

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM NEWBERRY COUNTY
Court of Common Pleas
Eugene C. Griffith Jr., Circuit Court Judge

RECEIVED

SEP 15 2026

S.C. SUPREME COURT

Appellate Case No. 2024-001360

Court of Appeals Unpublished Opinion No. 2026-UP-389

Newberry College, Respondent,

V.

Abdellah El Farissi, Petitioner.

PETITION FOR A WRIT OF CERTIORARI

September 15, 2026

Abdellah El Farissi
Pro Se Petitioner
135 Doverside Dr
Columbia, SC 29212
(954) 274-4475
1tennis.key@gmail.com

Other Counsel of Record:
Sheila M. Abron
1320 Main St., Suite 750
Columbia, SC 29201
(803) 740-7676
sabron@fisherphillips.com
Attorney for Respondent

INDEX

Questions Presented for Review	5
Statement of the Case	5
Reasons for Granting the Writ	7
I. Rule 242(b)(3): conflict with settled statutory-construction precedent	7
II. Novel question concerning § 2511(2)(d) at the Rule 12(b)(6) stage	11
Argument	12
I. Participant status and the statutory-purpose qualification	12
II. Pleading-stage significance of advance request, disclosure, and use	13
III. Threshold legal question; no request for factual adjudication	15
Conclusion and Requested Relief	16

TABLE OF AUTHORITIES

South Carolina Cases

Bergstrom v. Palmetto Health Alliance, 358 S.C. 388, 596 S.E.2d 42 (2004)

..... 13

Beverly v. Grand Strand Regional Medical Center, LLC, 435 S.C. 594, 869 S.E.2d 812 (2022)

..... 14

Doe v. Greenville County School District, 375 S.C. 63, 651 S.E.2d 305 (2007)

..... 13

El Farissi v. Newberry College, Op. No. 2026-UP-389 (S.C. Ct. App. July 29, 2026)

..... 6, 8, 14

Duvall v. South Carolina Budget & Control Board, 377 S.C. 36, 659 S.E.2d 125 (2008)

..... 10

Grimsley v. South Carolina Law Enforcement Division, 396 S.C. 276, 721 S.E.2d 423 (2012)

..... 17

Ray Bell Construction Co. v. School District of Greenville County, 331 S.C. 19, 501 S.E.2d 725
(1998) 8–10, 13, 16

Rydde v. Morris, 381 S.C. 643, 675 S.E.2d 431 (2009) 13

Skydive Myrtle Beach, Inc. v. Horry County, 426 S.C. 175, 826 S.E.2d 585 (2019)

..... 17

South Carolina State Ports Authority v. Jasper County, 368 S.C. 388, 629 S.E.2d 624 (2006)

..... 9–10

TNS Mills, Inc. v. South Carolina Department of Revenue, 331 S.C. 611, 503 S.E.2d 471 (1998)

..... 9–10

Federal Cases

Caro v. Weintraub, 618 F.3d 94 (2d Cir. 2010) 11, 14

United States v. Jiau, 734 F.3d 147 (2d Cir. 2013) 12

Statutes and Rules

18 U.S.C. § 2511(1)(c) 6

18 U.S.C. § 2511(1)(d) 6

18 U.S.C. § 2511(2)(d) 5–9, 11–12, 14–17

Rule 12(b)(6), SCRCPP 5–6, 11, 13–15, 17

Rule 242, SCACR 7, 11

QUESTIONS PRESENTED FOR REVIEW

I.

Did the Court of Appeals err in affirming dismissal under Rule 12(b)(6), SCRCP, based upon the participant-consent provision of 18 U.S.C. § 2511(2)(d), without addressing the criminal-or-tortious-purpose qualification expressly contained in that same provision, where Petitioner raised that qualification in his Initial Brief and Petition for Rehearing and the allegations and reasonable inferences were required to be viewed in Petitioner's favor at the pleading stage?

II.

