No. 22-26

In The

Supreme Court of the United States

RICHELLE D. WALLACE
Petitioner,

v.

CITY OF HAMPTON ET AL.,
Respondents.

On Petition for a Writ of Certiorari
to the Supreme Court of Virginia

PETITION FOR A WRIT OF CERTIORARI

RICHELLE D. WALLACE, pro se
86 WEST COUNTY STREET
HAMPTON, VIRGINIA 23663
(757)759-5163

July 5, 2020

QUESTIONS PRESENTED

New York Times v. Sullivan, 376 U.S. 254 (1964) federalized a large swath of libel law holding that the First Amendment mandates proof of actual malice in any defamation action brought by a public official. In Curtis publishing Co. V. Butts, 388 U.S. 130 (1967), the Court imposed that same requirement on public figure defamation plaintiffs. The correctness of extending the "actual malice" standard to public figure defamation plaintiffs has been repeatedly questioned by members of this Court, culminating in Justice Thomas, call two terms ago for the Court to "reconsider the precedents that require courts to apply it". McKee v. Cosby, Jr., 139 S Ct. 675, 676 (2019) (Thomas, J., concurring in denial of certiorari); see also Kagan, A Libel Story: Sullivan Then and Now (reviewing Anthony Lewis, Make No Law: The Sullivan Case and First Amendment (1991(, 18 Law and Social Inquiry 197, 211 (1993) (the use of the actual malice standard in this wide range of cases appears to have little connection with the story of Sullivan. Viewed from that vantage point, current libel law seems the result not of steady and sensible common

Questions Presented- continued

law reasoning but of a striking disregard of the doctrine's underpinnings).

1. Is the petitioner entitled to plain and structural error relief for the court's violation of implementing the Constitution successfully under the First, Fifth, Seventh, and Fourteenth Amendments.

2. Does the Petitioner meet the three threshold requirements to be eligible for plain- error relief.

3. Should the Court reconsider the argument of Freedom of Press in cases not involving reporters, journalists, photographers, but rather citizens who distribute malicious, egregious statements on the internet, social media.

4. In his dissent, Justice Neil Gorsuch raised the question, "In the case of New York Times v. Sullivan, if ensuring an informed democratic debate is the goal, how well do we serve that interest with rules that encourage falsehoods in quantities no one could have envisioned almost 60 years ago?"

5. Should this case be the Court's return of its attention to the "safe deposit" of our liberties. Justice Gorsuch, dissenting from the denial of certiorari in *SHKELZEN BERISHA v. GUY LAWSON, ET AL*, statement

Questions Presented- continued

concerning New Sullivan, "But given the momentous changes in the Nation's media York Times v. landscape since 1964, I cannot help but think the Court would profit from returning its attention, whether in this case or another, to a field so vital to the safe deposit" of our liberties.

6. Whether it is an abuse of discretion under the Federal Rules of Civil Procedures when a party against whom a judgment for affirmative relief is sought has failed to plead or otherwise defend, and that failure is shown by affidavit or otherwise, the clerk and/or court has failed to enter the party's default.

7. Whether it is an abuse of discretion under Federal Rules of Civil Procedures when the district judge—or a magistrate judge when authorized by local rule—fails to issue a iv Questions Presented-Continued mandated scheduling order as stated in Federal Rules of Civil Procedures Rule 16.

8. Whether the PETITION FOR A WRIT OF CERTIORARI should be fully granted when the Petitioner was given the opportunity to add Respondents after the judge's Order to file an Amended Complaint.

Questions Presented-continued

9. Should the Petitioner be allowed damages when the court denied a mandated Scheduling Order and Discovery process for the petitioner to prove calculated damages in the case.

LIST OF PARTIES

- CITY OF HAMPTON ET AL
- MARY BUNTING, CITY OF HAMPTON CITY MANAGER
- JAIME RASTATTER, CITY OF HAMPTON DIVISION OF FIRE/RESCUE, MEDIC/FIREFIGHTER
- NICOLE CLARK, CITY OF HAMPTON HUMAN RESOURCES DIRECTOR
- JASON MONK, CITY OF HAMPTON DIVISION OF FIRE/RESCUE, FIRE CHIEF
- MAURICE WILSON, CITY OF HAMPTON DIVISION OF FIRE/RESCUE ASSISTANT CHIEF

RELATED REFERENCES

- RICHELLE D. WALLACE v. CITY OF HAMPTON ET AL, JAIME RASTATTER, MARY BUNTING, NICOLE CLARK, JASON MONK, MAURICE WILSON, Case Number CL19-729, Hampton District Court, Order entered March 19, 2021
- RICHELLE D. WALLACE v. CITY OF HAMPTON ET AL, JAIME RASTATTER, MARY BUNTING, NICOLE CLARK, JASON MONK, MAURICE WILSON, Case Record Number 210406, Supreme Court of Virginia in the City of Richmond, Opinion entered December 21, 2021, Rehearing denial March 25, 2022

TABLE OF CONTENTS **Page**

TABLE OF CONTENTS-Continued **Page**

APPENDIX TABLE OF CONTENTS

APPENDIX TABLE OF CONTENTS-continued

TABLE OF CONTENTS-Continued **Page**

CASES

TABLE OF CONTENTS-Continued **Page**

STATUTES

JUDICIAL RULES

JUDICIAL RULES-continued **Page**

[1] All Federal Rules of Civil Procedures are covered in the Petitioner's PETITION OF WRIT OF MANDAMUS, MOTION FOR DEFAULT JUDGMENT in Appendix H.

