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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 PeetsAppellant,

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.

Final Reply Brief of Appellant

M. Elizabeth Crum (S.C. Bar No. 1486)
Michael R. Burchstead (S.C. Bar No. 73770)
Samantha J. Dorward (S.C. Bar No. 106310)
Burr & Forman LLP
1221 Main Street, Suite 1800
Columbia, SC 29201
(803) 799-9800
lcrum@burr.com
mburchstead@burr.com
sdorward@burr.com

Attorneys for Appellant Ann Peets

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Argument

1. The Commission's Probable Cause Vote in Executive Session Violates FOIA.

a. *Specific versus general.*

Respondents openly admit that the Commission took a binding vote in executive session but contends that this vote did not violate section 30-4-70(b) because section 8-13-320(10)(g) of the Ethics Act exempts it from FOIA's public vote requirement. Although they try to soft-pedal Appellant's "unbroken line of controlling cases"¹ which hold that FOIA does not allow public bodies to vote in executive session, *see* Resp'ts' Br. at 7, they never meaningfully grapple with any of this precedent. Instead, Respondents label one of the seven cited cases dicta and then made the inapposite and conclusory argument that "none involves FOIA's intersection with a more specific statutory provision, much less a confidentiality provision." Resp'ts' Br. at 7. However, accepting Respondents' formulation including its position that FOIA is just a general statute, all of these cases deal with public bodies' attempts to protect confidential decision making in some way or another just like this one.² Yet every time, the Court held that the public body's need for confidentiality must give way to FOIA when it comes to *voting*.

In accepting Respondents' argument that section 8-13-320(10)(g) of the Ethics Act overrode section 30-4-70(b) of FOIA, the trial court misapplied the rule of construction that a

¹ *See* Appellant's Brief at 7-9.

² *See, e.g., Quality Towing, Inc. v. City of Myrtle Beach*, 345 S.C. 156, 159, 547 S.E.2d 862, 863 (2001) (Review committee "evaluat[ing] the proposals submitted in response to the RFP."); *Miramonti v. Richland Cnty. Sch. Dist. One*, 438 S.C. 612, 616, 885 S.E.2d 406, 408 (Ct. App. 2023) (Board claimed it went to into executive session to receive legal advice and discuss parent's complaint); *Brock v. Town of Mount Pleasant*, 411 S.C. 106, 111, 767 S.E.2d 203, 205 (Ct. App. 2014) ("Council [] go[ing] into executive session to discuss legal and contractual matters pertaining to properties near Shem Creek and to also discuss personnel matters pertaining to appointments to Boards and Commissions.") (internal quotation marks omitted); *Piedmont Pub. Serv. Dist. v. Cowart*, 319 S.C. 124, 127, 459 S.E.2d 876, 878 (Ct. App. 1995) (Board meeting to discuss employee termination and severance agreement).

specific statute prevails over a general one (general/specific canon). The trial court correctly stated the general/specific canon as

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)).

Order at 5 (emphasis added). However, the Order never specifically finds that section 30-4-70(b) of FOIA and section 8-13-320(10)(g) of the Ethics Act “deal[] with [] identical issue[s]” For multiple reasons previously argued, they do not. *See* Appellant’s Br. at 11-14.

Nor do Respondents argue that the statutes deal with identical issues.³ Instead, they attempt to sidestep the “identical issue” question and answer a different question:⁴

According to Appellant, the circuit court erred because FOIA and the State Ethics Act do not deal with identical issues. *But that’s not the question.* Nor is it whether the purposes of FOIA’s open-vote requirement and the State Ethics Act’s confidentiality provision are the same. *The question is which statute is more specific as it relates to probable cause determinations in ethics proceedings.*

Resp’ts’ Br. at 6 (citations omitted) (emphasis added). The controlling court decisions of our Supreme Court make it clear that for the general/specific canon to apply, the statutes must be “dealing with the identical issue.” *See, e.g., DomainsNewMedia.com, LLC v. Hilton Head Island-Bluffton Chamber of Com.*, 423 S.C. 295, 304, 814 S.E.2d 513, 518 (2018).⁵ Any fair interpretation

³ The dictionary definition of “identical” is “being the same,” or “having such close resemblance as to be essentially the same.” *See* Merriam-Webster dictionary, “Identical,” at <https://www.merriam-webster.com/dictionary/identical> (accessed May 11, 2026).

