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SC Court of Appeals

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

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APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Sebastien Phillip Lenski, Administrative Law Judge

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Administrative Law Court Docket No. 25-ALJ-04-0147-AP

Appellate Case No. 2025-002443

Vincent Allen, #194611,

Appellant,

V.

South Carolina Department of Corrections,

Respondent.

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APPELLANT'S INITIAL BRIEF

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Vincent Allen, #194611  
Tyger River Correctional  
Institution Unit 1-B-228A  
200 Prison Road  
Enoree, S.C. 29335

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### STATEMENT OF ISSUES ON APPEAL

- I. Whether the ALC erred in holding that S.C. Code Ann. § 24-3-430(D)(2024) supersedes or eliminates SCDC's obligation under federal law, 18 U.S.C. § 1761(c), to pay inmates the prevailing wage in the PIECP, where federal law expressly requires payment of prevailing wages as a condition of certification?
- II. Whether the ALC committed reversible error by relying on inapplicable precedent (SCDC v. Cartrette) and by refusing to apply the Supremacy Clause to resolve the conflict between state and federal PIECP wage mandates?
- III. Whether the ALC violated SCALC Rule 58 and Appellant's due process rights by refusing to order supplementation of the record with essential documents, (current payroll history, DEW wage data, and Appellant's SOC Code), then penalizing Appellant for lack of presenting a sufficient record, which the court itself denied?
- IV. Whether the ALC erred in affirming (explicitly or implicitly), that Appellant's post-settlement wage claim was barred by prior settlement resolving earlier and distinct backpay period, where the claims concern separate time periods and federal law prohibits waiver of statutory prevailing wage rights?
- V. Whether the ALC erred in concluding (explicitly or implicitly), that Appellant lacks a continuing property interest in prevailing wages guaranteed by federal law and incorporated into SCDC's PIECP certification and contractual obligations?
- VI. Whether the ALC acted arbitrary, capricious, and without substantial evidence in affirming SCDC's decision based on deference rather than independent judicial review?

### STATEMENT OF THE CASE

The Appellant in the instant matter, Vincent Allen ("Appellant"), is an inmate incarcerated with the Respondent South Carolina Department of Corrections ("Department" or "SCDC"). While housed at Tyger River Correctional Institution ("TYRCI"), a prison operated by the SCDC, Appellant began participating in a federally certified Prison Industry Enhancement Certification Program ("PIECP"), in which Shaw Industries Group, Inc. ("Shaw") participates as the private industry sponsor.

On September 9, 2024, Appellant settled a prior backpay claim for the PIECP prevailing wages with SCDC. Under that Settlement, SCDC paid Appellant

the difference between wages he was previously paid and the prevailing wage for the time period of December 7, 2015 up to the settlement date.

Thereafter, on October 31, 2024, Appellant filed a new and distinct Step One grievance, wherein he specifically requested that "my wages be adjusted to reflect an hourly wage as determined by the DEW, not less than those paid and provided for work of similar nature in the locality in which the work is performed.". On November 20, 2024, SCDC denied Appellant's Step One Grievance, stating, "You allege that you are entitled to an increase in current wages in the Prison Industries Program to reflect Prevailing Wage. You have requested an adjustment in wage in accordance with DEW. The inmate pay statute, S.C. Code 24-3-430(D), was amended effective May 21, 2024, to eliminate the language requiring that inmates be paid the prevailing wage. Therefore, from that date forward, if you are working for a qualifying PIECP within Prison Industries and make the federal minimum wage or higher, you are being paid lawfully."

Subsequently, on November 26, 2024, Appellant filed his Step Two Grievance with SCDC, asserting in pertinent part that the "Supremacy Clause of the US Constitution and provides that any state law that conflicts with federal law is "without effect"". In response to Appellant's Step Two Grievance, on March 21, 2025, SCDC reiterated its position as stated prior in its denial of Appellant's Step One Grievance denial.

Thereafter, on March 25, 2025, Appellant filed a Notice of Appeal with the South Carolina Administrative Law Court ("ALC"), appealing the Department's final decision. The case was assigned on April 10, 2025, to the Honorable Sebastien Phillip Lenski, Administrative Law Judge. By Motion dated June 12, 2025, SCDC moved the ALC to dismiss the Appellant's case, asserting that the matter should be dismissed because Appellant and the Department

settled on September 9, 2024, and the funds had been deposited into Appellant's E.H. Cooper Account. In response, on June 23, 2025, Appellant filed his Appellant's Objection to Respondent's Motion to Dismiss. Then, on July 8, 2025, the ALC entered its Order Denying Respondent's Motion to Dismiss.

On July 31, 2025, SCDC filed the Record on Appeal, containing only Appellant's Step One and Step Two Grievances and their Responses. On August 11, 2025, Appellant filed his Motion to Compel Respondent to Supplement the Record Due to its Incompleteness and Extension of Time to File Brief. In response to Appellant's motion, the ALC issued its Order Denying Appellant's Motion to Supplement the Record and Granting Motion [to] Extend Time.

