

**STATE OF SOUTH CAROLINA
ADMINISTRATIVE LAW COURT**

South Carolinians for Responsible)
Agricultural Practices,)
)
Petitioner,)
)
v.)
)
South Carolina Department of)
Environmental Services, Jim Young)
d/b/a J. Young Broilers,)
)
Respondents.)
_____)

Docket No. 24-ALC-07-0266-CC

**ORDER DENYING MOTION
FOR RECONSIDERATION**

South Carolinians for Responsible)
Agricultural Practices,)
)
Petitioner,)
)
v.)
)
South Carolina Department of)
Environmental Services and Heath Coggins)
Broilers,)
)
Respondents.)
_____)

Docket No. 24-ALC-07-0267-CC

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SC Court of Appeals

This matter is before the South Carolina Administrative Law Court (ALC or Court) pursuant to a Motion for Reconsideration (Motion) filed by the South Carolinians for Responsible Agricultural Practices (Petitioner or SCAP) on December 20, 2024. *See* SCALC Rule 29(D). This Court previously issued an Order of Dismissal on December 13, 2024, granting a Motion to Dismiss filed by Jim Young d/b/a J. Young Broilers and Heath Coggins Broilers (collectively, Respondents). On January 9, 2025, the South Carolina Department of Environmental Services¹ (DES or Department) and Respondents filed its Response to the Motion.²

¹ Prior to July 1, 2024, the Department was recognized as the Department of Health and Environmental Control. South Carolina Act No. 60 of 2023 and section 1-30-140 of the South Carolina Code (Westlaw Edge through 2024 Act No. 210).

² Upon the consent of Petitioner, the Court granted Respondents' an extension to file its response.



For the reasons stated below, Petitioner's Motion is denied.

DISCUSSION

Pursuant to SCALC Rule 29(D), a party may move for reconsideration of a final decision of this Court subject to the grounds for relief set forth in Rule 59, SCRCF. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 21, 602 S.E.2d 772, 778 (2004) ("A motion under Rule 59(e) long has been viewed as 'motion for reconsideration' despite the absence of those words from the rule."). In its Motion, Petitioner presents four arguments concerning why the Court should reconsider its Order—each of which will be addressed in turn. As will be discussed in detail below, Petitioner's arguments are without merit.

Whether Petitioner meets the elements of constitutional standing

During the hearing on the Motion to Dismiss, Petitioner asserted that its legally protected interest arose from constitutional provisions under either article 1, section 3 or section 22. Now, in its Motion, Petitioner argues that it has constitutional standing because its injuries are found through several concrete, particularized, and imminent invasions of Petitioner's members' legally protected rights, specifically, their "legally protected, unrestricted right to use and enjoy their properties." However, Petitioner's argument misses the forest from the trees. In fact, Petitioner only offers conclusory statements that these hypothetical injuries will occur if these facilities begin operating. "Constitutional standing is based on Article III of the United States Constitution, which limits the jurisdiction of the federal courts to actual cases or controversies." *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control*, 430 S.C. 200, 210, 845 S.E. 2d 481, 486 (2020). It is well established that the "irreducible constitutional minimum" of standing requires that the plaintiff must have (1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61, 112 S.Ct. 2130, 2136, 119 L.Ed.2d 351 (1992). To establish injury in fact, a plaintiff must show that he or she suffered "an invasion of a **legally protected interest**" that is "concrete and particularized" and "actual or imminent, not conjectural or hypothetical." *Lujan*, 504 U.S., at 560, 112 S.Ct. at 2136, 119 L.Ed.2d 351 (internal quotation marks omitted) (emphasis added).

As discussed in *Preservation Society of Charleston v. South Carolina Department of Health and Environmental Control*, “[t]he purpose of [the] administrative [review] process is to discover and evaluate harm to the surrounding environment and to **persons who would be affected by the proposed project.**” 430 S.C. at 216, 845 S.E.2d at 489 (emphasis added). As addressed in the Court’s Order of Dismissal, to be affected by a poultry facility project, a party must show that: 1) they are a property owner within a one mile radius of the proposed building footprint or permitted poultry facility or other animal facility, 2) that the proposed building footprint is located less than eight hundred feet from the facility owner’s property line or located less than one thousand feet or more from an adjacent property owner’s residence and, 3) that it is challenging the decision in its own behalf. Petitioner has failed to show that it meets these requirements. As such, the Court did not err in concluding that Petitioner failed to meet its burden of proof to show that it possessed constitutional standing because Petitioner has failed to show an invasion of a **legally protected interest**. Said differently, since the General Assembly has only granted the right to administrative review of projects for poultry facilities to affected persons as defined under section 48-6-40 of the South Carolina Code (Supp. 2024), Petitioner failed to meet its burden that it has suffered an injury in fact.

