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**SC Court of Appeals**

THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

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Appellate Case No. 2024-000347

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Ramona D. Byers, as Personal Representative of the Estate of Mario Byers, . . . . . Plaintiff,

v.

Greenville County and South Carolina Department of Corrections, . . . . . Defendants,

of whom South Carolina Department of Corrections is . . . . . Petitioner.

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PETITION FOR A WRIT OF CERTIORARI

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May 24, 2024

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## **CERTIFICATION OF COUNSEL**

Counsel for Petitioner certifies that a Petition for Rehearing was filed and finally ruled upon by the South Carolina Court of Appeals on April 30, 2024.

## **QUESTIONS PRESENTED**

1. Did the Court of Appeals fail to properly consider whether the Trial Court's order was immediately appealable because it decided a novel question of law – whether the South Carolina Department of Corrections (“SCDC”) owes a legal duty to all detainees housed in local jails by performing annual inspections pursuant to Section 24-9-20 of the South Carolina Code?
2. Did the Court of Appeals fail to properly consider whether the Trial Court's order was immediately appealable under Sections 14-3-330(1) and 14-3-330(2) of the South Carolina Code because the decisions decided SCDC's defenses and affects substantial rights of SCDC?
3. Did the Court of Appeals fail to properly consider this appeal given the exceptional circumstances presented?

## **STATEMENT OF THE CASE**

This Court should grant the Petition of the South Carolina Department of Corrections because this case presents several important issues of first impression in South Carolina relating to whether SCDC, and other state agencies, are civilly liable to individuals detained at local jail facilities throughout the state because SCDC is tasked with conducting annual inspections of those jails. This case also presents the novel issue whether a governmental entity like SCDC is entitled to determine what immunities it may assert under the South Carolina Tort Claims Act or whether a plaintiff or the trial court has the right to summarily make that decision. As such, this case has far-reaching impact not only upon SCDC, but also on other state agencies with similar inspection responsibilities and all governmental entities which are entitled to assert defenses under the Act.

## **The Jail and Prison Inspection Program**

The South Carolina Legislature first adopted the Jail and Prison Inspection Program in 1962. It has since amended the program thirteen times.<sup>1</sup> Pursuant to Section 24-9-10, the Legislature established a Jail and Prison Inspection Division under the jurisdiction of SCDC. The Jail and Prison Inspection Program currently provides that the Jail and Prison Inspection Division, together with the State Fire Marshall and the South Carolina Department of Health and Environmental Control, will inspect all local jail facilities annually. S.C. Code §24-9-20.

The inspections by SCDC are based upon standards adopted by the South Carolina Association of Counties - the South Carolina Minimum Jail standards. Id. Upon receipt of SCDC's annual report, the entity that operates the local facility, like Greenville County, shall "initiate" corrective action within ninety days. S.C. Code Ann. § 24-9-30. If the entity fails to initiate corrective action, the Director of SCDC **may** close all or a portion of a facility unless he determines that "the public interest is served by permitting the facility to remain open." Id. (emphasis added.) If the Director orders all or any portion closed, the entity that operates the facility may appeal to the Circuit Court in the applicable County. Id.

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<sup>1</sup> In 1962, the South Carolina Legislature enacted Acts 55-315, 55-316, and 55-217, which became Sections 24-9-10, 24-9-20, and 24-9-30, in the 1976 Code. In 1967, the Legislature enacted Act (55) 587 amending Acts 55-315 and 55-316. In 1970, the Legislature enacted Act 56 (2368) amending Act 55-317. In 1978, the Legislature enacted Act No. 571, Section 1 adding Code Section 24-9-35. In 1979, the Legislature enacted Act No. 132, Section 2 adding Code Section 24-9-40. In 1980, the Legislature enacted Act No. 419, Sections 1 and 2 amending Code Sections 24-9-20 and 24-9-30. That same year, the Legislature enacted Act No. 512, Section 2 amending Code Section 24-9-35. In 1981, the Legislature enacted Act No. 181, Section 2 amending Code Section 24-9-20. In 1993, the Legislature enacted Act No. 181, Sections 433, 434, and 435 amending Code Sections 24-9-10, 24-9-20, and 24-9-30. In 1995, the Legislature enacted Act No. 7, Part IV, Sections 72 and 73 amending Code Sections 24-9-20 and 24-9-30. In 2000, the Legislature enacted Act No. 308, Section 2 amending Code Section 24-9-20. That same year, the Legislature enacted Act No. 388, Section 8 adding Code Section 24-9-50. In 2010, the Legislature enacted Act No. 237, Sections 61, 62, and 63 amending Code Sections 24-9-30, 24-9-35, and 24-9-40. In 2023, the Legislature enacted Act No. 60 amending Code Section 24-9-20.

