THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2016-002525

Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., A Minor; and Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., A Minor, Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., A Minor; Adam Olsen Ackerman; and A.E.P., III, ... Plaintiffs,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company, and Jones Street Publishers, LLC, ... Defendants,

And

Eugene Walpole, ...Plaintiff,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company, and Jones Street Publishers, LLC, ... Defendants,

Of Whom Eugene Walpole, Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., A Minor; and Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., A Minor, Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., A Minor; Adam Olsen Ackerman; and A.E.P., III, are the ..... Petitioners,

And

Of Whom Jones Street Publishers, LLC is the ..... Respondent.

PETITION FOR A WRIT OF CERTIORARI

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CERTIFICATE OF COUNSEL

The Court of Appeals issued its decision on November 6, 2019. (App. pp. 1036-64). Counsel for Petitioner certifies that the Petition for Rehearing was made on November 21, 2019, and denied on March 18, 2020. (App. pp. 1065-77).

QUESTIONS PRESENTED

I. Whether the Court of Appeals erred in finding that the defamatory statements concerning Petitioners were protected by and did not abuse the fair report privilege.

II. Whether the Court of Appeals erred in finding that, as a matter of law, referring to an individual and his actions as racist is not a provable statement of fact.

III. Whether the Court of Appeals erred in finding that Petitioners did not demonstrate a mere scintilla of evidence of injury to reputation, embarrassment, personal humiliation, and mental anguish and suffering.

IV. Whether the Court of Appeals erred in finding that as a matter of law, a reasonable jury could not determine that the defamatory statements concerning Petitioners as a group were "of and concerning" the individual members of the Academic Magnet High School football team, even though the team only consisted of 28 members.

V. Whether the Court of Appeals erred by failing to consider Coach Walpole's lack of control or responsibility over government affairs in determining that he was a public official.

VI. Whether the Court of Appeals erred in finding that Coach Eugene Walpole did not demonstrate actual malice through clear and convincing evidence, even though Respondent had reliable information prior to publication that its accusations of racism were untrue and unsupported by the evidence.

STATEMENT OF THE CASE

This Petition for Writ of Certiorari arises from the alleged publication of false and defamatory statements by Respondent Jones Street Publishers, LLC ("City Paper")[1] about the members of the Academic Magnet High School ("AMHS") football team ("the Students") and Coach Eugene Walpole ("Walpole") (collectively "Petitioners") that injured their reputations in violation of South Carolina's defamation principles. The Students filed a Complaint against the

[1] Jones Street owns and operates the *City Paper* that is distributed around Charleston.

Respondent and other defendants on November 21, 2014, which was followed by Walpole's Complaint filed on December 16, 2014, both in the Charleston County Court of Common Pleas. (App. pp. 223-227; pp. 228-235).

On January 20, 2015, the Respondent moved to dismiss Petitioners' Complaints pursuant to Rule 12(b)(6), SCRCP, on the grounds that the defamatory statements were not "of and concerning" the Students; that the alleged defamation constitutes opinion, hyperbole, or epithet and therefore is not actionable; and that the Respondent is protected by the fair report privilege for relying on fair and accurate reports of statements from public officials. (App. pp. 29-33). The trial court heard the Respondent's Motion to Dismiss on May 8, 2015, and, in an order filed July 7, 2015, the trial court denied the Respondent's Motion to Dismiss. On April 29, 2016, the Respondent moved for summary judgment on the basis that there is no genuine issue of material fact on largely the same grounds as the motion to dismiss. (App. pp. 34-38). The trial court heard the Respondent's Motion for Summary Judgment on October 11, 2016. Petitioners received written notice of entry of the order granting the Respondent's Motion for Summary Judgment on November 21, 2016. (App. pp. 7-28). The Students and Walpole timely filed their Notices of Appeal on December 19, 2016. (App. pp. 912-914; pp. 915-918). Following oral argument on April 1, 2019, the Court of Appeals issued a published opinion, *Garrard v. Charleston Cty. Sch. Dist.*, 838 S.E.2d 698 (Ct. App. 2019), on November 6, 2019. Petitioners timely filed their Petition for Rehearing on November 21, 2019. The Court of Appeals denied the petition in an order filed March 18, 2020. Petitioners now seek a writ of certiorari pursuant to Rule 242, SCACR, to review that decision.

FACTS

I. THE WATERMELON RITUAL

Following a win against Military Magnet in the second game of the 2014 season, the Academic Magnet football team began a celebration of smashing a watermelon after a winning game. (App. p. 335, lines 3-6; p. 368, line 20 – p. 369, line 1; p. 391, lines 6-9). Before this particular game, a team member had purchased a watermelon on the way back to the school from getting dinner at Subway with his teammates. (App. p. 334, line 25 – p. 335, line 2; p. 405, lines 15-22; p. 424, lines 1-6). While the team was getting ready in the locker room, the player decided to draw a face on the watermelon, like in the movie *Castaway* starring Tom Hanks. (App. p. 336, lines 6-14). None of the coaches were in the locker room at this time. (App. p. 450, line 23 – p. 451, line 6). The player also named the watermelon Bonds-Wilson Junior, a reference to the volleyball in *Castaway*,[2] as well as to the name of the Academic Magnet High School campus. (App. p. 336, lines 15-18; p. 388, line 22 – p. 389, line 2; p. 447, lines 9-11). A picture of "Wilson" from *Castaway* is reproduced here:

The player brought the watermelon on the bus with him and then placed it on his team's bench before the game. (App. p. 337, lines 14-18; p. 338, lines 2-16; p. 390, lines 22-23; p. 426, lines 11-20). At the end of the game, the players gathered around their coach, and he made a brief speech before dismissing the team. (App. p. 339, line 20 – p. 340, line 13; p. 427, line 18 – p. 428, line 1; p. 370, lines 13-16). Typically, after his post-game speech, Coach Walpole would speak to the

[2] Tom Hanks' character in *Castaway* draws a face on a volleyball and names it "Wilson." The volleyball becomes his imaginary companion while he is stranded on an uninhabited island.

parents and other fans, while the assistant coaches ensured that the players collected the equipment and cleaned up the bench area. (App. p. 507, line 22 – p. 509, line 3). At this point, a player brought the watermelon over to the team and they began a football chant. One of the players smashed the watermelon on the ground and then they ate it. (App. p. 340, lines 3-8; p. 445, line 18 – p. 446, line 10). Following this celebration, the players threw away any watermelon pieces that were left and returned to the bus. (App. p. 342, lines 3-7; p. 370, line 25 – p. 371, line 3).

