THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHESTERFIELD COUNTY
Court of Common Pleas

Michael S. Holt, Circuit Court Judge

Appellate Case No.: 2023-001000

Glenn C. Odom,.....Appellant,

v.

John Campolong and A.C. McLeod, Defendants,

Of whom, John Campolong is the .....Respondent.

PETITION FOR REHEARING

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Pursuant to Rule 221(a) of the South Carolina Appellate Court Rules, Appellant Glenn C. Odom moves the Court for Rehearing and/or to Alter its Unpublished Opinion number 2025-UP-262 of July 23, 2025, which affirms the Circuit Court's grant of summary judgment to Respondent John Campolong.

Respectfully, the Court's Opinion wholly overlooks a key component of Odom's actual malice argument and circumvents the summary judgment standard by weighing the evidence and resolving ambiguities in the witness testimony in favor of Campolong and not Odom. The Opinion correctly notes that actual malice is a *subjective* standard that tests the *defendant's* good faith belief in the truth of his statements. *See George v. Fabri*, 345 S.C. 440, 456, 548 S.E.2d 868, 876 (2001) ("[A]ctual malice is governed by a subjective standard which tests the defendant's good faith belief . . . ."). Odom has argued to the Court and the Circuit Court that there is a triable issue of fact as to whether Campolong had a good faith belief in the subject defamatory statements based upon the totality of circumstantial and direct evidence, including evidence that Campolong personally did not know of anything illegal that Odom had done in connection to the tobacco settlement fund grant.

There is direct evidence in the record demonstrating that Campolong made statements to Town Council members that, in the light most favorable to Odom, are defamatory *per se*. Town Council member Beulah Bolton specifically described these statements as follows:

Q. And what have you heard?

A. Well, I can't really state verbatim.

Q. No, but in substance?

A. Kind of embezzled some money.

Q. That he embezzled money?

A. Supposedly.

Q. And who told you that?

A. *Well, I've heard both of them say it.*

Q. Both on [sic] them?

A. Uh-huh.

Q. On numbers of occasions?

A. Yes.

Q. And these were not meeting minutes of the council, but conversations you had with them?

A. Yes.

Q. *Did they tell you how much he had embezzled?*

A. *Yeah, million something*. I'd have to look back.

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Q. Did he say who he had – did they say who he had embezzled it from?

A. The federal government, as I recall.

(R. p. 829, line 17 – p. 830, line 10; R. p. 831, lines 1-3).

Town Council member Marion Stephens, III, similarly testified that Campolong made statements to him that were identical in substance:

Q. I have a few follow-up questions. You've used the words "crook, stole money." Mr. Campolong, did he use those words?

A. Yes, sir.

(R. p. 984, lines 3-6). However, Campolong offered testimony demonstrating that he does not have a subjective, good faith belief that Odom embezzled money or did anything else illegal related to the tobacco settlement fund grant:

Q. What do you know of that Mr. Odom has done illegal that you have personal knowledge of?

A. Illegal, I do not know.

(R. p. 632, lines 22-24).

On summary judgment, a court is not to consider the merits of competing testimony or weigh the testimony. *See Lanier Constr. Co. v. Bailey & Yobs, Inc.*, 384 S.C. 275, 278, 681 S.E.2d 909, 911 (Ct. App. 2009) ("A court considering summary judgment neither makes factual determinations nor considers the merits of competing testimony . . . . [T]he court does not weigh conflicting evidence with respect to a disputed material fact."). Ambiguities in testimony and other evidence are to be resolved in favor of the nonmoving party. *See Hiers by Hiers v. Mullens*, 310 S.C. 63, 68, 425 S.E.2d 57, 60 (Ct. App. 1992) ("[M]atters of credibility should not be determined at the summary judgment stage. All ambiguities, conclusions, and inferences arising in and from evidence must be construed *most strongly* against the movant for summary judgment."). Further, all evidence is supposed to be viewed in the light most favorable to the nonmoving party, and if there is sufficient evidence to create a triable issue of fact on each element of the plaintiff's claim summary judgment is inappropriate. *See Quail Hill, LLC v. Cty. of Richland*, 387 S.C. 223, 235,

692 S.E.2d 499, 505 (2010) ("In determining whether any triable issue of fact exists, the evidence and all inferences which can reasonably be drawn therefrom must be viewed in the light most favorable to the nonmoving party.").

Clearly, if Bolton's and Stephens' testimony is taken at face value and construed as true with all ambiguities resolved in Odom's favor, as should have been done on summary judgment, then there is evidence in the record that Campolong made statements to third parties directly accusing Odom of participating in illegal conduct by embezzling or stealing money from government funds. The Opinion should have construed this testimony as true, but instead the Opinion finds that Bolton's and Stephens' testimony "lacked conviction" and was "ambiguous." This weighing of the testimony directly contravenes the summary judgment standard and displaces the jury's function as the arbiter of facts. *See Correll v. Spartanburg*, 169 S.C. 403, 169 S.E. 84 (1933) ("[T]he jury is the sole judge of the facts of the case . . . .").

