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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

Honorable R. Ferrell Cothran, Jr., Circuit Court Judge

Appellate Case No. 2016-000774

Case No. 2012-CP-43-2030

Win Myat, ...Appellant,

v.

Tuomey Regional Medical Center, ...Respondent,

AMICI CURIAE BRIEF OF PRISMA HEALTH TUOMEY AND SOUTH CAROLINA HOSPITAL ASSOCIATION

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INTEREST OF AMICI

Prisma Health is the largest and most comprehensive integrated health care system in the Midlands. Prisma Health Tuomey, one of its affiliates, operates the Prisma Health Tuomey Hospital in Sumter. Both Prisma Health and Prisma Health Tuomey are tax-exempt organizations, pursuant to 26 U.S.C. § 501(c)(3). Prisma Health Tuomey has been sued in the Court of Common Pleas in Sumter County based on the judgment that is on appeal in this lawsuit.

Founded in 1921 to serve as the collective voice of the state's hospital community, the South Carolina Hospital Association is a private, nonprofit organization made up of about 100 member hospitals and health systems and about 900 personal members associated with its institutional members. The Association strives to support its member hospitals in creating a world-class health care delivery system for the people of South Carolina by fostering high-quality patient care and serving as effective advocates for the hospital community. The issues raised in this appeal about the Solicitation of Charitable Funds Act will impact the Association's nonprofit members.

STATEMENT OF THE ISSUE ON APPEAL

Whether a bright-line rule should apply to determine if an organization is protected by S.C. Code § 33-56-180(A)'s cap on damages against a charitable organization.

INTRODUCTION

After common-law charitable immunity was abolished, our General Assembly adopted a legislative cap on damages against charitable organizations. This cap enables charitable organizations to compensate those they injure while protecting their assets, so that they may still perform their essential function in our society.

This cap, found in S.C. Code § 33-56-180(A), fulfills its purpose best when charitable organizations and those who deal with them are certain that they can rely on it. This certainty is important for these organizations when they are involved in litigation and when they enter into transactions with other entities, whether for-profit business or other charitable organizations.

And it's particularly important in a case like this. Win Myat obtained a judgment against Tuomey Regional Medical Center for $2.5 million that was reduced to the $300,000 based on § 33-56-180(A). He not only seeks to have that reduction reversed by this Court, but he also now seeks to collect that judgment from Prisma Health Tuomey (based on Prisma Health Tuomey's purchase of Tuomey Regional's assets) in a second lawsuit that he filed in circuit court less than two months ago, while this case is on appeal.

To accomplish his ultimate goal of collecting the judgment from Prisma Health

Tuomey, Myat urges this Court to (1) reject a statutory bright-line rule that was adopted by the General Assembly in § 33-56-170(1) for determining what organizations are protected by § 33-56-180(A)'s cap and (2) use instead a vague test that will require a case-by-case determination on whether a particular defendant is entitled to the statutory cap at that time. That bright-line, however, is demanded by both sound public policy and long-standing rules of statutory interpretation.

STATEMENT OF THE CASE

While rounding at Tuomey Hospital, Win Myat slipped and fell. (R. p. 1266, lines 15–17; p. 1286, line 15–p. 1287, line 2). He sued Tuomey Regional for his injuries, and a jury awarded him $2.5 million. (R. pp. 31–37; p. 1614, line 19–p. 1616, line 3). That verdict, however, was reduced to $300,000, based on the Solicitation of Charitable Funds Act ("SCFA"), S.C. Code § 33-56-10 *et seq.* (R. pp. 5–22). Myat appealed the reduction of the verdict.

After this verdict, Tuomey Regional sold substantially all of its assets to Palmetto Health Tuomey (which is now known as Prisma Health Tuomey). This decision was motivated by the $237 million judgment that the federal government obtained against Tuomey Regional based on the False Claims Act and the Stark Law.[1]

While Myat was appealing his verdict against Tuomey Regional, he filed a second lawsuit related to his slip and fall—this time against Prisma Health Tuomey.[2]

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[1] Although Palmetto Health Tuomey assumed most operating liabilities of Tuomey Regional, it did not assume the Myat judgment.

