Docket 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 RESPONDENT

Team 219856
Counsel for Respondent

QUESTIONS PRESENTED

I. Whether a rehabilitated businessperson and community activist meets the required standard to be a libel-proof plaintiff under defamation law on the sole basis of a single felony conviction from decades ago that gained no notoriety or public attention.

II. Whether a political candidate's attacks on an individual's integrity and professionalism are eligible for protection under the doctrine of rhetorical hyperbole based on the meaning, verifiability, and context of the statements.

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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

Summary of the Facts

Silvia Courtier is a rehabilitated local businesswoman and community activist in the city of Silvertown. (J.A. at 2.). She not only owns a line of clothing stores but is also active in certain philanthropic and charitable activities. (J.A. at 2.). She maintains two websites: one for her business and one for her altruistic endeavors. (J.A. at 2, 16.).

Silvia Courtier had a difficult childhood. (J.A. at 5.). Both her parents were drug addicts; her father was killed in prison and her mother died of a drug overdose when she was ten years old. (J.A. at 5.). Silvia engaged in illegal activities as a teenager, which resulted in her being declared delinquent as a juvenile. (J.A. at 5.). While in her early twenties, Silvia became addicted to cocaine and was charged with two drug-related felonies. (J.A. at 5, 16). She pled guilty to a possession charge and served two years in state prison. (J.A. at 16.).

While in prison, Silvia took advantage of the opportunities offered to her by earning her G.E.D., enrolling in community college classes, taking every business class that she could find, and earning her degree in business. (J.A. at 5, 16.). She was released from prison as a rehabilitated woman and opened up her first business, which was a small-scale clothing operation. (J.A. at 5.). She later met Raymond Courtier, who invested in several more exclusive clothing stores. (J.A. at 5.). Now, her clothing stores cater to consumers of high-end designers like Fendi, Chanel, Gucci, Louis Vuitton, and more. (J.A. at 16.). Recently, she has become more involved in causes relating to educational equity, restorative justice, and affordable housing. (J.A. at 2.). For example, Silvia has advocated against private, for-profit prisons and gentrification, and has advocated for restoring voting rights for former felons and increasing adult literacy. (J.A. at 16.).

Silvia has also become passionate about the local campaign for mayor. (J.A. at 3.). In one of her online commentaries in support of candidate Evelyn Bailord, Silvia criticized Bailord's opponent, Elmore Lansford, as a "relic of the past," "a divisive leader," and "someone who cares little for social justice issues," and encouraged readers to vote for Bailord. (J.A. at 3.). Lansford responded with a barrage of blatant attacks on Silvia's character:

> It is ironic that Silvia Courtier blasts me as uncaring toward the less fortunate. No wonder she is a coddler of criminals. In her early years, Silvia Courtier was a lewd and lusty lush, a leech on society, and a woman who walked the streets strung out on drugs. She is nothing more than a former druggie.
>
> It is also ironic that she casts herself as the defender of the less fortunate. Last time I checked, she is the proprietor of a bunch of upscale, hoity-toity clothing stores that are lacking in class and substance. How ironic that she pimps out these clothes to the rich and lavish. She is corrupt and a swindler, who hoodwinks the poor into thinking she is some kind of modern-day Robinita Hood. I guess she learned something from the streets.
>
> Now, this businesswoman is a pimp for the rich and a whore for the Poor. What a Joke!

(J.A. at 4.). Lansford's remarks form the basis of this action.

Summary of the Proceedings

Silvia sued Lansford for defamation of character and false light invasion of privacy in the Tenley District Court. (J.A. at 4.). Her defamation claims were particular to the phrases "a pimp for the rich," "a leech on society," "a whore for the poor," and "corrupt and a swindler." (J.A. at 4-5.). Lansford contended his statements are rhetorical hyperbole and that Silvia is a libel-proof plaintiff with no good reputation to protect. (J.A. at 5.). Lansford filed a special motion to strike and dismiss the defamation claims under the Tenley Public Participation Act. (J.A. at 6.). Although the court found that Silvia was not a libel-proof plaintiff, the Tenley District Court found Lansford's remarks to be rhetorical hyperbole and granted Lansford's motion to strike and dismiss. (J.A. at 10, 12-13.).

Silvia appealed to the Supreme Judicial Court of Tenley. (J.A. at 14.). The court affirmed the district court's holding that Silvia was not a libel-proof plaintiff but reversed the dismissal of Silvia's claims at this stage of litigation. (J.A. at 19, 23.). Lansford appealed the Supreme Judicial Court of Tenley's decision, and this Court granted certiorari. (J.A. at 24.).

Standard of Review

A special motion to dismiss/strike can be treated as a motion to dismiss under Fed. R. Civ. P. 12(b)(6). *Clifford v. Trump,* 339 F. Supp. 3d 915, 922 (C.D. Cal. 2018). On appeal of a motion to dismiss, the Court reviews the case *de novo*. *Farah v. Esquire Magazine*, 736 F.3d 528, 531 (D.C. Cir. 2013).

SUMMARY OF THE ARGUMENT

The First Amendment guarantees freedom of expression, although this privileged is not absolute. Given the importance of protecting one's own reputational interest, state defamation laws have previously restricted the scope of protected freedom of expression. However, state defamation laws also have their limits. Defamation claims can be precluded by the libel proof plaintiff doctrine or the defense of rhetorical hyperbole.

Silvia Courtier is not barred from bringing her defamation claims under the libel-proof plaintiff doctrine. The libel-proof plaintiff doctrine has been interpreted to have two approaches: issue specific and incremental harm. In order to be libel-proof under the issue specific approach, a plaintiff must have such a diminished reputation in a certain area such that any further comment would not cause further harm. Based on her criminal history alone, which did not garner any public attention or notoriety, Courtier's past is insufficient to tarnish her reputation to the point of no return as required to render her libel-proof. Further, Courtier is not libel-proof under the incremental harm doctrine. This doctrine requires the harm of the challenged

statements to cause more than an incremental harm when compared to the rest of the statements made. Because the harm caused by the challenged statements substantially outweighs any harm caused by the rest of the Lansford's post, Courtier's claims are not barred by this doctrine. Additionally, given the lack of evidence supporting reputational harm at this early stage in litigation, dismissal under this doctrine is premature.

