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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

The Honorable William P. Keesley

Appellate Case No. 2025-002064

Ann Peets .... Appellant,

v.

South Carolina State Ethics Commission
and Meghan Walker Dayson, in her official
capacity as Executive Director of the South
Carolina State Ethics Commission.. Respondents.

Record on Appeal

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Index

Orders

Pleadings

Motions and Memoranda

Transcripts

Other

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiff,	)	Civil Action No.: 2023-CP-40-04854
vs.	)	**ORDER OF ASSIGNMENT AND SCHEDULING ORDER**
South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	)	

This matter comes before the Court on the parties' joint consent motion to assign the above-captioned case to the undersigned and for entry of a scheduling order. For the reasons below, the parties' motion is **GRANTED**.

Plaintiff filed an amended complaint on February 3, 2025, raising six causes of action, the first of which was a claim under the Freedom of Information Act (FOIA). *See* S.C. Code Ann. §§ 30-40-10 through -165. On February 27, 2025, the parties appeared for an initial hearing pursuant to S.C. Code Ann. § 30-4-100(A). The undersigned, as Chief Judge for Administrative Purposes for Common Pleas in the Eleventh Judicial Circuit, presided over the hearing and is now familiar with the issues in this Freedom of Information Act case. Given that the parties anticipate additional hearings that will necessitate a scheduling order to conclude this case within six months as required, S.C. Code Ann. § 30-4-100, the Court finds that assigning this case, in full, to a single judge would promote judicial economy and give effect to the General Assembly's intent.

The Court has authority to enter this Order in its capacity as Chief Administrative Judge. *E.g.*, *In re Duties of Circuit Court Chief Judges for Administrative Purposes*, Order No. 2019-06-

28-02 (S.C. Sup. Ct. filed June 29, 2019); Rule 40(h), SCRCP. Therefore, consistent with the above law, for good cause shown, in the interest of judicial economy, and to facilitate compliance with the General Assembly's directive to conclude the case within six months, the Court hereby assigns this case, in full, to the undersigned. The undersigned shall have exclusive jurisdiction over all issues in the case and take action to facilitate resolving this case within six months.

To that end, the following Scheduling Order is established in this case based on the parties' agreement to file cross-motions for summary judgment:

On the FOIA claim and any exhaustion arguments,

1. The parties shall file cross-motions for summary judgment, as well as any final memoranda in support, no later than **March 21, 2025**.
2. The parties shall file responses in opposition to each other's cross-motions for summary judgment no later than **April 4, 2025**.
3. The parties shall file reply briefs, if any, no later than **April 11, 2025**.
4. The case is subject to being called for an in-person hearing on the motions for the FOIA claim and any exhaustion arguments on **April 18, 2025**.

On the remaining claims:

1. The parties shall file cross-motions for summary judgment, as well as any final memoranda in support, no later than **May 30, 2025**.
2. The parties shall file responses in opposition to each other's cross-motions for summary judgment no later than **June 13, 2025**.
3. The parties shall file reply briefs, if any, no later than **June 20, 2025**.
4. The case is subject to being called for an in-person hearing on the motions for the remaining claims any time after **June 27, 2025**.

AND IT IS SO ORDERED.

Honorable William P. Keesley
Chief Administrative Judge
Lexington County Court of Common Pleas
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/Complex Case Designation

Circuit Judge (Code #2050)

s/ William P. Keesley

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiff,	)	Case No. 2025CP3200440
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

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[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

Electronically signed on 2025-05-29 11:07:43 page 18 of 18

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP3200440

Ann Peets
PLAINTIFF(S)

South Carolina State Ethics Commission et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The plaintiff filed a motion to alter or amend and to reconsider the order issued on May 29, 2025. The motion is respectfully denied. Please see page 2.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case.

☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/10/2025 .

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The motion is decided upon written submissions, and the court has had the benefit of extremely detailed briefs by talented advocates. While it has generally been the practice of this court to issue more specific orders on Rule 59 motions, careful consideration has been given to the extensive arguments raised. It has been determined that the original order is sufficient in that it contains no error of law or failure to rule upon any issue necessary to decide the dispute. Nor does this court find any inappropriate statements of fact or improper factual rulings. This case deals with the tension that exists in statutory interpretation related to matters that are of extreme importance to citizens. These statutes are at the core of protecting confidence in governmental activities. The court refers to the Response filed by the defendants. The issues presented in this case are at times technical and others may come to different conclusions than this court. Nonetheless, even in the context of the drastic nature of summary judgment, this court finds that the decision to determine that the defendants did not violate FOIA in the unique circumstances presented here and that the plaintiff should be required to exhaust administrative remedies is justified. Having fully reconsidered the prior ruling and the issues raised in the pending motion, with the utmost respect to those who disagree with the analysis and conclusions reached by this court, the motion to alter or amend is denied.

Lexington Common Pleas

Case Caption:	Ann Peets VS South Carolina State Ethics Commission , defendant, et al
Case Number:	2025CP3200440
Type:	Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley

Electronically signed on 2025-09-10 12:34:03 page 3 of 3

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	Civil Action No.
Ann Peets, Plaintiff, v. South Carolina State Ethics Commission, Defendants.	**SUMMONS**

TO: THE DEFENDANT NAMED ABOVE:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint upon the subscriber at his office, 1221 Main Street, Suite 1800, Columbia, South Carolina 29201 (or by mail to PO Box 11390, Columbia, SC 29211), within thirty (30) days after service hereof, exclusive of the day of service. If you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

Respectfully Submitted,

/s/ Michael R. Burchstead

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Attorneys for Ann Peets

January 31, 2025
Columbia, SC

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	Civil Action No.

Ann Peets,

Plaintiff,

v.

South Carolina State Ethics Commission

Defendants.

Complaint
(Non-Jury)

Plaintiff Ann Peets (Plaintiff or Peets), pursuant to S.C. Code Ann. §§ 15-53-10, *et. seq*., S.C. Code Ann. § 30-4-100(A), seeks declaratory judgment, injunctive relief and in support thereof would further show the Court as follows:

Parties, Jurisdiction, Venue, Background

1. Defendant South Carolina State Ethics Commission (Commission) is an executive branch agency of the State of South Carolina, whose primary responsibility is the administration and enforcement of the Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. §§ 8-13-100, *et. seq.*, and § 2-17-10, *et. seq*. (Ethics Act). The Commission's sole office is located at 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210, which is located in Lexington County, South Carolina. Thus, venue is proper in Lexington County.

2. Among other activities, the Commission investigates and adjudicates complaints brought by individuals alleging violations of the Ethics Act. Although the Commission's powers are purely civil, the complaint process is of a quasi-criminal nature. If found to have violated the

Ethics Act, a respondent can be subject to a fine up to $2,000.00 per violation, administrative penalties, and referral to criminal authorities for prosecution S.C. Code Ann. § 8-13-320(10)(h), -320(10)(i).

3. The Commission is also a "public body," as defined by S.C. Code Ann. § 30-4-20(a) of the South Carolina Freedom of Information Act (FOIA). The FOIA "dictates the procedures by which public bodies must conduct their meetings." *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 128, 459 S.E.2d 876, 878 (Ct. App. 1995), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996).

4. Plaintiff is a citizen and resident of Charleston County. In the November 7, 2023 general election, Peets was a first-time candidate for political office, running for a seat on Folly Beach Town Council. Peets received enough votes to qualify for the run-off election on November 21, 2023, but she ultimately lost that election. As a candidate for public office, Peets was required to comply with the Ethics Act, Title 8, Article 13, related to campaign practices. *See* S.C. Code Ann. §§ 8-13-1300, *et. seq.*

5. After the election, three political opponents of Respondent's candidacy - Greta Anderson, Lindsay Hamrick, and Jody Rogers - filed complaints with the Commission alleging certain technical or procedural violations of the Ethics Act (i.e., allegations that Peets filed a campaign disclosure reports too late, failed to properly report contributions or expenditures, etc.). Peets denies these allegations.

6. In December 2023,[1] the Anderson, Hamrick, and Rogers complaints were reviewed

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[1] On December 4, 2023, the Commission opened the Hamrick complaint investigation, on December 13, 2023, it opened the Rogers investigation, and on December 27, 2023, it opened the Anderson investigation.

by the Commission Executive Director, or her designee, who ordered an investigation after finding the complaints contained "facts sufficient" to order an investigation and ordered an investigation. *See* S.C. Code Ann. § 8-13-320(10)(c).

7. The Commission then investigated the matter. When a Commission investigation is concluded,

> … commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. … *If the commission determines, by an affirmative vote of six or more commission members,*[2] *that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred* … Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of [the Ethics Act].

S.C. Code Ann. § 8-13-320(10)(i) (emphasis added). The hearing described in the statute is commonly-known as a "probable cause hearing."

8. On August 20, 2024, Peets received a Notice of Hearing from the Commission,[3] which is the "preliminary decision … setting forth a date for a hearing before a panel of three commissioners" contemplated by S.C. Code Ann. § 8-13-320(10)(i).The Notice of Hearing represented that a probable cause hearing on her case had been conducted and the Commission voted to find probable cause against Peets on multiple counts of violating the Ethics Act.

9. The Notice of Hearing set forth a February 20, 2025 date for a contested case

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[2] The Commission consists of eight (8) members. S.C. Code Ann. § 8-13-310(A)(1).

[3] Peets first learned about the contents of the Notice of Hearing two days earlier, on August 18, 2024, when she reviewed a social media post from one of the complainants, Greta Anderson, on the "Folitics" Facebook page maintained by Anderson.

hearing before a 3 commissioner hearing panel.

10. The circuit court has exclusive jurisdiction over actions to enforce the FOIA. *See* S.C. Code Ann. § 30-4-100(A) (providing that "[a] citizen of the State may apply *to the circuit court* for a declaratory judgment, injunctive relief, or both, to enforce the provisions of this chapter ….") (emphasis added).

11. As the Ethics Commission has no power to adjudicate a FOIA claim, this claim is properly brought in this Court. *See Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006) ("A party is not required to exhaust administrative remedies if the issue is one that cannot be ruled upon by the administrative body.").

12. This Court has subject matter jurisdiction to grant the relief requested pursuant to the South Carolina Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, *et seq*, S.C. Code Ann. § 30-4-100(A), Rule 65, SCRCP, and the power and authority granted and reserved unto this Court by Article 5, Section 20 of the Constitution of the State of South Carolina.

13. This Court has personal jurisdiction over the parties for the purposes of the relief sought herein and has jurisdiction over this controversy.

First Cause of Action
(Declaratory Judgment, S.C. Code Ann. § 15-53-10, *et seq.*
Violation of the S.C. Freedom of Information Act

14. Peets repeats the preceding allegations as if set forth herein.

15. The Notice of Hearing indicated that the Commission found probable cause against Peets, but did not contain any indication of when the probable cause vote took place. On information and belief, the Commission is contending it took place on July 18, 2025. Until

recently, Peets had assumed that the Commission had actually voted on probable cause at that meeting. However, the Commission's official minutes for that meeting show otherwise.[4]

16. The July 18, 2024 open meeting minutes, attached for convenience as **Exhibit A,** reflects that the Commission took formal votes multiple times, with all of them passing by a 7-0 margin. The minutes reflect that the meeting was called to order at 9:37 a.m., that at some subsequent point the Commissioners voted "to go into executive session to hear probable cause matters," that the Commissioners "returned from Executive Session at 12:15 p.m,," that Commission staff then presented and the Commissioners voted to adopt a draft advisory opinion, and then that the Commission voted to adjourn at 12:18 PM. Logically, if the Commission voted on probable cause, it would have been between 12:15 PM when it came out of "executive session to hear probable cause matters" and adjournment 3 minutes later at 12:18 PM. However, the July 18, 2024 minutes demonstrate that no probable cause vote was taken.

17. At the September 19, 2024 Commission meeting, the minutes show that the Commission voted 7-0 to adopt the July 18, 2024 minutes.[5]

18. The July 18, 2024 meeting minutes "are the only competent evidence of the proceedings of the transactions of" Commission proceedings. *Berkeley Elec. Co-op., Inc. v. Town*

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[4] On its website, the Commission maintains the official open meeting minutes for all of its meetings from 2005 to the present, *see* Commission Open Meeting Minutes at https://ethics.sc.gov/about-us/meeting-minutes (accessed Jan. 28, 2025). The information on the website reflects that a meeting was held on July 18, 2024 and attaches the minutes to that meeting. *See* July 18, 2024 Commission Meeting Minutes at https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/Commission/Meeting%20Minutes/2024%20Meeting%20Minutes/July%2018%2C%202024%20Open%20Session%20Minutes.pdf (accessed January 28, 2025).

[5] *See* Sept. 19, 2024 Commission Meeting Minutes https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/Commission/Meeting%20Minutes/2024%20Meeting%20Minutes/September%2019%2C%202024%20Open%20Session%20Minutes.pdf. (accessed January 27, 2025).

of Mount Pleasant, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992) (internal citation omitted). The law "require[s] [the Commission] to keep written minutes of their public meetings recording 'the substance of *all matters proposed, discussed or decided*.'" *Davis v. Orangeburg-Calhoun L. Enf't Comm'n*, 344 S.C. 240, 248, 542 S.E.2d 755, 759 (Ct. App. 2001) (*quoting* S.C. Code Ann. § 30–4–90(a)(3) (1991)) (emphasis added). Thus, notwithstanding the Commission asserting that probable cause was found against Peets, "[p]arol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a [public body] unless the minutes are incomplete or ambiguous." *Berkeley Elec*., 308 S.C. at 208 (internal citation omitted). "Otherwise, parol evidence could render official minutes uncertain or unreliable so that the minutes would fail to afford dependable evidence of the proceedings...." *Id*.; *Davis,* 344 S.C. at 248, 542 S.E.2d at 759.

19. The July 18, 2024 minutes are unambiguous. The *only* logical conclusion that can be taken from reviewing them is that no probable cause vote was taken.

20. To the extent the Commission argues that it voted in favor of probable cause for Peets in Executive Session, that vote is invalid. S.C. Code Ann. § 30-4-70(a) specifies the six (6) reasons for which a public body may go into Executive Session, but § 30-4-70(b) makes clear that "[n]o action may be taken in executive session except to (a) adjourn or (b) return to public session." Thus, even assuming *arguendo* that the Commission was allowed to "go into executive session to hear probable cause matters" on July 18, 2024, any actual vote on probable cause was required to be taken in open session. *See also Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 165, 547 S.E.2d 862, 866 (2001) ("FOIA prohibits any formal action to be taken in an executive session.") (*citing* § 30–4–70(a)(6)); *Bus. License Opposition Comm. v. Sumter Cnty.*, 311 S.C. 24, 28, 426 S.E.2d 745, 748 (1992) ("We agree with the Master that the evidence of record

demonstrates that the amendment to the ordinance was illegally adopted at the closed meeting … [B]ased upon this evidence, we find no abuse of discretion on the part of the Master in ordering the equitable relief of invalidation of the ordinance."); *Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 616–17, 885 S.E.2d 406, 408 (Ct. App. 2023) ("Even if the Board had complied with the FOIA's specific purpose requirement when it retreated into executive session, it could not have taken any vote except to adjourn or resume its public session. § 30-4-70(b).") (*citing* § 30-4-70(b)); *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 118, 767 S.E.2d 203, 209 (Ct. App. 2014), *aff'd as modified*, 415 S.C. 625, 785 S.E.2d 198 (2016) (FOIA "specifically prohibit[s] voting while in executive session.").

21. Thus, to the extent the Commission attempts to argue that a probable cause vote took place in Executive Session, Peets is entitled to an order declaring the actions of the Commission to be in violation of the FOIA and invalid and enjoining further violations of the FOIA.

22. Regardless, because the July 18, 2024 minutes conclusively demonstrate that no probable cause vote was taken, Peets is entitled to an order declaring that the Commission has no statutory jurisdiction to proceed with a merits hearing before a Commissioner Hearing Panel, because the prerequisite of "the commission determin[ing], by an affirmative vote of six or more commission members, that there is probable cause" has not occurred. *See* S.C. Code Ann. § 8-13-320(10)(i).

WHEREFORE, having fully set forth its complaint, Plaintiff prays that this court issue its order:

(1) that the court declare pursuant to section 15-53-20 of the South Carolina Code and S.C. Code Ann. § 30-4-100(A), that the Commission violated FOIA in its handling of Peets' complaints, that no valid probable cause vote was taken on Peets' ethics complaints, and therefore the Commission lacks the authority to proceed in this matter.;

(2) that the Court enjoin the Commission from continuing to violate FOIA;

(3) that the Court grant an order awarding her reasonable attorneys' fees and costs under S.C. Code Ann. § 30-4-100;

(4) that the Court order 10-day hearing in this matter as required by S.C. Code Ann. § 30-4-100 (A).

(5) Such other relief as this Court may deem proper and appropriate.

Respectfully Submitted,

/s/ Michael R. Burchstead

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Columbia, South Carolina
January 31, 2025

EXHIBIT "A"

ELECTRONICALLY FILED - 2025 Jan 31 4:23 PM - LEXINGTON - COMMON PLEAS - CASE#2025CP3200440

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

MINUTES
COMMISSION MEETING
OPEN SESSION
July 18, 2024

The July 18, 2024, meeting was called to order at 9:37 a.m. by Chairman Scott E. Frick at the State Ethics Commission's Hearing Room located at 201 Executive Center Drive, Suite 150, Columbia, South Carolina. Chairman Scott E. Frick, Vice Chairman F. Xavier Starkes, Commissioner AJ Holloway, Commissioner Mary Hunter B. Tomlinson, Commissioner Neal D. Truslow, and Commissioner Matthew N. Tyler were in attendance. Commissioner Bryant Caldwell appeared via Zoom call. Commissioner Brandolyn T. Pinkston was not present.

Staff present: Meghan Walker Dayson, Ami Franklin, Courtney Laster, Renique Brabham, Ryanne Caldwell, Kevin Hinson, Reggie Gaymon, James Bagnall, W.B. White, Jr., Thomas Yeager, Rachael O'Bryan, and Erin Caughman were in attendance.

Chairman Frick declared a quorum present. Director Dayson noted for the record that the news media was duly notified.

MINUTES

Chairman Frick called for the approval of the May 16, 2024 minutes. Chairman Frick asked for any discussion. A motion was made by Commissioner Starkes, seconded by Commissioner Tyler, to accept the minutes from the May 16, 2024 Commission meeting. The motion carried with a 7 – 0 vote.

APPEALS

C2022-060 State Ethics Commission vs. William C. Smith

Attorney Brabham informed the panel that Respondent's attorney, Maureen T. Coffey, had filed a Motion for Continue for Respondent's Appellate Hearing and that staff had no objection to the Motion. The continuance was granted by Chairman Frick.

C2023-003 State Ethics Commission vs. Troy Thomas

The Commission was represented by Attorney Brabham and the Respondent appeared *pro se*. Respondent acknowledged that his 2021 Pre-Election Campaign Disclosure was not timely filed. Respondent expressed that he had been unemployed during periods of the Complaint process and that he only paid a $10.00 filing fee to run for Springfield Town Council. Chairman Frick stated that the matter would be taken under advisement and an order issued within a few weeks. Commissioners Matthew N. Tyler, Mary Hunter B. Tomlinson, and Neal D. Truslow recused from the appellate hearing since they comprised the Hearing Panel.

OFFICE OPERATIONS

Director Dayson presented the Budget, Compliance Report, and Pending and Paid Orders Report for information.

EXECUTIVE SESSION

Chairman Frick asked for further discussion or a motion to go into Executive Session to hear probable cause matters. A motion was made by Commissioner Tyler, seconded by Commissioner Starkes, to go into executive session to hear probable cause matters. The motion carried with a 7 – 0 vote.

RETURN FROM EXECUTIVE SESSION

The Commissioners returned from Executive Session at 12:15 p.m.

ADVISORY OPINION

The Commission was presented with a draft of AO2024-001, which discusses whether services provided by a cyber security firm constitute a campaign contribution. A motion was made by Commissioner Starkes, seconded by Commissioner Tyler, to adopt the drafted AO2024-001. The motion passed with a 7 – 0 vote.

ADJOURNMENT

Chairman Frick asked for further discussion or a motion to adjourn. There being no further discussion, a motion was made by Commissioner Truslow, seconded by Commissioners Tomlinson and Tyler, to adjourn at 12:18 p.m. The motion carried with a 7 – 0 vote.

Respectfully Submitted,

Rachael O'Bryan

Rachael O'Bryan

STATE OF SOUTH CAROLINA | IN THE COURT OF COMMON PLEAS

COUNTY OF LEXINGTON | Civil Action No. 2025-CP-32-00440

Ann Peets,

Plaintiff,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,

Defendants.

Amended Complaint and Petition for Writ of Prohibition and Temporary and Permanent Injunctive Relief
(Non-Jury)

Plaintiff Ann Peets (Plaintiff or Peets), pursuant to S.C. Code Ann. §§ 15-53-10, *et. seq*., S.C. Code Ann. § 30-4-100(A), Rule 57 and Rule 65 of the South Carolina Rules of Civil Procedure (SCRCP), and Article 5, Section 20 of the Constitution of the State of South Carolina, seeks declaratory judgment, injunctive relief, and a writ of prohibition, and in support thereof would further show the Court as follows:

Background

1. Defendant South Carolina State Ethics Commission (Commission) is an executive branch agency of the State of South Carolina, whose primary responsibility is the administration and enforcement of the Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. §§ 8-13-100, *et. seq.*, and § 2-17-10, *et. seq*. (Ethics Act).[1] The Commission's sole

[1] Unless otherwise noted, the Commission will be used to refer jointly to the Commission and the other Defendants, each of whom is sued in their official capacity only.

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office is located at 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210, which is located in Lexington County, South Carolina. Thus, venue is proper in Lexington County.

2. Among other activities, the Commission investigates and adjudicates complaints brought by individuals alleging violations of the Ethics Act. Although the Commission's powers are purely civil, the complaint process is of a quasi-criminal nature. If found to have violated the Ethics Act, a respondent can be subject to a fine up to $2,000.00 per violation, administrative penalties, and referral to criminal authorities for prosecution S.C. Code Ann. § 8-13-320(10)(h), -320(10)(i).

3. The Commission is also a "public body," as defined by S.C. Code Ann. § 30-4-20(a) of the South Carolina Freedom of Information Act (FOIA). The FOIA "dictates the procedures by which public bodies must conduct their meetings." *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 128, 459 S.E.2d 876, 878 (Ct. App. 1995), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996).

4. Plaintiff is a citizen and resident of Charleston County. In the November 7, 2023 general election, Peets was a first-time candidate for political office, running for a seat on Folly Beach Town Council. Peets received enough votes to qualify for the run-off election on November 21, 2023, but she ultimately lost that election. As a candidate for public office, Peets was required to comply with the Ethics Act, Title 8, Article 13, related to campaign practices. *See* S.C. Code Ann. §§ 8-13-1300, *et. seq.*

5. After the election, three political opponents of Respondent's candidacy - Greta Anderson, Lindsay Hamrick, and Jody Rogers - filed complaints with the Commission alleging certain technical or procedural violations of the Ethics Act (i.e., allegations that Peets filed a

campaign disclosure reports too late, failed to properly report contributions or expenditures, etc.). Peets denies these allegations.

6. In December 2023,[2] the Anderson, Hamrick, and Rogers complaints were reviewed by Defendant Meghan Walker Dayson, the Commission Executive Director, or her designee, who ordered an investigation after finding the complaints contained "facts sufficient" to order an investigation and ordered an investigation. *See* S.C. Code Ann. § 8-13-320(10)(c). Defendant Dayson is made a defendant herein solely in her official capacity.

7. The Commission then investigated the matter. Throughout the course of the investigation, Peets was proceeding without an attorney. From the start of the investigation and going forward, Defendant White led Peets to believe that the investigation only concerned minor issues that could be easily corrected with her cooperation. Relying on these representations, Peets fully cooperated with the investigation, answered all questions posed to her, and gathered any information requested by Defendant White.

8. Meanwhile, unbeknownst to Peets, the Commission went on ill-advised, bizarre, and illegal fishing expedition into Peets' *personal* (not campaign) finances by issuing far-reaching and broad subpoenas to four (4) entities which are based outside the State of South Carolina,[3] specifically TD Bank (based in Cherry Hill, New Jersey),[4] American Express Company (AMEX)

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[2] On December 4, 2023, the Commission opened the Hamrick complaint investigation, on December 13, 2023, it opened the Rogers investigation, and on December 27, 2023, it opened the Anderson investigation.

[3] Upon information and belief, neither AMEX nor Venmo have any physical presence in South Carolina. While TD Bank and First Citizens have a physical presence in South Carolina, they are national banks. A national bank is deemed to be located in the state "in which its main office, as set forth in its articles of association, is located." *Wachovia Bank v. Schmidt,* 546 U.S. 303, 307 (2006).

(New York, New York),[5] Venmo (San Jose, California),[6] and First Citizens Bank (Raleigh, North Carolina).[7] As fully discussed *infra*, these subpoenas were all illegal because the Commission lacks the authority to issue subpoenas outside the State.

9. Most egregiously, the Commission issued a subpoena to TD Bank, which demanded the following information which was not limited in any way in time or scope:

> X YOU ARE HEREBY COMMANDED to **produce** and permit **inspection and copying of the following documents or objects** in your possession, custody or control at the place, date, and time specified below (list documents or objects):
> Any and all financial records from inception to current bearing the name or portions of Ann A. Peets (Date of Birth: [redacted]). These records should also include but not be limited to any; applications, phone numbers, authorizations and/or signers, account description, account numbers, account history, statements, transactions history, checks (any form), debits/credits, cards, wire transfers, address changes, services changes, transfer of the account and/or account closure, and any other records and/or associated account(s) to include account number [redacted].
> **State Ethics Commission, 201 Executive Center Drive, Suite 150, Columbia, SC 29210** **02/01/2024**

The production the Commission eventually received as a result of this subpoena was massive and contained all manner of highly personal and private information. The Commission received over

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[4] *See* TD Bank Corporate Information at__https://www.td.cornica/enlabout-td/corporate-profileicorporate-information#:—:text=TD%20Bank%20and%20its%20subsidiaries,headquartered%20in%20Cherry'020Hil 1°·02C%20N.J. (accessed January 16, 2025); *Campagna v. TD Bank, N.A.*, No. 20 Civ. 94 (CDL), 2020 WL 7130508, at *2 (M.D. Ga. Dec. 4, 2020) (TD Bank is a Delaware national banking association headquartered in New Jersey).

[5] Peets is informed and believes that American Express Company is the entity which was "served" the subpoena, and it is based in New York, *NY .See* SEC Form 10-Q American Express Company at https: ',/www.sec.gov'Archivesi'edgar'datal4962.[1]000000496224000031 'axp-20240331.htm (accessed January 16, 2025) (noting that AMEX is a New York company based in New York, NY). Regardless, Respondent is informed and believes that no subsidiary or related company to AMEX is a citizen of South Carolina.

[6] *See* SEC Form 10-Q PayPal Holdings, inc. at https://www.sec.gov/Archives/edgar/data/1633917/000163391724000048 .'pyp1-20240331.htm (accessed January 16, 2025) (noting that Venmo is owned by PayPal Holdings, Inc., which is a Delaware company based in San Jose, CA).

[7] See *First-Citizens Bank & Tr. Co. v HSBC Holdings PLC,* No. 3:23-CV-02483-LB, 2024 WL 3364016, at *14 (N.D. Cal. July 9, 2024) ("First Citizens is a North Carolina corporation with its principal place of business there.").

2,200 pages from Peets' personal bank account at TD Bank going back to 2014, which encompassed every transaction she has ever made with this account, her account balance after each transaction, payments made to the IRS and the South Carolina Department of Revenue. It further included highly personal information such as where she shopped, where she vacationed, the identity of her medical providers, how much she paid the medical providers, and much more.

10. The Commission also received as a result of the subpoenas (a) from American Express Company, Peets' personal credit card credit card statements and business credit card statements for Insight Marketing; (b) from First Citizens, business bank account records for Insight Marketing; and (c) from Venmo, personal payments made by Peets.

11. Despite Peets fully cooperating with the investigation and endeavoring to provide anything Defendant White asked for, Peets was never given prior notice of these subpoenas, and thus she received no opportunity to object to their issuance, scope, or relevance.

12. When a Commission investigation is concluded,

> … commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred. … *If the commission determines, by an affirmative vote of six or more commission members,*[8] *that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred* … Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of [the Ethics Act].

S.C. Code Ann. § 8-13-320(10)(i) (emphasis added). The hearing described in the statute is

[8] The Commission consists of eight (8) members. S.C. Code Ann. § 8-13-310(A)(1).

commonly-known (and will be referred to herein) as a "probable cause hearing."

13. On August 20, 2024, Peets received a Notice of Hearing from the Commission, which is the "preliminary decision … setting forth a date for a hearing before a panel of three commissioners" contemplated by S.C. Code Ann. § 8-13-320(10)(i). The Notice of Hearing represented that a probable cause hearing on her case had been conducted and the Commission voted to find probable cause against Peets on forty-five (45) counts of violating the Ethics Act.[9] The 45 counts were based primarily or substantially on information derived from the subpoenas for Peets' personal bank account records described above.

14. The Notice of Hearing set forth a February 20, 2025 date for a contested case hearing before a 3 commissioner hearing panel (merits hearing). The Ethics Act requires that the merits hearing "must be open to the public." S.C. Code Ann. § 8-13-320(10)(i).

Jurisdiction

15. This Court has subject matter jurisdiction to grant the relief requested pursuant to the South Carolina Declaratory Judgments Act, S.C. Code Ann. §§ 15-53-10, *et seq*, S.C. Code Ann. § 30-4-100(A), Rule 65, SCRCP, and the power and authority granted and reserved unto this Court by Article 5, Section 20 of the Constitution of the State of South Carolina.

16. As to Count One, the circuit court has exclusive jurisdiction over actions to enforce the FOIA. *See* S.C. Code Ann. § 30-4-100(A) (providing that "[a] citizen of the State may apply *to the circuit court* for a declaratory judgment, injunctive relief, or both, to enforce the provisions

[9] Peets first learned about the contents of the Notice of Hearing two days earlier, on August 18, 2024, when she reviewed a social media post from one of the complainants, Greta Anderson, on the "Folitics" Facebook page maintained by Anderson. Prior to reviewing this post, Peets was still operating under the assumption that Defendant White was acting in good faith when he represented this to be a minor issue that could easily be corrected.

of this chapter ….") (emphasis added).In other words, the Ethics Commission has no power to adjudicate a FOIA claim.

17. As to Counts Two, Three, and Four, Peets is informed and believes she can go to this Court for this declaratory relief before exhausting its remedies within the agency, on numerous grounds (without waiving any others), including:

(a) "[t]he construction of a statute is a judicial function and responsibility." *Anderson v. S.C. Election Comm'n,* 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012)*;*

(b) that "[a] party is not required to exhaust administrative remedies if the issue is one that cannot be ruled upon by the administrative body." *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville,* 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006);

(c) that assuming arguendo a probable cause vote did take place on Peets' complaints, the full Commission has already approved of this practice of issuing out-of-state subpoenas by voting on probable cause, and taking the question to a subset of 3 of these same Commissioners would be a futile exercise. See *Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs.,* 400 S.C. 478, 735 S.E.2d 492 (2012); and

(d) that "[t]he doctrine of exhaustion of remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Ward v. State,* 343 S.C. 14, 538 S.E.2d 245 (2000).

18. This Court has personal jurisdiction over the parties for the purposes of the relief

sought herein and has jurisdiction over this controversy.

First Cause of Action
(Declaratory Judgment, S.C. Code Ann. § 15-53-10, *et seq.*)
(Violation of the S.C. Freedom of Information Act/No Statutory Authorization to Proceed on Complaints)

19. Peets repeats the preceding allegations as if set forth herein.

20. Without "the commission determin[ing], by an affirmative vote of six or more commission members, that there is probable cause" has occurred, *see* S.C. Code Ann. § 8-13-320(10)(i), the Commission has no statutory authorization to convene a 3-Commissioner Panel for a contested case hearing.

21. Until recently, Peets had assumed that the Commission had actually voted on probable cause at the July 18, 2024 meeting, as the Commission claimed in the Notice of Hearing. However, the Commission's official minutes for that meeting show otherwise.[10]

22. The July 18, 2024 open meeting minutes, attached for convenience as **Exhibit A,** reflects that the Commission took formal votes multiple times, with all of them passing by a 7-0 margin. The minutes reflect that the meeting was called to order at 9:37 a.m., that at some subsequent point the Commissioners voted "to go into executive session to hear probable cause matters," that the Commissioners "returned from Executive Session at 12:15 p.m,," that Commission staff then presented and the Commissioners voted to adopt a draft advisory opinion, and then that the Commission voted to adjourn at 12:18 PM. Logically, if the Commission voted

[10] On its website, the Commission maintains the official open meeting minutes for all of its meetings from 2005 to the present, *see* Commission Open Meeting Minutes at https://ethics.sc.gov/about-us/meeting-minutes (accessed Jan. 28, 2025). The information on the website reflects that a meeting was held on July 18, 2024 and attaches the minutes to that meeting. *See* July 18, 2024 Commission Meeting Minutes at https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/Commission/Meeting%20Minutes/2024%20Meeting%20Minutes/July%2018%2C%202024%20Open%20Session%20Minutes.pdf (accessed January 28, 2025).

on probable cause, it would have been between 12:15 PM when it came out of "executive session to hear probable cause matters" and adjournment 3 minutes later at 12:18 PM. However, the July 18, 2024 minutes demonstrate that no probable cause vote was taken.

23. At the September 19, 2024 Commission meeting, the minutes show that the Commission voted 7-0 to adopt the July 18, 2024 minutes.[11]

24. The July 18, 2024 meeting minutes "are the only competent evidence of the proceedings of the transactions of" the Commission. *Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant,* 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992) (internal citation omitted). The law "require[s] [the Commission] to keep written minutes of their public meetings recording 'the substance of *all matters proposed, discussed or decided*.'" *Davis v. Orangeburg-Calhoun L. Enf't Comm'n*, 344 S.C. 240, 248, 542 S.E.2d 755, 759 (Ct. App. 2001) (*quoting* S.C. Code Ann. § 30–4–90(a)(3) (1991)) (emphasis added). Thus, notwithstanding the Commission asserting that probable cause was found against Peets, "[p]arol evidence cannot be admitted to explain, enlarge, or contradict minutes of the proceeding of a [public body] unless the minutes are incomplete or ambiguous." *Berkeley Elec.*, 308 S.C. at 208 (internal citation omitted). "Otherwise, parol evidence could render official minutes uncertain or unreliable so that the minutes would fail to afford dependable evidence of the proceedings...." *Id.*; *Davis*, 344 S.C. at 248, 542 S.E.2d at 759.

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[11] *See* Sept. 19, 2024 Commission Meeting Minutes https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/Commission/Meeting%20Minutes/2024%20Meeting%20Minutes/September%2019%2C%202024%20Open%20Session%20Minutes.pdf. (accessed January 27, 2025).

25. The July 18, 2024 minutes are unambiguous. The *only* logical conclusion that can be taken from reviewing them is that no probable cause vote was taken.

26. If the Commission voted in favor of probable cause for Peets in Executive Session, that vote is invalid. S.C. Code Ann. § 30-4-70(a) specifies the six (6) reasons for which a public body may go into Executive Session, but § 30-4-70(b) makes clear that "[n]o action may be taken in executive session except to (a) adjourn or (b) return to public session." Thus, even assuming *arguendo* that the Commission was allowed to "go into executive session to hear probable cause matters" on July 18, 2024, any actual vote on probable cause was required to be taken in open session. *See Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 165, 547 S.E.2d 862, 866 (2001) ("FOIA prohibits any formal action to be taken in an executive session.") (*citing* § 30–4–70(a)(6)); *Bus. License Opposition Comm. v. Sumter Cnty.*, 311 S.C. 24, 28, 426 S.E.2d 745, 748 (1992) ("We agree with the Master that the evidence of record demonstrates that the amendment to the ordinance was illegally adopted at the closed meeting … [B]ased upon this evidence, we find no abuse of discretion on the part of the Master in ordering the equitable relief of invalidation of the ordinance."); *Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 616–17, 885 S.E.2d 406, 408 (Ct. App. 2023) ("Even if the Board had complied with the FOIA's specific purpose requirement when it retreated into executive session, it could not have taken any vote except to adjourn or resume its public session. § 30-4-70(b).") (*citing* § 30-4-70(b)); *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 118, 767 S.E.2d 203, 209 (Ct. App. 2014), *aff'd as modified,* 415 S.C. 625, 785 S.E.2d 198 (2016) (FOIA "specifically prohibit[s] voting while in executive session.").

27. Thus, to the extent the Commission attempts to argue that a probable cause vote took place in Executive Session, Peets is entitled to an order declaring the actions of the

Commission to be in violation of the FOIA and invalid and enjoining further violations of the FOIA.

28. Regardless, because the July 18, 2024 minutes conclusively demonstrate that no probable cause vote was taken, Peets is entitled to an order declaring that the Commission has no statutory jurisdiction to proceed with a merits hearing before a Hearing Panel of the Commission on the complaints against Peets.

<u>Second Cause of Action</u>
(Declaratory Judgment, S.C. Code Ann. § 15-53-10, *et seq.*)
(No Statutory Authority to Issue Extraterritorial Subpoenas)

29. Peets repeats the preceding allegations as if set forth herein.

30. Put simply, the Commission does not have subpoena authority outside the State of South Carolina. Thus, the subpoenas issued to the out-of-state entities were illegal.

31. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Rainey v. Haley,* 404 S.C. 320, 323, 745 S.E.2d 81, 82 (2013) *(citing 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. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges,* 341 S.C. at 85 (internal citation omitted). Like any other agency created by the Legislature, the Commission has "only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers ...." *S.C. Tax Comm 'n v. S.C Tax Bd. of Rev.,* 278 S.C. 556, 560, 299 S.E.2d 489, 491-92 (1983).

32. As is true with all other powers, the Commission's "powers to investigate and elicit information are … derived from and limited by the authorizing statutes." *Ex parte Allstate Ins.*

Co., 248 S.C. 550, 563, 151 S.E.2d 849, 853 (1966). S.C. Code Ann. § 8-13-320(9)(f), the relevant statute authorizing subpoena power contains no language that can be construed as granting the Commission subpoena power outside borders of the State of South Carolina. This is for good reason, because "[t]he principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another."*Drs. Hosp. of Augusta, L.L.C v, Comp Trust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006); *see also John Deere Co. v. Cone*, 239 S.C. 597, 602–03, 124 S.E.2d 50, 53 (1962) (finding “a subpoena duces tecum [which] purported to require production … of [a] company's original records, admittedly located in another state …, was ineffectual as a subpoena because the courts of this state are without jurisdiction over persons or property outside of its territory.”).

33. It is also misleading to represent for the Commission to issue subpoenas to out-of-state entities representing that it has power to compel compliance when it does not. On at least two reported occasions, attorneys in South Carolina have been disciplined for issuing a subpoena to an out-of-state entity. *Matter of Lundgren*, 421 S.C. 300, 303, 806 S.E.2d 125, 127 (2017) (disciplining an attorney for issuing a subpoena to an out-of-state entity); *Matter of Fabri*, 418 S.C. 384, 392, 793 S.E.2d 306, 310 (2016) (noting prior attorney sanction "that involved improperly subpoenaing an out-of-state party.") (cleaned up).

34. Upon information and belief, the Commission could have attempted to domesticate and properly serve the out-of-state subpoena to the New Jersey, New York, California, and North Carolina entities had it chosen to do so pursuant to the Uniform Interstate Depositions and Discovery Act, but it did not. In the case of the TD Bank subpoena, the Commission investigator emailed the subpoena to an out-of-state email address.

35. Therefore, pursuant to section 15-53-20 of the South Carolina Code, Peets seeks a declaration from this Court that

(a) the Commission does not have subpoena authority outside the State of South Carolina; and

(b) the Commission exceeded its lawfully conferred authority in issuing the 4 out-of-state subpoenas in Peets' investigation.

Third Cause of Action
(Declaratory Judgment, S.C. Code Ann. § 15-53-10, *et seq.*)
(Violation of Privacy Rights under Federal and State Constitution)

36. Peets repeats the preceding allegations as if set forth herein.

37. The Fourth Amendment "demands that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated...." *State v. Moore*, 421 S.C. 167, 173, 805 S.E.2d 585, 588 (Ct. App. 2017), *aff'd as modified*, 429 S.C. 465, 839 S.E.2d 882 (2020).

38. Stated in very similar terms, S.C. Const. art. I, § 10 "favors an interpretation offering a higher level of privacy protection than the Fourth Amendment." *State v. Key*, 431 S.C. 336, 349, 848 S.E.2d 315, 321 (2020).

39. For a search to violate of the Fourth Amendment or S.C. Const. art. I, § 10, the challenger must show "not only that the search of an item was illegal, but also that he had a legitimate expectation of privacy in the item searched." *Moore*, 421 S.C. at 174.

40. As set forth *supra*, the subpoenas at issue were illegal.

41. Peets "had a legitimate expectation of privacy" in her bank records, and the expectation is one which "society recognizes as reasonable." *Moore*, 421 S.C. at 174, 805 S.E.2d at 589. Just by way of example, the Commission received from TD Bank 2,200 pages of records

from Peets' personal bank account going back to 2014, containing many, many transactions of a highly personal and private nature.

42. Therefore, pursuant to section 15-53-20 of the South Carolina Code, Peets seeks a declaration from this Court that

(a) Peets has a right to privacy in her bank records under the Fourth Amendment;

(b) Peets has a right to privacy in her bank records under S.C. Const. art. I, § 10; and

(c) The Commission violated these rights in seizing her bank records.

43. Pursuant to section 15-53-20 of the South Carolina Code, Peets also seeks an order requiring the Commission to relinquish the custody and control of her bank records.

Third Cause of Action
(Declaratory Judgment, S.C. Code Ann. § 15-53-10, *et seq.*)
(Violation of Due Process Under State Constitution)

44. Peets repeats the preceding allegations as if set forth herein.

45. S.C. Const. art. I, § 22, which provides:

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property *unless by a mode of procedure prescribed by the General Assembly*, and he shall have in all such instances the right to judicial review.

This provision is "a safeguard for the protection of liberty and property of citizens," *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 446, 823 S.E.2d 193, 196 (Ct. App. 2018) (internal citation omitted), and "an additional guarantee of important due process rights." *Id.* at 447 (*citing Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998)).

46. The subpoenas at issue were overbroad and unrelated to any legitimate ethics investigation. Peets was given no prior notice of the subpoenas, thus no opportunity to object to their scope or any matters of procedural regularity. She did not learn about the subpoenas until after charges were issued based on the documents received therein. While Peets voluntarily spoke to Commission staff about the allegations in the Anderson, Hamrick, and Rogers complaints, she was never allowed an opportunity to respond to or explain the information gathered from the subpoenas prior to the probable cause proceeding.

47. Due process required that Peets be afforded some method of challenging the seizure of her bank records *prior* to their introduction in a probable cause proceeding, which would have required *at minimum* prior notice of their issuance.

48. The Ethics Act is silent as to whether or not the Commission is required to give a respondent notice of an investigative subpoena for respondent's records held by a third party. However, the Commission is wrong that this legislative silence can be construed to grant it an unbridled and limitless subpoena power which cannot be checked in any meaningful way until it is too late. As it stands, the Commission's interpretation of the scope of its power has deprived Peets of her property through these subpoenas under a "mode of procedure [not] prescribed by the General Assembly" because of the lack of notice. This violates S.C. Const. art. I, § 22.

49. Moreover, assuming *arguendo* that the Commission is correct that the Legislature intended to give it unreviewable subpoena powers,[12] then it must also be true that the portion of

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[12] Upon information and belief, the Commission misapprehends its subpoena authority as something akin to a power to issue search warrants. However, as distinguished from a search warrant, the key feature of a subpoena is that it "commences an adversary process during which the person served with the subpoena may challenge it in court before complying with its demands." *In re Subpoena Duces Tecum*, 228 F.3d 341, 348 (4th Cir. 2000). Additionally, the Legislature knows how to write a statute that grants

the Ethics Act is an unconstitutional delegation of power. *See S.C State Highway Dep't v. Harbin*, 226 S.C. 585, 595, 86 S.E.2d 466, 471 (1955) ("A statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers.").

50. Therefore, pursuant to section 15-53-20 of the South Carolina Code, Peets seeks a declaration from this Court that

(a) The Commission is required to provide ethics respondents notice of an investigative subpoena issued for a respondent's records held by a third party prior to seizing the records;

(b) The Commission's current practice of failing to give respondents such notice violates S.C. Const. art. I, § 22.

<u>Fifth Cause of Action</u>
(Writ of Prohibition)

51. Peets repeats the preceding allegations as if set forth herein.

52. On November 4, 2024, the undersigned counsel received the non-confidential file on the Peets investigation;[13] it was only at this point that Peets or counsel understood that the Commission possessed thousands of pages of Peets' bank records containing highly personal and private information.

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search warrant powers, *see*, *e.g.*, S.C. Code Ann. § 22-5-10. The Commission was not granted search warrant powers. *See* § 8-13-320(9)(f); *See Strickland v. Richland Cnty. Legislative Delegation*, 440 S.C. 438, 447 48, 892 S.E.2d 288, 293 (2023) (holding "the legislature clearly knew how to write discretion into the process because it did so in express language for select circumstances" in other statutes.); *S.C. Coastal Conservation League v. S.C. Dep't of Health and Env't Control*, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) ("[H]ad the legislature intended for the fifteen day time period to begin after receipt of notice. the legislature knew how to draft the statute to accomplish this result.").

[13] On October 1, 2024, the undersigned counsel emailed the Commission a Letter of Representation which requested the investigative file, and this was not received until a month later.

53. The Commission intends to produce these bank records (or some portion of them) into evidence at a contested case hearing that is scheduled for February 20, 2025. By law, this hearing "must be open to the public." S.C. Code Ann. § 8-13-320(10)(i).

54. Peets initially intended to present the issues contained herein (except for the FOIA claim) through the vehicle of a Motion to Dismiss filed with the Hearing Panel.

55. On December 19, 2024, the undersigned counsel filed a motion for continuance of the February 20, 2025 hearing,[14] referencing the Motion to Dismiss that would soon be filed and summarizing the general legal grounds. Peets suggested in the continuance request that the Motion to Dismiss be heard on the date of the merits hearing, and suggested the merits hearing (if necessary) be scheduled a reasonable time after the decision on the Motion to Dismiss. Peets expressed that if she were forced to go forward with the merits hearing without an opportunity to have the Motion to Dismiss decided, or to exercise any appellate rights, the ongoing constitutional concerns about her bank records would be mooted because these records (or at least a portion of them) would be introduced into evidence at a public hearing.

56. On January 14, 2025, Commission staff responded to the Motion for Continuance, indicating that Commission staff would not agree to continue the matter. The result of this is that the Motion to Dismiss, Motion for a Continuance, and the merits hearing would remain scheduled before the Hearing Panel on February 20, 2025, and everyone needed to be prepared that day to conduct the merits hearing. Meanwhile, the Commission is actively pressing forward in planning for the merits hearing. It has already subpoenaed seven (7) witnesses to testify at the merits hearing,

[14] This was the first continuance request Peets had made and for unknown reasons the matter has been placed on a faster-track to a hearing than for most cases.

including the three complainants. Peets does not know who some of these people are, or the subject of any of the witnesses' offered testimony. Thus, Peets is left with a substantial risk that she will have no opportunity to appeal a unfavorable decision on the Motion to Dismiss until after her bank records have already been introduced in evidence at a public hearing.

57. A writ of prohibition lies against a state agency that, while acting in a judicial or quasi-judicial capacity, to "prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure." *See Ex parte Jones*, 160 S.C. 63, 158 S.E. 134, 137 (1931).

58. "[P]rohibition is the proper remedy where … in the exercise of jurisdiction in handling matters clearly within its cognizance, an inferior court transgresses the bounds prescribed to it by the law, and there is no adequate remedy available in the ordinary course of the law." 63C Am. Jur. 2d Prohibition § 39 (internal footnotes and citations omitted).

59. "A court may be prohibited from acting in excess of its jurisdiction when it proceeds in a different manner than that prescribed by a relevant statute, [or] fails to follow an appellate decision directly on point." 63C Am. Jur. 2d Prohibition § 43 (internal footnotes and citations omitted).

60. "The writ also may be issued for an excess of territorial jurisdiction." *Id.*

61. The writ originally lay only against inferior courts but was soon extended to "public functionaries, officials, and persons charged with the performance of a duty not wholly judicial, and not even very extensively or strongly marked with a judicial character." *Hamer v. Stackhouse,*

14 S.C. 417, 427 (1881). Thus, the writ now lies against officials acting in a quasi-judicial capacity. *Id.* Here, the Commission is acting in a judicial or quasi-judicial capacity.

62. For reasons described *supra*, the Commission has clearly committed multiple encroachments, excesses, usurpations, and improper assumptions of jurisdiction, and committed many great outrages upon the settled principles of law and procedure.

63. A writ of prohibition is a preventive writ. If the temporary injunction does not issue, and the Commission forces Peets to go forward with a hearing prior to a decision by this Court on the request for a writ of prohibition, the instant litigation might become moot, thereby causing Peets irreparable harm and depriving her of an adequate remedy at law.

64. Therefore, Peets seeks a writ of prohibition from this Court, directing it not to move forward with any contested case proceeding in this matter until the issues in this case can fully be adjudicated.

Sixth Cause of Action
(Temporary Injunction)

65. Peets repeats the preceding allegations as if set forth herein.

66. The purpose of a temporary injunction is to preserve the status quo and avoid possible irreparable injury to a party pending litigation.

67. In this litigation, Peets seeks declaratory and injunctive relief from this Court, as well as a writ of prohibition, seeking to *inter alia* protect her constitutional interests in her bank records.

68. A temporary injunction is needed to preserve the status quo during the pendency of this litigation, and to prevent the Commission from taking any action on the ethics complaints against Peets until the matter is resolved.

69. As shown by the allegations herein, together with the exhibits thereto, which are attached hereto and incorporated herein pursuant to Rule 10(c), SCRCP, Peets will likely succeed on the merits of this case.

70. As shown by the allegations herein, together with the exhibits thereto, which are attached hereto and incorporated herein pursuant to Rule 10(c), SCRCP, Peets has no adequate remedy at law. Commission staff will not even grant or recommend a *continuance* in this matter, so that Peets can preserve her appellate rights if the Motion to Dismiss is denied.

71. Without this Court's intervention, Peets faces her private financial records being placed into evidence at a hearing in the matter on February 20, 2025, thus potentially mooting the constitutional issues about having these records in the public domain. Further, Peets would not have the opportunity to fully adjudicate the important issues at stake.

72. As shown by the allegations herein, together with the exhibits thereto, which are attached hereto and incorporated herein pursuant to Rule 10(c), SCRCP, Peets will suffer irreparable harm if the temporary injunction is not issued through *inter alia* the unlawful disclosure of her financial records.

73. Accordingly, Peets requests that this Court hold a hearing on the request for a temporary injunction and issue the temporary injunction on the earliest date possible to ensure a resolution well in advance of February 20, 2025.

WHEREFORE, having fully set forth its complaint, Plaintiff prays that this court issue its order,

(1) that the Court declare pursuant to section 15-53-20 of the South Carolina Code and S.C. Code Ann. § 30-4-100(A), that the Commission violated FOIA in its handling of Peets' complaints, that no valid probable cause vote was taken on Peets' ethics complaints, and therefore the Commission lacks the authority to proceed in this matter.;

(2) that the Court enjoin the Commission from continuing to violate FOIA;

(3) that the Court order 10-day hearing in this matter as required by S.C. Code Ann. § 30-4-100 (A);

(4) that the Court declare the Commission does not have subpoena authority outside the State of South Carolina, and that it exceeded its lawfully conferred authority in issuing the out-of-state subpoenas at issue;

(5) that the Court declare Peets has a right to privacy in her bank records under the Fourth Amendment and S.C. Const. art. I, § 10, and that the Commission violated these rights in seizing her bank records;

(6) that the Court require the Commission to relinquish the custody and control of her bank records;

(7) that the Court grant the Writ of Prohibition and Temporary Injunction, directing the Commission not to move forward with any contested case proceeding in this matter until the issues in this case can fully be adjudicated;

(8) that the Court award attorney's fees and costs available under FOIA and as otherwise might be available;

(9) that the Court grant any other relief requested herein, or such other relief as the Court may deem proper and appropriate.

Respectfully Submitted,

s/ Michael R. Burchstead
Michael R. Burchstead (S.C. Bar No. 73770)
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mburchstead@burr.com
Attorney for Ann Peets

Columbia, South Carolina
February 3, 2025

STATE OF SOUTH CAROLINA COUNTY OF SPARTANBURG	)))	IN THE COURT OF COMMON PLEAS
Ann Peets, Plaintiff, vs. South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	)))))))))))))	Civil Action No.: 2025-CP-32-00440 **VERIFICATION**

PERSONALLY appeared before me, Ann Peets, who after being first duly sworn, deposes and states as follows:

1. I am over 18 years of age, and I am qualified and competent to make this verification under oath.

2. I have personal knowledge of the facts and information stated in the Amended Complaint filed in the above-captioned matter.

3. I hereby verify that the information contained in the Amended Complaint is accurate, true, and correct to the best of my knowledge and belief.

FURTHER AFFIANT SAYETH NOT.

ANN PEETS

56592391 v1

SWORN TO AND SUBSCRIBED BEFORE ME
This 3 day of February, 2025

Notary Public for the State of South Carolina
My Commission Expires: 04/27/2031

ALLISON HINNANT
NOTARY
My Comm. Exp.
April 27 2031
PUBLIC
SOUTH CAROLINA

EXHIBIT "A"

State of South Carolina
State Ethics Commission

SCOTT E. FRICK, CHAIRMAN
F. XAVIER STARKES, VICE CHAIRMAN
BRYANT S. CALDWELL
AJ HOLLOWAY

BRANDOLYN THOMAS PINKSTON
MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

MINUTES
COMMISSION MEETING
OPEN SESSION
July 18, 2024

The July 18, 2024, meeting was called to order at 9:37 a.m. by Chairman Scott E. Frick at the State Ethics Commission's Hearing Room located at 201 Executive Center Drive, Suite 150, Columbia, South Carolina. Chairman Scott E. Frick, Vice Chairman F. Xavier Starkes, Commissioner AJ Holloway, Commissioner Mary Hunter B. Tomlinson, Commissioner Neal D. Truslow, and Commissioner Matthew N. Tyler were in attendance. Commissioner Bryant Caldwell appeared via Zoom call. Commissioner Brandolyn T. Pinkston was not present.

Staff present: Meghan Walker Dayson, Ami Franklin, Courtney Laster, Renique Brabham, Ryanne Caldwell, Kevin Hinson, Reggie Gaymon, James Bagnall, W.B. White, Jr., Thomas Yeager, Rachael O'Bryan, and Erin Caughman were in attendance.

Chairman Frick declared a quorum present. Director Dayson noted for the record that the news media was duly notified.

MINUTES

Chairman Frick called for the approval of the May 16, 2024 minutes. Chairman Frick asked for any discussion. A motion was made by Commissioner Starkes, seconded by Commissioner Tyler, to accept the minutes from the May 16, 2024 Commission meeting. The motion carried with a 7 – 0 vote.

APPEALS

C2022-060 State Ethics Commission vs. William C. Smith

Attorney Brabham informed the panel that Respondent's attorney, Maureen T. Coffey, had filed a Motion for Continue for Respondent's Appellate Hearing and that staff had no objection to the Motion. The continuance was granted by Chairman Frick.

C2023-003 State Ethics Commission vs. Troy Thomas

The Commission was represented by Attorney Brabham and the Respondent appeared *pro se*. Respondent acknowledged that his 2021 Pre-Election Campaign Disclosure was not timely filed. Respondent expressed that he had been unemployed during periods of the Complaint process and that he only paid a $10.00 filing fee to run for Springfield Town Council. Chairman Frick stated that the matter would be taken under advisement and an order issued within a few weeks. Commissioners Matthew N. Tyler, Mary Hunter B. Tomlinson, and Neal D. Truslow recused from the appellate hearing since they comprised the Hearing Panel.

OFFICE OPERATIONS

Director Dayson presented the Budget, Compliance Report, and Pending and Paid Orders Report for information.

EXECUTIVE SESSION

Chairman Frick asked for further discussion or a motion to go into Executive Session to hear probable cause matters. A motion was made by Commissioner Tyler, seconded by Commissioner Starkes, to go into executive session to hear probable cause matters. The motion carried with a 7 – 0 vote.

RETURN FROM EXECUTIVE SESSION

The Commissioners returned from Executive Session at 12:15 p.m.

ADVISORY OPINION

The Commission was presented with a draft of AO2024-001, which discusses whether services provided by a cyber security firm constitute a campaign contribution. A motion was made by Commissioner Starkes, seconded by Commissioner Tyler, to adopt the drafted AO2024-001. The motion passed with a 7 – 0 vote.

ADJOURNMENT

Chairman Frick asked for further discussion or a motion to adjourn. There being no further discussion, a motion was made by Commissioner Truslow, seconded by Commissioners Tomlinson and Tyler, to adjourn at 12:18 p.m. The motion carried with a 7 – 0 vote.

Respectfully Submitted,

Rachael O'Bryan

Rachael O'Bryan

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)))	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiffs, v. South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	)	Case No. 2025-CP-32-00440 **DEFENDANTS' ANSWER TO PLAINTIFF'S AMENDED COMPLAINT**

Defendants South Carolina State Ethics Commission (the Commission) and Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission (collectively, "Defendants"), responding to the Amended Complaint of Plaintiff Ann Peets, by and through the undersigned counsel, answer and allege—while reserving and without waiving the right to be heard on a motion to dismiss—as follows:

1. Each and every paragraph of the Amended Complaint not specifically admitted, qualified, or explained is denied.

2. Responding to the unnumbered Introductory Paragraph in the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith. Defendants further deny that Plaintiff is entitled to any of the extraordinary relief sought in this lawsuit.

3. Defendants admit the allegations in Paragraph 1 of the Amended Complaint.

4. Defendants assert no response is required to the allegations in Footnote 1 of the Amended Complaint. To the extent a response is required, Defendants admit Plaintiff refers to

Defendants as "the Commission" throughout her Amended Complaint. Further responding, although Footnote 1 references other "Defendants," Plaintiff does not sue the Commission employee who investigated the underlying ethics complaints against her in the Amended Complaint. Thus, there is now only one other Defendant. Although Defendants agree Dayson is sued in her official capacity, they deny that she is a proper Defendant.

5. Responding to Paragraph 2 of the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

6. Responding to Paragraph 3 of the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith. Further responding, Defendants deny the Freedom of Information Act (FOIA) requires the Commission to conduct a public vote on information the State Ethics Act requires to be confidential until *after* a probable cause determination is made.

7. Defendants admit, upon information and belief, the allegations in Paragraph 4 of the Amended Complaint. Further responding, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

8. Responding to Paragraph 5 of the Amended Complaint, Defendants admit only the allegations that Greta Anderson, Lindsay Hamrick, and Jody Rogers filed complaints against Plaintiff. Defendants deny that Plaintiff denied the allegations because she, in fact, admitted to most of the violations of the State Ethics Act that are the subject of the pending proceeding before the Commission. As for the remaining allegations, Defendants assert no response is required given that they consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response

is required, Defendants deny and demand proof of those allegations. Any allegation in Paragraph 5 not specifically admitted is denied.

9. Responding to Paragraph 6 of the Amended Complaint, Defendants admit the first sentence and the allegation that Dayson is sued in her official capacity, but they deny Dayson is a proper or necessary defendant. Further responding, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

10. Defendants admit the allegations in Footnote 2 of the Amended Complaint.

11. Responding to Paragraph 7 of the Amended Complaint, Defendants admit the first and second sentences. As for the remaining allegations, Defendants assert no response is required given that they consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants admit that, in a telephone call on January 16, 2024, Investigator White explained to Plaintiff the Commission's complaint process, the due process afforded to her, possible resolutions of the complaint, the confidentiality aspects of the investigation, and Plaintiff's right to representation and to provide a written response to the complaint. Plaintiff acknowledged these rights and chose to proceed without an attorney. Any allegation in Paragraph 7 not specifically admitted is denied.

12. Responding to Paragraph 8 of the Amended Complaint, Defendants assert no response is required given that they consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants admit the Commission issued subpoenas to the entities named in Paragraph 8, all of which regularly transact business in South Carolina. Defendants deny any allegations of wrongdoing or illegality and assert the Commission

had the authority to issue the subpoenas referenced. These subpoenas were "relevant to the agency's investigation," S.C. Code Ann. § 8-13-320(10)(f), into Plaintiff—among other things—using her personal accounts for campaign expenditures, and no entity objected or moved to quash. *See id.* Any allegation in Paragraph 8 not specifically admitted is denied.

13. Responding to Footnote 3 of the Amended Complaint, Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations concerning "physical presence." Further responding to the allegations, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

14. Responding to Footnotes 4, 5, 6, and 7 of the Amended Complaint, Defendants crave reference to the authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

15. Responding to Paragraph 9 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants admit the Commission issued the referenced subpoena to TD Bank, and TD Bank responded with over 2,200 pages of responsive records. Defendants deny any remaining allegations, including any allegations of wrongdoing or illegality, and assert the Commission had the authority to issue the referenced subpoena. Any allegation in Paragraph 9 not specifically admitted is denied.

16. Defendants admit the allegations in Paragraph 10 of the Amended Complaint.

17. Responding to Paragraph 11 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual

allegations. To the extent a response is required, Defendants admit the allegations but deny Plaintiff was entitled to any prior notice of the subpoenas at issue. Indeed, "publicizing details" of an ongoing investigation could "undermine the integrity of the investigation and tip off potential targets that could lead to tampering with evidence or witnesses." *United States v. Murdaugh*, No. 9:23-396-RMG, 2024 U.S. Dist. LEXIS 56367, at *5–6 (D.S.C. Mar. 28, 2024). Any allegation in Paragraph 11 not specifically admitted is denied.

18. Responding to Paragraph 12 of the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

19. Defendants admit the allegations in Footnote 8 of the Amended Complaint. Further responding, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

20. Defendants admit the allegations in Paragraph 13 of the Amended Complaint. Further responding, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

21. Responding to Footnote 9 of the Amended Complaint, Defendants lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning Plaintiff's receipt of information and thoughts and, therefore, deny and demand proof of those allegations. Further responding, while "Defendant White" is no longer a named defendant in this action, Defendants deny that the investigator made promises concerning the outcome of the investigation or acted in bad faith. Any allegation in Footnote 9 not specifically admitted is denied.

22. Responding to Paragraph 14 of the Amended Complaint, Defendants admit the allegations in the first sentence, crave reference to the legal authorities cited in the second sentence, and deny any misstatements, mischaracterizations, or inconsistencies therewith.

