

THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. SUPREME COURT

APPEAL FROM PICKENS COUNTY

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2022-001332

Andrew Pampu,.....Petitioner,

v.

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

PETITION FOR WRIT OF CERTIORARI

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CERTIFICATION OF COUNSEL

The Court of Appeals denied Petitioner's timely Petition for Rehearing on August 12, 2025.

QUESTIONS PRESENTED FOR REVIEW

- I. Collateral estoppel only bars litigating issues which have been fully, fairly, and actually determined. Whether Wingo consented to sex with Pampu was previously before a university panel without contested case authority or procedures ensuring a fair hearing. And whether Clemson University breached a contract with Pampu was settled, not determined. Did the Court of Appeals err in finding Pampu cannot litigate these issues?
- II. Civil conspiracy is acting on an agreement to harm another, and juries need only make a fair and reasonable estimate of resulting damages. Wingo and Gahagan intentionally deceived Clemson into suspending Pampu for something he did not do, and an expert explained how and why Pampu was harmed as a result. Did the Court of Appeals err in ordering a JNOV be entered on Pampu's civil conspiracy claim?

INTRODUCTION

Trouble often brews with open relationships. In the fall of 2015, Andrew "Drew" Pampu, Erin Wingo, and Colin "CJ" Gahagan were freshmen at Clemson. Wingo had an open relationship with Gahagan. But Gahagan became upset when Wingo took an interest in Pampu, his pledge brother. These troubles came to a head on Pampu's 19th birthday. Gahagan and Wingo had a fight, after which Wingo propositioned Pampu for sex. The two had consensual sex behind what was then said to be a restaurant. Word soon spread about what happened. Embarrassed by Wingo's actions and looking to minimize the stigma, Wingo and Gahagan agreed to falsely claim Wingo was too drunk to consent and to have Pampu removed from school. They got their way. A University hearing panel found Pampu committed misconduct following a sham hearing and suspended him. With this mark on his record, Pampu transferred to another school, was not accepted into dental school as he had planned, and lost substantial earnings over his lifetime.

A jury awarded Pampu \$5.28 million in actual and punitive damages for defamation and civil conspiracy. The circuit court granted a JNOV as to civil conspiracy but denied it as to

defamation. The Court of Appeals affirmed the JNOV on civil conspiracy and further directed a JNOV on the defamation claim. The Court of Appeals' decision rests on several novel and important questions of law, conflicts with this Court's decisions, and has far reaching impacts on university sexual assault proceedings. This Court therefore should grant certiorari.

STATEMENT OF THE CASE

I. “If you don’t kiss me, we’re not going to have sex tonight.”

Pampu, Wingo, and Gahagan entered Clemson as freshmen in 2015. R. p. 1428, lines 14–17; p. 1625, lines 23–25; p. 1755, lines 7–9. Pampu and Gahagan were pledge brothers. R. p. 1429, line 14–p. 1431, line 1. One night that September, Pampu and Wingo made out. R. p. 1629, lines 5–7; *see also* R. p. 3125 (Wingo texting a friend of hers, “daily update. got drunk, made out with CJs hot pledge brother”). Even though Wingo and Gahagan had an open relationship at the time, Gahagan was “furious” about what happened. R. p. 1630, lines 12–17; p. 3126. Still, Pampu developed feelings for Wingo. R. p. 1551, lines 20–24; *see also* p. 1494, lines 3–8. As Pampu recalled, “at that point, you know, I had liked this girl.” R. p. 1494, line 8.

About six weeks after they first kissed, Wingo wanted to kiss Pampu for his 19th birthday. R. p. 1429, lines 17–18; p. 1642, lines 17–21; p. 2016, lines 8–10; p. 2173, lines 13–19. That night, Pampu and Gahagan’s fraternity threw a party at an off-campus house called “the Compound.” Wingo pre-gamed with friends before walking about 30 minutes to the party. R. p. 2010, line 6–p. 2014, line 14. When she arrived, she was “normal, happy, excited,” and “[r]eady to get there and see people.” R. p. 2016, lines 3–7. She was not stumbling, slurring her speech, vomiting, or showing signs of incapacitation.¹ R. p. 1436, lines 6–21; p. 1761, line 18–p. 1762, line 14; p. 2018,

¹ A witness observed Wingo stumble while walking up some stairs at the party, but the witness agreed she cannot say this was due to intoxication. R. p. 2174, line 22–p. 2175, line 4.

line 15–p. 2019, line 12. No one had concerns about Wingo being too intoxicated. *E.g.*, R. p. 1763, lines 12–22; p. 2018, line 25–p. 2019, line 12. It was “[j]ust a typical night out.” R. p. 2016, lines 3–7. Wingo first had had an argument with Gahagan, who told her to find Pampu. R. p. 2017, line 19–p. 2018, line 15. Wingo, upset with Gahagan, did just that. R. p. 1644, line 19–p. 1645, line 9.

Wingo found Pampu outside and told him, “If you don’t kiss me tonight, we’re not going to have sex.” R. p. 1436, line 22–p. 1437, line 6. This surprised Pampu, so he suggested they engage in oral sex instead. R. p. 1437, lines 7–17. Wingo consented. R. p. 1438, lines 10–18. Needing privacy because the party was on-going, Wingo and Pampu left the Compound through a back entrance to find another location. R. p. 1439, line 9–p. 1440, line 2. They walked together about a quarter to a half mile before finding a private spot by a shed along the fence line. R. p. 1441, line 25–p. 1442, line 6; p. 1498, line 19–p. 1504, line 2; p. 1806, lines 3–7. During that walk, Wingo still showed no outward signs of being incapacitated. R. p. 1442, lines 7–21.

Now in a private place, Wingo voluntarily pulled down her pants and told Pampu it was “[s]o we can have sex.” R. p. 1443, lines 2–16. When Pampu asked, she verbally consented to sex with him. R. p. 1443, lines 17–21. During their encounter, Wingo again displayed no outward signs of incapacity, never asked Pampu to stop, and dressed herself afterward. R. p. 1444, line 8–p. 1447, line 9. Wingo does not dispute she acted voluntarily, she verbally consented to sex, or the other facts Pampu described. R. p. 1649, line 17–1652, line 10.