⁴ As discussed in a different context in Appellant’s Initial Brief at 20, *ignoratio elenchi*, referring to “the mistake of one who, failing to discern the real question which he is to meet and answer, addresses his allegations or arguments to a collateral matter or something beside the point.” *Black’s Law Dictionary*, 6th ed.

⁵ *See also Proctor v. Whitlark & Whitlark, Inc.*, 414 S.C. 318, 333, 778 S.E.2d 888, 896 (2015); *Florence Cnty. Democratic Party v. Florence Cnty. Republican Party*, 398 S.C. 124, 128, 727 S.E.2d 418, 420 (2012); *Georgetown Cnty. League of Women Voters v. Smith Land Co.*, 393

of these court holdings requires that **both** statutes must be “dealing with the identical issue” **and** dealing with that same issue “in a more specific and definite manner.” *See Eagle Container Co., LLC v. Cnty. of Newberry*, 379 S.C. 564, 572, 666 S.E.2d 892, 896 (2008) (reversing Court of Appeals decision for misapplication of the general/specific canon because “there [was] no irreconcilable conflict” between two sections of a county ordinance which “serve[d] different functions . . .”).

Fundamentally, Respondents’ arguments on these points reflect a misapprehension of the nature of the issues before the Court. The question before the Court is about voting in secret (executive) session. Appellant alleges that the Commission has unlawfully taken an action by **voting** in executive session. Section 8-13-320 of the Ethics Act uses the word “vote” numerous times, but it does not use that word in section 8-13-320(10)(g). By contrast, section 30-4-70(b) is the operative statute as to how public bodies vote and it requires them to vote in public. If the Legislature had meant to include “vote” within the confidential provision of § 8-13-320(10)(g) it could have and would have. *See, e.g., Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“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.’”).

S.C. 350, 356, 713 S.E.2d 287, 291 (2011); *Denman*, 387 S.C. at 138, 691 S.E.2d at 468–69 (2010); *Spectre*, 386 S.C. at 372, 688 S.E.2d at 852; *Capco of Summerville, Inc. v. J.H. Gayle Const. Co.*, 368 S.C. 137, 142, 628 S.E.2d 38, 41 (2006); *Whiteside v. Cherokee Cnty. Sch. Dist. No. One*, 311 S.C. 335, 340, 428 S.E.2d 886, 889 (1993). For reasons previously argued in pages 8 through 11 of Appellant’s Brief, section 8-13-320(10)(g) of the Ethics Act is not more specific than section 30-4-70(b) of FOIA.

b. *Authority to go into Executive Session.*

Citing to the trial court's finding that "none of the exceptions in FOIA allow the Commission to 'deliberate' in executive session," Resp'ts' Br. at 9-10, Respondents argue that the Commission's authority to go into executive session is derived from the Ethics Act confidentiality statute (§ 8-13-320(10)(g)). This is incorrect. The Commission's authority to go into executive session derives from FOIA,⁶ S.C. Code Ann. § 30-4-70(a), which authorizes a public body to go into executive session, *inter alia*, to discuss disciplinary actions.⁷ Section 8-13-320(10)(g) simply mandates that investigations, inquiries, hearings, and accompanying documents are confidential and "everything discussed in executive session must remain confidential." Notably, section 8-13-320(10)(g) does not even mention the phrase "executive session." If the General Assembly had meant section 8-13-320(10)(g) to authorize the Commission to go into executive session, it would have said so, as it did in section 8-13-550(A).⁸ *See Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 (2000).

The plain language of section 30-4-70(a) allows a public body to close a meeting for "discussion of . . . discipline or . . . a person regulated by a public body." Respondents take the

⁶ It is axiomatic that as a creature of statute, the Commission possesses "only those powers expressly conferred or necessarily implied for it to effectively fulfill the duties with which it is charged." *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991).

