RECEIVED
Mar 02 2026
S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

ON A WRIT OF CERTIORARI FROM THE COURT OF APPEALS

APPEAL FROM GEORGETOWN COUNTY
Court of Common Pleas

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.

PETITIONERS' REPLY BRIEF

WOMBLE BOND DICKINSON (US) LLP

M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504

Molly M. McDermid
S.C. Bar No. 104695
molly.mcdermid@wbd-us.com
5 Exchange Street
Charleston, South Carolina 29401
843.722.3400

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

March 2, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES ii
PETITIONERS' REPLY BRIEF 1
ARGUMENT 2
I. The terms "fiduciary" and "trust" are neither synonymous nor interchangeable. 2
II. The Bank Board's reliance on *Michie* overlooks a fundamental point of that case. 4
III. The Bank Board's reliance on out-of-state authority proves the limitations of the agency's jurisdiction under South Carolina law. 5
IV. The Court should not credit Bank Board's disregard of the Probate Court. 6
CONCLUSION 7

TABLE OF AUTHORITIES

Cases

Ballard v. Newberry County, 432 S.C. 526, 854 S.E.2d 848 (Ct. App. 2021) 3
City of Camden v. Brassell, 326 S.C. 556, 486 S.E.2d 492 (Ct. App. 1997) 7
Ex Parte Michie, 167 S.C. 1, 165 S.E. 359 (1932) 4
Hodges v. Rainey, 341 S.C. 79, 533 S.E.2d 578 (2000) 2
S.C. Pub. Interest Found. v. Wilson, 2025 S.C. LEXIS 151, 924 S.E.2d 163, ___ (2025) 3

Statutes

S.C. Code Ann. § 34-21-10 .... 1, 5
S.C. Code Ann. § 34-21-20 4
S.C. Code Ann. § 62-1-201(49) 3
S.C. Code Ann. § 62-3-704 6
S.C. Code Ann. § 62-5-106 6
S.C. Code Ann. § 62-5-408 6
S.C. Code Ann. § 62-5-414 6
S.C. Code Ann. § 62-8-108 6
S.C. Code Ann. § 62-8-116 6

Other Authorities

S.746, 125th Session of the South Carolina General Assembly (2023–2024)........................ 1, 3, 6

PETITIONERS' REPLY BRIEF

The Bank Board's return brief is based entirely on a logical fallacy that, at its core, is an unlawful attempt by an executive agency to expand its own jurisdiction beyond the boundaries specifically set by the General Assembly. The agency's argument reduces to:

1. The Bank Board has regulatory jurisdiction over banks.
2. Banks can provide the full scope of fiduciary services recognized under the law.
3. Therefore, any company that provides fiduciary services (whether involving trusts or not) must also fall within the agency's jurisdiction.

It then spends 28 pages propping up this fallacy by ignoring the whole of Title 34, Chapter 21 of the South Carolina Code and relying instead on statutes from other states, the agency's own internal memoranda, and the agency's view of public policy to justify its overreach.

In essence, the Bank Board asks this Court to rewrite South Carolina Code § 34-21-10 to expand the agency's jurisdiction to include companies engaged in "***fiduciary*** business," rather than only companies engaged in "***trust*** business," as the Legislature narrowly prescribed.

But courts do not rewrite statutes; only the General Assembly can rewrite a statute. And here, the General Assembly ***declined*** to give the Bank Board the statutory change the agency is now trying to secure through litigation. *See* S.746, 125th Session of the South Carolina General Assembly (2023–2024) (proposing to rewrite Section 34-21-10 to vastly expand the definition of "trust business" to reach of all manner of fiduciary services, including when the fiduciary is performing work at the direction and supervision of a court).

That proposed legislation died in committee two years ago, but its Fiscal Impact Statement makes clear the Bank Board was the bill's advocate. And that raises the easiest rebuttal to the agency's return brief: If "trust business" truly meant what the agency now argues to this Court, there would have been no need for the agency to seek a legislative expansion in the first place.

ARGUMENT

I. The terms "fiduciary" and "trust" are neither synonymous nor interchangeable.

The Bank Board's 28-page opposition invites the Court to seize the legislative pen and rewrite a statute in such a manner that would expand an agency's jurisdiction beyond that which the General Assembly has permitted. The Bank Board suggests that its regulatory jurisdiction should reach all fiduciaries, including non-trustees, for two primary reasons: (1) the colloquial use of the word "trust" implies a "fiduciary" relationship, so the Court should freely substitute the word "fiduciary" for the word "trust" within South Carolina Code § 34-21-10 (Return Br. at 6–9); and (2) because banks can be authorized to provide fiduciary services beyond those of a trustee, the Bank Board should naturally regulate all fiduciaries (*id.* at 10–16).[1]

Both of these arguments are rooted in an assumption that when the General Assembly restricted the agency's jurisdiction to companies engaged in "trust business," the Legislature really meant to say "any kind of fiduciary business, regardless of whether a trust is involved."

