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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In the 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.

PETITIONER'S BRIEF

R. Walker Humphrey, II
James T. Johnson
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Kimberly C. Lau (*pro hac vice*)
James E. Figliozzi (*pro hac vice*)
OFFIT KURMAN PC
590 Madison Avenue, 6th Floor
New York, NY 10022
(212) 545-1900

Attorneys for Petitioner

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Questions Presented

I. Collateral estoppel only bars relitigating issues which already have been fully, fairly, and actually determined. The core issues here were either decided by a university hearing panel without procedures ensuring a fair hearing or were settled with a third party. Did the Court of Appeals err in finding that collateral estoppel bars Pampu from litigating these issues?

II. Civil conspiracy is acting on an agreement to harm another. When that happens, juries need only make a fair and reasonable estimate of resulting damages. Wingo and Gahagan agreed to intentionally deceive 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

Open relationships often are problematic. 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 fraternity pledge brother. These troubles came to a head on Pampu's 19th birthday. Gahagan and Wingo had a fight, after which an angry Wingo sought out Pampu and propositioned him for sex. The two had consensual sex behind what was said to be a restaurant. Word inevitably spread about what had happened between them. Embarrassed and looking to minimize the resulting stigma, Wingo and Gahagan agreed to falsely claim that 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 stain on his record, Pampu transferred to another school, was rejected from every dental school he applied to, and will earn substantially less over his lifetime. Pampu sued, and a jury awarded him $5.28 million in actual and punitive damages for defamation and civil conspiracy.

The Court of Appeals' erroneous decision undoing the entire jury verdict for Pampu is even more problematic. It opens every campus sexual assault finding to immediate procedural attack and direct appeal, imposes burdens which no state school believes it has, and insulates students who abuse school policies from liability for their actions. This Court should reverse to restore the verdict and the status quo.

Statement of the Case

After Clemson found Pampu committed sexual misconduct based on intentionally false allegations, Pampu sued Wingo, her father Dave, and Gahagan for defamation, abuse of process, intentional infliction of emotional distress, and civil conspiracy on June 17, 2017. 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 (1) Pampu's settlement of a separate lawsuit against Clemson did not bar his claims here; (2) the university hearing panel's findings did not preclude Pampu from relitigating Wingo's capacity to consent to sex with him; and (3) genuine issues of material fact existed 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 directed 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. 1084–1085. The jury also found Dave Wingo not liable for civil conspiracy. *Id.* Respondents moved for JNOV. 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 affirmed in part and reversed in part in a published opinion. It reversed the denial of JNOV as to defamation, finding that collateral estoppel prevents 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 Clemson panel's findings be preclusive; (2) the settlement of Pampu's separate suit against Clemson was preclusive; (3) Pampu had an adequate opportunity to litigate the issue of consent before the hearing panel; and (4) the university's proceeding was a contested case which had to be appealed under the Administrative Procedure Act, S.C. Code Ann. § 1-23-310 to -400. App. 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 university's final decision; and (3) Pampu's damages testimony was speculative. App. 7–10.

Pampu timely petitioned for rehearing on June 26, 2025. App. 33–48. The Court of Appeals called for a response, which Gahagan filed on July 7, 2025, and Erin and Dave Wingo filed on July 14, 2025. App. 51–84. The court denied Pampu's petition on August 12, 2025. App. 85–86. Pampu then petitioned for a writ of certiorari on September 11, 2025. This Court granted the petition on April 1, 2026.

Statement of the Facts

I. Wingo tells Pampu, "If you don't kiss me tonight, we're not going to have sex."

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. The three ran in the same circles—Pampu and Gahagan were pledge brothers, Gahagan and Wingo had an open relationship, and Pampu and Wingo were friends. R. p. 1429, line 14–p. 1431, line 1. The troubles began one night that September when 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 he and Wingo were not exclusive, Gahagan was "furious" about what happened. R. p. 1630, lines 12–17; p. 3126. Pampu nevertheless 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 later, Wingo told her friends that she wanted to kiss Pampu again, this time 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." R. p. 1434, line 25–p. 1435, line 15. 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. It was "[j]ust a typical night out." 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, line 15–p. 2019, line 12. No one had concerns about her being too intoxicated. *E.g.*, R. p. 1763, lines 12–22; p. 2018, line 25–p. 2019, line 12. And after a brief fight with Gahagan,

[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.

