No. 22-_____

In The

Supreme Court of the United States

DONALD V. WATKINS and DONALD V. WATKINS, P.C.,
Petitioners

v.

MATRIX, LLC, and JOSEPH W. PERKINS, JR.,
Respondents

On Petition for Writ of Certiorari
To The Supreme Court of Alabama
Case No.: 1200892

PETITION FOR WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether the Alabama Courts' grant and affirmance of a summary judgment for Respondents in a state law defamation case conflicts with this Court's decisions in *Anderson v. Liberty Lobby Inc.,* 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); and *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574 (1986) in a case where: (a) Petitioners pleaded First Amendment constitutional defenses in their Motion to Dismiss, Answers to the Complaint, and Opposition to Summary Judgment, (b) genuine issues of material facts existed with respect to whether Petitioner Donald V. Watkins was a professional online "journalist," within the meaning of *New York Times v. Sullivan*, 376 U.S. 254 (1964), and Respondents were "public figures" at the time of publication, within the meaning of *Curtis Publishing Co. v. Butts,* 388 U.S. 130 (1967*)* and *Associated Press v. Walker,* 388 U.S. 130 (1967), and with respect to the truth of the matters Respondents alleged to be defamatory, and (c) the Alabama Courts applied a simple "negligence" standard for determining liability on the defamation claims, rather than the "actual malice" or "reckless disregard for the truth" standard, which conflicts with this Court's decision in *Curtis Publishing Co. v. Butts* and *Associated Press v. Walker* for "public figures"?

2. Whether the Alabama Courts' award and affirmance of $1.5 million in "presumed damages" for Respondents in a case where (a) First

Amendment constitutional defenses were asserted, (b) the speech at issue involved matters of public concern, and (c) there was no proof of actual damages, conflict with the express prohibition against "presumed damages" in *Gertz v. Robert Welch,* 418 U.S. 323 (1974)?

LIST OF PARTIES

The parties to the proceedings in the Alabama Supreme Court and Alabama trial court are:

1. Donald V. Watkins, Petitioner, as Defendant-Appellant,
2. Donald V. Watkins, P.C., Petitioner, as Defendant-Appellant,
3. Matrix, LLC, Respondent, as Plaintiff-Appellee, and
4. Joseph W. Perkins, Jr., as Plaintiff-Appellee.

CORPORATE DISCLOSURE STATEMENT

There is no parent or publicly held company owning 10 percent or more of the corporation's stock for the corporate entities in this case.

PROCEEDINGS IN THE COURTS BELOW

The case was filed on November 13, 2017, as *Matrix, LLC, and Joseph W Perkins, Jr., v. Donald V. Watkins and Donald V. Watkins*, P.C., Case No.: CV-2017-901408, in the Circuit Court for Tuscaloosa County, Alabama. (C-2).[1]

On May 31, 2021, the trial court entered a summary judgment for Respondents on their defamation claims in a First Amendment case. (C-251).

On August 20, 2021, the trial court entered a Final Judgment that awarded $1.5 million to Respondents in "presumed damages" as compensation for reputational injury and mental anguish. (C-266).

On September 30, 2021, Respondents filed a timely Notice of Appeal to the Alabama Supreme Court from the August 20, 2021, Final Judgment. The caption of the case was: *Donald V. Watkins and Donald V. Watkins, P.C. v. Matrix, LLC, and Joseph W. Perkins, Jr.*, Case No. 1200892 (Appeal from Tuscaloosa Circuit Court: CV-2017-901408).

On September 23, 2022, the Alabama Supreme Court affirmed the Final Judgment, with no opinion.

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[1] The citation herein refers to the Clerk's Record on Appeal in the Alabama Supreme Court. The "C" stands for Clerk and the number "C-2" represents the document number on the trial court's docket sheet, unless otherwise indicated.

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PETITION FOR A WRIT OF CERTIORARI

Petitioners Donald V. Watkins and Donald V. Watkins, P.C., petition this Court for a Writ of Certiorari to review the judgment of the Alabama Supreme Court in this case.

OPINIONS BELOW

The court opinions below are set forth in the Appendix. Appendix A is the trial court's May 31, 2021, Order Granting Summary Judgment. Appendix B is the trial court's August 20, 2021, Final Judgment. Appendix C is the Alabama Supreme Court's September 23, 2022, Affirmance Order, without an opinion.

STATEMENT ON JURISDICTION

This Court's jurisdiction to review the Petition for Writ of Certiorari in this case rests on 28 U.S.C § 1257, and 28 U.S.C. § 2101(c).

The date of the Alabama Supreme Court order sought to be reviewed was entered on September 23, 2022.

CONSTITUTIONAL PROVISION INVOLVED

The Constitutional provision involved is the First Amendment, which states:

> Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

STATEMENT OF THE CASE

On November 13, 2017, Respondents filed a state court defamation case against the Petitioners in the case of *Matrix, LLC, and Joseph W Perkins, Jr., v. Donald V. Watkins and Donald V. Watkins*, P.C., Case No.: CV-2017-901408, in the Circuit Court for Tuscaloosa County, Alabama.[2]

As discussed more fully below, Petitioners asserted their First Amendment rights of freedom of speech and freedom of the press in their Motion to Dismiss[3], in their Answer to the Complaint[4], in their written responses to discovery requests[5], and in their

[2] C-2
[3] C-57 and 58
[4] C-73 and 74
[55] C-82 and 83

opposition to Respondent's Motion for Summary Judgment[6].

The case arises from a raging public controversy in Alabama and around the nation in 2017 regarding the Tuscaloosa County, Alabama sheriff's office (and other local law enforcement officials) handling of a rape case that had been promptly reported by the alleged victim.

