THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. SUPREME COURT

APPEAL FROM DORCHESTER COUNTY
Heath P. Taylor, Circuit Court Judge

Appellate Case No. 2024-001727
Case No. 2017-CP-18-1125

Calvin Henson, Daniel James Collins, Jason Robinson,
Russell Taylor, and All Those Similarly Situated, ... Respondents,

v.

South Carolina Department of Corrections and the
South Carolina Department of Juvenile Justice, ... Petitioners.

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

Counsel for the Petitioners South Carolina Department of Corrections ("SCDC") and the South Carolina Department of Juvenile Justice ("SCDJJ") certifies that the Petition for Rehearing was made and finally ruled on by the South Carolina Court of Appeals on March 11, 2025.

QUESTIONS PRESENTED

(1) Did the South Carolina Court of Appeals err in dismissing the Petitioners' direct appeal where the appeal impacts the mode of trial?

(2) Does South Carolina law recognize an "ascertainability requirement" under Rule 23, SCRCP?

(3) Does South Carolina law allow for a class definition that requires the trial court to conduct mini-trials or evidentiary hearings to determine class membership, and if so, are the mini-trials or evidentiary hearings conducted with a jury as the fact finder?

(4) Are the class definitions as adopted by the trial court proper under South Carolina law and do they allow for the manageability and efficiencies required of a class action?

STATEMENT OF THE CASE

The Respondents Calvin Henson, Daniel James Collins, and Jason Robinson allege that they were SCDC inmates who were sexually assaulted, and the Respondent Russell Taylor alleges that he was sexually assaulted while in the custody of SCDJJ. The Respondents, individually and as representatives of putative classes, have brought a claim for negligence/gross negligence alleging that SCDC and SCDJJ "fail[ed] properly to implement and enforce their policies and procedures, including but not limited to classification of inmates, monitoring of inmates by employees, allowing gross overcrowding, and by failing to provide appropriate employees and staff at the various locations in Defendants' facilities which would have prevented the sexual assaults suffered by Plaintiffs." *See*, Amended Complaint, ¶ 76. The Respondents seek monetary relief for themselves and for all putative class members. The Respondents also seek declaratory and injunctive relief.

On August 31, 2023, after the case had been pending for numerous years, the Respondents filed their Motion to Certify Class. (App. 128-129). That motion was heard by Judge Heath P. Taylor, who issued an Order Granting Plaintiffs' Motion to Certify on May 22, 2024. (App. 76-91). The Petitioners SCDC and SCDJJ thereafter filed a Motion to Alter or Amend Order and/or Motion to Reconsider. (App. 92-110). As a result of that motion, Judge Taylor issued an Amended Order Granting Plaintiffs' Motion to Certify filed September 13, 2024. (App. 60-75).

The Petitioners thereafter filed a timely appeal to the South Carolina Supreme Court. Specifically, the Petitioners filed a Notice of Appeal, or in the Alternative, Petition for Writ of Certiorari. (App. 7-20). By Order filed October 17, 2024, the Supreme Court transferred the appeal to the South Carolina Court of Appeals. (App. 5-6).

In the Court of Appeals, the Respondents filed a Motion to Dismiss Appeal (App. 21-28), which the Petitioners opposed. (App. 29-42). On January 3, 2025, the Court of Appeals issued an Order dismissing this appeal as not being immediately appealable. (App. 1-2). The Petitioners filed a Petition for Rehearing (App. 49-59) which was summarily denied by the Court of Appeals by Order issued March 11, 2025. (App. 3-4).

The Petitioners now seek a writ of certiorari in this Court.

ARGUMENTS

I. The South Carolina Court of Appeals erred in dismissing the Petitioners' direct appeal where the appeal impacts the mode of trial and thus is immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2).

