


No. _____

**In the
Supreme Court of the United States**



**CITIZENS ALLIANCE
FOR GOVERNMENT INTEGRITY,**

Petitioner,

v.

**YORK COUNTY, SOUTH CAROLINA,
BY AND THROUGH ITS MANAGER JOSHUA EDWARDS; ET AL.,**

Respondents.

**On Petition for a Writ of Certiorari to the
Supreme Court of South Carolina**

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

The Fourteenth Amendment forbids arbitrary and irrational executive action. In land-use cases, the courts of appeals apply materially different standards in deciding when allegedly unauthorized executive permitting may support substantive due process review.

The Second Circuit has recognized that land-use action tainted by “fundamental procedural irregularity,” including action taken without legal authority, may be sufficiently arbitrary to support a substantive due process claim. *Cine SK8, Inc. v. Town of Henrietta*, 507 F.3d 778, 789 (2d Cir. 2007). The Third Circuit, by contrast, requires conscience-shocking misconduct beyond even bad-faith violations of state law. *United Artists Theatre Circuit, Inc. v. Twp. of Warrington*, 316 F.3d 392, 394, 399–400 (3d Cir. 2003). The Eleventh Circuit generally forecloses substantive due process review of executive deprivations of state-created land-use rights altogether. *Hillcrest Property, LLP v. Pasco Cnty.*, 915 F.3d 1292, 1297, 1299–1301 (11th Cir. 2019).

The Question Presented is:

Whether, and under what standard, local executive officials’ issuance of land-use permits after a local board of zoning appeals has ruled the proposed use prohibited may support a claim of arbitrary executive action under the Fourteenth Amendment.

PARTIES TO THE PROCEEDINGS

Petitioner Here and Petitioner Below

- Citizens Alliance for Government Integrity

Respondents Here and Respondents Below

- York County, By and Through Its Manager Joshua Edwards
- Josh Reinhardt, Manager of York County Development Services Department
- Jonathan Buono, Director of York County Planning and Development.

CORPORATE DISCLOSURE STATEMENT

Petitioner Citizens Alliance for Government Integrity is a nonprofit corporation with no outstanding shares of stock. It has no parent corporation, and no publicly held company owns 10% or more of membership interests.

LIST OF PROCEEDINGS

Supreme Court of South Carolina

No. 2025-002174

Citizens Alliance for Government Integrity, *Petitioner*
v. York County, et al., *Respondents*

Final Order: December 16, 2025

Note: This case was initiated as a Petition for Writ of Mandamus, Prohibition, or Injunctive relief to the Supreme Court of South Carolina. There are no related state or federal trial court or appellate proceedings within the meaning of Rule 14.1(b)(iii), that involve the same parties as this petition and the proceedings directly on review here.

There are several cases with overlapping facts and parties that are adjacent to this petition: *Silfab Solar, Inc. and Exeter 7149 Logistics, L.P. v. York County Board of Zoning Appeals*, No. 2024-CP-46-02641 (S.C. Ct. Common Pleas filed June 28, 2024); *Citizens Alliance for Government Integrity, Inc. v. Silfab Solar, Inc.*, No. 2024-CP-46-03532 (S.C. Ct. Common Pleas filed Sept. 5, 2024); *Walter Buchanan v. South Carolina Department of Environmental Services and Silfab Solar, Inc.*, No. 2025-000288 (S.C. Ct. App. filed Feb. 14, 2025); and *Bivins v. York County*, No. 2025-CP-46-04007 (S.C. Ct. Common Pleas filed Oct. 13, 2025). Petitioner does not list those matters as “directly related proceedings” under Rule 14.1(b)(iii) because they do not arise from the same case as the original jurisdiction proceeding below.

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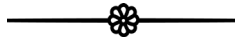
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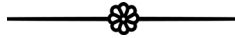
PETITION FOR A WRIT OF CERTIORARI

CITIZENS ALLIANCE FOR GOVERNMENT INTEGRITY respectfully petitions for a writ of certiorari to review the judgment of the South Carolina Supreme Court in this case.



OPINIONS BELOW

The order of the Supreme Court of South Carolina declining to entertain petitioner's original jurisdiction petition for mandamus, prohibition, and injunctive relief was entered on December 16, 2025. App.1a. That order is unpublished and no opinion accompanied it.



