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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

APPEAL FROM THE ADMINISTRATIVE LAW COURT

S. Phillip Lenski, Administrative Law Judge

Lower Court Case No. 23-ALJ-30-0335-CC

South Carolina Department of Consumer Affairs, Respondent,

v.

Lavisha Green, Petitioner.

Court of Appeals Appellate Case No. 2024-001652

Unpublished Opinion No. 2026-UP-293

PETITION FOR WRIT OF CERTIORARI

INTRODUCTION

Petitioner Lavisha Green, appearing pro se, respectfully petitions the Supreme Court of South Carolina for a writ of certiorari to review the Court of Appeals' June 10, 2026, decision dismissing her appeal as untimely. The Court of Appeals denied rehearing on September 1, 2026. This petition does not ask the Court to resolve disputed facts outside the appellate record. It asks the Court to decide whether an appeal from the Administrative Law Court may be extinguished by treating transmission of an email as conclusive proof of receipt when Rule 203(b)(6), SCACR, and section 1-23-610(A)(1) expressly measure the appeal period from receipt, and when the record contains sworn and contemporaneous evidence of later receipt.

QUESTIONS PRESENTED

1. Whether the Court of Appeals misapprehended Rule 203(b)(6), SCACR, section 1-23610(A)(1), and the distinction between receipt and service recognized in Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, by treating the August 2, 2024, transmission of the ALC's final order as sufficient to establish receipt on that date despite Petitioner's sworn affidavit and contemporaneous August 28 email stating that she received the decision on August 27 and never received the mailed copy.

2. Whether the Court of Appeals improperly shifted the evidentiary burden to Petitioner to prove a negative - nonreceipt on August 2 - even though Respondent produced no delivery confirmation, server record, read receipt, witness testimony, or other competent evidence establishing that the ALC decision actually entered Petitioner's email system and was retrievable by her on August 2, 2024.

STATEMENT OF THE CASE

The underlying administrative proceeding concerned a $9,000 mortgage-log penalty imposed by the South Carolina Department of Consumer Affairs. Petitioner did not deny that the 2022 mortgage log was filed after the March 31 deadline. Her dispute concerned the resulting penalty and the circumstances under which it accumulated. The ALC ultimately upheld the penalty, while stating that the monetary penalty imposed on a new licensee with no prior disciplinary infractions appeared disproportionate, but concluding that it lacked statutory discretion to reduce the amount. R. 85–91.

The administrative record also contains Petitioner's testimony that, after she contacted Department counsel, she was told the approximately ninety-day delay in notification resulted from the small group working in the office. See R. 38–39. The email correspondence admitted in the administrative record likewise reflects the Department's written explanation that processing data from more than one thousand licensees and 192,163 mortgage applications took its small staff time, and that late filers and non-filers were notified approximately ninety days after the report was due. R. 72–76. These facts are not presented as a new question for certiorari; they show why the appellate review lost through the jurisdictional dismissal concerned with substantial and fully developed issues already contained in the record.

The ALC issued its Final Order and Decision on August 2, 2024. R. 85–91. The law clerk transmitted the order by email that day and stated that a hard copy was mailed. R. 92–94. On August 28, 2024, Petitioner replied to that email and stated that she had never received the mailed copy and had received the email the previous day. R. 92–94. Petitioner later submitted a sworn affidavit attesting that she received the decision on August 27, 2024. R. 97–98.

Counsel served and filed the Notice of Appeal on September 25, 2024; the Notice identified August 27, 2024, as the date of receipt. R. 77–78. If August 27 is the date of receipt, the Notice of Appeal was timely under Rule 203(b)(6) and section 1-23-610(A)(1). The Department moved to dismiss. Petitioner's Return argued that Wells Fargo distinguishes the date a decision is sent from the date a party actually receives it, and that Lemmons rejected treating an email time stamp as automatically establishing the date of receipt. On January 13, 2025, the Court of Appeals denied the Department's motion to dismiss without prejudice and permitted appellate jurisdiction to be addressed in the merits briefs.

In her final appellate briefing, Petitioner again argued that the date of actual receipt, not transmission, controls. On June 10, 2026, the Court of Appeals dismissed the appeal as untimely. The court acknowledged Petitioner's August 28 email and her position that she received the decision on August 27 but concluded there was no credible evidence that she failed to receive the order in early August. The court therefore did not reach the merits of her appeal. Petitioner timely sought rehearing, specifically identifying her sworn affidavit, the distinction between transmission and receipt, the absence of competent proof of August 2 receipt, and the burden imposed on her to prove nonreceipt. Rehearing was denied on September 1, 2026.

