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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Samuel L. Johnson, Administrative Law Judge

Appellate Case No. 2026-000947

Lower Court Case No. 25-ALJ-09-0270-CC

South Carolina Department of Insurance,.....Respondent,

v.

Joyce Freeman, ...Appellant.

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COUNTERSTATEMENT OF ISSUE ON APPEAL

I. Whether the Administrative Law Court correctly interpreted section 38-53-170(e) (2025) of the South Carolina Code as requiring a bondsman to charge and collect the minimum fee of the greater of $100.00 or 10% of the face of the bond before executing the bond and allowing a bondsman thereafter to enter a payment agreement of any premium amount not collected as the statutory minimum fee up to the maximum of 15% of the bond?

INTRODUCTION

In 2023, the General Assembly enacted the Bond Reform Act, Act No. 83, 2023 S.C. Acts 474, amending, among other statutory provisions, section 38-53-170(e) of the South Carolina Code which relates to unlawful acts of bondsmen. The amendment retained the cap on bond premiums at 15% of the bond's face amount but raised the minimum bond premium from $25.00 to the greater of $100.00 or 10% of the bond and required that minimum fee to be charged and collected before the execution of the bond. S.C. Code Ann. § 38-53-170(e). The amendment also included a payment agreement option, allowing bondsmen to collect any amount of the premium remaining above the minimum fee up to the maximum fee through a payment plan not to exceed eighteen months. *Id.*

The underlying facts are undisputed here. Appellant Joyce Freeman is a licensed South Carolina bail bondsman. From May 5 through June 1, 2025, Appellant failed *to charge and collect* the mandatory statutory minimum fee for ten bail bonds before posting the bonds with the court as required by section 38-53-170(e). After investigation, the Department imposed a regulatory penalty for her statutory violations. Appellant contends she did not violate the law because she entered into payment agreements for the bond premiums, even though she did not collect the statutory minimum fee before executing the bond.

There is a single question of statutory interpretation before this Court: what is the correct interpretation of section 38-53-170(e)? If the Department's interpretation is correct, Appellant's penalty stands. It is, and the Administrative Law Court agreed. To agree with Appellant's interpretation, the Court would have to ignore rules of statutory construction and disregard the General Assembly's intent in enacting section 38-53-170(e). The Court should affirm.

COUNTERSTATEMENT OF THE CASE

In June 2025, the Department received a complaint alleging Appellant, a licensed producer and surety bondsman, charged 10% for a $35,000.00 bail bond for a criminal defendant but failed to collect the full 10% minimum fee required by statute prior to execution of the bond. As a result, the Department initiated an investigation, discovering, among other things, that the bond amount was $35,000.00, and Appellant charged a premium of $3,500.00 but collected only $500.00. Appellant allowed the balance of the 10% minimum fee ($3,000.00) to be paid via a payment agreement.

The Department sent a Notice of Investigation letter to Appellant on June 5, 2025, and Appellant responded the next day. *See* (Ex. 8 to Mot. for Summ. J.). During the investigation, Appellant provided copies of ten bonds she executed between May 2 and June 1, 2025, after charging, but not collecting, the statutorily required 10% minimum fee before executing the bond, along with corresponding payment agreements. Appellant did not then, and does not now, deny that she failed to collect the required minimum 10% fee. Rather, Appellant argued she did not have to collect the minimum 10% fee before executing the bond because she believes the law permits bondsmen to create a payment plan to receive the full 10% minimum bond premium.

After the Department concluded its investigation, the Department issued a final agency order against Appellant on August 18, 2025, finding Appellant violated three statutes: S.C. Code Ann. § 38-43-130(A)(C)(2); S.C. Code Ann. § 38-53-150(A)(2), (7),(B); and S.C. Code Ann. § 38-53-170(e). *See* (Ex. 9 to Mot. for Summ. J.). The Department then imposed a regulatory penalty of $25,000.00 against Appellant in accordance with the requirements of section 38-2-10.

Appellant filed a request for a contested case hearing with the administrative law court ("ALC") on September 2, 2025. On September 10, 2025, ALC Judge Samuel Johnson was

assigned to preside over the matter at the ALC. In Appellant's Pre-Hearing Statement, she suggested that she appealed the Department's regulatory action because she disagreed with the Department's interpretation of section 38-53-170(e). *See* (Ex. 10 to Mot. for Summ. J.). Appellant admitted engaging in the behavior that led to the Department's decision. *See* (Exs. 8 & 10 to Mot. for Summ. J.).