⁷ Curiously, Respondent argues that "Appellant put section 30-4-70(a) at issue by arguing 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,'" Resp'ts' Br. at 9 (cleaned up), but then contends that Appellant abandoned the 30-4-70(a) issue by purporting that it was not argued until the Motion to Reconsider. Resp'ts' Br. at 10. As previously discussed in Appellant's Brief, page 20, footnote 23, it was the Respondents who raised the issue of the Commission's compliance with section 30-4-70(a), and it was over the Appellant's objection. Respondents' arguments that the section 30-4-70(a) was waived are manifestly without merit.

⁸ This is the only time the phrase "executive session" is used in the Ethics Act.

incongruous position that section 30-4-70(a) does not apply to the Commission, citing to two arguments which are really different variations of the same argument.

First, the Respondents contend that no “discipline” results from a finding of probable cause. *See Resp’ts’ Br.* at 10. Second, Respondents argue that “the Commission does not ‘discipline’ a respondent in an ethics proceeding. *See Resp’ts’ Br.* at 11. As discussed below, these positions are unsupportable and disingenuous.

For starters, the Commission’s website, which outlines to the general public the information describing its complaint process, states in part:

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 May 11, 2026). Indeed, the Ethics Act explicitly authorizes the Commission to, *inter alia*, levy civil penalties of up to \$2,000 for a violation of the Act, § 8-13-320(10)(k)(1), levy an enforcement or administrative fee, § 8-13-130, “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 given as discipline.”). And a finding of probable cause is the linchpin without which none of the disciplinary actions listed by the Commission on its website can occur.

As to the argument that a probable cause vote is not a final decision, “FOIA makes it clear that meetings are not limited to instances where final 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.”⁹

To accept the Respondents’ argument that a probable cause finding is not a final decision on discipline, the Court must also accept that public bodies cannot go into executive session under section 30-4-70(a)(1) to discuss disciplinary matters until such time as a final disciplinary decision is made (which means they must discuss disciplinary matters out in the open). The Court should reject Respondents’ interpretation as out of line with the plain language of section 30-4-70(a) because if it were correct, it would render section 30-4-70(a) ineffective and lead to an absurd result. *See TNS Mills, Inc. v. S.C. Dep’t of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998) (“The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.”); *State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) (holding “the courts will reject [a statutory interpretation], when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect”).

Finally, accepting the trial court’s and Respondents’ interpretation that section 8-13-320(10)(g) authorizes the Commission to go into executive session for probable cause hearing discussions, would leave the Commission in the anomalous, if not absurd, position of

⁹ See Merriam-Webster dictionary, “Discuss,” at <https://www.merriam-webster.com/dictionary/identical> (accessed May 11, 2026). There is no difference (at least as far as this case is concerned) between “deliberating” and “discussing.” See Merriam-Webster dictionary, “Deliberate,” at <https://www.merriam-webster.com/dictionary/deliberate> (accessed May 11, 2026) (defining “[d]eliberate” as “to think about or discuss issues and decisions carefully” or “to think about deliberately and often with formal discussion before reaching a decision.”).

relying on section 30-4-70(a) when it needed to go into executive session to discuss any other reason listed in the statute (employment, promotion, contractual arrangements, etc.), but not for probable cause votes. The Legislature could not have intended the so-called confidentiality provision of the Ethics Act to carve out a single shot exception to the public voting requirement of section 30-4-70(b).

c. *Harmonizing the Ethics Act and the FOIA.*

Respondents argue that conducting a hearing necessarily includes voting. Resp'ts' Br. at 6. Not so. As discussed *supra*, voting is clearly separate and distinct from "information relating to 'investigations, inquiries, [and] hearings.'" *Id.* A vote is a separate and distinct act resulting from the public body's discussion/deliberation of the information relating to an investigation or hearing. For example, the Ethics Act provides that the Commission can begin an investigation upon "majority vote" of the membership of the Commission. S.C. Code Ann. § 8-13-320(9)(a). The Court can and should take judicial notice of the fact that governmental bodies routinely go into executive session to receive legal advice, discuss personnel issues, contractual matters, or economic development opportunities, and they then come out of executive session, and vote on a plan of action in open session. Often that vote can authorize agency personnel to continue negotiations with an unnamed or code-named person/entity in a contractual matter or in an economic development endeavor. It is undisputed that when a complaint is filed against a candidate, a case number is assigned to the complaint. *See* (**R. p. 112**) Defs.' Mot. Summ. J., Ex. A. ¶ 5; (**R. p. 259**) Pl.'s Mot. Summ. J. at 11, n. 10 (**R. p. 259**).

