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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY

The Honorable Joe M. Crosby, Master-in-Equity

Appellate Case No. 2025-001557

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

v.

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

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Counterstatement of the Issue

Statutes must receive a fair and reasonable interpretation that does not make their language superfluous. For 96 years, the General Assembly has provided for state regulation of entities conducting a trust business, including those serving as trustees, conservators, guardians, personal representatives, or agents. Despite this history, Petitioners maintain that the General Assembly only intended to regulate entities serving as trustees of a trust instrument. The Court of Appeals rejected Petitioners' argument. It held that Petitioners conduct a trust business under the operative statute's plain language and enjoined that business until they register and become subject to State regulation and oversight.

The question presented is:

Whether Petitioners are conducting an unauthorized trust business by serving as conservator, guardian, personal representative, and agent without obtaining approval from the Board of Financial Institutions.

Introduction

This case is not about whether fiduciaries like conservators, guardians, personal representatives, or agents perform good and valuable services for the citizens of this State. They do. It is not about whether individuals can perform those services without registering with the Board of Financial Institutions. They can. Instead, this case is about whether those who choose to avail themselves of the benefits of the corporate form when performing these services are required to comply with statutory obligations designed to protect their principals. They must.

Conducting a business in South Carolina is a privilege, not a right. This State "has a legitimate interest in assuring that corporate fiduciaries serve the public faithfully" and has enacted laws "prescribing the fiduciaries' financial resources, governing their conduct, and defining their

responsibilities." *American Trust v. S.C. State Bd. of Bank Control*, 381 F. Supp. 313, 320 (D.S.C. 1974). Specifically, S.C. Code Ann. § 34-21-10 requires any person (other than a "natural person" or a nationally chartered bank) that conducts "trust business in this State" to make a "written application" and "receiv[e] written approval from the Board." Once approved, entities conducting trust business are subject to the Board's rigorous review and oversight.

This Court recounted this regulatory framework's history in *Ex parte Michie*, 167 S.C. 1, 165 S.E. 359 (1932). Prior to 1911, "[t]he theory of the common law was that a corporation could not be thus appointed [as executor of a will] because it could not take the oath necessary in qualifying." *Id.* at 366. The General Assembly changed that rule by statute in 1911. *Id.* "The lawmakers, when they granted them power to become executors, administrators, guardians, and trustees, must have realized that they were creating for them a different status in the law than that of an individual executor, but had faith in their fidelity and the security of the funds intrusted [*sic*] to them." *Id.* at 368. Unfortunately, "[t]he epidemic of bank failures which followed in the years preceding 1930 showed them the fallacy of their faith and induced the passage of the act of 1930, which accurately defines the duties of such fiduciaries in the handling of trust funds." *Id.* at 367. Among other things, this 1930 act undertook "to subject corporate fiduciaries to examination" by the State Board of Bank Control, the predecessor of the current Board of Financial Institutions. *Id.* at 367.

The Court of Appeals, consistent with the law across the country, found that entities performing fiduciary services, whether in the roles of trustee of a trust instrument, personal representative, conservator, guardian, or agents under powers of attorney, are conducting "trust business" and are subject to the Board's regulation. Petitioners' attempts to confine § 34-21-10 to trustees serving under a trust instrument ignore the statute's plain language, render superfluous or

completely confound substantial portions of statutes, and conflict with the General Assembly's intent. The Court of Appeals correctly refused to exclude entities serving as conservator, guardian, personal representative, or agent from the Board's oversight, which includes regular examinations to ensure that those entities have the financial and organizational wherewithal to protect their principals and their assets. This Court therefore should affirm the Court of Appeals' decision that Petitioners are subject to the Board's regulation.

Statement of the Case

Stephen Mantell incorporated Petitioner CDM Corporation, Inc. in 2009 and organized Petitioner Guardian Fiduciary Services, LLC in 2011 "for the purpose of providing needed services for elderly, disabled, and otherwise compromised individuals in South Carolina" App. 202. Mantell uses the corporate form for these businesses "to allow for continuity in the event something happens to me" and to obtain insurance, which "benefits me personally, but also benefits my clients." App. 69, 203. On their shared website, Petitioners advertised that they provided the services of "trusteeship," "power of attorney" (durable, medical, and financial), "personal representative," "guardianship," and "conservator." App. 173–84. All these roles require Petitioners to take charge of their principals' assets. Petitioners did not submit a written application to or receive written approval from Respondent South Carolina Board of Financial Institutions before offering these services. App. 164–66.

The Board opened an investigation after receiving several complaints that Petitioners "appeared to be conducting [a] trust business without prior written approval of the Board, as required by S.C. Code Ann. § 34-21-10." App. 55–56. Petitioners failed to fully cooperate in this investigation, App. 56–57, 65–76, but admitted that their businesses included "twenty

conservatorship accounts, five or six power-of-attorney accounts, five or ten estates and three or four trusts," App. 69.

The Board gave Petitioners a chance to comply with the law before bringing legal action to enjoin their unauthorized trust business. App. 57, 74–76. When Petitioners still did not comply, the Board filed this action. App. 18–26. The Board sought a finding that Petitioners are conducting an unauthorized and unlawful trust business, and an injunction barring them from conducting trust business activities without first obtaining the Board's written approval. *Id.* In response, Petitioners claimed that they "have either extricated themselves from all matters involving a trust" or are taking steps to do so. They also denied that their other service offerings "constitute conducting a trust business, claiming that a former Commissioner of Banking told them "that approval was not required for their businesses" because they "would not be managing investments on behalf of trusts." App. 30, 33–34. Further, Petitioners counterclaimed for a declaratory judgment that their businesses do not constitute trust businesses, are lawful, and are not subject to the Board's regulation. App. 32–37. By consent, the circuit court referred the case to the Honorable Joe Crosby, Master-in-Equity for Georgetown County. App. 4.

