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SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM THE ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2025-000294

South Carolinians for Responsible Agricultural Practices, Appellant,

v.

South Carolina Department of Environmental Services, Jim Young, and d/b/a J. Young Broilers, Respondents.

AND

South Carolinians for Responsible Agricultural Practices, Appellant,

v.

South Carolina Department of Environmental Services and Heath Coggins Broilers, Respondents.

INITIAL BRIEF OF APPELLANT

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May 2, 2025
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STATEMENT OF THE CASE

Respondents Heath Coggins, doing business as Heath Coggins Broilers ("Coggins"), and Jim Young, doing business as J. Young Broilers ("Young"), each applied to Respondent South Carolina Department of Environmental Services ("DES") for a permit for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system. On June 4, 2024, DES issued permits ("the permits") to both Coggins (Permit No. AG-20599 and Facility Permit No. ND0090174) and Young (Permit No. AG-20600 and Facility Permit No. ND0090175) (collectively, "the Broilers"). Appellant South Carolinians for Responsible Agricultural Practices ("SCRAP" or "Appellant") filed respective Requests for Board Review to the Board of the Department of Health and Environmental Control for the Coggins and Young permits on June 18, 2024, which were denied one day later on June 19, 2024.

Appellant then appealed the issuance of these permits by filing Requests for Contested Case Hearings with the Administrative Law Court ("ALC") on July 19, 2024. The contested cases

were consolidated into one matter by the ALC on September 12, 2024. On October 22, 2024, the Broilers filed a Motion to Dismiss and Memorandum of Law in Support of Motion to Dismiss. Appellant filed a Response in Opposition to the Motion to Dismiss and included affidavits from each of its members on November 1, 2024. The ALC granted the Motion to Dismiss on December 13, 2024. (Order of Dismissal, Dec. 13, 2024). Pursuant to SCALC Rule 29(D) and SCRCP Rule 59(e), Appellant filed a Motion for Reconsideration on December 20, 2024, which was denied by the ALC on January 17, 2025. (Order Denying Motion for Reconsideration, Jan. 17, 2025). On February 14, 2025, Appellant filed a timely Notice of Appeal.

STANDARD OF REVIEW

In an appeal from the ALC, the Administrative Procedures Act provides the appropriate standard of review. *Jack's Custom Cycles, Inc. v. S.C. Dep't of Rev.*, 439 S.C. 35, 41, 885 S.E.2d 433, 436–37 (Ct. App. 2023). Under that statute, this Court may reverse or modify the decision of the ALC if the substantive rights of the Appellant have been prejudiced because the finding, conclusion, or decision is: (a) in violation of constitutional rights or statutory provisions; (b) in excess of the statutory authority of the agency; (c) made upon unlawful procedure; (d) affected by other error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion. S.C. Code Ann. § 1-23-610(B).

When the issue on appeal to this Court involves a question of law, "our standard of review allows this court to reverse the ALC's decision if it is affected by an error of law." *Chapman v. S.C. Dep't of Soc. Serv.*, 420 S.C. 184, 188, 801 S.E.2d 401, 403 (Ct. App. 2017) (quoting *Ackerman v. S.C. Dep't of Corr.*, 415 S.C. 412, 417, 782 S.E.2d 757, 760 (Ct. App. 2016)) (internal quotation marks omitted). All questions of law are reviewed de novo. *S.C. Dep't of Rev. v. Blue*

Moon of Newberry, Inc., 397 S.C. 256, 260, 725 S.E.2d 480, 483 (2012). Statutory interpretation is one such question of law that is reviewed by this Court de novo. *S.C. Coastal Conservation League v. S.C. Dep't of Health & Envtl. Control*, 390 S.C. 418, 425, 702 S.E.2d 246, 250 (2010); *see also Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

STATEMENT OF FACTS

I. FACTUAL BACKGROUND CONCERNING THE PROPOSED CAFOS

Last year, members of the Mountville community and surrounding area received notice that Respondents Heath Coggins and Jim Young planned to construct new concentrated animal feeding operations ("CAFOs")[1] along the Little River on TMS No. 511-00-00-009.[2] In total, these CAFOs would consist of sixteen poultry barns 55' by 600' in size that hold 528,000 broiler chickens with a normal production live weight of 2,613,600 pounds and generate 3,220 tons of waste every year. Despite the plethora of concerns voiced by SCRAP, its members, its supporters, and other members of the Mountville community, DES issued permits for the construction and operation of an agricultural animal facility and manure and animal by-products treatment and storage system to both Coggins and Young. Because these CAFOs would have a significant, adverse impact upon water quality, air quality, public health, and Appellant's members' peaceful

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[1] Under South Carolina law, an animal feeding operation is defined as a CAFO according to its size and other factors. A broiler chicken operation is a large CAFO "if it stables or confines as many as or more than . . . 125,000 chickens (other than laying hens), [and] if the [animal feeding operation] uses other than a liquid manure handling system." S.C. Code Ann. Regs. § 61-9.122.23(b)(4)(x). *Both* the Coggins and Young permitted operations meet this definition and are, therefore, large CAFOs.

[2] Currently, Heath Coggins and Jim Young own TMS No. 511-00-00-009 together with David Coggins. The Broilers plan to eventually split this one parcel down the middle to accommodate both of their respective CAFOs. Upon current knowledge, information, and belief, that property division has not yet occurred.

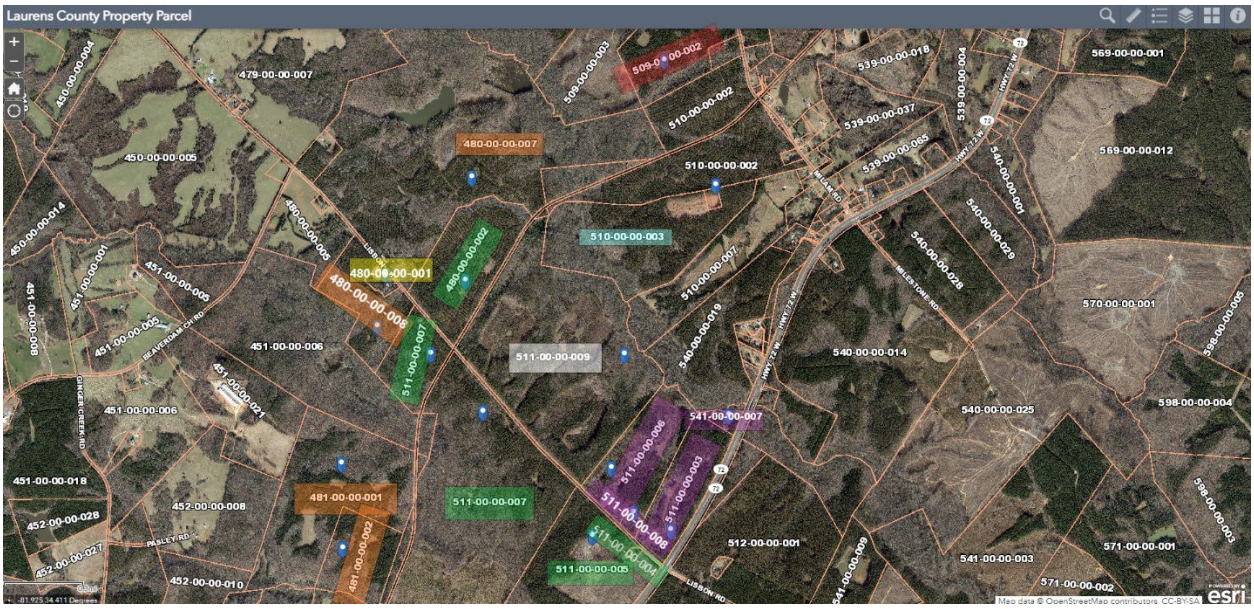
use and enjoyment of their property—and because these permits violate applicable statutes, regulations, rules, and policies in South Carolina law—Appellant and its members chose to exercise their right to pursue an administrative appeal of these permit decisions.

Appellant SCRAP is a member-based non-profit organization established by local citizens and property owners in the Mountville area of Laurens County. SCRAP's members advocate for poultry farming practices and permitting to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in Mountville to deteriorate. Appellant has a total of eight members, all of whom provided testimony describing how they are affected by these proposed CAFOs and the concerns they have about these CAFOs regarding pollution, property rights, and quality of life. *See* Affidavit of Charles Blackmon (SCRAP Response to Motion to Dismiss, Exhibit 1); Affidavit of Jean Revis (SCRAP Response to Motion to Dismiss, Exhibit 2); Affidavit of Mary Basel (SCRAP Response to Motion to Dismiss, Exhibit 3); Affidavit of Margaret Sparrow (SCRAP Response to Motion to Dismiss, Exhibit 4); Affidavit of Ross Stewart (SCRAP Response to Motion to Dismiss, Exhibit 5); Affidavit of Randy Piontek (SCRAP Response to Motion to Dismiss, Exhibit 6); Affidavit of Richard Heald (SCRAP Response to Motion to Dismiss, Exhibit 7); and Affidavit of Christina Heald (SCRAP Response to Motion to Dismiss, Exhibit 8).

