THE STATE OF SOUTH CAROLINA
In the Supreme Court

APPEAL FROM SUMTER COUNTY
Court of Common Pleas

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

Appellate Case No. 2019-001757

Case No. 2012-CP-43-2030

Win Myat, ... Appellant,

v.

Tuomey Regional Medical Center, ... Respondent,

BRIEF OF *AMICUS CURIAE* SOUTH CAROLINA HOSPITAL ASSOCIATION IN OPPOSITION TO THE PETITION FOR WRIT OF CERTIORARI

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INTEREST OF AMICUS

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 healthcare-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

The Solicitation of Charitable Funds Act ("SCFA") imposes a cap on damages against a "charitable organization," which the SCFA defines as an organization that "is exempt from taxation pursuant to Section 501(c)(3)" of the Internal Revenue Code. S.C. Code § 33-56-170(1). The Court of Appeals held that a "charitable organization" protected by the cap is "any organization that is tax exempt by the IRS pursuant to Section 501(c)(3)." (App. 9.) Myat, on the other hand, contends § 33-56-170(1) requires a trial court to conduct its own examination to determine if that organization "should be exempt" under § 501(c)(3) before an organization may benefit from the cap. Pet. 9, 11–12.

The question presented is:

Whether the Court of Appeals correctly interpreted § 33-56-170(1) as relying on the IRS's determination of an entity's tax-exempt status to know if that entity is protected by the SCFA's cap.

INTRODUCTION

For more than thirty-five years, the South Carolina Code has provided that an entity "which is exempt from taxation pursuant to Section § 501(c)(3)" of the Internal Revenue Code is protected by the SCFA's cap on damages against a charitable organization. S.C. Code § 33-56-170(1). The Court of Appeals held below that "any organization that is tax exempt by the IRS pursuant to Section 501(c)(3) [is] a charitable organization" and thus eligible for the SCFA's cap on damages. (App. 9).

Myat asks this Court to reverse that decision, claiming that the Court of Appeals got this "novel and important" issue wrong. Pet. 1. According to Myat, every time a charity asserts the SCFA's cap, the trial court cannot defer to the IRS's decision that the charity "is exempt" under § 501(c)(3) but instead must conduct its own examination to determine if that organization "should be exempt" under § 501(c)(3) before the charity can be protected by this cap.

Myat is the one whose interpretation of § 33-56-170 is incorrect. *First*, he ignores the plain language of the statute, which makes the cap available for any organization that "is exempt from taxation" under § 501(c)(3). Federal law gives the IRS the authority to decide whether an entity "is exempt" under § 501(c)(3). *Second*, Myat's approach conflicts with this Court's decision in *Lazerson v. Hilton Head Hospital, Inc.*, 312 S.C. 211, 439 S.E.2d 836 (1994), which held that the language of § 33-56-170 imposes an "objective" test. *Third*, Myat's interpretation would lead to bad public policy, wasting the limited resources of both charities and the judicial system.

The Court of Appeals unanimously interpreted § 33-56-170(1) correctly. The petition for a writ of certiorari should therefore be denied.

STATEMENT OF THE CASE

While working as an employed physician, Win Myat slipped and fell at Tuomey Hospital. (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 was reduced to $300,000, based on the SCFA's cap. (R. pp. 5–22.) Myat appealed that reduction.

After and unrelated to this verdict, Tuomey Regional sold substantially all of its assets to Palmetto Health Tuomey (now known as Prisma Health Tuomey). 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—and served it less than a month before the Court of Appeals held oral argument in this appeal. That case is currently stayed while this appeal is pending. *See* Order, *Myat v. Tuomey Reg'l Med. Ctr.*, No. 2018-CP-43-02265 (S.C. Ct. Comm. Pls. May 7, 2019).

In his lawsuit against Prisma Health Tuomey, Myat seeks, among other things, a declaratory judgment that Prisma Health Tuomey is liable for any judgment Myat obtains against Tuomey Regional in his first lawsuit, even though Tuomey Regional retained and did not assign that liability in its sale to Prisma Health Tuomey. *See* Compl., *Myat v. Tuomey Reg'l Med. Ctr.*, No. 2018-CP-43-02265 (S.C. Ct. Comm. Pls. Dec. 28, 2018).

