THE STATE OF SOUTH CAROLINA
In the Supreme Court

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S.C. 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 SUPPORT OF TUOMEY REGIONAL MEDICAL CENTER

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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." *See* S.C. Code § 33-56-180(A). For purposes of this cap, the SCFA defines as a charitable organization as one that "*is exempt* from taxation pursuant to Section 501(c)(3)" of the Internal Revenue Code. *Id.* § 33-56-170(1) (emphasis added). 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 section 33-56-170(1) requires a trial court to conduct its own examination to determine if that organization "should be" exempt under section 501(c)(3) before an organization may benefit from the cap. Pet'r's Br. 19 n.47.

The question presented is:

Whether the Court of Appeals correctly interpreted section 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 begs this Court to reverse that decision. 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 section 501(c)(3) before the charity can be protected by this cap.

Myat is the one whose interpretation of section 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 section 501(c)(3). Federal law gives the IRS the authority to decide whether an entity "is exempt" under section 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 section 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 section 33-56-170(1) correctly. Its decision should therefore be affirmed.

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), which has been determined by the IRS to be tax exempt under section 501(c)(3). 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 section 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 section 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 section 501(c)(3).

Everyone agrees 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

* 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.

is "the text of the statute." *Id.* When the text of a statute is plain, that is the end of the analysis. *Id.*

Section 33-56-170 is short. The SCFA's cap in section 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 section 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 section 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 section 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 section 33-56-170 is straightforward. That section establishes two categories of entities: (1) those that are tax exempt under section 501(c)(3) and protected by the cap and (2) those that are not tax exempt under section 501(c)(3) and not protected by the cap. Because the IRS decides if an organization "is exempt" under section 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 section 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 brief to try to avoid the plain language of section 33-56-170(1). None is persuasive.

First, he subtly shifts from the statute's language of "is exempt" to "should be exempt." Pet'r's Br. 19 n.47. 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, section 33-56-170(1) says "is," not "should be." Because section 33-56-170(1)'s language of "is exempt" is plain, no more analysis is necesssary.

Second, Myat contends that the IRS does not police compliance sufficiently, so the courts must assume this responsibility. *See* Pet'r's Br. 14–15 & n.45. Again, Myat is asking this Court to rewrite the SCFA, giving courts the authority to decide whether organizations are charitable enough. Courts do not have the power to rewrite statutes. *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 at the state level. (Of course, there is the oversight at the federal level too.) This state-level

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. If Myat believes that the secretary of state does not do this enough (as he insisted in response to the amicus brief at the certiorari stage), there is a ballot-box solution, and he could campaign for someone running for that office who promised to crack down on supposedly bad-behaving charities. Or he could even run for secretary of state himself on this platform.

Third, Myat claims our courts, not the federal government, have traditionally determined if an organization was protected by charitable immunity. *See* Pet'r's Br. 15 & n.46, 21–22 (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 section 501(c)(3) status dispositively determines who the SCFA's cap protects.

Fourth, case law from other jurisdictions is unhelpful here. *See* Pet'r's Br. 21 (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'r's Br. 19–23. That is irrelevant under the plain language of section 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 a tax-exempt entity that is currently providing medical services.)

Sixth, Myat tries to differentiate "is exempt" in section 33-56-170(1) from "determined by the Internal Revenue Service to be a tax exempt organization" in section 33-56-20, the general definitions section for the SCFA. *See* Pet'r's Br. 10–14. The different phrasing must, Myat says, mean the General Assembly intended to define "charitable organization" differently in these two sections.

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

section 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. Myat focuses only on the 1994 amendment to the SCFA, *see* Pet'r's Br. 12–13, but looking back further makes plain that his argument misses the mark. 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 section 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 section 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, s*ee* 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 section 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 section 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 section 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 section 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).

Nothing about the 1994 act on which Myat relies changed the definition discussed in *Lazerson*. Indeed, given that the General Assembly did not change this definition, the presumption in statutory interpretation that a legislature knows about

past judicial decisions cuts against Myat. *See* Pet'r's Br. 12 (citing *Whitner v. State*, 328 S.C. 1, 6, 492 S.E.2d 777, 778 (1997)).

Focusing then on what the Court held in *Lazeron*, relying on whether an organization has been determined by the IRS as tax exempt under section 501(c)(3) is an objective 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 section 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 balances promoting charitable work and providing a remedy for people who are injured.

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, South Carolina 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.

The certainty offered by the General Assembly's bright-line rule in section 33-56-170(1) is critical to charitable organizations. The Court should reject Myat's invitation to disregard the certainty the General Assembly adopted and replace it with a case-by-case approach that could result in similarly situated charitable organizations being treated differently or the same charitable organization being treated differently in separate cases.

Moreover, Myat's approach to the SCFA's cap unnecessarily imposes direct costs on charitable organizations by requiring that they spend resources to produce the same conclusion over and over again. Charitable organizations, and particularly charitable hospitals, do essential work, typically without excess resources. 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 could have been helped by the charitable organizations, had the organizations not had to spend scarce 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 section 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 section 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.

Indeed, giving courts "discretion" (as Myat put it in response to the amicus brief at the certiorari stage) is merely a more subtle way of saying "taking up judicial time." There is nothing "myopic" about a bright-line rule. Rather, it is a sensible

legislative solution for addressing charitable immunity while letting litigation focus on the central issues in a case.

* * *

Both rules of statutory construction and public policy lead to the same result: section 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

This Court should affirm the judgment below.

Respectfully Submitted,

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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.

s/ Wm. Grayson Lambert
Wm. Grayson Lambert