No. 18-2143

IN THE

SUPREME COURT OF THE UNITED STATES

Elmore Lansford,

Petitioner,

v.

Sylvia Courtier,

Respondent.

ON APPEAL TO THE SUPREME JUDICIAL COURT OF STATE OF TENLEY

BRIEF FOR THE PETITIONER, ELMORE LANSFORD

On the Brief:

Team No. 219969

QUESTIONS PRESENTED

1. Whether a litany of criminal convictions—including a felony—in an individual's past can render the individual a libel-proof plaintiff under defamation law when the convictions have gained no notoriety or public attention.
2. Whether a politician's emotive but figurative statements against a political critic deserve First Amendment protection under the rhetorical hyperbole doctrine.

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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

Statement of Facts

Throughout her childhood and well into her early adult life, the Respondent, Sylvia Courtier ("Courtier" or "Respondent") frequently found herself on the wrong side of the law. (J.A. at 5.). Respondent's disregard for the law began as a teenager, where she engaged in a variety of illegal activity. (J.A. at 5.). Her "litany of [juvenile] offenses" include "simple assault, simple possession of marijuana, indecent exposure, vandalism, and possession of cocaine." (J.A. at .5). Eventually, Respondent could not escape culpability, and a juvenile court declared her "delinquent during one of [her] several juvenile adjudications." (J.A. at 5.). As a result, Respondent was "incarcerated at a boot camp for young female offenders." (J.A. at 15.).

Despite her stay at the boot camp—a juvenile correctional facility—Respondent continued her criminal lifestyle upon release. (J.A. at 15-16.). And unfortunately, Respondent's preoccupation with breaking the law did not stop when she became an adult. In her early twenties, she developed a cocaine habit. (J.A. at 5.). She was arrested for possession and distribution of cocaine (J.A. at 15-16.), and ultimately pled guilty to the possession charge, a felony, and served two years in state prison. (J.A. at 17-18.).[1]

Upon her release from prison, Respondent established a clothing business "around the city of Silvertown that cater[ed] to expensive tastes." (J.A. at 2.). She later married Raymond Courtier, "an older man . . . who served as her primary investor in some [of her] clothing stores," who has

[1] Respondent claims, however, that her substantial criminal history as a juvenile criminal and criminal felon from decades earlier is "far in her past." (J.A. at 5.).

since passed away. (J.A. at 5.).[2] Respondent also became publicly vocal about her political opinions. (J.A. at 2.). For example, she advocates "quite heavily against gentrification and the elimination of affordable housing" on her social-media platforms. (J.A. at 16.).

For several years, as part of her outspoken political views, Respondent has become a scathing critic of Elmore Lansford ("Lansford" or "Petitioner"), the Petitioner in this action. (J.A. at 3.). Lansford is the current Mayor of Silvertown. (J.A. at 3.). He is deeply familiar with the political landscape as he was previously a city council member. (J.A. at 2.). As Mayor, Lansford generally appeals to his constituents by promoting a "tough-on-crime" agenda and by supporting Silvertown's economic development. (J.A. at 16.). A testament to his political stance, and in a controversial effort to "increas[e] the economic boon of Silvertown," Lansford recently "supported [] efforts to create new high-rise developments in Cooperwood, an area [in Silvertown] with high poverty and crime rates." (J.A. at 16.). Most notably, Lansford increased the police presence in Cooperwood to "more vigorously enforce laws against the distribution of illegal drugs and narcotics." (J.A. at 3.).

Lansford's staunch political opponents, including Respondent, fiercely criticized his support of the high-rise developments, alleging that the increased police presence brought forth allegations of racial profiling and police brutality. (J.A. at 3.). During the most recent Silvertown mayoral election, Lansford entrenched his position regarding the high-rise developments, campaigning under the alliterative slogan, "Cleaning up Cooperwood." (J.A. at 16.). He fiercely

[2] Raymond Courtier was the former mayor of Silverton, and "held office for eighteen consecutive years until his death." (J.A. at 2.). Raymond and Lansford were "both political contemporaries and one-time allies who served on the city council together." (J.A. at 16.). Raymond, in fact, "was one of Lansford's early supporters, helping [Lansford] enter the political arena." (J.A. at 3.).

competed against "political newcomer," Evelyn Bailord. (J.A. 17.). Respondent was one of Bailord's "diehard supporters." (J.A. at 3.). She made substantial contributions and hosted black-tie dinners in support of the Bailord campaign. (J.A. at 3.).

Respondent also entered into the political discourse against Lansford. (J.A. at 3.). Through her media platforms, she "criticized Lansford as a 'relic of the past,' 'a divisive leader,' and 'someone who cares little for social justice issues.'" (J.A. at 3.). She posted columns on her social media platform that publicly criticized Lansford. (J.A. at 3.). One of Respondent's columns, posted on her website, reads as follows:

> The Time is Now for Political Change! The choice is clear for citizens of Silvertown. Our current mayor, Elmore Lansford, is out of touch with 21st century America and the need for social justice. We need a mayor who cares about all of the citizens of Silvertown, not just the wealthy developers who seek to reap excess profits over the less fortunate in our community.
>
> Lansford's time is past. He once was a caring politician, but now he is simply an entrenched incumbent; beholden to special interests. He has engaged in a war on the economically-strapped denizens of Cooperwood, imposing more and more police patrols. His repressive measures contribute to the process of gentrification and the displacement of Cooperwood residents to other neighborhoods or other cities.
>
> In short, Mayor Lansford is a plutocrat. He needs to be replaced by a compassionate politician, one who cares about all people of all races, genders, and ethnicities. That candidate is Evelyn Bailord. She has devoted her life to social justice causes. She was a former member of the United States Peace Corps years ago. In her law practice, she devoted countless hours to pro bono service. She will put policies into practice that champion many of the social justice causes that are most important to our community. we have endeavored to share over the past several years
>
> The choice is clear for Silvertown – Out with the Old and In with the New. Vote for Bailord on Election Day!

(J.A. at 3-4.).

In the face of Respondent's public criticism, and in the spirit of political discourse, Lansford articulated the following response:

> 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.).

Despite engaging in years of political dialogue and discourse regarding highly controversial matters, Respondent took offense to Lansford's statements. (J.A. at 4.). She filed this defamation suit shortly after. (J.A. at 4.).

