18-8128

No.

IN THE SUPREME COURT OF THE UNITED STATES

C. Collie,
Petitioner,

v.

SCCLC
Respondents.

PETITION FOR A WRIT OF CERTIORARI

C. Collie
Post Office Box 187
Sullivans Island, SC 29482-0187
843.883.3010

TABLE OF CONTENTS

QUESTIONS PRESENTED

I. Whether the revised South Carolina Frivolous Proceedings Act (SCFPA), S.C. Code § 15-36-10, is unconstitutional on its face and as applied and is a violation of the First, Fifth, Seventh, and Fourteenth Amendments.

TABLE OF AUTHORITIES

SUPREME COURT

STATE COURTS

OPINIONS BELOW

The Order on appeal in this matter is dated May 25, 2018. Petition for Rehearing was denied on September 21, 2018.

JURISDICTION

The South Carolina Supreme Court filed its opinion on May 25, 2018. Petition for Rehearing was denied by order filed September 21, 2018. This Court's jurisdiction rests on 28 U.S.C. Section 1257. *Thompson v. City of Louisville*, 362 U.S. 199 (1960) (review granted where no other appellate review was available).

CONSTITUTIONAL PROVISIONS AT ISSUE

Amendment I

Religion and Expression

Congress shall make no law respecting an establishment of religion, or prohibiting

the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

Amendment V

From the Bill of Rights

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offense to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

Amendment VII

Civil Trials

In Suits at common law, where the value in controversy shall exceed twenty dollars, the right of trial by jury shall be preserved, and no fact tried by a jury, shall be

otherwise reexamined in any Court of the United States, than according to the rules of common law.

Amendment XIV.

Rights Guaranteed:
Privileges and Immunity of Citizenship,
Due Process, and Equal Protection.

SECTION I. 1. All persons born or naturalized in the United States and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATE STATUTORY PROVISIONS AT ISSUE

SCFPA: S.C. Code Ann. § 15-36-10 through 15-36-50 (2005).

Revised SCFPA: S.C. Code Ann. § 15-36-10 (Supp. 2009).

FACTS

The two-year suspension was entered in November 2014. In answer to the petition for reinstatement, Disciplinary Counsel (DC) at that time, now replaced, opposed reinstatement with false inflammatory claims to the panel, including but not limited to, falsely claiming suspension was based on incapacity. Similarly, the record reflects conflicted DC breached confidentiality by failing to use the contact information in the Attorney Information System and instead faxing confidential, sensitive information to the open fax used by multiple physicians at petitioner's medical office. When the breach of trust was reported, SCCLC stated, "Barbie knows the rules." In addition, conflicted DC altered the record, including forgery on behalf of the state. Moreover, conflicted DC submitted unauthorized charges and costs which were never accounted for. Counsel for the petitioner was granted a continuance for the hearing on reinstatement by the South Carolina Supreme Court. With her departure imminent, conflicted DC reversed that order at the last minute. Petitioner is prejudiced thereby.

Reasons for Granting the *Writ of Certiorari*

But for the unconstitutional retroactive application of the revised SCFPA, we would not be here. Is it any wonder attorneys are at each others throats over the revised SCFPA? As set forth more fully below, the two-year suspension and denial of reinstatement herein resulted from the application of the inapplicable revised SCFPA and its reporting provisions in the underlying case. Though then stayed on appeal, the inapplicable revised SCFPA order was reported to the appellate courts and to SCCLC. The conflicted Disciplinary Counsel (DC), now replaced, sought improper default multiple times and the two-year suspension is entered on improper default. That underlying case arose prior to the effective date of the revised SCFPA. See *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). The issues were timely raised on direct appeal and with request for remand, however, the state court of last resort did not address it. See *Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 402, 110 S.Ct. 2447, 110 L.Ed.2d 359, 58 USLW 4763 (1990)(the lack of any legal requirement other than the talismanic recitation of "'*frivolous*' will foreclose meaningful review of sanctions") (emphasis supplied).