Thereafter, on September 19, 2025, Appellant filed his Initial Brief to the ALC. SCDC filed its Respondent's Brief on October 13, 2025. Then, on October 20, 2025, Appellant filed his Reply Brief. On November 12, 2025 the Honorable Sebastien Phillip Lenski, Administrative Law Judge, issued his Final Order, affirming SCDC's decision. Therefore, and in response to the ALC's November 12, 2025 "Final Order", on December 5, 2025, Appellant served the Notice of Appeal on the Department.

#### **STANDARD OF REVIEW**

Appellate review of the ALC's decisions is governed by S.C. Code Ann. § 1-23-610. Pursuant to this section, Reversal is required where the decision is:

- (a) in violation of constitutional or statutory provisions;
- (c) made upon unlawful procedure;
- (d) affected by other error of law;
- (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record;

(f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 24-3-610(B)(a), (c) - (f).

The Court review legal questions de novo, including interpretation of federal law, preemption, and constitutional claims.

#### ARGUMENT

**I. THE ALC ERRED AS A MATTER OF LAW BY CONCLUDING THAT THE 2024 AMENDMENT TO § 24-3-430(D) ELIMINATES SCDC'S FEDERAL OBLIGATION TO PAY THE PREVAILING WAGE**

In 1935, Congress enacted the Ashurst-Sumners Act, now codified at 18 U.S.C. § 1761(a). This federal law generally prohibits the transportation in interstate commerce of goods, wares, and merchandise produced by prisoners. In Harker v. State Use Industries, 990 F.2d 131 (4th Cir. 1993), the Fourth Circuit, noting that the Ashurst-Sumners Act "criminalizes the transport of prison-made goods in interstate commerce in ... those situations in which prison labor threatens competition." (emphasis added). However, an exception to the scope of the Ashurst-Sumners' prohibition and criminalization is available for prisoners participating in a work pilot project administered by the Bureau of Justice Assistance ("BJA"), an agency of the Department of Justice. 18 U.S.C. § 1761(c). Pursuant to the federal statute authorizing the PIECP, inmates participating in such programs must have "received wages at a rate which is not less than that paid for work of a similar nature in the locality in which the work was performed." Id. § 1761(c)(2). This is the prevailing wage standard. It is a condition of federal certification, mandatory, and cannot be reduced or waived by a state statute.

Additionally, the PIECP Guidelines issued by the BJA and published in the Federal Register, likewise requires that states participating in the PIECP must pay participating inmate workers the prevailing wage. There it is stated

that "[p]revailing wage verification must be obtained by the appropriate state agency which determines wage rates (usually the Department of Economic Security)." 64 Fed. Reg. 17000-14 (Apr. 1999). In South Carolina the wage setting agency would now be the Department of Employment and Workforce. In the absence of such verification, the program participant is "responsible for establishing a reasonable prevailing wage." Id. The participant must then retain on file for the BJA's review "relevant wage data from a sufficient number of competitors in the locality," "data analysis for determining a reasonable prevailing wage result," and "if possible, a written assessment of the reasonableness of the resulting prevailing wage determination by an appropriate state agency which normally determines wage rates." Id. The prevailing wage "cannot be set below the Federal minimum wage, as defined in the Fair Labor Standards Act." Id. "Payment of minimum wage, however, does not automatically achieve compliance with the prevailing wage requirement unless the prevailing wage for the comparable private-sector industries is, in fact, the Federal minimum wage." Id. The PIECP Guidelines repeatedly clarified the binding federal conditions that certified programs must pay the prevailing wage and continue paying it to all PIECP inmate workers.

In its Step One Grievance response, SCDC denied its requirement to pay Appellant the prevailing wage because "S.C. Code Ann. § 24-3-430(D), was amended effective May 21, 2024, to eliminate the language requiring that inmates be paid the prevailing wage." See Step One Grievance Response. SCDC reiterated this position in response to Appellant's Step Two Grievance. See Step Two Grievance Response. SCDC relied upon this same argument in its Brief before the ALC. See SCDC's Brief to the ALC pp. 3 - 4. But SCDC is well aware that payment of the minimum wage "does not automatically achieve compliance

with the prevailing wage requirement." 64 Fed. Reg. 17000-14. In his brief to the ALC, Appellant not only cited the above PIECP Guideline, but also attached a printed copy of it to his brief. See Appellant's Brief to the ALC p. 3; Exhibit C.