Statement of Procedural History

Respondent filed her defamation suit against Lansford in the Tenley District Court. (J.A. at 14.). In response, Lansford moved to dismiss the defamation claim pursuant to Tenley Code Ann. §5 – 1 – 705(b) of the Tenley Public Participation Act, arguing that Respondent's suit obstructs his First Amendment right to free speech. (J.A. at 14.). Specifically, Lansford argued that Respondent's suit must be dismissed because she is libel-proof and Lansford's statements qualify as rhetorical hyperbole. (J.A. at 1-2.).[3] Although the Tenley District Court found that Respondent is not libel-proof, the court ultimately grant[ed] [Lansford's] special motion to strike/dismiss [Respondent's] defamation claim. (J.A. at 13.), finding that Lansford's statements constituted rhetorical hyperbole. On appeal, the Supreme Judicial Court of State of Tenley reversed Lansford's

[3] While the two issues granted certiorari relate to whether Respondent is libel-proof and whether Lansford's speech qualifies as rhetorical hyperbole, the speech is also true or substantially true, an additional bar against a defamation claim.

special motion to dismiss under the Tenley Public Participation Act. (J.A. at 23.). Upon petition by Lansford, the Supreme Court of the United States granted certiorari and scheduled oral arguments for the October term of 2019. (J.A. at 24.)

Standard of Review

Pursuant to Tenley Code Ann. § 5 – 1 – 704(a) of the Tenley Public Participation Act, "[i]f a legal action is filed in response to a party's exercise of the right of free speech, . . . that party may petition the court to dismiss the legal action." Tenley Code Ann. § 5 – 1 – 704(a). Once the petitioning party "mak[es] a prima facie case that [said] legal action . . . is based on, relates to, or is in response to that party's exercise of the right to free speech," Tenley Code Ann. §5 – 1 – 705(a), "the court shall dismiss the legal action unless the responding party establishes a prima facie case for each essential element of the claim in the legal action," Tenley Code Ann. §5 – 1 – 705(b). As the Tenley District Court aptly noted, the Tenley Public Participation Act, similar to other anti-SLAPP statutes, "protects defendants from lawsuits that target them for expression that should be protected by the First Amendment." (J.A. at 2.). Thus, Lansford's special motion to dismiss depends entirely upon analysis of his constitutional First Amendment rights.

First Amendment questions must be reviewed *de novo*. *P&G v. Bankers Tr. Co.*, 78 F.3d 219, 227 (6th Cir. 1996). Given the constitutional considerations at bar, this Court "must 'make an independent examination of the whole record'" to ensure "that the judgment does not constitute a forbidden intrusion on the field of free expression." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 508 (1984) (quoting *Edwards v. South Carolina*, 372 U.S. 229, 235 (1963)). The duty before the Court is not limited only to the elaboration of constitutional principles but also to "review the evidence to make certain that those principles have been constitutionally applied." *New York Times Co. v. Sullivan*, 376 U.S. 254, 284-85 (1964). This includes an "exam[ination]

[of] the statements in issue and the circumstances under which they were made to see . . . whether they are of a character which the principles of the First Amendment" are meant to protect. *Bose*, 466 U.S. at 508 (citation omitted).

SUMMARY OF THE ARGUMENT

A bulwark of our Bill of Rights, the First Amendment of the United States Constitution provides substantial constitutional safeguards against the suppression of our "freedom of speech." U.S. CONST. amend. I. Given the "fundamental importance of the free flow of ideas and opinions on matters of public interest and concern," *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 50 (1988), the United States has advanced a "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times*, 376 U.S. at 270 (citations omitted). At times, however, the encouragement of such lively speech "may well include vehement, caustic, and sometimes unpleasantly sharp attacks." *Id*. at 270. Nonetheless, it is a "prized American privilege to speak one's mind, although not always with perfect good taste." *Bridges v. California*, 314 U.S. 252, 270 (1940).

To ensure protection of First Amendment freedoms, the "Constitution imposes stringent limitations" on the permissible scope of defamation liability. *Greenbelt Coop. Pub. Ass'n v. Bresler*, 398 U.S. 6, 12 (1970). Otherwise, the "threat or actual imposition of pecuniary liability" could impair the "unfettered exercise" of First Amendment constitutional protection. *Id.* at 12. Two such limitations of defamation liability, which apply to the case at bar, are the libel-proof plaintiff doctrine and the limitation of liability for statements of rhetorical hyperbole.

Contrary to the decisions of both the Tenley District Court and Supreme Judicial Court of State of Tenley, Respondent falls squarely within the purview of the libel-proof-plaintiff doctrine because of her pervasive and extensive criminal past. The libel-proof plaintiff doctrine prevents

plaintiffs with irredeemable reputations from pursuing defamation claims. The doctrine was established to avoid costly and prolonged defamation actions in instances where plaintiffs will only recover nominal damages because of their poor reputations. Up until her early adult life, Respondent engaged in a litany of criminal offenses which resulted in incarceration on numerous occasions. Although Respondent has since departed from her previous criminal activities, the extensive nature of her criminal past has already damaged her reputation. Given that a reasonable jury would likely find that Respondent's reputation has been sufficiently tainted, the libel-proof plaintiff doctrine applies to Respondent despite the alleged lack of notoriety of her criminal activities. Accordingly, Respondent's assertions that Lansford's statements defamed her already-damaged reputation is meritless.

Additionally, Lansford's statements against Respondent fall outside of the defamation context because no reasonable person would understand such statements to be taken literally. Although Lansford's statements do make factual assertions, the surrounding circumstances and context behind them indicate their loose, figurative nature. Further, Lansford's comments were made in direct response to Respondent's scathing critique of him as a form of harsh political banter, which—although unsavory—deserves First Amendment protection.

Accordingly, because Respondent falls squarely in the purview of the libel-proof plaintiff doctrine, and because Lansford's statements qualify as rhetorical hyperbole, this Court should grant Lansford's special motion to dismiss Respondent's defamation claim.