Wingo set off for Pampu at Gahagan's behest. R. p. 1644, line 19–p. 1645, line 9; p. 2017, line 19–p. 2018, line 15.

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. Pampu, surprised, suggested they engage in oral sex instead. R. p. 1437, lines 7–17. Wingo consented. R. p. 1438, lines 10–18. Needing privacy from the ongoing party, Wingo and Pampu left the Compound. R. p. 1439, line 9–p. 1440, line 2. They walked 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 signs of being incapacitated. R. p. 1442, lines 7–21.

Once in a private place, Wingo voluntarily pulled down her pants, said she wanted to have sex with Pampu, and verbally consented to it when asked. R. p. 1443, lines 2–21. Wingo continued showing no signs of incapacity. R. p. 1444, line 8–p. 1446, line 7. She also never asked Pampu to stop and even dressed herself afterward while they talked. R. p. 1444, line 21–p. 1445, line 4; p. 1446, line 8–p. 1447, line 4. She never suggested their encounter was not consensual. R. p. 1447, lines 5–9. 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. On their way back, Wingo became extremely emotional over how her sex with Pampu would affect Gahagan. R. p. 1446, lines 8–21. Wingo 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 mention Pampu's actions or suggest she did not consent to sex with him. R. p. 1447, lines 5–9. Because Wingo remained overcome with emotion about Gahagan back

at the Compound, Pampu found their friends, secured a ride home for her, ensured their friends would look after her, and told her to call him if she needed anything. R. p. 1523, line 16–p. 1526, line 18. The driver, a friend of Pampu's, said he would safely take Wingo home and told Pampu to return to the party for his birthday.[2] R. p. 1526, lines 2–10.

II. Embarrassed by Wingo's actions, Wingo and Gahagan agree to falsely claim she was incapacitated so "it's not gonna be possible for Pampu to stay" in school.

The next morning, Wingo texted Pampu "[d]on'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 text messages soon 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 her "super judgmental" sorority sisters heard what happened. R. p. 1809, lines 4–5; p. 2043, lines 1–22. And Gahagan was incensed. R. p. 1806, line 18–p. 1808, line 9. Making matters worse, his pledge class made derogatory comments about Wingo when Gahagan tried standing up for her. R. p. 1813, line 7–p. 1815, line 15; *see also* p. 2466 (Pampu apologizing for making one of the comments).

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[2] Pampu previously said Wingo was "on the bad end of drunk" during their 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. R. p. 1521, lines 16–17. Only after Wingo left and Pampu returned to the party did Wingo display more outward signs of drunkenness such as vomiting. *E.g.*, R. p. 2163, line 2–p. 2164, line 16. Even so, the friend who drove Wingo home and her dorm RA (who is a mandatory reporter) did not notice anything out of the ordinary about Wingo's condition. *E.g.*, R. p. 2085, line 1–p. 2087, line 4; p. 2187, line 24–p. 2189, line 25.

Wingo and Gahagan changed their story later that day to save face. Even though Wingo remembered what happened, Gahagan suggested to her that "[i]f you don't remember it's rape." R. p. 1674, lines 1–10. And that was their story 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; pp. 3131–3133. Wingo's father, Dave, also 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.

Gahagan also wanted Wingo to press criminal charges. R. p. 1771, lines 9–17. But Pampu did not commit a crime. R. p. 3110. So Wingo and Gahagan decided removal from school was best. A series of text messages sent to each other just three and a half weeks after they started falsely claiming Wingo was incapacitated memorialized their plan:

> <u>Gahagan to Wingo</u>: One step closer to him being gone.
> ...
> <u>Gahagan to Wingo</u>: 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
> ...
> <u>Wingo to Gahagan</u>: 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.
> ...
> <u>Gahagan to Wingo</u>: What do you mean worked out? There's no way this kid can stay at this school. It's honestly impossible
> ...
> <u>Gahagan to Wingo</u>: 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
>
> <u>Wingo to Gahagan</u>: 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. 3137–3139. Gahagan later 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.

Wingo and Gahagan kept Pampu in the dark about their plan. Gahagan, for instance, reassuringly said 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. But their plan came to light when Wingo filed formal charges.

III. Clemson suspends Pampu for sexual misconduct based on Wingo and Gahagan's false testimony without a meaningful opportunity to present his case.