STANDARD OF REVIEW

This Court reviews questions of law *de novo*. *Delaney v. First Fin. of Charleston, Inc.*, 426 S.C. 607, 611, 829 S.E.2d 249, 250–51 (2019). Statutory interpretation is a question 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 General Assembly imposed a bright-line rule in § 33-56-170(1).

The SCFA allows a person injured by a charitable organization to "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" by the Tort Claims Act. S.C. Code § 33-56-180(A). The question here is how to determine which organizations can claim the benefits of that cap on damages.

By statute, the cap protects "any organization, institution, association, society, or corporation which *is exempt from taxation pursuant to Section 501(c)(3)* . . . of Title 26 of the United States Code."* *Id.* § 33-56-170(1) (emphasis added). The Court of Appeals held that statute means an entity is protected by the cap if it "is tax exempt by the IRS pursuant to Section 501(c)(3)." (App. 9.) The Court of Appeals correctly interpreted this statute as meaning the IRS's decision controls whether an entity is protected by the SCFA's cap.

A. The plain language of § 33-56-170(1) establishes a bright-line rule.

1. Whether an organization is protected by the cap depends on the IRS's decision whether that organization is tax exempt under § 501(c)(3).

This Court has repeatedly instructed that "[t]he cardinal rule of statutory construction is to ascertain and effectuate the intent of the legislature." *Hodges v. Rainey*, 341 S.C. 79, 85, 533 S.E.2d 578, 581 (2000). The "best evidence" of the General Assembly's intent is "the text of the statute." *Id.* When the text of a statute is plain, that is the end of the analysis. *Id.*

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* Section 33-56-170(1) also protects entities exempted under 26 U.S.C. § 501(d), but that provision is not relevant to this case.

Section 33-56-170 is short. The SCFA's cap in § 33-56-180(A) applies to an entity that "is exempt from taxation pursuant to Section 501(c)(3) . . . of Title 26 of the United States Code." S.C. Code § 33-56-170(1).

To apply this statute, a court must know when an entity "is exempt" under § 501(c)(3). Thankfully, federal law answers that question clearly: The IRS decides. *See* 26 C.F.R. § 1.501(c)(3)-1 (describing what entities are exempt under § 501(c)(3)); 26 C.F.R. § 601.201 (allowing the IRS to issue determination letters); Rev. Proc. 2019-5 (setting forth the procedure for the IRS to issue determination letters for entities seeking tax-exempt status under § 501(c)(3)); *see also* 26 U.S.C. § 7805(a) (giving the IRS authority for promulgating regulations to enforce Title 26).

Armed with this answer, application of § 33-56-170 is straightforward. That section establishes two categories of entities: (1) those that are tax exempt under § 501(c)(3) and protected by the cap and (2) those that are not tax exempt under § 501(c)(3) and not protected by the cap. Because the IRS decides if an organization "is exempt" under § 501(c)(3), the IRS's decision controls whether an entity is protected by the SCFA's cap.

2. Myat's arguments cannot overcome this plain language.

Myat insists that the Court of Appeals erred and that § 33-56-170(1) requires a trial court to determine, every time the cap is asserted and without regard to an IRS decision, whether an entity qualifies for the SCFA's cap. In doing so, he weaves at least six different arguments throughout his petition to try to avoid the plain language of § 33-56-170(1). None is persuasive.

First, he subtly shifts from the statute's language of "is exempt" to "should be exempt." Pet. 9. But this Court "cannot change" the words in a statute. *Mfrs. Fin. Acceptance Corp. v. Bramlett*, 157 S.C. 419, 154 S.E. 410, 412 (1930). That is the General Assembly's job. *Id.*; *see also* S.C. Const. art. III, § 1 (vesting the "legislative power" in the General Assembly). This Court, in exercising the "judicial power," interprets the statute as written. S.C. Const. art. V, § 1; *Hodges*, 341 S.C. at 87, 533 S.E.2d at 582. Here, § 33-56-170(1) says "is," not "should be."

