

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

The Honorable L. Casey Manning, Circuit Court Judge

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Circuit Court Case No. 2011-CP-40-7854

DEC 19 2012

Appellate Case No. 2012-211048 **S.C. Supreme Court**

John S. Rainey, Appellant,

v.

Nimrata Nikki R. Haley, Respondent.

RETURN BRIEF OF RESPONDENT

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TABLE OF CONTENTS

TABLE OF AUTHORITIES ii

STATEMENT OF ISSUES ON APPEAL 1

STATEMENT OF THE CASE..... 2

STANDARD OF REVIEW..... 3

ARGUMENTS AND AUTHORITIES..... 3

I. The State Ethics Code removes complaints against officeholders from the circuit court’s subject matter jurisdiction except in limited circumstances that are inapplicable here. 3

 A. The General Assembly vested exclusive subject matter jurisdiction over complaints alleging violations of the State Ethics Code in executive and legislative tribunals. 5

 B. There is no authority to support any argument that the circuit court generally has subject matter jurisdiction over ethics complaints. 7

 1. The General Assembly limited the circuit court’s jurisdiction over ethics proceedings to a specific circumstance that is inapplicable here. 7

 2. None of the cases cited in the Appellant’s brief stand for the proposition that a circuit court has subject matter jurisdiction to resolve an ethics complaint filed against an officeholder. 9

 3. There is nothing to indicate that the circuit court has concurrent jurisdiction with the administrative bodies over ethics proceedings. . 12

 4. The General Assembly was not required to include a “jurisdiction-stripping” provision in the Ethics Code. 14

II. Private citizens do not have standing to seek a declaratory judgment that another has broken criminal statutes. 15

III. This case has been mooted by intervening proceedings before the House Legislative Ethics Committee..... 17

CONCLUSION 18

TABLE OF AUTHORITIES

Cases

<i>Amisub of S.C., Inc. v. Passmore</i> , 316 S.C. 112, 447 S.E.2d 207 (1994).....	4
<i>Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners</i> , 320 S.C. 113, 463 S.E.2d 600 (1995).....	4
<i>Baird v. Charleston County</i> , 333 S.C. 519, 511 S.E.2d 69 (1999).....	9, 10
<i>Booth v. Grissom</i> , 265 S.C. 190, 217 S.E.2d 223 (1975)	18
<i>Coon v. Coon</i> , 364 S.C. 563, 614 S.E.2d 616 (2005)	4
<i>Denene, Inc. v. City of Charleston</i> , 352 S.C. 208, 574 S.E.2d 196 (2002).....	14
<i>Derrick v. Gaston Sch. Dist. of Lexington County</i> , 172 S.C. 472, 174 S.E. 431(1934) ...	18
<i>Earle v. Aycock</i> , 276 S.C. 471, 279 S.E.2d 614 (1981)	18
<i>Fabian’s Uptown Charleston, Inc. v. S.C. Tax Comm’n</i> , 247 S.C. 164, 146 S.E.2d 608 (1966).....	17
<i>Gaffney Ledger v. South Carolina Ethics Commission</i> , 360 S.C. 107, 600 S.E.2d 540 (2004).....	11
<i>Hamilton v. Fulgham</i> , 385 S.C. 632, 686 S.E.2d 683 (2009).....	3
<i>Hodges v. Rainey</i> , 341 S.C. 79, 533 S.E.2d 578 (2000)	8
<i>In re Richland County Magistrate’s Court</i> , 389 S.C. 408, 699 S.E.2d 161 (2010).....	16
<i>Linda Mc Co. v. Shore</i> , 390 S.C. 543, 703 S.E.2d 499 (2010)	3
<i>Mathis v. S.C. State Hwy. Dep’t</i> , 260 S.C. 344, 195 S.E.2d 713 (1973)	17
<i>Sanford v. South Carolina State Ethics Commission</i> , 385 S.C. 483, 685 S.E.2d 600 (2009).....	10
<i>Shah v. Richland Memorial Hospital</i> , 350 S.C. 139, 564 S.E.2d 681 (Ct. App. 2002)....	12
<i>South Carolina Coastal Council v. South Carolina State Ethics Commission</i> , 306 S.C. 41, 410 S.E.2d 245 (1991)	12
<i>State v. Sweat</i> , 386 S.C. 339, 688 S.E.2d 569 (2010).....	13
<i>Town of Summerville v. City of N. Charleston</i> , 378 S.C. 107, 662 S.E.2d 40 (2008)	3
<i>Video Gaming Consultants, Inc. v. S.C. DOR</i> , 342 S.C. 34, 535 S.E.2d 642 (2000)	10