Clemson's Office of Community and Ethical Standards (OCES) received information from a resident assistant (not the one who saw her on the night in question) that Pampu allegedly sexually assaulted Wingo. R. p. 2537, lines 14–19. Wingo initially did not want to bring charges against Pampu. R. p. 2537, line 21–p. 2538, line 2. But, per her and Gahagan's later agreement, she brought a formal complaint on November 11, 2015. R. p. 2540, line 25–p. 2541, line 8. OCES assigned two investigators to the matter, Loreto Jackson and Suzanne Price. Neither could compel witnesses to talk or produce information; they could only rely on what witnesses voluntarily provided. 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 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 15 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:

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. Take this exchange where the chairman rephrased Pampu's question to state that Jackson's investigation was thorough after Pampu tried to question her about omitting evidence which contradicted Wingo's claims:

> 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 answered questions for 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. 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.

7. The hearing officer prevented Pampu from addressing some defenses altogether. For example, the hearing officer barred Pampu from presenting evidence that he had no reason to believe Wingo was incapacitated, even though whether he knew or had reason to know she was incapacitated was an element of the charge. R. p. 2585, line 25–2586, line 8; p. 2786, lines 9–11.

8. 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.

9. The panel received the complete investigation packet—notes from 14 witness interviews, dozens of text messages, and other documents—most of them 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 witnesses making the statements. R. pp. 2419–2431. Pampu also could not question the seven witnesses who gave statements but never spoke at the hearing. 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 on-campus housing, prohibited him from contacting Wingo, required that he enter a counseling program, and mandated that he complete a Sexual Assault Awareness course.[3] R. pp. 345–346. Pampu appealed to the Vice President of Student Affairs, who affirmed. R. p. 346; p. 354; p. 382. He next appealed to the Office of the President, which increased the suspension by one year. R. p. 354; p. 360; p. 383. The President's 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 of appeal, 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 as stated at mediation, which the district court granted. *Id.* at *3. In doing so, the court observed that

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

Clemson has "shown a willingness to try to accommodate [Pampu]'s needs in preserving his 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.*

In relevant part, the final 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. 3190–3191.

IV. Wingo and Gahagan's campaign cost Pampu substantial lifetime earnings.

Pampu transferred to and graduated from the College of Charleston. R. p. 1461, lines 12–20. Originally, Pampu planned to attend dental school and become an orthodontist. R. p. 1462, lines 18–24. His credentials were strong enough to be accepted into dental school. R. p. 1939, lines 3–17. 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. Pampu spent 100 hours shadowing in dental clinics, worked for an orthodontist while in school, and secured recommendations from professors and practicing dentists. R. p. 1464, line 21–p. 1465, line 5; pp. 3158–3159; pp. 3167–3169; p. 3176. But Pampu had

to disclose his suspension on his application. R. p. 3149. All nine dental schools he applied to rejected him. R. p. 1463, lines 16–20; *see also* R. p. 1967, lines 16–23 (stating that Indiana University interviewed Pampu, only to reject him after speaking with Clemson). 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. Experts like Shedlin "render opinions about a person's ability to work and to earn." R. p. 1934, lines 8–9. Shedlin 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.

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, line 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.

*   *   *

The jury awarded Pampu $5.28 million for defamation and civil conspiracy. R. pp. 1084–1085. The courts below took the entire verdict away. R. pp. 5–9; App. 7–31. This Court granted certiorari to review those decisions.

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).

Summary of the Argument

The jury in this case was the first fact finder to hear all the evidence about what happened between Pampu, Wingo, and Gahagan. It found Wingo was not incapacitated when she consented to sex with Pampu and that she conspired with Gahagan to have Pampu removed from Clemson. The courts below erred in revoking that verdict.

1. Collateral estoppel does not bar Pampu from relitigating whether Wingo was incapacitated when she consented to sex with him or whether she and Gahagan conspired to have him removed from Clemson. The OCES panel which first heard Wingo's allegations did not afford Pampu a full and fair opportunity to litigate these issues. Pampu could not directly question adverse witnesses, no witnesses were sworn, the panel received unsigned and unsworn statements, the

chairman and panel members interfered with his questioning, and the panel could not compel attendance—none of which is true of the circuit court trial. Those procedural deficiencies defeat preclusion.

