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THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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**S.C. Supreme Court**

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Joseph M. Strickland, Special Circuit Court Judge

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Appellate Case No. 2015-001368

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James W. Trexler.....Petitioner

v.

The Associated Press, Barrington Broadcasting South Carolina Corp.,  
Raycom TV Broadcasting, Inc. and The Pacific & Southern Co.,  
Inc.....Respondents

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RETURN BY RESPONDENTS TO PETITION

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ATTORNEYS FOR RESPONDENTS

## COUNTER STATEMENT OF QUESTIONS PRESENTED<sup>1</sup>

1. Was the Court of Appeals correct in affirming the Circuit Court's ruling that news reports of petitioner's arrest for kidnapping were fair and accurate reports of the contents of a public record and thereby privileged under the "fair report" privilege?
2. Was the Court of Appeals correct in affirming the Circuit Court's ruling that the news reports of petitioner's arrest, and that he had been charged with felony mistreatment of animals could not be proven to be false when petitioner's pleadings and material submitted by respondents in support of their motion for summary judgment confirmed that petitioner had been arrested and charged with felony mistreatment of horses?

### STATEMENT OF THE CASE

Respondents were named as defendants in an "Amended Complaint" filed June 23, 2010, which sought to assert against them claims for defamation, civil conspiracy, outrage and negligence. (R. pp. 33-40) Petitioner was the sole plaintiff identified in this document. (R.p. 33) Ultimately all claims but the defamation claim were dismissed. Respondents moved for summary judgment on grounds that the defamation claims were barred by the applicable statute of limitations, that the publications were privileged, and, if not privileged, could not be proven to be false. Summary judgment was granted to respondents on the bar of the statute of limitations, the lack of proof of falsity, the lack of proof of fault on the part of respondents, and the fair report privilege. Petitioner appealed from the grant of summary judgment, and the South Carolina Court of Appeals, in a unanimous opinion, affirmed the trial court on grounds that the

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<sup>11</sup> In questions 1 and 4 of his "QUESTIONS PRESENTED" petitioner seeks review of issues and arguments not addressed by the Court of Appeals which stated, "We decline to address Trexler's remaining arguments because our resolution of prior issues is dispositive." Item 3 of Unpublished Opinion filed April 15, 2015, p. 6. The arguments not addressed by the Court of Appeals were the statute of limitations and Trexler's status as a public official

fair report privilege had been applied correctly, and that petitioner had failed to prove the falsity of the publications. (Opinion No. 2015-UP-201, 4/15/2015) The Court of Appeals declined to address petitioner's remaining arguments on grounds that its "resolution of the prior issues is dispositive." (*Id.*) Petitioner's motion for reconsideration was denied and the within-captioned petition followed.

## ARGUMENT<sup>2</sup>

1. THE COURT OF APPEALS WAS CORRECT IN AFFIRMING THE CIRCUIT COURT'S RULING THAT NEWS REPORTS OF PETITIONER'S ARREST FOR KIDNAPPING WERE FAIR AND ACCURATE REPORTS OF THE CONTENTS OF A PUBLIC RECORD AND THEREBY PRIVILEGED UNDER THE "FAIR REPORT" PRIVILEGE.

As a starting point it should be noted that none of the reasons identified by the Supreme Court for the grant of a review of a decision of the Court of Appeals is present in the within-captioned matter. There is no novel question of law, the decision of the Court of Appeals was unanimous, there is no conflict with a prior decision of the Supreme Court, there is no substantial constitutional issue involved, and the federal question presented by petitioner's obligation to prove the falsity of the publications was decided consistently with decisions of the United States Supreme Court. Rule 242(b), SCACR.

The "fair report" privilege has long been recognized in South Carolina law to protect from defamation claims the fair and substantially accurate reports of official proceedings and records. *Oliveros v. Henderson*, 116 S.C. 77, 106 S.E. 855 (1921). The application of the privilege is to be determined by the trial court as a matter of law, *Swinton Creek Nursery v. Edisto Farm Credit*, 334 S.C. 469, 514 S.E.2d 126 (1977); *Oliveros, supra.*, and, when applied, the privilege insulates from libel claims those who publish the contents official records and

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<sup>2</sup> Respondents address only the issues ruled upon by the Court of Appeals.

statements, even when those statements and records contain false information *White v. Wilkerson*, 328 S.C. 179, 493 S.E.2d 345 (1997).

