THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas
R. Mikell Scarborough, Master-in-Equity

Opinion No.: 2025-UP-153
Case No.: 2018-CP-10-4083
Appellate Case No.: 2022-001114

RECEIVED
Aug 20 2025
S.C. SUPREME COURT

Charleston Carriage Works, L.L.C., Petitioner,

v.

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

Petition for A Writ of Certiorari

August 19, 2025

Thomas R. Goldstein, S.C. Bar #2186
Belk, Cobb, Infinger & Goldstein, P.A.
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 729-0928
E-mail: tgoldstein@cobblaw.net
Attorney for Petitioner

Other counsel of record:
Jenkins Mann
Mann, Blake & Jackson
1901 Main Street
Columbia, S. C. 29201

Elizabeth J. Palmer
Saxton & Stump
151 Meeting Street
Charleston, S. C. 29401

Joseph D. Thompson, III
Spencer Gill
Hall, Booth & Smith, P.C.
111 Coleman Blvd., Suite 301
Mt. Pleasant, S. C. 29464

INDEX

CERTIFICATE OF COUNSEL

Counsel for petitioner certifies that he filed a Petition for Rehearing on May 12, 2025, and the Court of Appeals finally ruled on the Petition for Rehearing by Order dated July 24, 2025. The Court of Appeals simultaneously denied the Petitioner's request for a rehearing *en banc*. (The Petitioner asked for an *en banc* rehearing on the ground that Opinion No. 25-UP-153 fails to adhere to controlling precedent.)

QUESTIONS PRESENTED

1. Did the Court of Appeals fail to apply the summary judgment standard?

2. Did the Court of Appeals fail to apply the discretionary standard to Petitioner's motions to amend the scheduling Order, amend the complaint, and compel discovery?

3. Did the Court of Appeals disregard the controlling precedent of this Court established in *Erickson v. Jones Street Publishers, L.L.C.* 368 S. C. 444, 629 S.E.2d 653 (2006), *Garrard v. Charleston Co0unty School District*, 429 S.C. 170, 838 S.E.2d 698 (2020), and *Cruce v. Berkeley County School District*, 442 S.C. 1, 896 S.E.2d 765 (2024)

TABLE OF AUTHORITIES

CASES:

STATUTES AND OTHER AUTHORITIES:

STATEMENT OF THE CASE

The plaintiff, now out of business, was one of five carriage companies in Charleston. It filed a summons and complaint against the defendants on July 23, 2018, alleging four causes of action: civil conspiracy, Violation of Article I, § 3/Gross Negligence/Reckless Conduct, Tortuous Interference with Business Relations, and Defamation. The Respondent, Charleston Animal Society, is a quasi-governmental charity funded by Charleston County and several municipalities. The Respondent, Ellen Harley, is a part-time Charleston resident, who created her "charity" she calls the "Charleston Carriage Horse Advocates." She is also a founding member of the Charleston Animal Society's "Equine Cruelty Committee."

The complaint alleges the defendant charities launched a coordinated effort to harm Charleston Carriage Works by publishing false information about the company, casting it in a false light of being an animal abuser, which is libel *per se*, interfering in its web presence to divert its customers to their anti-carriage web sites. The Respondents continuously suppressed truthful information about the company to ensure their false characterization of Petitioner remained uncorrected. By painting the principal and the company as animal abusers and disrupting their reservations page, the Respondents hoped to "depress their income" to make continued operation impossible.[fn.1] The Respondents further attacked Petitioner's operation by harassing everyone in its orbit, following and harassing tours, filing licensing complaints against its veterinarian, its lawyer, and even asserted a bogus O.S.H.A. complaint. They even threatened to sue one of Petitioner's disclosed witnesses. (R.O.A. Vol. 1, pg. 376)

The Respondents' hostility to Petitioner began prior to Petitioner's horse , Big John, slipping on Meeting Street in April, 2017. Charleston Carriage Works was one of five carriage tour

1 See Vol. 1 R.O.A. page 387, Harley March 30, 2017, e-mail: "I am thinking the only way to defeat this City/Industry cartel is by depressing their income. The corruption is too great to fight and win." Big John slipped 19 days later.

companies, which operate under an annual "Franchise Agreement" with the City of Charleston.[fn.2] (R.O.A. Vol. 4, page 1707) (The Petitioner went out of business in 2023.)

On Wednesday, April 19, 2017, Petitioner's horse, Big John, a 22-year-old Belgian draft horse, driven by an experienced driver, Gabby Byrd, carried a tour of 10 school children down Meeting Street. April 19th was a pleasant day, with temperatures in the low 70's. As the carriage approached the intersection of Meeting Street and Hasell Street, Big John slipped, sat, and then lay down until he was unharnessed and walked back to the barn 11 minutes later.

In those 11 minutes, a small crowd gathered, including principals of the "Charleston Carriage Horse Advocates" (Ellen Harley and Elizabeth Fort) and the Charleston Animal Society's "Equine Cruelty Committee" (Ellen Harley). (R.O.A. page 383 [City Tourism Minutes Aug. 18, 2015, Supp. affidavit filed June 23, 2020, page 5, Ex. 1 and Second Supp. affidavit filed Aug. 19, 2021; Ex. 1 May 20, 2022 Motion[photo] at page Vol. 3, 972) Ellen Harley has a history of following tours and harassing drivers, and the video evidence she took on April 19th demonstrates that she pushed her way forward and harangued the barn hands unharnessing Big John so he could get to his feet. The audio captures her slandering Petitioner's operation, telling bystanders: "This is horrible, f**king happens all the time, they're killing them," prompting a bystander telling her to "stop it." R.O.A. Vol 3, page 972 [screen shot of video filed May 20, 2022 and video]

In accordance with City regulations (R.O.A. pages 1707-1716), the City dispatched its Equine Manager to Petitioner's barn to examine Big John and prepare a written report. She found him unharmed and pronounced him fit for work. In addition, a qualified Doctor of Veterinary Medicine, Dr. Tara Byrd (now Dr. Little) examined Big John and also found him unharmed and fit for work. Both the City's Equine Manager and the veterinarian reduced their findings to writing, which the

2 The General Assembly protects the right of carriages to use public streets. § 56-5-790, S. C. Code, ann.

City immediately released to the public. Both reports are found in the R.O.A. at Vol. 3, pg. 1059 [Ex. 1 to deposition of Dr. Miller; Dr. Little quoted page 22 of Jan. 26, 2022 Supp. Memo, R.O.A. Vol. 3, pages 851-854 and Report: "City Releases official report on Charleston carriage horse incident," April 20, 2017, Ex. 4 to Elizabeth Fort deposition] The defendants knew of these reports prior to disseminating their edited videos containing demonstrably false statements.

Immediately following the April 19th incident, the defendants cobbled together a video comprised of footage shot by Ellen Harley and one or two others. Dan Krosse, the Charleston Animal Society's "media specialist," edited and inserted demonstrably false editorial captions in the form of insinuating questions and published it as "evidence" of Big John's "collapse" from "exhaustion." R.O.A. Vol. 2, pages 352, 353-355, 366, 398 [affidavits filed February 25, 2020, page 4, pages 6-7; filed Dec. 2, 2020, page 7; September 24, 2021, page 11, page 15 "Demand Humane Carriage Tours," *etc*.; note quotation marks on "trip" on defendants' video labeling)]

After the defendants published their videos,[fn.3] they went viral because Respondents promoted them as an example of a horse worked to death. On April 23rd, Joe Elmore sent an email to the Charleston Carriage Horse Advocates conveying "kudos" for its then 11 million views in four days, (R.O.A. Vol. 2, pg. 546 and Vol. 3 pg. 952) discussed more fully below. (The Charleston Animal Society's version of the video included Big John regaining his feet, so it only received 200,000 views, not including republications.) In the Harley version, millions of viewers believed Big John died. To encourage donations, the defendants still use still photos of Big John lying on the ground, which the defendants still distribute implying it is a photo of a dead horse that died from overwork, "collapsed" from exhaustion. They do this to encourage donations, and it works. As the torrent of abusive messages including death and arson threats poured in in, the Petitioner wrote to the

defendants on April 25, 2017 and May 11, 2017, informing them that their misrepresentations were damaging the plaintiff and asking them to please correct their statement that Big John "collapsed" or died. R.O.A. Vol. 2, page 867 [Supp. Memo. of Law filed January 6, 2022, Exhibits 1 and 2 and Ex. 3 to January 31, 2020 30(b)(6) deposition of Ellen Harley]. Not only did the defendants refuse to issue a correction, but also they affirmatively deleted all truthful corrections provided by third parties to keep Petitioner in a false light. To make sure their misrepresentations remained uncorrected, they banned anyone from their sites who provided truthful information that disproved the Respondent's misrepresentations to promote the lie that Petitioner abused his horse. As the threats and interference escalated, including, but not limited to, someone showing up at the principal's home and firing shots down their driveway and another attacker showing up in person at Petitioner's barn, threatening barn personnel, telling them he "had something for them" and would return, the defendants continued to misrepresent Big John's health and stoke the false assertion that Petitioner is an animal abuser. The Respondents, Harley and Charleton Carriage Horse Advocates, even threatened a disclosed witness in the pending case, threatening her with legal action for attempting to correct Respondents' false statements. (R.O.A. Vol. 1, page 434)

After a year of absorbing abuse, which grew, and defendants' intentional interference on Petitioner's reservations page, and after the defendants refused to publish (or at least allow) truthful information to stem the threats of violence and interference and continued to stoke anger by characterizing Petitioner as an animal abuser, the Petitioner filed suit on May 29, 2018. On July 19, 2018, the defendants filed a Notice of Removal to federal court, and on July 23, 2018, the plaintiff filed a motion to remand to state court. On August 15, 2018, the plaintiff took a voluntary nonsuit and refiled the action in state court two days later. omitting the federal cause of action, on August 17,

3 The Charleston Animal Society's version included Big John getting to his feet. The Harley/Charleston Carriage

2018 at Case Number 2018-CP-10-4083. The complaint alleges four causes of action as set forth above. (R.O.A. Vol. 1, page 77)

The defendants filed joint motions to dismiss on October 19, 2018. (R.O.A. Vol. 1, page 87) Six months later, while the parties were waiting for a decision on the defendants' joint motion to dismiss, plaintiff's counsel suffered the first heart attack in April 2019. This led to an initial hospitalization and outpatient treatment, but counsel worked up to August, 2019, when M.U.S.C. performed an open-heart procedure. Recovery progressed slowly, including damage to the laryngeal nerve, reducing counsel's speaking voice to a whisper for approximately six months.