ARGUMENT

Given the imperative First Amendment constitutional considerations at stake, this Court should reverse the Supreme Judicial Court of State of Tenley's judgement and dismiss Respondent's defamation claim. Under the Tenley Public Participation Act, Respondent's

defamation claim turns on whether Lansford's statements implicate his First Amendment right to engage in free speech. Tenley Code Ann. §§ 5 – 1 – 701 et seq. Although this Court has "regularly acknowledged the 'important social values which underlie the law of defamation,'" *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 22 (1990) (quoting *Rosenblatt v. Baer*, 383 U.S. 75, 86 (1966)), the First Amendment to the United States Constitution places several "limits on the application of [such] state law[s]." *Id.* at 14 (discussing culpability requirements, the rhetorical hyperbole exception, and limitations derived from burden-of-proof requirements). These limitations—referred to by this Court as "constitutional safeguards"—were "fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *New York Times*, 376 U.S. at 269 (citations omitted). Accordingly, this Court has established numerous limitations against state defamation claims to "surely demonstrate the Court's recognition of the Amendment's vital guarantee of free and uninhibited discussion of public issues." *Milkovich*, 497 U.S. at 22. Here, this Court should dismiss Respondent's defamation claim upon the implication of two such limitations: (1) the libel-proof plaintiff doctrine derived from Respondent's poor reputation; and (2) the limitation of liability against statements that qualify as rhetorical hyperbole, such as those made in Lansford's comment.

I. RESPONDENT'S PRIOR CRIMINAL CONVICTIONS SUFFICIENTLY RENDER HER LIBEL-PROOF UNDER THE DOCTRINE BECAUSE THEY CREATE A REPUTATION THAT IS BEYOND ADDITIONAL DAMAGE.

The libel-proof plaintiff doctrine limits persons with backgrounds riddled with criminal convictions and anti-social behavior, such as Respondent, from bringing defamation actions because, by definition, they do not have a reputation to protect. The doctrine was born from *Cardillo v. Doubleday & Co.*, where Cardillo, a convicted felon, attempted to sue a book's authors and publishers for defamation. 518 F.2d 638, 639 (2d Cir. 1975). The court looked to the purpose

of defamation actions—to protect people's reputations—and reasoned that because Cardillo was a "habitual criminal" it was unlikely that he would recover anything more than nominal damages from his lawsuit. *Id*. at 639-40. Accordingly, the court held that Cardillo was libel-proof as a matter of law. *Id.* at 639.

The doctrine was adopted to help balance the First Amendment considerations of freedom of speech with the reputational interests of persons who are allegedly defamed. *Wynberg v. National Enquirer, Inc.*, 564 F. Supp. 924, 928 (C.D. Cal. 1982). When a person's reputation interests have sunk so low that the only viable recovery in the action is nominal damages, the First Amendment interest of an uninhibited and robust discussion must prevail. *Id.* Courts have repeatedly cited the same two factors that can cause a person's reputation to sink so low: anti-social behavior and criminal convictions. *See McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6, 10 (Tex. App. 1994) (holding that the record must show criminal or anti-social behavior); *see also Wynberg*, 564 F. Supp. at 928 (stating that "[a]n individual who engages in certain anti-social or criminal behavior and suffers a diminished reputation may be 'libel-proof'"); *Lamb v. Rizzo*, 391 F.3d 1133, 1138 (10th Cir. 2004) (same).

During the initial stages of a lawsuit, the libel-proof plaintiff doctrine allows courts to determine whether a libel or defamation action will be futile, rather than proceed with discovery and trial before concluding that a plaintiff can recover nominal damages at the most. This Court should hold that Respondent falls squarely within the purview of the libel-proof plaintiff doctrine. Respondent's defamation action is meritless and will lead to, at most, nominal damages, because Respondent's background and reputation are afflicted by numerous criminal convictions, including charges of several felonies, extending from Respondent's youth into her adulthood. The lack of notoriety surrounding her convictions is not dispositive in the analysis because, as a matter

of law, Respondent already has a reputation that is not strong enough to protect. Examining Lansford's speech in question shows that the true statements within the protected speech do more to expose Respondent's reputation than the statements she challenges, causing her to be libel-proof under the incremental harm version of the libel-proof plaintiff doctrine.[4] Therefore, this Court should reverse the lower court's ruling and hold that Respondent is, as a matter of law, a libel-proof plaintiff and accordingly dismiss her defamation action.

A. Respondent's Defamation Action is Meritless Because the Libel-Proof Plaintiff Doctrine Prevents Convicted Felons, Such as Respondent, From Pursuing Such Actions.

According to the libel-proof plaintiff doctrine, *as a matter of law*, because Respondent has no good reputation to protect due to her extensive criminal history, she is unable to bring a claim for defamation. Since its inception in 1975, courts invoke the libel-proof plaintiff doctrine to prevent persons convicted of crimes from alleging reputational damage from the protected speech of others. The very case in which the libel-proof plaintiff doctrine was adopted involved a man who was convicted of several felonies, including bail jumping and interstate transfer of stolen securities. *Cardillo*, 518 F.2d at 640. In that case, the court affirmed that Cardillo could not bring a libel action,[5] because a reasonable jury would not award him any damages given his record and relationships. *Id.*

This foundation of the libel-proof plaintiff doctrine—its application resting firmly on the meritless claims of convicted criminals—has been embraced by numerous courts. In *Finklia v. Jacksonville Daily Progress*, the court recognized "the cases that most compellingly invite

[4] Petitioner's focus is the incremental harm version of the libel-proof plaintiff doctrine as opposed to the issue-specific version of the doctrine because there is not enough information in the record to determine Respondent's reputation prior to the challenged statements.
[5] The libel-proof plaintiff doctrine applies to both libel and defamation actions.

application [of the doctrine] are those cases, like *Cardillo*, in which criminal convictions for behavior . . . are urged as a bar to the [defamation or libel] claim." 742 S.W.2d 512, 515 (Tex. App. 1987). In that case, the plaintiff challenged a characterization of himself by a local police chief who allegedly inflated his criminal convictions to local media. *Id.* at 514 (stating that the plaintiff was a "methamphetamine dealer" and involved in a "burglary ring" when plaintiff had never been convicted of distributing amphetamines and was not serving time for any burglary). The court found that the effect on the plaintiff's reputation was "utterly inconsequential" because his previous record for burglary, theft, and drug possession rendered him libel-proof even though the challenged statements were inaccurate. *Id.* at 517.

