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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

Appeal From the Administrative Law Court

Ralph King Anderson, III, Administrative Law Judge

Opinion No. 6072 (S.C. Ct. App. Filed July 17, 2024)

Supreme Court Case No. 2024 – 001570

Colonial Pipeline Company, ... Petitioner,

v.

South Carolina Department of Revenue, Abbeville County, Anderson County, Greenville County, Aiken County, and Laurens County and York County, ... Respondents.

RESPONDENT SOUTH CAROLINA DEPARTMENT OF REVENUE'S RETURN TO PETITIONER COLONIAL PIPELINE COMPANY'S WRIT OF CERTIORARI

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INTRODUCTION

Pursuant to Rule 242(f), SCACR, Respondent South Carolina Department of Revenue ("Department") submits this Return to Colonial Pipeline Company's ("Colonial") Petition for Writ of Certiorari ("Petition").

"A writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." Rule 242(b), SCACR. The Court considers a number of reasons in determining whether to exercise its discretion to grant review in general, including: (1) where there are novel questions of law; (2) where there is a dissent in the decision of the Court of Appeals; (3) where the decision of the Court of Appeals is in conflict with a prior decision of the Supreme Court; (4) where substantial constitutional issues are directly involved; and (5) where a federal question is included and the decision of the Court of Appeals conflicts with a decision of the United States Supreme Court. *See* Rule 242(b), SCACR.

No special or important reasons in this case warrant granting a writ of certiorari, nor does this case present any of the above "character of reasons" that the Court typically considers. *Id.* The Court of Appeals correctly reversed the Administrative Law Court's ("ALC") decision because the ALC erroneously broadened the scope of the property tax exemption sought by Colonial beyond the plain meaning of the statute. The Court of Appeals was correcting an error of law—the ALC's incorrect construction of a statute—which is subject to *de novo* review without any deference to the ALC's legal conclusions. This case does not present a novel question of law merely because the term industrial plant is not defined separately from its plain and ordinary meaning. Importantly, Colonial bases its Petition on the misunderstanding that the Court of Appeals limited the Pollution Control Exemption to manufacturers. Accordingly, for the reasons discussed below, this Court should deny Colonial's Petition.

COUNTER-STATEMENT OF QUESTION PRESENTED FOR REVIEW

Did the Court of Appeals correctly hold that Colonial does not qualify for an exemption for facilities and equipment of an industrial plant, which must engage in production, because Colonial is a transportation company that does not have a plant or produce anything?

COUNTER-STATEMENT OF THE CASE

This matter came before the ALC in accordance with the Administrative Procedures Act, S.C. Code Ann. §§ 1-23-310 et seq. (2005 & Supp. 2015) for a contested case hearing. Colonial filed a request for a contested case hearing with the ALC on December 5, 2018, in case number 18-ALJ-17-0443-CC to challenge a Department Determination issued by the Department. *See* Department Determination (issued November 19, 2018) (R. pp. 2443–2448). In the Department Determination, the Department determined that Colonial is not entitled to a property tax exemption pursuant to § 12-37-220(A)(8)—commonly referred to as the Pollution Control Exemption. *Id.*

Six counties moved to intervene in the case, and the ALC granted these motions and added Abbeville, Anderson, Greenville, Aiken, Laurens, and York counties as Intervenors (Counties) to the hearing. *See* Order (filed April 16, 2019) (R. pp. 1–2); Order (filed May 29, 2019) (R. pp. 3–4); Order (filed June 13, 2019) (R. pp. 5–6).

