THE STATE OF SOUTH CAROLINA
In The Supreme Court

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S.C. 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

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

v.

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

Reply to Return to Petition for A Writ of Certiorari

October 17, 2025

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Petitioner's Return to Respondent's Counter Statement of the Facts

The Respondents' statement of case is more legal argument than statement of case, and in stating the case, they ignore facts and contort law. First, this case arrives for review from a grant of summary judgment, a standard of review Respondents ignore. They construe the facts in an implausible light at variance with the record. Arguing outside the record that Petitioner sold its business, the Respondents disregard the fact that they drove the Petitioner out of business gloating they had Petitioner like a "cornered animal. (R.O.A. Vol. 3, pg. 953) Ellen Harley's "attractive taste for the jugular" is on full display in this record and the record leaves no doubt that the amalgamated Respondents successfully campaigned to paint Petitioner as an animal abuser and destroy him by "depressing his income." Respondents display unapologetic arrogance in quoting the seven statements superimposed over the video image of Big John, five of which are demonstrably false and represent the Petitioner "alleges" their video went viral when the Record demonstrates Respondents celebrated it. (R.O.A. Vol. 2, pg. 546) The Respondents also mischaracterize this case as a disagreement over a single video when the record demonstrates the video is but one tentacle of the Respondents' campaign to put Petitioner out of business. They succeeded.

Second, the assertion on page 2 that unassociated "bystanders" sent the Animal Society the video is equally bold and equally false. On page 972 of volume 3 is a still photograph of "bystander" Ellen Harley hovering over Big John, interfering in the effort to unharness him so he could stand up, and gathering the video evidence Respondents deployed for their smear campaign. "Bystanders" are Elizabeth Fort and Ellen Harley, the Charleston Carriage Horse Advocates Directors (R.O.A. Vol. 3, pg. 993) and the Charleston Animal Society's "Equine Cruelty Committee" Chairperson who follows and harasses tours. (R.O.A. Vol. 1, pg. 386) These organizations operate as one amalgamated entity and they carefully coordinate their attack. (See R.O.A. Vol. 2, pg. 546 for pre-meeting planning e-mail four days after the incident and page Vol. 1, pg. 404, Elizabeth Fort's comments at Tourism Commission three days later. See Vol. 1, pg. 400 where Elmore tells Harley: "make sure you are clearly representing Charleston Carriage Horse Advocates, not Charleston Animal Society. . ."

Next Respondents launch into an explanation that "collapse" means different things to different people, which drives home the point that only a jury can determine the intent of the words. The purpose of both libel law and summary judgment is to allow juries to decide what the words mean taking into account the context in which they are published. Respondents may not declare by argumentative fiat how eleven million viewers perceived their video. They even mislead this Court

by providing a fraction of the *Merriam Webster* definition of "collapse," omitting: "to fall or shrink together abruptly and completely: fall into a jumbled or flattened mass through the force of external pressure *a blood vessel that collapsed*. . . . 5: to break down in vital energy, stamina, or self-control through exhaustion or disease: *she came home and collapsed on the sofa*. *especially*: to fall helpless or unconscious." It is the sole province of a jury to determine the meaning of "collapse" **in the context Respondents delivered it.** Respondents claim their use of "collapse" means "fall," but less than 16 hours after the incident, they shared their disappointment that local media changed their description from "collapsed" to "fall." (R.O.A. Vol. 3, pg. 980) Respondents ignore not only the context of their false message but also ignore their meticulous effort to suppress every truthful correction. They systematically deleted factually accurate responses and banned anyone attempting to correct their false message. See testimony of Elizabeth White before the Tourism Commission on April 26, 2017 at Vol. 1, page 407, probably the most succinct summary of the entire case. The Internet abuse they engendered including death, arson threats and the cancellation of tours and these actions are powerful evidence of how the public interpreted "collapse." The actionable libel in *Cruce*[1] was a single e-mail asserting Cruce's student records were not in order:

> On January 7, 2016, Berkeley High athletic trainer Chris Stevens sent an email to forty-five people . . . questioning the integrity and completeness of student athlete files Cruce had maintained. In the email, Stevens remarked the filing issues were a potential 'liability' to the District.

Painting Petitioner as an animal abuser is much worse, and Respondents completely ignore the statute prohibiting charities from disseminating "misleading" information.

