THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM LEXINGTON COUNTY
Court of Common Pleas

William P. Keesley, Circuit Court Judge

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.

FINAL BRIEF OF RESPONDENTS STATE ETHICS COMMISSION AND EXECUTIVE DIRECTOR DAYSON

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COUNTERSTATEMENT OF THE ISSUES ON APPEAL

I. Did the circuit court err in finding FOIA did not require the State Ethics Commission to violate the State Ethics Act by voting on Appellant's confidential probable cause determination in public?

II. Did the circuit court abuse its discretion in dismissing Appellant's other claims without prejudice for failure to exhaust when the same issues are pending before the Commission?

Introduction

Sorting the wheat from the chaff, there are really two issues here. *First*, did the circuit court correctly find FOIA didn't require the State Ethics Commission to violate the State Ethics Act—and commit a misdemeanor—by voting on Appellant's confidential probable cause determination in public? *Second*, did the circuit court properly dismiss Appellant's other claims without prejudice for failure to exhaust when the same issues are pending before the Commission? Because the answer to both questions is yes, the Court should affirm.

Counterstatement of the Case

This appeal arises out of an investigation into Appellant Ann Peets under the South Carolina Ethics, Government Accountability, and Campaign Reform Act (the State Ethics Act).[1]

On July 18, 2024, in executive session, the Commission found probable cause existed to believe Appellant violated the State Ethics Act on 45 counts. (R. p. 112). After the Commission noticed a merits hearing on the allegations, (R. p. 130), Appellant retained counsel and moved for a continuance, (R. p. 132). Two days later, Appellant filed a motion to dismiss the complaints against her with the Commission's Hearing Panel. (R. p. 141).

Before the Commission's Hearing Panel could rule, however, Appellant filed this lawsuit on January 31, 2025. *See generally* (R. p. 27). Appellant then amended her complaint. *See generally* (R. p. 39). Soon after, the Commission's assistant general counsel filed a response to the motion to dismiss pending before the Commission's Hearing Panel, urging the Panel to deny the motion and proceed to a merits hearing. (R. p. 161). Appellant's motion to dismiss remains pending at the Commission to this day. (R. p. 113).

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

Meanwhile, Appellant moved for a temporary injunction in circuit court but later withdrew the motion because the Commission's Hearing Panel continued the merits hearing pending disposition of this action. *Id.* On February 27, 2025, the circuit court held an initial hearing in this matter under FOIA. *See* S.C. Code Ann. § 30-4-100(A). The Commission then answered Appellant's amended complaint. (R. p. 67). On March 18, 2025, the circuit court assigned this case to the Honorable William P. Keesley and set a consent briefing schedule for dispositive motions. (R. p. 1).

The parties agreed to file cross-motions for summary judgment on Appellant's FOIA claim and the Commission's defense that Appellant's remaining claims should be dismissed for failure to exhaust statutory administrative remedies. *Id.* Following extensive briefing on the parties' cross-motions, (R. pp. 87, 249, 274, 286, 296, & 302), the circuit court held a lengthy hearing.

After carefully considering the evidence, briefs, and arguments of counsel, the circuit court granted summary judgment for Respondents (the Commission). (R. p. 5). Appellant moved to reconsider. (R. p. 311). The Commission filed a response, (R. p. 331), and Appellant replied, (R. p. 345). On September 10, 2025, the circuit court denied Appellant's motion to reconsider. (R. p. 23). This appeal follows.

STATEMENT OF THE FACTS

Before delving into the specific facts of this case, it is necessary to sketch a brief overview of the process for investigating ethics complaints filed with the Commission.

