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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

The Honorable Joe M. Crosby
Master-in-Equity

Appellate Case No. 2025-001557
Court of Appeals Opinion 2025-UP-169

South Carolina Board of Financial Institutions ..... Respondent,

v.

CDM Corporation, Inc., and Guardian Fiduciary Services, LLC ..... Petitioners.

REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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September 8, 2025

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REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

In seeking certiorari review, the Petitioners explained that the Court of Appeals has taken the two-word phrase "trust business" in South Carolina Code § 34-21-10 and vastly expanded the jurisdiction of the Bank Board beyond the narrow authority assigned by the General Assembly to cover every type of fiduciary role imaginable under South Carolina law, irrespective of whether a trust is involved. That interpretation is contrary to the statute's plain language, the historical understanding of the statute, and every rule of statutory interpretation that could be in play. And the result is to abandon some of South Carolina's most vulnerable citizens without the help that the Probate Court has tasked Petitioners with providing.

In opposing the certiorari request, the Bank Board provides no analysis of the statute itself, nor does it identify a single case or rule of statutory interpretation that supports the Court of Appeals' ruling. Instead, the agency parrots the lower court's decision and then puts forward three arguments to avoid further judicial review: (1) claiming that the Court of Appeals' reading of the law is the same as it has been "for nearly 100 years" (Return at 3–7); (2) arguing that this Court shouldn't care about this case because the Court of Appeals' order is "not published and has no precedential value beyond the present case" (*id.* at 1, 7); and (3) distancing itself from the agency's own pre- and mid-litigation efforts to expand its jurisdiction (*id.* at 10).

These arguments only highlight the need for this Court's intervention. Left unchecked, the Court of Appeals' decision both expands the Bank Board's authority beyond the limited boundaries set by the Legislature, and it removes from the Probate Court's toolbox an essential tool on which that court counts to help South Carolina's most vulnerable citizens when they come before the Probate Court needing help.

ARGUMENT

I. The Bank Board's historical discussion reinforces its absence of jurisdiction over the Petitioners and other non-trustee fiduciaries.

The Bank Board spends the bulk of its Return discussing the agency's history, implying that the Bank Board has always regulated non-trustee fiduciaries and arguing that the Court of Appeals' ruling is consistent with a century of jurisprudence. (Return at 3–7.) The agency cites a single case in support of its argument—*Ex Parte* Michie, 167 S.C. 1, 165 S.E. 359 (1932)—but that case actually underscores the error of the Court of Appeals' decision.

In *Michie*, this Court held that a dissolved bank that had been the executor of a will owed an estate's administrator only the pro rata sum of funds that remained with the bank when it closed, rejecting an argument that the estate had a priority claim over the bank's general creditors. *Id.* at 35, 165 S.E. at 370.

That holding does not directly control any issue in this case, but the *Michie* Court discussed the impetus for legislation passed in 1930 to which the Bank Board now points: "[A]s conditions grew worse and bank failures became a thing of daily occurrence, they [*i.e.*, the General Assembly] undertook to lock the door after the horse had been stolen; they passed the Act of 1930." *Id.* at 25–26, 165 S.E. at 367.

The "Act of 1930" referenced in *Michie* was passed in response to serial bank failures, but it did not empower a state agency to regulate all non-trustee fiduciaries. Instead, as the *Michie* Court itself recited, the Legislature's solution to the banking crisis was to provide that "[a]ll State ***banks***, ***trust companies***, and fiduciary corporations ***doing a trust business***, shall be subject to examination by the State banking department." *Id.* at 24, 165 S.E. at 366 (quoting 1930 S.C. Acts No. 821, § 1) (emphasis added). This legislative recognition that not all fiduciary corporations are "doing a trust business" remains codified today at South Carolina Code § 34-21-20.

Thus, "for nearly 100 years," the General Assembly has recognized that there are some "fiduciary corporations" that are "doing a trust business," while others (like the Petitioners) are not. Only the former fall within the jurisdiction of the Bank Board, as a matter of both the plain language of the State Code and historical fact.

As discussed in the certiorari petition, this straightforward understanding of the law—that the Bank Board's regulatory authority only reaches companies that manage trusts—is consistent with how the Attorney General previously advised the public. (R. p. 220.) It is consistent with how the agency previously advised the Petitioners. (R. p. 200.)[1] It is consistent with the circuit court's plain-language reading of South Carolina Code § 34-21-10. (R. p. 8.) And it is consistent with the Bank Board's continued representations to the public that only Banks, Credit Unions, Savings Associations, and Savings Banks—none of which include the Petitioners—must apply for "trust powers." *See generally Applications Manual* at 6 ("Trust Powers"), *available at* https://banking.sc.gov/sites/banking/files/Documents/Applications%20Manual/Applications%20Manual%206.2.2025.pdf.[2] The Court of Appeals' ruling to the contrary should be reversed.

