EXHIBIT 3

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF RICHLAND	)	C/A NO.: 2023-CP-40-01850
South Carolina Public Interest Foundation, and John Sloan, individually and on behalf of all others similarly situated,	)	
Plaintiffs,	)	**AMENDED ORDER**
vs.	)	
South Carolina State Law Enforcement Division, and Mark Keel, in his official capacity as Chief of the South Carolina State Law Enforcement Division,	)	
Defendants.	)	

Before the Court are cross-motions for summary judgment filed by Plaintiffs South Carolina Public Interest Foundation and John Sloan, individually and on behalf of all others similarly situated (collectively, "Plaintiffs"), and Defendants South Carolina Law Enforcement Division and Mark Keel, in his official capacity as Chief of the South Carolina Law Enforcement Division (collectively, "SLED"). This case is a challenge to SLED's operation of an automated license plate reader ("ALPR") database—a database that SLED maintains as a resource for law enforcement when criminal investigations or other public safety emergencies arise. The parties agree there are no genuine issues of material fact, and the Court can decide the three principal issues presented as a matter of law: (1) whether SLED possesses the requisite legislative authorization to operate the ALPR database; (2) if so, whether such legislation violates the non-delegation doctrine; and (3) whether SLED Policy 13.40 ("Policy 13.40") governing use of the ALPR database violates the Administrative Procedures Act ("APA").

The Court held a hearing on the parties' cross-motions for summary judgment on April 7, 2025. The Court has carefully considered the parties' motions and extensive briefing, the arguments offered during the hearing, and the relevant law. For the reasons set forth below, the Court **DENIES** Plaintiffs' motion for summary judgment and **GRANTS** SLED's motion for summary judgment.

BACKGROUND

I. Procedural History

As noted above, this lawsuit is a challenge to SLED's operation of the ALPR database. Plaintiffs first attempted to bring this challenge in the original jurisdiction of the Supreme Court of South Carolina. (Appellate Case No. 2022-001613). After the Supreme Court denied Plaintiffs' petition for original jurisdiction, Plaintiffs filed their complaint for declaratory and injunctive relief with this Court on April 11, 2023. In their complaint, Plaintiffs seek declarations that (1) SLED lacks legislative authority to operate the ALPR database, Compl. ¶¶ 63-77; (2) alternatively, any statutory authorization for the ALPR database violates the non-delegation doctrine, *id.* ¶¶ 78-87; and (3) Policy 13.40 violates the APA, *id.* ¶¶ 88-100. Plaintiffs also request an injunction preventing SLED from operating the ALPR database. Before the Court are the parties' cross-motions for summary judgment.

II. The Undisputed Facts

A. ALPRs Generally and the Purpose of the ALPR Database

As the Court noted above, the parties agree there are no genuine issues of material fact concerning SLED's operation of the ALPR database. ALPR systems are cameras linked with software that allows them to identify and read license plates on vehicles along public roadways. The ALPR systems capture a digital image of the vehicle's license plate and transmit that image

to the database along with the date, time, and geographical coordinates of the image capture. The ALPR systems also collect limited information about the vehicle like make, model, and color. The information ALPR systems collect is "anonymous"; they do not identify the individual driving the vehicle.

License plate "reads" are stored in the database for one (1) year from the date of their capture.[1] As of February 7, 2025, the ALPR database contained 141,818,757 reads. In connection with a criminal investigation or public safety emergency, law enforcement personnel with user credentials can log onto the ALPR database and search by license plate number or vehicle characteristics to identify a vehicle and/or vehicle location. Additionally, the ALPR database features a "hot list" of license plate numbers associated with stolen cars, AMBER alerts, and vehicles owned by persons of interest in a crime. If an ALPR feeding into the database detects a possible license plate read from the "hot list," the system will send an alert to specified officers.

