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SC Court of Appeals

NOTICE OF APPEAL IN A CIVIL
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Hon. Thomas W. McGee III, Circuit Court Judge

Hon. Daniel Coble, Circuit Court Judge

Case No. 2025-CP-40-08433

Appellate Case No. 2026-002064

Wendell Cooper, Appellant,

v.

South Carolina Human Affairs Commission, Respondent.

BRIEF OF APPELLANT

Wendell Cooper
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STATEMENT OF ISSUES ON APPEAL

I. Whether the circuit court erred in dismissing Appellant's Petition for Judicial Review as an impermissible challenge to SCHAC's final no-cause determination under S.C. Code Ann. § 1-13-90(d)(4), where Appellant did not seek judicial reweighing of the merits of that determination, but challenged alleged unlawful procedure, legal error, misclassification of his retaliation complaint, use of an incorrect factual and timeliness framework, failure to reconcile material contradictory evidence, failure to address materially false information, and arbitrary or capricious agency action under S.C. Code Ann. § 1-23-380.

II. Whether the circuit court erred at the Rule 12 dismissal stage by accepting Respondent's characterization of Appellant's Petition as a challenge to SCHAC's no-cause merits determination instead of addressing the Petition as pleaded and applying the governing dismissal standard to Appellant's allegations of unlawful procedure, legal error, misclassification, incorrect factual premises, contradictory evidence, and arbitrary or capricious agency action.

III. Whether the circuit court erred in permitting dismissal based upon a timeliness theory derived from Appellant's January 6, 2023, application and an alleged March 26, 2024, notice of non-selection, where Appellant alleged a later retaliation claim and contended that SCHAC misclassified that retaliation claim as an untimely failure-to-hire claim.

IV. Whether the circuit court erred in dismissing the Petition without addressing Appellant's allegation that SCHAC relied upon or failed to reconcile the School District's material representation that Appellant had not applied for the position after documentary information showed that Appellant had applied on January 6, 2023.

V. Whether the circuit court erred in concluding that S.C. Code Ann. § 1-13-90(d)(4) foreclosed Appellant's action without separately determining whether Appellant's allegations of unlawful

procedure, legal error, misclassification, failure to follow governing investigative procedures, use of materially incorrect information, and arbitrary or capricious agency action were reviewable under S.C. Code Ann. § 1-23-380 or otherwise required remand to SCHAC.

STATEMENT OF THE CASE

This appeal arises from Appellant Wendell Cooper's Petition for Judicial Review concerning actions of the South Carolina Human Affairs Commission ("SCHAC") in connection with an employment-discrimination and retaliation matter.

SCHAC moved to dismiss the Petition pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, and S.C. Code Ann. § 1-13-90(d)(4). SCHAC contended, among other things, that its no-cause determination was not subject to judicial review and that the circuit court lacked jurisdiction over Appellant's Petition.

Appellant opposed dismissal. Appellant maintained that his Petition did not ask the circuit court to decide the merits of the underlying employment-discrimination claim or to reweigh SCHAC's no-cause determination. Instead, Appellant maintained that the Petition challenged alleged legal and procedural defects in SCHAC's handling of the matter, including alleged misclassification of the claim, use of an incorrect factual and timeliness framework, failure to address contradictory evidence, reliance upon or failure to correct materially inaccurate information, and failure to follow governing procedures.

A hearing on SCHAC's motion to dismiss was held on June 18, 2026. During and following that proceeding, Appellant continued to maintain that his challenge concerned the legality of SCHAC's procedure and factual framework rather than merely disagreement with the agency's ultimate no-cause determination.

On June 23, 2026, the circuit court issued a Form 4 reflecting dismissal. On July 1, 2026, the court entered an Order Granting Defendant South Carolina Human Affairs Commission's Motion to Dismiss.

Appellant sought post-judgment relief under Rule 59(e), SCRCP, and, alternatively, Rule 52(b), SCRCP, requesting alteration or amendment of the dismissal and clarification or additional findings concerning the grounds for dismissal and the legal and procedural issues Appellant had raised.

The post-judgment motion was subsequently denied. Appellant thereafter pursued appellate review of the final disposition of the Rule 59(e)/Rule 52(b) motion together with the underlying June 23 Form 4 and July 1, 2026, dismissal order.

The present appeal therefore concerns whether dismissal was proper where Appellant contends that the circuit court treated the action as an impermissible attempt to obtain merits review of SCHAC's no-cause determination without separately addressing the legal and procedural challenges actually presented in Appellant's Petition.

STANDARD OF REVIEW

This appeal principally presents questions of law arising from the circuit court's dismissal of Appellant's Petition pursuant to Rules 12(b)(1) and 12(b)(6), SCRCP, and from the interpretation and application of S.C. Code Ann. §§ 1-13-90(d)(4) and 1-23-380.