PETITION FOR WRIT OF CERTIORARI

Petitioner, Richelle D. Wallace, respectfully petitions for a Writ of certiorari to review the judgment of the Supreme Court of Virginia in this case.

OPINIONS BELOW

The opinion of the Supreme Court of Virginia, denial to set aside erroneous judgment and rehearing are unreported. The orders from Hampton Circuit Court are unreported.

JURISDICTION

In the Supreme Court of Virginia held at the Supreme Court Building in the City of Richmond on Wednesday the 22nd day of December, 2021, the Court is of the opinion there is no reversible error in the judgment complained of (App.C). Upon consideration whereof, petitioner's July 16, 2021 motion for default judgment, etc. was denied. In the Supreme Court of

Virginia held at the Supreme Court Building in the City of Richmond on Friday the 25th day of March, 2022, on consideration of the petition of the petitioner to set

1

aside from the judgment rendered herein on December 22, 2021 and grant a rehearing thereof, the prayer of the said petition was denied (App. D). This Court has jurisdiction of the federal claims of the petitioner in this action in pursuant of 28 U.S.C. § 1254(1).

STATUTORY PROVISIONS AND JUDICIAL RULES INVOLVED

28 U.S. Code § 4101 1)Defamation.—

The term "defamation" means any action or other proceeding for defamation, libel, slander, or similar claim alleging that forms of speech are false, have caused damage to reputation or emotional distress, have presented any person in a false light, or have resulted in criticism, dishonor, or condemnation of any person.

(2)Domestic court.—

The term "domestic court" means a Federal court or a court of any State.

18 U.S. Code § 242- Whoever, under color of any law, statute, ordinance, regulation, or custom, willfully

subjects any person in any State, Territory, Commonwealth, Possession, or District to the deprivation of any rights, privileges, or immunities

secured or protected by the Constitution or laws of the United States, or to different punishments, pains, or penalties, on account of such person being an alien, or by reason of his color, or race, than are prescribed for the punishment of citizens, shall be fined under this title or imprisoned not more than one year, or both; and if bodily injury results from the acts committed in violation of this section or if such acts include the use, attempted use, or threatened use of a dangerous weapon, explosives, or fire, shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse, or an attempt to commit aggravated sexual abuse, or an attempt to kill, shall be fined under this title, or imprisoned for any term of years or for life, or both, or may be sentenced to death.

Fed. R. Civ. P. 56-Appendix 14l, Appendix 2m
Fed. R. Civ. P. 4(j)(2)(A)(B)- Appendix 2m
Fed. R. Civ. P. 16-Appendix 2m
Fed. R. Civ. P. 12(c) Appendix 2m
Fed R. Civ. P. 54(c)- Appendix 2m

Fed. R. civ. P. 55(a)(c)- Appendix 2m
Fed. R. Civ. P. 60(b)(2)(3)(4)- Appendix 2m
Fed. R. Civ. P. 79(1)(2)- Appendix 2m

CONSTITUTIONAL PROVISIONS INVOLVED

The First Amendment to the United States Constitution provides:

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.

The Fifth Amendment to the United States Constitution provides:

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.

The Seventh Amendment to the United States Constitution provides: 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 the common law.

The Fourteenth Amendment to the United States Constitution provides:

> 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.

NATURE OF ACTION

Petitioner proved prima facie defamation 1) a false statement purporting to be fact; 2) publication or communication of that statement to a third person; 3) fault amounting to at least negligence; and 4) damages, or some harm caused to the person or entity who is the subject of the statement. The Petitioner proved "actual malice" in this case. The Petitioner also proved defamation *per se*. The factual contentions of the case have evidentiary support that was filed and entered in case file CL19-729 with the Hampton Circuit Court.

The Petitioner requested a copy of this case file from the Supreme Court of Virginia. A copy of a Pretrial Order was filed in the record of this case to the Supreme Court of Virginia (App.E). The Pretrial Order was from the United States District Court for the Eastern District of Virginia Norfolk Division, *Richelle D. Wallace v. City of Hampton*, Civil Action No: 2:15cv126. This pretrial order was unrelated to this case. The fact that an unrelated PRETRIAL ORDER, from an unrelated case, was filed is "clear and 6 convincing" evidence that the Petitioner's

Constitutional Amendment Rights were violated. Petitioner files this action pursuant to Amendments I,

V, VII, and XIV of the United States Constitution, 18 U.S. Code § 242 - Deprivation of rights under color of law, 28 U.S. Code § 4101 (1), Federal Rules of Civil Procedures, Petitioner seeks relief as specified in the original Complaint under Prayer for Relief.