As shown in Figure 1 below, which was submitted with SCRAP's Response to the Motion to Dismiss, all members of SCRAP own property either directly adjacent to or within one mile of the CAFOs proposed by Coggins and Young. The CAFOs are proposed to be built on parcel 511-00-00-009, which is shown in white on Fig. 1. SCRAP member Charles Blackmon owns five parcels located within one mile of the CAFOs. He owns parcel 509-00-00-002, shown in red on

Fig. 1, and he also owns jointly with his sister, SCRAP member Jean Revis, parcels 480-00-00-007, 480-00-00-008, 481-00-00-001, and 480-00-00-002, shown in orange on Fig. 1. Spouses and SCRAP members Richard Heald and Christina Heald own and permanently reside at parcel 480-00-00-001, shown in yellow on Fig. 1. Sisters and SCRAP members Mary Basel and Margaret Sparrow keep a cabin that they reside in for many weeks of the year upon property that is directly adjacent to and surrounding the CAFOs, including parcels 480-00-00-002, 511-00-00-004, 511-00-00-005, and 511-00-00-007, shown in green on Fig. 1. SCRAP member Randy Piontek is in the process of building a home on his property that is directly adjacent to the CAFOs, parcel 510-00-00-003, shown in blue on Fig. 1. Finally, SCRAP member Ross Stewart owns properties directly adjacent to and downstream of the CAFOs, one which holds a home that he leases out to others, including parcels 511-00-00-003, 511-00-00-006, 511-00-00-008, and 541-00-00-007, shown in purple on Fig. 1.

Figure 1. Laurens County GIS Screenshot of CAFOs Property & Surrounding Area



Appellant's members are no stranger to the effects of CAFOs, for there are already 57 industrial poultry barns across Mountville that Appellant's members are forced to see, smell, and

interact with. The CAFOs at issue in this appeal, however, are much closer to and many times adjacent to Appellant's members' properties. They know they will be much more affected by these CAFOs and on a more personal level. *See, e.g.*, Aff. of C. Blackmon, ¶ 8 ("With Coggins' and Young's plans to add 16 more [chicken] houses to the existing 57, there will be no point on the compass in the Little River watershed that a citizen cannot expect the foul odors of an operation to greet him.").

The testimony from Appellant's members demonstrates that if these CAFOs are allowed to operate under their current permits, they will negatively impact the property, liberty, recreational, and aesthetic interests of each and every member of Appellant organization. Charles Blackmon, whose family has owned the properties listed above since the 1760s, stated that this forestland is home to "numerous natural springs, creeks, and the Little River," which makes this land "conducive to abundant wildlife, birds, and fish." *See* Aff. of C. Blackmon, ¶¶ 3–4. Charles Blackmon and his sister, Jean Revis, use their properties for hiking, hunting, fishing, timber production, photography, and fellowship, and these activities are threatened by the CAFOs, especially given their proximity to the Little River, which sustains the many flora and fauna in the area. *See* Aff. of C. Blackmon, ¶¶ 4, 6, 8–9; Aff. of J. Revis, ¶¶ 4, 8–9.

Similarly, sisters Mary Basel and Margaret Sparrow, who use their properties for gardening, archery, deer hunting (both personally and through leasing the property to others), dog agility training, hiking, and spending sacred time with family, friends, and nature, asserted that these CAFOs will "negate property value; impair water and air quality; create unmanageable traffic, truck noise, and road deterioration; and reduce quality-of-life and outdoor enjoyment." Aff. of M. Basel, ¶¶ 6, 14; *see also* Aff. of M. Sparrow, ¶¶ 3–5, 7–9.

Ross Stewart, whose property is adjacent to and downstream of the CAFOs, affirmed that the "[s]oil erosion could be catastrophic" as a result of the grading, cut and fill activities that will be necessary to construct the CAFOs, which will directly affect his properties and the timber production, hunting, and fishing activities he uses them for. Aff. of R. Stewart, ¶¶ 4–5, 9–12.

Randy Piontek, who is currently constructing a primary residence for himself and his family on his Mountville property, stated that the CAFOs "would effectively render the area of my land unusable," including the opportunities on his land to hike, hunt, fish, and gather together with friends and family. Aff. of R. Piontek, ¶¶ 3, 6–7.

Finally, spouses Richard Heald and Christina Heald, who use their property as their permanent residence following their retirement, as well as for gardening, entertaining, and other outdoor activities, asserted that their quality of life and property interests will be ruined should these CAFOs be constructed. *See* Aff. of R. Heald, ¶¶ 3, 8–10; Aff. of C. Heald, ¶¶ 3, 8–10. Specifically, they stated, "What was once beautiful land will be like a toilet. We will not be able to spend any time outdoors, doing the things we love to do." Aff. of R. Heald, ¶ 10; Aff. of C. Heald, ¶ 10.

These members' ability to exercise fundamental property rights will be impaired by the odors, vector such as flies, stormwater problems, air pollution, water pollution, application of manure, and negative impacts to health and welfare all associated with and caused by these CAFOs. These property rights include the unrestricted right to use and enjoy their properties the right to contract and receive profits for hunting timber production upon their properties, the right to clean air and clean water, and the right to reasonable use of riparian resources on their property (for those that have property the Little River runs through). Further, the operation of these CAFOs will also impair Appellant's members' liberty interests, including the right to fish and hunt, and the

right to use and enjoy clean air and clean water. The operation of these CAFOs will also impair and injure Appellant's members' aesthetic and recreational interests in enjoying and observing wildlife, which is one of the most prominent activities these members each do on their properties.

II. THE LEGAL FRAMEWORK OF S.C. CODE ANN. § 48-6-40

Unfortunately, this is not the first time that these Broilers have proposed industrial poultry barns on this parcel, and this is also not the first time that SCRAP and its members have taken a stand to protect the environment and community they love and want to continue to live in for generations to come. In 2016, Heath Coggins, Jim Young, and David Coggins each applied for permits to build CAFOs on this same property along Lisbon Road and the Little River. When those permits were issued by the Department of Health and Environmental Control (DHEC), SCRAP appealed those permits.[3] Although the permits were initially upheld, on appeal, this Court reversed DHEC's issuance of the operating permits to Coggins and Young, finding that DHEC (1) failed to enforce the appropriate NPDES permit requirements of South Carolina regulations and the Pollution Control Act and (2) failed to meaningfully evaluate water quality impacts to the Little River, which is an impaired water body with a TMDL, and impose protective requirements upon the CAFOs. *Blackmon v. S.C. Dep't of Health & Envtl. Control*, 441 S.C. 342, 893 S.E.2d 578 (Ct. App. 2022).

In 2018, after SCRAP began its earlier administrative appeal resulting in this Court's decision, the General Assembly sought to make it more difficult, if not virtually impossible, to appeal the issuance of poultry CAFO permits. *See* S.C. Code Ann. §§ 48-6-30; 48-6-40.[4] The

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[3] These permit appeals were filed into the following contested cases, which were later consolidated: 17-ALJ-07-0041-CC (David Coggins), 17-ALJ-07-0042-CC (Heath Coggins), and 17-ALJ-07-0039-CC (Jim Young).

[4] Before the Department of Health and Environmental Control (DHEC) split into two separate agencies of the Department of Public Health and the Department of Environmental Services

statute recognizes that "affected persons" are among the parties entitled to bring a contested case hearing of a poultry CAFO permit. *See* S.C. Code Ann. § 48-6-40(B)(1), (D)(1). However, instead of using the plain meaning of "affected person" that is employed in all other administrative appeals of permits issued by DES, the legislature provided its own definition of this term:

> For purposes of this section, "affected person" means a property owner with standing within a one mile radius of the proposed building footprint or permitted poultry facility or other animal facility, except a swine facility, who is challenging on his own behalf the permit, license, certificate, or other approval for the failure to comply with the specific grounds set forth in the applicable department regulations governing the permitting of poultry facilities and other animal facilities, other than swine facilities.

S.C. Code Ann. § 48-6-40(E). Quizzically, the legislature's special scrutiny of administrative appeals of poultry CAFO permits did not end there, as it also added the following:

> Notwithstanding any other provision of law, a decision to issue a permit, license, certification, or other approval of a poultry facility or another animal facility, except a swine facility, may not be contested if the proposed building footprint is located eight hundred feet or more from the facility owner's property line or located one thousand feet or more from an adjacent property owner's residence.

S.C. Code Ann. § 48-6-40(D)(2). As a result, this statutory framework establishes the rights of newly-defined "affected persons" but simultaneously opens the door to a situation in which "affected persons" under subsection (E) would not be able to vindicate their rights by statute if the poultry CAFO permit holder at issue meets the setback requirements of subsection (D)(2).

The General Assembly's decision to pass the provisions of S.C. Code Ann. § 48-6-40 was a significant departure from how poultry CAFO permit appeals have proceeded in the past. Before 2009, any affected person could use the administrative appeals process providing first for DHEC Board review and then for the opportunity to request a contested case hearing before the ALC. *See*

(DES), S.C. Code Ann. § 48-6-40 was codified as S.C. Code Ann. § 44-1-65. Through 2023 Act 60, the General Assembly re-codified S.C. Code Ann. § 44-1-65 as S.C. Code Ann. § 48-6-40 with edits reflecting the removal of DHEC Board review from the permit appeals process.

S.C. Code Ann. § 44-1-60 (eff. July 1, 2006 through June 30, 2010). This appeals process was the same for all permits issued by the Department (then DHEC), whether it was a poultry CAFO permit or otherwise. In June of 2009, however, the General Assembly passed Act No. 75 over the governor's veto, which is codified as S.C. Code Ann. § 47-9-60 and provides:

> Notwithstanding any other provision of law, only property owners and residents within a **two-mile radius** of a permitted livestock or poultry facility, with the exception of a swine facility, may appeal a permit issued by the Department of Health and Environmental Control pertaining to the facility.

