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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

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APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas  
Thomas W. McGee, III, Circuit Court Judge

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Appellate Case No. 2025-002437

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South Carolina Public Interest Foundation, and John Sloan, individually and on behalf of all  
others similarly situated,..... Appellants,

v.

South Carolina State Law Enforcement Division, and Mark Keel, in his official capacity as  
Chief of the South Carolina State Law Enforcement Division,..... Respondents.

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**BRIEF OF RESPONDENTS**

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## **STATEMENT OF ISSUES**

- I. Does SLED possess the requisite statutory authority to operate the ALPR database?
- II. Does the legislation authorizing SLED to operate the ALPR database provide SLED with unlimited discretion such that it violates the non-delegation doctrine?
- III. Is SLED Policy 13.40 a “regulation” within the meaning of the APA?

## **INTRODUCTION**

This action for declaratory and injunctive relief presents three questions of law: (1) does SLED have the requisite statutory authority to operate the Automated License Plate Reader (“ALPR”) database, (2) if so, is that statutory authority unconstitutionally broad, and (3) was SLED required to comply with the Administrative Procedures Act (“APA”) when it adopted Policy 13.40, which governs use of the ALPR database. On the parties’ cross-motions for summary judgment, the circuit court properly focused on those three issues through the lens of the undisputed factual record, and it ruled Appellants are not entitled to the relief they seek.

Determined to obtain a different result here, Appellants resort to attempting to manufacture fear rather than analyze and deal with the undisputed facts. Though they have not asserted a Fourth Amendment claim, Appellants insist throughout their brief that SLED is storing “highly sensitive” data about South Carolinians and ostensibly violating their rights to privacy. They suggest SLED could use the ALPR database to “learn intimate details about a person’s life” or even “to stalk and harass former romantic partners.” App. Br. at 9, 12. They claim SLED has no safeguards in place to prevent officers from using the database to conduct “suspicionless fishing expeditions” into peoples’ lives. App. Br. at 10. Appellants even go as far as stating the “true stakes are whether SLED may create a surveillance state unilaterally.” App. Br. at 2.

While most of Appellants’ commentary about the ALPR database rests on hyperbole and worst-case hypotheticals, the record tells a different story. ALPRs do not collect highly sensitive information; they reveal a vehicle’s license plate’s location on a public roadway at a specific point in time. They collect the same information that an individual could observe standing along a roadway—information for which there is no reasonable expectation of privacy. *United States v. Knotts*, 640 U.S. 276, 281 (1983) (“A person travelling in an automobile on public thoroughfares

has no reasonable expectation of privacy in his movements from one place to another.”). To be sure, ALPR technology greatly enhances law enforcement’s ability to track a vehicle’s movement over time when criminal investigations or other public safety emergencies arise. SLED limits access to the ALPR database to certified law enforcement officers, and it strictly restricts use of the database to public safety-related missions. As the circuit court recognized, “the record contains *no evidence* of officers using the database for any other, improper purposes.” (R. p. 44; MSJ Order) (emphasis added). The record confirms that SLED’s training and oversight have prevented the forms of misuse envisioned by Appellants.

Like the circuit court below, this Court should not be distracted by Appellants’ “attempt to color their position with additional, broader arguments” beyond the issues presented. (R. p. 36; MSJ Order). Nor should the Court accept Appellants’ invitation to consider whether SLED may adopt new, more intrusive surveillance technologies. As with any appeal, the Court’s role is to decide the issue before it—not to “render an advisory opinion on a hypothetical situation.” *Shasta Beverages (A Div. of Consol. Foods Corp.) v. S.C. Tax Comm’n*, 280 S.C. 48, 56, 310 S.E.2d 655, 659 (1983). Here, the central issue is whether SLED possesses sufficient statutory authority to operate a database that is exclusively used for criminal justice purposes. As Respondents will show, SLED possesses such authority, and the Court should affirm.

### **STATEMENT OF THE CASE**

#### **A. ALPR technology and the ALPR database.**

ALPRs are cameras linked with software that allows them to identify and read license plates on vehicles along public roadways. ALPR systems capture a digital image of the vehicle’s license plate and transmit that image to a database along with the date, time, and geographical coordinates of the image capture. (R. pp. 446-48; Responses to Plaintiffs’ First Set of Requests for Admissions). The ALPR systems also collect limited information about the vehicle like make,

model, and color. (R. pp. 191-196; Presentation Called “ALPR Quick Training” (hereinafter “ALPR Quick Training”).

ALPR systems may be “fixed, mobile, or portable.” (R. p. 58, ¶ 22; SPIF Complaint). A fixed ALPR is installed in a permanent location like a traffic light or bridge. (*Id.*). Mobile ALPRs are mounted on law enforcement patrol cars or other vehicles. (*Id.*). Portable ALPRs can be moved and deployed in different areas as needed. (*Id.*).

SLED operates the ALPR database to house data collected by other law enforcement entities in the State.<sup>1</sup> Over 40 law enforcement entities contribute to the database via approximately 125 ALPR systems. (R. pp. 217-21; List of Agencies and Systems that Contribute to SLED’s ALPR). SLED operates only six ALPR systems—accounting for less than 5% of the ALPR systems contributing to the database. (*Id.*). License plate “reads” are stored in the database for one year. (R. p. 464; SLED Policy 13.40 dated June 26, 2024 (hereinafter, “SLED Policy 13.40”)). As of February 7, 2025, the ALPR database contained 141,818,757 reads. (R. p. 511; Second Supplemental Answers to Plaintiffs’ First Set of Interrogatories).

Law enforcement personnel with valid user credentials can log onto the ALPR database to search for a license plate or vehicle when criminal investigations or other public safety emergencies arise. Additionally, the ALPR database features a “hot list” of license plate numbers associated with stolen cars, AMBER alerts, and vehicles owned by persons of interest in a crime. (R. pp. 461-62; SLED Policy 13.40). If an ALPR feeding into the database detects a possible

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<sup>1</sup> SLED’s ALPR database, sometimes called the “ALPR back office,” should not be confused with ALPR databases operated by private vendors like Vigilant Solutions (“Vigilant”) or Flock Safety (“Flock”). The nationwide databases maintained by Vigilant and Flock are fed by data collected from both law enforcement and private ALPRs. (*See* R. pp. 197-207; Ex. 6 to Pltf MSJ). These private databases may also be accessed by both law enforcement and private subscribers, such as homeowners’ associations. (*Id.*).

license plate read from the “hot list,” the system will send an alert to the specified officers. Officers are taught to verify and confirm the accuracy of all reads prior to initiating a stop of a vehicle.