The Jail and Prison Inspection Program also requires local facilities to report deaths to SCDC and includes a penalty against a local facility for the failure to report. S.C. Code Ann. § 24-9-35. The Program requires that all design plans for new jail facilities be submitted to SCDC. S.C. Code Ann. § 29-9-40. The Program also mandates that certain information be reported to SCDC to include in a statewide jail information system. S.C. Code Ann § 24-9-50.

Notably, at no point during the sixty-year legislative history of the Jail and Prison Inspection Program has the South Carolina Legislature adopted any provision providing for a private right of action or other civil remedy against SCDC or the other state entities required to conduct inspections. Despite this, on May 3, 2023, Plaintiff initiated this novel action against SCDC contending that it owes a legal duty under the Jail and Prison Inspection Program to her Decedent, who is alleged to have committed suicide while in the custody of the Greenville County Detention Center. (Compl. May 3, 2023.) On June 6, 2023, Plaintiff filed an Amended Complaint containing the same novel theories of law. (Am. Compl. June 6, 2023.)

### **The Issues Presented Impact Other Pending Cases**

Other plaintiffs, represented by the same counsel, are pursuing similar claims. To date, Plaintiff's counsel has filed at least three similar actions in the Court of Common Pleas for Richland County: Brenda Black, as Personal Representative of the Estate of David Posey v. Greenville County and South Carolina Department of Corrections, C.A. No. 2023-CP-40-03639 (Richland Cnty., S.C., Ct. Com. Pl., June 9, 2023); Ronald Zack, as Personal Representative of the Estate of Allan L. Zack v. Greenville County and South Carolina Department of Corrections, C.A. No. 2023-CP-40-03029 (Richland Cnty., S.C., Ct. Com. Pl., July 13, 2023); and Mary Redding, as Personal Representative of the Estate of Randy Eugene Broome v. Greenville County and the South Carolina Department of Corrections, C.A. No. 2024-CP-40-02768 (Richland Cnty., S.C. Ct. Com. Pl., May 3, 2024). The plaintiffs in those cases also contend that SCDC owes a legal duty under the Jail and Prison

Inspection Program to individuals housed in local jails.

### **Procedural History**

Given the history of the Jail and Prison Inspection Program, on June 21, 2023, SCDC filed a motion to dismiss Plaintiff's claims. Specifically, SCDC contended that:

- a. It does not owe any legal duty to Plaintiff's Decedent;
- b. The Jail and Prison Inspection Program statutes do not create a private right of action in favor of local facility detainees like Plaintiff's Decedent;
- c. SCDC is immune from liability for conducting such inspections under the South Carolina Tort Claims Act; and
- d. The public duty rule applies. (Mot. June 21, 2023.)

On March 1, 2024, the Trial Court issued an order. Importantly, the order did not merely address whether Plaintiff had plead proper legal claims in her Amended Complaint, but instead actually decided the merits of SCDC's defenses and thus affected its substantial rights. (Order Mar. 1, 2024.) Specifically, the Trial Court held:

- a. That the statutes relating to the Jail and Prison Inspection Program create a duty of care owed by SCDC to Plaintiff's Decedent while a detainee at the Greenville County Detention Center awaiting trial. (Id. at 4-5.)
- b. That "SCDC is not immune" under Sections 15-78-60(2), (4), (5), and (13) of the South Carolina Tort Claims Act. (Id. at 9-10.)
- c. That gross negligence applies to the exceptions to the waiver of sovereign immunity set forth in Sections 15-78-60(2), (4), (5), and (13) of the South Carolina Tort Claims Act even though SCDC does not contend that any exception which includes a gross negligence standard applies in this case. (Id. at 8-10.)
- d. That "the public duty rule does not provide SCDC a defense in this case." (Id. at 5.)

On March 11, 2024, Petitioner timely filed a notice of appeal from the Trial Court’s order. (Notice of Appeal Mar. 11, 2024.) Four days later, on March 15, 2024, the South Carolina Court of Appeals summarily dismissed the appeal ruling that an order denying a motion to dismiss is not appealable regardless of the effect of the Trial Court’s order. (Order Mar. 15, 2024.) On March 28, 2024, Petitioner timely filed a petition for rehearing. (Pet. for Reh’g Mar. 28, 2024.) On April 30, 2024, the South Carolina Court of Appeals denied the petition for rehearing. (Order Apr. 30, 2024.)

