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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
IN THE SUPREME COURT

APPEAL FROM THE CHARLESTON COUNTY COURT OF COMMON PLEAS

THE HONORABLE R. FERRELL COTHRAN, JR., CIRCUIT COURT JUDGE

Unpublished Opinion No. 2025-UP-252
(Ct. App. filed July 23, 2025, withdrawn, substituted, and refiled October 29, 2025)
Supreme Court Case No. 2025-002380

Kevin Dion Hollinshead, Senior…… Respondent,

v.

Thomas J. Bell, individually and as Executive Director of Charleston Coalition for Kids, Charleston Coalition for Kids, a nonprofit Organization, Angelica M. Colwell, Lee P. Deas, Godfrey A. Gibbison, Eric P. Strickland, Loren R. Ziff, Courtney S. Waters, Leeza D. Steward, and Teach for America, Inc.…….....Petitioners.

RESPONDENTS' RETURN TO PETITIONERS' JOINT PETITION FOR WRIT OF CERTIORARI TO THE COURT OF APPEALS

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January 30, 2026
Charleston, South Carolina

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PLEASE TAKE NOTICE THAT Appellant hereby respectfully submits this return to Petitioners' Joint Petition for Writ of Certiorari to the Court of Appeals dated November 28, 2025.

STATEMENT OF THE CASE

This is an action for defamation, civil conspiracy, and outrage. *R.*, pp. 036 - 050. This matter arises out of a libelous campaign advertisement in which Respondents, Thomas J. Bell (hereinafter referred to as "Bell"), Charleston Coalition for Kids (hereinafter referred to as "Coalition"), Angelica M. Colwell (hereinafter referred to as "Colwell"), Lee P. Deas (hereinafter referred to as "Deas"), Godfrey A. Gibbison (hereinafter referred to as "Gibbison"), Eric P. Strickland (hereinafter referred to as "Strickland"), Loren R. Ziff (hereinafter referred to as "Ziff"), Courtney S. Waters (hereinafter referred to as "Waters"), Leeza D. Steward (hereinafter referred to as "Steward"), and Teach for America, Inc. (hereinafter referred to as "TFA"), acting in concert, conspired to and in fact did liable Appellant, Kevin Dion Hollinshead, Senior (hereinafter referred to as Hollinshead"). *R.*, pp. 036 - 050.

Hollinshead initiated this action on January 29, 2021, by filing a Summons and Complaint with the Clerk of the Charleston County Court of Common Pleas. *R.*, pp. 012 - 023. The Complaint was amended on February 2, 2021, four days later, and again on August 12, 2021[1]. *R.*, pp. 024 - 035; 036 - 050. In response, the Petitioners each filed motions to dismiss this action for failure of the Second Amended Complaint to state facts sufficient to constitute a cause of action pursuant to

[1] *See R.*, pp. 001 - 005.

Rule 12(b)(6), S.C.R.CIV.P.[2] *R.*, pp. 253 - 430. Additionally, Steward filed a motion for summary judgment as on separate grounds[3]. *R.*, pp. 362 - 430.

By order dated and filed April 5, 2022, the motions to dismiss were granted which the Circuit Court amended by Order dated and filed April 26, 2022. On May 12, 2022, Hollinshead appealed to the South Carolina Court of Appeals.

By opinion filed July 23, 2025, the Court of Appeals reversed the Circuit Court's Order dismissing this action and remanded the matter to the Charleston County Court of Common Pleas for further proceedings. On August 7, 2025, the Petitioners petitioned the Court of Appeals for rehearing. On October 29, 2025, the Court of Appeals denied the Petitioners' Petition for Rehearing, withdrew its July 23, 2025, Opinion and issued a substitute Opinion again reversing the Circuit Court's Order dismissing this action and remanding the matter to the Charleston County Court of Common Pleas for further proceedings. The instant Joint Petition for Writ of Certiorari to the Court of Appeals followed.

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[2] The Respondents, likewise, filed motions to dismiss the Amended Complaint filed February 2, 2021. However, since the motions were rendered moot and still pending when the Second Amended Complaint was filed on August 12, 2021, they are not germane to the issues involved in this appeal and will, therefore, not be discussed.

[3] Steward also filed an Answer in which she denied the material allegations of the Second Amended Complaint and raised thirteen affirmative defenses not pertinent to the issues involved in this appeal. *See R.*, pp. 051 - 062. Stewart is the only Respondent to have filed an answer in this matter so far.

