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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

William C. McMaster, Circuit Court Judge

Common Please Case No. 2025-CP-23-00389

Appellate Case No. 2025-001151

Southern Painting and Maintenance Specialists, LLC.,

Appellant,

v.

Greenville County,

Respondent.

APPELLANT'S INITIAL OPENING BRIEF

Respectfully submitted this 22nd day of July 2025.

CAMPBELL TEAGUE LLC

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1) Whether, under *de novo* review, the plain language of South Carolina Code Sections 40-11-30 and 40-11-410(4)(c) requires a general contractor's license to install flooring, thereby prohibiting Greenville County from awarding the contract to an unlicensed contractor and rendering the award void as a matter of law.
2) Whether, pursuant to *de novo* review, a government contract awarded to a company not registered to do business in South Carolina must be voided.
3) Whether the trial court abused its discretion when it applied the wrong standard, ignored the applicable statutory law, and instead considered whether Greenville County acted in good faith to determine the merits of a declaratory judgment action.

STATEMENT OF THE CASE

This appeal stems from the Circuit Court's denial of relief to stop an unlicensed contractor from performing work on a county project.

Pursuant to the Greenville County Procurement Code, on September 20, 2024, Greenville County issued a sealed bid solicitation seeking bids to install new flooring in the Greenville County Animal Care shelter. (9/20/24 Request for Proposals #25029.) The request for proposals ("RFP") asked for contractors "to provide and install flooring" for the project titled, "Animal Care Facilities – Shelter Flooring Installation, RFP # 25029" (hereinafter, the "Project"). (*Id*.) The RFP states, "The current flooring shows visible wear, including scratches, cracks, and areas where moisture has seeped in, leading to safety and health concerns for both animals and staff." (*Id*.) Thus, the Project included the following specifications:

- Replacing existing flooring with new flooring. (1.1)
- Inspecting all surfaces where new flooring will be installed. (3.2)
- Identifying any subfloor preparation required and "preparing the site for installation," in order "to minimize delays during installation." (3.2)
- Ensuring "all necessary safety measures are in place for their workers and shelter staff during the installation process." (3.4)
- Providing warranty for both materials and installation. (3.6)
- Conducting the installation in two phases to provide new flooring to both buildings. (3.7)

(*Id*.)

The Project required bidders to comply with state and federal laws, have all necessary licenses, and be authorized to do business in South Carolina. (*Id*. at 12.24.) Southern Painting and

Maintenance Specialists, LLC ("Southern Painting"), Tailor Made Services, Inc. ("TMS"), and HRP Innovation LLC ("HRP") bid on the project. TMS does not hold a general contractor's license. (4/10/25 Def. Responses to Reqs. to Admit.) Further, at the time of the bid, TMS was not registered to do business in South Carolina. (1/24/25 Maffett Aff.¶ 12, Ex. B.)

TMS was awarded the Project by Greenville County. (4/4/25 Def. Answer ¶ 12.) On December 3, 2024, Southern Painting protested the bid under the Greenville County Procurement Code. (1/24/25 Maffett Aff.¶ 13, Ex. C.) Specifically, Southern Painting asserted (1) TMS did not have a general contractor's license as required for the Project, (2) Southern Painting did not have all information required to compare the bids, and that (3) Southern Painting's protest rights be reserved pending receipt of all information regarding the bid. (*Id*.) On December 11, 2024, Greenville County issued a response, denying Southern Painting's protest. (*Id*.) On December 16, 2024 Southern Painting appealed the protest to the Greenville County Administrator (*Id*.) On January 13, 2025, the Greenville County Administrator denied Southern Painting's request. (*Id*.)

On January 23, 2025, Southern Painting filed a Declaratory Judgment action and request for Injunctive Relief in Circuit Court, asserting that the bid award was void under South Carolina law since TMS did not have the required licensure and was not registered to do business in South Carolina. (1/23/25 *See* Compl.) On January 24, 2025, Southern Painting filed its Motion for Declaratory Judgment and Injunction. (1/24/25 Mot. for Decl. J. and Mot. for Inj.) On March 3, 2025, Greenville County filed its Answer. (4/4/25 Def. Answer.) On April 14, 2025, the Circuit Court held a hearing and took the matter under advisement. On April 21, 2025, the Circuit Court issued an Order. (4/21/25 Form 4 Order.) On May 8, the Circuit Court issued a formal Order, holding that Greenville County's denial of Southern Painting's protest was not "arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power." (5/8/25

Order p. 9). Southern Painting filed a Motion to Alter or Amend the Judgment on May 16, 2025, asserting among other arguments that the Circuit Court needed to determine whether an unlicensed contractor was permitted to install the animal shelter flooring. (5/16/25 Mot. to Alter or Amend J.) On June 3, 2025, the Circuit Court issued an order denying Southern Painting's Motion to Alter or Amend. (6/3/25 Order.) On June 5, 2025, Southern Painting filed its Notice of Appeal and served Greenville County on the same day. (6/5/25 Notice of Appeal.)