REASONS FOR GRANTING THE WRIT

Rule 242(b), SCACR, provides that certiorari is discretionary and is granted only for special and important reasons, including novel questions of law, conflict with a prior decision of the Supreme Court, and substantial constitutional issues. This petition presents a recurring legal question concerning what constitutes "receipt" of an electronically transmitted ALC decision for purposes of a jurisdictional appellate deadline, whether transmission may be substituted for receipt despite record evidence identifying a later receipt date, and the resulting loss of an appeal by right.

I. THE DECISION BELOW CONFLICTS WITH THE ACTUAL RECEIPT REQUIREMENT

Section 1-23-610(A)(1) provides that judicial review of a final ALC decision is obtained by serving and filing a notice of appeal not more than thirty days after the party receives the final decision and order. Rule 203(b)(6), SCACR, likewise measures the thirty-day period from 'receipt of the decision.' Neither provision says 'transmission,' 'mailing,' 'sending,' or 'presumed receipt.'

In Wells Fargo Bank, N.A. v. Fallon Properties S.C., LLC, 422 S.C. 211, 218-19, 810 S.E.2d 856, 859-60 (2018), this Court held that "receipt" under Rule 203, SCACR, is not synonymous with the requirements of service and rejected an interpretation of Rule 203(b)(6) that limited receipt to mail or hand delivery. Wells Fargo recognizes that electronic communication may constitute receipt; it does not eliminate the separate factual question of when receipt actually occurred. Here, the disputed issue is not whether email can constitute receipt, but whether the August 2 transmission itself established receipt on August 2 despite record evidence identifying August 27 as the date of actual receipt.

Lemmons v. Macedonia Water Works, Inc., 431 S.C. 186, 193-94, 847 S.E.2d 471, 47576 (Ct. App. 2020), likewise addressed proof of receipt in the electronic-mail context. Petitioner's appellate counsel specifically argued that adopting Respondent's send-date theory would change the triggering event in Rule 203(b)(6) from receipt to transmission. The question presented here therefore concerns proof of the date of receipt, not whether email is categorically incapable of constituting receipt.

The decision below produced that very result. It treated August 2 as the jurisdictionally operative date without competent proof establishing actual receipt on August 2. The rule says receipt. A court may interpret a procedural rule, but it may not replace the triggering event selected by the rule with a different event. Procedural rules bind courts as well as litigants.

II. THE COURT IMPROPERLY SHIFTED THE BURDEN TO PETITIONER TO PROVE NONRECEIPT

Petitioner's August 28, 2024, email is contemporaneous documentary evidence of actual receipt. Petitioner did not first identify August 27 as the receipt date after a jurisdictional dispute arose. On August 28, one day after receiving the decision, Petitioner responded to the email transmitting the Final Order and stated that she had received it the previous day and had never received the mailed copy. R. 92–94. Her subsequent sworn affidavit identifies the same August 27 receipt date, R. 97–98, and the Notice of Appeal likewise identifies August 27. These three pieces of record evidence are consistent with one another. Respondent's evidence established transmission on August 2; Petitioner's evidence addressed actual receipt.

Respondent did not produce an electronic delivery confirmation, server record, read receipt, witness testimony, or other comparable evidence establishing actual receipt on August 2. Instead, Respondent's evidence established that the ALC transmitted the decision on August 2 to an address Petitioner had supplied. Transmission and receipt are different events under the text of Rule 203(b)(6). The earliest contemporaneous documentary evidence in this record identifying when Petitioner actually received the decision is her August 28 response stating that she received it the previous day. R. 92–94.

The opinion then faulted Petitioner for failing to provide technical evidence showing why she did not receive the email earlier. That approach reverses the evidentiary question. Petitioner was effectively required to prove that an electronic communication was not received on August 2 even though the record contains affirmative, contemporaneous evidence identifying when she did receive it. Treating proof of transmission as superior to direct evidence addressing receipt effectively changes both the triggering event stated in Rule 203(b)(6) and the evidentiary burden imposed upon Petitioner.