## **ARGUMENT**

### **The South Carolina Court of Appeals Improperly Dismissed Defendant’s Appeal**

Section 14-3-330 permits review upon appeal of any “intermediate judgment, order or decree in a law case involving the merits in actions commenced in the court of common pleas...” S.C. Code Ann. § 14-3-330(1) (2017). An order “involves the merits,” when it “**finally determines some substantial matter forming the whole or part of some cause of action or defense.**” Mid-State Distribs., Inc. v. Century Importers, Inc., 310 S.C. 330, 334, 426 S.E.2d 777, 780 (1993) (emphasis added). This Court may also review an “order affecting a substantial right in an action when such order ‘strikes out an answer or any part thereof or any pleading in any action.’” S.C. Code Ann. § 14-3-330(2)(c) (2017). This Court has recognized that “the question of whether an order is immediately appealable is determined on a case-by-case basis.” Stone v. Thompson, 426 S.C. 291, 295, 826 S.E.2d 868, 870 (2019). Here, the Trial Court’s order is immediately appealable under Sections 14-3-330(1) and 14-3-330(2) because it involves the merits of the case, pertains to the ability of SCDC to assert legal defenses, and affects substantial rights of SCDC.

In Stone, this Court granted certiorari to determine whether a family court order which found that a common-law marriage existed was immediately appealable under Section 14-3-330 of the South Carolina Code. Id. at 292, 826 S.E.2d at 868. Notably, the appealed order did not end the case because divorce and equitable distribution causes of action were still pending. Id. at 294, 826

S.E.2d at 869. The South Carolina Court of Appeals held that the order was interlocutory because it did not end the case and that it was not immediately appealable under the statute. Id. at 292-93, 826 S.E.2d at 868-69.

This Court disagreed and reversed. Id. at 293, 826 S.E.2d at 869. This Court found that the order was appealable under 14-3-330(1) because it finally determined a substantial matter forming part of a cause of action and a defense to it, and therefore involved the merits. Id. at 295, 826 S.E.2d at 870. This Court noted that the family court’s determination “finally determined a substantial matter” – i.e. whether the parties were married. Id. That issue was key to the defense in the case; “Thompson’s primary – and to this point, exclusive – defense to the family court causes of action was that the parties were not married. Accordingly, the court weighed the evidence and finally determined a substantial matter forming part of Stone’s causes of action, as well as Thompson’s defense, which satisfies the test we clarified in Mid-State.” Id.

While the Trial Court’s order in this case did not end the case, it determined elements of Plaintiff’s claims and eviscerated SCDC’s defenses. Specifically, the Trial Court found that that “S.C. Code Ann. § 24-9-10, *et seq.* creates a statutory duty owed by SCDC to Plaintiff in this case.” (Order 5, Mar. 1, 2024.) The Trial Court also summarily held that “SCDC is not immune from liability,” (Order 9, Mar. 1, 2024.) The Trial Court found that Plaintiff’s claims against SCDC “are not barred by the South Carolina Tort Claims Act” which dismisses legitimate defenses available to SCDC under Sections 15-78-60(2), (4), (5), and (13) of the Act. (Order 8, Mar. 1, 2024.) Beyond this, the Trial Court decided, on its own, that the gross negligence standard applies to those exceptions in the Tort Claims Act even though SCDC did not contend that any section that includes gross negligence applies in this case and specifically told that Court that it did not make such a contention. The Trial Court’s holding that “the public duty rule does not provide SCDC a defense in this case” is also dispositive of another viable legitimate defense. (Order 5, Mar. 1, 2024.)

As the South Carolina Court of Appeals did in Stone, it summarily found that the Trial Court's order was interlocutory and improperly dismissed SCDC's appeal despite the fact that the Trial Court's order involves the merits of both claims and defenses and affects substantial rights of SCDC. The South Carolina Court of Appeals also overlooked the presence of at least two novel questions of law arising in connection with this case, including:

1. Whether the Jail and Prison Inspection Program creates a private right of action against SCDC.
2. Whether a "special duty" exception to the public duty rule applies in this case.

These novel questions of law form a substantial matter underpinning Plaintiff's causes of action and SCDC's defenses. Therefore, this Court should grant certiorari to review the decision of the South Carolina Court of Appeals given the issues of first impression. Rule 242, SCACR.

**The Legislation Creating the Jail and Prison Inspection Program Does Not Create a Private Right of Action Against SCDC**

This Court has discretion to grant certiorari where, as here, the case presents important issues of first impression in South Carolina. Rule 242(b), SCACR. This Court has granted certiorari when presented with novel issues of law in cases involving statutory interpretation. See Lambries v. Saluda Cnty. Council, 409 S.C. 1, 5, 760 S.E.2d 785, 787 (2014) (In a matter for first impression, this Court granted a petition for a writ of certiorari to consider the notice provision in Section 30-4-80 to determine whether Saluda County Council's practice of amending its agenda during regularly scheduled meetings violated the statute); Murphy v. Owens-Corning Fiberglas Corp., 356 S.C. 592, 594-97, 590 S.E.2d 479, 480-81 (2003) (granting certiorari to review novel issues presented when interpreting section 15-5-150 of the South Carolina Code); F & D Elec. Contractors, Inc. v. Powder Coaters, Inc., 350 S.C. 454, 458, 567 S.E.2d 842, 844 (2002) (granting certiorari to consider the novel issue of the meaning of "consent" in the mechanic's lien statute).

