No. 18-2143

IN THE

Supreme Court of the United States

October Term, 2019

ELMORE LANSFORD,

Petitioner,

v.

SILVIA COURTIER,

Respondent.

ON WRIT OF CERTIORARI TO THE SUPREME JUDICIAL COURT OF TENLEY

BRIEF FOR PETITIONER

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QUESTIONS PRESENTED

1. Whether, absent of notoriety or public notoriety, Respondent is a libel-proof under both versions of the Libel-Proof Plaintiff Doctrine, solely on the basis of her prior criminal convictions.

2. Whether Mr. Lansford's statements are nonactionable because they are rhetorical hyperbole and are protected by the First Amendment and Tenley States's Anti-SLAPP law.

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JURISDICTIONAL STATEMENT

i. A Formal Statement of Jurisdiction has been omitted in accordance with the Rules of the Washington College of Law's Burton D. Wechsler First Amendment Moot Court Competition.

STATEMENT OF THE CASE

I. Statement of Facts

Respondent has a trouble background. She has a lengthy criminal history that includes offenses ranging from assault, possession of marijuana, indecent exposure, vandalism, and possession of cocaine. (J.A. at 15.). These offenses led her to be declared a delinquent and she was incarcerated at a boot camp for young females. (J.A. at 15.). Respondent's criminal lifestyle continued well into her twenties and she was arrested for possession and distribution of cocaine. (J.A. at 16.).

Recently, Silvertown held a mayoral election and Respondent used the opportunity to add to her infamous background by criticizing the current mayor, Mr. Lansford, and posted an attack column on her website. (J.A. at 3.). Respondent referred to Mr. Lansford as a "relic of the past," "a divisive leader," and "someone who cares little for social justice issues." (J.A. at 3.). After reading Respondent's malicious column, Mr. Lansford was justifiably upset and responded by writing a column of his own. (J.A. at 4.). Mr. Lansford post included colorful language including metaphors such as "a pimp for the rich," "a leech on society," "a whore for the poor." (J.A. at 5.). Accordingly, Respondent filed suit accusing Mr. Lansford of defamation and placing her in false light by claiming that she was an inveterate criminal. (J.A. at 6.).

II. Procedural History

Respondent filed suit against Mr. Lansford in the Tenley District Court against the Petitioner, Elmore Lansford. (J.A. at 5.). The complaint asserted defamation of character and false light invasion of privacy against Lansford. Lansford contented that Respondent is a libel-proof plaintiff because the statements were true. (J.A. at 8.). In response, Mr. Lansford filed a special motion to strike and dismiss Respondent's defamation claim under Tenley Public

Participation Act, § 5 – 1- 701 et. seq. (J.A. at 8.). Mr. Lansford filed the motion because he claimed the lawsuit was an attempt to punish or silence him for his for his freedom of expression. (J.A. at 2.). The district court concluded that Respondent was not a libel-proof plaintiff but that Mr. Lansford's speech was protected under rhetorical hyperbole and therefore, granted the special motion to dismiss the defamation case. (J.A. at 11, 13.). Respondent appealed to the Supreme Judicial Court of State of Tenley. (J.A. at 14.). The Supreme Judicial Court of State of Tenley affirmed the decision of the district court that the Respondent was not liable-proof plaintiff but reversed in part because Respondent's competence and professionalism were called into question. (J.A. at 21, 23.).

This Court granted Lansford's request for certiorari on the following questions (1) Whether an individual can be a libel-proof plaintiff under defamation law solely on the basis of past criminal convictions, including a felony, that have gained no notoriety or public attention; and (2) Whether the challenged statements in this case qualify as unprotected defamation or protected rhetorical hyperbole? (J.A. at 24.).

SUMMARY OF THE ARGUMENT

The Supreme Judicial Court of the State of Tenley erroneously ruled that Respondent was not libel-proof and Mr. Lansford's statements called Respondent's competence and professionalism into question. This Court should reverse the lower court's decision and grant Mr. Lansford's motion to dismiss.

Respondent is libel-proof under both versions of the Libel-Proof Plaintiff Doctrine. Under the broad version, Incremental Harm, Respondent is libel-proof because her reputation suffers minimal harm when evaluating the contested statements with the uncontested statements and the statements are substantially true. Additionally, the use of Incremental Harm is necessary

because it furthers judicial efficiency. Under the narrow version of the Libel-Proof Plaintiff Doctrine, Issue Specific, Respondent is still libel-proof based solely on her previous criminal convictions because the statements made by Mr. Lansford were in regard to Respondent's criminal past and her reputation on that specific issue could not be harmed because it was already diminished. Moreover, the Issue Specific approach insures fairness for all parties involved.

Even if this Court does not agree that Respondent is libel-proof, Mr. Lansford's statements are still not defamatory because they are rhetorical hyperbole. These statements are rhetorical hyperbole because it was Mr. Lansford's heated, emotional response and the plain meaning of the words are impossible to apply to Respondent in a literal sense. Since the statements are rhetorical hyperbole, they are offered more protection under the First Amendment as freedom of expression. Furthermore, Respondent is not able to assert a valid defamation claim because she is a public figure and actual malice cannot be proved and the claim is barred by Tenly State's Anti-SLAPP laws. Accordingly, this Court should reverse the lower court's holding.

ARGUMENT

Mr. Lansford's statements are not defamatory as applied to Respondent, nor do they violate the First Amendment. Many courts have recognized that "[m]odern defamation law is a complex mixture of common-law rules and constitutional doctrines. And working one's way through it all can be dizzying." *Pan Am Syst. v. Atl. Northeast Rails and Ports, Inc.*, 804 F.3d 59, 64 (1st Cir. 2015). This Court has recognized that "expressions of 'opinion' may often imply an assertion of objective fact." *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 18 (1990). It has also been established that these types of statements are "afforded greater protections by the First Amendment." *Greenbelt Publishing Ass'n v. Bresler*, 398 U.S. 6 (1970).

This Court should reverse the Supreme Judicial Court of the State of Tenley's holding that Mr. Lansford's statements about Respondent are defamatory for two main reasons. First, based solely on criminal convictions, Respondent is libel-proof under both versions of the Libel-Proof Plaintiff Doctrine. Second, Mr. Lansford's statements are rhetorical hyperbole and are protected by the First Amendment.

I. UNDER TENLEY STATE'S DEFAMATION LAW, AN INDIVIDUAL CAN BE A LIBEL-PROOF PLAINTIFF SOLEY ON THE BASIS OF PAST CRIMINAL CONVICTIONS THAT HAVE NOT GAINED NOTORIETY OR PUBLIC ATTENTION BECAUSE NEITHER THE BROAD OR NARROW VERSIONS OF THE LIBEL-PROOF PLAINTIFF DOCTRINE REQUIRE IT.

