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May 29 2026
SC Court of Appeals

STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

MARVIN DONALD PRIOLEAU,
Plaintiff/Appellant,

v.

AMERICAN HONDA FINANCE CORPORATION
d/b/a Honda Financial Services,
Defendant/Respondent.

Appellate Case No.: 2026-001124
From Charleston County Court of Common Pleas
Case No. 2025-CP-10-03283
The Honorable T.J. Rode, Presiding

PETITION FOR REHEARING

Plaintiff/Appellant Marvin Donald Prioleau respectfully petitions this Court for rehearing of its Order of Dismissal entered May 14, 2026, and in the alternative requests certification to the South Carolina Supreme Court pursuant to Rule 204(b), SCACR. Petitioner does not ask this Court to overrule *Toler's Cove* or *Heffner*. Petitioner asks this Court to certify three unresolved questions of South Carolina law to the Supreme Court, using the rehearing vehicle to vacate the dismissal and restore the appeal as the procedural predicate for certification. The dismissal was entered sua sponte; Honda filed no motion to dismiss and neither party had briefed whether *Heffner*, *Toler's Cove*, or any jurisdictional bar applied to this specific order, leaving Petitioner with no prior opportunity to address those grounds. Pursuant to Rule 221, SCACR, Appellant identifies the specific points of law this Court overlooked or misapprehended.

INTRODUCTION

South Carolina's general rule is clear: orders compelling arbitration and staying litigation are not immediately appealable. *Toler's Cove Homeowners Ass'n v. Trident Construction Co.*, 355 S.C. 605, 609, 586 S.E.2d 581, 583 (2003). For routine arbitration compel orders, this rule prevents piecemeal appellate disruption of the arbitral process. Petitioner does not challenge the rule or its underlying rationale.

South Carolina also holds that § 15-48-200(a) displaces § 14-3-330's general interlocutory-appeal provision for arbitration orders. *Heffner v. Destiny, Inc.*, 321 S.C. 536, 537, 471 S.E.2d 135, 136 (1995). For orders the SCUAA's appellate track can reach, this displacement rule serves the channeling purpose of that specific regime. Petitioner does not challenge that holding either.

This petition presents the narrow circumstance in which *Heffner*'s displacement rule has no predicate to operate on, because the SCUAA's own post-award provisions cannot reach the error at issue.

Section 15-48-130(a)(5) permits post-award vacatur only where:

> "there was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection."

That condition is extinguished the moment the February 27 Order issued: the compel order is itself an adverse determination under § 15-48-20, even though no formation inquiry was conducted. The third clause, requiring that the party not participate without objection, is satisfied here; Petitioner contested formation throughout, including by sworn affidavit and banking records filed before the February 27 Order. Section 15-48-130(a)(3) reaches only whether the *arbitrators* exceeded their delegated powers; it does not reach whether the *trial court* failed to perform the § 15-48-20(a) inquiry that is the condition precedent to any valid delegation. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013).

No SCUAA channel therefore exists for this error. *Heffner* displaces § 14-3-330 in favor of the SCUAA regime, but only when that regime provides an avenue for the claim at issue. When the SCUAA track categorically cannot reach the specific pre-referral court failure presented here, *Heffner*'s displacement rule has no predicate, and § 14-3-330(2)(a)'s substantial-right track applies. Its requirements are satisfied: the order bypassed the mandatory § 15-48-20(a) formation inquiry on a genuinely contested record, permanently eliminating a statutory right no post-award proceeding can restore.

The record confirms this is not a routine compel order. The February 27 Order compelled arbitration based on "at least one of the two Subject Contracts"; the court's own language concedes it never determined which contract governs. Lease 1 was declared legally null by Honda's own signed instrument, Form LAWCA-745EX. Lease 2 is the contract whose formation Petitioner contests with sworn banking records. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 149-52 (2024), requires a court to resolve which of two contracts governs before compelling arbitration. The Order did not.