Additionally, Appellant attached a copy of the SCDC's Contract with the private industries sponsor Shaw. See Appellant's Brief to the ALC 5 - 6; Exhibit D. In his brief to the ALC, Appellant specified the following four (4) places of the SCDC / Shaw Contract, where he argued, (1) p. 6 § 3.2.1, SCDC agreed to pay inmates consistent with wage data provided to SCDC on an annual basis by the DEW; (2) p. 7 paragraph 4, SCDC agreed that upon annual receipt of the wage data from the DEW, SCDC would notify Shaw in writing of any changes to the "Gross Hourly Inmate Pay Rate", and SCDC will then adjust the "Gross Hourly Inmate Pay Rate" reflected as necessary; (3) p. 8 § 3.2.2, SCDC agreed to "operate [its prison industry] project [at Tyger River Correctional Institution] in accordance with "Private Sector/Prison Industries Enhancement Certificate" program [commonly known as the "PIE" program] for the United States Department of Justice, Bureau of Justice, ... The major requirements of the "PIE" program are outlined in Appendix C of this Agreement"; and (4) p. 15 at APPENDIX C, stating, "Outline of requirements by the United States Department of Justice Private Sector/Prison Industries Enhancement Certificate" to be completed by SCDC" "South Carolina Department of Employment and Workforce has provided written assurance that wages paid to inmates are similar in the locality to other workers of Federal minimum wage, **whichever is higher.**" See Appellant's Initial Brief to the ALC pp. 5 - 6; Exhibit D pp. 6 - 8, 15.

States participating in federal programs must comply with conditions of participating imposed by Congress or the administering agency. In Armstrong v.

Exceptional Child Center, Inc., 575 U.S. 320, 135 S.Ct. 1378, 191 L.Ed.2d 471 (2015), the Court recognized that federal conditions are enforceable against states. In Myers v. S.C. Dept. of Health & Human Services, 418 S.C. 608, 795 S.E.2d 301 (December 21, 2016), the South Carolina Court of Appeals stated, "Because the waiver program is governed by federal statute, when a state elects to participate in the program, it **must comply with all federal Medicaid laws and regulations.**" (emphasis added).

Here, SCDC voluntarily elected to enter the federally certified PIECP, as authorized under 18 U.S.C. § 1761(c); repeatedly certified compliance, and executed contracts with its private industry sponsor Shaw, in which contracts SCDC expressly incorporated these mandatory federal wage conditions. Thus, confirming they are required and binding as a matter of federal law and contract law.

The ALC's "Final Decision" contradicts federal statute, federal guidelines, and contractual obligations SCDC voluntarily assumed. Such an error requires reversal under S.C. Code Ann. § 1-23-610(B)(a), (d), & (e).

**II. THE ALC ERRED BY RELYING ON AN INAPPLICABLE PRECEDENT (SCDC V. CARTRETE) AND BY REFUSING TO APPLY THE SUPREMACY CLAUSE TO RESOLVE THE CONFLICT BETWEEN STATE AND FEDERAL PIECP WAGE MANDATES**

In his Step One Grievance, Appellant requested an adjustment of his PIECP wages to meet the prevailing wage as determined by the DEW. See Appellant's Step One Grievance. In its grievance response, SCDC stated to the effect, that as of May 21, 2024, it was no longer required to pay inmates working in the PIECP prevailing because of the amendments made to S.C. Code Ann. § 24-3-430(D). See Step One Response. Then, Appellant filed his Step Two Grievance, asserting that the Supremacy Clause of the U.S. Constitution provides that any state law that conflicts with federal law is "without effect". Appellant further indicated that the conflicting state law, 24-3-430(D)(as amended 2024), was preempted by federal law 18 U.S.C. 1761(c)

and PIECP Guideline.. 64 Fed. Reg. 17000-14. See Step Two Grievance. In response, the Department reiterated its position, relying on the May 21, 2024 amendment made to 24-3-430(D). See Step Two Response.

The Supremacy Clause of the United States Constitution provides that federal law "shall be the supreme Law of the Land ... any Thing in the Constitution or Laws of any State to the Contrary notwithstanding." U.S. Const. Art. VI, cl 2. Thus, any state law that conflicts with federal law is "without effect." See Weston v. Kim's Dollar Store, 385 S.C. 520, 684 S.E.2d 769 (July 15, 2009); Cipollone v. Liggett Group, Inc., 505 U.S. 504, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992).

In both his Initial and Reply briefs before the ALC, Appellant argued that South Carolina's 2024 amendment to § 24-3-430(D) conflict with both federal law, 18 U.S.C. § 1761(c) and PIECP Guideline (64 Fed. Reg. 17000-14); and under the Supremacy Clause, federal law governs when conflict exist. Therefore, Appellant respectfully urged the ALC to find 24-3-430(D)(as amended May 21, 2024) preempted and therefore unenforceable to the extent that it conflicts with federal PIECP requirements. See Appellant's Initial Brief to the ALC pp. 3 - 6; Appellant's Reply Brief to the ALC pp.1 - 3. In all of SCDC's filings pertaining to this matter, both administratively and before the ALC, SCDC remained suspiciously quietly concerning the preemption doctrine. Nonetheless, in the ALC's November 12, 2025, "Final Order", the ALC stated, "On September 19, 2025 the Appellant filed his brief with the court arguing that state laws that conflict with the federal mandate to pay PIECP inmates the prevailing wage is "without effect." Thus, the Department must adjust the Appellant's wages to reflect the prevailing wage as determined by the Department of Employment and Workforce (DEW). On October 14, 2025, the Department filed its brief with the court arguing that the Appellant is not