On July 5, 2019, the plaintiff filed its first motion to compel and amended this motion on September 27, 2019. Vol. 1, R.O.A. pages 89 and 143. On July 16, 2019, before anyone anticipated a COVID pandemic shutdown, the parties entered into a Consent Scheduling Order. (R.O.A. Vol. 1, page 75) On July 22, 2019, the defendant, Charleston Animal Society, filed a motion to compel discovery. (R.O.A. Vol 1, page 101)

On November 20, 2019, more than a year—461 days—after plaintiff filed its complaint, 79 days before the expiration of the Scheduling Order, the defendants filed their initial Answers along with simultaneous motions for Summary Judgment. (R.O.A. Vol. 1, pages 177 and 182) Charleston Carriage Horse Advocates and Ellen Harley also filed a Motion to Strike parts of the plaintiff's complaint. (R.O.A. Vol. 1, page 204)

The discovery process was contentious resulting in two court appearances before Judge Price. (Charleston Animal Society cooperated in discovery; Ellen Harley and her Charleston Carriage Horse Advocates obstructed from start to finish and to this date have never fully complied.) On January 30, 2020, the defendants, Carriage Horse Advocates and Harley, filed a motion for a

---

Horse Advocates Video did not.

protective Order, a motion to quash a discovery subpoena seeking documents they promised to provide, and a motion to compel. R.O.A. Vol 1, pages 206-240. Judge Bentley Price "heard" discovery motions on May 28, 2020 and June 6, 2020, and issued Orders on June 17, 2020 and July 30, 2020. See R.O.A. Vol. 1, pages 65 and 68 for Orders and Vol. 4, pages 1546-1585 for the transcripts of the two hearings. ("Heard" is in quotation marks because the Courts were operating under the Governor's COVID-19 emergency Orders, and the transcripts reveal the "hearings" were hamstrung by technology failures.)

When the defendants, Harley and Charleston Carriage Horse Advocates, continued to thwart discovery, the plaintiff filed a motion for sanctions on October 2, 2020. R.O.A. Vol. 1, page 334. Because the courts were still operating under COVID restrictions and obstructed by backlogged cases, the parties agreed on May 27, 2021, to refer **all** outstanding motions to the Master-in-Equity.[fn.4] Following the Order of Reference, the Master-in-Equity issued the following Orders:

May 5, 2022	Order denying sanctions for failure to provide discovery
May 12, 2022	Order denying amendments to add parties defendant and plaintiff
May 12, 2022	Order denying amended scheduling Order
May 12, 2022	Order granting summary judgment
August 2, 2022	Order denying motions for reconsideration

For the Court's convenience an Index of each Order issued in this case is as follows:

June 2, 2020	Confidentiality Order
June 17, 2020	Plaintiff's Motion to Compel is Granted
July 30, 2020	Order Resolving Cross Motions to Compel
May 27, 2021	Order referring case to Master-in-Equity
July 8, 2021	Order referring case to Master-in-Equity (reference fee omitted)
May 5, 2022	Master-in-Equity Order denying sanctions (discovery obstruction)
May 12, 2022	Master-in-Equity Order denying amendments to complaint
May 12, 2022	Master-in-Equity Order denying amended scheduling Order
May 12, 2022	Master-in-Equity Order granting summary judgment
August 2, 2022	Master-in-Equity Order denying motions for reconsideration
August 11, 2022	Notice of Appeal

4 Petitioner emphasizes "all" because, as discussed below, the Master-in-Equity refused to take up Petitioner's Motion for Sanctions on the ground that he lacked jurisdiction but then, paradoxically, denied it.

On May 12, 2022, the Master-in-Equity granted summary judgment for Respondents on every cause of action (App. Vol. 1 pages 4-39). At the same time, the circuit court denied Petitioner's motion to amend the scheduling Order, motion to amend, and motion for sanctions for discovery violations. (App. Vol 1, ppgs. 40, Scheduling Order, 43, Amend, and 51, discovery violations. The Court entered the Order denying Petitioner's motion to compel discovery on May 5, 2022.) After the Petitioner asked the circuit court to reconsider its decisions, the court denied Petitioner's motions for reconsideration on August 2, 2022 by a form Order without further analysis. (App. Vol. 1, page 1). The Petitioner timely appealed to the Court of Appeals on August 11, 2022. (R.O.A. Vol. 1, page 345) The Court of Appeals issued Opinion Number 25-UP-153 on April 30, 2025, and thereafter denied Petitioner's Petition for Rehearing on July 24, 2025.

Petitioner now seeks a writ of certiorari to review of Opinion Number 25-UP-153 because the case raises "substantial constitutional issues" of the limits of free speech at the intersection of free speech and defamation and because the Opinion under review is in direct "conflict with . . . prior decision[s] of the Supreme Court." Rule 242(b), *S. C. Appellate Court Rules* The May 12, 2025 Petition for Rehearing detailed specifically how Opinion 153 is in direct conflict with *Erickson, Garrad*, and especially *Cruce,* which this Court decided as the present appeal was pending. The Court of Appeals erred in failing to apply the summary judgment standard, especially as to the Harley and Charlston Carriage Horse Advocates' discovery obstruction and failed to give even passing references to the required factors governing the exercise of discretion in Petitioner's motions for sanctions, to amend and to extend the scheduling Order a single time.

Introduction

THE COURT OF APPEALS FAILED TO APPLY THE SUMMARY JUDGMENT STANDARD DISREGARDING THE OVERWHELMING EVIDENCE OF A COORDINATED EFFORT TO PUT THE PETITIONER OUT OF BUSINESS AND FAILED TO APPLY A DISCRETIONARY STANDARD IN DENYING ALL OF PETITIONER'S MOTIONS.

Opinion No. 2025-UP-153 is nine brief paragraphs affirming the Master-in-Equity in total with neither discussion nor application of either the summary judgment standard or the abuse of discretion standard. The Court of Appeals simply adopted the Master-in-Equity's conclusions without comment and ignored the well-developed controlling precedent of this Court on the important legal issues of limits of free speech, statutory restrictions on charitable conduct, conspiracy, intentional interference with business relations, and defamation. Moreover, the Record demonstrates that neither the Master-in-Equity nor the Court of Appeals made the slightest effort to apply discretionary standards to the Petitioner's important motions addressing Ellen Harley's and her Charleston Carriage Horse Advocates' discovery obfuscation or the motions related to amending the complaint and extending the Scheduling Order.

The Court of Appeals ignored controlling precedent and abandoned its responsibility to conduct a *de novo* standard of review:

> When reviewing the grant of a summary judgment motion, the appellate court applies the same standard that governs the trial court under Rule 56(c), SCRCP, which provides that summary judgment is proper when there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. Rule 56(c), SCRCP; *Fleming v. Rose*, 350 S.C. 488, 493, 567 S.E.2d 857, 860 (2002). On appeal from an order granting summary judgment, the appellate court will review all ambiguities, conclusions, and inferences arising in and from the evidence in a light most favorable to the non-moving party below. *Willis v. Wu*, 362 S.C. 146, 151, 607 S.E.2d 63, 65 (2004).

The Court of Appeals made no effort to test independently the record for the existence of genuine issues of material fact:

> In reviewing the grant of a summary judgment motion, we apply the same standard which governs the trial court under Rule 56(c), *S.C.R.C.P.*: summary judgment is proper when "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." See 10 Wright & Miller, *Federal Practice and Procedure* § 2716, p. 643 (1983); *SSI Medical Services, Inc. v. Cox*, 301 S.C. 493, 392 S.E.2d 789 (1990); *Irby v. Richardson*, 278 S.C. 484, 298 S.E.2d 452 (1982). This standard "mirrors" the standard for a directed verdict under Rule 50(a), *S.C.R.C.P. Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 250, 106 S. Ct. 2505, 2511, 91 L. Ed.2d 202, 213 (1986); see also *Main v. Corley*, 281 S.C. 525, 316 S.E.2d 406 (1984). *Baughman v. American Tel. & Tel. Co.*, 306 S.C. 101, 410 S.E.2d 537 (1991).

Opinion No. 2025-UP-153 repeatedly "concludes" without comment the Master correctly determined Petitioner failed to create any genuine issue of material fact, but neither court applied a summary judgment analysis to the overwhelming evidence contained in the Record because they decided erroneously the Petitioner is a "limited public figure," could not prove the statements were "of and about" it and the record contains no evidence of malice. In short, they substituted their view of the evidence instead of letting a jury decide highly disputed facts. The Court of Appeals shrugs off the fact that the case raises some of the most foundational Constitutional principles[fn.5] by repeating the Master-in-Equity was correct without further analysis. Paradoxically, the Court of Appeals thought the case raised sufficiently important issues to grant oral argument but decided the case on a *per curiam* unpublished opinion. Equally perplexing is the present case arrives before the Court decided by two-thirds of the panel that decided *Cruce,* yet this case presents much more evidence of tort than the single e-mail that this Court found sufficient in *Cruce*. The Opinion under review conflicts with the three big cases on these issues, *Erickson, Garrard*, and *Cruce*, and Petitioner called the Court of Appeals' attention to this Court's reversal of the *Cruce* decision while this case was pending (discussed in detail below). Likewise, in evaluating Petitioner's pending pre-trial motions, the Court of Appeal abandoned the core judicial function of testing the record for any evidence the Master-in-Equity exercised any of the indicia of discretionary review. In adopting the Master-in-Equity's decisions on important pending pre-trial motions, the Court of Appeals says only that the Master-in-Equity did not abuse discretion in denying every motion Petitioner raised even when the record lacks any application of necessary discretionary factors. The failure to apply any of the discretionary factors demonstrates error, and the Master-in-Equity's decision on the discovery abuses is self-refuting. The Record shows that neither the

5 See *Whitehurst v. Town of Sullivans Island* (Opinion No. 28290, July 16, 2025) discussed below for a thorough analysis of where free speech ends and disorderly conduct begins.

Master-in-Equity nor the Court of Appeals made the slightest effort to apply a discretionary standard:

> An abuse of discretion occurs when the judge's ruling is based upon an error of law, such as application of the wrong legal principle; or, when based upon factual conclusions, the ruling is without evidentiary support; or, when the judge is vested with discretion, but the ruling reveals no discretion was exercised; or when the ruling does not fall within the range of permissible decisions applicable in a particular case. [citations omitted] *Capital U-Drive-It, Inc. v. Beaver*, 369 S.C. 1, 630 S.E.2d 464 (2006) (Family Court did not err in allowing release of financial records in divorce case.)

As discussed fully below, this record contains copious evidence of the defendants' coordinated efforts to destroy Petitioner's business by misrepresenting him as an animal abuser and spending taxpayers' money as charities to "leverage social media" to interfere with his ability to operate.

1. THE COURT OF APPEALS MISAPPLIED SETTLED LAW ON THE DEFENDANTS', ELLEN HARLEY AND CHARLESTON CARRIAGE HORSE ADVOCATES', WILLFUL OBSTRUCTION OF DISCOVERY. THE COURT OF APPEALS IGNORED THE CONTROLLING LAW ON USE OF DISCRETION, HOLDING THE MASTER-IN-EQUITY DID NOT ERR WHEN IT RULED IT LACKED JURISDICTION TO TAKE UP PETITIONER'S MOTION FOR SANCTIONS AND SIMULTANEOUSLY DENIED IT. NEITHER THE MASTER-IN-EQUITY NOR THE COURT OF APPEALS APPLIED THE MINIMIUM FACTORS REQUIRED BY THE DISCRETIONARY STANDARD.