When reviewing a dismissal under Rule 12(b)(6), SCRCP, the appellate court applies the same standard as the circuit court. *Thompson v. Killian*, Op. No. 28305 (S.C. Sup. Ct. filed Nov. 5, 2025); *Patterson v. Witter*, 425 S.C. 213, 225, 821 S.E.2d 677, 684 (2018). The question is whether, viewing the pleading in the light most favorable to the plaintiff and resolving every

doubt in the plaintiff's favor, the pleading states any valid claim for relief. *Thompson*, Op. No. 28305; *Patterson*, 425 S.C. at 225, 821 S.E.2d at 684.

South Carolina law further provides that, on a Rule 12(b)(6) motion, the court's consideration is ordinarily confined to the allegations of the pleading. The pleaded facts and reasonable inferences arising from those facts must be considered in the plaintiff's favor, and dismissal is improper when those allegations would entitle the plaintiff to relief under any theory of the case. *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999). Appellant expressly relied upon this pleading standard below.

To the extent dismissal rested upon Rule 12(b)(1), SCRCP, subject-matter jurisdiction presents a question of law. An appellate court decides that question without deference to the circuit court. *S.C. Public Interest Foundation v. Wilson*, 437 S.C. 334, 340, 878 S.E.2d 891, 894 (2022); see also *Thompson*, Op. No. 28305.

Likewise, interpretation of a statute presents a question of law reviewed de novo. *S.C. Public Interest Foundation v. Calhoun County Council*, 432 S.C. 492, 495, 854 S.E.2d 836, 837 (2021). Accordingly, the circuit court's interpretation of the relationship between S.C. Code Ann. § 1-13-90(d)(4) and Appellant's asserted grounds for relief under S.C. Code Ann. § 1-23-380 is subject to independent appellate review.

Section 1-23-380 identifies grounds upon which relief may be granted when judicial review is otherwise authorized and substantial rights have been prejudiced by agency action that, among other grounds, was made upon unlawful procedure, affected by error of law, clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record, or arbitrary or capricious or characterized by abuse of discretion. Appellant's Petition expressly invoked those grounds and alleged that SCHAC's determination was arbitrary and capricious, unsupported by substantial evidence, and made upon unlawful procedure.

ARGUMENT

I. THE PETITION PLEADED PROCESS-BASED LEGAL AND PROCEDURAL DEFECTS; DISMISSAL CANNOT BE SUSTAINED MERELY BY CHARACTERIZING THE ACTION AS A PROHIBITED MERITS APPEAL OF SCHAC'S NO-CAUSE DETERMINATION

The central distinction in this appeal is between review of SCHAC's ultimate no-cause determination and review of the alleged legal and procedural defects by which SCHAC processed Appellant's complaints. Appellant's Petition did not merely assert that SCHAC reached the wrong result. It alleged that SCHAC used an incorrect factual and timeliness framework, misclassified the complaint, failed to verify material facts, failed to reconcile contradictory evidence, and acted upon unlawful procedure and legal error.

Appellant expressly preserved that distinction before dismissal. Following the June 18, 2026, hearing, Appellant informed the circuit court that SCHAC's Motion to Dismiss "argued against a claim Petitioner did not plead." Appellant stated that nothing in his Petition asked the court to review or reweigh SCHAC's final no-cause decision as a merit's determination. Rather, the Petition invoked S.C. Code Ann. § 1-23-380 and challenged the agency process as unlawful, arbitrary or capricious, affected by legal error, based upon the wrong factual and timeliness framework, and unsupported by the whole record.

SCHAC's own investigative record confirms that these alleged procedural matters were part of an actual agency process. SCHAC informed Appellant that its investigator would gather information from both parties, permit Appellant to rebut the District's contentions, interview relevant witnesses, analyze the information obtained, submit the matter for legal review, and make a determination based upon the evidence presented by both sides. Thus, factual development, rebuttal, witness investigation, and evaluation of the evidentiary record were not

collateral matters invented for judicial review; they were components of the investigative process SCHAC itself described.

The investigative file also demonstrates why Appellant's procedural allegations were concrete rather than abstract. During SCHAC's February 28, 2025, interview, Appellant stated that he applied for the position through the District's website, that the principal's secretary assisted him in completing the application, and that he had communicated with Dr. Christopher Emerson concerning his application.

On March 3, 2025, SCHAC recorded that Appellant had produced the email in which Dr. Emerson stated, "thank you for applying," and the investigator indicated an intention to speak with the employee who assisted with the application.

SCHAC thereafter interviewed Dr. Emerson. Its own witness-interview record states that Dr. Emerson reviewed the email communication between himself and Appellant and acknowledged that their communication included an email thanking Appellant for applying. Yet the dispute over whether Appellant had actually applied remained central to the District's defense and SCHAC's processing of the claim.

