RECEIVED

Oct 10 2025

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM PICKENS COUNTY
Court of Common Pleas
Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-001851

Andrew Pampu, ... Petitioner,

v.

Erin Wingo, David Wingo, and Colin J. Gahagan……. Respondents.

RESPONDENTS ERIN WINGO AND DAVID WINGO'S RETURN IN OPPOSITION TO APPELLANT-RESPONDENT'S PETITION FOR WRIT OF CERTIORARI

C. Mitchell Brown (SC Bar No. 12872)
E-Mail: mitch.brown@nelsonmullins.com
Madison C. Guyton (SC Bar No. 105205)
E-Mail: madison.guyton@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

John M. Grantland, Esquire (S.C. Bar No. 64158)
E-Mail: jgrantland@murphygrantland.com
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

Attorneys for Respondents-Appellants Erin Wingo and David Wingo

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page(s)

Federal Cases

South Carolina Cases

Other State Cases

Statutes

Other Authorities

INTRODUCTION

The Petition to this Court relates to a 2015 incident between two students then at Clemson University. The students have long since graduated and moved on to their respective careers. The 2015 incident led to multiple lawsuits in both state and federal court, as well as other judicial proceedings. Respondents Erin Wingo ("Ms. Wingo" [1]) and Dave Wingo ("Mr. Wingo) submit that the Court of Appeals has reached the correct result and this Court should deny the Petition for Writ of Certiorari.

In response to a Title IX complaint, Clemson University ("Clemson") instituted an investigation of a sexual encounter between Andrew Pampu ("Pampu") and Ms. Wingo. As a result of the investigation, and no doubt based in part on Pampu's own statements about the incident and surrounding circumstances, Clemson charged Pampu with violating various Clemson University General Student Regulations. Based on the testimony and information presented at an administrative hearing (the "Clemson Administrative Hearing"), Clemson notified Pampu of its decision (the "Clemson Administrative Decision") that Ms. Wingo was "incapacitated and unable to give consent which [Pampu] should have reasonably known," and Clemson suspended Pampu for five months. The Clemson Administrative Decision included permission for Pampu to return to Clemson under certain conditions, but he did not want to comply with those conditions. Pampu exhausted Clemson University's appeal process, during which Clemson repeatedly upheld the Clemson Administrative Decision. Pampu did not attempt to seek state court judicial review at the conclusion of the Clemson appeal process. Instead, he filed an action (the "Clemson Action") in federal court naming as defendants Clemson University, Clemson University Board of Trustees, and several of Clemson's individual employees. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957,

[1] This Return refers to the Wingos as did the Court of Appeals in its June 11, 2025 decision.

2019 WL 1383822 (D.S.C. Mar. 27, 2019) (unpublished). In the Clemson Action, Pampu asserted claims for violation of due process (Fourteenth Amendment) and breach of contract, among others. In the Clemson Action, Pampu asserted that the findings in the Clemson Administrative Decision were factually incorrect and that the Clemson Title IX process, hearing, and procedures were inadequate and illegal. Ultimately, the parties to the Clemson Action entered a settlement agreement (the "Clemson Settlement"), which, among other things, reinstated the Clemson Administrative Decision, fully and finally resolved Pampu's claims, and compensated Pampu. The Clemson Settlement reads in pertinent part: "Clemson University will reinstate the hearing board's decision of February 29, 2016 as upheld by the University Vice President of Student Affairs." (R. 3190). After agreeing to the Clemson Settlement, Pampu thereafter challenged it, arguing it was void. *See Doe*, 2019 WL 1383822 at *2 (citing ECFs Nos. 75, 90). Pampu's arguments in this regard were resolved by the federal district court, who rejected his arguments and who concluded that the Clemson Settlement was enforceable. *See id*. at *3. Pampu did not appeal the federal district court's ruling.

Instead, Pampu pursued claims for defamation and civil conspiracy against Ms. Wingo, her father Mr. Wingo, and Colin J. Gahagan ("Gahagan"). The bases of his claims were that (1) Ms. Wingo, Mr. Wingo, and Gahagan defamed Pampu by stating he raped[2] Ms. Wingo, and (2) Ms. Wingo and Gahagan conspired and lied during the Clemson Administrative Hearing to tortiously interfere with and cause Clemson to breach the contract between Clemson and Pampu. The Court of Appeals held that there were two sources of collateral estoppel here warranting JNOV on Plaintiff's state tort claims. First, the Clemson Settlement, ruled to be enforceable by the federal

[2] There is no dispute here that sexual intercourse occurred. The issue is whether this occurred by consent, or whether Ms. Wingo was too intoxicated or incapacitated to consent.

district court adverse to Pampu, which was not appealed. Second, the failure to seek judicial review in state court of the final administrative rulings by Clemson University. [3] Either ground independently warrants denial of the Petition here.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

I. Did the Court of Appeals properly order JNOV be entered on Pampu's defamation claim, under the doctrine of collateral estoppel based on the Clemson Settlement and enforcement order and/or the failure to seek judicial review from the final Clemson administrative proceedings?

II. Did the Court of Appeals properly affirm the circuit court's order entering JNOV on Pampu's civil conspiracy claim where the record does not contain evidence of a conspiracy to commit an unlawful act or lawful act by unlawful means to have Pampu removed from Clemson, nor does the record contain evidence of any damages arising from the alleged conspiracy?

COUNTERSTATEMENT OF THE CASE

The narrative told to this Court by Pampu in the Petition is a portrayal of a totally innocent Pampu, lured into a sexual encounter, only after which Ms. Wingo became drunk. It is a narrative that Pampu, realizing after sex that Ms. Wingo had become drunk, assisted and provided care for her and then was later the victim of a conspiracy to have him thrown out of Clemson by Ms. Wingo and Gahagan. Facts are stubborn things. Pampu's own statements undermine this narrative.

