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S.C. SUPREME COURT

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM PICKENS COUNTY

Court of Common Pleas

Perry H. Gravely, Circuit Court Judge

Appellate Case No. 2025-001851

Andrew Pampu, Petitioner,

v.

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

**RESPONDENTS ERIN WINGO AND DAVID WINGO'S
RESPONDENTS' BRIEF**

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INTRODUCTION

This appeal arises from a 2015 incident between two Clemson University students, Andrew Pampu (“Pampu”) and Erin Wingo (“Ms. Wingo”¹). Both individuals have long since graduated. The incident led to multiple lawsuits in both state and federal court. Pampu asks this Court to reinstate a verdict by looking past the binding consequences of his own litigation choices, among other things. Ms. Wingo and her father, David Wingo (“Mr. Wingo”), respectfully submit that the Court of Appeals reached the correct result and this Court should affirm.

In response to a Title IX complaint, Clemson University (“Clemson”) investigated a sexual encounter between Pampu and Ms. Wingo. Based in part on Pampu’s own account, Clemson charged Pampu with violating its General Student Regulations. Following an administrative hearing (the “Clemson Administrative Hearing”), Clemson issued a decision (the “Clemson Administrative Decision”) finding that Ms. Wingo “was incapacitated and unable to give consent which [Pampu] should have reasonably known,” and suspended Pampu for five months. Pampu declined to comply with the conditions for return, and exhausted Clemson’s appeal process, during which Clemson repeatedly upheld the Clemson Administrative Decision.

Rather than seeking state court judicial review of the final Clemson Administrative Decision, Pampu filed an action (the “Clemson Action”) in federal court on June 15, 2016, against Clemson University, its Board of Trustees, and several Clemson employees. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27, 2019) (unpublished). In the Clemson Action, Pampu asserted claims for violations of due process under the Fourteenth Amendment and breach of contract, among others, and challenged the Clemson Administrative Decision as factually incorrect and Clemson’s Title IX process as inadequate and unlawful. In

¹ This Brief refers to the Wingos as did the Court of Appeals in its June 11, 2025 decision.

March 2018, the parties to the Clemson Action mediated and reached a settlement agreement that was reduced to writing and signed by both Pampu and his counsel. *Id.* at *1. The parties to the Clemson Action executed a formalized version of the settlement agreement (the “Clemson Settlement”) that reinstated the Clemson Administrative Decision, fully and finally resolved Pampu’s claims, and compensated him. The Clemson Settlement states: “Clemson University will reinstate the hearing board’s decision of February 29, 2016 as upheld by the University Vice President of Student Affairs.” Pampu thereafter challenged the Clemson Settlement as void. *See Doe*, 2019 WL 1383822 at *2 (citing ECFs Nos. 75, 90). The federal district court rejected that challenge and found the Clemson Settlement enforceable. *See id.* at *3. Pampu did not appeal.

On June 15, 2017, Pampu filed this action (“Defamation Action”) asserting defamation and civil conspiracy against Ms. Wingo, Mr. Wingo, and Colin Gahagan (“Gahagan”). The bases of his claims were that (1) Ms. Wingo, Mr. Wingo, and Gahagan defamed Pampu by stating he “raped”² Ms. Wingo, and (2) Ms. Wingo and Gahagan conspired and lied during the Clemson Administrative Hearing to tortiously interfere with and cause Clemson to breach the contract between Clemson and Pampu. The Court of Appeals held that collateral estoppel warranted JNOV on Pampu’s state tort claims on two independent grounds: (1) the Clemson Settlement, found enforceable by the federal district court in an unappealed ruling; and (2) Pampu’s failure to seek state court judicial review of the final Clemson Administrative Decision.³ Either ground forecloses the relief Pampu seeks.

² There is no dispute here that sexual intercourse occurred. The issue is whether this occurred by consent, or whether Ms. Wingo was too intoxicated or incapacitated to consent.

³ Several arguments regarding new trial entitlement were advanced by the Wingos and Gahagan, but the Court of Appeals did not address those arguments because there was no need to do so.

Pampu's latest challenge, in this Court, is not about the procedures of the Clemson Administrative Hearing or a retelling of undergraduate disputes. It is about whether Pampu may evade the binding consequences of his settlement and subsequent litigation choices by relitigating findings he agreed would remain in place, as well as whether his civil conspiracy claims fail.

COUNTER-STATEMENT OF THE QUESTIONS PRESENTED

- I. Did the Court of Appeals properly order JNOV be entered on Pampu's defamation claim under the doctrine of collateral estoppel based on the Clemson Settlement and enforcement order and/or the failure to seek judicial review from the final Clemson administrative proceedings?
- II. Did the Court of Appeals properly affirm the circuit court's order entering JNOV on Pampu's civil conspiracy claim where the record does not contain evidence of a conspiracy to commit an unlawful act or lawful act by unlawful means to have Pampu removed from Clemson, nor does the record contain evidence of damages arising from the alleged conspiracy?

COUNTERSTATEMENT OF THE CASE

Pampu's narrative to this Court portrays him as totally innocent and victimized by Wingo and Gahagan. Facts are stubborn things; Pampu's own statements undermine his narrative.

On October 24, 2015, Ms. Wingo, a 5'2" Clemson University freshman, drank approximately 13.5 ounces of liquor in a friend's dorm room over the course of one hour and then proceeded to go to a fraternity party, taking a plastic bottle with vodka in it with her. (R. 1637:2–1638:22; R. 1641:23–1642:7). The fraternity party's attendees, including Pampu, observed Ms. Wingo was drunk before the sexual encounter. (R. 1488; R. 2159:1–2161:8). Pampu stated that *prior* to leaving the party that he “he could tell she was drunk. She was loud and having a good time,” and he also knew that she had a plastic water bottle containing straight vodka because he drank from it. (R. 1488). The two “made out,” and then they walked from the party to a location between a wooden fence and a shed, drank more vodka from the plastic bottle, and engaged in intercourse. (R. 1438:10–18; R. 1438–46; R. 1506:7–10; R. 1508–14). Starting from the moment

a friend at the party walked her over to Pampu, Ms. Wingo remembers only fragments of the encounter, such as being slapped on the behind and Pampu saying “I’m finished” and being up against a fence. (R. 1647:10–16, R. 1709:8–1710:21). On the walk back to the party, Pampu admitted Ms. Wingo was “extremely emotional,” stumbling, and “on the *bad end* of drunk.” (R. 1521:4–11) (emphasis added).

After Pampu left Ms. Wingo on the fraternity steps—where witnesses saw her hysterically sobbing—friends assisted her back to her dorm. (R. 1710:18–25; R. 1711:1–21; R. 2161:21–25; R. 2164:2–12). On the way to the dorm, and once there, Ms. Wingo vomited multiple times, lost her key, and had to be helped into her lofted bed by friends and a resident advisor. (R. 1656:20–1675:13; R. 2163:2–2165:1). Throughout this process, Ms. Wingo was upset, crying, and largely incoherent. (R. 2163:2–2164:16). Her texts immediately after the encounter were gibberish. (R. 1733:1–1734:12).

By contrast, after leaving Ms. Wingo, Pampu texted a fraternity member: “I fucked a chick by a garbage thing behind Chipotle,” which was then shared with Pampu’s entire pledge class. (R. 1530:16–22; R. 1531:8–11; R. 1713:12–20; R. 1806:14–24; R. 1828:5–11).

Later, a Clemson resident assistant learned of the encounter from Ms. Wingo’s roommate and filed a report with Clemson University’s Office of Community and Ethical Standards (“OCES”), which resulted in a formal Title IX complaint to Clemson by Ms. Wingo on November 11, 2015. (R. 48; R. 1572:9–16; R. 172:3–5). Clemson investigated the complaint from December 1, 2015, through January 28, 2016, interviewing Pampu, Ms. Wingo, and twelve other witnesses. (R. 2408–09; R. 2105:8–21; R. 2407). Pampu told investigators that Ms. Wingo was drunk upon arriving at the party because she was loud and having a good time, and he described her that night as “on the bad end of being drunk – occasional stumbling.” (R. 1488: 14–1489:4; R. 1522:15–19;

R. 1589:5–10; R. 2439; R. 1521–22). He later signed the investigative report, concurring that this account was true and correct. (R. 2441). Ultimately, the investigation resulted in Clemson charging Pampu with the violation of four Clemson University General Student Regulations, including sexual misconduct. (R. 52; R. 340–41).

On February 11, 2016, Clemson issued a charge letter detailing Pampu’s alleged violations of the Clemson University General Student Regulations, specifically Clemson’s Anti-Harassment Policy, and giving Pampu the option to admit the violations and accept the recommended sanctions (dismissal without eligibility to return) or request an administrative hearing. (R. 2104:20–24; R. 2106:5–19; R. 3075). Pampu requested a hearing, at which evidence from the investigation and witnesses was presented before a board of Clemson faculty, staff, and students. (*Id.*; R. 2107:19–2108:20).⁴ Both Pampu and Ms. Wingo were assisted by licensed attorneys. (R. 2107:3–18). Key testimony from the Clemson Administrative Hearing included the following:

- Pampu acknowledged having sexual intercourse with Ms. Wingo in public. (R. 2764:17–2765:20).
- Pampu was asked: “[W]hat is your understanding of incapacitation, and do you believe somebody can give [] consent if they’re impaired.” Pampu answered:

*My understanding of incapacitation is where you really just cannot talk whatsoever. I know, from the school’s standpoint, it has – it’s different. But for everyone else, at least in my age, everyone in general, when it becomes something like that, you either can give consent or you can’t. I mean, it’s pretty clear, as I explained earlier, to me, what consent was. And she undoubtedly said yes. (R. 2780:22–2781:9; see also R. 2789:24–2791:5).*⁵

⁴ Prior to the administrative hearing, Pampu received a copy of the Investigative Report. (R. 2110:6–15). Pampu was also notified as to who the witnesses at the hearing would be and Pampu was informed that he was also permitted to bring witnesses if he chose. (R. 2109:11–24).

⁵ Clemson University General Student Regulations, specifically Clemson’s Anti-Harassment Policy, plainly indicates that a person who is impaired “due to the influence of alcohol” is unable to give consent. (R. 394; R. 2114, lines 8-16). The policy indicates that there must be a finding that a respondent knew or had reason to know a complainant was unable to consent due to the impairment. (R. 394–95). Following defense counsel’s attempt to question

- Pampu also stated that he was “just a little confused on why there’s so much about her specific consent when I was **incapacitated too**.” (R. 2781:24–2782:1 (emphasis added)).
- Pampu was also asked if he thought Ms. Wingo would have had sex with him if she was sober. Pampu stated in part:

*If she had been sober, I – it would have – it didn’t stand out to me differently. It – I mean, it didn’t – what am I trying to say here? I’m trying to word it so it sounds correct and that I’m actually getting my point across. **Just because she was drunk**, I didn’t think she was doing something she wouldn’t have done **if she was sober**. So yes, I would – I believe that she would have done it **regardless of her intoxication**.* (R. 2783:22–2784:4 (emphasis added)).

On February 29, 2016, Clemson’s OCES sent a letter (the “Clemson Administrative Decision”) informing Pampu that “[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which [Pampu] should have reasonably known.” (R. 345–47). Clemson imposed several sanctions on Pampu, including a five-month suspension with the opportunity for re-enrollment after counseling and the completion of an approved course on sexual assault awareness. (R. 345–46). Pampu chose not to return to Clemson following his suspension. (R. 1571:9–17). Pampu exhausted Clemson’s appeal process, and Clemson repeatedly upheld the Clemson Administrative Decision. (R. 348–59; R. 3080–83; R. 3092–95; R. 3115). Pampu did not attempt to seek state court judicial review thereafter.