The parties stipulated to the operative facts and filed cross-motions for summary judgment, responses in opposition, and replies. *See* Department's Motion for Summary Judgment and Memo in Support (filed December 11, 2019) (R. pp. 305–480); Department's Response in Opposition (filed December 20, 2019) (R. pp. 481–507); Department's Reply (filed January 3, 2020) (R. pp. 639–658); Abbeville, Anderson, Greenville, and York's Motion for Summary Judgment and Memo in Support (filed December 11, 2019) (R. pp. 218–241); Abbeville, Anderson, Greenville, and York's Response in Opposition (filed December 23, 2019) (R. pp. 508–515); Abbeville, Anderson, Greenville, and York's Reply (filed January 3, 2020) (R. pp. 566–573); Aiken and Laurens' Motion for Summary Judgment and Memo in Support (filed December 11, 2019) (R. pp. 186–217); Aiken and Laurens'

Response in Opposition (filed December 23, 2019) (R. pp. 516–526); Aiken and Laurens' Reply (filed January 3, 2020) (R. pp. 574–582); Colonial's Motion for Summary Judgment (filed December 11, 2019) (R. pp. 242–304); Colonial's Response in Opposition (filed December 23, 2019) (R. pp. 527–565); Colonial's Reply to Respondent's and Intervenors' Responses to Colonial's MSJ (filed January 3, 2020) (R. pp. 583–638). The ALC denied the cross-motions for summary judgment. *See* Order on Cross Motions for Summary Judgment (filed March 6, 2020) (R. pp. 7–29).

On August 4–5, 2020, the ALC held a contested case hearing. In its original Order, the ALC denied Colonial's application for the Pollution Control Exemption for some items and granted it for others. *See* Order (filed December 1, 2020) (R. pp. 47–79). The Counties and Colonial filed Motions for Reconsideration. *See* Abbeville, Anderson, Greenville, and York Motion to Recons. (filed December 11, 2020) (R. pp. 710–720); Aiken and Laurens Motion to Recons. (filed December 11, 2020) (R. pp. 721–755); Colonial's Motion to Recons. (filed December 11, 2020) (R. pp. 756–823). The Counties and Department filed Responses to Colonial's Motion for Reconsideration. *See* Abbeville, Anderson, Greenville, and York Resp. to Mot. to Recons. (filed December 21, 2020) (R. pp. 824–830); Aiken and Laurens Resp. to Mot. to Recons. (filed December 21, 2020) (R. pp. 831–833); and Dep't Resp. to Mot. to Recons. (filed December 23, 2020) (R. pp. 834–836). To allow time to review the motions and responses, the ALC rescinded its December 1, 2020 Order. *See* Order (filed January 4, 2021) (R. pp. 80).

The ALC issued an Amended Final Order granting the Pollution Control Exemption for all claimed items. *See* Amended Final Order (filed February 9, 2021) (R. pp. 81–112). Abbeville County, Anderson County, Greenville County, and York County appealed the Amended Final Order on February 25, 2021. Aiken County and Laurens County appealed the Amended Final Order on March 2, 2021. The Department appealed the Amended Final Order on March 10, 2021. The Court of Appeals reversed the Amended Final Order and held that the ALC erred by granting the exemption

for facilities and equipment of an industrial plant, which must engage in production, to a transportation company that does not have a plant or produce anything.[1]

STATEMENT OF FACTS

Colonial is a pipeline company that transports refined petroleum, jet fuel, gasoline, diesel, heating oil, kerosene, and blend stocks (collectively, "Refined Petroleum Products," each, a "Refined Petroleum Product"). *See* Stipulation of Facts No. 1 (R. p. 2462). Colonial transports fungible products, and a customer may not receive the exact same petroleum product it paid Colonial to transport. *See* Hr'g Tr. 124:16–23 (R. p. 1565). At least 90% of each Refined Petroleum Product transported by Colonial is of the same specification and quantity when it enters the pipeline as it is when it leaves the pipeline. *See* Stipulation of Facts No. 10 (R. p. 2463).

Colonial transports multiple products back-to-back through the pipeline, which results in some mixing of the products where they interface. When two incompatible products mix, the result is called Transmix—an unusable and unsaleable fluid. *See* Stipulation of Facts Nos. 3 and 4 (R. p. 2462). Each Refined Petroleum Product that combines to create Transmix can be separated into a once again saleable Refined Petroleum Product. *See* Stipulation of Facts No. 7 (R. p. 2462). As part of its transportation services, Colonial separates Transmix back into each Refined Petroleum Product at no additional charge to the customer. *See* Stipulation of Facts No. 8 (R. p. 2462). Colonial could avoid Transmix entirely by transporting a single Refined Petroleum Product at one time in the pipeline. *See* Stipulation of Facts Nos. 5 and 6 (R. p. 2462). Colonial injects drag reducing agents to reduce friction on the lines in South Carolina and does various inspections in this state. *See* Stipulation of Facts No. 2 (R. p. 2462). Colonial removes water that condenses in the pipeline called sting water. *See* Hr'g Tr.

