

THE STATE OF SOUTH CAROLINA

In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No.: 2018-CP-10-4083

Appellate Case No.: 2022-001114

Opinion No.: 2025-UP-153

Charleston Carriage Works, L.L.C.,

Appellant,

v.

Charleston Animal Society, Ellen Harley and
Charleston Carriage Horse Advocates, Inc.,

Respondents.

MEMORANDUM IN SUPPORT OF
PETITION FOR REHEARING
PETITION FOR REHEARING *EN BANC*

May 12, 2025

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1.
THE COURT OF APPEALS FAILED TO ADHERE TO CONTROLLING PRECEDENT.

A. *Erickson*

The Supreme Court decided *Erickson* in 2006, and the Opinion under review violates that controlling precedent. *Erickson*¹ is factually similar except that Jones Street Publishers was a “media defendant,” and the defendants here are not. This Court passed *Erickson* up to the Supreme Court to decide, and the Supreme Court rejected the same reasoning now asserted here by the Court of Appeals and reinstated the jury verdict on liability and remanded for the jury to determine actual and punitive damages. The Opinion under review ignores the Supreme Court’s holding in *Erickson*.

B. *Garrard*

Thirteen years later, this Court handed down *Garrard*, affirming the trial court’s summary judgment on the ground that labeling plaintiff a racist is not defamatory.² The Supreme Court affirmed on the narrow ground that the Appellant failed to provide evidence of damages—not an issue here—but reversed this Court’s analysis of defamation across the board, vacating the same erroneous reasoning now being improperly applied here to sustain summary judgment.

Viewing the evidence in a light most favorable to Petitioners, we affirm in result the decision of the court of appeals regarding the entry of summary judgment due to Petitioners' failure to present evidence (beyond mere speculation) in proof of their injuries. We affirm the court of appeals' decision on this basis alone, **and we vacate the balance of the court of appeals' opinion.** (emphasis added)

The Supreme Court “vacated” this Court’s analysis of (1) fair reporting privilege, (2) matter of public concern, (3) expressions of opinion, (4) proof of injury, (5) whether defamatory statements were “of and concerning” the plaintiff, and (6), most importantly, actual malice, discussed below in Argument 5. Here, Appellant testified at pages 416 and 440 that he spent \$5,000.00 a month trying to combat defendants’ interference in his reservations page and demonstrated how the defendants targeted his reservations page. The defendants gloated over their attacks, even calling Appellant’s principal a

¹ *Erickson v. Jones Street Publishers, L.L.C.* 368 S. C. 444, 629 S.E.2d 653 (2006)

² *Garrard v. Charleston County School District*, 439 S.C. 596, 890 S.E.2d 567 (2023)

“cornered animal,” Vol. 3 R.O.A. page 953, and allocated money to “depress his income,” (R.O.A. page 387), not to mention intimidated his witness, R.O.A. page 438, filed licensing complaints against its lawyer, veterinarian, and filed a bogus O.S.H.A. complaint against Appellant, R.O.A. page 376.

The Supreme Court held that a media defendant labeling plaintiff a “racist” is actionable. The defendants here labeled Appellant an “animal abuser,” which is worse than “racist” in *Garrard* because animal cruelty is a crime:

“[The defendant] did not merely accuse [the plaintiff] of being [‘an animal abuser’] in some abstract sense. Rather, [the defendant’s social media post] could be understood as an accusation of concrete, wrongful conduct, which can be proved to be either true or false. That makes it potentially defamatory.” (cleaned up)); *Taylor v. Carmouche*, 214 F.3d 788, 793 (7th Cir. 2000) (holding a statement that a person is “[an animal abuser] is defamatory and acknowledging that whether someone is [an animal abuser] or practices [animal abuse] in the workplace is a mundane issue of fact that is litigated every day); *cf. Capps v. Watts*, 271 S.C. 276, 281-83, 246 S.E.2d 606, 609-10 (1978) (recognizing that mere name calling and words of abuse are generally not considered defamatory but holding such remarks may be capable of libelous construction by reason of extrinsic facts).

Garrard at page 569, substituting “animal abuser” for “racist”

Because the Opinion under review violates binding precedent, the Court should grant a rehearing *en banc* so as to correct the lack of uniformity on this fundamental and important issue.

Cruce

The South Carolina Supreme Court handed down *Cruce* in 2024, which Appellant called to the attention of this Court on January 31, 2024.³ In *Cruce*, the Berkeley County School District defamed the plaintiff by **a single email** sent to 45 recipients alleging his files were not in order. The jury returned a verdict for \$200,000.00. This Court erroneously reversed the verdict on the similar grounds in the Opinion under review. The Supreme Court reversed and reinstated the verdict rejecting the same “limited public figure” error here (discussed in more detail in Argument 4 below). The Supreme Court emphatically stated that the concept of an “involuntary public figure” is “a species *Gertz* described as “exceedingly rare, and some now believe to be extinct.” *Cruce* at page 12. This introductory discussion demonstrates that Opinion under review is not

³ *Cruce v. Berkeley County School District*, 442 S.C. 1, 896 S.E.2d 765 (2024)

correct and is contrary to the controlling precedent, which justifies rehearing *en banc* to promote future uniformity in defamation cases. There are few legal issues more important than the right to protect one's reputation, the "immediate jewel of souls."⁴

2.