**B. SLED’s role in maintaining the ALPR database.**

Again, SLED operates only six of the 125 ALPR systems that contribute to the ALPR database. Other law enforcement agencies throughout the State supply over 95% of the “reads” that populate the database. (R. pp. 217-21; List of Agencies and Systems that Contribute to SLED’s ALPR Database). Contrary to Appellants’ suggestion, SLED does not deploy ALPRs to “track[] *every* vehicle” in the State. App. Br. at 2. Rather, “SLED operates the ALPR database to house the data collected by other law enforcement agencies and to provide technical support on the use of the ALPR database.” (R. p. 457; Affidavit of SSA Mark Amos). To that end, SLED analysts frequently assist local law enforcement in searching the ALPR database during criminal investigations and other public safety emergencies. (R. pp. 466-507; Success Stories).

Most importantly, SLED strictly limits use of the ALPR database through several safeguards. SLED adopted Policy 13.40 to “provide officers with guidelines on the proper use of the Automated License Plate Recognition (ALPR) systems and the data collected from the systems.” (R. p. 461; SLED Policy 13.40). Policy 13.40 provides that “use of the ALPR systems is restricted to public safety-related missions.” (*Id.*). Indeed, “the sole purpose for the ALPR database is to serve as a resource for law enforcement when criminal investigations or other public safety emergencies arise.” (R. p. 457; Affidavit of SSA Mark Amos). Any misuse of the ALPR database results in disciplinary action by SLED, termination of access to the database, sanctions, and/or criminal penalties. (*Id.*); (R. pp. 460-65; SLED Policy 13.40); (R. p. 36; MSJ Order).

Beyond Policy 13.40, SLED protects against misuse of the ALPR database by limiting access to the database, training officers on proper use of the database, and auditing use of the

database. As of June 2023, only 426 law enforcement personnel statewide had access to the database. (R. pp. 239-41; List of Agencies and Entities with Access to SLED’s ALPR Database). Access is restricted to state and local law enforcement entities, as well as certain federal entities like the Bureau of Alcohol, Tobacco, Firearms and Explosives and the U.S. Immigration and Customs Enforcement. (*Id.*).

To gain access to the database, a prospective user must (i) demonstrate that he or she is National Crime Information Center (“NCIC”) certified, (ii) submit a SLED Criminal Justice Information Systems (“CJIS”) form completed by his or her law enforcement agency’s Terminal Agency Coordinator, and (iii) receive verification from SLED. (R. p. 452; Answers to Plaintiffs’ Second Set of Interrogatories); (R. p. 464; SLED Policy 13.40). Those with access are trained in proper use of the ALPR database. (R. p. 457; Affidavit of SSA Mark Amos); (R. pp. 462-64; SLED Policy 13.40); (R. pp. 191-96; ALPR Quick Training). Before searching the database, officers must enter a valid “code” such as CI (criminal investigation) or MP (missing person). (R. p. 457; Affidavit of SSA Mark Amos). Officers must also state the “reason” for their search, such as “stolen car” or “homicide investigation.” (*Id.*). SLED audits officers’ use of the database to ensure all searches serve legitimate law enforcement purposes. (R. p. 457; Affidavit of SSA Mark Amos); (R. pp. 462-64; SLED Policy 13.40).

**C. The ALPR database is effective, and Appellants’ concerns about misuse are unfounded.**

By operating the ALPR database, SLED maximizes the crime-fighting effectiveness of ALPR technology in South Carolina. Again, SLED uses the database to compile data from ALPR systems deployed by over 40 law enforcement agencies across the state. (R. pp. 217-21; List of State Agencies Using ALPR Technology). Systems that these law enforcement agencies were using, and would continue to use, irrespective of SLED’s operation of a centralized ALPR

database. SLED also assists those agencies in searching the ALPR database when criminal investigations and other public safety emergencies arise. (R. pp. 466-507; Success Stories). SLED does this in furtherance of its statutorily created purpose of providing “quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state as directed by the Governor and Attorney General.” S.C. Code Ann. § 23-3-15(A)(9).

Without SLED’s database, local law enforcement agencies could continue to deploy their ALPR systems, but they would have to create their own technological infrastructure for housing the data their ALPR systems capture.<sup>2</sup> Even putting aside the cost of doing so, requiring such a patchwork approach would reduce the effectiveness of ALPR technology. Take, for example, a hypothetical missing person or AMBER alert situation where law enforcement has reason to believe a particular vehicle with a known license plate number is involved. If the victim goes missing in Richland County, the Richland County Sheriff’s Office could search its database to see if the suspect vehicle passed any of its five ALPR systems. (R. pp. 217-21; List of Agencies and System that Contribute to SLED’s ALPR Database). If the vehicle leaves Richland County, however, investigating officers would have to determine which adjoining jurisdictions to contact, explain the situation, and request that those jurisdictions search for the suspect vehicle. Perhaps those subsequent searches would reveal the vehicle’s location and lead to an arrest. On the other hand, perhaps the response would be too slow, allowing the vehicle to leave the state in the time it takes to coordinate between agencies and search the relevant ALPR database(s).

The better approach is the one currently in place in South Carolina. SLED houses the data collected from local agencies’ ALPR systems so it is available in a centralized database for

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<sup>2</sup> Alternatively, local law enforcement agencies could choose to contract with private third-party companies to house and store information; however, the privacy of the information provided to a third-party company would not be guarded to the same degree that SLED secures its information.

statewide use by authorized users. By storing the data and employing analysts who know how to use it effectively, SLED maximizes the utility of ALPR technology and provides the appropriate technical assistance to the law enforcement agencies in this state in accordance with its statutorily defined purposes. The record below contains several examples demonstrating the ALPR database's effectiveness in a wide range of criminal investigations:

Investigators from Beaufort PD submitted a request for assistance on locating a vehicle involved in a shooting of an elderly woman. The vehicle was identified as a 2006-2013 Nissan Versa Silver in color. Analysts pulled a list for 100 mile radius to include the numbers "65" in the plate as they were partially identifiable in a submitted photo. The vehicle ended up being number 5 on the list which was 45 miles away from the incident scene. The driver was arrested and has been charged with attempted murder and possession of a weapon during a violent crime . . . .

(R. p. 472; Success Stories).

The SLED Lowcountry Office requested IOC assistance in identifying a white Jeep that was captured on security cameras leaving the area of a homicide in Denmark, SC. IOC analysts were able to identify the Jeep as a 2005-2010 Jeep Cherokee. Analysts conducted a 25-mile radius search for 2005-2010 Jeep Cherokees which returned 149 vehicles. Analysts ran the vehicles for color and sorted the list leaving 18 White Jeep Grand Cherokees. The remaining jeeps were run in ALPR and a possible match was found. The vehicle was number 1 on the list.

(*Id.* at 499).

Importantly, SLED has operated the ALPR database, since at least February of 2013, without experiencing any of the misuses hypothesized in Appellants' brief.<sup>3</sup> As a result of SLED's strict protocol, oversight, and training, there have not been any instances of officers using the database for an improper purpose. Consistent with Policy 13.40, the database has exclusively been used for public safety-related missions. As the circuit court recognized, there is "no evidence of officers using the database for any other, improper purposes" under SLED's supervision. (R. p. 44; MSJ Order at 13).

