

RECEIVED

Mar 31 2026

S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA

In the Supreme Court

In the Original Jurisdiction of the Supreme Court

Appellate Case Number 2026-000758

Civil Action No. 2026-CP-23-01277

Probate Court Case Number 2026-GC-23-00023

Elizabeth Evans, individually, and as healthcare decision-maker for Duane Evans, Mikal Evans,
and Anna Okupinski, Petitioners,

v.

Tom Vestal Evans, Respondent.

RETURN TO EMERGENCY PETITION FOR ORIGINAL JURISDICTION

THE CARPENTER LAW FIRM, P.C.

/S/ James G. Carpenter
S.C. Bar No. 1136
819 E. North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
Email: jim@carpenterlawfirm.net

THE LAW OFFICE OF BRIAN T. SMITH

/S/ Brian T. Smith
SC Bar ID 0070232
714 Pettigru Street
Greenville, SC 29601
Telephone: (864) 239-2007
Facsimile: (864) 239-2039
Email: bsmith@btsmithlaw.com

NOW COMES the Respondent, Tom Vestal Evans, (“Tom”), by his undersigned attorneys, and submits this Return to the Emergency Petition for Original Jurisdiction.

STATEMENT OF THE CASE

This case is a family dispute primarily between Tom and his Stepmother over the treatment of his father, Duane Evans, an Allegedly Incapacitated Individual (“AII”), who is in the hospital, having suffered a stroke. Tom is working to save his father, and the Stepmother prefers palliative care, hospice, and ultimately death. The two daughters are aligned with the Stepmother, but Duane’s brothers and sisters are aligned with Tom.

This case has been litigated primarily in the Probate Court, and secondarily in the Circuit Court for Greenville County. Tom brought this action in Probate Court requesting the appointment of himself as Guardian for his father. The Stepmother answered and asked instead for the appointment of herself as Guardian for Duane.

The Probate Court heard evidence and denied both Tom’s petition and the Stepmother’s petition but ruled that the Stepmother had priority to make medical decisions for Duane under S.C. Code Ann. § 44-66-30, “Persons who may make health care decisions for patient who is unable to consent; order of priority; exceptions.”

The Probate Court appointed an attorney for Duane. He petitioned the Probate Court again to decide what care was appropriate. The Probate Court ruled that because an appeal had been filed, the Probate Court had no jurisdiction to address the Petition of the appointed attorney.

This week, Tom filed a motion under Rule 60(b), asking the Probate Court to consider “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” *Id.* Tom would show the Court the newly discovered evidence:

STATEMENT OF THE FACTS

After the Probate Court ruled on the initial petition and cross petition, and ruled that the Stepmother had decision-making authority under the statute, over the next two or three weeks, Tom secured affidavits from three witnesses, who testified that they met on different days with Duane, and that on three different occasions Duane definitively asserted his desire to receive restorative medical treatment and care with the goal of being healed and continuing to live, by squeezing their hands in response to a question asking if he desired such treatment; and then, when asked the opposite question: whether he desired no treatment, to simply give up, and let nature take its course, Duane either did not squeeze, or definitively withdrew his hand, indicating a negative response. **(Exhibits A, B, and C).**

Joseph E. Evans, Jr., MD, signed an affidavit on February 28, 2026. He is a physician and a brother to Duane. Joseph testified that on February 27, 2026, he was with Duane in the hospital. He was talking to his brother and explaining his condition to him. Joseph said, “If you want to keep fighting and try to get better, get off the ventilator, and leave the hospital, if [you want] to receive medical care with the possibility of helping [you] get better, squeeze my hand.” Joseph testifies, “At that point, Duane gave a very definite squeeze in my hand, 3 to 5 times in a row.” **(Exhibit A, par 5).**

Joseph also testifies that he offered Duane the other alternative. “After that, I also asked Duane, if you want to be left alone, go to sleep, and let nature take its course, and if you want that, to squeeze my hand. Duane did not squeeze my hand in response to that question.” **(Exhibit A, par. 6).**

Joseph concludes, “I am firmly convinced that my brother wants to live, that he wants to receive medical treatment, that he expressed that desire by firmly squeezing my hand in response to my inquiry.” **(Exhibit A, par. 7).**

A second affidavit comes from Tom. He testifies that on March 4, 2026, “my father was able to open his eyes, visually track individuals in the room, and looked directly at people speaking to him.” **(Exhibit B, par. 1).**

“I asked my father to squeeze my hand if he wanted to live and continue fighting. In response, my father squeezed my hand multiple times. I then asked my father to squeeze my hand if you want to die, and he removed his hand from mine, and did not squeeze my hand, indicating a negative response.” **(Exhibit B, par. 2).**

Tom further testifies, “These actions appeared purposeful and responsive to my verbal questions. Based on these observations, it is my sincere belief that my father is demonstrating awareness and the ability to respond to commands, and that additional time is necessary to allow for further neurological evaluation and potential recovery.” **(Exhibit B, par. 3).**