JURISDICTION

The Supreme Court of South Carolina entered the final order sought to be reviewed on December 16, 2025. App.1a. No petition for rehearing was filed. By order of the Chief Justice dated March 12, 2026, the time to file a petition for a writ of certiorari was extended to and including May 15, 2026. Sup. Ct. No. 25A986. This petition is timely. This Court has jurisdiction under 28 U.S.C. § 1257(a). *Detroit & C. Ry. v. Michigan RR Comm.*, 240 U.S. 564, 571 (1916); *Rescue Army v. Mun. Court of Los Angeles*, 331 U.S. 549, 565 (1947).



CONSTITUTIONAL PROVISIONS INVOLVED

U.S. Const. amend. XIV, § 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the state wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.



STATEMENT OF THE CASE

This case concerns whether county officials may issue permits for a land use after the county's own board of zoning appeals has determined, in a written ruling, that the use is prohibited.¹ App.214a. Petitioner

¹ South Carolina's zoning-enabling statutes place review of zoning-administrator decisions in local boards of zoning appeals, followed by judicial review. *See* S.C. Code Ann. §§ 6-29-780, 6-29-800(E), 6-29-820 to -850. A board of zoning appeals may "reverse or affirm, wholly or in part," or "modify" the administrative decision and, to that end, has "all the powers of the officer from whom the appeal is taken." S.C. Code Ann. § 6-29-800(E); *Ani Creation v. City of Myrtle Beach*, 440 S.C. 266, 288 (2023). South Carolina law also provides that "[n]o permit may be issued or approved unless the requirements of this chapter or any ordinance adopted pursuant to it are complied with," and authorizes an

Citizens Alliance for Government Integrity (“CAGI”) alleges that, after the York County Board of Zoning Appeals unanimously ruled in May 2024 that Silfab Solar, Inc.’s proposed solar-panel and photovoltaic-cell manufacturing use was not permitted in the property’s Light Industrial district, county officials nevertheless began issuing permits for the project without any rezoning, variance, stay, or other lawful change-of-use approval. *Id.* at App.160a, App.162a-164a, App.168a-169a, App.213a-214a.

CAGI is a nonprofit membership organization representing over 8,000 residents of upper York County, including residents who live near the project site. App.163a. Among its members is Amanda Morrison, a Fort Mill resident who lives in the community where Silfab has located the project site and who avers that the property is being converted from a distribution warehouse into an industrial manufacturing use that violates the County’s zoning code and “will emit pollutants near our schools and homes.” *Id.* at App.186a-187a, App.189a.

The property is located at 7149 Logistics Lane in Fort Mill, South Carolina, within a multi-county industrial park, and is zoned Light Industrial (“LI”). App.55a, App.148a, App.164a, App.213a-214a. York County’s own zoning materials describe the LI district as intended for “less intensive uses” that “protect nearby residential areas from the encroachment of

adjacent or neighboring property owner who would be “specially damaged” by a zoning violation to seek injunction, mandamus, or other appropriate relief. S.C. Code Ann. § 6-29-950(A). This statutory context is offered only to identify the practical setting in which the federal question arises, not to supply an independent basis for review.

heavy industrial uses.” *Id.* at App.76a. The parcel lies next to an elementary school and a middle school, and within a three-mile radius containing more than 53,000 residents. *Id.* at App.76a, App.164a, App.171a. App.176a.

The property had long been improved with an approximately 840,000-square-foot distribution warehouse. App.170a-171a, App.184a, App.265a. CAGI’s position is that county officials permitted the conversion of that warehouse into a chemical-manufacturing facility without any rezoning, variance, or lawful change-of-use approval. *Id.* at App.162a-164a, App.181a.

In late 2022, Silfab sought zoning verification for its proposed operations. App.55a, App.76a. On December 27, 2022, the County’s zoning office issued a letter signed by a zoning technician stating that Silfab’s proposed operations were compatible with LI zoning because they constituted electrical equipment, appliance, and component manufacturing. *Id.* at App.55a, App.76a-77a. Respondents maintained that the letter reflected the Zoning Division’s official determination. *Id.* at App.55a-56a. CAGI, by contrast, maintained that the letter was legally ineffective because the County Code required action by the Zoning Administrator rather than a subordinate staff member, and because only the Zoning Administrator was authorized to issue or deny zoning permits under York County Code Section 155.1123. *Id.* at App.169a, App.174a, App.219a, App.223a-224a.

