

THE STATE OF SOUTH CAROLINA  
In The Supreme Court

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APPEAL FROM ANDERSON COUNTY  
Court of Common Pleas  
R. Keith Kelly, Circuit Court Judge

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**May 18 2020**

S.C. SUPREME COURT

Opinion No. 2017-000267 (S.C. Ct. App. filed January 15, 2020)

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CARLA DENISE GARRISON AND CLINT GARRISON,  
*Petitioners-Respondents,*

v.

TARGET CORPORATION,  
*Respondent-Petitioner.*

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**REPLY IN FURTHER SUPPORT OF RESPONDENT-PETITIONER'S  
PETITION FOR A WRIT OF CERTIORARI**

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Lewis F. Powell III  
George P. Sibley III  
HUNTON ANDREWS KURTH LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219  
Telephone: (804) 788-8200  
Facsimile: (804) 788-8218

John C. Moylan III (S.C. Bar # 11227)  
Henry L. Parr Jr. (S.C. Bar # 4340)  
Wallace K. Lightsey (S.C. Bar # 6476)  
WYCHE, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: (803) 254-6542  
Facsimile: (803) 254-6544

Knox L. Haynsworth III  
(S.C. Bar # 010275)  
BROWN, MASSEY, EVANS, McLEOD &  
HAYNSWORTH, LLC  
Post Office Box 2464  
Greenville, South Carolina 29602  
Telephone: (864) 271-7424  
Facsimile: (864) 242-6496

*Counsel for Respondent-Petitioner*

Other Counsel of Record:

Joshua T. Hawkins (S.C. Bar # 78470)  
Helena L. Jedziniak (S.C. Bar # 100825)  
HAWKINS & JEDZINIAK, LLC  
1225 South Church Street  
Greenville, South Carolina 29605  
Telephone: (864) 275-8142  
Facsimile: (864) 752-0911

*Counsel for Petitioners-Respondents*

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## ARGUMENTS

This case presents three important issues warranting review because the Court of Appeals decision (1) substantially departs from over six decades of this Court's prior cases requiring clear proof to establish constructive notice, (2) incorrectly disposes of a novel procedural issue over a dissenting opinion, and (3) announces an unprecedented method for assessing the constitutionality of a punitive damages award under the circumstances of the case. *See* Target's Pet. for a Writ of Certiorari at 9-23; Rule 242(b), SCACR. The Garrisons cannot dispute that these issues deserve review, let alone defeat them on their merits. So they turn instead to hyperbole and distraction—dwelling on irrelevant evidence and matters of trial strategy, and invoking uncontroversial litigation principles that have nothing to do with Target's arguments.

On Target's first question presented, despite a "mountain" of distracting testimonial and circumstantial evidence, the Garrisons cannot overcome the simple fact that no evidence places the discarded syringe in Target's parking lot at any time prior to the incident. The Garrisons' constant refrain about the deferential standard of review for factual findings thus rings hollow because the fact question of longevity *never arises* when the evidence does not suggest any particular period of time. The jury could only speculate about whether the syringe had been in the lot long enough to confer constructive notice, contravening settled precedent.

On the second question, the Garrisons fail to even confront the issue presented—whether the damages cap constitutes an affirmative defense. Instead, they tacitly assume that the cap is an affirmative defense and proceed directly to

the basic principle that defendants must plead affirmative defenses. This misses the point. In all events, the Garrisons more or less concede that this issue merits review. *See* Garrisons' Return to Target's Pet. for a Writ of Certiorari at 2.

And on the third question, the Garrisons again fail to confront Target's arguments, repeating the same principles Target outlined in its petition but pointing to no valid evidence of potential harm bringing this case in line with this Court's prior holdings.

In short, the Garrisons offer no reason why this Court should hesitate in granting certiorari on each of the three issues that Target presents.