Summary judgement is only appropriate if there is no question of fact. Only a jury can determine the meaning of "collapse" in the context of Respondents' publication. Respondents' counter statement is in conflict with the well-developed body of law on libel. How the millions of viewers interpreted the Respondents' characterization of Petitioner's horse as "collapsed" is not a judgment call they get to pronounce:

> Defamation need not be accomplished in a direct manner. *Tyler v. Macks Stores*, 275 S.C. 456, 272 S.E.2d 633 (1980). A mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain. *Id*." "Thus, truth is an affirmative defense as to which the defendant has the burden of pleading and proof, unless the statement involves a constitutional issue. See Hubbard and Felix, *The South Carolina Law of Torts* 468, 478 (2d ed. 1997)." *Parrish v. Allison*, 376 S.C. 308, 656 S.E.2d 382 (Ct. App. 2007) (Court reversed jury verdict for defendant and remanded for new trial because defendant did not plead affirmative defense of truth.) "If the question is one on which reasonable minds might differ, then it is for the jury to determine which of the two permissible views they will take." *Parrish* at page 389 quoting *Holtzscheiter v.*

[1] *Cruce v. Berkeley County Sch. Dist.*, 442 S.C. 1, 896 S.E.2d 765 (2024)

Thomson Newspapers, Inc., 332 S.C. 502, 506 S.E.2d 497 (1998).

This Court reaffirmed these principles in *Cruce v. Berkeley County Sch. Dist.*, 442 S.C. 1, 896 S.E.2d 765 (2024), *Erickson v. Jones Street Publishers., L.L.C.* 368 S. C. 444, 629 S.E.2d 653 (2006), and *Garrard v. Charleston School Dist.*, 439 S.C. 596, 890 S.E.2d 567 (2023).

The Respondents construe Petitioner's case ultra narrowly like saying a murder defendant is innocent because the decedent died when his heart stopped without mentioning the bullet fired into his chest. Context is important. In testing the record for the existence of a genuine issue of material fact, the Court cannot evaluate the video in a factual vacuum or ignore the overwhelming evidence demonstrating the malicious common scheme of the Respondents' joint enterprise to put it out of business. Respondents cannot rely upon their Counter Statement's assertion that Harley's March 30, 2017 e-mail to formulate the plan to depress Petitioner's income occurred **before the video.** The e-mail provides the context revealing the Respondents' motivation in labeling the viral video with false statements. Respondents are being deliberately duplicitous if they sincerely believe there is "no evidence or testimony that CAS requested this information"![2] The video followed the e-mail, but it is undisputed that CAS' media specialist, Dan Krosse, placed the false statements on the video and Respondents knew they were false. The March 30, 2017 e-mail to Joe Elmore, Dan Krosse, and Kurt Taylor, all principals of the Charleston Animal Society was part of a string to which Joe Elmore responded. The Record on Appeal leaves no room for doubt as to the Respondents' common scheme or plan because the record is overflowing with evidence of coordination and amalgamation between Ellen Harley, her Charleston Carriage Horse Advocates, and the Charleston Animal Society's "Equine Cruelty Committee." They are indistinguishable, and the fact that Harley put their common goals in writing four weeks **before the Big John video** is some of the strongest evidence of their intentional malice in mislabeling of the Big John video. The Record makes clear Respondents' fanatical dedication with suppressing truthful correction, banning anyone who failed to adhere to the party line. See reference to Eliabeth White mentioned above and the affidavit of Katherine Vaughn at Vol. 1, pg. 434. There is no missing the Respondents' malice, which plaintiffs always prove indirectly:

Nevertheless, the Supreme Court has recognized that a plaintiff will rarely find success in proving awareness that a statement is false "from the mouth of a defendant himself." *Herbert v. Lando*, 441 U.S. 153, 171-72, 99 S. Ct. 1635, 60 L. Ed. 2d 115 (1979). Therefore, any direct or indirect evidence relevant to the defendant's state of mind is admissible to prove actual malice. A

[2] The record contains indisputable evidence of collusion and coordination via e-mail even including a conversation proposing to sue Petitioner after the incident because he tried to mitigate his damages!

plaintiff may present competent circumstantial evidence of bad faith to establish actual malice despite a defendant's contention that the publication was made "with a belief the statements were true." *St. Amant v. Thompson*, 390 U.S. 727, 732, 88 S. Ct. 1323, 20 L. Ed. 2d 262 (1968). Furthermore, a subjective awareness of probable falsity can be shown if there are obvious reasons to doubt the veracity of the informant or the accuracy of his reports. *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688, 109 S. Ct. 2678, 105 L. Ed. 2d 562 (1989). *Anderson v. The Augusta Chronicle*, 365 S.C. 589, 619 S.E.2d 428 (2005)

It is a bold, but fruitless, gambit to cite Ellen Harley's 2017 pre video statement as evidence of innocence when it demonstrates the pre-existing and premediated conspiracy to harm the Petitioner, which places the video in the proper context for a jury to evaluate.

REPLY TO ARGUMENT 1. (DISCOVERY OBSTRUCTION)

There is no benefit in burdening the Court with continued debate over the holding of *Richardson*.[3] The record is clear that Harley and the Charleston Carriage Horse Advocates obstructed discovery from start to finish, and no amount of protesting or pleading could overcome their obstruction.

