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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In The Supreme Court

APPEAL FROM BERKELEY COUNTY

Court of Common Pleas

Dale E. Van Slambrook, Circuit Court Judge

Order Dismissing Case No. 2026-001501 (S.C.
Ct. App. filed Sept. 23, 2026)

Joy D. Phillips individually
and as guardian of Sierra A.
Phillips, and James C. Phillips,

Respondents,

v.

Community Options, Inc., Angela
Stuckey, Shirley Anderson, and Willa
Manigault,

Petitioners.

PETITION FOR A WRIT OF CERTIORARI

HALL BOOTH SMITH, P.C.

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CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision on July 13, 2026. (App.pp.304-05). Counsel for Petitioners certify that the Petition for Rehearing was made on July 23, 2026, (App.pp.306-12), and denied on September 23, 2026, (App.pp.336-37).

QUESTIONS PRESENTED

This is a public policy case of first impression that will decide whether the private, privileged and confidential information of individuals, particularly, protected health information (“PHI”), can be irretrievably exposed without their knowledge by an interlocutory discovery order. No one disputes that the orders Petitioners appealed are interlocutory discovery orders. However, interlocutory orders that threaten an irreversible invasion of substantial privacy rights are precisely the orders this Court has recognized demand immediate review. The questions presented are:

- I. Whether the Court of Appeals erred in dismissing Petitioners’ appeal because the orders are immediately appealable interlocutory orders affecting individuals’ substantial rights to privacy.
- II. Whether the Court of Appeals erred in dismissing Petitioners’ appeal rather than transferring it to this Court.

STATEMENT OF THE CASE

This case involves Sierra Phillips (“Sierra”), a now thirty-year-old female, with certain physical and cognitive deficits since birth, who previously resided at Thistle, a community training home, level 2, operated by Community Options, Inc. (App.pp.190-91). Her parents, Joy D. Phillips (“Joy”) and James C. Phillips (“Chris”) (collectively, “Respondents”), initiated this case on October 25, 2023, by filing a Summons and Complaint with the Berkeley County Court of Common Pleas. (App.pp.188-205).

The Defendants in the circuit court case, and the Petitioners in this Writ of Certiorari, are Community Options, Inc. (“Community Options”), a nonprofit corporation that provides housing and other services to its “consumers” who are vulnerable disabled adults, and three (3) Community Options’ employees, Angela Stuckey, Shirley Anderson (“Anderson”), and Willa Manigault (“Manigault”), (collectively, “Individual Petitioners”), who provided personalized care to consumers in the Thistle home, including Sierra. Petitioners filed their Answers on December 21, 2023. (App.pp.206-56).

This case arises out of Anderson’s Omnibus Adult Protection Act mandatory report¹ made to the South Carolina Law Enforcement Division (“SLED”) on January 2, 2023, at the direction of her supervisor, and to the North Charleston Police Department on January 3, 2023, at the direction of SLED. (App.pp.99,117). More specifically, Anderson reported Sierra’s allegations of abuse by her parents while she was on a home visit with them between December 28, 2022, and December 31, 2022. (App.pp.99-100,117). An investigation was conducted by law enforcement. (App.pp.100,117). Sierra’s allegations against Joy and Chris were unsubstantiated and, therefore, the case was closed on February 6, 2023. (App.pp.100,117). A week later, on February 13, 2023, Sierra’s parents picked her up from Thistle, and she went to live with Joy at her home in North Carolina. (App.pp.100,117). In turn, on March 21, 2023, Chris reported to SLED that Sierra alleged Anderson and Manigault abused her on January 3, 2023. (App.pp.100,117). Law enforcement investigated Chris’ report, determined the allegations to be unfounded, and the case was closed with no further follow-up necessary on April 20, 2023. (App.pp.100,117). Nonetheless,

¹ See S.C. Code Ann. § 43-35-5 (“This chapter may be cited as the Omnibus Adult Protection Act.”); *see also* § 43-35-25 (Persons required to report abuse, neglect, or exploitation of adult; reporting methods.).