Silvia Courtier is further not barred from bringing her defamation claims because Lansford's statements are not protected rhetorical hyperbole. Courts have adopted a multi-factor test in considering the totality of the circumstances to determine if an allegedly defamatory statement is actionable. Thus, courts have weighed the following factors: (1) the common usage or meaning of the allegedly defamatory words themselves; (2) the degree to which the statements are verifiable; (3) the immediate context in which the statement occurs; and (4) the broader social context into which the statement fits. Because Lansford's statements comprise words with specific meanings, the statements can be verified through investigations, and the context of and surrounding Lansford's statements all weigh in favor of the statements being factual assertions, the statements at issue are not protected rhetorical hyperbole and dismissal under this doctrine is at least premature.

ARGUMENT

It is well established by this Court that freedom of expression is protected under the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 269 (1964). First Amendment protection was "fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth* v. *United States*, 354 U.S. 476, 484 (1957). However, this protection is not absolute. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 3 (1990). This Court has repeatedly held that First Amendment protections do not prevent

state libel laws from being applied to allegations of defamation. *See e.g.*, *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 3 (1990); *Greenbelt Coop. Publ'g Ass'n v. Bresler*, 398 U.S. 6, 12 (1970) ("Because the threat or actual imposition of pecuniary liability for alleged defamation may impair the unfettered exercise of these First Amendment freedoms, the Constitution imposes stringent limitations upon the permissible scope of such liability.").

Implicit in defamation law is the continued difficulty in balancing protection of an individual's reputation with freedom of expression. *See Hustler Magazine v. Falwell*, 485 U.S. 46, 52 (1988); *Celle v. Filipino Reporter Enters.*, 209 F.3d 163, 171 (2d Cir. 2000). *Ollman v. Evans*, 750 F.2d 970, 974 (D.C. Cir. 1984) (stating that "an individual's interest in his or her reputation is of the highest order"). Protection of a person's reputation "is an eloquent expression of the respect historically afforded the dignity of the individual in Anglo-American legal culture." *Ollman*, 750 F.2d at 974 (emphasizing a defamatory statement's ability to "destroy an individual's livelihood, wreck his standing in the community, and seriously impair his sense of dignity and self-esteem"). Given the importance of reputation, Courts should be wary of dismissing defamation claims in early stages of litigation. *Hiraide v. Vast Sys. Tech. Corp.*, No. C-08-04714 RMW, 2009 U.S. Dist. LEXIS 71383, at *33 (N.D. Cal. Aug. 3, 2009) (declining to dismiss slander case at the pleadings stage given the lack of development as to the actionability and damages caused by the challenged statements).

I. SILVIA COURTIER IS NOT BARRED FROM BRINGING HER DEFAMATION SUIT UNDER THE LIBEL-PROOF PLAINTIFF DOCTRINE BECAUSE HER CRIMINAL HISTORY ALONE, WITHOUT ANY PUBLIC ATTENTION OR NOTORIETY, IS INSUFFICIENT TO RENDER HER LIBEL-PROOF UNDER BOTH THE ISSUE-SPECIFIC APPROACH AND THE INCREMENTAL HARM DOCTRINE.

A person is libel-proof, when they are so unlikely by the virtue of their life, to recover anything other than nominal damages as to warrant dismissal of the case. *Cardillo v. Doubleday*

& Co., 518 F.2d 638, 639-40 (2d Cir. 1975). The doctrine is limited, with narrow application, which is to be confined to its basic factual context. *Buckley v. Littell*, 539 F.2d 882, 889 (2d Cir. 1976). The doctrine has been heavily criticized and has not yet been adopted in a majority of jurisdictions. *See Bustos v. A&E TV Networks*, 646 F.3d 762, 765 (10th Cir. 2011) (the scope of the doctrine uncertain as it is both too narrow and too broad); *Brooks v. Am. Broad. Cos.*, 932 F.2d 495, 501 (6th Cir. 1991) (refusing to adopt the doctrine); *Liberty Lobby v. Anderson*, 746 F.2d 1563, 1569 (D.C. Cir. 1984) (the libel-proof plaintiff doctrine is a "fundamentally bad idea" resulting in "federal courts [] spinning loose-woven legal theory not firmly attached to the loom of state law"). Then-Judge Antonin Scalia famously criticized the doctrine in his refusal to adopt it stating: "The theory must be rejected because it rests upon the assumption that one's reputation is a monolith, which stands or falls in its entirety. The law, however, proceeds upon the optimistic premise that there is a little bit of good in all of us -- or perhaps upon the pessimistic assumption that no matter how bad someone is, he can always be worse." *Liberty Lobby*, 746 F.2d at 1568 (Scalia, J.)

In courts where the libel-proof plaintiff doctrine has been applied, it has been applied carefully. Because such few plaintiffs have "so bad a reputation" that a libelous statement "cannot realistically cause impairment of [their] reputation because [it's] already so low," the doctrine must be applied with caution. *Guccione v. Hustler Magazine, Inc.*, 800 F.2d 298, 303 (2d Cir. 1986); *Thomas v. Tel. Publ'g Co.*, 929 A.2d 991, 1004-05 (N.H. 2007) (adopting the libel-proof plaintiff doctrine but warning that "it should be applied with caution and sparingly").

Given the cautious application of the doctrine, not all courts have adopted it. In those that have, two suggested versions of the libel-proof plaintiff doctrine have developed: the issue-specific libel-proof plaintiff doctrine and the incremental harm doctrine. *Thomas*, 929 A.2d at

1002. Courtier's criminal history has not irreparably damaged her reputation, and accordingly, this Court should affirm both the Tenley District Court and the Supreme Judicial Court of Tenley in finding Courtier is not libel-proof.

A. Courtier is Not Libel-Proof Under the Issue-Specific Approach Because Her Criminal Record Alone, Without Public Attention or Notoriety, is Insufficient to Diminish Her Reputation Such That She has No Good Reputation to Protect Thus Rendering Her Libel-Proof.