In 2023, York County Council enacted Ordinance No. 6623 authorizing a fee-in-lieu-of-tax (“FILOT”) agreement to induce Silfab to locate the project in the County. App.56a, App.85a-87a. Respondents argued that the FILOT agreement ratified prior County actions

relating to the project, including the 2022 zoning verification letter. *Id.* at App.56a, App.83a, App.85a-87a. CAGI has consistently maintained that the FILOT was an economic-development measure only, did not rezone the property, and did not authorize any change in use. *Id.* at App.88a, App.93a, App.95a, App.220a, App.226a. A former Vice Chair of York County Council similarly averred that the FILOT was presented and approved “merely as a tax incentive,” that no variance or change-of-use petition was presented to the council, and that the existing warehouse “was never zoned for anything other than distribution.” *Id.* at App.265a.

In early 2024, a Fort Mill resident requested a formal zoning interpretation from York County concerning Silfab’s proposed use. App.145a-147a. The County’s zoning administrator responded that solar-panel manufacturing fell within “computer and electronic product manufacturing” and therefore was permitted in the LI district. *Id.* at App.148a-150a. That determination was appealed to the York County Board of Zoning Appeals. *Id.* at App.152a-155a.

In May 2024, after a hearing, the Board voted 5-0 to reverse the Zoning Administrator’s interpretation and later issued a written order concluding that solar-panel manufacturing did not constitute “Computer and Electronics Product Manufacturing,” was not a listed use in the LI district and therefore was prohibited under the York County Code. App.213a-214a.

Silfab and its landlord appealed the Board’s order to the circuit court, where that appeal remains pending. App.267a. While that appeal remains unresolved, CAGI alleges that permits have continued to issue and development has proceeded, threatening to outpace

state-court review. *Id.* at App.164a-165a, App.167a, App.170a. Respondents have argued that the Board's ruling is not final and therefore did not preclude permitting. *Id.* at App.61a, App.70a.

Several related state proceedings provide context but do not resolve the dispute presented here. In September 2024, CAGI filed a separate circuit court action seeking declaratory and injunctive relief. *Id.* at App.249a-258a. After a December 18, 2024 hearing, the circuit court stayed that action until final resolution of the administrative proceeding involving the Board of Zoning Appeals and declined to stay construction permits. *Id.* at App.32a. Another neighboring property owner later filed a separate state court action concerning the County's permitting of the Silfab project, which the circuit court dismissed in substantial part on pleading grounds. *Id.* at App.3a, App.11a, App.232a.

Against that backdrop, and while county officials began issuing permits despite the Board's written ruling, CAGI filed the present original action in the Supreme Court of South Carolina on October 28, 2025, seeking mandamus, prohibition, and injunctive relief against York County and county officials. App.160a, App.171a, App.178a. The petition alleged that respondents issued permits for the Silfab project notwithstanding the Board's ruling and without any rezoning, variance, or lawful change-of-use approval. *Id.* at App.179a, App.175a, App.178a-179a, App.181a. It repeatedly characterized the County's conduct as taken without legal authority, as *ultra vires*, and as rendering the permits *void ab initio*. *Id.* at App.163a, App.169a-170a, App.179a-180a, App.226a, App.228a-230a. The petition further alleged that York County

was “misappropriating quasi-judicial and quasi-legislative functions in violation of the law,” acting in “defiance” of the Board’s ruling, and engaging in conduct that was “arbitrary and irrational” and lacking any substantial relation to public health, safety, or welfare. *Id.* at App.163a, App.165a, App.169a.

Those allegations expressly invoked South Carolina Code Section 6-29-950 and, at the same time, cast respondents’ conduct as “arbitrary and irrational” executive action “having no foundation in reason and no substantial relation to public health, public safety, or welfare[.]” App.163a. In that way, the petition framed the case not only as a state-law permitting dispute, but also as one implicating the constitutional prohibition on arbitrary land-use action. In support of that theory, the petition invoked *Nectow v. Cambridge* through lower-court authority, for the proposition that zoning action is invalid when it “has no foundation in reason and is a mere arbitrary or irrational exercise of power” lacking a substantial relation to public health, safety, morals, or welfare. 277 U.S. 183, 187–88, 48 S.Ct 447, 72 L.Ed. 842 (1928). *Id.* at App.165a. In its amended reply, CAGI reiterated that the zoning verification letter was not lawful zoning approval, asserted that it was “*void ab initio*,” argued that respondents were approving permits “in excess of the county officers’ statutory authority,” and maintained that the FILOT agreement did not authorize any change in use. *Id.* at App.219a-220a.