Instead, on June 15, 2016, filed the Clemson Action in federal court naming as defendants Clemson University, Clemson University Board of Trustees, and several of Clemson’s individual employees. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, 2019 WL 1383822 (D.S.C. Mar. 27,

Pampu on the definitions of “rape” and “consent” in the Anti-Harassment Policy, the trial court ruled the Anti-Harassment Policy was inadmissible in the underlying defamation trial, a ruling which is further discussed *infra*. (R. 1471–77).

2019) (unpublished). Pampu asserted claims for violation of Title IX of the Education Amendments of 1972, violation of due process (Fourteenth Amendment), breach of contract, breach of the covenant of good faith and fair dealing, negligence, promissory estoppel, and declaratory judgment. (R. 211–293). Pampu claimed in the suit against Clemson that the findings against him were factually incorrect and the Clemson process inadequate and illegal. *See id.* On March 21, 2018, the parties in *Doe v. Clemson* participated in mediation and reached a settlement agreement, which was reduced to writing in the Clemson Settlement. *Doe*, 2019 WL 1383822 at *1. The Clemson Settlement provided for the reinstatement of OCES’s factual decision and payment of monies to Pampu from the South Carolina Insurance Reserve Fund on behalf of Clemson and the other named defendants. (R. 3190–91). The Clemson Settlement reads in pertinent part: “Clemson University will reinstate the hearing board’s decision of February 29, 2016 as upheld by the University Vice President of Student Affairs.” (R. 19; R. 3190). The validity and enforceability of the Clemson Settlement was thereafter challenged and litigated by Pampu as void and resolved by the federal district court, which on March 27, 2019, concluded that the Clemson Settlement was enforceable. *See Doe*, 2019 WL 1383822. Pampu did not appeal the federal district court’s determination.

On June 15, 2017, Pampu filed the present Defamation Action, asserting claims for abuse of process, intentional infliction of emotional distress, civil conspiracy, and defamation. (R. 59–69). The first two claims were dismissed prior to trial. (R. 28–29). The circuit court conducted a jury trial on March 21–25, 2022. (R. 1338).

Although Pampu asserts that the jury in this Defamation Action “was the first fact finder to hear all the evidence about what happened between Pampu, Wingo, and Gahagan,” Pet’r’s Br. at 15, on the contrary, the jury was *not* presented with evidence related to Clemson’s Title IX

process, Clemson’s investigation, the evidence and information Clemson considered in the Clemson Administrative Hearing, the Clemson Administrative Decision, the Clemson Action, or the Clemson Settlement. Instead, in granting a Motion in Limine filed by Pampu which was later reaffirmed at trial, the circuit court excluded all evidence related to Clemson’s Title IX process. (R. 1293:4–1294:15, R. 1386:24–1388:2, R. 1395:14–22, R. 1762:2–25, R. 1765:8–19). Although the court permitted impeachment with prior sworn statements from the investigation and Clemson Administrative Hearing, (R. 1387), it prohibited counsel from identifying the proceedings in which those statements were made. (R. 1783–84). The court also ruled that Clemson’s Anti-Harassment Policy definitions of “rape” and “consent” were inadmissible. (R. 1471–77). And the jury charge did not define “rape” either by its common-law meaning or by reference to the Clemson Anti-Harassment Policy. (R. 2271–2306). As a result, the jury was permitted to decide liability not based on the meaning of Respondents’ statements in context (i.e., under the Clemson Administrative Decision and Clemson Policy, which would render the statements substantially true) but instead based on the jurors’ own undefined and subjective understanding of the term.

Against that backdrop, the jury was left without any context regarding Clemson’s extensive process or its determination that Pampu had intercourse with Ms. Wingo while she was too incapacitated to consent, yet Pampu was permitted to emphasize that he had never been arrested, criminally charged, convicted, or sued for rape. (R. 1420–21, R. 1467–68, R. 1682–83, R. 1870–72, R. 2243, R. 2257). Further, Pampu was permitted at trial, over objection, to offer testimony from a vocational expert, who claimed that Pampu’s “suspension” from Clemson was caused by statements and actions by the Wingos and Gahagan, which in turn caused him to not be accepted into dental school. (R. 1930–59). Essentially, the Wingos were precluded at trial from discussing

the actual cause of Pampu's suspension – Clemson's findings after its investigation, which included the assessment of testimony from witnesses Pampu, Ms. Wingo, and several others.

The trial of the Defamation Action concluded with a jury verdict for Mr. Wingo on the civil conspiracy claim and the following verdicts for Pampu: Civil Conspiracy, as to Ms. Wingo, \$2,000,000 in actual damages; as to Gahagan, \$1,000,000 in actual damages; Defamation, as to Ms. Wingo, \$700,000 in actual damages and \$450,000 in punitive damages; as to Mr. Wingo, \$230,000 in actual damages and no punitive damages; as to Gahagan, \$700,000 in actual damages and \$220,000 in punitive damages. (R. 1084–1085). Following post-trial motions, the circuit court entered a judgment notwithstanding the verdicts on the civil conspiracy claims, finding that Pampu failed to establish numerous elements of the civil conspiracy cause of action. (R. 5–7). The circuit court denied the remaining post-trial motions. Cross-appeals followed.

The Court of Appeals properly determined that collateral estoppel applied to the defamation claim, and that the Circuit Court properly determined Pampu could not recover for civil conspiracy because the Record does not include evidence of a conspiracy to remove Pampu from Clemson, or of damages arising from the alleged conspiracy.

ARGUMENT

Pampu has repeatedly sought to undo the consequences of the Clemson Administrative Decision via two university-level administrative appeals, a federal lawsuit against Clemson, and a challenge to the enforceability of his own settlement. At each of those turns, Pampu was told that the Clemson Administrative Decision stands and is enforceable. Although Pampu obtained a favorable ruling from the circuit court on the collateral estoppel issue and secured a jury verdict on his defamation claim, the Court of Appeals correctly reversed, finding that collateral estoppel precludes such relitigation. The Court of Appeals also correctly affirmed the circuit court's JNOV on Pampu's civil conspiracy claim.

I. The Court of Appeals properly ordered JNOV be entered on Pampu's defamation claim, under the doctrine of collateral estoppel.

A. The Clemson Settlement alone independently supports the Court of Appeals' Decision because Pampu agreed to reinstate the Clemson Administrative Decision, the District Court found the Clemson Settlement enforceable, and Pampu did not appeal.

The Clemson Settlement alone independently supports affirmance of the Court of Appeals' decision. Collateral estoppel applies when an issue was "actually litigated and determined by a valid and final judgment" in a prior suit. *Zurcher v. Bilton*, 379 S.C. 132, 135, 666 S.E.2d 224, 226 (2008). Contrary to Pampu's belief, a stipulated judgment arising from settlement *can* create collateral estoppel, depending on its terms. The doctrine "conserves judicial resources and fosters reliance on judicial action by minimizing the possibility of inconsistent decisions." *Montana v. United States*, 440 U.S. 147, 153–54 (1979). The Restatement provides that "[a] stipulation or consent judgment may have preclusive effect in a subsequent action if the parties have so agreed." Restatement (Second) of Judgments § 27, cmt. e (27 (Am. Law Inst. 1982).

The Clemson Settlement reinstated the Clemson Administrative Decision. (R. 3190–91). In his opposition to the enforcement of the Clemson Settlement in the Clemson Action, Pampu's position was that the Clemson Settlement was not enforceable because Pampu would not have agreed to settle for anything less than "complete exoneration" and "the full expungement of Clemson's disciplinary findings." *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, ECF No. 105, Aff. of Mrs. Pampu at ¶ 6 (Nov. 18, 2018); ECF No. 106, Aff. of Mr. Pampu at ¶ 12 (Nov. 18, 2018).⁶ Pampu's position (i.e., "his complete exoneration) in the Clemson Action was thus an attack on, and incompatible with, the terms of the Clemson Settlement reinstating administrative findings against him. The district court rejected Pampu's position and his arguments, and

⁶ This Court can take judicial notice of these filings.

determined that the terms of the Clemson Settlement were “clear and unambiguous” and signed by Pampu. *Doe*, 2019 WL 1383822, at *3. Pampu had his day in court on the enforceability of the Clemson Settlement, received an adverse ruling, and elected not to appeal. That ruling is a final and binding judicial decision that Pampu did not appeal.

Pampu relies on *Arizona v. California*, 530 U.S. 392, 414 (2000), for the proposition that settlements do not ordinarily create issue preclusion unless the parties clearly intend such effect.” Pet’r’s Br. at 25. Yet, *Arizona* involved a settlement without operative terms reinstating factual findings. Here, the Clemson Settlement expressly provided that “Clemson University will reinstate the hearing board’s decision of February 29, 2016, as upheld by the University Vice President of Student Affairs.” Pampu’s denial of Ms. Wingo’s allegations appeared only in a recital “WHEREAS” clause, not in the operative provisions. (R. 3190–91). Under ordinary contract principles, operative terms control over recitals. 17A Am. Jur. 2d Contracts § 373. Pampu’s continued denial of Ms. Wingo’s allegations is a statement of *his* position preserved in a recital; it is **not** an operative term that negates the binding reinstatement of the Clemson Administrative Decision and the impact of its factual findings. The distinction between the recital and the operative provisions is critical: the parties agreed to reinstate the decision, and the settlement’s “clear and unambiguous” language, as **determined** by the district court, does just that.

Further, Section 29 of the Restatement Second of Judgments provides, “A party precluded from relitigating an issue with an opposing party, in accordance with §§ 27 and 28, is also precluded from doing so with another person unless the fact that he lacked full and fair opportunity to litigate the issue in the first action or other circumstances justify affording him an opportunity to relitigate the issue.” Restatement (Second) of Judgments § 29 (Am. L. Inst. 1982). Reading Section 29 of the Restatement Second of Judgments in conjunction with Section 27, comment e, Pampu cannot

reargue purported procedural deficiencies -- which were the basis for claims he pursued against and settled with Clemson -- to avoid the preclusive effect of OCES's decision, which he agreed to have reinstated.

Alone, the Clemson Settlement, under which Pampu agreed for Clemson to "reinstate [OCES's] decision of February 29, 2016 as upheld by the University Vice President of Student Affairs," independently precludes Pampu from relitigating Ms. Wingo's consent. (R. 3190–92). The district court found the Clemson Settlement is enforceable over objection. *See Doe*, 2019 WL 1383822. Regardless of whether Clemson's OCES is a state agency, Pampu signed a binding agreement for the following findings to be reinstated: "[Ms. Wingo was] incapacitated and unable to give consent which [Pampu] should have reasonably known," and the board suspended Pampu for five months. (R. 345).