STATEMENT OF THE CASE

This case presents paramount constitutional questions regarding the First Amendment, Fifth Amendment, Seventh Amendment, and Fourteenth Amendments. Should the First Amendment continue to be utilized *New York Times v. Sullivan* out of context to protect individuals, municipalities, etc. for publishing malicious content in this new age of modern technology? In a prima facie case involving defamation, should the courts be allowed to violate the constitutional rights of a due process and equal protection such as with the right to disclosure of evidence, where the evidence must be "material" to trigger the Due Process Clause. As Justice Scalia strongly urged that: "One of the evolutionary provisions that I abhor is New York Times v. Sullivan. ... For the Supreme Court to say that the

Constitution requires that, that's not what the people understood when they ratified the First Amendment.

7

Nobody thought that. Libel, even libel of public figures, was permitted, was sanctioned by the First Amendment. Where did that come from? Who told—who told Earl Warren and the Supreme Court that what had been accepted libel law for a couple hundred years was no longer?" Sullivan, 376 U.S. at 269 (quoting *Stromberg v. California,* 283 U.S. 359, 369 (1931)). "[N]either factual error nor defamatory content suffices to remove the constitutional shield from criticism of official conduct." Id., at 273. For the Respondents to argue *New York Times v. Sullivan,* to be labeled a "public figure", a fairly high threshold of public activity is necessary to elevate a person to public figure status, *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 745 and, as to those who are not pervasively involved in public affairs, they must have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved" to be considered a "limited-purpose" public figure." *Gertz v. Robert Welch, Inc.* (1974) 418 U.S. 323, 345. Public figure did not apply to the Petitioner in this case, so the Respondents' argument is moot. 9 Even if the court decided the Petitioner was a "public figure" in Sullivan v. New York Times, "The

First Amendment of the U.S. Constitution does not protect libelous publications" and "The Fourteenth

Amendment is directed against State action and not private action" Id., 676, 144 So. 2d, at 40. Justice White's dissent in Gertz highlighted this disconnect: "The central meaning of New York Times, and for me the First Amendment as it relates to libel laws, is that seditious libel—criticism of government and public officials— falls beyond the police power of the State. In a democratic society such as ours, the citizen has the privilege of criticizing his government and its officials. But neither New York Times nor its progeny suggests that the First Amendment intended in all circumstances to deprive the private citizen of his historic recourse to redress published falsehoods damaging to reputation or that, contrary to history and precedent, the Amendment should now be so interpreted. Simply put, the First Amendment did not confer a 'license to defame the citizen.' "

If a court admits the Respondents' filings after default, proceed with litigation without issuing a Scheduling Order, deemed official documents not as evidence, not allow evidence presented for reconsideration, the court has violated the Constitution. If the court violates State Code in the litigation process,

the court has violated the Constitution as written in the Fourteenth Amendment.

Proceedings Before The District Court

Petitioner is a private, natural born U.S. citizen who is a woman of color. She is a retired Fire Captain/Medic for the Hampton Division of Fire & Rescue, after nearly 20 years of service, and mother. The Petitioner has a college degree from Hampton University in Fire Administration.

This case concerns the petitioner's defamation complaint against respondents brought in the Circuit Court of the City of Hampton in the Eighth Judicial Circuit in the State of Virginia and the Supreme Court of Virginia.

At issue is the 2019 and 2018 publication on social media by Respondent, Jaime Rastatter, as an agency of the City of Hampton. The Respondent, Jaime Rastatter, stated that she worked for the City of Hampton in the January 31, 2018 social media post.

On May 1, 2018, the appellee, Jaime Rastatter made libel statements in her capacity as an employee of the City of Hampton. She made the following statements:

a. File a lawsuit (followed by a laughing emoji face).

10

b. Nah... you will never be Council. Not much to worry about.

c. Absolutely, it may take longer than you but slow and steady win the race...and remains employed. I have far too much integrity to lie and cry to climb the ladder. Nice chatting.

The May 1, 2018 defamation case is within the one-year statute of limitations. A copy of the libel statements was submitted in the appellant's original complaint, copies can be found in both the Hampton Circuit Court and Supreme Court of Virginia records.

The Respondent, Jaime Rastatter's, comment about the Petitioner "lied and cried" to climb up the ladder insinuates the Petitioner failed to perform her professional duties and constitutes a defamatory statement, *Cashion v. Smith,* 286 Va. 327, 749 S.E. 2d 526 (2013)

The Respondent, Jaime Rastatter's statement, "File a lawsuit" was a continued response from a January 31, 2018 statement Ms. Rastatter had posted on social media stating, "This candidate (Former Hampton Fire Dept. Captain) for the Hampton City council filed a lawsuit against the City of Hampton. The attached link is a recent document in regards to the

release of funds ie...Hampton Citizens tax dollars. Educate yourself prior to voting." The May 1st

comments were made on the night of Election Day. The laughing emoji and comment were Ms. Rastatter's way of gloating in defaming the petitioner's name and character prior to Election Day. Copies of the libel January statements by the Defendant were submitted with the Plaintiff's original complaint as relevant evidence. The Respondent published defamatory statements that named the Petitioner, specifically, on social media that was shared by others. The Respondent, Jaime Rastatter' statement, "Nah...you will never be Council. Not much to worry about." was another continued response from a January 31, 2018, post, recorded and filed in the original complaint, which the respondent stated, "I wish you were honest. I wish you were the caring, hardworking, selfless individual you portray to the public. I do not live in the City of Hampton therefore I cannot vote. I do however work for the City of Hampton and do not believe you are qualified to help lead a city, support a fire department you work hard at destroying." The defendant also stated, "Your character was EXPOSED not assassinated. Your employment with the city was like a crappy marriage. Get rid of the wife and pay alimony. In the end...No amount of money will save your soul."