Because the parties agreed that the case presented a question of law, they requested and the ALC entered a scheduling Order setting January 9, 2026, as the deadline to file cross motions for summary judgment on the correct interpretation of section 38-53-170(e). After the parties briefed their respective motions for summary judgment, the ALC ruled on February 13, 2026, finding the Department's interpretation of section 38-53-170(e) controlling. (Order). Appellant filed a motion to reconsider on March 3, 2026, and the Department filed a response on March 23, 2026.

On April 1, 2026, the ALC issued an order granting in part and denying in part Appellant's motion to reconsider. (Order on Mot. to Recons.). In granting in part Appellant's motion, the ALC modified its order, deleting any reference to agency deference and clarifying that it reached its own conclusion based on the statute's language and the General Assembly's intent and not based on any doctrine of agency deference. (Order on Mot. to Recons. at 13). The ALC issued an amended order to that effect that same day. *See generally* (Am. Order).

Appellant filed a notice of appeal on April 25, 2026. (Not. of Appeal). This appeal follows.

STANDARD OF REVIEW

The Court "review[s] the decision of the ALC for errors of law." *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011) (citing S.C. Code Ann. § 1-23-380(5)(d)). "[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), which 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).

ARGUMENT

The Department agrees that there is one issue before the Court: what is the correct interpretation of section 38-53-170(e) of the South Carolina Code? In relevant part, section 38-53-170(e) states that it is unlawful for a bondsman to:

> (e) accept anything of value from a principal except the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond. Conditions of the bond which expressly or implicitly require payment of monies in excess of the premium, as a cost of satisfying the condition of the bond, shall not be considered part of the bondsman's premium, and are not affected by this code provision. The bondsman may collect these fees from the defendant and is not limited by any language requirements of this code provision.
>
> However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars. This payment agreement may not be altered and must not exceed eighteen months after the date on which the bond was executed.

S.C. Code Ann. § 38-53-170(e).

In sum, section 38-53-170(e) mandates that a minimum fee of the greater of $100.00 or 10% of the bond must be charged and collected prior to execution of a bond and permits bondsmen thereafter to enter a payment agreement to collect any remaining amount of the bond premium not collected as the minimum fee. That is the prevailing interpretation of this statute, and the Administrative Law Court (ALC) got it right.

Appellant would have the Court read out the main provision of the statute, which the General Assembly included via an amendment in 2023, mandating the minimum fee to be "charged and collected" "before the execution of the bond" and disregard the clear intent of the General Assembly in favor of her interpretation. That, the Court cannot do. For the reasons below, the Court should affirm.

I. The ALC correctly found section 38-53-170(e) prohibits bondsmen from executing a bond without first charging and collecting the greater of $100 or 10% of the bond, regardless of whether there is a payment agreement in place.

In 2023, the General Assembly passed the Bond Reform Act (the "Act"), which, in part, was meant to protect the public by closing the revolving door and preventing criminal defendants from committing crimes while out on bond. In so doing, the General Assembly amended section 38-53-170(e) to increase the statutory minimum fee as a precondition of pretrial release on bond. Prior to amendment, the statute prohibited bondsmen from accepting anything of value from a principal except the premium which could "not exceed fifteen percent of the face amount of the bond, with a minimum fee of twenty-five dollars." S.C. Code Ann. § 38-53-170(e) (2015). After amendment, however, the General Assembly included two new requirements. "While maintaining a cap on bond premiums at 15% of the bond's face amount, the General Assembly amended subsection (e) by raising the minimum bond premium fee and also requiring it to be charged and collected before the execution of the bond." (Am. Order at 12); *see also* S.C. Code Ann. § 38-53-170(e) (Supp. 2025).

At issue here is the interplay between the "minimum fee" requirement that must "be charged and collected before the execution of the bond" in paragraph 1 and the "payment agreement" option in paragraph 2. *See* S.C. Code Ann. § 38-53-170(e) ("However, the bondsman is permitted to enter into a payment agreement by attaching a statement of bondsman to the bond

proceeding form and this agreement shall require the principal on the bail bond or any indemnitor to make a minimum down payment of one hundred dollars.").