The Master-in-Equity concluded he lacked jurisdiction to rule on Petitioner's application for relief for Respondents' discovery abuses, which is a demonstrable error of law, and without a "full and fair opportunity to complete discovery," a court is precluded from entertaining summary judgment. *Doe v. Batson*, 345 S.C. 316, 548 S.E.2d 854 (2001). The Court of Appeals gave this important issue no review because it simply assumed without analysis the Master-in-Equity was correct, and the Master-in-Equity refused to consider the issue on the erroneous basis that *Richardson*[fn.6] prohibited him from considering it. Thus, Opinion 153 is controlled by an error of law because the Court of Appeals: (A) misapplied the discretionary standard, (B) overlooked the overwhelming evidence of obstruction, and (C) relied upon a case that stands for the exact opposite of the Court of Appeals' conclusion.

(A)
The Discretionary Standard

The Court of Appeals holds that the Master's refusal to address the discovery abuses is a discretionary decision that will not be disturbed on appeal. However, the Record demonstrates the Master never applied any discretion because he erroneously decided he lacked jurisdiction to hear the motion and then denied it, a self-refuting proposition! A court cannot simultaneously lack jurisdiction to hear a case while denying it on the merits. Petitioner briefed this issue extensively, but the Court of Appeals was not troubled by the illogicality and affirmed without comment. As the discussion in subsection C on page 11 shows, the *Richardson* case relied on by both the Master-in-Equity and the Court of Appeals holds that **any** judge can evaluate discovery obstruction with or without an antecedent motion. Thus, the decision "is based upon an error of law." *Capital U-Drive-It, op. cit.*

(B)
The Evidence of Obstruction

The record contains overwhelming, irrefutable evidence of Ellen Harley's and her Charleston Carriage Horse Advocate's contumacious conduct. Ms. Harley's contempt for norms is extraordinary. During this case, she misrepresented facts under oath and deployed an array of dirty tricks, including reporting Petitioner's counsel to Disciplinary Counsel, reporting Petitioner's veterinarian to LLR, had a hand in a bogus O.S.H.A. complaint against Petitioner, and—most astonishing of all—threatened to sue one of Petitioner's disclosed witnesses during the pendency of the case! These unethical attacks are her *modus operandi* and on full display in this case. (Her Congressional campaign manager, Allen Raymond, noted she is "politically experienced, pragmatic, and had an aggressive taste for the jugular" in his book, *How to Rig an Election*, Simon & Shuster (2008) page 50.) Her misrepresentations, dirty tricks and discovery obstruction did not trouble the

---

6*Richardson on Behalf of 15th Cir. Drug Enf't Unit v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S.*

Master-in-Equity in the slightest. When the Court of Appeals ignored the overwhelming evidence of obstruction, it placed an imprimatur upon her misconduct. This single error is sufficient justification for this Court to grant review as the judicial system cannot function by allowing litigants to ignore the rules. By ignoring Harley's unprincipled conduct, the Court tacitly creates an unsettling impression that well-connected litigants may flout the rules. The useful information Petitioner gathered through discovery came from the Charleston Animal Society, which complied with the rules of discovery, but when it came to Harley and her charity, the Master-in-Equity applied a bizarre, unsupported rationale, concluding "Petitioner got exactly what he asked for," (R.O.A. Vol. 1, page 388), a conclusion demonstrably refuted by the record at pages 390-391 where Petitioner provided the Court a precise, detailed explanation of Harley's discovery smokescreen. Both the Master-in-Equity and the Court of Appeals ignored this evidence even though it demonstrates Petitioner got nothing he sought. Petitioner's expert, Steve Abrams, laid out for the Court exactly what Petitioner needed and that Harley and the Charleston Carriage Horse Advocates had refused to provide it. (R.O.A. Vol. 440) See also two examples of Petitioner's detailed letters begging for cooperation at pages 169 and Vol. 2, 557, correspondence August 4, 2019 and July 17, 2020.) As Petitioner said in its brief to the Court of Appeals: ". . . the [Petitioner's] Third Supplemental affidavit filed September 24, 2921 (R.O.A. Vol. 1, page 388) explained the defendants' 10,000-page putative discovery production is entirely bogus: 2,913 pages of duplicated material, 1604 pages of court filings, *etc*.," (Brief to Court of Appeals page 8) The entire precise tally of the Respondent's production is at R.O.A. Vol. 1, page 390. The defendants' discovery production included such documents as blank pages and Martha Vineyard's sales flyers, hardly what Petitioner was asking

---

Curr.& Various Jewelry, 430 S.C. 594, 599, 846 S.E.2d 14, 16 (Ct. App. 2020)

for.[fn.7] At oral argument before the Master-in-Equity on this contemptuous conduct, his entire comment on this issue was four words: "All right. Got it." (R.O.A. Vol 4, page 1639)

An additional evidentiary point demonstrates further why this Court should grant the Petitioner a review. Petitioner tried for years to get the Charleston Carriage Horse Advocates' financial documents to show coordination with the Charleston Animal Society. At the hearing on Petitioner's motion to compel before Judge Price, Harley's lawyer told the Court they would produce the charity's bank records "just as they would be delivered to the client from the Bank." R.O.A. page Vol. 4, page 1583. After Petitioner received records that are not "just as they would be delivered. . . from the bank," Petitioner decided to cut through the obstruction and subpoena the same records directly from the bank. The Respondents, Harley and Charleston Carriage Horse Advocates, moved to quash the subpoena even though the subpoena sought the identical documents they agreed to produce "just as they would be delivered . . . from the Bank." Both the Master-in-Equity and the Court of Appeals winked at this dishonest conduct, which not only disadvantaged Petitioner but creates a disquieting impression that privileged litigants receive an elite tier of justice unavailable to most.

(C)
The Misapplication of *Richardson*

The Court of Appeals committed clear legal error here. In citing *Richardson*,[fn.8] as authority to affirm the Master-in-Equity, the Court of Appeals compounded the Master's erroneous reasoning that he could not hear the motion because only Judge Price had jurisdiction because Judge Price issued the Order compelling the Respondents to produce the documents. While the Court of Appeals recites a correct statement of law: "[T]he imposition of sanctions is generally entrusted to the sound

7 Providing excessive random documents to plaintiffs is a common Hollywood theme in courtroom movies.

discretion of the trial court," the Master-in-Equity never exercised any discretion, refusing to entertain the plaintiff's request by relying on a self-refuting proposition that he lacked jurisdiction to consider it while simultaneously denying it! The lower court's assertion that: "Only Judge Price has jurisdiction to consider this application" is an error of law. Neither the Master-in-Equity nor the Court of Appeals acknowledged or addressed the procedural history of the case that the parties agreed to refer **all** pending motions to the Master-in-Equity. See Order of Reference filed May 27, 2021, at page 61 of the Record on Appeal. If the Master lacked jurisdiction to hear the motion, then it is legally/logically impossible for him to deny the relief on the merits. Under the Master-in-Equity's own reasoning, he was required to send the motion back to Judge Price. Instead, he ducked the question. Refusing to address a question is the opposite of exercising discretion. "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

Both the Master-in-Equity and the Court of Appeals relied on *Richardson* to support their decisions, but *Richardson* stands for the precise opposite principle for which the Court of Appeals is citing it! *Richardson* 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)

This erroneous reasoning alone is sufficient reason for this Court to grant certiorari under Rule

---

8 *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)

242(b)(3) *S.C. Appellate Court Rules*, to remind trial courts of their duty to adhere to precedent, which requires trial courts to investigate allegations of discovery misconduct. The abdication of judicial responsibility to monitor discovery and the Court of Appeals' disobedience to precedent is particularly disheartening because the Opinion under review rewards bad actors for bad conduct and raises the specter that rich people escape the consequences of their bad acts. The Court of Appeals' Opinion 153 is controlled by an error of law because the Record demonstrates that neither the Master-in-Equity nor the Court of Appeals exercised discretion. Paying lip service to the concept is not the same thing as exercising it. *Balloon Plantation Inc. v. Head Balloons, Inc.*, 303 S.C. 152, 399 S.E.2d 439 (Ct. App. 1990) In fact, the Court of Appeals Opinion under review is at variance with its own analysis on the subject. In *Samples v. Mitchell*, 329 S.C. 105, 405 S.E.2d 213 (Ct. App. 1997) the Court of Appeals reversed a trial court for failing to evaluate adequately a discovery dispute (failure to turn over a surveillance video). The Court of Appeals said:

> Although the trial judge in this case correctly framed the issue as discovery abuse, he did not weight the required factors. A failure to exercise discretion amounts to an abuse of that discretion. *Fontaine v. Peitz*, 291 S.C. 536, 538, 353 S.E.2d 565, 566 (1987) ("When the trial judge is vested with discretion, but his ruling reveals no discretion was, in fact, exercised, an error of law has occurred."); *Balloon Plantation v. Head Balloons*, 303 S.C. 152, 155, 399 S.E.2d 202 (1981) (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.")).

Obviously, neither the Master-in-Equity nor the Court of Appeals exercised any discretion because the Master-in-Equity and the Court of Appeals misapplied *Richardson* as authority relieving either of them from exercising any kind of review because Petitioner's motion could only be heard by Judge Price. This is an error of law, which demonstrates the lack of discretion because *Richardson* holds the precise opposite. The Court of Appeals Opinion is controlled by an error of law.

2. THE MASTER-IN-EQUITY FAILED TO APPLY THE REQUIRED SUMMARY JUDGMENT STANDARD TO THE FACTS AND FAILED TO APPLY THE CORRECT

LEGAL STANDARD. THE COURT OF APPEALS' OPINION THAT THE EVIDENCE DOES NOT RAISE A GENUINE ISSUE OF MATERIAL FACT THAT THE VIDEO IS "OF AND ABOUT" THE PETITIONER IGNORES THE SUBSTANTIAL EVIDENCE OF RESPONDENTS SPECIFICALLY IDENTIFYING AND SPECIFICALLY TARGETING THE PETITIONER.

In part 2 of its analysis, the Court of Appeals concludes that Petitioner failed to demonstrate the Respondents' defamatory statements or conspiracy were "of and about him." The Record clearly demonstrates the error. Petitioner proved by direct evidence that within four days of disseminating the April 19th video, the Respondents identified him by name and company. (R.O.A. Vol. 2, page 860 [Supp. Memorandum of Law, Ex. 4 affidavit of Broderick Christoff]) Not only did the Respondents republish a still photo of Big John on their Facebook page, but also they published a long statement including:

> Christoff's statement is a reaction to the fact that more than 11 million people say the video of his horse, "Big John" collapse on Meeting Street last week.
>
> . . .
>
> Before last week's incident involving the collapsed horse, "Big John," Charleson Animal Society had reached out to industry leaders to meet about the study, but was turned down." (page 872)

Leaving aside the multiple lies in that post, it is impossible to deny that the information being published out was "of and about" anyone other than Petitioner.