Although ALPRs collect data indiscriminately, use of the ALPR database is strictly "restricted to public safety-related missions." Policy 13.40 at A.1. This means law enforcement officers are only permitted to search the database in connection with criminal investigations and other public safety emergencies like AMBER alerts and missing person situations. The record contains evidence of numerous instances where the ALPR database has assisted law enforcement in these situations. SLED Ex. 5. Importantly, there is no evidence in the record of any misuse of the ALPR database for non-law enforcement purposes.[2]

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[1] SLED previously stored license plate reads in the database for a three (3) year period. In June 2024, SLED reduced the retention period for license plate reads from three years to one year.

[2] Suggesting otherwise, Plaintiffs only reference a *Post & Courier* article discussing a source's statement about "one case where ALPRs were used to track the whereabouts of [a] partner by falsely reporting the partner as missing." Eric Connor, *Greenville Adding More Cameras to Read License Plates, Raising Questions of Oversight, Privacy,* The Post & Courier (July 16, 2022); (Pl.

B. SLED's Role in Operating the ALPR Database

The vast majority of data that feeds the ALPR database is collected by other law enforcement entities in the State. Specifically, over 40 law enforcement entities contribute to the database via approximately 125 ALPR systems. SLED operates only 6 ALPR systems—less than 5% of the total number of ALPR systems contributing to the database. Accordingly, SLED's primary responsibilities in operating the ALPR database are to house the data collected by other law enforcement agencies and to provide technical support and oversight on use of the ALPR database. Indeed, SLED analysts frequently assist local law enforcement with searching the ALPR database during criminal investigations and other public safety emergencies.

SLED also controls and limits access to the ALPR database. Access is restricted to state and local law enforcement entities, as well as certain federal entities like the Bureau of Alcohol, Tobacco, Firearms and Explosives and the U.S. Immigration and Customs Enforcement. The only private entity with access to the database is NDI, the company that provides technical support for SLED's operation of the database. To gain access to the database, a prospective user must (i) demonstrate that he or she is National Crime Information Center (NCIC) certified, (ii) submit a SLED CJIS form completed by his or her law enforcement agency's Terminal Agency Coordinator, and (iii) receive verification from SLED.

SLED also regulates use of the database to ensure that all searches serve legitimate public safety or criminal investigation purposes. SLED trains officers on proper use of the ALPR database and performs routine audits to ensure all searches serve legitimate law enforcement purposes. Any misuse of the ALPR database results in disciplinary action by SLED and

Ex. 30). Even assuming this statement is admissible for purposes of resolving the parties' motions, there is nothing in the article that suggests this incident occurred in South Carolina.

termination of access to the database. Misuse of the database also subjects officers to penalties under state and federal laws and regulations. *See, e.g.,* S.C. Code of Regulations R. 73-25; 28 C.F.R. Part 20.

III. The Scope of Plaintiffs' Challenge

Again, Plaintiffs challenge SLED's operation of the ALPR database on three grounds. Plaintiffs argue that SLED lacks legislative authorization to operate the ALPR database or, alternatively, that any legislative authorization violates the non-delegation principle. Plaintiffs also contend that Policy 13.40 violates the APA. Although Plaintiffs' lawsuit turns on these three somewhat narrow issues, Plaintiffs attempt to color their position with additional, broader arguments. Plaintiffs contend (i) there are "significant privacy implications" associated with ALPR technology, (ii) the Court's ruling in this case will govern or otherwise apply to SLED's ability to adopt new surveillance technologies, and (iii) specific legislation should control law enforcement's ability to utilize ALPR technology, as the General Assembly is in the best position to "weigh the tradeoffs" associated with this technology. The Court addresses these background arguments before turning to the three primary issues raised in Plaintiffs' lawsuit.