On June 22, 2017, Buzzfeed News published a feature article about the rape and suicide of University of Alabama honors student Megan Rondini titled, "A College Student Accused A Powerful Man Of Rape. Then She Became A Suspect." The article highlighted the following events:

1. On July 2, 2015, Megan Rondini reported to Tuscaloosa County, Alabama Sheriff's Office deputies that she had been raped at the home of local playboy T.J. "Sweet T" Bunn, Jr., a Tuscaloosa County businessman and then-member of the Alabama State Conservation Board. Rondini also made the same report to a rape counselor at the University of Alabama.
2. Bunn is the son of a powerful Alabama Crimson Tide football program booster. His wealthy family was also friends and supporters of then-Alabama governor Robert Bentley, who resigned from office in April 2017 after his own sex scandal with a married mistress/gubernatorial senior advisor was exposed.

[6] C-243 and 264

3. Sheriff's deputies quickly turned against Megan Rondini once they realized T.J. Bunn, Jr., was the designated rape suspect. Additionally, the University's rape counselor withdrew from counseling Rondini after she learned that Bunn was the accused rapist.

Once Megan Rondini realized there would be no criminal justice in her rape case, she committed suicide.

Following publication of the Buzzfeed News article on the Megan Rondini rape-suicide case, Petitioner Donald V. Watkins ("Watkins") published a series of articles on the case. The articles referenced in Respondents' Complaint are hyperlinked in their entirety. They are:

1. "Matrix, LLC, Implicated in Threat Against Megan Rondini Family," published on October 26, 2017. https://www.facebook.com/donald.v.watkins/posts/10214494505098554
2. "Bunn Family PR Firm Linked to Recent Cyber Attacks," published on October 29, 2017. https://www.facebook.com/donald.v.watkins/posts/10214514895328297
3. "APR, Matrix Team Up for More Character Assassination in Megan Rondini Case," published on November 1, 2017. https://www.facebook.com/donald.v.watkins/posts/10214539481782943

4. "Alabama Power Company Created A 'Frankenstein' Called Matrix, LLC," published on November 2, 2017 https://www.facebook.com/donald.v.watkins/posts/10214547329419129.

In their Complaint, Respondents identified the following statements in the articles as defamatory:

1. "Matrix … is directing a non-stop wave of cyberattacks against my public Facebook and Wikipedia pages."
2. "In the aftermath of the in-depth Buzzfeed News article last June about Megan Rodini's rape case, Matrix began an endless campaign to smear Megan Rondini, the Rondini Family, and Me."
3. "[Matrix] also got the Tuscaloosa News to Publish a July 27, 2017, Bunn Family-sponsored attack ad against Megan Rondini and her family."
4. "Everything in my life has prepared me to dig for the truth and stand up to bullies like Joe Perkins who would obstruct the truth about a rape case for a fee."
5. "Since June of 2017, Matrix has been working for the family of Terry Jackson 'Sweet T' Bunn, Jr., and their strategic allies to (a) smear the name and character of Megan Rondini … and (b) clean up the 'street reputation of 37-year-old -Sweet T."

On February 14, 2020, Respondents filed their Motion for Summary Judgment in the case, together with an evidentiary record in support of the Motion. (C-206 and 209). Included in the evidentiary record was the February 14, 2020, affidavit of Respondent Joe Perkins ("Perkins"), the sole owner of Respondent Matrix, LLC ("Matrix"). Perkins claimed that the five statements listed above are false.

Perkins also swore that "I have never taken any actions to obstruct the truth in any rape case, including the rape allegations raised by Ms. Rondini and her family….".

Finally, Perkins swore that "Watkins never contacted me or anyone at Matrix prior to publishing these lies or gave me any attempt to verify or refute his allegations."

Matrix and Perkins offered the deposition of Watkins in support of their Motion.[7]

Due to the COVID-19 outbreak and President Donald Trump's March 13, 2020, declared national emergency relating to the pandemic, Petitioners repeatedly asked the trial court to stay all proceedings related to the Motion for Summary Judgment until discovery could be completed.[8] The trial court denied Petitioners' multiple Motions to Stay the proceedings.[9]

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[7] The Watkins deposition was also attached in its entirety to the Respondent's Brief as "App. Ex. A" in the Alabama Supreme Court. We refer to the deposition as the "Watkins Deposition" and cite it in the Petition as "App. Ex. A."

[8] C-214, 223, and 236.

[9] C-231.

On April 27, 2020, Petitioners opposed the Motion for Summary Judgment, as best they could during the nationwide COVID-19 lockdown and their inability to complete discovery.[10] Petitioners proffered all pleadings, affidavits, declarations[11], and discovery responses (as of that date) in opposition to the Motion for Summary Judgment.[12]

In an ironic twist of fate, while Watkins' and DVWPC's case was on appeal to the Alabama Supreme Court, Perkins and Jeff Pitts, his former chief executive officer, sued each other in the state courts of Alabama and Florida in 2021. In his Answer to Complaint[13] in the case *Matrix, LLC, v. Canopy Partners, LLC, et al.*, Civil Action No.: 01-CV-2021-902121, (Circuit Court of Jefferson County, Alabama), Pitts asserted the following in the Sixth Defense:

> Defendant Pitts was compelled to resign [from Matrix] because of Perkins' inappropriate and unethical business practices, including, but not limited to, initiating and directing the creation of an explicit video used in an attempt to intimidate the family of Megan Rondini, a rape victim who had committed suicide, to settle a

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[10] C-243.

[11] The Watkins Declaration is included at C-58.

[12] The discovery responses included filed Answers to Interrogatories (C-82 and 83), the April 12, 2019, deposition of Watkins (App. Ex. A), and the production of documents. Watkins produced some of the documents he relied on to support the alleged defamatory articles at his deposition and testified about them at pages 142 to 147 of his deposition.

[13] Doc. 129, filed on August 3, 2022.

