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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM GEORGETOWN COUNTY

The Honorable Joe M. Crosby, Master-in-Equity

Appellate Case No. 2025-001557

South Carolina Board of Financial Institutions, ... Respondent,

v.

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

RESPONDENT'S PETITION FOR REHEARING

Shawn D. Eubanks
Christopher A. Majure, Sr.
Matthew D. Houck
1200 Senate Street, Suite 214
Wade Hampton Office Building
Columbia, South Carolina 29201
(803) 734-2623

R. Walker Humphrey, II
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Elizabeth Zeck
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
930 Richland Street (29201)
Post Office Box 8416
Columbia, South Carolina 29202
(803) 252-3300

Attorneys for Respondent
South Carolina Board of Financial Institutions

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Respondent South Carolina Board of Financial Institutions ("Board") files this timely petition for rehearing under Rules 221 and 240, SCACR.

Introduction

In finding that § 34-21-10 reaches only companies administering express trusts, the Court overlooked several arguments the Board raised, each of which independently compels the opposite result. The Board first argued that Petitioners fall within § 34-21-10 because they exercise control over another's property while providing services. Resp't's Br. at 7–8. The Board also argued that Petitioners' work falls within the plain meaning of "trust" even in the absence of a formal trust instrument. *Id.* at 8–9. If the Court were to find that § 34-21-10's meaning is not plain, the Board argued that the exclusion of a "natural person or a national banking association having its principal place of business in this State … acting as trustee, executor, administrator, guardian, committee or in any other fiduciary capacity" from the registration requirement confirms that the statute extends to other corporations which fulfill those roles. *Id.* at 10–12. Next, the Board argued that § 34-21-20's grant of Board jurisdiction over "trust companies[] *and* fiduciary corporations authorized to conduct a trust business" confirms that "trust business" is a broad term encompassing an array of fiduciary businesses regardless of what they are named. *Id.* at 12–13 (emphasis added). The Board then observed that the General Assembly enacted § 34-21-10's predecessor following losses caused by executors, not trustees of a trust. *Id.* at 14. The Court's opinion addresses none of these.

Rather than reach these arguments, the Court makes arguments neither party briefed. In doing so, the opinion overlooks plain statutory language establishing the Board's jurisdiction, misapprehends the Board's remaining arguments, and effectively legislates the repeal or amendment of statutes throughout the Code that protect vulnerable South Carolinians. This Court should grant rehearing and affirm the Court of Appeals' holding that the term "trust business" in S.C. Code Ann. § 34-21-10 includes corporate fiduciaries like Petitioners.

ARGUMENT

I. The Court overlooks precedent and § 34-21-10's documented history, which prove that the General Assembly placed a broad range of fiduciaries under the Board's jurisdiction.

The Court makes fundamental errors in defining the entities and subject matter under the Board's authority and in overlooking critical portions of statutes. By misapprehending the Board's jurisdiction, the Court never reaches the central question of this case: What did the General Assembly mean by requiring the Board to oversee "trust business" pursuant to § 34-21-10?

A. The General Assembly has intended the Board to regulate entities serving in various fiduciary roles for almost 100 years.

The Court acknowledges that "[c]ontext and location reveal much about what the term 'trust business' means," Opinion at 4, but then fails to give effect and meaning to, or even analyze, the full language of the statute at the center of this dispute: S.C. Code Ann. § 34-21-10.

Section 34-21-10 provides that no entity shall conduct trust business in South Carolina without the Board's written authorization, but individuals and national banks can still act as "trustee, executor, administrator, guardian, committee or in any other fiduciary capacity." The General Assembly would have had no need to exempt those roles from the licensure requirement unless "trust business" already encompassed them. The exception thus confirms that the General Assembly meant "trust business" to include this broad array of fiduciary roles. The Court sidesteps this central statutory language and instead focuses on inapplicable common trust fund statutes and provisions of the Probate Code, before finally concluding that "[b]eing a fiduciary does not a trust company make." Opinion at 6. But when the General Assembly originally defined a trust company, being a fiduciary is precisely what made one.