entitled to the prevailing wage for his current work because S.C. Code Ann. § 24-3-430 was amended effective May 21, 2024 from "prevailing wage" to "federal minimum wage." Therefore, the Appellant is not entitled to the prevailing wage for his ongoing work in the PIECP. On October 22, 2025, the Appellant filed his Reply Brief with the court arguing that pursuant to the Supremacy Clause, it is clear that federal law controls and any conflicting state statute is void. Therefore, the amended state statute is preempted and without effect under the Supremacy Clause. The Appellant is requesting the court to reverse the Department's denial of his grievance, declare S.C. Code Ann. § 24-3-430(D) preempted by 18 U.S.C. § 1761(c) and order the Department to pay him the prevailing wage for all PIECP work performed from May 21, 2024 to the present." See Final Order p. 2.

After rehearsing the background of the case, in the "DISCUSSION" section of the Final Order, the ALC stated, "South Carolina courts have previously held that **certain** federal laws do not apply to inmate workers, but rather the state statutory scheme governs the Department's conduct. See South Carolina Dept. of Corrs. v. Cartrette, 387 S.C. 640, 694 S.E.2d 18 (Ct. App. 2010)(holding that the federal Fair Labor Standards Act does not apply to inmate workers, but rather statutes governing the prison industries program compel the Department to ensure inmate workers receive the same pay rates and employment conditions as their non-inmate peers.). Inmates working in a prison industries program have a state-created liberty interest in having the Department pay them according to the statutory scheme governing the program. Torrence v. S.C. Dept. of Corrs., 433 S.C. 224, 226, 857 S.E.2d 549, 550 (2021). Accordingly, the current statutory mandate requires the Department to pay inmates not less than the federal minimum wage." (emphasis added). See Final Order pp. 3 - 4.

The ALC cited Cartrette, supra to hold that "federal laws do not apply to inmate workers." But Cartrette, held only that the Fair Labor Standard Act ("FLSA") does not apply to inmates because they are not "employees" within the meaning of the FLSA, 29 U.S.C. § 203(e). That case concerned employment law, not federal commerce statutes.

The PIECP, by contrast, is a federal criminal and interstate commerce statute—not an employment statute. Its prevailing wage mandate does not depend on "employees" status but rather on a federal condition of certification under 18 U.S.C. § 1761(c). As such, the rationale in Cartrette concerning the FLSA's non-applicability to inmates has no bearing on the enforceability of a specific federal statutory mandate enacted under Title 18.

Additionally, Cartrette, did not address federal preemption. Thus, Cartrette does not absolve SCDC of compliance with 18 U.S.C. § 1761(c). The ALC's reliance on Cartrette to reject the applicability of 18 U.S.C. § 1761 (c) is a fundamental misapplication of law and a reversible error under S.C. Code Ann. § 1-23-610(B)(d). Because the ALC decided the case on incorrect legal grounds reversal is required.

**III. THE ALC ERRED BY REFUSING TO ORDER SUPPLEMENTATION OF THE RECORD WITH ESSENTIAL DOCUMENTS, THEN FINDING THAT APPELLANT FAILED TO MEET HIS BURDEN OF PRESENTING A SUFFICIENT RECORD TO ALLOW APPELLATE REVIEW**

Under Rule 58 of the South Carolina Administrative Law Court (SCALC Rules), "[w]here applicable, the record on appeal shall consist of: ... all evidence received or considered, including copies of all relevant sentencing sheets in sentence calculation matters, and copies of specific policies relied upon by the agency ...". On July 31, 2025, SCDC served a copy of the Record on Appeal upon the Appellant, containing only both Appellant's Step One and Step Two Grievance, along with both grievances' response. See Record on Appeal ("ROA") to the ALC.