Under the issue-specific approach to the libel proof plaintiff doctrine, "[a] libel-proof plaintiff is one whose reputation on the matter in issue is so diminished that, at the time of an otherwise libelous publication, it could not be further damaged." *Thomas*, 929 A.2d at 1004 (quoting *McBride v. New Braunfels Herald-Zeitung,* 894 S.W.2d 6, 9 (Tex. Ct. App. 1994). In other words, a plaintiff's reputation for a particular trait must be sufficiently bad as to not suffer any harm by further statements made regarding that trait, even if such statements are false or made with malice. *See Church of Scientology Int'l. v. Time Warner, Inc.,* 932 F. Supp. 589, 593 (S.D.N.Y. 1996).

In application of this doctrine, especially concerning criminal history, courts often consider three factors when determining whether is libel-proof: the nature of the conduct, the number of offenses, and the degree and range of publicity received. *Marcone v. Penthouse Int'l Magazine for Men*, 754 F.2d 1072, 1078-79 (3d Cir. 1985). *See also Wynberg v. Nat'l Enquirer*, 564 F. Supp. 924, 928 (C.D. Cal. 1982). These factors specifically get to the essence of the doctrine such that a plaintiff has no good reputation left to protect. *See Cardillo v. Doubleday & Co.*, 518 F.2d 638, 639-40 (2d Cir. 1975). Upon consideration of these factors, namely the nature and frequency of the conduct and the publicity associated to it, Courtier's criminal history does not render her libel-proof with respect to Petitioner's immature social media rant.

1. Nature and frequency of the Conduct

Generally, for a plaintiff to be libel-proof based on their criminal history, that history must be "so extreme that no reasonable person could find further damage to [her] reputation" based on the defamation. *McBride*, 894 S.W.2d at 10-11 (holding plaintiff was not libel-proof given his three prior convictions for theft, burglary, and delivery of hydromorphone because his criminal history was not so extreme as to sufficiently diminish his reputation). *See e.g.*, *Jackson v. Longcope*, 476 N.E.2d 617, 621 (Mass. 1985) (holding defendant actively serving a life sentence, without the possibility of parole, with lengthy sentences to be served after the expiration of that life sentence was libel-proof based on several convictions for possession of a firearm, kidnapping, rape, robbery, intent to murder, and first-degree murder, and pending indictments for other murders); *Finklea v. Jacksonville Daily Progress*, 742 S.W.2d 512, 517-18 (Tex. Ct. App. 1987) (holding plaintiff with at least eight prior convictions for burglary, theft, and drug possession was libel-proof regarding his criminal history because the effect of the statements on his reputation was "utterly inconsequential").

More specifically, a plaintiff's criminal history becomes so extreme when plaintiff is "notorious" for a criminal act or her record depicts life as a "habitual criminal." *Jackson*, 476 N.E.2d at 619. *See e.g.*, *Cardillo*, 518 F.2d at 639 (holding repeat offender actively serving time in prison for numerous federal felonies libel-proof because of his strong record of serious crime and known associations to organized crime); *Ray v. Time, Inc.*, 452 F. Supp. 618, 622 (W.D. Tenn. 1976) (holding convicted murder libel-proof given his confession to the murder of Martin Luther King, Jr. reasoning that "a plaintiff cannot collaterally, by a civil action of libel, attempt to attack the effect of his criminal conviction for murder").

Courtier's brief criminal history is insufficient in severity and habit to render her libel-proof. Courts have traditionally not held a single conviction to be sufficient to tarnish one's reputation to the point of no return, for instance, in *McBride*, the court protected the reputation of a plaintiff with three convictions. Alternatively, in *Finklea*, the court determined an extensive history of "at least" eight convictions within twenty-five years was enough to deem the plaintiff libel-proof. Courtier's criminal history is brief, limited to juvenile delinquency and a single drug conviction from "decades ago" which is substantially less than both *McBride* and *Finklea*. Furthermore, Courtier is far more than her conviction – she only served two years after which she reentered the community and opened a successful local business. Conversely, the criminals' lives in *Jackson* and *Cardillo* are defined by the consequences of their violent crimes. Both Cardillo and Jackson were serving lengthy sentences, twenty-one years and life-plus respectively, for extensive criminal histories of serious crimes and continuing association with criminal activity. Courtier's juvenile delinquency and single drug conviction have not defined her life. Therefore, Courtier is not libel-proof given the nature and frequency of her conduct.

2. Degree and range of publicity

Publicity is an essential component of damage to someone's reputation that is necessary to trigger the issue-specific version of the libel proof plaintiff doctrine. *Thomas v. Tel. Publ'g Co.*, 929 A.2d at 1005 (holding plaintiff with habitual criminal record of roughly twenty convictions spanning three states was not libel-proof because receiving "little media attention" for past convictions was insufficient to establish such diminished reputation for the purposes of the doctrine). Publicity is often the means by which reputation damage occurs, and accordingly, the "most effective evidence" of such damage. *Id.* In cases in which courts have applied the libel-proof plaintiff doctrine, especially concerning criminal history, both the publicity surrounding

the crimes and the level of notoriety "are quite high." *Id. See e.g.*, *Marcone*, 754 F.2d at 1079 (declining to hold plaintiff libel-proof as a matter of law despite evidence of "sullied" past from negative publicity concerning drug trafficking, motorcycle gangs, income tax evasion, punching a police officer, and contempt of court because such evidence should be considered by the jury and would likely be reflected in compensatory damages calculation); *Wynberg*, 564 F. Supp. at 928 (holding plaintiff with five criminal convictions for bribery, grand theft, offering money and the services of a prostitute to police, and two instances of contributing to delinquency of minors involving sex and drugs was libel-proof given that at least seventeen newspaper articles reported his conduct spanning local, national, and international news); *Ray*, 452 F. Supp. at 622 (holding plaintiff libel-proof given the notoriety of his confession to the murder of Martin Luther King, Jr.).

There are no facts to suggest Courtier's criminal record was ever publicized, much less to the heightened level required by the libel-proof plaintiff doctrine. Courtier's conduct was not widely reported, especially in a negative light, like the plaintiff in *Marcone*. Courtier was not the subject of a vast newspaper publication like the plaintiff in *Wynberg*. Nor did Courtier's single drug conviction gain her notoriety like Martin Luther King's murderer in *Ray*. In fact, Courtier's criminal conduct received even less than the minimal publicity afforded to the plaintiff in *Thomas*, for which the court held was insufficient under this doctrine. The utter lack of publicity surrounding Courtier's criminal history indicates her reputation was not sufficiently damaged so as to render her libel-proof.