ARGUMENT

This case contemplates whether a government entity can award a public project to a company that (1) lacks the required contractor's license and (2) is not registered to do business in South Carolina. Greenville County attempts to shift attention from these statutory violations by pointing to the purported good faith of its employees or their reliance on informal communications from LLR. But Greenville County's intentions or efforts cannot be the guidepost for whether the law was followed. Such excuses cannot exempt our *government* from complying with state law. We respectfully ask this Court to uphold the rule of law and confirm that public entities in South Carolina must comply with state licensing statutes when awarding construction work.

A. Because TMS did not have the necessary licensure to perform the work required by the Project, Greenville County cannot award TMS the bid pursuant to South Carolina law and the resulting contract must be rendered void by this Court.

1. Issues of statutory interpretation are reviewed *de novo*.

Questions of statutory interpretation are questions of law which are subject to *de novo* review and which the Court is free to decide without any deference to the court below. *Hueble v. S.C. Dep't of Nat. Res.*, 416 S.C. 220, 228, 785 S.E.2d 461, 465 (2016). Under the *de novo* standard, the appellate court independently reviews the record and makes its own factual findings based on

the preponderance of the evidence. *Wilson v. Gandis*, 430 S.C. 282, 306, 844 S.E.2d 631, 644 (2020).

"The characterization of a declaratory judgment suit depends on the nature of the underlying controversy." *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). Here, Southern Painting requested the lower court to interpret S.C. Code Sections 40-11-30 and 410 to confirm that flooring installation requires a general contractor's license in South Carolina. (Pl. Compl. ¶. 27.) Based on the statutory interpretation, Southern Painting asked that the Court declare the contract between Greenville County and TMS void under South Carolina law, since TMS was unlicensed and not authorized to do business in South Carolina. As this centers on statutory interpretation, the standard of review is *de novo*. *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022) ("We review questions of statutory interpretation de novo.").

2. Review of the plain language of the statute makes clear that the Project was for the installation of floors under S.C. Code 40-11-410(4)(c) and thus required a general contractors license under S.C. Code 40-11-30.

Under the plain language of the statutes, flooring installation work in South Carolina—like the Project—must be performed by a licensed general contractor. Title 40, Chapter 11 of the South Carolina Code governs contractors and their license requirements. Section 410 sets forth the license classifications and subclassifications, listing specifically the type of work each classification allows a contractor to perform. Unless explicitly exempt from licensure in 40-11-360, a license is required to perform the listed work.

S.C. Code § 40-11-410(4)(c) describes the work a "General Contractor-Nonstructural Renovation" is permitted to perform. The statute states, "installing, remodeling, renovations, and finishes of…flooring (excluding carpeting)" falls under this Nonstructural Renovation

subclassification. *Id*. This licensure also covers sandblasting, a technique using powerful equipment often used to prepare concrete subfloors. *Id*.

a) The Project was undoubtedly for the installation of floors.

There is no doubt that the Project involved the installation of flooring. The Project was titled "Animal Care Services – Shelter **Flooring Installation**." (9/20/24 Request for Proposals #25029) (emphasis added). The scope of work, as outlined in Greenville County's proposal, reiterates that the Project was for flooring installation:

> **3. Scope of Work**
>
> **3.1. General Information**
>
> The County of Greenville is seeking sealed proposals from General Contractors to provide and install flooring at the Animal Care Services facility located at 328 Furman Hall Road, Greenville, SC 29609.
>
> Tha Animal Care facility consists of two buildings; Building 1 for Animal Adoptions, and Building 2 for Animal Receiving. To ensure minimal disruption, the project will be executed in two phases with building 1 as the first phase and building 2 being the second phase.

(9/20/24 Request for Proposals #25029 Pgs. 6-8) (emphasis added).

The RFP describes the current flooring make-up and issues with the various materials currently in the building. (9/20/24 Request for Proposals #25029 Pg. 3 ¶1.1.) The RFP clearly seeks removal of the old flooring, preparation of the site, and installation of new flooring functional for the animal shelter. (9/20/24 Request for Proposals #25029 Pg. 3 ¶1.1.)