Respondents assert that Petitioners abused Sierra, after having falsely been accused of the same by Sierra. (App.p.203).

Respondents filed a Summons and Complaint against Petitioners on October 25, 2023, asserting causes of action for: (1) Assault and Battery; (2) Defamation and Defamation *Per Se*; (3) Civil Conspiracy; and (4) Negligent Hiring and Supervision. (App.pp.188-205). The parties then exchanged extensive written discovery. More specifically, Petitioners answered Respondents' First Interrogatories and Requests for Production on January 11, 2024, producing approximately 3,904 pages of documents and a Privilege Log. (App.p.100). Petitioners supplemented their responses to Respondents' First Interrogatories and Requests for Production on August 30, 2024, producing approximately 2,633 additional pages of documents. (App.pp.100-01). On September 18, 2024, Petitioners supplemented their discovery for a second time, producing another 78 pages of documents, all of which consisted of email communications and text messages. (App.pp.100,103). Additionally, eight (8) depositions were taken, including the depositions of all Individual Petitioners. (App.pp.100,119).

Despite the foregoing, Respondents filed a Motion to Compel on August 28, 2025, regarding Respondents' Document Request No. 12, which sought “[a]ll communications (e.g., letters, emails, text messages, direct messages, social media messages, etc.)” relating not only to Respondents, but also, “[r]eports of abuse, neglect, or injury of *any resident*” of Thistle and *any other* Community Options’ facility or home. (App.pp.18-98 (emphasis added)). This time, Respondents demanded Individual Petitioners surrender their personal cell phones “to their counsel” for a *carte blanche* “forensic collection and review of . . . text messages and other [responsive] communications[,]” on the grounds that Respondents did not “trust” that the Individual Petitioners had already produced all information and documents responsive to

Document Request No. 12. (App.p.23). On January 5, 2026, Petitioners filed a Memorandum of Law in Opposition to Respondents' Motion to Compel, reiterating their extensive discovery efforts, as well as their previous production of all text messages related to Sierra that they were able to locate, and prior identification of all Individual Petitioners' cell phone numbers and carriers. (App.pp.99-115). Petitioners argued that Respondents' demand for a forensic examination would likely yield production of privileged and confidential information belonging to individuals other than Individual Petitioners, which Petitioners are prohibited from disclosing pursuant to state and federal law. (App.pp.109).

The circuit court conducted a hearing on January 5, 2026. (App.pp.284-303). In an order dated March 25, 2026, the circuit court granted Respondents' Motion to Compel and ordered Individual Petitioners to surrender their phones for an expert forensic collection of all accessible text messages over a six (6) year timeframe, from January 1, 2017, to October 25, 2023, including retrieval of deleted information if recoverable. (App.pp.1-13). The order stated that the names of vulnerable adults other than Sierra could be redacted from responsive communications and marked Confidential, but it did not include any privacy protections related to the forensic search itself, or the review required to identify the names of said vulnerable adults. (App.p.11).

Petitioners filed a Motion for Reconsideration on April 3, 2026, reemphasizing their obligations pursuant to the Health Insurance Portability and Accountability Act ("HIPAA"), along with other privacy laws, and specifically pointed out how the order was devoid of the required procedural safeguards to protect the confidential, sensitive, and protected information of individuals, including vulnerable non-party consumers. (App.pp.116-65). Petitioners explained that Individual Petitioners manage and take consumers to medical appointments and, therefore, receive medical appointment reminders and other information related to consumers' care on their

personal phones, which constitutes PHI within the meaning of HIPAA, and that no one is entitled to access PHI without proper authorization. (App.p.122). Petitioners further explained that in addition to consumers' PHI, Individual Petitioners' phones could also contain their own PHI as well as others for whom they manage medical communications. Petitioners asked the circuit court to reconsider the March 25, 2026, order because it commanded Petitioners, and by extension their counsel and an expert forensic examiner, to break privacy laws. Petitioners also requested a hearing on their Motion for Reconsideration (App.pp.116), but the circuit court denied the Motion for Reconsideration without a hearing in a Form 4 order on May 26, 2026. (App.pp.14-17).

