THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM BARNWELL COUNTY
In the Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Clifton B. Newman, Circuit Court Judge

Lower Court Case No. 2013-CP-06-0059
Appellate Case No. 2019-000599

Lorenda Robinson, Elaine Nix, Archie Patterson,
And Tami Bollerman, ... Plaintiffs,
Of Whom, Archie Patterson and Tami Bollerman are the Respondents/Appellants,

v.

South Carolina Department of Employment and
Workforce, ... Appellant/Respondent.

RESPONDENTS' BRIEF IN RESPONSE TO AMICI CURIAE BRIEF

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INTEREST OF THE AMICI CURIAE

In its brief, amici assert they have an interest in this case in "preserving the legislature's plenary legislative authority to direct the manner in which the state government spends appropriated funds." Amici further asserts the "circuit court's holding that the Department of Employment and Workforce ("SCDEW" or the "department") was required promulgate regulations prior to implementing the proviso at issue in this case directly impacts the General Assembly's ability to regulate the expenditure of appropriated funds." Amici misreads the circuit court's order in that the circuit court merely performed its constitutional duty of interpreting and declaring the law.

As cited by Amici in their brief, "[t]he legislative department makes the laws; the executive department carries the laws into effect, and the judicial department interprets and declares the laws." *State ex rel. McCleod v. Yonce*, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979) As this principle applies to this case:

1. The General Assembly in 2010 enacted statutes which require the department to promulgate regulations necessary to carry out or enforce provisions of the laws governing unemployment compensation. In the 2012-2013 Appropriation Bill, the General Assembly enacted Budget Proviso 67.7 which provided funding for enforcement of S.C. Code Ann §§41-35-110 and 120(5) via 5 methods-one of them being an online work search. The same proviso was also enacted in the 2013-14, 2014-15, and 2015-16 budgets. These statutes and provisos are more fully discussed below.

2. In March of 2012 and before enactment of the 2012-2013 Appropriations Act, the department adopted binding policies and procedures for enforcement of an online work search requirement, but without first promulgating regulations as statutorily mandated. As a result, over 61,000 claims were denied between August 2012 and February 2013.

3. In February 2013, respondents filed this class action for declaratory relief that the department was required to promulgate regulations before implementing the online work search requirement. The circuit court interpreted the above statutes and provisos and found SCDEW was required to promulgate regulations regarding the online work search requirement. The court found the proviso was a funding mechanism and did not relieve SCDEW of its statutory obligations to promulgate regulations necessary for the enforcement of the online work search requirement.

The circuit court's ruling did not limit or restrict the funding provided in the provisos, and the ruling did not directly impact the expenditure of appropriated funds. All the circuit court did was interpret and declare the law.

"It is well established that courts will disregard the subsequently expressed opinions of individual legislators as to the intent of the legislature as a whole when construing a statute. *Creswick v. the University of South Carolina*, 434 S.C. 77, 83, 862 S.E.2d 706, 709 (2021) *Bread Pol. Action Comm. v. Fed. Election Comm'n*, 455 U.S. 577, 582 n.3, 102 S.Ct. 1235, 71 L.Ed.2d 432 (1982) Nevertheless, the above is discussed in detail in the responses below.

BACKGROUND

The Department's Duty to Promulgate Regulations.

In 2010 Act 146, the S.C. General Assembly made substantial revisions to the unemployment law. Among these revisions were amendments to various statutes mandating the department to promulgate regulations. Prior to the 2010 amendments, regulations were permissive. SC Code Ann.§ 41-27-510 (1976, as amended) provides: "[t]he department **must promulgate regulations** applicable to unemployed individuals, making distinctions in the procedures regarding total unemployment, part-total unemployment, partial unemployment of the individuals attached to their regular jobs and other forms of short-time work as the department considers necessary." Section 41-29-110 provides: "[t]he department **must promulgate regulations necessary** to carry out the provisions of Chapters 27 through 41 of this title, employ personnel, make expenditures, require reports not otherwise provided for in these chapters, conduct investigations or take other action as it considers necessary or suitable to administer its duties and exercise its powers pursuant to the title." Section 41-35-610 provides: "[a] request for determination of insured status, a request for initiation of a claim series in a benefit year, a notice of unemployment, a certification for waiting-week credit, and a claim for benefits **must be made pursuant to regulations the department promulgates.**" Section 41-35-110(1) provides "[a]n unemployed insured worker is eligible to receive benefits with respect to a week only if the department finds he... has made a claim for benefits with respect to that week **pursuant to regulations prescribed by the department.**" (emphasis added)