3. No reputation left to protect

Given the cornerstone of a defamation claim is reputational harm, the essence of the libel-proof plaintiff doctrine is that a person's reputation is so diminished that it could not be

further damaged by the statements made. *See Cardillo*, 518 F.2d at 639; *Finklea*, 742 S.W.2d at 516 (citing *Ray*, 452 F. Supp. at 622) (stating that a person's remaining good reputation is still entitled to protection). Accordingly, courts have applied this doctrine under circumstances of extreme reputational damage, such that the plaintiff's reputation was past the point of no return. *See e.g. Jackson*, 476 N.E.2d at 618-19 (applying the doctrine to inmate actively serving a life sentence, without the possibility of parole, with lengthy sentences to be served after the expiration of that life sentence for several convictions for possession of a firearm, kidnapping, rape, robbery, intent to murder, and first-degree murder, and pending indictments for other murders)*, Cardillo*, 518 F.2d at 640 (applying the doctrine to repeat offender actively serving time in prison for numerous federal felonies who has a strong record of serious crime and known associations to organized crime)*, Lamb v. Rizzo*, 391 F.3d 1133, 1134 (10th Cir. 2004) (applying the doctrine to inmate serving three consecutive sentences of life imprisonment who also repeatedly attempted to flee prison).

Courtier's reputation is not so diminished as to warrant the application of the libel-proof plaintiff doctrine. The criminals' lives in *Jackson, Cardillo,* and *Lamb* were defined by the consequences of their criminal actions. Both Cardillo and Jackson were serving lengthy sentences, twenty-one years and life-plus respectively, for extensive criminal histories of serious crimes and continuing association with criminal activity. Similarly, Lamb's utterly heinous offenses lead to three consecutive life sentences. To the contrary, Courtier's juvenile delinquency and single drug conviction have not defined her life or her reputation. In fact, Courtier used her time in prison to get her G.E.D. and enrolled in college level classes, taking every business class she could find. After completing her sentence, she opened a local clothing store which gained popularity and increasing success. Not only did Courtier establish herself as an entrepreneur, she

also built a reputation in the community as a political activist, supporting causes relating to education, restorative justice, and affordable housing. Therefore, Courtier is in no way libel-proof due to the insignificance of her criminal history and her established reputation in the community as an entrepreneur and activist.

B. Courtier is Not Libel-Proof Under the Incremental Harm Doctrine Because the Harm Caused by the Challenged Statements Outweighs the Harm Caused by the Rest of the Post, if any, and Given the Lack of Evidence of Harm, Dismissal Under this Doctrine is Premature.

Some courts have recognized the incremental harm doctrine as a secondary approach to the libel-proof plaintiff doctrine. *Thomas v. Tel. Publ'g Co.*, 929 A.2d at 1002; *Stern v. Cosby*, 645 F. Supp. 2d 258, 270 (S.D.N.Y. 2009); *Jewell v. NYP Holdings, Inc.*, 23 F. Supp. 2d 348, 390 (S.D.N.Y. 1998) (the incremental harm doctrine is the "cousin" of the libel-proof plaintiff doctrine). The doctrine has developed based upon the view that "some wrongs simply should not be actionable primarily because society is better off avoiding the costs associated with litigation where the harm suffered is incremental." *Jewell*, 23 F. Supp. 2d at 392. Like the general application of the libel-proof plaintiff doctrine, the incremental harm doctrine is to be "sparingly applied, if at all." *Stern*, 645 F. Supp. 2d at 287. *See also Masson v. New Yorker Magazine, Inc.*, 960 F.2d 896, 899 (9th Cir. 1992) (declining to adopt the doctrine in California because it is fundamentally flawed and a "bad idea").

The incremental harm doctrine measures the harm inflicted by the challenged statements compared to the harm imposed by the rest of the entire publication. *Masson*, 960 F.2d at 898 (9th Cir. 1992). If the harm inflicted by the challenged statements is determined to be minimal or nonexistent, the claim is not actionable. *Stern*, 645 F. Supp. 2d at 286-87; *Masson*, 960 F.2d at 898. In other words, only where a statement "cannot realistically cause impairment" because "the true portions of the statement have such damaging effects," should a plaintiff be libel-proof

under the incremental harm doctrine. *Skakel v. Grace*, 5 F. Supp. 3d 199, 214 (D. Conn. 2014) (quoting *Guccione*, 800 F.2d at 303.) Therefore, in applying this doctrine, the court must consider the specific challenged statements as compared to the rest of the published statements.

1. Harm Caused by Challenged Statements

Application of the incremental harm doctrine requires the comparison of challenged statements.[1] Courtier specifically challenges the following statements made by Lansford:

(1) "a pimp for the rich";
(2) "a leech on society";
(3) "a whore for the poor"; and
(4) "corrupt and a swindler."

(J.A. at 5, 18.).

Specifically, statements of a sexual nature can be "particularly salacious and damaging" to a person's reputation. *See Stern*, 645 F. Supp. 2d at 287 (S.D.N.Y. 2009) (recognizing the substantial harm caused by several sexual statements such as those about oral sex, having sex for money, creation of a sex tape, and "pimp[ing]"). Lansford's "pimp" and "whore" statements are similarly lude in nature as the sexual statements in *Stern*. Both *Stern* and Lansford specifically include the "pimp," and while *Stern* does not explicitly mention "whore," being a whore is defined as having sex for money.[2]

[1] In application of the doctrine, the challenged statements must be actionable because only actionable statements may be considered in assessing the harm done to a plaintiff's reputation. *Thomas v. Tel. Publ'g Co.*, 929 A.2d at 1004. For actionability, *see infra* Part II, at 16.

[2] *Whore*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/whore (last visited Sept. 29, 2019) (defining whore as "a person who engages in sexual intercourse for pay").

Additionally, statements attacking an individual's professional integrity and honesty can cause more than incremental harm to that individual's professional reputation. *See Stern*, 645 F. Supp. 2d at 287. In *Stern*, the court considered statements surrounding stolen money, perjury, bribery, blackmail, and extortion, determining that the damage caused by these statements was not merely incremental. *Id.* Similarly, the nature of Lansford's "corrupt" and "swindler" statements specifically target Courtier's character by implicating her competence and professionalism as a businessperson.