Did the Court of Appeals err by treating the participant-consent language of 18 U.S.C. § 2511(2)(d) as dispositive without giving effect to the “unless” qualification contained in the same sentence, contrary to this Court's settled principles requiring statutory language to be read as a whole and its operative provisions to be given effect?

STATEMENT OF THE CASE

This petition presents a narrow question concerning the proper interpretation and application of 18 U.S.C. § 2511(2)(d) at the Rule 12(b)(6) pleading stage.

Petitioner formerly served as an Associate Head Tennis Coach for Respondent Newberry College. Petitioner's Complaint alleged that former Newberry College student-athlete Nastassia Chamoun recorded a conversation with Petitioner in his vehicle at the request of then-head tennis coach Elias Fernandez. (R. p. 8).

Petitioner further alleged that Chamoun disclosed the recording to Fernandez; that Fernandez shared the recording with Associate Athletic Director Wayne Alexander; and that Fernandez and Alexander decided to terminate Petitioner's employment. (R. p. 8). Petitioner's

Amended Complaint further alleged that the recording was also shared with Athletic Director Sean Johnson. (R. p. 10).

Respondent moved to dismiss pursuant to Rule 12(b)(6), SCRCp. (R. pp. 11–13). Petitioner opposed dismissal and invoked the Federal Wiretap Act and South Carolina's corresponding wiretap statutes. (R. pp. 14–16).

The circuit court granted Respondent's motion and dismissed the action with prejudice. (R. pp. 1–6).

On appeal, Petitioner expressly placed before the Court of Appeals the complete language of 18 U.S.C. § 2511(2)(d), including its criminal-or-tortious-purpose qualification. Appellant's Initial Br. at 5–6. The Initial Brief also addressed the related disclosure and use provisions of 18 U.S.C. §§ 2511(1)(c) and (d). *Id.* at 5–6.

Respondent likewise placed the complete language of § 2511(2)(d) before the Court of Appeals and addressed the related disclosure-and-use provisions. Respondent's Initial Br. at 6–7; Respondent's Final Br. at 6–7. Thus, the statutory qualification was part of the federal statutory controversy presented by both parties.

On July 29, 2026, the Court of Appeals issued Unpublished Opinion No. 2026-UP-389 and affirmed dismissal.

In resolving the federal statutory issue, the Court held that, even if Chamoun was acting on behalf of a request by the head tennis coach to record the conversation, Chamoun was a party to the conversation; “thus, there was consent and no unlawful interception occurred.” *El Farissi v. Newberry College*, Op. No. 2026-UP-389, at 2.

The Court therefore treated Chamoun's participant status as dispositive.

Petitioner subsequently sought rehearing and specifically directed the Court of Appeals to the criminal-or-tortious-purpose language omitted from the opinion's analysis. The Court of Appeals denied rehearing.

Petitioner now seeks certiorari on that narrow statutory question.

REASONS FOR GRANTING THE WRIT

Rule 242(b), SCACR, provides that certiorari is not a matter of right but may be granted for "special and important reasons." Among the expressly identified considerations are cases presenting novel questions of law and cases in which the decision of the Court of Appeals conflicts with a prior decision of this Court. Rule 242(b)(1), (3), SCACR.

Both considerations support review here.

I. Review is warranted under Rule 242(b)(3) because the Court of Appeals' analysis conflicts with this Court's settled precedent requiring statutory language to be considered as a whole and all operative provisions to be given effect.

The Court of Appeals' resolution of Petitioner's federal wiretap claim turned upon 18 U.S.C. § 2511(2)(d). That provision makes participant interception generally lawful, but expressly qualifies that rule where the communication is intercepted "for the purpose of committing any criminal or tortious act" in violation of federal or state law.

Congress therefore did not enact an unconditional participant-consent rule. Within the same sentence, Congress attached an express "unless" qualification concerning the purpose for which the interception was undertaken.