23. Defendants assert no responses are required to Paragraphs 15 and 16 because the allegations call for legal conclusions. To the extent responses are required, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

24. Defendants deny the allegations in Paragraph 17 of the Amended Complaint. Further responding to Subparagraphs (a) through (d), Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

25. Responding to Paragraph 18 of the Amended Complaint, Defendants assert no response is required given that the allegations call for legal conclusions. To the extent a response is required, Defendants deny and demand proof of the allegations.

FOR A FIRST DEFENSE TO THE FIRST CAUSE OF ACTION

26. Responding to Paragraph 19 of the Amended Complaint, each of the above allegations is realleged and incorporated by reference.

27. Responding to Paragraph 20 of the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

28. Responding to Paragraph 21 of the Amended Complaint, Defendants lack information sufficient to form a belief as to the truth of the allegations in the first sentence and, therefore, deny and demand proof of the allegations. As to the second sentence, Defendants deny

the allegation that no probable cause vote was taken; crave reference to the Commission's official meeting minutes; and deny any misstatements, mischaracterizations, or inconsistencies therewith.

29. Responding to Footnote 10 of the Amended Complaint, Defendants crave reference to the Commission's official meeting minutes and deny any misstatements, mischaracterizations, or inconsistencies therewith.

30. Responding to Paragraph 22 of the Amended Complaint, Defendants crave reference to the Commission's official meeting minutes and deny any misstatements, editorial comments, mischaracterizations, or inconsistencies therewith. Further responding, the Commission voted on probable cause in executive session because "[a]ll investigations, inquiries, hearings, and accompanying documents" relating to a complaint under the State Ethics Act are confidential until *after* a probable cause determination. S.C. Code Ann. § 8-13-320(10)(g). Any allegation in Paragraph 22 not specifically admitted is denied.

31. Responding to Paragraph 23 of the Amended Complaint, Defendants crave reference to the Commission's official meeting minutes and deny any misstatements, mischaracterizations, or inconsistencies therewith.

32. Responding to Footnote 11 of the Amended Complaint, Defendants crave reference to the Commission's official meeting minutes and deny any misstatements, mischaracterizations, or inconsistencies therewith.

33. Responding to Paragraph 24 of the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith. Further responding, Defendants assert the cited authorities are irrelevant because "[a]ll investigations, inquiries, hearings, and accompanying documents"

relating to a complaint under the State Ethics Act are confidential until *after* a probable cause determination. S.C. Code Ann. § 8-13-320(10)(g).

34. Responding to Paragraph 25 of the Amended Complaint, Defendants admit the first sentence and deny the second sentence.

35. Defendants deny the allegations in Paragraph 26 of the Amended Complaint. Further responding, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith. Moreover, 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). And 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)). Plaintiff's reliance on FOIA for obtaining probable cause determinations is therefore misplaced.

36. Defendants deny the allegations contained in Paragraphs 27 and 28 of the Amended Complaint.

FOR A FIRST DEFENSE TO A SECOND CAUSE OF ACTION

37. Responding to Paragraph 29 of the Amended Complaint, each of the above allegations is realleged and incorporated by reference.

38. Defendants deny the allegations in Paragraph 30 of the Amended Complaint.

39. Responding to the allegations in Paragraphs 31 and 32 of the Amended Complaint, Defendants assert no responses are required because they call for legal conclusions. To the extent responses are required, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

40. Responding to Paragraphs 33 and 34 of the Amended Complaint, Defendants assert no response is required given that they consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants deny and demand proof of the allegations, crave reference to the legal authorities cited, and deny any misstatements, mischaracterizations, or inconsistencies therewith.

41. Responding to Paragraph 35, including subparagraphs (a) and (b), of the Amended Complaint, Defendants admit Plaintiff seeks the relief stated but deny Plaintiff is entitled to any relief. Plaintiff does not present a justiciable controversy and failed to exhaust administrative remedies, and the Uniform Declaratory Judgments Act is not an independent grant of jurisdiction.

FOR A FIRST RESPONSE TO A THIRD CAUSE OF ACTION

42. Responding to Paragraph 36 of the Amended Complaint, each of the above allegations is realleged and incorporated by reference.

43. Responding to Paragraphs 37, 38, and 39 of the Amended Complaint, Defendants assert no responses are required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent responses are required, Defendants deny and demand proof of the allegations, crave reference to the legal authorities cited, and deny any misstatements, mischaracterizations, or inconsistencies therewith.

44. Defendants deny the allegations in Paragraph 40 of the Amended Complaint.

45. Responding to Paragraph 41 of the Amended Complaint, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith. Further responding to the allegations, Defendants admit the Commission received 2,200 pages of responsive records from TD Bank. Defendants deny any remaining allegations.

46. Responding to Paragraph 42, including subparagraphs (a), (b), and (c), of the Amended Complaint, Defendants admit Plaintiff seeks the relief stated but deny she is entitled to any relief. Plaintiff does not present a justiciable controversy and failed to exhaust administrative remedies, and the Uniform Declaratory Judgments Act is not an independent grant of jurisdiction.

47. Responding to Paragraph 43 of the Amended Complaint, Defendants admit Plaintiff seeks the relief stated but deny she is entitled to any relief.

FOR A FIRST RESPONSE TO A FOURTH[1] CAUSE OF ACTION

48. Responding to Paragraph 44 of the Amended Complaint, each of the above allegations is realleged and incorporated by reference.

49. Responding to Paragraph 45 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent responses are required, Defendants deny and demand proof of the allegations, crave reference to the legal authorities cited, and deny any misstatements, mischaracterizations, or inconsistencies therewith.

[1] Plaintiff's Amended Complaint erroneously contains two third causes of action.

50. Responding to Paragraph 46 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants deny Plaintiff was entitled to any prior notice of the subpoenas at issue. Indeed, "publicizing details" of an ongoing investigation could "undermine the integrity of the investigation and tip off potential targets that could lead to tampering with evidence or witnesses." *Murdaugh*, 2024 U.S. Dist. LEXIS 56367, at *5–6. Further responding, Plaintiff admitted—among other things—that she used multiple accounts for campaign expenditures, which violates the State Ethics Act. So the Commission was not required to gather more commentary from her on the subject. Any allegation in Paragraph 46 not specifically admitted is denied.

51. Defendants deny the allegations in Paragraph 47 of the Amended Complaint. It is well-settled that "due process is flexible and calls for such procedural protections as the particular situation demands." *Robert K. v. City of Camden Plan. Comm'n*, 376 S.C. 165, 172, 656 S.E.2d 346, 350 (2008). Plaintiff's demand for notice and an opportunity to be heard at each stage of an *investigation* is "utterly meritless." *Hood v. USAA*, Op. No. 28249 (S.C. Sup. Ct. filed Jan. 8, 2025) (Howard Adv. Sh. No. 2 at 17). Notably, the Commission tried to hold a hearing—consistent with the specific process set forth by the General Assembly—but Plaintiff filed this lawsuit to prevent it from going forward.

52. Responding to Paragraphs 48 and 49, including Footnote 12, of the Amended Complaint. Defendants assert no responses are required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, and generalizations about nonjusticiable issues rather than factual allegations. To the extent responses are required,

Defendants deny and demand proof of the allegations; crave reference to the legal authorities cited; and deny any misstatements, mischaracterizations, or inconsistencies therewith.

53. Responding to the allegations contained in Paragraph 50, including subparagraphs (a) and (b), of the Amended Complaint, Defendants admit Plaintiff seeks the relief stated but deny she is entitled to any relief. Plaintiff does not present a justiciable controversy, she failed to exhaust administrative remedies, the Uniform Declaratory Judgments Act is not an independent grant of jurisdiction, and the Court lacks authority to red-pencil the State Ethics Act. Further, Plaintiff has not been "finally bound," S.C. CONST. art. I, § 22, by any ruling of the Commission.

FOR A FIRST DEFENSE TO A FIFTH CAUSE OF ACTION

54. Responding to Paragraph 51 of the Amended Complaint, each of the above allegations is realleged and incorporated by reference.

55. Responding to Paragraph 52, including Footnote 13, of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, gratuitous remarks, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants deny and demand proof of the allegations. Any allegation in Paragraph 52 and Footnote 13 not specifically admitted is denied.

56. Responding to Paragraph 53 of the Amended Complaint, the February 20, 2025 hearing was continued, and Defendants are without knowledge or information sufficient to form a belief as to the truth of the allegations concerning what *staff* may have sought to introduce in a hearing before the Commission. Further responding, Defendants crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith. Any allegation in Paragraph 53 not specifically admitted is denied.

57. Responding to Paragraph 54 of the Amended Complaint, Defendants admit Plaintiff filed a motion to dismiss on the issues she raises in the Amended Complaint, which is still pending before the Commission's Hearing Panel. Defendants, however, lack knowledge or information sufficient to form a belief as to the truth of the allegations concerning her initial intent for filing motions with the Hearing Panel and then seeking declarations from the Court on those same issues and, therefore, deny and demand proof of those allegations. Any allegation in Paragraph 54 not specifically admitted is denied.

58. Responding to Paragraph 55 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, gratuitous remarks, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants admit only that Plaintiff filed a motion for a continuance of the February 20, 2025 hearing. Except as specifically admitted, Defendants deny and demand proof of the remaining allegations in Paragraph 55. Further responding, Plaintiff was required to exhaust her administrative remedies before pursuing this litigation.

59. Responding to Paragraph 56 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, gratuitous remarks, and generalizations about nonjusticiable issues rather than factual allegations. To the extent a response is required, Defendants admit only that Commission staff opposed Plaintiff's motions but deny the hearing is still scheduled for February 20, 2025. Further responding, Plaintiff blurs the role of the Hearing Panel and Commission staff prosecuting the case. The Hearing Panel has not ruled on anything, and Plaintiff is not entitled to special treatment by way of interlocutory appellate review of her objections to what may or may

not have been introduced at a hearing. A criminal defendant cannot immediately appeal an adverse ruling on a motion to suppress just as a civil defendant cannot immediately appeal an adverse discovery ruling, and no party may preemptively appeal anticipated evidentiary rulings before even obtaining a ruling. *E.g.*, *State v. Looper*, 412 S.C. 363, 366, 772 S.E.2d 516, 517 (Ct. App. 2015) ("an 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) ("an 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))). Nor would Plaintiff be entitled to special treatment by way of interlocutory appellate review if the Commission had denied her motion to dismiss. *E.g.*, *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"). Any remaining allegations in Paragraph 56 not specifically admitted are denied.

60. Responding to Paragraphs 57, 58, 59, 60, and 61 of the Amended Complaint, Defendants deny that Plaintiff is entitled to the extraordinary remedy of a writ of prohibition from the Court, and they crave reference to the legal authorities cited and deny any misstatements, mischaracterizations, or inconsistencies therewith.

61. Defendants deny the allegations in Paragraphs 62 of the Amended Complaint.

62. Responding to Paragraph 63 of the Amended Complaint, Defendants assert no response is required given that the allegations consist of legal conclusions, arguments, unwarranted inferences, editorial comments, gratuitous remarks, and generalizations about nonjusticiable issues

rather than factual allegations. To the extent a response is required, Defendants deny and demand proof of the allegations.

63. Responding to Paragraph 64 of the Amended Complaint, Defendants admit Plaintiff seeks the relief alleged but deny that she is entitled to a writ of prohibition or any other relief from the Court.

FOR A FIRST DEFENSE TO A SIXTH CAUSE OF ACTION

64. Responding to Paragraph 65 of the Amended Complaint, each of the above allegations is realleged and incorporated by reference.

65. Responding to Paragraph 66, Defendants admit the purpose of a temporary injunction but deny Plaintiff is entitled to a temporary injunction. In fact, a temporary injunction would upset—not preserve—the status quo by upending the Commission's statutorily prescribed process that has been in place for years, including when opposing counsel served as general counsel to the Commission.

66. Responding to Paragraph 67 of the Amended Complaint, Defendants admit Plaintiff seeks the relief stated but deny she is entitled to any relief.

67. Defendants deny the allegations contained in Paragraphs 68 and 69 of the Amended Complaint.

68. Defendants deny the allegations in Paragraph 70 of the Amended Complaint. Plaintiff's contention that she is entitled to interlocutory appellate review of the denial of a motion to dismiss—when the Commission has not yet ruled on it—is "utterly meritless." *Hood*, Op. No. 28249, at 17; *cf. Levi*, 409 S.C. at 381, 762 S.E.2d at 48 (quoting *Lee*, 406 S.C. at 103, 749 S.E.2d at 158); *McClendon*, 313 S.C. at 526, 443 S.E.2d at 540. Contrary to her representations, Plaintiff does have an adequate—indeed exclusive—remedy at law expressly provided for in detail by the

General Assembly in the State Ethics Act. Any allegation in Paragraph 70 not specifically admitted is denied.

69. Defendants deny the allegations in Paragraphs 71 and 72 of the Amended Complaint.

70. Responding to Paragraph 73 of the Amended Complaint, Defendants admit Plaintiff seeks the relief stated but deny she is entitled to any relief. Further responding to the allegations, the hearing is no longer scheduled for February 20, 2025, and Plaintiff withdrew her motion for temporary injunction. This request therefore lacks merit and is moot.

71. Responding to the WHEREFORE Paragraph, including subparagraphs (1) through (9), of the Amended Complaint, Defendant denies Plaintiffs are entitled to any relief and demands proof of the allegations.

FOR A SECOND DEFENSE

72. Plaintiff failed to state facts sufficient to constitute a cause of action on any of her six claims and, therefore, the Court should dismiss the Amended Complaint, with prejudice, under Rule 12(b)(6), SCRCP.

FOR A THIRD DEFENSE

73. The Court should dismiss some or all of Plaintiff's claims because she failed to exhaust her exclusive administrative remedies, and these issues are already the subject of motions pending at the Commission. *E.g.*, *Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 74–79, 902 S.E.2d 41, 47–50 (Ct. App. 2024), *cert. denied* (S.C. Sup. Ct. Nov. 14, 2024).

FOR A FOURTH DEFENSE

74. The Court should dismiss some or all of Plaintiff's claims on mootness or ripeness grounds because no justiciable controversy exists between Plaintiff and Defendants.

FOR A FIFTH DEFENSE

75. Plaintiff's interpretation of the statutes and regulations applicable to the legal questions presented run afoul of the plain language of the State Ethics Act, the Ethics Regulations, and the well-settled canons of statutory construction. FOIA does not apply to the Commission's probable cause determinations. The State Ethics Act provides a "specific and comprehensive approach," *DomainsNewMedia.com, LLC*, 423 S.C. at 304, 814 S.E.2d at 518, for when and how the Commission may openly discuss and release information related to ethics complaints. It cannot do so until *after* a probable cause determination. *See* S.C. Code Ann. § 8-13-320(10)(g). And 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*, 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); *cf.* S.C. Code Ann. § 30-4-40(a)(4) (stating a public body may "exempt from disclosure" under FOIA "[m]atters specifically exempted from disclosure by statute or law"). Alternatively, because the ethics "complaint process is of a quasi-criminal nature," Pl.'s Compl. at ¶ 2, the probable cause determination was an "investigative proceeding[] regarding allegations of criminal misconduct" and, therefore, the meeting could be "closed to the public" under FOIA. S.C. Code Ann. § 30-4-70(a)(4). The Court should thus dismiss the Amended Complaint with prejudice.

FOR A SIXTH DEFENSE

76. The Court should dismiss Plaintiff's Amended Complaint because Defendants have simply followed the "mode of procedure prescribed by the General Assembly" in conducting ethics complaint investigations, proceedings, hearings, and adjudications under the State Ethics Act and Ethics Regulations, and Plaintiff has not been deprived of due process of law—much less

"finally bound"—by Defendants' application of those plain and unambiguous statutes and regulations. S.C. CONST. art I, § 22.

FOR A SEVENTH DEFENSE

77. Plaintiff's objection to a nonparty producing bank records in response to a subpoena that are relevant to her alleged violations of the State Ethics Act is not ripe and does not give rise to any colorable claim for the Court to issue a declaratory judgment regarding an alleged violation of the Fourth Amendment to the U.S. Constitution.

FOR AN EIGHTH DEFENSE

78. Plaintiff's objection to unintroduced bank records is not ripe and fails as a matter of law to give rise to any colorable claim for the Court to issue a declaratory judgment regarding an alleged violation of article I, section 10 of the South Carolina Constitution. Plaintiff's bank records will be redacted. *See* S.C. Code Ann. § 8-13-320(10)(g)(ii) ("Exhibits introduced *must* be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy." (emphasis added)).

FOR A NINTH DEFENSE

79. Plaintiff is not entitled to the extraordinary remedy of a writ of prohibition because she failed as a matter of law to show Defendants improperly exercised jurisdiction over anything under the State Ethics Act. And "it has been settled in this state from an early period that . . . if the inferior court or tribunal has jurisdiction of the person and subject-matter of the controversy, the writ [of prohibition] will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision." *State v. Isaac*, 405 S.C. 177, 185 n.6, 747 S.E.2d 677, 681 n.6 (2013) (alteration in original) (quoting *New South Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199–200, 187 S.E.2d 794, 796 (1972)).

FOR A TENTH DEFENSE

80. Plaintiff failed as a matter of law to show entitlement to injunctive relief of any kind because she seeks to upend, not preserve, the status quo; her request is largely if not entirely moot; and she cannot demonstrate irreparable harm, a likelihood of success on the merits, or the absence of an adequate remedy at law.

FOR AN ELEVENTH DEFENSE

81. Defendant expressly reserves the right to amend its Answer and assert any further affirmative defenses at such time and to the extent warranted before, during, or after discovery based on its investigation of the case or other relevant factual developments, and Defendant hereby gives notice of its intent to do so at the appropriate time.

WHEREFORE, having fully answered Plaintiff's Amended Complaint, Defendants request the Court dismiss Plaintiff's Amended Complaint, enter judgment in Defendants' favor on all counts, and award Defendants costs and any other relief the Court deems just and proper.

(Signature page to follow)

Respectfully submitted,

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Counsel for Defendants South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson

Columbia, South Carolina
March 7, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiff,	)	Case No. 2025-CP-32-00440
v.	)	**DEFENDANTS' MOTION FOR SUMMARY JUDGMENT**
South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	)	

Defendants South Carolina State Ethics Commission (the Commission) and Meghan Walker Dayson, in her official capacity as Executive Director of the Commission (collectively, Defendants), by and through the undersigned counsel, submit this motion for summary judgment pursuant to Rule 56, SCRCP. For the reasons below, the Court should grant summary judgment for Defendants on Plaintiff Ann Peets's Freedom of Information Act[1] (FOIA) claim and dismiss the remaining claims because she failed to exhaust her exclusive statutory administrative remedies before seeking the Court's intervention.

INTRODUCTION

After admitting to conduct that violates various provisions of the South Carolina Ethics, Government Accountability, and Campaign Reform Act (the State Ethics Act),[2] Plaintiff hired counsel to represent her in a duly noticed hearing before a Commission Hearing Panel. To delay the hearing, Plaintiff's counsel filed motions raising a host of procedural matters about the

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

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

investigation. Yet before the Hearing Panel could rule on those motions, Plaintiff filed this lawsuit. According to Plaintiff, the Commission violated FOIA by not making its probable cause determination on her 45 charges during a public meeting. Not satisfied with stopping there, Plaintiff seeks a mandatory injunction and a writ of prohibition. But her demands for extraordinary relief are premised on rights that do not exist, invite the Court to issue advisory opinions, and seek to supplant the Commission's exclusive authority to decide these issues.

Plaintiff's claims are "utterly meritless." *Hood v. USAA*, Op. No. 28249 (S.C. Sup. Ct. filed Jan. 8, 2025) (Howard Adv. Sh. No. 2 at 17). The Commission is not required to conduct a public vote on information the State Ethics Act requires to be confidential until *after* a probable cause determination is made. *See* S.C. Code Ann. § 8-13-320(10)(g). In fact, it is prohibited from doing so. And Plaintiff is not entitled to premature and interlocutory review from the Court on a motion to dismiss that the Commission has not yet considered, evidence that has not yet been entered into the record, or constitutional claims that are not yet ripe. Nor can she demonstrate entitlement to a writ of prohibition, mandatory injunction, or declaratory judgment.

The Court should therefore reject Plaintiff's attempt to thwart the Commission's investigatory and decisionmaking process and dismiss her amended complaint.

BACKGROUND

Plaintiff was a candidate for Folly Beach City Council in the November 7, 2023 general election. Pl.'s Am. Compl. at ¶ 4. She was defeated after a runoff on November 22, 2023. *Id.* In December 2023 and January 2024, Greta Anderson, Lindsay Hamrick, and Jody Rogers filed ethics complaints against Plaintiff for her alleged conduct and campaign in that race. Ex. A at ¶ 5. (Affidavit of Meghan Dayson). Executive Director Dayson reviewed the complaints and determined they contained facts sufficient to constitute a violation of the State Ethics Act, and an investigation into Plaintiff's conduct ensued. *Id.* On December 13 and 20, 2023, and January 12, 2024, the Commission notified Plaintiff of the complaints filed against her, advised her about the confidential nature of the proceedings, and indicated an investigator would contact her to obtain evidence and statements from her. Ex. B. The Commission also notified Plaintiff that she was entitled to representation and to file a written response to the complaints. *Id.* Plaintiff chose to proceed without an attorney. Pl.'s Am. Compl. at ¶ 7.

At the early stages of the investigation, Plaintiff admitted using multiple accounts for campaign expenditures. Ex. C; *see also* S.C. Code Ann. § 8-13-1312 (prohibiting candidates from operating more than one campaign bank account for each office sought and requiring all campaign expenses to be drawn from that campaign bank account). Because her campaign expenditures and accounts were in question, the Commission's staff issued four subpoenas to entities with which Plaintiff banks as part of the investigation. *See* Pl.'s Am. Compl. at ¶ 8. These subpoenas were "relevant to the agency's investigation," S.C. Code Ann. § 8-13-320(10)(f), into Plaintiff using non-campaign bank accounts for campaign expenditures. *See id.* No entity objected or moved to quash. *Cf.* S.C. Code Ann. Regs. 52-211(C).

On July 18, 2024, in executive session, the Commission found probable cause existed to believe Plaintiff violated the State Ethics Act on 45 counts. Ex. A, Dayson Aff. at ¶ 10. Later, on August 6, 2024, the Commission noticed a merits hearing on the allegations against Plaintiff for February 20, 2025. Ex. D. Plaintiff then retained counsel, who moved for a continuance of the merits hearing on December 19, 2024, stating he would soon move to dismiss the complaints. Ex. E. The Commission's assistant general counsel opposed the motion for continuance on January 14, 2024, indicating the Commission staff objected to a continuance for several reasons. Ex. F. Primarily, staff argued it would delay prosecution of the complaints because the Hearing Panel

Chair—who would consider any motion to dismiss—had already been assigned for the February 20 hearing, and a new one would have to be assigned if the hearing did not go forward. *Id.*

Two days later, on January 16, 2025, Plaintiff filed a motion to dismiss the complaints with the Commission. Ex. G. Before the Commission could rule, however, Plaintiff filed this lawsuit on January 31, 2025, raising the same issues in the still-pending motion to dismiss before the Commission's Hearing Panel and tacking on a FOIA claim as a hook to get into circuit court. Plaintiff then amended her complaint. On February 4, 2025, the Commission's assistant general counsel filed a response to the motion to dismiss pending before the Commission's Hearing Panel, urging the Commission to deny Plaintiff's motion and proceed to a merits hearing. Ex. H. Plaintiff's motion to dismiss remains pending at the Commission. Ex. A, Dayson Aff. at ¶ 17.

Meanwhile, Plaintiff moved for a temporary injunction but later withdrew the motion because the February 20 merits hearing was continued pending disposition of this action. *Id.* at ¶ 18. On February 27, 2025, the Court held an initial hearing in this matter. *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 Honorable William P. Keesley and set a briefing schedule for dispositive motions. This motion for summary judgment 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).

ARGUMENT

The Court should grant summary judgment for the Commission because (1) Plaintiff's FOIA claim fails, and (2) she did not exhaust her exclusive remedies on the remaining claims.

I. The Commission's probable cause determination was lawful.

At the end of an investigation, "in a preliminary written decision with findings of fact and conclusions of law," staff "must make a recommendation whether probable cause exists to believe that a violation of this chapter has occurred." S.C. Code Ann. § 8-13-320(10)(i). "Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or Chapter 17, Title 2." *Id.* If the Commission finds probable cause, it then schedules "a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred." *Id.* "A notice of hearing is issued at least thirty days before the scheduled hearing." S.C. Code Ann. Regs. 52-707.

On July 18, 2024, the Commission found probable cause to believe Plaintiff violated the State Ethics Act by—among other things—using multiple accounts for campaign expenditures. Ex. A, Dayson Aff. at ¶ 10. To adhere to the confidentiality provisions in the State Ethics Act, the Commission made this determination in executive session. *Id.* at ¶¶ 8–10. Still, Plaintiff argues the Commission's probable cause determination on the 45 counts against her violated FOIA because it was not made during an open public meeting. *See* S.C. Code Ann. § 30-4-70.

The dispositive question, however, is whether FOIA or the State Ethics Act governs probable cause determinations. Because the State Ethics Act controls and requires confidentiality, Plaintiff's FOIA claim fails as a matter of law.

Of course, "[t]he proper interpretation of a statute presents a question of law." *Seels v. Smalls*, 437 S.C. 167, 172, 877 S.E.2d 351, 354 (2022). And "[t]he 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 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 "has 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). And 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)).

Plaintiff's reliance on FOIA for obtaining probable cause determinations is thus misplaced. 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 finding of probable cause. S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii) (outlining circumstances in which information is no longer confidential, which arise only "[a]fter dismissal following a finding of probable cause" or "[a]fter a finding of probable cause").

In fact, a violation of subsection 8-13-320(10)(g) and the "wilful release of confidential information is a misdemeanor." *Id.* Thus, it is 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"). After all, there are few instances where the Commission can 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 such 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)).[3]

The Commission also must follow the confidentiality provisions for ethics complaints against members of the General Assembly. Each body, of course, 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 the conduct of a member of the House or Senate, the Commission must vote to make a recommendation of probable cause

[3] The State Ethics Act renders compliance with several other FOIA provisions impossible too. For instance, FOIA requires production of all documents a member of a public body reviews during a public meeting. *See* S.C. Code Ann. § 30-4-30(D)(4). However, this would include all manner of documents otherwise protected from disclosure under section 8-13-320(10)(g). FOIA also gives public bodies discretion in determining what may be exempt from disclosure. *See* S.C. Code Ann. § 30-4-40(a)(1)–(19). Under the State Ethics Act, there is no discretion though: disclosure would violate subsection 8-13-320(10)(g). Thus, the exemption for "[m]atters specifically exempted from disclosure by statute or law," like the State Ethics Act here, comes into play. S.C. Code Ann. § 30-4-40(a)(4). Finally, FOIA mandates that "final opinions, including concurring and dissenting opinions, as well as orders, made in the adjudication of cases" become public record. S.C. Code Ann. § 30-4-50(A)(3). But in cases dismissed for lack of probable cause, the Commission's decision is not a public record. *See* S.C. Code Ann. § 8-13-320(10)(g)–(h).

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, discussions and votes related to probable cause recommendations regarding legislators are held in executive session as well.

Under Plaintiff's reading, however, the Commission must violate all these specific statutes—as well as the ones governing "all" other information on ethics complaints—in service of complying with the more 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). That is "absurd." *Florence Cnty. Democratic Party*, 398 S.C. at 128, 727 S.E.2d at 420.

Because the Commission cannot publicize information until after probable cause is found, S.C. Code Ann. § 8-13-320(10)(g), it would have to conduct a straw poll in executive session before voting in open session to comply with Plaintiff's tortured reading. *But 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."). Under Plaintiff's reading, the Commission would thus have to violate FOIA just to comply with it. *But see Florence Cnty. Democratic Party*, 398 S.C. at 128, 727 S.E.2d at 420 (prohibiting reading a statute to produce an "absurd result"). Or the Commission would have to ignore the State Ethics Act. *But see Edwards v. State*, 383 S.C. 82, 91, 678 S.E.2d 412, 417 (2009) ("Executive agencies are required to comply with the General Assembly's enactment of a law until it has been otherwise declared invalid.").

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 are *in para materia* and must be construed together, if possible, to produce a single, harmonious result."). The Court need not take a red pencil to the South Carolina Code because "the more specific statute"—the State Ethics Act—controls. *Denman*, 387 S.C. at 138, 691 S.E.2d at 468–69. That "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, on the production of information relating to ethics complaints.

Indeed, the Commission's reading is also supported by other language in the State Ethics Act requiring certain steps in an ethics proceeding to be public. *See Roberts*, 393 S.C. at 342, 713 S.E.2d at 283 (stating a court must read the statute "in a sense that harmonizes with its subject matter and accords with its general purpose"). Section 8-13-320(10)(j) provides that "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—like the probable cause determination—had to be open to the public, the General Assembly would have said so (like it did for merits hearings). It did not.[4] *Cf. Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 ("The canon of construction '*expressio unius est exclusio alterius*' or '*inclusio unius est exclusio alterius*' holds that 'to express or include one thing implies the exclusion of another, or of the alternative.'" (quoting *Expressio unius est exclusio alterius*, BLACK'S LAW DICTIONARY (7th ed. 1999))). This is unsurprising given that

[4] 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).

"publicizing details" of an ongoing investigation could "undermine the integrity of" it "and tip off potential targets that could lead to tampering with evidence or witnesses." *United States v. Murdaugh*, No. 9:23-396-RMG, 2024 U.S. Dist. LEXIS 56367, at *5–6 (D.S.C. Mar. 28, 2024).

Accordingly, the Commission did not violate FOIA by following the more specific confidentiality requirements in the State Ethics Act when it found probable cause on the 45 counts against Plaintiff in executive session. The Court should therefore grant summary judgment for the Commission on Plaintiff's FOIA claim and dismiss it with prejudice.

II. Plaintiff failed to exhaust her exclusive administrative remedies on the remaining claims.

Plaintiff also seeks a declaratory judgment that the Commission's staff (1) exceeded 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. These claims are meritless, but the Court need not reach them at this juncture because Plaintiff failed to exhaust her exclusive statutory administrative remedies.

"In determining whether the [General Assembly] has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute." *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009).

"[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).

Further, "[t]he 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) (emphasis added). "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.

A. The Commission has exclusive jurisdiction over Plaintiff's case until a final ruling, and Plaintiff must exhaust her statutory remedies before pursuing judicial review.

Currently pending before the Commission's Hearing Panel is Plaintiff's motion to dismiss challenging (1) whether the Commission's investigatory staff was "legally authorized to issue the out-of-state subpoenas"; (2) whether those subpoenas violated Plaintiff's "rights under the Fourth Amendment to the U.S. Constitution and South Carolina Constitution"; and (3) whether the subpoenas complied with Plaintiff's "due process guarantees under the Ethics Act and the S.C. Constitution." These should sound familiar: Plaintiff's second, third, and fourth causes of action raise the same issues. *See* Pl.'s Am. Compl. at ¶¶ 29–50.

Before the Commission's Hearing Panel had a chance to rule on the issues and before Full Commission Review occurred, Plaintiff filed this lawsuit. But Plaintiff has no right to seek relief from this Court before exhausting her statutory administrative remedies with the Commission, which has exclusive authority over ethics proceedings.

Under the State Ethics Act, a merits hearing is 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 the 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).

Until final disposition, exclusive jurisdiction therefore remains with the Commission under the General Assembly's directives in the State Ethics Act. *See Gantt v. Selph*, 423 S.C. 333, 340, 814 S.E.2d 523, 527 (2018) ("In determining whether the [General Assembly] has given another entity exclusive jurisdiction over a case, a court must look to the relevant statute." (quoting *Haley*, 404 S.C. at 323, 745 S.E.2d at 83)). As our supreme court has recognized, "the [General

Assembly] has granted exclusive authority over ethical complaints to the appropriate Ethics Committee." *Haley*, 404 S.C. at 325, 745 S.E.2d at 84.

The same is true of the Commission's authority over ethics complaints against public officials and candidates for public office like Plaintiff. *See* S.C. Code Ann. § 8-13-320(10) (stating the State Ethics Commission has the "duties and powers to . . . conduct its investigations, inquiries, and hearings" in the detailed process set forth in the following subsections); § 8-13-320(10)(a) ("The commission shall accept from an individual, whether personally or on behalf of an organization or governmental body, a verified complaint, in writing, that states the name of a person alleged to have committed a violation of this chapter and the particulars of the violation.").[5]

In ethics cases at the Commission, 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. Here, the Panel Chair was scheduled to hear Plaintiff's motion to dismiss before the merits hearing on February 20. The Panel Chair might have denied the motion, granted the motion, or continued the merits hearing to a later date to allow for further review of the motion before ruling. *E.g.*, S.C. Code Ann. Regs. 52-715. But we don't know because Plaintiff filed this lawsuit to prevent the hearing from going forward. As a result, the Hearing Panel has ruled on nothing.

Still, Plaintiff demands interlocutory review before obtaining an adverse ruling. *But see* S.C. Code Ann. § 1-23-380. Needless to say, her request finds no support in the law. *E.g.*, *State v. Looper*, 412 S.C. 363, 366, 772 S.E.2d 516, 517 (Ct. App. 2015) ("order denying a motion to

[5] *See also* Order, *Hill v. S.C. Republican Party*, App. Case No. 2020-000851 (S.C. Sup. Ct. filed Nov. 25, 2020) (summarily dismissing appeal based on argument that the State Ethics Commission had exclusive jurisdiction over alleged ethics complaint), *reh'g denied* (Mar. 9, 2021); Order, *Harpootlian v. S.C. Senate Republican Caucus*, App. Case No. 2019-001404 (S.C. Sup. Ct. filed Dec. 12, 2019) (granting writ of prohibition to prevent the circuit court from the further improper exercise of subject matter jurisdiction and noting respondents could file the case in the State Ethics Commission if they wished to further pursue it), *reh'g denied* (Mar. 12, 2020).

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").

The State "Ethics Act provide[s] administrative remedies specifically tailored to efficiently resolve [Plaintiff's] complaint[s]." *Haley*, 404 S.C. at 334, 745 S.E.2d at 88 (Beatty, J., concurring in result). And the Commission tried to hold a timely hearing on these issues consistent with the specific process crafted by the General Assembly. Plaintiff is not entitled to special treatment and must exhaust these exclusive remedies before pursuing judicial review. After all, "it is well settled a court ordinarily will refuse to grant a declaratory judgment where a special statutory remedy has been provided," *Smith*, 336 S.C. at 527, 520 S.E.2d at 351, and "'[g]ratuitous interference' in the administrative process should be avoided," *id.* (quoting *Williams Furniture Corp. v. S. Coatings & Chem. Co.*, 216 S.C. 1, 7–8, 56 S.E.2d 576, 579 (1949)).

Plaintiff would not be entitled to interlocutory appellate review even if the Commission denied all her pending motions. Where, as here, the Commission has not even ruled on those motions, Plaintiff's demand for relief is especially inappropriate. Dismissal without prejudice is therefore proper because Plaintiff is attempting to bypass her administrative remedies "by means of an action for declaratory judgment." *Pullman Co. v. Pub. Serv. Comm'n*, 234 S.C. 365, 368–69, 108 S.E.2d 571, 572 (1959).

B. No exception to exhaustion applies.

To try to circumvent her exhaustion problem, Plaintiff alleges in conclusory fashion that two exceptions apply. *See* Pl.s' Am. Compl. at ¶¶ 17(b)–(c). One exception to the exhaustion requirement "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 v. State*, 343 S.C. 14, 19, 538 S.E.2d 245, 247 (2000)), *cert. denied* (S.C. Sup. Ct. Nov. 14, 2024). To demonstrate futility, however, a plaintiff must show "the administrative agency taking 'a hard and fast position that makes an adverse ruling a certainty.'" *Id.* (quoting *Cox v. S.C. Educ. Lottery Comm'n*, 441 S.C. 209, 221, 893 S.E.2d 342, 348 (Ct. App. 2023)). Another exception exists "if the issue is one that cannot be ruled upon by the administrative body." *Id.* (quoting *Charleston Trident Home Builders, Inc. v. Town Council of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006)). Neither exception applies here.

As to the former, Plaintiff alleges "the full Commission has already approved this practice of issuing out-of-state subpoenas by voting on probable cause, and taking the question to a subset of 3 of these same Commissioners would be a futile exercise." Pl.'s Am. Compl. at ¶ 17(c) (citing *Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trs.*, 400 S.C. 478, 735 S.E.2d 492 (2012)). Plaintiff is wrong.

On July 18, 2024, the Commission determined probable cause exists to believe Plaintiff has violated the State Ethics Act. 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). Moreover, here—as is typical in Commission investigations—staff did not provide copies of subpoenas, or the responses, to the Commission for its probable cause determination. *See* Ex. A, Dayson Aff. at ¶ 9.

The Commission made no rulings on the merits. Nor did the Commission consider—or rule on—the propriety of any of its staff's investigation tactics or the constitutional issues Plaintiff now raises in finding probable cause. So the Commission has not taken a hard-and-fast position on the issues (raised both here and in Plaintiff's pending motion to dismiss) that would render "an adverse ruling a certainty." *Robinson*, 443 S.C. at 75, 902 S.E.2d at 48; *see also Smith*, 336 S.C. at 526–27, 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 claims she is excused from exhausting because the issues are "one[s] that cannot be ruled upon by the administrative body." Pl.'s Am. Compl. at ¶ 17(b) (quoting *Charleston Trident Home Builders, Inc.*, 369 S.C. at 502, 632 S.E.2d at 867). For one, this representation is strange given that Plaintiff filed a motion to dismiss the ethics complaints against her with the Commission on the same issues she raises here. *See* Pl.'s Am. Compl. at ¶ 54 (Plaintiff "initially intended to present the issues contained herein" via "a Motion to Dismiss filed with the Hearing Panel"). For another, the Commission has exclusive authority to conduct investigations, inquiries, and hearings into ethics complaints; hear preliminary matters and take actions necessary to conduct hearings; and determine whether a violation of the State Ethics Act has occurred. *See* S.C. Code Ann. § 8-13-320(10); S.C. Code Ann. Regs. 52-713(A).

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 and should decide those issues first. *See Robinson*, 443 S.C. at 78–79, 902 S.E.2d at 49–50 (finding plaintiffs had to exhaust their administrative remedies despite claiming the agency "acted outside of its authority"). And if suppression or exclusion of the challenged evidence is appropriate, the Commission's Hearing Panel can make those rulings too. *See* S.C. Code Ann. Regs. 52-713(A) ("One Commissioner is designated the Panel Chair who 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"). But these are the Commission's decisions to make.[6]

In short, Plaintiff cannot avail herself of any exceptions to the exhaustion requirement, and she is not entitled to advisory opinions via declaratory relief on matters pending at the Commission.

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

Plaintiff's requests for a writ of prohibition and mandatory injunction fail for the same reasons: she has an adequate remedy at law because she can raise (and has raised) the same issues at the Commission. She simply has not exhausted those exclusive remedies. That she is impatient and does not want to wait for the Hearing Panel's ruling does not make her requests appropriate.

1. A writ of mandamus is inappropriate here.

Our supreme court has repeatedly said a writ of prohibition "will *only* lie to prevent an encroachment, excess, usurpation, or improper assumption of jurisdiction on the part of an inferior court or tribunal, or to prevent some great outrage upon the settled principles of law and procedure." *New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199–200, 187 S.E.2d 794, 796 (1972)

[6] Plaintiff has not challenged the constitutionality of a statute or regulation, much less presented a facial challenge. *See Robinson*, 443 S.C. at 75, 79, 902 S.E.2d at 48, 50 (asserting the "general rule" that "a court may decide the case without waiting for an administrative ruling" did not apply because the "sole issue posed in a particular case [was not] the constitutionality of a statute").

(emphasis added) (quoting *Berry v. Lindsay*, 256 S.C. 282, 287, 182 S.E.2d 78, 81 (1971)). "[I]t has been settled in this state from an early period that" if the "tribunal has jurisdiction of the person and subject-matter of the controversy, the writ will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision." *State v. Isaac*, 405 S.C. 177, 185 n.6, 747 S.E.2d 677, 681 n.6 (2013) (alteration in original) (quoting *New S. Life Ins. Co.*, 258 S.C. at 199–200, 187 S.E.2d at 796). Nor will it lie when "*an adequate and applicable remedy by* appeal, writ of error, certiorari, or *other prescribed methods of review are available*." *New S. Life Ins. Co.*, 258 S.C. at 199–200, 187 S.E.2d at 796 (emphasis added).

Plaintiff cannot show the Commission improperly exercised jurisdiction over anything related to the ethics complaint against her given the State Ethics Act gives it exclusive jurisdiction over such matters. *See supra* Section II.A. Plaintiff can seek (and has sought) the same relief from the Commission's Hearing Panel in her motion to dismiss that she seeks here.

At bottom, Plaintiff's request for a writ of prohibition is based on an alleged "substantial risk that she will have no opportunity to appeal a[n] unfavorable decision on the Motion to Dismiss until after her bank records have already been introduced in evidence at a public hearing." Pl.'s Am. Compl. at ¶ 56. Plaintiff's contention that she is entitled to interlocutory judicial review of the denial of a motion to dismiss—when the Commission has not yet ruled on it—is "utterly meritless." *Hood*, Op. No. 28249, at 17; *cf. Levi*, 409 S.C. at 381, 762 S.E.2d at 48 (quoting *Lee*, 406 S.C. at 103, 749 S.E.2d at 158); *McClendon*, 313 S.C. at 526, 443 S.E.2d at 540. There is no telling what records, if any, will be introduced at the now-postponed merits hearing.

Regardless, 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). Thus, to the extent Plaintiff has a privacy interest in the bank records, the State Ethics Act already provides protection. And even if disclosure of Plaintiff's bank records violated her constitutional rights, a denial of her motion to dismiss—which is really a motion in limine—is not immediately appealable. *See Parr v. Gaines*, 309 S.C. 477, 481, 424 S.E.2d 515, 518 (Ct. App. 1992) ("Motions in limine are not final determinations of whether evidence will be admitted at trial."). Indeed, denials of motions to suppress, which are also based on alleged violations of constitutional rights, are never immediately appealable. *See Looper*, 412 S.C. at 366, 772 S.E.2d at 517.

And Plaintiff's suggestion that it is somehow improper for the Hearing Panel to plan to hear her motion for a continuance and motion to dismiss on the same day as the merits hearing contradicts frequent docket management practice throughout the circuit courts of this State. *See* Rule 16(e), SCRCP ("the trial judge *may* hold an informal conference before trial to dispose of any remaining matters, including disposition of any pending motions" (emphasis added)). In any event, "[t]he grant or denial of a continuance lies with the sound discretion of the trial court and such ruling will not be reversed absent a clear showing of abuse of discretion." *M&M Grp., Inc. v. Holmes*, 379 S.C. 468, 474–75, 666 S.E.2d 262, 265 (Ct. App. 2008); *see also Hamm v. S.C. Pub. Serv. Comm'n*, 312 S.C. 238, 240, 439 S.E.2d 852, 853 (1994) ("The Commission, as an administrative law tribunal, has similar discretion."); *id.* at 241, 439 S.E.2d at 853 (finding "no abuse of discretion by the Commission in refusing to grant a continuance where the basis for the motion was the unresolved appeal of an order not yet ripe for appeal").

Plaintiff simply wants the Commission to conduct its business in a way she prefers. But she cites no law that gives her the right to argue motions on a separate day than the merits hearing. *Cf. Newman v. Old W., Inc.*, 286 S.C. 394, 397, 334 S.E.2d 275, 276-77 (1985) ("docket control oftentimes demands that the administrative judge disregard to some degree the convenience of witnesses and litigants"). That Plaintiff may be unprepared for the merits hearing because her motions remain pending is no reason to grant an extraordinary writ of prohibition. *See Plyler v. Burns*, 373 S.C. 637, 650, 647 S.E.2d 188, 195 (2007) ("the denial of a motion for a continuance on the ground that counsel has not had time to prepare is rarely disturbed on appeal"). Nor is that justification credible given how long this matter has been pending.

2. *Plaintiff also is not entitled to a mandatory preliminary injunction.*

For a preliminary injunction to issue,[7] Plaintiff must establish an inadequate remedy at law. *See Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). She cannot. Nor can she establish the other elements necessary for injunctive relief. *See id.* (requiring a showing of irreparable harm and likelihood of success on the merits).

The only time a court can grant an injunction under the State Ethics Act is in the 50-day window before an election. *See* S.C. Code Ann. § 8-13-320(9)(b)(1). As our supreme court has held, that exclusive 50-day window "implies the exclusion of another" for injunctive relief. *Haley*, 404 S.C. at 325, 745 S.E.2d at 84 (cleaned up). We are well outside that window here. And "[i]t is a 'long-settled rule of judicial administration that no one is entitled to judicial relief for a supposed or threatened injury until the prescribed administrative remedy has been exhausted.'" *Tobaccoville USA, Inc. v. U.S. Dep't of the Treasury*, No. 4:16-cv-00424-RBH, 2016 U.S. Dist. LEXIS 29877, at *11 (D.S.C. Mar. 9, 2016) (quoting *Philip Morris, Inc. v. Block*, 755 F.2d 368, 369 (4th Cir. 1985)).

What is more, an injunction under these circumstances would disturb—not preserve—the status quo by upending the Commission's statutorily prescribed process that has been in place for

[7] Plaintiff previously withdrew her motion for temporary injunction, and her amended complaint does not seek permanent injunctive relief. Defendants address this aspect of relief for the sake of completeness and out of an abundance of caution.

decades, including when opposing counsel served as general counsel to the Commission. *See Poynter Invs., Inc. v. Century Builders of Piedmont, Inc.*, 387 S.C. 583, 586, 694 S.E.2d 15, 17 (2010) ("A preliminary injunction should issue only if necessary to preserve the status quo ante.").

* * *

The Commission has exclusive jurisdiction over Plaintiff's ethics case until a final ruling, and she must exhaust her administrative remedies before seeking judicial review. No exception applies. Because the legal remedy prescribed by the General Assembly is more than adequate, Plaintiff is not entitled to a declaratory judgment, writ of prohibition, or mandatory injunction.

What Plaintiff really wants is for the Court to throw out the charges against her for alleged violations of the State Ethics Act. That remedy is as implausible as it is gratuitous. If she were to prevail on her FOIA claim, the ultimate result would be a re-vote on probable cause in a public session. As for her evidentiary objections dressed up in constitutional garb, if she is somehow correct, only the Commission can decide whether to exclude the not-yet-introduced bank records or dismiss her charges. Respectfully, this Court cannot.

Aside from delaying a Commission hearing on the 45 ethics charges against her, it is thus unclear what Plaintiff seeks to accomplish in this fanciful lawsuit.

CONCLUSION

In sum, Plaintiff's claims are anathema to the General Assembly's unmistakable directives in the State Ethics Act. The Commission did not violate FOIA by confidentially making a probable cause determination as required by the specific governing statute. *See* S.C. Code Ann. § 8-13-320(10)(g). And Plaintiff cannot bypass her statutory administrative remedies to get an advisory opinion from the Court on the same matters pending before the Commission, which is the exclusive forum for deciding ethics complaints. *See* S.C. Code Ann. § 8-13-320(9) & (10). The Court should therefore grant summary judgment for Defendants, dismiss Plaintiff's FOIA claim with prejudice, dismiss the remaining claims without prejudice as unripe for failure to exhaust, and decline to issue the extraordinary relief sought in the amended complaint.

Respectfully submitted,

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Columbia, South Carolina
March 21, 2025

Case No. 2025-CP-32-00440

EXHIBIT A

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

Affidavit of Meghan Walker Dayson
March 20, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets,	)	Case No. 2025-CP-32-00440
Plaintiff,	)	
v.	)	**AFFIDAVIT OF MEGHAN WALKER DAYSON**
South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,	)	
Defendants.	)	

PERSONALLY appeared before me, Meghan Walker Dayson, in her official capacity as the Executive Director of the South Carolina State Ethics Commission (the Commission), being duly sworn, deposes and states as follows:

1. I, Meghan Walker Dayson, am over 18 years of age and am competent to provide this testimony based on my personal knowledge.

2. I have served as the duly appointed Executive Director of the Commission since February 2018. As Executive Director, I administer the daily business of the Commission and perform duties assigned by the Commission.

3. The Commission is responsible for the enforcement of the South Carolina Ethics, Government Accountability, and Campaign Reform Act of 1991 (the State Ethics Act). Among its other duties, the Commission is responsible for initiating and receiving complaints, conducting investigations making probable cause determinations, and holding hearings regarding alleged violations of the State Ethics Act.

4. When an ethics complaint is filed, I am tasked with determining whether the complaint alleges facts sufficient to constitute a violation of the State Ethics Act.

5. In the matter of Plaintiff Ann Peets, the Commission received the complaints on December 7, 2023 (C2023-137), December 18, 2023 (C2023-138), and January 4, 2024 (C2024-001). I determined each complaint contained facts sufficient and ordered an investigation.

6. At the conclusion of every investigation, the Commission investigator assigned to the matter must make a recommendation to the Commission on probable cause.

7. Upon receipt of an investigator's recommendation, the Commission must determine, based on the information from the investigator, whether probable cause exists.

8. All discussions and votes related to probable cause determinations, including in Plaintiff's matters, are made during executive session of a properly noticed Commission meeting. This process predates my tenure as executive director.

9. In Plaintiff's case, the procedure was the same. Before making a determination—as is typical—Commission staff provided the Commission with the complaints,[1] the written response submitted by Plaintiff,[2] along with multiple attachments, and the investigator's written recommendation. The Commission was not given copies of any subpoenas or subpoena responses related to Plaintiff's matters.

10. The Commission convened on July 18, 2024, and entered executive session for the purpose of discussing probable cause matters. Plaintiff's matters were presented to the Commission during this executive session, and the Commission voted to find probable cause existed to believe she violated the State Ethics Act on 45 charges.

11. On August 9, 2024, on behalf of the Commission, I sent a Notice of Hearing to

[1] True and correct copies of the Notices of Complaints are attached to the motion for summary judgment as Exhibit B.

[2] A true and correct copy of Plaintiff's response to the complaints is attached to the motion for summary judgment as Exhibit C.

Plaintiff. A true and correct copy of the Notice of Hearing is attached to the motion for summary judgment as Exhibit D.

12. In all matters, once a Notice of Hearing is issued, the case proceeds to a hearing on the merits of the alleged violations of the State Ethics Act. These hearings are held in public before a randomly chosen panel of three members of the Commission, with one Commissioner presiding as the Hearing Panel Chair. *Id.*

13. Before the merits hearing in Plaintiff's matter, her counsel filed a motion for a continuance on December 19, 2024. A true and correct copy of the motion for a continuance is attached to the motion for summary judgment as Exhibit E.

14. Commission staff filed a response to the motion for a continuance on January 14, 2025. A true and correct copy of the response to the motion for a continuance is attached to the motion for summary judgment as Exhibit F.

15. On January 16, 2025, Plaintiff's counsel filed a motion to dismiss the complaints with the Commission. A true and correct copy of the motion to dismiss is attached to the motion for summary judgment as Exhibit G.

16. Commission staff opposed the motion to dismiss on February 4, 2025. A true and correct copy of the response to the motion to dismiss is attached to the motion for summary judgment as Exhibit H.

17. To date, the Commission's Hearing Panel has not ruled on Plaintiff's motion for a continuance or motion to dismiss.

18. The Commission, however, has postponed the merits hearing in Plaintiff's matters pending disposition of this action.

FURTHER AFFIANT SAYETH NOT.

Meghan W. Dayson

Meghan Walker Dayson
Executive Director
South Carolina State Ethics Commission

SWORN to and subscribed before
me this 20th day of March, 2025

Notary Public for South Carolina
My Commission expires: 3-25-25

Case No. 2025-CP-32-00440

EXHIBIT B

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

Notices of Complaints
December 15, 2023, December 20, 2023, and January 12, 2024

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

December 15, 2023

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 9214896900997901424506540

RE: Complaint C2023-137 — In the Matter of Ann Peets

Dear Ms. Peets:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On December 13, 2023, in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

December 20, 2023

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 9214896900999790142452 6425

RE: Complaint C2023-138 In the Matter of Ann Peets

Dear Ms. Peets:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On December 19, 2023, in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

January 12, 2024

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 92148969009997901424621137

RE: Complaint C2024-001 In the Matter of Ann Peets

Dear Ms. Peets:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On January 8, 2024, in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

Case No. 2025-CP-32-00440

EXHIBIT C

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

Ann Peets' Response to Ethics Complaints
August 21, 2024

Ann Peets
Counts and Summary of Rationale Discussed with
SC Ethics Commission Investigators
Prepared as Summary for Erin Caughman -- August 21, 2024

1) <u>Fail to file Initial Campaign Disclosure Report within 10 days of reaching $500</u>

I have filed all reports that you require for Contributions and Expenditures along the way for my campaign. In fact, I checked in by phone multiple times along the way in my campaign and my reporting cadence was confirmed. **You required me to file 3 reports:**

- **Initial Report for Candidates** once you pass $500 in Contributions if this happens before the Pre-Election report is filed. **I did NOT HAVE contributions above $500, so did not have to file this report. (I confirmed this with your SC Ethics Commission as I was filing.)**

2) <u>Fail to file Q1 2024 Campaign Disclosure Report</u>

- Since my balance was $0 in my Campaign account as of December 31, 2023, I'm not sure what kind of filing is required as the election was November 7th and long over.

3) <u>Fail to file Q3 2023 Pre-Election Campaign Disclosure Report</u>

- **Pre-Election Report had to be filed before the Election**. **I filed this on October 24th 2023 as I was required to**. It shows a contribution from Kristen Kappel for $50 and $570 in personal loans as I had NO other funds contributed at that time. I don't understand why there is confusion about seeing that $570 personal loan in the Pre-Election report. When I entered that $570 loan into **my Pre-Election report on October 20**, I took a screenshot **(See Attachment A**).
- I also asked about this when I called your offices to confirm reporting. I asked about whether this was all showing up and you confirmed that it was and that all had been filed correctly to that point.
- Your office sent me a confirmation email after that call that confirmed my Pre-Election report had been successfully submitted as discussed. (**See Attachment B**)

4) <u>Smart Signs Sept 2023 $644.35 campaign expenditure improper reporting</u>

- **Properly Reported**: Signs were delivered and in use beginning **early OCTOBER,** NOT SEPTEMBER and they were paid for October 21.
- **Q4 '23 Report Covering Oct 1 through Dec 31**: For recording all my invoices and payments for Q4, I used the system I have for every corporation I've worked in – an expense report system. You gather up all your invoices for a given period and the dates the payments were made and put them all into the system.

- Because I have worked in Marketing for over 20 years, I have many relationships with great vendors who do not require immediate payment nor deposits. What this means is that unlike those who don't work with established vendor relationships, **I PAY UPON DELIVERY because I have a working relationship with these vendors.** And, that's why almost all my campaign expenditures easily fell in the Q4 timeframe.

5) Staples $10.79 Sept. 2023 campaign expenditure improper reporting
- Leave Behind Cards: **Reported Accurately in Q4 '23 Report**

6) Aldi $108.99 Oct 2023 Campaign Expenditure improper reporting
- Charcuterie Platters for Meet n Greet Event: **Reported Accurately in Q4 '23 Report**

7) Chico Feo $37.03 Oct 2023 Campaign Expenditure improper reporting
- Drink and Snack during Campaign Speaking Event on stage:
- **Reported Accurately in Q4 '23 Report**

8) Sunset Cay $35.56 Oct 2023 Campaign Expenditure improper reporting
- Campaign Meet 'n Greet Event: **Reported Accurately in Q4 '23 Report**
- Bar Tab is for 3 beers plus $20 tip. Screenshot documenting my Sunset Cay Meet N Greet event on 10/5 is attached (**See Attachment D**)
- Since it is a bar, every one of the attendees bought their own drinks – so I bought 2 of my campaign team helpers a drink and bought myself one to walk around with while talking and campaigning with everyone. I tipped at a higher level because Sunset Cay didn't charge us anything for use of their bar for the event, so I tipped Sunset Cay to thank them for helping out with my campaign event.

9) Tides Hotel: $15.76 Oct 2023 Campaign Expenditure improper reporting
- Folly Association of Business Speaking Event: **Reported Accurately in Q4 '23 Report**
- Folly Association of Business Meeting where all candidates were invited to speak to introduce themselves and campaign. This is tab for a drink during the FAB cocktail hour during the event

10) Wix.com: $25.07 Oct 2023 Campaign Expenditure improper reporting
- Website Hosting Expense for October, paid for in November.
- **Reported Accurately in Q4 '23 Report**

11) Bounty Bar: $68.61 Oct 2023 Campaign Expenditure improper reporting
- **Reported Accurately in Q4 '23 Report as Bounty Bar City Council Member Drinks**
- Invitation by sitting Folly Beach City Council Member: DJ Rich to discuss the campaign and give advice on his key learnings as a City Council member. I put my credit card down upon arrival and pulled it back when he arrived, so he could get the tab. Instead, Bounty Bar bartender charged both of our sets of drinks and snacks to my card.

Ann Peets – Summary of Rationale Discussed with SC Ethics Commission Investigators

- I would not be socializing or listening to DJ Rich unless he had reached out as a City Council member. You really can't say no to a meeting suggested by a City Council member when you are running for a Council seat.

12) <u>Nelson Printing: $855.65 Feb 2024 Campaign Expenditure improper reporting</u>
- Mailer Printing: Mailed in November
- **Reported Accurately in Q4 '23 Report**

13) <u>US Postal Service: Oct, 2023 2 campaign expenditures totalling $615.78</u>
- USPS Mailer Postage for Mailing sent in October
- **Reported Accurately in Q4 '23 Report**

14) <u>City of Folly Beach: $25.00 August 24, 2023 Campaign Expenditure improper reporting</u>

- Your Ethics reporting website says: "If contributions are made more than 45 days prior to an election, they are not included in expenses." Filing fee of $25 was paid on 8/23/23, 76 days prior to the Nov 7th election, so that's why it's not recorded. **(See Addendum C – discussed with Investigator) – Not Reported because it was not required to be.**

15) <u>GoDaddy: $13.16 September, 2023 Campaign Expenditure fail to report</u>
- My website developer secured my website domain for me in October, not September.
- I didn't see a receipt for this, because she did it on my behalf.
- **Reported within Website Expenses.**

16) <u>Wix.com: $25.07 Oct 2023 campaign expenditure fail to report</u>
- Website Hosting Expense for October, paid for in November.
- **Reported Accurately in Q4 '23 Report**

17) <u>GroundTruth: $499.94 December 2023 fail to report</u>
- I have no earthly idea what this expense is......
- Can't report if I don't know what it is.

18) <u>LCA Design & Marketing: $150.00 March 2024 fail to report</u>
- I did not owe nor pay LCA Design & Marketing anything more than the $1,375 for the website design and setup invoiced in October when the website was constructed.
- I have no idea what this would be and could be mixed up with another person's campaign that Laura handled. She worked on many people's campaigns.

19) <u>Toni Catoe: $20.00 September 8, 2023 fail to report</u>

- Toni is my friend and not involved with my campaign. This check was a personal gift to me and as such, it was deposited into my personal account. I'm confused as to why you are looking at my personal accounts and personal transactions and assuming personal checks are related to my campaign?

20) Skip Fink: $250 October 2, 2023 fail to report

- I do not recall any contribution from Skip Fink to my campaign. I have double checked my campaign account and other personal accounts and cannot find any donation from Skip Fink.

21) Unknown Donor: $50 Date? Fail to report?

- There was only ONE $50 donor to my campaign – Kristen Kappel, whose donation was **reported on October 15th in my Pre-Election Report.**
- There were NO OTHER $50 donations to my campaign.
- There was ONE transaction mistake made by my bank related to my Campaign bank deposits where I deposited $300 in the ATM, but the bank only recorded $250….they corrected it up to the accurate $300 the next day. I can get the bank to show that mistake by them and then the revision if you would like.
- That could have caused the confusion. Otherwise, there were no other $50 donations than Kristen Kappel's.

22) Mary Catoe: $100 November 12, 2023 fail to report

- Mary is my friend and not involved with my campaign. This check was written to me after the November 7th election, and was not for my campaign. It was a check to me as a gift to buy wine. The "Go Get Em" note was related to my job search at the time. This was deposited into my personal account – I'm confused as to why you are looking at my personal accounts and personal transactions?

23) Toni Catoe: $50.00 November 11, 2023 fail to report

- Toni is my friend and not involved with my campaign. This check was also written to me after the November 7th election, and was not for my campaign. It was a personal gift to me. This was deposited into my personal account – I'm confused as to why you are looking at my personal accounts and personal transactions?

24) Amanda Vargo: In kind photographs fail to report

- **This is inaccurate**. As I was designing my campaign website, I wanted to feature some great photos taken by a local resident. I stopped by Amanda Vargo's store on Folly. She was just launching her store here on Folly. She agreed to let me use a few of her photos for my campaign website in exchange for a mention of her brand new store on my website: "Photography Courtesy of Amanda Vargo, Folly Sol".

- This is a common exchange arrangement that happens daily in Marketing. I have worked in Advertising and Corporate Marketing for over 20 years rising from Marketing Manager to the Senior Executive ranks running multi-million dollar businesses. I am called on to testify as a Marketing Expert in court cases. I can say from experience that new businesses like Ms. Vargo's look for free awareness anywhere they can get it.

- It is NOT TRUE that photos are usually billed for the rate stated. Photos are used in multiple ways ranging from free use for a mention to specific photo shoots with rights drawn up in contracts. Ms. Vargo didn't pursue any sort of formal arrangement with me. **She was happy to agree to provide the photos for free to me in exchange for free store exposure on my campaign website for the few months it was live**. In no way would the free use of these photos ever reach the $150 value level. This photo usage would not be valued this way in my decades of Marketing experience.

25) <u>Failure to timely deposit campaign contribution – 4 contributions within 10 days of receipt:</u>
- I am not clear on which campaign contributions this charge is referring to. Please advise and I can double check.

26) <u>Failure to make expenditure from Campaign Account: $25.00 City of Folly Beach</u>
- **This expenditure had to be made from my personal checking account because you can't open a Campaign Account at the bank until you show paperwork from the City of Folly Beach that you are indeed an accepted candidate running for City Council.**
- To get the paperwork submitted to the City of Folly Beach and then subsequently accepted by the SC Election Commission to make you an official candidate qualified to open an election account, **you have to pay the fee upfront, so there is no logical way to pay this fee from anywhere except your personal account.**
- As soon as the Election Commission certified that I was a candidate a couple of days later, I was advised by the City of Folly Beach that I could open an election bank account, which I did the same day.

27) <u>GoDaddy: Failure to make $13.16 Sept 2023 expenditure from campaign bank account</u>
- My website developer secured my website domain for me in October, not September.
- I didn't see a receipt for this, because she did it on my behalf with a credit card I gave her before my campaign account was established.

