No. 22-67

In The
Supreme Court of the United States

ROBERT "BOB" KING,

Petitioner,

v.

SPECIALTY HOSPITAL OF WASHINGTON, *et al.*,

Respondents.

On Petition for Writ of Certiorari to the District of Columbia Court of Appeals

BRIEF IN OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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COUNTER-STATEMENT OF QUESTIONS PRESENTED

Petitioner King filed an Opposition to the Special Motion to Dismiss of Specialty Hospital of Washington ("SHW") *et al.* (collectively hereinafter "Respondent") pursuant the District of Columbia's "anti-SLAPP" statute, D.C. Code §§ 16-5501 to 16-5505 (2012), as well as to Respondent's accompanying summary judgment motion based on absolute-privilege issues resolved earlier in favor of an individual defendant, Respondent's CEO Susan Bailey. Petitioner's Opposition admitted that his potentially still viable defamation claim against Respondent was based on an alleged telephone call to the re-election campaign office of former D.C. Mayor Vincent Gray from someone that Petitioner never was able to identify. His Opposition asserted incorrectly not having had any opportunity for discovery about that claim while Respondent's bankruptcy proceedings continued during the first three years of the action, and asserted that new evidence might "become apparent" now that the bankruptcy was concluded. Those were the only grounds upon which Petitioner opposed Respondent's Special Motion. The trial court granted both dispositive motions, and Petitioner did not seek reconsideration.

On appeal, the D.C. Court of Appeals affirmed the anti-SLAPP Act dismissal, holding "that[,] although the trial court erroneously granted the special motion without convening a statutorily required hearing, such error was harmless and the grant of the motion was appropriate." The Court of Appeals also affirmed the partial summary judgment, because previous rulings against Petitioner in favor of

Ms. Bailey – which had thereby become the "law of the case" against him – rendered allegedly defamatory statements about his conduct that Respondent's counsel and other agents made to MPD officers and in TRO proceedings absolutely privileged.

In concluding that remand was not required despite the trial court's failure to hold an evidentiary hearing, the Court of Appeals specifically found:

(a) that Petitioner had insisted in earlier proceedings – and thereby admitted under the "judicial estoppel" doctrine – that he was a "public figure;"

(b) that Petitioner never challenged Respondent's assertions that the allegedly defamatory call occurred "in connection with an issue of public interest," under factors including "whether the alleged call 'implicate[d] health, safety, and community well-being," whether it related to the District of Columbia," and whether it was made "to members of the public;"

(c) that Petitioner "is unable to prove that an employee or other agent of [Respondent] actually made a false or defamatory statement about him" to Chuck Thies, the re-election campaign official he alleged as having received a defamatory telephone call;

(d) that Petitioner effectively admitted he lacked evidence that the allegedly defamatory phone call had taken place, even though he had ample opportunity to pursue discovery from Mr. Thies and other individuals earlier in the action, because he

sought additional discovery to respond to the anti-SLAPP special motion;

(e) that the only "new" evidence Petitioner presented on appeal failed to support the Complaint's allegation that a defamatory statement to Mr. Thies occurred two days after the TRO hearing, and that such mere allegations were not sufficient to oppose a Special Motion;

(f) that Petitioner failed to argue below that Respondent's Special Motion was untimely under the anti-SLAPP Act, and therefore waived that issue; and

(g) that Petitioner failed to explain with particularity how the trial court's granting less time than he sought before filing his Opposition violated due process.

Therefore, the preemptive jurisdictional questions presented here are:

1. Whether this Court lacks jurisdiction under 28 U.S.C. section 1257, because the Petition fails to present any substantial federal question for this Court's review that was timely and otherwise properly raised below.

2. Whether the D.C. Court of Appeals affirmed the trial court's granting of the Special Motion to Dismiss solely on alternative "state law" grounds, including but not limited to interpretation and application of the local anti-SLAPP Act under local procedural standards, and thus did not reach or decide any federal question adverse to Petitioner

upon which this Court's jurisdiction might properly be based now.

3. Whether Petitioner failed to properly frame and present any issue of constitutional or other federal law dimension regarding "fundamental procedural rights" of *pro se* litigants confronted with a well-articulated and otherwise legitimate Special Motion to Dismiss under the local anti-SLAPP Act with the clarity needed for effective adjudication.

PARTIES TO PROCEEDINGS BELOW

The Petition identified all parties to proceedings below. Only SHW and its subsidiary Capitol Hill Nursing Home are parties to this Brief in Opposition.

CORPORATE DISCLOSURE STATEMENT

Respondent Specialty Hospital of Washington, LLC ("SHW") was at all times relevant a limited liability company that operated as a subsidiary of BridgePoint Healthcare, LLC, which is not related to any publicly traded entity. Respondent Capitol Hill Nursing Center was a subsidiary of SHW.

ADDITIONAL RELATED PROCEEDINGS

The following actions were also related proceedings here.

Specialty Hospital of Washington – Nursing Center, LLC v. King, No. 14 CV 621 (filed 1/31/2014) (Complaint and same-day TRO hearing referred to in Memorandum Opinion supporting Judgment entered for Ms. Bailey September 19, 2018).

King v. Wilich, President, SHW, No. 14 CV 7503, District of Columbia Superior Court, dismissed November 10, 2015, for lack of service on Mr. Wilich.

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OPPOSITION TO PETITION FOR A WRIT OF CERTIORARI

Respondents Specialty Hospital of Washington, LLC *et al.* respectfully ask the Court to deny King's Petition for a Writ of Certiorari.

OPINIONS BELOW

The relevant opinions below are as listed in the Petition and included in the Petition's Appendices.

STATEMENT RE LACK OF JURISDICTION

Respondent respectfully suggests that this Court does not have jurisdiction under 28 U.S.C. § 1257, because the courts below did not consider or decide any issue of federal constitutional, statutory or regulatory law adverse to Petitioner.

Subsection (a) of 28 U.S.C. section 1257 reads in full:[1]

> (a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari [1] where the validity of a treaty or statute of the United States is drawn in question or [2] where the validity of a statute of any State is drawn in question on the ground of its

[1] Emphasis by underlining or boldface added herein unless otherwise noted.

> being repugnant to the Constitution, treaties, or laws of the United States, or [3] where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.

None of the three above-numbered parts of section 1257(a) apply here, because: (1) no federal statute or treaty is at issue herein, (2) Petitioner failed below to draw into question the validity of any District of Columbia statute on federal-law grounds, and (3) Petitioner failed below to properly set up "any title, right, privilege or immunity" under the Constitution, treaties or laws of the United States. Instead, the issues properly presented and resolved below against Petitioner involve the interpretation and application of the local anti-SLAPP Act, D.C. Code 16-5501 *et seq*., in light of governing state law procedural standards, which are not subject to review under section 1257(a), and section 1257(b) provides that, "[f]or purposes of this section, the term 'highest court of a State' includes the District of Columbia Court of Appeals." *Id.*

Furthermore, any potential for exercising such jurisdiction would be vitiated here by the facts that (a) the D.C. Court of Appeals resolved the issues properly presented to it as a matter of D.C. statutory and procedural law in construing and applying the local anti-SLAPP Act, because (i) Respondent undisputedly presented a *prima facie* case for a Special Motion to Dismiss, and (ii) Petitioner failed to present any evidence capable of showing a likelihood of success on the merits of his defamation claim; and

(b) the Court of Appeals determined under governing local procedural law (i) that the asserted procedural mistake in granting Respondent's Special Motion to Dismiss without first holding an evidentiary hearing was harmless error, and (ii) that no other material issue was properly preserved for appeal.

STATEMENT OF THE CASE

I. Supplemental Statement re Factual Background

Petitioner's Complaint pleaded that he is a long-time public figure in D.C. and, ironically, was a longtime public supporter of Respondent SHW and its predecessors. (AA.41-43,[2] Complaint herein, ¶¶ 10-19.) Petitioner married Deborah A. King (born Deborah Wynn) in 1970, and thereby became step-father to Ms. Wynn's then two-year-old daughter LaShawn, whom he treated as his own daughter, but never adopted. (AA.43, *id*. ¶ 20 & n.2.) From 1998 to 2013, LaShawn was a patient of SWH and resident in its Nursing Center, where she received treatment and custodial support for multiple sclerosis, and received frequent visits from Petitioner. (*Id*.)

Unfortunately, when LaShawn Wynn died at age 43 on November 21, 2013, Petitioner became convinced that negligence by employees or agents of Respondent had caused her death. (AA.43, *id*., ¶¶ 21-

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[2] "AA.__-__" refers to Petitioner's Appellate Appendix below, to which Respondent was not allowed any input. *See* D.C. R. App. P. 30(b). "SA.___-__" refers to Respondent's Supplemental Appendix below. "OA.__-__" refers to Appendices of this Brief in Opposition.

22 & n.3.) Over the ensuing two-month period, Petitioner sought cooperation from Susan Bailey, SHW's CEO, and others on its board and staff, in an effort to establish that hospital negligence led to LaShawn's death. (AA.43-44, *id.*, ¶¶ 23-27.) While Ms. Bailey and other SHW officials initially were sympathetic and cooperative in addressing Respondent's concerns and inquiries (*see id.*), they necessarily become more circumspect when they learned that his wife, Deborah King, was planning to file a negligence suit and that he was threatening to expose the hospital and shut it down. (AA.45, *id.*, ¶¶ 29-31; King Dep. Tr., at 227-32, 558-60, 647-48, & 653-54.) Ms. Bailey and the Respondents nevertheless cooperated with Petitioner's request for copies of LaShawn's medical records. (AA.45-46, *id.* ¶¶ 31-32.)

The Complaint (¶ 32) asserts that the last conversations between Petitioner and Respondent's representatives including Ms. Bailey were amicable and polite, except for one conversation that he now denies ever occurred. Specifically, on January 30, 2014 – after Ms. Bailey told Respondent that, on advice of counsel, she could not provide him with internal SHW investigative records – he lost his temper and in a tirade threatened Bailey and others at SHW with a bomb attack or gun violence. The Complaint alleges that, several hours later that day, after advising President Wilich and counsel of Petitioner's threat, CEO Bailey had security call the MPD and report Petitioner's angry, threatening statements (A.42, 46-51, *id.*, ¶¶ 33 & n.4.) MPD Officer Nicholas Deciutiis was assigned the investigation and interviewed Ms. Bailey later that same day. (SA.4-11**,** Bailey 7/20/2016 Dep. Tr., at 69-

71; SA.12-22, Deciutiis Dep. Tr., at 6-13; DCMPD Report #14014330 (Ex. 4, Bailey Dep.).) Ms. Bailey told Officer Deciutiis of the threatening statements made by Petitioner King. (Bailey Dep. Tr., at 17-20; 32-34.)

