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 STATE OF TENLEY

PETITIONER'S BRIEF ON THE MERITS

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Counsel for Petitioner

QUESTIONS PRESENTED

1. Is a Respondent a libel proof plaintiff under defamation law when the Respondent was previously convicted of a felony which has already substantially diminished her reputation?
2. Whether Petitioner's statements in this case qualify as protected rhetorical hyperbole or unprotected defamation?

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STATEMENT OF JURISDICTION

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. Factual Background

Petitioner, Elmore Lansford, is a civil servant who started his public life by serving several terms as a City Councilmember for the city of Silvertown. (J.A. at 3). As a civil servant, Lansford focused on progress and championed ideas such as new housing developments, being "tough on crime," and leading the charge towards economic prosperity. (J.A. at 3, 16). After serving on the City Council Lansford was elected to serve as Mayor where he continued to push Silvertown forward.

Respondent, Silvia Courtier, has also led a life in the public eye. (J.A. at 15). While she now owns her own store, she had a troubled past. As a juvenile she stole money and committed assault, indecent exposure, vandalism, and possession of marijuana and cocaine, both Schedule 1 drugs. *Id*. As a result of her consistent illegal actions, Respondent was convicted of a felony, declared delinquent, and ultimately incarcerated for a period of 24 months. (J.A. at 5, 15).

Mayor Lansford and Respondent crossed paths through Raymond Courtier, the previous Mayor of Silvertown. (J.A. at 16). Mr. Courtier helped Mayor Lansford enter the political arena. *Id*. During Mayor Lansford's most recent election, Respondent became very involved, campaigning hard for Mayor Lansford's opposition – Evelyn Bailord. (J.A. at 17). Respondent "contributed substantially to Bailord's campaign" by offering "diehard" support, hosting multiple black-tie dinners, and writing online commentaries attacking Mayor Lansford. *Id*. In addition to monetary a "relic of the past," "a divisive leader," and "someone who cares little for social justice issues." *Id*.

Respondent continued to lash out stating that "[Lansford] once was a caring politician, but now he is simply an entrenched incumbent; beholden to special interests. He has engaged in

war on the economically-strapped denizens of Cooperwood . . .” *Id*. Moreover, respondent referred to Mayor Lansford as a “plutocrat,” his measures as “repressive,” and suggested he does not care about all races, genders, and ethnicities.” (J.A. at 4). Mayor Lansford responded to this political attack on social media. *Id*. The post, a “fusillade of insults”, expressed Mayor Lansford’s displeasure with Respondent’s unprovoked attack. *Id*. Just as respondent sought to heavily criticize Mayor Lansford through offensive and mean-spirited language, so too did Mayor Lansford. *Id*. Among other statements, he called respondent, “a pimp for the rich,” “a leech on society,” “a whore for the poor,” and “corrupt and a swindler.” (J.A. at 5). Respondent filed suit against Mayor Lansford, alleging these statements were defamatory. (J.A. at 4).

II. Procedural History

In the early stages of litigation, Mayor Lansford moved for the case to be dismissed based on the Tenley Citizen’s Public Participation Act - Tenley’s anti-SLAPP statute. (J.A. at 2). The Distrcit Court granted Mayor Lansford’s motion. (J.A. at 13). In reaching its decision, the Court reasoned that although respondent was not a libel-proof plaintiff, the statements in question were “rhetorical hyperbole.” (J.A. at 11). This kind of language, the Court reasoned, is protected by the First Amendment and the special motion to dismiss was proper. (J.A. at 12). Respondent appealed to the Supreme Judicial Court of the State of Tenley. (J.A. at 14). The Supreme Judicial Court reversed the District Court’s ruling because it determined Mayor Lansford’s language went beyond rhetorical hyperbole. (J.A. at 22).

While conceding that some of Mr. Lansford’s language was protected rhetorical hyperbole, the Court relied on case law where similar language was determined not to be protected speech. *Id*. Mr. Lansford petitioned this Court for certiorari, which was granted. (J.A. at 24).