CAGI also supported its request for emergency relief with allegations concerning the nature of the proposed operations and the public interests at stake. App.160a, App.162a-163a. The petition alleged that the project involved rapid conversion of the warehouse

into a chemical-manufacturing facility with air-discharge stacks, a wastewater-treatment component, dedicated chemical-storage outbuildings, and chemical-handling structures. App.166a, App.183a. It further alleged that the facility would use hazardous, toxic, and pyrophoric chemicals, including trimethylaluminum, phosphorus oxychloride, hydrofluoric acid, hydrochloric acid, silane, and boron trichloride. *Id.* at App.160a, App.166a-167a.

Respondents opposed relief on state-law and procedural grounds. They argued that the petition was duplicative of other pending proceedings; that the issues should be resolved in lower courts rather than through the state supreme court's original jurisdiction; that any decision whether to revoke permits or issue a stop-work order was discretionary rather than ministerial; and that prohibition was unavailable because county officials are not courts or officers exercising judicial or quasi-judicial powers. *Id.* at App.53a-54a. Respondents also disputed CAGI's premise that the County had acted without authority, contending that the zoning verification letter reflected the Zoning Division's official position, that the FILOT agreement ratified prior County actions relating to the project, and that the Board's ruling was not final and therefore did not preclude permitting. *Id.* at App.56a-57a.

On December 16, 2025, the Supreme Court of South Carolina entered a one-page order. App.1a-2a. The order stated that petitioner sought mandamus compelling York County to cease issuing operating and occupancy permits to Silfab, alternatively sought prohibition preventing further permit issuance, and requested injunctive relief. *Id.* The court then stated

that, “[d]ue to the nature of this request, we construe Petitioner’s petition to include a request for injunctive relief,” and concluded: “We decline to entertain this matter in our original jurisdiction.” *Id.* at App.2a. No opinion accompanied the order. *Id.* at App.1a-2a. The court did not explain whether it declined original jurisdiction because it accepted respondents’ state-law objections to mandamus or prohibition, because it believed other remedies were adequate, because it rejected a federal objection, or for some other reason. *Id.* This petition seeks review of that order.



REASONS FOR GRANTING THE PETITION

This petition warrants review for three reasons. First, the courts of appeals apply materially different substantive due process standards to executive action in land-use cases when officials allegedly issue permits after they lack lawful authority to do so. The Second Circuit has allowed such claims to proceed in circumstances that other circuits reject as no more than state-law error, while the Eleventh Circuit generally bars this class of executive land-use claim altogether absent infringement of a fundamental right.

Second, the question is important and recurring. Land-use permitting is among the most common exercises of local executive power, and the constitutional consequences of *ultra vires* permitting now depend on geography. This Court has not resolved how substantive due process applies when such officials authorize a use after the local appellate zoning body has ruled that the use is prohibited and no rezoning,

variance, stay, or other lawful authorization has intervened.

Third, this case frames the conflict. County officials began issuing permits after the York County Board of Zoning Appeals unanimously ruled the proposed use prohibited, and respondents do not deny the permitting but defended it as lawful notwithstanding the Board's ruling. The South Carolina Supreme Court then entered a final order declining to entertain petitioner's original writ proceeding, leaving unresolved whether such allegedly unauthorized executive permitting is merely a matter of state law or arbitrary action of constitutional dimension. The case accordingly provides a concrete setting in which to resolve the disagreement among the lower courts.

At minimum, this case warrants vacatur and remand because the South Carolina Supreme Court's unexplained order does not disclose whether it rejected a federal objection or instead declined relief on an adequate and independent state ground.

I. The Courts of Appeals Apply Materially Different Substantive Due Process Standards to Executive Land-Use Action Taken Without Lawful Authority

The courts of appeals do not speak with one voice on the federal status of *ultra vires* executive land-use action. While not every state-law error in a zoning dispute becomes a federal case, the question here is whether, and under what circumstances, executive land-use action taken after officials lack lawful authority may itself be arbitrary in the constitutional sense. On that question, the circuits have diverged. That disagreement produces materially different constitu-

tional outcomes in similar cases based solely on geography.