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<sup>3</sup> R. pp. 462-64; SLED Policy 13.40 (originally dated February 7, 2013).

**D. Appellants sued to enjoin SLED’s operation of the ALPR database, and the circuit court granted SLED’s motion for summary judgment.**

Appellants first filed this action as a Petition for Original Jurisdiction in the South Carolina Supreme Court. Appellate Case No. 2022-001613. After the Supreme Court denied their Petition, Appellants filed their Complaint in the Richland County Court of Common Pleas on April 11, 2023. Appellants asserted three causes of action for declaratory relief: (1) SLED’s operation of the ALPR database exceeds its statutory authority and violates the Separation of Powers clause of Article I, Section 8 of the South Carolina Constitution; (2) alternatively, if SLED’s operation of the ALPR database is statutorily authorized, such statutes unconstitutionally delegate legislative authority to SLED; and (3) alternatively, that Policy 13.40 implements binding norms on the public and should have been promulgated as a regulation under the APA. (R. pp. 66-70; SPIF Compl.). Appellants also sought an injunction prohibiting SLED “from collecting ALPR data and operating SLED’s ALPR database so long as its operation remains unlawful[.]” (*Id.* at 71).

During discovery, Appellants propounded several requests for information housed in the ALPR database about Appellant John Sloan’s vehicles. (R. pp. 153-54; Defendants’ Answers to Plaintiffs’ First Set of Interrogatories and Requests for Production). SLED objected to these requests and moved for an order protecting it from searching the database for a non-law enforcement purpose. (R. pp. 88-95; Defendants’ Motion for Protective Order filed on May 2, 2024). On November 25, 2024, the circuit court granted SLED’s motion, ruling that Appellants’ discovery requests were not relevant and would require SLED to improperly access the database for a non-law enforcement purpose. (R. pp. 1-8; Order on Defendants’ Motion for Protective Order entered November 25, 2024). Specifically, the circuit court determined “the discovery requests would require SLED to use the database solely for litigation purposes that are unrelated to any public safety mission.” (*Id.* at 6). The circuit court ruled that accessing the database for a non-

law enforcement purpose would violate “various state and federal laws and regulations.” (*Id.* at 7) (citing S.C. Code of Regulations R. 73-25; S.C. Code Ann. § 8-13-725(B)(1); 28 C.F.R. Part 20).

At the close of discovery, the parties filed cross-motions for summary judgment. The circuit court heard oral argument on the parties’ motions on April 7, 2025. (R. p. 643; Transcript of Record dated April 7, 2025). On May 13, 2025, the circuit court issued its order granting SLED’s motion for summary judgment and denying Appellants’ motion for summary judgment. (R. pp. 9-29; Initial MSJ Order).

On May 22, 2025, Appellants filed a narrowly tailored motion to reconsider that only requested the circuit court “amend the order to remove statements that the Plaintiffs did not argue that subsection 23-3-15(A)(9) violates the non-delegation doctrine.” (R. p. 559; Plaintiffs’ Rule 59(e) Motion to Alter or Amend Judgment filed on May 22, 2025). The circuit court granted Appellants’ motion on November 5, 2025, and issued an amended order granting SLED’s motion for summary judgment and denying Appellants’ motion for summary judgment on November 12, 2025. (R. pp. 30-31; Order Granting Plaintiffs’ Motion to Alter or Amend entered on November 5, 2025); (R. pp. 32-51; MSJ Order).

In short, the circuit court decided each of the issues presented in SLED’s favor. The circuit court ruled: (1) SLED’s operation of the ALPR database is legislatively authorized by S.C. Code Ann. §§ 23-3-15(A)(4), -(A)(9), and -110; (2) each of the statutory provisions authorizing SLED’s operation of the ALPR database contain the requisite “intelligible principle” and avoid scrutiny under the non-delegation doctrine; and (3) Policy 13.40 is not a “regulation” within the meaning of the APA. (R. pp. 32-51; MSJ Order). The circuit court further found that because Appellants’

claims fail on the merits, it was unnecessary to determine whether Appellants possess standing to challenge SLED's operation of the ALPR database. (*Id.* at 38-39).

Appellants filed their notice of appeal of the summary judgment order on December 5, 2025. (R. pp. 85-87; Plaintiffs' Notice of Appeal filed December 5, 2025).<sup>4</sup>

### **STANDARD OF REVIEW**

"When reviewing the grant of summary judgment, the appellate court applies the same standard applied by the trial court pursuant to Rule 56(c), SCRCP." *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). "When parties file cross-motions for summary judgment, the issue is decided as a matter of law." *United Servs. Auto. Ass'n v. Pickens*, 434 S.C. 60, 64, 862 S.E.2d 442, 444 (2021). The interpretation of a statute is a question of law, which the appellate court reviews de novo. *Id.* "A legislative act will not be declared unconstitutional unless its repugnance to the constitution is clear and beyond a reasonable doubt." *Joytime Distributors & Amusement Co. v. State*, 338 S.C. 634, 640, 528 S.E.2d 647, 650 (1999).

### **ARGUMENT**

#### **I. SLED possesses the requisite legislative authority to operate the ALPR database.**

As a product of the separation of powers doctrine, S.C. Const. art. 1 § 8, executive agency action must be supported by a statutory grant of authority. *See, e.g., Hampton v. Haley*, 403 S.C. 395, 403, 743 S.E.2d 258, 262 (2013). This grant of authority need not be explicit; our Courts have recognized that an agency must be given the leeway to exercise the powers "necessarily implied for it to effectively fulfill the duties with which it is charged." *Captain's Quarters Motor Inn, Inc. v. S.C. Coastal Council*, 306 S.C. 488, 490, 413 S.E.2d 13, 14 (1991). Ultimately, consistent with the separation of powers, the legislature decides the level of discretion to afford.

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<sup>4</sup> Appellants did not appeal the circuit court's November 25, 2024 Order granting SLED's motion for protective order. (R. pp. 85-87; Plaintiffs' Notice of Appeal filed December 5, 2025).

An executive agency may even “make policy determinations when properly delegated such power by the legislature[.]” *Hampton*, 403 S.C. at 404, 743 S.E.2d at 262.

In determining the authority conferred by the legislature, the best evidence is the plain text of the statute. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) (“What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will.” (citation omitted)). Here, the relevant statutory text reveals the legislature’s intent to provide SLED broad authority in (1) carrying out its mission “to provide quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state,” S.C. Code Ann. § 23-3-15(A)(9), and (2) creating a statewide criminal justice database and criminal information and communication system, S.C. Code Ann. §§ 23-3-15(A)(4) and -110. As the circuit court correctly ruled, each of these statutory provisions independently authorize SLED’s operation of the ALPR database. (R. pp. 39-46; MSJ Order).