The parties cross-moved for summary judgment. App. 45–266. The master granted partial summary judgment to the Board as to Petitioners' service as a trustee and enjoined them from advertising for or providing that service. App. 12. But the master granted Petitioners' summary judgment motion as to their other fiduciary services. He determined that a "trust business" under § 34-21-10 must involve a trust instrument. App. 10–12. To reach this conclusion about the meaning of "trust business," the master ignored the remaining language of § 34-21-10, as well as other statutes concerning the Board. Instead, he looked to what he deemed the ordinary and customary

use of the term. *Id.* In the master's view, "the usual and customary definition of a 'trust business' is a business involved in the administration of trusts." App. 11. He also found that the Probate Code's exclusion of so-called "non-trustee fiduciary roles" (i.e., conservators, guardians, personal representatives, and agents) from the definition of a "trust" in S.C. Code Ann. § 62-1-201 "confirms" that those activities are excluded from the definition of a "trust business" in § 34-21-10. App. 11–12. Finally, the master found that the probate court's "regulation" of "non-trustee fiduciary roles" in other sections places those roles "outside of [the Board]'s jurisdiction." App. 13. The master then denied the Board's motion for partial reconsideration. App. 16–17.

The Board timely appealed to the Court of Appeals, which reversed and remanded in an unpublished opinion. App. 353–367. It correctly declined to view this question of statutory interpretation only "in light of the special circumstances of [Petitioners'] particular businesses." App. 358. So while Mantell's claims of financial distress may be "sympathetic," the court had to be "mindful of the far-reaching implications" of § 34-21-10 because the General Assembly intended to "address[] circumstances far beyond the specific facts of this case." *Id.* Employing a more complete analysis than the master, the Court of Appeals held that "common sense dictates that if a business entity is in possession of someone else's money, the Board should have regulatory authority over that entity," no matter the specific role it fulfills. App. 363; *see also* App. 362 ("However, given that [the Board] is charged with regulating an industry affecting large sums of client funds, it is unlikely that the legislature intended to draw a distinction between the *types* of fiduciary services to be regulated, *e.g.*, trustee services versus conservator services.").

The Court of Appeals therefore held that trust businesses which must register under § 34-21-10 include trustees of trust instruments and other fiduciaries like personal representatives,

conservators, guardians, and agents. App. 363. The court next held that the master erred in finding that the Probate Code places non-trustee fiduciaries outside the Board's jurisdiction. App. 363–66. Applying that plain language interpretation to Petitioners, the court remanded to the master to enjoin their service as a personal representative, conservator, guardian, or agent without complying with § 34-21-10. App. 367.

This Court granted a writ of certiorari to review the Court of Appeals' decision. App. 456.

Standard of Review

The sole issue before the Court is one of statutory interpretation. Statutory interpretation is a question of law reviewed de novo. *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022).

Argument

This case presents a straightforward question of statutory interpretation. As is relevant here, § 34-21-10 provides:

> No corporation, partnership or other person shall conduct a trust business in this State without first making a written application to the [Board] and receiving written approval from the Board.... Provided, further, that nothing contained in this section shall prevent a natural person or national banking association having its principal place of business in this State from qualifying and acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity.

S.C. Code Ann. § 34-21-10.

Petitioners argue at length that they are not subject to the Board's licensure and oversight because they no longer serve as trustees of any trust instruments, and the Board's oversight and regulation of "trust business" is limited to such trustees. Pet. Br. at 5–12. Their argument is based on a fundamental error—their unsupported assertion that only a trustee of a trust instrument can be a Board-regulated "trust company," or engaged in a Board-regulated "trust business." Their assertion irreconcilably conflicts with the final sentence of § 34-21-10 and several other statutes,

and every fiduciary service which Petitioners offer is either a trustee by explicit statutory definition or involves a trust relationship. Because excluding these services from the definition of "trust business" improperly ignores the plain language of the statute, the Court should reject Petitioners' argument and enjoin them from acting in those roles unless and until they obtain the Board's written approval.

I. The Court of Appeals correctly refused to adopt Petitioners' myopic definition of trust business and found that the Board can regulate businesses which offer a variety of trust-related services.

The cardinal rule of statutory interpretation is to effectuate the General Assembly's intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). A statute's plain language is the best of evidence of that intent, so courts give its words "their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) (citation omitted). "The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Id.* at 102–03, 606 S.E.2d at 506 (citation omitted). This Court cannot add terms to a statute, as doing so "is not a construction of a statute, but, in effect, an enlargement of it by the court." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (cleaned up). The Court also presumes "the General Assembly does not intend to supplant common law principles when enacting legislation." *O'Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 691 (Ct. App. 1998).

Each of the fiduciary roles at issue—personal representative, guardian, conservator, power of attorney—involves exercising control over another person's property. *E.g.*, S.C. Code Ann. § 62-3-711(a) ("A personal representative has the same power over the title to property of the estate

that an absolute owner would have, in trust however, for the benefit of the creditors and others interested in the estate."); S.C. Code Ann. § 62-5-309(A)(6)(B) (providing that in the absence of a conservator, a guardian is responsible for "receiving money and tangible property deliverable to the ward," just as a trustee would, "and applying the money and property for support, care, and education of the ward"); S.C. Code Ann. § 62-5-417 ("The appointment of a conservator vests in him title as trustee to all property of the protected person."); S.C. Code Ann. § 62-8-203(a) (providing that someone holding a power of attorney may "do any lawful act with respect to the subject and all property related to the subject," including demanding "money or another thing of value to which the principal is … entitled, and conserve, invest, disburse, or use anything so received" and "contract[ing] in any manner with any person."). So regardless of the specific title applied, every service offered by Petitioners involves a quintessential trust relationship.

