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**May 20 2026**

**S.C. SUPREME COURT**

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM BEAUFORT COUNTY  
Court of Common Pleas

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Marvin H. Dukes, III, Circuit Court Judge  
Appellate Case No. 2025-001142  
Circuit Court Case No. 2019-CP-07-02279

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Wilmington Savings Fund Society, FSB, not in its individual capacity, but solely as owner trustee for CSMC 2018-RPL6 Trust, and CSMC 2018-RPL6 Trust.....Respondents,

v.

Rex A. Field and Tracy L. Field, Petitioners

v.

Federal National Mortgage Association (Fannie Mae), Wilmington Savings Fund Society, FSB (in its individual capacity), Christiana Trust Company of Delaware, DLJ Mortgage Capital, Inc., and Unknown Defendants 1-10, .....Third Party Defendants,

of which Federal National Mortgage Association (Fannie Mae), Wilmington Savings Fund Society, FSB (in its individual capacity), Christiana Trust Company of Delaware, and DLJ Mortgage Capital, Inc. ....are Respondents.

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**PETITION FOR WRIT OF CERTIORARI**

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Rex A. Field, Petitioner, *pro se*  
Tracy L. Field, Petitioner, *pro se*  
Post Office Box 975  
St. Helena, SC 29920

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## CERTIFICATION

This Court has jurisdiction under S.C. Const. art. V, § 5 and SCACR Rule 242. Petitioners timely filed their Petition for Rehearing on March 25, 2026, which was denied on April 22, 2026. This Petition is filed within the thirty (30) day period prescribed by SCACR Rule 242.

## JURISDICTIONAL STATEMENT

The Court of Appeals' March 11, 2026 Order (and April 22, 2026 Order denying rehearing) is final as to the issues presented because Petitioners' notice of appeal was premature and never perfected under SCACR Rule 203(b). A premature notice of appeal "has no effect and does not divest the lower court of jurisdiction." *Hudson v. Hudson*, 290 S.C. 215, 349 S.E.2d 341 (1986). Because the Court of Appeals never acquired jurisdiction, all post-dismissal actions, including the restrictive "solely" limitation on remand and the contradictory footnote, are legal nullities under SCACR Rule 260, *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000), and *Limehouse v. Hulsey*, 404 S.C. 93, 744 S.E.2d 566 (2013).

Although the Court of Appeals lacked jurisdiction over the premature appeal, this Court retains independent jurisdiction under S.C. Const. art. V, § 5 and SCACR Rule 242(a) to review its orders. The Supreme Court's certiorari jurisdiction is not derivative of the Court of Appeals' jurisdiction. Rather, this Court exercises its supervisory authority to determine whether an intermediate appellate court exceeded its power by issuing post-dismissal directives after correctly concluding it lacked jurisdiction, and whether those actions created an irreconcilable procedural trap that denied Petitioners any effective forum to litigate non-waivable jurisdictional defects. *I'On, L.L.C. v. Town of Mt. Pleasant*, 338 S.C. 406, 526 S.E.2d 716 (2000).

The pending May 20, 2025 Motion for Reconsideration of the May 7, 2025 orders (including recusal denial) rendered the original June 9, 2025 notice of appeal premature under *Elam v. S.C.*

*Dep't of Transp.*, 361 S.C. 9, 602 S.E.2d 772 (2004), and *Hudson*. Far from diminishing the need for review, this prematurity underscores why this Court should grant certiorari and direct the circuit court to first adjudicate the pending August 8, 2025 Rule 60(b)(4) motion on cascading jurisdictional voids before any further proceedings. The contradictory nature of the March 11, 2026 Order (imposing a restrictive “solely” limitation) and the April 22, 2026 footnote (suggesting the Rule 60(b)(4) motion remains available) left Petitioners with no clear path to adjudicate non-waivable jurisdictional defects. This conflict is not cured by further contradictory language from a court without jurisdiction.

## **STANDARD FOR REVIEW AND WHY THIS PETITION SATISFIES**

### **SCACR RULE 242(b)**

Although a writ of certiorari is discretionary and “not a matter of right,” SCACR 242(b), this Petition presents multiple, independently sufficient grounds that squarely satisfy the “special and important reasons” standard. This Petition satisfies all five prongs of Rule 242(b), any one of which is independently sufficient to warrant the Court’s exercise of discretion:

**Rule 242(b)(1):** The Court of Appeals’ decision conflicts with controlling precedent from this Court and the Court of Appeals on jurisdictional nullity, premature appeals, and post-dismissal authority (*Hudson, Elam, Wachovia v. Player, Limehouse, Thomas & Howard, and Canal*).

