RECEIVED

Sep 08 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM ADMINISTRATIVE LAW COURT
Ralph King Anderson, III, Chief Administrative Law Judge

Opinion No. 6148 (S.C. Ct. App. Filed June 17, 2026)

Appellate Case No. 2024-000013

Trial Court Case No. 19-ALJ-17-0416-CC

Tractor Supply Company .... Appellant,

v.

South Carolina Department of Revenue............................ Respondent,

PETITION FOR A WRIT OF CERTIORARI

NELSON MULLINS RILEY &
SCARBOROUGH LLP

C. Mitchell Brown (SC Bar No. 12872)
mitch.brown@nelsonmullins.com
1320 Main Street / 17th Floor
Columbia, SC 29201
(803) 799-2000

Bryson M. Geer (SC Bar No. 13606)
bryson.geer@nelsonmullins.com
John C. von Lehe, Jr. (SC Bar No. 5719)
john.vonlehe@nelsonmullins.com
Robert T. Streisel (SC Bar No. 101912)
bobby.streisel@nelsonmullins.com
151 Meeting Street / 6th Floor
Charleston, SC 29401-2239
(843) 853-5200

Attorneys for Tractor Supply Company

SOUTH CAROLINA DEPARTMENT
OF REVENUE

Marcus D. Antley (SC Bar No. 102176)
marcus.antley@dor.sc.gov
W. Allen Myrick, Jr. (SC Bar No. 14718)
allen.myrick@dor.sc.gov
300A Outlet Pointe Blvd.
Columbia, SC 29210
(803) 898-5623

Attorneys for S.C. Department of Revenue

Pursuant to Rule 242 of the South Carolina Appellate Court Rules, Tractor Supply Company ("TSC") petitions this Court to issue a writ of certiorari to review the Court of Appeals' opinion in *Tractor Supply Company v. S.C. Dept. of Rev.*, Op. No. 2026-UP-6148 (S.C. Ct. App. June 17, 2026) (Howard Adv. Sh. No. 23 at 13) ("Opinion" or "Slip. Op.").[1]

SUMMARY OF GROUNDS FOR CERTIORARI

Writs of certiorari issue from this Court "where there are special and important reasons," including where the Court of Appeals' decision conflicts with Supreme Court precedent or raises novel questions of law. Rule 242(b), SCACR.

The Court of Appeals' decision conflicts with at least three decisions of this Court: *CarMax Auto Superstores W. Coast, Inc. v. S.C. Dep't of Revenue*, 411 S.C. 79, 767 S.E.2d 195 (2014); *Alltel Commc'ns, Inc. v. S.C. Dep't of Rev.*, 399 S.C. 313, 731 S.E.2d 869 (2012); and *Media General Commc'ns, Inc. v. S.C. Dep't of Rev.*, 388 S.C. 138, 694 S.E.2d 525 (2010). *CarMax* established legal standards for apportioning multistate business income that the lower courts failed to follow. *Alltel* requires ambiguities in tax statutes to be construed in the taxpayer's favor—a long-standing taxpayer-protection canon of statutory construction that the lower courts bypassed by never interpreting the disputed statutory text. And *Media General* left unresolved the novel issue presented here: whether the alternative apportionment statute authorizes forced combined unitary reporting against a non-consenting taxpayer that is the only member of its unitary group conducting business in South Carolina. Other special and important reasons why this Court should grant this writ include that the decisions below impact how the South Carolina Department of Revenue (the "Department"), the courts, and taxpayers will understand and apply the relevant tax

[1] The undersigned certifies that a petition for rehearing was made and finally ruled on by the Court of Appeals on August 7, 2026.

statutes and this Court's precedents. Moreover, these decisions will shape whether national and international companies—such as Boeing, Mercedes, Volvo, and others making significant investment decisions in South Carolina—view the State's tax environment as fair, stable, and predictable. Such confidence is essential if South Carolina is to retain existing businesses, attract new investment, and remain competitive in today's global economy. The Court's guidance is needed on these recurring issues of statewide importance.

INTRODUCTION

This case involves South Carolina's alternative apportionment statute at § 12-6-2320(A)[2] (the "AA Statute").[3] South Carolina taxes only the portion of a multistate taxpayer's business income derived from its in-state activity. An apportionment method (i.e., a statutory formula) is used to determine the taxpayer's in-state activity. South Carolina law provides eight different apportionment methods. TSC, as a seller of tangible personal property, **must** use the sales factor method. § 12-6-2252(A). TSC's sales factor for the audit period (calculated by dividing its SC sales by its sales everywhere) was just under 3% because just under 3% of its sales occurred here. The Department may invoke the AA Statute when a taxpayer's required apportionment method does not reasonably approximate its in-state business activity.

In *CarMax*, this Court established that invoking the AA Statute requires the Department to prove: (1) the taxpayer's statutory formula (here, the sales factor) does not fairly represent its South Carolina business activity ("Step One"); and (2) the proposed alternative method is reasonable ("Step Two"). 411 S.C. at 88-90, 767 S.E.2d at 199-200; *accord Rent-A-Center W., Inc. v. S.C.*

[2] All code sections are from the South Carolina Code of Laws Annotated unless otherwise noted.
[3] After this case began, subsection (A)(4) of the AA Statute was amended and a new subsection (B) added. § 12-6-2320 (2024). As this amendment does not apply to cases at the ALC or appellate courts, cites to the AA Statute are to the prior version.

Dep't of Rev., 418 S.C. 320, 332, 792 S.E.2d 260, 266 (Ct. App. 2016). The AA Statute further requires any alternative method be equitable and *apportion TSC's income*. § 12-6-2320(A)(4).

The lower courts ignored this Court's precedents, as well as the AA Statute's text and purpose, to uphold the Department's unprecedented imposition of Combined Unitary Reporting ("CUR"). The Department imposed CUR simply because TSC has affiliates and paid one of them a transfer price for procurement services—without even evaluating whether that price was too high. The Department's *post-hoc* litigation theory to justify CUR was that the transfer price was improper, yet its own expert offered no opinion on what a correct price would be. Moreover, if the Department had established an improper transfer price, it had ample powers to simply make a price adjustment, assess additional taxes based on the same, and even assess penalties, if justified. The Department is not empowered to instead impose CUR, as it has done here, merely due to the existence of intercompany transactions (which are not uncommon in corporate America).

