RECEIVED

Jun 25 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM ORANGEBURG COUNTY
Court of Common Pleas

The Honorable T.W. McGee III, Circuit Court Judge

Appellate Case No.: 2026-001265
Ct. App. Case No.: 2025-000104
Civil Action No.: 2024-CP-38-00733

Great Deal Investing LLC, of Wyoming,………………………………………………..Petitioner,

v.

Jared Burnett, Brett Buras, Damian Bergamaschi, Steve Decker, J&B Holdings Group, LLC, and Hatchery Hill MHC, LLC, ……………………………...Respondents.

RETURN OF RESPONDENTS TO PETITIONER'S PETITION FOR WRIT OF CERTIOARI

Joey R. Floyd, SC Bar No. 8491
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260
(803) 252-7693
jfloyd@brunerpowell.com
Attorneys for Respondents

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

Rules

COUNTER-STATEMENT OF THE QUESTION PRESENTED

I. Whether the Court of Appeals correctly affirmed the Trial Court's ruling that Petitioner cannot bring suit for alleged breach of contract, where Petitioner violated applicable South Carolina licensing laws.

COUNTER-STATEMENT OF THE CASE[1]

This matter comes before this Court pursuant to a petition for writ of certiorari to the Court of Appeals filed by the Petitioner, Great Deal Investing LLC, of Wyoming ("Petitioner" or "Great Deal") on June 3, 2026. This case began with a suit filed by Petitioner against defendants Jared Burnett, Brett Buras, Damian Bergamashi, Steve Decker, J&B Holdings Group, LLC ("J&B"), and Hatchery Hill MHC, LLC (collectively, "Respondents") on June 6, 2024. (R. p. 25.) On July 2, 2024, Appellant amended its complaint. (R. p. 31.)

The causes of action in the Amended Complaint all concern an alleged contract whereby a finder's fee—or commission—would be paid to Petitioner in connection with the purchase of real estate in South Carolina. (R. p. 34, ¶ 28 (stating fee); ¶ 32 (identifying real property in Cordova, SC); and p. 35, ¶ 47 (stating fee calculated in reference to sale of the real property).) In response to each of the complaints, Respondents filed a motion to dismiss. (R. pp. 118 and 134.) Subsequently, the Parties also filed cross motions for summary judgment. (R. pp. 137 and 24.) The motions for summary judgment were heard by the Honorable Thomas W. McGee III, who ultimately granted summary judgment in favor of Respondents on December 9, 2024. (*See* R. p. 3.)

[1] Respondents assert that Petitioner's statement of the case should be disregarded for failure to contain all necessary facts or any citations to the record of the appeal. *See* Rule 242(d)(2), SCACR (requiring a "concise statement of the case, containing the facts material to the consideration of the questions presented") and 242(d)(3) ("Failure of a petitioner to present with accuracy, brevity, and clarity the information and arguments that are essential to a ready and adequate understanding of the points requiring consideration will be a sufficient reason for denying the petition.").

Judge McGee gave the Parties extensive opportunities to brief and argue the issue presented in the motions.[2] The Trial Court concluded that Petitioner was seeking to enforce an alleged illegal contract that violated South Carolina's licensing laws for real estate brokers. (*See* R. p. 19.) Petitioner thereafter filed a motion to alter or amend, which was denied on January 13, 2025. (R. p. 21.) Petitioner then filed an appeal with the Court of Appeals on January 15, 2025.

After briefing, the Court of Appeals issued an unpublished opinion on February 11, 2026, affirming the Trial Court. *See Great Deal Investing LLC, of Wyoming v. Burnett, et al.*, Op. No. 2026-UP-061 (S.C. Ct. App. filed Feb. 11, 2026) (hereinafter, "Opinion"). The Court of Appeals concluded that the undisputed facts show that Petitioner and its member, through whom its business was conducted, were not licensed to practice real estate in South Carolina and the law thus dictated that Petitioner could not collect a commission on a real estate transaction, such as the one at issue in this case. *See Opinion*, at p. 2. On February 26, 2026, Petitioner filed a petition for rehearing, as well as a suggestion for rehearing *en banc*. The petition was denied on May 5, 2026, and no vote was requested on the suggestion for rehearing *en banc*. Petitioner subsequently filed

[2] Petitioner's opportunities included, but were not limited to, the following submissions:

