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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Daniel Coble, Circuit Court Judge

Appellate Case No. 2026-000357
Civil Action No. 2022-CP-40-05552

South Carolina Automobile and Truck Dealers Association, Respondent,

v.

South Carolina Department of Consumer Affairs, Appellant.

INITIAL REPLY BRIEF OF APPELLANT

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ARGUMENTS

The South Carolina Department of Consumer Affairs (“DCA”) did not solicit its responsibilities under the 2016 Closing Fee Statute (“2016 Statute”). The South Carolina Automobile and Truck Dealers Association (“SCADA”) was instrumental in the drafting and passage of the 2016 Statute. Once it passed, DCA adapted to its new regulatory mandate. Admittedly, DCA’s practices over the years in administering the 2016 Statute evolved, but DCA was not provided with a playbook. DCA first conducted reasonableness reviews (determine whether the proposed fee was supported by documentation), then added inspections (determine whether the fee was properly posted and charged on buyer’s orders), and in 2022 added compliance reviews (determine whether the fee was included in the advertised price as required).

DCA’s conduct was well reasoned and based on an exercise of judgment. Even if this Court disagrees with DCA’s interpretation of the 2016 Statute, this disagreement does not translate into a finding of arbitrariness. The trial court’s failure to recognize this distinction was a fundamental error. Several times throughout SCADA’s brief, it attempts to distract this Court—as it successfully did the trial court—by taking portions of statutes and quotes out of context. DCA asks this Court to consider SCADA’s arguments in light of the full text of the statutes and quotes.

I. THE TRIAL COURT INCORRECTLY CONSTRUED THE APPLICABLE PROVISION OF THE CODE IN FINDING DCA’S COMPLIANCE REVIEWS WERE ARBITRARY AND CAPRICIOUS.

A. DCA’s interpretation of the 2016 Closing Fee Statute (“2016 Statute”) was reasonable and did not demonstrate arbitrariness.

The trial court found that DCA’s ability to access books, accounts, and records applied only during DCA’s review of a dealership’s proposed closing fee for reasonableness.¹ DCA contends

¹ Again, it must be stressed, SCADA **never** advanced this statutory interpretation until it submitted its proposed order after the trial had concluded.

this interpretation of the Closing Fee Statute is incorrect.² DCA also contends that its interpretation of the Closing Fee Statute was not “patently absurd and contrary to law.” The trial court’s limiting interpretation runs counter to the 2016 Statute’s pronouncement that DCA “shall administer and enforce the subject of motor vehicle dealer closing fees including, but not limited to, this section.” S.C. Code Ann. § 37-2-307(E)(1). This is not limiting language.

The trial court’s interpretation is also incorrect and illogical when compared with the inspections of motor vehicle dealerships performed by DCA. Inspections, which were mostly unannounced and conducted without any probable cause, sought the review of buyer’s orders for multiple deals.³ The inspections were not performed as part of a review of a dealership’s proposed closing fee for reasonableness. DCA is merely asking for consistency on this point. If an inspection is allowed and “expected” by the industry, surely DCA’s interpretation of the 2016 Statute allowing compliance reviews cannot be so far-fetched as to call it patently absurd. [Trial trans. 279-80, 361-63]

DCA would certainly prefer this Court issue an opinion finding that the trial court’s interpretation was incorrect, and that DCA had the specific statutory authority, under the 2016 Statute, to conduct compliance reviews. However, this Court need not reach this conclusion to recognize the trial court’s error. This Court can find that DCA’s decision to conduct compliance reviews based on its reading of the 2016 Statute was not without “any course of reasoning [or] exercise of judgment.” *Deese v. S.C. State Bd. of Dentistry*, 286 S.C. 182, 184-85, 332 S.E.2d 539, 541 (Ct. App. 1985). In other words, it was not arbitrary.

² Even assuming SCADA’s argument that the statute only permits a review of reasonableness, it is illogical to conclude that an initial approval permanently divests DCA of its authority. To accomplish the statute’s regulatory purpose, DCA must retain the power to determine whether a previously approved closing fee remains reasonable over time.

³ SCADA incorrectly states DCA’s inspections included “obtain[ing] the advertised price and the sales contract for several deals.” Resp. Br. 22. DCA did not obtain advertised prices prior to starting its compliance reviews. [Trial trans. 131-33]

B. DCA's compliance reviews of motor vehicle dealers are similar to reviews conducted with respect to other industries and serve as evidence that DCA did not act arbitrarily and had substantial justification for its actions.

DCA does not contend that the statutes granting it the authority to conduct compliance reviews of other regulated industries are identical to the 2016 Statute. However, a comparison of the other statutory grants of authority—together with evidence that DCA has conducted compliance reviews of other industries for many years—supports an inference that DCA's interpretation of the 2016 Statute and its conduct in conducting compliance reviews, without first having a complaint, was reasonable and rational.

SCADA's comparison of the other statutes is grounded in an assumption that the 2016 Statute allows access to records only for the single purpose of a reasonableness review. However, SCADA is begging a question that is not even relevant to this matter. Whether or not DCA's interpretation of the 2016 Statute is correct does not disprove DCA's assertion that its own interpretation was reasonable and rational. DCA points to the other statutes not as direct comparisons to the 2016 Statute but as reasonable comparators that would lead one, who is following a course of reasoning and an exercise of judgment, to conclude that the 2016 Statute also allowed access to records without a prior complaint. That was the common ground shared between the 2016 Statute and the other statutes; they do not require probable cause or a complaint before a full review of books and records can be conducted to determine compliance with the statute.