STANDARD OF REVIEW

Steward filed a motion for summary judgment pursuant to Rule 56(b), S.C.R.CIV.P., in addition to a motion to dismiss pursuant to Rule 12(b)(6), S.C.R.CIV.P., both standards shall be discussed.

RULE 12(B)(6), MOTION TO DISMISS

Rule 12(b)(6) permits a party to move to dismiss a case if the complaint fails "to state facts sufficient to constitute a cause of action." "An appellate court applies the same standard of review as the trial court when reviewing the dismissal of an action pursuant to Rule 12(b)(6), SCRCP." *Capital City Ins. Co. v. BP Staff, Inc*., 382 S.C. 92, ___, 674 S.E.2d 524, 528 (Ct. App. 2009)(discussing standard for motion to dismiss based on Rule 12(b)(6)). "Under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure a defendant may move to dismiss a complaint based on a failure to state facts sufficient to constitute a cause of action." *Brazell v. Windsor*, 376 S.C. 83, 83, 655 S.E.2d 736, 737 (Ct. App. 2007). "Rule 12(b)(6) permits the trial court to address the sufficiency of a pleading stating a claim; it is not a vehicle for addressing the underlying merits of the claim." *Skydive Myrtle Beach, Inc. v. Horry Cty*., 426 S.C. 175, 180, 826 S.E.2d 585, 587 (2019). "A motion to dismiss under Rule 12(b)(6) tests the sufficiency of a complaint; importantly, it does not resolve contests surrounding the facts, the merits of a claim, or the applicability of defenses." *Republican Party of N.C. v. Martin*, 980 F.2d 943, 952 (4th Cir. 1992) (*cited with approval Skydive Myrtle Beach, Inc. v. Horry Cty*., *supra* at 180, 826 S.E.2d at 587).

"In considering a motion to dismiss pursuant to Rule 12(b)(6), SCRCP, the circuit court must base its ruling solely upon the allegations set forth on the face of the complaint." *Charleston*

Cty. Sch. Dist. v. Harrell, 393 S.C. 552, 557, 713 S.E.2d 604, 607 (2011); *accord Brown v. Leverette* , 291 S.C. 364, 366, 353 S.E.2d 697, 698 (1987) ("... solely upon the allegations set forth on the face of the complaint").

> If the facts and inferences drawn from the facts alleged in the complaint, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory, then the grant of a motion to dismiss for failure to state a claim is improper. In deciding whether . . . [to grant a] motion to dismiss, the . . . court must consider whether the complaint, viewed in the light most favorable to the plaintiff, states any valid claim for relief. A motion to dismiss under Rule 12(b)(6) should not be granted if facts alleged and inferences reasonably deducible therefrom entitle the plaintiff to relief under any theory. . . [A] complaint should not be dismissed merely because the court doubts the plaintiff will prevail in the action.

Spence v. Spence, 368 S.C. 106, 116-117, 628 S.E.2d 869, 874 (2006) (citations omitted).

"The question is whether, in the light most favorable to the plaintiff, and with every doubt resolved in his behalf, the complaint states any valid claim for relief. Dismissal under Rule 12(b)(6) is improper if the facts alleged and inferences reasonably deducible from them, viewed in the light most favorable to the plaintiff, would entitle the plaintiff to relief on any theory." *Capital City Ins. Co. v. BP Staff, Inc*., *supra* at 99, 674 S.E.2d at 528. "[A] well-pleaded complaint may proceed even if it strikes a savvy judge that actual proof of those facts is improbable, and that a recovery is very remote and unlikely." *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 556, 127 S.Ct. 1955, 1965, 167 L.Ed.2d 929, 940-41 (2007) (internal quotations omitted) (*cited with approval Skydive Myrtle Beach, Inc. v. Horry Cnty*., *supra* at 180, 826 S.E.2d at 588). A case "should not be dismissed merely because the court doubts the plaintiff will prevail in the action." *Capital City Ins. Co. v. BP Staff, Inc*., *supra* at 99, 674 S.E.2d at 528. "[P]leadings in a case should be construed liberally and the Court must presume all well pled facts to be true so that substantial justice is done between the parties." *Overcash v. S.C. Elec. & Gas Co*., 364 S.C. 569, 572, 614 S.E.2d 619, 620 (2005) (*citing Stroud v. Riddle*, 260 S.C. 99, 102, 194 S.E.2d 235, 237 (1973)). "At the Rule 12 stage,

therefore, the first decision for the trial court is to decide only whether the pleading states a claim. . . [A] plaintiff is—entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim." *Skydive Myrtle Beach, Inc. v. Horry Cnty.*, *supra* at 180, 826 S.E.2d at 588. "The trial court's grant of a motion to dismiss will be sustained only if the facts alleged in the complaint do not support relief under any theory of law." *Capital City Ins. Co. v. BP Staff, Inc.*, *supra* at 99, 674 S.E.2d at 528.