The Respondent had announced she is an employee of the City of Hampton, "Absolutely, it may take longer

than you but slow and steady win the race...and remains employed. I have far too much integrity to lie and cry to climb the ladder. Nice chatting." Was a continued response from a January 31, 2018 post where the respondent stated, "This Is good...redirecting at its finest. You'll make a great politician...however I am willing to clarify. Yes I was fired. Unlike you who took the resignation file when under scrutiny for treating people poorly. While I cannot discuss specifics, I can tell you this. I didn't cry, lie, steal, cheat or manipulate. I fought for my job that was taken by an ass. You and I are nothing alike. I'm an open book willing to discuss my career prior to termination as well as regaining my position 6 months later. I didn't go after the taxpayers as did you. I could dance circles around you when you were employed as a fireman and still could today. Don't challenge me to a dispute you are ignorant on. You see that day in the officer's office at station when you gave me turnover....I have it. recorded.... let's dance".
Again, the respondent was never in a position to know the petitioner's career history. The respondent stating the respondent took the resignation file when under scrutiny for treating people poorly is not information the respondent would be privileged to and was

maliciously false. The Petitioner was on FMLA at the time of her resignation which is confidential

information that was submitted to the petitioner's supervisor and up the chain of command. Ms. Rastatter was not in the petitioner's chain of command at the time she retired. The petitioner was on FMLA at the time she left the department which means any information concerning her Family Medical Leave Act would be a violation of the FMLA laws and shows gross negligence on the Hampton Fire Department, Human Resources Department, and the City of Hampton for allowing information being leaked and malicious, false information being released into the public. The Respondent also states the petitioner "lied, cried, cheated, stole, and manipulated." Again, this 16 insinuates the petitioner's inability to perform her professional duties which is a defamatory statement, *Cashion v. Smith,* 286 Va. 327, 749 S.E. 2d 526 (2013). She also stated she wished the Petitioner were "honest, caring, hardworking, and selfless" all while identifying herself as an employee of the City of Hampton, not as her personal opinions. When she states she works for Hampton, she then becomes an agency of the City of Hampton. The City of Hampton Social Media Policy (App. F) also states, "Do not use ethnic slurs, profanity, personal insults, or engage in any conduct that would

not be acceptable in the city's workplace. Avoid comments or topics that may be considered

objectionable or inflammatory. If you identify yourself as a city employee, ensure your profile and related content is consistent with how you wish to present yourself to colleagues, citizens and other stakeholders.

The Respondent made a false statement about the Petitioner's resignation, claimed the Petitioner was not qualified to perform in a position on city council, lied, cheated, and stole in her previous employment. The Respondent was not reprimanded for the statements nor was there a retraction given which is tantamount of a ratification. Evidence that there was no reprimand would be the cyberstalking and libel comments made by the respondent, Jaime Rastatter, on or about May 1, 2018, on a separate social media page belonging to the Petitioner.

The Petitioner contacted the City Manager on the night of January 31, 2018, to notify her of the respondent's libelous comments because of the severity of the matter. Correspondence between the petitioner and respondent was included in the petitioner's original complaint. As the respondent had identified herself as working for the City of Hampton, the respondent had violated a non-disparagement clause of an enforced settlement agreement in a federal court case..

The City Manager, Mary Bunting responded in an email on around February 1, 2018. Notification was

given to the City Manager that same night of the objectionable or inflammatory. If you identify yourself as a city employee, ensure your profile and related content is consistent with how you wish to present yourself to colleagues, citizens and other stakeholders.

The Respondent made a false statement about the Petitioner's resignation, claimed the Petitioner was not qualified to perform in a position on city council, lied, cheated, and stole in her previous employment. The Respondent was not reprimanded for the statements nor was there a retraction given which is tantamount of a ratification. Evidence that there was no reprimand would be the cyberstalking and libel comments made by the respondent, Jaime Rastatter, on or about May 1, 2018, on a separate social media page belonging to the Petitioner.

The Petitioner contacted the City Manager on the night of January 31, 2018, to notify her of the respondent's libelous comments because of the severity of the matter. Correspondence between the petitioner and respondent was included in the petitioner's original complaint. As the respondent had identified herself as working for the City of Hampton, the respondent had violated a non-disparagement clause of an enforced

settlement agreement in a federal court case.