SUMMARY OF THE ARGUMENT

This Court must reverse the decision of the Supreme Court of Tenley and hold that: (1) Respondent Silvia Courtier is a libel-proof plaintiff; and (2) Petitioner, Lansford's, statements were rhetorical hyperbole protected by the 1st Amendment.

First, Silvia Courtier is a Libel Proof Plaintiff. Because the challenged statements in Lansford's press release do no more harm to her reputation than the unchallenged statements the Incremental Harm doctrine prohibits Courtier from any redress. Additionally, Courtier is libel proof under the Issue Specific Libel Proof Plaintiff doctrine because the allegedly defamatory comments are in reference to a specific part of Courtier's life for which her reputation is so tarnished that nothing more could defame her. Accordingly, Courtier is prohibited from any redress because Lansford's statements did not further tarnish her already questionable reputation.

Second, Mayor Lansford's statements are rhetorical hyperbole protected by the First Amendment. Mayor Lansford's social media post did not express defamatory facts about respondent, but rather his displeasure with a political opponent. The language he used in the context he used it in would lead a reasonable reader to believe he was speaking hyperbolically. Further, in the context of an intense back-and-forth carried out on the internet between political rivals, a reasonable reader would understand Mayor Lansford's language to be nothing more than hyperbole.

For the aforementioned reasons, this Court should overrule the Supreme Judicial Court of Tenley and reinstate the District Court's granting of Mayor Lansford's special motion to dismiss.

ARGUMENT

I. SILVIA COURTIER IS A LIBEL PROOF PLAINTIFF UNDER BOTH THE INCREMENTAL HARM DOCTRINE AND THE ISSUE-SPECIFIC LIBEL-PROOF PLAINTIFF DOCTRINE.

Silvia Courtier is a libel proof plaintiff because the harm caused by the challenged statements is nominal in comparison to the unchallenged statements and the statements made by Lansford do not further tarnish her reputation for being a former criminal. Libel is governed primarily by state law; however, most states recognize five elements to the crime of libel: 1.) a written defamatory statement; 2.) about the plaintiff; 3.) published to a third party; 4.) maliciously made; and 5.) harm caused to the plaintiff. *See New York Times Co. v. Sullivan*, 376 U.S. 254 (1964) (applying New York law and explaining that defamation requires "actual malice" on the part of the defendant when making the allegedly defamatory statements); *see also Levinsky's, Inc. v. Wal-Mart Stores, Inc.*, 127 F.3d 122 (1st Cir. 1997) (finding that Maine law defines malice as having ill intent); *Celle v. Filipino Rep. Ent.*, 209 F.3d 163, 179 (2nd Cir. 2000).

Furthermore, challenged statements must be considered "actionable" statement in the eyes of the law in order to qualify as libel. *See generally Old Dominion Branch v Austin*, 418 U.S. 264 (1974) (holding that a statement that was an opinion based in fact was not actionable under defamation law). Even when statements have been found actionable, courts have found Plaintiffs can be held libel-proof under either the Incremental Harm Doctrine or the Issue-Specific Libel Proof Plaintiff doctrine. *E.g., Cardillo v. Doubleday*, 518 F.2d 638 (2nd Cir. 1975) (finding that the Plaintiff was libel proof under the Issue-Specific Libel Proof Plaintiff doctrine because of his life as a habitual criminal); *see also Herbert v. Lando*, 781 F.2d 298 (2d Cir. 1986) (finding the Plaintiff's reputation would have been muddied by the unchallenged statements as much as the challenged statements, making him a libel proof plaintiff).

An individual is considered libel proof under the incremental harm doctrine when the harm of the challenged statements, in comparison to the unchallenged statements, is considered to be "nominal or non-existent." *Herbert*, 781 F.2d at 304. Additionally, a plaintiff is found to be libel-proof under the issue Specific Libel Proof Plaintiff doctrine when their reputation is so muddied, either by former conviction or public knowledge of poor behavior, that the allegedly defamatory comments cannot further injure the Plaintiff's reputation. *See Cardillo v. Doubleday*, 518 F.2d 638 (2nd Cir. 1975).

