

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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Appeal from The Administrative Law Court  
Ralph King Anderson, III, Administrative Law Judge

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Court of Appeals Opinion No. 5379  
Supreme Court Case Tracking No. 2016-000829

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Francis Ackerman, #266928, Malik Aljalil, #219551,  
Linso Allen, #269378, Michael Benninger, #264212,  
Frederic Brown, #289602, Timothy Brown, #238461,  
Terrell Buchanon, #277262, Christopher Buch, #200690,  
Rudy Cassady, #238732, Sheldon Clark, #264772,  
Zawaski Cobb, #187136, Kamathene Cooper, #145333,  
Gladstone Cummings, #267450, Patrick Curtis, #175139,  
Quintin Daniels, #196284, Curtis Davis, #238776,  
Heyward Dempsey, #134171, Phillip Denney, #240678,  
Paul Durham, #219573, Jerome Durham, #270393, Keith  
Eigner, #299153, Bernard Felder, #122099, Jermaine  
Garriett, #191274, Fred Gatewood, #289775, Dennis  
Goff, #177506, Gregory Grant, #109656, Nelson  
Hampton, #286427, James Hartman, #219770, Gary  
Hayes, #263985, Michael Hood, #279987, Nikia Law,  
#260855, Stephen Lease, #137016, Harry Leonard,  
#249996, Herbert McFadden, #184297, Michael  
McFarland, #266870, Earl Mack, #216237, John Moultri,  
#276527, Matin Muntaqim, #266870, Tony Pitts,  
#280597, Germaine Pringle, #250390, Gene Richardson,  
#93614, Dennis Richey, #233472, Ignacio Rivera,  
#300424, Vondell Sanders, #241308, James Sattler,  
#235043, Joseph Schmitz, #173987, Arthur Scott,  
#251957, Jerome Scott, #153381, Roosevelt Scott,  
#275631, Archie Simmons, #161419, Robert Smith,  
#199324, James Williams, #282929, Gary Bryant,  
#258972, Harlon Edger, #261866, Johnny Holden,  
#245199, Don Hughes, #256862, Michael Key, #266890,  
Archie Lee, #226354, Isaac Richardson, #232574,  
Larkland Richards, #281768, John Wojcik, #219463,  
James Bogan, #288111, Larry Burke, #281911, Jammie  
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,  
#260047, Ricky Libby, #274681, Alain Lareua, #128014,  
Quentin Baker, #297868, Frank Corley, #292975, James

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Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Respondents,

v.

South Carolina Department of Corrections, Petitioner.

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**REPLY TO THE RESPONDENTS' RETURN TO  
PETITION FOR WRIT OF CERTIORARI  
BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS**

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Counsel for SCDC

## I. REPLY TO THE RESPONDENTS' RETURN

In accordance with South Carolina Appellant Court Rule ["SCACR"] 242(g), the South Carolina Department of Corrections ["SCDC"] respectfully submits its instant reply to the Respondents' return to its petition for this Court to issue a writ of certiorari by which to review the final decision issued by the Court of Appeals in the instant matter, styled as *Francis Ackerman, et al., Appellants, v. S.C Dep't of Corr., Respondent*, Opinion No. 5379 (Feb. 10, 2016) (Apx. pp. 6106 – 14). 782 S.E.2d 757 (S.C. Ct. App. 2016).

SCDC, by and through its undersigned counsel, filed and served its petition for writ of certiorari, along with its allied appendix, on May 2, 2016. The Respondents, by and through their counsel, submitted a return to SCDC's petition dated May 27, 2016.

## II. INACCURACIES IN THE "COUNTER-STATEMENT OF THE CASE"

At the outset of their "Counter-Statement of the Case," the Respondents stated as follows:<sup>1</sup>

This case involves 197 inmate grievances for prevailing wages under [§ 24-3-430(D)]. Respondents are inmates and former inmates who worked in the Lieber/Williams Technologies (WTI) work program at various times between 1998 and present. **A 1998 contract between SCDC and WTI set inmates' pay rate at \$4 per hour and contained other work guidelines** [Apx. p. 725]. Section 24-3-430(D) required SCDC to pay inmates at least "the prevailing wage for work of similar nature in the private sector". **As of July 2001, Statutes at Large, No. 66, §37.31 amended §24-3-430(D) to allow SCDC to pay inmates a "negotiated wage."** [emphasis supplied].

The above-quoted paragraph reflects two (2) inaccurate assertions. First, the contract between SCDC and WTI, the private industry sponsor for the prison industries service work project in which the Respondents participated, did not set the Respondents' "pay rate at \$4 per hour." Instead, the operative provision of the contract established that SCDC would lease the

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<sup>1</sup> See the Respondents' Return dated May 27, 2016, pp. 1 – 2.

inmates' labor to WTI at the rate of \$4.00 per inmate labor hour.<sup>2</sup> (Apx. p. 725).

