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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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APPEAL FROM SPARTANBURG COUNTY

J. Mark Hayes, II, Circuit Court Judge

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Consolidate Case Nos. 2023-CP-42-01221, 2023, CDP-42-01226, 2023-CP-42-01367
2023-CP-42-01545

Appellate Case No. 2024-001828

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South Carolina Native Plant Society,

Appellant/
Petitioner,

vs.

Spartanburg County Planning Commission and Blue Sky Associates, LLC, d/b/a T. Tree Farms, RV Park,

Respondents.

and

The Enclave at Fairview Farm Homeowners' Association, Inc., Golden Hills of Fairview Homeowners' Association, Inc., Greenspace of Fairview, LLC, North Pacolet Association, Inc., Debra A. Whitaker, Charles, D. Whitaker, Roxanne M. Hellman-Wojan, Richard G. Wojan, Judie R. Klapholz, Trustee of the Judie R. Klapholz Trust, and Slater Properties, Inc., d/b/a Caroland Farms,

Appellants/
Petitioners,

vs.

Spartanburg County SC, Spartanburg County Planning Commission, and Blue Sky. Associates, LLC, d/b/a T. Tree Farms RV Park,

Respondents.

## PETITION FOR REHEARING

The "Homeowners" hereby petition the Court of Appeals to rehear this case, dismissed by its decision filed August 5, 2026, to vacate that decision and reconsider the case in its entirety on the merits. This petition is submitted in accordance with Rule 221, SCACR.

## NATIVE PLANT SOCIETY PETITION

The Appellant Native Plant Society is also petitioning for rehearing. The Homeowners hereby adopt and incorporate into this petition each and every ground and argument set forth by the Native Plant Society in its petition for rehearing.

## RULE OF FINALITY

In addition, the Homeowners petition for rehearing because the Court of Appeals overlooked or failed to consider two important aspects of the "rule of finality", upon which its decision rests: the "collateral order doctrine" and the "*Gillespie* doctrine." Both doctrines have their origins in the concept of "finality" under federal law.

South Carolina law often follows the lead of federal law, the most notable example perhaps being the Rules of Civil Procedure themselves. That path is found in many South Carolina appellate decisions, as well. [E.g. *Kitchen Planners v. Friedman*, 440 S.C. 456, 892 S.E.2d 297 (2023) relying on *Anderson v. Liberty Lobby*, 477 U.S. 242, 106 S.Ct. 2505, 91 L.Ed. 2d 202 (1986) for the correct standard for summary judgment; *Baughman v. Amer. Tel & Tel. Co.*, 306 S.C. 101, 116, 410 S.E.2d 537, 545-46 (1991) (quoting *Celotex Corp. v. Catrett*, 477 U.S. 317, 322-23 (1986) concerning required elements of proof. *Hansson v. Scalise Builders*, 374 S.C. 352, 358-59, 650 S.E.2d 68 (2007). *Mid-State Distributors, Inc. v. Century Importers, Inc.*, 310 S.C.

330, 426 S.E.2d 777 (1993) citing *Southern Plastics Company v. Southern Commerce Bank*, - - S.C. - -, 423 S.E.2d 128 (1992) (Davis Adv.Sh. No. 22 at 22) adopting the federal two-prong test for determining the limits of due process and personal jurisdiction.]

Like South Carolina, federal appellate jurisdiction begins with a statute. S.C. Code §14-3-330 and 28 U.S.C. 1291. Both statutes are based on the word "final". Neither, however, defines "final." Nor does Rule 201(a), SCACR, which is also based on the word "final."

It is left to the courts to determine the contours of "final." The United States Supreme Court has considered "finality" in cases that have led it to create the "collateral order doctrine" and the "*Gillespie* doctrine." In South Carolina, these doctrines have not been presented to the appellate courts, until now. This is the case for the Court of Appeals to consider those doctrines.

It is the province of the Court of Appeals to take such a step and adopt those doctrines, just as it did decades ago when it jettisoned contributory negligence and adopted the doctrine of comparative negligence. *Langley v. Boyter*, 284 S.C. 162, 325 S.E.2d 550 (Ct. App. 1984). In a legendary opinion joined by Judge Randall Bell, who was later elected to the South Carolina Supreme Court, Chief Judge Alex Sanders made the following observation about development of the law, which is exactly the situation in the present case.

> Our Supreme Court has had occasion to mention the doctrine of comparative negligence in several other cases. While the Court obviously did not recognize the doctrine of comparative negligence, as a doctrine of general application, in these cases or any other, it does not appear the Court has ever been asked to do so. Thus, the absence of the doctrine of comparative negligence in South Carolina, like the presence of the doctrine of contributory negligence, has been brought about because, until now, no one has ever questioned which doctrine should be applied. *Id.* at 177-178.

The collateral order doctrine and *Gillespie* doctrine have not been considered by the South Carolina Supreme Court or Court of Appeals.

Here is what the United States Supreme Court has had to say on the subject:

> "But even so circumscribed a legal concept as appealable finality has a penumbral area ..." *Radio Station WOW, Inc. v. Johnson*, 326 U.S. 120, 125 (1945).
>
> ***
>
> [The] struggle of the courts [is] sometimes to devise a formula that will encompass all situations and at other times to take hardship cases out from under the rigidity of previous declarations; sometimes choosing one and sometimes another of the considerations that always compete in the question of appealability, the most important of which are the inconvenience and costs of piecemeal review, on the one hand, and the danger of denying justice by delay on the other. *Dickinson v. Petroleum Conversion Corp.*, 338 U.S. 507, 511 (1950)

The "danger of denying justice by delay" is present in this case, as set forth further in the Section "Wrongful Remand", in the Native Plant Society's petition for rehearing, and in the briefs on the merits filed by both Petitioners/Appellants.