A plaintiff is libel-proof based solely on past criminal convictions, regardless of notoriety or public attention because the Libel-Proof Plaintiff Doctrine does not require notoriety to be proven. *Cardillo v. Doubleday & Co.*, 518 F.2d 638 (2d Cir. 1975). In order to establish that a plaintiff is libel-proof, the court must find that the defendant's statements did not impose any additional harm or that the plaintiff's reputation was previously so tarnished that no further harm to their reputation could be done. *Id.* A plaintiff is "libel-proof," i.e., so unlikely by virtue of his life as a habitual criminal to be able to recover anything other than nominal damages as to warrant dismissal of the case." *Id.* at 639. In its published opinion, the *Cardillo* court established that criminal convictions alone were enough to satisfy the doctrine. *Id.* Moreover, the court did not implement then, nor should it now, a requirement of notoriety or public attention to find that a plaintiff is libel-proof.

The Libel-Proof Plaintiff Doctrine is broken down into two separate but distinct versions: Incremental Harm and Issue Specific. *The Libel-Proof Doctrine,* 98 Harv. L. Rev. 1909 (1985). In the immediate case, Respondent is a libel-proof plaintiff for three main reasons. First, under

the broad version of the doctrine, Incremental Harm, Respondent's reputation suffered minimally from the contested statements as compared to the damage of the uncontested statements. Moreover, the statement made was the substantial truth and provides a valid defense to libel. Second, even if the broad version of the doctrine was not met, Respondent is still a libel-proof plaintiff under the narrow version of the doctrine, Issue Specific. This is because several circuit courts have found that prior criminal convictions are enough to render a plaintiff libel-proof, and here, Respondent's reputation in regard to the specific issue was already diminished. Third, adoption of the doctrine promotes judicial economy.

A. Absent Notoriety or Public Attention, The Broad Version of the Libel-Proof Plaintiff Doctrine Is Satisfied Because the Respondent's Reputation Suffers Minimal Harm and the Statement as a Whole is Substantially True.

Criminal convictions are enough to render a plaintiff libel-proof under the Incremental Harm version of the Libel-Proof Plaintiff Doctrine. Incremental Harm measures the harm incurred by the contested statements as compared to the publication as a whole. *Herbert v. Lando*, 568 F.2d 974 (2d Cir. 1977). If the harm is determined to be nominal or non-existent, the statements are nonactionable and should be dismissed. *Id.* Incremental Harm "attacks a basic premise of libel law: that any harm to an individual's reputation deserves a judicial forum, even if the plaintiff is entitled only to nominal damages." Kevin L. Kite, *Incremental Identities: Libel-Proof Plaintiffs, Substantial Truth, and the Future of the Incremental Harm Doctrine*, 73 N.Y.U. L. Rev. 529, 534 (1998).

Incremental Harm is satisfied in this case for three main reasons. First, even though Respondent established a prima facie case, her reputation suffers minimal harm because even if the contested statements are false and defamatory, they do not cause any further harm than the

accurate, uncontested statements. Second, when read as a whole, the statements made in regard to Respondent are substantially true and creates an affirmative defense to a claim of libel. Third, adoption of the doctrine promotes judicial efficiency.

1. Applying the Incremental Harm Version of the Libel-Proof Plaintiff Doctrine, The Respondent's Reputation Does Not Suffer Any Additional Damage from the Contested Statements When Compared to Those Uncontested.

Respondent is libel-proof because the contested portions of Mr. Lansford's statements did not cause Respondent's reputation to suffer any further damage other than that of the uncontested portions which highlighted Respondent's criminal history. Incremental Harm provides that "when unchallenged or nonactionable parts of a particular publication are damaging, another statement, though maliciously false, might be nonactionable on the grounds that it causes no harm beyond the harm caused by the remainder of the publication." *Church of Scientology Int'l v. Time Warner, Inc.*, 932 F. Supp. 589, 593 (S.D.N.Y. 1996). The version "acknowledged that the plaintiff was harmed but questioned whether the plaintiff could recover for harm that was incremental to the nonactionable harm." Patricia C. Kussmann, *Construction and Application of Libel-Proof Doctrine*, 54 A.L.R.6th 165, § 6 (2010).

The United States District Court for the Southern District of New York established the broad branch of the Libel-Proof Plaintiff Doctrine in *Simmons Ford, Inc. v. Consumers Union of United States, Inc.*, 516 F.Supp. 742 (S.D.N.Y. 1981). In that case, the district court focused on an unchallenged portion of the defendant's statements and determined that the "portion of the article challenged by plaintiffs . . . . could not harm [the plaintiff's] reputation in any way beyond the harm already caused by the remainder of the article." *Id.* at 750. Petitioner, Simmons Ford, Inc., filed a claim of libel against Consumers Union, the publisher of the magazine, after the

CitiCar received an unsatisfactory review in the Consumer Reports publication. The review deemed the CitiCar "Not Acceptable." *Id.* at 744. Simmons contested a portion of the publication that indicated the CitiCar failed to conform to certain federal safety standards. *Id.* at 744.

Since the publication in *Simmons* was a magazine publication, it likely received public attention. However, the court never determined that notoriety or public attention was a requirement in the analysis, nor that it was even a factor. *Id.* The district court concluded their analysis by stating that the defendant's constitutional First Amendment interests at stake outweighed the minimal interest the plaintiff had in regard to its reputation and subsequently granted summary judgment. *Id.* at 751.

In the instant case, the statements Respondent contests do not have any incremental harm when contrasted to the statements that are uncontested. Respondent contests several statements Mr. Lansford included in his online article, such as references to Respondent as "a pimp for the rich;" "a whore for the poor;" and "corrupt and a swindler." (J.A. at 5.). Among the many uncontested statements, Mr. Lansford also stated that Respondent was a former "druggie." (J.A. at 4.). Similar to *Simmons*, the Incremental Harm version of the Libel-Proof Plaintiff Doctrine is applicable to the instant case because it is a case where Respondent has contested multiple statements made by Mr. Lansford and the publication also includes portions of nonactionable statements. The uncontested statements are supported by the public record of Respondent's criminal convictions. Records indicate that in the past, Respondent stole money from grocery stores and participated in other illegal activity. (J.A. at 5.). Respondent also completed a two-year prison sentence after being charged with possession of cocaine. (J.A. at 16.).