While the trial court and Respondents dismiss the concept, whether there is one count or 45 counts, it is a simple matter, using ordinary English, to vote on each count in public with

reference to the Commission-assigned complaint number.¹⁰ *See* Appellant’s Br. at 16-18. Assuming probable cause were found, once the candidate’s name is released, the public can see how each Commissioner voted on each count, thus ensuring that the Commission does not operate in secret and carries out the purposes of the FOIA and the confidentiality provision of the Ethics Act.

2. Exhaustion of Remedies.

- a. *The Commission lacks authority to hear a challenge to its issuance of extraterritorial subpoenas.*

Initially, Respondents make the disingenuous statement that

[Appellant] abandoned her third and fourth claims, because an agency can “rule on whether a party’s constitutional rights have been violated,” and “merely asserting an alleged constitutional violation will not allow a party to avoid an administrative ruling.”

See Resp’ts’ Br. at 11, footnote 5 (internal citations omitted). As worded, this inaccurately suggests or implies that Appellant takes the position that the Commission can “rule on whether a party’s constitutional rights have been violated,” and that the Commission is empowered to rule on whether it has violated the Constitution. To the contrary, as Appellant argues in her *ultra vires* claim, the Commission lacked the constitutional authority to issue the extraterritorial subpoenas.¹¹ *See* Appellant’s Br. at 23-31.

¹⁰ Without breaching confidentiality, the Commission can vote in public to find probable cause to find that for Complaints C2023-137, C2023-138, and C2024-001, a candidate failed to file an Initial Campaign Disclosure within ten days of reaching the \$500.00 threshold, in violation of § 8-13-1308(A), and or that she failed to timely file a pre-election disclosure in violation of § 8-13-1308(B), and/or that she neglected to report one or more campaign expenditures in violation of § 8-13-1308(F)(4), and so forth. While it might take longer, this simple method maintains confidentiality while taking action in public.

¹¹ Extraterritorial jurisdiction “implicates the state’s sovereignty [and is] 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); *see also* Appellant’s Br. at 23-31.

Respondents argue that it is of no moment that the trial court did not discuss (mention) the clause in section 8-13-320(10)(f), which provides that the subpoenas are subject to judicial enforcement. But it is. “Enforcement” is defined as “to carry out effectively *enforce* laws.”¹² Only the Commission has the statutory authority to enforce the provisions of the Ethics Act, *see* § 8-13-320(9), (10), and only the judicial branch has the authority to find a subpoena unenforceable or enforceable. *See* S.C. Code Ann. § 8-13-320(10)(f). Because the Legislature explicitly determined that the judiciary could enforce subpoenas, the natural inference from that is that the Commission cannot. *See Hodges*, 341 S.C. at 86, 533 S.E.2d at 582 (applying the “‘*expressio unius est exclusio alterius*’ or ‘*inclusio unius est exclusio alterius*’ canon of construction.”). If the Legislature had meant to allow the Commission to enforce its own subpoenas, it would have said so.

Respondents also rely on the language in § 8-13-320(10)(f) that “gives the Commission authority to rule on a motion ‘for an order quashing a subpoena issued under this section.’” Resp’ts’ Br. at 13. Unfortunately, Respondents neglect to point out that the full sentence reads: “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). By its express terms, the Legislature only gave the Commission or a panel the authority to hear a motion to quash a subpoena *vis á vis* a person to whom a subpoena was issued—but gave no such authority to the Commission to hear a motion to quash from a person accused of a violation of the Ethics Act. *See Hodges*, 341 S.C. at 86, 533 S.E.2d at 582. It is indisputable that the General Assembly

¹² *See* Merriam-Webster dictionary, “Enforcement,” at <https://www.merriam-webster.com/dictionary/enforcement> (accessed May 11, 2026).

did not give the Commission the authority to hear a challenge from Appellant to enforce the subpoenas it issued to the financial institutions.

