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Feb 23 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY

Jocelyn Newman, Circuit Court Judge

Appellate Case No. 2025-002124

Curtis D. Bale,.....Petitioner,

v.

John A. Dougherty, Wachovia Securities Financial Holdings, LLC, Wells Fargo Clearing Services, LLC, f/k/a Wells Fargo Advisors, LLC, Wells Fargo & Company, Wells Fargo Bank, N.A., and LPL Financial, LLC, ...Defendants,

of which John A. Dougherty, Wells Fargo Clearing Services, LLC, f/k/a Wells Fargo Advisors, LLC, Wells Fargo Bank, N.A., and LPL Financial, LLC are .....Respondents.

REPLY IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

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Introduction

Respondents' opposition to C.D. Bale's petition for a writ of certiorari confirms why review is needed. Respondents identify questions of law that this Court has not answered and that have split courts across the country: whether orders compelling arbitration and staying the case are immediately appealable as final orders or injunctions. While Respondents deny that there is a conflict between this Court's decisions and half-heartedly dispute the existence of a constitutional question, the only means to address the unanswered questions is through certiorari review.

To nevertheless preserve disparate appellate treatment of arbitration orders, Respondents cling to outdated precedent, distort this Court's decision in *Heffner v. Destiny, Inc.*, and ignore *Palmetto Construction Group, LLC v. Restoration Specialists, LLC*'s explicit repudiation of arbitration favoritism. After all, Respondents benefit when the scales are tilted against individuals who oppose arbitration. But even on their own terms, Respondents cannot agree on which statute controls appealability; advance absurd readings of *Heffner*; defend an appealability regime that arbitrarily privileges one side of an arbitrability dispute over the other; and inadvertently underscore the very conflict that commands this Court's guidance.

So Respondents' oppositions confirm that questions of law exist which only this Court can resolve through a writ of certiorari. This Court should grant the writ, reverse the Court of Appeals, and hold that orders compelling arbitration are immediately appealable under South Carolina law.

Argument

I. Certiorari is warranted because Respondents disagree as to whether § 14-3-330 or § 15-48-200 govern appealability of the circuit court's order.

Respondents cannot agree which statute governs appealability of orders compelling arbitration and staying a case. For that reason alone, certiorari is needed to clarify the law.

Wells Fargo maintains that "courts universally" apply § 15-48-200 as the exclusive jurisdictional provision governing appeals from arbitration orders, thereby preempting § 14-3-330, to foreclose appellate review of orders compelling arbitration. Wells Fargo Opp. at 5–9. LPL, by contrast, claims that exclusively applying § 15-48-200 is "backwards." LPL Opp. at 15 n.10. In LPL's view, orders compelling arbitration must first clear § 14-3-330; only if they are not immediately appealable under § 14-3-330 does the Court determine whether § 15-48-200 allows for an interlocutory appeal. LPL Opp. at 9–12. This stark contradiction confirms the statutory confusion which Bale identified—the Court of Appeals' rigid adherence to *Heffner* has created a doctrinal void in the wake of this Court's repudiation of the policy favoring arbitration. Without this Court's clarification, parties and courts alike will continue to reach divergent interpretations of the controlling statutory authority, further muddying the already murky waters.

Certiorari is necessary to stop this confusion from further seeping into our courts. As Bale explained, appellate courts have, at times, turned to § 14-3-330 even after finding that an order is not appealable under § 15-48-200. *E.g.*, Pet. at 15 (citing *Huskins v. Mungo Homes, LLC*, 444 S.C. 592, 910 S.E.2d 474 (2024)); *see also St. Francis Xavier Hosp. v. Ruscon/Abco*, 285 S.C. 584, 587, 330 S.E.2d 548, 550 (Ct. App. 1985) (holding orders denying an application to consolidate pending arbitration proceedings is not immediately appealable because "Section 15–48–200 does not expressly allow [such] an appeal" *and* such orders do "not fall within any exception to the final judgment rule" under § 14-3-330). This directly cuts against Wells Fargo's argument that § 15-48-200 is the exclusive statute. Wells Fargo Opp. at 6–7. It also directly cuts against LPL's argument that § 15-48-200 confirms that all arbitration orders are "interlocutory by nature" and never appealable. LPL Opp. at 9, n.7. *Cf. Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 300, 705 S.E.2d

475, 477 (Ct. App. 2011) ("An interlocutory order not governed by a specialized appealability statute is not immediately appealable unless it fits into one of the categories listed in section 14–3–330 of the South Carolina Code.").