In their Notice of Appeal filed October 14, 2024, the Petitioners SCDC and SCDJJ specifically stated that the Amended Order Granting Plaintiffs' Motion to Certify filed September 13, 2024, "affects the mode of trial and therefore is immediately appealable." (App. 8). In that Notice of Appeal, the Petitioners provided an explanation as to how the Amended Order impacts the mode of trial. As the Petitioners cited, South Carolina law is clear that "[o]rders affecting the mode of trial affect a substantial right as defined in section 14-3-330(2) of the South Carolina Code (1976), and must, therefore, be appealed immediately." *Frampton v. South Carolina Dept. of Transportation*, 406 S.C. 377, 752 S.E.2d 269, 274 (Ct. App. 2013). In fact, "the failure to timely appeal an order affecting the mode of trial effects a waiver of the right to appeal that issue." *Id*. *See also*, *Pelfrey v. Bank of Greer*, 270 S.C. 691, 244 S.E.2d 315 (1978) (holding that an order denying a compulsory reference affects the mode of trial and is immediately appealable); *Foggie v. CSX Transportation, Inc.*, 313 S.C. 98, 431 S.E.2d 587, 591 (1993) ("[i]ssues regarding mode of trial must be raised in the trial court at the first opportunity, and the order of the trial judge is immediately appealable"). Thus, the Petitioners will arguably waive their mode of trial-related issues if those are not immediately appealed.

Despite that background and a detailed explanation as to how the Amended Order impacts the mode of trial and the potential detriment to the Petitioners were they not to seek an immediate appeal on issues impacting the mode of trial, the Court of Appeals issued an Order dismissing the appeal which does not address whether or not the Amended Order impacts the

mode of trial. Instead of addressing the mode of trial implications, the Court of Appeals simply states that "we dismiss the appeal as not immediately appealable." (App. 2). That is followed by a string citation that does not address whether or not the Amended Order impacts the mode of trial as the Petitioners have raised. (App. 2).

The string citation includes *Hensley v. South Carolina Dept. of Social Services*, 429 S.C. 144, 838 S.E.2d 510 (2020), in which this Court explained that "class certification orders are *ordinarily* not immediately appealable." *Hensley*, 838 S.E.2d at 512. (Emphasis added). This use of the term "ordinarily" should not be overlooked. Indeed, South Carolina jurisprudence is clear that a trial court order on class certification *which affects the mode of trial* not only is immediately appealable, but must be immediately appealed or the challenge to mode of trial is waived and cannot be asserted after final judgment.

The string citation also includes *Salmonsen v. CGD, Inc.*, 377 S.C. 442, 661 S.E.2d 81 (2008), in which this Court ruled that an order adopting an "opt-in" rather than an "opt-out" notification procedure in a class action can affect the mode of trial. This Court recognized that the "traditional analysis of claims of denial of a mode of trial requires a determination of whether or not a party is erroneously denied a trial by jury in a law case." 661 S.E.2d at 87. This Court further explained that "the mode of trial analysis indubitably includes the consideration of the availability of trial" and hence "[t]he question of the denial of an actual trial is intrinsic." *Id*. The *Salmonsen* Court also reiterated that South Carolina law requires that a litigant seek an immediate appeal on a mode of trial issue, or otherwise the right to appeal is deemed waived. *Id*.

Despite including *Hensley* and *Salmonsen* in the string citation, the Court of Appeals failed to address the Petitioners' arguments as to how the Amended Order impacts the mode of trial in this case. Notably, the Court of Appeals never states even whether the mode of trial is

impacted or not. Instead, it simply dismisses the appeal as "not immediately appealable" because "ordinarily" that is the correct result.

Respectfully, that is not the correct result here. The Petitioners believe that the critical issues they raise impact the mode of trial, thereby justifying a direct and immediate appeal at this stage in the litigation. To reiterate, the Petitioners have not been advised conclusively by either appellate court that the mode of trial is not impacted by their challenge to the class definitions. Thus, the Petitioners remain at serious risk of waiving their mode of trial arguments by not taking an immediate appeal and exhausting those appellate rights. The Petitioners cannot take those chances in a case of this significance and wide-ranging impact.

As discussed in detail in the Notice of Appeal, there is a valid and meritorious argument that the mode of trial is impacted by the Amended Order Granting Plaintiffs' Motion to Certify. In that Amended Order, the trial court identified two classes -- a single class against the Petitioner SCDC and a single class against the Petitioner SCDJJ. For SCDC, the class definition is "[a]ll individuals that have been under the custody and care of the South Carolina Department of Corrections ("SCDC") in South Carolina from 2012 until present who were victims of a nonconsensual sexual battery." (App. 73). Similarly, for SCDJJ, the class definition is "[a]ll individuals that have been under the custody and care of the South Carolina Department of Juvenile Justice ("SCDJJ") in South Carolina from 2012 until present who were victims of a nonconsensual sexual battery." (App. 73).