Furthermore, even in a more general sense, these statements substantially harm Courtier's reputation as a businessperson and activist. Lansford "vociferously attacked" both Courtier's skill and integrity as a businessperson on social media. Courtier relies on her social media presence particularly for her activist role within the community. Therefore, Lansford's specific attacks on her character cause significant harm to her reputation.

The harm of the above statements outweighs the harm caused by the statements contained in the rest of Lansford's social media post when compared. Although the remaining statements are also distasteful and immature, Courtier's reputation stands to suffer only minimal harm at most based on these statements. First, Lansford attempts to diminish Courtier's character by referring to her prior criminal history by calling her a "former druggie." Next, Lansford criticizes Courtier's "hoity-toity clothing stores" that lack class and substance. Lastly, Lansford attacks her integrity by alleging she "hoodwinks the poor." All of these statements cause minimal harm, if any, given they address aspects of Courtier's reputation that are well established[3] and therefore

[3] Courtier has built a strong professional reputation through her "significant accomplishments" in the business world and a strong activist reputation through her "sizable social media presence"

not likely to waiver when criticized by a political adversary. Thus, the harm caused by the challenged statements outweighs the harm caused by the unchallenged statements, and Courtier is not libel-proof under the incremental harm doctrine.

2. Dismissing this claim under the incremental harm doctrine is premature.

The incremental harm doctrine is dependent on the determination of harm flowing from the challenged statements and therefore, ruling on the motion to dismiss is premature. At this early stage in the litigation, the parties have not yet established the harm caused by the statements which is necessary to rule on this doctrine. *See Church of Scientology,* 932 F. Supp. at 594 (refusing to address incremental harm doctrine at the time in which the parties had not yet conducted discovery on the issue of damages); *Skakel*, 5 F. Supp. 3d at 214 (declining to dismiss the action during the pleadings stage on the basis of the incremental harm doctrine because the record before the court was undeveloped such to prevent the court from determining reputational harm with certainty); *Hiraide*, 2009 U.S. Dist. LEXIS 71383, at *33 (declining to dismiss slander case at the pleadings stage given the lack of development as to the actionability and damages caused by the challenged statements); *Biro v. Condé Nast*, 883 F. Supp. 2d 441, 468 n.10 (S.D.N.Y. 2012) ("Because there has been no evidence on […] the degree of harm caused by the allegedly defamatory statements, [the incremental harm] doctrine[] do[es] not apply here."). Therefore, any comparison made under the doctrine is merely speculate and dismissing the case is premature.

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she uses to advocate for causes such as criminal justice reform, education reforms, and protection of affordable housing. (J.A. at 16.).

II. LANSFORD'S REMARKS CALLING COURTIER "A PIMP FOR THE RICH," "A LEECH ON SOCIETY," "A WHORE FOR THE POOR," AND "CORRUPT AND A SWINDLER" ARE NOT MERE RHETORICAL HYPERBOLE BECAUSE THE COMMON MEANING OF THE WORDS, THE DEGREE OF VERIFIABILITY OF THE STATEMENTS, AND THE IMMEDIATE CONTEXT AND THE BROADER SOCIAL CONTEXT SURROUNDING THE STATEMENTS ALL WEIGH IN FAVOR OF A FINDING THAT THE STATEMENTS ARE CAPABLE OF CARRYING DEFAMATORY MEANING.

Although First Amendment protections do not prevent state libel laws from being applied to allegations of defamation, this Court has recognized "constitutional limits on the *type* of speech which may be the subject of state defamation actions," thus differentiating protected hyperbole from statements capable of a defamatory meaning. *Milkovich*, 497 U.S. at 16-17. Statements that "cannot reasonably be interpreted as stating actual facts" about an individual are entitled to First Amendment protection, so that "public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of this Nation." *Id.* at 20 (citing *Falwell*, 486 U.S. at 53-55).

Statements that "even the most careless reader must have perceived" to be rhetorical hyperbole are not actionable under state defamation laws. *Id.* at 17. Although this Court did not specify a test for distinguishing between statements capable of a defamatory meaning and rhetorical hyperbole, many appellate courts have adopted a multi-factor test in determining whether an allegedly defamatory statement is rhetorical hyperbole.[4] The multi-factor test looks to

[4] Such multi-factor tests have been adopted at least by the First Circuit, Second Circuit, Fourth Circuit, Sixth Circuit, the Ninth Circuit, and the D.C. Circuit. *See, e.g., Phantom Touring, Inc. v. Affiliated Publications*, 953 F.2d 724, 727 (1st Cir. 1992); *Lee v. Bankers Trust Co.*, 166 F.3d 540, 546 (2d Cir. 1999); *Lapkoff v. Wilks*, 969 F.2d 78, 82 (4th Cir. 1992); *Joliff v. NLRB*, 513

the totality of the circumstances and comprises the following considerations: (1) the common usage or meaning of the allegedly defamatory words themselves; (2) the degree to which the statements are verifiable; (3) the immediate context in which the statement occurs; and (4) the broader social context into which the statement fits. *See Joliff v. NLRB*, 513 F.3d 600, 611-12 (6th Cir. 2008). Because Lansford's remarks about Courtier do not fall within the protection of rhetorical hyperbole under the multi-factor test, this Court should affirm the Supreme Judicial Court of Tenley and find that the remarks are capable of possessing defamatory meeting and an expedited motion to strike or dismiss the case should not be granted.

A. The Common Usage and Meaning of the Words Used in Lansford's Remarks Demonstrate a Specific Meaning for Each Word That Is Not Merely Loose, Figurative, or Hyperbolic.

Courts have traditionally first looked to the common usage or meaning of the words at issue. *Ollman*, 750 F.2d at 979 (noting that the court should look to "whether the statement has a precise core of meaning for which a consensus of understanding exists or, conversely, whether the statement is indefinite and ambiguous"). This Court established in *Milkovich* that rhetorical hyperbole "negate[s] the impression that the writer was seriously maintaining that [petitioner acted in accordance with the statement]." Milkovich, 497 U.S. at 21. Thus, the terms at issue should reflect "clear factual implications," as opposed to "loosely definable" or "variously interpretable" statements. *Ollman*, 750 F.2d at 980 (finding "fascist" to have too many definitions to be actionable, and further noting that "corrupt" was actionable while "incompetent" was too vague to be actionable) (citing *Buckley*, 539 F.2d at 895). Examples of

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F.3d 600, 611-12 (6th Cir. 2008); *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1053 (9th Cir. 1990); *Ollman v. Evans*, 750 F.2d 970, 979-84 (D.C. Cir. 1984).

statements comprising "epithets, fiery rhetoric or hyperbole" include "sloppy and irresponsible reporting," "intangible," "most repulsive thing," and "one of the best things." *Unelko Corp. v. Rooney*, 912 F.2d 1049, 1054 (9th Cir. 1990); *Ollman*, 750 F.2d at 981.