The Court overlooks that defendants disobeyed a discovery Order, specifically Judge Price's Order dated June 17, 2020 and that the Master-in-Equity never applied discretion because he erroneously concluded the law prohibited him from considering the issue in the first place. In addition, the Master-in-Equity adopted mutually exclusive positions; to wit, if he did not have jurisdiction to consider the motion, then he could not simultaneously deny it.

The Court of Appeals overlooks the overwhelming evidence of the defendants', Harley's and Charleston Carriage Horse Advocates', bad faith in obstructing discovery, citing a case that is the precise opposite of this Court's conclusion. "[T]he imposition of sanctions is generally entrusted to the sound discretion of the trial court" is a correct statement of law, but the Master-in-Equity refused to exercise discretion on the self-refuting proposition that he lacked judicial authority to consider it! The assertion that: "Only Judge Price has jurisdiction to consider this application" would preclude the Master-in-Equity from denying the relief. If the Master lacked jurisdiction to hear the motion, then it is logically impossible for him to deny the relief. Refusing to address a question is the logical opposite of exercising discretion. Moreover, *Richardson* stands for the exact opposite principle for which the Court is citing it!⁵ *Richardson* clearly holds that **any judge** can consider a remedy for discovery abuses whether there has been a previous Order or not:

The text of Rule 37. SCRCP, therefore empowered White with the right to request sanctions against the Solicitor for failing to respond to White's discovery requests **without first filing a motion to compel**. [citations omitted] (finding trial court has **duty** to delay trial to determine whether exclusion of an undisclosed witness is appropriate, "regardless of whether the proponent of the testimony is allegedly in violation of a pre-trial order or court rule.") (emphasis added)

⁴ William Shakespeare, *Othello*, Act III, Sc. 3, line 177

⁵ *Richardson on Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars (\$21,000.00) U.S. Currency & Various Jewelry*, 430 S.C. 594, 599, 846 S.E.2d 14, 16 (Ct. App. 2020)

The abdication⁶ of judicial responsibility to monitor discovery is both shocking and disheartening particularly because this Opinion rewards bad actors for their own misconduct.

3.

The Court of Appeals overlooks the obvious and compelling and overwhelming evidence that the defendants' statements were aimed directly at the Petitioner.

In the second section of the Opinion under review this Court affirms summary judgement by relying upon false assumptions refuted by the record. First, the Record demonstrates this case is about years of coordinated attacks on the plaintiff. When this Court writes: “we conclude the master’s ruling that statements other than those made in the relevant video were not ‘of and concerning CCW’ was correct” (Opinion at page 1), it ignores the copious evidence of attacks on the plaintiff discussed in Argument 5. This record is bursting at the seams with evidence of a deliberate, coordinated effort by disreputable fraudsters who conspired to put Appellant out of business through a plan of action conceived years before the video. Five days after the video release, the defendants specifically identified Appellant’s principal by name, concentrating the hate and threats directly on him, gloating that he was a “cornered animal”! (R.O.A. page 953) The video is just one part of a multipronged attack on the Appellant to drive him out of business. (See list of malicious acts summarized on pgs. 41-42 of Appellant’s brief, attached here for convenience.)

Not only does this Court ignore this evidence, but also erroneously relies on *Burns v. Gardner*, 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997) for the proposition that a defamation claim must “refer to some ascertainable person.” Leaving aside that the defendants specifically identified Appellant by name, whether defendants identified Appellant is a question of fact. *Burns*

⁶ The error in refusing to use discretion is discussed below on page 16, citing *Balloon Plantation Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990)

affirmed a dismissal on a failure to state a cause of action and imposed sanctions against the plaintiff's attorneys for filing a frivolous lawsuit. In *Burns*:

The appellants, who both are blind African Americans, obtained a copy of the position paper [sent to the General Assembly]. Notwithstanding the fact that the position paper made no reference to them, either by name or implication, the appellants filed suit against Charles and Earline Gardner, who they believed were the authors of the position paper, as well as Owens Corning, Inc., Charles Gardner's employer.”