Neither the Administrative Procedure Act, the Information Act, nor Pampu's Clemson settlement compels a different result. The OCES hearing was not a contested case under the APA by definition or in application. No statute requires a hearing, and the one held lacked the notice, discovery, subpoena, evidentiary, cross-examination, and appeal requirements which the APA demands. The Information Act also leaves procedures to each university without purporting to displace the common law collateral estoppel analysis. Pampu's settlement with Clemson is likewise not preclusive. Settlements carry no issue-preclusive effect absent clear intent, and Pampu expressly preserved his denial of Wingo's allegations rather than acceding to them. The Court of Appeals' contrary holdings misapply statutes, common-law principles, and the parties' agreement, and should be reversed.

2. The Court of Appeals erred in ordering JNOV on Pampu's civil conspiracy claim. Viewed in the light most favorable to Pampu, the record supports the jury's finding that Wingo and Gahagan committed an unlawful act or a lawful act by unlawful means by inducing Clemson to breach its contract with Pampu through their false accusations. In any event, civil conspiracy requires only an overt act in furtherance of the agreement, not completion of an underlying tort. There is ample evidence to support the jury's finding that Wingo and Gahagan sought to have Clemson remove Pampu regardless of whether they met all elements of tortious interference with a contract.

The Court of Appeals also erred in finding Pampu did not sufficiently prove damages caused by the conspiracy. The court wrongly faulted Pampu for not appealing the Clemson decision because no appeal right exists. And the jury's damages award is not speculative under this Court's standard granting juries wide latitude where the nature of the injury precludes exact proof. Pampu's uncontradicted vocational expert testified to a reasonable degree of professional certainty that Pampu would have completed dental school and an orthodontics residency but for his suspension, providing ample foundation for the jury's award.

ARGUMENT

I. The Court of Appeals erred in holding that Clemson's OCES decision and settlement collaterally estop Pampu from litigating Wingo's capacity to consent to sex.

The Court of Appeals' misapplication of statutes and common law collateral estoppel radically alters the landscape of campus sexual assault proceedings. The court's holding exposes countless university proceedings to immediate procedural attack, upends already crowded appellate dockets, overburdens schools, and frustrates the intent of multiple statutes. This Court should restore order by reversing the Court of Appeals' decision that collateral estoppel bars Pampu's claims.

A. The OCES proceeding is not preclusive because Pampu had greater procedural rights in court to litigate Wingo's capacity that made a difference when the jury found for him.

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).

But collateral estoppel has many exceptions. *S.C. Prop. & Cas. Ins. Guar. Ass'n*, 304 S.C. at 213, 403 S.E.2d at 627 (citing Restatement (Second) of Judgments §§ 28–29). For instance, it 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). Similarly, an earlier decision is not preclusive if "[t]he forum in the second action affords the party against whom preclusion is asserted procedural opportunities in the presentation and determination of the issue that were not available in the first action and could likely result in the issue being differently determined." *Id.* § 29(2). There is no preclusion "when the party against whom it is invoked can avail himself of procedures in the second action that were not available to him in the first action and that may have been significantly influential in determination of the issue." *Id.* § 29 cmt. d.

The Court of Appeals erred in holding that these exceptions do not apply.

1. A straightforward application of common law collateral estoppel requires finding that the OCES proceeding is not preclusive.

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. 10–11. None of that can be said about the circuit court trial. The additional procedures available to Pampu in circuit court but not before the OCES panel—discovery, subpoena power, the Rules of

Evidence, sworn witnesses, and neutral decisionmakers, among others—made a material difference in the outcome of Pampu's case. The jury here was the first fact finder to hear all the evidence and unanimously found Wingo was not incapacitated when she consented to sex with Pampu.

Despite this record, the Court of Appeals held that "Pampu was also allowed to cross-examine OCES witnesses just as he was allowed to cross-examine Respondents['] witnesses in the present action." App. 23. This belief is staggering. The Court of Appeals also misused fairness to overcome these procedural deficiencies. *See*, *e.g.*, App. 19–20, 23. Fairness can deny collateral estoppel, not grant it. *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). And the court never explained how fairness justifies the application of collateral estoppel given the evidence showing Wingo remembered what happened but wanted to keep it a secret, and Gahagan admitted Wingo wanted to have sex with Pampu and that he lied during the OCES hearing. R. p. 1447, lines 14–17; p. 2050, line 9–p. 2051, line 24; p. 3124; p. 3135.