Thereafter, Officer Deciutiis recommended, for its protection, that SHW file for a Temporary Restraining Order ("TRO"). Pursuant to this recommendation, Respondents authorized their attorney, Kenneth Rosenau, Esq., to seek such a TRO, because of Petitioner's threatening statements. (Bailey Dep. Tr. at 21-28, 90-92.) The TRO Complaint was filed on January 31, 2014, and Petitioner was served with the Complaint and Summons that afternoon, shortly before a hearing set for 4:00 p.m. the same day, which Petitioner neither attended nor sought to continue, by telephone or otherwise. Given the serious nature of the claims, Superior Court Judge Henry Greene entered a TRO requiring Petitioner to stay at least 500 feet away from Respondent's premises and each of 12 named SHW officials, including Susan Bailey. (AA.48, *id*., ¶¶ 39-40, & SA.23-24, 1/31/2014 Order; AA.763 & SA.25-43, 1/31/2014 Hearing Tr., at 5-12.) Judge Greene also scheduled a preliminary injunction hearing before Judge Michael O'Keefe, at which – upon advice of counsel – Petitioner consented to accepting a Barring Notice. (SA.44-45, 2/14/2014 Doc. Entry re Barring Notice; AA.764 & SA.46-92, 2/14/2014 Hearing Tr., at 27 & 37-43.)

The Complaint also alleges that, at the time of the alleged events described above, King was under contract to assist Mayor Gray's re-election campaign. (AA.48, ¶ 41.) The Complaint then alleges that, on or

about February 2, 2014, some SHW employee or agent called the campaign's manager, Chuck Thies, and further alleges that the unidentified person "stated to [Thies] that if [Petitioner] pursued any action to expose medical malpractice at SHW on behalf of his late stepdaughter, Ms. Wynn, they (presumably agent(s) and/or employee(s) of SHW) would report the fact and substance of the TRO filed in D.C. Superior Court and predicted that [such] action would cause the Mayor to lose his re-election bid." (AA.48-49, *id.*, ¶ 42.) The Complaint further alleges that, as a result of the alleged phone call, King lost his "valuable" consulting contract with the Gray re-election campaign. (AA.49, *id.*, ¶ 43.)

II. Supplemental Statement re Procedural Background

Petitioner King filed this case as Civil Action No. 14-3742 on June 17, 2014, naming as defendants the Respondents herein – Specialty Hospital of Washington, LLC ("SHW") and Capitol Hill Nursing Center (collectively hereinafter "Respondent") – as well as two individuals, Susan Bailey and Frank Wilich, who were Respondent's CEO and President, respectively. (AA.39-51, Complaint.) The Complaint alleged counts for Defamation (Count I) and False-Light Invasion of Privacy (Count II), and sought Punitive Damages (as Count III). (*See id.*, *passim*.)

The Suggestion of Bankruptcy filed in the trial court by corporate-bankruptcy counsel for Respondent on July 7, 2014 (*id.*, ¶ 3), shows: (a) that, more than a month <u>before</u> King filed suit herein, Respondent had entered bankruptcy proceedings (AA.5-6, Doc. Nos. 11 & 17; AA.52-53, ¶ 1), and (b)

that such proceedings automatically stayed any judicial action against Respondent that was or could have been commenced before the filing of the bankruptcy action.[3] (*Id.*, ¶ 2.)

A. Litigation of the Police Report and TRO Issues

After discussions with counsel for Respondent (Archie Rich, Esq.) and for the individual defendants (Ronald Guziak, Esq.), Judge Thomas Motley agreed to proceed with litigation of Respondent's claims against Ms. Bailey. (*See* AA.10, Doc. No. 40, & AA.54-64, 10/3/2014 Hearing Tr.; AA.716-717, Scheduling Order.) Thus, prior to June 2018, when Respondent came out of bankruptcy, Ms. Bailey was the only Defendant that had been properly served or who had voluntarily appeared.[4]

After depositions and other extensive discovery, Ms. Bailey moved for summary judgment. (AA.76-108**,** 11/17/2016 MSJ; AA.65-75, 11/17/2016 Alternative MSJ re Punitive Damages.) After Petitioner filed an Opposition, Judge Motley held a lengthy hearing, during which the judge requested supplemental briefs on the applicability of absolute privilege to reports to police and to other alleged statements on which Petitioner's claims depended.

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[3] Respondent's bankruptcy did not affect or stay Petitioner's cases against individuals Wilich and Bailey or his ability to conduct discovery about the defamation claims against them.

[4] Petitioner never served his original Complaint on Mr. Wilich, and instead filed a separate, later action, which Judge Motley dismissed. (*See* SA.1-2, 11/10/2015 Order.) Appeal from that dismissal thereafter became time barred. (*See* AA.5, 10/3/2014 Doc. No. 11.)

(*See* AA.24, Doc. No. 131, & AA.348-400, 12/20/2016 Hearing Tr., at 10-61.) Bailey and Petitioner each filed supplemental briefs. (AA.401-419, Bailey's 2017 Suppl. Br.; AA.434-447, King's 2017 Suppl. Br.)

After a second hearing on March 10, 2017, Judge Motley granted summary judgment to Bailey on absolute privilege grounds as to the police report and the TRO proceedings. (AA.27, Doc. No. 152, & AA.484-491, 4/14/2017 Order.) While noting separately that absolute privilege would not necessarily apply to any defamatory phone call to the mayoral re-election campaign office (*see* AA.39-51, Complaint, esp. ¶ 42), Judge Motley granted Bailey summary judgment as to that claim, because Petitioner had no evidence that she made or instigated any such call. (AA.487, *id.* at 4 n.1.) Judge Motley therefore entered a final Judgment in favor of Bailey (SA.3, 4/14/2017 Judgment), which Petitioner never appealed.

B. Litigation of the Mayoral Campaign Contact Issue

The trial court thereafter continued Petitioner's action until after June 15, 2018, when the Bankruptcy Court dismissed Respondent herein. (AA.592-596, 6/15/2018 Dismissal Order.) Without waiting for Petitioner re-serve the Complaint, on July 19, 2018, Respondent waived such service and timely filed a Special Motion to Dismiss in reliance on the D.C. Anti-SLAPP Act (AA.614-627; *see* AA.37-38, D.C. Code §§ 16-5501-02), a Motion for Partial Summary Judgment on absolute privilege issues (AA.507-523), and an Answer with Affirmative Defenses. (AA.499-506.)

By July 2018, none of Petitioner's three prior attorneys was representing him, so he filed a *pro se* Motion seeking an extension of 60 days to find new counsel and then respond, which Respondent opposed. (AA.656-665.) Judge Anthony Epstein granted a 30-day extension until September 1, 2019. (*See* AA.666-667.) Unable to secure new counsel, Petitioner *pro se* filed an Opposition to the pending Motions on August 31, 2018, without requesting more time to find counsel (AA.668-680), to which the Respondent filed a Reply. (AA.936-943.)

On September 19, 2018, Judge Epstein issued a 10-page Order granting the Special Motion to Dismiss and the Motion for Partial Summary Judgment, and entered final Judgment for Respondent. (AA.966-977.)

C. The Appeal Below

After timely noticing his appeal, Petitioner sought and obtained appellate counsel, William H. Brammer Jr., Esq. As here relevant, Petitioner's main Brief below purported to raise the following issues:[5]

I. Whether the trial court committed error in law in granting the Defendant's Special Motion to Dismiss based on the Anti-Slapp Act, D.C. Code § 16-5502:

   A. Whether the Movant's Special Motion under the anti-SLAPP Act was time barred.

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[5] Petitioner's appellate contentions II and IV below are not at issue here.

B. Whether the trial court committed an error in law by failing to hold an expedited hearing as required by statute.

C. Whether the trial court incorrectly determined that Petitioner was an individual contemplated to be covered by the Act.

D. Whether the trial court misinterpreted and misapplied the statutory definitions of D.C. Code section 16-5501(3) and relevant case law in reaching its holding that Petitioner's allegations of defamation and false light were covered by D.C. Code § 16-5502.

E. Whether the Court committed an error in law by failing to consider record evidence that Respondent's alleged statements were false.

* * *

III. Whether the Court violated the *pro se* Petitioner's due process rights by failing to award him more time to obtain counsel than just 30 days from the date of his extension Motion.

* * *

Respondent's main Brief opposed each contention on appeal. As to the Special Motion to Dismiss issues, Respondent demonstrated, *inter alia*:

I.A. that Petitioner failed to raise the Special Motion timing issue below, and in any event that the Special Motion was timely because

Respondent had bankruptcy protection until after June 15, 2018, and the filing of the Special Motion occurred less than 45 days thereafter;

I.B. that any mistake in failing to hold a hearing was harmless error, and that Petitioner had failed to seek reconsideration in the trial court;

I.C. that Petitioner failed to raise the "person contemplated by the statute" issue in the trial court, and that in any event Petitioner was an admitted "public figure" for whom any proven misstatement about his conduct would have to satisfy the stringent "actual malice" standard;

I.D. that the trial court had correctly interpreted and applied the anti-SLAPP Act in every regard;

I.E. that, after considering the entire record, including the lack of any affidavit from Mr. Thies or any other witness, the trial court correctly concluded that there was insufficient evidence of any allegedly defamatory telephone call to the re-election campaign for a jury to reach the issue of falsehood; and

* * *

III. that Petitioner failed to seek reconsideration of the trial court's ruling on his initial request for more time to seek new counsel, and failed to otherwise preserve that issue below.