The conflict is sharpest among the Second Circuit, the circuits requiring conscience-shocking or similarly extraordinary abuse, and the Eleventh Circuit's rule for executive land-use action. The Second Circuit is the most receptive to giving independent constitutional significance to *ultra vires* land-use action. In *Brady*, which involved a dispute over whether property was lawfully zoned and used for commercial purposes, the court held that if local officials had "no authority under state law" to revoke permits, demand new zoning approvals, or subject the owner to a further approval process, a factfinder could conclude there was no "rational basis" for their conduct, and consequently, the "appellants' rights to substantive due process" were violated. *Brady v. Town of Colchester*, 863 F.2d 205, 213, 215–216 (2d Cir. 1988). *Brady* thus treated unauthorized zoning action not as mere state-law error, but as conduct that could itself satisfy the arbitrariness element of substantive due process. *Id.* The court was careful to add that not every wrong zoning decision creates a constitutional claim, but it allowed the claim to proceed because the alleged lack of authority could support a finding of constitutional arbitrariness, especially where the record suggested "impermissible political animus" rather than a good-faith mistake about the law. *Id.* at 216.

Cine SK8 sharpened the same principle. The Second Circuit held that a land-use dispute may be constitutionally arbitrary where it is tainted by "fundamental procedural irregularity," and it added that if the town board lacked authority under local law to take the challenged action, the action was

“*ultra vires*” and “sufficiently arbitrary to amount to a substantive due process violation.” *Cine SK8, Inc.*, 507 F.3d at 789 (quoting *Natale v. Town of Ridgefield*, 170 F.3d 258, 262 (2d Cir. 1999)).

That does not mean every state-law error is constitutional. The Second Circuit still emphasizes that federal substantive due process is reserved for conduct “so outrageously arbitrary as to constitute a gross abuse of governmental authority,” and even a state-law violation may not suffice where state remedies exist. *Harlen Assoc. v. Mineola*, 273 F.3d 494, 505 (2d Cir. 2001). Within those limits, the Second Circuit recognizes that action taken without legal authority may itself support—or at least strongly evidence—the arbitrariness element, especially where the record also reflects political animus or fundamental procedural irregularity. See *Brady*, 863 F.2d at 213, 215–216; *Cine SK8, Inc.*, 507 F.3d at 789–790. The Second Circuit’s approach therefore is not that every state-law defect is constitutional, but that lack of legal authority may, in the proper case, bear directly on constitutional arbitrariness.

Other circuits apply a markedly stricter federal threshold. In the majority camp, illegality under state or local law—even bad-faith illegality—is not enough by itself and requires additional conscience-shocking, truly irrational, or otherwise egregious conduct. The First Circuit, for example, holds that a plaintiff in a land-use case must show conscience-shocking conduct and warns that substantive due process “may not, in the ordinary course, be invoked to challenge discretionary permitting or licensing determinations of state or local decisionmakers, whether those decisions are right or wrong.” *Mongeau v. City of Marlborough*,

492 F.3d 14, 17 (1st Cir. 2007) (internal quotation marks and citation omitted).

The Third Circuit likewise holds that executive action in land-use cases violates substantive due process only when it “shocks the conscience,” and it rejected its earlier, more permissive “improper motive” approach for that reason. *United Artists Theatre Circuit, Inc.*, 316 F.3d at 394, 399–400. Consistent with that rule, the Third Circuit aligned with other circuits in approvingly citing the proposition that arbitrary or even bad-faith enforcement of zoning or state law, without more, is insufficient for federal substantive due process. *Id.* at 402 (citing *Chesterfield Dev. Corp. v. City of Chesterfield*, 963 F.2d 1102, 1104–1105 (8th Cir. 1992), and *PFZ Properties, Inc. v. Rodriguez*, 928 F.2d 28, 32 (1st Cir. 1991)).

The Fourth Circuit takes a materially narrower view. It holds that “[t]he legality of a zoning decision under applicable state law is not determinative” of a federal substantive due process claim, because constitutional arbitrariness is “completely distinct from and far narrower than” arbitrariness under administrative law. *Sylvia Dev. Corp. v. Calvert Cnty.*, 48 F.3d 810, 829 n.7 (4th Cir. 1995). And it said so while cautioning against reliance on broader formulations “from other circuits, such as *Brady v. Colchester*, 863 F.2d 205 (2d Cir. 1988)[.]” demonstrating that what the Second Circuit treats as potentially constitutional arbitrariness, the Fourth Circuit treats as at most a question of state administrative law. *Sylvia Dev. Corp.*, 48 F.3d at 829 n.7.

The Eighth Circuit states the rule bluntly: even if a city knowingly enforced an invalid zoning ordinance in bad faith, “[a] bad-faith violation of state law

remains only a violation of state law.”² *Chesterfield Dev. Corp.*, 963 F.2d at 1104.