SUMMARY OF ARGUMENT

Three facts distinguish this from a routine compel order: (1) Honda's own signed rescission instrument, Form LAWCA-745EX, declared Lease 1 legally null before the arbitration motion was filed; (2) the court compelled arbitration "based on at least one of the two Subject Contracts," conceding it never identified the controlling instrument as *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024) requires; and (3) the court skipped the mandatory § 15-48-20(a) formation inquiry entirely on a record supported by sworn affidavit and banking records, then denied a six-error Rule 59(e) motion in one sentence on SCRCP Form 4. The petition presents three unresolved questions the Supreme Court should answer: whether *Heffner*'s displacement rule reaches this specific error; whether a pending jury demand on the entire action and the FAA § 4 formation-jury right may be permanently extinguished without the § 15-48-20(a) inquiry; and whether *Morgan v. Sundance, Inc.* limits that result. This Court is respectfully asked to certify those questions, using rehearing as the procedural vehicle to vacate the dismissal and restore the appeal.

PROCEDURAL HISTORY

Petitioner filed the original Summons and Complaint on June 6, 2025, with a timely jury demand on all claims. On July 16, 2025, Petitioner filed a Conditional Response and Limited Objection to Defendant's Motion to Compel, placing formation in dispute and invoking 9 U.S.C. § 4 by name. On July 17, 2025, Petitioner filed a First Amended Complaint, again with a jury demand on all claims. On August 15, 2025, Petitioner filed a Consolidated Reply in Opposition to Defendant's Motion to Compel Arbitration and the Affidavit of Marvin Donald Prioleau in Support of Authentication, establishing that $7,300 of $12,300 in claimed consideration has no corresponding transaction in Petitioner's banking records. The court heard argument on October 10, 2025. On February 27, 2026, the court entered its Order Granting Defendant's Motion to Compel Arbitration and Case Stay. On March 9, 2026, Petitioner filed a Motion to Alter and/or Amend Order pursuant to

Rule 59(e), SCRCP, identifying six specific structural errors including the § 15-48-20(a) failure, the pending jury demands on the entire action and on formation under FAA § 4, the LAWCA-745EX rescission, and the *Coinbase* contract-identification failure. On April 3, 2026, the court entered an Order Denying the Rule 59(e) motion on SCRCP Form 4, with one sentence of reasoning.

GROUND I: THE ORDER AFFECTS A SUBSTANTIAL RIGHT UNDER § 14-3-330(2)(a): *HEFFNER*'S DISPLACEMENT RULE DOES NOT REACH THE MANDATORY FORMATION DUTY § 15-48-20(a) IMPOSES ON THE TRIAL COURT

The threshold question is not whether *Heffner* correctly held that § 15-48-200(a) displaces § 14-3-330 for arbitration orders generally; it does, and Petitioner accepts that holding. The threshold question is whether *Heffner*'s displacement rule reaches an order that skipped the mandatory § 15-48-20(a) formation inquiry when no SCUAA post-award provision can reach that pre-referral court failure. It does not. As the following analysis demonstrates, the SCUAA's own text forecloses the only post-award channel designed for no-agreement claims, leaving no SCUAA avenue for *Heffner* to protect and no bar to § 14-3-330(2)(a) review.

A. § 15-48-130(a)(5) Is Foreclosed By Its Own Terms: No SCUAA Channel Exists For This Error.

Heffner's logic is that when a specific statute addresses the same subject as a general one, the specific statute controls. That logic has a predicate: the specific statute must actually provide an appellate avenue for the claim at issue. The SCUAA does not provide that avenue here.

Section 15-48-130(a)(3) authorizes post-award vacatur where "the arbitrators exceeded their powers." That provision reaches the *arbitrator's* conduct after referral; it does not reach the *trial court's* pre-referral failure to conduct the mandatory § 15-48-20(a) inquiry. A trial court that compels arbitration without determining whether an agreement to arbitrate was formed has not delegated any power to the arbitrator; it has failed to perform the statutory inquiry that is the condition precedent to any valid delegation. The arbitrator's subsequent conduct cannot retroactively cure the trial court's failure. *Oxford Health Plans LLC v. Sutter*, 569 U.S. 564, 568 (2013) (§ 10(a)(4) review reaches only whether the arbitrator acted within the scope of authority granted, not whether the court correctly determined that authority existed).

