

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

**RECEIVED**

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

JUN 22 2022

The Honorable H. Steven DeBerry, IV

**SC Court of Appeals**

Appellate Case No. 2022-000133

South Carolina Human Affairs Commission,

Appellant,

v.

Yacht Cove Owners Association, Inc.,  
and Maria Dehart,

Respondent.

**RECORD ON APPEAL**

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STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
2021- CP-32-00769

South Carolina Human Affairs Commission,  
Plaintiff,

vs.

Yacht Cove Owners Association, Inc., and  
Maria Dehart,  
Defendants.

**ORDER GRANTING  
MOTION TO DISMISS OF  
MARIA DEHART**

THIS MATTER came before the Court on November 2, 2021, and is now ripe for adjudication. For the reasons listed below, I hereby GRANT the Motion to Dismiss of Defendant Maria Dehart (hereinafter the “Defendant” or “Dehart”), by and through counsel, with prejudice, pursuant to Rule 12(b)(6), SCRCF.

In reviewing the Amended Complaint, motions, and arguments of counsel, I find as follows:

1. Dehart was served with the Amended Summons and Complaint on May 10th, 2021, which alleged that she violated “the South Carolina Fair Housing Law by retaliating against the Aggrieved Parties because the Aggrieved Parties filed a complaint of housing discrimination against Defendants.” (Amended Complaint, ¶ 3).

2. The Amended Complaint further alleges that Dehart is “an agent and employee<sup>1</sup> of Defendants(s) Yacht Cove Owners Association acting as its board chair [sic].” (Amended Complaint, ¶ 3).

---

<sup>1</sup> Dehart serves as a volunteer on the Board of the homeowners association at Yacht Cove.

3. It is undisputed that Yacht Cove Owners Association, Inc. is a non-profit corporation organized under the laws of South Carolina.<sup>2</sup>

4. It is also undisputed that Plaintiff's Amended Complaint identifies Dehart as a member of the board of directors, as set forth above.

5. It is also undisputed that S.C Code Ann. § 33-31-834 provides, in pertinent part, that "[a]ll directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) [including not-for-profit corporations] are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence."

6. It is undisputed that Plaintiff has not alleged that Dehart acted in a manner that amounts to willful, wanton, or gross negligence.

7. It is undisputed that, according to Plaintiff's own allegations, Plaintiff is suing Dehart for acts she took while acting as a member of the governing body of Yacht Cove. Indeed, Plaintiff alleges that Dehart "admitted that she, along with other members of Yacht Cove's Board, made the decision to charge the Aggrieved Parties for legal fees related to the previous housing discrimination complaint filed on or about February 27, 2020," and that "believed Article IX of Yacht Cove's Bylaws allowed the Board to assess the fees on behalf of Yacht Cove." (Amended Complaint, ¶¶ 15 and 17).

8. Indeed, Plaintiff admits that Dehart sought legal counsel prior to imposition of fees on the Aggrieved Parties. (Amended Complaint, ¶ 21).

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<sup>2</sup> The Court takes judicial notice that the South Carolina Secretary of State lists "Yacht Cove Owners Association, Inc." as a domestic Non-Profit Corporation in good standing.

### LEGAL STANDARD

Under Rule 12(b)(6), SCRCF, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E.2d 805 (S.C. App. 2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001).

### LEGAL ARGUMENT

For the reasons set forth above, the claims that Plaintiff attempts to state against Dehart must be dismissed with prejudice because they clearly run afoul of immunity provided to persons such as Dehart in S.C Code Ann. § 33-31-834.

The policy underlying S.C Code Ann. § 33-31-834 is easy to grasp. Dehart is a volunteer board member of a homeowner's association ("HOA"). Persons who volunteer to serve their neighbors as board members of an HOA should not be subject to suits seeking draconian damages from would-be plaintiffs or regulatory agencies because the board members acted within the course and scope of their volunteer service.

To the extent that Plaintiff seeks to rely on its internal "Administrative Interpretation" that individual board members of non-profit corporations are not immune from liability under the South Carolina Fair Housing Law, such reliance is unavailing. Plaintiff's internal interpretation takes no account of S.C. Code Ann. § 33-31-834, and in any event, a mere administrative interpretation may not take precedence over a statute. It is axiomatic that, where an administrative regulation – to say nothing of a mere "interpretation" – poses an irreconcilable conflict with a statute, the

administrative rule is void and unenforceable. *Brooks v. S.C. State Bd. of Funeral Serv.*, 271 S.C. 457, 247 S.E.2d 820 (1978).

In its arguments, the South Carolina Human Affairs Commission attempts to rely on its own administrative interpretations – which do not mention or consider S.C Code Ann. § 33-31-834 – in order to convince the Court to ignore the protections granted by the General Assembly to volunteer non-profit Board members like Ms. Dehart. For that reason, the case cited by Plaintiff, *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 766 S.E.2d 707, 719 (2014), actually works against its own argument. Plaintiff cites to *Kiawah* as a declaration of deference to an agency's administrative interpretation of a statute entrusted to its administration or its own regulations “unless there is a compelling reason to differ.” *Id.* at 34, 766 S.E.2d at 718. Plaintiff's argument fails for at least two reasons:

- (1) In this matter, the statute at issue – S.C Code Ann. § 33-31-834 – has not been entrusted by the General Assembly to Plaintiff's administration or its own regulations.
- (2) Moreover, the Commission has failed to account how its “interpretation” has addressed, in any meaningful way, the directives of the General Assembly as embodied in S.C. Code Ann. § 33-31-834.

Again, relying on *Kiawah*, this Court finds that the Commission's argument is “manifestly contrary to the statute.” *Id.* at 35, 766 S.E.2d at 719. The Commission – in direct contravention of S.C. Code Ann. § 33-31-834 – seeks to hold individual board members of non-profit corporations liable for acts taken squarely within the course of scope of his or her duty. In this regard, the Commission simply does not have the authority to override the General Assembly in this manner.

Plaintiff's policy arguments also fail. The South Carolina Human Affairs Commission may still attempt to convince a judge and/or jury that the Yacht Cove Owners Association, Inc. was in violation of the South Carolina Fair Housing Act in enforcing the provisions of the HOA's covenants.

Finally, to the extent Plaintiff attempts to rely on federal interpretations of federal statutes regarding housing, such an argument is also unavailing. Plaintiff is a state agency created by the General Assembly seeking to prosecute this case under a South Carolina statute. South Carolina law, and the rules of interpretation and construction applying thereto, must control. Furthermore, Plaintiff has not directed the Court to any case in which another court, state or federal, that has interpreted a statute that provides the protections to persons such as Ms. Dehart afforded by S.C. Code Ann. § 33-31-834.

**CONCLUSION**

For the reasons stated above, this Court GRANTS the Motion to Dismiss of Defendant Maria Dehart with prejudice, and DISMISSES the claims against her in Plaintiff's Amended Complaint, and with each side to bear its own costs and fees.

AND IT IS SO ORDERED.

\_\_\_\_\_  
The Honorable H. Steven DeBerry, IV  
Presiding Judge  
Fifth Judicial Circuit

\_\_\_\_\_, 20\_\_\_\_  
\_\_\_\_\_, South Carolina.



Lexington Common Pleas

**Case Caption:** Sc Human Affairs Commission VS Yacht Cove Owners Association, Inc. , defendant, et al  
**Case Number:** 2021CP3200769  
**Type:** Order/Dismissal

H. Steven DeBerry, IV

Circuit Court Judge 2771

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STATE OF SOUTH CAROLINA	)	
	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	
	)	
South Carolina Human Affairs	)	
Commission,	)	
	)	
Plaintiff,	)	
	)	
vs.	)	ORDER
	)	Case No.: 2021-CP-32-00769
	)	
Yacht Cove Owners Association,	)	
Inc., and Maria Dehart,	)	
	)	
Defendants.	)	
	)	
	)	

The Plaintiff, South Carolina Human Affairs Commission, requests the Court to reconsider the Order dated December 16, 2021 and filed in the Lexington County Clerk of Court's office.

Having duly considered the motion of the Plaintiff, this Court has determined that its original ruling of December 16, 2021 is fully supported by law and evidence and is hereby ratified and reconfirmed. The motion is therefore DENIED.

AND IT IS SO ORDERED.

Dated: \_\_\_\_\_

\_\_\_\_\_  
H. Steven DeBerry IV  
Judge, Twelfth Judicial Circuit



Lexington Common Pleas

**Case Caption:** Sc Human Affairs Commission VS Yacht Cove Owners Association, Inc. , defendant, et al

**Case Number:** 2021CP3200769

**Type:** Order/Other

H. Steven DeBerry, IV

Circuit Court Judge 2771

Electronically signed on 2022-01-07 12:53:14 page 2 of 2

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF LEXINGTON )

IN THE COURT OF COMMON PLEAS

South Carolina Human Affairs )  
Commission, )  
Complainant, )

2021-CP-32-00769

vs. )

AMENDED COMPLAINT

Yacht Cove Owners Association )  
Inc. and Maria Dehart, )  
Respondents. )  
\_\_\_\_\_ )

The Plaintiff, complaining of the Defendants herein, would show unto this Honorable Court as follows:

1. This action is brought by the South Carolina Human Affairs Commission (hereinafter "Plaintiff," "SCHAC" or "the Commission") on behalf of Charles and Patricia Rentz ("Aggrieved Parties") to enforce the South Carolina Fair Housing Law (hereinafter "FHL"), § 31-21-10 et seq. of the South Carolina Code of Laws, as amended, and its implementing regulations. This action is brought on behalf of the Aggrieved Parties pursuant to § 31-21-130, et al. S.C. Code Ann. (Law Co-op. 1976).

2. Plaintiff is a South Carolina state agency with its principal place of business at 1026 Sumter Street, Suite 101, Columbia, South Carolina. The Commission's mission, as affirmed by the General Assembly, is to eliminate and prevent discrimination in employment, housing, and public accommodations. The Human Affairs Commission works to eliminate housing discrimination and to ensure equal opportunity for all people through leadership, education and outreach, public policy initiatives, investigation of fair housing violations, and enforcement.

3. As set forth below, Defendants have engaged in a practice of discrimination against the Aggrieved Parties in violation of the South Carolina Fair Housing Law by retaliating against the

Aggrieved Parties because the Aggrieved Parties filed a complaint of housing discrimination against Defendants.

4. The property at issue is in Lexington County, South Carolina. The Commission's Complaint is based upon Defendants' acts or practices pursuant to the FHL at South Carolina Code § 31-21-80.

5. Upon information and belief, Defendant Yacht Cove Owners Association, Inc. ("Defendants Yacht Cove Owners Association" or "Yacht Cove") is a domestic corporation in the State of South Carolina, with a principal place of business in Lexington County.

6. Upon information and belief, Maria Dehart ("Defendant Dehart" or "Dehart") is a resident of Lexington County, South Carolina, and is an agent and employee of Defendants(s) Yacht Cove Owners Association acting as its board chair.

7. Upon information and belief, the property giving rise to this action is located at 239 Mariners Way, Columbia, SC 29212.

8. Venue is proper in this Court.

9. The South Carolina FHL at § 31-21-130(C) grants the Commission authority to investigate and, if an Order for a hearing is issued, to hold an administrative hearing at its offices in Columbia, South Carolina or at other convenient locations. The parties to the investigation may otherwise elect to have the matter heard in circuit court pursuant to § 31-21-130, et seq. Defendants have elected to remove this matter to circuit court.

#### **FACTS**

10. The Aggrieved Parties are members of a class of persons protected from unlawful discrimination by the FHL § 31-21-80.

11. Specifically, Aggrieved Parties are individuals who did previously file a Fair Housing complaint against Defendants on or about February 27, 2020.

12. On August 31, 2020, the Aggrieved Parties discovered that the Defendants placed an encumbrance against the property giving rise to this action in the form of a lien in the amount of \$2,850 for legal fees associated the work the Defendants' attorney did related to the Aggrieved Parties' previous fair housing complaint.

13. The Aggrieved Parties received no prior notification of the charge until they attempted to sell their unit and the charge was revealed at the sale closing.

14. The Aggrieved Parties timely dual-filed a second complaint with SCHAC under the South Carolina FHL, §31-21-10 et seq., as amended, and with the United States Department of Housing and Urban Development under corresponding federal laws on October 7, 2020.

15. During the Commission's second investigation of the retaliation complaint filed in October 2020, Defendant Dehart admitted that she, along with other members of Yacht Cove's Board, made the decision to charge the Aggrieved Parties for legal fees related to the previous housing discrimination complaint filed on or about February 27, 2020.