The RFP outlines key milestones, including site assessment, preparation, phased installation, and final inspection. (9/20/24 Request for Proposals #25029 Pgs. 6-8.) Notably, the contractor must provide a comprehensive warranty covering both materials and workmanship of the installation. (9/20/24 Request for Proposals #25029 Pg. 7 ¶3.5.) This warranty specifically addresses installation-related issues such as lifting, cracking, and moisture penetration, further

confirming that the Project involved flooring installation and finishing. The RFP also states that "[t]he contractor must ensure that the *flooring installation* process complies with all relevant health and safety regulations." (9/20/24 Request for Proposals #25029 Pg. 7 ¶3.4.) (emphasis added). In fact, the term "install," including its variations such as "installing" and "installation," appears approximately 29 times in the Project bid, not including the Project title of "Shelter Flooring Installation" which appears prominently at the top of each page. The word "flooring," including its variations such as "floor," appears approximately 34 times in the Project bid, again not including the Project title[1]. These repeated references underscore that the purpose of the Project was the installation of flooring, which is clearly covered by the licensing requirement in S.C. Code § 40-11-410(4)(c).

More specifically, the proposed flooring to be used for the Project were Sherwin Williams five-layer systems—Fastop Deco Flake SL45 and Resuflor Mechanical Room Systems. (11/5/24 Tailor Made Services, Inc. Bid; 1/24/25 Maffett Aff. Ex. D.) The full installation process is described in the Sherwin Williams materials submitted with TMS's bid. (11/5/24 Tailor Made Services, Inc. Bid.) The installation of cove base and resinous flooring systems involves the blasting and sanding of concrete, repairing concrete to prepare the surface, apply a primer base, and installing slurry, grout, and seal coats. (11/5/24 Tailor Made Services, Inc. Bid.) Kevin Parris, a representative of Sherwin Williams' High Performance Flooring, gave additional details about the flooring system and the process for site preparation and installation. He stated that the system was to be installed over sound, mechanically prepared concrete. (1/24/25 Maffett Aff. Ex. D.) Any existing coatings or flooring must be removed to achieve the required concrete surface profile. (*Id*.) Mr. Parris explained that the system could be installed over a fully adhered ceramic tile,

[1] If the Project title was included, flooring and install would appear over 50 times.

provided the tile is sound, mechanically profiled, and properly primed. (*Id.*) However, if the tile integrity was in question, full removal was recommended. (*Id.*) Additionally, Mr. Maffett, explained that the preparation work included shot blasting, a form of mechanical surface preparation using equipment that weighs several hundred pounds and typically requires two employees to operate. (1/24/25 Maffett Aff. ¶15.) While distinct from sandblasting, shot blasting similarly involves industrial machinery requiring skill to use safely. Due to the complexity of these multi-step systems, Mr. Parris confirmed that installation should be performed by an experienced flooring contractor. (1/24/25 Maffett Aff. Ex. D.)

Because the Project requires flooring installation and shot blasting for preparation of the subfloor, a license is required under S.C. Code § 40-11-410(4)(c). Accordingly, S.C. Code § 40-11-30 requires any individual or entity performing this work, where the total cost exceeds $10,000, to hold a valid general contractor's license. There is no assertion that the Project was under $10,000. (4/12/25 Hearing Transcript Pgs. 10-11). Further, S.C. Code §§ 40-11-30 and 40-11-370 prohibit individuals or entities from performing or holding themselves out as licensed contractors to perform general or mechanical construction above the statutory threshold without a valid license. To reinforce this mandate, the legislature made it a punishable offense to either authorize or perform construction without a valid license. S.C. Code § 40-11-200(b). Here, there is no doubt that TMS did not hold a South Carolina general contractor's license. (4/10/25 Def. Responses to Reqs. to Admit). Thus, by the plain language of the statute on *de novo* review, this Court must find that a license was required to execute the flooring installation for the Project and TMS was not qualified.

b) Because the law prohibits an unlicensed contractor from installing floors, this Court must void the contract between Greenville County and TMS.

Through the plain language of Title 40, Chapter 11, the South Carolina legislature prohibits unlicensed contractors from installing floors. To enforce this policy, South Carolina declares contracts void when a contractor performs work without the proper license. This Court should do the same in this case.

For example, in *W & N Constr. Co. v. Williams*, 322 S.C. 448, 472 S.E.2d 622 (1996), the Supreme Court voided a contract due to the contractor's lack of license. The Court stated, "[t]he rationale is that such licensing statutes protect the public and to permit unlicensed contractors to circumvent licensing requirements by payment of a small fine would defeat the legislative intent." *Id*. at 450, 623.