> civil claim; developing and deploying phony groups and digital platforms to intimidate individuals as a method to influence public perception and litigation….[14]

Due to continuous COVID-19 lockdowns and the trial court's refusal to stay all discovery in the case until the lockdowns were lifted, Petitioners never got a chance to take the deposition of Perkins, which they had previously noticed on November 29, 2018.[15]

1. Watkins was a Bona Fide Journalist

At all times material to this lawsuit (i.e., October 26, 2017 through November 2, 2017), Watkins was a bona fide professional journalist and licensed attorney.[16] He published Voter News Network, a print edition newspaper for Independent voters, in the early to mid-2000s.[17] Watkins was a regular guest contributor for a print edition newspaper published by the Jefferson County Citizens Coalition in the 2000s.[18] He also wrote guest editorials for the Birmingham News and the Montgomery Advertiser.[19]

Watkins was also one of the executive producers on the 2006 historical documentary aired on PBS titled,

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[14] After Pitts' Answer spilled over into the public domain, the Matrix-Canopy Partners case was quickly settled by Perkins.
[15] C-125.
[16] App. Ex. A, at 16-26.
[17] Id. at 16.
[18] Id. at 18.
[19] Id. at 19.

"Alpha Phi Alpha: A Century of Service,"[20] with the on-screen credit listed in the name of his Alamerica Bank.

In 2013, Watkins established an Internet news media presence by publishing news on his personal Facebook page (i.e., Donald Watkins).[21] In 2018, Watkins expanded his news media platforms to publish news and commentaries on: www.donaldwatkins.com.[22] Watkins has written and published hundreds of copyrighted articles and commentaries on a wide array of matters of significant public interest.[23]

The Facebook and website news platforms are solely owned by Watkins in his personal capacity.[24]

Watkins has also been a regular news contributor on the Shelly Stewart radio show (Birmingham, Alabama), the David Meckley radio show (Dothan, Alabama), and the Paul Finebaum sports radio show (Birmingham).[25]

At all times material to Respondents' lawsuit, Watkins was a member of the Society of Professional Journalists.[26]

Petitioner Donald V. Watkins, P.C. ("DVWPC"), was a professional corporation under Ala. Code., Section 10A-4-1.01 for the purpose of providing legal services. Watkins was the sole shareholder of

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[20] Id. at 20.
[21] Id. at 22.
[22] Id. at 22.
[23] Id. at 26.
[24] Id. at 22.
[25] Id. at 23-25.
[26] Id. at 26.

DVWPC.[27] DVWPC did not own or operate a Facebook page or website for any purpose in 2017.[28]

2. In Writing and Publishing the Articles at Issue Watkins Conformed to the SPJ Code of Professional Ethics

Since 2014, the Society of Professional Journalists ("SPJ) has published a Code of Ethics for its members. (See, https://www.spj.org/ethicscode.asp)

In researching, writing, and publishing the articles and commentaries in question, Watkins complied with the SPJ Code of Professional Ethics. The basic tenets are: (1) seek the truth and report it, (2) minimize harm, (3) act independently, and (4) be accountable and transparent.

Watkins received no payment or other form of compensation for writing and publishing his articles.[29]

Other than the fact that Watkins worked at DVWPC in 2017, there was nothing in the record that tied DVWPC to the publications at issue. Yet, the trial court entered a $1.5 million summary judgment against DVWPC.

In researching and writing the articles in question, Watkins had three primary sources of information. One was Perkins, whom Watkins contacted and

[27] C-58 at ¶¶4 and 11.
[28] App. Ex. A, 26.
[29] Id. at 131.

interviewed.[30] In his affidavit, Perkins says Watkins never contacted him.[31]

Watkins also had another primary source, who wished to remain anonymous.[32] The source was someone within Matrix itself, or within the company's orbit.[33] The source provided specific information to Watkins about T.J. Bunn and his family that was verifiable from certain public records.[34] This source's information was corroborated by other credible information and proved to be reliable enough for Watkins to trust his information.[35]

Watkins also used a female confidential informant who provided him inside information for the published articles at issue, provided she could remain anonymous.[36] Her information was verified when Watkins talked to other sources.[37]

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[30] App. Ex. A, at 53-55, 124.
[31] C-209, Perkins Affidavit at ¶11
[32] App. Ex. A, at 55
[33] Id.
[34] For example, this source told Watkins about a clandestine trip T.J. Bunn and his father made to see a lawyer out of state on the family's private jet and the reason for the trip. When Watkins checked on FlightAware, an aircraft tracking system, the jet was where the source said it was. The source also told Watkins that Perkins and Matrix was assisting the Bunn family in preparing an attack ad on Megan Rondini's character to be placed in the Tuscaloosa News. The ad actually ran in the Tuscaloosa News. He also told Watkins how Matrix would attack him and his public profile. Everything the source told Watkins actually occurred. Id. at 55-58, 70-72, 74-77, 70-80, 78-94, and 103.
[35] Id. at 56-58.
[36] Id. at 60-69, 80, and 108.
[37] Id. at 64.

Watkins also had a confidential source who worked in the Tuscaloosa County Sheriff's office.[38]

Watkins also had access to a video on a flash-drive that was surreptitiously initially delivered to the Rondini family's law firm, and later to Watkins, as well as meta data from the flash-drive.[39] The flash-drive contained the same images referenced in Pitts' Answer to Perkins' state court complaint.