Appellant contends the ability for a bondsman to enter a payment agreement provided in paragraph 2 acts as an exception to the minimum fee requirement and permits the execution of any bond for only $100.00, so long as there is a payment agreement for the remainder in place. But as the ALC correctly found, this interpretation would eviscerate the minimum fee requirement (the greater of 10% or $100.00) that must be charged and collected before the execution of the bond and, as a result, the General Assembly's intent.

"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). "The statute's text is the 'best evidence of the legislative intent or will.'" *Est. of Meier v. Burnsed*, 445 S.C. 288, 294, 914 S.E.2d 130, 133 (2025) (quoting *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581). "In interpreting a statute, the language of the statute must be read 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). And courts "must give the words found in the statute their 'plain and ordinary meaning without resort to subtle or forced construction to limit or expand the statute's operation.'" *CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (quoting *Sloan v. Hardee*, 371 S.C. 495, 499, 640 S.E.2d 457, 459 (2007)).

As the ALC found, by increasing the "minimum fee" and including the mandate that the minimum fee "be charged and collected before execution of the bond," "the General Assembly intended to impose a high minimum-premium standard charged to those seeking bond and to ensure that that amount is actually collected by the bondsman before the bond is executed." (Am. Order at 12–13). To be sure, the statute mandates this by using the word "must." *See* S.C. Code

Ann. § 38-53-170(e) (the minimum fee "*must* be charged and collected by the bondsman before the execution of the bond" (emphasis added)); *see also Richland Cnty. v. S.C. Dep't of Revenue*, 422 S.C. 292, 309, 811 S.E.2d 758, 767 (2018) ("Under the rules of statutory interpretation, use of words such as 'shall' or 'must' indicates the [General Assembly's] intent to enact a mandatory requirement." (quoting *Collins v. Doe*, 352 S.C. 462, 470, 574 S.E.2d 739, 743 (2002))). Thus, in plain terms, paragraph 1 of section 38-53-170(e) mandates, without qualification, that before executing any bond, a bondsman must charge and collect the greater of $100.00 or 10% of the face amount of the bond.

Appellant does not meaningfully disagree with this mandate. Instead, she contends the Court should read the word "however" in the paragraph 2 of the statute as somehow overriding that mandate and providing an exception to the minimum fee requirement that "must be charged and collected by the bondsman before the execution of the bond." It does not.

For one, when the General Assembly wants to create an exception, it generally uses that specific term as it did in other portions of section 38-53-170 and other provisions of Chapter 53. *See, e.g.*, S.C. Code Ann. § 38-53-170(b) (no bondsman or runner may "(b) pay a fee or rebate or give anything of value to an attorney in bail bond matters, *except* in defense of any action on a bond" (emphasis added)); S.C. Code Ann. § 38-53-170(e) (no bondsman or runner may "(e) accept anything of value from a principal *except* the premium, which may not exceed fifteen percent of the face amount of the bond, with a minimum fee of one hundred dollars or ten percent of the bond, whichever is greater, that must be charged and collected by the bondsman before the execution of the bond" (emphasis added)). If the General Assembly intended to create an exception here, it would have said so.

For another, even taking Appellant's argument that "however" should mean "in spite of that," App.'s Br. at 6, which the ALC did, (Am. Order at 13), her interpretation still does not hold water. As the ALC found, as used in the statute, "however" and the rest of the first sentence in paragraph 2 meant "in spite of any statutory language in the first paragraph suggesting otherwise, a bondsman who charges a premium exceeding the minimum fee that must be collected before bond execution may enter a payment agreement with the principal or an indemnitor for collection of the remaining amount." *Id.* at 14.

This does not render the word "however" meaningless as Appellant contends. App.'s Br. at 7. As the ALC noted, this interpretation makes clear that (1) "despite language in the preceding paragraph that could be read to suggest otherwise—collection of the entire bond premium before bond execution is not required where the entire premium exceeds the minimum" and (2) "despite the preceding paragraph's prohibition on a bondsman accepting 'anything of value' from the bond's principal after execution of the bond, the collection of additional premium (in excess of the statutory minimum) is permissible—if such collection occurs pursuant to a payment agreement meeting the requirements of the statute." (Am. Order at 14).

This interpretation, as the ALC found, harmonizes the two paragraphs in section 38-53-170(e) "and reflects the General Assembly's purpose in stiffening the requirement to post bond—requirements only applicable where the bond court has determined the defendant's reappearance for trial is not reasonably assured and/or that the defendant's release may pose an unreasonable danger to the community or an individual." *Id.*; *see also CFRE, LLC*, 395 S.C. at 74, 716 S.E.2d at 881 (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").