An analogous case dealing with public contracts is *William C. Logan & Assocs. v. Leatherman*, where the Court held that the failure to list a subcontractor in accordance with the procurement code, whether done negligently or intentionally, rendered a bid nonresponsive. 290 S.C. 400, 351 S.E.2d 146 (1986). That failure, though technical, invalidated the bid. *Id*. Here, the defect is more fundamental: the bidder lacked a legal prerequisite to perform the work. (4/10/25 Def. Responses to Reqs. to Admit).

TMS's failure to submit proof of a general contractor's license, an explicit requirement of the bid solicitation, constitutes a fundamental and disqualifying defect. Under *William C. Logan & Assocs.*, such noncompliance is not a trivial or technical oversight; it renders the bid nonresponsive as a matter of law. The defect was clear at the time the bid was submitted and renders the resulting contract legally invalid. To hold otherwise would effectively reduce mandatory licensing requirements to mere procedural suggestions, undermining both the integrity

of the public procurement process and the statutory framework designed to protect it. (Greenville County's Procurement Code at § 7-192).

South Carolina Courts have consistently upheld licensing law. Allowing the TMS contract to stand would contradict a well-established line of South Carolina precedent confirming that unlicensed contractors cannot lawfully perform regulated construction work or benefit from contracts without a valid license. These cases include:

1. *Duckworth v. Cameron*, 270 S.C. 647, 649, 244 S.E.2d 217, 218 (1978) ("Any builder who violates the chapter by entering into a contract for home construction without obtaining the required license simply cannot enforce the contract.");

2. *Wagner v. Graham*, 296 S.C. 1, 370 S.E.2d 95 (Ct. App. 1988) (holding that contractor was precluded from bringing foreclosure action based on contractor's failure to be licensed by state Residential Homebuilders Commission);

3. *Columbia Pools, Inc. v. Moon*, 284 S.C. 145, 146, 325 S.E.2d 540, 540 (1985) ("Columbia Pools was not licensed in South Carolina as a general contractor or residential home builder when the contract was executed. The trial court dismissed the action holding an unlicensed home builder's enforcement suit was barred under S.C. Code § 40–59–130 and *Duckworth v. Cameron,* 270 S.C. 647, 244 S.E.2d 217 (1978). We affirm.");

4. *Lenz v. Walsh*, 362 S.C. 603, 607, 608 S.E.2d 471, 473 (Ct. App. 2005) ("South Carolina courts have held that, pursuant to the statute, a builder who is not licensed at the time he enters into a contract for residential construction may not bring an action to enforce the provisions of the contract.");

5. *Roberta, Inc. v. Tr.*, 274 S.C. 53, 55, 260 S.E.2d 818, 819 (1979) ("Since appellant was an unlicensed builder, it cannot "bring an action" to enforce the provisions of the building contract, including one to recover, as here, for amounts paid by it to third parties in the performance of the contract. This is the scope of the plain language of the statute. We have no authority to change it.").

Although the preceding cases involve private enforcement, they are grounded in the same statutory mandate—licensure is a legal condition to contract, not a technicality that can be waived or

ignored. This Court is bound by this precedent to enforce the licensing requirements of Title 40, Chapter 11.

3. The plain language of the governing statute is unambiguous, so no further analysis is required.

"Appellate courts must follow a statute's plain and unambiguous language, and when the language is clear, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 7–8, 809 S.E.2d 223, 226 (2018). What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. *Id*. When a statute is plain and unambiguous, courts may not look outside its text to override its clear mandate. *Paschal v. State Election Comm'n*, 317 S.C. 434, 436, 454 S.E.2d 890, 892 (1995) ("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.")

Under S.C. Code § 40-11-410(c), flooring installation qualifies as general contracting, as it includes nonstructural renovations like floor installation and finishing. Flooring installers must be licensed for projects over $10,000. S.C. Code § 40-11-30. The work in question was over $10,000. (4/12/25 Hearing Transcript Pgs. 10-11). TMS did not have a license. (4/10/25 Def. Responses to Reqs. to Admit). The analysis is complete, and no further interpretation is needed.

a) The lower court erred by looking outside the statute for guidance, contrary to South Carolina law.

Rather than following the established rules of statutory interpretation, the lower court made a roundabout decision asserting reliance on an agency opinion. This is in error.

First, the lower court did not analyze the statute or its application, as requested by the Declaratory Judgment action. (Pl. Compl ¶ 28; *See also* S.C. Code § 15-53-30.) Instead, the lower court asserted that Appellant had to "show that the County's award to TMS and the County's denial

of Southern Painting's protest was 'arbitrary, unreasonable, in obvious abuse of discretion, or an excess of lawfully delegated power.'" (5/8/25 Order Pg. 9.) The lower court bypassed its obligation to review the application of South Carolina statutes to the Project award.[2] Even operating within the incorrect framework, the lower court overlooked that any interpretation contrary to South Carolina statute would be "an excess of lawfully delegated power." It all comes back to the application of the statute.