16

The City Manager, Mary Bunting responded in an email on around February 1, 2018. Notification was given to the City Manager that same night of the January 31, 2018 libel statements, a letter from the Petitioner's attorney was delivered to the City Attorney Office on or about April 17, 2018 and the City of Hampton made no effort to rectify or resolve the malicious acts which led to the following attack May 1, 2018. The City Attorney's Office never contacted the Petitioner's attorney who sent the letter, at any time. Attorney Carteia Basnight also contacted the City Attorney's Office. A copy of the attorney's letter was filed with Hampton Circuit Court and the Supreme Court of Virginia. Ms. Basnight informed the City Attorney's Office of the defamatory comments and requested a thorough investigation on merit. She also requested the written decision and all communications on the matter be forwarded to her office. She advised the petitioner that she never received any response from the City Attorney's Office. The Respondent, City Manager Bunting acknowledged receipt of the January 31, 2018, email, which included the libel comments, and advised she had notified Human Resources Director Nicole Clark and Interim Fire Chief Jason Monk to

investigate further. All City of Hampton Department Heads and personnel were aware of the false, libel

statements, and the violation of FMLA laws committed by Medic/Firefighter Jaime Rastatter. At the time of the defamatory publication, Respondent Jaime Rastatter and other Respondents,

The Petitioner contacted the City Manager on the night of January 31, 2018, to notify her of the respondent's libelous comments because of the severity of the matter. Correspondence between the petitioner and respondent was included in the petitioner's original complaint. As the respondent had identified herself as working for the City of Hampton, the respondent had violated a non-disparagement clause of an enforced settlement agreement in a federal court case.

The City Manager, Mary Bunting responded in an email on around February 1, 2018. Notification was given to the City Manager that same night of the January 31, 2018 libel statements, a letter from the Petitioner's attorney was delivered to the City Attorney Office on or about April 17, 2018 and the City of Hampton made no effort to rectify or resolve the malicious acts which led to the following attack May 1, 2018. The City Attorney's Office never contacted the Petitioner's attorney who sent the letter, at any time. Attorney Carteia Basnight also contacted the City Attorney's Office. A copy of the attorney's letter was filed with Hampton Circuit Court and the Supreme

Court of Virginia. Ms. Basnight informed the City Attorney's Office of the defamatory comments and requested a thorough investigation on merit. She also requested the written decision and all communications on the matter be forwarded to her office. She advised the petitioner that she never received any response from the City Attorney's Office.

The Respondent, City Manager Bunting acknowledged receipt of the January 31, 2018, email, which included the libel comments, and advised she had notified Human Resources Director Nicole Clark and Interim Fire Chief Jason Monk to investigate further. All City of Hampton Department Heads and personnel were aware of the false, libel statements, and the violation of FMLA laws committed by Medic/Firefighter Jaime Rastatter.

At the time of the defamatory publication, Respondent Jaime Rastatter and other Respondents, Mary Bunting, Nicole Clark, and Jason Monk, and Maurice Wilson knew that the words were untrue or believing them to be true lacked reasonable grounds for such belief and acted negligently in the making and posting of such statements, as such, Jamie Rastatter as an agent, acted with malice towards the Petitioner.

Any and all evidence of the Respondents was provided in the Plaintiff's original complaint along with

relevant evidence to support any and all claims. The court was aware that the city made no attempts to contact the Petitioner or the Petitioner's previous attorney.

The City of Hampton was given notification on the night of the first defamatory incident. The City of Hampton was notified by the Petitioner's previous attorney in April, approximately three months later of the first incident, and the City of Hampton failed to act. The malicious, false statements and failure to act of the Respondents was of an abusive nature. The Petitioner waited one year after the May 1, 2018 defamatory comments were made to give the City of Hampton ample opportunity to come to a resolution and the City of Hampton never responded to resolve this matter.

The Petitioner properly filed a complaint within the statute of limitations based on the libel statements of the Respondent, Jaime Rastatter, in her capacity as an employee of the City of Hampton. The complaint was filed on or around April 1, 2019. The Petitioner's original and amended complaints were against the City of Hampton et al to include Jaime Rastatter. Jaime Rastatter was not sued as an individual.

The Petitioner did not receive a response to the complaint within the mandated 21 days nor was a response filed within the 21-day mandate. The service

was issued May 8, 2019. The Respondents should have filed a response no later than May 29, 2019. The Respondents did not file a response until June 3, 2019 and July 8, 2019.

The Petitioner contacted the Hampton Clerk of Court, Linda Batchelor-Smith via email on June 6, 7,12,19, 2019 requesting a copy of the Summons of Civil Actions Forms served and to have a default judgment entered in the case and never received a response. A default judgment was never entered in this case by the Clerk of Court which violated FRCP Rule 12(c), FRCP Rule 58(b)(c).

On June 13, 2019, the petitioner filed a Motion for Default Judgment as the Respondent had not filed a response within the mandated 21-day period (App. G) The Petitioner filed a Petition of Writ of Mandamus, Motion for Default Judgment on or around November 5, 2019, (App. H) on the grounds that the Respondents had failed to respond in a timely manner and the clerk had failed to keep verified records and preservation of papers under local codes. The Circuit Court did not maintain accurate record keeping of this case, omitted vital documents, hindering the Petitioner's ability to provide factual, evidentiary argument.