When Petitioner wrote to the Respondents on April 25, 2017 and May 11, 2017, (R.O.A. Vol. 2, pgs. 867 and 869), informing them of the abuse and threats raining down on him because of the Respondents' misrepresentations, they responded by blocking all truthful corrections to promote the threats. "Your reckless and false statements have generated numerous serious threats directed against Broderick, his family and his employees." (pg. 867) Equally perplexing is the fact that neither the Master-in-Equity nor the Court of Appeals recognized or discussed the different standards governing the conduct of "media defendants" and charities. The General Assembly prohibits charities from disseminating misleading information. § 33-56-120, S. C. Code, ann.

Because of the evidence of the specific identification of Petitioner by name and the malicious policy to cast him in a false light, there is no explanation for the Court of Appeals failing to see that the defamatory statements were not "of and about him." Petitioner identified the proverbial "smoking gun" evidence such as Harley promoting a "depress their income" strategy and Joe Elmore advocating using taxpayer money to "leverage social media" against Petitioner. Even the first sentence of the Court of Appeals' analysis on this legal issue is contradictory: ". . . we conclude the master's finding that statements **other than those made in the relevant video** were not 'of and concerning' CCW was correct" (emphasis added), which is like saying: "other than the bullets in the victim, there was no evidence he was the target." There are multiple errors here. The most obvious is that looking at the evidence in the light most favorable to Petitioner, he identified multiple genuine issues of material fact. "Other than those made in the relevant video" means the Petitioner met his burden of creating a genuine issue of material fact on the false statements "made in the relevant video." The Court of Appeals ignored the Respondents' pattern of coordinated acts to attack the Petitioner, and their conspiracy was premised on painting him in a false light to damage the business. Whether a plaintiff is defamed a little, a moderate amount, or a lot is not a legal distinction recognized in American jurisprudence. If the "statements made in the relevant video" are "of and concerning" the plaintiff, then summary judgment is improper.

Second, and equally troubling is the Court of Appeals' cavalier attitude toward jury trials. The issue before the Court was not whether Petitioner proved his claims by a preponderance of the evidence, but rather whether Petitioner raised a genuine issue of material fact, which the Court of Appeals conceded in its first sentence!

Third, the Court of Appeals reliance on *Burns v. Gardner*, 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997) suggests the Court of Appeals relied on headnotes instead of the Court's holding.

Leaving aside that the Record contains overwhelming evidence of Petitioner's identification—the name of his company, the name of the Principal—the question of whether the statements were "of and concerning" Petitioner are jury questions. *Burns* affirmed a 12(b)(6) dismissal for failure to state a cause of action. The complaint in *Burns* was so frivolous the trial court imposed sanctions against the plaintiff's attorneys (one of whom the Supreme Court disbarred 9 years later) for filing a frivolous lawsuit:

> 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."

Equally perplexing is the Court of Appeals' reliance on a case evaluating a defamation claim brought by a government official (another public/private figure error that permeates Opinion 153 discussed more fully below) against two public officials—County Council members, in *Stokes v. Oconee Ctny*., 441 S.C. 566, 895 S.E.2d 689 (Ct. App. 2023). The Cout of Appeals set out the facts of that case as:

David Stokes worked as the County's "Building Official" from December 2011 to May 2017. "The Building Official is the administrator for building and/or code compliance within Oconee County and ensures that proper code is followed in the design, construction, and maintenance of buildings and structures within Oconee County.

The trial court granted summary judgment because the two Council members were entitled to investigate complaints against County employees and they had immunity under the *South Carolina State Torts Claim Act*, § 15-78-60, S.C. Code, ann. This case provides no authority for granting summary judgment against Petitioner.

The Court of Appeals also deviated from the South Carolina standard that a defamation claim never requires specific identification of a plaintiff to maintain an action. Even if these Respondents

had not specifically identified Petitioner by name and company as set forth above, the "of and about" question is a jury question. This rule is found throughout South Carolina case law in cases such as the Court of Appeals' 1987 Opinion in *Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 358 S.E.2d 397 (Ct. App. 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)

In *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998) (*Holzscheiter II*) this Court held:

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 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, the Court of Appeals disregarded the controlling precedent of the big three defamation cases, *Erickson*, *Garrard*, and *Cruce*. The Court of Appeals ignored *Erickson v. Jones Street Publishers*, 629 S.E.2d 653, 368 S.C. 444 (S.C. 2006) because that decision 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 the well-developed South Carolina law, this Court held that she could maintain an action. Even a casual

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 attacks perpetrated against the Petitioner by registered charities that operate as alter egos of ultra wealthy scammers whose only goal is convince an Internet audience to send them money to get carriages off "their" streets. The evidence showing the specific targeting of Petitioner in this case is far beyond the creation of a genuine issue of material fact. It is overwhelming, and it is surprising that the Court of Appeals would treat such important issues with so little concern. Petitioner respectfully prays for a writ of certiorari to review this error because the Court of Appeals' cursory evaluation of fundamental errors in applying South Carolina tort law to the facts of this case raise important constitutional issues at the intersection of free speech and defamation. In contrast to the cavalier analysis of Opinion 153, this Court carefully evaluates these issues when speech infringes upon the right to be left alone, described by Justice Brandeis in his dissent in *Olmstead v. United States*, 227 U.S. 438, 48 S.Ct. 564, 67 L.Ed. 785 (1928) as "the most comprehensive of rights and the right most valued by civilized men." See Brandeis and Warren, "The Right to Privacy," *Harvard Law Review*, Vol. IV, No. 5 (1890) Many Americans agree that the Internet's intrusion into privacy is one of the greatest threats facing citizens. This case demonstrates how much damage keyboard warriors can inflict. This Court issued an encyclopedic Opinion on a related speech issue in its thorough 32-page analysis applied to a Municipal Court disorderly conduct conviction balancing free speech and its limits. In *Whitehurst v. Town of Sullivans Island*, S.C. ___, __ S.E.2d ___ (Opinion No. 28290 filed July 16, 2025), this Court affirmed a jury's guilty verdict finding Whitehurst's racist rant was not protected speech. Like the racist attack in *Whitehurst*, Respondents' attacks on the Petitioner here are more premediated and

extended versions of Whitehurst's brief outburst, which this Court found to be unprotected speech.

3. THE COURT OF APPEALS DISREGARDED CONTROLLING PRECEDENT OF THIS COURT AND COMMITTED REVERSIBLE ERROR FINDING THAT A PRIVATE PERSON OPERATING A BUSINESS BECOMES A "LIMITED PUBLIC FIGURE."

A. THE DEFENDANTS ARE NOT "MEDIA DEFENDANTS." THEY ARE CHARITIES PROHIBITED FROM DISPENSING FALSE OR MISLEADING INFORMATION.

B. THE PLAINTIFF IS NOT A LIMITED PUBLIC FIGURE.

C. PROOF OF MALICE IS NOT NECESSARY FOR A PRIVATE FIGURE, AND EVEN IF IT WERE, THE RECORD CONTAINS OVERWHELMING EVIDENCE OF MALICE AND EVIDENCE OF COORDINATION AND CONSPIRACY TO PUT PETITIONER OUT OF BUSINESS

While both the Master-in-Equity and the Court of Appeals acknowledged the "big three" cases controlling the outcome here, neither applied them, and the Court of Appeals' Opinion under review ignores the controlling precedent instead of following it. The big three cases that are factually similar and controlling are, in chronological order: *Erickson v. Jones Street Publishers, L.L.C.* 368 S. C. 444, 629 S.E.2d 653 (2006), *Garrad v. Charleston School Dist.*, 439 S.C. 596, 890 S.E.2d 567 (2023), and *Cruce v. Berkeley County School District*, 442 S.C. 1, 896 S.E.2d 765 (2024), the last decided during the pendency of this case. Each one of these cases requires reversal of the Opinion under review, and together they represent a rejection of the Court of Appeals' superficial analysis. Thus, the third section of Opinion 153 is controlled by palpable errors of law.

A. THE DEFENDANTS ARE NOT "MEDIA DEFENDANTS." THEY ARE CHARITIES PROHIBITED FROM DISPENSING FALSE OR MISLEADING INFORMATION

Neither the Master-in-Equity nor the Court of Appeals recognized, let alone evaluated, that Respondents are registered charities and not "media defendants." Charities accept statutory limits on their activities in exchange for favorable tax treatment unavailable to "media defendants." The

reason for this is obvious; to wit, to prevent charities from disseminating false messages to induce the public to send money. See § 33-56-120, S.C. Code:

Misrepresentations prohibited. (A) In connection with the solicitation of contributions or the sale of goods or services for charitable purposes, a person shall not misrepresent or mislead, knowingly and willfully, a person by any manner, means, practice, or device.

Every one of the Respondents' false statements were accompanied by a request to donate money to their cause, and yet no court has recognized this limitation or considered how it might apply to the false statements the Respondents disseminated. See R.O.A. Vol. 1, page 353-54:

"In fact, an animal rights/rescue group in New Jersey to whom the Charleston Carriage Horse Advocates sent a video, ran a fictitious campaign to purchase and rescue Big John. This rescue organization reported less than $6,000 in donations in 2015 but raised over $100,000.00 in the 7 days that followed the Big John incident."

The Court of Appeals' failure to address the difference between "media defendants" and charities demonstrates why the Court should grant certiorari for review, for the issues here are just as profound as the issues raised in *Whitehurst* illuminating the tension between the limits of free speech against the right to be free from injury. The right of any plaintiff "to the protection of his own reputation from unjustified invasion" is the "root of any decent system of ordered liberty." *Rosenblatt v. Baer*, 383 U.S. 75, 86 S.Ct. 669, 15 L.Ed.2d 597 (1966) (public official must show malice to recover for defamation)

B. THE PLAINTIFF IS NOT A LIMITED PUBLIC FIGURE.

Perhaps the most salient error in Opinion No. 153 is the Court of Appeals' misapplication of the "limited public figure" myth. Here again the Court of Appeals disregarded the precedent of this Court and adopted a solipsistic legal analysis. The wellspring of this principle flows from *Gertz v. Welch*, 418 U.S. 323 (1974), the standard this Court has followed rigorously. In *Gertz*, the Court laid down the test to determine if a plaintiff transformed himself into a "limited public figure," which the Court says is "exceedingly rare":

. . . we have no difficulty in distinguishing among defamation plaintiffs. The first remedy of any victim of defamation is self-help—using available opportunities to contradict the lie or correct the error, and thereby to minimize its adverse impact on reputation. Public officials and public figures usually enjoy significantly greater access to the channels of effective communication, and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. [Footnote 9] Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater.

More important than the likelihood that private individuals will lack effective opportunities for rebuttal, there is a compelling normative consideration underlying the distinction between public and private defamation plaintiffs. An individual who decides to seek governmental office must accept certain necessary consequences of that involvement in public affairs. He runs the risk of closer public scrutiny than might otherwise be the case. And society's interest in the officers of government is not strictly limited to the formal discharge of official duties. As the Court pointed out in *Garrison v. Louisiana,* 379 U.S. at 379 U.S. 77, the public's interest extends to "anything which might touch on an official's fitness for office. . . . Few personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation, even though these characteristics may also affect the official's private character."