Wingo and Pampu returned to the party together. R. p. 1447, lines 10–13. During their walk back, Wingo became extremely emotional over how her sex with Pampu would affect her relationship with Gahagan. R. p. 1446, lines 8–21. She wanted a more serious relationship with Gahagan, but sex with someone else crossed the boundary line in their otherwise open relationship. R. p. 1631, line 13–p. 1632, line 7. Wingo did not express a concern about Pampu’s actions or

indicate she did not consent to sex with him. R. p. 1447, lines 5–9. When they returned to the Compound, Pampu found their friends, secured a ride home for Wingo, ensured their friends would look after her given her emotional state, and told Wingo to call him if she needed anything. R. p. 1523, line 16–p. 1526, line 18. Pampu’s friend told him to return to the party and “I’ll make sure the girls get home safe.”² R. p. 1526, lines 2–10.

II. From “Don’t Tell CJ What Happened” to “One Step Closer to Pampu Being Gone.”

The next morning, Wingo texted Pampu, “Don’t tell CJ what happened” and told a friend that she had sex with Pampu. R. p. 1447, lines 14–17; p. 2050, line 9–p. 2051, line 24; p. 3124. But her actions harmed her relationship with Gahagan. R. p. 1446, lines 8–21. Then, text messages leaked which incorrectly stated Pampu had sex with Wingo “by the garbage thing behind Chipotle.” R. p. 1808, line 25–p. 1809, line 5; *see also* p. 1498, line 19–p. 1504, line 2 (describing the correct location where Wingo and Pampu had sex). Wingo was “ashamed and embarrassed” by these messages, particularly when “super judgmental” sorority sisters heard what happened. R. p. 1809, lines 4–5; p. 2043, lines 1–22. Those messages incensed Gahagan too. R. p. 1806, line 18–p. 1808, line 9. When he tried to save face by standing up for Wingo, his pledge class sided with Pampu and made derogatory comments about Wingo.³ R. p. 1813, line 7–p. 1815, line 15.

To save face, Wingo and Gahagan changed the narrative later that day. They crafted a story that Wingo was drunk to the point of incapacitation. Gahagan was the first to suggest to Wingo

² Pampu previously said Wingo was “on the bad end of drunk” during the walk back to the party, which he explained meant she was “extremely emotional” and “very upset” about Gahagan. R. p. 1521, lines 4–15. Wingo’s friends and others uniformly testified she was upset about Gahagan and never mentioned Pampu. R. p. 2022, line 20–p. 2023, line 7; p. 2074, line 24–p. 2076, line 15; p. 2085, line 1–p. 2086, line 19; p. 2176, line 16–p. 2177, line 8. Pampu also noted Wingo was stumbling on the walk back, but this may have been because of the “rocky terrain” of the path. R. p. 1521, lines 16–17. Sometime after Wingo left and Pampu returned to the party, Wingo vomited and began displaying more outward signs of drunkenness for the first time.

³ Pampu made one of the comments but later apologized to Gahagan for it. R. p. 2466.

that “If you don’t remember it’s rape.” R. p. 1674, lines 1–10. From that point on, Wingo and Gahagan repeated their false claim that Pampu raped Wingo because she was blackout drunk and unable to consent over 100 times to nearly 20 people. R. p. 1676, line 19–p. 1679, line 25; p. 1682, line 18–p. 1688, line 3; p. 1761, line 8–p. 1763, line 22; p. 1772, line 16–p. 1773, line 1; p. 1776, line 1–8; p. 1777, lines 10–15; p. 3133; pp. 3131–32. Wingo’s father, Dave, also made this claim. He falsely wrote that Pampu “preyed” on Wingo, his conduct was “predatory,” he is a “serial predator,” there is a “likelihood that he will do something harmful again,” and he will “possibly giv[e] others a ‘green light’ to do so as well.” R. p. 3142; p. 3145.

Wingo and Gahagan then agreed to get Pampu kicked out of school. Gahagan originally wanted Wingo to press criminal charges. R. p. 1771, lines 9–17. But because Pampu did not commit a crime, R. p. 3110, Wingo and Gahagan decided removal from school was best just three and a half weeks after they started falsely claiming Wingo was incapacitated:

Gahagan to Wingo: One step closer to him being gone.

...

Gahagan to Wingo: Well you have 4 chances in the school to get what you want. Then you have criminal. Unless you decide criminal sooner is the best option

...

Wingo to Gahagan: half of me wants to have him expelled and throw his ass in jail. and half of me wants to hide. right now the northern in me is coming out and I’m ready to hit him with a lawsuit.

...

Gahagan to Wingo: What do you mean worked out? There’s no way this kid can stay at this school. It’s honestly impossible

...

Gahagan to Wingo: I’ll be honest. Getting him charged criminally is gonna be a bit harder because of no physical evidence but through the school should be no problem

Wingo to Gahagan: yeah criminal charges would be a pain in the ass

Gahagan to Wingo: You are safe. He’s gone Erin. It’s not gonna be possible for him to stay

R. pp. 3137–39. To keep Pampu in the dark about their plan, Wingo and Gahagan told Pampu everything was all right. Gahagan, for instance, texted that Pampu “would never rape” Wingo. R. p. 1777, line 24–p. 1778, line 2. And Wingo told Pampu, “I don’t blame you for it. I told you that’s what I wanted and I believe you when you say that you kept asking me if it was okay. I’m mad at myself for letting it happen[.]” R. p. 1556, lines 16–18.

Clemson suspended Pampu under these false allegations. R. p. 1586, lines 7–14. But after the fact, Gahagan admitted that Pampu is “innocent,” Gahagan “lied” to Clemson, “Erin wanted to have sex that night,” and Gahagan tried to destroy relevant evidence. R. p. 3135.