28) <u>Wix: Failure to make $25.07 Sept 2023 expenditure from campaign bank account</u>
- Laura Anderson purchased Wix website hosting for me with a credit card I gave her before my campaign account was opened.
- Wix charged my credit card automatically on a recurrent basis instead of invoicing me to pay it from my campaign account.

- I never was invoiced or saw the bills from Wix, so these were handled as recurrent charges from a card given to Laura early on.

29) <u>SmartSigns: Failure to make $664.36 expenditure from campaign bank account</u>

- **My Election Account DID NOT HAVE CHECK WRITING NOR CREDIT CARD PAYMENT as a feature, only a debit card, which didn't work as a credit card.**
- I have been advised not to transmit my debit card info over to vendors who could hack my account, so I had no choice but to use personal accounts to pay for this invoice.
- The majority of my campaign was paid for out of my personal funds transferred into my campaign account as loans. I only had a few hundred in contributions.
- **However, for some invoices I could not or would not want to pay by debit card, it would not make sense to transfer personal loan funds in to my campaign account when I couldn't use the campaign debit card to pay a given invoice. I had no choice, but to pay these bills out of an account that had a credit card or check writing privileges.**

30) <u>Wix: Failure to make $25.07 expenditure from campaign bank account</u>

- Laura Anderson purchased Wix website hosting for me with a credit card I gave her before my campaign account was opened.
- Wix charged my credit card automatically on a recurrent basis instead of invoicing me to pay it from my campaign account.
- I never was invoiced or saw the bills from Wix, so these were handled as recurrent charges from a card given to Laura early on.

31) <u>Folly Current: Failure to make $475 expenditure from campaign bank account</u>

- **My Election Account DID NOT HAVE CHECK WRITING NOR CREDIT CARD PAYMENT as a feature, only a debit card, which didn't work as a credit card.**
- I have been advised not to transmit my debit card info over to vendors who could hack my account, so I had no choice but to use personal accounts to pay for this invoice.
- **This invoice had to be paid by check. So, it would not make sense to transfer personal loan funds in to my campaign account when I couldn't use the campaign debit card to pay a given invoice. I had no choice, but to pay this bill with a check out of an account with check writing privileges.**

32) <u>LCA Design and Marketing: Failure to make $1,375 to LCA Design and Marketing from campaign bank account</u>

- My Campaign account only had a debit card attached to it – NO ABILITY to write checks. So, since I wanted to pay this invoice by check, instead of moving personal funds into my Campaign account where I couldn't write a check, I wrote the check from my business account. **(See Attachment E.)**

33) US Postal Service: Failure to make $353.43 expenditure from campaign bank account

- My Campaign account only had a debit card attached to it – not a credit card. So, since I wanted to pay this invoice by credit card, instead of moving personal funds into my Campaign account where I couldn't pay by credit card, I paid this bill via credit card.

34) Missing from Hearing Sheet – Can't Respond if I don't know what it is

35) Missing from Hearing Sheet – Can't Respond if I don't know what it is

36) Missing from Hearing Sheet – Can't respond if I don't know what it is

37) Missing from Hearing Sheet – Can't respond if I don't know what it is

38) Missing from Hearing Sheet – Can't respond if I don't know what it is

39) Accepted In-kind campaign contribution from Amanda Vargo in amount of $1,200, exceeding contribution limit of $1,000

- **This is inaccurate**. As I was designing my campaign website, I wanted to feature some great photos taken by a local resident. I stopped by Amanda Vargo's store on Folly. She was just launching her business here on Folly. She agreed to let me use a few of her photos for my campaign website in exchange for a mention of her brand new store on my website: "Photography Courtesy of Amanda Vargo, Folly Sol".

- This is a common exchange arrangement that happens daily in Marketing. I have worked in Advertising and Corporate Marketing for over 20 years rising from Marketing Manager to the Senior Executive ranks running multi million dollar businesses. I am called on to testify as a Marketing Expert in court cases. I can say from experience that new businesses like Ms. Vargo's look for free awareness anywhere they can get it.

- It is NOT TRUE that photos are usually billed for the rate stated. Photos are used in multiple ways ranging from free use for a mention to specific photo shoots with rights drawn up in contracts. Ms. Vargo didn't pursue any sort of formal arrangement with me. **She was happy to agree to provide the photos for free to me in exchange for free store exposure on my campaign website for the few months it was live**. In no way would the free use of these photos ever reach the $150 value level. This photo usage would not be valued this way in my decades of Marketing experience.

40) Accepted campaign contribution from Chris Marley for $100, exceeding $25 limit

- **Contribution Limits**: Related to 40, 41, 42, and 43 below....Because I am not a professional politician and it is my first time running for office, I relied intensely on the guidance from your website regarding contribution limits. It outlines a $1,000 limit for local candidates and accepting up to $5,000 from political parties, **but there is NO MENTION of any limit of $25 for Cash Contributions**. **(See Attachment F for printout of your website language at the time.) I am seeing that as of a few months ago, there is now a clearer delineation of the $25 limit, but this new language was only launched in May of 2024. My reporting was done in Q4 of 2023, when no such language was prominently displayed.**
- In fact, our Mayor and other City Council members had never heard of this before. And, **when you enter amounts over $25 as Cash in your reporting system, it doesn't reject these higher amounts**.

41) <u>Accepted campaign contribution from Chuck Skipper for $200, exceeding $25 limit</u>
- See Contribution Limits explanation in #40

42) <u>Accepted campaign contribution from Alison McNatt for $100, exceeding $25 limit</u>
- See Contribution Limits explanation in #40

43) <u>Unknown contribution of $50, exceeding $25 limit</u>

- There was only ONE $50 donor to my campaign – Kristen Kappel, whose donation was reported on October 15th in my Pre-Election Report.
- There were NO OTHER $50 donations to my campaign.
- There was ONE transaction mistake made by my bank related to my Campaign bank deposits where I deposited $300 in the ATM, but the bank only recorded $250....they corrected it up to the accurate $300 the next day. I can get the bank to show that mistake by them and then the revision if you would like.
- That could have caused the confusion. Otherwise, there were no other $50 donations.

44) <u>Accepted anonymous cash campaign contribution of $50</u>

- There was only ONE $50 donor to my campaign – Kristen Kappel, whose donation was reported on October 15th in my Pre-Election Report.
- There were NO OTHER $50 donations to my campaign.
- There was ONE mixup in my bank donations where I deposited $300 in the ATM, but the bank only recorded $250....the bank corrected it up to the $300 actual amount the next day.
- That could have caused the confusion. Otherwise, there were no other $50 donations.

45) Disbursed $574.34 of unexpended campaign funds to her personal account.

- I waited until all expenses had cleared for my campaign by December 31, 2023, so there would be clean accounting. I had one outstanding invoice to cover to Nelson Printing.
- The remaining funds from my campaign account of $574.34 were transferred to my personal checking account to cover the last bill I had to pay for my campaign expenses. So, campaign funds were indeed used to cover a campaign invoice.
- I had to write a check for this final invoice, and as I noted, my campaign account did not have the ability to write checks attached to it.
- So, the $574.34 from my campaign account plus an additional $281.31 from my personal funds added together to the $855.65 I paid to Nelson Printing to cover my last campaign expense outstanding with a check.
- With that, my campaign account had a balance of $0.

Case No. 2025-CP-32-00440

EXHIBIT D

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

Notice of Hearing
August 9, 2024

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

August 9, 2024

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 9214 8969 0099 9790 1425 5770 37

RE: Complaints C2023-137; C2023-138; C2024-001 In the Matter of Ann Peets

Dear Ms. Peets:

The State Ethics Commission has considered the above captioned complaints and has determined that probable cause exists to support the alleged violation. As a result of the Commission's determination, you are hereby provided with the Notice of Hearing. In accordance with 8-13-320 (10)(g), South Carolina Code of Laws, 1976, as amended, all complaint matters are now public upon the issuance of the Notice of Hearing.

Please be aware that under recent General Assembly amendments to the Ethics Reform Act in 2016 Act. No. 282, effective April 1, 2017, this and all other Ethics Commission hearings are now open to the public. The Ethics Commission will provide timely notice of Commission hearings to the public pursuant to the requirement of the South Carolina Freedom of Information Act.

Please contact Rachael O'Bryan, Administrative Assistant, at 803-253-4192 or robryan@ethics.sc.gov as soon as possible to:

- Confirm receipt of this Notice of Hearing and notify the Commission whether you will or will not attend the scheduled hearing at **9:30am, Thursday, February 20, 2025** *at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150 Columbia, SC 29210.*
- Confirm address, telephone number and email address.
- Notify the Commission if an attorney will be representing you.

In accordance with S.C. Code Ann. Section 1-23-320(F), in lieu of a hearing, the Commission may be agreeable to resolve this matter through an informal disposition by Consent Order.

If you do not attend the hearing, a judgment by default will be rendered.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MLW:ro
Enclosure: Notice of Hearing

Case No. 2025-CP-32-00440

EXHIBIT E

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

Ann Peets' Motion for Continuance
December 19, 2024

STATE OF SOUTH CAROLINA **COUNTY OF RICHLAND**	**BEFORE THE STATE ETHICS COMMISSION**
IN THE MATTER OF:	
COMPLAINTS C2023-137; C2023-138; C2024-001	
Lindsay Hamrick, Jody Lynn Rogers, Great Anderson Complainants, v. Ann Peets, Respondent.	**MOTION FOR CONTINUANCE**

Respondent Ann Peets (Respondent), through the undersigned counsel, hereby moves that this case be continued, based on the following grounds:

1. On or about August 6, 2024, the Commission issued a 45-count Notice of Hearing against Respondent, setting a hearing date of February 20, 2025. Respondent learned about the charges against her and the hearing date on or about August 15, 2024, from reading a post from one of the complainants, Greta Anderson, on the "Folitics" Facebook page. On August 19, 2024, Respondent received the Notice of Hearing herself, and short time later, she endeavored to secure legal representation.

2. On October 1, 2024, the undersigned counsel sent a Letter of Representation to Commission staff and requested the investigative file. The file was received on November 4, 2024. The investigative file includes, among many other materials, over 2,200 pages of documents purportedly gathered pursuant to subpoena from Respondent's personal checking and savings accounts at TD Bank, including all transactions, credits, and debits she ever made in those accounts

for more than a decade. To say the least, this material includes highly personal financial information of Respondent, including (just to name a few examples) information related to payments made to medical providers and federal and state tax authorities.

3. While the TD Bank subpoena was the most outrageous of the four financial subpoenas issued by the Commission, the Commission also obtained other sensitive personal financial information of Respondent via subpoenas to American Express (AMEX) (personal credit card account and business account), First Citizens Bank (business bank account), and Venmo (personal transactions).

4. The reasons for requiring a continuance can only be understood in the context of a Motion to Dismiss that Respondent will soon file. Respondent anticipates moving to dismiss on the following grounds:[1]

> a. The Commission lacks the extraterritorial jurisdiction to directly issue a subpoena to TD Bank (based in Cherry Hill, NJ), AMEX (based in El Paso, TX), First Citizens Bank (based in Raleigh, NC), or Venmo (based in San Jose, CA). None of these companies are citizens of the State of South Carolina.[2] "The principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another." *Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006). Further, as a creature of statute, the Commission has "only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers." *S.C. Tax Comm'n v. S.C. Tax Bd. of Rev.*, 278 S.C. 556, 560, 299 S.E.2d 489, 491–92 (1983). Nothing in the language of § 8-13-320(10)(f) or elsewhere in the Ethics Act shows a legislative intent to grant the

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[1] Respondent does not waive any other grounds for dismissal, which may be presented in the Motion, or otherwise.

[2] While TD Bank and First Citizens have branches in South Carolina, they are not citizens of South Carolina. They (and also AMEX) are national banks, which are deemed to be located in the state "in which its main office, as set forth in its articles of association, is located." *Wachovia Bank v. Schmidt,* 546 U.S. 303, 307 (2006); *see also* 28 U.S.C. § 1348 (noting national banks are "deemed citizens of the States in which they are respectively located").

Commission subpoena power outside the State.[3]

b. Because the Commission has no extraterritorial jurisdiction, its only possible option to validly issue an out-of-state subpoena is by complying with the Uniform Interstate Depositions and Discovery Act (Act), S.C. Code Ann. §§ 15-47-100, *et. seq.* Among other things, the Act provides"[t]o request issuance of a subpoena under [the Act], a party must submit a foreign subpoena to the clerk of court of the county in which discovery is sought to be conducted in this State." § 15-47-120(A). And when "a subpoena issued under Section 15-47-120 commands a person to ... produce designated books, documents, records, electronically stored information, or tangible items, ... the time and place and the manner of ... the production ... *must* comply with the South Carolina Rules of Civil Procedure relating to discovery." § 15-47-140 (emphasis added). There is no indication in the investigative file that the Commission attempted to comply with the Act.[4]

c. The subpoenas for personal bank records, without notice to Respondent, violated her right to privacy under the Fourth Amendment to the United States Constitution and S.C. Const. art. I, § 10. See *State v. Moore*, 421 S.C. 167, 173, 805 S.E.2d 585, 588 (Ct. App. 2017), *aff'd as modified,* 429 S.C. 465, 839 S.E.2d 882 (2020) (The Fourth Amendment "demands that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....'); *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 198, 882 S.E.2d 770, 776 (2023), *reh'g denied* (Feb. 8, 2023) (rejecting an argument that the constitutional "right to privacy applies only to criminal defendants in the context of Fourth Amendment search and seizure."); *Moore,* 421 S.C. at 173, 805 S.E.2d at 588 (finding S.C. Const. art. I, § 10 contains nearly identical language[5] to that of the Fourth Amendment in asserting its citizens' right to be free from unreasonable searches and seizure.); *Key,* 431 S.C. at 349, 848 S.E.2d at 321 (holding the express right to privacy under S.C. Const. art. I, § 10 "favors an interpretation

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[3] Given the principle stated in *Drs. Hosp. of Augusta, supra*, the Legislature may not be able to effectively grant extraterritorial subpoena power to a state agency at all, but it is still notable that the Legislature has attempted to grant extraterritorial investigative power to other investigative entities. *See, e.g.,* S.C. Code Ann. § 35-1-602(a)(1) ("The Securities Commissioner may conduct public or private investigations within or outside of this State...); § 27-29-110(a)(1)("The [real estate] commission may make the necessary public or private investigations within or outside of this State..."). That the Legislature has attempted to do so for other investigative entities and not the Ethics Commission must be seen as intentional. *See Connelly v. Main St. Am. Grp.,* 439 S.C. 81, 96, 886 S.E.2d 196, 204 (2023) ("[W]here a statute contains a given provision, the omission of such a provision from a similar statute concerning a related subject is significant to show that a different intention has existed.").

[4] Among other issues, Respondent was never given the prior notice of the subpoenas nor the opportunity to object to their issuance, scope, or relevance mandated by Rule 45(a) & (b), SCRCP. And at least with respect to the TD Bank and Venmo subpoenas, they were sent to the companies via email and a webform submissions, respectively, which are not proper service under the South Carolina Rules of Civil Procedure.

[5] S.C. Const. art. I, § 10 declares "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated ...." *State v. Key*, 431 S.C. 336, 349, 848 S.E.2d 315, 321 (2020).

offering a higher level of privacy protection than the Fourth Amendment."); *Kyllo v. United States*, 533 U.S. 27, 33, 121 S. Ct. 2038, 2042 (2001) ("[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable."); *In re Subpoena Duces Tecum*, 228 F.3d 341, 348 (4th Cir. 2000) (under the Fourth Amendment, the target of subpoena entitled to judicial process *before* intrusion occurs);

d. The Commission's investigation, including but not limited to the issues described above with the subpoenas, violated Respondent's due process rights under S.C. Const. art. I, § 22. See *Kuschner v. City of Camden Planning Com'n.*, 376 S.C. 165, 656 S.E.2d 346 (2008) (The fundamental requirements of administrative due process are that a party be given notice, afforded an opportunity to be heard in a meaningful way and judicial review); § 8-13-320(10)(a).

5. In summary, Respondent believes the Motion to Dismiss brings to the forefront serious issues regarding the integrity of the investigation, and she is seeking to protect important constitutional privacy and due process rights.

6. The undersigned counsel was informed by Commission counsel that the Motion to Dismiss likely would be heard by a Commission Panel immediately prior to a hearing on the merits on February 20, 2025. However, if the event the Motion is denied, Respondent intends to seek expeditious appellate relief, which will not be possible if the merits hearing (where the Commission would rely on evidence from Respondent's personal financial records) takes place immediately after the Motions hearing. This is even more problematic because the merits hearing would be open to the public.

7. Respondent proposes that the Commission continue the February 20, 2025 hearing.[6] The undersigned counsel anticipates filing the Motion to Dismiss within the next two weeks (a timeline complicated by the holidays). Even though the Motion is not currently filed, we have no objection to scheduling the hearing on the Motion for February 20, 2025, or on another mutually agreeable date. At present, the undersigned counsel has no conflicts with the third

[6] We would also add that this is not an old case. Probable cause was found only five months ago, Respondent learned about it four months ago, and no prior continuances have been requested.

Thursday of any month in 2025. If the Motion to Dismiss is denied, the undersigned counsel proposes scheduling a merits hearing for no fewer than 30 days from when a formal order on the Motion is issued.

Respectfully Submitted,

Michael R Burchstead

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Attorneys for Ann Peets

Columbia, South Carolina
December 19, 2024

Case No. 2025-CP-32-00440

EXHIBIT F

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

State Ethics Commission's Response to Motion for Continuance
January 14, 2025

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION
)
IN THE MATTER OF:)
)
Complaints C2023-137; C2023-138;)
C2024-001)
)
Lindsay Hamrick, Jody Lynn Rogers,)
Greta Anderson)
Complainants.)
)
Ann Peets)
Respondent.)
)

RESPONSE TO RESPONDENT'S MOTION FOR CONTINUANCE

The above-captioned complaints are scheduled for a hearing before the Commission on February 20, 2025. On December 23, 2024, Respondent filed a Motion for Continuance on the following grounds:

1) Respondent's counsel received the Commission's materials, totaling over 2,200 pages, on November 4, 2024;

2) The Commission's investigative records contain information that is personal in nature; and

3) Respondent intends to file a Motion to Dismiss within two (2) weeks of filing the Motion for Continuance, which would be January 6, 2025.

As an initial matter, Commission staff believes each argument Respondent will allegedly set forth in a Motion to Dismiss is without merit. As to the Motion for Continuance, Commission staff hereby objects on the following grounds:

1) Commission staff has not yet received Respondent's Motion to Dismiss; and

2) Granting Respondent's Motion for Continuance would likely result in undue delay in prosecuting the complaints. Pursuant to S.C. Code Ann. Regs. 52-713(A), the Panel Chair is

bestowed with the authority to "hear preliminary and interlocutory matters and take other action as is necessary to conduct the hearing." Undoubtedly, a Motion to Dismiss constitutes a preliminary matter. If these complaints are continued and the hearing is re-noticed, a new Panel Chair will be assigned, leaving the February 20, 2025 Panel Chair unable to hear any Motion to Dismiss that may be filed. If a Motion to Dismiss is filed thereafter, this process will repeat itself. During the rescheduled hearing date, Respondent would likely present her Motion to Dismiss. If the Panel Chair denies the dismissal, the complaints would once again need to be rescheduled for the substantive hearing.

Respectfully submitted,

Renique K. Brabham
Assistant General Counsel
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

January 14, 2025
Columbia, SC

Case No. 2025-CP-32-00440

EXHIBIT G

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

Ann Peets' Motion to Dismiss
January 16, 2025

STATE OF SOUTH CAROLINA **COUNTY OF LEXINGTON**	)))	**BEFORE THE STATE ETHICS COMMISSION**
IN THE MATTER OF:		
COMPLAINTS C2023-137; C2023-138; C2024-001		
Lindsay Hamrick, Jody Lynn Rogers, Great Anderson Complainants, v. Ann Peets, Respondent.	)))))))))))	**MOTION TO DISMISS**

INTRODUCTION

In the November 7, 2023 general election,[1] Ann Peets (Respondent) was a first-time candidate for political office, running for a seat on Folly Beach Town Council. After the election, three political opponents of Respondent's candidacy - Greta Anderson, Lindsay Hamrick, and Jody Rogers[2] - filed the underlying complaints alleging what were *at most* garden-variety compliance issues with Respondent's campaign disclosure reports.[3] Notwithstanding the limited scope of the complaints, the Commission issued subpoenas to four (4) out-of-state entities that it had no power to issue. These far-reaching and intrusive subpoenas were for Respondent's personal financial information and that of her business, which had no conceivable connection to her campaign. The

[1] Respondent received enough votes to qualify for the run-off election on November 21, 2023, but she ultimately lost that election.

[2] Rogers had initially attempted to file her Complaint on November 13, 2023, after the general and prior to the runoff election. Based on this being filed in the 50 day period before an election, *see* S.C. Code Ann. § 8-13-320(9), the Commission did not accept the Complaint.

[3] To be clear, Respondent does not concede the truth of these allegations.

Commission did not have power to issue these subpoenas, and the Commission did not give Respondent notice of the subpoenas. Thus, she was deprived of the opportunity to object to their issuance or scope. The actions of the Commission in issuing these subpoenas were not only illegal in themselves, but they violated Respondent's constitutionally-protected rights to privacy and due process.

For these reasons and the reasons discussed more fully below, the 45 counts in the Notice of Hearing – all of them - must be dismissed with prejudice.

UNDERLYING FACTS

The underlying complaints were filed after the Folly Beach Town Council race had concluded. On December 4, 2023, the Commission opened the Hamrick complaint investigation, on December 13, 2023, it opened the Rogers investigation, and on December 27, 2023, it opened the Anderson investigation.

Shortly after the Commission opened these investigations, Respondent received form letters, each containing the same form language, and stating *inter alia* that "You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make."

On January 10, 2024, Respondent sent Commission Enforcement Administrator Erin Caughman a comprehensive email with attached documentation, responding to the allegations in the complaints. Responding to the email, Ms. Caughman indicated she had forwarded the information to the assigned Investigator, Brad White. Respondent, Ms. Caughman, and Investigator White scheduled a call for January 16, 2024.

On January 16, 2024, Respondent spoke to Ms. Caughman and Investigator White, as scheduled. For approximately two hours, Investigator White and Respondent went through her expenses and donations line-by-line. According to the investigative report drafted by Investigator White,

> White explained [to Respondent] the Ethics Commission, the complaint process, the due process afforded to her, the possible resolutions of the complaint, and the confidentiality aspects of the investigation. White also explained Respondent's right to representation and the right to provide a written response to the complaint.[4] Respondent acknowledged her rights and stated she would speak without an attorney.

Investigator White also explained to Respondent that he did not view these as serious allegations, or something to that effect. At the end of the call, Investigator White tasked Respondent with obtaining additional information on her campaign spending to provide to the Commission. Respondent complied and endeavored to find all the requested information.

On January 17, 2024, the Commission sent a subpoena for documents to TD Bank, a financial institution whose U.S. operations are based in Cherry Hill, New Jersey.[5] Respondent has a personal checking account, personal savings account, and campaign bank account at TD Bank. Investigator White sent this subpoena via email to AccountAMCBGSISubpoenas@td.com, demanding the following:

[X] YOU ARE HEREBY COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date, and time specified below (list documents or objects):

Any and all financial records from inception to current bearing the name or portions of Ann A. Peets (Date of Birth: [redacted]. These records should also include but not be limited to any; applications, phone numbers, authorizations and/or signers, account description, account numbers, account history, statements, transactions history, checks (any form), debits/credits, cards, wire transfers, address changes, services changes, transfer of the account and/or account closure, and any other records and/or associated account(s) to include account number [redacted]

State Ethics Commission, 201 Executive Center Drive, Suite 150, Columbia, SC 29210 — 02/01/2024

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[4] Respondent denies that Investigator White ever informed Respondent of the right to provide a written response to the complaint.

[5] See TD Bank Corporate Information at https://www.td.com/ca/en/about-td/corporate-profile/corporate-information#:~:text=TD%20Bank%20and%20its%20subsidiaries,headquartered%20in%20Cherry%20Hill%2C%20N.J. (accessed January 16, 2025); *Campagna v. TD Bank, N.A.*, No. 20 Civ. 94 (CDL), 2020 WL 7130508, at *2 (M.D. Ga. Dec. 4, 2020) (TD Bank is a Delaware national banking association headquartered in New Jersey).

Respondent was not provided notice of this subpoena, nor an opportunity to challenge it.

On January 17, 2024, the Commission sent a subpoena for documents to Venmo, a financial technology company based in San Jose, California.[6] Investigator White sent this subpoena through the "PayPal Safety Hub, an online portal, demanding the following:

> [X] YOU ARE HEREBY COMMANDED to **produce and permit inspection and copying of the following documents or objects** in your possession, custody or control at the place, date, and time specified below (list documents or objects):
>
> Any and all records from inception to current bearing the name or portions of or belonging to Ann A. Peets (Date of Birth: [redacted] @[redacted] [redacted]@gmail.com, [redacted]@protonmail.com, or phone number [redacted] These records should also include but not be limited to any; applications, phone numbers, authorizations and/or signers, account description, account numbers, account history, statements, transactions history, checks (any form), debits/credits, cards, wire transfers, address changes, services changes, transfer of the account and/or account closure, and any other records and/or associated account(s) to include TD Bank account number [redacted].
>
> **State Ethics Commission, 201 Executive Center Drive, Suite 150, Columbia, SC 29210** **02/01/2024**

Again, Respondent was not provided notice or the opportunity to challenge this subpoena.

On January 22, 2024, Investigator White received a package from Respondent which included, *inter alia,* information indicating that Respondent had a personal credit card account with American Express Company (AMEX), a financial company based in New York, NY.[7] That same day, the Commission sent a subpoena for documents to AMEX to its "Subpoena Response Unit" at an address located in El Paso, Texas. In this instance, the Commission limited the request to the records between July 1, 2023 and December 31, 2023, and requested the following:

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[6] *See* SEC Form 10-Q PayPal Holdings, Inc. at https://www.sec.gov/Archives/edgar/data/1633917/000163391724000048/pypl-20240331.htm (accessed January 16, 2025) (noting that Venmo is owned by PayPal Holdings, Inc., which is a Delaware company based in San Jose, CA).

[7] Respondent is informed and believes that American Express Company is the entity which was "served" the subpoena, and it is based in New York, NY.*See* SEC Form 10-Q American Express Company athttps://www.sec.gov/Archives/edgar/data/4962/000000496224000031/axp-20240331.htm (accessed January 16, 2025) (noting that AMEX is a New York company based in New York, NY). Regardless, Respondent is informed and believes that no subsidiary or related company to AMEX is a citizen of South Carolina.

X	YOU ARE HEREBY COMMANDED to produce and permit inspection and copying of the following documents or objects in your possession, custody or control at the place, date, and time specified below (list documents or objects): Financial records for American Express Cards ending in [redacted] and [redacted] held in the name of Ann Peets from July 1, 2023, until December 31, 2023. These records should also include but not be limited to any; applications, phone numbers, authorizations and/or signers, account description, account numbers, account history, statements, transactions history, checks (any form), debits/credits, cards, wire transfers, address changes, services changes, transfer of the account and/or account closure, and any other records and/or associated account(s) to include account numbers ending in [redacted] and [redacted].
	State Ethics Commission, 201 Executive Center Drive, Suite 150, Columbia, SC 29210 — 02/05/2024

Respondent was not provided notice of this subpoena, nor an opportunity to challenge it.

On January 22, 2024, Investigator White emailed Respondent requesting additional information on her campaign contributions. On January 26, 2024, Respondent supplemented the information previously provided.

On January 29, 2024, Investigator White received a production from Venmo.

On January 31, 2024, Investigator White received a production from TD Bank in response to the subpoena for Respondent's personal checking, personal savings, and campaign bank account records. As described more fully *infra*, this production was over 2,200 pages, and included highly private and personal information from Respondent's personal account going back to when she opened it in 2014.

On April 4, 2024, Investigator White followed up via email to the AMEX Subpoena Response Unit (amexsru@aexp.com), stating *inter alia* that he had mailed the subpoena via certified mail, that it was delivered on January 29, 2024, and the Commission's deadline of February 5, 2024 had passed 60 days ago. Investigator White asked when a response could be expected. Two minutes later, Investigator White received an automatic reply from the AMEX Subpoena Response Unit, stating *inter alia* "Please note that we do not accept service of process of legal orders via email."

By April 30, 2024, because Respondent had received no correspondence or contact whatsoever from Commission staff since providing the requested information on January 26, 2024, she requested a status update from Investigator White. Respondent never received a response to this email. Based on Respondent's prior discussions with staff, and the information she had voluntarily provided, she was under the impression that the matter would soon be resolved.

On May 29, 2024, Investigator White received the production from AMEX, which included credit card statements for Respondent's personal account and a business account for Insight Marketing, LLC (Respondent's company).

On May 30, 2024, Investigator White emailed Respondent with more questions, and she promptly and fully responded.

On June 3, 2024, the Commission sent a subpoena for documents to First Citizens Bank (First Citizens), a financial institution based in Raleigh, North Carolina,[8] where Insight Marketing maintains a business bank account. Investigator White sent this subpoena via email and the US Postal Service, and demanded the following:

> [X] YOU ARE HEREBY COMMANDED to **produce and permit inspection and copying of the following documents or objects** in your possession, custody or control at the place, date, and time specified below (list documents or objects):
> Any and all financial records from July 1, 2023, through June 1, 2024, bearing the name Insight Marketing, LLC, account number [redacted]. These records should also include but not be limited to any; applications, phone numbers, authorizations and/or signers, account description, account numbers, account history, statements, transactions history, checks (any form), debits/credits, cards, wire transfers, address changes, services changes, transfer of the account and/or account closure, and any other records and/or associated account.
> **State Ethics Commission, 201 Executive Center Drive, Suite 150, Columbia, SC 29210** **06/21/2024**

Neither Respondent nor Insight Marketing was provided notice of this subpoena, nor an opportunity to challenge it.

On July 18, 2024, the Commission met and found probable cause against Respondent on forty-five (45) counts of violating the Ethics Act. However, Respondent was provided no prior notice of this meeting or that the complaints would be presented for probable cause. By the time of the probable cause hearing, Respondent had not heard from the Commission since May 30, 2024, when Investigator White had emailed her with the additional questions.

[8] *See First-Citizens Bank & Tr. Co. v. HSBC Holdings PLC*, No. 3:23-CV-02483-LB, 2024 WL 3364016, at *14 (N.D. Cal. July 9, 2024) ("First Citizens is a North Carolina corporation with its principal place of business there.").

On August 18, 2024, Respondent reviewed a social media post from Greta Anderson (one of the complainants) on Anderson's political Facebook page, called "Follitics." From reviewing Anderson's post, Respondent first learned (1) that the Commission had found probable cause against her on 45 counts of violating the Ethics Act; (2) the substance of these 45 charges; and (3) that a hearing on these charges had been scheduled for February 20, 2025.[9] Thus, not only Anderson, but many other members of the Folly Beach community were made aware of the charges prior to Respondent being notified.

ARGUMENT

A. The Ethics Commission was not legally authorized to issue the out-of-state subpoenas.

1. The Commission has no statutory authority to issue a subpoena to an out-of-state company.

The investigation and the 45 underlying charges primarily or substantially rely on investigative subpoenas issued to four companies - TD Bank, AMEX, First Citizens, and Venmo – none of which is a citizen of South Carolina. Upon information and belief, neither AMEX nor Venmo have any physical presence in South Carolina. While TD Bank and First Citizens have a physical presence in South Carolina, they are national banks. A national bank is deemed to be located in the state "in which its main office, as set forth in its articles of association, is located." *Wachovia Bank v. Schmidt,* 546 U.S. 303, 307 (2006); 28 U.S.C. § 1348 (noting national banks are "deemed citizens of the States in which they are respectively located").

The Legislature did not bestow on the Commission the power to issues subpoenas to out-of-state entities. "The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Rainey v. Haley*, 404 S.C. 320, 323, 745 S.E.2d 81, 82 (2013) (*citing Hodges*

[9] It was not until August 20, 2024, two days after seeing the Facebook post, that Respondent received the letter identifying the charges levied against her and that a hearing was scheduled.

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. Therefore, the courts are bound to give effect to the expressed intent of the legislature." *Hodges*, 341 S.C. at 85 (internal citation omitted). Additionally, like all other state agencies, the Commission has "only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers ...." *S.C. Tax Comm'n v. S.C. Tax Bd. of Rev.*, 278 S.C. 556, 560, 299 S.E.2d 489, 491–92 (1983). "The power of an administrative agency to investigate requires the same statutory authority as any other administrative action. Its powers to investigate and elicit information are therefore derived from and limited by the authorizing statutes." *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 563, 151 S.E.2d 849, 853 (1966); *see also Hitachi Data Sys. Corp. v. Leatherman*, 309 S.C. 174, 178–79, 420 S.E.2d 843, 846 (1992).

The only provision in the Ethics Act respecting the Commission's subpoena powers is S.C. Code Ann. § 8-13-320(9)(f), which provides:

> The commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, subject to judicial enforcement, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency's investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued under this section.

Nothing in this statutory provision or elsewhere in the Ethics Act can reasonably be interpreted to grant the Commission subpoena power outside of the State. This is for good reason, because "[t]he principle that state statutes generally have no extra-territorial effect remains a foundation of the respect for individual sovereignty the states must share with one another." *Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006).

Assuming *arguendo* the Legislature has the authority to grant extraterritorial investigative power to a state agency, it must do so expressly. *See, e.g.,* S.C. Code Ann. § 35-1-602(a)(1)(b) ("The Securities Commissioner may … conduct public or private investigations *within or outside of this State* which the Securities Commissioner considers necessary or appropriate … (b) For the purpose of an investigation under this chapter, the Securities Commissioner or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, [and] take evidence … the Securities Commissioner considers relevant or material to the investigation.") (emphasis added); S.C. Code Ann. § 27-29-110(a)(1)("The [real estate] commission may make the necessary public or private investigations within or outside of this State…"), § 35-11-745(A)(1)("The Commissioner [defined as the SC Attorney General] may conduct public or private investigations within or outside of this State…"), § 34-36-50(A)("The department [of consumer affairs] may make investigations and examinations upon reasonable suspicion within or outside of this State…"); § 27-32-190(B)(1) ("The [real estate] commission may make a public or private investigation it considers necessary, either within or outside of this State…"). The Legislature is keenly aware of how to write statutes to confer extraterritorial investigative power. *See Strickland v. Richland Cnty. Legislative Delegation,* 440 S.C. 438, 447–48, 892 S.E.2d 288, 293 (2023) (holding "the legislature clearly knew how to write discretion into the process because it did so in express language for select circumstances" in other statutes.); *S.C. Coastal Conservation League v. S.C. Dep't of Health & Env't Control*, 390 S.C. 418, 426, 702 S.E.2d 246, 251 (2010) ("[H]ad the legislature intended for the fifteen day time period to begin after receipt of notice, the legislature knew how to draft the statute to accomplish this result.").

The Legislature has not granted the Commission the authority to conduct investigations out-of-state, much less attempted to authorize the Commission to issue subpoenas in other states.

Finally, issuing these subpoenas for records outside the State of South Carolina and stating to the recipients **YOU ARE HEREBY COMMANDED** also misleads the subpoena recipients as to their duty to comply with the subpoenas. *See Matter of Lundgren*, 421 S.C. 300, 303, 806 S.E.2d 125, 127 (2017) (finding in lawyer disciplinary case, respondent improperly, *inter alia,* "issued [a] subpoena to an out-of-state entity.") (cleaned up); *Matter of Fabri,* 418 S.C. 384, 392, 793 S.E.2d 306, 310 (2016) (noting prior attorney sanction "that involved improperly subpoenaing an out-of-state party.") (cleaned up).

2. The Commission did not comply with the Uniform Interstate Depositions and Discovery Act in issuing these subpoenas.

Because the Commission lacks extraterritorial subpoena power, it would have the option of complying with the Uniform Interstate Depositions and Discovery Act (UIDDA or the Act) to issue an out-of-state subpoena. It did not.

The UIDDA was intended to provide simplified procedures for conducting out-of-state discovery, including issuing out-of-state subpoenas.[10] The UIDDA was passed by the National Conference of Commissioners on Uniform State Laws (NCCUSL) in 2007.[11] "Once an act has been approved by NCCUSL, it is officially promulgated for consideration by the states, and the legislatures are urged to adopt it."[12] South Carolina adopted the UIDDA in 2010, *see* S.C. Code Ann. §§ 15-47-100 to -160, Rule 28(d), SCRCP, and it has also been adopted in the jurisdictions

[10] Marna L. Brown, Esq., State of New Jersey Law Revision Commission Final Report Relating to the Uniform Interstate Depositions and Discovery Act, 37 Seton Hall Legis. J. 241, 242 (2013).

[11] Richard B. Long, *The National Conference of Commissioners on Uniform State Laws A Continuing Work in Progress*, N.Y. St. B.J., June 2007, at 41.

[12] *See id.*

where three of the subpoena recipients at issue here were based: New Jersey (TD Bank), *see* N.J.R. of Ct. 4:11-4, New York (AMEX), *see* N.Y. C.P.L.R. 3119, North Carolina (First Citizens), N.C. Gen. Stat. §§ 1F-1 to 1F-7, and California (Venmo), Cal. Code §§ 2029.100-.900. Because South Carolina, New Jersey, New York, and California adopted the UIDDA, then compliance with the Act is mandatory.

The UIDDA procedure requires that any foreign subpoena be domesticated by the clerk of court in the circuit in which discovery is sought (here, Cherry Hill, NJ, New York, NY, Raleigh, NC, and San Jose, CA). *See* Uniform Laws, UIDDA § 3, Issuance of a Subpoena, Additionally, "[a] subpoena issued by a clerk of court under Section 3 must be served in compliance with [the applicable statute for the state]." *See* Uniform Laws, UIDDA § 4, Service of a Subpoena. Here, each of the relevant state UIDDA statutes requires service in compliance with that state's civil rules of procedure. *See* N.J. Ct. R. R. 4:11-4(b)(4) ("*Service of Subpoena.* A subpoena issued by an attorney authorized to practice in this State or by the Clerk of the Superior Court must be served in compliance with R. 1:9-3 and R. 1:9-4."); N.Y. C.P.L.R. 3119(c) ("Service of subpoena. A subpoena issued under this section must be served in compliance with sections two thousand three hundred two and two thousand three hundred three of this chapter."); N.C. Gen. Stat. Ann. § 1F-4 ("A subpoena issued by a clerk of court in North Carolina under G.S. 1F-3 must be served in compliance with G.S. 1A-1, Rule 45(b) of the North Carolina Rules of Civil Procedure."); Cal. Civ. Proc. Code § 2029.400 ("A subpoena issued under this article shall be personally served in compliance with the law of this state, including, without limitation, Section 1985.").

The investigative file shows nothing to indicate the Commission even attempted to comply with the UIDDA. Far from it. The Commission paid no attention to the UIDDA and directly sent the out-of-state companies subpoenas which misleadingly claimed they were legally obligated to comply. Further, in one instance, the Commission emailed a subpoena, and in another, it uploaded a subpoena to a web portal, which is not proper service of a subpoena under the civil rules in any jurisdiction.

B. The subpoenas at issue violated Respondent's rights under the Fourth Amendment to the U.S. Constitution and South Carolina Constitution.

The subpoenas violate Respondent's right to privacy under the Fourth Amendment to the United States Constitution and Article I, section 10 of the South Carolina Constitution. The Fourth Amendment "demands that '[t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated....'" *State v. Moore*, 421 S.C. 167, 173, 805 S.E.2d 585, 588 (Ct. App. 2017), *aff'd as modified,* 429 S.C. 465, 839 S.E.2d 882 (2020). In almost identical terms, S.C. Const. art. I, § 10 declares "[t]he right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures and unreasonable invasions of privacy shall not be violated," which in almost identical terms to the Fourth Amendment protects citizens' right to be free from unreasonable searches and seizure. *See* S.C. Const. art. I, § 10; *State v. Key*, 431 S.C. 336, 349, 848 S.E.2d 315, 321 (2020). "The touchstone of the Fourth Amendment is reasonableness." *See id.* (citing *Florida v. Jimeno*, 500 U.S. 248, 250, 111 S.Ct. 1801 (1991)). "[A] Fourth Amendment search occurs when the government violates a subjective expectation of privacy that society recognizes as reasonable." *Kyllo v. United States*, 533 U.S. 27, 33, 121 S. Ct. 2038, 2042 (2001).

Moreover, the express right to privacy under S.C. Const. art. I, § 10 "favors an interpretation *offering a higher level of privacy protection than the Fourth Amendment.*" *Key,* 431 S.C. at 349, 848 S.E.2d at 321 (*citing State v. Forrester*, 343 S.C. 637, 645, 541 S.E.2d 837, 841 (2001) (emphasis added)). The South Carolina Supreme Court recently rejected an argument that the constitutional "right to privacy applies only to criminal defendants in the context of Fourth

Amendment search and seizure." *Planned Parenthood S. Atl. v. State*, 438 S.C. 188, 198, 882 S.E.2d 770, 776 (2023), *reh'g denied* (Feb. 8, 2023).

Under either the federal Fourth Amendment privacy standard or the greater protections offered by the South Carolina Constitution, Respondent's right to privacy has been violated. For Respondent to claim an illegal search or seizure, first, "[t]he search of an item [must be] illegal." *Moore*, 421 S.C. at 174, 805 S.E.2d at 589. As established *supra*, the subpoenas were illegal because the Commission had no extraterritorial jurisdiction to issue them, and in any event they were not issued in compliance with the UIDDA. Next, Respondent must have "had a legitimate expectation of privacy in the item searched." *Id.* Respondent had an expectation of privacy in her personal financial records, and there can be no serious argument to the contrary or that her privacy expectation was not reasonable. For example, the subpoena to TD Bank was unlimited in time. TD Bank's response included a production of over 2,200 pages from Respondent's personal bank account going back to 2014, which included *every debit card transaction she had ever made*, her account balance after each transaction, payments made to the IRS and the South Carolina Department of Revenue, documentation of where she shopped, where she vacationed, the identity of her medical providers, how much she paid the medical providers, etc. These are just a few examples of the types of highly personal information the Commission obtained with its lawless and far-reaching subpoenas. It goes on.

For these reasons, Respondent's rights under the Fourth Amendment and South Carolina Constitution have been violated.

C. **The subpoenas at issue did not comply with Respondent's due process guarantees under the Ethics Act and the S.C. Constitution.**

The Commission's investigation disregarded Respondent's due process protections guaranteed in the Ethics Act. *See* S.C. Code Ann. § 8-13-320(10)(a), (d), (h), § 8-13-320(12). Section 8-13-320(10)(a) specifically requires that

> The commission shall forward a copy of the complaint, a general statement of the applicable law with respect to the complaint, and a statement explaining the due process rights of the respondent including, but not limited to, the right to counsel to the respondent within ten days of the filing of the complaint.

The Commission apparently purports to comply with this directive in the identical form letters it sent to Respondent after the investigations were opened when it writes

> In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.
>
> On [DATE], in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.
>
> In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.
>
> Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

The Commission's form letters do not comply with the mandatory requirements of S.C. Code Ann. § 8-13-320(10)(a). For one thing, referring Respondent to "the Ethics Reform Act" in its entirety is not the "general statement of the *applicable* law *with respect to the complaint*" required by the statute (emphasis added). The Commission is required to inform respondents of the specific, *applicable* provision or provisions of the Ethics Act being investigated. For another, nothing in the form letters can be interpreted as "explaining the due process rights of the respondent," and a directive to "advise the commission" "[s]hould you retain legal counsel" is not equivalent to advising respondent of "the right to counsel …."

Here, Investigator White invited Respondent (who at the time had not hired an attorney) to interview and provide information on the investigation on multiple occasions, and led her to believe that this was a minor issue that could be easily corrected with her cooperation. Meanwhile, unbeknownst to Respondent, the Commission was actively using the information Respondent willingly using Respondent's cooperation against her, and issuing its misleading and lawless subpoenas for her personal financial records to buttress these garden-variety compliance violations initially alleged in the complaints. Despite Respondent's cooperation, the Commission "commence[d] an adversary process," *In re Subpoena Duces Tecum*, 228 F.3d at 348, but did so without Respondent's knowledge. Respondent was never given the chance to "provide a written response to the complaint," i.e., the allegations that Investigator White ultimately presented to the Commission at the July 18, 2024 probable cause hearing, nor was she even told that a hearing was taking place. Had Respondent been properly informed, she likely would have realized much sooner that the Commission was not treating this like a minor issue and hired an attorney prior to the probable cause determination. Fittingly but regrettably, Respondent was relegated to learning about the 45 counts against her on a political Facebook post ("Follitics") made by one of the complainants.

The Commission's investigation also violated Respondent's constitutional due process rights. Article I, Section 22 of the South Carolina Constitution states

> No person shall be finally bound by a judicial or quasi-judicial decision of an administrative agency affecting private rights except on due notice and an

> opportunity to be heard; nor shall he be subject to the same person for both prosecution and adjudication; nor shall he be deprived of liberty or property *unless by a mode of procedure prescribed by the General Assembly,* and he shall have in all such instances the right to judicial review.

S.C. Const. art. I, § 22 (emphasis added). "This section is 'an additional guarantee of important due process rights.'" *McIntyre v. Sec. Comm'r of S.C.*, 425 S.C. 439, 447, 823 S.E.2d 193, 196 (Ct. App. 2018) (*quoting Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 444, 511 S.E.2d 48, 54 (1998)).

Respondent's due process rights were violated because she was never given any prior notice of the subpoenas nor the opportunity to object to their issuance, scope, or relevance as mandated by SCRCP Rule 45. Rule 45(a)(4), SCRCP provides "[i]f the subpoena commands the production of documents, electronically stored information, or tangible things or the inspection of premises before trial, then before it is served on the person to whom it is directed, a copy of the subpoena must be served on each party in the manner prescribed by Rule 5(b) at least ten days before the time specified for compliance." Upon information and belief, the Commission misapprehends its subpoena authority as something akin to a power to issue search warrants. But the Legislature knows how to grant search warrant powers in a statute, *see* S.C. Code Ann. § 22-5-10, and it beyond doubt did not grant them to the Commission. Rather, it granted the Commission subpoena power. *See* § 8-13-320. As articulated by the Fourth Circuit, there are different guardrails in place for a search warrant demand versus the issuance of a subpoena:

> In short, the immediacy and intrusiveness of a search and seizure conducted pursuant to a warrant demand the safeguard of demonstrating probable cause to a neutral judicial officer before the warrant issues, *whereas the issuance of a subpoena initiates an adversary process that can command the production of documents and things only after judicial process is afforded. See United States v. Miller,* 425 U.S. 435, 446 & n. 8, 96 S.Ct. 1619, 48 L.Ed.2d 71 (1976). And while a challenge to a warrant questions the actual search or seizure under the probable cause standard, *a challenge to a subpoena is conducted through the adversarial process, questioning the reasonableness of the subpoena's command.*

> . . .
> The value of constraining governmental power ... is nevertheless recognized in the judicial supervision of subpoenas. Application of the reasonableness standard protects this value and yet preserves the governmental power of investigation ... The requirement that subpoenas be used only for a legitimate and authorized governmental purpose prohibits the government from "engag[ing] in arbitrary fishing expeditions" and from "select [ing] targets of investigation out of malice or an intent to harass." [*United States v. R. Enterprises, Inc.*, 498 U.S. 292, 299, 111 S. Ct. 722 (1991)]

In re Subpoena Duces Tecum, 228 F.3d 341, 348-349 (4th Cir. 2000) (emphasis added). As noted *supra*, Rule 45(a)(4) South Carolina Rules of Civil Procedure provides guardrails in the form of notice of a subpoena and an opportunity to challenge it, but the Commission did not comply with this rule.

Upon information and belief, the Commission believes it is not required to comply with the South Carolina Rules of Civil Procedure, as to notice, proper service, and other matters. If so, this begs the question: does the Commission believe there are *any* limits on its investigative authority? It cannot be the case that there are none. If the Commission's interpretation is correct and no guardrails exist, then this portion of the Ethics Act is an unconstitutional delegation of power. *See S.C. State Highway Dep't v. Harbin*, 226 S.C. 585, 595, 86 S.E.2d 466, 471 (1955) ("A statute which in effect reposes an absolute, unregulated, and undefined discretion in an administrative body bestows arbitrary powers and is an unlawful delegation of legislative powers."). Such an interpretation of the statute would also violate S.C. Const., Art. I, Sec. 22 because Respondent cannot "be deprived of liberty or property unless by a mode of procedure prescribed by the General Assembly." While the SCRCP are an example of "a mode of procedure prescribed by the General Assembly," this Commission investigation (however characterized) was not. Respondent does not read these provisions of the Ethics Act to be unconstitutional, but believes that the Legislature has given the Commission the investigative powers expressly conferred in the statute, no more and no less, and it has in fact mandated the guardrails that the Commission has chosen to ignore.[13]

D. The only proper remedy is to dismiss the Complaint with prejudice.

As firmly established *supra*, for multiple reasons, the investigation is tainted and the charges cannot stand. The typical remedy for an unlawful search is the suppression of the evidence under the exclusionary rule. *See State v. 192 Coin-Operated Video Game Machines*, 338 S.C. 176, 195, 525 S.E.2d 872, 882 (2000). To be clear, "[t]he [exclusionary] rule does apply to a civil proceeding which is quasi-criminal in nature, or in which the government is seeking to exact a penalty or in some way to punish a person." 31A C.J.S. Evidence § 350; *see also 192 Coin-Operated Video Game Machines*, 338 S.C. at 195 (applying exclusionary rule to civil forfeiture proceedings).

In this case, the illegality of the Commission's action is obvious, the constitutional harms that Respondent has suffered are well-established, and the problems are too pervasive to simply exclude the ill-gotten evidence (what would be left?). The bell cannot be unrung. Any dismissal without prejudice would allow the Commission, now knowing what they know, to go back and attempt to procure the same information through legal means. Under these particular circumstances, the only proper remedy is for the Commission to dismiss the Complaint and to do so with prejudice.

[13] To the extent a court reviews this matter, it would be required to apply "the doctrine of constitutional doubt, which provides that when a statute is susceptible of two constructions, courts interpret the statute to avoid 'grave and doubtful constitutional questions.'" *United Student Aid Funds, Inc. v. S.C. Dep't of Health & Env't Control*, 349 S.C. 162, 168, 561 S.E.2d 650, 653 (Ct. App. 2002), *aff'd*, 356 S.C. 266, 588 S.E.2d 599 (2003) (*quoting Pennsylvania Dep't of Corrections v. Yeskey*, 524 U.S. 206, 212, 118 S.Ct. 1952 (1998)).

CONCLUSION

For the reasons discussed herein, the Commission should dismiss all charges against Respondent and should dismiss the complaint filed against her with prejudice.

Respectfully Submitted,

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Columbia, South Carolina
January 16, 2025

Case No. 2025-CP-32-00440

EXHIBIT H

to

South Carolina State Ethics Commission and Executive Director Meghan Walker Dayson's Motion for Summary Judgment

State Ethics Commission's Response to Motion to Dismiss
February 4, 2025

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION
)
IN THE MATTER OF:)
)
Complaints C2023-137; C2023-138;)
C2024-001)
)
Lindsay Hamrick, Jody Lynn Rogers,)
Greta Anderson)
Complainants.)
)
Ann Peets)
Respondent.)
)

RESPONSE TO RESPONDENT'S MOTION TO DISMISS

This matter comes before the South Carolina State Ethics Commission (Commission) by way of a Motion to Dismiss (Motion) filed by Respondent Ann Peets (Respondent) on January 21, 2025. As discussed herein, Respondent's Motion should be denied, and this matter should proceed to a hearing on the merits.

PROCEDURAL HISTORY

The above-referenced Complaints were filed against Respondent—a candidate for Folly Beach City Council in a November 7, 2023 general election and a November 22, 2023 runoff election—on December 7, 2023, December 18, 2023, and January 4, 2024, respectively. The Complaints asserted similar allegations against Respondent with regard to her Campaign Disclosure Reports (CDRs). Pursuant to Section 8-13-320(10)(c) of the Ethics, Government Accountability, and Campaign Reform Act (Ethics Act), the Commission's Executive Director determined that the Complaint alleged facts sufficient to constitute a violation of the Ethics Act and ordered an investigation. In certified letters dated December 15, 2023, December 20, 2023, and January 12, 2024, Respondent was provided with a copy of each respective Complaint. See Attachment 1. Respondent provided a written response on January 10, 2024. See Attachment 2.

After finding probable cause to believe Respondent violated the Ethics Act, the Commission issued a Notice of Hearing (NOH) and a corresponding certified letter on August 9, 2024. See Attachment 3.[1] The NOH outlined 45 violations of the Ethics Act, summarized below:

> Three (3) counts of violating Section 8-13-1308 for failing to file requisite Campaign Disclosure Reports; ten (10) counts of violating Section 8-13-1308(F)(4) for improperly reporting expenditures; five (5) counts of violating Section 8-13-1308(F) for failing to report expenditures; five (5) counts of violating Section 8-13-1308(F)(2) for failing to report campaign contributions; one (1) count of violating Section 8-13-1308(F)(2) for failing to report an in-kind contribution; one (1) count of violating Section 8-13-1312 for failing to deposit four (4) contributions within ten days of receipt; thirteen (13) counts of violating Section 8-13-1312 for payment of expenditures outside of the campaign bank account; one (1) count of violating Section 8-13-1314(A)(1)(c) for accepting a contribution over $1,000.00; four (4) counts of violating Section 8-13-1314(A)(2) for accepting cash contributions over $25.00; one (1) count of violating Section 8-13-1324 for accepting an anonymous campaign contribution; and one (1) count of violating Section 8-13-1370 for improper discharge of unexpended campaign funds.

On December 23, 2024, Respondent filed a Motion for Continuance that has not yet been heard by the Commission.[2] This Motion followed.

ARGUMENTS

I. The Commission has authority to issue subpoenas relevant to its investigations.

Respondent argues the Complaints should be dismissed because the charges and investigation rely on improperly issued investigative subpoenas. Specifically, Respondent contends i) the Commission lacks authority to issue subpoenas to financial institutions that are headquartered outside of South Carolina, and ii) the Commission failed to comply with the Uniform Interstate Depositions and Discovery Act (UIDDA). As discussed herein, these arguments are without merit because, A) at the time of issuance, the Commission's sole

[1] The Commission found probable cause to believe Respondent violated the Ethics Act in 48 instances. Following the probable cause hearing, Commission staff combined four (4) counts into one (1), resulting in a 45-count NOH.

[2] Commission staff responded to the Motion for Continuance on January 14, 2025.

requirement in issuing subpoenas was that the subpoena be used to procure witnesses or materials that are relevant to the Commission's investigation; B) South Carolina law has long established that a company conducting business in the state is subject to the personal jurisdiction of the state; and C) the UIDDA is inapplicable.

A. The Commission's subpoenas were issued during its investigation and in accordance with the Ethics Act.

Section 8-13-320(10)(f) of the Ethics Act provides, in relevant part:

> The commission may order testimony to be taken in any investigation or hearing by deposition before a person who is designated by the commission and has the power to administer oaths and, in these instances, to compel testimony. The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency's investigation by approval of the chairman, subject to judicial enforcement. A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued under this section. (emphasis added).

Notedly, the Commission has the authority to determine whether a person has failed to comply with the disclosure requirements contained in the Ethics Act. S.C. Citizens for Life, Inc. v. Krawcheck, 759 F. Supp. 2d 708, 710 (D.S.C. 2010) (citing Section 8-13-320(7) of the Ethics Act). In making such a determination, the Commission is granted authority to conduct investigations, to include issuing subpoenas, for matters containing facts sufficient to constitute a violation. See Section 8-13-320(9), (10)(c). A facts sufficient determination is a preliminary determination that comports with the due process outlined in the Ethics Act. The Commission's authority to issue subpoenas in the stage immediately following a facts sufficient determination requires only that the subpoena be issued for the procurement of witnesses or materials relevant to the Commission's investigation. See Section 8-13-320(10)(f).

Here, the Commission received the Complaints alleging Respondent failed to properly report contributions and expenditures on her CDRs. In letters dated December 15, 2023, December 20, 2023, and January 12, 2024, the Commission, via its Executive Director, informed Respondent that the Complaints contained facts sufficient to warrant an investigation. During its investigation, the Commission issued subpoenas for the procurement of financial records to the institutions Respondent used to make campaign expenditures and receive campaign contributions. Accordingly, the subpoenas requested materials relevant to the Commission's investigation and were therefore issued in accordance with the Ethics Act.

B. <u>South Carolina has personal jurisdiction over the recipients of the issued subpoenas.</u>

Respondent argues that the Commission lacks the proper jurisdiction to issue the subpoenas because the companies—TD Bank, Venmo, AMEX, and First Citizens Bank (the Companies)—are headquartered outside of South Carolina. This argument is without merit because the Companies are subject to the personal jurisdiction of South Carolina. It is a long-standing principal that South Carolina may exercise personal jurisdiction over a person who, in relevant part, does business or maintains its principal place of business in the state. S.C. Code Ann. § 36-2-802; <u>see e.g.</u>, <u>Batts v. SNAP Inc.</u>, No. 2:23-CV-03565-DCN, 2024 WL 3677802, at *4 (D.S.C. 2024) ("Personal jurisdiction over a nonresident defendant can be either specific or general. General jurisdiction arises when the nonresident defendant's contacts with the forum state are so continuous and systematic as to render [the defendant] essentially at home in the forum State." (internal citations omitted)); <u>Goodyear Dunlop Tires Operations, S.A. v. Brown</u>, 564 U.S. 915, 919 (2011); <u>Int'l Shoe Co. v. Washington</u>, 326 U.S. 310, 317 (1945).

Here, each Company continuously and systematically conducts business in South Carolina; and TD Bank, First Citizens Bank, and AMEX have physical business locations in South Carolina. Therefore, the Companies are all subject to the personal jurisdiction of South Carolina.

C. The UIDDA is inapplicable to the Commission's issuance of subpoenas in this matter.

Respondent argues that the Commission failed to comply with the UIDDA, which is codified in Chapter 47 of Title 15 of the South Carolina Code of Laws, with regard to issuing its subpoenas to the Companies because the subpoenas were not domesticated through a clerk of court in the state in which each Company is headquartered. This argument is without merit because the Commission was not required to domesticate its subpoenas.

> Section 15-47-110(2) of the UIDDA defines "foreign jurisdiction" as "a state other than South Carolina."
>
> Section 15-47-110(3) of the UIDDA defines "foreign subpoena" as "a subpoena issued under authority of a court of record of a foreign jurisdiction."
>
> Section 15-47-120 of the UIDDA provides the following:
>
> > (A) To request issuance of a subpoena under this chapter, a party must submit a foreign subpoena to the clerk of court of the county in which discovery is sought to be conducted in this State. A request for the issuance of a subpoena under this chapter does not constitute an appearance in the courts of this State.
> >
> > (B) When a party submits a foreign subpoena to a clerk of court in this State, the clerk, in accordance with the rules of court, promptly shall issue a subpoena for service upon the person to which the foreign subpoena is directed. The subpoena must incorporate the terms used in the foreign subpoena and contain or be accompanied by the names, addresses, and telephone numbers of all counsel of record in the proceeding to which the subpoena relates and of any party not represented by counsel.

Here, the Commission is granted the authority to issue subpoenas in Section 8-13-320(10)(f); and, as outlined in Item I.B. above, the Commission issued subpoenas to companies that are subject to the personal jurisdiction of South Carolina. Accordingly, the Commission's subpoenas were not—and were not required to be—issued under the authority of a court in a state other than South Carolina. Thus, the Commission was not required to domesticate its subpoenas to the Companies, and the UIDDA is inapplicable.

Therefore, the Commission lawfully issued its subpoenas to the Companies.[3]

II. The subpoenas do not violate Respondent's Fourth Amendment right to privacy.

Respondent argues that the Commission's subpoena to TD Bank violated her right to privacy because the subpoena produced documents outlining the full history of Respondent's personal expenditures with TD Bank. This argument is fundamentally flawed because the subpoena was lawfully issued and produced documentation that a reasonable person would expect to be subject to search under the circumstances.

As outlined in Item I, the Commission lawfully issued its subpoenas to the Companies because the requested materials are relevant to the Commission's investigation and the Companies are subject to the personal jurisdiction of South Carolina. Secondly, candidates for public office in South Carolina are bound by the Ethics Act, and they are responsible for adhering to the campaign finance laws therein. Notedly, the Preamble to the Ethics Act shows that the Ethics Act is intended to promote public transparency, in part, by requiring "complete and effective disclosure." See Preamble. In effectuating this, the Commission is required to conduct audits to ensure candidates process campaign contributions and expenditures through a qualified campaign bank account. See Sections 8-13-320(7), 8-13-1312.

If the audited information is included in a public hearing, the Commission is required to redact the information to "exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy." Section 8-13-320(10)(g)(ii). However, this does not preclude the Commission's authority to acquire materials that contain the personal

[3] Respondent also argues that the Commission improperly issued its subpoenas that were emailed or uploaded to a web portal. Companies sometimes adopt internal procedures regarding acceptance of administrative subpoenas. In the current matter, Venmo requested that the Commission's subpoena be uploaded via web portal; TD Bank requested that the subpoena be emailed; First Citizens Bank requested that the subpoena be sent via facsimile and email; and AMEX accepted USPS mail. The Companies all accepted and responded to the subpoenas.

information so long as its inclusion was ancillary to the substantive materials relevant to the Commission's investigation. See Section 8-13-320(10)(f). Indeed, while the Ethics Act requires candidates to use only one campaign bank account that is separate from their personal account, the Commission's authority to review campaign contributions and expenditures does not depend on whether candidates actually maintain their campaign bank accounts as required. For the purposes of public transparency, all accounts used in furtherance of a candidacy are subject to the Commission's auditing powers.

Here, Respondent was a candidate for Folly Beach City Council in a November 7, 2023 election and November 22, 2023 run-off election; and the Commission's investigation revealed that Respondent used her personal TD Bank account to cover campaign-related expenses.[4] Thus, Respondent was on notice that her personal TD Bank account was subject to the Commission's review. In proceeding to a hearing, Commission staff shall redact Respondent's personal information contained in the bank records that are not relevant to the prosecution and which create an unreasonable invasion of privacy. Therefore, the Commission has not violated Respondent's Fourth Amendment right to privacy by issuing subpoenas to TD Bank or any of the Companies holding financial accounts Respondent used in furtherance of her candidacy.