The Court of Appeals nevertheless ended its analysis after determining that Chamoun was a participant: "Chamoun was a party to the conversation that she recorded; and thus, there

was consent and no unlawful interception occurred.” *El Farissi v. Newberry College*, Op. No. 2026-UP-389, at 2. The opinion did not proceed to analyze the statutory qualification.

A. Ray Bell demonstrates why this warrants certiorari review.

This Court's decision in *Ray Bell Construction Co. v. School District of Greenville County*, 331 S.C. 19, 501 S.E.2d 725 (1998), is particularly instructive. Ray Bell came before this Court on writ of certiorari to the Court of Appeals. This Court granted review, reversed the Court of Appeals, and remanded.

The Court of Appeals had construed the statute by focusing upon particular statutory language. This Court rejected that analytical approach, expressly holding that “the Court of Appeals erred in focusing only on” one statutory subsection when construing the statute. *Id.* at 25, 501 S.E.2d at 728. This Court then examined the broader statutory scheme and concluded that the Court of Appeals' interpretation would render other statutory requirements “virtually meaningless.” *Id.* at 27, 501 S.E.2d at 729.

The Court reiterated that a statute must be read as a whole and that provisions forming part of the same statutory law must be construed together and given effect where reasonably possible. *Id.* The Court ultimately reversed and remanded.

The analogy here is substantial. In Ray Bell, the Court of Appeals' analysis focused too narrowly upon one portion of statutory text while the remainder of the statutory scheme materially affected its meaning. Here, the Court of Appeals focused upon the participant-consent portion of § 2511(2)(d): participant → consent → lawful interception. But the statutory sentence continues: participant consent → unless the communication was intercepted for the specified criminal or tortious purpose.

Petitioner does not contend that Ray Bell interprets § 2511(2)(d). Rather, Ray Bell demonstrates that this Court has exercised certiorari jurisdiction to correct a Court of Appeals statutory analysis that focused upon only part of governing statutory text and thereby deprived other statutory provisions of meaningful effect. That is the interpretive concern presented here.

B. TNS Mills reinforces the requirement that the entire statutory provision receive effect.

In *TNS Mills, Inc. v. South Carolina Department of Revenue*, 331 S.C. 611, 620, 503 S.E.2d 471, 476 (1998), this Court reiterated that statutory language must be read as a whole, related provisions construed together, and each given effect.

That principle is directly implicated where a court relies upon the first portion of a statutory sentence while the second portion expressly qualifies the first. If participant status alone necessarily terminated the § 2511(2)(d) inquiry, the statutory qualification beginning with “unless” would have no operative function in participant-interception cases.

C. State Ports Authority confirms that courts should not concentrate upon isolated statutory language.

In *South Carolina State Ports Authority v. Jasper County*, 368 S.C. 388, 398, 629 S.E.2d 624, 629 (2006), this Court reiterated that a statute should not be construed by concentrating upon an isolated phrase. Although *State Ports Authority* arose in this Court's original jurisdiction rather than on certiorari, its statutory-construction principle remains relevant. The Court of Appeals' reasoning effectively isolated the participant-consent language from the qualification Congress placed immediately after it.

D. Duvall further establishes that statutory language must not be treated as futile.

In *Duvall v. South Carolina Budget & Control Board*, 377 S.C. 36, 42, 659 S.E.2d 125, 128 (2008), this Court reiterated that statutory language must be considered as a whole and that courts presume legislative enactments were intended to accomplish something rather than constitute futile acts.

Duvall interpreted the statutory language in context rather than treating particular terms in isolation. That principle has particular force here. Congress deliberately wrote “unless.” That word performs a statutory function. If participant status necessarily establishes lawful interception without any inquiry into the specified purpose, the qualification Congress attached to participant consent is effectively denied operation.

