

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

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**Jun 30 2022**

**S.C. SUPREME COURT**

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APPEAL FROM HORRY COUNTY  
Court of Common Pleas

R. Lawton McIntosh, Circuit Court Judge

Unpublished Opinion No. 2021-UP-288 (S.C. Ct. App. Filed Aug. 4, 2021)

Case No. 2014-CP-26-8367  
(Formerly 2013-CP-26-2816)

Appellate Case No. 2016-001328

Gabriel Barnhill & GSB Enterprises LLC..... Respondents

v.

J. Floyd Swilley, J. Floyd Swilley Investment Advisors, Laurel K. Swilley, SMG Partners, LLC,  
SMS Services, LP, William C. Piner, WCP Limited, LLC, 809 Holdings, LP, QC  
Financing, LLC, and Sage Financial Group, LLC.....Petitioners,

Of Whom J. Floyd Swilley and Laurel K. Swilley and Heath Causey are the .....Petitioners

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**RESPONDENTS’ OPPOSITION TO PETITIONER’S MOTION FOR LEAVE TO FILE  
SUPPLEMENTAL APPENDIX**

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Respondents Gabriel Barnhill & GSB Enterprises, LLC hereby object to Petitioners’  
Motion For Leave to File Supplemental Appendix.

**ARGUMENT**

Petitioners are attempting to introduce matter not presented to the lower court.  
Appellants’ proposed Supplemental Appendix includes an email from December 13, 2021 and an  
attachment thereto. Appellants’ actions violate SCACR 210(c) which prohibits the inclusion in

the Record on Appeal of “matter which was not presented to the lower court or tribunal.” The Court should not consider any fact which does not appear in the Record on Appeal. Rule 210(h), SCACR. The Record was closed in 2016. Any materials five years later should not be permitted.

Allowing Appellants to introduce this new material to the Court would turn the appellate process on its head and turn it into a trial court where new evidence may be received for consideration. See Sanders v. Salley, 283 S.C 460, 461 322 S.E.2d 829, 830 (S.C. 1984). This is what the requirement that “The Record shall not, however, include matter which was not presented to the lower court or tribunal” is designed to prevent. Rule 210(c), SCACR. The introduction of any such new material is a fundamental violation of the principles of appellate practice and review, and undermines the very function of the Court. Respondents will be prejudiced by any such inclusion.

### CONCLUSION

This Court should deny the Petitioner’s Motion for Leave to File Supplemental Appendix.

Respectfully submitted,

**s/ Nate Fata**

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June 30, 2022