The Petition expressly alleged three separate forms of evidence supporting Appellant's contention that he applied on January 6, 2023: the timestamped application, Dr. Emerson's January 10, 2023 "Thank you for applying" email, and the District's later written acknowledgment that the application had been entered under District credentials. Appellant alleged that SCHAC failed to reconcile those materials with the contrary factual position upon which the investigation had proceeded.

The District's own position, as reproduced in SCHAC's investigative file, further demonstrates that the application question was disputed. The District argued that "[e]ven if" Appellant

submitted an application in January 2023, the discrimination charge was untimely. It therefore asserted timeliness as an alternative ground rather than establishing as an undisputed fact that no application existed. That distinction matters at the Rule 12 stage because Respondent's factual characterization could not simply replace the allegations actually pleaded.

SCHAC nevertheless framed its Motion to Dismiss principally around the proposition that S.C. Code Ann. § 1-13-90(d)(4) makes the Commissioner's decision to dismiss a charge nonreviewable. SCHAC relied upon *Orr v. Clyburn*, 277 S.C. 536, 290 S.E.2d 804 (1982), and related federal authority for the proposition that a no-cause determination is preliminary, non-adjudicatory, nonbinding, and does not itself impose liability upon the parties. SCHAC therefore sought dismissal under Rule 12(b)(1).

SCHAC separately asserted that, if the challenged agency action were reviewable under the Administrative Procedures Act, jurisdiction would lie in the Administrative Law Court rather than the Court of Common Pleas. SCHAC also sought dismissal under Rule 12(b)(6) based upon timeliness and its contention that Appellant could not amend a closed complaint, and under Rule 12(b)(7) for alleged failure to join Greenville County School District as a necessary party. SCHAC therefore presented multiple independent grounds for dismissal, each of which required analysis on its own terms rather than resolution through the single characterization that Appellant merely sought reweighing of the no-cause determination.

Appellant does not disregard the express language of S.C. Code Ann. § 1-13-90(d)(4), which states that the Commissioner's order either dismissing the charge or bringing an action in equity "shall not be subject to judicial or other further review." Appellant's argument is narrower. The circuit court was required to determine whether that statutory prohibition disposed of every distinct procedural and legal defect actually pleaded, including alleged agency conduct occurring

before the dismissal and SCHAC's alleged failure to follow its own reconsideration procedure, rather than treating every such allegation as merely a request to reweigh the ultimate no-cause determination.

That distinction is reinforced by S.C. Code Regs. 65-7. Regulation 65-7 demonstrates that a SCHAC dismissal is not procedurally incapable of reconsideration. When a proper application for reconsideration is made and adequate cause is shown, the regulation requires notice to the parties, designation of a different staff member, a new investigation, and a new reasonable-cause determination. Appellant specifically alleged below that later evidence contradicting the District's earlier position was material to whether adequate cause existed for reconsideration, correction, supplementation, or further investigation. Appellant relied on that regulatory framework to show that his process-based challenge was materially different from asking the circuit court itself to decide whether discrimination or retaliation occurred.

Nor does *Orr v. Clyburn*, 277 S.C. 536, 290 S.E.2d 804 (1982), eliminate the need to identify the nature of the claim actually pleaded. *Orr* arose while SCHAC's investigation was still underway and involved an employer seeking judicial intervention in that ongoing administrative process. In discussing judicial interference with agency investigative discretion, the Supreme Court recognized that noninterference is not absolute where fraud, abuse of power, or unreasonable or capricious conduct is alleged. Appellant's Petition expressly alleged arbitrary and capricious agency conduct, unlawful procedure, legal error, and failure to follow required agency procedures. Whether those allegations ultimately establish a reviewable claim presents a legal question; they cannot simply be converted into an allegation that Appellant disagreed with SCHAC's substantive no-cause conclusion.

That distinction is particularly significant under the Rule 12(b)(6) standard already stated above. The issue at that stage was not whether Appellant could ultimately prove every allegation concerning SCHAC's process. The question was whether the Petition, construed in Appellant's favor, pleaded a cognizable basis for relief. Respondent could challenge jurisdiction and could argue that particular relief was unavailable, but its motion could not transform Appellant's pleaded process challenge into a different claim and then obtain dismissal merely because that substituted claim was barred.

Accordingly, the dismissal should not be affirmed simply on the theory that Appellant sought appellate reweighing of SCHAC's no-cause determination. Appellant repeatedly disclaimed such relief and identified specific alleged errors concerning SCHAC's factual framework, classification of the complaint, investigative procedure, treatment of contradictory evidence, and application of the governing timeliness framework. Those claims must be evaluated as pleaded and under the legal standards applicable to each distinct ground for dismissal.