The Court of Appeals further sidestepped the OCES hearing's failings by holding that Pampu could appeal Clemson's decision. App. 29. As explained below, there is no right to appeal. *Infra* pp. 20–23. In any event, a decision is final for preclusion purposes regardless of whether an appeal is pending or available. *Retreat at Charleston Nat'l Country Club Home Owners Ass'n v. Winston Carlyle Charleston Nat'l, LLC*, 445 S.C. 566, 595–96, 915 S.E.2d 736, 752 (Ct. App. 2025). And finality alone does not establish preclusion—this Court has recognized at least 13 exceptions to the rule that final decisions bind future litigation. *S.C. Prop. & Cas. Ins. Guar. Ass'n*, 304 S.C. at

213, 403 S.E.2d at 627 (citing Restatement (Second) of Judgments §§ 28–29). So even if Clemson rendered an appealable decision, Pampu could still relitigate the issues if these exceptions apply.

Because Pampu did not have a full and fair opportunity to litigate these questions before the OCES panel, the panel's decision and the university's affirmance are not preclusive.

2. The Administrative Procedure Act does not change the result because the OCES proceeding was not a contested case.

The Court of Appeals avoided the OCES hearing's procedural deficiencies by holding that the vehicle to address them was a direct appeal under the APA. App. 23. In the court's view, the OCES hearing was a contested case. App. 29. Pampu therefore had to appeal the President's final decision to the Court of Appeals, and because he did not, Pampu cannot relitigate Wingo's capacity to consent. *Id.* The court was wrong.

First, the OCES hearing was not a contested case by definition. 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 require a hearing. It requires only that universities provide "procedures for institutional disciplinary action" and for "an institutional disciplinary proceeding." S.C. Code Ann. § 59-105-40(B)(4); *see also* 34 C.F.R. § 106.45(g) (stating that a university's procedures "may, *but need not*, provide for a live hearing") (emphasis added).

Second, the OCES hearing was not a contested case in application. 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 directly question witnesses against him, and the chairman, panel members, and hearing officer interfered with the questioning he attempted, *supra* pp. 10–11. Contested case orders must separately state findings of fact and conclusions of law, S.C. Code Ann. § 1-23-350; the order here states only 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 Clemson's final 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. The question is not how to fix missing procedures. It is whether the proceeding is a contested case to begin with. And not even Clemson believes its OCES decisions are appealable contested case orders. *See* R. p. 2118, lines 4–13. The Court of Appeals therefore imposed a framework on the OCES proceeding that the university itself disclaimed. As then-Judge Verdin found, "[i]t would be unfair to allow the OCES board's decisions to be entitled to preclusive effect while at the same time allowing it to operate outside of the rules that other state agencies follow." R. p. 22.

Third, case law does not support the OCES proceeding being a contested case. The Court of Appeals cited *Ross v. Medical University of South Carolina*, 317 S.C. 377, 453 S.E.2d 880 (1994) (*Ross I*), as proof that this Court "has treated a state-supported university as a state agency for purposes of the APA." App. 25. But the parties in *Ross I* did not contest the APA's application. *See Ross I*, 317 S.C. at 380–81, 453 S.E.2d at 882–83. So when MUSC tried to challenge the APA in a subsequent appeal, the Supreme Court held the APA's application was law of the case. *Ross v. Med. Univ. of S.C.*, 328 S.C. 51, 62, 492 S.E.2d 62, 68 (1997) (*Ross II*). And law-of-the-case rulings do not bind other cases. *Builders Mut. v. Bob Wire Elec., Inc.*, 424 S.C. 161, 165, 817 S.E.2d 807, 809 (Ct. App. 2018).

The Court of Appeals also incorrectly found its conclusion to be "consistent" with decisions subjecting secondary school boards to the APA. App. 25. That line of cases began with *Laws v. Richland County School District No. 1*, 270 S.C. 492, 243 S.E.2d 192 (1978), which concerned a school proceeding conducted under the Teachers Employment and Dismissal Act. *Id.* at 495, 243 S.E.2d at 193. Like contested cases, parties in teacher dismissal proceedings can take depositions, issue subpoenas, and have counsel present. S.C. Code Ann. § 59-25-460(A); *id.* § 59-25-490; *id.* § 59-25-500; *id.* § 59-25-520. All testimony is given under oath. *Id.* § 59-25-460(E). The final order also must state findings of fact and conclusions of law. *Id.* § 59-25-460(B)(2), -(C). And for those proceedings, the General Assembly provided an appeal to circuit court. S.C. Code Ann. § 59-25-480. Because the General Assembly knows how to provide hearing procedures and a right to judicial review when it wants to, its omission of them from the Information Act is dispositive. *Laws* has no bearing on OCES proceedings which do not offer the same procedures or a statutory appeal right.

