STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets,	)	Case No. 2025CP3200440
	)	
Plaintiff,	)	
	)	
v.	)	**ORDER**
	)	
South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,	)	
	)	
Defendants.	)	
	)	

With ethics complaints pending against her at the South Carolina State Ethics Commission, Plaintiff Ann Peets sued the Commission and Meghan Walker Dayson, in her official capacity as Executive Director of the Commission (collectively, Defendants), in this Court. This matter is before the Court on the parties' cross-motions for summary judgment seeking rulings on Plaintiff's Freedom of Information Act (FOIA)[1] claim and whether she can proceed on the remaining claims without exhausting statutory administrative remedies. For the reasons below, after carefully considering the extensive briefing and arguments of counsel, the Court **GRANTS** Defendants' motion for summary judgment and **DENIES** Plaintiff's motion for summary judgment.

BACKGROUND

Plaintiff was a candidate for Folly Beach City Council in the November 7, 2023 general election. After the election, several opponents filed ethics complaints against Plaintiff for her alleged conduct and campaign in that race. Executive Director Dayson reviewed the complaints and determined they contained facts sufficient to constitute a violation of South Carolina Ethics,

[1] S.C. Code Ann. §§ 30-4-10 through -165.

Government Accountability, and Campaign Reform Act (the State Ethics Act),[2] and an investigation into Plaintiff's conduct ensued.

In letters dated December 13 and 20, 2023, and January 12, 2024, the Commission notified Plaintiff of the complaints filed against her as well as the investigation that would follow. The Commission also informed Plaintiff that she was entitled to representation and to file a written response to the complaints. Plaintiff proceeded without an attorney. Because Plaintiff's use of multiple bank accounts for her campaign was in question, the Commission's staff issued four subpoenas to entities with which Plaintiff banks as part of the investigation. Those subpoenas and their respective responses serve as the basis for most of Plaintiff's claims here.

At the conclusion of the investigation, during a July 18, 2024 meeting in executive session, the Commission found probable cause existed to believe Plaintiff violated the State Ethics Act. It subsequently noticed a merits hearing for February 20, 2025. Plaintiff then retained counsel, who moved for a continuance of the merits hearing on December 19, 2024. The Commission's assistant general counsel opposed the motion for continuance on January 14, 2025. Two days later, Plaintiff filed a motion to dismiss the complaints with the Commission.[3]

Before the Commission's Hearing Panel could rule, however, Plaintiff filed this lawsuit on January 31, 2025, raising the same issues in the still-pending motion to dismiss at the Commission and adding a FOIA claim. Plaintiff amended her complaint and moved for a temporary injunction. She later withdrew the motion because the February 20, 2025 merits hearing was continued pending disposition of this action. On February 27, 2025, the Court held an initial hearing in this

[2] S.C. Code Ann. §§ 8-13-100 through -1520.

[3] The Commission's assistant general counsel filed a response to the motion to dismiss with the Commission's Hearing Panel on February 4, 2025. That motion is still pending at the Commission.

matter via WebEx. *See* S.C. Code Ann. § 30-4-100(A). The Commission then answered Plaintiff's amended complaint. On March 18, 2025, the Court entered an Order assigning this case to the undersigned and set a briefing schedule for dispositive motions.

The parties agreed to file cross-motions for summary judgment on Plaintiff's FOIA claim and Defendants' argument that her remaining claims should be dismissed for failure to exhaust statutory administrative remedies. After the parties filed extensive briefing on their cross-motions for summary judgment, the Court held a hearing on April 17, 2025 at the Lexington County Courthouse. This Order now follows.

STANDARD

Summary judgment is proper when "the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Rule 56(c), SCRCP. In deciding the motion, "the evidence and its reasonable inferences must be viewed in the light most favorable to the nonmoving party." *Baughman v. Am. Tel. & Tel. Co.*, 306 S.C. 101, 115, 410 S.E.2d 537, 545 (1991). When "cross motions for summary judgment are filed, the parties concede the issue before [the Court] should be decided as a matter of law." *Wiegand v. U.S. Auto. Ass'n*, 391 S.C. 159, 163, 705 S.E.2d 432, 434 (2011).