It is both shocking and unavailing that Respondents quote (on page 10) counsel's October 26, 2020 correspondence to suggest Petitioner was dragging his feet on discovery because Respondents obviously forgot Petitioner's numerous attempts to get discovery responses on track, which Respondents impeded at every turn. Petitioner responded two days later, (R.O.A. Vol. 4, pg. 1724), quoted below. The Record is overflowing with Petioner's multiple efforts to get cooperation—R.O.A. pages 93, 98, 155, 162, 325,[4] 890, and 1718-1726—all of which the Master-in-Equity ignored. Petitioner's October 28th reply said in part:

However, what frustrates me—hence my preference for letters, which require composition, review, editing for clarity, rather than e-mails, which are little more than gossamer thoughts—is my inability to articulate our theory of the case. I agree that search terms play a minimal role in our case, but we know from the thousand or so e-mails turned over from the Charleston Animal Society that your client has been thoroughly dishonest in providing discovery. I will not call her a "liar" again since that term so upset you, but, for the record, Ms. Harley's effort to gain a collateral advantage by securing a disciplinary finding against me failed to find its mark. It did, however, provide additional cogent evidence of her pattern of dishonest behavior, which a jury may find revealing. You already have a copy of her complaint against me, and I am attaching the Supreme Court's decision, which I plan on using as evidence in the trial of this case, so please consider this letter a supplemental response to request to produce. Our theory of the case is that Ms. Harley, like many dishonest and fraudulent hucksters populating social media, deliberately created a false impression of Brody as an animal abuser. So, while the search terms will generate additional evidence of Ms. Harley's conspiracy with

[3] *Richardson v. Twenty-One Thousand & no/100 Dollars ($21,000.00) U.S. Curr.& Various Jewelry*, 430 S.C. 594, 599, 846 S.E.2d 14, 16 (Ct. App. 2020)

[4] The July 17, 2020, letter is significant because, in keeping with having "an attractive taste for the jugular," Ms. Harley sent this letter to Disciplinary Counsel requesting Petitioner's counsel be punished.

Charleston Animal Society as amply demonstrated by the e-mails turned over by the Charleston Animal Society, the more important evidence is the manipulation of her social media presence, which we cannot examine without access to her devices and the administrator keys. As you are aware, when a person takes action on a computer, there is a metadata record of who did what when. This is critically important as it relates to edited and deleted items. And we can be confident in our inference, based on Ms. Harley's demonstrated dishonesty and unethical conduct to date, that she has deleted anything that will be helpful to our cause. I have not even deposed her yet, and we have her in so many lies, I cannot keep them straight… Sure, the search terms will turn up e-mails your client said she did not have, but that is not the heart of my case. The heart of my case is her manipulation of social media to attack Brody economically and which could have gotten Brody or Amber or one of their employees killed. The consistent expurgation of truthful information demonstrates an intent to cast Brody in a false light, and this is the foundation of our case. Your refusal to make the devices available for forensic examination is designed to thwart our search for the truth. Whether Ms. Harley was acting in her individual capacity or as the principal of Charleston Carriage Horse Advocates, she is prohibited from publishing false information and deleting true statements to create and convey a false message.

In conclusion, please reconsider this intransigence and please provide Steve Abrams the access to the Charleston Carriage Horse Advocates devices so he can do a forensic study just like he has done in hundreds of cases. . . .

Ellen Harley's and the Charleston Carriage Horse Advocates' document production is almost entirely bogus as laid out, page by page at Vol. 1, page 390 of the Record on Appeal:

More importantly, very little of this 11th hour 8258-page production is relevant to the case. By contrast, she does not hesitate to send me thousands of pages of duplicates and documents already on file, and yet, despite being the chief officer of a registered charity, she sends me only 182 pages of e-mail communications, representing a total of 37 e-mails even though we received 689 pages of e-mails from Charleston Animal Society in which she is a correspondent! She has not produced a single e-mail between the Charleston Carriage Horse Advocates and their supporters, despite her sworn 30(b)(6) testimony that they frequently send photos and video to the CCHA e-mail address, and there are no such e-mails, photos, or videos. I know for a fact she surveils my barn because I have seen her, but she produced none of those videos. There are very few e-mails between her and her fellow members of Charleston Carriage Horse Advocates, which is not possible.

The Master-in-Equity dismissed Petitioner's concerns with "All right, got it." (R.O.A. Vol. 4, page 1639) As the transcript of hearing demonstrates, Petitioner's previous efforts to address its two Motions to Compel regarding discovery deficiencies with Judge Price were hampered by technology failures during the COVID-19 shutdown, and the Court of Appeals gave this critical issue short shrift. If Petitioner's motion to compel/sanctions were not properly before the Master-in-Equity on the ground that only Judge Price could entertain it (an error of law), then the only avenue available to the Master-in-Equity was to send the motion to Judge Price for disposition. Thus, no matter how the Respondents characterize Judge Price's rulings, which, like *Richardson*, speak for themselves, they do not address the error of the Master-in-Equity refusing to take up the motion even though the Order of Reference (R.O.A. Vol. 1, page 61) clearly referred all outstanding motions. The Master-