Notably, as to both classes, the trial court adopted class definitions that use the language "who were victims of a nonconsensual sexual battery," which in turn incorporates the statutory definition of "sexual battery" from S.C. Code Ann. § 16-3-651(h). Critically, before being deemed a member of either class, each putative class member will need to prove both (1) that

he/she was a victim of a "sexual battery" based on that statutory definition and (2) that the sexual battery was nonconsensual. In effect, in order to determine whether a particular SCDC inmate or SCDJJ juvenile meets the class definition, the trial court will be required to engage in hundreds of mini-trials or evidentiary hearings. As the Petitioners have explained, these class definitions consequently raise significant mode of trial issues from the outset.

Although the trial court declined to address procedures for notification of the defined classes, the trial court did state definitively that these would be "opt-out" classes, which is no surprise – that procedure is required by this Court in *Salmonsen*. *See*, *Salmonsen*, 661 S.E.2d at 9 ("an 'opt-out' notification procedure is the proper method to be offered to putative class members in the instant case and future class action cases"). The Respondents do not deny that the classes, as certified by the trial court, are opt-out classes.

However, because they are opt-out classes and given the lack of "ascertainability" of the classes as defined by the trial court, the mode of trial is impacted by the Amended Order. As the Petitioners have explained, it logically follows that in order to comply with "opt-out" procedures, the members of the class must be identified *before* notification of the class can be made. Thus, the fact that the trial court did not set forth notification procedures does not make this mode of trial argument premature. Regardless of whatever the notification procedures may be, for an opt-out class as required in *Salmonsen*, the trial court will be required to determine which SCDC inmates and which SCDJJ juveniles meet the class definitions. Only once those class members are identified may the notification of the classes even commence.

Importantly, both the Petitioners and the Respondents have demanded a jury trial in their operative pleadings. However, the mode of trial is significantly intertwined with and implicated by the class definitions adopted by the trial court. To reiterate, for both the SCDC and the

SCDJJ classes, using the class definitions as adopted, the trial court will need to determine (1) whether each putative class member was a victim of a "sexual battery" using the statutory definition of "sexual battery" from S.C. Code Ann. § 16-3-651(h), and (2) whether any sexual battery as found was nonconsensual. The two-part findings that will need to be made by the factfinder to determine *each* class member are also a significant part of the merits of each putative class member's cause of action, and those findings will need to be determined before class notification even occurs. As the Petitioners have explained, that is unprecedented. That determination will need to be made by the jury per the jury trial demand made by all parties. Moreover, before there can be a full hearing on liability – again by the jury – the qualifying class members would need to be notified and given the opportunity to "opt-out" per *Salmonsen*. Thus, in order to provide the jury trial requested by all parties, the jury trial would need to be bifurcated, with the second phase of the trial on liability issues held months later after the "opt-out" period has expired.

To further complicate the process, the same jury will be required to decide whether each SCDC inmate and SCDJJ juvenile meets the class definitions and then later determine liability and, if necessary, damages As federal courts have recognized, "[t]he right to a jury trial in federal civil cases, conferred by the Seventh Amendment, is a right to have juriable issues determined by the first jury impaneled to hear them (provided there are no errors warranting a new trial) and not reexamined by another finder of fact." *Matter of Rhone-Poulenc Rorer, Inc*., 51 F.3d 1293, 3003 (7th Cir. 1995) (collecting cases). The same would be true under state law. That extended process will create a tremendous burden and hardship of time and inconvenience on that jury (as well as the court), and more significantly, it will also not be reasonably feasible for the jury to hear the evidence relevant to determining whether each putative class member

qualifies as a class member and then months later be called upon to determine liability and, if necessary, damages, both of which determinations will rely on or at least be extensions of the fact-finding performed in the "class definition" phase of the trial held months earlier.

Of further significance, as the foregoing discussion reflects, the class definitions adopted by the trial court create what are commonly referred to as "fail-safe" classes. A fail-safe class is one that "is defined so that whether a person qualifies as a member [of the class] depends on whether the person has a valid claim." *EQT Production Co. v. Adair*, 764 F.3d 347, 360, n.9 (4th Cir. 2014), *citing Messner v. Northshore University Health Systems*, 669 F.3d 802, 825 (7th Cir. 2012). Fail-safe classes are considered improper for two principal reasons. First, in a fail-safe class, "a class member either wins or, by virtue of losing, is defined out of the class and is therefore not bound by the judgment." *Messner*, 669 F.3d at 825. Second, fail-safe classes do not comply with Rule 23. As discussed in more detail below, Rule 23 requires that members of a proposed class be readily identifiable, which is a principle called "ascertainability." *See*, *EQT*, 764 F.3d at 358 ("Rule 23 contains an implicit threshold requirement that the members of a proposed class be readily identifiable"). Under this so-called "ascertainability" requirement, "[a] class cannot be certified unless a court can readily identify the class members in reference to objective criteria." *Id*. In other words, a class action should not proceed "if class members are impossible to identify without extensive and individualized fact-finding or mini-trials." *Id*. Therefore, because a fail-safe class requires a court to engage in individualized fact-finding or mini-trials to identify the members of the class, fail-safe class definitions violate these principles.