On July 2, 2026, Petitioners filed their Notice of Appeal of the circuit court's decision, which the Court of Appeals dismissed as interlocutory on July 13, 2026. (App.pp.257-83).

On July 23, 2026, Petitioners filed a Motion to Reinstate the appeal and supporting memorandum, which pointed out that a discovery order requiring the release of protected information of non-parties is an immediately appealable interlocutory order because it affects a substantial right to privacy. (App.pp.306-19). Petitioners also explained that such an order is immediately appealable because the protected information, once released, cannot be recaptured and the confidentiality of the information cannot be restored once disclosed. (App.pp.317-18). In other words, Petitioners cannot comply with the circuit court's order for forensic examinations of Individual Petitioners' phones now and appeal the order after a final judgment without risking irreparable harm. (App.pp.317-18).

The Court of Appeals construed the Motion to Reinstate as a petition for rehearing and issued a two-sentence order denying the same on September 23, 2026, because "the Court [was] unable to discover that any material fact or principle of law ha[d] been either overlooked or disregarded." (App.pp.336-37).

ARGUMENT

In dismissing Petitioners' appeal as interlocutory, the Court of Appeals disregarded what is truly at stake. This is not an ordinary discovery dispute over documents that can be protected by an order, clawed back, resealed, and/or excluded at trial. It is a demand to hand over the private, privileged and confidential information of an infinite number of non-party individuals, as well as the Individual Petitioners, to a forensic examiner and counsel, without notice or an opportunity to object, an intrusion that, once it occurs, can never be undone. Petitioners do not dispute that the orders are interlocutory. They contend that these particular orders, if followed, immediately implicate substantial privacy rights and present exactly the kind of exceptional circumstances that South Carolina law has long treated as warranting immediate appellate review.

The stakes are extraordinary because the harm is irreversible. The orders compel a *carte blanche* forensic extraction of six (6) years of communications from the personal cell phones of three (3) caretakers' devices that, by the circuit court's own findings, were used to coordinate the daily care of vulnerable consumers. Those phones not only contain the PHI of consumers, but also, Individual Petitioners, as well as non-parties who have never been heard in this case, who have received no notice, and who have had no chance to object. Once that information is pulled, copied, and reviewed, no appellate ruling can restore its confidentiality. The right to keep it private will have been permanently extinguished. This Court has already embraced that allowing the examinations now "would let the cat out of the bag, without any effective way of recapturing it." *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. 1, 7, 630 S.E.2d 464, 467 (2006) (quoting *Siedle v. Putnam Invs., Inc.*, 147 F.3d 7, 9 (1st Cir. 1998)).

The questions presented are of profound and growing public importance in a rapidly evolving digital world, namely, whether the private, privileged and confidential information of

individuals, including their PHI, stored on cell phones can be seized and searched wholesale without the safeguards that state and federal law demands. Citizens have a fundamental right to privacy, and this Court has already held that patients hold “a valid and legitimate expectation that their medical information will remain confidential.” *Hollman v. Woolfson*, 384 S.C. 571, 578, 683 S.E.2d 495, 499 (2009). That expectation does not evaporate because the information now lives on a phone rather than in a filing cabinet. To let the dismissal stand, would tell every South Carolinian that their digital records, including medical records, are fair game in litigation to which they are not even a party, and would tell every caregiver that using a phone to do their job forfeits not only their own privacy, but also, the privacy of their patients and others. In an age when such devices are indispensable, that result is untenable. A grant of certiorari would allow this Court to address privacy in this new era of communications being routinely transmitted electronically, and in the area of electronic discovery, an issue that will only recur and generate numerous inevitable appeals, as technology continues to advance. Petitioners properly sought review in the Court of Appeals and, if that court lacked jurisdiction, it should have transferred the appeal to this Court rather than dismissing it outright.

I. The Court of Appeals erred in dismissing Petitioners’ appeal because the orders are immediately appealable interlocutory orders affecting individuals’ substantial rights to privacy.