Contrary to Petitioners' arguments, the ordinary meaning of "trust" is not limited to formal trusts. *See* 90 C.J.S. *Trusts* § 1 ("A trust is defined as the right, enforceable solely in equity, to the beneficial enjoyment of property, the legal title to which is vested in another, but the word 'trust' also is frequently employed to indicate duties, relations, and responsibilities that are not strictly technical trusts."). Further, trust is the foundation of all fiduciary relationships in South Carolina, not just the formal role of a trustee. *See Moore v. Moore*, 360 S.C. 241, 250, 599 S.E.2d 467, 472 (Ct. App. 2004) ("A fiduciary relationship is founded on the trust and confidence reposed by one person in the integrity and fidelity of another."); *see also Trust Relationship*, Black's Law Dictionary (11th ed. 2019) ("An association based on one person's reliance on the other person's specialized training; esp., FIDUCIARY RELATIONSHIP. — Also termed fiducial

relationship."). The term "trust" therefore captures an array of fiduciary relationships where one party is charged with management and control over the property and affairs of another.

The Court of Appeals correctly refused to limit § 34-21-10 to trustees of a trust instrument to the exclusion of all other fiduciary relationships. Petitioners' attempt to confine a trust business to "a business involved in the administration of trusts" fails the most basic precepts of statutory construction. *See* Pet. Br. at 6 (quoting App. 11). Only one plain language construction of § 34-21-10 honors the words used by the General Assembly: the one adopted by the Court of Appeals. It also is the only one which honors the General Assembly's intent. Subjecting businesses like Petitioners to the Board's licensure and oversight assists and protects vulnerable South Carolinians. Vulnerable, at-risk, and incompetent principals need protection when their assets are part of an entity's business model, whether that business acts as a trustee, personal representative, guardian, conservator, or agent. There is no reason the General Assembly would exempt some corporate fiduciaries from regulation when the risk of harm which the legislature sought to mitigate extends across the board. That is particularly true where the impetus for state regulation of trust businesses involved executors, who are not trustees administering trusts. *Ex parte Michie*, 167 S.C. 1, 165 S.E. 359, 366–67 (1932).

This Court should affirm the Court of Appeals' confirmation of what the law has been since the Great Depression: a "trust business" includes entities which serve as conservators, guardians, personal representatives, and agents.

II. Traditional canons of construction further confirm that a "trust business" includes institutional conservators, guardians, personal representatives, and agents.

If the Court finds § 34-21-10's language is not plain, then traditional canons of construction produce the same result.

A. Including conservator, guardian, personal representative, and agent within "trust business" avoids rendering the last sentence of § 34-21-10 superfluous.

"The intention of the legislature must be gleaned from the entire section and not simply clauses taken out of context." *Singletary v. S.C. Dep't of Educ.*, 316 S.C. 153, 162, 447 S.E.2d 231, 236 (Ct. App. 1994) (emphasis added). This Court therefore reads a statute as a whole and consonant with its purpose. *CFRE, LLC v. Greenville Cnty. Assessor*, 395 S.C. 67, 74, 716 S.E.2d 877, 881 (2011). It also reads a statute so that "no word, clause, sentence, provision or part shall be rendered surplusage, or superfluous." *Id.* (quotation omitted). After all, the General Assembly intended its words to have some effect, otherwise it would not have enacted them into law. *Id.*

The General Assembly provided the answer to the question presented within § 34-21-10. In the last sentence of the statute, the General Assembly exempted "a natural person or a national banking association having its principal place of business in this State" which serves as a "trustee, *executor, administrator, guardian, committee or in any other fiduciary capacity*" from its trust business registration requirement. S.C. Code Ann. § 34-21-10 (emphasis added). If § 34-21-10 does not apply to these other institutional fiduciaries, then the italicized language is superfluous. Giving those words meaning, as this Court must, requires including these roles within the scope of trust businesses.

Petitioners' efforts to evade this common-sense conclusion readily fail.

For example, they argue that the General Assembly only added this sentence in 1972 to "harmonize" § 34-21-10 with a federal statute, 12 U.S.C. § 92a. Pet. Br. at 10–11. Petitioners do little to explain the nature or purpose of such harmonization, or how exactly harmony excuses them from the Board's licensure and oversight. But in any event, Petitioners are wrong on the merits.

First, the last sentence of § 34-21-10 is broader than § 92a. Section 92a allows the regulator of national banks (the Office of the Comptroller of the Currency (OCC)) to grant a "special permit" for national banks to serve as "trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or in any other fiduciary capacity … when not in contravention of State or local law." 12 U.S.C. § 92a(a). A national bank's trust powers under § 92a are coextensive with, not greater than, a state bank's. *American Trust v. S.C. State Bd. of Bank Control*, 381 F. Supp. 313, 322 (D.S.C. 1974). Section 92a therefore does not exempt national banks from local registration requirements. But recognizing a federal regulator approves and oversees nationally-chartered banks conducting trust business, the General Assembly exempted them from state registration for those services. The last sentence of § 34-21-10 then goes further and exempts natural persons, who are unaffected by § 92a, from registration requirements in addition to national banks. The General Assembly therefore did not simply "harmonize" § 34-21-10 with § 92a; it created exemptions from state regulation which the federal law does not.