The third affidavit comes from Madison Evans, niece to Duane. She testified that two days after the events of Tom’s affidavit, she was with her uncle. She states, “While holding his hand, I asked him words to the effect of whether he wanted to keep fighting to live, and told him if he did, he should squeeze my hand. In response to this request, Duane squeezed my hand firmly multiple times.” **(Exhibit C, par. 5).** Madison continues, “I then asked him to squeeze my hand if he wanted to rest and stop fighting. Immediately after I asked this question, Duane paused and released my hand” **(Exhibit C, par. 6).**

A fourth affidavit comes from a family friend, Vince Hamilton. Hamilton testified that he visited Duane on March 15, 2026, in his hospital room approximately 6:30 PM for about an hour. Duane was communicating through multiple gestures **(Exhibit D, par. 10).** Hamilton testified that Duane’s “eyes were open, and he appeared to be visually tracking and following the activity within the room” **(Exhibit D, par. 9).** Hamilton further testified that Duane “was also making

purposeful hand gestures toward various objects and areas of his body. At one point, he repeatedly pointed toward the tube in his throat, which I interpreted as an attempt to communicate discomfort or frustration with the presence of the tube” (**Exhibit D, par. 10**). Hamilton continued, “Duane also repeatedly pointed toward his legs. After his legs were rubbed or scratched in response, he stopped making these gestures, which suggested to me that he was attempting to communicate physical sensation, and that he recognized when relief was provided” (**Exhibit D, par. 11**).

Finally, Hamilton testified, “Duane pointed toward the television in the room. After the television channel was changed, he stopped pointing, which further indicated to me that he was aware of his surroundings and capable of expressing preferences through gestures” (**Exhibit D, par. 12**). Hamilton concludes, “in my opinion, his actions demonstrated awareness, intentional movement, and attempts at communication.” (**Exhibit D, par. 13**).

In addition, Tom has secured an Independent Medical Evaluation (“IME”) from an independent, board-certified adult neurologist, Dr. Jonathan J. Halford, a professor of neurology at the Medical University of South Carolina in Charleston, who is prepared to testify that Duane is making neurological progress by responding to verbal commands, and that he has reasonable prospects for improvement and healing (**Exhibit E**). In addition, we attach a copy of his lengthy CV (**Exhibit F**). Dr. Halford summarizes his qualifications in his examination. Dr. Halford reviewed the medical records and reports from Prisma Health. Dr. Halford also visited Duane on March 17, 2026, at 11:30 AM and at 1 PM.

Dr. Halford observed, “he would follow me around the room with his eyes.” Dr. Halford also saw the patient stick out his tongue on command, show two fingers with verbal and visual prompting, and reach purposefully toward his endotracheal tube as if communicating he wanted it removed.

During Dr. Halford's bedside examination on 03/17/2026, Dr. Pasapuleti (Prisma's neurointensivist) confirmed that "**he and Neuro ICU staff had noted Mr. Evans following simple commands intermittently over the previous several days**" (Exhibit E) (emphasis added).

As a result of these examinations and his studying the medical records, Dr. Halford said, "I believe that it is more likely than not that **Mr. Evans will become more conscious** over the next month or two." (Exhibit E) (emphasis added). He also said it was "premature" to determine "that further life-sustaining medical treatment would be medically futile." He said that "continued support of management . . . remains **medically appropriate and consistent with accepted standards of neurological care**." (Exhibit E) (emphasis added).

Dr. Halford also said, "Many patients who are in a minimally conscious state improve to full consciousness over the first few months after their brain injury." (Exhibit E).

Finally, he said if Duane could not receive this kind of care at the facility where he is now, he could "**transfer** to a tertiary or specialized center capable of providing comprehensive neuro-rehabilitative and ventilator-weaning care is **medically reasonable and should be strongly considered in order to preserve Mr. Evans' opportunity for neurological recovery** and ensure that treatment decisions are guided by involving clinical findings and the **patient's best medical interest**." (Exhibit E) (emphasis added).

Dr. Halford concluded, "Based on the available medical information and by direct examination, it is my opinion within a reasonable degree of medical certainty that **continued life-sustaining treatment and rehabilitative evaluation are medically justified and in the patient's best medical interest** at this stage of recovery" (Exhibit E) (emphasis added).

Six days after Dr. Halford's bedside examination, **Prisma's own treating team**

documented what the independent evidence had already established. The Kemmy ACNP / Spears

MD note includes:

- 24-hour update: “Neurological exam improved this morning. Nods appropriately, follows commands consistently.”
- HPI/Exam: “follows occasionally midline commands, attempts to nod/shake head in response but not always appropriately”
- GCS: E4 VT M6 = 10T -- maximum possible for intubated patient
- NIHSS 1a = 0 (“Alert; keenly responsive”)
- NIHSS 1c = 0 (“Performs both tasks correctly”)
- “RUE moves spontaneously and purposefully against gravity”

(Petitioner’s Exhibit D)

Another medical professional corroborated this IME (**Exhibit F**). Marshall A. White, MD, testified that he had provided help to Duane and his siblings on a regular basis. He stated that “a recent video of Duane carrying out an appendicular two step command with his right hand is powerful evidence of his awareness and underlying cognitive function, irrefutable beyond reflex or even rudimentary communication. This demonstration validates claims of the aforementioned witnesses.” (**Exhibit F**). *See also* video (**Exhibit G**).