(emphasis added).[5] With this statute, the General Assembly carved out a drastic, one-of-a-kind rule for poultry CAFO permit appeals. The gravity of the legislature's decision was not lost on Governor Sanford, who proclaimed in his veto message:

> [T]he bill would allow only property owners and residents within a two mile radius of livestock or poultry operations to have the right to appeal a permit issued by the Department of Health and Environmental Control (DHEC). Through our research, we have found no other size restriction imposed on any other DHEC permitting process. We think this legislation sets a dangerous precedent that should not be repeated.

Governor's Veto Message, June 2, 2009. Unfortunately, the governor's warning was not heeded by the legislature, which was able to overcome the veto and pass S.C. Code Ann. § 47-9-60 into law. Therefore, from 2009 until 2018, poultry CAFO permit appeals could be pursued by property owners and residents within a two-mile radius of the CAFO. After 2018, as described above, that radius was limited even further to property owners within a one-mile radius of the CAFO.

Although the law allowing CAFO permit appeals has sought to become much more restrictive, Appellant's motivations behind its permit appeals have remained constant. As was true in the first round of litigation, SCRAP and its members desire to see their rural community and its

[5] When codifying S.C. Code Ann. § 48-6-40 in 2018, the General Assembly did not repeal or replace S.C. Code Ann. § 47-9-60, which is still good law today.

treasures, like the Little River, protected from further pollution and destruction by additional CAFOs. There is a risk that adding more CAFOs will overrun their community, impacting their homes and denigrating their most fundamental property rights. Appellant's members breathe the air; drink the water; enjoy viewing plant and wildlife; and recreate, use, and appreciate the natural resources in and around the permitted operations, including the Little River. All of these activities and interests are at risk of harm if the Broilers construct and operate CAFOs as authorized in the Department's permit decisions.

III. THE ALC'S ORDERS

The ALC justified its dismissal of Appellant's administrative appeal of the Broiler's CAFO permits by mistakenly concluding that SCRAP and its members do not have standing to bring these contested cases. (Order of Dismissal, pp. 10–11). The court first examined whether SCRAP established statutory standing under S.C. Code Ann. § 48-6-40. In an attempt to reconcile the conflicting provisions of § 48-6-40(E) and § 48-6-40(D)(2) the court determined that a person is "affected" if they meet the elements of subsection (E), but a person is "aggrieved" if that person meets the elements of subsection (E) and the additional element of subsection (D)(2). (Order of Dismissal, pp. 5–6). The court reasoned that only "aggrieved" parties are able to establish statutory standing under § 48-6-40, which it determined SCRAP had not done in this case because the Broilers' proposed CAFO footprints are located eight hundred feet from the facility owner's property line and are more than one thousand feet from an adjacent property owner's residence. (Order of Dismissal, p. 6); *see* S.C. Code Ann. § 48-6-40(D)(2). Turning to associational standing next, the court noted that SCRAP—using statutory standing as the underlying type of standing of its members—could not establish associational standing because § 48-6-40(E) requires that a property owner must challenge the permit "on his own behalf." (Order of Dismissal, pp. 9–10).

The ALC also rejected Appellant's argument that it had constitutional standing to bring these contested cases. (Order of Dismissal, pp. 7). Instead of conducting its analysis by relying on the decades of precedent from South Carolina courts formulating the elements of constitutional standing and how those elements should be interpreted, the ALC simply invoked Article I, § 3 and § 22 of the South Carolina Constitution and concluded that constitutional standing did not exist under those provisions. (Order of Dismissal, pp. 7–8). The court jumbled its constitutional standing analysis with Appellant's argument that reading S.C. Code Ann. § 48-6-40(D)(2) as a bar to Appellant's ability to bring these consolidated contested cases would violate its and its members' rights to due process of law. (Order of Dismissal, pp. 7–9). As a result, the ALC's order failed to properly consider and address whether § 48-6-40(D)(2), as applied to SCRAP, violates SCRAP's and its members' rights to due process of law because they would have no opportunity to vindicate their property and liberty interests. The end of the court's order determined that it did not need to address Appellant's other constitutional argument of whether § 48-6-40(D)(2), as applied to SCRAP, is an unconstitutional violation of SCRAP's and its members' rights to equal protection of the laws. (Order of Dismissal, p. 11).

After the Order of Dismissal was filed, Appellant raised numerous issues within the ruling to the ALC and clarified its arguments that were misapprehended by the court. (SCRAP Motion for Reconsideration). The motion included a thorough explanation of how SCRAP and its members (1) meet the three elements of constitutional standing; (2) meet the three elements of associational standing; (3) suffer an unconstitutional violation of their due process rights if S.C. Code Ann. § 48-6-40(D)(2) is applied to them; and (4) suffer an unconstitutional violation of their rights to equal protection of the laws if S.C. Code Ann. § 48-6-40(D)(2) is applied to them. (SCRAP Motion for Reconsideration).

In its second order, the ALC once again confounded the constitutional standing analysis with the statutory standing analysis, determining that a party must meet the definition of "affected person" under S.C. Code Ann. § 48-6-40(E), as well as the additional element in § 48-6-40(D)(2), to have *constitutional* standing. (Order Denying Motion for Reconsideration, p. 3) Further, the court then employed the statutory definition of "affected person"—plus the additional element from subsection (D)(2)—to conclude that if all of the components of § 48-6-40(D)(2)–(E) are not met by a party, then its constitutional due process and equal protection rights cannot be violated. (Order Denying Motion for Reconsideration, p. 6). In using this circular logic, the court repeatedly overlooked the constitutionally-protected property and liberty interests of property owners who are located immediately near or directly adjacent to these proposed CAFOs. In the last section of the order, the ALC again noted that § 48-6-40(E) precludes the use of associational standing because statutory standing is limited to permit challenges "brought by the property owner" and in "instances in which the permit affects the [contested case] applicant itself." (Order Denying Motion for Reconsideration, p. 8).

ARGUMENT

At the heart of this appeal stand Charles Blackmon, Jean Revis, Mary Basel, Margaret Sparrow, Ross Stewart, Randy Piontek, Richard Heald, and Christina Heald—eight residents and property owners in Mountville, right on the doorstep of the CAFOs proposed by the Broilers, who are patiently waiting for their day in court. These CAFOs, and DES' decision to permit them, represents an imminent and concrete threat to SCRAP's members' most basic property and liberty interests that are safeguarded under South Carolina law. Each and every member of SCRAP demonstrated in their sworn affidavits that these CAFOs will cause them to suffer extensive harm to their property rights, their use and enjoyment of the surrounding environment, and their overall

quality of life. Their testimony makes clear that Appellant has both constitutional standing and associational standing to bring these administrative appeals of the CAFO permits issued by DES. Therefore, the ALC's rulings to the contrary require reversal, and this matter should be remanded to the ALC for the contested case hearing.

Appellant's members purchased or inherited their respective properties so that they could exercise the full extent of their property rights, connect with their land and community, and fully immerse themselves in the culture of an outdoorsy small town. Appellant's constitutional and associational standing allows SCRAP's members to be heard in their administrative appeal of the CAFO permits. Appellant also seeks reversal because applying S.C. Code Ann. § 48-6-40(D)(2) here improperly deprives Appellant and its members of their constitutional due process and equal protection rights. The ALC erred when it concluded that Appellant's and its members' rights to due process of law and equal protection of the laws are not violated by this statutory provision, and its ruling should be reversed by this Court.

I. Because Appellant's Members Presented Extensive Evidence that They Would Be Injured by the Proposed CAFOs and Administrative Review Could Reduce or Avoid Their Injuries, the ALC's Dismissal Was Erroneous.

The ALC erred in finding that Appellant lacks constitutional standing to bring this consolidated administrative appeal of the CAFO permits issued to the Broilers by DES and dismissing Appellant's action on that basis. In both the Order of Dismissal and the Order Denying SCRAP's Motion for Reconsideration, the ALC failed to undertake the proper analysis for constitutional standing. Instead, the ALC repeatedly attempted to blur the lines between statutory standing and constitutional standing, running counter to decades of precedent from South Carolina appellate courts. Appellant's members' sworn testimony establishes that they have constitutional

standing to be heard in this consolidated administrative appeal, so the ALC's dismissal of this matter should be reversed.

South Carolina courts recognize three different types of standing: statutory standing, constitutional standing, and public importance standing. *ATC Inc. v. Charleston Cnty.*, 380 S.C. 191, 195, 669 S.E.2d 337, 339 (2008). As to constitutional standing, the Supreme Court of South Carolina has adopted the test announced in *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560–61, 112 S.Ct. 2130, 2136 (1992). *See Sloan v. Greenville Cnty*., 356 S.C. 531, 549, 590 S.E.2d 338, 348 (Ct. App. 2003); *Beaufort Realty Co. v. Beaufort Cnty*., 346 S.C. 298, 301, 551 S.E.2d 588, 589 (Ct. App. 2001). In *Lujan*, the Supreme Court of the United States stated "the irreducible constitutional minimum of [Article III] standing contains three elements": (1) the plaintiff must have suffered an "injury in fact," i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision. *Lujan*, 504 U.S. at 560–61, 112 S.Ct. at 2136.