Second, and to the extent § 34-21-10 does "harmonize" state law with § 92a, Petitioners fail to acknowledge that the OCC has interpreted a bank's trust powers as extending beyond merely serving as a trustee under a trust instrument. The OCC has stated that a national bank acts in a fiduciary capacity requiring this "special permit" when it serves in any of the fiduciary roles listed in § 92a(a)—trustee, executor, administrator, registrar of stocks and bonds, guardian of estates, assignee, receiver, or any other fiduciary capacity in which banks and competitors may act under state law. App. 261. "There is no *de minimis* rule regarding national banks' use of trust powers. A national bank that *only performs one fiduciary capacity* under 12 U.S.C. § 92a would need trust powers." *Id.* (emphasis added).

Petitioners' related argument that the Court of Appeals "isolated," "dissociated," and "finely sliced" the last sentence of § 34-21-10 from the rest also fails, because the Court of Appeals did no such thing. Pet. Br. at 10. The Court of Appeals interpreted it alongside the whole of § 34-21-10. App. 360.

B. Petitioners' narrow interpretation of "trust business" conflicts with other provisions of the South Carolina Code which include acting as an executor, guardian, conservator, and agent as trust powers requiring the State's authorization.

The Court must construe a statute's words "in context and their meaning determined by looking at the other terms used in the statute." *Hinton v. S.C. Dep't of Prob., Parole & Pardon Servs.*, 357 S.C. 327, 332, 592 S.E.2d 335, 338 (Ct. App. 2004). In that vein, Petitioners argue the Court of Appeals' conclusion is inconsistent with "the rest of Chapter 21, which makes clear that that [the Board's] jurisdiction is designed to reach companies that invest in 'common trust funds,'" and with "the rest of South Carolina Code as a whole, which repeatedly distinguishes between trustees and all other types of fiduciaries." Pet. Br. at 10. These arguments fare no better than Petitioners' others because these statutes confirm that the Court of Appeals correctly held that a trust business includes serving as conservators, guardians, personal representatives, and agents.

1. The Board's trust business jurisdictional statute, § 34-21-20, is not limited to entities serving as the trustee of a trust.

Section 34-21-20 subjects state-chartered banks, related entities, "trust companies, and fiduciary corporations authorized to conduct a trust business in this State" to the Board's regulation and examination. Petitioners argue that § 34-21-20's reference to "fiduciary corporations authorized to conduct a trust business" means that not all fiduciary corporations engage in a trust business. Pet. Br. at 9. "Trust business," they claim, must therefore be narrower

and not include the fiduciary roles which Petitioners serve. *See id.* But the phrase "authorized to conduct a trust business in this State" modifies *all* entities listed in the statute—banks, trust companies, and fiduciary corporations. It is not a limitation on fiduciary corporations.

Petitioners' argument evidences a lack of understanding regarding inter-state banking regulation. Although every state in the country charters and regulates institutions and entities that serve as fiduciaries, the names used for them are not consistent. In the South Carolina Code, these entities are consistently referred to as "trust companies" or "trust institutions" having "trust powers," and the business they conduct is called trust business. At the same time, other states' laws create regulated fiduciary institutions under different names. Examples include "trust bank" (Conn. Gen. Stat. Ann. § 36a-2(73)), "fiduciary for hire" (Kan. Stat. Ann. § 9-701(m)), or "corporate fiduciary" (Ind. Code Ann. § 28-1-1-3(19)). These terms all describe roughly the same thing, with minor state-by-state variations—they are all broadly "fiduciary corporations" because they are entities serving in a fiduciary capacity.

Fiduciary corporations, including those licensed under the laws of other states, do not inherently have the power to serve as a fiduciary in South Carolina. *See American Trust*, 381 F. Supp. at 322. If an out-of-state entity intends to conduct trust business in South Carolina, it must obtain the Board's written approval under § 34-21-10. Section 34-21-10's registration requirement is agnostic to an entity's name, institution type, organizational structure, or state of incorporation. Once the Board grants approval, the out-of-state entity becomes a "fiduciary corporation authorized to conduct a trust business in this State." To ensure comprehensive oversight of these trust businesses, no matter what they are called, the General Assembly needed the term "trust business" to be all-encompassing.

The broad application of § 34-21-20 is confirmed by history and long-standing South Carolina case law. Consider banks which offer only non-trustee fiduciary services. Under Petitioners' interpretation, this bank need not register with the Board to serve as an executor, even though losses caused by bank executors were why the General Assembly acted in 1930 to regulate trust businesses. *Michie*, 165 S.E. at 366–67. This gap in regulation is why "trust business" must be given its full meaning.

Next, Petitioners argue that the Board is only authorized to oversee entities maintaining "common trust funds." The statutes governing common trust funds—which are funds "maintained by a trust institution, exclusively for the collective investment and reinvestment of moneys contributed thereto by the institution in its capacity as a fiduciary or cofiduciary"—are within Article 3. S.C. Code Ann. § 34-21-210(3). Section 34-21-10, on the other hand, is found within Article 1, titled "General Provisions." To be sure, the Board regulates trust businesses offering common trust funds. But nothing within Title 21 suggests that the Board's jurisdiction over trust businesses is limited to them. That argument is facially absurd. *See* S.C. Code Ann. §§ 34-21-10–20 (identifying business subject to the Board's regulation without limitation to those offering common trust funds).

2. Title 34 repeatedly imposes Board regulation upon institutions providing fiduciary services beyond that of a trustee.

Title 34 further acknowledges elsewhere that the Board must authorize an entity to serve in fiduciary capacities including conservator, guardian, personal representative, and agent.