The lower courts committed fundamental legal errors warranting review as follows:

First, contrary to *CarMax, Rent-A-Center*, and the AA Statute, both lower courts applied the wrong Step One standard by examining whether *separate reporting* correctly measured TSC's in-state business activity rather than whether TSC's *sales factor* failed to fairly represent it. They also used "income" as a proxy for business activity and found Step One met despite *no evidence* that the TSC's sales factor was an inaccurate measure of in-state business activity.

Second, the lower courts misapplied the burden of proof under *CarMax*. They shifted the Step One burden to TSC, finding Step One met because *TSC allegedly failed to prove* arm's-length pricing between it and a subsidiary. They found Step Two met despite the Department presenting no evidence to satisfy the Department's burden of showing that an alternative method is reasonable.

Third, the alternative method imposed—CUR—is not even authorized here. CUR apportions income belonging predominantly to affiliates conducting *no* business in this state—over 70% of the income apportioned to and taxed by this state belongs to such affiliates, not TSC.

Fourth, both courts never interpreted the AA Statute's language, bypassing the taxpayer-protection canon requiring that any ambiguities be construed in the taxpayer's favor. *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873.

Fifth, the lower courts misapplied *Media General*, which held only that a unitary group—all members of which conducted business in South Carolina—could use a combined entity apportionment method that the taxpayers in that matter *requested* permission to use. 388 S.C. at 141-43 and 146, 694 S.E.2d at 526-27 and 529. *Media General* did not address the novel question presented here of whether the AA Statute authorizes the Department to *force* CUR upon a *non-consenting* taxpayer that is the *only* unitary group member doing business here. TSC has found no other state that has ruled a similar statute authorizes forced CUR under these facts.

Sixth, the Court of Appeals applied a substantial evidence standard instead of *de novo* review to what were legal questions and issues, thus insulating the Administrative Law Court's ("ALC") erroneous rulings from meaningful appellate scrutiny.

This Court should grant certiorari.

QUESTIONS PRESENTED FOR REVIEW

I. Did the Court of Appeals Err by Applying the Wrong Step One Standard, Conflating Taxable Income with Business Activity and Ignoring *CarMax* and the AA Statute?

II. Did the Court of Appeals Err in Failing to Correct the ALC's Burden-Shifting, Applying the Wrong Legal Standard to a Transfer Pricing Issue, and Finding Substantial Evidence Supported the ALC's Decision?

III. Did the Court of Appeals Err in Holding § 12-6-2320(A)(4) Authorized the Department's Forced Use of CUR Against a Single Non-Consenting Taxpayer?

IV. Even if § 12-6-2320(A)(4) Can Authorize CUR, Did the Court of Appeals Err in Finding that the Department Met its Step Two Burden?

V. Did the Court of Appeals Err by Failing to Apply the Proper De Novo Standard of Review to Questions of Law?

STATEMENT OF THE CASE

This case involves TSC's protest of a corporate income tax assessment by the Department for tax years 2014 through 2016 (the "Audit Period"). R. 3737-3743. TSC filed its returns using the statutorily required sales factor apportionment method. R. 3631-3698. The Department's assessment and audit, which its Determination affirmed, alleged that TSC's business activity was not fairly represented here, invoked the AA Statute to impose CUR, and assessed additional tax of $1,383,064 plus interest. R. 3715-3721. TSC filed a contested case hearing request with the ALC on December 11, 2019. R. 154-180. Following a five-day hearing in January 2023, the ALC issued a Final Order on August 8, 2023. R. 1-64. Following TSC's Motion for Reconsideration (R. 2531-2695), the ALC rescinded its Final Order (R. 65) and then issued an Order on Motion for Reconsideration (R. 138-145) and Amended Final Order (the "Order") on December 4, 2023. R. 66-137. The ALC denied TSC's reconsideration motion of this Order. R. 2708-2874, 146-153.

TSC appealed to the Court of Appeals, contending the ALC erred for the reasons outlined herein. After oral argument, the Court of Appeals issued its Opinion affirming the ALC on June 17, 2026, and it denied TSC's rehearing petition. TSC now petitions this Court for a writ of certiorari.

STATEMENT OF THE FACTS

A. TSC Entities and Retail Operations

TSC and its affiliates, TSC of Texas and TSC of Michigan (collectively, the "TSC Group"), operate retail stores nationwide. R. 1245:3-8, 2890.[4] TSC of Texas operates the Texas stores; TSC of Michigan operates the Michigan stores; and TSC operates stores in the remaining 48 states—approximately 80% of all locations. R. 2913, 2987, 3066, 1246:4-6. TSC is the only TSC Group entity with business activity in South Carolina. R. 1245:3-8, 1246:11-14, 1291:11-14.

B. TSC of Texas' Procurement Activities and the PwC Transfer Pricing Study

TSC of Texas performs procurement services—acquiring inventory and performing related services for all TSC Group stores—and it charged TSC and TSC of Michigan a 9.7% markup on inventory costs.[5] R. 878:15-24, 1245:19-1246:3, 1259:19-1268:14, 1278:3-8, 3762, 3826. This 9.7% markup was based on a transfer pricing study (the "PwC Study") prepared by PricewaterhouseCoopers, which deemed it to be an arm's length price. *Id.*

C. The Competing Tax Returns: Separate versus Combined Reporting

TSC filed its South Carolina returns using separate entity reporting as required by law.[6] R. 3631-3698. To determine its South Carolina tax liability under this method, TSC started with its federal taxable income ("FTI"), applied state modifications to arrive at total business income, and then apportioned a fraction to South Carolina using its sales factor. *Id.* The Department audited

---

[4] In 2001, TSC (the sole TSC entity at the time) underwent a restructuring, which has remained in place since, resulting in the current TSC Group. R. 1246:18-22, 1254:14-1256:14, 1258:4-1259:6. Many business reasons, including tax efficiency planning, prompted the restructuring. R. 1249:15-1252, 1254:14-1256:14, 1258:4-1259:6; *see also* R. 67, n. 5 (showing ALC did not find tax planning to be the only goal of the restructuring or that TSC had no business purposes for it).

[5] TSC of Texas also owns the TSC Group's valuable marketing-related and other intangible property ("IP"). R. 485:20-486:24, 1245:19-1246:3, 2903, 3764, 4441. During the Audit Period, TSC of Texas allowed TSC and TSC of Michigan to use this IP at no charge. R. 485:20-486:24, 3764, 3804-3806, 3823.