A. Appellant Established Injury in Fact for Constitutional Standing.

Turning to the first element of constitutional standing, if these CAFOs operate, Appellant's members will suffer many injuries that are concrete, particularized, and imminent invasions of their legally protected rights, including constitutionally protected property rights. The affidavits submitted by every member of SCRAP show that the permitting of these CAFOs creates an "immediate danger [that] a direct injury will be sustained" to SCRAP's members' legally protected interests. *Commander Health Care Facilities, Inc. v, S.C. Dep't of Health & Envtl. Control*, 370 S.C. 296, 301, 634 S.E.2d 664, 666 (Ct. App. 2006). These legally protected interests can be ordered into six categories.

First, all SCRAP members have a legally protected, unrestricted right to use and enjoy their respective properties. *See Painter v. Town of Forest Acres*, 231 S.C. 56, 60, 97 S.E.2d 71, 73 (1957) ("[P]roperty consists not merely in its ownership and possession but an unrestricted right of use, enjoyment, and disposal. Anything which destroys one or more of these elements to that extent, destroys the property itself."); *see also Gwynette v. Myers*, 237 S.C. 17, 24, 115 S.E.2d 673, 676 (1960) ("[F]or one's ownership of property consists not only of his right to possess it, but also of his right to use it as he pleases, to sell it at his own price, and to give it away if he wishes to do so.").

Second, many of SCRAP's members receive profits through hunting leases and timber production allowed upon their properties. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶ 4; Ex. 2, Aff. ¶ 4; Ex. 3, Aff. ¶ 11; Ex. 4, Aff. ¶ 9; and Ex. 5, Aff. ¶ 4) (discussing the leases and profits associated with hunting and timber production on their properties)). The contracts that many of SCRAP's members have allowing hunting and timber production on their properties, and the profits associated with those contracts, are legally protected property interests. *See Hamilton v. Bd. of Trustees of Oconee County School Dist.*, 282 S.C. 519, 525, 319 S.E.2d 717, 721 (Ct. App. 1984) (A property interest "can be found in existing state law; in contracts, express or implied; or in mutually explicit understandings.").

Third, all SCRAP members have legally protected aesthetic and recreational interests in enjoying and observing wildlife, which South Carolina law specifically recognizes as "a judicially cognizable injury in fact." *See Sea Pines Ass'n for the Protection of Wildlife, Inc. v. S.C. Dep't of Natural Res*., 345 S.C. 594, 601–02, 550 S.E.2d 287, 291–92 (2001); *see also Sierra Club v. Morton*, 405 U.S. 727, 738, 92 S.Ct. 1361, 1368 (1972) (holding that the interest alleged to have

been injured in a standing analysis can take the form of aesthetic, conservational, recreational, or economic values).

Fourth, Article I, § 25 of the South Carolina Constitution guarantees SCRAP's members a legally protected right "to hunt, fish, and harvest wildlife traditionally pursued," which are all activities that SCRAP's members enjoy on their respective properties. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶ 4; Ex. 2, Aff. ¶ 4; Ex. 3, Aff. ¶ 6; Ex. 4, Aff. ¶ 9; Ex. 5, Aff. ¶ 4; Ex. 6, Aff. ¶ 3; Ex. 7, Aff. ¶ 3; and Ex. 8, Aff. ¶ 3 (describing the hunting, fishing, and other outdoor activities SCRAP members enjoy on their properties)).

Fifth, SCRAP's members have a legally protected interest in the maintenance of the purity of the air and water resources of their Mountville environment, "consistent with the public health, safety and welfare of its citizens." S.C. Code Ann. § 48-1-20. This legally protected interest is also safeguarded by South Carolina's public trust doctrine, which recognizes that "everyone has the inalienable right to breathe clean air; to drink safe water; to fish and sail, and recreate upon the high seas, territorial seas and navigable waters; as well as to land on the seashores and riverbanks." *Sierra Club v. Kiawah Resort Associates*, 318 S.C. 119, 127–28, 456 S.E.2d 397, 402 (1995); *see also McQueen v. S.C. Coastal Council*, 354 S.C. 142, 149, 580 S.E.2d 116, 120 (2003) (As part of its public trust duties, the State "cannot permit activity that substantially impairs the public interest in marine life, water quality, or public access.").

Finally, some SCRAP members own properties that the Little River and its tributaries run through, which is also true of the Broilers' property. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶¶ 3–4; Ex. 2, Aff. ¶¶ 8–9; Ex. 3, Aff. ¶ 15; and Ex. 5, Aff. ¶¶ 9–12 (discussing the path of the Little River and its tributaries on their properties and the Broilers' property)). These members have a legally protected interest in their special right "allowing them to make reasonable use of

the water adjacent to their property" and to be protected from their neighbors' unreasonable interference with such riparian rights. *Jowers v. S.C. Dep't of Health & Envtl. Control*, 423 S.C. 343, 355–56, 815 S.E.2d 446, 452–53 (2018).

Should these CAFOs operate, Appellant's members will suffer concrete, particularized, and imminent invasions of all the legally protected interests discussed above. The invasions of SCRAP's members' legally protected interests, as demonstrated in their sworn testimony, will take at least six forms as a result of the permitting and operation of the CAFOs. First, the odor that will emanate from these CAFOs presents imminent harm to SCRAP's members' right to use and enjoy their properties, to hunt and fish upon those properties, and to receive profits through hunting leases. In their affidavits, Appellant's members described the odors that they have experienced from more distant CAFOs, and they affirm that those odors will continue, worsen, and directly impact them if the Broilers are allowed to construct new CAFOs as permitted by DES. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶¶ 5–9; Ex. 2, Aff. ¶¶ 8–9; Ex. 3, Aff. ¶¶ 11–14; Ex. 4, Aff. ¶¶ 8–9; Ex. 6, Aff. ¶¶ 5–7; Ex. 7, Aff. ¶¶ 8–10; and Ex. 8, Aff. ¶¶ 8–10).

Second, the vectors, including flies, that will result from these CAFOs and infest the surrounding properties present imminent harm to SCRAP's members' rights to use and enjoy their properties, to hunt and fish upon those properties, to enjoy and observe wildlife upon those properties, and to receive profits through hunting leases. Their affidavits describe the flies, insects, pests, and other vectors that they have experienced from current CAFOs and affirm that these vectors will continue, worsen, and directly impact them if the Broilers' new, much closer CAFOs are constructed. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶¶ 5–9; Ex. 2, Aff. ¶¶ 8–9; Ex. 3, Aff. ¶¶ 11–14; Ex. 4, Aff. ¶¶ 7–9; Ex. 6, Aff. ¶¶ 5–7; Ex. 7, Aff. ¶ 8; and Ex. 8, Aff. ¶ 8).

Third, the stormwater problems that will result from these CAFOs, given their location next to the 100-year floodplain and upon unstable soil and topography, present imminent harm to SCRAP's members' rights to use and enjoy their properties, to enjoy and observe wildlife upon those properties, to receive profits through timber production, and to have clean water. The sworn testimony from Appellant's members describes the unstable soil and topography that they have experienced, which they affirm will cause these CAFOs to generate a host of stormwater problems and other water quality issues. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶ 9; Ex. 2, Aff. ¶¶ 8–9; Ex. 3, Aff. ¶ 15; and Ex. 5, Aff. ¶¶ 8–12).

Fourth, the air and water pollution that will result from these CAFOs present imminent harm to SCRAP's members' rights to use and enjoy their properties, to hunt and fish upon those properties, to enjoy and observe wildlife upon those properties, to have clean air and clean water, and to exercise their riparian rights. In the sworn testimony provided to the ALC, SCRAP's members described the air pollution and water pollution to the Little River and its tributaries that they have experienced from more distant CAFOs, and they affirm that this pollution will continue, worsen, and directly impact them with the Broilers' new CAFOs, which are closer to the Little River than any other CAFO in Mountville. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶¶ 6–9; Ex. 2, Aff. ¶¶ 8–9; Ex. 3, Aff. ¶ 12–15; Ex. 4, Aff. ¶¶ 8–9; Ex. 5, Aff. ¶¶ 8–12; Ex. 6, Aff. ¶¶ 5–7; Ex. 7, Aff. ¶¶ 9–10; and Ex. 8, Aff. ¶¶ 9–10).

Fifth, the application of manure that will occur around these CAFOs and bring unwanted sights and smells to those areas presents imminent harm to SCRAP's members' rights to use and enjoy their properties, to hunt and fish upon those properties, to receive profits through hunting leases, and to exercise their riparian rights. Appellant's affidavits once again describe the problems with land application of manure that SCRAP members have experienced from other, extant

CAFOs, which they affirm will continue, worsen, and directly impact them if the closer Broilers' CAFOs are built. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶¶ 7–8; Ex. 3, Aff. ¶ 11–15; Ex. 4, Aff. ¶¶ 7–9; Ex. 6, Aff. ¶ 6; Ex. 7, Aff. ¶¶ 8–10; and Ex. 8, Aff. ¶¶ 8–10).

Last, the negative impacts to health and welfare that will result because of the operation of these CAFOs threaten imminent harm to SCRAP's members' lives, livelihoods, and rights to use and enjoy their properties. Their affidavits describe the negative impacts to health and welfare—especially in terms of enjoying quality time outdoors—that SCRAP members already contend with from extant CAFOs, which they affirm will continue, worsen, and directly impact them if the Broilers' new CAFOs are built as permitted. (SCRAP Response to Motion to Dismiss, Ex. 1, Aff. ¶¶ 6–9; Ex. 3, Aff. ¶ 13–14; Ex. 4, Aff. ¶¶ 6–8; Ex. 6, Aff. ¶¶ 6–7; Ex. 7, Aff. ¶¶ 8–10; and Ex. 8, Aff. ¶¶ 8–10).