Section 15-48-130(a)(5) is the SCUAA's post-award provision most directly applicable to a no-agreement claim. It permits vacatur where:

> "there was no arbitration agreement and the issue was not adversely determined in proceedings under § 15-48-20 and the party did not participate in the arbitration hearing without raising the objection."

The third clause is satisfied here: Petitioner contested formation throughout, including by sworn affidavit and banking records filed before the February 27 Order. This provision is nonetheless foreclosed by its own text. Once the February 27 Order issued, the second condition is gone: the compel order is an adverse determination under § 15-48-20, even though no formation inquiry was conducted. The statute does not require that the adverse determination have been correctly made; only that it occurred. The order's silence on formation does not preserve § 15-48-130(a)(5); it forecloses it.

Honda faces a dilemma from which § 15-48-130(a)(5) provides no exit. If the February 27 Order is treated as an adverse determination under § 15-48-20, notwithstanding that the trial court conducted no formation inquiry, then § 15-48-130(a)(5) is foreclosed by its own terms, as shown above. If the order is *not* so treated, Petitioner is nonetheless compelled through a complete arbitration before receiving the pre-arbitration judicial determination § 15-48-20(a) specifically requires. Either way, § 15-48-130(a)(5) cannot restore what § 15-48-20(a) guarantees: a judicial formation determination *before* arbitration begins, not belated post-award relief after the parties have litigated before an arbitrator whose authority was the very question at issue.

No SCUAA post-award channel therefore exists for the specific error at issue: the trial court's pre-referral § 15-48-20(a) failure. This is a structural feature of the distinction the SCUAA draws between the trial court's role, determining formation before referral, and the arbitrator's role, conducting the arbitration after referral. No post-award court can retroactively conduct the formation hearing § 15-48-20(a) required, restore the judicial forum the legislature mandated for that inquiry, or unwind the prejudice of having the formation question decided by an arbitrator whose authority was the very question at issue.

B. *Heffner*'s Displacement Rule Has No Predicate When No SCUAA Channel Exists.

Heffner held that § 15-48-200(a) displaces § 14-3-330 because the legislature created a specific appellate regime for arbitration orders that supersedes the general interlocutory-appeal statute. *Heffner*, 321 S.C. at 537, 471 S.E.2d at 136. That holding makes sense when the SCUAA channel *can reach* what the appellant seeks to challenge. It has no application when the SCUAA track categorically cannot reach the error; not because the

appellant failed to use it, but because the post-award provisions do not address pre-referral trial court failures by their own terms.

The specific error here, the trial court's failure to conduct the mandatory § 15-48-20(a) inquiry, falls outside both SCUAA post-award channels: § 15-48-130(a)(3) by structural necessity (it reaches arbitrators, not trial courts) and § 15-48-130(a)(5) by textual operation (the compel order itself forecloses it). When no specific SCUAA channel exists for the claim at issue, the premise of *Heffner*'s displacement falls away. A rule that displaces one statute in favor of another has no application when the favored statute provides no avenue for the specific claim.

This reading does not narrow *Heffner*; it applies *Heffner*'s own logic correctly. The specific-over-general principle that animates *Heffner* operates only when there is a specific provision to apply. Where the SCUAA is silent as to pre-referral trial court failures, § 14-3-330(2)(a) remains the governing provision. By applying *Heffner* to block § 14-3-330(2)(a) review of the trial court's § 15-48-20(a) failure, this Court has, inadvertently, transformed *Heffner*'s channeling rule into an absolute immunity for the precise court conduct § 15-48-20(a) was enacted to prevent.