If this Court believes the facts of *Burns* are in any way relevant to the undisputed facts (at least at the summary judgment stage) that these malicious defendants, statutorily prohibited from publishing misleading information, who unleashed years of coordinated attacks on Appellant, stoking social media animosity, maliciously suppressing truthful corrections, specifically identifying him by name⁷ to bring down opprobrium, deliberately disrupting his reservation page, attacking the professional licenses of his lawyer, his veterinarian, filing a bogus O.S.H.A. complaint to harass him, and perhaps most egregious of all, intimidating a disclosed witness, then the Court is deliberately ignoring the evidence. The question of whether the defendants' actions, including but not limited to, the video, are “of and concerning” the Appellant is a jury question, an issue laid to rest since 1998 when the Supreme Court decided *Holzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998) (*Holzscheiter II*):

The newspaper also asserts it was entitled to a directed verdict because respondent, Shannon's mother, failed to prove the statement that Shannon lacked family support was "of and about her." *Kendricks v. Citizens & Southern Nat'l Bank*, 266 S.C. 450, 223 S.E.2d 866 (1976). While the general rule is that defamation of a group does not allow an individual member of that group to maintain an action, this rule is not applicable to a small group. 50 *Am. Jur.* 2d, *Libel and Slander* § 349 (1995); *Hospital Care Corp. v. Commercial Casualty Ins. Co.*, 194 S.C. 370, 9 S.E.2d 796 (1940)(defamation of a class not actionable by member unless statement has special and personal application to plaintiff). We hold there was evidence from which a jury could have found the statement was "of and about" respondent and thus the directed verdict motion was

⁷ South Carolina law never required a specific identification of a plaintiff to maintain a defamation action even though these defendants specifically identified Appellant. This rule is found throughout South Carolina case law in cases such as this Court's opinion in *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 358 S.E.2d 397 (1987), which contains a detailed discussion of various forms of defamation occurring without specific identification. “While our Supreme Court has not directly addressed this point of television libel/slander, it has in related language held that any words which distinctly assume or imply plaintiff's guilt or raise a strong presumption of it in the minds of the hearers are sufficient to submit the issue of libel or slander to the jury trying the case. [citation omitted] For the reasons stated, we adopt as the law of this state the rule of law set forth in *Crump v. Berkeley Newspapers, Inc.*, *supra*; **the issue of whether the broadcast was of or about Wilhoit was properly submitted to the jury and we so hold.**” (emphasis added) The plaintiff in *Erickson* was not identified.

properly denied. *Washington v. Whitaker, supra; Hospital Care, supra.* See also *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 358 S.E.2d 397 (1987).

Finally, a salient case on this issue, *Erickson v. Jones Street Publishers*, 629 S.E.2d 653, 368 S.C. 444 (S.C. 2006), makes clear that a plaintiff need not be specifically named to maintain a defamation case. Jones Street Publishers never identified Linda Erickson as the G.A.L. referenced in its story, and consistent with South Carolina law, the Supreme Court held that she could maintain an action. Any unbiased examination of this record shows the defendants attacked Appellant specifically through images, **specifically naming him**, targeting his web presence, moving against his lawyer's and veterinarian's professional licenses, filing an O.S.H.A. complaint against him, *etc.* This Record is overwhelming with direct, specific evidence of a coordinated malicious attack perpetrated by putative charities run by ultra wealthy scammers whose only goal is to get carriages off "their" streets and persuade people to send money. The evidence in this case is far beyond the creation of a genuine issue of material fact. It is overwhelming.

4.

The Court of Appeals misapplies *Cruce v. Berkely Cnty. Sch. Dist.*, 442 S.C. 1, 896 S.E.2d 765 (2024) for the erroneous proposition that the Appellant is a "limited public figure" or the record contains no evidence of malice. *Cruce v. Berkeley Cnty. Sch. Dist.* holds precisely the opposite of how Opinion 153 cites it.

The introductory overview shows how the Opinion under review deviates from controlling precedent. It ignores the settled law on "limited public figures," and compounds the error by citing the most recent case that demonstrates its error, *Cruce v. Berkeley County School District*, 442 S.C. 1, 896 S.E.2d 765 (2024) *Cruce* simplified the 7-part *Erickson* test for limited public figures, reducing the test to three factors:

(1) whether the plaintiff voluntarily injected herself into and played a prominent role in a public controversy, **defined as a controversy whose resolution affects a substantial segment of the public**; (2) whether the defamation occurred after the plaintiff voluntarily entered the controversy but while still embroiled in it; and (3) whether the defamation was related to the controversy." (emphasis added)

Cruce reversed this Court's analysis, and despite being overruled, the Opinion under review

repeats the same error:

We reverse the decision of the court of appeals and hold Cruce was not a public official or a limited public figure. Cruce's defamation claim was supported by the evidence. We therefore reinstate the jury's damages award. *Cruce* at page 19