III. The Commission complied with all due process rights afforded to Respondent.

Article 7 of Chapter 52 of the South Carolina Code of Regulations (Regulations) discusses the Commission's procedures pertaining to contested case hearings. Regulation 52-710 provides:

> A. In addition to the information previously gathered in the course of the investigation, the parties may engage in additional discovery. B. All parties to the proceedings are entitled to engage in discovery as provided in the Administrative

[4] The Commission issued a subpoena for bank records to TD Bank because Respondent maintained her campaign bank account with TD Bank. In response to the subpoena, TD Bank produced records for both Respondent's campaign bank account and personal bank account—which could only be determined upon the Commission investigator's review of the records. This review revealed that Respondent made campaign-related expenditures from her personal TD Bank account.

> Procedures Act and the Act to the extent that depositions may be taken. The rules concerning the taking of and use of depositions as stated in the South Carolina Rules of Civil Procedure shall apply. C. Upon motion of any party, the Commission may grant the use of interrogatories and requests for admissions under the South Carolina Rules of Civil Procedure. (emphasis added)

Respondent argues that the Commission violated her due process rights by failing to notify her of its issuance of subpoenas. This argument is without merit because it contemplates due process for matters following a finding of probable cause. As outlined below, the subpoenas in question were issued prior to the Commission's finding of probable cause, and the Commission followed all appropriate procedures afforded to Respondent under the Ethics Act.

Upon receipt of a complaint, the Commission must forward a copy of the complaint, provide a general statement of the applicable law, and notify a respondent of her due process rights within ten (10) days. Section 8-13-320(10)(a). If the Commission or its designee determines that the complaint does not allege facts sufficient to constitute a violation, the Commission is then required to notify the respondent of its dismissal of the complaint. Section 8-13-320(10)(b).

Alternatively, if the Commission or its designee determines the complaint alleges facts sufficient to constitute a violation, the Commission is then required to notify a respondent of the Commission's probable cause determination. Section 8-13-320(10)(i). The probable cause determination is a preliminary decision that takes place after an investigation. See id. If the Commission finds probable cause to believe a respondent violated the Ethics Act, it then schedules the matter for a hearing and must notify the respondent of the hearing date and the applicable due process rights. See Section 8-13-320(10)(h)-(j). After issuing its notice of hearing, the Commission must notify the respondent of all communications pertaining to additional discovery. See Regulation 52-710.

Here, the Commission received the Complaints against Respondent on December 7, 2023, December 18, 2023, and January 4, 2024. On December 15, 2023, December 20, 2023, and January 12, 2024, respectively, the Executive Director—as the Commission's designee—forwarded Respondent a copy of the Complaint along with a letter notifying Respondent that the Complaint contained facts sufficient to warrant an investigation. The letters further provided Respondent with the website address to the general law, information regarding future communications from a Commission investigator, a request that Respondent notify the Commission of retention of counsel, and a statement that the matter and materials were confidential until the Commission finds probable cause to believe Respondent violated the Ethics Act unless Respondent waives her right to confidentiality in writing. See Attachment 1.

On January 3, 2024, Commission staff contacted Respondent via telephone and scheduled an interview for Respondent to speak with a Commission investigator on January 16, 2024. On January 10, 2024, prior to the interview, Respondent sent the Commission a written response alleging, in part, that she filed all reports as required. Following the January 16, 2024 telephone interview, Respondent sent the following materials to the Commission: a January 18, 2024 email attaching her personal recordkeeping documents; a package, received January 22, 2024, containing Respondent's personal recordkeeping documents, revealing a campaign expenditure made with an AMEX card; and a January 26, 2024 email containing a spreadsheet with contributions not included in her previous materials.

In furtherance of its investigation into the Complaints[5] and the materials received from Respondent, the Commission subpoenaed records from TD Bank and Venmo on January 14, 2024 and AMEX on January 29, 2024 and May 15, 2024[6]. The Commission's investigation later

[5] Specifically, Complaint C2023-138 contained an attachment showing Respondent used Venmo as her fundraising platform.

[6] The Commission sent a second subpoena to AMEX after its January 29, 2024 subpoena expired.

revealed that Respondent also made campaign expenditures with her personal business account through First Citizens Bank. Accordingly, on June 3, 2024, the Commission issued a subpoena to First Citizens Bank. Each company had the right to move before the Commission to quash the subpoena pursuant to Section 8-13-320(10)(f); however, all Companies complied and produced the requested materials.

At the conclusion of the Commission's investigation, the Commission found that the produced materials substantiated a finding of probable cause. Accordingly, in a letter dated August 9, 2024, the Commission notified Respondent of her scheduled hearing date, the applicable provisions of the Ethics Act, a request that she inform the Commission if she procures counsel, and a statement alerting Respondent that the matter is now subject to public disclosure pursuant to Section 8-13-320(10)(g). The Commission did not issue additional subpoenas or acquire additional witnesses prior to Respondent filing her Motion for Continuance.

Therefore, the Commission has complied with all due process requirements under the Ethics Act.

CONCLUSION

For these reasons, Respondent's Motion to Dismiss should be denied and this matter should proceed to a hearing on the merits.

Respectfully submitted,

Renique K. Brabham
Assistant General Counsel
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

February 4, 2025
Columbia, SC

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

December 15, 2023

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 9214896900999790142450654O

RE: Complaint C2023-137 In the Matter of Ann Peets

Dear Ms. Peets:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On December 13, 2023, in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

FOR COMMISSION USE ONLY:
CASE NUMBER
C 2023-137

COMPLAINT FORM

COMPLAINANT: Lindsay Hamrick
ADDRESS: 715 London Dr., Chas, SC 29412
TELEPHONE NUMBER: 803.269.2250
TITLE: President, Lindsay Hamrick, LLC

RESPONDENT: Ann Peets
ADDRESS: PO Box 1193, Folly Beach, SC 29439
TELEPHONE NUMBER: 201.230.5280
TITLE: Former candidate, Folly Beach City Council

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

Ann Peets filed her "pre-election campaign finance disclosure" late and also never filed her "initial filing." On 10/24, a day late, she filed showing $0 in contributions and didn't correct it to say she received $50 in September until 11/9, after the election, and only after she was confronted on Facebook w/ a Venmo screen shot. In an attempt to explain this on FB, she said she received only $50 before Election Day and that another $550 was received 11/9, the day of her post and 2 days after she qualified for the runoff. How did she only receive $50 prior to Election Day when she had a over $4000 in expenditures before then, which are all documented in the supporting documents in this complaint? Also, on 11/9, Ann Peets attempted to explain on FB why she didn't file any reports and said she didn't receive more than $50 prior to the election and that "I waited for all my invoices" before attempting to report them on 11/9 (also in supporting documents). However, this is not the nature of campaign finance reporting. The law clearly states that you report when you've received $500 OR had $500 in expenditures, which she had and paid for them when she used her credit card. When she decided to pay off the company that allowed her to pay for said expenditure isn't what the law requires, nor is it in the spirit of SC Ethics Commission reporting. Credit cards are a method of payment and must be reported. I also question if she had a separate bank account and credit card for her campaign,and that she didn't receive $550 in cash donations until after Election Day.

If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record.

STATE OF SOUTH CAROLINA
COUNTY OF Charleston
Personally appeared before me Lindsay Hamrick who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this 4th day of December, 2023

ALLISON HINNANT NOTARY My Comm. Exp. April 27 2031 PUBLIC SOUTH CAROLINA

Complainant Signature

Notary Public for South Carolina
My Commission expires 04/27/2031

SEC-7 (Revised 3/2022)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
ELECTRONIC COPIES WILL NOT BE ACCEPTED

C102form

Ann Peets expenditures, contributions & posts about them in order of events

9/1 Deadline to register to run - filing fee	$25.00
9/19 Venmo donation Kappell	$50.00
9/28 Alfredo's meet and greet	
9/28 Alfredo's food served	"In kind donation"
9/29 Facebook page created with link to website	
LCA graphics designed and paid for photos courtesy of AV photography	$1375.00
Folly Current ad (other candidate's invoice dated 10/5)	$475.00
10/2 Chico Feo meet and greet	$37.03
10/3 Sunset Cay meet and greet	$35.56
10/3 Sunset Cay meet and greet (food)	$108.99 Aldi
10/5 Sunset Cay (FB post asking for donations)	
10/6 asking for donations again (just showing push for donations)	
10/17 Candidate's forum at Tides	$15.76
11/1 Bowens Island meet and greet	$174.89
11/1 Bowens Island drinks and food	
Smart Signs (Eric Lutz text on 9/28 for sign in ROW)	$664.36
Folly Beach postage	$615.78
Staples leave behind cards	$10.79
Nelson Printing leave behind cards (Given at Alfredo's on 9/28)	$85.02
Nelson Printing mailers	$855.65
Wix website	$25.00
Bounty Bar - CC refreshments	$68.61
Chris Marley (supposedly on 11/9 after election)	$100.00

- Chuck Skipper - (supposedly on 11/9 after election) $200.00
- John Calhoun (Summerville) - (supposedly on 11/9 after election) $250.00
- Alison McNatt - (supposedly on 11/9 after election) $100.00

6:31

Bizzell4Folly

Posts About More

2 shares

Like Comment Share

Bizzell4Folly created an event. ...

THU, SEP 28
Candidate Meet & Greet With Chris Bizz... ☆ Interested
Christine and Andy Suza...

Like Comment

Bizzell4Folly ...
Sep 12 ·
Update: the city voted to procure this

Video Friends Marketplace Notifications Menu

6:32

What to expect

Join us at Alfredo's on Folly Beach for a casual meet the candidate night. We look forward to meeting with the residents of Folly Beach and learning more about the issues they are passionate about.

Light Hors d'Oeuvre prepared by Alfredo's will be provided and beer/wine will be available for purchase.

We look forward to exchanging ideas with all residents on key issues facing Folly Beach!

Meet your host

Video Friends Marketplace Notifications Menu

2:57

Ann Peets - Comm Elect A...

Ann Peets - Comm Elect...
@Ann-Peets · 0 friends

Pay or Request

Feed Between You

KK Kristen Kappel paid Ann Peets - Comm Elect Ann Peets
Campaign

7:40

New Message

To: Eric Lutz

PM

Campaign sign almost in the road on 1st block of

Text

7:40

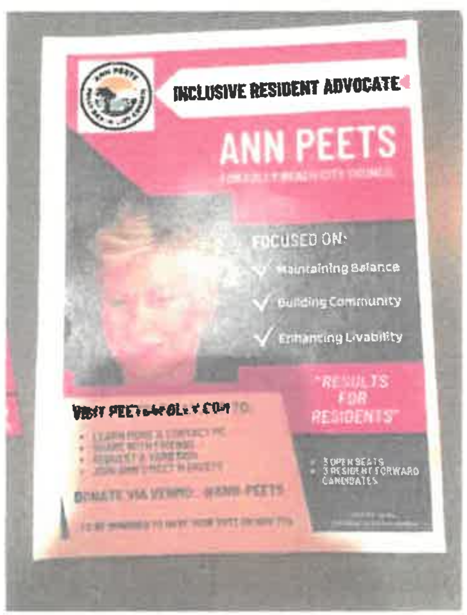
New Message Cancel

To: Eric Lutz

Campaign sign almost in the road at first block of W Hudson

Thank you I just removed them

It was a peetsand a Peets and a Bizzell right next to hers



6:19

About

ann.peets@protonmail.com
Email

http://Peets4Folly.com/
Website

Basic info

Not yet rated (0 Reviews)
Public

Page transparency

Facebook is showing information to help you understand the purpose of this Page.

143567685501333
Page ID

September 29
Creation date

Admin info
This Page doesn't have any other admins. Additional admins may have permission to post content, comment

Video Friends Marketplace Notifications Menu

Page 1

Oct 2023 edition

ROA 175

6:36

Peets4Folly

Posts About More ▾

Peets4Folly

What a spectacular day on Folly!

Enjoyed a nice sunset and evening over at Chico Feo "Rocking the Vote" with my fellow candidate for City Council, Chris Bizzell. Loved.....loved the Souvlaki and the company. If you haven't had a chance, take a moment now to get yourself registered and ready to vote....Thanks for another great evening!

Video Friends Marketplace Notifications Menu

6:38

Peets4Folly

Posts About More ▾

Peets4Folly

Please join us for our next Meet 'n Greet on Thursday, Oct 5th at the Marina. We look forward to another amazing opportunity to meet everyone, answer questions, and have some fun --- not to mention those awesome Marina sunsets!!

This is also our campaign fundraiser event. Unlike some of the other candidates enjoying support from larger organizations, we are funded solely by Folly voters. Please help us defray some of the costly expenses of campaigning like signage, mailings, and ads. Every little bit helps and its greatly appreciated. You can donate to my campaign via VENMO: @Ann-Peets

Thank you in advance for your support of my run for City Council!

Ann

Video Friends Marketplace Notifications Menu

7:01

Peets4Folly

Posts About More ▾

Peets4Folly

Chris Bizzell and I, running for Folly Beach City Council, are hosting a Meet 'N Greet this Wednesday, November 1st from 5 to 7PM at Bowen's Island. Come have a drink, share some great Bowen's Island food and bring your questions or get to know us if you're just starting to decide on your votes.

This Meet 'N Greet was set up to be very convenient for voters in Mariners Cay, Marsh Winds, and other homes based across the river from Folly. All voters across Folly are welcome, but we wanted to open up a great live opportunity for those living closest to Bowen's who haven't yet had a chance to talk with us.

Looking forward to seeing you Wednesday night!

Folly Beach City Council November 1st

Video Friends Marketplace Notifications Menu

7:02

Peets4Folly

Posts About More ▾

Like Share

Peets4Folly

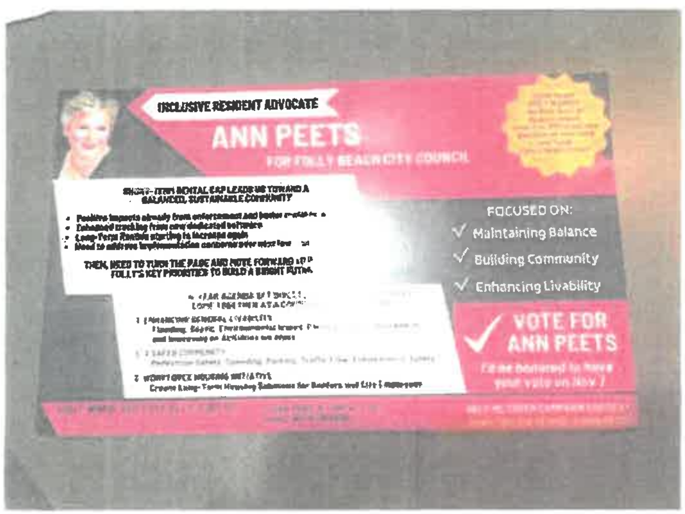
Thanks, everyone, for coming out to our Meet 'n Greet over at Bowen's Island tonight. Chris Bizzell and I got to meet some great folks mostly from the other side of the River and hear their concerns and proposed solutions. They have unique issues and are so very engaged in this election. The drinks, oysters and shrimp were terrific and we got lucky with one of Bowen's amazing sunsets.....Thanks, everyone, for coming out, asking all your questions, and engaging with us to plan for an awesome future for all of Folly!

2

Like Comment Share

Peets4Folly

Nov 1



6:22

Home | Ann Pe...
www.peets4fo...

Meet & Greets

page 2

[CA graphics]

1:57

Peets4Folly's post

Peets4Folly

Here is SC State Ethics Commission filing overview for my Folly Beach City Council campaign:
I have filed all the reports required by law for Contributions and Expenditures along the way for my campaign. SC State Ethics Commission requires 3 reports to be filed:

1. An Initial Report for Candidates once you pass $500 in Contributions if this happens before the Pre-Election Report. I did not pass the $500 mark in this timeframe, so did not have to file this report (confirmed by Commission)

2. Pre-Election Report had to be filed before the Election. I filed this as required prior to the election. It shows one contribution of $50 and $570 in personal loans.

3. Q4 Report covering Oct 1 through Dec 31. I waited for all my invoices to come in along with my contributions before i paid any of the bills. I added all my Q4 expenditures on November 9th. They are all captured within the SC Ethics Commission database.

I talked with the Commission to see if I could submit this Q4 report now so it could be electronically seen, but they won't allow me to submit this report any earlier than Dec 31. So, since nothing of the Q4 report can be seen online, I have attached 3 screenshots here:

1)Summary of Contributions and Expenditures
2)Contributions in Detail (NOTE: No association or group contributions, only individual voters.)

Message Peets4Folly

1:57

Peets4Folly's post

1)Summary of Contributions and Expenditures
2)Contributions in Detail (NOTE: No association or group contributions, only individual voters.)
3) Expenditures in Detail

Here are the key takeaways:
-I filed everything legally required by the SC State Ethics Commission from the beginning of this campaign on time
- I have NOT been funded by any association, only individual voters
- I have put in personal loans of $3,847.51 as an investment in the Folly community.

You, Greta Anderson and 6 others 6 shares

Share

Q4 SC State Ethics Commission Report that is loaded in, but Commission won't allow submission until Dec 31st

Like Share

Message Peets4Folly

1:57

Peets4Folly's post

Like Share

Q4 Campaign Expenditures Loaded into SC State Ethics Commission website on Nov 9th, Commission won't allow submission until Dec 31

Like Share

Quarter 4, 2023 Report

Q4 Campaign Contributions Loaded into SC State Ethics Commission website on Nov 9th, Commission won't allow submission until Dec 31

Like Share

Message Peets4Folly

ethicsfiling.sc.gov

Election Type: General
Viewing Version:

Status: Not Submitted

Overview Contributions Account Credits Expenditures Loans

Versions

Version	Date Submitted
Original Report	

Ann Peets

PO Box 1193
Folly Beach, SC 29439

Balances

Income	Filing Period	Election Cycle Total
Cash Contributions	$650.00	$700.00
[illegible]	$0.00	[illegible]
Debt Setoff Funds	$0.00	$0.00
Personal Contributions	$0.00	$0.00
Loans	$3,847.51	$3,847.51
Account Credits	$0.00	$0.00
Total	$4,497.51	$4,547.51

Expenditures	Filing Period	Election Cycle Total
Expenditures	$4,547.51	$4,547.51
In-Kind Expenditures	$0.00	$0.00
Total	$4,547.51	$4,547.51

ethicsfiling.sc.gov

Status: Not Submitted

Overview Contributions Account Credits Expenditures Loans

Showing 14 entries. Expenditure Total: $4,547.51

Date	Paid To	Amount	Mailing Address	Description	Alerts
[illegible]	[illegible]	$106.99	613 Johnnie Dodds Blvd, Mt. Pleasant, SC 29464	Marina Meet n Greet Food	
[illegible]	[illegible]	$37.05	132 E Ashley Avenue, Folly Beach, SC 29439	Chico Feo Food Campaign Event	
[illegible]	Sunset Cay	$55.54	64 West 9th Street, Folly Beach, SC 29439	Sunset Cay Meet n Greet	
[illegible]	[illegible]	$475.00	P.O. Box 597, Folly Beach, SC 29439	Folly Current Ad	
[illegible]	[illegible]	$1,375.00	1553 Cultivation Lane, Mt. Pleasant, SC 29466	Website Design & Host	
[illegible]	[illegible]	$174.89	1870 Bowens Island Road, Charleston, SC 29412	Bowens Island Campaign Event	
[illegible]	[illegible]	$15.76	1 Center Street, Folly Beach, SC 29439	Tides FAB Forum Event	
[illegible]	[illegible]	$615.78	107 East Indian Avenue, Folly Beach, SC 29439	Mailer Postage	
[illegible]	[illegible]	$10.79	78 Folly Road Blvd, Charleston, SC 29407	Leave Behind Cards	
[illegible]	[illegible]	$68.81	15 Center Street, Folly Beach, SC 29439	Bounty Bar CC Coordination Refreshments	
[illegible]	[illegible]	$83.02	100 Columbus St., Charleston, SC 29403	Leave Behind Card Printing	
[illegible]	[illegible]	$851.65	100 Columbus St, Charleston, SC 29403	Mailer Printing	
[illegible]	Wix	$25.07	TBD, TBD SC 29439	Wix.com Website Services	
[illegible]	[illegible]	$664.16	300 Cadman Plaza West, Suite 1303, Brooklyn, NY 11201	Yard Signs	

Elections & Campaign Reports

Folly Beach At Large

Reports

Quarter 4, 2023 Report

Filing Period: 10/19/2023 - 12/31/2023
Election Date: Nov 7, 2023
Election Type: General
Viewing Version:

Status: Not Submitted

Overview Contributions Account Credits Expenditures Loans

Showing 4 entries. Contribution Total: $650.00

Date	Contributor	Amount	Mailing Address	Occupation	Description	Alerts
[illegible]	[illegible]	$100.00	Huron Street, Folly Beach, SC 29439	Retired	Cash	
[illegible]	[illegible]	$200.00	349 Shadow Race Lane, Folly Beach, SC 29439	Retired	Cash	
[illegible]	[illegible]	$250.00	5127 Blair Road, Sommerville, SC 29483	Retired	Cash	
[illegible]	[illegible]	$100.00	Ashley Avenue, Folly Beach, SC 29439	Pharmacist	Cash	

page 3

State of South Carolina
State Ethics Commission

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

December 20, 2023

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 9214896900999790142452642 5

RE: Complaint C2023-138

In the Matter of Ann Peets

Dear Ms. Peets:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On December 19, 2023, in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

FOR COMMISSION USE ONLY:
CASE NUMBER
C 2023-138

COMPLAINT FORM

COMPLAINANT: JODY LYNN ROGERS
ADDRESS: 517 W BEACH CT. FOLLY BEACH 29439
TELEPHONE NUMBER: 843-496-2092
TITLE: Former Candidate FB City Council

RESPONDENT: ANN PEETS
ADDRESS: 606 W BEACH CT, FOLLY BEACH SC 29439
TELEPHONE NUMBER: 201-230-5280
TITLE: Candidate Folly Beach City Council

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

Ann Peets didn't file her initial filing and was late filing her pre-election campaign finance disclosure. When she filed on 10/24/23 (after deadline of 10/23/23) she filed that she had $0 contributions and $0 expenditures. When confronted with a Venmo screenshot of a contribution made to her account in September, she finally reported that one donation on 11/9/2023, after the general election. She still has not reported any other contributions or expenditures even though she ran ads in local paper, had campaign yard signs and co-hosted 3 meet & greet events. She is now in a runoff election to be 11/21/23.

If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record.

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

Personally appeared before me Jody Lynn Rogers who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this 13th day of Nov, 2023

Jody Lynn Rogers
Complainant Signature

Elizabeth Williams
Notary Public for South Carolina
My Commission expires

Elizabeth J. Williams
NOTARY PUBLIC
State of South Carolina
My Commission Expires 3/21/2026

SEC-7 (Revised 3/2022)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
ELECTRONIC COPIES WILL NOT BE ACCEPTED

C102form

State of South Carolina
State Ethics Commission

SCOTT E. FRICK, CHAIRMAN
F. XAVIER STARKES, VICE CHAIRMAN
BRYANT S. CALDWELL
AJ HOLLOWAY

BRANDOLYN THOMAS PINKSTON
MARY HUNTER B. TOMLINSON
NEAL D. TRUSLOW
MATTHEW N. TYLER

201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

January 12, 2024

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 92148969009997901424621137

RE: Complaint C2024-001 — In the Matter of Ann Peets

Dear Ms. Peets:

In accordance with Section 8-13-320(10)(a) of the Ethics Reform Act, we are providing you with a copy of a complaint filed against you. The Ethics Reform Act, which is the applicable law, may be found here: https://www.scstatehouse.gov/code/t08c013.php.

On January 8, 2024, in accordance with Section 8-13-320(10) Code of Laws for S.C., 1976, as amended, the State Ethics Commission reviewed the complaint provided and determined that there are sufficient facts to warrant an investigation. You will be contacted in the near future by an investigator concerning any evidence or statements you may desire to make. If you wish, you may provide a written response to the complaint, including any documentation you wish the Commission to consider. Should you retain legal counsel, please advise the Commission.

In accordance with Section 8-13-320(9) and (10), this complaint is not considered a public record unless or until there is a finding of probable cause by the Commission or unless the Respondent waives the right to confidentiality in writing to the Commission, or the Commission issues a public disposition.

Complaint procedures are outlined on our website under the link to complaints. We shall keep you informed of the status of this complaint.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MWD:ro
Enclosure: Complaint

STATE OF SOUTH CAROLINA
STATE ETHICS COMMISSION

FOR COMMISSION USE ONLY:
CASE NUMBER
C 2024-001

COMPLAINT FORM

COMPLAINANT: Greta Anderson
ADDRESS: PO Box 1890 Folly Beach, SC 29439 / 46 Lempa's Lane
TELEPHONE NUMBER: 843-607-1088
TITLE:

RESPONDENT: Ann Peets
ADDRESS: PO Box 1193 Folly Beach, SC 29439
TELEPHONE NUMBER: 201-230-5280
TITLE: Candidate for City of FB City Council

Set forth in detail specific facts upon which you based your complaint against above-named respondent (only detailed, clear factual allegations will be considered. If additional space is needed, attach supplemental sheets).

In addition to filing her "pre-election" campaign finance disclosure LATE, Ms. Peets also never filed her "intial filing." As of todays date, 12.27.23 no amendments have been made. On Nov. 14th she posted on her Facebook Page Peets4Folly an overview of her campaign. She is claiming that she didn't pay any of her bills until Nov. 9th, 2023. However, she also lists expenditures that clearly had to be paid at time of receipt of goods. For example: a campaign website was created and up & running on Sept 29, 2023. (1375.00) Yard Signs were created and displayed on Sept 28, 2023. (669.36) Fliers and campaign cards were displayed at meet and greets late Sept and early Oct (appx 1500.00) Postage for campaign fliers that were mailed out before election - (615.78) There is no way the USPS billed her for postage. She served food at her meet & greets - ran tabs - these items had to be paid for when purchased. Last but not least are her campaign contributions. She is claiming $650.00 came in AFTER the election. PLS check into her actions and help keep candidates records transparent.

If there is a finding of probable cause, the following documents become public record: the complaint, the response (if any) by respondent, and the notice of hearing. If a hearing is to be held, the final order and all exhibits become public record. If no hearing is held following a finding of probable cause, the final disposition of the matter becomes public record.

STATE OF SOUTH CAROLINA
COUNTY OF Charleston

Personally appeared before me Marlene B. Estridge who, first being duly sworn, says that he/she has read and knows the contents of the above complaint and that the allegations contained therein, are true and correct to the best of his/her own knowledge, except for those matters therein based upon information and belief, and as to those he/she believes them to be true.

Sworn to and subscribed before me this 27 day of December, 2023

Marlene B. Estridge
Notary Public for South Carolina
My Commission expires 1-29-2030

MARLENE B. ESTRIDGE NOTARY My Comm. Exp. 01/29/2030 PUBLIC SOUTH CAROLINA

Greta Anderson
Complainant Signature

SEC-7 (Revised 3/2022)

REPLY TO: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210 (803)253-4192
ELECTRONIC COPIES WILL NOT BE ACCEPTED

C102form

3:30

Peets4Folly
Nov 14 ·

Here is SC State Ethics Commission filing overview for my Folly Beach City Council campaign:
I have filed all the reports required by law for Contributions and Expenditures along the way for my campaign. SC State Ethics Commission requires 3 reports to be filed:

1. An Initial Report for Candidates once you pass $500 in Contributions if this happens before the Pre-Election Report. I did not pass the $500 mark in this timeframe, so did not have to file this report (confirmed by Commission)

2. Pre-Election Report had to be filed before the Election. I filed this as required prior to the election. It shows one contribution of $50 and $570 in personal loans.

3. Q4 Report covering Oct 1 through Dec 31. I waited for all my invoices to come in along with my contributions before I paid any of the bills. I added all my Q4 expenditures on November 9th. They are all captured within the SC Ethics

Peets4Folly limited who can comment on this post.

3:29

Peets4Folly
Nov 14 ·

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I talked with the Commission to see if I could submit this Q4 report now so it could be electronically seen, but they won't allow me to submit this report any earlier than Dec 31. So, since nothing of the Q4 report can be seen online, I have attached 3 screenshots here:

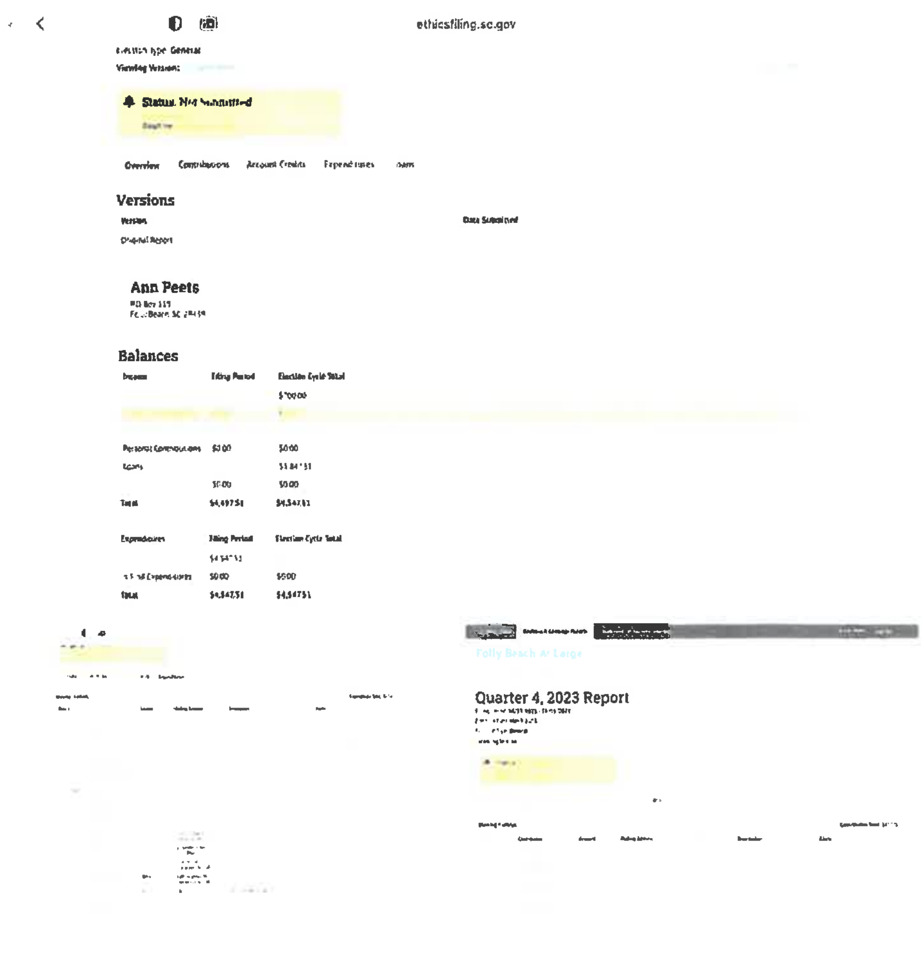
1)Summary of Contributions and Expenditures
2)Contributions in Detail (NOTE: No association or group contributions, only individual voters.)
3) Expenditures in Detail

Peets4Folly limited who can comment on this post.

3:26

Peets4Folly
Nov 14 ·

Here are the key takeaways:
-I filed everything legally required by the SC State Ethics Commission from the beginning of this campaign on time
- I have NOT been funded by any association, only individual voters
- I have put in personal loans of $3,847.51 as an Investment in the Folly community.



Peets4Folly limited who can comment on this post.

• 9/1 Deadline to register to run - filing fee	$25.00
• 9/19 Venmo Donation Kappell	$50.00
• 9/28 Alfredo's meet and greet	
• 9/28 Alfredo's food served	"In kind donation"
• 9/29 Facebook page created with link to website	
• LCA graphics designed and paid for	$1375.00
• photos courtesy of AV photography	"In kind donation"
• Folly Current ad ([redacted])	$475.00
• 10/2 Chico Feo meet and greet	$37.03
• 10/3 Sunset Cay meet and greet	$35.56
• 10/3 Sunset Cay meet and greet (food)	$108.99 Aldi
• 10/5 Sunset Cay post asking for donations	
• 10/6 asking for donations again	
(just showing push for donations)	
• 10/17 Candidate's forum at Tides	$15.76
• 11/1 Bowens Island meet and greet	$174.89
• 11/1 Bowens Island drinks and food	
• Smart Signs	$664.36
(sent picture to Lutz on 9/28 sign in ROW)	
• Folly Beach postage	$615.78
• Staples leave behind cards	$10.79
• Nelson Printing leave behind cards	$85.02
(I got this leave behind card at Alfredo's on 9/28)	
• Nelson Printing mailers	$855.65
• Wix website	$25.00
• Bounty Bar - CC refreshments	$68.61

Contributions

• Chris Marley	$100.00

• Chuck Skipper	$200.00
• John Calhoun - (Summerville)	$250.00
• Alison McNatt	$100.00

P.O. Box 1193
Folly Beach, SC 29439-1193

January 10, 2024

Ms. E. Caughman & Mr. Brandon Hite
ecaughman@ethics.sc.gov
Admin Investigations Department
State Ethics Commission
201 Executive Center Drive, Suite 150
Columbia, SC 29210

Dear Ms. Caughman & Mr. Hite:

I am a resident of Folly Beach, SC who ran for a local seat. I have worked as a Marketing Executive in Life Sciences over a 20-year career with integrity and honesty. I am not a professional politician.

Last fall, I ran for Folly Beach City Council along with 8 other candidates. The political race was contentious on Folly Beach. One side was Resident focused and the other side was Investor/Realtor focused. Residents are fighting to retain a quality of life and community without being overrun by Investment Short-Term rentals.

I worked diligently and communicated closely by calling and emailing with the SC Ethics Commission to ensure I was filing my campaign reports and donations within guidelines and on time. All Campaign Funds In and Expenses out are registered into your reporting system and are also listed in ***Attachment 1.*** After talking with your office to be sure all was being filed as required, I received a confirmation email from you dated November 9th (***A copy is attached as Attachment 2***).

I have filed all reports that you require by law for Contributions and Expenditures along the way for my campaign. **You required me to file 3 reports:**

1) An **Initial Report for Candidates** once you pass $500 in Contributions if this happens before the Pre-Election Report is filed. I did not have contributions above $500, so did not have to file this report. ***(I confirmed this with the SC Ethics Commission.)***

2) **Pre-Election Report had to be filed before the Election**. I filed this on October 24th as I was required to. It shows a contribution from Kristen Kappel for $50 and $570 in personal loans as I had NO other funds contributed at that time.

3) **Q4 '23 Report covering Oct 1 through Dec 31:** I had to wait until all my invoices and contributions were in to start paying bills. This is because I did not want to tie up more of my personal funds since I heard from multiple supporters that more donations were coming in.

So, I gathered my invoices and donations. Then, I paid the invoices with the campaign donations that came in and contributed personally to cover the rest of the expenses, recording everything in the Q4 23 report. Because I have worked in marketing for 20 years, I have many relationships with great vendors who did not require immediate payment nor deposits.

There were 2 particularly contentious and bullying women in the Investor / Realtor camp of this election:

1) **Jody Lynn Rogers**, an Investor/Realtor candidate who personally bullied and attacked me for months during this campaign and
2) **Lindsey Dee (social media name), who is actually Lindsay Hamrick**, a realtor on James Island who I've seen is paid by candidates to malign other candidates during elections. (See payment from Candidate Dan Boles to her for social media work).

As they were attacking me about my SC Ethics filings, I called your commission to see if I could file my report early before Dec 31st, so I could prove I was filing correctly. You told me I wouldn't be able to. Instead, then, I volunteered my postings for the Q4 report as a public posting to my campaign facebook page. **(Attached as Attachment 3)**

In the November 7th election, I came in 4th, just 10 votes behind the #3 (Investor/realtor) candidate and my challenger Jody Lynn Rogers lost. This resulted in a runoff election between Billy Grooms (Investor/Realtor) candidate and me. Thus, I had to print out more signs and I received two more campaign donations which are recorded in my Q4 report to close it out.

Chronology:

- October 24th: Ann Peets files Pre-Election Report as required
- November 7th: City Council 9-Candidate Election
- November 9th: Q4 Report Entries made for all Donations and Election Invoices Paid by Ann
- November 9th: Called / Emailed SC Ethics Commission to confirm content and timing of filing. (***Email confirmation is Attachment 2.)***
- November 14th: Ann Peets voluntarily posts contents of Donations and Invoices Paid from Q4 report voluntarily onto her Campaign Facebook page (Peets4folly.com) to prove to anyone inquiring that all is filed as required with SC Ethics Commission. (***Attachment 3***)
- Nov 1 through Nov 21: Intense social media bullying of Ann by Jody Lynn Rogers and Lindsay Hamrick ensues almost daily. (***Attachment 4***)
- November 21: Letter from SC Ethics Commission notifies that Jody Lynn Rogers has lodged a complaint against Ann Peets, but that no complaint can be accepted from one candidate against another in the 50-day period before their election.
- November 21: Runoff Election of Billy Grooms vs. Ann Peets for 3rd Council seat. Ann loses to Billy Grooms

- December 21: One Month post-election, I am notified that Jody Lynn Rogers has lodged a complaint against me.
- December 26: Over One Month post-election, I am notified that Lindsay Hamrick has lodged a complaint against me.

I have worked diligently to file all Campaign Donations and Expenses with the SC Ethics Commission to your online reporting portal. If a mistake was made, it was technical.

These retaliatory complaints are nothing more than a disgruntled candidate and a political operative for Investor/Realtor groups working to bully resident forward candidates from running for a seat on Folly Beach City Council. I believe an Investor/Realtor faction have decided to use their interpretation of your technical rules as a means to scare away future opposition by Folly Beach residents and to discourage residents from running against them in elections. I don't believe that the SC Ethics rules or misinformation should be used as a weapon against residents trying to run for local office.

My campaign account is down to $0 as required. (***Attachment 5***) I look forward to the discussion on January 16th @ 2PM.

I am happy to discuss the details around any of this or answer any questions either prior or during our meeting set for January 16th at 2PM. I can be reached at (201) 230-5280 or via email at ann.peets@gmail.com.

Sincerely yours,

Ann Peets
Ann.peets@gmail.com
(201)230-5280
Campaign Facebook Page: Peets4folly.com

#1

Ann Peets Folly Beach City Council Election Finances			
September through December 31, 2023			
City Council Election for 3 Open Seats: November, 2023			SC Ethics Filing Reports
			NOTE: No Initial Report Required as I didn't exceed $500
Campaign Funds In			
Kristin Kappel	50	15-Oct	Pre-Election Report Filed Oct 24
Ann Peets Personal Loan	570	20-Oct	Pre-Election Report Filed Oct 24
Chris Marley	100	9-Nov	Q4 Report Filed Jan 8, 2024
Chuck Skipper	200	9-Nov	Q4 Report Filed Jan 8, 2024
John Calhoun	250	9-Nov	Q4 Report Filed Jan 8, 2024
Alison McNatt	100	9-Nov	Q4 Report Filed Jan 8, 2024
Funds In	**1270**		
Campaign Expenses			
Aldi Food for Marina Meet	**108.99**	9-Nov	Q4 Report Filed Jan 8, 2024
Chico Feo Snacks	**37.03**	9-Nov	Q4 Report Filed Jan 8, 2024
Sunset Cay Food & Drink	**35.56**	9-Nov	Q4 Report Filed Jan 8, 2024
Folly Current Ad	475	9-Nov	Q4 Report Filed Jan 8, 2024
Website Design	1,375	9-Nov	Q4 Report Filed Jan 8, 2024
Bowens Island Event	174.89	9-Nov	Q4 Report Filed Jan 8, 2024
Tides FAB Forum	**15.76**	9-Nov	Q4 Report Filed Jan 8, 2024
Mailer Postage	262.35	9-Nov	Q4 Report Filed Jan 8, 2024
Mailer Postage	353.43	9-Nov	Q4 Report Filed Jan 8, 2024
Leave Behind Cards	**10.79**	9-Nov	Q4 Report Filed Jan 8, 2024
Bounty Bar CC Drinks	**68.61**	9-Nov	Q4 Report Filed Jan 8, 2024
Leave Behind Card Printin	**85.02**	9-Nov	Q4 Report Filed Jan 8, 2024
Mailer Printing	855.65	9-Nov	Q4 Report Filed Jan 8, 2024
Wix.com Website Services	25.07	9-Nov	Q4 Report Filed Jan 8, 2024
Yard Signs	664.36	9-Nov	Q4 Report Filed Jan 8, 2024
Expenses	**4547.51**		
Ann Peets Personal Loan	$3,277.51		Q4 Report Filed Jan 8, 2024
Late Donations and Expenses			
Campaign Funds In			
Campaign Donation (John C	$300.00	5-Dec	Q4 Report Filed Jan 8, 2024
Campaign Donation (Kim Ja	$200.00	8-Dec	Q4 Report Filed Jan 8, 2024
	$500.00		
Campaign Expenses			
Campaign Signs	$719.40	14-Nov	Q4 Report Filed Jan 8, 2024
Ann Peets Personal Loan	$219.40		Q4 Report Filed Jan 8, 2024

Q4 FILING
CAMPAIGN DONORS

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ANN PETERS

Contributions Expenditures Loans Account Credits Bank Accounts

Add Contribution   Add Personal Funds   Add Debt Setoff

Find Contribution Entries By...

Report: Any
Election Cycle: Any
Date
Paid By
Description
Income Type: Any

Search

Showing all 7 entries. Reset Filters

Contribution Total: $1,196.50

Export to Excel

Date -	Report	Paid By	Credit	Income Type	Election Cycle	Description	Actions
12/08/2023	Quarter 4, 2023 Report	Kim Iaeger	$196.50	Individual Contribution	General - 11/7/2023		Edit
12/05/2023	Quarter 4, 2023 Report	John C Calhoun	$300.00	Individual Contribution	General - 11/7/2023		Edit
11/09/2023	Quarter 4, 2023 Report	Chris Marley	$100.00	Individual Contribution	General - 11/7/2023	Cash	Edit
11/09/2023	Quarter 4, 2023 Report	Chuck Skipper	$200.00	Individual Contribution	General - 11/7/2023	Cash	Edit
11/09/2023	Quarter 4, 2023 Report	John C Calhoun	$250.00	Individual Contribution	General - 11/7/2023	Cash	Edit
11/09/2023	Quarter 4, 2023 Report	Alison McNatt	$100.00	Individual Contribution	General - 11/7/2023	Cash	Edit
10/15/2023	Quarter 3 & Pre-Election (General) Report 2023	Kristen Kappel	$50.00	Individual Contribution	General - 11/7/2023	Cash	Edit

1 - 7 of 7 items

Q4 FILING
CAMPAIGN EXPENSES
ANN DEBTS

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Paid To | Description | Type

Search

Showing all 15 entries. Reset Filters

Expenditures Total: $5,266.91

Export to Excel

Paid To	Report	Date	Debit	Type	Election Cycle	Description	Actions
James Island Signs	Quarter 4, 2023 Report	11/14/2023	$719.40	Expenditure	General - 11/7/2023	Signage	Edit
Bounty Bar	Quarter 4, 2023 Report	11/9/2023	$68.61	Expenditure	General - 11/7/2023	Bounty Bar CC Coordination Refreshments	Edit
US Postal Service	Quarter 4, 2023 Report	11/9/2023	$615.78	Expenditure	General - 11/7/2023	Mailer Postage	Edit
The Folly Current	Quarter 4, 2023 Report	11/9/2023	$475.00	Expenditure	General - 11/7/2023	Folly Current Ad	Edit
Bowen's Island	Quarter 4, 2023 Report	11/9/2023	$174.89	Expenditure	General - 11/7/2023	Bowens Island Campaign Event	Edit
Aldi	Quarter 4, 2023 Report	11/9/2023	$108.99	Expenditure	General - 11/7/2023	Marina Meet n Greet Food	Edit
Chico Feo	Quarter 4, 2023 Report	11/9/2023	$37.05	Expenditure	General - 11/7/2023	Chico Feo Food Campaign Event	Edit
Nelson Printing	Quarter 4, 2023 Report	11/9/2023	$855.65	Expenditure	General - 11/7/2023	Mailer Printing	Edit
LCA Design & Marketing	Quarter 4, 2023 Report	11/9/2023	$1,375.00	Expenditure	General - 11/7/2023	Website Design & Host	Edit
Smartsigns	Quarter 4, 2023 Report	11/9/2023	$664.36	Expenditure	General - 11/7/2023	Yard Signs	Edit
Sunset Cay	Quarter 4, 2023 Report	11/9/2023	$35.56	Expenditure	General - 11/7/2023	Sunset Cay Meet n Greet	Edit
Staples	Quarter 4, 2023 Report	11/9/2023	$10.79	Expenditure	General - 11/7/2023	Leave Behind Cards	Edit
Tides Hotel	Quarter 4, 2023 Report	11/9/2023	$15.76	Expenditure	General - 11/7/2023	Tides FAB Forum Event	Edit
Nelson Printing	Quarter 4, 2023 Report	11/9/2023	$85.02	Expenditure	General - 11/7/2023	Leave Behind Card Printing	Edit
Wix	Quarter 4, 2023 Report	11/9/2023	$25.07	Expenditure	General - 11/7/2023	Wix.com Website Services	Edit

1 - 15 of 15 items

Q4 FILING
PERSONAL LOANS
ANN PEETS

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Finances

Contributions Expenditures Loans Account Credits Bank Accounts

Loan payments made before 2/5/2017 are not included in campaign report totals.

Commercial Loans

Lender	Origination Date	Amount	Term	Rate	Status	Balance

No records available.

0 - 0 of 0 items

Add Commercial Loan

Personal Loans

Before Your Election: You can repay yourself for all personal loans at any time before election day
After Your Election: For local filers, you will only be able to repay yourself up to $10,000. For statewide filers, you will only be able to repay yourself up to $25,000

Origination Date	Amount	Status	Balance
12/8/2023	$219.40	Open	$219.40
11/9/2023	$3,277.51	Open	$3,277.51
10/20/2023	$570.00	Open	$570.00

1 - 3 of 3 items

Add Personal Loan

Family Loans
You can add loans from family and friends as a personal loan. Keep in mind that family loans have a $1,000 limit each for local filers and $3,500 limit each for statewide filers.

Guy Fellin
Vendors
And Debts

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Showing all 14 entries. Reset Filters

Vendor *	Address	Expenditures	Most Recent	Election Cycle	Vendor Search
Aldi	613 Johnnie Dodds Blvd Mt. Pleasant, SC 29464	1	11/9/2023	General 11/7/2023	Show
Bounty Bar	15 Center Street Folly Beach, SC 29439	1	11/9/2023	General 11/7/2023	Show
Bowen's Island	1870 Bowens Island Road Charleston, SC 29412	1	11/9/2023	General 11/7/2023	Show
Chico Feo	122 E. Ashley Avenue Folly Beach, SC 29439	1	11/9/2023	General 11/7/2023	Show
James Island Signs	1615 Patterson Charleston, SC 29412	1	11/14/2023	General 11/7/2023	Show
LCA Design & Marketing	1533 Cultivation Lane Mt. Pleasant, SC 29466	1	11/9/2023	General 11/7/2023	Show
Nelson Printing	100 Columbus St. Charleston, SC 29403	2	11/9/2023	General 11/7/2023	Show
Smartsigns	300 Cadman Plaza West, Suite 1303 Brooklyn, NY 11201	1	11/9/2023	General 11/7/2023	Show
Staples	78 Folly Road Blvd Charleston, SC 29407	1	11/9/2023	General 11/7/2023	Show
Sunset Cay	66 West 9th Street Folly Beach, SC 29439	1	11/9/2023	General 11/7/2023	Show
The Folly Current	P.O. Box 597 Folly Beach, SC 29439	1	11/9/2023	General 11/7/2023	Show
Tides Hotel	1 Center Street Folly Beach, SC 29439	1	11/9/2023	General 11/7/2023	Show
US Postal Service	107 East Indian Avenue Folly Beach, SC 29439	1	11/9/2023	General 11/7/2023	Show
Wix	TBD TBD, SC 29439	1	11/9/2023	General 11/7/2023	Show

Gmail

#2

SC Ethics Filer: Report Submitted

ethicsfiling@portal.sc.gov <ethicsfiling@portal.sc.gov> Thu, Nov 9, 2023 at 11:38 PM
To: ann.peets@gmail.com

Ann,

You have successfully submitted your Quarter 3 & Pre-Election (General) Report 2023, version: Amendment 1 for your Folly Beach At Large candidacy.

You can log in to your account for South Carolina Ethics Filing at Log In to view your report details at any time.

Next Report Available: January 1, 2023
Next Deadline: January 10, 2023

If you have questions, call your filing agency for assistance.

• Reports from House of Representatives Office Runs: (803) 734-3114

• Reports from Senate Office Runs: (803) 212-6410

• Reports from all other statewide and local Office Runs: (803) 253-4192

This notification is sent from an account we use for sending messages only. Replies to this inbox are not monitored. If you need to contact the State Ethics Commission, House Ethics Committee, or Senate Ethics Committee, please use the contact information above.

#3

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Intro

Inclusive Resident Advocate Candidate Running for Folly Beach City Council

Page · Political Candidate

P.O. Box 1193, Folly Beach, SC, United States, South Carolina

ann.peets@protonmail.com

Peets4Folly.com

Not yet rated (0 Reviews)

Photos See all photos

Peets4Folly
November 14, 2023 ·

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1)Summary of Contributions and Expenditures
2)Contributions in Detail (NOTE: No association or group

#3

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Not yet rated (0 Reviews)

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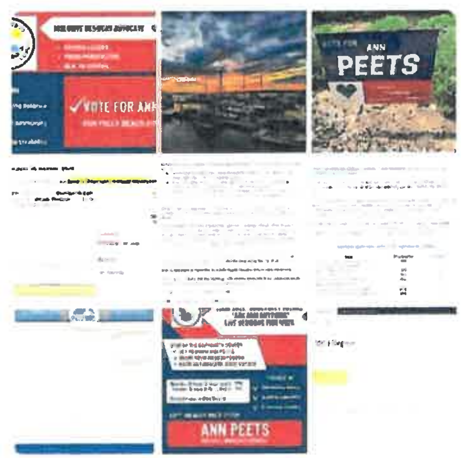
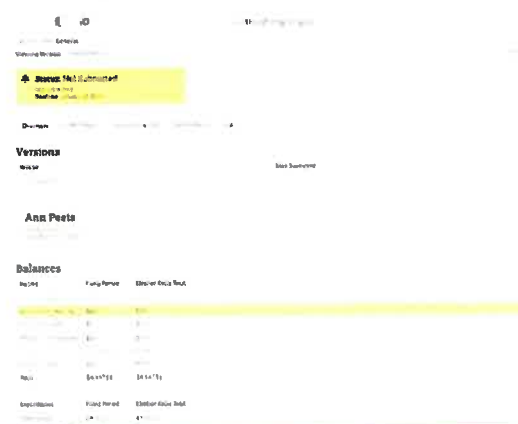
3) Expenditures in Detail

Here are the key takeaways:
-I filed everything legally required by the SC State Ethics Commission from the beginning of this campaign on time
- I have NOT been funded by any association, only individual voters
- I have put in personal loans of $3,847.51 as an Investment in the Folly community.

Photos

See all photos





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Page · Political Candidate

P.O. Box 1193, Folly Beach, SC, United States, South Carolina

ann.peets@protonmail.com

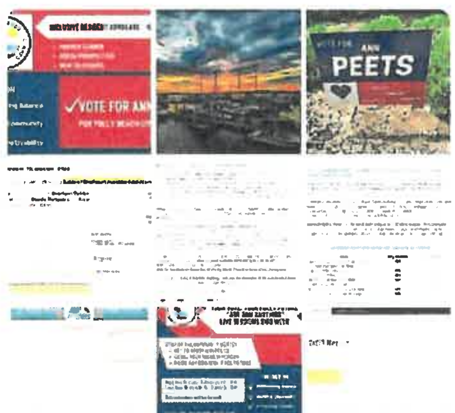
Peets4Folly.com

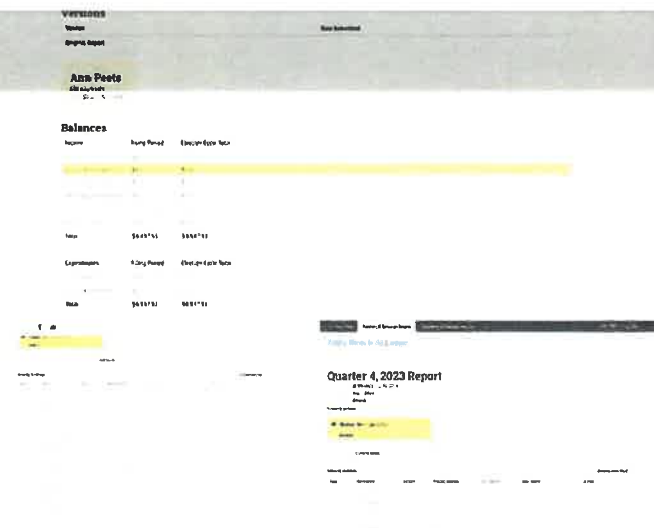
Not yet rated (0 Reviews)

Exit View As

Photos

See all photos





8

5

Peets4Folly limited who can comment on this post.

Peets4Folly
November 13, 2023

#4

1:47

Folly Beach Free Speech

Mary J Maher Catoe

Top comments

Jody Lynn Rogers
Top Contributor
I would like to know if Ann Peets had taken PAC money, since she was delinquent and has reported she has no campaign contributions or expenditures. She is in violation of campaign ethics financial reporting. She falsely implied that others were taking PAC money and she was not but why is she not reporting accurately?

Peets4Folly
Jody, it's all accurately reported and I think I've answered this multiple times. I don't take any funding from any organization and I'm up to date on all reporting.

1:47

Folly Beach Free Speech

Chris Marley

$0 expenses and $0 contributions up until Oct 23rd That isn't possible,... See more

Like Reply

Jody Lynn Rogers
Top Contributor

Peets4Folly https://ethicsfiling.sc.gov/public/candidates-public-officials/person/campaign-disclosure-reports/report-detail?personid=48978&seiId=55281&officeId=73924&reportId=365138

SC Ethics Filing

Like Reply

Chris Marley

Jody Lynn Rogers are you accusing Ann Peets of committing a crime?

Like Reply

Jody Lynn Rogers
Top Contributor

Comment as

1:47

Folly Beach Free Speech

all reporting.

Jody Lynn Rogers
Top Contributor

Peets4Folly it is NOT accurately reported. The entire point of the campaign finance reporting is to provide transparency to voters in advance of the election so that we can see who has contributed to everyone's campaign. You are the only candidate who hasn't reported donations or expenses.
Just you saying you haven't taken PAC money doesn't mean anything if you aren't willing to report properly.
You reported you have incurred $0 expenses and $0 contributions up until Oct 23rd. That isn't possible,... See more

Jody Lynn Rogers
Top Contributor

Peets4Folly https://

1:48

Folly Beach Free Speech

Chris Marley

Jody Lynn Rogers
Top Contributor

Chris Marley I'm saying that her Campaign Disclosure from is not accurately showing her contributions or expenditures which violates the SC Ethics filings.

Like Reply

Chris Marley
Author

Jody Lynn Rogers Sounds like you'all are accusing Ann Peets of committing a crime. OR using innuendo to make the accusation of a crime. Just what it seems. I dont know enough about filing rules to say if there is or is not certain things that impact the form and its appearance on a website. But if thats what you want to insinuate she perpetrated a criminal act, you've done that. Not very "nice or kind". I guess you've abandoned that now.

Like Reply

Comment as Alison M

1:48

Folly Beach Free Speech

Jody Lynn Rogers
Top Contributor

Chris Marley I'm being factual. Candidate Peets stated on her campaign page that she did not take PAC money "like other candidates". But because her campaign finance reporting is not accurate, it doesn't provide the visibility for anyone to verify if she did or didn't accept PAC contributions.
It's not for me to judge if it's intentional or criminal but it's not correct.

Like Reply

Roberta Murchison
Top Contributor

Chris Marley , sounds like Jody is accusing Ann of committing a crime. Isn't that libel?

Like Reply

Roberta Murchison
Top Contributor

Chris Marley , Jody has not been "nice or kind" at any point

1:48

Folly Beach Free Speech

Chris Marley

Jody Lynn Rogers for Folly City Council · Follow

Top Contributor

Roberta Murchison being fair and kind means we all live by the same rules. Sorry your candidate wants to falsely call me and other candidates out as being supported by a PAC but fails to accurately report her campaign contributions and expenses. If she can't file her ethics reporting properly how can she be trusted on council?

Like Reply

Kristen Phillips Kappel

Top Contributor

Jody Lynn Rogers for Folly City Council Hi Jody, in the spirit of "fairness", why are you only calling out one candidate with whom you disagree and not noting the other candidates (that are perhaps more aligned with you) that have shown no contributors or expenditures? One candidate shows all zeros and another only a loan and

Comment as Alison M

1:48

Folly Beach Free Speech

Chris Mar...

Like Reply

Jody Lynn Rogers for Folly City Council Follow

Top Contributor

Kristen Phillips Kappel There was only one candidate that posted that she didn't accept PAC money and insinuated other candidates did. That's why that particular candidate was called out.

I did follow up with another candidate that shows all "0s" and learned it is because she actually had no contributions or expenses until Oct 24th. I did express my concerns and she was calling the SC Ethics office to see if they could help her change the report for visibility purposes.

Like Reply

Kristen Phillips Kappel

Top Contributor

But your point seems to be that one candidate is breaking the law or something while not

Comment as Alison M...

1:48

Folly Beach Free Speech

Chris Marley

But your point seems to be that one candidate is breaking the law or something while not being fair and stating facts about others.
I'm out. 🤷

Like Reply

Jody Lynn Rogers for Folly City Council Follow

Top Contributor

Kristen Phillips Kappel go back and read my posts. I never said she had committed a crime, that was your buddy trying to bait me into saying something I didn't.
I said I would like to know if she has taken PAC money and because her reporting was not on-time or accurate, that visibility and transparency isn't there. Btw..she missed 2 filing deadlines, the initial filing and the pre-election filing.
The whole point of SC Ethics filing is to provide voters visibility. But it's particularly concerning when the candidate

Comment as Alison M

1:45

Folly Beach Free Speech

Jody Lynn Rogers for Folly City Council

Top Contributor

- I know who you are voting for so am not answering this for you, but for others who might lend any credibility to your accusations.

I did not take any contributions from CTAR as you can verify through my accurate SC Ethics filing. I have no affiliation with CTAR other than answering their survey that was sent out to all candidates. I'm assuming they think my answers are better for property values and home sales than those of the folks that you support.

You should be more concerned about the fact that Ann Peets hasn't accurately filed her SC Ethics filing. She had contributions and expenses that were supposed to have been reported on 10/23. She missed two filing deadlines and didn't disclose at least one contribution we know was made in September.

But I'm sure that won't bother you, just as it doesn't bother you that until a few weeks ago, Chris Bizzell was claiming

1:45

Folly Beach Free Speech

the fact that Ann Peets hasn't accurately filed her SC Ethics filing. She had contributions and expenses that were supposed to have been reported on 10/23. She missed two filing deadlines and didn't disclose at least one contribution we know was made in September.
But I'm sure that won't bother you, just as it doesn't bother you that until a few weeks ago, Chris Bizzell was claiming 4% (primary resident status) in Greenville, SC where he runs an Airbnb. And also...you went out and got an STR license before the cap was passed. So let's just stop with the hypocritical BS

Like Reply

Mary J Maher Catoe

did I miss something? Are you suggesting I did something illegitimately?
I'm concerned I see your signs in front of a property developed by a mortgage broker who lives in downtown Charleston . He developed it after the cap was in place. It's a 5-6 bedroom home in a

1:42

Folly Beach Free Speech

Lindsay Dee
Has anyone called the Ethics Commission and filed a complaint?

Jody Lynn Rogers for Folly City Council
Author Top Contributor
Lindsay Dee yes

Greta Anderson
Top Contributor
Lindsay Dee - I'm guessing they will receive more than one complaint

Lindsay Dee
Greta Anderson I've never filed one, but show me where to sign, and I'm happy to help! There is nothing more that gets under my skin than a dishonest politician.

Follitics

even mentioned in her list of 11/9 expenses), etc. Never in 25 years working on campaigns have I ever seen a candidate try to BS the public like this. What is she hiding? And why????

*In the comments, I've posted the SC Ethics flyer for candidates that explains how reporting works and how candidates are penalized for not reporting and blatantly lying to voters. Also a link to how you can file a complaint.

Peets4Folly

Here is SC State Ethics Commission filing overview for my Folly Beach City Council campaign:... See more

1:09

Follitics

bothers me that they act like it is a real resident association. Peets always says the residents association has said this and that to her. Well I never heard of any resident association.

Vincent Perna
The gall of throwing stones while not disclosing her own contribution sources says it all.

Katherine Meader
Ann Peet's is a POS

Jay Simmons
so is

1:33

Folly Beach Free Speech

"There is no doubt Billy Groomes is involved in our community, but does he vote for what is in the best interest of residents?"

Like Comment Send Share

Mary J Maher Catoe and 3 others

Top comments

Jody Lynn Rogers for Folly City Council · Follow

Top Contributor

I find it absurd that Ann Peets wants to

Comment as Ann M...

1:33

Folly Beach Free Speech

Top comments

Jody Lynn Rogers for Folly City Council

Top Contributor

I find it absurd that Ann Peets wants to use honest and accurate financial disclosure campaign reporting against another council member when she has refused to accurately report her campaign contributions and expenditures. If she had filed correctly anybody could go to this SC Ethics site and see who contributed to her campaign "before" the election. But she still has not correctly filed. She's hiding something or incompetent. Which is it? Neither is a trait any of us want in a council member.

SC Ethics Filing

1:33

Folly Beach Free Speech

When did you donate to Ann Peets' campaign?

Like Reply

Jody Lynn Rogers for Folly City Council Follow

Top Contributor

Chris Marley when did you contribute to Ann Peets campaign? Was it before Oct 23rd? Was it Nov 9th?

Like Reply

Jason Silver

1:34

Folly Beach Free Speech

Jody Lynn Rogers for Folly City Council

Top Contributor

For the record, Paul Lauer had been a long-time friend of . And the mortgage banker owns a home on Folly. Because he doesn't live here full-time he couldn't vote against the cap, so he financially supported candidates who look out for his interests as well as full-time residents.

But Ann Peets doesn't care about the part-time residents who hoped to one day retire and live here full time. She doesn't care about half of the residents that have been negatively impacted by the cap as it was implemented.

Ann Peets has no record of being involved in anything on Folly until she got involved with FRA. She is not a resident advocate. She is a marketing manipulator who only cares about "winning".

