

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2016-001221

Fred Gatewood, #289775, ..... Respondent/Petitioner,

v.

South Carolina Department of Corrections, ..... Petitioner/Respondent.

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

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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 return filed by Fred Gatewood [“Gatewood”] to its petition for this Court to issue a writ of certiorari by which to review Court of Appeals’ decision in the instant matter, styled as *Fred Gatewood, Appellant, v. S.C. Dep’t of Corr., Respondent*, Opinion No. 5389 (Mar. 9, 2016). (Jt. Apx. pp. 292 – 311). 785 S.E.2d 600 (S.C. Ct. App. 2016).

**I. CHRONOLOGY ASSOCIATED WITH THE PARTIES’ FILINGS TO THIS COURT**

SCDC and Gatewood both filed petitions for rehearing with the Court of Appeals in which they addressed various aspects of the Court of Appeals’ March 9, 2016 decision (Jt. Apx. pp. 312 – 94). By an order it issued June 2, 2016, the Court of Appeals denied the parties’ respective petitions for rehearing. (Jt. Apx. pp. 395 – 96).

Gatewood, by and through his counsel, filed a petition for writ of certiorari, along with his allied appendix, with this Court on June 30, 2016.

SCDC, by and through its undersigned counsel, filed its petition for writ of certiorari, along with its allied appendix, on July 25, 2016. SCDC incorporated its return to Gatewood’s petition in its July 25, 2016 petition.

In accordance with guidance it received from the Clerk’s office, SCDC, by and through its undersigned counsel and without objection by Gatewood’s counsel, filed and served a joint appendix in support of the parties’ respective petitions on August 2, 2016.

On August 23, 2016, Gatewood, by and through his counsel, filed and served his return (styled as a “response”) to SCDC’s July 25, 2016 petition. SCDC now respectfully submits its instant reply to Gatewood’s return.

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

In his "Counter-Statement of the Case," Gatewood stated as follows:<sup>1</sup>

In 1998, SCDC and WTI entered into a contract to set up this work program (Jt. App. p. 74). The contract established inmates' pay rate at \$4 per hour and contained other work guidelines (Jt. App. p. 79).

The above-quoted paragraph reflects an inaccurate assertion that the contract between SCDC and WTI, the private industry sponsor for the service work project in which Gatewood participated, set Gatewood's "pay rate at \$4 per hour." Instead, the contract's operative provision established that SCDC would lease the inmates' labor to WTI at the rate of \$4.00 per inmate labor hour. (Jt. App. p. 79).

Gatewood also stated as follows in his "Counter-Statement of the Case:<sup>2</sup>"

On August 23, 2004, the Supreme Court issued decisions in [*Adkins, et al. v. SCDC*, 602 S.E. 2d 51 (S.C. 2004) and *Wicker v. SCDC*, 602 S.E. 2d 56 (S.C. 2004)]. These decisions held inmates could file prevailing wage grievances and appeal to the Administrative Law Court (ALC).

SCDC respectfully asserts that by its decisions in *Adkins* and *Wicker*, this Court simply recognized the rights of inmates to articulate challenges to the rate at which SCDC paid them for their prison industries labor, as well as challenges to other aspects of the pay SCDC remitted to them for such labor (i.e. deductions assessed by SCDC by operation of S.C. Code Ann. § 24-3-40, various budget provisos, and § 24-1-195), via administrative grievances filed in accordance with the provisions of SCDC's Inmate Grievance System Policy, designated as Policy GA-01.12.

More specifically, SCDC respectfully asserts that by its decisions in *Adkins* and *Wicker*, this Court did not create any new right(s) for inmates to file such grievances.

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<sup>1</sup> See Gatewood's Return, p. 2.