Statutes

Act 387, § 8, 116th Session of the General Assembly (2005–2006), <i>available at</i> http://www.scstatehouse.gov/sess116_2005-2006/bills/3285.htm	12
S.C. Code Ann. § 8-13-320(10)	7, 13
S.C. Code Ann. § 8-13-320(10)(m) (2004), <i>available at</i> http://www.scstatehouse.gov/archives/CodeofLaws2004/t08c013.php	11
S.C. Code Ann. § 8-13-320(9)	6
S.C. Code Ann. § 8-13-320(9)(b)(1).....	8
S.C. Code Ann. § 8-13-530(4).....	6, 8
S.C. Code Ann. § 8-13-540.....	7, 13
S.C. Code Ann. §§ 2-17-5 through -150	5
S.C. Code Ann. §§ 8-13-1110 through -1180	5
S.C. Code Ann. §§ 8-13-1300 through -1372	5
S.C. Code Ann. §§ 8-13-310 through -320	5
S.C. Code Ann. §§ 8-13-510 through -530	5
S.C. Code Ann. §§ 8-13-700 through -795	5

Rules

S.C. House of Representatives Rule 4.16 7, 13
S.C. Senate Rule 44 7, 13
S.C. Senate Rule 44.1 7, 13

Treatises

Jean Hoefler Toal, Shahin Vafai, & Robert A. Muckenfuss, *Appellate Practice in South Carolina* (2d ed. 2002)..... 4

Regulations

S.C. Code Ann. Regs. 52-701 through -807 13

Constitutional Provisions

S.C. Const. art. V, § 24 16

STATEMENT OF ISSUES ON APPEAL

This case initially presented the following appellate questions:

1. Does the circuit court always have subject matter jurisdiction to adjudicate cases in which a plaintiff seeks a declaration that an elected official is liable for violating the State Ethics Code, or is its jurisdiction limited only to complaints that are filed within the fifty-day window preceding an election in which that official is a candidate?

2. Does a private citizen have standing to seek a declaratory judgment that another person has broken criminal laws?

While this appeal has been pending, a third issue has emerged due to the Appellant's decision to present his case to the House Legislative Ethics Committee, which fully resolved this matter on its merits after a merits hearing:

3. When a case has been finally resolved on its merits while an appeal is pending, is the appeal moot?

STATEMENT OF THE CASE

On November 17, 2011, Appellant filed this action in the Richland County Court of Common Pleas seeking a declaration that Governor Haley criminally violated the State Ethics Code while serving in the House of Representatives. (Complaint, R. p. 34.) In response, Governor Haley petitioned this Court for a Writ of Prohibition, as the circuit court lacked subject matter jurisdiction over this case, and moved for dismissal with the circuit court itself on the same grounds. This Court denied Governor Haley's petition, but the circuit court granted her motion to dismiss by order dated March 21, 2012. (Order Dismissing Case, R. p. 24.) Appellant sought reconsideration, which was denied by order dated April 3, 2012. (Order Denying Reconsideration, R. p. 28.)

Two days before the circuit court dismissed his case, Appellant filed the exact same complaint with the Legislative Ethics Committee for the House of Representatives. (Letter to The Honorable J. Roland Smith (Mar. 19, 2012), copy filed with the Court on Nov. 5, 2012.) After a full merits hearing, the House Ethics Committee held that Governor Haley had not violated the law and dismissed all of Appellant's claims. That vote was publicly taken on June 29, 2012, and the Committee entered a written order on July 17, 2012, memorializing its ruling. (Order of the House Legislative Ethics Committee, copy filed with the Court on Aug. 7, 2012.) Appellant did not attempt to appeal the Committee's decision, which is now final.

Three weeks after filing his complaint with the House Ethics Committee, Appellant noticed his appeal of the circuit court's dismissal of this case. (Notice of Appeal, R. p. 1.) On July 13, 2012, Governor Haley moved for dismissal of this appeal because it is moot, as the House Ethics Committee has fully resolved every issue

presented in the complaint. On August 10, 2012, the Court certified this appeal from the Court of Appeals, and it denied Governor Haley's motion to dismiss on September 7, 2012.

STANDARD OF REVIEW

Issues associated with subject matter jurisdiction and the interpretation of statutes are questions of law. *Linda Mc Co. v. Shore*, 390 S.C. 543, 551, 703 S.E.2d 499, 503 (2010). Appellate courts review questions of law *de novo*. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENTS AND AUTHORITIES

All of the issues before the Court involve subject matter jurisdiction in some capacity. ***First***, the circuit court was barred by the State Ethics Code from exercising jurisdiction over Appellant's complaint. ***Second***, the Appellant has no standing to invoke the Court's jurisdiction. ***Third and finally***, assuming *arguendo* that the circuit court may have had jurisdiction here (which it did not), it cannot exercise jurisdiction any longer because this case has been mooted by the Appellant's decision to have his case resolved by a different tribunal. Each basis for rejecting this appeal is discussed below.