The Trial Court in this case erroneously determined that even though there is no legislative history or evidence of legislative intent to do so, the Jail and Prison Inspection Program imposes a statutory duty upon SCDC (and presumably the State Fire Marshall and SCDHEC) and creates a private right of action for detainees housed in local jails (and perhaps employees, visitor and others present in local jails). (Order 5, Mar. 1, 2024.) In so doing, the Trial Court disregarded this Court’s decision in Denson v. National Cas. Co., 439 S.C. 142, 886 S.E.2d 228 (2023).

In Denson, the plaintiff’s decedent died in an accident caused by a drunk driver who had been overserved at a bar. Id. at 145, 886 S.E.2d at 230. Although the bar previously had general liability insurance coverage and liquor liability coverage with National Casualty Company, it failed to renew its liquor liability coverage. Id. Section 61-2-145(c) of the Code required insurers offering liquor liability insurance to “notify the department in a manner prescribed by department regulation of the lapse or termination of the liquor liability insurance policy.” Id. at 146, 886 S.E.2d at 230. The insurer failed to give such notice when the bar’s liquor liability coverage lapsed. Id. at 145, 866 S.E.2d at 230. The plaintiff filed an action in federal court against the insurer asserting negligence based upon allegations that the insurer failed to notify the Department of Insurance as required by the statute. Id. at 145-46, 886 S.E.2d at 230. The insurer moved to dismiss arguing that the statute did not grant the plaintiff or any similarly injured party the right to assert a civil claim. Id. at 146, 866 S.E.2d at 230. On certified question from the district court, this Court considered whether the statute created a private right of action and ruled that it did not. Id. at 145, 886 S.E.2d at 229.

Because there was no common-law right of action against the insurer, this Court first considered whether the statute gives rise to a private cause of action. Id. at 151, 886 S.E.2d at 233. This Court reiterated long-standing South Carolina law that “[t]he main factor in determining whether a statute gives rise to a private cause of action is legislative intent,” which must be gleaned from the statutory language. Id. This Court also stated that “[a] finding that the legislature intended

to create a private right of action requires more than simply demonstrating a plaintiff may potentially benefit.” Id. at 154, 866 S.E.2d at 235. Furthermore, “[t]he fact that a statute imposes a duty is not dispositive of a tortfeasor’s liability under a negligence claim, for all statutes impose commands to do or refrain from doing something.” Id. at 147, 886 S.E.2d at 231. This Court also noted the general rule that when a statute does not expressly create civil liability – as the Jail and Prison Inspection Program does not - such liability should not be imposed unless the statute was enacted for a plaintiff’s special benefit. Id. at 151-52, 886 S.E.2d at 233.

Even though the statute at issue expressly required the insurer to report a lack of liquor liability coverage to the Department of Insurance, this Court found that the statute did not impose a legal duty upon the insurer to the plaintiff to do so. Id. at 147, 886 S.E.2d at 231. This Court held that its conclusion is supported by the statute’s failure to provide any consequence for the insurer. Id. at 154, 866 S.E.2d at 235. This Court noted that the fact that the legislature delineated consequences for insureds but did not do the same for the insurer supported the conclusion that the statute did not create an implied private right of action against the insurer. Id. This Court found that the enforcement mechanism provided in a statute can indicate whether the legislature intended to create civil liability as another means of enforcement. Id. at 155, 886 S.E.2d at 235. This Court found that the enforcement mechanism of that statute was the Department of Insurance’s authority to suspend or revoke a license, not to impose civil liability against the insurer. Id.

Any legislation which is in derogation of common law must be strictly construed and not extended beyond clear legislative intent. Id. at 152, 866 S.E.2d at 234. Given that at common law there was no right for a plaintiff to maintain a suit directly against an insurer unless there was privity of contract, this Court found a statutory right to maintain an action against the insurer would contravene common law. Id. at 153, 866 S.E.2d at 234.

This Court also considered whether the statute gave rise to a claim for negligence per se based

upon the two-part Rayfield test. Id. at 154, 886 S.E.2d at 234. This Court found that the statute was part of a larger regulatory scheme intended primarily to promote public safety and welfare by ensuring that certain businesses maintain liquor liability insurance, not to benefit a private party. Id. at 154, 866 S.E.2d at 234. This Court also found that the essential purpose of the statute was not to protect against the type of harm suffered by the decedent. Id.