On October 24, 2015, Ms. Wingo, a 5'2" Clemson University freshman, drank approximately 13.5 ounces of liquor in a friend's dorm room over the course of one hour and then proceeded to go to a fraternity party, taking a plastic bottle with vodka in it with her. (R. 1637:2–1638:22; R. 1641:23–1642:7). The fraternity party's attendees, including Pampu, observed Ms. Wingo was drunk, before the sexual encounter. (R. at 1488; R. 2159:1–2161:8). Pampu stated that

[3] Several arguments regarding new trial entitlement were also advanced by the Wingos and Gahagan, but the Court of Appeals did not address those arguments because there was no need to do so.

prior to leaving the party that he "he could tell she was drunk. She was loud and having a good time," and he also knew that she had a plastic water bottle containing straight vodka because he drank from it. (R. at 1488). At this fraternity party, Ms. Wingo and Pampu "made out," and they walked from the party to a location between a wooden fence and a shed, drank more vodka from the plastic bottle, and engaged in intercourse. (R. 1438:10–18; R. 1438–46; R. 1506:7–10; R. 1508–14). Starting from the moment a friend at the party walked her over to Pampu, Ms. Wingo only remembers small portions of the entire encounter with Pampu, such as being slapped on the behind and Pampu saying "I'm finished" and being up against a fence. (R. 1647:10–16, R. 1709:8–1710:21).[4] On the walk back to the party, Pampu admitted that Ms. Wingo was "extremely emotional," stumbling, and "on the *bad end* of drunk." (R. 1521:4–11) (emphasis added).

After Pampu left Ms. Wingo on the front steps of the fraternity party, where she was witnessed hysterically sobbing, her friends assisted getting her to her dorm room. (R. 1710:18–25; R. 1711:1–21; R. 2161:21–25; R. 2164:2–12). On the way to the dorm room, and once there, Ms. Wingo vomited on multiple occasions, and upon arriving at her dorm, her friends had to help her get to the bathroom, had to find a resident advisor to open Ms. Wingo's dorm room for her because she lost her key, and had to assist her in getting into her lofted bed. (R. 1656:20–1675:13; R. 2163:2–2165:1). Throughout this process, Ms. Wingo was upset, crying, and not very coherent. (R. 2163:2–2164:16). Ms. Wingo's texts immediately after this encounter were gibberish and nonsensical. (R. 1733:1–1734:12).

In contrast, after leaving Ms. Wingo, Pampu texted a fellow fraternity member about the sexual intercourse, stating, "I fucked a chick by a garbage thing behind Chipotle," and a fraternity

[4] Pampu cites to his own testimony that Ms. Wingo walked to the back of the building of the fraternity party with him to support the position that she consented to intercourse. Pampu Petition for Writ of Certiorari at 3 (citing R. 1438:10–18).

member subsequently shared the text with Pampu's entire fraternity pledge class. (R. 1530:16–22; R. 1531:8–11; R. 1713:12–20; R. 1806:14–24; R. 1828:5–11).

Later, a Clemson resident assistant learned of the sexual encounter from Ms. Wingo's roommate and filed a report with Clemson University's Office of Community and Ethical Standards ("OCES"), which resulted in a formal Title IX complaint to Clemson by Ms. Wingo on November 11, 2015. (R. 48; R. 1572:9–16; R. 172:3–5). Clemson instituted an investigation of the sexual encounter, and the investigation resulted in Clemson charging Pampu with the violation of four Clemson University General Student Regulations, including sexual misconduct. (R. 52; R. 340–41). Following a hearing involving multiple witnesses where lawyers were present, on February 29, 2016, Clemson OCES sent a letter (the "Clemson Administrative Decision") informing Pampu that "[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which [Pampu] should have reasonably known." *Id*. Clemson imposed several sanctions on Pampu, including a five-month suspension with the opportunity for re-enrollment after counseling and the completion of an approved course on sexual assault awareness. (R. 345–46). Because he did not want to comply with the Clemson Administrative Decision's conditions of his return, Pampu chose not to return to Clemson following his suspension. (R. 1571:9–17). Pampu exhausted Clemson University's appeal process, and Clemson repeatedly upheld the Clemson Administrative Decision. (R. 348–59; R. 3080–83; R. 3092–95; R. 3115). Pampu did not attempt to seek state court judicial review.

Instead, on June 15, 2016, he opted to file an action in federal court naming as defendants Clemson University, Clemson University Board of Trustees, and several of Clemson's individual employees. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019) (unpublished). Pampu asserted claims for violation of Title IX of the Education

Amendments of 1972, violation of due process (Fourteenth Amendment), breach of contract, breach of the covenant of good faith and fair dealing, negligence, promissory estoppel, and declaratory judgment. (R. 211–293). Pampu claimed in the suit against Clemson that the findings against him were factually incorrect and the Clemson process inadequate and illegal. *See id*. On March 21, 2018, the parties in *Doe v. Clemson* participated in mediation and reached a settlement agreement, which was reduced to writing in the Clemson Settlement. (R. 3190–93). The Clemson Settlement provided for the reinstatement of OCES's factual decision and payment of monies to Pampu from the South Carolina Insurance Reserve Fund on behalf of Clemson and the other named defendants. (R. 3190–91). The Clemson Settlement reads in pertinent part: "Clemson University will reinstate the hearing board's decision of February 29, 2016 as upheld by the University Vice President of Student Affairs." (R. 19; R. 3190). The validity and enforceability of the Clemson Settlement was thereafter challenged and litigated by Pampu as void and resolved by the federal district court, which concluded that the Clemson Settlement was enforceable. *See Doe*, 2019 WL 1383822. Pampu did not appeal the federal district court's determination.

On June 15, 2017, Pampu filed the present action, asserting claims for abuse of process, intentional infliction of emotional distress, civil conspiracy, and defamation. (R. 59–69). The abuse of process and intentional infliction of emotional distress claims were dismissed prior to trial. (R. 28–29). The circuit court conducted a jury trial on March 21–25, 2022. (R. 1338).