The Supreme Court's decision cannot be reconciled with the panel decision here. Jeffrey Cruce was a football coach and athletic director for Berkeley County High School. The jury returned a verdict of defamation because of **a single e-mail** sent to 45 recipients and awarded a verdict of \$200,000.00 actual damages. The allegation in the defamatory e-mail implied Cruce failed to keep his athletic department's files in order. Contrast that with the allegations here—years long coordinated effort to paint Appellant as an animal abuser by privileged agitators with a special interest in shutting down carriage companies. See R.O.A. page Vol 1, pg. 404-407. These wealthy scammers manufactured a “public controversy” to gin up contributions. The Appellant's response to being defamed was entirely defensive, like Linda Erickson—the precise opposite of “voluntarily injecting himself” into a “controversy.” He only took steps to protect the company from the social media frenzy and mitigate damages. Despite having the truth at hand, the defendants continued to promote false information, suppress truthful information, and tacitly called for violence against the Appellant. The defendants identified the Appellant by name on April 24, 2017, 5 days after the video—see Vol. 2, page 872—and image and deliberately interfered in his reservations page to destroy his business **under the guise of government supported, tax-exempt charities** that are statutorily prohibited from promoting false or misleading information. The trial court found Cruce was not a public figure and was defamed. So did the Supreme Court. The only court that did not was this Court, holding erroneously: “Cruce was a public official due to his status as a high school football coach and athletic director.” Two members of this panel wrongly decided *Cruce* and now repeat the same legal error the Supreme Court reversed in *Cruce*. The Appellant here, like the plaintiff in *Erickson*, did absolutely nothing to insert himself into a manufactured controversy. This Court never explains how the Appellant

voluntarily assumed a role of special prominence” and transformed into the “unicorn of defamation law.”:

Nor is [Cruce] that unicorn of defamation law, the ‘involuntary public figure,’ a species *Gertz* described as ‘exceedingly rare,’ and some say extinct. *Id.*; see generally Elder Defamation: A Lawyer’s Guide § 5.8 (Oct.2022).” *Cruce* at page 12.

5.

The Court of Appeals misapplies *Cruce v. Berkely Cnty. Sch. Dist.*, 442 S.C. 1, 896 S.E.2d 765 (2024) for the proposition that Appellant had to prove to the Court’s satisfaction evidence of actual malice to survive summary judgment. Malice is not required in libel against private figures, and this Record contains overwhelming evidence of malice sufficient to raise a genuine issue of material fact.

The Opinion under review departs from the controlling precedent of *Cruce*.

5(A)

The Record presents the existence of Jury questions—the summary judgment standard.

Neither the Master-in-Equity nor the panel decision under review give any deference to the summary judgment standard even though Appellant devoted considerable briefing to the standard for imposing the “drastic remedy” of summary judgment. *Erickson* makes clear that a citizen who defends himself or herself from defamation does not transform into a “limited public figure.” Both the Master-in-Equity and the Opinion under review displace the jury function by substituting their view of the evidence, improperly deciding believability and credibility.

5(B)

Proof of malice is not required in defamation cases unless the plaintiff is a public figure and even then it is a jury question to be decided at a trial on the merits, not at summary judgment.

Here, the Opinion under review commits another salient error. Citing *George v. Fabri*, 345 S.C. 440, 548 S.E.2d 868 (2001), the panel erroneously holds the plaintiff must prove, presumably by clear and convincing evidence at the summary judgment stage, constitutional malice, **even quoting the Supreme Court’s opinion that unambiguously restricts this principle to public official defamation cases:**

The constitutional guarantee of free speech requires that a **public official or public figure** must prove a defamatory statement was made “with ‘actual malice’—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.” *New York Times*, 376 U.S. at 279-

80, 84 S.Ct. 710; see also *Curtis Publishing Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967) (extending *New York Times* standard of actual malice to public figures); *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000). **At trial**, the plaintiff must prove actual malice by clear and convincing evidence. *E.g.*, *New York Times, supra*; *Elder, supra*. (emphasis added)

The Supreme Court modified the *George* rule four years later in another public official case, *Anderson v. The Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428 (2005):

The central issue of this case is whether any evidence exists tending to prove that Kent recklessly disregarded the truth when he published the article “Let the Liar Run.” **If such evidence exists, the question of actual malice is a question of fact for a jury.** (emphasis added)

The Record shows that the Appellant did not create the “controversy,” that the “controversy” of how he treated his horses was never “public,” that the putative “controversy” is created solely in the minds of scammers and fraudsters operating unlawfully under the guise of charities to promote collections through social media. Appellant is a small business trying to survive the defendants’ vicious and coordinated attacks and mitigate damages. Without any serious discussion, this Court simply puts Appellant in the unicorn category of “limited public figure” in violation of *Erickson* and its progeny without explanation or rationale.

The Court compounds its error relying on *McClain v. Arnold*, 275 S.C. 282, 270 S.E.2d 124 (1980), because the Supreme Court affirmed summary judgement because: “The record before the trial court **was devoid of any evidence** the article was published with knowing or reckless falsity; therefore, summary judgment was properly granted.” (emphasis added) *McClain* involved a Newspaper, a media defendant, which ran an article about a judicial proceeding, and after being notified it misidentified the plaintiff, it printed a retraction. Here, the defendants are not media defendants; they are charities statutorily prohibited from dispensing false or misleading messages. § 33-56-120, S.C. Code. Second, Appellant is obviously not a public official or a public figure. Third, the defendants manufactured a false controversy that Appellant did not create and did not “voluntarily insert himself into the putative controversy.” Fourth, when repeatedly supplied with correct information, the defendants here suppressed it. This Court’s Opinion holds

that any plaintiff who comes under attack cannot take steps to protect itself without being transformed into a “limited public figure.” This conclusion is demonstrably erroneous—Linda Erickson tried to defend herself, and the Supreme Court clearly stated that doing so did not transform her into a “limited public figure.” This Opinion is controlled by an error of law:

Appellant testified she had separately sued Winner and several other persons for defamation. Appellant testified she asked another guardian ad litem (Marilyn Lassiter, who was named and accused of wrongdoing in the same article) to attend a publicly advertised meeting and secretly tape-record it because she had been told "that a group had been formed to ruin me [and] to try to put me in jail." Appellant also had listened to audiotapes secretly made by two other friends who had attended the group's meetings. Newspaper questioned Appellant about three private letters she wrote in 1999 regarding the guardian reform controversy and questions about her education and training to two Governor's Office officials.