E. The conflict concerns analytical methodology—not whether the exception is conclusively established.

Petitioner does not argue that *Ray Bell*, *TNS Mills*, *State Ports Authority*, or *Duvall* themselves determine the meaning of the Federal Wiretap Act. Nor does Petitioner contend that these South Carolina Supreme Court decisions establish that *Chamoun* acted with a qualifying criminal or tortious purpose.

Rather, these decisions establish the governing principles of statutory construction relevant here: courts must consider statutory text as a whole, give effect to all of its operative provisions, and avoid an interpretation that renders deliberately enacted statutory language meaningless or futile.

The Court of Appeals' analysis cannot readily be reconciled with that principle. Moreover, the qualification was squarely before the Court of Appeals. Petitioner quoted and relied upon it in his Initial Brief. Appellant's Initial Br. at 5–6. Respondent likewise quoted the

complete provision and addressed the related disclosure-and-use provisions. Respondent's Initial Br. at 6–7; Respondent's Final Br. at 6–7. Petitioner again identified the omission in his Petition for Rehearing.

This therefore is not an effort to introduce a new statutory theory at the certiorari stage. The question is whether the Court of Appeals could properly end its analysis at participant consent without considering the statutory qualification already before it.

Under Rule 242(b)(3), that asserted conflict with this Court's settled statutory-construction methodology presents a special and important reason for review.

II. Review is additionally warranted because this case presents an important and novel question concerning application of § 2511(2)(d) at the Rule 12(b)(6) stage.

Rule 242(b)(1) separately recognizes novel questions of law as a consideration supporting certiorari.

The issue here is not whether South Carolina generally permits one participant to record a conversation. The narrower federal question is whether, when § 2511(2)(d)'s criminal-or-tortious-purpose qualification is properly presented in a Rule 12(b)(6) case, participant status alone may dispose of the federal claim without examining whether the pleaded allegations and reasonable inferences implicate that statutory qualification.

In *Caro v. Weintraub*, 618 F.3d 94 (2d Cir. 2010), the Second Circuit considered § 2511(2)(d) in circumstances involving a participant recording. The court did not terminate its analysis merely because the recorder participated in the conversation; it proceeded to consider whether the communication had been intercepted for a criminal or tortious purpose. *Caro* ultimately rejected the claim because the required purpose must be independent of the interception itself and must exist when the interception occurs.

That disposition reinforces Petitioner's narrower contention: participant status does not eliminate the statutory-purpose inquiry. Likewise, *United States v. Jiau*, 734 F.3d 147 (2d Cir. 2013), considered the intended use of the recording when analyzing the purpose requirement.

These authorities do not establish that Petitioner necessarily satisfies § 2511(2)(d). They demonstrate that the complete statutory inquiry extends beyond the mere identity of the interceptor as a participant. This Court's review would therefore clarify an important issue of federal statutory application not expressly addressed in the opinion below.

ARGUMENT

I. Participant status did not permit the Court of Appeals to end its § 2511(2)(d) analysis without addressing the statutory-purpose qualification.

Section 2511(2)(d) establishes participant consent subject to an express qualification. The Court of Appeals concluded: Chamoun participated → consent existed → no unlawful interception occurred. But Congress enacted: participant consent → unless the communication was intercepted for the specified criminal or tortious purpose.

The federal claim could properly be dismissed on the participant-consent ground alone only if the remainder of the statutory provision did not affect the analysis. Yet the Court of Appeals did not explain why the “unless” language was inapplicable; it simply did not address it.

That omission is especially significant because both parties placed the complete statute before the Court. Appellant's Initial Br. at 5–6; Respondent's Initial Br. at 6–7; Respondent's Final Br. at 6–7. The issue is not whether the Court of Appeals was required to accept Petitioner's interpretation. It is whether the Court was required to analyze the complete provision before treating participant status as dispositive.

Ray Bell provides an especially useful South Carolina analogue. There, this Court rejected the Court of Appeals' statutory interpretation because it had focused only upon part of the statutory scheme. The Court read the provisions together and rejected an interpretation that rendered other requirements virtually meaningless. The same analytical discipline should apply here.