As the Board recounted in its brief, the General Assembly began regulating corporate fiduciaries in 1930. Resp't's Br. at 2 (citing *Ex parte Michie*, 167 S.C. 1, 165 S.E. 359 (1932)). At the time, the General Assembly codified these statutes within Article 2 ("Trust Companies") of Chapter 62 ("Banks, Trust Companies, and Credit Unions") of the S.C. Civil Code of 1930.[1] In language nearly identical to that of present-day § 34-21-20, the General Assembly mandated that "[a]ll state banks, trust companies, and fiduciary corporations *doing a trust business*, shall be subject to examination by the State banking department, and shall be further subject to the following rules and regulations for the conduct of such trust business." S.C. Civ. Code § 5746 (1930) (emphasis added); *see also Michie*, 165 S.E. at 366 (quoting the same language recodified as S.C. Civ. Code § 7905 (1932)). The Code defines "Trust Companies" in detail, explicitly including service as trustee, conservator, guardian, personal representative, and agent, among other roles:

> Corporations may be created under this Article for any ***one or more*** of the following purposes.
> (1) To receive money in *trust* and to accumulate the same at such rate of the interest as may be agreed upon.
> (2) […]
> (3) To accept and execute all such trusts and perform such duties of every description as may be committed to them by any person or persons whatsoever, or by any corporation, and to act as assignee, receiver, trustee, depository or *in any other fiduciary capacity,* and to accept and execute all such trusts and perform such duties of every description as may be committed to or placed in them by order, judgment or decree of any of the Courts of record of this State, or other State or of the United States.
> (4) To take, accept and hold, by the order, judgment or decree of any Court of this State or of any other State, or of the United States, or by gift, grant, assignment, transfer, devise or bequest of any person or corporation, any real or personal

[1] The Board attaches this Article for ease of reference, but it can also be found at https://guides.law.sc.edu/SCLegalResources/superseded_statutes.

property in *trust*, and to execute and perform any and all such legal and lawful trusts in regard to the same upon the terms, conditions, limitations and restrictions which may be declared, imposed, established or agreed upon in and by such order, judgment, decree, gift, grant, assignment, transfer, devise or bequest.

(5) […]

(6) To act as *agent* or *attorney in fact* for any person or corporation in the management and control of real or personal property, in the sale and conveyance of such property, and for the investment of money.

(7) To act as the fiscal or transfer or other agent of the United States, or any State, municipality, body politic or corporation, and to receive, invest, and disburse money, to transfer, register, and countersign certificates of stock, bonds or other evidence of indebtedness; and to act as *attorney in fact* or agent of any person or corporation, foreign or domestic, for any lawful purposes.

(8) To act as *executor* under the last will and testament or *administrator* of the estate of any deceased person; or as *guardian* of the estate of any infant; or as *committee* of any insane person, idiot or feeble minded person, under the appointment of any court of record, judge or clerk thereof having jurisdiction of the estate of such deceased person, infant, insane person, idiot, or feeble-minded person.

(9) […]

(10) […]

(11) To purchase, hold, manage and sell real property.

(12) […]

S.C. Civ. Code § 5727 (1930) (emphasis added).

The fiduciary roles that § 5727 assigns to the trust companies required to register with the Board are the same roles in which Petitioners serve. And as *Michie* explained, misconduct by executors, not trustees of a trust, prompted these statutes. 165 S.E. at 366–67. The General Assembly has long intended Board-regulated trust business to include an array of fiduciary roles, not just trustees. The Court's opinion does not account for, and is contrary to, this historical record.

B. The Board's trust business jurisdiction includes every "corporation, partnership or other person," and is not limited by the type of entity or the entity's use of common trust funds.

Rather than focus on the language of § 34-21-10, the Court incorrectly confines the Board's authority to "banks and building and loan associations," citing S.C. Code Ann. § 34-1-60. Opinion at 4. Section 34-1-60 is only one part of the Board's jurisdiction. The Board regulates a variety of financial institutions and service providers. *See*, *e.g.*, S.C. Code Ann. § 34-30-10 (savings banks); S.C. Code Ann. § 34-28-700 (savings and loan associations); S.C. Code Ann. § 34-26-200 (credit unions); S.C. Code Ann. § 37-22-140 (mortgage lenders/mortgage loan originators); S.C. Code Ann. § 37-3-502 (supervised lenders); S.C. Code Ann. § 34-29-20 (restricted lenders); S.C. Code Ann. § 34-39-130 (deferred presentment); S.C. Code Ann. § 34-41-20 (check cashers).

As part of its oversight, the Board authorizes and regulates every "corporation, partnership or other person" conducting "a trust business" in South Carolina. S.C. Code Ann. § 34-21-10. These and other requirements of Article 1 ("Banks *and Corporations* Doing Trust Business") of Title 34, Chapter 21 of the South Carolina Code are not specific to banks, building and loan associations, or any other type of institution. Yet the Court still erroneously concludes that "[t]he rules of Title 34 are designed for entities whose business is to administer trust funds, i.e., banks or trust companies." Opinion at 5. To do so, the Court conflates distinct defined and undefined terms.