[6] States imposing corporate income taxes often select one of two reporting methods: (1) separate entity reporting, or (2) CUR. R. 1445:14-1446:13. Various policy reasons might prompt a state to choose one over the other, including economic development reasons, ease of administration, reduction of taxpayers using tax minimization strategies, etc. R. 1449:13-1450:8, 1452:13-1454:1, 1458:4-15.

TSC and required CUR. R. 3715. CUR works differently: (1) it starts with the TSC *Group's* FTI, and (2) calculates the sales factor using the TSC *Group's* sales. R. 3700-3714.

The Department's Corporate Working Papers provide a useful comparison of TSC's tax returns as filed (Reported column) versus using CUR (Audited column):

Corporate Adjustments Summary for 2014

	Reported	Audited
1. Federal Taxable Income	$130,998,512	$552,221,388
2. Net Adjustment	$17,478,426	$17,478,426
3. Total Net Income as Reconciled	$148,476,938	$569,699,814
4. Total South Carolina Net Income	$4,137,310	$12,989,725
5. South Carolina Net Operating Loss Carryover	$0	$0
6. South Carolina Net Income Subject to Tax	$4,137,310	$12,989,725
7. Corporation Tax Due	$206,866	$649,486

R. 3701. Line 1 is FTI, Line 2 contains state modifications, and Line 3 is total business income subject to apportionment. *Id.* The sales factor is applied between Lines 3 and 4 to produce the Line 4 totals, which are taxed at 5%. *Id.* Using 2014 as an example: CUR produced total business income of $569,699,814, but only 26.1% ($148,476,938) was TSC's income—the remaining 73.9% came from TSC of Texas and TSC of Michigan. CUR apportioned $12,989,725 to South Carolina (8.75% of TSC's business income) despite only 2.79% of TSC's sales occurring here.

For the entire Audit Period, TSC's sales factor was approximately 2.83% and the TSC Group's sales factor under CUR was slightly less at 2.32%.[7] *See* R. 3631-3698, 3700-3714. But because CUR uses the TSC Group's FTI, TSC's tax liability nearly tripled—from $675,135 to $2,058,199. *Id.* Over 73% of the income CUR apportioned here was not TSC's, and it apportioned

[7] TSC's sales factor was approximately 2.79% for 2014, 2.82% for 2015, and 2.88% for 2016. R. 3631-3698. The sales factor for the collective Audit Period (2.83%) is calculated as total 2014-16 SC sales divided by total 2014-16 everywhere sales. *Id.* The TSC Group's sales factor was approximately 2.28% for 2014, 2.31% for 2015, and 2.37% for 2016. *See* R. 3700-3714. The average TSC Group's sales factor for the collective Audit Period (2.32%) is calculated as total 2014-16 SC sales divided by total 2014-16 everywhere sales. *Id.*

8.64% of TSC's income here despite only 2.83% of TSC's sales occurring here. *Id.*

D. The Audit and the Department's Choice to Not Use its §482 Powers and to Instead Require CUR.

The Department has *never* used its §482 powers, though it acknowledges other states do so, to address transfer pricing issues. R. 2083:10-16, 2082:20-2084:10. The Department's position is that the accuracy of a transfer pricing study (and whether an intercompany charge is an arm's length price) ***is not relevant*** to the Step One test—whether the statutory formula fairly represents South Carolina business activity. R. 2081:15-2082:19. Thus, the Department does not evaluate whether transfer pricing reports are accurate during audits. The Audit Report found Step One met because the TSC Group was a unitary business with intercompany transactions (which would exist within any unitary group). *Id.*; R. 3715.[8] Years later, well after the Department's Determination and during litigation, the Department hired an expert to evaluate the PwC Study. *See infra* E.

E. The PwC Study and Related Expert Testimony at Trial

During litigation, both experts concluded that the PwC Study did not use the most reliable method. The ALC properly recognized, however, that the study's use of an unreliable method did not mean the 9.7% price was inaccurate. R. 81 ("Simply because the PwC study is flawed and unreliable does not necessarily mean that the 9.7% markup on inventory adopted by Texas does not meet the arm's length standard. A flawed process can still produce a correct result."). TSC's expert (Andrade) performed his own analysis using a more reliable method, confirming the 9.7% markup was in fact an arm's length price. R. 1563:9-1568:15, 1582:7-25, 1687:10-23, 4017. The Department's expert (DeRamus), by contrast, never attempted to determine the correct arm's

[8] The Department made no fact findings as to TSC's business activity in South Carolina, which it found irrelevant and instead only looked at the business activity of the entire TSC Group before invoking the AA Statute and requiring CUR. R. 3715, 2096:9-19, 2098:7-2099:13.

length price; he simply concluded the PwC Study's method was unreliable and stopped there, because the Department did not ask him to go any further. R. 81, 81, n. 23.

LEGAL BACKGROUND
(Standard Apportionment and the Two-Step Alternative Apportionment Inquiry)

A. South Carolina Business Activity is Measured Using an Apportionment Formula—Here, the Sales Factor.

Determining a multistate taxpayer's South Carolina taxable income starts with its FTI, followed by state modifications as provided in Article 9 of the Income Tax Act ("Article 9"). That amount is then subject to the allocation and apportionment provisions in Article 17 of the Income Tax Act ("Article 17"). §§ 12-6-580, 12-6-2210(B); *see also Emerson Elec. Co. v. S.C. Dep't of Rev.*, 395 S.C. 481,t 485, 719 S.E.2d 650, 652 (2011) ("South Carolina levies tax upon only the percentage of the taxpayer's total business which is conducted within the state." (citing § 12-6-2210(B)). Article 17 (titled "Allocation and Apportionment") dictates that non-business income is "allocated" and business income is "apportioned." *See* §§ 12-6-2220, -2230, -2240; *Emerson*, 395 S.C. at 485, 719 S.E.2d at 652. Income remaining after allocation is apportioned under § 12-6-2252 or one of the special formulas in §§ 12-6-2290 or 12-6-2310. § 12-6-2240.

Sellers of tangible personal property—like TSC—**must** apportion a fraction of their total business income to South Carolina using the sales factor. § 12-6-2252(A). The sales factor is a fraction—the numerator is the taxpayer's total sales in South Carolina, and the denominator is the taxpayer's total sales in all states. § 12-6-2280(A). The resulting fraction represents the South Carolina portion of the taxpayer's total business activity. *See, e.g., Duke Energy Corp. v. S.C. Dep't of Rev.*, 415 S.C. 351, 356, 782 S.E.2d 590, 592 (2016) ("an apportionment formula determines the fraction of business conducted in South Carolina").