In sum, if those fail-safe class definitions are allowed to proceed, there will be a significant impact on issues related to mode of trial – issues which are unavoidable in order to comply with the requirements of an "opt-out" class as mandated by this Court in *Salmonsen* and

as already established by the Amended Order. Therefore, the appeal should be permitted to proceed as an immediate appeal.

To further support their position, the Petitioners have cited to such seminal Supreme Court cases as *Hensley, supra*, and *Gardner v. South Carolina Department of Revenue*, 353 S.C. 1, 577 S.E.2d 190 (2003), both of which contain useful analysis regarding the pitfalls of classes which require individualized inquiry and decision-making with respect to each putative class member. Notably, the trial court gave no consideration to these critical cases which guide class action jurisprudence in South Carolina.[1]

Of note, in *Hensley*, *supra*. this Court explained that "there must be a proper balance between common and individualized issues in order to achieve the efficiencies the class procedure was designed to promote." *Hensley*, 838 S.E.2d at 514. This Court further spoke of the need for the court "to balance the efficiency to be gained from one trial on common issues versus the difficulty to be suffered by having to conduct individual trials or hearings on issues that are not common." *Id*. This Court also cited a well-respected treatise on South Carolina civil procedure for the following:

> The commonality requirement [of Rule 23(a), SCRCP] is a condition of class action status, but the existence of common questions alone is not sufficient .... *[T]he class action must be a better procedural mechanism for resolving the litigation than named joinder or separate litigation.* Under Fed. R. Civ. P. 23(b)(3), this is reflected in the requirement that the common

[1] The Court of Appeals and the trial court also gave no consideration to the recent decision in *Robinson v. South Carolina Department of Employment and Workforce*, 443 S.C. 63, 902 S.E.2d 41 (Ct. App. 2024). *Robinson* is another example where class certification was found not to be appropriate due to the need to separately adjudicate the exhaustion of administrative remedies defense which required individualized inquiry and decision-making with respect to each putative class member. In *Robinson*, the Court of Appeals reversed all orders on appeal, including the Circuit Court's orders certifying a class action. The Court of Appeals specifically ruled that "the circuit court erred by finding Claimants were not required to exhaust their administrative remedies." 902 S.E.2d at 50. This Court subsequently denied certiorari.

> questions predominate over individual issues. Although not specifically required by this Rule, it is inherent in the general conditions for class actions. The Court should first determine the existence of common questions, and then whether they are sufficient[ly] central to justify the class action.

Id., citing Harry M. Lightsey & James F. Flanagan, *South Carolina Civil Procedure* 199 (1st ed. 1985). (Emphasis added).

As indicated, the reason *Hensley* is so critical here is that, based on the class definitions adopted by the trial court, it will be required to conduct mini-trials or evidentiary hearings *just to determine who qualifies as a class member* and that must occur before the "opt-out" notification procedure can begin. That is not typical of proper class actions where the class membership may be determined by objective criteria which do not require individualized fact-finding. That alone demonstrates why these cases are not appropriate for class certification.[2]

Similarly, the Court of Appeals and the trial court gave no consideration to the importance and impact of *Gardner*, *supra*. While the trial court mentions *Gardner*, it never distinguishes *Gardner* nor explains why it is not controlling. In *Gardner*, this Court explained that "[t]o establish commonality, a party must show that there are questions of law or fact common to the class. In practical terms this means the party must articulate the existence of *significant* common, legal, or factual issues that bind the proposed class together." 577 S.E.2d at 200. (Emphasis added). Importantly, "[c]ommonality is met only where the class shares a