RULE 56(B), SUMMARY JUDGMENT

"Summary judgment is proper when there is no genuine issue of material fact and the moving party is entitled to judgment as a matter of law." *Nelson v. Chas. Co. Parks & Recreation Comm.*, 362 S.C. 1, 605 S.E.2d 744 (Ct. App. 2004). "[W]hen plain, palpable, and indisputable facts exist on which reasonable minds cannot differ, summary judgment should be granted." *Hedgepath v. AT&T*, 348 S.C. 340, 559 S.E.2d 327 (Ct. App. 2001). "In determining whether a genuine issue of fact exists, a court must consider everything in the records, pleadings, depositions, interrogatories, admissions on file, affidavits, etc." *Gilmore v. Ivey*, 290 S.C. 53, 58, 348 S.E.2d 180, 183 (Ct. App. 1986).

In determining whether to grant summary judgment, the Court must view the facts and inferences in the light most favorable to the non-moving party. *Matsushita Elec. Co. v. Zenith Radio Corp.,* 475 U.S. 574, 106 S.Ct. 1348, 89 L.Ed.2d 538 (1986). A material fact is any factual dispute that might affect the outcome of the case under the governing substantive law. *Id.* A factual dispute is genuine if the evidence is such that a reasonable jury could resolve the dispute in favor of the non-moving party. *Id.* The judge is not to weigh the evidence himself but rather to determine if there is a genuine issue for trial. *Id.* The moving party bears the burden of demonstrating the

absence of a genuine issue of material fact. *See Celotex Corp. v. Catrett,* 477 U.S. 317, 106 S.Ct. 2548, 91 L.Ed.2d 265 (1986).

STATEMENT OF FACTS[4]

In 2020 Hollinshead and Waters were both candidates seeking election to the same the Charleston County School Board seat. *R.*, p. 040, ¶¶17 and 18. The Coalition was a supporter of Waters. *R*., p. 041*,* ¶19.

Prior to the election, the Coalition funded the creation of a political ad entitled 'Kevin Hollinshead Lied About Stealing From an HBCU – We Deserve Leaders We Can Trust, (hereinafter referred to as the "Ad"). *R*., p. 041*,* ¶20. Bell, Colwell, Deas, Gibbison, Strickland, and Ziff, individually, and as members of the board of directors for and agents of the Coalition, authored the content of the Ad and authorized the funding of the Ad and the Ad's publication and dissemination on the Coalition's YouTube channel and various television networks in the Greater Charleston County, South Carolina Area. *R*., p. 041*,* ¶¶22 - 26. As of January 29, 2021, the Ad has been viewed one-hundred and thirty-nine times (135) on CCFK's YouTube Channel. *R*., p. 045*,* ¶71.

The Ad features Stewart who, at Waters direction, appears in the Ad and narrates a portion of it. *R*., p. 042*,* ¶¶35 & 36. At the time of the Ad's creation and publication Waters and Stewart were both employed by TFA. *R*., p. 042*,* ¶¶27 & 30. Waters, who at the time, was Steward's supervisor at TFA directed and/or requested Steward appear in the Ad. *R*., p. 042*,* ¶¶33, 34 & 37. Waters and Stewart were acting as TFA's agent at the time Stewart appeared in the Ad. *R*., pp. 041 - 042*,* ¶¶28 – 31.

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[4] The facts are taken from the Second Amended Complaint, the only source from which they may be taken for purposes of this appeal. No facts outside of the four corners of the Second Amended Complaint can be considered for purposes of a Rule 12(b)(6) motion to dismiss.

An anonymous voiceover in the Ad states "Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars from a local HBCU and lied to cover it up." *R*., p. 042, ¶38. "Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from Benedict College." *R*., p. 042, ¶39. Stewart then says: "We can't have someone like that managing the tax dollars for our schools." *R*., p. 042, ¶40.