Fourth, subjecting campus sexual assault proceedings to the APA frustrates the intent of the Information Act and produces absurd results. The General Assembly declined 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 contested case procedures, it would have said so. Deeming these proceedings to be contested cases therefore thwarts the discretion to design procedures that the General Assembly afforded universities. Also, private schools are not under the Information Act unless they choose to be. S.C. Code Ann. § 59-105-20(3). There is no suggestion that any private school, even one opting in to the Information Act, has contested case authority. *See* S.C. Code Ann. § 1-23-310(2) (defining "Agency" under the APA as a "state" entity authorized to decide contested cases). Parties therefore can collaterally attack private school proceedings. That means identical conduct must be challenged through wildly different procedural vehicles depending on whether the school is public or private. There is no suggestion the General Assembly intended that disparity. Finally, no public university in the State provides contested case procedures for these proceedings. *See*, *e.g.*, App. 37–38; Pampu Resp. Br. to Gahagan at 24–26. If the Court of Appeals' decision stands, every state school is violating the law.

Making these proceedings a contested case with a direct appeal to the Court of Appeals therefore will yield an avalanche of cases, jeopardize countless university proceedings, make these cases more expensive for universities, and frustrate investigations. So the simplest explanation is the best: the OCES hearing was not a contested case.

3. The Information Act does not make university sexual assault proceedings preclusive.

Next, the Court of Appeals held that the Information Act makes findings of campus sexual assault panels preclusive because holding otherwise renders the act's provisions superfluous. App. 20. The Court of Appeals was wrong here as well.

The goal of statutory interpretation is to honor 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 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). Courts 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). Courts also presume "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."). Interpreting the Information Act to make campus sexual assault determinations preclusive impermissibly expands the statute beyond any bounds the General Assembly envisioned.

B. Pampu's settlement with Clemson is not preclusive because it did not determine any relevant issue and the parties did not intend for it to be preclusive.

The Court of Appeals also misused Pampu's settlement with Clemson to conclude that Wingo's consent has been determined and cannot be relitigated.[4] *See* App. 20.

"Settlements ordinarily occasion no issue preclusion ... unless it is clear, as it is not here, that the parties intend their agreement to have such an effect." *Arizona v. California*, 530 U.S. 392, 414 (2000) (emphasis removed); *see also* 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."). This is because "none of the issues is actually litigated" without such intent. Restatement (Second) of Judgments § 27 cmt. e. "And if preclusive effect were given to issues not litigated, the result might serve to discourage compromise, to decrease the likelihood that the issues in an action would be narrowed by stipulation, and thus to intensify litigation." *Id.* Court approval of a settlement also does not make it a consent judgment. 18A Fed. Prac. & Proc.

[4] 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.

Juris. § 4443; *see* App. 21–22 (suggesting the settlement was a consent judgment). It merely finds the parties had an enforceable contract without addressing the case's underlying merits. 8A Fed. Prac. & Proc. Juris. § 4443.

No one intended Pampu's settlement to be preclusive. To the contrary, Pampu denied Wingo's allegations in the settlement, reservation of that denial was part of the consideration given, and Clemson admitted no liability. R. pp. 3190–3191. The only matter litigated before the district court was whether the settlement was an enforceable contract, which is not an issue here. *Doe v. Clemson Univ.*, No. 8:16-cv-1957, 2019 WL 1383822, at *2–3 (D.S.C. Mar. 27, 2019).

Nor does the agreement require reinstatement of the OCES panel's factual findings. Settlement agreements are construed as ordinary contracts. *Pee Dee Stores, Inc. v. Doyle*, 381 S.C. 234, 241–42, 672 S.E.2d 799, 802–03 (Ct. App. 2009). Courts construe contracts to give effect to the parties' intent, and the best evidence of that intent is the contract's plain language as a whole. *N. Am. Rescue Prods. v. Richardson*, 411 S.C. 371, 378, 769 S.E.2d 237, 240–41 (2015). The agreement intentionally distinguishes between the OCES panel's decision to suspend Pampu for one semester, which he agreed to reinstate instead of the President's decision to suspend him for a longer period, and the allegations forming "the basis" of that decision, which Pampu expressly denied. R. pp. 3190–3191. This distinction is critical. Clemson does not report a one-semester suspension to other schools. R. p. 384. So the compromise was to reinstate the original unreportable one-semester suspension rather than keep the reportable longer suspension by the President's office. It was not to reinstate the panel's factual findings.

