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Aug 27 2026

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM YORK COUNTY
Court of Common Pleas, The Honorable William A. McKinnon

Court of Appeals Case No. 2022-000580
Unpublished Opinion No. 2025-UP-275, rehearing denied May 14, 2026

Supreme Court Case No. 2026-001324

The Grapevine of Riverwalk, Inc.Petitioner-Respondent,
v.

Riverwalk River District Building 6, LLC, Mark Mather,
GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and
Assured Administration, LLC, Respondents-Petitioners.

REPLY IN SUPPORT OF PETITION FOR A WRIT OF CERTIORARI

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August 27, 2026

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Petitioners Riverwalk River District Building 6, LLC, Mark Mather, GRH Development Resources, LLC, The Greens of Rock Hill, LLC, and Assured Administration, LLC (collectively, “Riverwalk”) respectfully reply to the Return of Respondent The Grapevine of Riverwalk, Inc. (“Grapevine”).

ARGUMENT IN REPLY

Grapevine’s Return makes the Petition’s point. Rather than answer the novel and consequential preservation questions presented, Grapevine asks this Court to ratify an erroneous series of procedural forfeiture traps: first, that Riverwalk was required to pursue an interlocutory appeal after a contract-construction ruling; second, that Riverwalk lost review of legal questions the circuit court had already decided because Riverwalk did not ritualistically repeat them in a Rule 50 motion at the close of evidence; and third, that Riverwalk’s post-trial motions were too late—though the case remained open, a claim for specific performance remained undecided, and the circuit court itself set the schedule under which the parties proceeded. That is not—and it should not be—the law of South Carolina.

The Opinion’s preservation rulings are not harmless technicalities. They leave intact a damages judgment that rests on a legal theory that the Court of Appeals rejected when it reversed specific performance. They allow a jury verdict to stand without review of the trial court’s threshold legal rulings on an unambiguous commercial Lease. And they treat Riverwalk’s compliance with a court-ordered post-trial schedule as a jurisdictional default, notwithstanding Rule 54(b), SCRCp, and appellate authority explaining that where there is no express Rule 54(b) determination, the time to file post-trial motions does not begin to run until all claims have been adjudicated.

This Court should grant Riverwalk’s Petition.

I. South Carolina Code § 14-3-330(2) does not permit immediate appeal of the lower court's denial of Riverwalk's Rule 12 Motion to Strike Grapevine's jury demand.

Grapevine makes this issue so much "harder than it has to be."¹ The question of whether Riverwalk was required to immediately appeal the denial of its Rule 12 Motion to Strike is controlled by statute, and that statute Can Tell You Why: no party was deprived of a constitutional right by the order, and so no immediate appeal could be taken from it.

South Carolina Code § 14-3-330(2) confines immediate, direct appeal of an order "affecting a substantial right" to three exceptional circumstances, none of which exist here: "when such order (a) in effect determines the action and prevents a judgment from which an appeal might be taken or discontinues the action [not applicable here], (b) grants or refuses a new trial [not applicable here] or (c) strikes out an answer or any part thereof or any pleading in any action [also not applicable here]." The statute is clear: **immediate, direct appeal is restricted to orders disrupting a party's constitutional right to trial by jury.**

Grapevine's Return contends that the circuit court's order denying Riverwalk's Motion to Strike Grapevine's jury demand affected a substantial right – a mode of trial – and therefore had to be appealed immediately. The Return is wrong because it ignores the controlling limitation on the so-called "mode of trial" exception. In *Fulmer v. Cain*, this Court explained that "the 'mode of trial' exception to the general rule that only final orders are appealable is confined to orders which abridge a party's constitutional right to trial by jury." 380 S.C. 466, 470, 670 S.E.2d 652, 654 (2008) (cleaned up) (emphasis added). There, as here, no party had suffered an abridgment of the constitutional jury right. Indeed, Grapevine received precisely what it demanded: a jury trial. The *Fulmer* ruling conforms with the plain

¹ With deference to the Eagles (1979), "**I Can't Tell You Why**." The Long Run. Elektra Records.

language of § 14-3-330(2).