Subsequent to the victory over Military Magnet, the AMHS football team repeated this celebration after each game that they won. (App. p. 448, line 18 – p. 449, line 3; p. 372, lines 3-10; p. 373, line 23 – p. 374, line 4; p. 374, line 22 – p. 375, line 12). The players credited the ritual as leading to their success. (App. p. 344, lines 2-8; p. 430, lines 2-12; p. 443, lines 8-19). The same player bought the watermelon for all but possibly one game. (App. p. 343, lines 5-8; p. 429, line 24 – p. 430, line 1). The characteristics of the face on the watermelon varied each week as it was drawn by several different players over the course of the season. (App. p. 406, line 10 – p. 407, line 5; p. 425, lines 5-11; p. 344, line 20 – p. 345, line 4; p. 346, lines 8-25; p. 390, lines 3-8). The players chanted or cheered each time before the watermelon was smashed. (App. p. 347, lines 3-10; p. 348, lines 1-10; p. 452, line 23 – p. 453, line 3). Players described the chanting as like the chants heard in the movie *Remember the Titans*, a college football pre-game chant, and football grunts. (App. p. 341, lines 7-10; p. 408, lines 2-8; p. 444, lines 17-18). Coach Walpole was aware that the team was celebrating their wins by cheering and smashing a watermelon, but he did not know that the watermelons had a face or a name. (App. p. 509, lines 7-25; p. 512, lines 11-23; p. 517, lines 3-6).

The watermelon was accidentally left on the bus during the game against Garrett. (App. p. 409, lines 6-9; p. 431, line 24 – p. 432, line 11; p. 376, line 15 – p. 377, line 6). The players were

unable to return to the bus to get it, so the team waited until they had returned to their school to perform their celebration. (App. p. 432, line 22 – p. 433, line 8; p. 349, line 23 – p. 350, line 8). Once back at AMHS, the team gathered in the courtyard to smash the watermelon. (App. p. 410, lines 19-23; p. 454, lines 1-8). The freshmen lock-in was taking place at that same time, so various other students and AMHS teachers were also in the courtyard during the celebration. (App. p. 454, lines 1-17; p. 455, lines 20-25; p. 434, lines 2-11; p. 435, lines 16-21; p. 378, lines 4-17). The players were subsequently reprimanded for disturbing the freshmen lock-in. (App. p. 351, lines 16-20).

II. THE INVESTIGATION

On Monday, October 13, 2014, Charleston County School Board member Michael Miller emailed Charleston County School District (CCSD) Superintendent Nancy McGinley, alleging that the students would destroy a watermelon while making monkey noises after victories, and asking for an inquiry into the matter. Superintendent McGinley requested that AMHS principal Judith Peterson perform an investigation. Principal Peterson spoke with the head coach, an assistant coach, the athletic director, and the team captain. Although Principal Peterson's report concluded that there were no racial overtones to the celebration, Superintendent McGinley requested further investigation.

On October 16, the football team was called to the auditorium for interviews regarding the watermelon celebration. The members of the football team were asked to report to the auditorium at the start of the day and were told to sit apart from one another and not talk. (App. p. 456, line 21 – p. 457, line 16; p. 379, line 8 – p. 380, line 19; p. 436, line 8 – p. 437, line 13; p. 392, line 16 – p. 393, line 4). Players were called individually to be questioned by Associate Superintendent Lou Martin and Kevin Clayton, the CCSD Diversity Committee Advisor, in a classroom next to

the auditorium. (App. p. 353, lines 5-11; p. 438, line 16 – p. 439, line 18). Some players waited over four hours to be interviewed. (App. p. 460, lines 6-13; p. 352, line 12 – p. 353, line 4). Players were asked what they knew about the watermelon ritual and specifically about the face drawn on the watermelon and the sounds made during the celebration. (App. p. 458, line 17 – p. 459, line 3; p. 394, lines 1-23; p. 354, line 21 – p. 356, line 15). The players were also asked whether they knew about the negative connotations or racial overtones surrounding watermelons, and if the students replied in the negative, they were told to look it up. (App. p. 392, lines 1-7; p. 411, line 12 – p. 412, line 7; p. 461, lines 10-18). At the end of each interview, the player was sent back to class after being told not to tell anyone what was discussed. (App. p. 413, lines 11-15; p. 357, lines 12-25).

Following the player interviews, Coach Walpole was also interviewed by Mr. Martin and Mr. Clayton, with Principal Peterson present. (App. p. 534, lines 14-23). During the interview, Mr. Martin informed Coach Walpole that the watermelons had a drawing on them and the players made monkey sounds during the celebration. (App. p. 529, line 24 – p. 530, line 9). Coach Walpole was also told that having a watermelon on the bench was like running up and down the sideline with a Confederate flag. (App. p. 528, lines 3-7). On October 20, 2014, the Charleston County School District relieved Coach Walpole of his coaching duties. (App. p. 620).

III. THE PRESS CONFERENCE

On October 21, 2014, the CCSD held a press conference at which Superintendent McGinley described the investigation and the decision to relieve Mr. Walpole of his coaching duties.

> On Monday, October 13, 2014, an allegation was brought to my attention from one of the board members that the Academic Magnet football team has practiced a watermelon ritual with students making monkey sounds as part of a postgame celebration. This board member was clearly concerned about racial stereotypes

> related to this type of ritual. I immediately called Principal Peterson and she agreed to investigate. After she spoke with the Head Coach, Assistant Coach, and one player, she reported back to me that the coaches said they were aware of this ritual following victories and that they did not see any . . . observe any cultural insensitivity. ***The tone of the report given back to me implied that this was an innocent ritual.***

(App. p. 620) (emphasis added).

Following this initial report, Superintendent McGinley deployed Associate Superintendent Louis Martin to further investigate in order to "surface the facts related to this alleged ritual." (App. p. 620). According to Superintendent McGinley, this investigation revealed that

> there was a tradition that the team participated in as a group following the games, following the victories . . . . The watermelon was taken to all games on a bus. It was carried to the field and placed on the team bench . . . . Players would gather in a circle, smash the watermelon, while others either were standing in a group or locking arms and making chanting sounds that were described as 'ooh, ooh, ooh.' The watermelon was inscribed with a face . . . that could be considered a caricature . . . . Additionally, the watermelon was named at each game. At game one, the watermelon was named Junior. For games two through six, the watermelon was named Bonds Wilson 1, 2, 3, 4, or 5.