In a ten page, single spaced *per curiam* opinion, the Court of Appeals concluded overall, as here relevant, "that although the trial court erroneously granted the special motion without convening a statutorily required hearing, such error was harmless and the grant of the motion was appropriate." (Pet. App. A, at 1.) More particularly, the Court of Appeals followed the procedure established in the recent *SAPRAC* case for determining "whether remand is required" in a particular case where the trial court has granted an anti-SLAPP Special Motion without first holding a hearing, and found that Petitioner had not shown any good reason for remand.

First, the Court of Appeals held that Petitioner's consistent original contentions that he is a "public figure" judicially estopped him from later asserting that he is not a public figure for purposes of a defamation-defense analysis. (*Id.* at 5-6 (citing *New Hampshire v. Maine*, 532 U.S. 742, 750-51 (2001), and *Mason v. United States*, 956 A.2d 63, 66 (D.C. 2008).) The Court of Appeals also observed that Petitioner failed on appeal to challenge the trial court's Special Motion findings that the alleged statement to Mr. Thies was "in connection with an issue of public interest," in that the alleged call "implicate[d] health, safety, and community well-being" and "related to the District of Columbia" (*id.* at 6 n.3) and whether it was a "communication to the public," as required by the anti-SLAPP Act. (*Id.* at 6 n.4.)

Second, the Court of Appeals held that, "to the extent that [Petitioner] argues that he is entitled to a hearing on remand to demonstrate that he is likely to succeed on the merits of his claims, we also disagree that he is entitled to such," because "he is unable to

prove that an employee or other agent of [SHW] actually made a false or defamatory statement about him to Thies." (*Id*. at 6-7 (citing *Competitive Enterprise Institute v. Mann*, 80 A.3d 177, 188 (D.C. 2013).) In this regard, the Court of Appeals found that Petitioner "effectively conceded before the trial court that he did not have any evidence to present substantiating that a phone call had ever taken place[,] and he made this concession by requesting to get discovery from Bailey and other current and former [SHW] employees and from third parties like Mr. Thies," and yet had not sought to do so during the first three years of the litigation.

Third, the Court of Appeals noted that Petitioner "asserts for the first time on appeal (1) that he has an email from Thies confirming that such a call was made to Thies and (2) that 'he has since procured telephone records for Mr. Thies showing calls from telephone numbers emanating from [SHW] **on the day that the TRO was obtained** against [ ] Mr. King'." (*Id*. at 7.) As the Court of Appeals opinion explains, the text of the proffered Thies e-mail – which Respondent supplied to the Court of Appeals – fails to support the allegation that a defamatory call came from an employee or agent of Respondent, and the proffered telephone records of calls on the day the TRO was issued fail to establish that any call to Thies occurred **two days later**, as alleged in Petitioner's Complaint. (*Id*. at 7-8.) Further, the Court of Appeals held that the proffer of such evidence "came too late" and should have been presented to the trial court. (*See id*., citing D.C. Code § 17-305(a), D.C. R. App. P. 10(a), and *Hawkins v. Hall*, 537 A.2d 571, 573-74 (D.C. 1988).)

Fourth, the Court of Appeals ruled that, by raising timeliness for the first time on appeal, Petitioner had waived the right to argue that the Special Motion was not filed within the 45-day period after the Complaint was filed.[6] (*Id.* at 8 n.8.)

Finally, as here relevant, the Court of Appeals ruled that Petitioner had failed to show that the trial court "violated [his] due process [rights] by failing to award him the requested time in order to obtain" new counsel, as measured from the date of the Order rather than from the date of the Motion. In this regard, the Court of Appeals noted that Respondent "raises no argument as to how the trial court's decision" in this regard "amounted to a constitutional violation." *See id.* at 9 (citing *Comford v. United States*, 947 A.2d 1181, 1188 (D.D.C. 2008)).

III. Perceived Misstatements of Fact and Law in the Petition

Pursuant to the requirements of Supreme Court Rule 15.2 regarding promptly addressing of any perceived misstatements in the Petition, Respondent respectfully directs the Court to the following perceived misstatements of fact and law.

A. Response to Petition's Perceived Misstatements of Fact

Respondent denies that its CEO, Susan Bailey, "contacted an acquaintance on the D.C. Metropolitan

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[6] Petitioner's Complaint as to Respondent was essentially a nullity, because of the latter's bankruptcy situation, as a result of which the section 16-5502 deadline did not begin to run until Respondent voluntarily filed its Answer the same day the Special Motion was filed.

Police Department" because of Petitioner's threats of violence against the hospital, as alleged in the Petition (at 4). There is nothing similar from Petitioner – alleging a direct call from Ms. Bailey to the MPD or alleging use of "an acquaintance" in the MPD – in any of his prior pleadings during the six-year case record in the D.C. courts. CEO Bailey testified at deposition that, after Petitioner's threat to blow up the hospital, she asked hospital security to call the police. (OA.2-5, Bailey 7/20/2016 Dep. Tr., at 46-47 & 55.) Statements filed by Respondent's counsel at a follow-up TRO hearing in February 2014 about Petitioner's threat indicate that hospital security personnel may have made a general 911 call to the MPD. (OA.5-6, *id*. at 121-22.) During much of the action below, Petitioner had legal representation, and presumably Petitioner's counsel took no discovery from hospital security personnel because he and his counsel concluded that they would not implicate Ms. Bailey in a direct call to the MPD.

The Petition (at 4) also creates the misleading impression that the January 31, 2014 TRO hearing resulted solely in an *ex parte* order restraining Petitioner from having further uninvited contact with Respondent and its personnel. As set forth *supra*, the Respondent authorized attorney Kenneth Rosenau to file a Motion for a TRO against Petitioner, because of his threatening statements to Ms. Bailey as reported to the MPD. Respondent filed the TRO Complaint on January 31, 2014, and Petitioner was served with the Complaint and Summons that afternoon, shortly before a hearing set for 4:00 p.m. the same day, which he neither attended nor sought to continue, by telephone or otherwise. Given the serious nature of the claims, Judge Henry Greene entered a TRO

requiring Petitioner to stay at least 500 feet away from Respondent's premises and 12 of its officials, including Susan Bailey. (AA.48 below, *id*. ¶¶ 39-40, & SA.23-24 below, 1/31/2014 Order; AA.763 & SA.25-43 below, 1/31/2014 Hearing Tr., at 5-12.) Judge Greene also set a February 14, 2014 preliminary injunction hearing before Judge Michael O'Keefe, at which – upon advice of his counsel – Petitioner consented to accepting a Barring Notice. (SA.44-45 below, 2/14/2014 Doc. Entry re Barring Notice; AA.764 & SA.46-92 below**,** 2/14/2014 Hearing Tr., at 27 & 37-43.) On that record, which Petitioner never effectively rebutted, Judge Motley granted Ms. Bailey summary judgment, holding that the alleged January 31, 2014 police report and ensuing TRO pleadings were absolutely privileged, even if false. (*See* AA.484-491 below, Motley 4/14/2017 Order, esp. at 1-4.)

The underlying record is also devoid of any support for Petitioner's remaining allegations herein – that a representative of the hospital telephoned Chuck Thies, who was Mayor Vincent Gray's re-election campaign manager, two days after the original incident, and that this alleged call resulted in Petitioner being fired from his consulting role for the campaign. To the contrary, Petitioner admitted – during his 2016 deposition (*see* OA.9-10, 13-14 & 29-30, King 7/15/2016 Dep. Tr., at 31 & 57, and 7/26/16 Dep. Tr., at 531) and before Judge Motley (*see* OA.35, Respondent's Partial Summary Judgment Memorandum, at 3 n.4) – that he did not know who called the campaign manager, and only "believes" it was someone "from the hospital." Again, despite ample opportunity for discovery, Petitioner never deposed Mr. Thies and never took discovery from presumably knowledgeable individuals to identify the

alleged SHW representative that called Mr. Thies. Petitioner also admitted at deposition that he has no evidence or basis for claiming that an alleged call from Ms. Bailey or any other hospital employee caused his alleged termination from Mayor Gray's campaign. Indeed, Petitioner's contract was never terminated, and instead, after a preexisting, ongoing, and unrelated contract dispute between Petitioner and the Gray re-election campaign, the dispute eventually was settled. (*See* OA.8-9, 10-13, 14-17 & 28-30, King 7/15/2016 Dep. Tr., at 25, 34-37 & 151-53, and King 9/20/2016 Dep. Tr., at 428 & 480.)

Respondents also dispute the Petition's assertion (at 4) that Dr. Dolores Claire made any statement to King that Respondent violated any medical standard of care or was otherwise negligent in a manner that proximately caused the death of his step-daughter, LaShawn Wynn, a patient in the Respondent's Nursing Facility. Despite having years of discovery time between filing suit in June 2014 and the entry of judgment based on Respondent's Special Motion to Dismiss and Summary Judgment Motion in September 2018, King never took the depositions of Dr. Claire or Dr. George Taler, and never obtained or provided any other statement from either physician. The underlying record lacks any evidence corroborating King's assertion of an admission of negligence by Respondent's personnel during its care of Ms. Wynn. (OA.17-26, King 7/15/2016 Dep. Tr., at 212-15 & 217-23 (discussing the preliminary nature of Dr. Claire's investigation and statement).) During the Wilich, Bailey, and continuing-bankruptcy stages of the action, Petitioner had legal representation, and presumably no such discovery was taken over that extended period because he and his counsel concluded

that Drs. Claire and Taler would not confirm his alleged recollection of their statements in his presence.

B. Response to Petition's Perceived Misstatements of Law

This Brief responds to the Petition's perceived misstatements of law in Section II.B, *infra*, under Reasons for Denying the Petition. (*See* pages 26-32, *infra*.)

REASONS FOR DENYING THE WRIT

On the record below, Petitioner King is not entitled to obtain this Court's review on either question the Petition purports to present: (1) whether the expedited hearing on a special motion to dismiss under an anti-SLAPP Act is necessary to prevent a deprivation of fundamental procedural rights; or (2) whether the courts have a heightened obligation to preserve the rights of litigants under anti-SLAPP laws where one party appears *pro se*. As shown above, Petitioner did not raise any such issue in the trial court, either in his Opposition Brief or in a reconsideration motion, and neither issue was presented on appeal in a manner that clearly raised any question of constitutional or other federal law that the Court of Appeals resolved against him.