Second, the first budget proviso enacted by the legislature did not, as asserted by the Respondents, "allow SCDC to pay inmates a 'negotiated wage.'" Instead, the first budget proviso enacted by the legislature allowed SCDC to pay inmates, like the Respondents, who participated in prison industries service work projects less than the "prevailing wage" for their labor (Apx. p. 322).

As SCDC illustrated in its May 2, 2016 petition,<sup>3</sup> the entirety of the first proviso enacted by the legislature for fiscal year 2001 – 2002 read as follows:

The Director of [SCDC] may enter into contracts with private sector entities that would allow for inmate labor to be provided for **prison industry service work**. The use of such inmate labor may not result in the displacement of employed workers within the local region in which work is being performed. Service work is defined as any work such as repair, replacement of original manufactured items, packaging, sorting, labeling, or similar work that is not original equipment manufacturing. [SCDC] may negotiate the wage to be paid for inmate labor provided under prison industry service work contracts, and **such wages may be less than the prevailing wage for work of a similar nature in the private sector**. [emphasis supplied].

Throughout the course of the instant litigation, the Respondents have consistently uttered the term "negotiated wage," and they did so throughout their return. For the sake of clarity, the Respondents themselves coined the term "negotiated wage." The term "negotiated wage" did not appear in any of the six (6) budget provisos enacted by the legislature from fiscal years 2001 to 2007, nor has it ever appeared in § 24-1-295 or, for that matter, § 24-1-290.

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<sup>2</sup> See § 3.3.1 of the contract between SCDC and WTI.

<sup>3</sup> See SCDC's May 2, 2016 Petition for Writ of Certiorari, p. 3, n. 2. As SCDC also illustrated in its petition, the legislature allowed SCDC to pay inmates less than the "prevailing wage" for the labor they voluntarily provided to service work projects in each of the five (5) provisos it subsequently enacted. By ratifying Senate Bill 182 ["S. 182"] in 2007, the legislature codified this language from each of the six (6) provisos it enacted beginning in 2001. See 2007 South Carolina Laws Act No. 68 (S.B. 182). Section 2 of S. 182 consisted of § 24-1-295, which allowed and still allows SCDC to pay inmates who participate in service work projects "less than the prevailing wage for work of a similar nature in the private sector."

Later in the same section of their return, the Respondents asserted that in denying their grievances, “SCDC invoked the 15 day rule for ‘incident’ grievances in § 13.1 of [SCDC Policy GA-01.12 (Apx. p. 687)], contending inmates filed [their Step 1 grievances] **more than 15 days after initial employment** and [*Adkins v. S.C. Dep’t of Corr.*, 602 S.E.2d 51 (S.C. 2004)/*Wicker v. S.C. Dep’t of Corr.*, 602 S.E.2d 56 (S.C. 2004) (e.g., Apx. pp. 1311 – 17)].” [emphasis supplied and footnote omitted].

Again, the above-quoted assertion by the Respondents is inaccurate, as SCDC, in its final decision denying the Respondents’ grievances, concluded as follows (Apx. pp. 1312 and 1315):

[GA-01.12] is the policy that established SCDC’s inmate grievance system. Paragraph 13.1 of [GA-01.12] establishes a deadline by which inmates must file grievances for alleged incidents. Specifically, Paragraph 13.1 requires that an inmate must file a grievance “within 15 days of the alleged incident.” Exceptions to this deadline appear in paragraph 13.9 of [GA-01.12].

I conclude, after again reviewing your Step 1 grievance and your Step 2 appeal in light of [*Adkins*], [*Wicker*], the deadline established by paragraph 13.1, and the exceptions to this deadline recognized by paragraph 13.9, **that you did not submit your Step 1 grievance within 15 days of when SCDC first paid you an hourly wage that allegedly violated the applicable prison industries statutes** and, specifically, Section 24-3-430. The 15 day deadline established in this policy applies to nearly every aspect of inmate activity, and no special exception applies to prison industries pay disputes. Consequentially, the 15 day deadline applies to your grievance.

Moreover, you filed your Step 1 grievance **nearly three (3) years after SCDC first paid you** for your participation in the [service work project] located at Lieber, over two (2) years after your participation in the project at Lieber ended, and over 30 days after the South Carolina Supreme Court issued [*Adkins*] and [*Wicker*]. Clearly you exceeded the time frame associated with filing a grievance under [GA-01.12]. [emphasis supplied].

As SCDC explained in its petition,<sup>4</sup> the Respondents grounded their claims upon their assertions that SCDC had purportedly failed to pay them an hourly wage which conformed to the

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<sup>4</sup> See SCDC’s May 2, 2016 Petition, p. 3, n. 2.

operative legislation (i.e. 24-3-430(D) and the provisos). As reflected by the above-quoted passage from its final decision, SCDC found that the incidents which spawned the Respondents' claims consisted of the dates upon which SCDC first paid them for their labor.