Throughout this campaign she has demonstrated that she has not interpersonal skills. What happened with McFarland? She let him do all the work

1:34

Folly Beach Free Speech

But Ann Peets doesn't care about the part-time residents who hoped to one day retire and live here full time. She doesn't care about half of the residents that have been negatively impacted by the cap as it was implemented.
Ann Peets has no record of being involved in anything on Folly until she got involved with FRA. She is not a resident advocate. She is a marketing manipulator who only cares about "winning".
Throughout this campaign she has demonstrated that she has not interpersonal skills. What happened with McFarland? She let him do all the work and spend all the money to get the cap passed, took credit for it, and then sent a venomous letter asking not to be associated with him any longer. Who the hell does that?
She can't talk with people with who she disagrees with. I have been on the receiving end of some of her "all cap" ugly letters as part of this campaign as well. What will she do if she's on council and actually has to work through conflict and differing opinions?

1:07

Follitics

wait til November to pay for them.

Greta Anderson

- I'd also like the contact info for LCA Design and Marketing. According to what you stated...they built your website in September and you didn't have to pay them the $1375.00 until November. That's so cool of them to let you slide for so long!

Lindsay Dee

not a single web designer in town who won't at least require a deposit.

Lindsay Dee

One day later, still crickets from ? Says a lot.

1:07

Follitics

Lindsay Dee

Greta Anderson

Admin

Peets4Folly, could you pls connect me with the Smart Sign folks that sent you $664.36 worth of personalized campaign signs without making you pay for them when you ORDERED them. I find it REALLY hard to believe they sent them to you in September and let you wait til November to pay for them.

Like Reply

Greta Anderson

Admin

Peets4Folly - I'd also like the contact info for LCA Design and Marketing. According to what you stated...they built your website in September and you didn't have to pay them the $1375.00 until November. That's so cool of them to let you slide for so long!

Like Reply

Lindsay Dee

Author

Greta Anderson not a single web designer in town who won't at least

Comment as Alison M

1:07

Follitics

Lindsay Dee

what I don't get is why lie? It's a surprise to exactly nobody that Chris, Alison, Kristen, etc. gave to her campaign. But, I don't believe for one minute that they were her only donors, and certainly not that they didn't support her until after she qualified for the runoff. BS!! She might be arrogant, but I didn't think she was an idiot. This is the most amateur campaign nonsense I've ever seen. Why risk getting a $25,000 fine??? So dumb. I guess the Ethics Commission will have to help us understand it

Greta Anderson

\- she'll SPIN it

1:30

Folly Beach Free Speech

All comments

Lindsay Dee

Lindsay Dee

1:07

Follitics

Lindsay Dee

Complaints | State Ethics Commission

Greta Anderson

I bet $5.00 she never opened a "campaign" account.

Lindsay Dee

1:07

Follitics

Lindsay Dee

Does she think we're stupid? The SC Ethics Commission makes it crystal clear that you MUST report once you have raised OR SPENT $500. This woman expects us to believe that 1) $650 in cash donations came in AFTER the election on Nov. 9 and that she only received one $50 before election day, and 2) that she had no expenses at all before Nov. 9??? I call BS. Her own FB page contradicts everything she's claiming. Even if she really gave herself a $3,847.51 loan like she says, SHE HAS TO REPORT IT.

Did she not have multiple meet and greets? Says so right on her FB post that she did. Weren't some of those in September? You report when you SPEND and therefore use your credit card, not when you pay the credit card bill. This is Elections 101 common sense.

She built her website in September, bought signs, paid for postage, went to Aldi for supplies for her Sunset Cay event on 10/3, had flyers printed, had food provided at her Alfredo's event on 9/28 (not even mentioned in her list of 11/9 expenses), etc. Never in 25 years working on campaigns have I ever seen a candidate try to BS the public like this. What is she hiding? And why????

*In the comments, I've posted the SC Ethic
for candidates that explains how reporting
and how candidates are penalized for not re g
and blatantly lying to voters. Also a link to how you

1:30

Folly Beach Free Speech

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1:00

Follitics

Admin

Like Reply

Lindsay Dee
I saw a picture one time of her in black leggings at a meet and greet. Ok twice. And both before Oct 1.

Oh, and standing with that guy flipping off people. Oh, and that time she tried to kill turtles with a ballon ride.

Like Reply

Allan Albright
Lindsay Dee was she also wearing the same red top?

Like Reply

Lindsay Dee
Allan Albright yes. That's clearly her color. Represents anger and evil.

Like Reply

1:23

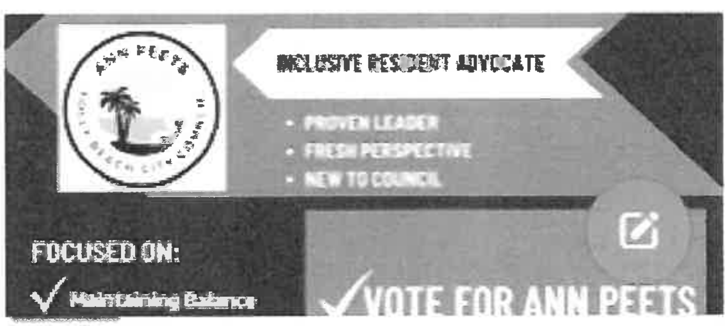
Folly Beach Free Spe...

Lindsay Dee

All of this is a lie. All of it. First, she's now backed by Realtors too, so she can quit w/ the Realtor bashing. Second, CTAR is NOT a lobbying organization. It's a professional organization - period. Is there a lobbying arm for Realtors in SC? Yep, but it ain't CTAR. Google "registered lobbyists in SC" to confirm what I already know. Third, we can't say for sure who's backing her since she hasn't filed but one Ethics Report claiming a single $50 donation since filing to run for office months ago, and she's reported zero expenses for all the events she's held. What's she hiding? She's so full of shit, and frankly, it's just offensive at this point. Please show #angryann tomorrow that we aren't as stupid as she thinks!

Peets4Folly

Tomorrow is the day to decide who best represents your voice on City Council...
By electing Ann Peets, Folly Beach...



1:18

Folly Beach Free Spe...

Lindsay Dee

Follitics

Lindsay Dee

Please be advised that #Billy4Folly, who unlike his opponent actually filed his SC Ethics Reports, has accepted ZERO contributions from "special interest groups" and that #AngryAnn is still 100% full of shit.

4:20
◂ Messages

Comment

this island.

"A journey of a thousand miles begins with a single step"

Like Reply

Lindsay Dee
Ann Peets oh now you're dirty deleting again, are you? We are gonna do everything we can to get you off the Zoning Commission, you biased, hateful transplant. Shame on you! Again. Shame shame shame. GBTNJ!!!

Like Reply

Replying to **Lindsay Dee** Cancel

Lindsay Dee

is and has

q w e r t y u i o p
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123 space return

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Accounts | Transfers | Bill Pay | Account Options ⌄

Good morning, **ANN PEETS.**

Today is Jan 10, 2024. | Last accessed: Jan 6, 2024 12:34 PM ET.

Banking	Available Balance
TD BUSINESS SIMPLE CHECKING › x7911 CAMPAIGN ACCOUNT	$0.00
TD PREMIER CHECKING › x1203	~~$888.37~~
TD SIMPLE SAVINGS › x0206	~~$75.01~~

State of South Carolina
State Ethics Commission

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201 EXECUTIVE CENTER DRIVE, SUITE 150
COLUMBIA, S.C. 29210

MEGHAN WALKER DAYSON
EXECUTIVE DIRECTOR

August 9, 2024

Ann Peets
PO Box 1193
Folly Beach, SC 29439

Certified Mail: 9214 8969 0099 9790 1425 5770 37

RE: Complaints C2023-137; C2023-138; C2024-001

In the Matter of Ann Peets

Dear Ms. Peets:

The State Ethics Commission has considered the above captioned complaints and has determined that probable cause exists to support the alleged violation. As a result of the Commission's determination, you are hereby provided with the Notice of Hearing. In accordance with 8-13-320 (10)(g), South Carolina Code of Laws, 1976, as amended, all complaint matters are now public upon the issuance of the Notice of Hearing.

Please be aware that under recent General Assembly amendments to the Ethics Reform Act in 2016 Act. No. 282, effective April 1, 2017, this and all other Ethics Commission hearings are now open to the public. The Ethics Commission will provide timely notice of Commission hearings to the public pursuant to the requirement of the South Carolina Freedom of Information Act.

Please contact Rachael O'Bryan, Administrative Assistant, at 803-253-4192 or robryan@ethics.sc.gov as soon as possible to:

- Confirm receipt of this Notice of Hearing and notify the Commission whether you will or will not attend the scheduled hearing at **9:30am, Thursday, February 20, 2025** *at the State Ethics Commission Hearing Room located at: 201 Executive Center Drive, Suite 150 Columbia, SC 29210.*
- Confirm address, telephone number and email address.
- Notify the Commission if an attorney will be representing you.

In accordance with S.C. Code Ann. Section 1-23-320(F), in lieu of a hearing, the Commission may be agreeable to resolve this matter through an informal disposition by Consent Order.

If you do not attend the hearing, a judgment by default will be rendered.

Sincerely,

Meghan Walker Dayson

Meghan Walker Dayson
Executive Director

MLW:ro
Enclosure: Notice of Hearing

STATE OF SOUTH CAROLINA)
COUNTY OF RICHLAND) BEFORE THE STATE ETHICS COMMISSION
)
IN THE MATTER OF:)
)
Complaints C2023-137; C2023-138;)
C2024-001)
)
Lindsay Hamrick, Jody Lynn Rogers,)
Greta Anderson)
Complainants.)
)
Ann Peets)
Respondent.)

NOTICE OF HEARING

The State Ethics Commission has determined that there is probable cause pursuant to Section 8-13-320(10)(i), Code of Laws, South Carolina, 1976, as amended, in the above-captioned complaints. The Commission will convene a formal hearing into the matters in accordance with Section 8-13-320(10)(i) & (j), Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.) on Thursday, February 20, 2025 at 9:30 a.m. at the Commission Hearing Room located at: 201 Executive Center Drive, Suite 150, Columbia, South Carolina 29210.

The following allegations will be heard:

COUNT ONE
FAILURE TO FILE AN INITIAL CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(A), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to file an Initial Campaign Disclosure Report (CDR) within ten days of reaching the $500.00 accumulated aggregate threshold, in violation of Section 8-13-1308(A).

COUNT TWO
FAILURE TO FILE A CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(B), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to file a 2024 Quarter 1/Final CDR, in violation of Section 8-13-1308(B).

COUNT THREE
FAILURE TO FILE A PRE-ELECTION CAMPAIGN DISCLOSURE REPORT
SECTION 8-13-1308(D), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to file a Quarter 3 2023/Pre-Election CDR, in violation of Section 8-13-1308(D).

COUNT FOUR
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report a September 19, 2023 campaign expenditure of $664.36 to SmartSigns, in violation of Section 8-13-1308(F)(4).

COUNT FIVE
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report a September 28, 2023 campaign expenditure of $10.79 to Staples, in violation of Section 8-13-1308(F)(4).

COUNT SIX
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report an October 4, 2023 campaign expenditure of $108.99 to Aldi, in violation of Section 8-13-1308(F)(4).

COUNT SEVEN
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report an October 4, 2023 campaign expenditure of $37.03 to Chico Feo, in violation of Section 8-13-1308(F)(4).

COUNT EIGHT
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report an October 10, 2023 campaign expenditure of $35.56 to Sunset Cay, in violation of Section 8-13-1308(F)(4).

COUNT NINE
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report an October 13, 2023 campaign expenditure of $15.76 to Tides Hotel, in violation of Section 8-13-1308(F)(4).

COUNT TEN
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report an October 14, 2023 campaign expenditure of $25.07 to Wix.com, in violation of Section 8-13-1308(F)(4).

COUNT ELEVEN
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report an October 19, 2023 campaign expenditure of $68.61 to The Bounty Bar, in violation of Section 8-13-1308(F)(4).

COUNT TWELVE
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report a February 22, 2024 campaign expenditure of $855.65 to Nelson Printing, in violation of Section 8-13-1308(F)(4).

COUNT THIRTEEN
FAILURE TO PROPERLY REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F)(4), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, improperly report two (2) October 31, 2023 campaign expenditures totaling $615.78 to US Postal Service, in violation of Section 8-13-1308(F)(4).

COUNT FOURTEEN
FAILURE TO REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report an August 24, 2023 campaign expenditure of $25.00 to City of Folly Beach, in violation of Section 8-13-1308(F).

COUNT FIFTEEN
FAILURE TO REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a September 10, 2023 campaign expenditure of $13.16 for GoDaddy.com, in violation of Section 8-13-1308(F).

COUNT SIXTEEN
FAILURE TO REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report an October 14, 2023 campaign expenditure of $25.07 for WIX.com, in violation of Section 8-13-1308(F).

COUNT SEVENTEEN
FAILURE TO REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a December 4, 2023 campaign expenditure of $499.94 to GroundTruth, in violation of Section 8-13-1308(F).

COUNT EIGHTEEN
FAILURE TO REPORT CAMPAIGN EXPENDITURE
SECTION 8-13-1308(F), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a March 5, 2024 campaign expenditure of $150.00 to LCA Design & Marketing, in violation of Section 8-13-1308(F).

COUNT NINETEEN
FAILURE TO REPORT CAMPAIGN CONTRIBUTION
SECTION 8-13-1308(F)(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a September 8, 2023 campaign contribution of $20.00 from Toni Catoe, in violation of Section 8-13-1308(F)(2).

COUNT TWENTY
FAILURE TO REPORT CAMPAIGN CONTRIBUTION
SECTION 8-13-1308(F)(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report an October 1, 2023 campaign contribution of $250.00 from O.J. Fink, in violation of Section

8-13-1308(F)(2).

COUNT TWENTY-ONE
FAILURE TO REPORT CAMPAIGN CONTRIBUTION
SECTION 8-13-1308(F)(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a campaign contribution of $50.00 from Unknown Donor, in violation of Section 8-13-1308(F)(2).

COUNT TWENTY-TWO
FAILURE TO REPORT CAMPAIGN CONTRIBUTION
SECTION 8-13-1308(F)(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a November 12, 2023 campaign contribution of $100.00 from Mary Catoe, in violation of Section 8-13-1308(F)(2).

COUNT TWENTY-THREE
FAILURE TO REPORT CAMPAIGN CONTRIBUTION
SECTION 8-13-1308(F)(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report a November 11, 2023 campaign contribution of $50.00 from Toni Catoe, in violation of Section 8-13-1308(F)(2).

COUNT TWENTY-FOUR
FAILURE TO REPORT IN-KIND CAMPAIGN CONTRIBUTION
SECTION 8-13-1308(F)(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to report an in-kind campaign contribution for photographs taken by Amanda Vargo, in violation of Section 8-13-1308(F)(2).

COUNT TWENTY-FIVE
FAILURE TO TIMELY DEPOSIT CAMPAIGN CONTRIBUTION

SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to deposit four (4) campaign contributions within ten (10) days of receipt, in violation of Section 8-13-1312.

COUNT TWENTY-SIX
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make an August 24, 2023 expenditure of $25.00 to City of Folly Beach from her campaign bank account, in violation of Section 8-13-1312.

COUNT TWENTY-SEVEN
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a September 10, 2023 expenditure of $13.16 to GoDaddy.com from her campaign bank account, in violation of Section 8-13-1312.

COUNT TWENTY-EIGHT
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a September 14, 2023 expenditure of $25.07 to Wix from her campaign bank account, in violation of Section 8-13-1312.

COUNT TWENTY-NINE
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a September 19, 2023 expenditure of $664.36 to Smartsigns from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make an October 14, 2023 expenditure of $25.07 to Wix from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-ONE
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make an October 24, 2023 expenditure of $475.00 to Folly Current from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-TWO
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make an October 24, 2023 expenditure of $1,375.00 to LCA Design and Marketing from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-THREE
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make an October 31, 2023 expenditure of $353.43 to US Postal Service from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-FOUR
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make an October 31, 2023 expenditure of $262.35 to US Postal Service from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-FIVE
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a November 2, 2023 expenditure of $174.89 to Bowen Island Restaurant from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-SIX
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a December 4, 2023 expenditure of $499.94 to GroundTruth Digital from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-SEVEN
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a January 8, 2024 expenditure of $3.50 to Venmo from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-EIGHT
FAILURE TO MAKE EXPENDITURE FROM CAMPAIGN ACCOUNT
SECTION 8-13-1312, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, fail to make a February 22, 2024 expenditure of $855.65 to Nelson Printing from her campaign bank account, in violation of Section 8-13-1312.

COUNT THIRTY-NINE
ACCEPTANCE OF CAMPAIGN CONTRIBUTION EXCEEDING LIMITATION
SECTION 8-13-1314(1)(c), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, accept an in-kind campaign contribution from Amanda Vargo in the amount of $1,200.00, exceeding the contribution limit of $1,000.00, in violation of Section 8-13-1314(1)(c).

COUNT FORTY
ACCEPTANCE OF CASH CONTRIBUTION EXCEEDING LIMITATION
SECTION 8-13-1314(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, accept an October 22, 2023 cash campaign contribution from Chris Maley in the amount of $100.00, exceeding the cash contribution limit of $25.00, in violation of Section 8-13-1314(2).

COUNT FORTY-ONE
ACCEPTANCE OF CASH CONTRIBUTION EXCEEDING LIMITATION
SECTION 8-13-1314(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, accept an October 22, 2023 cash campaign contribution from Church Skipper in the amount of $200.00, exceeding the cash contribution limit of $25.00, in violation of Section 8-13-1314(2).

COUNT FORTY-TWO
ACCEPTANCE OF CASH CONTRIBUTION EXCEEDING LIMITATION
SECTION 8-13-1314(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, accept a December 7, 2023 cash campaign contribution from Alison McNatt in the amount of $100.00, exceeding the cash contribution limit of $25.00, in violation of Section 8-13-1314(2).

COUNT FORTY-THREE
ACCEPTANCE OF CASH CONTRIBUTION EXCEEDING LIMITATION
SECTION 8-13-1314(2), S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, accept a November 14, 2023 cash campaign contribution from an unknown contributor in the amount of $50.00, exceeding the cash contribution limit of $25.00, in violation of Section 8-13-1314(2).

COUNT FORTY-FOUR
ACCEPTANCE OF ANONYMOUS CASH CONTRIBUTION
SECTION 8-13-1324, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, accept an anonymous $50.00 cash campaign contribution, in violation of Section 8-13-1324.

COUNT FORTY-FIVE
IMPROPER DISBURSEMENT OF UNEXPENDED CAMPAIGN FUNDS
SECTION 8-13-1370, S.C. CODE ANN., 1976, AS AMENDED

That Ann Peets, candidate for Folly Beach City Council, did in Richland County, disburse $574.34 of unexpended campaign funds to her personal account, in violation of Section 8-13-1370.

You have the right to be represented by counsel, the right to call and examine witnesses, the right to introduce exhibits, and the right to cross-examine opposing witnesses. This hearing will be open to the public as required by Section 8-13-320(10)(j), Code of Laws, South Carolina, 1976, as amended. The procedures to be followed are set forth in the Administrative Procedures Act, Section 1-23-10, et seq., Code of Laws, South Carolina, 1976, as amended, the State Ethics Act, Section 8-13-100, et seq., Code of Laws, South Carolina, 1976, as amended, and State Ethics Commission Regulations, S.C. Code Ann. Regs. 52-707 (1997 Cum. Supp.).

A pre-hearing conference may be scheduled prior to the hearing to allow exchange of witness lists and evidence, marking of exhibits, and disposition of motions or pleadings. In the event you fail to appear, judgment by default will be rendered against you. If there are any questions concerning the above notice or hearing times, please contact the State Ethics

Commission.

Meghan W. Dayson

Meghan Walker Dayson, Executive Director
State Ethics Commission

Dated this 6th day,
of August 2024.

Certificate of Service by Certified Mail

I hereby certify that a copy of this **NOTICE OF HEARING** was duly served on the RESPONDENT Ann Peets, PO Box 1193, Folly Beach, SC 29439 by depositing said **NOTICE OF HEARING** in the United States mail, Columbia, South Carolina on this 9th day of August 2024, by CERTIFIED MAIL, E-RETURN RECEIPT REQUESTED, appropriate postage affixed, and a return address clearly indicated on said envelope.

Rachael O'Bryan

Rachael O'Bryan, Administrative Assistant
State Ethics Commission (803) 253-4192

Columbia, South Carolina

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	Civil Action No. 2025-CP-32-00440
Ann Peets, Plaintiff, v. South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	**MOTION AND INCORPORATED MEMORANDUM OF PLAINTIFF ANN PEETS IN SUPPORT OF HER MOTION FOR PARTIAL SUMMARY JUDGMENT**

PLEASE TAKE NOTICE THAT Plaintiff Ann Peets (Peets), by and through counsel, hereby moves before the Presiding Circuit Court Judge of the Eleventh Judicial Circuit on the 10th day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting her partial summary judgment under Rule 56 of the South Carolina Rules of Civil Procedure (SCRCP) declaring that (1) Defendant South Carolina State Ethics Commission (Commission) violated the South Carolina Freedom of Information Act, S.C. Code. Ann. §§ 30-4-10, *et. seq.*, (FOIA), by voting in executive session (Count One of the Amended Complaint); and (2) the doctrine of exhaustion of administrative remedies does not apply to the remaining claims.[1]

[1] Per the March 18, 2025 Order of Assignment and Scheduling Order entered in this action, this Motion only addresses the merits of the FOIA claim and whether the remaining claims are subject to the exhaustion of administrative remedies. The Scheduling Order requires the parties file cross-motions for summary judgment on the merits of the remaining claims by May 30, 2025.

INDISPUTABLE FACTS[2]

(1) The Commission is an executive branch agency of the State of South Carolina, whose primary responsibility is the administration and enforcement of the Ethics, Government Accountability, and Campaign Reform Act of 1991, S.C. Code Ann. §§ 8-13-100, *et. seq.*, and § 2-17-10, *et. seq*. (Ethics Act).[3]

(2) Among other activities, the Commission investigates and adjudicates complaints brought by individuals alleging violations of the Ethics Act. Although the Commission's powers are purely civil, the complaint process is of a quasi-criminal nature. If found to have violated the Ethics Act, a respondent can be subject to a fine up to $2,000.00 per violation, administrative penalties, and referral to criminal authorities for prosecution. *See* § 8-13-320(10)(h), -320(10)(i).

(3) In the November 7, 2023 general election, Peets was a first-time candidate for political office, running for a seat on Folly Beach Town Council. She received enough votes to qualify for the run-off election on November 21, 2023, but lost that election. As a candidate for office, Peets was required to comply with the provisions of the Ethics Act related to campaign practices, Title 8, Article 13. *See* S.C. Code Ann. §§ 8-13-1300, *et. seq.*

[2] To avoid unnecessary repetition, Plaintiff craves reference to the factual recitations in the Amended Complaint to the extent not included herein.

[3] Defendant Meghan Walker Dayson is the Executive Director of the Commission and is sued in her official capacity only. "An official-capacity suit against a state officer is not a suit against the official but rather is a suit against the official's office. As such it is no different from a suit against the State itself." *Hafer v. Melo*, 502 U.S. 21, 26, 112 S. Ct. 358, 362 (1991) (cleaned up). Thus, unless otherwise noted, the Commission will be used to refer jointly to the Commission and Defendant Dayson.

(4) After the election had concluded, in December 2023, the Commission received three complaints against Peets alleging certain technical and/or procedural violations of the Ethics Act.[4] *See* Pl.'s Am. Compl., ¶ 5; Defs.' Answer to Pl.'s Am. Compl., ¶ 8.

(5) Subsequently, the Commission or authorized staff reviewed the complaints, determined they contained "facts sufficient" to open an investigation, and opened an investigation into the allegations. *See* S.C. Code Ann. § 8-13-320(10)(c), S.C. Code Ann. Regs. 52-203(B)(6).[5] *See* Pl.'s Am. Compl., ¶ 6; Defs.' Answer to Pl.'s Am. Compl., ¶ 9.

(6) Under the Ethics Act, the purpose of any investigation of a complaint is to determine whether "probable cause" exists. *See* § 8-13-320(10)(i); S.C. Code Regs. 52-203(12). "Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of" the Ethics Act. *Id.*

(7) During the investigation, the Commission issued subpoenas to four entities that were not based in the State of South Carolina for Peets' personal bank records and the business bank records for an LLC she owned. *See* Pl.'s Am. Compl., ¶¶ 8-10; Defs.' Answer to Pl.'s Am. Compl., ¶¶ 12-16. The Commission did not attempt to domesticate or properly serve these subpoenas pursuant to the Uniform Interstate Depositions and Discovery Act , S.C. Code Ann. §§ 15-47-100, *et. seq. See* Pl.'s Am. Compl., ¶ 34; Defs.' Answer to Pl.'s Am. Compl., ¶ 40.

(8) One of the subpoenas, to TD Bank, was worded to demand "[a]ny and all financial records from inception …." Pl.'s Am. Compl., ¶ 9. The Commission investigator

[4] The complaints were filed by Greta Anderson, Lindsay Hamrick, and Jody Rogers, political opponents of Peets' candidacy for Council. Peets denies the allegations in the Complaint.

[5] "'Facts Sufficient' means a preliminary determination based on the face of the complaint of jurisdiction over the Respondent and whether the facts plead, if true, would constitute a violation of the Act." S.C. Code Regs. 52-203(6).

emailed this particular subpoena to an out-of-state email address. Pl.'s Am. Compl., ¶ 34. TD Bank responded with approximately 2,200 pages of Peets' personal bank records going back to 2014. Pl.'s Am. Compl., ¶ 9; Defs.' Answer to Pl.'s Am. Compl., ¶¶ 15, 25.

(9) The Commission did not provide Peets notice of the subpoenas or an opportunity to object to their issuance. *See* Defs.' Answer to Pl.'s Am. Compl., ¶ 11.

(10) At the conclusion of a Commission investigation,

> … commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists to believe that a violation of [the Ethics Act] has occurred. … If the commission determines, *by an affirmative vote of six or more commission members*,[6] that there is probable cause to believe that a violation has been committed, its preliminary decision may contain an order setting forth a date for a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred …

S.C. Code Ann. § 8-13-320(10)(i) (emphasis added). The closed-door hearing described above is commonly-known as a "probable cause hearing." If, at the probable cause hearing, 6 of the 8 Commissioners affirmatively vote that probable cause exists, Commission staff issues a notice of hearing, which is the "preliminary decision … setting forth a date for a hearing before a panel of three commissioners" under § 8-13-320(10)(i). A probable cause hearing is "conducted to determine whether a violation of [the Ethics Act] has occurred." § 8-13-320(10)(j). "Probable cause is a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of" the Ethics Act. *Id.*

(11) During the Commission's July 18, 2024 meeting, a probable cause hearing was conducted on, *inter alia*, the complaints levied against Peets. Am. Compl., ¶ 22; Defs.' Answer to Pl.'s Am. Compl., ¶ 30. As reflected in the Commission's July 18, 2024 open meeting

[6] The Commission consists of eight (8) members. S.C. Code Ann. § 8-13-310(A)(1).

minutes, at some unspecified point during the meeting, the Commissioners voted "to go into executive session to hear probable cause matters." *See* Am. Compl., Ex. A. However, the minutes do not reflect that a probable cause vote was taken, either in executive session or after return to public session. *See id.*

(12) The Commission admits that at this July 18, 2024 meeting it "voted on probable cause [for the Peets complaints] in executive session." *See* Defs.' Answer to Pl.'s Am. Compl., ¶ 30.

(13) On August 20, 2024, Peets received a Notice of Hearing from the Commission, representing that the Commission voted to find probable cause against her on forty-five (45) counts of violating the Ethics Act.[7]

STANDARDS

Summary Judgment

"The purpose of summary judgment is to expedite disposition of cases which do not require the services of a fact finder." *Dawkins v. Fields,* 354 S.C. 58, 69, 580 S.E.2d 433, 438 (2003) (*quoting George v. Fabri*, 345 S.C. 440, 452, 548 S.E.2d 868, 874 (2001)). The court shall grant summary judgment if the movant shows "that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Rule 56(c), SCRCP.

Declaratory Judgments Act

The South Carolina Uniform Declaratory Judgments Act, S.C. Code Ann. § 15-53-10, *et. seq.*, provides that "courts of record within their respective jurisdictions shall have power to

[7] The Notice of Hearing initially set forth a February 20, 2025 date for a contested case hearing before a 3 commissioner hearing panel for a formal hearing. That hearing date has now been continued, and the Commission has represented that it will not be rescheduled during the pendency of this action.

declare rights, status and other legal relations whether or not further relief is or could be claimed." § 15-53-20. Even though §§ 15-53-30 to 15-53-50 of the Act specifically enumerate certain subjects on which declaratory relief can be granted, Section 15-53-60 makes clear that this enumeration "does not limit or restrict the exercise of the general powers conferred in § 15-53-20 in any proceeding when declaratory relief is sought in which a judgment or decree will terminate the controversy or remove an uncertainty." The Declaratory Judgments Act "is declared to be remedial. Its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights status and other legal relations. It is to be liberally construed and administered." § 15-53-130.

FOIA PRINCIPLES

"FOIA was enacted to prevent the government from acting in secret." *Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 163, 547 S.E.2d 862, 865 (2001) (*citing South Carolina Tax Comm'n v. Gaston Copper Recycling Corp.*, 316 S.C. 163, 447 S.E.2d 843 (1994). It "creates an affirmative duty on the part of public bodies to disclose information." *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991). "Indeed, consistent with FOIA's goal of broad disclosure, the exemptions from its mandates are to be narrowly construed." *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 348, 594 S.E.2d 888, 893 (Ct. App. 2004).

"To further advance [FOIA's] purpose, the government has the burden of proving that an exemption applies." *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005).

DISCUSSION

I. Peets is entitled to summary judgment that the Commission violated FOIA by voting on probable cause in executive session.

A. The Commission may not vote in executive session and therefore its probable cause vote is invalid.

No material facts are at issue and Peets is entitled to summary judgment on the FOIA claim.

First, it is indisputable that the Commission is a "public body" under the FOIA. *See* S.C. Code Ann. § 30-4-20(a) (defining "public body" as a "state board, commission, agency, and authority, any public or governmental body or political subdivision of the State … or any organization, corporation, or agency supported in whole or in part by public funds or expending public funds …."). The Commission does not deny that it is a "public body," or that FOIA is applicable to the agency.[8] The FOIA "dictates the procedures by which public bodies must conduct their meetings." *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 128, 459 S.E.2d 876, 878 (Ct. App. 1995), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996).

Second, the Commission admits that it "voted on probable cause [for the Peets complaints] in executive session." *See* Defs.' Answer to Pl.'s Am. Compl., ¶ 30. The FOIA requires that "[e]very meeting of all public bodies shall be open to the public unless closed

[8] FOIA is clearly applicable. *See, e.g.*, S.C. Code Ann. § 8-13-540(D)(6)(e) ("Upon the issuance of the final order, the following documents become public record: … any documents in the commission's report that substantiate the commission's recommendation of probable cause that would constitute a public document and are not exempt from disclosure under the Freedom of Information Act or other state or federal law also shall become public record. These documents must be redacted, as appropriate, in compliance with state or federal law."); State Ethics Commission, Freedom of Information Act at https://ethics.sc.gov/freedom-information-act-foia (accessed March 19, 2025) (containing Commission's FOIA policy); State Ethics Commission, Meeting Minutes, at https://ethics.sc.gov/about-us/meeting-minutes (accessed March 19, 2025) (indicating "[a]ll meetings of the State Ethics Commission are held pursuant to the Freedom of Information Act, and all required notifications are made.")

pursuant to Section 30-4-70 of this chapter." S.C. Code Ann. § 30–4–60. Section 30–4–70(a) then enumerates six specific reasons in which "[a] public body may hold a meeting closed to the public …." Assuming *arguendo* that a "probable cause" hearing qualifies as a proper reason to go into executive session, section 30–4–70(b) then mandates that "[n]o action may be taken in executive session except to (a) adjourn or (b) return to public session. A public body may not commit the public body to a course of action by a polling of members in executive session."

S.C. Code Ann. § 30–4–70(b) unequivocally prohibits the Commission from voting on probable cause or anything else in executive session. *See Eidson v. S.C. Dep't of Educ.*, 444 S.C. 166, 196, 906 S.E.2d 345, 360–61 (2024), *reh'g denied* (Oct. 3, 2024) ("When the text is not ambiguous, then what the General Assembly said in the text is what the General Assembly meant."); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("[I]t is not the court's place to change the meaning of a clear and unambiguous statute … Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, … the court has no right to impose another meaning.") (citations omitted).

Numerous times and without exception, South Carolina courts have held that a public body may not vote in executive session and such vote is invalid. *See Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 165, 547 S.E.2d 862, 866 (2001) ("FOIA prohibits any formal action to be taken in an executive session."); *Bus. License Opposition Comm. v. Sumter Cnty.*, 311 S.C. 24, 28, 426 S.E.2d 745, 748 (1992) ("We agree with the Master that the evidence of record demonstrates that the amendment to the ordinance was illegally adopted at the closed meeting … [B]ased upon this evidence, we find no abuse of discretion on the part of the Master in ordering the equitable relief of invalidation of the ordinance."); *Davis v. S.C. Educ. Credit for Exceptional Needs Child. Fund*, 441 S.C. 187, 206, 893 S.E.2d 330, 340 (Ct. App. 2023) ("[T]he

FOIA … prohibits a vote in executive session to take action."); *Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 616–17, 885 S.E.2d 406, 408 (Ct. App. 2023) ("Even if the Board had complied with the FOIA's specific purpose requirement when it retreated into executive session, it could not have taken any vote except to adjourn or resume its public session."); *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 118, 767 S.E.2d 203, 209 (Ct. App. 2014), *aff'd as modified*, 415 S.C. 625, 785 S.E.2d 198 (2016) (FOIA "specifically prohibit[s] voting while in executive session."); *Piedmont PSD,*, 319 S.C. at 128 ("The District clearly violated the plain language of the Act by voting while in executive session.").

For the above reasons, the Court should rule, as a matter of law, that the Commission violated FOIA in voting on probable cause in executive session and its executive session vote to determine probable cause is invalid.

B. No exemption from § 30–4–70(b) applies to the Commission's probable cause votes.

The Commission does not challenge that S.C. Code § 30–4–70(b) unequivocally prohibits voting in executive session, but claims it is exempt from the requirement to vote in open session. Specifically, the Commission states, "the State Ethics Act requires [confidentiality] until *after* a probable cause determination is made." *See* Defs.' Answer to Pl.'s Am. Compl., ¶ 6 (emphasis in original). Although the statute is not specifically cited in this portion of the Answer, the Commission appears to refer to § 8-13-320(10)(g), which states that "[a]ll investigations, inquiries, hearings, and accompanying documents are confidential and only may be released pursuant to this section." *See* Defs.' Answer to Pl.'s Am. Compl., ¶ 30.

The Commission's probable cause votes are not exempt from the public vote requirement of S.C. Code Ann. § 30–4–70(b). Although the Commission presents itself as the only agency in state government administratively adjudicating matters subject to statutory confidentiality provisions, the Legislature knew well when it enacted the Ethics Act that many other executive branch public bodies adjudicate complaints of a disciplinary nature subject to varying degrees of statutory confidentiality. *See Hodges*, 341 S.C. at 88 ("It is presumed that the Legislature is familiar with prior legislation, and that if it intends to repeal existing laws it would ... expressly do so …") (internal citation omitted). As the Supreme Court recognized in *Bellamy*, the Legislature designed the FOIA with an objective of balancing the competing interests of transparency and confidentiality. *Bellamy*, 305 S.C. at 295, 408 S.E.2d at 221 (FOIA was "an attempt to meet the demand for open government while preserving workable confidentiality in governmental decisionmaking.") (c*iting Chrysler Corp. v. Brown*, 441 U.S. 281, 292, 99 S.Ct. 1705, 1713 (1979)). As noted, many other executive branch agencies adjudicate disciplinary or similar complaints under statutes requiring confidentiality. *See*, e.g., § 34-30-590 (State Board of Financial Institutions); § 40-2-80(E) (Board of Accountancy); 40-23-190 (Environmental Certification Board); § 40-33-190 (Nursing Board); § 40-47-110(D)(1)-(2); § 40-47-114(C); § 40-47-116(A) & (B); § 40-47-190 (Board of Medical Examiners). An agency may not unilaterally exempt itself from the FOIA requirement that it vote publicly because a statutory confidentiality requirement exists. *See Newberry Pub. Co. v. Newberry Cnty. Comm'n on Alcohol & Drug Abuse*, 308 S.C. 352, 355, 417 S.E.2d 870, 872 (1992) ("We find that SLED's policy of denying all FOIA requests for criminal investigative reports, without determining whether portions of the report are subject to disclosure, is in direct contravention of the clear language of the FOIA. If the legislature had wanted to create a blanket exemption for all criminal investigative reports, regardless of content, it clearly could have done so.").[9]

[9] In 1994, then-Attorney General Travis Medlock personally issued an opinion requested by the

Among other flaws with the Commission's argument, it is falsely premised on the notion that the open meeting requirement in S.C. Code § 30–4–70(b) and confidentiality in § 8-13-320(10)(g) cannot be read to operate harmoniously. *See Adoptive Parents v. Biological Parents*, 315 S.C. 535, 543, 446 S.E.2d 404, 409 (1994) ("Statutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each."). To be clear, Peets only challenges the Commission *voting* to find probable cause in executive session; she does not challenge the Commission *deliberating* on such matters in executive session. The Commission can take its vote on finding probable cause in open session without violating the confidentiality provision of § 8-13-320(10)(g) simply by identifying the case by its number,[10] and not including the respondent's name, a practice routinely followed by other executive branch public bodies which are also subject to FOIA and statutory confidentiality requirements. As discussed *supra*, the Board of Medical Examiners (Medical Board) is subject to similar, and substantially more detailed, confidentiality requirements.[11] The Medical Board's meeting minutes reflect that the board discusses complaint matters deemed confidential in executive session, but then publicly

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South Carolina Real Estate Commission (REC) on the REC's ability to have private or executive session deliberations on *inter alia* disciplinary proceedings brought against licensees in its judicial or quasi-judicial capacity. 1994 S.C. Op. Att'y Gen. 54 (1994). The Attorney General advised that regardless of whether the REC was acting in its judicial or quasi-judicial capacity, it was required to vote in open session. Concluding, the opinion stated: "The rule under the [FOIA] is openness, so that public business is conducted in public. Any doubt as to whether a meeting should be open to the public should be resolved in favor of openness." *Id.*

[10] It is indisputable that Commission staff assigns complaint numbers once an investigation is opened. In this case, the complaint numbers are C2023-137, C2023-138, and C2024-001.

[11] See S.C. Code Ann. § 40-47-110(D)(1)-(2); § 40-47-114(C); § 40-47-116(A) & (B); § 40-47-190

votes on these complaints in open session, identifying the matter only using complaint numbers. *See, e.g.*, S.C. Bd. of Med. Exam'rs Minutes Aug. 5-6, 2024,[12] p. 6:

> **MOA FINAL ORDER HEARING, CASE NUMBER 2022-332 [CLOSED]**
>
> Motion to executive session for legal advice; motion carried. Motion out of executive session; motion carried. Motion to accept the MOA, find violations of 40-47-110(B)(3), -110(B)(13), - 110(B)(14), -110(B)(17), -110(B)(26), and 40-47-133(A) with sanctions of a private reprimand ….

There is no reason that the Commission cannot handle probable cause hearings in a similar manner. Voting on probable cause matters in open session is in no way inconsistent with keeping "investigations, inquiries, hearings, and accompanying documents" confidential under § 8-13-320(10)(g).

Finally, it is meaningful that the Legislature has established exactly two narrow statutory exceptions to the requirement that a public body vote in open session. When the Retirement Systems Investment Commission (RSIC) was established through Act 371 of 1998, the purpose of the Act in part was

> … *TO AMEND* SECTIONS 30–4–40 AND *30–4–70*, BOTH AS AMENDED, *RELATING TO* MATTERS EXEMPT FROM DISCLOSURE AND *MEETINGS WHICH MAY BE CLOSED FOR PURPOSES OF THE FREEDOM OF INFORMATION ACT*, SO AS TO EXEMPT RECORDS RELATING TO INVESTMENTS OR OTHER FINANCIAL MATTERS OF THE STATE RETIREMENT SYSTEMS IF DISCLOSURE WOULD JEOPARDIZE

[12] The Medical Board minutes are online at https://llr.sc.gov/med/Minutes/20250128085819818_August%205-6%202024%20BME%20Minutes.pdf (accessed March 20, 2025). The Court can and should take judicial notice of the Medical Board minutes and the actions taken therein by the Board, the accuracy of which is indisputable. *See Matter of Harry C.*, 280 S.C. 308, 310, 313 S.E.2d 287, 288 (1984) ("The Courts will take judicial notice of subjects and facts of general knowledge, and also of facts in the field of any particular science which are capable of demonstration by resort to readily accessible sources of indisputable accuracy …."); *see also United States v. Garcia*, 855 F.3d 615, 621 (4th Cir. 2017) (noting that federal courts "routinely take judicial notice of information contained on state and federal government websites"). Additionally, such minutes "are the only competent evidence of the proceedings of the transactions of the governing body." *Berkeley Elec. Co-op., Inc. v. Town of Mount Pleasant*, 308 S.C. 205, 208, 417 S.E.2d 579, 581 (1992).

> INVESTMENT DECISIONS OR OBJECTIVES *AND ALLOW THE STATE BUDGET AND CONTROL BOARD MEETING AS TRUSTEE OF THE RETIREMENT SYSTEMS AND THE STATE RETIREMENT SYSTEMS INVESTMENT PANEL TO MEET IN EXECUTIVE SESSION IF DISCLOSURE WOULD JEOPARDIZE INVESTMENT DECISIONS OR OBJECTIVES* ….

(emphasis added).[13] Thus, S.C. Code Ann. § 30-4-70(a)(6) establishes that RSIC can "hold a meeting closed to the public … if the meeting is in executive session specifically pursuant to Section 9-16-80(A) or 9-16-320(C)." Sections 9-16-80(A) and § 9-16-320(C) establish the limited and narrow reasons in which RSIC can make a decision in executive session.[14] Several years later, the Legislature made a similar exemption for Boards of Trustees of the respective institution of higher learning while acting as trustees over endowment funds. The purpose of In Act 122 of 1999 in part was

> … *TO AMEND SECTIONS* 30-4-40 AND *30-4-70*, BOTH AS AMENDED, *RELATING TO* MATTERS EXEMPT FROM DISCLOSURE AND *MEETINGS WHICH MAY BE CLOSED FOR PURPOSES OF THE FREEDOM OF INFORMATION ACT, SO AS TO* EXEMPT RECORDS RELATING TO INVESTMENTS OR OTHER FINANCIAL MATTERS OF THE ENDOWMENT INVESTMENT SYSTEMS IF DISCLOSURE WOULD JEOPARDIZE INVESTMENT DECISIONS OR OBJECTIVES AND TO *ALLOW THE RESPECTIVE BOARDS OF TRUSTEES MEETING AS TRUSTEES OF THE RESPECTIVE ENDOWMENT FUNDS TO MEET IN EXECUTIVE SESSION IF DISCLOSURE WOULD JEOPARDIZE INVESTMENT DECISIONS OR OBJECTIVES*.

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[13] *See* Act 371 of 1998 at https://www.scstatehouse.gov/billsearch.php?billnumbers=958&session=112&summary=B (accessed March 21, 2025). The title of an act can be used in determining the legislative intent of the act. See *Father v. S.C. Dept. of Social Services*, 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001) (*citing Joytime Distrib.& Amusement v. State*, 338 S.C. 634, 649, 528 S.E.2d 647, 655 (1999)).

[14] *See* S.C. Code Ann. § § 9-16-80(A) ("Meetings … [to] … make tentative or final decisions on, investments or other financial matters may be in executive session if disclosure of the deliberations or decisions would jeopardize the ability to implement a decision or to achieve investment objectives."); § 9-16-320(C) ("The [RSIC] may discuss, deliberate on, and make decisions on a portion of the annual investment plan or other related financial or investment matters in executive session if disclosure thereof would jeopardize the ability to implement that portion of the plan or achieve investment objectives.").

(emphasis added).[15] Thus, S.C. Code Ann. § 30-4-70(f) exempts "[t]he Board of Trustees of the respective institution of higher learning, while meeting as the trustee of its endowment funds, if the meeting is in executive session specifically pursuant to Sections 59-153-80(A) or 59-153-320(C)." Sections 59-153-80(A) or 59-153-320(C) establish the limited and narrow reasons in which these Boards of Trustees can make a decision in executive session.[16]

In these two cases, it bears emphasis that it was *the Legislature* which can exempt public bodies from the requirement to vote in open session by enacting legislation to that effect; no public body is entitled to create an exemption for itself. If the Legislature had wanted to allow the Commission to take probable cause votes in executive session, it knows how to write legislation to accomplish this desire. *See Newberry Pub. Co.* 308 S.C. at 355, 417 S.E.2d at 872. In this case, Section 8-13-320(10)(g) has remained substantially the same since its inclusion in the Ethics Act of 1991,[17] and the Legislature has not enacted a statutory exemption for the Ethics Commission. No such exemption exists. *See Hodges,* 341 S.C. at 86–87, 533 S.E.2d at 582 ("[T]he enumeration of exclusions from the operation of a statute indicates that the statute should apply to all cases not specifically excluded. Exceptions strengthen the force of the general law

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[15] *See* Act 122 of 1999 at https://www.scstatehouse.gov/billsearch.php?billnumbers=3904&session=113&summary=B (accessed March 21, 2025).

[16] See S.C. Code Ann. § 59-153-80(A) ("Meetings by the board while acting as trustee of the endowment fund or by its fiduciary agents to deliberate about, or make tentative or final decisions on, investments or other financial matters may be in executive session if disclosure of the deliberations or decisions would jeopardize the ability to implement a decision or to achieve investment objectives."); § 59-153-320(C) ("The panel may discuss, deliberate on, and make decisions on a portion of the annual investment plan or relate financial or investment matters in executive session if their disclosure would jeopardize the ability to implement that portion of the plan or achieve investment objectives.").

[17] See Act 248 of 1991 at https://www.scstatehouse.gov/sess109_1991-1992/bills/3743.htm (accessed March 21, 2025).

and enumeration weakens it as to things not expressed.") (internal citations omitted); *Newberry Pub. Co.*, 308 S.C. at 355, *supra*.[18]

II. **Peets is entitled to summary judgment that the remaining claims are not subject to the doctrine of exhaustion of administrative remedies.**

In addition to the FOIA claim, Peets seeks a declaratory ruling on the following issues:

Count Two. The Court is asked to decide whether applying S.C. Code Ann. § 8-13-320(10)(f) (establishing the Commission's subpoena power) and other applicable state law, the Commission may issue subpoenas outside the State of South Carolina, at least without complying with the Uniform Interstate Depositions and Discovery Act. *See* Am. Compl., ¶¶ 29-35. The Commission does not dispute that it issued subpoenas to such companies in the investigation of the Peets complaints and will argue that it had the legal authority to issue the subpoenas. Defs.' Answer to Pl.'s Am. Compl., ¶ 12.

Count Three. The Court is asked to decide whether the Commission violated Peets' privacy rights under the Fourth Amendment to the U.S. Constitution and S.C. Const. art. I, § 10 when it issued subpoenas for thousands of pages of her personal bank records. *See* Am. Compl., ¶¶ 36-43. The Commission does not dispute the contents of the bank records received through its subpoenas, or the purpose for which they were seized. The Commission will argue that it was legally entitled to seize the bank records. Defs.' Answer to Pl.'s Am. Compl., ¶¶ 9-10.

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[18] It is also difficult to believe that the Legislature would exempt the Commission, given that the Ethics Act and FOIA are both designed to encourage transparency in government and the purposes of the two statutory schemes so much align. See Preamble, Act 248 of 1991 at https://www.scstatehouse.gov/billsearch.php?billnumbers=3743&session=109&summary=B (accessed March 21, 2025) (stating the Act's purposes as *inter alia* "making public servants more accountable …, maintain[ing] the integrity of the political and governmental processes …, [and] help[ing] restore public trust in the governmental institutions and the political and governmental processes.).

Count Four. The Court is asked to decide whether the Commission violated Peets' due process rights under S.C. Const. art. I, § 22 by not providing her notice of the subpoenas or an opportunity to object to their issuance. *See* Am. Compl., ¶¶ 44-50. The Commission admits that it did not provide Peets such prior notice and will argue that it was not legally required to do so. Defs.' Answer to Pl.'s Am. Compl., ¶ 11.[19]

The Commission argues Counts Two, Three, and Four (but not the FOIA claim) are barred because Peets must adjudicate her ethics complaints to a final conclusion before the Commission before seeking relief from this Court. The Commission is wrong, based on the law and the undisputed facts of this case. For the following reasons, the doctrine of exhaustion of administrative remedies does not apply to these claims and/or an exception exists:

(1) The remaining claims solely present issues of law.

To start, "[t]he doctrine of exhaustion of administrative remedies is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Storm M.H. ex rel. McSwain v. Charleston Cnty. Bd. of Trustees*, 400 S.C. 478, 487, 735 S.E.2d 492, 497 (2012) (*citing Ward v. State,* 343 S.C. 14, 17 n. 5, 538 S.E.2d 245, 246 n. 5 (2000)). *See also Ex parte Allstate Ins. Co.*, 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966) (exhaustion "is not an invariable rule.") As recognized by the Supreme Court, for exhaustion to apply, there must at minimum be a question of fact that it is desirable for an administrative agency to adjudicate. *See Hyde v. S.C.*

[19] Peets also requested a Writ of Prohibition (Count Five), requesting the Court to "direct[ ] [the Commission] not to move forward with any contested case proceeding in this matter until the issues in this case can fully be adjudicated." Pl.'s Am. Compl., ¶ ¶ 51-64. Based on Peets' interpretation of the March 18, 2025 Order of Assignment and Scheduling Order, and the fact that the Commission plainly cannot issue a Writ of Prohibition, Peets does not believe Count Five is subsumed into the exhaustion inquiry. Nevertheless, Peets acknowledges that Count Five is inextricably entwined with Counts Two, Three, and Four, and especially the privacy claim.

Dep't of Mental Health, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) ("Where an adequate administrative remedy is available *to determine a question of fact*, one must pursue the administrative remedy or be precluded from seeking relief in the courts.") (*citing Meredith v. Elliott,* 247 S.C. 335, 147 S.E.2d 244 (1966)) (emphasis added). Thus, in *Hyde*, the Court found the exhaustion doctrine applied because the "Department denied Hyde's factual allegations and the State Employee Grievance Procedure provides an adequate administrative remedy to determine factual issues." *Id.* The Court in *Hyde* relied on *Meredith v. Elliott*, where the exhaustion doctrine was applied because "respondents here had available to them an adequate administrative remedy *to determine the question of fact* as to whether there had been an overvaluation of their property for the purpose of the taxation thereof." 247 S.C. at 346 (emphasis added). Unlike the situation in *Hyde* or *Meredith*, Peets is not asking the Court to decide any question of fact and, as to these issues, the Commission has raised no question of fact. The parties agree that no question of material fact is present in this case, which is why they agreed to file cross-motions for summary judgment. For this reason alone, the exhaustion doctrine does not apply.

The case before the Court involves undisputed facts and pure issues of law. This squarely aligns with *Ex parte Allstate Ins. Co.*, where the Supreme Court held exhaustion was not required to enjoin an investigation when "[t]he issue was solely one of law as to the statutory authority or jurisdiction of the [Insurance] Commissioner. The facts in regard to that issue were undisputed. Under the undisputed facts, the Commissioner was obviously without such authority." 248 S.C. at 567–68, 151 S.E.2d at 855. Similarly, *Corpus Juris Secondum*[20] states that exhaustion "may be

[20] The Supreme Court has favorably cited *Corpus Juris Secundum* as one of "our most reputable texts." *Berberich v. Jack,* 392 S.C. 278, 292, 709 S.E.2d 607, 614 (2011) (internal citation omitted).

justified when the only issue—or at least the controlling issue—is one of law or if the issue is a law's construction or interpretation" and exhaustion "usually will not be applied …if the agency disregards a specific and unambiguous statutory, regulatory, or constitutional directive." 73 C.J.S. Public Administrative Law and Procedure § 137.

Exhaustion doctrine is based in part on deference to agency processes and expertise, but there is no need to defer to the Commission on pure issues of law. *See Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644–45 (2000) (the purposes underlying the exhaustion doctrine "would not be served when the only issue is the validity of a statute."); *McKart v. United States*, 395 U.S. 185, 197–98, 89 S. Ct. 1657, 1665 (1969) ("The resolution of [a question that is solely one of statutory interpretation] does not require any particular expertise on the part of the appeal board; the proper interpretation is certainly not a matter of discretion."). Put simply, it is the province of the Court to interpret statutes and constitutional provisions, not the Commission or any other administrative agency. *See Anderson v. S.C. Election Comm'n*, 397 S.C. 551, 555, 725 S.E.2d 704, 706 (2012) ("The construction of a statute is a judicial function and responsibility,"); *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 632, 767 S.E.2d 157, 163 (2014) ("It is emphatically the province and duty of the judicial department to say what the law is.") (*citing Marbury v. Madison*, 5 U.S. 137, 138, 1 Cranch 137, 2 L.Ed. 60 (1803)); *see also Loper Bright Enterprises v. Raimondo*, 603 U.S. 369, 144 S. Ct. 2244, 2261 (2024) (eliminating *Chevron* deference and holding that "under the [federal Administrative Procedures Act], it thus remains the responsibility of the court to decide whether the law means what the agency says.") (internal citations and quotation marks omitted).

(2) The issues in the remaining claims are not ones that can be ruled upon by the Commission, thus there are no applicable administrative remedies.

Exhaustion is also inapplicable because the Commission lacks the statutory authorization to rule on the specific issues raised in this declaratory action. "A party is not required to exhaust administrative remedies if the issue is one that cannot be ruled upon by the administrative body." *Charleston Trident Home Builders, Inc. v. Town Council of Town of Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006) (*citing Ward v. State*, 343 S.C. 14, 538 S.E.2d 245 (2000)).

The Commission urges this Court to send Peets' statutory and constitutional claims to be decided by a panel of three Commissioners. However, the Commission Panel is only statutorily authorized to conduct a hearing "to determine whether a violation of this chapter [i.e., the Ethics Act] has occurred …." § 8-13-320(10)(j); *see also* § 8-13-320(10)(k) ("No later than sixty days after the conclusion of a hearing *to 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." (emphasis added). Determining whether a person violated the Ethics Act is all a Commission Panel can do. It cannot opine on the statutory limitations of its subpoena power under § 8-13-320(10), and under no circumstances can it determine the proper meaning of the state or federal constitutions. The Commission has "only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose." *S.C. Tax Comm'n v. S.C. Tax Bd. of Rev.*, 278 S.C. 556, 560, 299 S.E.2d 489, 491–92 (1983). While Peets adamantly denies violating the Ethics Act, what she did or didn't do is not what this lawsuit is about. This lawsuit concerns the Commission's adherence – or lack thereof – to the law.

The Commission cannot, itself, adjudicate whether or not it violated the statutory and constitutional provisions at issue. Nor can it rule on Peets' request for a Writ of Prohibition.

Because the Commission is not authorized to hear these particular claims, the doctrine of exhaustion is inapplicable. *See Stinney v. Sumter Sch. Dist. 17*, 391 S.C. 547, 551, 707 S.E.2d 397, 399 (2011) ("When an administrative remedy is not available for the injury suffered, the doctrine of exhaustion is not applicable.") (*citing Thomas Sand Co. v. Colonial Pipeline Co.*, 349 S.C. 402, 413, 563 S.E.2d 109 (Ct. App. 2002)); *Video Gaming Consultants*, 342 S.C. at 39, 535 S.E.2d at 645 ("[P]ractically speaking, *requiring* a party to raise an issue which cannot be ruled upon by an ALJ makes little sense.") (emphasis in case); *Cap. City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 102, 674 S.E.2d 524, 530 (Ct. App. 2009) ("The doctrine of exhaustion of administrative remedies only comes into play when a litigant attempts to invoke the original jurisdiction of a circuit court to adjudicate a claim based on a statutory violation for which the legislature has provided an administrative remedy.") (*citing Thomas Sand*, 349 S.C. at 413).

(3) Any administrative remedy before the Commission would be inadequate.

If the Court were to find an administrative remedy exists at the Commission level for Peets' claims, any such remedy would be inadequate. *See Storm M.H.*, 400 S.C. at 487 (finding "the administrative remedies would have been inadequate given the immediacy of Student's enrollment date and the potential delay of an administrative appeal.").

Assuming *arguendo* there is any ethics complaint left to adjudicate after the Court disposes of the FOIA claim, the Commission urges that Peets should be forced to suffer a potential constitutional deprivation by having her personal bank records introduced in a public hearing[21] before a circuit court (that already has jurisdiction over the dispute) can adjudicate whether those bank records were lawfully taken. *See* Defs.' Answer to Pl.'s Am. Compl., ¶ 59.

[21] The law requires that any merits hearing "must be open to the public." S.C. Code Ann. § 8-13-320(10)(i).

(“Plaintiff is not entitled to special treatment by way of interlocutory appellate review of her objections to what may or may not have been introduced at a hearing ….). This is not an adequate remedy. It is actually no remedy at all because the reality is that the privacy claims will be moot as soon as the records are introduced in evidence at any merits hearing.

(4) It would be futile for Peets to bring these claims before the Commission.

“A commonly recognized exception to the requirement of exhaustion of administrative remedies exists when a party demonstrates that pursuit of administrative remedies would be a vain or futile act.” *Storm M.H.*, 400 S.C. at 487 (*citing Brown v. James,* 389 S.C. 41, 54, 697 S.E.2d 604, 611 (Ct. App. 2010)). Here, “it would [be] futile for [Peets] to exhaust her administrative remedies as the [Commission’s] decision [is] certain to be unfavorable.” *Id.* at 478.

In this litigation, the Commission through counsel has taken a hard and fast position on whether it had the legal authority to issue the subpoenas at issue, Defs.’ Answer to Pl.’s Am. Compl., ¶ 12, whether it was legally entitled to seize Peets’ bank records at issue. Defs.’ Answer to Pl.’s Am. Compl., ¶¶ 9-10, and whether it was legally required to provide Peets notice of any of the subpoenas. Defs.’ Answer to Pl.’s Am. Compl., ¶ 11; *see also* Defs.’ Answer to Pl.’s Am. Compl., ¶ 8.

Apart from its litigating positions, the full Commission has already effectively decided the issues on Counts Two, Three, and Four against Peets when at least 6[22] of them voted for probable cause, and there is no reason to believe a Commission Panel (a 3 member subset of the full Commission) will find differently. At the July 18, 2024 probable cause hearing, Commission

[22] The minutes reflect that 7 members were present. *See* Am. Compl., Ex. A. Since the vote was not in public, Peets does not know whether 6 or 7 members voted to find probable cause. But statutorily, at least 6 of them had to. See S.C. Code Ann. § 8-13-320(10)(i).

staff presented its "recommendation whether probable cause exists to believe that a violation of this chapter has occurred." S.C. Code Ann. § 8-13-320(10)(i). This recommendation takes the form of an investigative report prepared by Commission staff, which *inter alia* shows everything the investigators documented in their investigation. It is indisputable that the investigative report plainly reflected all the legal infirmities identified in the Amended Complaint at issue here, *i.e.*, that Commission staff was issuing subpoenas outside the State of South Carolina without attempting to properly domesticate them, that it obtained a large volume of Peets' personal financial records through these subpoenas, and that Peets was not provided prior notice or an opportunity to object to these subpoenas. The Commission already endorsed these investigative practices when it voted to find probable cause against Peets.

Under these circumstances, it would be a futile exercise for this Court to require Peets to take these purely legal claims before the Commission and expect a different result.

(5) The Court should hear these claims as involving matters of public interest and promoting judicial economy

In *Storm M.H.*, the Supreme Court did not apply exhaustion in part because the Court found "the instant case presents issues of important public interest and a resolution would promote judicial economy." 400 S.C. at 487. So too here.

Judicial economy will be served by the Court adjudicating these claims, and a scheduling order is in place where all of the issues will be briefed by June 20, 2025 and the case is subject to being called for an in-person hearing any time after June 27, 2025. *See* March 18, 2025 Order of Assignment and Scheduling Order. For reasons too evident to belabor, sending these matters back to the Commission will guarantee that any judicial review will take a much, much longer time to resolve (even assuming meaningful judicial review were possible).

The public interest favors these issues be resolved by a Court – not an administrative body and that the resolution takes place within a reasonably speedy timeframe. The Court can take and should take judicial notice that the Commission regulates all manner of public officials, public members, and public employees in state and local government, all the way from the Governor to the local Water District Commissioner, as well as all candidates for state and local political office (such as Peets). *See also* S.C. Code Ann. § 8-13-100(27) (defining "public official"); § 8-13-100(26) (defining "public member"); § 8-13-100(25) (defining "public employee"); § 8-13-100(5), § 8-13-1300(4) (defining "candidate"). In 2016, the Commission's investigative authority was expanded to include members and candidates for the General Assembly.[23] The Commission correctly states that it is charged with "enhanc[ing] public trust in the integrity of state and local government" and "[a]s such, the Commission must fairly and impartially enforce the Ethics Reform Act of 1991."[24] In enforcing the Ethics Act, the Commission has the ability to impose enormous fines[25] and to refer people for criminal prosecution. *See* § 8-13-320(10)(h), § 8-13-320 (10)(i).

The public at large has a right to be secure about whether the Commission is adhering to the letter of the law in enforcing the Ethics Act. If the Commission is not, the public has a strong interest in the Court clarifying that it is legally noncompliant, so its practices can then be brought

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[23] *See* Act 282 of 2016 at https://www.scstatehouse.gov/billsearch.php?billnumbers=3184&session=121&summary=B (accessed March 20, 2025).

[24] *See* State Ethics Commission 2024 Accountability Report at https://ethics.sc.gov/sites/ethics/files/Documents/About%20Us/Reports%20and%20Policies/State%20Ethics%202024%20Accountability%20Report.pdf (accessed March 20, 2025), at p. 6.

[25] See State Ethics Commission Debtors information at https://ethics.sc.gov/debtors and https://ethics.sc.gov/sites/ethics/files/Documents/Debtors/Debtors%20List%20December%202024.pdf (accessed March 20, 2025).

into compliance. Without judicial review, these practices are likely to continue and repeated in future ethics investigations, particularly given the Commission's adamant arguments regarding its statutory authority. It is difficult to imagine that Peets is an outlier and this investigation is the only time the Commission has issued subpoenas to out of state banks for personal bank records, done so without providing notice to the accountholder, or drafted investigative subpoenas without any limits or proportionality. Any ruling from the Court on the declaratory claims will "settle and [ ] afford relief from uncertainty and insecurity with respect to rights status and other legal relations," § 15-53-130, not only for Peets but also the Commission and the many, many people in the public under its jurisdiction.

For all of these reasons, the public interest demands a judicial resolution which will provide legal certainty on all the claims in the Amended Complaint. *See League of Women Voters of United States v. Newby*, 838 F.3d 1, 12 (D.C. Cir. 2016) ("There is generally no public interest in the perpetuation of unlawful agency action. To the contrary, there is a substantial public interest in having governmental agencies abide by the federal laws that govern their existence and operations.").