As the Trial Court in this case appropriately concluded, SCDC does not owe a common law duty to detainees at every local jail in South Carolina, like Plaintiff's Decedent. (Order 3, Mar. 1, 2024.) However, the Trial Court determined incorrectly that the Jail and Prison Inspection Program creates a private right of action. Contrary to this finding, there is nothing in the Jail and Prison Inspection Program which suggests that the Legislature ever intended such result. The Program does not create civil liability, nor does it include any civil or criminal consequence for SCDC's performance of inspections.

The Trial Court should not have construed the Jail and Prison Inspection Program in contravention of common law so long as another interpretation was reasonable. There is another reasonable interpretation, the correct interpretation, that the legislature intended for SCDC to provide advice and guidance to local jails who have fewer resources than the agency. The Trial Court should have determined that there was no legislative intent to enact the Jail and Prison Inspection Program for the special benefit of Plaintiff's Decedent, or any other individual detainee housed at any of the jails in South Carolina. This Court should grant certiorari to consider this important issue.

### **The Public Duty Rule Applies in this Case**

South Carolina courts have been "reluctant to find special duties statutorily imposed." Tanner v. Florence Cnty. Treasurer, 336 S.C. 552, 562, 521 S.E.2d 153, 158 (1999). Despite this, the Trial Court held that "the statutory duties created and owed by SCDC under S.C. Code Ann. §§24-9-10 – 30," "fall under the 'special duty' exception to the public duty rule." (Order 5, Mar. 1, 2024.) The

Trial Court also held that “the public duty rule **does not** provide SCDC a defense in this case.” (Order 5, Mar. 1, 2024.) Thus, the Trial Court incorrectly disposed of another viable legitimate defense of SCDC and substantially impacted its legal rights.

The Trial Court erroneously relied upon Steinke v. South Carolina Dep’t of Labor, Licensing and Regulation, 336 S.C. 373, 520 S.E.2d 142 (1999) to support its conclusion. (Order 6-7, Mar. 1, 2024.) Although Steinke analyzes the public duty rule, the statute in Steinke, the Amusement Rides Safety Code, is significantly different than the Jail and Prison Inspection Program.

First, as this Court noted in Steinke, an essential purpose of the Amusement Rides Safety Code is to protect against a particular kind of harm, i.e., harm caused by poorly designed, constructed, or maintained amusement rides. Id. at 390, 520 S.E.2d at 150. Second, this Court found that the “[m]embers of the larger class of visitors and employees the statute was intended to protect – the riders and workers at a specific, reportedly hazardous amusement ride – were readily identifiable before the fact of the injury.” Id. at 391, 520 S.E.2d at 151. Third, unlike the statutes here, the Amusement Rides Safety Code permits the Department of Labor, Licensing, and Regulation **to impose civil penalties** when an owner fails to comply with the Act. Id. at 392, 520 S.E.2d at 151.

A more similar case is Adkins v. Varn, 312 S.C. 188, 439 S.E.2d 822 (1993). In Adkins, a thirteen-year-old girl was fatally injured after vicious dogs chased her into a public street where she was struck and killed by an automobile. Id. at 189, 439 S.E.2d at 823. The plaintiff filed a wrongful death action against Greenville County alleging that the county’s animal control ordinance created a special duty of care towards the girl and individual members of the general public. Id. at 192, 439 S.E.2d at 825. The plaintiff also alleged that the death of the child was attributable to the county’s failure to enforce its animal control ordinance. Id. at 192, 439 S.E.2d at 824-25.

This Court noted that a special duty exists when:

(1) an essential purpose of the statute is to protect against **a particular kind of harm**; (2) the statute, either directly or indirectly, imposes on a specific public officer a duty to guard against or not cause **that harm**; (3) the class of persons the statute intends to protect is identifiable before the fact; (4) the plaintiff is a person within the protected class; (5) the public officer knows or has reason to know of the likelihood of harm to members of the class if he fails to do his duty; and (6) the officer is given sufficient authority to act in the circumstances or he undertakes to act in the exercise of his office.

Id. at 193, 439 S.E.2d at 825 (*citing Bellamy v. Brown*, 305 S.C. 291, 294, 408 S.E.2d 219, 221 (1991)) (emphasis added). This Court found that there was no identification of a particular class of potential victims in the ordinance. Id. at 193, 439 S.E.2d at 825. This Court also found that the terms of animal control ordinance did not identify a particular kind of harm. Id. Ultimately, this Court concluded that there was no legislative intent to create a special duty. Id. This Court held that “assuming arguendo that the ordinance did create a special duty, it would still not rise to a level which would abrogate the plain meaning of § 15-78-60(4).” Id. Ultimately, this Court affirmed the trial court’s ruling that the county animal control ordinance did not create a special duty of care to the general public. Id. at 194, 439 S.E.2d at 825.