Additionally, Respondents try to make the case to the Court that Commission *staff* can issue subpoenas for the agency. *See* Resp'ts' Br. at 3-4 ("Commission staff issued four subpoenas to entities with which Appellant banks as part of the investigation."); *id.* at 11 (stating the issue of "whether . . . Commission staff was "legally authorized to issue the out-of-state subpoenas"). Section 8-13-320(10)(1) provides, in relevant part:

[t]he commission may . . . 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.

S.C. Code Ann. § 8-13-320(10)(1) (emphasis added).

Simply stated, under the plain language of section 8-13-320(10)(f), Commission staff does not have the unilateral authority to issue a subpoena, let alone an extraterritorial subpoena. The General Assembly only authorized the Commission itself to do that. By contrast, when the Legislature intends to delegate authority to the Commission's executive director or staff, it knows how to write a statute that accomplishes this. *See Hodges*, 341 S.C. at 86, 533 S.E.2d at 582. *Cf.* § 8-13-320(10)(b), (c) (providing "the commission, its executive director, or staff designated by the commission" can determine a complaint for "facts sufficient" and open an investigation after this finding is made); § 8-13-320(10)(i) (requiring "the commission staff, in a preliminary written decision with findings of fact and conclusions of law, must make a recommendation whether probable cause exists"). The Ethics Act only authorizes the Commission, through its Chairman, to issue subpoenas and only authorizes the courts to enforce the subpoenas the Commission issues. The Commission lacks statutory authority to rule on Appellant's challenge to the efficacy of the extraterritorial subpoenas. "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 Summerville*, 369 S.C. 498, 502, 632 S.E.2d 864, 867 (2006).

- b. *Exhaustion of remedies doctrine is inapplicable here, or the Appellant is excused from it.*

Respondents take the position that the question of whether the Commission exceeded its authority in issuing extraterritorial subpoenas “is a mixed question of law and fact incidental to whether Appellant violated the State Ethics Act.”¹³ Resp’ts’ Br. at 12. This matter was decided on cross-motions for summary judgment. Neither Appellant nor Respondents cited to any disputed issues of material fact and the Order finds none. Additionally, Respondents’ Brief does not identify any disputed issue of material fact regarding service of the four subpoenas on the financial institutions in foreign jurisdictions that are in dispute.¹⁴ Notably, Respondents do not deny that the Commission staff issued subpoenas to entities whose headquarters are in foreign jurisdictions. Resp’ts’ Br. *passim* at 11-16; **(R. pp. 69–70)** Answer Am. Compl. ¶¶ 12–14. Rather, they admit that “the Commission issued subpoenas to the entities named in paragraph 8, all of which regularly transact business in South Carolina.”¹⁵ **(R. p. 69)** Answer Am Compl. ¶ 12. Nor, as discussed *supra*, do Respondents point to any authority to support the power of the Commission’s staff to

¹³ Even assuming *arguendo* that staff can issue subpoenas, Respondents do not explain how they believe the Commission’s statutory or constitutional authority to issue a subpoena has any bearing on whether Appellant violated the Ethics Act. It does not. Additionally, this matter was decided in cross-motions for summary judgment, and no issues of material fact were cited by either party on their cross-motions.

¹⁴ The Uniform Interstate Depositions and Discovery Act (UIDDA) defines “foreign jurisdiction” as a “state other than South Carolina.” S.C. Code Ann. § 15-47-110(2).

¹⁵ Appellant does not deny that doing business in South Carolina would afford our courts or administrative agencies that have any regulatory authority over said institutions jurisdiction to hear matters arising from their actions in the State. However, that is a legally different standard than the authority to serve an extraterritorial subpoena.

issue extraterritorial subpoenas. Instead, they simply argue that staff can issue subpoenas pursuant to S.C. Code § 8-13-320(10)(f) while investigating an ethics complaint. The issue of exhaustion of remedies before this Court is purely one of law.