Ethics Investigations

The Commission, of course, has the duty and power "to initiate or receive complaints and make investigations." S.C. Code Ann. § 8-13-320(9). At the end of an investigation, staff "must make a recommendation whether probable cause exists to believe that a violation" occurred "in a preliminary written decision with findings of fact and conclusions of law." 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." *Id.* 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.* As relevant here,

> [a]fter a finding of probable cause, . . . the following documents become public record: the complaint, the response by the respondent, and the notice of hearing. If a hearing is held on the matter, the final order and all exhibits introduced at the hearing shall become public record upon issuance of the final order by the commission. Exhibits introduced must be redacted prior to release to exclude personal information where the public disclosure would constitute an unreasonable invasion of personal privacy. In the event a hearing is not held on a matter after a finding of probable cause, the final disposition of the matter becomes public record.

S.C. Code Ann. § 8-13-320(10)(g)(ii). Until then, "[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). And "[t]he wilful release of confidential information is a misdemeanor." S.C. Code Ann. § 8-13-320(10)(g)(ii).

Appellant's Case

Appellant was an unsuccessful candidate for Folly Beach City Council in the 2023 general election. (R. p. 40). After the election, three individuals filed separate ethics complaints related to her campaign. (R. p. 12). Executive Director Dayson reviewed the complaints, determined they contained facts sufficient to constitute a violation of the State Ethics Act, and ordered an investigation into Appellant's conduct. *Id.*

Early in the investigation, Appellant admitted to using multiple accounts for campaign expenditures. (R. p. 120). Because her campaign expenditures and accounts were in question, Commission staff issued four subpoenas to entities with which Appellant banks as part of the investigation. *See* (R. p. 41). The Commission ultimately found probable cause to believe she violated the State Ethics Act by, among other things, using multiple accounts for campaign expenditures.[2] (R. p. 112). To obey the confidentiality provisions in the State Ethics Act, the Commission found probable cause in executive session, *id.*, and later noticed a merits hearing for February 20, 2025, (R. p. 130).

Appellant filed a motion to dismiss the complaints with the Commission's Hearing Panel. (R. p. 141). But before it could rule, she filed this lawsuit—and then amended her complaint—raising the same issues in the pending motion to dismiss and tacking on a FOIA claim. (R. p. 39).

In her amended complaint, Appellant argued the Commission's confidential probable cause determination on the 45 counts against her violated FOIA because it was not made during open session of a public meeting. (R. pp. 46–49). The remaining issues concerned the propriety of subpoenas issued during the investigation. (R. pp. 49–58). Appellant sought declarations that Commission staff (1) exceeded its authority by subpoenaing banking institutions outside South Carolina, (2) violated her right to privacy by obtaining her bank records, and (3) violated her due process rights by not giving her notice of the subpoenas. (R. pp. 51–52, & 54).

This matter comes before the Court on the circuit court's order granting summary judgment for the Commission and denying Appellant's cross-motion for summary judgment.

STANDARD

"[I]nterpretation of a statute is a question of law," *Catawba Indian Tribe of S.C. v. State*, 372 S.C. 519, 524, 642 S.E.2d 751, 753 (2007), the Court reviews "de novo," *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008). And "whether to require

[2] *See* S.C. Code Ann. § 8-13-1312 (stating, in relevant part, "a candidate shall not establish more than one campaign checking account and one campaign savings account for each office sought").

the plaintiff to exhaust administrative remedies [i]s a matter within the sound discretion of the trial judge," which the Court reviews for "an abuse of discretion" *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 101, 674 S.E.2d 524, 529 (Ct. App. 2009) (quoting *Stanton v. Town of Pawleys Island*, 309 S.C. 126, 128, 420 S.E.2d 502, 503 (1992)).

ARGUMENT

I. The circuit court correctly found the specific provisions of the State Ethics Act trump the general provisions of FOIA under these circumstances.

Under the State Ethics Act, "[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). All information related to ethics complaints is confidential until *after* a finding of probable cause. S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii). Appellant argues the Commission violated FOIA's open-vote requirement by finding, in executive session, probable cause existed to believe she violated the State Ethics Act. *See* S.C. Code Ann. § 30-4-70(b) ("No action may be taken in executive session except to (a) adjourn or (b) return to public session.").