It is undisputed that a press release disseminated by the Richland County Sheriff's Department upon the occasion of petitioner's arrest stated falsely that petitioner had been arrested for kidnapping (R. p. 1074) while stating accurately that petitioner had been arrested for "5 counts of ill treatment of animals." The news reports of the arrest published by respondents fairly and accurately reported the contents of the official statement by the Sheriff's Department that petitioner had been arrested for kidnapping. Petitioner presented no evidence showing the existence of a genuine issue of material fact regarding publications reporting the kidnapping charge. In fact, petitioner acknowledged that the press release disseminated by the Sheriff's Department stated petitioner had been arrested for kidnapping. (R. p. 390 lines 6-9) For these reasons, no review of the decision of the Court of Appeals with respect to the application of the fair report privilege sheltering from liability news reports of petitioner's arrest for kidnapping is warranted.

2. THE COURT OF APPEALS WAS CORRECT IN AFFIRMING THE CIRCUIT COURT'S RULING THAT THE NEWS REPORTS OF PETITIONER'S ARREST, AND THAT HE HAD BEEN CHARGED WITH FELONY MISTREATMENT OF ANIMALS COULD NOT BE PROVEN TO BE FALSE WHEN PETITIONER'S PLEADINGS AND MATERIAL SUBMITTED BY RESPONDENTS IN SUPPORT OF THEIR MOTION FOR SUMMARY JUDGMENT CONFIRMED THAT PETITIONER HAD BEEN ARRESTED AND CHARGED WITH FELONY MISTREATMENT OF HORSES.

Under South Carolina law the first element of a defamation claim is "a false and defamatory statement concerning another...." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332

S.C. 502, 506 S.E.2d 497 (1998) (Toal, J. concurring), 506 S.E.2d at 506. Respondents argued that petitioner had an obligation to prove the falsity of their publications either because he was a public official, Assistant Commissioner of Agriculture for the State of South Carolina, *New York Times Co., Inc. v. Sullivan*, 376 U.S. 254, 84 S.Ct. 710, 11 L.Ed. 2d 686 (1964), or, if he were a private figure, because the publication concerned a matter of public interest. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 106 S.Ct. 1558, 89 L.Ed.2d 783 (1986). The Court of Appeals approached the falsity issue from a common law perspective, presuming the publications were false and shifting the burden to respondents to prove the truth of their publications. The Court of Appeals did recognize that truth, even substantial truth, was a complete defense to a defamation claim. *Ross v. Columbia Newspapers, Inc.*, 266 S.C. 75, 221 S.E.2d 770 (1976); *Haulbrooks v. Overton*, 295 S.C. 380, 368 S.E.2d 676 (Ct. App. 1988). Regardless of whether petitioner had to prove the falsity of the publications or respondents had to prove their truth, the Court of Appeals was correct in ruling that respondents' publications were true. Petitioner alleged in the Amended Complaint that he had been arrested and charged as if he were the owner of horses alleged to have been mistreated. (R. p. 35) In his brief petitioner acknowledged that he had been arrested and charged with felony mistreatment of animals (Br. of App. p. 18):

On February 27, 2008, Appellant [petitioner] was arrested and charged with five counts of misdemeanor ill-treatment of animals. (R. pp. 1088-1092). On March 13, 2008, Appellant was indicted on 4 counts of felony mistreatment of animals. (R. pp. 1093-1100).

Petitioner's allegation in his complaint and acknowledgment in his brief regarding his arrest and felony charges for abusing horses alone would establish the correctness of the ruling of the Court of Appeals that petitioner had failed to prove the falsity of the publications or that respondents had proved the truth of the publications. But, moving beyond those indicia of truth,

respondents supported their motion for summary judgment with the submission to the court of eight indictments of petitioner for violations of section 47-1-40(B) of the South Carolina Code of Laws. This code section makes the mistreatment of animals a felony offense. Obviously the news reports that petitioner had been arrested and charged with felony abuse of horses were true, and the truth is a complete defense to a defamation claim. See, e.g., *Parker v. Evening Post Pub. Co., Inc.* 317 S.C. 236, 452 S.E.2d 640 (Ct. App. 1994), cert. denied 516 U.S. 1172 (1996).

### CONCLUSION

Review of the decision of the Court of Appeals is not warranted as none of the reasons contained in Rule 242(b), SCACR are present. As a matter of law the publication of the contents of a public record is privileged. And, the news reports by respondents were true as borne out by petitioner's own assertions and the material submitted to the trial court in support of respondents' motion for summary judgment. The petition for writ of certiorari should be denied.

Respectfully submitted,



Columbia, South Carolina

July 7, 2015

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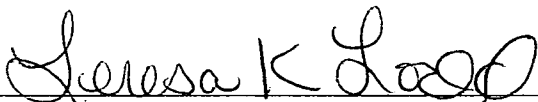
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I, Teresa K. Todd, Legal Assistant to Jay Bender, an employee of Baker, Ravenel & Bender, L.L.P., hereby certify that I have, on the date indicated below, served counsel below with a Respondents' Return to Petition by mailing a copy of same via United States Mail, postage pre-paid and return address clearly indicated on said envelope, to counsel at the following address:

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July 7, 2015