Therefore, as shown below, (1) the Petition fails to establish any basis for jurisdiction under 28 U.S.C. section 1257(a), (2) the affirmance below was based entirely on alternative "state law" grounds (*see id.*, subpart b), and (3) the record does not supply a proper

basis for this Court to consider the two belatedly asserted issues of procedural due process.

I. Petitioner Has Failed to Set Forth with Particularity Any Federal Question Decided Adversely Below That Could Form the Basis for This Court's Jurisdiction under 28 U.S.C. Section 1257.

A. This Court's Jurisdiction for Reviewing State Court Judgments Is Limited to Cases Where the State Court Considered and Resolved a Federal Question Adversely to the Petitioner.

The Court of Appeals below is the highest D.C. court, and under 28 U.S.C. section 1257(b), that court's judgments are reviewable by this Court only in the same manner that this Court reviews judgments of the highest courts of the several states.[7] *Pernell v. Southall Realty*, 416 U.S. 363, 368 (1974). As outlined below, Petitioner has failed to show how he is entitled to review within the explicit jurisdictional parameters of section 1257(a).

On certiorari to a state's high court, this Court can consider only federal questions actually passed upon by the state courts. *Wilson v. Cook*, 327 U.S.

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[7] Except for situations in which Congress has specifically authorized collateral review of state court judgments, a party who seeks to overturn a state court judgment must proceed through the state court judicial system and can only seek federal court review in this Court pursuant to 28 U.S.C. section 1257. *See 4901 Corp. v. Town of Cicero*, 220 F.3d 522, 527 (7th Cir. 2000), citing *District of Columbia Court of Appeals v. Feldman*, 460 U.S. 462, 482 n.16 (1983).

474, 483 (1946); *accord, Lear, Inc. v. Adkins*, 395 U.S. 653, 680 (1969); *McGoldrick v. Compagnie Generale Transatlantique*, 309 U.S. 430, 434 (1940). In contrast, the fact that a statute might be so misconstrued as to cause a violation of the U.S. Constitution is not sufficient to raise a federal question; instead, the right to review is limited to whether, in the case presented, the state statute was so applied as to deprive him of property or other legal rights without due process of law. *Castillo v. McConnico*, 168 U.S. 674, 683 (1898). In such regards, a decision by the state high court that a particular formality is or is not essential under the state statute does not present a reviewable federal question, if the statute as so construed is still sufficient to provide due process of law. *Id.*

Whether a federal question was presented for decision to the state court of whose decision review by this Court is sought, and whether its decision of that question was necessary to determination of cause, is itself a federal question. *Honeyman v. Hanan*, 300 U.S. 14, 19 (1937). However, as to whether or not such a federal claim has been timely and otherwise properly asserted under the state's procedural system, the decision of the state court is binding upon this Court, when it is clear that the state court's decision was not rendered to evade or defeat the claim of a federal right. *Hartford Life Ins. Co. v. Johnson*, 249 U.S. 490, 493 (1919).

In order to vest this Court with jurisdiction to review the final judgment of a highest state court, the claim of federal right must have been asserted at the proper time and in the proper manner by pleading, motion, or other appropriate action under the state's

system of pleading and practice. *Hartford Life*, 249 U.S. at 493; *accord, Southwestern Bell Tel. Co. v. Oklahoma*, 303 U.S. 206, 212-13 (1938). That is, explicit and timely insistence in state court that a state statute or its application at hand is repugnant to the federal Constitution, treaties, or laws is a prerequisite to this Court's jurisdiction under section 1257 to review a state court judgment upholding the interpretation and application of the state statute.[8] *Rohr Aircraft Corp. v. County of San Diego*, 362 U.S. 628, 629 (1960).

In contrast, this Court has not been granted jurisdiction to review state court judgments in which there was, in fact, no decision against any right, title, privilege, or immunity claimed under the Constitution or laws of the United States. *Adams County v. Burlington & Missouri R. Co.*, 112 U.S. 123, 127 (1884). Any initial grant of certiorari will be vacated where the grounds presented in the petition had no substantial basis in the record, because of lack of assignment of error showing proper presentation of the asserted federal question to the state court. *Ellison v. Koswig*, 276 U.S. 598, 598 (1928) (per curiam).

Likewise, this Court does not acquire jurisdiction to review the judgment of a state court of last resort by mere writ of error, and instead it must affirmatively appear upon face of the record below that a federal question constituting an appropriate

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[8] In contrast, this Court has section 1257 jurisdiction where a federal question was properly presented and decided below, even if the state court might instead have chosen to base its decision, consistently with record, upon some independent and adequate non-federal ground. *Indiana ex rel. Anderson v. Brand*, 303 U.S. 95, 98 (1938).

ground for such review was presented to, and expressly or necessarily decided by, that state court. *Mellon v. O'Neil*, 275 U.S. 212, 214-15 (1927). Thus, potentially viable federal questions first presented to the highest state court on a petition for rehearing come too late for consideration in this Court. *Lear*, 395 U.S. at 681.

B. Petitioner Has Failed to Set Forth with Particularity Any Federal Question Decided Adversely Below.

In opposing Respondent's Special Motion pursuant to the local anti-SLAPP Act, Petitioner's legal and factual contentions were limited to challenging the meaning and interpretation of the D.C. statute and its application to the facts on which the Special Motion was based, and even those grounds were very narrow. (*See* AA.668-680.) In response to the Court's September 19, 2018 Order granting the Special Motion to Dismiss without an *ore tenus* hearing, Petitioner did not seek reconsideration or otherwise assert that granting the Special Motion without a hearing and/or without more time to retain new counsel violated any fundamental right to due process generally, or for *pro se* litigants specifically.

On appeal, Petitioner's main Brief likewise failed to mention or raise any particularized constitutional or other federal-law issue, as confirmed by the fact that its Table of Authorities does not mention any federal constitutional or statutory provision. (*See id*. at page vii.) Instead, on the statutory requirement for a hearing before ruling on a Special Motion, his main Brief's argument was limited to asserting that the anti-SLAPP Act's

hearing requirement is mandatory. (*See id*. at 10-11.) Likewise, regarding the trial court's decision to reduce Petitioner's requested extension of time to find new counsel to 30 days from the date of the requesting Motion, the main argument in Petitioner's Brief was limited to a vague assertions of "prejudice" to his "due process" ability to properly respond to the Special Motion. (*See id*. at 19.) In neither case did his main Brief on appeal below cite any particular constitutional or other federal-law provision, let alone cite any federal precedent or other authority for his contentions.

Similarly, Petitioner's appellate Reply Brief failed to mention or raise any particularized constitutional or other federal-law issue, as confirmed by the fact that its Table of Authorities does not mention any federal constitutional provision, or any federal statutory provision besides the bankruptcy code. (*See id*. at page iii.) Instead, the Reply Brief was limited to repeating Petitioner's main Brief contentions (*see id.* at 14-15 & 16-17), with vague references to D.C. Court of Appeals precedents stating that "*pro se* litigants are not always held to the same standards as are applied to lawyers." At no point, however, does his Reply Brief mention – let alone properly particularize – any constitutional or federal statutory basis for transmuting the appellate review of Judge Epstein's alleged errors into a "federal question" that the Court of Appeals considered on the merits and decided against Petitioner.

Accordingly, Petitioner has failed to establish any *prima facie* case for this Court's jurisdiction under 28 U.S.C. section 1257, because the judgment

for which review is sought was not based on any decision of a federal question.

II. The District of Columbia Court of Appeals Affirmed the Judgment Below against Petitioner on Alternative State-Law Grounds That Did Not Involve Any Cognizable Federal Question.

A. This Court Does Not Review Appeals from State Courts Where Any Federal Question Raised Was Not Ruled on by the State Courts either Expressly or by Clear Implication.

For purposes of reviewing petitions for review under 28 U.S.C. section 1257, this Court affords deference to the construction of District of Columbia statutes given by the D.C. Court of Appeals, including statutes enacted by the Congress that apply only within the District. *Hall v. C&P Telephone Co.*, 793 F.2d 1354, 1357 (D.C. Cir. 1986), citing *Pernell*, 416 U.S. at 367 (where this Court deferred to interpretation and application of local D.C. statute denying right to trial by jury in certain tenant eviction matters). In such regards, a decision by the state high court that a particular formality is or is not essential under the state statute does not present a reviewable federal question, if the statute as so construed is still sufficient to provide due process of law. *Castillo*, 168 U.S. at 683.

Similarly, where this Court concluded that the state court decision was based on the view that a petitioner had not pursued the remedy afforded by

state law for vindication of any constitutional right claimed to be violated, the Court dismissed the appeal and denied certiorari. *Copperweld Steel Co. v. Industrial Com. of Ohio*, 324 U.S. 780, 785 (1945).

Notably, where the proposed writ of error to highest state court to review its judgment for the plaintiff in an action for defamation depended on a judgment resting on non-federal grounds that were sufficient to sustain the result, this Court held that the petition must be dismissed for want of jurisdiction. *Utilities Ins. Co. v. Potter*, 1941 U.S. LEXIS 823 (1941); *accord, Kansas City Star Co. v. Julian*, 215 U.S. 589, 589-90 (1909). There is no conceivable reason for a different result in the instant case, where the state courts granted and then affirmed summary judgment for the defendant in a defamation action. *See id.*

Likewise, where the decree for which review is sought under section 1257 or its predecessors rests on a defense of estoppel, or on any other alternative state-law ground that was broad enough to control the controverted rights of the parties, and without disposing of any federal question that the petitioner had properly raised, the petitioner did not have any grounds for federal review, either as a matter of right or in the exercise of this Court's sound discretion. *Adams County*, 112 U.S. at 127. As the Court held more recently, no substantial federal question affording a basis for its review of the decision of a state's highest court was presented by the contention that a special tax assessment was imposed without due process, where the state's highest court held that the assessment challenge was barred by laches and estoppel, which was an independent, state

law basis for the result. *Utley v. St. Petersburg*, 292 U.S. 106, 111-12 (1934).

Even more broadly, the mere fact that a state court has rendered an erroneous decision on questions of state law, or has overruled state-law principles or doctrines established by previous decisions on which the disappointed party relied, does not give rise to claim under the Fourteenth Amendment, or otherwise confer appellate jurisdiction on this Court. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 681 (1930).