[2] Judicial notice may, of course, be taken at any stage of litigation, and that notice may be taken of judicial records. *See* Rule 201(f), SCRE; *see also Colonial Penn*

That case is No. 2018-CP-43-02265, pending in Sumter County, and it was served on Prisma Health Tuomey on January 25, 2019 (less than three weeks before this Court held oral argument in this appeal).

In the Prisma Health Tuomey lawsuit, Myat seeks a declaratory judgment that (1) Prisma Health Tuomey is liable for any judgment Myat obtains against Tuomey Regional in his first lawsuit and (2) any statutes of limitations are tolled while this appeal is pending. Compl. ¶¶ 11–13, *Myat v. Tuomey Regional Medical Center n/k/a Palmetto Health Tuomey n/k/a Prisma Health Tuomey*, No. 2018-CP-43-02265 (S.C. Ct. Comm. Pls. Dec. 28, 2018).[3]

STANDARD OF REVIEW

This Court reviews questions of law *de novo*. *First Citizens Bank & Tr. Co., Inc. v. Blue Ox, LLC*, 422 S.C. 461, 466, 812 S.E.2d 418, 420 (Ct. App. 2018). Statutory interpretation involves questions of law. *Town of Summerville v. City of N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008).

ARGUMENT

I. The SCFA Protects the Important Work of Charitable Organizations Like Prisma Health Tuomey.

Charitable organizations perform an invaluable role in our society. Rather than

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Ins. Co. v. Coil, 887 F.2d 1236, 1239 (4th Cir. 1989) (observing that the "most frequent use of judicial notice of ascertainable facts is in noticing the content of court records").

[3] Myat also asserts a claim for fraudulent conveyance. He alleges that Tuomey Regional's assets were transferred to what is now Prisma Health Tuomey "with the actual intent, or presumptive intent, to hinder, delay, or defraud" him. Compl. ¶ 14, *Myat v. Tuomey Regional Medical Center n/k/a Palmetto Health Tuomey n/k/a Prisma Health Tuomey*, No. 2018-CP-43-02265 (S.C. Ct. Comm. Pls. Dec. 28, 2018).

seek their own profits, these organizations exist solely to help others. They provide food, shelter, clothing, medical care, and other needs to people who have no other way to get these basic necessities, while also performing research and providing education that strengthens the quality of our citizenry. Congress long ago acknowledged the public's benefit from these good works by exempting these organizations from paying income tax. *See* 26 U.S.C. § 501(c)(3).

Because of their good work, for over a century, South Carolina's charitable entities benefited from the common-law doctrine of charitable immunity. *See Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 40, 533 S.E.2d 312, 316 (2000); *Fitzer v. Greater Greenville S.C. Young Men's Christian Ass'n*, 277 S.C. 1, 3, 282 S.E.2d 230, 231 (1981). This immunity, however, was abolished in 1981. *See Fitzer*, 277 S.C. at 4, 282 S.E.2d at 232.

In response to *Fitzer*, the General Assembly passed Act No. 505 in 1984, which adopted a cap on damages against charitable organizations of $200,000. *See* 1984 S.C. Acts 505, §§ 1, 2 (codified at S.C. Code §§ 33-55-200, 33-55-210); *see also Hanvey v. Oconee Mem'l Hosp.*, 308 S.C. 1, 3, 416 S.E.2d 623, 625 (1992) (discussing the General Assembly's response to *Fitzer*). This provision was later amended to equal the cap on damages against public entities in the Tort Claims Act. *See* 2000 S.C. Acts 366, § 1 (codified at S.C. Code §§ 33-56-170, 33-56-180).[4]

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[4] This cap was moved from § 33-55-210 to § 33-56-180 by Act 461 of 1994, which also increased the cap to $250,000. *See* 1994 S.C. Act 461, § 1. Act 336 of 2000 changed the cap from a set amount to the cap set by the Tort Claims Act in § 15-78-120, so that the charitable cap would change with the Tort Claims cap. *See* 2000 S.C. Acts 366, § 1.