The statements in the Ad are false. In fact, Hollinshead and Hollinshead Group Insurance LLC were defendants in a lawsuit (hereinafter referred to as the 'Lawsuit') brought against them by Student Assurance Services, Inc., (hereinafter referred to as 'SAS') arising out of a commission dispute. *R*., p. 042, ¶41. Benedict College was not a party to the Lawsuit. *R*., p. 042, ¶42. The Lawsuit alleges, among other things, that (1) Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by cashing premium checks paid by Benedict; (2) Hollinshead and Hollinshead Group Insurance LLC breached a contract between Hollinshead and Hollinshead Group Insurance LLC and SAS by misappropriating insurance premium checks paid by Benedict; (3) Hollinshead and Hollinshead Group Insurance LLC's breach of the contract between Hollinshead and Hollinshead Group Insurance LLC and SAS was accompanied by false statements to be relied upon by SAS so that Hollinshead would have opportunity and time to convert premiums paid and funds belonging to SAS; (4) Hollinshead stole and unlawfully converted $144,677.75 of insurance premiums paid to Hollinshead for the benefit of SAS; Hollinshead employed a scheme to defraud SAS of $144,677.75 of insurance premiums; and, (5) Hollinshead made false statements and false representations to SAS. *R*., p. 043, ¶¶43, 44, 46, 47, 49, 51 and 52. The Lawsuit refers to these insurance premiums as "SAS's funds." *R*., p. 043, ¶¶44 & 46. Hollinshead and Hollinshead Group Insurance LLC denied these

allegations in their Answer. *R*., p. 043, ¶¶45, 48, 50 & 53. The Lawsuit does not allege Hollinshead and/or Hollinshead Group Insurance LLC stole or misappropriated money from Benedict College. *R*., p. 044, ¶58.

On May 24, 2007, Hollinshead and Hollinshead Group Insurance LLC confessed judgment to SAS in the amount of $144,677.75, admitting liability to SAS and authorizing entry of judgment in that amount (hereinafter referred to as the 'Confession of Judgment'). *R*., p. 044, ¶¶59 - 61. Benedict College is not mentioned or referred to in the Confession of Judgment. *R*., p. 044, 62.

ARGUMENT

THE COURT OF APPEALS CORRECTLY REVERSED THE CIRCUIT COURT'S DISMISSAL OF RESPONDENT'S DEFAMATION CLAIM.

Petitioners' arguments as to why the Court of Appeals should be reversed ignore well established procedural rules and precedent: particularly Rules 12(b)(6) and 56(b) and (c) and the well-developed case law relating to the same. The Court of Appeals, however, understood the standard and, thus, properly reversed the Circuit Court's Order. Contrary to the Petitioners claims, the First Amendment does not permit one to defame another, irrespective of whether that person is a public or a private figure[5]. In short, there is nothing whatsoever which justifies the granting of *certiorari* in this case.

[5] Petitioners acknowledge as much admitting: "one does not enjoy absolute immunity simply because an allegedly defamatory statement is made within an election campaign." *Joint Petition for A Writ of Certiorari*, p. 9; *See Curtis Publ'g Co. v. Butts*, 388 U.S. 130, 150, 87 S.Ct. 1975, ____, 18 L.Ed.2d 1094, ____ (1967) ("[T]hat dissemination of information and opinion on questions of public concern is ordinarily a legitimate, protected and indeed cherished activity does not mean . . . that one may in all respects carry on that activity exempt from sanctions designed to safeguard the legitimate interests of others."), *cited with approval in Anderson v. The Augusta Chronicle*, 355 S.C. 461, 474-75, 585 S.E.2d 506, 513 (Ct. App. 2003).

"'The publication of a statement is defamatory if it tends to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'" *Harris v. Tietex Int'l Ltd*., 417 S.C. 533, 540, 790 S.E.2d 411, 415 (Ct. App. 2016) (citations omitted) (*quoting Williams v. Lancaster Cty. Sch. Dist.*, 369 S.C. 293, 302–03, 631 S.E.2d 286, 292 (Ct. App. 2006) and *Fleming v. Rose*, 350 S.C. 488, 494, 567 S.E.2d 857, 860 (2002)).

A communication is defamatory if it tends "'to impeach the honesty or integrity or reputation, or publish the natural or alleged defects, of one who is alive, and thereby to expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.'" *Smith v. Bradstreet Co,* 63 S.C. 525, 530, 41 S.E. 76, 7643 (1902) (*quotin*g 18 AM. & ENG. ENC. LAW, at page 861).

> The defamatory character of the words complained of is for the jury if the language is susceptible of two meanings, one defamatory and the other innocent; but if the language is unambiguous the question is for the court. The court determines whether the language is capable of the meaning ascribed to it, and the jury determines whether the language had the meaning ascribed to it.
>
> The South Carolina rule goes further and holds that a demurrer to a complaint (and inferentially a motion for summary judgment) 'will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.' Our courts also hold that any words which raise a strong suspicion of the plaintiff's guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. And even stronger, our courts hold that if the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies.