Second, South Carolina law does not give deference to agency interpretations contrary to the plain language of the statute. Here, the lower court substituted Greenville County's view of an agency email for the statute itself, an error directly at odds with controlling law. It is well settled that when the plain language of the statute is contrary to the agency's interpretation, the Court will reject the agency's interpretation. *State v. Sweat*, 379 S.C. 367, 384, 665 S.E.2d 645, 655 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010). The lower court was obligated to apply the statute as written. As now-Chief Justice John W. Kittredge explained in *C-Sculptures, LLC v. Brown*, 403 S.C. 53, 57, 742 S.E.2d 359, 361 (2013):

> The term valid is clear and unambiguous, and leaves no room for statutory construction. Respondent admits it did not have the appropriate license, yet attempts to avoid the door-closing effect of section 40–11–370(C) by claiming it was merely under-licensed. The statute manifestly forecloses Respondent's interpretation, as the term valid does not give rise to the slightest ambiguity.

Third, South Carolina has indicated its awareness of the United States Supreme Court's overruling of *Chevron*, and this Court should thus adopt the reasoning in *Loper*. For forty years, *Chevron, U.S.A., Inc. v. Nat. Res. Def. Council, Inc.*, 467 U.S. 837, 104 S. Ct. 2778, 81 L. Ed. 2d 694 (1984), required courts to defer to an agency's interpretation of a statute so long as the statute

[2] Appellant reiterated this requirement in its Motion to Alter or Amend, which was denied. (5/16/25 Mot. to Alter or Amend J.)

was ambiguous, and the agency's interpretation was "reasonable." That framework fundamentally altered the balance of power, permitting executive agencies, not the courts, to have the final word on what the law means. *Id*. But in *Loper Bright Enterprises v. Raimondo*, the Supreme Court rejected this approach. 603 U.S. 369, 144 S. Ct. 2244 (2024). Chief Justice Roberts held that courts need not, and under the Administrative Procedure Act *may not*, defer to an agency's interpretation of the law simply because a statute is ambiguous. *Id*. In short, it's the job of the judges, not bureaucrats to say what the law means. *Id*. Even if a law is unclear, courts must interpret it independently, not just accept an agency's reading. *Id*. The U.S. Supreme Court reminded us that "[t]he Framers appreciated that the laws judges would necessarily apply in resolving those disputes would not always be clear, but envisioned that the final 'interpretation of the laws' would be 'the proper and peculiar province of the courts." *Id.* at 2247 (*quoting* The Federalist No. 78, at 525 (A. Hamilton)). "As Chief Justice Marshall declared in the foundational decision of *Marbury* v. *Madison*, it is emphatically the province and duty of the judicial department to say what the law is." *Id*. at 369, 144 S. Ct. at 2247 (citations omitted).

South Carolina has not explicitly adopted the U.S. Supreme's Court approach yet, currently gives deference to state agency interpretations. *Georgia-Carolina Bail Bonds, Inc. v. Cnty. of Aiken*, 354 S.C. 18, 26, 579 S.E.2d 334, 338 (Ct. App. 2003) ("[A]n opinion or construction of a statute by an agency that is in charge of enforcing the statute should be given great deference.") However, just last year, the Honorable Paula H. Thomas flagged the *Loper Bright Enters* holding. *Colonial Pipeline Co. v. S.C. Dep't of Revenue*, 443 S.C. 448, 458, 905 S.E.2d 129, 134 (Ct. App. 2024), *reh'g denied* (Aug. 19, 2024), *cert. denied* (Feb. 12, 2025). The Court wrote:

> We are cognizant of the recent United States Supreme Court decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S., 144 S.Ct. 2244, 219 L.Ed.2d 832 (2024), which overruled precedent requiring a reviewing court to defer to permissible agency interpretations of the statutes those agencies

> administered, even when a reviewing court might read the statute differently, if the statute was silent or ambiguous with respect to the specific issue at hand.
>
> *Id*. (quotations omitted).

This Court should now adopt the position of the *Loper* decision and confirm that it is the exclusive role of the courts—not an agency—to say what the law is.