II. TO THE EXTENT THE DISMISSAL RESTED ON RULE 12(b)(6), THE CIRCUIT COURT ERRED BY ADOPTING RESPONDENT'S RECHARACTERIZATION RATHER THAN EVALUATING THE PETITION AS PLEADED.

The Rule 12(b)(6) inquiry required the circuit court to evaluate the Petition Appellant actually filed. It did not permit Respondent to substitute a different factual theory for Appellant's allegations and then obtain dismissal of that substituted theory.

Under *Thompson v. Killian*, Op. No. 28305 (S.C. Sup. Ct. filed Nov. 5, 2025), and *Gentry v. Yonce*, 337 S.C. 1, 5, 522 S.E.2d 137, 139 (1999), the court considers whether, viewing the pleading in the light most favorable to the plaintiff and resolving every doubt in the plaintiff's favor, the pleading states any valid claim for relief. See also *Baird v. Charleston County*, 333 S.C. 519, 527, 511 S.E.2d 69, 73 (1999).

Appellant's Petition expressly alleged that SCHAC's conduct was arbitrary and capricious, affected by error of law, unsupported by substantial evidence, and made upon unlawful procedure. The Petition alleged that SCHAC misclassified Appellant's allegations, used an incorrect factual and timeliness framework, failed to verify material facts, failed to reconcile contradictory evidence, and failed to evaluate the retaliation claim under the factual theory Appellant actually presented.

Respondent's Motion to Dismiss did not merely test those allegations for legal sufficiency. Instead, Respondent characterized the matter principally as an untimely challenge arising from Appellant's January 2023 application and an alleged March 26, 2024 notice that the position had been filled. Respondent calculated 581 days between March 26, 2024, and the filing of Appellant's later retaliation complaint and argued that the complaint was untimely.

That characterization did not address the retaliation theory pleaded by Appellant. The Petition alleged later retaliatory conduct and later-discovered information, including the District's subsequent acknowledgment that Appellant had in fact applied for the position after the District had previously maintained that no application existed. Appellant alleged that this later conduct and the District's failure to correct its earlier representation were material to the retaliation claim and to SCHAC's timeliness analysis.

SCHAC's own records demonstrate that the later retaliation matter was not merely hypothetical. On October 29, 2025, SCHAC Director Alex Nelson wrote to Appellant that SCHAC had received an "initial inquiry questionnaire" from him the previous day and requested clarification of the specific harm and allegations forming the basis of that complaint. Respondent's Motion to Dismiss likewise expressly acknowledged that Appellant "filed another complaint with SCHAC alleging retaliation on October 28, 2025."

That admission is significant because Respondent separately relied upon S.C. Code Regs. 65-2(H)(3) to argue that Appellant could not amend his previously closed discrimination complaint. Respondent thereby addressed two procedurally distinct matters: a request concerning the already-closed complaint and a separate retaliation complaint filed on October 28, 2025.

The regulation itself preserves that distinction. S.C. Code Regs. 65-2(H)(1) provides that a complaint may be amended to cure technical defects or clarify allegations and further provides that additional unlawful employment practices that are not clearly related to the original complaint "may, if timely, be made in a separate complaint." Subsection (H)(3), by contrast, provides that an existing complaint may not be amended after a letter of determination, final order, conciliation, or dismissal.

Thus, the prohibition against amending a closed complaint did not, by its own terms, resolve the legal status of the separate retaliation complaint SCHAC acknowledged receiving on October 28, 2025. That separate complaint required its own analysis, including whether it alleged a timely unlawful employment practice and whether the factual allegations were sufficient under the governing statute and regulations.

The retaliation questionnaire itself further demonstrates why the relevant factual framework could not simply be reduced to the January 2023 application or March 2024 hiring event. Appellant identified retaliation as the basis of the complaint and alleged that the District's statement that he never applied, the subsequent discovery of records showing that he did apply, the failure to correct that representation, and later records-related conduct occurred after Appellant engaged in protected activity.

The questionnaire separately identified June 7, 2025, as the date Appellant complained to Matthew Clements, the District's FOIA and Compliance Officer. That date was part of the factual

chronology of Appellant's asserted protected activity and alleged later retaliation; it was not the date on which the new SCHAC retaliation complaint was filed. SCHAC's own Motion identified October 28, 2025, as the filing date of the separate retaliation complaint.

This distinction matters because Respondent's timeliness defense depended upon selecting March 26, 2024, as the controlling date of the alleged violation. Appellant's Petition, however, alleged later conduct as part of the retaliation claim. Whether that later conduct ultimately constitutes an independently actionable retaliatory act is a legal question that must be analyzed under the governing law. But at the Rule 12(b)(6) stage, Respondent's selection of an earlier date could not simply replace the later factual allegations pleaded by Appellant without addressing them.