Such evidence, which should have been credited by the trial court, supports DCA's belief that it could also conduct compliance reviews of motor vehicle dealers that charged a closing fee. Logically, it is much less reasonable to believe that compliance reviews could be conducted of

every other regulated industry except motor vehicle dealers, especially in such a highly-regulated industry. [Resp. Br. 15]

To the extent SCADA attempts to distinguish the language of other regulatory statutes from the closing fee records language, it falls short. For example, SCADA highlights the provision of the mortgage brokers statute, S.C. Code Ann. § 40-58-65, that allows one examination per year of the broker's books and records to determine compliance with the statute. Any additional requests for access to books and records during the same year would require DCA to have a reason, i.e., probable cause, to believe the mortgage broker had violated the law. That one examination can be performed without "cause or complaint" to determine compliance with the statute. This is exactly like the 2016 Statute.

SCADA claims that the pawnbrokers statute, S.C. Code Ann. § 40-39-90, is contrasted to the 2016 Statute because the former mandates that a pawnbrokers' records "must at all reasonable times be open to [] inspection." The 2016 Statute states DCA "**shall** have access to a motor vehicle dealer's books, accounts and records . . ." with no reference to time limitations. It could be read that the pawnbrokers statute is more limiting than the 2016 Statute. Such a difference reinforces DCA's argument that the General Assembly knows exactly how to set parameters for each industry it chooses to regulate.

The remaining statutes SCADA cites also do not hold up to scrutiny and frankly miss the point: not one requires probable cause or a complaint prior to a review of records.

C. The amendment to the 2016 Statute shows the Legislature intended a departure from the original law, which is strong evidence supporting the reasonableness of DCA's rational interpretation of the 2016 Statute.

DCA submits that the 2023 amendment changed the law rather than clarifying it, providing clear evidence DCA had the authority to conduct compliance reviews under the 2016 Statute.

Legislative amendments are presumed to change existing law, not merely restate it. *Vernon v. Harleysville Mut. Cas. Co.*, 244 S.C. 152, 157–58, 135 S.E.2d 841, 844 (1964). SCADA seemingly agrees in asserting the 2023 amendment was “intended to change the law, not merely to restate it.” [Resp. Br. 24] In Mr. Floyd’s testimony to the Legislature in February 2023, he stated, “someone [needs to] weigh in and define the Department’s statutory authority.” [DCA Pre-trial Brief 11] While SCADA claims the 2023 amendment was passed to curb DCA’s overreach, this argument actually confirms that the 2016 Statute granted DCA the broad authority to conduct reviews without complaints or probable cause; otherwise, an amendment to strip that power would have been unnecessary.

The House Legislative Oversight Committee (“HLOC”) also recognized that the 2023 amendments worked a change to the 2016 Statute, rather than simply to restate or clarify the law. The report stated, “Prior to the passage of [the 2023 Statute], DCA had statutory authority to access a vehicle dealer’s books, accounts, and records” HLOC characterized the statute as giving “broad authority” to DCA. This characterization should have been considered by the trial court as competent evidence that DCA had a valid and rational belief that it could undertake compliance reviews.

The Administrative Law Court’s finding that DCA possessed “authority under the plain language of the closing fee statute [to] access[] books, accounts, and records for the purposes of determining compliance with that section” provides additional evidence and support that DCA had a reasonable basis for believing it had the authority to conduct compliance reviews. SCADA fails to address this finding, which was issued only two months into this lawsuit. Perhaps it is because SCADA’s HLOC testimony acknowledged that DCA’s original statutory authority was either broad or open to interpretation, necessitating legislative intervention to restrict it. [DCA Pre-trial Br. 11]

D. DCA's compliance reviews were not warrantless searches.

SCADA's repeated references to DCA's compliance reviews as "warrantless searches" and "warrantless investigations" is a red herring. As DCA explained at length through trial testimony and its Brief to this Court, there is a patent difference between compliance reviews and investigations. [Trial Trans. 224-25, 511-14, 554-56] DCA's activities were compliance reviews conducted pursuant to the plain language of the 2016 Statute. DCA did not need a search warrant or a "cause or complaint" to conduct compliance reviews in the same manner as DCA does for several other regulated industries with similar language in their statutes or regulations. SCADA admits that the closing of a motor vehicle transaction is a "highly regulated" transaction, i.e., a transaction of a "closely regulated" industry. [Resp. Br. 15] Warrants are not required to inspect records of closely regulated industries. *See Liberty Coins v. Goodman*, 880 F.3d 274 (6th Cir. 2018); *City of Los Angeles v. Patel*, 576 U.S. 409, 454 (2015) (Scalia, J. dissenting).

Moreover, the U.S. and South Carolina constitutions prohibit "unreasonable searches." *See* U.S. Const. amend. IV; S.C. Const. art. I, § 10. DCA's compliance reviews were not searches. They were prescribed by law—here the 2016 Statute—to provide regulatory oversight of businesses. *See Wyman v. James*, 400 U.S. 309, 323-24 (1971).⁴ The compliance reviews also were not unreasonable. DCA requested a spreadsheet and four items from deal jackets for, at most, thirty transactions from each dealership. [Trial Tr. 144-145, 213-14; App. Br. 22.] Noncompliance with DCA's requests resulted in the revocation, for about 24 hours, of three motor vehicle dealers' closing fee certificates.⁵ DCA never considered or suggested any criminal sanctions could occur.

⁴ The U.S. Supreme Court questioned whether a home visit of a welfare recipient as a condition of continued receipt of welfare benefits was a "search" and analogized it to be more akin to an IRS auditor requesting information to substantiate a tax deduction.

⁵ S.C. Code Ann. § 37-2-307(F) (Supp. 2022) said, "It is the intent of the General Assembly to authorize a motor vehicle dealer to charge a closing fee in compliance with this section[.]" DCA's position regarding these three dealers was that they were not operating "in compliance with this section" because they refused DCA access to the books, accounts, and records, and therefore were no longer "authorize[d]" to charge a closing fee.