17. Defendant Dehart specifically told the SCHAC investigator that she believed Article IX of Yacht Cove's Bylaws allowed the Board to assess the fees on behalf of Yacht Cove.

18. During the first investigation, Defendant Dehart was the primary contact with Yacht Cove's attorney, Warren Herndon, which is evidenced by her own admissions to the Plaintiff's investigator and through an invoice of services rendered generated by Woodward, Cothran & Herndon, Attorneys at Law.

19. Specifically, Dehart consulted with Warren Herndon, the Defendants' attorney, multiple times by telephone in response to the Plaintiff's first investigation, which culminated in legal fee expenses of \$2,850.

20. During the course of the second investigation, Warren Herndon admitted to the Plaintiff's investigator that he and Dehart discussed the imposition of the fees on the Aggrieved Parties.

21. Further, Defendant Dehart admitted to the Plaintiff's investigator that she, on Yacht Cove's behalf, failed to send notice of the fees to the Aggrieved Parties prior to the sale of their home, stating that personal struggles she had "going on" caused timely notice to "slip through the cracks."

22. However, Defendant Dehart admitted during the Plaintiff's investigation that she told Yacht Cove's accountant to add the legal fees to the statement for the Aggrieved Parties in or around August 2020.

23. After the Commission conducted a lawful investigation, the Commission determined that reasonable cause existed to believe that discriminatory housing practices occurred. Specifically, the Commission found that there was evidence to prove that Defendants retaliated against the Aggrieved Parties because the Aggrieved Parties filed a fair housing complaint against the Defendants on or about February 27, 2020.

24. The Aggrieved Parties' timely-filed second complaint alleges Defendants have retaliated against Aggrieved Parties in violation of S.C. Code Ann. § 31-21-80.

25. The South Carolina Human Affairs Commission is the state agency charged with the administration of the South Carolina Fair Housing Law as stated in §31-21-90 of the South Carolina Code of Laws, including the investigation and prosecution of charges of unlawful discriminatory housing practices.

**CAUSE OF ACTION**  
**S.C. Code Ann. § 31-21-80**  
**(Retaliation)**

26. The Commission re-alleges and incorporates by reference the allegations set forth above.

27. The Defendants' continued assertion of a claim for attorneys' fees is baseless and constitutes interference and harassment of the Aggrieved Parties in retaliation for the exercise of their rights under the FHL.

28. The Defendants, through the actions and conduct referred to in the preceding paragraphs, including but not limited to retaliation, have discriminated against the Aggrieved Parties in violation of S.C. Code Ann. § 31-21-80.

29. As a result of this conduct, the Aggrieved Parties suffered emotional distress, substantial inconvenience, embarrassment, and humiliation.

30. Plaintiff is informed and believes that Aggrieved Parties are entitled to judgment for actual, compensatory, and punitive damages, and attorney's fees and costs.

31. Additionally, Plaintiff is entitled to the costs associated with bringing this action and seeks a separate civil penalty in an amount deemed appropriate by a jury, not to exceed \$21,039.

**WHEREFORE**, Plaintiff requests an Order:

A) Declaring that the Defendants' actions, as alleged in this complaint, violate the Fair Housing Law § 31-21-10 et seq. of the South Carolina Code of Laws of 1976, as amended;

B) Enjoining the Defendants, their employees, agents, successors, and any other persons in active concert or participation with any of them from retaliating against any person for the exercise of rights under the Fair Housing Law and Fair Housing Act;

C) Awarding such damages to the Aggrieved Parties pursuant to §31-21-80 as will fully compensate them for any economic loss, emotional distress, substantial inconvenience, embarrassment, humiliation, loss of a housing opportunity, and any and all other actual damages caused by Defendants' discriminatory conduct;

D) Assessing such civil penalty as the Court deems just and proper, not to exceed \$21,039;

E) Awarding any additional relief that the Court deems just and proper.

s/Lee Ann Watson., Esq.

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Columbia, South Carolina

March 29, 2021

STATE OF SOUTH CAROLINA  
COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT  
2021- CP-32-00769

South Carolina Human Affairs Commission,  
Plaintiff,

vs.

Yacht Cove Owners Association, Inc., and  
Maria Dehart,

Defendants.

**MOTION TO DISMISS OF  
MARIA DEHART**

NOW COMES the Defendant Maria Dehart (hereinafter the “Defendant” or “Dehart”), by and through counsel, and moves to dismiss Plaintiff’s Amended Complaint with prejudice pursuant to Rule 12(b)(6), SCRCPP, as follows:

1. Dehart was served with the Amended Summons and Complaint on May 10th, 2021, which alleged that she violated “the South Carolina Fair Housing Law by retaliating against the Aggrieved Parties because the Aggrieved Parties filed a complaint of housing discrimination against Defendants.” (Amended Complaint, ¶ 3).

2. The Amended Complaint further alleges that Dehart is “an agent and employee<sup>1</sup> of Defendants(s) Yacht Cove Owners Association acting as its board chair [sic].” (Amended Complaint, ¶ 3).

3. It is undisputed that Yacht Cove Owners Association, Inc. is a non-profit corporation organized under the laws of South Carolina.<sup>2</sup>

<sup>1</sup> Dehart serves as a volunteer on the Board of the homeowners association at Yacht Cove.

<sup>2</sup> The Court may take judicial notice that the South Carolina Secretary of State lists “Yacht Cove Owners Association, Inc.” as a domestic Non-Profit Corporation in good standing.

4. It is also undisputed that Plaintiff's Amended Complaint identifies Dehart as a member of the board of directors, as set forth above.

5. It is also undisputed that S.C Code Ann. § 33-31-834 provides, in pertinent part, that "[a]ll directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, associations, and organizations described in subsection (b) [including not-for-profit corporations] are immune from suit arising from the conduct of the affairs of these cooperatives, corporations, associations, or organizations. This immunity from suit is removed when the conduct amounts to wilful, wanton, or gross negligence."

6. It is undisputed that Plaintiff has not alleged that Dehart acted in a manner that amounts to wilful, wanton, or gross negligence.

7. It is undisputed that, according to Plaintiff's own allegations, Plaintiff is suing Dehart for acts she took while acting as a member of the governing body of Yacht Cove. Indeed, Plaintiff alleges that Dehart "admitted that she, along with other members of Yacht Cove's Board, made the decision to charge the Aggrieved Parties for legal fees related to the previous housing discrimination complaint filed on or about February 27, 2020," and that "believed Article IX of Yacht Cove's Bylaws allowed the Board to assess the fees on behalf of Yacht Cove." (Amended Complaint, ¶¶ 15 and 17).

8. Indeed, Plaintiff admits that Dehart sought legal counsel prior to imposition of fees on the Aggrieved Parties. (Amended Complaint, ¶ 21).

#### LEGAL STANDARD

Under Rule 12(b)(6), SCRPC, a defendant may move to dismiss based on a failure to state facts sufficient to constitute a cause of action. *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999); *Bergstrom v. Palmetto Health Alliance*, 352 S.C. 221, 573 S.E.2d 805

(S.C. App. 2002). A trial judge in the civil setting may dismiss a claim when the defendant demonstrates the plaintiff has failed to state facts sufficient to constitute a cause of action in the pleadings filed with the court. *Williams v. Condon*, 347 S.C. 227, 553 S.E.2d 496 (Ct.App.2001).

### LEGAL ARGUMENT

For the reasons set forth above, the claims that Plaintiff attempts to state against Dehart must be dismissed with prejudice because they clearly run afoul of immunity provided to persons such as Dehart in S.C Code Ann. § 33-31-834.

The policy underlying S.C Code Ann. § 33-31-834 is easy to grasp. Dehart is a volunteer board member of a homeowner's association ("HOA"). Persons who volunteer to serve their neighbors as board members of an HOA should not be subject to suits seeking draconian damages from would-be plaintiffs or regulatory agencies because the board members acted within the course and scope of their volunteer service.

To the extent that Plaintiff seeks to rely on its internal "Administrative Interpretation" that individual board members of non-profit corporations are not immune from liability under the South Carolina Fair Housing Law, such reliance is unavailing. Plaintiff's internal interpretation takes no account of S.C. Code Ann. § 33-31-834, and in any event, a mere administrative interpretation may not take precedence over a statute.

### CONCLUSION

For the reasons stated above, Defendant Maria Dehart respectfully requests that the Court DISMISS the claims in Plaintiff's Amended Complaint against her with prejudice, and any such other and further relief as this Court may deem just and proper.

Dated this the 3rd day of June, 2021.

Respectfully submitted,

RICHARDSON PLOWDEN & ROBINSON, P.A.

/s/ Eugene H. Matthews

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**COUNSEL FOR DEFENDANT MARIA DEHART**

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 South Carolina Human Affairs )  
 Commission, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Yacht Cove Owners Association, )  
 Inc., and Maria Dehart, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT

C/A No. 2021-CP-32-00769

**PLAINTIFF’S MEMORANDUM  
 IN OPPOSITION TO DEFENDANT’S  
 MOTION TO DISMISS MARIA DEHART**

Defendant Maria Dehart (“Dehart”) seeks to be dismissed from this action on the grounds that her volunteer service as Chair of Defendant Yacht Cove Owners Association, Inc. (“the Board”), a domestic non-profit corporation, subjects her to the qualified immunity protections of S.C. Code Ann. § 33-31-834. Plaintiff South Carolina Human Affairs Commission (“the Commission”), who brings suit on behalf of the Aggrieved Party, opposes the motion and would show unto the Court the following in support of its position:

**BACKGROUND**

As alleged in the Amended Complaint, the Aggrieved Party is a person who previously filed a fair housing complaint with the Commission, which the Commission dismissed. This matter arises from Dehart placing a \$2,850.00 lien against the Aggrieved Party’s property for the purpose of recovering legal fees associated with that initial fair housing complaint. The Aggrieved Party did not receive notice of the lien until appearing at the closing for the sale of their property. The Aggrieved Party thereafter filed a second complaint with the Commission alleging that the individualized assessment of legal fees constitutes unlawful retaliation. This is the fair housing complaint giving rise to this action.

Also as alleged in the Amended Complaint, Dehart admitted that she, along with other

members of the Board, made the decision to charge the Aggrieved Party for the legal fees associated with their defending the initial fair housing complaint. Specifically, Dehart informed the Commission's investigator she believed the Board's bylaws allowed for this fee assessment. Dehart informed the Commission's investigator that she told the Board's accountant to assess these legal fees against the Aggrieved Party. Dehart further informed the Commission's investigator that she failed to send prior notice of this fee assessment to the Aggrieved Party on the Board's behalf.

The Commission maintains Dehart's decision to assess legal fees against the Aggrieved Party was made in retaliation for the Aggrieved Party's initial complaint to the Commission in violation of S.C. Code Ann. § 31-21-80, which makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of . . . any right granted" by the South Carolina Fair Housing Act.

### LEGAL STANDARD

Dehart moves for dismissal pursuant to Rule 12(b)(6), SCRCP. The court may dismiss a complaint that fails "to state facts sufficient to constitute a cause of action." *Id.* The court's ruling "must be bottomed and premised solely upon the allegations set forth by the plaintiff. The motion will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001).

### ARGUMENT AND AUTHORITIES

**The South Carolina Fair Housing Law is constructed in a manner that impliedly preempts state-specific business law, leading to an absurd result should Defendant Dehart be dismissed from this action pursuant to the Nonprofit Corporation Act.**

Dehart asserts that S.C. Code Ann. § 33-31-834 entitles her to qualified immunity in this

action. That statute, part of the South Carolina Nonprofit Corporation Act of 1994, provides immunity from suit for “directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, [and] associations” when suit arises “from the conduct of the affairs of these cooperatives, corporations, associations, or organizations.” S.C. Code Ann. § 33–31–834(a).

The Commission submits the South Carolina Fair Housing Law preempts Dehart’s invocation of qualified immunity. “Where a state statute conflicts with or frustrates federal law, the former must give way.” *Quigley v. Rider*, 357 S.C. 477, 483, 593 S.E.2d 476, 479 (Ct. App. 2003) (citing *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114 (1981)). The conflicting state laws at issue can be resolved with implied conflict preemption, which occurs “either where compliance with both federal and state regulations is physically impossible or where the state law ‘stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress.’” *Priester v. Cromer*, 401 S.C. 38, 44, 736 S.E.2d 249, 252 (2012) (quoting *Hines v. Davidowitz*, 312 U.S. 52, 67, 61 S.Ct. 399, 404 (1941)). “Evidence of preemptive purpose is sought in the text and structure of the statute at issue.” *Quigley v. Rider*, 357 S.C. at 483, 593 S.E.2d at 479.