Judge Verdin therefore had it right: Pampu's claim that Respondents "are lying about the assault is entirely consistent with his previous arguments before the federal court and Clemson

board." R. p. 20. Holding that Pampu intended to reinstate the finding that he committed sexual misconduct "would make no sense alongside the unequivocal denial" of Wingo's allegations on the first page of the settlement agreement. *Id.* And it particularly makes no sense because this lawsuit was pending when Pampu settled with Clemson. Accepting the Court of Appeals' analysis means Pampu intended his settlement with Clemson to resolve *this* case. No evidence supports that conclusion, and Pampu's continued litigation against Respondents confirms he understood the settlement has no effect here.

II. The Court of Appeals erred in ordering a JNOV on Pampu's civil conspiracy claim because the facts and the law require that it be submitted to the jury.

"[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." App. 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. Here too, the court was wrong as a matter of law.[5]

[5] The court also made several incorrect preservation and abandonment findings. For example, the court found that Pampu's opening brief did not argue Clemson's suspension of him was a breach of contract. App. 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. App. 9–10. But Respondents never argued that the Information Act precluded Pampu's civil conspiracy claim.

A. Collateral estoppel does not bar Pampu's civil conspiracy claim.

The Court of Appeals summarily held that both the Clemson settlement and the absence of an appeal from the Clemson decision also bar Pampu's conspiracy claim. App. 8, 10. For the reasons above, collateral estoppel does not apply and the court again erred. *See supra* pp. 20–23, 25–27.

B. Wingo and Gahagan committed an unlawful act or a lawful act by unlawful means by lying so Clemson would dismiss Pampu.

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 without cause. "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 was a contract for Pampu to attend Clemson. App. 8. There also was no dispute that Wingo and Gahagan knew of this contract, and the Court of Appeals did not find that their actions were unintentional or justified. Instead, the Court of Appeals held there was no reasonable inference that Clemson breached a contract with Pampu. In the court's view, Clemson followed state law by implementing a sexual assault policy, Pampu never claimed Clemson knowingly accepted false testimony, and the jury was not told about the OCES hearing. App. 8–12. These holdings directly conflict with this Court's decisions and the record.

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. App. 10. As to the first point, Clemson's intent is immaterial. *Infra* pp. 29–30. The second point is baffling. The entire collateral estoppel argument is about whether Pampu can relitigate the panel's findings.

First, the Court of Appeals placed more weight on the Information Act than it can bear. The Information Act applies to universities, not students. S.C. Code Ann. § 59-105-40. There is no evidence the General Assembly intended to insulate students who abuse proceedings conducted under the act for personal gain. 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 still lies if Wingo and Gahagan corrupted that proceeding through deceit.

This Court's decision in *Hall v. UBS Financial Services, Inc.*, 435 S.C. 75, 866 S.E.2d 337 (2021), is directly on point. *Hall* held that a third party can be liable for inducing the termination of an at-will employment relationship even though the employer had the right to terminate at any time. *Id.* at 90–92, 866 S.E.2d at 344–45. The Court explained that "[t]he fact that the employment is at the will of the parties, respectively, does not make it one at the will of others." *Id.* at 90, 866 S.E.2d at 344 (quotation omitted). The same principle controls here. Clemson had a contractual right to discipline students who commit sexual misconduct, but that right does not immunize those who induce Clemson to exercise it through lies. So the relevant inquiry is not whether Clemson's act was authorized; an at-will termination is authorized too. It is whether Wingo and Gahagan procured it through unlawful means. The Information Act therefore provides Wingo and Gahagan no safe harbor.

Second, the Court of Appeals wrongly focused on Clemson's intent as the breaching party. It is Wingo and Gahagan's intent in procuring the breach that matters. *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"). If Wingo and Gahagan misled Clemson into exercising its rights under the Information Act and Clemson's policies, Pampu has a

claim because Clemson removed Pampu based on a false premise. Pampu did not have to prove Clemson also knew Wingo's claim was false. *See Hall*, 435 S.C. at 90–92, 866 S.E.2d at 344–45. The court therefore erred in faulting Pampu for not offering that proof.