[1] The Court of Appeals further held that the ALC erred in limiting the scope of the contested case hearing to only three types of Colonial's property. However, Colonial did not challenge that holding in the Petition.

157:23–158:2 (R. pp. 1598–1599). These *de minimus* or auxiliary activities ensure that the quality of each Refined Petroleum Product received by the customer is the same as the Refined Petroleum Product that went into the pipeline. *See* Stipulation of Facts No. 9 (R. p. 2463).

All the parties agree and the ALC made no contrary finding to the fact that Colonial does not engage in production. *See* Amended Final Order at p. 31 (R. p. 111); Motion for Reconsideration Hr'g. Tr. 14:25–15:7 (R. pp. 1877–1878).

RELEVANT LAW

South Carolina law provides for a tax on "[a]ll real and personal property in this State…" S.C. Code Ann. § 12-37-210 (2014). This rule has limited exemptions, including the Pollution Control Exemption provided by S.C. Code § 12-37-220(A)(8) (2014), which states:

> (A) [T]here is exempt from ad valorem taxation:
>
> ***
>
> **all facilities or equipment of industrial plants** which are designed for the elimination, mitigation, prevention, treatment, abatement, or control of water, air, or noise pollution, both internal and external, required by the state or federal government and used in the conduct of their business. At the request of the Department of Revenue, the Department of Health and Environmental Control shall investigate the property of any **manufacturer** or company, eligible for the exemption to determine the portion of the property that qualifies as pollution control property. Upon investigation of the property, the Department of Health and Environmental Control shall furnish the Department of Revenue with a detailed listing of the property that qualifies as pollution control property. **For equipment that serves a dual purpose of production and pollution control, the value eligible for the ad valorem exemption is the difference in cost between this equipment and equipment of similar production capacity or capability without the ability to control pollution.** For the purposes of this item, twenty percent of the cost of any piece of machinery and equipment placed in service in a greige mill qualifies as internal air and noise pollution control property and is exempt from property taxes. "Greige mill" means all textile processes from opening through fabric formation before dyeing and finishing. (emphasis added).

This property tax exemption statute derives from S.C. Const. art. X, § 3(h), which exempts from ad valorem taxation "all facilities or equipment of industrial plants which are designed for the elimination, mitigation, prevention, treatment, abatement or control of water, air or noise pollution."

ARGUMENT

I. THE ARGUMENTS IN THE PETITION DO NOT PRESENT THE TYPE OF SPECIAL OR IMPORTANT REASONS FOR WHICH CERT SHOULD BE GRANTED UNDER RULE 242, SCACR.

Colonial argues a writ of certiorari should be granted because this appeal presents a novel question of law; the decision of the Court of Appeals conflicts with a prior decision of the Supreme Court; and substantial constitutional issues are directly involved. As elaborated below, each of these arguments are misplaced, and none of these arguments present special or compelling reasons for the Court to grant certiorari. Therefore, Colonial's Petition should be denied.

A. The Court of Appeals' interpretation of the Pollution Control Exemption in § 12-37-220(A)(8) does not present a novel question of law.

Colonial claims that there is a novel question of law because the term "industrial plant" in section 12-37-220(A)(8) was not defined by statute, case law, or the Department. *See* Petition at 4. However, encountering undefined terms in a statute is not unusual, and our courts routinely employ various principles of statutory construction when confronted with such undefined terms. In every case, the objective is to interpret the term in accordance with its usual and customary meaning, without resorting to a forced construction that would either limit or expand the statute's operation. *Branch v. City of Myrtle Beach*, 340 S.C. 405, 409–10, 532 S.E.2d 289, 292 (2000); *Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178, 420 S.E.2d 843, 846 (1992) (internal citations omitted).