The jury was not presented with evidence related to Clemson's Title IX process, Clemson's investigation, the evidence and information Clemson considered in the Clemson Administrative Hearing, the Clemson Administrative Decision, the Clemson Action, or the Clemson Settlement. Instead, in granting a Motion in Limine filed by Pampu which was later reaffirmed at trial, the circuit court excluded all evidence related to Clemson's Title IX process. (R. 1293:4–1294:15; R.

1386:15–1387:23). However, Pampu was permitted to offer testimony from a vocational expert, who claimed that Pampu's "suspension" from Clemson was caused by statements and actions by the Wingos and Gahagan, which in turn caused him to not be accepted into dental school. (R. 1930–59). Essentially, the Wingos were precluded at trial from discussing the ***actual*** basis (which included testimony from witnesses other than Pampu and Ms. Wingo, etc. but also included statements made by Ms. Wingo and Pampu at the time of the Clemson Administrative Hearing) for the Clemson Administrative Decision.

The trial concluded with a jury verdict for Mr. Wingo on the civil conspiracy claim and the following verdicts for Pampu: Civil Conspiracy, as to Ms. Wingo, $2,000,000 in actual damages; as to Gahagan, $1,000,000 in actual damages; Defamation, as to Ms. Wingo, $700,000 in actual damages and $450,000 in punitive damages; as to Mr. Wingo, $230,000 in actual damages and no punitive damages; as to Gahagan, $700,000 in actual damages and $220,000 in punitive damages. (R. 1084–1085). Following post-trial motions, the circuit court entered a judgment notwithstanding the verdicts on the civil conspiracy claims, finding that Pampu failed to establish numerous elements of the civil conspiracy cause of action. (R. 5–7). The circuit court denied the remaining post-trial motions. Cross-appeals followed.

The Court of Appeals properly determined that collateral estoppel applied to the defamation claim, and that the Circuit Court properly determined Pampu could not recover for civil conspiracy because the Record does not include evidence of a conspiracy to remove Pampu from Clemson, or of any damages arising from the alleged conspiracy.

ARGUMENT

I. The Court of Appeals properly ordered JNOV be entered on Pampu's defamation claim, under the doctrine of collateral estoppel.

A. The Court of Appeals properly applied the doctrine of collateral estoppel as Pampu had a full and fair opportunity to address any inadequacies with the Clemson Administrative Hearing, entered the Clemson Settlement instead, which he subsequently contested as unenforceable, lost, and then failed to appeal.

Collateral estoppel applies when an issue was "actually litigated and determined by a valid and final judgment" in a prior suit. *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). Contrary to Pampu's belief, a stipulated judgment arising from a settlement *can* create collateral estoppel, depending on its terms. "The doctrine of collateral estoppel 'is grounded upon concepts of fairness, it should not be rigidly or mechanically applied.'" *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998)); *see also* 46 Am. Jur. 2d Judgments § 469 ("Collateral estoppel is an equitable doctrine. It is founded on principles of fundamental fairness, and fairness is its overriding concern.") (footnotes omitted). Collateral estoppel "conserves judicial resources[] and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153–54 (1979). The application of the doctrine of collateral estoppel by the Court of Appeals to preclude Pampu from pursuing his claims for defamation (and civil conspiracy) aligns with the doctrine's principles of fairness because he had a full and fair opportunity to address, in litigation, his claimed inadequacies of the Clemson Administrative Hearing regarding which he now complains. After some litigation, Pampu opted to enter the Clemson Settlement, *which included a stipulation to reinstate the Clemson University findings against him*, to fully and finally resolve his claims regarding the alleged inadequacies. Pampu thereafter sought to void the Clemson Settlement, which was litigated with Clemson, and suffered an adverse ruling in this regard from the district court, from which he did appeal.

The Restatement of Judgments provides, "A stipulation or consent judgment may have preclusive effect in a subsequent action if the parties have so agreed." Restatement (Second) of

Judgments § 27 (Am. Law Inst.1982), cmt. e. The Clemson Settlement explicitly stated that the Clemson Administrative Decision would be upheld and the initial sanctions would be reinstated. (R. 3190–91). After an enforceability challenge by Pampu in the Clemson Action, the district court determined that the terms of that settlement were "clear and unambiguous" and signed by Pampu. *Doe*, 2019 WL 1383822, at *3.[5] Thus, the Clemson Settlement has a preclusive effect as to the Clemson Administrative Decision as well as to Pampu's breach of contract claim against Clemson, which the Clemson Settlement fully and finally resolved. Further, Section 29 of the Restatement Second of Judgments provides, "A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue." Restatement (Second) of Judgments § 29 (Am. L. Inst. 1982). Therefore, reading Section 29 of the Restatement Second of Judgements in conjunction with Section 27, comment e, Pampu cannot use the purported procedural deficiencies which were the basis for claims he pursued against and settled with Clemson to avoid the preclusive effect of OCES's decision, which he agreed to have reinstated. Furthermore, Pampu's agreement to this reinstatement was determined by the district court to be fully enforceable against him over his objection, which was a judicial decision Pampu did not appeal, and is thus final.