The Commission brings suit under the South Carolina Fair Housing Law, which was passed in 1989 to implement “the policy of this State to provide, within constitutional limitations, for fair housing throughout the State.” S.C. Code Ann. §§ 31–21–20; compare 42 U.S.C. § 3601 (Fair Housing Act “Declaration of policy”). “Under general rules of statutory construction, a jurisdiction adopting legislation from another jurisdiction imports with it the judicial gloss interpreting that legislation.” *Orr v. Clyburn*, 277 S.C. 536, 540, 290 S.E.2d 804, 806 (1982). While *Clyburn* specifically pertained to the South Carolina Human Affairs Law and Title VII of the Civil Rights Act of 1964, the “essentially identical” provisions of the federal Fair Housing Act

and the South Carolina Fair Housing Law similarly demand that cases interpreting provisions of the federal Fair Housing Act “are certainly persuasive if not controlling” in construing our State’s Fair Housing Law. *Orr v. Clyburn*, 277 S.C. at 540, 290 S.E.2d at 806.

Both “[t]he federal Fair Housing Act and South Carolina Fair Housing Law prohibit discrimination in the rental of a dwelling based upon a person’s race, color, religion, sex, familial status, or national origin.” *SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. 72, 89, 781 S.E.2d 115, 124 (Ct. App. 2015) (citing S.C. Code Ann. § 31–21–40; 42 U.S.C. § 3604). A complaint filed under the Fair Housing Law “means a written charge alleging a discriminatory housing practice in compliance with the Act . . . or with the Department of Housing and Urban Development [“HUD”] and referred to the Commission pursuant to Section 810(f) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1968.” S.C. Code Regs. § 65-210(D)(2)(c) (emphasis supplied). The Act’s protections extend to retaliation claims, prohibiting coercion, intimidation, threats, or interference “with any person in the exercise of . . . any right granted” by the Act. S.C. Code Ann. § 31–21–80; 42 U.S.C. § 3617; *see, e.g., Reyes v. Fairfield Properties*, 661 F.Supp.2d 249, 265 (E.D.N.Y. 2009) (to succeed, a retaliation claim brought pursuant to this section does not require any predicate finding of liability under the Act’s enumerated substantive anti-discrimination provisions).

This Court should construe the provisions of the Fair Housing Law giving rise to a private cause of action against Dehart to preempt the qualified immunity provision of the Nonprofit Corporation Act. “The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature.” *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). Though legislative intent “should be derived primarily from the plain language of the statute,” that plain language must be read “in conjunction with the purpose of the entire statute and the policy of the

law.” *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599-600, 654 S.E.2d 284, 289-90 (Ct. App. 2007). “In construing a statute, the court looks to the language as a whole in light of its manifest purpose.” *State v. Sweat*, 379 S.C. 367, 376, 665 S.E.2d 645, 650 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010). Courts “should reject statutory interpretations that lead to results so plainly absurd they could not have been intended by the legislature or that defeat the plain legislative intention.” *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. at 599, 654 S.E.2d at 289.

To apply the 1994 Nonprofit Corporation Act rather than the earlier South Carolina Fair Housing Law would lead to an absurd result. Unlike the Nonprofit Corporation Act, the Fair Housing Act is entrenched with Title VIII of the Civil Rights Act, and contemplates the naming of individual respondents under the circumstances giving rise to the complaint in this case. Accordingly, the Commission has determined that individual board members of property owner’s associations are not immune to liability in actions brought pursuant to the Fair Housing Law, and this Court should defer to that interpretation.

***A. The Fair Housing Law was enacted to protect the civil rights of the aggrieved party***

The South Carolina Nonprofit Corporation Act cannot be applied in a manner that abridges the civil rights of the aggrieved parties represented by the Commission. The prevention of housing discrimination is a matter inextricably linked to the Equal Protection Clause. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 260, 97 S.Ct. 555, 561 (1977); *see also Katzenbach v. Morgan*, 384 U.S. 641, 651, 86 S.Ct. 1717, 1724 (1966) (state may enact legislation “to enforce the Equal Protection Clause” so long as statute(s) is “plainly adapted to that end” and “consistent with the letter and spirit of the constitution”). “The purpose of the equal protection clause of the Fourteenth Amendment is to secure every person within the State’s

jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S.Ct. 495, 495 (1918).

Dismissing Defendant Dehart pursuant to a State-created business rule would frustrate the federal underpinnings of this Fair Housing action. *See Priester v. Cromer*, 401 S.C. at 59, 736 S.E.2d at 260 (finding federal motor vehicle standards impliedly preempt state-law products liability claims); *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) (in determining legislative intent, “there is no room for the courts to impose a different judgment based upon their own notions of public policy”). The Nonprofit Corporation Act does not share the same constitutional roots as those grounding the state Fair Housing Act. *Compare* S.C. Code Ann. § 33–31–301, *et. seq.* (purposes and powers of nonprofit corporations) *with SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. at 89, 781 S.E.2d at 124 (acknowledging classifications protected by state and federal housing laws). Further, Dehart sits as a member of a private homeowner’s board. She does not serve the public. *See Williams v. Condon*, 347 S.C. at 233, 553 S.E.2d at 500 (“American courts have long recognized the existence of immunity for public officers from personal liability for tortious acts committed while serving in an official capacity.”).

Applying the proposed immunity provision would have a chilling effect on aggrieved parties wishing to invoke the Fair Housing Law against the decisionmakers governing their capricious homeowner’s associations and boards. *See Foster v. Barilow*, 6 F.3d 405, 408 (6th Cir. 1993) (private party plaintiffs “are, in reality, the primary enforcers of the Fair Housing Act”); *MHANY Mgmt. Inc. v. Inc. Vill. of Garden City*, 985 F. Supp. 2d 390, 415 (E.D.N.Y. 2013), *aff’d sub nom, Mhany Mgmt., Inc. v. Cty. of Nassau*, 819 F.3d 581 (2d Cir. 2016) (refusing to weigh

evidence which “would have a chilling effect on any [housing] entity’s willingness to enact similar [antidiscrimination] guidelines”). The Fourth Circuit has spoken to this policy consideration, stating:

In light of the public policy objectives inherent in encouraging private plaintiffs to seek redress of [Fair Housing Act] violations, it would be incongruous to allow bodies such as the HOA to enforce by contract an attorneys’ fees provision against a plaintiff who has brought an [ ] action in good faith. Such a provision, if enforced by the courts, would have the natural and counterproductive effect of dissuading individuals from filing [a Fair Housing] lawsuit when they have a reasonable basis on which to assert their claims.

*Scoggins v. Lee’s Crossing Homeowners Ass’n*, 718 F.3d 262, 276 (4th Cir. 2013) (refusing to award attorneys’ fees and costs to prevailing defendants); *see also Bryant Woods Inn, Inc. v. Howard Cnty, Md.*, 124 F.3d 597, 606 (4th Cir. 1997) (rejecting ordinary application of loser-pays system to plaintiffs bringing suit pursuant to the Fair Housing Act).

Dehart’s proposed application of S.C. Code Ann. § 33–31–834 would hinder the efforts of Congress and the South Carolina General Assembly to promote the enforcement of civil rights objectives. The qualified immunity statute therefore must “give way” to those provisions of the South Carolina Fair Housing Law which give rise to a private cause of action. *Quigley v. Rider*, 357 S.C. at 483, 593 S.E.2d at 479.

**B. *The Fair Housing Act contemplates that an individual board member may be held liable***

“It is clear that the Fair Housing Act allows for claims to be brought against individual Defendants.” *Hous. Opportunities Project For Excellence, Inc. v. Key Colony No. 4 Condo. Assoc., Inc.*, 510 F. Supp. 2d 1003, 1013 (S.D. Fla. 2007). The rationale lies in general principles of agency law, which the Supreme Court has expressly applied to housing discrimination actions. *Meyer v. Holley*, 537 U.S. 280, 285, 123 S. Ct. 824, 828 (2003). Elected board members are charged with representing the communal interest of all property owners, and are therefore “in a

position to deny or make unavailable a portion of the building to plaintiff, or to discriminate against plaintiff in the provision of housing services or facilities,” to include retaliation. *Schroeder v. De Bertolo*, 879 F. Supp. 173, 178 (D.P.R. 1995). An individual board member of a community association is a proper party when evidence shows the individual “personally participated in discriminatory acts taken on behalf of the association.” Sara Pratt, “Proper Respondents in Fair Housing Complaints” (Sept. 4, 2014 HUD memo) (citing *Hous. Opp. Project for Excellence, Inc. v. Key Colony No. 4 Condo. Ass’n, supra*); 1 Housing Discrim. Practice Man. § 2:26 (“Who can be sued”); Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 12B:2 (July 2021) (“Who may be liable under the Fair Housing Act—Principals and agents”).

Other courts have declined to grant summary judgment in favor of individual board members. The Georgia Court of Appeals has vacated summary judgment in a retaliation case against a condominium association and individual members of its board of directors. *Bailey v. Stonecrest Condominium Ass’n, Inc.*, 304 Ga.App. 484, 484, 696 S.E.2d 462, 464 (Ga. Ct. App. 2010). In that case, the plaintiffs alleged individual members of their owner’s association board proposed amending the by-laws for the discriminatory purpose of prohibiting property owners from leasing their units to minorities. *Id.* at 489, 696 S.E.2d at 467. The Georgia Court of Appeals found the plaintiffs had established a prima facie case for discrimination, therein noting that the Georgia Fair Housing Act “is nearly identical to the Federal Fair Housing Act,” and expressly “consider[ing] federal cases construing the FHA persuasive precedent applicable to the instant dispute.” *Id.* at 487, n.3, 696 S.E.2d at 466, n.3.

An individual member of the defendant homeowner’s association’s board of directors was properly named in *Scroggins v. Lee’s Crossing Homeowner’s Ass’n*, a Fourth Circuit case wherein plaintiffs brought suit for the board’s failure to act on a requested exception to the covenants sought

to accommodate the plaintiffs' partially paralyzed son. 718 F.3d at 267. Evidence showed the plaintiffs informed the association's board members of their request in writing, but the board tabled the request and failed to communicate with the plaintiff. Sixteen months later, one board member finally reached out to the plaintiffs seeking details in support their request. *Id.* at 268.

Relying upon *Meyer v. Holley, supra*, the United States District Court for the Southern District of Florida found plaintiffs in a fair housing action stated a sufficient claim against individual board members by alleging "that the board of directors each personally and intentionally discriminated against" them. *Hous. Opportunities Project For Excellence, Inc. v. Key Colony No. 4 Condo. Assoc., Inc.*, 510 F. Supp. 2d at 1014; *Sabal Palm Condominiums of Pine Island Ridge Assoc., Inc. v. Fischer*, 6 F.Supp.3d 1272, 1294 (S.D. Fla. 2014) (holding president of HOA's board of directors liable for personally contributing to HOA's refusal to accommodate under FHA). Courts in the Ninth Circuit have similarly declined to find individual board members could not be found liable in fair housing actions. *Hernandez v. Golf Course Ests. Home Owners Ass'n*, 454 F. Supp. 3d 1029, 1039 (D. Or. 2020); *Sanzaro v. Ardiente Homeowners Ass'n*, 364 F.Supp.3d 1158, 1177-80 (D. Nev. 2019) (finding board members individually liable for denying reasonable accommodation); *Fielder v. Sterling Park Homeowners Ass'n*, 914 F.Supp.2d 1222, 1229 (W.D. Wash. 2012) (holding that president and board members may be held individually liable for their personal involvement in FHA violations); *United States v. Tropic Seas, Inc.*, 887 F.Supp. 1347, 1365 (D. Haw. 1995) (denying HOA board member's summary judgment motion because there was a genuine issue of material fact as to whether defendant participated or acquiesced in FHA violations).

**C. Administrative Interpretation asserts an individual board member may be held liable**

As a general rule, courts defer to state agency interpretations of their own regulations. *City*

of *Arlington, Tex. V. F.C.C.*, 569 U.S. 290, 307, 133 S.Ct. 1863, 1874-75 (2013). “If the statute or regulation ‘is silent or ambiguous with respect to the specific issue,’ the court then must give deference to the agency’s interpretation of the statute or regulation, assuming the interpretation is worthy of deference.” *Kiawah Dev. Partners, II v. S.C. Dep’t of Health & Env’tl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014) (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)). “The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons.” *Brown v. S.C. Dep’t of Health & Env’t Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (internal quotation and citation omitted).