Those classed as public figures stand in a similar position. Hypothetically, it may be possible for someone to become a public figure through no purposeful action of his own, but the instances of truly involuntary public figures must be exceedingly rare. For the most part, those who attain this status have assumed roles of especial prominence in the affairs of society. Some occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. More commonly, those classed as public figures have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. In either event, they invite attention and comment.

Even if the foregoing generalities do not obtain in every instance, the communications media are entitled to act on the assumption that public officials and public figures have voluntarily exposed themselves to increased risk of injury from defamatory falsehood concerning them. No such assumption is justified with respect to a private individual. He has not accepted public office or assumed an "influential role in ordering society." *Curtis Publishing Co. v. Butts,* 388 U.S. at 388 U.S. 164 (Warren, C.J., concurring in result). He has relinquished no part of his interest in the protection of his own good name, and consequently he has a more compelling call on the courts for redress of injury inflicted by defamatory falsehood. Thus, private individuals are not only more vulnerable to injury than public officials and public figures; they are also more deserving of recovery.

Here, there is no dispute that Charleston Carriage Works involuntarily became the subject of the defendants' coordinated effort to damage it. Neither Charleston Carriage Works nor Broderick Christoff "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved" or possessed "significantly greater access to the channels of

effective communication, and hence have a more realistic opportunity to counteract false statements." *Gertz, supra*. Brody's entire interaction with the "controversy" was a defensive effort to save his business, exactly like Linda Erickson. He never made a public statement until after the Respondents attacked him. While the existence of carriage tours may be a public interest, his care of his horse was not, and when Respondents implied and amplified an inference that he worked a horse to death, they defamed him and the company as part of the conspiracy to "depress their income," and there is not a scintilla of evidence in this voluminous record that he "occup[ied] positions of such persuasive power and influence" as to transform him into the "exceedingly rare" limited public figure, or as this Court said in *Cruce:* "Nor is [Cruce] that unicorn of defamation law, the "involuntary public figure," a species *Gertz* described as "exceedingly rare," and some now believe to be extinct."

Neither the Master-in-Equity nor the Court of Appeals explains how defending oneself transforms one into the unicorn of the "limited public figure," and both the Master and the Court of Appeals disobeyed this Court's holding in *Erickson* that neither Linda Erickson's contact with the Governor's office nor her secretly recording her adversaries transformed her into a "limited public figure." The Court of Appeals ignored controlling precedent on these issues, and Petitioner gave the Court of Appeals an opportunity to fix its opinion by pointing out these errors and asking for review *en banc* so the Court could speak with one voice to reconcile the panel decision with the controlling precedent on this important issue. Two members of the panel in the Opinion under review were two members of the *Cruce* panel and yet Opinion 153 is in direct conflict with the holding of *Cruce*:

> The *Erickson* template is well-intentioned but awkward to apply. We believe a better test for determining whether one is a limited public figure considers three things: (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. *See Prosser and Keeton on Torts* 806 (W.

Page Keeton *et. al*. eds., 5th ed. 1984); *The Law of Torts* § 561 (Dan B. Dobbs et al., 2d ed., 2011); Smolla, *1 Law of Defamation* §§ 2:23 & 2:24 (2d ed., 2023). We therefore replace the *Erickson* factors with this three-part inquiry.

The plaintiff did nothing to voluntarily inject himself into a public controversy defending against accusations he abused his horse. (The Respondents deposed Petitioner's board-certified veterinarian who described Brody's care of his horses as "above and beyond." See deposition of Dr. Miller at Vol. 4, page 1526 where Respondents' lawyer questioned the Petitioner's veterinarian about Petitioner's care of his horses:

Q. With regard to the working environment, what kind of opinions are you expected to or would hold with regard to the working environment of Mr. Christoff's horses?
A. The working environment takes into account several things. Certainly, cleanliness, ventilation, safety, proper nutrition, proper care, knowledgeable staff, following regulations of the City, but also going above and beyond. Not just doing the minimum required. I know that he has an excellent farrier. He uses the same farrier I do. Dentistry. Veterinarian care. Everything is done as it should be.

The Petitioner did nothing to inject himself into this controversy other than existing. Under the Court of Appeals' reasoning, no person who is libeled can defend himself or herself without transforming into a limited public figure. Yet every case on the subject says the opposite. Moreover, the controversy does not affect "a substantial segment of the public." It is a manufactured controversy that affects unprincipled animal rights individuals who want carriages off "their" streets. Finally, the defamation is not related to the controversy of working horses. The Respondents are free to argue to a jury that the City should not allow horses on City streets, but the Petitioner's treatment of his horses has never been a controversy until Respondents manufactured one to fuel their conspiracy. For example, one could say that the high price of groceries is "a public controversy . . . whose resolution affects a substantial segment of the public," but that would not justify disseminating a photo of Petitioner carrying a gallon of milk with a caption: "Is this shoplifting or just a "trip" to the store? In fact, when Respondents deposed the City of Charleston's Director of Livability & Tourism Official, Dan Riccio, he testified that Harley, whom he described as a "bully,"

and her group had done exactly that to him! They took a photo of him having a conversation on the steps of City Hall and published it along with an assertion that the photo demonstrated he was in a corrupt confederation with the carriage companies! See R.O.A. Vol. 3, page 1222

> Q. What are you forming your opinion on that she's a bully then? Answer the question, please.
> A. Because I have been accused of things by her that are not true.
> Q. Where and in what context?
> A. Social media. Facebook.
> Q. Do you have copies of those?
> A. Yeah. Want me to read it?

Thus, the defamation is never related to a "public controversy" when the Respondents manufacture a controversy to fuel their conspiracy to "depress income." Likewise, when victims defend themselves, the Respondents cannot hide behind the canard of just asking questions, especially when they are statutorily prohibited from disseminating misleading information to gin up contributions. Therein lies the horror of the modern digital age where each and every one of us is a potential target for anyone with a grudge. As *Erickson* instructs, the Respondent's attacks on Petitioner did not transform him into a "limited public figure," an extinct legal fiction, and he did not transform himself into one by defending himself.

This Court has evaluated the identical "limited public figure" issue three times since *Erickson v. Jones Street Publishers, L.L.C.*, 368 S.C. 444, 629 S.E.2d 653 (2006). Linda Erickson was not a limited public figure because she did exactly what Petitioner did in this case; she acted defensively trying to protect herself from defamatory attack. When she wrote the Governor's office, she did not transform into a "limited public figure" just as Brody Christoff did not transform by attending City Council meetings. Likewise, Eugene Walpole, the head football coach at Academic Magnet School in *Garrard* was not a limited public figure even though he held a public position. *Garrad v. Charleston School Dist.*, 439 S.C. 596, 890 S.E.2d 567 (2023). (Affirmed summary judgment on the

ground plaintiffs failed to present evidence of damages but vacated the rest of the Court of Appeals' opinion, including correcting the Court of Appeals that calling someone a racist can be actionable.)

Finally, the head football coach at Berkeley high (who adopted a controversial "no punt" football strategy, which is comparable to the issue of carriage tours in this case—that is, that different people have different opinions about carriage tours) was not a limited public figure and successfully obtained a jury verdict in his defamation claim arising out of a single e-mail sent to about 45 people. *Cruce v. Berkeley County School District*, 442 S.C. 1, 896 S.E.2d 765 (2024) The single, actionable e-mail in *Cruce* merely suggested the students' files were not in order, an allegation many orders of scale below labeling someone an animal abuser, which is an allegation of criminal conduct. This Court's precedent demotion of "limited public figure" to "unicorn" status demonstrates Opinion No. 153 is controlled by error an error of law. This Court held:

> II. Limited Public Figure
>
> The District's backup argument is that, if Cruce is not a public official, then he is a public figure. The District relies on *Curtis Pub. Co. v. Butts*, 388 U.S. 130, 87 S.Ct. 1975, 18 L.Ed.2d 1094 (1967), which held that the head football coach at the University of Georgia (who was privately paid and not a public employee) was a "public figure" in a defamation case involving allegations of bribery. Cruce could not be an all-purpose "public figure" as that term of art from *Butts* was later clarified as limited to those who "have assumed roles of especial prominence in the affairs of society [or] occupy positions of such persuasive power and influence that they are deemed public figures for all purposes." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 345, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974). Nor is he that unicorn of defamation law, the "involuntary public figure," a species *Gertz* described as "exceedingly rare," and some now believe to be extinct. *Id*.; see generally Elder, *Defamation: A Lawyer's Guide* § 5.8 (Oct. 2022).
>
> Nevertheless, the District claims Cruce fits the definition of a limited public figure, a category announced in *Gertz* that describes one who "voluntarily injects himself or is drawn into a particular controversy and thereby becomes a public figure for a limited range of issues." *Gertz*, 418 U.S. at 351, 94 S.Ct. 2997; see also id. at 345, 94 S.Ct. 2997 (explaining that limited public figures "invite attention and comment" because they "have thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved").

It is impossible to reconcile the controlling precedent of *Cruce* with the Court of Appeals' conclusion in Opinion No. 153. Before oral argument, Petitioner notified the Court of Appeals on

January 31, 2024 of the decision in *Cruce* as required by Rule 208(b)(7) of the *S. C. Appellate Court Rules.* Petitioner wrote to the Court of Appeals, notifying the Court of the *Cruce* decision and including a copy of the case. It made no difference. (Two members of the *Cruce* panel decided this case.)

This Record demonstrates that Charleston Carriage Works and Broderick Christoff only reacted defensively, like Linda Erickson, trying to save the business, never voluntarily injected themselves into a public controversy and as is painfully obvious, lacked the channels of effective communication necessary to blunt the coordinated attacks leveled against Petitioner by tax supported charitable organizations with millions of surplus funds in the bank.[fn.9] The Court should grant certiorari to correct this error.

C. PROOF OF MALICE IS NOT NECESSARY FOR A PRIVATE FIGURE, AND EVEN IF IT WERE, THE RECORD CONTAINS OVERWHELMING EVIDENCE OF MALICE AND EVIDENCE OF COORDINATION AND CONSPIRACY TO PUT PETITIONER OUT OF BUSINESS

The Court of Appeals next evaluates whether the Record contains evidence of malice. At the outset, the Court of Appeals overlooked that labeling Petitioner an animal abuser, a crime, and a crime is libel *per se* for which damages are presumed. "If a defamation is actionable *per se*, then under common law principles the law *presumes* the defendant acted with common law malice and that the plaintiff suffered *general* damages." *Holtzscheiter v. Thomson Newspapers*, 332 S.C. 502, 506 S.E.2d 497 (1998) (*Holtzscheiter II*) It is therefore astonishing the Master-in-Equity concluded calling Petitioner an animal abuser is "rhetorical hyperbole," something this Court laid to rest *Garrard* holding that calling someone a racist is actionable, and racism is not a crime. The Court of Appeals ignored the Master-in-Equity's "rhetorical hyperbole" conclusion without comment. Proof

of malice is not necessary in *per se* cases. Assuming *arguendo* that a private figure—even the unicorn "limited public figure"—is required to prove malice, which is a question of fact for a jury, this Record overflows with evidence of malice. Other than acts of violence, there are no more intentional, coordinated, and malicious acts than those laid out in this record, and Petitioner produced actual writings of the Respondents plotting to "depress his income." This evidence is compelling both as evidence of malice and as evidence of conspiracy and intentional interference with business relations. (The Court of Appeals also held erroneously that malicious acts cannot also be acts of conspiracy. This error is discussed in the next section.) In Petitioner's briefing to the Court of Appeals, Petitioner provided a sample of 23 specific acts of malice (which are also acts of conspiracy, *etc*.):

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

---

9 Joe Elmore's affidavit at Vol. 1, page 266 attested to $1,669,408 in "long term investments"—the stock market. The Charleston Animal Society's publicly filed tax returns "investments—publicly traded securities" for 2024 show $18,805,605. I.R.S. Form 990, which this Court can judicially notice.