I. The State Ethics Code removes complaints against officeholders from the circuit court's subject matter jurisdiction except in limited circumstances that are inapplicable here.

Subject matter jurisdiction is the single most important element of any case. Before a court can ever address the merits of a matter, it must have jurisdiction to do so, as subject matter jurisdiction is the sole source of a court's power. *Hamilton v. Fulgham*, 385 S.C. 632, 637, 686 S.E.2d 683, 685–86 (2009). Without jurisdiction, nothing that a

court does has any effect. *See Coon v. Coon*, 364 S.C. 563, 566, 614 S.E.2d 616, 617 (2005) (“A judgment of a court without subject-matter jurisdiction is void.”).

Subject matter jurisdiction is inflexible, and jurisdictional boundaries are drawn by the State Constitution and Code of Laws. *See Atlanta Skin & Cancer Clinic, P.C. v. Hallmark Gen. Partners*, 320 S.C. 113, 121, 463 S.E.2d 600, 605 (1995) (“Subject matter jurisdiction of a court depends upon the authority granted to the court by the constitution and laws of the state.” (quoting *Paschal v. Causey*, 309 S.C. 206, 209, 420 S.E.2d 863, 865 (Ct. App. 1992))). Accordingly, a court’s lack of jurisdiction cannot be waived, conferred by consent, ignored, or otherwise disregarded. *See, e.g., id.* (“It is axiomatic that subject matter jurisdiction cannot be waived or conferred by consent.”); *Amisub of S.C., Inc. v. Passmore*, 316 S.C. 112, 114, 447 S.E.2d 207, 208 (1994) (“Lack of subject matter jurisdiction may not be waived and should be taken notice of by this Court.”).

As summarized in Chief Justice Toal’s appellate treatise:

The issue of subject matter jurisdiction is, of course, critical to determining in which court an action may be brought. Subject matter jurisdiction refers to a court’s power to hear and determine cases of the general class to which the proceedings in question belong. **Lack of subject matter jurisdiction constitutes the strongest possible defense in an action** because it is a complete defense that may be raised at any stage of a proceeding, even for the first time on appeal before the Supreme Court. It may not be waived, including by consent of parties, and should be taken notice of by the courts. The subject matter jurisdiction of South Carolina courts is constitutionally and statutorily specified.

Jean Hoefler Toal, Shahin Vafai, & Robert A. Muckenfuss, *Appellate Practice in South Carolina* 3 (2d ed. 2002) (emphasis added and internal citations omitted).

Here, the plain language of the State Ethics Code makes clear that the circuit court properly determined that it lacked subject matter jurisdiction over the Appellant’s

complaint. Nor has the Appellant identified anything in his briefing to this Court to suggest that the circuit court's analysis was incorrect.

A. The General Assembly vested exclusive subject matter jurisdiction over complaints alleging violations of the State Ethics Code in executive and legislative tribunals.

The Legislature has established a comprehensive statutory scheme for regulating the behavior of elected officials, public employees, lobbyists, and other individuals who present for public service. The State Ethics Code provides guidelines for, among other things, permissible uses of public resources, permissible uses of monies in a campaign account, disclosure of campaign receipts, and a host of other topics. *See generally* S.C. Code Ann. §§ 2-17-5 through -150 (describing limitations on conduct of lobbyists and lobbyist principals); *id.* §§ 8-13-700 through -795 (describing “Rules of Conduct” for public officials, members, and employees); *id.* §§ 8-13-1110 through -1180 (describing obligations for “Disclosure of Economic Interests”); *id.* §§ 8-13-1300 through -1372 (describing requirements governing “Campaign Practices”).

In addition to carefully outlining these restrictions, the Legislature created three administrative bodies charged with enforcing the State Ethics Code; regulating the conduct of public officials, members, and employees; and issuing advisory opinions when questions arise regarding application of the Ethics Code: the State Ethics Commission (*id.* §§ 8-13-310 through -320), and the House and Senate Legislative Ethics Committees (*id.* §§ 8-13-510 through -530).