ANALYSIS

I. The Commission's probable cause determination did not violate FOIA.

On July 18, 2024, the Commission—while in executive session—found probable cause to believe Plaintiff violated the State Ethics Act. Plaintiff contends this probable cause determination violated FOIA because it was not made during an open public meeting. *See* S.C. Code Ann. § 30-4-70 ("No action may be taken in executive session except to (a) adjourn or (b) return to public

session."). Defendants, for their part, argue the confidentiality provisions in the State Ethics Act prohibit disclosure of any information related to an ethics complaint before a probable cause determination. For that reason, Defendants argue the Commission cannot vote on probable cause determinations in public. The Court agrees with Defendants.

Deciding "[t]he proper interpretation of a statute" is "a question of law." *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 354 (2022). "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the [General Assembly]." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). "If a statute's language is plain and unambiguous and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning." *Miller v. Doe*, 312 S.C. 444, 447, 441 S.E.2d 319, 321 (1994).

"All rules of statutory construction are subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used, and that language must be construed in light of the intended purposes of the statute." *Amisub of S.C., Inc. v. S.C. Dep't of Health and Env't Control*, 407 S.C. 583, 597, 757 S.E.2d 408, 416 (2014) (quoting *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010)). The Court must read the statute "in a sense that harmonizes with its subject matter and accords with its general purpose." *Town of Mt. Pleasant v. Roberts*, 393 S.C. 332, 342, 713 S.E.2d 278, 283 (2011).

To be sure, FOIA prohibits public bodies from voting in executive session. S.C. Code Ann. § 30-4-70(b). And "FOIA is remedial in nature and should be liberally construed to carry out its purpose." *Evening Post Publ'g Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011) (quoting *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 161, 547 S.E.2d 862, 864–65 (2001)). But as our supreme court has recognized, the General Assembly "established

a comprehensive statutory scheme for regulating the behavior of elected officials, public employees, lobbyists, and other individuals who present for public service" in the State Ethics Act. *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 83 (2013). As relevant here, the State Ethics Act provides a "specific and comprehensive approach," *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 304, 814 S.E.2d 513, 518 (2018), for when and how the Commission may openly discuss and release information related to ethics complaints. *See* S.C. Code Ann. § 8-13-320(10)(g).

Of course, when "one statute address[es] an issue in general terms and another statute deal[s] with the identical issue in a more specific and definite manner, the more specific statute will be considered an exception to, or a qualifier of, the general statute and given such effect." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (quoting *Spectre, LLC v. S.C. Dep't of Health & Env't Control*, 386 S.C. 357, 372, 688 S.E.2d 844, 852 (2010)).

With these principles in mind, the Court cannot begin and end its inquiry with FOIA.[4] *See DomainsNewMedia.com, LLC*, 423 S.C. at 304, 814 S.E.2d at 518 (rejecting the argument that the Court could "look only to FOIA . . . and go no further" because the specific statutes "play[ed] the lead role in [the Court's] disposition"). After all, the operative statute in the State Ethics Act directs that "[a]ll investigations, inquiries, hearings, and accompanying documents are confidential and *only may be released pursuant to this section*." S.C. Code Ann. § 8-13-320(10)(g) (emphasis added). It explains when information related to ethics complaints is no longer confidential, and none of those circumstances arise until *after* a probable cause finding. S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii) (stating information is no longer confidential only "[a]fter dismissal following a

[4] Plaintiff cites several cases considering the FOIA open vote requirement. But none involves FOIA's intersection with a more specific statutory provision, much less a confidentiality provision.

finding of probable cause" or "[a]fter a finding of probable cause"). In fact, a violation of subsection 8-13-320(10)(g) and "wilful release of confidential information is a misdemeanor." *Id.*

Reading these statutes alongside FOIA, the Court thus finds it legally impossible for the Commission to obey the confidentiality requirements of the State Ethics Act, while also complying with FOIA, by making a probable cause determination in an open public meeting. *Cf. Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (per curiam) (stating a court must "not construe the statute in a way which leads to an absurd result or renders it meaningless"). Indeed, with rare exceptions, the Commission cannot even acknowledge the existence of a complaint. *See* S.C. Code Ann. Regs. 52-718.