**I. This Court should review the Court of Appeals' decision because it expands South Carolina's well-settled limits on premises liability.**

The evidence adduced at trial showed that Denise Garrison hurt her hand by swatting a syringe away from her daughter in the parking lot of Target's Anderson store. Target did not put the syringe there and lacked actual knowledge of its presence. So to make Target liable, the Garrisons had to show Target had constructive notice of the syringe, and to do that, they had to offer some evidence establishing that the syringe had been in the parking lot "at any particular time prior to" the injury. *See Wimberly v. Winn-Dixie Greenville*, 252 S.C. 117, 121-22, 165 S.E.2d 627, 629 (1969). They offered no cognizable evidence to meet that burden, so the jury could only speculate. Settled precedent of this Court bars judgment in favor of the Garrisons on this record. The Court should grant certiorari to review the contrary judgment below.

For more than half a century, South Carolina law has required a plaintiff bringing a premises liability claim based on constructive notice to show that the dangerous condition existed “for a *sufficient length of time* that the storekeeper would or should have discovered and removed it had the storekeeper used ordinary care.” *Gillespie v. Wal-Mart Stores, Inc.*, 302 S.C. 90, 91, 394 S.E.2d 24, 25 (Ct. App. 1990) (emphasis added); see *Hunter v. Dixie Home Stores*, 232 S.C. 139, 143-44, 101 S.E.2d 262, 264-65 (1957). And throughout those years, courts have reversed verdicts when the jury could do no more than speculate as to how long the hazard might have existed. See, e.g., *Milligan v. Winn-Dixie Raleigh, Inc.*, 273 S.C. 118, 254 S.E.2d 798 (1979) (reversing jury’s verdict based on insufficient proof of constructive notice); *Anderson v. Winn-Dixie Greenville, Inc.*, 257 S.C. 75, 184 S.E.2d 77 (1971) (same); *Wimberly*, 252 S.C. at 117, 165 S.E.2d at 627 (same); *Wintersteen v. Food Lion, Inc.* (“*Wintersteen I*”), 336 S.C. 132, 518 S.E.2d 828 (Ct. App. 1999) (same).

In their Return, the Garrisons do not object to the long line of cases establishing South Carolina’s anti-speculation principle, nor do they question its applicability to a claim like theirs. Instead, they assert that “the jury ordinarily decides [the] sufficient-length-of-time question,” Garrisons’ Return at 8 (quotation omitted), and attempt to hide behind the deferential standard of review for factual findings, *id.* at 1, 7. To be sure, the question of whether a particular period of time is long enough to give rise to constructive notice constitutes a fact question. But the Garrisons miss the point by focusing on the standard of review because the fact

question of longevity *never arises* if the evidence does not suggest any particular period of time. Under those circumstances, settled South Carolina law bars a finding of constructive notice, because the jury cannot be left to speculate. *See Gillespie*, 302 S.C. at 92, 394 S.E.2d at 25.

Although the Garrisons tout various pieces of evidence as “proof” of a length of time, none of their evidence allowed the jury to reasonably infer any particular timeframe during which the syringe appeared in the parking lot. This Court should grant review to preserve its long-standing mandate that a jury cannot speculate about how long a hazard may have existed.

**A. Witness Testimony Cannot Cloak Conjecture as Proof of a Period of Time.**

The Garrisons cite the testimony of Clint, Denise, and Target’s manager Shelby Brintnall to establish proof of constructive notice. Garrisons’ Return at 8-9. This testimony, they claim, “is more than what has been deemed sufficient in prior cases.” *Id.* at 9. Not so.

Initially, the Garrisons cite this testimony out of context. Before Clint guessed that the syringe had to have been in the parking lot somewhere between two days and two months, he admitted that he did “not know how it got there.” (R. p. 418, line 5.) And he never testified that he actually observed the syringe in the parking lot before the accident. Moreover, Denise admitted she “could only speculate what happened.” (R. p. 425, lines 19-23.) And Brintnall explicitly disclaimed knowing how old the syringe was, when it had appeared in the parking lot, or how it had arrived there. (*See, e.g.*, R. p. 215, lines 4-6.)