B. The AA Statute is a Last-Resort Relief Valve with a Two-Step Burden on the Proponent of an Alternative Method.

Section 12-6-2320(A)—the final provision of Article 17—is a narrow exception. In *CarMax*, this Court established the governing two-step burden, which must be met by a preponderance of the evidence, to invoke it: "the Department bears the burden to prove: (1) that the statutory formula [here, the sales factor] does not fairly represent [the taxpayer's] business activity in South Carolina and (2) that the proposed alternative formula is reasonable." 411 S.C. at 89, 767 S.E.2d at 200 (citations omitted). The Department cannot satisfy Step One merely by showing that the standard formula produces a lower tax or that the taxpayer employed a tax-minimization strategy or by using "scant and conclusory" testimony. *Id.* at 90–91, 767 S.E.2d at 200–01. And the standard formula is presumed to work until the Department proves otherwise. *See id.*; *Rent-A-Ctr.*, 418 S.C. at 333, 792 S.E.2d at 267.

<u>ARGUMENT</u>

I. THE COURT OF APPEALS ERRED IN APPLYING THE WRONG STEP ONE STANDARD, CONFLATING TAXABLE INCOME WITH BUSINESS ACTIVITY AND IGNORING *CARMAX* AND THE AA STATUTE.

This case could have been resolved by a single question of law: What is the correct Step One standard? This Court answered that question in *CarMax*, yet the lower courts departed from that precedent without explanation. Under *CarMax*, Step One requires the Department to prove that the *sales factor* did not fairly represent TSC's *business activity* in South Carolina. 411 S.C. at 89, 767 S.E.2d at 200; *accord Rent-A-Center*, 418 S.C. at 332, 792 S.E.2d at 266. This formula-focused inquiry is mandated by the AA Statute's text and consistent with persuasive authority under the Uniform Division of Income for Tax Purposes Act ("UDITPA") § 18.

A. The Correct Step One Standard Focuses Solely on the Sales Factor—the Statutory Formula Designed to Represent TSC's South Carolina Business Activity.

1. <u>*CarMax* establishes that Step One tests the statutory formula</u>.

In *CarMax*, this Court held that Step One requires proof that "the statutory formula does not fairly represent the taxpayer's business activity in South Carolina." 411 S.C. at 89, 767 S.E.2d at 200; *accord Rent-A-Ctr.*, 418 S.C. at 332–33, 792 S.E.2d at 266–67.[9] For TSC, a seller of tangible personal property, the "statutory formula" is the sales factor—a fraction measuring South Carolina sales as a percentage of TSC's total sales in all states. §§ 12-6-2252(A), 12-6-2280(A). Step One thus asks a single, concrete question: Did the Department prove that this fraction fails to reasonably approximate the South Carolina portion of TSC's total business activity? Here, the Department did not even attempt to make that showing.

2. <u>The statutory text and structure of Article 17 confirm the formula-focused inquiry for Step One</u>.

Neither lower court interpreted the AA Statute's text.[10] Reading the AA Statute in its context and applying other ordinary principles of statutory construction independently compel a formula-focused Step One standard as this Court applied in *CarMax*. South Carolina only seeks to tax the portion of a multistate taxpayer's business income that is reasonably attributable to its in-

[9] *Rent-A-Center* applied this standard faithfully, correctly framing the Step One inquiry as "whether the statutory formula fairly represents a taxpayer's business activity within South Carolina" and reversing the lower court's ruling that Step One was met, finding that the Department failed to point to "any specific evidence the standard apportionment method did not fairly represent [the taxpayer's] business activities." 418 S.C. at 332-33, 792 S.E.2d at 266-67.

[10] The closest either court came to "interpreting" the statutory text was the Court of Appeals' dismissal of TSC's Step One reading as "too narrow," asserting that it "would allow a multistate taxpayer to artificially shift its income in any manner it chose and effectively eliminate its state tax burden without recourse." Slip Op. 21. This premise is false: the Legislature gave the Department targeted recourse for non-arm's-length pricing through I.R.C. § 482 powers and § 482-specific penalties under § 12-54-155(C)(2).

state business activity. *Emerson*, 395 S.C. at 485, 719 S.E.2d at 652; § 12-6-2210(B). The purpose of the apportionment provisions is to determine the fraction of the taxpayer's total business that occurred here. *Duke Energy Corp.*, 415 S.C. at 356, 782 S.E.2d at 592. Section 12-6-2320(A) is the final statute in Article 17 and is triggered only "[i]f the . . . apportionment provisions of this chapter do not fairly represent the extent of the taxpayer's business activity in this State." For TSC, the Article 17 provisions generate a single output: the sales factor, which was just under 3% during the Audit Period. The statutory text plainly asks whether *that* sales factor fairly represents (i.e., reasonably approximates) the extent of (i.e., the portion of) TSC's total business activity that occurred in this State.

Moreover, reading § 12-6-2320(A)—the final statute in Article 17—as providing for a Step One standard that tests whether an Article 37 *filing method*—"separate entity reporting"—produces the correct amount of taxable income is illogical and would be a forced construction that impermissibly expands the AA Statute beyond its legislative intent. *See TNS Mills v. S.C. Dep't of Rev.*, 331 S.C. 611, 624, 503 S.E.2d 471, 478 (1998) ("forced construction of statutory words for the purpose of expanding a statute's operation is prohibited").[11]

3. Persuasive authority under UDITPA § 18—the model for South Carolina's AA Statute—confirms the formula-focused standard.