(App. p. 620). Superintendent McGinley then stated that based upon their interviews of the students and the coaches, "the accountability lies with the adults." (App. p. 620). Later in the press conference, Superintendent McGinley stated that "again these were allegations, ok these [sic] are what we were investigating." (App. p. 620). At no point during the press conference that day did Superintendent McGinley say that the students or Coach Walpole were racist. Furthermore, she did not make any statement as to whether or not Coach Walpole was even aware of the details of the celebration.

IV. THE RESPONDENT'S PUBLICATIONS

On October 21, 2014, the Respondent published an article by Editor Chris Haire entitled "Melongate: Big toothy grins, watermelons, and monkey sounds don't mix." (App. p. 608). The article was written and published after Haire viewed Superintendent McGinley's press conference

in which she stated that the post-game celebration was an "innocent ritual." (App. p. 608). The article states:

> Today, Charleston was consumed by one story and one story only: the removal of Academic Magnet football coach Bud Walpole amid allegations that his players more or less behaved like racist douchebags. And if there's one lesson to be learned from all of this it's this: big toothy grins, watermelons, and monkey noises don't mix. Any sensible person can see that.
>
> Apparently not. And apparently not the coaching staff and the players on the Academic Magnet Raptors.
>
> Somewhere along the way in this year's unexpectedly successful season, the Raptors took a liking to buying watermelons before their games. They apparently drew a face on it each time – a big toothy, grinning face. The first time the watermelon was named Junior. The next time it was Bonds Wilson, the name of the campus the AMHS shares with School of the Arts. That name stuck.
>
> But here's where the things get even worse. At the close of each game, the players smashed the watermelon on the ground while reportedly making the monkey-like sounds of 'ooh ooh ooh ooh.' Apparently, the players did this after four or five games, each time evidently after the largely white Raptor squad beat one of their opponents, each one largely an African-American team. Parents of players on one of the opposing teams reportedly brought this to the attention of African-American Board member Michael Miller last week.
>
> That the coaching staff of the Academic Magnet Raptors and none of its players, including at least one African American, didn't see the trouble with this toxic combination of monkey sounds, toothy grins, and watermelons is at best baffling and at worst indicative of the casual acceptance of racism in Charleston today, even among the best and brightest that the county has to offer. After all, AMHS is not only the No. I ranked school in the state, it's one of the tops in the nations.
>
> Seriously, did everyone at AMHS forget the last 100 years of American history? Did they forget about blackface, Buckwheat, and *Birth of a Nation*? Did they forget about minstrel shows? Did they forget about Coons Chicken, lawn jockeys, golliwogs, and the like? Apparently so, I don't know about you, but I think it's time to reconsider Academic Magnet's rankings because clearly they are producing nothing more than grade-A dumbasses.
>
> Even more troubling is the degree to which Raptor Nation has circled the wagons around Walpole and the team. Frankly, this has nothing to do with the fact that the coach is by all accounts a good man. Walpole's merits are meaningless.

> The point is that an entire team of players thought it was Ok to draw a grinning face on a watermelon, smash it on the ground each time they beat a largely black team, and make monkey noises – and no one apparently told them to stop.
>
> No one said, 'Hey guys, I know not a single one of you has a racist bone in your body, you know, because that's a bad thing, and well, you're an Academic Magnet kid, and you come from a good middle-class white family and you're going to college, and there's no way in hell you'd, you know, ***draw a racist caricature on a watermelon*** and make monkey noises and do it fully aware of, like, what all that stuff means, because if you did, knowing all that stuff, then yikes, people might start thinking you're racists. Hell, I'd think you're a racist, and, well, ***I just don't know if I can deal with the fact that Charleston's best and brightest students are racist douchebags. I mean, it's just a joke right? Right?'***
>
> ***Actually, it's not. It's the sad truth*** about life here in Charleston, S.C. today.

(App. p. 608) (emphasis added).

The Respondent published another article in the October 21, 2014 edition entitled "District: AMHS football team's watermelon ritual included 'monkey sounds,' 'caricature.' Coach removed after complaint of 'animalistic' sounds following defeat of majority-black team." (App. pp. 609-611). Following this article, Coach Walpole was reinstated and Superintendent McGinley resigned from her position.

In the October 30, 2014 edition, the Respondent published another article by Haire entitled "Mob Rules. School district forces out superintendent who fired ***coach who condoned racist ritual.***" (App. p. 612) (emphasis added). The article states:

> But goddammit, this town is rotten with racists.
>
> Not only do we have a Confederate-flag waving, Southern apologist heading up the College of Charleston, now the Charleston County School District Board of Trustees has forced Superintendent Nancy McGinley out of her job because she dared to fire a ***football coach who condoned a racist act.***
>
> Honestly, I had no idea that this was how the Coach Bud Walpole controversy would play out. I don't think anyone really did. The ouster of McGinley is every bit as surprising as one of George R.R. Martin's wedding-day bloodbaths. But it's even more brutal than the *Game of Thrones* author could have conjured up because

McGinley was in the right to give Walpole the boot – and the board should've backed her.

The Academic Magnet coach had to know that his players were engaging in a ritual that would be perceived as racist by any sensible outside observer. ***If you don't already know, a racist caricature had been drawn on a watermelon*** and then smashed each time the largely white football team defeated their predominantly African-American competitors. Even worse, they reportedly made monkey sounds when they did it.

And based on what has been reported, it appears that McGinley in part was motivated to remove Walpole because he apparently didn't see anything disturbing himself, a stance that more than strains credulity given the coach's 50-some-odd-years on this planet.

***

In hindsight, there's no denying that McGinley simply misjudged her fellow Charlestonians. Perhaps she too had bought into the hype that the Holy City had shaken off its racist past, that our Lowcountry home had been born anew as America's most beloved tourist town. Perhaps she genuinely thought that the community would rise up with her and condemn ***this racist behavior***. But it didn't.

As the controversy unfolded, the black community largely remained, silent, while the entire Academic Magnet community rallied behind Coach Walpole, with some even going as far as to deny any racist connection between watermelons, Sambo-like caricatures, monkey noises, and black people. Because one single coach had been fired, they were willing to ignore America's shameful racist past. Apparently, to admit that their coach, their children, might be just a smidgen racist was simply too much to bear.