III. LEGAL EFFECT OF THE JURISDICTIONAL ERROR: DUE PROCESS AND LOSS OF APPELLATE REVIEW

The record facts are concrete. Petitioner submitted a sworn affidavit identifying August 27, 2024 as the date she received the ALC decision. R. 97–98. Her contemporaneous August 28 email

stated that she received the decision the previous day and never received the mailed copy. R. 92–94. Her Notice of Appeal likewise identified August 27 as the receipt date. R. 77–78.
Respondent established that the ALC transmitted the decision on August 2, but the record identified in the rehearing petition did not include a delivery confirmation, read receipt, server record, or witness testimony establishing actual receipt by Petitioner on August 2.

The governing rule makes the legal significance of those facts clear. Rule 203(b)(6), SCACR, and section 1-23-610(A)(1) measure the appellate period from receipt of the ALC decision. The rule does not state that transmission, mailing, or the sender's time stamp begins the jurisdictional period. Petitioner's appellate briefing and Petition for Rehearing specifically presented the distinction between transmission and receipt and relied on the actual-receipt analysis addressed in Wells Fargo and Lemmons.

The jurisdictional error had a dispositive legal effect. By using an earlier receipt date notwithstanding Petitioner's sworn and contemporaneous evidence of August 27 receipt, the Court of Appeals dismissed the appeal without reaching any of the preserved merits. Petitioner was therefore not merely denied a procedural accommodation; she lost appellate review of the ALC decision altogether.

That consequence implicates fundamental due-process principles of fair notice and a meaningful opportunity to be heard. Petitioner does not present due process here as a new, freestanding Question Presented. Rather, due process describes the constitutional consequence of the preserved Rule 203(b)(6) and evidentiary errors. Where South Carolina law provides judicial review from the ALC by right, a jurisdictional deadline should not extinguish that review on the basis of a receipt date that Petitioner maintains was not established by competent evidence under the rule governing receipt.

The problem is especially significant because the dismissal prevented appellate consideration of a fully developed administrative record. Petitioner acknowledged the original late filing, but challenged what occurred afterward: the $100-per-day penalty accumulated to $9,000; the administrative record contained evidence concerning the approximately ninety-day notification period and the Department's small-staff explanation; and the ALJ stated that the resulting penalty appeared disproportionate while concluding that he lacked statutory discretion to reduce it. In the merits briefing, Petitioner also presented an as-applied constitutional challenge asserting that the $9,000 civil penalty was unconstitutionally excessive under the Eighth Amendment to the United States Constitution and Article I, Section 15 of the South Carolina Constitution, and Respondent answered that constitutional argument. Those preserved merits were never decided by the Court of Appeals because the appeal was dismissed on jurisdictional grounds.

Petitioner expressly returned these jurisdictional errors to the Court of Appeals in her Petition for Rehearing. She identified the sworn affidavit, the contemporaneous August 28 email, the absence of competent proof establishing August 2 receipt, the distinction between transmission and receipt, and the burden imposed on her to prove nonreceipt. Rehearing was denied without modification of the jurisdictional ruling. The preserved questions therefore remain unresolved and warrant this Court's review.

The appropriate remedy is not for this Court to decide the unresolved merits in the first instance. Petitioner respectfully requests that the Court grant certiorari, reverse or vacate the jurisdictional dismissal, and remand the case to the Court of Appeals so that the preserved merits may receive appellate review under the governing law.

IV. REVIEW IS NECESSARY TO PROVIDE A CLEAR STATEWIDE RULE FOR

ELECTRONIC RECEIPT

Electronic service is routine, and the question presented is likely to recur. The difference between transmission and receipt is not semantic when a jurisdictional deadline is at stake. A clear rule is needed concerning what evidence establishes receipt of an electronically transmitted ALC decision under Rule 203(b)(6) and section 26-6-150(B), and whether a sender's transmission record alone may overcome sworn and contemporaneous evidence identifying a later date of receipt.

Certiorari is appropriate because the issue affects more than the parties to this case. Litigants, agencies, and courts need a predictable rule for determining when the jurisdictional clock begins. That rule should follow the text selected by the General Assembly and this Court: receipt.

RELIEF REQUESTED

Petitioner respectfully requests that this Court grant the petition for writ of certiorari, review the Court of Appeals' jurisdictional dismissal, reverse or vacate the determination that Petitioner's appeal was untimely, and remand the matter to the Court of Appeals for consideration of the preserved merits of the appeal. Petitioner further requests such other relief as this Court deems just and proper. Respectfully submitted,

s/ Lavisha Green

Lavisha Green, Petitioner, Pro Se

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Date: September 9, 2026

Method of Service: U.S. Mail, first-class postage prepaid

s/ Lavisha Green

Lavisha Green, Petitioner, Pro Se