The contrary interpretation that Appellant pushes does not likewise harmonize the two paragraphs. In reality, Appellant's interpretation would gut the clear mandate in paragraph 1 and 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]"). If a bondsman was permitted to enter a payment agreement "for the collection of the premium amount over time," App.'s Br. at 7, without first charging and collecting the statutory minimum fee, as Appellant argues, then the statutory minimum fee would not be a precondition to the execution of the bond. *See* (Am. Order at 15) ("Such an interpretation would also beg the question as to why the General Assembly would have included the minimum, pre-execution collection requirements in the first paragraph at all instead of just requiring a minimum downpayment of $100 with the remainder of the premium to be paid and collected over eighteen months, i.e. through a payment plan."). But it is.

There is only one way to skin this cat to provide meaning to both paragraphs, comply with the unambiguous mandate in paragraph 1, and honor the General Assembly's intent. *See Centex Int'l, Inc. v. S.C. Dep't of Revenue*, 406 S.C. 132, 139, 750 S.E.2d 65, 69 (2013) ("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" (quoting *S.C. State Ports Auth. v. Jasper Cnty.*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006))). That is: a bondsman must charge and collect the greater of $100.00 or 10% of the face of the bond before execution of the bond as a minimum fee, and if the bond premium exceeds that minimum fee (up to 15% of the bond), the bondsman is permitted to enter a payment agreement to collect the remaining amount over time. Lest the so-called exception would swallow the rule.

This interpretation is supported by the prior version of section 38-53-170(e) too. As Appellant acknowledges, in 2023, the General Assembly amended the statute, leaving the maximum premium at 15% of the bond in place but increasing the minimum fee from $25.00 to the greater of $100.00 or 10% of the bond. App.'s Br. at 7; *compare* S.C. Code Ann. § 38-53-170(e) (2015), *with* S.C. Code Ann. § 38-53-170(e) (Supp. 2025). If the General Assembly did not want to retain a minimum fee requirement, it could have deleted it entirely. Likewise, if the General Assembly intended to increase the minimum fee to a flat $100.00, all it had to do was strike "twenty-five dollars" and insert "one hundred dollars." It didn't. Instead, the General Assembly purposely added the language "one hundred dollars or ten percent of the bond, whichever is greater." S.C. Code Ann. § 38-53-170(e). This language was added to ensure bondsmen charged and collected as a minimum fee of 10% of any bond over $1,000 prior to the execution of the bond.

That is not all. The General Assembly also included the new requirement that the minimum fee "must be charged and collected by the bondsman before the execution of the bond." S.C. Code Ann. 38-53-170(e).[1] If the General Assembly did not intend the increased minimum fee to be

[1] Appellant spends an entire section of her brief discussing an earlier version of the bill that was never enacted. App.'s Br. at 19–22. Even though the ALC discussed the prior legislative history on this issue, it ultimately—correctly—"did not give weight to the legislative history" because it had not been enacted. (Am. Order at 17 n.17). To be sure, "[b]ills are introduced and fail in the General Assembly for any number of reasons, and it would be beyond speculation for us or any court to divine some import and meaning from the mere fact that the bills did not become law." *CFRE, LLC*, 395 S.C. at 81, 716 S.E.2d at 884. The Court should not consider the first proposed amendments to section 38-53-170(e). Even so, the General Assembly did not pass that version of the bill for a reason.

And if any consideration to unenacted bills should be given, it should be to House Bill 4512, which clarifies what the Department has argued all along: that "[p]ayment agreements are permitted for amounts in excess of ten percent of the bond but are otherwise prohibited." H.R. 4512, 126th Leg. Sess. (2025). "It could reasonably be argued that this proposed legislation constitutes a clarifying amendment intended to resolve ambiguity in the present statute by more carefully spelling out the

charged and collected prior to the execution of the bond, it would have only used the word "charged" and not have included the words "and collected" or the phrase "prior to the execution of bond" in this provision.

Tellingly, Appellant does not once try to reconcile her interpretation with the General Assembly's addition of the "charged and collected" requirement, which is a precondition to the bond's execution. In fact, she does not mention the requirement once after her initial recitation of the statute's language and the Department's position. Her silence on the issue is deafening because "[t]he Court must presume the [General Assembly] intended its statutes to accomplish something and did not intend a futile act." *Duvall v. S.C. Budget & Control Bd.*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008). And "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *Senate ex rel. Leatherman v. McMaster*, 425 S.C. 315, 322, 821 S.E.2d 908, 912 (2018) (quoting CFRE, LLC, 395 S.C. at 74, 716 S.E.2d at 881).