SCDC logically reasoned that if their claims consisted of assertions that SCDC did not pay them an hourly wage which conformed to state law, then the Respondents knew from the date upon which SCDC first paid them that they possessed a claim for back wages attributable to the difference between the hourly wage SCDC purportedly should have paid them and the hourly wage SCDC actually paid them. Thus, contrary to the assertion from their return, SCDC did not conclude that the Respondents filed their Step 1 grievances "more than 15 days after initial employment."

**III. CONTRARY TO THE ARGUMENTS OFFERED BY THE RESPONDENTS IN THEIR RETURN, THE COURT OF APPEALS' DECISION AND ORDER ANIMATES NOVEL QUESTIONS OF LAW FOR REVIEW BY THIS COURT**

**A. THE COURT OF APPEALS ANIMATED A NOVEL QUESTION OF LAW BY EFFECTIVELY RULING THAT INMATES ALONE DETERMINE WHETHER THE CLAIMS THEY ARTICULATE IN THEIR GRIEVANCES CONCERN "POLICIES" OR "PROCEDURES"**

The Respondents disputed whether a novel question of law was animated when the Court of Appeals effectively ruled that inmates alone determine whether the claims they articulate in the grievances they file under GA-01.12 concern SCDC "policies" or "procedures" so that the grievances presenting such claims are exempt from the applicable fifteen-day filing deadline.<sup>5</sup>

The Respondents offered the following argument in rebuttal to SCDC's analysis and argument on this point:<sup>6</sup>

On the merits, inmates contend SCDC incorrectly states the question. First, a grievance concerning policies/procedures should be readily

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<sup>5</sup> See the Respondent's Return, pp. 5 – 10. See also SCDC's Petition, pp. 12 – 17.

<sup>6</sup> See the Respondent's Return, p. 6.

recognized by SCDC [Apx. p. 6153]. Second, inmates' grievances fall within SCDC's own definition of "policies/procedures"; the substance of grievances challenges the pay rate in the contract; and contract provisions cannot realistically be characterized as "incidents" [Apx. pp. 6113 – 14]. Third, the grievance form itself asks which, if any, SCDC policy is being grieved [Apx. p. 1296]. Thus, inmates do not alone determine if grievances concern policies/procedures. Rather, SCDC makes the determination from the language and substance of the grievance.

However, in the first two (2) points of their above-quoted argument, the Respondents simply invoked the fourth page of the order issued March 24, 2016 order by which the Court of Appeals denied SCDC's petition for rehearing (Apx. p. 6153) and the final two (2) pages of the Court of Appeals' February 10, 2016 decision. (Apx. pp. 6113 – 14). Thus, SCDC respectfully asserts that the Respondents offered only conclusory arguments as the first two (2) points of their above-quoted argument.

For their third point, the Respondents referenced the following instructions from the front side of SCDC's pre-printed Step 1 grievance form (Apx. p. 1296):

**STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy) [emphasis supplied].**

The Step 1 form referenced by the Respondents for the third point of their argument consisted of the form completed by Francis Ackerman, and, directly under the instructions referenced by the Respondents, Mr. Ackerman wrote the following (Apx. p. 1296):

[SCDC] is asked to review and determine whether I am entitled to received back wages which are due to me from working at [Lieber] when they only paid me .35 an hour and not prevailing wage as under [§ 24-3-430] as well as fact they were getting \$4.00 an hour and still did not give me my money from 10/01 to 10/02.

SCDC respectfully submits that Mr. Ackerman did not identify an SCDC policy he challenged by his grievance form. Instead, as prompted by the form's instructions, Mr. Ackerman described an incident, namely that SCDC did not pay him wages for his prison

industries labor which conformed to state law, and he provided incident date(s) of October 2001 to October 2002.

Ultimately, nothing offered by the Respondents refutes SCDC's contention that under the Court of Appeals' February 10, 2016 decision, along with the order it issued March 24, 2016 which denied SCDC's petition for rehearing, the inmates alone determine whether the claims they articulate in their Step 1 grievance forms constitute challenges to a particular SCDC policy.

The Respondents next asserted that the "language and context" of paragraph 13.9 of GA-01.12, as well as the instructions which appear on the Step 1 grievance form, support the decision by the Court of Appeals.<sup>7</sup>

The Respondents quoted the entirety of paragraph 13.9, which provides as follows:<sup>8</sup>

Exceptions to the 15 day time limit requirement will be made for grievances concerning policies/procedures. Exceptions may also be made for incident grievances by the Chief/designee, Inmate Grievance Branch, provided that documented reasonable cause can be demonstrated as to why the original time frame was not met, e.g., inmate physically unable to initiate grievance due to hospitalization, court appearance, etc. The waiver must be requested by the grievant.

The Respondents next quoted the relevant portion of the fourth of five (5) instructions appearing on the reverse side of SCDC's pre-printed Step 1 form (Apx. 1297):<sup>9</sup>

Submit the completed form to the Institutional Grievance Coordinator within fifteen (15) days of an alleged incident; policy grievances at any time.