(1) Plaintiff's Jul. 8, 2024 Motion for Summary Judgment (R. p. 137);
(2) Plaintiff's Jul. 8, 2024 Affidavit of Nathan Johns (R. p. 140);
(3) Plaintiff's Aug. 27, 2024 Memorandum in Opposition to Defendants' Motion to Dismiss and for Judgment on the Pleadings (R. p. 267);
(4) Plaintiff's Aug. 27, 2024 Memorandum in Support of Motion for Summary Judgment (R. p. 271);
(5) Plaintiff's Aug. 30, 2024 Memorandum in Opposition to Defendants' Motion for Summary Judgment (R. p. 297);
(6) Oral Arguments in Motion Hearing on Sep. 4, 2024 (Transcript at R. p. 78);
(7) Plaintiff's Sep. 4, 2024 Supplemental Memorandum in Opposition to Defendants' Motion for Summary Judgment (R. p. 300);
(8) Plaintiff's Oct. 17, 2024 Second Supplemental Memorandum in Opposition to Defendants' Motion for Summary Judgment (R. p. 303);
(9) Plaintiff's Oct. 25, 2024 Reply to Defendants' Supplemental Memorandum in Response to Plaintiff's Second Supplemental Response (R. p. 318); and
(10) Plaintiff's Dec. 9, 2024 Motion to Alter or Amend (R. p. 327).

a petition for writ of certiorari to the Court of Appeals on June 3, 2026. This return in opposition follows.

The facts relied upon by the Trial Court and Court of Appeals to resolve the issues in this appeal are not in dispute. *See Opinion*, at p. 2. Petitioner is a foreign limited liability company operated by member Nathan Johns ("Mr. Johns") using the trade name "Great Deal Investing." (R. pp. 31–32; p. 140.). Through its member, Mr. Johns, Great Deal "is engaged in the business of finding mobile home park sellers across the country for mobile home park buyers." (R. p. 140, ¶ 5 (affidavit of Mr. Johns submitted to the Trial Court by Petitioner).) Mr. Johns conducts his business virtually from his house in another state. (*See* R. p. 140, ¶ 2.)

Mr. Johns admits that he has never taken an examination to become a real estate broker in South Carolina. (R. p. 140, ¶ 8.) Additionally, Petitioner states in the alleged contract that it "holds no professional licenses." (R. p. 48.) Finally, the South Carolina Department of Labor, Licensing and Regulation ("LLR") Real Estate Commission ("Commission") provided a sworn statement that there is no record of Petitioner or Mr. Johns having any South Carolina registration or license with the Commission. (R. p. 245.) Thus, it is undisputed that Mr. Johns is not a licensed real estate broker in South Carolina, nor is Petitioner registered as a real estate brokerage in South Carolina. Nonetheless, Petitioner engaged in the business of finding buyers for sellers of mobile home parks, which are parcels of real property, and now claims a fee calculated based upon such an alleged sale in South Carolina.

The specific type of transaction alleged in this case is described in the alleged contract Petitioner attached to the Amended Complaint, which is entitled "Finder's Fee Contract." (*See* R. p. 47–49 (hereinafter, "alleged contract"); *see also* R. p. 34, ¶ 27 (pleading incorporating the alleged contract by reference).) The defined purpose of the alleged contract is "to establish the terms and conditions under which the Finder shall be entitled to receive a Finder's Fee . . . in relation to potential real estate transactions." (R. p. 47.) The alleged contract defines a "real estate transaction" as the "Buyer" purchasing "real Property" and/or the "Buyer" purchasing "any interest in real Property." (*Id.*)

In support of its alleged claims, Petitioner avers that it identified a mobile home park in Cordova, South Carolina and alerted J&B's managing member. (R. p. 34, ¶ 32.) Petitioner avers that it introduced the potential real estate purchaser to the potential real estate seller. (R. p. 34, ¶¶ 33–34.) Thereafter, J&B allegedly entered into a contract for the purchase of the real property. (R. p. 34, ¶ 36.) When the transaction closed, the property was deeded to Hatchery Hill MHC, LLC. (R. p. 58.) Petitioner sued on the theory that it should have been paid a seven percent finder's fee of $37,800.00 as part of the real estate transaction. (R. p. 36, ¶ 55.)