Timeliness is ordinarily an affirmative defense. Under *Spence v. Spence*, 368 S.C. 106, 123, 628 S.E.2d 869, 878 (2006), an affirmative defense ordinarily may not be resolved under Rule 12(b)(6) unless the allegations of the pleading themselves demonstrate the defense. Likewise, in *Brown v. Leverette*, 291 S.C. 364, 367, 353 S.E.2d 697, 699 (1987), the Supreme Court held that dismissal on statute-of-limitations grounds was improper where the defense was not apparent from the face of the complaint. Here, Respondent's timeliness theory depended upon treating March 26, 2024, as the controlling alleged violation despite Appellant's allegations of later retaliatory conduct. The timeliness defense therefore could not be established at the pleading stage merely by adopting Respondent's disputed characterization of which alleged act controlled.

Appellant expressly brought this problem to the circuit court's attention before judgment. He stated that Respondent's Motion to Dismiss "argued against a claim Petitioner did not plead" and that "[a] motion to dismiss cannot be granted by rewriting the Petition and then dismissing the rewritten version." Appellant identified the pleaded issues as unlawful procedure, legal error,

misclassification of the retaliation complaint, use of the wrong factual and timeliness framework, failure to evaluate contradictory evidence, and arbitrary or capricious agency action.

The same distinction defeats reliance upon the closed-complaint amendment rule as a complete answer to the Petition. Appellant does not dispute that S.C. Code Regs. 65-2(H)(3) prevents a complainant from amending an existing complaint after a determination or dismissal. The point is that Respondent's own Motion acknowledged that Appellant subsequently filed "another complaint" alleging retaliation. Regulation 65-2(H)(1) expressly contemplates a separate complaint for additional unlawful employment practices where the regulatory requirements, including timeliness, are satisfied.

Accordingly, the relevant Rule 12(b)(6) question was not whether Appellant was permitted to amend the closed age-discrimination complaint. It was whether the Petition stated a cognizable challenge to SCHAC's treatment of the separate retaliation complaint, including SCHAC's classification of the claim, selection of the operative date, treatment of later alleged conduct, and application of its timeliness rules.

This does not require the appellate court to determine that Appellant ultimately proved retaliation or that every alleged later event constituted an actionable employment practice. Rule 12(b)(6) concerns the sufficiency of the pleading, not ultimate proof. The factual allegations and reasonable inferences had to be evaluated in Appellant's favor, while the legal sufficiency of those allegations remained for the court to decide under the correct factual framework.

Accordingly, to the extent the dismissal rested upon Rule 12(b)(6), timeliness, or the proposition that Appellant was merely attempting to amend a previously closed complaint, the dismissal should be reversed. The Petition had to be evaluated as pleaded, including its allegations

concerning the separate retaliation complaint and later conduct, rather than under Respondent's recharacterization of the case as solely an untimely challenge to the original failure-to-hire event.

III. THE CIRCUIT COURT ERRED BY ACCEPTING A TIMELINESS ANALYSIS BASED UPON AN EARLIER FAILURE-TO-HIRE EVENT RATHER THAN ADDRESSING APPELLANT'S ALLEGED LATER RETALIATION CLAIM.

S.C. Code Ann. § 1-13-90(a) requires a complaint to be filed within 180 days after the alleged discriminatory practice occurred. The controlling question therefore depends upon identification of the unlawful employment practice actually alleged. Appellant's Petition challenged SCHAC's treatment of a later retaliation complaint, not merely the original January 2023 failure-to-hire event.

Retaliation is independently prohibited by S.C. Code Ann. § 1-13-80(F), which makes it unlawful for an employer to discriminate against an employee or applicant because the individual opposed an unlawful employment practice or made a charge, testified, assisted, or participated in a proceeding under the South Carolina Human Affairs Law. Appellant alleged protected activity through his prior age-discrimination charge and alleged that retaliatory conduct occurred afterward.

Respondent nevertheless calculated timeliness from an alleged March 26, 2024, notice concerning the earlier hiring decision and argued that 581 days elapsed before Appellant filed the separate retaliation complaint on October 28, 2025. That calculation answers the timeliness question only if March 26, 2024, was the sole alleged unlawful employment practice. Appellant's Petition alleged otherwise.

The retaliation submission alleged conduct occurring after May 1, 2025, including Appellant's June 7, 2025, complaint to the District, the District's July 7, 2025, discovery and acknowledgment of the previously disputed application, and Appellant's allegations that

thereafter the District failed to correct its prior representation to SCHAC and failed to produce requested records. Appellant does not contend that the June 7 complaint or the July 7 discovery of the application was itself necessarily an actionable retaliatory act. Rather, those events formed part of the chronology from which Appellant alleged later retaliatory conduct. The relevant legal question was whether any specifically alleged post-May 1, 2025, conduct constituted an independently actionable, materially adverse retaliatory act under S.C. Code Ann. § 1-13-80(F).