The point of disagreement is thus clear. The Second Circuit may permit a substantive due process claim to proceed based on the proposition that local officials acted without legal authority. Whereas the

² The same basic view appears elsewhere and confirms the majority view that a violation of local law does not itself infringe substantive due process. *See, e.g., FM Props. Operating Co. v. City of Austin*, 93 F.3d 167, 173–174 (5th Cir. 1996) (“[I]nsist[ing] that review of municipal zoning is within the domain of the states[,]” and “a violation of state law is alone insufficient to state a constitutional claim under the Fourteenth Amendment.” (internal quotation marks and citation omitted)); *Golf Vill. N., LLC v. City of Powell*, 42 F.4th 593, 601 (6th Cir. 2022) (holding that to fail rational basis review in a substantive due process zoning case, “the government’s actions must be so brutal and offensive that [they do] not comport with traditional ideas of fair play and decency” (quoting *Cnty. of Sacramento v. Lewis*, 523 U.S. 833, 847 (1998)) (cleaned up); *Coniston Corp. v. Vill. of Hoffman Ests.*, 844 F.2d 461, 467–468 (7th Cir. 1988) (collecting cases from the First, Third, Fifth, and Ninth Circuits and asserting that federal courts should not review zoning decisions based solely on alleged violations of local ordinances or state law, characterizing such claims as “garden-variety zoning dispute[s] dressed up in the trappings of constitutional law[.]”); *Norton v. Vill. of Corrales*, 103 F.3d 928, 932–933 (10th Cir. 1996) (“[T]he legality of a zoning decision under applicable state law is not determinative of whether the decision violated federal substantive law.” (quoting *Sylvia Dev. Corp.*, 48 F.3d at 829)); *George Washington University v. District of Columbia*, 318 F.3d 203, 209–210 (D.C. Cir. 2003) (requiring plaintiffs to show that their substantive due process claims are supported by only “grave unfairness” through either “a substantial infringement of state law prompted by personal or group animus, or . . . a deliberate flouting of the law that trammels significant personal or property rights.” . . . [A] breach of local law does not of itself violate substantive due process.” (internal quotation marks and citation omitted)).

majority rejects that premise and holds that illegality under state or local law, even if knowing or in bad faith, does not by itself amount to constitutional arbitrariness.

The Eleventh Circuit goes further still. It does not merely require more than illegality or irrationality. Rather, it bars this class of as-applied executive land-use claims absent infringement of a fundamental right. The Eleventh Circuit grounds that rule in the broader principle that state-created rights ordinarily do not receive substantive-due-process protection. *Hillcrest Property, LLP*, 915 F.3d at 1297, 1299–1301; *Lewis v. Brown*, 409 F.3d 1271, 1273–1274 (11th Cir. 2005). It therefore treats non-legislative deprivations of land-use rights as outside substantive due process altogether, “even if the plaintiff alleges that the government acted arbitrarily and irrationally.” *Greenbriar Vill., L.L.C. v. Mt. Brook City*, 345 F.3d 1258, 1263 (11th Cir. 2003). The court has applied that rule specifically to zoning enforcement and land-use administration, treating those actions as executive rather than legislative. *Lewis*, 409 F.3d at 1273–1274.

These approaches cannot be reconciled. In the Second Circuit, deliberate land-use action taken after officials allegedly lack authority may itself support a substantive-due-process claim and constitute serious procedural irregularity sufficient to supply constitutional arbitrariness. *Cine SK8, Inc.*, 507 F.3d at 789–790. In the majority camp, however, unauthorized action is not enough without some further conscience-shocking or similarly egregious abuse. See, e.g., *United Artists Theatre Circuit, Inc.*, 316 F.3d at 394, 399–400. Meanwhile, in the Eleventh Circuit, no cognizable substantive-due-process claim exists at all for executive

deprivations of state-created land-use rights. *Hillcrest Property*, 915 F.3d at 1297, 1299–1301.

That geographic divergence is outcome-determinative. The same allegation—that permitting officials authorized a use after the local appellate zoning body ruled it prohibited and without any intervening lawful authorization—may state a federal claim in one circuit, fail absent extraordinary additional facts in another, and be categorically barred in a third. Federal constitutional protection should not turn on the happenstance of geography.

II. The Question is Important and Recurring

The question presented arises from the routine administration of land-use law. Local officials decide every day whether a proposed use is permitted, whether approvals may issue, and whether development may continue. This Court has long held that land-use restrictions cannot stand when they lack a substantial relation to the public health, safety, morals, or general welfare, *Nectow*, 277 U.S. at 188; that a regulation failing to serve any legitimate governmental objective may be so arbitrary or irrational as to violate due process, *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005); and that, for executive action, the threshold inquiry is whether the conduct is so egregious or outrageous that it shocks the contemporary conscience, *Lewis*, 523 U.S. at 846–850. And in the land-use setting, it has rejected substantive due process liability where officials followed a facially applicable legal process and their directive was “eminently rational.” *City of Cuyahoga Falls v. Buckeye Cmty. Hope Found.*, 538 U.S. 188, 198–199 (2003).