SCFPA's reporting provisions to the appellate courts and to SCCLC, thereby, thwarted/ prevented meaningful, objective appellate review, and it has resulted in the attached Exhibit A. Exhibit A states there was a hearing, however, there was no notice to the affected party, no opportunity to be heard, no transcript, and no record for judicial review regarding impermissible ex parte taking, including but not limited to, confiscation

of unearned filing fees paid by plaintiff (currently assessed at $50.00 per filing), denial of individual, property, and constitutional rights, and denial of filing and access to the courts in perpetuity. Exhibit A purportedly relies on an unspecified, unnamed December 3, 2009, South Carolina Supreme Court order without case number, without caption, without citation, and without providing a copy. In fact, there is no December 3, 2009, South Carolina Supreme Court order in that case. Further, there is no published or unpublished December 3, 2009, South Carolina Supreme Court (SCSC) case at all per the Advance Sheets. Accordingly, the consideration of untrustworthy hearsay in the form of an unspecified, unnamed December 3, 2009, order without case number, without caption, and without citation is contrary to constitutional due process safeguards.

Moreover, the attached Exhibit B is a copy of the Civil Action Cover Sheet from the underlying case in the two-year suspension. As per Exhibit B, the underlying case was filed by counsel of record for breach of the promise to follow the bylaws in good faith contained in the settlement agreement. See attached Exhibit C, transcript excerpt confirming the settlement agreement on the record with the court retaining jurisdiction to enforce it. As confirmed at the bottom of Exhibit B, counsel of record certified that the case is not frivolous. Despite plaintiff's reliance in good faith on counsel's certification, plaintiff was sanctioned for filing a frivolous claim. See *In re Ruffin*, 363 S. C. 347, 610 S. E. 2d 803 (2005) (Court found lawyer did not violate Rule 3. 1 in filing a meritless complaint because there was no clear and convincing evidence of the misconduct; the lawyer relied on the advice of his attorney). Plaintiff's counsel documented the meritorious claims and relevant circumstances surrounding that case in Exhibit D, attached. Though he signed the complaint, filed it, and certified the case is not frivolous,

counsel of record was not sanctioned as set forth in the attached Exhibit E. That Exhibit provides pertinent facts regarding defendant SCCLC's meddling in pending litigation to gain collateral advantage for the other side. The unconstitutional retroactive application of the revised SCFPA in that case was then wrongfully used, while stayed on appeal, as a basis for unconstitutional retroactive application of the revised SCFPA in favor of malpractice defendants Haynsworth Sinkler Boyd, PA, then Chief Justice Jean Hoefer Toal's well-publicized mentor and former employer.

At the hearing on reinstatement, defendants herein presented the panel with an unpublished, unrelated *John Doe* order dated December 2, 2009, attached as Exhibit F. But for the unconstitutional retroactive application of the revised SCFPA, there would be no *John Doe* order because that order was issued as a result of the inapplicable revised SCFPA provision for reporting to the appellate courts and to SCCLC, which at the time was stayed pending appeal. That unpublished *John Doe* order on its face declares there is no record to support it, which is one of the definitions of abuse of discretion. Unpublished orders have no precedential value and should not be cited except in proceedings in which they are directly involved. Rule 268(d)(2), SCACR. It is respectfully submitted the *John Doe* order is inadmissible, it tainted the proceedings, and it prejudiced the plaintiff and the proceedings.

Despite the fact the Haynsworth order was then pending appeal, that *John Doe* order relies on footnote 2, again with no citation, source, or authority for that footnote, thereby concealing Haynsworth as its source; that footnote is lifted from the Haynsworth order which was then stayed. The appellate court effectively decided the Haynsworth appeal, not on briefs, but by issuing the *John Doe* order without consideration of the

merits or the record on appeal, which had not yet been filed, thereby denying meaningful, objective appellate review. That *John Doe* order was then used to prevent plaintiff from pursuing appeal of that very Haynsworth order per the attached Exhibit G, a copy of the order of the former Chief Judge of the South Carolina Court of Appeals. Haynsworth unilaterally drafted its own legal malpractice order which does not reflect the proceedings or the facts. See attached Exhibit H, transcript excerpt of plaintiff's counsel's oral argument. Accordingly, this Court should find the revised SCFPA is unconstitutional on its face and/or as applied because, including but not limited to, the reporting provisions effectively thwart/prevent meaningful, objective appellate review.