Alone, the Clemson Action and Clemson Settlement, in which Pampu agreed for Clemson to "reinstate [OCES's] decision of February 29, 2016 as upheld by the University Vice President

[5] Pampu has sued his lawyers involved with the Clemson Settlement, in which case he has asserted the settlement "impacted his underlying litigation" (meaning this action). *See Pampu et al. v. Clawson et al.*, Civ. Act. No. 2021-CP-10-01343, Amended Compl. at ¶ 1. This suit was dismissed by the circuit court on various grounds, but on appeal this dismissal was reversed in part by the Court of Appeals. *See Pampu et al. v. Clawson et al.*, App. Case No. 2023-001779, Unpublished Opinion No. 2025-UP-272.

of Student Affairs," precludes Pampu from relitigating whether Ms. Wingo consented to sexual intercourse. (R. 3190–92). The U.S. District Court for the District of South Carolina found the Clemson Settlement is enforceable over objection. *See Doe*, 2019 WL 1383822. Regardless of whether Clemson's OCES is a state agency, Pampu signed a binding agreement for the following findings to be reinstated: "[Ms. Wingo was] incapacitated and unable to give consent which [Pampu] should have reasonably known," and the board suspended Pampu for five months. (R. 345). Moreover, Pampu now improperly argues in his Petition points he failed to make to the Court of Appeals in his Petition for Rehearing. Pampu argues now that the "purpose" of the Clemson Settlement was designed to merely reduce Pampu's suspension. Pampu then refers to what Clemson "may be legally unable" to do regarding the Clemson Settlement, in an effort to cast doubt as to its purposes and meaning. Besides not being properly raised here, these positions were in effect rejected by the district court's conclusion, in the face of Pampu's argument then that the Clemson Settlement was "void," that the Clemson Settlement is enforceable and "clear and unambiguous," a ruling from which Pampu did not appeal. *See Doe*, 2019 WL 1383822 at *3.

Hence, the Court of Appeals properly found, *on these facts*, that Pampu should be collaterally estopped from relitigating the issue of whether Ms. Wingo consented to intercourse. *See Revenue Cabinet, Com. of Ky. v. Samani*, 757 S.W.2d 199, 202 (Ky. Ct. App. 1988) ("It is our conclusion that the application of res judicata and collateral estoppel is best served on a case-by-case basis as opposed to an automatic imposition of a doctrine."). Thus, the Clemson Settlement alone independently supports the Court of Appeals' opinion and result.

B. The Court of Appeals properly determined that Clemson's OCES is a state agency and that collateral estoppel applies from its findings.

Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been before a state agency, a finding by that state agency with regard to an element that

is critical to recovery in the civil action is binding upon the civil court. *Bennett v. South Carolina Dept. of Corr.*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Perry v. South Carolina Law Enforcement Div.*, 310 S.C. 558, 426 S.E.2d 334 (1992). Clemson's OCES qualifies as a state agency under the South Carolina Administrative Procedures Act (the "APA"), S.C. Code Ann. Sections 1-23-10, et. seq., pursuant to (1) the plain language of the statutes, (2) caselaw concluding university boards and committees are subject to the APA, and (3) the reading of the South Carolina Campus Sexual Assault Information Act in conjunction with the APA.

(1) The plain language of the APA qualifies Clemson's OCES as a state agency.

First, Sections 1-23-10(1) and -310(1) of the APA define "agency" to include each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to determine "contested cases."[6] This definition neither includes nor excludes schools, colleges or universities. The APA agency term includes "state boards" that are authorized to hear "contested cases." The term "contested case" is defined as a "proceeding **including, but not restricted to**, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party **are required by law** to be determined by an agency after an opportunity for hearing" S.C. Code Ann. § 1-23-310(3) (emphasis added).

(2) Caselaw concluding university boards and committees are subject to the APA support the conclusion that Clemson is a state agency under the APA.

The Court of Appeals also properly found that Clemson is an administrative agency for purposes of the APA. In previous cases, decisions by university boards and/or committees have been found to be subject to the APA. *See Ross v. Med. Univ. of S.C.*, 317 S.C. 377, 379, 453 S.E.2d 880, 882 (1994) (tenured professor appeals a decision by a faculty committee, that was approved

[6] Additionally, the term "agency" has been defined to include state schools, colleges, and universities. S.C. Code Ann. § 15-78-30(a).

by the universities board of trustees, pursuant to the APA). The decision by the Court of Appeals aligns with how the Court of Appeals has treated secondary school boards whose decisions are subject to judicial review and how several other jurisdictions have treated college student disciplinary proceedings, *see* Op. at 25–27. Further, Pampu's Petition for Writ of Certiorari does not dispute that Clemson is an agency for purposes of the APA.

(3) Reading the APA in conjunction with the S.C. Campus Sexual Assault Information Act supports the conclusion that Clemson is a state agency under the APA.

Finally, the Court of Appeals properly relied on the South Carolina Campus Sexual Assault Information Act to conclude the Clemson Administrative Decision was a contested case determined by a state agency. Clemson's OCES is a board at Clemson that is authorized and required by law to determine rights of parties under both federal and state law. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to "adopt and publish grievance procedures that provide for the prompt and equitable resolution of student . . . complaints alleging any action that would be prohibited by" Title IX or regulations thereunder. 34 CFR § 106.8(b) (Dep't of Education); 28 CFR § 54.135(b) (Dep't of Justice). Such prohibited actions include sexual intercourse without consent.

Similarly, the South Carolina Campus Sexual Assault Information Act requires public South Carolina universities, like Clemson, to establish procedures for institutional disciplinary actions in cases of alleged sexual assault. *See* S.C. Code Ann. §§ 59-105-20(3) ("'institution' means a public two-year or four-year . . . university located in this State") and 59-105-40 (requiring public universities "implement a campus sexual assault policy regarding . . . ***procedures*** followed by the institution once sexual assault occurs and is reported" that "must address" among other things, "procedures for institutional disciplinary action in cases of alleged sexual assault" and

"possible sanctions following the final determination of ***an institutional disciplinary procedure*** regarding sexual assault."). These required procedures make the decisions by Clemson's OCES "contested cases" under the APA, as the term "contested case" is defined in § 1-23-310 as a "proceeding including, ***but not restricted to***, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party are required by law to be determined by an agency after an opportunity for hearing" S.C. Code Ann. § 1-23-310(3) (emphasis added).