Pampu now improperly argues in his Brief points he failed to make to the Court of Appeals in his Petition for Rehearing. He now argues that the "purpose" of the Clemson Settlement was merely to reduce Pampu's suspension. Pet'r's Br. at 26. However, Pampu's after-the-fact characterization of the settlement's "purpose," here, in an attempt to inject ambiguity, cannot override the plain language of the operative provisions of the Clemson Settlement and subsequent enforcement order, which reinstated the Clemson Administrative Decision and its factual findings. Pampu also points to the district court's observation that "student educational and disciplinary records are governed by a variety of laws, which may constrain what [Clemson is] able to do." Pet'r's Br. at 13. Even if external laws constrained Clemson's ability to modify records, Pampu's agreement to reinstate the Clemson Administrative Decision reflects his acceptance of those constraints as part of a bargained-for exchange. Besides not being properly raised here, these positions were rejected by the district court's conclusion that the Clemson Settlement is

enforceable and “clear and unambiguous,” a ruling from which Pampu did not appeal. *See Doe*, 2019 WL 1383822, at *3.

Pampu further argues in an attempt to inject ambiguity that the pendency of this Defamation Action when he settled with Clemson shows the Clemson Settlement was not intended to affect this case. Pet’r’s Br. at 27. Besides being improperly raised, these attempts are contradicted by Pampu elsewhere—in his legal malpractice action (“Malpractice Action”)⁷ against the counsel that represented him in the mediation in which the parties reached the Clemson Settlement. In the Malpractice Action, Pampu alleged the Clemson Settlement “frustrat[ed] the purpose of the underlying litigation”—meaning this Defamation Action. *See Pampu et al. v. Clawson et al.*, Civ. Act. No. 2021-CP-10-01343, Compl. at ¶ 2; Amended Compl. at ¶ 1; Second Am. Compl. at ¶ 1. *See also id.* at 17 (alleging, “[t]he [l]awyers failed to meet the minimum standard of care thereby breaching professional duties to the [Pampus] to adequately and competently provide legal services, counsel and advice regarding all claims and causes of action asserted in the Federal Case and in the State Case.”).⁸

⁷ In May 2018, Pampu fired Clawson Fargnoli, LLC, Samuel R. Clawson, Jr., and the Brewer Law Firm (collectively, the “Malpractice Respondents”), which he had retained in November 2017 to represent him in the Clemson Action and the present action. *See Pampu et al. v. Clawson et al.*, Civ. Act. No. 2021-CP-10-01343 (the “Malpractice Action”), Compl. (filed Mar. 19, 2021); Am. Compl. (filed Apr. 30, 2021); Second Am. Compl. ¶¶ 13, 42–43 (filed June 16, 2021). This Court can take judicial notice of these filings.

⁸ Pampu also points to the circuit court, in the person of now Justice Verdin, concluding in denying summary judgment that the OCES findings did not preclude relitigation of consent. However, an order denying summary judgment is non-final, and can never be appealed. *Watson v. Underwood*, 407 S.C. 443, 456–57, 756 S.E.2d 155, 162–63 (Ct. App. 2014). Further, at the time of this summary judgment hearing, counsel for Respondents was unaware of Pampu’s Malpractice Action and inconsistent allegations being made by Pampu in that litigation, including Pampu’s Malpractice Action’s expert affidavit, filed only a few months before the summary judgment hearing, wherein that expert states the Malpractice Respondents should have been “well aware of the downstream implications of a sexual misconduct *finding*.” *See* Malpractice Action, Resp’ts-Pet’rs’ Joint Pet. for Writ of Certiorari at 1 (Oct. 29, 2025) and Pet’rs-Resp’ts’ Return to Resp’ts-Pet’rs Pet. for Writ of Certiorari at 1–3 (Nov. 25, 2025). at ¶

Hence, the Court of Appeals properly found that Pampu, in this case, should be collaterally estopped from relitigating the issue of whether Ms. Wingo consented to intercourse. *See 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.”). Thus, the Clemson Settlement alone independently supports the Court of Appeals’ opinion and result.

B. The Court of Appeals properly applied the doctrine of collateral estoppel because Pampu had a full and fair opportunity to address any inadequacies with the Clemson Administrative Hearing, challenged them in federal court, settled, and then failed to appeal the enforceability ruling.

The application of the doctrine of collateral estoppel by the Court of Appeals to preclude Pampu from pursuing his claims for defamation aligns with the doctrine’s principles of fairness because he had a full and fair opportunity to address, in litigation, his claimed inadequacies of the Clemson Administrative Hearing regarding which he now complains. After some litigation, Pampu opted to enter the Clemson Settlement, *which included a stipulation to reinstate the Clemson University findings against him*, to fully and finally resolve his claims regarding the alleged inadequacies. Pampu thereafter sought to void the Clemson Settlement, which was litigated with Clemson, and suffered an adverse ruling in this regard from the district court, from which he did appeal.

Pampu now argues that the doctrine of collateral estoppel applies only when parties have had a “full and fair opportunity to litigate the issues” and that exceptions apply when there are

6(c) (emphasis added). The expert does not say the Malpractice Respondents were negligent for reinstating a suspension; he says they were negligent for reinstating a “sexual misconduct *finding*”—and allowing for a “dirty” record. This conflicts directly with Pampu’s position here, where he now argues that the reinstatement term was only “to reinstate the original one-semester suspension.” *See* Pet’r’s Brief at 26.

differences in the quality or extent of the procedures available. Pet'r's Br. at 18. However, Pampu's reliance on the alleged procedural deficiencies of the Clemson Administrative Hearing as an exception to collateral estoppel ignores the fact that he has had a full and fair opportunity to litigate these very issues in a federal court. Pampu challenged the Clemson proceedings in two appeals at the university level and then in a federal court action against Clemson in which he asserted the very procedural deficiencies of which he now complains, and which he resolved through the Clemson Settlement. While Pampu obtained a jury verdict on defamation, such does not diminish the fact that Pampu had already had three separate opportunities—two at the university level and one at the federal court level—to challenge the procedural adequacy of the Clemson proceedings. Any alleged procedural deficiencies have been addressed through those challenges and were resolved through the Clemson Settlement.

Even assuming for purposes of argument that the OCES hearing had procedural shortcomings, the remedy for those alleged shortcomings was an appeal under the APA or, alternatively, resolution through his federal court action, not a collateral attack through a defamation suit. Pampu chose the federal court path. He sued Clemson, argued Clemson's proceedings violated Title IX and his rights under the Due Process Clause of the Fourteenth Amendment, and specifically contended that Clemson failed to conduct a thorough and impartial investigation, failed to avoid conflicts of interest, failed to use the preponderance of evidence standard, and failed to provide adequate training related to Title IX investigations. *See Doe v. Clemson Univ.*, No. 8:16-CV-1957, ECF No. 1, Compl. Pampu used these alleged failures to argue that Clemson's proceedings violated Title IX because they afforded the complainant greater rights than the respondent, which resulted in gender bias against Pampu as a male, essentially arguing that Clemson's procedural deficiencies created an environment where an accused male student was

fundamentally denied due process by being prosecuted under a presumption of guilt. *See id.* In other words, Pampu litigated, but then settled, the very procedural challenges he now raises in this action. Having chosen that forum and that resolution, Pampu cannot seek a second opportunity to litigate these issues through a defamation action in Pickens County.

C. The Court of Appeals properly determined that Clemson’s OCES is a state agency and that collateral estoppel applies from its findings.

Under South Carolina law, where a civil action arises out of the same factual scenario as one which has been before a state agency, a finding by that state agency with regard to an element that is critical to recovery in the civil action is binding upon the civil court. *Bennett v. South Carolina Dept. of Corr.*, 305 S.C. 310, 408 S.E.2d 230 (1991); *Perry v. South Carolina Law Enforcement Div.*, 310 S.C. 558, 426 S.E.2d 334 (1992). Clemson’s OCES qualifies as a state agency under the South Carolina Administrative Procedures Act (the “APA”), S.C. Code Ann. Sections 1-23-10, et. seq., pursuant to (1) the plain language of the statutes, (2) caselaw concluding university boards and committees are subject to the APA, and (3) the reading of the South Carolina Campus Sexual Assault Information Act in conjunction with the APA.

(1) The plain language of the APA qualifies Clemson’s OCES as a state agency.

First, Sections 1-23-10(1) and -310(1) of the APA define “agency” to include each state board, commission, department, or officer, other than the legislature or the courts, authorized by law to determine “contested cases.”⁹ This definition neither includes nor excludes schools, colleges or universities. The APA agency term includes “state boards” that are authorized to hear “contested cases.” The term “contested case” is defined as a “proceeding **including, but not restricted to**, ratemaking, price fixing, and licensing, in which the legal rights, duties, or privileges of a party

⁹ Additionally, the term “agency” has been defined to include state schools, colleges, and universities. S.C. Code Ann. § 15-78-30(a).

are required by law to be determined by an agency after an opportunity for hearing” S.C. Code Ann. § 1-23-310(3) (emphasis added).

(2) Caselaw concluding university boards and committees are subject to the APA support the conclusion that Clemson is a state agency under the APA.

The Court of Appeals also properly found that Clemson is an administrative agency for purposes of the APA. This conclusion is well supported by precedent. In *Ross v. Medical University of South Carolina*, this Court treated a state-supported university as a state agency for purposes of the APA when a tenured professor appealed a decision by a faculty committee, approved by the university’s board of trustees pursuant to the APA procedures. 317 S.C. 377, 379, 453 S.E.2d 880, 882 (1994). The Court of Appeals’ decision here likewise aligns with how courts have treated secondary school boards whose decisions are subject to judicial review and how several other jurisdictions have treated college student disciplinary proceedings. *See Op.* at 25–27. Further, Pampu failed in his Petition for Writ of Certiorari to dispute that Clemson is an agency for purposes of the APA.

To the extent Pampu contends that the parties in *Ross I* did not contest the APA’s application and that its holding was limited, this argument proves too much. That both parties in *Ross I* treated the university’s proceeding as subject to the APA, without objection, underscores that there is nothing novel about applying the APA to state university proceedings. The Court of Appeals’ decision aligns with how courts have consistently treated state university proceedings, including how the Court of Appeals has treated secondary school boards whose decisions are subject to judicial review.

Nor does *Garris v. Governing Board of S.C. Reinsurance Facility* alter the analysis. *Garris* held that an agency only decides a contested case when a statute “explicitly requires [the agency] to hold a hearing.” 333 S.C. 432, 440, 511 S.E.2d 48, 52 (1998). That case, however, is readily

distinguishable. It involved the Reinsurance Facility—an entity with a fundamentally different structure and purpose from a state university exercising disciplinary authority over students under the Campus Sexual Assault Information Act. More importantly, the Clemson Administrative Hearing was not voluntary in any meaningful sense. The Campus Sexual Assault Information Act requires public universities to adopt “procedures for institutional disciplinary action” in cases of alleged sexual assault. S.C. Code Ann. § 59-105-40(B)(4). And where the potential consequences are severe, due process requires more than an “informal, immediate hearing.” *Stinney v. Sumter Sch. Dist.* 17, 391 S.C. 547, 551, 707 S.E.2d 397, 399 (2011). Read together, those statutory and constitutional requirements compel a hearing process for serious campus sexual-assault disciplinary matters. Unlike the voluntary hearing in *Garris*, the Clemson Administrative Hearing arose from legal obligations imposed on a public university and was therefore properly treated as a contested case.