The Respondents then contended as follows:<sup>10</sup>

Inmates contend that if waiver had to be requested from SCDC for §13.9 grievances concerning policies/procedures, it would be discretionary with

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<sup>7</sup> See the Respondent's Return, p. 6.

<sup>8</sup> *Id.*, p. 6.

<sup>9</sup> *Id.*, p. 7. The Respondents again referenced Mr. Ackerman's Step 1 form.

<sup>10</sup> *Id.*

SCDC. If discretionary, that would contradict (1) SCDC's mandatory exception in §13.9; (2) SCDC's step 1 instructions that policy grievances can be filed at any time; and (3) the context of §13.9, which clearly means for waiver to apply only to §13.9 incident grievances.

Aside from again relying upon the rulings issued by the Court of Appeals in both its February 10, 2016 decision and March 24, 2016 order, the Respondents' contentions simply miss the salient points of the analysis and argument on this point SCDC offered in its petition.

Importantly, the instructions on the pre-printed Step 1 form simply do not account for or otherwise eliminate the reality that an inmate may mischaracterize the claim he articulates under the heading "STATE GRIEVANCE (include documentation, and date of incident; if SCDC Policy, indicate which policy)" on the Step 1 form as a "policy" grievance when the claim he articulates under this heading actually constitutes an "incident" grievance.

This is the hazard created by both the Court of Appeals' decision and its order, because, under by operation of both, the inmate faces no deadline whatsoever by which to file such a grievance, and the ability of SCDC to investigate the inmate's claim would irreversibly erode the longer the inmate waited to file such a grievance.

In its March 24, 2016 order, the Court of Appeals, in response to the first argument SCDC offered in its petition for rehearing, crowned a tortured analysis of paragraph 13.9's grammatical structure by concluding as follows (Apx. p. 6153):<sup>11</sup>

The final [sentence of paragraph 13.9] requiring the grievant to request a waiver pertains only to the exceptions permitted for incident grievances." Without such a request, SCDC would not be aware of a particular grievant's reason for seeking a time extension.

In its petition, SCDC cogently and persuasively argued that nothing paragraphs 13.9, 7.1, 13.1, or any other provision of GA-01.12 supports the Court of Appeals' interpretation of the final sentence of paragraph 13.9.

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<sup>11</sup> See SCDC's Petition, pp. 13 – 14.

After offering a rhetorical question and hypothetical for this Court's consideration in its May 2, 2016 petition,<sup>12</sup> SCDC argued as follows:<sup>13</sup>

Contrary to the Court of Appeals' explanation, paragraph 13.9's final sentence exists for two (2) reasons: (1) to compel the inmate seeking an exception to the fifteen-day deadline to advise SCDC of the type of claim that appears in his grievance (i.e. "incident" vs. "policy, procedure, directive, or condition") and (2) to compel the inmate to seek an extension to the fifteen-day deadline in a timely fashion so that SCDC may not only determine whether the inmate's claim actually challenges an agency "policy, procedure, directive, or condition" but also to promptly investigate the facts and circumstances associated with the inmate's claim.

The Respondents rebutted SCDC's above-quoted argument as follows:<sup>14</sup>

SCDC questions how SCDC can determine if a grievance challenges policies/procedures, etc. if the inmate has no filing deadline (SCDC petition, p. 16). In response, inmates contend that, **as this case demonstrates, when the grievance is filed does not affect SCDC's ability to determine its type, even though here SCDC made that determination incorrectly.** [emphasis supplied].

By so contending, the Respondents validated the argument presented by SCDC in both its petition for rehearing to the Court of Appeals and its petition to this Court, because the parties have vigorously disputed from nearly the inception of the instant litigation whether the Respondents' grievances were comprised of "incident" claims or "policies/procedures" claims.

The Respondents maintained from the beginning or nearly the beginning of the instant litigation that they complied with paragraph 13:1's 15-day filing deadline by filing their Step 1s within 15 days of this Court's issuance of the remittiturs in both *Adkins* and *Wicker*, and, towards that end, the Respondents included the remittiturs issued by this Court for both cases in the record they submitted to the Court of Appeals. [Apx. pp. 190, 199, and 6009 – 13].

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<sup>12</sup> See SCDC's Petition, pp. 14 – 15. In their return, the Respondents responded to both the rhetorical question and hypothetical SCDC offered in its petition. See the Respondents' Return, pp. 7 – 8.

<sup>13</sup> See SCDC's Petition, p. 16.

<sup>14</sup> See the Respondents' Return, p. 9.

The folly of the Court of Appeals' profoundly defective interpretation of paragraph 13.9 is perhaps most starkly revealed by the reality that under such an interpretation, the Respondents could have waited until 2016 or, for that matter, 2026 to file the Step 1 grievances in which they assert their prison industries pay claims. Such a delay would have undoubtedly adversely affected SCDC's ability to adequately defend the Respondents' claims.