As our Supreme Court held in *Ex parte Allstate Ins. Co.*, “[t]he 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.” 248 S.C. 550, 563, 151 S.E.2d 849, 853 (1966). There is simply no language in section 8-13-320(10)(f), the Ethics Act as a whole, or the legislative findings adopted when the General Assembly enacted the Ethics Act¹⁶ that indicate the legislative intent to authorize the Commission (let alone Commission staff) to issue or to hear challenges to extraterritorial subpoenas.

As Respondents acknowledge and our Supreme Court held in *Ex parte Allstate Ins. Co.*, exhaustion of remedies is not always an invariable rule and the doctrine’s application is a proper exercise of the court’s discretion, which is “a recognition that situations can exist where failure to exhaust administrative remedies may be excused.” 248 S.C. at 557, 151 S.E.2d at 855. Here, just as in *Ex parte Allstate*, the issue is solely one of law as to the statutory authority of the Commission to issue extraterritorial subpoenas. Respondents argue that *Robinson v. S.C. Dep’t. of Emp. & Workforce*, 443 S.C. 63, 902 S.E.2d 41 (Ct. App. 2024), is controlling in this matter. Respondents misapprehend *Robinson*’s applicability to this case. The appeals procedure in *Robinson*, in clear and unambiguous language, was “the sole and exclusive appeal procedure.” See S.C. Code Ann. § 41-35-690. This is not so for appeals from the Ethics Commission. Rather, section 8-13-320(m) provides, in pertinent part:

¹⁶ See Act No. 248 of 1991.

Within ten days after service of an order, report, or recommendation, a respondent *may apply* to the commission for a full commission review of the decision made by the commission panel 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(m) (emphasis added). Section 1-23-380 expressly provides for an interlocutory appeal of 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.” Issuance of investigatory subpoenas is clearly a preliminary/procedural action. As discussed *supra*, regardless of whether the subpoena is extraterritorial, the Commission only has authority to hear motions to quash subpoenas from persons/entities on whom a subpoena is served.

As the Court of Appeals held in *Robinson*, distinguishing it from *Ex parte Allstate*, the Supreme Court excused the exhaustion of remedies requirement “because the issue was solely one of law as to the statutory authority or jurisdiction . . . [and the *Ex parte Allstate*] case did not involve a statutory provision requiring exhaustion or stating that the administrative remedy was the sole and exclusive appeal procedure . . .” *Robinson*, 443 S.C. at 78, 902 S.E.2d at 49. The same is true in this case.

The sole issues before this Court regarding exhausting administrative remedies are ones of law—involving statutory interpretation. First, does the Ethics Act contain a statutory provision requiring exhaustion or stating that the administrative remedy is the sole and exclusive appeal procedure? And second, does the Commission have the authority to rule on the legality of Appellant’s challenge to the issuance of its extraterritorial subpoenas? Just as in *Ex parte Allstate*, the issues regarding exhaustion of remedies are solely ones of law as “*to the statutory authority or jurisdiction of the [Commission and] [t]he facts in regard to [those issues are] undisputed.*” *Ex parte Allstate*, 248 S.C. at 567, 151 S.E.2d at 855 (emphasis added). Even if exhaustion is

applicable in this case, the circumstances in this case afford a sound basis for the trial court and this Court to excuse any failure of Appellant to exhaust administrative remedies.

Conclusion

For the reasons stated above, Appellant respectfully requests that the Court should determine:

- a. the trial court committed error of law when it determined that the Commission did not violate S.C. Code Ann. § 30-4-70(b) when voted in executive session to find probable cause as to the investigation of Appellant and the Commission's determination of probable cause is null and void;
- b. the trial court committed error of law when it determined the Commission had the statutory authority to hear Appellant's challenge to the subpoenas issued to financial institutions in foreign jurisdictions; and
- c. the trial court decision be reversed and remanded for further proceedings.

Respectfully submitted,

s/ Michael R. Burchstead

M. Elizabeth Crum (S.C. Bar No. 1486)

Michael R. Burchstead (S.C. Bar No. 73770)

Samantha J. Dorward (S.C. Bar No. 106310)

Burr & Forman LLP

1221 Main Street, Suite 1800

Columbia, SC 29201

(803) 799-9800

lcrum@burr.com

mburchstead@burr.com

sdorward@burr.com

Attorneys for Appellant Ann Peets

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Columbia, South Carolina