STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM THE ADMINISTRATIVE LAW COURT

Administrative Law Judge John D. McLeod

ALC Case No. 16-ALJ-04-0153-AP
Appellate Case No. 2016-001564

UUNO MATTIAS BAUM, # 272249,

APPELLANT,

v.

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS,

RESPONDENT.

FINAL BRIEF OF RESPONDENT

SOUTH CAROLINA DEPARTMENT OF CORRECTIONS

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ATTORNEY FOR RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

STATEMENT OF ISSUES ON APPEAL

I. THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT THE GENERAL PURPOSE OF S.C. CODE § 24-3-40 IS TO RESTRICT PRISONER ACCESS TO EARNED WAGES AND CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CONCLUSION THAT S.C. CODE § 24-3-40 DOES NOT ALLOW APPELLANT TO DISTRIBUTE HIS ESCROWED WAGES TO A PERSON OF HIS CHOOSING AT THE PRESENT TIME.

II. APPELLANT'S VAGUE AND CONCLUSORY ASSERTIONS THAT S.C. CODE § 24-3-40 VIOLATES THE CONSTITUTION ARE INSUFFICIENT TO OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY AFFORDED TO STATUTES.

STATEMENT OF THE CASE

This matter comes before the Court pursuant to the appeal of Uuno Mattias Baum, an inmate in the custody of the South Carolina Department of Corrections. On May 22, 2015, Appellant submitted a Step One Grievance arguing that he should be permitted to distribute his escrowed wages to his mother. SCDC denied the request, stating that under S.C. Code § 24-3-40, since Appellant was serving a life sentence, his escrowed wages must be held until his release, parole, or death. Appellate submitted a Step Two Grievance on June 21, 2015, which was denied for the same reason on January 14, 2016. Appellant filed a Notice of Appeal to the Administrative Law Court on February 16, 2016. On July 14, 2016, Administrative Law Judge John D. McLeod issued an order affirming SCDC's determination under S.C. Code § 24-3-40. This appeal follows.

STANDARD OF REVIEW

S.C. Code Ann. § 1-23-610(B) provides the applicable standard of review:

> The review of the administrative law judge's order must be confined to the record. The reviewing tribunal may affirm the decision or remand the case for further proceedings; or it may reverse or modify the decision if the substantive rights of the petitioner have been prejudiced because the finding, conclusion, or decision is:
>
> (a) in violation of constitutional or statutory provisions;
>
> (b) in excess of the statutory authority of the agency;
>
> (c) made upon unlawful procedure;
>
> (d) affected by other error of law;
>
> (e) clearly erroneous in view of the reliable, probative and substantial evidence on the whole record; or
>
> (f) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

S.C. Code Ann. § 1-23-610(B); see also S.C. Code § 1-23-380(5).

ARGUMENT

I. THE ADMINISTRATIVE LAW COURT PROPERLY FOUND THAT THE GENERAL PURPOSE OF S.C. CODE § 24-3-40 IS TO RESTRICT PRISONER ACCESS TO EARNED WAGES AND CORRECTLY AFFIRMED THE DEPARTMENT OF CORRECTIONS' CONCLUSION THAT S.C. CODE § 24-3-40 DOES NOT ALLOW APPELLANT TO DISTRIBUTE HIS ESCROWED WAGES TO A PERSON OF HIS CHOOSING AT THE PRESENT TIME.

Appellant, an inmate serving a life sentence for murder, argues that S.C. Code § 24-3-40 entitles him to have his escrowed wages distributed to a person or persons of his choosing at any time. (See Brief of Appellant, page 7). To the contrary, as the Administrative Law Judge properly concluded, S.C. Code § 24-3-40's general purpose is to restrict still-incarcerated inmates' access to their escrowed wages, and subsection (B)(2) does not allow Appellant to distribute his earned wages to a person of his choosing at the present time.