Appellant does not contend that merely labeling earlier conduct "continuing" revives an otherwise untimely failure-to-hire claim. *National Railroad Passenger Corp. v. Morgan*, 536 U.S. 101, 110–14 (2002), holds that discrete discriminatory or retaliatory acts have separate filing periods and that an untimely earlier act is not revived merely because it is related to a later act.

Under *Morgan*, an earlier discrete act cannot be revived merely by characterizing its continuing effects as retaliation. But *Morgan* equally requires a separate filing-period analysis for each later act alleged to be independently retaliatory. Accordingly, the earlier failure-to-hire event and the District's earlier representation could serve as background evidence, while any independently actionable retaliatory conduct occurring within 180 days before the October 28, 2025, complaint required its own analysis under § 1-13-80(F) and the materially-adverse standard.

That federal authority is particularly relevant because the South Carolina Supreme Court has recognized that the Human Affairs Law essentially follows the substantive structure of Title VII and that federal decisions interpreting materially analogous provisions are persuasive in construing the state law. *Orr v. Clyburn*, 277 S.C. 536, 540–41, 290 S.E.2d 804, 806 (1982).

Nor did the termination of Appellant's employment in 2023 necessarily render subsequent alleged retaliation legally irrelevant. In *Robinson v. Shell Oil Co.*, 519 U.S. 337, 346 (1997), the

Supreme Court held that Title VII's anti-retaliation provision protects former employees from retaliatory post-employment conduct. And *Burlington Northern & Santa Fe Railway Co. v. White*, 548 U.S. 53, 67–68 (2006), holds that actionable retaliation is not confined to conduct occurring at the workplace or directly altering the terms of employment; the question is whether the challenged conduct is materially adverse under the retaliation standard.

Accordingly, the proper timeliness inquiry required identification of each later act Appellant actually alleged, determination of whether any such act was materially adverse and independently actionable as retaliation, and application of the 180-day period to any qualifying act. Appellant does not ask the appellate court to decide in the first instance that every later event constituted retaliation. The point is that Respondent could not establish untimeliness simply by treating the earlier hiring event as the only possible unlawful employment practice while disregarding the later retaliation allegations.

The circuit court therefore could not resolve the timeliness issue merely by accepting Respondent's March 26, 2024, starting point. At minimum, the later retaliation allegations required analysis under § 1-13-80(F), § 1-13-90(a), *Morgan*, and the materially-adverse retaliation standard before the separate retaliation complaint could be dismissed as untimely.

IV. THE CIRCUIT COURT ERRED BY DISMISSING THE PETITION WITHOUT ADDRESSING THE MATERIAL CONTRADICTION CONCERNING APPELLANT'S JANUARY 6, 2023, APPLICATION.

A central factual premise of SCHAC's investigation was the District's representation that Appellant had not submitted an application for the Southside High School physical-education position in January 2023. The District's position statement asserted that its records contained no January 2023 application and that the last application received from Appellant was in 2022.

SCHAC's own investigative materials, however, reflected contrary information even during the investigation. Appellant provided the January 2023 email in which Dr. Christopher Emerson stated, "Thank you for applying." SCHAC's investigator recorded that evidence and specifically noted the need to address Dr. Emerson's email. When SCHAC later interviewed Dr. Emerson on March 31, 2025, he reviewed the email communications and confirmed that his communication with Appellant concerning the position included an email thanking Appellant for applying, although Dr. Emerson did not claim that he personally received Appellant's application.

The contradiction became more substantial when the District itself wrote on July 7, 2025: "Thank you for the clarification. It allowed us to track down your application for the position." The District further stated that its log showed Appellant's application was submitted on January 6, 2023, at 3:03 p.m. by Ms. Scott and explained that the process involved manually adding an applicant to an open position.

Appellant's Petition expressly alleged this contradiction. It alleged that SCHAC's investigation had proceeded on the District's representation that no application existed and that later District records materially contradicted that representation. Appellant raised the contradiction as evidence supporting his claims of an incorrect factual framework, inadequate investigation, failure to address materially inconsistent information, and arbitrary or capricious agency action.

The governing investigative regulations reinforce the procedural significance of that allegation. S.C. Code Regs. 65-3(A)(2) provides that investigators shall do those things "necessary and proper to thoroughly investigate a complaint," subject to the proper scope of investigation, and Regulation 65-3(A)(6)(a) requires a "prompt and complete investigation" of allegations meeting the requirements of Regulation 65-2. Regulation 65-3(A)(6)(b) further addresses the receipt and acquisition of evidence relevant to the complaint. Regulation 65-6 provides that a reasonable-

cause determination must be based on and limited to evidence obtained by the Commission and may not make a judgment on the merits of allegations not investigated.