CONCLUSION

Peets is entitled to an order granting summary judgment on (1) her FOIA claim; and (2) a declaration that the doctrine of exhaustion of administrative remedies does not apply to the remaining claims.

Signature Page Follows

Respectfully Submitted,

s/ Michael R. Burchstead

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March 21, 2025

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiff,	)	Case No. 2025-CP-32-00440
v.	)	
South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	)	**DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT**

Defendants South Carolina State Ethics Commission (the Commission) and Meghan Walker Dayson, in her official capacity as Executive Director of the Commission, submit this response in opposition to Plaintiff Ann Peets's cross-motion for summary judgment. For the reasons below, the Court should deny Plaintiff's motion, grant summary judgment for Defendants on Plaintiff's Freedom of Information Act (FOIA) claim, and dismiss the remaining claims without prejudice for failure to exhaust.

Argument

I. The Commission's probable cause determination was lawful because the State Ethics Act trumps FOIA under these circumstances.

The Commission agrees that it is a public body, and it voted on probable cause in the ethics complaints against Plaintiff in executive session on July 18, 2024. But the Commission parts company with Plaintiff on her insistence that it had to do so in an open session of a public meeting.

Contrary to Plaintiff's suggestion, the Court cannot begin and end its inquiry with FOIA. *See DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 304, 814 S.E.2d 513, 518 (2018) (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"). Doing so would ignore the General Assembly's directive in the State Ethics Act on the confidentiality of information related to ethics complaints. *See* S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii); *cf. Creswick v. Univ. of S.C.*, 434 S.C. 77, 82, 862 S.E.2d 706, 708 (2021) ("The best evidence of legislative intent is the text of the statute."); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.").

That is why the cases Plaintiff cites are inapposite: they do not involve FOIA's intersection with a more specific statutory provision. *See* Pl.'s Mot. for Summ. J. at 8–9; *but see Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010) (stating 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" (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))). Nor do they wrestle with a statutorily required confidentiality provision.

Plaintiff seems to acknowledge the Commission is hamstrung by the confidentiality provision. She simply suggests the Commission should "deliberate" about probable cause in private but then vote on whether probable cause exists in public by "identifying the case by its number." Pl.'s Mot. at 11. But that, too, is prohibited. "The *existence of a complaint* . . . remains confidential unless the Respondent waives confidentiality in writing." S.C. Code Ann. Regs. 52–704(A)(2) (emphasis added). Revealing a complaint number in an open meeting before a probable cause determination reveals "[t]he existence of a complaint." *Id.* In any event, there is no practical way the Commission can "deliberate" in private without taking a straw poll in executive session, which is also prohibited by FOIA. *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."). So again, Plaintiff would have the Commission violate FOIA just to comply with it.

What is more, Plaintiff's suggested approach ignores that the Commission often considers numerous charges of violations of the State Ethics Act in each ethics complaint. In such instances, the Commission often makes a probable cause determination as to each charge or in groupings of like-charges. A charge-by-charge (or group of charges) probable cause determination is not as simple as reciting a complaint number (if that were allowed). It necessarily requires description, if not identification, of each charge—sometimes as detailed as the date, vendor, contributor, contribution amount, etc. If the process for probable cause determinations were not done in executive session, the information provided on each charge would identify the respondent under consideration and violate the confidentiality provisions of the State Ethics Act.

That said, the Commission has not "unilaterally exempt[ed] itself from the FOIA requirement" as Plaintiff contends. By requiring "all" information relating to ethics complaints to remain confidential, "pursuant to [that section of the State Ethics Act]," until after a probable cause determination, S.C. Code Ann. 8-13-320(10)(g), *the General Assembly* exempted the Commission from the open vote requirement until after a probable cause determination. To be sure, "if a hearing is to be held" on the merits after a probable cause determination, "the hearing[] must be open to the public." S.C. Code Ann. § 8-13-320(10)(j). But until then, everything is confidential.

Indeed, determining and voting on probable cause in executive session has been the Commission's practice since before Executive Director Dayson's tenure, *see* Ex. A to Defs.' Mot. for Summ. J., including while Plaintiff's counsel was the Commission's general counsel. So the Commission's interpretation of the confidentiality provision, as well as its probable cause voting practice, is nothing new. And 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. In doing so, it 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).

Plaintiff nevertheless spills considerable ink on how the Board of Medical Examiners, for example, handles complaints. The Commission need not take a position on whether other state agencies, even those with confidentiality provisions,[1] must vote on certain issues in executive session. Neither does the Court. The specific statute at issue is in the State Ethics Act, not other provisions of the South Carolina Code relating to different agencies. But even if other analogous laws were appropriate for comparison, the only applicable one—which Plaintiff notably omits—is the Rules for Lawyer Disciplinary Enforcement. *See* S.C. Code Ann. § 8-13-320(12) (requiring the Commission to give "rights of due process as expressed in the Rules Governing the Practice of Law must be followed" for complaints).

Rule 12(a) of the Rules for Lawyer Disciplinary Enforcement includes a confidentiality provision that prohibits, "[e]xcept as otherwise provided in these rules or ordered by the Supreme Court," Office of Disciplinary Counsel (ODC) staff and others from "in any way reveal[ing] the existence of the complaint, while the matter remains confidential." Rule 12(a), RLDE, Rule 413,

[1] The confidentiality statutes Plaintiff cites are not analogous anyway. None makes a "vote" the condition precedent to the public availability of some information like the State Ethics Act does.

SCACR. Those matters remain confidential until 30 days after an answer is filed or after the expiration of the time to answer if "formal charges are filed regarding allegations of misconduct." Rule 12(b), RLDE, Rule 413, SCACR. Thus, the triggering event in the RLDE is 30 days after an answer when formal charges are filed.

Before then, however, much like in a Commission proceeding, ODC investigates the complaint and makes a recommendation to an investigative panel of the Commission on Lawyer Conduct. Rule 19(b)–(d), RLDE, Rule 413, SCACR. "The investigative panel may adopt, reject or modify the recommendation" and may "direct disciplinary counsel to file formal charges" if it determines "reasonable cause to believe the lawyer committed misconduct for which the imposition of a sanction is warranted." Rule 19(d)(4)(A)–(B), RLDE, Rule 413, SCACR. This "reasonable cause" determination is confidential because it occurs *before* ODC files formal charges and the time to answer has expired. Rule 12(a), RLDE, Rule 413, SCACR; *see also About, Lawyer & Judicial Discipline, The Disciplinary Process*, S.C. JUD. BRANCH, https://www.sccourts.org/about/lawyer-judicial-discipline/the-disciplinary-process/ (last visited Apr. 1, 2025) ("The disciplinary proceedings become public 30 days after the period of time in which the lawyer or judge may file an answer. All subsequent records and proceedings relating to the formal charges are open to the public including any letter of caution or admonition issued thereafter. *Up until this time, the disciplinary proceedings are confidential*." (emphasis added)).

The same goes for ethics complaints. 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). And it requires that an ethics complaint proceeding, including a probable cause determination, remain confidential until *after* that determination. *See* S.C. Code Ann. § 8-13-320(10)(g) ("All investigations, inquiries, hearings, and accompanying documents are confidential and only may be released pursuant to this section." (emphasis added)); *id.* at § -320(10)(g)(i)–(ii) (outlining circumstances in which information is no longer confidential, which arise only "[a]fter dismissal following a finding of probable cause" or "[a]fter a finding of probable cause"); *see also* S.C. Code Ann. Regs. 52–704(A)(2) ("The *existence of a complaint* . . . remains confidential unless the Respondent waives confidentiality in writing.").

For these reasons and those raised in the Commission's motion for summary judgment, the Court should reject Plaintiff's interpretation of FOIA. Applying the confidentiality provision in the State Ethics Act, the Commission correctly recognized that all information relating to an ethics complaint—including the probable cause determination—must be confidential until *after* that determination. This interpretation best "harmonizes" the "more specific," *Denman*, 387 S.C. at 138, 691 S.E.2d at 468–69, statute in the State Ethics Act "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), and does not "lead[] to an absurd result," *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (per curiam).

The Commission did not violate FOIA by following the State Ethics Act's confidentiality strictures when it found probable cause in executive session.

II. Plaintiff cannot circumvent the exhaustion requirement and the Commission's exclusive jurisdiction over the ethics complaints against her.

Plaintiff supplies five reasons why she does not have to exhaust her statutory administrative remedies before running to the Court on her unripe claims. Each is equally unavailing.

She *first* contends the exhaustion requirement does not apply to her claims because they raise issues of law. According to Plaintiff, "for exhaustion to apply, there must at a minimum be a question of fact that it is desirable for an administrative agency to adjudicate." Pl.'s Mot. for Summ. J. at 16. Although creative, the two cases she cites for this proposition say no such thing. *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). That is because only a few exceptions to statutorily required exhaustion exist, and a complaint raising "issues of law" is not one of them. *See Ward v. State*, 343 S.C. 14, 18, 538 S.E.2d 245, 247 (2000) ("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." (emphasis added)). Nor would that make sense. State agencies handle questions of law every day. And "an agency . . . can still rule on whether a party's constitutional rights have been violated," so "merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling." *Id.*

Even so, there *are* factual issues related to the ethics complaints against her that must still be adjudicated first by the Commission. After all, Plaintiff contends she "denies the allegations" in the ethics complaints against her, Pl.'s Mot. for Summ. J. at 3 n.4, even though she already admitted to the underlying conduct, *see* Ex. C. to Defs.' Mot. for Summ. J. When those complaints are finally heard, the Commission can and will consider the legal issues Plaintiff raises here. *See infra*. Thus, the Court should reject Plaintiff's attempt to expand the exceptions to exhaustion.

Plaintiff's reliance on *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 151 S.E.2d 849 (1966), is similarly misplaced. As our court of appeals recently explained, *Ex parte Allstate* concerned an issue of law "as to the statutory authority or jurisdiction of the Chief Insurance Commissioner" to conduct the investigation he conducted. *Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 78, 902 S.E.2d 41, 49 (Ct. App. 2024) (distinguishing *Ex parte Allstate*), *cert. denied* (S.C. Sup. Ct. Nov. 14, 2024). It is indisputable that the Commission had the sole authority to investigate and now to hear the ethics complaint against Plaintiff, including any related matters like the ones raised here. *E.g.*, S.C. Code Ann. § 8-13-320(10); S.C. Code Ann. Regs. 52-713(A). Plaintiff merely argues the subpoenas issued as part of that lawful investigation were too broad. No matter how she tries to dress it up, that is a discovery or evidentiary dispute, not a jurisdictional issue.

And despite Plaintiff's attempt to rewrite the amended complaint, she does not challenge "the constitutionality of a statute or regulation." *Robinson*, 443 S.C. at 75, 902 S.E.2d at 48; *cf. Berenyi, Inc. v. Nucor Corp.*, No. 2:20-cv-03170-DCN, 2022 U.S. Dist. LEXIS 124789, at *15 (D.S.C. July 13, 2022) ("Courts look disfavorably upon motions to amend brought for the purpose of circumventing dispositive motions."). Rather, she challenges the Commission's authority to obtain her bank records through subpoenas to the entities with which she banks. Am. Compl. at ¶¶ 35, 42, 50. But that is no exception to the exhaustion requirement either. *Robinson*, 443 S.C. at 78, 902 S.E.2d at 49 (finding no exception to exhaustion applied because the plaintiffs had "not challenged the constitutionality of a statute or regulation. Rather, *they challenged [the agency's] authority* to enforce the online work search requirement based on DEW's failure to promulgate regulations pertaining to such requirement").

Deference, moreover, only comes into play here because the Commission has the exclusive authority to investigate and hear all issues relating to ethics complaints. As a function of and in executing the Commission's authority and statutory duties, the Commission or its staff may also interpret statutes and regulations related to the Commission. Whether the Court affords deference to that interpretation later, *see Doe v. Keel*, 440 S.C. 427, 431, 892 S.E.2d 282, 284 (2023), should not affect whether the Court allows the Commission to interpret law related to it in the first place. The Court may eventually consider the Commission's interpretation, if necessary, and it can then decide then whether the Commission's interpretation of these issues (whatever it may be, for the

Commission has ruled on nothing) is correct. But Plaintiff's attempt to bypass the Commission's authority to consider these issues first has nothing to do with the deference doctrine.

Plaintiff's *second* argument fares no better because the Commission can rule on the issues she raises here in the ethics proceeding. Recall Plaintiff filed a motion to dismiss before the Hearing Panel based on those same issues. 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. Regs. 52–713(A). And these issues, which relate to the admissibility of evidence, will be decided in due course when the Hearing Panel hears the ethics complaints against Plaintiff. *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"). But even if they are questions of constitutional deprivation, the Commission can consider them. *See Ward*, 343 S.C. at 18, 538 S.E.2d at 247 ("[A]n agency . . . can still rule on whether a party's constitutional rights have been violated," so "merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling"). Plaintiff cites no authority to the contrary. None exists.

As to Plaintiff's *third* argument, the administrative remedies available to her are more than adequate. She simply does not want to exhaust them. Plaintiff's main gripe on this front is that she will "be forced to suffer a potential constitutional deprivation by having her personal bank records introduced in a public hearing." Pl.'s Mot. for Summ. J. at 20. But Plaintiff has no clue what bank records the Commission staff may or may not introduce at a merits hearing that has not yet occurred. What is more, if introduced, all bank records "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). The State Ethics Act thus provides the very protection about which Plaintiff is supposedly so concerned here.

Turning to Plaintiff's *fourth* argument, the futility exception does not apply. Again, the Commission has ruled on nothing except that probable cause exists to believe Plaintiff violated the State Ethics Act. As Executive Director Dayson attested, the Commissioners did not review copies of subpoenas, or the responses, in making that determination. *See* Ex. A to Defs.' Mot. for Summ. J., at ¶ 9. In other words, the Commission has not considered the propriety of the subpoenas' issuance—the crux of Plaintiffs' amended complaint. So an "adverse ruling" is not 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)).

And Plaintiff's conclusory argument that she can claim futility by suing the Commission and forcing it to take a position in a lawsuit to bypass the agency is specious. For one, Defendants' "position in this lawsuit does not establish futility." *Ga. Dep't of Cmty. Health v. Ga. Soc'y of Ambulatory Surgery Ctrs.*, 724 S.E.2d 386, 390 (Ga. 2012) (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. For another, as the Commission clarified in its motion for summary judgment, the Panel Chair could "den[y] the motion, grant[] the motion, or continue[] the merits hearing to a later date to allow for further review of the motion before ruling. But we don't know because Plaintiff filed this lawsuit to prevent the hearing from going forward. As a result, the Hearing Panel has ruled on nothing." Defs.' Mot. for Summ. J. at 14.

Finishing with Plaintiff's *fifth* argument, judicial economy is not served or furthered by this Court hearing the issues Plaintiff raises in her amended complaint before the Commission has a chance to rule on the same ones. As a matter of public policy, the General Assembly has mandated that only after following its statutorily required 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. The Ethics Act provides for "[a]n appeal to the court of appeals, pursuant to Section 1- 23-380 and as provided in the South Carolina Appellate Court Rules." S.C. Code Ann. § 8-13-320(10)(m). But it does not provide for interlocutory review of garden-variety discovery disputes.

Imagine if this Court were called upon to referee debates over the scope of subpoenas the Commission issues in each ethics complaint case. What could be more "[g]ratuitous interference"? *Smith v. S.C. Ret. Sys.*, 336 S.C. 505, 527, 520 S.E.2d 339, 351 (Ct. App. 1999) (quoting *Williams Furniture Corp. v. S. Coatings & Chem. Co.*, 216 S.C. 1, 7–8, 56 S.E.2d 576, 579 (1949)). Although Plaintiff cries wolf about the implications of this case, nothing makes her case special or any different from that of another complainant. Respectfully, whether the appropriate scope of a subpoena is 10 years or 2 years has nothing to do with the public interest.

At bottom, this is about Plaintiff wanting the Court to throw out ethics complaints against her—even though the Commission has sole authority to adjudicate them—because she apparently does not like her chances there. But "[i]t is well-settled that no unfair prejudice exists simply because a party has to defend a [case] on the merits." *Liberty Prop. Holdings SC, LLC v. Richardson*, No. 4:22-cv-03556-RBH, 2023 U.S. Dist. LEXIS 107182, *5–6 (D.S.C. June 20, 2023). And the law does not countenance such blatant forum-shopping. *Cf. State v. Isaac*, 405 S.C. 177, 185 n.6, 747 S.E.2d 677, 681 n.6 (2013) (writ of mandamus "will not lie to correct errors and irregularities in procedure, or to prevent an erroneous decision" (quoting *New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199–200, 187 S.E.2d 794, 796 (1972)). If she is unhappy with the Commission's ruling on any aspect of her case, an appeal to the courts is her remedy.

In all events, the only time our supreme court has issued a writ of prohibition in this setting is to prevent a circuit court from improperly exercising jurisdiction over an ethics complaint. *See*

Harpootlian v. S.C. Senate Republican Caucus, App. Case No. 2019-001404 (S.C. Sup. Ct. filed Dec. 12, 2019) (granting writ of prohibition to prevent the circuit court from the further improper exercise of subject matter jurisdiction and noting respondents could file the case in the State Ethics Commission if they wished to further pursue it), *reh'g denied* (Mar. 12, 2020). Plaintiff is trying to flip that ruling on its head. The Court, however, should reject her invitation to commit the same error as the circuit court in *Harpootlian*. Instead, the Court should dismiss the remaining claims without prejudice so the Hearing Panel can rule on the motions pending at the Commission.

CONCLUSION

The Court should deny Plaintiff's motion, grant summary judgment for Defendants on the FOIA claim, and dismiss the remaining claims without prejudice for failure to exhaust.

Respectfully submitted,

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Columbia, South Carolina
April 4, 2025

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Civil Action No. 2025-CP-32-00440

Ann Peets,

Plaintiff,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,

Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND IN FURTHER SUPPORT OF HER MOTION FOR PARTIAL SUMMARY JUDGMENT

The Commission misapprehends its own governing statutes, its obligations under the FOIA, the limitations of its own power, and the jurisdiction of the Court to interpret state statutes and the state and federal constitution. Plaintiff incorporates all arguments made in her Motion and Incorporated Memorandum in Support of Partial Summary Judgment, and makes the following additional points:

Argument

I. <u>Plaintiff is entitled to summary judgment on her FOIA claim.</u>

It is indisputable that the Commission is a "public body" subject to FOIA. *See* S.C. Code Ann. § 30-4-20(a).[1] The FOIA "dictates the procedures by which public bodies must conduct their meetings." *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 128, 459 S.E.2d 876, 878 (Ct. App. 1995), *aff'd*, 324 S.C. 239, 478 S.E.2d 836 (1996). The "government has the burden of

[1] *See also* Pl.'s Mot. for Partial. Summ. J., at 7, footnote 8.

proving that an exemption [to FOIA] applies." *Evening Post Pub. Co. v. City of N. Charleston*, 363 S.C. 452, 457, 611 S.E.2d 496, 499 (2005).[2] "[C]onsistent with FOIA's goal of broad disclosure, the exemptions from its mandates are to be narrowly construed." *Burton v. York County Sheriff's Dep't*, 358 S.C. 339, 348, 594 S.E.2d 888, 893 (Ct. App. 2004).

The Commission did not meet its burden to show that the probable cause vote (the "affirmative vote of six or more commission members" required by § 8-13-320(10)(i)) are exempt from the public vote requirement of FOIA. Nor could it, because § 30-4-70(b) is clear that the Commission votes must be made in public. It provides that "[n]o action may be taken in executive session except to (a) adjourn or (b) return to public session." "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. The court has no right to look for or impose another meaning." *Cowart*, 319 S.C. at 128 (cleaned up); *see also, e.g., Eidson v. S.C. Dep't of Educ.*, 444 S.C. 166, 196, 906 S.E.2d 345, 360–61 (2024), *reh'g denied* (Oct. 3, 2024); *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).[3] Applying this principle of statutory interpretation, the Court of Appeals held in *Cowart* "the District clearly violated the plain language of the Act by voting while in executive session." *Cowart*, 319 S.C. at 128. Every South

[2] The policy underlying open meetings statutes "assumes that a citizenry's ability meaningfully to engage in, monitor, and protest governmental decisions entails access to information about what the government is doing in the first place. To protect these core aspirations of American participatory democracy, courts liberally construe statutes regulating the conduct of public affairs, and strictly construe exemptions to such laws." § 73:10. Conduct of public affairs, 3B Sutherland Statutory Construction (8th ed.) (internal footnotes omitted).

[3] It is proper to consider the title or caption of an act in aid of construction to show the intent of the legislature. *Joytime Distrib.& Amusement v. State*, 338 S.C. 634, 649, 528 S.E.2d 647, 655 (1999); *Father v. S.C. Dept. of Social Services*, 345 S.C. 57, 545 S.E.2d 523 (Ct. App. 2001). The Title of FOIA, as originally enacted in 1978, provided that it was "An Act to Provide That All Meetings of Governmental Bodies of This State, *Except As Specifically Exempted*, Shall Be Open to the Public …." 1978 Acts No. 593 (emphasis added). Thus, to the extent the Court wished to inquire into legislative intent, it supports Plaintiff's position.

Carolina appellate court to consider this issue has applied this FOIA provision to mean exactly what it says. *See, e.g., Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 165, 547 S.E.2d 862, 866 (2001); *see also* Pl.'s Mot. for Partial. Summ. J., at. 7-9.

The Commission assertion of a broad "statutory confidentiality" exception to S.C. Code Ann. § 30-4-70(b) is manifestly without merit. The Commission's improperly conflates two very different concepts: *deliberating* in executive session and *voting* in executive session. While public bodies are permitted to *deliberate* in executive session if 30-4-70(a) is properly invoked,[4] § 30-4-70(b) strictly prohibits them from *voting* in executive session (absent a statutory exception, which does not apply in this case); *See* Pl.'s Mot. for Partial. Summ. J., at. 12-15.

The Commission invokes *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 814 S.E.2d 513 (2018), to argue for an exemption to FOIA because of the rule of construction that a specific statute prevails over a general one. This case is inapposite for three reasons.

First, the "rule of statutory construction [that a specific statute prevails over a general one] comes into play only when there is a conflict between the statutes." *Porter v. S.C. Pub. Serv. Comm'n*, 327 S.C. 220, 224, 489 S.E.2d 467, 469 (1997). Here, FOIA and the Ethics Act "can be reconciled and are susceptible of a construction which will render both operative without doing violence to either," and thus "it is the duty of the court to so construe them." *Id.*; *see also* Pl.'s Mot. for Partial. Summ. J., at 11-12. Despite the Commission's complaints about having to comply with § 30-4-70(b) (and other provisions of FOIA that are inapplicable to this case),[5] there is no reason to believe that the Commission's confidentiality obligations are in any way are

[4] Plaintiff did not challenge and thus takes no position on whether the Commission properly invoked S.C. Code Ann. § 30-4-70(a) to deliberate on probable cause in the underlying ethics complaints.

[5] See D.'s Mot. for Partial. Summ. J., at 7-8.

impeded or compromised by its voting to find probable cause in open session. *See* Pl.'s Mot. for Partial. Summ. J., at 9-12; *see also Cooper v. Bales*, 268 S.C. 270, 274–75, 233 S.E.2d 306, 308 (1977) (Ness, J.) ("Authorized closed meetings with mandated revelation of the records of such meetings would produce an irreconcilable and nonsensical result and we refuse to apply such an interpretation."); *Cowart*, 319 S.C. at 129 ("[T]here is no requirement [in FOIA] that the details of matters properly discussed in a closed meeting be revealed to the public.") (*citing Cooper*, 268 S.C. at 274–75); *Id.* ("Nonetheless, requiring votes to be taken in public heightens the public awareness and understanding of the issue, and forces each member of the body to take responsibility for his vote."*).*

Second, *DomainsNewMedia.com* involved a different situation entirely, an analysis of whether a chamber of commerce receiving public funds was even "a public body" subject to FOIA; the Court held the chamber was not subject to FOIA because another statute provided the transparency for the public funds along the lines of what FOIA would have offered. 423 S.C. at 302. *DomainsNewMedia.com* cannot be read to mean that a "general" transparency statute (FOIA) can be nullified by a "more specific" secrecy statute (S.C. Code Ann. § 8-13-320(10)(g)) If this construction were correct, the FOIA's directives would be drained of all their meaning. Additionally, even accepting *arguendo* the Commission's construction of § 8-13-320(10)(g) is correct (which it is not), it speaks to confidentiality with a much higher level of generality than the specific prohibition on voting in executive session in § 30-4-70(b).

Third, the Commission's argument about *DomainsNewMedia.com* misses the point that balancing transparency and confidentiality was already baked into the FOIA from the very beginning. See *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E.2d 219, 221 (1991) (FOIA "is an attempt to meet the demand for open government while preserving workable confidentiality in governmental decisionmaking.").

Importantly, *DomainsNewMedia.com* recognizes that once a governmental entity is classified as "a public body," it "trigger[s] the full panoply of FOIA requirements." 423 S.C. at 295. This is quite different from the Commission's argument that it can be a "public body" for some FOIA purposes, but not others. *Cf. Hodges,* 341 S.C. at 92 ("Rainey argue[d] that Santee Cooper should be considered a state agency for some purposes and not for others … Rainey cannot choose which statutes will classify Santee Cooper as a state agency based upon how advantageous that classification will be to him.") Just so. It is indisputable that the Commission is a "public body" subject to FOIA, and it cannot be one for some FOIA purposes and not others.

Plaintiff is entitled to summary judgment on this claim.

II. <u>The Court has jurisdiction and the Commission lacks statutory authority to decide the specific issues raised in the Complaint.</u>

According to the Commission, a Commission Panel has "exclusive jurisdiction" to decide whether Commission staff violated various statutes outside of the Ethics Act and South Carolina constitutional provisions in the investigation of Plaintiff. In sum and substance, this is a contention that seeks to confer the jurisdiction of South Carolina's unified court system upon the executive branch of government in excess of its statutory authority. The Commission has it backwards. This Court has subject matter jurisdiction over the claims, but the Commission does not does not have statutory authority to decide these claims. Therefore, exhaustion of administrative remedies is clearly inapplicable.

In summary, Plaintiff's (1) Count Two asks whether Commission staff improperly issued subpoenas in excess of its powers proscribed by the Legislature in its enabling legislation and in violation of the Uniform Interstate Depositions and Discovery Act, S.C. Code Ann. §§ 15-47-100, *et. seq*.. (UIDDA)[6]; (2) Count Three asks whether the subpoenas for bank records violated Plaintiff's privacy rights under the Fourth Amendment to the U.S. Constitution and S.C. Const. art. I, § 10; and (3) Count Four asks whether issuing the subpoenas without notice to Plaintiff violated her due process rights under S.C. Const. art. I, § 22. *See also* Pl.'s Mot. for Partial. Summ. J., at 15-16.

A. The Court has subject matter jurisdiction over this matter.

"Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." *Gantt v. Selph*, 423 S.C. 333, 337, 814 S.E.2d 523, 525 (2018) (cleaned up). For courts and administrative agencies alike, "subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question." *Forman v. S.C. Dep't of Lab.*, 419 S.C. 64, 74, 796 S.E.2d 138, 143 (Ct. App. 2016). The issues in the Complaint center on whether a state agency misapprehended the scope of its own subpoena powers in violation of several state statutes and the state and federal constitution. It is indisputable that these issues reflect "the type of case in question" that the Court "has the authority to hear," *Forman v.* 419 S.C. at 74, and it should quickly dispense with any argument to the contrary.[7] Moreover, the issues in the Complaint involve pure issues of law that the Court,

[6] *See* S.C. Code Ann. § 15-47-120(A) ("To request issuance of a subpoena under this chapter, a party must submit a foreign subpoena to the clerk of court of the county in which discovery is sought to be conducted in this State.").

[7] *See also Ward v. State,* 343 S.C. 14, 17, 538 S.E.2d 245, 246 (2000) ("[I]f there are exceptions to the exhaustion requirement, as discussed further herein, the issue cannot be one of subject matter jurisdiction.") (internal citation omitted).

as the judicial branch of government, has the authority to hear. *See* Pl.'s Mot. for Partial. Summ. J., at. 16-18.[8]

Additionally, the fact that the Commission lacks the statutory authority to enforce a subpoena without the court's assistance affirms the fact that the court system has the authority to hear a legal challenge to the Commission's issuance of a subpeona. See S.C. Code Ann. § 8-13-320(10)(f) (The commission may administer oaths and affirmation for the testimony of witnesses and issue subpoenas by approval of the chairman, *subject to judicial enforcement*, and issue subpoenas for the procurement of witnesses and materials including books, papers, records, documents, or other tangible objects relevant to the agency's investigation by approval of the chairman, *subject to judicial enforcement*.") (emphasis added).

B. The Commission does not have statutory authority to hear these matters.

In stark contrast to a court which has broad powers to hear cases involving challenges to an agency's reliance on state laws, the Commission is a creature of statute and agency of the executive branch whose powers derive from and are limited by statute. *See South Carolina Tax Comm'n. v. South Carolina Tax Bd. of Review*, 299 S.E.2d 489,491-492 (1983). "Any action taken by [the Commission] outside of its statutory and regulatory authority is null and void." *Responsible Econ. Dev. v. S.C. Dep't of Health & Env't Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007) (internal citation omitted). The power to rule on the statutory and constitutional issues at hand could arise only through a statute directly granting such power directly to the Commission.

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[8] *See Brock v. Town of Mount Pleasant*, 415 S.C. 625, 628, 785 S.E.2d 198, 200 (2016) ("The interpretation of a statute is a question of law.") (internal citation omitted); *Gantt*, 423 S.C. at 338) ("The question of subject matter jurisdiction is a question of law."); *Segars-Andrews v. Jud. Merit Selection Comm'n*, 387 S.C. 109, 123, 691 S.E.2d 453, 461 (2010) ("It is the duty of this Court to interpret and declare the meaning of the constitution.") (internal citation omitted);

As relevant here, the Ethics Act provides that after a probable cause vote of the full Commission, it may order "a hearing before a panel of three commissioners … *to determine whether a violation of the chapter has occurred*." S.C. Code Ann. § 8-13-320(10(i) (emphasis added); *see also* § 8-13-320(10(j) (using same verbiage). The Commission is not statutorily authorized to hear or answer the question of whether the Commission staff, as part of its investigation prior to the probable cause hearing, violated the UIDDA, the Fourth Amendment to the U.S. Constitution (privacy), and the S.C. Constitution privacy and due process provisions. These claims have nothing to do with "whether a violation of the chapter [by Peets] has occurred." *Gantt v. Selph*, 423 S.C. at 340 (rejecting attempt to divest the court of jurisdiction and holding "there is no specific constitutional provision or statutory provision giving the Richland Election Board the exclusive authority—or any authority for that matter—to determine the qualifications of a candidate for election to the School Board."). Nor are the merits of ethics complaints material to resolution of the issues at hand.[9]

The Court should reject the Commission's arguments that a regulation purporting the enable the "Panel Chair [with] the authority to hear preliminary and interlocutory matters and take such other action as is necessary to conduct the hearing" enables a panel to hear the issues at hand. S.C. Code Ann. Regs. 52-713. Assuming *arguendo* that the regulation means what the

[9] At various points in its Motion, the Commission inappropriately injects the merits. Because the merits of the ethics complaints are not at issue, this discussion is inappropriate but the fact that this was raised only reinforces Plaintiff's prior arguments that the Commission is taking a hard and fast position on the merits and going through the administrative process would be futile. Also inappropriate and impertinent are the references in the Motion to criminal investigations, implying that the ethics complaints at issue fit into that category when they do not. *See Ex parte Harrell v. Att'y Gen. of State*, 409 S.C. 60, 65, 760 S.E.2d 808, 810 (2014), *abrogated by Pascoe v. Parks*, 415 S.C. 643, 785 S.E.2d 360 (2016) ("Jurisdiction over violations of the Ethics Act is civil in nature.").

Commission claims,[10] its authority is fixed by statute and cannot be expanded by any regulation. *See Soc'y of Pro. Journalists v. Sexton*, 283 S.C. 563, 567, 324 S.E.2d 313, 315 (1984) ("Although a regulation has the force of law, it must fall when it alters or adds to a statute.") (*citing Banks v. Batesburg Hauling Co.*, 202 S.C. 273, 24 S.E.2d 496 (1943)); *Adams Fruit Co. v. Barrett*, 494 U.S. 638, 650 (1990) ("[I]t is fundamental that an agency may not bootstrap itself into an area in which it has no jurisdiction.") (citations omitted).

Even apart from the enabling statute, the questions raised here require the exercise of judicial power which the Commission does not have and cannot exercise. Under S.C. Const. art. V, § 1, "all judicial power is "vested in [the] unified judicial system," and the Commission is an agency of the executive branch of government. S.C. Const. art. I, § 8 requires that the legislative, executive, and judicial "powers of the government" shall be forever distinct and separate, *i.e.*, no branch may exercise the power of another branch, and no person may exercise the power of more than one branch.[11] In sum, the Commission has no judicial powers to rule on these specific issues, and endeavoring to do so would exceed its statutory authority.

Conclusion

For the reasons stated above and in its Motion and Incorporated Memorandum in Support of Partial Summary Judgment, Plaintiff respectfully contends that it is entitled to summary judgment on (1) the FOIA claim; and (2) a declaration that the doctrine of exhaustion of administrative remedies does not apply to the remaining claims.

[10] Plaintiff submits that the serious constitutional and statutory claims raised here are not "preliminary and interlocutory matters."

[11] S.C. Const. art. I, § 8 states: "In the government of this State, the legislative, executive, and judicial powers of the government *shall be forever separate and distinct from each other*, **and** *no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other*." (Emphasis added).

Respectfully Submitted,

s/ Michael R. Burchstead

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STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets,	)	Case No. 2025-CP-32-00440
Plaintiff,	)	
v.	)	**DEFENDANTS' REPLY IN SUPPORT OF SUMMARY JUDGMENT**
South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,	)	
Defendants.	)	

Defendants South Carolina State Ethics Commission (the Commission) and Meghan Walker Dayson, in her official capacity as Executive Director of the Commission, submit this reply in support of their motion for summary judgment. For the reasons below, the Court should grant summary judgment for Defendants on Plaintiff Ann Peets's Freedom of Information Act (FOIA)[1] claim, dismiss the remaining claims without prejudice for failure to exhaust, and deny Plaintiff's cross-motion for summary judgment.

ARGUMENT

I. *Plaintiff's FOIA argument proves too much.*

The Commission did not violate FOIA by following the State Ethics Act's confidentiality strictures when it found in executive session that probable cause exists to believe Plaintiff violated the State Ethics Act. And Plaintiff cannot show otherwise.

For starters, Plaintiff's deliberation-versus-voting distinction is equal parts puzzling and revealing. Plaintiff disclaims any challenge to—and "takes no position on"—the Commission

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

deliberating on probable cause in executive session. Pl.'s Resp. in Opp. at 3 & n.4; *see also* Pl.'s Mot. for Summ. J. at 11 ("Peets only challenges the Commission *voting* on probable cause in executive session; she does not challenge the Commission *deliberating* on such matters in executive session."). She also declines to say which part of section 30-4-70(a) permits deliberating in executive session.[2] *See* Pl.'s Resp. in Opp. at 3 n.4.

But the reason she's ducking that part of the analysis is because none of its subsections apply. *See* S.C. Code Ann. § 30-4-70(a)(1)–(6). Rather, the State Ethics Act applies and permits—indeed requires—the Commission to deliberate *and vote* on probable cause in executive session. *See* S.C. Code Ann. § 8-13-320(10)(g); S.C. Code Ann. Regs. 52-704(A)(2). This is where Plaintiff's theory falls apart: If she admits the specific confidentiality provisions of the State Ethics Act overrule FOIA's general open meeting provisions to allow for executive session deliberations before a probable cause determination, then she is left holding the bag on why the same is not true for voting on a probable cause determination.

In fact, the State Ethics Act governs the whole process. *Cf. 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)). Plaintiff's cabined analysis simply cannot yield the contrary result she seeks. *See Senate ex rel. Leatherman v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (stating the Court "must read the statute so 'that no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous'" (quoting *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011))).

Still, Plaintiff contends "there is no reason to believe that the Commission's confidentiality obligations are in any way are [sic] impeded or compromised by its voting to find probable cause

[2] The Commission has not "invoked" that provision. *But see* Pl.'s Resp. in Opp. at 3 n.4.

in open session." Pl.'s Resp. in Opp. at 4. Yet if the Commission must comply with FOIA's open vote requirement before a probable cause determination, then it must violate the State Ethics Act's confidentiality requirement. That cannot be what the General Assembly intended. *See 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, the requirement that the merits hearing "must be open to the public," S.C. Code Ann. § 8-13-320(10)(j), reveals it is not. *See Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (stating "to express or include one thing implies the exclusion of another, or of the alternative").

To escape her analytical quandary, Plaintiff tries to distinguish *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 814 S.E.2d 513 (2018). The Commission understands the context in which our supreme court decided that case. But when another statute provides a "specific and comprehensive approach" to an issue FOIA does not cover, *DomainsNewMedia.com* recognizes the more specific statute can trump FOIA. *Id.* at 304, 814 S.E.2d at 518. That is all the Commission argues here. After all, as the supreme court has held, 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).

Although Plaintiff wants to whistle past *Rainey v. Haley*, it is directly on point. Because the State Ethics Act's "specific and comprehensive approach," *DomainsNewMedia.com*, 423 S.C. at 304, 814 S.E.2d at 518, to confidentiality of information related to ethics complaints controls, the Commission did not violate FOIA by voting in executive session to find probable cause on the ethics charges against Plaintiff.

II. Plaintiff mounts no serious challenge to exhaustion requirement.

Plaintiff seeks to invent a new exception to the exhaustion requirement. According to Plaintiff, whenever an individual raises a question of law in an administrative forum, he or she automatically has the right to go to circuit court first. In advancing this never-before-recognized exception, Plaintiff ignores the authorities Defendants have invoked in two rounds of briefing that doom her argument. She also overlooks that 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).

On her non-FOIA claims, Plaintiff frames the issues as whether the Commission exceeded its authority in issuing subpoenas and violated her privacy and due process rights in doing so. Pl.'s Resp. in Opp. at 6. These are precisely the issues courts have held are *not* excepted from the exhaustion requirement. *See Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 78–79, 902 S.E.2d 41, 49–50 (Ct. App. 2024) (finding exhaustion was required despite claims that the agency "acted outside of its authority"); *Ward v. State*, 343 S.C. 14, 18, 538 S.E.2d 245, 247 (2000) (stating "an agency . . . can still rule on whether a party's constitutional rights have been violated," so "merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling"). Plaintiff fails to address or wrestle with any of this adverse authority.

The Commission has the authority to consider the propriety of a subpoena issued in an ethics investigation. It can "conduct investigations, inquiries, and hearings" into ethics complaints. S.C. Code Ann. § 8-13-320(10). And it may "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 relating to ethics complaints in an ethics proceeding. *See* S.C. Code Ann. § 8-13-320(j) (stating hearing must be conducted in keeping 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 evidentiary issues relating to subpoenas, like the ones Plaintiff raises here. *See* S.C. Code Ann. Regs. 52-713(A); S.C. Code Ann. § 1-23-330.

Unconvinced, Plaintiff continues to generally cite *Gantt v. Selph*, 423 S.C. 333, 814 S.E.2d 523 (2018). Her reliance on *Gantt*, however, is misplaced. In *Gantt*, the plaintiff filed a declaratory judgment action solely on whether a candidate was qualified for election to school board. *Id.* at 339, 814 S.E.2d at 526. Our supreme court distinguished that claim from a challenge to voter registration, which was a matter exclusively left to the Richland County board of voter registration and elections by statute. *Id.* Here, unlike in *Gantt*, "exclusive authority [is] vested with" the Commission "by statute" to investigate, hear, and rule on the ethics complaints against Plaintiff, including any challenges she raises to subpoenas issued during the investigation. *See* S.C. Code Ann. § 8-13-320(10); *Rainey*, 404 S.C. at 323, 745 S.E.2d at 83.

Gantt recognizes as much: "In *Rainey*, . . . [w]e held the circuit court did not have subject matter jurisdiction in such a case" in part because "the General Assembly had adopted a comprehensive statutory scheme, the State Ethics Act, for regulating the behavior of elected officials." *Gantt*, 423 S.C. at 340, 814 S.E.2d at 527 (citing *Rainey*, 404 S.C. at 323, 745 S.E.2d at 83). The supreme court "concluded it was clear the General Assembly intended the respective Legislative Ethics Committees to have exclusive authority to hear allegations of ethics violations of its own members and staffs." *Id.* So too here. Because the State Ethics Act gives the Commission exclusive jurisdiction to investigate and hear ethics complaints—including issues that may be part and parcel of an ethics proceeding like those Plaintiff raises here *and* in her motion to dismiss pending at the Commission—Plaintiff's attack on the Commission's authority lacks merit.

Put simply, the General Assembly gave the Commission "the exclusive right to decide those issues subject only to an appeal for judicial review of [its] decisions," *Bennett v. S.C. Dep't of Corr.*, 305 S.C. 310, 313, 408 S.E.2d 230, 232 (1991). *See* S.C. Code Ann. § 8-13-320(9)(m).

CONCLUSION

For these reasons, as well as those raised before, the Court should grant summary judgment for Defendants on the FOIA claim, dismiss the remaining claims without prejudice for failure to exhaust, and deny Plaintiff's cross-motion for summary judgment.

Respectfully submitted,

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April 11, 2025

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	Civil Action No. 2025-CP-32-00440

Ann Peets,

Plaintiff,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,

Defendants.

PLAINTIFF'S REPLY IN FURTHER SUPPORT OF SUMMARY JUDGMENT

Plaintiff Ann Peets (Plaintiff), for the reasons below, and fully incorporating all arguments made in her Motion and Incorporated Memorandum in Support of Partial Summary Judgment, and her Response to Defendant's Motion, respectfully requests that the Court grant her summary judgment on her FOIA claim, declare that the probable cause finding is void as a result of the FOIA violation, and declare that the exhaustion of administrative remedies does not apply to the remaining claims.

Argument

I. **FOIA**

(1) The Commission is not in any way "hamstrung by" S.C. Code Ann. § 8-13-320(10)(g).[1] Its odd argument that "identifying the case by its number" would "reveal the

[1] *See* D's Response in Opp. to Mot. for Partial Summ. J., at 2.

existence of a complaint" and violate section (10)(g)[2] runs counter to the "rule of absurdity"[3] and common sense; identifying a case number in an open meeting and voting "yes" or "no" for probable cause reveals nothing to the public that any particular one of the tens of thousands of individuals under the Commission's purview is under investigation.[4]

(2) Nor, for reasons amply discussed in the Response Brief,[5] does *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 814 S.E.2d 513 (2018), support the Commission's position.

(3) S.C. Code Ann. § 8-13-320(10)(g) was designed to be a shield for respondents like Peets to protect them from unwarranted publicity during an investigation,[6] not a sword for the Commission to use against ethics respondents to allow it to secretly vote on their complaints.

(4) The Court should reject the Commission's attempts (on multiple fronts) to "read[] a conflict into the statutes where none exists." *Charleston Cnty. Assessor v. Univ. Ventures, LLC*, 427 S.C. 273, 285, 831 S.E.2d 412, 418 (2019). S.C. Code Ann. § 30-4-70(b) unequivocally prohibits what the Commission admits to doing: voting in executive session. *See, e.g.*, *Quality*

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[2] *See* D's Response in Opp. to Mot. for Partial. Summ. J., at 2-3.

[3] *See Strickland v. Richland Cnty. Legislative Delegation*, 440 S.C. 438, 447, 892 S.E.2d 288, 293 (2023) ("Courts must reject a statutory interpretation if it leads to an absurd result that could not possibly have been intended by the legislature or that defeats plain legislative intent.").

[4] This Court can take judicial notice that tens of thousands, if not more than 100,000, public servants are under the jurisdiction of the Commission. The Commission has jurisdiction over all "public officials, public members, and public employees," see S.C. Code Ann. § 8-13-320(9), including officials and employees at the state and local level, as well as candidates for office, lobbyists, etc. There are approximately 60,000 state employees alone. See https://careers.sc.gov/#:~:text=Join%20the%20nearly%2060%2C000%20state,life%20for%20all%20South%20Carolinians (accessed April, 10, 2025).

[5] *See* P's Response in Supp. of Mot. for Partial. Summ. J., at 3-5.

[6] *See Gaffney Ledger v. S.C. Ethics Comm'n*, 360 S.C. 107, 111, 600 S.E.2d 540, 542 (2004) ("Subsection 10(g) … controls a party's disclosure of an ethics matter.") (emphasis added).

Towing, Inc. v. City of Myrtle Beach, 345 S.C. 156, 167, 547 S.E.2d 862, 867 (2001). Whatever the Commission's view as to the most efficient or convenient manner of voting on probable cause determinations, it does not have "any discretion as to the recognition of or obedience to a statute. The agency must obey a law found upon the statute books until in a proper proceeding its constitutionality is judicially passed upon." *S.C. Tax Comm'n v. S.C. Tax Bd. of Rev.*, 278 S.C. 556, 560, 299 S.E.2d 489, 491–92 (1983). "[T]he exemptions from [the FOIA's] mandates are to be narrowly construed," *Burton v. York Cnty. Sheriff's Dep't*, 358 S.C. 339, 348, 594 S.E.2d 888, 893 (Ct. App. 2004), and the mere fact that the word "confidential" is included in § 8-13-320(10)(g) does not mean the Legislature made an exception to § 30-4-70(b).[7] "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

(5) The circumstances here are not functionally different from the Real Estate Commission (REC), which asked then-Attorney General Travis Medlock whether or how it

[7] Many administrative agencies hear quasi-judicial complaints and the operative statutes contain substantially similar confidentiality provisions. See, e.g., S.C. Code Ann. § 40-2-80(E) ("All proceedings related to the investigations and inquiries during the investigation process undertaken [by the South Carolina Board of Accountancy] pursuant to this chapter are confidential, unless the licensee or registrant who is the subject of the investigation or inquiry waives the confidentiality of the existence of the complaint."); § 40-33-190 ("No person connected with any complaint, investigation, or other proceeding before the [Nursing Board] … may mention the existence of the complaint, investigation, or other proceeding, disclose any information pertaining to the complaint, investigation, or other proceeding, or discuss any testimony or other evidence in the complaint, investigation, or proceeding, and then only to the extent necessary for the proper disposition of the complaint, investigation, or other proceeding."); § 40-47-114 ("A [Medical Board] review hearing and decision of an administrative hearing officer are confidential, unless an order automatically suspending or denying a license pending compliance and further order of the board has been issued, in which case the fact of suspension or denial of a license by the administrative hearing officer is public information under the Freedom of Information Act."). Plaintiff is unaware of any other agency that claims to be entitled to a "statutory confidentiality" exemption from FOIA.

could keep its quasi-judicial disciplinary deliberations and votes shielded from FOIA. In conclusion, AG Medlock stated:

> When the public is shut out of the public's business, it opens the way for misinformation and rule by a few people. Our advice is to put everything out in the open and give everybody a chance to know what is going on. The public eye is always better than the closed door.
>
> Therefore, it is our opinion that:
>
> 1. The [REC] is a public body subject to the requirements of the [FOIA].
>
> 2. In those instances in which the [REC] is operating as an appellate or quasi-judicial body, an open meeting should be held, with open deliberations, *and voting conducted in an open or public session.*
>
> 3. The permissive reasons for entering executive session are few and are narrowly drawn. If the [REC] is to hold a discussion that would fall within these limited reasons, the Commission may (but is not required to) convene in executive session. *Any action taken (i.e., a vote) must be taken in open session.*
>
> 4. The rule under the [FOIA] is openness, so that public business is conducted in public. Any doubt as to whether a meeting should be open to the public should be resolved in favor of openness.

1994 S.C. Op. Atty. Gen. No. 22, 1994 WL 136198 (emphasis added). The principles expressed by AG Medlock equally apply here. Making quasi-judicial decisions in no way exempts the Commission from voting in public. And even assuming *arguendo* probable cause *deliberations* were permitted in executive session under § 30-4-70(a), § 30-4-70(b) requires that *votes* on substantive decisions must be made in public. *See Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 616–17, 885 S.E.2d 406, 408 (Ct. App. 2023) ("Even if the Board had complied with the FOIA's specific purpose requirement when it retreated into executive session, it could not have taken any vote except to adjourn or resume its public session.").

(6) The Commission contends "the only applicable" analogous laws to this situation are the Rules of Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR,[8] in light of S.C. Code Ann. § 8-13-320(12) (providing "with respect to [Ethics Commission] complaints, investigations, and hearings the rights of due process as expressed in the Rules Governing the Practice of Law must be followed."). Plaintiff agrees the RLDE are relevant, but not to the FOIA issue because the Commission on Lawyer Conduct and the Office of Disciplinary Counsel are a part of the judicial branch of government and FOIA does not apply to the judicial branch.[9]

(7) Even so, Plaintiff did not receive the due process given to lawyers under the Rules of Lawyer Disciplinary Enforcement (RLDE), Rule 413, SCACR. RLDE Rule 14(c)(1) requires a "subpoena directed to a non-party shall be served on the non-party as provided in Rule 4(d) or (j) of the South Carolina Rules of Civil Procedure (SCRCP)," whereas the Commission in this investigation did not follow the SCRCP and argues it is not subject to these rules or any court rules at all. Had the SCRCP been followed, then Plaintiff would have received notice of the subpoenas, and a Court would have prevented subpoenas being emailed to out-of-state banks,[10] required at minimum compliance with the Uniform Interstate Depositions and Discovery Act,[11]

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[8] *See* D's Response in Opp. to Mot. for Partial. Summ. J., at 4.

[9] *See Washington Legal Found. v. U.S. Sent'g Comm'n*, 17 F.3d 1446, 1449 (D.C. Cir. 1994) ("Over the years, virtually every case interpreting the APA exemption for 'the courts of the United States' has held that the exemption applies to the entire judicial branch—at least to entities within the judicial branch that perform functions that would otherwise be performed by courts."); *United States v. Mitchell*, No. 03-6938, 2003 WL 22999456, at *1 (4th Cir. Dec. 23, 2003) (holding federal courts do not fall within the definition of "agency" under FOIA); Guidetti v. Donahue, No. CA 6:11-1249-HMH-KFM, 2012 WL 4051188, at *1 (D.S.C. Sept. 13, 2012), aff'd, 507 F. App'x 298 (4th Cir. 2013) (finding the same).

[10] "As a rule, the South Carolina subpoena served on a witness residing in a foreign state will be ineffective even if the South Carolina subpoena form is filled out perfectly and timely served. The problem is that the jurisdiction of South Carolina's courts is geographically limited by our state's borders." Professor John P. Freeman, Out-of-State Subpoenas, S.C. Lawyer, JULY/AUGUST 2002, at p. 9.

[11] S.C. Code Ann. §§ 15-47-100, *et. seq.*

and would have never permitted a fishing expedition through 10 years of Plaintiff's personal bank records. While this is just a single example of the differences between the RLDE and how the Commission conducted the investigation at issue, it is likely that following RLDE Rule 14(c)(1) would have avoided the need for this lawsuit

II. <u>**Subject matter jurisdiction/statutory authority**</u>

(8) As previously argued, as matter of statutory interpretation, the Commission lacks statutory authority to hear the remaining claims because its authority is limited "to determin[ing] whether a violation of the [Ethics Act] has occurred." S.C. Code Ann. § 8-13-320(10)(i).[12] The claims at issue here are not within the legislative authorization. *See Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 121, 678 S.E.2d 430, 433 (2009) ("While DHEC has exclusive subject matter jurisdiction to determine whether a violation has occurred, it does not have subject matter jurisdiction to hear civil claims for damages resulting from those violations.") (internal footnote omitted); *Forman v. S.C. Dep't of Lab.*, 419 S.C. 64, 74, 796 S.E.2d 138, 143 (Ct. App. 2016) ("A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question. This same principle applies to administrative agencies.") (cleaned up).

(9) Even assuming *arguendo* the Commission did have authority to hear some portion of the claims (it does not), nothing in the Response presents a serious argument that the Court lacks subject matter jurisdiction over the claims. On every occasion analogous to the one here, courts have not hesitated to exercise their jurisdiction over matters related to the Ethics Act and the Ethics Commission:

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[12] *See* P's Response in Supp. Mot. for Partial. Summ. J., at 7-9.

a. In *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 685 S.E.2d 600, *opinion clarified*, 386 S.C. 274, 688 S.E.2d 120 (2009), Governor Sanford filed an original jurisdiction action while an ethics complaint was pending against him, principally related to whether he had waived confidentiality under § 8-13-320(10)(g) (i.e., not the matters of non-Ethics Act statutory and constitutional interpretation at issue here). The Court explained, "[b]ecause the instant case has been brought in the Court's original jurisdiction, it is within the province of this Court to make findings of fact and conclusions of law regarding the issues before us." *Id.* at 497.

b. In *Ford v. State Ethics Comm'n*,, also filed during the pendency of an ethics complaint, a State Senator argued the Commission had no jurisdiction over him, and the Court agreed and determined the jurisdictional issue without requiring the determination to be made by the agency in the first instance. 344 S.C. 642, 545 S.E.2d 821 (2001).

c. In *Anderson v. S.C. Election Commission*, the Court accepted jurisdiction to hear a declaratory judgment regarding statutory interpretation of a provision of the Ethics Act (§ 8–13–1356), holding "we are not asked to judge a disputed legislative election but rather to interpret a statute. The construction of a statute is a judicial function and responsibility." 397 S.C. 551, 555, 725 S.E.2d 704, 706.

d. In *S.C. Coastal Council v. S.C. State Ethics Comm'n*, the Court "exercise[d] its original jurisdiction in this matter to determine whether S.C. Code Ann. § 8–13–450 (1986) of the State Ethics Law applies to the membership of Coastal Council." 306 S.C. 41, 42, 410 S.E.2d 245, 246 (1991).

e. In *Legacy All., Inc. v. Condon*, the U.S. District Court for the District of South Carolina took jurisdiction over plaintiff's pre-enforcement challenge, declaring "S.C. Code Ann. §§ 8–13–1322(A) and 8–13–1332(3) [of the Ethics Act] unconstitutional to the extent they are applied to a not-for-profit organization campaigning as to a ballot issue." 76 F. Supp. 2d 674, 680 (D.S.C. 1999) (Anderson, J.).

f. In *S.C. Citizens for Life, Inc. v. Krawcheck*, the Fourth Circuit reversed and remanded a district court decision dismissing a pre-enforcement constitutional challenge to several Ethics Act provisions on ripeness grounds and holding that "the issues in this First Amendment challenge are fit for judicial decision at this time. They are purely legal, and the South Carolina Ethics Act is final." 301 F. App'x 218, 221 (4th Cir. 2008).[13]

g. In *S. Carolinians for Responsible Gov't v. Krawcheck*, the court decided a pre-enforcement constitutional challenge alleging that "the Commission's conduct and

[13] The decision below was decided in part because "[t]here has been no administrative action by the Commission." *S.C. Citizens for Life, Inc. v. Krawcheck*, No. 4:06-CV-2773-TLW, 2007 WL 9752772, at *5 (D.S.C. Sept. 27, 2007), rev'd and remanded, 301 F. App'x 218 (4th Cir. 2008)

> application of the South Carolina Ethics Code violated SCRG's rights secured by the First and Fourteenth Amendments." CV 3:06-01640-MJP, 2009 WL 10713347, at *1 (D.S.C. Mar. 25, 2009) (Perry, J.). In that case, the Court reversed on reconsideration an earlier decision dismissing for failure to exhaust administrative remedies, because "there are no factual disputes for resolution through an administrative process. All that remains is a pure question of constitutional law which, by state law, the Commission is powerless to decide." CV 3:06-01640-MJP, 2009 WL 10713347, at *1, *7 (D.S.C. Mar. 25, 2009) (Perry, J.) *(citing Video Gaming Consultants, Inc. v. S.C. Dep't of Revenue*, 342 S.C. 34, 38, 535 S.E.2d 642, 644 (2000)).

(10) The Commission's citation to *Rainey v. Haley*, 404 S.C. 320, 324, 745 S.E.2d 81, 83 (2013), is misplaced. *Rainey* involved the especially unique situation where the plaintiff attempted to get a judicial declaration that then-Governor criminally violated the Ethics Act when she was a House member. The Court determined that it lacked jurisdiction over Rainey's ethics complaint against Governor Haley, not based on administrative exhaustion, but on separation of powers grounds because the complaint was required to be filed with the House Ethics Committee *and* because the exercise of jurisdiction would interfere with the House's constitutional authority to discipline its own members. 404 S.C. at 327. In this case, the Plaintiff is not initiating or pursuing an ethics complaint against anyone, but requesting the Court to decide pure issues of law about the Commission's investigative conduct that are ancillary to her ethics complaint (and moreover, concerning issues that the Commission cannot adjudicate).

(11) Plaintiff submits that she presents "a here-and-now injury" akin to one brought by the plaintiffs in *Axon Enter., Inc. v. Fed. Trade Comm'n*, decided under the federal APA:

> The harm Axon and Cochran allege is "being subjected" to "unconstitutional agency authority"—a "proceeding by an unaccountable ALJ." … That harm may sound a bit abstract; but this Court has made clear that it is "a here-and-now injury." … And—here is the rub—it is impossible to remedy once the proceeding is over, which is when appellate review kicks in. … The claim, again, is about subjection to an illegitimate proceeding, led by an illegitimate decisionmaker. And as to that grievance, the court of appeals can do nothing: A proceeding that has already happened cannot be undone. Judicial review of Axon's (and Cochran's) structural constitutional claims would come too late to be meaningful.

> …
> Axon and Cochran will lose their rights not to undergo the complained-of agency proceedings if they cannot assert those rights until the proceedings are over.

598 U.S. 175, 191–92 (2023). So too here. For nearly a year, Plaintiff's personal bank records have been in the possession of a state agency which had no authority to seize them, and which lawlessly found probable cause in secret. This is an ongoing, continuous harm, which cannot adequately or fully be remedied at the end of the administrative process.

Conclusion

Despite that the very reason the Ethics Commission exists is to bring accountability and transparency to public officials and employees, through its position in this lawsuit, the Commission attempts to evade its own accountability to the courts or anyone else.

The Court should reject this, affirm its jurisdiction, and grant Plaintiff summary judgment on her FOIA claim, declare that the probable cause finding is void, and declare that the exhaustion of administrative remedies does not apply to the remaining claims.

Respectfully Submitted,

s/ Michael R. Burchstead

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April 11, 2025

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	Civil Action No. 2025-CP-32-00440

Ann Peets,

Plaintiff,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,

Defendants.

MOTION TO ALTER OR AMEND

PLEASE TAKE NOTICE THAT Plaintiff Ann Peets ("Plaintiff") hereby moves pursuant to Rule 59 of the South Carolina Rules of Civil Procedure ("SCRCP") for an order altering, amending, or reconsidering the Court's May 29, 2025 Order denying the Plaintiff's Motion for Summary Judgment and granting Defendants' South Carolina State Ethics Commission ("Commission") and Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission (collectively, "Defendants") Motion for Summary Judgment.

This Motion is made on the grounds set forth below. Plaintiff respectfully asserts that the Court has misapprehended or overlooked controlling appellate court precedent and legal principles. Furthermore, issues raised to the Court have not been ruled upon, and Plaintiff therefore requests rulings thereon to preserve such issues. *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004).

DISCUSSION

I. The Order misapprehends controlling appellate court precedent, which has never recognized an exception to § 30-4-70(b).

Respectfully, the Order misapprehends or overlooks controlling appellate court precedent and an unbroken line of authority, which holds that the FOIA strictly prohibits public bodies from voting in executive session. *See* S.C. Code Ann. § 30-4-60 ("Every meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter."); § 30-4-70(b) ("No action may be taken in executive session except to (a) adjourn or (b) return to public session."). Time and time again, and without exception, courts have made this principle perfectly clear:

(1) In *Quality Towing, Inc. v. City of Myrtle Beach*, the Supreme Court considered an allegation that "City Council took formal action in [executive] session." 345 S.C. 156, 163, 547 S.E.2d 862, 866 (2001). Although the Court held FOIA was not violated because Council took no "formal action," it also made clear that "FOIA prohibits any formal action to be taken in an executive session." *Id.* at 165.

(2) In *Bus. License Opposition Comm. v. Sumter Cnty.*, the Supreme Court reviewed a decision of the Master in Equity invalidating an "amendment to [a county] ordinance [because it] was adopted, not at the public meeting, but, illegally, at the closed meeting." 311 S.C. 24, 27, 426 S.E.2d 745, 747 (1992). The Court "agree[d] with the Master that the evidence of record demonstrates that the amendment to the ordinance was illegally adopted at the closed meeting …." *Id.* at 28.

(3) In *Fowler v. Beasley*, the Supreme Court held, "[s]o long as the vote is taken at an open public meeting, and the public is able to glean the results and how each member voted, there is no FOIA violation." 322 S.C. 463, 469, 472 S.E.2d 630, 634 (1996).[1]

(4) In *Davis v. S.C. Educ. Credit for Exceptional Needs Child. Fund,* the Court of Appeals "categorically disagree[d] with the circuit court's conclusion that the meetings of a public body can be closed meetings if aspects of the discussion at those meetings—even all aspects—are exempt from the FOIA. That is not what FOIA says." 441 S.C. 187, 206, 893 S.E.2d 330 (Ct. App. 2023).

(5) In *Miramonti v. Richland Cnty. Sch. Dist. One*, the Court of Appeals held that a school board violated the specific purpose requirement in § 30-4-70(a) because the announced specific purpose of the executive session was improper." 438 S.C. 612, 616, 885 S.E.2d 406, 408 (Ct. App. 2023). The Court then held, "[e]ven if the Board had complied with the FOIA's specific purpose requirement when it retreated into executive session, it could not have taken any vote except to adjourn or resume its public session" *Id.* at 616–17.

(6) In *Brock v. Town of Mount Pleasant*, the Court of Appeals reiterated that in 1987, FOIA was amended to specifically prohibit voting in executive session, even if the vote was ratified later. 411 S.C. 106, 767 S.E.2d 203 (Ct. App. 2014), *aff'd as modified*, 415 S.C. 625, 785 S.E.2d 198 (2016) (*citing Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 459 S.E.2d 876 (Ct. App. 1995), *aff'd,* 324 S.C. 239, 478 S.E.2d 836 (1996)).

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[1] This did not happen here. Not only was the probable cause vote admittedly taken in closed session, but Plaintiff to this day has no idea whether 6 or 7 Commission members voted to find probable cause. Moreover, it is on nothing more than the Commission's say-so that a probable cause vote took place at all.