Rather than addressing this obstacle, Appellant contends the Department's and the ALC's interpretation would place "[t]he financial stakes for violating the conditions of the bond" so high that "[t]he ranks of county jails would swell unnecessarily, and at significant expense to the taxpayer." App.'s Br. at 8. As the ALC noted, however, that is a policy consideration for the General Assembly, not for the judicial system. (Am. Order at 16 n.16). What is more:

> The bond court is permitted to consider a criminal defendant's financial resources when setting the bond amount. S.C. Code Ann. § 17-15-30(A)(3) (Supp. 2025). If the judge setting bond is aware that the law requires the collection of 10% of the bond's face amount from the defendant up front, the judge can take the defendant's financial status into account when determining the appropriate amount of bond to set. Indeed, Section 38-53-170(e) itself envisions that some bonds would be set at low amounts when it included the

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Legislature's intent consistent with the Department's position." (Am. Order at 17 n.17). "[S]ubsequent amendments may be interpreted as clarifying the legislative intent behind existing law." *Gardner v. S.C. Dep't of Revenue*, 353 S.C. 1, 14, 577 S.E.2d 190, 196 (2003).

> phrase "with a minimum fee of one hundred dollars or 10% of the bond, whichever is greater," language that contemplates surety bonds set at amounts below $1,000.

Id. The Court need not consider this speculatory outcome in analyzing this straightforward statutory interpretation question.

Appellant also makes three other unavailing arguments against this interpretation. App.'s Br. at 10–11. As to the first, the statute does in fact require different transactions. To be sure, paragraph 1 speaks in terms of the statutory mandatory "minimum fee" that must be charged and collected "before execution of the bond" and paragraph 2 speaks in terms of a "minimum down payment." S.C. Code Ann. § 38-53-170(e); *see also* (Am. Order at 18) ("Relatedly, and more importantly, the two paragraphs represent two different obligations relating to the bond."). It specifically contemplates that prior to executing the bond, the bondsman must collect the "minimum fee" and, if the bondsman agrees with the principal to enter a payment agreement—which is permissive—the bondsman must collect the "minimum down payment." *Id.* And, if the bondsman wishes to collect a higher down payment, nothing in the statute prohibits that. The precondition is always, however, that the bondsman charge and collect the "minimum fee." *Id.*; (Am. Order at 18) ("The first paragraph governs the terms of the execution of the bond, specifically the amount to be charged and collected as a mandatory prerequisite to the execution of the bond, whereas the second paragraph provides for the terms of a contractual agreement (i.e., a payment plan) between the bail bondsman and the principal and/indemnitor regarding the payment of any remaining premium that the bail bondsman may charge (up to the amount allowed by law).").

Turning to the second—what the ALC considered the "debtors' prison argument"—Although Appellant knew the Department's interpretation of the statute all along, Appellant's raised this argument for the first time in a motion to reconsider. The Court should thus not pass

on this argument.[2] *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."). But even if it does, the argument fails.

Appellant contends the Department's interpretation could result in incarceration of a principal for failing to pay a "private debt" that is not statutorily required to be charged by a bondsman. App.'s Br. at 11. Although section 38-53-170(e) may incidentally benefit a bondsman by providing more protection for the premium, that is not the ultimate purpose. Rather, it is "to further ensure against violation by defendants of the conditions of bond—an issue in which the State certainly has an interest." (Order on Mot. to Recons. at 4). What is more, a payment agreement under section 38-53-170(e) is no ordinary private agreement. It is allowed only by this statute with the "bond premium amount capped by the state, to a bondsman licensed and regulated by the state as part of a criminal defendant's consideration for a bond sanctioned by the state to facilitate the release on bail of a defendant from state or local custody while ensuring the reappearance of the defendant for a public trial for an alleged crime against the state." *Id.* Indeed, the "surplus amount" or "optional 5% of the bond" as Appellant calls, App.'s Br. at 12, capped at 15% of the bond, may only be charged *because the statute says so*. Of course, the General Assembly intended "would create a highly regulated payment agreement procedure" for this. App.'s Br. at 12. As the ALC properly found, "the state has a legitimate interest in regulating" such payment agreements from execution to any default. *Id.*

[2] Appellant contends that this wasn't a new argument but was simply "meant to further highlight the inconsistency of the Departments interpretation with other fundamental precepts of South Carolina law." App.'s Br. at 11 n.2. Because this "highlight[ing]" could and should have been raised in opposition to the Department's motion for summary judgment, it was improper on a motion to reconsider.