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[2] Of note, one of the foremost experts on class actions, Professor Newberg cautions that "[i]n a money-damages class action, common issues must predominate over individual ones so as make a class trial 'manageable,' thereby rendering it a superior form of adjudication. If a case is likely to devolve into thousands of individual mini-trials concerning each class member's damages, that process may threaten the efficiency gains of class treatment and render a class action unhelpful." 4 *Newberg on Class Actions* § 12:6 (5th ed.). *See also*, *O'Quinn v. Beach Associates*, 272 S.C. 95, 249 S.E.2d 734, 738 (1978), *as cited in Gardner*, 577 S.E.2d at 201 ("[t]he very purpose of a class action is to avoid the necessity of requiring each member of the class to prove the elements of the cause of action").

determinative issue." 577 S.E.2d at 200-201. (Emphasis added). Relying on federal jurisprudence, this Court in *Gardner* explained that "questions that are in no way dispositive and which simply propel the action into a posture where judicial scrutiny is necessary for just adjudication are insufficient to establish commonality." 577 S.E.2d at 201. Most importantly, this Court held that "a representative plaintiff cannot establish commonality if the court must investigate each plaintiff's individual claim." *Id*.

The *Gardner* case is instructive in addressing not only the commonality prong, but in the present case, it is instructive on the propriety and utility of the class definitions as well. In *Gardner*, a proposed plaintiff class of taxpayers sued the Department of Revenue and numerous governmental entities who attempted to use the Setoff Debt Collection Act to recover monies owed by taxpayers from their tax refunds. This Court reversed the certification of a plaintiff class for a lack of commonality. This Court found that, in addition to showing that the notice required by statute was deficient, a showing of prejudice was also required and that an individualized examination of each class member's claim was necessary before a class member could prevail. This Court explained that "[a] representative class cannot exist where the court must investigate each plaintiff's prejudice claim ... Requiring such individualized examination negates the benefits of a class action suit." *Gardner*, 577 S.E.2d at 201.

In sum, *Hensley* and *Gardner* are slightly different from the case at bar in that the determination of class membership in those cases did not require individualized inquiry; only a determination of commonality required individualized inquiry. However, those cases explain that individualized inquiry and the need for mini-trials or evidentiary hearings negate the benefits of a class action. It certainly is much more problematic – and indeed affects the mode of trial –

where as here the individualized inquiry is needed on the front-end to determine whether each putative class member even meets the two-prong definition of the class itself.

Clearly, the same level of individualized inquiry as in *Gardner*, if not a much greater level of such inquiry, is necessary in the present case – particularly just to identify the putative class members. Similar to the individualized issue of prejudice in *Gardner*, the present action turns on the individualized issue of consent, among others. As discussed at length, the putative class members in the case at bar cannot even qualify as a class member until they can show they are a victim of a "nonconsensual sexual battery." By its very nature, consent – like prejudice – requires individualized inquiry and adjudication.

In sum, there has not been a class certified – certainly not in South Carolina – that requires a jury trial to determine if a putative class member even qualifies as a class member so that notification procedures can take place and ultimately each class member can make an opt-out decision. Yet, that is the posture of this class action given the fact-intensive class definitions adopted by the trial court. Those are indeed fail-safe class definitions which clearly impact the mode of trial for the reasons discussed herein.

Accordingly, the Court of Appeals erred in dismissing the Petitioner's direct appeal as interlocutory and not immediately appealable. For the reasons discussed, the order on appeal impacts the mode of trial, as was the case in *Salmonsen*, and a direct appeal should be permitted to proceed. The Court is respectfully requested to grant a writ of certiorari to review not just the appealability question but also the merits of the appeal.

II. If the Supreme Court finds that the direct appeal does not impact the mode of trial and the Amended Order Granting Plaintiffs' Motion to Certify is accordingly not immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2), the Petitioners seek a writ of certiorari in the Court's original jurisdiction to address important issues related to the class definitions adopted by the trial court including whether South Carolina law recognizes an "ascertainability requirement" under Rule 23, SCRCP.

In the alternative, if this Court agrees with the Court of Appeals and concludes that there is no mode of trial issue similar to what was presented in *Salmonsen*, and as a result, a direct appeal is not available, the Petitioners alternatively submit that these issues are of such significant public interest and importance that they warrant the issuance of a writ of certiorari in this Court's original jurisdiction.

The Supreme Court may hear an interlocutory issue in its original jurisdiction when "the public interest is involved, or if special grounds of emergency or other good reasons exist." Rule 245, SCACR. *See also*, S.C. Const. art. V, § 5 (setting forth that "[t]he Supreme Court shall have power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs"). In *Lafitte v. Bridgestone Corp.*, 381 S.C. 460, 674 S.E.2d 154 (2009), this Court recognized that "a writ of certiorari may be issued when exceptional circumstances exist." 674 S.E.2d at 160. This Court further explained that a writ of certiorari may be issued in "the interests of judicial economy" to address a "novel issue of significant public interest." 674 S.E.2d at 160-61.