<sup>2</sup> *Id.*

**III. CONTRARY TO THE ARGUMENTS OFFERED BY GATEWOOD IN HIS RETURN, THE COURT OF APPEALS' MARCH 9, 2016 DECISION AND JUNE 2, 2016 ORDER ANIMATED NOVEL QUESTIONS OF LAW FOR REVIEW BY THIS COURT**

**A. THE COURT OF APPEALS ERRED BY RULING ON THE SECOND ISSUE IT IDENTIFIED IN ITS MARCH 9, 2016 DECISION THAT SCDC SHOULD HAVE PAID GATEWOOD THE "PREVAILING WAGE" PER § 24-3-430(D) AND APPLIED § 24-3-40(A)'S DEDUCTIONS TO HIS GROSS WAGES DURING JULY 2007, AND, IN DOING SO, THE COURT OF APPEALS ANIMATED NOVEL QUESTIONS OF LAW**

**1. Gatewood's Analysis and Arguments in Opposition**

Gatewood contended in his return that contrary to the argument SCDC presented in its petition, the Court of Appeals did not err by ruling that SCDC should have paid the "prevailing wage" per § 24-3-430(D) and applied the deductions from § 24-3-40(A) to the gross wages SCDC remitted to him for his labor during July 2007.<sup>3</sup> Gatewood also contended in his return that SCDC failed to show in its petition any special and important reasons why this Court should issue a writ of certiorari on this issue.<sup>4</sup>

Concerning the merits of SCDC's argument, Gatewood focused on footnote 3 of the Court of Appeals' decision, which read as follows (Jt. Apx. p. 295):<sup>5</sup>

The legislature sustained the Governor's veto of H. 3620, Appropriation Bill 2007-2008, Part 1B § 37.21, the stated reason for the veto being, "the language is no longer necessary after I signed S. 182, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded." **Therefore, from July 1, 2007 to August 1, 2007, there existed no authorization for SCDC to pay participating inmates below the prevailing wage.** We address the import of this anomaly in section II of the Law/Analysis portion of this opinion.<sup>6</sup> [emphasis supplied by Gatewood].

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<sup>3</sup> See Gatewood's Return, pp. 4 – 14.

<sup>4</sup> *Id.*, pp. 13 – 14.

<sup>5</sup> *Id.*, p. 7.

<sup>6</sup> Gatewood omitted footnote 3's final sentence in his return.

Gatewood then observed in his return that in Section II of its opinion,<sup>7</sup> the Court of Appeals ruled as follows regarding the July 2007 gap created by the Governor's veto of the 2007-08 proviso (Jt. App. p. 300):

Critically, this gap also left a void in deductions specific to service work contracts.

The Governor's veto message indicates he was apparently unaware that [§ 24-1-295] became effective on August 1, rather than July 1, 2007, or that a gap in the authorization of the program would be created. However; this court may not consider the Governor's veto message and its effect on the legislature's subsequent action in determining legislative intent. [See *Amisub of S.C., Inc. v. S.C. Dep't of Health & Envtl. Control*, 757 S.E.2d 408, 417 (S.C. 2014)] (stating the Governor's veto message does not have the force of law because it is neither a legislative act nor an Executive Order and that to hold otherwise "would violate the separation of powers doctrine by altering the allocation of powers granted to the three branches of government by our state's constitution").

Accordingly, [§ 24-3-40] governed deductions from the gross earnings of inmates from July 1, 2007 until [§ 24-1-295] became effective on August 1, 2007.<sup>8</sup>

Later in his return, Gatewood responded to SCDC's argument regarding the impact of the legislative history associated with Senate Bill 182 ["S. 182"]. 2007 South Carolina Laws Act No. 68 (S.B. 182), as follows:<sup>9</sup>

In this case, Section 4 of Act No. 68 (S. 182) states: "Section 4. This act takes effect August 1, 2007" (Jt. App. p. 391). In addition, in the South Carolina Code, § 24-1-295, after the text it states: "History: 2007 Act No. 68, § 2, eff August 1, 2007". Finally, there is no relevant language in [§ 24-1-295] indicating that it should be applied retroactively.

Gatewood contends that the word "shall" in the text, the effective date of August 1, 2007, and the absence of clear legislative intent of retroactive application, all indicate §24-1-295 was intended to apply prospectively

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<sup>7</sup> See Gatewood's Return, p. 7.

<sup>8</sup> Gatewood omitted the second of the three (3) above-quoted paragraphs in his return.

<sup>9</sup> See Gatewood's Return, pp. 9 – 10.

only. Finally, SCDC does not contend that §24-1-295 is remedial or procedural.