Watkins also interviewed Megan Rondini's father.[40]

Watkins avoided talking with lawyers for the Rondini family and those who represented the defendants in their civil suit.[41]

Watkins contacted Facebook 10 times between September 17, 2017, and October 9, 2018, about the hacking of his Facebook account.[42] Each time Facebook told Watkins the company was looking into his hacking complaint.[43] Watkins even contacted the original general counsel of Facebook for help on this hacking issue, to no avail.[44]

Yet, the trial court's Order granting summary judgment found that Watkins never contacted Facebook.[45]

Watkins contacted Wikipedia, via email, about the third-party editing of his Wikipedia page to add

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[38] Id. at 105-106.
[39] Id. at 134-147.
[40] Id. at 115-116, 135-137.
[41] Id. at 130.
[42] Id. 116.
[43] Id. a.
[44] Id. at 100.
[45] C-251, at 3.

negative content and Wikipedia's ultimate deletion of his page.[46]

Yet, the trial Court's Order granting summary judgment found that Watkins never contacted Wikipedia.[47]

Watkins did not contact the Tuscaloosa News. After the News ran an attack ad against Megan Rondini, an alleged rape victim who made a timely police report within an hour of the incident, Watkins did not view the News as a credible news source.[48]

Watkins' deposition testimony detailed his sources for all of the statements Matrix and Perkins claimed were defamatory.[49]

In researching, writing, and publishing the news articles and commentaries in question, Watkins believed his sources were credible and reliable at the time each article was published.[50]

As a journalist and publisher, Watkins never had any reason to believe that the statements published in the news articles and commentaries at issue were false in any respects.[51]

3. Matrix and Perkins were "Public Figures"

Prior to the lawsuit, Matrix and Perkins had attained general fame or notoriety throughout

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[46] App. Ex. A, at 82-84 and 86-88.
[47] C-251, at 3.
[48] App. Ex. A, at 125.
[49] Id. at 50-153.
[50] C-58, at ¶20.
[51] C-58 at ¶21.

Alabama and pervasive involvement in ordering the political landscape in the state.[52]

Perkins started on the road to fame and notoriety in Alabama in 1985 when he made illegal campaign contributions to the 1986 congressional campaign of Roy Johnson and caused seven fellow employees of Perkins and Associates to do the same thing. On March 9, 1992, Perkins signed a "Conciliation Agreement" with the Federal Election Commission (FEC) in which he admitted to violating 2 U.S.C., § 441b(a) and 2 U.S.C., § 441(f) by making these illegal campaign contributions in the name of his employees.

Perkins' case is labeled: "In Re the Matter of Joseph W. Perkins, MUR 2797." https://www.fec.gov/files/legal/murs/2797.pdf. Perkins' confession appears in MUR 2797, at pp. 92040901499 to 92040901502).

Despite the alleged defamatory statements, Perkins' fame and notoriety throughout Alabama continued to climb, as measured by Yellowhammer News power rankings. For example, on February 19, 2014, Perkins was listed as Number 15 on Yellowhammer's list of "Power and Influence" players in Alabama because of his political work with Matrix.[53] See, https://yellowhammernews.com/15-joe-perkins/ Yellowhammer is a political and business news media organization. *(Id.)*.

On October 4, 2019, Perkins ranked Number 8 on Yellowhammer's "Power and Influence" list. See,

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[52] Id. at ¶¶14-17

[53] Id. at ¶16.

https://yellowhammernews.com/2019-power-influence-40-numbers-1-10/

On April 30, 2021, Perkins ranked Number 5 on Yellowhammer's "Power and Influence" list. See, https://yellowhammernews.com/2021-power-influence-40-numbers-1-10/

The Mobile Press-Register called Matrix, "the closest thing Alabama politics has to a non-government secret agency" because of its political work on behalf of the Alabama Education Association and the Alabama Power Company.[54] See, also https://yellowhammernews.com/15-joe-perkins/

Because of Perkins' perennial power and influence in Alabama, Matrix and Perkins "command sufficient access to the means of counterargument to be able 'to expose through discussion the falsehoods and fallacies' of the defamatory statements."[55]

Furthermore, the alleged defamatory articles did not prejudice Matrix and Perkins in any way. During the pendency of the appeal of this case to the Alabama Supreme Court, Perkins' ranking on Alabama's "Power and Influence" list climbed from Number 15 in 2014 to Number 5 in 2021.

Likewise, Matrix was able to secure a $15,000 per month contract for "Professional Services" from Auburn University from September 2019 that paid the firm $382500 through October 2022. See, Auburn University Open Checkbook, See, https://auapps.auburn.edu/OpenAlabama/

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[54] Id. at ¶17.
[55] C-73, 74, 82 and 83.

4. Matrix and Perkins Thrusted Themselves into the Vortex of the Megan Rondini Rape-Suicide Case

In an affidavit filed in support of the Motion for Summary Judgment, Perkins claimed that neither he, nor Matrix, played any role in the Megan Rondini rape case. Yet, Matrix surreptitiously delivered a flash-drive with sexual content to the law firm for the Rondini family.[56]

In his deposition, Watkins testified at length about the flash-drive and its contents.[57] The flash-drive contained a video of Megan Rondini talking about her nightlife at a local Tuscaloosa bar and photos of a nude female in bed with a nude male, with the false implication that the nude woman was Megan. Watkins produced the metadata from the flash-drive that contains emails from Matrix employee Robert Taylor to Jeff Pitts, Matrix's then-CEO, and Taylor's wife in Montgomery.[58] The contents of the flash-drive were verified by Megan Rondini's father.[59]

As mentioned earlier, Pitts filed an Answer in the case of *Matrix, LLC, v. Canopy Partners, LLC, et al.*, supra, in which he claimed was compelled to resign from Matrix "because of Perkins' inappropriate and unethical business practices, including, but not limited to, initiating and directing the creation of an

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[56] App. Ex. A, at 11.
[57] Id. at 134-147.
[58] Id. at 143.
[59] Id. at 135.

explicit video used in an attempt to intimidate the family of Megan Rondini, a rape victim who had committed suicide, to settle a civil claim….".

Despite the totality of facts and circumstances Watkins and DVWPC proffered in opposition to the Motion for Summary Judgment regarding Matrix's and Perkins' involvement in the Megan Rondini rape-suicide case, the trial court found that both Respondents were "private figures" for the purposes of this First Amendment case.

On the basis of this finding, the trial court allowed Matrix and Perkins to prove their defamation case using a "negligence" burden of proof in a summary judgment proceeding.