First, the Court equates a "trust institution" under § 34-21-210(1), which is in a separate article relating only to common trust funds, with "trust business" under § 34-21-10. In drawing this false equivalence, the Court misunderstands the Board's argument. *See* Opinion at 5 ("Working off [the definitions in Article 3], the Board maintains that anyone acting as a guardian, conservator, or personal representative is a fiduciary, and a fiduciary is necessarily a 'trust institution.'").[2] From

[2] The Board cited Article 3 on a much narrower point: its definition of fiduciary in § 34-21-210(2), which includes serving as a "trustee, executor, administrator, guardian of estates, committee of estates of persons non compos mentis, and managing agent." Resp't's Br. at 14–15. Section 34-21-20 allows the Board to regulate both "trust companies" and "fiduciary corporations authorized to conduct a trust business," and Article 3 demonstrates that a "fiduciary corporation" is not limited to mere service as a trustee. If "fiduciary corporations authorized to conduct a trust business" were limited to trust companies, this additional language would be unnecessary. The

this misunderstanding, the Court holds that "[t]he rules of Title 34 are designed for entities whose business is to administer trust funds," and further implies that Board oversight is limited to those who "invest[] fiduciary monies in a common trust fund." Opinion at 5.

Common trust funds pool assets held pursuant to multiple fiduciary relationships, each with its own "instrument, judgment, decree or order creating the fiduciary relationship." S.C. Code Ann. § 34-21-260. Managing pooled funds involves investing them and applying the resulting equity for multiple beneficiaries, requiring additional safeguards and presenting unique accounting issues, which the General Assembly addressed through statutes directed to this approach in § 34-21-210 *et seq*. To be sure, the Board regulates entities that manage common trust funds. But nothing within Title 34, Chapter 21 suggests that the Board's jurisdiction over trust businesses reaches only those which manage common trust funds.[3]

Next, the Court conflates "trust institution" with the undefined term "trust company" to declare that "[t]he rules of Title 34 are designed" exclusively for banks or trust companies, as the Court has apparently defined them. Opinion at 6. That declaration contradicts § 34-21-10, which contains no such limitation on the Board's jurisdiction. S.C. Code Ann. § 34-21-10 ("No corporation, partnership or other person shall conduct a trust business in this State without first … receiving written approval from the Board.").

Court, however, did not address this argument and, instead, created its own argument not made by any party regarding Article 3.

[3] It is unclear whether the Court intended its decision to limit the Board's authority under § 34-21-10 to trust companies which manage common trust funds. *See* Opinion at 6 ("Companies like Petitioners—who are not financial institutions and are not investing fiduciary monies in a common trust fund—are not engaged in a 'trust business' simply by acting as a personal representative or other non-trustee fiduciary."). Because that there is no such limitation, the Court should clarify its holding to avoid confusion.

Finally, based on this series of errors, the Court conflates "trust companies" with "trust business" and summarily concludes that Petitioners are not engaged in "trust business"—a term that remains undefined, contained in a statute that remains unexamined: § 34-21-10.

These analytical errors combine to produce an absurd result. Banks, which are highly sophisticated and already closely regulated, may not serve as fiduciaries without the Board's express approval. Yet entities like Petitioners may serve the most vulnerable individuals in this State free of that requirement, precisely *because* they are not sophisticated or closely regulated. This outcome undermines the existence of Board licensure, and the clear purpose of the statute. This Court has historically refused to allow such an outcome. *See State ex rel. McLeod v. Montgomery*, 244 S.C. 308, 314, 136 S.E.2d 778, 782 (1964) ("However plain the ordinary meaning of the words used in a statute may be, the courts will reject that meaning, when to accept it would lead to a result so plainly absurd that it could not possibly have been intended by the Legislature, or would defeat the plain legislative intention; and if possible will construe the statute so as to escape the absurdity and carry the intention into effect.").

In fact, state bank regulation comes as no surprise to Petitioner Guardian Fiduciary Services. The Michigan Department of Insurance and Financial Services entered an Enforcement Order on October 23, 2024, directing Guardian to "remove any and all advertisements, publications, or statements that claim they offer, or are qualified to offer, any private corporate fiduciary services or private corporate trust services in the State of Michigan" and cease and desist from doing so in the future. *Dep't of Ins. & Fin. Servs. v. Guardian Fid. Servs.*, Case No. 24-17742, ¶¶ 13, 16–17, https://www.michigan.gov/difs/-/media/Project/Websites/difs/DO/2024/November/Guardian_Fiduciary_24-17742.pdf.