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[1] The Bank Board attempts to discredit Mr. Mantell's unrebutted, sworn affidavit by pretending that these conversations were with an anonymous "BOFI staffer." (Return at 5, 8.) Hardly. As Mr. Mantell detailed in his affidavit, these conversations were with Banking Commissioner Louie Jacobs—the very same Banking Commissioner to whom the Attorney General addressed the advisory opinion explaining that "trust business" means administering trusts. (*Compare* R. p. 200 (Mantell affidavit recounting multiple conversations with "Banking Commissioner Louie Jacobs"), *with* R. p. 219 (Attorney General's Opinion addressed to "The Honorable Louie A. Jacobs, Commissioner of Banking").)

Even more puzzling is the Bank Board's suggestion that FINRA—a private, members-regulating-each-other organization—somehow has exclusive jurisdiction to govern entities that manage investments. (Return at 5 n.3.) The entire point of South Carolina Code §§ 34-21-10 *et seq.* is to give the Bank Board authority to govern entities that manage investments in common trust funds—which does not include the Petitioners.

[2] The Bank Board rebuts this by pointing out that an application for trust powers is available on the agency's website. (Return at 8.) This response also misses the point; the agency's own Applications Manual identifies the entities who actually need to complete that application, and it

II. The Court of Appeals' ruling has a direct adverse impact on numerous South Carolinians who count on the Petitioners.

The Bank Board next encourages the Court to reject certiorari review because the Court of Appeals' opinion was unpublished. In so doing, the agency practically concedes that the Court of Appeals' decision wrongly expands the agency's jurisdiction beyond its statutory boundaries, but it asks the Court to brush aside that legal error because, in theory, the ruling only attaches to the Petitioners and only applies to this case:

> Thus, even if this Court disagrees with the [Court of Appeals'] conclusion that "all institutional fiduciaries fall within BOFI's regulatory authority," that language is ineffectual. The application of the appellate Order is limited to Petitioners, and the practical effect of the appellate decision is narrow and explicit: "we remand to the master to enjoin Petitioners' services as a personal representative, conservator, guardian, or agent without first complying with section 34-21-10."

(Return at 7 (quoting Op. at 7, 15) (cleaned up).)[3]

This is a remarkable position for an agency to take. Administrative agencies only have the authority given to them by the Legislature. *Med. Soc'y v. MUSC*, 334 S.C. 270, 275, 513 S.E.2d 352, 355 (1999). The agency cannot seriously expect the public at large—or, specifically, other non-trustee fiduciaries and the probate attorneys and probate judges who engage them to help vulnerable South Carolinians in need—to take comfort in the fact that an unlawful expansion of the agency's jurisdiction happened in an unpublished opinion.

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identifies only Banks, Credit Unions, Savings Associations, and Savings Banks as entities yhat need to apply for such "trust powers." The Petitioners are none of these things, and the agency's own manual corroborates that the Petitioners are beyond the Bank Board's jurisdiction.

[3] Notably, in reciting which of the Petitioners' fiduciary services should be enjoined, the Court of Appeals did not mention "trustee"—the only fiduciary role that the General Assembly actually assigned to the Bank Board in South Carolina Code § 34-21-10, which is a fiduciary service that the Petitioners' do not provide. The mismatch between the Court of Appeals' instructions to the circuit court and the plain language of Section 34-21-10 makes the error of its analysis unmistakable.

Moreover, this issue is not merely a philosophical question of agency overreach, but will practically impact numerous vulnerable South Carolinians who, prior to the Court of Appeals' opinion, were readily cared for by the Petitioners. Although the Bank Board argues that the unpublished decision "is limited to Petitioners," the practical effect is that the decision reaches all South Carolinians for whom the Petitioners are currently providing fiduciary services. These individuals are vulnerable or incapacitated citizens in need of fiduciary services to assist with decisions concerning their health, safety, and wellbeing. Despite the Bank Board's flippant contention that the Court of Appeals' unpublished decision impacts the Petitioners alone, that ruling will certainly negatively impact the numerous South Carolinians who will be stripped of their fiduciary services and care if that decision is allowed to stand.