Additionally, if § 15-48-200(a) is read to permanently foreclose all SC review of the trial court's § 15-48-20(a) failure, that reading creates serious tension with South Carolina's open courts provision, S.C. Const. Art. I, § 9 ("every person shall have speedy remedy therein for wrongs sustained"). Reading § 15-48-200(a) and § 14-3-330(2)(a) as operating in different registers, the former governing standard arbitration dispositions and the latter reaching the exceptional case where the SCUAA provides no channel for a pre-referral mandatory duty, avoids that constitutional question and should be preferred. *Joytime Distribs. & Amusement Co. v. State*, 338 S.C. 634, 528 S.E.2d 647 (1999).

C. The Order Affects A Substantial Right Under § 14-3-330(2)(a) And Effectively Determines The Action.

With no SCUAA channel available, § 14-3-330(2)(a) applies. Both of its requirements are satisfied.

Substantial right. Section 15-48-20(a) creates a specific, mandatory statutory right: when a party genuinely contests the formation of an arbitration agreement, the court **shall** proceed summarily to the determination of that issue. This right is assigned by the legislature to the judicial branch rather than to an arbitrator, because the arbitrator's authority is derived from the very agreement whose formation is in dispute. Delegating formation to the arbitrator is structurally circular: it prejudges the outcome of the threshold inquiry by assuming what must first be proved. *Coinbase, Inc. v. Suski*, 602 U.S.

143, 149-52 (2024). South Carolina courts have consistently enforced § 15-48-20(a)'s mandatory formation-inquiry requirement. *Zabinski v. Bright Acres Assocs.*, 346 S.C. 580, 553 S.E.2d 110 (2001); *Simpson v. MSA of Myrtle Beach, Inc.*, 373 S.C. 14, 26, 644 S.E.2d 663, 669 (2007).

The order also affected two independently substantial jury rights, both extinguished by a single order. First, Petitioner demanded a jury trial on the entire action. Petitioner filed timely Rule 38 demands for jury trial on all claims in both the original Complaint (June 6, 2025) and the First Amended Complaint (July 17, 2025), months before Honda's arbitration motion was filed. Those demands placed the entire mode of trial for this action squarely in the judicial forum. The February 27 Order displaced that jury right on the whole case without any formation inquiry, without addressing the demands, and without any finding that Petitioner had waived the right. South Carolina holds that "[o]rders affecting the mode of trial affect substantial rights under § 14-3-330(2) and must, therefore, be appealed immediately." *Lester v. Dawson*, 327 S.C. 263, 491 S.E.2d 240 (1997) (citing *Foggie v. CSX Transp.*, 313 S.C. 98, 431 S.E.2d 587 (1993)). An order that compels arbitration over a pending jury demand on the entire action is an order affecting the mode of trial for that action, the precise category *Lester* and *Foggie* hold requires immediate appeal.

Second, and independently, Petitioner had a specific federal statutory right to a jury trial on the formation question itself. FAA § 4 provides:

> "If the making of the arbitration agreement or the failure, neglect, or refusal to perform the same be in issue, the court **shall** proceed summarily to the trial thereof."

That statute further provides that "the party alleged to be in default may…demand a jury trial of such issue." The Rule 38 demands Petitioner filed on the entire case encompass this right; they were filed before any arbitration issue arose and were never withdrawn. FAA § 4's explicit jury-trial guarantee on formation is a federal statutory right that the Order extinguished without acknowledgment. The February 27 Order conducted no formation hearing, did not address either the case-wide jury demand or the specific formation jury right, and made no determination of Petitioner's entitlement to either. The SCUAA provides no mechanism for challenging the denial of a jury demand on the whole case or on formation specifically, leaving no SCUAA channel for *Heffner* to protect on this ground.

The anticipated response — that a compel order implicitly subsumes a pending jury demand because the arbitration clause itself is a contractual waiver of the jury right — is unavailable here. That doctrine presupposes a valid, formed contract containing the

waiver. When formation of the purported contract is the contested threshold question, no inference of jury waiver is available: the waiver cannot be derived from a contract whose existence must first be proved. Applying jury-waiver doctrine before conducting the § 15-48-20(a) inquiry assumes the answer to the threshold question *Howsam* and *First Options* reserve exclusively for courts. The arbitration clause cannot waive the jury right on formation if the jury right on formation is precisely what § 4 guarantees to determine whether the clause exists.

