THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the
ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2020-000837
Case No. 19-ALJ-17-0001-CC

Eighteen Ink, LLC, d/b/a Group Therapy . . . . . Respondent

v.

South Carolina Department of Revenue . . . . . Respondent

and

Thomas R. Gottshall, April C. Lucas, and Michael Drennan . . . . . Intervenors/Appellants

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FINAL BRIEF OF RESPONDENT EIGHTEEN INK, LLC

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STATEMENT OF ISSUES ON APPEAL

1. The Administrative Law Court's determination that Group Therapy was entitled to relicensure for the 2018-2020 alcohol licensing period has been mooted by the expiration of its permits and licenses.

2. The Administrative Law Court properly found that Group Therapy's location was suitable for renewal of its on-premises beer and wine permit and restaurant liquor by the drink license, which is supported by substantial evidence.

3. The Administrative Law Court properly precluded Appellants from making arguments and presenting evidence regarding whether Group Therapy is engaged primarily and substantially in the preparation and serving of meals.

    a. Determining compliance with statutory licensing requirements is an enforcement matter exclusively vested with the Department of Revenue and the South Carolina Law Enforcement Division.

    b. Even if Appellants were entitled to advance such arguments, Group Therapy is in compliance with the relevant constitutional requirement as defined by statute.

STATEMENT OF THE CASE

Respondent Eighteen Ink, LLC d/b/a Group Therapy ("Group Therapy") filed an application with the South Carolina Department of Revenue ("the Department") to renew its on-premises beer and wine permit and restaurant liquor by the drink license for the 2018-2020 licensing period. The Department issued a final determination finding Group Therapy met the statutory requirements for renewal but denied the application based upon the receipt of timely public protests. Group Therapy filed a request for a contested case hearing with the Administrative Law Court ("ALC").

On February 4, 2019, the ALC granted leave for Appellants to intervene. On September 27, 2019, the Department added Columbia Police Department ("CPD") Chief William Holbrook to the list of Protestants.

The Department filed an Amended Prehearing Statement on December 9, 2019, informing the ALC that the Department no longer considered the licensed location suitable for renewal based on a South Carolina Law Enforcement Division ("SLED") administrative citation issued to Group Therapy on September 15, 2019, for allegedly permitting a criminal act on the premises. On December 19, 2019, the Department also added the University of South Carolina ("the University") to the list of Protestants.

Prior to the start of the hearing, the ALC granted Group Therapy's motion *in limine* to preclude Appellants from advancing arguments and presenting evidence regarding Group Therapy's preparation and service of meals. During the hearing, the ALC heard witnesses and received evidence on the suitability of Group Therapy's location for the renewal of its on-premises beer and wine permit and restaurant liquor by the drink license. At the close of the hearing, the ALC took the matter under advisement.

A month later, Appellants moved to reopen and supplement the record with new evidence depicting an altercation that took place inside of Group Therapy, which the ALC denied.

In its Final Order, the ALC held Group Therapy's location was suitable for permitting and licensure. This appeal followed.

Several months later, Group Therapy submitted an application to renew its on-premises beer and wine permit and restaurant liquor by the drink license for the 2020-2022 licensing period, and the Department received valid protests in July 2020. The permit and license at issue in this appeal expired on August 31, 2020.

FACTS

Group Therapy, a restaurant located at 2107 Greene Street in the Five Points entertainment district, has been a part of the Columbia community since 1978. (R. p. 112, lines 10-13; R. p. 113, lines 1-3). On June 30, 2016, Eighteen Ink, LLC, comprised of Steve Taneyhill and Tiffany Lancaster, purchased and began operating Group Therapy.[1] (R. p. 111, line 21–p. 112, line 9). Taneyhill also serves as Group Therapy's general manager. (R. p. 112, lines 16-19). Group Therapy typically opens at 8:00 p.m. on Mondays, 4:30 p.m. Tuesday through Friday, and in the afternoon on the weekend. (R. p. 113, lines 10-15). While Group Therapy does not target customers of a particular age group, Group Therapy's average patron ranges in age from 21 to 71. (R. p. 117, lines 2-23). Additionally, Group Therapy employs ten individuals who could work as bartenders or door security, and six who work as bartenders and a cook. (R. p. 118, lines 6-17; R. p. 136, lines 3-15). As part of its business, Group Therapy routinely obtained an on-premises beer and wine permit and a restaurant liquor by the drink license. Group Therapy also obtained a late-night permit from the City of Columbia.[2] (R. p. 113, lines 10-15).

Group Therapy filed an application with the Department to renew its on-premises beer and wine permit and restaurant liquor by the drink license for the 2018-2020 licensing period. The Department issued a final determination on December 4, 2018, indicating that Group Therapy met

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[1] Respondent Eighteen Ink, LLC and Group Therapy will be referred to collectively as "Group Therapy" throughout.

[2] Late-night permits are discretionary permits allowing establishments to continue serving beer and wine after 2:00 a.m. (R. p. 123, line 23–p. 124, line 3). In obtaining a late-night permit, the establishment has to be vetted and approved by the Columbia Police Department, which puts "great emphasis" on the process. (R. p. 305, lines 5-7; R. p. 306, lines 17-18). The fire department also conducts a safety review of the establishment before a late-night permit is issued. (R. p. 309, lines 2-4). At one point, there were twelve establishments in Five Points holding late-night permits. (R. p. 305, lines 20-21). However, after the City enacted a more stringent review process, only four establishments in Five Points retained their late-night permits. (R. p. 305, lines 13-22).

the statutory requirements for renewal but denied the application based upon the receipt of timely public protests. (R. p. 49, lines 4-16). Specifically, fifteen residents from neighborhoods surrounding Five Points, including Appellants, protested the renewal application, arguing (1) Group Therapy's location was not suitable for relicensure and (2) Group Therapy was not engaged primarily and substantially in the preparation and service of meals as required by statute and the state constitution.[3] On January 2, 2019, Group Therapy filed a request for a contested case hearing with the ALC, and the ALC granted leave for Appellants to intervene on February 4, 2019.

A few months later, SLED conducted two separate inspections of Group Therapy. At some point in September 2019, SLED conducted a compliance review and determined Group Therapy was in compliance with all the relevant statutory requirements regarding the preparation and service of meals.[4] (R. p. 48, line 23–p. 50, line 22). That same month, SLED Special Agent Kirkland Jordan led several random inspections of establishments in Five Points after a college football game. (R. p. 204, line 16–p. 205, line 1). During her inspection of Group Therapy, Agent Jordan discovered Torrickory Outing and three other individuals smoking marijuana in the back office. (R. p. 102, line 3–p. 103, line 16; R. p. 207, line 6–p. 210, line 5). In response to the SLED inspection, the Department filed an Amended Prehearing Statement informing the ALC that it no

[3] *See* S.C. Const. art. VIII-A, § 1 ("[L]icenses may be granted to sell and consume alcoholic liquors and beverages on the premises of businesses which engage primarily and substantially in the preparation and serving of meals."); S.C. Code Ann. § 61-6-1610(A)(1) (providing that it is lawful to sell and consume alcoholic liquors sold by the drink in a business "bona fide engaged primarily and substantially in the preparation and serving of meals"); S.C. Code Ann. § 61-6-1820(1) (providing that the Department may issue a liquor by the drink license to a "business bona fide engaged primarily and substantially in the preparation and serving of meals").

[4] *See* S.C. Code Ann. § 61-6-20(2) (providing that a business is "[b]ona fide engaged primarily and substantially in the preparation and serving of meals" if it has tablespace to seat forty patrons simultaneously, a kitchen, and menus, and prepares hot meals for customers upon demand at least once each day the establishment chooses to be open.).

longer considered the licensed location suitable, relying on allegations that Group Therapy allowed someone to smoke marijuana in its back office.[5] (R. p. 75, line 17–p. 76, line 25).

Prior to the start of the hearing, the ALC heard arguments on Group Therapy's motion *in limine* seeking to preclude Appellants from advancing arguments concerning Group Therapy's preparation and service of meals, and seeking to exclude any evidence regarding Group Therapy's food sales. (R. p. 31, line 5–p. 60, line 24). Group Therapy argued there was no private right of action to enforce the alcohol licensing laws, rather, such authority was vested exclusively in the Department and SLED. (R. p. 31, line 10–p. 33, line 7). Group Therapy further argued the Department, SLED, and Intervenors determined Group Therapy was in compliance with the relevant statutory requirements. (R. p. 34, lines 10-22; R. p. 46, lines 7-14). Appellants argued that the protest statute[6] does not limit the reasons a member of the public may cite when protesting the issuance of a license. (R. p. 36, line 15–p. 37, line 15). Appellants also argued the state constitution required that the ALC consider an applicant's percentage of food sales despite the absence of such language in the statutory definition of a business "bona fide engaged primarily and substantially in the preparation and serving of meals." (R. p. 39, line 20–p. 44, line 17). Group Therapy responded that Appellants could not ask the ALC to read additional elements into the statutory definition, and Appellants could not circumvent SLED and the Department's determination regarding statutory compliance. (R. p. 34, line 23–p. 35, line 12; R. p. 46, line 7–p. 47, line 22).