Citing the South Carolina Fair Housing Law, HUD guidance, and relevant case law, the Commission’s Administrative Interpretation #4 asserts that individual board members of homeowner’s associations can be held liable as “Persons” under S.C. Code Ann. § 31–21–30(9). In reaching its interpretation, the Commission relies upon HUD guidance stating that individual board members should be named when “the facts presented during intake allege that these board members directly participated in the alleged discriminatory housing practice.” *Title VIII Complaint Intake, Investigation, and Conciliation Handbook* (8024.1) at 4-16, available at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/ftheo/80241](https://www.hud.gov/program_offices/administration/hudclips/handbooks/ftheo/80241).

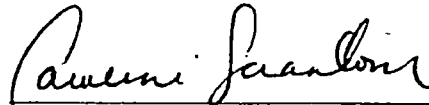
Here, the Commission alleges Dehart’s individualized assessment of attorneys’ fees against the Aggrieved Party constitutes unlawful retaliation “against any person because that person has made a complaint . . . or participated in any manner in a proceeding under the Fair Housing Law.” S.C. Code Regs. § 65-219(3)(e). Evidence alleged in the Amended Complaint supports a conclusion that Dehart took part in, authorized, and/or ratified the discriminatory conduct forming the basis for this retaliation suit: as alleged in the Amended Complaint, Dehart

decided to assess the Aggrieved Party with legal fees associated with Yacht Cove's defense of the Aggrieved Party's initial fair housing complaint. Dehart instructed Yacht Cove's accountant to assess these fees against the Aggrieved Party. To add insult to injury, Dehart knowingly withheld notice of her decision until the Aggrieved Party appeared at the closing for the sale of her Yacht Cove property. Under this theory, facts are sufficient to entitle the Aggrieved Party to relief by and through the Commission, pursuant to S.C. Code Ann. § 31-21-80.

### CONCLUSION

The Commission submits that, for the foregoing reasons, the South Carolina Fair Housing Law preempts the qualified immunity provision of the South Carolina Nonprofit Corporation Act. Accordingly, the Court should deny Defendant Dehart's motion to dismiss, find the qualified immunity provision upon which Defendant Dehart relies does not apply to this action, and further find the Commission's complaint states facts which sufficiently establish a cause of action under S.C. Code Ann. § 31-21-80.

Respectfully submitted,



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ATTORNEYS FOR PLAINTIFF

October 29, 2021  
Columbia, South Carolina

STATE OF SOUTH CAROLINA )  
 COUNTY OF LEXINGTON )  
 )  
 South Carolina Human Affairs )  
 Commission, )  
 )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 Yacht Cove Owners Association, )  
 Inc., and Maria Dehart, )  
 )  
 Defendants. )  
 \_\_\_\_\_ )

**IN THE COURT OF COMMON PLEAS  
 ELEVENTH JUDICIAL CIRCUIT**

C/A No. 2021-CP-32-00769

**PLAINTIFF’S MOTION TO  
 ALTER OR AMEND JUDGMENT**

On December 16, 2021, this Court entered an order (Or.) granting Defendant’s Rule 12(b)(6), SCRCPP, motion to dismiss Defendant Maria Dehart (Dehart) as an individually named party to this action. Plaintiff South Carolina Human Affairs Commission (the Commission) hereby moves to alter or amend judgment pursuant to Rule 59(e), SCRCPP, and would show unto the Court the following in support of its motion:

A motion to alter or amend judgment is contemplated in two situations: for reconsideration when a party “believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue;” and “when an issue or argument has been raised, but not ruled on, in order to preserve it for appellate review.” *Elam v. S.C. Dept. of Transp.*, 361 S.C. 9, 24, 602 S.E.2d 772, 780 (2004). The Commission respectfully moves before the Court to reconsider its order for two reasons. First, to address a misapprehension of the deferential standard to be applied to an agency’s interpretation of its own statutes and regulations. Second, to furnish a ruling on the issue of implied preemption.

- I. The Commission’s Administrative Interpretation #4 is neither arbitrary, capricious, nor manifestly contrary to the statutes and regulations the General Assembly has enumerated to the Commission.**

In granting Dehart’s Rule 12(b)(6), SCRCPP motion, the Court ruled that “a mere

administrative interpretation may not take precedence over a statute,” and found the Commission’s Administrative Interpretation #4 manifestly contrary to a statute found in the Nonprofit Corporation Act. (Or. at 3-4). The Court further found that the Commission exceeded its authority and overrode the intent of the General Assembly when it named Dehart as an individual defendant in its fair housing suit. (Or. at 4).

In so finding, this Court expressly relied on the case of *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 766 S.E.2d 707, 719 (2014)—a case that considers when a court must give deference to an agency’s interpretation of the statutes the agency is charged with administering. *Kiawah* advises that deference is given to an administrative interpretation unless it is “arbitrary, capricious, or manifestly contrary to the statute” that is the subject of the agency’s interpretation. *Id.* at 34-35, 766 S.E.2d 707 at 718. The case offers no support for the legal conclusion that an administrative interpretation is afforded no deference should circumstances give rise to discord between the interpretation and a statute wholly outside the scope of the laws administered by the agency. Yet, the Order adopts *Kiawah* for that very purpose.

Instead of ruling upon whether the Commission’s interpretation of its own statutes and regulations was reasonable and entitled to deference, the Court deferred to a statute wholly unassociated with the South Carolina Fair Housing Law for reasons unrelated to the scope of the Commission’s duties in enforcing the South Carolina Fair Housing Law. This is a misapprehension of the deferential standard pertaining to an agency’s interpretation of its own statute or regulation.

Interpreting and applying statutes and regulations administered by an agency is a two-step process. First, a court must determine whether the language of a statute or regulation directly speaks to the issue. If so, the court must utilize the clear meaning of the statute or regulation. If the statute or regulation is silent or ambiguous with respect to the specific issue, the court then must give deference to

the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference. . . .

Advancing to the second step, we must first consider the scope of South Carolina's deference doctrine. In this State, the doctrine can be traced back to *Read Phosphate Co. v. South Carolina Tax Commission*, 169 S.C. 314, 168 S.E. 722 (1933), where this Court adopted the deference doctrine from United States Supreme Court precedent, stating: "The construction given to a statute by those charged with the duty of exercising it is always entitled to the most respectful consideration, and ought not to be overruled without cogent reasons." The Court, again relying on federal case law, stated the rationale for the rule as: "The officers concerned are usually able men, and masters of the subject. Not unfrequently they are the draftsmen of the laws they are . . . called upon to interpret." Thus, we give deference to agencies both because they have been entrusted with administering their statutes and regulations and because they have unique skill and expertise in administering those statutes and regulations.

As repeatedly stated in our decisions, our deference doctrine provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations unless there is a compelling reason to differ.

Accordingly, the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is arbitrary, capricious, or manifestly contrary to the statute.

*Kiawah*, 411 S.C. at 32-35, 766 S.E.2d at 717-18 (cleaned up).

The agency cases *Kiawah* catalogues for its enunciated test consistently apply this deference doctrine to situations where a regulation or administrative interpretation is alleged to conflict with a statute charged to the agency's enforcement—not to a statute from an Act not within the agency's purview. *Barton v. S.C. Dept. of Probation Parole and Pardon Services*, 404 S.C. 395, 415-18, 745 S.E.2d 110, 121-23 (2013) (reviewing DPPPS' application of its own statute); *CFRE, LLC v. Greenville County Assessor*, 395 S.C. 67, 77, 716 S.E.2d 877, 882 (2011) (reviewing DOR's interpretation of the revenue laws DOR administers); *S.C. Coastal Conversation League v. S.C. Dep't of Health & Env'tl. Control*, 363 S.C. 67, 74, 610 S.E.2d 482,

486 (2005) (determining which DHEC regulation applied to action undertaken by DHEC's OCRM); *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (deciding reasonableness of Worker's Compensation Commission's interpretation and administration of a statute from Worker's Compensation Act); *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002) (deciding reasonableness of DHEC's OCRM interpretation and administration of DHEC's regulations relating to stormwater management); *Dunton v. S.C. Bd. Of Examiners in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) (reviewing Board of Optometry's interpretation of its own statutes); *Faile v. S.C. Employment Sec. Comm'n*, 267 S.C. 536, 230 S.E.2d 219 (1976) (reviewing Employment Securities Commission's administration of its own regulations); *Hadden v. S.C. Tax Comm'n*, 183 S.C. 38, 38, 190 S.E. 249, 252-53 (1937) (deferring to construction given to income tax statute by tax commission charged with duty of executing said statute). See *Kiawah*, 411 S.C. at 33 n.7-8, 766 S.E.2d at 717 n.7-8 (reminding of adoption of deference test enunciated in *Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 2782 (1984)).

The Court's reliance on *Brooks v. S.C. State Bd. of Funeral Service*, 271 S.C. 457, 247 S.E.2d 820 (1978), additionally highlights the applicability of the above-cited test to an agency's **own** statutory and regulatory interpretations, rather than the transposition of one agency's enforcement standards to a statute from a wholly unrelated Act. In *Brooks*, the court reviewed the State Board of Funeral Service's own administrative regulation and found it in conflict with the statute governing the State Board of Funeral Service. 271 S.C. at 461-63, 247 S.E.2d at 822-23. Yet, in this case, the Court cited *Brooks* in support of its finding that the Nonprofit Corporation Act takes precedence over an administrative interpretation promulgated by the agency charged with carrying out the Fair Housing Act, in a suit brought by that agency under the Fair Housing

Act. To conflate a statute from the Nonprofit Corporation Act as a compelling reason to reject the Commission's agency interpretation regarding a suit brought pursuant to its own Fair Housing Law is a misapprehension of the standard to be applied to the issue before the Court.

The Court should instead address the plain language of the Commission's own statute, S.C. Code Ann. § 31-21-40(9), which defines person as "one or more individuals . . . ." alleged by the Commission to have violated the Fair Housing Law, in relation to the Commission's Administrative Interpretation #4, which asserts that individual board members of homeowner's associations can be held liable as "Persons" subject to the Fair Housing Law. The Court should defer to the Commission's Administrative Interpretation #4, as that Interpretation pertains to the law it is charged with enforcing, and as the Commission's Administrative Interpretation #4 is not arbitrary, capricious, or manifestly contrary to the Fair Housing Law.

The Court should additionally find that, given the propriety of the Commission's reliance on its own statutes and agency interpretations, the facts presented in the amended complaint are sufficient to state a cause of action brought pursuant to S.C. Code Ann. § 31-21-80 and guided by S.C. Code Regs. § 65-219(3)(e). This is because evidence alleged in the amended complaint supports a conclusion that Dehart took part in, authorized, and/or ratified the discriminatory conduct forming the basis for this retaliation suit. As alleged in the amended complaint, Dehart decided to assess the Aggrieved Party with legal fees associated with Yacht Cove's defense of the Aggrieved Party's initial fair housing complaint. Dehart individually consulted with counsel for the purpose. Dehart instructed Yacht Cove's accountant to assess these fees against the Aggrieved Party. To add insult to injury, Dehart knowingly withheld notice of her decision until the Aggrieved Party appeared at the closing for the sale of her Yacht Cove property.

Dehart's individualized assessment of attorneys' fees against the Aggrieved Party

constitutes unlawful retaliation “against any person because that person has made a complaint . . . or participated in any manner in a proceeding under the Fair Housing Law.” S.C. Code Regs. § 65-219(3)(e). The facts alleged in the amended complaint constitute an intentional act of discrimination which the Commission is charged with enforcing under the Fair Housing Law, which is why the Commission has not alleged negligence, or gross negligence. Notably, an intentional act is of higher scienter than the willful wanton conduct prescribed by the Nonprofit Corporation Act’s qualified immunity statute.

The Commission has alleged facts in support of an intentional act of discrimination sufficient to sustain Dehart’s Rule 12(b)(6), SCRCF, motion, and the Court’s Order of December 16, 2021 should be amended accordingly.

**II. The Nonprofit Corporation Act does not offer a compelling reason to differ with the Commission’s Administrative Interpretation #4 and Fair Housing Law, which preempts the Nonprofit Corporation Act for purposes of actions brought pursuant to the Fair Housing Law.**

This Court found that the agency interpretation the Commission cited in support of its position “is void and unenforceable” because it conflicts with a statute from a wholly separate Act. (Or. at 3-4). The Court found the Commission’s Administrative Interpretation #4 “in direct contravention of S.C. Code Ann. § 33-31-834,” part of Nonprofit Corporation Act, and found that the Commission exceeded its authority and overrode the intent of the General Assembly without applying the standard adhering to the Commission’s implied preemption argument. (Or. at 4).