Effectively determines the action. The February 27 Order compels arbitration and stays the circuit court action. This Court dismissed the appeal. No South Carolina court is actively hearing this matter. When arbitration concludes, the only remaining judicial review is under §§ 15-48-120 through 15-48-150; narrow review that asks whether the arbitrator exceeded delegated powers, not whether the trial court correctly performed its § 15-48-20(a) obligation before referring the dispute. No post-award court can retroactively conduct the formation hearing § 15-48-20(a) required or restore the judicial forum the legislature mandated for that inquiry. *See Wachovia Bank, N.A. v. Blackburn*, 407 S.C. 321, 329, 755 S.E.2d 437, 441 (2014) (courts look to substance and practical effect of orders). *Smith v. Spizzirri*, 601 U.S. 472 (2024), confirms that a stay is the proper FAA disposition but does not address state-law appealability under § 14-3-330(2)(a) on a contested-formation record. The action has been effectively determined by the permanent elimination of any forum capable of conducting the mandatory pre-referral statutory process. *See Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 773 S.E.2d 144 (2015) (§ 14-3-330(2)(a) applied where exceptional bifurcation order went "far beyond ordinary bifurcation," permanently conditioning a party's access to a class of defendants).

D. The Formation Dispute Is Genuine And The Violation Is On The Face Of The Order.

Petitioner contested formation below with record evidence: a sworn affidavit and banking records establishing that $7,300 of $12,300 in claimed consideration has no corresponding transaction in Petitioner's account records. This is not a conclusory denial. It is an evidence-supported challenge to the factual predicate of the alleged agreement, precisely the kind of genuine contest that triggers the court's mandatory duty under § 15-48-20(a). *Zabinski*, 346 S.C. 580, 553 S.E.2d 110; *Simpson*, 373 S.C. at 26, 644 S.E.2d at 669. The court may not delegate that duty to the arbitrator. *Howsam v. Dean Witter Reynolds, Inc.*, 537 U.S. 79, 84 (2002) (formation is a "question of arbitrability" reserved for courts); *First Options of Chicago, Inc. v. Kaplan*, 514 U.S. 938, 944 (1995) (courts may not presume an arbitrator has authority over a dispute about whether the parties agreed to arbitrate at all); *Buckeye Check Cashing, Inc. v. Cardegna*, 546 U.S. 440, 444-45 (2006)

(distinguishing formation challenges, reserved for courts, from validity challenges to a formed contract, which the severability doctrine sends to the arbitrator). The February 27 Order made no formation determination. It referred the question, along with the merits, to the arbitrator.

Additionally, two lease agreements exist in this record. The Order compelled arbitration based on "at least one of the two Subject Contracts," conceding that the Circuit Court never determined which contract governs. This concession is not harmless. Lease 1 (February 3, 2024) was rescinded by Honda's own signed instrument, Form LAWCA-745EX, which expressly declares that lease "has been canceled (rescinded) and no longer has any legal effect." Lease 2 (March 19, 2024) is the lease whose formation Petitioner contests with the $7,300 evidentiary record. A trial court cannot compel arbitration based on "at least one of" an instrument Honda's agent declared legally null and a contract whose formation is genuinely disputed. The Supreme Court held in *Coinbase, Inc. v. Suski*, 602 U.S. 143, 149-52 (2024), that when two contracts exist and the parties dispute which governs, the court must resolve that threshold question before compelling arbitration: "Before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Id.* at 149 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019)). The Order violates § 15-48-20(a) and *Coinbase* independently and simultaneously.

This Court overlooked that the February 27, 2026 Order is not the ordinary compel-and-stay. It is an order that, on a genuinely contested formation record, skipped the mandatory § 15-48-20(a) gateway, displaced Petitioner's statutory and federal right to a judicial and jury formation determination, and did so in a manner that no post-award proceeding can remedy.