"Regulation" includes "... each agency statement of general public applicability that implements or prescribes law or policy or practice requirements of an agency...." S.C. Code Ann. §1-23-10(4). A policy or guideline has the force of law if it creates a binding norm.

Joseph v. South Carolina Dept. of Labor, Licensing, and Regulation, 417 S.C. 436, 453, 790 S.E. 2d 763, 772 (2016). The "key inquiry" is:

> the extent to which the challenged policy leaves the agency free to exercise its discretion to follow or not to follow that general policy in an individual case, or on the other hand, whether the policy so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule's criterion. As long as the agency remains free to consider the individual facts in the various cases that arise, then the agency action in question has not established a binding norm. *Joseph, id* at 417 S.C. 454, 790 S.E.2d 772.

"When there is a close question whether a pronouncement is a policy statement or a regulation, the [agency] should promulgate the ruling as a regulation in compliance with the APA." *Joseph, id*, citing *Home Health Serv., Inc. v. S.C. Tax Com'n*, 312 S.C. at 329, 440 S.E.2d at 378.

Moreover, SC Const., Art.1, § 22 provides:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly, and he shall have in all such instances the right to judicial review.

The Online Work Search Policy.

In March 2012, the Legislative Audit Council[1] issued its report entitled *A Management Review of the South Carolina Department of Employment and Workforce* which found the department did not have a system to verify job contacts by claimants and recommended it implement a system to verify job contacts and ensure all communications with claimants regarding work search requirements are accurate and consistent. Legislative Audit Council Report, *A Management Review of the South Carolina Department of Employment and Workforce*, pp 35-37. The department responded to the LAC report by letter dated March 6,

[1] The Legislative Audit Counsel (LAC) was created by the General Assembly and is charged with review of operation of state agencies to assist the General Assembly.

2012 and stated it was "implementing a policy change to require one of the four mandatory work searches to be performed online through SCWOS [South Carolina Works Online] ...." See March 6 2012letter, response 15, from Abraham Turner to Perry Simpson attached to 2012 LAC Report id. This policy change is also referenced in Procedure transmittal letter 1267-3 dated August 11. 2012 (Supp. R. 38) states:

> In March of 2012, our work search policy was revised **to require all claimants** to make a minimum of four (4) job contacts per week. At least one (1) of the contacts **must** be made via at SC Works Online services jobs.scworks.org and all contacts **must** be documented on the Form UCB 303, Record of Work Seeking Activities.... If a claimant fails to make at least one (1) job search on SCWOS..., a letter will go to the claimant **explaining that their benefits have been stopped due to their failure to make an online search** through SCWOS **for a specific claim week** ending date. The letter will instruct the claimant to report to their local SC Works Center with a copy of the letter and their Form UCB-303 Record of Work Seeking Activities. ...
> Warnings are NOT acceptable for SCWOS work searches.... (Emphasis added) (SROA 38)

According to Kevin Cummings, the department's Unemployment Insurance Benefit Department Manager, "[i]f a claimant is deemed out of compliance with eligibility requirements for a given week, including the failure to conduct an online job search, DEW takes a statement from the claimant on the reason for noncompliance... and issues either a disqualification or a determination of eligibility is issued by a claims adjudicator...." (R. 1085, para. 22)

Per this policy the department sends the following letter to all claimants when the system detected an online search was not made:

> WORK SEARCH VERIFICATION FAILURE – BENEFITS STOPPED
>
> YOU ARE REQUIRED TO MAKE AT LEAST ONE (1) OF YOUR FOUR (4) WEEKLY JOB CONTACTS USING THE DEPARTMENTS JOB SERVICE WORK SEARCH WEBSITE: SC WORKS ONLINE SERVICES (JOBS.SCWORKS.ORG). OUR RECORDS INDICATE THAT YOU FAILED TO MAKE AN SC WORKS JOB SEARCH CONTACT FOR THE CLAIM WEEK ENDING [claim week date]

THEREFORE, YOUR BENEFITS HAVE BEEN STOPPED.