This cap means that a person who is injured by a charitable organization "may recover in an action brought against the charitable organization only the actual damages he sustains in an amount not exceeding the limitations on liability imposed in the South Carolina Tort Claims Act in Chapter 78 of Title 15." S.C. Code § 33-56-180(A). This cap protects "any organization, institution, association, society, or corporation which *is exempt from taxation pursuant to Section 501(c)(3)* or 501(d) of Title 26 of the United States Code." *Id.* § 33-56-170(1) (emphasis added).

As our Supreme Court has recognized, the "clear legislative purpose" of the SFCA is "to encourage the formation of charitable organizations, to promote charitable donations, and to preserve the resources of the charitable organizations." *Doe v. Am. Red Cross Blood Servs., S.C. Region*, 297 S.C. 430, 437, 377 S.E.2d 323, 327 (1989); *see also Simmons*, 341 S.C. at 40, 533 S.E.2d at 316 (observing that the basis of the common-law immunity was that "a charitable institution should devote its resources to the endeavor at hand and the greater good"); *cf. Chastain v. AnMed Health Found.*, 388 S.C. 170, 174–75, 694 S.E.2d 541, 544 (2010) (reaffirming that the damages cap for charitable organizations is constitutional).

This legislative purpose recognizes the "distinctions between those in business for profit and those who have eleemosynary motives." *Doe*, 297 S.C. at 437, 377 S.E.2d at 327. Charitable organizations focus on helping the public, which often includes the most needy in our society, rather than on generating profits for their shareholders. Imposing a cap on the damages that a plaintiff can recover from a charitable organization helps avoid the type of crippling judgments that could force

those organizations to stop helping others (or at least significantly limit their ability to do so). Protecting these organizations therefore benefits the public, which is a concern that does not exist with for-profit businesses.

Further, significant similarities between charitable organizations and government also support the cap. Whereas government gets most of its revenue from taxpayers, charitable organizations generally rely on the goodwill of donors for substantial funding. And like government that serves the people, charitable organizations work for the public's benefit rather than their own bottom line.

To aid in their work, governments are protected by, among other things, the caps in tort claims acts. *See, e.g.*, S.C. Code § 15-78-120. Courts around the country have recognized that these caps alleviate the harsh result of sovereign immunity while avoiding depleting the public fisc. *See, e.g., Feres v. United States*, 340 U.S. 135, 139 (1950) (explaining that the Federal Tort Claims Act "marks the culmination of a long effort to mitigate unjust consequences of sovereign immunity from suit"); *In re Train Collision at Gary, Ind. on Jan. 18, 1993*, 654 N.E.2d 1137, 1146 (Ind. Ct. App. 1995) ("The legislative purpose of the Tort Claims Act was to limit the financial responsibility of the state by restricting damages in tort in order to protect the fiscal integrity of governmental bodies."); *Kahrar v. Borough of Wallington*, 791 A.2d 197, 206 (N.J. 2002) (noting that tort claims acts attempt "to harmonize the sentiment against sovereign immunity with the legitimate need to protect taxpayers from a flood of costly and potentially speculative litigation").

Just as tort claims acts allow an injured party to recover for his injuries while

still protecting the government's ability to operate, our State's SFCA strikes a similar, legislatively drawn balance for charitable organizations. A person who is harmed can obtain relief, but a charitable organization will not be hampered too severely by an overwhelming judgment.

II. Bright-Line Rules Provide Clarity and Predictability.

In all aspects of life (other than death and taxes), certainty is not always possible. But on some occasions, it is.

When the law provides certainty, it typically comes through bright-line rules. Such rules offer "uniformity, objectivity, and practical judicial administration." *United States v. Troxler Hosiery Co.*, 681 F.2d 934, 936 (4th Cir. 1982) (citing *United States v. Hamdan*, 552 F.2d 276, 280 (9th Cir. 1977)). Bright-line rules are frequently preferable because they provide greater clarity for courts and litigants. These benefits have even been the bases on which the U.S. Supreme Court has defended its decisions. *See, e.g., Hamer v. Neighborhood Hous. Servs. of Chi.*, 138 S. Ct. 13, 20 (2017) (observing that the rule the Court adopted was "both clear and easy to apply"); *Burnham v. Superior Court of Cal.*, 495 U.S. 604, 626 (1990) (explaining that the Court's rule avoids "uncertainty and litigation" that the dissent's rule would provoke).