Coach Walpole's firing should have been a teachable moment, the kind that instructs the largely white student body of Academic Magnet High School in the ways that white people, even good ones, can inadvertently engage in hurtful racially offensive behavior, Instead what the students got was a teachable lesson in mob rule and white privilege. Days after his removal, Walpole was reinstated.

Many years from now, I know that many of these same AMHS students who defended Walpole and his players will see the error of their ways. I know that they will realize that it was wrong to turn a blind eye to how much pain the team's actions caused the African American community, some of them their fellow students. Now that Nancy McGinley has been forced out of office, perhaps that realization will happen much sooner rather than later.

(App. p. 612) (emphasis added). Being referred to as "racist douchebags" who drew "racist caricatures" and participated in a "racist act," and as a coach "who condoned a racist act," damaged the Petitioners' reputations.

STANDARD OF REVIEW

Under Rule 242(b), SCACR, a "writ of certiorari is not a matter of right, but of sound judicial discretion, and will be granted only where there are special and important reasons." The Rule states further that "the character of reasons" to be addressed when considering review includes when "there are novel questions of law" and "where substantial constitutional issues are directly involved." Rule 242(b), SCACR.

ARGUMENT

Pursuant to Rule 242, SCACR, Petitioners move for a Writ of Certiorari and for this Court to review and reverse the Court of Appeals' Published Opinion, *Garrard v. Charleston Cty. Sch. Dist.*, 838 S.E.2d 698, of November 6, 2019. The Court of Appeals erroneously affirmed the trial court's grant of summary judgment on the basis that (1) the articles in the *City Paper* were protected by the fair report privilege, (2) characterizing a person and his acts as racist is opinion and not a verifiable, objectively provable statement of fact, (3) Petitioners did not establish a mere scintilla of evidence showing that they suffered "actual injury," (4) defamatory statements about a high school football team in general are not actionable because they are not "of and concerning" the individual students on the team, (5) Coach Walpole was a public official, and (6) Coach Walpole did not demonstrate constitutional malice through clear and convincing evidence.

For the first issue, the question of whether or not the fair report privilege was abused is a jury issue that should have been left to the factfinder. For the second issue, the question of whether it is defamatory to label someone as a racist is a novel issue of South Carolina law and implicates the constitutional tension between protected and defamatory speech. However, the concept that

allegations of racism can be defamatory is not revolutionary and is supported by the law of other jurisdictions. For the third issue, there is ample evidence in the record demonstrating that Petitioners were embarrassed, humiliated, and suffered damage to their reputations. For the fourth issue, the court erred in determining that under the relevant circumstances, the football team was too large for the defamatory statements to be understood as referring to each individual member of the team. For the fifth issue, Coach Walpole is not a public official because he did not have substantial responsibility for or control over the conduct of governmental affairs. For the sixth issue, Coach Walpole introduced evidence showing that Haire and the Respondent were aware of information from a trusted source indicating that the celebration ritual was not racist, yet they published the defamatory articles anyway. Lastly, for each issue, the Court of Appeals' analysis is fatally and fundamentally flawed, and this Court should review the issues and reverse.

I. THE FAIR REPORT PRIVILEGE DOES NOT APPLY TO THE DEFAMATORY STATEMENTS IN THE *CITY PAPER* ARTICLES, AND EVEN IF IT DID, THE STATEMENTS CONSTITUTE AN ABUSE OF THE PRIVILEGE.

The Court of Appeals stated in its opinion that the trial court "made no findings to suggest that Jones Street Publishers' use of the word 'racist' was either protected or not protected under the fair report privilege" and that Petitioners had conceded that "[a]ny factual reporting by the *City Paper* regarding actual statements made by Academic Magnet or [Charleston County School District] officials is protected by the fair report privilege." (App. p. 1050). To the extent that it could be construed that the fair report privilege extends to Respondent's defamatory statements, it is the Petitioners' position that the defamatory statements at issue are not qualifiedly privileged. The fair report privilege only protects "a report of the contents of the public record ***and any matter added to the report by the publisher, which is defamatory of the person named in the public records, is not privileged.***" *Jones v. Garner*, 250 S.C. 479, 487, 158 S.E.2d 909, 913 (1968)

(emphasis added). The defamatory statements included in the *City Paper* pieces were extrinsic to any factual reporting of the events surrounding the Academic Magnet football team and its post-game celebrations. Therefore, the fair report privilege should not apply to any statements by Respondent proclaiming the football team, its coaching staff, and their acts to be racist.

Even if the statements were qualifiedly privileged, their contents would constitute an abuse of the privilege. The defense of a qualified privilege will not apply if it has been abused or exceeded. Abuse of the privilege has been described as occurring when "a communication or statement . . . goes beyond the requirement" of the reporting occasion. *Id.* That is exactly what occurred when Respondent chose to supplement its factual reporting of the football team's celebrations, Coach Walpole's firing and reinstatement, and the school district's press conference with accusations of racism. The question of whether a qualified privilege has been abused is a jury issue. *West v. Morehead*, 396 S.C. 1, 8, 720 S.E.2d 495, 499 (Ct. App. 2011). Consequently, Respondent cannot avail itself of any argument that the fair report privilege should serve to dispose of Petitioners' claims through summary judgment, as there is evidence in the record creating a genuine dispute of material fact as to whether the privilege was abused.[3]

II. LABELING AN INDIVIDUAL AND HIS ACTIONS AS RACIST IS A VERIFIABLE STATEMENT OF FACT, REGARDLESS OF WHETHER IT IS CONTAINED IN AN OPINION PIECE.

Second, the Court of Appeals' decision incorrectly holds that labelling an individual as a racist cannot be interpreted as a defamatory statement of fact. The question of whether the term racist can be defamatory is a novel question of state law. Ultimately, the issue of whether

[3] Even if the fair report privilege did apply and was not abused, Petitioners have presented clear and convincing evidence that the defamatory statements were published with actual malice. *See* discussion *infra* Section VI. A qualified privilege, even if it does apply, does not prevent liability for defamation where the statements were made with actual malice. *Eubanks v. Smith*, 292 S.C. 57, 63, 354 S.E.2d 898, 902 (1987).

statements are defamatory is a question for the jury as the finders of fact. *Goodwin v. Kennedy,* 347 S.C. 30, 38, 552 S.E.2d 319, 323, (Ct. App. 2001). Regardless of whether the statements at issue were couched as opinion, opinions may imply an assertion of objective fact. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990). "Even if the speaker states the facts upon which he bases his opinion, if those facts are either incorrect or incomplete, or if his assessment of them is erroneous, the statement may still imply a false assertion of fact." *Id.; see also Goodwin*, 347 S.C. at 40-41, 552 S.E.2d at 325 ("In *Milkovich,* the United States Supreme Court rejected the creation of an artificial dichotomy between opinion and fact, holding that the Constitution does not require a wholesale defamation exemption for anything that might be labeled 'opinion.'").