The circuit court's error was not that it denied Grapevine a jury trial (it didn't). Its error was that it refused to enforce Grapevine's contractual agreement to waive one. That distinction is dispositive. The Lease provides in conspicuous, all-capital language:

THE PARTIES KNOWINGLY AND VOLUNTARILY WAIVE ANY RIGHT THEY MAY HAVE TO A TRIAL BY JURY IN ANY CLAIM OR CAUSE OF ACTION ARISING HEREUNDER OR RELATING TO THIS LEASE.

(R. 1269). Riverwalk's Motion to Strike sought enforcement of that provision, presenting a straightforward question of contract construction and legal entitlement. When the lower court denied Riverwalk's motion, it misconstrued the Lease's clear language – but it did not put any party's constitutional right in jeopardy. In that regard, the lower court's order was no different from any other contract construction decision that it made during the trial, and which could be appealed after final judgment pursuant to South Carolina Code § 14-3-330(1) ("if no appeal be taken until final judgment is entered the court may upon appeal from such final judgment review any intermediate order or decree necessarily affecting the judgment not before appealed from."). *Fulmer* confirms that the order was not immediately appealable.

Put another way, there is no doubt that Riverwalk was not required to take an immediate appeal from the trial court's *other* errors of law on contract construction, including the common area and option to purchase provisions discussed below. For example, had Riverwalk attempted to immediately appeal the trial court's ruling that the Lease's common area provisions are ambiguous, such an appeal would have been dismissed pursuant to S.C. Code § 14-3-330, and Riverwalk would have been required to wait until final judgment to appeal. Likewise, no immediate appeal could be taken by Riverwalk of the order denying its contractual right to a non-jury trial. This makes sense from a public policy standpoint: the statutory, jurisdictional guardrails on appellate review are designed to avoid piecemeal

appeals and to promote judicial economy.

Although Grapevine argues that the case of *Frampton v. South Carolina Dept. of Transportation*, 406 S.C. 377, 752 S.E.2d 269 (Ct. App. 2013), is “nearly identical to the circumstances here,” the Court of Appeals’ decision in *Frampton* does not control over this Court’s unmistakable ruling in *Cobb* that the denial of a non-jury trial is not immediately appealable. 365 S.C. 360, 618 S.E.2d 299 (2005). Moreover, *Frampton* does not alter the unambiguous limit on this Court’s jurisdiction to hear immediate appeals, which is constrained by statute. S.C. Code § 14-3-330(2). Nor does it dilute this Court’s holding in *Fulmer*, that “the ‘mode of trial’ exception to the general rule . . . is confined to orders which abridge a party’s constitutional right to trial by jury.” 380 S.C. 466, 670 S.E.2d 652.

No authority supports Grapevine’s sweeping proposition that every order involving the mode of trial must be immediately appealed. Grapevine’s position would expand interlocutory jurisdiction beyond the statute. It would require litigants to pursue immediate appeals from commonplace orders construing private jury-waiver provisions—even though such orders do not determine the action, refuse a new trial, or strike a pleading within the meaning of South Carolina Code § 14-3-330(2). The result of Grapevine’s position would invite precisely the piecemeal appeals that the jurisdictional statute is designed to prevent.

A. Grapevine’s waiver argument is a red herring.

Grapevine asserts Riverwalk waived enforcement of the Lease’s jury-waiver provision by initially demanding a jury and agreeing to a jury trial. The Return offers no authority holding that a demand under Rule 38, SCRPC, irrevocably waives a party’s right to request the court to determine under Rule 39(a), SCRPC, that no jury-trial right exists on the claims presented. Rule 38(d) provides that a jury demand ordinarily may not be

withdrawn without consent. But Rule 39(a) answers the question Grapevine avoids. Even where a jury has been demanded, trial will be by jury unless “the court upon motion or of its own initiative finds that a right of trial by jury of some or all of those issues does not exist.” Rule 39(a), SCRCP. Riverwalk’s Rule 12(f) motion did exactly that: it requested a ruling that, because Grapevine contractually waived a jury trial, Grapevine had no jury-trial right on claims arising from or related to the Lease.