Adams v. Daily Tel. Printing Co., 356 S.E.2d 118, 122, 292 S.C. 273, 279 (Ct. App. 1986), *aff'd as modified*, 367 S.E.2d 702, 295 S.C. 218 (1988) (*quoting* 53 C.J.S. *Libel and Slander* § 223(a) (1983) and *citing Flowers v. Price*, 192 S.C. 373, 6 S.E.2d 750 (1940)).

> [D]efamation need not be accomplished in a direct manner.

> To render the defamatory statement actionable, it is not necessary that the false charge be made in a direct, open and positive manner. A mere insinuation is as actionable as a positive assertion if it is false and malicious and the meaning is plain.

Tyler v. Macks Stores of S.C., Inc., 275 S.C. 456, 458, 272 S.E.2d 633, 634 (1980); accord *Murray v. Holnam, Inc*., 344 S.C. 129, 139, 542, S.E.2d 743, 748 (Ct. App. 2001) ("A mere insinuation is actionable as a positive assertion if it is false and malicious and its meaning is plain."). "[C]ouching a statement with a defamatory connotation in terms of an opinion does not grant an exemption for anything that might be said." *Goodwin v. Kennedy*, 347 S.C. 30, 40, 552 S.E.2d 319, 324 (Ct. App. 2001).

The allegations of the Second Amended Complaint - which must be accepted as true for purposes of a Rule 12(b)(6) motion to dismiss and construed in a light most favorable to Respondent - constitute a textbook liable. The crux of the libelous statements as alleged in the Second Amended Complaint are that: (1) "Kevin Hollinshead is using our money to help himself. Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from a local HBCU and lied to cover it up." (2) "Hollinshead was successfully sued for stealing one-hundred fifty thousand dollars ($150,000) from Benedict College." (3) "We can't have someone like that managing the tax dollars for our schools." *R*., pp. 038 - 050. As alleged in the Second Amended Complaint, which must be accepted as true and construed in a light most favorable to him, Respondent, of course, did no such thing. *R*., pp. 038 - 050. As the Second Amended Complaint alleges, Respondent was involved in a commission dispute with SAS relating to commissions earned as a result of sales of health insurance to students enrolled in Benedict College. *R*., pp. 038 - 050. Benedict College itself was in no way involved in the commission dispute, was not an insured under any of the policies and was in no way involved in any of the transactions out of which the commission dispute arose. *R*., pp. 038 - 050. None of the students' policies involved in

the suit between Respondent and SAS were cancelled for nonpayment of premiums. *R*., pp. 038 - 050. The statements in question are irrefutably a lie fabricated by Petitioners which tends "'to impeach the honesty or integrity or reputation'" of Respondent which "'expose him to public hatred, contempt, ridicule, or obloquy, or to cause him to be shunned or avoided, or to injure him in his office, business, or occupation.'" That was obviously the Respondents' intent. On this, reasonable minds cannot differ.

The Court of Appeals correctly held "[t]he allegations in Hollinshead's second amended complaint sufficiently articulated that statements made in a political advertisement were false and defamatory about Hollinshead." The claim that Respondent is "using our money to help himself" implies that Respondent is misappropriating and/or stealing taxpayer money. This is especially apparent when put into context with the later statement that "We can't have someone like that managing the tax dollars for our schools."

The statement that Respondent is "using our[6] money to help himself" implies that Respondent is misappropriating and/or stealing taxpayer money. The statement that "We can't have someone like that managing the tax dollars for our schools" when coupled with and put in context with the statement that Respondent is "using our money to help himself" cannot be plausibly construed as an opinion: it is a statement to the effect that Respondent is misappropriating and/or stealing taxpayer money. This is unquestionably defamatory.

