

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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S.C. SUPREME COURT

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APPEAL FROM CHARLESTON COUNTY  
Court of Common Pleas  
Honorable Edgar W. Dickson, Circuit Court Judge

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Appellate Case No. 2025-002188

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Andrew Pampu, Amanda Pampu, and John Pampu, ..... Petitioners-Respondents,

v.

Clawson Fargnoli, LLC, Samuel R. Clawson Jr, Esq., Christina R.  
Fargnoli, Esq., Barrett R. Brewer, Esq., and Brewer Law Firm, LLC, ..... Respondents-Petitioners.

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**RESPONDENTS-PETITIONERS' JOINT REPLY TO  
PETITIONERS-RESPONDENTS' RETURN TO  
RESPONDENTS-PETITIONERS' JOINT PETITION FOR WRIT OF CERTIORARI**

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## ARGUMENT

### **I. The Court of Appeals misapplied S.C. Code Ann. § 15-36-100 in determining the sufficiency of Petitioners-Respondents' pleadings.**

Respondents-Petitioners submit this Reply pursuant to Rule 242(g), SCACR. The question before the Court is simple: Does S.C. Code Ann. § 15-36-100(C)(1) mean what it says?

Section 15-36-100(C)(1) states:

The contemporaneous filing requirement of subsection (B) [requiring an expert affidavit to be filed as part of the complaint] does not apply to any case in which the period of limitation will expire, or there is a good faith basis to believe it will expire on a claim stated in the complaint, within ten days of the date of filing and, because of the time constraints, the plaintiff alleges that an affidavit of an expert could not be prepared.

S.C. Code Ann. § 15-36-100(C)(1). Petitioners-Respondents contend that this statute is satisfied if a plaintiff merely references subsection (C)(1) and alleges, as Petitioners-Respondents did in this case, that the plaintiff “intends to file an Amended Complaint with an expert affidavit within forty-five (45) days.” Complaint, ¶ 103, R. p. 55. As is clear from the record, Petitioners-Respondents did not allege any of the language explicitly required by subsection (C)(1) regarding time constraints or preparation of an affidavit of an expert—specifically, that *because of the time constraints*, an expert affidavit could not be prepared. *See id.* Instead, Appellants alleged that pursuant to S.C. Code Ann. § 15-36-100(C)(1), the Complaint was being filed without the required affidavit because there was “a good faith basis to believe the expiration of the statute of limitations is imminent or that the Lawyers may argue that the expiration of the statute of limitations may expire.” *See id.* Appellants then amended their Complaint 42 days later to include an expert witness affidavit. *See* Amended Complaint, R. pp. 58-87. However, Petitioners-Respondents did not address the timing language of subsection (C)(1) in their First Amended Complaint. *See id.* In fact, they did not reference subsection (C)(1) in their Amended Complaint at all. Rather, they merely

stated that “included with the filing of this Amended Complaint . . . is the affidavit of Justin Dillon, Esq. . . .” Am. Complaint, ¶ 103, R. p. 77. Petitioners-Respondents do not appear to argue that the Amended Complaint addresses or satisfies subsection (C)(1).

Only in response to motions to dismiss filed by Respondents-Petitioners did Petitioners-Respondents address the timing language of subsection (C)(1). In their Second Amended Complaint, filed June 16, 2021, Petitioners-Respondents, for the first time, alleged, in relevant part:

Plaintiffs had a good faith basis to believe the three-year statute of limitations on Plaintiffs’ legal professional negligence cause of action against the Lawyers would expire on March 21, 2021, which was within 10 days of the date the Summons & Complaint was filed on March 19, 2021. Because of time constraints, an affidavit of an expert could not be prepared in time to file the Summons & Complaint before March 21, 2021.

Second Am. Complaint, ¶ 103, R. p. 129. At the time of filing the Second Amended Complaint, the statute of limitations had already expired—by Petitioners-Respondents’ own admission—more than eighty-five (85) days earlier. *See id.*

The Court of Appeals, without articulating its analysis, summarily stated that the Second Amended Complaint, filed after the statute of limitations, satisfied subsection (C)(1) with its allegation that “the alleged affidavit could not be prepared prior to the statute of limitations due to time constraints.” Op. at 3. Absent from the Court’s Opinion is any discussion the mandatory language of subsection (C)(1), which requires the plaintiff allege that “because of the time constraints . . . an affidavit of an expert could not be prepared.” S.C. Code Ann. § 15-36-100(C)(1). Stated differently, the exception articulated by subsection (C)(1) only applies when the *initial* complaint contains the allegations of time constraints and inability to prepare an affidavit because of those time constraints. If a plaintiff does not allege both of these facts, he cannot avail himself of the 45-day grace period provided by subsection (C)(1).