Sensing the frailty of their arguments, Respondents attempt to distinguish orders compelling arbitration and *staying* the underlying case, and those *dismissing* the case. But these arguments underscore the lack of consistency or clarity in appellate review. For example, despite arguing that § 15-48-200 is the *exclusive* statutory authority governing appeals related to arbitration, Wells Fargo concedes that orders compelling arbitration and dismissing the case are fully appealable under § 14-3-330. Wells Fargo Opp. at 13. It argues that United States Supreme Court precedent allows for this inconsistency, but appealability is a question of state law. *Palmetto Constr. Grp.*, 432 S.C. at 639, 856 S.E.2d at 153. Likewise, LPL rebukes Bale's argument that stays are the functional equivalent of a dismissal as "an unprincipled assault on South Carolina case law," LPL at 6 n.4, but the Court of Appeals consistently remands dismissals for the entry of a stay, thus denying appellate review for both. *E.g.*, *Weldon v. Dominion Clemson, LLC*, No. 2023-000033, 2025 WL 1328815, at *2 (S.C. Ct. App. May 7, 2025) ("Because the circuit court dismissed rather than stayed Weldon's actions pending arbitration, we hold the order is immediately appealable and we reverse and remand to the circuit court to vacate its dismissal of Weldon's claims and to enter an order staying her actions pending the outcome of arbitration."); *Widener v. Fort Mill Ford*, 381 S.C. 522, 525–26, 674 S.E.2d 172, 174 (Ct. App. 2009) ("We do not reach this issue [of arbitrability] because we are reversing and remanding this case for the trial court to stay this action pending arbitration."). The Court of Appeals' denial of appellate review for dismissal orders likely stems from *Heffner*'s policy-backed holding. *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 83, 744 S.E.2d 552,

561 (2013) ("An order need not terminate a case to be a final judgment; it is merely "something that finally *disposes of the whole subject matter of the* action or terminates the action, leaving nothing to be done but to execute the judgment.") (emphasis added).

The current treatment of dismissals as compared to stays only furthers the disparate, and confusing, appellate treatment on orders compelling arbitration.[1] Seemingly aware of these inconsistencies, Respondents try to rewrite *Heffner* as if the pro-arbitration policy played no role in it at all. *See* Wells Fargo Opp. at 6–7; LPL Opp. at 21–22 (arguing *Heffner* was based on plain legislative intent). This is facially wrong. *Heffner* explicitly invoked "the policy of the United States and this State to favor arbitration," to narrowly construe § 15-48-200 to limit appeals from orders "favor[ing] arbitration over litigation." 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995). Even assuming *Heffner* simply "applied standard principles of statutory construction," Wells Fargo Opp. at 1, those principles were undeniably driven by the policy favoring arbitration.

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[1] As the New Jersey Supreme Court noted in *Wein v. Morris*, 194 N.J. 364, 944 A.2d 642 (2008),

> When the parties are ordered to arbitration, the right to appeal should not turn on whether a trial court decides to stay the action or decides to dismiss the action. Rather, the same result should apply in either case. In that way the parties will know with relative certainty that the order is appealable as of right.
>
> . . .
>
> To avoid further uncertainty in this area, and to provide a uniform procedure, we find it appropriate to deem an order compelling arbitration a final judgment appealable as of right. That is, whether the court in compelling arbitration dismisses the action as part of a final order or stays the matter, the order will be deemed final and appealable as of right. In our view, that will provide uniformity, promote judicial economy, and assist the speedy resolution of disputes.

Id. at 379–80, 944 A.2d at 650–51.

"[I]t is emphatically the province and duty of the judicial department to say what the law is." *Marbury v. Madison,* 5 U.S. (1 Cranch) 137, 177 (1803). *Cf. Lewis v. Lewis*, 392 S.C. 381, 385–86, 709 S.E.2d 650, 651–53 (2011) (correcting "the myriad of modern cases" applying an erroneous appellate standard of review derived on "earlier jurisprudence" to comport with the constitutional *de novo* requirement). But courts cannot arbitrarily extend a statute's reach through statutory construction. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000); *see id.* at 87, 533 S.E.2d at 582 ("When the language of a statute is clear and explicit, a court cannot rewrite the statute and inject matters into it which are not in the legislature's language, and there is no need to resort to statutory interpretation or legislative intent to determine its meaning."). Thus, when construing a statute, the primary rule "is to ascertain and give effect to the intent of the legislature." *Mid-State Auto Auction of Lexington, Inc. v. Altman*, 324 S.C. 65, 69, 476 S.E.2d 690, 692 (1996).