Dr. White also stated his agreement with the opinion of Dr. Hallford, whom he called “a highly distinguished and well-known peer.”

Dr. White also raised another issue:

Since Duane was essentially “written off” and placed on palliative care approximately 10 days into his illness, he has not received the care that would enable him to make the best recovery. The most glaring example of this is the failure to protect his trachea pharynx by performing a timely tracheotomy. Highlighting this point is the fact that the hospital’s attorney admits this does not meet the standard of care and that the medical record indicates a discussion regarding this topic on the ninth day of hospitalization. “The trach” was apparently refused by the default family medical decision-making designee. This was followed by an untimely attempt to harvest his organs. These actions created a disagreement regarding this abrupt management decision with the majority of Duane’s blood relatives recognizing that he needed more time. Their attempts to mediate this critical difference of opinion with Elizabeth and Duane’s daughters was met with stonewalling, exclusion from visitation and the hospital’s threat of

physical arrest with the charges of trespassing.

Dr. White concludes,

It is beyond time where all involved should put aside ego and personal opinion in this matter and move forward with expediency to provide Duane the care he has indicated he wishes. Although, admittedly impaired, **his affirmative indication to continue living takes precedence over all other concerns.** There is every indication that Duane's language ability should be preserved, however, with an endotracheal tube he is unable to verbally express himself. **We therefore must rely on his hand gestures,** as seen in the video, **which are clear evidence of his ability to understand and communicate.**

(Exhibit F) (emphasis added).

See also supplemental statements of Dr. Halford and Dr. White, commenting on the documentation from Prisma's team of doctors, documenting Duane's voluntary activities. *See* **(Exhibits H and I).**

In addition, on several occasions Duane has been breathing on only pressure settings on the ventilation for hours at a time. "Down to only pressure on the ventilator" means that the patient has been successfully weaned from full ventilator support and is breathing spontaneously, assisted only by a set amount of positive pressure (pressure support) in the baseline pressure (PEEP). This indicates the patient may be in the process of being removed from the ventilator (extubation).

Prisma has strongly indicated that hospital, as an institution, and its doctors have "ethical" concerns about continuing to treat Duane in his current condition; however, other hospitals nearby, such as St. Francis Hospital, with a facility in Anderson, and Spartanburg Regional, in Spartanburg, have established programs to provide the specific treatment that Duane needs **(Exhibit F).**

Tom wants to see his father get the kind of treatment he needs, but despite the definitive indications from Duane, the Stepmother desires only to have palliative care and hospice provided for him, leading to his death.

Accordingly, Tom filed in the Probate Court under Rule 60, to present the “newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b).” *Id.*

RESPONSE TO THE SCURRILOUS ACCUSATION

Finally, one other issue should be addressed. The Prisma Hospital and the Stepmother have accused Tom of leaving some kind of spy device or “nanny cam” in the hospital room, and charged that Tom recorded or transmitted surreptitious video, images, or audio recordings.

Nothing could be further from the truth. Tom **categorically denies** any and all allegations of spying, surreptitious recording, or surreptitious transmissions.

Tom took the device into Duane’s room so that Tom could play music for his father. Tom’s father is a musician, and he has created and recorded his own music. Tom thought that bringing his own music to his father might be a comfort to Duane, that it might also be therapeutic, and might help bring some healing.

The device was left out in the open; it was not hidden or concealed in any way. Tom suggests that the scurrilous accusations are not only false, but they also represent a kind of paranoia or “conspiracy theory” thinking.

Further, Tom believes that for this music-playing device to be a “spy” device, it would need to be connected to the Internet, which this device was not.

Nevertheless, the Hospital has permanently barred Tom from seeing his father, in spite of the familial benefit Duane received from Tom’s visits.

LEGAL DISCUSSION

Rule 245 of the South Carolina Appellate Court Rules governs a Petition for Original

Jurisdiction:

(a) When Appropriate. The Supreme Court will not entertain matters in its original jurisdiction when the matter can be determined in a lower court in the first instance, without material prejudice to the rights of the parties. If the public interest is involved, or if special grounds of emergency or other good reasons exist why the original jurisdiction of the Supreme Court should be exercised, the facts showing the reasons must be stated in the petition.

Id.

This rule was adopted to protect the Court from originally hearing an avalanche of cases and to let it conduct its business in an orderly manner. *King v Aetna Ins. Co.*, 168 S.C. 84, 167 SE 12 (1933). This Court has ruled that the Supreme Court is and should be primarily concerned with appellate matters; it should not exercise original jurisdiction in matters cognizable in the circuit courts except when necessary in the public interest, or because of emergency, or for some other compelling reason. *Modern Finance Co. v Hicks*, 235 SC 212, 110 SE2d 859 (1959).