When noncompliance with a “search” does not result in criminal sanctions, a warrant is not needed. *See Parks v. Laurens Cotton Mills*, 75 S.C. 560, 56 S.E. 234 (1907); *Camara v. Mun. Court of the City and Cnty. of San Francisco*, 387 U.S. 523 (1967); *See v. City of Seattle*, 378 U.S. 541 (1967); *Wyman v. James*, 400 U.S. 309 (1971); *City of Los Angeles v. Patel*, 576 U.S. 409 (2015).

E. SCADA’s reliance on the alleged pretextual justification for DCA’s compliance reviews shows that evidence of complaints should not have been admitted at trial.

DCA never defended this action by claiming that prior complaints justified the compliance reviews. The compliance reviews were justified by the language of the 2016 Statute. This should have been a case of cross-motions for summary judgment based on the interpretation of the 2016 Statute.⁶ DCA’s actions regarding the compliance reviews were not really in dispute. DCA never claimed it had complaints against the dealerships that were reviewed. DCA has consistently argued all along that the compliance reviews were authorized by the terms of the 2016 Statute, with or without previous complaints. If this interpretation was incorrect, so be it. But it was not an arbitrary interpretation, and DCA was substantially justified in pressing its claims in this litigation.

II. THE TRIAL COURT SHOULD HAVE FOUND THIS CASE WAS MOOT BASED ON THE AMENDMENT TO THE 2016 STATUTE.

The 2023 amendments mooted SCADA’s challenge to DCA’s conduct under the 2016 Statute. Shockingly, after “emphatically” stressing that this case is not about prospective relief, SCADA now claims that its “concerns about the Department’s administration of the statute were **not** negated by the 2023 amendments.” [Resp. Brief 30 (emphasis added)] SCADA goes on to say that it “**seeks** to protect its members from overreach” (emphasis added) in DCA’s administration of the 2016 Statute. SCADA is reframing its requested declaratory relief to portray a fictional,

⁶ Surprisingly, after three years of litigation, and an appearance on two previous trial rosters, on the weekend before this trial began, SCADA offered to have this case submitted on cross-motions for summary judgment.

ongoing, active controversy. Even more concerning, SCADA claims it sought declarations about DCA's "conduct and its **continuing** consequences." (emphasis added).

First and foremost, there was no evidence elicited at trial about any continuing consequences to the motor vehicle dealer industry. DCA has not conducted any compliance reviews of motor vehicle dealers since January 2023. [Trial transc. 567] This is SCADA's transparent attempt to manufacture an active controversy all while telling this Court it is not seeking prospective relief. When the 2016 Statute was amended, the controversy ended. By way of illustration, new subsection (E)(3) in the 2023 Statute places limitations on how DCA can check for compliance. By making this change, the General Assembly made DCA's previous compliance exam methodology obsolete. The very language SCADA argues about, "this section," is no longer contained in the law and now more stringent rules apply. No longer does the law refer to the phrase "this section." Thus, there would be no continuing consequences as SCADA would have this Court believe. Therefore, SCADA's concerns are moot.

SCADA cannot have it both ways. It cannot claim this case is about nothing more than DCA's past conduct while also claiming it is seeking to protect its members in the future. There is no further conduct under the 2016 Statute and SCADA admits as much.⁷

SCADA claims that "[a] defendant cannot moot a case 'by repealing a challenged statute and replacing it with one that differs in some insignificant respect.'"⁸ [Resp. Br. at 31, quoting *Abbeville Cnty. Sch. Dist. v. State*, 410 S.C. 619, 629-31, 767 S.E.2d 157, 162-63 (2014)] In *Abbeville*, the supreme court was concerned with actions by defendants themselves that might

⁷ SCADA states, "The Department ceased conducting the compliance review investigations in late 2022, and the General Assembly amended the 2016 Closing Fee Statute in 2023. For these reasons, injunctive relief became moot." [Resp. Br. at 2 n.3] Declaratory relief was also mooted for these same reasons.

⁸ The amendments to the Closing Fee Statute were not insignificant. The amendments took care of 98% of SCADA's concerns with DCA's conduct. [Trial transc. 410-11]

work to moot important questions. The defendants⁹ themselves, “through statute and proviso, [] introduced new education programs.” *Id.* at 631, 767 S.E.2d at 163. “However, the Defendants have not substantially changed the baseline funding mechanisms.” *Id.* Thus, the supreme court found the case was not rendered moot by the defendants’ own legislative maneuvering.

Here, SCADA mooted its own case by seeking fundamental changes to the 2016 Statute. An amendment of a statute is essentially a repeal of the earlier version. *State ex rel. Carter v. State*, 325 S.C. 204, 481 S.E.2d 429 (1997). A case becomes moot “when some event occurs making it impossible for [the] reviewing Court to grant effectual relief.” *Byrd v. Irmo High Sch.*, 321 S.C. 426, 431, 468 S.E.2d 861, 864 (1996). The “event” was SCADA’s lobbying for and getting a statutory amendment that did away with DCA’s conduct. [DCA Pre-trial Brief] There is no effectual relief being granted in the trial court’s order. The order does not change DCA’s practices.

The plaintiffs in *Abbeville* also argued the case was not moot “because the inadequacies in the public education system that gave rise to the constitutional violation persist today.” *Id.* at 630, 767 S.E.2d at 162. The supreme court agreed, finding “the overall funding scheme **continues** to disadvantage them in the same fundamental way.” *Id.* at 631, 767 S.E.2d 163. There is no continuing conduct in the present case.

Importantly, in *Abbeville*, the supreme court also recognized that even if the case was moot, it could nonetheless exercise jurisdiction to provide judicial guidance concerning the current educational program. *Id.* at 631 n. 4, 767 S.E.2d at 163 n. 4. This consideration is not present in the current case. The trial court’s order provides no guidance on future events.