More importantly, none of that testimony breaks the threshold of speculation. As their own lawyer conceded to the trial court, Clint and Denise Garrison did not know how long the syringe had been there. (See R. p. 512, lines 3-7 (“The defense keeps getting hung up on ‘you don’t know where this needle came from.’ Of course they don’t. *You don’t know how long it’s been there.*’ Of course they don’t.” (emphasis added)).) Guesswork offered as witness testimony is still speculation.

The “recurring condition” cases the Garrisons cite in support of their position fail to alter that conclusion. For example, the Garrisons isolate one remark from *Fickling v. City of Charleston*, in which a public works director said that a recurring sidewalk “condition ‘had probably been that way for a while,’” and analogize that statement to their own vague testimony as sufficient proof of constructive notice. Garrisons’ Return at 9 (quoting *Fickling*, 372 S.C. 597, 610 n.34, 643 S.E.2d 110, 117 n.34 (Ct. App. 2007)). But the public works director in *Fickling* had good reason to suspect a hole had been there “for a while,” because defects in sidewalks were a recurring problem that the City had faced previously. See *Fickling*, 372 S.C. at 608, 643 S.E.2d at 116. In contrast, there is no evidence whatsoever suggesting any injuries or recurring hazards in Target’s lot before Denise’s injury in May 2014.<sup>1</sup>

**B. “Appearance” Evidence Does Not Suggest Any Particular Length of Time.**

The Garrisons also rely on evidence that the syringe was “dirty,” suggesting that such an appearance proves that the syringe had been in the parking lot long

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<sup>1</sup> This important distinction also differentiates this case from *Major v. City of Hartsville*. See 410 S.C. 1, 3, 763 S.E.2d 348, 350 (2014) (reversing summary judgment when evidence suggested the defendant was aware of the hazard and undertook efforts to prevent it “prior to petitioner’s injury” (emphasis added)).

enough to confer constructive notice. There is no dispute about the syringe's appearance. (*See, e.g.*, R. p. 214, line 24.) But, as Target emphasized in its petition, there is no evidence that links that trait to any period of time in Target's lot.

The Garrisons fail to comprehend this subtle-but-important distinction, assuming that because the syringe was dirty, it must have been in the parking lot that night long enough to be found. But they did not offer evidence at trial that would prove that point—they presented no evidence suggesting how long it might take an object to attain such appearance or, for that matter, why the syringe must have taken on that appearance in Target's parking lot as opposed to a different location. Thus, standing alone, the Garrisons' appearance evidence is insufficient to establish any particular length of time.<sup>2</sup>

As Target explained in its petition, *Anderson*—a premises liability case applying with full force here—bolsters that conclusion. *See* Target's Pet. at 13-14. *See Anderson*, 257 S.C. at 80, 184 S.E.2d at 79. In fact, the same logic was employed by the Fourth Circuit in an application of South Carolina law three years before *Anderson*. *See Joye v. Great Atl. & Pac. Tea Co.*, 405 F.2d 464 (4th Cir. 1968). In *Joye*, the Fourth Circuit reversed the jury's verdict for a plaintiff who slipped on a banana peel in a supermarket. *Id.* at 464. The court characterized the plaintiff's proof of constructive notice as follows:

Plaintiff offered no direct evidence below as to how long the banana had been in the floor before the accident. The circumstantial evidence

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<sup>2</sup> Relatedly, there is no basis in the trial record to relate the appearance of the syringe to the appearance of items where the syringe landed *after* Denise swatted it out of her daughter's hand.

taken most favorably to the plaintiff shows that the floor may not have been swept for as long as 35 minutes. No one saw the banana until after Joye fell on it. It was then described as dark brown in color, having dirt and sand on it. There was dirt on the floor near the banana, and the banana was sticky around the edges. *From this evidence we think the jury could not tell whether the banana had been on defendant's floor for 30 seconds or 3 days.*

*Id.* at 465 (emphasis added). Such evidence could not allow the jury to determine “how long (even [in] the broadest range of approximation) the banana may have been on the floor,” thus requiring reversal. *Id.* at 466.