In no uncertain terms, *Heffner* held that the legislature intended § 15-48-200 to "restrict the right to appeal orders which favor arbitration over litigation," because "[t]he policy of the United States and this State is to favor arbitration of disputes. *Heffner*, 321 S.C. at 537, 471 S.E.2d at 136.[2] It was only reading § 15-48-200 through the lens of that policy that the Court held the statute conflicts with and therefore preempts § 14-3-330. *See Cnty. of Hawaii v. UNIDEV, LLC*, 129 Haw. 378, 390, 301 P.3d 588, 600 (2013), *as corrected* (July 24, 2013) ("There is no indication in the statutory language, then, that the 'permission' [statute's use of 'may'] to appeal certain orders such as an order denying a motion to compel arbitration precludes the appeal of an order granting a

[2] Even if the legislature intended § 15-48-200 to restrict the right to appeal orders compelling arbitration, such restriction is unconstitutional without a policy favoring arbitration. *Infra* pp. 6–8; *see also Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 277, 844 S.E.2d 390, 395 (2020) ("[I] remains the duty of this Court to ensure that statutes enacted by the Legislature are constitutionally valid.").

motion to compel arbitration pursuant to HRS § 641–1.") Wells Fargo's argument that that *Heffner* simply "applied a long-accepted canon of statutory construction to hold that S.C. Code Ann. § 15-48-200's enumerated list of appealable orders was exclusive" without applying the policy defies belief. *See* Wells Fargo Opp. at 6. After applying the canon of *expressio unis*, the Court had to determine whether there is a conflict between § 15-48-200 and § 14-3-330. *See Heffner*, 321 S.C. at 537, 471 S.E.2d at 136. If there was a conflict, then § 15-48-200 would control to the exclusion of § 14-3-330. *Id.*; *see also Porter v. S.C. Pub. Serv. Comm'n*, 327 S.C. 220, 224 n.3, 489 S.E.2d 467, 469 n.3 (1997) ("Where two statutes can be reconciled and are susceptible of a construction which will render both operative without doing violence to either, *it is the duty of the court to so construe them*.") (emphasis added); *James v. S.C. Dep't of Transp.*, 393 S.C. 440, 445, 711 S.E.2d 919, 922 (Ct. App. 2011) ("Statutes in apparent conflict should be construed, if possible, to allow both to stand and give effect to each."). The Court found a conflict, and the only basis for it is the now-rejected policy in favor of arbitration.

Given LPL's and Wells Fargo's contradictory statutory interpretations and their refusal to grapple with *Heffner*'s policy-rooted holding, this case presents precisely the type of systemic confusion that warrants this Court's intervention. Certiorari should be granted.

II. If § 15-48-200 governs appealability, as Wells Fargo argues, certiorari is warranted because the statute constitutionally treats those opposing arbitration differently than those seeking it.

Wells Fargo's insistence that § 14-3-330 plays no role in determining the appealability of orders compelling arbitration, arguing instead that § 15-48-200 alone governs, collapses entirely once *Heffner*'s pro-arbitration policy foundation is removed. But even if § 15-48-200 controls, it cannot stand in the wake *Palmetto Construction*'s repudiation of the policy in favor of arbitration because there is no reasonable basis for the disparate appellate treatment of arbitration orders.

Certiorari is therefore warranted to resolve the substantial equal protection issue presented in the absence of a policy favoring arbitration. Rule 242, SCACR (noting such is issue is the quintessential "special and important reason" warranting review by the Supreme Court).

"[I]t remains the duty of this Court to ensure that statutes enacted by the Legislature are constitutionally valid." *Bailey v. S.C. State Election Comm'n*, 430 S.C. 268, 277, 844 S.E.2d 390, 395 (2020); *see also McLeod v. Starnes*, 396 S.C. 647, 657, 723 S.E.2d 198, 204 (2012) (noting that when a decision "rests on unsound constitutional principles, [] stare decisis does not preclude our reconsideration of the issue addressed in that case"). For legislation to be constitutional, it "must possess two indispensable qualities: [f]irst, it must be framed as to so extend to and embrace equally all persons who are or may be in the like situation and circumstances; and secondly, the classification must be natural and reasonable, not arbitrary and capricious." *City of Laurens v. Anderson*, 75 S.C. 62, 55 S.E. 136, 137 (1906) (quotation omitted).