II. The allegations of an advance request, interception, disclosure, and use made the statutory-purpose inquiry material at the pleading stage.

This case was dismissed under Rule 12(b)(6). It therefore did not reach discovery, summary judgment, or trial.

The Court of Appeals itself recognized that the complaint must be construed in the light most favorable to Petitioner and that the allegations and reasonable inferences must be considered in determining whether relief could be available under any theory. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009); *Bergstrom v. Palmetto Health Alliance*, 358 S.C. 388, 395, 596 S.E.2d 42, 45 (2004); *Doe v. Greenville County School District*, 375 S.C. 63, 66, 651 S.E.2d 305, 307 (2007).

The allegations were not limited to Chamoun independently choosing to record her conversation with Petitioner. Rather, Petitioner alleged an advance request. Petitioner's Complaint alleged that Chamoun recorded the conversation at Fernandez's request. (R. p. 8). Petitioner alleged subsequent disclosure of the recording to Fernandez and Alexander and resulting adverse consequences. (R. p. 8). Petitioner's Amended Complaint alleged additional involvement by Johnson. (R. p. 10).

Most importantly, the Court of Appeals expressly assumed the advance-request allegation when it wrote "even if" Chamoun was acting on behalf of a request by the head tennis coach to

record the conversation. *El Farissi v. Newberry College*, Op. No. 2026-UP-389, at 2. Thus, the Court itself recognized the allegation but nevertheless ended the statutory analysis at participant status.

That matters because the federal statutory qualification turns upon purpose. The alleged sequence was an advance request, a recording pursuant to that alleged request, disclosure to the requesting coach, further alleged disclosure or use, and alleged resulting injury.

Those allegations do not conclusively establish a qualifying purpose. But they bear directly upon why the interception allegedly occurred. Caro teaches that the relevant purpose must exist when the interception is undertaken and must concern an independent criminal or tortious objective. Accordingly, the alleged advance request and contemplated subsequent use are relevant to the statutory inquiry.

Petitioner does not contend that the Court of Appeals was required to conclude that his allegations satisfied the criminal-or-tortious-purpose qualification. The Court remained free, after considering that qualification under the governing Rule 12(b)(6) standard, to determine whether Petitioner's allegations were legally sufficient.

Petitioner's narrower contention is that the Court could not properly treat Chamoun's participant status as ending the § 2511(2)(d) analysis without first addressing the express statutory qualification upon which Petitioner relied.

That distinction is particularly important because this action was terminated under Rule 12(b)(6), before factual development concerning the alleged purpose of the interception. This Court has recognized the distinction between reviewing the legal sufficiency of a pleading and adjudicating the ultimate merits of a claim. See *Beverly v. Grand Strand Regional Medical*

Center, LLC, 435 S.C. 594, 869 S.E.2d 812 (2022) (emphasizing that the Court was reviewing a Rule 12(b)(6) dismissal rather than an order on the merits).

Petitioner therefore does not ask this Court to determine Chamoun's ultimate purpose or resolve disputed facts. He asks only whether the Court of Appeals applied the complete statutory framework before affirming dismissal with prejudice. If § 2511(2)(d)'s criminal-or-tortious-purpose qualification required consideration, the appropriate inquiry at the pleading stage was whether Petitioner's allegations and reasonable inferences were legally sufficient under that framework—not whether Petitioner had already proved the ultimate factual issue.

III. Petitioner does not ask this Court to determine that the criminal-or-tortious-purpose qualification was conclusively satisfied.

This limitation is essential to the question presented.

Petitioner does not ask this Court to find that Chamoun committed a crime. Petitioner does not ask this Court to find that Fernandez committed a tort. Petitioner does not ask this Court to hold that every recording undertaken at another person's request violates the Federal Wiretap Act. And Petitioner does not contend that the recording itself supplies the independent criminal or tortious purpose required by § 2511(2)(d).