In *Davis v. Tennessean*, the plaintiff sought a libel action against a newspaper claiming the newspaper inaccurately reported that he had shot a man. 83 S.W.3d 125, 126 (Tenn. Ct. App. 2001). The plaintiff argued that, in reality, it was his co-defendant who had actually pulled the trigger, and that he had never shot anyone, much less the victim. *Id.* The plaintiff, in fact, was incarcerated for aiding and abetting in the murder of the victim rather than the murder itself. *Id.* Nonetheless, the court held that the plaintiff's mere association with the crime and his further conviction rendered him libel-proof, as a matter of law, because his reputation was "virtually valueless." *Id.*

While the foregoing cases display the court's willingness to apply the doctrine to plaintiffs convicted of particularly disturbing crimes, courts have also applied the doctrine to plaintiffs guilty of crimes of a lesser degree. For example, in *Ali v. Moore*, a broadcaster inaccurately accused the plaintiff of attempting to bribe two persons when the plaintiff was only found guilty of bribing one person. 984 S.W.2d 224, 230 (Tenn. Ct. App. 1998). When the plaintiff brought an action for defamation, the court reasoned that the conviction for one count of attempted bribery was sufficient

to tarnish the plaintiff's reputation enough that the alleged libelous statement did nothing more to negatively impact the plaintiff's reputation. *Id.*

The court has also applied the libel-proof plaintiff doctrine when allegedly defamatory speech is not related to any criminal convictions at all but, rather, relates to particularly anti-social behavior. In *Bustos v. A&E TV Networks*, during the plaintiff's incarceration, the broadcasting network aired a special stating that he was part of the Aryan Brotherhood. 646 F.3d 762, 762-63 (10th Cir. 2011). In reality, the plaintiff was not a member of the Aryan Brotherhood, and the inaccurate information circulated around the prison caused several physically-threatening situations for the plaintiff (*i.e.,* inmates who were involved in the Brotherhood did not appreciate the plaintiff's uninvited association with them, and members of other gangs in the prison started to threaten plaintiff based on the inaccurate connection). *Id.* at 763. Despite the widespread consequences of the inaccurate broadcast, the court held that even though the plaintiff was not technically in the Aryan Brotherhood, the plaintiff was libel-proof as to the statements because his affiliation with the Brotherhood was bad enough to sour his reputation. *Id.* at 767. Accordingly, criminal convictions—ranging from murder to bribery—as well as anti-social behavior—merely an association with an undesirable group—are enough to render a plaintiff libel-proof.

In this case, Respondent falls squarely within the scope of the libel-proof plaintiff doctrine due to her multiple criminal convictions and is, as a matter of law, unable to pursue her defamation action. Respondent's criminal convictions extend beyond the grey area of anti-social behavior and place her right in the center of the doctrine's purpose. Respondent was declared "delinquent" by the court when she was a juvenile. (J.A. at 15.). Before she even reached the age of eighteen, Respondent accumulated an inventory of offenses including simple assault, simple possession, vandalism, possession of cocaine, and others. (J.A. at 5.). Respondent was incarcerated and sent

to a boot camp for young women, but still, when released, she continued her criminal lifestyle. (J.A. 15-16.). As an adult, she was arrested for possession and distribution of cocaine, and served jail time for the felony. (J.A. at 17-18.).

Respondent's convictions most closely mirror the convictions of the plaintiff in *Finklia*. Her convictions range from forms of stealing, drug charges, and physical attacks against others. (J.A. at 5.). As the court in *Finklia* noted, these are the types of plaintiffs that offer a *compelling* reason to apply the doctrine. A litany of criminal offenses strips away the analysis and, as a matter of law, indicates that a plaintiff is libel-proof. Respondent cannot escape her past convictions by claiming that Lansford's words are what truly caused her reputation's decline. Therefore, Respondent's criminal history is sufficient to consider her a libel-proof plaintiff in her defamation action.

B. The Lack of Notoriety Surrounding Respondent's Convictions Does Not Insulate Her from Her Inability to Pursue the Defamation Action Because, as a Matter of Law, She Has No Good Reputation to Protect.

Notoriety and public attention of a plaintiff's criminal convictions are not dispositive in the analysis of whether a plaintiff is, in fact, libel-proof. Respondent, in this case, is unable to make a claim that unsavory portions of her reputation are not well-known and, therefore, cannot pursue a defamation claim. Her criminal history, as a matter of law, places her within the scope of the libel-proof plaintiff doctrine, regardless of the public attention associated with her convictions. The reputation in question is the reputation as a reasonable jury would understand it, not the reputation in the community prior to the challenged speech. When courts analyze whether a plaintiff is libel-proof, they determine whether a fully-informed jury could cognize any injury to the reputation, not whether a community would cognize an injury. *See e.g. Cofield v. Advertiser, Co.*, 486 So. 2d 434, 435 (Ala. 1986).

In *Cofield v. Advertiser, Co.*, the court held a plaintiff to be libel-proof without a finding that the criminal convictions had received any public attention. 486 So. 2d 434, 435 (Ala. 1986). The court reasoned that the plaintiff had five convictions of theft offenses, four of which were the outcome of guilty pleas. *Id.* There is no indication in the *Cofield* record that the plaintiff was well-known, that his convictions received any sort of notoriety, or that there was any publicity associated with his trial. *Id.* Nonetheless, the court held that, *as a matter of law*, the plaintiff would not be able to show any significant change to his reputation as a consequence of the speech he was challenging, and therefore, the plaintiff was libel-proof and unable to bring his action. *Id.*

The appropriate consideration in addressing the change in the plaintiff's reputation is how the jury would contemplate the impact of the change, not how society would contemplate the impact of the change. In *Finklia*, when the court determined that the plaintiff was libel-proof, it reasoned what the jury would decide once it heard the *actual* background of the plaintiff and then reflected on the impact of the challenged statements to the plaintiff. *Finklia*, 742 S.W.2d at 517-18. The court did not contemplate whether all of the background information that was given to the jury was also information that the public would also have received. *Id.* The court did not analyze what the public already knew of the plaintiff and how the challenged information would affect its perception. *Id.* This was simply not a consideration. Accordingly, it is the perception of a reasonable jury, with all the information given to it, that is relevant to the inquiry, not the amount of public attention someone has received prior to the challenged statements.

Some courts consider a showing of publicity when deciding if a plaintiff is libel-proof under the doctrine. *See Wynberg v. National Enquirer, Inc.*, 564 F. Supp. 924, 928 (C.D. Cal. 1982) (citing "the degree and range of publicity received" as one of the factors used to determine the impact of defamatory statements); *see also Thomas v. Tel. Publ'g Co.*, 929 A.2d 991, 1005

(N.H. 2007) ("Publicity is part and parcel of the damage to a reputation necessary to trigger the issue-specific version of the libel-proof plaintiff doctrine."). However, these cases do not control the analysis of the doctrine overall. In *Wynberg*, publicity of a person's poor reputation is cited only as a relevant factor, among others, under the libel-proof plaintiff doctrine. *Wynberg*, 564 F. Supp. at 928. And in *Thomas*, the court looked unambiguously toward the issue-specific version of the libel-proof plaintiff doctrine. *Thomas*, 929 A.2d at 991. When a case presents facts that are distinguishable from those, the publicity element can fluctuate in importance and is not, in any regard, dispositive.