Regardless of the falsity of the contested statements and although the publication did not receive substantial notoriety or public attention, the rationale used by the United States District

Court in *Simmons* is still applicable. The uncontested statements are supported by evidence of public record indicating that Respondent is a convicted felon. All members of the public have access to this information and can obtain it without any particular hardship. When reading the publication in its entirety, the damage Respondent suffered to her reputation from her felony conviction far outweighs the incremental harm her reputation might sustain from falsely being portrayed as a "pimp for the rich" or a "whore for the poor."

Critics of Incremental Harm often argue that this Court declined to adopt the doctrine in *Masson v. New York Magazine Inc.*, 501 U.S. 496 (1991). However, a careful reading of *Masson* indicates that the Court did not express an actual denial of the doctrine but recognized a limitation on how the doctrine can be applied. The Ninth Circuit's opinion in *Masson*, it noted that one of the libel claims brought was properly dismissed by application of Incremental Harm. *Masson v. New Yorker Magazine, Inc.*, 960 F.2d 896 (9th Cir. 1992). On writ of certiorari, this Court slightly parted from the Ninth Circuit's decision on the basis that Incremental Harm is not compelled by the First Amendment. *Masson,* 501 U.S. at 496. "The Court did not pass on the merits of the doctrine and did not suggest that the doctrine was inconsistent with the interests of the First Amendment. . . . the Court indicated states are perfectly free to adopt the doctrine." Kevin L. Kite, *Incremental Identities: Libel-Proof Plaintiffs, Substantial Truth, and the Future of the Incremental Harm Doctrine*. 73 N.Y.U. L. Rev. 529, 551 (1998). This Court determined that the Incremental Harm Doctrine is a valid and viable doctrine. In a decision similar to this Court's in *Masson*, the Sixth Circuit viewed Incremental Harm as "a loose-woven legal conception of the federal courts." *Brooks v. Am. Broad. Cos.*, 932 F.2d 495, 500 (6th Cir. 1991). Despite the court's criticism, the Sixth Circuit also did not flatly reject Incremental Harm.

Therefore, Incremental Harm is applicable in the present case because the Respondent's reputation does not suffer any further harm from the actionable statements when compared to the nonactionable statements. As such, Respondent is libel-proof based solely on her criminal record because the contested statements supply far less harm than that of the uncontested statements. Since Incremental Harm is applicable and the requirements have been met, this Court should reverse the Supreme Judicial Court of the State of Tenley's holding which erroneously refused to apply the Incremental Harm version of the Libel-Proof Plaintiff Doctrine.

2. Mr. Lansford's Statements Were Substantially True and Established A Defense Against a Libel Claim.

The contested statements are nonactionable because the Mr. Lansford's publication is substantially true and establishes a defense against the libel claim. The Substantial Truth Doctrine attacks the falsity requirement of a prima facie case. Kite, *Supra* at 534. When reviewing a contested statement in a libel claim, "[m]inor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'" *Masson*, 501 U.S. at 517 (*citing Heuer v. Kee*, 15 Cal.App.2d 710, 714 (1936)). Often, courts have used Incremental Harm interchangeably with the Substantial Truth. This is because in both applications, the courts determine the effect of one statement, which is claimed to be false, as compared to another statement, which is uncontested and true. "Falsehoods that do not harm the plaintiff's reputation more than a full recital of the true facts about him would do are thus not actionable." *Id.* When substantial truth is at issue, "courts must view the story through the eyes of the average reader or member of the audience." *Zerangue v. TSP Newspapers, Inc.*, 814 F.2d 1066 (5th Cir. 1987).

The Seventh Circuit adopted Substantial Truth in *Haynes.* 8. F.2d 1066 (5th Cir. 1987). In that case, a book publisher was sued for defamation by Luther Haynes after publishing

statements that Haynes lost employment because of incessant drinking and that his drinking caused his child to be born with a deformity. *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222,1225 (7th Cir. 1993). The Seventh Circuit held that although these specific statements were not entirely true, they were *substantially* true. *Id*. at 1228. The accuracies within the statements were that Haynes was a chronic drinker and that his wife believed her husband's drinking caused their son to suffer a deformity. *Id.* at 1227. Despite the fact that there was no evidence to support the claims, the court dismissed the libel claims brought against the publisher because the information provided in the book was substantially true.

In a similar case, the Fifth Circuit also examined the applicability of Substantial Truth. In *Zerangue,* a police deputy and chief deputy released an inmate without authorization, on several different occasions, and allowed the inmate to check on his family and aide an undercover police investigation. 814 F.2d 1066, 1071 (5th Cir. 1987). When the secret arrangement was uncovered, both officers lost their jobs and were convicted of malfeasance, a misdemeanor charge. *Id.* A short time later, a news article was published by TSP Newspaper Inc., eliciting that the police deputy and chief deputy were charged with a felony. *Id.* A retraction was published after the error was realized, but the newspaper made the very same mistake just one year later in a different publication. *Id.* The circuit court found that Substantial Truth was inapplicable because the distinction between a misdemeanor and felony conviction are not mere details. *Id.* at 1073. The court reasoned that a felony conviction, particularly the one alleged in *Zerangue,* indicated a much more serious crime than one warranting a misdemeanor conviction. In *Zerangue*, the publication indicated that the police detective and chief deputy committed felony theft. Conversely, the misdemeanor malfeasance charge they were actually convicted of only consisted of the unauthorized releases of an inmate in order to perform an undercover police investigation.

The distinction was not a mere falsehood because it would lead a member of the audience or an average reader to believe that the charges were much more severe and "converted foolish and irresponsible betrayal of the public trust into a rapacious and calculated one." *Id.* at 1074.

In the immediate case, the statements made by Mr. Lasford are substantially true. Respondent was in fact convicted of felony possession of cocaine in the past. (J.A. at 16.). That incident was not an isolated one and the record further indicates that Respondent was proven delinquent as a minor and committed theft when she stole money from grocery stores. (J.A. at 5.). Here, the Respondent contests statements made by Mr. Lansford that included, "a pimp for the rich;" "a whore for the poor;" and "corrupt and a swindler." (J.A. at 5.). Respondent asserts that these statements are falsities and defame her. However, these statements are substantially true and provide a valid defense for Mr. Lansford.

This Court has previously defined the term "corrupt." In the Court's opinion in *Arthur Andersen LLP v. United States*, Chief Justice Rehnquist ruled that the words "'corrupt' and 'corruptly' are normally associated with wrongful, immoral, depraved, or evil." 544 U.S. 696, 705 (2005). When used as an adjective, the definition of corrupt is "characterized by improper conduct." *Corrupt,* Merriam-Webster Dictionary (12th ed. 2016). Although this Court has never provided a definition of "swindler," the Fifth Circuit has spoken on its intended definition. In *Edwards v. Bromberg*, the court stated, "whether larceny or embezzlement, of obtaining money under false pretenses, swindling or other wrongful deprivations of the property of another, is of little importance so long as it amounts to theft." 232 F.2d 107, 111 (5th Cir. 1956). Additionally, the dictionary definition of "swindler" means "to obtain money or property from by fraud or deceit." *Swindler,* Merriam-Webster Dictionary (12th ed. 2016).