The clear and unequivocable insinuation is that Respondent is misappropriating taxpayer money: stated another way stealing taxpayer money. Stealing money is "universally regarded as

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[6] The word "our" means "of or belonging to us or ourselves" or alternatively, "of or belonging to all people." THE DK ILLUSTRATED OXFORD DICTIONARY (1998), p.577. There is literally no way to construe, reasonably or otherwise, the term "our" in this context to include SAS or Benedict College. Clearly the term "our" as meaning the taxpayers whose taxes support the Charleston County School District.

conduct which reflects adversely on a man's honesty and integrity." *State v. Al-Amin*, 353 S.C. 405, 425, 578 S.E.2d 32, 43 (Ct. App. 2003), *overruled on other grounds*, *State v. Broadnax*, 414 S.C. 468, 476, 779 S.E.2d 789, 793 (2015). Respondent has not stolen or misappropriated taxpayer dollars or funds designated for or allocated to a school district, any school or any governmental entity or agency. This representation is pure and simply a lie created by the Petitioners out of whole cloth. Yet, Petitioners, not surprisingly, conveniently omit reference to any of this portion of the Second Amended Complaint in their Petition.

It is well settled that this Court is not permitted to consider matters outside of the four corners of the Second Amended Complaint when passing on the Rule 12(b)(6) motions. *See, e.g., Charleston Cty. Sch. Dist. v. Harrell*, *supra* (reversing the trial court's order granting the defendants motion to dismiss because the trial court considered matters outside of the four corners of the complaint when deciding the motion). Rather, when considering the Petitioners' motions, this Court may only consider the allegations contained in the Second Amended Complaint, which it must accept as true, and all inferences drawn from the facts alleged in the Second Amended Complaint must be viewed in the light most favorable to Respondent. *See*, *e.g.*, *Id.*; *Spence v. Spence*, *supra.* If the factual allegations entitle Respondent to relief on any theory – which is the case here - Petitioners' Petition for Certiorari must be denied. *Id.* Because the facts alleged and inferences reasonably deducible therefrom in the Second Amended Complaint entitle Respondent to relief, the Court of Appeals opinion must stand. *Id*.

"When the language alleged to be libelous, or slanderous, is plain and unambiguous, and admits of but one reasonable construction, it becomes a matter of law for the action and determination of the court. If said language be ambiguous, or doubtful of meaning, it should be left to the jury to determine in what sense it was used, and what its meaning is." *Drakeford v. Dixie Home*

Stores, 105 S.E.2d 711,714, 233 S.C. 519, 524 (1958). Dismissal of a complaint "'will only be sustained where the court can affirmatively say that the publication is incapable of any reasonable construction which will render the words defamatory.' . . . [A]ny words which raise a strong suspicion of the plaintiff's guilt in the minds of the hearers are sufficient upon which to base a cause of action for slander or libel. . . . [I]f the words are capable of the offensive meaning attributed to them, then an action for libel or slander lies." *Adams v. Daily Tel. Printing Co*., *supra.*

A reading of Petitioners' Petition reveals that their arguments are premised entirely on a view of the evidence and the evidence to be drawn therefrom in a light most favorable to them. This is clearly repugnant to the standards by which both a Rule 12(b)(6) and a Rule 56(b) motion are to be decided. To the contrary all of the evidence and the inferences to be drawn therefrom must be viewed in a light most favorable to Respondent.

At no stage of the proceedings have Respondents argued that their representation that Respondent stole and/or misappropriated taxpayer money to his own use is not defamatory. *See R*., pp. 316 – 503. They have not taken the position that this representation is true and that it is not defamatory for the obvious reason that they have no basis upon which to argue that this representation is not defamatory. Clearly it is. This failure is in and of itself a reason why this Court must deny the Petition for Writ of Certiorari.

As the Second Amended Complaint makes clear that the Petitioners acted with actual malice or, as it is sometimes referred to, constitutional malice. Given that the Lawsuit involved a commission dispute between SAS and Respondent which in no way involved Benedict Collage or anyone affiliated with Benedict Collage and that the statement that Respondent is "using our money to help himself" despite there being no allegation of this in the Lawsuit or any evidence to support this or even a rumor that he was doing so, when construed in a light most favorable to

Respondent, there is no escaping the conclusion that Petitioners knew the statements were false of acted in reckless disregard for their falsity. This is quintessential actual malice. *See, e.g., New York Times Co. v. Sullivan,* 376 U.S. 254, 84 S. Ct. 710, 11 L. Ed. 2d 686, (1964); *see also Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978)(public officials liable complaint alleging that liable was willful and malicious cured by amendment to add that publication was made "with wanton and reckless disregard for the truth").