Finally, SCDC respectfully asserts that the Respondents did not dispute the reality that no appellate court in our state, other than the Court of Appeals by its February 10, 2016 decision and March 24, 2016 order, has examined paragraph 13.9 and its impact upon the 15-day deadline from paragraph 13.1.

Therefore, SCDC again respectfully asserts that the analysis and interpretation of paragraph 13.9 provided by the Court of Appeals in its February 10, 2016 decision and March 24, 2016 order clearly present novel questions of law, and, consequentially, this Court should grant SCDC's petition.

**B. THE COURT OF APPEALS ANIMATED A NOVEL QUESTION OF LAW WHEN IT RULED THAT "INMATE PROPERTY COMPLAINTS" COVER ONLY COMPLAINTS ABOUT "CHATTELS"**

The Respondents also disputed whether the Court of Appeals animated a novel question of law when it ruled that "Inmate property complaints," under paragraph 7.4 of GA-01.12, cover only complaints about "chattels."<sup>15</sup>

After quoting several of the passages from this Court's decisions in *Wicker* and *Williams, et al. v. S.C. Dep't of Corr.*, 641 S.E.2d 885 (S.C. 2007) invoked by SCDC in its petition,<sup>16</sup> the

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<sup>15</sup> See the Respondents' Return, pp. 10 – 15. See also SCDC's Petition, pp. 17 – 22.

<sup>16</sup> See the Respondents' Return, p. 11. See also SCDC's Petition, pp. 17 – 19.

Respondents offered the following rebuttal to SCDC's assertion that the Court of Appeals had, by both its decision and order, animated a novel question of law on this point:<sup>17</sup>

The Court of Appeals held that "property" in §7.4 contemplates "chattels" belonging to the grievant, rather than an intangible right to the payment of wages [Apx. p. 6154]. "Property" is the unrestricted and exclusive right to a "thing" (Black's Law Dictionary, Fourth Edition, p. 1382). Inmates note that §10.1 of [GA-01.12] policy allows restoration of "property" by substituting a state-like "item" [Apx. p. 686]. "Chattel" means an article of personal property, or a "thing" personal and movable (Black's Law Dictionary, Fourth Edition, p. 299). Thus, legal definitions and grievance policy both compare "property" to "things" or "items".

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SCDC contends the Court of Appeals made a baseless distinction between chattels and inmate wages as property (SCDC petition, pp. 20-21). "Wages" means compensation "paid" to a person for services (Black's Law Dictionary, Fourth Edition, p. 1750). Inmates note they have not been paid the wages they seek by their grievances. Indeed, by the current litigation SCDC continues to dispute inmates' entitlement to those wages. While inmates have an intangible right to payment of the wages, the money is not presently subject to inmates' control and disposition like a [chattel] in their cell would be. Inmates contend the Court of Appeals' distinction between chattels and wages as property was logical and correct.

SCDC respectfully but frankly asserts that rather than buttressing the purported distinction between "intangible" and "tangible" property fashioned by the Court of Appeals in its March 24, 2016 order (Apx. p. 6154), the Respondents' above-quoted argument only further illustrates the baseless distinction the Court of Appeals made between categories of property when it interpreted "Inmate property complaints" under paragraph 7.4 of GA-01.12.

For example, paragraph 10.1 of GA-01.12 actually supports SCDC's argument on this point. Importantly, the Court of Appeals did not analyze, discuss, or cite paragraph 10.1 in either its decision or its order. Even more importantly, the Respondents did not recite the entirety of paragraph 10.1 in the above-quoted passage from their return.

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<sup>17</sup> See the Respondents' Return, p. 12.

Paragraph 10.1 obviously falls under paragraph 10, which is entitled “REMEDIES,” and paragraph 10 reads as follows (Apx. p. 686):

All SCDC personnel responsible for responding to an inmate grievance will afford each successful grievant a meaningful remedy to the extent that their respective positions, authority, and resources allow. Remedies may include, **but are not limited to**, the following: [emphasis supplied].

Paragraph 10.1 is entitled “Restitution,” and, in its entirety, it reads as follows (Apx. p. 686):

Restoration of property by substituting a *state-like* item. This will normally occur instead of any monetary reimbursement. [emphasis supplied in GA-01.12].

Given the prison industries wage claims they articulated in their grievances, the Respondents acknowledged in their return that they are exclusively seeking back pay (i.e. money) from SCDC as their remedy. Thus, SCDC need not concern itself with the prospect of the “restoration of property” identified by the Respondents in their grievances (i.e. money) by “substituting a state-like item” as contemplated by paragraph 10.1, because SCDC may provide the Respondents the precise type of property sought by their claims by simply remitting to them any back pay they may be due upon an adverse ruling by the Administrative Law Court [“ALC”], the Court of Appeals, or this Court concerning the merits of their wage claims

Thus, the distinction fashioned by the Court of Appeals in its March 24, 2016 order between “chattels” and monies, namely that “Inmate property complaints” under paragraph 7.4 covers only “chattels” possessed with the Respondents and not monies, is nothing more than a fiction, and the Respondents efforts to support such a fiction only served to expose the fatally defective nature of the distinction fashioned by the Court of Appeals.

