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Apr 21 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM RICHLAND COUNTY
In the Court of Common Pleas

Honorable William A. McKinnon, Circuit Court Judge

Appellate Case No. 2026-_____

Case No. 2021-CP-40-01276

WANDA WHETSTONE,Respondent,

v.

STATE OF SOUTH CAROLINA, OFFICE OF THE GOVERNOR,.....Petitioner.

RESPONDENT’S RETURN TO PETITION FOR WRIT OF CERTIORARI

CHAPPELL, CHAPPELL & NEWMAN

Mark D. Chappell, Jr.

Graham L. Newman

Mark D. Chappell

William S. Detwiler

4500 Fort Jackson Blvd., Suite 250

Columbia, South Carolina 29209

(803) 233-7050

markjr@chappell.law

graham@chappell.law

mark@chappell.law

will@chappell.law

Counsel for Respondent

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QUESTIONS PRESENTED FOR REVIEW

1. In *Wade v. Berkley County*, this Court held that “§ 15-78-70(d) permits a plaintiff to maintain an action against a governmental employee in his individual capacity, settle, and then pursue an action against the governmental employer for the tort of his employee allegedly committed while in the scope of employment.” 348 S.C. 224, 230, 559 S.E.2d 586, 589 (2002). Does *Wade* create, as the Court of Appeals effectively held and despite section 15-78-40, an absolute right for a plaintiff to settle with the employee and then sue the government employer, even if the employer would have other common-law defenses to that suit based on the settlement?

2. If *Wade* stretches as far as the Court of Appeals held, should *Wade* be narrowed or overruled so that *Wade* does not conflict with the rest of the Tort Claims Act?

INTRODUCTION

Wanda Whetstone, Respondent, respectfully submits this Return opposing the Petition for Writ of Certiorari filed by Petitioner Office of the Governor. The Court of Appeals correctly addressed, apprehended, and decided the issues presented by this appeal and on Petitioner’s Petition for Rehearing and thus, certiorari review is neither warranted nor necessary. The Court correctly concluded that *Wade v. Berkeley County* controls and that Whetstone may, consistent with the South Carolina Tort Claims Act, settle with an individual employee and then pursue a claim against the government employer. The Petition of Petitioner rests on a mischaracterization of the issues decided on appeal and on legal theories the Office of the Governor did not preserve.

Furthermore, Petitioner’s approach of addressing the enforcement procedure of the South Carolina Tort Claims Act as the threshold issue distracts from the true holding of the Court of Appeals on the substantive question of legislative intent. If accepted, Petitioner’s flawed position

on that topic would have the effect of undermining Respondent's legislatively established legal rights to bring suit against a governmental entity after settling with the individually liable party, as in *Wade*.

Therefore, the Petition for Writ of Certiorari should be denied.

STANDARDS FOR PETITIONS FOR WRIT OF CERTIORARI

Petitions for Writ of Certiorari are authorized by Rule 242, SCACR, and are matters of discretion, not of right. The Supreme Court grants certiorari only when there are special and important reasons, such as conflicts with prior decisions, issues of significant public interest, or decisions that appear to be in conflict with applicable law. Certiorari is not an opportunity for a disappointed litigant to have a "second bite at the apple" by arguing the case for a second time. *Checker Yellow Cab Co. v. Checker Cab & Parcel Service*, 287 S.C. 608, 612, 340 S.E.2d 549, 552 (Ct. App. 1986), citing *Arnold v. Carolina Power & Light Co.*, 168 S.C. 163, 167 S.E. 234 (1933).

STATEMENT OF THE CASE

A. Campbell and Whetstone are in a car accident

As it relates to this Petition, the facts are undisputed. Wanda Whetstone was driving down Trenholm Road in Columbia, South Carolina when Karen Campbell pulled out of a bank parking lot and collided with Whetstone. Pet.App.16. Whetstone accused Campbell of being negligent and significantly injuring her in various ways. *Id.* Campbell was the special assistant for the First Lady and the director at the Governor's Mansion when the collision occurred. *Id.*

Whetstone filed a claim with Campbell's insurance company. That claim was resolved for \$100,000.00, and in exchange, Whetstone "discharge[d]" Campbell "from any and all claims"

and “agree[d] and covenant[ed] that [Whetstone] will never seek to execute any judgment obtained against the releasees and will not seek to collect any such judgment from the personal assets of the releasees.” Pet.App.59. The Office of the Governor was not a releasee.