B. Appellant Established Causation for Constitutional Standing.

Considering next the second element of constitutional standing, the subsection above established that Appellant's members will suffer concrete, particularized, and imminent invasions of their legally protected interests, and these injuries are causally connected to the Broilers' operation of the CAFOs that were permitted by DES. *See Lujan*, 504 U.S. at 560, 112 S.Ct. at 2136 ("[T]he injury has to be fairly traceable to the challenged action of the [Respondents], and not the result of the independent action of some third party not before the court.") (internal quotation marks omitted). In other words, but for DES approving the permits for the Broilers' proposed CAFOs, the concrete, particularized, and imminent harm to Appellant's members' legally protected interests would not occur. *See Opternative, Inc. v. S.C. Bd. of Med. Examiners*, 433 S.C. 405, 415–16, 859 S.E.2d 263, 268 (Ct. App. 2021) ("Establishing a 'but for' causal connection or showing a substantial likelihood that the challenged action caused the injury is sufficient.").

South Carolina requires these proposed CAFOs to obtain permits before operation. Therefore, the Department's approval of the Broilers' CAFO permits necessarily causes Appellant's injuries because the permits do not protect against the harms associated with CAFOs. The permits do not include adequate measures for controlling odors and vectors, nor do they include mandatory measures that must be taken for when an odor or vector problem is identified on-site. The permits also fail to address this site's special characteristics, including the site's location next to the 100-year floodplain and upon unstable soil and topography, and the risk that creates for accelerating or exacerbating stormwater runoff and pollution. The permits are not protective of air quality and do not include measures to prevent an increase in pollution to the air. Similarly, the permits are not protective of water quality because they do not include measures to prevent pollution to the already-impaired Little River and its wetlands, located just over 100 feet from some of the proposed barns. The permits include no monitoring nor reporting requirements for any changes in water quality. The permits do not address where the land application of manure will occur and do not include protective measures to prevent such manure from affecting nearby and adjacent property owners. Finally, the permits do not include any measures designed to protect the health and welfare of nearby residents and other citizens from the pollution generated by CAFOs. All of these deficiencies in the permits will injure Appellant's members, as discussed in the prior subsection.

C. Appellant Established Redressability for Constitutional Standing.

The third element of constitutional standing is that it must be likely that the injury will be redressed by a favorable decision by the reviewing court. *See Sea Pines Ass'n for the Protection of Wildlife, Inc.*, 345 S.C. at 601, 550 S.E.2d at 291 ("[I]t must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.") (quoting *Lujan*, 504 U.S.

at 561, 112 S.Ct. at 2136). This element is met because Appellant's injuries are all of the sort contemplated under the Department's regulations governing the permitting of poultry facilities. Thus, each of these injuries are redressable through review of the permits in a consolidated contested case hearing before the ALC.

The applicable regulations require that a CAFO permit must: (1) include adequate measures for controlling odors (S.C. Code Ann. Regs. 61-43.200.150); (2) include adequate measures for controlling vectors (*id.* at 61-43.200.160); (3) include appropriate special conditions based on its latitude and longitude (*id.* at 61-43.200.70(F)(1)); (4) prevent an increase in pollution of waters and air of the state (*id.* at 61-43.200.70(E); 61-43.200.140(A)); (5) include information about manure utilization areas that will receive manure from the CAFO (*id*. at 61-43.200.100(A)); and (6) protect the health and welfare of citizens of the state from pollutants generated by the CAFO (*id.* at 61-43.200.10(A)). Enforcement of these regulations through a contested case hearing before the ALC—and requiring the permits issued to the Broilers to comply with these regulations—would redress Appellant's injuries. Furthermore, Appellant identified all of these regulations and deficiencies associated with the permits as issues to be determined at a contested case hearing in Appellant's Prehearing Statements. (SCRAP Prehearing Statements for Coggins/Young, Section 3, pp. 2–7).

D. The ALC's Dismissal for Lack of Standing Was Erroneous.

Because Appellant established all three elements of constitutional standing under *Lujan*, the ALC erred when it dismissed Appellant's consolidated contested case for a lack of standing. In its Order of Dismissal, the ALC wrote, "Petitioner has failed to establish constitutional standing under either article 1, section 3 or section 22." (Order of Dismissal, p. 11). The ALC's misunderstanding of constitutional standing is evident when compared against decades of

precedent from South Carolina appellate courts. Under constitutional standing principles, the ALC was required to consider and analyze whether Appellant met each of the three elements of constitutional standing. Because the ALC failed to do so in its Order of Dismissal, SCRAP raised this issue in its Motion for Reconsideration and asked the ALC to apply the three elements of constitutional standing to it instead of using the due process provisions of the South Carolina Constitution.

The ALC's order denying reconsideration also evinces a misapprehension of applicable law. Instead of following the precedent established by South Carolina courts, the ALC collapsed statutory and constitutional standing into a single inquiry. Specifically, the court found that in order for SCRAP to meet the injury in fact requirement of constitutional standing, it must show that it meets the elements of S.C. Code Ann. § 48-6-40(D)(2)–(E).[6] (Order Denying Motion for Reconsideration, p. 3). The ALC then concluded, "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**." (Order Denying Motion for Reconsideration, p. 3) (emphasis in original). As explained in the subsections above, Appellant's legally protected interests that will suffer a concrete and imminent invasion as a result of the Broilers' CAFOs permitted by DES 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

[6] The ALC combined S.C. Code Ann. § 48-6-40(D)(2) and (E) to create the following elements that a party must show: "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." (Order Denying Motion for Reconsideration, p. 3).

properties, and the profits associated with those contracts; (3) the aesthetic and recreational interest in enjoying and observing wildlife; (4) the right to fish and hunt safeguarded by the South Carolina Constitution; (5) the right to clean air and clean water safeguarded under the public trust doctrine; and (6) the right to reasonable use of the riparian resources on their properties and the right to be free from unreasonable use of those riparian resources by adjacent landowners.

It was legal error for the ALC to add statutory standing to the constitutional standing analysis, or otherwise hold that statutory standing subsumes or overrides constitutional standing, and it was legal error for the ALC to conclude that Appellant lacks constitutional standing. *See* S.C. Code Ann. § 1-23-610(B)(d).

The ALC's elaborated as follows: "[S]aid 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." (Order Denying Motion for Reconsideration, p. 3). This conclusion effectively allows a statutory provision to preclude finding an injury in fact for constitutional standing purposes and would allow a statute to preclude review of violations of constitutional rights. The conclusion is also contrary to precedent from this Court and the Supreme Court that make clear that if "no statute confers standing, the elements of constitutional standing must be met." *Youngblood v. S.C. Dep't of Soc. Serv.*, 402 S.C. 311, 317, 741 S.E.2d 515, 518 (2013); *see also Bevivino v. Town of Mt. Pleasant Bd. of Zoning Appeals*, 402 S.C. 57, 64, 737 S.E.2d 863, 867 (Ct. App. 2013). If a statute does not convey standing, or if there is an applicable statute granting standing that is not met by the party bringing the case, then that party may seek relief if it demonstrates the three elements of constitutional standing. *See Youngblood*, 402 S.C. at 320–21, 741 S.E.2d at 519–20. To rule otherwise could violate a legally protected interest held by

that party, as well as that party's right to due process.[7] *Id*. This precedent describes the exact situation of Appellant—even if it does not meet the elements of statutory standing, due process provides that it may vindicate its legally protected interests by establishing constitutional standing.

Therefore, the ALC erred when it determined that a failure to meet statutory standard necessarily equates to a failure to meet constitutional standing. *See* S.C. Code Ann. § 1-23-610(B)(d). Because Appellant has demonstrated that it has constitutional standing, this Court should reverse the ALC's dismissal of these consolidated administrative appeals.

II. Because Appellant Satisfied Every Element of Associational Standing, the ALC's Dismissal Was Erroneous.

The ALC erred when it determined that Appellant does not have associational standing to bring these consolidated cases contesting DES' decision to issue CAFO permits to the Broilers, and the court's decision should be reversed. Associational standing allows an organization to bring suit on behalf of its members if the following elements are met: "(1) at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right, (2) the interests at stake are germane to the organization's purpose, and (3) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Envtl. Control*, 430 S.C. 200, 211, 845 S.E.2d 481, 487 (2020) (citing *Hunt v. Wash. State Apple Advert. Comm'n*, 432 U.S. 333, 343, 97 S.Ct. 2434, 2441 (1977)). Associational standing is rooted in well-established principles that allow organizations to advocate for the collective interests of their members, especially in complex legal and administrative proceedings. *See, e.g.*, *Pres. Soc'y of Charleston*, 430 S.C. at 211, 845 S.E.2d at

[7] As the *Youngblood* decision makes clear, SCRAP's legally protected interests entitle it and its members not only to constitutional standing, but also to due process of law, which is discussed in Section III of this brief, *infra*.

487 ("Associational standing advances some important objectives: it promotes judicial economy and efficiency by avoiding repetitive and costly independent actions by individual members, and it allows members who would have standing in their own right to pool their financial resources and legal expertise to help ensure complete and vigorous litigation of the issues.").