South Carolina's AA Statute is "nearly identical" to UDITPA § 18. Slip Op. 14. Like *CarMax*, courts in other jurisdictions applying UDITPA § 18 have uniformly interpreted Step One

[11] The lower courts' Step One standard also destroys the structural harmony between Steps One and Two. Under the correct Step One standard, the two steps work seamlessly together. But the wrong Step One standard creates conflict at Step Two—CUR clearly violates the plain language of subsection (A)(4). *See infra* § III.B. The ALC applied the wrong Step One standard and found it satisfied by an allegedly inflated business expense deduction, leaving Step Two to fix a "defect" the AA Statute was never designed to address.

as testing the *apportionment formula*—not income. The Oregon Supreme Court's decision in *Twentieth Century-Fox* is instructive. There, the court framed step one as asking "whether the department proved that the statutory three-factor apportionment formula . . . did not fairly represent the extent of taxpayer's business activity in this state." *Twentieth Century-Fox Film Corp. v. Dep't of Revenue*, 700 P.2d 1035, 1036 (Or. 1985). The department satisfied step one by identifying a specific defect in the *property-factor numerator*—not by pointing to depressed income. *Id.* at 1043–44. The court warned against the very error the lower courts committed here:

> It is also important to note that it must be established that statutory apportionment does not adequately reflect *business activity*, **not merely that it does not adequately reflect income earned in the state**.

Id. at 1042–43 (citing *Amoco Prod. Co. v. Armold*, 518 P.2d 453 (Kan. 1974)) (emphasis added).[12] Persuasive authority from other jurisdictions thus further supports that Step One tests the apportionment formula, not taxable income.

4. <u>Any ambiguity in Step One must be resolved in TSC's favor under the taxpayer-benefit-of-the-doubt canon</u>.

TSC's primary position is that § 12-6-2320(A) plainly requires the Department to prove that the statutory formula—here, the sales factor—does not fairly represent TSC's South Carolina business activity. *See supra* § I.A.2. But even if this Court perceived an ambiguity in the statute, such must be resolved in TSC's favor. *See, e.g.*, *Alltel*, 399 S.C. at 321, 731 S.E.2d at 873 (statute "reasonably susceptible of an interpretation that will exclude [the taxpayer]" must be so construed,

---

[12] Similarly, the Kansas Supreme Court in *Amoco* reversed the lower tribunals because they applied the wrong step one standard, focusing on the taxpayer's Kansas *income* rather than the extent of its in-state business activities as measured by the three-factor formula. *Amoco*, 518 P.2d at 459–60, 464 (finding "the Board failed to recognize the shift from the income test under the old law to the extent of business activities test under the new law [adoption of UDITPA including § 18.]").

"any substantial doubt being resolved in his favor").[13] TSC's formula-focused reading is at minimum reasonable, so any doubt must be resolved in its favor. *Id.* The lower courts bypassed this critical canon by failing to interpret the statutory text.

B. The Lower Courts Applied an Incorrect Step One Standard, Substituting "Separate Entity Reporting" for the Statutory Formula and Conflating Business Activity with Taxable Income.

The lower courts' incorrect Step One standard is the result of two fundamental errors, both of which are contrary to *CarMax* and the AA Statute. First, they viewed Step One as asking whether "separate entity reporting"—a tax return filing method governed by Article 37—fairly represented TSC's business activity here. *See, e.g.*, R. 117-121; Slip Op. 18-21.[14] This substitution of a filing method for the statutory formula was error.

Second, they substituted a novel income-focused standard for the formula-focused standard in *CarMax*. Reasoning that TSC earns income from retail sales, they treated TSC's "***<u>income</u>***" as a ***<u>proxy</u>*** for its South Carolina business activity. *See e.g.* R. 118, 122, 125, 134; Slip Op. 18-21. But income and business activity are not the same thing. A taxpayer may conduct substantial South Carolina business activity yet have little, no, or even negative taxable income in a given year. The sales factor—not taxable income—is the Legislature's chosen method for measuring business activity. The fact that TSC earns income from retail *sales* is precisely why the *sales* factor is the

[13] The canon applies to the enforcement of tax statutes generally, displaced only for matters of "legislative grace"—credits and exemptions—which are construed against the taxpayer. *Mead v. Beaufort Cnty. Assessor*, 419 S.C. 125, 139–40, 796 S.E.2d 165, 173 (Ct. App. 2016). TSC seeks no credit or exemption; § 12-6-2320(A) is a liability-imposing provision the Department invoked to increase TSC's tax, so the canon applies here with full force.

[14] The Court of Appeals used different, inconsistent terminology than the ALC when affirming, but neither court correctly applied *CarMax* or the AA Statute.

appropriate (and mandated) tool for measuring its business activity here.[15]

Applying this income-focused standard, the lower courts found the Department satisfied Step One with evidence that TSC's 9.7% markup allegedly exceeded an arm's-length price, thus understating TSC's taxable income. R. 121-128; Slip Op. 18-21. The lower courts thus never examined whether the Department met the *actual* Step One standard.

C. Applying the Correct Standard, the Department Failed Step One.

The Department presented **no evidence** that more than 2.83% of TSC's business activity occurred here nor any evidence that this percentage—or the numerator (South Carolina sales) or denominator (total sales) of the fraction—was incorrect. Indeed, the ALC effectively found the sales factor accurate, concluding that but for the transfer-pricing issue, "I would conclude that separate reporting resulted in a fair representation of TSC's business activity in this state." R. 126. The sales factor did exactly what the Legislature intended: it accurately determined the fraction of TSC's total business that occurred here. Because the Department never proved otherwise, it failed Step One.

II. THE COURT OF APPEALS ERRED BY FAILING TO CORRECT THE ALC'S BURDEN SHIFTING, APPLYING THE WRONG LEGAL STANDARD TO A TRANSFER PRICING ISSUE, AND FINDING SUBSTANTIAL EVIDENCE SUPPORTED THE ALC'S DECISION.

Even if Step One could be satisfied by showing TSC's business expense deduction was too high, the Court of Appeals also erred by not correcting the ALC's improper burden-shifting,

[15] The ALC's rationale for its "income" as a proxy for business activity is based on circular, flawed logic, and its use is not confined to this case. The ALC applied the same reasoning to a different set of facts in *CarMax Auto Superstores, Inc. v. S.C. Dep't of Rev.*, No. 21-ALJ-17-0182-CC at 57 (S.C. Admin. L. Ct. Aug. 15, 2024) (dism. on appeal) ("And, while in some cases income may not reflect business activity, here, where all of CarMax East's business activity results in revenue, I find that income is a proxy for CarMax East's business activity in this state."). The income proxy has no support in the law and nullifies the purpose of the Article 17 apportionment provisions.

applying the wrong legal standard to a transfer pricing issue, and affirming findings unsupported by substantial evidence.