The Return’s cited case, *Liberty Builders, Inc. v. Horton*, 336 S.C. 658, 665, 521 S.E.2d 749, 753 (Ct. App. 1999), concerns the waiver of arbitration. It does not resolve whether a party’s earlier procedural jury demand relinquishes its right to enforce a contractual jury waiver, in answer to an amended complaint. Nor did the circuit court make the express waiver finding that Grapevine now asks this Court to infer. The Return’s new, fact-bound alternative theory does not convert the circuit court’s contract construction order into one requiring immediate interlocutory appeal.

B. The appeal encompassed the intermediate order.

Grapevine next contends that Riverwalk did not separately list or attach the March 10, 2021, order in its notices of appeal. That argument fails because Riverwalk appealed from the final judgment, and South Carolina law expressly permits review at that point of intermediate orders necessarily affecting the judgment.

In *Lancaster v. Fielder*, this Court held that when a party timely appeals from a final judgment, S.C. Code § 14-3-330(1) authorizes review of “any intermediate order or decree necessarily affecting the judgment not before appealed from.” 305 S.C. 418, 421, 409 S.E.2d 375, 377 (1991) (“[I]f there is a final judgment, and the party timely files his notice of intent to appeal from that judgment, under Section 14-3-330(1) this Court can review any intermediate

order or decree necessarily affecting the judgment not before appealed from.”). The same principle is reflected in *Greenville County v. Kenwood Enterprises, Inc.*, 353 S.C. 157, 577 S.E.2d 428 (2003) (expressly rejecting a procedural-bar argument based on failure to notice an intermediate order because an appeal from final judgment permits review of intermediate orders necessarily affecting the judgment), *overruled on other grounds by Byrd v. City of Hartsville*, 365 S.C. 650, 620 S.E.2d 76 (2005). *See also South Carolina Department of Transportation v. Faulkenberry*, 337 S.C. 140, 146, 522 S.E.2d 822, 825 (Ct. App. 1999) (“When there is a final judgment, and a party timely files its notice of intent to appeal from that judgment, this court may review any intermediate order necessarily affecting the judgment not earlier appealed.”).

There is no question the order denying Riverwalk’s Motion to Strike necessarily affected the judgment. It compelled a jury trial that yielded the verdicts and resulting orders now on appeal. Grapevine identifies no prejudice suffered because the order was not attached to the notice of appeal, and no rule requires an appellant to list every antecedent intermediate ruling in order to invoke review of an appeal from a final judgment.

Riverwalk did what the law required. It raised the jury-waiver question, received an adverse ruling, proceeded to final judgment, and appealed. Upon Riverwalk’s appeal from final judgment, the Court of Appeals had jurisdiction to review that intermediate order, which necessarily affected (and infected) every portion of the resulting judgment. S.C. Code § 14-3-330(1); S.C. Code § 18-1-130 (“Upon an appeal from a judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment.”). The Opinion commits error in finding the issue unpreserved, and this Court should review and reverse that error.

II. The Return confirms the need for this Court to clarify preservation of pure legal errors.

The Return's answer to Riverwalk's contract-construction issues is mechanical: Riverwalk did not renew its directed verdict motion on the breach-of-contract claims at the close of all evidence. But that answer assumes the point in dispute. Riverwalk does not seek this Court's review of a factual sufficiency ruling. It seeks review of antecedent errors of law that controlled whether the questions could go to the jury in the first place.

The Return never discusses *Dupree v. Younger*, 598 U.S. 729 (2023). It never confronts the distinction between questions of fact – which may evolve as trial evidence develops – and pure questions of law, which do not. And it never answers Riverwalk's statutory argument that S.C. Code § 14-3-330(1) permits review after final judgment of intermediate legal orders necessarily affecting the judgment.

In *Dupree*, the United States Supreme Court held that Rule 50 does not require a litigant to renew a pure legal issue after trial where that issue was previously raised and ruled upon. 143 S.Ct. at 1387-88, 1391. The reason is plain: where the question is truly legal, future testimony and exhibits do not alter the answer. A repeat-motion requirement therefore amounts to "a copy and paste" exercise for litigants and the "tedium" of a court rejecting the same legal position, twice. *Id.* at 1389-90 ("There is no reason to force litigants and district courts to undertake that empty exercise.").