Consider Ms. Gloria Ormand-Ward.

Ms. Ormand-Ward lives in Horry County. She is in her early 80s. She is not married, and her closest family member is a cousin who lives in Seattle.

In July 2021, Ms. Ormand-Ward was diagnosed with progressive vascular dementia and permanent bipolar mood disorder. Judge Beverly of the Horry County Probate Court deemed her to be "incapacitated" and unable to make decisions essential to her physical safety and wellbeing.[4]

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[4] A copy of the Probate Court's order is attached for the Court's reference as Exhibit A. *See* Rule 201(b), SCRE (explaining that courts can take judicial notice of facts that are "not subject to reasonable dispute"); *id.* 201(f) ("Judicial notice may be taken at any stage of the proceeding."); *Sec'y of State for Defence v. Trimble Navigation Ltd.*, 484 F.3d 700, 705 (4th Cir. 2007) (explaining that, even in a Rule 12(b) context, a court "may properly take judicial notice of matters of public record").

The copy of the appointment order that is attached to this Reply was pulled from the Record on Appeal in Appellate Case No. 2023-000239, a matter pending before the Court of Appeals, as discussed in the text. Coincidentally, a panel of the Court of Appeals heard argument in that case on February 11, 2025—the day before a different panel heard oral argument in this case. As of the date of this filing, the Petitioners' case on behalf of Ms. Ormand-Ward remains pending before the Court of Appeals.

The Probate Court further became aware that shortly before Ms. Ormand-Ward's diagnosis, she "may have been the victim of an unauthorized transfer of assets and/or exploitation of her financial resources" through an allegedly-fraudulent transfer of her home in Myrtle Beach through a warranty deed to a business named "Homedebone LLC." (Ex. A, Ormand-Ward Probate Order at 3–4.)

Accordingly, the Probate Court appointed "CDM Corporation [one of the Petitioners], by and through its representative, Stephen Mantell" to serve as a guardian and conservator for Ms. Ormand-Ward. (*Id.* at 8.) The appointment order addressed various aspects of Ms. Ormand-Ward's daily activities, and it directed CDM as a fiduciary to be responsible for managing all of the "removed" decisions on behalf of Ms. Ormand-Ward:

> **IT IS HEREBY ORDERED** that a guardianship and conservatorship are appropriate given the evidence presented, and Gloria Ormand-Ward is incapacitated to the extent that she can/cannot exercise the following rights pursuant to S.C. Code Ann. § 62-5-304(A) and § 62-5-404(B):

Remove	Retain	Other	
☒	☐	☐	1. Marry or divorce
☒	☐	☐	2. Reside in a place of his/her choosing, and consent or withhold consent to any residential or custodial placement
☒	☐	☐	3. Travel without the consent of the proposed Guardian
☒	☐	☐	4. Give, withhold, or withdraw consent and make other informed decisions relative to medical, mental, and physical examinations, care, treatment and therapies
☒	☐	☐	5. Make end-of-life decisions including, but not limited to, a 'do not resuscitate' order or the application of any medical procedures intended solely to sustain life, and consent or withhold consent to artificial nutrition and hydration
☒	☐	☐	6. Consent or refuse to consent to hospitalization and discharge or transfer to a residential setting, group home, or other facility for additional care and treatment
☒	☐	☐	7. Authorize disclosures of confidential information
☒	☐	☐	8. Operate a vehicle
☒	☐	☐	9. Vote
☒	☐	☐	10. Be employed without the consent of the proposed Guardian
☐	☒	☐	11. Consent to or refuse educational services
☐	☒	☐	12. Participate in social, religious or political activities
☒	☐	☐	13. Buy, sell, or transfer real or personal property or transact business of any type
☒	☐	☐	14. Make, modify, or terminate contracts
☒	☐	☐	15. Bring or defend any action at law or equity

(*Id.* at 7.)

As part of the Petitioners' work on behalf of Ms. Ormand-Ward, CDM instituted litigation to reclaim her property that was allegedly deeded to "Homedebone LLC." A portion of that case is presently pending before the Court of Appeals in a case captioned *Gloria Ormand-Ward, by and through her Guardian and Conservator, CDM Corporation, through its representative, Stephen Mantell v. Litt et al.*, Appellate Case No.2023-000239. At bottom, as part of their fiduciary services, the Petitioners are zealously advocating for Ms. Ormand-Ward and looking after her wellbeing.