B. The Dispute Below Was Resolved Solely under Principles of State Law, without Ruling on Any Federal Question.

The Petition (at 10-11) errs in relying on an out of context statement from *Saudi American Public Relations Affairs Comm. v. Institute for Gulf Affairs*, 242 A.3d 602, 610 (D.C. 2020) (hereinafter "*SAPRAC*") (opinion by Easterly, J.), in contending that the D.C. Court of Appeals must vacate and remand each and every special motion dismissed under the D.C. Anti-SLAPP Act without the statutorily prescribed hearing, regardless of the nature of the respective claims and defenses and the evidence proffered in the briefs. In *SAPRAC*, the trial court denied the Anti-SLAPP special motion without a hearing, reasoning that "the SAPRAC Parties had not made the prima facie showing that they were defendants in a SLAPP." *Id.* at 607. The Court of Appeals held there that the trial court erred, in failing to hold a "real-time" proceeding at which the parties

could present argument and evidence to a judge, as is appropriate under the circumstances. *Id*. at 608-10.

However, the Court of Appeals in *SAPRAC* did not remand without further deliberation for an *ore tenus* hearing to make the more complete record called for by the Anti-SLAPP Act, to which both parties seemingly would be entitled under the wording of the statute. Instead, the Court of Appeals proceeded to address and decide whether the legal decision of the trial court was wrong on the merits – in that instance, whether the moving party failed as a matter of law to make a prima facie showing that "the claim at issue arises under an act in furtherance of the right of advocacy on issues of public interest." *See id*. at 610-13. In this regard, the court explained (*id*. at 610):

> Our analysis does not end with the determination that a hearing should have been held. The SAPRAC Parties argue that . . . (1) the trial court additionally erred by mistakenly concluding that they had failed to make the prima facie showing required by *D.C. Code § 16-5502(b)* that "the claim at issue arises under an act in furtherance of the right of advocacy on issues of public interest"; (2) pursuant to the statute, the burden should have shifted to the IGA Parties to show that their "claim is likely to succeed on the merits"; and (3) because the IGA Parties cannot carry this burden, the special motion to dismiss should be granted. For their part, the IGA Parties argue that,

> because the trial court correctly determined that the SAPRAC Parties had failed to make the requisite prima facie showing, we should affirm because "there is no way in which [the failure to hold a hearing] affected the substantial rights of the parties." Because these arguments implicate **whether remand is required** and what should be litigated on remand, we turn to examine the prima facie showing requirement for a special motion to dismiss under *D.C. Code § 16-5502(b)* and the relevant definitional provisions in *D.C. Code § 16-5501*. . . .

Thus, the *SAPRAC* opinion implicitly recognizes that some anti-SLAPP Act special motions present legal issues in a factual context that is sufficiently clear to warrant affirming the order granting of the motion despite the fact that the trial court failed to hold the mandated hearing. In *SAPRAC*, the court ultimately held that "the SAPRAC Parties made at least a prima facie case that [the allegedly injurious] statements were 'in furtherance of the right of advocacy on issues of public interest."[9] *See id.*, 242 A.3d at 612.

Thus, even though the *SAPRAC* trial court had not even heard what the party responding to the special motion to dismiss would offer at the required

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[9] In contrast, the Court of Appeals in *SAPRAC* concluded that the record from the trial court on the issue of whether the allegedly injured person was a public figure was not clear enough to make a determination as a matter of law, and therefore ruled that the SAPRAC Parties could seek further consideration of that issue on remand. *See id.*, 242 A.3d at 612 n.13.

hearing on the prima-facie case issue, the Court of Appeals found that the moving party had presented a prima facie case in that regard as a matter of law. Thus, it is at least implicit in the Court of Appeals decision in *SAPRAC* that remand for the statutorily specified hearing is not required if that step clearly would not alter the ultimate outcome. *See id.* at 608-13. Consequently, contrary to what the Petition asserts (at 10-11), the Court of Appeals decision in the instant action to affirm, despite the trial court's failure to hold a formal hearing, is consistent procedurally and substantively with the previous reviewing approach, procedure and decision by the Court of Appeals in *SAPRAC*.

This conclusion is further confirmed by the D.C. Court of Appeals opinion – decided shortly after the instant appeal – in *American Studies Ass'n v. Bronner*, 259 A.3d 728, 739-43 (D.C. 2021), following *Competitive Enterprise Institute v. Mann*, 150 A.3d 1213, 1220-35 (D.C. 2016) (Glickman, Easterly and Deahl, JJ.), where the court discussed *seriatim* the legal standards in an anti-SLAPP special motion context for ruling on (a) the "likelihood of success on the merits" standard for the non-moving party's affirmative defense, (b) the prima facie case standard for showing that the non-moving party's suit "arises from an act in furtherance of the right of advocacy on issues of public interest."[10] In each regard, the *American Studies* court held that an anti-SLAPP

[10] Significantly, Judge Easterly was on the panel of the instant appeal, and yet presumably saw no reason to dissent, or to concur specially, on the ground that the *per curiam* opinion here conflicted in any regard with her scholarly opinion on behalf of the panel in *SAPRAC*.

motion to dismiss "is essentially an expedited summary judgment motion, albeit with procedural differences, and that summary judgment is appropriate when a claim is legally insufficient for any reason, including the defenses that may be raised against it," and thus "[t]he anti-SLAPP process in essence accelerates the consideration of available defenses." *See id.*, 259 A.3d at 740-41 & 745-48. In this regard, the D.C. Rules of Civil Procedure do not require trial courts to hold an *ore tenus* hearing before deciding every summary judgment motion (*see id.*, Rule 56), and accordingly the procedural views of the D.C. Court of Appeals regarding application of the anti-SLAPP Act harmonize with local summary judgment rules.

The Petition (at 8) also suggests that this Court should consider precedents from other state high courts that reportedly held their legislature's anti-SLAPP statute offensive to the state's constitution by violating the right to trial by jury.[11] In *SAPRAC*, the Court of Appeals declined to consider precedents under other states' anti-SLAPP statutes, noting that such "statutes vary in language and scope and that state courts have interpreted them in divergent ways." *See id.*, 242 A.3d at 611. In any event here, Petitioner never raised any issue of constitutionality in the D.C. courts, and the Petition offers far too little to properly raise such an issue now under this Court's own precedents applying section 1257.

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[11] *See id.* at 8, citing *Davis v. Cox*, 351 P.3d 862, 864, 967-68 (Wash. 2015), *abrogated on other grounds by Maytown Sand & Gravel, LLC v. Thurston County*, 423 P.3d 223 (Wash. 2018), and *Leiendecker v. Asian Women United of Minnesota*, 895 N.W.2d 623, 637-38 (Minn. 2017).

The Petition (at 8) also cites anti-SLAPP statutes from four other states to illustrate their respective requirements for filing special motions to dismiss promptly, typically within 60 days of notice of the offending suit or claim. Significantly, those examples show that there is nothing magical about D.C.'s 45-day deadline for filing special motions to dismiss. Likewise, some of those anti-SLAPP statutes expressly recognize the trial court's discretion to relax the prescribed deadline, thereby further confirming that procedural deadlines for such statutes typically are not equivalent to statutes of limitations, let alone "jurisdictional" deadlines.[12] Accordingly, the Court of Appeals acted well within its discretion in concluding that any still-cognizable error in the timing of Respondent's special motion was harmless.

Finally, contrary to Petitioner's contention, Respondent's Special Motion was timely under the anti-SLAPP Act's 45-day deadline. In particular, on June 15, 2018, a local Bankruptcy Judge issued a final order dismissing the chapter 11 bankruptcy case against Respondent. (AA.592-596 below.) The legal effect of that Order, as thereafter voluntarily implemented by the parties hereto, was that filing of

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[12] Contrary to Petitioner's main Brief contention below (*id*. at 8-9), the procedural limitation in D.C. Code section 16-5502 is not a statute of limitations – because the anti-SLAPP Act creates a preemptive procedure for defending against specified kinds of bad-faith lawsuits rather than a separate cause of action – and its time limit is just a presumptive procedural deadline. Petitioner's main Brief below relied in this regard on *Sherrod v. Breitbart*, 720 F.3d 932, 937 (D.C. Cir. 2013), which purported to treat the time limit in section 16-5502 as a statute of limitations, but did so without support from precedent either from the D.C. Court of Appeals or from any other state jurisdiction with an anti-SLAPP statute.

the 2014 action against Respondent only became effective as of June 15, 2018, and that new service (by consent or otherwise) would have had to occur before the 20-day deadline under Rule 12(b) would begin to run, rather than when the filing of the Complaint became effective. Therefore, Respondent timely filed its Answer as a voluntary appearance on July 19, 2018, and likewise timely filed its Special Motion to Dismiss and partial summary judgment Motion the same day.[13]

Accordingly, Petitioner has failed to establish any basis for this Court's jurisdiction under 28 U.S.C. section 1257, because the state court judgment for which review is sought was decided solely on alternative state law grounds.

III. Petitioner Failed Below to Properly Preserve Any Constitutional or Other Federal-Law Issue Regarding Procedural Rights of *pro se* Litigants Confronted with a Special Motion to Dismiss under a Local Jurisdiction's Anti-SLAPP Act.

A. This Court Exercises Its Sound Discretion by Avoiding Review of Matters Where the Asserted Federal Questions Are Not Presented with the Clarity Needed for Effective Adjudication.

This Court's jurisdiction to review a judgment of a state's highest appellate court turns upon

[13] Petitioner likewise did not object in the trial court to the timing of the July 19, 2018 Answer and Motion to Dismiss, and that issue was duly deemed waived on appeal.

whether a federal right was specially set up or claimed in the state courts, and denied by the decision of that state's highest appellate court. *Parker v. McLain*, 237 U.S. 469, 471 (1915). Furthermore, to be effective for this purpose, assertion of such a federal right must "at least have fair color of support and not be frivolous or wholly without foundation," because it is settled that a putative federal question that rests on an obviously false assumption is so plainly devoid of merit as to afford no basis for exercise by this Court of its appellate jurisdiction over the state court. *Id*.