Included among the powers vested in each of these bodies is the duty to resolve complaints made against public officials, members, and employees when they are alleged to have violated the State Ethics Code. The State Ethics Commission has exclusive

subject matter jurisdiction over alleged violations of the Ethics Code by all officials, members, and employees who are not affiliated with the General Assembly:

The State Ethics Commission has these duties and powers: to initiate or receive complaints and make investigations, as provided in item (10), of statements filed or allegedly failed to be filed under the provisions of this chapter and Chapter 17 of Title 2 and, upon complaint by an individual, of an alleged violation of this chapter or Chapter 17 of Title 2 by a public official, public member, or public employee except members or staff, including staff elected to serve as officers of or candidates for the General Assembly unless otherwise provided for under House or Senate rules. Any person charged with a violation of this chapter or Chapter 17 of Title 2 is entitled to the administrative hearing process contained in this section.

Id. § 8-13-320(9).

Similarly, ethics complaints involving Legislators and their staff are committed exclusively to the jurisdiction of the Legislative Ethics Committees:

Each ethics committee shall: receive and hear a complaint which alleges a breach of a privilege governing a member or staff of the appropriate house, the alleged breach of a rule governing a member or staff of or candidate for the appropriate house, misconduct of a member or staff of or candidate for the appropriate house, or a violation of this chapter or Chapter 17 of Title 2.

Id. § 8-13-530(4).

The statutory assignment of subject matter jurisdiction to these administrative bodies over complaints against individual officeholders and public employees is unambiguous and clear from the plain language of these laws. Nevertheless, to ensure that no doubt remained on this issue, the General Assembly—collectively, and each chamber individually—crafted a detailed set of procedures that must be followed when a complaint has been filed with these administrative bodies to ensure that respondents are

afforded due process and that ethics proceedings are insulated from outside political influences. *See, e.g., id.* § 8-13-320(10) (outlining the procedures to be followed when a complaint is filed with the State Ethics Commission); *id.* § 8-13-540 (outlining the procedures to be followed when a complaint is filed with a Legislative Ethics Committee); S.C. House of Representatives Rule 4.16 (setting forth particular rules that must be followed when resolving complaints pending with the House Legislative Ethics Committee); S.C. Senate Rules 44 & 44.1 (setting forth particular rules that must be followed when resolving complaints pending with the Senate Legislative Ethics Committee).

Despite this comprehensive administrative structure—including (1) substantive standards governing conduct, (2) a tribunal to enforce those standards, and (3) a procedural framework within which that tribunal must operate—the Appellant fills his brief with random legal theories in an attempt to undercut the fact that the circuit court does not have subject matter jurisdiction over ethics complaints. Neither law nor logic support his arguments, as discussed below.

B. There is no authority to support any argument that the circuit court generally has subject matter jurisdiction over ethics complaints.

Contained within the Appellant’s eight-page jurisdictional discussion are four discernable arguments, each of which is readily rebutted by one or more long-settled legal doctrines.

1. The General Assembly limited the circuit court’s jurisdiction over ethics proceedings to a specific circumstance that is inapplicable here.

The Appellant’s first theory for reversal suggests that the circuit court had jurisdiction over this case because the Legislature permits circuit courts to exercise

jurisdiction over ethics complaints within the fifty-day period preceding an election if the defendant is a candidate in that election. (Br. of Appellant at 12.) This argument fails for two straightforward reasons.

First, these statutes are unambiguous in that they only permit circuit courts to resolve ethics complaints during this narrow fifty-day pre-election window. *See* S.C. Code Ann. § 8-13-320(9)(b)(1) (“During this fifty-day period, any person may petition the court of common pleas [instead of the State Ethics Commission] alleging the violations complained of and praying for appropriate relief by way of mandamus or injunction, or both.”); *id.* § 8-13-530(4) (permitting circuit courts to exercise jurisdiction over complaints that must otherwise be resolved by a Legislative Ethics Committee during the same fifty-day period). But the Appellant did not file his complaint against Governor Haley within fifty days of an election in which she is a candidate. These statutes, therefore, have absolutely no relevance to this case.

Second, the Court regularly points out that when the General Assembly passes a law governing a topic in a particular way, it necessarily excludes all other alternatives. *See, e.g., Hodges v. Rainey*, 341 S.C. 79, 86, 533 S.E.2d 578, 582 (2000) (“The canon of construction ‘*expressio unius est exclusion alterius*’ or ‘*inclusio unius est exclusion alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” (quoting *Black’s Law Dictionary* 602 (7th ed. 1999))). In this case, because the General Assembly expressly authorized the circuit court to resolve ethics complaints during the fifty-day pre-election period, it necessarily removed these cases from the circuit court’s jurisdiction at all other times—precisely the opposite outcome argued by the Appellant, but the only legitimate conclusion that can be drawn from the

State Ethics Code's plain language. Accordingly, the Appellant's reliance on the "fifty days before an election" statutes is misplaced and cannot serve as a basis for reversing dismissal here.¹

2. None of the cases cited in the Appellant's brief stand for the proposition that a circuit court has subject matter jurisdiction to resolve an ethics complaint filed against an officeholder.