Second, Myat contends that the IRS does not police compliance sufficiently, so the courts must assume this responsibility. *See* Pet. 11–12. Again, Myat is really asking this Court to rewrite the SCFA. Courts do not have that power. *See Hodges*, 341 S.C. at 87, 533 S.E.2d at 582. They must, rather, "honor the legislative policy determination" made by the General Assembly. *Smith v. Tiffany*, 419 S.C. 548, 559, 799 S.E.2d 479, 485 (2017). To do otherwise would be to violate separation of powers. *Id.* Here, the General Assembly's policy decision was for the IRS determination to control.

This does not mean charitable organizations have no oversight. Their oversight simply comes from somewhere other than courts in individual lawsuits like this one. As just one example, the secretary of state may, on his own accord or based on a complaint, investigate any charitable organization and bring an action before an administrative law judge. *See* S.C. Code § 33-56-140.

Third, Myat claims our courts, not the federal government, have traditionally determined if an organization was protected by charitable immunity. *See* Pet. 12, 18

(citing *Eiserhardt v. State Agr. & Mech. Soc. of S.C.*, 235 S.C. 305, 309, 111 S.E.2d 568, 570 (1959)). Even assuming this is historically accurate, this approach applied when charitable immunity was part of the common law. This common-law protection was abolished in 1981. *See Fitzer v. Greater Greenville S.C. Young Men's Christian Ass'n*, 277 S.C. 1, 4, 282 S.E.2d 230, 232 (1981). Now, the protection is statutory. The General Assembly thus decides who gets that protection, and the General Assembly has decided that the IRS's determination of an entity's § 501(c)(3) status dispositively determines who the SCFA's cap protects.

Fourth, case law from other jurisdictions is unhelpful here. *See* Pet. 18 (citing *Univ. of Va. Health Servs. Found. v. Morris ex rel. Morris*, 657 S.E.2d 512 (Va. 2008)). That Virginia Supreme Court decision addressed Virginia law, not our SCFA, and Virginia's charitable-immunity statute has particular definitions and provisions not relevant here. *See Univ. of Va. Health Servs. Found.*, 657 S.E.2d at 517–18.

Fifth, Myat points out that Tuomey Regional is no longer providing any medical services. *See* Pet. 19. That is irrelevant under the plain language of § 33-56-170(1). Moreover, it ignores the fact that Toumey Regional was actively providing medical services at the time of Myat's injury, at the time he filed suit, and for the entirety of the trial. (It also glosses over Myat's separate lawsuit against Prisma Health Tuomey, in which he is trying to recover this particular judgment from an entity that is currently providing medical services.)

Sixth, Myat tries to differentiate "is exempt" in § 33-56-170(1) from "determined by the Internal Revenue Service to be a tax exempt organization" in § 33-

56-20, the general definitions section for the SCFA. *See* Pet. 9. The different phrasing must, Myat says, mean the General Assembly intended to define "charitable organization" differently in these two sections. *See* Pet. 9–11.

This is wrong for multiple reasons. For one, the General Assembly spoke clearly when it specifically said the SCFA's cap was available to an organization "which is exempt from taxation pursuant to Section 501(c)(3)." S.C. Code § 33-56-170(1). That plain language means no other tools of statutory construction are needed. *See Hodges*, 341 S.C. at 85, 533 S.E.2d at 581.

For a second, Myat ignores what the different phrasing actually means. The two terms "is exempt" and "determined by the Internal Revenue Service" mean the same thing functionally because the IRS determines who "is exempt" under § 501(c)(3). To treat these phrases as meaning different things would require contorting the plain language, in violation of the most basic tenet of statutory construction. *See id.*

For a third, the history of the SCFA undermines Myat's contention. The original SCFA was adopted in 1972. *See* 1972 S.C. Acts No. 1459. It defined "charitable organization" as one that held "itself out to be a benevolent, educational, philanthropic, humane, patriotic, or eleemosynary organization." 1972 S.C. Acts No. 1459, § 2 (codified at S.C. Code § 67-92 (1962); S.C. Code § 33-55-20(1) (1976)). When originally adopted, the SCFA did not include a cap on damages because common-law charitable immunity still existed. *See Fitzer*, 277 S.C. at 4, 282 S.E.2d at 232.