SCADA also cited *Treasured Arts, Inc. v. Watson*, 319 S.C. 560, 463 S.E.2d 90 (1995), asserting a declaratory plaintiff need not submit to sanctions before seeking relief. The plaintiff in

⁹ The defendants were the State of South Carolina, the Governor, the President Pro Tempore of the Senate, and the Speaker Pro Tempore of the House of Representatives. *Abbeville*, 410 S.C. at 624-25, 767 S.E.2d at 159-60.

Watson brought the declaratory action to prove its conduct was proper and it did not need to wait for a criminal conviction to do so. The supreme court agreed, finding a litigant need not “undergo a criminal prosecution as the sole means of seeking relief.” *Id.*, quoting *Babbitt v. United Farm Workers Nat’l Union*, 442 U.S. 289 (1979). In the present case, SCADA was not attempting to engage in any course of conduct and SCADA faced no sanctions. Instead, SCADA brought this action to examine DCA’s conduct, not to declare that SCADA’s actions or its members’ actions were proper.

Finally, in an effort to show that this action is not moot, SCADA claims that “the recurring nature of the Department’s investigative practices satisfies the exceptions for matters capable of repetition yet evading review and of important public interest.” SCADA is not seeking prospective relief. There is no recurring conduct. The conduct complained of has ceased, by SCADA’s own admission. [Resp. Br. p. 2 fn. 3] The capable-of-repetition-yet-evading-review doctrine has no applicability in this matter. Likewise, this is not a matter of important public interest and SCADA has never claimed as much.

As a last-ditch effort made to the trial court and now to this Court, SCADA attempts to claim this case is not moot because the statute governing DCA’s authority to conduct investigations, § 37-6-106(1), was not amended. This case is not about § 37-6-106(1). This case is singularly about the 2016 Statute, its interpretation, and what conduct was permissible pursuant to that statute. Saying that DCA’s conduct should have been governed by § 37-6-106(1) does not create an active case or controversy about § 37-6-106(1).

In SCADA’s scramble to find a justiciable controversy, all it can point to are fictional future concerns. The trial court’s order is nothing more than an avenue for SCADA’s unreasonable attorneys’ fee request. The trial court’s order does not change any of DCA’s practices. The trial

court's order gives SCADA nothing but "vindication"¹⁰ and attorney's fees. The trial court's order has "no practical legal effect upon [the] existing controversy." *Abbeville*, 410 S.C. at 629, 767 S.E.2d at 162, quoting *Mathis v. S.C. State Highway Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973). The trial court erred by not dismissing this case based on mootness.

III. DCA'S ISSUANCE OF THE MEMORANDUM AND ITS SOCIAL MEDIA POSTS WERE NOT ARBITRARY.

DCA relies on its arguments in its opening brief concerning the Memorandum and its social media posts. It should be clear to this Court that an issue of arbitrariness cannot be "tried" by simply admitting the Memorandum and social media posts into evidence but not submitting any evidence concerning why they were arbitrary. Barring a clear showing that DCA does not have the authority to issue an educational memo to businesses and post educational material on its social media pages for consumers, the trial court should have shown deference to DCA's interpretation of its statutory authority. *See Lexington Law Firm v. S.C. Dep't of Consumer Affairs*, 382 S.C. 580, 586, 677 S.E.2d 591, 594 (2009) (holding this Court should defer to the Department's findings where there is no compelling reason to reject it). Allowing such a finding of arbitrariness to stand based on these facts could ultimately chill all compliance efforts across many regulatory agencies in this State.

IV. SCADA LACKED STANDING TO BRING ANY CLAIMS CONCERNING THE MEMORANDUM OR SOCIAL MEDIA POSTS.

DCA contends SCADA did not have standing to bring its claims regarding the Memorandum or social media posts. SCADA argues it meets the elements of associational standing under *Pres. Soc'y of Charleston v. S.C. Dep't of Health & Env't Control*, 430 S.C. 200, 845 S.E.2d 481 (2020). SCADA's reliance on *Preservation Society* is misplaced.

¹⁰ See Appellant's DOM 38.

The first element of associational standing, which is completely ignored by SCADA, is that “at least one member would otherwise have standing (statutory, constitutional, or otherwise) to sue in his or her own right.” *Id.* at 211, 845 S.E.2d at 487. In analyzing this first element of associational standing, the supreme court found the plaintiffs possessed standing pursuant to a statute that allowed an “affected person” to file a request for a contested case. *Id.* at 212-17, 845 S.E.2d at 487-90. In the present case, SCADA is not relying on any statute for its standing.

Thus, we must turn to the constitutional standard. The constitutional minimum of standing contains three elements: “(1) the plaintiff must have suffered an ‘injury in fact,’ i.e., an invasion of a legally protected interest that is concrete and particularized, and actual or imminent; (2) there must be a causal connection between the injury and the conduct complained of; and (3) it must be likely that the injury will be redressed by a favorable decision.” *Id.* at 210, 845 S.E.2d at 486, citing *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992).

A. SCADA has not pointed to any evidence showing that any dealership was damaged as a result of the Memorandum.

SCADA ignores the first requirement of constitutional standing. There was simply no evidence elicited at trial that any dealership suffered a particular injury as a result of the Memorandum.¹¹ SCADA claims the investigator’s notes demonstrate individualized harm to each of the twenty dealerships that were reviewed by DCA. The investigator’s notes do not demonstrate harm, and no dealership testified they were harmed. In fact, no motor vehicle dealer testified at all at trial. The notes simply document the compliance reviews. However, even assuming the compliance reviews caused some harm,¹² there is no evidence the compliance reviews were tied

¹¹ In the written discovery of this case, SCADA asserted that whether any of its members had suffered a concrete, particularized injury from DCA’s conduct is not relevant to SCADA’s members’ interest in pursuing this action. [DCA Second Motion to Compel]

¹² Highly regulated industries such as motor vehicle dealers should expect some interruption by governmental agencies. In fact, motor vehicle dealers expected to be inspected. [Trial Tr. 279–280]

to the Memorandum. DCA is not arguing SCADA lacked standing to bring its claims concerning the compliance reviews. But SCADA is conflating possible harm as a result of the compliance reviews with harm as a result of the Memorandum. There is no evidence of harm resulting from the Memorandum.