Since the record has made clear that Respondent concedes she is a convicted felon, her conduct could be characterized as improper and falls well within the definition of "corrupt." Furthermore, by stealing money from grocery stores, Respondent could also be categorized as a "swindler." With regard to the terms "pimp" and "whore," these words are defined as "to make use of often dishonorably for one's own gain or benefit" and "a venal or unscrupulous person." *Id.* Each of these words accurately depict Respondent's previous encounters with the law and should be considered substantially true.

In applying Substantial Truth, this Court should reverse the lower court's improper decision and dismiss the case. Respondent's statements were substantially true and therefore create a defense to the libel claim. Since the contested statements in the immediate case are substantially true, Respondent, considering her criminal record alone, is libel-proof. Accordingly, this Court should reverse the lower court's erroneous decision by applying Substantial Truth and dismissing the case in favor of Mr. Lansford.

3. **Utilizing Incremental Harm Ensures Judicial Economy.**

The use of Incremental Harm promotes judicial economy because it guarantees that courts will not waste resources on frivolous claims. If "true portions of a statement have such damaging effects, even nominal damages are not to be awarded. Instead, the claim should be dismissed so that the costs of defending against the claim of libel . . . will be avoided." *Guccione v. Hustler Magazine, Inc.*, 800 F.2d 298, 303 (2d Cir. 1986).

A cornerstone of the Incremental Harm is that it provides protection to defendants in a libel claim. The doctrine "recognized that if an article is both injurious and substantially true . . . any minor mistakes are themselves unlikely to result in substantial harm, thus protecting against litigation designed to punish a speaker for stating harmful truths instead of compensating a

plaintiff for significant falsehoods." Patricia C. Kussmann, *Construction and Application of Libel-Proof Doctrine,* 54 A.L.R.6th 165, § 6 (2010).

For these purposes, the Incremental Harm Doctrine not only provides a defense to libel claims but also acts as a filter to ensure that valuable resources are not wasted on frivolous claims. Since Respondent can only be granted nominal damages, it would be a waste of judicial resources and impose financial costs on both parties without the benefit of a remedy. Thus, this Court should reverse the Supreme Judicial Court of the State of Tenley's ruling and dismiss this case in favor of Mr. Lansford.

B. The Narrow Version of the Libel-Proof Plaintiff Doctrine Is Satisfied Because Respondent's Reputation Was Already Tarnished with Respect to the Specific Issue of Her Criminal Background and Safeguards Judicial Equity.

Mr. Lansford's statements do not provide an actionable claim of libel because Respondent's reputation could suffer no further harm on the issue of criminality. The narrowly tailored version of the Libel-Proof Plaintiff Doctrine is recognized by a majority of courts as Issue Specific. *See The Libel-Proof Plaintiff Doctrine,* 98 Harv. L. Rev. 1909 (1985). This version provides a defense to the defamation prong of a libel claim. Kite, *Supra* at 534. The scope of this doctrine is considered to be narrow because it is only applicable to a plaintiff's reputation on a specific issue. As the *Wynberg* court noted, "[a]n individual who engages in certain anti-social or criminal behavior and suffers diminished reputation may be 'libel-proof' as a matter of law, as it relates to that specific behavior." *Wynberg v. Nat'l Enquirer, Inc.*, 564 F.Supp. 924, 928 (C.D. Cal. 1982).

The narrow requirements of the Issue Specific version of the Libel-Proof Plaintiff Doctrine have been satisfied for three main reasons. First, Respondent is a libel-proof plaintiff

solely on the basis of her past criminal convictions because her reputation as a criminal offender is so diminished, it could suffer no further harm. Second, even if the doctrine was not limited to plaintiffs with criminal records, Respondent is still libel-proof because the contested statements regard a specific issue: her criminality. Third, applying the narrow version of the doctrine reinforces judicial equity.

1. Respondent is Libel-Proof on the Specific Issue of Criminality Because Her Prior Criminal Record Precludes Her Reputation from Suffering Any Further Injury.

As a convicted criminal, Respondent is the precise type of plaintiff the doctrine sought to target because her reputation on the matter is so tainted, she is libel-proof. The Second Circuit in *Cardillo* limited the narrow version to plaintiffs with criminal convictions who complain of trivial imprecisions with respect to their criminal record. *Cardillo*, 518 F.2d at 639-40. This decision was reaffirmed by the Second Circuit one year later in *Buckley v. Littell,* 539 F.2d 882 (2d Cir. 1976).

The libel claim in *Buckley* stemmed from years of communication between the parties. In a bulletin Buckley wrote, he admitted that he first misquoted statements made by Littell. *Id.* at 886. Upon learning of the misstatements, Littell wrote to Buckley twice and asked him to make corrections. Both of these requests were ignored. *Id.* at 887. In response, Littell decided to include Buckley in his book, *Wild Tongues*, and reference all the "trouble" Buckley gave him. *Id.*

Buckley brought suit against Littell alleging a claim of libel for statements published in Littell's book. *Buckley*, 539 F.2d at 882. Buckley contested several statements that included calling Buckley a "fellow traveler" of "fascism" and "deceiver". *Id.* at 887. Littell also asserted that Buckley used his "journalistic position to spread materials from 'openly fascist journals' under the guise of responsible conservatism." *Id*. Although the court denied to apply the Issue

Specific version, it was because of the court's prior decision in *Cardillo*, which stated the doctrine was only applicable to criminals, not the content of the specific matter. *Id.* at 888.

In this case, Respondent posted a column on her political website that attacked Mr. Lansford's ability to adequately fulfill his duties as mayor of Silvertown. (J.A. at 3.). Respondent heedlessly stated that Mr. Lansford was "out of touch", "engaged in a war" and practiced "repressive measures". (J.A. at 3-4.). Respondent delivered the coup de grâce by suggesting Mr. Lansford was uncompassionate and did not care "about all people of all races, genders, and ethnicities." (J.A. at 4.). In response to the derogatory remarks, Mr. Lansford posted a column on his own private social media website. (J.A. at 8.). That column is where Respondent's claim is rooted as she asserts that she was defamed by several of Mr. Lansford's statements that referenced Respondent as "a pimp for the rich;" "a leech on society;" "a whore for the poor;" and "corrupt and a swindler." (J.A. at 5.). Among these statements, Mr. Lansford describes that Respondent's political contributions include being a "coddler of criminals" and "the defender of the less fortunate." (J.A. at 4.).