This is an assumption that the Court should reject as a matter of law because it is contrary to the statute's actual language. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000) ("Under the plain meaning rule, it is not the court's place to change the meaning of a clear and unambiguous statute.").

It also violates the norm that when the General Assembly specifies a single item ("trust"), it necessarily excluded all other related items from the law (every other type of fiduciary). *See id.* at 86, 533 S.E.2d at 582 ("The canon of construction '*expressio unius est exclusio alterius*' or

[1] The logic behind the latter of these arguments is especially puzzling. No one disputes that banks are within the jurisdiction of the Bank Board; regulating them is why the agency exists in the first place. *See* S.C. Code Ann. § 34-1-60 (creating the agency to "supervise all banks and building and loan associations"). But this case doesn't involve a bank or the scope of a bank's work, so the services a bank can provide are irrelevant to the issue here.

‘*inclusio unius est exclusio alterius*’ holds that ‘to express or include one thing implies the exclusion of another, or of the alternative.’” (quoting Black’s Law Dictionary 602 (7th ed. 1999))).

Nor can the Court rewrite the statute to match the “substitute ‘fiduciary business’ for ‘trust business’” outcome for which the agency argues. *See S.C. Pub. Interest Found. v. Wilson*, 2025 S.C. LEXIS 151, at *18, 924 S.E.2d 163, ___ (2025) (“[C]ourts must be aware that their duties and responsibilities are limited to the interpretation of a statute, and we cannot rewrite a statute to suit our own policy preferences.”).

Nor can the Court accept the agency’s invitation to just add words to the statute that the General Assembly itself left out (and chose to leave out again when it failed to pass S.746 two years ago). *See Ballard v. Newberry County*, 432 S.C. 526, 532, 854 S.E.2d 848, 851 (Ct. App. 2021) (“We are not at liberty to add to the statutory law or subtract from it.”).

Nor does the General Assembly consider the other types of fiduciaries—conservator, guardian, and so forth—to be interchangeable with “trust,” as it specifically “excludes” such other fiduciaries from the definition of “trust.” S.C. Code Ann. § 62-1-201(49).

And not only does the law intercept and reject the agency’s position at every turn, the Bank Board’s position also defies logic. Under its theory, because a trustee is a fiduciary, every fiduciary must also be in the “trust business” for regulatory purposes. But that obviously isn’t so.

Just because every square is a rectangle doesn’t make every rectangle a square.

Just because every gamecock is a chicken doesn’t make every chicken a gamecock.

Just because every tiger is a cat doesn’t make every cat a tiger.

The list could continue, but the result is inescapable: A “trust business” is not the same as a “fiduciary business,” and the terms are neither synonymous nor statutorily interchangeable like the Bank Board argues and the Court of Appeals incorrectly held. Reversal is required.

II. The Bank Board's reliance on *Michie* overlooks a fundamental point of that case.

Just as it did when opposing certiorari review, the Bank Board attempts to rely upon *Ex Parte Michie*, 167 S.C. 1, 165 S.E. 359 (1932), to support its contention the agency has always regulated non-trustee fiduciaries. (*E.g.*, Return Br. at 2, 9, 14.) But *Michie* indicates exactly the opposite.

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. *Id.* at 35, 165 S.E. at 370.That holding does not directly control any issue in this case, but *Michie* 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 almost a century, the General Assembly has recognized that there are some "fiduciary corporations" that are "doing a trust business," but others (like the Petitioners) are not. Only the former fall within the jurisdiction of the Bank Board, both as a matter of the plain language of the State Code and historical fact.

III. The Bank Board's reliance on out-of-state authority proves the limitations of the agency's jurisdiction under South Carolina law.

The Bank Board's return brief attempts to bolster its overly broad reading of the phrase "trust business" in South Carolina Code § 34-21-10 by pointing to other states' statutes. But that exercise fully cuts against the agency's argument.

For instance, the Bank Board cites Kansas law and notes that state allows its banking agency to regulate a "fiduciary for hire." (Return Br. at 13 (citing Kan. Stat. Ann. § 9-701(m)).) The Board also cites Indiana law and notes that state allows its banking agency to regulate a "corporate fiduciary." (*Id.* (citing Ind. Code Ann. § 28-1-1-3(19)).)

That the Kansas and Indiana legislatures picked the phrases "fiduciary for hire" (instead of "trustee for hire") and "corporate fiduciary" (rather than "corporate trustee") demonstrates that a state legislature can give its agencies jurisdiction broader than only regulating companies engaged in "trust business." The South Carolina General Assembly, however, is not one of those state legislatures.