Pampu’s comparison to teacher-dismissal proceedings fares no better. He argues that, because the General Assembly expressly provided hearing procedures and an appeal right in the Teachers Employment and Dismissal Act, its failure to include comparable language in the Campus Sexual Assault Information Act must mean no APA review was intended. This *expressio unius* argument is misplaced. First, the chronology undermines the inference. The Teachers Employment and Dismissal Act was enacted in 1976, one year before the APA was enacted in 1977, and decades before the Campus Sexual Assault Information Act. When the General Assembly passed the Teachers Employment and Dismissal Act, no general-purpose contested-case framework existed. The legislature had to spell out hearing procedures, evidentiary standards, and appellate pathways because there was no APA to supply them. By the time the General Assembly enacted the Campus Sexual Assault Information Act, the APA had been in place for years as a well-

established procedural framework governing all state agencies conducting contested cases. The General Assembly did not need to replicate detailed procedural requirements in the Information Act because the APA already supplied them.

Second, the *expressio unius* canon carries limited force where, as here, the statutes were enacted decades apart under fundamentally different legal conditions. *See Pharm. Coal. for Patient Access v. United States*, 126 F.4th 947, 956–57 (4th Cir. 2025) (noting that negative inferences weaken when provisions were not “considered or enacted together” and carry “little force” when they were not enacted “even close in time”). Drawing an inference of deliberate exclusion from statutes separated by that gulf in time and circumstance is unreliable. To the contrary, requiring every later enabling statute to restate the APA’s procedures would render the APA largely superfluous, and the General Assembly is presumed not to have enacted a futile thing. *See Denene, Inc. v. City of Charleston*, 352 S.C. 208, 212, 574 S.E.2d 196, 198 (2002). The better reading is that the Campus Sexual Assault Information Act’s silence is consistent with, not contrary to, the APA’s application.

Equally unavailing is the reliance on testimony of Clemson’s former Title IX coordinator. The assertion that “not even Clemson believes its OCES decisions are appealable contested case orders” rests on the proffered testimony of Clemson’s former Title IX coordinator—testimony that was not admitted into evidence and that Pampu himself previously attacked as “inadmissible proffer testimony” when it was cited by the Wingos. Pet’r’s Br. at 21 (citing R. 2118:4–13); Pampu’s Appellant Reply Br. at 4. In any event, a university administrator’s lack of awareness of the APA does not determine whether a proceeding qualifies as a contested case. That question turns on statutory definitions, constitutional requirements, and the nature of the proceeding itself. Thus, even if Clemson personnel had no awareness of the availability of APA review, that

misunderstanding cannot control the legal status of the Clemson Administrative Hearing. *Cf. Morgan v. S.C. Budget & Control Bd.*, 377 S.C. 313, 319, 659 S.E.2d 263, 267 (Ct. App. 2008) (noting “[e]stoppel will not lie against a government entity where a government employee gives erroneous information in contradiction of statute.”) (citations omitted).

(3) Reading the APA in conjunction with the S.C. Campus Sexual Assault Information Act supports the conclusion that Clemson is a state agency for purposes of the APA.

Finally, the Court of Appeals properly relied on the South Carolina Campus Sexual Assault Information Act to conclude the Clemson Administrative Decision was a contested case determined by a state agency. Clemson’s OCES is a board at Clemson that is authorized and required by law to determine rights of parties.

Specifically, the Campus Sexual Assault Information Act requires public South Carolina universities, like Clemson, to establish procedures for institutional disciplinary actions in cases of alleged sexual assault. *See* S.C. Code Ann. §§ 59-105-20(3) (“‘institution’ means a public two-year or four-year . . . university located in this State”) and 59-105-40 (requiring public universities “implement a campus sexual assault policy regarding . . . procedures followed by the institution once sexual assault occurs and is reported” that “must address” among other things, “procedures for institutional disciplinary action in cases of alleged sexual assault” and “possible sanctions following the final determination of an institutional disciplinary procedure regarding sexual assault.”).

Indeed, these procedures are required under both federal and state law. Both the Department of Education and the Department of Justice have promulgated regulations under Title IX that require a school to “adopt and publish grievance procedures that provide for the prompt and equitable resolution of student . . . complaints alleging any action that would be prohibited by”

Title IX or regulations thereunder. 34 CFR § 106.8(b) (Dep't of Education); 28 CFR § 54.135(b) (Dep't of Justice). Such prohibited actions include sexual intercourse without consent.¹⁰

These required procedures make the decisions by Clemson's OCES "contested cases" under the APA, as the term "contested case" is defined in § 1-23-310 as 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) (emphasis added).

D. Pampu's arguments about "Absurd Results" are unavailing because the requirements of the APA are consistent with Due Process and the design of the Campus Sexual Assault Information Act.

Pampu argues that treating the Clemson Administrative Hearing as a contested case produces absurd results—that it would thwart the discretion the General Assembly afforded universities, create disparate procedural vehicles for public and private universities, and generate an "avalanche of cases" on appeal. Each of these arguments fails.

(1) The requirements of contested cases align with the due process protections already required of public universities.

Pampu's discretion argument overlooks a basic limitation: any discretion the General Assembly gave universities under the Campus Sexual Assault Information Act must be exercised

¹⁰ Pampu cites 34 C.F.R. § 106.45(g), which provides that a university's procedures "may, but need not, provide for a live hearing," as evidence that no hearing is required. Pet'r's Br. at 20. But this federal regulation addresses the minimum floor of federal Title IX requirements; it does not address state law requirements. The Campus Sexual Assault Information Act and the Due Process Clause operate independently and impose additional requirements beyond the federal floor. A regulation stating that federal law does not require a hearing does not preclude state law from imposing such a requirement. Here, the combination of the Campus Sexual Assault Information Act's requirement of "procedures for institutional disciplinary action" and the Due Process Clause's requirement of protections commensurate with the severity of the consequences imposes a state-law requirement of a hearing for sexual assault proceedings. The federal regulation is therefore inapposite.

within constitutional bounds. Public universities are bound by the Due Process Clause, and any discretion the General Assembly affords them in student disciplinary proceedings must be exercised within those constitutional limits. This Court has made clear that, in assessing the constitutionality of a legislative enactment, “every reasonable presumption must be made in favor of the constitutionality of the act.” *Johnson v. Piedmont Mun. Power Agency*, 277 S.C. 345, 351, 287 S.E.2d 476, 479 (1982). The Campus Sexual Assault Information Act therefore cannot be read to authorize procedures that fall short of the Fourteenth Amendment’s guarantee of due process. Rather, it must be presumed that the General Assembly intended universities to employ procedures consistent with constitutional requirements.

That presumption is especially important in this context. In *Stinney v. Sumter School District 17*, this Court held that due process in public-school disciplinary proceedings must be calibrated to the severity of the consequences at stake. 391 S.C. 547, 550–51, 707 S.E.2d 397, 398–99 (2011). Where the potential sanction is severe, such as expulsion or a lengthy suspension, the process afforded must be greater than an “informal, immediate hearing.” *Id.* at 551, 707 S.E.2d at 399 (quoting *Goss v. Lopez*, 419 U.S. 565, 579–80). And in the Campus Sexual Assault Information Act, the General Assembly expressly recognized the “serious nature and consequences” of sexual assaults and the resulting university disciplinary decisions. S.C. Code Ann. § 59-105-30. Given those serious consequences, any procedures adopted under the Act must satisfy heightened due-process protections.

Therefore, whatever discretion the Campus Sexual Assault Information Act confers does not include authority to impose grave disciplinary consequences through constitutionally inadequate procedures. Construing these proceedings as contested cases does not thwart the General Assembly’s intent; it gives effect to that intent in a constitutionally permissible manner.

The APA's contested-case framework is consistent with, not contrary to, the requirements of due process, because the safeguards associated with contested cases closely align with the heightened procedures required when public universities adjudicate serious disciplinary allegation.

That conclusion also answers Pampu's warning that, if the Court of Appeals' decision stands, "every state school is violating the law." Pet'r's Br. at 23. Pampu's premise in his brief is that the Clemson Administrative Hearing did not mirror every procedural feature of a formal APA contested case: it provided five days' notice rather than thirty, allowed no depositions or subpoenas, did not apply the Rules of Evidence, and did not permit direct cross-examination. *Id.* at 21. However, those asserted deficiencies do not show that the proceeding was not a contested case. They show, at most, that the proceeding may have been conducted with procedural error subject to correction through the APA's appellate process. That distinction matters. If Clemson failed to afford the proper procedures required in a contested case, Pampu's remedy was to pursue an APA appeal,¹¹ not to collaterally attack the outcome through a separate tort action. The fact that the circuit court initially accepted Pampu's collateral-estoppel argument does not change that result; the Court of Appeals correctly recognized the error in that analysis. Any procedural shortcomings in Clemson's process may inform how universities conduct future proceedings, but they do not retroactively alter the nature of the Clemson Administrative Hearing or give Pampu a second opportunity to relitigate the issue of Ms. Wingo's consent in another forum based on the facts and procedural history before this Court in this matter.

(2) The different procedural vehicles for public and private universities reflect the deliberate design of constitutional protections, not an absurd result.

¹¹ Or alternatively here, through a federal court action, which Pampu chose to commence, and later chose to settle.

Pampu argues that treating the Clemson Administrative Hearing as a contested case creates an absurd disparity because “identical conduct must be challenged through wildly different procedural vehicles depending on whether the school is public or private.” Pet’r’s Br. at 23. Public universities are of course bound by the Due Process Clause in a way private institutions generally are not. It is unsurprising that this distinction may produce differences in the procedural vehicles through which their conduct may be challenged. Therefore, the differences for which Pampu raises alarm already exist under longstanding principles of constitutional law and is by design, not by accident.

The state-action doctrine illustrates the point. The protections of the Fourteenth Amendment apply to state action, not purely private conduct, unless a private actor is acting “under color of state law.” 42 U.S.C. § 1983. Thus, the law has long recognized that public institutions and private institutions do not occupy the same constitutional position, and it follows that they need not be subject to identical procedural mechanisms for review. Pampu’s asserted disparity is therefore not some absurd byproduct of the Court of Appeals’ decision; it is the ordinary consequence of the basic distinction between state action and private conduct.

The same distinction appears in other statutory regimes as well. Title IX applies to education programs that receive federal financial assistance, while private universities that do not accept such funding are not subject to that statute. *See* 20 U.S.C. § 1681(a). So too here: different institutions may be subject to different obligations, and those different obligations may yield different avenues of challenge. That is not an absurd result. It is the deliberate design of a legal system that imposes distinct constitutional and statutory constraints depending on whether the challenged conduct is governmental or private.

South Carolina courts and federal courts alike have recognized that principle. See, e.g., *Crenshaw v. Erskine College*, 432 S.C. 1, 26, 850 S.E.2d 8, 15 (2020) (holding that a tenured professor could not rely on the protections of the Due Process Clause of the Fourteenth Amendment because Erskine is a private institution to which the clause does not apply); *Doe v. Oberlin College*, 60 F.4th 345, 348 (6th Cir. 2023) (holding that Oberlin, a private university, is not a state actor and thus is not subject to federal due process requirements). The fact that different procedural vehicles may apply to public and private universities is therefore not a reason to reject the Court of Appeals’ analysis. It is a reason to recognize that Pampu’s absurdity argument rests on a false premise: the law does not require public and private institutions to be treated identically where their legal obligations are not identical.

(3) Both the APA and public record do not support Pampu’s “avalanche of cases” prediction.