Petitioner admitted in its Amended Complaint that real estate transaction upon which it bases its claims concerns real property located in Orangeburg County. (R. p. 35, ¶ 43 (noting deed recorded in Orangeburg County); p. 34, ¶ 36 (noting purchase price of the real property); p. 35, ¶ 47 (alleging J&B failed to pay a fee amounting to 7% of the purchase price).). Nonetheless, despite filing suit to avail itself of South Carolina courts and despite asserting claims based on the premise that Petitioner should receive a finder's fee for a "successful real estate transaction" that occurred in South Carolina, Petitioner asserts that no South Carolina real estate licensing law can apply to it. Neither the Trial Court, nor the Court of Appeals agreed with this meritless contention.

ARGUMENT

I. PETITIONER HAS RAISED NO ISSUE MERITING REVIEW.

Petitioner fails to identify any question which requires the attention of the Supreme Court. Notably, Petitioner's statement of the single issue presented does not frame any novel question of law, does not raise a conflict with a prior Supreme Court opinion, does not state any substantial constitutional issues,[3] and does not bring out any conflict with federal law. *See* Rule 242(b), SCACR. Moreover, there was no dissent in the unpublished opinion of the Court of Appeals, which, simply by being unpublished, forecloses application of the decision in any future case. *See* Rule 242(b), SCACR (listing dissent as a possible reason for a writ) and Rule 268(d)(2), SCACR (stating that unpublished opinions have no precedential value).

Petitioner cannot reasonably argue that this case—which amounts to the straight-forward application of long-existing South Carolina law to the facts presented—merits any further review by the Courts, who have been unanimous in their rulings to date. Petitioner cannot voluntarily bring suit in South Carolina asserting that it is owed a commission on the sale of a parcel of South Carolina real estate and then complain when South Carolina law applies.

Petitioner's broad and sweeping proposition—that all state laws and regulations can only apply to persons physically in the state—if ever adopted would wreak havoc on nearly every aspect of state law, including the tax code and swathes of administrative law generally. Moreover, it would put all licensed professionals in South Carolina at a clear disadvantage as compared to all non-resident professionals. Further, a real estate broker would simply need to drive across the state line to avoid all administrative or regulatory liability for their actions. Such an absurd result

[3] Petitioner has previously attempted to argue that there are constitutional issues presented in this case. That argument was properly given short shrift by the Court of Appeals. *See Opinion*, p. 4, n. 4. Petitioner failed to frame any constitutional issue in its question presented for review in the Petition. Moreover, Petitioner's single argument heading addresses only South Carolina's rules of statutory construction, rather than any constitutional issue. Under Rule 242(d)(1), SCACR, any question not presented will not be considered. Under Rule 242(d)(3), SCACR, Petitioner has also failed to frame its arguments, such as they may be, with clarity. Respondents would assert that any attempt to shoehorn in a constitutional argument where it was not properly preserved should not be considered. However, to the extent that the Court considers any argument pertaining to the Commerce Clause, Respondents would incorporate by reference Argument III of the Final Respondents' Brief before the Court of Appeals.

is inconsistent with the law and inconsistent with any reasonable application of state law and the rules of construction. No new case law need be propounded to resolve that question.

II. SOUTH CAROLINA LAWS FORECLOSES PETITIONER'S CLAIMS.

Petitioner's contention is that, so long as Mr. Johns conducts Petitioner's business from his house in another state, Petitioner cannot be required to follow South Carolina law even when its own allegations depict Mr. Johns acting as a broker for South Carolina real property. Petitioner's contention—that all effect of the law stops once a person steps across the state border—is not only inconsistent with the law, but also absurd when applied to nearly any fact pattern.

a. Petitioner Violated South Carolina's Real Estate Licensing Laws.

The Commission was established to regulate the real estate industry through licensing "so as to protect the public's interest when involved in real estate transactions." *See* S.C. Code Ann. § 40-57-10 and § 40-57-30(7) (Supp. 2023).[4] The purpose of this type of regulation is to protect the public. *See* S.C. Code Ann. § 40-1-10(B) and § 40-1-40(A)–(B); *see also Hous. Auth. v. Key*, 352 S.C. 26, 28, 572 S.E.2d 284, 285 (2002) (regulation of the legal profession is to protect the public).