III. Pampu is gone after Clemson suspends him without a meaningful opportunity to present his case.

Clemson’s Office of Community and Ethical Standards (OCES) received information from a resident assistant that Pampu allegedly sexually assaulted Wingo. R. p. 2537, lines 14–19. Wingo initially did not want to bring charges. R. p. 2537, line 21–p. 2536, line 2. But she changed her mind and, on November 11, 2015, brought a formal complaint. R. p. 2540, line 25–p. 2541, line 8. OCES assigned two investigators, Loreto Jackson and Suzanne Price, and neither could compel witnesses to talk or produce information; they could only rely on what witnesses voluntarily provide. R. p. 2565, lines 16–24. The investigators issued a final report on February 4, 2016, determining that “Erin Wingo was incapacitated during the incident and unable to give to consent” and recommending a hearing be held. R. p. 2543, lines 10–18. Clemson issued a charge letter to Pampu on February 11 advising him of the allegations and his right to a hearing. R. pp. 2909–10.

Pampu’s charges came before a five-member hearing panel fifteen days later, on February 26, 2016. The panel included a chairman, a faculty member, a staff member, and two students. R. p. 2107, line 23–p. 2108, line 1. An OCES staff member served as the hearing officer. R. p. 2533, lines 11–14. The hearing was not a traditional adjudicatory proceeding. For example:

1. No witnesses were sworn.
2. The Rules of Evidence did not apply. R. p. 379.
3. Pampu had counsel present, but his attorney could not speak directly to the panel or any witnesses. R. p. 2534, lines 5–7.

4. Pampu could not directly cross examine Wingo or any witness against him. All his questions went through the chairman, who determined whether he would ask the question. Often, the chairman rephrased Pampu's questions in ways that helped Wingo. For example, Pampu tried to question Jackson about omitting evidence which contradicted Wingo's claims. The chairman rephrased the question to instead state that Jackson's investigation was thorough:

By Mr. Pampu:

. . . [I]sn't the credibility of someone's statement relevant during an investigation?

By Chairperson Frock:

Okay. So let me ask that question. Based on your thorough investigation, that – well, it appears to be pretty thorough – and all the interviews, where would you guide us towards the credibility of some of the issues you are hearing right now in terms of who told what, when and [] maybe how?

R. p. 2583, lines 6–19.

5. The chairman and panel members interjected to answer questions on behalf of witnesses. *E.g.*, R. p. 2611, line 18–p. 2612, line 13; p. 2676, line 18–2677, line 5.

6. The hearing officer intervened on behalf of Jackson, the only investigator who appeared at the hearing, and prevented Pampu from presenting relevant evidence. For example, Jackson omitted evidence helpful to Pampu from her outline because she felt that the witness was “editorializing and making judgmental comments about Erin” and “incorrect in some of her information” on a minor detail. R. p. 2571, lines 6–16. When Pampu seized on Jackson passing judgment on the witness, the hearing officer cut Pampu's questioning short, proclaiming, “It's not

the investigator’s responsibility to determine credibility.” R. p. 2585, lines 4–5. The hearing officer also prevented Pampu from presenting evidence that he had no reason to believe Wingo was incapacitated, even though whether Pampu knew or had reason to know Wingo was incapacitated was an element of the charge. R. p. 2585, line 25–2586, line 8; p. 2786, lines 9–11.

7. Lacking subpoena power, Pampu could not compel witnesses to attend the hearing, including those favorable to his case. *E.g.*, R. p. 2573, line 17–p. 2574, line 19.

8. The panel received the complete investigation packet, containing notes from 14 witness interviews, dozens of text messages, and other documents, most of which are hearsay. R. p. 2110, lines 6–15; p. 2572, lines 10–18; p. 2617, lines 5–7; pp. 2406–2527. And because investigators could not compel witnesses to produce evidence, their notes and any documents are just “what [the witnesses] want to present.” R. p. 2565, lines 16–23. Except for Wingo and Pampu’s interview notes, no notes were signed by the witness making the statements. R. pp. 2419–31. Seven witnesses also never spoke at the hearing, meaning Pampu had no opportunity to question them. Finally, Price, the investigator who primarily spoke with the witnesses, was not at the hearing to answer questions about the interviews. R. p. 2542, lines 15–20.

The panel found for Wingo on the record during the February 26 hearing and in a letter dated February 29. R. p. 345; p. 2788, lines 17–21. It found that Wingo “was incapacitated and unable to consent which [Pampu] should have reasonably known.” R. p. 345. It suspended him for one semester, placed him on disciplinary probation, evicted him from campus housing, prohibited him from contacting Wingo, required that he enter a counselling program, and mandated that he complete a Sexual Assault Awareness course.⁴ R. pp. 345–46. Pampu appealed to the Vice

⁴ The specific violations were of university regulations regarding alcohol, disorderly conduct, harm to person, and sexual misconduct. R. p. 345.

President of Student Affairs, who affirmed. R. p. 346; p. 354; p. 382. He next appealed to the Office of the President, who increased the suspension by one year. R. p. 354; p. 360; p. 383. That letter stated, “This decision is final” and, unlike the others, did not advise Pampu of any further appeal rights. *Id.*; *see also* p. 383 (Code of Conduct stating, “The decision of the president or his/her designee shall be final” and providing for no further appeals). Clemson officials understand there is no right to appeal the President’s decision to the court system. R. p. 2118, lines 4–13.

With no right to appeal Clemson’s final decision, Pampu filed a Federal lawsuit in June 2016 against the university, certain officials, and members of the hearing panel challenging the school’s handling of Wingo’s complaint. *Doe v. Clemson Univ.*, No. 8:16-cv-1957, 2019 WL 1383822, at *1 (D.S.C. Mar. 27, 2019). The parties settled at mediation in March 2018. A dispute then arose as to whether the final settlement agreement would contain terms regarding Pampu’s transcript and how Clemson would treat his disciplinary records. *Id.* at *2. Clemson moved to enforce the settlement agreement, which the district court granted. *Id.* at 3. In doing so, the court observed that Clemson has “shown a willingness to try to accommodate [Pampu]’s reputation” but “the subject matter of student educational and disciplinary records are governed by a variety of laws, which may constrain what [Clemson is] able to do to accommodate [Pampu] above and beyond what the Settlement Agreement requires.” *Id.* Clemson therefore had limited power to remove these items from Pampu’s record.