Whether or not an individual engages in racist ideologies or behavior is certainly provable by fact. The question of whether something or someone is racist or racially motivated is litigated every day in our sister state and federal courts. The notion that accusing someone of being a "racist douchebag" or participating in a "racist act" is defamatory is not a novel idea, even though it has not been addressed by South Carolina courts, as multiple jurisdictions have found that calling someone a racist is or could be a defamatory statement of fact, especially when the defamatory accusation is accompanied by other defamatory statements of specific fact:

> Instances may arise in which claiming someone is a bigot will become more than non-actionable insult. ***Whether an accusation of bigotry is actionable depends on whether the statement appeared to be supported by reasonably specific facts that are capable of objective proof of truth or falsity.*** The statement might explicitly refer to those specific facts or be made in such manner or under such circumstances as would fairly lead a reasonable listener to conclude that he or she had knowledge of specific facts supporting the conclusory accusation. For example, a claim of bigotry could include claims that the selected person had engaged in specific acts such as making racist statements, failing to associate with or to act with courtesy toward people of a particular race, denying another employment or advancement because of race or religion, or posting signs that carried a racist message.

Ward v. Zelikovsky, 136 N.J. 516, 539, 643 A.2d 972, 983–84 (1994) (emphasis added); *see Taylor v. Carmouche*, 214 F.3d 788, 793 (7th Cir. 2000) ("'Felton is a racist' is defamatory, and a person who makes an unsupported defamatory statement may be penalized without offending the first amendment."); *Puchalski v. Sch. Dist. of Springfield*, 161 F. Supp. 2d 395, 408 (E.D. Pa. 2001) ("To impute racism to a plaintiff, particularly one for whom such an attitude could be incompatible with the proper performance of his public responsibilities, may be defamatory."); *Beverly Hills Foodland, Inc. v. United Food & Commercial Workers Union, Local 655*, 840 F. Supp. 697, 707 (E.D. Mo. 1993) (finding that the defamatory nature of the term "racist" is to be determined by "the temper of the times" and the "current of contemporary public opinion."); *Sheridan v. Carter*, 48 A.D.3d 444, 446-47, 851 N.Y.S.2d 248, 252 (2008) ("In the first instance, Carter's published statements, which depicted the plaintiffs as racists who physically abused and economically exploited their domestic employee, were clearly defamatory per se."); *Lennon v. Cuyahoga Cty. Juvenile Court*, Case No. 86651, 2006 WL 1428920, at *6 (Ohio Ct. App. 2006) ("[B]eing referred to as a racist may, at times, constitute defamation per se . . . ."); *see also Webber v. Ohio Dep't of Public Safety*, 103 N.E.3d 283 (Ohio Ct. App. 2017).

The two *City Paper* articles discussed in the Court of Appeals' opinion are replete with assertions and innuendo that the Petitioners are racist. "'[I] just don't know if I can deal with the fact that Charleston's best and brightest students are racist douchebags. I mean, it's just a joke right? Right?' Actually, it's not." (App. p. 608). "School district forces out superintendent who fired coach who condoned racist ritual." (App. p. 612). The articles also asserted that team members drew "a racist caricature on a watermelon" in a "racist act" and smashed it on the ground after beating "a largely black team." (App. pp. 608, 612). Thus, Respondent did not solely call Petitioners racists; the accusations were accompanied by factual allegations that the team members

drew racist caricatures on a watermelon in a "racist act," and that Coach Walpole condoned racist rituals. These accusations accused Petitioners of participating in racist activities and make the present facts distinguishable from those in which other jurisdictions have found that merely labeling someone as a racist is not actionable. Furthermore, the statements were not framed as opinion. The articles did not solely state that the team was "acting like" racist douchebags; it stated that Petitioners "***are*** racist douchebags" who either condoned or participated in a "racist act." Whether or not Petitioners and their acts are racist is certainly provable through testimonial evidence. The record contains evidence that Petitioners and the celebration ceremony were not in fact racist or racially motivated. (App. pp. 356-357, 395, 411-412, 610-611).

The Court of Appeals' opinion essentially finds that, as a matter of law, a publication may brand anyone a "racist douchebag", including private individuals, so long as the assertion is contained in an "opinion" piece, even if the piece's thrust is to report and inform readers of the facts of a newsworthy occurrence. This finding is overbroad and will sweep under the First Amendment's protection defamatory statements, specifically those accusing individuals of racism, that are couched as "opinions." In today's knee-jerk, reactionary political climate, publicizing that someone or something is racist is certain to become more commonplace, and private individuals should be protected from having such accusations publicized about them under a veil of factual authority masquerading as "opinion." The question of whether the statements were defamatory is supported by evidence in the record lending a factual basis to Petitioners' arguments, creating a dispute that must be resolved by the factfinder. The Court of Appeals' opinion should be reversed, and clarity provided addressing under what circumstances a publicized accusation of racism could be defamatory, regardless of whether it is presented as an "opinion" piece. Neither the trial court

nor the Court of Appeals appropriately considered the evidence offered by Petitioners proving that they are not racist in light of the summary judgment standard.

III. UNDER THE SUMMARY JUDGMENT STANDARD, THERE IS MORE THAN A MERE SCINTILLA OF EVIDENCE DEMONSTRATING THAT PETITIONERS SUFFERED INJURY TO THEIR REPUTATIONS, EMBARRASSMENT, HUMILIATION, AND MENTAL ANGUISH.