Appellants correctly acknowledge that the statutory authorization issue “presents a question of statutory interpretation,” with the Court determining “whether the agency’s conduct falls within the General Assembly’s grant of authority.” App. Br. at 17. But their framing of the “agency conduct” in question is highly misleading. Appellants repeatedly contend the Court must determine whether the General Assembly authorized SLED to “engage in mass surveillance” (*id.* at 15), “maintain databases of sensitive information about those unconnected to crimes” (*id.* at 17), and “collect and retain boundless information on those not suspected of crimes” (*id.* at 20). Again, the Court must approach the issue presented through the lens of the record. With that understanding, the real question is this: Did the General Assembly provide SLED with sufficient authority to maintain an ALPR database containing information that is publicly observable for the

sole purpose of assisting law enforcement only when criminal investigations and other public safety emergencies arise? The answer is yes.

**A. S.C. Code Ann. § 23-3-15(A)(9) authorizes SLED’s operation of the ALPR database.**

Section 23-3-15(A) reflects the primary grant of legislative authority to SLED. It provides that SLED “shall have specific and exclusive jurisdiction and authority statewide, on behalf of the State, in matters including but not limited to the following functions and activities,” and it proceeds to list nine statutorily assigned functions. The final subsection, S.C. Code Ann. § 23-3-15(A)(9), expressly provides SLED with broad discretion to conduct “other activities not inconsistent with the mission of the division or otherwise proscribed by law.” As the circuit court correctly noted, at the time the statute was enacted, the General Assembly understood SLED’s mission is “to provide quality manpower and technical assistance to law enforcement agencies and to conduct investigations on behalf of the state as directed by the Governor and Attorney General.”<sup>5</sup>

With that understanding of the statutory term “mission,” the meaning of subsection 23-3-15(A)(9) is not difficult to ascertain. The legislature authorized SLED to engage in activities that are not inconsistent with its mission—to provide quality manpower and technical assistance to law

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<sup>5</sup> Appellants argued below that it was improper for SLED to rely on a “self-described” mission statement posted on SLED’s website in discussing the authority provided in subsection 23-3-15(A)(9). The circuit court properly rejected Appellants’ argument. (R. pp. 40-41; MSJ Order). The circuit court analyzed Accountability Reports submitted to the General Assembly prior to subsection 23-3-15(A)(9)’s enactment and found “the mission statement featured on [SLED’s] website is consistent with SLED’s mission as described in Accountability Reports submitted to the General Assembly.” (*Id.* at 41). Thus, the circuit court ruled “the General Assembly understood the meaning of the term ‘mission’ when it authorized SLED to engage in activities not inconsistent with its mission or otherwise proscribed by law.” *Id.* (citing *Pee v. AVM, Inc.*, 344 S.C. 162, 168, 543 S.E.2d 232, 235 (Ct. App. 2001) (“The legislature is presumed to have fully understood the meaning of the words used in a statute and, unless this meaning is vague or indefinite, intended to use them in their ordinary and common meaning or in their well-defined legal sense.”)). On appeal, Appellants do not challenge the propriety of referring to SLED’s mission statement when analyzing subsection (A)(9).

enforcement agencies and to conduct investigations on behalf of the state—or otherwise proscribed by law. There is nothing ambiguous about that grant of legislative authority, and this Court is “bound to give effect” to the legislature’s intent. *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 (citation omitted).

The circuit court was correct to conclude that subsection 23-3-15(A)(9) authorizes SLED’s operation of the ALPR database. The record demonstrates that SLED’s operation of the database involves the provision of “quality manpower and technical assistance to law enforcement agencies.” Namely, SLED maintains the database to house data collected from ALPRs operated by over 40 law enforcement agencies across the state. SLED also “provide[s] technical support on the use of the ALPR database,” by assisting local law enforcement officers in searching the database when criminal investigations arise. (R. pp. 455-459; Affidavit of SSA Mark Amos); (R. pp. 466-507; Success Stories). The record is replete with examples of SLED providing such assistance. (R. pp. 467; Success Stories) (“North Charleston Police Department requested SLED assistance in identifying a silver Honda Pilot with partial South Carolina Tag[.]”); (*Id.* at 468) (“Summerville Police Department requested SLED assistance in identifying a dark colored Jeep Gran[d] Cherokee that was used for felony [breaking] and entering of vehicles.”); (*Id.* at 473) (“SCHP requested assistance with a Hit and run black dodge journey showing a partial tag of . . . .”). SLED also regulates access to the database, trains officers on proper use of the database, and audits use of the database to ensure compliance. *See Supra* Section B.

Under subsection 23-3-15(A)(9), SLED is authorized to conduct activities that are not inconsistent with its mission or otherwise proscribed by law. The foregoing discussion confirms the first prong of subsection (A)(9) is satisfied: SLED’s operation of the database is wholly consistent with its mission of providing quality manpower and technical assistance to law

enforcement. As to the second, Appellants do not contend SLED's operation of the database is proscribed by law. While they may suggest the ALPR database raises privacy concerns, they have not asserted a challenge under the Fourth Amendment or the South Carolina Constitution. Even assuming they had asserted such a claim, it would fail. Courts across the Country have concluded ALPRs do not violate the Fourth Amendment.<sup>6</sup>

Unwilling to accept the straightforward conclusion that subsection 23-3-15(A)(9) authorizes SLED's operation of the ALPR database, Appellants resort to several different tactics. The first is to completely ignore the statutory text. Referencing Justice Scalia's famous remark that legislatures don't "hide elephants in mouseholes," *Whitman v. Am. Trucking Ass 'ns*, 531 U.S. 457, 468 (2001), Appellants contend that "nothing in the text of [subsection (A)(9)] suggests that the General Assembly gave SLED such broad power" to operate the ALPR database. App Br. at 26. But subsection (A)(9) is not a mousehole. It is a broad grant of authority reflecting the legislature's desire to empower SLED to conduct activities that are not inconsistent with its