Appellant does not rely upon those provisions for the broader proposition that evidence discovered after dismissal automatically required SCHAC to reopen the original proceeding. Rather, they demonstrate why Appellant's allegation that the investigation proceeded under a materially disputed factual premise presented a procedural issue distinct from a request that the circuit court itself decide whether discrimination occurred.

Appellant does not ask the Court of Appeals to determine from the July 7, 2025, evidence that discrimination or retaliation occurred. Nor does Appellant contend that the later discovery of the application, standing alone, establishes liability. The narrower issue is whether the Petition stated a cognizable procedural challenge when it alleged that SCHAC's investigation and subsequent treatment of the matter rested upon or failed to address a factual premise later contradicted by the District's own records.

That distinction is important because the contradiction concerned more than a collateral detail. Whether Appellant had applied was directly related to the District's explanation, the factual framework SCHAC investigated, and the later dispute over how Appellant's retaliation allegations should be treated. The District's later identification of the application therefore bore directly upon the process-based allegations pleaded in the Petition.

At the dismissal stage, the circuit court was not required to decide which account ultimately prevailed. But neither could the pleaded contradiction be disregarded by treating Respondent's factual characterization as established. Appellant was entitled to have the legal sufficiency of his procedural allegations evaluated on the facts pleaded, including the allegation that the agency

process had been affected by materially inconsistent information concerning the existence of the January 6, 2023, application.

Accordingly, dismissal should not be sustained without addressing Appellant's preserved allegation that SCHAC's treatment of the matter proceeded under, or failed adequately to address, a materially disputed factual premise concerning whether he had applied for the position.

V. TO THE EXTENT THE CIRCUIT COURT'S DISMISSAL RESTED UPON S.C. CODE ANN. § 1-13-90(d)(4), THE COURT WAS REQUIRED TO SEPARATELY ANALYZE THE NATURE OF APPELLANT'S PROCESS-BASED CLAIMS AND THE PROPER FORUM FOR ANY REVIEWABLE AGENCY ACTION.

Appellant does not dispute the language of S.C. Code Ann. § 1-13-90(d)(4). That provision authorizes the Commissioner, after review of the case file and the investigator's recommendation, to issue an order dismissing the charge or bringing an action in equity and provides that "which order shall not be subject to judicial or other further review."

Appellant likewise does not contend that S.C. Code Ann. § 1-23-380 permits a court simply to disregard that express statutory limitation and reweigh SCHAC's ultimate no-cause determination. The issue presented is narrower: whether § 1-13-90(d)(4)'s prohibition against further review of the Commissioner's dismissal order automatically disposes of every separately pleaded allegation concerning unlawful procedure, legal error, misclassification, use of an incorrect factual framework, and treatment of allegedly contradictory evidence.

The Petition did not merely allege that SCHAC reached the wrong conclusion on the underlying discrimination claim. It alleged that SCHAC processed Appellant's allegations under an incorrect factual and legal framework, misclassified the later retaliation complaint, selected an allegedly incorrect operative date for timeliness purposes, failed to reconcile materially contradictory

evidence concerning Appellant's January 6, 2023, application, and failed to follow governing investigative procedures. Those allegations challenged the legality of the process by which the agency acted rather than asking the circuit court itself to determine whether discrimination or retaliation occurred.

Section 1-23-380 supplies standards governing judicial review when review is otherwise authorized. It permits relief for agency action made upon unlawful procedure, affected by error of law, unsupported by the whole record, or arbitrary or capricious, and it recognizes immediate review of certain preliminary, procedural, or intermediate agency actions where later review would not provide an adequate remedy. Appellant does not contend that those provisions independently override § 1-13-90(d)(4) or convert SCHAC's investigative dismissal into a contested-case decision. Rather, Appellant invoked those standards to identify the nature of the procedural and legal defects alleged in the Petition.

That distinction is reinforced by *Orr v. Clyburn*, 277 S.C. 536, 290 S.E.2d 804 (1982). *Orr* held that SCHAC's investigative determination is non-adjudicatory, imposes no liability, and is not binding upon the employer, and it recognized the statutory prohibition against judicial review of the Commissioner's decision whether SCHAC itself will proceed. But *Orr* also stated that courts ordinarily will not interfere with an agency's exercise of investigative discretion "except in cases of fraud or abuse of power, or where unreasonable or capricious." Id. at 542, 290 S.E.2d at 807. Appellant's Petition expressly alleged arbitrary and capricious conduct, unlawful procedure, and legal error. Appellant therefore does not rely upon *Orr* as authorizing merits review of SCHAC's no-cause determination; he relies upon the distinction *Orr* itself recognized between prohibited review of the agency's substantive investigative disposition and an adequately pleaded challenge to allegedly unlawful or capricious agency conduct.