Matrix and Perkins offered no evidence of any kind that DVWPC played any role in the publication of the alleged defamatory statements. They offered no proof that DVWPC engaged Watkins' services to write and/or publish the articles at issue on the company's behalf.

Yet, the trial court awarded a summary judgment for Matrix's and Perkins and against DVWPC.

5. Facts Regarding "Presumed Damages"

Matrix and Perkins never presented evidence of any actual injury, either reputational or economic. On July 5, 2021, they simply filed a "Memorandum of Law in Support of Compensatory Damages in which they asked for $2 million in "presumed damages."[60]

[60] C-254.

Watkins and DVWPC objected to the award of presumed damages in a First Amendment case involving "public figures" and matters of public concern.[61]

Without holding an evidentiary hearing on damages, the trial court simply awarded Respondents $1.5 million as compensatory damages for "presumed damages" to their reputations.

Perkins' reputation was already soiled due to his public confession to the FEC about breaking federal election laws. As this Court can see from the FEC file in Perkins' case, Perkins escaped criminal prosecution for his illegal campaign contribution scheme only because the special three-year statute of limitations for prosecuting him had expired.

The Alabama Supreme Court affirmed all aspects of this case, without an opinion.

REASONS FOR GRANTING THE PETITION

In *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-280 (1964), this Court held that, in a libel suit brought by a public official, the First Amendment requires the plaintiff to show that in publishing the defamatory statement the defendant acted with actual malice — "with knowledge that it was false or with reckless disregard of whether it was false or not." The Court held further that such actual malice must be shown with "convincing clarity." Id., at 285-286. See also *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 342 (1974).

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[61] C-264.

This Court later extended these New York Times requirements to libel suits brought by "public figures" as well. See, e. g., Curtis Publishing Co. v. Butts, 388 U.S. 130 (1967).

1. Respondents Failed to Meet this Court's Mandated Summary Judgment Burden of Proof in a First Amendment Case.

Watkins' and DVWPC's case presents the question of whether the Alabama state courts' application of the summary judgment standard in Petitioners' case conflicts with the "clear-and-convincing" evidence requirement enunciated in this Court's trilogy of cases on summary judgments in First Amendment cases that were decided in 1986: *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986); *Celotex Corp. v. Catrett*, 477 U.S. 317 (1986); and *Matsushita Electric Industrial Co., Ltd. v. Zenith Radio Corp*., 475 U.S. 574 (1986). Petitioners say it does.

Summary judgment is appropriate "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Ala.R.Civ.P. 56(c)(3). In relying heavily on the standards of review established in 1986 by this Court's trilogy of summary judgment cases, the Alabama Supreme Court has outlined the test as to whether a summary judgment movant has satisfactorily supported its motion:

If the movant has the burden of proof at trial, the movant must support his motion with credible evidence, using any of the materials specified in Rule 56(c), [Ala.]R.Civ. P. (`pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits'). The movant's proof must be such that he would be entitled to a directed verdict if this evidence was not controverted at trial.

If the burden of proof at trial is on the nonmovant, the movant may satisfy the Rule 56 burden of production either by submitting affirmative evidence that negates an essential element in the nonmovant's claim or, assuming discovery has been completed, by demonstrating to the trial court that the nonmovant's evidence is insufficient to establish an essential element of the nonmovant's claim…..

The law requires only that a movant for a summary judgment present evidence, from whatever source, to show that there is no triable issue of fact in the case. The moving party may rely on any of the materials specified in Rule 56(c) ("pleadings, depositions, answers to interrogatories, and admissions on file").

> In other words, a moving party "need not prove a negative in order to prevail on a motion for a summary judgment." *Lawson State [Community College v. First Continental Leasing Corp*.], 529 So.2d [926, 935 (Ala. 1988)].

Ex parte General Motors Corp., 769 So.2d 903, 909 (Ala. 1999) (quoting from and adopting *Berner v. Caldwell*, 543 So.2d 686, 691 (Ala. 1989) (Houston, J., concurring specially)).

The Court in *Anderson* summarized the proper evidentiary standard and burden of proof for the disposition of motions for summary judgment in First Amendment cases, as enunciated in 1986 in the trilogy of this Court's decisions on point.

First, a summary judgment will not lie if the dispute about a material fact is "genuine," that is, if the evidence is such that a reasonable jury could return a verdict for the nonmoving party. *Anderson*, 477 U.S. at 248.

Second, at the summary judgment stage, the judge's function is not himself to weigh the evidence and determine the truth of the matter but to determine whether there is a genuine issue for trial. *Id*. at 249.

Third, when a properly supported motion for summary judgment is made, the adverse party "must set forth specific facts showing that there is a genuine issue for trial." *Id*. at 250.

Fourth, the standard for summary judgment mirrors the standard for a directed verdict. *Id.* In

essence, the inquiry under each is the same: whether the evidence presents a sufficient disagreement to require submission to a jury or whether it is so one-sided that one party must prevail as a matter of law. *Id*. at 251-252.

Fifth, the substantive standard of proof that applies in a First Amendment summary judgment analysis is this: "The mere existence of a scintilla of evidence in support of the plaintiff's position will be insufficient; there must be evidence on which the jury could reasonably find for the plaintiff." *Id*. at 252.

Sixth, where the First Amendment mandates a "clear and convincing" standard, the trial judge in disposing of a directed verdict motion should consider whether a reasonable factfinder could conclude, for example, that the plaintiff had shown actual malice with convincing clarity. *Id.*

Seventh, just as the "convincing clarity" requirement is relevant in ruling on a motion for directed verdict, it is relevant in ruling on a motion for summary judgment. When determining if a genuine factual issue as to actual malice exists in a libel suit brought by a public figure, a trial judge must bear in mind the actual quantum and quality of proof necessary to support liability under *New York Times*. *Id.* at 254.