Pampu’s “avalanche of cases” argument is not supported by the APA’s appellate framework, the treatment of this decision in later cases, or the existing landscape of university-disciplinary litigation. While Pampu warns that recognizing campus sexual-assault proceedings as contested cases, with a right of direct appeal under the APA, will produce an “avalanche of cases,” neither the APA’s appellate framework nor the public record supports that prediction. The APA does not invite immediate or unbounded judicial review; it requires parties to exhaust available administrative remedies before seeking review of an agency decision. See S.C. Code Ann. § 1-23-380. That exhaustion requirement exists to promote efficiency and protect agency authority. See *Bone v. U.S. Food Serv.*, 399 S.C. 566, 576, 733 S.E.2d 200, 205 (2012). Pampu’s floodgates argument therefore ignores the very structure of the APA, which is designed to narrow and channel review rather than generate unnecessary appeals.

The public record likewise undercuts Pampu’s prediction. Public-index records for every South Carolina county in which a public university, technical college, or community college is located do not reflect the wave of challenges Pampu forecasts. Few of the cases brought against public universities since the 2025 Court of Appeals decision have involved university disciplinary proceedings at all. And those few cases have not challenged the sort of alleged procedural deficiencies Pampu claims would subject universities to immediate attack. *Ubokudom v. Univ. of S.C.*, No. 2026-000348, (S.C. Ct. App. filed May 18, 2026); *Mckenzie v. Univ. of S.C. Police Dept.*, No. 2025-CP-40-06374 (S.C. C.P. Sept. 15, 2026); *Grate v. Coastal Carolina Univ.*, No. 2025-CP-26-06721 (S.C. C.P. Aug. 27, 2025). As the public index is devoid of claims of procedural deficiencies, these cases simply are not being brought to the magnitude Pampu suggests, if at all.

Further, the treatment of *Pampu v. Wingo* in other litigation points in the same direction. The Court of Appeals’ decision has been cited in only three separate cases, and those citations concern the standard of review for JNOV, abandonment of arguments, and the elements of civil conspiracy—not alleged procedural deficiencies in university proceedings. See Respondents’ Initial Brief at 10, *Sealevel Systems, Inc. v. CreatiVasc Medical, Inc.*, No. 2025-001630 (S.C. Ct. App. filed Apr. 24, 2026); Respondents’ Final Brief at 39, *Cobb v. Bigelow*, No. 2025-001074 (S.C. Ct. App. filed Dec. 10, 2025); Memorandum in Support of Defendants’ Motion to Dismiss, *Capital Resorts Grp., LLC v. Stonegate Firm, LLC*, No. 9:25-cv-13124-BHH (D.S.C. Dec. 8, 2025). None of those citations suggest that the Court of Appeals’ decision has destabilized university disciplinary proceedings or generated the flood of procedural appeals Pampu predicts.

Finally, Pampu’s floodgates argument is also undercut by the litigation conduct of his own counsel. While Pampu warns that the Court of Appeals’ decision will invite a wave of litigation challenging university disciplinary proceedings, his counsel is already representing plaintiffs in

cases asserting procedural defects in university hearings across the country. *See, e.g., Doe v. Bd. of Regents of the Univ. Sys. of Ga.*, No. 4:25-CV-00233 (S.D. Ga. Oct. 1, 2025); *Poirier v. Chazy Rural Sch. Dist.*, No. 8:25-CV-00339 (N.D.N.Y. Mar. 14, 2025); *Doe v. Icahn Sch. of Med. at Mount Sinai*, No. 1:24-CV-00344 (S.D.N.Y. Jan. 17, 2024); *Fallows v. Coastal Carolina Univ.*, No. 23-1712 (4th Cir. July 6, 2023); *Doe v. Wesleyan Univ.*, No. 22-1713 (2d Cir. Aug. 8, 2022); *Willie v. N.Y. Univ.*, No. 0521439/2021 (N.Y. Sup. Ct. Nov. 22, 2021). Those cases show that this category of litigation exists independent of the Court of Appeals’ decision; litigation challenging alleged procedural defects in university disciplinary proceedings was already underway.

E. Pampu’s position would render the Campus Sexual Assault Information Act’s disciplinary framework ineffective and invite duplicative litigation.

Absurd results actually do follow if the decisions of universities under the Act are immediately subject to relitigation in the courts via tort litigation. To the extent that Pampu is concerned about avoiding placing burdens on universities and court dockets, Pampu’s advocated result would certainly contribute to those burdens. Requiring university proceedings for sexual assault while simultaneously providing another forum to immediately litigate—or relitigate—the same issue would mean that any university proceeding was essentially useless, and the General Assembly’s statute passage was a waste of its time and efforts as well.

The General Assembly, recognizing the “serious nature and consequences of sexual assault,” created the Campus Sexual Assault Information Act to “to encourage institutions of higher learning to develop . . . a comprehensive sexual assault policy address prevention and awareness of sexual assault and to establish procedures that address campus sexual assaults.” S.C. Code Ann. § 59-105-30. Further, the Act requires university policies to address “possible sanctions following the final determination of an institutional disciplinary procedure regarding sexual

assault” and “procedures for institutional disciplinary action in cases of alleged sexual assault.” S.C. Code Ann. § 59-105-40(B)(2), (4). Thus, the General Assembly intended universities to create procedures for disciplinary action to address and resolve campus sexual assaults. Finding that such disciplinary actions could be litigated and relitigated from the outset would impair universities' ability to actually address campus sexual assaults because it would result in any decision at the university level carrying no weight.

The treatment of university proceedings such as those here as contested cases cut in favor of finality, not against it. The APA's exhaustion requirement, S.C. Code Ann. § 1-23-380, and the standard of judicial review applicable to contested cases, S.C. Code Ann. § 1-23-380(5), are designed to promote exactly the kind of efficiency Pampu claims to advocate. Treating these university proceedings as contested cases aligns the Act with these existing mechanisms and ensures that university determinations carry the weight the General Assembly intended.

Therefore, the Court of Appeals properly relied on the South Carolina Campus Sexual Assault Information Act to conclude the Clemson Administrative Decision resulted from a contested case determined by a state agency. Because Clemson is authorized to enforce institutional disciplinary actions for alleged sexual assaults through contested cases, it is a state agency authorized by law to determine contested cases and its findings are binding upon Pampu. To the extent Pampu now raises issue with the findings of the Clemson Administrative Decision or with the procedures of the Clemson Administrative Hearing, he had a full and fair opportunity to litigate those concerns by seeking judicial review in circuit court by way of appeal, and instead chose to bring his federal court action against Clemson and entered into the Clemson Settlement.

F. Pampu's failure to seek judicial review after exhausting administrative remedies regarding the Clemson Administrative Decision precludes Pampu from relitigating the issue of Ms. Wingo's consent.

To the extent Pampu believed certain protections of the APA were not provided, he could have appealed those issues to the state courts of South Carolina. *See* S.C. Code Ann. § 1-23-380. Pampu should not be allowed to collaterally attack the Clemson Administrative Decision via this defamation action after failing to seek judicial review. *See Bennett*, 305 S.C. 310, 408 S.E.2d 230 (finding that a claimant’s failure to seek judicial review of an agency’s ruling barred his subsequent suit because by not seeking judicial review of the decision, he abandoned his only opportunity to gain a favorable ruling on the issues also raised in the subsequent suit); *McClellan v. Bd. of Regents of State Univ.*, 921 S.W.2d 684 (Tenn. 1996) (noting that allegedly procedural issues in a hearing before the university’s board should and could have been raised on appeal).

In his petition for certiorari, for the first time, Pampu argued he should be excused from failing to seek judicial review because while the May 27, 2016, decision of Clemson’s President stated, “This decision is final,” the decision did not outline his right to appeal, and he now reasserts that argument in his brief. Pet. for Cert at 9 and 24; Pet’r’s Br. at 31. Yet, the administrative finality of the President’s May 27, 2016, decision upholding the Clemson Administrative Decision is exactly what gave rise to Pampu’s ability to seek judicial review. S.C. Code Ann. § 1-23-380 (“A party who has exhausted all administrative remedies available within the agency and who is aggrieved by a *final decision* in a contested case is entitled to judicial review.”) (emphasis added). The APA does not require an agency to provide notice of the opportunity for judicial review.

Therefore, Pampu could have sought judicial review in the circuit court but instead, he sued Clemson in federal court and asserted claims arising from purported deficiencies in the Clemson Administrative Hearing, and he resolved those claims through the Clemson Settlement, found to be fully enforceable after challenge. (R. 19; R. 3191).

G. The Court of Appeals properly concluded that the Clemson Administrative Decision determined that Ms. Wingo lacked consent.

Following the hearing, Clemson OCES sent Pampu the Clemson Administrative Decision, which concluded that Pampu did commit “Sexual Misconduct.” (R. 345–47). “Sexual Misconduct” is by definition nonconsensual conduct,¹² and the letter unequivocally states that, “[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known.”¹³ (R. 345–47; R. 2106:1–19; R. 2113–2114; R. 3075–77). The finding that Ms. Wingo was incapacitated and unable to consent to the sexual encounter was necessary to support the Clemson Administrative Decision. To determine if Pampu committed “Sexual Misconduct,” Clemson’s OCES had to determine whether the incident was consensual; it conclusively found that it was not. Therefore, the finding that Ms. Wingo was incapacitated and unable to give consent was necessary to the determination that Pampu committed Sexual Misconduct.

Because the act of sexual intercourse was not in dispute,¹⁴ the only issue to be decided by Clemson was one of consent. The necessary factual finding on lack of consent was made in the Clemson Administrative Decision, which was later affirmed by Clemson’s Vice President of Student Affairs, then the President of Clemson, and by Clemson and Pampu in the Clemson Settlement. Although, for reasons not appearing in the record, Clemson did not *charge* Pampu with

¹² “Sexual Misconduct” is defined by Clemson’s Anti-Harassment and Non-Discrimination Policy as “any other nonconsensual conduct of a sexual nature.” (R. 393). Pampu concedes he had sexual intercourse with Wingo.

¹³ Under Clemson’s Anti-Harassment Policy, in order to find a person failed to receive consent from a person impaired and unable to give consent “due to the influence of alcohol,” “there must be a finding that the complainant was unable to consent and a finding that the respondent knew or had reason to know the complainant was unable to consent.” (R. 394–95).