Defendants herein used the unpublished *John Doe* order, pursuant to the inapplicable revised SCFPA, to prejudice, to deny meaningful opportunity to be heard, to deny full and fair hearing on the merits, to thwart and/or prevent meaningful, objective appellate review, and to wrongfully/unconscionably use SCCLC and ODC to gain collateral advantage in pending litigation for the benefit of untrustworthy officers of the court, Haynsworth Sinkler Boyd, PA. See Exhibit I, November 1, 2016, correspondence. Taking up Haynsworth's bad faith debt collection practices, Defendant SCCLC essentially became the debt collector for a private entity by arguing reinstatement was conditioned on that payment to Haynsworth, appearing to oppose reinstatement. There has never been any ruling on ability to pay. Compare *Turner v. Rogers,* 564 U.S. 431 (2011). Important public issues support granting the *Writ of Certiorari.* See In re *Primus,* 436 U.S. 412, 98 S.Ct. 1893, 56 L.Ed.2d 417 (1978) (the First Amendment provides limits).

Moreover, the revised SCFPA, S.C. Code § 15-36-10, is not applicable to the legal

malpractice claim against Haynsworth because the claims arose prior to the effective date of the revised SCFPA. See *Southeastern Site Prep v. Atlantic Coastal Builders and Contractors, LLC*, 394 S.C. 97, 107, 713 S.E.2d 650, 655 (S.C. App. 2011). Under the prior applicable SCFPA, S.C. Code § 15-36-10 to 50, Judge Hughston's denial of Haynsworth's motion for summary judgment precludes sanctions. Moreover, Judge Hughston wrote, "Given my opportunities to observe and hear Dr. Holmes, I have no doubt she is sincere in her beliefs about this case," and he found there is no "intent to harm," which precludes sanctions under the applicable SCFPA, S.C. Code § 15-36-10 to 50, then in effect and precludes sanctions under Rule 11, SCRCP. But for the unconstitutional retroactive application of the revised SCFPA, we would not be here.

In addition, the revised SCFPA's "reasonable attorney standard" is not fair notice to the public at large or to parties. The First Amendment doctrine of overbreadth is an exception to this Court's normal rule regarding the standards for facial challenges. See *Members of City Council of Los Angeles v. Taxpayers for Vincent*, 466 U. S. 789, 796 (1984). The showing that a law punishes a "substantial" amount of protected free speech, "judged in relation to the statute's plainly legitimate sweep," *Broadrick v. Oklahoma*, 413 U. S. 601, 615 (1973), suffices to invalidate all enforcement of that law, "until and unless a limiting construction or partial invalidation so narrows it as to remove the seeming threat or deterrence to constitutionally protected expression," id., at 613. See also *New York v. Ferber*, 458 U. S. 747, 769, n. 24 (1982); *Dombrowski v. Pfister*, 380 U. S. 479, 491, and n. 7, 497 (1965).

The Court has provided this expansive remedy out of concern that the threat of

enforcement of an overbroad law may deter or "chill" constitutionally protected speech--especially when the overbroad statute imposes monetary civil sanctions. See *Schaumburg v. Citizens for a Better Environment*, 444 U. S. 620, 634 (1980); *Bates v. State Bar of Ariz.*, 433 U. S. 350, 380 (1977); *NAACP v. Button*, 371 U. S. 415, 433 (1963). Many persons, rather than undertake the considerable burden (and sometimes risk) of vindicating their rights through litigation, will choose simply to abstain from protected speech for fear of financial loss--harming not only themselves but society as a whole, which is deprived of an uninhibited marketplace of ideas. Overbreadth adjudication, by suspending all enforcement of an overinclusive law, reduces these social costs caused by the withholding of protected speech.

As this Court noted in *Broadrick*, however, there comes a point at which the chilling effect of an overbroad law, significant though it may be, cannot justify prohibiting all enforcement of that law--particularly a law that reflects "legitimate state interests in maintaining comprehensive controls over harmful, constitutionally unprotected conduct." 413 U. S., at 615. For there are substantial social costs created by the overbreadth doctrine when it blocks application of a law to constitutionally unprotected speech, or especially to constitutionally unprotected conduct. To ensure that these costs do not swallow the social benefits of declaring a law "overbroad," the Court has insisted that a law's application to protected speech be "substantial," not only in an absolute sense, but also relative to the scope of the law's plainly legitimate applications, before applying the doctrine of overbreadth invalidation. *Id.* at 613. This Court is respectfully requested to exercise its jurisdiction to grant review.

CONCLUSION

WHEREFORE petitioner respectfully requests that this Court grant the petition for writ of certiorari.

Respectfully submitted,

C. Holmes, MD
POB 187
SI, SC 29482-0187
843.883.3010