Moreover, the Respondents explicitly acknowledged in their return that this Court’s previous decisions in *Adkins*, *Wicker*, and *Williams* “did not concern or discuss property

distinctions” as the Court of Appeals did in its March 24, 2016 order.<sup>18</sup> By so acknowledging, the Respondents effectively conceded that the Court of Appeals animated a novel question of law by ruling that under paragraph 7.4 of GA-01.12, “Inmate property complaints” cover only complaints about “chattels.”

Along the same lines, SCDC again respectfully asserts that the Respondents did not dispute the reality that no appellate court in our state, other than the Court of Appeals by its February 10, 2016 decision and March 24, 2016 order, has examined paragraph 7.4 of GA-01.12 or, more specifically, examined whether “Inmate property complaints,” under paragraph 7.4, cover only complaints about “chattels.”

Thus, SCDC respectfully asserts that the rulings on this point by the Court of Appeals in both its February 10, 2016 decision and March 24, 2016 order present novel questions of law, and, consequentially, this Court should grant SCDC’s petition.

#### **IV. DEFECTS IN THE “COUNTER-STATEMENT OF THE QUESTION PRESENTED”**

Under SCACR 242(f), the Respondents included in their return not only argument in rebuttal to this issues and analysis SCDC offered in its petition, but also a counter-statement of the case,<sup>19</sup> as well as a counter-statement of the questions presented for review.<sup>20</sup>

For the sake of brevity, as well as the limitations on the length of its instant reply set by SCACR 242(g), SCDC respectfully submits that it presented the salient, relevant, and operative questions for review in its May 2, 2016 petition. However, SCDC now takes the opportunity to address one (1) component of the Respondents’ counter-statement of the questions presented.

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<sup>18</sup> See the Respondents’ Return, pp. 13 and 14.

<sup>19</sup> SCDC previously addressed inaccuracies in the Respondents’ “COUNTER-STATEMENT OF THE CASE.” See pp. 1 – 4 above.

<sup>20</sup> See the Respondents’ Return, pp. 15 – 23.

At the outset of their counter-statement of the questions presented,<sup>21</sup> the Respondents stated the following:

The term “policies/procedures” appears in several provisions of [GA-01.12], most notably §§7.1 and 13.9 [Apx. pp. 685, 689]. However, the term is not defined in that policy [Apx. p. 691]. “Policy” is defined elsewhere as “the general principles by which a government is guided in its management of public affairs” (Black’s Law Dictionary, 5th ed., 104). The term “procedure” is defined as “the act or method of proceeding in an action” (Webster’s New World Dictionary, 1989 ed., 341). **SCDC defines “policies” and “procedures” as the approved guidelines for handling the agency’s day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates** [Apx. p. 160].

Several conclusions can be drawn from these definitions. First, SCDC is an agency of “government”. Second, SCDC operates the work program in question under [§ 24-3-310] [Apx. p. 720] as one of its “public affairs” and “day-to-day operations”.<sup>22</sup> **And third, SCDC operates the program pursuant to certain “principles”, “methods”, and “guidelines”, primarily those in its 1998 contract with WTI.** [emphasis supplied].

The Respondents did not provide the entirety of SCDC’s definition of the terms “policies” and “procedures,” which, as reflected by the July 26, 2012 order issued by the ALC consisted of the following [Apx. p. 160]:

[T]he terms “policies” and “procedures” constitute approved guidelines for handling the agency’s day-to-day operations as well as statements expressing the basic expectations of conduct for agency staff and inmates. More formally stated, **the terms “policies” and “procedures” constitute agency directives deemed by the responsible agency officials as “necessary to preserve internal order and discipline, and to maintain institutional security in the prison.”** [emphasis supplied].

Further, the Respondents failed to note that the ALC adopted SCDC’s above-quoted definitions of these terms, and the ALC did so to the exclusion of the definitions provided by the

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<sup>21</sup> *Id.*, p. 16.

<sup>22</sup> SCDC respectfully submits that the Respondents erroneously asserted that SCDC operated the service work project at Lieber under the ambit of § 24-3-310. Instead, upon the ratification of S. 182 by the legislature in 2007, SCDC operated the service work project in question under §§ 24-1-290 and 295. These two (2) statutes fell under Chapter 1 of Title 24 rather than Chapter 3, Article 3 of Title 24, in which appears §§ 24-3-310, *et seq.*

Respondents.<sup>23</sup> [Apx. p. 160 – 61]. The Respondents then stated as follows:<sup>24</sup>

Inmates contend that this contract, along with other memos in the record [Apx. pp. 719 – 35], form the basis of **SCDC wage policy** which caused them to be paid less than prevailing wages. The contract also contains, as summarized above, general principles, guidelines and methods for handling SCDC’s day-to-day operations, as well as expectations of conduct, for the work program. [emphasis supplied].