SCADA also boldly declares that “[m]any [dealerships] were also forced to make questionable refunds to customers.” [Resp. Br. at 32] SCADA also inaccurately and disingenuously pronounces that DCA forced a dealership to make refunds *because it declined to produce information*. [Resp. Br. at 10] This level of deception to this Court is almost shocking. Even SCADA’s citation to the record on these claims contains no discussion of refunds. And the record is void of evidence that any dealer felt coerced. The **only** evidence at trial concerning refunds of a \$50 title-processing fee is that the CFO of a dealership realized the fee was incorrectly charged. [Tr. 548–49, 552–3] There is no evidence this dealership (Vaden) was forced to provide refunds because it failed to produce records for a compliance review. It was from a review of Vaden’s closing fee records that its CFO admitted the problem and offered refunds. In fact, any dealerships that issued refunds did so after performing self-audits. [Trial Tr. 239–41]

SCADA must find it necessary to engage in this level of hyperbole because the real facts concerning the compliance reviews are certainly not this scandalous. DCA conducted compliance reviews of only 20 dealerships. The investigators randomly selected 30 deals from a list and asked for only four specific items from each deal. The compliance reviews lasted for a few hours on weekdays, and in many cases the investigators set up appointments ahead of time.¹³ [Trial Tr. 149-53] There is no evidence the reviews were “disruptive to business.” They were part of doing business in a highly regulated industry.

¹³ SCADA initially sought a declaration that DCA could not conduct unannounced visits to motor vehicle dealerships. SCADA dropped this claim, which had no basis in law or fact.

Likewise, SCADA overplays the profit information. The only evidence at trial was that profit information was initially obtained by happenstance when the investigators were provided sales reports from some dealerships. [Trial Tr. 250] Profit information was specifically requested from only three dealerships. [Trial Tr. 251] DCA's witnesses explained why profit information might be tied to compliance with the 2016 Statute. [Trial Tr. 235-237] DCA did not admit that it requested information that was not necessary for its compliance reviews. [Trial Tr. 258-264]

The trial court erred in finding that SCADA had standing to bring any claims concerning the Memorandum.

B. SCADA has not pointed to any evidence of harm to dealerships to support standing as a result of social media posts by DCA.

SCADA again ignores the first requirement of constitutional standing. There was simply no evidence elicited at trial that any dealership suffered a particular injury as a result of the social media posts. SCADA conflates the alleged harm to the 20 dealers from compliance reviews with alleged harm from social media posts. The two things are mutually exclusive. There is no evidence the general public knew of compliance reviews being conducted at 20 random dealerships. This Court cannot just assume that social media posts caused any dealership to suffer a concrete and particularized injury, or that there was a causal connection between any injury and social media posts. *See Pres. Soc'y, supra*. Likewise, SCADA would need to show that any injury can be redressed by a favorable decision. *Id.* The trial court's decision does nothing to redress any alleged injury. The trial court erred in finding SCADA had standing to bring any claims concerning social media posts.

V. THE TRIAL COURT ERRED IN ALLOWING SCADA TO AMEND ITS COMPLAINT AFTER THE TRIAL HAD CONCLUDED.

SCADA claims DCA had notice of a claim for attorneys' fees because the complaint included a demand for costs pursuant to the Declaratory Judgments Act (the "DJA"). This provides no notice at all. The DJA does not allow the recovery of attorneys' fees and there is no prior case law suggesting that the DJA can serve as a basis for an award of attorneys' fees. If SCADA is so sure of the "notice" provided by its complaint and the DJA, there would have been no need to move to amend its complaint.

SCADA further claims the terms of the State Action Statute bolster its construction of the DJA. This is absurd. The State Action Statute specifically and explicitly provides for the award of attorney's fees under certain circumstances. The Legislature knows how to write a statute that provides for the award of attorney's fees. It cannot be assumed that the Legislature's omission of attorney's fees from the DJA means that attorney's fees can be awarded.

The fact that DCA had the ability to respond to the request for attorney's fees means nothing. DCA should not have had to respond in the first place. The case relied on by SCADA, *Pool v. Pool*, 329 S.C. 324, 494 S.E.2d 820 (1998), is inapposite. In *Pool*, the issue of attorney's fees was actually tried by the family court. *Id.* at 327, 494 S.E.2d at 822 ("Evidence regarding these issues was admitted at the full merits hearing."). In addition, an order had been entered over a year prior to trial stating any request for attorney's fees and costs by either party would be considered by the court. *Id.* at 329 n. 7, 494 S.E.2d at 823 n. 7.

SCADA claims that its amendment to the pleadings should be allowed "to conform to proof" and that "amendments to conform to proof should be liberally allowed." *Ball v. Canadian Am. Express Co., Inc.*, 314 S.C. 272, 275, 442 S.E.2d 620, 622 (Ct. App. 1994) (reversing leave to amend pleadings made after trial). Amendments to pleadings after trial are for "caus[ing] them to conform to the evidence." Rule 15(b), SCRCP. SCADA's motion to amend did not conform to any

evidence presented at trial. The motion in *Pool* was made after the trial had been concluded, and the issue had been tried by the court. Here, SCADA's motion to amend did not conform to any issues that had been tried. SCADA's motion was not even made until after DCA objected to the fee request and asserted that the issue had not been raised.¹⁴ Thus, the trial court should be overturned.