As subsection (F) mandates, “If a plaintiff fails to file an affidavit as required by this section,” the initial complaint is subject to dismissal. S.C. Code Ann. § 15-36-100(F). The Petitioners-Respondents failed to allege these facts in their initial Complaint or in their Amended Complaint; so, subsection (F) mandated dismissal. *See id.* Subsection (F) also bars “renewal” of the complaint after the expiration of the applicable period of limitations. *See id.* (“[T]he complaint is not subject to renewal after the expiration of the applicable period of limitation unless a court determines that the plaintiff had the requisite affidavit within the time required pursuant to this section and the failure to file the affidavit is the result of a mistake.”) Renewal is precisely what Petitioners-Respondents argue in support of the Court of Appeals decision in this matter. *See generally* Return.

Petitioners-Respondents cannot rely on subsection (E) to cure their failure to allege time constraints. *See* Return at 3. Subsection (E) does not apply here because it is limited to defects in the affidavit itself. A comparison of the language of subsections (E) and (F) confirms this distinction. Subsection (E) specifically discusses “an affidavit which is allegedly defective” and “alleging the affidavit is defective.” *See* S.C. Code Ann. § 15-36-100(E). By contrast, subsection (F) addresses circumstances where “a plaintiff fails to file an affidavit as required by this section.” *See id.* at § 15-36-100(F). In sum, subsection (E) allows a plaintiff to cure an alleged defect *in the affidavit* by amending *the affidavit* within a certain amount of time. It does not permit a plaintiff to cure his failure to file any affidavit at all by amending *the pleadings* to include an affidavit. Accordingly, subsection (E) cannot be used to cure a failure to allege the required circumstances to invoke the 45-day exception under subsection (C)(1).

While *Planned Parenthood S. Atl. v. State*, 445 S.C. 600, 916 S.E.2d 299 (2025), is relevant to this case, Petitioners-Respondents cite it for the wrong reasons. *See* Return at 4. “The first

question to be asked when interpreting a statute is whether the statute’s meaning is clear on its face.” *Id. at* 609, 916 S.E.2d at 304. Subsection (C)(1) clearly requires the plaintiff to allege specific facts that Petitioners-Respondents did not allege in their initial complaint. “If the text of a statute is ‘plain and unambiguous, and conveys a clear and definite meaning,’ there is nothing for a court to do except to apply the plain meaning.” *Id. at* 609–10, 916 S.E.2d at 304. Petitioners-Respondents ask this Court to ignore the plain meaning of subsection (E) to allow plaintiffs to amend the pleadings rather than a deficient affidavit.

Similarly, Petitioners-Respondents ask this Court to ignore subsection (F)’s clear prohibition against renewal of a defective complaint after the expiration of the statute of limitations, which is precisely what Petitioners-Respondents seek—i.e., renewal of their initial complaint after the motions to dismiss argued a failure to contemporaneously file the affidavit required by subsection (B). It is Petitioners-Respondents who argue for a subtle or forced construction of the applicable statutes, which is expressly forbidden by *Rudick v. Rudick*, 437 S.C. 270, 878 S.E.2d 686 (2022).

## **II. Respondents-Petitioners’ Petition raises important considerations for this Court to grant their Petition for Writ of Certiorari.**

This Court should grant Respondents-Petitioners’ Petition because it raises a special or important reason to support the grant of a petition for a writ of certiorari under Rule 242, SCACR. No court in South Carolina has previously addressed or interpreted subsection (C)(1) under these circumstances. Allowing Petitioners-Respondents to circumvent the clear requirements of § 15-36-100 effectively extends the statute of limitations for professional negligence claims, contrary to the public policy behind the statute. Simply put, the Court of Appeals’ holding contradicts the plain language of S.C. Code Ann. § 15-36-100 and operates to extend the statute

of limitations for professional negligence claims beyond what the Legislature intended. Review by this Court is necessary to clarify the correct application of this important statute.

Rule 242(b)(1), SCACR, provides this Court with the discretion to grant a writ for arguments where there are novel questions of law. There is not ample precedent available, so a novel question does arise. *See, e.g., U.S. Bank Nat'l Ass'n as Tr. to U.S. Bank Tr. Nat'l Ass'n v. Mack*, 445 S.C. 103, 110, 912 S.E.2d 236, 239 (2025) (holding that novel questions rarely arise where there is ample precedent). Where a petition raises a novel question of law, it is proper for this Court to grant the petition for writ of certiorari. *S.C. Dep't of Soc. Servs. v. Benjamin*, 430 S.C. 235, 236, 844 S.E.2d 373 (2020).

### **CONCLUSION**

This Court should grant Respondents-Petitioners' Petition for Writ of Certiorari. The Court of Appeals' decision was in error on this novel question of law. Because the Petition raises a special or important reason, the Court should grant the Petition for Writ of Certiorari.

**[SIGNATURES ON FOLLOWING PAGE]**

December 19, 2025

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