The Garrisons’ case fares no better. They offered no direct evidence placing the syringe in Target’s parking lot before the incident.<sup>3</sup> At best, their circumstantial evidence suggested that the syringe was dirty, but that trait offered no reasonable inference as to how, when, or where that wear-and-tear occurred. The jury could not tell whether the syringe had been in Target’s parking lot for two minutes or two weeks. That is not enough to give rise to constructive notice in South Carolina. *See Wintersteen I*, 336 S.C. at 136, 518 S.E.2d at 830.<sup>4</sup>

### **C. The Garrisons’ Spoliation Argument is Irrelevant.**

Because the syringe’s presence at trial would have established only that the syringe looked dirty—a point not in dispute—the Garrisons’ focus on spoliation likewise misses the point. Thus, this case is not like a medical malpractice case

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<sup>3</sup> This remains true despite the misleading labels the Garrisons use in their Return. *See Moriarty v. Garden Sanctuary Church of God*, 341 S.C. 320, 337, 534 S.E.2d 672, 680 (2000) (defining direct and circumstantial evidence).

<sup>4</sup> *Wintersteen I* refutes the Garrisons’ claim that none of the cases cited in Target’s petition had any “evidence at all about timing,” Garrisons’ Return at 10. *See also Anderson*, 257 S.C. at 78-79, 184 S.E.2d at 78 (rejecting an inference of constructive notice from employee’s statement that “we should have had this place cleaned up but we just hadn’t got around to it yet”); *Hurst v. Home Depot U.S.A.*, No. CA-99-1334-11, 2000 WL 33222911, at \*3 (D.S.C. June 20, 2000).

where the defendant hospital lost critical records cataloging the decedent's vital signs, *Stokes v. Spartanburg Reg'l Med. Ctr.*, 368 S.C. 515, 521, 629 S.E.2d 675, 678-79 (Ct. App. 2006), or a slip-and-fall case where the defendant intentionally failed to gather witness statements and destroyed written notes related to the incident, *Schweikert v. Franciscan Health Sys.-W.*, No. 36806-6-II, 2009 WL 826227, at \*1 (Wash. Ct. App. 2009) (unpublished) (applying foreseeability standard for constructive notice not recognized in South Carolina).

Under South Carolina law, the plaintiff “must be prepared to make a showing that the document or evidence might reasonably have supported whatever presumption is being requested of the fact finder.” *Pringle v. SLR, Inc. of Summerton*, 382 S.C. 397, 405, 675 S.E.2d 783, 787 (Ct. App. 2009). The Garrisons failed to make that showing, either at trial or on appeal. And for good reason—the physical syringe would have offered nothing the photographs or witness testimony left out. The trial record shows that the syringe was dirty and weathered. Those traits say nothing about where that weathering occurred or how long the syringe had been in Target's parking lot.

**D. The Garrisons' Remaining Evidence Invokes the Rejected “Foreseeability” Standard for Constructive Notice.**

The Garrisons' remaining arguments for constructive notice focus on Target's cleaning practices and, in particular, its alleged inability to find and remove other “dangerous objects” in its parking lot two years later. That evidence does not speak to the issue presented, because it does not show how long the syringe was in the lot.

South Carolina courts have rejected evidence of ineffective cleaning and prevention measures as proof of constructive notice of a specific hazard. *See Anderson*, 257 S.C. at 80, 184 S.E.2d at 79; *Wimberly*, 252 S.C. at 122, 165 S.E.2d at 629. Whether Target employed best practices in cleaning and maintaining its parking lot does not suggest how long the syringe was actually in Target’s lot. Instead, the Garrisons’ arguments regarding cleaning practices boil down to the contention that Target should have *foreseen* that an injury would occur if it did not take better care of its lot.<sup>5</sup>

But South Carolina cases make clear that foreseeability does not establish constructive notice. *See Wintersteen v. Food Lion, Inc. (“Wintersteen II”)*, 344 S.C. 32, 35-36, 542 S.E.2d 728, 730 (2001). As this Court explained in rejecting the rule of foreseeability: “To require shopkeepers to anticipate and prevent the acts of third parties is, in effect, to render them insurers of their customers’ safety. This is simply not the law of this state.” *Id.* at 37, 542 S.E.2d at 731 (citation omitted).