The Second Amended Complaint alleges that statements were made in a television ad which was widely broadcast on various television networks in the eastern half of South Carolina and were published on the internet. The statements refer to Respondent by name. The statements in question state Respondent committed a crime - "stealing" money from Benedict College and misappropriating and/or stealing tax dollars and/or school board funds – and is unfit for business, trade profession or office and specifically claims he is unfit for office: "We can't have someone like that managing the tax dollars for our schools." *See Davis v. Niederhof*, 143 S.E.2d 367, 246 S.C. 192 (1965)(claim that plaintiff committed a crime -stealing – slander per se); *Flowers v. Price*, *supra* (charge of larceny when placed in context of circumstances slander per se); *Imerritt v. Great Atl. & Pac. Tea Co*, 179 S.C. 474, 184 S.E. 145 (1936) (charge of larceny slander per se); *Moshtaghi v. The Citadel*, 314 S.C. 316, 443 S.E.2d 915 (Ct. App. 1994) (statements that infer impropriety or inadequacy in performing one's job, statements that conduct had been dishonorable, and statement that conduct was illegal are all actionable per se). Clearly, when taken in a light most favorable to Respondent, the allegations of the Second Amended Complaint state facts which constitute a cause of action for defamation.

Petitioners contend that "when the alleged defamatory statement involves matters of public concern, the Free Speech Clause of the First Amendment to the United States Constitution abrogates the common law presumption of falsity, and 'the ***plaintiff*** must prove the statement was false.'" *Joint Petition for A Writ of Certiorari*, p. 6 (emphasis original). The burden of proof is an evidentiary standard. *See Jones v. Leagan*, 681 S.E.2d 6, 384 S.C. 1 (Ct. App. 2009). Petitioners' position by necessarily require this Court to consider the evidence in this case to reach such a conclusion. It is well settled that the Court is to consider only the allegations of the complaint under consideration when passing on a motion to dismiss under Rule 12(b)(6). Factual considerations are not permitted. Thus, Petitioners' Petition for Certiorari should be denied, and the Court of Appeals Opinion should remain undisturbed.

THE COURT OF APPEALS CORRECTLY HELD THAT THE TRIAL COURT SHOULD HAVE PERMITTED RESPONDENT TO AMEND HIS COMPLAINT AS TO THE REMAINING CAUSES OF ACTION

Petitioners argue that "the Court of Appeals' decision affords Respondent an unprecedented fourth attempt to plead his case." *Joint Petition for A Writ of Certiorari*, p. 11. In addition to apparently being mathematically challenged, Petitioners ignore the procedural history of the matter when taking this position, as the procedural history is inconvenient to Petitioners' narrative.

The initial complaint was filed January 29, 2021, and only alleged defamation. *R*., p. 12. To state the obvious, the original complaint is not an amended complaint. This is a concept so self-evident that no further discussion on this point is necessary.

The ***first*** amended complaint was filed four days later on February 2, 2021, well before service on any of the Petitioners was even attempted to correct some inaccuracies in the prior version. *R*., p. 24. This was at best an amendment of right - if it can be considered an amendment

at all under Rule 15(a), S.C.R.CIV.P., rather than a refiling and substitution of the original Complaint given that none of the Petitioners had been served by that point – and either way required no consent from anyone: not the opposing parties, the court or anyone else. *See* Rule 15(a)[7].

The ***second*** amended Complaint was filed August 12, 2021, to which Petitioners consented added new causes of action as a result of the intervening change in the law brought about in the Supreme Court's opinion issued in *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 861 S.E.2d 774 (2021), issued May 19, 2021, which provides a different pleading standard for a cause of action for civil conspiracy. *R*., pp. 1 & 51. Though the lower court did issue an order permitting the amendment based on the consent of the parties, this amendment was not permitted by leave of court, but rather by consent. Rule 15(a).[8]

Petitioners inexplicably fail to mention any of this in their Petition for Writ of Certiorari.

Petitioners take the position that "[g]ranting Respondent the right to file a fourth complaint goes far beyond the parameters of *Skydive* and should prompt this Court to clarify to the bench and the bar that *Skydive* should not be read as affording litigants carte blanche to continue to try to properly plead their case when they have already been afforded multiple opportunities to do so." Petitioners go on to argue that "not only did the Court of Appeals err by extending *Skydive* to permit a plaintiff to file a fourth complaint, but the court also failed to conduct any analysis regarding whether the proposed amendment would be clearly futile." These arguments ignore the

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[7] "A party may amend his pleading once as a matter of course at any time before or within 30 days after a responsive pleading is served. . . . . Otherwise a party may amend his pleading only by leave of court ***or by written consent of the adverse party***." Rule 15(a) (emphasis added).

[8] See footnote 7, *supra*.

most fundamental principals of mathematics, the procedural history and seek to cast the trial court into the role of soothsayer.