As already addressed at length above, the description of the two classes using the class definitions adopted by the trial court does not allow the class members to be identified by objective criteria and indeed would require mini-trials or evidentiary hearings to determine just the class membership. As indicated, each potential class member will need to prove that he/she was a victim of a "sexual battery" and moreover that the sexual battery was nonconsensual

before even being deemed a member of the class. Neither the trial court nor the parties identified any existing South Carolina case addressing the current scenario where the inclusion of a person in the class requires individualized inquiry. Hence, this scenario is a novel one, for which immediate guidance from the Supreme Court by way of a writ of certiorari is merited. Likewise, there is no existing appellate authority addressing the propriety of a "fail-safe" class under South Carolina law.

Where there is an absence of governing law on a rule of civil procedure, this Court directs that courts seek guidance from case law interpreting and applying the equivalent federal rule. In *Gardner v. Newsome Chevrolet-Buick, Inc.*, 304 S.C. 328, 404 S.E.2d 200 (1991), this Court stated: "Since our Rules of Procedure are based on the Federal Rules, where there is no South Carolina law, we look to the construction placed on the Federal Rules of Civil Procedure." 404 S.E.2d at 201.

The federal courts direct that "[a]s a preliminary matter, the court should consider the definition of the class when determining the appropriateness of class certification." *Cuming v. South Carolina Lottery Commission*, 2008 WL 906705, *1 (D.S.C. 2008). In *EQT Production Co. v. Adair*, 764 F.3d 347 (4th Cir. 2014), the Fourth Circuit recognized that "Rule 23 contains an implicit threshold requirement that the members of a proposed class be readily identifiable." 764 F.3d at 358. The Fourth Circuit has explained that "[a] class cannot be certified unless a court can readily identify the class members in reference to objective criteria." *Id*. Importantly, "if class members are impossible to identify without extensive and individualized fact-finding or 'mini-trials,' then a class action is inappropriate." *Id*. As the federal district court has further explained, "[t]he proposed class definition must not depend on subjective criteria or the merits of the case or require an extensive factual inquiry to determine who is a class member." *Cuming*,

2008 WL 906705, *1. "Where the practical issue of identifying class members is overly problematic, the court should consider that the administrative burdens of certification may outweigh the efficiencies expected in a class action." *Id*.

To reiterate, from a practical standpoint, if the identity of the putative class members cannot be identified without the trial court holding separate mini-trials or individualized evidentiary hearings, then it is impossible to effectuate the "opt-out" notification procedure. Obviously, the class representatives cannot give notice to persons whom they cannot identify. This demonstrates why this issue needs to be addressed by this Court at the class notification stage and not after final judgment.

For these reasons, the Petitioners request that the Court grant a writ of certiorari to address the following issues which are novel and of significant public importance:

(1) Does South Carolina law recognize an "ascertainability requirement" under Rule 23, SCRCP?

(2) Does South Carolina law allow for a class definition that requires the trial court to conduct mini-trials or evidentiary hearings to determine class membership, and if so, are the mini-trials or evidentiary hearings conducted with a jury as the fact finder?

(3) Are the class definitions as adopted by the trial court proper under South Carolina law and do they allow for the manageability and efficiencies required of a class action?

CONCLUSION

Based on the foregoing discussion, the Petitioners South Carolina Department of Corrections and the South Carolina Department of Juvenile Justice respectfully request that this Court grant their petition for a writ of certiorari. The Petitioners respectfully request that this Court rule that the Amended Order Granting Plaintiffs' Motion to Certify filed September 13, 2024, affects the mode of trial and therefore is immediately appealable. In that case, the Petitioners leave it to the Court's discretion whether to transfer the appeal back to the Court of Appeals or to retain jurisdiction under Rule 204, SCACR, to address the merits of the appeal.

Alternatively, if the Court finds that the direct appeal does not impact the mode of trial and the Amended Order Granting Plaintiffs' Motion to Certify is accordingly not immediately appealable pursuant to S.C. Code Ann. § 14-3-330(2), the Court is nonetheless requested to issue a writ of certiorari in its original jurisdiction to address the critical issues of public importance raised herein.

Respectfully submitted,

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