The Petitioner argued the Respondents be held at the standards set forth by the Federal Rules of Civil

Procedures. A copy of the memorandum with the Supreme Court of Virginia letterhead, from Patricia G. Davis, dated August 29, 2019, to The Honorable William R. 22 Savage, III, cc'd to The Honorable Bonnie L. Jones, Chief Judge, The Honorable Linda B. Smith, Clerk, and Mr. Michael Byser, Court Administrator thanked Judge Savage for accepting the designation to hear the case and requested Mr. Byser contact Judge Savage in regard to scheduling.

A copy of the Supreme Court of Virginia Chief Judge, Donald W. Lemons, Order designating Judge William R. Savage, III to preside over the case according to law is also provided in the case files. On December 2, 2019, the petitioner contacted the Hampton Circuit Court Administrator, Michael Byser and attorney James Cales, and requested Judge William Savage provide a scheduling order via email (App. I). On December 3, 2019, Mr. Byser responded that Judge Savage would address the trial date issue at the December 18, 2019 hearing. Once the trial date has been set, the Uniform Pretrial Scheduling Order would then be completed and entered. On December 3, 2019, Mr. Byser responded stating Judge Savage would address the trial date issue at the hearing on December 18th. Once the trial date is set, the uniform Pretrial Scheduling Order can be completed and entered. Judge

Savage never set a trial date, never completed nor entered a Uniform Pretrial Scheduling Order.

On December 13, 2019, The Petitioner filed a Writ of Mandamus, Motion to Recuse Judge William Savage, (App. J) for the following reasons:

1. The initial presiding Judge in this case was Judge Christopher Hutton. Chief Judge Bonnie Jones submitted a recusal of the Judges of the Eighth Judicial Circuit due to their relationship with the City Manager, Mary Bunting.

2. It wasn't until the Petitioner requested a trial by jury that Judge Bonnie Jones recused all Eighth Judicial Circuit Court Judges from the case. The Eighth Circuit Court Judges had presided in other cases involving the City Manager, Case No. CL1200111488, *Read, Erin Elizabeth v. City of Hampton, Mary Bunting,* Case No. Cl12002837, *Self, Robert v. City of Hampton, Charles Jordan, Mary Bunting,* Judge Taylor, presiding, Case No. 130022517, 9/30/ 2013, *Self, Robert v. City of Hampton, Charles Jordan, Mary Bunting,* Judge Taylor, presiding. The Chief Judge had no grounds to recuse the Eighth Judicial Circuit Judges from the case as the argument of their relationship interfering was moot.

The presiding judge, William Savage, allowed the Respondents to enter pleas after evidence of default and

the Petitioner filed a Motion of Default Judgment which was prejudicial and biased in this case as the Respondents were not entitled to any further proceedings in this case. Judge Savage refused to recuse himself from the case.

The Respondent, Jaime Rastatter, also identifies herself as a fireman. In *New York Times v. Sullivan* Id., at 674-675, 144 So.2d at 39. "We think it common knowledge that the average person knows that municipal agents, such as police and firemen, and others, are under the control and direction of the city governing body, and more particularly under the direction and control of a single commissioner. In measuring the performance or deficiencies of such groups, praise or criticism is usually attached to the official in complete control of the body."

"The "public figure" issue is not cut and dried. To begin with, a fairly high threshold of public activity is necessary to elevate a person to public figure status, *Brown v. Kelly Broadcasting Co.* (1989) 48 Cal.3d 711, 745, and, as to those who are not pervasively involved in public affairs, they must have "thrust themselves to the forefront of particular public controversies in order to influence the resolution of the issues involved" to be considered a "limited purpose" public figure." *Gertz v. Robert Welch,* Inc. (1974) 418 U.S. 323, 345.

On December 15, 2020, at 1206 hours, the Petitioner contacted the Court Administrator, Michael Byser via email along with the Respondents' counsel. The petitioner stated she had not received written denials for her written requests from Judge Savage concerning a scheduling conference, scheduling order, pretrial hearing, or status on her Motion for Summary Judgment. The petitioner also stated she was waiting on a written explanation as to Judge Savage's disregard to FRCP Rule 16 and coerced the petitioner in participating in the first hearing because he refused to prepare a scheduling order until after the December 18, 2019 hearing.