Other statutes in the State Ethics Act underscore this legal impossibility. Sections 8-13-1170 and -1372, for example, allow the Commission to find "inadvertent and unintentional" errors or omissions on statements of economic interests or campaign disclosures are "technical violations not subject to the provisions of this chapter pertaining to ethical violations." S.C. Code Ann. §§ 8-13-1170(A) & -1372(A). "Technical violations must remain confidential unless requested to be made public" by the filer. *Id.* In those cases, the Commission must first vote to find probable cause, but it can then find the violation of the State Ethics Act is a "technical" one that must remain confidential. *Id.*; *see also* S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii) (stating information relating to ethics complaint becomes public record "[a]fter a finding of probable cause, *except for a technical violation pursuant to Section 8-13-1170 or 8-13-1372*" (emphasis added)).

The Commission also must follow the confidentiality provisions for ethics complaints against members of the General Assembly. Each body has its own Ethics Committee. *See* S.C. Code Ann. § 8-13-510. But when complaints allege facts sufficient to constitute a violation of the State Ethics Act, the Commission is charged with investigating them. S.C. Code Ann. § 8-13-

540(A)(2) & (B). At the conclusion of its investigation into a House or Senate member's conduct, the Commission must vote to make a recommendation of probable cause to the proper Ethics Committee. S.C. Code Ann. § 8-13-540(B)(6). As with all ethics complaints, "[a]ll investigations, inquiries, hearings and accompanying documents are confidential" until after a probable cause determination—or *after a second probable cause finding* if the Ethics Committee asks the Commission for additional investigation—and even then, only certain documents become public. S.C. Code Ann. § 8-13-540(C)(1)–(2). For that reason, the Commission holds discussions and votes on probable cause recommendations regarding legislators in executive session too.

Under Plaintiff's reading, before a probable cause determination, the Commission would have to violate these specific statutes—and the confidentiality provision governing all information related to ethics complaints—to comply with the general requirements of FOIA. *But see Denman*, 387 S.C. at 138, 691 S.E.2d at 468–69 (quoting *Spectre, LLC*, 386 S.C. at 372, 688 S.E.2d at 852). Plaintiff argues the Commission could "deliberate" about probable cause in private but must vote on whether probable cause exists in public by "identifying the case by its number."[5] But Plaintiff overlooks the conundrum this creates.

For one, based on the Court's review, none of the exceptions in FOIA allow the Commission to "deliberate" in executive session. *See* S.C. Code Ann. § 30-4-70(a) (stating "[a] public body may hold a meeting closed to the public for one or more of the following reasons"). The Commission derives this authority from the confidentiality provisions in the States Ethics Act, not FOIA, which require the Commission to keep "all" information relating to an ethics complaint confidential until after a probable cause determination. *See* S.C. Code Ann. § 8-13-320(10)(g). For another, Plaintiff's suggested approach would contravene the requirement that "[t]he existence

[5] Plaintiff declined to take a position on which part of FOIA would allow private deliberation.

of a complaint . . . remain[] confidential unless the Respondent waives confidentiality in writing." S.C. Code Ann. Regs. 52–704(A)(2).

Where, as here, the ethics complaints against Plaintiff contained 45 charges, the Court agrees that a probable cause determination is not as simple as reciting a complaint number. Indeed, the Court questions how the Commission would know what to say in open session—without already knowing the outcome in executive session—to comport with the confidentiality requirement. *See* S.C. Code Ann. § 30-4-70(b) ("The members of a public body may not commit the public body to a course of action by a polling of members in executive session."). The Commission would have had to take a straw poll in executive session or describe and identify each charge or group of like-charges in open session. Either scenario would force the Commission to violate FOIA just to comply with it or else violate the State Ethics Act. *But see Florence Cnty. Democratic Party*, 398 S.C. at 128, 727 S.E.2d at 420.