As was the case here, looking to a dictionary definition is an appropriate step in this exercise. *See, e.g., Travelscape, LLC v. S.C. Dep't of Revenue*, 391 S.C. 89, 101, 705 S.E.2d 28, 34 (2011) (looking to the American Heritage Dictionary for a definition of an undefined term in a tax statute). Moreover, this Court has previously examined the Pollution Control Exemption involving a taxpayer engaged in production. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 503 S.E.2d 471 (1998). Notably, the Court did not find the Pollution Control Exemption to be ambiguous. *See id.* 331 S.C. at 616, 503 S.E.2d at 474 ("Pollution control equipment typically forms an integral part of the **production** process

in a greige mill..." (emphasis added)). Thus, when the Court of Appeals concluded that an "industrial plant" must engage in production, it did so in accordance with established canons of construction and consistent with prior findings of this Court. This does not create a novel question of law worthy of this Court's discretionary review.

B. The Court of Appeals' interpretation of the Pollution Control Exemption in § 12-37-220(A)(8) comports with prior Supreme Court decisions.

The Court of Appeals applied the rules of statutory construction consistent with Supreme Court precedent. The Court of Appeals laid out the proper rules of statutory construction with cites to Supreme Court decisions, and its analysis was "[m]indful of these rules governing statutory construction." *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443 S.C. 448, 458, 905 S.E.2d 129, 134 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024).

As cited by the Court of Appeals' decision, "What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will." *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 8, 809 S.E.2d 223, 226 (2018) (quoting *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000)). The Court of Appeals started by reviewing the language of the property tax imposition statute and then the exemption statute and South Carolina Constitution. *Colonial Pipeline Co.* at 443 S.C. at 459 ("we first review section 12-37-210 of the South Carolina Code (2014), which taxes '[a]ll real and personal property in this State' subject to exemptions. The exemption at issue, the Pollution Control Exemption, provided statutorily by section 12-37-220(A)(8)(2014) of the South Carolina Code…Our South Carolina Constitution also provides an exemption…"). Therefore, the Court of Appeals started its analysis with the statutory and constitutional language.

"In interpreting a statute, the court will give words their plain and ordinary meaning[ ] and will not resort to forced construction that would limit **or expand** the statute." *State v. Johnson*, 396 S.C.

182, 188, 720 S.E.2d 516, 520 (Ct. App. 2011) (emphasis added).[2] Colonial's interpretation impermissibly expands the statute (Pollution Control Exemption). Its definition exceeds the usual and customary definition of industrial plant and would be broad enough to include a college dormitory, hospital, bank, train, tractor trailer, or fishing boat. In contrast, the Court of Appeals gave the statutory words their plain and ordinary meaning. *Colonial Pipeline Co.* at 443 S.C. at 461. ("In our view, this statutory definition provides a plain and ordinary meaning for the term 'industrial plant' in that it contemplates some production or output."). The Court of Appeals found that, like Colonial, "the ALC strained to find a definition of the meaning, 'industrial plant' beyond what the Legislature intended." *Id.* In other words, the Court of Appeals found the ALC forced a construction that expanded the statute. Therefore, Colonial is not entitled to the Pollution Control Exemption under the general rules of statutory construction.

Moreover, "[t]he language of a tax exemption statute must be given its plain, ordinary meaning and must be strictly construed against the claimed exemption." *Home Med. Sys., Inc. v. S.C. Dep't of Revenue*, 382 S.C. 556, 564, 677 S.E.2d 582, 587 (2009). "Th[e] rule of strict construction [of a tax exemption statute] simply means that constitutional and statutory language will not be strained or liberally construed in the taxpayer's favor." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (quoting *Se. Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)). "It does not mean that [the appellate court] will search for an interpretation in [DOR]'s favor where the plain and unambiguous language leaves no room for construction." *Id.* at 74–75, 716 S.E.2d at 881 (alteration in original). As mentioned above, the ALC's construction was strained and beyond the legislative intent—i.e. liberally construed in the taxpayer's favor. Rather than searching for an interpretation in the Department's favor, the Court of Appeals' interpretation is based on the plain