In other words, under 28 U.S.C. section 1257, which provides for this Court's review of constitutional or other federal law questions decided by state courts, the Court may rule on those properly presented federal questions that are necessary for decision of the case below, but exercise of such appellate jurisdiction is inappropriate when the asserted federal issues are not presented with the clarity needed for effective adjudication. *Socialist Labor Party v. Gilligan*, 406 U.S. 583, 588 n.2 (1972).

B. The Record Below Does Not Present the Sort of Clarity Needed for Adjudication of Well-Defined Federal Questions.

As shown by the record below, Petitioner has failed to properly preserve with particularity any specific federal question, constitutional or otherwise. In addition, Petitioner has failed to present the putative federal questions he belatedly raises with the clarity needed for effective adjudication. Among other things, neither his Petition nor the appellate and trial court briefs below cite any federal or other

precedent purporting to address constitutional or other federal requirements for deciding whether fundamental due process rights ought to require either (a) an *ore tenus* hearing in every case before granting a special motion to dismiss under an anti-SLAPP statute, (b) representation by counsel of *pro se* plaintiffs in every case for purposes of opposing such a special motion to dismiss, or merely (c) additional time for a *pro se* plaintiff to prepare an Opposition to the Special Motion to Dismiss.

Indeed, the record made by Petitioner's appellate counsel below – beginning with the May 24, 2019 main Brief filed by legal counsel on Petitioner's behalf, eight months after docketing of Judge Epstein's September 19, 2018 Order and the related Judgment – provides a clear indication that neither additional time to prepare, nor representation by counsel, nor holding an *ore tenus* hearing would have made a material difference in the outcome here or the supporting record. Likewise, as the Court of Appeals concluded below, there was no need for oral argument on appeal, because nothing in the record could justify altering the trial court's merits decision.

Accordingly, this Court should not exercise any actual 28 U.S.C. section 1257 jurisdiction it might have over the Petition presented here, because the record in this case does not have the clarity needed for effective adjudication of any sort of fundamental due process issue regarding adjudication of special motions to dismiss pursuant to anti-SLAPP statutes, either generally or when one of the parties to the action is litigating *pro se*.

CONCLUSION

For all the reasons set forth above, the Petition for a Writ of Certiorari should be denied.

Dated: August 25, 2022

Respectfully submitted,

Andrew Butz, Esq.
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APPENDIX

APPENDIX TABLE OF CONTENTS

Item[14] **Page**

[14] Copies of original exhibits are available upon request.

IN THE DISTRICT OF COLUMBIA
SUPERIOR COURT
CIVIL DIVISION

ROBERT "BOB" KING 3102 Apple Road, NE Washington, DC 20018 Plaintiff, vs. SPECIALTY HOSPITAL OF WASHINGTON, LLC 71 O Street, NW Washington, DC 20001 and CAPITOL HILL NURSING CENTER AT SPECIALTY HOSPITAL OF WASHINGTON 700 Constitution Avenue, NE Washington, DC 20002 and SUSAN BAILEY, CEO SPECIALTY HOSPITAL OF WASHINGTON 700 Constitution Avenue, NE Washington, DC 20002 and FRANK WILICH, PRESIDENT, SHW	Civil Action No. CA 003742 B

SPECIALTY HOSPITAL OF)
WASHINGTON)
700 Constitution Avenue, NE)
Washington, DC 20002)
Defendants.)

Deposition of SUSAN BAILEY

Washington, DC

Wednesday, July 20, 2016

10:25 a.m.

Deposition of Susan Bailey, held at Planet Depos – DC, 1100 Connecticut Avenue, NW, Suite 950, Washington, D C, pursuant to Notice, before Donna Marie Lewis, Registered Professional Reporter and Notary Public of and for the District of Columbia.

Job No.: 117165

Pages 1 – 159

Reported by: Donna Marie Lewis, RPR, CSR

* * *

(Pages 46-47)

on an hourly basis.

THE WITNESS: So we are in a break?

MS. JOHNSON: And it's time for you to get up.

(The proceedings recessed from 11:09 a.m. to 11:13 a.m.)

MS. JOHNSON: Read the last question.

(The court reporter read requested portion)

THE WITNESS: That's the question?

BY MR. KING:

Q Yes.

A The police were not called until later that afternoon.

Q What time were they called, Ms. Bailey? What time were the police called later that afternoon?

A I don't know the exact time. I know it was late in the afternoon. So according to this report it was somewhere before 4:56. I can tell you it was after three o'clock because I spoke with my boss at three o'clock. He was in travel that day. And after this phone conversation I was so upset and so concerned that I really was rather stunned. I was very concerned given --

Q Ms. Bailey, I didn't ask you for anything except your testimony and you answered the question.

A Thank you.

Q Do you know who made the call? That you said three o'clock made the -- called the police at three o'clock?

A To my recollection it was security. I directed them to call.

Q That was around 3:00 you said, Ms. Bailey?

A Somewhere before 4:56 and after three o'clock.

Q So you didn't think it was important, Ms. Bailey, to call the police when you received a threat between 10:00 and 11:00? Or as you suggest the threat came in before 10:00 so you didn't think it was important, Ms. Bailey? And I asked you to give me the definite of detonate. You

* * *

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Q Answer that? What took you so long to call them?

A After we concluded the conversation as I said I was stunned, shocked, upset about the threat that was made. Subsequently I spent time talking with Dr. Singal, seeking advice from counsel. All of this was based on the fact that we had observed as a team your escalating behavior and your labile emotional state after the death of LaShawn which we were all very concerned about. But because of the threat that was made and the state of your emotional health we made the decision collectively to call the police. It took all of that time to make that decision.

Q So what you are saying is from ten o'clock in the morning, 10, 11, 12, 1, 2, 3 -- it took you

six hours when somebody was going -- it took you six hours to make a decision about someone as you described to blow up -- was coming to blow up the facility. And it took you six hours to contact the police? Is that your statement?

* * *

(Pages 121-22)

afternoon shift. He didn't arrive for sometime. She also called my office. We began working on a preliminary injunction.

The court --

Q I'll stop you right there. I believe you -- I believe you testified earlier that you didn't call 9-1-1?

A That's correct.

Q But your attorney on the 30th proffered for you that you called 9-1-1?

A I still stand that I personally did not call 9-1-1.

Q So he wasn't truthful with the judge? Is that right?

MS. JOHNSON: Objection to form. She can't talk about what he was or was not. The record speaks for itself.

MR. KING: The record says she called 9-1-1. That's the record.

MS. JOHNSON: Well, she you asked her about her attorney being untruthful.

BY MR. KING:

Q But the record says you called 9-1-1?

A That record says I did.

Q And read on down. Read the entire thing for me, please?

A He didn't arrive for some time. She also called my office. We began working on the preliminary injunction.

The court: Okay. So there was one. The allegations are that there was some threatening type statements made in one phone call when things were emotional. The emotions were running a little high.

Mr. Rosenau: Actually the scary part, Your Honor, is emotions were not running high. It was a very -- to proffer my clients testimony.

The court: But I mean -- but ultimately though we're talking about one, one incident. No one has had any follow up in the last -- it's been two weeks now since the 30th. It was one incident in a quiet, calm voice, a chilling voice. And it was specific comments about don't make me a terrorist and detonate -- detonate and comments

* * *

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REPORTER'S CERTIFICATE

I, DONNA M. LEWIS, RPR, Certified Shorthand Reporter before whom the foregoing deposition was taken, do hereby certify that the foregoing transcript is a true and correct record of the testimony; that said testimony was taken by me stenographically and thereafter reduced to typewriting under my direction; that review was not requested; and that I am neither counsel for, related to, nor employed by any of the parties to this case and have no interest, financial or otherwise, in its outcome.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal this 29th day of July, 2016.

My commission expires: March 14, 2018.

/s/

IN THE DISTRICT OF COLUMBIA
SUPERIOR COURT
CIVIL DIVISION

ROBERT "BOB" LEWIS KING,)

Plaintiff,)

-v-) Civil Action No.

SUSAN BAILEY,) 2014 CA 003742 B

CEO SPECIALTY)

HOSPITAL OF WASHINGTON)

Defendants.)

Deposition of ROBERT "BOB" LEWIS KING

Washington, D.C.

Friday, July 15, 2016

10:05 a.m.

Job No: JO392255

Pages: 1-421

Reported by: Kenneth Norris

* * *

(Page 25)

A. I believe so.

Q. And in fact, half of it was paid to you, $9,000, correct?

A. I believe so.

Q. And then the remainder is the -- has not been paid and you were trying to collect it from Mayor Gray through Chuck Theis, correct?

A. That's correct.

Q. And has that ever been paid, that additional 9,000?

A. We basically, I believe settled, or settled the matter. I settled the matter with Gray. Not with Chuck Thies. I settled the matter with Vincent Gray.

Q. Okay.

And was that back in 2014? When did that occur?

A. I'm not sure. He left office -- it could have been that 2012 election.

Q. Okay. All right.

Well, I thought -- no. I've got this as a contract --

* * *

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still there, because he's still -- he's involved in Gray's campaign now. So I'm pretty sure he's still there.

That's why I put two addresses down. He used two addresses.

Q. All right.

Since we actually provide that information on Chuck Thies a couple weeks ago, have you contacted him personally about this lawsuit and the need for his deposition?

A. No. I was just kind of excited when Attorney Johnson asked me for the information. So I was kind of looking forward to you-all taking the lead on that because that's a very important piece, you know, huge piece, third party. You know, who called you? Why?

Q. At this point we don't know who that was, though?

A. No, I don't.

Q. All right.

That would be one thing that you would ask Chuck Thies.

* * *

(Page 34-37)

Q. What happened then? I mean, this is something I've got down in --

A. I don't believe it was terminated prematurely. I think the campaign was over and

there was obviously a labor dispute in the contract about the outstanding balance.

Q. Okay.

A. Which, as I indicated earlier, that I reached out to Mayor Gray because he asked me -- he hired me and not Chuck Thies.

Q. All right.

So there was a -- so you were supposed to do $18,000 of -- the contract was for $18,000 and you were supposed to work up, and do certain things for the campaign.

You did your part to prepare and help and assist in the campaign for Mayor Gray, but the campaign ended and all of the things that -- or part of the things that were required of you and included as part of your responsibilities under the contract, no longer had to be performed because the campaign ended?