**Whether the Department’s Application of Subsection 48-6-40(D)(2)
Violated Petitioner’s Due Process Rights.**

Petitioner contends the Court incorrectly applied Article I, § 3 and § 22 of the South Carolina Constitution to determine whether Petitioner has constitutional standing. I do not find the Court erred in this regard or improperly failed to rule on whether subsection 48-6-40(D)(2) of the South Carolina Code resulted in an unconstitutional violation of Petitioner’s due process rights. As stated above, the consideration of Article I, § 3 and § 22 of the South Carolina Constitution was responsive to Petitioner’s position. However, Petitioner explains in its Motion that it raised these constitutional provisions to show that dismissal of the cases violates Petitioner and its members’ due process right because it precludes them from the opportunity to vindicate their property and liberty interests.³ Petitioner cites to *Stono River Environmental Protection*

³ The asserted property and liberty interests include: (1) the unrestricted right to use and enjoy their properties; (2) the contracts that many of SCRAP’s members have allowing hunting and timber production on their properties, and the profits associated with those contracts; (3) the right to clean air and clean water safeguarded under the public trust doctrine; and (4) the right to reasonable use of the riparian resources on their properties and the right to be free from

Association v. South Carolina Department of Health and Environmental Control, 305 S.C. 90, 406 S.E.2d 340 (1991), *League of Women Voters of Georgetown County v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991), and *Howard v. South Carolina Department of Corrections*, 399 S.C. 618, 733 S.E. 2d 211 (2012) to argue that parties with a property or liberty interest in an administrative agency's decision are entitled to notice, an opportunity to be heard, and judicial review. Yet, these cases are distinguishable from the case at bar because in each of the aforementioned cases, the appealing person possessed a legally protected interest in the administrative process.

In *Stono Environmental Protection Association v. South Carolina Department of Health and Environmental Control*, the Supreme Court considered whether Stono River EPA and the Sierra Club were denied an opportunity to contest a 401 certification in an adjudicatory proceeding. In contrast to Petitioner, Stono River EPA and the Sierra Club each sought administrative review pursuant to rights arising under regulation 61-72 of the South Carolina Code of Regulations. S.C. Regs. 61-72 (2015) (amended June 26, 2015) (defining party as “[a] person who initiates administrative review by filing a Petition, or is deemed to be a party by operation of Section 402, or who is admitted to participate in an adjudicatory hearing, with rights to participate by presenting evidence, and calling and cross-examining witnesses. The Department is deemed to be a party.”). Indeed, in contrast to Stono River EPA and the Sierra Club, Petitioner has failed to meet its burden to show that it possesses a right to seek contested case review of the decisions at issue in these cases.

Moreover, *League of Women Voters of Georgetown County* involved the South Carolina Coastal Council's (Council) denial of League's request for a public hearing on its issuance of certification that Willbrook Plantation's (Willbrook) project was consistent with the South Carolina Coastal Zone Management Program.⁴ Council denied League's request on the basis that its certification decision was not a contested case as defined under the Administrative Procedures

unreasonable use of those riparian resources by adjacent landowners. Further, liberty interests are also at stake in these permit challenges and lead SCRAP and its members to fight for those interests, including (1) the right to fish and hunt safeguarded by the South Carolina Constitution, and (2) the right to use and enjoy clean water and clean air capable of sustaining human life.

⁴ Certification from the Council is required in order to obtain a permit from the Department to construct a sanitary sewer system; a decision which, League has a legally protected interest in.

Act. S.C. Code Ann. § 1-23-310(2) (1986). While the Supreme Court agreed that the decision was not a contested case, it ultimately concluded that League was entitled to due process at all stages of the application process under Article 1, Section 22 of the Constitution since “Council’s certification determination may be accorded significant weight by the permitting agency in deciding whether or not to grant a permit.” In other words, unlike Petitioner, since League possessed an interest in the potential issuance of a permit to Willbrook to construct a sanitary sewer system, Petitioner was entitled to due process notwithstanding the fact that the disputed decision of the Council was not a contested case. *League of Women Voters of Georgetown Cnty. v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991), *overruled by Brownhoward v. S.C. Dep’t of Health & Env’t. Control*, 348 S.C. 507, 560 S.E.2d 410 (2002).