"The cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." Charleston County School District v. State Budget & Control Bd., 313 S.C. 1, 5, 437 S.E.2d 6, 8 (1993). The text of a statute is considered the best evidence of the legislative intent or will, and the courts are bound to give effect to the expressed intent of the legislature. Grier v. AMISUB of S.C., Inc., 397 S.C. 532, 535, 725 S.E.2d 693, 695 (2012). The words of a statute must be given their plain and ordinary meaning without resorting to subtle or forced construction. Durham v. United Cos. Fin. Corp., 331 S.C. 600, 604, 503 S.E.2d 465, 468 (1998). "Where the statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and the court has no right to impose another meaning." Hodges v. Rainey, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000).

If the language of an act gives rise to doubt or uncertainty as to legislative intent, the construing court may search for that intent beyond the borders of the act itself. State v. Morgan, 352 S.C. 359, 367, 574 S.E.2d 203, 207 (Ct. App. 2002); see also Wade v. Berkeley County, 348 S.C. 224, 229, 559 S.E.2d 586, 588 (2002) ("[W]here a statute is ambiguous, the Court must construe the terms of the statute."). An ambiguity in a statute should be resolved in favor of a just, beneficial, and equitable operation of the law. State v. Hudson, 336 S.C. 237, 247, 519 S.E.2d 577, 582 (Ct. App. 1999); City of Sumter Police Dep't v. One (1) 1992 Blue Mazda Truck, 330 S.C. 371, 376, 498 S.E.2d 894, 896 (Ct. App. 1998). In construing a statute, the court looks to the language as a whole in light of its manifest purpose. See, e.g., State v. Dawkins, 352 S.C. 162, 166, 573 S.E.2d 783, 785 (2002). Statutory language "must be construed in context and in light of the intended purpose of the statute in a manner which harmonizes with its subject matter and accords with its general purpose." Cabiness v. Town of James Island, 393 S.C. 176, 192, 712 S.E.2d 416, 425 (2011) (internal quotations omitted).

Appellate courts give great weight to an agency's long-standing construction of a statute; however, such a construction is not dispositive. Gilstrap v. South Carolina Budget and Control Bd., 310 S.C. 210, 423 S.E.2d 101 (1992); see also Brown v. Bi–Lo, Inc., 354 S.C. 436, 440, 581 S.E.2d 836, 838 (2003) (recognizing that courts generally give deference to an administrative agency's interpretation of an applicable statute or its own regulation unless the plain language of the statute or regulation is contrary to the agency's interpretation). If the statute or regulation "is silent or ambiguous with respect to the specific issue," the court then must give deference to the agency's interpretation of the statute or

regulation, assuming the interpretation is worthy of deference. Chevron, U.S.A., Inc. v. Natural Res. Def. Council, Inc., 467 U.S. 837, 843 (1984).

The statute at issue in Appellant's case, S.C. Code § 24-3-40, involves the disposition of wages of inmates who are allowed to work at paid employment. The statute, in its entirety, reads as follows:

> (A) Unless otherwise provided by law, the employer of a prisoner authorized to work at paid employment in the community under Sections 24-3-20 to 24-3-50 or in a prison industry program provided under Article 3 of this chapter shall pay the prisoner's wages directly to the Department of Corrections.
> If the prisoner is serving his sentence in a local detention or correctional facility pursuant to a designated facilities agreement or in a local work/punishment program, or if the local governing body elects to operate one, then the same provisions for payment directly to the official in charge of the facility shall apply if the facility has the means to account for such monies.
> The Director of the Department of Corrections, or the local detention or correctional facility manager, if applicable, shall deduct the following amounts from the gross wages of the prisoner:
> (1) If restitution to a particular victim or victims has been ordered by the court, then twenty percent must be used to fulfill the restitution obligation. If a restitution payment schedule has been ordered by the court pursuant to Section 17-25-322, the twenty percent must be applied to the scheduled payments. If restitution to a particular victim or victims has been ordered but a payment schedule has not been specified by the court, the director shall impose a payment schedule of equal monthly payments and use twenty percent to meet the payment schedule so imposed.
> (2) If restitution to a particular victim or victims has not been ordered by the court, or if court-ordered restitution to a particular victim or victims has been satisfied then:
> (a) if the prisoner is engaged in work at paid employment in the community, five percent must be placed on deposit with the State Treasurer for credit to a special account to support victim assistance programs established pursuant to the Victims of Crime Act of 1984, Public Law 98-473, Title II, Chapter XIV, Section 1404, and fifteen percent must be retained by the department to support services provided by the department to victims of the incarcerated population; or
> (b) if the prisoner is employed in a prison industry program, ten percent must be directed to the State Office of Victim Assistance for use in training, program development, victim compensation, and general administrative

support pursuant to Section 16-3-1410 and ten percent must be retained by the department to support services provided by the department to victims of the incarcerated population.