This case is analogous to *Buckley* because the references made about the plaintiff stemmed from observations of politics and out of personal exchanges. *Buckley,* 539 F.2d at 887. The court reasoned that an "exchange, however heated, about systems of government and about democracy . . . . surely these are matters where the widest latitude for debate in the interests of the First Amendment must be furnished." *Buckley,*539 F.2d at 889. The facts of the immediate case and those in *Buckley* are nearly identical, thus, it can be reasonably inferred that had Buckley previously been convicted as a criminal, the circuit court certainly would have been required to apply the Issue Specific Doctrine and would have arrived at the same conclusion.

Following the holding in *Buckley* which was rooted in *Cardillo,* this Court should conclude that the Issue Specific version was founded on limited terms that were specifically tailored to plaintiffs who were libel-proof solely because of past criminal convictions. Since Respondent is a libel-proof plaintiff on the basis of her criminal convictions alone, including a felony charge for possession of cocaine, this Court should reverse The Supreme Judicial Court of State of Tenley's holding that Respondent is not a libel-proof plaintiff within the meaning of defamation law.

2. Extending the Issue Specific Version of the Libel-Proof Plaintiff Doctrine to Include Plaintiffs Who Do Not Have Criminal Convictions Still Renders Respondent Libel-Proof.

Respondent's prior criminal history provides a laundry list of offenses that include, but are not limited to: theft, assault, possession of marijuana, and possession of cocaine; therefore, her criminal reputation is so tainted she is libel-proof on the issue. (J.A. at 5 and 15.) Ten years after the Second Circuit ruled in *Buckley*, it extended Issue Specific to include matters outside of criminal convictions. In *Guccione v. Hustler Magazine, Inc.*, the court determined that "a plaintiff's reputation with respect to a specific subject may be so badly tarnished that he cannot be further injured by allegedly false statements on that subject." 800 F.2d 298, 303 (2d Cir. 1986). Therefore, even without the prerequisite criminal record, Respondent is still libel-proof under the Issue Specific analysis.

Guccione was the first case in the Second Circuit that strayed from its prior rulings in *Cardillo* and *Buckley* when it elected to apply the Issue Specific analysis to a plaintiff whose reputation was diminished on an issue, separate from criminal convictions. In that case, Guccione, publisher of *Penthouse* magazine, brought a libel action against *Hustler* magazine after an article was published in *Hustler,* accusing Guccione of being an adulterer. The factual

analysis proved that while Guccione was married, he also had a live-in girlfriend for thirteen of the fifteen years he was married. The court noted Guccione had a "duration of . . . . adulterous conduct, which he made no attempt to conceal from the general public". *Id.* at 302. Accordingly, the court determination that Guccione's "libel complaint fails because Guccione was 'libel-proof' with respect to the accusation of adultery". *Id.* at 303.

In the immediate case, an analysis based on criminal convictions alone is still enough to satisfy the updated version of Issue Specific. Respondent challenges statements made in regard to her criminality and as a habitual criminal, she is libel-proof. Since Respondent's reputation was already damaged by the slew of criminal charges she obtained, her reputation could suffer no further harm on the matter. Since it would be impossible for Respondent to suffer an injury to a reputation she already disposed of, she is libel-proof based exclusively on her criminal convictions, and this Court should reverse the lower court's erroneous decision and dismiss this case in favor of Mr. Lansford.

3. The Issue Specific Version of the Libel-Proof Plaintiff Doctrine Provides a Balance in Interests and Fairness.

Respondent is libel proof and the narrow version of the Libel-Proof Plaintiff Doctrine should be applied by this Court because it preserves judicial equity for all parties involved. With its development, "courts have avoided the creation of either a blanket immunity for the press or an open season on libel plaintiffs." *The Libel-Proof Plaintiff Doctrine,* 98 Harv. L. Rev. 1909, 1911 (date). This is important because libel law "exists to protect a plaintiff's standing in the community, not to redress his unshared feelings of hurt or wrong." *Id.* at 1915. The logic of this doctrine allows courts to avoid future issues of discriminatory enforcement and provides equity to defendants in a libel claim because it does not grant remedy to anyone who has not suffered an actual harm.

Similar to the Second Circuit, several circuit courts have recognized the effectiveness of the narrow version. The Sixth Circuit looked to prior felony convictions to satisfy the doctrine's requirements for applicability. *Ray v. Time, Inc.*, 452 F.Supp. 618, 621 (6th Cir. 1976). However, some courts have not yet been presented with a proper case to apply it to. In the Third Circuit, the court in *Marcone v. Penthouse International Magazine for Men* did not flatly reject the doctrine, but could not apply its because Marcone's reputation was not diminished and could incur damage. 754 F.2d 1072, 1079 (3d Cir. 1985). Likewise, the Eighth Circuit in *Ray v. U.S. Dep't of Justice* determined that challenged statements were not actionable and therefore, did not evaluate the statements under the doctrine. 658 F.2d 608, 611 (8th Cir. 1981).

Utilizing the Issue Specific version offers protection to defendants from discriminatory enforcement. Once a plaintiff's reputation cannot be further harmed on a specific issue, defendants are not subjected to a plaintiff sporadically picking and choosing who to sue. In order to continue to promote fairness and limit claims brought under personal emotion or hurt feelings, this Court should rule in favor of Mr. Lansford and dismiss the case because Respondent's claims do not constitute an actual injury nor is there an actual remedy that could be provided.

II. THE SUPREME JUDICIAL COURT OF THE STATE OF TENLEY ERRONEOUSLY REVERSED THE DECISION OF THE DISTRICT COURT BECAUSE MR. LANSFORD'S STATEMENTS ARE RHETORICAL HYPERBOLE AND ARE PROTECTED UNDER THE FIRST AMENDMENT AND ANTI-SLAPP LAWS.

Mr. Lansford's statements are not defamatory because they are rhetorical hyperbole and are protected by the United States Constitution under the First Amendment and the State of Tenley's Anti-SLAPP law. A statement is considered defamatory if it is "reasonably susceptible to the defamatory meaning imputed to it." *Levin v. McPhee*, 119 F.3d 189, 195 (2d Cir. 1997). However, statements considered to be rhetorical hyperbole or imaginative are afforded greater

protections by the First Amendment. *Greenbelt Publishing Ass'n v. Bresler*, 398 U.S. 6 (1970). Rhetorical hyperbole can be defined as "loose, figurate language." *Letter Carriers v. Austin*, 418 U.S. 264, 284 (1974).