On August 11, 2025, Appellant filed his Motion to Compel Respondent to

Supplement the Record Due to its Incompleteness and Extension of Time to File Brief ("Motion for Supplement"). In his Motion for Supplement, Appellant requested that the Court order SCDC, in accordance with SCALC Rule 58 to provide a complete Record by supplementing the Record with the following relevant documents: (1) Post-settlement PIECP payroll history showing number of hours worked and hourly wages paid for his work; (2) wage data provided by the DEW used by SCDC to determine the prevailing wage; (3) Job Description and Standard Occupational Classification ("SOC") Code documents relied upon in setting Appellant's wage rate; and (4) SCDC and Shaw contractual agreement, wherein SCDC agreed to pay PIECP inmate workers a wage consistent with wage data proved by the DEW on an annual basis. See Motion for Supplement p 3. In his Motion for Supplement, Appellant asserted that omission of the aforementioned documents prejudices his ability to fully present his case and materially impairs the Court's ability to conduct a meaningful review. See Motion for Supplement p. 3. By Order, dated September 5, 2025, the ALC denied Appellant's Motion for Supplement. See ALC's Order denying Motion for Supplement pp. 1 - 2. Thus, the ALC denied Appellant the evidence needed to satisfy his burden of proving prevailing wage entitlement, and then penalized him for not meeting that burden. Specifically, stating in its November 12, 2025 "Final Order", "Appellant has not met his burden to show that the Department has erred. State v. Mitchell, 330 S.C. 189, 199, 498 S.E.2d 642, 647 (1998)(placing on appellant the burden of presenting a sufficient record to allow appellate review)." See Final Order p. 4. It is arbitrary and capricious for a court to: (1) deny a party access to essential evidence, and then (2) penalize that party for lacking that evidence. The ALC's actions violated S.C. Code Ann. § 1-23-610(B)(e) and (f) and warrants reversal.

**IV. THE ALC ERRED BY ACCEPTING SCDC'S ARGUMENT THAT APPELLANT'S POST-SETTLEMENT WAGE CLAIM IS BARRED BY A PRIOR, DISTINCT BACKPAY SETTLEMENT**

On June 12, 2025, SCDC filed its Respondent's Motion to Dismiss ("Motion to Dismiss") to the ALC, asserting the case involving the Appellant's wage claim should be dismissed because "the parties settled any and all claims arising out of Appellant's participation in the prison industries program, including any [PIECP] while incarcerated at the [SCDC]." See SCDC's Motion to Dismiss p. 1. SCDC attached a redacted copy of the settlement agreement with its Motion to Dismiss. See Final Release of All Claims pp. 1-2.

Even though the ALC issued its Order Denying Respondent's Motion to Dismiss ("Order Denying Motion to Dismiss"), dated July 8, 2025, its Order did not explicitly reject SCDC's position on this issue, (See Order Denying Motion to Dismiss); as evident by the first argument outlined in the Respondent's Brief to the ALC, where SCDC argued "Under the terms of Appellant's settlement agreement with SCDC, Appellant is precluded from bringing any future or additional claims arising out of his participation in PIECP." See SCDC's Brief to the ALC p. 3.

Even if the ALC did not discuss the settlement issue at length, its November 12, 2025, "Final Order" affirmance of SCDC's entire final decision necessarily adopted SCDC's position that Appellant's claim was barred by the earlier settlement. To prevent affirmance on an unchallenged ground, Appellant raises the issue here. See I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 526 S.E.2d 716 (2000); Futch v. McAllister Towing of Georgetown, Inc., 335 S.C. 598, 518 S.E.2d 591 (1999).

A release is a contract, and the scope of a release is gathered by its terms. See Southern Glass & Plastics Co. v. Duke, 367 S.C. 421, 626 S.E.2d 19 (Ct. App. 2005). The express terms of SCDC's Final Release of All Claims, in

pertinent part states, "Inmate does hereby release, acquit, and forever discharge SCDC, ... all claims, known or unknown, up to and including the date of this Release", not after. See Final Release of All Claims p. 1. "In construing [a] release, the court must seek to ascertain and give effect to the intention of the parties." Wilson Group, Inc. v. Quorum Health Resources, Inc., 880 F.Supp. 416, 425 (D.S.C. 1995).

The language of the settlement agreement at issue makes clear that the parties (SCDC and Appellant) resolved a distinct wage period, from December 7, 2015 up to the date of the settlement, specifically September 9, 2024. However, Appellant's present appeal concerns post-settlement wages, which occurred after the effective date of the settlement and involve a new statutory violation. Thus, the settlement cannot bar the post-settlement wage claim as a matter of South Carolina contract law.

Furthermore, federal law prohibits waiver of statutory wage rights through private settlement. The United States Supreme Court has held repeatedly that statutory wage rights cannot be waived by private agreement because they protect not only the worker but also the statutory regime. This rule is well established. See Brooklyn Savings Bank v. O'Neil, 324 U.S. 697, 65 S.Ct. 895, 89 L.Ed. 1296 (1945) (FLSA wage rights cannot be waived by settlement) "to allow waiver of statutory wages by agreement would nullify the purposes of the Act"; Barrentine v. Arkansas-Best Freight System, Inc., 450 U.S. 728, 101 S.Ct. 1437 (1981), "FLSA rights cannot be abridged by contract or otherwise waived because this would "nullify the purposes" of the statute and thwart the legislative policies it was designed to effectuate."

The same principle applies here. The prevailing wage requirement is a non-waivable statutory right imposed by Congress as a condition of PIECP participation. Neither SCDC nor an inmate can legally waive or contract around

federal statutory wages. Therefore, SCDC's position that the earlier settlement extinguished Appellant's later statutory wage rights is legally invalid.