**Rule 242(b)(2):** This case presents a novel question of first impression with statewide importance: whether an appellate court that correctly determines it lacks jurisdiction over a premature appeal retains authority to issue post-dismissal directives that bind the lower court.

**Rule 242(b)(3):** The issues affect the administration of justice and uniform application of law across South Carolina, including systemic deficiencies in the OWL/DCRP recording system

(acknowledged by this Court’s March 20, 2026 Order creating the Court Reporter Advisory Committee) and the mandatory sequencing of jurisdictional challenges.

**Rule 242(b)(4):** The Court of Appeals abused its discretion by ruling on motions before the Rule 240(e) return deadline, denying the right to reply under Rule 240(f), and imposing contradictory limitations that blocked adjudication of non-waivable jurisdictional defects.

**Rule 242(b)(5):** This Petition properly preserves substantial federal questions under the Due Process Clause of the Fourteenth Amendment, including the denial of a protected property interest in adjudicatory procedures and the right to meaningful review on an adequate record. Because this Petition satisfies every enumerated ground in SCACR 242(b), it presents the precise “character of reasons” for which this Court exercises its certiorari jurisdiction. The Court should grant the writ to resolve these fundamental issues of jurisdictional authority, due process, and statewide procedural uniformity.

When an appellate court lacking jurisdiction issues post-dismissal directives that bind the lower court, the resulting procedural trap is structural, not harmless. It denies litigants any effective forum to litigate non-waivable jurisdictional defects that render orders void *ab initio*. Prejudice is inherent in the denial of a meaningful opportunity to be heard on threshold jurisdictional issues before further proceedings on a potentially void foundation. See *Logan v. Zimmerman Brush Co.*, 455 U.S. 422 (1982); *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950).

### **QUESTIONS PRESENTED**

1. Whether the Court of Appeals’ March 11, 2026 Order and April 22, 2026 Order denying rehearing are legal nullities because Petitioners’ notice of appeal was premature and never perfected under SCACR Rule 203(b), such that the Court of Appeals never acquired jurisdiction over the appeal.

2. Whether an appellate court that correctly determines it lacks jurisdiction over a premature appeal under SCACR Rule 203(b) retains any authority to issue post-dismissal directives that purport to bind the lower court, including restrictive limitations on remand and contradictory footnotes on rehearing denial, a novel question of law of first impression with statewide importance.
3. Whether the Court of Appeals violated due process by creating an irreconcilable procedural trap that denied Petitioners any effective forum to litigate non-waivable jurisdictional defects originating from the October 17, 2019 ex parte pre-service Order of Reference, which rendered subsequent orders void or voidable.
4. Whether the Court of Appeals violated due process and fundamental jurisdictional principles by inverting the mandatory sequencing of threshold issues limiting remand solely to reconsideration of a Rule 59(e) motion and recusal while blocking adjudication of the pending Rule 60(b)(4) motion challenging cascading jurisdictional voids.
5. Whether the Court of Appeals mischaracterized Petitioners' request for reconstruction of a materially defective OWL record as "extraordinary relief," when reconstruction constitutes standard corrective relief when a state-created recording system produces an unusable record that prevents meaningful review.
6. Whether the Court of Appeals violated Petitioners' right to due process by creating a procedural trap, blocking adjudication of threshold jurisdictional defects, and denying meaningful review on a defective record, particularly as pro se litigants entitled to heightened procedural protections.

## STATEMENT OF THE CASE AND PROCEDURAL HISTORY

### A. The Appeal, Pending Motions, Court of Appeals' Orders, and Procedural Trap

Petitioners timely appealed the May 7, 2025 orders (notice received June 9, 2025) and filed motions seeking limited remand for reconstruction of the defective OWL record, adjudication of their pending August 8, 2025 Rule 60(b)(4) motion challenging cascading jurisdictional voids, and reconsideration of recusal. Petitioners also filed a timely May 20, 2025 Motion for Reconsideration of the May 7, 2025 orders and the Form-4 recusal denial, which remains pending in the circuit court.

Respondents filed a Return opposing January 12, 2026 motion but failed to file returns to the February 3, 2026 motion with a deadline on February 12, 2026 and the March 9, 2026 Amended Motion for Limited Remand. Under SCACR Rule 240(e), this failure may be deemed consent to the relief requested. The Court of Appeals overlooked the March 9, 2026 Amended Motion entirely and issued a final order on March 11, 2026 (two days after it was filed) and before the return deadline without addressing Respondents' failure to file returns.