After the ALC asked for the Department's input, the Department agreed there was no private right of action allowing an intervenor to step into the shoes of the Department and enforce

[5] *See* S.C. Code Ann. § 61-4-580(A)(5) (indicating that no holder of a permit authorizing the sale of beer or wine may knowingly permit the commission of a crime on the permit holder's premises).
[6] S.C. Code Ann. § 61-6-1825.

statutory compliance. (R. p. 48, lines 8-17). The Department also confirmed that Group Therapy was in compliance with the statutory requirements, relying on the compliance check SLED conducted in September 2019. (R. p. 48, line 23–p. 50, line 22). Additionally, the Department explained that SLED does not audit an establishment's food sales when conducting a compliance check because it strictly adheres to the statutory definition. (R. p. 54, line 13–p. 55, line 24). However, in response to concerns raised by the ALC, the Department explained that SLED utilized multiple methods to investigate whether an establishment served food,[7] and the Department would seek revocation of an establishment's license if it determined the establishment did not provide food. (R. p. 56, line 17–p. 57, line 10; R. p. 60, lines 6-16).

Ultimately, the ALC granted Group Therapy's motion *in limine*, reasoning, in pertinent part:

> the Protestants' allegations . . . that Group Therapy is not . . . engaged primarily and substantially in the business of selling food . . . is an enforcement argument. And I think enforcement is the responsibility of the Department [of Revenue] and SLED and that the citizens . . . don't have that private right to bring an enforcement action. I think the *Sandalwood* case is pretty clear on that.

(R. p. 61, lines 5-18). Thereby establishing the hearing was limited to determining whether Group Therapy's location was suitable for relicensure.

After pretrial motions, the hearing began and the ALC heard testimony from eight witnesses. Group Therapy called Outing to testify regarding the incident in Group Therapy's office. Outing testified that he occasionally worked as a backup DJ for Group Therapy, but was not an employee. (R. p. 82, line 22–p. 83, line 8). Outing explained that on the night of the incident, he went to Group Therapy to retrieve his bookbag out of the office after placing it in there

[7] The Department provided the specific example of sending a SLED agent into an establishment to attempt to purchase food. (R. p. 60, lines 10-16).

while DJing on a previous night. (R. p. 84, line 24–p. 85, line 13). Outing indicated that he asked an employee if he could retrieve his bag, but did not tell anyone he planned to smoke marijuana in the office. (R. p. 85, line 14–p. 86, line 10). Furthermore, Outing explicitly denied that any of Group Therapy's employees knew he was smoking in the office. (R. p. 86, lines 5-10; R. p. 88, lines 6-9; R. p. 91, line 16–p. 93, line 11). Outing explained he and his girlfriend entered the office and let two unidentified individuals in with them. (R. p. 86, lines 5-14; R. p. 103, lines 5-16). Shortly after Outing and three individuals began smoking, SLED agents knocked on the door and issued him a citation for the marijuana. (R. p. 86, lines 13-20; R. p. 93, lines 8-11).

Group Therapy next called Taneyhill, who testified regarding Group Therapy's operating hours, employees, and the demographics of its patrons, as well as its efforts to hold itself to a higher standard. In maintaining a higher standard, Taneyhill testified that Group Therapy only employed professionals and did not hire college students.[8] (R. p. 118, lines 11-14).

In regard to serving alcohol, Taneyhill explained that all of the bartenders were required to become ServSafe certified prior to serving. (R. p. 125, lines 3-13). Taneyhill also testified that Group Therapy stationed two employees at the front door to check IDs, and one at the back door[9] to prevent anyone from sneaking into the establishment. (R. p. 118, lines 18-25; R. p. 146, lines 10-13). Additionally, Group Therapy invested in an Intellicheck ID scanner, the same system employed by CPD, to prevent the use of fake IDs.[10] (R. p. 120, line 22–p. 121, line 20).

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[8] Taneyhill also testified that neither he nor his employees knowingly allowed Outing to smoke marijuana in the office. (R. p. 115, lines 6-17).

[9] Group Therapy's back door is used only as an exit, and patrons can only gain entry through the front door. (R. p. 146, lines 7-17).

[10] Taneyhill further testified that he would be willing to purchase more Intellicheck scanners to alleviate any of the ALC's potential concerns. (R. p. 201, lines 19-22).

Regarding patron safety, Taneyhill testified Group Therapy had ten security cameras inside the establishment and one outside. (R. p. 163, lines 6-13). Taneyhill also indicated Group Therapy maintained a line in front of the establishment to prevent the crowd from exceeding capacity, and security occasionally screened patrons for weapons before allowing them to enter. (R. p. 147, lines 10-17; p. 159, lines 1-6). Furthermore, Taneyhill explained Group Therapy routinely cooperated with CPD to mitigate potential issues. (R. p. 153, line 6–p. 158, line 22). Additionally, Taneyhill detailed Group Therapy's formation and operation of the Safe and Sound Pledge, which asks the establishments in Five Points to commit to providing patrons with an employee to escort them to their vehicle or ride. (R. p. 122, line 6–p. 123, line 22).

Following Taneyhill's testimony, the Department called Special Agent Kirkland Jordan, the Five Points supervisor for SLED's alcohol enforcement unit. (R. p. 203, lines 2-23; R. p. 228, lines 11-12). Agent Jordan testified regarding the incident in the office and her subsequent investigation, but ultimately conceded that she had no reason to believe anyone at Group Therapy knowingly allowed Outing to smoke. (R. p. 204, line 12–p. 225, line 6; R. p. 242, lines 16-25). The majority of Agent Jordan's remaining testimony summarized the issues with alcohol, loitering, and fighting in the general Five Points area and the corresponding law enforcement presence assigned to manage those issues. (R. p. 230, line 17–p. 239, line 17). Agent Jordan explained such issues were endemic to Five Points generally, but not Group Therapy specifically. (R. p. 239, lines 15-17). Notably, Agent Jordan stated she had never seen a fight inside Group Therapy, the marijuana incident was the only violation she was aware of involving Group Therapy, and Group Therapy's Intellicheck ID scanner was a civilian version of the one SLED used. (R. p. 230, lines 6-8; R. p. 231, line 18–p. 232, line 9; R. p. 241, lines 4-20). Additionally, Agent Jordan

acknowledged that she knew of no evidence indicating the issues she identified as plaguing Five Points were attributable to Group Therapy. (R. p. 243, lines 1-7).

For their first witness, Appellants offered Chief William Holbrook of the Columbia Police Department to testify regarding CPD's protest. (R. p. 247, lines 14-19; R. p. 248, lines 10-25). Chief Holbrook indicated that CPD's decision to file its protest was based on the amount of calls for service and the alcohol-related nature of the calls for service. (R. p. 251, lines 16-17; R. p. 270, lines 14-15). Chief Holbrook explained that between July 2018 and July 2019, CPD was called to Group Therapy 43 times, with 38 calls having a direct nexus to the establishment. (R. p. 264, lines 13-15). Notably, however, Chief Holbrook acknowledged CPD does not make an arrest during every call for service. (R. p. 250, lines 13-15). Additionally, Chief Holbrook testified that CPD tied sixteen criminal charges in 2018 and eighteen criminal charges in 2019 directly to Group Therapy, but conceded that he did not know whether any of the charges produced convictions or whether anyone arrested for one incident received multiple charges. (R. p. 278, lines 2-3; R. p. 280, lines 1-3; R. p. 296, line 4–p. 297, line 15). Chief Holbrook also explained that any arrests made on the block where Group Therapy was located but not directly attributed to Group Therapy did not have "a clear nexus to the establishment itself." (R. p. 278, line 13–p. 279, line 9). Outside of the specific incidents attributed to Group Therapy, Chief Holbrook's testimony mainly detailed the issues with crime and drinking in the Five Points area at large.

On cross-examination, Chief Holbrook acknowledged that CPD indicated Group Therapy had "a reputation for peace and good order in the community" in its protest packet. (R. p. 293, lines 14-19). Chief Holbrook further conceded that Group Therapy took all steps necessary and cooperated with CPD to mitigate issues when asked. (R. p. 294, line 5–p. 295, line 15).

Notably, upon examination by the ALC, Chief Holbrook identified CPD as the agency tasked with vetting and approving late-night permits for the establishments in Five Points. (R. p. 304, line 25–p. 305, line 7). Chief Holbrook explained part of the process involved meeting with ownership and reviewing the calls for service and incidents occurring at the location. (R. p. 309, lines 2-6). In attempting to explain why CPD supported Group Therapy receiving a late-night permit but not a renewal of its license, Chief Holbrook indicated CPD approved the late-night permit out of "fairness" because Group Therapy's call volume was low relative to other establishments in the Five Points area. (R. p. 309, line 21–p. 310, line 19). Chief Holbrook concluded his testimony by asserting that most of the problems CPD encountered in the Five Points area were alcohol related, indicating establishments could alleviate these issues by refusing to serve underage patrons and taking care not to overserve. (R. p. 313, lines 8-19).

Next, Appellants offered Rob Perry, the Director of Traffic Engineering at the South Carolina Department of Transportation ("DOT"). (R. p. 314, lines 16-20). Perry explained that Harden Street and Devine Street, two of the main roads running through the Five Points district, were the sites for two of the non-motorized safety projects DOT planned to develop and construct within a two to three-year period. (R. p. 320, lines 9-23; R. p. 324, lines 21-23). Based on DOT data, Perry testified that Harden Street had the highest incidence of crashes involving pedestrians or bicycles out "of the ten [projects DOT] presented for approval." (R. p. 323, lines 7-8). However, Perry explained this determination was based on twelve incidents involving bike or pedestrian crashes occurring on Harden Street over the course of five years. (R. p. 320, lines 6-8; R. p. 322, lines 12-18). Perry further acknowledged that the data did not reflect the severity of any of the incidents, and conceded that more vehicle crashes occurred during the daytime than at night.