B. Procedural History

1. After settling with Campbell, Whetstone sued the Office of the Governor, claiming that Campbell was acting in the scope of her employment when Campbell hit her car. Whetstone asserted a single claim “under the doctrine of respondeat superior and pursuant to the S.C. Tort Claims Act.” Pet.App.17 (complaint). The Office moved for summary judgment based on Whetstone’s settlement with Campbell, relying on the common-law rule in *Andrade*. Pet.App.23-24. The Circuit Court granted that motion. Pet.App.10.

2. The Court of Appeals reversed, holding that *Wade* controls. The Court of Appeals claimed that the Governor moved for summary judgment, “arguing that under section 15-78-70(d)” Whetstone’s “settlement with Campbell extinguished her claims against” the Office. Pet.App.68. The Court of Appeals found *Wade* “factually on all fours with the present case” and “controlling authority,” foreclosing the Governor’s argument. Pet.App.69-70.

The Governor petitioned for rehearing. He explained that he did not move for summary judgment under section 15-78-70(d) and believes that *Wade* cannot control. Instead, the Governor claims he moved for summary judgment under the common-law rule that settling with an employee also releases the employer under a vicarious-liability theory. Pet.App.77-84. The Court of Appeals denied that petition. Pet.App.89.

The Court of Appeals issued a substituted opinion. Most significantly was a change to correct the law firm name of Petitioner’s counsel, found on the opening page of the Court of

Appeals' ruling. Petitioner claims that the substituted opinion changed a single sentence in the background section that still didn't capture the Governor's argument, but the rest of the substituted opinion did not change anything in the Court of Appeals' analysis, nor did it change the Court of Appeals' opening sentence that this case is about section 15-78-70(d) or that *Wade* is "controlling authority." Pet.App.90, 92.

3. The Governor now petitions for a writ of certiorari.

ARGUMENT

I. The Court of Appeals correctly concluded Respondent has the right to settle with a government employee in his or her individual capacity and subsequently bring an action against their government employer.

A. Respondent is legally entitled to bring suit and recover against The Office of the Governor.

Simply put, the primary issue in this case is whether the Legislature intended to allow a private citizen's cause of action to pursue a tort claim against a governmental entity after settling with the entity's individual employee. S.C. Code Ann. §15-78-20(a) states: "It is declared to be the public policy of the State of South Carolina that the state, and its political subdivisions, are only liable for torts within the limitations of this chapter and in accordance with the principles established herein." S.C. Code Ann. §15-78-20(a) (2005). Thus, the "TCA" (the Act) controls all actions brought pursuant to the Act and all decisions interpreting the act apply including the decision in *Wade*. Furthermore, given Whetstone's analogous facts to *Wade*, this case concerns the meaning of section 15-78-70(d), which states: "A settlement or judgment in an action or a settlement of a claim under this chapter constitutes a complete bar to any further action by the claimant against an employee or governmental entity by reason of the same occurrence." S.C. Code Ann. §15-78-20(d) (2005). "Appellant argues the controlling authority applicable to this case is *Wade v. Berkely County*, 348 S.V. 224, 559 S.E.2d 586 (2002). We agree." *Whetstone v.*

State of South Carolina, Office of the Governor, Op. No. 6133 (S.C. Ct. App. dated Jan 21, 2026)(Howard Adv. Sh. No. 3 at 57).