The circuit court held a "plain and unambiguous reading of FOIA and the State Ethics Act together render[s] both operative," producing a "harmonious result that requires confidentiality of all information relating to ethics complaints until after a probable cause determination." (R. p. 12) (cleaned up). It found "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." (R. p. 9) (citing S.C. Code Ann. § 8-13-320(10)(g)). "[W]hen '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.'" (R. p. 9) (quoting *Denman v. City of Columbia*, 387 S.C. 131, 138, 691 S.E.2d 465, 468–69 (2010)).

According to Appellant, the circuit court erred because FOIA and the State Ethics Act do not deal with identical issues. App.'s Br. at 12–13. 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. *Id.* at 13. The question is which statute is more specific as it relates to probable cause determinations in ethics proceedings.

The Commission never argued section 30-4-70(b) does not concern public votes by public bodies in general. Instead, it argued the State Ethics Act's confidentiality provision deals with the specific issue of confidentiality 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). If that weren't enough, it clarifies that information "only may be released pursuant to this section." *Id.*

On appeal, Appellant now argues section 8-13-320(10)(g) does not specifically state votes are confidential. But "all" information relating to "investigations, inquiries, [and] hearings," S.C. Code Ann. § 8-13-320(10)(g), necessarily includes votes on probable cause. *Cf. Smith v. Munday*, 848 F.3d 248, 253 (4th Cir. 2017) (discussing the "probable-cause inquiry"); *Moretti v. Thorsdottir*, 157 F.4th 352, 364 (4th Cir. 2025) (finding an "investigation satisfied" "probable cause"). Notably, Appellant repeatedly called it a "probable cause hearing" below. *E.g.*, (R. pp. 252, 256, 269). Reading the statute to exclude probable cause votes would lead to an absurd result. *See Wade v. State*, 348 S.C. 255, 259, 559 S.E.2d 843, 845 (2002) ("a court must reject a statute's interpretation leading to absurd results not intended by the [General Assembly]").

Moreover, the circuit court did not find *DomainsNewMedia.com, LLC* dealt with the open-vote requirement. Our supreme court there faced a similar issue of FOIA's intersection with a more issue-specific statute. *See* (R. pp. 8–9); *see also* 423 S.C. at 304, 814 S.E.2d at 518. It 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. Here, the circuit court considered "the more specific statute," section 8-13-320(10)(g), "an exception to, or a qualifier of, the general statute," section 30-4-70(b), and properly gave it "such effect." *Denman*, 387 S.C. at 138, 691 S.E.2d at 468–69 (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)).

After all, "the Court cannot begin and end its inquiry with FOIA." (R. p. 9); *see also DomainsNewMedia.com, LLC*, 423 S.C. at 304, 814 S.E.2d at 518 (disagreeing that the Court could "look only to FOIA . . . and go no further," for the specific statutes "play[ed] the lead role in [its] disposition"). The circuit court thus distinguished Appellant's purported "unbroken line of controlling case[s],"[3] App.'s Br. at 6 & 9, because "none involves FOIA's intersection with a more specific statutory provision, much less a confidentiality provision." (R. p. 9 n.4). And in the face of extraneous statutes, the circuit court kept its eye on the ball: "The specific statute at issue here is in the State Ethics Act, not other provisions of the Code governing different agencies." (R. p. 13 n.7). How the State Board of Medical Examiners handles its votes is beside the point.[4]

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[3] One case did not "address that issue directly." *Davis v. S.C. Educ. Credit for Exceptional Needs Children Fund*, 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) (the "general rule as to dicta . . . is particularly applicable where there is a contrary statute").

[4] Even so, the Medical Board's vote followed a final hearing, finding violations and issuing sanctions. (R. p. 260). Appellant overlooks that Medical Board votes on temporary suspensions "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). The State Ethics Act's confidentiality provision is more sweeping, for it governs "[a]ll investigations, inquiries, hearings, and accompanying documents" in an ethics case until "after" a probable cause determination. S.C. Code Ann. § 8-13-320(10)(g)(i)–(ii).