in-Equity refused to consider the motion because it was, according to him, improperly captioned. As discussed on the next page citing the *Lucey v. Meyer* case, the Master-in-Equity was obligated to address the substance of the motion no matter how it was titled. Respondents inadvertently draw attention to the Master-in-Equity's error on page 11 of their Return: "As the lower court correctly concluded, the Petitioner's discovery was not **ignored**" (emphasis added) the Master-in-Equity avoided addressing Petitioner's motion because he found "sanctions" and "compel" to be so unrelated so as to not be properly before the Court. Even in considering summary judgment, the Master-in-Equity was dismissive about the discovery deficiencies: "All right, got it." R.O.A. Vol. 4, page 1639, followed by a written Order concluding he lacked authority to rule on it: "Rather than seek a court order via a motion to compel, plaintiff is hoping the Court will bypass this step and award access as a sanction under Rule 37(b)." The only "evidence" in this record that Petitioner "received what he asked for." (R.O.A. Vol. 1, page 52) is Respondents' unsupported contention, which the Record refutes. The Petitioners detailed explanation of "10,000 responsive documents" at Vol. 1, page 390 demonstrates the inaccuracy of Respondents' assertion and the Master-in-Equity's resulting error.

As for Ellen Harley's unreliability, she demonstrated contempt for the process from start to finish. The Record on Appeal shows:

- She and the Carriage Horse Advocates produced exactly 37 e-mails, which everyone knows is false because the Charleston Animal Society produced hundreds of e-mails in which she is listed as both sender and recipient.
- She indisputably perjured herself in her mutually exclusive statements about receiving Petitioner's request for correction. (R.O.A. vol. 1, pg. 394, vol. 3, pg. 1255)
- Petitioner consistently begged for cooperation without success, which the Master-in-Equity completely ignored. See R.O.A. Vol. 1, pages 143-176 for correspondence March 21, 2019, March 27, 2019, March 18, 2019, August 2, 2019, and August 4, 2019, discussed above.
- Respondents ran out the clock on Petitioner, refusing to engage in discovery after the expiration of the scheduling Order even though Petitioner allowed Respondents to take two post-expiration depositions (Dr. Miller and Dan Riccio), and Respondents refused to consent to a single extension even though plaintiff's counsel was out of commission for months for open heart surgery and post-surgical complications and the Courts' shut down in February 2020 for COVID-19 protocols.

These facts are thoroughly discussed in Petitioner's opening brief and do not require further discussion here other than to state the obvious that Respondents' contention that Petitioner did not frame properly the relief he was seeking is irrelevant. Whether Petitoner's motion was to compel or for sanctions is irrelevant because when a motion is before the Court, the Court will address the substance no matter how it is filed:

"Rule 7(b)(1), SCRCP requires that motions 'shall state with particularity the grounds therefor, and shall set forth the relief or order sought.'" *Camp*, 386 S.C. at 575, 689 S.E.2d at 636. "The particularity requirement 'is to be read flexibly in recognition of the peculiar circumstances of the case.'" *Id*. (quoting *Cambridge Plating Co., Inc. v. Napco, Inc*., 85 F.3d 752, 760 (1st Cir. 1996)). "'By requiring notice to the court and the opposing party of the basis for the motion, rule 7(b)(1) advances the policies of reducing prejudice to either party and assuring that the court can comprehend the basis of the motion and deal with it fairly.'" Id. (quoting *Calderon v. Kansas Dep't of Soc. & Rehab. Servs*., 181 F.3d 1180, 1186 (10th Cir. 1999)). However, when neither party is prejudiced and the court is able to deal fairly with a motion for reconsideration, applying an overly technical application does not serve the purpose of Rule 7(b)(1), SCRCP. Id. at 575-76, 689 S.E.2d at 636-37.

When the trial court is able to discern the relief requested, "[i]t is the substance of the requested relief that matters 'regardless of the form in which the request for relief was framed.'" *Richland Cnty. v. Kaiser*, 351 S.C. 89, 94, 567 S.E.2d 260, 262 (Ct. App. 2002) (quoting *Standard Fed. Sav. & Loan Ass'n v. Mungo*, 306 S.C. 22, 26, 410 S.E.2d 18, 20 (Ct. App. 1991)); see *Fields v. Reg'l Med. Ctr. Orangeburg*, 363 S.C. 19, 27, 609 S.E.2d 506, 510 (2005) (holding it was proper to treat plaintiff's written motion as a Rule 59(e) motion to the extent the motion addressed the trial court's evidentiary rulings, which the plaintiff challenged in her briefly stated oral motion at the end of the trial, even though it was erroneously captioned as a motion for new trial).

Lucey v. Meyer, 401 S.C. 122, 736 S.E.2d 274 (Ct. App. 2012)

Courts deal in substance, not form, and however Respondents choose to characterize Petitioner's motion, it is clear the Petitioner was asking for relief requiring the Respondents, Harley, and Charleston Carriage Horse Advocates, to grant administrator access, and it is clear the Master-in-Equity denied Petitioner relief on erroneous grounds. See affidavit of Steve Abram Vol. 1, pg. 440.