Lastly, *Howard v. South Carolina Department of Corrections* pertained to the ALC’s summary dismissal of an inmate’s appeal from a prison disciplinary conviction. To appreciate the differentiation of this case from the one at bar, it is helpful to understand that an inmate’s right to administrative review of a Department of Corrections (DOC) final decision under the APA is derived from the decision of the South Carolina Supreme Court in *Al-Shabazz v. State*, 338 S.C. 354, 527 S.E.2d 742 (2000). In *Al-Shabazz*, the Court held that the ALC’s jurisdiction in inmate appeals is limited to state-created liberty interests typically involving: (1) cases in which an inmate contends that prison officials have erroneously calculated his sentence, sentence-related credits, or custody status; and (2) cases in which an inmate has received punishment in a major disciplinary hearing as a result of a serious rule violation. *Id.* at 382, 527 S.E.2d at 757.

In the cited case, Howard challenged DOC’s enforcement of a policy and his disciplinary conviction. Following a hearing, Howard was found guilty and sanctioned with failure to earn good-time credits for the month of the disciplinary infraction and a reduction in earned-work credit, he did not, however, lose any accrued good-time credits due to his conviction. The ALC summarily dismissed the appeal on the basis that pursuant to subsection 1-23-600(D) of the South Carolina Code, the ALC lacked jurisdiction to hear the appeal because Inmate Howard had not lost any good time credits. *See* 1-23-600(D) (Supp. 2024) (providing ALJ shall not hear appeal from an inmate involving loss of the opportunity to earn sentence-related credits pursuant to Section 24-13-210(A) or Section 24-13-230(A)). However, the Supreme Court held that the summary dismissal was in violation of Howard’s due process rights because Howard’s appeal

involved more than a review of the loss of the opportunity to earn good-time credits and a reduction in earned-work credits. Specifically, the appeal also challenged DOC's enforcement of its policy, an action which Howard possessed a right to judicial review. *See Al-Shabazz v. State*, 338 S.C. at 370, 527 S.E.2d at 750.

As stated in this Court's Order of Dismissal, the Department's application of subsection 48-6-40(D)(2) of the South Carolina Code did not violate Petitioner's Due Process Rights because Petitioner has failed to demonstrate a legally protected interest in the Department's actions. Indeed, as explained in the Order of Dismissal, "the interests protected by the due process clause are defined not by the Constitution, but by independent sources, such as state law." *James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 657 S.E.2d 469 (2008) (citing U.S.C.A. Const. Amend. 14). In matters involving projects such as Respondents, section 48-6-40 limits administrative review to affected persons. Because Petitioner has failed to show an invasion of a legally protected interest, i.e., that it is an affected person, the Department's application of subsection 48-6-40(D)(2) cannot give rise to an unconstitutionally violation of Petitioner's due process rights.

**Whether the Department's Application of Subsection 48-6-40(D)(2)
Violated Petitioner's Rights to Equal Protection of the Laws.**

Petitioner argues the Court failed to rule on whether subsection 48-6-40(D)(2) is a violation of Petitioner's equal protection rights. Significantly, section 48-6-40 limits access to the administrative review process to affected persons. As explained in the Court's Order of Dismissal and numerous times herein, Petitioner has failed to meet its burden of proof to show that it is an affected person as defined under section 48-6-40. Since Petitioner is not an affected person, it has no standing to complain of the application of the statute. *See Fed. Land Bank of Columbia v. Davant*, 292 S.C. 172, 177, 355 S.E. 2d 293, 296 (1987) (holding plaintiff lacked standing to raise an equal protection argument since statute restricted access to courts to nonresident plaintiffs).

Nevertheless, Petitioner's argument is categorically without merit. "The equal protection clause only forbids irrational and unjustified classifications." Our courts have repeatedly stated that:

[a] classification will survive rational basis review when it bears a reasonable relation to the legislative purpose sought to be achieved, members of the class are treated alike under similar circumstances, and the classification rests on a rational

basis. Further, those who challenge the validity of one under rational basis review must “negate every conceivable basis which might support it.

E.g., Planned Parenthood S. Atl. v. State, 438 S.C. 188, 238–39, 882 S.E.2d 770, 797 (2023), *reh’g denied* (Feb. 8, 2023) (internal citations removed).