Here, there is nothing in the Jail and Prison Inspection Program suggesting that it was enacted to protect pretrial detainees from harming themselves. Like the ordinance in Adkins, the Jail and Prison Inspection Program does not provide that the inspections of detention facilities are performed by SCDC to protect any individual detainee. The Jail and Prison Inspection Program does not identify a particular kind of harm. The Jail and Prison Inspection Program does not readily identify pretrial detainees as the class of persons who the Jail and Prison Inspection Program was intended to protect. The Jail and Prison Inspection Program also does not include any civil penalties to be imposed either by or against SCDC for noncompliance with the Jail and Prison Inspection Program. The Jail and Prison Inspection Program does not require inspection reports to be provided to the

detainees of the facility. Instead, the inspection reports are provided to the entity that operates the facility – in this case, Greenville County Council. S.C. Code Ann. § 24-9-20.

Contrary to the Trial Court’s conclusion, the Jail and Prison Inspection Program addresses the general welfare of detention facility employees, population, visitors, and the nearby community. As such, the Trial Court should have determined that the Legislature did not intend to create a special duty owed by SCDC to Plaintiff’s Decedent, and that SCDC did not owe any legal duty to Plaintiff’s Decedent or any other individual detainee housed at any of the jails in South Carolina pursuant to the public duty rule.

### **A Governmental Entity Defendant Has the Right to Select and Allege its Defenses**

In addition to overlooking these novel questions of law, the South Carolina Court of Appeals failed to address a key issue in every case involving a governmental entity under the Tort Claims Act, namely whether SCDC has the right to determine which sections of the Act it asserts. Neither Plaintiff nor the Trial Court may raise an affirmative defense not raised nor relied upon by SCDC. Jones v. Lott, 387 S.C. 339, 692 S.E.2d 900 (2010) is on point.

In Jones, the sheriff pled that he was entitled to immunity pursuant to Section 15-78-60(6) of the Tort Claims Act which does not include a gross negligence standard. Id. at 344, 692 S.E.2d at 903. The trial court granted the sheriff’s motion for a directed verdict based in part upon the immunity afforded under Section 15-78-60(6). Id. at 344, 692 S.E.2d at 902. On appeal, the sheriff argued that he was entitled to immunity under Section 15-78-60(21), which relates to the escape of persons in the custody of a governmental entity, as an additional sustaining ground. Id. at 345, 692 S.E.2d at 903.

The plaintiff petitioned this Court arguing that the sheriff was not entitled to immunity under Sections 15-78-60(5) and 15-78-60(21). Id. at 346, 692 S.E.2d at 903. Although the sheriff did not plead Section 15-78-60(25) (which relates to the protection of persons in the custody, control, or

confinement of a governmental entity) as a basis for immunity, the plaintiff argued that Section 15-78-60(25) applied. Id. at 347-48, 692 S.E.2d at 904-05. Thus, the plaintiff posited that because multiple exceptions to the waiver of immunity were invoked and at least one of those exceptions contains a gross negligence standard, gross negligence should be grafted into the other exceptions. Id. at 347, 692 S.E.2d at 904.

This Court rejected the argument. Id. at 348, 692 S.E.2d at 904. This Court noted that because the sheriff “never raised an affirmative defense that contained a gross negligence standard,” the gross negligence standard should not be read into other sections of the Act. Id. at 348, 692 S.E.2d at 904-05. This Court emphasized that “the better practice is to allow the government to assert all relevant exceptions and apply the gross negligence standard when it is contained in one applicable exception.” Id. at 347, 692 S.E.2d at 904.

In Repko v. County of Georgetown, 424 S.C. 494, 818 S.E.2d 743 (2018), this Court revisited when it is appropriate to apply a gross negligence standard from one immunity provision of the South Carolina Tort Claims Act to another. There, the plaintiff asserted claims against the County for failing to comply with or enforce its rules, regulations, and written policies governing the handling of a letter of credit. Id. at 499, 818 S.E.2d at 746. The County alleged that it did not owe a duty of care to the plaintiff and that it was immune under Sections 15-78-60(1), (2), (4), (5), (12), and (13) of the Tort Claims Act. Id. The County moved for a directed verdict under Sections (4), (5), (12), and (13) of the Act. Id. at 502, 818 S.E.2d at 747-48. The trial court granted the County’s directed verdict motion, finding that the regulation did not create a duty of care by the County to the plaintiff and that the County was immune under Sections 15-78-60(4), (5), and (13) of the Act. Id. The trial court also found that Section 15-78-60(12) did not apply to the case. Id. This Court granted certiorari. Id. at 497, 818 S.E.2d at 745.