¹⁴ Again, Pampu has never denied engaging in sexual intercourse with Ms. Wingo on the night at issue. (R. 1530:16–1531:16). In light of this fact, the Court of Appeals declined to speculate why Clemson charged Pampu with “Sexual Misconduct” rather than “Sexual Assault and/or Battery,” reasoning that the charge classification was immaterial because Pampu admitted intercourse and the only contested issue was Ms. Wingo’s capacity to consent. *See Op.* at 30–31.

rape, non-consensual sexual intercourse meets the definition of rape.¹⁵ Substantial truth is of course a defense to defamation. Pampu cannot escape the admitted truth that he had sexual intercourse with Ms. Wingo, nor that the Clemson Administrative Decision explicitly determined “[Ms. Wingo] was incapacitated and unable to give consent.” (R. 345–47). Courts have addressed nomenclature in the defamation context and generally do not require that we all communicate technical legal principles with precision. *See Simonson v. United Press Int’l, Inc.*, 654 F.2d 478, 481–82 (7th Cir. 1981) (finding no defamation when word “rape” used even though crime was second-degree sexual assault because “rape,” as understood in common usage, truthfully described the conduct involved); *Nanji v. Nat’l Geographic Soc’y*, 403 F. Supp. 2d 425, 433–34 (D. Md. 2005) (finding that use of “rape” instead of “more technically precise term” did not render article inaccurate, and collecting cases for proposition that “technical errors in legal nomenclature in reports on matters involving violation of the law are of no legal consequence” in defamation actions) (internal quotations omitted). Therefore, the conclusion that Clemson’s OCES, as a state

¹⁵ “Rape,” is defined by Clemson’s Anti-Harassment Policy as the “carnal knowledge of a person without the consent of the victim including instances where the victim is incapable of giving consent because of his/her age or because of his/her temporary or permanent mental or physical impairment,” applies as a term because of the temporary impairment and corresponding lack of consent, coupled with admitted sexual intercourse. (R. 392). In contrast, in this defamation/tort trial, the circuit court charged the jury that “rape and sexual assault are considered crimes of moral turpitude” (R. 2294), but at no point in the jury charge (R. 2271–2306) did the trial court define the term “rape” — whether by reference to the common law definition, *see State v. Lindsey*, 355 S.C. 15, 19, 583 S.E.2d 740, 741 (2003) (defining rape as “the carnal knowledge of a woman by force and against her consent”), or by reference to the Clemson Anti-Harassment Policy. The circuit court thus permitted the jury to render a verdict based not on the use of the word by Respondents in context (i.e., the Clemson definition as spelled out in the Anti-Harassment Policy), under which the Respondents’ statements would be substantially true, but instead, by use of their own personal context. Further, the circuit court refused to allow any evidence at trial explaining the Clemson Anti-Harassment Policy, the Clemson investigation, and the Clemson Administrative Hearing, and thus the actual context of the word “rape” as used by Respondents. (R. 1293:4–1294:15, R. 1386:24–1388:2, R. 1395:14–22, R. 1762:2–25, R. 1765:8–19).

agency, made finding that Ms. Wingo was incapacitated and unable to give consent was necessary to its judgment that Pampu committed Sexual Misconduct.

H. Pampu’s defamation claim improperly seeks to relitigate the Clemson Administrative Decision and pursue damages that he has sought and which were paid via the Clemson Settlement.

The damages Pampu seeks from the Wingos and Gahagan are identical to those he already sought from and settled with Clemson and are inextricably tied to the Clemson Administrative Hearing and Decision. As set forth below, the record demonstrates that (1) Pampu’s damages claims in this action mirror those he asserted against Clemson; (2) Pampu’s own counsel repeatedly linked the alleged defamation to Pampu’s removal from Clemson; and (3) the decision to suspend Pampu was solely Clemson’s, based entirely on the Title IX process, and Pampu agreed to reinstate that decision through the Clemson Settlement. Accordingly, the Court of Appeals correctly reversed the jury verdict, holding that collateral estoppel bars the defamation claim.

First, Pampu’s alleged damages in the trial before the circuit court were directly related to the Clemson Administrative Hearing and Decision. Pampu testified that he was unable to graduate from Clemson and that he had to alter his career plans because he could not get into dental school due to his “removal” from Clemson. (R. 1461–64). Pampu’s vocational expert testified that Pampu would have gotten into dental school “but for” his removal from Clemson. (R. 1939–43; R. 1948–49). The expert did not place a specific monetary value to this alleged harm, and instead generally testified that Pampu suffered a reduced lifetime earning capacity based on the “removal” from Clemson. (R. 1939–43). In his suit in federal court against Clemson, Pampu sought “damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects” (R. 291–93); Compl., *Doe v. Clemson Univ.*, No. 8:16-CV-1957, at “Wherefore” (i)–(vi) (D.S.C. Jun. 15, 2016). In his suit against the Wingos and Gahagan, Pampu seeks *exactly the same*:

“damages to physical well-being, emotional and psychological damages, damages to reputation, past and future economic losses, loss of educational and career opportunities, and loss of future career prospects.” (R. 69).

Second, based on the testimony and arguments at trial, Pampu directly and repeatedly tied the allegedly defamatory statements to his removal from Clemson. Pampu’s counsel often conflated the issue of defamation reputational damages with the Clemson suspension while addressing the jury. For example, during the opening statement Pampu’s counsel argued that “[Pampu’s] defamation claim is actually based on defendants’ false statements to at least 20 other people calling him a rapist. Because of defendants’ actions, [Pampu] will be required to disclose and self-report **his removal from Clemson** for the rest of his life whenever he applies to another school or applies to certain jobs. His dreams of becoming an orthodontist will never happen because of defendants’ irreversible actions.” (R. 1416, line 18 –1417, line 2 (emphasis added)). Also, during closing arguments Pampu’s counsel claimed: “[t]he reason [Pampu] cannot fulfill his intended career goal of being an orthodontist is not because of Clemson, but for [Ms. Wingo and Gahagan’s] statements, **Clemson would not have kicked him out.**” (R. 2235:3–6 (emphasis added)).¹⁶

¹⁶ The Clemson Administrative Decision to suspend Pampu was based on a variety of evidence and testimony from persons, in addition to Ms. Wingo and Pampu. Further, the Decision no doubt was based in part on the statements of Pampu himself at the Clemson Administrative Hearing where he admitted to engaging in public sexual intercourse with an intoxicated Ms. Wingo, not agreeing with Clemson’s definitions of incapacitation and consent, and acknowledged he knew Ms. Wingo was intoxicated and on the “bad end of drunk.” (R. 2762:9–19; R. 2763:8–11; R. 2764:17–2765:20; R. 2780:22–2781:9; R. 2781:24–2782:1; R. 2783:22–2784:4; R. 2789:24–2791:5).

Third, the ultimate decision to suspend Pampu from Clemson was solely based on comments, statements, and evidence from *within* the Title IX process. There is no suggestion that OCES based its decision on anything other than the testimony and evidence uncovered during the Title IX investigation and presented during the Clemson Administrative Hearing. It was Clemson's decision, and its decision alone, to suspend Pampu. Pampu based his alleged damages requests in this matter solely on Clemson's decision to suspend him from school, which was based on the Title IX investigation. Pampu and Clemson agreed to reinstate the Clemson Administrative Decision in the Clemson Settlement, which meant the findings stayed on his record and would be available for viewing by any post-graduate school. Pampu challenged the enforceability of the Clemson Settlement, the district court ruled against him, and Pampu did not appeal. Having already sought and received compensation from Clemson for the underlying conduct through the Clemson Settlement, Pampu cannot now seek a second recovery from the Wingos or Gahagan for damages allegedly arising from the reinstated decision.

II. The Court of Appeals properly affirmed the circuit court's granting JNOV on Pampu's civil conspiracy claim.

The Court of Appeals also properly affirmed the circuit court's granting a JNOV on Pampu's civil conspiracy claim. To successfully assert a civil conspiracy claim, Pampu had to show "(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 [Pampu]." *Paradis v. Charleston Cnty. Sch. Dist.*, 433 S.C. 562, 574, 861 S.E.2d 774, 780 (2021). The Court of Appeals and the circuit court both correctly found that Pampu failed to present evidence to establish that Gahagan and Ms. Wingo planned to commit an unlawful act or a lawful act by unlawful means. Nor did they prove resulting damages.

At the outset, Pampu raises multiple arguments in his Brief that were not properly raised below. However, the Court of Appeals was correct in finding that Pampu failed to develop certain arguments with supporting authority in his opening appellate brief, which constitutes abandonment. *See Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). Pampu cannot cure those failures before this Court by citing new authorities and raising new theories for the first time. SCACR 242(d)(1); *see also Mazloom v. Mazloom*, 392 S.C. 403, 403–04, 709 S.E.2d 661 (2011); *Foster v. Foster*, 393 S.C. 95, 99, 711 S.E.2d 878, 880 (2011).

A. Pampu failed to present evidence that Gahagan and Ms. Wingo planned to commit an unlawful act or a lawful act by unlawful means.

For Pampu’s civil conspiracy claim, Pampu asserts, “[t]he act at the heart of Wingo and Gahagan’s conspiracy was getting Clemson to breach its contract with Pampu by removing him from school.” Pet’r’s Br. at 28. Specifically, Pampu alleges Gahagan and Ms. Wingo conspired to commit an unlawful act by planning to tortiously interfere with the contract between Pampu and Clemson. *Id.* “The elements of a cause of action for tortious interference with contract are: (1) existence of a valid contract; (2) the wrongdoer’s knowledge thereof; (3) [the wrongdoer’s] intentional procurement of its breach; (4) the absence of justification; and (5) resulting damages.” *Vortex Sports & Ent., Inc. v. Ware*, 378 S.C. 197, 205, 662 S.E.2d 444, 449 (Ct. App. 2008) (quoting *Camp v. Springs Mortg. Corp.*, 310 S.C. 514, 517, 426 S.E.2d 304, 305 (1993)). Pampu has waived any arguments he seeks to assert to establish that Clemson’s enforcement of the Clemson University’s General Student Regulations is a breach of contract that Gahagan and Ms. Wingo could have conspired to procure.

First, the Court of Appeals properly found that Pampu should have been precluded from asserting at trial that Clemson had breached its contract with Pampu. *See Op.* at 8. In the Clemson Settlement, Pampu resolved his breach of contract claim against Clemson and accepted the

reinstatement of the full Clemson Administrative Decision, including the findings he now contests in this action.

Second, Pampu has abandoned the argument that Clemson's imposition of sanctions was a breach of Clemson's contractual duties to him. Pampu's opening brief cited no authority to establish a university's sanctions against a student constitutes a breach of a contract between a student and university. *See* Pampu Appellant's Br. at 20–21. Because Pampu failed to cite authority to support his position, the Court of Appeals properly found that Pampu abandoned his argument. *Op.* at 10; *see Glasscock, Inc. v. U.S. Fid. & Guar. Co.*, 348 S.C. 76, 81, 557 S.E.2d 689, 691 (Ct. App. 2001). In concluding Pampu abandoned his argument because he failed to cite authority, the Court of Appeals suggested it would be difficult to find such authority given Clemson's implementation of Clemson's policies, which are informed by statutory requirements, some of which Pampu admitted breaching, and others regarding which agreed to be final. *Id.* Hence, Pampu cannot establish that Ms. Wingo and Gahagan's participation in the Title IX investigation and Clemson Administrative Hearing constituted a plan to intentionally procure the breach of the contractual relationship between Pampu and Clemson.

Pampu's reliance now on *Hall v. UBS Financial Services, Inc.*, 435 S.C. 75, 866 S.E.2d 337 (2021), appeared for the first time in his petition for certiorari. He now cites *Hall* in an attempt to support his proposition that (1) Clemson breached its contract with Pampu and (2) even if Clemson did not breach its contract with Pampu, Gahagan and Ms. Wingo still somehow tortiously interfered with the contract. Pampu cannot now raise arguments in his petition for writ of certiorari not previously raised to the courts below. SCACR 242(d)(1); *see also Mazloom v. Mazloom*, 392 S.C. 403, 403-04, 709 S.E.2d 661 (2011) (declining to address an issue not raised in the petition for rehearing); *Foster v. Foster*, 393 S.C. 95, 99, 711 S.E.2d 878, 880 (2011) ("In order to preserve an

issue for appellate review, a party must both raise that issue to the trial court and obtain a ruling.”); *Long v. Dunlap*, 87 S.C. 8, 68 S.E. 801 (1910) (Court will not consider any point which was not presented and considered below unless it involves jurisdiction of the court).