Gatewood further contends that the legislature's actions suggest it did not intend for §24-1-295 to cover July 2007. S. 182 (§24-1-295) was ratified by the legislature on June 7 or 8, 2007 (Jt. App. pp. 372-373, 386-389). Section 4 of the ratified copy of S. 182 states: "This act takes effect August 1, 2007" (Jt. App. p. 391). Thus, by June 7 or 8, the legislature is presumed to have known of the August 1, 2007 effective date of §24-1-295 [*Amisub*, 757 S.E.2d at 416] (The Court recognizes a presumption that the legislature is familiar with existing legislation). On June 13, the Governor signed S. 182 into law (Jt. App. pp. 372-373, 391).

On June 27, the Governor vetoed the 2007-08 proviso, which had an effective date of July 1, 2007 (Jt. App. pp. 370, 372-374). On June 28 or 29, the legislature sustained the Governor's veto (Jt. App. pp. 372-374). Thus, the legislature sustained the veto of the proviso when it is presumed to have known of the July 1, 2007 effective date for the proviso, and the August 1, 2007 effective date of §24-1-295 [*Amisub*]. For these reasons, Gatewood contends the legislature's actions do not indicate that it intended for §24-1-295 to be applied to July 2007 or at any time before its effective date of August 1, 2007.

At the outset of his return, Gatewood discussed S. 182 as follows:<sup>10</sup>

On June 7 or 8, 2007, S. 182 (§§ 24-1-290, 295) was ratified by the legislature (Jt. App. pp. 372-374, 386-391). Section 4 of the ratified copy of S. 182 stated an effective date for the statute of August 1, 2007 (Jt. App. p. 391). **S. 182 contained language similar to the provisos, and it also changed the list of required deductions and stated they were "in addition to any other required deductions"** (Jt. App. pp. 368, 373). On June 13, 2007, the Governor signed S. 182 into law (Jt. App. pp. 372-374, 391). On June 27, the Governor vetoed the proviso for 2007-2008, which had an effective date of July 1, 2007 (Jt. App. pp. 370, 372). On June 28 or 29, the legislature sustained the Governor's veto (Jt. App. pp. 372-374). [emphasis supplied].

## 2. SCDC's Reply

SCDC respectfully asserts that Gatewood, like the Court of Appeals, misapprehended the impact of the legislature's ratification of S. 182. Specifically, SCDC respectfully asserts it was permitted to pay Gatewood "less than the prevailing wage" during July 2007, because the

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<sup>10</sup> See Gatewood's Return, pp. 1 – 2.

legislature did not intend to create any gap between the expiration of the sixth budget proviso and its enactment of all three (3) sections of S. 182.

In so asserting, SCDC respectfully submits that Gatewood and the Court of Appeals overlooked the reality that the legislature enacted S. 182, §§ 1 and 2 (a/k/a §§ 24-1-290 and 295), in order to codify the six (6) budget provisos that it had enacted to address service work projects since 2001. More specifically, SCDC respectfully submits that both Gatewood and the Court of Appeals overlooked the legislative history associated with all three (3) sections S. 182, which stands apart from the legislative history of the seventh proviso.

In his accounting of its legislative history, Gatewood, like the Court of Appeals, overlooked the reality that the title of S. 182 reflected the following upon its June 8, 2007 ratification (Jt. Apx. p. 390):

AN ACT TO AMEND THE CODE OF LAWS OF SOUTH CAROLINA, 1976, BY ADDING [§§ 24-1-290 AND 295] SO AS TO PROVIDE THAT THE DEPARTMENT OF COMMERCE SHALL DEVELOP AND MAINTAIN A MARKETING PLAN TO ATTRACT PRIVATE SECTOR SERVICE BUSINESSES FOR EMPLOYMENT OF INMATES THROUGH THE PRISON INDUSTRIES PROGRAM UNDER CERTAIN CIRCUMSTANCES, TO PROVIDE THAT THE DIRECTOR OF [SCDC] MAY ENTER INTO CONTRACTS WITH PRIVATE SECTOR ENTITIES THAT ALLOW INMATE LABOR TO BE PROVIDED FOR PRISON INDUSTRY SERVICE WORK THAT INVOLVES EXPORTATION OF CERTAIN PRODUCTS UNDER CERTAIN CIRCUMSTANCES, AND **PROVIDE THAT THE DIRECTOR OF [SCDC] SHALL DEDUCT CERTAIN AMOUNTS FROM THE GROSS EARNINGS OF AN INMATE ENGAGED IN PRISON INDUSTRY SERVICE WORK *IN ADDITION TO ANY OTHER REQUIRED DEDUCTIONS.*** [bold and italicized emphasis supplied].