(R. p. 322, line 19–p. 323, line 2; R. p. 331, line 19–p. 333, line 6). Notably, Perry did not offer any testimony specific to Group Therapy or its impact on the traffic in Five Points.

Dean Marc Shook testified on behalf of the University of South Carolina. (R. p. 338, line 6–p. 340, line 2). Dean Shook explained the University typically considered four factors when deciding whether to participate in a licensing protest: (1) last drink data,[11] (2) food sales, (3) social media campaigns targeting students and promoting overconsumption, and (4) law enforcement citations. (R. p. 342, line 18–p. 344, line 22). In regard to the first factor, Dean Shook testified a total of two students reported having their last drink at Group Therapy in 2018, and a total of two students reported the same in 2020.[12] (R. p. 347, lines 5-12; R. p. 367, lines 1-8). Turning to the third factor, Dean Shook testified Group Therapy had very little social media activity in 2018, and did not actively target students or promote overconsumption.[13] (R. p. 348, lines 6-25). Ultimately, Dean Shook indicated the University's decision to protest was based on the data presented by CPD. (R. p. 351, lines 6-16). The remainder of Dean Shook's testimony largely detailed the drinking habits of students, the business practices of establishments in Five Points at large, and his concerns with student safety in the Five Points area. (R. p. 353, line 13–p. 363, line 1). Significantly, during cross-examination, Dean Shook conceded that, despite its concerns with student drinking and the associated harms, the University began serving alcohol to patrons at sporting events, including students. (R. p. 370, line 8–p. 375, line 24).

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[11] "Last drink" data represents where a student had his or her last drink before being admitted to the hospital for alcohol related reasons. (R. p. 342, line 25–p. 344, line 7).

[12] Notably, Dean Shook also testified that seven students reported having their last drink at another establishment in the area. (R. p. 347, lines 5-12).

[13] Dean Shook testified regarding another establishment in the Five Points area advertising free drinks to any women presenting a sorority bid card. (R. p. 348, lines 16-23). Notably, such an advertising campaign is designed to target not only college students, but underage college students as most women join sororities during their freshman year of college.

Finally, Appellants offered two local residents to testify. First, Appellants called Vivian Clark Armstead to testify on behalf of the Martin Luther King Lower Waverly Neighborhood. (R. p. 381, line 17–p. 383, line 1). While Ms. Armstead had general concerns about congestion and overall safety, her only concern regarding Group Therapy was the occasional congregating of people outside the door. (R. p. 398, lines 9-17). In fact, Ms. Armstead testified that her granddaughters frequented Group Therapy and she did not discourage them from doing so because she knew of no incidents with the establishment and found it to be "pretty responsible." (R. p. 398, lines 5-14; R. p. 408, lines 12-22). Ms. Armstead further indicated she would be open to collaborating with Taneyhill to alleviate issues placed on her neighborhood by the Five Points area. (R. p. 405, line 6–p. 408, line 11; R. p. 413, line 6–p. 414, line 20).

Next, Michael Drennan testified on behalf of the Shandon neighborhood. (R. p. 415, line 15–p. 416, line 5). Mr. Drennan explained he protested the suitability of Group Therapy's location due to his concerns regarding Five Points's impact on the health and safety of young people and the community. (R. p. 417, lines 1-6). Mr. Drennan detailed two trips he took to Group Therapy, but the majority of his testimony centered around the conditions in Five Points generally, the drinking habits of patrons in the general Five Points area, and the impact that an increase in student rentals had on his neighborhood. (R. p. 421, line 15–p. 442, line 25). Mr. Drennan further acknowledged he was involved in several other protests, his goal was to generally reduce the number and density of the establishments in Five Points to achieve a more "tenable balance," and he hoped to use the protest process to identify which establishments were meeting their legal requirements. (R. p. 443, lines 10-13; R. p. 453, line 20–p. 454, line 11).

Following closing statements, the ALC took the matter under advisement. (R. p. 474, lines 21-25). During that time, Appellants moved to reopen and supplement the record with video evidence depicting an altercation that took place inside of Group Therapy, which the ALC denied.

In its final order, the ALC found Group Therapy's location was suitable for the renewal of its on-premises beer and wine permit and restaurant liquor by the drink license. (R. pp. 1-17). In determining Group Therapy's location was suitable for relicensure, the ALC found Group Therapy maintained a reputation for peace and good order in the community. (R. p. 16, ¶ 18). The ALC further found this reputation could be directly attributed to Taneyhill's positive relationship with law enforcement and his willingness to take steps designed to address and mitigate problems at their request. (R. p. 16, ¶ 18). The ALC also noted Taneyhill was willing to meet with concerned neighbors, implement additional measures to relieve strain on law enforcement, and operate Group Therapy according to higher standards. (R. p. 16, ¶ 18).

Turning to the issues raised by law enforcement, the ALC found CPD's position to be inconsistent, noting CPD relied on the same data when determining Group Therapy was entitled to a late-night permit that it relied on to support its claim that Group Therapy's location was unsuitable to serve alcohol. (R. p. 14, ¶ 10). The ALC explained "CPD's inability to determine whether [Group Therapy]'s call volume is low, so as to justify a discretionary late-night permit to serve more alcohol, or high, so as to necessitate an absolute denial of alcohol licensure entirely" presented a factual dilemma. (R. p. 14, ¶ 10). Moreover, the ALC pointed to Chief Holbrook's testimony that CPD determined Group Therapy did not have a high call volume relative to other establishments in the area. (R. pp. 13–14, ¶ 9). Thus, the ALC found the "conclusion that service calls attributed to Group Therapy will overburden law enforcement resources [wa]s not supported

by facts and a denial premised on unsuitability in the context of a strain on law enforcement [wa]s without evidentiary support." (R. p. 14, ¶ 10).

In reviewing the concerns of the University, the ALC noted that out of the four factors considered when the University files a protest, only the fourth factor concerning the number of service calls was raised in Group Therapy's case. (R. p.14, ¶ 11). Thus, because the ALC determined such evidence was inconsistent, it found this factor lacked evidentiary support. (R. p.14, ¶ 11). Additionally, the ALC noted that Dean Shook characterized the number of students hospitalized after consuming their last drink at Group Therapy as "low." (R. p. 14, ¶ 12). The ALC also considered Dean Shook's testimony partially attributing the problems in the general Five Points area to the significant increase in underage students at the University. (R. p. 14, ¶ 12). As such, the ALC determined Group Therapy could not be held responsible for the behavior or tendencies of a generation. (R. p. 14, ¶ 12).

Finally, in addressing the concerns of Ms. Armstrong and Mr. Drennan, the ALC found they provided compelling testimony regarding the nuisance behavior in the general Five Points area, but determined these protestants provided, at best, very limited evidence demonstrating Group Therapy was unsuitable for licensure. (R. p. 15, ¶ 15). The ALC concluded the protestants were dissatisfied with Five Points patrons as a whole, but did not provide direct complaints against Group Therapy or its owners. (R. p. 15–16, ¶ 15).

Ultimately, the ALC ordered the Department to issue Group Therapy the on-premises beer and wine permit and restaurant liquor by the drink license, and the Department did so. (R. pp. 1-17). This appeal followed.

Several months later, Group Therapy submitted an application to renew its on-premises beer and wine permit and restaurant liquor by the drink license for the 2020-2022 licensing period,

and the Department received valid protests, including protests from Appellants, the same month. Group Therapy's permit and license for the 2018-2020 licensing period, the subject of this appeal, expired on August 31, 2020. As such, Group Therapy is currently operating under a Letter to Operate issued by the Department.

STANDARD OF REVIEW

A final decision of the ALC may only be reversed when the decision is prejudicial to an appellant's substantial rights and (a) violative of constitutional or statutory provisions; (b) in excess of the agency's statutory authority; (c) made upon unlawful procedure; (d) affected by an error of law; (e) clearly erroneous in view of the reliable, probative, and substantial evidence on the whole record; or (f) arbitrary, capricious, or characterized by abuse of discretion. *MRI at Belfair, LLC v. S.C. Dep't of Health & Envtl. Control*, 394 S.C. 567, 572, 716 S.E.2d 111, 113 (Ct. App. 2011). As to factual issues, appellate review of the ALC's orders is limited to a determination of whether the order is supported by substantial evidence. *S.C. Dep't of Revenue v. Sandalwood Soc. Club*, 399 S.C. 267, 277, 731 S.E.2d 330, 335 (Ct. App. 2012). As the trier of fact, the ALC is authorized to determine the fitness of an applicant for alcohol licensing using broad, but not unbridled, discretion. *Byers v. S.C. Alcoholic Beverage Control Comm'n*, 281 S.C. 566, 568, 316 S.E.2d 705, 706 (Ct. App. 1984). Therefore, the weight and credibility assigned to the evidence is within the province of the ALC, *S.C. Cable Television Ass'n v. S. Bell Tel. & Tel. Co.*, 308 S.C. 216, 222, 417 S.E.2d 586, 589 (1992), and "[w]hen the evidence conflicts on an issue, the [appellate] court's substantial evidence standard of review defers to the findings of the fact-finder." *Be Mi, Inc. v. S.C. Dep't of Revenue*, 408 S.C. 290, 297, 758 S.E.2d 737, 740 (Ct. App. 2014).