(3) Thirty-five percent must be used to pay the prisoner's child support obligations pursuant to law, court order, or agreement of the prisoner. These child support monies must be disbursed to the guardian of the child or children or to appropriate clerks of court, in the case of court ordered child support, for application toward payment of child support obligations, whichever is appropriate. If there are no child support obligations, then twenty-five percent must be used by the Department of Corrections to defray the cost of the prisoner's room and board. Furthermore, if there are no child support obligations, then ten percent must be made available to the inmate during his incarceration for the purchase of incidentals pursuant to subsection (4). This is in addition to the ten percent used for the same purpose in subsection (4).

(4) Ten percent must be available to the inmate during his incarceration for the purchase of incidentals. Any monies made available to the inmate for the purchase of incidentals also may be distributed to the person or persons of the inmate's choice.

(5) Ten percent must be held in an interest bearing escrow account for the benefit of the prisoner.

(6) The remaining balance must be used to pay federal and state taxes required by law. Any monies not used to satisfy federal and state taxes must be made available to the inmate for the purchase of incidentals pursuant to subsection (4).

(B) The Department of Corrections, or the local detention or correctional facility, if applicable, shall return a prisoner's wages held in escrow pursuant to subsection (A) as follows:

(1) A prisoner released without community supervision must be given his escrowed wages upon his release.

(2) A prisoner serving life in prison or sentenced to death shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice.

(3) A prisoner released to community supervision shall receive two hundred dollars or the escrow balance, whichever is less, upon his release. Any remaining balance must be disbursed to the Department of Probation, Parole and Pardon Services. The prisoner's supervising agent shall apply this balance toward payment of the prisoner's housing and basic needs and dispense any balance to the prisoner at the end of the supervision period.

Appellant asserts that subsection (B)(2) allows for a current distribution to a person of his choice. Appellant's interpretation is incorrect under the plain language of the statute

and considering the general purpose of the statute, which is clearly to restrict an inmate's access to his earned wages. (See ALC Order, page 5-6). The disbursement of escrowed wages is governed by subsection (B) of the statute. Subsection (B)(1) states that a prisoner released without community supervision must be given his escrowed wages *upon his release*. Subsection (B)(2), a subsection dedicated to inmates sentenced to death or life imprisonment, states that such an inmate "shall be given the option of having his escrowed wages included in his estate or distributed to the persons or entities of his choice." Subsection (B)(3) states that an inmate released to community supervision shall receive the lesser of two-hundred dollars or the escrow balance *upon his release*, with any remaining balance going to the Department of Probation, Parole and Pardon Services to be applied toward payment of the offender's housing and basic needs. Any balance remaining at the conclusion of the supervision period is returned to the offender at that time.

The Administrative Law Judge properly concluded that a review of the statute as a whole indicates that the general purpose of S.C. Code § 24-3-40 is to restrict personal access of still-incarcerated inmates to their earnings except in the limited circumstances specified in the statute. In fact, the only direct access an incarcerated inmate has to his earnings is under Subsection (A)(4), which requires that ten percent of the escrowed wages must be made available to the inmate during his incarceration. This subsection specifically states that the inmate may use the ten percent "for the purchase of incidentals" or he may distribute these funds "to the person or persons of the inmate's choice." Subsection (A)(4) provides the only mechanism for an inmate to distribute funds to other people during his incarceration. Subsection (B)(2), read in harmony with the restrictive nature of the statute as a whole, does

not change this fact and consequently only allows an inmate who serves a life or death sentence to have his escrowed wages distributed to the persons or entities of his choice upon his or her death.[1]