Both of these doctrines apply to the case at hand and qualify Silvia Courtier as a libel proof plaintiff. The statements which Silvia Courtier challenged are indeed offensive and may bring harm to her reputation. However, the unchallenged statements are substantially similar to the challenged statements and are likely to muddy her reputation as much, if not more so, than the statements she opposes. Furthermore, Silvia Courtier's reputation for piety has already been substantially tarnished by her record of habitual criminal activity as a young woman.

a. Silvia Courtier is libel proof under the incremental harm doctrine because the challenged statements cause substantially less harm than Mr. Lansford's unchallenged statements

The challenged statements made my Mr. Lansford caused significantly less harm to Silvia Courtier's reputation than his unchallenged statements, making Silvia Courtier a libel proof under the Incremental Harm Doctrine. The Incremental Harm aspect of the libel-proof plaintiff doctrine "measures the incremental harm inflicted by the challenged statements beyond the harm imposed by the rest of publication." *Herbert*, 781 F.2d at 31. "If the harm is considered to be nominal or nonexistent, the statements are dismissed as non-actionable." *Id.*; *see Church of Scientology Int'l v. Tune Warner, Inc.*, 932 F. Supp. 589, 593 (S.D.N.Y. 1996) (explaining 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"). The bench is charged with evaluating the communication in its entirety to decide whether the unchallenged statements sufficiently ruin the Plaintiff's reputation before deciding if a plaintiff is Libel-proof under the Incremental Harm Doctrine. *Thomas v. Telegraph Pub. Co.*, 155 N.H 314, (N.H 2007) (quoting *The Libel-Proof Plaintiff Doctrine*, 98 Harv. L. Rev. 1909, 1909-10 (1985)).

Silvia Courtier alleges that Mr. Lansford defamed her numerous times throughout a profanity fill post challenging specifically Mr. Lansford's statements that she is a "pimp for the rich"; "a leech on society"; "a whore for the poor"; and someone who is "corrupt and a swindler." (J.A. 5). While she chooses several important claims, she fails to state that the entire rant was defamatory. Notably absent from her challenge are Mr. Lansford's assertion that Silvia Courtier is"a coddler of criminals"; "a lewd and lusty lush"; "a former druggie"; and someone who "hoodwinks the poor." (J.A. 4).

The challenged statements have the general effect of painting Silvia Courtier as a promiscuous and devious woman who has taken advantage of her fellow members of society. *See id.* (Detailing Silvia Courtier's opposition to being described "a pimp for the rich"; "a leech on society"; "a whore for the poor"; and "corrupt and a swindler" by Mr. Lansford). In comparison, the unchallenged statements uttered by Mr. Lansford paint the exact same image of Silvia Courtier.

If one were to remove the challenged statements from the paragraph, but leave the unchallenged statements where they are, the message which any competent and objective reader would receive is that Silvia Courtier is a promiscuous and devious woman who takes advantage of her fellow members of society. While the challenged statements are unquestionably vulgar,

they simply do no more harm than the unchallenged statements. Consequently, these statements are nominal and are "nonactionable on the grounds that [they] cause[d] no harm beyond the harm caused by the remainder of the publication." *Tune Warner, Inc.*, 932 F. Supp. 593.

b. Silvia Courtier qualifies as libel proof under the Issue Specific Libel-Proof Plaintiff Doctrine because her prior convictions have already substantially tarnished her reputation.

Silvia Courtier's prior felony convictions have tarnished her reputation so substantially that she is libel-proof regarding statements made about her actions as a youth. Since the Libel Proof Plaintiff Doctrine was enunciated in *Cardillo* "[t]he cases that most compellingly invite its application are those cases, like *Cardillo*, in which criminal convictions for behavior similar to that alleged in the challenged communication are urged as a bar to the claim." *Finklea v. Jacksonville Daily Progress*, 742 S.W.2d 512, 515 (Tx.Ct.App. 1987) (citing *Wynberg v. National Enquirer*, 564 F.Supp. 924 (C.D. CA 1982), *Logan v. District of Colombia*, 447 F.Supp. 1328 (D.D.C. 1978), *Jackson v. Longcope*, 394 Mass. 577 (Sup. Ct. Mass. 1985).