This Court ruled that it would not exercise original jurisdiction to grant a writ of mandamus to compel a warden and the Commissioner of the South Carolina Department of Corrections to credit an inmate with time served prior to his criminal trial. *Key v. Currie*, 305 S.C. 115, 406 S.E.2d 356 (1991). This Court ruled that it would not “entertain matters in its original jurisdiction where the matter can be entertained in the trial courts of this State. Only when there is an extraordinary reason such as a question of **significant public interest** or an emergency will this court exercise its original jurisdiction.” *Id.* 305 S.C. at 116, 406 S.E.2d at 357 (emphasis added).

For example, this Court exercised original jurisdiction to address the question of whether a proviso prohibited a universal mask mandate at the University of South Carolina involving a large public university and potentially thousands of students. This Court reasoned that the matter

involved “a question of significant public interest that must be decided before classes resumed this week.” *Creswick v. University of South Carolina*, 434 S.C. 77, 79 862 S.E.2d 706, 707 (2021). Accordingly, the Court accepted the matter in its original jurisdiction and expedited its consideration.

Similarly, this Court heard a case in its Original Jurisdiction when it related to allowing South Carolina registered voters to vote by absentee ballot in the upcoming primary election in general election. *Bailey v. South Carolina State Election Commission*, 430 S.C. 268, 271, 844 S.E.2d 390, 391 (2020). The Court noted, “[W]e begin with the unassailable proposition which all participants acknowledge: the right to vote is a **cornerstone of our constitutional republic.**” *Id.*, 430 S.C. 268, 271, 844 S.E.2d 391 (emphasis added). However, the Court dismissed the case, finding the issue was a political question.

Another instructive case on this issue is *South Carolina Public Interest Foundation v. Lucas*, 416 S.C. 269, 786 S.E.2d 124 (2016). Petitioners challenged the inclusion of a particular proviso in the Annual Appropriations Act because it violated the “one subject rule” found in S.C. Constitution, Art. III, § 17.

As explained below, we hold that where the General Appropriations Act contains a section that is not germane to the purpose of that act, i.e., one that does not “reasonably and inherently relate to the raising and spending of tax monies,” that section may be excised by a court. In so doing, we modify our holding in *Am. Petroleum Inst. v. South Carolina Dep’t. of Rev.*, 382 S.C. 572, 677 S.E.2d 16 (2009).

Id., 416 S.C. 269, 271, 786 S.E.2d 124, 125-126. In footnote 1, the Court explained why original jurisdiction was necessary.

[W]ere this case to be decided in the Circuit Court, that court would be bound by *stare decisis* and would be required to strike the [Annual Appropriations] Act in its entirety. . . . The consequences of such a ruling would call into question **the ability of the state to meet its fiscal obligations.**

Id., 416 S.C. 269, 270, 786 S.E.2d 124, 125, n. 1. Accordingly, because of the great public

importance of the issue, the Court found that original jurisdiction was appropriate.

This Court has exercised original jurisdiction to consider many other cases of great public importance.¹ Many of the cases accepted in this Court's original jurisdiction involved an allegation of a Constitutional violation, or the alleged illegal actions of public officials or public bodies, or the improper spending of public money.

THE PUBLIC INTEREST IS NOT INVOLVED

This case does not involve a matter of great public interest. No public official is involved. No public entity or public official is involved. The South Carolina citizens as a whole are not concerned at all. This does not involve the expenditure of public monies, or the application of the state law or the Constitution to state or local government. It is simply a matter of whether one individual is fulfilling her statutory duty to another for whom she is the first line of defense. Accordingly, this case is a dispute primarily between a son and his Stepmother over the treatment

-
1. ¹ Challenge to the Attorney General paying his former law firm \$75 million in attorneys' fees. *South Carolina Public Interest Foundation v. Wilson*, 437 S.C. 334, 878 SE2d 891 (2022);
 2. Challenge to the constitutionality of the Governor's allocation of \$32 million to provide tuition grants for students to attend private or independent schools. *Adams v. McMaster*, 432 S.C. 225, 851 SE2d 703 (2020);
 3. The constitutionality of S.C. Code Ann. § 11-43-140, governing the membership of the South Carolina Transportation Infrastructure Bank Board. *South Carolina Public Interest Foundation v. South Carolina Transportation Infrastructure Bank*, 403 S.C. 640, 744 S.E.2d 521 (2013);
 4. Claim that Act 338 enacted by the General Assembly in 2008 violates the "one subject rule" of the South Carolina Constitution, Article III, § 17. *American Petroleum Institute v South Carolina Department of Revenue*, 382 S.C. 572, 677 SE2d 16 (2009);
 5. Many acts passed by the General Assembly in 2007 violated the "one subject rule" of the South Carolina Constitution, Article III, § 17. *South Carolina Public Interest Foundation v. Harrell*, 378 S.C. 41, 663 SE2d 441 (2008);
 6. Allegation that Commissioners for the South Carolina Department of Transportation were appointed in violation of South Carolina Code Annotated § 57-1-330 (A), allowing them to serve for no more than "one consecutive term." *Sloan v. Hardee*, 371 S.C. 495, 640 SE2d 457 (2007);
 7. Challenge to school district funding scheme as violating the Consolidated Procurement Code and the state's Constitutional debt limits. *Colleton County Taxpayers Association the School District of Colleton County*, 371 S.C. 224, 638 SE2d 685 (2006);
 8. Action seeking declaratory judgment that Act 187, the Life Sciences Act, violates Article III, § 17 of the Constitution. *Sloan v Wilkins*, 362 S.C. 430, 608 SE2d 579 (2005);
 9. Challenge to whether the Governor met the qualifications for service. *Sloan v. Sanford*, 357 S.C. 431, 593 SE2d 470 (2004).