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<sup>5</sup> As discussed above, the absence of proof that hazards appeared in Target’s parking lot *before* Denise’s injury differentiates this case from *Major*, *Campbell*, and *Ford*, which the Garrisons claim in support of their arguments. *See Major*, 410 S.C. at 3, 763 S.E.2d at 350; *Campbell v. S.C. State Highway Dep’t*, 244 S.C. 186, 191, 135 S.E.2d 838, 840 (1964) (considering evidence that showed “there had been *previous* washouts” and that the State was aware *before* the incident that “during periods of heavy rain the drainage system was insufficient to take care of the excess water” (emphasis added)), *overruled on other grounds by McCall v. Batson*, 285 S.C. 243, 329 S.E.2d 741 (1985); *Ford v. S.C. Dep’t of Transp.*, 328 S.C. 481, 489, 492 S.E.2d 811, 815 (Ct. App. 1997) (recognizing that testimony from an individual who warned a “road crew of the general problems of falling trees in the vicinity” *before* a tree fell was competent evidence).

The Garrisons did not show that any injuries occurred in Target’s parking lot before Denise’s, which might suggest recurring hazards in the parking lot.<sup>6</sup> Instead, they suppose that Target ought to have been on notice that its poor cleaning practices would lead to trouble, pointing only to a bolt, spring, and rod found in the parking lot two years after the incident to prove their point. But after-the-fact foreseeability is not the rule for constructive notice. The Garrisons’ insistence that Target did not employ adequate cleaning or maintenance practices distracts from their critical failure to show that the syringe had been in the parking lot long enough to be discovered in the use of ordinary care.

**E. Target Properly Objected to the Garrisons’ Constructive Notice Evidence at Trial.**

Because the Garrisons cannot point to any valid evidence addressing the syringe’s temporal duration in the lot, they resort to arguments about procedural waiver. They claim that “Target failed to lodge objections in the trial court to the mountain of evidence presented on constructive notice.” Garrisons’ Return at 18. But the trial record contradicts that misleading statement.

Target repeatedly objected to the Garrisons’ constructive notice evidence below. For example, mirroring the argument in its petition, Target’s motion for a

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<sup>6</sup> *Cf. Major*, 410 S.C. at 4, 763 S.E.2d at 350 (“Where a recurring condition is of such a nature as to amount to a continual condition, when coupled with other factors, the recurring condition may be sufficient to create a jury issue as to constructive notice.”). The Garrisons’ own discussion of *Major* illustrates how that case diverges from this one. Garrisons’ Return at 16. In *Major*, the defendant knew about problematic ruts in their parking lot and abandoned efforts to fix them. 410 S.C. at 3-4, 763 S.E.2d at 350. Here, the Garrisons presented no evidence that any injuries or recurring hazards occurred in Target’s parking lot before Denise’s injury in May 2014.

directed verdict emphasized that the Garrisons failed to prove constructive notice because their evidence did not place the syringe in the parking lot at any particular time before the incident. (See R. p. 497, line 14-p. 500, line 7; p. 502, line 23-p. 503, line 25; p. 514, line 12-p. 516, line 11.) As Target’s counsel explained, “To let the jury go decide based on the evidence that the plaintiffs have presented is rank speculation.” (R. p. 516, lines 4-6.) Then, after the jury returned its verdict in favor of the Garrisons, Target reasserted the constructive notice argument in its post-trial motion for judgment as a matter of law. (See R. p. 750-759; p. 812-816.) The cases the Garrisons cite on this point simply fail to apply. See Garrisons’ Return at 10.

Perhaps because the Garrisons misunderstand the nature of the issue Target presents, the “procedural problem” that they perceive conflates admissibility of evidence with its sufficiency. But Target does not contend that the Garrisons’ testimony or evidence was inadmissible.<sup>7</sup> Rather, even accepting the Garrisons’ proof, the whole evidentiary record remained legally deficient as to constructive notice because it never crossed the threshold beyond speculation and conjecture. See *Milligan*, 273 S.C. at 121, 254 S.E.2d at 800 (reversing jury’s verdict when the conclusion that the merchant had constructive notice “would be pure speculation”).