Plaintiff conceded that because Section 15-78-60(4) does not include a gross negligence standard, Section 15-78-60(4) would provide immunity from liability for failure to comply with or enforce the regulations at issue. Id. at 504, 818 S.E.2d at 749. Nonetheless, the plaintiff argued that the gross negligence standard contained in Section 15-78-60(12) should be read into Section 15-78-60(4) simply because the County initially pled that it was entitled to immunity under Section (12). Id. This Court disagreed. Id. at 502, 818 S.E.2d at 748.

This Court noted the plaintiff's argument that Jones v. Lott, "stands for the proposition that when a governmental entity simply pleads an immunity provision containing a gross negligence standard, the gross negligence standard must be read into all other immunity subsections." Id. at 505, 818 S.E.2d at 749. This Court held that for the gross negligence standard from one immunity provision of the Act to be read into another provision that does not contain a gross negligence standard, the immunity provision containing the gross negligence standard must apply in the case. Id. at 507, 818 S.E.2d at 750. This Court explained that in many instances, a governmental entity may initially plead immunity pursuant to a section containing a gross negligence standard but that immunity section may ultimately not apply to the facts of the case. Id. Accordingly, "the gross negligence standard contained in that [inapplicable] immunity [subsection] is not to be read into applicable immunity subsections that do not contain a gross negligence standard." Id.

Thus, if any of **the asserted and applicable** exceptions to the waiver of sovereign immunity include a gross negligence standard, only then is the gross negligence standard grafted into other exemptions. In this case, SCDC contends that certain sections of the Tort Claims Act apply to its

inspections of local jails, Section 15-78-60(4)<sup>2</sup> and Section 15-78-60(13)<sup>3</sup>. In this case, SCDC did not assert any exemptions that include a gross negligence standard.

Importantly, the Trial Court incorrectly decided that Sections 15-78-60(12) and (25) apply in this case even though SCDC makes no such contention and they do not apply. (Order 8-10, Mar. 1, 2024.) Section 15-78-20(12), which provides immunity for a loss resulting from licensing powers or functions, does not apply here. Section 15-78-60(12) “is applied where a governmental agency actually engages in licensing functions.” Plyler v. Burns, 373 S.C. 637, 652, 647 S.E.2d 188, 196 (2007). The Jail and Prison Inspection Program does not require SCDC to permit, license, issue a certificate to, or register any local jails.

Section 15-78-60(25) provides immunity for a loss resulting from a responsibility or duty concerning the protection of persons **in the custody, control, or confinement** of the entity. This Court has held that Section 15-78-60(25) “usually applie[s] in situations where a governmental entity is responsible for the actual physical accountability for the person.” Id. at 652, 647 S.E.2d at 196. “The unambiguous language of [Section 15-78-60(25)] clearly refers to the protection of the physical person.” Id. at 653, 647 S.E.2d at 197. Here, the Trial Court correctly found that “Plaintiff’s decedent was not in the custody and control of SCDC at the time of the incident.” (Order 3, Mar. 1, 2024.) As such, Section 15-78-60(25) does not apply in this case.

Thus, the Trial Court incorrectly grafted the gross negligence standard to Sections 15-78-60(4) and (13), even though SCDC did not assert immunity under any section that includes a gross

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<sup>2</sup> Section 25-78-60(4) which provides immunity for “adoption, enforcement, or compliance with any law or failure to adopt or enforce any law, whether valid or invalid, including, but not limited to, any charter, provision, ordinance, resolution, rule, regulation, or written policies.”

<sup>3</sup> Section 15-78-60(13) provides immunity for “regulatory inspection powers or functions, including failure to make an inspection, or making an inadequate or negligent inspection, of any property to determine whether the property complies with or violates any law, regulation, code, or ordinance or contains a hazard to health or safety.”

negligence standard nor do the sections involving gross negligence apply in this case. (Order 9-10, Mar. 1, 2024.) The Trial Court incorrectly decided that it, not the governmental entity involved, determines what defenses to assert under the Act.

The Trial Court did not simply find that Plaintiff had pled a plausible claim for which SCDC might not have immunity, the Trial Court finally decided the immunity issue on SCDC's motion to dismiss concluding that "SCDC is not immune from liability" and that Plaintiff's claims against SCDC "are not barred by the South Carolina Tort Claims Act." (Order 8-9, Mar. 1, 2024.) Thus, the Trial Court made a final decision regarding SCDC's defense in this case and impacted its substantial rights.