VI. THE TRIAL COURT ERRED IN AWARDING ATTORNEY'S FEES.

A. The Declaratory Judgements Act ("DJA") does not provide for the recovery of attorney's fees.

SCADA insists the DJA provides a separate avenue for attorney's fees. There are no reported South Carolina cases finding that the DJA supports an award of attorney's fees. The DJA, in a section entitled "Costs," allows "the court [to] make such award of costs as may seem equitable and just." S.C. Code Ann. § 15-53-100. Attorney's fees cannot be read into this statute. The DJA does not define "costs" as attorney's fees and case law has not interpreted costs under the DJA to include attorney's fees.

SCADA claims that "[c]osts" has been applied to support a fee award in prior cases." SCADA does not analyze any of these prior cases. There is no holding in *Lollis*¹⁵ that attorney's fees can be awarded under the DJA. *Hegler*¹⁶ awarded attorney's fees pursuant to the terms of a

¹⁴ SCADA also cites to *Hardaway Concrete Co., Inc. v. Hall Contracting Corp.*, 374 S.C. 216, 647 S.E.2d 488 (Ct. App. 2007), for the proposition that an amendment to seek attorney's fees should be allowed where the opposing party had notice, argued the issue, and presented relevant authority. However, in *Hardaway*, the opposing party had notice of the plaintiff's intention to seek attorney's fees at least two weeks prior to trial beginning. *Id.* DCA had no such notice. SCADA's memorandum of law submitted regarding DCA's civil conspiracy counterclaim did not provide notice to DCA that SCADA would request attorney's fees at the end of trial. This memorandum only requested fees and costs expended by SCADA in defending against the counterclaim. The trial court denied the request for attorney's fees.

¹⁵ *Lollis v. Dutton*, 421 S.C. 467, 807 S.E.2d 723 (Ct. App. 2017).

¹⁶ *Hegler v. Gulf Ins. Co.*, 270 S.C. 548, 243 S.E.2d 443 (1978).

contract. The supreme court did not analyze the issue in *Raynolds*¹⁷ because the issue was moot. The DJA should not serve as the basis for an award in this case.

B. SCADA has not proved its entitlement to attorney’s fees pursuant to the State Action Statute.

SCADA is not entitled to attorney’s fees pursuant to the State Action Statute. In opposing SCADA’s request, DCA cited *McDowell v. S.C. Dep’t of Soc. Servs.*, 304 S.C. 539, 405 S.E.2d 830 (1991), as the proper standard to analyze whether an “agency acted without substantial justification in pressing its claim against the party.” S.C. Code Ann. § 15-77-300(A). SCADA made no attempt to discuss or distinguish *McDowell* from the present case on appeal.

SCADA also fails to meaningfully distinguish this matter from *Layman*, solely pointing to the Circuit Court’s order. The *Layman* Court proceeded with “a lodestar calculation of reasonable attorneys’ fees using the hourly rate quotes and time sheets submitted by counsel.” *Layman v. State*, 376 S.C. 434, 459, 658 S.E.2d 320, 333 (2008). DCA reiterates: SCADA’s counsel failed to present “an itemized accounting of the attorney’s fees,” as required by S.C. Code § 15-77-330 and case law. Thereby, it was impossible for the trial court to make such a calculation and award.

DCA also argued that the trial court failed to apply the presumption of substantial justification. *See* S.C. Code Ann. § 15-77-300(A) (stating the agency is presumed to be substantially justified in pressing its claim if the agency follows a statutory mandate that has not been invalidated). The trial court ignored this presumption, and SCADA likewise made no attempt to explain why it should not apply in this case. The failure to apply this presumption was legal error.

Moreover, “[a]n agency’s loss on the merits does not create a presumption that its position was not substantially justified.” *Video Gaming Consultants, Inc. v. S.C. Dep’t of Rev.*, 358 S.C.

¹⁷ *State Auto Prop. & Cas. Ins. Co. v. Raynolds*, 357 S.C. 219, 592 S.E.2d 633 (2004).

647, 650, 595 S.E.2d 890, 892 (Ct. App. 2004). The trial court’s analysis of this issue reads like a foregone conclusion based on the court’s determination on the merits. In one sentence, the trial court simply declares DCA had “no substantial factual or legal justification” for its conduct.

DCA’s position in this litigation was based on a reasonable and rational interpretation of the 2016 Statute. DCA “pressed its claim” in this litigation based on its reading of the 2016 Statute compared to other similar statutes that provide for a review of books and records of other regulated industries. DCA was substantially justified to defend this action and to assert that its conduct was proper based on its reading of the 2016 Statute.

DCA never asserted it had *carte blanche* to access any records for any reason whatsoever. SCADA attempts to portray DCA’s litigation position as one that cavalierly asserted DCA could do what it wanted, when it wanted. Yes, DCA asserted at trial that the 2016 Statute provided it with all the necessary authority it needed to conduct compliance reviews. This position is based on DCA’s construction and interpretation of the 2016 Statute. This should not be a shocking assertion. DCA, as a creature of statute, obtains its power and authority from statutes. DCA pressed its statutory interpretation at trial, no more and no less. The HLOC and the ALC both found, during the pendency of this action, that DCA had authority to access a dealer’s records under the 2016 Statute. Neither entity made any finding that DCA needed probable cause to do so.