The Court should grant review on this issue to address the conflict with long-standing Supreme Court constructive notice precedent that the Court of Appeals’ decision creates.

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<sup>7</sup> The Garrisons’ citation to *Tucker v. Doe*, 413 S.C. 389, 405, 776 S.E.2d 121, 130 (Ct. App. 2015), therefore holds no water. See Garrisons’ Return at 9.

**II. This Court should grant certiorari to resolve the novel question of whether the statutory cap on punitive damages is an affirmative defense.**

Two members of the Court of Appeals panel, over a dissent, misapprehended several points of law in concluding that South Carolina’s statutory damages cap constitutes an affirmative defense. This Court should grant review to correct that erroneous conclusion. *See* Target’s Pet. at 16-21. The Garrisons hardly even dispute the sound reasons Target offers against classifying the cap as an affirmative defense. *See* Garrisons’ Return at 19-22. Indeed, they partially concede that this issue merits review. *See id.* at 2.

Instead of confronting the question that Target presents, the Garrisons stress that “affirmative defenses are forfeited if not timely asserted.” *Id.* at 1, 19. Target, of course, agrees with that basic litigation principle—but it fails to advance the Garrisons’ argument because the cap is not an affirmative defense. Had the legislature intended to require defendants to plead the punitive damages cap as an affirmative defense, it would have said so. Instead, it directed trial judges to apply the cap after the jury renders its verdict. *See* S.C. Code § 15-32-530(B). Moreover, unlike an affirmative defense, which addresses liability, the punitive damages cap leaves the plaintiff’s cause of action unaffected and merely limits the amount of damages a plaintiff may recover. These distinctions make the cap different in kind than the affirmative defenses listed by Rule 8(c) of the South Carolina Rules of Civil Procedure.<sup>8</sup>

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<sup>8</sup> Despite the Garrisons’ invocation of Rule 8(c), the rule, of course, fails to list the statutory punitive damages cap as an example of an affirmative defense.

In place of an affirmative argument for why section 15-32-530's cap on punitive damages should qualify as an affirmative defense, the Garrisons fall back on litigant conduct—specifically, that defendants routinely plead unnecessary defenses. Garrisons' Return at 21. Perhaps. But that does not answer the novel question presented here of whether the statutory cap must be pleaded as an affirmative defense. And if anything, that observation underscores why the Court should grant certiorari to address the question and clarify that defendants need not inefficiently plead the cap as a defense out of a sense of caution.

The Garrisons' fairness arguments also fail to address the affirmative defense question. And, in any case, section 15-32-530 provides clear notice of its restriction.<sup>9</sup> The cap applies to all civil actions, not just those involving certain defendants under certain factual scenarios. And the language of section 15-32-530 imposes a *mandatory* duty on the *trial court*—not the jury—to ensure enforcement of the cap when the punitive award exceeds the greater of \$500,000 or three times the compensatory award—regardless of whether the defendant raises the issue. *See* § 15-32-530(B). The Garrisons cannot reasonably claim surprise at the recovery limitation in the cap any more than they might claim surprise at the operation of the South Carolina Rules of Civil Procedure.

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<sup>9</sup> The Garrisons cite cases, mainly from the First and Fifth Federal Circuits, for support. *See* Garrisons' Return at 20. Of course, many other persuasive authorities support Target's position. *See, e.g., Zorrilla v. Aypco Constr. II, LLC*, 469 S.W.3d 143, 157 (Tex. 2015); *McGinnes v. Wesley Med. Ctr.*, 224 P.3d 581, 591 (Kan. Ct. App. 2010); *Anderson v. City of Milwaukee*, 559 N.W.2d 563, 569 (Wis. 1997); *Snyder v. City of Minneapolis*, 441 N.W.2d 781, 788 (Minn. 1989). That this issue has divided courts outside of South Carolina counsels in favor of review.