In sum, the Administrative Law Judge properly affirmed the Department of Corrections' final agency determination after correctly concluding that there were no compelling reasons to overrule the Department's interpretation of S.C. Code § 24-3-40.[2] See Kiawah Development Partners, II v. South Carolina Dept. of Health and Environmental Control, 411 S.C. 16, 34-35, 766 S.E.2d 707, 718 (2014) ("Accordingly, the deference doctrine properly stated provides that where an agency charged with administering a statute or regulation has interpreted the statute or regulation, courts, including the ALC, will defer to the agency's interpretation absent compelling reasons. We defer to an agency interpretation unless it is 'arbitrary, capricious, or manifestly contrary to the statute.'" (citation omitted)). (See ALC Order, page 5). Accordingly, the order of the Administrative Law Judge should be upheld.

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[1] The Administrative Law Judge correctly found that this conclusion is buttressed by the statute's use of the term "estate" in Subsection (B)(2), which term is commonly understood to refer to property owned at death. See State v. Wilson, 274 S.C. 352, 355, 264 S.E.2d 414, 415 (1980) (when general words follow the enumeration of particular classes or subjects, the general words should be construed as limited only to those of the general nature or class enumerated); South Mutual Church Insurance Company v. S.C. Windstorm & Hail Underwriting Ass'n, 306 S.C. 339, 342, 412 S.E.2d 377, 379 (1991) (the meaning of terms in a statute may be ascertained by reference to words associated with them in the statute). (See ALC Order, page 7-8).

[2] Appellant repeatedly mentions the fact that section (A)(5) of S.C. Code § 24-3-40 states that the interest-bearing escrow account is "for the benefit of the prisoner." The fact that ten percent of an inmate's wages goes into an escrow account for his benefit does not change the fact that very next portion of the statute restricts inmate access to such funds until release from custody. Although Appellant's life sentence means that he most likely will not be released until he dies, his release is still possible through reversal of his conviction via the appellate, post-conviction relief, or habeas corpus processes, through pardon, or through any other mechanism allowed by law. Having restricted access to his escrowed wages while he is still incarcerated allows Appellant to build up a supply of funds in the event of his release, which would obviously be to his benefit. Further, even if he is not released during his lifetime, Appellant's argument overlooks the reality that he does indeed benefit

II. APPELLANT'S VAGUE AND CONCLUSORY ASSERTIONS THAT S.C. CODE § 24-3-40 VIOLATES THE CONSTITUTION ARE INSUFFICIENT TO OVERCOME THE PRESUMPTION OF CONSTITUTIONALITY AFFORDED TO STATUTES.

Appellant also argues that as applied, S.C. Code § 24-3-40(B)(2) violates the Takings Clause by depriving him of his property without his consent and violates the Equal Protection Clause by treating him differently than inmates not serving life sentences. Both of Appellant's constitutional arguments fail because his assertions of unconstitutionality are insufficient to overcome the presumption of constitutionality. See Davis v. County of Greenville, 322 S.C. 73, 77, 470 S.E. 2d 94, 96 (1996) ("[A]ll statutes are presumed constitutional and, if possible, will be construed to render them valid."); Curtis v. State, 345 S.C. 557, 570, 549 S.E.2d 591, 597 (2001) ("[A] legislative act will not be declared unconstitutional unless its repugnance to the Constitution is clear and beyond a reasonable doubt.") (citation omitted).

Takings Clause Claim

Initially, Appellant's Takings Clause claim is arguably not ripe under the analysis employed in Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985). Appellant has not first sought compensation under the remedies provided by state law, such as an action for conversion. See, e.g., Moseley v. Oswald, 376 S.C. 251, 254, 656 S.E.2d 380, 382 (2008) (discussing the elements of a conversion action in South Carolina). Accordingly, Appellant's Takings Clause claim should be summarily dismissed as premature.

