THE STATE OF SOUTH CAROLINA

In the Supreme Court

RECEIVED
NOV 13 2026
S.C. SUPREME COURT

On Petition for a Writ of Certiorari to the Court of Appeals

Court of Appeals Case No. 2024-001360

Appeal from Newberry County, Court of Common Pleas

The Honorable Eugene C. Griffith, Jr., Circuit Court Judge

Supreme Court Appellate Case No. 2026-002038

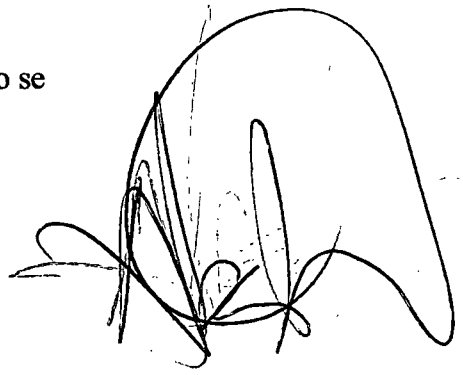
Abdellah El Farissi, Petitioner

v.

Newberry College, Respondent

PETITIONER'S REPLY TO RESPONDENT'S RETURN TO PETITION FOR WRIT OF CERTIORARI

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



Petitioner Abdellah El Farissi respectfully replies to Newberry College's Return under Rule 242(g), SCACR. The original court record shows that important facts and legal arguments were presented before the circuit court dismissed this case. The record also shows that the circuit court decided the federal wiretap issue by relying on the fact that the student was part of the recorded conversation. Petitioner asks this Court to consider the actual record, the full federal statute, and the separate question of the College's alleged involvement.

I. The original Complaint already said the head coach requested the recording

The Return states that Petitioner first alleged on appeal that Nastassia Chamoun recorded the conversation at Head Tennis Coach Elias Fernandez's request. Return at 3. The original Complaint, filed February 8, 2024, expressly alleges that Chamoun recorded the March 3, 2023 conversation at Fernandez's request. R. p. 8. Respondent's own Final Brief quoted that allegation from the Complaint. Respondent's Final Br. at 5–6.

The original Complaint also alleges that Chamoun gave the recording to Fernandez, that he shared it with Associate Athletic Director Wayne Alexander, and that the two officials, both identified as College agents, decided to terminate Petitioner's employment. R. p. 8. The Amendment to Complaint alleges that Fernandez also shared the recording with Athletic Director Sean Johnson. R. p. 10. These allegations were before the circuit court when it heard the motion to dismiss.

II. Petitioner raised the wiretap issue before dismissal

Petitioner's March 15, 2024 Opposition to Motion to Dismiss expressly discussed the Federal Wiretap Act and cited S.C. Code Ann. § 17-30-20. R. pp. 14–15. Subject to the chapter's exceptions, § 17-30-20(1) prohibits intentional interception, attempted interception, and procurement of either act. Subsection (2) addresses certain uses of devices to intercept oral

communications under specified conditions. Subsections (3)–(4) prohibit intentional disclosure or use, or attempts, when the person knows or has reason to know the contents came from an unlawful interception. Section 17-30-50 addresses criminal penalties.

The Opposition separately cited § 17-30-135(A), which provides a civil remedy against a person or entity that intercepts, discloses, uses, or procures those acts in violation of the state chapter. It expressly alleged that the College used the recording to terminate Petitioner. R. p. 16. Petitioner invoked federal wiretap law at the July 8, 2024 hearing. R. p. 31, ll. 14–18 (Tr. 8), and p. 37, ll. 1–3, 16–21 (Tr. 14). The written order acknowledged the federal Act and both state statutes and rejected the wiretap theory because Chamoun participated in the conversation. R. pp. 2–3. The broader statutory issue was raised and decided before appeal.

The narrower argument presents a separate preservation question. The Opposition and hearing did not expressly present the criminal-or-tortious-purpose qualification in 18 U.S.C. § 2511(2)(d). Under *Elam v. S.C. Department of Transportation*, 361 S.C. 9, 23–25, 602 S.E.2d 772, 779–80 (2004), an issue or argument generally must be raised to and ruled on by the circuit court. If the court does not rule on a raised issue or argument, a Rule 59(e), SCRCP, motion is required to obtain a ruling for appellate review. Petitioner filed no such motion.

Petitioner submits that the full meaning of § 2511(2)(d) is part of the federal issue the circuit court decided. The College argues that the qualification presents a distinct theory requiring a different factual showing. Return at 5–7. Petitioner quoted the complete provision and identified the omitted language in his Initial Brief. Appellant's Initial Br. at 5. That later briefing cannot cure a failure to preserve a distinct argument in the circuit court.

III. The federal statute has an exception to the ordinary one-party-consent rule

A participant generally may record a conversation without the other person's consent. South Carolina law recognizes that rule. S.C. Code Ann. § 17-30-30(C). The federal statute likewise generally permits a private participant to record, but its protection is unavailable when the interception is for the purpose of committing a criminal or tortious act under federal or state law. 18 U.S.C. § 2511(2)(d).

The circuit court quoted the participant-consent language without discussing the federal exception. R. p. 3. The Court of Appeals likewise relied on Chamoun's participation, even assuming she recorded at Fernandez's request. *El Farissi v. Newberry College*, Op. No. 2026-UP-389, at 2 (S.C. Ct. App. filed July 29, 2026).