As to Plaintiffs' "privacy" argument, the Court is not insensitive to the concerns of citizens like Plaintiff Sloan who would prefer not to have their license plate information stored in the ALPR database. The Court is also mindful of Plaintiffs' argument that ALPR systems present a potential for misuse by law enforcement officers with access to the data they collect. However, these concerns are largely alleviated by the anonymous nature of ALPR technology and the controls SLED places on use of the ALPR database. The record reflects these controls have been effective in ensuring proper use of the ALPR database in South Carolina, as there is no evidence of any misuse here. Additionally, although Plaintiffs have not challenged SLED's operation of the ALPR

database under the Fourth Amendment or South Carolina's constitutional right to privacy, S.C. Const. art. 1 § 10, the "nearly uniform consensus" of courts that have evaluated the constitutionality of ALPRs have held their uses are do not constitute Fourth Amendment searches. *Scholl v. Illinois State Police*, No. 24-CV-4435, 2025 WL 964143, at *13 (N.D. Ill. Mar. 31, 2025) (collecting cases). Therefore, in analyzing the issues raised in this case, Plaintiffs' general argument about the privacy implications associated with ALPRs has limited significance.

Plaintiffs' arguments respecting potential other surveillance technologies also have little weight. Although Plaintiffs assert that the Court's ruling in this case will speak to SLED's ability to utilize other new technologies, such as facial recognition software, the Court's role is not to issue an advisory opinion on matters that are not before the Court. *Shasta Beverages (A Div. of Consol. Foods Corp.) v. S.C. Tax Comm'n*, 280 S.C. 48, 56, 310 S.E.2d 655, 659 (1983). The primary question in this case is whether SLED's operation of the ALPR database is sufficiently authorized by existing legislation. Any challenges to other technologies that law enforcement may or may not choose to adopt in the future should be resolved on a case-by-case basis.

Finally, Plaintiffs' arguments as to the desirability of specific legislation governing the use of ALPR technology in South Carolina are also largely irrelevant to the issues in this case. While Plaintiffs contend the General Assembly *should* make the initial determination as to whether SLED can operate the ALPR database, any rule that would require specific legislation prior to law enforcement's adoption of policing technologies would have significant negative consequences. *See S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 595, 86 S.E.2d 466, 470 (1955) (discussing the flexibility necessary in legislation relating to "policing regulations" (citation omitted)); *see also Davis v. Kansas Dep't of Revenue*, 843 P.2d 260, 263 (Kan. 1992) (noting "all specifics of police enforcement methods need not be legislated").

Additionally, a ruling from this Court enjoining SLED's operation of the ALPR database is not a prerequisite to the General Assembly passing ALPR legislation. As Plaintiffs note, a bill regulating ALPR technology was introduced in the House of Representatives this year. See H. 4013, 2025-2026 Gen. Assemb., 126th Sess. (S.C. 2025). Thus, the Court's decision in this case in no way prevents the General Assembly from enacting legislation governing SLED's operation of the ALPR database if it chooses to do so.

LEGAL STANDARD

"When parties file cross-motions for summary judgment, the issue is decided as a matter of law." *United Servs. Auto. Ass'n v. Pickens*, 434 S.C. 60, 64, 862 S.E.2d 442, 444 (2021). "The question of statutory interpretation is one of law for the court to decide." *Alltel Commc'ns, Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870 (2012). "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

ANALYSIS

As the Court has noted above, this lawsuit presents three legal issues for determination. Prior to addressing those issues, however, the Court must consider a threshold issue raised by the parties: whether Plaintiffs possess standing to challenge SLED's operation of the ALPR database. Plaintiffs contend they have public importance standing to do so, *see, e.g.*, *S.C. Pub. Int. Found. v. Wilson*, 437 S.C. 334, 341, 878 S.E.2d 891, 895 (2022) (discussing public importance standing), and they further contend Plaintiff Sloan possesses constitutional standing. SLED disagrees. Courts typically address standing prior to determining the merits of a plaintiff's claims. In this case, however, it is unnecessary to do so. Even assuming Plaintiffs have standing to challenge

SLED's operation of the ALPR database, Plaintiffs' claims fail on the merits. *See Bodman v. State*, 403 S.C. 60, 69, 742 S.E.2d 363, 367 (2013) (declining to decide whether a plaintiff had standing under the public importance doctrine where his claims failed on the merits). The Court now turns to the issues at hand.