Recognizing "[t]he serious nature and consequences of sexual assault and the particular problems caused by sexual assault within a campus community prompt[ed] the General Assembly to encourage institutions of higher learning to develop . . . a comprehensive sexual assault policy to address prevention and awareness of sexual assault and to establish procedures that address campus sexual assaults." S.C. Code Ann. § 59-105-30. It is presumed that by passing a statute, the General Assembly intended to accomplish something and not to do a futile thing. *Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002).

To allow Pampu to relitigate in the form of a defamation/conspiracy action the Clemson Administrative Decision, which he did not appeal to the circuit court, (and instead agreed to reinistate pursuant to the Clemson Settlement Agreement in federal court) would undermine the South Carolina Campus Sexual Assault Information Act's purpose to address the problems caused by campus sexual assaults, and render the Act a futile thing. Therefore, the Court properly relied on the South Carolina Campus Sexual Assault Information Act to conclude the Clemson Administrative Decision resulted from a contested case determined by a state agency. Because Clemson is authorized to enforce institutional disciplinary actions for alleged sexual assaults through contested cases, it is a state agency authorized by law to determine contested cases and its findings are binding upon Pampu. To the extent Pampu now raises issue with the findings of the

Clemson Administrative Decision or with the procedures of the Clemson Administrative Hearing– he had a full and fair opportunity to litigate the concerns he now raised in this defamation/conspiracy matter by seeking judicial review in circuit court by way of appeal (explained further below), and instead brought his federal court action against Clemson and entered into the Clemson Settlement.

C. Pampu's failure seek judicial review after exhausting administrative remedies regarding the Clemson Administrative Decision precludes Pampu from relitigating the issue of Ms. Wingo's consent.

To the extent Pampu believed certain protections of the APA were not provided, he could also have appealed those issues to the state courts of South Carolina. *See* S.C. Code Ann. § 1-23-380. Pampu should not be allowed to collaterally attack the Clemson Administrative Decision via this defamation action after failing to seek judicial review. *See Bennett,* 305 S.C. 310, 408 S.E.2d 230 (finding that a claimant's failure to seek judicial review of an agency's ruling barred his subsequent suit because by not seeking judicial review of the decision, he abandoned his only opportunity to gain a favorable ruling on the issues also raised in the subsequent suit); *McClellan v. Bd. of Regents of State Univ.*, 921 S.W.2d 684 (Tenn. 1996) (noting that allegedly procedural issues in a hearing before the university's board should and could have been raised on appeal).

In his "Fact" section, for the first time, Pampu now argues he should be excused from failing to seek judicial review because while the May 27, 2016, decision of Clemson's President stated, "This decision is final," the decision did not outline his right to appeal. Yet, the finality of the President's May 27, 2016, decision upholding the Clemson Administrative Decision is exactly what gave rise to Pampu's ability to seek judicial review. S.C. Code Ann. § 1-23-380 ("A party who has exhausted all administrative remedies available within the agency and who is aggrieved

by a *final decision* in a contested case is entitled to judicial review.") (emphasis added). The APA does not require an agency to provide notice of the opportunity for judicial review.

Therefore, Pampu could have sought judicial review in the circuit court but instead, he sued Clemson in federal court and asserted claims arising from purported deficiencies in the Clemson Administrative Hearing, and he resolved those claims through the Clemson Settlement, found to be fully enforceable after challenge. (R. 19; R. 3191).

D. The Court of Appeals properly concluded that the Clemson Administrative Decision determined that Ms. Wingo lacked consent.

Following the hearing, Clemson OCES sent Pampu the Clemson Administrative Decision, which concluded that Pampu did commit "Sexual Misconduct." (R. 345–47). "Sexual Misconduct" is by definition nonconsensual conduct,[7] and the letter unequivocally states that, "[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known."[8] (R. 345–47; R. 2106:1–19; R. 2113–2114; R. 3075–77). The finding that Ms. Wingo was incapacitated and unable to consent to the sexual encounter was necessary to support the Clemson Administrative Decision. To determine if Pampu committed "Sexual Misconduct," Clemson's OCES had to determine whether the incident was consensual; it conclusively found that it was not. Therefore, a finding that Ms. Wingo was incapacitated and unable to give consent was necessary to the judgment that Pampu committed Sexual Misconduct.

[7] "Sexual Misconduct" is defined by Clemson's Anti-Harassment and Non-Discrimination Policy as "any other nonconsensual conduct of a sexual nature." (R. 393). Pampu concedes he had sexual intercourse with Wingo.

[8] Under Clemson's Anti-Harassment Policy, in order to find a person failed to receive consent from a person impaired and unable to give consent "due to the influence of alcohol," "there must be a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent." (R. 394–95).

Because the act of sexual intercourse was not in dispute,[9] the only issue to be decided by Clemson was one of consent. The necessary factual finding on lack of consent was made in the Clemson Administrative Decision, which was later affirmed by Clemson's Vice President of Student Affairs, then the President of Clemson, and by Clemson and Pampu in the Clemson Settlement. Although, for reasons not appearing in the record, Clemson did not *charge* Pampu with rape, non-consensual sexual intercourse meets the definition of rape.[10] Substantial truth is of course a defense to defamation. Pampu cannot escape the admitted truth that he had sexual intercourse with Ms. Wingo and the truth that the Clemson Administrative Decision explicitly determined "[Ms. Wingo] was incapacitated and unable to give consent." (R. 345–47). Courts have addressed nomenclature in the defamation context and generally do not require that we all communicate technical legal principles with precision. *See Simonson v. United Press Int'l, Inc.*, 654 F.2d 478, 481–82 (7th Cir. 1981) (finding no defamation when word "rape" used even though crime was second-degree sexual assault because "rape," as understood in common usage, truthfully described the conduct involved); *Nanji v. Nat'l Geographic Soc'y*, 403 F. Supp. 2d 425, 433–34 (D. Md. 2005) (finding that use of "rape" instead of "more technically precise term" did not render article inaccurate, and collecting cases for proposition that "technical errors in legal nomenclature in reports on matters involving violation of the law are of no legal consequence" in defamation actions) (internal quotations omitted). Therefore, the conclusion that Clemson's OCES, as a state

[9] Again, Pampu has never denied engaging in sexual intercourse with Ms. Wingo on the night at issue. (R. 1530:16–1531:16).