Upon further investigation, it was discovered F. Doggs from the Sheriff's Office was given specific instructions not to leave the summons for Ms. Jaime Rastatter with anyone in the Hampton Division of Fire and Rescue Department by the respondent's counsel, Lola Perkins. She was told she had to serve Ms. Rastatter personally. Evidence is shown in the actual Proof of Service documents where Ms. Doggs documents the dates and times serving Ms. Mary Bunting and Ms. Jaime Rastatter. Ms. Mary Bunting's Summons was served to Sr. Deputy City Attorney, Lola Perkins, on 5-13-19 at 0917 hours. It was "Delivered to person found in charge of usual place of business or

employment during business hours giving information of its purport." The first attempt to serve Ms. Rastatter was on 5-13-19 at 0921 hours "left with Vicki Barnett" Office Specialist and Ms. Doggs documents "NotFound" on the Proof of Service. Ms. Doggs left the Summons with Vicki Barnett, the Respondent's place of business which means FRCP 4(j)(2)(A)(B) was met and the Respondent was properly served. The Sr. Deputy City Attorney deliberately obstructed the delivery of the summons to Ms. Rastatter and violated Fed. R. Civ. P. 4(j)(2)(A)(B). The Petitioner filed, with the new evidence, a Motion to Reconsider the Motion of Default Judgment, on or around February 24, 2020.

During the December 29, 2020 hearing, the Petitioner asked Judge Savage why she had not heard anything concerning the motion and that the Notice of Hearing was for the Respondents' demurrers and special pleas. The judge asked the Petitioner what she wanted reconsidered. The petitioner explained the new evidence of the obstruction of the legal process of serving Ms. Rastatter. The judge stated the court had not heard of any evidence, just the petitioner's argument (App. 4l). The petitioner stated the evidence is in the summons themselves. The judge replied, "That's not evidence". The judge then stated that he had stated if the service was not an issue, he would

grant that party an extension of time to file the papers answers to the complaint and any answers that they filed would be deemed by the court to have been timely filed. He went on to state he had already granted the party an extension of time to file. The judge then asked counsel if they had filed an answer which they admitted they had not (App. 6l). The petitioner replied that the agency shall render a written decision on a party's timely petition for reconsideration within 30 days from receipt of the petition for reconsideration that shall deny, modify the decision or vacate the case and set a new hearing for further proceeding. The agency shall state the reasons for its actions. The petitioner stated she never received any written statement. Respondents' counsel replied Article 2.2 of the Code of Virginia does not govern the administration of civil proceedings, that's 8.01."

On December 10, 2020, the petitioner filed a Motion for Summary Judgment. In the December 29, 2020 hearing, the petitioner stated (App.14l), "Rule 56 of the FRCP reflect that this court can enter a summary judgment in favor of the plaintiff in this action and award relief...The undisputed evidence develops in the complaint, pretrial hearing, amended complaint, response to the demurrer and special plea, and discovery in the case demonstrate the plaintiff carried

her burden to establish defamation on the evidence provided."

On December 16, 2020 at 1323 hours, the Petitioner contacted Byser via email requesting Judge Savage provide a written directive for the December 29, 2020 hearing. The petitioner stated the judge failed to follow FRCP Rule 16 and was coercing the petitioner to participate in another hearing that showed the judge was biased.

On December 16, 2020, the Respondents' counsel filed a Notice of Hearing. On December 17, 2020 at 1137 hours, the Court Administrator, Michael Byser, sent an email to the Petitioner and Respondents' counsel of an original order by Judge Savage that the Demurrers and Special Pleas of the Respondents shall be heard. The Petitioner was not allowed reasonable time to file an objection which was filed at 1649 hours that same day as she was not aware of the judge's order less than 24 hours after the Notice of hearing was filed(App. 1I). The Judge's Order was prejudicial, bias, and an abuse of discretion. The Petitioner's Objection included the judge's violation of FRCP Rule 16 as no scheduling order had not been issued, no ruling on the Motion for Summary Judgment, no mediation, arbitration or settlement conference had been made. In the court transcript of the December 18, 2019 hearing

(App.4k) "The court finds that there was no proper service on that defendant, and the motion for default judgment is denied. If it could be construed that there was service, then the court is going to grant that defendant an extension of time for filing and the pleading filed or deemed by the court to have been timely filed therefore, the motion for default is denied." The Respondents never filed for an extension of service so the judge's grant for an extension of time was prejudicial,biased, in plain error, and an abuse of discretion. The judge's denial of default judgment was in plain error and an abuse of discretion.

In the December 18, 2019 hearing before Judge Savage, the Respondent's attorney, Mr. Cales argued *Clifford v. Trump* which was attached to the Respondents' demurrer and plea, and the doctrine of rhetorical hyperboles as it relates to the appellant as a public figure. The Petitioner decided to run for City Council in January. The Petitioner had not become a qualified candidate for Hampton City Council at the time the Respondent made the libel statements on January 31, 2018, so there is no way she could be considered a "public figure". The Petitioner did not meet the criteria as a "public figure" as described in *Gertz v. Robert Welch.*

Referring to the December 18, 2019, court

transcript, Statements about the Petitioner resigning because of scrutiny, going after taxpayers, being qualified to lead the city, lying, cheating, stealing, manipulating, being dishonest, not hardworking, are not rhetorical hyperboles but defamatory statements on the Petitioner's character and abilities. "(c) Factual error, content defamatory of official reputation, or both, are insufficient to warrant an award of damages for false statements unless "actual malice"-knowledge that statements are false or in reckless disregard of the truth - is alleged and proved. Pp. 279- 283. "*New York Times v. Sullivan*, actual malice is proven as the Respondent posted the libel comments to prevent the Petitioner from becoming a part of Hampton City Council. The Respondent was not in the chain of command to be privy to any information pertaining to the Petitioner's reason for leaving. The Petitioner was on FMLA at the time she left the department which means any information concerning her Family Medical Leave Act would be a violation of the FMLA laws and show gross negligence on the Hampton Fire Department, Human Resources Department, and the City of Hampton for allowing any information being leaked and allowing malicious, false information being released into the public. The judge ordered the petitioner to file an Amended Complaint within thirty