I. SLED's operation of the ALPR database is legislatively authorized.

As a product of our separation of powers doctrine, S.C. Const. art. 1 § 8, executive agency action must be authorized by statute. *See Hampton v. Haley*, 403 S.C. 395, 403-04, 743 S.E.2d 258, 262 (2013); *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991). Explicit authorization, however, is not required. So long as the General Assembly has either "expressly conferred or necessarily implied" the relevant authority through statute, the agency action is permissible. *Captain's Quarters*, 306 S.C. at 490, 413 S.E.2d at 14. Indeed, agency action is deemed *ultra vires* only where such express or implied authorization is wholly lacking, or where agency action violates a legislative mandate. *See S.C. Pub. Int. Found. v. S.C. Dep't of Transp.*, 421 S.C. 110, 123-24, 804 S.E.2d 854, 861-62 (2017).

Here, Plaintiffs do not contend SLED's operation of the ALPR database violates any statutory provision. Rather, Plaintiffs argue SLED's operation of the ALPR database is *ultra vires* because no statutory provision explicitly or implicitly authorizes it. In response, SLED identifies two sources that implicitly authorize its operation of the ALPR database: (i) S.C. Code Ann. § 23-3-15(A)(9) and (ii) S.C. Code Ann. § 23-3-15(A)(4) and S.C. Code Ann. § 23-3-110. The Court addresses these provisions in turn.

A. S.C. Code Ann. § 23-3-15(A)(9)

Subsection 23-3-15(A)(9) provides as follows:

> In addition to those authorities and responsibilities set forth in this chapter, the South Carolina Law Enforcement Division shall have specific and exclusive

> jurisdiction and authority statewide, on behalf of the State, in matters including but not limited to the following functions and activities: . . . other activities not inconsistent with the mission of the division or otherwise proscribed by law.

S.C. Code Ann. § 23-3-15(A)(9). In support of its argument that this subsection authorizes the ALPR database, SLED relies on its mission statement, which provides, "The primary mission of the State Law Enforcement Division is to provide quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state as directed by the Governor and Attorney General."[3] SLED argues that because its operation of the ALPR database involves the provision of technical support to local law enforcement—specifically, storing data collected by other agencies and assisting agencies in searching the database in criminal investigations—it is authorized by subsection 23-3-15(A)(9).

Plaintiffs raise two arguments in response to SLED's position. Plaintiffs first take issue with SLED's reliance on a mission statement posted on its website. Plaintiffs contend SLED cannot use a "self-described" mission statement to expand the authority the General Assembly provided SLED in its enabling statutes. Relatedly, Plaintiffs argue SLED cannot use the "general language" in subsection 23-3-15(A)(9) to circumvent the limits subsection 23-3-15(A)(4) and section 23-3-110 place on SLED's database authority. According to Plaintiffs, because those statutes authorize SLED to maintain a particular type of database, subsection 23-3-15(A)(9) does not operate to provide SLED additional authority.

The Court first considers Plaintiffs' argument concerning the propriety of SLED's reliance on its mission statement. As a general matter, the Court agrees that SLED could not unilaterally declare its mission and therefore control the authority provided by subsection 23-3-15(A)(9). However, that is not what SLED seeks to do here. At the hearing on this matter, SLED informed

[3] https://www.sled.sc.gov/ (last visited May 7, 2025).

the Court that the mission statement featured on its website is consistent with SLED's mission as described in Accountability Reports submitted to the General Assembly.[4] For example, SLED's 1992-1993 Accountability Report identifies one of SLED's "fundamental responsibilities" as "[t]he provision of investigative, technical and manpower assistance to all sheriffs, chiefs of police, solicitors, grand juries, city and county managers and other offices charged with a criminal responsibility."[5] Similarly, SLED's 1999 Accountability Report states, "The primary mission of SLED is to provide quality manpower and technical assistance to all law enforcement agencies and to conduct professional investigations on behalf of the state, as directed by the Governor or Attorney General, for the purpose of solving crime and promoting public order in South Carolina."[6] These Accountability Reports demonstrate that when S.C. Code Ann. § 23-3-15 was enacted in 1993 and later amended in 2003, the General Assembly understood the meaning of the term "mission" when it authorized SLED to engage in activities not inconsistent with its mission or otherwise proscribed by law. *See Pee v. AVM, Inc.*, 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct. App. 2001) ("The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense."). Accordingly, the Court finds it is proper to consider SLED's "mission statement" in analyzing the authority provided by subsection 23-3-15(A)(9).