After improperly relying on facially-inapplicable statutes, the Appellant cites a series of cases that reference the Ethics Code and argues that they are proof that the circuit court has subject matter jurisdiction over his complaint. (Br. of Appellant at 13–16.) They do not stand for any such proposition. In fact, none address a circumstance where a plaintiff has filed a complaint seeking a declaration that an individual officeholder has violated the Ethics Code.

The Appellant's chief citation is to *Baird v. Charleston County*, 333 S.C. 519, 511 S.E.2d 69 (1999), which he boldly asserts is "directly on point." (Br. of Appellant at 13.) Respectfully, it is anything but on point. There, a group of plaintiffs asked a circuit court to enjoin the issuance of hospital revenue bonds that were to be issued pursuant to a bond ordinance passed by the Charleston County Council. 333 S.C. at 525, 511 S.E.2d at 72. One argument the plaintiffs urged in support of enjoining issuance of the bonds was that a County Council member had a conflict of interest and, therefore, his tie-breaking vote in favor of the ordinance should not count and the ordinance should be invalidated. *Id.* at

¹ The Appellant repeatedly claims that Judge Manning's order of dismissal "contradicted" itself because of this grant of jurisdiction during the fifty-day pre-election window. (Br. of Appellant at 12, 19.) This is plainly incorrect, as Judge Manning's order specifically acknowledged this limited grant of jurisdiction immediately before explaining its inapplicability here. (Order Dismissing Case, R. p. 26, n.1.)

533, 511 S.E.2d 77. The Court held that it had authority to invalidate the bond ordinance on this basis. *Id.* at 535, 511 S.E.2d at 77–78.

Baird is fundamentally distinguishable from this case in at least two dispositive ways. For one, the defendant in that case was “Charleston County,” not an individual officeholder who is entitled to both due process, as a constitutional matter, and to the statutory procedures outlined in the Ethics Code when his or her conduct is challenged. Likewise, the desired relief in *Baird* was the invalidation of a legislative act, not a declaration that an individual officeholder had criminally broken the law. In fact, the relief sought in *Baird* could not have been provided by an administrative tribunal, as only courts have the ability declare a statute unlawful. *See, e.g., Video Gaming Consultants, Inc. v. S.C. DOR*, 342 S.C. 34, 38–39, 535 S.E.2d 642, 644–45 (2000) (stating that neither the Administrative Law Court or an agency can void a statute, but are charged with enforcing the law as it is written until the Judiciary determines the validity of legislation). Accordingly, although it has the Ethics Code as an ingredient of the case, *Baird* has absolutely no bearing on the circuit court’s subject matter jurisdiction over the Appellant’s complaint against Governor Haley.

In addition to *Baird*, the Appellant leans heavily on *Sanford v. South Carolina State Ethics Commission*, 385 S.C. 483, 685 S.E.2d 600 (2009), in support of his argument. *Sanford*, however, stands for exactly the opposite conclusion suggested by the Appellant. There, Governor Sanford was involved in ongoing proceedings before the State Ethics Commission, *not* a circuit court, and he filed suit in this Court’s original jurisdiction in order to force the State Ethics Commission to follow the Ethics Code’s confidentiality guarantees. *Id.* at 489, 685 S.E.2d at 603. At no point was this Court or

any other ever asked to weigh-in on the merits of the allegations that Governor Sanford had violated the Ethics Code, as that question was committed solely to the jurisdiction of the State Ethics Commission. *Sanford*, therefore, certainly does not indicate that the circuit court incorrectly evaluated its lack of subject matter jurisdiction here.

Finally, the Appellant presents a string-cite of cases to support his claim that no court “has held it lacked subject matter jurisdiction over the Ethics Act.” (Br. of Appellant at 15–16.) Like *Baird* and *Sanford*, these cases illustrate the basic errors of the Appellant’s argument. The first is *Gaffney Ledger v. South Carolina Ethics Commission*, 360 S.C. 107, 600 S.E.2d 540 (2004). There, the Court reviewed a decision of the State Ethics Commission to publicly reprimand a newspaper for allegedly violating the Ethics Code’s confidentiality provisions. *Id.* at 110, 600 S.E.2d at 541. The case does not stand for the proposition that the circuit court could have heard the case at the trial level.