REPLY TO ARGUMENT 2. (REFUSAL TO EXTEND SCHEDULING ORDER)

The Record is clear that Respondents took advantage of counsel's 2019 health setback and the 2020 COVID-19 shutdowns[5] to run out the clock on a scheduling Order that was not extended a single time. The facts are not in dispute, and the record shows the Master-in-Equity gave the request no consideration. His superficial treatment of all of Petitioner's motions is clear from the transcript of record at Vol 4, pages 1587-1704, an undisputed record of the lack of discretion applied to the issues before the Court. A response to Respondents' Argument 2 is necessarily a repetition of Reply to Argument 1. The only assertion in Respondents' Argument 2 that is not addressed above is their

[5] The reason the parties referred the case was because the Courts were shut down.

assertion that the Scheduling Order expired on February 7, 2020 and Petitioner did not file with a request for extension until October. The Respondents omit Petitioner's numerous efforts to obtain cooperation and that the Courts shut down in February 2020 under COVID-19 restrictions, and further omit they took two depositions after the expiration of the Scheduling Order, Dan Riccio on March 11, 2020 and Dr. Miller on February 11, 2020, but denied Petitioner the same opportunity. The Master-in-Equity never gave any of these facts any consideration,[6] an abuse of discretion.

REPLY TO ARGUMENT 3. (NO EVIDENCE OF PREJUDICE BY AMENDMENT)

Page limitations on Replies prevent a full discussion of every point Respondents raise, but not much is required here because Respondents do not identify a *scienter* of legal prejudice precluding amendments other than their unsupported assertion. Petitioners proposed amendments changed nothing about its claims and introduced no new theories of recovery, because the tort of outrage is not qualitatively different from defamation and the new plaintiffs only address Respondents' assertion that some of the damages are "personal" and the new defendants are merely the agents of the Respondents. This issue is thoroughly discussed in the Petition for Certiorari at pages 41-44 and in the briefing to the Court of Appeals at pages 45-47.

REPLY TO ARGUMENT 4. (RESPONDENTS IDENTIFIED PETITIONER)

The Respondents' argument that they did not identify Petitioner is frivolous. Leaving aside the undisputable fact that **they specifically identified** him two days after publishing the video on April 19, 2019—see Record on Appeal Vol. 1, page 416 & Vol. 2, page 872, they specifically targeted his web presence by choosing a name so close as to confuse people looking for him and spent tax dollars and charitable contributions to purchase Google AdWords so that when searching for Petitioner, Respondents' page appeared first. Petitioner's expert explained how this works at Vol. 1, pg. 441: "By outbidding Plaintiff for keywords that describe Plaintiff's business, defendants would be able to direct search engine traffic . . ." South Carolina law does require specific identification to maintain a defamation action so long as there is sufficient evidence for a jury—not the Court—to make the identification. *Erickson, op. cit.*: "The article did not name the guardian who represented Pat Beal's granddaughter. Appellant testified there were only a handful of private, non-lawyer guardians in Dorchester Count at the time." In 1998, this Court previously established the same rule in *Holtzscheiter v. Thomson Newspapers Inc.*:

The newspaper also asserts it was entitled to a directed verdict because respondent, Shannon's

[6] Neither did the Court of Appeals. At oral argument, a member of the panel asked Petitioner's counsel why the case took so long to get before the Master-in-Equity! The briefing to the Court of Appeals provided the answer.

mother, failed to prove the statement that Shannon lacked family support was 'of and about her.' [citations omitted] 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." [citations omitted].[7] See also *Restatement of Torts 2d* §674 and § 674A.

The question of whether defamatory words can be "reasonably understood" to apply to Petitioner is a quintessential jury question, and Respondents willfully refuse to acknowledge this case arrives as an appeal from a grant of summary judgment. The Respondents' avoidance of the summary judgment standard is telling.

Finally, Respondents assert that there are no defamatory statements in the record "aside [from] those contained with the 'Big John' video." (Return at page 15) Respondents concede they defamed the plaintiff. They never explain—or offer any legal authority—why one defamatory act is insufficient. *Cruce, op. cit.* involved a single e-mail published to 45 in-house recipients.

REPLY TO ARGUMENT 5. (PETITIONER IS NOT A "LIMITED PUBLIC FIGURE")

The Respondents' futile attempt to paint Petitioner as the "unicorn" limited public figure is premised upon two assertions: (1) that Petitioner attended Tourism Commission meetings when the subject of carriage tours was on the agenda, and (2) that the *Post & Courier* quoted Petitioner. Respondents rely upon *Atlanta Humane Soc. v. Mills*, 274 Ga. App. 159, 618 S.E.2d 18 (Ga. Ct. App. 2005), a reliance approaching the line prohibiting lawyers from misleading Courts.