**This Court Should Grant Certiorari Because Exceptional Circumstances Exist in this Case**

Rule 242 provides that a writ of certiorari "will be granted only where there are special and important reasons." Rule 242(b), SCACR. Rule 242 describes five situations to "indicate the character of reasons" the Court may consider which are "neither controlling nor fully measuring" of this Court's discretion or power to grant certiorari. This Court has repeatedly granted certiorari where, as here, there are exceptional circumstances.

For example, in In re Breast Implant Prod. Liab. Litig., 331 S.C. 540, 543, 503 S.E.2d 445, 447 (1998), this Court granted certiorari to review the denial of the defendant's motion to dismiss the plaintiff's claim for strict liability concerning physicians' use of breast implant devices. This Court indicated that although it "will not generally accept matters on a writ of certiorari that can be entertained in the trial court or on appeal, a writ of certiorari may be issued when exceptional circumstances exist." Id. at 543 n.2, 503 S.E.2d at 447 n.2. This Court found that "exceptional circumstances exist[ed]" where that case involved "[n]ovel questions of law concerning issues of significant public interest . . . contained in numerous state and federal actions," and a ruling from this Court "would serve the interests of judicial economy by eliminating numerous inevitable appeals

raising these issues.” Id.

Similarly, in Laffitte v. Bridgestone Corp., 381 S.C. 460, 674 S.E.2d 154 (2009), this Court granted certiorari to review the trial court’s order granting of a motion to compel trade secret information. This Court held that a writ of certiorari may be issued when exceptional circumstances exist even if an order is not immediately appealable. Id. at 471-72, 674 S.E.2d at 160-61. This Court found that “[t]he instant case presents such exceptional circumstances as it involves a novel question of law in a matter that has been the subject of numerous claims in state and federal courts. A decision by this Court at this time best serves the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.” Id.

The Trial Court’s ruling in this case has far-reaching implications. First, it creates statutory duties and potential financial liability for three state entities, SCDC, the State Fire Marshal and the South Carolina Department of Health and Environmental Control. Second, it impacts the right of every governmental entity entitled to assert immunity under the Tort Claims Act to decide which defenses to assert in a given case. Third, this case presents significant legal issues that are the subject of at least three other pending cases. A decision by the Court in this case would eliminate numerous inevitable appeals raising these issues in similar cases.

### **CONCLUSION**

Based upon the foregoing authorities and arguments, Petitioner South Carolina Department of Corrections respectfully requests that the Court grant a Writ of Certiorari to consider and resolve the novel questions of law in this case. Petitioner respectfully petitions this Court to review the underlying Trial Court order pursuant to Sections 14-3-330(1) and 14-3-330(2). Petitioner also respectfully requests that this Court grant a writ of certiorari given the significant public interest involved in this case and in the interests of judicial economy.

May 24, 2024

s/Stephanie H. Burton  
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THE STATE OF SOUTH CAROLINA  
In the Supreme Court

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Daniel M. Coble, Circuit Court Judge

Appellate Case No. 2024-000347

Ramona D. Byers, as Personal Representative of the Estate of Mario Byers, . . . . . Plaintiff,

v.

Greenville County and South Carolina Department of Corrections, . . . . . Defendants,

of whom South Carolina Department of Corrections is . . . . . Petitioner.

PROOF OF SERVICE

I certify that I have served Petitioner South Carolina Department of Corrections' Petition for a Writ of Certiorari, upon Plaintiff Ramona D. Byers, as Personal Representative of the Estate of Mario Byers, and Defendant Greenville County by depositing a copy of it in the United States mail, postage prepaid, on March 28, 2024, addressed to their respective attorneys of record as follows:

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May 24, 2024

*By United States Mail and by email*

The Honorable Jenny Abbott Kitchings  
Clerk, South Carolina Court of Appeals  
1220 Senate Street  
Columbia, South Carolina 29201  
[ctappfilings@sccourts.org](mailto:ctappfilings@sccourts.org)

Re: Ramona D. Byers, as Personal Representative of the Estate of Mario Byers v. Greenville  
County and South Carolina Department of Corrections  
C.A. No.: 2023-CP-40-02273  
Appellate Case No. 2024-000347

Dear Ms. Kitchings:

Enclosed for filing are:

- (1) The South Carolina Department of Corrections' Petition for a Writ of Certiorari; and
- (2) Proof of Service of the same on all parties.

With kind regards,

Yours very truly,

GIBBES BURTON, LLC

A handwritten signature in blue ink that reads "Stephanie H. Burton". The signature is written in a cursive style with a prominent initial "S".

Stephanie H. Burton

SHB/bre  
Enclosures

cc: Mr. Kyle J. White (w/enclosures)(by email)  
Mr. J. Drew Bradshaw (w/enclosures)(by email)  
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