To find, as this Court has, that the Nonprofit Corporation Act invalidates the Commission’s interpretation and administration of its own Fair Housing Law erroneously implies that the Nonprofit Corporations Act impliedly repealed the Fair Housing Law. This is not a compelling reason to hold void and unenforceable the Commission’s administration of its own law, *see Kiawah*, 411 S.C. at 32-35, 766 S.E.2d at 717-18, as the aims and purposes of the Fair Housing

Law are inextricably linked to the Equal Protection Clause and incorporated to the State of South Carolina through the Fourteenth Amendment to the United States Constitution.

The Commission argued, but the Court did not address, that the South Carolina Fair Housing Law preempts Dehart's invocation of qualified immunity. The Commission brings suit under the South Carolina Fair Housing Law, which was passed in 1989 to implement "the policy of this State to provide, within constitutional limitations, for fair housing throughout the State." S.C. Code Ann. § 31-21-20; *compare* 42 U.S.C. § 3601 (Fair Housing Act "Declaration of policy"). Our Fair Housing Law is essentially identical, and was adopted for the essentially identical purpose, as the federal Fair Housing Act. "The federal Fair Housing Act and South Carolina Fair Housing Law prohibit discrimination in the rental of a dwelling based upon a person's race, color, religion, sex, familial status, or national origin." *SPUR at Williams Brice Owners Ass'n, Inc. v. Lalla*, 415 S.C. 72, 89, 781 S.E.2d 115, 124 (Ct. App. 2015) (citing S.C. Code Ann. § 31-21-40; 42 U.S.C. § 3604).

A complaint filed under the Fair Housing Law "means a written charge alleging a discriminatory housing practice in compliance with the Act . . . or with the Department of Housing and Urban Development ["HUD"] and referred to the Commission pursuant to Section 810(f) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1968." S.C. Code Regs. § 65-210(D)(2)(c). The Fair Housing Law's protections extend to retaliation claims, prohibiting coercion, intimidation, threats, or interference "with any person in the exercise of . . . any right granted" by the Act. S.C. Code Ann. § 31-21-80; 42 U.S.C. § 3617. And, "Persons" subject to the Commission's enforcement of the Fair Housing Law means "one or more individuals . . ." S.C. Code Ann. § 31-21-40(9).

When, as here, "an agency's construction of a statute regarding its operation . . . is

reasonable and furthers the legislative intent,” the Court must defer to the agency’s interpretation. *Mitul Enterprises, L.P. v. Beaufort Cty. Assessor*, 410 S.C. 430, 434, 764 S.E.2d 720, 722 (Ct. App. 2014). South Carolina’s adoption of the “essentially identical” provisions of the federal Fair Housing Act “imports with it the judicial gloss interpreting that legislation.” *Orr v. Clyburn*, 277 S.C. 536, 540, 290 S.E.2d 804, 806 (1982). Unlike the Nonprofit Corporation Act, the Fair Housing Law is derived from and entrenched with Title VIII of the federal Civil Rights Act. The Law, and the purpose of the Commission’s enforcement of the Law, is to prevent housing discrimination—which is a matter inextricably linked to the Equal Protection Clause. *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 260, 97 S.Ct. 555, 561 (1977); *see also Katzenbach v. Morgan*, 384 U.S. 641, 651, 86 S.Ct. 1717, 1724 (1966) (state may enact legislation “to enforce the Equal Protection Clause” so long as statute(s) is “plainly adapted to that end” and “consistent with the letter and spirit of the constitution”).

This Court’s alternative application of S.C. Code Ann. § 33–31–834 hinders the efforts of Congress and the South Carolina General Assembly to promote the enforcement of civil rights objectives. The Commission is charged with the prevention of housing discrimination and must have a means of enforcing the Fair Housing Law. The state-created business rule offers no compelling reason to diverge from the Commission’s implemented procedures and administrative interpretations, particularly when that state-created business rules lacks the same constitutional roots as those grounding the state Fair Housing Act. *Compare* S.C. Code Ann. § 33–31–301, *et. seq.* (purposes and powers of nonprofit corporations) *with SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. at 89, 781 S.E.2d at 124 (acknowledging classifications of persons protected by state and federal housing laws). Members of homeowner’s associations are charged with representing the communal interest of all property owners. They are therefore in a position to

make individualized decisions that may amount to discrimination. They should not be insulated from liability for individualized actions resulting in discrimination in provision of housing services or facilities, the terms and conditions attached to those housing services or facilities, or acts conducted in retaliation for one constituent's engagement in any activity protected by the Fair Housing Law.

As applied in this case, the Nonprofit Corporation Act “stands as an obstacle to the accomplishment and execution of the full purposes and objectives of Congress,” and leads to an absurd result that could not have been intended by the General Assembly. *Priester v. Cromer*, 401 S.C. 38, 44, 736 S.E.2d 249, 252 (2012) (internal quotation omitted); see *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599, 654 S.E.2d 284, 289 (Ct. App. 2007). It should be rejected for that reason.

Accordingly, the Commission respectfully asks this Court to reconsider the findings of its December 16, 2021 Order and find that the Fair Housing Law gives rise to a private cause of action against Dehart because the Fair Housing Law, the Constitutional considerations underlying the Fair Housing Law, the Commission's regulations, and the Commission's Agency Interpretation #4 are derived from and entrenched with Title VIII of the federal Civil Rights Act, and therefore impliedly preempt the Nonprofit Corporation Act in actions brought pursuant to the Fair Housing Law.

Respectfully submitted,

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ATTORNEY FOR PLAINTIFF

December 29, 2021  
Columbia, South Carolina

State of South Carolina  
County of Lexington

Court of Common Pleas

South Carolina )  
Human Affairs Commission )  
 )  
Plaintiff, )  
v. )  
 )  
The Yacht Cove Owners )  
Association, Inc., and )  
Maria Dehart )  
 )  
Defendants.)

Transcript of Record  
2021-CP-32-00769

November 2, 2021  
Lexington, South Carolina  
(via Webex remote platform)

B E F O R E:

The Honorable H. Steven DeBerry, IV, Judge.

A P P E A R A N C E S:

Caroline Scrantom, Esquire  
Attorney for the Plaintiff

Eugene Hamilton Matthews, Esquire  
Attorney for the Defendants

Bethanie K. Creppon  
Circuit Court Reporter

1 PROCEEDINGS

2 \* \* \*

3 THE COURT: Good afternoon. This is  
4 Case No. 2021-CP-32-00769, South Carolina Human  
5 Affairs Commission versus The Yacht Cove Owners  
6 Association. And I believe this is a motion to  
7 dismiss by Defendant -- and is that Ms. Dehart.

8 MR. MATTHEWS: Yes, sir, Your Honor.

9 THE COURT: Okay.

10 And, Ms. Dehart, so are -- you're represented  
11 today by Ms. Scrantom; is that right?

12 MR. MATTHEWS: No, no; by me, sir,  
13 Mr. Matthews.

14 THE COURT: Okay. Then, Mr. Matthews, it's  
15 your motion, right?

16 MR. MATTHEWS: Yes, Your Honor. And I can  
17 proceed whenever you're ready.

18 THE COURT: All right. I'm happy to hear from  
19 you.

20 MR. MATTHEWS: Thank you, Your Honor. It's a  
21 pleasure to be in your court.

22 The motion that was filed on behalf of  
23 Ms. Dehart is based on two things. First of all,  
24 there's a statute in South Carolina law, under the  
25 non-profit statutes, that forbids parties, including

1 the Commission, from doing what it's doing, which is  
2 suing a -- what is, in this case, a volunteer member  
3 of a board of a non-profit from suit for money  
4 damages. And it provides immunity from such suits,  
5 except in cases of things like gross negligence.

6 And the statute is longstanding and is  
7 designed, as you might imagine, to provide  
8 volunteers like Ms. Dehart, or others who are  
9 serving in non-profits, the certain level of  
10 immunity from these types of suits:

11 I understand that, on Friday, the Commission  
12 filed a response to the motion, arguing two things,  
13 we would think, ineffectively. The first is, is  
14 that the statute -- the statutes under which it's  
15 preceding the South Carolina Fair Housing Act have  
16 somehow implied an action against an individual.

17 While we searched high and low for the  
18 actual -- in the actual Act for such an explicit  
19 power to bring an action against an individual board  
20 member of a respondent and, of course, you can't  
21 find it. That's in part why we believe -- the  
22 Commission now believes it important for this Court  
23 to rule that there is an implied -- and, again, to  
24 read from page 4 of its own brief: This Court  
25 should construe to provisions of the Fair Housing

1 Law giving rise to a private cause of action against  
2 Dehart, against an individual, to preempt qualified  
3 immunity provision of the Non-Profit Corporation  
4 Act.

5 Well, as Your Honor is aware, it's a  
6 time-honored job of the Court to construe statutes.  
7 And the cardinal rule -- and I'll just -- the  
8 cite -- the most recent cite is Davis v. School  
9 District of Greenville County, 374 S.C. 49: The  
10 goal of statutory construction is to harmonize  
11 conflicting statutes, whenever possible, and to  
12 prevent an interpretation that would lead to a  
13 result that is plainly absurd.

14 And I think what you have before you is a  
15 contested view of what is absurd. In their brief,  
16 they -- Commission defines absurdity in this regard  
17 as the inability of the Commission to sue  
18 individuals. And they appear to do that on two  
19 grounds: The first is, if this were a federal  
20 statute, there is -- there are cases from other  
21 jurisdictions that have construed the Federal Fair  
22 Housing Act to prevent individual liability.

23 Now, the obvious answer to that is, well, it --  
24 then HUD may have -- if HUD wanted to bring  
25 Ms. Dehart into the case, then a different agency,

1 under a different statute, under a federal statute,  
2 should have brought the case. And that didn't  
3 occur.

4 The State, through the Commission, has brought  
5 the claim under a state statute. And having  
6 appeared and practiced before the Commission for  
7 decades now, I can tell you that the differences  
8 between federal antidiscrimination statutes, be it  
9 employment or housing, are different than state  
10 statutes. They're just different. Remedies are  
11 different; causes of action are different. They're  
12 just different. Forms are different. They're  
13 different.

14 One thing, if they had actually brought a claim  
15 under the Federal Housing Act, the Federal Fair  
16 Housing Act, the case wouldn't be in this court; it  
17 would be removed to a federal jurisdiction because  
18 it would arise under US Constitution, not in State  
19 law.

20 So the brief that the Commission submitted to  
21 you is filled with references to federal law, which  
22 is inapplicable here because there's not a cause of  
23 action arising under federal law. And as much as  
24 they would like -- and, if I were them, I would try  
25 to beguile you, frankly, into considering this to be

1 a federal cause of action, which it is not.

2 The second is this -- and, again, there's  
3 plenty of precedent for that, and the most common  
4 one is the difference between the State's human  
5 affairs law and Title 7 of the Civil Rights Action,  
6 1964. They're different causes of action; they're  
7 different forums; they're -- that they're brought  
8 under; they're different statutes of limitation; all  
9 that is different.

10 And also, you know, notably, there's no  
11 individual liability under Title 7 or, for that  
12 matter, the state human affairs law. So there's  
13 that.

14 The second is this: When you look at, as we  
15 think this Court's duty to both litigants is to  
16 construe State law in a way, as our Supreme Court  
17 demands that we do, to harmonize what may appear to  
18 be conflicting statutes and, perhaps, without  
19 reason, the Commission has stated, Look, it's one of  
20 our jobs -- one of our jobs is to try to remedy fair  
21 housing issues and we think that we can do this or  
22 only do this by suing individuals.

23 Well, that's just not true. Even if you grant  
24 this motion, Your Honor, Ms. Dehart will be  
25 dismissed as a party, the Yacht Cove Home Owners

1 Association will remain. And to the extent,  
2 although we contest the Commission's legal theories,  
3 it will continue to sue Yacht Cove and to attempt,  
4 we think, in a misguided fashion, but if -- you  
5 know, they're happy to think otherwise. They're  
6 regulators -- if they think that it's important  
7 public policy for them to continue to sue Yacht Cove  
8 in this case, they may do so.

9 Yacht Cove has not filed a motion to dismiss;  
10 Maria Dehart has. There's a difference. So it's a  
11 canard to allege that somehow reading the statutory  
12 language of the state fair housing act in  
13 conjunction with the state nonprofit corporations  
14 act somehow leads to an absurd result.