Eight, credibility determinations, the weighing of the evidence, and the drawing of legitimate inferences from the facts are jury functions, not those of a judge, whether he is ruling on a motion for summary judgment or for a directed verdict. The evidence of the

nonmovant is to be believed, and all justifiable inferences are to be drawn in his favor. *Id.* at 255.

Furthermore, in cases raising First Amendment issues, an appellate court has an obligation to make an independent de novo examination of the whole record to ensure that the judgment does not constitute a forbidden intrusion on the field of free expression. See, *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984).

Based upon the standards enunciated in this Court's "trilogy" of cases, the "clear and convincing" evidence requirement applies to First Amendment cases. As such, the trial judge's summary judgment inquiry as to whether a genuine issue exists required that it determine whether the evidence presented was such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant.

Where the factual dispute concerns "actual malice," which is clearly a material issue in a *New York Times* case, the appropriate summary judgment question must be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not.

In Watkins' and DVWPC's case, the trial court's Order granting summary judgment conflicts with this Court's standards for deciding motions for summary judgments in First Amendment cases, as enunciated in the *Anderson, Celotex Corp.,* and *Matsushita Electric Industrial Co., Ltd* trilogy of cases.

In its Order granting summary judgment for Matrix and Perkins, the trial court started on a New York Times analysis,[62] but quickly pivoted from an "actual malice" standard of proof for Matrix and Perkins to a simple "negligence" burden.[63] The trial court justified its "negligence" burden of proof with this clearly erroneous truncated and unexplained finding: "[T]here is no evidence that Perkins or Matrix had a role in the [Megan Rondini rape-suicide] controversy that is central to this lawsuit."[64]

In their opposition to summary judgment, Watkins and DVWPC proffered deposition testimony, declarations, and discovery responses establishing that Matrix and Perkins were "public figures" under either or both legal theories enunciated in *Curtis Publishing Co. v. Butts,* 388 U.S. 130 (1967*)* and *Associated Press v. Walker,* 388 U.S. 130 (1967). Matrix and Perkins had fame and notoriety Alabama. Additionally, they voluntarily thrusted themselves into the Megan Rondini controversy.

Watkins and DVWPC proffered an evidentiary submission that established genuine issues of material facts with regard to:

1. Whether Watkins was a "journalist" at the time of publication and within the meaning of *New York Times v. Sullivan* and its progeny?

2. Whether Watkins' articles at issue concerned matters of significant public interest?

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[62] C-251, at 2.
[63] Id. at 3.
[64] Id.

3. Whether Matrix and Perkins were "public figures" at the time of publication, within the meaning of *Butts and Walker*?

4. Whether Matrix and Perkins attained general fame and notoriety throughout Alabama, within the meaning of *Butts and Walker*?

4. Whether Matrix and Perkins thrusted themselves into the "vortex" of the Megan Rondini rape-suicide public controversy?

5. Whether DVWPC played any role whatsoever in the publication of the alleged defamatory statements?

6. Whether Matrix's and Perkins' evidential submission, when viewed on a de novo review, established that Watkins acted with "actual malice" in writing and publishing the alleged defamatory articles and statements at issue?

The facts in this case clearly establish that Watkins was a bona fide freelance online "journalist" and that Matrix and Perkins were "public figures" at the time of publication. As such, Matrix and Perkins were required to establish that Watkins acted with "actual malice" or a "reckless disregard for the truth" in publishing the statements at issue. This burden of proof was not imposed upon Matrix and Perkins by the Alabama courts.

Even if this Court agrees that Matrix and Perkins were "private figures" and accepts the trial court's clearly erroneous findings of the fact that they proved the elements a state law defamation case, the award of $1.5 million for "presumed damages" in a case where First Amendment constitutional defenses were

asserted is expressly barred by *Gertz v. Robert Welch,* 418 U.S. at 349.

2. The Alabama State Courts decided important First Amendment questions in a way that conflicts with bedrock decisions of this Court by granting and affirming a summary judgment for Respondents in a state law defamation case where: (a) Petitioners asserted First Amendment constitutional defenses in their Motion to Dismiss, Answers to the Complaint, and Opposition to Summary Judgment, (b) there were genuine issues of material facts as to whether Petitioner Donald V. Watkins was a professional online "journalist" and whether Respondents were "public figures" at the time of publication, and (c) the Alabama Courts applied a simple "negligence" standard of liability in deciding the case, rather than an "actual malice" or "reckless disregard for the truth" of the published statements standard, as established in *New York Times v. Sullivan*, *supra*, and its progeny.

This is a First Amendment case, and it was treated as such by the trial court. Watkins and DVWPC asserted their First Amendment rights at every stage of the proceedings.

New York Times v. Sullivan arose from a defamation case filed in an Alabama state court by Montgomery, Alabama Police Commissioner L.B. Sullivan, who claimed that he was libeled in a full-page advertisement in the Times titled "Heed Their Rising Voices," which criticized a "wave of terror" against civil rights demonstrations in the South led by Dr. Martin Luther King, Jr. Most of the assertions in the advertisement were accurate; a few were not. Sullivan, who was not named in the ad, sued the Times, claiming it had in effect falsely accused him of misconduct. Governor John Patterson also joined the lawsuit and added Dr. King and four other black ministers as defendants, even though they did not prepare the advertisement or cause it to be published. The plaintiffs were awarded $500,000 by an all-white jury. This Court upheld the jury verdict against the defendants.

When the case reached the U.S. Supreme Court, the Justices applied the First Amendment for the first time in a libel case. The core of the court's ruling in reversing the Alabama judgment was that the First Amendment barred "public officials" from recovering damages for a defamatory falsehood relating to his official conduct in the absence of clear and convincing evidence that the statement was made with what the Justices called "actual malice" -- that it was made "with knowledge that the statement was false or with a reckless disregard for whether it was false or not."

"Erroneous statement is inevitable in free debate and must be protected if the freedoms of expression

are to have the "'breathing space' that they need to survive." *Id*. at 271-73.