A. Campaign ended.

Q. And, therefore, he said, I'm not going to pay you the rest?

A. Correct. Exactly.

Q. But you had already put in the money and got stuck with additional costs?

A. Yes. Exactly. Yeah. Exactly.

Q. So the compromise was probably, what was your out-of-pocket? I'm not going to pay you the whole $18,000 but what -- show me what in fact, you've already expended on the campaign and I'll pay you that?

A. Well, he had no -- that wasn't his decision. As I stated earlier, probably if Chuck Thies had asked me to get involved in the campaign, I'm not so sure whether I would have.

But I got a personal call from then Mayor Gray, as I have – I've gotten these personal calls from all of the predecessors. There's not one mayor that's ever ran in this city, including Walter Washington, that didn't call me and I did a contract to do their campaign.

Q. All right.

So who negotiated this resolution? You and Mayor Gray personally or was it Chuck --

A. Yeah. You know, Mayor Gray wants -- you know, we talk about -- you know, we talk about buses, we talk about meet and greets, ice cream and socials. In fact, all of the campaigns that I do as part of my service, I document. All of my elections, I have a photographer, a video person who travels with me all over the city and I just take pictures and document. And then when the campaign is over, I give that back to the candidate as part of their record.

I do all their awards and that's – that's why the contract is like it is.

Q. All right.

But there -- and there was nothing in the conversations that you had with Chuck Thies or with Mayor Gray thereafter with regards to their terminating that contract with B&K's -- Bob King Associates and the major because of this call from the hospital?

A. I'm not sure about that. You know, that's just something that -- I don't know what may have influenced. I can't speak for Chuck Thies. I don't know what influenced him to -- not to want to pay me for a contract he never negotiated with me in the beginning.

Q. So without talking with them and actually getting their depositions and asking specifically that question, at this point in time the mayor's -- the reasons for not paying you the remaining 9,000 on that contract was because he didn't need your services anymore, the campaign was over?

A. No. No. He was kind of -- he wasn't happy about that, because I trust the mayor.

And I said, and he said he'd look into it. And I reached a settlement. The mayor had to get involved because it wasn't getting anywhere with Chuck. And I didn't have to get in -- have an extended conversation with him.

* * *

(Page 57)

A. Okay.

Q. Just to be sure about this call from some unknown person to Chuck Thies on or about February 2nd, you have no information and you're not claiming that Susan Bailey called, correct?

A. I don't know. I don't know who called.

Q. Okay.

You have no information that whoever called him was asked to call Chuck Thies by Susan Bailey, correct?

A. I have no information on that. I was coming out of church.

Q. You have no information that Susan Bailey knew anything about it, authorized it, ratified it, caused it to occur, correct?

A. I think she knew about it.

Q. Okay.

How do you think -- why do you think that? Do you have any evidence or proof that she knew about it?

A. I don't have any evidence or proof. I just

* * *

(Pages 151-53)

contract, and I think you're about right. He probably settled between three and four.

Q. Okay.

But, when was -- when did the -- when was there a concern on your part that resulted in your writing a letter to get the rest of your contract paid, in reference to Chuck Theis apologizing for what he may have said to you on February 2nd?

A. That's a business thing with me, you know, if I -- I think you pointed out, the campaign was over.

Q. Right.

A. You know, I'm always worried when I'm doing consulting work, because usually if the campaign is over you lose, they don't want to pay.

Q. All right.

A. So you want to get your money.

Q. Okay. All right.

So, basically given that seemed -- Chuck Theis seemed to have been satisfied with what you told him about the dismissal, the subsequent delay in paying you any money on the contract would seem to be related to the mayor's campaign being lost, rather than to anything said to Chuck Theis by whoever it was?

A. I don't have any clue about that. I can't get in Chuck's head. The deposition of Chuck would lead you to ask that question. I hope you would get an answer.

Q. But nobody -- I guess what I'm saying is nobody told you, not Chuck Theis nor did Mayor Gray

tell you, I'm not paying you because of – I'm not completing this contract with you because of the possibility that you may have made a threat against the hospital?

A. I have no idea because they shouldn't have been involved in the beginning. That's why I don't understand.

Q. Okay.

A. I mean, the contract in the little mayor's election shouldn't have a damn thing to do with what happened with the hospital.

Q. All right.

And as far as you know, it may not have but we need to talk to somebody.

A. Well, obviously it did because Chuck threatened to terminate the contract if I did something. And -- but the fact of the matter is that somebody called him. Why would somebody call him? That's a question I need you to ask him. You're an attorney.

Q. Well, I know. But that contract wasn't terminated on -- in February of 2014, right?

A. I mean, when the election is over, you know the mayor --

Q. The contract really wasn't terminated. They never breached the contract?

A. No. The contract was reached in the settlement agreement that paid the outstanding balance.

Q. All right.

A. Paid the outstanding balance.

Q. Okay.

I guess we have to go to lunch.

* * *

(Pages 212-15)

And actually -- and obviously if we're working on reforms, this is very serious.

Q. But in the first meeting you didn't get an explanation nor did you get a report, correct?

A. In the first meeting, how could you get one? You give the hospital an opportunity to do an internal investigation.

Q. And then you were supposed to get a report on the second meeting. You didn't get a report or an explanation because --

A. Well, because we felt that Stephanie was hijacked. So she had to bring in somebody else. So we were in effect starting the process all over again.

Q. And then the third time, you had a meeting with --

A. With Clair on the 22nd.

Q. And you still didn't get a --

A. Yes, I did. I got a little report from her that they didn't follow protocol.

Q. Okay.

But that --

A. That was her preliminary finding.

Q. You also, I think in your notes, said that the hospital said that they were not responsible and explained to you why they weren't?

A. Hospital never responded because that was due on the 30th.

She gave -- Susan, out of respect for me -- and I met with Clair and Susan. She said the report has not been completed but what I can tell you right now, they didn't follow protocol.

Q. Yes.

A. That's what Clair said. They didn't follow protocol.

Q. Yes.

A. But I had the report.

Q. But that didn't cause her death, that it --

A. Huh?

Q. They also told you that had nothing to do with her death?

A. No, they didn't. Because nobody would know what caused her death at this time, because that's why I had to do an autopsy.

Q. I'm trying to figure out if there's any meeting of the minds here between --

A. We're going to play --

Q. -- what I know and what you're saying?

A. We can play doctor.

Q. All right.

A. You know?

Q. So, did you make -- did you take any steps, did you make any calls, did you write any outlines of any press conferences with regards to following up on this January 13th note that you were going to expose what had happened to Lashawn to the press outside of Specialty Hospital?

A. I believe if, my memory serves me correct, after the 13th I spoke to Claire Oliver on the 22nd. And I think it was very clear that she was – it's a work in progress and she had assured me that she would have the final report on the 30th. So, I didn't have any reason to do anything.

She gave me already her preliminary findings. Simply says, they didn't follow protocol but she was still investigating, and that she would have a completed report by January the 30th. And that was fine with me.

Q. Let me take a break.

A. And if you want to -- I mean, I'll share this with you. This is the autopsy report.

Q. You know, it's not relevant. And I can -- I can tell you each medicine and tell you why that's all something you should not be worried about and concerned about.

A. But let me tell you about --

Q. And frankly if I was at the meeting, if we ever had that meeting, we wouldn't be here because this whole lawsuit or your misunderstandings of the records would have been explained.

A. Yeah, but --

Q. We can't --

A. Yeah. But the pathology report is very important because it tells you the cause of death.

Q. No. But you're misreading it.

* * *

(Pages 217-23)

Q. So, it was 18,000, right? And 9,000 --

A. No. It looks like it says 2,500 by January, 6,500 hundred by February. And the balance of 9,000 due by March the 31st.

Q. And that's -- that was the part, the balance was not paid. That was the issue you had prompting the letter?

A. Uh-huh.

MS. JOHNSON: What's the date?

MR. GUZIAK: May 8th, 2014.

All right. Let's mark this and make this Number 10.

(King Exhibit No. 10 was marked for identification.)

BY MR. GUZIAK:

Q. So, when you and I discussed and have discussed these conferences with Susan Bailey and staff and the reporting staff to her about the hospital's response to your concerns about Lashawn Wynn's care on the date of her death, you mentioned that Delores Clair, the nursing director had told you that there was a violation of hospital protocol, right?

A. That's correct.

Q. Okay.

A. On January the 22nd.

Q. Okay. On January 22nd.

But other than for what that statement, if in fact it occurred and your recollection of it, did not the hospital during those meetings with you basically

try to explain and make you understand your view of the records and your interpretation of the records as being incorrect? And that, in fact, Lashawn had received good care and proper care that day?

A. No. No, not at all. At no time.

Q. At no time?

A. No. You can't be -- you can't give a report when there's an ongoing investigation. You can only give me that – it's at the conclusion of the investigation.

Q. But the preliminary report --

A. No. No preliminary report. Except other than January 22nd, Clair said that they failed the protocol. That's all she could tell me.

Q. Didn't they all tell you that, in fact, there was -- the error was in documentation only, and not in actual care and medical compliance and service?

A. No. I answered -- you asked me this question about four or five times. Emphatically no, no, no.

Q. Okay. All right.

Well, let me show you this note here in your diary notes we've marked as Exhibit Number 8.

And it's a special note, "Report was repeated by me. Meeting Susan Bailey 1-3-14 at 11:00 a.m."

Susan -- I can't read that, "Said that Stephanie Kahn whom she had assigned to investigate Lashawn called," your language. I have to have you read it?

A. The job.

Q. "11-15-13 and 48 hours. Prior to that date that verbal report she received from Stephanie was good news for me that nothing had happened to Lashawn that would suggest that she was not properly cared for."

That's what you wrote. Did you not? You want to take a look?

A. Yes. If I wrote that I think you're probably right. If I wrote that, that was before she had done any investigation.

Because I asked her, how could you determine nothing had gone wrong when you had not reviewed any of the internal records.

And you're right. She said -- I said, well, how did you get to come to that conclusion? She said she came to that conclusion because she had interviewed a couple of the staff people.