SCADA improperly cites DCA’s pre-trial brief as evidence that DCA’s position was not substantially justified.¹⁸ See Rule 16(c), SCRCP (stating pre-trial briefs are solely for use of the court at the pre-trial hearing and shall not be made part of the record). In context, the portions of DCA’s pre-trial brief cited by SCADA concerned a discussion of settlement negotiations. In settlement discussions, SCADA had rejected DCA’s proposed consent order. DCA did not want to

¹⁸ It is unclear why SCADA believes DCA’s settlement posture at the time of trial had anything to do with whether DCA’s position in this litigation was substantially justified.

admit wrongdoing related to compliance reviews, even though both sides recognized that an order from the trial court would effect no change to DCA's practices. SCADA continued this litigation, in the words of its counsel, to get "vindication," even after obtaining a statutory amendment. DCA did not state that "any 'admission of wrongdoing by the Department is a non-starter.'" [Resp. Br. at 40] In full, DCA stated, "There may be a way to settle this case, but Plaintiff's insistence on wholesale admissions of wrongdoing by the Department is a non-starter." DCA's statements in its pre-trial brief should not be used to find DCA's position in the litigation was without substantial justification. In context, the Court can see that the statements were made as part of a wider explanation of settlement opportunities and were not made in an unreasonable manner.

Under the State Action Statute, the trial court was required to evaluate whether any special circumstances would make an award of attorney's fees unjust. In its brief, SCADA turns this standard on its head and claims that the failure to award fees would be unjust because DCA "punished" dealers and "fought" this litigation. [Resp. Br. at 40] The trial court made the same error of law, by concluding a failure to award attorney's fees would be unjust. SCADA cites to no part of the record in claiming that DCA punished dealers. SCADA has no response to DCA's showing of special circumstances other than to inject hyperbole and make unjustified statements concerning DCA's actions.

C. The amount of attorney's fees awarded by the trial court is not supported by the record and has not been shown to be reasonable.

SCADA makes little effort in its brief to point to any specific facts demonstrating the fee award was "limited to reasonable time expended at a reasonable rate." S.C. Code Ann. § 15-77-300(B). Instead, SCADA blames its fees on responding to DCA's motions.¹⁹ However, based on

¹⁹ Alternatively, SCADA claims it spent "many hours" reviewing discovery produced by DCA. [Reply Memo filed Dec. 8, 2025] How many hours? How do these hours compare to responding to DCA's motions? Were any of these

its limited showing to the trial court, there could have been no way for the trial court to have determined whether SCADA's attorneys "spent months" responding to DCA's motions. On this point, Mr. Becker's affidavit summarily states the litigation "included significant pre-trial motion practice and an interlocutory appeal through the South Carolina Court of Appeals and Supreme Court."²⁰ The affidavit includes no other details of when or how time was expended. Mr. Sheheen's affidavit fares no better. It states nothing more than the total amount of attorney's fees. In its brief, SCADA incorrectly states that Mr. Sheheen's affidavit includes a description of the types of work performed. The brief goes on to incorrectly assert that Mr. Sheheen's affidavit explains his fee structure. [Resp. Br. at 41] The affidavit does no such thing. It states only that Mr. Sheheen "provided advice and counsel." [Affidavit filed Nov. 26, 2025]

Only after SCADA's attorneys' showing was challenged by DCA did SCADA attempt to provide additional details concerning Mr. Sheheen's fees. SCADA asserted in a memorandum that Mr. Sheheen "reviewed" various items, "consulted" with co-counsel and the client, and "assisted" with trial preparation and strategy. However, this additional explanation was not made by way of affidavit and still contains no details about the time expended or why Mr. Sheheen's fees would be customary for similar services.

The reviewing court's analysis boils down to the reasonableness of the requested fees. The court, however, cannot determine reasonableness if it is not provided sufficient information to evaluate "the time devoted" to a matter and whether the fees were customary for similar services.

hours duplicative amongst attorneys? Were all of these hours necessary? We will never know. An award of attorney's fees cannot be made on such a flimsy showing.

²⁰ The interlocutory appeal did not proceed through this Court. DCA filed a petition for extraordinary relief with the supreme court on June 26, 2023. SCADA filed a 13-page response to this petition on July 26, 2023. Thus, this interlocutory appeal may account, generously, for one month of work by SCADA in responding to the petition. The interlocutory appeal challenged the trial court's determination that DCA was required to provide confidential financial records concerning closing fee registrations since June 3, 2016, for **all** South Carolina motor vehicle dealers, not just SCADA members. Thus, SCADA would have had confidential financial information from competing dealers.

S.C. Code Ann. § 15-77-300(B). SCADA sabotaged itself by failing to provide this information. This issue should not be remanded to the trial court for further determination. SCADA failed to make a proper showing of the reasonableness of its request for attorney's fees. SCADA should not be given another bite at the apple.

SCADA asserted in its Statement of the Case that it sought declarations concerning only three categories of DCA's 2022 conduct. In fact, SCADA also sought declarations regarding DCA's alleged use of customer's personal identifying information. SCADA dropped this claim on the first day of trial. SCADA also asserted numerous claims regarding DCA's "Closing Fee Registration and Reasonableness Review," which it later dropped. DCA had to defend these claims and even moved for summary judgment twice regarding these claims. To the extent SCADA is awarded any attorney's fees, SCADA should not get full credit for prevailing in this action. *See Brawley v. Richland Cnty.*, 445 S.C. 80, 911 S.E.2d 156 (Ct. App. 2025) (stating a reasonable fee award must include only reasonably expended hours and must be proportional to the degree of success obtained).

SCADA recognized that the trial court could have excluded hours that were not reasonably expended from the fee calculation. *See id.* [Memo. Filed Dec. 8, 2025, at 8] However, SCADA did not even give the trial court the tools for this determination. The trial court should have denied outright the request for attorney's fees because there was no way to determine whether any hours were "excessive, redundant, or otherwise unnecessary." *Id.* at 95, 911 S.E.2d at 164.