The Bank Board also cites statutes from five other states—Arizona, Massachusetts, New Jersey, Ohio, and Utah—that statutorily define the phrase "trust business" as expansively as the agency desires it to be construed here. (Return Br. at 18.) As before, that some state legislatures have taken a step that the General Assembly has not—and, in fact, recently refused to take with S.746—is proof positive that South Carolina Code § 34-21-10 is limited to "trust business" alone.

Thus, the Court should not credit the agency's argument that "the General Assembly needed the term 'trust business' to be all-encompassing." (Return Br. at 13.) If that position were accurate, the Legislature alone—not the Judiciary, and certainly not an executive agency seeking to expand its own jurisdiction (including through a mid-litigation internal memorandum)—must be the one to say so.

IV. The Court should not credit Bank Board's disregard of the Probate Court.

Finally, despite having no relevant experience or expertise caring for vulnerable and incapacitated people, the Bank Board argues it is in a better position than the Probate Court to oversee and regulate fiduciaries who are performing their responsibilities as conservators, guardians, personal representatives, and other non-trustee fiduciaries. (Return Br. at 19–22.)

While Petitioners continue to question how or why the Board of Financial Institutions seeks authority to oversee fiduciary responsibilities like healthcare, end-of-life, and daily activities for individuals in need, the argument that the Probate Court is somehow incapable or lacks jurisdiction to do so is simply wrong.

The Probate Code makes clear that the Probate Court ***shall*** play an active role in appointing and managing fiduciaries. *See e.g.*, S.C. Code Ann. § 62-5-106 (guardians); *id.* §§ 62-5-408 & -414 (conservators); *id.* § 62-3-704 (personal representatives); *id.* §§ 62-8-108 & -116 (power of attorney). Nor does the Probate Court blindly appoint the Petitioners to perform these services; the judges of that court vet the Petitioners and evaluate their qualifications and relevant experience when considering whether to make such an appointment. (*E.g.*, Appx. 212–16 (affidavit of Judge Carter).)[2]

The Court should disregard the agency's dismissive attitude towards the Probate Court. Not only is the Probate Court authorized by the General Assembly to serve the function that the Bank Board is attempting to seize, it has and continues to successfully do so.

---

[2] The Bank Board argues that this whole litigation would be a non-issue if Mr. Mantell simply performed the fiduciary services as ordered by the Probate Court in his personal, individual capacity. (Return Br. at 20.) This is an entirely impractical solution and underscores why the Bank Board is ill-suited for the authority it is asking the Court to provide. As Mr. Mantell explained to the circuit court, he provides these services using the corporate form in order to procure insurance, which inures to the benefit of the individuals who the Petitioners serve. (Appx. 203, ¶ 7.)

CONCLUSION

The thrust of the Petitioners' argument is simple: the phrase "trust business" in South Carolina Code § 34-21-10 gives the Bank Board regulatory jurisdiction over companies that invest and manage trust funds, and nothing more.

That construction is consistent with what the words of the statute actually say. *See City of Camden v. Brassell*, 326 S.C. 556, 560, 486 S.E.2d 492, 494–95 (Ct. App. 1997) ("If a statute's language is plain and unambiguous, and conveys a clear and definite meaning, there is no occasion for employing rules of statutory interpretation and the court has no right to look for or impose another meaning.").

That construction is consistent with the whole of this entire chapter of the South Carolina Code ("Article 1: General Provisions," and "Article 3: Common Trust Funds").

That construction is consistent with what the Attorney General has previously advised. (Appx. 223.)

That construction is consistent with how the agency previously advised the Petitioners, a position upon which the Petitioners have long relied. (Appx. 203, ¶¶ 12–13.)

And that construction recognizes the practical reality that the Bank Board regulates banks and financial institutions, ***not*** companies like the Petitioners who provide for the day-to-day needs of vulnerable people for whom they have been entrusted to serve and care, like Ms. Ormand-Ward. (Opening Br. at 15–20.)

For the reasons set forth above, the Petitioners respectfully request the Court vacate the Court of Appeals' decision, reject the Bank Board's attempt to expand its own jurisdiction, and issue an order reinstating the circuit court's straightforward, plain-language construction of the phrase "trust business."

Respectfully submitted,

WOMBLE BOND DICKINSON (US) LLP

By: /s/ M. Todd Carroll
S.C. Bar No. 74000
todd.carroll@wbd-us.com
1221 Main Street, Suite 1600
Columbia, South Carolina 29201
803.454.6504

Molly M. McDermid
S.C. Bar No. 104695
molly.mcdermid@wbd-us.com
5 Exchange Street
Charleston, South Carolina 29401
843.722.3400

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

March 2, 2026