It follows that if Bolton's and Stephens' testimony as to these statements is true, and Campolong has testified that he had no factual basis for making these statements, then there is sufficient evidence to create a triable issue as to whether Campolong made these statements with actual malice or a subjective good faith belief in their truth. The Opinion dodges this reasoning by erroneously finding as a threshold matter that Bolton's and Stephens' testimony was ambiguous.[1]

[1] The Opinion also surmises that Campolong made these statements while the Town Council was investigating issues pertaining to Odom and the town's water supply, and that such statements should be protected. As argued with regards to the absolute privilege by the undersigned at oral arguments and in Appellant's Brief, there is *no evidence* in the record supporting that Town Council was investigating the tobacco settlement fund grant or engaging in any legitimate legislative functions related to it at the time the subject

Additionally, by placing outsized importance on Odom's testimony that he personally did not know whether Campolong believed anything he said, the Opinion wholly ignores direct evidence of Campolong's subjective state of mind as well as the remaining circumstantial evidence in the record demonstrating that Campolong purposefully avoided the truth.

Odom has also argued that there is sufficient evidence to survive summary judgment because Campolong never meaningfully investigated the truth or falsity of the statements, because there is ample evidence that Campolong would have a motive to make such statements, and because there is evidence that he purposefully ignored information that was contrary to his statements. Odom made these arguments not because each within itself would constitute clear and convincing evidence of actual malice, but because considered in their totality they create a reasonable inference that Campolong acted with actual malice. *See Harte-Hanks Comms. v. Connaughton*, 491 U.S. 657, 668, 692, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989) ("[A] plaintiff is entitled to prove the defendant's state of mind through circumstantial evidence . . . and it cannot be said that evidence concerning motive or care *never* bears any relation to the actual malice inquiry . . . . Although failure to investigate will not *alone* support a finding of actual malice, the purposeful avoidance of the truth is in a different category .").

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statements were made from 2016-2017, four years after Town Council wrote the South Carolina Attorney General concerning the matter, three years after Odom was cleared of any wrongdoing, and fifteen years after the grant was awarded. (App.'s Reply Br. 4-9). Campolong has not pointed to any evidence in the record supporting that he was functioning in a legislative capacity at the time the statements were made.

The Opinion sidesteps this inference by wholly discrediting the testimony of Bolton and Stephens, when the summary judgment standard instructs that the testimony should have been resolved in the light most favorable to Odom, and by assigning outsized importance to Odom's subjective knowledge of Campolong's state of mind. In doing so, the Opinion conflates the separate tasks of (1) weighing the evidence, which is reserved for the jury, and (2) determining whether the *totality* of the evidence, when construed in favor of Odom, is sufficient to establish clear and convincing proof of actual malice.

Second, the Opinion erroneously stretches the absolute privilege beyond any reasonable limits it has by applying it to the statements made to both Bolton and Stephens. The Opinion embraces a new standard for the absolute privilege, one in which any defamatory publications made by a Council member that are "related" to Town interests or Town Council legislative duties or purposes are protected by the privilege, regardless of the occasion upon which they are published. This impermissibly broadens the privilege far beyond its historical bounds. *See Richardson v. McGill*, 273 S.C. 142, 146-48, 255 S.E.2d 341, 343-44 (1979) (describing that a legislator must also be engaged in a legislative duty or process at the time a defamatory statement is made for the absolute privilege to apply). While there is little South Carolina case law describing the absolute privilege in detail, there is a wealth of decisions from other jurisdictions and secondary sources precisely setting out how the privilege should be applied, especially when it is considered alongside absolute legislative immunity, which is a nearly identical concept.

While relatedness to official legislative interests is an important consideration in determining whether the absolute privilege applies, it is not the only consideration. The primary consideration is the occasion upon which the statement is published. And the case law is nearly unanimous in providing that in order to be protected by the absolute privilege the occasion upon which a defamatory statement is published must be one in which the publisher is advancing a legitimate, ongoing legislative function, as opposed to merely speaking on a subject that is related to a governmental interest.

> As a state legislator, Representative Clemons may assert absolute legislative immunity. *See Tenney v. Brandhove*, 341 U.S. 367, 373, 71 S. Ct. 783, 95 L. Ed. 1019 (1951). But asserting such absolute legislative immunity and proving it are different things, because that immunity is confined to the activities that *further* an elected official's legislative duties. *See Brown v. Crawford Cty., Ga.*, 960 F.2d 1002, 1012 (11th Cir. 1992) ("Absolute legislative immunity extends only to actions taken within the sphere of legitimate legislative activity.") (quotations omitted). "The position of the individual claiming legislative immunity, then, is not dispositive. It is the nature of the act which determines whether legislative immunity shields the individual from suit." *Yeldell v. Cooper Green Hosp., Inc.*, 956 F.2d 1056, 1062 (11th Cir. 1992). We have distinguished between acts that are legislative in nature and thus shielded (like voting, speechmaking on the legislative floor, committee reports, committee investigations and proceedings), and those that are not (like public distribution of press releases and newsletters, administration of penal facilities, and personnel decisions). *See id.* (collecting cases).
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> Representative Clemons' official Twitter and Facebook accounts are not legislative in nature; they are not "an integral part of the deliberative and communicative processes by which [elected officials] participate in committee and House proceedings." *Gravel v. United States*, 408 U.S. 606, 625, 92 S. Ct. 2614, 33 L. Ed. 2d 583 (1972). We agree with the district court that, based on the allegations in the complaint, the official Twitter and Facebook accounts are much more like the public distribution of a press release than a speech made on the floor of the assembly. *See Hutchinson v. Proxmire*, 443 U.S. 111, 133, 99 S. Ct. 2675,

> 61 L. Ed. 2d 411 (1979) (holding that a congressman's newsletters and press releases "are not entitled to the protection of the Speech or Debate Clause").