Nor should South Carolina demand pointless repetition of legal issues. This Court has stated that it "does not require parties to engage in futile actions in order to preserve issues for appellate review." *Staubes v. City of Folly Beach*, 339 S.C. 406, 415, 529 S.E.2d 543, 547 (2000). This Court should review the Opinion to clarify that directed verdict motions are

only necessary to preserve factual error.² Under South Carolina law, **a trial court's error of law is preserved for appellate review as soon as it is raised to and ruled upon by the lower court.** See S.C. Code § 14-3-330 (stating appellate jurisdiction “for correction of errors of law” extends to “[a]ny intermediate . . . order or decree in a law case involving the merits . . .”); S.C. Code § 18-1-130 (“Upon an appeal from a judgment the court may review any intermediate order involving the merits and necessarily affecting the judgment.”); *Atl. Coast Builders & Contractors, LLC v. Lewis*, 398 S.C. 323, 330, 730 S.E.2d 282, 285-286 (2012) (because Appellant had raised issue in its Complaint, at trial, and within a Rule 59 Motion, on which the master ruled, “[o]ur core preservation requirements therefore have been met, and there is no procedural bar to us considering this question.”).

Here, the Lease construction arguments were raised to the trial court before trial, during trial, and in post-trial motions, and each were specifically ruled upon by the trial court. In particular, the trial court's erroneous determination that certain Lease provisions were ambiguous—and its commensurate decision to submit the questions to the jury—involved the merits of the case and controlled the ultimate judgments for damages and specific performance. See S.C. Code § 18-1-130. Notably, the trial court's erroneous rulings extended long after trial due to the unusual procedural posture of this case, in which Grapevine made a post-trial directed verdict motion for specific performance. (See, e.g., R. pp. 33-34, requiring an amended master deed and holding that the “amended Master Deed shall contain terms that are . . . not unduly restrictive of Plaintiff's rights, including the right of Plaintiff to use Common Areas adjacent to its space, as established by the judgment in this

² Rule 50, SCRPC, sets the timing for such motions as being “at the close of evidence” and “at the close of all evidence” because such motions challenge the sufficiency of factual evidence.

case.”). Because the trial court ruled on the legal issues (repeatedly), the Court of Appeals erred when it found the issues to be unpreserved for lack of a motion pursuant to Rule 50.

The Court of Appeals’ approach produces an intolerable result. A party may present an issue of contract interpretation; receive the trial court’s legal ruling; be told the court will not change its mind; proceed through trial; and then lose appellate review because counsel did not make one more ritual recitation of an already rejected legal position. That is not preservation—it is a forfeiture trap.

A. Grapevine’s own Return confirms it did not exercise the option as required.

The Lease’s option language is not complicated. Paragraph 33 requires an exercise “in accordance with the Purchase and Sale Agreement as provided in Exhibit G.” The Return acknowledges that Exhibit G required execution of a purchase-and-sale agreement and a \$25,000 escrow deposit upon execution. (Return, p. 5). The Return further acknowledges that Grapevine never executed Exhibit G and never tendered the required deposit. (*Id.*, p. 8) (“Accordingly, it is undisputed that Grapevine never executed the purchase and sale agreement attached as Exhibit G to the Lease or tendered the \$25,000 earnest money deposit required by Exhibit G.”).

The Return explains that Grapevine desired to purchase, sent a letter announcing its intent, communicated about a closing, and claims Riverwalk frustrated the transaction. But notice of an intent to exercise is not a substitute for exact compliance with the option’s stated terms. In *Ingram v. Kasey’s Associates*, this Court held that a tenant’s notice of its desire to extend an option did not satisfy a contractual requirement to pay money: the lessor was entitled to “exact compliance with the terms of the option.” 340 S.C. 98, 111, 531 S.E.2d 287, 293 (2000). That principle is decisive here. Grapevine’s factual narrative does not alter the

undisputed fact that the incorporated agreement was never executed, and the required deposit was never tendered.

The Opinion itself found that Grapevine did not properly exercise the option and that no purchase contract existed to specifically enforce. Yet it left intact a damages verdict on the same alleged option-related breach—not because the verdict was legally sound, but because it deemed Riverwalk’s legal argument unpreserved. Grapevine’s Return fails to confront that contradiction. Review is necessary to prevent preservation error from sustaining a judgment undermined by the Court of Appeals’ own merits analysis.