The Takings Clause of the Fifth Amendment provides that "private property [shall

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by having monies available for distribution to his family members upon his death.

not] be taken for public use, without just compensation." U.S. Const. amend. V. In order to state a Takings Clause claim, a plaintiff must first demonstrate that he possesses a property interest that is constitutionally protected. Only if the plaintiff actually possesses such an interest will a reviewing court then determine whether the deprivation or reduction of that interest constitutes a "taking." Givens v. Ala. Dep't of Corr., 381 F.3d 1064, 1066 (11th Cir. 2004) (citations omitted).

Importantly, although the Fifth Amendment protects property interests, it does not create them. See Phillips v. Wash. Legal Found., 524 U.S. 156, 164 (1998) (citation omitted). Therefore, in order to ascertain the nature and extent of the protected property interest at issue, a court must look outside the Takings Clause to "rules or understandings that stem from an independent source," such as common law and state law. Board of Regents v. Roth, 408 U.S. 564, 577 (1972). While a state may create and define property rights, the Takings Clause limits a state's ability to redefine core property rights in an attempt to sidestep the Takings Clause. See Webb's Fabulous Pharm., Inc. v. Beckwith, 449 U.S. 155, 164 (1980). Accordingly, as noted by the United States Supreme Court, "a State, by *ipse dixit,* may not transform private property into public property without compensation." Id. On the other hand, if a state statute creates a property right not previously recognized or one broader than that traditionally understood to exist, the property interest so created is defined by the statute and may be withdrawn so long as the State affords due process in doing so. Washlefske v. Winston, 234 F.3d 179, 184 (4th Cir. 2000).

"Although private citizens ordinarily have a constitutionally protected property interest in the wages earned from their labor under employment contracts, inmates do not."

Id. at 184. "Inmates can be put to work without compensation, and such a policy would not violate any traditional principle of property law." Id. at 184-85. In fact, "at common law[,] a convicted felon not only did not have a property right in the product of his work in prison, but he also forfeited all rights to personal property." Id. at 185.

The State of South Carolina adopted the common law from England. In O'Hagan v. Fraternal Aid Union, 144 S.C. 84, 141 S.E. 893 (1928), the South Carolina Supreme Court held that where there is no statute addressing a particular issue, "we must look back to the common law, for the principles of the law there stated are of force in this state, until there has been some repeal or modification thereof by the law-making body." Id. at 84, 141 S.E. 894. This presumption that the English common law applies where there is no contrary South Carolina authority is mandated by the reception statute, S.C. Code Ann. § 14-1-50. Our Supreme Court has further held that the common law will not be impliedly changed but will only be changed by "clear and unambiguous legislative enactment." State v. Carson, 274 S.C. 316, 262 S.E.2d 918, 920 (1980). Consequently, in South Carolina, an inmate enjoys no personal property rights. See accord, Givens v. Alabama Department of Corrections, 381 F.3d 1064, 1068 (11th Cir. 2004) ("under traditional common law in Alabama, an inmate had no property rights"); see also Washlefske, 234 F.3d at 185 (holding that a prisoner does not "enjoy the right to exclude others from the use of funds credited to his accounts, nor is he entitled to the interest or other income earned from them.").

Appellant does not enjoy any common law property rights to his earned wages. His conclusory statement that he has a "fundamental right" to his earned wages is erroneous and without any legal support. (See Brief of Appellant, p. 4). Although our legislature has

chosen to provide inmates with limited rights to funds earned through prison work programs, the statute does not take away any preexisting property right; instead, it creates a limited property right defined by the terms of the statute. Accordingly, since Appellant cannot claim that a property interest based on traditional principles of property was taken, his takings claim fails.