The twin plaintiffs in *Atlanta Humane Soc*. were: the Society and its executive director, Bill Garrett. The two sued Mills for posting that they killed animals for profit. The Court of Appeals held that the Humane Society, a quasi-government agency, like Charleston Animal Society, cannot maintain a suit for defamation. The Court of Appeals found Bill Garrett, its Director, to be a "limited public figure" because he was the Agency's Executive Director, issued press releases and frequently made public appearances on behalf of the governmental Agency:

In sum, Garrett is the director of and spokesman for AHS, an organization at the center of a controversy over its performance of the duties delegated to it by Fulton County. He voluntarily injected himself into the controversy by participating in the WSB Television investigation of AHS and in the consideration of AHS's performance by the Fulton County Commission.

Notwithstanding Garrett's position as a "limited public figure," the Georgia Court of Appeals ended the case because Garrett failed to show actual malice, a dramatic difference with the case now before the Court. Here the Master-in-Equity made two palpable legal errors: First, the Master-in-Equity declared Petitioner a "limited public figure" because (1) he went to Tourism

[7] *Erickson v. Jones Street Publishers., L.L.C.* 368 S. C. 444, 629 S.E.2d 653 (2006) *Holtzscheiter v. Thomson Newsps.*, 332 S.C. 502, 506 S.E.2d 497 (1998) (*Holtzscheiter II*)

Commission meetings that directly affected his business and (2) because he took steps to mitigate his damages. There is not a case in American jurisprudence that supports this legal conclusion. In fact, *Cruce*[8] and *Gertz*[9] put stakes through the heart of it calling the concept "extinct" and a "unicorn." Second, even if Petitioner were a unicorn limited public figure, that classification does not deprive him of the right to a jury trial. The classification relates **only** to the level of proof required as this Court made clear in *Erickson*, in *Garrard*, and in *Cruce*. There is no shortage of actual malice in this record. Charleston Carriage Horse Advocates Director, Catherine Poag, writing four days after the video to Joe Elmore and others crowed about their success: "Look at that letter from Broderick—And like any cornered animals, their natural actions will be desperate ones—The drivers will all be on edge about what if they are the next carriage with a runaway horse **or one that stumbles** and end [*sic*.] up in international views. (emphasis added) (R.O.A. Vol. 3, page 953) Respondents suggest (on page 20) that involuntary participants can become public figures when they "choose a course of conduct that invites public attention." The only choice Petitioner's made was to operate a business. It was the Respondents' vicious, deceitful attacks on him, stirring up public hysteria, suppressing truthful corrections to paint him in a false light that put him in the public eye. The Respondents' entire argument is to blame the victim for their attack like blaming an assault victim because she wore a short skirt.

REPLY TO ARGUMENTS 6 & 8[10]. (RESPONDENTS ARE CHARITIES)

Respondents' assertion that they are media defendants is not true. They are registered charities. As such, they receive significant financial benefits. To qualify, they must have a charitable purpose, and using the Internet to troll and smear a lawful business is not a charitable purpose. Because charities are ripe for mischief, the State imposes conditions on them, one of which is to refrain from dispensing false or misleading messages for obvious reasons. § 33-56-120, S. C. Code, ann. After the Respondents pushed out their video with demonstrably false statements superimposed on them combined with their aggressive suppression of truthful correction, their coffers swelled with contributions. The Respondents' sixth argument that neither

[8] "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).*" *Cruce v. Berkley County School District*, 442 S.C. 1, 896 S.E.2d 765 (2024) The Respondents attempt a grammatical Respondents attempt to avoid this holding by means of the passive voice: "has been quoted by the media." (Return at page 18) No case in American jurisprudence supports such an assertion.

[9] *Gertz v. Robert Welch, Inc*., 418 U.S. 323 (1974)

[10] Because Respondents' 6th and 8th arguments are the same, and because of page limitations on Replies, Petitioner treats the two arguments together.

"this Court [n]or the U.S. Supreme Court have had the opportunity to consider whether this heightened standard, rooted in the First Amendment of the U. S. Constitution, applies in defamation cases involving non-media defendants, the relevant precedence from the Federal judiciary clearly indicated that it is the content of the speech, not the identity of the speaker that determines that the heightened standard applies." (Return at page 21) Fair enough, but Joe Elmore was in possession of the correct information from at least three sources and ignored them all to promote a message he knew was false.[11] Respondents ignore the statutory limitation on South Carolina charities. Second, if the question is the content of the speech and not the identity of the speaker, then the whole media-non media dispute is a meaningless sophistic exercise, and either way Petitioner is entitled to a jury trial because even the Respondents admit some of the messages are false. (Return at page 15, quoted above on page 11) Third, even a public figure can be libeled. Fourth, this appeal is from a dismissal by summary judgment, so the "heightened standard" is not implicated at the summary judgment standard, and even if it were, as discussed in the next section, the evidence of malice in this case is overwhelming. Fifth, while the existence of carriage tours may be a matter of public debate, the specific controversy of Petitioner's treatment of his horse is not, yet the Respondents launched a multi-front attack on Petitioner to describe him as an animal abuser, casting the Petitioner in the false light of driving Big John to collapse from exhaustion and then did everything possible to suppress truthful correction.