Pursuant to the South Carolina laws for the real estate profession, a "real estate brokerage firm" is a "real estate company engaged in the business of real estate brokerage. S.C. Code Ann. § 40-57-30(24) (Supp. 2023). "Real estate brokerage" means "the aspect of the real estate business that involves activities relative to property management or a real estate sale, exchange, purchase, lease." *Id.* at § 40-57-30(23) (conjunction missing in original). Petitioner's alleged contract specifically defines the purpose of the contract as achieving a "successful real estate transaction."

[4] Certain code sections cited herein were amended by 2024 S.C. Act 204. This response will apply the versions of the statutes contained in the 2023 Cumulative Supplement (Vol. 14), but aside from renumbering of subsections, there is no noteworthy conflict in the specific portions cited herein.

(R. p. 47.) As alleged in the Amended Complaint, the real estate transaction at issue in this case is for real property in South Carolina.[5] (R. p. 58 (deed attached to Amended Complaint).) Therefore, Petitioner acted as a real estate brokerage firm in this case.

However, as with most professions in South Carolina, it is not the company that is licensed, but the individuals—*i.e.*, the members of the profession. A real estate brokerage firm acts through its constituent professionals. South Carolina law provides that it "is unlawful for an individual to act as a real estate broker, real estate associate, or real estate property manager or to advertise or provide services as such without an active, valid license issued by the commission." S.C. Code Ann. § 40-57-20. Section 40-57-30, which contains the definitions for its chapter, outlines what constitutes a real estate "broker," including negotiating real estate transactions for a fee, commission, referral fee, as well as soliciting referrals for a fee. S.C. Code Ann. § 40-57-30(3) (Supp. 2023). It is undisputed that the person performing the alleged contract at issue for Petitioner is Mr. Johns. (R. p. 142, ¶¶ 22–25.) It is also undisputed that Mr. Johns has no real estate license in South Carolina.[6] (R. p. 245, ¶¶ 4–5.) Finally, it is undisputed that Mr. Johns' activities violated

[5] Petitioner has repeatedly mischaracterized the real estate-related nature of this case as an *in personum* versus *in rem* issue. (*See* Petition at p. 4.) This characterization is a red herring—Petitioner submitted to the personal jurisdiction of South Carolina courts by filing its complaint in the Court of Common Pleas. (*See* R. p. ¶ 10–11 (Amended Complaint alleging jurisdiction and venue).). Personal jurisdiction is not the issue presented, as that analysis concerns <u>defendants</u>. No one is using the real estate to hale the plaintiff Petitioner into court under an *in rem* theory, nor is anyone attempting to control or dispose of the real property through this case. Nonetheless, the Amended Complaint clearly shows that this case is about whether Petitioner can claim a fee to broker the sale of South Carolina real estate while not complying with South Carolina law.

[6] Petitioner specifically states that it is not licensed in the alleged contract. As outlined in Respondents' Brief, disclaimers of this sort have no bearing on the application of the bar to enforcement of illegal contracts because the issue lies not in the relationship between the alleged contracting parties, but instead between Petitioner and the public—*i.e.*, the citizens of South Carolina. Indeed, this statement of no licensing suggests that Petitioner was aware that its activities could be subject to licensing laws like a person who shares a video online, knowing it is intellectual property that does not belong to them, stating that they do not 'intend' to violate copyright laws. The disclaimer serves only to show that the individual knew they might be violating the law.

the South Carolina license laws;[7] Petitioner does not argue otherwise. Petitioner conceded to the Trial Court that if Mr. Johns was working from Columbia, South Carolina, his actions would be illegal. (R. p. 104, ll. 4–6 (Appellant's counsel acknowledging that if the facts changed to his client being in Columbia, Appellant would lose).)

b. Petitioner Cannot Enforce an Illegal Contract.

Because the stated purpose of the alleged contract was for Petitioner to earn a finder's fee on a real estate transaction, *i.e.* perform as an unlicensed broker and brokerage firm, the contract is illegal. A plaintiff who is party to an illegal contract may not beseech the court for a remedy based upon that contract. *See Rountree v. Ingle*, 94 S.C. 231, 234–35, 77 S.E. 931, 932 (1913) (no court will lend its aid to a man who founds his cause of action on an illegal act); *Jackson v. Bi-Lo Stores*, 313 S.C. 272, 276, 437 S.E.2d 168, 170 (Ct. App. 1993) (quoting *McMullen v. Hoffman*, 174 U.S. 639, 654, 19 S. Ct. 839, 845 (1899)) (citing United States Supreme Court finding the principle consistently upheld from "the earliest time to the present").