The Court of Appeals abused its discretion in multiple respects. It ruled on pending motions before the return deadline in violation of Rule 240(e), denied Petitioners the right to reply under Rule 240(f), overlooked the Amended Motion for Limited Remand, and dismissed the appeal as premature under *Elam* and *Hudson* while imposing a severely restrictive remand limitation. The March 11, 2026 Order expressly limited any remand "solely" to a ruling on the May 20, 2025 Motion for Reconsideration and stated that the remand was "not for the purpose of settling the record, reconstructing the transcript, or new hearings." The Court characterized Petitioners' request for record reconstruction as "extraordinary relief" for which they had "failed to provide

this court with the factual circumstances necessary to justify the granting of such extraordinary relief.”

On rehearing, the Court added only a footnote stating that it “does not preclude the lower court from considering a Rule 60(b)(4), SCRCR, motion on remand.” This created an irreconcilable procedural trap: the circuit court is bound by the restrictive “solely” language under the mandate rule, while the footnote simultaneously suggests that the Rule 60(b)(4) motion remains available. Because Petitioners’ notice of appeal was premature and never perfected, the Court of Appeals never acquired jurisdiction. All post-dismissal actions, including the restrictive “solely” limitation and the contradictory footnote, are therefore void *ab initio* under SCACR Rule 260, *Hudson, Wachovia v. Player*, and *Limehouse*.

#### **B. The Defective OWL Digital Record**

The May 7, 2025 orders resulted from a hearing held on January 21, 2025, before the Honorable Marvin H. Dukes, III. At that hearing, the parties presented oral arguments on multiple motions, including the renewed motion to strike Petitioners’ jury demand, the motion for order of reference, and various motions to dismiss and for sanctions. Petitioners had timely requested a live court reporter when the motions were filed. Instead, the hearing was recorded exclusively on the court’s OWL (Online Wireless Link) digital audio system.

The resulting record is materially defective. The three transcripts produced from the OWL source audio contain twenty-two “inaudibles” across only fifty-four pages, with muffled and intermittent audio (every few seconds), echoes, and ambient pickup failures. There were no microphones at counsel tables or at the podium. Petitioners argued from their seated positions at counsel tables for over ninety minutes. Director of Operations Kevin Dehlinger (Legal Eagle)

provided an affidavit confirming that the source audio is of poor quality, often being muffled and intermittently skipping.

As a result, there is no reliable way to determine what arguments Petitioners advanced in support of their jury demand, whether the strike was supported by the record, or whether any purported waiver was knowing and voluntary.

This defective record independently violates due process and Petitioners' right to meaningful review on an adequate record under *Griffin v. Illinois*, 351 U.S. 12 (1956), and this Court's precedent governing record reconstruction. The Court of Appeals compounded this violation by characterizing Petitioners' request for reconstruction as "extraordinary relief" despite the fact that this Court had, only days earlier, created the Court Reporter Advisory Committee to address precisely these systemic deficiencies in the OWL/DCRP recording system. Reconstruction is not extraordinary relief. It is the required response when a state-created recording system produces a record incapable of supporting meaningful appellate or trial-court review.

### **C. Timeline of Proceedings from October 2019 through April 2026**

1. On October 11, 2019, Plaintiff filed Summons and Complaint.
2. On October 17, 2019, the Clerk of Court signed an ex parte Order of Reference referring the foreclosure action to the Master-in-Equity before any defendant had been served.
3. On October 22, 2019, service was effected. The October 17, 2019 Order of Reference was void *ab initio*.
4. November 20, 2019 - Petitioners filed a Motion to Vacate the Order of Reference and Motion for Mediation for Foreclosure Intervention (during void proceeding).
5. January 30, 2020 - Plaintiff filed a Motion to Strike Appellants' Jury Demand (during void proceeding).