Construing the statutory language, the Court agrees with SLED that subsection 23-3-15(A)(9) authorizes SLED's operation of the ALPR database. Plainly, the General Assembly's

[4] The Court takes judicial notice of these Accountability Reports, which are matters of public record.

[5] https://tinyurl.com/3s83y6v6, at pg. 4 (last visited May 7, 2025).

[6] https://tinyurl.com/3hku8cs5, at pg. 6 (last visited May 7, 2025).

intent in enacting this provision was to provide SLED with broad authority to take actions consistent with SLED's mission. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will."). Although that authority is not unlimited, it extends to SLED's operation of the ALPR database. The evidence before the Court makes clear that SLED provides a great degree of technical support to local law enforcement agencies in operating the database. Most notably, SLED operates the database to store the data collected by ALPR systems deployed by other law enforcement agencies, and SLED's analysts frequently assist law enforcement officers in searching the ALPR database in criminal investigations and other public safety emergencies. Plainly, these activities are consistent with SLED's mission to provide technical assistance to law enforcement agencies. Effectuating the legislative intent embodied in the text of subsection 23-3-15(A)(9), the Court finds this provision authorizes SLED's operation of the ALPR database.

Finally, the Court rejects Plaintiffs' argument that the authority provided by subsection 23-3-15(A)(9) is limited by SLED's other "database" statutes, subsection 23-3-15(A)(4) and 23-3-110. As the Court explains below, those statutes authorize SLED to maintain a "statewide criminal justice data base and data communication system" and "statewide criminal information and communication system," respectively. Contrary to Plaintiffs' suggestions, however, nothing in those statutes suggests they account for all of SLED's "database" authority. Instead, section 23-3-15 explicitly states that SLED "shall have specific and exclusive jurisdiction and authority statewide . . . in matters *including but not limited to* the following functions and activities[.]" (emphasis added). Section 23-3-110 also contains no "limiting" provision—it simply establishes a statewide criminal information and communication system "with such functions as [SLED] may

assign to it." Thus, the statutory text reveals that these provisions were not intended to limit SLED's authority in the manner Plaintiffs suggest. For these reasons, the Court finds subsection 23-3-15(A)(9) sufficiently authorizes SLED's operation of the ALPR database.

B. S.C. Code Ann. § 23-3-15(A)(4) and S.C. Code Ann. § 23-3-110

SLED also argues subsection 23-3-15(A)(4) and section 23-3-110 independently authorize its operation of the ALPR database. Those statutes provide as follows:

> In addition to those authorities and responsibilities set forth in this chapter, the South Carolina Law Enforcement Division shall have specific and exclusive jurisdiction and authority statewide, on behalf of the State, in matters including but not limited to the following functions and activities: . . . operation and maintenance of a central, statewide criminal justice data base and data communication system[.]

S.C. Code Ann. § 23-3-15(A)(4).

> There is hereby established as a department within the State Law Enforcement Division a statewide criminal information and communication system, hereinafter referred to in this article as "the system," with such functions as the Division may assign to it and with such authority, in addition to existing authority vested in the Division, as is prescribed in this article.

S.C. Code Ann. § 23-3-110.

SLED contends its operation of the ALPR database falls squarely within its authority to operate a "criminal justice data base and data communication system" and a "criminal information and communication system." In support of its argument, SLED relies on the evidence demonstrating that use of the database is "strictly limited to public safety-related missions" like "criminal investigations and other emergency situations such as AMBER alerts and missing person situations." Plaintiffs, on the other hand, argue the ALPR database does not fit within the authority provided by subsection 23-3-15(A)(4) and section 23-3-110. Plaintiffs' argument focuses on the fact that ALPRs collect data indiscriminately, and the majority of the license plate reads in the database relate to vehicles that are not suspected of being involved in criminal activity.