GROUND II: THE FEBRUARY 27 ORDER IS A VOIDABLE REVERSIBLE ERROR OF LAW: THE TRIAL COURT COMPELLED ARBITRATION WITHOUT CONDUCTING THE FORMATION INQUIRY § 15-48-20(a) MANDATES

The record presents two independent, concrete violations of the mandatory § 15-48-20(a) gateway. First, the February 27 Order compelled arbitration based on "at least one of the two Subject Contracts," a concession that the Circuit Court never identified which contract governs. That threshold determination was required before any compel order could issue. Lease 1 (February 3, 2024) was rescinded by Honda's own signed instrument, Form LAWCA-745EX, which expressly declares that lease "has been canceled (rescinded) and no longer has any legal effect." A nullified instrument cannot

anchor an arbitration clause. Lease 2 (March 19, 2024) is the contract whose formation Petitioner contests with a sworn affidavit and banking records establishing that $7,300 of $12,300 in claimed consideration, more than half, has no corresponding transaction in Petitioner's account records. *Coinbase, Inc. v. Suski*, 602 U.S. 143, 149-52 (2024), holds that when two contracts exist and the parties dispute which governs, a court must resolve that threshold question before compelling arbitration: "Before referring a dispute to an arbitrator, the court determines whether a valid arbitration agreement exists." *Id.* at 149 (quoting *Henry Schein, Inc. v. Archer & White Sales, Inc.*, 586 U.S. 63, 69 (2019)). The Order did not.

Second, even on a single-contract theory, § 15-48-20(a) imposed a mandatory duty to adjudicate Petitioner's contested-formation challenge before compelling arbitration on Lease 2. South Carolina courts have consistently enforced this duty. *Zabinski*, 346 S.C. 580, 553 S.E.2d 110; *Simpson*, 373 S.C. at 26. The word **"shall"** in § 15-48-20(a) is mandatory, not permissive. *Wigfall v. Tidelands Utils., Inc.*, 354 S.C. 100, 111, 580 S.E.2d 100, 105 (2003) ("The term 'shall' in a statute means that the action is mandatory."). The February 27 Order skipped that gateway entirely. Petitioner does not contend the Order is void for lack of subject-matter or personal jurisdiction; the Circuit Court had both. Rather, it is *voidable* as a reversible error of law: the court had jurisdiction to act but exercised that jurisdiction in violation of § 15-48-20(a)'s mandatory procedural command. *See BB&T v. Taylor*, 369 S.C. 548, 553, 633 S.E.2d 501, 503 (2006); *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995).

Federal arbitration policy reinforces this conclusion. FAA § 4, which Petitioner invoked below by name in the Conditional Response filed July 16, 2025, provides that when the making of an arbitration agreement "be in issue, the court **shall** proceed summarily to the trial thereof," and further that "the party alleged to be in default may…demand a jury trial of such issue." Whether FAA § 4's jury-trial provision applies as a procedural matter in South Carolina state court is itself an open question in some circuits; Petitioner notes it as a parallel federal command, but the argument does not depend on it: S.C. Code Ann. § 15-48-20(a) independently imposes the identical mandatory-formation-inquiry obligation at the state level, and Petitioner's Rule 38 jury demands on the entire action, filed in the original Complaint (June 6, 2025) and First Amended Complaint (July 17, 2025), independently preserve the jury right regardless of FAA § 4's procedural reach. The February 27 Order conducted no formation hearing, did not address either jury right, and made no determination of Petitioner's entitlement to either; a consistent failure under both state and federal frameworks this Court did not address before declining jurisdiction.