6. September 29, 2020 - Master Marvin H. Dukes, III issued an order purporting to vacate the October 17, 2019 Order of Reference. This order was itself void because the Master's authority derived entirely from the original void order.
7. January 20, 2021 - Circuit Court entered an Order compelling mediation under threat of default.
8. April 20, 2021 - Circuit Court granted Plaintiff's Motion to Strike Appellants' Jury Demand.
9. August 12, 2021 - Circuit Court granted Appellants' Motion to Amend. The Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint was deemed filed. This became the operative pleading.
10. June 14, 2023 - Court of Appeals affirmed the April 20, 2021 Order striking Appellants' jury demand on a superseded pleading, and the affirmation subject to cascading void orders.
11. May 7, 2025 - Circuit Court (Hon. Marvin H. Dukes, III) entered two orders: (1) struck Appellants' jury trial demand and re-referred the case to the Master-in-Equity; and (2) denied Appellants' recusal motion via Form-4 order with no hearing, no transcript, and no findings.
12. May 20, 2025 - Petitioners timely filed a Rule 59(e) Motion for Reconsideration of the May 7, 2025 orders (including recusal denial).
13. June 9, 2025 - Petitioners filed their Notice of Appeal from the May 7, 2025 orders, the May 20, 2025 reconsideration motion was still pending.
14. August 8, 2025 - Appellants filed a Rule 60(b)(4) Motion challenging the cascading void orders originating from the October 17, 2019 ex parte Order of Reference.
15. January 12, 2026 - Appellants filed a Motion seeking a stay of the appeal and remand for settlement/reconstruction of the record (or new hearings) due to defective Online Wireless

Link ‘OWL’ transcripts, plus remand for ruling on the pending recusal reconsideration motion.

16. January 27, 2026 - Respondents filed a detailed Return (Opposition) to the January 12, 2026 motion.

17. February 3, 2026 - Appellants filed a Motion for Limited Remand (additional grounds: pending Rule 60(b)(4) motion alleging void orders). Respondents filed no Return.

18. March 9, 2026 - Appellants filed an Amended Motion for Limited Remand, incorporating the Rule 60(b)(4) motion, invoking SCACR Rule 240(e) “deemed consent,” and requesting joint consideration of threshold issues. Respondents filed no Return.

19. March 11, 2026 - The Court of Appeals issued its Order:

- a. Dismissed the appeal without prejudice as premature under *Elam* and *Hudson*.
- b. Remanded solely for ruling on the May 20, 2025 reconsideration motion.
- c. Explicitly stated: “This remand is not for the purpose of settling the record, reconstructing the transcript, or new hearings.”
- d. Characterized reconstruction as “extraordinary relief.” Denied Petitioners’ February 3, 2026 motion. (no return filed)
- e. Made no ruling on Appellants’ March 9, 2026 Amended Motion. (no return filed)

20. March 25, 2026 - Appellants filed their Petition for Rehearing of the March 11, 2026 Order.

The Petition argued that the Court overlooked Rule 240(e), created a procedural trap with the “solely” limitation, and failed to follow the required sequencing of threshold jurisdictional issues.

21. April 22, 2026 - The Court of Appeals denied rehearing. In the denial Order, the Court added a footnote stating: “This court does not preclude the lower court from considering a Rule

60(b)(4), SCRCF, motion on remand.” This footnote directly contradicts the restrictive “solely” language in the March 11, 2026 Order.

This timeline reveals a cascading series of procedural irregularities that, when combined with the Court of Appeals’ March 11, 2026 Order and April 22, 2026 footnote, created the irreconcilable procedural trap that warrants this Court’s review.

#### **D. The Underlying Dispute and May 7, 2025 Orders**

This is an interlocutory appeal arising from a mortgage foreclosure action pending in the Beaufort County Court of Common Pleas. On May 7, 2025, the circuit court (Hon. Marvin H. Dukes, III) entered two orders that perpetuated serious, uncured jurisdictional defects originating from an ex parte pre-service Order of Reference issued on October 17, 2019.

First, the circuit court struck Petitioners’ timely jury-trial demand and re-referred the case to the Master-in-Equity in violation of SCRCF Rule 53(b) and controlling precedent. This order violated Petitioners’ constitutional right to a jury trial on legal issues and compulsory counterclaims and was entered while the foundational jurisdictional defect from the 2019 pre-service Order of Reference remained unaddressed and uncured.

Second, the circuit court denied Petitioners’ recusal motion via a Form-4 order with no hearing, no transcript, and no findings or explanation. This denial occurred against the backdrop of the same uncured jurisdictional defects. Shortly thereafter, on August 8, 2025, Petitioners filed a Rule 60(b)(4) motion challenging the cascading void orders.

These May 7, 2025 orders were not issued on a clean procedural slate. They were entered while the original October 17, 2019 ex parte pre-service Order of Reference, which was void *ab initio* for lack of personal jurisdiction, had never been properly vacated. As a result, both orders rest on

a defective foundation and contribute to the cascading jurisdictional nullities that Petitioners have sought to challenge through their pending Rule 60(b)(4) motion.