Even if Pampu did not abandon or waive his arguments, *Hall* does not support the propositions for which he now cites the case. In *Hall*, answering the “narrow” question of “whether a third-party employee’s interference [with the contractual relationship between an employer and at-will employee] can be actionable,” this Court held, “the absence of an underlying breach by the terminating employer does not shield the third party from liability when she intentionally and unjustifiably procures the termination of an at-will employee.” 435 S.C. 75, 88–92, 866 S.E.2d 337, 343–45 (2021). Pampu fails to establish how the narrow holding in *Hall* may extend to his case. Pampu was not an employee in an at-will contract with Clemson. Instead, the terms of his status as a student were outlined in Clemson University General Student Regulations. *See Organiscak v. Cleveland State Univ.*, 116 Ohio Misc.2d 14, 762 N.E.2d 1078, 1081 (2001) (determining “[t]he terms of the contract between the university and the student are generally found in the college catalog and handbooks supplied to students.”); *Cornett v. Miami Univ.*, 104 Ohio Misc.2d 41, 728 N.E.2d 471, 473 (2000) (determining “[t]he terms of the contract between the university and the student are generally found in the college catalog and handbooks applied to students.”). Because the narrow holding of *Hall* does not extend to the facts at issue in this action, the general rule applies: “without a breach of the underlying contract, there can be no recovery” for tortious interference with a contract. *First Union Mortg. Corp. v. Thomas*, 317 S.C. 63, 73, 451 S.E.2d 907, 913 (Ct. App. 1994).

Moreover, *Hall* is substantively distinguishable. In *Hall*, there was no question that the third party’s *actions themselves* constituted the improper interference: the employee was fired

because of the third party's alleged false reports, with no independent adjudicative process intervening between the third party's conduct and the adverse employment action. *See* 435 S.C. at 79–80, 866 S.E.2d at 339. By contrast, here the Clemson Administrative Hearing intervened between Ms. Wingo and Gahagan's actions and Pampu's suspension. Clemson independently investigated, conducted a hearing, and reached its own decision based on the totality of the evidence before it, including the testimony and statements of persons other than Ms. Wingo and Gahagan. Clemson's investigation and determination, based in part on Pampu's own admissions, is what led his suspension.

Pampu also argues that civil conspiracy does not require completion of the underlying tort, citing *Pye v. Est. of Fox*, 369 S.C. 555, 567–68, 633 S.E.2d 505, 511 (2006), and he cites Justice Few's concurrence in *Paradis*, 433 S.C. at 580–81, 861 S.E.2d at 783–84, for the proposition that “civil conspiracy requires only an overt act in furtherance of the goal that harms another” and that “Pampu therefore did not need to fully prove a tortious interference claim.” Even under this broader formulation, the conspiracy claim still requires proof of (a) an agreement to commit an unlawful act or a lawful act by unlawful means and (b) damages proximately resulting from the conspiracy. *Paradis*, 433 S.C. at 574, 861 S.E.2d at 780. The evidence of record does not support either element because (1) the jury never heard what Ms. Wingo and Gahagan told Clemson, and (2) Pampu's damages are attributable to the Clemson Administrative Decision, which he agreed to reinstate.

Pampu contends that the exclusion of Clemson OCES's investigation and the Clemson Administrative Hearing is irrelevant to the JNOV analysis because “JNOV tests the sufficiency of the evidence the jury heard” and “does not ask what other evidence the circuit court kept out.” Pet'r's Br. at 30. This argument is correct as a statement of law, but it cuts against Pampu, not in his favor. Precisely because JNOV tests the sufficiency of the evidence the jury *heard*, and the jury

never heard what Ms. Wingo and Gahagan told Clemson, there was insufficient evidence before the jury to establish the essential elements of the conspiracy claim. The exclusion of that evidence is not the *basis* for the JNOV, the *absence* of that evidence from the record is. Because evidence from Clemson OCES's investigation and the Clemson Administrative Hearing were excluded from evidence at the trial, there was no evidence before the jury regarding what Gahagan or Ms. Wingo told Clemson. (R. 1293:4–1294:15; R. 1386:15–1387:23). Consequently, Pampu failed to prove what supposed “lies” Ms. Wingo and Gahagan told Clemson to lead to his allegedly improper suspension. It is impossible to establish that Ms. Wingo and Gahagan conspired and “induced Clemson to breach its contract with Pampu” without, among other things, proving what Ms. Wingo and Gahagan told Clemson.

Further, because evidence from Clemson OCES's investigation and the Clemson Administrative Hearing were excluded from evidence at the trial, there was no evidence before the jury to support a finding that the investigation and hearing could have constituted a breach of the contract between Clemson and Pampu. Therefore, viewing all evidence in the light most favorable to Pampu, a reasonable jury could not have concluded that Gahagan and Ms. Wingo planned to commit an unlawful act or a lawful act by unlawful means.

B. Pampu failed to present sufficient evidence of actual damages from the alleged conspiracy proximately resulting to Pampu.

Under a civil conspiracy claim, the injured party may recover the damages that flow from the conspiracy. *See Hackworth v. Greywood at Hammett, LLC*, 385 S.C. 110, 115, 682 S.E.2d 871, 874 (Ct. App. 2009), *overruled on other grounds by Paradis*, 433 S.C. 562, 861 S.E.2d 774. Pampu was entitled to recover only the damages that naturally and proximately resulting from the wrongful act or acts done in pursuance of the alleged conspiracy and which directly resulted from it. *See id.*; 15A C.J.S. *Conspiracy* § 33; (R. 2301:3–14).

Critically, the existence or amount of damages cannot be left to conjecture, guess, or speculation. *Gauld v. O'Shaughnessy Realty Co.*, 380 S.C. 548, 559, 671 S.E.2d 79, 85 (Ct. App. 2008). *See also White v. Whitney Mfg. Co.*, 60 S.C. 254, 267-68, 38 S.E. 456, 461 (1901) (disallowing speculative damages). While proof of the amount of loss with absolute or mathematical certainty is not required, to be sufficient, a reasonable basis for computation must be afforded or evidence must permit a reasonably close estimate of the loss. *Piggy Park Enters., Inc. v. Schofield*, 251 S.C. 385, 392, 162 S.E.2d 705, 708 (1968).

Measured against this standard, Pampu's damages theory falls short. The only alleged damages presented by Pampu with respect to the conspiracy to have him “removed from Clemson” was his alleged decreased earning capacity based on his inability to get into dental school and become an orthodontist. These damages are both highly speculative and not proximately caused by the alleged concerted conduct.

First, as the Court of Appeals properly found, by entering the Clemson Settlement, Pampu established a substantial intervening and superseding cause related to Pampu’s “removal from Clemson” and inability to gain admission to dental school. Op. at 10. Pampu signed the Clemson Settlement in March 2018. (R. 3190). In the Clemson Settlement, Pampu agreed to the release of Clemson from the breach of contract claim and to the full reinstatement of the Clemson Administrative Decision. (R. 3190–91). Later, Pampu applied to dental schools after executing the Clemson Settlement, as he was applying for admission to dental school in the 2021–2022 academic school year. (R. 1969:3–9; R. 3147). As such, subsequently being required to disclose the Clemson Administrative Decision on his dental school application, and potentially not obtaining admission into dental school, resulted from a bargained for exchange to which Pampu assented. Because Pampu has already recovered for the underlying conduct that forms the basis of his civil conspiracy

claim—the purported breach of his contract with Clemson—and he elected to settle his breach of contract claim with Clemson, he cannot now pursue Ms. Wingo and Gahagan for damages he alleges arose from their purported plan to interfere with his contract with Clemson.

Second, as discussed above, there was no evidence presented to the jury to establish that the alleged lies told by Ms. Wingo and Gahagan led to Pampu’s “removal from Clemson.” (See R. 1293:4–1294:15; R. 1386:15–1387:23). Clemson reached its decision to suspend Pampu based on a host of facts, such as the statements or testimony of other witnesses and including the statements or testimony of Pampu himself, all of which were a part of the Title IX process.

Third, Pampu ignores the impact that his *admitted* Clemson policy violations may have had on his ability to gain admission to dental school. Specifically, Pampu does not dispute drinking alcohol as a minor, (R. 226, ¶ 67; R. 228 at ¶ 73), which was a violation of Clemson University’s General Student Regulations, and his punishment was based, in part, on that violation. (R. 345). Similarly, Pampu does not dispute having sexual intercourse in a public location, which supported the separate disorderly conduct violation, (R. 1530:16–22; R. 1531:8–11), and his punishment was based, in part, on that violation. Thus, Pampu admitted to violating numerous Clemson policies. (R. 345). The dental school application asked Pampu whether he had “ever been disciplined for student conduct violations.” (R. 3149). These admitted violations also break any casual chain of Pampu’s civil conspiracy claim.

Fourth, Pampu's alleged damages are highly speculative and not ascertainable within a reasonable degree of certainty. His damages theory rests on multiple layers of unproven contingencies: (a) that he would have been accepted to dental school, (b) that he would have completed dental school, (c) that he would have been accepted to an orthodontic residency, and (d) that he would have completed that residency and become a practicing orthodontist. This chain

of speculation does not represent "mere uncertainty as to the amount" of damages; rather, it is uncertainty as to whether any compensable injury ever existed.

The speculative nature of these damages is underscored by the inadequacy of the evidence supporting them. Pampu's sole evidence that his "removal from Clemson" prevented him from getting into dental school was in the form of testimony from his vocational expert Mr. Steven Shedlin. Without successfully contacting any of the dental schools to which Pampu applied, Mr. Shedlin reached the unreasonable and speculative conclusion that, but for Pampu's suspension from Clemson, he would have been able to get into one of the nine dental schools that he applied to. (R. 1940–41; R. 1947–48; R. 1949; R. 1964). Mr. Shedlin admitted that he did not know whether any of the dental schools ever contacted Clemson or the College of Charleston. (R. 1973:23–1974:5). Mr. Shedlin also reached the unsupportable opinion that Pampu would have been able to get into an orthodontic residency, even though Mr. Shedlin did not even consider the statistics of how many dental students are able to obtain orthodontic residencies. (R. 1976–79). Mr. Shedlin further acknowledged that he made an *assumption* that Pampu would be able to become an orthodontist. (R. 1998:5–10). Mr. Shedlin's opinion that Pampu lost significant earning capacity due to having to the Clemson Administrative Decision on his records was based entirely on this speculative assumption that Pampu would become an orthodontist. (R. 1998:17–22). The record thus reflects a failure to prove damages naturally flowing and proximately caused by any alleged civil conspiracy, a deficiency that Pampu's own shifting account of his career plans only deepens.¹⁷

¹⁷ In the Clemson Action, Pampu's parents represented that Clemson's findings foreclosed his ability to attend *medical* school, and they made no mention of orthodontic plans. See Doe v. Clemson Univ., No. 8:16-cv-1957, ECF No. 105, Aff. of Mrs. Pampu ¶ 12 (D.S.C. Nov. 18, 2018); *id.*, ECF No. 106, Aff. of Mr. Pampu ¶ 12 (D.S.C. Nov. 18, 2018). In this action, however, Pampu described a broader and evolving career path: his "original plan" was to become "a physician and

In an attempt to overcome this evidentiary deficiency, Pampu argues that juries receive “wide latitude” to determine future damages and that “mere uncertainty as to the amount” does not preclude recovery. Pet’r’s Br. at 33. But the uncertainty here is not just about the amount—it is whether any compensable injury occurred at all. Pampu’s “proof” consisted of multiple speculative contingencies: admission to dental school, graduation, acceptance to residency, completion of residency and becoming a practicing orthodontist. That is not “mere uncertainty as to amount”; it is uncertainty as to whether any injury existed. The cases Pampu cites do not extend the jury’s “wide latitude” to speculation.