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<sup>6</sup> See *Scholl v. Ill. State Police*, 776 F.Supp.3d 701, 721 (N.D. Ill. 2025); *United States v. Floyd*, 2025 WL 3250951 (M.D. Fla. Nov. 21, 2025); *Sidor v. Thornell*, 2025 WL 3282976 (D. Ariz. Oct. 24, 2025), *adopted*, 2025 WL 3281746 (D. Ariz. Nov. 25, 2025); *Schemel v. City of Marco Island, Fla.*, 2025 WL 2958798 (M.D. Fla. Oct. 17, 2025), *Rinaldi v. Sylvester*, 2025 WL 2682691 (S.D.N.Y. Sept. 19, 2025); *United States v. Brown*, 2025 WL 2444596 (W.D. Okla. Aug. 25, 2025); *United States v. Acosta*, 2025 WL 2427700 (N.D. Okla. Aug. 22, 2025); *United States v. Slaybaugh*, 2025 WL 2123781, at \*1 (M.D. Ala. July 29, 2025); *United States v. Sturdivant*, 786 F. Supp. 3d 1098, 1108 (N.D. Ohio 2025); *United States v. Jackson*, 2025 WL 1530574 (D. Kan. May 29, 2025); *United States v. Griffin*, 2025 WL 1474679, at \*9 (S.D. Ind. May 22, 2025); *United States v. Martin*, 753 F. Supp. 3d 454 (E.D. Va. 2024); *United States v. Toombs*, 671 F. Supp. 3d 1329 (N.D. Ala. 2023); *Schemel v. City of Marco Island, Fla.*, 2023 WL 3010344, at \*4 (M.D. Fla. Feb. 14, 2023); *United States v. Rubin*, 556 F. Supp. 3d 1123, 1130 (N.D. Cal. 2021); *Boniecki v. Fox*, 2015 WL 3507936, at \*1 (D. Mont. June 3, 2015); *United States v. Salcido-Gonzalez*, 2024 WL 2305478, at \*12 (D. Utah May 21, 2024); *United States v. Cooper*, 2025 WL 35035, at \*7 (E.D. La. Jan. 6, 2025); *United States v. Bowers*, 2021 WL 4775977, at \*3 (W.D. Pa. Oct. 11, 2021); *Chaney v. City of Albany*, 2019 WL 3857995, at \*8 (N.D.N.Y. Aug. 16, 2019); *United States v. Jiles*, 2024 WL 891956 at \*15-19 (D. Neb. Feb. 29, 2024); *United States v. James*, 2023 WL 3370421 (W.D. La. Jan. 30, 2023); *United States v. Graham*, 2022 WL 4132488, at \*5 (D.N.J. Sep. 12, 2022), *aff'd*, No. 23-3197, 2025 WL 342190 (3d Cir. Jan. 30, 2025).

mission or proscribed by law. Appellants' position that subsection (A)(9) did not give SLED "broad power" is simply meritless.

Appellants' remaining arguments about subsection (A)(9) also fail. They contend the authority provided in subsection (A)(9) is limited by SLED's other "database authority," which permits SLED to retain only criminal information. App. Br. at 26-27. Relatedly, they invoke the canon of construction that a specific statute prevails over a more general one, arguing that the criminal database provisions in subsections 23-3-15(A)(4) and section 23-3-110 "define the scope of SLED's authority to develop and maintain databases." App. Br. at 27.

These arguments fail. First, as the circuit court noted, they ignore the statutory text. Nothing in subsection 23-3-15(A)(4) or 23-3-110 suggests that those provisions are the sole source of SLED's authority to maintain a database. By its plain terms, the legislature's grant of authority in subsection (A)(9) was "**[i]n addition to** those authorities and responsibilities set forth in this chapter." (emphasis added). Similarly, while Appellants treat subsection 23-3-15(A)(4) as an exclusive grant of authority, the statute specifically provides SLED with authority "**in matters including but not limited to . . .** operation and maintenance of a central, statewide criminal justice data base and data communication system." (emphasis added). The plain text of the statutes confirm that the legislature intended subsection (A)(9) to operate as an independent grant of authority to SLED. The Court, respectfully, has "no choice but to apply the statute as written." *Connelly v. Main St. Am. Grp.*, 439 S.C. 81, 89, 886 S.E.2d 196, 200 (2023).

Likewise, the general rule "that a specific statute prevails over a more general one" is not implicated here. See *Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995). "[T]his rule of statutory construction comes into play only when there is a conflict between the statutes." *Porter v. S.C. Pub. Serv. Comm'n*,

327 S.C. 220, 224 n.3, 489 S.E.2d 467, 469 n.3 (1997). As SLED explains below, there is no conflict here, as subsection 23-3-15(A)(4) and section 23-3-110 also authorize SLED’s operation of the ALPR database. Even assuming they did not, however, the Court would still have to apply the plain meaning of subsection (A)(9) and conclude it authorizes the ALPR database. That is because rules of statutory interpretation, such as the one Appellants invoke here “are not needed” when the statute’s language is plain and unambiguous. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581. By permitting SLED to act in furtherance of its mission of providing quality manpower and technical assistance to law enforcement, subsection (A)(9) unambiguously authorizes SLED’s operation of the ALPR database.

Moreover, other SLED “database” statutes, such as the DNA and fingerprint statutes, reflect that the General Assembly can come back and limit authority granted when it believes it is necessary. *See* S.C. Code Ann. §§ 23-3-600 *et seq.*; S.C. Code Ann. § 23-3-40. In both instances, law enforcement was already collecting and maintaining fingerprint and DNA records before the General Assembly acted. The General Assembly did not need to first grant law enforcement the authority to collect this information; rather, it came back after the fact and enacted legislation specifically constraining how that pre-existing practice could continue—governing who could be sampled, how records would be stored, who could access them, and under what circumstances they must be expunged. *See* S.C. Code Ann. §§ 23-3-600 *et seq.* This legislative pattern demonstrates that when the General Assembly has concerns about a particular law enforcement database or data-collection practice, it knows how to act, and it does so through targeted, database specific legislation. The ALPR database is no exception. The General Assembly is well aware that SLED maintains and operates the ALPR database. *See, e.g.*, H.R. 3366, 2023-2024 Gen. Assemb., 125th Reg. Sess. (S.C. 2023). If the General Assembly shared Appellants’ concerns about the scope of

that database, it was and remains free to enact legislation limiting SLED’s collection, retention, or use of ALPR data, just as it did with the fingerprint and DNA records. Its choice not to do so is telling, and this Court should not use judicial construction to impose restrictions the General Assembly has declined to enact.

**B. S.C. Code Ann. §§ 23-3-15(A)(4) and -110 authorize SLED’s operation of the ALPR database.**

SLED’s operation of the ALPR database is also permissible under two additional statutes: S.C. Code Ann. § 23-3-15(A)(4), which empowers SLED to operate a “central, statewide criminal justice data base and data communication system,” and S.C. Code Ann. § 23-3-110, which allows SLED to operate a “statewide criminal information and communication system . . . with such functions as [SLED] may assign to it[.]”

Analyzing these provisions, the circuit court ruled it was “proper to consider the manner in which the database functions, rather than focusing solely on the information contained in the database.” (R. p. 44; MSJ Order). The circuit court was correct to do so, as the statutory authorization inquiry rests on whether the agency is “act[ing] within the authority granted” by the legislature. *Bazzle v. Huff*, 319 S.C. 443, 445, 462 S.E.2d 273, 274 (1995). And again, the statutory authority need only “necessarily impl[y]” the agency’s ability to act. *Captain’s Quarters*, 306 S.C. at 490, 413 S.E.2d at 14.