Yet the Court "must presume that the General Assembly is familiar with existing legislation," and "statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative." *Amisub of S.C., Inc.*, 407 S.C. at 598, 757 S.E.2d at 416; *see also Joiner ex rel. Rivas v. Rivas*, 342 S.C. 102, 109, 536 S.E.2d 372, 375 (2000) ("[S]tatutes dealing with the same subject matter . . . must be construed together, if possible, to produce a single, harmonious result."). The "plain and unambiguous," *Miller*, 312 S.C. at 447, 441 S.E.2d at 321, reading of FOIA and the State Ethics Act together "render[s] both operative," *Amisub of S.C., Inc.*, 407 S.C. at 598, 757 S.E.2d at 416, and "produces a single, harmonious result," *Rivas*, 342 S.C. at 109, 536 S.E.2d at 375, that requires confidentiality of all information relating to ethics complaints until after a probable cause determination. *Cf.* S.C. Code Ann. § 30-4-40(a)(4) (exempting "[m]atters specifically exempted from disclosure by statute or law").

This reading finds support elsewhere in the State Ethics Act, too, in provisions requiring the Commission to conduct later steps of an ethics proceeding in public. Section 8-13-320(10)(j) provides "if a hearing is to be held" on the merits, "the hearing[] must be open to the public." But the same is not true for probable cause determinations. *See* S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii). If all other stages of an ethics investigation had to be open to the public, the General Assembly would have said so just as it did for merits hearings. It did not.[6] *Cf. Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 (stating "to express or include one thing implies the exclusion of another, or of the alternative"). After a probable cause determination, however, except for technical violations, the Commission can comply with FOIA's open vote requirement without violating the confidentiality provision in the States Ethics Act. *Cf. Rivas*, 342 S.C. at 109, 536 S.E.2d at 375.

Accordingly, the Court finds the Commission did not violate FOIA by following the specific confidentiality requirements in the State Ethics Act when it found probable cause on the charges against Plaintiff in executive session.[7]

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[6] The General Assembly has amended the State Ethics Act many times since its original enactment in 1991. *See, e.g.*, 1993 Act No. 184; 1995 Act No. 6; 2003 Act No. 76; 2006 Act No. 387; 2008 Act No. 245; 2011 Act No. 1; 2016 Act No. 282. Until 2017, even with the same FOIA provisions on open public meetings and executive session in place, the statute on merits hearings provided "[t]he hearings must be held in executive session unless the respondent requests an open hearing." S.C. Code Ann. § 8-13-320(10)(j) (2011). At that time, the Commission's interpretation of the confidentiality provision, as well as its practice determining and voting on probable cause in executive session, was in place too. In amending the State Ethics Act without addressing this, the General Assembly necessarily condoned the Commission's interpretation and practice. *Cf. Gilstrap v. S.C. Budget & Control Bd.*, 310 S.C. 210, 215, 423 S.E.2d 101, 104 (1992) (citing with approval *Grove City College v. Bell*, 465 U.S. 555 (1984), in which the Supreme Court of the United States recognized reenactment of a statute with knowledge of the administrative interpretation thereof is a strong indication of legislative approval of that interpretation).

[7] The Court finds it unnecessary to address the parties' arguments on how other state agencies may vote on issues under their various confidentiality statutes. The specific statute at issue here is in the State Ethics Act, not other provisions of the Code governing different agencies.

II. The Court finds Plaintiff failed to exhaust her exclusive statutory administrative remedies on the remaining claims, and no exception to the exhaustion doctrine applies.

The amended complaint also seeks declarations that the Commission's staff (1) exceeded its authority by issuing subpoenas to banking institutions outside of South Carolina in investigating Plaintiff's case, (2) violated Plaintiff's right to privacy by obtaining her bank records through those subpoenas, and (3) violated Plaintiff's due process rights by not giving her notice of the subpoenas before obtaining the bank records. Although Defendants make a compelling argument that the Commission has exclusive jurisdiction over these issues until a final ruling, *see Haley*, 404 S.C. at 325, 745 S.E.2d at 84, the Court need not answer that question now. Instead, the Court declines to rule on the merits of these claims because Plaintiff failed to exhaust her administrative remedies before pursuing this lawsuit, and no exceptions apply.