[10] "Rape," which is defined by Clemson as the "carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical impairment," applies as a term because of the temporary impairment and corresponding lack of consent, coupled with admitted sexual intercourse. (R. 392).

agency, made finding that Ms. Wingo was incapacitated and unable to give consent was necessary to its judgment that Pampu committed Sexual Misconduct.

E. Pampu's defamation claim improperly seeks to relitigate the Clemson Administrative Decision and pursue damages that he has sought and which were paid via the Clemson Settlement.

Pampu's alleged damages were directly related to the Clemson Administrative Hearing and Decision. For example, Pampu testified that he was unable to graduate from Clemson and that he had to alter his career plans because he could not get into dental school due to his "removal" from Clemson. (R. 1461–64). Pampu's vocational expert testified that Pampu would have gotten into dental school "but for" his removal from Clemson. (R. 1939–43; R. 1948–49). The expert did not place a specific monetary value to this alleged harm, as the trial court did not permit the testimony, and instead generally testified that Pampu suffered a reduced lifetime earning capacity based on the "removal" from Clemson. (R. 1939–43). In his suit against Clemson, Pampu sought "damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects" (R. 291–93); Compl., *Doe v. Clemson Univ.*, No. 8:16-CV-1957, at "Wherefore" (i)–(vi) (D.S.C. Jun. 15, 2016). In his suit against the Wingos and Gahagan, Pampu seeks exactly the same: "damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects." (R. 69).

Based on the testimony and arguments at trial, Pampu directly and repeatedly tied the allegedly defamatory statements to his removal from Clemson. Pampu's counsel often conflated the issue of defamation reputational damages with the Clemson suspension while addressing the jury. For example, during the opening statement Pampu's counsel argued that "[Pampu's] defamation claim is actually based on defendants' false statements to at least 20 other people

calling him a rapist. Because of defendants' actions, [Pampu] will be required to disclose and self-report ***his removal from Clemson*** for the rest of his life whenever he applies to another school or applies to certain jobs. His dreams of becoming an orthodontist will never happen because of defendants' irreversible actions." (R. 1416, line 18 –1417, line 2 (emphasis added)). Also, during closing arguments Pampu's counsel claimed: "[t]he reason [Pampu] cannot fulfill his intended career goal of being an orthodontist is not because of Clemson, but for [Ms. Wingo and Gahagan's] statements, ***Clemson would not have kicked him out."*** (R. 2235:3–6 (emphasis added))[11].

The ultimate decision to suspend Pampu from Clemson was solely based on comments, statements, and evidence from *within* the Title IX process. There is no suggestion that OCES based its decision on anything other than the testimony and evidence uncovered during the Title IX investigation and presented during the Clemson Administrative Hearing. It was Clemson's decision, and its decision alone, to suspend Pampu. Pampu based his alleged damages requests in this matter solely on Clemson's decision to suspend him from school, which was based on the Title IX investigation. Pampu and Clemson agreed to reinstate the Clemson Administrative Decision in the Clemson Settlement, which meant the findings stayed on his record (and thus would be available for viewing by any post-graduate school). Pampu lost his attempt to void the Clemson Settlement, and did not appeal the Order adverse to him to the contrary. The Court of Appeals correctly determined he cannot now try to get a jury in Pickens County to award him damages against the Wingos or Gahagan resulting from the reinstated decision.

II. The Court of Appeals properly affirmed the circuit court's granting JNOV on Pampu's civil conspiracy claim.

[11] As set forth above, however, the Clemson Administrative Decision was based on a variety of evidence and testimony from persons in addition to Ms. Wingo and Pampu. Further, the Decision no doubt was based in part on the statements of Pampu himself at the hearing.

The Court of Appeals also properly affirmed the circuit court's granting a JNOV on Pampu's civil conspiracy claim. To successfully assert a civil conspiracy claim, Pampu had to show "(1) the combination or agreement of two or more persons, (2) to commit an unlawful act or a lawful act by unlawful means, (3) together with the commission of an overt act in furtherance of the agreement, and (4) damages proximately resulting to [Pampu]." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). The Court of Appeals and the circuit court both correctly found that Pampu failed to present evidence to establish that Gahagan and Ms. Wingo planned to commit an unlawful act or a lawful act by unlawful means. Nor did they prove resulting damages.

A. Pampu failed to present evidence that Gahagan and Ms. Wingo planned to commit an unlawful act or a lawful act by unlawful means.

For Pampu's civil conspiracy claim, Pampu asserts, "[t]he act at the heart of Wingo and Gahagan's conspiracy was getting Clemson to breach its contract with Pampu by removing him from school." Pampu Petition for Writ of Certiorari at 21. Specifically, Pampu alleges Gahagan and Ms. Wingo conspired to commit an unlawful act by planning to tortiously interfere with the contract between Pampu and Clemson. Pampu Petition for Writ of Certiorari at 22. "The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer's knowledge thereof; (3) [the wrongdoer's] intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages." *Vortex Sports & Ent., Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008) (quoting *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993)). Through the Clemson Settlement and his failure to raise these arguments in the Court of Appeals, Pampu has waived any arguments he seeks to assert to establish that Clemson's enforcement of the Clemson University's General Student Regulations is a breach

of contract that Gahagan and Ms. Wingo could have conspired to procure. Further, even if Pampu did not waive his arguments, he did not present evidence to support these contentions.

As a threshold matter, the Court of Appeals properly found that Pampu should have been precluded from asserting at trial that Clemson had breached its contract with Pampu. *See* Op. at 8. In the Clemson Settlement, Pampu resolved his breach of contract claim against Clemson and accepted the reinstatement of the full Clemson Administrated Decision, including the findings he now contests in this action.