Crucially, substantial evidence is not a mere scintilla of evidence nor the evidence viewed blindly from one side of the case, but is evidence which, considering the entire record, would allow

reasonable minds to reach the conclusion the ALC reached. *Laws v. Richland Cty. Sch. Dist. No. 1*, 270 S.C. 492, 495–96, 243 S.E.2d 192, 193 (1978). In other words, "the evidence is substantial if direction of the verdict would be improper were the matter before a jury for its consideration." *Fast Stops, Inc. v. Ingram*, 276 S.C. 593, 595, 281 S.E.2d 118, 119 (1981). Thus, "[t]he possibility of drawing two inconsistent conclusions from the evidence *does not prevent an administrative agency's finding from being supported by substantial evidence*." *Risher v. S.C. Dep't of Health & Envtl. Control*, 393 S.C. 198, 210, 712 S.E.2d 428, 434 (2011) (emphasis added) (quoting *Palmetto All., Inc. v. S.C. Pub. Serv. Comm'n*, 282 S.C. 430, 432, 319 S.E.2d 695, 696 (1984)).

ARGUMENT

I. The Court should dismiss this appeal because the permits and licenses protested have expired which renders this case moot.

At the outset, this Court should dismiss Appellants' appeal because there is no justiciable controversy before the Court as Group Therapy's 2018-2020 permits and licenses have expired.

"Before any action can be maintained, a justiciable controversy must be present." *Sloan v. Greenville Cty.*, 356 S.C. 531, 546, 590 S.E.2d 338, 346 (Ct. App. 2003). "The concept of justiciability encompasses the doctrines of ripeness, mootness, and standing." *Id.* at 547, 590 S.E.2d at 346. "A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy. This is true when some event occurs making it impossible for [the] reviewing [c]ourt to grant effectual relief." *Id.* at 552, 590 S.E.2d at 349 (first and second alterations in original) (quoting *Curtis v. State*, 345 S.C. 557, 567, 549 S.E.2d 591, 596 (2001)). "[C]ases or issues which have become moot or academic in nature are not a proper subject of review." *Id.* Thus, an appellate court "will not pass on moot and academic questions or make an adjudication where there remains no actual controversy[,]" *id.*, rather, "[when] the questions presented by an appeal are moot, *the appeal will be dismissed*." *Nolas Trading Co. v. S.C. Dep't*

of Health & Envtl. Control, 289 S.C. 345, 348, 345 S.E.2d 507, 508 (Ct. App. 1986) (emphasis added).

Here, the underlying issue on appeal is whether Group Therapy was entitled to a renewal of its on-premises beer and wine permit and liquor by the drink license for the two-year period beginning in August 2018 and ending in August 2020. However, the permits and licenses at issue in this appeal expired on August 31, 2020. *See* S.C. Code Ann. § 61-2-120(3)(b) (providing that biennial licenses and permits issued to establishments in Richland County pursuant to the alcohol licensing statutes expire on the last day of August in even numbered years); *see also Sloan*, 356 S.C. at 552, 590 S.E.2d at 349 ("[M]oot appeals result when intervening events render a case nonjusticiable."). Consequently, determining whether Group Therapy was entitled to relicensure for the 2018-2020 licensing period will have no practical effect on Group Therapy's ability to serve beer, wine, or liquor during the 2018-2020 licensing period because the period has already expired. *See Sloan*, 356 S.C. at 552, 590 S.E.2d at 349 ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." (alteration in original) (quoting *Curtis*, 345 S.C. at 567, 549 S.E.2d at 596)).

Moreover, Group Therapy has already initiated the renewal process for the licensing period beginning in August 2020 and ending in August 2022. Group Therapy submitted a new application for licensure and the Department received valid protests, including those from Appellants. As a result, Group Therapy is now operating under a Letter to Operate, and awaiting a final determination from the Department regarding whether it is entitled to relicensure. Thus, regardless of whether this Court determines that Group Therapy was entitled to have its permit and license renewed for the 2018-2020 licensing period, Group Therapy must still demonstrate that it is entitled to a permit and license for the 2020-2022 licensing period. Notably, under the alcohol

licensing statutes, there is no meaningful difference between the application process for the issuance of a license and the application process for the renewal of a license. *See* S.C. Code Ann. §§ 61-4-500 to -525 (controlling applications, licensing criteria, and protests associated with the issuance or renewal of on-premises beer and wine permits); S.C. Code Ann. §§ 61-6-1810 to -1825 (controlling applications, licensing criteria, and protests associated with the issuance or renewal of liquor by the drink licenses); *see also Kan Enters., Inc. v. S.C. Dep't of Revenue*, 420 S.C. 596, 605, 803 S.E.2d 882, 887 (Ct. App. 2017) ("[Our courts do not apply] a more lenient suitability standard for the renewal of a [license] as opposed to its initial issuance."). Therefore, an applicant holding a license must undergo the same application process as an applicant without a license. Furthermore, each application for licensure or relicensure requires a full evaluation of the relevant circumstances as they exist at the time of the application, which would include any change in circumstances occurring over the last two years. Consequently, determining whether Group Therapy was properly issued a permit and license for the 2018-2020 licensing period will have no practical effect on Group Therapy's ability to obtain a permit and license for the 2020-2022 licensing period. *See Sloan*, 356 S.C. at 552, 590 S.E.2d at 349 ("A case becomes moot when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." (alteration in original) (quoting *Curtis*, 345 S.C. at 567, 549 S.E.2d at 596)).

As demonstrated above, any decision by this Court regarding Group Therapy's entitlement to licensure during the 2018-2020 licensing period will not be enforceable, nor would it have any practical effect on the establishment's ability to obtain a permit and license in the future. Accordingly, the issue on appeal has become moot and this Court should dismiss the appeal.[14] *See*

[14] Such an outcome is supported by other jurisdictions that routinely find issues regarding a party's entitlement to licensure are mooted by the expiration of the relevant licensing period. *See Cravey v. Bankers Life & Cas. Co.*, 71 S.E.2d 659, 659 (Ga. 1952) ("The entire period for which the

id. ("[C]ases or issues which have become moot or academic in nature *are not a proper subject of review*." (emphasis added)); *Nolas Trading Co.*, 289 S.C. at 348, 345 S.E.2d at 508 ("W[hen] the questions presented by an appeal are moot, *the appeal will be dismissed.*" (emphasis added)).

II. The ALC properly determined that Group Therapy's location was suitable for renewal of its on-premises beer and wine permit and restaurant liquor by the drink license.

This Court should affirm the ALC's order finding Group Therapy's location was suitable for renewal of its on-premises beer and wine permit and restaurant liquor by the drink license because the ALC's finding is supported by substantial evidence in the record. In reaching its decision, the ALC correctly refused to weigh the following generalized negative factors against Group Therapy: (1) problems emanating from other establishments, (2) house parties and other nuisance activities in residential areas resulting from college student rentals, (3) regional traffic

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renewal license would be effective expired on July 1, 1952, and the case thereupon became moot."); *Gordon v. Marshall*, 307 S.W.2d 920, 921 (Ky. 1957) (finding an appeal from a judgment directing a licensing officer to renew a license for the license year ending October 26, 1957, would be dismissed as moot when the officer issued the renewal license after the judgment was entered, and the license year expired before the appeal could be heard); *Spinato v. Lowe*, 119 So.2d 480, 480 (La. 1960) ("Since this is a mandamus proceeding by plaintiff to compel defendant to issue a liquor permit for the calendar year 1959 which has expired, the issue presented for determination has now become moot."); *id.* at 481 ("In the present case it would serve no useful purpose for this Court to determine whether the plaintiff should have been issued a liquor permit for the year 1959 for any decree which this Court would render, if we were to find merit in plaintiff's contentions, would be unenforceable."). In *Wyo. Bd. of Outfitters & Prof'l Guides v. Clark*, the Wyoming Supreme Court succinctly explained why the appeal of a licensing determination is mooted by the expiration of the relevant licensing period. 39 P.3d 1106 (Wyo. 2002). In the case, the relevant licensing authority appealed the trial court's reversal of its decision denying the respondent's application for a professional guide's license for the year 1999. *Id.* at 1108. On appeal in 2002, the Court found "[a]ny determination . . . relating to the bases upon which the Board denied the 1999 license is moot in that it would be wholly ineffectual and of no practical effect." *Id.* at 1109. The Court explained that if it ruled the respondent "should not have been denied his 1999 guide license, this determination would be completely inconsequential as the issuance of this license approximately two years after the 1999 year has ended would be of no practical value." *Id.* Similarly, the Court explained a ruling that the license should have been denied "would be equally of no worth at this late date." *Id.*

issues, (4) street crime not associated with Group Therapy, and (5) the drinking habits of all students in the greater Columbia area. As discussed herein, the ALC properly limited its review of the facts to the impact Group Therapy specifically had on the Five Points area.