In relevant part, the settlement agreement with Clemson entered after this order provided:

WHEREAS, Plaintiff denies the allegations of [Wingo’s] November 11, 2015 formal Title IX complaint to Clemson University, the basis of which the hearing board’s decision of February 26, 2016 was made;

...

NOW THEREFORE, in consideration of the Recitals and mutual promises contained herein, the Parties agree as follows:

...

2. Clemson University will reinstate the hearing board's decision of February 29, 2016, as upheld by the University Vice President of Student Affairs;

...
7. Plaintiff releases and forever discharges Clemson Defendants . . . none of whom admit any liability, but expressly deny liability[.]

R. pp. 3190–91.

IV. Wingo and Gahagan's efforts to remove Pampu from Clemson caused him substantial financial harm.

Pampu transferred to and graduated from the College of Charleston. R. p. 1461, lines 12–20. He planned to attend dental school and become an orthodontist. R. p. 1462, lines 18–24. To that end, he graduated magna cum laude with a degree in biochemistry and scored well on his dental school admission exams, including a score in the top 10% on one part. R. p. 1461, lines 16–20; p. 1463, line 21–p. 1464, line 10. His credentials were strong enough to be accepted into dental school. R. p. 1939, lines 3–17. But Pampu had to disclose his suspension on his application. R. p. 3149. All nine dental schools he applied to rejected his application. R. p. 1463, lines 16–20. So Pampu had to pivot. He obtained an MBA from the College of Charleston and began working in medical sales, earning about \$72,000 per year. R. p. 1608, line 16–p. 1609, line 6.

Pampu presented testimony from Steven D. Shedlin, a certified rehabilitation counselor with over 40 years' experience in the field. R. p. 1930, line 17–p. 1933, line 6. He has testified as an expert over 300 times on vocational rehabilitation, employment earnings, and related matters. R. p. 1933, line 7–p. 1934, line 5. The circuit court qualified Shedlin as a vocational expert without objection. R. p. 1936, lines 4–12.

“Vocational experts render opinions about a person's ability to work and to earn.” R. p. 1934, lines 8–9. Shedlin opined Pampu would have been accepted to dental school and an orthodontics residency had he not been suspended from Clemson. R. p. 1939, line 22–p. 1940, line 25; p. 1976, line 17–p. 1977, line 5. While Pampu will do well selling medical equipment, he will

not earn as much as an orthodontist. R. p. 1941, line 14–p. 1942, line 10; p. 1943, lines 3–p. 1948, line 10. Pampu therefore will “earn significantly less over his lifetime” because of his suspension. R. p. 1948, line 25–p. 1949, line 3; p. 1959, lines 3–7. Shedlin held all his opinions to a reasonable degree of professional certainty. R. p. 1948, lines 11–14.

V. The courts below took away the jury’s \$5.28 million award to Pampu.

Pampu filed this case on June 17, 2017, asserting claims for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy. R. pp. 31–71. Judge Perry H. Gravely denied Respondents’ motion to dismiss, except as to abuse of process. R. p. 29. Pampu later withdrew his intentional infliction of emotional distress claim. On October 13, 2021, then-Judge Letitia H. Verdin denied Respondents’ motions for summary judgment. R. pp. 17–24. Judge Verdin found that Pampu’s settlement with Clemson did not bar his claims here, the OCES hearing panel’s findings did not preclude Pampu from relitigating Wingo’s capacity to consent to sex, and there were questions of fact as to the defamation and civil conspiracy claims. *Id.*

The case was called for a jury trial before Judge Gravely on March 21, 2022. Twelve witnesses testified over five days. At the close of Pampu’s case, Respondents moved for a directed verdict. Judge Gravely denied the motion as to defamation and took the motion as to civil conspiracy under advisement. R. p. 2153, lines 3–25. Respondents renewed their directed verdict motion at the close of all evidence. Relevant here, they argued collateral estoppel bars Pampu’s claims and he presented insufficient evidence of civil conspiracy. R. p. 2207, line 11–p. 2216, line 16. Judge Gravely denied all pending direct verdict motions. R. p. 2215, lines 14–p. 2216, line 15.

The jury awarded Pampu \$5.28 million as follows: (1) \$700,000 in actual damages and \$450,000 in punitive damages for defamation against Wingo; (2) \$230,000 in actual damages and no punitive damages for defamation against Dave Wingo; (3) \$700,000 in actual damages and

\$200,000 in punitive damages for defamation against Gahagan; (4) \$2,000,000 in actual damages for civil conspiracy against Wingo; and (5) \$1,000,000 in actual damages for civil conspiracy against Gahagan. R. pp. 1084–85. The jury also found Dave Wingo not liable for civil conspiracy. *Id.* Respondents moved for, among others, JNOV because collateral estoppel bars Pampu’s claims and Pampu presented insufficient evidence of a civil conspiracy. R. pp. 1086–1109. Judge Gravely denied the JNOV as to defamation but granted it as to civil conspiracy. R. pp. 4–13. Judge Gravely then denied Dave Wingo’s Rule 59(e) motion on August 22, 2022. R. pp. 1–3.

The parties timely filed and served cross appeals. On June 11, 2025, the Court of Appeals, in a published opinion, affirmed in part and reversed in part. The court reversed the denial of JNOV as to defamation, finding that collateral estoppel precludes Pampu from relitigating Wingo’s capacity to consent. Specifically, the court held: (1) the South Carolina Campus Sexual Assault Information Act, S.C. Code Ann. § 59-105-10 to -60 (Information Act), requires that the panel’s findings be preclusive; (2) the settlement of Pampu’s suit against Clemson was preclusive; (3) Pampu had an adequate opportunity to litigate the issue of consent before the hearing panel; and (4) the OCES proceeding was a contested case which had to be appealed under the Administrative Procedure Act, S.C. Code Ann. § 1-23-310 to -400. Op. at 19–31. The court affirmed the JNOV as to civil conspiracy because (1) there was insufficient evidence of an unlawful act or lawful act committed by unlawful means, in part because the Clemson settlement and the Information Act prevent him from litigating these issues; (2) Pampu “broke the chain of causation” by failing to appeal the final OCES decision; and (3) Shedlin’s testimony was speculative. Op. at 7–10.