Throughout the rest of its counter-statement of the questions presented, the Respondents repeatedly invoked and discussed SCDC’s purported “wage policy.”<sup>25</sup>

For that matter, the Respondents asserted earlier in their return that the instant case “concerns **SCDC wage policy**, which is ongoing and is contained in the 1998 contract and various memos. [Apx. pp. 719 – 35].<sup>26</sup>” [emphasis supplied]. The Respondents also contended earlier in their return that under paragraph 13.9, the term “policies/procedures” meant “**SCDC wage policy** [Apx. p. 5979].<sup>27</sup>” [emphasis supplied].

Succinctly stated, SCDC has never created, issued, or otherwise published an agency-wide “wage policy” for the prison industries projects it operates, and it further respectfully asserts that no such agency-wide “wage policy” exists.

Moreover, SCDC respectfully asserts that the terms of its 1998 contract with WTI simply do not conform to the definition of “policies” and “procedures” adopted and applied by the ALC in its July 26, 2012 order, because the terms of the 1998 contract were not “necessary to preserve internal order and discipline, and to maintain institutional security” at Lieber, the prison at which

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<sup>23</sup> While the Court of Appeals endorsed the entirety of this definition as adopted by the ALC (Apx. p. 6113), SCDC respectfully submits that the Court of Appeals misapprehended the definition in its February 10, 2016 order.

<sup>24</sup> See the Respondents’ Return, p. 16

<sup>25</sup> *Id.*, pp. 18 – 19 and 21 – 22.

<sup>26</sup> *Id.*, p. 8.

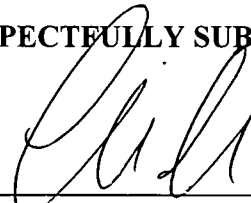
<sup>27</sup> *Id.*, p. 14.

SCDC operated the service work project in which WTI participated as the private industry sponsor and at which the Respondents voluntarily participated in the service work project operated by SCDC.

**V. CONCLUSION**

For the foregoing reasons, as well as all of the reasons articulated in its May 2, 2016 petition, SCDC again respectfully urges this Court to, under the provisions of SCACR 242(b), review the both the Court of Appeals' February 10, 2016 decision and its March 24, 2016 order.

**RESPECTFULLY SUBMITTED:**



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Counsel for SCDC

Columbia, South Carolina  
June 14, 2016

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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Appeal from The Administrative Law Court  
Ralph King Anderson, III, Administrative Law Judge

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Court of Appeals Opinion No. 5379  
Supreme Court Case Tracking No. 2016-000829

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Francis Ackerman, #266928, Malik Aljalil, #219551,  
Linso Allen, #269378, Michael Benninger, #264212,  
Frederic Brown, #289602, Timothy Brown, #238461,  
Terrell Buchanon, #277262, Christopher Buch, #200690,  
Rudy Cassady, #238732, Sheldon Clark, #264772,  
Zawaski Cobb, #187136, Kamathene Cooper, #145333,  
Gladstone Cummings, #267450, Patrick Curtis, #175139,  
Quintin Daniels, #196284, Curtis Davis, #238776,  
Heyward Dempsey, #134171, Phillip Denney, #240678,  
Paul Durham, #219573, Jerome Durham, #270393, Keith  
Eigner, #299153, Bernard Felder, #122099, Jermaine  
Garriett, #191274, Fred Gatewood, #289775, Dennis  
Goff, #177506, Gregory Grant, #109656, Nelson  
Hampton, #286427, James Hartman, #219770, Gary  
Hayes, #263985, Michael Hood, #279987, Nikia Law,  
#260855, Stephen Lease, #137016, Harry Leonard,  
#249996, Herbert McFadden, #184297, Michael  
McFarland, #266870, Earl Mack, #216237, John Moultri,  
#276527, Matin Muntaqim, #266870, Tony Pitts,  
#280597, Germaine Pringle, #250390, Gene Richardson,  
#93614, Dennis Richey, #233472, Ignacio Rivera,  
#300424, Vondell Sanders, #241308, James Sattler,  
#235043, Joseph Schmitz, #173987, Arthur Scott,  
#251957, Jerome Scott, #153381, Roosevelt Scott,  
#275631, Archie Simmons, #161419, Robert Smith,  
#199324, James Williams, #282929, Gary Bryant,  
#258972, Harlon Edger, #261866, Johnny Holden,  
#245199, Don Hughes, #256862, Michael Key, #266890,  
Archie Lee, #226354, Isaac Richardson, #232574,  
Larkland Richards, #281768, John Wojcik, #219463,  
James Bogan, #288111, Larry Burke, #281911, Jammie  
Gaymon, #208922, David Harrell, #260004, Jeff Stinson,  
#260047, Ricky Libby, #274681, Alain Lareua, #128014,  
Quentin Baker, #297868, Frank Corley, #292975, James