In some instances, a balancing test, even with its uncertainty, may be preferable to the certainty of a bright-line rule. But courts ought to be wary of introducing uncertainty into the law, for "certainty and uniformity are gains not lightly to be sacrificed." *Bartlett's Familiar Quotations* 653 (Justin Kaplan ed. 17th ed. 2002) (quoting Justice Benjamin Cardozo, *The Paradoxes of Legal Science* (1928)).

III. A Bright-Line Rule Best Furthers the Goals of the SCFA.

The legislative cap on damages against a charitable organization is not a situation in which certainty should be sacrificed. The certainty offered by a bright-line rule is critical to charitable organizations. But Myat insists that this Court should throw certainty away and instead require trial courts, based on their own independent analyses, to determine in each case whether a defendant qualifies as tax exempt under 26 U.S.C. § 501(c)(3) and thus is protected by the cap in § 33-56-180(A). *See* Appellant's Br. 27–28. Under Myat's argument, similarly situated charitable organizations could be treated differently, and one charitable organization could be treated differently in two cases.

Myat's argument not only disregards the plain language and history of the SCFA, but it also raises serious policy concerns for charitable organizations. The correct interpretation of this Act applies a bright-line rule for whether a charitable organization is protected by the cap in § 33-56-180(A).

A. Public Policy Supports a Bright-Line Rule.

1. Uncertainty Drives Up Expenses for Charitable Organizations.

Charitable organizations, and particularly hospitals, do essential work. And they often do it without an excess of resources.[5] Thus, these organizations are compelled to use their resources as wisely as possible. Predictability helps organizations do this because it allows for expense control and more accurate planning.

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[5] Having substantial revenues doesn't mean that hospitals don't have equally large (or even larger) expenses.

Uncertainty, by contrast, makes operating more expensive for anyone, including charitable organizations. Not knowing with certainty the amounts of prospective liabilities drives up of insurance premiums and the costs of lending, leasing, and installment sales. Driving up costs, of course, impairs the ability to provide public benefits.

A bright-line rules keeps costs down. With a bright-line rule for determining whether an entity is protected by the cap of § 33-56-180(A), parties to any transaction involving a charitable organization (whether an acquisition, a merger, a loan, or something else) can know that the maximum liability for any tort claim is $300,000. That avoids the necessity of combing through an organization's records to identify all pending and possible tort claims, assessing the likelihood that each will be pursued, analyzing which claims could result in significant damages, and establishing a dedicated fund for satisfying any judgments, all while that organization is trying to provide its charitable services.

Without this certainty, all of those types of transactions are more expensive. And unnecessarily so. The costs of that uncertainty are ultimately borne by the people who would have been helped by the charitable organizations, had the organizations not have to spend extra resources compensating for uncertainty. *Cf. Knox v. United States*, No. 0:17-CV-36-CMC, 2018 WL 3241931, at *4 (D.S.C. July 3, 2018) (recognizing that the United States could benefit from § 33-56-180(A) based on its relationship with a charitable organization).

This case provides a stark illustration of how uncertainty can be costly, both to a

charitable organization and to the people it aims to help. A plaintiff could do exactly what Myat has done here. He could bring his tort claim and argue that § 33-56-180(A)'s cap does not apply because something the defendant did means that the defendant should not qualify under § 501(c)(3).[6]

This argument could be made even in cases that are less extreme than one involving the respondent here, when the federal government had obtained a nine-figure judgment based on the False Claims Act and the Stark Law. A plaintiff could argue, for instance, that the organization was spending money that was not necessary to its mission, such as providing free food at community health screenings or investing in state-of-the-art equipment before its existing equipment became dangerous or inadequate. This argument would require substantial discovery, including of trade secrets and other confidential information and would likely involve a battle of experts. A court would, under Myat's view, only then decide for itself whether § 33-56-180(A)'s cap applied.