A. The 482 Treasury Regulations and the Arm's Length Standard

The key to the §482 Regulations is the "Arm's Length Standard" set forth under Treasury Regulation § 1.482-1(b)(1). A transaction between related parties meets this standard "if the results of the transaction are consistent with the results that would have been realized if uncontrolled [unrelated] taxpayers had engaged in the same transaction under the same circumstances." Treas. Reg. § 1.482-1(b)(1). Importantly, the standard is flexible—a range of prices will satisfy it, and the IRS will not adjust any price within that range. Treas. Reg. § 1.482-1(e). If the transaction does not meet the standard and is excessive, the Department can adjust the price and the taxes owed and impose a penalty. Here, the Department never attempted to use its §482 powers.

B. The Court of Appeals Failed to Correct the ALC's Improper Burden-Shifting.

TSC has no burden to prove the sales factor fairly represents its business activity—the standard method works until the Department proves otherwise. *CarMax*, 411 S.C. at 89-91; *Rent-A-Center*, 418 S.C. at 333. Yet despite acknowledging that the burden rested on the Department (R. 116, 121), the ALC effectively shifted it to TSC. Rather than ask whether the Department proved the procurement charge *failed* the Arm's Length Standard, the ALC asked whether TSC's PwC Study and expert affirmatively proved the charge *satisfied* that standard. R. 77, 123. This inverted analysis placed the burden of proof on TSC from the start and constitutes improper burden-shifting, which the Court of Appeals failed to correct.

C. The Court of Appeals Erred by Affirming the ALC's Flawed "Reasonableness" Standard and Finding Substantial Evidence Supported the Decision.

The burden of proof requires "specific evidence" providing "a sound evidentiary basis."

CarMax, 411 S.C. at 90-91, 767 S.E.2d at 200-01. Bald assertions and conclusory testimony are insufficient. *Id.*; *Rent-A-Center*, 418 S.C. at 333, 792 S.E.2d at 267. Assuming *arguendo* that the Department could meet its burden by showing the procurement charge/transfer price exceeded an arm's length price, it must present specific evidence that provides a sound basis for concluding the price failed to satisfy the Arm's Length Standard. *Id.* The ALC failed to hold the Department to that burden.

First, the Department presented no range of arm's length prices—not even an estimate. R. 81, 127 n. 68. The ALC acknowledges this, noting the Department's expert "did not . . . establish what the correct transfer price . . . should be in this case." R. 81. Without evidence of a correct price range, there is no basis to conclude the 9.7% charge fell outside it.[16]

Second, rather than finding the Department failed to meet its burden when its expert did not provide an opinion on a correct price range, the ALC performed its own "transfer pricing" analysis—but applied a "reasonableness" test of its own creation instead of the relevant Treasury Regulations. R. 79, 81 n. 23, 124 n. 64. No such test exists; the proper inquiry is whether the transfer price satisfies the Arm's Length Standard.

Third, the ALC's analysis rested on unsupported assumptions. An arm's length price is what a third party would charge for performing the relevant services. Yet the Department did not identify a single company claimed to be capable of performing the bundle of procurement services performed by TSC of Texas, let alone what that company would charge. The ALC *assumed* TSC could find other companies to perform procurement for less than TSC of Texas charged. R. 84, 92. When the ALC dismissed this evidentiary gap, stating it "do[es] not find that degree of specificity

[16] The Department did not even present a *single* suggested arm's length price (versus a range).

was necessary" (R. 92 n. 38), it ignored this Court's requirement of specific evidence. *CarMax*, 411 S.C. at 90-91, 767 S.E.2d at 200-01; *Rent-A-Center*, 418 S.C. at 333, 792 S.E.2d at 267.

The Department's remaining "evidence"—none of which relates to *third parties*—consisted of: (1) testimony about the 2001 restructuring more than a decade before the Audit Period; (2) comparisons of sales *revenue* to taxable income; (3) other "before and after transfer pricing" financial comparisons; and (4) an unsupported assertion that procurement "only costs $13 million," ignoring the billions of dollars of inventory purchased. R. 81-84, 121-128. None of this is relevant to the Arm's Length Standard under the §482 Regulations much less proof the procurement charge failed to satisfy that standard.

The substantial evidence standard requires evidence that would allow *reasonable minds* to reach the ALC's conclusion. *Risher v. S.C. Dep't of Health & Env't Control,* 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011). The Court of Appeals erred in affirming the ALC's flawed transfer pricing analysis under an incorrect "reasonableness" standard and in finding substantial evidence supported the ALC's decision.

D. The Court of Appeals Erred in Affirming the ALC's Rejection of the Only Arm's Length Analysis in Evidence.

TSC's expert, Dr. Andrade, performed a transfer pricing analysis and produced the only Arm's Length Standard in evidence (besides the PwC Study). R. 81, 4017; *see also supra* Facts § E. Yet the ALC rejected it based on conclusory criticisms and—lacking any transfer pricing expertise—then substituted its own judgment. R. 85-93. This was error.

The ALC's primary basis for rejecting Andrade's analysis was that he failed to adequately explain his 50/50 profit split. R. 86-89. But that is not accurate. The split is dividing the profits generated by the six non-routine functions, and TSC of Texas performed the two most valuable functions and jointly performed another with TSC. R. 85-86. Based on his expert judgment, Andrade determined that TSC of Texas should get more than 50% of the profit but he backed it down to 50% to be conservative. *Id.* The ALC conceded these functions "provide value" but claimed it was not convinced of their magnitude (R. 130, n. 71)—without ever explaining why a 50/50 split was unreasonable when TSC of Texas performed the two most valuable functions.

By rejecting Andrade's analysis and finding CUR appropriate, the ALC effectively imposed a 0%/100% profit split—awarding nothing to TSC of Texas despite its critical procurement and product development functions. No evidence supports this outcome. The Court of Appeals erred in affirming a decision that substitutes judicial speculation for expert analysis on a technical transfer pricing question.

III. THE COURT OF APPEALS ERRED IN HOLDING § 12-6-2320(A)(4) AUTHORIZED THE DEPARTMENT'S FORCED USE OF CUR AGAINST A SINGLE NON-CONSENTING TAXPAYER.

A. This is an Unresolved Question of First Impression that the Lower Courts Wrongly Treated as Foreclosed.

This case also presents a question of first impression: Does § 12-6-2320(A)(4) authorize the Department to force CUR on a non-consenting taxpayer that is the only member of its unitary group conducting business in South Carolina? The TSC Group has three entities, but only TSC operates here, and it did not request CUR. Both lower courts declined to interpret the statutory text, claiming *Media General* resolved the issue. R. 106-107; Slip Op. 21-22, 26.[17] It did not.