Pampu timely petitioned for rehearing on June 26, 2025. The court called for a response, which Gahagan filed on July 7, 2025, and Erin and Dave Wingo filed on July 14, 2025. The Court of Appeals denied Pampu’s petition on August 12, 2025.

STANDARD OF REVIEW

A court may grant a JNOV “only if no reasonable jury could have reached the challenged verdict.” *Gastineau v. Murphy*, 331 S.C. 565, 568, 503 S.E.2d 712, 713 (1998). “When reviewing the trial court’s ruling on a motion for a directed verdict or a JNOV, this Court must apply the same standard as the trial court by viewing the evidence and all reasonable inferences in the light most favorable to the nonmoving party.” *RFT Mgmt. Co. v. Tinsley & Adams LLP*, 399 S.C. 322, 331–32, 732 S.E.2d 166, 171 (2012). “[I]f more than one inference can be drawn, the case must be submitted to the jury.” *Gastineau*, 331 S.C. at 568, 503 S.E.2d at 713. “Neither the trial court nor the appellate court has the authority to decide credibility issues or to resolve conflicts in the testimony or the evidence.” *RFT Mgmt.*, 399 S.C. at 332, 732 S.E.2d at 171. This Court likewise reviews questions of law, like statutory interpretation and the application of collateral estoppel, de novo. *State v. Taylor*, 436 S.C. 28, 34, 870 S.E.2d 168, 171 (2022); *Crosby v. Prysmian Commc’ns Cables & Sys. USA, LLC*, 397 S.C. 101, 106, 723 S.E.2d 813, 816 (Ct. App. 2012).

ARGUMENT

- I. This Court should review the Court of Appeals’ holding that collateral estoppel bars Pampu’s claims because it presents novel and important questions of law about the Administrative Procedure Act and campus sexual assault proceedings, and it conflicts with this Court’s precedent.**

The Court of Appeals’ collateral estoppel holdings radically alter the landscape of campus sexual assault proceedings. In a matter of first impression, the court subjected countless proceedings to immediate procedural attack, opened clogged appellate dockets to a new wave of appeals, increased the burden on schools, and frustrated the intent of multiple statutes. And beyond incorrectly answering novel questions, the court misapplied this Court’s established collateral estoppel decisions. This Court therefore should grant certiorari. *See* Rule 242(b)(1), -(3), SCACR.

A. Whether university sexual assault proceedings fall under the APA is a novel question of law.

The Court of Appeals held that the OCES hearing was a contested case under the APA. Op. at 29. Pampu therefore had to appeal the final decision from the President's office to the Court of Appeals, and because he did not, Pampu cannot relitigate Wingo's capacity to consent. *Id.* This is a novel question of law which the court got wrong for four reasons.

First, the Information Act proves the OCES hearing is not a contested case. A contested case is “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). An agency only decides a contested case under the APA when a statute “explicitly requires [the agency] to hold a hearing.” *Garris v. Governing Bd. of S.C. Reinsurance Facility*, 333 S.C. 432, 440, 511 S.E.2d 48, 52 (1998). Even if the agency voluntarily offers a hearing—including one with all the features of a contested case—the proceeding still is not under the APA. *Id.* Here, the Information Act does not explicitly require a hearing. It requires only that universities provide “procedures for institutional disciplinary action” and for “an institutional disciplinary proceeding.” SC Code Ann. § 59-105-40(B)(4). The Clemson hearing therefore was not a contested case, no matter what procedures were used. *Garris*, 333 S.C. at 440–41, 511 S.E.2d at 52.

Second, the hearing did not meet the requirements for a contested case. A contested case must provide at least 30 days' notice for a hearing, S.C. Code Ann. § 1-23-320(A); only five days' notice is required for an OCES hearing, R. p. 378. Parties to a contested case can take depositions and issue subpoenas, S.C. Code Ann. § 1-23-320(C) to –(D); there are no such rights in an OCES hearing. The Rules of Evidence apply in a contested case, S.C. Code Ann. § 1-23-330(1); they do not apply in OCES hearings, R. p. 379. Parties to a contested case have a right of cross-

examination, S.C. Code Ann. § 1-23-330(3); Pampu had no right to question witnesses against him directly, and the chairman, panel members, and hearing officer interfered with the questioning he attempted, *supra* pp. 7–8. Contested case orders must have separately stated findings of fact and conclusions of law, S.C. Code Ann. § 1-23-350; the order here only made the conclusory statement that “the hearing board found that the complainant was incapacitated and unable to give consent which you should have reasonably known, therefore you were found in violation of all four charges,” R. p. 345. Lastly, a contested case is appealed to the Court of Appeals, S.C. Code Ann. § 1-23-380; there is no right to appeal the President’s decision, R. p. 2118, lines 4–13; *see also* R. p. 346, 354, 360, 382–83. The Court of Appeals’ belief that Pampu had to appeal these deficiencies misses the point. Op. at 29. The issue is not error correction for missing procedures. It is that the procedural differences are so great that the OCES proceeding is not a contested case.

Third, requiring campus sexual assault proceedings to be a contested case under the APA frustrates the intent of the Information Act. The General Assembly refused to detail what procedures a university must follow to address campus sexual assault claims. It left that determination to universities, with input from students. S.C. Code Ann. § 59-105-30. If the General Assembly intended for universities to adopt procedures that meet all the requirements for a contested case, it would have said so. Deeming these proceedings to be contested cases thwarts the discretion which the General Assembly afforded universities to adopt their own procedures.

Fourth, the Court of Appeals’ decision produces absurd results. If the APA applies, then state school proceedings must be appealed directly to the court system, while proceedings at private schools must be challenged collaterally. The same set of facts therefore are subject to wildly different vehicles for challenges. The decision also opens the floodgates to appeals from state school sexual assault proceedings, and likely many other proceedings too. If all contested case

requirements apply, these cases will become more expensive for universities and investigations will be frustrated. There is no suggestion the General Assembly intended to place state school sexual assault proceedings under the burdens of the APA.