Finally, even if South Carolina law is interpreted to allow deference to an agency opinion, that deference would not apply to the email from Ms. Jackson in this case. Again, for deference to come into play, the statute must first be ambiguous, which it is not here. The lower court further erred by deferring entirely to an email sent from an LLR employee offering only the following statement—"Sealants do not require a license from our board…" (1/14/25 Brewer Aff. Pg 3, Ex. C). The email does not address the fundamental question of whether the Project was a flooring installation job (as the RFP states) or just "applying a sealant coating" as Greenville County portrayed. (1/6/25 Brewer Aff. Pg 7, Ex. C). In her response, Ms. Jackson does not analyze the requirements of the Project or make any assertions about the nature of the Project. (1/14/25 Brewer Aff., Pgs. 3-9, Ex. C). Instead, Ms. Jackson simply quotes agency statements without any application of those statements to the question at issue. Then, when asked to clarify specifically whether the project "applying a sealant coating"[3] requires a general contractor's license, Ms. Jackson reiterates that "[s]ealants do not require [licenses]" without any analysis. (1/14/25 Brewer Aff. Pg 3, Ex. C). This informal communication is not subject to agency appeal.

[3] Bob Brewer, the Greenville County Procurement Director, makes assertions contrary to the RFP and the bid responses in this email. The RFP does not seek just a sealant, as discussed in Section A.2. above. TMS's proposal in response is not for just a sealant. (9/20/24 Request for Proposals #25029). And Mr. Brewer's assertion that there is no concrete repair needed directly contradicts the description of the current state of the flooring in the RFP. (*Id*). The inaccurate information provided to LLR cannot give rise to a reliable opinion.

The lower court relied on *Ruocco v. S.C. State Bd. of Registration for Pro. Eng'rs & Land Surveyors*, 314 S.C. 111, 115, 441 S.E.2d 829, 831 (Ct. App. 1994) to state that the "construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." (5/8/25 Order Pg. 8.) This first ignores the requirement that the statute be ambiguous before agency interpretation is consulted. *State v. Sweat*, 379 S.C. 367, 384, 665 S.E.2d 645, 655 (Ct. App. 2008), *aff'd as modified*, 386 S.C. 339, 688 S.E.2d 569 (2010). Further, the email here is not law, regulation, or formal agency interpretation. It does not contemplate the construction of the statute and is not entitled to deference. The lower court wrongfully relied on the email to excuse Greenville County's decision to award a contract to an admittedly unlicensed contractor—an outcome that plainly violates statutory licensing requirements. S.C. Code §§ 40-11-30; (4/10/25 Def. Responses to Reqs. to Admit). Allowing an unlicensed contractor to proceed based on an agency correspondence nullifies the law itself. Any effort to circumvent the unambiguous licensing statutes through informal agency communication is unlawful and must be categorically rejected.

4. Upholding the lower court's ruling would gut licensure law in South Carolina.

If the Court affirms the lower court's reliance on an informal LLR email to excuse compliance with South Carolina's licensing statutes, it will create a dangerous precedent that undermines the entire regulatory structure governing licensed construction. Licensing statutes exist to protect the public, ensure qualified contractors perform the work, and prevent unqualified or unscrupulous actors from taking advantage of loopholes. *See W & N Constr. Co. v. Williams*, 322 S.C. 448, 472 S.E.2d 622 (1996). Allowing counties to rely on informal, non-binding email interpretations invites circumvention. Contractors could skirt the law simply by securing favorable agency correspondence, often based on incomplete or inaccurate descriptions of the work to be

performed and use that to justify working without a license. The statutory requirement of licensure would become optional in practice, eroding the purpose of the licensing framework entirely. And in the case of government contracts, risk public safety and funds as well.

Worse still, this approach creates a blueprint for abuse. A county could intentionally or unintentionally misrepresent the scope of a project in communications with LLR, then rely on the resulting informal opinion to award the job to an unlicensed contractor. This undermines fair competition, places licensed contractors who jump through all the required hoops at a disadvantage, and deprives the public of the protections that licensure is designed to ensure. (Greenville County's Procurement Code at § 7-192). It also removes any meaningful judicial oversight, replacing statutory mandates with agency discretion exercised behind closed doors and outside any formal rulemaking or adjudicatory process. These informal communications could not be appealed within the agency or court system. If such practices are permitted, South Carolina's licensing laws will lose their force, and the integrity of public procurement will suffer in both perception and reality.

B. Because TMS was not registered to do business in South Carolina when the bid was submitted, the contract should be void.

The record is clear that TMS was not registered to do business in South Carolina at the time the bid was submitted to Greenville County. Appellant sought Declaratory Judgment on this issue, which was improperly denied by the Circuit Court. This Court should reverse.

1. Issues of statutory interpretation are reviewed *de novo*.

"The characterization of a declaratory judgment suit depends on the nature of the underlying controversy." *Barnacle Broad., Inc. v. Baker Broad., Inc.*, 343 S.C. 140, 146, 538 S.E.2d 672, 675 (Ct. App. 2000). "We review questions of statutory interpretation de novo." *Books-A-Million, Inc. v. S.C. Dep't of Revenue*, 437 S.C. 640, 642, 880 S.E.2d 476, 477 (2022).