In short, the Appellant does not come close to being a "limited public figure," but even if he were, the evidence of actual malice (discussed in the next section) is overwhelming, especially at the summary judgment level.

REPLY TO ARGUMENT 7. (RECORD CONTAINS EVIDENCE OF MALICE)

The evidence of malice is overwhelming in this record. Page limitations prohibit repetitious argument, but on pages 41-42 of Petitioner's Brief to the Court of Appeals, Petitioner delineated 23 specific examples of malice. The Respondents quote Ellen Harley's March 30, 2017 e-mail on page 26 of their Return. There, she urged her co-conspirator, Charleston Animal Society, to resort to other means to "depress their income" because they failed in their legislative lobbying efforts. They constantly reminded themselves to keep the communications secret where they

[11] First, Shannon Tillman, the City of Charleston Equine Manager released the City's report. Second, an equine veterinarian examined Big John and released a report. Third Petitioner wrote to Mr. Elmore on May 11, 2019, provided the facts and offered to provide any documentation or answer any questions. Vol. 2, page 869 Mr. Elmore displays the same arrogance to this Court that he displayed to Petitioner.

acknowledged that Big John did not collapse. (R.O.A. Vol. 3, page 953) In their Return to this Court, they assert on page 22 that: (1) Joe Elmore has no information to this date that the statements are false. That cannot possibly be true because they admit on page 15 of their Return at least some of the statements are false. Petitioner wrote to him on May 11, 2017 and provided the correct information (Vol. 2, page 869). Second, they assert Ellen Harley contributed no video even though the record shows her hovering over Big John collecting video, and finally she admitted doing so in her 30(b)(6) deposition. (R.O.A. Vol. 3, page 1296, lines 4-11 and page 972) Third, they colluded and used charitable contributions to purchase domain names to interfere with Petitioner's business: "they'll s**t their pants" (R.O.A. Vol. 1, pg. 429) The Big John video was just one part of unlawful collusion to destroy the Petitioner in which they ultimately succeeded, and a jury is entitled to examine the pattern of behavior exhibited through the copious evidence of bad faith, or as this Court said in *Anderson*: "The record in this case is replete with circumstantial evidence of bad faith on the part of [Respondents]." *Anderson v. Augusta Chronicle*, 619 S.E.2d 428, 365 S.C. 589 (S.C. 2005). Placing demonstrably false language on the video, refusing to issue a correction, misleading this Court by providing a partial definition of "collapse," deleting truthful information and banning all corrective commentators, interfering in Petitioner's web presence, seeking licensing penalties against Petitioner's lawyer and veterinarian, asserting bogus O.S.H.A. complaints, following and harassing Petitioner's tours is overwhelming evidence of malice, and it is shocking that neither the Master-in-Equity nor the Court of Appeals found any of this conduct troubling. Both invaded the province of the jury because the existence of these facts demonstrates there is far more than a genuine issue of material fact to be decided.

REPLY TO ARGUMENT 8 (Combined with Argument 6 above)

Due to page limitations on Replies, Petitioner combined the reply to Argument 8 with Argument 6 above on page 12. The Respondents are statutory charities.

REPLY TO ARGUMENTS 9 & 10 (Evidence of Conspiracy, Interference and Malice)

Arguments 9 and 10 are essentially the same—that there is no evidence to support conspiracy (Argument 9) and no evidence to support intentional interference (Argument 10). Because the two are essentially the same and because of the page limitations on Replies, Petitioner treats them as one.

The Respondents contend that the record contains no evidence that the Respondents improperly combined to commit an unlawful act in furtherance of an agreement to harm the

Petitioner by defaming him (Argument 9) or succeeded in having his franchise agreement terminated (Argument 10) even though in their internal communications, they concede that Big John stumbled and did not collapse and that the mission was to defeat the "corruption" of the City by "depressing their income." Just because they failed to have his franchise agreement revoked, they nonetheless pursued it. (R.O.A. Vol. 3, pgs. 973-975) Their charitable existence does not shield them from liability from their portrayal of Petitioner as an animal abuser, or harassing his tours, or interfering with his Internet presence to drive off customers. The Record demonstrates the Respondents coordinated a multi front attack on Petitioner, and they used either taxpayers' money or charitable contributions to "geotarget" the Petitioner to interfere in his ability to operate. (R.O.A. Vol 1, pgs. 427-429) They did this in conjunction by a systematic suppression of truthful information to drive customers away, even launching spurious licensing attacks against everyone in his orbit. There is more than a genuine issue of material fact here. The Respondents' stubbornness in the face of indisputable evidence leads to the Wittgensteinian silence.[12] Despite overwhelming evidence to the contrary, Respondents possess the temerity to write: "Petitioner's civil conspiracy claim is based upon speech that is protected by the First Amendment" (Return at page 26), which is both a willful misrepresentation of the law—defamation has never been constitutionally protected—and the facts. They deliberately misstate Petitioner's legal theory.