Similarly unavailing is Pampu’s contention that “Respondents did not offer a rebuttal expert.” Pet’r’s Br. at 33. The absence of a rebuttal expert does not render speculative testimony non-speculative. Even uncontradicted expert testimony must allow for the determination of damages with reasonable certainty or accuracy. *See Gauld*, 380 S.C. at 559, 671 S.E.2d at 85.

III. In the alternative, even if this Court reverses on collateral estoppel, JNOV should be entered for Mr. Wingo and a new trial ordered on independent grounds.

Even if this Court were to reverse the Court of Appeals on collateral estoppel, the independently preserved errors described below require JNOV for Mr. Wingo and, at minimum, a new trial for Ms. Wingo. *See* SCACR 220(a). Hence, the jury verdict cannot be reinstated.

A. Mr. Wingo is entitled to JNOV because the exclusion of the unredacted letter and Clemson Administrative Decision removes any evidentiary basis for a finding of negligence.

later on a dentist or an orthodontist” and his “dream” was to become “a physician or a dentist and later on an orthodontist.” R. 1462 and 1577. Yet Pampu’s expert Mr. Sheldin simply discussed whether Pampu would have gained admission to dental school and ultimately pursued orthodontics. R. 602–03. These inconsistencies underscore that Pampu’s lost-earning-capacity theory rests on a shifting and speculative career narratives, not damages proven with reasonable certainty.

The circuit court acknowledged that the “result” of the Clemson Administrative Hearing was “relevant,” but excluded the underlying process, findings, and related materials as potentially confusing under different standards and rules. (R. 1386:24–1387:15). As a result, Pampu could introduce evidence of his suspension, while the Wingos were barred from presenting the administrative process, investigation, findings, conclusions, or Clemson Settlement. (R. 1395:6–9).

That exclusion rested on Rule 403—not relevance—and was particularly prejudicial to Mr. Wingo. His only alleged defamatory statement was a letter to Pampu’s fraternity in which he relied on the Clemson Administrative Hearing and referenced and attached the Clemson Administrative Decision. The administrative process, investigation, findings, and conclusions directly supported Mr. Wingo’s defense that he acted reasonably under the circumstances. Yet the jury was not permitted to see the Clemson Administrative Decision.

The circuit court instructed the jury that negligence turns on “whether [the defendant] had reasonable grounds for believing that the communication is true.” (R. 2291:17–21). The Clemson Administrative Decision found Ms. Wingo was “incapacitated and unable to give consent which [Pampu] should have reasonably known.” (R. 345; R. 3077). Mr. Wingo testified that “[t]he whole basis of the letter was to let Phi Delta Theta know about the Clemson decision.” (R. 2375, lines 6–8). On that record, no reasonable juror viewing the full letter and attached decision could find Mr. Wingo lacked reasonable grounds for believing his communication was true.

Instead, because of the redactions, the jury saw only an incomplete version of the letter, creating the skewed presentation that SCRE 106 and the doctrine of completeness are designed to prevent. (See R. 789; R. 3142). Mr. Wingo is therefore entitled to JNOV. Alternatively, a new trial

should be ordered at which the unredacted letter and Clemson Administrative Decision are admitted.

B. The circuit court’s refusal to charge qualified privilege for Mr. Wingo’s settlement demand letter independently requires a new trial.

The Wingos requested a jury charge on qualified privilege, and the circuit court committed reversible error in denying it. The court declined any instruction on qualified privilege, concluding the doctrine did not apply to Mr. Wingo’s settlement communications with Pampu’s fraternity. That ruling was erroneous. Mr. Wingo’s letter stated, “We would like to resolve this matter with [the fraternity] without the necessity of litigation.” (R. 789, 3142). Under *Woodward v. S.C. Farm Bureau Ins. Co.*, “pre-trial settlement negotiations of legal claims give rise to occasions of qualified or conditional privilege when each side discloses its reasons for the relative positions taken.” 277 S.C. 29, 32, 282 S.E.2d 599, 601 (1981). Mr. Wingo held power of attorney over Ms. Wingo, and the unredacted letter demands \$100,000 to settle all claims against “numerous parties under the [fraternity’s] umbrella” for “the sexual assault and continued harassment of Erin.” (R. 2219:17–19; R. 795); see S.C. Code Ann. § 62-8-203(4) (providing a power of attorney authority to negotiate settlement for claims existing in favor of the principal).

At minimum, whether Mr. Wingo exceeded the bounds of that qualified privilege was for the jury. *Woodward* holds that “abuse of the conditional privilege is ordinarily an issue reserved for the jury.” 277 S.C. at 32, 282 S.E.2d at 601. The circuit court’s wholesale removal of that issue—combined with the jury’s review of only a redacted letter, without the Clemson Administrative Decision or any privilege instruction—was prejudicial error requiring a new trial with a proper qualified-privilege charge.

C. The blanket exclusion of evidence of the Title IX investigation and Clemson Administrative Hearing and Order while permitting suspension-based damages necessitates a new trial.

The circuit court excluded nearly all evidence from Clemson’s Title IX investigation and the Clemson Administrative Hearing while permitting Pampu to introduce evidence of his suspension. The Wingos could not present evidence of the administrative process, investigation, findings, conclusions, or the Clemson Settlement. (R. 1395, lines 6-10). This asymmetric ruling prejudiced the defense on every material issue.

- **Negligence/Fault.** All of Mr. Wingo’s alleged defamatory statements occurred after the Clemson Administrative Decision, making the Decision directly relevant to negligence, truth, and qualified privilege.
- **Substantial Truth.** The Clemson Administrative Decision states that “[b]ased on the information presented, the hearing board found that [Ms. Wingo] was incapacitated and unable to give consent which you should have reasonably known.” This finding was powerful evidence of substantial truth, and excluding it left the jury without the most probative evidence on that issue.
- **Damages.** Pampu testified that “the basis of [his] defamation claim is that the false statements of the defendants contributed to [his] suspension from Clemson University and the removal of [his] fraternity.” (R. 1458:17–22). However, the court excluded all Title IX process evidence (R. 1293:4–1294:15; R. 1386:15–1387:23). Yet, the court permitted a vocational expert to testify that Pampu’s suspension caused him not to be accepted into dental school. (R. 1930-59). The jury therefore likely awarded defamation damages based on Pampu’s alleged inability to become an orthodontist, without hearing the evidence necessary to evaluate whether those damages flowed from the Clemson Administrative Hearing (based on various evidence including statements from Pampu) rather than the Wingos’ external statements.

By allowing the jury to hear about Pampu's suspension and alleged dental-school consequences while barring the defense from explaining the independent administrative process and voluntary settlement, the circuit court created a fundamentally distorted trial record. That prejudice requires a new trial for Ms. Wingo and, at minimum, a new trial for Mr. Wingo.

D. Admission of improper character evidence against Ms. Wingo requires a new trial.

The circuit court committed reversible error by allowing Pampu's counsel to question Ms. Wingo about becoming "blackout drunk" on occasions *after* October 24, 2015. That testimony was irrelevant to whether she was intoxicated or capable of consenting on the night at issue and served only as an improper character attack. Counsel objected on relevance grounds (R. 1693:25–1694:5), and the issue is preserved because, where evidence is inherently prejudicial, the grounds for objection are patent. *Dunn v. Charleston Coca-Cola Bottling Co.*, 311 S.C. 43, 43–47, 426 S.E.2d 756, 757–58 (1993); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Rules of Evidence 404(a) and 404(b) bar character and other-acts evidence offered to prove conduct in conformity therewith. Ms. Wingo's later intoxication had no bearing on what occurred on October 24, 2015, and did not show a motive to lie; it merely invited the jury to judge her character. See *Shawhan v. Polk Cnty.*, 420 N.W.2d 808, 810 (Iowa 1988). No exception applied, and any marginal relevance was substantially outweighed by unfair prejudice.

E. The actual damages are excessive and the punitive damages review was constitutionally deficient.

(1) The actual damages were excessive.

Pampu only summarily claimed reputational harm and difficulty developing relationships. (R. 1460; R. 1606-07). The bulk of damages evidence was expert testimony regarding lost income from Pampu's alleged inability to attend dental school. The only reasonable conclusion is that the jury improperly based actual damages on Pampu's suspension and the vocational expert's

speculative lost-earning-capacity testimony. Damages cannot rest on speculation or conjecture. *Gray v. Southern Facilities, Inc.*, 256 S.C. 558, 183 S.E.2d 438 (1971).

Further, Pampu's suspension from Clemson resulted from the Clemson Administrative Hearing, the Clemson Administrative Decision, and subsequently the Clemson Settlement — not from any alleged defamatory comments outside the Title IX process. The \$700,000 actual damages award against Ms. Wingo, resting on excluded mitigating Title IX evidence, the absence of concrete reputational-harm testimony, and speculative vocational-expert testimony, was grossly excessive and warrants a new trial. *See Freeman v. A. & M. Mobile Home Sales, Inc.*, 293 S.C. 255, 259-60, 359 S.E.2d 532, 535 (Ct. App. 1987).

(2) The circuit court's review of punitive damages was constitutionally deficient.

Due process review of punitive damages is mandatory. *Mitchell, Jr. v. Fortis Ins. Co.*, 385 S.C. 570, 587, 686 S.E.2d 176, 185 (2009). The court must assess: (1) reprehensibility, (2) the disparity between actual or potential harm and the punitive award, and (3) the difference between the punitive award and civil penalties in comparable cases, and *Gamble* factors remain “relevant to the post-judgment due process analysis, but only insofar as it adds substance to the Gore guideposts.” *Id.* at 587–88, 686 S.E.2d at 185–86 (explaining a trial court must conduct a post-judgment review of punitive damages in accordance with *BMW of North America v. Gore*, 517 U.S. 559 (1996)). The circuit court applied only the *Gamble* factors and failed to apply the *Mitchell* guideposts. (R. 5–7). This constitutes reversible error as a matter of law.

Even if this Court were to overlook the trial court's failure to apply the correct legal standard, the punitive damages award does not withstand constitutional scrutiny under the *Mitchell* guideposts.

- **Reprehensibility.** The circuit court’s duration analysis referred to communications with the fraternity — made not by Ms. Wingo but by her father, who was not assessed punitive damages. A punitive award cannot rest on a separate defendant’s conduct. The analysis also ignores that Ms. Wingo was being vindicated by Clemson’s Title IX process during the referenced period. Little evidence supports any reprehensibility factor: the harm was not physical, there was no reckless disregard for health or safety, Pampu was not financially vulnerable, and the statements were limited to family, friends, and advisors.
- **Ratio.** Pampu presented almost no evidence of reputational harm beyond conclusory statements. (R. 1460; R. 1606-07). The actual damage award rested on speculation, and any proper award should have been at most nominal — rendering the punitive damages far greater than the stated 0.64 ratio suggests.
- **Comparable Awards.** The post-trial order makes no attempt to compare other awards or available civil penalties as *Mitchell* requires.

Therefore, this Court should apply the *Mitchell* analysis de novo and reverse the punitive damages award or, alternatively, order a new trial absolute.

CONCLUSION

For the foregoing reasons, this Court should affirm the Court of Appeals’ decision in its entirety. Should this Court reverse the Court of Appeals’ determination on collateral estoppel, the above-described errors by the circuit court require JNOV for Mr. Wingo and, failing that, a new trial for him as well as a new trial for Ms. Wingo.

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