A. Plaintiff was required to exhaust her statutory administrative remedies.

"[I]t is well settled a court ordinarily will refuse to grant a declaratory judgment where a special statutory remedy has been provided." *Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 527, 520 S.E.2d 339, 351 (Ct. App. 1999). Declaratory "[r]elief is not generally available to one who has not exhausted administrative remedies." *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 319 S.C. 388, 390, 461 S.E.2d 819, 821 (1995). The Uniform Declaratory Judgments Act "does not create substantive rights," *Felts v. Richland Cnty.*, 299 S.C. 214, 216, 383 S.E.2d 261, 262–63 (Ct. App. 1989), "has its limits," *Sunset Cay, LLC v. City of Folly Beach*, 357 S.C. 414, 423, 593 S.E.2d 462, 466 (2004), and "may not be invoked to avoid or circumvent the [General Assembly]'s exclusive method for challenging" certain matters, *Tourism Expenditure Rev. Comm. v. City of Myrtle Beach*, 403 S.C. 76, 82, 742 S.E.2d 371, 374 (2013).

By way of background, under the State Ethics Act, a merits hearing must be held before three Commission members in accordance with the Administrative Procedures Act. S.C. Code

Ann. § 8-13-320(10)(i)–(j). One of those members, designated as Panel Chair, "shall have the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing." S.C. Code Ann. Regs. 52-713(A). "No later than sixty days after the conclusion of a hearing," "the Hearing Panel must determine whether a violation of the chapter has occurred, the commission panel must set forth its determination in a written decision with findings of fact and conclusions of law." S.C. Code Ann. § 8-13-320(10)(k).

"Within ten days after" that, "a respondent may apply to the commission for a full commission review of the decision made by the commission panel." S.C. Code Ann. § 8-13-320(10)(m); *see also* S.C. Code Ann. Regs. 52-801 (allowing "Full Commission Review" of an erroneous "finding of fact or conclusion of law" from the Hearing Panel). An order against a respondent is not final until Full Commission Review occurs. *Id.* ("This review is the final disposition of the complaint before the commission.").

Only after following that procedure is the "party who has exhausted all administrative remedies available within the agency and who is aggrieved by a final decision in a contested case [] entitled to judicial review." S.C. Code Ann. § 1-23-380. "An appeal to the court of appeals, pursuant to Section 1-23-380 and as provided in the South Carolina Appellate Court Rules, stays all actions and recommendations of the commission unless otherwise determined by the court." S.C. Code Ann. § 8-13-320(10)(m).

Here, currently pending before the Commission's Hearing Panel is Plaintiff's motion to dismiss, which raises the same issues as the second, third, and fourth causes of action in the amended complaint. In ethics cases, a motion to dismiss is a "preliminary," S.C. Code Ann. Regs. 52-713(A), matter necessary to conduct the hearing in the first instance. The Panel Chair was scheduled to hear Plaintiff's motion to dismiss before the merits hearing on February 20, 2025.

But Plaintiff filed this action before the Commission's Hearing Panel could rule on the motion. It is thus undisputed that Plaintiff has not exhausted her administrative remedies. The only question, then, is whether an exception to the exhaustion requirement applies.

B. No exception to the exhaustion doctrine applies.

"The general rule is that while there are several exceptions that may be applied to the judicially-imposed exhaustion requirement, those that apply to a statutory requirement are few." *Ward v. State*, 343 S.C. 14, 18, 538 S.E.2d 245, 247 (2000). "When the exhaustion of remedies is statutorily mandated, as it is here, legislative intent prevails." *Id.* at 18–19, 538 S.E.2d at 247.