B. Whether the Information Act makes university sexual assault proceedings preclusive is a novel question of law.

The Court of Appeals held the Information Act makes findings of campus sexual assault panels preclusive because holding otherwise renders the act's provisions superfluous. Op. at 20. This too is a novel question of law which the Court of Appeals got wrong.

The cardinal rule of statutory interpretation is to effectuate the General Assembly's intent. *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). A statute's plain language is the best of evidence of that intent, so courts give its words "their plain and ordinary meaning without resorting to subtle or forced construction which limits or expands the statute's operation." *State v. Landis*, 362 S.C. 97, 102, 606 S.E.2d 503, 505 (Ct. App. 2004) (citation omitted). "The statute as a whole must receive a practical, reasonable, and fair interpretation consonant with the purpose, design, and policy of lawmakers. Any ambiguity in a statute should be resolved in favor of a just, equitable, and beneficial operation of the law." *Id.* at 102–03, 606 S.E.2d at 506 (citation omitted). This Court cannot add terms to a statute, as doing so "is not a construction of a statute, but, in effect, an enlargement of it by the court." *Rotkiske v. Klemm*, 589 U.S. 8, 14 (2019) (cleaned up). The Court also presumes "the General Assembly does not intend to supplant common law principles when enacting legislation." *O'Laughlin v. Windham*, 330 S.C. 379, 384, 498 S.E.2d 689, 691 (Ct. App. 1998). "The rules of the common law are not to be changed by doubtful implication, or overturned except by clear and unambiguous language." *Coakley v. Tidewater Const. Corp.*, 194 S.C. 284, 9 S.E.2d 724, 726 (1940).

Nothing suggests the General Assembly intended to give campus sexual assault proceedings preclusive effect. The Information Act only requires universities to adopt procedures. S.C. Code Ann. § 59-105-40(B)(4). It does not say what those procedures must be, foreclose any challenges to them or any findings made, or purport to replace the common law collateral estoppel analysis with a per se rule. *See Montana v. United States*, 440 U.S. 147, 153 (1979) (observing that collateral estoppel is “[a] fundamental precept of common-law adjudication”); *cf. 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.”). Courts therefore must decide the preclusive effect of these proceedings using traditional collateral estoppel principles.

C. The Court of Appeals’ decision conflicts with this Court’s collateral estoppel decisions.

Under collateral estoppel, “a party may be prevented from relitigating an issue which was [1] actually litigated and directly determined in a prior action [2] if the party had a full and fair opportunity to litigate the issue in the first action and [3] there are no circumstances which justify affording him a second opportunity to retry the issue.” *Roberts v. Recovery Bureau, Inc.*, 316 S.C. 492, 497, 450 S.E.2d 616, 619 (Ct. App. 1994). A non-party to the prior case may assert this defense against someone who was a party. *S.C. Prop. & Cas. Ins. Guar. Ass’n v. Wal-Mart Stores, Inc.*, 304 S.C. 210, 213, 403 S.E.2d 625, 627 (1991). To determine whether a non-party can invoke an earlier judgment, the standards and exceptions in Restatement (Second) of Judgments §§ 27–29 apply. *Id.* The Court of Appeals’ decision conflicts with these principles in four ways.

First, the court misused fairness to bolster collateral estoppel’s application. *See, e.g., Op.* at 19–20, 23. Fairness is used to *avoid* collateral estoppel even when its elements are otherwise met. *State v. Bacote*, 331 S.C. 328, 331, 503 S.E.2d 161, 163 (1998) (“[E]ven if all the

requirements of issue preclusion are met, when unfairness or injustice results or public policy requires it, the doctrine’s application may be precluded.”) (emphasis added). The Court of Appeals could not use its perceived notion of “fairness” to force a square peg into a round hole.

Second, the court wrongly held Pampu had an adequate opportunity to litigate Wingo’s consent before the OCES panel. *See Op.* at 23. Collateral estoppel does not apply when “[a] new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts.” Restatement (Second) of Judgments § 28(3). Here, the Court of Appeals believed “Pampu was also allowed to cross-examine OCES witnesses just as he was allowed to cross-examine Respondents-Appellants’ witnesses in the present action.” *Op.* at 23. This belief is staggering. In the OCES hearing, Pampu could not directly question adverse witnesses, his attorney could not speak directly to anyone, no witnesses were under oath, the chairman rephrased questions to make them friendlier to Wingo, the hearing officer and panel members answered questions for witnesses, the hearing panel received unsigned and unsworn statements from witnesses who did not testify, and the panel could not compel witnesses to attend. *Supra* pp. 7–8. None of that can be said about this trial. The Court of Appeals then side-stepped these procedural deficiencies by decreeing that the vehicle to address them was a direct appeal under the APA. *Op.* at 23. But Pampu could not appeal. *Supra* pp. 14–16. So the OCES hearing’s procedural failings are relevant now. On this record, there is no tenable argument that Pampu had an adequate opportunity to litigate Wingo’s consent such that collateral estoppel applies.

Third, the Clemson settlement did not determine Wingo’s consent or whether Clemson breached a contract with Pampu.⁵ *See Op.* at 20. A settlement does not litigate or determine

⁵ Pampu’s civil conspiracy claim asserts that Wingo and Gahagan sought to tortiously interfere with Pampu’s contractual right to remain a student at Clemson.

anything for collateral estoppel purposes. *See* 18A Fed. Prac. & Proc. Juris. § 4443 (3d ed.) (“To support preclusion at all, there must be a judgment in some form; a settlement agreement by itself is effective only as a contract.”) And court approval of a settlement does not make it a consent judgment. *Id.*; *see* Op. at 21–22 (suggesting the settlement was a consent judgment). Approval merely finds that the parties had an enforceable contract and says nothing on the merits. 8A Fed. Prac. & Proc. Juris. § 4443 (3d ed.). That is all the district court did here. *Doe*, 2019 WL 1383822, at *2–3. In the approved settlement, Pampu denied Wingo’s allegations, reservation of that denial was part of the consideration given, and Clemson admitted no liability. R. pp. 3190–91. The purpose of “reinstat[ing] the hearing board’s decision of February 29, 2016 as upheld by the University Vice President of Student Affairs” was to reinstate the original one-semester suspension, which Clemson would not report to other schools, rather the longer suspension by the President’s office which was reportable. R. p. 3191; *see also* R. p. 384 (stating Clemson’s reporting policy). It was not to reinstate the panel’s factual findings. Clemson might even be legally unable to erase those findings. *Doe*, 2019 WL 1383822, at *3. So as then-Judge Verdin found when denying summary judgment, concluding Pampu intended to reinstate the findings “would make no sense.” R. p. 20. This case was pending when Pampu settled with Clemson; of course he preserved the right to challenge Wingo’s capacity. Otherwise, the reservation language is superfluous.