In sum, no South Carolina appellate court decision has ever held that a public body subject to FOIA is not required to comply with § 30-4-70(b).[2] Every case that has addressed the issue has reiterated that public bodies are subject to the "full panoply of FOIA requirements." *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 305; *Davis*, 441 S.C. at 201–02. *DomainsNewMedia.com* is no exception. The Supreme Court in *DomainsNewMedia.com*, never considered the present question of whether a "public body" must comply with § 30-4-70(b). Instead, the Court addressed the very different question of whether the legislature intended that a private entity receiving a public accommodation tax funds is a public body at all. *See id.* 300–01.

If the Order stands, the Ethics Commission will become the only public body in the State to exempt its activities from FOIA without specific permission from the Legislature. If the Order stands, it blesses the Commission's evasion of the accountability and transparency of FOIA by mere virtue of a vague "confidentiality" provision in a different part of the code from FOIA that says nothing about voting, executive sessions, or any legislative intent of exempting from FOIA. This turns *DomainsNewMedia.com* on its head, and would render § 30-4-70(b) meaningless.

II. The Order misapprehends or misapplies the rule of statutory construction regarding a specific statute controlling over a general statute.

The Order misapprehends that the principle of the specific over the general only applies when the statutes "deal with the identical issue in a more specific and definite manner." *Denman*

[2] Defendants admit that the Commission is a "public body" for the purposes of the FOIA, and also that it voted on probable cause for Plaintiff's ethics complaints in executive session When these matters are undisputed, Plaintiff is unaware of any prior litigant even attempting to argue that it can vote in executive session under the post-1987 version of the South Carolina FOIA.

v. City of Columbia, 387 S.C. 131, 138, 691 S.E.2d 465, 468-69 (2010). That is not the case with § 30-4-70(b) and § 8-13-320(10)(g).

The Ethics Act and the FOIA do not deal with the identical issue, just as § 30-4-70(b) and § 8-13-320(10)(g) do not. The purpose of FOIA is explained in § 30-4-15:

> The General Assembly finds that it is vital in a democratic society that public business be performed in an open and public manner so that citizens shall be advised of the performance of public officials and of the decisions that are reached in public activity and in the formulation of public policy. Toward this end, provisions of this chapter must be construed so as to make it possible for citizens, or their representatives, to learn and report fully the activities of their public officials at a minimum cost or delay to the persons seeking access to public documents or meetings.

"[T]he underlying purpose of the FOIA is to protect the citizens from “secret government activity.” *See* D. Garrison "Gary" Hill*, *Recent Changes to the South Carolina Freedom of Information Act*, S.C. Law., JUNE 1999, at 19, 24 (citing *Bellamy v. Brown*, 305 S.C. 291, 295, 408 S.E. 2d 219 (1991)).

The Commission sets forth the purpose of the Ethics Act in its Mission Statement, which reads:

> The State Ethics Commission is an agency of state government responsible for the enforcement of the Ethics Reform Act of 1991 to restore public trust in government. The mission of the State Ethics Commission is to carry out this mandate by ensuring compliance with the state's laws on financial disclosure, lobbyist/lobbyist's principal disclosure and campaign disclosure; regulating lobbyists and lobbying organizations; issuing advisory opinions interpreting the statute; educating public officeholders and the public on the requirements of the state's ethics laws; conducting criminal and administrative investigations of violations of the state's ethics laws; and prosecuting violators either administratively or criminally.

https://ethics.sc.gov/about-us (visited June 6, 2025). *See also,* Preamble to 1991-1992 S.C. Acts and Joint Resolutions, Act 248; https://www.scstatehouse.gov/sess109_1991-1992/bills/3743.htm (accessed June 6, 2025).

While both FOIA and the Ethics Act involve the protection of the public, one protects from secret government activity and the other operates to maintain the integrity of the political and governmental process. The acts do not deal with the identical issues. S.C. Code Ann. § 30-4-70(b) protects South Carolina citizens from a governmental body taking a "formal" action in secret. Section 8-13-320(10)(g) protects the name and investigatory status of an individual subject to regulation by the Commission from disclosure, an individual protection in no way related to the public protection from secret government activity. In fact, as § 8-13-320(g) has been interpreted in the Order, it enhances the ability of the Commission to act in secret.

The logical extension of the Court's interpretation of § 8-13-320(10(g) would be that when any agency's enabling legislation requires confidentiality in an agency action, the agency can claim its confidentiality requirements exempt it from FOIA. That is and was not the legislative purpose when the General Assembly enacted its comprehensive scheme under FOIA to regulate access to public records and actions.

III. The Order misapplies the "specific over general" rule of construction because it fails to harmonize the two statutes or explain why they cannot be reconciled.

The Order also misapprehends that the "specific over general" rule of construction only "comes into play when there is a conflict between the statutes." *Porter v. S.C. Pub. Serv. Comm'n,* 327 S.C. 220, 224, 489 S.E.2d 467, 469 (1997). It must "not [be] possible to harmonize two statutes" *Id.* (citing *Williams v. Town of Hilton Head,* 311 S.C. 417, 429 S.E.2d 802 (1993)). Here, § 30-4-70(b) and § 8-13-320(10)(g) can clearly be reconciled.

In this case, Plaintiff, *inter alia,* (1) urged the Court of the need to harmonize the two statutes; and (2) gave a real-world example of how another agency (the Medical Board) harmonizes confidentiality provisions with FOIA by deliberating the matters in executive session, then voting using the complaint number. *See* Pl.'s Mot. For Partial Summ. J, at 11-12.

The Order makes no attempt to harmonize § 30-4-70(b) and § 8-13-320(10)(g). In the first full paragraph on page 6 of the Order, the Court "finds it legally impossible for the Commission to obey the confidentiality requirements of the State Ethics Act, while also complying with FOIA," Order, p. 6. This accepts the Commission's conclusory arguments on legal impossibility and does not engage in why and how it is impossible. Similarly, on page 8, the Order states that complying with § 30-4-70(b) would force the Commission to "take a straw poll in executive session," but it is unclear why it cannot comply with the law by discussing complaint matters in executive session without taking a straw poll, then voting in public. Then on page 9, footnote 9, the Order "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."

Respectfully, the Order errs in failing to harmonize the two statutes and ignoring Plaintiff's real world example of how the Medical Board (and, no doubt, other public bodies) manage to harmonize FOIA and similar confidentiality statutes. Contrary to the Order, "[t]he specific statute at issue here is [not] in the State Ethics Act," or at least not the Ethics Act alone. It is § 30-4-70(b). The Commission is subject to § 30-4-70(b) and so is the Medical Board. The Medical Board manages to comply with § 30-4-70(b), and also the confidentiality provisions of § 40-47-110(D)(1)-(2), § 40-47-114(C), and § 40-47-116(A) & (B). The question here is how the Ethics Act can be harmonized with 30-4-70(b). The question cannot be avoided by ignoring 30-4-70(b). Plaintiff requests a specific ruling on this issue.

IV. The Order improperly rules that the Commission was not required to comply with § 30-4-70(a), even though that issue was never raised.

The last sentence of the first full paragraph on page seven (7) of the Order improperly accepts the Commission's argument that it is exempt from S.C. Code Ann § 30-4-70(a), even though Plaintiff has repeatedly stated that it did not allege the Commission violated § 30-4-70(a). *See* Am. Complaint; Pl.'s Mot. For Partial Summ. J, p. 3, p. 3, fn 4 (recognizing that "public bodies are permitted to *deliberate* in executive session if 30-4-70(a) is properly invoked" and stating in a footnote that "Plaintiff did not challenge and thus takes no position on whether the Commission properly invoked [ ] § 30-4-70(a) to deliberate on probable cause in the underlying ethics complaints."). The issue of the Commission's compliance with § 30-4-70(a) was not properly at issue and should not have been included in the Order.

To the extent Court believes the Commission's compliance with § 30-4-70(a) was made at issue, Plaintiff respectfully contends that the Order erred in several respects:

(1) The footnote at the bottom of page seven (7) is incorrect that "Plaintiff declined to take a position on which part of FOIA would allow" deliberation in executive session. At the hearing, the undersigned counsel reaffirmed that § 30-4-70(a) was not a part of the Amended Complaint, but stated these types of discussions most likely fit under § 30-4-70(a)(1).

(2) The Commission's probable cause determinations unequivocally fall under S.C. Code Ann. § 30-4-70(a)(1). § 30-4-70(a)(1) provides in relevant part that

> *A public body may hold a meeting closed to the public for* one or more of the following reasons … *Discussion of … discipline … of … a person regulated by a public body …*; however, if an adversary hearing involving the employee or client is held, the employee or client has the right to demand that the hearing be conducted publicly ….

It is indisputable that (1) the Commission's probable cause determination concerns "discipline." *See* § 8-13-320(10)(k) ("The commission panel, where appropriate, shall recommend disciplinary or administrative action ….); § 8-13-1510 (setting forth potential civil and criminal penalties for a violation of the Ethics Act); and (2) Plaintiff is "a person regulated by" the Commission. See Order at p. 4-5; D.'s Mot for Summ. J., at p. 6; D.'s Response, at p. 5; D.'s Reply, at p. 3 (all pointing out that "the General Assembly has 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*.") (internal citations omitted) (emphasis added).

S.C. Code Ann. § 30-4-70(a)(1) also must be read together with § 30-4-70(b), which shows how the FOIA specifically protects confidentiality in the disciplinary context:

> Before going into executive session the public agency shall vote in public on the question and when the vote is favorable, the presiding officer shall announce the specific purpose of the executive session. As used in this subsection, "specific purpose" means a description of the matter to be discussed as identified in items (1) through (5) of subsection (a) of this section. However, *when the executive session is held pursuant to Sections 30-4-70(a)(1) or 30-4-70(a)(5), the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated.*

§ 30-4-70(b) (emphasis added).

Thus, the Order is incorrect when it posits that a "conundrum" would be created by the Commission "'deliberat[ing]' about probable cause matters in private but [ ] vot[ing] on whether probable cause exists in public by 'identifying the case by number.'" Order p. 7. The General Assembly recognized that many public bodies handle disciplinary matters, and thus in § 30-4-70(a)(1) allowed discussions of these matters to be in private. But it made no exemption for voting in executive session. Instead, it expressly provided that "the identity of the individual or entity being discussed is not required to be disclosed to satisfy the requirement that the specific purpose of the executive session be stated." § 30-4-70(b) This reflects the Legislature's "attempt to meet the demand for open government while preserving workable confidentiality in governmental decisionmaking." *Bellamy*, 305 S.C. at 295.

V. The Order misapprehends that Plaintiff did not question the Commission's jurisdiction.

On page 15, the Order erroneously concludes that "[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." Footnote 12 to this conclusion states: "Because Plaintiff does not question the Commission's jurisdiction to consider these issues, the other cases she cites for that proposition are inapplicable. (citations omitted)." This is an incorrect statement. One of the principal, most important, and unwavering arguments made by Plaintiff in this litigation is that the Commission does not have the jurisdiction or statutory authority to decide the specific issues raised in the Amended Complaint. The record is replete with examples, but Plaintiff points to the following arguments:

(1) "Exhaustion is also inapplicable because the Commission lacks the statutory authorization to rule on the specific issues raised in this declaratory action." Pl.'s Mot. For Partial Summ. J, at. 19-20;

(2) "The Court has jurisdiction and the Commission lacks statutory authority to decide the specific issues raised in the Complaint. … This Court has subject matter jurisdiction over the claims, but the Commission does not does not (sic) have statutory authority to decide these claims." Pl.'s Mot. For Partial Summ. J, at. 7-8.

(3) An entire section of the Reply concerned "Subject matter jurisdiction/statutory authority" *See* Pl's Reply, 6-9.

Obviously, Plaintiff's argument that the Commission does not have the statutory authority to hear allegations regarding the application of the UIDDA or the constitutionality of the delegation of subpoena power to the Commission is a challenge to the commission's "jurisdiction."

VI. The Order misapprehends the limited nature of the Commission's statutory jurisdiction.

In 2003, the Commission asked the Attorney General "does the State Ethics Commission have the authority to find a state statute, or any part thereof, unconstitutional" 2003 WL 21790884, at *1 (S.C.A.G. June 24, 2003) (cleaned up). In a comprehensive opinion to then-Ethics Commission Executive Director Herbert R. Hayden, the Attorney General answered that the Commission only had a limited statutory authority. Analyzing the issue, the Attorney General first cited to the holding in *S.C. Tax Comm. v. S.C. Tax Bd. of Review*, 278 S.C. 556, 559, 299 S.E.2d 489, 491 (1983), that "[a]n administrative agency has only such powers as have been conferred upon it by law and must act within the granted authority for an authorized purpose. It may not validly act in excess of its powers nor has it any discretion as to the recognition of or obedience to a statute." Id., at *1. The Attorney General also found "it is well settled that administrative agencies are not courts and may not exercise purely judicial powers of a court." *Id.*, at *2. On this issue, the Attorney General concluded that "an administrative agency, such as the State Ethics Commission, may not declare a statute enacted by the General Assembly to be unconstitutional. Such a ruling by a board or agency which is part of the executive branch, contravenes Art. I, § 8 of the Constitution which mandates a separation of powers among the legislative, executive, and judicial branches of government." *Id.*, at *3.

Thus, for reasons stated in the Attorney General opinion, which closely align with Plaintiff's arguments, the Order misapprehends the nature of the Commission's statutory authority to hear these issues and should be amended accordingly.

VII. The Order mischaracterizes Plaintiff's argument to say exhaustion is not required because "legal issues" raised and erred in not applying the *ultra vires* exception in *Allstate*

On page 12, the Order erroneously claims, "[a]ccording to Plaintiff, exhaustion was not required because she is raising legal issues." As is clear from Plaintiff's filings with the Court, the legal issues Plaintiff raised and argued on the non-FOIA claims are *all related to her allegation that the Commission exceeded its statutory authority in issuing and obtaining Plaintiff's personal bank records through extraterritorial subpoenas.* "As a creature of statutes, regulatory bodies like

DHEC have only the authority granted them by the legislature. Any action taken by DHEC outside of its statutory and regulatory authority is null and void." *See Responsible Econ. Dev. v. S.C. Dep't of Health & Env't Control*, 371 S.C. 547, 553, 641 S.E.2d 425, 428 (2007) (internal citations omitted). Just so with the Commission. Plaintiff has argued that Defendants' issuance of extraterritorial subpoenas exceed the Commission's statutory authority or, alternatively, the statute Defendants relied on to issue those subpoenas is unconstitutional. (*See* Am. Complaint, ¶¶ 8, 30, 35, 40, and 49; Pl's Mot. for Partial Summ. J, at 17, 18 and 19; Pl's Response, 6-8).

South Carolina has long recognized an exception to the exhaustion of remedies doctrine applies when an agency acts outside of its statutory authority.[3] In *Ex parte Allstate Ins. Co.*, the Supreme Court held that exhaustion was excused for an allegation that

> [T]he Insurance Commissioner was without authority to proceed with the investigation into purely political activities of the companies and their agents. *The issue was solely one of law as to the statutory authority or jurisdiction* of the Commissioner. *The facts in regard to that issue were undisputed*. Under the undisputed facts, the Commissioner was obviously without such authority. These circumstances afforded a sound basis for the action of the lower court in excusing the failure of the companies to first seek relief in the administrative proceedings ….

248 S.C. 550, 567–68, 151 S.E.2d 849, 855 (1966). As in *Allstate*, Plaintiff here alleges that an administrative body (here the Ethics Commission) has exceeded its authority or jurisdiction, and there were no issues of fact. South Carolina law has long recognized an "established exception" to exhaustion for *ultra vires* conduct based on the holding in *Allstate. See South Carolina Administrative Practice and Procedure* 93, 94 (Randolph R. Lowell 3rd ed. 2013) ("*Allstate* establishes that exhaustion will be excused when the plaintiff claims that agency action is plainly *ultra vires,* at least if that claim does not involve any disputed facts."); *see also Brown*

[3] This is sometimes referred to as the *ultra vires* exception.

v. James, 389 S.C. 41, 54–55, 697 S.E.2d 604, 611–12 (Ct. App. 2010), ("exception to the exhaustion requirement is recognized when an agency has acted outside of its authority.")

In the context of mischaracterizing Plaintiff's arguments to be about "legal issues," the Order makes several other unsupported claims:

(1) On page 12, the Order indicates that Plaintiff cited *Hyde v. S.C. Dep't of Mental Health*, 314 S.C. 207, 208, 442 S.E.2d 582, 583 (1994) and *Meredith v. Elliott*, 247 S.C. 335, 346, 147 S.E.2d 244 (1966) for this "legal issues" principle. This is incorrect. *Hyde* and *Meredith* were cited for the proposition that South Carolina's exhaustion cases require a disputed question of fact, which is not the situation here. Pl's Mot. for Partial Summ. J., 16-17.

(2) The statement on page 12 of the Order that "[a]gencies handle legal questions every day," is conclusory and does not respond to Plaintiff's argument that the Commission lacked statutory authority to decide the particular claims at issue here. The Commission is authorized "to determine whether a violation of the chapter [i.e., the Ethics Act] has occurred." S.C. Code Ann. § 8-13-320(10)(i), (j). Just because the Commission has the statutory authority to hear some legal issues does not mean it can hear any and all legal issues. *See S.C. Tax* Comm'n, 278 S.C. at 560; *Responsible Econ. Dev.*, 371 S.C. at 553.

In sum, the *ultra vires* exception clearly applies here. Therefore, for reasons stated above, the Order errs in mischaracterizing Plaintiff's argument on exhaustion in several respects. It also errs by failing to find Plaintiff should be excused from exhaustion because she alleges *ultra vires* activity, and by failing to even try to analyze the controlling precedent of *Allstate* or its progeny,[4]

[4] *Allstate* is only referenced in footnote 12 of the Order, discussed *infra*, and it is not clear for what proposition.

or otherwise explain why it believes the *ultra vires* exception to exhaustion is inapplicable. The Order should be amended accordingly.

VIII. The Court misapprehends the Ethics Act to statutorily mandated exhaustion and overlooks that *Ward* and *Robinson* are inapposite.

It is true that "[t]he 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 … When the exhaustion of remedies is statutorily mandated … legislative intent prevails." *Ward v. State*, 343 S.C. 14, 18–19, 538 S.E.2d 245, 247 (2000).Those general principles do not, however, apply in this case.

The Order improperly relies on the Supreme Court in *Ward* and the Court of Appeals in *Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 902 S.E.2d 41 (Ct. App. 2024),[5] and overlooks that the Ethics Act does not have a statutory exhaustion requirement. The relevant statutes in *Ward*[6] and *Robinson*[7] are examples of "statutorily mandated" exhaustion schemes which Court have strictly applied. There is no similar language anywhere in the Ethics Act mandating that the Commission's administrative review scheme is exclusive.

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[5] To the extent that *Robinson* diverges from clear Supreme Court precedent such as *Allstate,* the court is required to follow Supreme Court precedent. See *State v. Phillips*, 416 S.C. 184, 194, 785 S.E.2d 448, 453 (2016) "[I]t is incumbent upon the court of appeals to apply this Court's precedent.").

[6] *Ward* was brought under provisions of the Revenue Procedures Act stating "there is no remedy other than those provided in this chapter in any case involving the illegal or wrongful collection of taxes, or attempt to collect taxes," Ward, 343 S.C. at 17 (citing § 12–60–80(2000)), and "[i]f a taxpayer brings an action covered by this chapter in circuit court, other than an appeal of an Administrative Law Judge decision or DMV hearing officer decision, the circuit court shall dismiss the case without prejudice." Id. (citing § 12–60–3390 (2000)).

[7] In *Robinson*, the relevant enabling statutes[7] contained "*the exclusive method* for challenging its determinations regarding unemployment benefits and review of such decisions." *Robinson*, 443 S.C. at 74 (emphasis added).

The Court's reliance on *Robinson* and *Ward* is misplaced for other reasons. As to *Ward*, the Supreme Court in that case found exhaustion inapplicable to a challenge against the constitutionality of a statute. 343 S.C. at 18. The court held that agencies are capable of considering constitutional claims that arise in the course of administering their duties (an as applied challenge) and therefore administrative remedies should be exhausted before seeking judicial review. *See id.* 19–20, 538 S.E.2d at 247–48. However, unlike the claim in *Ward*, Plaintiff here contends that if Defendants interpretation of § 8-13-320(10) is correct and it purports to authorize an executive branch agency to issue extra territorial subpoenas, the statute is facially unconstitutional. Am. Complaint, ¶ 49. This is a facial challenge, not an as applied constitutional challenge. The Court erred in not concluding that the Commission does not have the authority to determine the constitutionality of § 8-13-320(10(g), as interpreted, as the exhaustion doctrine should not apply in this case.

To start with on *Robinson,* the Court of Appeals emphasized that exhaustion is not required when the agency is powerless to grant the relief sought. *See Robinson* 443 S.C. at 78–79. *Robinson* involved a constitutional due process challenge to an agency action that the agency *was statutorily authorized to adjudicate*. In *Robinson*, "[c]laimants asserted in their amended complaint that they were wrongfully denied benefits," *id.* at 69, and DEW under the relevant statutory review scheme, DEW was authorized to decide "all issues affecting claimant's rights to benefits …."[8] None of these circumstances in *Robinson* apply here. Unlike in *Robinson*, Plaintiff has sought relief the

[8] Robinson cited to S.C. Code Ann. Regs. 47-51(E)(1)(a) (Supp. 2023), which provides "[i]n addition to the issues raised by the appealed determination the Appeal Tribunal may consider *all issues affecting claimant's rights to benefits* from the beginning of the period covered by the determination to the date of the hearing." *See id.* at 79 (emphasis added).

agency is not authorized to adjudicate. Additionally, unlike the situation in *Robinson*, the Ethics Act provides the judiciary - not the Commission - the statutory authority (jurisdiction) to enforce subpoenas issued by the Commission. S.C. Code Ann. § 8-13-320(10)(f). It is axiomatic that the power to enforce a subpoena includes the power to quash it on the ground that it was illegally issued.

The Court should reconsider the Order and find the exhaustion of remedies doctrine does not apply in this case. Plaintiff specifically requests a ruling (1) how exhaustion is statutorily-mandated, if it so finds; and (2) how finding exhaustion on Plaintiff's separation of powers argument can be applied to *Ward*.

IX. The Court erred in failing to address the Commission's lack of statutory authority to issue out-of-state subpoenas and to enforce/rule on the same.

Plaintiff challenges Commission's authority under S.C. Code Ann. § 8-13-320(10)(g) to issue or determine the efficacy of out-of-state subpoenas. It is black letter law that the Commission only has the statutory authority to issue subpoenas only to persons and entities located within the State. *See Drs. Hosp. of Augusta, L.L.C. v. CompTrust AGC Workers' Comp. Tr. Fund*, 371 S.C. 5, 9, 636 S.E.2d 862, 864 (2006). Additionally, the Supreme Court has held, "[a]lthough territorial jurisdiction is not a component of subject matter jurisdiction, … it is a fundamental issue that may be raised by a party or by a court at any point in the proceeding … The exercise of extraterritorial jurisdiction implicates the state's sovereignty a question so elemental that … it cannot be waived by conduct or by consent." *State v. Dudley*, 364 S.C. 578, 582 (2005) (internal citation omitted).

There is no dispute that: (1) the Commission's subpoenas sought documents from entities located in foreign jurisdictions and (2) it received those documents from out-of-state entities. On page 10, the Order finds that Plaintiff "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 …." . As the Order recognized, "those subpoenas and their respective responses serve as the basis for most of Plaintiff's claims here." Order at 2.[9] Defendants admit that the 45 counts upon which the Commission found probable cause were "based primarily or substantially on information derived from the subpoenas for Peets' personal bank account records described above." Am. Compl., ¶ 13 and Answ. to Am. Compl, ¶ 20. Yet the Order did not rule on Plaintiff's allegation that the Commission did not have the statutory authority to issue out-of-state subpoenas and does not have the authority to adjudicate their enforcement.

The Order found that the Commission "can consider the propriety of a subpoena issued in an ethics investigation." Order at p. 14. The Order cites to S.C. Code Ann. § 8-13-320(1), -320(j), § 1-23-330 and Regs. 52-705(C)(1), -713(A) as the statutory authority for its decision. The Order failed to address the statutory requirements in § 8-13-320(f) that the Commission has to go to the court to enforce its subpoenas.

The Court should reconsider the Order and rule the Commission exceeded its statutory authority by issuing the subpoenas and would exceed its statutory authority and invade the authority of the courts by ruling on the propriety of an exterritorial subpoenas. Regardless, Plaintiff requests a specific ruling on the specific issues raised above about the Commission's authority to issue extraterritorial subpoenas and to hear matters regarding their enforcement.

X. The Order made several other unsupported factual contentions and inapt legal contentions.

The first full paragraph on page two (2) of the Order states that the subpoenas were issued "[b]ecause Plaintiff's use of multiple bank accounts for her campaign was in question …." This

[9] The First Cause of Action is based in FOIA. The remaining causes of action arise from the Commission's issuance of subpoenas.

improperly interjects the merits of Plaintiffs' ethics complaints into an Order regarding FOIA and exhaustion of administrative remedies, where the merits are irrelevant.

Moreover, upon information and belief, no evidence in the record shows specifically *why* Commission staff issued the subject subpoenas. Upon information and belief, the only reference in the pleadings to "multiple bank accounts" was the Defendants' conclusory claims in the Answer and its Motion for Summary Judgment to that effect. *See* Answer para 50; Def's Mot. For Summ. Judg. at p. 3. The Motion for Summary Judgment cites for the "multiple bank accounts" statement Exhibit C, a written response of Plaintiff to a Commission investigator about the complaints, made before she hired an attorney.[10] Exhibit C facially does not support the contention that the subpoenas were issued due to "multiple bank accounts" because *inter alia,* (1) it was written by Plaintiff, who could not know the reason the Commission issued subpoenas; and (2) it does not even mention subpoenas at all.

On page 6, the Order cites to Regulation 52–718(F) for why the Commission can rarely even acknowledge the existence of a complaint. As pointed out at oral argument, in *Sanford v. S.C. State Ethics Comm'n*, 385 S.C. 483, 499, *opinion clarified,* 386 S.C. 274 (2009), the "Governor [was] primarily concerned with the release of investigatory materials during the ongoing investigation stage" In this context, the Court found "Regulation 52–718(F) was not even implicated by this case because it addresses what would become the public record after the final disposition of a matter where a violation is found." *Id.* (emphasis in case). It necessarily follows that Regulation 52–718(F) is irrelevant here, and the reference should be stricken.

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[10] The fact that Defendants attached this statement to a public filing belies any claims that their primary concerns are with confidentiality.

On page 12, the Order states “it is undisputed that Plaintiff has not exhausted her administrative remedies.” That is incorrect. All parties acknowledge that the complaints before the Ethics Commission are still pending, but Plaintiff has consistently argued throughout the litigation that there are no administrative remedies for the specific wrongs that she has alleged here. Plaintiff requests that this statement be stricken.

On page 17, the Order states that Plaintiff “cannot speculate” as to which of the bank records would be introduced, and cites a case for the notion that a party cannot create a genuine issue of material fact through guesswork. This Order misconstrues that Plaintiff has never argued there was a genuine issue of material fact here. The parties admit that over 2,000 pages of Plaintiff’s personal bank records were seized through the use of extraterritorial subpoenas. The fact that the Commission suggests that not every page of these records is guaranteed to be produced in evidence at a merits hearing is immaterial to any issue (and in any event, the issue was raised by the Commission, not Plaintiff). Plaintiff requests that this statement be stricken.

On page 17, the Order cites to S.C. Code § 8-13-320(g)(ii) and states it is “important” that bank records would be redacted “prior to release.” Like Regulation 52–718(F), the statute applies only upon final disposition of a matter. Thus, the statute is irrelevant and the reference to it should be stricken. It is also irrelevant to Plaintiff’s primary concern about her bank records being publicly released at a public hearing. "Private bank records may disclose what the citizen buys, how often, and from whom. They can disclose what political, recreational, and religious organizations a citizen supports. They potentially disclose where the citizen travels, their affiliations, reading materials, television viewing habits, financial condition, and more. Little doubt exists that banking records, because of the type of information contained therein, are within a person's private affairs." *State v. Miles*, 160 Wash. 2d 236, 246–47, 156 P.3d 864, 869 (2007). The fact that her personal records may be redacted (for social security numbers and the like) does not meaningfully lessen this serious intrusion of privacy if they are displayed at a public merits hearing before she has the opportunity to legally challenge whether they were properly seized. Plaintiff requests that this statement be stricken.

CONCLUSION

For the reasons stated herein, Plaintiff respectfully requests that the Court alter, amend, or reconsider the May 29, 2025 Order.

Respectfully Submitted,

s/ Michael R. Burchstead

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June 9, 2025

STATE OF SOUTH CAROLINA COUNTY OF LEXINGTON	)))	IN THE COURT OF COMMON PLEAS ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiff, v. South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, Defendants.	)))))))))))))	Case No. 2025-CP-32-00440 **DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO RECONSIDER**

Defendants South Carolina State Ethics Commission (the Commission) and Meghan Walker Dayson, in her official capacity as Executive Director of the Commission, submit this response opposing Plaintiff Ann Peets's motion to reconsider the Court's order granting summary judgment to Defendants. For the reasons below, the Court should deny Plaintiff's motion.

INTRODUCTION

In response to the Court's 17-page order, Plaintiff filed a 20-page motion to reconsider, raising a host of arguments that span ten sections. At bottom, Plaintiff claims the Court erred in (1) granting summary judgment to Defendants on Plaintiff's claim that the Commission violated the Freedom of Information Act (FOIA) by confidentially making a probable cause determination on the ethics charges against her as required by the State Ethics Act and (2) dismissing her remaining claims related to subpoenas issued by Commission staff for failure to exhaust. She thus demands the Court reconsider or strike various portions of its Order. Plaintiff continues to ignore multiple rules of statutory construction. More to the point, she continues to disregard an all-encompassing confidentiality provision that prohibits disclosure of "all" information related to ethics proceedings, claiming the provision is somehow "vague." But the Court already carefully considered and rejected this argument, issuing a measured order. And Plaintiff's remaining arguments, particularly on exhaustion, are either unpreserved or without merit. The Court should therefore reject Plaintiff's attempt to recast this case post-judgment and deny reconsideration.

STANDARD

South Carolina courts recognize "two basic situations in which a party should consider filing a Rule 59(e) motion." *Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 24, 602 S.E. 772, 780 (2004). "A party may wish to file such a motion when she believes the court has misunderstood, failed to fully consider, or perhaps failed to rule on an argument or issue, and the party wishes for the court to reconsider or rule on it." *Id.* But "[a] party must file such a motion when an issue or argument has been raised, but not ruled on, . . . to preserve it for appellate review." *Id.*

ARGUMENT

I. The Court properly granted summary judgment to Defendants on Plaintiff's FOIA claim.

Applying the canons of statutory construction and harmonizing FOIA with the State Ethics Act, the Court correctly found section 8-13-320(10)(g) prohibits the Commission from voting on probable cause determinations in a public meeting and, thus, the Commission did not violate FOIA by voting in executive session to find probable cause existed to believe Plaintiff violated the State Ethics Act. Plaintiff nevertheless makes four unavailing arguments on reconsideration.

Starting with the first, the Court did not misapprehend any controlling case law.[1] *See* Mot. to Recons. at § I. Rather, the Court considered the cases Plaintiff cited but found them unhelpful

[1] And while Plaintiff trumpets dicta she recently found in *Davis v. South Carolina Educational Credit for Exceptional Needs Children Fund*, the court of appeals clarified it was not "address[ing] that issue directly." 441 S.C. 187, 206, 893 S.E.2d 330, 340 (Ct. App. 2023); *cf. Dennis v. S.C. Nat'l Bank*, 299 S.C. 34, 40, 382 S.E.2d 237, 240 (Ct. App. 1988) (dicta is "an expression or statement by the court on a matter not necessarily involved in the case nor necessary to a decision,"

to the specific question presented here because "none involves FOIA's intersection with a more specific statutory provision, much less a confidentiality provision." Order at 5 n.4. Plaintiff does not and cannot argue with that. Nor does Plaintiff's continued attack on *DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Commerce*, 423 S.C. 295, 814 S.E.2d 513 (2018), offer much. The Court did not find—and the Commission never argued—that case dealt with the open-vote requirement. The Court cited *DomainsNewMedia.com, LLC* because it was faced with a similar issue of FOIA's intersection with a different, more specific statute. *See* Order at 4–5.

Turning to Plaintiff's second and third arguments, the specific-versus-general question here is not whether FOIA and the State Ethics Act broadly deal with the same subject. It is which statute is more specific as it relates to probable cause determinations in ethics proceedings: FOIA's open-vote requirement, S.C. Code Ann. § 30-4-70(b), or the State Ethics Act's confidentiality requirement, S.C. Code Ann. § 8-13-320(10)(g). True, section 30-4-70(b) concerns public votes by public bodies in general. But the State Ethics Act's confidentiality provision deals with the specific issue of "all" information relating to "investigations, inquiries, [and] hearings" and prohibits disclosure until "*after*" the probable cause determination. S.C. Code Ann. § 8-13-320(10)(g). And information "only may be released pursuant to this section." *Id.* Plaintiff has never quoted or wrestled with that language. She merely dismisses the statute as some vague reference to confidentiality.

Under these circumstances, "the more specific statute," section 8-13-320(10)(g), was "considered an exception to, or a qualifier of, the general statute," section 30-4-70(b), "and given such effect." *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010)

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and the "general rule as to dicta . . . is particularly applicable where there is a contrary statute"). Unlike here, the court there held subsection 30-4-710(a)(1) comfortably applied to conversations on kids' scholarships. Regardless, the court of appeals was not confronted with this situation.

(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)). In *DomainsNewMedia.com, LLC*, our supreme court found "FOIA is a general statute; the A-Tax statute is a specific statute." 423 S.C. at 304, 814 S.E.2d at 518. That is the only similar point the Court made here. Plaintiff's curious attack on the specific-versus-general canon of statutory construction thus fails.

So does Plaintiff's contention that the Court did not harmonize the confidentiality provision in the State Ethics Act with the public vote requirement in FOIA. According to Plaintiff, the Court simply "accept[ed] the Commission's conclusory arguments on legal impossibility and does not engage in why and how it is impossible." Mot. to Recons. at 7. That argument is puzzling given the Court spent nearly five pages doing just that. *See* Order at 5–9.

Plaintiff had 48 charges against her and did not waive confidentiality. The Commission could not simply recite her case number and then take a vote. What if the Commission voted differently on each charge? Staff would necessarily have to divulge confidential information on the charges just to identify them so Commissioners could vote, violating the State Ethics Act. The only alternative is for the Commission to vote in executive session and then have a perfunctory public vote. But that violates FOIA. Plaintiff continues to ignore that the Commission cannot comply with FOIA without violating the State Ethics Act and committing a misdemeanor, and it cannot comply with the State Ethics Act without violating FOIA. Plaintiff offers no meaningful reason why the Court should reconsider its analysis on this point—she merely misrepresents that the Court failed to conduct one at all.

Indeed, the Court properly considered how its analysis—harmonizing section 30-4-70(b) and section 8-13-320(10)(g)—intertwined with other statutes in the State Ethics Act and FOIA, bringing us to Plaintiff's fourth argument. Of course, section 30-4-70(a) was the elephant in the room that Plaintiff tried to avoid. *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"). She complains the Court should not have even considered the statute because it was not in her amended complaint.

Yet the Court is not "an ostrich, hiding [its] head in the sand from relevant information." *Greenhouse v. MCG Capital Corp.*, 392 F.3d 650, 656 (4th Cir. 2004). The Court rightly rejected Plaintiff's invitation to violate at least five canons of statutory construction.[2] After all, Plaintiff put the provision at issue by acknowledging the Commission could deliberate on probable cause in executive session. *See* Pl.'s Mot. for Summ. J. at 11; Pl.'s Resp. Opp. Defs.' Mot. for Summ. J. at 3; Pl.'s Reply at 4. Her acknowledgement must come from some provision of law. The Court properly found no exception in section 30-4-70(a) applies. *See* Order at 7. It logically, then, had to and did come from the State Ethics Act. *See* S.C. Code Ann. § 8-13-320(10)(g).

After losing, Plaintiff now claims "[t]he Commission's probable cause determinations unequivocally fall under" section 30-4-70(a)(1).[3] Mot. to Recons. at 8. Section 30-4-70(a)(1)

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[2] *E.g.*, *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) ("the statute must be read as a whole and sections which are a part of the same general statutory law must be construed together and each one given effect"); *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (courts "should not concentrate on isolated phrases within the statute" but "read the statute as a whole and in a manner consonant and in harmony with its purpose"); *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 407 S.C. 583, 598, 757 S.E.2d 408, 416 (2014) ("statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result"); *Hodges v. Rainey*, 341 S.C. 79, 88, 533 S.E.2d 578, 583 (2000) ("Statutes dealing with the same subject matter must be reconciled, if possible, so as to render both operative."); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012) (per curiam) (courts should "not construe a statute in a way which leads to an absurd result").

[3] Plaintiff claims that "[a]t the hearing, [her] counsel reaffirmed that § 30-4-70(a)(1) was not a part of the Amended Complaint, but stated these types of discussions most likely fit under § 30-4-70(a)(1)." Mot. to Recons. at 8. Throughout three briefs, despite the Commission pointing out the obvious problem that Plaintiff's argument created, she never took a position on why the Commission could deliberate on probable cause in executive session. Plaintiff's counsel waited until his reply at the hearing to say that, if he had to pick one, he guessed section 30-4-70(a)(1) could potentially apply to these circumstances.

permits a closed meeting to discuss "discipline . . . of . . . a person regulated by a public body or the appointment of a person to a public body." But that section does not apply to the Commission's probable cause determination for several reasons.

For one, a probable cause determination is merely "a finding that the allegations contained in the complaint are more likely than not to have occurred and constitute a violation of this chapter or Chapter 17, Title 2." S.C. Code Ann. § 8-13-320(10)(i). No "discipline" results from it. If the Commission finds probable cause, it schedules "a hearing before a panel of three commissioners, selected at random, to determine whether a violation of the chapter has occurred." *Id.* For another, the Commission does not have the authority to "discipline" a respondent in an ethics proceeding. *See* S.C. Code Ann. § 8-13-320(k) (stating the Commission "where appropriate, shall recommend disciplinary or administrative action"); *id.* at § 8-13-320(n) ("A fine imposed by the commission, disciplinary action *taken by an appropriate authority*, or a determination not to take disciplinary action made *by an appropriate authority* is public record." (emphasis added)).

That said, the "conundrum" Plaintiff's argument creates—as the Court put it—still persists. Order at 7. Notwithstanding Plaintiff's desire for the Court not to consider the issue, the Court appropriately did so in its analysis. Considering the intersection of section 30-4-70(b) and section 8-13-320(10)(g), as well as other statutes within both FOIA and the State Ethics Act,[4] the Court concluded the "'plain and unambiguous,' reading of FOIA and the State Ethics Act together 'render[s] both operative,' and 'produces a single, harmonious result,' that requires confidentiality

[4] The Court should decline Plaintiff's demand to strike regulation 52-718 as irrelevant. First, the Court did not cite 52-718(F) because that provision does not even exist. *Contra* Pl.'s Mot. to Recons. at 19. Second, the Court properly cited regulation 52-718 as the "rare exceptions" when the Commission can "even acknowledge the existence of a complaint." Order at 6; *see also* S.C. Code Ann. Regs. 52-704(A)(2) ("The existence of a complaint and dismissal remains confidential unless the Respondent waives confidentiality in writing.").

of all information relating to ethics complaints until after a probable cause determination." Order at 8 (internal citations omitted). That the Court declined to harmonize the statutes as Plaintiff demanded (because it resulted in disharmony) is no cause for reconsideration.

The Court's ruling also does not render section 30-4-70(b) meaningless. Nor does it allow any agency to invoke any confidentiality provision to avoid the public vote requirement in FOIA. Despite the doomsday rhetoric, the Court's ruling dealt only with FOIA's open vote requirement as it intersects with the specific and unique confidentiality provision in the State Ethics Act. The Court did not determine all agencies can use any confidentiality provision to circumvent FOIA. In fact, it specifically declined to discuss other agencies. *See* Order at 9 n.7.

On that note, Plaintiff's arguments are at war with each other. She claims, on the one hand, the Court gave a greenlight for all agencies with confidentiality provisions to violate FOIA. Yet on the other hand, she says the Court erred in not considering other agencies. Putting aside the inconstancy, even if the Court had addressed how the Medical Board handles its confidentiality provision by considering the meeting minutes Plaintiff cites, the analysis is the same.

The vote the Medical Board took in that meeting was product of a "MOA *FINAL* ORDER HEARING," resulting in the Board accepting the MOA, finding violations of the applicable statutes, and issuing sanctions. Pl.'s Mot. for Summ. J. at 12 (emphasis added). That says nothing about how the Medical Board handles a vote, for instance, on the issuance of a temporary suspension, which "must not be made public until the time for requesting a review has passed or the administrative hearing officer issues an order after a review hearing." S.C. Code Ann. § 40-47-110(D)(1). Even so, the confidentiality provision in the State Ethics Act—though shorter in length—is broader in application because it applies to "[a]ll investigations, inquiries, hearings, and accompanying documents" in an ethics proceeding until "*after*" a probable cause determination.

S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii). Thus, Plaintiff's "real world example" establishes nothing and does not matter anyway because the Court's Order—and this case—deals only with FOIA's intersection with the confidentiality provision in the State Ethics Act.

In sum, the Court properly found "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." Order at 9.

II. The Court properly held Plaintiff was required, but failed, to exhaust her statutory administrative remedies before filing this lawsuit.

The exhaustion requirement "is discretionary." *Ward v. State*, 343 S.C. 14, 18 n.7, 538 S.E.2d 245, 247 (2000) (quoting *Andrews Bearing Corp. v. Brady*, 261 S.C. 533, 536, 201 S.E.2d 241, 243 (1973)). Here, exercising its discretion, the Court "decline[d] to rule on the merits of these claims because Plaintiff failed to exhaust her administrative remedies before pursuing this lawsuit, and no exceptions apply." Order at 10. In sections five through eight of her motion, Plaintiff raises four arguments to assign error to the Court's decision. Each is "utterly meritless." *Hood v. United Servs. Auto Ass'n*, 445 S.C. 1, 12, 910 S.E.2d 767, 773 (2025).

Plaintiff first claims she challenged the Commission's jurisdiction to hear the claims she raises in this lawsuit (and in her motion to dismiss pending before the Commission's Hearing Panel) all along, so the Court should have found she was excepted from the exhaustion requirement. For starters, she did not. But even if she did, the Commission has jurisdiction over issues related to the ethics complaints against Plaintiff.[5]

[5] *See* Order, *Hill v. S.C. Republican Party*, App. Case No. 2020-000851 (S.C. Sup. Ct. filed Nov. 25, 2020) (summarily dismissing appeal based on argument that the State Ethics Commission had exclusive jurisdiction over ethics complaint), *reh'g denied* (Mar. 9, 2021); Order, *Harpootlian v. S.C. Senate Republican Caucus*, App. Case No. 2019-001404 (S.C. Sup. Ct. filed Dec. 12, 2019) (granting writ of prohibition to prevent the circuit court from improper exercise of jurisdiction and noting respondent could file in the State Ethics Commission), *reh'g denied* (Mar. 12, 2020).

To be sure, as our supreme court has recognized, "the [General Assembly] has granted exclusive authority over ethical complaints to the appropriate Ethics Committee." *Rainey v. Haley*, 404 S.C. 320, 325, 745 S.E.2d 81, 84 (2013). So too with the Commission. The Commission also has statutory authority to issue subpoenas while investigating an ethics complaint. S.C. Code Ann. § 8-13-320(10)(f). Whether staff exceeded that authority is not a question of jurisdiction. *Cf. Fullbright v. Spinnaker Resorts, Inc.*, 420 S.C. 265, 274, 802 S.E.2d 794, 799 (2017) ("Subject matter jurisdiction is the power to hear and determine cases of the general class to which the proceedings in question belong." (quoting *Dema v. Tenet Physician Servs.-Hilton Head, Inc.*, 383 S.C. 115, 120, 678 S.E.2d 430, 433 (2009))); *see also Forman v. S.C. Dep't of Labor*, 419 S.C. 64, 74, 796 S.E.2d 138, 143 (Ct. App. 2016) ("A court's subject matter jurisdiction is determined by whether it has the authority to hear the type of case in question. 'This same principle applies to administrative agencies.'" (citation omitted)). It's a mixed question of law and fact.

Besides, exhaustion "does not involve subject matter jurisdiction." *Ward*, 343 S.C. at 17 n.5, 538 S.E.2d at 246 n.5. It "is generally considered a rule of policy, convenience and discretion, rather than one of law, and is not jurisdictional." *Id.* (quoting *Vaught v. Waites*, 300 S.C. 201, 205, 387 S.E.2d 91, 93 (Ct. App. 1989)). Plaintiff has whistled past a critical point: she raised the *exact* issues raised here in her motion to dismiss pending before the Commission's Hearing Panel. The Court rightly did not overlook this. The Commission has jurisdiction.

As to Plaintiff's second argument, the Commission never asserted it has the authority to declare a statute unconstitutional. In fact, the Commission expressly recognized the general rule that a challenge to the constitutionality of a statute is an exception to the exhaustion requirement. Defs.' Response in Opp to Pl.'s Mot. for Summ. J. at 8; Defs.' Reply at 18; *see also Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 75, 902 S.E.2d 41, 48 (Ct. App. 2024), *cert. denied*

(S.C. Nov. 14, 2024). But that has nothing to do with this case. *See* Am. Compl. at 11–16. Plaintiff admits as much: "the non-FOIA claims are all related to her allegation that the Commission exceeded its statutory authority in issuing and obtaining Plaintiff's personal bank records through extraterritorial subpoenas." Mot. to Recons. at 11. Her argument in section six is a straw man.

Plaintiff's third and fourth arguments—sections seven and eight—try to morph her challenge into one the Commission cannot consider. Yet *Ex parte Allstate* cannot bear the weight Plaintiff places on it. That case concerned "the statutory authority or jurisdiction of the Chief Insurance Commissioner" to conduct the investigation. *Robinson*, 443 S.C. at 78, 902 S.E.2d at 49 (distinguishing *Ex parte Allstate*). It had nothing to do with the Chief Insurance Commissioner exceeding his authority during an investigation he was authorized to conduct. The Commission, however, has sole authority to investigate and hear ethics complaints against Plaintiff, including any related matters like the propriety of its staff's subpoenas. *E.g.*, S.C. Code Ann. § 8-13-320(10); S.C. Code Ann. Regs. 52-713(A). The Court properly found *Ex parte Allstate* does not apply, especially considering the court of appeals recently confirmed that merely alleging an agency "acted outside of its authority" is no way to circumvent the exhaustion requirement. *Robinson*, 443 S.C. at 78–79, 902 S.E.2d at 49–50.

On that note, Plaintiff—for the first time in the face of countless citations in Defendants' briefing—responds to the Commission's arguments that *Robinson* and *Ward* defeat her attempt to except her claims from the exhaustion requirement. She claims they do not apply because the "Ethics Act does not have a statutory exhaustion requirement." Mot. to Recons. at 14. Plaintiff overlooks that the State Ethics Act and the Administrative Procedures Act do not permit judicial review until after a final order from the Commission. A merits hearing is held before three Commissioners. S.C. Code Ann. § 8-13-320(10)(i)–(j). "[T]he Hearing Panel must determine whether a violation of the chapter has occurred" and "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). "[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 erroneous "finding of fact or conclusion of law"). "This review is the final disposition of the complaint before the commission." *Id.* A party who exhausts "all administrative remedies available within the agency" and "is aggrieved by a final decision in a contested case" is "entitled to judicial review."[6] S.C. Code Ann. § 1-23-380; *cf. Haley*, 404 S.C. at 336, 745 S.E.2d at 89 (Beatty, J., concurring) ("the Ethics Act provided administrative remedies specifically tailored to efficiently resolve Appellant's complaint against Respondent").

Plaintiff's belated attack on *Robinson* likewise does not hold water. Her contention that it "diverges from clear Supreme Court precedent," Mot. to Recons. at 14 n.5, is specious. For the reasons explained above, *Ex parte Allstate* does not apply. And the Court must follow recent binding precedent from the court of appeals, particularly where, as here, our supreme court denied certiorari. The Court properly found the Commission has authority to consider the propriety of subpoenas and whether staff exceeded its authority in issuing them. Order at 14–15.

Citing section 8-13-320(10)(f), Plaintiff argues since the Court has authority to enforce a subpoena the Commission issues, it also may "quash it on the ground that it was illegally issued." Mot. to Recons. at 16. But the Commission also has that authority. *See* S.C. Code Ann. § 8-13-320(10)(f) ("A person to whom a subpoena has been issued may move before a commission panel or the commission for an order quashing a subpoena issued under this section."). If suppression

[6] The Court correctly found Plaintiff failed to exhaust. Order at 12. She has not received a ruling on her motion to dismiss from the Hearing Panel. Nor has she proceeded to a hearing and received a ruling on the merits. She has been "finally bound" by nothing. *See* S.C. CONST. art. I, § 22.

or exclusion of challenged evidence is proper, its Hearing Panel can make that ruling too. *See* S.C. Code Ann. Regs. 52-713(A) ("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"). That section provides no offramp for exhaustion.

Nor does Plaintiff meaningfully distinguish *Ward*. She certainly cannot do so by hatching a new argument. As the Commission pointed out several times, *see* Defs.' Response in Opp to Pl.'s Mot. for Summ. J. at 8; Defs.' Reply at 18, Plaintiff did not raise a facial constitutional challenge to any statute. *Contra* Mot. to Recons. at 12, 15. So the Court should reject her effort to do so at this late stage. *See Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009) ("An issue may not be raised for the first time in a motion to reconsider."). The Court's reliance on *Ward* remains sound because Plaintiff argued only that the Commission exceeded its authority and violated her constitutional rights in doing so. And because "an agency . . . can still rule on" that, "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 247.

Exercising its discretion, the Court properly found Plaintiff was required to exhaust, and no exception applied. And the Court merely dismissed without prejudice. Plaintiff can thus raise her arguments to the Commission and then seek judicial review. There is nothing to reconsider.

III. The Court should reject Plaintiff's merits arguments and other unjustified complaints.

The Court can dispose of the argument in Plaintiff's ninth section in short shrift because the parties agreed not to address the merits in the first round of briefing. And in accordance with that agreement and the Court's Scheduling Order, Plaintiff never did. Still, in her tenth section, Plaintiff claims the Court "improperly interject[ed] the merits of Plaintiff's ethics complaints into an Order regarding FOIA and exhaustion of administrative remedies, where the merits are irrelevant." Mot. to Recons. at 17–18.

Again, Plaintiff cannot have it both ways. Even so, the Court did not improperly interject anything by stating in the background section—which did not affect any ruling—that "Plaintiff's use of multiple bank accounts for her campaign was in question." Order at 2. The record reflects "multiple bank accounts" were at issue in the ethics proceeding against Plaintiff. *See* Am. Compl. at ¶¶ 8–10. And Plaintiff never specifically objected to Defendants' exhibits. *See* Exs. C & H to Defs.' Mot. for Summ. J. In them, she admitted to using multiple accounts for her campaign. *See* Ex. C, at 6. "A genuine issue of material fact is something on which the parties disagree, not on which one party is internally contradictory." *Wilson v. Gaston Cnty.*, 685 F. App'x 193, 199 (4th Cir. 2017). In all events, this undisputed fact is not material to the Court's ruling. *Cf. Town of Hollywood v. Floyd*, 403 S.C. 466, 477, 744 S.E.2d 161, 166 (2013) ("it is not sufficient for a party to create . . . an issue of fact that is not genuine" to defeat summary judgment).

The remaining findings Plaintiff wants stricken from the Order are trivial. The Court need not strike its statement that she "cannot speculate on what may be introduced at the merits hearing." Order at 17. She cannot. At any rate, whether Plaintiff had an adequate administrative remedy went straight to the propriety of a writ of prohibition or injunction. *See New S. Life Ins. Co. v. Lindsay*, 258 S.C. 198, 199–200, 187 S.E.2d 794, 796 (1972); *Scratch Golf Co. v. Dunes W. Residential Golf Props., Inc.*, 361 S.C. 117, 121, 603 S.E.2d 905, 908 (2004). And contrary to Plaintiff's selective reading, subsection 8-13-320(g)(ii) requires "[e]xhibits introduced" at the hearing to be redacted. Because it protects Plaintiff "where the public disclosure [of her bank records] would constitute an unreasonable invasion of personal privacy," *id.*, Plaintiff has an adequate administrative remedy. That is all the Court was saying.

Conclusion

Because the Court did not misunderstand, fail to fully consider, or neglect to rule on any preserved issue relevant to its order granting summary judgment and dismissing Plaintiff's claims, the Court should deny Plaintiff's motion to reconsider.

Respectfully submitted,

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Columbia, South Carolina
June 20, 2025

STATE OF SOUTH CAROLINA

COUNTY OF LEXINGTON

IN THE COURT OF COMMON PLEAS

Civil Action No. 2025-CP-32-00440

Ann Peets,

Plaintiff,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,

Defendants.

REPLY TO RESPONSE TO MOTION TO ALTER OR AMEND

Plaintiff hereby submits this reply to Defendants' response to the motion to alter or amend by incorporating by reference the arguments made in the Motion to Alter or Amend, the pleadings, and all other prior submissions to the Court, and further replying as follows:

(1) At no point in this litigation has Plaintiff challenged the Commission's ability to go into executive session to discuss discipline of a person it regulates. Not in her Amended Complaint, not during oral argument, and not in the Motion to Alter or Amend. Plaintiff's position has not changed. To the extent the Court believes § 30-4-70(a) is properly an issue in this case (it is not),[1] it should reject the arguments in the Response about probable cause votes not being "disciplinary"

[1] On pages 4-5 of the Response, Defendants continue to falsely claim Plaintiff was "tr[ying] to avoid" § 30-4-70(a). However, it is illogical to say that Plaintiff is running way from § 30-4-70(a) because she did not allege in her Amended Complaint that the Commission violated it. As previously pointed out, compliance with § 30-4-70(a) was not properly an issue in this case and should not have been ruled upon. *See Glass v. Glass*, 276 S.C. 625, 628, 281 S.E.2d 221, 222 (1981) ("A judgment or decree, whether in law or equity, must conform to both the pleadings and the proofs and be in accordance with the theory of action on which the pleadings are framed and the case was tried.").

proceedings under § 30-4-70(a)(1). First, if Defendants are correct in their assertion that "[n]o 'discipline' results from [a probable cause determination]" because it is "merely 'a finding that the allegations contained in the complaint are more likely than not to have occurred and constitutes a violation of this chapter," Response at 6, then there is no basis in FOIA for the Commission to go into executive session to discuss probable cause hearings at all.

(2) Defendants also overlook the clear language of § 30-4-70(a)(1) in contending that "[n]o 'discipline' results from it" because it is not a final decision on discipline. The plain language of § 30-4-70(a)(1) includes any "[d]iscussion of … discipline," and not a determination to discipline, as Defendants argue. Further, "FOIA makes it clear that meetings are not limited to instances where action is taken, as evidenced in section 30–4–20(d), which defines a 'meeting' as 'the convening of a quorum ... *to discuss or act* upon a matter over which the public body has supervision, control, jurisdiction or advisory power.'" *Lambries v. Saluda Cnty. Council*, 409 S.C. 1, 14, 760 S.E.2d 785, 792 (2014) (citing § 30–4–20(d)). "Discuss" is defined as "to talk about", "to investigate by reasoning or argument" or "to present in detail for examination or consideration."[2] Certainly a probable cause vote is a meeting where discipline is discussed.

(3) Defendants are also incorrect that "the Commission does not have the authority to 'discipline' a respondent in an ethics proceeding." *See* Response at 6. The Ethics Act explicitly authorizes the Commission to, *inter alia,* levy civil penalties of up to $2,000 per count, § 8-13-320(10)(k)(1), and "impose an oral or written warning or reprimand." § 8-13-780(B). Surely, fining or reprimanding a person is "discipline." See *In re Smith*, 337 S.C. 582, 586, 524 S.E.2d 616, 618 (1999) (holding, in some cases, "a public reprimand has been the strongest punishment

[2] https://www.merriam-webster.com/dictionary/discuss (Last viewed June 23, 2025).

given as discipline."). This assertion contradicts what the Commission represents to the general public about its disciplinary ability:

> **What disciplinary actions can be taken?**
>
> If found guilty of an alleged violation, the Commission may:
>
> - Recommend administrative action or disciplinary action;
> - *Issue a public warning or reprimand;*
> - *Order restitution; and*
> - *Levy a civil penalty of not more than $2,000*.

See https://ethics.sc.gov/complaints (accessed June 23, 2025) (emphasis added).[3]

(4) Even assuming *arguendo* the Commission's interpretation is correct, and its probable cause vote is not a "discussion of discipline" under § 30-4-70(a), then it does not follow Commission is exempt from FOIA; rather, it means its action going into executive session to discuss probable cause is invalid. *See* § 30-4-60 (requiring that "[e]very meeting of all public bodies shall be open to the public unless closed pursuant to § 30-4-70 of this chapter."); *Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 616, 885 S.E.2d 406, 408 (Ct. App. 2023) ("[A] public body is forbidden from entering executive session without complying with section 30-4-70(b) of the South Carolina Code.").

(5) Defendants claim that Plaintiff "whistle[d] past" the discretionary nature of exhaustion and that exhaustion does not involve subject matter jurisdiction. *See* Response at 9. Not so. *See*, *e.*g., Pls Response at 5, 8-9. Plaintiff was required to spend considerable time on the jurisdictional issue precisely because Defendants advanced an argument that the Commission

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[3] The Commission misses the mark when it highlights the "appropriate authority" language in § 8-13-320(n) to suggest that it is not the final say on discipline. While with House and Senate ethics complaints there are supervisory authorities other than the Commission, *see* § 8-13-100(2), such is not the case in the case before the Court. Here, the Commission has the final word on discipline, including whether to issue a public reprimand, order restitution, or levy civil penalties.

Panel has “exclusive jurisdiction” over these claims. *See* Def.’s Mot. for Summ. Jud. At 11-15, 19, 22; Def.’s Response at 6; Def.’s Reply at 5 (all arguing for the Commission’s “exclusive jurisdiction” over the claims). A claim that the Commission has exclusive jurisdiction is inconsistent with the Court having subject matter jurisdiction over the non-FOIA claims. Regardless, the discretionary nature of subject matter jurisdiction is true as a general principle, but inapplicable here. If Defendants were correct and the Commission had “exclusive jurisdiction” over the non-FOIA claims, then exhaustion would not be discretionary because a court *could not* hear the claims. But discretion is inapplicable where (as here) the Commission lacks statutory authority over these claims. *See* Mot. to Alter or Amend at 9-11.

(6) On pages 10 and 11 of the Response, Defendants incorrectly claim the reference in the Ethics Act to S.C. Code Ann. § 1-23-380 confers exclusive jurisdiction. § 1-23-380 explicitly provides that

> This section does not limit utilization of or the scope of judicial review available under other means of review, redress, relief, or trial de novo provided by law. A preliminary, procedural, or intermediate agency action or ruling is immediately reviewable if review of the final agency decision would not provide an adequate remedy.

Neither this statute nor any provision of the Ethics Act confers exclusive jurisdiction. Thus, Defendants have erroneously urged the Court to apply to the Ethics Act inapposite court decisions which hinged on the statutory scheme mandating exhaustion. *Cf. Robinson v. S.C. Dep't of Emp. & Workforce,* 443 S.C. 63, 76, 902 S.E.2d 41, 48 (Ct. App. 2024), *reh'g denied* (June 24, 2024), *cert. denied* (Nov. 14, 2024) (considering exhaustion where the statutory language mandates that agency procedure "is the sole and exclusive appeal procedure") (citation omitted).

(7) Even in the face of incontrovertible evidence to the contrary, Defendants do not abandon their contention that Plaintiff never challenged the Commission’s jurisdiction over the

non-FOIA claims. *See* Def's Response at 8. Accordingly, Plaintiff respectfully requests that the Court rule on the content of Plaintiff's Amended Complaint and arguments themselves and not Defendants' characterization thereof.

(8) Even though Defendants try, *see* Def.'s Response at 10, they cannot distinguish *Ex parte Allstate Ins. Co.*, 248 S.C. 550, 567, 151 S.E.2d 849, 855 (1966), which held exhaustion was inapplicable because "[t]he issue was solely one of law as to the statutory authority or jurisdiction of the Commissioner." As it relates to the exhaustion issue, *Ex parte Allstate* is on all fours with this case. Just as *Ex parte Allstate* "concerned 'the statutory authority or jurisdiction of the Chief Insurance Commissioner' to conduct the investigation," Plaintiff's challenge concerns the statutory authority or jurisdiction of the Commission or Commission Chair, in this case to rule on the efficacy of extra-territorial subpoenas it issued, which can only be enforced by courts. *See* Motion to Alter or Amend at 11-14.

(9) Defendants contend that "Plaintiff did not raise a facial constitutional challenge to any statute." *See* Def.'s Response at 6. Plaintiff raised a facial constitutional challenge as an alternative argument. *See* Am. Compl. ¶¶ 8, 30, 35, 40, and 49; Mot. to Alter or Amend at 13. Defendants are patently incorrect when they claim on page 12 of the Response that *Ward v. State*, 343 S.C. 14, 18, 538 S.E.2d 245, 247 (2000), holds that a facial challenge is the only instance in which exhaustion applies. *See* Def.'s Response at 12. To list just one example, see *Ex parte Allstate*, discussed *supra*, for *ultra vires* claims.

(10) On page 4 of the Response, Defendants contend that Plaintiff's counsel has "misrepresented" certain facts or law in this matter to the Court, which is not the case. At the summary judgment hearing, Defendants' counsel contended that Plaintiff's counsel was being "disingenuous" in advancing the FOIA argument, which incorrectly implied that counsel did not

believe the argument to be well-founded.[4] Plaintiff and counsel take the oath of civility very seriously. These arguments are disappointing and have no place here.

(11) As to the "misrepresentation" claim, Plaintiff argued, as a legal matter, that the Court did not attempt to harmonize the FOIA and the Ethics Act. Of course, the Court "is under a duty to harmonize conflicting provisions in legislation." *Neel v. Shealy*, 261 S.C. 266, 276, 199 S.E.2d 542, 547 (1973). Neither Plaintiff nor counsel misrepresented anything. While Defendants point to pages 5 thorough 9 of the Order as harmonizing the statutes, *see* Response at 4, Plaintiff respectfully contends that the Order does not. The cited portion of the Order do not even mention § 30-4-70(b), the principal statute at issue here, and it mostly discusses various portions of the Ethics Act that are not at issue at all. *See* Response at 6-7 (discussing § 8-13-1170, § 8-13-1372, § 8-13-510, and § 8-13-540).[5]

(12) Defendants ask, "[w]hat if the Commission voted differently on each charge?" *See* Response at 4. The answer is simple: the Commission is required to follow the law, voting separately in public on each of the 45 counts if necessary.