In *Butts, supra,* and *Walker, supra,* the court extended the "actual malice" standard to apply to "public figures" outside of government. In both cases, the plaintiffs were determined to be "public figures" who were suing under state law for defamation and the defendants had invoked the First Amendment protections enunciated in the *New York Times* case.

The instant case arises from the conduct of two famous and notorious "public figures" (i.e., Matrix and Perkins) who voluntarily thrusted themselves into a raging controversy about Megan Rondini, a University of Alabama honors student.

In June 22, 2017, Buzzfeed News featured Megan Rondini's tragic story in a widely disseminated article titled, "A College Student Accused A Powerful Man Of Rape. Then She Became A Suspect."

Petitioner Watkins later wrote and published a series of follow-up articles about Megan Rondini's rape-suicide case. Respondents Matrix and Perkins were featured prominently in several of Watkins' articles.

As was the case in *New York Times*, the forces of "power and influence" in Alabama weaponized the state's defamation laws and sued the Petitioners to chill their freedom of speech and freedom of the press.

As was the case in *New York Times*, the Alabama courts in Watkins' and DVWPC's case issued rulings that eviscerated Petitioners' First Amendment rights enunciated by ignoring them. In the instant case, the Alabama courts achieved the desired result by

granting a vigorously opposed summary judgment in a case littered with genuine issues of material facts on the First Amendment constitutional defenses.

Matrix and Perkins were not "public officials" at the time of publication. However, they were "public figures" within the meaning of *Butts* and *Walker*, 388 U.S. at 162. An individual can become a "public figure" within the meaning of *New York Times* and its progeny in one of two ways.

First, an individual may achieve such pervasive fame and notoriety that he becomes a "public figure" for all purposes and in all contexts. *Gertz v. Robert Welch*, 418 U.S. 323, 351 (1974).

Second, an individual may voluntarily inject himself or is drawn into a particular public controversy and thereby becomes a "public figure" for the limited range of issues. (Id.).

Matrix and Perkins became "public figures" under both scenarios. When Perkins broke federal election laws in 1985 by making campaign donations to the 1986 congressional campaign of Roy Johnson in the name of his employees, he started on his road to fame and notoriety in Alabama. His FEC case became publicly known and was reported by various statewide media organizations. It made Perkins a "public figure."

By February 19, 2014, Perkins was Number 15 on Yellowhammer News' list of "Power and Influence" players in Alabama. By October 4, 2019, Perkins had moved up to Number 8 on the list. By April 30, 2021, Perkins had moved up to Number 5 on the list. Perkins' impressive ascension on the Alabama's

"Power and Influence" list in 2019 and 2021 occurred after he claimed Watkins and DVWPC defamed him in October and November of 2017.

Matrix has been characterized by the Mobile Press Register as the "closest thing Alabama has to a non-government secret agency."

In September of 2019, less than two years after Matrix claimed it had been defamed, the firm became a vendor that provides Auburn University with unspecified "Professional Services" for $15,000 per month for a total of $382,500, as of October 2022. See, Auburn University Open Checkbook Records. The alleged defamation did not stop Matrix from getting this lucrative non-bid contract work for "Professional Services" from a flagship public university in Alabama.

When viewed under the totality of circumstances, it is clear that both Matrix and Perkins were "public figures" within the meaning of *New York Times* and its progeny. In any event, Watkins and DVWPC established genuine issues of material facts regarding whether Matrix and Perkins were "public figures," which made summary judgment inappropriate in this case under the standard enunciated in *Anderson*.

3. The Alabama Courts' Award and Affirmance of "Presumed Damages" to Respondents in a Case Where (a) First Amendment Constitutional Defenses Were Asserted, (b) the Speech at Issue Involved Matters of Public Concern, and (c) No Actual Damages Were

Proven, Conflicts With this Court's Prohibition Against "Presumed Damages" in *Gertz v. Welch.*

Matrix and Perkins never presented evidence of actual pecuniary or economic damages that flowed from the alleged defamatory statements. Likewise, they presented no evidence of actual injuries from mental anguish or emotional distress. They asked for and received "presumed damages" of their business and professional reputations, over the objection of Watkins and DVWPC.

The trial court did not conduct an evidentiary hearing on damages. It simply ruled on the pleadings.

The trial court awarded damages against DVWPC solely because Watkins worked at the law firm as a solo practitioner. There was no evidence that Watkins wrote and published the articles and statements at issue at the request of DVWPC.

In *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), this Court held that the First Amendment restricted the damages that a private individual could obtain from a publisher for a libel that involved a matter of public concern. More specifically, the Court held that in these circumstances the First Amendment prohibited awards of presumed and punitive damages for false and defamatory statements unless the plaintiff shows "actual malice," that is, knowledge of falsity or reckless disregard for the truth.

However, the recovery of presumed and punitive damages is permitted in defamation cases absent a showing of "actual malice" in a First Amendment case

when the defamatory statements do not involve matters of public concern. See, *Dun & Bradstreet, Inc. v. Greenmoss Builders, Inc.*, 472 U.S. 749 (1985).

The *Dun & Bradstreet* holding does not apply in the instant case because Watkins and DVWPC clearly and convincingly established in their opposition to summary judgment that the speech in this case involved matters of public concern.

Even if Matrix and Perkins are deemed to be "private figures" in a defamation case where First Amendment constitutional defenses were asserted, as was the case here, the award of "presumed damages" is barred by this Court opinion in *Gertz v. Welch*, 418 U.S. at 439.

CONCLUSION

Based upon the facts in the case and the correct application of the mandated legal standards enunciated by this Court for each issue raised on appeal, Watkins and DVWPC request this Court to: (a) reverse the May 31, 2021 Order granting summary judgment in favor of Matrix and Perkins on their defamation claims, (b) reverse the Alabama Supreme Court's September 23, 2022 summary Affirmance of the trial court's August 20, 2021 Final Judgment, and (c) direct the Alabama courts to dismiss Matrix's and Perkins case, without prejudice.