of his father. While also implicating the hospital itself, the hospital is involved as a service provider.

IF THE COURT GRANTS ORIGINAL JURISDICTION

If the Court takes the case in its original jurisdiction, Tom respectfully suggests that because of the many contested factual issues, the Court should appoint a particularly able and experienced judge as a “special referee to hear evidence and make recommendations,” as this Court did in another original jurisdiction case, *Housing Authority of City of Charleston v Key*, 352 S.C. 26, 572 SE2d 284 (2002). The law of the case does not bar reconsideration when material circumstances have changed. They have. Tom further suggests that this Court, or the special referee should address the following issues:

1. Is the Stepmother following Duane’s wishes as expressed in the affidavits attached hereto?
2. Is the Stepmother acting in Duane’s best interests?
3. Should the Court appoint Tom as Duane’s Guardian?
4. What is the standard of proof necessary to withhold life-sustaining care from an Allegedly Incapacitated Individual (AII)? Is it “clear and convincing evidence?”

THE ISSUES IN THIS CASE

I. The Stepmother Is Not Following Duane’s Wishes, as Established by the Attached Affidavits.

In this case, the first issue is **not** who is the medical decision-maker under SC Code Ann. § 44-66-30. The issue is whether the decision-maker is complying with the statutory requirements for making such decisions. The person making healthcare decisions under the statute does not have unlimited discretion. First, the discretion is bounded and limited by paragraph (G:

(G) A person authorized to make health care decisions pursuant to subsection (A) **shall base those decisions on the patient's wishes** to the extent that the patient's wishes can be determined. Where the patient's wishes **cannot be determined**, the person shall base the decision on the **patient's best interest**.

Id., (emphasis added).

The United States Supreme Court acknowledged the hard truth:

Not all incompetent patients will have loved ones available to serve as surrogate decisionmakers. **And even where family members are present, "[t]here will, of course, be some unfortunate situations in which family members will not act to protect a patient."** *In re Jobes*, 108 N.J. 394, 419, 529 A.2d 434, 447 (1987). **A State is entitled to guard against potential abuses in such situations.**

Cruzan by Cruzan v. Director, Missouri Dept. of Health, 497 U.S. 261, 281, 110 S.Ct.

2841, 2853 (1990) (emphasis added).

The Supreme Court also explained:

Close family members may have a strong feeling—a feeling not at all ignoble or unworthy, but not entirely disinterested, either—that they do not wish to witness the continuation of the life of a loved one which they regard as hopeless, meaningless, and even degrading. **But there is no automatic assurance that the view of close family members will necessarily be the same as the patient's would have been had she been confronted with the prospect of her situation while competent.**

Cruzan, 497 U.S. 261, 286, 110 S.Ct. 2841, 2855-56 (emphasis added).

Elizabeth Evans's authority to make healthcare decisions for Duane Alan Evans derives exclusively from S.C. Code Ann. § 44-66-30(A)(3), which accords priority to a spouse. That authority is not unconditional. It is expressly limited by Section 44-66-30(D), which requires the surrogate to act "in good faith to consent to treatment which is in accordance with the patient's previously expressed wishes or, if these are unknown, in the patient's best interest." *Id.*

She refused a tracheostomy that two independent medical experts have concluded is medically necessary and whose absence now threatens her husband's life. She discontinued all recovery-oriented medications, monitoring, and neurological assessments

within a single 2.5-hour window. She authorized organ procurement on the same day the treating physician told her recovery was “still very reasonable.”

The General Assembly conditioned surrogate authority on fidelity to the patient’s wishes or best interest precisely because the incapacitated patient cannot advocate for himself. When the surrogate’s decisions diverge from both the patient’s expressed wishes and his medical best interest, the statutory framework requires intervention.