Even so, as the ALC found, "the hypothetical scenario underlying [Appellant's] debtor's prison argument" could still arise under her own distorted interpretation of the statute. *See* (Order on Mot. to Recons. at 4–5). It provides no legitimate reason not to adopt the Department's interpretation, which furthers the General Assembly's intent.

And as to the third, it is Appellant's interpretation, not the Department's interpretation, that "defeat[s]" the purpose of the statute. *See* App.'s Br. at 12. As to this purpose, it is unclear where Appellant finds what she contends is the "obvious purpose of the payment agreement provision," *id.*, but it is clear that it is not found in the statute's language. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582 ("a court cannot rewrite the statute and inject matters into it which are not in the [General Assembly's] language"). "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 purpose of the statute." *State v. Sweat*, 386 S.C. 339, 350, 688 S.E.2d 569, 575 (2010) (quoting *Broadhurst v. City of Myrtle Beach Election Comm'n*, 342 S.C. 373, 380, 537 S.E.2d 543, 546 (2000)).

The Department's interpretation is the only way to construe the language in light of the intended purpose of the statute and to give meaning to all provisions of the statute. That is, as to the payment agreement, the ability to enter one arises under circumstances when there is a premium amount remaining due after charging and collecting the statutory minimum fee. Indeed, South Carolina law does not cap bail bond premiums at 10% or $100.00. Licensees may charge up to 15% for a premium. Given the statutorily mandated minimum fee, payment agreements may be used for premiums that exceed that minimum fee that is required to be charged and collected before execution of the bond.

Finally, the Court need not consider the nonbinding opinion on the issue from the South Carolina Attorney General that Appellant references. As Appellant concedes, that opinion is not binding on this Court. App.'s Br. at 14; *see State v. Ramsey*, 409 S.C. 206, 212, 762 S.E.2d 15, 18 (2014) ("although it may be persuasive authority, an Attorney General's opinion is not binding on this Court"); *Charleston Cnty. Sch. Dist. v. Harrell*, 393 S.C. 552, 560–61, 713 S.E.2d 604, 609 (2011) (same). That is especially so because a question of statutory interpretation is one for the Court to decide, not for the Attorney General to decide. *See Alltel Communs. Inc. v. S.C. Dep't of Revenue*, 399 S.C. 313, 316, 731 S.E.2d 869, 870 (2012) ("The question of statutory interpretation is one of law for the court to decide."). Like Appellant, the Attorney General did not wrestle with the statutory mandatory minimum fee requirement in paragraph 1 of section 38-53-170(e). Even so, in the end, the Attorney General deferred to the Department's interpretation "as the agency with regulatory authority," which the ALC confirmed too. *See* S.C. Att'y Gen. Op., 2025 S.C. AG LEXIS 33, *2 (July 31, 2025).

* * *

Appellant's interpretation yields an absurd result and defeats the purpose behind the amended bail bond law, which was, in part, to increase the minimum fee that had to be collected as a condition of pretrial release to deter offenders from committing additional crimes while out on bond. Solely increasing the fee from $25 to $100 would not close the revolving door.

The proper interpretation of section 38-53-170(e) is that no bondsman may execute a bond prior to charging and collecting the statutory minimum bond amount which is the greater of $100.00 or 10% of the face amount of the bond. Bondsmen wishing to charge more than the statutory minimum, up to 15% of the face value of the bond, may enter into a payment agreement for the amount over the statutory minimum and attaching a statement of bondsman to the bond

proceeding form. This is the only interpretation that gives meaning and harmonizes all the words in the statute with the General Assembly's intent.

II. The Department's interpretation should be considered, if not given deference.[3]

South Carolina courts have held that "where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts . . . will defer to the agency's interpretation absent compelling reasons." *Brown v. Bi-Lo, Inc.*, 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003); *see also Dunton v. S.C. Bd. of Exam'rs in Optometry*, 291 S.C. 221, 223, 353 S.E.2d 132, 133 (1987) ("The construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons."); *see generally Sweat*, 386 S.C. at 351, 688 S.E.2d at 575–76.