The Court should grant review to correct the Court of Appeals' fractured holding on this novel issue and clarify for South Carolina litigants that section 15-32-530's punitive damages cap is not an affirmative defense.

**III. This Court should grant certiorari to clarify that speculative “potential harm” cannot be used to augment actual damages when evaluating the constitutionality of a punitive damages award.**

The Court of Appeals relied on *Mitchell v. Fortis Ins. Co.*, 385 S.C. 570, 686 S.E.2d 176 (2009), and its discussion of “potential harm,” to reverse the trial court’s “specific conclusion” that the jury’s 45:1 punitive damages award violated due process. *Garrison v. Target Corp.*, 838 S.E.2d 18, 35 (S.C. Ct. App. 2020). But, as discussed in Target’s petition, because the Garrisons introduced no evidence at trial to support any potential harm, *Mitchell* simply fails to impact the analysis. The Court should review this issue to clarify that speculative considerations outside of the record cannot justify excessive punitive awards.

The Garrisons fail to refute Target’s main argument—that potential harm requires proof. Garrisons’ Return at 22-24. Target does not dispute that, as the Garrisons argue, potential harm *may* factor into the calculation of the punitive damages ratio. But plaintiffs must support potential harm with evidence adduced at trial. In *Mitchell*, for example, the plaintiff introduced expert testimony from a medical professional, who testified to the plaintiff’s likely health outcomes, a health care expert, who testified to the future health care costs, *and* an economist, who projected the total present value of treatment. 385 S.C. at 581-82, 686 S.E.2d at 182. Similarly, in *Austin v. Stokes-Craven Holding Corp.*, the case the Garrisons discuss to support their position, multiple experts testified to the potential safety

issues posed by a damaged truck. 387 S.C. 22, 38-42, 691 S.E.2d 135, 143-45 (2010). In light of the actual evidence of potential future harm presented to the juries in those cases, this Court found it appropriate to consider potential harm.

In contrast to the plaintiffs in *Mitchell* and *Austin*, however, the Garrisons produced absolutely no evidence showing that Denise might experience future harm. The Garrisons offer up the fact that Denise prophylactically took preventative medications, and that she submitted to periodic blood tests following the incident. Garrisons' Return at 23. But these examples speak to Denise's actual damages assessed at trial—rather than projected future damages. The Garrisons, like the plaintiffs in *Mitchell* and *Austin*, could have introduced expert testimony about the potential harm Denise might face as a result handling a discarded syringe. They did not. Instead, they play on imaginary consequences unsupported by anything in the record. Thus, the inclusion of potential harm in the due process calculation is inappropriate in this case.

The Court should grant review to reaffirm clear limits on punitive awards and clarify that the 45:1 ratio found in the jury's punitive verdict finds absolutely no support under South Carolina law.

### **CONCLUSION**

For the foregoing reasons, the Court should grant Target's petition for a writ of certiorari on each of the three issues it presents.

Respectfully submitted,

Lewis F. Powell III  
George P. Sibley III  
HUNTON ANDREWS KURTH LLP  
Riverfront Plaza, East Tower  
951 East Byrd Street  
Richmond, Virginia 23219  
Telephone: (804) 788-8200  
Facsimile: (804) 788-8218

s/John S. Moylan, III

John C. Moylan III (S.C. Bar # 11227)  
Henry L. Parr Jr. (S.C. Bar # 4340)  
Wallace K. Lightsey (S.C. Bar # 6476)  
WYCHE, P.A.  
807 Gervais Street, Suite 301  
Columbia, South Carolina 29201  
Telephone: (803) 254-6542  
Facsimile: (803) 254-6544

Knox L. Haynsworth III (S.C. Bar #  
010275)  
BROWN, MASSEY, EVANS, McLEOD  
& HAYNSWORTH, LLC  
Post Office Box 2464  
Greenville, South Carolina 29602  
Telephone: (864) 271-7424  
Facsimile: (864) 242-6496

*Counsel for Respondent-Petitioner*

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