Petitioner argues in its Motion that the requirements of subsection 48-6-40(D) of the South Carolina Code are not rationally related to the legislature purpose of the statute.⁵ However, subsection 48-6-40(D) of the South Carolina Code unequivocally relates to the legislative purpose of establishing the specific requirements that must be met in order for a person to pursue administrative review of a permit decision for a poultry facility. In other words, the General Assembly has determined the extent to which a person must be affected to be entitled to seek review of a decision involving a poultry facility project. *See State v. Thompson*, 349 S.C. 346, 355–56, 563 S.E.2d 325, 330 (2002) (in upholding constitutionality of statute proscribing out of season trapping of furbearing animals the court held that limiting the trapping season and placing a slight limitation on property owners whose property is damaged reasonably balanced interests of furbearing animals against property owner’s right to protect property from destruction). Petitioner’s corollary argument that “the affected persons attempting to pursue administrative appeals of DES decisions on poultry facility permits are *not* similarly situated to all other persons affected by a decision of the Department” so much as acknowledges this fact. Indeed, the Legislature has established a classification, and this Court shall afford that decision great deference as it presumably debated and weighed the advantages and disadvantages of the codified criterion. *Lee v. S.C. Dep’t of Nat. Res.*, 339 S.C. 463, 467, 530 S.E.2d 112, 114 (2000).

Further, Petitioner’s comparison of subsection 48-6-40(D) to “all other persons affected by a decision of the Department” is misplaced. Our court’s have endorsed the Legislature’s authority to formulate criteria for challenging administrative actions. *See, e.g., Preservation Society*, 430 S.C. at 209-216, 845 S.E.2d at 481-489. For purpose of permit decisions on a poultry facility, the Legislature has limited administrative review to persons who satisfy the criteria established under subsection 48-6-40. Moreover, setting aside the fact that Petitioner does not have standing to raise

⁵ More specifically, Petitioner asserts in its Motion that there is “[n]o reasoning behind why the numbers selected were selected ... and these arbitrary numbers of 800 feet and 1,000 feet do not match other gauges of when a person is affected”

an equal protection challenge, Petitioner has presented no argument to this Court as to how it has been treated dissimilarly to any other person challenging a permit decision on a poultry facility. *See Fed. Land Bank of Columbia v. Davant*, 292 S.C. at 177, 355 S.E. 2d at 296. Rather, Petitioner has been treated the same as any other person challenging a permit decision of this kind.

Whether Subsection 48-6-40(E) Precludes Associational Standing

Petitioner asserts that the Court's interpretation of subsection 48-6-40(E) does not pass muster under associational standing principles or under equal protection principles. Specifically, Petitioner argues that construing subsection 48-6-40(E) as a bar to associational standing is unconstitutional under equal protection principles. It appears Petitioner believes the Court's reading of subsection 48-6-40(E) is unconstitutional because it does not treat organizations similarly as persons challenging poultry permit decisions on their own behalf. I disagree.

"The primary purpose in construing a statute is to ascertain legislative intent." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is **no occasion for employing rules of statutory interpretation** and the **court has no right to look for or impose another meaning.**" *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) (emphasis added). Subsection 48-6-40(E) plainly provides that to challenge a permit decision on a poultry facility, the challenge must be brought "on his own behalf." Merriam-Webster defines "own" as "belonging to oneself or itself—usually used following a possessive case or possessive adjective." *See Own*, Merriam-Webster, <https://www.merriam-webster.com/dictionary/own> (last visited on December 9, 2024). This language thus reflects a legislative intent that challenges to poultry facility permits must be brought by the property owner. Surely, the Legislature must have intended to accomplish something by its choice of words. *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964).

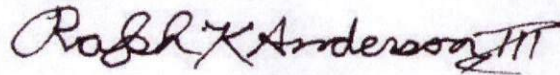
Furthermore, I find the only reasonable interpretation of this language, is a limitation of the right to bring a contested case to instances in which the permit affects the applicant itself. As highlighted by Petitioner in its Motion, associational standing creates a vehicle for organizations to advocate for the collective interests of its members. Importantly, the interests of the members of the organization are heart and center of the principles of associational standing. Quizzically, the implication of Petitioner's contention that construing subsection 48-6-40(E) as a bar to

associational standing is unconstitutional detaches the interests of Petitioner's members from the organization, creating a separate class in which Petitioner singly sits. Not only is Petitioner's argument in contradiction with the principles of association standing but it is also without merit because Petitioner has failed to present any argument that its members have been treated dissimilarly to any other person challenging a permit decision on a poultry facility.

ORDER

IT IS THEREFORE ORDERED that Petitioner's Motion for Reconsideration is **DENIED**.

AND IT IS SO ORDERED.

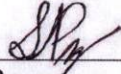


Ralph King Anderson, III
Chief Administrative Law Judge

January 17, 2025
Columbia, South Carolina

CERTIFICATE OF SERVICE

I, Stephanie Perez, hereby certify that I have this date served this Order upon all parties to this cause by depositing a copy hereof in the United States mail, postage paid, or by electronic mail, to the address provided by the party(ies) and/or their attorney(s).



Stephanie Perez
Judicial Law Clerk

January 17, 2025
Columbia, South Carolina