Likewise, the Court misplaces reliance on *Elder v. Gaffney Ledger*, 341 S.C. 108, 533 S.E.2d 899 (2000), another case discussing the standard in **public official** cases and holding that evidence of reckless publication is sufficient to show actual malice:

Actual malice is a subjective standard testing the publisher's good faith belief in the truth of his or her statements. *Peeler v. Spartan Radiocasting, Inc.*, 324 S.C. 262, 478 S.E.2d 282 (1996). The constitutional actual malice standard requires a **public official** to prove by clear and convincing evidence that the defamatory falsehood was made with the knowledge of its falsity or with reckless disregard for its truth. *New York Times Co. v. Sullivan, supra*; *Botchie v. O'Dowd*, 315 S.C. 126, 432 S.E.2d 458 (1993). . . . Actual malice may be present, however, where one fails to investigate and there are obvious reasons to doubt the veracity of the informant. *St. Amant, supra*.

First, Elder was the chief of police, **a public official!** Thus, the discussion of clear and convincing evidence has no application here. Second, *Elder* holds that publishing a statement with “reckless disregard” for the truth is actionable and creates a jury question.

Appellant and others furnished the true facts to the defendants and demanded a retraction; they refused. In fact, the defendants conspired to promote an all-out campaign both to republish and reinforce the false statements. See R.O.A. pages 546-547. They created a social media firestorm of animosity through libel, putting their false narrative out to innumerable media outlets. See R.O.A. page 1051, CCHA director, Elizabeth Fort’s testimony, line 4. They suppressed any

factual corrections and banned anyone from trying to correct them, even threatening a disclosed witness! See K. Vaughn affidavit at page 434. These defendants possessed a “high degree of awareness of . . . probable falsity,” much more than the circumstantial evidence the Supreme Court found sufficient in *Anderson*. It is undisputed (at least at the summary judgment stage) that the defendants knew that Big John was not hurt because they had the City’s equine records and official incident reports, verifying he was not exhausted, and they were literally present and knew it was a spring day in the low 70’s, and that absolutely he did not “collapse.” See R.O.A. page 1010, CCHA Director, Elizabeth Fort’s, testimony, lines 3-13. And yet, they stuck to their lies through the subsequent years, suppressing truthful information, attacking the Appellant’s reservations page and harassing/intimidating anyone associated with his business, including, but not limited to disclosed witnesses in this pending case all because they were on a mission to manufacture a controversy to destroy the Appellant! Even though the clear and convincing standard does not apply, there is overwhelming clear and convincing evidence of defamation, conspiracy, interference, *etc.*

In a 1961 case affirming a jury verdict in a malicious prosecution case (defendant swore out a warrant for grand larceny against plaintiff), the Supreme Court provided a definition of malice in *Margolis v. Telech*, 239 S.C. 232, 122 S.E.2d 419 (1961):

Malice is the deliberate, intentional doing of a wrongful act without just cause or excuse. In the case of *Hogg v. Pinckney*, 16 S.C. 387, cited with approval in *Jennings v. Clearwater Mfg. Co.*, 171 S.C. 498, 172 S.E. 870, , it is said that 'the term 'malice', as applied to torts, does not necessarily mean that which must proceed from a spiteful, malignant or revengeful disposition, but a conduct injurious to another, though proceeding from an ill-regulated mind not sufficiently cautious before it occasions an injury to another. 2 Bouv.Dic. 98.' And, in the same case, it is said: Malice is implied where it shows a disregard of the consequences of the injurious act, without reference to any special injury which he may inflict on another', and 'in doing some illegal act for one's own gratification or purposes, without regard to the rights of others or the injury he may inflict on another.'

5(C)

Even though proof of malice is not required in defamation cases unless the plaintiff is a public figure and must be proved at trial, not at summary judgment, there is copious

evidence of defendants’ intentional publication (and republication) of false statements and evidence of a coordinated conspiracy to “depress his income” to put him out of business.

Although the evidence of defendants’ defamatory and conspiracy interference is discussed above and throughout the Petition for Rehearing, for the Court’s quick reference, Appellant appends the 20 specific evidentiary examples of defendants’ intentional and malicious defamatory/conspiracy/interference acts from pages 41-42 of Appellant’s Brief.

6.

The Appellant set forth specific acts of civil conspiracy.