The General Assembly has made clear that the Board is to regulate *all* entities conducting "trust business," regardless of their corporate structure, and whether or not those entities manage common trust funds.

II. The Court overlooks that the Probate Code's definition of "trust" is inapplicable here, and ignores the Code's declarations that conservators, guardians, personal representatives, and agents are trustees.

The Court also overlooks and misapprehends the Board's arguments and plain statutory language in applying the Probate Code's "definition" of trust in S.C. Code Ann. § 62-1-201 to support its finding that conservators and personal representatives are not trustees and that the Board therefore cannot regulate them.

The Court fails to acknowledge that § 62-1-201 begins with *three* caveats to its definitions: (1) they are "[s]ubject to additional definitions contained in the subsequent articles which are applicable to specific articles or parts," (2) they do not apply if "the context otherwise requires," and (3) they apply only "in this Code," *i.e.*, the Probate Code. Properly read, S.C. Code Ann. § 62-1-201(49) does not provide a true definition of trust; it establishes that the Probate Code generally uses the term "trust" to mean an express trust.[4] *See also* S.C. Code Ann. § 62-7-102 ("This article applies to express trusts, charitable or noncharitable, and trusts created pursuant to a statute, judgment, or decree that requires the trust to be administered in the manner of an express trust."). The General Assembly adopted this narrow usage of "trust" in the specific context of the Probate Code over 50 years after the General Assembly charged the Board with regulating trust business,

[4] Neither the South Carolina Court of Appeals nor Supreme Court has ever applied § 62-1-201(49) to determine whether a trust has been created. *E.g.*, *Protestant Episcopal Church in Diocese of S.C. v. Episcopal Church*, 439 S.C. 284, 302, 887 S.E.2d 508, 517 (2022) (citing S.C. Code Ann. §§ 62-7-401 and 402 to determine whether an express trust was created).

and that usage has no bearing on the meaning of trust business in § 34-21-10. Confirming as much, § 62-1-201(49) expressly excludes common trust funds, which the Board no doubt regulates.

More importantly, the Probate Code explicitly describes conservators and personal representatives as trustees. "A *personal representative* has the same power over the title to property of the estate that an absolute owner would have, *in trust* however, for the benefit of the creditors and others interested in the estate." S.C. Code Ann. § 62-3-711(a) (emphasis added). "The appointment of a *conservator* vests in him title *as trustee* to all property of the protected person." S.C. Code Ann. § 62-5-417 (emphasis added); *see also Michie*, 165 S.E. at 361 (holding that a bank serving as an executor "was a trustee of the highest nature, and that the funds were trust funds, first for creditors, and, second, for beneficiaries").

If Board-regulated "trust business" means serving as a trustee by the Probate Code's definition, then service as a conservator or personal representative qualifies as trust business.

Moreover, § 62-1-201(49) does not exclude guardians and attorneys-in-fact from being trustees. Thus, the question becomes whether they are trustees under the common law. *See* S.C. Code Ann. § 62-7-106 ("The common law of trusts and principles of equity supplement this article, except to the extent modified by this article or another statute of this State."). This Court recently reiterated a longstanding definition of a trustee: "A trustee is a person holding the legal title to property, under an express or implied agreement to apply it, and the income arising from it, to the use and for the benefit of another person ...." *Eidson v. S.C. Dep't of Educ.*, 444 S.C. 166, 179, 906 S.E.2d 345, 351 (2024) (*quoting Neel v. Clark*, 193 S.C. 412, 416, 8 S.E.2d 740, 742 (1940)).

By this definition, guardians and attorneys-in-fact are trustees. A guardian is responsible for "receiving money and tangible property deliverable to the ward," as a trustee, "and applying the money and property for support, care, and education of the ward." S.C. Code Ann. § 62-5-309(A)(6)(b). Likewise, an agent or attorney-in-fact statutorily may "do any lawful act with respect to the subject and all property related to the subject," including demanding "money or another thing of value to which the principal is … entitled, and conserve, invest, disburse, or use anything so received" and "contract[ing] in any manner with any person." S.C. Code Ann. § 62-8-203(a). To the extent that an agent or attorney-in-fact "hold[s] the legal title to property, under an express or implied agreement to apply it, and the income arising from it, to the use and for the benefit of another person," he or she is a trustee.