PLEASE REPORT TO YOUR LOCAL SC WORKS CENTER IMMEDIATELY IF YOU WOULD LIKE TO RECEIVE FUTURE BENEFITS. BRING THIS NOTICE AND YOUR FORM UCB-303, REPORT OF WORK SEEKING ACTIVITIES, WHEN YOU REPORT. (S.R.O.A. 39)

This notice was sent to all claimants who the department contended did not perform an online work search. It advises them to report to the department if they want to receive future benefits. It does not inform them of the true purpose of the meeting, which was to convene a hearing to issue a determination concerning whether the claimant performed the online work search.

The Budget Proviso.

Despite the mandatory statutory language to promulgate regulations - and the fact that it did implement policies regarding the online work search requirement before the enactment of the proviso - the department and amicus point to budget provisos which specified funding, in part, for the online work search requirement. The department argued no other action was necessary by the department to implement the work search requirement because the proviso filled out the legislative scheme.

As part of the 2012-2013 Appropriations Act (enacted July 1, 2012) the legislature enacted Budget Proviso 67.7 The proviso and subsequent provisos[2] provided:

> (DEW: SUTA Contingency Assessment Funds) **Thirty percent of the funds appropriated through the contingency assessment funds collected on taxable wages paid by employers shall be spent on** enforcement of Section 41-35-110(3) and Section 41-35-120(5) of the 1976 Code, via Eligibility Reviews, Random Verification of Job Contacts and Wage Cross Matches during those weeks covered by the South Carolina State Unemployment Tax Authority (SUTA), and to ensure seated meetings with Unemployment Insurance claimants **and requiring that one of the four job search contacts required per week be**

[2] The provisos enacted in subsequent years are: 2013-2014 - Proviso 83.6, 2014-2015 - Proviso 83.6, and 2015-2016 - Proviso 83.5.

> **conducted through SC Works Online System (SCWOS), so that it can be electronically verified.** The agency must also inform claimants in advance that Eligibility Reviews and Random Verification of Job Contacts will be used by the Department to verify compliance with laws administered by the agency. (emphasis added)

Rulings of the Circuit Court

The circuit court interpreted the relevant statutes and case law and found DEW was required to promulgate regulations regarding the online work search requirement. The Court also interpreted the provisions of the Budget Proviso and found it did nothing more than require the department to spend 30% of its contingency assessment fund on enforcing Sections 41-35-110(3) and 41-35-120(5) via 5 methods – one of those being the online work search requirement. The court found the proviso was silent on the implementation of the work search policy and did not establish policies and procedures for its enforcement. The court also noted it was necessary to adopt policies and procedures before its implementation, but the department did not do so by regulation as it was required. The Court went on to find the policies and procedures adopted by the department violated Article 1, § 22 of the Constitution since they were not a mode of procedure adopted or approved by the General Assembly. Moreover, the notice sent by the department to claimants whose benefits were stopped did not inform them of the true purpose of reporting to the department, which was to take a statement regarding the online work search requirement so a determination by a claims adjudicator could be issued.

ARGUMENT

I. The Circuit Court Properly Interpreted the Above Statutes, and its Conclusions do not Lead to an Absurd Result.

A. The Department had to promulgate regulations to implement the Online Work Search Requirement.

As noted in *Creswick v. the University of South Carolina*, 434 S.C. 77, 81, 862 S.E.2d 706, 708(2021):