Media General is distinguishable on at least four grounds. First, all four *Media General* entities conducted business in South Carolina and *requested* combined treatment. 388 S.C. at 141-

[17] Both lower courts misstate TSC's argument as essentially claiming CUR is never allowed under § 12-6-2320(A)(4). Instead, TSC argues that CUR is not authorized on these facts.

43 and 146, 694 S.E.2d at 526-27 and 529. Second, *Media General* approved a combined entity apportionment method ("CEAM"), which combines apportionment *factors*; each taxpayer then uses the resulting fraction (the percentage) to apportion its own income here for taxation. *Id.* at 146-47, 694 S.E.2d at 529. In contrast, CUR first combines the group's *income*, then uses CEAM to apportion it. *See supra* Facts § C. *Media General* never authorized combining anything—including income—of entities not doing business here. Third, the parties in *Media General* stipulated that Steps One and Two were met. *Id.* at 146, 694 S.E.2d at 529. Here, TSC contests both. Fourth, TSC is making arguments specific to these facts that were not made in *Media General*, including that CUR violates the plain language of (A)(4). *See infra* § III.B. A ruling that (A)(4) does not authorize forced CUR here does not conflict with *Media General*.

B. The Plain Text of (A)(4) Does Not Authorize CUR on These Facts.

Subsection (A)(4) authorizes "any other method" only if it "effectuate[s] an equitable . . . apportionment of the taxpayer's income." § 12-6-2320(A)(4). The meaning of "the taxpayer's income" is plainly TSC's FTI as modified by Article 9. §§ 12-6-30(1), -580, -2240. That amount is subject to the Article 17 apportionment provisions, which are specifically "designed to apportion to South Carolina a fraction of the taxpayer's total income reasonably attributable to its business activity in this State." *Duke Energy*, 415 S.C. at 356, 782 S.E.2d at 592 (citation omitted). TSC is "the taxpayer," but CUR apportions the TSC Group's income. *See supra* Facts § C. In 2014, only 26.1% of the income CUR apportioned to South Carolina was TSC's; the rest belonged to entities with no business here. *Id.* The Legislature's precise language limits alternative methods to those apportioning "the taxpayer's income"—not affiliated entities' income. Here, CUR is not apportioning "the taxpayer's income" in violation of the plain language of (A)(4). At a minimum, TSC's interpretation is reasonable,[18] and under *Alltel*, ambiguities must be resolved in TSC's favor. 399 S.C. at 321, 731 S.E.2d at 873.

C. TSC Has Found No Case Authorizing Forced CUR Under Comparable Facts, and South Carolina Should Not Be an Outlier.

TSC has found no case where a court interprets subsection (A)(4) of a UDITPA § 18 statute to authorize forced CUR under facts like these.[19] The Court of Appeals cited three cases as "aligned" with *Media General* (Slip Op. 26-27), but each involved only two entities—both filing in the forum state—and none held (A)(4) authorized forced CUR under comparable facts.[20] In contrast, *Columbia Sportswear* addresses analogous facts and is highly persuasive. There, Indiana's department used a § 18 UDITPA statute against a taxpayer because of payments to affiliates for procurement-related activities, and the alternative method *increased the taxpayer's FTI* by including the income of related parties, resulting in an increased total business income (referred to as the "tax base"), a fraction of which was apportioned to Indiana. 45 N.E.3d at 891-93. The court held that interpreting its § 18 UDITPA statute to allow a method that increased FTI "would be like trying to pound a square peg into a round hole" and ruled the statute "did not authorize the Department

---

[18] The Court of Appeals conceded that the court's interpretation of a similar statutory scheme in *Columbia Sportswear USA Corp. v. Indiana Dep't of State Rev.*, 45 N.E.3d 888, 895-896 (Ind. Tax Ct. 2015), "support[s] TSC's argument that CUR is improper[.]" Slip Op. 26.

[19] This Court need not look beyond South Carolina law to resolve whether CUR is authorized here—the rules of statutory interpretation and this Court's precedents make clear it is not. But if the Court does consider other jurisdictions, those decisions only reinforce TSC's position.

[20] The Court of Appeals misconstrued the cases it cited. *Coca Cola Co. v. Dep't of Rev.*, 533 P.2d 788 (Or. 1975) did not hold that (A)(4) authorizes forced CUR. *See Cook v. Dep't of Rev.*, 23 Or. Tax 107, 121-26 (2018). *Leathers v. Jacuzzi, Inc.*, 935 S.W.2d 252 (Ark. 1996) involved taxpayers who filed combined returns without authorization by law or permission from the taxing agency; the issue was whether they were entitled to filed combined returns, and court held they were not. *Id.* at 254, 256. And *Pioneer Container Corp. v. Beshears*, 684 P.2d 396 (Kan. 1984), offers no support for forced CUR on these facts.

to make adjustments that increased [the taxpayer's] FTI and, thus, its Indiana net income *tax base.*" *Id.* at 896 (court's emphasis). Here, the AA Statute is being used to do the exact same thing under similar facts. If the decision below stands, South Carolina would be an outlier.

IV. EVEN IF § 12-6-2320(A)(4) CAN AUTHORIZE CUR, THE COURT OF APPEALS ERRED IN FINDING THE DEPARTMENT MET ITS STEP TWO BURDEN.

A. The Parties and Lower Courts Agree on the Applicability of the *Twentieth Century-Fox* Reasonableness Test.

For the "reasonable" requirement, the parties and lower courts agree that the Department must prove the first and third components of the *Twentieth Century-Fox* reasonableness test (the "Reasonableness Test"). R. 129, 133-134, 2161:20-2162:19; Slip Op. 27-29. These components require proof that CUR: (A) fairly represents TSC's business activity in South Carolina ("Part A"); (B) if applied uniformly (by all states), would tax no more than 100% of TSC's income ("Part B"); and (C) reflects the economic reality of TSC's South Carolina business activity ("Part C"). *Twentieth Century-Fox*, 700 P.2d at 1043.