For example, Section 34-21-210(1), which relates to common trust funds, defines "trust institution" to include "any trust company, authorized to act in a fiduciary capacity in this State … under the supervision of the Comptroller of the Currency of the United States, or the Federal

Reserve System, or the State Board of Bank Control of South Carolina." That same section defines "fiduciary" to include serving as "trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent." S.C. Code Ann. § 34-21-210(2). The inclusion of "executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent" would be unnecessary and surplusage if the General Assembly did not recognize that an entity must be "authorized to act in a fiduciary capacity in this State" to serve in these fiduciary roles.

Title 34 has several other examples, including:

- S.C. Code Ann. § 34-15-10, entitled "General authority to act as fiduciary," provides that a "banking corporation or trust company" must have at least $250,000 in capital to serve as "executor of a will, codicil, or writing testamentary, administrator with the will annexed, administrator of the estate of any person, receiver, assignee, guardian or trustee under a will or instrument creating a trust for the care and management of property.
- S.C. Code Ann. § 34-15-20 distinguishes between "every such banking corporation," i.e., the banking corporations and trust companies with authority to act as fiduciary referenced by § 34-15-10, and "private persons acting as such fiduciaries."
- S.C. Code Ann. § 34-30-1440(3) empowers a savings bank to "act as a trustee, executor, board, guardian, or in another fiduciary capacity," but only "with prior board approval," referencing the prior written approval requirement for trust business in § 34-21-10. *See also* S.C. Code Ann. § 34-1-180(9) (requiring banks seeking "trust powers" to refer to

the requirements for "trust business" established under Title 34, Chapter 21); *id.* § 34-28-500(12) (allowing savings associations to apply for trust powers under §34-21-10).

- S.C. Code Ann. § 34-3-850 provides that when a "trust company" is sold or merges, all the powers and duties "regarding each fiduciary capacity or other relationship transferred, whether created by will, indenture, trust, court order, agreement, or other means,"—not just trust instruments—shall transfer to the buyer or surviving entity.

These statutes and others confirm that the Board regulates entities serving under fiduciary appointments beyond a trustee of a trust.

Adopting Petitioners' interpretation of trust business would create an absurd result. If a trust business referred only to an entity acting as trustee, the General Assembly would not have established Board-enforced approval, capital, and other requirements throughout Title 34 for other fiduciary roles which entities could evade simply by *not* obtaining the Board's approval.

3. Outside Title 34, the South Carolina Code consistently acknowledges that the State must authorize entities to act in a fiduciary capacity beyond a trustee of a trust.

The Court of Appeals' interpretation of Board-regulated "trust business" is consistent with statutory provisions beyond Title 34 as well.

S.C. Code Ann. § 62-7-933(C)(3)(c) is one such example. This statutory "Prudent Investor Rule" governs investment and management decisions of "any fiduciary," not just a trustee, "holding securities in its fiduciary capacity" and provides that "[a] bank, trust company, or private banker so depositing securities pursuant to this section shall be subject to such regulations as in the case of state-chartered institutions, the Board of Financial Institutions."

Also, Title 21 of the South Carolina Code, entitled "Estates, Trusts, Guardians, and Fiduciaries," contains Chapter 29: "Trust Companies." Section 21-29-90(B) allows a bank to "designate an affiliated trust company as its agent for the performance of all acts, obligations, and responsibilities of the bank with respect to any fiduciary or other services generally rendered by bank trust departments." If the business of trust companies and trust departments were limited to serving as trustee of a trust instrument, there would be no need to clarify that a bank could assign its affiliate trust company "any fiduciary or other services generally rendered by bank trust departments." Yet again, the General Assembly could have simply said that banks could assign "trusts" to trust companies. But it chose broader language because, under South Carolina law, only trust companies and bank trust departments may serve in various fiduciary capacities.

* * *

When construed in context of the South Carolina Code provisions above, the terms "trust business" and "trust company" include serving as conservator, guardian, personal representative, agent, and other fiduciary roles. *See Hinton*, 357 S.C. at 333, 502 S.E.2d at 338 (Ct. App. 2004). Such a reading "harmonizes with its subject matter and accords with its general purpose." *Id.* If serving in fiduciary roles beyond that of a trustee is not "trust business" or the work of a "trust company," then other fiduciary roles would not be listed repeatedly, by name, in connection with these roles, and the rules for serving in these roles would not be for the Board to enforce.

C. The ordinary and customary meaning of a "trust business," as reflected in the laws of other states and a nationwide compact, includes serving as conservator, guardian, personal representative, and agent.

How other states define "trust business" can also show the ordinary and customary meaning of the term. *See Miss. Band of Choctaw Indians v. Holyfield*, 490 U.S. 30, 47–48 (1989) ("Well-settled state law can inform our understanding of what Congress had in mind when it

employed a term it did not define. Accordingly, we find it helpful to borrow established common-law principles of domicile to the extent that they are not inconsistent with the objectives of the congressional scheme.”).

Several other states regulate institutional corporate fiduciaries like Petitioners which provide a range of services beyond administering a trust. A few of the more succinct examples are:

- Arizona: “‘Trust business’ means the holding out by a person to the public at large by advertising, solicitation or other means that the person is available to act as a fiduciary in this state.... ‘Fiduciary’ means a personal representative, administrator, guardian, conservator, trustee, agent or other person who acts in a fiduciary capacity.” Ariz. Rev. Stat. Ann. § 6-851.

- Massachusetts: “‘Trust business’--any activity conducted by an executor of a will or codicil, an administrator with the will annexed, an administrator of the estate of any person, a guardian, a conservator, or a trustee under a will or instrument creating a trust for the care and management of property, while he is acting in such a fiduciary capacity.” Mass. Gen. Laws Ann. ch. 203, § 4A (West).