15 The only absurd result that could result from  
16 your work today, respectfully, Your Honor, would be  
17 for you to find that, for whatever reason, there's  
18 somehow a preemption of one state statute over  
19 another. If anything, because there is no specific  
20 private right of action against an individual  
21 described in the state fair housing act and that  
22 there is a specific provision of immunity to an  
23 individual who is on a board of a non-profit  
24 corporation, like Ms. Dehart was, according to their  
25 own complaint.

1           Again, this is a motion to dismiss. We are  
2           taking those parts of her complaint as true. And,  
3           indeed, they are true. Ms. Dehart acted within the  
4           course and scope of her duty as the part of the  
5           board, nothing more. There's no allegation she  
6           acted outside the scope of that duty. And, oh, by  
7           the way, the Board -- the Association can only act  
8           through its board members who are making corporate  
9           decisions. That's in part why, wisely, the  
10          Legislature included a provision immunizing board  
11          members from these types of actions.

12           Now, let me be the first to say that while I  
13          applaud, you know, the Commission's efforts to do  
14          what I think it should do, it's not uncommon for  
15          regulators to overreach, which is what's happened  
16          here. If the Commission wants to sue the Homeowners  
17          Association, we'll fight them, but at least not on  
18          that ground.

19           To try to bring in an individual volunteer  
20          board member who was just doing, you know, what the  
21          Board voted to do is exactly why the Legislature  
22          immunized people like Ms. Dehart from these types of  
23          actions. It does not frustrate the Commission's job  
24          in the least. They can continue to sue, as they  
25          wish and as they are, the Homeowners Association.

1 We will fight them as the Homeowners Association.

2 But to attempt to strong-arm a homeowners  
3 association to do the bidding of the Commission by  
4 going after individual defendants, number one, is  
5 not authorized. If you look at the Act and the  
6 provisions that permit the Commission to bring  
7 actions, that is not in there. That's why they've  
8 asked for you to conjure -- the word they used is  
9 implied. We would argue they want you to create,  
10 out of whole cloth, a private right of action  
11 against an individual defendant, which does not  
12 exist.

13 So when you're construing the two provisions  
14 here, both the provision under the state fair  
15 housing act, which permits the Commission to bring a  
16 cause of action, and the Nonprofit Act, which  
17 immunizes folks like Ms. Dehart, you actually can  
18 construe them in a way that permits you to  
19 effectuate the policies of both without one running  
20 rough shot of the other but, frankly, Your Honor, we  
21 would respectfully submit you're not permitted to  
22 do.

23 Here, the Commission can effectuate its  
24 purposes by suing the Homeowners Association, which  
25 is not granted immunity under this nonprofit act.

1 It can also honor the Legislature's will and obey  
2 the Legislature's will under the nonprofit act while  
3 noting that, you know, if there's something contrary  
4 here, the specific takes precedent over, certainly,  
5 an implied right of action or even a general right  
6 of action. That's the rules of the road for how we  
7 construe statutes. And, for that reason, you know,  
8 I understand. And, certainly, they've been  
9 industrious about finding federal law from other  
10 jurisdictions that construe a statute that is not at  
11 issue here.

12 I understand their reliance on Orr v. Clyburn  
13 which says, you know, we can look to federal law to  
14 help guide us, but it can't run rough shot over a  
15 state statute. There was nothing like 31- -- I'm  
16 sorry, 33-31-834 at issue in Clyburn v. Orr; just  
17 wasn't there. That was an issue that did not  
18 relate.

19 And, oh, by the way, even Orr v. Clyburn has  
20 given way in situations where the statutory  
21 construction of the statutory schemes at issue in  
22 that case between Title 7 of the Civil Rights Act of  
23 1964 and the state human affairs law under, I'm  
24 sorry, Title 1, Chapter 13, where they are  
25 different. And they are, at times, different in the

1 same way it may be that -- under the federal fair  
2 housing act, it may be that some jurisdictions  
3 permit individual liability under a statutory scheme  
4 that's not at issue here.

5 The claim brought against the individual, Marie  
6 Dehart, is brought under the state -- the state fair  
7 housing act, and that alone. So it really does the  
8 Court no good -- or, frankly, I would say the Court  
9 has not assisted in its efforts to reach a just  
10 verdict here or just decision here by relying on law  
11 that has nothing to do with a state statutory  
12 scheme.

13 Here, your job, we respectfully argue, is to do  
14 what ordinarily is required. You're trying to  
15 ascertain and effectuate the intent of the  
16 Legislature, the South Carolina General Assembly, as  
17 spoken through both the Nonprofit Corporations Act  
18 and the state fair housing.

19 And so two things: First of all, there's not  
20 really a provision in the state fair housing act to  
21 sue individuals. That's why they want you -- when I  
22 say they, I mean the Commission, wants you to create  
23 on today. Second, even if it were created,  
24 Ms. Dehart is immune.

25 Now, here, we're talking about -- because we're

1 dealing with non-profits, you know, we understand  
2 that your decision would be necessarily limited to  
3 non-profits. It may, perhaps, have to wait for  
4 another day, for another court to decide whether  
5 for-profit corporations or individuals in those  
6 corporations could be sued, because 33-31-834  
7 doesn't apply to them.

8 I think you'd still have to deal with whether  
9 or not there's a private right of action against an  
10 individual under this part of the act. But,  
11 happily, I don't think you need to reach that today.  
12 Here today, we're dealing with non-profits; today,  
13 we're dealing with the Act itself.

14 And we would urge you to find in the first --  
15 number one, deny the requests of the Commission to  
16 create, today, a private right of action against  
17 individuals under the state fair housing act and  
18 then, secondarily, but as importantly, dismiss the  
19 claim under the immunity statute that we've been  
20 discussing.

21 And I'm, of course, ready to answer any  
22 questions.

23 THE COURT: All right. I'll be happy to hear  
24 from Ms. Scrantom.

25 MS. SCRANTOM: Thank you, Your Honor. May it

1 please the Court? Caroline Scrantom appearing on  
2 behalf of the Human Affairs Commission.

3 Uniquely, under our commission's statutory  
4 scheme, when individuals come to us and file a  
5 housing discrimination complaint, it is, by statute,  
6 by regulation, dual filed with HUD, in addition to  
7 being filed and investigated by the South Carolina  
8 Human Affairs Commission.

9 Our fair housing law is unique in that way, and  
10 that means that our fair housing law, in its adopted  
11 form, the way that it was adopted and approved by  
12 South Carolina's General Assembly, is that it was  
13 modeled after and pointblank adopted from the  
14 federal fair housing act.

15 That means that our fair housing law is, in  
16 essence -- it has been incorporated to our state  
17 through the Equal Protection Clause of the 14th  
18 Amendment, and its aim is to provide a cause of  
19 action to eliminate discrimination in housing  
20 practices and to promote the policies of the federal  
21 fair housing act through the state.

22 We operate under a memorandum of understanding  
23 with HUD in investigating these cases for that  
24 purpose. And so, unlike other federal statutes  
25 which may vary from state statutory schemes and, in

1       this instance, a state-specific business where  
2       non-profit corporate rule that the General Assembly  
3       has adopted with a whole nother intent, the  
4       constitutional ties and roots of the South Carolina  
5       Fair Housing law would mandate that the intent of  
6       the passing of that entire act prevail over the  
7       application of qualified immunity to Ms. Dehart,  
8       again, under that state-specific business rule.

9               In this vein, our complaint is sufficient on  
10       its face as alleged against Ms. Dehart as an  
11       individual because the fair housing law does  
12       contemplate that an individual board member or any  
13       community association member would be named as a  
14       defendant in an action brought by an agency who has  
15       been entrusted with enforcing fair housing  
16       regulations.

17              And so, for this reason, we ask that you would  
18       defer to our agency's interpretation, which  
19       specifically states that fair housing law violations  
20       may be alleged against anyone that directly  
21       participates in the discriminatory act.

22              In addition to this, of course, state-specific  
23       agency interpretation, HUD's guidance, which has  
24       been cited in my memorandum, and other federal  
25       guidance, also cited in my memorandum, provide that

1 individuals may be named in fair housing suits so  
2 long as there's information that has been uncovered  
3 in the agency's investigation that indicates that  
4 that named individual was a key decisionmaker in the  
5 underlying discriminatory behavior that forms the  
6 basis for the complaint. It's a simple application  
7 of agency law.

8 This is a retaliation case, which is a little  
9 unique, and we are alleging that Ms. Dehart  
10 individually participate in the assessment of legal  
11 fees -- of attorneys' fees of an individualized  
12 homeowner within Yacht Cove's association. The  
13 facts giving rise to these allegations begin  
14 specifically at paragraph 15 of our complaint.

15 And you will see there, between paragraphs 15  
16 and 22, that the evidence uncovered in our agency's  
17 investigation show that Ms. Dehart individually  
18 consulted with an attorney for the purpose of  
19 determining whether she could and would assess  
20 attorneys' fees against the specific homeowners who  
21 are our aggrieved parties in this action.

22 Then she took the extra step of contacting the  
23 accountant for Yacht Cove and having those fees  
24 assessed. And, of course, our aggrieved party  
25 learned of the fees when they showed up at the real

1 estate closing when they sold the property.

2 A targeted assessment of legal fees is a fair  
3 housing law violation under our retaliation statute,  
4 which is statute 31-21-80. And the accompanying  
5 regulation for that is regulation 55-219-3(e) which  
6 says or shows or provides guidance for you to be  
7 able to find that the targeted assessment of legal  
8 fees constitutes a fair housing law violation  
9 because, in this case, as alleged in the complaint,  
10 it was done purely as a result of Yacht Cove having  
11 to defend against our aggrieved party's filing of a  
12 fair housing complaint, which happened prior.

13 And I know that that retaliation basis can get  
14 a little confusing; however, whenever you have a  
15 housing provider or, in this case, an HOA, who takes  
16 a targeted action against one homeowner just because  
17 that homeowner participated in any type of activity  
18 that is protected by the fair housing act, there is  
19 cause for a retaliation suit. And that's what we  
20 have in this instance.

21 Qualified immunity should not apply because of  
22 the constitutional roots in which our fair housing  
23 law is grounded. Additionally, Ms. Dehart, she  
24 serves a private homeowners association board. In  
25 no way does she serve or protect the public

1 interest, and so she should be able to be  
2 individually liable under agency principles here.

3 Qualified immunity traditionally is a  
4 privilege, again, that applies to someone who does  
5 something for the public interest. That does not  
6 apply here. Also, qualified immunity should not be  
7 able to apply because it would have a chilling  
8 effect on other homeowners, any other homeowner, or  
9 any other renter who has been targeted by the HOA in  
10 which they live because they did something,  
11 essentially, that the HOA didn't agree with.

12 So in this way, the fair housing law is  
13 intended to be a check and a balance against  
14 homeowners associations who would otherwise be able  
15 to continue to target and assess fines against  
16 individuals for exercising their rights under the  
17 act. That would include, as it did in this case,  
18 filing a fair housing complaint with our agency or  
19 with HUD or even for requesting an accomodation or a  
20 modification because they have some type of  
21 disability.

22 And so, for these reasons, essentially, we'd  
23 ask that you deny the motion to dismiss. The HUD  
24 and our agency guidance allows for an individual to  
25 be liable under our fair housing law, and we would

1 ask that you find that the qualified immunity  
2 provision does not apply to individual board members  
3 for these reasons.

4 THE COURT: All right.

5 MR. MATTHEWS: Your Honor, may I respond?

6 THE COURT: Absolutely.

7 MR. MATTHEWS: Well, Your Honor, I'll be  
8 honest. The argument that whether or not the  
9 immunity exists is entirely misplaced. This is  
10 not -- this is a creature of statute. The General  
11 Assembly has already decided for us that the  
12 immunity exists and applies directly to folks like  
13 Ms. Dehart. It's actually baked into the statute  
14 itself. It's explicit.

15 So there is no debate about whether immunity  
16 exists or applies because, regardless of what the  
17 state human affairs commissions may think about it,  
18 their creators, the General Assembly has made that  
19 decision for us. So there is no more debate about  
20 whether or not that immunity applies to Ms. Dehart.  
21 It does. And it's not because I say so; it's  
22 because the General Assembly says so. That's an  
23 easy one. It applies. There it is.

24 The second is this: As far chilling effect is  
25 concerned, first of all, there is no chilling effect

1 because the SCHAC continues to sue the proper party  
2 here, the Yacht Cove Homeowners Association.

3 Now, the Yacht Cove Homeowners Association is  
4 going to fight this because it believes that the  
5 Commission has horribly overreached here. And, you  
6 know, because the Commission has gone into some of  
7 the facts, well, we'll -- they'll join them in doing  
8 so.