Although the Court erred in holding that a fiduciary role constitutes "trust business" only if the Probate Code declares that role a trustee, the Probate Code confirms that Petitioners are trustees engaged in unauthorized trust business in violation of § 34-21-10.

III. The Court overlooks that the opinion effectively legislates the repeal of portions of the South Carolina Code.

By determining that the Board regulates only trustees of express trusts, this Court raises a serious and unanswered question: Why did the General Assembly repeatedly list the other fiduciary roles when discussing trust business and trust companies? This question is not theoretical. The Court's ruling confounds or effectively legislates away significant portions of State law, not only in the Banking Code, but throughout the South Carolina Code.

For example, the Court's decision essentially amends the following statutes, deleting existing statutory language (strikethroughs) and imposing its own wording (underlined):

> **Section 34-30-1440(A)(3)**
> A state savings bank may "with prior board approval, act as a trustee <u>of an express trust</u>~~, executor, board, guardian, or in another fiduciary capacity~~…"

Section 34-21-10
No ~~corporation, partnership or other person~~ bank or trust company shall conduct a trust business in this State without first making a written application to the State Board of Bank Control and receiving written approval from the Board…. Provided, further, that nothing contained in this section shall prevent a natural person or a national banking association having its principal place of business in this State from qualifying and acting as trustee of an express trust~~, executor, administrator, guardian, committee or in any other fiduciary capacity.~~

Section 34-21-20
All state chartered banks, building and loan associations, savings associations, savings and loan associations, savings banks, trust companies, ~~and fiduciary corporations~~ authorized to conduct a trust business in this State are subject to examination by the State Board of Financial Institutions and are further subject to rules and regulations promulgated by the Board.

Section 34-21-30
Banks, trust companies, serving as trustee of an express trust ~~or corporations acting in a fiduciary capacity~~ shall segregate all assets held as trustee of that express trust ~~in any fiduciary capacity~~ from the general assets of the bank, trust company, ~~or corporation~~ and shall keep a separate set of books or records showing in proper detail all transactions relative to this ~~fiduciary~~ business, and these books and records must be under the management of an officer whose duty must be prescribed by the board of directors.

Section 37-11-20 – Consumer Protection Code
(10) "Trust institution" means a state or national bank, state or federal savings and loan association, or trust company authorized to act as a trustee of an express trust ~~in a fiduciary capacity~~ in this State.

Section 40-8-30 – Perpetual Care Cemetery Act
(19) "Trust institution" means a state or national bank, state or federal savings and loan association, or trust company authorized to act as a trustee of an express trust ~~in a fiduciary capacity~~ in this State.

Throughout the Code, the General Assembly discusses trust business and trust companies in terms much broader than simply serving as the trustee of an express trust. The opinion overlooks the General Assembly's purposefully broad language.

IV. The Court overlooks and misapprehends the roles of both the Board and the probate courts regarding Petitioners' fiduciary activities.

The Court concludes by finding the Board's oversight of personal representatives, conservators, guardians, and attorneys-in-fact is unnecessary because "the Probate Code and the probate courts provide sufficient controls" over them, and "can require such fiduciaries to post surety bonds, provide accountings, and comply with other measures designed to protect the parties and the public." Opinion at 7–8. Although the General Assembly determines, as a matter of public policy, what oversight is sufficient, the Court overlooked or misapprehended four points and left vulnerable South Carolinians at risk when limiting the scope of § 34-21-10.

First, Petitioners have conceded that they do not limit their work to probate court appointments. *See* Pet'rs' Return to Mot. for Judicial Notice at 2 ("Petitioners do not dispute what they stated before the legislative subcommittee."); Resp't's Mot. for Judicial Notice at 2–3 (identifying statements from the subcommittee hearing proving that Petitioners engage in non-probate court work). The probate court therefore is not an effective check on the "non-trustee fiduciary services" which Petitioners provide.

Second, the Court draws an illusory distinction between trustees (which the Board regulates) and personal representatives, conservators, and guardians (which the Court held the Board cannot regulate) based on the Probate Code and probate court jurisdiction. The Probate Code addresses all of these fiduciary roles, giving the probate court jurisdiction over "trusts, inter vivos or testamentary, including the appointment of successor trustees" (S.C. Code Ann. § 62-1-302(a)(3)), just as over "estates of decedents" (S.C. Code Ann. § 62-1-302(a)(1)), or "protective proceedings and guardianship proceedings" (S.C. Code Ann. § 62-1-302(a)(2)(i)). Moreover, the Probate Code does not establish probate court authority to appoint, oversee, or otherwise provide "controls" over agents, which appears to be a commonly abused fiduciary role.[5] This undermines the Court's use of the Probate Code or the probate court as a litmus test for the Board's jurisdiction.