In fact, *Gaffney Ledger* further highlights the circuit court’s absence of jurisdiction here. At the time it was decided, the State Ethics Code vested circuit courts with appellate jurisdiction over rulings from the State Ethics Commission. *See* S.C. Code Ann. § 8-13-320(10)(m) (2004) (“This review is the final disposition of the complaint before the commission. An appeal to the circuit court, pursuant to Section 1-23-380, stays all actions and recommendations of the commission unless otherwise determined by the circuit court.”), *available at* <http://www.scstatehouse.gov/archives/CodeofLaws2004/t08c013.php>. *Gaffney Ledger* itself came to this Court after intermediate appellate review by the circuit court. 360 S.C. at 110, 600 S.E.2d at 541.

But the General Assembly’s comprehensive restructuring of the Administrative Procedures Act in 2006 removed this grant of jurisdiction from circuit courts, instead

vesting appellate jurisdiction over Ethics Commission decisions in the Court of Appeals. Act 387, § 8, 116th Session of the General Assembly (2005–2006), *available at* http://www.scstatehouse.gov/sess116_2005-2006/bills/3285.htm. The fact that the Legislature used to, but no longer does, permit the circuit court to review decisions of the Ethics Commission reinforces the basic point that the circuit court plays no role in resolving ethics complaints except within the fifty days prior to an election.

The Appellant’s remaining two cases are equally unhelpful for his argument:

- *South Carolina Coastal Council v. South Carolina State Ethics Commission*, 306 S.C. 41, 42, 410 S.E.2d 245, 246 (1991), was filed in this Court’s original jurisdiction (making the circuit court’s jurisdiction a question that was never at issue) and involved an issue arising under the pre-Operation Lost Trust version of the State Ethics Code (which was entirely overhauled by Act 248 of 1991). It is wholly irrelevant to this case.
- In *Shah v. Richland Memorial Hospital*, 350 S.C. 139, 151–52, 564 S.E.2d 681, 687–88 (Ct. App. 2002), the circuit court was asked to declare that a hospital had violated its own regulations and the Ethics Code when allegedly breaching a contract. The circuit court refused to address the issue on grounds of mootness, and the Court of Appeals affirmed. A circuit court’s refusal to exercise jurisdiction over an issue cannot possibly support an argument that the circuit court actually did have subject matter jurisdiction.

The inapplicable cases cited by the Appellant do not somehow override the Legislature’s unambiguous intention to vest administrative tribunals with exclusive subject matter jurisdiction over ethics complaints except during the fifty-day period immediately preceding an election. Accordingly, Governor Haley respectfully submits that the Court should reject the Appellant’s suggestion to the contrary.

3. There is nothing to indicate that the circuit court has concurrent jurisdiction with the administrative bodies over ethics proceedings.

The Appellant’s next argument is a statement that “the House Ethics Committee shares concurrent jurisdiction with South Carolina courts over the Ethics Act.” (Br. of

Appellant at 17.) For this position, he provides only a generic citation to Article 5 of Title 8, Chapter 13 of the Code of Laws. (*Id.*) Nothing in the Code actually stands for this proposition, as evidenced by the Appellant's failure to cite any legitimate authority, nor does logic support the Appellant's argument.²

If the General Assembly had intended for circuit courts to share "concurrent jurisdiction" with the three administrative tribunals it established to resolve ethics complaints, the Legislature would not have had any reason to create a sophisticated procedural framework to govern ethics proceedings. But the State Ethics Code, the rules governing each legislative chamber, and the State Ethics Commission's regulations create a detailed, step-by-step system for adjudicating such complaints. *E.g.*, S.C. Code Ann. § 8-13-320(10) (State Ethics Commission); *id.* § 8-13-540 (Legislative Ethics Committees); S.C. House of Representatives Rule 4.16 (House Legislative Ethics Committee); S.C. Senate Rules 44 & 44.1 (Senate Legislative Ethics Committee); S.C. Code Ann. Regs. 52-701 through -807 (State Ethics Commission).

Surely the General Assembly would not have established such a complex administrative structure if it also intended for circuit courts to resolve ethics complaints without following any of these same procedures. Such an understanding of subject matter jurisdiction under the Ethics Code would violate the long-established rule against interpreting laws in a way that renders a statute either mere surplusage or futile. *See State v. Sweat*, 386 S.C. 339, 351, 688 S.E.2d 569, 575 (2010) (explaining that a statute

² The Appellant's concession that the House Ethics Committee actually has jurisdiction over his complaint—he filed it there, and he admits the Committee's subject matter jurisdiction on Page 17 of his opening brief—underscores the fact that this case is moot. The House Legislative Ethics Committee resolved this case after a full merits hearing. (Order of the House Legislative Ethics Committee, R. p. 833.) As such, there is nothing left for the Judiciary to decide with respect to the Appellant's complaint.

should not be construed in a way that “would defeat the plain legislative intent,” including interpreting a statute in a manner that renders part of it superfluous); *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002) (“The Court must presume the legislature did not intend a futile act, but rather intended its statutes to accomplish something.”). The Appellant’s argument on this point is hollow.