The Respondents formulated their "depress their income" strategy just weeks before Big John laid down for 11 minutes, and yet, the Record shows Ellen Harley hovering over him interfering with the barn hands' efforts to unharness him to gather evidence for the plan. (R.O.A. Vol. 3, page 972) If a photo is worth a thousand words, the photo of Ellen Harley arriving on the scene and hovering over Big John to gather evidence to promote the destruction of Petitioner's business is a powerful visual representation of the elements of civil conspiracy and intentional interference. She was not present to assist; she was present to gather raw material to fortify the Respondents plan, immediately reporting that Big John collapsed and could not get up for 30 minutes—both false statements when she was present to know the truth. Joe Elmore characterizes the source of this video as "bystanders." The Respondents cast Petitioner in a false light as an animal abuser, knowing it would "depress his income." Defamation is not "constitutionally protected speech." Respondents also calculated they could interfere further with Petitioner's business by choosing a name close to Petitioner's business' name and purchase Google key words

[12] Whereof one cannot speak thereof one must be silent. Proposition 7, *Tractatus Logico-Philosophicus*

to hinder the Petitioner's reservation page. As Petitioner carefully explained to the Master-in-Equity, he was spending $5,000.00 a month to combat the Respondents' interference. See Petitioner's affidavit at Vol. 1, page 417 of the Record on Appeal:

> I know I had to pay Google $5,000.00 a month after April 19th to combat what the defendants were doing to me. . . . The only reason I do not have other direct evidence of how much the defendants were paying Google and for what words is only because the defendants refuse to turn over the material they said they would turn over. The attached screen shot demonstrates the defendants were specifically targeting only me—and not the other carriage companies—see Exhibit 1." R.O.A. vol. 1, pages 417-18. (Petitioner's expert, Steve Abrams explains this process at Vol. 1, pg. 441)

The evidence is overwhelming detailing the Respondents' interference in Petitioner's operation, ultimately putting it out of business. The Respondents cannot hide behind their failure to revoke the franchise agreement as a shield to escape the consequences of other interference. There are multiple genuine issues of material fact reserved for a jury to decide.

REPLY TO ARGUMENT 11. (§ 1983 Claim)

The page limitations on briefing required Petitioner to make cuts. The Court of Appeals denied Petitioner's request for leave to exceed the page limits. As a result, the Court required Petitioner to limit his discussion of *Dennis v. Sparks*[13] to a brief analysis. The U. S. Supreme Court held unanimously in 1980 that even judicial officers who are immune from suit under §1983, are nonetheless required to provide evidence and otherwise respond to claims under Title 42, U.S.C.A. § 1983. Because the Charleston Animal Society is (or at least was) a quasi-governmental agency[14] (See *Atlanta Humane Soc., op. cit*. discussed above), Petitioner included a § 1983 cause of action in an abundance of caution. Such a claim is indistinguishable from either conspiracy or intentional interference in business relations and is designed to bridge the gap across potential state tort claim defenses. The Respondents recognize this potential: "South Carolina does not recognize a cause of action seeking monetary damages for constitutional violations." That is not a correct statement of law, because Title 42, § 1983 is applicable in South Carolina and allows such claims. Because the elements of § 1983 tort claims are nearly identical to conspiracy, defamation, intentional interference, or outrage, a discussion of the elements is necessarily duplicative of the discussion above. Petitioner conformed to the Court of Appeals' directive on page limitations and should not be punished for doing so. There is nothing "conclusory" about the

[13] 449 U.S. 24 (1980)

[14] Charleston Animal Society is cagey about whether it is or is not a quasi-government agency. If it is not, the § 1983 claim is probably moot. CAS objected to taking Elmore's deposition because the scheduling Order expired.

Petitioner's discussion—it merely relies on the same evidence and analysis preceding it.

Conclusion

The issues raised in this case are important and far reaching. The scourge of Internet trolling and defamation is endemic, and it is unconscionable that charities debase themselves to persuade people to contribute. The Master-in-Equity's grant of summary judgment is not consistent with the summary judgment standard and not supported by the record. The Respondents obstructed discovery from start to finish and seek to profit from their own wrongdoing. The evidence of defamation, conspiracy, and interference is overwhelming, and it is unconscionable that they have so far avoided having to defend their actions before a jury. The Respondents occupy a privileged position in society not only economically, but also under the protection of the State as registered charities, and it is impossible to contemplate a republic of laws that allows such willful and vicious conduct to escape accountability. In the face of overwhelming evidence of genuine issues of material fact, the Master-in-Equity rewarded Respondents' obstruction, ignored Rule 15 allowing amendments and granted summary judgment across the board while preventing Petitioner an opportunity to create a fully developed record. This Court should grant review, examine the record, and reverse the finding that there is not a single triable issue and remand the case to allow the Petitioner to amend the complaint, complete discovery, including access to the administrator keys necessary to allow a forensic examination and thereafter be placed on the trial roster for disposition by trial by jury.

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/s/Thomas R. Goldstein
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