Third, the probate court serves a judicial role, not an executive one. Article I, § 8 of the South Carolina Constitution provides that "the legislative, executive, and judicial powers of the government shall be forever separate and distinct from each other, and no person or persons exercising the functions of one of said departments shall assume or discharge the duties of any other." This Court has articulated that under this framework, "the legislative department makes the laws; the executive department carries the laws into effect, and the judicial department interprets and declares the laws." *State ex rel. McLeod v. Yonce*, 274 S.C. 81, 84, 261 S.E.2d 303, 305 (1979). Any statutory provision requiring the probate court to do an act that is executive in nature is unconstitutional, and any action by a probate judge that "did not serve a judicial function" could waive the judge's common-law judicial immunity. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 193 (2007).

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[5] The following South Carolina Attorney General press releases reference charges against individuals for crimes committed while acting in the role of power of attorney *in 2026 alone*: Dolores Ann Edge (also conservator), https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-latta-woman-charged-with-stealing-more-than-34-000-from-nursing-home-resident/; Gina Carnaggio, https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-gilbert-woman-charged-with-stealing-more-than-10-000-from-vulnerable-adult/; Demetrias Roberts, https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-irmo-man-charged-with-stealing-almost-15-000-from-nursing-home-resident/; Robbie Williams, https://www.scag.gov/about-the-office/news/attorney-general-alan-wilson-announces-greenville-woman-charged-with-stealing-social-security-payments-from-assisted-living-resident/. Even though § 34-21-10 exempts these individuals from Board regulation, the point remains that probate courts do not provide oversight of these services. The risk for harm when these services are formed on the corporate scale only multiplies.

The probate court adjudicates trust, estate, conservatorship, or other fiduciary appointments on an individual basis. The Board's executive branch oversight allows organization-level supervision, ensuring the safety and soundness of the entity itself—protecting fiduciary assets, promoting compliance with fiduciary laws and regulations, and reducing systemic risks that could, if unchecked, affect countless fiduciary accounts. That oversight does not depend on the county in which a matter arises or on whether a party has filed a proper motion. The probate courts not only lack this power, but constitutionally cannot hold it. Recent events also confirm that court oversight of these roles is ineffective. *See* U.S.D.O.J., *Alex Murdaugh Sentenced to 40 Years in Prison for Federal Financial Crimes* (Apr. 1, 2024), https://www.justice.gov/usao-sc/pr/alex-murdaugh-sentenced-40-years-prison-federal-financial-crimes.

Lastly, the Court should not void the Banking Code's consumer safeguards just because it considers the Probate Code to provide sufficient controls over some of Petitioners' fiduciary activities. Nearly 200 years ago, South Carolina's Court of Appeals for Equity offered this observation, which still rings true today: "There can be no doubt that a guardian is a trustee and liable as other trustees are. It may be that to trustees not under bond and such as are not required to account annually to the Court, as executors and trustees of the appointment of parties, the doctrines of the Court might be somewhat more promptly and stringently applied, than to guardians who give bond and are required to account to the Court annually, and are under the responsibility of giving additional sureties when it seems requisite; still it is not safe to indicate any relaxation of the rules in equity concerning trustees in favor of such as have given bond." *Spear v. Spear*, 30 S.C. Eq. (3 Rich. Eq.) 184, 200–01 (1857) (internal citations omitted).

The probate courts' capability and authority have served as a regrettably effective red herring in this case and remain entirely irrelevant in discerning the Board's regulatory authority over Petitioners.

CONCLUSION

This Court therefore should grant rehearing, withdraw its opinion, and affirm the decision of the Court of Appeals.

Respectfully submitted,

/s/ Shawn D. Eubanks
Shawn D. Eubanks
Christopher A. Majure, Sr.
Matthew D. Houck
1200 Senate Street, Suite 214
Wade Hampton Office Building
Columbia, South Carolina 29201
(803) 734-2623

/s/ R. Walker Humphrey, II
R. Walker Humphrey, II
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Elizabeth Zeck
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
930 Richland Street (29201)
Post Office Box 8416
Columbia, South Carolina 29202
(803) 252-3300

Attorneys for Respondent South Carolina Board of Financial Institutions

Columbia, South Carolina
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