SCDC respectfully asserts that the legislature clearly intended for SCDC, upon S. 182's ratification, to assess deductions against the gross earnings of inmates participating in service work projects consisting of the schedule in S. 182, § 2 (a/k/a §§ 24-1-295(1) – (6)), as well as

“any other required deductions,” like security costs and overhead, as authorized by the final sentence of the unnumbered first paragraph of S. 182, § 2 (a/k/a § 24-1-295).

The legislature ratified S. 182 on June 8, 2007, and the Governor approved it on June 13, 2007. (Jt. Apx. pp. 390 – 91). Stated another way, the legislature approved and made valid S. 182 on June 8, 2007, and the Governor signed S. 182 into law on June 13, 2007.<sup>11</sup>

Thus, SCDC respectfully asserts that the legislature did not intend for any gap or void to be created during July 2007 during which the ratified provisions of all three (3) sections of S. 182 would not have applied. Furthermore, an examination of the sixth budget proviso, the seventh budget proviso, and §§ 1 and 2 of S. 182 (a/k/a §§ 24-1-290 and 295), reveals that they were identical or nearly identical. (Jt. Apx. pp. 372 – 74).

The Governor vetoed the seventh budget proviso by his June 27, 2007 message, and his message read as follows: “I am vetoing this proviso because **the language is no longer necessary after I signed S. 182**, the Prison Industries legislation. This proviso conflicts with the statutory changes and is unneeded.” [emphasis supplied]. (Jt. Apx. pp. 370 – 71).

The Court of Appeals, invoking *Amisub*, did not account for the Governor’s veto message into its effort to determine the legislative intent associated with § 24-1-295. More precisely, the Court of Appeals, again invoking *Amisub*, apparently used the Governor’s veto message to nullify or otherwise suspend the legislative intent associated with § 24-1-195. Under its interpretation of *Amisub*, the Court declared that a one month gap existed (i.e. July 2007) between the expiration of the sixth proviso and the effective date of § 24-1-295, and the Court of Appeals filled the one month gap with provisions of §§ 24-3-430(D) and 24-3-40(A). (Jt. Apx. pp. 299 – 301).

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<sup>11</sup> See <http://www.scstatehouse.gov/studentpage/coolstuff/glossary.shtml>.

SCDC respectfully asserts, however, the legislative intent associated with § 24-1-295 had nothing at all to do with the seventh budget proviso's fate. Instead, the legislative intent of § 24-1-295 was entirely contingent upon the legislative history associated with S. 182 and its three (3) sections. By the time it sustained the Governor's veto of the seventh budget proviso on either June 28 or 29, 2007, the legislature had, on June 8, 2007, already ratified the entirety of S. 182 and the Governor, on June 13, 2007, had already signed S. 182. Consequentially, the Governor and the legislature both abandoned the seventh budget proviso, because they realized that the seventh budget proviso was unneeded upon S. 182's ratification.

SCDC respectfully argues that S. 182's history evidences the legislature's intent for all three (3) of its sections to cover service work projects upon the expiration of the sixth budget proviso, and, accordingly, the legislature could not have intended and did not intend to create the July 2007 gap the Court of Appeals erroneously created in its March 9, 2016 decision.

Therefore, SCDC respectfully argues that the Court of Appeals erred in its decision when it cured the purported "anomaly" associated with the expiration of the sixth budget proviso and the legislature's ratification of S. 182 by declaring that the provisions of § 24-3-430(D) applied to the hourly rate at which SCDC paid Gatewood and that the provisions of § 24-3-40(A) applied to the deductions SCDC assessed against his gross pay during the month of July 2007.

Moreover, SCDC respectfully asserts, as it did in the petition it filed with this Court on July 25, 2016, that sufficient "special and important reasons" exist, as contemplated by the first sentence of SCACR 242(b), by which this Court should issue a writ of certiorari to review the Court of Appeals' decision on the second issue from its March 9, 2016 decision.