South Carolina's statute contains no express counterpart to the federal exception. *State v. Whitner*, 399 S.C. 547, 553–54, 732 S.E.2d 861, 864–65 (2012), addressed parental vicarious consent and reproduced the federal qualification in footnote 2. Each statute should be applied on its own terms.

At the hearing, the circuit court also reasoned that no wiretap violation occurred because the conversation was recorded in person and there was no telephone transmission. R. p. 36, ll. 13–25 (Tr. 13), and p. 39, ll. 1–9 (Tr. 16). Federal law can protect in-person oral communications when the speaker exhibits an expectation against interception that the circumstances justify and the contents are acquired using a qualifying device. 18 U.S.C. § 2510(2), (4)–(5). The pleaded setting bears on that question. R. p. 8. The written order's consent ruling and its separate ground concerning the College still must be addressed.

IV. The federal exception requires an independent criminal or tortious purpose

The College points out that *Caro v. Weintraub*, 618 F.3d 94, 98–102 (2d Cir. 2010), concerned dismissal and the futility of a proposed amendment, while *United States v. Jiau*, 734 F.3d 147, 151–52 (2d Cir. 2013), concerned suppression. Return at 9–10. Those decisions offer persuasive guidance on the same statutory language. *Caro* looked for an objective independent of the alleged wrong of making the recording. *Jiau* distinguished the purpose of making the recording from the purpose of the recorded conversation.

The Complaint alleges an advance request, later sharing, and an employment decision. R. p. 8. The amendment describes alleged coordination after termination over the reason for dismissal and unemployment benefits. R. p. 9. The sequence supports an inference that the recording was sought for later use in an employment decision. That objective alone is insufficient to establish an independent crime or tort, and the alleged conduct after termination does not establish Chamoun's purpose when she recorded.

If the exception is properly before this Court, Petitioner asks it to consider the pleaded facts and reasonable inferences under the complete federal statute and South Carolina's pleading standard. See *Rydde v. Morris*, 381 S.C. 643, 646, 675 S.E.2d 431, 433 (2009). The Opposition and transcript show what was argued below. The pleadings supply the facts for the Rule 12(b)(6), SCRCP, inquiry.

V. The Court must also consider the College's alleged disclosure and use

The Return emphasizes that Chamoun was a student. Return at 2–3. The pleadings also allege that Fernandez requested the recording and that College officials later shared it. R. pp. 8–10. When the circuit court asked how the College was involved, Petitioner pointed to the recording being forwarded to the head coach and to the head coach and associate athletic director

making the decision. R. p. 35, ll. 8–20 (Tr. 12). The Opposition expressly alleged College use. R. p. 16.

Federal law separately prohibits intentional disclosure or use when the person knows or has reason to know that the information came from an interception violating § 2511(1). 18 U.S.C. § 2511(1)(c)–(d). Section 2520(a) provides a civil remedy against a person or entity that engaged in a violation. A disclosure or use claim against the College requires a predicate unlawful interception, the statutory knowledge, and a basis to attribute the alleged acts to the College. Who operated the recorder does not resolve those questions.

South Carolina also provides a civil remedy for unlawful interception, procurement, disclosure, or use. S.C. Code Ann. §§ 17-30-20(1), (3)–(4), 17-30-135(A). That remedy requires a violation of the state chapter, including consideration of § 17-30-30(C).

The circuit court found both that there was no unlawful interception and that, even assuming unlawful conduct, the pleadings failed to state a claim against the College. It discussed the student's role and the absence of a pleaded public-policy exception to at-will employment. R. pp. 3–4. A statutory disclosure or use claim is distinct from wrongful discharge. Petitioner addressed the College's alleged statutory responsibility in his Initial and Final Briefs. Appellant's Initial Br. at 5–6. Appellant's Final Br. at 5–6. Those passages support Petitioner's position that he challenged the separate ground as to statutory liability. An independent ground left unchallenged can require affirmance. *Anderson v. S.C. Department of Highways & Public Transportation*, 322 S.C. 417, 420 n.1, 472 S.E.2d 253, 255 n.1 (1996).

VI. The petition presents a narrow question for certiorari review

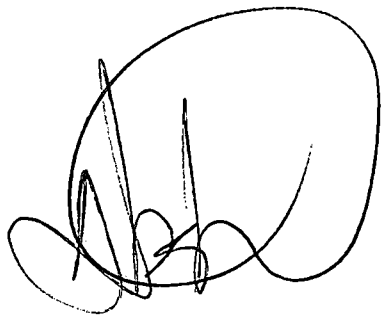
The Return argues that the ordinary consent rule is settled. Return at 7–10. Under Rule 242(b)(1) and (3), SCACR, the petition asks how the full federal consent provision applies at the

pleading stage when the qualification is reviewable and could affect the result. Pet. at 7–12. *Ray Bell Construction Co. v. School District of Greenville County*, 331 S.C. 19, 26, 501 S.E.2d 725, 729 (1998), supports reading a statute as a whole and giving effect to its operative provisions. The petition relies on that principle. Whether the issue could change the outcome depends on preservation, the pleaded facts, and the separate ground concerning the College.

Conclusion

Petitioner respectfully requests that the Court grant certiorari on the federal statutory questions presented in the petition. If the Court finds reviewable error that affected the judgment and no independent ground sustains dismissal, Petitioner requests that the Court reverse or vacate to the extent necessary and remand for application of the complete federal provision and the governing pleading standard.

Respectfully submitted,



Abdellah El Farissi, Petitioner pro se
Columbia, South Carolina
11/13/2026