Although the line between rhetorical hyperbole and defamation can be blurred at times, this Court has determined that a proper evaluation requires consideration of the totality of the circumstance. Therefore, Mr. Lansford's statements are not defamation for two reasons. First, Mr. Lansford's speech is considered rhetorical hyperbole and therefore, is protected under the First Amendment. Second, Mr. Lansford's speech is the exact type of speech that the anti-SLAPP laws were designed to protect.

A. Mr. Lansford's Statements Are Not Defamatory Because Rhetorical Hyperbole is Protected By the First Amendment.

The First Amendment protects Mr. Lansford's speech because the rhetorical hyperbole used was in response to Respondent's statements and therefore is not considered defamatory. This Court explained:

> the Constitution protects statements that cannot reasonably [be] interpreted as stating actual facts about an individual made in debate over public matters in order to provide assurance that public debate will not suffer for lack of imaginative expression or the rhetorical hyperbole which has traditionally added much to the discourse of our Nation.

Milkovich v. Lorain Journal Co., 497 U.S. 1, 20 (1990).

Respondent's defamation claim is not proper for the following reasons. First, Mr. Lansford's statements qualify as rhetorical hyperbole because emotional statements made that cannot be proven true or false are not defamatory. Second, unlike defamatory statements, rhetorical hyperbole is protected by the First Amendment.

1. Defamation is Not Met Because the Statements Made by Mr. Lansford are Rhetorical Hyperbole, and the Plain Meaning of the Contested Statements Proves to Be Impossible.

The lack of defamatory mean and statements of fact demonstrates that Mr. Lansford's statements are protected under the First Amendment. Defamatory meaning is a statement that is "reasonably susceptible to the defamatory meaning imputed to it." *Levin v. McPhee*, 119 F.3d 189, 195 (2d. Cir. 1997). Rhetorical hyperbole provides that even heated and emotional rhetoric made in response to criticism deserves free-speech protection in a free society. *Clifford v. Trump*, 339 F. Supp. 3d 927 (C.D. Cal. 2018).

This Court considered the issue of rhetorical hyperbole in *Greenbelt Coop. Pub. Ass'n v. Bresler*. This Court found that comparing a developer's negotiation style to "blackmail" was "simply impossible." *Greenbelt Coop. Pub. Ass'n v. Bresler*, 398 U.S. 14 (1970). This Court reasoned that even the most careless reader must have perceived that the word was no more than "rhetorical hyperbole," and the term was "simply an epithet used to demonstrate that the Respondents negotiation position to be unreasonable because there was a devoid of evidence that anyone thought the Respondent had been charged with a crime." *Id*.

Also, this Court further applied the concept of rhetorical hyperbole in *Letter Carrier v. Austin*. In *Letter Carrier*, a postal workers union posted in their newsletter a list of who had not yet joined the Union, listing them under the heading "List of Scabs." *Letter Carriers v. Austin*, 418 U.S. 266 (1974). The appellees then filed a defamation suit. After considering the definition of scab, this Court found that it was impossible to believe that the reader of the newsletter would believe that the appellees have committed the criminal offense of treason which is the criminal offense associated with the term scab, but rather, the term scab was merely being used for rhetorical hyperbole. *Id*. at 286 This Court explained further that rhetorical hyperbole is "a lusty and imaginative expression of the contempt felt by union members towards those who refuse to join." *Id*.

Here, Mr. Lansford speech is protected rhetorical hyperbole because although Mr. Lansford's statements were made in bad taste, when considering the totality of the statements, it is clear that the statements made were simply just lusty and imaginative expression. Also, when considering the statements plain meaning, they cannot be considered as anything except rhetorical hyperbole because it is not reasonable to consider them actual facts.

Similarly, to *Letter Carriers and Greenbelt Cooperative*, when considering the statements "a pimp for the rich" and "a whore for the poor" the statements are not true to the definition of the words. Therefore, under *Letter Carriers and Greenbelt Cooperative*. Mr. Lansford could not be libel since he does not allege an actual crime. When considering the definition of the word "pimp" (a man who controls prostitutes and arranges clients for them, taking part of their earnings in return) or "whore" (a prostitute), it is impossible for the reader to believe Mr. Lansford is alleging the Respondent participates in the criminal act of prostitution. *Pimp*, Black's Law Dictionary (11th ed. 2019); *Whore*, Black's Law Dictionary (11th ed. 2019). This also holds true for the other statements made by Mr. Lansford. When considering the statement that referred to the Respondent as a "leech on society," it would be impossible for a reader to believe that Mr. Lansford was actually calling the Respondent a "leech." The definition of leech is "an aquatic or terrestrial annelid worm with suckers at both ends. Many species are bloodsucking parasites, especially of vertebrates, and others are predators." Leech, Dictionary.com, https://www.dictionary.com/browse/leech. When looking to the plain meaning of the word leech, biologically a person cannot reasonably be both a human being and an aquatic or terrestrial annelid worm. Nor can an aquatic annelid worm suck blood from an abstract concept such as "society."

Although the lower court found that “corrupt and swindler” were terms that could possibly be defamation, the court did not hold that those statements are absolute, but rather they could possibly be considered defamation. In the cases that have found “corrupt” or “swindler” to be considered defamatory such as *Kumaran v. Brotman* (a teacher was referred to as a swindler) and *Bentley v. Bunton* (calling a judge “corrupt” is possibly defamatory), the court was dealing with a calculated falsehood, that offered only slight social benefit. *Kumaran v. Brotman*, 247 Ill. App. 3d 216, 227 (1993); *Bentley v. Bunton*, 94 S.W.3d 561 (Tex. 2002).

Here, that is not the case. Mr. Lansford’s statements are not calculated falsehoods and are very beneficial to society because he is addressing a public issue of whose opinion to trust when the Citizens of Tenley make their decision for Mayor. Further, in *Arthur Anderson LLP v. United States,* this court stated that ‘“[c]orrupt’ and ‘corruptly’ are normally associated with wrongful, immoral, depraved, or evil.” *Arthur Andersen LLP v. United States*, 544 U.S. 696, 705 (2005). Therefore, based on this Court’s definition of corrupt, the statements referring to the Respondent as corrupt would not be defamatory. The Respondents past consisted of wrongful, immoral, and depraved acts because she was a drug addict, sold drugs and stole money from grocery stores. Thus, Mr. Lansford’s statements could not be considered defamatory since they were the truth.