[2] When mentioning the "unwavering precedent in this State that courts should not insert terms to restrict a statute's application," Colonial omits the part about not expanding a statute's application. *See* Petition at 4-5.

and unambiguous language of the statute. *Colonial Pipeline Co.* at 443 S.C. at 462 ("we find the ALC did not apply the plain and ordinary meaning of the term industrial plant."). The fact that courts must strictly construe the Pollution Control Exemption against Colonial only bolsters the Court of Appeals' interpretation.

Further, "[a] statute should be given a reasonable and practical construction consistent with the purpose and policy expressed in the statute." *Liberty Mut. Ins. Co. v. S.C. Second Inj. Fund*, 363 S.C. 612, 621, 611 S.E.2d 297, 301 (Ct. App. 2005). The Court of Appeals found additional support for its interpretation in the broader constitutional and regulatory scheme, which distinguishes manufacturing and utility companies from transportation companies like Colonial. *Colonial Pipeline Co.* at 443 S.C. at 461. Specifically, transportation companies have a lower assessment ratio than manufacturers and utilities, which engage in production. This different treatment of transportation companies shows the Court of Appeals' interpretation aligns with the legislative intent. Therefore, the Court of Appeals properly interpreted and applied the Pollution Control Exemption following the Supreme Court's prior decisions.

C. The Court of Appeals' interpretation of the Pollution Control Exemption in § 12-37-220(A)(8) does not directly involve substantial constitutional issues.

The plain and ordinary meaning of industrial plant is the same in the Constitution and statute. As quoted in the Court of Appeals opinion, "[t]h[e] rule of strict construction [of a tax exemption statute] simply means that **constitutional and statutory language** will not be strained or liberally construed in the taxpayer's favor." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *Se. Kusan, Inc. v. S.C. Tax Comm'n*, 276 S.C. 487, 489, 280 S.E.2d 57, 58 (1981)) (emphasis added). Whether a transportation pipeline not engaged in production constitutes an industrial plant does not directly involve a substantial constitutional issue.

II. COLONIAL MISUNDERSTANDS THE COURT OF APPEALS DECISION AS LIMITING THE POLLUTION CONTROL EXEMPTION TO MANUFACTURERS.

Throughout the Petition, Colonial misunderstands that the Court of Appeals decision limited the Pollution Control Exemption to manufactures. However, the Court of Appeals decision states: "DOR argues the ALC erred by granting the exemption for facilities and equipment of an industrial plant, which must engage in production, to a transportation company that does not have a plant or produce anything. We agree." *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443 S.C. 448, 457, 905 S.E.2d 129, 134 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024). While a manufacturer would engage in production, it is not the only type of taxpayer that does. In fact, the Department pointed out that other entities engaged in production may also have an industrial plant. *See Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443 S.C. 448, 457, 905 S.E.2d 129, 134 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024) ("DOR first argues…the exemption applies only to manufacturers or other entities engaged in production.").

Similarly, Colonial wrongly states that "manufacturers" is a term that appears nowhere in the language of the Pollution Control Exemption. *See* Petition at 5. However, section 12-37-220(A)(8) explicitly includes the term manufacturer: "…the Department of Health and Environmental Control shall investigate the property of any **manufacturer** or company, eligible for the exemption to determine the portion of the property that qualifies as pollution control property…" (emphasis added). Colonial's entire argument in the Petition is premised on this mischaracterization, which is easily disproven by a careful reading of the Court of Appeals decision. Therefore, Colonial's petition should be denied.