Libel proof plaintiffs do not enjoy the typical level of protection from defamation because their prior acts have so tarnished their reputation that the allegedly defamatory comments can do no further damage. *See Cardillo*, 518 F.2d at (holding the plaintiff was libel-proof because his former crimes made it so that any recovery under defamation jurisprudence would be nominal). Understanding that one's "reputation is [not] a monolith which stands or falls in its entirety," courts have applied this doctrine to a person's reputation within specific aspects their life, even when that individual has not been convicted of a crime. *Liberty Lobby, Inc. v. Anderson*, 746 F.2d 1563, 1568 (D.D.C. 1984); *see Guccione v. Hustler Magazine, Inc.*, 800 F.2d 298, 303 (2nd Cir. 1986) (stating "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.").

Silvia Courtier's public record supports the idea that she was a habitual criminal. Public record shows that Silvia Courtier had a checkered past consumed by drugs and crime. (J.A. 5). These same records indicate that Silvia Courtier engaged in theft and was "delinquent during *several* juvenile adjudications." *Id.* (emphasis added). Furthermore, as a young adult, public record shows that she was convicted of a felony for cocaine distribution, ultimately serving two years in prison. *Id.*

The Issue Specific Libel Proof Plaintiff Doctrine is often reserved for "hard-core criminals who have been previously convicted of serious felonies." (J.A.10) (citing *Ray v. Time, Inc.*, 452 F.Supp. 618 (W.D. Tenn. 1796)). While it may be contended that Silvia Courtier's criminal history does not support the notion that she is, or ever was, a hardcore criminal who was convicted of a serious crime, that is simply not true. While the distribution of cocaine can sometimes be considered a "violent felony" when coupled with a weapon, any conviction of distribution of cocaine is serious enough to qualify as a predicate offense under the federal "three strikes" regime. *United States v. Barber*, 226 F.App'x 255, 258 (4th Cir. 2007), *see United States v. Kratsas,* 45 F.3d 48 (6th Cir.) (upholding a life sentence for a third offense of possession with intent to distribute cocaine). Furthermore, studies have shown that for several decades homicide rates and cocaine usage rates were directly correlated. *Declining Homicide in N.Y.C.: A Tale of Two Trends*, Jeffrey Fagan et al., 88 J. CRIM. L. & CRIMINOLOGY 1277. This reality has ultimately led to some jurisdictions prosecuting drug dealers for murder if the drugs they sell result in a deadly overdose. *See generally, State v. Kosto,* 106 N.E.3d 66 (Ohio 2018).

Like in *Davis v. The Tennessean,* Silvia Courtier was convicted of an undoubtedly serious crime. 84 S.W.3d 125 (Tenn. Ct. App. 2001) (holding that a plaintiff was libel-proof after being convicted of felony-murder). Regardless of reason, Silvia Courtier sold and distributed a

product which is not only federally illegal, but has the propensity to addict, destroy, and kill an individual. *Kosto*, 153 Ohio St. 3d 1469. (explaining that the deceased went through years of addiction rehabilitation but was ultimately overcome by his cocaine addiction leading to his death). The reputation which comes along with being convicted for distributing hardcore drugs is not one which is shed no matter how much time has passed because it implies moral ineptitude on the part of the drug dealer. Mr. Lansford's words did not ruin Silvia Courtier's reputation, Silvia Courtier ruined her reputation when she chose to peddle a highly addictive and life-threatening substances.