This Court found in *Clifford v. Trump,* that when dealing with a person’s response to criticism, the tone of the rhetorical hyperbole must be considered. *Clifford v. Trump*, 339 F. Supp. 3d 925 (C.D. Cal. 2018). In *Clifford,* President Trump was found not libel for defamation after tweeting "A total con job, playing the Fake News Media for Fools (but they know it)!" about a woman that is considered a public figure claiming to have been threatened by a man associated with Trump. The United States District Court for the Central District of California

found President Donald J. Trump personal tweets to be rhetorical hyperbole protected by the First Amendment because the tweet constituted "rhetorical hyperbole" normally associated with politics and public discourse in the United States. *Id*. at 925. The court further explained that "Mr. Trump's tweet displays an incredulous tone, suggesting that the content of his tweet was not meant to be understood as a literal statement about Plaintiff." This led the court to conclude that a published statement that is "pointed, exaggerated, and heavily laden with emotional rhetoric and moral outrage" cannot constitute a defamatory statement." *Id*. at 927; *See also Milkovich v. Lorain Journal Co.*, 497 U.S. 32 (1990).

Further, in *Miller v. Bock*, the Court of Appeals of Louisiana concluded that a "[a] political candidate has no license to defame his hecklers, but he also has no obligation to suffer them silently." *Miller v. Block*, 352 So.2d 313, 314 (La. Ct. App. 1977). The court reasoned that "One who engages in fractious and factious dialogue at a political meeting cannot demand sweetness and light from his adversary." *Id*.

Here, similar to *Trump*, Mr. Lansford's statements , it is clear that the statements made were exaggerated with word play and comparisons to non-human species that clearly cannot be taken for as a statement of fact. The statements made were in response to the Respondents implication that Mr. Lansford did not have the ability to be a good Mayor. Therefore, under the reasoning in *Miller*, Mr. Lansford has no obligation to suffer in silence simply because he is political candidate. Further, since the respondent is an adversary to Mr. Lansford, and that she used a fractious dialogue at a political meeting where she called into question Mr. Lansford's mayoral capability, she cannot demand sweetness from Mr. Lansford.

The Supreme Judicial Court of State of Tenley thus erroneously concluded that Mr. Lansford statements could be considered defamation. To the contrary, the evidence established that Mr.

Lansford's statements were rhetorical hyperbole that was made with heated emotion, and the pain meaning is impossible to apply when considered in context. The decisions of the Supreme Judicial Court of State of Tenley should, therefore, be reversed.

2. Since Mr. Lansford's Speech is Rhetorical Hyperbole, It Is Afforded Specific Protection Under the First Amendment as Freedom of Expression.

Mr. Lansford's speech is protected under the First Amendment because it was made in a heated moment when he was responding to criticism. In this case, Mr. Lansford's speech was protected under freedom of expression in the First Amendment because it is emotional rhetoric. This Court explained in *Garrison v. Louisiana,* that "even when a speaker or writer is motivated by hatred or ill-will his expression was protected by the First Amendment". *Garrison v. Louisiana*, 379 U. S. 64 (1964).

In *New York Times Co. v. Sullivan,* this Court explains that defamation law must be interpreted against "a profound national commitment that debate on public issues must be uninhibited, robust, and wide open" and that even if the statements are erroneous, freedom of expression deserves the right to breath. *New York Times Co. v. Sullivan*, 376 U.S. at 270, 272.

Following *New York Times*, this Court further explain the need for the First Amendment to remain broad when being interpreted. In *Cohen v. California*, this Court explained:

> That the air may at times seem filled with verbal cacophony is, in this sense not a sign of weakness but of strength. We cannot lose sight of the fact that, in what otherwise might seem a trifling and annoying instance of individual distasteful abuse of a privilege, these fundamental societal values are truly implicated.

Cohen v. California, 403 U.S. 15, 25 (1971). There is a need for minimal limitations to freedom of expression because the freedoms allotted in the First Amendment "are delicate and vulnerable, as well as supremely precious in our society" and "[t]he threat of sanctions may deter their

exercise almost as potently as the actual application of sanctions." *NAACP v. Button*, 371 U.S. 415, 433 (1963).

Here, when dealing with cases of defamation, this Court must consider the need for the freedom of expression to breath. If this Court chooses to limit the freedoms of the First Amendment, it will substantially affect all aspects of citizens' lives. It may cause individuals to be fearful of objecting or criticizing to political officials or public figures and therefore allow the government to have too much control over the information accessible to citizens, thus hindering public opinion.

Therefore, Mr. Lansford's response to the Respondent's statements are protected under the First Amendment because of his right to respond and his right to expression through rhetorical hyperbole and the decision the Tenley District Court made should be affirmed.

B. Under Anti-SLAPP Laws, Mr. Lansford's Speech is Not Defamatory Since the Respondent is a Public Figure, Her Claim Requires Actual Malice.

The statements made by Mr. Lansford are protected under the anti-SLAPP laws of Tenley because the Respondent has not met her burden of proof. Tenley's Public Participation Act or also known as their anti-SLAPP law, provides "[i]f a legal action is filed in response to a party's exercise of the right of free speech, right to petition, or right of association, that party may petition the court to dismiss the legal action." Tenley Code Ann. § 5 – 1 – 704(a). Under the anti-SLAPP laws, the defendant first has the "the burden of making a prima facie case that a legal action against the petitioning party is based upon, relates to, or is in response to that party's exercise of the right to free speech, right to petition, or right of association." Tenley Code Ann. §5 – 1 – 705(a). The Respondent is unable to meet the defamation requirements for two reasons. First, since the Respondent is considered a public figure there is an added requirement of actual

malice. Second since the element of actual malice is not met, the claim is invalid. *Milkovich v. Lorain Journal Co.,* 497 U.S. 1 (1990).

1. The Respondent is a Public Figure Under *Gertz* and Therefore Requires a Heightened Standard of Review.

The Respondent is considered a public figure because she chooses to thrust herself into the public eye**.** Public figures are classified by "reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention. *Gertz v. Robert Welch*, 418 U.S. 342 (1974). Therefore, under *Gertz*, the Respondent would be considered a public figure and therefore, liable to a higher standard when claiming defamation.

This Court decided in *Gertz v. Robert Welch*, that public officials and public figures "usually enjoy significantly greater access to the channels of effective communication and hence have a more realistic opportunity to counteract false statements than private individuals normally enjoy. Private individuals are therefore more vulnerable to injury, and the state interest in protecting them is correspondingly greater." *Gertz v. Robert Welch*, 418 U.S. 342 (1974). Therefore, public figures cannot recover damages for a "defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *Id.* at 334. This Court came to this conclusion because they found a person can be deemed a public figure two ways, first, if they "occupy positions of such persuasive power and influence that they are deemed public figures for all purposes" and second, is by the individual "thrust[ing] themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved." *Id.* at 345.