The record is silent in this case as to the amount of notoriety or public attention associated with Respondent's criminal background. However, as in *Cofield*, this information is not necessary—and ultimately, not relevant—to the overall inquiry of plaintiff's status under the libel-proof plaintiff doctrine. Respondent's criminal history is sufficient to consider her libel-proof as a matter of law. While widespread public attention to her criminal past would only bolster this conclusion (as considered in *Wynberg*), such notoriety is not required under the doctrine to prove that Respondent is libel-proof. [6]

If Respondent were permitted to move forward with this case (in contravention of the purpose of the libel-proof plaintiff doctrine and judicial efficiency), the jury would be the body to decide whether her criminal convictions and Lansford's challenged statements were sufficient to show that she should receive nominal damages, at the most. The inquiry would not be a determination of the public's perception of Respondent and a subsequent estimation of how the

[6] Respondent is also, arguably, a public figure, increasing the likelihood that her criminal convictions were in the public spotlight. While this is not an issue addressed on this appeal, if Respondent were to be considered a public figure by the Court, this would only bolster the conclusion that Respondent is libel-proof.

public's perception was affected by the challenged statements. Because of this reality, Respondent's criminal convictions are sufficient, as a matter of law, to consider Respondent a libel-proof plaintiff, and any lack of public attention would not be dispositive in the analysis.

C. Respondent Fails the Incremental Harm Version of the Libel-Proof Plaintiff Doctrine Because in the Context of the Full Statement in Question, the Challenged Portions Do Incidental Harm Compared to the Truth of the Statement in Its Entirety.

Respondent is only challenging a small number of statements out of the entirety of Lansford's speech, and this small number does an insignificant amount of harm compared to the true statements in Lansford's post. Because the challenged statements only contribute minimal harm, at most, the incremental harm version of the libel-proof plaintiff doctrine is applicable to Respondent.

The incremental harm version of the libel-proof plaintiff doctrine is implicated when the challenged statements, taken in the context of the full communication, damages the plaintiff's reputation far less than the non-actionable statements.[7] Note, *The Libel-Proof Plaintiff Doctrine*, 98 HARV. L. REV. 1909, 1912-13 (1985). In order to determine if the challenged statements are subject to the incremental harm version, the court must first ensure that the challenged statements are actionable. Kite, *Incremental Identities: Libel-Proof Plaintiffs, Substantial Truth, and the Future of the Incremental Harm Doctrine*, 73 N.Y.U. L. REV. 529, 548-63 (1998). Non-actionable statements include statements that are true, privileges allowed by state statute, and constitutional defenses. *Id.* at 542-43.

[7] Contrast with the issue-specific version of the libel-proof plaintiff doctrine. *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6, 9 (Tex. App. 1994) (explaining that the issue-specific version of the libel-proof plaintiff doctrine relates to a "plaintiff . . . 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").

Respondent is libel-proof under the incremental harm version of the doctrine because the statements she challenges, when considered in the context of the publication as a whole, do not significantly impact her reputation. In this case, there are portions of Lansford's published statement that expose Respondent's past criminal convictions to those who were not already aware. (J.A. at 4.). These statements referring to Respondent's criminal history are true and, therefore, non-actionable by the Respondent. The statements Respondent challenges (describing how her work relates to people in the community) will have miniscule impact on her reputation compared to the impact that uncovering her criminal past would. Because any harm associated with the challenged statements is incidental to any impact created by the non-actionable statements, Respondent is libel-proof under the doctrine.

Petitioner's special motion to dismiss should be granted because Respondent is the prime example of a libel-proof plaintiff. Respondent's criminal history, standing alone, renders her libel-proof, as a matter of law. The libel-proof plaintiff doctrine does not require notoriety surrounding the criminal convictions in order to prevent a plaintiff from bringing a defamation action. The existence of criminal convictions, as a matter of law, is sufficient. Additionally, Petitioner's statement, when taken in its entirety, creates, at most, incremental harm to Respondent's reputation. For these reasons, the Supreme Judicial Court of Tenley's ruling should be reversed, and this Court should find Respondent libel-proof.

II. LANSFORD'S STATEMENTS QUALIFY AS RHETORICAL HYPERBOLE BECAUSE THE STATEMENTS' UNDERLYING FACTUAL ASSERTIONS WERE NOT MEANT TO BE TAKEN LITERALLY.

The statements Respondent is challenging are also non-actionable because they are considered rhetorical hyperbole protected by the First Amendment. Lansford's comments qualify as rhetorical

hyperbole because the underlying factual assertions should not be understood to assert their literal propositions. Therefore, the decision of the court below should be reversed.

Statements that include "loose, figurative, or hyperbolic language" are afforded First Amendment protection as rhetorical hyperbole. *Milkovich*, 497 U.S. 1, 20 (1990). Such statements, which are "pointed, exaggerated, and heavily laden with emotional rhetoric and moral outrage" cannot constitute a defamatory statement. *Id.* at 32; *Cashion v. Smith*, 286 Va. 327, 339 (2013) (stating that rhetorical hyperbole is not defamatory). This Court has routinely decided that purported attacks contained in such statements "are constitutionally protected" from defamation liability if the attacks qualify as "rhetorical hyperbole." *Milkovich*, 497 U.S. at 20; *Nat'l Ass'n of Letter Carriers v. Austin*, 418 U.S. 264, 285-86 (1974); *Greenbelt Coop. Publ'g Ass'n v. Bresler*, 398 U.S. 6, 14 (1970). Such protection is afforded to guarantee that public discourse will not suffer for lack of "imaginative expression," which has traditionally been significant to the discourse of our Nation. *Milkovich*, 497 U.S. at 20. Even "derogatory and disparaging" expressions contained in such expressive language still receive First Amendment protection. *Clifford v. Trump*, 339 F. Supp. 3d 915, 925 (C.D. Cal. 2018). This is necessary to provide the "breathing space" needed for freedom of expression without liability for defamation. *Milkovich*, 497 U.S. at 20.