9 And there's a complaint that was filed by the  
10 aggrieved party so-named in the complaint was  
11 rejected because it was groundless. There was no  
12 basis for it, in spite of every possible effort by  
13 the Commission to make it so. Even they had to  
14 admit at the end of the day -- and the Homeowners  
15 Association Act permits the Homeowners Association  
16 to do what it did. That's not just a creature of  
17 contract or of a declaration applied to a homeowners  
18 association, that's actually also in the statutes  
19 that govern homeowners associations. We're  
20 permitted to do this.

21 And Ms. Dehart, far from acting on her own, far  
22 from acting, you know, recklessly, actually vetted  
23 herself on behalf of -- or vetted the Association's  
24 intentions with a lawyer. She didn't run out and,  
25 on her own, file a lien. She carefully considered

1 it. But also -- and, again, this is actually in the  
2 complaint itself.

3 I'm not arguing outside the pleadings. The  
4 pleadings recite how Ms. Dehart carefully considered  
5 and consulted with an attorney before the Board  
6 itself took its action.

7 So the chilling effect argument is neither here  
8 nor there. The Commission can and will continue --  
9 unless I miss my mark, and I don't think I have  
10 here -- even if you dismiss Ms. Dehart, the case  
11 will continue against what we regard as the proper  
12 defendant here, which is the Association. That,  
13 they will do all live-long day, and that will  
14 proceed until trial by jury.

15 Now, the -- so in terms of arguing that there's  
16 somehow a -- a qualified immunity doesn't actually  
17 exist, we simply commend you to the statute itself.  
18 That argument, frankly, we don't understand. The  
19 immunity is there for all to see.

20 Now, in terms of -- I believe there's an  
21 argument that because the federal law or because the  
22 agency has interpreted federal law to permit it to  
23 bring individual actions under the state law, we  
24 simply say administrative -- it's -- it hardly needs  
25 to be said that administrative interpretations die

1 at the feet of a statutory injunction otherwise.  
2 SCHAC's a creation of the General Assembly. It  
3 cannot violate statutes passed by general assemblies  
4 or create new causes of action in the absence of an  
5 action by the General Assembly because it believes  
6 it's consistent with some federal authority.

7 SCHAC does not interpret or does not enforce  
8 federal requirements on the General Assembly. If  
9 the General Assembly does not give them authority to  
10 do so, that's the beginning and end of their  
11 authority. Indeed, the recent public discussion  
12 about South Carolina OSHA being responsive to the  
13 governor, not to fed OSHA, makes that clear.

14 And if the feds want to take whatever action  
15 they want to take, if they want to revoke OSHA's --  
16 state OSHA's charter, in the same way if federal HUD  
17 wants to revoke any authority they give to the state  
18 human affairs commission because they don't like  
19 what the General Assembly has done, that is not for  
20 this Court or for the Commission to decide. That is  
21 for the General Assembly to decide and no others.

22 That is a political decision on the part of  
23 elected leaders, not bureaucrats. And with respect,  
24 not even the Court, the job that you have, we argue,  
25 is very circumspect. It is statutory construction.

1 And in that regard, we believe that your purpose is  
2 clear because the statutes are clear.

3 If the Commission wants to sue the Homeowners  
4 Association in order to vindicate a right that we,  
5 frankly, disagree with; if they want to go before a  
6 jury and plead their case a regulatory agency over  
7 these people, we think they have the statutory right  
8 to do so. We're not here about that. We're here  
9 about Ms. Dehart today.

10 And with respect to opposing counsel and, of  
11 course, with respect undyingly to the Court, we  
12 respectfully request that you, you know, consider  
13 our arguments, as well as opposing counsel's. And  
14 we do respectfully request that you agree with us  
15 and dismiss Ms. Dehart, and Ms. Dehart alone, from  
16 this action of prejudice.

17 THE COURT: All right.

18 Anything further, Ms. Scranton?

19 MS. SCRANTON: Briefly, Your Honor, if I may.  
20 We're not asking you to create, essentially, a new  
21 cause of action here. We are asking you to  
22 interpret the existing guidance from our agency,  
23 from HUD, and look at the intent of the entire South  
24 Carolina Fair Housing Law. And additionally in  
25 support, I would point to, I believe it's 31-21-39

1 which is our definitional scheme at the beginning of  
2 our fair housing law, which does address the  
3 definition of a person, including one or more  
4 individuals.

5 And so we would cite to that, just as  
6 additional support that the existing guidance, the  
7 existing statutory scheme allows for an individual  
8 and contemplates that an individual board member or  
9 community association member, regardless of their  
10 volunteer status, would be able to be held liable.

11 THE COURT: All right.

12 MS. SCRANTOM: I'd be happy to answer any  
13 questions that you have for us.

14 THE COURT: I think it's pretty clear what my  
15 job is here. I appreciate everybody being so clear  
16 and concise. I mean, I certainly want to take a  
17 look at the statutes and read all the pertinent  
18 filings and everything that's happened here.

19 I don't -- I don't -- I really don't like to do  
20 this, but I got reassigned this week. I got three  
21 weeks in a row of common pleas non-jury by the time  
22 we get through next week in Horry County.

23 But, having said that, I've already got some --  
24 quite a bit of work to try to figure out. But if  
25 you don't mind, I'd appreciate it if you could

1 submit proposed orders and maybe that can help me.

2 MR. MATTHEWS: Well, certainly, Your Honor.

3 When would you want them?

4 THE COURT: I mean, I'll leave it up to you. I  
5 don't want to put anybody in a tight spot. But, you  
6 know, maybe --

7 MR. MATTHEWS: Well, Your Honor, could you turn  
8 your attention to them in, say, three weeks?

9 THE COURT: That would be fine. Yeah,  
10 absolutely.

11 MR. MATTHEWS: Unless opposing counsel has a --  
12 unless she needs more time, which we are happy to  
13 accede to. Four weeks?

14 MS. SCRANTOM: Three weeks is fine with me.  
15 Three weeks of CPNJ rosters is a lot, so three weeks  
16 is good.

17 MR. MATTHEWS: Well, Your Honor, I'm happy to  
18 look at the -- my calendar. And my spouse would be  
19 reminding me that in three weeks, we are at  
20 Thanksgiving, and she has plans. So could we say by  
21 December 1st, which is about four weeks from now?

22 THE COURT: I'm fine with that --

23 MR. MATTHEWS: Okay.

24 THE COURT: -- unless opposing counsel has an  
25 issue.

1 MS. SCRANTOM: That would be fine with us, Your  
2 Honor.

3 THE COURT: Okay. And I really appreciate it.  
4 I want to give it, you know, the proper review and  
5 make sure we make the right decision.

6 MR. MATTHEWS: Very good, Your Honor.

7 THE COURT: That will be fine. December 1st,  
8 we will look for that.

9 MR. MATTHEWS: Very good. Thank you, Your  
10 Honor. Have a good day.

11 THE COURT: And you.

12 -- END OF TRANSCRIPT OF RECORD --  
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STATE OF SOUTH CAROLINA )  
COUNTY OF LEXINGTON )

South Carolina Human Affairs )  
Commission, )  
Plaintiff, )

vs. )

Yacht Cove Owners Association, )  
Inc., and Maria Dehart, )  
Defendants. )

IN THE COURT OF COMMON PLEAS  
ELEVENTH JUDICIAL CIRCUIT

C/A No. 2021-CP-32-00769

**PLAINTIFF'S PROPOSED**  
**ORDER DENYING DEFENDANT'S**  
**MOTION TO DISMISS MARIA DEHART**

NOW COMES BEFORE THE COURT Defendant Maria Dehart's motion to dismiss brought pursuant to Rule 12(b)(6), SCRPC. The undersigned conducted a hearing on this matter on November 2, 2021, via WebEx. Present at the hearing were Eugene H. Matthews, Esq., on behalf of Maria Dehart (Dehart), and Caroline Scrantom, Esq., on behalf of the South Carolina Human Affairs Commission (the Commission). Having considered the pleadings, the motion, and the argument of counsel, the Court DENIES the motion for the reasons set for below.

**Legal Standard**

To survive a motion to dismiss, a complaint must "state facts sufficient to constitute a cause of action." Rule 12(b)(6), SCRPC. The Court's ruling on said motion "must be bottomed and premised solely upon the allegations set forth by the plaintiff. The motion will not be sustained if the facts alleged and the inferences reasonably deducible from the pleadings would entitle the plaintiff to relief on any theory of the case." *Williams v. Condon*, 347 S.C. 227, 232-33, 553 S.E.2d 496, 499 (Ct. App. 2001).

**Factual Basis**

Plaintiff South Carolina Human Affairs Commission has filed suit under the South Carolina Fair Housing Law, S.C. Code Ann. § 31-21-10, *et seq.*, and alleges that Defendants

Yacht Cove Owners Association, Inc. (Yacht Cove) and Dehart retaliated against Aggrieved Parties Charles and Patricia Rentz (Rentz) in violation of S.C. Code Ann. § 31–21–80. The factual basis for the retaliation claim lies in the Commission’s allegation that Yacht Cove and Dehart levied legal fees against Rentz at the closing of the sale of her Yacht Cove property. As alleged in the amended complaint, these legal fees were associated with Yacht Cove’s defense of a fair housing complaint Rentz filed with the Commission prior to the property’s sale, and Dehart was instrumental in the decision to individually assess those fees against Rentz.

Dehart seeks to be dismissed from this action on the grounds that her volunteer service as Chair of Yacht Cove Owners Association, Inc., a domestic non-profit corporation, subjects her to the qualified immunity protections of S.C. Code Ann. § 33–31–834. At the hearing, Dehart did not dispute the factual basis for the amended complaint. Rather, Dehart contends that the South Carolina Nonprofit Corporation Act of 1994 provides immunity from suit for “directors, trustees, or members of the governing bodies of not-for-profit cooperatives, corporations, [and] associations”—including board members of private homeowners associations—when suit arises “from the conduct of the affairs of these . . . organizations.” S.C. Code Ann. § 33–31–834(a). Dehart asks the undersigned to apply this state-specific business statute to this fair housing action as a matter of first impression in our courts, and as a means of insulating individual homeowners association board members from purported over-regulation by the state agency vested with the authority to enforce the South Carolina Fair Housing Law.

### **Conclusions of Law**

The undersigned finds that, like the federal Fair Housing Act, the South Carolina Fair Housing Law contemplates the naming of an individual board member as a defendant in a suit brought pursuant to that law, so long as the facts alleged in the complaint indicate the individually

named board member directly participated in the alleged discriminatory housing practice.

The Commission's internal guidance has determined that individual board members of property owner's associations are not immune to liability in actions brought pursuant to the Fair Housing Law, and this Court defers to that interpretation. *Kiawah Dev. Partners, II v. S.C. Dep't of Health & Envtl. Control*, 411 S.C. 16, 33, 766 S.E.2d 707, 717 (2014) (quoting *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 843, 104 S.Ct. 2778, 81 L.Ed.2d 694 (1984)). Citing the South Carolina Fair Housing Law, HUD guidance, and relevant case law, the Commission's Administrative Interpretation #4<sup>1</sup> asserts that individual board members of homeowners associations can be held liable as "Persons" under S.C. Code Ann. § 31-21-30(9). In reaching its interpretation, the Commission relies upon HUD guidance stating that individual board members should be named when "the facts presented during intake allege that these board members directly participated in the alleged discriminatory housing practice." *Title VIII Complaint Intake, Investigation, and Conciliation Handbook* (8024.1) at 4-16.<sup>2</sup> This Court agrees.<sup>3</sup>

<sup>1</sup> Adopted July 10, 2018, and published at <https://schac.sc.gov/about-us/divisions-departments/legal-division>.

<sup>2</sup> Available at [https://www.hud.gov/program\\_offices/administration/hudclips/handbooks/fheo/80241](https://www.hud.gov/program_offices/administration/hudclips/handbooks/fheo/80241). Additional guidance not cited in the Commission's Administrative Interpretation similarly instructs that an individual board member of a community association is a proper party to a fair housing action when evidence shows the individual "personally participated in discriminatory acts taken on behalf of the association." Sara Pratt, "Proper Respondents in Fair Housing Complaints" (Sept. 4, 2014 HUD memo); 1 Housing Discrim. Practice Man. § 2:26 ("Who can be sued"); Robert G. Schwemm, *Housing Discrimination Law and Litigation* § 12B:2 (July 2021) ("Who may be liable under the Fair Housing Act—Principals and agents").