But this Court has never resolved how those principles apply when permitting officials exercise authority they do not lawfully possess, specifically when local executive officials allegedly begin permitting activity after the competent local appellate zoning body has already ruled that the use is prohibited and no lawful authorization has intervened.

Because permitting disputes recur constantly, and because the circuits now apply different constitutional thresholds to the same basic allegation—permitting after a contrary local zoning ruling—the question is both recurring and outcome-determinative. As shown above, the courts of appeals disagree over whether *ultra vires* land-use action may itself support a substantive due process claim, whether it must be accompanied by additional conscience-shocking circumstances, or whether executive deprivations of state-created land-use rights fall outside substantive due process altogether. The result is that materially similar allegations of unauthorized permitting can produce different constitutional outcomes in different parts of the country. Whether such alleged conduct is merely a state-law dispute or can rise to constitutional dimension should not depend on geography.

The federal question, then, is focused and recurring: when executive officials authorize a use after the local board of zoning appeals has said the use is forbidden, is that merely a matter for state law, or can it amount to arbitrary executive action forbidden by the Fourteenth Amendment? The question has practical significance in systems, like South Carolina's, where county zoning disputes are not subject to centralized state administrative supervision and affected residents must instead rely on case-by-case judicial remedies

that may arrive only after the challenged executive action has become irreversible.

III. This Case is a Suitable Vehicle

This case presents that recurring question in a concrete and practical posture. Under South Carolina law, a board of zoning appeals may hear appeals alleging error in an administrative zoning determination, and in doing so it “has all the powers of the officer from whom the appeal is taken[.]” *Ani Creation*, 440 S.C. at 288 (citing S.C. Code Ann. § 6-29-800(E)). Here, the local board unanimously issued a written ruling that the proposed use was prohibited. App.213a-214a. County officials nevertheless began issuing permits after that ruling, and did so without rezoning, a variance, or any other lawful change-of-use approval. Respondents, for their part, do not dispute that the Board entered that ruling but contend the Board’s ruling is not final and therefore did not bar permitting. *Id.* at App.70a n.17. That contention goes to the merits of whether permitting remained lawful notwithstanding the Board’s decision. It does not alter the posture in which this case presents the federal question, which is whether executive officials may authorize a use after the local body vested with appellate zoning authority has ruled the use prohibited. This is thus not an abstract challenge to a zoning code or a generalized complaint about local administration. It is a challenge to identified executive action taken after the local appellate zoning body had already spoken.

To be sure, the order below was not a routine refusal to entertain a petition filed by a stranger to the controversy. South Carolina law specifically authorizes an “adjacent or neighboring property owner” who

would be “specially damaged” by a zoning violation to seek injunction, mandamus, or other appropriate relief to prevent unlawful construction or use. S.C. Code Ann. § 6-29-950(A). South Carolina courts construe that statute to require a particularized injury distinct from the public generally and to permit suit by a specially damaged neighboring property owner to stop an alleged zoning violation. *Carnival Corp. v. Historic Ansonborough Neighborhood Ass’n*, 407 S.C. 67, 78–79, 753 S.E.2d 846, 852 (2014). CAGI invoked that remedial framework as a membership organization asserting the interests of nearby members who alleged threats to “health, safety, welfare, and environmental protection against toxic and hazardous chemicals . . . and [] imminent environmental impact to schools and homes” from respondents’ continued permitting of a use the Board of Zoning Appeals had ruled prohibited. App.163a.

The order below likewise is reviewable. The Supreme Court of South Carolina finally disposed of petitioner’s mandamus-prohibition-injunction proceeding when it declined to entertain the matter in its original jurisdiction. This Court has long held that “a proceeding in mandamus is an independent adversary suit, and a judgment awarding or refusing the writ is a final judgment” for purposes of this Court’s review, even when the underlying controversy continues elsewhere. *Detroit & C. Ry.*, 240 U.S. at 571. This Court has likewise held that prohibition is “a distinct suit” whose final disposition is final even though it “does not decide the merits of the principal suit[.]” *Mt. Vernon-Woodberry Cotton Duck Co. v. Ala. Interstate Power Co.*, 240 U.S. 30, 31 (1916). The order below

thus ended a reviewable proceeding in the State's highest court.