In determining whether to grant a license, the ALC may consider the suitability of the proposed location. *See Schudel v. S.C. Alcoholic Beverage Control Comm'n*, 276 S.C. 138, 142, 276 S.E.2d 308, 310 (1981) ("Although the suitability of proposed location of the business of the applicant is not listed in [the statute] as a condition of licensing, such a consideration is proper."). While suitability is not defined, the ALC is vested with broad discretion in making such a determination. *See Fast Stops, Inc.*, 276 S.C. at 595, 281 S.E.2d at 120 ("[Our courts] recognize[] the rather broad discretion vested in the [trier of fact] in determining the fitness or suitability of a particular location."). "In deciding whether a location is [suitable], the fact-finder may consider any evidence showing adverse circumstances[,]" and "should weigh evidence of the location's burden on law enforcement." *Kan Enters., Inc.*, 420 S.C. at 604, 803 S.E.2d at 886. Ultimately, the "determination of suitability is not solely a function of geography but involves an infinite variety of considerations related to the nature and operation of the proposed business and its impact upon the community." *Id.* (quoting *Palmer v. S.C. Alcoholic Beverage Control Comm'n*, 282 S.C. 246, 249, 317 S.E.2d 476, 478 (Ct. App. 1984)). Thus, the determination of suitability must be made on a case-by-case basis, and findings regarding an establishment's impact on the community must be supported by facts in the record rather than mere opinion testimony.[15]

[15] *Compare Taylor v. Lewis*, 261 S.C. 168, 171, 198 S.E.2d 801, 802 (1973) (finding the denial of a license to an applicant on the ground of unsuitability of location is without evidentiary support when "the relevant testimony of those who oppose the requested permit consists entirely of opinions and conclusions which are not supported by any facts"), *and Byers*, 281 S.C. at 568–69, 316 S.E.2d at 707 (finding the following factors were unsupported by substantial evidence or irrelevant to the determination of suitability: (1) the location planned to employ B-girls and strippers; (2) at least ten incidents at the club were reported to the police in the seven month period

Group Therapy presented evidence demonstrating its significant efforts to ensure the safety of its patrons and its efforts in holding itself to a higher standard than other establishments based on its employee qualifications, utilization of Serve Safe, and implementation of Intellicheck. At the core of Group Therapy's efforts rests the intent to prevent underage drinking and overconsumption. To achieve this goal, Group Therapy requires its bartenders take a ServSafe training course prior to being permitted to serve alcohol. (R. p. 124, line 24–p. 126, line 23). Taneyhill explained that the ServSafe program trains bartenders on how to avoid overserving patrons and prevent overconsumption. (R. p. 189, lines 9-11). Additionally, Taneyhill testified that Group Therapy typically stations two employees at the front door to check IDs, and invested in an Intellicheck ID system to help security check IDs and lower the efficacy of fake IDs.[16] (R. p. 118, line 21; R. p. 120, line 22–p. 122, line 5). As such, Taneyhill indicated that in his time as

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preceding the hearing; (3) crime in the area was increasing; (4) traffic in the area was heavy; and (5) the permits for some other locations in the area had been revoked or not renewed), *and id.* at 569, 316 S.E.2d at 707 (finding a location suitable when the evidence revealed (1) the establishment was located in a commercial area; (2) the establishment operated under a permit to sell wine and beer for over twenty years; (3) the owner was issued a permit without protest seven months prior to the hearing on the license application; (4) several other establishments in the area sold beer and wine; and (5) there was no evidence that the crime rate or traffic in the area had increased since the permit was issued for establishment seven months previously), *with Fowler v. Lewis*, 260 S.C. 54, 57–58, 194 S.E.2d 191, 192–93 (1973) (finding an establishment's location unsuitable because the issuance of a beer and wine permit would exacerbate the non-licensed establishment's issues with alcohol related disorder on its property), *and Kan Enters., Inc.*, 420 S.C. at 606, 803 S.E.2d at 887 (finding an establishment's location unsuitable in part because the establishment "had significantly more calls for police services and arrests than any of the three nearby" establishments), *and id.* at 606 n. 11, 803 S.E.2d at 888 n. 11 (finding an establishment's location unsuitable in part because community members provided eyewitness testimony demonstrating that (1) patrons congregated and loitered in a nearby alley after being directed to leave the establishment and (2) patrons threw litter on the lawns of nearby residences after leaving the establishment).

[16] Notably, SLED Agent Jordan testified Group Therapy's ID system was "[a]lmost as good" as SLED's. (R. p. 232, lines 5-9). Moreover, Taneyhill testified he was willing to purchase more Intellicheck scanners to alleviate any of the ALC's concerns. (R. p. 201, lines 19-22).

an owner and manager of Group Therapy, the establishment only received one ticket for serving an underaged patron. (R. p. 189, line 22–p. 190, line 9).

In addition to taking proactive steps to ensure the safety of its patrons within Group Therapy, Taneyhill also testified regarding Group Therapy's cooperation and collaboration with the community to increase the overall safety of the Five Points area. Taneyhill explained that Group Therapy cooperated with CPD when it had concerns about potential problem crowds. Specifically, Taneyhill testified that Group Therapy limited admission when asked and stopped hiring a certain DJ to avoid playing music that CPD feared would attract gang activity. (R. p. 153, line 6-p. 158, line 22). Taneyhill also detailed Group Therapy's role in the formation and operation of the Safe and Sound Pledge. (R. p. 122, line 6–p. 123, line 2). Taneyhill explained that by instituting the pledge, the establishments in Five Points agreed to provide patrons with an employee escort to ensure that they made it safely to their vehicle, taxi, or ride sharing vehicle. (R. p. 122, line 15–p. 123, line 22). Taneyhill further stated that he joined the board of the Five Points Association so that he could help the community in any way possible. (R. p. 127, line 17–p. 128, line 17). Finally, Taneyhill described Group Therapy's involvement in the annual Five Points Chili Cook Off, an event of which one-hundred percent of the proceeds were donated to the South Carolina Special Olympics. (R. p. 128, line 18–p. 129, line 7).

Chief Holbrook testified that CPD's decision to file its protest was based on the amount of calls for service and the alcohol-related nature of the calls for service. (R. p. 251, lines 16-17; R. p. 270, lines 14-15). Chief Holbrook detailed Group Therapy's calls for service and arrests made at the establishment, but could not testify to how many calls for service resulted in arrests, how many people were arrested, whether anyone arrested received multiple charges, or whether any arrests produced convictions. (R. p. 250, lines 13-15; R. p. 264, lines 13-15; R. p. 278, line 2–p.

280, line 3; R. p. 296, line 4–p. 297, line 15). Notably, while discussing these numbers in the context of a late-night permit review, Chief Holbrook characterized the calls for service as low relative to other establishments in the Five Points area. (R. p. 309, line 21–p. 310, line 19). Moreover, Chief Holbrook explained that any arrests made on the block where Group Therapy was located but not directly attributed to Group Therapy did not have "a clear nexus to the establishment itself." (R. p. 278, line 13–p. 279, line 9). Accordingly, Chief Holbrook acknowledged that CPD's protest packet indicated Group Therapy had "a reputation for peace and good order in the community." (R. p. 293, lines 14-19).

Additionally, Chief Holbrook asserted that most of the problems CPD encountered in the Five Points area were alcohol related, indicating establishments could alleviate these issues by refusing to serve underage patrons and taking care not to overserve. (R. p. 313, lines 8-19). As such, Chief Holbrook testified his goal was to encourage "responsible management and ownership of[] business[es]" in Five Points, noting that the decrease in quality-of-life offenses was partially attributable to "good collaboration with[] business owners in Five Points." (R. p. 287, lines 19-21; R. p. 306, lines 3-8). In this same vein, Chief Holbrook conceded that Group Therapy took all steps necessary and cooperated with CPD to mitigate issues when asked. (R. p. 294, line 5–p. 295, line 15).

Appellants also offered Rob Perry, the Director of Traffic Engineering at DOT. (R. p. 314, lines 16-20). Perry indicated DOT recorded twelve incidents involving bike or pedestrian crashes on Harden Street over the course of five years. (R. p. 322, lines 12-18). However, Perry explained that the data did not reflect the severity of any of the incidents, and further conceded that more vehicle crashes occurred during the daytime than at night. (R. p. 322, line 19–p. 323, line 2; R. p.

331, line 19–p. 333, line 6). Moreover, Perry did not offer any testimony specific to Group Therapy or its impact on the traffic in Five Points.

Dean Shook explained that when deciding to protest a license, the University considers four factors of which only one factor—law enforcement—was implicated in this matter, specifically identifying the data supplied by CPD as the reason for its protest. (R. p. 351, lines 6-16). Dean Shook indicated that the University had no issues with Group Therapy's last drink data or advertising practices, noting that other establishments in Five Points actively solicited students in their advertising campaigns and overserved patrons more frequently. (R. p. 347, lines 5-12; R. p. 348, lines 16-25). The remainder of Dean Shook's testimony described student drinking habits, the business practices of establishments in Five Points at large, and his concerns with student safety in the Five Points area. (R. p. 353, line 13–p. 363, line 18).

Appellants offered two local residents to testify regarding the effects of Five Points on their neighborhoods. Notably, however, both witnesses did not complain about Group Therapy specifically, but raised issues involving the Five Points area in general. Vivian Clark Armstead testified regarding her general concerns about congestion and overall safety in Five Points, but indicated her only concern regarding Group Therapy was the occasional congregating of people outside the door. (R. p. 398, lines 9-17). Moreover, Ms. Armstead indicated her granddaughters frequented Group Therapy, she found Group Therapy to be "pretty responsible," and she was open to working with Taneyhill to reduce issues placed on her neighborhood by the Five Points area. (R. p. 398, lines 5-14; R. p. 405, line 6–p. 408, line 22; R. p. 413, line 6–p. 414, line 20).