<sup>3</sup> The Commission's Agency Interpretation is not the only guidance on this issue. The United States Supreme Court has expressly applied general principles of agency law to housing discrimination actions, allowing for individual liability. *Meyer v. Holley*, 537 U.S. 280, 285, 123 S. Ct. 824, 828 (2003). The Fourth Circuit recognizes that individual homeowners association board member may be a properly named defendant in a fair housing action. *Scoggins v. Lee's Crossing Homeowners Ass'n*, 718 F.3d 262, 266-67 (4th Cir. 2013). And, a number of other jurisdictions have recognized individual liability for owner's association board members in actions brought pursuant to state or

In 1989, the General Assembly passed the South Carolina Fair Housing Law to implement “the policy of this State to provide, within constitutional limitations, for fair housing throughout the State.” S.C. Code Ann. § 31–21–20. Both “[t]he federal Fair Housing Act and South Carolina Fair Housing Law prohibit discrimination in the rental of a dwelling based upon a person’s race, color, religion, sex, familial status, or national origin.” *SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. 72, 89, 781 S.E.2d 115, 124 (Ct. App. 2015) (citing S.C. Code Ann. § 31–21–40; 42 U.S.C. § 3604). The Act’s protections extend to retaliation claims, prohibiting coercion, intimidation, threats, or interference “with any person in the exercise of . . . any right granted” by the Act. S.C. Code Ann. § 31–21–80; 42 U.S.C. § 3617. The Commission’s administration and enforcement of the Fair Housing Law further mirrors that of HUD, the federal agency charged with the administration and enforcement of the federal Fair Housing Act. For example, a complaint filed under the Fair Housing Law “means a written charge alleging a discriminatory housing practice in compliance with the Act . . . or with the Department of Housing and Urban Development [HUD] and referred to the Commission pursuant to Section 810(f) of Title VIII of the Civil Rights Act of 1968, as amended by the Fair Housing Amendments Act of 1968.” S.C.

federal fair housing laws. *Hernandez v. Golf Course Ests. Home Owners Ass’n*, 454 F. Supp. 3d 1029, 1039 (D. Or. 2020); *Sanzaro v. Ardiente Homeowners Ass’n*, 364 F.Supp.3d 1158, 1177-80 (D. Nev. 2019); *Sabal Palm Condominiums of Pine Island Ridge Assoc., Inc. v. Fischer*, 6 F.Supp.3d 1272, 1294 (S.D. Fla. 2014); *Fielder v. Sterling Park Homeowners Ass’n*, 914 F.Supp.2d 1222, 1229 (W.D. Wash. 2012); *Hous. Opportunities Project For Excellence, Inc. v. Key Colony No. 4 Condo. Assoc., Inc.*, 510 F. Supp. 2d 1003, 1013 (S.D. Fla. 2007) (“It is clear that the Fair Housing Act allows for claims to be brought against individual Defendants”); *United States v. Tropic Seas, Inc.*, 887 F.Supp. 1347, 1365 (D. Haw. 1995); *Bailey v. Stonecrest Condominium Ass’n, Inc.*, 304 Ga.App. 484, 487-89, 696 S.E.2d 462, 466-67, n.3 (Ga. Ct. App. 2010) (remanding case for consideration on the issue of whether individual board members of a condominium association engaged in discriminatory retaliation by proposing by-law amendments that would prohibit property owners from leasing to minorities); *Bailey, supra*, at n.3 (finding Georgia’s fair housing act “nearly identical to the Federal Fair Housing Act” and expressly “consider[ing] federal cases construing the FHA persuasive precedent applicable to the instant dispute”).

Code Regs. § 65-210(D)(2)(c).

“Under general rules of statutory construction, a jurisdiction adopting legislation from another jurisdiction imports with it the judicial gloss interpreting that legislation.” *Orr v. Clyburn*, 277 S.C. 536, 540, 290 S.E.2d 804, 806 (1982). Though legislative intent “should be derived primarily from the plain language of the statute,” that plain language must be read “in conjunction with the purpose of the entire statute and the policy of the law.” *Peake v. S.C. Dep't of Motor Vehicles*, 375 S.C. 589, 599-600, 654 S.E.2d 284, 289-90 (Ct. App. 2007). The “essentially identical” provisions of the federal Fair Housing Act and the South Carolina Fair Housing Law similarly demand that jurisprudence interpreting provisions of the federal Fair Housing Act “are certainly persuasive if not controlling” in construing our State’s Fair Housing Law. *Orr, supra*; compare S.C. Code Ann. § 31-21-20, *et seq.* with 42 U.S.C. § 3601, *et. seq.*

Because our Fair Housing Law is derived from the federal Fair Housing Act found in Title VIII of the Civil Rights Act of 1968, its adoption is rooted in the Fourteenth Amendment of the United States Constitution.<sup>4</sup> As a result, Dehart cannot invoke the qualified immunity provision of the wholly separate and state-specific South Carolina Non-Profit Corporation Act. To do so would frustrate the federal underpinnings of this fair housing action by hindering the efforts of the South Carolina General Assembly to enforce civil rights objectives. *See Priester v. Cromer*, 401

<sup>4</sup> The prevention of housing discrimination is a matter inextricably linked to the Equal Protection Clause, the purpose of which “is to secure every person within the State’s jurisdiction against intentional and arbitrary discrimination, whether occasioned by express terms of a statute or by its improper execution through duly constituted agents.” *Sunday Lake Iron Co. v. Township of Wakefield*, 247 U.S. 350, 352, 38 S.Ct. 495, 495 (1918); *SPUR at Williams Brice Owners Ass’n, Inc. v. Lalla*, 415 S.C. at 89, 781 S.E.2d at 124 (acknowledging classifications protected by state and federal housing laws). *See Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 260, 97 S.Ct. 555, 561 (1977); *see also Katzenbach v. Morgan*, 384 U.S. 641, 651, 86 S.Ct. 1717, 1724 (1966) (state may enact legislation “to enforce the Equal Protection Clause” so long as statute(s) is “plainly adapted to that end” and “consistent with the letter and spirit of the constitution”).

S.C. 38, 44, 736 S.E.2d 249, 252 (2012) (finding federal motor vehicle standards impliedly preempt state-law products liability claims); *S.C. Farm Bureau Mut. Ins. Co. v. Mumford*, 299 S.C. 14, 19, 382 S.E.2d 11, 14 (Ct. App. 1989) (in determining legislative intent, “there is no room for the courts to impose a different judgment based upon their own notions of public policy”). The South Carolina Nonprofit Corporation Act cannot be applied in a manner that abridges the civil rights of the aggrieved parties represented by the Commission, and its qualified immunity statute must “give way” to those provisions of the South Carolina Fair Housing Law which give rise to a private cause of action.<sup>5</sup> *Quigley v. Rider*, 357 S.C. 477, 483, 593 S.E.2d 476, 479 (Ct. App. 2003) (citing *Maryland v. Louisiana*, 451 U.S. 725, 746, 101 S.Ct. 2114 (1981)).

The Court finds the Commission’s amended complaint states facts sufficient to constitute a cause of action against Dehart under the Fair Housing Law. The Commission’s amended complaint alleges Dehart played an individualized role in making the decision to charge Rentz for the legal fees associated with Yacht Cove’s defense of Rentz’s initial fair housing complaint. Specifically, the amended complaint alleges Dehart informed the Commission’s investigator she believed the Board’s bylaws allowed for this fee assessment. The amended complaint alleges the Commission’s investigation revealed Dehart was the primary contact for the attorney Yacht Cove

<sup>5</sup> The undersigned recognizes that precluding individual liability under the Fair Housing Law would provide a mechanism for individual homeowners association board members, privately elected to serve a private body of homeowners rather than any public purpose, may then shield themselves from liability regardless of whether they are personally responsible for levying any discriminatory act upon a member of their constituency. This is not the result the Fair Housing Act endorses or intends, and it cannot be the result intended by South Carolina Fair Housing Law. Additionally, private party plaintiffs “are, in reality, the primary enforcers of the Fair Housing Act.” *Foster v. Barilow*, 6 F.3d 405, 408 (6th Cir. 1993). Precluding suit against individual board members where evidence suggests they are in fact individually liable for the discriminatory act “would have the natural and counterproductive effect of dissuading individuals from filing [a Fair Housing] lawsuit when they have a reasonable basis on which to assert their claims.” *Scoggins v. Lee’s Crossing Homeowners Ass’n*, 718 F.3d at 276.

hired to defend Rentz's fair housing complaint. As alleged in the amended complaint, the legal fees assessed against Rentz derived from Dehart's individual consultations with this legal counsel. The amended complaint further alleges Dehart informed the Commission's investigator that she instructed the Board's accountant to assess these legal fees against the Aggrieved Party. Dehart further informed the Commission's investigator that she personally failed to send prior notice of this fee assessment to the Aggrieved Party on the Board's behalf.

The facts as alleged in the amended complaint establish that Dehart directly participated in the alleged discriminatory housing practice by playing an instrumental and individualized role in the assessment of legal fees against Rentz. The amended complaint therefore states facts sufficient to state a cause of action against Dehart pursuant to S.C. Code Ann. § 31-21-80, which makes it "unlawful to coerce, intimidate, threaten, or interfere with any person in the exercise of . . . any right granted" by the South Carolina Fair Housing Law. *See also* S.C. Code Regs. § 65-219(3)(e). The South Carolina Nonprofit Corporations Act does not insulate Dehart from liability under the Fair Housing Law. Accordingly, the Court DENIES Dehart's motion to dismiss, and finds the facts alleged in the Commission's amended complaint are sufficient to state a cause of action against Maria Dehart as an individual board member of the Yacht Cove Owner's Association, Inc. AND IT IS SO ORDERED.

---

The Honorable H. Steven DeBerry, IV

This \_\_\_\_ day of \_\_\_\_\_, \_\_\_\_\_.

\_\_\_\_\_, South Carolina

## Scrantom, Caroline

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**From:** Scrantom, Caroline  
**Sent:** Wednesday, December 1, 2021 4:40 PM  
**To:** hsdeberrylc@sccourts.org  
**Cc:** Gene Matthews; Smith, Jamie  
**Subject:** SC Human Affairs Comm'n v. Yacht Cove Owners Assoc. Inc. and Maria Dehart (2021-CP-32-00769)  
**Attachments:** Plaintiffs Proposed Order Denying MTD Dehart.docx

Dear Mr. Thompson,

For Judge DeBerry's consideration, I have attached a proposed order dismissing Defendant Dehart's motion to dismiss. Our submission follows the November 2 motions hearing in this Lexington County matter. Proposed orders were requested from each party at the conclusion of the hearing. If you should have any questions or concerns, please do not hesitate to contact me.

Thank you,

*Caroline Scrantom*  
*Staff Counsel*  
SC Human Affairs Commission  
1026 Sumter Street, Suite 101  
Columbia, SC 29201  
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THE STATE OF SOUTH CAROLINA  
In The Court Of Appeals

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

The Honorable H. Steven DeBerry, IV

Case No. 2021-CP-32-00769

South Carolina Human Affairs Commission,

Appellant,

v.

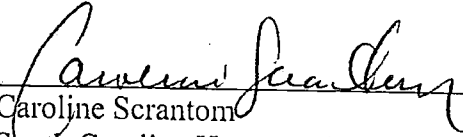
Yacht Cove Owners Association, Inc. and  
Maria Dehart,

Respondents.

NOTICE OF APPEAL

The South Carolina Human Affairs Commission appeals the Order of the Honorable H. Steven DeBerry, IV dated January 7, 2022. Appellant received written notice of the entry of this Order on January 7, 2022.

February 4, 2022

  
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Attorney for Appellant

Other Counsel of Record:

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Attorney for Respondents

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SC Court of Appeals

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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JUN 22 2022

APPEAL FROM LEXINGTON COUNTY  
Court of Common Pleas

**SC Court of Appeals**

The Honorable H. Steven DeBerry, IV

Appellate Case No. 2022-000133

South Carolina Human Affairs Commission,

Appellant,

v.

Yacht Cove Owners Association, Inc.,  
and Maria Dehart,

Respondent.

**CERTIFICATE OF COUNSEL FOR APPELLANT**

Counsel for Appellant certifies that this Record on Appeal contains all material proposed to be included by any of the parties and not any other material and this this Record on Appeal complies to the best of my ability with the April 15, 2014 Order from the South Carolina Supreme Court entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

s/ Caroline Scrantom

Caroline Scrantom

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1026 Sumter Street, Suite 101  
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(803) 737-7800

ATTORNEY FOR APPELLANT

June 22, 2022