Statements characterized as "rhetorical hyperbole" are those where "no reasonable inference could be drawn that the individual identified in the statement, as a matter of fact," engaged in the described conduct. *Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 19 (1990); *see also Bentley v. Bunton*, 94 S.W.3d 561, 580 (Tex. 2002). This constitutional protection recognizes that "exaggeration and non-literal commentary have become an integral part of social discourse." *Horsley v. Rivera*, 292 F.3d 695, 702 (11th Cir. 2002). To this end, other courts have also described

"rhetorical hyperbole" as "extravagant exaggeration . . . employed for rhetorical effect." *Backes v. Misko*, 486 S.W.3d 7, 26 (Tex. App. 2015).

Determining whether a statement is rhetorical hyperbole is a question of law. *Id.* at 340. In such determinations, courts must consider "the circumstances in which the statement was expressed." *Keller v. Miami Herald Pub. Co.*, 778 F.2d 711, 717 (11th Cir. 1985). Courts must "[also] look at the statement as a whole in light of the surrounding circumstances and based upon how a person of ordinary intelligence would perceive it." *Clifford*, 339 F. Supp. 3d at 927. A "person of ordinary intelligence" is one who "exercises care and prudence, but not omniscience, when evaluating allegedly defamatory communications." *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 157 (Tex. 2004). The inquiry here is objective, not subjective. *Id.*

In the present case, Lansford's statements against Respondent clearly fall within the category of rhetorical hyperbole, deserving First Amendment protections, because no reasonable person could infer that Respondent indeed engaged in the alleged conduct. Instead, given the context, a reasonable person could infer that Lansford's comments were "loose, figurative, and hyperbolic" language as part of a heated political debate over the internet. Further, Lansford's statements were merely an emotional outrage in response to the critical comments Respondent made describing him as a "plutocrat," "a relic of the past," and a "divisive leader." Therefore, Lansford's comments were rhetorical hyperbole.

A. Lansford's Comments About Respondent are Rhetorical Hyperbole Because No Reader Could Reasonably Interpret Them as Factual Allegations When Considering the Context Behind His Statements.

Lansford's statements towards Respondent, including the phrases "a pimp for the rich," "a leech on society," "a whore for the poor," and "corrupt and a swindler," qualify as rhetorical hyperbole because they cannot reasonably be interpreted as stating actual facts about Respondent.

As mentioned above, there are constitutional protections for statements that "cannot 'reasonably be interpreted as stating actual facts' about an individual." *Milkovich*, 497 U.S. at 20 (citing *Hustler Magazine v. Falwell*, 485 U.S. 46, 50 (1988)). This is the case despite the underlying factual assertions made in such statements, s*ee id.* at 21, because no harm could surely be inflicted upon a person if no person would believe the statement's factual accuracy. *See Greenbelt Coop. Pub. Ass'n v. Bresler*, 398 U.S. 6, 14 (1970) ("To permit the infliction of financial liability upon the petitioners for publishing" statements where "[i]t is simply impossible to believe" the underlying factual allegations "would subvert the most fundamental meaning of a free press"). However, articulations of objectively verifiable information or events are not afforded First Amendment protections as rhetorical hyperbole. *Milkovich*, 497 U.S. at 21.

The *Greenbelt* Court held that the surrounding context behind a statement plays a pivotal role in determining whether the statement qualifies as rhetorical hyperbole. There, this Court held that a Newspaper article purportedly accusing the plaintiff of "blackmail" qualified as rhetorical hyperbole because anyone who read the article, which used the word "blackmail," knew it was meant to describe (and disparage) the plaintiff's "negotiating proposals." *Id.* at 14. This Court mentioned, however, that if the Newspaper comments had been "truncated or distorted" in ways as to extract the word "blackmail" from the context in which it was used, there would be no First Amendment protections. *Greenbelt*, 398 U.S. at 13. However, because the surrounding comments were "accurate and full," they were afforded First Amendment Protections. *Id.*

More recently, in *Milkovich*, this Court held that a newspaper article implying that a high school wrestling coach perjured himself during an investigation did not qualify as rhetorical hyperbole because the article was "sufficiently factual to be susceptible of being proved true or false." *Milkovich*, 497 U.S. at 21-22. This was the case because the claim was "certainly verifiable

. . . with evidence adduced from the transcripts and witnesses present at the hearing." *Id.* Unlike the statements made in *Greenbelt*, the information surrounding the accusation levied against the coach indicated that the Newspaper article meant to accuse the Coach of committing the crime of perjury. *Id.*

In *Bentley v. Bunton*, the Supreme Court of Texas held the use of the word "corrupt" was actionable because the speaker "plainly and repeatedly stated [their] accusations of corruption were based on actual fact." 94 S.W.3d at 583. *Bentley* involved a talk show host who repeatedly accused a local district judge of being "corrupt" on air. *Id.* at 566-67. The court held that the host's use of the word "corrupt" was actionable as defamation because the "imputation of a corrupt or dishonorable motive in connection with established facts" were statements of fact not within the defense of "fair comment." *Id.* at 583. Supporting this holding was that the speaker made several assertions that his accusations were based on "actual fact[s]" and he cited "specific cases and occurrences and pointed to court records and public documents" when leveling the accusations. *Id.* For the court, the speaker's "constant[]" insistence that his "charges were borne out by objective, provable facts" weighed against a finding of rhetorical hyperbole. *Id.*; *but see Old Dominion Branch No. 496 v. Austin*, 418 U.S. 264, 282-83 (1974) (holding that the use of the "epithet 'scab' was protected" and could not be the basis for a libel suit because it was "literally and factually true" to describe the postal workers who had refused to join the union).

In *McGlothlin v. Hennelly*, a South Carolina district court held that phrases such a "crony capitalist," "crook," and a "crooked owner" constituted rhetorical hyperbole because they were "not capable of being proven as false or even properly defined." *McGlothlin v. Hennelly*, 370 F. Supp. 3d 603, 618 (D.S.C. 2019). In that case, an owner of a golf company brought a defamation suit after viewing several Facebook posts that characterized him as a "Crony Capitalist," a "crook,"

a "crooked owner." *Id.* at 613. The post also suggested that the plaintiff was corrupt by giving the Governor's wife a "no show" job. *Id.* The court held the statements were non-actionable due to their rhetorical and hyperbolic nature because the statement's "long, emotive" nature "negate[d] any impression that the speaker is asserting actual facts" about the particular statements especially "in the context of Facebook posy." *Id.* at 618*; see Fasi v. Gannett Co.*, 930 F. Supp. 1403, 1410 (D. Haw. 1995) (holding use of comments such as "Blackmail Incorporated," "Frank 'The Extortionist' Fasi," and "legalized blackmail" by an editorial about a mayor were "hyperbolic language," suggesting that they were not objective statements of fact).