Accordingly, this Court owes no deference to the lower court's interpretation and must independently assess the statutory requirements at issue.

2. TMS was not registered to do business in South Carolina at the time of their bid, which should have voided the bid award.

South Carolina requires businesses to register in South Carolina before operating within the State. S.C. Code Ann. § 33-15-101 states that a foreign corporation "may not transact business in this State until it obtains a certificate of authority from the Secretary of State." The statute is not discretionary. It is a mandatory condition precedent to doing business within the state. TMS expressly acknowledged and agreed to this requirement in the "S.C. Law Clause" it signed as part of its bid submission. (4/11/25 Pl. Mem. in Supp. of Mot. for Decl. J. (Ex. A). That clause requires that "upon award," the contractor must "comply with the laws of South Carolina which require such person or entity to be authorized and/or licensed to do business with this State." *Id*.

By its own signature, TMS bound itself to South Carolina law and jurisdiction, yet ignored the very legal condition of business registration that governs its right to contract with the State. This is not a technicality; it is a legal barrier. The failure to register at the time of bid submission means TMS was not legally eligible to enter into or perform the contract. By the time the award was issued, TMS still had not registered in South Carolina. Nor did it register during the contract negotiation phase.[4] TMS's failure to be registered to do business in South Carolina at the time of the bid, award, and finalization of the contract is a defect Greenville County cannot overlook and one that cannot be cured retroactively.

The Circuit Court dismissed this issue with a hand-waive, indicating non-compliance with this South Carolina law was not a big deal. In fact, the Court wrote, "To the contrary, the only

[4] In fact, TMS did not register with the State of South Carolina until 21 days after this lawsuit was initiated by Southern Painting. (4/9/25 Brewer Aff. (Ex. D.)

consequence for failure to become authorized in South Carolina is a small civil fine and the inability to bring lawsuits in South Carolina courts." (5/8/25 Order Pg. 10.) Permitting this to stand would render § 33-15-101 meaningless and encourage a practice where contractors bid first and worry about compliance only if challenged later. Accordingly, the lower court erred in failing to declare that the contract was void and unenforceable based on TMS's failure to comply with the statutory requirement to be authorized to do business in South Carolina at the time of the award.

C. The Circuit Court's refusal to enjoin the award of a public contract to an unlicensed and unregistered contractor—despite clear violations of South Carolina licensure and registration laws—was a clear abuse of discretion that demands reversal.

An injunction is necessary to prevent Greenville County from violating state law, letting an unlicensed contractor perform work requiring a license. All work must stop until the Project can be awarded to a properly qualified bidder. The Circuit Court disregarded the law of the State by denying Southern Painting's request for an injunction and allowing TMS to work on the Project.

For a preliminary injunction to be granted, the party seeking the injunction must establish that: (1) he would suffer irreparable harm if the injunction is not granted; (2) he will likely succeed on the merits of the litigation; and (3) there is an inadequate remedy at law. *AJG Holdings, LLC v. Dunn*, 382 S.C. 43, 51, 674 S.E.2d 505, 508 (Ct. App. 2009). These requirements were met, and the lower court's ruling must be reversed.

1. Standard of Review.

"Actions for injunctive relief are equitable in nature." *Grosshuesch v. Cramer*, 367 S.C. 1, 4, 623 S.E.2d 833, 834 (2005) (*citing Wiedemann v. Town of Hilton Head*, 344 S.C. 233, 236, 542 S.E.2d 752, 753 (Ct.App.2001)). "In equitable actions, the appellate court may review the record and make findings of fact in accordance with its own view of the preponderance of the evidence." *Id*. (*citing* Doe v. Clark, 318 S.C. 274, 276, 457 S.E.2d 336, 337 (1995). Because this action is

equitable in nature, based solely upon a request for declaratory and injunctive relief, the South Carolina Supreme Court's standard of review as articulated in *Grosshuesch* should apply here.

2. The Circuit Court abused its discretion by incorrectly applying the law and judging Southern Painting's injunction request by the wrong standard.