The statutory cap on damages and the related definition of "charitable organization" in what is now § 33-56-170(1) were added in 1984 after *Fitzer* abolished common-law charitable immunity. *See* 1984 S.C. Acts No. 505. When deciding the charitable organizations that would be protected by this cap, the General Assembly did not use the definition that already existed in the SCFA. Instead, the General Assembly adopted a bright-line rule to protect organizations that are exempt under § 501(c)(3)—a decision that the IRS made then and continues to make now. *See* 1984 S.C. Acts No. 505, § 1(a).

When the General Assembly rewrote the SCFA a decade later, *see* 1994 S.C. Acts No. 461 (codified at S.C. Code § 33-56-10 *et seq.*), the General Assembly did not change the definition in § 33-56-170(1) of a charitable organization that qualified for the cap. Instead, the General Assembly expanded the definition of a charitable organization in the general definitions section of the SCFA, which impacted other parts of the SCFA. *See* 1994 S.C. Acts No. 461, § 1 (codified at § 33-56-20(1)(a)).

By adding definitions to the SCFA, the General Assembly did not change, either explicitly or implicitly, the definition in § 33-56-170(1) that already existed specifically for the cap. To suggest that the General Assembly intended to change this unamended, specific definition by expanding another definition that applied to other sections ignores established principles of statutory construction. *See Atlas Food Sys. & Servs., Inc. v. Crane Nat'l Vendors Div. of Unidynamics Corp.*, 319 S.C. 556, 558, 462 S.E.2d 858, 859 (1995) ("The enactment of a later general statute does not repeal an earlier more specific statute.").

B. This Court has already indicated § 33-56-170(1) adopts a bright-line rule.

The Court has addressed the legislative cap in the SCFA before. In *Lazerson*, the Court called what is now § 33-56-170(1) "an objective criterion." 312 S.C. at 213, 439 S.E.2d at 838. An "objective test" is a test that can "be answered in a word or two or by a check mark." *Webster's New Collegiate Dictionary* 785 (1981). Relying on whether an organization has been determined by the IRS as tax exempt under § 501(c)(3) is such a test. In contrast, Myat's test is not.

II. Section 33-56-170(1)'s bright-line rule is good policy.

The plain language of § 33-56-170(1) should be the end of the analysis. But if it were not, public policy supports the same result.

A. The SCFA protects the important work that charities do.

Charities perform an invaluable role in our society. These organizations have no owners or shareholders and 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, charitable entities also benefited from the common-law doctrine of charitable immunity for decades before the doctrine was abolished in 1981. *See Simmons v. Tuomey Reg'l Med. Ctr.*, 341 S.C. 32, 40–41 533 S.E.2d 312, 316–17 (2000); *Fitzer*, 277 S.C. at 4, 282 S.E.2d at 232.

In response to *Fitzer*, the General Assembly adopted a legislative cap on damages against charitable organizations. *See* 1984 S.C. Acts No. 505 (codified at S.C. Code § 33-55-200 *et seq.*); *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*). As this Court has recognized, the "clear legislative purpose" of the SCFA's cap 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"). Imposing a cap on the damages that a plaintiff can recover from a charitable organization helps avoid the type of crippling judgment that could force that organization to stop helping, or at least significantly limit its ability to help, the public.

The similarities between a charitable organization and government illustrate the logic of the SCFA's cap. Just as government serves the people, a charitable organization works for the public's benefit rather than its 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. These caps alleviate the harsh result of sovereign immunity while avoiding depleting the public fisc. *See, e.g., 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

needs to protect taxpayers from a flood of costly and potentially speculative litigation").

The SCFA strikes a similar, legislatively drawn balance for a charitable organization. A person who is harmed can obtain relief, but a charitable organization will not be hampered too severely by an overwhelming judgment.