Instead, Petitioner seeks review of the threshold legal question: Must the criminal-or-tortious-purpose qualification actually be analyzed before participant status can be treated as dispositive under § 2511(2)(d), when that qualification was expressly raised and the pleaded facts included an alleged advance request followed by disclosure and use?

That distinction preserves the proper roles of the courts. The Supreme Court need not determine ultimate intent, resolve disputed facts, or determine at the certiorari stage whether

Petitioner ultimately can prove an independent criminal or tortious purpose. It need only determine whether the Court of Appeals applied the correct statutory framework.

If this Court determines that the complete § 2511(2)(d) analysis was required, the appropriate course is to reverse or vacate the decision as necessary and remand for application of the proper legal standard.

CONCLUSION AND REQUESTED RELIEF

This case presents a narrow but important question of statutory interpretation. The Court of Appeals relied upon 18 U.S.C. § 2511(2)(d) to affirm dismissal with prejudice. It concluded that because Chamoun was a participant in the conversation, there was consent and therefore no unlawful interception.

But Congress did not end § 2511(2)(d) at participant consent. Congress expressly qualified that rule: “unless such communication is intercepted for the purpose of committing any criminal or tortious act....”

That qualification was presented in Petitioner's Initial Brief, Appellant's Initial Br. at 5–6; appeared in Respondent's briefing, Respondent's Initial Br. at 6–7; Respondent's Final Br. at 6–7; and was specifically identified again in Petitioner's Petition for Rehearing. The issue therefore was before the Court of Appeals.

This Court's precedent establishes that statutory provisions must be read as a whole and their operative language given effect. Most significantly, in *Ray Bell Construction Co. v. School District of Greenville County*, this Court granted certiorari, held that the Court of Appeals “erred in focusing only on” a portion of the governing statutory scheme, rejected an interpretation that would render other statutory requirements “virtually meaningless,” and reversed and remanded.

The same interpretive concern warrants review here. Petitioner does not ask this Court to hold that the criminal-or-tortious-purpose qualification has been conclusively satisfied. He asks this Court to determine whether that qualification must be analyzed.

Such relief is consistent with this Court's treatment of erroneous pleading-stage dispositions. In *Grimsley v. South Carolina Law Enforcement Division*, 396 S.C. 276, 721 S.E.2d 423 (2012), this Court reversed a Rule 12(b)(6) dismissal and remanded for further proceedings. See also *Skydive Myrtle Beach, Inc. v. Horry County*, 426 S.C. 175, 826 S.E.2d 585 (2019) (reversing following a Rule 12(b)(6) dismissal and remanding to permit amendment). These decisions illustrate that correction of a pleading-stage legal error does not require this Court to decide disputed facts or ultimate liability; the Court may correct the governing legal standard and remand for further proceedings under that standard.

Accordingly, Petitioner respectfully requests that this Court:

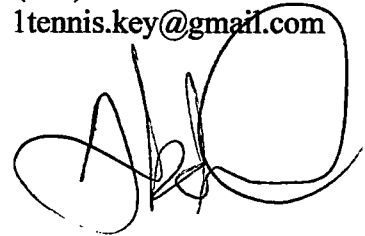
1. grant the Petition for Writ of Certiorari;
2. review whether the Court of Appeals properly applied the complete text of 18 U.S.C. § 2511(2)(d);
3. determine whether participant status could properly be treated as dispositive without addressing the criminal-or-tortious-purpose qualification expressly contained in the same provision; and

4. upon review, reverse or vacate the Court of Appeals' decision to the extent necessary and remand for application of the complete statutory analysis and the governing Rule 12(b)(6) standard.

Respectfully submitted,

September 15, 2026

Abdellah El Farissi
Pro Se Petitioner
135 Doverside Dr
Columbia, SC 29212
(954) 274-4475
1tennis.key@gmail.com

A handwritten signature in black ink, appearing to be 'A. El Farissi', written over the printed name and contact information.