Therefore, because the prior settlement cannot bar the later claim, the ALC erred by implicitly accepting SCDC's legally erroneous argument that Appellant's post-settlement wage claim was barred by a prior settlement covering a different time period.

**V. THE ALC ERRED IN CONCLUDING THAT APPELLANT HAS NO CONTINUING PROPERTY INTEREST IN PREVAILING WAGES GUARANTEED BY FEDERAL LAW**

In his Initial Brief to the ALC, Appellant argued that he has a protected property interest in prevailing wages arising from federal law, 18 U.S.C. § 1761 (c); Federal program conditions (PIECP GUIDELINE)(64 Fed. Reg. 17000-14); and SCDC's contractual obligations within the certified program. See Appellant's Initial Brief to the ALC pp. 5 - 6. The ALC's Final Order affirming SCDC's final decision, implicitly denied the Appellant his entitlement to such interests.

Property interests arises from statutes, rules, and guarantees that create legitimate claims of entitlement. See Board of Regents of State Colleges v. Roth, 408 U.S. 564, 92 S.Ct. 2701, 33 L.Ed.2d 548 (1972). Likewise, Perry v. Sindermann, 408 U.S. 593, 92 S.Ct. 2694, 33 L.Ed.2d 570 (1972), recognizes that entitlements may arise from "rules or understandings" underlying federal programs.

In Torrence v. S.C. Dept. of Corrs., 433 S.C. 633, 861 S.E.2d 36 (2021), the South Carolina Court of Appeals held that inmates have a liberty or property interest in the wage rates and conditions mandated by the statutes governing their prison industries program. Here, Appellant's wage entitlement arises not only from historic state statute but also from Federal law (18 U.S.C. § 1761(c); Federal program conditions (PIECP Guideline)(64 Fed. Reg.

17000-14); and SCDC's contractual obligations within the certified program (See SCDC / Shaw Contract), which create an enforceable entitlement to the prevailing wage, which the state cannot eliminate through unilateral statutory amendment. Once prevailing wage entitlement vests through federal certification and contractual incorporation, the State cannot extinguish it through a later statute.

The ALC's contrary finding replaced the federal entitlement with a new state minimum wage standard, one that conflicts with federal law and is inapplicable in federally certified PIECP programs.

A finding that negates federally protected property interest is: (1) Affected by error of law (§ 1-23-610(B)(d)); (2) clearly erroneous in view of the undisputed evidence (§ 1-23-610(B)(e)); and arbitrary and capricious (§1-23-610(B)(f)); and thus warrants reversal.

#### **VI. THE ALC IMPROPERLY DEFERRED TO SCDC RATHER THAN EXERCISING INDEPENDENT JUDICIAL REVIEW**

In its "Final Order", the ALC stated the following in pertinent part, "On September 19, 2025 the Appellant filed his brief with the court arguing that state laws that conflict the federal mandate to pay PIECP inmates the prevailing wage is "without effect." Thus, the Department must adjust the Appellant's wages to reflect the prevailing wage as determined by the [DEW]." [Appellant's Initial Brief to the ALC pp. 3 - 5]. "On October 14, 2025, the Department filed its brief with the court arguing that the Appellant is not entitled to the prevailing wage for his current work because S.C. Code Ann. § 24-3-430 was amended effective May 21, 2024 from "prevailing wage" to "federal minimum wage." Therefore, the Appellant is not entitled to the prevailing wage for his ongoing work in the PIECP." [See Respondent's brief pp. 3 - 4]. "On October 22, 2025, the Appellant filed his Reply Brief with the court arguing that pursuant to the Supremacy Clause, it is clear that federal law controls

and any conflicting state statute is void. Therefore, the amended state statute is preempted and without effect under the Supremacy Clause." [See Appellant's Reply Brief pp. 1 - 4]. See Final Order p. 2. The ALC's Final Order concluded with inappropriately deferring to SCDC's interpretation.

South Carolina's doctrine of deference provides that courts defer to an administrative agency's interpretations with respect to the statutes entrusted to its administration or its own regulations "unless there is a compelling reason to differ." See Kiawah Development Partners, II v. S.C. Dept. of Health & Environmental Control, 411 S.C. 16, 766 S.E.2d 707 (2014). However, "[w]hile the interpretation of a statute by the agency charged with its administration will be accorded the most respectful consideration on appeal, an agency's interpretation affords no basis for the perpetuation of a patently erroneous application of the statute." See State v. Sweat, 386 S.C. 339, 688 S.E.2d 569 (2010).

The Ashurst-Sumners Act, 18 U.S.C. § 1761(a), serves as the guiding light for all federally certified PIECP projects operated not only in South Carolina but nationwide. This statute unambiguously, providing that "Whosoever knowingly transport in interstate commerce or from any foreign country in the **United States**, any goods, wares, or merchandise manufactured, produced ... wholly or in part by convicts or prisoners ... shall be fined under this title or imprisoned ... or both." It is equally unambiguous that subsection (c) of that same federal statute is the only exception to the prohibition and criminalization of the Ashurst-Sumners Act, as before set forth in Section I of this brief. 18 U.S.C. § 1761(c) of that section is controlling with regards to wage standards for all PIECP inmate worker, requiring that they be paid no less than the prevailing wage.