Although a final judgment or order is generally required to establish appealability, certain interlocutory orders are immediately appealable, including an “order affecting a substantial right when such order . . . in effect determines the action and prevents a judgment from which an appeal might be taken.” S.C. Code Ann. § 14-3-330(2). “Immediate appeals under section (2) have been allowed in situations where the substantial right could not be vindicated on appeal after the case.” *Breland v. Love Chevrolet Olds, Inc.*, 339 S.C. 89, 94, 529 S.E.2d 11, 14 (2000). That is precisely

this case; the substantial privacy rights the orders disregard cannot be restored on appeal after the information has already been accessed.

a. The orders affect individuals' substantial rights to privacy.

HIPAA is the guiding authority on protecting PHI. HIPAA expressly prohibits disclosing PHI without procedural safeguards such as valid authorization or an individual's guardian's consent. 42 U.S.C.A. § 1320d-6. PHI encompasses any electronically transmitted or maintained health information that identifies or could reasonably identify the individual to whom it pertains. 45 C.F.R. § 160.103. It includes not only treatment records, but also, "any information . . . that relates to . . . the individual's past, present, or future physical or mental health condition," including identifiers such as names, birth dates, and addresses. 42 U.S.C.A. § 1320d; *see also* 45 C.F.R. § 164.514(b)(2) (listing eighteen specific identifiers). Several state statutes confirm, complement and expand upon the rights and protections afforded by HIPAA. *See, e.g.*, S.C. Code Ann. § 19-11-95 (relating to mental illness or emotional conditions); S.C. Code Ann. § 40-75-190 (relating to counseling services); S.C. Code Ann. § 44-29-135 (relating to sexually transmitted diseases); S.C. Code Ann. § 44-44-80 (relating to birth defects); S.C. Code Ann. § 44-22-100 (relating to mental illness and substance abuse); S.C. Code Ann. § 44-53-1650 (relating to prescriptions); S.C. Code Ann. § 44-115-40 (relating to physicians' services). Both the Constitution of the United States and the Constitution of the State of South Carolina protect against unreasonable invasions of privacy as well. *See Griswold v. Connecticut*, 381 U.S. 479 (1965) (explaining that the Constitution of the United States creates a penumbral right to privacy); S.C. Const. art. I, § 10 ("The right of the people to be secure . . . against . . . unreasonable invasions of privacy shall not be violated."). These state and federal protections clearly establish a substantial right within the meaning of section 14-3-330(2).

This Court has agreed that “the privacy rights of patients is an issue of significant public interest.” *Hollman*, 384 S.C. at 577, 683 S.E.2d at 498. It has further held that “non-party patients have a valid and legitimate expectation that their medical information will remain confidential[,]” and that invading non-party patients’ privacy rights, which both the State and Federal government recognize, can constitute a particularized harm to said non-party patients. *Id.* at 578, 683 S.E.2d at 499. The United States District Court for the District of South Carolina has recognized the importance of protecting against invasiveness in the context of forensic examinations of electronic devices. *See, e.g., Cross by & Through Steele v. XPO Express, Inc.*, Civil Action No. 4:15-cv-2481-BHH, 2016 WL 11519221, at *6 (D.S.C. May 3, 2016) (unpublished order) (“Courts should guard against undue intrusiveness resulting from inspecting or testing [electronic information] systems.” (alteration in original) (quoting Fed. R. Civ. P. 34(a) Advisory Committee Note (2006))); *E. Bridge Lofts Prop. Owners Ass’n., Inc. v. Crum & Forster Specialty Ins. Co.*, Civil Action No. 2:14-cv-2567-RMG, 2015 WL 12831731, at *2 (Jun. 18, 2015) (unpublished order) (same).