Appellants would have the Court ignore the manner in which the database functions and instead focus entirely on the fact that the database contains license plate reads that are unconnected to criminal activity. While Appellants desperately want to make this case about whether SLED may “collect and retain boundless information on those not suspected of crimes,” App. Br. at 20, the real inquiry—the one that honors the authority granted in subsection (A)(4) and section 110—is whether the database is used to facilitate the administration of “criminal justice” and the exchange

of “criminal information.” The record demonstrates that it is. “[T]he sole purpose for the ALPR database is to serve as a resource for law enforcement when criminal investigations or other public safety emergencies arise.” (R. p. 457; Affidavit of SSA Mark Amos). Use of the ALPR database is strictly restricted to public safety-related missions. (R. p. 462; SLED Policy 13.40). And, as the circuit court ruled, “the record contains no evidence of officers using the database for any other, improper purposes.” (R. p. 44; MSJ Order). Appellants overlook these facts entirely.

Appellants are wrong to claim their position is the one that honors the text of subsection (A)(4) and section 110. In ruling these provisions authorize SLED’s operation of the ALPR database, the circuit court did not ignore the legislature’s use of the term “criminal.” Rather, the circuit court found the statutory text permitted SLED to maintain the database because its *sole* purpose is to “serve as a resource for law enforcement when criminal investigations or other public safety emergencies arise.” (R. p. 44; MSJ Order). The circuit court correctly found that accepting Appellants’ approach would require rewriting the statutes. (*Id.*) (“[Appellants’] argument rests on the flawed premise that a database can only be considered a ‘criminal justice data base and data communication system’ or a ‘criminal information and communication system’ if it stores *exclusively* criminal information.”).

In their brief, Appellants’ attempts to modify the statutes are even more blatant. Though Appellants would have the Court insert a requirement that the databases store “*presently* ‘criminal information’” (App. Br. at 24), that is not the role of the judiciary. When it enacted subsection (A)(4) and section 110, the General Assembly did not undertake to prescribe the precise manner in which SLED must exercise its authority to operate a “criminal justice” or “criminal information” database. Instead, as explained above, both statutory provisions reveal the legislature’s intent to provide SLED with discretion. S.C. Code Ann. § 23-3-15 (providing SLED with authority “in

matters including but not limited to the following functions and activities”); S.C. Code Ann. § 23-3-110 (providing SLED with authority to operate a criminal information and communication system “with such functions as [SLED] may assign to it”).

Appellants’ remaining arguments do not relate to subsection (A)(4) or section 110 at all. Instead, Appellants rely on various other statutory schemes like the State DNA Database, S.C. Code Ann. §§ 23-3-610 *et seq.*; the sex offender registry, S.C. Code Ann. §§ 23-3-430 *et seq.*; and the criminal gang database, S.C. Code Ann. §§ 16-8-230 *et seq.* App Br. at 20. According to Appellants, these statutes demonstrate a “pattern of authorizing SLED to collect and store sensitive information about people connected to crimes and limiting SLED’s authority to collect information about people unsuspected of crimes.” App. Br. at 20. Not so.

The General Assembly’s decision to restrict SLED from retaining information about innocent people in these databases has no bearing on SLED’s ability to operate the ALPR database. SLED need not spill much ink to explain there is a vast difference between storing a person’s license plate and storing a person’s DNA, sex offender status, or gang member status. Because each of the statutes referenced by Appellants involve truly sensitive and personal information, it is unsurprising that the General Assembly chose to prevent the retention of such information about innocent people. Because the nature of the information in the ALPR database is materially different, these statutory schemes are not appropriate comparators.

Moreover, to the extent Appellants suggest the DNA, sex offender, and criminal gang statutes suggest explicit statutory authorization is required for SLED to create a database, they are mistaken. The circuit court properly addressed this argument below. (R. p. 44-46; MSJ Order). Such a holding would directly contravene the Supreme Court’s decision in *Captain’s Quarters*, which recognized that agency action does not require explicit statutory authorization. 306 S.C. at

490, 413 S.E.2d at 14. Such a holding would also render the authority the legislature provided to SLED in (A)(4), (A)(9), and 110 meaningless. (R. p. 45; MSJ Order) (noting that accepting Appellants’ explicit authorization argument would “effectively wipe out” the authority provided by the legislature in other statutory provisions and contravene legislative intent).<sup>7</sup>

**C. The General Assembly’s decision not to pass specific ALPR legislation should be respected.**

Appellants’ final argument does not have anything to do with whether the statutes in Title 23 authorize SLED’s operation of the ALPR database. Instead, Appellants fall back to the position that the Court should force the General Assembly’s hand so it may “evaluate the tradeoffs of ALPR technology.” App. Br. at 28. This argument fails for several reasons.

Though Appellants claim SLED has violated the separation of powers doctrine, that is precisely what they ask this Court to do. “Respect for separation of powers compels us to recognize that the General Assembly is the author of our state’s public policy[.]” *State v. Slocumb*, 426 S.C. 297, 314, 827 S.E.2d 148, 157 (2019). “It is not the role of this Court to advise the legislative or executive branches how to proceed[.]” *Shasta Beverages*, 280 S.C. at 56, 310 S.E.2d at 659; *see also Keyserling v. Beasley*, 322 S.C. 83, 86, 470 S.E.2d 100, 101 (1996) (“We do not sit as a superlegislature to second guess the wisdom or folly of decisions of the General Assembly.”); *Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017) (“[W]e adhere to the principle that a court must not reject the legislature’s policy determinations merely because the

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<sup>7</sup> Appellants also reach for other support beyond the text of subsection (A)(4) and section 110. They reference S.C. Code Ann. Regs. 73-20 (App. Br. at 19), S.C. Code Ann. § 17-1-40 (App. Br. at 19, 22, 24), and even a Virginia statute (App. Br. at 25). The circuit court’s order did not address any of these arguments, so they are not preserved for review. *See Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) (“At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge.”). In their motion to reconsider, Appellants did not request that the circuit court rule on these arguments.

court may prefer what it believes is a more equitable result.”). Accepting Appellants’ argument—that the Court should preclude SLED from operating the ALPR database so the legislature can take up the issue—would run afoul of these established principles.

Appellants’ argument also rests on the flawed premise that an order enjoining SLED’s operation of the ALPR database is a prerequisite to the General Assembly “evaluat[ing] the tradeoffs of ALPR technology.” App. Br. at 28. As Appellants’ brief acknowledges, the General Assembly is already doing so. *Id.* (citing H. 4675, 2025 Leg., 126th Sess. (S.C. 2025)).<sup>8</sup> Plainly, the General Assembly is aware of SLED’s operation of the ALPR database and is considering whether to pass more specific legislation. There is no need for the Court to spur debate that is already taking place; the Court should respect that the General Assembly has chosen not to pass additional legislation to date.

Finally, Appellants gain nothing by pointing out that other states have chosen to enact specific legislation addressing ALPR technology. App. Br. at 29. It is for the legislature, not the judiciary, to determine the wisdom of passing similar legislation in South Carolina. Moreover, Appellants’ citation to legislation in approximately 11 other states only demonstrates that most states, like South Carolina, have elected not to pass specific ALPR legislation.