According to Plaintiff, exhaustion was not required because she is raising legal issues. The cases Plaintiff cites, however, do not create an exception on that ground. *See Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994); *Meredith v. Elliott*, 247 S.C. 335, 346, 147 S.E.2d 244, 249 (1966). Agencies handle legal questions every day. And because an agency can "rule on whether a party's constitutional rights have been violated," "merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling." *Ward*, 343 S.C. at 18, 538 S.E.2d at 24. What is more, the Commission's ruling is subject to judicial review. *See* S.C. Code Ann. § 8-13-320(9)(m) (citing S.C. Code Ann. § 1-23-380).

As for the recognized exceptions, the Court finds none applies to Plaintiff's claims. One exception "exists when a party demonstrates that pursuit of them would be a vain or futile act." *Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 75, 902 S.E.2d 41, 48 (Ct. App. 2024) (quoting *Ward*, 343 S.C. at 19, 538 S.E.2d at 247), *cert. denied* (S.C. Sup. Ct. Nov. 14, 2024). Another exception exists "if the issue is one that cannot be ruled upon by the administrative body."[8]

[8] One additional exception arises when a plaintiff challenges the constitutionality of a statute or regulation. *See Robinson*, 443 S.C. at 75, 79, 902 S.E.2d at 48, 50 (asserting "general rule" that "a court may decide the case without waiting for an administrative ruling" did not apply because

Id. (quoting *Charleston Trident Home Builders, Inc. v. Town Council of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006)).

Starting with the former, to demonstrate futility, a plaintiff must show "the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.'" *Robinson*, 443 S.C. at 75, 902 S.E.2d at 48 (quoting *Cox v. S.C. Educ. Lottery Comm'n*, 441 S.C. 209, 221, 893 S.E.2d 342, 348 (Ct. App. 2023)). Here, the Commission has ruled on nothing except that probable cause exists to believe Plaintiff violated the State Ethics Act.[9] Further, as Executive Director Dayson attested, the Commissioners were not provided copies of subpoenas, or the responses, in making that determination. In other words, the Commission has not considered the propriety of the subpoenas—the crux of Plaintiff's amended complaint.

At the hearing, Plaintiff's counsel argued what he thought would have been included in the packet the Commission reviewed while voting on probable cause. Yet "statements by counsel are not evidence." *Landry v. Landry*, 430 S.C. 153, 163, 843 S.E.2d 491, 496 (2020). And "speculation and conjecture," *McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 389, 684 S.E.2d 566, 570 (Ct. App. 2009), is insufficient to defeat a properly supported motion for summary judgment. *See* Rule 56(e), SCRCP; *see also Nelson v. Piggly Wiggly Ctr., Inc.*, 390 S.C. 382, 390, 701 S.E.2d 776, 780 (Ct. App. 2010) (holding a nonmoving party may not rely on speculation to defeat

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the "sole issue posed in a particular case [was not] the constitutionality of a statute"). Because that is not at issue here, the cases Plaintiff cites—most of which are First Amendment pre-enforcement actions—are inapposite. *See S.C. Citizens for Life, Inc. v. Krawcheck*, 301 F. App'x 218 (4th Cir. 2008); *Legacy All., Inc. v. Condon*, 76 F. Supp. 2d 674 (D.S.C. 1999); *Carolinians v. Krawcheck*, No. 3:06-01640-MJP, 2009 U.S. Dist. LEXIS 151955 (D.S.C. Mar. 25, 2009).

[9] This determination equates to "a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation" of the State Ethics Act. S.C. Code Ann. § 8-13-320 (10)(i). A merits ruling, on the other hand, is based on a "preponderance of evidence" showing "the facts required to find a violation," S.C. Code Ann. Regs. 52–714(B), presented at a duly noticed public hearing with adversarial testing. *See* S.C. Code Ann. § 8-13-320(j).

summary judgment). There is no genuine issue of material fact: Executive Director Dayson's undisputed affidavit proves the Commissioners did not consider the subpoenas' propriety.

Because the Commission has not taken a hard-and-fast position on these issues that would render "an adverse ruling a certainty," *Robinson*, 443 S.C. at 75, 902 S.E.2d at 48, the futility exception to the exhaustion requirement does not apply here.[10] *See Smith*, 336 S.C. at526–27, 520 S.E.2d at 350–51 (holding a party's belief "even with good reason[] that [the agency would] reject her claim[] d[id] not establish futility as a basis for excusing exhaustion in the absence of a definitive statement by the agency administrator").