To that end, the ruling below does not allow any agency to invoke any confidentiality provision to avoid FOIA's public-vote requirement. FOIA determinations are "made on a case-by-case basis," *Evening Post Publ'g Co. v. Berkeley Cnty. Sch. Dist.*, 392 S.C. 76, 82, 708 S.E.2d 745, 748 (2011), and the circuit court decided only the intersection of FOIA's open-vote requirement with the State Ethics Act's confidentiality provision under the "unique circumstances presented here." (R. p. 24). In doing so, it analyzed how section 30-4-70(b) and section 8-13-320(10)(g) intertwined with other statutes in the State Ethics Act and FOIA.

Harmonizing the State Ethics Act and FOIA, the circuit court found the Commission could not "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." (R. p. 10). It considered "[o]ther statutes in the State Ethics Act" as part of that analysis. (R. pp. 10–13); *cf.* 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."). Under section 8-13-320(10)(j), "if a hearing is to be held" on the merits, it "must be open to the public." "But the same is not true for probable cause determinations." (R. p. 13) (citing 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." *Id.*

Still, while invoking other agencies' statutory schemes, Appellant argues the statutes the circuit court considered "have nothing to do with this case." App.'s Br. at 15. She specifically says the circuit court should not have considered section 30-4-70(a) when she "never argued in [her] Amended Complaint that the Commission had violated section 30-4-70(a)." App.'s Br. at 20.

The canons of statutory construction, however, do not support this cabined and incongruous approach. *See Burns v. State Farm Mut. Auto. Ins. Co.*, 297 S.C. 520, 522, 377 S.E.2d 569, 570

(1989) ("statutes [that] are part of the same Act must be read together"); *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006) (sections "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 & Env't 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.").

Besides, 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.'" (R. p. 11); *see also* (R. pp. 259, 288, 305). That ability must come from some provision of law. Addressing the Commission's arguments, the circuit court agreed her argument created a "conundrum" because "none of the exceptions in FOIA allow the Commission to 'deliberate' in executive session." (R. p. 11); *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"). Because no FOIA exception applies, the ability to consider probable cause in executive session necessarily must (and does) flow from the State Ethics Act. *See* S.C. Code Ann. § 8-13-320(10)(g).

On reconsideration, Appellant pivoted and argued "[t]he Commission's probable cause determinations unequivocally fall under" section 30-4-70(a)(1), (R. p. 318); App.'s Br. at 22, but that was too late and misses the mark. "An issue may not be raised for the first time in a motion to reconsider." *Johnson v. Sonoco Prods. Co.*, 381 S.C. 172, 177, 672 S.E.2d 567, 570 (2009). And section 30-4-70(a)(1) permits a closed meeting only to discuss "discipline . . . of . . . a person regulated by a public body or the appointment of a person to a public body." But it does not apply to Commission probable cause determinations for at least two 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 "discipline" a respondent in an ethics proceeding. *See* S.C. Code Ann. § 8-13-320(10)(k) (stating the Commission "where appropriate, shall recommend disciplinary or administrative action"); S.C. Code Ann. § 8-13-320(10)(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)).

In short, reading FOIA and the State Ethics Act together, the circuit court correctly found the General Assembly did not intend for the Commission to "violate the[] specific statutes—and the confidentiality provision governing all information related to ethics complaints—to comply with the general requirements of FOIA." (R. p. 11).

II. The circuit court properly dismissed Appellant's remaining claims without prejudice for failure to exhaust.

As the circuit court recognized, currently pending before the Hearing Panel is Appellant's motion to dismiss challenging whether (1) Commission staff was "legally authorized to issue the out-of-state subpoenas"; (2) those subpoenas violate her "rights under the Fourth Amendment to the U.S. Constitution and South Carolina Constitution"; and (3) the subpoenas comply with "due process guarantees under the Ethics Act and the S.C. Constitution." (R. p. 141). These issues are indistinct from Appellant's second, third, and fourth causes of action. *See* (R. pp. 14, & 49–54).