In sum, the General Assembly, in several statutory provisions, has provided SLED authority that permits the operation of the ALPR database. The Court must honor the General Assembly’s decision.

## **II. The statutes authorizing SLED’s operation of the ALPR database are constitutional.**

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<sup>8</sup> Two other bills relating to ALPR technology were also introduced in the most recent legislative session. *See* H. 4013, 2025 Leg., 126th Sess. (S.C. 2025) (Sponsored by Reps. Johnson, Gilliam, Bailey, Guest and Alexander); S. 447, 2025 Leg. 126th Sess. (S.C. 2025) (Sponsored by Sen. Adams).

According to Appellants, if SLED has statutory authority to maintain the ALPR database, that authority is itself unconstitutional. App. Br. at 30. Specifically, Appellants argue that sections 23-3-15 and 23-3-110 unconstitutionally delegate legislative authority to SLED in violation of the nondelegation doctrine. App. Br. at 34. However, as SLED has repeatedly demonstrated and as the circuit court correctly concluded, the General Assembly's actions fall well within the constitutional bounds prescribed by the nondelegation doctrine.

Any constitutional challenge to a statute carries a heavy burden: a legislative act will not be struck down “unless its repugnance to the constitution is clear beyond reasonable doubt.” *In re Stephen W.*, 409 S.C. 73, 76, 761 S.E.2d 231, 232 (2014) (internal quotation omitted). Any doubts “must be resolved in favor of constitutionality.” *Bauer v. S.C. State Housing Authority*, 271 S.C. 219, 233, 246 S.E.2d 869, 876 (1978). Appellants bear that burden, and they have not come close to satisfying it. *See In re Stephen*, 409 S.C. at 76, 761 S.E.2d at 232.

The nondelegation doctrine, “a component of the separation of powers doctrine,” prohibits the legislature from transferring its core lawmaking power to an executive agency. *Hampton*, 403 S.C. at 407, 743 S.E.2d at 264. But the doctrine does not bar the legislature from authorizing an agency to ““fill up the details”” by adopting rules and regulations to implement a law’s ““expressed general purpose.”” *Id.* at 407-08, 743 S.E.2d at 264 (quoting *S.C. State Highway Dept. v. Harbin*, 226 S.C. 585, 594, 86 S.E.2d 466, 470 (1955)). All that is required is “that the statute declare a legislative policy, establish primary standards for carrying it out, or lay down an intelligible principle” to which the agency must conform. *Harbin*, 226 S.C. at 594, 86 S.E.2d at 470. A statute crosses the constitutional line only if it grants an agency “unbridled, uncontrolled or arbitrary power.” *Hampton*, 403 S.C. at 408, 743 S.E.2d at 264 (internal quotation omitted).

That standard is especially forgiving where, as here, the delegated authority “relates to police regulations”—precisely the area where “flexibility” is most “necessary . . . to carry out the legislative will” and “it is impossible or impracticable to lay down criteria or standards” with rigid specificity. *Harbin*, 226 S.C. at 594-95, 86 S.E.2d at 470. Courts therefore assess a statute “in light of its surroundings and objectives,” and may find constitutionally adequate standards implied from the act as a whole—not just its expressed terms. *Bauer*, 271 S.C. at 233, 246 S.E.2d at 876. Critically, the inquiry focuses on “the things which the act affirmatively permits,” not speculation about how an agency might theoretically misuse its authority. *Harbin*, 226 S.C. at 595-96, 86 S.E.2d at 471.

Measured against these principles, the statutes at issue easily survive scrutiny. Appellants have identified no grant of unbridled authority because none exists. Instead, Appellants ask this Court to evaluate the statutes not by what they actually permit, but by a parade of hypothetical abuses, suggesting that the same statutory authority empowers SLED to deploy “facial recognition software to track and store for years every citizen’s movements,” monitor “vaccination records,” and collect a host of other personal information. App. Br. at 30, 32-35.<sup>9</sup> But this is precisely the mode of speculative analysis *Harbin* forecloses. The question is not what SLED might theoretically do; it is what the statutes actually authorize when compared to what the executive agency is actually doing.

What the statutes affirmatively authorize is the “operation and maintenance of a central, statewide criminal justice database and data communication system.” S.C. Code Ann. § 23-3-15(A)(4). An ALPR database falls squarely within that authorization. It is a criminal justice

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<sup>9</sup> The circuit court correctly recognized that SLED’s enabling statutes are *not* broad enough to allow SLED to create a database storing citizens’ vaccination records. (R. p. 48; MSJ Order).

database designed to collect, store, and communicate information useful to law enforcement investigations. Its creation is entirely consistent with the General Assembly's expressed purpose.

The same conclusion follows from section 23-3-15(A)(9)'s authorization for SLED to undertake "other activities not inconsistent with the mission of [SLED] or otherwise proscribed by law." SLED's mission is to "provide[ ] quality manpower and technical assistance to law enforcement." An ALPR database directly advances that mission by providing a technological tool that assists law enforcement agencies in criminal investigations.

Likewise, the General Assembly has authorized SLED to establish "a criminal information and communication system . . . with such functions as [SLED] may assign to it." S.C. Code Ann. § 23-3-110. While the statute does not itself assign specific functions or expressly reference ALPR technology, courts do not evaluate delegated authority solely by reference to what a statute expressly identifies. Rather, statutes must be construed "in light of [their] surroundings and objectives," and constitutionally sufficient standards may be implied from the statutory scheme as a whole. *Bauer*, 271 S.C. at 233, 246 S.E.2d at 876. Thus, while not identified by name, the authority to implement an ALPR database is reasonably implied from the General Assembly's directive that SLED operate a statewide criminal justice database, a criminal information and communication system, and provide technical assistance to law enforcement agencies throughout the state. Indeed, the General Assembly was not required to anticipate or enumerate every technological development that might assist SLED in carrying out its mission. Rather, recognizing the need for flexibility in an evolving law enforcement environment, the General Assembly entrusted SLED with determining what functions a criminal information system should perform in furtherance of the legislature's expressed purpose. The decision to include ALPR data within

that system is therefore a textbook example of filling in the details of legislative policy already established by statute.

Contrary to Appellants' contention, this statutory framework does not leave SLED free to collect individuals' data without limitation. Section 23-3-15(A)(4) does not authorize SLED to maintain *any* database SLED chooses; it authorizes the "operation and maintenance of a central statewide *criminal justice* database and data communication system." The "criminal justice" qualifier is the intelligible principle: it confines SLED to systems that serve criminal justice purposes and forecloses precisely the kind of general-purpose surveillance or unrelated record keeping Appellants hypothesize. Section 23-3-110 likewise does not give SLED a blank canvas; it authorizes a "criminal information and communication system," and while SLED may assign the functions to that system, any such function must still fall within the bounds of a *criminal information* system. Additionally, section 23-3-(A)(9)'s authorization for SLED to undertake "other activities" is itself doubly bounded: those activities must be "not inconsistent with mission of "[SLED]" and must not be "otherwise proscribed by law." This mission-tethering requirement is a textbook intelligible principle—it ties SLED's discretion to an external, ascertainable standard rather than leaving SLED free to act on whatever purpose it might devise.