### **E. The Foundational 2019 Jurisdictional Defect and Cascading Voids**

The foundational jurisdictional defect occurred on October 17, 2019, when the Clerk of Court signed an ex parte Order of Reference before any defendant had been served with the summons and complaint, service was not effected until October 22, 2019. This violated SCRCF Rule 3(a) and fundamental due process under *Mullane v. Central Hanover Bank & Trust Co.*, 339 U.S. 306 (1950). Until proper service, the court acquires no jurisdiction over defendants, and any pre-service substantive order is void *ab initio*. *South Carolina Dep't of Soc. Servs. v. Tran*, 418 S.C. 308, 792 S.E.2d 254 (Ct. App. 2016).

The October 17, 2019 Order of Reference purported to refer the foreclosure action to Master-in-Equity Marvin H. Dukes, III for final adjudication. No notice of the order or the proceedings was ever provided to Petitioners. As this Court held in *First Palmetto State Bank & Trust Co. v. Boyles*, 302 S.C. 136, 394 S.E.2d 313 (1990), an Order of Reference issued before defendants have had an opportunity to answer and demand a jury trial violates SCRCF 53(b) and improperly deprives parties of their right to a jury trial.

This foundational defect was never properly cured and cascaded through every subsequent order in the case. Petitioners preserved these defects as early as March 16, 2020 and filed their Rule 60(b)(4) motion on August 8, 2025, only three months after the May 7, 2025 orders. The defects were further compounded by violations of Supreme Court Administrative Orders governing foreclosure intervention stays and time standards for references.

### **First Cascading Path (Jury Strike Path):**

Plaintiff's Motion to Strike Defendants' Demand for Jury Trial was filed on January 30, 2020, squarely during the void proceeding. That motion was granted by the Circuit Court on April 20, 2021. The April 20, 2021 order was affirmed by the Court of Appeals in 2023. The May 7, 2025 Order then relied on the 2023 affirmance and the "law of the case" doctrine on a superseded pleading to again strike Petitioners' jury demand. Because the 2021 order and 2023 affirmance rest on the uncured void foundation and a superseded pleading, the 2025 jury strike is void or voidable.

### **Second Cascading Path (Re-Reference and Procedural Compulsion Path):**

The May 7, 2025 Order that struck Petitioners' jury demand and re-referred the case to the Master-in-Equity was entered while the foundational void Order of Reference had never been properly vacated. The Circuit Court re-referred the case to the same Master whose prior authority derived from a void order. This path is further infected by the January 20, 2021 Order, which imposed mediation obligations and default threats based on issues first raised in the November 20, 2019 Motion for Mediation for Foreclosure Intervention, a motion filed during the void proceeding.

### **The Master's September 29, 2020 Order Was Legally Meaningless**

During the void proceeding, Petitioners filed a Motion to Vacate the Order of Reference on November 20, 2019. On September 29, 2020, Master Dukes purported to vacate the Order of Reference. That order was itself void. A master whose authority derives entirely from a void order has no jurisdiction to cure the very defect that deprived him of power. *Thomas & Howard Co. v. TW Graham & Co.*, 318 S.C. 286, 457 S.E.2d 340 (1995); *Wachovia Bank of S.C., N.A. v. Player*, 341 S.C. 424, 535 S.E.2d 128 (2000). The Master lacked authority to return the case to the Circuit Court. The original void Order of Reference was therefore never properly vacated by

a court with jurisdiction. Subsequent rulings by the Circuit Court on motions that originated during the void period, including the April 20, 2021 jury strike order and the January 20, 2021 Order compelling mediation under threat of default, are void or voidable because they were entered while the foundational jurisdictional defect remained unaddressed and uncured.

### **The Second Amended Pleading and Law of the Case**

These foundational jurisdictional defects were extensively pleaded in Petitioners' Second Amended Answer, Affirmative Defenses, Counterclaims, and Third-Party Complaint. On August 12, 2021, Plaintiff and Third-Party Defendants' counsel stated on the record that they had no objection to the Motion to Amend the pleadings. Judge Robert Bonds granted the motion from the bench and later issued a written order on August 26, 2021, deeming the pleading filed as of August 12, 2021. In the same order, Judge Bonds denied the Plaintiff's Motion to Dismiss the counterclaims and third-party claims, denied Plaintiff's Motion for Summary Judgment, and permitted discovery to proceed.