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)). Exercising its discretion, the circuit court "decline[d] to rule on the merits of these claims because [Appellant] failed to exhaust her administrative remedies before pursuing this lawsuit, and no exceptions apply." (R. p. 14). Appellant assigns error to the circuit court's decision in five respects as to her second claim on whether the Commission's investigatory staff could issue out-of-state subpoenas.[5] Each is unavailing.

In Appellant's view, the first three concern the Commission's authority. She believes the Commission cannot consider whether staff exceeded its authority by issuing certain subpoenas during the investigation. But as our supreme court recognized, the General Assembly "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.[6] The Commission has authority to issue subpoenas while investigating an ethics complaint. S.C. Code Ann. § 8-13-320(10)(f). Whether staff exceeded that authority is a mixed question of law and fact incidental to whether Appellant violated the State Ethics Act. For that reason, Appellant's "pure issue of law" argument is misplaced. App.'s Br. at 29.

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[5] She abandoned her third and fourth claims, App.'s Br. at 1 n.3, 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." *Ward*, 343 S.C. at 18, 538 S.E.2d at 247.

[6] The circuit court did not find the Commission had exclusive jurisdiction. *See* (R. p. 14) ("Although Defendants make a compelling argument that the Commission has exclusive jurisdiction over these issues until a final ruling, the Court need not answer that question now." (citing *Haley*, 404 S.C. at 325, 745 S.E.2d at 84)).

And the two cases Appellant cites do not support her argument. *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). Few exceptions to statutorily required exhaustion exist, and a complaint raising "issues of law" is not one of them. *See Ward*, 343 S.C. at 18, 538 S.E.2d at 247 ("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.").

Nor would that make sense. State agencies handle questions of law every day. *See* S.C. Code Ann. § 1-23-350 ("A final decision shall include findings of fact and *conclusions of law*" (emphasis added)). Indeed, whether Appellant violated the State Ethics Act—a question Appellant concedes the Commission has authority to answer, App.'s Br. at 25—is a question of law too.

That the circuit court did not specifically mention the clause in section 8-13-320(10)(f) that the Commission's subpoenas are "subject to judicial enforcement" is of no moment. As the circuit court explained, the Commission "has broad authority to" "consider the propriety of a subpoena issued in an ethics investigation" and "hear issues relating to ethics complaints in an ethics proceeding." (R. pp. 18–19). 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)." *Id.* (cleaned up)

What is more, Appellant overlooks the next sentence in section 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." S.C. Code Ann. § 8-13-320(10)(f). If suppression or exclusion of challenged evidence is proper, the Commission's 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"). Those rulings do not invade the province of the judicial branch because they are subject to judicial review. *See* S.C. Code Ann. § 1-23-380.

Further, as this Court already recognized, *Ex parte Allstate Insurance Company*, 248 S.C. 550, 151 S.E.2d 849 (1966), concerned "the statutory authority or jurisdiction of the Chief Insurance Commissioner" to conduct the investigation in the first place. *Robinson v. S.C. Dep't of Emp. & Workforce*, 443 S.C. 63, 78, 902 S.E.2d 41, 49 (Ct. App. 2024), *cert. denied* (S.C. Nov. 14, 2024) (distinguishing *Ex parte Allstate*). It was not about the Chief Insurance Commissioner exceeding authority during an authorized investigation. Appellant admits the Commission has authority to investigate and hear ethics complaints. App.'s Br. at 25. But she ignores this authority necessarily includes any related matters like the propriety of subpoenas. *E.g.*, S.C. Code Ann. § 8-13-320(10); S.C. Code Ann. Regs. 52-713(A). The circuit court properly found *Ex parte Allstate* inapposite because simply alleging an agency "acted outside of its authority" does not excuse exhaustion. *Robinson*, 443 S.C. at 78–79, 902 S.E.2d at 49–50.