> The primary rule of statutory construction is to ascertain and give effect to the intent of the General Assembly. *S.C. Pub. Int. Found. v. Calhoun Cnty. Council*, 432 S.C. 492, 497, 854 S.E.2d 836, 838 (2021); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The first question to be asked when interpreting a statute is whether the statute's meaning is clear on its face. *Kennedy v. S.C. Ret. Sys.*, 345 S.C. 339, 346, 549 S.E.2d 243, 246 (2001). If a statute's language is plain, unambiguous, and conveys a clear and definite meaning, there is no need to employ the rules of statutory interpretation, and this Court must apply the statute according to its literal meaning. *Miller v. Aiken*, 364 S.C. 303, 307, 613 S.E.2d 364, 366 (2005). Under the plain meaning rule, this Court has no right to search for or impose another meaning or resort to subtle or forced construction to change the scope of a clear and unambiguous statute. *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011); *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010); *Cain v. Nationwide Prop. & Cas. Ins. Co.*, 378 S.C. 25, 29–30, 661 S.E.2d 349, 351–52 (2008). Only where the language of an act gives rise to doubt or uncertainty as to legislative intent may this Court search for that intent beyond the borders of the act itself. *Smith v. Tiffany*, 419 S.C. 548, 556, 799 S.E.2d 479, 483 (2017). The best evidence of legislative intent is the text of the statute. *Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 844 (2002); *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581.

From a plain reading, it is clear the Proviso is directing the department to spend 30% of the (SUTA) Contingency Assessment Funds on the five listed items to enforce §§ 41-35-110(3) and 120(5). The proviso neither defines these items, nor does it give any direction or instruction for the implementation of these items. Nor does it establish any mode of procedure for their enforcement. Moreover, there is no language which expressly or by implication suspends the department's duty to promulgate regulations. All the Proviso does is direct the expenditure of monies from the contingency assessment funds for the specific purposes outlined above. The

Provisos are silent on how they are to be implemented.

Clearly the General Assembly could have set forth procedures and policies in the proviso for the online work search requirement. For example, in the 2023-2024 Appropriations Act, Part 1A, Section 61, sets forth the amount appropriated for indigent defense. Part 1B, Budget Proviso 61.7 relates to Defense of Indigents Civil Action Application Fee. The General Assembly not only sets forth the amount of the fee, but also sets forth specific details regarding the application, including the requirement of an affidavit, application process for waiver of the fee, what to do if the applicant has some, but insufficient, assets for counsel, what to do in case of a juvenile applicant, the rights of the court to appoint an attorney in emergency situations – regardless of whether an application has been submitted, and the filing of a claim against the assets of the applicant to be filed with the clerk of court which, at the discretion of the court and after 30-day's notice to the applicant, could be reduced to a judgment against the assets of the applicant.[3] Therefore, the General Assembly knows how to give specific detail when enacting a

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3. 61.7. (INDEF: Defense of Indigents Civil Action Application Fee):
(A) A person requesting appointment of counsel in any termination of parental rights (TPR), abuse and neglect, or any other civil court action in this state shall execute an affidavit that the person is financially unable to employ counsel and that affidavit shall set forth all of the person's assets. This affidavit must be completed before counsel may be appointed. If it appears that the person has some assets but they are insufficient to employ private counsel, the court, in its discretion, may order the person to pay these assets or a portion thereof to the Commission on Indigent Defense.
(B) A forty dollar application fee for appointed counsel services must be collected from every person who executes an affidavit that they are financially unable to employ counsel. The person may apply to the court, the clerk of court, or other appropriate official for a waiver or reduction in the application fee. If it is determined that the person is unable to pay the application fee, the fee may be waived or reduced, provided that if the fee is waived or reduced, the clerk or appropriate official shall report the amount waived or reduced to the trial judge and the trial judge shall order the remainder of the fee paid by a time payment method or such method as the trial judge deems appropriate. The clerk of court or other appropriate official shall collect the application fee imposed by this section and remit the proceeds to the Commission on Indigent Defense on a monthly basis. The monies must be deposited in an interest-bearing account separate from the general fund and used only to provide for indigent defense services. The monies shall be administered by the Commission on Indigent Defense. The clerk of court or other appropriate official shall maintain a record of all persons applying for representation and the disposition of the application and shall provide this information to the Commission on Indigent Defense on a monthly basis as well as reporting the amount of funds collected or waived.
(C) In matters in which a juvenile is brought before a court, the parents or legal guardian of such juvenile shall execute the above affidavit based upon their financial status and shall be responsible for paying any fee. In matters concerning juveniles, the parents or legal guardians of said juvenile, shall be advised in writing of this requirement at the earliest stage of the proceedings against said juvenile.
(D) Nothing contained above shall restrict or hinder a court from appointing counsel in any emergency proceedings or where existing statutes do not provide sufficient time for an individual to complete the application process.