B. No Evidence Supports the ALC's Conclusion that the Department Proved CUR Satisfies the Reasonableness Test.

The Court of Appeals misapplied the substantial evidence standard when it erroneously found that substantial evidence supports the ALC's bald, conclusory statements that the Department proved Parts A, B, and C of the Reasonableness Test. Slip Op. 28-29. That standard requires identifiable fact findings and reasoning to support an agency's decision—courts may not accept an agency's decision at face value without requiring it to explain its reasoning. *See, e.g.*, *Porter v. S.C. Pub. Serv. Comm'n*, 333 S.C. 12, 21, 507 S.E.2d 328, 332 (1998). This Court has reversed lower courts that upheld an agency decision as being supported by substantial evidence when the decision failed to clearly identify the facts and/or reasoning used to reach the agency's conclusions. *See, e.g.*, *id.* at 21-22; 507 S.E.2d at 332-33; *Porter v. S.C. Pub. Serv. Comm'n*, 332 S.C. 93, 99–100, 504 S.E.2d 320, 323–24 (1998); *Able Commc'ns, Inc. v. S.C. Pub. Serv. Comm'n*, 290 S.C. 409, 411, 351 S.E.2d 151, 152 (1986).

The ALC's conclusion that CUR passes Part B is supported by nothing. R. 133. The ALC made no fact findings supporting this conclusion and offered no explanation of how the Department proved Part B. *Id.* The Court of Appeals likewise cites no facts or reasoning to support this conclusion.

The ALC's explanation that CUR passes Part C is equally deficient:

> Finally, I conclude the division of income under combined unitary reporting reflects the economic reality of the business activity engaged in by TSC ***for the reasons stated above***.

R. 134 (emphasis added). But the ALC never identifies those "reasons stated above," nothing in its Order makes them clear, and the Court of Appeals has not identified them either. Slip Op. 28-29. The ALC's conclusory statement has no identifiable support.

The Court of Appeals also erred in finding substantial evidence supports the ALC's conclusion that CUR passes Part A. The ALC's support is unclear and references no specific evidence. R. 129-134. The ALC merely describes how CUR calculates tax, notes that TSC's tax policy expert, Professor Pomp, generally favors states adopting mandatory CUR,[21] and states that TSC would have owed nearly as much tax using an unspecified "modest" transfer price instead of the 9.7% markup under separate reporting as TSC would pay under CUR. *Id.;* R. at 129-134.

[21] The Court of Appeals likewise suggests this supports finding the Department proved Step Two. Slip Op. 28. This is not a legislative hearing on whether to adopt CUR, and Professor Pomp's general policy preference cannot satisfy the Department's case-specific burden of proof here.

In sum, the ALC's conclusions that CUR passes Part A, B, or C of the Reasonableness Test are unsupported by substantial evidence, and the Court of Appeals erred in affirming that ruling.

C. Substantial Evidence Shows CUR Fails the Reasonableness Test.

TSC also demonstrated CUR fails the Reasonableness Test. CUR fails Part A because CUR apportions 8.64% of TSC's income to South Carolina and thus cannot result in a "fair representation of TSC's business activity," which was shown to be 2.83%.[22] *Supra* Facts § C. CUR fails Part B for similar reasons: because CUR apportions 8.64% of TSC's income when only 2.83% of TSC's business activity occurs here, uniform application would tax far more than 100% of TSC's income.[23] *Id.*

D. The Lower Courts Erred in Finding the Department Proved CUR is Equitable.

The lower courts erred in treating "reasonable" and "equitable" as synonymous, ignoring the heightened "equitable" standard in (A)(4). *See generally* R. 128-134; R. 129, n.70; Slip Op. 21-29. "Reasonable" means fair or moderate; "equitable" means consistent with principles of justice. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 74, 716 S.E.2d 877, 881 (2011). The Department required CUR simply because TSC was a unitary business with intercompany transactions, only searching for justification after TSC petitioned the ALC. *Supra* Facts § D. The Department chooses to not use its §482 powers during audits and says the accuracy of a transfer price is not relevant then; yet after forcing TSC into litigation based on nothing, the Department's

[22] No aspect of CUR is based on TSC or its South Carolina business activity. Under CUR, the income apportioned to South Carolina is the TSC Group's income, and the sales factor used to apportion that income is likewise based on the Group. CUR is not designed to fairly represent TSC's South Carolina business activity.

[23] The Court of Appeals suggestion that TSC is not subject to double taxation is incorrect. Slip Op. 28. CUR effectively makes the procurement charge a 0% markup, which would violate IRC § 482, thereby subjecting TSC to double taxation.

primary point of attack at trial is the transfer price, which is attacked with an expert who does not even give a suggested arm's length price thus preventing the ALC from being able to make a price adjustment if in fact the price was inaccurate. *Id.*; *see also supra* § II.C. The AA Statute is a relief provision, and the principles of equity have not been met.

V. THE COURT OF APPEALS FAILED TO APPLY THE PROPER DE NOVO STANDARD OF REVIEW TO QUESTIONS OF LAW.

The Court of Appeals erred by failing to review all legal questions *de novo*. Questions of law—including statutory interpretation—are reviewed without deference. *CFRE*, 395 S.C. at 74, 716 S.E.2d at 881. Instead of independently interpreting and applying the relevant statutes and case law, the Court of Appeals deferred to the ALC and applied a substantial evidence standard to questions of law. Specifically, the Court failed to conduct *de novo* review of: the interpretation and application of the AA Statute, *CarMax* and *Rent-A-Center* as to Steps One and Two; the interpretation and application of the burden of proof under *CarMax*; and the interpretation and application of *Media General*. By deferring to the ALC's rulings using a substantial evidence standard of review for these legal questions (Slip Op. 18-29), the Court of Appeals insulated the ALC's errors from meaningful appellate review.

CONCLUSION

For the reasons stated above and in TSC's prior briefing, the Court should grant certiorari, reverse the lower courts, and remand for entry of judgment in favor of Appellant TSC.

Respectfully submitted,

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: /s/ *Bryson M. Geer*
C. Mitchell Brown (SC Bar No. 12872)
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000
mitch.brown@nelsonmullins.com

Bryson M. Geer (SC Bar No. 13606)
bryson.geer@nelsonmullins.com
John C. von Lehe, Jr. (SC Bar No. 5719)
john.vonlehe@nelsonmullins.com
Robert T. Streisel (SC Bar No. 101912)
bobby.streisel@nelsonmullins.com
Nelson Mullins Riley Scarborough, LLP
Post Office Box 1806 (29402-1806)
Charleston, SC 29401-2239
(843) 853-5200

Counsel for Appellant Tractor Supply Company

September 8, 2026