This well-established rule, which protects the public, applies in professional licensing cases. In one 2010 case, a bank attempted to foreclose on a mortgage that had not been prepared or reviewed by an attorney. The Court found that the bank had processed the loan without the supervision of a lawyer and that constituted the unauthorized practice of law by the bank

[7] Indeed, Petitioner also violated the requirement that a brokerage have a "broker-in-charge." *See* S.C. Code Ann. § 40-57-30(4) and § 40-57-135 (Supp. 2023). Additionally, even if Petitioner complied with requirements for brokerages, brokers-in-charge, and brokers through other employees (which it does not have), Mr. Johns' status as an unlicensed employee would still prevent him from discussing any contract or other real estate document and from negotiating compensation or a commission. *See id.* at § 40-57-135(K)(1) and (10).
Moreover, case law specifically provides that a person not licensed as a real estate broker cannot contract for a commission "based either directly or indirectly on the value of the real property . . . ." *See Roberts v. Gaskins*, 327 S.C. 478, 490, 486 S.E.2d 771, 777 (Ct. App. 1997). In this case, Petitioner's alleged contract and the allegations in the Amended Complaint specifically set the fee sought as 7% of the purchase price of real estate.

employees. *See Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 76, 698 S.E.2d 244, 248 (Ct. App. 2010) (actions of bank employees gave the bank unclean hands and prevented suit premised upon the mortgage). The *Wachovia* case stands for the law that both the conduct of Petitioner and the conduct of its member, Mr. Johns, give Petitioner unclean hands and foreclose the ability to seek a remedy from South Carolina courts because they broke the laws governing the practice of real estate. Lest there be any doubt as to the serious nature of the licensing laws, the Legislature has made the failure to be licensed when practicing real estate a crime. *See* S.C. Code Ann. § 40-57-780 and § 40-57-20 (Supp. 2023).

c. Petitioner Admits That It Violated South Carolina Licensing Law.

Petitioner broke the law. Petitioner does not even argue otherwise. Rather, Petitioner argues that because its member was physically in another state while virtually conducting real estate broker actions in South Carolina, the laws of South Carolina cannot be applied to it. Petitioner asserts that it can force South Carolina courts to give Petitioner the benefit of an illegal contract no South Carolina company would be allowed to enforce simply because it is in another state. That is, Petitioner argues that the law allows him to violate South Carolina law with abandon, as long as he does it from an armchair in Indiana, or, for that matter, six inches over the state line in Charlotte, North Carolina, just as Petitioner argued to the Trial Court.

[Counsel for Petitioner:]	The Real Estate Commission has no right to regulate the conduct of a guy in Indiana doing exactly what we're doing.
The Court:	So if I move across from York County to Charlotte, I can do the same thing without having to subject myself to the same requirements, the same statutory requirement, that everybody else does? I can do the same thing across the border and that's okay?
[Counsel for Petitioner:]	**That's exactly right and, you know, a good example.** My son asked me not to use it, but I thought it was a good example.

(R. p. 100, lines 13–22) (emphasis added). The Court of Appeals properly affirmed the ruling that Petitioner's claims are barred.

d. South Carolina Can and Should Enforce Its Licensing Laws in This Case.

Petitioner's contention that the law cannot be applied to it is belied by precedent, existing statutes, and common sense. The first rule of statutory interpretation requires application of the plain language of the law, because it is the best evidence of the Legislature's intent. *See Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The real estate licensing framework makes no exception for out-of-state entities. In fact, the Code does exactly the opposite: it creates specific provisions applying to non-residents.[8] *See, e.g.*, S.C. Code Ann. §§ 40-57-120 and 40-57-320(B)(6) (Supp. 2023) (both providing for non-resident licensing procedures). These sections show plain and clear intent of the Legislature to regulate non-resident real estate brokers.[9]

By contrast, Petitioner cites to South Carolina Code Section 1-1-10, which merely defines the geographical borders of the State and declares that "sovereignty and jurisdiction of this State extends to all places within its bounds . . . ." This is not disputed, but the application of this