Here, Individual Petitioners’ phones may contain (1) medical appointment reminders for themselves, consumers, or other individuals that Individual Petitioners were authorized to receive (e.g., children, aging parent(s), etc.); (2) communications with consumers’ case workers and/or families regarding care and treatment; (3) communications with providers regarding the medical and mental health care for themselves, consumers, or other individuals; and (4) PHI unrelated to Sierra. The orders on appeal reach *any* consumer of Community Options, over a period of six (6) years. Yet neither of the orders contains the procedural safeguards required by HIPPA and South Carolina law. They do not permit Petitioners to provide the affected individuals, including consumers, notice, or an opportunity to object, before a third party receives their PHI, as contemplated by 45 CFR section 164.512(e). They do not require authorizations. They do not

confine the search to information relevant to any claim or defense. Instead, they command a *carte blanche* forensic seizure and review of years' worth of private communications belonging to people who are strangers to this lawsuit. Nothing could more directly affect a substantial right.

b. The substantial rights cannot be vindicated on appeal after the end of the case.

To determine if an interlocutory order is appealable, an appellate court should look at the effect of the order. *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011). Orders that conclusively determine an important question independent of the merits and are effectively unreviewable upon a later appeal can be immediately appealable. *Doe v. Howe*, 362 S.C. 212, 216, 607 S.E.2d 354, 356 (Ct. App. 2004).

Doe involved an interlocutory pretrial order denying a child sexual assault victim permission to proceed anonymously. *Id.* The Court of Appeals held that the order was immediately appealable because there is a need for confidentiality in cases dealing with sensitive and personal subject matter, and the order had the effect of revealing the victim's identity, which would be effectively unreviewable once revealed. *Id.* at 217, 607 S.E.2d at 356. Similarly, this Court has considered the appealability of orders that have the effect of nullifying a later appeal. *See Hollman*, 384 S.C. at 577, 683 S.E.2d at 498 ("Allowing the [patient] interviews will moot any claim petitioners could raise on appeal that the discovery was erroneously allowed."); *id.* at 578, 683 S.E.2d at 498-99 ("[N]o protective device can limit the invasion of the nonparty patients' privacy once contact with them is permitted."); *Ex parte Cap. U-Drive-It, Inc.*, 369 S.C. 1, 8, 630 S.E.2d 464, 468 (2006) ("[W]e agree with courts which have been inclined to find such an order immediately appealable because, after a court file is unsealed and the information released, no appellate remedy is likely to repair any damage done by an improper disclosure. 'Compelling a party that disputes an unsealing order to forgo an appeal until the conclusion of the underlying

litigation would let the cat out of the bag, without any effective way of recapturing it”
(quoting *Siedle v. Putnam Invs., Inc.*, 147 F.3d 7, 9 (1st Cir. 1998)).²

In *Hensley v. S.C. Dep’t of Soc. Servs.*, 429 S.C. 144, 838 S.E.2d 510 (2020), the Court of Appeals granted review because the order “involve[d] the disclosure of personal and potentially sensitive information for which there would be no appellate remedy . . . likely to repair any damage done by an improper disclosure.” *Id.* at 149, 838 S.E.2d at 512. This Court decided that the Court of Appeals erred in relying on *Doe* because *Doe* was limited to the narrow question of whether a pretrial order denying a plaintiff permission to proceed anonymously was immediately appealable. *Id.* at 149-50, 838 S.E.2d at 513. Importantly, the parties in *Hensley* did not know whether any confidential information was actually at risk. *Id.* at 149, 838 S.E.2d at 512. This Court specifically stated that,

Whether this Court should extend the reasoning of *Doe* to allow immediate appeals of orders other than those denying a child sexual assault victim’s request to proceed anonymously in a civil lawsuit is an important question[,] [but] we decline to address the question until the actual danger of disclosure of confidential information is squarely before the Court.

Id. at 151, 838 S.E.2d at 513-14. That danger is squarely before this Court now.