II. The Stepmother Is Not Acting in Duane’s Best Interests.

The Stepmother has stated in her Petition filed in this Court that she has decided to withhold normative medical care and treatment for Duane, and to give him only palliative care for his alleged comfort, and hospice, bringing about his death. Tom believes this decision violates SC Code Ann. § 44-66-30(G), because, as demonstrated through multiple affidavits above, Duane has expressed his desire to receive restorative care, and not just palliative care and hospice. In any event, a decision about whether the Stepmother is fulfilling her duty under § 44-66-30 can and should be made in the Probate Court, in the first instance, in response to Tom’s Motion under Rule 60(b); or, if the Court takes the case in its original jurisdiction, it should appoint a special referee.

The Stepmother has made decisions that contradicted every independent medical recommendation. Two board-certified neurologists -- one with no connection to any party -- examined the patient and concluded that continued treatment is medically justified and in the patient’s best interest. No physician has ever recommended withdrawal. Elizabeth refused tracheostomy, stopped wakefulness medications, and moved toward withdrawal while every treating and independent physician recommended continued care.

The Stepmother has harbored an organ donation conflict of interest. On the same day that all recovery medications were stopped (February 17, 2026, HD14), Elizabeth signed organ

donation authorization for Donation after Circulatory Death (DCD). The organ procurement organization then directed clinical care for a living patient -- ordering antibiotics, placing arterial lines, and stopping tube feeding – all documented “per Sharing Hope.”

On February 17, 2026 -- the same day that comfort care orders were placed, all wakefulness medications were stopped, and monitoring was eliminated -- Elizabeth signed organ donation authorization for Donation after Cardiac Death (DCD) with Sharing Hope, the regional organ procurement organization. She scheduled an operating room for organ procurement on February 18, 2026 between 10:00 and 12:00 -- before the patient had died.

The authorization was marked “FPA” (First Person Authorization), processed as though it were the donor’s own authorization, despite Duane having been a registered organ donor through the DMV since 2020. His existing donor registration made Elizabeth’s supplemental authorization legally redundant under S.C. Code Ann. Section 44-43-335.

Within hours, Sharing Hope was directing clinical care. An arterial line was placed with consent documented as “Written (per Sharing Hope).” The antibiotic piperacillin-tazobactam (Zosyn) was started with the indication “per Sharing Hope.” Tube feeding was stopped. -- “OK to stop per Sharing Hope.” Organ-specific imaging was ordered: CT chest/abdomen/pelvis and ultrasound of thyroid, both with the indication “Per Sharing Hope.” On February 18, Heparin 30,000 Units was ordered “3 min prior to compassionate extubation, DCD.”

The OPTN Ethics Committee White Paper (2007) requires temporal separation, personnel separation, and decision independence between the decision to withdraw treatment and organ procurement. All three safeguards collapsed here. The withdrawal decision and the donation authorization occurred on the same day, by the same person, with the organ procurement organization directing clinical care decisions that would otherwise belong to the treatment team.

This is not a criticism of organ donation. Duane Evans registered as a donor in 2020, and that decision deserves respect. But a donor registration expresses a wish to donate -- it does not express a wish to die. The temporal collapse of structural safeguards separating withdrawal, donation, and clinical management by an OPO raises questions about whether the surrogate's primary motivation was the patient's best interest or the facilitation of organ recovery.

The Stepmother has given several reasons for why she seeks to withhold treatment and care for Duane, including her assertion that she simply is unable to take care of him, and her assertion that she cannot afford to take care of him. Tom respectfully suggests that these two reasons demonstrate that she is considering matters related to herself, and not the best interests of Duane.

In the middle of February, the Stepmother discontinued several medications that the court appointed guardian restarted. On February 17, 2026, within a 2.5-hour window between 06:41 and 09:00, all three wakefulness-promoting medications were discontinued: Amantadine 200mg BID, Modafinil 200mg BID, and Bromocriptine 5mg Q8H. The same day, Lovenox (DVT prophylaxis) was discontinued "per family request." All daily monitoring labs -- CBC, BMP, Magnesium, Phosphorus, and daily chest X-ray -- were discontinued "per family request." Neurological monitoring was replaced with an order reading: "NO NOXIOUS STIMULI; PUPIL CHECKS ONLY." *Id.*

This order eliminated the very assessments capable of demonstrating consciousness -- then the absence of documented consciousness was used to justify withdrawal. The proof that these decisions lacked medical justification is simple: the court-appointed neutral guardian, Tracy Parsons, immediately reversed them. Upon assuming authority on Hospital Day 20, the guardian restarted Amantadine, restarted Lovenox, and increased Losartan to 100mg (Duane's pre-admission dose). A disinterested third party -- one appointed by this Court -- reviewed the same

clinical picture and concluded that Elizabeth's medication discontinuations were not supportable.

The United States Supreme Court commented on this concept.

Finally, we think a State may properly decline to make judgments about the "quality" of life that a particular individual may enjoy, and simply assert an unqualified interest in the preservation of human life to be weighed against the constitutionally protected interests of the individual.

Cruzan, 497 U.S. 261, 282, 110 S.Ct. 2841, 2853 (1990).