Next, the opinion contains an error as to whether the record contains evidence of general damages arising from injury to the Petitioners' reputations. A private-figure plaintiff involved in an issue of public controversy may produce evidence of general damages to show actual injury. *Erickson v. Jones Street Publishers, LLC*, 368 S.C. 444, 466, 629 S.E.2d 653, 665 (2006). General damages may include "***injury to reputation***, mental suffering, ***hurt feelings***, and other similar types of injuries [that] are incapable of definite money valuation." *Holtzscheiter v. Thomson Newspapers, Inc.*, 332 S.C. 502, 510 n.4, 506 S.E.2d 497, 502 n.4 (1998) (emphasis added). Furthermore, actual injury "is not limited to out-of-pocket loss. Indeed, the more customary types of actual harm inflicted by defamatory falsehood include impairment of reputation and standing in the community, ***personal humiliation***, and ***mental anguish and suffering***." *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 350, 94 S. Ct. 2997, 3012 (1974) (emphasis added). Petitioners have pointed to the following testimonial evidence in the record showing that they were embarrassed or humiliated, and that their reputations were injured:

> Q. Okay. What damages or injury do you allege to have incurred as a result of this article?
>
> A. Can you define damages and injury for me?
>
> Q. I –
>
> A. I'm not sure I –
>
> Q. Okay. So I – I need you to tell me what –

A. What has come as a result?

Q. What – what happened to you, what – what are you seeking redress for?

A. Okay. So we can start in many ways. First, my peers and fellow classmates think lower of me.

Q. Can you – let's stop one second. Well, no, actually, you go ahead. Keep going.

A. Okay. My peers and classmates think lower of me. They call my teammates and I racist. I can't determine if they were joking or not. How am I – I faced harassment for weeks, still face harassment. Faced harassment in spring - the spring semester as part of the soccer team.

I've had other professionals – I've had professors – a professor in particular, my thesis advisor at the College of Charleston, talk to me about it, he thought what we were doing was questionable, and so I have to face that in every – in every situation.

Two weeks – not even two weeks ago, last week at work, a co-worker of mine is a teacher at Cane Bay High School, was talking about that – was talking about Academic Magnet, not knowing that I went to Academic Magnet, not knowing that I went – was on the football team, saying, you know, at least – "At least we're not smashing watermelons and being racist," and I – I have to defend that, like I can't let my school be – or my teammates be portrayed that way. And so having that – that idea surround your school and being defamed in that way is a damage.

I have friends in North Carolina who, like I said earlier, were texting me about this saying, "Is this true," because they see on the news, you know, these – these allegations, and so I have to defend that in other states.

Talking about colleges, so in my pre-admission decision interview with Columbia, I'm asked that question. How do I defend that? Like I shouldn't have to defend that. That shouldn't be associated with me. Any college could look that up. It came up immediately. Look up Academic Magnet High School. I have football on my extra curricular activities as part of my common application.

In my interview with UNC Chapel Hill, me and two people, they're asking me about this incident. Who is to say – I didn't get accepted into Columbia. I didn't get the scholarship from USC. That's a $30,000 scholarship. Who's to say that's not why. Because they could think it speaks to my character when really it doesn't.

***

Q. Well, tell me how your reputation was damaged.

A. Again, because of false statements made by Lou Martin –

Q. I understand why. I'm asking how.

A. - that were published, even though they found no racial reason during the interview for the celebration, were published and, in my opinion, were defamatory. And because of that, I mean, I was told by Lou Martin in this letter, No. 1, that I was being terminated from my position as head coach and basketball coach, that I was not allowed to contact any parents or players, that I was not allowed to coach for CCSD ever again, and that I was not allowed to set foot on the Academic Magnet campus without permission. And these false reports depicted me as a racist, damaged my reputation, it caused public humiliation, emotional distress, depression.

What's even more depressing is that my grandchildren or anyone else can now just click on the Internet and read all about it. There were some remarks made in the city paper that damaged my reputation and our team's reputation, remarks that were very inappropriate and very ugly, to be honest.

***

Q. Can you tell me today sitting here the name of anyone you know that thinks less of you today as a result of these events?

A. I would say yes.

Q. Tell me their names and their addresses, please.

A. I don't know the name, but the – one of the assistant coaches at North Charleston High School this past season, after the game was over that we won 19 to nothing, we were going through the line exchanging handshakes, and according to two of our assistant coaches, one of the North Charleston coaches refused to shake hands with us and stated that, "We do not have any respect for you-all because of what happened last year."

(App. pp. 466-468, 556-558, 565; *see also* App. pp. 400, 440).

The Court of Appeals found that evidence the Petitioners felt more "self-conscious" was not sufficient to show that they had suffered general damages, citing *Murray v. Holnam*, 344 S.C. 129, 452 S.E.2d 743 (Ct. App. 2001), for the proposition that the focus of defamation is not on the

hurt to the defamed party's feelings. However, the cited proposition from *Murray* was not referring to general damages. In fact, the court had previously addressed in its opinion that general damages include "hurt feelings" and other types of injury that are incapable of monetary valuation. (App. p. 1057). Regardless, a full reading of the quoted testimony reveals that Petitioners not only felt "self-conscious" about the defamatory accusations, but they also experienced mental pain and suffering: "It doesn't feel good to be called a racist when you're not." (App. p. 400). General damages by definition include hurt feelings, embarrassment, and humiliation and encompass this type of harm.

Under the summary judgment standard, Petitioners only had to produce a mere scintilla of evidence of actual injury, with all inferences drawn in the light most favorable to Petitioners. In finding that Petitioners have not produced any evidence of general damages, the court misapplied defamation law and the summary judgment standard to the Petitioners' offered evidence. Thus, the court's decision should be reversed to properly apply the summary judgment standard to the damages evidence offered by Petitioners, with all inferences resolved in their favor.

IV. A REASONABLE JURY COULD FIND THAT THE *CITY PAPER*'S DEFAMATORY STATEMENTS CONCERNING THE AMHS FOOTBALL TEAM COULD BE UNDERSTOOD TO REFER TO THE INDIVIDUAL MEMBERS OF THE TEAM.

Fourth, the Court of Appeals erred in finding that the statements could not be "of and concerning" the individual students because the defamatory statements could not reasonably be understood to refer to the individual members of the AMHS football team. As noted in the court's opinion, the general rule is that an individual member of a group may not maintain an action for defamation of the group. *Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 377, 9 S.E.2d 796, 800 (1940). However, individual members of a small group may maintain a defamation action for false statements made about the group as a whole. *Holtzscheiter*, 332 S.C.

at 514, 506 S.E.2d at 504. The rationale behind this exception to the general rule is that in a small group, a defamatory statement about the group may be reasonably understood to refer to the individual members. *Evans v. Chalmers*, 703 F.3d 636, 659-60 (4th Cir. 2012). The question of whether a statement is "of and concerning" an individual member of a group is a jury issue. *Holtzscheiter*, 332 S.C. at 514, 506 S.E.2d at 504.