III. THE ALC'S DECISION WAS AFFECTED BY AN ERROR OF LAW AND SUBJECT TO *DE NOVO* REVIEW.

Colonial contends the ALC made a factual finding that Colonial's facilities were an industrial plant. This argument is flawed. The interpretation of a statute—including tax statutes—is indisputably

a question of law, not a question of fact. *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477(2022); *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 300, 814 S.E.2d 513, 516 (2018). The ALC clearly understood its analysis and interpretation of the phrase "industrial plant" to be a question of law, which is why the ALC placed its entire discussion of statutory construction within its "Conclusions of Law" in the Amended Final Order (R. pp. 97–108). Likewise, the questions presented to the Court of Appeals were not questions of fact, but questions of law, and as such the Court of Appeals correctly reviewed the ALC's interpretation of the exemption statute under the appropriate *de novo* standard. *Books-A-Million*, 437 S.C. at 642–43, 880 S.E.2d at 477.

The ALC erred in its broad definition of industrial plant. The facts in this case were largely undisputed. Application of the ALC's incorrect definition of industrial plant to the facts led to the incorrect conclusion that Colonial qualified for the pollution control exemption. Under the Administrative Procedures Act, the Court of Appeals may properly reverse the ALC if it determines any ALC finding, conclusion, or decision violates statutory provisions or is affected by error of law. *See* S.C. Code Ann. § 1-23-610(D) (Supp. 2020). Whether Colonial's operations met the statutory requirement for the Pollution Control Exemption is a question of law, and the ALC's conclusion that it did was a legal error—not a factual one. *See S.C. Dep't of Revenue v. Blue Moon of Newberry, Inc.*, 397 S.C. 256, 725 S.E.2d 480, 483 (2012) (holding that the determination of whether certain facts satisfy the language of a Department regulation is a question of law). The Court of Appeals properly reversed this error without any deference to the ALC's decision. *See State v. Whitner*, 399 S.C. 547, 552, 732 S.E.2d 861, 863 (2012) (*citing Transp. Ins. Co. & Flagstar Corp. v. S.C. Second Injury Fund*, 389 S.C. 422, 427, 699 S.E.2d 687, 689 (2010)).

IV. THE COURT OF APPEALS CORRECTLY CONSIDERED AND REJECTED THE ARGUMENTS COLONIAL RAISED BEFORE IT.

The Court of Appeals carefully considered the arguments before it and rightfully denied Colonial the Pollution Control Exemption. Similarly, this Court should deny Colonial's Petition for Writ of Certiorari.

A. Colonial mischaracterizes "concessions" by the Department.

The sole issue is not whether Colonial's operation is a plant. It is whether it is an industrial plant. *See* Motions Hearing January 6, 2020, Tr. 37:25–38:2; (R. pp. 1363–1364) ("'Industrial plant' together."). Colonial also incorrectly asserts that the Department determined Colonial's operations to be an industrial plant. That assertion is unsupported by the record. Instead, Mr. Ingram, the Department employee who processed Colonial's application for the Pollution Control Exemption, testified that he never considered or made any determinations about whether Colonial's operations could properly be considered an "industrial plant." *See* Hr'g. Tr. 310:14–16; 345:12–13 (R. pp. 1751; 1786). Additionally, Colonial's own witness admitted it never received anything from the Department stating its operations in South Carolina were an industrial plant. *See* Hr'g Tr. 47:5–10 (R. p. 1488). The Department never conceded that Colonial was an industrial plant.

B. Colonial exaggerates the effect of the Court of Appeals decision.

Colonial ignores that this is an exemption statute, which is narrowly construed. It is black letter law in South Carolina that tax exemption statutes are strictly construed against taxpayers. *See, e.g.*, *CFRE, LLC v. Greenville Cty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (stating that South Carolina courts have a long-standing policy of "strictly construing tax exemption statutes against the taxpayer"). The burden is on the taxpayer to prove he is entitled to an exemption by bringing himself clearly within the conditions of the statute authorizing the exemption. *See TNS Mills, Inc. v. S.C. Dep't of Revenue*, 331 S.C. 611, 618, 503 S.E.2d 471, 475 (1998) (citing *York Cty. Fair Assoc. v. S.C. Tax Comm'n*,

249 S.C. 337, 341, 154 S.E.2d 361, 363 (1967)); *see also State v. City of Columbia*, 115 S.C. 108, 104 S.E.2d 337 (1920) ("taxation is the rule and exemption is the exception").