Then, that plaintiff could—again, as Myat has done—seek to hold another charitable organization liable for a judgment in excess of the $300,000 cap, based on that organization's transaction with the defendant. If an organization's protection

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[6] At oral argument, Myat went a step further, arguing that because Tuomey Regional is no longer operating a hospital, it cannot possibly benefit from the charitable cap on damages. But that argument ignores the reality here that Myat is trying to recover on his judgment from Prisma Health Tuomey, which is operating a hospital as a charitable organization and which purchased assets from an entity that was, through the time that transaction closed, operating a hospital as a tax-exempt organization. And it disregards the fact that Tuomey Regional was operating a hospital both at the time of the accident and at the time of the trial.

under § 33-56-180(A) could not be known until the trial court takes up that question in a particular case, then an entity in Prisma Health Tuomey's shoes would have to reserve for potentially unknown—and substantial—liabilities from jury verdicts by diverting money from its primary mission of serving others.

To alleviate this concern and uncertainty for charitable organizations generally, this Court should make clear that the definition of "charitable organization" under § 33-57-170(1) is a bright-line, objective test that turns on solely whether an organization is identified as a § 501(c)(3) organization by the Internal Revenue Service. This test provides the certainty that will minimize operating costs as well as the costs to charitable organizations engaged in transactions with each other, which will allow them to spend resources on helping people (including caring for patients, in the case of Prisma Health Tuomey) instead of protecting themselves against unknown legal liabilities.

2. A Bright-Line Rule Protects Judicial Resources and Reduces Litigation Costs.

Judicial resources are limited. Spending time on one case necessarily means not spending time on another one. *See City of Columbia v. Assa'ad-Faltas*, 420 S.C. 28, 34, 800 S.E.2d 782, 785 (2017); *cf. Goff v. Kroger Co.*, 647 F. Supp. 87, 88 (S.D. Ohio 1986) ("Every day of trial this Court can save, even every hour of trial it can save in one case permits the Court to hear the claim of another litigant. This is of paramount importance and it is the essence of judicial economy.").

Litigation also consumes the parties' limited resources. *Cf. Anderson v. Anderson*, 282 S.C. 162, 164, 318 S.E.2d 566, 567 (1984) ("[W]e caution the parties

and their counsel that continued litigation is unnecessarily depleting the assets of the parties."). For charitable organizations like hospitals, this means less money for treating patients.

Given these costs, courts try to avoid having parties litigate collateral or ancillary issues by adopting bright-line rules that do not require judicial resolution. *See, e.g.*, *Hamer*, 138 S. Ct. at 20; *Burnham*, 495 U.S. at 626; *Harris v. Bankers Life & Cas. Co.*, 425 F.3d 689, 697 (9th Cir. 2005) (adopting "an objective baseline rule" to "avoid[] the spectre of inevitable collateral litigation").

That should be the case with the charitable cap in § 33-56-180(A). The primary issues in litigation between an injured party and a charitable organization are liability and what damages the plaintiff suffered. Litigating over whether the cap applies only makes that litigation more expensive and distracts from the core issues in the case.

The lack of a bright-line rule also imposes greater costs on charitable organizations across all their tort litigation. With a bright-line rule, a charitable organization can assert § 33-56-180(A)'s cap and quickly prove it is a tax-exempt organization under § 501(c)(3). But without such a rule, a charitable organization will have to prove from scratch, over and over again in different lawsuits, that it is "organized and operate[s] exclusively for religious, charitable, scientific, testing for public safety, literary, or educational purposes," 26 U.S.C. § 501(c)(3)—which is exactly what Myat claims Regional Tuomey should have had to do in this case. That takes time and money that simply pointing to a determination from the Internal

Revenue Service does not.

B. The General Assembly Imposed a Bright-Line Rule in § 33-56-170.

Sound policy supports applying this bright-line rule. So too do rules of statutory construction and South Carolina case law.