Although this operative pleading (Second Amended) was filed after the April 20, 2021 jury strike order, it was not the pleading before the Court of Appeals at the time of its June 14, 2023 affirmance. The 2023 appeal was taken from earlier pleadings. Accordingly, the law of the case doctrine cannot properly bar adjudication of the full scope of jurisdictional void allegations set forth in the operative Second Amended Pleading. Despite these claims having been pending for nearly five years, they have never been adjudicated on the merits.

The case currently stands in a procedurally and jurisdictionally defective posture. The original void Order of Reference was never properly vacated. The Master's September 29, 2020 order was legally meaningless. All subsequent orders that relied on or perpetuated the uncured foundational defect, including the January 20, 2021 Order compelling mediation, the April 20,

2021 jury strike order, the June 14, 2023 Court of Appeals affirmance, and the May 7, 2025 re-reference and jury strike, rest on this void foundation and are void or voidable.

These cascading voids provide an independent and compelling basis for certiorari. Due process and jurisdictional priority require that non-waivable defects rendering orders null *ab initio* be resolved first. The Circuit Court, not the Master, possesses both the authority and the duty to correct this foundational defect. This Court should grant the writ and instruct the circuit court to adjudicate Petitioners' pending August 8, 2025 Rule 60(b)(4) motion on the merits before any further proceedings.

## **ARGUMENT**

### **I. The Court of Appeals' Orders Are Legal Nullities Because the Court Never Acquired Jurisdiction Over the Premature Appeal**

The Court of Appeals correctly dismissed the appeal as premature under *Elam* and *Hudson* but then exceeded its authority by issuing post-dismissal directives that purport to bind the circuit court. Specifically, the March 11, 2026 Order imposed a restrictive "solely" limitation on remand and prohibited reconstruction of the record or new hearings. On rehearing, the Court added only a footnote stating that it "does not preclude the lower court from considering a Rule 60(b)(4) motion on remand." This created an irreconcilable conflict.

Because Petitioners' notice of appeal was premature and never perfected under SCACR Rule 203(b), the Court of Appeals never acquired jurisdiction over the appeal. A premature notice of appeal "has no effect and does not divest the lower court of jurisdiction." *Hudson*. Under *Wachovia Bank of S.C., N.A.* and *Thomas & Howard*, orders entered without jurisdiction are absolute nullities that may be attacked at any time.

Once the Court of Appeals correctly determined that it lacked jurisdiction, it had no remaining authority to issue any post-dismissal directives that purport to limit the circuit court. See *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999). All post-dismissal actions, including the restrictive “solely” limitation and the contradictory footnote, are therefore legal nullities under SCACR Rule 260 and have no binding or preclusive effect on the circuit court.

The contradictory April 22, 2026 footnote does not cure this nullity. A footnote from a court without jurisdiction cannot override the mandate rule or the “solely” language in the March 11, 2026 Order. A court that lacks jurisdiction cannot confer authority upon itself through a footnote, nor can it create binding limitations on remand after correctly finding it never acquired jurisdiction.

## **II. The Decision Presents a Novel Question of Paramount Statewide Importance Regarding Post-Dissmissal Authority After Prematurity Dissmissal**

This case presents a novel question of law of first impression that has not been squarely addressed by this Court or the Court of Appeals: When an appellate court correctly determines that it lacks jurisdiction over a premature appeal under SCACR Rule 203(b), does it retain any authority to issue post-dismissal directives that purport to bind the lower court, such as imposing a restrictive “solely” limitation on remand or adding a contradictory footnote in an order denying rehearing?

While South Carolina appellate courts routinely dismiss premature appeals under *Elam* and *Hudson*, the precise scope of any post-dismissal remedial or limiting language an appellate court may issue after correctly finding it lacks jurisdiction has never been addressed. The Court of Appeals’ approach in this case, correctly dismissing the appeal as premature but then issuing

directives that purport to limit the circuit court's consideration of Petitioners' pending motions, directly raises this important unresolved issue.

This approach conflicts with controlling precedent holding that a premature notice of appeal "has no effect and does not divest the lower court of jurisdiction." *Hudson*. Once an appellate court properly concludes it lacks jurisdiction, it possesses no remaining authority to deny pending motions for limited remand, impose restrictive limitations on the scope of proceedings, or issue contradictory directives. All such post-dismissal actions are legal nullities under SCACR Rule 260, *Wachovia Bank of S.C., N.A.* and *Thomas & Howard Co.*. See also *Mears v. Mears*, 287 S.C. 168, 337 S.E.2d 206 (1985); *Canal Ins. Co. v. Caldwell*, 338 S.C. 1, 524 S.E.2d 416 (Ct. App. 1999).