This Court has also concluded that rhetorical hyperbole encompasses "loose language or undefined slogans that are part of the conventional give-and-take in our economic and political controversies." *Cafeteria Emps. Union v. Angelos*, 320 U.S. 293, 295 (1943) (finding "Dictator" and "Robin Hood" to be rhetorical hyperbole). Thus, "murder for profit" in the context of a company's ambulance policy, "slave driver" in reference to an employee's manager, and "disgraceful manner" are classified as the type of "loose, figurative, or hyperbolic language" entitled to First Amendment Protection. *Joliff*, 513 F.3d at 612 (internal citations omitted). Some courts have regarded language that may comprise multiple definitions to be too vague to be actionable. *Obsidian Fin. Group, LLC v. Cox*, 812 F. Supp. 2d 1220, 1224 (D. Or. 2011) (finding the term "lying" to be unactionable because it comprised a spectrum of untruths including white lies, partial truths, misinterpretation, and deception). However, other courts have held that terms such as "liar" and "racist" have "clear, well-understood meanings, which are capable of being defamatory." *Armstrong v. Shirvell*, 596 F. App'x 433, 442 (6th Cir. 2015), (citing *Taylor v. Carmouche*, 214 F.3d 788, 793-94 (7th Cir. 2000)); *Connaughton v. Harte Hanks Commc'ns, Inc.*, 842 F.2d 825, 840-41 (6th Cir. 1988)). In essence, lower courts have been split regarding the actionability of terms with multiple definitions, but terms "suggestive of name calling, exaggeration, ridicule, imaginative expression, or subjective evaluation" are generally not sufficiently specific to be actionable, while the wide range of statements comprising "assertions or implications of provable facts" may be actionable. *See id.* (citing *Old Dominion Branch No. 496, Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 284-85 (1974)).

Courts have also previously found some of the statements at issue to constitute actionable defamatory remarks, which support a finding that those statements here are actionable. *See e.g.*, *Knievel v. ESPN*, 393 F.3d 1068, 1074 (9th Cir. 2005) (noting that the word "pimp" "may be reasonably capable of a defamatory meaning when read in isolation"). For example, some courts may find the term "whore" to be actionable in certain contexts which implied "serious sexual misconduct." *Mallory v. S & S Publishers*, 168 F. Supp. 3d 760, 765-66 (E.D. Pa. 2016) (citing supportive cases from two district courts and a state supreme court) (internal citations omitted); *Rangel v. Am. Med. Response West*, 2013 U.S. Dist. LEXIS 59579, at *26 (E.D. Cal. 2013). In another instance, a court has also found the accusation of a judge being "corrupt" to be sufficiently actionable for its implication that the judge had committed criminal acts. *Standing Comm. on Discipline of the U.S. Dist. Court v. Yagman*, 55 F.3d 1430, 1440 n.18 (9th Cir. 1995) (internal citations omitted).

Most importantly, dismissal at such early stages in the litigation is premature even if the statements at issue are subject to a wide range of meanings. *Hiraide*, 2009 U.S. Dist. LEXIS 71383, at *33 (holding that a statement calling the plaintiff "crazy" which could "cause harm to plaintiff's reputation in the Japanese business community" was not necessarily rhetorical hyperbole, and thus should not be "summarily dismissed at the pleadings stage").

Lansford's remarks here involve terms with specific definitions and therefore do not meet the bar for loose and figurative language that qualifies as protected rhetorical hyperbole. First, the terms at issue do not comprise mere descriptive adjectives with no objective meaning. A "whore" is defined as a person who engages in sexual intercourse for pay. *Whore*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/whore (last visited September 29, 2019). A "pimp" is defined as a criminal who is associated with, usually exerts control over, and

lives off the earnings of one or more prostitutes. *Pimp*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/pimp (last visited September 29, 2019). A "leech" is defined as a type of worm or a hanger-on who seeks advantage or gain. *Leech*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/leech (last visited September 29, 2019). A "corrupt" person is defined as one who is characterized by improper conduct, such as bribery or the selling of favors. *Corrupt (Adjective)*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/corrupt (last visited September 29, 2019). A "swindler" is defined as one who obtains money or property by fraud or deceit. *Swindle (Verb)*, MERRIAM-WEBSTER, https://www.merriam-webster.com/dictionary/swindler (last visited September 29, 2019). Because the terms used by Lansford have literal definitions, unlike the *Ollman* and *Unelko* adjectives such as "incompetent," "sloppy," and "most repulsive" which depend upon the nouns on which they are modifying, the terms here have a specific, well-understood meaning that weigh in favor of a literal reading of the terms.

Further, the terms at issue here are not simply analogies to "loose language or undefined slogans" such as "Dictator," "Robin Hood," or "slave driver." Such terms are clearly construed as rhetorical hyperbole because of the metaphorical nature of the terms at issue. Users of such terms are not literally accusing others of being a dictator, the original Robin Hood, or a literal slave driver. However, Lansford's remarks used the terms "whore," "pimp," "leech," "corrupt," and "swindler," which all have literal meanings when used to describe a person's character or conduct, and therefore are not construed metaphorically. Although various courts have arrived at different conclusions regarding the actionability of terms such as "lying," the terms that Lansford has used point to specific accusations regarding Courtier's character and conduct, and therefore are more analogous to actionable terms such as "racist" and "crazy." Additionally, courts have

previously found at least the terms "whore," "pimp," and "corrupt" to be actionable for making specific accusations concerning illegal misconduct, which favors a finding of this case surviving beyond an expedited motion to dismiss/strike at the pleadings stage.