proviso. It could have established policies in Proviso 67-7 which would have satisfied the requirements of Art, 1, §22 but chose not to do so, and it did not need to do so in light of the department's statutory obligation to promulgate regulations. As to any delays in implementing the policy, the legislature would have been aware of the requirements of Art. 1, §22, and all relevant statutes and would have expected a delay in the work search requirement's implementation. Moreover, if the department began the process of promulgating a regulation when it established the policy, delay would have been minimized. (According to amici, when the department finally got around to promulgating a regulation in 2016 for the online work search requirement, the regulatory process took about nine months.)

The circuit court concluded that the proviso was unambiguous, and from a plain reading, all it did was designate a portion of the department's contingency assessment fund to be spent on enforcing the provisions of §§41-35-110 (3) and 120(5) through 5 methods – one of them being online work searches to verify that claimants were looking for work. Neither amici nor the department point to any language in the proviso which establishes policies and procedures for the online work search requirement.

Notwithstanding the plain language of the proviso, amici points to S.C. Code Ann. §41-35-120(5) and asserts"...the only reasonable interpretation of the proviso is that the law requires a claimant to conduct one online search per week through SCWOS in order to be eligible for a

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(E) The appointment of counsel, as herein before provided, creates a claim against the assets and estate of the person who is provided counsel or the parents or legal guardians of a juvenile in an amount equal to the costs of representation as determined by a voucher submitted by the appointed counsel and approved by the court, less that amount that the person pays to the appointed counsel.

(F) Such claim shall be filed in the office of the clerk of court in the county where the person is assigned counsel, but the filing of a claim shall not constitute a lien against real or personal property of the person unless, in the discretion of the court, part or all of such claim is reduced to judgment by appropriate order of the court, after serving the person with at least thirty days' notice that judgment will be entered. When a claim is reduced to judgment, it shall have the same effect as judgments, except as modified by this provision.

weekly benefit...." (Amici Joint Brief page 7) § 120(5)(a)(1) provides "[a]n insured worker is ineligible for benefits... **if the department *finds* he has failed, *without good cause*...** to apply for available suitable work, when so directed by the employment office or the department." (emphasis added)

This statute clearly requires the department, before finding a claimant to be ineligible for benefits, to give the claimant an opportunity to show good cause for failing to apply for available suitable work if such a finding has been made. Notice and an opportunity to be heard must be given to the claimant. Therefore, for the department to properly enforce the statute, a notice would have to be given to claimant informing him of the department's contention that he did not comply with the online work search and give him the opportunity to provide good cause for his noncompliance.

In this case, the department sent a notice, telling the claimant he did not comply with the online work search requirement and directing him to appear at the department if he wanted to receive future benefits. It did not apprise the claimant that a hearing would be convened in which he had the right to challenge whether he had made the search or to show good cause why he didn't. [4]

While amici states there were regulations already in place to implement the online work search requirement, it fails to state what the applicable regulations are. The department did have a regulation in place for seated eligibility reviews, S.C. Reg. 47-21, which was its primary method of verification of whether a claimant was actively seeking work prior to the online work search requirement.[5] However, neither this regulation nor any other regulation covered online

[4] SC Reg 47- 104 enacted in 2017 to provide for the online work search, specifically contains this good cause requirement.