Respondents benefit from the disparate appellate treatment here because it only affords the right to appeal orders "which favor arbitration over litigation." *Heffner*, 321 S.C. at 537, 471 S.E.2d at 136; *see also Grant v. S.C. Coastal Council*, 319 S.C. 348, 354, 461 S.E.2d 388, 391 (1995) ("The *sine qua non* of an equal protection claim is a showing that similarly situated persons received disparate treatment."). Unsurprisingly, when the policy favoring arbitration is discarded, Respondents cannot provide any reasonable basis for the disparate treatment, converting the once-constitutional statute to an unconstitutional bar on appealability. Wells Fargo does not even identify a single alternative basis that does not depend on differential treatment of arbitration as more efficient and therefore favored over litigation. Wells Fargo Opp. at 10–11.

LPL's argument is even more self-defeating. LPL relies on *Ferla v. Infinity Dev. Assocs.*, *LLC*, 107 P.3d 1006, 1008 (Colo. App. 2004), to insist that the disparate treatment is constitutional because allowing appeals only from denials of arbitration has a "rational basis." LPL Opp. at 22. But LPL carefully omits that *Ferla*'s holding was because of *the policy favoring arbitration*—"The existing statutory scheme, which allows for appellate review to protect the right to compel arbitration, serves a legitimate purpose because it is rationally based on the public policy favoring arbitration." 107 P.3d at 1009. In other words, LPL's sole authority confirms Bale's point: once the pro-arbitration policy is gone, the constitutional justification evaporates with it.

Certiorari is therefore necessary.

III. If § 14-3-330 governs appealability, as LPL argues, certiorari is warranted because this Court has not determined whether orders compelling arbitration and staying the case are final orders or injunctions, and courts across the country are split.

Respondents try to portray the appealability of orders compelling arbitration and staying the case as "settled," but their argument ignores that South Carolina has never decided whether such orders constitute final judgments under § 14-3-330(1) or injunctions under § 14-3-330(4), and courts across the country are deeply divided on precisely this question. Rather than bolster Respondents' position, this widespread conflict exposes why a writ of certiorari is needed.

A. Orders compelling arbitration and staying the case are a final judgment.

Bale cites numerous jurisdictions—Maryland, Mississippi, New Jersey, Nebraska, Louisiana, Hawaii, Colorado, and others—that treat orders compelling arbitration as final and immediately appealable because they "put the parties out of court" and leave "nothing left for the trial court to do" on the issue of arbitrability. Pet. at 18–20. These courts recognize the practical reality that once arbitration is compelled, judicial review of arbitrability is over. As Respondents point out, other courts take the opposite view, *see*, *e.g.*, LPL Opp. at 7, concluding that in such

instances the case technically remains open or that review is available after the "conclusion of arbitration."[3]

Only through a writ of certiorari can this Court answer the question under South Carolina law. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 303, 705 S.E.2d 475, 478 (Ct. App. 2011) (noting even a "narrow construction" requires the Court "to focus on the effect of the order, not the label given to the motion or to the order granting it"). And under our State's law, orders concerning arbitrability are final.

An order compelling arbitration is final as to the court's involvement in the case. *See Bone v. U.S. Food Serv.*, 404 S.C. 67, 83, 744 S.E.2d 552, 561 (2013) ("An order need not terminate a case to be a final judgment; it is merely "something that finally *disposes of the whole subject matter of the* action or terminates the action, leaving nothing to be done but to execute the judgment."); *see also Horsey v. Horsey*, 329 Md. 392, 402, 620 A.2d 305, 310 (1993) ("A circuit court's order to arbitrate the entire dispute before the court does deprive the plaintiff of the means, in that case before the trial court, of enforcing the rights claimed."); Pet. at 18–20. Forcing a party to arbitrate before obtaining review on arbitrability puts the cart before the horse. Only after submitting to arbitration,

[3] *Bluffs, Inc. v. Wysocki*, 68 N.C. App. 284, 285, 314 S.E.2d 291, 293 (1984). Our neighboring states which hold that orders compelling arbitration are not appealable still adhere to a policy favoring arbitration. *E.g.*, *Innovative Images, LLC v. Summerville*, 309 Ga. 675, 848 S.E.2d 75 (2020) ("In enacting the arbitration code, the General Assembly established a clear public policy in favor of arbitration); *N. Carolina Farm Bureau Mut. v. Sematoski*, 195 N.C. App. 304, 308, 672 S.E.2d 90, 93 (2009) ("North Carolina has a strong public policy favoring arbitration."); *Premier Athlete Advisors LLC v. EnterSports MGT LLC*, 924 S.E.2d 41, 47 (N.C. Ct. App. 2025) (noting the "strong public policy favoring settlement of disputes by arbitration"). Virgina likewise still has a policy favoring arbitration. *E.g.*, *Church Mut., S.I. v. Ephesus Richmond Seventh-Day Adventist Church,* 84 Va. App. 371, 384, 914 S.E.2d 184, 190 (2025) ("Commonwealth's public policy favors arbitration and the validity of arbitration agreements.") (cleaned up). Tennessee, like the *Heffner* court, limits appeals from arbitration orders to those expressly exempted by statute. *See Peters v. Commonwealth Assocs.*, No. 03A01-9508-CV-00295, 1996 WL 93768, at *2 (Tenn. Ct. App. Mar. 5, 1996).