Appellant's pleadings, including the sworn testimony of its members, demonstrates that Appellant has associational standing to bring this consolidated administrative appeal. First, Appellant has established that *all* of its members have constitutional standing to bring these contested cases through "affidavits showing, through specific facts, that one or more of [the organization's] members would be directly affected by the alleged illegal [permit decisions]." *Summers v. Earth Island Inst.*, 555 U.S. 488, 498, 129 S.Ct. 1142, 1151–52 (2009). Specifically, as discussed in Section I of the Argument, Appellant has demonstrated that numerous imminent harms to its members' legally protected rights form the basis of Appellant's injuries in fact—harms that are caused by these CAFOs and DES' improper decision to permit them and that are redressable through a contested case hearing before the ALC. *See Lujan*, 504 U.S. at 560–61, 112 S.Ct. at 2136.

Second, Appellant's interests at stake in this action are germane to SCRAP's organizational purpose, which is to "advocate for poultry farming practices and permitting to be compatible with the use and enjoyment of non-poultry farming property owners, and in a manner that does not impair air and water quality, emit noxious odors, or otherwise cause the quality of life in the Mountville area to deteriorate." (SCRAP Response to Motion to Dismiss, p. 6); *see also* (SCRAP Prehearing Statements for Coggins/Young, p. 8) ("Since 2016, this organization has sought better permitting, oversight, and enforcement from DES as it pertains to the dozens upon dozens of poultry barns in their area.").

Third, precedent from the Supreme Court of South Carolina and the United States Supreme Court hold that the final element of associational standing is met in situations where, as here, the organizational petitioner does not seek monetary damages but instead a declaration of some kind that will reduce or avoid the injury it complains of. *See Pres. Soc'y of Charleston*, 430 S.C. at 217, 845 S.E.2d at 490 ("Petitioners do not seek monetary damages on behalf of their members for specific instances of environmental harm; rather, Petitioners seek administrative review of the agency's permitting process. Although affidavits of individual members have been submitted in support of Petitioners' request for administrative review, administrative review of [DES'] permitting process does not require the individual members' substantial participation."); *see also Warth v. Seldin*, 422 U.S. 490, 515, 95 S.Ct. 2197, 2213 (1975) ("If in a proper case the association seeks a declaration, injunction, or some other form of prospective relief, it can reasonably be supposed that the remedy, if granted, will inure to the benefit of those members of the association actually injured. Indeed, in all cases in which we have expressly recognized standing in associations to represent their members, the relief sought has been of this kind.").

In its ruling on the motion to dismiss, the ALC found that Appellant failed to show that it had statutory or constitutional standing, and as a result, Appellant could not establish that it had associational standing to bring these consolidated contested cases. (Order of Dismissal, p. 9) ("As discussed above, Petitioner has failed to establish that at least one of its members has standing—statutory, constitutional, or otherwise—to challenge this permit."). As detailed in the previous section of this brief, however, the ALC did not apply the proper test to determine constitutional standing, improperly held that Appellant lacked constitutional standing, and also erroneously concluded that statutory standing is an element of constitutional standing. (Order Denying Motion for Reconsideration, p. 3). Under the actual test for constitutional standing, Appellant has

demonstrated that each one of its members have constitutional standing to bring this action.[8] Therefore, it was legal error for the ALC to dismiss Appellant's consolidated contested case hearings for a lack of associational standing, and the decision should be reversed by this Court. *See* S.C. Code Ann. § 1-23-610(B)(d).

Moreover, in its discussion of associational standing, the ALC determined that S.C. Code Ann. § 48-6-40(E), which states that an affected person is someone "who is challenging on his own behalf the permit, license, certificate, or other approval," precludes the use of associational standing in cases challenging the permitting of poultry CAFOs. (Order of Dismissal, p. 10); (Order Denying Motion for Reconsideration, pp. 8–9). This requirement relates solely to statutory standing under S.C. Code Ann. § 48-6-40. Because SCRAP and its members have demonstrated they have constitutional standing, associational standing is still available to them in bringing these consolidated contested cases. South Carolina courts explicitly recognize that associational standing is available when constitutional standing is the underlying type of standing the organization's members possess to sue in their own right, as is the case here. *See, e.g.*, *Carnival Corp. v. Historic Ansonborough Neighborhood Ass'n*, 407 S.C. 67, 76, 753 S.E.2d 846, 851 (2014) ("[T]o possess standing, either Plaintiffs alone must have suffered a concrete, particularized injury or their members must have suffered such an injury and the other elements of associational standing must be satisfied."); *Beaufort Realty Co., Inc.*, 346 S.C. at 301, 551 S.E.2d at 589 (also examining the availability of associational standing by determining whether the organization's members demonstrated they have standing to sue in their own right through constitutional standing).

[8] *See* discussion *supra* Argument, Section I.

Regardless of the inapplicability of the phrase to constitutional standing, the ALC's analysis of § 48-6-40(E) was still an error of law. The ALC's reading mistakenly focuses on one pronoun—"own"—while simultaneously ignoring the well-established body of law relating to associational standing and the personhood of organizations.[9] *See, e.g.*, S.C. Code Ann. Regs. 61-43.50 (regulations for the standards for the permitting of agricultural animal facilities) ("'Person' means any individual, public or private corporation, political subdivision, association, partnership, corporation, municipality, state or federal agency, industry, co-partnership, firm, trust, estate, any other legal entity whatsoever, or an agent or employee thereof."). While it is far from settled whether the legislature can preclude associational standing, if that were the General Assembly's goal, it would have to do so through express language stating that associational standing may not be used in that context. *Accord Bennett v. Spear*, 520 U.S. 154, 163, 117 S.Ct. 1154, 1162 (1997) ("Congress legislates against the background of our prudential standing doctrine, which applies unless it is expressly negated."). Further, contrary to the ALC's conclusion, the eight members of SCRAP *are* participating in this case on their own behalf to protect their own legally protected interests. The ALC's reading of this statutory provision is affected by an error of law and should therefore be reversed. *See* S.C. Code Ann. § 1-23-610(B)(d).

III. Because S.C. Code Ann. § 48-6-40(D)(2), as Applied to Appellant, Violates Appellant's Constitutional Right to Due Process of Law, the ALC's Ruling was Erroneous.

The previous sections make clear that Appellant has met its burden in establishing every element of both constitutional and associational standing, and therefore, this matter should be

[9] Curiously, the ALC's textual argument focuses only on the pronoun "own" in the provision of S.C. Code Ann. § 48-6-40(E). The other pronoun present in the clause "on his own behalf" is "his." If the court's principle of ensuring each pronoun is given its due is applied throughout the rest of the clause, then those who use the pronoun "hers" would also be barred from contesting permits issued to poultry CAFOs. This absurd result could not have been the intention of the General Assembly.

remanded to the ALC so that Appellant can be heard in the consolidated contested case hearing it requested. In addition, S.C. Code Ann. § 48-6-40(D)(2), as applied to Appellant, violates Appellant's and its members rights to due process of law. The ALC erred when it concluded that Appellant's and its members' rights to due process of law are not violated by this statutory provision, and its ruling should be reversed by this Court.

The crux of Petitioner's as-applied, due process challenge of § 48-6-40(D)(2) is that SCRAP and its members—who are clearly located in close proximity to the Broilers' CAFOs—have property and liberty rights that would be impaired or destroyed if these CAFOs were to be constructed and operated as permitted.[10] A contested case hearing before the ALC is the only tribunal where SCRAP and its members can vindicate their property and liberty interests and assert that the permits issued by DES violate the statutes, regulations, rules, and policies surrounding CAFOs. Article I, § 3 of the South Carolina Constitution states that no person "shall be deprived of life, liberty, or property without due process of law," and Article I, § 22 of the South Carolina Constitution states that "[n]o 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 . . . and he shall have in all such instances the right to judicial review."[11]

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[10] The challenge to S.C. Code Ann. § 48-6-40(D)(2) presented by SCRAP is an as-applied challenge. Petitioner specifically brings this challenge as a group of individuals that are all property owners within a one-mile radius of the permitted CAFOs, are required by subsection (E) of the statute, but do not meet the requirement of (D)(2). As a party in this unique situation, where recognized legal rights are at issue but not protected by the terms of (D)(2), SCRAP challenges the constitutionality of this provision as applied to them.

[11] Within the context of challenging decisions made by administrative agencies, the due process rights of notice, an opportunity to be heard, and judicial review are further recognized by statute. *See* S.C. Code Ann. § 1-23-505(3) ("'Contested case' means a proceeding including, but not restricted to, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law or by Article I, Section 22, Constitution of the State of South Carolina, 1895, to be determined by an agency or the Administrative Law Court after an opportunity for hearing.").

South Carolina courts have interpreted the language of Article I, § 22 "as a safeguard for the protection of liberty and property of citizens" when such interests are affected by the decision of an administrative agency. *McIntyre v. Sec. Comm. of S.C.*, 425 S.C. 439, 446–47, 823 S.E.2d 193, 196–97 (Ct. App. 2018); *see also S.C. Ambulatory Surgery Center Ass'n v. S.C. Workers' Compensation Comm.*, 389 S.C. 380, 391, 699 S.E.2d 146, 152 (2010) ("Although our appellate courts have not always used the term 'due process rights' when discussing Article I, Section 22, we have consistently indicated that the protections provided under this section are the equivalent of those afforded by the Due Process Clause of our state and federal Constitutions. Procedural due process imposes constraints on governmental decisions which deprive individuals of **liberty or property interests** within the meaning of the Due Process Clause of the Fifth or Fourteenth Amendment of the United States Constitution.") (emphasis added) (internal quotation marks and citations omitted).