B. Bright-line rules provide clarity and predictability.

In most aspects of life (at least 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 often preferable because they provide greater clarity for courts and litigants. *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*, 495 U.S. 604, 626 (1990) (explaining that the Court's rule avoided the "uncertainty and litigation" that the dissent's rule would provoke).

C. Predictability is important for charities.

The certainty offered by the General Assembly's bright-line rule in § 33-56-170(1) is critical to charitable organizations. The Court should reject Myat's invitation to throw that certainty away for a case-by-case approach to whether the SCFA's cap applies.

Beyond the fact that similarly situated charitable organizations could be treated differently or one charitable organization could be treated differently in separate cases, Myat's approach to the SCFA's cap unnecessarily increases costs on charities. Charitable organizations, and particularly hospitals, do essential work, typically without excess resources. Thus, these organizations must use their resources as prudently as possible.

Adopting Myat's rule imposes direct costs on charitable organizations. Every dollar spent litigating an unnecessary question is a dollar that cannot be spent on the entity's charitable mission. *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.").

Myat's rule introduces indirect costs too. With a bright-line rule for determining whether an entity is protected by the SCFA's cap, 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 having to comb through an organization's records to identify all pending and possible tort claims, assess the likelihood that each will be pursued, analyze which claims could result in significant damages, and establish a dedicated fund for satisfying any judgments (assuming someone will put in the effort to do all of that, rather than simply walk away from the proposed transaction), all while that organization is trying to provide its charitable services. The extra costs in both time and money of Myat's rule will ultimately be borne by the people who would have been helped by the charitable

organizations, had the organizations not had to spend extra resources compensating for uncertainty.

Under Myat's rule, any tort plaintiff could do exactly what Myat has done here: allege that the SCFA's cap does not apply because the organization "should" not qualify for tax-exempt status under § 501(c)(3). That argument could be made even in cases that are less extreme than this one. A plaintiff could argue, for instance, that an organization was spending money that was not essential to its mission, such as providing free food at community health screenings or investing in state-of-the-art equipment before existing equipment became dangerous or inadequate.

Such an argument would require substantial discovery (including potentially third-party discovery, trade secrets, and other confidential information) and would likely involve a battle of experts. Only after all that time and expense could a trial court decide whether the SCFA's cap applied. And after that decision was finally made, either the plaintiff or the charitable organization could appeal the trial court's decision, requiring a second court to weigh in on this question.

To avoid all this uncertainty, the Court should make clear that the General Assembly's definition of "charitable organization" in § 33-57-170(1) is a bright-line, objective test that turns solely on whether an organization is determined to be a § 501(c)(3) organization by the IRS.

D. A bright-line rule protects judicial resources.

Myat's rule also has costs for our judicial system. 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.").

Given these costs, courts try to avoid having parties litigate collateral or ancillary issues by adopting bright-line rules that do not require substantial judicial resources to resolve. *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 SCFA's cap. The primary issues in tort litigation against a charitable organization are liability and the amount of damages. Fighting over whether the cap applies only makes that litigation more expensive and distracts from the core issues in the case. The General Assembly's bright-line rule enables a charitable organization to show the cap applies by a single, publicly available document. But without such a rule, a charitable organization will have to prove from scratch, over and over again in different lawsuits, that it satisfies all of the requirements for tax-exempt status under 26 U.S.C. § 501(c)(3). Doing so takes not only the parties' time and resources, but it also consumes valuable court time that simply producing a determination letter from the IRS does not.

* * *

Both rules of statutory construction and public policy lead to the same result: § 33-56-170(1) imposes a bright-line test to determine if an organization qualifies for the SCFA's cap on damages against a charitable organization. The Court of Appeals did not err in its interpretation of this statute.

CONCLUSION

The petition for a writ of certiorari should be denied.

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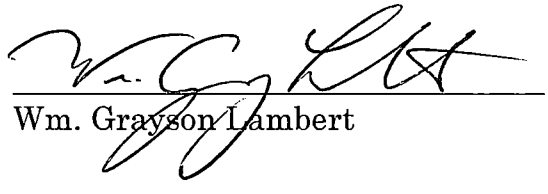
CERTIFICATE OF COMPLIANCE

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



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