Jackson, #267718, Quintin Linen, #238553, Thomas Miles, #246763, Chauncy Orr, #177069, Isaiah Scott, #228008, Eric Youmous, #281091, Derek Carter, #275938, Willie Hare, #256641, Ernest Miller, #235474, Robert Norris, #266101, Ronald Simmons, #267937, Samuel Simmons, #302393, William Thomas, #272501, Anthony Murphy, #295893, Anthony Murray, #237867, Johnny Hayes, #267910, Roy Morris, #288777, Daniel Dewey, #276678, Nehemiah Greene, #243339, Leroy Choice, #113990, James McFadden, #235419, Francis Prioleau, #268813, Darrell Rochester, #146731, Wilbur Jordan, #292264, Alvin Stewart, #278595, Kevin Poston, #266083, Kevin Smith, #272440, Donald Robinson, #277520, Douglas Bude, #263537, Willie Elder, #246208, Rogelio Zavala, #245106, Dennis Knight, #286981, Jacob Beach, #301270, Francis Ackerman, #266928, Darrin Miller, #259593, Edward Bryant, #255998, Sherman Austin, #20028, Michael Baylor, #265682, Taurus Bowman, #252745, Kenneth Carter, #243538, Calvin Drummond, #236322, David Feggins, #287157, Terry Ferguson, #299080, Willie House, #257820, Peter Jenkins, #257321, Percy Martin, #270035, James Murray, #165487, Stephone Simmons, #300422, Larry McClam, #282972, Tyrone Aiken, #244428, Tyrone Aiken, #248367, Frank Anderson, #282800, Ronald Brewer, #285756, Keith Brown, #295762, Pete Bryant, #242370, Michael Busques, #191961, Richard Butler, #162467, Gary Davis, #106144, Anthony English, #238474, Kerlan Etheredge, #236635, James Evans, #267837, Jose Flores, #240563, Robert Garrett, #291096, Reginald Geddis, #183851, Richard Graham, #228235, Gary Grooms, #283860, Wayne Harlan, #245705, Johnny Hayes, #267910, Steven Hickenbottom, #196263, Alfred Joyner, #260442, Donald Lyles, #296135, Henry Baker, #263398, Thomas Carter, #249362, Thomas Butler, #257552, Bobby Williams, #261486, Ray Wells, #173651, Rodney Pressley, #177947, Keith Kelly, #257556, Maxie Gamble, #254413, James Enriquez, #215539, Perry Deveaux, #109601, James Wells, #180458, Cedric Martino, #291396, Donald McAteer, #292961, Robert Wydman, #260331, Anthony Wright, #214007, Derrick

Williams, #272958, Kenneth White, #228409, James Trumper, #247429, Jeffrey Spears, #281697, Timothy Smith, #296539, Davis Sims, #278067, Virgil Simpson, #281888, Edward Simpson, #220017, Kenneth Simmons, #278911, George Shine, #292391, Ralph Sellers, #164295, Laron Richardson, #258786, Frank Patterson, #283098, Tony McNeil, #235864, Larry McClam, #282972, Lavanza Mack, #189340, Raymond Livingston, #277133, Nicholas Lambrose, #215080, Joseph Kelsey, #217218, Keith Eugene, no number, Chuck Jackson, #266425, James Foye, #211523, Timothy Inman, #151123, Marvin Gilbert, #273934, Demetrius Wheeling, #264976, Leon Wilson, #155867, Jeffrey Tevis, #216442, Darryel Beasley, #222388, Curtis Thompson, #266448, Baron Cobbs, #280479, James Tino, #145030, Harold Roberson, #117001, Ray Gadsen, #187527, Tony Witt, #242918, Jonathan Singleton, #287670, Joe Pannell, #89592, Charles Graham, #294453, Lazarus Brannon, #227847, Darrell Williams, #219730, Wilbert Mills, #244004, Howard Grant, #255473, Timothy Wilson, #261971, Rodney Elliott, #251337, Henry Rivers, #219118, Respondents,

v.

South Carolina Department of Corrections, Petitioner.

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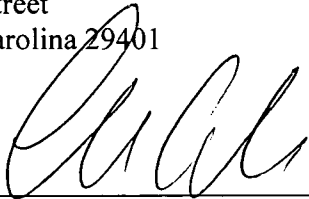
**PROOF OF SERVICE**

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I certify that I have served the **REPLY TO THE RESPONDENTS' RETURN TO THE PETITION FOR WRIT OF CERTIORARI BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS** on the above-named Respondents by mailing a copy of the same to their counsel of record at the following address:

Douglas H. Westbrook, Esquire  
Attorney at Law  
23 Broad Street  
Charleston, South Carolina 29401

June 14, 2016

  
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LAKE E. SUMMERS