**B. THE COURT OF APPEALS ERRED WHEN IT RULED ON THE FOURTH ISSUE IT IDENTIFIED IN ITS MARCH 9, 2016 DECISION THAT GATEWOOD WAS DEPRIVED OF DUE PROCESS, AND, IN DOING SO, IT ANIMATED NOVEL QUESTIONS OF LAW**

**1. Gatewood's Analysis and Arguments in Opposition**

Gatewood contended in his return that contrary to the argument SCDC presented in its petition, the Court of Appeals did not err by ruling that Gatewood was deprived of due process.<sup>12</sup> Gatewood also contended in his return that SCDC's argument on this issue "did not raise novel questions of law under SCACR 242(b)(1)."<sup>13</sup>

SCDC asserted in its July 25, 2016 petition that because his wage claims inherently sought lawful net wages from SCDC, Gatewood's claims predated any retroactive application of § 24-1-295 by the ALC and Gatewood simply failed to preserve his due process claim for review by the ALC. In his return, Gatewood responded as follows:<sup>14</sup>

Gatewood contends **the current due process claim** did not arise until the ALC, in its April 29, 2014 decision, applied §24-1-295 retroactively to Gatewood's pre-August 1, 2007 work (Jt. App. p. 37). **As a result, Gatewood could not have asserted the due process claim at anytime before the ALC decision.** Moreover, ALC Rule 65 does not permit motions for reconsideration, and Gatewood raised retroactive application of §24-1-295 and due process at the first available opportunity in the Court of Appeals (Jt. App. pp. 191, 211-212). [emphasis supplied].

Regarding SCDC's contention from its July 25, 2016 petition that the Court of Appeals' June 2, 2016 order (Jt. App. pp. 395 – 96) failed to resolve its inconsistent rulings that he failed to preserve his overtime pay claim but nonetheless preserved his retroactivity and due process claims, Gatewood offered only the following conclusory argument:<sup>15</sup>

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<sup>12</sup> See Gatewood's Return, pp. 14 – 22.

<sup>13</sup> *Id.*, p. 9.

<sup>14</sup> *Id.*, p. 16.

<sup>15</sup> *Id.*, p. 20.

Gatewood contends the order is correct that overtime entitlement is a separate question from, and not encompassed by, the evaluation of the proper amount of Gatewood's regular wage (Jt. App. p. 396).

## **2. SCDC's Reply**

First and foremost, SCDC respectfully argues that Gatewood's use of the phrase "current due process claim" in the first of the two (2) above quoted paragraphs from his return is profoundly misleading. Gatewood simply did not acquire a different, new, or "current due process" claim as a consequence of the order issued by the ALC on April 29, 2014 which upheld SCDC's denial of his grievance. (Jt. App. pp. 30 – 40).

Instead, SCDC respectfully asserts that Gatewood possessed a claim that SCDC deprived him of due process by remitting unlawful amounts of net wages to him and by continuing to remit to him unlawful amounts of net wages in his notice of appeal to the ALC from the inception of the instant controversy and that he simply never raised such a claim in the grievance proceedings before SCDC (Jt. App. pp. 47 – 56 and 41 – 45) or in the appellate proceedings before the ALC.

In the conclusion of the brief he filed February 19, 2014 with the ALC (Jt. App. p. 125), Gatewood clearly demanded that SCDC remit to him lawful amounts of net wages by advising the ALC to "[c]alculate [his] back wages at \$4.00 per hour, less any deductions under §24-3-40(A) applicable to [him], from his gross \$4.00 wage." However, Gatewood did not present any argument whatsoever in his brief to the ALC in which he asserted that SCDC deprived him of due process, either procedural due process or substantive due process, by the amount of net wages it remitted to him. (Jt. App. pp. 114 – 127).