"[Courts] defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute." *Kiawah Dev. Partners, II* v. *S.* C. *Dep't of Health & Env't Control*, 411 S.C. 16, 32–33, 766 S.E.2d 707, 718 (2014); *see also id.* ("If the statute or regulation 'is silent or ambiguous with respect to the specific issue,' the court then must give deference to the agency's interpretation of the statute or regulation, assuming the interpretation is worthy of deference." (citing *Chevron, U.S.A., Inc.* v. *Natural Res. Def Council, Inc.*, 467 U.S. 837, 843 (1984), *overruled by Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024))).

After more than 40 years of "automatic" agency deference that required courts to defer to an agency's interpretation of ambiguous statutory language, in 2024, the Supreme Court of the United States overruled *Chevron* in *Loper Bright.* In *Loper Bright*, the Supreme Court noted that

[3] Though she tries, App.'s Br. at 19 n. 3, Appellant cannot reserve an argument and address it in her reply. *See, e.g.*, *First Sav. Bank v. McLean*, 314 S.C. 361, 363, 444 S.E.2d 513, 514 (1994) (noting an appellant abandons an issue when he fails to "provide arguments or supporting authority" in his initial brief); *Fields v. Melrose Ltd. P'ship*, 312 S.C. 102, 106, 439, S.E.2d 283, 285 (Ct. App. 1993) (stating one "may not use the reply brief to argue issues not argued in his brief in chief").

"judges [must] independently identify . . . delegations of authority [to agencies], police the outer statutory [and constitutional] boundaries of those delegations, and ensure that agencies exercise their discretion consistent with" the Administrative Procedure Act: ensure that the agency's exercise of delegated discretion to make policy or find facts is not "arbitrary or capricious" and (where applicable) is supported by "substantial evidence." *Loper Bright*, 603 U.S. at 404.

Even in overruling *Chevron*'s automatic deference doctrine, however, the Supreme Court clearly indicated that courts should still respect an agency's interpretation and look to agency interpretations as one source of determining legislative intent. Quoting *Skidmore* v. *Swift & Co.*, 323 U.S. 134, 140 (1944), the Supreme Court stated that courts "may . . . seek aid from the interpretations of [the agencies] responsible for implementing particular statutes," reasoning that interpretations "issued contemporaneously with the statute at issue, and which have remained consistent over time, may be especially useful in determining the statute's meaning," as will be agency interpretations "to the extent [they] rest[] on factual premises within the agency's expertise." *Loper Bright*, 603 U.S. at 394. Moreover, the *Loper Bright* court did not deny that a reviewing court could "exercise[] independent judgment" while not being bound to an agency interpretation, yet still provide "the most respectful consideration to Executive Branch interpretations simply because [t]he officers concerned [were] usually able men, and masters of the subject, who were [n]ot unfrequently . . . the draftsmen of the laws [courts] . . . were afterwards called upon to interpret." *Id.* at 386 (cleaned up).

As explained above, South Carolina has its own deference doctrine, and the Supreme Court of South Carolina has not yet applied *Loper Bright* or changed its interpretation of our deference doctrine. Unless and until that occurs, the Department's interpretation deserves deference because, as shown above, it is not "arbitrary, capricious, or manifestly contrary to the statute." *Kiawah II*,

411 S.C. at 32–33, 766 S.E.2d at 718. The Department's interpretation of section 38-53-170(e) adheres to the statute's plain language, further legislative intent, and harmonizes and gives effect to the meaning of all statutory provisions. It is reasonable and entitled to deference.

That said, this Court, in *Colonial Pipeline Company* v. *South Carolina Department of Revenue*, 443 S.C. 448, 905 S.E.2d 129 (Ct. App. 2024), *cert. denied* (Feb. 12, 2025), mentioned it was "cognizant" of *Loper Bright* and issued a decision "[m]indful of the[] rules governing statutory construction." *Id.* at 459, 905 S.E.2d at 134. Even under that mindfulness, the Department's interpretation should be considered and respected because the Department is the regulatory agency charged with administering and enforcing the statutory, especially because the interpretation aligns with the rules of statutory construction.[4]

III. The rule of lenity cannot override legislative intent which guided the Department and the ALC's interpretation.

At the outset, Appellant's "rule of lenity" argument is not preserved. As Appellant acknowledges, she did not raise this argument until her motion to reconsider. App.'s Br. at 17. That was too late. *See Johnson*, 381 S.C. at 177, 672 S.E.2d at 570. The Court need not consider this argument.