may a party obtain narrow review of the arbitration award. While Respondents cite cases finding this after-the-fact review to be sufficient, it offers no protection to parties like Bale who are disputing arbitrability. For one, proceeding prior to review effectively moots any appeal on the issue of arbitrability. Bale must either sign a submission form in FINRA agreeing to arbitrate his claims or refuse to sign (because they are not arbitrable) and risk default. And even if arbitrability could still be appealed, the reality of such an appeal would frustrate both judicial and arbitration purposes. Optimistically assuming arbitration could be conducted within a year, an appeal could last an additional five years. If Bale is successful in challenging arbitrability on appeal, discovery would start anew, adjudication would continue before the proper judicial forum, and upon any resolution beneficial to Bale, Respondents would likely appeal the merits. Without much difficultly, this case could last 10 years—a daunting prospect for Bale, who is in his 80s. The trial court's order on arbitrability is therefore final in name and effect.

B. Alternatively, an order compelling arbitration is an injunction because it restrains court action and forces arbitration.

As with finality under § 14-3-330(1), whether an order compelling arbitration falls within § 14-3-330(4)'s reach is novel in this State and divided among other jurisdictions, warranting certiorari. *Compare* Pet. At 18–19 *with* LPL Opp. at 11–12 *and* Wells Fargo Opp. at 14. And Wells Fargo's call to federal cases declining to equate orders compelling arbitration with injunctions is irrelevant because U.S.C.A. § 16(a)(2) only allows appeals for injunctions "*against* an arbitration."

Because this Court has adopted the broadest interpretation of an injunction, Pet. at 20, it should align its ruling with other courts finding that orders compelling arbitration are appealable. This finding would not be a "sweeping" change to the Court's current view of interlocutory orders, as LPL asserts, because barring a litigant from court is anything but "procedural staging." *See* LPL

Opp. at 12–13 (arguing that Bale's view would result in "almost any interlocutory order" qualifying as an injunction). Unlike discovery orders, orders compelling arbitration extinguish the judicial forum and dictate where and how the dispute must be resolved. That is the crux of injunctive relief under § 14-3-330(4): an order that restrains action in one forum and compels action in another.

In short, the entrenched national split, combined with the statutory confusion illustrated by Respondents' own filings, makes this case the ideal vehicle for the Court to finally decide whether compel-and-stay orders are appealable as final orders, as injunctions, or both. Certiorari is therefore not only appropriate—it is essential.

IV. Bale's petition presents substantial and important issues that are capable of repetition absent review.

Respondents' label Petitioner's situation as "unique," LPL Opp. at 22, but it really is not unique in our commercial world. Construction cases are a prime example—multiple entities; multiple contracts; multiple and overlapping arbitration clauses; and forum-specific rules that complicate who can force arbitration where and when. Many others like Bale also have banking and advisory account agreements which yield the same result. The issues presented here certainly are capable of repetition and likely have been repeated across the State. And deferring review until after fragmented arbitrations, on different calendars and under different rules, guarantees that the arbitrability ruling will evade meaningful appellate oversight.

Attempting to resist this reality, Respondents largely misdirect the Court to the issue of arbitrability and assert arguments on the erroneous premise that Bale agreed to arbitrate. *E.g.*, LPL Opp. at 23 (claiming that it does not matter whether Bale has "meaningful review" because "well-settled South Carolina law equally acknowledges that parties agreeing to arbitration voluntarily elect to forego wholesale review"). But this too underscores the need for review because

Respondents are accepting the trial court's order as final for purposes of arbitrability, while arguing such ruling is not final for review. Until this Court can first resolve the conflict between *Heffner* and the now-repudiated policy favoring arbitration to allow review of the trial court's arbitrability determination, this issue will permeate in South Carolina in perpetuity.

The Court should thus ignore Respondents' arguments against review that assumes a valid arbitration agreement exists and find that Bale's petition presents a substantial and important issue that is capable of repetition absent review.

Conclusion

This Court should grant the petition to resolve the conflict and provide the guidance which Respondents' oppositions confirm is needed.

[Signature page follows]

Respectfully submitted,

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