- New Jersey: “‘For the purposes of this section, ‘trust business’ means holding out to the public by advertising, solicitation or other means that a person or entity is available to perform any of the services of a trustee or fiduciary in this State or another state, and includes acting as a trustee, testamentary trustee, fiduciary, executor or guardian[.]” N.J. Stat. Ann. § 17:9A-316 (West).

- Ohio: “‘Trust business’ means accepting and executing trusts of property, serving as a trustee, executor, administrator, guardian, receiver, or conservator, and providing fiduciary services as a business.” Ohio Rev. Code Ann. § 1111.01(I) (West).

- Utah: “‘Trust business’ means, except as provided in Subsection (1)(d), a business in which one acts in any agency or fiduciary capacity, including that of personal representative, executor, administrator, conservator, guardian, assignee, receiver, depositary, or trustee under appointment as trustee for any purpose permitted by law[.]” Utah Code Ann. § 7-5-1(b) (West).

See also App. 123–62 (reproducing the relevant parts of these and other state statutes). This national pattern of regulation shows a "trust business" ordinarily extends beyond "the administration of trusts."

The ordinary meaning of "trust business" is also established by a nationwide compact between states for regulating state-chartered trust businesses. South Carolina has been a party to this compact since 2018. App. 122. It defines "trust business" as

> the holding out by a person to the public by advertising, solicitation or other means that the person is available to perform any service as a fiduciary in the host state, including but not limited to:
>
> (a) acting as a fiduciary, or
>
> (b) to the extent not acting as a fiduciary, any of the following: (i) receiving for safekeeping personal property of every description; (ii) acting as custodian, assignee, bailee, conservator, transfer agent, escrow agent, registrar[,] or receiver; or (iii) acting as financial advisor, investment advisor, agent[,] or attorney-in-fact in any agreed upon capacity.

App. 112. While this document does not have the force and effect of law in South Carolina, *see infra* pp. 22–23, it demonstrates that the ordinary understanding of "trust business" includes all institutional fiduciary roles.

D. In licensing and regulating businesses which serve as conservator, guardian, personal representative, and agent, the Board protects vulnerable South Carolinians in ways that the Probate Court cannot.

As a backstop should their legal arguments fail, Petitioners make an emotional appeal. They contend that the Probate Court adequately oversees fiduciaries and requiring Board registration and oversight imposes an undue financial burden on these firms which will result in lost services to vulnerable South Carolinians. The Board is not blind to those concerns. But protecting South

Carolina's most vulnerable citizens is *why* the General Assembly exercised its discretion to require an additional layer of oversight.

Nothing prevents the Mantells from offering these services in their individual capacities. But they want to offer them under the benefits of the corporate form and behind the corporate veil with none of the corresponding burdens. The General Assembly rightly gave the Board jurisdiction over corporate entities which provide these services under liability shields. If the Mantells wish to continue serving as fiduciaries under the Petitioners' corporate shield, they must pay the necessary fees and allow the Board to determine whether they are well-equipped and adequately capitalized to do so.

And while Petitioners contend that the probate courts have "full authority to monitor" appointed fiduciaries, Pet. Br. at 16, the courts' authority only extends so far. In fact, the court is expressly excused from such comprehensive oversight. *E.g.*, S.C. Code Ann. § 62-5-309(B) ("Nothing herein shall require the court to oversee the plan of care [implemented by a guardian][.]"); S.C. Code Ann. § 62-5-414(B) ("Nothing herein shall require the court to oversee or approve the conservator's investment choices[.]"). The probate court—and indeed, the judicial branch in general—cannot examine an entire entity's fiscal stability or the company's compliance procedures and internal controls. A probate court's authority does not extend to reviewing the collective effect of a company's state-wide slate of appointments outside an individual probate court's jurisdiction. But the Board's authority does. App. 54–55. That review is necessary to protect the interests of those needing corporate fiduciaries from the risks posed by undercapitalized and unscrupulous companies. Section 34-21-10 therefore does not create a "gap," as Petitioners contend. Pet. Br. at 16–17. It fills a need for oversight which the probate courts cannot provide.

Petitioners further appeal to emotion by misdirecting the issue to Petitioners' ability to make decisions for others regarding travel, voting, and driving. *See* Pet. Br. at 20. But this case is not about those decisions. It is about companies which have the power to "buy, sell, or transfer real or personal property or transact business" on behalf of others. *Id.* at 19. Companies which can "make, modify, or terminate contracts" on behalf of others. *Id.* Companies which can "bring or defend any action at law or equity" on behalf of others. *Id.* Petitioners provide all those services as corporate entities.

As a final Hail Mary, Petitioners claim another "gap" exists because, in their view, the Board's application manual does not allow corporate fiduciaries like themselves to even apply for "trust powers." Pet. Br. at 16–17. There are several problems with this argument. First, the manual is not part of the appellate record, and Petitioners did not make this argument until their Petition for Rehearing before the Court of Appeals. App. 371, 376. It therefore is unpreserved. *Herron v. Century BMW*, 395 S.C. 461, 469, 719 S.E.2d 640, 644 (2011). Second, their reliance on the manual is ironic given their argument that the Court cannot rely on the Board's alleged interpretation of § 34-21-10. *See supra* pp. 23–26. Further, this argument elevates form over substance—literally, a government form above explicit statutory provisions. The Board has no power to change the scope of § 34-21-10 through the title of an application form. *See* Pet. Br. at 13 n.1 ("[E]ven an actual regulation that is properly promulgated through the rulemaking process cannot alter or expand an agency's authority that is set by statute.").