Even so, section 38-53-170(e) is not a penal statute. Assuming *arguendo* that it is, the rule of lenity does not change the correct interpretation of section 38-53-170(e). "The rule that penal statutes . . . must be construed strictly, is but a means of arriving at the intention." *Dykeman v.*

[4] Though it conducted its own statutory interpretation analysis, the ALC initially referenced agency deference in its Order. (Order on Mot. to Recons. at 10) ("While the Court reached the same conclusion as the Department, the Court reached its own conclusions about the interpretation of Section 38-53-170(e), based on its own analysis throughout nearly all of the Order."). On Appellant's motion to reconsider, the ALC confirmed this but decided to omit reference to deference from its Amended Order. *See* (Order on Mot. to Recons. at 13); *see generally* (Am. Order). The Court can affirm for any ground appearing in the record. Rule 220(c), SCACR.

Wells Fargo Home Mortg., Inc., 381 S.C. 333, 338, 673 S.E.2d 804, 806 (2009) (quoting *Rorrer v. P.J. Club, Inc.*, 347 S.C. 560, 567, 556 S.E.2d 726, 730 (Ct. App. 2001)). While penal statutes are to be strictly construed, "the canons of construction certainly allow the court to consider the statute as a whole and to interpret its words in the light of the context." *Bostic v. American Home Mortg. Servicing, Inc.*, 375 S.C. 143, 149, 650 S.E.2d 479, 481 (2007) (citation omitted). Thus, courts "should consider not merely the language of the particular clause being construed, but the word and its meaning in conjunction with the purpose of the whole statute and the policy of the law." *Id.* And the rule "does not prevent the courts from calling to their aid all the other rules of construction and giving each its appropriate scope" or "giving the words of the statute a reasonable meaning according to the sense in which they were intended, and disregarding . . . even the demands of exact grammatical propriety." *State v. Firemen's Ins. Co.*, 164 S.C. 313, 325, 162 S.E. 334, 338 (1931) (citation omitted)); *see also United States v. Bass*, 404 U.S. 336, 347 (1971) (courts should rely on lenity only if, "after seizing everything from which aid can be derived," it is "left with an ambiguous statute" (cleaned up)), *superseded on other grounds by statute*. At all times, the rule remains "subservient to the one that the legislative intent must prevail if it can be reasonably discovered in the language used." *Nelson v. Ozmint*, 390 S.C. 432, 436, 702 S.E.2d 369, 371 (2010) (citation omitted).

As explained above, and as the ALC found, even if ambiguous, the correct interpretation of section 38-53-170(e) can be gleaned by looking at the General Assembly's intent and considering the context of paragraph 2 as following paragraph 1. *See* (Order on Mot. to Recons. at 12); *see also State v. Miles*, 421 S.C. 154, 164, 805 S.E.2d 204, 210 (Ct. App. 2017) (the Court should not "invoke [the rule of lenity] before considering the words of the statute in context").

That is, the General Assembly intended to create a mandate that a bondsman charge and collect the minimum fee of the greater of $100.00 or 10% of the bond before executing the bond. Construing the statute through Appellant's lenses would defeat this intent and allow a payment agreement to strip the purpose of the statutory minimum fee. *See* (*id.* at 12–13) (it would "render the up-front-collection requirement in the first paragraph meaningless and would, in doing so, undermine the General Assembly's policy of stiffening the requirements to post bond to ensure that the burden of posting bond is consistent with the bond amount determined by the bond court"). The rule of lenity is not and cannot be used as a way to avoid legislative intent. *See* (*id.* at 12) ("the rules of statutory construction still apply when there is an ambiguity in a penal statute; and though ambiguities in such statutes that cannot be resolved by reasonable discovery of legislative intent must be construed in favor of the defendant, such construction cannot be at the expense of legislative intent").

In sum, "preservation of the policy and intent of the General Assembly in enacting the 2023 amendments to Section 38-53-170(e) must prevail over the statutory construction rule of lenity." (Order on Mot. to Recons. at 13).

CONCLUSION

For these reasons, the Court should affirm the ALC's interpretation of section 38-53-170(e) and grant of summary judgment to the Department. Appellant is obligated to pay the fine the Department imposed.

(Signature page to follow)

Respectfully submitted,

s/ Robert E. Tyson, Jr.

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