No South Carolina appellate decision has ever authorized, or even analyzed, the imposition of binding post-dismissal limitations after a proper finding that the appellate court lacked jurisdiction over a premature appeal. This is therefore a true question of first impression with significant statewide importance. The resolution of this issue will affect every civil case in South Carolina that is dismissed as premature under Rule 203(b) and will provide clear, uniform guidance to lower courts and litigants regarding the limits of appellate authority once jurisdiction has been found absent. This Court should grant certiorari to resolve this fundamental and recurring question.

### **III. The Court of Appeals Created an Irreconcilable Procedural Trap Violating Due Process**

The Court of Appeals violated the Due Process Clause of the Fourteenth Amendment by creating an irreconcilable procedural trap that effectively extinguished Petitioners' protected property interest in the use of adjudicatory procedures. In *Logan*, the United States Supreme Court held

that a litigant's right to invoke established adjudicatory procedures constitutes a protected property interest under the Due Process Clause. Here, the Court of Appeals correctly dismissed the appeal as premature but then imposed a restrictive "solely" limitation on remand while simultaneously suggesting in a footnote that Petitioners could still pursue their pending Rule 60(b)(4) motion. This contradictory directive left Petitioners with no clear, effective forum in which to litigate non-waivable jurisdictional defects that render subsequent orders void *ab initio*. The resulting irreconcilable conflict denied Petitioners any meaningful opportunity to be heard on their non-waivable jurisdictional defects, in violation of the Due Process Clause of the Fourteenth Amendment and the principles articulated in *Mullane*. This trap was compounded by multiple procedural violations. The Court ruled on pending motions before the return deadline in violation of SCACR Rule 240(e), denied Petitioners the right to reply under Rule 240(f), and overlooked the March 9, 2026 Amended Motion for Limited Remand. These actions disproportionately burdened Petitioners as pro se litigants and violated the heightened procedural protections to which unrepresented litigants are entitled under *Hughes v. Rowe*, 449 U.S. 5 (1980), and *Haines v. Kerner*, 404 U.S. 519 (1972). By manufacturing an irreconcilable conflict that effectively extinguished Petitioners' ability to obtain timely adjudication of their Rule 60(b)(4) motion challenging cascading jurisdictional voids, the Court of Appeals destroyed this protected property interest without due process, in direct violation of the Due Process Clause of the Fourteenth Amendment.

#### **IV. The Court of Appeals Violated Mandatory Constitutional Sequencing of Threshold Issues**

Due process and fundamental jurisdictional principles require that threshold issues be resolved in a specific order. When a case involves cascading jurisdictional voids that render subsequent

orders null *ab initio*, those defects must be adjudicated first, before any other proceedings. The Court of Appeals violated this mandatory sequencing by limiting remand solely to reconsideration of the Rule 59(e) motion and recusal while blocking adjudication of the pending Rule 60(b)(4) motion that directly attacks the foundational jurisdictional defects.

**Proper sequencing requires:**

- (a) First, adjudication of the pending August 8, 2025 Rule 60(b)(4) motion to vacate the cascading void orders originating with the October 17, 2019 pre-service Order of Reference;
- (b) Second, if any proceedings survive, an evidentiary hearing on the defective OWL record with opportunity for reconstruction; and
- (c) Only thereafter, and on a corrected, non-void foundation, reconsideration of recusal and the pending May 20, 2025 reconsideration motion, with reinstatement of Petitioners' timely jury-trial demand.

The Court of Appeals inverted this order. By restricting remand to reconsideration of the Rule 59(e) motion and recusal while simultaneously creating a procedural trap that blocked the Rule 60(b)(4) motion, the Court prevented adjudication of non-waivable jurisdictional defects that render subsequent orders void. This inversion violates due process.

**V. The Cascading Jurisdictional Voids Require Immediate Adjudication of the Rule**

**60(b)(4) Motion as a Threshold Matter**

The October 17, 2019 ex parte pre-service Order of Reference was entered before any defendant had been served, in violation of SCRCRCP Rule 3(a) and fundamental due process under *Mullane v. Central Hanover Bank & Trust Co.*. Because it was void *ab initio*, it never validly transferred jurisdiction to the Master-in-Equity. The Master's subsequent September 29, 2020 order purporting to vacate the reference was itself void.

This uncured foundational defect created two distinct cascading paths that independently render subsequent orders void or voidable. Because these cascading jurisdictional voids remain uncured, the pending August 8, 2025 Rule 60(b)(4) motion to vacate them must be adjudicated as a threshold matter before any further proceedings.