Petitioners' claim regarding the manual is also false. Page 1 of the Board's Applications Manual lists "Trust Companies" as one of the charters issued by the Board, and cites Section 34-21-10 as the applicable law. Page 2 of the Applications Manual references and gives a link to the

Trust Company Application. Likewise, the applicant must declare the "trust powers to be exercised" by selecting from a list which includes "Trustee," "Executor or Administrator," "Conservator," "Guardian," "Agent," among other options. *See* https://banking.sc.gov/industry-information/applications-and-forms. In other words, the Board's form incorporates a correct interpretation of its jurisdiction under § 34-21-10 which encompasses all corporate entities providing fiduciary services.

III. To the extent Petitioners' strawman administrative deference argument is even germane to this case, it fails as a matter of law.

Petitioners devote a substantial portion of their brief to attacking an interpretive tool which the Court of Appeals did not use: administrative deference. Pet. Br. at 12–15. This Court need not take the bait. But even if the Court reaches this issue, reliance on prior Board interpretations of § 34-21-10 is proper.

A. The Court of Appeals did not defer to the Board's interpretation of "trust business."

Petitioners' argument centers on a Policy Statement which the Board issued and an interstate compact regarding the regulation of trust businesses. The Court of Appeals mentioned the Policy Statement once during its factual and procedural history, App. 356, but never again cited it. Likely for this reason, Petitioners made no argument about the Policy Statement in their petition for rehearing. *See* App. 368–81. The argument therefore is unpreserved. *Herron*, 395 S.C. at 469, 719 S.E.2d at 644. Also, there is nothing for this Court to review because the Court of Appeals made no relevant rulings or findings adopting or even applying the Policy Statement.

As to the nationwide compact, the Court of Appeals similarly did not cite it as providing any interpretation, guidance, or determination by the Board. Nor could the court have done so, because the document explains that it is not intended to change state law or "determine what

activities a multi-state trust institution may conduct in a host state, with or without licensing or registration." App. 114; *see also* App. 121 ("Nothing in this Agreement is intended or shall be construed to preempt or otherwise contravene applicable state law governing multi-state trust institutions except to the extent, if any, explicitly adopted and given the force of law by a state supervisory agency with state law authority to do so."). Instead, the court cited it only as evidence of the ordinary and customary meaning of the term "trust business." App. 359–60; *see also supra* pp. 17–19 (analyzing the ordinary and customary meaning of "trust business"). Petitioners' argument that the Court of Appeals' reliance on the compact for this limited purpose had the effect of "expanding the [] Board's jurisdiction through the Judiciary and outside the legislative process," "violated basic separation of powers," and was the "overreach" which Chief Justice Kittredge warned against elsewhere is untethered from the record.

This Court should not countenance Petitioners' attempts to create an issue where none exists and should decline to reach the question of deference.

B. Ironically, Petitioners ask this Court to "defer to" alleged prior administrative interpretations of "trust business."

While claiming that the Board's official position deserves no consideration when interpreting the statute it administers, Petitioners simultaneously point to an unverified remark from a former Commissioner of Banking to claim that their fiduciary activities should be forever free from regulation. This position is unsupported by South Carolina law.

Generally, equitable estoppel does not lie against the government to prevent the due exercise of its police power or to thwart the application of public policy. *S.C. Dep't of Soc. Servs. v. Parker*, 275 S.C. 176, 178, 268 S.E.2d 282, 238 (1980); *see also Grant v. City of Folly Beach*, 346 S.C. 74, 80, 551 S.E.2d 229, 232 (2001). "Administrative officers of the state cannot estop the state

through mistaken statements of law." *Greenville Cnty. v. Kenwood Enters.*, 353 S.C. 157, 172, 577 S.E.2d 428, 436 (2003). Specifically, "[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute. Simply stated, equity follows the law." *Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 315, 319, 659 S.E.2d 263, 267 (Ct. App. 2008) (internal citation omitted). Estoppel therefore typically does not lie based on representations by agency staff. *E.g.*, *Quail Hill LLC v. County of Richland*, 387 S.C. 223, 237, 692 S.E.2d 499, 506 (2010) ("[T]o estop [the] County from enforcing [its zoning laws] would be in direct contravention of the general rule that a governmental entity may not be estopped by the unauthorized or erroneous conduct or statements of its officers or agents.").

Petitioners claim then-Commissioner of Banking Louie Jacobs told them that their fiduciary services were not "trust business" requiring Board registration and approval. Commissioner Jacobs, however, lacked unilateral authority to set Board policy. The Board may delegate certain ministerial functions to the Commissioner of Banking. *See* S.C. Code Ann. § 34-1-220 ("[T]he board may delegate to the Commissioner of Banking its authority to receive applications, develop necessary forms, issue certificates or correspondence on behalf of the board, conduct examinations, request additional information or documentation from applicants, approve articles of incorporation, and establish capital requirements and other standards for the safety and soundness of bank operations."). But Commissioner Jacobs was not "authorized to interpret or alter" the statutory registration requirement. "[T]rust companies[] and fiduciary corporations authorized to conduct a trust business in this State are … subject to rules and regulations promulgated by the board," not oral statements of the Commissioner of Banking. *See* S.C. Code Ann. § 34-21-20. Petitioners do not and cannot contend that they consulted the Board itself before conducting their

unregistered fiduciary activities. "Because the erroneous [legal] information relied on by [Petitioners] was conveyed by unauthorized individuals, the doctrine of equitable estoppel may not, as a matter of law, be invoked against [the Board]." *Quail Hill,* 387 S.C. at 237, 692 S.E.2d at 507.