(30) days of the hearing. In the Amended Complaint, the petitioner added Respondents Nicole Clark, Jason Monk, and Maurice Wilson as defendants. The Respondents argued the statute of limitations. The petitioner argued the integral roles each respondent played in this case and their failure to act. During the December 29, 2020 hearing the court deemed (App. 24l) "these four parties -- Bunting, Clark, Monk and Wilson -- may well be witnesses. Either party might want to call them for the trial of this case. I do not find that either of them is a necessary or essential party defendant in the case. I don't see that the plaintiff would be impaired in any way if they're not parties. In short, the special plea of the statute of limitations to Monk and Wilson..." The court's actions violated FRCP Rule 19(a)(1)(A)(B)(i) and FRCP Rule 20(a)(2)(A)(B)(3). Since the respondents did not, by appropriate steps in the trial court, seek to justify their utterance as "fair comment" or as privileged as a means for redressing grievances, those hypothetical defenses cannot be considered by this Court, *Beauharnais v. Illinois,* 343 U.S. 250 (1952).

Proceedings Before The Supreme Court of Virginia

The Petitioner timely filed a Petition for Appeal in the Supreme court of Virginia. The Petitioner argued the prima facie evidence of defamation of the case, and the fact the final order in the case was void as the March 19, 2021 states, "ADJUDGED, ORDERED, AND DECREED that the Demurrers and Special Pleas to the Amended Complaint...are hereby SUSTAINED...each for the reasons set forth on the record of the hearing on December 29, 2020." The Order for the December 29, 2020 hearing was filed and entered AFTER the March 19, 2021 hearing so the March 19, 2021 Final Order is VOID, FRCP79(a)(1).

None of the orders submitted to the Supreme Court of Virginia by the Petitioner nor the Respondents signed by Judge Savage, dated/entered on February 26, 2021, March 19, 2021, March 30, 2021, April 16, 2021 were stamped and assigned consecutive file numbers, which must be noted in the docket where the first entry of the action is made, as mandated in FRCP 79. This makes the Final Order VOID. The Petitioner requested a copy of this case file from the Supreme Court of Virginia. A copy of a Pretrial Order was filed in the

record of this case to the Supreme Court of Virginia (App.E). The Pretrial Order was from the United States District Court for the Eastern District of Virginia Norfolk Division, Civil Action No: 2:15cv126. This pretrial order was unrelated to this case. The fact that an unrelated PRETRIAL ORDER, from an unrelated case, was filed is "clear and convincing" evidence that the Petitioner's First Amendment Right of Due Process was violated.

The Supreme Court of Virginia Justices issued an opinion that there was no reversible error and refused the petition for appeal. The petitioner filed a Motion to Strike, A Motion to Motion to Set Aside Erroneous Judgment, and a Petition for Rehearing after Refusal of Petition for Appeal which were denied.

REASONS FOR GRANTING THE PETITION

There have been a number of defamation cases brought before this Court arguing New York Times v. Sullivan. This has led to the questioning of the extension of "actual malice" standards by members in this Court. This case has also led to questioning if this case can be applied today when considering the advanced technology people rely on for information that

does not include newspapers, magazines, television, etc. The Court cannot argue that *New York Times v. Sullivan* is in need of revisions but the principles of protecting individuals from falsehoods, protecting their reputations is still needed.

The Petitioner requests this Court grant certiorari on the grounds:

1. Petitioner proved prima facie defamation
a) a false statement purporting to be fact;
b) publication or communication of that statement to a third person;
c) fault amounting to at least negligence; and
d) damages, or some harm caused to the person or entity who is the subject of the statement.
2. The Petitioner proved "actual malice" in this case. The Petitioner also proved defamation *per se*.
3. The Respondents did not respond within the 21-day mandated period and were in default (Fed. R. Civ. P. 55(a)(c).
4. The judge allowed the Respondents to file a response and deemed the Respondents their Demurrers and Special Pleas had been filed in a timely manner even when new evidence proved there was obstruction in the service of the Respondent in this case and the Respondents

never filed an extension.

5. For all of the FRCP Rule violations listed in this petition.

6. There is evidence of prejudice, bias, plain error, and abuse of discretion throughout the process of the case.

7. The Petitioner was denied her Constitutional Rights as stated in the Constitutional Provisions, statutory provisions and judicial rules.

CONCLUSION

Based on the foregoing, the petition for a writ of certiorari should be granted.

Respectfully submitted,

Richelle D. Wallace, *pro se*
86 W. County Street
Hampton, Virginia 23663
(757) 759-5163
chelle_kiara@verizon.net