Third, the circuit court's exclusion of OCES hearing evidence is not a basis for JNOV. A JNOV tests the sufficiency of the evidence the jury heard. It does not ask what other evidence the circuit court kept out. Viewed in the light most favorable to Pampu, the record still permits the jury's finding of breach, with or without the OCES evidence. For example, the jury heard evidence that (1) all objective evidence shows Wingo was not incapacitated when she consented to sex with Pampu; (2) Wingo knew what happened on the night in 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. 5–9 (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.

In any event, whether Clemson in fact breached its contract is not the issue. Civil conspiracy does not require that the conspirators complete the underlying act. 15A C.J.S. *Conspiracy* § 6. It requires only an overt act in furtherance of the goal that harms another. *Pye v. Est. 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. Pampu therefore did not need to fully prove a tortious interference claim to hold Wingo and Gahagan liable for their agreement and resulting actions. *See*

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 ...."). If Wingo and Gahagan intended to harm Pampu by lying to get him removed from Clemson, took steps to accomplish that, and harmed him in the process, then Pampu has a civil conspiracy claim. Because the record contains sufficient evidence that Wingo and Gahagan did just that, the jury's verdict should stand.

C. Pampu presented uncontradicted expert testimony that Wingo and Gahagan's actions caused substantial financial harm.

Finally, the Court of Appeals held Pampu presented insufficient evidence of damages because he "broke the causal chain" by not appealing Clemson's final decision and because Shedlin's testimony that Pampu would have completed dental school and orthodontics training was speculative "and does not qualify as even minimally probative evidence to support the jury's verdict." App. 10. Once again, the Court of Appeals broke with this Court's decisions.

First, the Court of Appeals' causation holding rests on a false premise. Pampu did not fail to appeal a decision he could have appealed—there was no appeal to take. Clemson's President rendered the final decision, and his letter said so expressly: "This decision is final." R. p. 354; *see also* R. p. 383 (Clemson's Code of Conduct explaining that "[t]he decision of the president or his/her designee shall be final"). Clemson officials confirmed there is no right to appeal a presidential decision to the court system. R. p. 2118, lines 4–13; *see also supra* pp. 20–23 (further explaining there is no right to appeal the President's decision). A plaintiff cannot "break the causal chain" by failing to pursue a remedy that does not exist.

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 damage 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 [to] make a fair and reasonable estimate of the amount of damage." *Id.*; *see also Powers v. Calvert Fire Ins.*, 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. 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 heard that Pampu earns $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. From this, 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.[6] R. p. 1085; p. 2366, lines 17–21.

Respondents cannot escape liability by arguing that damages are speculative whenever the injury precedes the plaintiff's career. 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. The courts below therefore erred in taking away the jury's reasoned judgment.

Conclusion

A jury heard the full record and returned a unanimous verdict: Wingo was not incapacitated when she consented to sex with Pampu, and she and Gahagan conspired to have him removed from Clemson based on a story they knew to be false. The Court of Appeals displaced that verdict on two grounds, and both are wrong. Collateral estoppel does not bar Pampu's claims. The OCES hearing lacked the procedures—sworn testimony, cross-examination, subpoena power, the Rules of Evidence—that made a difference at trial, neither the APA nor the Information Act supplies a preclusive effect the General Assembly never granted, and Pampu's settlement with Clemson preserved rather than abandoned his denial of Wingo's allegations. If left standing, the Court of Appeals' opinion decision will convert every campus disciplinary proceeding into binding adjudication and impose burdens which schools cannot handle. And JNOV on civil conspiracy cannot stand either. The record supports the jury's finding that Wingo and Gahagan procured

[6] Respondents objected to instructing the jury to reduce future damages to present value. R. p. 2222, line 9–p. 2223, line 17.

Pampu's suspension through deceit, no appeal right existed for Pampu to forfeit, and Shedlin's uncontradicted expert testimony provided ample foundation for the damages award.

This Court should reverse the Court of Appeals.

Respectfully submitted,

/s/ R. Walker Humphrey, II
R. Walker Humphrey, II
James T. Johnson
WILLOUGHBY HUMPHREY & D'ANTONI, P.A.
133 River Landing Drive, Suite 200
Charleston, South Carolina 29492
(843) 619-4426

Kimberly C. Lau (*pro hac vice*)
James E. Figliozzi (*pro hac vice*)
OFFIT KURMAN PC
590 Madison Avenue, 6th Floor
New York, NY 10022
(212) 545-1900

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