Petitioners presented evidence that the Academic Magnet football team only had 28 players. (App. p. 990). The entire team participated in the post-game celebrations. The defamatory statements contained in the articles at issue referred to the entire team. The Court of Appeals based its finding on the fact that the defamatory statements did not single out any members of the team or include their pictures. These findings are irrelevant to the appropriate analysis, as the proper question for the Court of Appeals to have considered was whether the football team was small enough such that any defamatory statements about the team would be ascertainable to the individual members. The Court did not engage in any such analysis in its opinion.

The cases cited by the court in support of its finding all refer to groups much larger in size than the football team at issue. *See Hospital Care Corp. v. Commercial Cas. Ins. Co.*, 194 S.C. 370, 9 S.E.2d 796 (1940) (defamatory statements were made about "small insurance companies"); *Burns v. Gardner*, 328 S.C. 608, 493 S.E.2d 356 (Ct. App. 1997) (defamatory statements were about "blind people"). Conversely, in the only case Petitioners could find discussing the defamation of a sports team as a unit, the Supreme Court of Oklahoma found that an individual member of the Oklahoma University football team, a much larger group than the Academic Magnet football team, could pursue a defamation claim even though the defamatory statements only referred to the football team in general and not the individual player. *See Fawcett Publ'ns, Inc. v. Morris*, 377 P.2d 42 (Okla. 1962). It should be left to a jury to decide whether the statements

accusing the entire Academic Magnet football team of being racist and participating in racist rituals were "of and concerning" the individual members of the team, in light of the fact that the team only had 28 members. *See Wilhoit v. WCSC, Inc.*, 293 S.C. 34, 39, 358 S.E.2d 397, 400 (Ct. App. 1987) ("Whether a written defamatory statement refers to a particular plaintiff, normally, is a question of fact for a jury.").[4]

V. COACH WALPOLE IS NOT A PUBLIC OFFICIAL, AS HE DOES NOT HAVE SUBSTANTIAL RESPONSIBILITY FOR OR CONTROL OVER THE CONDUCT OF GOVERNMENTAL AFFAIRS.

Fifth, the Court of Appeals erred when it affirmed the trial court's conclusion that Coach Walpole is a public official for the purposes of a defamation action.[5] The question of whether a high school football coach is a public official is a novel issue of state law. The determination of whether the plaintiff in a defamation action is a private figure, public figure, or public official is for the court.[6] *Erickson*, 368 S.C. at 468, 629 S.E.2d at 666. Public officials are prohibited from recovering damages for defamation related to their official conduct unless they can prove that the defamatory statements were made with actual malice. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80, 84 S. Ct. 710 (1964).

This higher fault requirement for public officials is based on the following two concepts: "first, a strong interest in debate on public issues, and, second, a strong interest in debate about ***those persons who are in a position significantly to influence the resolution of those issues***." *Rosenblatt v. Baer*, 383 U.S. 75, 85, 86 S. Ct. 669 (1966) (emphasis added). "[T]he 'public official' designation applies at the very least to those among the hierarchy of government employees who

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[4] The question of whether the statements were "of and concerning" Petitioners does not apply to Coach Walpole, who was individually named in the defamatory articles.

[5] Petitioners have maintained that Coach Walpole is a private figure, preserving this issue for review. (App. p. 986).

[6] The Court of Appeals did not address whether Coach Walpole is a public figure.

have, or appear to the public to have, ***substantial responsibility for or control over the conduct of governmental affairs***." *Id.*

The Court of Appeals has previously determined that an assistant principal is not a public official for the purposes of a defamation claim. *See Goodwin*, 347 S.C. at 45, 552 S.E.2d at 327. It is difficult to square how a high school football coach can be a public official when an assistant principal is not. The idea that school administrators and coaches are not public officials finds favor amongst the decisions of other jurisdictions. *See Moss v. Stockard*, 580 A.2d 1011, 1029-1030 (D.C. Cir. 1990) ("[T]he office of coach of a basketball team at a public university might inherently attract scrutiny and generate public interest . . . however, any such interest would not result, even in part, from the perception or reality that the coach had 'substantial responsibility for or control over governmental affairs . . . .'"); *Verity v. USA Today*, 164 Idaho 832, 842-43, 436 P.3d 653, 663-64 (2019) (finding that a public school coach is not a public official because they do not hold a position of persuasive power and influence); *McGuire v. Bowlin*, 932 N.W.2d 819, 823-28 (Minn. 2019) ("[T]o support the conclusion that someone is a public official, his or her duties must relate to the core functions of government, such as safety and public order . . . coaching duties are ancillary to core functions of government; put simply, basketball is not fundamental to democracy."); *O'Connor v. Burningham*, 165 P.3d 1214, 1217-1221 (Utah 2007) ("The policies and actions of the coach of any high school athletic team does not affect in any material way the civic affairs of a community . . . ."); *see also Ellerbee v. Mills*, 262 Ga. 516, 422 S.E.2d 539 (1992) ("In our view, under normal circumstances, a principal simply does not have the relationship with government to warrant 'public official' status under *New York Times*.").

Coach Walpole, as a government employee, did not attempt to control public policy or opinion. He did not exert control over the conduct of government affairs. The Court of Appeals

cited two Supreme Court of South Carolina decisions to support its finding that a football coach is a public official.[7] However, the issue of whether or not a school board member or trustee was a public official was not before the Court in either case, and the Court did not engage in an analysis or hold that school administrators are public officials. Thus, the Court's statements as to the status of school administrators in both cases was nonbinding dicta. The proper analysis asks whether the government employee had substantial responsibility for or control over the conduct of governmental affairs. Since Coach Walpole does not have a significant and controlling relationship with any core government functions, he is not a public official under *New York Times*, and he does not have to demonstrate actual malice to prevail on his defamation claim.[8]

VI. EVEN IF COACH WALPOLE IS A PUBLIC OFFICIAL, SUMMARY JUDGMENT WAS IMPROPER BECAUSE HE DEMONSTRATED ACTUAL MALICE THROUGH CLEAR AND CONVINCING EVIDENCE.