Respondent's own Motion to Dismiss demonstrates why the distinction matters. SCHAC first argued that review was completely barred under § 1-13-90(d)(4). It then argued in the alternative that, if the challenged agency action were reviewable under the Administrative Procedures Act, Appellant had proceeded in the wrong tribunal. SCHAC separately sought dismissal under Rule 12(b)(6) based upon timeliness and the prohibition against amending a closed complaint.

Those theories are legally distinct. A conclusion that an agency action is statutorily nonreviewable is different from a conclusion that the action may be reviewable but was presented in the wrong forum. Both are different from a conclusion that the Petition fails to state a legally sufficient claim. Each ground therefore required analysis according to its own legal standard.

To the extent a challenged agency action constituted a final decision in a contested case subject to APA appellate review, S.C. Code Ann. § 1-23-600(D) assigns appellate jurisdiction to the Administrative Law Court, subject to statutory exceptions. See *Allen v. South Carolina Department of Corrections*, 439 S.C. 164, 886 S.E.2d 671 (2023). That principle does not establish that the Commissioner's § 1-13-90(d)(4) dismissal itself was appealable to the Administrative Law Court. It instead confirms that the questions of non-reviewability and proper forum are analytically separate and could not be treated as interchangeable grounds for dismissal.

This distinction is particularly important because subject-matter jurisdiction and the substantive sufficiency of a claim are separate inquiries. If the circuit court lacked jurisdiction over a particular category of agency action, the jurisdictional question had to be resolved as such. If a particular procedural claim was independently reviewable but belonged in another tribunal, the proper forum had to be identified under the governing statutory scheme. And if the court reached

Rule 12(b)(6), the Petition had to be evaluated under the pleading standard discussed above rather than by treating Respondent's factual characterization as established.

Accordingly, to the extent dismissal rested upon § 1-13-90(d)(4), the statutory prohibition should not be extended beyond the agency action it governs without determining whether Appellant's separately pleaded process-based allegations were themselves barred, independently reviewable, or required to be presented in another tribunal. Appellant does not seek merits review of SCHAC's no-cause determination; he seeks appellate review of whether the circuit court properly analyzed the distinct legal and procedural claims actually pleaded.

For these reasons, the dismissal should be vacated or reversed to the extent it treated all of Appellant's process-based allegations as indistinguishable from an impermissible merits appeal of SCHAC's no-cause determination, and the matter should be remanded for application of the proper jurisdictional and Rule 12 standards to the claims actually pleaded.

CONCLUSION

For the foregoing reasons, Appellant respectfully submits that the circuit court erred in dismissing the Petition without separately addressing the legal and procedural claims actually pleaded. Appellant did not ask the circuit court to reweigh SCHAC's no-cause determination or decide the merits of the underlying discrimination or retaliation claims. He challenged alleged unlawful procedure, legal error, misclassification of the retaliation complaint, use of an incorrect factual and timeliness framework, failure to address materially contradictory evidence, and arbitrary or capricious agency action.

The Petition was required to be evaluated as pleaded and under the proper jurisdictional and Rule 12 standards. Respondent's characterization of the matter as merely an untimely attempt to challenge or amend a closed discrimination complaint could not substitute for analysis of

Appellant's separately pleaded claims concerning the later retaliation complaint and the materially disputed evidence regarding his January 6, 2023, application.

Accordingly, Appellant respectfully requests that this Court reverse or vacate the dismissal and remand the matter for further proceedings consistent with this Court's decision.

PRAYER FOR RELIEF

WHEREFORE, Appellant Wendell Don Cooper respectfully requests that this Court:

1. Reverse or vacate the circuit court's dismissal of Appellant's Petition for Judicial Review;
2. Remand the matter for proper consideration of the legal, procedural, jurisdictional, timeliness, and pleading issues actually raised in the Petition;
3. Direct that Appellant's process-based claims be evaluated separately from any prohibited request to reweigh SCHAC's ultimate no-cause determination;
4. Direct that the separate retaliation complaint, the applicable timeliness framework, and the materially contradictory evidence concerning Appellant's January 6, 2023, application be addressed under the proper legal standards; and
5. Grant such other and further relief as this Court deems just and proper.

Respectfully submitted,

s/ Wendell Don Cooper
Wendell Don Cooper
Appellant, Pro Se

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SC Court of Appeals

CERTIFICATE OF SERVICE

I hereby certify that on October 1, 2026, I served a true and correct copy of the foregoing Brief of Appellant upon counsel of record for Respondents by electronic mail and by depositing a copy in the United States Mail, first-class postage prepaid, addressed as follows:

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October 1, 2026

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