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]

The malicious act in *Cruce* was a single e-mail sent to 45 recipients suggesting that the head football coach's files might not be in order! A jury found that single e-mail defamatory and returned a verdict for the plaintiff. The Court of Appeals reversed. This Court granted certiorari and found the evidence sufficient and reinstated the jury verdict. The evidence in this case involves, among other things, intentionally false publications disseminated to hundreds of millions of people across the globe, and it is impossible to review this Record and fail to see a jury question:

In *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 506 S.E.2d 497 (1998), our Supreme Court revisited malice and lifted the definition of common law actual malice from *Jones v. Garner*, supra: "[C]ommon law actual malice, that is `the defendant was activated by ill will in what he did, with the design to causelessly and wantonly injure the plaintiff; or that the statements were published with such recklessness as to show a conscious indifference toward plaintiffs reports.'" *Holtzscheiter*, 332 S.C. at 510 n. 3, 506 S.E.2d at 501 n. 3. The case sub judice is controlled by the definition of common law actual malice because the plaintiff is a private citizen. A different definition of malice is efficacious in regard to a public official or public figure:

In defamation actions involving a "public official" or "public figure," the plaintiff must prove the statement was made with "actual malice," *i.e.*, with either knowledge that it was false or reckless disregard for its truth. *New York Times Co. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed.2d 686 (1964); *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 94 S.Ct. 2997, 41 L.Ed.2d 789 (1974)....
....
The actual malice standard is not satisfied merely through a showing of ill will or "malice" in the ordinary sense of the term.

Elder v. Gaffney Ledger, 341 S.C. 108, 113-14, 533 S.E.2d 899, 901-02 (2000). The public official or public figure definition of actual malice is inapposite to the case at bar.

Actual malice requires that at the time of the defendant's act or omission he was conscious or chargeable with consciousness of his wrongdoing. *Padgett v. Sun News*, 278 S.C. 26, 292 S.E.2d 30 (1982). Malice may be proved by direct or circumstantial evidence. *Hainer v. American Medical Int'l, Inc.*, 328 S.C. 128, 492 S.E.2d 103 (1997); *Smith v. Smith*, 194 S.C. 247, 9 S.E.2d 584 (1940).

Whether malice is the incentive for a publication is ordinarily for the jury to decide. See *Ponticelli v. Mine Safety Appliance Co.*, 104 R.I. 549, 247 A.2d 303 (1968) (citing 3 Restatement of Torts § 619(2)). Proof that statements were published in an improper and unjustified manner is sufficient evidence to submit the issue of actual malice to a jury. *Hainer, supra*; *Mains v. K Mart Corp.*, 297 S.C. 142, 375 S.E.2d 311 (Ct.App.1988). See also *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1999)(finding factual inquiries, such as whether the defendants acted in good faith in making the statement, questions for the jury).

We find genuine issues of fact exist regarding whether the statement was made with actual malice. The issue of actual malice is properly a question for the jury.
Murray v. Holnam, Inc., 542 S.E.2d 743, 344 S.C. 129 (S.C. App. 2001) (emphasis added)

This Court emphasized this procedure in *Litchfield* in affirming a jury's finding of actual malice:

This evidence [the Newspaper's failure to investigate] constitutes a failure to investigate before publishing an article when there were obvious reasons to doubt the veracity of Pat Beal or the accuracy of her report. Thus, the evidence indicates Newspaper's subjective awareness of probable falsity of the report and **is sufficient to support the jury's finding of actual malice**. Accordingly, we affirm the jury's finding of actual malice and remand this case for a jury to consider the issue of punitive damages.

Erickson v. Jones Street Publishers, LLC, 368 S.C. 444, 629 S.E.2d 653 (S.C. 2006) (emphasis added)

The malicious/conspiratorial acts listed above show much more than a "subjective awareness of probable falsity" because these Respondents knew Big John "stumbled" and did not "collapse" from "exhaustion." They launched their campaign to damage the Petitioner just as they announced when they formulated a plan right before Big John tripped to "depress their income." They succeeded. As *Erickson* instructs, a court does not substitute itself for the fact-finding function of a jury and only weighs the evidence at the close of the case to know how to instruct the jury. In this case, the instruction should include the presumption of damages arising from a libel *per se*. Opinion No. 153 misapplies all these well settled legal principles. Even though the Court of Appeals cites the right cases it follows none of them, and the refusal to adhere to controlling precedent addressing significant constitutional issues of free speech is a significant error that requires further review. Deciding this important case as an unpublished opinion also raises the unsettling suggestion that the Court of Appeals ignores binding precedent if it keeps it on the downlow.

4. THE COURT OF APPEALS OVERLOOKED THE COPIOUS EVIDENCE OF CONSPIRACY AND INTENTIONAL INTEFERENCE WITH BUSINESS RELATIONS INCLUDING DIRECT STATEMENTS OF COORDINATION TO SPREAD FALSE ALLEGATIONS AND MISINFORMATION

The Court of Appeals' fourth section, summarily concludes there is no evidence of "an agreement between the defendants to jointly spread false allegations and misinformation as alleged in the complaint." The Court's disregard of evidence is shocking. Addressing the Court of Appeals' error necessarily involves a repetition of the preceding Arguments discussing evidence of malice, and no purpose is served by burdening the Court with a repetitious discussion. The Court of Appeals erroneously asserts that the same evidence cannot support alternative theories of recovery even though Rule 8(a) of the *S. C. Rules of Civil Procedure* specifically says otherwise: "Relief in the

alternative or of several different types may be demanded." The Petitioner, therefore, selects some obvious evidentiary examples of "an agreement between the defendants," which the Court of Appeals either overlooked or ignored.

First it is undisputed—and the defendants admit—that the video they disseminated was a joint project between the Harley defendants and the Charleston Animal Society, specifically its "media specialist," Dan Krosse. If the Court is wondering how Ellen Harley was on the scene within seconds, the answer is because she has a history of following carriages and disrupting tours. See R.O.A. Vol. 1, page 352: "Ms. Harley was on the scene within minutes because she frequently follows tours around Charleston and has harassed drivers and guests." As set forth above, the Court can hear her voice on the video haranguing the barn hands as they rushed to unharness Big John. The still photo from the video, R.O.A. Vol. 3 page 972, shows her hovering over Big John, and her behavior was sufficiently obnoxious to motivate a bystander to tell her to "stop it." Dan Krosse placed the misleading labels on the video, and the Charleston Carriage Horse Advocates published it. The published versions were different. Charleston Animal Society's version depicted Big John getting to his feet. The Harley defendants' version did not, prompting Joe Elmore of the Charleston Animal Society to remark four days later: "Kudos for the 11 million views." (R.O.A. Vol.2, pg. 546 and Vol.3 pg. 952) The Petitioner provided the following sample of evidence from the Record on Appeal to demonstrate both malice and coordination:

Two weeks before Big John slipped on Meeting Street, the defendants shared an email scheme 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] This email was not specifically targeting Charleston Carriage Works, but it demonstrates the longstanding coordination to damage the carriage companies.

Ellen Harley served in dual capacities as the principal of the Charleston Carriage Horse Advocates and the Charleston Animal Society's "Equine Cruelty Committee." See R.O.A. Vol. 1, page 364 [Christoff affidavit December 2, page 5, and Ex. 1]: "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."

Joe Elmore, Chief Executive Officer of the Charleston Animal Society pledged $82,000.00—95,000.00 of taxpayers' money to hire a public relations firm, Forbes-Tate 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)

The defendants consistently lobbied City Council to ban carriage tours presenting "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.)

Specifically labeling plaintiff an animal abuser. R.O.A. Vol. 1, page 455 [Christoff affidavit page 7]

Making knowingly false statements to newspaper and broadcast journalists. (Big John could not get up for 30 minutes; Big John collapsed from exhaustion.) These activities are strikingly similar to the facts in *Gertz* and *Erickson*.

When the video generated attacks on the Petitioner, the Respondents jointly celebrated the damage they were doing to the plaintiff. (R.O.A. page 953 April 23, 2017) e-mail quoted on page 22 of Petitioner's Brief to the Court of Appeals. This is only four days after the event and the Charleston Animal Society's Chief Executive Officer, Joe Elmore chimes in: "Kudos" to 11 million views. That is: kudos to 11 million people in four days believing Petitioner worked Big John to exhaustive collapse.

The defendants knew Big John "stumbled" and did not "collapse." R.O.A. Vol. 3, page 953[Poag email]

The defendants are constantly reminding the participants to keep their communications "confidential" even though they all represent registered charities that are statutorily precluded from disseminating misleading information. *Passim*

The defendants rigorously patrolled their web presence to strike and truthful information and to bar such persons from the site. They even threatened to sue one of the Petitioner's disclosed witnesses who gave an affidavit about being barred.

When informed of the harm they were causing and asked to issue a correct statement, the Respondents refused. (R.O.A. Vol. 3, page 1255 [January 31, 2021 30(b)(6) deposition of Ellen Harley, page 26]

The Respondents used I.T. specialists to disrupt the plaintiff's reservation page and purchased Google keywords to make sure any potential customer of Charleston Carriage Works was diverted to their web site. The evidence shows the Respondents only interfered with Petitioner and not the other three carriage companies. (R.O.A. Vol. 1, page 416 [4th sup. Affidavit of B. Christoff and exhibits]

The Respondents used taxpayer funds to purchase Google ads specifically tailored to divert customers from Petitioner's reservation page. (R.O.A. Vol. 1, pages 416 and 440) [4th Supplemental Affidavit of B. Christoff, Affidavit of Steve Abrams])

The Respondents purchased domain names close to Charleston Carriage Works to divert customers away from plaintiff and then celebrated their subterfuge: "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]) (Interestingly, Ellen Harley's Congressional campaign manager, Allen Raymond, *How to Rig an Election*, served time for jamming the opposing party's phone lines on election day so poll managers or electors seeking information could not reach the

party. That scheme is similar to the strategy developed by the Respondents here.)

Four days after publishing the video, the Respondents identified Charleston Carriage Works principal, Broderick Christoff, by name thereby bringing the threat of violence to his home. (R.O.A. Vol. 2, page 860 [Supplemental Memorandum of Law, Ex. 4 affidavit of Broderick Christoff])

As set forth in Argument 1, Ellen Harley and her Charleston Carriage Horse Advocates successfully prevented Petitioner from obtaining any meaningful discovery, and to this day never permitted the plaintiff's expert to conduct a routine forensic exam of their electronic media.