4. The General Assembly was not required to include a “jurisdiction-stripping” provision in the Ethics Code.

The Appellant’s final argument is that the Legislature did not fully state its intention to cabin ethics complaints in the tribunals that it created specifically for enforcing the Ethics Code because it did not also include an express provision that “stripped jurisdiction from this state’s courts.” (Br. of Appellant at 18.) This position attempts to erect an artificial rule that has never been part of South Carolina jurisprudence. Indeed, the Appellant does not cite a single case where the Court has held that the only way the Legislature can draw a jurisdictional boundary is by identifying ***both*** (1) what body can adjudicate a case ***and*** (2) what bodies cannot adjudicate a case.

In order to reach the conclusion urged by the Appellant, the Court would have to ignore the facts that the General Assembly expressly:

- Created three bodies specifically to regulate conduct under the Ethics Code;
- Vested those bodies with jurisdiction to adjudicate ethics complaints filed against public officials, members, and employees;
- Outlined a step-by-step administrative process for resolving ethics complaints that includes strict confidentiality requirements; and
- Authorized the circuit court to address ethics complaints against officeholders only in the fifty days preceding an election.

Such an outcome would be truly unprecedented, and Governor Haley submits that the Court should not credit the Appellant's final jurisdictional argument accordingly.

At bottom, the General Assembly's intent with the State Ethics Code is clear: Complaints filed against individual officeholders must be filed with the appropriate administrative tribunal, and the only exception to this rule occurs in the limited circumstance where a complaint is filed within fifty days of an election in which the respondent is a candidate. Only in this narrow situation can the circuit court adjudicate an ethics complaint. However, because this case does not fall within that exception—nor has the Appellant ever suggested that it does—the circuit court rightly dismissed this case for lack of subject matter jurisdiction.

II. Private citizens do not have standing to seek a declaratory judgment that another has broken criminal statutes.

The Appellant devotes the remainder of his opening brief to arguments about “relaxed standing” in matters of “public importance.” (Br. of Appellant at 20–29.) In the Appellant's view, the circuit court “mischaracteriz[ed]” this case as a “criminal prosecution” when concluding that the Appellant lacked standing, and that ruling should be reversed. (*Id.* at 25.)

The Appellant's attack on the ruling below is squarely rebutted by the allegations of his own complaint. He specifically sought a declaration that Governor Haley's alleged conduct “violates Section 16-9-10(A)(2)” —a provision of the State Criminal Code—and, incredibly, asked the circuit court to declare that Governor Haley's alleged conduct amounted to “misdemeanor and felony offenses punishable by fine and/or

imprisonment.” (Compl. ¶¶ 31, 38, “Wherefore”; R. pp. 44, 45, 57.)³ The circuit court certainly did not “mischaracterize” the Appellant’s complaint; he expressly asked for a declaration of criminal behavior.

Accordingly, the circuit court properly held that the Appellant lacked standing to assert criminal claims. The South Carolina Constitution designates the Attorney General, not the citizenry at-large, as “the chief prosecuting officer of the State with authority to supervise the prosecution of all criminal cases in courts of record.” S.C. Const. art. V, § 24. And this Court recently warned about the dangers inherent in allowing private citizens to present claims of criminal misconduct:

If a private party is permitted to prosecute a criminal action, we can no longer be assured that the powers of the State are employed only for the interest of the community at large. In fact, we can be absolutely certain that the interests of the private party will influence the prosecution, whether the self-interest lies in encouraging payment of a corporation’s debt, influencing settlement in a civil suit, or merely seeking vengeance. . . . We find that allowing prosecution decisions to be made by, or even influenced by, private interests would do irreparable harm to our criminal justice system.

In re Richland County Magistrate’s Court, 389 S.C. 408, 412, 699 S.E.2d 161, 163 (2010).

Ultimately, the Appellant asks the Court to find that any citizen can co-opt the courts in order to have an enemy—a former spouse, a former business partner, a political rival, or anyone else—deemed to be a “criminal” as long as the plaintiff styles his or her case as a “declaratory judgment” action. The improper uses of the Judiciary under such a

³ After full merits hearing on this matter, the House Legislative Ethics Committee dismissed all claims against Governor Haley. (Order of the House Legislative Ethics Committee, copy filed with the Court on Aug. 7, 2012.)

scenario would be endless. There is no case, statute, or constitutional provision authorizing such abuses of the courts or vesting the citizenry with standing in such a situation. The circuit court rightly held that the Appellant lacked standing here.