[5] S.C. Reg. 47-21(b) provides:
Continued Claims: In order to establish eligibility for benefits or waiting period credit for succeeding weeks of non-job-attached unemployment during any continuous period of non-job-attached unemployment, the claimant shall continue to file as prescribed

work searches. Eligibility reviews as contemplated by Reg. 47-21 would give notice and opportunity to be heard as to whether a claimant was actively seeking work before stopping benefits, satisfying 41-35-120(5)(a)(1) as discussed above, South Carolina Code Ann. §41-35-670 which requires a determination or redetermination before stopping benefits, as well as Art. 1, § 22 of the Constitution, since claimant would have notice and opportunity to be heard through a mode of procedure established by the legislature.

Finally, amici ignore that the department had to implement polices for the implementation of the online work search. These policies are set forth above and are evidenced by Procedural Transmittal Letter 1267-3, (SROA 38) the letter/notice sent to claimants requiring them to report to the department.(SROA. 39) the affidavit of Kevin Cummings, (R. 1085) and the letter from the department to the Legislative Audit Counsel (See attachment to 2012 Legislative Audit Council Report) The online work search policy was established in March 2012, three (3) months before the budget took effect. The department could not have relied on the proviso in establishing the policy. The policy is binding on the department and gives them little discretion in making individual determinations on whether a claimant actively searched for work. The policy is an illegal regulation not promulgated pursuant to the APA. Even if this court interprets the proviso to be more than a funding mechanism, the department enacted an illegal regulation without legislative approval.

B. The Circuit Court's Ruling does not Lead to an Absurd Result.

Amicus argues the circuit court's interpretation of the proviso leads to an absurd result

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by the Department. When so directed, claimants will be required to report, in person, to the local office where they are filing their claim. The claimant will set forth:
i. That he has not worked or earned wages except as reported,
ii. That he has not refused any work offered to him, and
iii. That he is able and available to accept work and is looking for full-time employment.

since it gives the department a 'de facto veto' over the proviso. All the circuit court did was its constitutional duty of interpreting the law. From its interpretation of the proviso and other statutory provisions, it issued its ruling, and this court has de novo review of that ruling with respect to this issue.

The proviso is a funding mechanism. It did not establish the online work search policy. The department established the policy, but without first promulgating regulations as statutorily required. Respondents have never contended the department could ignore the proviso and spend money in any other manner. With regard to the proviso, the issue has always been "What does it say?".

It would have been absurd to interpret the proviso as being a complete statement of the online work search policy since it gave no details of its implementation. The legislature could not have contemplated a mode of review for the online work search requirements which would have told the claimant to report to the department if it wished to receive future benefits when the true purpose of the hearing was to ascertain whether the claimant had complied with the online work search. (see P. 5 above) Such a scheme would violate S.C. Const. Art.1, § 22. A statute should not be construed in a manner which renders it unconstitutional when a construction that renders it constitutional is possible. *Peoples Nat. Bank of Greenville v. South Carolina Tax Commission*, 250 S.C. 187, S.C. 156 S.E.2d. 769 (1967); *Paris Mountain Water Co. v. City of Greenville, et. al.*, 110 S.C. 36, 96 S.E. 545 (1918)

II. The Proviso Did Not Suspend Statutes Requiring the Department to Promulgate Regulations.

A budget proviso can temporarily suspend the operation of a permanent statute if the intent to do so is clearly manifest *and* if there is an irreconcilable conflict between the proviso and the permanent statute. *Amisub of South Carolina v. South Carolina Dept. of Health and*

Environmental Control, 407 S.C. 583, 757 S.E.2d. 408 (2014), *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) (citations omitted). However, "[b]ecause we must presume that the General Assembly is familiar with existing legislation, statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." *Amisub*, id at 407 S.C. 598, 757 S.E.2d 416. "Moreover, statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result." *Amisub*, id. citing *Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000).

Neither amici nor the department point to any language in the proviso which is inconsistent or in conflict with its obligation to promulgate regulations necessary to carry out the provisions of the unemployment law. The proviso is silent on the implementation of the online work search requirement. Since the legislature is presumed to be aware of the statutes it has enacted, it only makes since that it would have expected the department to promulgate regulations to carry it into effect.

In fact, the department, by necessity, did establish policies and procedures which created binding norms to implement and enforce compliance with the online work search requirement. The policies established were binding on the department since warnings were not acceptable for failing to conduct the online search and claimants were penalized by not receiving their weekly benefit.