Relying on the statutory language of subsection 23-3-15(A)(4) and section 23-3-110, the Court agrees with SLED that these provisions authorize SLED's operation of the ALPR database. Plaintiffs' argument rests on the flawed premise that a database can only be considered a "criminal justice data base and data communication system" or a "criminal information and communication system" if it stores *exclusively* criminal information. However, the statutes at issue are not so narrowly drafted. Accordingly, in determining whether the ALPR database is authorized by § 23-3-15(A)(4) and § 23-3-110, it is proper to consider the manner in which the database functions, rather than focusing solely on the information contained in the database.

The evidence before the Court demonstrates that the ALPR database compiles information for the "sole purpose of . . . serv[ing] as a resource for law enforcement when criminal investigations or other public safety emergencies arise." SLED Ex. 3 at ¶ 8. Use of the database is "strictly limited to public safety-related missions" like "criminal investigations and other emergency situations such as AMBER alerts and missing person situations." *Id.* at ¶ 7. And importantly, the record contains no evidence of officers using the database for any other, improper purposes. Rather, the evidence demonstrates that the ALPR database has been an integral tool in numerous criminal investigations. SLED Ex. 5. With this understanding, the Court finds SLED's operation of the ALPR database is permissible under the authority provided by subsection 23-3-15(A)(4) and section 23-3-110.

C. Explicit Statutory Authority is Not Required.

Finally, the Court addresses one additional argument Plaintiffs advance in support of their position that the ALPR database is not legislatively authorized. Plaintiffs contend that because the General Assembly enacted legislation specifically instructing SLED to operate other databases, such as the DNA database, S.C. Code Ann. §§ 23-3-610 *et seq.*, and the criminal gang database,

S.C. Code Ann. § 16-8-330, explicit authorization is also required for the ALPR database. Plaintiffs' argument fails for two primary reasons.

First, Plaintiffs' "explicit authorization" argument contravenes both established case law and the legislature's intent embodied in SLED's enabling statutes. It is well settled under South Carolina law that agency action does not require explicit statutory authorization. *Captain's Quarters*, 306 S.C. at 490, 413 S.E.2d at 14 (explaining that agency action is permissible where it is "necessarily implied" by statutory authority). Although Plaintiffs wish to create an exception to this rule where the agency action touches upon purportedly "sensitive information" about license plates, their argument finds no support in this state's precedent. Instead, adopting Plaintiffs' argument would effectively wipe out the authority the legislature granted to SLED in subsection 23-3-15(A)(9). Because the Court's responsibility is to "effectuate the intent of the legislature," *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581, Plaintiffs' argument must fail.

Second, Plaintiffs' argument presumes that the DNA and criminal gang databases came into existence *after* the statutes governing them were enacted. However, both databases were created prior to the enactment of their statutory schemes. S.C. Code Ann. §§ 23-3-610 *et seq.*, the statute governing the DNA database, went into effect in 1994. However, SLED's 1992-1993 Accountability Report, referenced above, demonstrates that SLED was collecting and maintaining DNA evidence from major crime scenes prior to the enactment of that law. *See supra* n.4 at 34. S.C. Code Ann. § 16-8-330, the criminal gang database statute, went into effect in 2007. SLED's 2005-2006 Accountability Report demonstrates that, before the statute was enacted, SLED was compiling information about violent gang members and entering the information into a cooperative

state, local, and federal database.[7] This sequence of events demonstrates that explicit legislative approval was not required for the creation of the DNA and criminal gang databases.

With this understanding, the enactment of specific legislation governing the DNA and criminal gang databases reveals only that the General Assembly always retains the lawmaking authority to direct SLED in the performance of its activities. Of course, it is up to the legislature, not the judiciary, to decide whether such specific statutory direction should be provided. The legislature chose to provide such direction for the DNA and criminal gang databases, which contain highly sensitive identifying information. The fact that the legislature has not, thus far, chosen to enact such specific statutory direction for the ALPR database simply does not carry the significance Plaintiffs attach to it.