Opinion No. 2025-UP-153 is a study in contradiction. The Opinion says: Appellant “failed to allege conspiratorial conduct distinct from the conduct underpinning its claims for libel, tortious interference with business relations and civil rights violations,” citing *Paradis v. Charleston Cnty. Sch. Dist.*, 443 S.C. 562, 861 S.E.2d 774 (2021) (Opinion at page 4) The Supreme Court in *Paradis* loosened the technical rules of pleading conspiracy by jettisoning the requirement of special damages. The Court held that civil conspiracy contains four elements, each of which Appellant pled in the first cause of action and proved. When this Court writes “speech and conduct protected by the First Amendment could not serve as the basis for a claim for civil conspiracy,” the Court either overlooks the record or is searching for a pretext to uphold summary judgment. There is no First Amendment right protecting defamation just as there is no First Amendment right to file spurious complaints which is why the *Rules of Civil Procedure* have a Rule 11. The defendants have no Constitutional right to interfere in Appellant’s reservations page, stoke hostility toward Appellant, suppress truthful corrective information, threaten Appellant’s witnesses—all as registered South Carolina charities, **which are statutorily limited in their expressive conduct.** See § 33-56-120, S.C. Code, a statute no court has recognized let alone applied. The Appellant has no idea what the Court of Appeals means writing the plaintiff cannot “reallege prior acts” as a basis for a conspiracy claim. The conspiracy claim is the first cause of action! The touchstone for pleading is Rule 8 of the *South Carolina Rules of Civil Procedure*:

A pleading which sets forth a cause of action . . . shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded."

Finally, the panel's reliance on *Kuznik v. Bees Ferry Assocs.*, 342 S.C. 579, 538 S.E.2d 15 (Ct. App. 2000) is misplaced. *Kuznik* decided not to reverse the Master-in-Equity's dismissal of a conspiracy claim (although the Court of Appeals' corrected the Master's misapprehension that a conspiracy can only be clandestine) because the cross-claimant, Hoffman, had already succeeded on his indemnity claim and this Court held he was not entitled to a double recovery. The Court said: "Additionally, we have affirmed Hoffman's damages under breach of contract and breach of fiduciary duty. Hoffman is thus precluded from recovering additional damages under conspiracy for the same acts for which he obtained relief under these other causes of action." This panel decision turns the holding of *Kuznik* on its head because the Appellant here has recovered nothing. Appellant clearly set out the necessary elements of conspiracy, and if he had not, the defendants would have moved to strike. In stretching for a justification to affirm a summary judgment on conspiracy on a ground neither alleged nor argued, this Court demonstrates that it has overlooked both the facts, the rules of procedure and the law.

7.

The Appellant fully argued that the defendants as quasi-governmental entities violated the Appellant's civil rights.

On January 5, 2023, this Court entered an Order denying Appellant's application to exceed page limits in its brief. The Order limiting pages conflicts with the panel's assertion Appellant insufficiently presented its civil rights claim. The basis for the violations of the civil rights claim is thoroughly addressed with specific citation to the most pertinent controlling authority, *Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct.183, 66 L.Ed.2d 185 (1980), which holds that private persons acting in concert with government officials are subject to suit, and this Record is clear that the Charleston Animal Society is an arm of the Charleston County government. It is not fair to, on

one hand, place page limitations on Appellant and on the other hand ignore arguments because Appellant adhered to the page limitations imposed by the Court, especially where the Record on Appeal comprises nearly 2000 pages. *Mulherin-Howell v. Cobb*, 362 S.C. 588, 608 S.E.2d 587 (Ct. App. 2005) does not support the Court's conclusion because there, the trial court **denied** summary judgment and allowed the case to proceed to trial. An appeal from a decision denying summary judgment is not the same analysis as an appeal from a decision to impose the "drastic remedy" that ends a case and denies a litigant the right to trial by jury.

8.

The Court overlooks the undisputed fact that the Appellant can only operate through an annual franchise agreement with the City of Charleston, and the Record demonstrates an abundance of evidence by the defendants interfering in Appellant's franchise agreement. The defendants are charities, statutorily prohibited from disseminating false or misleading information.

The Opinion under review affirms the Master-in-Equity on Appellant's interference claim based on a demonstrable error of fact. The Opinion under review affirms summary judgment because Charleston Carriage Works' "failure to point to a contract with which the defendants interfered." (Opinion at page 4). This is a demonstrably incorrect because not only did Appellant specifically "point to a contract" in paragraph 24 of the complaint (R.O.A. page 88), but the Record contains, among other things, an email from the Charleston Animal Society's lawyer threatening Appellant with termination. See email dated April 24, 2017, five days after the video, from Kurt Taylor at pages 413 and 973. The franchise contract is on page 1729.

The constant attacks casting Appellant as an animal abuser threatened its franchise agreement with the City, and Appellant spent thousands of dollars combatting the unremitting attacks premised on false information. A franchise is "a special privilege conferred by government on individual or corporations, and which does not belong to citizens of country generally of common right." *Black's Law Dictionary* Fifth Ed. The Opinion under review ignores Appellant's

pleadings and evidence, and as far as Appellant can tell, no one yet has even acknowledged Appellant's allegation let alone analyzed it.