Finally, even if this Court holds that the terms at issue are subject to multiple meanings, dismissal of this lawsuit is still premature under the *Hiraide* approach. This Court should affirm the Supreme Judicial Court of Tenley at least because of this case is still currently at the early phases of litigation.

B. A Reasonable Listener Could Conclude That Lansford's Remarks Were Verifiable and Thus Implied Objective Facts About Courtier.

The verifiability factor turns on "whether the statement was one of objective fact or subjective opinion." *Lee v. Bankers Trust Co.*, 166 F.3d 540, 546-47 (2d Cir. 1999) (finding possible vague implication of employee wrongdoing based on employer's actions of going through employee's desk and ordering him to stay away from work was subjective and therefore not actionable). Subjective statements are more likely to carry a defamatory meaning, while objective facts are more likely to be actionable, because opinion cannot defame unless a "reasonable factfinder" can believe that the allegedly defamatory remarks "impl[y] reasonably specific assertions of fact." *Id.* Thus, courts have considered if the statement at issue is "objectively capable of proof or disproof." *Joliff*, 513 F.3d at 611.

In order to determine if a statement is verifiable, a court first looks to the plain meaning of the words to determine if the dictionary definition favors a finding of objectivity. *Unelko*, 912 F.2d at 1055 (citing *Lewis v. Time, Inc.*, 710 F.2d 549, 553 (9th Cir. 1983)) (comparing the objective dictionary definition of "work" with the subjective dictionary definition of "shady"). However, a finding of objectivity is not determinative, and a statement may still be verifiable when the definition involves certain elements of subjectivity as long as it implies an objective

fact. *Id.* (holding that terms with subjective definitions can be actionable when "based on factual observations to a sufficient extent to imply an assertion of fact," in the case of an allegedly defamatory remark that the product Rain-X "didn't work"). Therefore, this test turns on whether the allegations can be investigated. *See Milkovich*, 497 U.S. at 21 (finding a claim about perjury to be verifiable because it was based on a core of objective evidence by comparing testimony records); *Joliff*, 513 F.3d at 613 (finding a claim about logbook falsification to be verifiable because those claims were actually investigated). However, exaggerated and satirical statements with no basis in objective fact are not entitled to protection against defamation, but Lansford's statements do not rise to that level. *Unelko*, 912 F.2d at 1055 (citing *Falwell*, 485 U.S. at 48).

First, as discussed in Part II.A, each term at issue has a specific dictionary definition ("whore" is defined as a person who engages in sexual intercourse for pay; "pimp" is defined as a criminal who is associated with, usually exerts control over, and lives off the earnings of one or more prostitutes; "leech" is defined as a type of worm or a hanger-on who seeks advantage or gain; "corrupt" is defined as characterized by improper conduct (such as bribery or the selling of favors); "swindler" is defined as to obtain money or property by fraud or deceit). These definitions imply objective facts, or at least are sufficiently based on factual observations to imply objective facts, about Courtier. The remarks made about Courtier are not vague assertions of "suspicion of some undisclosed wrongdoing" like in *Lee*, where nobody could prove whether such allegations of wrongdoing were right or wrong. In fact, merely subjective words with no basis in objectivity are limited to vague terms such as "shady" and other indeterminate adjectives. However, the remarks about Courtier are instead analogous to the "lightbulb" example illustrated in *Unelko*. *Unelko* teaches that a lightbulb is inherently objective because it either "gives off light or it doesn't" *Unelko*, 912 F.2d at 1055. Similarly, Courtier is either been

paid for sex, or she has not. She either pimped, or she has not. She is either a hanger-on, or she is not. She has either been involved in bribery or favor-selling, or she has not. She has either obtaining money or property by fraud or deceit, or she has not.

Even if this Court finds that there are some elements of subjectivity in this inquiry, the remarks maintain sufficient objective basis to be actionable. The term "It didn't work" in *Unelko* was found to be objective as applied to a product which allegedly failed to meet its stated purpose. Similarly, the phrases "whore for the poor," "pimp for the rich," "corrupt and a swindler," and "a leech on society" can be found to be objective as applied to activities that Courtier had the potential to be involved in, as a former drug addict and current businesswoman.

Second, the remarks about Courtier could easily be investigated. Similar to both a perjury investigation which could be carried out by comparing his testimony in two separate instances in *Milkovich*, and a company investigation into logbook falsification in *Joliff*, the conduct that Courtier is accused of can easily be investigated. Investigations regarding prostitution, pimping, bribery, and swindling are commonplace, and such an investigation could be easily done to verify the remarks about Courtier. This is in contrast to the inability to investigate if an American author is a fascist, which clearly lacks a "clear method of verification." *Ollman*, 750 F.2d at 981.

Finally, the remarks about Courtier simply do not rise to the level of exaggeration and satire to render them unverifiable. In *Falwell*, the statement of "a drunken incestuous rendezvous [between plaintiff and] his mother in an outhouse" contained in a parody of an advertisement was found to be satirical. *Falwell*, 485 U.S. at 48. However, the essence of Lansford's remarks is far more factual than satirical. There is no indication of exaggeration or parody here, unlike the *Falwell* advertisement, which was visibly labeled as "ad parody." Thus, a reasonable viewer of

Lansford's remarks could infer that Lansford was making objective factual assertions about Courtier's behavior and conduct.

C. The Context Surrounding Lansford's Barrage of Attacks on Courtier's Character Supports an Inference That the Statement was Intended to be Taken Literally.