Turning to the latter, Plaintiff argues the Commission lacks the power to determine whether staff exceeded its authority in issuing subpoenas and violated her privacy and due process rights in doing so. But these are precisely the issues courts have held are not excepted from exhaustion. *See Robinson*, 443 S.C. at 78–79, 902 S.E.2d at 49–50 (requiring exhaustion despite claims the agency "acted outside of its authority"); *Ward*, 343 S.C. at 18, 538 S.E.2d at 247 ("merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling").

The Commission can consider the propriety of a subpoena issued in an ethics investigation. It has authority to "conduct investigations, inquiries, and hearings" into ethics complaints, S.C. Code Ann. § 8-13-320(10), and "issue subpoenas for the procurement of" things "relevant to the agency's investigation by approval of the chairman," S.C. Code Ann. § 8-13-320(10)(f); *see also* S.C. Code Ann. Regs. 52-705(C)(1). Further, the Panel Chair has broad authority to hear issues

[10] Plaintiff also argued, without citation to authority, that futility applies because the Commission took a position in its answer. The Court respectfully disagrees. One cannot establish futility by suing an agency and forcing it to take a position in defense of the lawsuit. *See Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs.*, 724 S.E.2d 386, 390 (Ga. 2012) (defendant's "position in this lawsuit does not establish futility" (quoting *Davenport v. Harry N. Abrams, Inc.*, 249 F.3d 130, 134 (2d Cir. 2001)). If that were the case, the futility exception would always swallow the exhaustion rule, encouraging forum-shopping in contravention of legislative intent.

relating to ethics complaints in an ethics proceeding. *See* S.C. Code Ann. § 8-13-320(j) (stating hearing must be conducted in line with the Administrative Procedures Act); S.C. Code Ann. Regs. 52-713(A) (stating the Panel Chair "shall have the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing"). This includes questions on the admissibility of evidence, which the Hearing Panel will decide in due course as it considers the ethics complaints against Plaintiff.[11] *See* S.C. Code Ann. § 1-23-330 ("[i]n contested cases" "the rules of evidence as applied in civil cases in the court of common pleas shall be followed").

If the Commission's staff "exceeded its lawfully conferred authority in issuing" subpoenas or violated Plaintiff's constitutional rights, the Commission's Hearing Panel can decide those issues first.[12] And if suppression or exclusion of the challenged evidence is appropriate, the Hearing Panel can make those rulings too. *See* S.C. Code Ann. Regs. 52-713(A) (stating the Panel Chair "shall have the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing"); S.C. Code Ann. § 1-23-330 ("[i]n contested cases" "the rules of evidence as applied in civil cases in the court of common pleas shall be followed"). The Court therefore finds this exception does not excuse Plaintiff's failure to exhaust.

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[11] In essence, Plaintiff seeks interlocutory review before obtaining an adverse ruling from the Commission on the issues relating to the investigative subpoenas. *But see, e.g.*, *State v. Looper*, 412 S.C. 363, 366, 772 S.E.2d 516, 517 (Ct. App. 2015) ("order denying a motion to suppress evidence . . . is an interlocutory order that is not immediately appealable"); *Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 241, 439 S.E.2d 852, 853 (1994) ("Discovery orders . . . are not immediately appealable."); *Ex parte Wilson*, 367 S.C. 7, 13, 625 S.E.2d 205, 208 (2005) ("order directing a nonparty to submit to discovery is not immediately appealable"); *Levi v. N. Anderson Cnty. EMS*, 409 S.C. 374, 381, 762 S.E.2d 44, 48 (Ct. App. 2014) ("Courts 'cannot review a decision that has not been made.'" (quoting *Lee v. Bondex, Inc.*, 406 S.C. 97, 103, 749 S.E.2d 155, 158 (Ct. App. 2013))); *McClendon v. S.C. Dep't of Hwys. & Pub. Transp.*, 313 S.C. 525, 526, 443 S.E.2d 539, 540 (1996) ("denial" of a motion to dismiss "is not immediately appealable").