Finally, the court's decision did not fully consider the entire record of evidence when finding that Coach Walpole, as a public official, did not demonstrate actual malice. Actual malice may be present "where one fails to investigate and there are obvious reasons to doubt the veracity of the [information]." *Elder v. Gaffney Ledger*, 341 S.C. 108, 114, 533 S.E.2d 899, 902 (2000). The two *City Paper* articles which labeled the Petitioners and their celebration ceremony as racist were published on October 21, 2014, and October 30, 2014. (App. pp. 602, 606). Yet, the same

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[7] *Sanders v. Prince*, 304 S.C. 236, 403 S.E.2d 640 (1991); *Scott v. McCain*, 272 S.C. 198, 250 S.E.2d 118 (1978).

[8] In its opinion, the Court of Appeals also noted that Coach Walpole was a public official because he interacted with parents and participated in newspaper and television interviews. (App. p. 1063). Whether Coach Walpole participated in interviews is a factor to consider when determining if an individual is a public figure, not a public official. The Court of Appeals did not fully recognize or delineate the difference between a public figure and a public official, and its meshing of the two concepts in finding that Coach Walpole was a public official was in error. Since Coach Walpole is not a public official, the Court of Appeals' decision should be reversed so that his status as a public figure or private figure may be properly determined.

day the first article was published, the Respondent published an additional article which included assertions by members of the Academic Magnet community, some of whom had close ties with the football program, stating that Coach Walpole, the team members, and the celebration ceremony were not racist. (App. pp. 610-611).

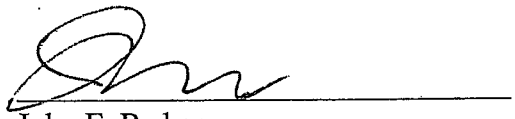
When considered in conjunction with the facts that Superintendent Nancy McGinley's October 21, 2014, press conference indicated that the celebration was not racist, that Haire watched this conference by a live television broadcast prior to the publications, and that Haire considered Superintendent McGinley to be "completely honest and trustworthy" to the extent that he had "no reason to doubt the truth of the statements she made during the press conference," the only reasonable inference is that Haire had multiple obvious reasons to doubt the veracity of his erroneous conclusion that the team was racist and engaged in racially motivated celebrations. (App. pp. 614-616). When viewed in the light most favorable to Petitioners, the most reasonable conclusion is that Haire was cognizant of multiple sources in the Academic Magnet community, at least one of whom he trusted implicitly, who asserted that the ceremony, students, and football coaching staff were not racist or racially motivated. He was aware of this information prior to publishing his accusations of racism. Not only did Haire fail to investigate his assertions, he had obvious reasons, primarily the indications of Superintendent McGinley, to doubt the veracity of his claims. The Court of Appeals' opinion should be reversed since, in the light most favorable to Petitioners, there is clear and convincing evidence that the accusations of racism were published with actual malice, as Haire had obvious reasons to doubt the truth of his accusations of racism.

CONCLUSION

For these and all other reasons put forth to the Court of Appeals and trial court, viewed in a light most favorable to Petitioners, the Court of Appeals' decision affirming the trial court's granting of summary judgment to Respondent should be reversed.

Respectfully submitted,

PETERS, MURDAUGH, PARKER,
ELTZROTH & DETRICK, P.A.



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ATTORNEYS FOR PETITIONERS

April 16, 2020
Hampton, South Carolina

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Jean H. Toal, Circuit Court Judge

Appellate Case No. 2016-002525

Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., A Minor; and Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., A Minor, Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., A Minor; Adam Olsen Ackerman; and A.E.P., III, ... Plaintiffs,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company, and Jones Street Publishers, LLC, ... Defendants,

And

Eugene Walpole, ...Plaintiff,

v.

Charleston County School District, Kevin Clayton, Axxis Consulting Company, and Jones Street Publishers, LLC, ... Defendants,

Of Whom Eugene Walpole, Amy Garrard and Lee Garrard, Guardians Ad Litem for R.C.G., A Minor; and Dean Frailey and Kathryn Frailey, Guardians Ad Litem for C.F., A Minor, Richard Nelson and Cheryl Nelson, Guardians Ad Litem for D.G.N., A Minor; Adam Olsen Ackerman; and A.E.P., III, are the ..... Petitioners,

And

Of Whom Jones Street Publishers, LLC is the ..... Respondent.

CERTIFICATE OF SERVICE

This is to certify that I, ***Megan C. Davis***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Petitioners, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within ***Petition for a Writ of Certiorari*** to:

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This is to certify that I, ***Megan C. Davis***, with the Law Firm of Peters, Murdaugh, Parker, Eltzroth & Detrick, P.A., Attorneys for the Petitioner, have this date mailed via the U.S. Postal Service with first class postage prepaid, a true and correct copy of the within ***Petition for a Writ of Certiorari*** to:

The Honorable Jenny Abbott Kitchings
South Carolina Court of Appeals Clerk of Court
Post Office Box 11629
Columbia, SC 29211-1629

Megan C. Davis

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April 16, 2020
Hampton, South Carolina

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The Honorable Daniel E. Shearouse
S.C. Supreme Court Clerk of Court
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Re: ***Eugene Walpole, et al. v. Charleston County School Dist, et al.***
Consolidated Civil Action No.: 2015-CP-10-2389
Appellate Case No.: 2016-002525
Opinion No. 5691 (S.C. Ct. App. Filed November 6, 2019)

Dear Mr. Shearouse:

Please find enclosed our firm's check in the amount of $250.00 for the filing fee for the Petition for Writ of Certiorari and Appendix in the above-referenced matter. The Petition for Writ and Appendix (3 Volumes) have been uploaded for filing.

By copy of this letter, the Petition for Writ of Certiorari and Appendix are being served on all counsel of record and we are filing a copy of the Petition and Proof of Service with the S.C. Court of Appeals.

If you have any questions, please let us know.

With kind regards, I am

Sincerely,

Megan Davis

Megan C. Davis
Paralegal to William F Barnes, III

/mcd
Enclosures as stated

cc: Wallace K. Lightsey, Esquire
Meliah Bowers Jefferson, Esquire
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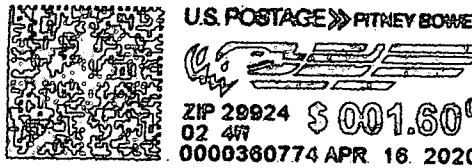
SC Court of Appeals



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