The principal jurisdictional difficulty is not finality, but the opacity of the order below. The Supreme Court of South Carolina gave no explanation for declining to entertain the matter in its original jurisdiction. App.1a-2a. It did not say whether it accepted respondents' state-law objections to extraordinary relief, believed other remedies were adequate, rejected a federal objection, or relied on some combination of those grounds. *Id.*

This Court confronted a similar problem in *Philadelphia Newspapers, Inc. v. Jerome*, where the record did not disclose whether the state court had passed on the federal claims or denied mandamus on an adequate and independent state ground. 434 U.S. 241, 241–242 (1978). There, the Court vacated and remanded for clarification. *Id.* Therefore, where the record does not disclose whether the state court passed on the federal claim or denied relief on an adequate and independent state ground, this Court should vacate and remand for clarification. *See id.* At a minimum, the unexplained order does not make this case an unsuitable vehicle; if anything, it presents the same kind of uncertainty that warrants clarification rather than inaction.

South Carolina ordinarily does not entertain matters in original jurisdiction when they can be heard in the trial courts. *Key v. Currie*, 305 S.C. 115, 116, 406 S.E.2d 356, 357 (1991). However, South Carolina also recognizes that original jurisdiction may be appropriate when public interest, emergency, or legitimate constitutional issues are present. *Id.*; *Doe v. State*, 421 S.C. 490, 497 n.5, 808 S.E.2d 807, 810 (2017). Indeed, petitioner specifically noted special

emergency grounds existed because despite ongoing circuit and appeals court cases, “[t]he construction is evolving at such a rapid pace that it threatens to outpace judicial review[.]” App.166a.

The unexplained order below does not disclose which of those competing principles the court thought controlled. That silence should not be treated as automatically insulating the order from this Court’s review. At minimum, this Court should grant certiorari, vacate, and remand for clarification of the basis for the state court’s refusal. *See Philadelphia Newspapers*, 434 U.S. at 241–42.

Nor does the manner in which the issue was framed defeat review. Although the federal issue was not labeled below in the refined terms used now, this Court does not require any “particular form of words or phrases”; it requires only that “the claim of invalidity and the ground therefor be brought to the attention of the state court with fair precision and in due time.” *Street v. New York*, 394 U.S. 576, 584 (1969); *see New York Ex Rel. Bryant v. Zimmerman*, 278 U.S. 63, 67 (1928) (same). Petitioner fairly presented the substance of the federal objection by invoking the Fourteenth Amendment’s prohibition on arbitrary and irrational zoning action and applying that objection to respondents’ post-BZA permitting conduct, arguing that respondents’ conduct was “arbitrary and irrational.” App.163a, App.165a. Petitioner cited *Nectow*’s Fourteenth Amendment rule that zoning action may not rest on conduct that “has no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare[.]” *Nectow*, 277 U.S. at 187 (quoting *Euclid v.*

Ambler Co., 272 U.S. 365, 395 (1926)). App.165a. Petitioner further argued that the challenged permits were *ultra vires* and void. To be sure, mere presentation of the facts or a similar state-law theory would not suffice. But this record contains more than that: it presents the substance of the federal objection, not merely its factual predicate.

Nor is the case too abstract for review. This Court has cautioned that, in an extraordinary-writ posture, jurisdiction should be exercised only when the proceeding tenders the constitutional issue in “clean-cut and concrete form.” *Rescue Army*, 331 U.S. at 584. That requirement is met here. The operative facts are straightforward: a local appellate zoning body ruled that the proposed use was prohibited, and petitioner alleges that executive officials began issuing permits anyway, without any intervening rezoning, variance, or other lawful approval. Whether that alleged conduct is only a state-law error or may also amount to arbitrary executive action forbidden by the Fourteenth Amendment is a focused legal question presented by a completed and identifiable course of conduct.

In short, this petition gives the Court an opportunity either to resolve the substantive conflict now or to vacate and remand for clarification of the state court’s unexplained order. What the order below does not do is eliminate the conflict, answer the federal question, or reduce the need for this Court’s intervention.



CONCLUSION

The petition for a writ of certiorari should be granted. In the alternative, if the Court concludes that the basis of the South Carolina Supreme Court's order is insufficiently clear to permit plenary review, the Court should vacate the judgment and remand for such further proceedings as the state court may deem appropriate to clarify the record.

Respectfully submitted,

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