Finally, Michael Drennan testified that he protested because he believed there to be too many establishments in Five Points crowded into a densely packed area, indicating it was his goal to achieve a more "tenable balance." (R. p. 417, line 1–p. 419, line 8; R. p. 453, line 20–p. 454,

line 11). To that end, Mr. Drennan explained that he was involved in several protests and hoped to use the protest process to identify which establishments in Five Points were meeting their legal requirements. (R. p. 443, lines 10-13; R. p. 453, line 20–p. 454, line 11). This testimony reveals that Mr. Drennan did not seek to preclude Group Therapy's relicensure specifically. Rather, he sought to decrease the total number of establishments serving alcohol in Five Points by protesting the licensure of any establishment in the area and letting the Department and the ALC sort out the rest. As such, Mr. Drennan testified about two trips he made to Group Therapy, but the remainder of his testimony detailed the drinking habits of patrons and the conditions in the general Five Points area, as well as the impact of increased student rentals on his neighborhood. (R. p. 421, line 15–p. 424, line 1; R. p. 424, line 15–p. 437, line 6).

In light of the foregoing evidence, the ALC's finding that Group Therapy's location was suitable for relicensure was well within its broad discretion. *See Be Mi, Inc.*, 408 S.C. at 297, 758 S.E.2d at 740 ("Absent an allegation of fraud or a statu[t]e or a court rule requiring a higher standard, the standard of proof in administrative hearings is generally a preponderance of the evidence." (alteration in original) (quoting *Anonymous (M–156–90) v. State Bd. of Med. Exam'rs*, 329 S.C. 371, 375, 496 S.E.2d 17, 19 (1998))); *see also Fast Stops, Inc.*, 276 S.C. at 595, 281 S.E.2d at 120 ("Court[s] recognize[] the rather broad discretion vested in the [trier of fact] in determining the fitness or suitability of a particular location."). As demonstrated by the evidence and recited by the ALC's order, Group Therapy had a positive reputation for peace and good order in the community, cooperated with law enforcement to mitigate risks, and showed a willingness to continue improving its operations. Additionally, the ALC's determination that Chief Holbrook's testimony presented factual inconsistencies regarding call volume is entitled to significant deference. *See Woodall v. Woodall*, 322 S.C. 7, 10, 471 S.E.2d 154, 157 (1996)

("[When] evidence is disputed, the appellate court may adhere to the findings of the trial judge, who saw and heard the witnesses."); *id.* ("The trial judge was in a superior position to judge the witnesses' demeanor and veracity and, therefore, his findings should be given broad discretion."); *S.C. Cable Television Ass'n*, 308 S.C. at 222, 417 S.E.2d at 589 ("The weight and credibility assigned to evidence presented is a matter peculiarly within the province of the [fact finder].").

Furthermore, contrary to Appellants' assertions, the ALC properly declined to assign weight to evidence that was wholly irrelevant to Group Therapy's impact on the community. Appellants argue that Group Therapy's location is unsuitable based on evidence demonstrating (1) problems emanating from other establishments and the Five Points area at large, (2) house parties and other nuisance activities in residential areas resulting from college student rentals, (3) regional traffic issues, (4) street crime not associated with Group Therapy, and (5) the drinking habits of all students in the greater Columbia area. However, the question of suitability asks the court to determine what *Group Therapy's* impact is on the surrounding community, not the impact of (1) all the establishments in Five Points, (2) every student in the region, (3) local traffic, and/or (4) any person who may be walking through Five Points. *See Kan Enters., Inc.*, 420 S.C. at 604, 803 S.E.2d at 886 ("[The] determination of suitability is not solely a function of geography but involves an infinite variety of considerations related to the nature and operation of the proposed business *and its impact upon the community.*" (quoting *Palmer*, 282 S.C. at 249, 317 S.E.2d at 478)). It would be patently unreasonable to find Group Therapy's location unsuitable based on the shortcomings of neighboring establishments or the issues associated with student rentals.

Accordingly, the ALC's order is supported by substantial evidence and the mere fact that Appellants, or any other reasonable person, might not agree with the ALC's view of the evidence does not require a different result. *See Laws*, 270 S.C. at 495–96, 243 S.E.2d at 193 ("'Substantial

evidence' is not a mere scintilla of evidence *nor the evidence viewed blindly from one side of the case*, but is evidence which, *considering the record as a whole*, would allow reasonable minds to reach the conclusion that the [ALC] reached or must have reached in order to justify its action." (emphases added)); *Risher*, 393 S.C. at 210, 712 S.E.2d at 434 ("[T]he possibility of drawing two inconsistent conclusions from the evidence *does not prevent an administrative agency's finding from being supported by substantial evidence*." (alteration in original) (emphasis added) (quoting *Palmetto All., Inc.*, 282 S.C. at 432, 319 S.E.2d at 696)); *Fast Stops, Inc.*, 276 S.C. at 595, 281 S.E.2d at 119 ("Indeed, the evidence is substantial if direction of the verdict would be improper were the matter before a jury for its consideration."). Therefore, the ALC's order should be affirmed.[17] *See Be Mi, Inc.*, 408 S.C. at 297, 758 S.E.2d at 740 ("The decision of the [ALC] should not be overturned unless it is unsupported by substantial evidence or controlled by some error of law." (alteration in original) (quoting *Original Blue Ribbon Taxi Corp. v. S.C. Dep't of Motor Vehicles*, 380 S.C. 600, 604, 670 S.E.2d 674, 676 (Ct. App. 2008))).

III. The ALC properly precluded Appellants from challenging the Department of Revenue's jurisdiction in determining whether Group Therapy is engaged primarily and substantially in the preparation and serving of meals.

[17] Appellants argue the ALC erred in refusing to allow them to supplement the record with a video depicting an altercation inside Group Therapy. However, the ALC was well within its discretion in determining that such evidence was "cumulative" and would "not have any material effect" on the outcome of the case. *See Wright v. Strickland*, 306 S.C. 187, 188, 410 S.E.2d 596, 597 (Ct. App. 1991) ("A trial judge's decision not to reopen a case for additional [evidence] is a matter within his or her sound discretion, and the decision will not be disturbed on appeal absent an abuse of discretion."). Moreover, the inclusion of an additional piece of evidence would not lead to the conclusion that the ALC's decision was not supported by substantial evidence. *See Risher*, 393 S.C. at 210, 712 S.E.2d at 434 ("[T]he possibility of drawing two inconsistent conclusions from the evidence *does not prevent an administrative agency's finding from being supported by substantial evidence*." (alteration in original) (emphasis added) (quoting *Palmetto All., Inc.*, 282 S.C. at 432, 319 S.E.2d at 696)).

The ALC properly precluded Appellants from advancing arguments and presenting evidence regarding Group Therapy's preparation and service of meals because determining whether an establishment is in compliance with statutory licensing requirements is an enforcement matter exclusively vested with the Department and SLED. However, even if Appellants were entitled to advance such arguments, Group Therapy is in compliance with the relevant constitutional requirement as defined by statute.

a. Determination of compliance with statutory licensing requirements as an enforcement matter.

The ALC correctly precluded Appellants from making arguments and presenting evidence asserting that Group Therapy was not engaged primarily and substantially in the preparation and serving of meals because such a determination is within the exclusive province of the Department and SLED.

Under section 61-6-1610(A)(1) of the South Carolina Code, "it is lawful to sell and consume alcoholic liquors sold by the drink in a business establishment . . . if the establishment . . . is bona fide engaged primarily and substantially in the preparation and serving of meals."[18] Section 61-2-20 of the South Carolina Code vests "[t]he functions, duties, and powers set forth in this title . . . in the department[19] and the division.[20] The department must administer the provisions of this title, and the division must enforce the provisions of this title."[21]

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[18] *See also* S.C. Code Ann. § 61-6-1820(1) ("The department may issue a [liquor by the drink] license . . . upon finding . . . the applicant conducts a business bona fide engaged primarily and substantially in the preparation and serving of meals.").

[19] "Department" is defined as "the South Carolina Department of Revenue." S.C. Code Ann. § 61-2-10(A)(1).

[20] "Division" is defined as "the South Carolina Law Enforcement Division." S.C. Code Ann. § 61-2-10(A)(3).

[21] *See also* S.C. Code Ann. § 61-2-80 ("The State, through the department, *is the sole and exclusive authority empowered to regulate the operation of all locations authorized to sell beer, wine, or alcoholic liquors*, is authorized to establish conditions or restrictions which the department

"Enforcement" is defined as "[t]he act or process of compelling compliance with a law, mandate, command, decree, or agreement." *Enforcement*, Black's Law Dictionary (11th ed. 2019). This Court has previously held that "only DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme." *Sandalwood*, 399 S.C. at 280, 731 S.E.2d at 337.

Here, the Department determined that Group Therapy met the statutory requirement of being "engaged primarily and substantially in the preparation and serving of meals." (R. p. 48, line 23–p. 49, line 7). *See Be Mi, Inc.*, 408 S.C. at 298, 758 S.E.2d at 741 ("[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." (alteration in original) (quoting *Brown v. S.C. Dep't of Health & Envtl. Control*, 348 S.C. 507, 515, 560 S.E.2d 410, 414 (2002))). Moreover, the Department represented to the ALC that SLED conducted a compliance check of Group Therapy and found that it was in compliance in September 2019, after the filing of the application for renewal and Appellants' protest. (R. p. 50, lines 2-22). Accordingly, the Department explained that at the point of application, it determined Group Therapy met the statutory requirements and would have granted the license renewal but for the public protest. (R. p. 49, lines 12-16). In seeking to challenge Group Therapy's compliance with the statute, Appellants are attempting to impose their own interpretation of the law in place of the determination properly made by the Department. However, Appellants' attempt to usurp the statutory authority delegated to the Department and SLED by the General Assembly is inappropriate and unauthorized.

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considers necessary before issuing or renewing a license or permit, and *occupies the entire field of beer, wine, and liquor regulation* except as it relates to hours of operation more restrictive than those set forth in this title." (emphases added)).