Some explanation and context is required here concerning DCA's motion practice in this matter. It is not nearly so onerous as SCADA would have this Court to believe and certainly does not account for the employment of thirteen separate lawyers and over \$500,000.00 in fees.

DCA filed fourteen motions, but SCADA was far from being buried in them:

- **Motion to Change Venue** – granted by consent.
- **Motion to Substitute Counsel** – no opposition to this motion by SCADA.
- **Motions to Compel (2)**, filed February 13, 2023, and April 10, 2023.

On May 12, 2023, the trial court entered an order granting in part DCA's first motion to compel and denying DCA's second motion to compel. This order also granted in part and denied in part SCADA's motion to compel.

- **Motions to reconsider (2)**, filed May 22, 2023, regarding portions of the order granting in part SCADA's motion to compel and denying in part DCA's motion to compel.

DCA filed two motions regarding the trial court's May 12, 2023, order simply for ease of separately briefing the issues. The trial court had ordered the production of all closing fee registration documents from all motor vehicle dealers in the entire state. This would have required DCA to provide more than 20,000 pages of records and confidential financial information for more than 1,300 motor vehicle dealers, 80% of whom are not SCADA members. [Petition for Writ at 12] The trial court had also denied numerous discovery requests from DCA seeking basic information, including evidence of concrete, particularized damages suffered by SCADA members. SCADA objected to this request on relevancy grounds, but now surprisingly argues in this appeal that it presented sufficient evidence of damages to support its standing to bring this action. SCADA filed one 7-page response to DCA's two motions to reconsider.

- **Motion to dismiss based on mootness**, filed June 9, 2023, after the 2016 Statute was amended.
- **Motion to reconsider denial of motion to dismiss**, filed October 3, 2023.
- **Motions for summary judgment (2)**, filed April 7, 2023, and October 25, 2024.

DCA filed the first motion after taking Mr. Floyd's deposition in March 2023. SCADA had also taken two depositions of DCA employees prior to this motion being filed. SCADA did not take any further depositions during the entire course of this action. The trial court heard this motion on November 8, 2023, after the case had been pending for a year and denied it as premature

because the parties were still engaged in discovery. By February 29, 2024, DCA had responded to all of SCADA's outstanding written discovery requests. After that date, SCADA did not indicate it was still seeking any materials. The case was at a standstill in October 2024. Thinking discovery was complete, DCA moved for summary judgment. SCADA opposed this motion on the grounds that it needed to conduct further discovery. The trial court denied this motion.

- **Motion for protective order**, filed November 11, 2024.

Upon the filing of DCA's motion for summary judgment, after lying dormant for most of 2024, SCADA swiftly served notices for the depositions of DCA's Administrator and its general counsel. DCA moved for a protective order to quash these depositions, which the trial court granted by order entered February 2, 2025.

- **Motion in limine**, filed July 28, 2025.

On July 22, 2025, SCADA named a new witness. DCA filed this motion to exclude this witness's testimony. SCADA later withdrew this witness.

- **Motion in limine**, filed October 6, 2025. This was a general pre-trial motion.
- **Post-trial motions.**

This case was set for trial during the week of February 10, 2025. SCADA moved to continue the trial of the case for six months so that it could complete written and deposition discovery. DCA was ready to go to trial. SCADA then served one additional set of requests to produce. [Heimes MIL]

If this case was not so serious to DCA, it would be almost comical that SCADA now asserts it was DCA that went to lengths to avoid a trial in this matter. SCADA claims this was a straightforward declaratory judgment action that could have been resolved at minimal time and expense, but SCADA never moved for judgment as a matter of law, never asked for an expedited

trial date, and moved to continue the earliest scheduled trial date because after over two years of litigation it suddenly needed to conduct more discovery.²¹ After SCADA's second motion for continuance was granted, this case next appeared on the trial roster for the week of August 11, 2025. SCADA named a new witness, which it later withdrew.

It should be clear that DCA's motion strategy did not contribute to the unreasonable time and effort allegedly spent by SCADA to bring this matter to trial. Numerous motions required no time or effort by SCADA. Numerous motions were normal and necessary. DCA's dispositive motions were filed only after significant discovery had taken place in the action. SCADA's assertion that its time and effort was due to DCA's "tactics" rings hollow given SCADA has provided no time sheets or other detailed information to demonstrate that its fees were reasonable.

DCA agrees this is a "straightforward declaratory judgment action" as asserted by SCADA. [Resp. Br. at 42] The trial court made no analysis of "the nature, extent, and difficulty of the case." S.C. Code Ann. § 15-77-300(B)(1). If it had, in light of SCADA's admission that this case was "straightforward," there would be no basis to award the unreasonable fees. SCADA took two depositions on February 28, 2023, reviewed documents produced by DCA, and tried the case. The workings of the 2016 Statute were not novel to SCADA and its counsel. On the other hand, if this was truly a "novel case" with "few legal precedents," as claimed by SCADA, a reasonable interpretation of a novel statute by DCA should not subject DCA to the payment of hundreds of thousands of dollars in attorney's fees.

Rather than a case of overreach by DCA, this case is a blatant example of overreach by a well-heeled trade association. Even after getting the legislative changes it sought, SCADA

²¹ In moving for a continuance of the trial date, SCADA certified to the trial court, pursuant to Rule 11, SCRCP, that consultation with opposing counsel would serve no useful purpose. SCADA was correct—DCA was prepared to go to trial.

continued to churn this litigation despite valid and justified attempts by DCA to end this case. SCADA wanted vindication for conduct that had already ceased, which is why this case lasted for three years.

CONCLUSION

Based on the foregoing discussion and analysis, DCA respectfully requests that this Court reverse the trial court's orders finding in favor of SCADA on its claims for declaratory relief and the award of attorney's fees.

Respectfully submitted,

s/Peter M. Balthazor

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