The Circuit Court incorrectly denied the injunction because it conducted the wrong analysis. To determine the likelihood of success on the merits, the Court looked at whether the County's *decision* should be upheld, rather than determining whether the law was actually followed. (5/8/25 Order.) In part, the Circuit Court relied on *Sloan v. Greenville Cnty.*, 356 S.C. 531, 555–56, 590 S.E.2d 338, 351 (Ct. App. 2003), citing the proposition that it must review Greenville County's decision for arbitrary or capricious action. (5/8/25 Order.). However, *Sloan* actually states that a "*discretionary decision* of a legislative body...should not be upset on appeal unless [they are] arbitrary, unreasonable, in obvious abuse of discretion, or in excess of lawfully delegated power." *Sloan*, 356 S.C. at 555-56 (*citing Smith v. Georgetown County Council,* 292 S.C. 235, 238–39, 355 S.E.2d 864, 866 (Ct.App.1987), *citing Bob Jones Univ. v. City of Greenville,* 243 S.C. 351, 133 S.E.2d 843 (1963)). At issue here is whether a contractor is properly licensed under the laws of the State of South Carolina. This is not a discretionary decision Greenville County's Procurement Office is tasked with determining.

Thus, before getting to an analysis of whether a decision is "arbitrary, oppressive, or capricious," a court must first consider if the government entity has the power in the first place. It is axiomatic that a government entity does not have the power to ignore the laws of South Carolina. Further, only the courts have the power to determine what the law is, so Greenville County's Procurement Office was not acting within its power by making determinations of what the law is.

The issue before the Circuit Court was whether TMS, an unlicensed contractor, could lawfully complete the Project (and thus, whether Southern Painting was likely to succeed on the

merits of its equitable Declaratory Judgment claim regarding the same). This was not an appeal of the Project bid; it was a separate Declaratory Judgment action. Thus, the analysis the Court should have conducted has nothing to do with Greenville County's decision or how it was made. Instead, the Court should have followed the statutory interpretation analysis set forth in Sections A and B above.

Rather than review the law, the Court determined that because Greenville County had "tried" when it made its decision to award the bid to TMS, the decision could not be overturned. (5/8/25 Order). It is irrelevant that Greenville County "made inquiries" with the LLR. Whether Greenville County acted in good faith does not alter the governing statute. Failure to obtain the necessary license not only violates S.C. Code 40-11-30 but also renders the contractor's work invalid. *W & N Const. Co. v. Williams*, 322 S.C. 448, 449, 472 S.E.2d 622, 622 (1996). As discussed in detail above, TMS is not licensed. (4/10/25 Def. Responses to Reqs. to Admit.) Therefore, TMS is barred from performing construction work, including flooring installations. The Circuit Court ignored the applicable law, which even under a heightened abuse of discretion standard warrants reversal. *See, e.g.*, *Ledford v. Pennsylvania Life Ins. Co.,* 267 S.C. 671, 675, 230 S.E.2d 900, 902 (1976) ("An abuse of discretion occurs when a trial court's decision is unsupported by the evidence or controlled by an error of law.")

South Carolina's licensing laws exist to protect public safety by ensuring that only qualified contractors perform construction work. *W & N Const. Co. v. Williams*, 322 S.C. 448, 449, 472 S.E.2d 622, 622 (1996). Awarding a contract to an unlicensed contractor poses an immediate and irreparable risk, which is substandard workmanship. (*See* 1/24/25 Maffett Aff. ¶ 14, 15, 17 and Ex. D). As stated above, it is unlawful for a contractor to preform work without a general contractor's license. *See* S.C. Code § 40-11-370. Employing unlicensed contractors can lead to

dangerous conditions, structural failures, and costly repairs that cannot simply be undone. (1/24/25 Maffett Aff, Ex. D.) Once an unqualified contractor performs work, the damage is already done, making monetary remedies insufficient.

Awarding the Project to an unlicensed contractor inflicts unfair and irreparable economic harm on licensed professionals like Southern Painting. The contractor licensing system exists to ensure lawful competition and protect the integrity of the industry. With the Project underway under the control of an unlicensed contractor, any further work performed makes it less possible to reverse completed work and reallocate the contract. Allowing the unlicensed contractor to proceed deprives Southern Painting and other bidders complying with the law of the opportunity to perform the contract, causing irreparable harm that cannot be remedied by monetary damages alone. Because equity intervenes where the law offers no solution, the absence of a legal remedy makes injunctive relief not only appropriate but imperative to prevent irreparable harm. An immediate injunction is required.

CONCLUSION

Greenville County awarded a public construction contract to an unlicensed and unregistered contractor in direct violation of the controlling statutes S.C. Code § 40-11-30 and S.C. Code § 40-11-370. Greenville County violated that mandate, and the lower court compounded the error by elevating an informal agency email over binding statutory text. This appeal is not about good faith or bureaucratic discretion; it is about whether the law still binds our public institutions. It does. Southern Painting respectfully requests this Court to reverse the lower court, declare the contract void, and require the Project to be rebid in accordance with the law.

[signature page follows]

Respectfully submitted this 22nd day of July 2025.

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