Critical to this analysis is what the February 27 Order did not do: it did not address formation at all. It did not cite § 15-48-20(a) in the context of formation. It did not rule on Petitioner's jury demand. It did not acknowledge FAA § 4. It compelled arbitration without conducting the inquiry, leaving Petitioner's formation challenge and jury demand entirely unaddressed. It was the Rule 59(e) motion, filed March 9, 2026, that first placed those specific failures before the court for correction: the § 15-48-20(a) failure, the pending jury demand on the entire action, the LAWCA-745EX nullity, the *Coinbase* contract-identification failure, and two additional structural errors. The April 3, 2026 Rule 59(e) denial is therefore the operative order where the court actually confronted Petitioner's formation and jury trial arguments and rendered its ruling on them. That ruling consists of one sentence: "Under the applicable standard, this motion is respectfully denied." It was entered on SCRCP Form 4, the standard judgment form, checking "DECISION BY THE COURT: This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered." Judge Rode did not check the Form 4's separate "ACTION STRICKEN — Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award" box, the form's designated disposition for cases sent to binding arbitration. The significance is in that blank box. By characterizing the disposition as a court decision on issues "tried or heard" while leaving the arbitration-referral box unchecked, Judge Rode's own form treats Petitioner's formation challenge and jury demand as matters for judicial resolution, resolved as a bench decision, without analysis, without citation, and without a single substantive finding. Six structural errors were raised. None were addressed. That is the arbitration-preferring procedural standard *Morgan v. Sundance, Inc.*, 596 U.S. 411, 418 (2022), prohibits: a pending jury demand on the entire case and a mandatory federal formation-hearing obligation dismissed on a standard form designed for routine case closings, while the underlying compel order, which never addressed those rights in the first place, is simultaneously treated as unreviewable on interlocutory appeal.

This Court misapprehended the applicable doctrine by applying the interlocutory bar without first determining whether the challenged order committed a reversible error of law that permanently displaced a substantial statutory right and left an unaddressed federal jury demand on the entire case and on formation; threshold questions this Court always retains authority to examine in determining the nature of the order before it.

GROUND III: APPLYING THE INTERLOCUTORY BAR TO PERMANENTLY INSULATE A § 15-48-20(a) VIOLATION FROM ALL REVIEW CREATES AN ARBITRATION-SPECIFIC PROCEDURAL ADVANTAGE PROHIBITED BY *MORGAN v. SUNDANCE*: A QUESTION WARRANTING CERTIFICATION UNDER RULE 204(b), SCACR

This ground is presented as a supplemental argument and as a primary independent basis for certification to the South Carolina Supreme Court under Rule 204(b), SCACR.

Morgan v. Sundance, Inc., 596 U.S. 411, 418 (2022), held that courts may not create arbitration-preferring procedural rules in the waiver context: "The policy is to make arbitration agreements as enforceable as other contracts, but not more so." No court has yet decided whether *Morgan*'s non-discrimination principle extends to state interlocutory-appeal rules that permanently insulate a mandatory formation-gateway bypass from all review. That unresolved question, not a settled rule but a genuine open question under post-*Morgan* federal arbitration doctrine, is the independent basis for the Rule 204(b) certification request in this ground. The logical extension of *Morgan* to state appellate procedure is plausible, significant, and squarely unresolved in South Carolina.

The interlocutory bar, as applied by the Court of Appeals, produces exactly that asymmetry. South Carolina courts have permitted immediate § 14-3-330 appeals of interlocutory orders determining which mandatory statutory regime governs a party's claims. *See Cooke v. Palmetto Health Alliance, Inc.*, 367 S.C. 167, 624 S.E.2d 439 (Ct. App. 2005) (order determining workers' compensation exclusive remedy applied was immediately appealable under § 14-3-330 as finally determining a substantial matter). No comparable bar prevents review of a mandatory procedural failure in a non-arbitration statutory context. Under the Court of Appeals' ruling, a trial court may compel arbitration without conducting the mandatory § 15-48-20(a) formation inquiry, permanently displacing the judicial forum, and no appellate court will review that failure until after arbitration runs its full course. The asymmetric result, whatever its doctrinal source, gives arbitration orders a unique procedural immunity that no other contract-enforcement mechanism enjoys. *Morgan* reinforces that courts should read *Heffner* narrowly to avoid extending that immunity to the exceptional circumstance presented here.