And finally, as mentioned above, Ellen Harley filed licensing complaints against plaintiff's veterinarian, plaintiff's lawyer, and filed a spurious O.S.H.A. complaint against Petitioner. [R.O.A. Vol. 1, page 376 [Christoff 2d Supp. affidavit]

This is a sample of the evidence Petitioner developed after only one of the defendants participated in discovery, and one thing is clear: the Court of Appeals either overlooked this evidence or ignored it. It is impossible to review this evidence (especially applying the summary judgment standard) and fail to see (1) a combination (2) to commit unlawful acts (3) together with the commission of overt acts in furtherance of the agreement, and (4) damages. The Petitioner testified he spent $5,000.00 a month trying to combat the interference with his reservation page and battling the negative reviews generated solely by the defendants' campaign of misinformation. See R.O.A. Vol. 1, page 417: "I had to pay Google $5,000.00 a month after April 19th to combat what the defendants were doing to me." He provided detailed information about the drop in reservations and the loss of income, and the defendants did not challenge the Petitioner on damages. The Court of Appeals' Opinion is far out of step with South Carolina law, and the Court should grant a writ of certiorari to correct these errors.

5. **THE PETITIONER CITED *DENNIS V. SPARKS*, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980) AS AUTHORITY FOR ITS CLAIMS BROUGHT UNDER ARTICLE I, §3 AND GROSS NEGLIGENCE AND RECKLESS CONDUCT AND PETITIONER IS ALLOWED TO RELY ON THE SAME EVIDENCE FOR DIFFERENT CLAIMS. THE PETITIONER FULLY IDENTIFIED THE LEGAL ISSUE AND CITED CONTROLLING AUTHORITY FOR THE CAUSES OF ACTION AND DID NOT "ABANDON" THE ISSUE ESPECIALLY WHERE THE COURT OF APPEALS DENIED PETITIONER'S REQUEST TO EXCEED PAGE LIMITATIONS.**

The fifth section of the Opinion under review refuses to reach the Petitioner's issue raised in the second cause of action in its complaint, alleging a violation of civil rights under Article I, § 3 of the South Carolina Constitution (privileges and immunities and due process) and alleging gross negligence and recklessness because the defendant, Charleston Animal Society is a quasi-governmental agency.

Article I, § 3 of the South Carolina Constitution says:

> Privileges and immunities; due process; equal protection of laws.
> The privileges and immunities of citizens of this State and of the United States under this Constitution shall not be abridged, nor shall any person be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

In concluding Petitioner "abandoned" this issue, the Court of Appeals forgot that on January 5, 2023, it denied the Petitioner's request to exceed the page limitations on briefs. Petitioner recognizes that the workload of The Court of Appeals is overwhelming, but it cannot on the one hand limit Petitioner's arguments while on the other hand conclude Petitioner insufficiently addressed issues. More importantly, the Court of Appeals overlooks Rule 8, quoted above on page 27 that allows plaintiffs to assert multiple prayers for relief on the same allegations. Because the Court limited the Petitioner's submission, Petitioner led with the strongest case, *Dennis v. Sparks*, 449 U.S. 24, 101 S.Ct. 183, 66 L.Ed.2d 185 (1980), which allowed a civil rights claim against a private party who conspired with a judicial officer to injure the plaintiff. The Petitioner included gross negligence and recklessness in anticipation of a state tort claims defense. The Petitioner's claim is based on the same facts and the same evidence it relies on for defamation, conspiracy, and intentional interference with business relations, which includes allegations of Respondents attempting to interfere with its franchise agreement with the City. The "Equine Cruelty Committee" is specifically tailored to undercut Petitioner's Franchise Agreement just like the "Charleston Carriage Horse Advocates" is specifically tailored to disrupt Petitioner's reservations page by using

tax money to purchase key words to divert customers away to Respondents' web site. The Respondents are free to argue that *Dennis v. Sparks* is not controlling, but the Court of Appeals cannot plausibly conclude that Petitioner abandoned its legal position by conforming to the Court's page limitations and relying on a United States Supreme Court opinion. Moreover, the case cited by the Court of Appeals for Petitioner's putative abandoning issues is not remotely relevant for two reasons. First, the Appellant in *Mulherin-Howell v. Cobb*, 362 S.C. 488, 608 S.E.2d 587 (2005) cited no authority for its position, or as the Court of Appeals said in *Mulherin*: "Initially, we note the Counsel failed to cite any supporting authority for this position." The Petitioner here cited a controlling U. S. Supreme Court case applicable to the alleged State Constitution violations, and relying on the same evidence for alternative theories of recovery does not render arguments "conclusory." Moreover, in the *Mulherin* case cited by the Court of Appeals, the appellate court discussed the allegedly abandoned issue on its merits, which it did not do here: "Even if properly presented, the issue fails on the merits." *Mulherin-Howell, supra*.

Not only did the Court of Appeals overlook Petitioner's authority and the application of Rule 8 of the *Rules of Procedure*, but also it failed to recognize the present case raises profound issues of speech. This Court made clear in *Whitehurst* that where speech intersects with tortuous conduct, the Court will apply a close analysis. See *Whitehurst v. Town of Sullivans Island*, ___ S.C. ___, ___ S.E.2d ____ (Opinion No. 2025).

As the Petitioner's briefing to the Court of Appeals shows, specifically pages 44-45, the Petitioner fully addressed the civil rights violations and included allegations of reckless conduct to cover the non-governmental defendants, Harley and her charity, Charleston Carriage Horse Advocates. Because the Charleston Animal Society is an agency of the County (and supported by the municipalities of North Charleston and Mt. Pleasant), it is a quasi-governmental agency as the

affidavit of Joe Elmore at page Vol. 1, pg. 248: "The funding allotted to CAS by the County in any given year varies and is determined on a yearly basis in connection with the approval of the County budget." (The City of North Charleston donated the site, and other municipalities contribute to its operation.) Harley's and Charleston Carriage Horse Advocates' status is less clear, in part because neither one ever provided disclosure of its financial relationship to the Charleston Animal Society so in an abundance of caution, the Petitioner included allegations of gross negligence and reckless conduct as to them for the same acts alleged against the Charleston Animal Society. In the briefing to the Court of Appeals, the Petitioner pointed out that the evidence on the civil rights/gross negligence claim was the same evidence that supported the other claims as specifically allowed under Rule 8. See page 44 of Petitioner's Brief to the Court of Appeals: "These elements are indistinguishable from the civil rights claim—see *Dennis v. Sparks*, 449 U.S. 241." It is one thing for a Court to say it disagrees with a litigant, but it is a demonstrable error to say an issue is abandoned when Petitioner separately and specifically identified and argued the question, supported by authority. This error is another reason this Court should grant a writ of certiorari to review Opinion No. 153.

6. THE PETITIONER PLEAD INTENTIONAL INTERFERENCE WITH BUSINESS RELATIONS AND THE COURT OF APPEALS ERRED BY ANALYZING A DIFFERENT CAUSE OF ACTION AND IGNORING THE EVIDENCE.

In its sixth section the Court of Appeals again deviated from the summary judgment standard by narrowly construing the Petitioner's pleadings to an improperly narrow view of the issue before the Court, which the Court of Appeals misidentified as being a cause of action for "tortuous interference with a contract." Even though the Court of Appeals stated Petitioner's claim was "for intentional interference with business relations," it applied a different analysis, citing *Sea Island Food Grp., LLC v. Yaschik Dev. Co., Inc.*, 433 S.C. 278, 857 S.E.2d 902 (Ct. App. 2021) and

reduced Petitioner's issue to a question involving the Petitioner's franchise agreement. The Court of Appeals missed the plaintiff's allegations by a country mile misconstruing it as "interference with contractual relations," instead of applying the correct law to the Petitioner's pleadings, which are "interference in business relations." The elements of this tort are well known:

> To recover on a cause of action for intentional interference with prospective contractual relations, we hold the plaintiff must prove: (1) the defendant intentionally interfered with the plaintiff's potential contractual relations; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff. See *Leigh Furniture and Carpet Co. v. Isom*, 657 P.2d 293 (Utah 1982); see also Blake v. Levy, 191 Conn. 257, 464 A.2d 52 (1983); *Straube v. Larson*, 287 Or. 357, 600 P.2d 371 (1979); *Restatement (Second) of Torts* § 766B and 767 (1977).
>
> *Crandall Corp. v. Navistar Intern. Transp. Corp.*, 395 S.E.2d 179, 302 S.C. 265 (S.C. 1990)

While it is true that the defendants attempted to interfere with Petitioner's franchise agreement by alleging various delicts through its alter ego, the "Equine Cruelty Committee," urging the City to ban carriages, the defendants spent significant sums and significant time to put Petitioner out of retail business by painting him as an animal abuser and by interfering in its reservations page to drive away his business. The record in this case is bursting with evidence of Respondents' efforts (1) to interfere with the plaintiff's potential contractual relations by purchasing keywords to intercept Petitioner's customers and divert them to their page; (2) for an improper purpose or by improper methods; (3) causing injury to the plaintiff. The Court of Appeals ignored Petitioner's Fourth Affidavit (R.O.A. Vol. 2, pg. 416), which demonstrates how Respondents diverted his customers and ignored the affidavit of Petitioner's expert witness, Steve Abrams at Vol. 1, pg. 440 of the Record on Appeal. The Court of Appeals ignored the summary judgment standard even though this evidence is compelling.

The Record demonstrates the lengths Respondents implemented to disrupt the Petitioner's reservations pages, causing him to spend $5,000.00 a month trying to combat their online interference. See R.O.A. Vol. 1, page 375: "Ellen Harley and Joe Elmore decided early on to single

me out and get me out of business, and for those reasons, she picked a name for her "charity" to mimic my company's name so she and the Charleston Animal Society could try to put me out of business by making sure that my customers searching for "Charleston Carriage Works" are diverted to their "charity." See also Petitioner's explanation as to how a computer search for "Charleston Carriage Works" diverted customers to Harley's group: "This proves the defendants were specifically targeting the exact business name of 'Charleston Carriage Works,' and the defendants were hoping to get away with this by suppressing the discovery material." (R.O.A. Vol. 1, page 418) The Record contains direct, unassailable proof of the Respondents' conduct at pages 420-425, followed by emails obtained in discovery demonstrating the Respondents' strategy of purchasing keywords to divert Internet traffic, or as Charleston Animal Society's "media specialist" Dan Krosse stated on May 3, 2018: "They are going to s#!t their pants!" The Court of Appeals considered none of this, even turning a blind eye to Petitioner's expert witness who at pages 440-442 cogently and succinctly explained how the Respondents implemented this Internet fraud. Instead of evaluating the evidence in light of the pleadings, the Court of Appeals veered off to an analysis for a cause of action that Petitioner did not plead. Had the Court of Appeals applied the *Navistar* elements to the evidence presented below, it would have concluded that Petitioner far surpassed the summary judgment threshold for a claim of interference in business relations

While the Respondents have a long history of attempting to interfere with Petitioner's franchise agreement, they originally limited their efforts through lawful lobbying. However, when advocating for legislative change failed, they shifted their strategy, and the Record contains plenty of evidence of direct interference directly tailored to drive off Petitioner's customers. The Respondents' misrepresentations to City Officials are well documented, for example at Vol. 2, pages 362-64: "Both Ellen Harley and Joe Elmore have made numerous statements that our temperature readings

are not accurate because our employees take them and log them for the City." The Charleston Animal Society's subcommittee, "Equine Cruelty Committee," headed by Ellen Harley routinely appears before the governing authority and spews misinformation.