As our Supreme Court has repeatedly instructed, "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Lightner v. Hampton Hall Club, Inc.*, 419 S.C. 357, 363, 798 S.E.2d 555, 558 (2017). The "best evidence" of the General Assembly's intent is "the text of the statute." *S.C. Dep't of Soc. Servs. v. Boulware*, 422 S.C. 1, 7, 809 S.E.2d 223, 226 (2018). But courts have also looked to legislative history to discern a statute's meaning. *See, e.g.*, *Hartzell v. Palmetto Collision, LLC*, 419 S.C. 87, 96, 796 S.E.2d 145, 150 (Ct. App. 2016); *Pulliam v. Comer*, 278 S.C. 538, 541, 298 S.E.2d 775, 776 (1982). Here, every tool of statutory interpretation supports applying a bright-line rule.

1. The Plain Language of § 33-56-170 Indicates that the General Assembly Intended to Adopt a Bright-Line Rule.

This section is simple enough. The cap in § 33-56-180(A) applies to an organization that "is exempt from taxation pursuant to Section 501(c)(3) or 501(d) of Title 26 of the United States Code." S.C. Code § 33-56-170(1).

This section therefore envisions a binary situation. Either an organization is tax exempt, or it is not. That decision is made by the Internal Revenue Service after considering an organization's application and operations. *See* 26 C.F.R. § 1.501(c)(3)-1 (June 30, 2017).

Under this either/or scenario, if, on the one hand, the Internal Revenue Service

determines that an organization is tax exempt under 26 U.S.C. § 501(c)(3), then it is protected by S.C. Code § 33-56-180(A). On the other, if the Internal Revenue Service determines that an organization is not exempt under § 501(c)(3), then it is not protected by this cap.

Section 33-56-170(1) is that simple. That statute does not provide that an organization is protected by the cap in § 33-56-180 if it "could be" or "may be" tax exempt under § 501(c)(3). The cap applies only if the Internal Revenue Service determines an organization "is" tax exempt under § 501(c)(3). And whether an organization "is" exempt under § 501(c)(3) is easily resolved by looking to documentation from the Internal Revenue Service.

2. The History of the SCFA Confirms that a Bright-Line Rule Applies.

Myat attempts to avoid this conclusion by contrasting § 33-56-170 with § 33-56-20(1)(a)(i). *See* Appellant's Br. 23–26. His efforts, however, are fruitless, as examination of the history of the SCFA actually undermines Myat's contention.

Section 33-56-170's definition of "charitable organization" applies only to § 33-56-180(A). For the rest of the Act, a different section defines a "charitable organization" more broadly. *See* S.C. Code § 33-56-20(1)(a); *see also* 1972 S.C. Acts 1459, § 2 (codified at § 67-92 (1962 Code); § 33-55-20(1) (1976 Code)). This different definition stems from the fact that the original SCFA did not include a cap on damages (and hence did not need the definition in § 33-56-170) because, at that time, common-law charitable immunity had not been abolished. *See Fitzer*, 277 S.C. at 4, 282 S.E.2d at 232 (abolishing this immunity in 1981).

The statutory cap on damages and the related definition of "charitable organization" was not adopted until 1984. *See* 1984 S.C. Acts 505. At that time, the General Assembly decided that the statutory cap would not be available to all charitable organizations referenced in the SCFA, but instead it would apply only to those charitable organizations determined by the Internal Revenue Service to be tax exempt under § 501(c)(3) or § 501(d). This definition in § 33-56-170(1) thus created a bright-line to determine if the cap applied: whether the Internal Revenue Service had determined that an organization was tax exempt under § 501(c)(3). That definition that has not changed in the thirty-five years since it was adopted.

In other words, the General Assembly pointed directly to the Internal Revenue Service to define whether an organization was protected by the charitable cap. When contrasted with the original definition of "charitable organization" for other purposes of the Act (which was still in effect when the cap and its definition for "charitable organization" was adopted), this definition in § 33-56-170(1) was unique in its exclusive focus on federal law.