Colonial erroneously argues that the Court of Appeals created a definition of "industrial plant" that it is limited to a manufacturer, which would be applicable in situations far removed from property taxes. However, the Court of Appeals did neither—its definition does not limit industrial plants to manufacturers (i.e. the definition simply excludes a transportation company like Colonial that does not engage in production), nor does it have far-reaching implications (i.e. the definition only applies to the Pollution Control Exemption). Exemptions are an act of legislative grace. *See Asmer v. Livingston*, 225 S.C. 341, 82 S.E.2d 465, 466 (1954) (a refund of taxes is solely a matter of governmental grace, and taxpayers seeking such relief must bring themselves clearly within the terms of the statute authorizing a refund). The Pollution Control Exemption has multiple limiting elements and having an industrial plant is one. The text of the Pollution Control Exemption is the best evidence of the Legislature's intent. *See S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. at 8, 809 S.E.2d at 226. Taxpayers like Colonial that do not have an industrial plant are not (and never have been) entitled to the Pollution Control Exemption.

In its Petition for Rehearing, Colonial candidly labeled its "dangerous precedent" argument as a parade of horribles. This argument is fallacious and unavailing. *See Books-A-Million*, 437 S.C. at 646, 880 S.E.2d at 479 (rejecting a taxpayer's similar "parade-of-horribles scenario"). Denying the Pollution Control Exemption to Colonial will not have a chilling effect because a separate requirement of the pollution control exemption is that the facilities or equipment must be required by state or federal law. Even without the exemption, taxpayers must have the pollution control equipment. Further, the Court of Appeals decision was limited to the interpretation the Pollution Control Exemption. In its parade of horribles, Colonial speculates about potential effects on the interpretation of a federal regulation unrelated to taxes. Colonial further speculates that zoning ordinances **may** use the term "industrial

plant" without citing a single ordinance. Colonial then speculates that an insurance policy **may** reference industrial plants. Nonetheless, the Court of Appeals' holding is not nearly as far-reaching as Colonial suggests. Therefore, Colonial's self-described parade of horribles argument is not a reason for this Court to grant certiorari.

C. Colonial cites irrelevant cases, statutes, and regulations.

Colonial cites *S.C. Pub. Int. Found. v. City of Columbia*, 431 S.C. 164, 847 S.E.2d 257 (Ct. App. 2020) in advocating for an expansive definition of "industrial." *See* Petition at 13–14. However, that case is irrelevant here. It does not say that a student dormitory is an industrial plant, and such an idea would be absurd. *See Duke Energy Corp. v. S.C. Dep't of Revenue*, 415 S.C. 351, 355, 782 S.E.2d 590, 592 (2016) (a statute will not be construed to lead to absurd results). However, Colonial argues under its distorted interpretation of industrial plant that the issue in that case is identical. Besides having nothing to do with the term "industrial plant," the issue in that case centered on the meaning of "industrial **or business**." *S.C. Pub. Int. Found. v. City of Columbia* at 167, 847 S.E.2d at 258 (emphasis added). Rather than hold the dormitories were industrial, the Court of Appeals explicitly stated, "[w]e hold these dormitories are commercial enterprises that fall within the definition of '**business**.'" *Id.* (emphasis added). Even if "industrial" were broad enough to include a dormitory, combining "industrial" and "plant" results in a term that requires a production element.

Colonial looks outside of the Tax Code to a nuisance statute's definition of a different term industrial facility. *See* Petition at 10–11. Besides having nothing to do with property taxes, the statute uses an entirely different term: industrial facility instead of industrial plant. Additionally, Colonial confuses the use of the term industrial plant in the context of a federal flammable liquids regulation as a definition of the term. 29 CFR 1910.106 does not define industrial plant. The definitional section is subsection (a) and does not include a definition of industrial plant. Instead, the term is used in subsection (e). Subsection (e) just provides regulations related to flammable liquids in the context of

an industrial plant and contains no definition of industrial plant. Therefore, this federal flammable liquids regulation has no relevance to South Carolina property taxes and the Pollution Control Exemption.