Fourth, Gahagan admitted to lying during the OCES hearing and that Wingo wanted to have sex with Pampu. R. p. 3135. The Court of Appeals never cited this evidence or addressed how a decision obtained by dishonesty can be preclusive.

D. Special and important reasons compel review of the Court of Appeals’ decision.

The Court of Appeals’ decision drastically alters the student-university relationship. It gives universities obligations which no one—including Clemson—previously believed they had.

No public university in the State provides contested case procedures for these proceedings. *See, e.g.,* Pet. for Reh’g at 5–6; Pampu Resp. Br. to Gahagan at 24–26. If the Court of Appeals’ decision stands, every state school is violating the law. And if they are violating the law, the new direct appeal to the Court of Appeals will yield an avalanche of cases and jeopardize countless university proceedings. This Court’s review is imperative before this sea change in the law occurs.

II. This Court should review the Court of Appeals’ imposition of a JNOV on Pampu’s civil conspiracy claim because it presents novel and important questions of law and conflicts with this Court’s precedent.

“[A] plaintiff asserting a civil conspiracy claim must establish (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 the plaintiff.” *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). Pampu’s conspiracy claim is based on Wingo and Gahagan’s “concerted effort to have Pampu removed from Clemson.” Op. at 8. The Court of Appeals did not find there was insufficient evidence of an agreement between Wingo and Gahagan or of an overt act supporting it. The court only found insufficient evidence of an unlawful act or a lawful act by unlawful means, and that Pampu’s damages were too speculative. This Court should review that decision.⁶ *See* Rule 242(b)(1), -(3), SCACR.

⁶ The Court of Appeals’ civil conspiracy discussion also included collateral estoppel. Op. at 8, 10. Pampu’s collateral estoppel discussion above applies equally here. The court also made several incorrect preservation and abandonment findings. For example, the court found Pampu’s opening brief did not argue that Clemson’s suspension of him was a breach of contract. Op. at 9 n.7. But Pampu expressly argued that point in his opening brief. Pampu Appellant’s Br. at 20–21. The court also held Pampu abandoned any argument that Clemson could breach its contract even if it complied with the Information Act. Op. at 9–10. Respondents never argued the Information Act affected Pampu’s civil conspiracy claim. This was a conclusion the Court of Appeals reached on its own. Pampu therefore had no reason to raise the Information Act in his civil conspiracy briefing. Finally, the court held Pampu abandoned any argument that Clemson knowingly accepted false evidence or that he can “second-guess” the hearing panel’s credibility assessments. Op. at

A. Whether the Information Act shields Wingo and Gahagan from liability for civil conspiracy is a novel question of law.

The Court of Appeals held that Wingo and Gahagan cannot be liable for civil conspiracy because Clemson followed state law by implementing a sexual assault policy. Op. at 9–10. This is another novel question which the court answered incorrectly.

The court placed more weight on the Information Act than it can bear. The Information Act applies to universities, not to students. *See* S.C. Code Ann. § 59-105-40. There is no evidence the General Assembly intended to insulate students who, for personal gain, abuse proceedings conducted under the act. The court also overlooked that civil conspiracy does not require an unlawful act. Even if Clemson acted lawfully based on the evidence at the hearing, liability can still lie, such as if Wingo and Gahagan tried to throw that proceeding by engaging in deceitful conduct. *Cf. Hall v. UBS Finc. Servs., Inc.*, 435 S.C. 75, 90-92, 866 S.E.2d 337, 344-45 (2021) (allowing claim for tortious interference with an at-will employment relationship, where the employer did not breach a contract, because “[t]he fact that the employment is at the will of the parties, respectively, does not make it one at the will of others”).

B. The Court of Appeals’ decision that Pampu did not show an unlawful act or a lawful act by unlawful means conflicts with this Court’s tortious interference and civil conspiracy decisions.

The act at the heart of Wingo and Gahagan’s conspiracy was getting Clemson to breach its contract with Pampu by removing him from school. “The elements of a tortious interference with contractual relations claim are: (1) the existence of a contract; (2) knowledge of the contract; (3) intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *Hall*, 435 S.C. at 89, 866 S.E.2d at 344 (quotation omitted). The Court of Appeals agreed there

10. As to the first point, Clemson’s intent is immaterial. *Infra* pp. 21–22. The second point is baffling. The entire collateral estoppel argument is about whether Pampu can relitigate the panel’s findings.

was a contract between Clemson and Pampu. Op. at 8. There was no dispute that Wingo and Gahagan knew of this contract, and the Court of Appeals did not find their actions were unintentional or justified. Instead, the Court of Appeals only held there was no reasonable inference that Clemson breached a contract with Pampu because Clemson followed state law by implementing a sexual assault policy, Pampu never claimed Clemson knowingly accepted false testimony, and the court excluded evidence of the OCES hearing. These holdings directly conflict with this Court's decisions and the record.

The tortious interference claim looks to Wingo and Gahagan's intent. *See Eldeco, Inc. v. Charleston Cnty. Sch. Dist.*, 372 S.C. 470, 481, 642 S.E.2d 726, 732 (2007) (holding that it is "necessary that [the third party] intend to interfere with [] an existing contract"). Clemson's intent as the breaching party is irrelevant. If Wingo and Gahagan misled Clemson into exercising its rights under the Information Act and Clemson's policies, Pampu has a claim because Clemson still breached its agreement by removing Pampu based on a false premise. *See Hall*, 435 S.C. at 90–92, 866 S.E.2d at 344–45. It is immaterial whether Clemson knew Wingo's claim was false.