[12] Because Plaintiff does not question the Commission's jurisdiction to consider these issues, the other cases she cites for that proposition are inapplicable. *See Ford v. State Ethics Comm'n*, 344 S.C. 642, 545 S.E.2d 821 (2001); *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 151 S.E.2d 849 (1966).

* * *

"When the exhaustion of remedies is statutorily mandated, as it is here, legislative intent prevails." *Ward*, 343 S.C. at 18–19, 538 S.E.2d at 247. Mindful that "'[g]ratuitous interference' in the administrative process should be avoided," *Smith*, 336 S.C. at 527, 520 S.E.2d at 351 (quoting *Williams Furniture Corp. v. S. Coatings & Chem. Co.*, 216 S.C. 1, 7–8, 56 S.E.2d 576, 579 (1949)), the Court declines to wade in at this juncture. Plaintiff failed to exhaust her statutory remedies before pursuing judicial review, and no exceptions apply. Because the Commission has not ruled on the issues raised here, the Court finds dismissal without prejudice is appropriate.

III. The State Ethics Act provides Plaintiff an adequate remedy at law.

Plaintiff's last two causes of action seek a writ of prohibition and a mandatory preliminary injunction prohibiting the Commission from moving forward with the ethics proceeding against her while this lawsuit is pending.

For all the reasons above, the Court denies Plaintiff's requests for equitable relief because she has an adequate legal remedy. *See New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199–200, 187 S.E.2d 794, 796 (1972) (stating writ of prohibition will not lie when "an adequate and applicable remedy by appeal, writ of error, certiorari, or other prescribed methods of review are available"); *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004) (requiring an inadequate legal remedy injunction to issue). Plaintiff can raise (and has raised) the same issues at the Commission. If necessary, she can seek judicial review of those decisions. *See* S.C. Code Ann. § 8-13-320(9)(m) (citing S.C. Code Ann. § 1-23-380).

Plaintiff's argument on inadequacy is that she will not be able to appeal a decision on the motion to dismiss until after her bank records have already been introduced into evidence at a public hearing. But "denial" of a motion to dismiss "is not immediately appealable." *McClendon*,

313 S.C. at 526, 443 S.E.2d at 540. And even if the Hearing Panel denies her motion to dismiss, the Court cannot speculate on what may be introduced at the merits hearing. *Cf. In re Eleanor McCarthy Lenahan Tr.*, 428 S.C. 598, 605, 836 S.E.2d 793, 797 (Ct. App. 2019) ("A party may not create a genuine issue of material fact through speculation or guesswork."). Importantly, as the Commission points out, any records introduced "must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy." S.C. Code Ann. § 8-13-320(g)(ii).

Because the legal remedy prescribed by the General Assembly is adequate, Plaintiff is not entitled to a writ of prohibition or mandatory injunction.

CONCLUSION

In sum, the Commission did not violate FOIA by confidentially making a probable cause determination on the ethics charges against Plaintiff as required under the State Ethics Act. *See* S.C. Code Ann. § 8-13-320(10)(g). As for her remaining claims, Plaintiff failed to exhaust her statutorily required administrative remedies—which are legally adequate—before seeking judicial review. And no exception to the exhaustion requirement applies.

The Court therefore **GRANTS** summary judgment for Defendants, **DENIES** Plaintiff's cross-motion for summary judgment, **DISMISSES** Plaintiff's FOIA claim and requests for a writ of prohibition and mandatory injunction with prejudice, and **DISMISSES** her remaining claims seeking declaratory relief without prejudice for failure to exhaust.

IT IS SO ORDERED.

William P. Keesley, Chief Administrative Judge
Court of Common Pleas for Lexington County
Eleventh Judicial Circuit of South Carolina

Lexington Common Pleas

Case Caption: Ann Peets VS South Carolina State Ethics Commission , defendant, et al

Case Number: 2025CP3200440

Type: Order/Summary Judgment

Circuit Judge (Code #2050)

s/ William P. Keesley