D. Colonial conflates transportation with output and production.

Colonial makes another absurd argument that a transportation company is outputting the product it transports. *See* Petition at 15. Transporting does not equate to outputting or producing. If Colonial is outputting Refined Petroleum Products, then a subway is outputting people. Under that logic, the New York City subway outputs 3.6 million people every day.[3] However, that does not make it an industrial plant because transportation is not production. "Processing" transmix is just dealing with the byproduct of transporting different refined petroleum products in the same pipeline. *See* Stipulation of Facts No. 3–8 (R. p. 2462). Injecting DRA (drag reducing agent) is just lubricating the pipe. *See* Stipulation of Facts No. 2 (R. p. 2462). Regrading the product means, for example, when premium 93 octane gasoline and regular 87 octane gasoline mix as a byproduct of transporting both in the same pipeline, where the two products mix is now graded as regular 87 octane gasoline. *See* Hr'g Tr. 191:2–8 (R. pp. 1632). This does not involve production. It is simply changing what the product is called. Transportation and its auxiliary activities do not constitute production.

V. THE PETITION RAISES NEW ARGUMENTS AND CITES ADDITIONAL CASES.

Colonial cites for the first time a 1987 case from Alabama interpreting a distinct exemption related to pollution control devices, facilities, and structures. *See* Petition at 5. The statute at issue in that case was Ala. Code § 40-9-1(20), which exempts from property tax: "All devices, facilities, or structures, and all identifiable components thereof or materials for use therein, acquired or constructed

[3] Metropolitan Transportation Authority, *Subway and bus ridership for 2023* https://new.mta.info/agency/new-york-city-transit/subway-bus-ridership-2023 (last visited November 4, 2024, 10:24 AM).

primarily for the control, reduction, or elimination of air or water pollution." Alabama did not limit its broad exemption to facilities and equipment of an industrial plant as South Carolina expressly did. Our Legislature chose to write a more limited exemption than Alabama. Also for the first time, Colonial cites a 1985 Wyoming case related to a soda ash **plant**. *State Bd. of Equalization v. Tenneco Oil Co.*, 694 P.2d 97, 98 (Wyo. 1985). Consistent with the Court of Appeals decision, a soda ash plant engages in the **production** of soda ash. If instructive at all, these cases support the Court of Appeals decision.

Colonial also cites several South Carolina cases that only appeared for the first time in its Petition for Rehearing despite the cases dating back to the early to mid-1900s. *See* Petition at 10. These cases that use the term "industrial plant," if helpful, support the Court of Appeals decision. The property at issue in *Mayfield v. S. Ry. Co., Carolina Div.* is a cotton gin, which produces/processes cotton fibers by removing the seeds. It is similar to a greige mill which is explicitly included in the Pollution Control Exemption. The Court even distinguished the industrial plant from the railroad—i.e. transportation company. The industrial plant in *Magill v. S. Ry. Co.* is a brick mill, which produces bricks. The industrial plants in *Allison v. Ideal Laundry & Cleaners* are a cannery, which produces canned food, and a glass factory, which produces glass. The industrial plants referenced in those cases may have been property of a manufacturer. However, none of the cases analyze the term industrial plant. None of the cases relate to the Pollution Control Exemption. None of the cases relate to property taxes. Still, if relevant, these cases support the Court of Appeals decision.

CONCLUSION

Certiorari is not appropriate in this case under Rule 242(b), SCACR. The Court of Appeals' decision does not raise any special and important reasons that weigh in favor of granting the writ. Instead, the Court of Appeals correctly reversed the ALC's Order and held that Colonial was not entitled to the Pollution Control Exemption. This was a question of law, not fact, and as such, the

Court of Appeals properly reviewed the question of law under a *de novo* standard. The Court of Appeals properly corrected the fundamental error of law committed by the ALC, without which the ALC would have been unable to conclude that the items in dispute were exempt from property tax. Consequently, this Court should deny Colonial's Petition.

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