Respondent argues that she cannot be libel proof because of her rehabilitation into a productive member of society; however, this argument does not hold weight. "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" regardless of any transformation they may have undergone. *Guccione*, 800 f.2d at 303. Like in *Guccione*, the allegedly defamatory comments are pointed at Silvia Courtier's reputation with respect to a specific subject. *Guccione*, 800 F.2d 298. However, unlike in *Guccione*, the statements were made in reference to actions which caused the Plaintiff to be incarcerated. *Compare, Guccione*, 800 F.2d 298 (holding Guccione was libel-proof because of his reputation despite not being convicted of a crime), *with* J.A. 5 (Detailing Silvia Courtier's criminal history and felony conviction for distribution of cocaine). *Guccione* makes it clear that a criminal history is not necessary to be considered libel-proof. However, it also makes it clear that when a criminal history is present and the statements made are in reference to that history, it should be more likely that a Plaintiff is libel-proof because their incarceration inherently diminishes their reputation.

II. MR. LANSFORD'S CHALLENGED STATEMENTS QUALIFY AS PROTECTED RHETORICAL HYPERBOLE.

This Court should overrule the Supreme Judicial Court of Tenley and revive the District Court's granting of Mr. Lansford's special motion to strike/dismiss this defamation claim because the challenged statements are rhetorical hyperbole. The Constitution demands, and courts far and wide have historically found, that rhetorical hyperbole is protected by the First Amendment and, thus, not defamatory. *See Cafeteria Employees Local 302 v. Angelos*, 320 U.S. 293, 295 (1943); *Greenbelt Co-Op Publ. Assn., Inc. v. Bresler*, 398 U.S. 6 (1970); *Letter Carriers v. Autin*, 418 U.S. 264 (1974); *Milkovich v. Lorain Hournal Co.*, 497 U.S. 1 (1990) (stating "the *Bresler-Letter Carriers-Falwell* line of cases provides protection for . . . 'rhetorical hyperbole.'); *New York Times, Inc. v. Isaacks*, 146 S.W.3d 144 (Tex. 2004); *Clifford v. Trump*, 339 F. Supp. 3d 915 (C.D. Cal. 2018). The standard for what language falls within these protections is what a reasonable reader would understand the words to mean. *See Bresler*, 398 U.S. 6; *Letter Carriers*, 418 U.S. 264.

To discern the reasonable reader's understanding, Courts look to (1) what meaning the words convey; *Austin*, 418 U.S. at 285; and (2) the context in which the statements are made; *see e.g., Austin*, 418 U.S. 264; *Bresler*, 398 U.S. 6. Here, Mr. Lansford's statements are hyperbole because they simply convey a generic, political displeasure with respondent and were made in the context of an off-the-cuff attack in response to respondent's political opposition. Accordingly, the District Court's grant of Mr. Lansford's motion to dismiss was proper and this Court should reinstate it.

a. Mr. Lansford's statements did not express defamatory facts, but rather a generic displeasure with respondent.

Statements that "cannot be reasonably interpreted as stating actual facts about an individual" constitute rhetorical hyperbole. *Milkovich*, 497 U.S. at 17. To understand what the

statements mean, the Court must look at how an ordinary reader would interpret the words. *See Bresler*, 398 U.S. 6 (addressing how a reader would interpret "blackmail"); *Austin*, 418 U.S. 264 (addressing how a reasonable reader would interpret "scab"); *Milkovich*, 487 U.S. 1 (addressing how a reasonable reader would interpret repeated accusations of perjury); *Flamm v. Am. Assn of Univ. Women*, 201 F.3d 144 (2000) (addressing how a reasonable reader would interpret "ambulance chaser"); *New York times Inc. v. Isaacks*, 146 S.W.3d 144 (Tx. 2004) (addressing how a reasonable reader would interpret satire).

In *Bresler*, the Court wrestled with how the term "blackmail" is interpreted when used at a city meeting. 398 U.S. 6. There, Bresler, a local businessman, wanted the city to rezone one of his properties to allow residential development, while the city simultaneously wanted to purchase a separate property from Bresler to build a new school. *Id*. Local residents, outraged with Bresler's proposal, referred to his bargaining position as "blackmail." *Id*. The term later found its way into a news article describing the city meeting. *Id*. The Court noted that there was no evidence anyone in the city actually thought Bresler had committed blackmail. *Id*. at 14. The Court found that, in the context of an article accurately describing Bresler's proposal, "even the most careless reader must have perceived that the word was no more than rhetorical hyperbole, a vigorous epithet used by those who considered Bresler's negotiating position extremely unreasonable." *Id*.