Attwood v. Clemons, 818 Fed. App'x 863, 869-70 (11th Cir. 2020). The policy reasons justifying absolute legislative immunity are identical to those justifying the absolute legislative privilege.

It was Campolong's burden to prove facts demonstrating that he was participating in an official legislative function at the time he made the subject statements. The Court's Opinion is erroneous because there is no evidence in the record demonstrating that Campolong was fulfilling any legislative function at the time he made the statements. There is no evidence that he was involved in voting, speechmaking at a Town Council meeting, drafting an official Town Council report, or carrying out an official and ongoing Town Council investigation or proceeding. There is no evidence that Campolong's statements were an "integral part of the deliberative and communicative processes" by which Campolong, Stephens, and Bolton were participating in Town Council proceedings, regardless of where they were made. There is no evidence that Campolong's statements were anywhere within the sphere of legitimate legislative activity.

The Opinion is in error because it broadens the privilege to sweep in every statement a legislator could make anywhere concerning anyone, regardless of its content or whether it has any relationship with ongoing, active legislative activities, so long as the statement has some tangential relatedness to government "business". There is no valid policy objective that is achieved by granting such broad protection

to statements made by Town Council members. Here, there is no evidence in the record indicating in any sort of detail the circumstances and purpose of the conversations in which the defamatory statements were made, other than that they involved general town business, as opposed to any specific pending or future ordinances. (R. p. 986, line 2-p. 987, line 23). There is no evidence of any pending or ongoing legislation or business the Town Council was currently involved in at the time the subject statements were made. There is no evidence of what legislative function was advanced by making statements to Bolton's sister, who was not even a town official.

The Supreme Court of South Carolina has made it clear that the privilege is a narrow one and is only to be applied when the statements are related to the discharge of legitimate ongoing legislative functions. *Richardson*, 273 S.C. at 147, 255 S.E.2d at 343 (stating that the privilege applies when the statements are related to the discharge of the legislator's responsibilities); *see* Restatement (Second) of Torts § 590 (Am. L. Inst. 1965) ("A member of the Congress of the United States or of a State or local legislative body is absolutely privileged to publish defamatory matter concerning another *in the performance of his legislative functions*."). "The privilege does not protect a legislator who in private or public discussion outside of his legislative function explains his reasons for voting on past, pending or proposed legislation or who otherwise discusses the legislation, *or who engages in other activities incidentally related to legislative affairs but not a part of the legislative process itself*." *Id.* (emphasis added). It does not extend to public discussions outside

of a legislative function, such as explaining reasons for voting on legislation, granting interviews, or talking to constituents. *Butler v. Town of Argo*, 871 So. 2d 1, 24-25 (Ala. 2003).

The Opinion also concludes that the defamatory publications were only made in close temporal proximity to Town Council meetings. This is not reflective of the entire record. The testimony of Stephens clearly indicates that statements made to him did not occur in Town Hall and that they occurred at Campolong's business. (R. p. 985, line 23-p. 986, line 4; R. p. 986, lines 19-21). There is no evidence these statements were made in close temporal proximity with official Town Council meetings. Regardless, temporal proximity to official proceedings has no bearing on the absolute privilege inquiry. *See Richardson*, 273 S.C. at 146, 255 S.E.2d at 343 (recognizing that occasions other than those comprising strictly legislative or judicial proceedings can be protected by the privilege).

Lastly, the Opinion erroneously finds that Odom's civil conspiracy claim accrued in 2012. Odom's claim could not have accrued at that stage in the controversy because the 2012 letter written from Campolong and the Town Council to SLED was not defamatory in that it was privileged, and under the discovery rule, Odom was not aware of the publication of the letter in 2012. Further, even if the claim accrued in 2012, the Opinion does not explain why the last overt act doctrine should not be adopted by the Court or how its objectives would not be met in this instance. South Carolina has never rejected the theory, and neither does the Opinion; it simply assumes, without explanation, that the theory should not be adopted in this case

despite the fact that similar, analogous continuing accrual theories have been adopted within South Carolina in different contexts. *E.g. State ex rel. Wilson v. Ortho-McNeil-Janssen Pharmaceuticals, Inc.,* 414 S.C. 33, 777 S.E.2d 176 (2015).

For the foregoing reasons, the Appellant requests that the Court rehear and alter its Unpublished Opinion and reverse the Circuit Court's Order granting summary judgment to Respondent.

Respectfully submitted,

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August 12, 2025
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