The April 24, 2017 email from Kurt Taylor cited above and the Record on Appeal contain undisputed evidence of the defendants' efforts to interfere in Appellant's franchise agreement with the City. The Record demonstrates that after Ellen Harley failed to secure a seat on City Council, she formed both the "Equine Cruelty Committee" of the Charleston Animal Society on which she held a Board seat, and created a new, separate charitable entity, the Charleston Carriage Horse Advocates to amplify her efforts with Joe Elmore of the Charleston Animal society to begin a campaign of harassment and intimidation of Appellant. The Master-in-Equity and now this Court ignore the statutory restrictions on charities and mischaracterize this case as involving a single publication of a single video when the Record demonstrates the video is just one part of the coordinated effort to bring Appellant down.

9.

The Court ignores Rule 15 as Appellant's application to add parties defendant was in response to Respondent's identification of third parties for their publications, which they disclosed for the first time on January 31, 2020 in Ellen Harley's 30(b)(6) deposition and the application to add parties plaintiff was only to address Respondents' complaints that some of Appellants' damages were "personal." The proposed amendments added no causes of action or required additional discovery, and the Respondents never identified putative prejudice from the amendments.

The Opinion under review repeats the same error committed by the Master-in-Equity. Rule 15 permits amendments as late as trial. The Court overlooks Respondents never demonstrate how they would suffer prejudice from amendments to address the concerns they raised that (1) some of the Appellant's damages are "personal," and (2) the late identification of third parties the Respondents blamed for some of their worst acts. The amendments asserted no new causes of action or theories of recovery, and the record shows that the Master-in-Equity never exercised "discretion" in denying the amendments; he simply denied them without a meaningful explanation. "It is an equal abuse of discretion to refuse to exercise discretionary authority when it is warranted

as it is to exercise the discretion improperly. *State v. Smith*, 276 S.C. 494, 498, 280 S.E.2d 200, 202 (1981).” *Balloon Plantation Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990) There is no suggestion or evidence, that the proposed amendments were “indiscriminate” or designed to “surprise” another party or that the defendants would suffer prejudice. “Discretion” can cover a multitude of sins, but the test for amendments is whether they prejudice the opposing party.

10.

The Master-in-Equity’s refusal to extend the scheduling Order a single time was an abuse of discretion and manifest injustice.

The Court’s acceptance of the Master-in-Equity’s refusal to extend a scheduling Order a single time is a shocking example of fundamental injustice and at variance with the authority cited by this Court: A scheduling “order may be altered or amended whenever justice so requires.” Opinion at page 5, citing Rule 26(f), *S. C. Rules of Civil Procedure*. The Order in this case was never amended a single time, and as stated above discussing amendments, neither the Master-in-Equity nor this Court employs any discretion, which is itself an abuse of discretion, and this record demonstrates that Appellant’s request for a single extension of a scheduling order under the facts of this case should have been granted. In fact, the evidence in this case overwhelmingly demonstrates beyond any reasonable doubt that justice required an extension for any of these indisputable facts:

1. The defendants never answered the complaint for 461 days, 79 days before the scheduling Order expired!
2. The defendants took a deposition after the expiration of the scheduling order but refused the same accommodation to the plaintiff.
3. The defendants consistently interfered in plaintiff’s discovery efforts.
4. Plaintiff’s counsel suffered a heart attack in April 2019, requiring hospitalization followed by open-heart surgery in August 2019.
5. The Governor of South Carolina shut down the Courts in February 2020, which remained closed for approximately a year.

Finally, *Arthur v. Sexton Dental Clinic*, 368 S.C. 326, 628 S.E.2d 894 (Ct. App. 2006) does not support the Court's peremptory approval of the Master-in-Equity's decision. There, the chief administrative judge granted a request to extend the scheduling order and provided other relief for the plaintiff in the interest of justice, which is the precise opposite of what occurred here.

CONCLUSION

The Court of Appeals' panel opinion, 2025 UP 153 is out of step with binding precedent from the South Carolina Supreme Court in defamation cases. The Opinion under review cites the controlling cases but then refuses to apply the holdings. In its four-page Opinion, not once does the panel mention, let alone apply the summary judgment standard and ignores the Supreme Court's decisions on limited public figures and ignores the tsunami of malice evidence in the Record on Appeal. In fact, there are few things more malicious than a coordinated effort to put Appellant out of business. The Court grossly misapplies the standard of review for a private figure and is out of step with every Supreme Court case on the subject including, but not limited to, the United States' Supreme Court's analysis in *Gertz v. Robert Welch, Inc.*, 418 U.S. at 351, 94 S.Ct. at 3013, 41 L.Ed.2d at 812 (1974).

The Court should grant the Appellant a rehearing before the entire Court of Appeals because the issues raised in this case are of statewide importance and involve one of the most fundamental rights citizens possess—the right to protect their reputations.