Similarly, the Court found the use of the word "scab" was "obviously used in a loose, figurative sense" when published in a union newspaper. *Austin*, 418 U.S. at 284. There, a union published a list of non-union employees, whom the union referred to as "scabs." *Id*. The Court noted the term scab could refer to an individual who has not joined a union, but it could also mean a traitor. *Id*. Comparing this case to *Bresler*, the Court concluded, "It is similarly

impossible to believe that any reader of the Carrier' Corner would have understood the newsletter to be charging the appellees with committing the criminal offense of treason." *Id*. at 285.

How a word is used, however, affects how it is understood. "A word is not a crystal, transparent and unchanged, it is the skin of a living thought and may vary greatly in color and content according to the circumstances and the time in which it is used." *Towne v. Eisner*, 245 U.S. 418, 425, 62 L. Ed. 372, 38 S. Ct. 158 (1918). For example, in *Milkovich* the Court found that allegations of a wrestling coach lying during court proceedings constituted defamatory language. 497 U.S. 1. There, a high school wrestling coach provided testimony about a physical altercation at a wrestling meet. *Id*. In covering his testimony, a local paper asserted "anyone who attended the meet . . . knows in his heart that Milkovich . . . lied at the hearing after each having given his solemn oath to tell the truth." *Id*. at 5. The Court analyzed this criticism, finding "this is not the sort of loose, figurative or hyperbolic language which would negate the impression that the writer was seriously maintaining petitioner committed the crime of perjury. Nor does the general tenor of the article negate this impression." *Id*. at 21.

The distinction between hyperbole, like *Bresler* and *Austin* and defamatory language, like *Milkovich*, is whether the reasonable reader interprets the language as an actual assertion of a falsity. The case at bar falls in with the former cases because it is loose language that does not assert particular facts. Like the use of "blackmail" in *Bresler*, Mr. Lansford's statements that the respondent is a "pimp for the rich" and a "whore for the poor" reflect Mr. Lansford's contempt for respondent. Those statements cannot be reasonably be understood as accusing respondent of pimping or whoring. Additionally, unlike *Milkovich*, Mr. Lansford's statements do not indicate respondent acted in any particular way at any particular time. In this light, these statements are more like the use of "scab" in *Austin* because they are simply generic terms, which are colorful

and offensive, but do not assert an actual crime. As such, these statements are reasonably understood as exaggeration and hyperbole and not defamatory language.

b. The context in which the challenged statements were made clearly suggest they are to be interpreted hyperbolically.

Courts also look to the context of potentially slanderous statements: both the broader societal context and the immediate literal context. *See Milkovich,* 497 U.S. at 24 (Brennan, J. dissenting) (when distinguishing between statements of fact and opinion, "courts have been relying on . . . the meaning of the statement in context . . . and the broader social circumstances in which the statement was made.").

i. The use of rhetorical hyperbole is extremely common (and protected) during political debate

To understand Mr. Lansford's statements, one need first look to the larger, societal context. In *Letter Carries*, this Court recognized the use of the term "scab" in the context of labor negotiations to refer to workers who refused to join the union was protected. 418 U.S. 264. The Court reasoned, "epithets such as 'scab,' 'unfair,' and 'liar' are commonplace in [labor disputes], and not so indefensible as to remove . . . protection." *Id*. The Court concluded, "such words were obviously used here in a loose, figurative sense to demonstrate the union's strong disagreement with the views of those workers who opposed unionization." *Id*.