Recognizing the danger of delay, the United States Supreme Court shaped the law of "finality" to provide protection.

> The Court has adopted essentially practical tests for identifying those judgments which are, and those which are not, to be considered "final." A pragmatic approach to the question of finality has been considered essential to the achievement of the "just, speedy and inexpensive determination of every action": the touchstones of federal procedure. *Brown Shoe Co. v. United States*, 370 U.S. 294, 306 (1962) (decision on the finality issue in favor of appeal), (citations omitted).

These considerations had led to *Cohen v. Beneficial Industrial Loan Corp.*, 337 U.S. 541 (1949), the leading case on the collateral order doctrine.

> This decision appears to fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate

consideration be deferred until the whole case is adjudicated. The Court has long given this provision of the statute this practical rather than a technical construction. *Id.* at 547. (citations omitted).

The United States Supreme Court has continually reaffirmed the doctrine.

> ... the [finality] statute entitles a party to appeal not only from a district court decision that "ends the litigation on the merits and leaves nothing more for the court to do but execute the judgment," but also from a narrow class of decisions that do not terminate the litigation, but must, in the interest of "achieving a healthy legal system," nonetheless be treated as "final." *Digital Equip. Corp. v. Desktop Direct, Inc.*, 511 U.S. 863, 867 (1994) (citation omitted).

That is this case.

The *Gillespie* doctrine, sometimes called the "twilight doctrine", is similar to the collateral order doctrine. The difference is that *Gillespie* is more pragmatic and more of a balancing test.

> [O]ur cases long have recognized that whether a ruling is "final" within the meaning of § 1291 is frequently so close a question that decision of that issue either way can be supported with equally forceful arguments, and that it is impossible to devise a formula to resolve all marginal cases coming within what might be called the "twilight zone" of finality. Because of this difficulty this Court has held that the requirement of finality is to be given a "practical rather than a technical construction." ... [I]n deciding the question of finality the most important competing considerations are "the inconvenience and costs of piecemeal review, on the one hand and the danger of denying justice by delay on the other." *Gillespie v. United States Steel Corp.*, 379 U.S. 148, 152-53 (1964)

## WRONGFUL REMAND

Application of the collateral order and *Gillespie* doctrines is especially important in this case because the effect of the circuit court's remand order was to trample on the exclusive jurisdiction of the Court of Appeals and the right of the Petitioners/Appellants to timely appeal. Without timely appeal, the Petitioners/Appellants could be forever foreclosed as a practical

matter from protecting the rare and endangered Dwarf-flower heartleaf and drinking waters of Goldmine Creek.

The statutory framework for processing a decision by a planning commission is an appeal to the circuit court and from there to the Court of Appeals. S.C. Code 6-29-1150 (D)(1), S.C. Code 14-3-330, and S.C. Code 18-9-10. There is no provision for a remand to the planning commission. By remanding, the circuit court impermissibly divested the Court of Appeals of jurisdiction. A subordinate court is not allowed to divest a superior court of jurisdiction, yet that is exactly what has occurred in this case. The error is especially egregious because there is nothing for the planning commission to do on remand. Nothing. It is not an exaggeration to say that the planning commission acted as a renegade, and its decision disregarding the law and facts would be overturned on appeal but for counsel for the Respondent Blue Sky thwarting appeal by asking for remand.

> "The Court: But I'm leaning towards keeping it as is with the understanding that this term vacate equals the term remand."
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> ***
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> "Mr. Shissias: Your Honor, if -- if your final order only said that in two sentences that, you know, I -- I feel like I would've done my job today." ROA pp. 635, 636.

A remand to the planning commission would deprive the public of review of a planning commission decision by the judiciary as explicitly required by the General Assembly in 6-29-1150(D)(1) ("An appeal from the decision of the planning commission must be taken to the circuit court within thirty days after actual notice of the decision.") The statute does not provide for a remand to the very county department that erred in its application of state land development laws and county ordinances. The statue provides that the jurisdiction and

authority to review a planning commission decision is vested only in the judiciary. The review of planning commission errors is to be conducted by the state courts alone.

The Court of Appeals should not accept "remand" without question. First, "vacate" means invalidate – not "remand". Second, the law does not allow remand to the planning commission. Third, there was nothing to remand. Remand was improperly requested by counsel, and improvidently granted by the circuit court. Fourth, if the Court of Appeals were to accept remand without question, and not independently examine the validity of remand, that would invite remand to become a device for canny lawyers to thwart the right to timely appeal and this Court's jurisdiction - - exactly as has occurred here.

This improper and unjust intrusion of remand on appellate rights and jurisdiction is a stand-alone ground for reconsideration. The collateral order and *Gillespie* doctrines support reconsideration on this ground, but they are not necessary for it.

## CONCLUSION

In accordance with Rule 221(a), this petition "state(s) with particularity the points supposed to have been overlooked or misapprehended by the court." In accordance with Rule 240(c), it "state(s) the grounds thereof." If the Court of Appeals grants the Petition, or otherwise requests, the Appellant Homeowners will file a full brief on the facts and law.

August 20, 2026

Respectfully submitted,

s/Carl F. Muller
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Respondents.

## PROOF OF SERVICE

The undersigned does hereby certify that on August 20, 2026, a copy of the Petition for Rehearing of Appellants/Petitioners The Enclave, et al., was served by email on all counsel of record by copy of this email and filed by electronic email with the Clerk of Cour for the South Carolina Court of Appeals.

August 20, 2026

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