Accordingly, the Court should terminate the Stepmother's surrogate healthcare decision-making authority under S.C. Code Ann. § 44-66-30(A)(3) for failure to meet the good faith standard required by Section 44-66-30(D). The evidence demonstrates that her decisions are not in accordance with Duane's previously expressed wishes (patient's own demonstrated actions contradict her representations) and are not in the patient's best interest (every independent medical recommendation contradicts her decisions).

On February 11, 2026, (Hospital Day 8), Dr. Sanjeev Sivakumar recommended tracheostomy and PEG as a bridge to recovery, telling the family that "most trach patients get them reversed in two months" and PEG tubes are removed in "6-8 weeks." Elizabeth refused.

At the February 27, 2026, hearing, Prisma Health's own senior associate general counsel, Markita Ebersole -- who is also "a nearly-30-year ICU nurse" who still practices "at the bedside with this exact patient population" -- testified that the standard of care calls for tracheostomy "ideally to be done between the seven- and ten-day mark." Elizabeth's refusal overrode this standard.

Both independent medical experts have concluded that the Stepmother's refusal is indefensible:

Dr. Jonathan J. Halford, MD (Professor of Neurology, MUSC; examined patient with Prisma's neurointensivist present (Report signed March 18, 2026): "Continued supportive

management including consideration of tracheostomy for safer long-term airway management, structured ventilator-weaning protocols, and formal neurological rehabilitation evaluation, remains medically appropriate and consistent with accepted standards of neurocritical care.”

Dr. Marshall A. White, MD (Board Certified Neurologist; Certified Brain Injury Specialist; (Report signed March 19, 2026) stated: “The most glaring example of this is the failure to protect his trachea and pharynx by performing a timely tracheotomy. Highlighting this point is the fact that the hospital’s attorney admits this does not meet the standard of care.” Dr. White continued: “It must be stated in absolute terms that maintaining Duane with an endotracheal tube will eventually kill him and those participants allowing this to continue bear substantial risk for allowing this egregious circumstance to continue.”

As of the date of this motion, Duane Evans has been intubated via endotracheal tube for over 44 days. The patient is now demonstrating consciousness, while unable to speak because of the very ETT that Elizabeth refused to have replaced with a tracheostomy. A surrogate who refuses a medically indicated procedure that two independent experts agree is necessary to prevent death is not acting in the patient’s best interest.

III. The Court Should Appoint Tom as Duane’s Guardian.

If it is established that the Stepmother is violating her duty under SC Code Ann. § 44-66-30(G), Tom would ask the court to appoint him as Guardian for his father, so he could move his father to a facility prepared to give him the kind of healing treatment that he needs to maximize his recovery, to protect Duane’s life, authorize medically necessary interventions, and ensure treatment decisions are guided by Duane’s evolving clinical status rather than a surrogate’s predetermined outcome. Tom initiated these proceedings, has consistently advocated for recovery-oriented care aligned with both independent medical experts’ recommendations, and as the

patient's biological son, is an appropriate person to serve.

Pursuant to S.C. Code Ann. § 62-5-108, the Court should appoint Tom as emergency guardian with authority over healthcare decisions for Duane. Tom is Duane's biological son, and he is the Petitioner who initiated these proceedings and whose emergency filing on February 18 saved his father's life by blocking the planned extubation. He has consistently advocated for effective care that aligns with the recommendations of both independent medical experts. His position – continued treatment, tracheostomy, rehabilitation evaluation -- is the medically appropriate course as confirmed by Dr. Halford and Dr. White.

Duane is now demonstrating his wishes through his own actions -- following commands, squeezing hands when asked about living, withdrawing when asked about dying, and reaching for his endotracheal tube. The question is no longer what Duane said in the past, but what Duane is communicating now. Tom's position -- continued treatment, tracheostomy, rehabilitation -- aligns with what the patient is demonstrating and with what both independent medical experts recommend. Tom does not seek to impose substituted judgment based on prior conversations; he seeks to ensure the medically appropriate care that two independent physicians have confirmed is in his father's best interest.

Accordingly, Tom would evaluate and, if appropriate, consent to transfer to a specialized facility. Per Dr. Halford's recommendation: "If these interventions are unavailable or not pursued at the current facility, transfer to a tertiary or specialized center capable of providing comprehensive neuro-rehabilitative and ventilator-weaning care is medically reasonable and should be strongly considered in order to preserve Mr. Evans' opportunity for neurological recovery." (Dr_Halford_IME_Final_03-18-2026.md).

The Court should also authorize Tom to consent to tracheostomy evaluation. Both

independent experts have concluded that tracheostomy is medically appropriate. Dr. White has stated “in absolute terms that maintaining Duane with an endotracheal tube will eventually kill him.” The patient has been intubated for over 53 days. This is a medical emergency.

The Court should also authorize Tom to consent to an independent neurological evaluation using the Coma Recovery Scale-Revised (CRS-R), the validated instrument for assessing disorders of consciousness. No CRS-R has been administered during this hospitalization.