Petitioners also mistakenly argue that their interpretation "match[es] what the Attorney General historically advised the public and the agency itself" and is what the Attorney General "had always understood [trust business] to mean." Pet. Br. at 4–5, 6; *see also id.* at 7 (discussing a 1996 letter[1] from then-Assistant Deputy Attorney General Robert Cook). But that is *not* what the referenced document said. This letter form 1996 only suggested that a corporation which was "fairly inactive" but served as a conservator, personal representative, and trustee of some trusts in 1972 was grandfathered under § 34-21-10 and therefore did not need to register with the Board. App. 223–24. And in considering whether the company had conducted continuous "trust business" as a "trust company," the letter acknowledges the various fiduciary roles associated with a trust company under South Carolina law:

> It is also said that a "trust company" is a corporation formed for the purpose of taking, executing and administering all such trusts as may be lawfully committed to it and acting as testamentary trustee, executor, guardian, etc.
>
> The foregoing definitions are consistent with those set forth in Title 34 of the Code. See, e.g. Sections 34-21-20 through -70; Section 34-21-210 (1) [definition of "trust institution"]; Section 34-21-220 et seq ["common trust funds"].

App. 223. In any event, the principal question was not whether the company conducted a trust business, but whether it had a sufficiently "active" business to be grandfathered. *Id.* The letter

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[1] This letter was "an informal opinion only. It has been written by a designated Assistant Deputy Attorney General and represents the position of the undersigned attorney as to the specific questions asked. It has not, however, been personally scrutinized by the Attorney General nor officially published in the manner of a formal opinion." App. 224.

concluded that 34-21-10 "does not require any particular level of transacting trust business in order to be entitled to be 'grandfathered.'" App. 224.

C. If the Court reaches the question of deference, it is proper to defer to the Board's prior findings that "trust business" includes all corporate fiduciary roles.

Petitioners argue that administrative deference is improper under the United States Supreme Court's decision in *Loper Bright Enterprises v. Raimondo*, 603 U.S. 369 (2024). Pet. Br. at 14. Although our Court of Appeals has noted it is "cognizant of" *Loper Bright*, the existence of that recent federal decision does not negate a century of independent South Carolina law. *See Colonial Pipeline Co. v. S.C. DOR*, 443 S.C. 448, 458–59, 905 S.E.2d 129, 134–35 (Ct. App. 2024). In *Colonial Pipeline* itself, the Court of Appeals rejected the Administrative Law Judge's conclusions and instead adopted the statutory interpretation advanced by the administrative agency—there, the Department of Revenue—finding that its interpretation of the disputed term "industrial plant" was reasonable and should be followed. *Id.* at 459–62, 905 S.E.2d at 135–36.

As the South Carolina Attorney General's Office noted in its amicus brief filed with the Court of Appeals, South Carolina's administrative deference doctrine is long-standing and independent of federal derivation.[2] It can be traced back to two cases from the 1930s: *Read Phosphate Co. v. S.C. Tax Comm'n*, 169 S.C. 314, 168 S.E. 722 (1933) and *Stovall v. Sawyer*, 181 S.C. 379, 187 S.E. 821 (1936). *See Kiawah Dev. Partners, II v. S.C. Dep't of Health & Env't Control*, 411 S.C. 16, 32, 766 S.E.2d 707, 718 (2014) (discussing origins of deference doctrine in South Carolina). Nearly 100 years ago, the *Read* court found that "construction given to a statute by those charged with the duty of executing it is always entitled to the most respectful consideration, and ought not

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[2] Petitioners did not include this amicus brief in the Appendix. If the Court is inclined to reach this issue, the Board commends the brief to the Court's attention.

to be overruled without cogent reasons." 169 S.C. 314, 168 S.E. at 728. South Carolina law applies agency deference in two situations: when the statute is ambiguous, *see Kiawah Dev. Partners*, 411 S.C. at 32, 766 S.E.2d at 717, or when there are gaps in the statute, *Young v. S.C. Dep't of Public Transp.*, 287 S.C. 108, 113, 336 S.E.2d 879, 882 (Ct. App. 1985) (agencies are "implicitly authorized" to "interpret, clarify and explain" or to "fill up the details" of statutes they administer).

Because the term "trust business" is undefined, the Attorney General's Office correctly argued that "some degree of deference" should be afforded to the Board's interpretation of its own statutes. Both before and during this case, the Board has maintained that entities serving as conservator, guardian, personal representative, or agent are engaged in a "trust business." *E.g.*, App. 55, 59–64, 104–105. Petitioners cite no law limiting administrative deference to only material which has gone through a formal rulemaking process. They only cite cases and statutes stating that agency regulations cannot conflict with the law and that only formal regulations have the force and effect of law. Pet. Br. at 13 & n.1. But that is beside the point. The Board does not argue that its past interpretations have the force and effect of law. And of course, the Board maintains that they do not conflict with the statute; they merely apply the statutory language to clearly articulate a rule which Petitioners have taken great efforts to muddle.

Finally, the Board's Policy Statement is a reliable and reasonable interpretation of South Carolina law. The Policy Statement is well-reasoned, grounded thoroughly upon provisions from both the Banking Code and the Probate Code of South Carolina, and was approved unanimously by a Board composed of individuals engaged in the financial industries of South Carolina. App. 103–05. So deference to the Board's interpretation—if it is an issue here—is proper.

Conclusion

The Court of Appeals correctly applied the law as it has existed for 96 years. Entities desiring to serve as trustee, conservator, guardian, personal representative, or agent must first be licensed by the Board. The General Assembly required regulatory oversight because history showed the folly of misplaced faith in corporate fiduciaries, including those who serve in roles other than trustees of trust instruments. Petitioners' attempt to evade state regulation would leave vulnerable South Carolinians at the mercy of undercapitalized, mismanaged, and unqualified fiduciaries. If Petitioners wish to enjoy the benefits of providing their services through the corporate form, they must meet the statutory requirements to do so.

This Court therefore should affirm.

[Signature page follows]

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