Turning to *Robinson*, Appellant first tried to distinguish it in her motion to reconsider. (R. p. 324); *cf. Johnson*, 381 S.C. at 177, 672 S.E.2d at 570. In any event, the notion that the Commission can't decide these matters is puzzling given that she asked the Commission to address them. *See* (R. p. 55) (Appellant "initially intended to present the issues" via "a Motion to Dismiss filed with the Hearing Panel"). If Commission staff exceeded "lawfully conferred authority in issuing" subpoenas, the Hearing Panel can and should decide that issue.

More to the point, the State Ethics Act and the Administrative Procedures Act do not permit judicial review until after the Commission's final order. Again, here's how it works. A merits hearing is held before a panel of three Commissioners, who "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)(i)–(k). "[A] respondent may apply to the commission for a full commission review of the decision made by the commission panel." *Id.* at § 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.* One who exhausts "all administrative remedies" and "is aggrieved by a final decision" is "entitled to judicial review." 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").

The circuit court correctly found Appellant failed to exhaust this process, and no exception applied. (R. p. 16). Appellant received no ruling from the Hearing Panel because she ran to the courts. So she was "finally bound," S.C. CONST. art. I, § 22, by nothing. And her argument on the lack of an adequate legal remedy proves too much. Appellant does not argue subsection 8-13-320(g)(ii) is inadequate. Nor could she: it requires redaction of "[e]xhibits introduced" at the hearing. *Id.* Because that protects her "where the public disclosure [of her bank records] would constitute an unreasonable invasion of personal privacy," *id.*, the circuit court properly found Appellant has an adequate remedy subject to judicial review if necessary. (R. p. 20).

Likewise, this case bears no resemblance to *Axon Enterprise v. Federal Trade Commission*, where the plaintiffs were "challenging the Commissions' power to proceed at all, rather than actions taken in the agency proceedings." 598 U.S. 175, 192 (2023). Mere possession of bank records through alleged unlawful subpoenas does not render the Commission's investigation and ethics proceeding against her "illegitimate" or "unconstitutionally structured." *Id.* at 191. These are "the sorts of procedural or evidentiary matters an agency often resolves on its way to a merits decision." *Id.* at 193. And "even if the Hearing Panel denies her motion to dismiss," no one can "speculate on what may be introduced at the merits hearing." (R. p. 21); *see also McKnight v. S.C. Dep't of Corr.*, 385 S.C. 380, 389, 684 S.E.2d 566, 570 (Ct. App. 2009) (a plaintiff "must" have "more than speculation and conjecture" to survive summary judgment).

Equally unavailing is Appellant's advocacy for a "public interest" exception to exhaustion. The circuit court did not address this argument, and she did not raise it in her motion to reconsider. *See Caldwell v. Wiquist*, 402 S.C. 565, 576, 741 S.E.2d 583, 589 (Ct. App. 2013) (if "an issue has not been ruled upon by the trial [court] nor raised in a post-trial motion," it "may not be considered on appeal" (quoting *Pelican Bldg. Ctrs. of Horry-Georgetown, Inc. v. Dutton*, 311 S.C. 56, 60, 427 S.E.2d 673, 675 (1993))). At any rate, Appellant cites no case applying it. To the extent she relies on *Anderson v. South Carolina Election Commission*, that case turned on ripeness and "the systemic failure of the political parties to follow the law" in certifying hundreds of candidates, not "a single" individual as here. 397 S.C. 551, 556, 725 S.E.2d 704, 706 (2012) (per curiam).

Finally, the Commission's decision is not "[w]ithout judicial review." App's Br. at 32. Appellant must wait to seek it, though, until after the Commission issues a final ruling. *See* (R. p. 15); S.C. Code Ann. § 1-23-380. The circuit court did not abuse its discretion in so finding.

CONCLUSION

For these reasons, the Court should affirm the circuit court's grant of summary judgment for Respondents.

Respectfully submitted,

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