In its Final Order, the ALC stated, "In this appeal, the Appellant's grievance is that pursuant to the **preemption doctrine**, the **federal statute mandating** that inmates be paid the prevailing wage, **preempts** S.C. Code Ann. § 24-3-430(D)". See Final Order p. 2; Appellant's Step Two Grievance.

Whether a federal statute preempts state law is a question of law for the court to decide. See Weston v. Kim's Dollar Store, 385 S.C. 520, 684 S.E.2d 769 (2009); warranting independent judicial review. The appellate court "may make its own ruling on a question of law without deferring to the circuit court." Henderson v. Summerville Ford-Mercury Inc., 405 S.C. 440, 446, 748 S.E.2d 221, 224 (2013).

"The preemption doctrine is rooted in the Supremacy Clause of the United States Constitution and provides that any state law that conflicts with federal law is 'without effect'." Priester v. Cromer, 401 S.C. 38, 43, 736 S.E.2d 249, 252 (2012)(quoting Cipollone v. Liggett Group, Inc., 505, 516, 112 S.Ct. 2608, 120 L.Ed.2d 407 (1992)). "[T]he purpose of Congress is the ultimate touchstone' of pre-emption analysis." Id. (quoting Cipollone, 505 U.S. at 516, 112 S.Ct. 2608). "To discern Congress'[s] intent we examine the explicit statutory language and the structure and purpose of the statute." Ingersoll-Rand Co. v. McClendon, 498 U.S. 133, 138, 111 S.Ct. 478, 112 L.Ed.2d 474 (1990)).

The McMaster court stated in pertinent part, "In addition to the governmental use exemption, the Ashurst-Sumners Act contains an exemption allowing the interstate transportation of goods produced under the Bureau of Justice's [Assistance] (Private Sector / Prison Industry Enhancement Certification Program (Prison Industry Certification Program), provided that the inmates who produced the goods were paid the prevailing local rate for their work. 18 U.S.C. § 1761(c). The prevailing wage

requirement insures that the availability of prison-made goods will not hamper fair competition. Harker, 990 F.2d at 133-34. The prevailing wage requirement was enacted in 1979, more than forty years after FLSA was enacted ... If Congress believed that the FLSA applied to prison labor, it would have had no reason to amend the Ashurst-Sumners Act to exempt goods produced for prevailing wage under the Prison Industry Certification Program ... Because Congress dealt specifically with the threat of unfair competition from prison-made goods in the Ashurst-Sumners Act, it is that statute, and not the FLSA, that controls." (emphasis added). McMaster v. State of Minn., 819 F.Supp. 1429 (1993); Harker v. State Use Industries, 990 F.2d 131 (4th Cir. 1993); Vanskike v. Peters, 974 F.2d 806 (7th Cir. 1992), cert. denied, 507 U.S. 928, 113 S.Ct. 1303, 122 L.Ed.2d 692 (1993); Kentucky Whip & Collar Co. v. Illinois Central R.R. Co., 299 U.S. 334, 351 - 52 & n. 19, 57 S.Ct. 277, 282 - 83 & n. 19, 81 L.Ed. 270 (1937).

Likewise, in regards to S.C. Code Ann. § 24-3-430(D)(pre-amendment), our Supreme Court finding in Adkins v. S.C. Dept. of Corrs., 360 S.C. 413, 602 S.E.2d 51 (2004), that the overall purpose for the prevailing wage statute's application to inmates participating in a project designated by Director of the Bureau of Justice Assistance pursuant to Public Law 90 - 351 (24-3-430(G)) was to "prevent unfair competition". Thus, the state law, 24-3-430(D)(2024) as amended, removed that safeguard in South Carolina from the same threats of ruinous conditions and unfair competition involving inmate labor that existed pre-Ashurst-Sumners Act, which prompted Congressional legislation to safeguard against such. See 64 Fed. Reg. 17000-14 (PIECP Guidelines)(April 7, 1999)(Under Legislative History, 1. Unregulated Prison Labor); Exhibit C pp. 2 - 3.

Preemption "is compelled whether Congress' command is explicitly stated

in the statute's language or implicitly contained in its structure and purpose." Jones v. Rath Packing Co., 430 U.S. 519, 525, 97 S.Ct. 1305, 51 L.Ed.2d 604 (1977). Moreover, "[f]ederal regulations have no less pre-emptive effect than federal statutes." Fidelity Fed. Sav. & Loan Ass'n v. de la Cuesta, 458 U.S. 141, 153, 102 S.Ct. 3014, 73 L.Ed.2d 664 (1982). A federal law may either expressly or impliedly preempt a state law. Congress may expressly preempt a state law though specific language clearly stating its intent. On the other hand, implied preemption occurs though "field preemption" or "implied conflict preemption". Implied preemption occurs when: (1) where compliance with both federal and state regulations is impossible; or (2) where the state law "stands as an obstacle to the accomplishment and execution of the full purpose and objectives of Congress." See Hines v. Davidowitz, 312 U.S. 52, 67, 61 S.Ct. 399, 85 L.Ed. 581 (1941).