III. This case has been mooted by intervening proceedings before the House Legislative Ethics Committee.

Even assuming *arguendo* that the circuit court has subject matter jurisdiction over ethics proceedings at all times, and that a private citizen can seek a declaratory judgment that another is a criminal, the Appellant's appeal still fails because this case is moot. As explained above, as well as in Governor Haley's earlier motion to dismiss this appeal, this case has been finally decided on its merits by the House Legislative Ethics Committee. (Order of the House Legislative Ethics Committee, copy filed with the Court on Aug. 7, 2012.)

As the Court is aware, prior to appealing the judgment below, the Appellant voluntarily filed his complaint with the House Ethics Committee, and that tribunal rejected all of his claims after a full merits hearing that was broadcast live on the Internet. Nor can he challenge that Committee's authority to resolve this case; he chose to file his complaint with that body, and he concedes that jurisdiction was proper before the House Ethics Committee in his opening brief to this Court. (Br. of Appellant at 17.) The Committee's judgment is final, and there is nothing left for the Judiciary to resolve.

A case becomes moot "when judgment, if rendered, will have no practical legal effect upon [the] existing controversy." *Mathis v. S.C. State Hwy. Dep't*, 260 S.C. 344, 346, 195 S.E.2d 713, 715 (1973); see *Fabian's Uptown Charleston, Inc. v. S.C. Tax Comm'n*, 247 S.C. 164, 166, 146 S.E.2d 608, 608 (1966) ("This Court will not pass on moot or academic questions or make an adjudication where there remains no actual

controversy.”). This is not a “prudential limitation,” as the Appellant incorrectly asserts (Br. of Appellant at 27), but instead is a jurisdictional threshold that cannot simply be ignored at a plaintiff’s request. *See, e.g., Booth v. Grissom*, 265 S.C. 190, 192, 217 S.E.2d 223, 224 (1975) (“It is elementary that the courts of this State have no jurisdiction to issue advisory opinions.”) (emphasis added).

Here, the Appellant’s case has been dismissed on its merits by a tribunal that actually does have subject matter jurisdiction over his complaint. Accordingly, any remaining question in this case is purely academic, as the House Legislative Ethics Committee’s ruling is final and has a preclusive effect on any future proceedings. *See, e.g., Earle v. Aycock*, 276 S.C. 471, 475, 279 S.E.2d 614, 616 (1981) (“[The employee] is precluded from raising the validity of the discharge in a collateral action as the decision of the [State Grievance C]ommittee became the law of the case, and the doctrine of *res judicata* bars the relitigation of the issue.”); *Derrick v. Gaston Sch. Dist. of Lexington County*, 172 S.C. 472, 477, 174 S.E. 431, 433 (1934) (“Can one pursue this remedy thus specifically provided by the legislature, and, having lost, seek redress in another distinct tribunal? We think he is estopped by the application of the doctrine of *res adjudicata*.”). Because there is nothing left to adjudicate, this case is now moot.⁴

CONCLUSION

The circuit court rightly dismissed the Appellant’s complaint, as the General Assembly has carved ethics complaints out of the circuit court’s subject matter

⁴ As fully explained in Governor Haley’s motion to dismiss, none of the exemptions to mootness are applicable here, either. This case is not “capable of repetition, yet evading review”; it will evade review here because of the Appellant’s own litigation strategy, not because of an unavoidable event that necessarily happens with time. Nor is there any emergency accompanying this case that would be cause for invoking the “manifest urgency” exemption to mootness.

jurisdiction except in narrow circumstances that are inapplicable here. Likewise, members of the citizenry do not have standing to invoke a court's jurisdiction for purposes of seeking a declaration that another has violated criminal laws, and the circuit court correctly put an end to the Appellant's misuse of the State Judiciary.

But even if these procedural problems did not exist, this appeal still fails. The Appellant took his complaint to the House Legislative Ethics Committee, and after a public hearing on the merits, that tribunal resoundingly dismissed the Appellant's case and rejected all allegations that Governor Haley had violated the Ethics Code. That proceeding necessarily mooted this appeal. For all of these reasons, Governor Haley respectfully submits that the circuit court's ruling should be affirmed or, alternatively, that this appeal should be dismissed.

Respectfully submitted,

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CERTIFICATE OF COUNSEL

The undersigned certify that this Final Brief complies with Rule 211(b), SCACR, with the exception of four citations that were modified as outlined in the below-signed's letter to the Court of December 11, 2012.

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PROOF OF SERVICE


S.C. Supreme Court

I, the undersigned Legal Assistant of the law offices of Womble Carlyle Sandridge & Rice, LLP, attorneys for Respondent, do hereby certify that I have served the below parties in this action with a copy of the pleading(s) hereinbelow specified by mailing a copy of the same to the following address(es):

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