In *Sandalwood*, this Court held that "DOR is charged with the responsibility of administering and enforcing the laws and regulations governing the manufacture and sale of alcoholic beverages, including beer, wine, and alcoholic liquors." 399 S.C. at 278, 731 S.E.2d at 336. Thus, this Court explained, "only DOR may bring violations under its regulations, and no private right exists to bring a claim against a business under DOR's regulatory scheme." *Id.* at 280, 731 S.E.2d at 337. This Court concluded that "the allowance of what amount[s] to a private citizen bringing a claim under DOR's regulatory scheme [i]s an error of law." *Id.* at 281, 731 S.E.2d at 337.

This Court's holding in *Sandalwood* is equally applicable here. The case at bar is a renewal case in which Group Therapy already holds a license. Thus, whether Group Therapy is in compliance with sections 61-6-1610 and 61-6-1820 is an enforcement issue to be investigated by SLED and prosecuted by the Department in accordance with section 61-2-20. Consistent with its enforcement authority, the Department issued South Carolina Revenue Procedure #13-2,[22] which provides that failure to be "primarily and substantially engaged in the preparation and serving of meals" is a violation of the license holder's license. The penalty set forth by the Department for such a violation is revocation. *Id.* Pursuant to section 61-2-20, the only entity authorized to investigate whether a violation has occurred is SLED, and only the Department may prosecute such a violation. Therefore, had the ALC allowed Appellants to prosecute their claim that Group Therapy is not "engaged primarily and substantially in the preparation and serving of meals," it would have allowed private citizens to bring a claim under the Department's regulatory scheme in

[22] S.C. Dep't of Revenue, S.C. Revenue Proc. #13-2, Penalty Guidelines for ABL Violations (2013).

contravention of this Court's holding in *Sandalwood.* As such, the ALC properly precluded Appellants from advancing such arguments.

Appellants argue they should have been allowed to challenge whether Group Therapy is "engaged primarily and substantially in the preparation and serving of meals" under the language of the license protest statute. Pursuant to section 61-6-1825(A)(3) of the South Carolina Code, "[a] person . . . may protest the issuance or renewal of the license if he files a written protest providing . . . the specific reasons why the application should be denied." Appellants assert the lack of limiting language in the statute affords them carte blanche to advance any rationale for denial of the application, including self-serving opinions regarding Group Therapy's compliance with the Department's regulatory scheme contrary to the Department's own determinations. *See Be Mi, Inc.*, 408 S.C. at 298, 758 S.E.2d at 741 ("[T]he construction of a statute by the agency charged with its administration will be accorded the most respectful consideration and will not be overruled absent compelling reasons." (alteration in original) (quoting *Brown*, 348 S.C. at 515, 560 S.E.2d at 414)). However, Appellants ask this Court to interpret section 61-6-1825(A)(3) in a vacuum. Rather, this Court must also consider conflicting and related statutes to reach an interpretation that would produce a harmonious result. *See Beaufort Cty. v. S.C. State Election Comm'n.*, 395 S.C. 366, 371, 718 S.E.2d 432, 435 (2011) ("[I]t is well settled that statutes dealing with the same subject matter are *in pari materia* and must be construed together, if possible, to produce a single, harmonious result."). The Legislature would not have vested the Department and SLED with the exclusive powers to enforce compliance with the alcohol licensing statutes if it intended to let private citizens exercise that same power. *See Hodges v. Rainey*, 341 S.C. 79, 91, 533 S.E.2d 578, 584 (2000) ("The goal of statutory construction is to harmonize conflicting statutes whenever possible and to prevent an interpretation that would lead to a result that is plainly

absurd."); *see also Foothills Brewing Concern, Inc. v. City of Greenville*, 377 S.C. 355, 363, 660 S.E.2d 264, 268 (2008) ("Court[s] must presume the Legislature did not intend a futile act, but rather intended its statutes to accomplish something."). Thus, when read together with section 61-2-20, the protest statute does not give private parties the authority to usurp the Department's role to enforce compliance with the alcohol licensing statutes, nor does it give private parties the authority to substitute their own opinion on compliance for that of the Department's.[23]

b. Compliance with the relevant constitutional and statutory provisions.

Assuming arguendo, that the Legislature intended to allow private citizens to raise enforcement claims under the alcohol licensing statutes in place of the Department, this Court should affirm the ALC's order because Group Therapy is in compliance with the relevant statutes. Moreover, this Court does not have the authority to add elements or change the purpose of a statute as Appellants request. Rather, such changes are within the sole province of the Legislature.

Pursuant to article VIII-A, section 1 of the South Carolina Constitution,

> In the exercise of the police power the General Assembly has the right to prohibit and to regulate the manufacture, sale, and retail of alcoholic liquors or beverages within the State. The General Assembly may license persons or corporations to manufacture, sell, and retail alcoholic liquors or beverages within the State under the rules and restrictions as it considers proper, including the right to sell alcoholic liquors or beverages in containers of such size as the General Assembly considers appropriate.

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[23] Appellants cite *Be Mi, Inc.* for the proposition that members of the public can bring enforcement claims under the protest statute. However, the case at bar is easily distinguishable. In *Be Mi, Inc.*, the Department of Revenue denied the renewal application based on a valid public protest *and* its own determination that the establishment "failed to be engaged primarily and substantially in the preparation and service of meals." 408 S.C. at 294, 758 S.E.2d at 739. The Department later changed its view and represented to the ALC that the establishment met all of the statutory requirements and the ALC agreed. *Id.* at 295, 758 S.E.2d at 739. The appellants then appealed the ALC's finding on the issue. *Id.* at 295–96, 758 S.E.2d at 739–40. Accordingly, the issue of statutory compliance was raised by the Department, not members of the public. In the case at bar, the Department has consistently maintained that Group Therapy met the statutory requirements for a restaurant liquor by the drink license. (R. p. 48, line 23–p. 50, line 22).

However, the constitution limits the Legislature's power to grant liquor by the drink licenses to certain establishments, including "businesses which engage primarily and substantially in the preparation and serving of meals." *Id.* This limitation is codified in sections 61-6-1610(A)(1) and 61-6-1820(1) of the South Carolina Code. The South Carolina Code also provides that

> "Bona fide engaged primarily and substantially in the preparation and serving of meals" means a business that provides facilities for seating not fewer than forty persons simultaneously at tables for the service of meals and that:
>
> (a) is equipped with a kitchen that is utilized for the cooking, preparation, and serving of meals upon customer request at normal meal times;
>
> (b) has readily available to its guests and patrons either menus with the listings of various meals offered for service or a listing of available meals and foods, posted in a conspicuous place readily discernible by the guest or patrons; and
>
> (c) prepares for service to customers, upon the demand of the customer, hot meals at least once each day the business establishment chooses to be open.

S.C. Code Ann. § 61-6-20(2). Additionally, pursuant to section 61-6-1610(I)(3),

> "Primarily" means that the serving of the meals by a business establishment is a regular source of business to the licensed establishment, that meals are served upon the demand of guests and patrons during the normal mealtimes that occur when the licensed business establishment is open to the public, and that an adequate supply of food is present on the licensed premises to meet the demand.

Here, the Department determined that Group Therapy was engaged "primarily and substantially in the preparation and serving of meals" because it met the standard provided in section 61-6-20(2). (R. p. 49, line 23–p. 50, line 22). In fact, the Department specifically represented to the ALC that SLED conducted a compliance check in September 2019[24] to "check to make sure there was food, there was a kitchen, there was a chef, [and] there was seating." (R. p. 50, lines 2-22). Appellants do not dispute that Group Therapy is in compliance with the elements

[24] The Department further represented that the compliance check was conducted after Group Therapy had applied for license renewal and after Appellants filed their protest. (R. p. 50, lines 2-22).

laid out in section 61-6-20(2).[25] Rather, Appellants seek to have this Court impose a "percentage of overall sales" element into the statutory definition provided by section 61-6-20(2) and offer two rationales in support.

First, Appellants argue the definitions enacted by the Legislature must constitute additional requirements to those imposed by article VIII-A, section 1, further asserting that the failure to consider food sales would fall below the constitution's "regulatory floor." Appellants are mistaken, as such a view is inconsistent with the Legislature's inherent power to regulate and license alcohol sales.

"The supreme legislative power of the State is vested in the General Assembly." *Moseley v. Welch*, 209 S.C. 19, 26–27, 39 S.E.2d 133, 137 (1946). Thus, "[t]he provisions of the state constitution are not a grant but a limitation of legislative power, so that the Legislature may enact any law not expressly, or by clear implication, prohibited by the state or federal constitution." *Segars-Andrews v. Judicial Merit Selection Comm'n*, 387 S.C. 109, 118, 691 S.E.2d 453, 458 (2010). Crucially, "[s]tate constitutional provisions will not be construed to impose limitations *beyond their clear meaning*." *Id.* (emphasis added). As such, "a legislative body [has] the power, within reasonable limitations, to prescribe legal definitions of its own language[,]" *Malone v. Edwards*, 271 S.C. 401, 404, 247 S.E.2d 454, 455–56 (1978), "and such definitions are binding upon courts and should prevail." *Purvis v. State Farm Mut. Auto. Ins. Co.*, 304 S.C. 283, 288, 403 S.E.2d 662, 665 (Ct. App. 1991).