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For the foregoing reasons, the Court finds S.C Code Ann. §§ 23-3-15(A)(4), -(A)(9), and -110 each authorize SLED's operation of the ALPR database. The Court further rejects Plaintiffs' argument that explicit legislation is required for SLED to maintain the ALPR database.

II. The statutes authorizing SLED's operation of the ALPR database are not unconstitutional.

Our courts have a "very limited scope of review in cases involving a constitutional challenge to a statute." *In re Stephen W.*, 409 S.C. 73, 76, 761 S.E.2d 231, 232 (2014). "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear beyond a reasonable doubt." *Id.* "The party challenging the constitutionality of the statute has 'the burden of proving the statute unconstitutional.'" *Id.* (quoting *State v. Jones*, 344 S.C. 48, 58, 543 S.E.2d 541, 546 (2001)).

[7] https://tinyurl.com/mrks2uy7, at 61 (last visited May 7, 2025).

The non-delegation doctrine "is a component of the separation of powers doctrine and prohibits the delegation of one branch's authority to another branch." *Hampton*, 403 S.C. at 407, 743 S.E.2d at 264; *see also Harbin*, 226 S.C. at 594, 86 S.E.2d at 470 (noting "the legislature may not delegate its power to make laws"). A statute violates the non-delegation doctrine if it "reposes an absolute, unregulated, and undefined discretion in an administrative body," such as when it "sets up no standard to guide the [agency] and contains no limitations." *Harbin*, 226 S.C. at 595, 86 S.E.2d at 471. That is not to say, however, that our laws cannot afford agencies discretion, as the General Assembly may allow an agency to "fill up the details" of how the legislature's expressed purpose will be carried out. *Hampton*, 403 S.C. at 407, 743 S.E.2d at 264. Thus, the primary inquiry in determining whether legislation violates the non-delegation doctrine is whether the statute "lay[s] down an intelligible principle to which the administrative officer or body must conform." *Harbin*, 226 S.C. at 594, 86 S.E.2d at 470.

SLED contends each of the statutory provisions that authorize its ALPR database, §§ 23-3-15(A)(4), -(A)(9), and -110, contain the requisite "intelligible principle" and therefore avoid scrutiny under the non-delegation doctrine. SLED notes that subsection 23-3-15(A)(9) requires that SLED's activities must not be "inconsistent with [its] mission" or "otherwise proscribed by law." And as to subsection 23-3-15(A)(4) and section 23-3-110, SLED notes these provisions require that any database serve "criminal justice and data communication" or "criminal information and communication" purposes.

Plaintiffs argue these provisions contain no "guiding principle for how SLED should decide what information to collect and retain." Plaintiffs contend these provisions are similar to the statute at issue in *Harbin* that our Supreme Court invalidated.

Plaintiffs have failed to carry their burden of demonstrating beyond a reasonable doubt that the statutes in question provide SLED "absolute, unregulated, and undefined discretion" such that they violate the non-delegation doctrine. *See Harbin*, 226 S.C. at 595, 86 S.E.2d at 471. Instead, the language of each statutory provision reveals an intelligible principle restricting SLED's authority. *See* S.C Code Ann. §§ 23-3-15(A)(4) (action must serve "criminal justice data base and data communication" purposes), -(A)(9) (action must not be "inconsistent with [SLED's] mission" or "proscribed by law"), and -110 (action must serve "criminal information and communication" purposes). Contrary to Plaintiffs' position, this is not a situation like *Harbin* where the legislature truly provided an agency with unfettered discretion. *Cf.* 266 S.C. at 593-95, 86 S.E.2d at 469-71 (finding a non-delegation doctrine violation where the statute in question permitted the State Highway Department to revoke licenses "for any cause which it deems satisfactory"). Instead, *Harbin* supports SLED's position. As noted above, it recognizes the flexibility inherently necessary in legislating police activities. *Id.* at 594-95, 86 S.E.2d at 470.