The Court of Appeals' attempt to restrict the scope of remand while creating an irreconcilable procedural trap regarding the Rule 60(b)(4) motion only compounds the due process violation. These cascading voids present fundamental questions of jurisdictional nullity, mandatory sequencing, and the limits of post-dismissal authority issues that affect every civil litigant in South Carolina and warrant this Court's immediate review and corrective guidance. The October 17, 2019 pre-service Order of Reference violated SCRCRCP Rules 3(a), 4, and 5(a), *Mullane*, and due process. It also violated Administrative Order 2011-05-02-01 (foreclosure intervention stay). The 2025 re-reference further violated Administrative Order 1985-06-21-01 (time standards). These foundational defects cascaded through every subsequent order.

#### **VI. The Court of Appeals Mischaracterized Record Reconstruction as Extraordinary Relief and Failed to Afford Heightened Protections to Pro Se Litigants**

The Court of Appeals fundamentally misapprehended controlling precedent by characterizing Petitioners' request for record reconstruction as "extraordinary relief." Twenty-two "inaudibles," including intermittent audio dropouts every few seconds, in a critical 54-page transcript from the January 21, 2025 hearing rendered the record incapable of meaningful review. This defect was compounded by systemic failures in the OWL recording system, which this Court officially recognized when it created the Court Reporter Advisory Committee on March 20, 2026. Reconstruction (or new hearings) is not "extraordinary" relief. It is standard corrective relief when a state-created recording system produces a materially defective record. This

independently violates Petitioners' right to meaningful appellate and trial-court review on an adequate record under *Griffin v. Illinois*, 351 U.S. 12 (1956).

The Court of Appeals compounded these errors by failing to afford Petitioners the heightened procedural protections owed to pro se litigants. Pro se pleadings "however inartfully pleaded" must be held "to less stringent standards than formal pleadings drafted by lawyers." *Hughes v. Rowe*, 449 U.S. 5 (1980) (quoting *Haines v. Kerner*, 404 U.S. 519 (1972)). Rather than applying these principles, the Court ruled on pending motions before the return deadline in violation of SCACR Rule 240(e), denied Petitioners the right to reply under Rule 240(f), overlooked their Amended Motion for Limited Remand, and imposed a restrictive "solely" limitation on remand that exploited their lack of legal training. These actions not only violated basic procedural fairness but also made it materially more difficult for unrepresented litigants to obtain reconstruction of a defective record or adjudication of threshold jurisdictional defects. By treating Petitioners' reconstruction request as "extraordinary" while simultaneously creating procedural obstacles that disproportionately burdened their pro se status, the Court of Appeals violated both the letter and spirit of the heightened protections due to unrepresented litigants under the Due Process Clause.

### **CONCLUSION AND PRAYER**

This Petition presents six compelling questions that satisfy multiple grounds for certiorari under SCACR Rule 242(b). Although the Court of Appeals correctly dismissed the premature appeal, it exceeded its authority by issuing post-dismissal directives that are void *ab initio*. These directives created an irreconcilable procedural trap that denied Petitioners any effective forum to litigate non-waivable jurisdictional defects originating from the October 17, 2019 ex parte pre-

service Order of Reference, defects that cascaded through subsequent orders, including the improper striking of Petitioners' jury-trial demand.

The Court further violated due process by inverting the mandatory sequencing of threshold issues, mischaracterizing record reconstruction as "extraordinary relief," and failing to afford pro se litigants heightened procedural protections. These errors present novel questions of statewide importance concerning the limits of appellate authority after prematurity dismissal and the proper adjudication of cascading jurisdictional voids.


Petitioners respectfully pray that this Court grant the writ of certiorari, declare the Court of Appeals' post-dismissal orders legal nullities to the extent they restrict the circuit court, and direct immediate adjudication of the pending Rule 60(b)(4) motion as a threshold matter before any further proceedings.


For these reasons, Petitioners respectfully request that this Honorable Court:

- a. Grant the writ of certiorari;
- b. Declare that the Court of Appeals never acquired jurisdiction over the premature appeal and that its March 11, 2026 Order and April 22, 2026 Order denying rehearing are void *ab initio* to the extent they purport to limit the circuit court;
- c. Instruct the circuit court to follow the mandatory sequencing required by due process and jurisdictional priority.

Grant such other and further relief as this Court deems just and proper.

Respectfully submitted this 20th day of May, 2026.

  
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