IV. This Court Should Adopt the “Clear and Convincing Evidence” Standard of Proof Necessary to Withhold Life-Sustaining Care from an Allegedly Incapacitated Individual (AII).

The United States Supreme Court addressed the issue of what is the standard of proof necessary to withhold life-sustaining care from an allegedly incapacitated individual. *Cruzan by Cruzan v. Director, Missouri Dept. of Health*, 497 U.S. 261, 110 S.Ct. 2841 (1990). Parental guardians brought suit seeking declaratory judgment for judicial sanction of their wish to terminate artificial nutrition and hydration on behalf of their adult daughter, who had been in a terrible automobile accident. They brought the action in the Probate Division of the Circuit Court of Jasper County, Missouri, which court directed state employees to cause the guardians’ request to be carried out. The Missouri Supreme Court reversed, and the United States Supreme Court granted certiorari on the question of whether a state may require that an incompetent person’s wishes as to the withdrawal of life-sustaining medical treatment be proven by clear and convincing evidence. The Supreme Court concluded that the state of Missouri could require that standard.

Unlike Duane, the patient in that case was in “a persistent vegetative state,” which means that the person “evinces no indications of significant cognitive function.” *Id.*, 497 U. S. 261, 266, 110 S. Ct. 2841, 2845. The patient in that case had made prior statements in conversation to her housemate to the effect that she would prefer to be dead than to live in a persistent vegetative state.

The Missouri Supreme Court found those statements to be unreliable for the purpose of determining her intent and ruled that they did not meet the standard of “clear and convincing evidence.”

The Supreme Court ruled,

Missouri relies on its interest in the protection and preservation of human life, and there can be no gainsaying this interest. As a general matter, the States—indeed, all civilized nations—demonstrate their commitment to life by treating homicide as a serious crime. Moreover, the majority of States in this country have laws imposing criminal penalties on one who assists another to commit suicide.⁸ We do not think a State is required to remain neutral in the face of an informed and voluntary decision by a physically able adult to starve to death.

Id., 497 U. S. 261, 280, 110 S. Ct. 2841, 2852 (*emphasis added, footnote omitted*).

The United States Supreme Court ruled that Missouri could require clear and convincing evidence to guard against potential abuses by surrogates who may not act to protect the patient.

Id., 497 U. S. 261, 268, 110 S. Ct. 2841, 2846.

We believe that Missouri may permissibly place an increased risk of an erroneous decision on those seeking to terminate an incompetent individual’s life-sustaining treatment. An erroneous decision not to terminate results in a maintenance of the status quo; the possibility of subsequent developments such as advancements in medical science, the discovery of new evidence regarding the patient’s intent, changes in the law, or simply the unexpected death of the patient despite the administration of life-sustaining treatment at least create the potential that a wrong decision will eventually be corrected or its impact mitigated. An erroneous decision to withdraw life-sustaining treatment, however, is not susceptible of correction.

Id., 497 U. S. 261, 283, 110 S. Ct. 2841, 2854.

The California Supreme Court addressed an analogous scenario in *Conservatorship of Wendland*, 26 Cal.4th 519, 28 P.3d 151 (2001). While not binding on this Court, *Wendland* is persuasive. Robert Wendland, like Duane Evans, was minimally conscious – he could follow simple commands inconsistently, manipulate objects, and respond to stimuli. The court held that for a conscious patient, the party seeking withdrawal must prove by clear and convincing evidence either the patient’s prior wishes or best interest. As the court observed: “The decision to treat is

reversible. The decision to withdraw treatment is not.” 26 Cal.4th at 550.

CONCLUSION

Tom contends that this action is not a matter of great public importance, necessitating this Court’s original jurisdiction, but rather is a family dispute over the care of his father. Further, most cases in this Court’s original jurisdiction do not have the serious, fundamental factual disputes that this case has. This matter can and should be decided in the Probate Court, in the first instance

However, if the Court grants original jurisdiction, this Court should an appointed special referee to resolve the factual issues and decide whether the Stepmother is fulfilling her duty under SC Code Ann. § 44-66-30(G) to act in accordance with Duane’s expressed wishes, and to act in accordance with his best interest.

The Court should appoint Tom as the emergency guardian for Duane.

Finally, the Court should adopt the “clear and convincing evidence” standard of proof necessary to withhold life-sustaining care from an Allegedly Incapacitated Individual (AII).

Respectfully submitted,
THE CARPENTER LAW FIRM, P.C.

_____/S/ James G. Carpenter

S.C. Bar No. 1136
819 E. North Street
Greenville, SC 29601
Telephone: (864) 235-1269
Facsimile: (864) 331-3083
email: jim@carpenterlawfirm.net

THE LAW OFFICE OF BRIAN T. SMITH

_____/S/ Brian T. Smith

SC Bar ID 0070232
714 Pettigru Street
Greenville, SC 29601
Telephone: (864) 239-2007
Facsimile: (864) 239-2039
Email: bsmith@btsmithlaw.com