(13) Defendants state that Plaintiff argued "*Robinson* diverges from clear Supreme Court precedent." *See* Pls Response at 11. What Plaintiff actually said was "[t]o the extent that *Robinson* diverges from clear Supreme Court precedent such as *Allstate* …." *See* Mot. To Alter or Amend at 14, fn 5.

[4]"Disingenuous" is defined as "lacking in candor" or "giving a false appearance of simple frankness." https://www.merriam-webster.com/dictionary/disingenuous (accessed June 23, 2025).

[5] Additionally, the portions of the Order claiming that it is impossible for the Commission to harmonize the statutes rely heavily on the uncorroborated and very much disputed factual and legal contentions of the Commission's outside counsel on why the agency cannot comply with FOIA. Defendants' unsupported contentions continue in the Response. *See, e.g.*, Def's Response at 4 ("The Commission could not simply recite her case number and then take a vote.").

(14) On page 12-13 of the Response, Defendants erroneously contend that Plaintiff improperly "address[ed] the merits in the first round of briefing," in conflict with the Consent Scheduling Order with regard to § 9 of the Motion. *See* Mot. to Alter or Amend at 16-17 (arguing "[t]he Court erred in failing to address the Commission's lack of statutory authority to issue out-of-state subpoenas and to enforce/rule on the same."). As previously pointed out, "the Order did not rule on Plaintiff's allegation that the Commission did not have the statutory authority to issue out-of-state subpoenas and does not have the authority to adjudicate their enforcement." *See* Mot. to Alter or Amend at 17. Section 9 of the Motion does not intend to address the *merits* of whether the Commission has extraterritorial subpoena power, but whether it had the statutory authority to adjudicate whether it could issue extraterritorial subpoenas. The latter issue relates to exhaustion, and exhaustion here turns on whether or not the Commission has the ability to adjudicate the matter of extraterritorial subpoenas.

(15) Also on page 12-13 of the Response, Defendants contend Plaintiff is trying to "have it both ways" because Plaintiff later complains about Defendants "interject[ing] the merits of the ethics complaints …." As Defendants should know, "the merits *of the ethics complaints*," is a completely different issue than the merits of the underlying circuit court action. Plaintiff has consistently argued the merits of the ethics complaint is irrelevant to this action.

(16) In the first full paragraph of page 13 of the Response, Defendants go on to (again) discuss the merits of the ethics complaints. In the Motion, Plaintiff pointed out page 2 of the Order, which finds that the subpoenas were issued "[b]ecause Plaintiff's use of multiple bank accounts for her campaign was in question …." *See* Mot. to Alter or Amend at 17-18. In addition to arguing the merits of the ethics complaints were not relevant, Plaintiff also stated that "no evidence in the

record shows specifically *why* Commission staff issued the subject subpoenas." *See* Mot. to Alter or Amend at 18. Defendants' Response is non-responsive to that particular issue.

CONCLUSION

For the reasons stated herein, and as previously argued, Plaintiff respectfully requests that the Court alter, amend, or reconsider, the May 29, 2025 Order.

Respectfully Submitted,

s/ Michael R. Burchstead

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Columbia, South Carolina
June 24, 2025

State of South Carolina	)	Court of Common Pleas
County of Lexington	)	Eleventh Judicial Circuit

Ann Peets,	)	Transcript of Record
Plaintiff,	)	2025-CP-32-00440
vs.	)	
South Carolina Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission,	)	
Defendants.	)	

April 17, 2025
Lexington, South Carolina

B E F O R E:

The Honorable William P. Keesley, Judge

A P P E A R A N C E S:

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On behalf of the Applicant

Vordman Carlisle Traywick, III, Esquire
Courtney Michelle Laster, Esquire
On behalf of South Carolina Ethics Commission

Reported by: Stacy S. Johnson, RPR
Circuit Court Reporter

I N D E X

E X H I B T S

NO EXHIBITS WERE INTRODUCED

(The following proceedings were held April 17, 2025, beginning at 1:00 PM.)

BAILIFF: All rise. Court is now in session. The Honorable William P. Keesley presiding.

THE COURT: Be seated, please.

All right. Are we ready on Peet versus South Carolina Ethics Commission?

MR. BURCHSTEAD: Yes, Your Honor. And I'm Michael Burchstead representing Ann Peets, the plaintiff.

MR. TRAYWICK: Good afternoon, Your Honor. Lyle Traywick, along with my co-counsel Courtney Laster of the State Ethics Commission, and I'm with Robinson Gray, and we collectively represent the defendants in this matter.

THE COURT: All right. Let me hear from the moving party.

MR. TRAYWICK: We've filed cross-motions. I'm happy to take them in whatever turn suits the Court best.

THE COURT: Help me out.

MR. TRAYWICK: Okay.

MR. BURCHSTEAD: Your Honor, we're happy to start out as the plaintiff, thank you, if that suits everybody.

And, again, my name is Michael Burchstead of Burr Forman. We have a matter. Ann Peets is my client. She's here right now. She lives on Folly Beach, came here for the hearing. This is a matter related to several ethics complaints against her with the Ethics Commission. The State Ethics Commission is the agency in South Carolina which does enforcement, advisory opinions and -- and is tasked with adjudicating the ethics act, so it has a wide range of public officials, public employees, statewide and all the way down to the local level, and various other people also.

My client is not a public official. She was a candidate for Folly Beach Town Council in the November 2023 election. This was her first time running for political office. Her only time right now. She did not win that election, but she -- she made the runoff and didn't win the runoff, and shortly after the election a few people in the community who did not support her candidacy filed ethics complaints with the Ethics Commission.

This case is not about the substance of those complaints. This is about the -- I mean, my client denies the ethics allegations against her, but that's really beside the point here. This is about the investigation that the Ethics Commission has conducted, including, we think, violating the clearcut terms of the Freedom of Information Act in adjudicating and investigating this complaint, so I want to start with the FOIA violation.

We have cross-motions for summary judgment, Your Honor. As you know, under a scheduling order we are going to hear the FOIA claim today and administrative exhaustion requirements, those arguments, because there's one claim for FOIA, and I think everybody in this court, whether we agree on the substance or not, I think we agree that FOIA is properly before the Court -- before the circuit court and nobody else.

In addition to the FOIA claim, we have brought three more counts related to the investigation, which are pure issues of law. It relates to mostly some subpoenas that went out during the course of the investigation. The Ethics Commission, which is a state agency, it's a creature of the Legislature and it only has the power that the Legislature gives it, and the Legislature gave it the power to issue subpoenas. It didn't get into any details about the scope of those subpoenas or where to issue. It's a pretty fundamental principle that a state agency cannot issue subpoenas or certainly enforce them outside of the territorial jurisdiction of South Carolina, and the agency in this case issued and received documents, incredibly broad, incredibly broad, to four out of state financial institutions without trying to be tethered or considering itself tethered to the South Carolina Rules of Civil Procedure or any other standards.

So the result with regard to one of these subpoenas, just by way of example, even though this was -- the ethics complaints were limited to a November 2023 election, my client filed as a candidate in August of 2023, the Ethics Commission got ten years of my client's personal bank records from, in this case TD Bank, which is not based in the state of South Carolina. My client didn't get notice of these. Had she gotten notice of these subpoenas, TD Bank and the others would have -- she would have challenged it, and I don't think any court would have upheld certainly ten years' worth of subpoenas if any of them, so we have that issue.

There's a way as I believe Your Honor is aware to investigate a foreign subpoena such as this and that would be under the Uniform Interstate Depositions and Discovery Act. The Commission didn't do that. Commission staff I should say. I may slip, you know, but this was on the staff level. It didn't do that and it ended up getting like 2200 pages' worth of personal bank records going back to 2014. My client had no idea because she wasn't provided notice. We contend she was entitled to notice. We contend that she has a privacy interest in these bank records under the South Carolina Constitution, under the Federal Constitution, and -- and she had a due process interest in having notice of what was really going on.

Your Honor, what happens at the Ethics Commission, there's a two-step process. So here we were in the investigative part of the process and this is all very carefully laid out by the statute. So during the investigative process, once an investigation is opened, the investigation is completed. We have a lot of arguments maybe about -- for later about how it should have been completed, but it's completed and then at the staff level the staff, and this is set out by statute, goes and makes a probable cause determination based on a recommendation from staff.

In this case, probable cause was found based on what we contend, even though we're not -- I want to set the stage without getting into the merits -- merits of it, but what we contend are clearly illegal outside of the Ethics Commission's authority, subpoenas and, you know, other parts of the investigation.

So the issue most immediately before us, Your Honor, is the Freedom of Information Act and, frankly, this was an issue that originally we didn't necessarily recognize as an issue until examining it a little bit, but when we looked at the meeting minutes, which is -- which are attached to -- to the complaint, from July 18, 2024, we noticed that while there is something in the minutes about going to probable cause -- going into executive session to hear probable cause matters, there's no more detail beyond that. And then the minutes show that they come out of executive session and the minutes don't show that anything -- any vote was taken. At least in the open session minutes, which are available.

Now the Ethics Commission informed my client after the fact, not before the hearing, that -- that it found probable cause on July 18, 2024, but the minutes didn't show that. It took getting into the course of this litigation for the ethics -- to unsort what happened really through the admissions and it's all really pretty clear right now that the Ethics Commission admits that it's a public body under the

Freedom of Information Act. All public bodies have to comply with the full panoply of the requirements of FOIA, which includes the requirements related to public records, but here we're talking about the requirements for open meetings, and specifically 30-4-70(b). For years and years, I mean, ever since 1978 when the open meetings parts of FOIA were introduced in their current form, ever since then it's been pretty clear even though some of the issues have been -- the statute has been amended over the years, but it's always been clear that no votes -- or at least certainly under the law right now, no votes can be taken in executive session. There's certain things that can be discussed in executive session compared -- you know, under 30-4-70(a). We're not saying that the Commission properly did discuss things in executive session, we're not challenging that. That doesn't mean that we necessarily think it's right. What we're challenging is voting in executive session, which FOIA clearly says that you just -- I mean, you just can't -- you can't do. It's -- I mean, I would refer -- this has been thoroughly briefed. I would refer to the Brock versus Town of Mount Pleasant case, to the Sumter County business license opposition case, to the Miramonti case recently with Richland 1, from the

Court of Appeals. I mean, it's very, very clear that 30-4-70(b) does not allow a vote in executive session.

So what we have here, and really it's gotten clarified through the briefing, is that the Ethics Commission is admitting that it's a public body, admitting that it voted in executive session. I've never -- I haven't been able to find an argument for a case where that argument was made, but it even admits -- I think it admits, my interpretation of the latest reply brief, it admits that what 30-4-70(b) means, it should because how could it mean anything else? It says that when a public body goes into executive session to -- you know, it can go in for certain specified reasons, but you can't take a vote other than to adjourn and -- well, I don't have it in front of me, you'll have it, but it can take it to vote to adjourn basically. It can't take any substantiative vote in executive session.

So what the Commission argues is while we're a public body and we're -- I mean, and it's clear, we have it in the complaint there, it's all over the Commission's website, there's no challenge that it's a public body and that it's subject to FOIA, but what it is trying to argue is that well, it's subject to FOIA; well, only for some purposes, but not for others, and that's just not what -- that's not what the FOIA says. That's not how the FOIA has ever been interpreted.

Under -- since 1978 when the public meetings act was adopted in its current form, there have been just a few amendments to it, and the amendments are pretty -- they've never -- I mean, early on a public body used to be able to ratify actions taken in executive session. In fact, I think that was the preferred course, or that was the prescribed course under the statute, was the 1987 amendments as the Brock case and the Piedmont v. Cowart case pointed out, the Legislature made very clear that you cannot ratify -- a public body is no longer allowed to ratify actions taken in executive session, nor can they vote in executive session, and that's just never been controversial. Most of these controversies are around, as I observed the cases, about whether meetings were properly noticed or whether there was a proper subject to go into executive session under (a), but here the Commission said that it doesn't apply to at least their probable cause determinations, so you have to start, you know -- so they are saying they're subject to an exemption.

You know, courts have to look at an exemption just like they would look at any other statute, the cardinal rule of statutory construction, what is the intent of the Legislature, but under that same rule Hodges v. Rainey and many, many other cases as Your Honor well knows, when the language is -- the statute is clear and unambiguous the Court doesn't have the right to define another meaning, and here it's clear and unambiguous that there's no voting in executive session.

And I think one reason -- one thing that the Court can look to for legislative intent is it could look to well, are there other exemptions? I mean, have there been -- is anybody else exempted or does this really apply across the board? Because the Commission isn't pointing to anything in their statutory scheme, Title 8, Chapter 13. The Commission hasn't pointed to -- well, I take -- I take a step back. It's not pointed to anything explicit in Title 8, Chapter 13, they don't point to anything in FOIA, but one of those amendments to FOIA, 30 -- the amendment 30-4-70, when the State created the Retirement System Investment Commission it passed a statute and within that statute it amended part of 30-4-70(b) to specifically exempt not everything, but certain discussions of the Retirement System Investment Commission for FOIA. So the Commission is arguing that the fact that there is something confidential, you know, over in Title 8 then, well, why would the Legislature if they, you know, want to specifically pass a law to specifically declare that the RSIC is exempt from FOIA but only with certain -- you know, certain criterion are met, and I think the criterion -- I mean, if disclosure would jeopardize investment decisions or objectives, so it's not a blanket disclosure, but it's a very targeted disclosure, which is -- targeted exemption, which is consistent with FOIA.

But here the fact that the word "confidential" is used and the fact that there is some -- some level of confidentiality to proceedings, that cannot be read as a legislative intent to exempt. I mean, for one thing confidentiality was baked into the FOIA from the very beginning. It's really a balancing test. Bellamy v. Brown, I mean, about how to balance confidentiality versus transparency. If a confidentiality provision however it's interpreted would be an exemption to a prohibition against voting in executive session, the exceptions to FOIA would swallow up the rule, and that's not how it's been interpreted.

Second on that I should note, and it's important, the defendant is the government. The government has a very heavy burden in arguing for an exemption to FOIA. That's in addition to its usual summary judgment burdens. Evening Post Publishing versus City of North Charleston, I mean, the government has the burden of proving that an exemption applies. We're on summary judgment right here and it's pointing -- it hasn't done enough to -- to meet it's burden.

If the Court is inclined to look at legislative history, I mean, I say that clearly there's no indication of legislative intent, but the legislative history supports us. I mean, the Ethics Commission was created in 1975. Act 191 of 1975. In that act, it says the Ethics Commission or -- well, the Commission, shall conduct its investigations and hearings in this manner. All Commission investigations and records relating to their preliminary investigation shall be confidential. So that's been tweaked a little bit, but it hasn't substantively changed since 1975.

Three years later in Act 593 of 1978, the Legislature passed the law which specifically provided all meetings of governmental bodies in this state, except as specifically exempted, shall be open to the public, and all of the case law has supported a wide berth in transparency and accountability and these provisions go to the fundamental purpose of FOIA, which is to prevent the government from acting in secret. So the fact that there's a -- there's something that's confidential over in -- you know, over in Title 8 isn't a legislative exception.

Additionally, the cases have been clear, as I mentioned, in FOIA, FOIA doesn't countenance blanket exceptions. This has to be -- even in cases -- there's the -- where there are -- pardon me -- Newberry Publishing Company versus Newberry County Commission on Alcohol and Drug Abuse, 308 S.C. 352, the Supreme Court, just by way of example, found that SLED's policy of denying all FOIA requests for criminal investigative reports without determining whether portions of the reports are subject to disclosure is in direct contravention of the clear language of FOIA. If the legislature wanted to create a blanket exemption for all criminal investigative reports regardless of content, it clearly could have done so.

So that goes to two things really. FOIA -- there are no blanket exemptions -- there are very few blanket exemptions under FOIA and really those exemptions have to be clearly set forth and clearly state. And the Commission tries to argue not only by pointing to Title 8 but wants to direct the Court to the DomainsNewMedia, which really doesn't -- in my mind isn't worth much of anybody's time, but I'm happen to answer any questions.

We have that laid out pretty well in our response that the DomainsNewMedia was a 2018 Supreme Court opinion where there was a question about whether a chamber of commerce could -- was a public body under FOIA. As Your Honor knows, FOIA is all about transparency and accountability and the Supreme Court found that FOIA was a more general statute than a specific statute that was -- that basically allowed this private organization to get -- or accommodation tax funds to -- to have some level of transparency and so the Court saw that as a legislative intent that these organizations wouldn't be object to FOIA.

But what -- the main point from that I would just say is that this whole statutory rule of interpretation about a specific versus general, specific prevails over general, it's -- it's not applicable where if we look at Porter versus South Carolina Public Service Commission, 327 S.C. 220 where there's a -- there's only where there's a conflict between the statutes and the Commission's trying to read a conflict in the statute that doesn't exist.

There's no way -- I wouldn't necessarily presume to say well, the Commission has to do things this particular way as opposed to that particular way, but it is -- it does have to vote in public even if it -- even assuming arguendo it can discuss these in executive session.

So, you know, I wouldn't presume to say how do that, but we gave a suggestion which -- in our motion for summary judgment what the medical board does. The medical board and lots and lots of other disciplinary -- or agencies with a quasi judicial or disciplinary function, they have -- they come out and use the complaint numbers. Well, if you're worried about confidentiality using let's just say C2024-130, that doesn't breach anybody's confidentiality. That's just a way to put your vote on the record to make sure that you know who on this eight member commission where six votes are required for probable cause. As of now my client doesn't know was it six votes, was it seven votes? It's secret. We don't know. We just have to take the Commission's word for it that there was a vote. I'm not questioning that there was a vote, but we don't know how many. We don't know -- we're not arguing that we -- right now, you know, that we're, you know, entitled to be privy to their discussions, that's not something we've raised here. We're just saying we're entitled to know the vote and that's what the FOIA requires. The public requires it.

So, you know, the second thing about DomainsNewMedia, just quickly, I mentioned it at the beginning, I mean, it was very, very clear that if you're a public body you're a public body for all purposes. You can't sort of pick and choose when it's convenient for you to be a public body, which provisions of FOIA you want to comply with or not.

Let me move quickly if I could -- well, I can probably hit some of this on the other way -- on the other way. I mean, we're pretty thoroughly briefed, but I do want to move quickly because it's a little bit of a -- the exhaustion of administrative remedies issue. There's a little bit of strange posture with it. I mean, we've all agreed to talk about FOIA and the exhaustion issue and we've all briefed those issues, including the exhaustion issue, and we've briefed it thoroughly. But, you know, it's a little bit hard to divorce that issue from well, what happens with -- which we haven't briefed, assuming the Court finds that there's a FOIA violation, we've asked, and we have asked and there's been at least one mention, that we think the action is void, and that's pretty clear, you know, that that's at least an option for the courts to void or invalidate the action.

So, I mean, the question starts after that, and I wouldn't presume to even try to brief it, and I'm not substantively arguing it now, I'm just raising it, what happens next? So just to -- just to float the issue that while there's some things that can be cured perhaps and there's some things that cannot be cured, and I wouldn't presume to say let me -- let's brief the FOIA violation before the Court decides there's a FOIA violation, but really it's hard to see at least in a clean way, at least based the record, how this could be -- how this could be fixed even, you know, with -- whether the exhaustion issues even need to be -- even need to be reached if there's a FOIA violation and it can't be fixed because we've got -- and I'll just leave that there, and I'll take any -- I'll take any issues, but right now the -- the FOIA violation and the -- I would say Counts II, III and IV, the Commission going above its statutory authority, issues subpoenas, not being in compliance with UIDDA, violating due process, violating the Fourth Amendment, the South Carolina Constitution, all of those issues are intertwined and if -- if the result is -- well, if this is void but we're gonna go and just vote again after having -- everybody having considered all this what we contend is illegally obtained information, I'm not sure -- I'm not arguing it, but I'm just not sure that that's a way forward.

I mean, right now I don't think there's any question -- again, I'm not asking for the ruling on that issue. I'm not arguing yet. We're not -- we haven't fully gone through it, but the answer to -- you know, the answer -- it's sort of just hard to separate because if the answer is well, we're gonna go back and just still use all of the illegal stuff and present it to the Commission again and just revote, I just don't think that fits with public policy or the purpose of the FOIA as it's ever been interpreted, but right now, I mean, there are arguments about jurisdiction and about really exclusive jurisdiction.

There's no question at all. I'd just refer to the briefs. This Court has jurisdiction over the matters. The doctrine of exhaustion of administrative remedies doesn't go to jurisdiction. The Commission brings up the Rainey case. Rainey wasn't decided on exhaustion of administrative remedies, Rainey was decided on the separation of powers and some other issues because John Rainey tried to file an ethics complaint against Nikki Haley in the circuit court and that -- and those matters have to go through the House Ethics Committee.

We're not filing an ethics complaint. We are trying to get the Court to resolve pure issues of law that are ancillary to an ethics complaint. Thomas -- the Thomas Sand case, the Stinney versus South Carolina School District 17, says if something is -- I mean, the fact that both matters relate in some way to an ethics complaint or complaints, that doesn't -- that does not mean that the circuit court has -- can't hear it. And, in fact, I mean, if the legislature intended to divest the circuit court, I mean, this is within the circuit court's -- these issues, to repeat, are within the Court's constitutional jurisdiction and the Ethics Commission by the statute, by the language of this particular statute, is authorized under certain circumstances and with prerequisites to see whether a violation of the ethics act has occurred in so many words.

So, you know, that -- that's just a matter of statutory interpretation; that one, the Ethics Commission doesn't have the statutory authority to hear these claims, but, I mean, there's just no question that the Court -- that's not a matter of this

Court's subject matter jurisdiction as the Ethics Commission attempts to argue and if -- if there were to be a ruling to kick whether -- regardless of what happened on FOIA to kick these other claims back -- back to the agency, it's the first time that I would have ever seen it because every time -- if you look at pages six to eight of our reply brief, I mean, Sanford verse Ethics Commission. Ford versus Ethics Commission.

In Sanford, both of those cases happened after -- were filed after a complaint was filed. The Courts did not hesitate to wade into it. The only decision that I'm aware of where exhaustion of administrative remedies was even decided was an unpublished decision in the Krawcheck -- one of the -- it's cited in pages six through eight, but Judge Matthew Perry, one of the Krawcheck decisions, where it was an unpublished district court decision that was decided on exhaustion of administrative remedies and then on reconsideration the Court felt -- the Court reversed and Judge Perry said because there are no factual disputes, which that's important if I haven't highlighted it, there are no factual disputes here, a resolution through an administrative process, all that remains is a pure question of constitutional law which by state law the

Commission is powerless to decide citing Video Gaming Consultants 342 S.C. 34. So every single time. I mean, Legacy Alliance versus Condon. Anderson versus State Election Commission was a matter about the interpretation under the ethics act. The Courts have jurisdiction over this. There's no -- there's just no question.

So, regardless, I've probably -- you know, I've probably talked enough, but for now I'll save anything else for reply, but really just in sum it's a clearcut FOIA violation. It's a -- I mean, there's no decision I've ever seen where it's even been argued that a public body can vote in executive session. And then, too, as far as everything else, the Court has jurisdiction, the agency doesn't have jurisdiction.

And just the last thing, we are -- we have a scheduling order where we're gonna -- if we stay on the current course, and I'm not even suggesting here, you know, what the decision would be, but we would have a decision by the end of June and it would take a lot longer as I belive the Commission has admitted to go over there and we don't have -- we have pure issues of law. We're all -- I'll just speak for the other side. I mean, they're good lawyers. They can brief things, they can -- and, you know, we can very clearly lay out the issues here, and I believe the other issues should stay here in this court.

Thank you. Thank you. Thank you, Your Honor.

And I refer to the briefs to the extent not -- not mentioned in the oral argument.

THE COURT: Thank you, sir.

What's the response?

MR. TRAYWICK: Thank you, Your Honor.

Again, Lyle Traywick on behalf of the State Ethics Commission and Executive Director Dayson.

This case is about the intersection of FOIA and the State Ethics Act and although my good friend on the other side wants to say DomainsNewMedia isn't worth any time of the Court and we respectively take a different view. My law partner argued that case before the Supreme Court and what it does stand for the proposition of is the Court rejecting the argument that you can only resolve a case by just looking at FOIA, and this is one of those such cases.

Yes, we're not challenging that it's a -- we're not a public body, but guess what? Under Bellamy, the very case he cites, what he omits to tell the Court is the very end of the opinion. No legislative intent to create a duty of confidentiality can be found in the language of the act. We hold, therefore, that no special duty of confidentiality is established by the FOIA. Well, that stands in stark contrast to the provision, a very specific is one, that we have cited throughout this case of the State Ethics Act, and that is Subsection 8-13-320-10(g)(ii). It says after a finding of probable cause, dot dot dot, the following documents become public record.

Let's look also at the general provision of Subsection (g). It says all investigations, inquiries, hearings and accompanying documents are confidential and only may be released pursuant to this section. That is the specific and clear intent of the General Assembly that this is a specific statute that prevails. It imposes a duty of constitutionality on the State Ethics Commission that stands in far contrast to this general duty of disclosure which our Supreme Court distinguished between in Bellamy v. Brown.

So we are not charting a new course here. The General Assembly understood exactly what it was doing when it imposed this duty of confidentiality upon the State Ethics Commission. And if that weren't enough, it drove the point home by saying any violation of that duty of confidentiality via the willful release of confidential information is a misdemeanor. So if staff of the Commission or the commissioners willfully release any information related to a complaint in violation of Subsection (g), they can face jail time or a penalty.

So the suggestion that oh, we can ignore of all that, number one, flies in the face of Edwards v. State, which says that all executive agencies shall follow the law until it's declared invalid and it just does a torturous reading of these two provisions. They are, in fact, in conflict and we have listed a number of manners in which they are in Footnote 3 on page 8 of our initial motion for summary judgment, and there's just no way to comply with these provisions in concert with each other and although my friend on the other side says we don't need to take a position on whether the State Ethics Commission can deliberate in executive session, there's a reason for that because if only FOIA applies, we cannot. There are only specific instances under Subsections 30-4-70(a) where a public body can discuss things in executive session primarily dealing with employment, employment compensation and other matters. Not one of those, Subsections 1 through 6, apply to the State Ethics Commission, yet by the same token Section 8-13-320, Subsection 10(g) forbids us from discussing anything related to an ethics complaint in public until after a finding of probable cause. That right there is in conflict and so we're not breaking new ground. This, in fact, entirely consistent with how the ODC handles complaints against judicial officers.

My good friend on the other side suggests that we're in a class of one over here. We're not and it's really not all that surprising because if you think about the underpinnings of the State Ethics Act it is to prevent what I think the plaintiff here is most upset with and that's your political opponents using the system as a sword as retribution and really you don't have that. Doctors aren't going after other doctors to file disciplinary complaints. The same with realtors.

Here in this specific context the General Assembly in -- in passing the State Ethics Act really struck that balance between openness and transparency and regulating campaign finance, as well as the actions of public officials, but also not allowing that process to be abused to effect their official duties or to discourage them to run for office.

The same with judges. If all of this were put out into the open all the time, that could potentially in theory at least affect rulings and so really what you've got is the three branches of government being treated the same when there are actions filed against them and the State Ethics Act just so happens to also include folks who are running for office and running for lower levels of office. So there's not anything odd about this at all.

And so really you get into the specific versus the general. The DomainsNewMedia has recognized that in the context of FOIA. Sure, it's in the public body domain, not necessarily here, but there are situations in which the Court must look to another specific comprehensive statutory scheme to determine whether the General Assembly intended something else and you know what that language sounds eerily familiar to? Rainey v. Haley, which we didn't get a position on until my friend's reply brief.

But Rainey v. Haley really is an open and shut of both of the aspects of our motion for summary judgment. The Court there recognized that the Legislature has established a comprehensive statutory scheme for regulating the behavior of elected officials, public employees, lobbyists and other individuals who present for public service.

Okay. Comprehensive scheme. The same language used in DomainsNewMedia. The extensive and unambiguous statutory scheme contemplates the receipt, processing and resolution of ethics complaints against a member of the General Assembly and the respective chambers of the Legislature. Therefore, it's clear the Legislature intended respective ethics committees to have exclusive authority to hear those.

Now my friend on the other side says oh, that's just a separation of powers case. The Court didn't given get into separation of powers until a belt and suspenders finding in Subsection (c) of that opinion. Rather, it discussed the State Ethics Act as a whole and all those very same provisions are equally applicable to cases that originate in the Ethics Commission, not necessarily in the legislative ethics committees, and so there is a comprehensive statutory scheme. I think -- I think my friend called it carefully laid out by statute. We agree. It is. And in that context, which goes through each phase of a case from investigation all the way to a hearing, it's quite crystal clear on what the Commission can and cannot do. And don't just take my word for it. You have the president of the Senate, you have the Speaker of the House, you have the State Ethics Commission, the plaintiff who had initially filed suit, and the United States District Court for the District of South

Carolina issue an order dismissing a complaint and saying that that section governs when and how information that's otherwise confidential may be produced and how those vary with FOIA. That's in the Notice of South Carolina Authority that we filed with the Court yesterday in the Doe v. Thrasher case.

So here we've got everyone in agreement that that's what applies. So what's really going on here? You've got a complainant who is trying to get her ethics charges thrown out because this ruling on just the finding of probable cause to send her complaint to a full-blown proceeding was not done in open session. Well, number one, it can't be, but, number two, it's really important about why that hearing isn't in open session. It wasn't always that way. In 2017, the General Assembly amended the State Ethics Act to make clear that a merits hearing shall be in open session and not in executive session. It didn't touch any of the other provisions and you want to know why? Because it knew exactly how the State Ethics Commission is interpreted and as the Gilstrap case that we cited in our brief stands for the proposition of citing a U.S. Supreme Court case in support that when the Legislature reenacts something with knowledge of how that interpretation has been going, that's an acknowledgment that it agrees with it, and so that's the case here, of course.

Also if 70(a) doesn't apply, then 70(b) can't. Like how can we go into executive session to deliberate, and -- and the only authority for that would be under the ethics act and that's why my friend on the other side won't take a position on that because he knows that's true. So 70(b), you can't just hopscotch back and forth from FOIA to the State Ethics Act. And truth of the matter is, is that deliberation and voting are part and parcel the same.

Now he suggests we go look at what the medical board is doing. Well, they have a lot of different policy considerations for the disciplinary actions taken against doctors, but let's even look at his example. There, there was an executive session to discuss what to do and then they came back and voted on the ultimate disposition of the case. The discipline to be imposed. That's not what happened here. This was just a determination that probable cause existed to believe that she violated the State Ethics Act such that this should go to a full-blown hearing. This should be out in the open during which she has full due process rights, adversarial testing of the charges against her and others to check that process subject to appellate and judicial review. And so that is just simply not the case that you can jump in or out.

Also you can't just tap in your analysis to 70(b). I mean, you've got to read statutes as a whole, and that's from Senate re: Leatherman v. McMaster. You can't just say oh, well, we just won't touch that because that's not convenient to their argument and go straight into 70(b). That's not how the rules of statutory construction work.

Also we've got to look at our regulation. That prevents his proposed solution. We can't acknowledge the existance of a complaint except in certain circumstances. And so take, for example, what happened here. Ms. Peets had 45 charges against her. Unless you take a straw poll in executive section, which is prohibited by 70(b), how in the world would you be able to know what charges you're voting on in open session? So there would have to necessarily be some description of them and you'd be revealing the existence in the description of those charges and, therefore, existence of the complaint and violation of a regulation. And while he might say oh, well, you know, that regulation is not what the statute says, as the Court is well aware the General Assembly has a say in regulations and that one's been on the books for quite some time.

Also this notion -- I have to push back a little bit. This notion that we didn't realize what happened until digging into see how the vote was taken really is disingenuous, Your Honor. I'm sorry, but my friend on the other side has served as the general counsel for the State Ethics Commission for three and a half years and I just think he can't say to this Court he didn't know how that worked. This is exactly how it's been working since then and although there are special duties to former clients, you also have the duty of candor to the Court. You can't just say I didn't know this was an issue and so I do have to push back on that respectfully just a little bit. That's too much.

Also we provided a list of other FOIA provisions with which we cannot comply and what this statutory construction argument here that they advance violates the most is construing the statutes in a way that would lead to an absurd result. It would require the State Ethics Commission to ignore the very act that it's charged with administering, turn a blind eye to it never mind the criminal penalties associated with doing so in service of the more general Freedom of Information Act provisions that clearly can't apply and work in harmony with the confidentiality provisions. That leads to an absurd result.

And also to -- to what end? She admits in her reply that voting on this wouldn't even reveal anything to the public. Well, isn't that the whole purpose of FOIA? So what is this? This is just a technicality to try -- a gotcha moment to try to get her charges thrown out, and that's all this is.

And so that leads me into the second argument and I will say there's no indication here -- we've been interpreting it this way since the start, so there's no indication of bad faith here, so good faith bars any attorney fees being sought by the plaintiff.

Let's turn to exhaustion. Again, I want to start with Rainey v. Haley. The Court made quite clear there what the deal is. This exclusively within the province. The General Assembly weighed in, too, the last time they amended the State Ethics Act, and this in the bottom notes of the statute, Section 17 of Act 284 -- or, I'm sorry, Act 282 in 2016 talks about how the committees shall maintain jurisdiction and how the State Ethics Commission shall have jurisdiction over open complaints after a certain date. That word's important, right? You can't just ignore it and say oh, this is just, you know, judicial exhaustion and we can just turn a blind eye. That's not what the General Assembly intended and the Supreme Court said as much.

Also I didn't hear any mention of the Harpootlian case. Plaintiff here seeks a writ of prohibition. The only writ of prohibition of which I'm aware is the one that we got in the case, which is the first I was able to find since 1972, that prevented the circuit court from doing exactly what he's asking you to do here, which is to take jurisdiction over an ethics complaint. Now however you want to read Rainey v. Haley, all five justices may not have skinned the cat the same way, but the two that concurred agreed with the result. The claims weren't yet ripe and they should be decided by the State, in that case, ethics committees; so to here with the State Ethics Commission.

All plaintiff's cases are readily distinguishable and so -- and Rainey said as much. Rainey rejected the plaintiff's argument there about four that plaintiff here advances. I mean, that's the Supreme Court of South Carolina. The highest court in this state has already rejected that argument. We didn't see that anywhere.

Sanford. That was about the confidentiality provision. Yeah, there was an on-going proceeding, but that pertained to the governor of South Carolina and what he could do.

All the other ones as plaintiff admits are re-enforcement actions. That's a totally different ball game, Your Honor. That's whether the Commission can even enforce a statute against somebody and whether FOIA is violative of the constitution. And the Krawcheck cases are really illustrative examples. The reason the Court said that the Commission could not have ruled on them there, and I teach these in our election law class, is because they were facial challenges under the First Amendment. It's black-letter law that an agency cannot entertain a facial constitutional challenge and we don't consider the contrary, but that's not what she's asking for here.

All these challenges sounding in Article 1, Section 22, which by the way, no claim under that is ripe until there's a final deprivation of her right. There's been no final deprivation of her right by an administrative agency here because we haven't been able to rule on it. When we tried to go and schedule a hearing, she filed this action rasing the exact same claims that were raised in their motion to dismiss the case, so there's been no final adjudication there.

Fourth Amendment. I mean, that's the same thing. It's a motion to suppress is essentially what she's asking for or potentially a motion in limine, however you want to construe that, but really what it boils down to is she didn't like the subpoenas.

But I do want to push back a little bit because the way my friend explains the subpoenas suggests that they asked for ten years of records. That's not what they said. They asked for any and all financial records from inception to current bearing the name or portions of Ann Peets with her date of birth. Why might that be totally normal for the State Ethics Commission? Well, it was her first time running for office, so presumably they wouldn't have been open that long. And also, as our regulations contemplate, folks running for office can have a checking account and a savings account, so oftentimes there could be multiple accounts related to a campaign. So they didn't -- the investigators didn't know what they were looking for at the time and so they asked for that. That the result of that ended up being ten years' of records isn't our fault and no one has even suggested that those ten years' worth of bank records would even be introduced at a hearing. But you know what? If they are, that very same section that they don't want the Court to look at provides her the very remedy she seeks here to protect her constitutional right to privacy, and that is redaction.

Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. Yet that's not good enough. She wants the Court to the rule on these, all of which are interlocutory. She claims that the Ethics Commission can't even rule on these in first instance, but our regulations made quite clear and have been blessed by the General Assembly that the panel chair can hear preliminary interlocutory matters.

What's interlocutory? Well, we gave a long laundry list of trying to charitably analyze what she was asking this Court do and every single one of those are interlocutory. Denial of a motion to dismiss, interlocutory. She filed a motion to dismiss everything. Ruling on a motion to suppress, interlocutory. Ruling on a motion in limine, interlocutory. So everything that she's asking for is interlocutory as expressly contemplated in the regulations promulgated by the Commission with full awareness of the case law upon those.

And so this suggestion that they're without power to rule on the scope and propriety of a subpoena that was part and parcel of the investigation, that argument just doesn't hold. And really what they're asking you to do is interfere with that hearing and the courts have been clear that our courts should avoid gratuitous interference with administrative procedures and really all these types of claims belong in the State Ethics Commission. They have the power to hear it. There's no facial constitutional challenge. Plaintiff doesn't even wrestle with our citation under Robinson v. South Carolina Department of Employment and Workforce. I think that was a very clear indication of our courts, again, one of my cases, that exhaustion is alive and well. The Court of Appeals there reversed what would have been probably a hundred million dollar class action on the grounds that the plaintiff did not exhaust administrative remedies in the face of very similar arguments to what they make here and that's that, you know, oh, well, the agency doesn't have authority to hear this. Well, that's the tail wagging the dog. The agency does have the authority to hear it and you can't just style it a certain way and say oh, I'm asking the Court for a writ of prohibition. They clearly can't get that, but that's sort of a red herring because it's the substance of the relief that she seeks, which is a ruling --

THE COURT: Hold on a second. My pen ran out of ink.

I'm sorry. Go ahead.

MR. TRAYWICK: Of course.

It's the substance of relief that you look at, right? And so he also wants to say we're not talking about the merits, but he wants to get into the merits on the providing of subpoenas. You know, all those banks are operating in South Carolina, so this notion that they couldn't accept subpoenas I'm really not following, but that's a question for another day. That's a question for the State Ethics Commission to determine and to the extent she continues to say that there's some Marbury v. Madison exception to exhaustion, I'm not aware of it. I've never seen our courts uphold that if it happened.

It's a question of law to be sure, but it's part and parcel of the investigation of the Commission, the Commission who passed on it. If she doesn't like any of that then, of course, everything is subject to judicial review by our courts. The right of appeal flows through the Commission. She's before a panel of three commissioners, then it goes to a four commissioner review. If she's not happy with that, then she gets to appeal to the Court of Appeals. So there's no prejudice here.

And the suggestion that oh, well, you already took it, so you should just keep it, that ignores the -- the policy of judicial economy. He filed first the motion to dismiss there and they had a hearing scheduled in a matter of days on it, but before they could hear it this action was filed and then amended just to -- just to basically forum shop, and so that is anathema to -- to the notion of judicial economy by having two bodies having to weigh in on the same issues.

Our panel chair stands ready to schedule and hear that stuff, but really what it boils down to is that they didn't like the way things were scheduled. They thought that there should be a continuance and that there should be a standalone hearing on a motion to dismiss and that no merits hearing should go forward until that was heard. Well, case administration is within the quintessential discretion of both the courts and administrative tribunals and so the writ of prohibition will not lie to correct an error of procedure, whether actual or perceived, or to prevent what she might think would be an erroneous decision.

And on that note, the suggestion that -- that it would be futile to go there because there's a hard and fast decision, I've seen zero case cited by the other side on that. We have cited a case from the Georgia Supreme Court saying that that's not true. Your litigation position is not a hard and fast ruling on something because otherwise you can always have the exceptions follow the rule.

I mean, think about it. I don't want to go before you, so all I have to do is sue you and if you dare to answer, then I'm good. That would create the mischief that is contrary to what the General Assembly intended by having these bodies deal with these very specific matters within their expertise and so that cannot be what the General Assembly intended.

Also, you know, I stand by Harpootlian. We cited another case in which the Supreme Court dismissed the appeal and the reason why is because this Hodges v. Rainey notion that the inclusion of one implies the exclusion of the others and the General Assembly has only provided one window within which a circuit court may have jurisdiction over an ethics complaint and that's in the 50-day window leading up to an election and twice now the Supreme Court has gotten rid of a case out of the court system because it extended beyond and sent it right back and said you can go to the Commission, it's not proper for the courts to act on that, and so that's in the Harpootlian case and the Hill v. South Carolina Republican Party case.

And so basically the plaintiff here is inviting this Court to commit error, but there are no facial constitutional challenges and that's the only claim that's outside the kin of an administrative body like the State Ethics Commission.

I beg the Court's indulgence briefly.

THE COURT: Yes, sir.

MR. TRAYWICK: Another thing, and this is pretty key, and I think Ms. Dayson's affidavit makes quite clear. You know, they say it's futile because the Commission already made a ruling on probable cause, but that conflicts with the standards, Your Honor. Probable cause is a much lower standard than an actual finding following a trial-like hearing subject to adversarial testing and arguments and evidence and witnesses and, you know, subpoenaed documents and all the like, of a finding of that, and so that's simply not what they did. And what she also made clear is that neither the subpoenas nor the responses were included within the report considered by the Commission in ruling on probable cause. So how could they take a position on something of which they are not aware?

And as we made clear in our brief, the Commission could agree with her. I don't know. They don't share. The three commissioners can say yeah, you know, those subpoenas were too broad or they could say no, they may have yielded a lot, but as written they were fine. They may say we reject your argument on out of state subpoenas because all these banks have branches in South Carolina and do business regularly in South Carolina. Or they may say, you know what, your reading of that statute is right and the backstop for that is judicial review, and that's exactly what the General Assembly intended not to allow, instead the plaintiff to bring those claims here in the first instance.

The last thing I want to clarify is that I think my friend on the other side mentioned it was II, III and IV. It's also V. We are -- our primary motion here is they're wrong on FOIA and all remaining claims in the amended complaint should be dismissed without prejudice so that she can raise those matters in the Commission as required by law.

So I'm happy to answer any additional questions, Your Honor; otherwise, I would like an opportunity to reply based on what he raises in his reply.

THE COURT: Thank you.

Yes, sir. Anything further?

MR. BURCH: Yes, sir, Your Honor.

Briefly. There are a few -- a few things. One, I would say counsel on the other side is wrong about everything he said, but, you know, I'm just gonna -- I'll get that out there, but to start with, Bellamy v. Brown. I think counsel misapprehends what Bellamy v. Brown is about. When the Supreme Court talks about FOIA not establishing a statutory duty of confidentiality, that doesn't have anything to do with these issues right here. That has to do with whether, you know, an agency or public body can be held liable for, you know, breaching of FOIA and disclosing something that shouldn't have been disclosed, and that's what the Court in Bellamy v. Brown said and several other cases. That's just a completely different issue.

We agree with the fact that we don't challenge that the Legislature could make its intention clear in some other statute that it's trying to exempt -- exempt certain actions from FOIA, but it's got to be somewhere. It's got to be either in FOIA or in the other statutes. So there are a few straw men that are being built up trying to make -- trying to make the argument or read things into arguments that aren't warranted, but certainly we're looking at legislative intent.

It's like well, if it's not in the FOIA and it's not clear in the ethics act, we're -- I mean, we were -- we were very happy to allow a late notice of supplemental authority mostly because I just think it's irrelevant, I mean, and to be a good -- you know, and to be a good counsel on the other side, you know, be cordial with everything, and that's all fine, but we do think the authority is -- is irrelevant, but the premise of it, the premise of it all, we just -- we just reject.

So, I mean, just not even to get into that because the premise, the fundamental premise, is that well, we can't -- we can't comply with both statutes even under our reading if we're complying with FOIA, and time and time again, I mean, the courts -- the courts say otherwise. That's the interplay of 30-4-70(a)versus (b), and we mention (a) only because it gives context to (b).

I mean, honestly I don't know that the

Commission's appropriately going into executive session right here. I think it could fit under, you know, employee discipline, which I believe is the first of the 70 -- 70 factors, but, I mean, I don't understand the premise that we're running for it by only saying that they violated (b). (a) says that certain enumerated -- there are certain enumerated reasons why a public body can go into executive session. We're happy to make that an issue if the Commission wants to make that an issue here, but -- and it uses the word "discuss", okay? It may have used the word "deliberate". Is there a difference? Well, it doesn't matter because they use different words and discuss is not the same thing as vote, so the interplay between (a) and (b) in 30-4-70 is that there's certain things under (a) that are considered inherently to be confidential so a public body can go in and discuss these issues, but it just can't vote on them. And a vote doesn't -- I mean, a vote is different than discusses. I mean, it's different words used in different -- I mean, it's just -- it's a -- I don't know why a difference between those two words is a confusing thing. The Legislature uses different words in the statute. I think it's pretty well settled and it's meant to talk about different things.

I want to push back on the fact that -- you know, trying to make me a witness in here because, I mean, none of that's really under any evidentiary standard. If we're gonna talk about it, I mean, we have a bench trial and we've got the fact that the Commission hasn't been doing it this way forever.

The Commission used to do it wrong because it used to come out of executive session and take a vote in open session and in that vote it would ratify the actions in executive session. Nobody ever raised that to me as an issue. I'd never dealt with the FOIA when I was there. Not that I'm becoming a witness here, but, you know, that's a -- that was wrong. At some point, and I can't say when, but it cold be easily determined from the minutes, they decided to just take all the votes out and just not -- just to actually vote in executive session and -- even if both things are wrong. I mean, they sort of -- I do think actually voting is more clearcut even though Brock v. Town of Mount Pleasant and Piedmont versus Cowart, you know, very unequivocally say that you can't -- you know, that ratification isn't -- isn't allowed either.

So, I mean, I'm not trying to be a witness, but really what this is all about, I mean, we're before the law. As Your Honor knows, I mean, you know, we're -- we have issues of law before us. What the arguments come down to is this is the way we've always done this. That's not a legal argument. That's an excuse. Even if it was done the same way for thirty years, that's not what the law says. And the fact that, you know, we have a litigant who wants to bring it up regardless of the fact it hasn't been brought up perhaps in court before, that doesn't change anything about -- about the analysis.

ODC was mentioned. ODC is part of the judicial branch. That's different. They're not ODC. They're not -- they're not the State Grand Jury. They're an administrative agency who has the powers given to them by the Legislature; no more, no less. Statute says that they can investigate and adjudicate violations of the ethics act. Traywick is proud of the Robinson case, but if you look at that and -- well, if you look at that, that's a completely different statute. We're talking about matters of statutory interpretation. What, you know, one statute says is if it had the exact same language, you know, maybe you're onto something, but that -- that statute gave the EW a wider berth.

And there was a discussion about Regulation

52-718 F, the Commission's longstanding regulation. Well, in Sanford v. Ethics Commission, 385 S.C. 483, the Supreme Court found Regulation 52-718 F is not even implicated by this case because it addresses what would become the public record in bold in the -- after the final disposition of a matter where a violation's found contrasts the governor's primarily concerned with the release of investigatory material during the on-going investigation stage regardless because we find Governor Sanford has waived his right to confidentiality, the import of that regulation is irrelevant.

Bear with me for one moment.

I don't believe that the Harpootlian case, which I'm generally aware of, but -- I don't believe that's a published opinion, but I don't believe it's the only time a court has considered a writ of prohibition in the last forty or so years. We have a case in our firm, which I'm happy -- I'm trying to find -- I can't find it where Judge I believe it was Alison Lee in the Richland County Court of Common Pleas got a writ of prohibition against DOR, and that's Jeffrey M. Stein versus South Carolina Department of Revenue. The hearing was June 17th of 2005. Presiding judge, Alison Renee Lee, plaintiff's attorney is Robert

Widener and Paul Harrell and Eric Doran, and it was issued. Maybe there's not an appellate court decision, but the fact that Mr. Traywick doesn't know about it doesn't -- doesn't mean it's not there.

Lastly, the affidavit from Ms. Dayson is not very relevant to -- to anything is as far as what the Commission might have seen or not seen because the fact that the Commission panel or the Commission who would become part of the panel would not see the subpoenas themselves, even accepting it as true, I would have attached it except there's probably questions about putting it on a public docket, but I could tell you, and I don't think it's indisputable, that the Commission would quote a summary of the results of the subpoena and the fact it cannot be interpreted otherwise that -- that the subpoenas were issued without notice to my client.

Now perhaps that investigative report would not lead the Commission panel to -- or the commissioners to believe that -- to know for sure that these were out of state banks, but when you're talking about TD Bank, American Express, Venmo, First Citizens Bank, I mean, I'm not sure that that's really relevant to any issue here. I mean, the commissioners are well aware of what happened in this investigation. At least the ones who are still on the Commission. Right now I don't even -- I believe I'll leave it for the Commission to say whether they even have a quorum to do business right now because under 8-13-310, all the commissioners, they're on rotating schedules and the terms of certain commissioners expired on April 1st of this year, just a few weeks ago.

So I don't know even know if the Commission can do business or at least any time soon until it gets -- until, you know, it gets some commissioners confirmed. I mean, under that statute, the only one I've seen, there are no holdovers and nobody can -- can serve even as interim until they're confirmed by the General Assembly. So I'm not aware -- all I know is looking at -- looking at the website as of yesterday they list five commissioners and I'm -- I can't represent for sure whether all of them have -- what the terms are, but really we're talking about a long and slow process if this goes back to the administrative area. I don't think that the end -- more importantly I think it just -- it can't -- they can't do it.

I think if I'm going to be in candor right here, you know, we've got several issues other than the FOIA, putting aside the FOIA, so we've got several issues. One -- okay. Let's just say that the

Commission can decide the scope of their authority. I don't think they can. Under 8-13-320-10 to say that, I don't think they can. I mean, the Legislature said you've got subpoena power. I think the Commission can do -- they can find violation of the ethics act or adjudicate a violation of the ethics act, find facts, in that regard, but let's just say that they can. Let's just say that that's the one thing they can do, can they determine whether it complied with UIDDA in issuing those subpoenas? No. Can it decide a matter of constitutional law under either the state constitution or the Federal constitution, and the answer to both is no. This isn't -- I mean, courts have allowed as-applied challenges. We haven't gotten into that because it's just not -- this isn't an as-applied challenge. This is the fact that -- these are pure issues of law and statutory construction and constitutional construction. In Travelscape, the court said that while courts can in some instances do as-applied challenges because of the inherently factual nature of their challenges and we've said there's no issues of fact here and this isn't -- this isn't an as-applied challenge.

So what we're left with, I think, so let's just assume that the Commission can decide the scope of its own authority under the statute, but it can't decide whether it violated UIDDA, so what does that leave? So we're gonna have one issue going to the Commission for a process, but still stay here on everything else? And that's not -- it doesn't make any sense and there is jurisdiction here.

We are ready and able to -- to decide these issues and -- and, I mean, I've just -- I would respectfully ask the Court grant our motion for summary judgment on the FOIA and issue an order granting summary judgment on the exhaustion of administrative remedies issue and have us proceed to a schedule in the order which would finish the briefing by the end of June and we can just have a court decide these issues as -- as it should be.

Thank you, Your Honor, for your time and your accomodation.

THE COURT: Thank you. Anything else?

MR. TRAYWICK: May I very briefly reply, Your Honor, to a couple of points?

THE COURT: Certainly.

MR. TRAYWICK: This notion of always done it this way, you know, I hear that. When I grew up both my parents worked in state government and sometimes hearing that phrase makes you turn blue, but the reason it's relevant here, no one in fifty years has ever challenged this. You don't see people or good government advocates coming in here saying, you know, God, you've got to do it this way and you don't see people subject to the act who -- who have these confidentiality protections coming in and say please air more of my dirty laundry before I even get a chance to go defend the case, and that's telling. The General Assembly is aware of this interpretation, has blessed it, and even interpreted it this way, and it is absolutely consistent with 8-13-320(10)(g)(ii) and releasing information that's confidential only pursuant to that section as mandated by the General Assembly.

I'm not sure what the point of how many commissioners are there. It only takes three to hold a hearing and according to his testimony I guess, you know, there's five. There's more in the hopper. One of whom is one of his law partners as I understand it, so I think there will be plenty of folks over there to Rule.

813-320(10)(j)requires that the hearing be conducted in accordance with the Administrative Procedures Act. Well, I practice in front of the Public Service Commission all the time. They get to rule on motions in limine. That is the beginning of every single hearing and that's essentially what they're asking for here, is do not let this evidence in because it was improperly procured.

Suppression, whatever, I don't know how they call it a motion for suppression with a citation in their brief that all, you know, state ethics cases are civil. So it's really a motion in limine. This is absolutely allowed and the South Carolina Rules of Evidence govern these proceedings under the Administrative Procedures Act as incorporated by this provision.

On the Harpootlian, yeah, I don't know what Judge Alison Lee did on a totally unrelated thing. My point is the Supreme Court's only granted one and if he has evidence to the contrary, then he needs to come forward with it.

As for him questioning what was presented, I don't know how, you know, knowing what's being presented in executive session, how he could have any knowledge of that. There's no competent evidence in this record that contradicts what Director Dayson said other than counsel's speculation. As Your Honor is well aware, that's insufficient to defeat a properly supported motion for summary judgment.

So with all those points, Your Honor, FOIA does not govern the Commission's vote in this -- in this instance. Testimony of counsel is not evidence despite us hearing a lot just now and these are issues that are -- must be ruled on. I mean, I'm not touting Robinson. I'm saying Robinson rejected this notion that you can't rule on those arguments isn't even a question of agency authority. They just don't like the subpoenas. They said that they're too broad and that you didn't follow this act. A commissioner is more than capable of ruling on that. Most of them are lawyers and, you know what, if she doesn't like it she can go to the next level and get a judicial review, which is the way that the General Assembly designed it to happen.

As for how long it takes, we agreed to pushing it out as a courtesy to counsel and if he wants it sooner, I can talk to Ms. Laster and can try to move her hearing up, but that's apparently not what they wanted because they came and sued in this court to delay anything from going before the Commission, so -- with respect.

For all these reasons, Your Honor, we would ask that you grant the Commission's motion for summary judgment on the FOIA claim and dismiss the remaining claims without prejudice so that the Commission can consider them in the first instance as required by the General Assembly subject to judicial review.

Thank you so much for leaving your chambers and all the court personnel here's time and attention this afternoon.

Happy to answer any questions.

THE COURT: How much time would each side need to submit proposed orders?

MR. TRAYWICK: Your Honor, if we gave -- if we submitted proposed orders by May 9th, it looks like the next briefing wouldn't be due, depending on what the Court does, until May 30th. We could obviously move those deadlines if necessary, but it would give us roughly three weeks to prepare proposed orders.

Would that work or do you need a different timeframe?

THE COURT: No, I'm happy to accommodate you. May 9th is a State holiday. If you-all want to say by the end of that week.

MR. TRAYWICK: May 8th? That's three weeks to the day.

THE COURT: And I should have said I don't want these filed. I want them sent to me by e-mail in Word format so that I can cut and paste and move things around. So you-all just e-mail it to me. Don't send it to my secretary. Put the J on the end of my name for judge. Don't put the SC for secretary. So WKeesleyJ@SCcourts.org and WKeesleyLC, for law clerk, @SCcourts.org. Attach it as a Word document, please. And if something comes up and you need to adjust the schedule, let me know.

You folks are very well prepared and you present interesting issues and I'll make a call. Whether it's right or wrong it will be after deliberation and certainly what I think the law requires.

Thank you very much. Court's adjourned.

(Whereupon, the proceedings were concluded at 2:35 PM.)

C E R T I F I C A T E

I, Stacy S. Johnson, Official Court Reporter for the Eleventh Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate and complete transcript of record of all the proceedings had and the evidence introduced in the hearing of the captioned case in Circuit Court on the 17th day of April, 2025.

This transcript may contain quoted material. Such material is reproduced as read by the speaker.

I do further certify that I am neither of kin, counsel, nor have an interest to any party hereto.

November 10, 2025

/s/ Stacy S. Johnson
STACY S. JOHNSON, RPR
CIRCUIT COURT REPORTER

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2025-CP-32-00440

Ann Peets, ... Appellant,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson,
in her official capacity as Executive Director of the South Carolina
State Ethics Commission, ... Respondents.

NOTICE OF APPEAL

Pursuant to Rule 203, SCACR, Appellant Ann Peets appeals the order of the Honorable William P. Keesley entered May 29, 2025, granting summary judgment for Respondents, denying Appellant's cross-motion for summary judgment, dismissing Appellant's FOIA claim and requests for a writ of prohibition and mandatory injunction, and dismissing Appellant's claims seeking declaratory relief without prejudice for failure to exhaust (attached as Exhibit 1).

Pursuant to Rule 59(e), SCRCP, Appellant filed a Motion to Alter or Amend on June 9, 2025. On September 10, 2025, The Honorable William P. Keesley entered a Form 4 order denying Appellant's Motion to Alter or Amend (attached as Exhibit 2). Upon the entry of the order denying the Rule 59(e) motion, Appellant timely appeals from both orders.

[*Signature Page Follows*]

Respectfully submitted,

s/Michael R. Burchstead
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October 7, 2025
Columbia, South Carolina

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

Case No. 2025-CP-32-00440

Ann Peets, ... Appellant,

v.

South Carolina State Ethics Commission, Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission, ... Respondents.

PROOF OF SERVICE

This is to certify that I, Lisa Gibson, a legal assistant with the law firm of Burr & Forman LLP, have caused to be served this day one (1) copy of the **Notice of Appeal** in the above-captioned matter upon counsel for Respondents South Carolina State Ethics Commission and Meghan Walker Dayson, in her official capacity as Executive Director of the South Carolina State Ethics Commission via email at the email address reflected in the Attorney Information System and as set forth below:

Vordman Carlisle Traywick, III
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A copy of the email serving counsel as stated above is attached hereto.

Lisa Gibson

Lisa Gibson
Legal Practice Assistant

October 7, 2025
Columbia, South Carolina

Gibson, Lisa

From:	Gibson, Lisa
Sent:	Tuesday, October 7, 2025 11:19 AM
To:	'ltraywick@robinsongray.com'; Sarah Frierson; 'claster@ethics.sc.gov'
Cc:	Burchstead, Michael; Crum, Liz; Ackbersingh-Teed, Angella
Subject:	Ann Peets v. SC State Ethics Commission, et al.; C/A 2025-CP-32-00440 - Notice of Appeal
Attachments:	Peets Notice of Appeal.pdf; EX 1 2025-10-06 Peets Notice of Appeal (5.29.25 Order)(63048278.1).pdf; EX 2 2025-10-06 Peets Notice of Appeal (9.10.25 Form 4 Order)(63048280.1).pdf; Peets - POS to parties.pdf; Peets - Filing ltr to Court re NOA.pdf

Dear Counsel,

Attached for service in the above-referenced matter is a Notice of Appeal, 2 Exhibits, Proof of Service, and filing letter to Clerk of Court of Appeals. We will be filing these documents shortly with the Court of Appeals and will attach this email to the proof of service of same.

Best regards,
Lisa Gibson

BURR & FORMAN

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October 7, 2025

VIA ELECTRONIC FILING
The Honorable Jenny Abbott Kitchings
Clerk of Court
South Carolina Court of Appeals
1220 Senate Street
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ctappfilings@sccourts.org

Re: *Ann Peets v. South Carolina State Ethics Commission*; C/A No. 2025-CP-32-00440

Dear Ms. Kitchings:

Pursuant to Rules 203 and 262(a)(3) of the South Carolina Appellate Court Rules and Supreme Court Order 2024-04-24-01 part (b)(2), attached for filing is Ann Peets' Notice of Appeal in the above matter. By copy of this letter, I am serving counsel for Respondents via email as permitted by Rule 262(c)(3), SCACR and Order 2024-04-24-01 part (d)(1) and attached is a proof of service to that effect.

A check in the amount of $250 for the required filing fee will be delivered via courier.

Thank you. Please contact me if you have any questions.

Sincerely,

Burr & Forman LLP

Michael R. Burchstead

MRB/lg
Attachments

cc: Vordman Carlisle Traywick, III
Sarah C. Frierson
Courtney M. Laster
(*all via email*)

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
COUNTY OF LEXINGTON	)	ELEVENTH JUDICIAL CIRCUIT
Ann Peets, Plaintiff,	)	Case No. 2025CP3200440
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

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[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]

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[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

Electronically signed on 2025-05-29 11:07:43 page 18 of 18

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF Lexington
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. 2025CP3200440

Ann Peets
PLAINTIFF(S)

South Carolina State Ethics Commission et al
DEFENDANT(S)

DISPOSITION TYPE (CHECK ONE)

☐ **JURY VERDICT**. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.

☑ **DECISION BY THE COURT**. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled);
☐ Other

☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy;
☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award;
☐ Other

☐ **STAYED DUE TO BANKRUPTCY**

☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*):
☐ Affirmed; ☐ Reversed; ☐ Remanded;
☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL, OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☑ Statement of Judgment by the Court:

The plaintiff filed a motion to alter or amend and to reconsider the order issued on May 29, 2025. The motion is respectfully denied. Please see page 2.

ORDER INFORMATION

This order ☑ ends ☐ does not end the case. ☑ See Page 2 for additional information.

For Clerk of Court Office Use Only

This judgment was electronically entered by the Clerk of Court as reflected on the Electronic Time Stamp, and a copy mailed first class to any party not proceeding in the Electronic Filing System on 09/10/2025 .

RECEIVED
Oct 07 2025
SC Court of Appeals

NAMES OF TRADITIONAL FILERS SERVED BY MAIL

Court Reporter:

E-Filing Note: The date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgment to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

The motion is decided upon written submissions, and the court has had the benefit of extremely detailed briefs by talented advocates. While it has generally been the practice of this court to issue more specific orders on Rule 59 motions, careful consideration has been given to the extensive arguments raised. It has been determined that the original order is sufficient in that it contains no error of law or failure to rule upon any issue necessary to decide the dispute. Nor does this court find any inappropriate statements of fact or improper factual rulings. This case deals with the tension that exists in statutory interpretation related to matters that are of extreme importance to citizens. These statutes are at the core of protecting confidence in governmental activities. The court refers to the Response filed by the defendants. The issues presented in this case are at times technical and others may come to different conclusions than this court. Nonetheless, even in the context of the drastic nature of summary judgment, this court finds that the decision to determine that the defendants did not violate FOIA in the unique circumstances presented here and that the plaintiff should be required to exhaust administrative remedies is justified. Having fully reconsidered the prior ruling and the issues raised in the pending motion, with the utmost respect to those who disagree with the analysis and conclusions reached by this court, the motion to alter or amend is denied.

Lexington Common Pleas

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

Case Number: 2025CP3200440

Type: Order/Amend

Circuit Judge (Code #2050)

s/ William P. Keesley