These provisions are a far cry from the standardless delegation at issue in *Harbin*, which authorized "the State Highway Department to suspend or revoke a license for *any cause* which it deems satisfactory." 226 S.C. at 595, 86 S.E.2d at 470 (emphasis added). As the Court explained, "in this grant of authority, there is no standard except the personal judgment of the administrative officers of the Department." *Id.* at 596, 86 S.E.2d at 471. However, unlike the statute in *Harbin*, the General Assembly did not vest SLED with unfettered discretion to determine the scope of its own authority. Rather, SLED's authority is constrained by objective standards. The General

Assembly limited SLED's authority to criminal justice and criminal information systems, required that any additional activities be consistent with SLED's mission, and prohibited activities otherwise proscribed by law. Those statutory limitations provide the intelligible principle that was absent in *Harbin*.<sup>10</sup>

Moreover, the General Assembly has independently prohibited public employees from improperly accessing or using records maintained by governmental agencies. *See, e.g.*, S.C. Code Ann. § 8-13-725(B)(1) ("A public official, public member, or public employee may not willfully examine, or aid and abet in the willful examination of, . . . other records of an individual in the possession of or within the access of a public department or agency if the purpose of the examination is improper or unlawful.").<sup>11</sup> Violations carry substantial consequences. Upon conviction, an offending employee must be immediately discharged from public employment and may be fined up to five thousand dollars, imprisoned for up to five years, or both. S.C. Code Ann.

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<sup>10</sup> Appellants also cite *Hampton and Gilstrap* in support of their position. App. Br. at 32. However, their reliance is misplaced. In *Hampton*, the Court expressly declined to address the nondelegation doctrine issue after resolving the case on different grounds. 403 S.C. at 409, 743 S.E.2d at 265 ("Having found that the Board violated the separation of powers in declining the appropriated funds and setting a different enrollee contribution rate, we need not consider the petitioners' assertion that the Board violated the nondelegation doctrine."). Likewise, *Gilstrap* does not support Appellants' argument. Rather than holding that the statute violated the nondelegation doctrine, the Court invoked the canon of constitutional avoidance and construed the statute to avoid an unconstitutional delegation. *See Gilstrap v. S.C. Budget and Control Bd.*, 310 S.C. 210, 216, 423 S.E.2d 101, 105 (1992) ("If the Act is so broad as to allow the Board to apply restrictions with the only requirement being that they be applied uniformly, the effect would be to allow the Board to appropriate funds with unbridled discretion. Such an interpretation would make the Act and unlawful delegation of legislative authority. We will not construe the Act to do that which is unconstitutional.").

<sup>11</sup> The circuit court likewise recognized that SLED's use of ALPR data is subject to meaningful legal constraints. In ruling on Defendants' Motion for Protective Order, the circuit court cited S.C. Code Ann. § 8-13-725(B)(1) and "agree[d] with SLED that accessing the ALRP database for a non-law enforcement purpose . . . would run afoul of various state and federal laws and regulations." (R. p. 7 n.2; Order Granting Protective Order). Notably, Appellants did not appeal that ruling.

§ 8-13-725(B)(2). These provisions underscore that the General Assembly has imposed meaningful safeguards against the very abuses Appellants hypothesize.

SLED Policy 13.40 further confirms the absence of any unconstitutional delegation. Acting pursuant to statutory authority, SLED adopted Policy 13.40 to govern the operation of the ALPR system. (*See* R. p. 461; SLED Policy 13.40). The Policy restricts access to NCIC certified officers with SLED-issued credentials, limits use to “public safety-related missions,” and subjects any misuse to sanctions and disciplinary action. (*Id.* at 462-63). It is thus a paradigmatic example of administrative implementation—not independent law making. In other words, it reflects SLED’s permissible role in filling up the details of a legislative enactment.

In sum, the structure here is precisely what the nondelegation doctrine permits: the General Assembly declared a legislative policy, established an intelligible principle to guide SLED, and allowed SLED to fill up the details through rules and regulations suited to a dynamic law enforcement environment. Accordingly, the statutory scheme falls well within constitutional bounds.

### **III. Policy 13.40 does not violate the Administrative Procedures Act.**

Appellants’ APA challenge is a last-ditch effort to undermine SLED’s ALPR program after their statutory and constitutional arguments fail. They contend that Policy 13.40 functions as a regulation and therefore should have been promulgated through the APA’s notice-and-comment process. App. Br. at 35, 37. As the circuit court correctly ruled, however, Policy 13.40 is not a “regulation” under the APA.

The APA defines a “regulation” as an “agency statement of *general public applicability* that implements or prescribes law or policy or practice requirements of any agency.” S.C. Code Ann. § 1-23-10(4) (emphasis added). Excluded from that definition are “descriptions of agency procedures applicable only to agency personnel . . . and other agency actions relating only to

specified individuals.” *Id.* Whether a particular agency action constitutes a regulation turns on whether it “establishes a binding norm”—that is, whether it “so fills out the statutory scheme that upon application one need only determine whether a given case is within the rule’s criterion.” *Joseph v. S.C. Dep’t of Lab., Licensing & Regul.*, 417 S.C. 436, 454, 790 S.E.2d 763, 772 (2016) (internal quotation omitted). “The key inquiry, therefore, is the extent to which the challenged policy leaves the agency free to exercise its discretion.” *Id.* (internal quotation omitted). If the agency remains free to follow or not follow the policy in an individual case, no binding norm exists. *Id.*

Policy 13.40 fails to qualify as a regulation for two independent reasons. First, it lacks the general public applicability that the APA’s definition of regulation requires. By its plain language, Policy 13.40 applies only to a subset of law enforcement officers who are “NCIC inquiry certified and have been issued username and passwords by SLED”—the only individuals “permitted to use an ALPR system or access the ALPR back office.” (R. p. 463; SLED Policy 13.40). That is precisely the category of “agency personnel” and “specified individuals” that the APA expressly excludes from the definition of regulation.

Second, Policy 13.40 does not create a binding norm. SLED included an explicit disclaimer at the outset of the Policy: “this document does not create any contractual rights or entitlements. The agency reserves the right to revise the content of this document, in whole or in part.” (R. p. 461; SLED Policy 13.40). That reservation of discretion is fatal to Appellants’ claim. Because SLED remains free to revise or depart from the Policy, no binding norm exists.

Accordingly, SLED was not required to promulgate Policy 13.40 through the APA’s notice-and-comment procedures, and the circuit court correctly rejected Appellants’ APA challenge.

## **CONCLUSION**

For the foregoing reasons, the Court should affirm the circuit court's order.

### **SMITH | ROBINSON**

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