A Connecticut court also held the use of the words "contributions to slush funds," "part of the fix," "secret, illegal and corrupt deals," "payoffs," "blatant coverup attempt" and "maneuvers with political and corrupt implications" constituted rhetorical hyperbole which no reader could think charges the Plaintiff with the commission of a crime. *Lizotte v. Welker*, 45 Conn. Supp. 217, 231 (1996). In *Lizotte*, a journal published an article suggesting that a real estate developer's contribution to a political committee positively influenced a settlement of litigation that was a result of a residential application, inferring potential bribery. *Id.* at 218. The Connecticut court held phrases such as "it looks like a payoff . . . don't know if it's a payoff" are the sort of "loose, figurative, or hyperbolic language which would negate the impression that the writer" was seriously accusing the plaintiff of a crime. *Id.* at 232. The court further found that the "inclusion of the phrase, 'I don't know' in the statement [was] significant" because it lent a cautionary tone that tends to demonstrate "opinion rather than a fact." *Id.* at 233*; see Nicosia v. De Rooy*, 72 F. Supp. 2d 1093, 1101 (N.D. Cal. 1999) (holding statements on personal website accusing plaintiff of being a "fraud," and "a criminal" as part of heated debate are less likely viewed as statements of fact and more likely to be rhetorical hyperbole); *see also Art of Living Found. v. Does*, No. 10-

CV-05022-LHK, 2011 U.S. Dist. LEXIS 63507, at *21-23 (N.D. Cal. June 15, 2011) (holding that comments on a blog accusing a non-profit health organization of engaging in "exploitation, . . . swindling, . . . cheating, . . . physical abuse, . . . sexual harassment and fondling" did not amount to factual accusations of criminal activity because they were part of "heated debate," and the statements were "voic[ing] an opinion" about the author's beliefs about the organization).

In the case at bar, any person who reads Lansford's comments in their full context would likely determine that the statements were only intended to disparage Respondent. For example, Lansford's use of the phrase "whore for the poor" was not made to actually accuse Respondent of performing sexual favors with lower-class individuals. The same can likely be said about his use of the phrase "pimp for the rich."

Further, Lansford's other comments at issue constitute rhetorical hyperbole because they cannot be objectively verified when read in context. Like *McGlothlin*, Lansford's comment about Respondent as "corrupt and a swindler" closely mirrors the comments of "crook" and a "crooked owner." (J.A. at 5.). Just as in *McGlothlin*, Lansford's comments were made via social media in a "long, emotive" way and therefore should negate "any impression" that Lansford was asserting actual facts. (J.A. at 4.). Unlike *Milkovich*, where the claims of perjury were "certainly verifiable," here Lansford's alleged accusation that Respondent is "corrupt and a swindler" is not verifiable as the comments were not made in reaction to any past investigation of Respondent. (J.A. at 5.). The comments are not objectively verifiable because the record is devoid of any evidence that Respondent previously engaged or is currently engaged in corruption. At the most, Lansford's statements indicate that Respondent holds a misleading reputation in poorer communities, but that in no way indicates that Respondent committed any objectively verifiable crime such as corruption. Further, Lansford's accusation that Respondent was a "former druggie" has no relation

to the emotive comments that Respondent is "corrupt." (J.A. at 5.). Therefore, given the entire context behind Lansford's use of the phrase "corrupt and a swindler," it is clear that he only meant to engage in rhetorical hyperbole.

Lansford's comments are distinguishable from those in *Bentley* because Lansford did not attempt to verify or assert the factual accuracy of his statements (by citing specific cases). Though Lansford made references to Respondent's past drug use, they were not done to substantiate the accuracy of his accusations. (J.A. at 4.). Lansford highlights the drug use as part of an emotional response against Respondent, not to claim the accuracy of his comments.[8] Lansford does not cite court records, cases, or public documents to validate his accusations. He also never insists that his comments were "objective, provable facts."

Even where the word "corrupt" has been used to imply that a politician engaged in bribery, courts have nonetheless held this was rhetorical hyperbole. Like *Lizotte*, Lansford uses the word "corrupt" to describe Respondent. (J.A. at 5.). However, no reader could think Lansford's words imputed Respondent with the crime because Lansford also uses cautionary tone with words like "I guess" in his statement, strongly suggesting loose hyperbolic language. (J.A. at 4.). Like *Nicosia*, because Lansford's comments were made through the internet, they should also be viewed as more likely to be heated debate indicative of rhetorical hyperbole than defamation. (J.A. at 4.). Similar to *Art of Living Found*, Lansford's comments describing Respondent as a "swindler" should also be viewed as Lansford voicing his opinion about the Respondent in the heated debate between the parties about the viability of Lansford for Mayor. (J.A. at 4.). The comments made in *Art of Living Found* were more significant, accusing the organization of cheating, physical abuse, and sexual

[8] Although such an exercise may be considered rude to some, it is still constitutionally protected if no defamatory statements were made.

abuse, while the comments made here only emotively describe Respondent as a "swindler." Therefore, Lansford's comments describing Respondent as "corrupt and a swindler" are rhetorical hyperbole because they were made in heated debate, and no reader could objectively believe they were meant to impute Respondent of the underlying conduct.

B. Lansford's Comments in Response to Respondent's Political Criticism is Rhetorical Hyperbole Normally Associated with Politics and Public Discourse.