The meaning of a statement in context is also critical to a complete understanding of the allegedly defamatory remarks at issue. Because readers will "inevitably be influenced by a statement's context, and the distinction between fact and opinion can therefore be made only in context," the language of the entire statement must be considered in determining whether a statement is fact or opinion. *Ollman*, 750 F.2d at 982. The appropriateness of allegedly defamatory terms to a specific situation may render a factual statement one of opinion and vice versa. *See Greenbelt*, 398 U.S. at 7 (using the term "blackmail" in the context of the substance of a land developer's negotiating proposals); *Flamm v. Am. Ass'n of Univ. Women*, 201 F.3d 144, 153 (2d Cir. 2000) (holding use of "ambulance chaser" to describe an attorney in a directory for referrals put out by a national professional organization to be actionable). However, the statement need not include a "complete set of facts" to make clear that a statement is rhetorical hyperbole. *Ollman*, 750 F.2d at 982. In contrast, the juxtaposition of specific facts surrounding the allegedly defamatory term can support an inference that the term is factual. *Soo Choi v. Kyu Chul Lee*, 312 F. App'x 551, 553 (4th Cir. 2009) (noting that use of the term "gangster" in conjunction with conduct allegations such as accepting bribes can support a factual inference of gang membership). Courts have also considered the inclusion of cautionary or interrogatory language in determining if the statement comprises fact or opinion, although a writer may not escape defamation liability by prefacing statements with such language. *Id.* at 982-83 (recognizing that readers may be put on notice of opinion statements if cautionary or

interrogatory language is used); *Bellavia Blatt & Crossett, P.C. v. Kel & Partners LLC*, 151 F. Supp. 3d 287, 293 (E.D.N.Y. 2015) (use of rhetorical "indicators" such as "it seemed to me…," "appeared to be," or "could well be," or qualifiers that suggest an opinion such as "reputation," "word on the street," "rumored," or "reportedly" can signal "presumptions and predictions" instead of facts).

In *Greenbelt*, this Court found that "blackmail" was rhetorical hyperbole in the context of a negotiation proposal because "[n]o reader could have thought that [the statements] were charging Bresler with the commission of a criminal offense." *Greenbelt*, 398 U.S. at 14. Noting the context of a "public and wholly legal" negotiation proposal, this Court held that "even the most careless reader" would have found the statement to mean that Bresler's negotiating position was "extremely unreasonable" as opposed to alleging criminal activity. *Id.* In contrast, Lansford's remarks could be reasonably inferred to state objective facts about Courtier in light of her past and current activities. Lansford's statements dredge up her former drug addiction from when she was younger. In light of her criminal history, a reasonable reader could believe that she was actually involved in prostitution or running a prostitution ring. Lansford also criticizes Courtier's current ownership of a line of upscale clothing stores. Given her entrepreneurial standing, the allegations of being "corrupt" and "swindl[ing]" could reasonably be applied to both her business activities and her community activism, specifically through implication of and association with illegal financial misappropriations. This is particularly analogous to *Flamm*, because the defamatory term "ambulance chaser" was used in a publication released by a national professional organization, and Lansford's position as mayor of Silvertown accorded him a comparable level of repute.

Lansford's statement in its entirety bears similarity to the statements in *Choi*, where allegations of him accepting bribes supported a literal reading of the neighboring term "gangster." Lansford's accusations that Courtier is "a whore," "a pimp," "a leech," "corrupt," and "a swindler" could also be literally interpreted in light of the juxtaposition of Lansford's neighboring statements, which include "coddler of criminals," "a woman who walked the streets strung out on drugs," and "former druggie."

Further, Lansford's allegations do not include any cautionary or interrogatory language. In contrast, Lansford's choice of language supports an inference that he intended his statements to be taken literally. Lansford's failure to preface the statements at issue with rhetorical identifiers such as "it seemed to me…," "appeared to be," or "could well be." He also failed to preface the statements at issue with qualifiers that suggest an opinion, such as "reputation," "word on the street," or "rumored." Thus, the failure to include cautionary language with the statements at issue, when juxtaposed with objective facts about Courtier, could lead a reasonable reader to conclude that the statements at issue also comprise facts about Courtier.

D. The Broader Social Context into Which Lansford's Statements Fit Support A Literal Meaning of The Statements at Issue.

This Court has provided license in which "intemperate, abusive, or insulting language" may be used "if such rhetoric [is believed] to be an effective means to make its point" in the context of labor disputes. *Joliff*, 513 F.3d at 613 (citing *Old Dominion*, 418 U.S. at 283 (finding use of the word "traitor" as applied to an employee who crossed a picket line to be exaggerated rhetoric given that aggressive language is "commonplace in labor disputes")). This is in part because labor disputes are "heated affairs that may abound with rough language and intemperate, even inaccurate, statements." *Id.* The *Ollman* court further emphasized examples in which the broader social context of the statements would favor a finding of an opinion. For example,

statements made in a magazine known to "[partake in] an ancient, living tradition of criticizing, even lampooning, performers," would be considered rhetoric, and imputations that a plaintiff committed sexual acts on stage at the Miss America Pageant was rhetoric since the statement was "clearly a 'fantasy.'" *Ollman*, 750 F.2d at 984. The court thus distinguished the difference between being "assailed as a corrupt public official by a soapbox orator" and being "labelled corrupt in a research monograph detailing the causes and cures of corruption in public service." *Id.* at 983. Another example involved a blog which was characterized as a "watch site" that provided "testimony" and exposes. *Armstrong*, 596 F. App'x at 442 (where the characterization of the blog sought to convince readers to believe that the blog's statements were actual facts).

Lansford, the current mayor of Silvertown and a former city council member, is a significantly more reputable source of information than a "soapbox orator" or a "lampooning magazine." Because the reader would not expect a career politician to engage in embellished gossip, Lansford's authorship of the statement lends credence to its objective factuality. Instead, Lansford's statement, which was released while he was still the mayor of Silvertown, is more analogous to accusations of corruption within a research monograph, as discussed in *Ollman*, which presumes some form of foundation in fact. Lansford's political role in Silvertown and the public release of his statement compels readers to believe that the statement comprises facts and is more comparable to a blog that seeks the reader's belief that its statements are factual assertions. Further, although the political arena can arguably be considered a heated affair, this is not the type of dispute that can be characterized as comprising intemperate and abusive language. Thus, Lansford's statements, which were made in a political context, do not receive the same protection as do the labor dispute statements made in *Joliff*.

CONCLUSION

Lansford's statements regarding Silvia Courtier constitute an actionable defamation claim under Tenley state law. First, Courtier's single prior felony conviction from decades ago does not render her a libel-proof plaintiff under both the incremental harm doctrine and the issue-specific approach to the libel-proof plaintiff doctrine. Furthermore, Lansford's statements fail to constitute protected rhetorical hyperbole because the totality of the circumstances surrounding Lansford's statements weigh in favor of a finding that his statements contained factual assertions. Respondent Courtier respectfully requests this Court affirm the Supreme Judicial Court of Tenley and find that Courtier is not a libel-proof plaintiff and that Lansford's statements do not qualify as protected rhetorical hyperbole.