The record makes that asymmetry concrete. As detailed in Ground II, six specific structural errors, including a pending jury demand on the entire case and a mandatory federal formation-hearing obligation, were raised in the Rule 59(e) motion and dismissed in one sentence on SCRCP Form 4, with the court checking "DECISION BY THE COURT" while leaving unchecked the form's "ACTION STRICKEN — Binding arbitration" box. No

comparable procedural shortcut would be available to dismiss a pending jury demand in a non-arbitration contract context.

The South Carolina Supreme Court has not yet addressed whether *Morgan*'s non-discrimination principle operates to limit the scope of § 15-48-200(a)'s exclusion of grants of arbitration from the appellate list in a case where the trial court bypassed the mandatory § 15-48-20(a) gateway entirely. That is a question of significant legal importance affecting arbitration practice throughout South Carolina. It warrants certification under Rule 204(b), SCACR, independent of whether this Court grants rehearing on other grounds.

This Court overlooked whether applying the interlocutory bar to permanently insulate a mandatory federal and state statutory violation, including an unaddressed jury demand on formation, from all appellate review creates an arbitration-specific procedural advantage prohibited by *Morgan v. Sundance*; a question of statewide importance warranting certification to the South Carolina Supreme Court.

CONCLUSION

For the foregoing reasons, Plaintiff/Appellant respectfully requests that this Court, as primary relief, certify to the South Carolina Supreme Court pursuant to **Rule 204(b), SCACR** the following questions:

1. Whether the simultaneous application of *Toler's Cove* and *Heffner* may properly foreclose all South Carolina review, interlocutory and post-award, of a trial court's failure to perform the mandatory formation determination § 15-48-20(a) requires, when § 15-48-130(a)(5)'s text forecloses post-award review and § 15-48-130(a)(3) reaches only arbitrator conduct;

2. Whether a court may compel arbitration and permanently extinguish a party's timely Rule 38 jury demand on the entire action and the independent FAA § 4 jury right on the formation question, without conducting the mandatory § 15-48-20(a) inquiry, and without any appellate forum capable of reviewing that displacement before arbitration concludes; and

3. Whether *Morgan v. Sundance, Inc.* prohibits applying that foreclosure when no equivalent procedural bar would apply to mandatory statutory failures in non-arbitration proceedings.

As the procedural predicate for certification, Petitioner requests that this Court grant rehearing and:

1. Vacate the Order of Dismissal entered May 14, 2026;
2. Restore the appeal to the active docket; and
3. Order briefing on the merits, including the trial court's failure to conduct the mandatory § 15-48-20(a) formation inquiry, its failure to identify the operative contract as required by *Coinbase, Inc. v. Suski*, 602 U.S. 143 (2024), and its failure to address Petitioner's timely jury demands on the entire action and on formation.

Respectfully submitted,

/s/ Marvin Donald Prioleau

Marvin Donald Prioleau
2308 Dundee Street
North Charleston, SC 29405
Plaintiff/Appellant, Pro Se
(843) 709-1402
mave843@gmail.com

Dated: May 29, 2026

CERTIFICATE OF SERVICE

I, Marvin Donald Prioleau, hereby certify that I served a true and correct copy of the following document in the above-captioned matter:

PETITION FOR REHEARING

upon counsel of record for Defendant/Respondent by depositing the same in the United States Mail, first-class postage prepaid, addressed as follows:

Natasha M. Durkee, Esq.
Lauren Tuffo, Esq.
Walker Allen LLP
Post Office Box 1068
Mount Pleasant, SC 29465

and

Walker Allen LLP
10800 Sikes Place, Suite 250
Charlotte, NC 28277

and filed the same with the Clerk of the South Carolina Court of Appeals by electronic mail at ctappfilings@sccourts.org.

This mailing was deposited on May 29, 2026.

/s/ Marvin Donald Prioleau
Marvin Donald Prioleau
2308 Dundee Street
North Charleston, SC 29405
Plaintiff/Appellant, Pro Se
(843) 709-1402
mave843@gmail.com

Dated: May 29, 2026