Equal Protection Clause Claim:

Under the Equal Protection Clause of the 14th Amendment, no person in the United States shall be denied "the equal protection of the laws." U.S. Const. amend. XIV. "The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment." Grant v. S.C. Coastal Council, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995). Where an alleged equal protection violation does not implicate a suspect class or abridge a fundamental right, the "rational basis" test is used. Town of Hollywood v. Floyd, 403 S.C. 466, 480, 744 S.E.2d 161, 168 (2013); see also Curtis v. State, 345 S.C. 557, 574, 549 S.E.2d 591, 600 (2001) ("This case does not involve a suspect classification or a fundamental right, so the question under equal protection analysis is whether the legislation is rationally related to a legitimate state purpose."). "To prevail under the rational basis standard, a claimant must show similarly situated persons received disparate treatment, and that the disparate treatment did not bear a rational relationship to a legitimate government purpose." Town of Hollywood, 403 S.C. at 480, 744 S.E.2d at 168 (citations omitted). The classification will be upheld if there is "any reasonably conceivable state of facts" that would provide a rational basis for it. F.C.C. v. Beach Communications, Inc., 508 U.S. 307, 313 (1993).

The fact that a classification may result in some inequity does not render it unconstitutional under the equal protection clause. Curtis at 574, 549 S.E.2d at 600 (citations omitted). Furthermore, equal protection "does not require things which are different in fact or opinion to be treated in law as though they were the same." Tigner v. Texas, 310 U.S. 141, 147 (1940). The Equal Protection Clause does not forbid state legislatures from classifying, but "the classification must be reasonable, not arbitrary, and must rest upon some ground of difference having a fair and substantial relation to the object of the legislation, so that all persons similarly circumstanced shall be treated alike." Royster Guano Co. v. Virginia, 253 U.S. 412, 415 (1920).

Under S.C. Code § 24-3-40, all inmates have restricted access to their escrowed wages until such time as they are released.[3] Restricted access while incarcerated gives inmates the opportunity to have a supply of funds upon release, which increases their chances of succeeding outside the prison walls. Although Appellant committed a crime of such magnitude as to warrant a life sentence - meaning his release most likely will not occur until he dies - his release is still possible through reversal of his conviction via the appellate, post-conviction relief, or habeas corpus processes, through pardon, or through any other mechanism allowed by law. Therefore, just like other inmates, his having restricted access to his escrowed wages allows him to build up a supply of funds in the event of his release. If he is not released during his lifetime, the statute allows him to either have the escrowed funds

[3] Historically, prison inmates have had limited access to funds for several reasons. First of all, prisons provide inmates with everything they need and there is consequently not a reason for inmates to have access to money. Furthermore, inmates having unfettered access to currency or funds could invite attack by predatory inmates, facilitate escape or the procurement of drugs, or lead to bribing of officials. See Sullivan v. Ford, 609 F.2d 197, 198 (5th Cir. 1980), *cert denied* 446 U.S. 969. Restricting inmate access to funds also reduces the risks of gambling, drug trafficking, extortion, and temptation to engage in other unedifying or illicit activities. See

included in his estate - meaning the funds would be subject to the probate process - or designate a person or persons to receive the funds outside of the probate process. See S.C. Code § 24-3-40 (B)(2).

Since this case does not involve a suspect classification or a fundamental right, the question under an equal protection analysis is whether the legislation is rationally related to a legitimate state purpose. Here, Appellant has failed meet his burden to show that any classifications made in S.C. Code § 24-3-40 are not rationally related to legitimate state purposes, as discussed in the paragraph above.[4] In that vein, his arguments regarding equal protection are vague and conclusory and without citation to any relevant precedent supporting that his equal protection rights have been violated. (See Brief of Appellant, p. 6-7). Accordingly, this Court should find that Appellant's equal protection is without merit and dismiss this issue.

Cardwell v. Hogan, 534 P.2d 283, 284 (1975); Nix v. Paderick, 407 F. Supp. 844, 846 (E.D. Va. 1976).

[4] Notably, Appellant – an inmate who committed a murder that warranted a life sentence – has also failed to make any sufficient showing that he is "similarly situated" to inmates who committed less heinous crimes and are not serving life sentences.

CONCLUSION

For the foregoing reasons, this Court should affirm the Administrative Law Court's decision below.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the **Final Brief of Respondent** complies with Rule 211(b), SCACR, and also complies with the South Carolina Supreme Court's April 15, 2014, order entitled "Revised Order Concerning Personal Identifying Information and Other Sensitive Information in Appellate Court Filings."

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