Lansford's comments are rhetorical hyperbole because they constitute speech normally associated with politics and public discourse. The meaning of a publication, its truth, and its defamatory nature are dependent on "a reasonable person's perception of the entirety of publication and not merely on individual's statements." *Clifford*, 339 F. Supp. 3d at 925. In *Clifford v. Trump*, the District Court for the Central District of California held President Trump's negative tweets constituted "rhetorical hyperbole." *Id.* at 926. In *Clifford*, after a woman expressed that she had an "intimate relationship" with Mr. Trump, she alleged she was approached and threatened by a man in Nevada. *Id.* at 919. After the alleged encounter, the woman released a sketch of the purported attacker following Mr. Trump's election as President. *Id.* In response, Mr. Trump tweeted that the man was "nonexistent," "a total con," and it was "Fake News Media for Fools." *Id.* Mr. Trump also posted a picture on his Twitter of the sketch beside a picture of the woman's husband. *Id.* at 919-920. The woman sued for defamation based on these tweets, arguing that the tweets attacked "the veracity of her account" and that they suggested that she was making a false accusation. *Id.* at 919. The District Court held the tweets were not defamatory and could be classified as rhetorical hyperbole because they "display[ed] an incredulous tone," which suggested the content of the tweets were not to be understood as a "literal statement" about the plaintiff. *Id.* at 926. Further, the court held that the tweets were not defamatory because they were "issued . . .

in the context of Plaintiff . . . as a political adversary to the President," as evidenced by the woman "challeng[ing] the legitimacy of [the President's]" victory in the election. *Id.* at 927. The court also reasoned that these were "one-off" comments and not "sustained attack[s]." *Id.*

Another case of a political adversary's defamation claim can be seen in *Rehak v. Creative Services*. *Rehak Creative Servs. v. Witt*, 404 S.W.3d 716 (Tex. App. 2013). There, the court held there was no valid defamation claim even when a political adversary accused an incumbent politician of "sidestep[ing]" the Constitution, "ripping off taxpayers," and taking "sleazy steps" to success. *Rehak*, 404 S.W.3d at 720-21. An opposing party running against the incumbent made the challenged statements on his website, and an advertising company for the incumbent sued for defamation. *Id.* at 721. The website also compared the main character in a book, musical, and movie, *How to Succeed in Business Without Really Trying*, to the incumbent in an attempt to show how the incumbent ripped off taxpayers. *Id.* The court held there was no defamation claim because the "website's tone and the 'campaign context' of the statements suggested rhetoric hyperbole that was typical of politics." *Id.* at 730. Central to the court's holding was the website's clear intent to deliver a political message about the use of money in politics in a manner that was "exaggerated, provocative, and amusing"—all of which are at the "heart of the First Amendment." *Id.*; *but see Campbell v. Clark*, 471 S.W.3d 615, 627-28 (Tex. App. 2015) (holding that a website's statements which accused an incumbent of helping his nephew avoid child molestation charges was not rhetorical hyperbole because the tone of the statements was not exaggerated, as it began with language "Children Ages 5-17 Reportedly Sexually Abused by Kaufman County Commissioner's . . . nephew.").

Though "political candidate[s] ha[ve] no license to defame hecklers," they cannot be expected to "suffer . . . silently." *Miller v. Brock*, 352 So. 2d 313, 314 (La. Ct. App. 1977). In

Miller, a Louisiana court held that a candidate's comments that a questioner at a political meeting "has got a problem" and is "unfit" were not "defamatory in its context." *Id. Miller* involved a woman who disagreed with and heckled a political candidate at a public meeting. *Id.* at 313. In response, the candidate stated that the woman had "a problem" and asserted that she was "unfit" for a job she wanted within the school district. *Id.* The court held the statements were not defamatory, and they "[a]t worst" were an "impolitic reaction by a political candidate to the heckling" he experienced. *Id.* at 314.

Here, Lansford's comments were rhetorical hyperbole because they were made as a response to political criticism from a political adversary. Lansford's comments were similar to *Clifford*, where the court held Trump's tweets were rhetorical hyperbole because they exuded an incredulous tone. This is evidenced by Lansford using words like "corrupt and a swindler" and "a whore for the poor." (J.A. at 4.). As courts have stated, context matters. Here, the context behind Lansford's comment—which was in response to Respondent's harsh criticism—indicates that the two were political adversaries. (J.A. at 4.). Specifically, Respondent was the first to support Bailord, Lansford's political opponent, and Respondent issued a new column post where she described Lansford as a "plutocrat" that "needs to be replaced by a compassionate politician." (J.A. at 5.). Her role as Lansford's adversary is further evidenced by her comment, "Out with the Old and In with the New," which appears to be banter between political adversaries. (J.A. at 4.). Furthermore, Lansford's comments were "one-off comments" and not "sustain[ed] attacks," similar to the comments in *Clifford*. The record is devoid of any evidence that Lansford continued to disparage Respondent outside of the single incident where he responded to Respondent's harsh, political criticism.

Similar to *Rehak*, Lansford also compares Respondent to a character from a movie when he calls Respondent "Robinita Hood." (J.A. at 4.). Just as in *Rehak*, Lansford's comments that Respondent is a "pimp for the rich" and a "whore for the poor" are the types of exaggerated and provocative comments the First Amendment seeks to protect. *Id.* Additionally, Lansford's comments can be viewed as an attempt to deliver a political message about the credibility of his political opponent's supporter. The comment's tone and the campaign context show it was merely rhetorical hyperbole. The campaign context is indicated by Respondent's original post, given in favor of Evelyn Bailord, and Mr. Lansford's subsequent comments given after the Respondent's posts urging voters to "Vote for Bailord on Election Day!" (J.A. at 3-4.).

Lansford's statements are distinguishable from *Campbell* because, unlike *Campbell*, the comments here were exaggerated. Unlike *Campbell*, where the appellant's statements did not employ extravagant exaggeration, here Lansford heavily exaggerated as his statements used words like "pimp for the rich," "hoodwinks the poor," and "modern-day Robinita Hood." (J.A. at 4.). As *Miller* has expressed, political candidates, though they cannot defame, cannot silently suffer from hecklers. Here, Lansford, *like Miller*, had an impolitic reaction to Respondent's heckling (vis-à-vis her comments about Mr. Lansford being a "relic of the past," "a divisive leader," and "someone who cares little for social justice issues"). (J.A. at 3.). Respondent's heckling consisted of personal attacks against Lansford. *Id.* Lansford's reply was a political response to criticism from a political adversary which is the rhetorical hyperbole the First Amendment seeks to protect.

Lansford's comments toward Respondent are protected by the First Amendment and immune from a defamation claim. No reasonable reader could interpret Lansford's comments as factual against the Respondent. The political context in which Lansford made his comments only

bolsters this conclusion. Accordingly, the Supreme Judicial Court of Tenley's ruling should be reversed, and this Court should dismiss Respondent's claim.

CONCLUSION

For the foregoing reasons, this Court should reverse the Supreme Judicial Court of Tenley's judgment and grant Mr. Lansford's expedited motion.