Respectfully submitted,

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Appendix (pages 41-42 of Appellant's opening brief)

1. Distributed an email on March 30, 2017 coordinating a joint plan to “depress their income.” R.O.A. Vol. 1 page 387 [Harley March 30, 2017 e-mail, Ex. 3, 2d Supp. affidavit]
2. Misrepresentations to Tourism Commission and formulating a common plan of attack. See R.O.A. Vol. 1, page 364___[Christoff affidavit December 2, page 5, and Ex. 1], including the creation of the joint C.C.H.A./C.A.S. “Equine Cruelty Committee”: “Ellen Harley, Chair, Equine Cruelty Committee Internal Conversation: Does the carriage horse industry, as currently practiced in Charleston, overwork or overdrive horses, violating South Carolina cruelty law and the Five Freedoms.” Coordinated a plan to use contributions and taxpayer money to “leverage social media” See Ex. 3: “Joe Elmore made the recommendation that we procure Forbes-Tate to assist in initiating strategy development, . . . and plan to effectively eliminate the **inhumane treatment of horses** used in Charleston’s carriage horse industry. He estimates that phase 1 of the project could cost between \$82,000 and \$95,000. . . . **Please keep this confidential.**” (emphasis added); Misrepresented “findings” of “Equine Cruelty Committee” to City of Charleston. (R.O.A. Vol. 1, page 364 and 384 [Supp. Affidavit, page 5, page 10, Elmore Affidavit, Ex. 6]) (R.O.A. Vol. 1, page 383) (See also C.A.S. August 18, 2015 Minutes quoted below.)
3. Labeling plaintiff an animal abuser. R.O.A. Vol. 1, page 455 [Christoff affidavit page 7]
4. Inserting demonstrably false assertions on video.
5. Making knowingly false statements to newspaper and broadcast journalists. (Big John could not get up for 30 minutes; Big John collapsed from exhaustion.)
6. Jointly celebrating the damage done to the plaintiff. (Poag April 23, 2017 e-mail quoted above on page 22; Elmore e-mail: “Kudos” to 11 million views.)
7. Acknowledging Big John “stumbled,” not “collapsed.” R.O.A. Vol. 3, page 953[Poag email]
8. Reminders to keep the conversations “confidential.” *Passim*
9. Suppressing and blocking truthful corrective information R.O.A. Vol. 1, pages 352 and 434 [Christoff February 25, 2020, affidavit, page 4, Vaughn affidavit]
10. Refusing to issue a correction after being informed of attacks on the plaintiff R.O.A. Vol. 3, page 1255 [January 31, 2021 30(b)(6) deposition of Ellen Harley, page 26]
11. Refusing to urge followers not to issue threats or commit violent acts against the plaintiff. (R.O.A. Vol. 3, page 1255, Vol. 2, pages 814-816 and 867-868, April 25, and May 11, 2017 correspondence to defendants)
12. Using taxpayer and tax-exempt money to disrupt the plaintiff’s reservation page (R.O.A. Vol. 1, page 416 [4th sup. Affidavit of B. Christoff and exhibits])
13. Using taxpayer funds, purchased Google ads specifically tailored to divert customers from Appellant’s reservation page. (R.O.A. Vol. 1, pages 416 and 440) [4th Supplemental Affidavit of B. Christoff, Affidavit of Steve Abrams])
14. Executed joint plan to purchase domain names to divert customers away from plaintiff: “They’ll s**t their pants.” (R.O.A. Vol. 1, pages 387 and 429 (“depress their income”), (“they’ll s**t their pants”)) [C.A.S. Minutes, 4th Supp. Affidavit, Ex. 8])
15. Entered into an unlawful conspiracy to keep “confidential” their joint efforts to attack carriage companies. (R.O.A. Vol. 3, page 973 [Ex. 2 Motion for Reconsideration])
16. Jointly disseminated a false video of Appellant’s horse on April 19, 2017 containing demonstrably false assertions.

17. Four days after publishing the video, identifying Appellant by name. (R.O.A. Vol. 2, page 860 [Supplemental Memorandum of Law, Ex. 4 affidavit of Broderick Christoff])
18. Deliberately and systematically suppressed truthful information to cast plaintiff in a false light. (R.O.A. Vol. 1, page 434 [affidavit of Katherine Vaughn])
19. Banning anyone posting truthful information. (R.O.A. Vol. 1, page 434 [affidavit of Katherine Vaughn])
20. Provided doctored putative “bank records.” (R.O.A. Vol. 2, pages 559-562; see defendants’ motion to quash at 327, plaintiff’s motion to compel at 143)
21. Intimidating a disclosed witness. R.O.A. Vol. 1, page 438 [Affidavit of K. Vaughn]
22. Preventing any forensic exam of electronic media.
23. Filing licensing complaints against plaintiff’s veterinarian, lawyer, and filing a spurious O.S.H.A. complaint. [R.O.A. Vol. 1, page 376 [Christoff 2d Supp. affidavit]