Relatedly, the Court of Appeals held there was insufficient evidence of a breach by Clemson because the circuit court excluded direct evidence of the OCES proceeding. Op. at 10. This ignores the evidence which was presented to the jury: (1) all objective evidence shows Wingo was not incapacitated when she consented to sex with Pampu; (2) Wingo knew what happened on the night on question but only crafted a contrary story after her actions became socially embarrassing and she met with Gahagan; (3) Wingo and Gahagan texted each other about getting Pampu removed from Clemson; (4) Wingo and Gahagan led Pampu on while working behind his back to have him removed; (5) Gahagan admitted to lying to Clemson about Wingo's consent; and (6) Clemson suspended Pampu. *Supra* pp. 2–6 (collecting evidence). This was enough evidence

for the jury to conclude that Wingo and Gahagan induced Clemson to breach its contract with Pampu. The jury did not need to know the details of the OCES hearing to make this finding.

Even if Clemson did not technically breach its agreement with Pampu, Wingo and Gahagan are still liable for conspiracy. Conspiracy requires only an overt act in furtherance of the goal. *Pye v. Estate of Fox*, 369 S.C. 555, 567-68, 633 S.E.2d 505, 511 (2006), *overruled on other grounds by Paradis*, 433 S.C. at 573, 861 S.E.2d at 779. “[T]he conspiracy need not be completed.” 15A C.J.S. *Conspiracy* § 6. Pampu therefore did not need to prove all elements of the underlying act. *Paradis*, 433 S.C. at 580-81, 861 S.E.2d at 783-84 (Few, J., concurring in part and dissenting in part) (acknowledging that a civil conspiracy claim can proceed even if an underlying tort cannot be proven); *see also* 16 Am. Jur. 2d *Conspiracy* § 53 (“[A]n agreement underlying a civil conspiracy need not extend to all details of the scheme and may be express, implied, or based on evidence of a course of conduct . . .”). So if Wingo and Gahagan intend to harm Pampu by lying to get him removed from Clemson, take steps to accomplish that, and harm him in the process, then Pampu has an actionable civil conspiracy claim. Because the record contains sufficient evidence that Wingo and Gahagan did just that, the jury’s verdict should stand. He need not prove a tortious interference claim to succeed.

C. The Court of Appeals’ decision that Pampu’s damages are speculative conflicts with this Court’s standards for determining future damages.

Finally, the Court of Appeals held Pampu presented insufficient evidence of damages because the fact he did not appeal the final decision “broke the causal chain” and Shedlin’s testimony that Pampu would have completed dental school and orthodontics training was pure speculation “and does not qualify as even minimally probative evidence to support the jury’s verdict.” Op. at 10. Once again, the Court of Appeals broke with this Court’s decisions.

First, Pampu did not break the causal chain by not appealing the final decision by Clemson because he had no ability to appeal. *See supra* pp. 14–16.

Second, this Court grants juries “wide latitude” to determine future damages. *Haltiwanger v. Barr*, 258 S.C. 27, 32–33, 186 S.E.2d 819, 821 (1972). This is particularly true where “from the nature of the case, the extent of the injury and the amount of damages are not capable of exact and accurate proof.” *Jones v. Thomas & Hill, Inc.*, 265 S.C. 66, 73, 216 S.E.2d 871, 874 (1975) (quotation omitted). In those cases, “all that can be required is that the evidence—with such certainty as the nature of the particular case may permit—lay a foundation which will enable the trier of facts make a fair and reasonable estimate of the amount of damage.” *Id.*; *see also Powers v. Calvert Fire Ins. Co.*, 216 S.C. 309, 321, 57 S.E.2d 638, 644 (1950) (“[P]erplexity attending the determination of the question and amount of damages rarely, if ever, defeats a cause of action. In such cases courts ordinarily depend upon the wisdom and fairness of the good men and true who compose the jury and here they appear to have reached a just and reasonable verdict.”). “[I]t does not matter that the determination of damages depends to some extent on the consideration of contingent events.” *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 392, 162 S.E.2d 705, 708 (1968) (quotation omitted). “[W]here it is reasonably certain that damage has resulted, mere uncertainty as to the amount will not preclude the right of recovery or prevent a jury decision awarding damages.” *Jones*, 265 S.C. at 73, 216 S.E.2d at 874 (quotation omitted).

The record here has ample evidence to support the jury’s award of damages. The jury awarded \$3,000,000 for civil conspiracy, which is about \$70,000 per year in lost earnings for the rest of Pampu’s working life.⁷ R. p. 1085; p. 2366, lines 17–21. In reaching this verdict, the jury

⁷ Respondents objected to instructing the jury that they must reduce future damages to present value. R. p. 2222, line 9–p. 2223, line 17.

knew Pampu makes \$72,000 per year in sales but wanted to be an orthodontist. R. p. 1608, line 16–p. 1609, line 6. Shedlin, a qualified vocational rehabilitation expert, testified to a reasonable degree of professional certainty that Pampu would have been accepted to dental school, completed an orthodontics residency, and earned substantially more were it not for his suspension. R. p. 1939, line 22–p. 1940, line 25; p. 1943, lines 3–6; p. 1948, line 25–p. 1949, line 3; p. 1959, lines 3–7; p. 1976, line 17–1977, line 5. Respondents did not offer a rebuttal expert.

The jury’s award was not speculative under the correct standard and considering all the evidence in the record. Respondents should not get a pass because they injured someone before he could begin his career by arguing any damages are too speculative. Our law gives juries the power to “make a fair and reasonable estimate of the amount of damage” in these circumstances. *Jones*, 265 S.C. at 73, 216 S.E.2d at 874. That is what the jury did here, and the courts below erred in taking away the jury’s reasoned judgment in direct contravention of this Court’s decisions.

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

/s/ R. Walker Humphrey, II

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