Ms. Ormand-Ward is one of hundreds of South Carolinians who the Petitioners have served through the years, and her case raises two major points in response to the Bank Board's argument. First, there are very real consequences to the Court of Appeals' decision, unpublished or not. As it stands, Ms. Ormand-Ward—and numerous other vulnerable South Carolinians just like her—counts on the Petitioners to look out for her health, safety, and wellbeing, precisely as the Probate Court ordered. It is simply untrue to argue, as the agency does, that allowing the Court of Appeals' decision to stand will not impact anyone beyond the Petitioners.

Second, no one would genuinely suggest that the General Assembly intended for the Bank Board to regulate the various responsibilities outlined in the Probate Court's "Remove/Retain" list. The agency claims that it is a "baseless, ad hominem accusation" to argue that the Bank Board is "unqualified and unequipped to regulate" these activities. (Return at 7.) But this is in no way an "ad hominem" attack—it is simply a realization that the Bank Board exists to "supervise all banks and building and loan associations," not guardians or conservators. S.C. Code Ann. § 34-1-60.

What input could the Bank Board possibly have as to whether Ms. Ormand-Ward (or any other vulnerable South Carolinian) should be allowed to marry? Or where she should live? Or whether she can travel? Or about her medical decisions? Or whether she should be allowed to drive? Or whether she should be allowed to vote? Or whether she should be allowed to hold a job?

These are issues that the General Assembly committed to the Probate Court's ongoing supervision. The Court of Appeals erred when it construed the two-word statutory phrase "trust business" to sweep regulatory authority over these activities into the Bank Board's jurisdiction. Ms. Ormand-Ward's case provides a vivid illustration of the "special and important reasons" why certiorari review is critical here, and it directly rebuts the agency's argument that the Court of Appeals' unpublished decision will have no meaningful impact. Rule 242(b), SCACR.

III. Only the General Assembly can expand the agency's jurisdiction.

Finally, the agency concludes its Return by arguing that the Court should excuse the Bank Board's pre- and mid-litigation attempts to expand its own jurisdiction because, in its view, the Court of Appeals did not give deference to the agency's interpretation of "trust business." (Return at 10.) This is simply incorrect: the agency argued on appeal that the circuit court erred by not giving deference to the Bank Board's interpretation of "trust business" (Board's Opening Appellate Brief at 21–23); the Court of Appeals then recited that the agency had issued a "policy statement" that interpreted "trust business" to include all types of fiduciaries (Op. at 4); and the Court of Appeals pointed to the agency's conduct in entering a compact with other states as support for its ultimate ruling that "trust business" includes all fiduciaries. (Op. at 7–8).

The Petitioners' point on this issue is simple: only the General Assembly can expand the Bank Board's jurisdiction. The agency can't expand its own jurisdiction. *Joseph v. S.C. LLR*, 417 S.C. 436, 461, 790 S.E.2d 763, 777 (2016). But by relying on the agency's own jurisdiction-expanding activities, the Court of Appeals committed legal error when concluding the two-word phrase "trust business" means "not only the trustee of a trust but also a personal representative, conservator, guardian, or agent." (Op. at 11.) This Court should grant certiorari review accordingly and realign the Bank Board's jurisdiction to the narrow scope prescribed by the Legislature.

CONCLUSION

The Petitioners' position has been constant throughout this litigation: this case should begin and end with the plain language of South Carolina Code § 34-21-10, which gives the Bank Board authority to regulate companies engaged in "trust business" alone. Through the agency's unilateral actions, it has attempted to bypass its delegating statute and the legislative process to expand its authority to all fiduciaries. This is, at its core, agency overreach.

Yet, the Bank Board has presented no evidence or reasoning to support the Court of Appeals' conclusion that it is the qualified and appropriate agency to oversee lifechanging decisions made by non-trustee fiduciaries for vulnerable or incapacitated individuals including, for instance, whether an incapacitated person can marry or divorce, travel, drive, vote, work, or make medical or end-of-life decisions. Respectfully, the Bank Board's role is not look after individual South Carolinians who are unable to care for and make decisions for themselves. Its statutory charge is to regulate banks and companies that invest trust funds, not non-trustee fiduciaries like the Petitioners who are appointed by and are accountable to the Probate Court.

Accordingly, the Petitioners request the Court grant this petition, vacate the Court of Appeals' decision, and issue an order reinstating the circuit court's straightforward, plain-language construction of the phrase "trust business."

Signature Page Attached

Respectfully submitted,

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