Further, Pampu has abandoned the argument that Clemson's imposition of sanctions was a breach of Clemson's contractual duties to him. Pampu's opening brief cited no authority to establish a university's sanctions against a student constitutes a breach of a contract between a student and university. *See* Pampu Appellant's Br. at 20–21. Because Pampu failed to cite authority to support his position, the Court of Appeals properly found that Pampu abandoned his argument. Op. at 10; *see Glasscock, Inc. v. U.S. Fid. & Guar. Co*., 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). In concluding Pampu abandoned his argument because he failed to cite authority, the Court of Appeals suggested it would be difficult to find such authority given Clemson's implementation of Clemson's policies, which are informed by statutory requirements, some of which Pampu admitted breaching, and others regarding which agreed to be final. *Id*. Hence, Pampu cannot establish that Ms. Wingo and Gahagan's participation in the Title IX investigation and Clemson Administrative Hearing constituted a plan to intentionally procure the breach of the contractual relationship between Pampu and Clemson.

Now, for the first time, Pampu cites *Hall v. UBS Finc. Servs., Inc.*, 435 S.C. 75, 866 S.E.2d 337 (2021), in an attempt to support his proposition that (1) Clemson breached its contract with Pampu and (2) even if Clemson did not breach its contract with Pampu, Gahagan and Ms. Wingo

still somehow tortiously interfered with the contract. Pampu cannot now raise arguments in his petition for writ of certiorari not previously raised to the courts below. SCACR 242(d)(1); *see also Mazloom v. Mazloom*, 392 S.C. 403, 403-04, 709 S.E.2d 661 (2011) (declining to address an issue not raised in the petition for rehearing); *Foster v. Foster*, 393 S.C. 95, 99, 711 S.E.2d 878, 880 (2011) ("In order to preserve an issue for appellate review, a party must both raise that issue to the trial court and obtain a ruling."); *Long v. Dunlap*, 87 S.C. 8, 68 S.E. 801 (1910) (Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court).

Even if Pampu did not abandon his arguments, *Hall*, does not support the propositions for which he now cites the case. In *Hall*, answering the "narrow" question of "whether a third-party employee's interference [with the contractual relationship between an employer and at-will employee] can be actionable," this Court held, "the absence of an underlying breach by the terminating employer does not shield the third party from liability when she intentionally and unjustifiably procures the termination of an at-will employee." 435 S.C. 75, 88–92, 866 S.E.2d 337, 343–45 (2021). In his petition, Pampu does not establish how the narrow holding in *Hall* may extend to his case. Pampu was not an employee in an at-will contract with Clemson. Instead, the terms of his contract were outlined in Clemson University General Student Regulations. *See Organiscak v. Cleveland State Univ.*, 116 Ohio Misc.2d 14, 762 N.E.2d 1078, 1081 (2001) (determining "[t]he terms of the contract between the university and the student are generally found in the college catalog and handbooks supplied to students."); *Cornett v. Miami Univ.*, 104 Ohio Misc.2d 41, 728 N.E.2d 471, 473 (2000) (determining "[t]he terms of the contract between the university and the student are generally found in the college catalog and handbooks applied to students."). Because the narrow holding of *Hall* does not extend to the facts at issue in this action, the general rule applies: "without a breach of the underlying contract, there can be no recovery"

for tortious interference with a contract. *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

Further, the evidence of record does not establish Clemson breached its contract with Pampu. Because evidence from Clemson OCES's investigation and the Clemson Administrative Hearing were excluded from evidence at the trial, there was no evidence before the jury regarding what Gahagan or Ms. Wingo told Clemson. (R. 1293:4–1294:15; R. 1386:15–1387:23).[12] The Clemson Administrative Decision was necessarily based only on the information that was provided to Clemson in witness interviews and during the Clemson Administrative Hearing. (R. 2118:18–2120:16). The jury heard none of this. Consequently, Pampu failed to prove what supposed "lies" Ms. Wingo and Gahagan told Clemson to lead to his allegedly improper suspension. It is impossible to establish that Ms. Wingo and Gahagan conspired and "induced Clemson to breach its contract with Pampu," Pampu Petition for Writ of Certiorari at 23, without, among other things, proving what Ms. Wingo and Gahagan told Clemson. Further, because evidence from Clemson OCES's investigation and the Clemson Administrative Hearing were excluded from evidence at the trial, there was no evidence before the jury to support a finding that the Clemson OCES's investigation and the Clemson Administrative Hearing could have constituted a breach of the contract between Clemson and Pampu. (R. 1293:4–1294:15; R. 1386:15–1387:23). Therefore,

[12] Pampu references texts from Gahagan that say, "You're innocent. *Get your brothers away from me*," and "You're innocent. Just *pull you fucking boys off me and never touch me again*," as evidence that Gahagan lied during the Clemson Administrative Hearing. Pampu Petition for Writ of Certiorari at 19; R. 3135 (emphasis added). However the texts do not provide evidence of what Gahagan or Ms. Wingo stated at the Administrative Hearing, and Pampu does not address the issue of the language of the texts implying they were coerced by force, nor does Pampu address Gahagan's trial testimony regarding the texts. R. 1821:14–1824:4.

viewing all evidence in light most favorable to Pampu, a reasonable jury could not have concluded that Gahagan and Ms. Wingo planned to commit an unlawful act or a lawful act by unlawful means.

B. Pampu failed to present sufficient evidence of actual damages from the alleged conspiracy proximately resulting to Pampu.