[8] The non-binding Ninth Circuit opinion cited by Petitioner does not address a statutory scheme specifically regulating non-resident licensees, which distinguishes that case from this one. *See generally Consul Ltd. v. Solide Enterprises, Inc.*, 802 F.2d 1143, 1148 (9th Cir. 1986). Notably, the Ninth Circuit appeared to distinguish the case before it on the basis that the broker in question was licensed in their home state. *See id.* at 1149 n.5. In this case, the broker is not licensed in any state, as stated in the alleged contract. Based upon Petitioner's arguments, Petitioner evidently believes that it can transact business in 49 of the 50 states, just not the one it resides in, without being licensed. Such a contention is untenable and unworkable if the 49 states have any hope of protecting their citizens, which is the public policy behind the laws and doctrine at issue.

[9] This intent also applies to numerous other professions, including attorneys, who—if not licensed and not resident in South Carolina—may still be regulated via debarment. *See* Rule 2(g), RLDE, Rule 413, SCACR; *see, e.g.*, *In re Naderi*, 426 S.C. 476, 827 S.E.2d 582 (2019). In the *Naderi* case, an unlicensed attorney from California was debarred after entering into a contract to negotiate payments on a South Carolina mortgage. The Supreme Court has the authority, under rules approved by the Legislature, to protect South Carolinians from unlicensed lawyers from other jurisdictions, just as the Commission and the courts are empowered to protect the public from unlicensed real estate brokers from other jurisdictions—particularly where, as in this case, the unlicensed broker voluntarily submits himself to the jurisdiction of South Carolina courts.

statement to this case is of no moment. The statute does not state that South Carolina's laws do not apply to foreign parties conducting business in South Carolina or brokering deals for South Carolina real estate. Indeed, even if the Code made some broad statement, it would still likely be inapposite, given that there are more specific laws addressing real estate brokering and non-resident licensees directly. *See Wooten ex rel. Wooten v. South Carolina Dep't of Transp.*, 333 S.C. 464, 468, 511 S.E.2d 355, 357 (1999) (citing *Atlas Food Systems & Serv., Inc. v. Crane*, 319 S.C. 556, 462 S.E.2d 858 (1995)) (a specific statutory provision prevails over a more general one).

The South Carolina case cited by Petitioner has a different fact pattern than this case. *See generally Robertson v. Bumper Man Franchising*, 364 S.C. 155, 612 S.E.2d 451 (2005). The *Bumper Man* case concerned two different agreements—one was entered into and performed wholly outside of South Carolina. *Id.* At 156, 612 S.E.2d at 452. For that agreement, the Court ruled that a South Carolina law did not apply. *Id.* This case is different: Petitioner's allegations in the Amended Complaint amount to an assertion that Petitioner performed its obligation under the alleged contract by arranging the sale of a parcel of South Carolina real estate. (R. p. 36, ¶ 53 (alleging full performance by Petitioner), ¶ 55 (seeking compensation for performance based on 7% of sales price of South Carolina property sales price).) Under these facts, the *Bumper Man* case is not applicable.

Petitioner's simplistic argument that laws may not project legislation into other states, ignores entirely numerous aspects of existing law, not the least of which is South Carolina Code Title 12, governing taxes. If states could not "project" its tax laws on persons or entities physically in other states, the tax system would be radically different. Fortunately, the South Carolina Supreme Court and the United States Supreme Court have already addressed this type of question. In a 1993 case, the South Carolina Supreme Court addressed the Department of Revenue's purview under Title 12 is to obtain income tax payments from foreign corporations that conduct any activity with a view to earn income from South Carolina. *See Geoffrey, Inc. v. South Carolina Tax Com'n*, 313 S.C. 15, 18, 437 S.E.2d 13, 15–16 (1993) (quoting S.C. Code Ann. § 12-7-230 (Supp. 1992)). When application of the law was challenged by a foreign corporation that had no physical presence in South Carolina, the Supreme Court found no issue with the application of the tax code to that company. *Id.* at 19, 437 S.E.2d at 16 ("Geoffrey has not been unwillingly brought into contact with South Carolina").