The Court should grant certiorari to correct this error.

7. THE COURT OF APPEALS IGNORED RULE 15, *S. C. RULES OF CIVIL PROCEDURE* AND DID NOT APPLY ANY DISCRECTIONARY STANDARD TO PETITIONER'S MOTION TO AMEND THE PLEADINGS.

The seventh and eighth sections of Opinion No. 153 affirm the Master-in-Equity's decision denying amendments to the pleadings on identical grounds and can, therefore, be treated together. The Court of Appeals concedes that a trial court has "wide latitude in amending pleadings," but it made no effort to determine if the Master-in-Equity did or did not exercise discretion in denying the motions to amend. The failure to apply discretion is an error of law as discussed above on pages 11-13. The Court of Appeals affirms the Master-in-Equity on a principle of law that does not exist, citing *Valentine v. Davis*, 319 S.C. 169, 460 S.E.2d 217 (Ct. App. 1995). This is a strange case to ground its decision, because as the Court of Appeals determined in *Valentine*, the proposal to add plaintiffs to the case were strangers to the action having no connection to the case except for being represented by the same lawyer bringing the case! In other words, the proposed new parties in *Valentine* had no connection to the case whatsoever and they were attempting to relitigate a case they already lost in federal court. Here, the proposal to add the principals of Charleston Carriage Works as parties plaintiff was only to address the defendants' contention that some of their claimed damages were "personal." Their addition added no new causes of action or required additional discovery because the allegations and the evidence remains exactly the same.

The reasoning in the Opinion under review's prohibits any plaintiff from ever adding an additional plaintiff or an additional defendant under any circumstances. This is a palpable error of

law. It does not matter if the analysis is under Rule 15 or Rule 20, but it is impossible to imagine a more incorrect statement of law. The proposed amendments here were to add the principals of Charleston Carriage Works to answer the assertions of the Respondents that some of their claimed damages were "personal" and could not be advanced by Charleston Carriage Works. The addition of the principals as co-plaintiffs changes nothing, requires no additional discovery. The alleged "personal" claims arise out of the same transaction or occurrence as the original complaint. "All persons may join in one action as plaintiffs if they assert any right to relief jointly, severally, or in the alternative in respect of or arising out of the same transaction, occurrence, or serious of transactions or occurrences and if any question of law or fact common to all these persons will arise in the action." The Court of Appeals never mentions, let alone explains, how Petitioner fails to fulfill the requirements of Rule 20 in this circumstance. The Master-in-Equity denied the motion because he concluded the defendants would be "prejudiced" without explaining how and erroneously concluding that the amendments could not survive a statute of limitations defense without considering that a statute of limitations defense is an affirmative defense that must be plead and proved. The only "prejudice" hinted at is that the defendants might be required to do additional work, which is not the definition of legal prejudice. Neither the Master-in-Equity nor the Court of Appeals identified any legal prejudice as that term is defined. Legal prejudice means an inability to defend. See *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962), *City of North Myrtle Beach v. Lewis Davis*, 360 S.C. 255, 599 S.E.2d 462 (Ct. App. 2004), *Lee v. Branch,* 373 S.C. 654, 647 S.E.2d 197 (2007)

As for adding additional defendants, it was not until the defendants produced Ellen Harley as a 30(b)(6) witness on January 31, 2020, that the plaintiff heard of Domingue Advertising or Digital Consulting, Inc. as possibly responsible for the defamation. The January 31, 2020 disclosure was the

first time plaintiff heard those names. For the first time, Ellen Harley, the 30(b)(6) designated witness for the Charleston Carriage Horse Advocates testified that others, including other Board members, might be responsible for the dissemination of the defamatory video and engaged in a conspiracy to cast Petitioner in a false light and/or interfere with Petitioner's reservations page. To this date, neither Harley nor Charleston Carriage Horse Advocates produced any meaningful discovery and successfully suppressed Petitioner's efforts to get administrator keys to their electronic communications. They did not produce any. As a result, three months later after hearing the identification for the first time, Petitioner moved to amend the complaint on April 6, 2020, (R.O.A. Vol. 1, pg. 242) to add the newly identified parties. The Court of Appeals ignored that the Respondents did not file their responsive pleadings until November 20, 2019, fifteen months after Petitioner filed its summons and complaint and five months prior to Petitioner's motion to amend. Notably, the Answers made no mention of either Domingue Advertising or Digital Consulting, so it is impossible to allege that the Petitioner acted with delay. As for the other defendants, they are alleged principals of the Charleston Carriage Horse Advocates charity and hardly qualify as "new" defendants. In short, the Court of Appeals failed to apply the well settled law on amendments and neither the Master-in-Equity nor the Court of Appeals exercised anything close to discretionary evaluation.

Rule 15 of the *South Carolina Rules of Civil Procedure* requires that amendments be liberally granted in the interests of justice. The addition of new parties is the same standard under Rule 20. New parties can be added if the claims arise out of the same transaction or occurrence. *Chan v. Thompson*, 302 S.C. 285, 395 S.E.2d 731 (Ct. App. 1990): "We affirm the decision of the master to add the other companies owned by the Chans to the litigation on the breach of contract claim. There is some evidence these companies were set up by the Chans and utilized to channel sales away from Lisa Floral

in such a way as to deprive the Thompsons of sales commissions." The wellspring of commentary on the rule allowing amendments comes from the United States Supreme Court case of *Foman v. Davis*, 371 U.S. 178, 83 S.Ct. 227, 9 L.Ed.2d 222 (1962):

> The Court of Appeals also erred in affirming the District Court's denial of petitioner's motion to vacate the judgment in order to allow amendment of the complaint. As appears from the record, the amendment would have done no more than state an alternative theory for recovery.
>
> Rule 15(a) declares that leave to amend 'shall be freely given when justice so requires'; this mandate is to be heeded. See generally 3 Moore, Federal Practice (2d ed. 1948), 15.08, 15-10. If the underlying facts or circumstances relied upon by a plaintiff may be a proper subject of relief, he ought to be afforded an opportunity to test his claim on the merits. In the absence of any apparent or declared reason—such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed, undue prejudice to the opposing party by virtue of allowance of the amendment, futility of amendment, *etc*.—the leave should, as the rules require, be 'freely given.' Of course, the grant or denial of an opportunity to amend is within the discretion of the District Court, but outright refusal to grant the leave without any justifying reason appearing for the denial is not an exercise of discretion; it is merely abuse of that discretion and inconsistent with the spirit of the Federal Rules.

Neither the Master-in-Equity nor the Court of Appeals discussed, let alone found any alleged prejudice, other than the possibility of some additional discovery, which is not "prejudice" under South Carolina law. (See cases cited above.) The Respondents would not suffer any legal prejudice as the Courts define that term by allowing the amendment, and as the record demonstrates, the case was not on a trial roster, and Ellen Harley and the Charleston Carriage Horse Advocates obstructed discovery throughout the case, and Respondents cannot complain about delay when it took them 15 months to file their responsive pleadings. Therefore, no Respondent can identify either prejudice or plaintiff's failure to pursue discovery diligently. The Court should grant certiorari to correct this error of law.

8. THE COURT OF APPEALS APPLIED NO DISCRETIONARY ANALYSIS TO PETITIONER'S ONLY REQUEST TO EXTEND THE SCHEDULING ORDER ONE TIME, IGNORING THE DEFENDANT'S FAILURE TO ANSWER FOR 461 DAYS, DILATORY AND OBSTRUCTIVE DISCOVERY INTERFENCE, COUNSEL'S LENGTHY HOSPITILIZATIONS AND THE DELAYS CAUSED BY COVID SHUTDOWN

The final section of the Opinion under review should shock the conscience of the Court. As set

forth above, the defendants did not answer the complaint until November 20, 2019, 79 days prior to the **only** scheduling Order expiring, which had never been extended. In between filing the complaint and the defendants answering the complaint, Petitioner's lawyer suffered a first heart attack in April 2019, requiring emergency hospitalization. That hospitalization resulted in a diagnosis requiring an open-heart procedure to address. Periodic hospitalizations followed from April to August to "work up" to an August surgical replacement of the aortic arch, the aortic valve, and related procedures. The surgery took place on August 20, 2019, which required lengthy hospitalization followed by cardiac rehabilitation. Moreover, during the procedure, the surgeon nicked the laryngeal nerve, which paralyzed counsel's vocal cords, reducing counsel's speaking voice to a whisper for about six months. As counsel recovered from the procedure, the COVID-19 pandemic struck, resulting in the emergency closure of the Courts for many months. The Governor issued his first Emergency COVID Order on March 11, 2020 (Order 2020-07), and from that point forward, the State rapidly began shutting down. Under the circumstances of Harley's and the Charleston Carriage Horse Advocates' obstruction of discovery, the delay of filing Answers for 461 days, leaving just 79 days before the original Consent Order expired, and the delays brought about by a serious illness and COVID restrictions make the refusal to extend a scheduling order a single time unconscionable. Neither the Master-in-Equity nor the Court of Appeals applied any discretionary analysis to this fact, relying entirely on a headnote principle that scheduling orders can be extended "whenever justice so requires." Petitioner is at a loss to formulate a set of facts more deserving for a single extension as these, and Opinion No. 153 is controlled by an error of law for which this Court should grant certiorari.

CONCLUSION

The Court of Appeals gave this case a cursory review even though it raises important

Constitutional issues of the limits of free speech and the limits of using speech to attack others. "Good name in men and women is the immediate jewel of their souls." The Master-in-Equity issued a self-refuting, contradictory Order on discovery, never applied the proper summary judgment standard, and ignored this Court's binding precedent in *Erickson, Garrad*, and *Cruce* as to limited public figure, the "of and about" standard, the overwhelming evidence of malice, and misapplied the elements of defamation, conspiracy, intentional interference in business relations and violation of the Petitioner's basic constitutional rights with the facts of this case. The Court of Appeals merely affirmed all this with barely any discussion. It did nothing more than rubber stamp the Master-in-Equity's palpably erroneous rulings. The Court should grant a petition for writ of certiorari to review the decision of the Court of Appeals to address the important constitutional issues raised and to correct the Court of Appeals' refusal to adhere to controlling precedent.

Respectfully submitted,

August 20, 2025

/s/Thomas R. Goldstein
Thomas R. Goldstein, #2186.
Belk, Cobb, Infinger & Goldstein, P.A.
Attorneys for Respondent
P. O. Box 711121
N. Charleston, South Carolina 29415-1121
(843) 729-0928
E-mail: tgoldstein@cobblaw.net