B. Grapevine cannot manufacture ambiguity through extrinsic evidence.

The Return’s common area discussion is similarly revealing. It does not quote the Lease or identify language that is actually susceptible to two reasonable meanings. Instead, it relies on negotiation history, marketing materials, Riverwalk’s alleged temporary permission for tables and chairs, and conduct occurring after the Lease was signed. **That is backwards.** Whether a contract is ambiguous is a question of law. *North American Rescue Products, Inc. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240 (2015). If the Lease is unambiguous, its construction is for the court. *Lee v. University of South Carolina*, 407 S.C. 512, 517, 757 S.E.2d 394, 397 (2014). And extrinsic evidence cannot give a written contract a meaning different from its plain terms. *Bluffton Towne Center, LLC v. Gilleland-Prince*, 412 S.C. 554, 571, 772 S.E.2d 882, 891 (Ct. App. 2015).

The parol evidence rule supplies the same answer to Grapevine’s reliance on pre-Lease communications. Extrinsic evidence of prior or contemporaneous agreements and understandings cannot be admitted to contradict, vary, or explain a written instrument. *In*

re Estate of Holden, 343 S.C. 267, 275, 539 S.E.2d 703, 708 (2000). Especially in this instance, where the Lease contains a clear ‘entire-agreement’ clause. (R. 1265 ¶ 43) (*see infra*, p. 14).

The Lease identifies the “Demised Premises” as “being located within the Building,” clearly distinguishing the leased premises from the outdoor common areas. (R. p. 1247 ¶ 1). It grants Grapevine a non-exclusive right to use and enjoy the common areas with other tenants and their customers, employees, and invitees. The legal question was whether that text conferred Grapevine’s claimed right to occupy and commercially use (for the service and sale of alcohol) the common areas in the manner for which the jury awarded damages. The Return offers no textual ambiguity. Instead, it attempts to use extrinsic evidence to create one. The circuit court’s initial ambiguity ruling was an erroneous ruling of law, and Riverwalk preserved its challenge to it.

Petitioners respectfully ask this Court to grant a writ of certiorari to reverse the lower court’s errors of law on these Lease construction issues, which controlled the ultimate judgment in this case and did not need to be raised repeatedly to be preserved for review.

III. The jury’s verdict was not a final adjudication of all claims in this case, and therefore Riverwalk’s post-trial motions were timely.

Despite having consented³ to the fourteen-day timeline for post-trial motions, which was necessitated in part by Grapevine’s own, still-pending, as-yet-unadjudicated claim for

³ **THE COURT:** Let’s get back on the record. Counsel, my inclination is to give y’all ten days for post-trial motions and that would include, if the Plaintiff wants to make the motion for specific performance. . . *Let’s just give y’all two full weeks*. We will say, post-trial motions by, that would be Friday, the 10th.

That is acceptable to [Grapevine]?

COUNSEL FOR GRAPEVINE: Yes, Your Honor.

(R. p. 1186) (emphasis added).

specific performance, Grapevine now cries “Gotcha!” and insists Riverwalk should have filed within ten days. (Return, p. 21). But Grapevine does not confront the central problem: at the time the jury was discharged, the case was not over, and no final judgment resolving all claims had been entered.

The Return also fails to address Rule 54(b), SCRCP. Grapevine’s refrain that the circuit court “mistakenly” afforded the parties fourteen days assumes that the jury verdict somehow decided claims that were not before it and remained undetermined. But a court cannot be said to have lost jurisdiction over a case before it has finished fully adjudicating the claims in that case—and in this case Grapevine’s specific-performance claim remained reserved for post-verdict adjudication.