Specifically, this Court found that the company's income derived from an annual royalty paid by another company for use of its intellectual property and marketing know-how was sufficient to incur South Carolina taxes where it was used to obtain South Carolian customers for another company that then paid the royalty using calculations based on South Carolina sales. *Id.* at 17–18, 22, 437 S.E.2d at 17–18 (describing royalty and the "real source" of the income). The Court did not even find it problematic that the company paying the royalties had not been using the intellectual property in South Carolina at the time of the initial agreement. *Id.* at 19, 437 S.E.2d at 16 ("By electing to license its trademarks and trade names for use by [the store] in many states, [the foreign corporation] contemplated and purposefully **sought the benefit of economic contact** with those states." (emphasis added)). Recently, specifically in the context of sales tax, the United States Supreme Court addressed the similar issue of "physical presence" and made clear it is no longer a reasonable requirement in this era.

The issue before the Court was whether Wayfair, Overstock.com, and Newegg had to collect sales taxes on goods and services delivered in South Dakota when the companies had "no employees or real estate in South Dakota." *See South Dakota v. Wayfair, Inc.*, 585 U.S. 162, 170, 138 S.Ct. 2080, 2089 (2018). In determining that the prior "physical presence rule" should be overturned, the Court discussed that the law "'should focus on rules that are appropriate to the twenty-first century, not the nineteenth.'" *Id.* at 176, 138 S.Ct. at 2092 (quoting Hellerstein, *Deconstructing the Debate Over State Taxation of Electronic Commerce*, 13 Harv. J.L. & Tech. 549, 553 (2000)). Indeed, the Court referred to the physical presence rule as creating an "arbitrary, formalistic distinction." *Id.* The Court found that physical presence was no longer necessary for the purposes of sales taxes and had already been unnecessary for the demands of due process. *Id.* at 177, 138 S.Ct. at 2093.

There is no precedent cited by Petitioner that imposes any sort of physical presence rule, nor is there any onus on the State to have such a rule. Indeed, in this day and age, where even court is conducted remotely, it is ludicrous to draw such an archaic distinction. The fact pattern in this case shows just as much contact with South Carolina as the taxpayer in the 1993 case. Petitioner entered into an alleged contract to provide his nationwide services for purposes of arranging real estate sales. (R. at p. 32, ¶ 12.) Petitioner contemplated earning income from South Carolina when it allegedly connected Respondents to a South Carolina property owner. (R. at p. 34, ¶ 32.) Petitioner now seeks payment of a commission calculated based on the consummation of the South Carolina sale constituting performance. Unlike typical foreign taxpayers, Petitioner <u>voluntarily</u> came to this state and appealed to its courts to help it obtain this fee while yet thumbing its nose at this State's laws.

While our courts are known to eschew distinctions without a difference, Petitioner is proposing a distinction with untold consequences rippling through administrative law and beyond. If Petitioner is correct and South Carolina cannot apply its laws to parties not physically in the State, then South Carolina cannot regulate insurance companies based outside the state, even if they digitally provide policies to South Carolinians; South Carolina cannot regulate lawyers appearing in digital court hearings and depositions, even if they are under the auspices of South Carolina courts; and South Carolina cannot regulate doctors treating patients by videoconference, even if they are South Carolina patients. In applying *reductio ad absurdum*, Petitioner's contention would have South Carolina eschew the collection of sales taxes from entities that the United States Supreme Court has already ruled must comply. While the plain language of the statutes at issue do not support Petitioner's claims, even if they did, Petitioner's position would still be unworkable and absurd. In the final analysis, the Courts work to avoid absurd results—and Petitioner is asserting a position that creates a patently absurd result.

CONCLUSION

If this case had nought to do with South Carolina, as Petitioner now contends, it should not have hired a South Carolina lawyer to file a South Carolina case seeking a judgment under the imprimatur of the South Carolina courts. Petitioner is attempting to obtain a finder's fee in this case at the expense of the natural functions of state law. Wherefore, based upon the foregoing arguments and the record in this matter, Respondents would respectfully pray that this Court deny the petition for writ of certiorari, as no additional review in merited in this case.

s/Joey R. Floyd
Joey R. Floyd, SC Bar No. 68491
Bruner Powell Wall & Mullins, LLC
Post Office Box 61110
Columbia, South Carolina 29260
(803) 252-7693
jfloyd@brunerpowell.com
Attorneys for Respondents

June 25, 2026
Columbia, South Carolina