Therefore, dismissal of Petitioner's case would violate SCRAP's and its members' rights to due process of the law because they would have no opportunity to vindicate their property and liberty interests. To maintain a due process challenge, a party must explain the dimensions of the property and liberty interests at issue, which "stem from an independent source such as state law." *Hamilton*, 282 S.C. at 525, 319 S.E.2d at 721; *see also* 16C C.J.S. Constitutional Law §§ 1888, 1896 (Dec. 2024). The property interests at issue, and the independent sources of law from which those rights arise, were outlined in Section I of the Argument and 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

unreasonable use of those riparian resources by adjacent landowners. Further, the liberty interests at stake include the following: (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. *See* S.C. Const. Art. XIV, § 4 ("All navigable waters shall forever remain public highways free to the citizens of the State."); *Juliana v. United States*, 947 F.3d 1159, 1169–70 (9th Cir. 2020) (case where plaintiffs argued that the government deprived them of a substantive constitutional right and liberty interest "to a climate system capable of sustaining human life").

Supreme Court precedent confirms that parties with a property or liberty interest in an administrative agency's decision, such as DES' decision to issue permits to the Broilers for the construction and operation of CAFOs, are entitled to notice, an opportunity to be heard, and judicial review. *Stono River Envtl. Prot. Ass'n v. S.C. Dep't of Health & Envtl. Control*, 305 S.C. 90, 93–94, 402 S.E.2d 340, 342 (1991); *League of Women Voters of Georgetown Cnty. v. Litchfield-by-the-Sea*, 305 S.C. 424, 427, 409 S.E.2d 378, 380 (1991). Both *Stono River* and *League of Women Voters of Georgetown County* involved petitioners concerned with the environmental impacts of the permit decisions made by DHEC and how those permit decisions would impact their property rights. Both times, the Supreme Court found that minimum standards of due process required an opportunity to be heard and the right to judicial review. Further, in *Howard v. S.C. Dep't of Corrections*, the Supreme Court found that the ALC's jurisdiction could not be completely abrogated by a statute when legally protected interests, such as property and liberty interests, were at stake, for that would be a violation of due process. 399 S.C. 618, 629–30, 733 S.E.2d 211, 217–18 (2012) (case involving prisoners' sentence-related credits, which implicate their liberty and property interests). These holdings support Appellant's argument that it would be unconstitutional for S.C. Code Ann. § 48-6-40(D)(2) to bar Appellant from bringing its challenges.

Both of the ALC's orders show that the court misapprehended the law surrounding SCRAP's constitutional right to due process. First, in the Order of Dismissal, the ALC examined Article I, §§ 3 and 22 of the South Carolina Constitution to determine if SCRAP had constitutional standing to bring these consolidated contested cases, which is the incorrect standard for constitutional standing. (Order of Dismissal, pp. 7–9). The ALC also erroneously concluded in its analysis that Appellant failed to point to a legally protected interest (for the purposes of Article I, § 3) or a private right (for the purposes of Article I, § 22) that entitled Appellant to due process of law. (Order of Dismissal, pp. 8–9). Further, the ALC found that because S.C. Code Ann. § 48-6-40(D)(2) limits when a case contesting a poultry CAFO permit can be brought, property owners outside of the setback requirement provided in subsection (D)(2) no longer have any recognized legally protected interests or private rights. (Order of Dismissal, pp. 7–8).

These holdings constitute serious errors of law and violate Appellant's constitutional rights because, as described above, Appellant and its members have a number of constitutionally-protected property and liberty interests that entitle them to due process before those rights may be impaired or violated by a decision of an administrative agency such as DES.[12] *See* S.C. Code Ann. § 1-23-610(B)(a), (d).While the legislature has broad authority, "[i]t is a basic provision of American jurisprudence that a statutory provision **never be allowed to trump a constitutional**

[12] The ALC attempted to minimize the due process protections owed to Appellant by finding that the property rights of Appellant were not sufficiently defined. In support of this proposition, the court cited to *James Acad. of Excellence v. Dorchester Cnty. Sch. Dist. Two*, 376 S.C. 293, 657 S.E.2d 469 (2008) and *Hamilton v. Bd. of Tr. of Oconee Cnty. Sch. Dist.*, 282 S.C. 519, 319 S.E.2d 717 (Ct. App. 1984). (Order of Dismissal, pp. 7–8). Those cases involved property interests that did not create due process rights, including a conditional authorization of a charter school and an employment contract with a one-year term. In stark comparison, the constitutionally protected property and liberty interests raised by Appellant in this case are extremely well-rooted in American and South Carolina's jurisprudence as interests entitled to due process of law.

right." 16 C.J.S. Constitutional Law § 150 (Dec. 2024) (emphasis added). Indeed, statutes cannot deprive Appellant and its members of their constitutional rights to appeal administrative decisions that affect and abridge their legally protected rights and interests. *See Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682, 50 S.Ct. 451, 454–55 (1930) ("Whether acting through its judiciary or through its Legislature, a state may not deprive a person of all existing remedies for the enforcement of a right, which the state has no power to destroy, unless there is, or was, afforded to him some real opportunity to protect it.").

In its second order, the ALC continued to misunderstand and misapply the law, even after Appellant clarified its legally protected property and liberty interests for the court in its Motion for Reconsideration. The ALC maintained that Appellant lacked a legally protected interest in the administrative process because its right to an administrative appeal of a poultry CAFO permit was limited by S.C. Code Ann. § 48-6-40. (Order Denying Motion for Reconsideration, p. 4). Specifically, the court reasoned that "[b]ecause 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 [*sic*] violation of Petitioner's due process rights."[13] (Order Denying Motion for Reconsideration, p. 6).

Once again, the ALC concluded that all of Appellant's due process rights have been removed as a result of S.C. Code Ann. § 48-6-40(D)(2), for none of Appellant's legally protected rights are recognized under the statute. This is a manifest error of law and violates Appellant's

[13] Confusingly, the ALC's order refers to the "Department's" application of S.C. Code Ann. § 48-6-40(D)(2) several times. The Department of Environmental Services has not offered any interpretation or application of § 48-6-40. In fact, DES took no position on the Motion to Dismiss in which the Broilers raised § 48-6-40. (Order of Dismissal, p. 1, note 1). Further, DES did not even list S.C. Code Ann. § 48-6-40 as an applicable statute in these consolidated contested cases in its prehearing statements. (DES Prehearing Statements for Coggins/Young, pp. 2–3).

constitutional rights. *See* S.C. Code Ann. § 1-23-610(B)(a), (d). When the legislature invades legally protected rights, as they have done here, courts do not simply concur that rights no longer exist. Instead, it is up to the courts to protect the rights of citizens when legislative reach goes too far and circumvents constitutionally protected interests. The implications of the ALC's decision, if affirmed, would deal a devastating blow to the citizenry's most fundamental rights and opens the door to further limiting or prohibiting review of governmental actions, regardless of what the due process clause mandates. This Court should address this important constitutional issue before the reasoning of the decision is invoked in other legal contexts.

It was legal error for the ALC to apply S.C. Code Ann. § 48-6-40(D)(2) to Appellant in these matters because its application results in an unconstitutional violation of due process rights, and that decision should be reversed by this Court. *See* S.C. Code Ann. § 1-23-610(B)(a), (d).

IV. Because S.C. Code Ann. § 48-6-40(D)(2), as Applied to Appellant, Violates Appellant's Constitutional Right to Equal Protection of the Laws, the ALC's Ruling was Erroneous.

In a similar vein, applying S.C. Code Ann. § 48-6-40(D)(2) to Appellant here would result in an unconstitutional violation of Appellant's and its members' rights to equal protection of the laws. The ALC erred when it concluded to the contrary, and its ruling—which is in violation of constitutional rights and is affected by an error of law—should be reversed by this Court. *See* S.C. Code Ann. § 1-23-610(B)(a), (d).

As is true with the right to due process, the South Carolina Constitution also guarantees the right to equal protection of the laws. *See* S.C. Const. Art. I, § 3 ("The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws."). The doctrine of equal protection ensures that

similarly situated persons do not receive disparate treatment within a legislative classification. *Grant v. South Carolina Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995); *see also Thompson v. S.C. Comm'n on Alcohol & Drug Abuse*, 267 S.C. 463, 472, 229 S.E.2d 718, 722 (1976) ("The guiding principle most often stated by the courts is that the constitutional guaranty of equal protection of the laws requires that all persons shall be treated alike under like circumstances and conditions, both in the privileges conferred and in the liabilities imposed."). "[T]he Equal Protection clauses of the United States Constitution and the South Carolina Constitution allow for disparate treatment of different classes as long as the classification is a reasonable one and is rationally related to a legitimate purpose." *Robarge v. City of Greenville*, 382 S.C. 406, 413, 675 S.E.2d 788, 791–92 (Ct. App. 2009); *see also Marley v. Kirby*, 271 S.C. 122, 124, 245 S.E.2d 604, 605 (1978) ("[T]he classification must not be purely arbitrary and must rest upon some reasonable basis.").

When such a classification is written into a statute, the requirements of equal protection are satisfied if: "(1) the classification created by the statute is rationally related to its legislative purpose; (2) the members of the class are treated like those similarly situated; and (3) the classification rests on some rational basis." *Jenkins v. Meares*, 302 S.C. 142, 147, 394 S.E.2d 317, 319 (1990). In this case, the statute drawing a classification is S.C. Code Ann. § 48-6-40, which unconstitutionally excludes similarly situated landowners with legitimate property interests from accessing the administrative appeals process. As a result, the statute does not pass muster under South Carolina's equal protection test, examined below.