This reality is reinforced by a review of the Notice of Appeal Gatewood filed with the ALC upon SCDC's denial of his grievance (Jt. App. p. 46), in which he articulated a due process

claim associated with SCDC's application of the fifteen-day filing deadline from paragraph 13.1 of Policy GA-01.12 to his grievance but failed to articulate any due process claim associated with his claim for prevailing and/or "negotiated wages."<sup>16</sup>

Moreover, nowhere in its March 9, 2016 decision did the Court of Appeals indicate whether SCDC or, for that matter, the ALC deprived Gatewood of his right to substantive due process or procedural due process. (Jt. App. pp. 292 – 311). Likewise, the Court of Appeals did not indicate whether SCDC or the ALC deprived Gatewood of his right to substantive due process as opposed to procedural due process in the June 2, 2016 order by which it denied the parties' respective petitions for rehearing. (Jt. App. pp. 395 – 96).

Gatewood himself did not specify whether SCDC, for that matter, the ALC deprived him of his right to substantive due process as opposed to his right to procedural due process in his brief to the Court of Appeals (Jt. App. pp. 190 – 232), in his reply brief to the Court of Appeals (Jt. App. pp. 270 – 91), or his petition for hearing to the Court of Appeals (Jt. App. pp. 312 – 18). Given one more opportunity to clarify whether SCDC or the ALC deprived him of his right to substantive due process or his right to procedural due process in his return to SCDC's July 25, 2016 petition, Gatewood again failed to do so.

In *Sloan v. S.C. Bd. Of Phys. Therapy Examiners*, 636 S.E.2d 598, 615 (S.C. 2006), this Court recited the following standards applicable to a procedural due process claim:

**The requirements of procedural due process, usually deemed to apply in a contested case or hearing which affects an individual's property or liberty interest,** generally include adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, the right to confront and cross-examine witnesses whose testimony is used to establish facts, and the right to meaningful judicial review. ... Procedural due process requirements are not technical; no

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<sup>16</sup> For the third ground of his appeal to the ALC of SCDC's denial of his grievance, Gatewood stated as follows: "Applying [paragraph 13.1] to these facts violated due process." In the fifth ground, Gatewood only stated as follows: "Grievance proved all elements of claim for prevailing/negot. wages."

particular form of procedure is necessary. ... “[D]ue process is flexible and calls for such procedural protections as the particular situation demands.” ... The requirements in a particular case depend on the importance of the interest involved and the circumstances under which the deprivation may occur. [emphasis supplied and citations omitted].

This Court in *Sloan*, 636 S.E.2d at 614, offered the following standard associated with a substantive due process claim:

**No person shall be deprived of life, liberty, or property without due process of law.** U.S. Const. amend. XIV, 1; S.C. Const. art. I, 3. In order to prove a denial of substantive due process, **a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.** [*Sunset Cay, LLC v. City of Folly Beach*, 593 S.E.2d 462, 470 (S.C. 2004)]; [*Worsley Companies, Inc. v. Town of Mt. Pleasant*, 528 S.E.2d 657 (S.C. 2000)]. [emphasis supplied].

In *Dunes West Golf Club, LLC v. Town of Mount Pleasant*, 737 S.E.2d 601, 609 (S.C. 2013), this Court again relied upon *Sunset Cay* in offering the relevant standard associated with a substantive due process claim:

“In order to prove a denial of substantive due process, a party must show that he was arbitrarily and capriciously deprived of a cognizable property interest rooted in state law.” [*Harbit v. City of Charleston*, 675 S.E.2d 776, 782 (S.C. Ct. App. 2009)] [citing *Sunset Cay*, 593 S.E.2d at 470]. “The State’s deprivation of the property interest must fall so far beyond the outer boundaries of legitimate governmental authority that no process could remedy the deficiency.” *Id.* [emphasis supplied].

In what SCDC respectfully submits is an important aside, the *Dunes West* Court, 737 S.E.2d at 612, n. 11, also offered the following ruling applicable to SCDC’s argument that Gatewood failed to preserve his due process claim for review by the ALC and, by logical extension, the Court of Appeals:

Further, Appellant argues for the first time to this Court that its title to the Golf Course **Property**, rather than its specific right to use and develop the **property**, forms the requisite property interest upon which **a substantive due process challenge** may be based. **Appellant cannot present this argument for the first time on appeal.** [*See Atlantic Coast Builders & Contractors, LLC v. Lewis*, 730 S.E.2d 282, 287 (S.C. 2012)] (“It is

axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”). [emphasis supplied].