The permissibility of a wholesale forensic examination of Individual Petitioners’ personal phones is an important question independent of the merits, and timing is everything. If Petitioners must wait for a final judgment to obtain review, the forensic audit will already be complete, and it will be too late for any court to repair the damage. That is the decisive point; allowing the audit to proceed before this Court makes a ruling does not merely risk harm, it guarantees harm. Once the

² In *Hensley v. South Carolina Department of Social Services* discussed *infra*, this Court stated that *Ex Parte Cap. U-Drive-It* involved a final order and, therefore, did not support the immediate appeal of interlocutory orders, but the language therein is instructive. 429 S.C. 144, 150-51, 838 S.E.2d 510, 513.

forensic examiner completes the collection of every existing and deleted text, email, message, calendar, photograph, and document from Individual Petitioners' phones, the private, privileged and confidential information, as well as the PHI, of non-parties and Individuals Petitioners, will have been exposed.³ Further, as soon as counsel reviews the examiner's results, the protected information would not only have been exposed but now would also have been examined. Neither the forensic examiner, nor Individual Petitioners' counsel, will have the requisite authority to access the very information they are required by the orders to produce. No order entered after final judgment can recapture that information or restore its confidentiality. The cat will be out of the bag, and the individuals' rights to privacy will be permanently lost. An appellate victory years from now would be hollow – a ruling that the disclosure should never have happened, entered long after it did.

The dilemma the orders create underscores why review cannot wait. To comply, Petitioners must knowingly and intentionally allow a third party to access the privileged PHI of non-parties, exposing themselves to civil and criminal penalties under the very laws that forbid disclosure. If the dismissal stands and the case is remitted, Petitioners will be forced to choose between being held in contempt or violating the substantial privacy rights of vulnerable consumers and non-parties. Respondents insist that Petitioners *only* avenue of review is to defy the orders and appeal a contempt citation. However, as the authorities above make clear, that is not the rule when an order threatens an irreversible invasion of fundamental rights. To hold otherwise, would create a precedent that any party, regardless of the type of litigation, faced with a similar order for forensic examination of personal electronic devices, will be forced, every single time, to choose whether to

³ The collection will undoubtedly capture other types of sensitive, confidential personal information unrelated to medical care, but that is also protected from disclosure by state and federal law, such as personal financial information.

be held in contempt or break privacy laws. Not only would this unnecessarily expose parties to sanctions, but also, it would require parties to pursue appeals, which would do nothing but backlog the circuit and appellate court systems.

II. If the Court of Appeals lacked jurisdiction, it erred in dismissing Petitioners' appeal rather than transferring it to this Court.

a. This Court should exercise its authority to issue an extraordinary writ of certiorari under the circumstances present here.

Even if the orders were not independently appealable, this Court possesses, and should exercise, the authority to review them now. The Constitution and the Code vest this Court with the “power to issue writs or orders of injunction, mandamus, quo warranto, prohibition, certiorari, habeas corpus, and other original and remedial writs.” S.C. Const. Art. V, § 5; S.C. Code Ann. § 14-3-310. Pursuant to that authority, this Court “may use a common law writ of certiorari to correct errors of law, particularly where a trial court exceeded its authority.” *State v. Price*, 441 S.C. 423, 433, 895 S.E.2d 633, 638 (2023). This Court reserves that power for cases in which “exceptional circumstances exist.” *Laffitte v. Bridgestone Corp.*, 381 S.C. 460, 471, 674 S.E.2d 154, 160 (2009); *accord Price*, 441 S.C. at 435 n.5, 895 S.E.2d at 639 n.5. The power is used sparingly; however, this case is one of the rare few that merits it. *See Henson v. S.C. Dep’t of Corr.*, Op. No. 28343 (S.C. Sup. Ct. filed Jul. 22, 2026) (Howard Adv. Sh. No. 27 at 12).

This Court has thoughtfully invoked that power to review discovery orders when the circumstances were exceptional. In *Hollman*, the Court held that a circuit court’s order modifying a protective order to permit interviews of non-party patients “present[ed] exceptional circumstances which warrant[ed] the issuance of a writ of certiorari[,]” because “[a]llowing the [patient] interviews will moot any claim petitioners could raise on appeal[,]” and “the privacy rights of patients is an issue of significant public interest.” *Hollman*, 384 S.C. at 577, 683 S.E.2d