Respondent agrees with the Court of Appeals that the issue at hand in *Whetstone* and *Wade* are analogous. The Court properly understood the issue, acknowledged that the statute does not define the procedures for settlement amongst the tortfeasors, and considered both sides' arguments as to whether the Circuit Court had properly construed the Legislature's intent. The key distinction here is that *Whetstone*, much like *Wade*, did not enter a settlement under "The Act" and there was no action pending under "The Act" at the time *Whetstone* settled with Campbell. "As in this case, *Wade's* claim was a derivative liability claim in that there were no allegations of tortious conduct by the government entity outside of its employee's actions." *Whetstone* at 60. The Governor's motion for summary judgment and briefing on appeal did not seek relief under S.C. Code §15-78-70(d) as the sole basis for dismissal and included common law defenses, which do not apply here as the settlement with Campbell was outside of "the Act". The record (motion and memorandum) shows the Governor expressly disclaimed moving under §15-78-70(d) and instead relied on the common law rule (*Andrade*) concerning the effect of a covenant not to execute of an employee on an employer's derivative liability, which Petitioner argued does not belong here. See R. pp. 22–23, 30–31; Oral Arg. 21:24–21:36. Given the *Andrade* decision did not deal with the TCA, rather the UCATA, Petitioner's arguments based on the *Andrade* decision are ill-founded and not squarely before the Supreme Court on their Petition for Writ of Certiorari.

Regardless of Petitioner's chosen framing, the question squarely presented and decided by the Court of Appeals was statutory: whether the Act, as construed in *Wade*, bars *Whetstone's* sequence of actions (settle with employee with no action pending against the governmental

entity; sue employer under the Act). The Court properly addressed that question and applied the correct legal framework of *Wade*, as the Court found *Wade* on all fours with the present case. *Whetstone* at 59-62. Because the Governor's ill-founded argument below was that a covenant not to execute with an employee extinguishes derivative liability of the employer, the Court properly addressed whether *Wade* (and the Tort Claims Act) precludes the employer from being sued after such a settlement.

Certiorari is not a vehicle for presenting new legal theories. Petitioner's Petition, which seeks to recast the case as controlled by common law employer-acquittal doctrines (*Andrade*) and to treat *Wade* as non-controlling, advances arguments that were either not preserved or were insufficient to supplant *Wade's* controlling statutory holding. Appellate Courts should not grant certiorari to entertain unpreserved or newly minted arguments. See *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991). The Petition's suggestion that the Court decided an argument the Governor "never made" is incorrect: the Court faithfully considered the interplay between *Wade* and the common law rule as applied under the Tort Claims Act and ruled correctly.

B. *Wade* is dispositive on the statutory question and was properly applied.

Wade squarely held that §15-78-70(d) does not bar an action against a governmental employee in his individual capacity where no Tort Claims Act action existed against the employer at the time of the employee settlement. *Wade v. Berkeley Cnty.*, 348 S.C. 224, 230, 559 S.E.2d 586, 589 (2002). The Court of Appeals properly relied on *Wade* in concluding the Tort Claims Act permits the sequence Petitioner followed. The Court of Appeals found the opinion in *Newkirk v. Enzor* persuasive in holding that "Governmental entities are vicariously liable for their employee's torts only as provided by the statute; governmental entities are not additionally

or alternatively liable under common-law vicarious liability doctrines." *Whetstone* at 61(citing *Newkirk v. Enzor*, 240 F. Supp. 3d 426, 436 (D.S.C. 2017)).

The Governor's efforts to convert the Court's statutory holding into a different, broad stroke common-law rule that would allow the government to enjoy greater protections than private employers (i.e., to be insulated from liability even where a private employer would remain liable) conflicts with the Legislature's intent and the Tort Claims Act's directive that a governmental entity is liable "in the same manner and to the same extent as a private individual under like circumstances." S.C. Code Ann. §15-78-40. The Court of Appeals' ruling harmonizes *Wade* with §15-78-40 and the Act's text and intended purpose. Thus, their interpretations bind lower Courts on the statutory question presented herein.