For clarity’s sake, SCDC respectfully argues that it did not deprive Gatewood of his right to procedural due process, because Gatewood was afforded, under the provisions of Policy GA-01.12 and, for that matter, Section V of the ALC Rules of Procedure, adequate notice, the opportunity to be heard at a meaningful time and in a meaningful way, the right to introduce evidence, and the right to meaningful judicial review as contemplated under *Sloan*.

SCDC further respectfully argues that it did not deprive Gatewood of his right to substantive due process concerning the net earnings it remitted to him during the entirety of the time he was engaged in the service work project at Lieber, because he was not “arbitrarily and capriciously deprived of a cognizable property interest rooted in state law” as required under *Sloan*, *Dunes West*, and *Sunset Cay*. Stated plainly, SCDC remitted lawful amounts of net earnings to Gatewood during the entirety of the time he was engaged in the service work project.

SCDC did not have to pay Gatewood § 24-3-430(D)’s “prevailing wage,” nor did it have to apply § 24-3-40(A)’s deductions to Gatewood’s gross wages during the July 2007 gap fashioned by the Court of Appeals in its March 9, 2016 decision. Instead, SCDC lawfully paid Gatewood “less than the prevailing wage” during July 2007, and any deductions it applied to his gross wages during July 2007 for security costs and overhead conformed to the “in addition to any other required deductions” language from S. 182, which the legislature ratified June 8, 2007 and the Governor approved June 13, 2007. (Jt. Apx. pp. 390 – 91).

As it remitted lawful amounts of net wages to him during the three (3) fiscal years covered by the fourth, fifth, and sixth budget provisos (i.e. 2004-2005, 2005-2006, and 2006-2007), as well as July 2007 (i.e. the period of time in which the legislature intended for all three

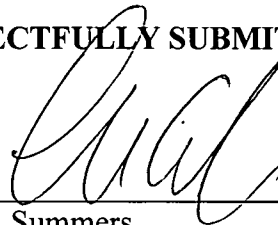
(3) sections of S. 182 to apply), SCDC did not divest Gatewood of any net wages attributable to him at any time he was engaged in the service work project at Lieber.

Accordingly, SCDC respectfully asserts that the Court of Appeals erred in ruling in the fourth issue it identified in its March 9, 2016 decision that Gatewood was deprived of due process. Moreover, if for no other reason than the unresolved question of whether SCDC or the ALC deprived Gatewood of right to procedural due process as opposed to substantive due process, SCDC respectfully asserts, as it did in the petition it filed with this Court on July 25, 2016, that sufficient “special and important reasons” exist, as contemplated by the first sentence of SCACR 242(b), by which this Court should issue a writ of certiorari to review the Court of Appeals’ decision on the fourth issue from its March 9, 2016 decision.

#### IV. CONCLUSION

For the foregoing reasons, as well as the reasons articulated in its July 25, 2016 petition, SCDC again respectfully urges this Court to, under SCACR 242(b), review the both the Court of Appeals’ March 9, 2016 decision and its June 2, 2016 order in the instant matter.

**RESPECTFULLY SUBMITTED:**



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Columbia, South Carolina  
September 2, 2016

**RECEIVED**

SEP 02 2016

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

S.C. SUPREME COURT

APPEAL FROM THE SOUTH CAROLINA ADMINISTRATIVE LAW COURT

Ralph King Anderson, III, Chief Administrative Law Judge

Appellate Case No. 2016-001221

Fred Gatewood, #289775, ..... Respondent/Petitioner,

v.

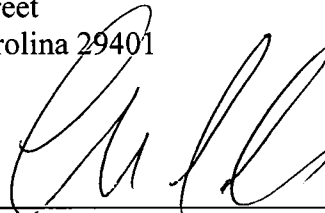
South Carolina Department of Corrections, ..... Petitioner/Respondent.

**PROOF OF SERVICE**

I certify that I have served the **REPLY BY THE SOUTH CAROLINA DEPARTMENT OF CORRECTIONS TO GATEWOOD'S RETURN TO ITS PETITION FOR WRIT OF CERTIORARI** 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

September 2, 2016



LAKE E. SUMMERS