at 498. In *Laffitte*, the Court issued the writ to review an order compelling disclosure of a trade secret, finding exceptional circumstances in a “novel question of law in a matter that ha[d] been the subject of numerous claims in state and federal courts,” and reasoning that review “best serve[d] the interests of judicial economy by eliminating the numerous inevitable appeals raising this novel issue of significant public interest.” *Laffitte*, at 471-72, 674 S.E.2d at 160-61. There are other instances as well. See, e.g., *Oncology & Hematology Assocs. of S.C. v. S.C. Dep’t of Health and Env’t Control*, 387 S.C. 380, 387, 692 S.E.2d 910, 924 (2010) (issuing a writ of certiorari to review overly broad discovery orders of the administrative law court because exceptional circumstances existed); *McGee v. Bruce Hosp. Sys.*, 312 S.C. 58, 439 S.E.2d 257 (1993) (granting the writ to decide whether certain matters were immune from discovery).

This Court’s most recent decision puts this case squarely within the Court’s power. In *Henson*, the Court of Appeals dismissed an appeal from an interlocutory order as not immediately appealable, and this Court nonetheless “issued a common law writ of certiorari to directly address” the order, holding that review was warranted in that “very rare” case of “exceptional circumstances.” *Henson*, Op. No. 27 at 13, 16. The same course is warranted here, and the circumstances are arguably even more compelling. Unlike a class-certification ruling, the orders in this case threaten an irreversible loss of non-party privacy rights the very moment they are carried out.

Petitioners have established that the privacy interests at stake, coupled with the irreversibility of the harm and the novel, recurring question of electronic discovery of digitally stored PHI, constitute exceptional circumstances and will not belabor the point. Petitioners respectfully ask the Court to consider the growing landscape of electronic medical communications, electronic discovery, the breadth of what current electronic devices can and do

hold, and the implications of an order requiring *carte blanche* production of six (6) years of communications on Individual Petitioners' phones if allowed to stand, particularly in the context of individuals who regularly handle PHI. *See, e.g., Riley v. California*, 573 U.S. 373, 395 (2014) (noting that modern cell phones store immense quantities of personal information and that their owners keep on their person a digital record of nearly every aspect of their lives); *id.* at 393-94 ("The term 'cell phone' itself is misleading shorthand; . . . They could just as easily be called cameras, video players, rolodexes, calendars, tape recorders, libraries, diaries, albums, or newspapers. . . . [T]he possible intrusion on privacy is not physically limited in the same way when it comes to cell phones." (citations omitted)).

b. The Court of Appeals should have transferred Petitioners' appeal to this Court if it could not entertain the appeal.

"The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties." Rule 245(a), SCACR. "In the event that the notice of appeal is filed in the wrong appellate court, the appellate court in which the matter is filed *shall* issue an order transferring the case to the appropriate appellate court." Rule 204(a), SCACR (emphasis added).

Petitioners sought review in the Court of Appeals because they believed that court could determine the matter under section 14-3-330(2) of the South Carolina Code. To the extent the Court of Appeals concluded it lacked jurisdiction, the governing rule is mandatory; the appeal should have been transferred, not dismissed. Dismissal did the opposite of what the rules command; it extinguished Petitioners' chance at review of an order that will irreversibly compromise citizens' privacy rights, and it did so on a purely procedural footing. The appellate rules are not meant to operate that way. *See Elam v. S.C. Dep't of Transp.*, 361 S.C. 9, 25, 602 S.E.2d 772, 780 (2004) (admonishing that procedural and appellate rules should not be interpreted to create a trap for

parties). Where Petitioners raised exceptional circumstances implicating substantial, irreversible privacy rights, the Court of Appeals should have transferred the matter to this Court rather than closing the courthouse doors.

CONCLUSION

This case presents the rare convergence of a substantial right, irreversible harm, and a novel question of significant, recurring, and growing public importance. As soon as the forensic audit is underway, the opportunity to safeguard individuals' privacy rights, will be gone for good, and no later appeal can bring that back.

For the foregoing reasons, Petitioners respectfully urge this Court to grant a Writ of Certiorari, vacate the Court of Appeals' dismissal, and halt the ordered forensic examinations.

Respectfully submitted,

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