As noted, the original complaint is not an amended complaint. The first amended complaint was filed four days later and before complaint was served on anyone and arguably does not even count as an amended complaint for purposes of this analysis, but rather a substitution of the original complaint, and required no one's consent; the Petitioners or the Court. Nevertheless, assuming, without agreeing that the February 2, 2021, complaint actually constitutes an amended complaint for purposes this analysis, this was indisputably the first amendment. The second amended complaint, filed with the consent of the parties, not leave of court, was at most the second amended complaint, and the first if the initial amended complaint is considered a refiling of the original complaint. Thus, assuming for purposes of analysis and without agreeing, that the February 2, 2021, complaint actually constitutes an amended complaint, this was irrefutably the second amended complaint. Therefore, what the Court of Appeals opinion permits, at best, is the filing of a ***third*** amended complaint and the ***first*** which actually requires leave of court. Consequently, if, as the Court of Appeals correctly held, Respondent is permitted to subsequently amend the complaint, this will be the first time he will have done so to address any pleading deficiencies brought about by a challenge to the complaint advanced by Petitioners. This is exactly what the holding in *Skydive Myrtle Beah, Inc. v. Horry County*, *supra*, was intended to permit and is well within its scope.[9]

[9] Petitioners correctly note that "[e]ven the game of baseball only allows three strikes." Petitioners nevertheless apparently fail to recognize that the game of baseball requires that one first be allowed an opportunity to come to the plate and swing at pitches before any strikes can be called. All Respondent seeks is an opportunity to bat. Petitioners seek to eliminate that requirement and have Respondent called out before leaving the dugout.

According to Petitioners, "The Court of Appeals relied heavily—and improperly—on this Court's decision in *Skydive Myrtle Beach, Inc. v. Horry County*, but that case concerns materially different facts. Unlike *Skydive*, Respondent has already been permitted to file three complaints. *Cf. Skydive Myrtle Beach v. Horry Cty*., 426 S.C. 175, 180, 826 S.E.2d 585, 588 (2019) ('Skydive was—any plaintiff is— entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim.')." As clearly demonstrated above, this position is both mathematically inaccurate and ignores the procedural history. As Petitioners admit in the quote contained in the above parenthetical "any plaintiff is— entitled to litigate the validity of its original pleading without having to convince the trial court of the merits of its underlying claim." *Joint Petition for A Writ of Certiorari*, p. 12. That is exactly what the Court of Appeals opinion enables: Respondent to "litigate the validity of . . . [his] original pleading without having to convince the trial court of the merits of its underlying claim." As noted, this is the first opportunity Respondent will have been given to address pleading deficiencies brought to light by a challenge by Petitioners to the complaint, and the first time which required leave of court.

Respondents seek to place the trial court in roll of soothsayer and require it to engage in judicial clairvoyance, arguing that permitting Respondent to amend the complaint as to the civil conspiracy and intentional infliction of emotional distress is an act of futility. Of course, the complaint has not yet been amended so how could they know this? Not surprisingly, Petitioners offer no real support for their position regarding this. This Court as already rejected Petitioners' argument in *Skydive Myrtle Beah, Inc. v. Horry County*, *supra* at 183, 826 S.E.2d at 589, explaining "[w]e cannot imagine a circumstance in which a trial court should refuse to allow an amendment on the ground of futility without seeing what the amendment would look like." The Court of Appeals clearly recognized this. Petitioners, nevertheless, urge this court to ignore this Courts prior

sound reasoning. There is no justification for indulging Petitioners in their futile position in this regard.

Finally, Petitioners urge this Court to accept its Petition for Writ of Certiorari and take it as an opportunity "to clarify to the bench and the bar that *Skydive* should not be read as affording litigants carte blanche to continue to try to properly plead their case when they have already been afforded multiple opportunities to do so." In addition to ignoring that this is not what happened in this case, which has been discussed at length above, it, likewise ignores the fact that the Court of Appeals opinion in this matter is unpublished as has no presidential value. *See* Rule 220(a), SCACR. Accordingly, there is nothing for the Court to clarify as it relates to this case. Therefore, this forms no basis for granting Petitioners' Petition for Writ of Certiorari.

CONCLUSION

As conclusively demonstrated above, Petitioners have failed to demonstrate a basis which would justify granting their Petition for Writ of Certiorari. Accordingly, Petitioners' Petition for Writ of Certiorari should be denied and the Court of Appeals' October 29, 2025, Opinion should stand unaltered.

RESPECTFULLY SUBMITTED,

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