III. The Department Was Statutorily Obligated to Promulgate Regulations to Implement the Online Work Search Requirement.

A. The Statutes Mandate the Department Promulgate Regulations.

The use of the word "must" is considered mandatory under principles of statutory interpretation. *In Re Matthews*, 345 S.C. 638, 550 S.E.2d. 311 (2001). As set forth above, §§ 41-27-510, 29-110, 35-610 and 35-110(1) specify the department **must** promulgate regulations.

Amici ignore the actual language of the statute when it asserts the statutes are permissive when it comes to promulgating regulations. But even if these statutes did not exist, the department is still subject to the requirements of the Administrative Procedures Act, S.C. Code Ann. § 1-23-10, et. seq. (1976) and was required to promulgate regulations since its online work search policies created a binding norm.

B. Section 41-35-610 is Applicable to the Online Work Search."

Section 41-35-610 provides: "... a claim for benefits **must be made pursuant to regulations the department promulgates**." Class members were denied their benefits for the week which the department contends an online work search was not made. The requirement directly affected their benefit. This statute is therefore applicable.

Conclusion

The circuit court properly interpreted the relevant statutes and provisos and found the department was required to promulgate regulations before implementing the online work search requirement.

Respectfully submitted:

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CERTIFICATE OF COUNSEL

The undersigned certifies that this Brief complies with Rule 211(b), SCACR and the Supreme Court's April 15, 2014, Order on Personal Identifying Information.

June 30, 2023

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And Tami Bollerman

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

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SC Court of Appeals

APPEAL FROM BARNWELL COUNTY
In the Court of Common Pleas

Doyet A. Early, III, Circuit Court Judge
Clifton B. Newman, Circuit Court Judge

Lower Court Case No. 2013-CP-06-0059
Appellate Case No. 2019-000599

Lorenda Robinson, Elaine Nix, Archie Patterson,
And Tami Bollerman, ... Plaintiffs,

Of Whom, Archie Patterson and Tami Bollerman are the Respondents/Appellants,

v.

South Carolina Department of Employment and
Workforce, ... Appellant/Respondent.

PROOF OF SERVICE

I certify that I have this day deposited in the United States Mail, first class, a bounded and unbounded copy of Respondents' Brief In Response to Amici Curiae Brief to the Clerk of the South Carolina Court of Appeals, along with this Proof of Service, and that I have served the Respondents' Brief In Response To Amici Curiae Brief on the following counsel of record by email on July 3, 2023. A copy of the emails are attached. I have also filed this Brief and Proof of Service at ctappfilings@sccourts.org.

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VIA EMAIL (ctappfilings@sccourts.org) & U.S. MAIL
July 3, 2023

The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate St.
Columbia SC 29201

RE: Archie Patterson v. SCDEW
Appellate Case No.: 2019-000599

Dear Ms. Kitchings:

Enclosed for filing with the court please find one bound and one unbound copy of the Respondents' Brief in Response to Amici Curiae Brief with Proof of Service submitted on behalf of the Respondents Archie Patterson and Tami Bollerman in connection with the above matter.

Thank you for your courtesies in this matter. Please advise immediately should you have any questions or concerns in this matter.

Sincerely,

Daniel W. Williams

DWW:ar
Enc.

(by email only)
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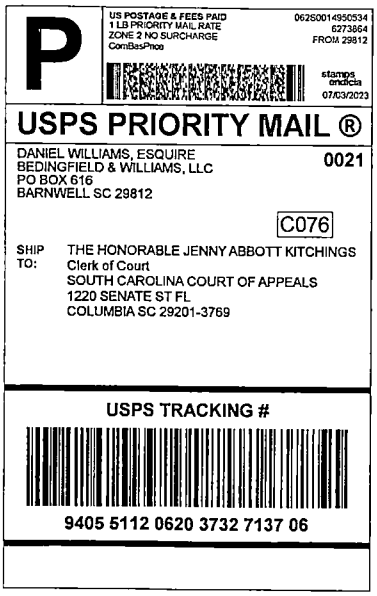

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