Further, the Supreme Court of Vermont found in *Burns v. Times Argus Ass'n*, that a Lieutenant Governor's wife was considered a public figure and therefore required to prove actual

malice to prove defemination. *Burns v. Times Argus Ass'n*, 139 Vt. 381, 430 A.2d 773 (1981). The court came to this conclusion because the lieutenant's wife became a public figured during her husband's career in the public sector that brought her into the public eye. Multiple courts have adopted the finding that spouses or family members of public officials or celebrities are also considered public figures. *See Carson v. Allied News Co.*, 529 F.2d 206 (7th Cir. 1976); *see also Meeropol v. Nizer*, 381 F. Supp. 29 (S.D.N.Y. 1974).

Similar to the decision in *Gertz*, the Respondent would be considered a public official. In *Gertz*, this Court explained how people can be considered deemed public figures two different ways. The first way is the public figure occupy positions of such persuasive power and influence that they are deemed public figures for all purposes. Here, the Respondent is a wealthy business owner throughout the community. The Respondent is also extremely politically active, she has been supporting politically related issues such as education, restorative justice, and affordable housing. (J.A at 2.). She also manages two websites, one for her business and one for her advocacy and social causes. Further, the Respondent demonstrates her substantial power and influence by showing ability to host black-tie dinners and substantially contribute to political campaigns. She further demonstrates her influence through a webpage where she tells citizens who she believes they should vote for.

Looking towards the second way to determine if a person is considered a public figure under the *Gertz* analysis. When making this determinization, this Court should consider whether they thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved. Similarly, to *Burns v. Times Argus Ass'n*, the Respondent is also considered a public figure because she is a widow of a former Mayor, Raymond Courtier. Therefore, the Respondent, by making the decision to marry a public figure, choose to thrust

herself into the controversies. The Respondent further thrusted herself into public controversies in order to influence the resolution when she not only made the decisions to have a website for her political views but also when she made the decision to make negative statements on her website about opposing mayoral candidates.

Therefore, due to the decisions and actions of the Respondent, she would be considered a public figure.

2. Since the Respondent is Required to Have a Heightened Standard of Proof, She Fails to Prove the Essential Elements of a Defamation Case.

The Respondent does not meet her heightened burden required by *New York Times Co. v. Sullivan*, because Lansford did not have actual malice. Actual malice requires the party stating the claim to prove publication of defamatory falsehood "with 'actual malice' -- that is, with knowledge that it was false or with reckless disregard of whether it was false or not." *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). The statements made cannot be considered to have actual malice because Mr. Lansford's rhetorical hyperbole is not a statement made with knowledge that it is false or considered to have a reckless disregard of whether it was false or not.

In *New York Times Co. v. Sullivan*, this Court the recognized the need for "a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice.'" *Id.* at 279-80. The court further explained that for there to be actual malice, the party making the claim must have sufficient proof that the statements are actually intentionally false. *Id.* at 263.

Three years after this Court made the *New York Times* decision, the court in *Curtis Publishing Co. v. Butts*, extended the constitutional privilege in *New York Times* that protects defamatory criticism of nonpublic persons "who are nevertheless intimately involved in the

resolution of important public questions or, by reason of their fame, shape events in areas of concern to society at large." *Curtis Publ'g Co.* v. *Butts*, 388 U.S. 130, 18 L. Ed. 2d 1094 (1967). Therefore, the test from then on would apply both to public figures as well as public officials.

Under the *New York Times* test, actual malice is subject to a clear and convincing standard of proof. *Gertz*, 418 U.S. at 342. The court further explain how to determine clear the and convincing evidence stand in *Harte-Hanks Communications v. Connaughton*. This Court stated, "we have made clear that the defendant must have made the false publication with a 'high degree of awareness of . . . probable falsity,' or must have 'entertained serious doubts as to the truth of his publication.'" *See Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657 (1989); *see also Garrison* v. *Louisiana*, 379 U.S., at 74.

Here, based on the *New York Times* definition of actual malice, Mr. Lansford's statements do not meet the requirement of knowledge that it was false or that he acted with reckless disregard of whether it was false or not. The case at hand deals with a man that is being silenced for utilizing his First Amendment right to freedom of expression. The anti-SLAPP laws were put into place to protect citizens like Mr. Lansford to not be afraid of being sued by a wealthy corporate actor when they choose to speak out against them. Freedom of expression is not actual malice, simply because the Respondent does not like or agree with the comments made by Mr. Lansford does not make them defamatory. Further, the respondent has no proof that Mr. Lansford's statements were intentionally or maliciously false. Even if this Court found some of the statements to be false, due to the margin of error the court allows for false statements and the use of rhetorical hyperbole, the Respondent would still not meet her burden of substantial proof.

The overall purpose of "anti-SLAPP" laws are to place a procedural mechanism into place to protect citizens who have been or are being sued by wealthy corporate actors merely to intimidate and silence those citizens for exercising their First Amendment freedoms of petition or speech. Matthew D. Bunker & Emily Erickson, *# AINTTURNINGTHEOTHERCHEEK: Using Anti- SLAPP law as a Defense in Social Media*, 87 UMKC L. Rev. 801, 802 (2019). Other jurisdictions, including California, use anti-SLAPP statutes to "encourage and safeguard the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government to the maximum extent permitted by law and, at the same time, protect the rights of a person to file meritorious lawsuits for demonstrable injury." Tex. Civ. Prac. & Rem. Code § 27.002. Therefore, if the court were to deem the Mr. Lansford's statements as defamatory, it would be significantly minimizing the First Amendments right to breath because it would be limiting the freedom of expression by minimizing every citizens ability to criticize or share their opinion in how they view a public figure or corporation.

The Supreme Judicial Court of the State of Tenley erroneously concluded that Mr. Lansford's speech was defamatory. To the contrary, the evidence establishes the that the Respondent has to prove actual malice and therefore due to the lack of actual malice, the Respondent's claim is invalid. Thus, the decision of the Supreme Judicial Court of the State of Tenley should be reversed.

CONCLUSION

Respondent's defamation claim is without merit because she is libel-proof under both versions of the Libel-Proof Plaintiff Doctrine. More importantly, Mr. Lansford participated in a heated discussion on a matter of public opinion that is protected by the First Amendment and Tenley State's Anti-SLAPP law. For the foregoing reasons, Petitioner Elmore Lansford urges

this Court to reverse the decision of the Supreme Judicial Court of State of the Tenley and grant Mr. Lansford's motion to dismiss.

Respectfully submitted,

_____

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