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[25] Additionally, the following evidence in the record supports the conclusion that Group Therapy is engaged "primarily and substantially in the preparation and serving of meals": (1) Taneyhill testified Group Therapy employed a cook; (R. p. 136, lines 12-15); (2) security footage from Group Therapy depicted a cook smoking wings, chicken tenders, and brisket; (R. p. 164, lines 5-18); (3) Dean Shook testified that Group Therapy placed advertisements for food on its social media account; (R. p. 348, lines 6-12); and (4) Dean Shook testified meal preparation and service was not an issue for the University under its protest criteria. (R. p. 349, lines 21-23).

Here, article VIII-A, section 1 provides that a liquor by the drink license may be granted to "businesses which engage primarily and substantially in the preparation and serving of meals." Notably, however, article VIII-A, section 1 does not define "primarily" or what it means to be engaged "primarily and substantially in the preparation and serving of meals." Moreover, there is no provision in article VIII-A, section 1 limiting the Legislature's authority to codify such definitions. Thus, in light of the constitution's silence, it is well within the Legislature's inherent legislative power to define what qualifies as a business engaged "primarily and substantially in the preparation and serving of meals." *See Segars-Andrews*, 387 S.C. at 118, 691 S.E.2d at 458. ("[T]he Legislature may enact *any law* not expressly, or by clear implication, prohibited by the state or federal constitution." (emphasis added)); *id.* ("State constitutional provisions will not be construed to impose limitations *beyond their clear meaning*." (emphasis added)); *Malone*, 271 S.C. at 404, 247 S.E.2d at 455–56 ("[A] legislative body [has] the power, within reasonable limitations, to prescribe legal definitions of its own language."); *Moseley*, 209 S.C. at 27, 39 S.E.2d at 137 ("[E]very presumption will be made in favor of the constitutionality of a legislative enactment."). Consequently, the definitions provided by the Legislature cannot fall below the constitution's "regulatory floor" because the constitution does not provide a more stringent definition than the statutes. Similarly, the statutes cannot be interpreted to supplement the constitutional standard because the standard is undefined. Rather, in codifying the definitions, the Legislature merely provided individuals seeking liquor by the drink licenses and the agencies responsible for regulating such licenses with a consistent framework for complying with article VIII-A, section 1.

Second, Appellants rely on *Brunswick Capitol Lanes v. S.C. Alcoholic Beverage Control Comm'n*,[26] for the proposition that the engaged "primarily and substantially in the preparation and serving of meals" language in article VIII-A, section 1 includes a "percentage of overall sales" element. This reliance is misplaced. In determining whether the mini-bottle applicant was engaged "primarily and substantially in the preparation and serving of meals" as required by former section 61-5-20(4)(a),[27] the *Brunswick* Court looked to former section 61-5-10(1) for "definitional guidance." *Id.* at 783, 260 S.E.2d at 452–53. The statute provided that

> "Bona fide engaged primarily and substantially in the preparation and serving of meals" shall refer only to such a business which has been issued a Class A restaurant license prior to issuance of license under this article and in addition provides facilities for seating not less than forty persons simultaneously at tables for the service of meals.

Id. (quoting S.C. Code Ann. § 61-5-10(1) (Cum. Supp. 1978)). However, lacking a relevant statutory definition for the word "primarily," the Supreme Court interpreted it to mean "of first importance" or "principally." *Id.* at 783, 260 S.E.2d at 453. Consequently, the Court found that possession of a restaurant license and adequate seating was not a determinative factor, noting instead that "the legislature []stated the critical test is whether the business is engaged 'primarily and substantially in the preparation and serving of meals.'" *Id.* at 784, 260 S.E.2d at 453. Thus, relying on its definition of "primarily," the Court based its interpretation of what it meant to be engaged "primarily and substantially in the preparation and serving of meals" on a minimum food sales percentage. *Id.*

Notably, *Brunswick* was decided almost three decades before the enactment of the current version of sections 61-6-20(2) and 61-6-1610(I)(3). Thus, by enacting the current version of

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[26] 273 S.C. 782, 260 S.E.2d 452 (1979).
[27] (1976).

section 61-6-1610(I)(3), the Legislature replaced the *Brunswick* Court's definition of "primarily" with its own.[28] *Cf. Lindsay v. Nat'l Old Line Ins. Co.*, 262 S.C. 621, 629, 207 S.E.2d 75, 78 (1974) ("[A] judicial interpretati[on] of a statute is determinative of its meaning and effect, [but] any subsequent legislative amendment to the contrary will []be effective from the date of its enactment."). In addition to replacing the *Brunswick* Court's definition of "primarily," the Legislature also codified a new definition of a business engaged "primarily and substantially in the preparation and serving of meals" in section 61-6-20(2). In doing so, the Legislature explicitly declined to adopt food sales percentage as an element of the definition, deciding instead to rely on evidence of a kitchen, seating, menus, and the daily service of hot meals. *Cf. State v. Sawyer*, 409 S.C. 475, 481, 763 S.E.2d 183, 186 (2014) ("The General Assembly is presumed to be aware of th[e judiciary]'s interpretation of a statute, and whe[n] that statute has been amended, but no change has been made that affects the [judiciary]'s interpretation, the legislature's inaction is evidence that our interpretation is correct."). Consequently, *Brunswick* was abrogated by the current versions of section 61-6-20(2) and section 61-6-1610(I)(3), and its holding is inapplicable to the case at bar.

As demonstrated above, the Legislature is well within its authority to define undefined terms in the state constitution and to replace judicially crafted definitions through legislation. Despite the proper exercise of such power, Appellant's are essentially asking this Court to add one of two elements to section 61-6-20(2). Appellants ask this Court to apply the definitional statute in a manner they approve of by reading the statute to include a sales percentage element, or to determine that the statute only applies to applicants who are opening a new establishment.

[28] Specifically, the Legislature changed the definition of "primarily" from a "principal" source of business to a "regular source of business."

However, regardless of how much Appellants disapprove of the statutory definition, they cannot ask this Court to legislate from the bench. *See Lambries v. Saluda Cty. Council*, 409 S.C. 1, 16, 760 S.E.2d 785, 792–93 (2014) ("It has long been the law of this state that whe[n] a statute's plain language is clear, a court is not allowed to change its meaning, and a court cannot speculate on legislative intention because to do so would be an assumption of legislative power."); *McLain v. Hayne*, 5 S.C.L. (3 Brev.) 291, 293 (1812) ("[I]t is not for the judiciary to usurp legislative powers, and alter and amend the law, as may be thought proper or necessary."). Rather, the statutory definition of a business engaged "primarily and substantially in the preparation and serving of meals" may only be changed through legislation. *See Moseley*, 209 S.C. at 26–27, 39 S.E.2d at 137 ("The supreme legislative power of the State is vested in the General Assembly.").[29]

Accordingly, this Court must apply section 61-6-20(2) according to the plain language of the statute as the Legislature intended. *See Gay v. Ariail*, 381 S.C. 341, 345, 673 S.E.2d 418, 420 (2009) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, the rules of statutory interpretation are not needed and [c]ourt[s] ha[ve] no right to impose another meaning."); *Hodges*, 341 S.C. at 85, 533 S.E.2d at 581 ("What a legislature says in the text of a statute is considered the best evidence of the legislative intent or will. Therefore,

[29] Notably, a recent bill was introduced in the South Carolina Senate, sponsored by Appellants' counsel, that would amend section 61-2-20(2) to add an additional element to the definition of "Bona fide engaged primarily and substantially in the preparation and serving of meals." *See* S.B. 536, 124th Gen. Assemb., Reg. Sess. (S.C. 2021). This proposed legislation would add an element requiring an establishment to demonstrate that it "derives gross revenue from its sale of meals and foods, and non-alcoholic beverages, that is not less than fifty-one percent of its total gross revenue from the sale of meals and foods, non-alcoholic beverages, and alcoholic beverages." *Id.* This bill is a tacit acknowledgement by Appellants' counsel that: (A) the current version of the statute does not include a percentage of sales element; (B) the statute sought to be amended does not violate article VIII-A, section 1 of the state constitution; and (C) any amendment to the statutory definition of "Bona fide engaged primarily and substantially in the preparation and serving of meals" must be implemented by the Legislature, not the courts.

the courts are bound to give effect to the expressed intent of the legislature." (quoting Norman J. Singer, *Sutherland Statutory Construction* § 46.03 at 94 (5th ed. 1992))). Pursuant to the plain language of the statute, Group Therapy is in compliance and the ALC's order should be affirmed.

CONCLUSION

Based on the foregoing, (1) the issues on appeal have been rendered moot by the expiration of Group Therapy's 2018-2020 permits and licenses, (2) the ALC's finding that Group Therapy's location was suitable for relicensure is supported by substantial evidence, and (3) the ALC properly precluded Appellants from challenging the Department of Revenue's jurisdiction in determining whether Group Therapy is engaged primarily and substantially in the preparation and serving of meals. Accordingly, this Court should affirm the ALC's order.

Respectfully submitted:

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April 12, 2021

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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

Appeal from the
ADMINISTRATIVE LAW COURT
The Honorable Shirley C. Robinson, Administrative Law Judge

Appellate Case No. 2020-000837
Case No. 19-ALJ-17-0001-CC

Eighteen Ink, LLC, d/b/a Group Therapy . . . . . Respondent

v.

South Carolina Department of Revenue . . . . . Respondent
and

Thomas R. Gottshall, April C. Lucas, and Michael Drennan . . . . . Intervenors/Appellants

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CERTIFICATE OF COUNSEL

The undersigned certifies that Respondent Eighteen Ink, LLC's Final Brief complied with Rule 211(b), SCACR.

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