Thus, the first step in this preemption inquiry is to determine whether the federal government has established requirements applicable to the rate of pay for inmates participating in a federally certified PIECP under BJA certification, 18 U.S.C. § 1761(c). If so, the next step is to determine whether the state law S.C. Code Ann. § 24-3-430(D), parallels the federal requirements (then, the state law is not preempted) or whether the state law is "different from, or in addition to" the federal requirements (then, state law is preempted). See Weston v. Kim's Dollar Store, 399 S.C. 303, 731 S.E.2d 864 (2012). Appellant now argues the federal law at issue, 18 U.S.C. § 1761(c) requires all participating state correctional departments to pay inmate PIECP workers "no less than [prevailing wage] for work of similar nature in the locality in which the work was performed." The state law S.C. Code Ann. 24-3-430(D)(2024) requires that SCDC pay inmate PIECP workers "[No] less than an hourly rate equal to the federal minimum wage for work of similar nature in the private sector".

Clearly federal law, 18 U.S.C. § 1761(c) mandates all state correctional agencies participating in the PIECP to pay participating inmates the prevailing wage. Thus, the first prong of this standard has been met and therefore, implied preemption is triggered. This leads to the inquiry of S.C. Code Ann. § 24-3-430(D)(2024), whether state law is different from or in addition to the PIECP's specific federal prevailing wage requirement. In its Step One and Step Two Grievance responses; as well as its Respondent's Brief to the ALC, SCDC's position has been and is that pursuant to the amendments made to 24-3-430(D)(effective May 21, 2024), "This change from "prevailing wage" to "federal minimum wage" indicates that the Legislature no longer intends for inmates to receive a prevailing wage for their work in the PIECP after May 21, 2024. S.C. Code Ann. § 24-3-430(D) explicitly directs SCDC to pay inmates, like Appellant, the federal minimum wage, which he is receiving." (emphasis added). See SCDC's Brief to ALC p. 4; Step One and Step Two Grievance Responses.

S.C. Code Ann. § 24-3-430(D)(2024) and SCDC's interpretation clearly stands as obstacle to the accomplishment and execution of the full purpose and objectives of Congress, which in the enactment of 18 U.S.C. § 1761(c), left no room for PIECP inmates participating in the PIECP nationwide to be paid no less than the **prevailing wage** in the locality the work is performed. See 18 U.S.C. § 1761(c). Also, see Hines v. Davidowitz, *supra*; Geir v. American Honda Motor, Co., Inc., 529 U.S. 861, 120 S.Ct. 1913, 146 L.Ed.2d 914 (2000).

Thus, the ALC's deference to SCDC, despite evidence of missing records, misapplication of law, conflict with federal authority, and ignoring uncontroverted evidence of exhibits submitted by the Appellant (PIECP Guideiline (Exhibit C) and SCDC / Shaw Contract (Exhibit D)), establishing federal wage requirements, is arbitrary and capricious, and constitutes

reversible error under every subsection of S.C. Code Ann. § 1-23-610(B).

#### CONCLUSION

For all the above-provided reasons, Appellant respectfully asserts that the ALC's decision which it enter in its November 12, 2025 "Final Order", must be reversed because it:

- A) Missapplied and ignored federal law;
  - B) Relied upon inapplicable precedent;
  - C) Ignored mandatory preemption principles;
  - D) Denied Appellant a complete record under SCALC Rule 58;
  - E) Affirmed without substantial evidence;
  - F) Implicitly affirmed SCDC's argument that a prior settlement for PIECP backpay bars present wage claim;
  - G) Upheld a state statute that is legally void due to federal preemption;
- and
- H) Deferred improperly to SCDC.

Therefore, Appellant respectfully asks this Honorable Court, under the various provisions of § 1-23-610(B) to:

- 1) Reverse the ALC's November 12, 2025 Final Order;
- 2) Hold that federal law, 18 U.S.C. § 1761(c) preempts the 2024 amendment to S.C. Code Ann. § 24-3-430(D) as applied to inmate participants in SCDC's PIECP program;
- 3) Hold that prior settlement for PIECP backpay cannot extinguish any right to challenge underpayment of wages earned after settlement period;
- 4) Remand with instructions that SCDC pay Appellant the prevailing wage required by 18 U.S.C. § 1761(c) from his post-settlement date, September 9, 2024 forward, using the proper SOC Code and DEW locality wage data; and
- 5) Grant any further relief the Court deems just and appropriate.

Respectfully Submitted,

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December 30, 2025