Likewise, the Return does not address *Holroyd v. Requa*, 361 S.C. 43, 603 S.E.2d 417 (Ct. App. 2004). The Court in *Holroyd* held that post-trial motions were not required to be filed until after the trial court had “ruled on all the claims presented.” *Id.* at 52–54 (citing Rule 54, SCRCP). In *Holroyd*, the jury rendered a verdict on December 20—but (as here) the parties had reserved one cause of action for post-trial adjudication by the court. Interestingly, on January 8th the plaintiff withdrew the claim it had previously reserved; the defendant then filed his post-trial motions on January 15th (so, **twenty-six days** after the jury verdict). The Court in *Holroyd* held that those post-trial motions, made twenty-six days after the jury retired, were nonetheless timely. *Id.* at 53–54 (holding, “the time for filing post-trial motions did not begin to run until the time Respondents’ UTPA claim had been withdrawn. Requa filed his post-trial motions within seven days of the informal notice of withdrawal and eight days prior to the formal withdrawal. Requa’s post-trial motions were therefore timely under the rules.”); see also *Ashenfelder v. City of Georgetown*, 389 S.C. 568, 578, 698 S.E.2d 856, 861 (Ct.

App. 2010) (holding that absent an express Rule 54(b) determination, “the time to file post-trial motions did not begin to run until all claims had been adjudicated.”).

While the rules of procedure allot ten (now twenty) days for post-trial motions, the very same rules of procedure also permit a trial court to change its mind at any time before final adjudication of “all the claims” within an action. *See*, Rule 54(b), SCRCP (“any order or other form of decision, however designated, which adjudicates fewer than all the claims or the rights and liabilities of fewer than all the parties shall not terminate the action as to any of the claims or parties, and the order or other form of decision is subject to revision at any time before the entry of judgment adjudicating all the claims and the rights and liabilities of all the parties.”). Thus, the trial court here had authority to rule on the issues raised in Riverwalk’s post-trial motions, as well as on Riverwalk’s arguments in opposition to Grapevine’s post-trial motions, and rule, it did. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1997) (“an issue . . . must have been raised to and ruled upon by the trial judge to be preserved for appellate review.”). The issues were therefore preserved for review.

At a minimum, Rule 54(b) and the decision in *Holroyd* implicate an alternative interpretation to the Opinion’s error preservation ruling. Multiple interpretations on issue preservation should propel this Court to review the Opinion and find the issue preserved:

It cannot be said that Appellant’s arguments are clearly preserved. But in light of the foregoing, it also cannot be said that [Appellant]’s arguments are clearly unpreserved. In these situations, “where the question of issue preservation is subject to multiple interpretations, any doubt should be resolved in favor of preservation.” Therefore, we find Appellant has preserved her arguments to this court, and has adequately appealed the circuit court’s order.

Johnson v. Roberts, 422 S.C. 406, 412, 812 S.E.2d 207 (Ct. App. 2018), *quoting Atlantic Coast Builders & Contractors LLC* at 333, 730 S.E.2d at 287 (Toal, C.J. concurring in part and

dissenting in part). **Moreover, multiple possible interpretations on issue preservation should propel this Court to clarify the law.**

The Opinion found that Riverwalk had preserved its reliance challenge; it refused to reach the merits only because it erroneously held Riverwalk's JNOV motion to be untimely. The Return concedes Riverwalk moved for a directed verdict on negligent misrepresentation because the evidence did not establish detrimental reliance. Once this Court holds that Riverwalk's JNOV motion was timely, this Court may reach the merits identified in the Petition. Riverwalk need not belabor those merits in reply. Grapevine entered an integrated, arms-length commercial Lease containing an entire-agreement provision that superseded prior representations regarding the transaction, and Grapevine had no right to rely on alleged statements during lease negotiations, as a matter of law. (R. 1265, ¶ 43: "All prior representations, discussions, covenants, or warranties of the parties with respect to the Demised Premises or the subject matter hereof are merged herein and superseded hereby.").

CONCLUSION

The Return does not cure the Opinion's errors of law. It confirms that this case presents important questions regarding the statutory limits of appellate jurisdiction, the preservation of pure legal issues, and the timing of post-trial motions where a claim remains pending. Those questions extend far beyond this commercial Lease dispute, and they justify this Court's review under Rule 242(b), SCACR.

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Respectfully submitted,

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PROOF OF SERVICE

I certify that on August 27, 2026, I served Respondents-Petitioners' *Reply in Support of Petition for a Writ of Certiorari* by sending the same to Petitioner-Respondent's attorneys of record at their email addresses of record with AIS.

s/ Ainsley Tillman

Attorney for Petitioners