First, S.C. Code Ann. § 48-6-40 is not rationally related to its stated purpose. The stated legislative purpose of this statute was "to establish specific requirements for the review and appeal of decisions by the South Carolina Department of Health and Environmental Control (DHEC)

regarding the permitting of certain agricultural animal facilities." South Carolina House Journal, 2017 Reg. Sess. (May 2, 2017).[14] The classification at issue here is not rationally related to this purpose. Specific requirements for the review and appeal of permit decisions can be created without using the "arbitrary" classification present in S.C. Code Ann. § 48-6-40(D)(2). *See Ex parte Hollman*, 79 S.C. 9, 60 S.E. 19, 24–25 (1908) ("The general rule is familiar that a statute affecting alike all persons of a class is constitutional, if the classification be not arbitrary, but based upon reasonable grounds."). The unreasonable nature of § 48-6-40(D)(2) is further exemplified by the fact that the statute recognizes affected persons under subsection (E) but determines those persons cannot vindicate their rights if the setback requirement from subsection (D)(2) is met. It is both arbitrary and unreasonable for a statute to determine that a person is affected by a poultry CAFO yet in the next breath take away his or her right to an administrative appeal of the permit.

Second, the affected persons, like Appellant, who are attempting to pursue administrative appeals of DES decisions on poultry facility permits are *not* treated like those similarly situated. For example, an adjoining landowner whose home is 999 feet from the poultry CAFO's footprint is similarly situated to an adjoining landowner whose home is 1,001 feet from the poultry CAFO's footprint. However, under S.C. Code Ann. § 48-6-40(D)(2), only one of those landowners would be able to pursue an administrative appeal of the issued CAFO permit, despite the fact that both landowners are affected persons within one-mile of the CAFO and are clearly in close proximity to it. Additionally, property owners nearby to or adjoining a CAFO are similarly situated, but if

[14] Although this is the stated purpose of the legislation, this particular statutory language bends the balance of power between poultry facilities and the public drastically in favor of poultry facilities. The Supreme Court of South Carolina has found that when a statutory classification unfairly favors one group, it is unconstitutional. *See, e.g.*, *Standard Oil Co. v. City of Spartanburg*, 66 S.C. 37, 44 S.E. 377, 380 (1903) ("We are irresistibly forced to the conclusion that the exemption was intended as a mere favor to those included within the classification, and that it was therefore unconstitutional.").

that CAFO is a poultry CAFO, the right to an administrative appeal is severely limited. Conversely, if that CAFO is a swine CAFO, then the right to an administrative appeal is not limited at all, despite the negative impacts of CAFOs to property, health, and quality of life being very similar regardless of which animal it houses. Further, affected persons attempting to pursue administrative appeals of DES decisions on poultry CAFO permits are not treated like similarly situated persons affected by some other decision made by the Department, who are all governed by the less stringent standards of S.C. Code Ann. § 48-6-30 and interpretive case law. This leaves people and organizations like SCRAP and its members vulnerable to the violation of their rights in a way that other persons affected by DES decisions are not.

Third, the classification in S.C. Code Ann. § 48-6-40(D)(2) does not rest upon a rational basis. No reasoning behind why the numbers selected were selected can be found in the statute, and these arbitrary numbers of 800 feet and 1,000 feet do not match other gauges of when a person is affected found within the same statute in subsection (E), nor the wider regulatory scheme, such as S.C. Code Ann. Regs. 61-43.200.60, which entitles adjacent property owners and property owners within 1,320 feet to notice of an applicant's intent to build an animal facility. Furthermore, for over fifteen years, South Carolina law has allowed property owners and residents within a ***two-mile radius*** of a permitted poultry CAFO to appeal a permit issued by the Department. *See* S.C. Code Ann. § 47-9-60. There is no permissible basis that exists to upend the entire statutory scheme in favor of setback distances that have no basis in fact or in law.[15]

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[15] The paragraphs above make clear that S.C. Code Ann. § 48-6-40(D)(2), as applied to Appellant, violates equal protection principles under the rational basis test. Likewise, this statutory classification would also fail the strict scrutiny test applied in cases involving fundamental rights, which may be implicated here. When a legislative classification places burdens upon the exercise of a fundamental right, then equal protection will only be satisfied if the classification is necessary to promote a compelling government interest. *See, e.g.*, *Clements v. Fashing*, 457 U.S. 957, 963, 102 S.Ct. 2836, 2843 (1982); *Shapiro v. Thompson*,

In light of the above, the ALC's decision should be reversed. Although the court did not address Appellant's equal protection argument in the first order, it did examine it briefly in its order denying reconsideration. (Order of Dismissal, p. 11). In its second order, the ALC first found that Appellant does not have standing to bring an equal protection challenge because it does not meet the elements of S.C. Code Ann. § 48-6-40. (Order Denying Motion for Reconsideration, p. 6). As Appellant has reiterated several times throughout this argument, Appellant has standing to bring these consolidated contested cases through constitutional standing. Moreover, Appellant can bring this as-applied equal protection challenge because it has been disadvantaged by an unconstitutional legislative classification.

Although the ALC went on to begin rational basis review of S.C. Code Ann. § 48-6-40, the court's analysis was ultimately incomplete. First, the ALC determined that the statute relates to its stated purpose because "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." (Order Denying Motion for Reconsideration, p. 7). This circular reasoning essentially results in a forfeiture of review of whether or not a statute is rationally related to its stated purpose because

394 U.S. 618, 634, 89 S.Ct. 1322, 1331 (1969). United States Supreme Court precedent has recognized the freedom to petition the government for the redress of grievances and the freedom to do so as a group effort in close association with others as fundamental rights. *See, e.g.*, *Roberts v. U.S. Jaycees*, 468 U.S. 609, 622, 104 S.Ct. 3244, 3252 (1984). To the extent that S.C. Code Ann. § 48-6-40(D)(2) prevents SCRAP and its members from exercising its fundamental right to petition the government for the redress of grievances, the statute must meet strict scrutiny to be permissible. Likewise, to the extent that S.C. Code Ann. § 48-6-40(E) infringes SCRAP and its members' fundamental right to petition the government for the redress of grievances as an association of close individuals, the statute must meet strict scrutiny to be permissible. As explained above, the statutory provisions at issue here are not rationally related to their stated purpose, so they also are not necessary to a compelling government interest. Importantly, the stated purpose of § 48-6-40 can be met through less restrictive means, so the legislative classification cannot survive the strict scrutiny analysis.

one would need only look to see if the legislature said it was, instead of conducting an independent analysis.

Second, the ALC found that "Petitioner has been treated the same as any other person challenging a permit decision of this kind." (Order Denying Motion for Reconsideration, p. 8). This conclusion unjustly narrows the scope of this element of the equal protection analysis, which is to determine if Appellant is treated like those similarly situated. The analysis does not look at if the members of a class are treated the same, but if the members of a class are treated alike to those *similarly situated*. Here, as explained earlier, those seeking review of permitting decisions are treated very differently depending upon whether they ae seeking review of a permitting decision regarding a CAFO as opposed to some other decision. And even within the CAFO context, there is a vast difference between requirements related to poultry CAFOs as opposed to swine CAFOs.

Finally, the ALC did not examine whether the legislative classification in S.C. Code Ann. § 48-6-40(D)(2) rests upon a rational basis. The only reason given by the court was that the statute has a rational basis because the legislature said so. (Order Denying Motion for Reconsideration, pp. 7–8). Thus, the ALC's determination that § 48-6-40 does not violate equal protection, as applied to Appellant, was an error of law in violation of constitutional rights and should be reversed by this Court. *See* S.C. Code Ann. § 1-23-610(B)(a), (d).

CONCLUSION

For the reasons detailed above, the decisions of the ALC should be reversed. Appellant established every element of constitutional standing, which entitles it and its members to bring these consolidated administrative appeals of the permits issued by DES to the Broilers. It was legal error for the ALC to conclude that Appellant does not have constitutional standing in light of the testimony of Appellant and its members, and it was legal error for the ALC to confuse and equate

statutory and constitutional standing. In addition, Appellant established every element of associational standing, and it was legal error for the ALC to conclude to the contrary. It was also legal error for the ALC to apply S.C. Code Ann. § 48-6-40(E) to Appellant in the associational standing analysis given that Appellant's underlying source of standing is constitutional standing, and the ALC's interpretation of § 48-6-40(E) also suffers from an error of law. Further, Appellant demonstrated that S.C. Code Ann. § 48-6-40(D)(2) is an unconstitutional violation of Appellant's and its members' rights to due process of law. When the ALC determined that Appellant's due process rights were eliminated through the enactment of § 48-6-40(D)(2), the court committed a serious legal error and violated Appellant's constitutional rights. Finally, Appellant demonstrated that S.C. Code Ann. § 48-6-40(D)(2) is an unconstitutional violation of Appellant's and its members' rights to equal protection of the laws. The ALC's ruling to the contrary suffers from an error of law and violates Appellant's constitutional rights.

WHEREFORE, Appellant South Carolinians for Responsible Agricultural Practices respectfully requests this Court issue an Opinion reversing the Order of Dismissal and Order Denying Motion for Reconsideration of the Administrative Law Court.

Respectfully submitted,

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May 2, 2025