I said did you -- I said have you checked the -- have you looked at the records yet? She said no. Because I believe what she was trying to tell me, there were several phases to her investigation. One, I think she attempted to go to somebody and ask. And of course, if you go to somebody and ask, did anything go wrong? Of course they're going to say no to protect their job. And that's what I told her, I said, fine. Let

me see your written report when you do your internal investigation. And that's when I asked her, have you looked at any of the records, internal records; mine --

Q. When you -- who did you say that to; Stephanie Kahn or --

A. Yes. Stephanie -- Stephanie Kahn. Because she was in there. I said, have you looked at it? She said, no, Mr. King, I haven't looked at anything.

She said, the first phase of my investigation is that I talked to a few of the staff members that night. I don't know, she didn't name any names. And they said everything was fine. And I said, what do you expect?

Q. Okay.

So, follow up on my questions, so the hospital did conduct some investigations, not complete, and did -- provided you with a response that you did not feel was sufficient and/or complete, correct?

A. It was a response that Susan Bailey did not commit to me. She committed to me to do a full internal investigation with a written report, not some oral investigation by two or three people.

Q. So you were still unsatisfied and wanted that full written report, and had another meeting?

A. No. It wasn't because it wasn't satisfied.

And then, I understood with sympathy that she got hijacked. And that's when Susan told me she could not finish the report, that she would get somebody else to pick it up. And she got Clair.

Q. But what was reported to you was not -- was not satisfactory enough for you?

A. It wasn't a report.

Q. It was --

A. It wasn't a report at all.

Q. You wanted more?

A. I wanted what Susan said she was going to do. Conduct a -- if you suggest to me they're going to talk to three or four people when someone lost their life is a thorough investigation, I beg to differ with you.

Q. Okay.

So, the request of Susan to provide you with additional reports and a final report continued and was to be provided to you finally on January 30th, right?

A. That's correct.

Q. And then you got the call from Susan Bailey saying, we're not going to do that, I can't do that, I need to have counsel present, correct?

A. That's correct.

Q. Okay.

So, tell me what you remember about that call from Susan Bailey on January 30th?

A. If I may, the meeting in which Susan had committed to me is in my exhibit that you have: The Death of Lashawn Wynn. All of that detail was discussion I had with her on the ninth, that's in the written report.

* * *

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REPORTER'S CERTIFICATE

District of Columbia

City of Washington, to wit:

I, KENNETH NORRIS, a Notary Public of the District of Columbia, City of Washington, do hereby certify that the within named witness personally appeared before me at the time and place herein set out, and after having been duly sworn by me, according to law, was examined.

I further certify that the examination was recorded stenographically by me and this transcript is a true record of the proceedings.

I further certify that I am not of counsel to any of the parties, nor in any way interested in the outcome of this action.

As witness by hand and notarial seal this 15th day of July, 2016.

/s/
KENNETH NORRIS
Notary Public

Commission Expires: 9-30-18

IN THE SUPERIOR COURT FOR THE
DISTRICT OF COLUMBIA

Civil Action No. 2014 CA 003742B

- x

Robert (Bob) King,

Plaintiff,

- vs -

Susan Bailey,

Defendant,

- x

VIDEO DEPOSITION OF ROBERT L. KING

Washington, DC

September 20, 2016

Volume 2 – Pages 420 to 691

Assignment No. j0428781

* * *

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that now?

THE PLAINTIFF: Sure.

BY MR. GUZIAK:

Q Can you tell me what it is before I start reading it?

A It is basically my urgent request to the mayor to pay me because it is the mayor that hired me and not Mr. Chuck Thies.

That was the first request that I made to him in terms of our relationship and that he needed to see Chuck Thies and make sure I got paid.

Q But in addition to, or I guess to summarize what we discussed about this issue with your contract with Mayor Gray and Chuck Thies's involvement, eventually this was resolved and there was a settlement and you were paid some monies on your contract, correct?

A That is correct.

Q Exhibit 7, I think, we are going to keep in the pile that we are going to copy today.

It looks like what he is providing me is not only Exhibit 7, a letter, but also Exhibit 10 which is Mayor Gray's Re-election Plan submitted by Mr. King of King & Associates, and it looks

* * *

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you both of these because I want to show you that that diagnosis of depressive order was a diagnosis that was in existence long before this call on January 30, 2014.

A Are you talking to me?

Q Yes.

A Oh, you are waiting for me?

Q Yes.

A Regarding the call --

Q My question is, tell me who made that diagnosis and why?

A I have no idea. I can respond to 2012. 2014, I can respond to that.

Q 2012?

A Yes. February 12, 2014, I can respond to that.

Q What are you responding to?

A I am responding to the fact that that was two days before the TRO, and Judge Michael O'Keefe's office, that was after the alleged threats of January 31, January 30, and the TRO on the 30th and I did have in a conversation with one of the doctors about what the hospital did to me.

They betrayed my trust, and as my therapist indicated in her deposition, they made a

* * *

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about it. The police didn't tell anybody.

A Let me tell you one thing.

Q You told everybody and not the police, right?

A Let me just say this. Susan Bailey told Chuck Thies, somebody, not Susan Bailey, but somebody told Chuck Thies.

Either Ron Guziak told him?

Frank Wilich told him?

Unless Susan Bailey lied under her deposition because she said she didn't. So it is three people that told him, I believe, or know someone who could tell him. Either you didn't tell him or you got somebody who you knew to call him.

Q Did you ever think that maybe somebody from the police department that knows Mayor Gray may have called him?

A No.

Q No?

A At that time when Mayor Gray -- listen, let me tell you this.

Q Is there a possibility of that?

A No. Mayor Gray wanted an investigation. They wanted his head on a platter like John the

* * *

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UNITED STATES OF AMERICA)

ss:

DISTRICT OF COLUMBIA)

I, T. S. HUBBARD, JR., a Notary Public within and for the District of Columbia do hereby certify that the witness whose deposition is hereinbefore set forth was duly sworn and that the within transcript is a true record of the testimony given by such witness.

I further certify that I am not related to any of the parties to this action by blood or marriage and that I am in no way interested in the outcome of this matter.

in nature.

IN WITNESS WHEREOF, I have hereunto set my hand this 2nd day of October 2016.

/S/

Thomas S. Hubbard, Jr.
Notary Public District of Columbia
Commission Identification 237435
Sworn in on June 12, 2006
Commission Expires April 30, 2018

IN THE SUPERIOR COURT OF THE DISTRICT OF COLUMBIA
Civil Division

ROBERT KING,	:	
Plaintiff,	:	Civil Action No.: 2014 CA 003742 B
v.	:	Cal. 5 – Judge Edelman Next Scheduled Event:
SPECIALTY HOSPITAL OF WASHINGTON, LLC, *et al.*,	:	Status Hearing: September 21, 2018
Defendant	:	

DEFENDANTS' MEMORANDUM OF POINTS AND AUTHORITIES IN SUPPORT OF THEIR MOTION FOR PARTIAL SUMMARY JUDGMENT

I. Procedural History of the Case:

This is a three Count Complaint for Defamation, False Light, and Punitive damages filed by Plaintiff, Robert King, against Defendants Specialty Hospital of Washington, LLC, ("Specialty Hospital") the Capital Hill Nursing Center ("CHNC"), which was located in and part of Specialty Hospital, and also two individual corporate officer Defendants, Frank Wilich, President, and Susan Bailey, CEO.

All of Plaintiff's allegations except as set forth in paragraphs 41 – 43 of the Complaint, Plaintiff claims that Specialty Hospital CEO, Susan Bailey,

made a false police report wherein she allegedly reported that King made a bomb threat and other threats of violence

* * *

(Page 3)

However, at all times pertinent to the litigation and adjudication of Plaintiff King's claims against Bailey and Wilich, Plaintiff's same claims against the corporate Defendants, Specialty Hospital and CHNC, had been stayed pursuant to Section 362(b) of the Bankruptcy Code, due to bankruptcy proceedings and claims involving Specialty Hospital and CHNC in the US Bankruptcy Court for the District of Columbia. Therefore, due to the automatic stay, Plaintiff King's claims against Specialty Hospital and CHNC were not before Judge Motley and could not be adjudicated until final adjudication of the Bankruptcy claims.

Moreover, despite the dismissal of Defendants Wilich and Bailey, the Court could not grant Summary Judgment as to all defendants not only because of the bankruptcy proceedings, but also because of the separate factual predicate under Plaintiff's allegations of defamation set forth in paragraphs 41–43 of the Complaint. Judge Motley specifically addressed these specific allegations in footnote 1 of his April 21, 2017 Order as follows:

> "….the claim against the hospital is based on the allegation that the Hospital gave false information to Mayor Gray and his campaign about the incident, which formed the basis for the

> report to the police. Mr. King alleges that he was financially injured as a result of these alleged false statements made by an unknown employee of defendant Specialty Hospital of Washington. Information given to Mayor Gray and his campaign is not covered by the absolute privilege. (*See Newmeyer v. Sidwell Friends Sch.*, 128 A 3d.1023, 1042 D.C. 2015) (declining to extend the absolute privilege to statements publicizing the plaintiffs complaint to the media, which the Court of Appeals found "gratuitous" "bear[ing] no relevance whatsoever to the judicial proceedings") The truth of the allegations concerning the falsity of this information is a material fact in dispute and is an issue for the jury to decide"[4]
>
> * * *

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argued or offered by Plaintiff King, Judge Motley's Order must continue to be the law of the case as to all absolute privilege related allegations.

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[4] It should be noted however that at his deposition and upon direct questioning by Judge Motley in open court on December 20, 2016, Mr. King confirmed that he had no knowledge or information as to who informed the Mayor's office or the specific alleged employee or agent of Specialty Hospital who allegedly called Chuck Thies. Mr. King only testified and stated to the Court that he "believed" it was someone from Specialty Hospital. (*See* King deposition pages 31-33; 57 (*attached* as Exhibit E))

Therefore, under the law the case doctrine all three requirements for the applicability of the doctrine herein have been met and summary judgment should therefore be also granted to Specialty Hospital of Washington, LLC and Capitol Hill Nursing Center as to all claims alleged in Plaintiff's Complaint against these Defendants other than as set forth in paragraphs 41 – 43 of the Plaintiff's Complaint.

Respectfully submitted this ___ day of _____, 2018

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