Here, with respect to each of the statutes in question, the Generally Assembly struck the proper balance between providing SLED broad authority and providing SLED unlimited authority. Although Plaintiffs contend the statutes provided the latter, their argument is not supported by the statutory text. For example, SLED plainly could not create a database storing citizens' vaccination records without exceeding the limitations imposed by subsection 23-3-15(A)(4) and section 23-3-110. Although Plaintiffs would tailor the statutes more narrowly, they do not violate the non-delegation doctrine as drafted.

III. Policy 13.40 does not violate the Administrative Procedures Act.

The final issue before the Court is whether Policy 13.40 is a "regulation" within the meaning of the APA, S.C. Code Ann. §§ 1–23–10, *et seq.* Plaintiffs contend that it is, and they

argue that SLED violated that APA in enacting Policy 13.40 without engaging in notice-and-comment rulemaking and obtaining legislative approval. *See* S.C. Code Ann. §§ 1–23–110; -120. SLED does not dispute that it did not follow the APA's procedural requirements in promulgating Policy 13.40. Instead, SLED contends it was unnecessary to do so because Policy 13.40 is not a "regulation" within the meaning of the APA.

Before turning to the APA's definition of the term "regulation," the Court briefly examines Policy 13.40. The "General Purpose" of Policy 13.40 is to "provide officers with guidelines on the proper use of Automated License Plate Recognition (ALPR) systems and the data collected from the systems." Policy 13.40 accomplishes that purpose in several ways. For example, Policy 13.40 (i) provides that only "officers who are NCIC inquiry certified and have been issued username and passwords by SLED shall be permitted to use an ALPR system or access the ALPR back office"; (ii) restricts officers' use of the ALPR database to "public safety-related missions"; and (iii) provides penalties for misuse of the database.

In determining whether SLED was required to abide by the APA's requirements in promulgating Policy 13.40, the Court's analysis hinges on the APA's definition of the term "regulation." The APA defines a "regulation" as an "agency statement of general public applicability that implements or prescribes law or policy or practice requirements of any agency." S.C. Code Ann. § 1-23-10(4). Importantly, however, the term regulation "does not include . . . other agency actions relating only to specified individuals." *Id.*

The parties' arguments respecting this definition are relatively straightforward. Plaintiffs contend that because Policy 13.40 binds SLED, other law enforcement, and the general public, it is a "regulation" under the APA. Plaintiffs rely on the fact that other law enforcement agencies, like the Myrtle Beach Police Department, have acknowledged that they are bound by Policy 13.40.

SLED, on the other hand, contends Policy 13.40 is not a regulation because it is only binding on officers with access to the ALPR database—not the general public.

Based upon the language of subsection 1-23-10(4), the Court finds Policy 13.40 is not a regulation under the APA. The Court agrees with SLED that, by its terms, Policy 13.40 binds only SLED's employees tasked with operating the database and other law enforcement officers with access to the database, i.e., "officers who are NCIC inquiry certified and have been issued username and passwords by SLED."[8] Because Policy 13.40 "relat[es] only to specified individuals," it falls outside the APA's definition of regulation. Moreover, although Plaintiffs argue otherwise, Policy 13.40 does not establish a "binding norm" of general public applicability. *Cf. Joseph v. S.C. Dep't of Lab., Licensing & Regul.*, 417 S.C. 436, 454, 790 S.E.2d 763, 772 (2016) (holding an agency position statement governing physical therapists' ability to make certain patient referrals was a regulation under the APA). While Policy 13.40 may have an indirect effect on the public by governing how officers access and use the ALPR database, that alone is not sufficient to transform Policy 13.40 into a regulation under the APA.

CONCLUSION

For the foregoing reasons, the Court denies Plaintiffs' motion for summary judgment and grants SLED's motion for summary judgment.

[*Electronic judicial signature to follow*]

[8] It is unsurprising that the Myrtle Beach Police Department acknowledges it is bound by Policy 13.40 because its officers have access to the database. Pl. Ex. 7.

Richland Common Pleas

Case Caption: South Carolina Public Interest Foundation , plaintiff, et al vs South Carolina State Law Enforcement Division , defendant, et al

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Type: Order/Summary Judgment

So Ordered

s/ Thomas W. McGee III, Judge Code 2786