Similarly, this "loose" language is common and important in political debate. *See Cafetria Employees Local 302 v. Angelos*, 302 U.S. 293, 295 (1943) ("loose language . . . [is] part of the conventional give and take in our economic and political controversies."); *Milkovich,* 497 U.S. at 13 ("'rhetorical hyperbole' . . . has traditionally added much to the discourse of our Nation."); *Trump*, 339 F.Supp. 3d at 924 (recognizing rhetorical hyperbole is "normally associated with politics and public discourse in the United States."). In *Trump,* Stephanie Clifford challenge the legitimacy of President Trump's 2016 victory. Later, President Trump

accused Clifford of lying and of orchestrating a "con-job." 339 F. Supp. 3d at 915. The District Court for the Central District of California found Donald Trump's tweets were "extravagant exaggeration [that is] employed for rhetorical effect." *Id*. at 925. The District Court reasoned there is incredible leeway in political debate, without which it "would deprive this country of the 'discourse' common to the political process." *Id*. at 926.

The importance of the political context is especially relevant in understanding the challenged statements in this case. Respondent "has become a critic of . . . [Mr.] Lansford." (J.A. at 3). She is a "diehard supporter" and "advisor" to Mr. Lansford's political opposition. (J.A. at 3). Moreover, she has written commentaries online degrading Mr. Lansford's political stances and achievements. (J.A. at 17). The political fight central to this case is nearly identical to that in *Trump*. Like Ms. Clifford engaged Mr. Trump in political battle, respondent called Mr. Lansford a "plutocrat" and strongly implied he did not care about "people of all races, genders, and ethnicities." (J.A. at 17). And just as Mr. Trump shot back with "an incredulous tone," so too did Mr. Lansford. In the context of heated political debate, this type of back and forth is understood as hyperbole. *Miller v. Brock*, 352 So.2d 313 (LA Ct. App. 1977) ("A political candidate has no license to defame his hecklers, but he also has no obligation to suffer them silently. One who engages in fractious and factious dialogue at a political meeting cannot demand sweetness and light from his adversary.").

ii. The context of Mr. Lansford's medium of expression and use of colorful language indicate he intended his comments to be understood hyperbolically.

Equally important in the context inquiry is *who* made the statement and *how* he made it. "It is one thing to be assailed as a corrupt public official by a soapbox orator and quite another to be labelled corrupt in a research monograph detailing the causes and cures of corruption in public service." *Ollman v. Evans*, 750 F.2d 970, 983 (D.C. Cir. 1984) (en banc). In *Trump*, the

court noted President Trump often communicated with over-the-top rhetoric, which implied his statement against Clifford was rhetorical hyperbole. *Bentley v. Bunton* found the context led the opposite conclusion. 94 S.W.3d 561 (Tx. 2002). There, a talk show host repeatedly accused a local judge of corruption. *Id*. Further, the host stated there was evidence supporting this accusation. *Id*. The Court recognized the average listener understood the program to be asserting truth. *Id*. The host was running an informational program and "plainly and repeatedly stated his accusations were based on actual fact." *Id*. at 572. Likewise, in *Flamm* v. *Am. Assn. of Univ. Women*, the Court found the inclusion of the term "ambulance chaser" in a factual database to be defamatory. 201 F.3d 144 (2000). The court noted the publication was "a list of facts," including: names, addresses, and phone numbers. *Id*. Therefore, "a reasonable reader would not expect . . . hyperbole in a straightforward directory of attorneys and other professionals." *Id*. at 156.

Here, Mr. Lansford's online post was like President Trump's tweet. Unlike *Flamm*, there were no surrounding facts to affect the reasonable reader. To the contrary, the surrounding narrative in the post was merely Mr. Lansford's opinion. The Supreme Judicial Court of Tenley even conceded that parts of Mr. Lansford's statement were "clearly hyperbole." (J.A. at 24). This would lead the average reader to understand the challenged statements were nothing more than a vulgar extension of Mr. Lansford's displeasure with respondent. Moreover, Mr. Lansford's post is unlike the television report in *Bentley*. While there the viewers tuned in for journalistic information on local goings-on, the reasonable reader of Mr. Lansford's post would understand his words to merely be heated rhetoric common to political campaigning.

Conclusion

Based on the aforementioned argument, this Court should reverse the ruling of Supreme Judicial Court of Tenley and reinstate the District Court's grant of Mr. Lansford's special motion to dismiss.