Under a civil conspiracy claim, the injured party may recover the damages that flow from the conspiracy. *See Hackworth v. Greywood at Hammett*, LLC, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009), *overruled on other grounds by Paradis*, 433 S.C. 562, 861 S.E.2d 774. Pampu was entitled to recover only the damages that naturally and proximately resulting from the wrongful act or acts done in pursuance of the alleged conspiracy and which directly resulted from it. *See id.*; 15A C.J.S. *Conspiracy* § 33; (R. 2301:3–14). The existence or amount of damages cannot be left to conjecture, guess, or speculation. *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008). While proof of the amount of loss with absolute or mathematical certainty is not required, to be sufficient, a reasonable basis for computation must be afforded or evidence must permit a reasonably close estimate of the loss. *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 392, 162 S.E.2d 705, 708 (1968). Damages must be susceptible of ascertainment with a reasonable degree of certainty, and the evidence should allow the court or jury to determine the amount of damages with reasonable certainty or accuracy. *Gauld v. O'Shaugnessy Realty Co.*, 380 S.C. at 559, 671 S.E.2d at 85. *See also White v. Whitney Mfg. Co.*, 60 S.C. 254, 267-68, 38 S.E. 456, 461 (1901) (disallowing speculative damages).

The only alleged damages presented by Pampu with respect to the conspiracy to have him "removed from Clemson" was his alleged decreased earning capacity based on his inability to get into dental school and become an orthodontist. These damages are both highly speculative and not proximately caused by the alleged concerted conduct for numerous reasons.

First, as the Court of Appeals properly found, by entering the Clemson Settlement, Pampu established a substantial intervening and superseding cause related to Pampu's "removal from Clemson" and inability to gain admission to dental school. Op. at 10. Pampu signed the Clemson Settlement in March 2018. (R. 3190). In the Clemson Settlement, Pampu agreed to the release of Clemson from the breach of contract claim and to the full reinstatement of the Clemson Administrative Decision. (R. 3190–91). Later, Pampu applied to dental schools after executing the Clemson Settlement, as he was applying for admission to dental school in the 2021–2022 academic school year. (R. 1969:3–9; R. 3147). As such, subsequently being required to disclose the Clemson Administrative Decision on his dental school application, and potentially not obtaining admission into dental school, resulted from a bargained for exchange to which Pampu assented. Because Pampu has already recovered for the underlying conduct that forms the basis of his civil conspiracy claim -- the purported breach of his contract with Clemson-- and he elected to settle his breach of contract claim with Clemson, he cannot now pursue Ms. Wingo and Gahagan for damages he alleges arose from their purported plan to interfere with his contract with Clemson.

Second, as discussed above, there was no evidence presented to the jury to establish that the alleged lies told by Ms. Wingo and Gahagan led to Pampu's "removal from Clemson." (*See* R. 1293:4–1294:15; R. 1386:15–1387:23). Clemson reached its decision to suspend Pampu based on a host of facts, such as the statements or testimony of other witnesses and including the statements or testimony of Pampu himself, all of which were a part of the Title IX process.

Third, Pampu ignores the impact that his *admitted* Clemson policy violations may have had on his ability to gain admission to dental school. Specifically, Pampu does not dispute drinking alcohol as a minor, (R. 226, ¶ 67; R. 228 at ¶ 73), which was a violation of Clemson University's General Student Regulations, and his punishment was based, in part, on that violation. (R. 345).

Similarly, Pampu does not dispute having sexual intercourse in a public location, which supported the separate disorderly conduct violation, (R. 1530:16–22; R. 1531:8–11), and his punishment was based, in part, on that violation. Thus, Pampu admitted to violating numerous Clemson policies. (R. 345). The dental school application asked Pampu whether he had "ever been disciplined for student conduct violations." (R. 3149). These admitted violations also break any casual chain of Pampu's civil conspiracy claim.

Fourth, Pampu's alleged damages are highly speculative and not ascertainable within a reasonable degree of certainty. Pampu's sole evidence that his "removal from Clemson" prevented him from getting into dental school was in the form of testimony from his vocational expert Mr. Steven Shedlin. Without successfully contacting any of the dental schools to which Pampu applied, Mr. Shedlin reached the unreasonable and speculative conclusion that, but for Pampu's suspension from Clemson, he would have been able to get into one of the nine dental schools that he applied to. (R. 1940–41; R. 1947–48; R. 1949; R. 1964). Mr. Shedlin admitted that he did not know whether any of the dental schools ever contacted Clemson or the College of Charleston. (R. 1973:23–1974:5). Mr. Shedlin also reached the unsupportable opinion that Pampu would have been able to get into an orthodontic residency, even though Mr. Shedlin did not even consider the statistics of how many dental students are able to obtain orthodontic residencies. (R. 1976–79). Mr. Shedlin further acknowledged that he made an *assumption* that Pampu would be able to become an orthodontist. (R. 1998:5–10). Mr. Shedlin's opinion that Pampu lost significant earning capacity due to having to the Clemson Administrative Decision on his records was based entirely on this speculative assumption that Pampu would become an orthodontist. (R. 1998:17–22). There was thus a failure to prove damages naturally flowing and proximately caused by any alleged civil conspiracy.

CONCLUSION

For the foregoing reasons, the Court should deny the petition for a writ of certiorari.

NELSON MULLINS RILEY & SCARBOROUGH LLP

By: s/ C. Mitchell Brown

C. Mitchell Brown (SC Bar No. 12872)
E-Mail: mitch.brown@nelsonmullins.com
Jonathan M. Knicely (SC Bar No. 101780)
E-Mail: jonathan.knicely@nelsonmullins.com
Madison C. Guyton (SC Bar No. 105205)
E-Mail: madison.guyton@nelsonmullins.com
NELSON MULLINS RILEY & SCARBOROUGH LLP
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

John M. Grantland, Esquire (S.C. Bar No. 64158)
E-Mail: jgrantland@murphygrantland.com
Murphy & Grantland, P.A.
P.O. Box 6648
Columbia, SC 29260
(803) 782-4100

Attorneys for Respondents-Appellants Erin Wingo and David Wingo

Columbia, South Carolina
October 10, 2025