II. The Governor's reliance on *Andrade* and on a private-employer acquittal rule cannot justify certiorari review.

Andrade addressed the effect of a covenant not to sue an employee under common law and the Uniform Contribution Among Tortfeasors Act as between private parties. *Andrade* does not displace *Wade's* interpretation of the Tort Claims Act, nor does it establish that government entities receive broader derivative-liability protections than private employers. The Act's text—particularly §15-78-40 and the exclusive-remedy provisions—controls how common-law doctrines operate in TCA cases. The Court of Appeals correctly observed that the TCA governs liability for employee torts by setting exclusive remedies and statutory limits; the statute's unique statutory scheme means common-law joint-tortfeasor doctrines do not operate in the same way. As the Court explained (citing *Newkirk*), the TCA replaces the common-law doctrine of respondeat superior for suits against governmental entities—liability exists only “as provided by the statute.” *Whetstone* at 61, citing *Newkirk v. Enzor*, 240 F. Supp. 3d 426, 436 (D.S.C. 2017). The Governor's position would produce anomalous and inequitable results: it would permit

governmental entities to obtain greater shielding than private actors and would deny plaintiffs the statutory remedies the Legislature intentionally created. The Court of Appeals properly avoided such an outcome by following well established law.

Furthermore, “The TCA allows a plaintiff to settle with a government employee in his or her individual capacity and subsequently bring an action against the employer.” *Wade* at 230, 559 S.E.2d at 589. “The TCA does not distinguish between joint and vicarious liability, only whether the employee was acting within the scope of her employment.” *Whetstone* at 62. Whether or not the employee in the matter was acting within the course and scope of her employment is ultimately a question for the finders of fact, the jury. If the Office of the Governor is not to blame for the torts of their employee, then the finders of fact will adjudicate them. What the Office of the Governor is now attempting to do is expand and strengthen their shield of protection, completely adverse to the legislative intent of the Act. This attempt to rebalance the checks and balances of our Constitution has no standing before this Court.

The Court of Appeals' decision in this case is not only validated by the legislative intent discussed above, but is further supported by the South Carolina case law cited by the Court differentiating between employer liability under the Act and private liability under S.C. Code Ann. §15-38-65 (2005)(“The [UCATA] shall not apply to governmental entities.”). *Whetstone* at 61. “The TCA's language makes no distinction between derivative liability claims and claims against both employer and employee as joint tortfeasors.” *Id.* Ultimately, as decided in *Newkirk v. Enzor*, “the doctrine of respondeat superior therefore is inapplicable to claims against South Carolina governmental entities or their employees. Governmental entities are vicariously liable for their employees' torts only as provided by the statute; governmental entities are not

additionally or alternatively liable under common-law vicarious liability doctrines.” *Whetstone* at 61 citing *Newkirk v. Enzor*, 240 F. Supp 3d 426, 436 (D.S.C. 2017).

III. Preservation and scope bars certiorari review on the new theories advanced.

To the extent the Petition now presses a distinct common law defense or reframes the Governor's arguments, these contentions either were not preserved below or were not presented to the Court of Appeals in the posture necessary to obtain reversal. Appellate courts do not grant certiorari simply to entertain new legal arguments raised for the first time after an adverse ruling. See *State v. Austin*, 306 S.C. 9, 19, 409 S.E.2d 811, 817 (Ct. App. 1991).

Petitioner’s attempts in their Petition for Writ of Certiorari to now expand the strike zone, ultimately misses the plate and the crux of the issue in this matter upon appeal: whether or not *Wade* applies to the timeline of settlement between Whetstone with Campbell individually and may a further claim be brought under the TCA. The Court of Appeals is correct in its ruling that “the common law bar to employer liability discussed in *Andrade* is not applicable in this case.” *Whetstone* at 62.

IV. No special or important reason exists for certiorari review.

The Petition asks for certiorari review principally to re-litigate the correctness of *Wade* or to expand the Court's inquiry beyond the issues presented. Those are merits disagreements, not grounds for certiorari. *Wade* remains binding precedent on the statutory question, and the Governor has not shown intervening controlling authority, conflict among decisions, or issues of significant public interest warranting Supreme Court review.

CONCLUSION

For the foregoing reasons, this Court should deny the Petition for Writ of Certiorari.

Respectfully submitted,

s/ Mark D. Chappell Jr.

Mark D. Chappell, Jr. (SC Bar No. 102209)

markjr@chappell.law

Mark D. Chappell (SC Bar No. 1197)

mark@chappell.law

William S. Detwiler (SC Bar No. 106673)

will@chappell.law

4500 Fort Jackson Blvd. Ste. 250

Columbia, SC 29209

P: 803-233-7050

F: 803-233-0570

Counsel for Respondent