The definition for "charitable organization" in the rest of the SCFA was expanded in 1994. *See* 1994 S.C. Act 461, § 1. It now provides:

> (i) determined by the Internal Revenue Service to be a tax exempt organization pursuant to Section 501(c)(3) of the Internal Revenue Code;
>
> (ii) that is or holds itself out to be established for any benevolent, social welfare, scientific, educational, environmental, philanthropic, humane, patriotic, public health, civic, or other eleemosynary purpose, or for the benefit of law enforcement personnel, firefighters, or other persons who protect the public safety; or

> (iii) that employs a charitable appeal as the basis of solicitation or an appeal that suggests that there is a charitable purpose to a solicitation, or that solicits or obtains contributions solicited from the public for a charitable purpose.

S.C. Code § 33-56-20(1)(a).

This new definition added subsection (i), which, like § 33-56-170, references § 501(c)(3). But this new reference to that provision did not change § 33-56-170(1). Instead, § 33-56-170(1) remained unamended, indicating that the General Assembly had no intention of changing it.

Finally, despite their differences in phrasing, both § 33-56-20(1)(a)(i) and § 33-56-170 lead to the same result in this case. An organization that "is exempt" under § 501(c)(3) (*i.e.*, § 33-56-170(1)) has been "determined" to be exempt (*i.e.*, § 33-56-20(1)(a)(i)), so applying either provision leads to the same conclusion.[7]

3. Our Supreme Court Has Suggested a Bright-Line Rule Applies to § 33-56-170 and § 33-56-180(A).

Our Supreme Court has addressed the legislative cap in the SCFA before. In *Lazerson v. Hilton Head Hospital, Inc.*, 312 S.C. 211, 439 S.E.2d 836 (1994), the trial court had held that this cap violated due process and was therefore unconstitutional. The Supreme Court, however, reversed, holding that the limitation on damages bore

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[7] Myat additionally contends that our courts, not the federal government, have traditionally determined if an organization was protected by charitable immunity. *See* Appellant's Br. 27 & n. 69 (citing *Eiserhardt v. State Agr. & Mech. Soc. of S.C.*, 235 S.C. 305, 309, 111 S.E.2d 568, 570 (1959)). This argument can be quickly rejected, as it disregards that this rule applied to common-law charitable immunity, before the General Assembly adopted the SCFA.

a rational relationship to a legitimate legislative objective. *Id.* at 213, 439 S.E.2d at 838.

In its analysis, the court called what is now § 33-56-170 "an objective criterion." *Id.* Something that is objective is readily determinable and not subject to debate. *Cf. Webster's New Collegiate Dictionary* 785 (1981) (defining "objective test" as one that can "be answered in a word or two or by a check mark"). Looking to whether an organization has been approved by the federal government as tax exempt under § 501(c)(3) is such a test.

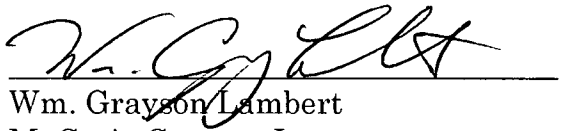
* * *

Both public policy and rules of statutory construction lead to the same result: § 33-56-170 requires a bright-line test to determine if an organization qualifies for § 33-56-180(A)'s legislative cap on damages against a charitable organization.

CONCLUSION

The circuit court's order reducing the verdict based on S.C. Code § 33-56-180 should be affirmed.

Respectfully Submitted,



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CERTIFICATE OF COMPLIANCE

This Brief of *Amici Curiae* complies with Rules 208(b) and 211, SCACR, as required by Rule 213, SCACR.

Wm. Grayson Lambert

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CERTIFICATE OF SERVICE

This Brief of *Amici Curiae* was served on all counsel of record via first class U.S. Mail, postage prepaid, on February 19, 2019:

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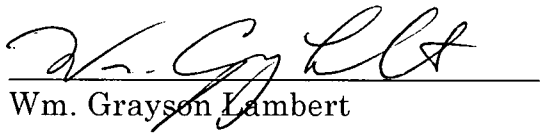

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