Respectfully submitted this 16th day of December, 2022.

/s/Byron R. Perkins
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No. 22-_____

In The
Supreme Court of the United States

DONALD V. WATKINS and DONALD V. WATKINS, P.C.,
Petitioners

v.

MATRIX, LLC, and JOSEPH W. PERKINS, JR.,
Respondents

APPENDIX TO PETITION FOR WRIT OF CERTIORARI

APPENDIX A

May 31, 2021, Order Granting Summary Judgment

IN THE CIRCUIT COURT OF TUSCALOOSA COUNTY, ALABAMA

MATRIX, LLC, PERKINS JOSEPH W JR Plaintiffs, V. WATKINS DONALD V. DONALD V. WATKINS, P.C., Defendants.	)))))))))	Case No: CV-2017-901408.00 Filed May 31, 2021

ORDER

The Court apologizes for the delay in the entry of this Order.

This matter came before the Court for a virtual hearing on plaintiffs' motion for summary judgment. At the hearing, the plaintiffs were represented by their attorneys, Todd Campbell and Cason Kirby, and defendants were represented by attorney Byron Perkins. Based on the arguments of counsel, the pleadings, briefs, and attached evidentiary matters, and after a review of the case law, the Court summarizes and rules as follows.

This is a defamation case. Plaintiff Perkins is the founder and member of plaintiff Matrix, LLC, a communication firms with an office in Tuscaloosa. Watkins is an attorney whose law firm is Donald Watkins, P.C. The complaint contends that in a series

of Facebook posts from October 26, 2017 to November 2, 2017 the defendants defamed plaintiffs. The posts at issue concerned the alleged rape of a University of Alabama student by a local businessman. Among other things, the plaintiffs allege that defendants posted that plaintiffs were part of a conspiracy to threaten the UA student's family, that the plaintiffs worked with the *Tuscaloosa News* to smear the UA student, that plaintiff Perkins was paid to obstruct the investigation, and that plaintiffs had used an internet hacker to sabotage defendants' Facebook and Wikipedia pages. The complaint also alleges that individuals responded online to the defendants' defamatory postings with derisive comments that included calling plaintiffs "cowards", "pathological liars", and "roaches", and that prior to filing suit, by way of letter, Perkins requested retraction, with no response.

The plaintiffs' complaint contains five (5) claims of defamation. The defendants counterclaimed alleging that plaintiffs defamed them by statements made to the Alabama Political Reporter. Plaintiffs request that the Court grant to them Summary Judgment as a Matter of Law on their defamation complaint, and on the defendants' defamation counterclaim.

Under the law, "[a] statement is defamatory if it 'tends. . . to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him.'" Blevins v. W.F. Barnes Corp., 768 So. 2d 386, 389 (Ala. Civ. App. 1999), quoting *Restatement (Second) of Torts*. While slander is defamation through the

spoken word, "[l]ibel is a form of defamation accomplished through a permanent medium such as writing." Defamatory statements posted to a website have been found to constitute libel. Glennon v. Rosenblum, 325 F. Supp. 1255 (N.D. Ala. 2018). "In cases of libel, if the language used exposes the plaintiff to public ridicule or contempt, though it does not embody an accusation of crime, the law presumes damages to reputation, and pronounces it actionable per se." Ceravolo v. Brown, 364 So. 2d 1155, 1156-57 (Ala. 1978), quoting Marion v. Davis, 114 So. 357, 358-59 (1927).

A prima facie case for defamation consists of the following: "(1) that defendant was at least negligent; (2) in publishing; (3) a false and defamatory statement to another; (4) concerning the plaintiff; (5) which is either actionable without harm (actionable per se) or actionable upon allegations and proof of special harm (actionable per quod)." Nelson v. Lapeyrouse Grain Corp., 534 So. 2d 1085, 1091 (Ala. 1988).

In New York Times v. Sullivan, 376 U.S. 254 (1964) and its progeny, the U.S. Supreme Court established that when public figures sue for libel, rather than negligence, they must meet the higher burden of "actual malice" which is defined as "knowing falsity or reckless disregard for the truth." In Alabama, our Supreme Court has recognized a "limited-purpose" public figure, who is required to meet this higher "actual malice" burden. See Cottrell v. National Collegiate Athletic Ass'n, 975 So. 2d 306, 334 (Ala. 2007). One qualifies as a "limited-purpose" public figure if he makes "a voluntary decision to place

himself in a situation where there was a likelihood of public controversy." White v. Mobile Press Register, Inc., 514 So. 2d 902, 904 (Ala. 1987). Here, there is no evidence that Perkins or Matrix had a role in the controversy that is central to this lawsuit, Wolston v. Reader's Digest Ass'n, 443 U.S. 157 (1979), and this Court finds that the plaintiffs' burden is negligence.

As to negligence in defamation matters, the Alabama Supreme Court has held that "[i]n determining whether the defendant acted as a reasonable, prudent person under the circumstances in publishing the defamatory communication the finder of fact may take into account the thoroughness of the check that a reasonable person would make before publishing the statement, the nature of the interests that the defendant was seeking to promote in publishing the statement, and the extent of damage to which the statement exposed the plaintiff's reputation." Mead Corp. v. Hicks, 448 So. 2d 308, 312 (Ala. 1983). In assessing negligence here, under the Mead standard above, the Court considers among other things that Watkins never contacted Perkins, anyone at Matrix, or the Tuscaloosa News to verify his accusations, and that he did not contact Facebook or Wikipedia to determine if his accounts had been hacked.

PLAINTIFFS' COMPLAINT

In its first claim, plaintiffs allege that Watkins accused them of cyber attacks (internet hacking) of his Facebook page and Wikipedia page, conduct that

Watkins admitted during deposition would constitute a crime. In his affidavit attached to this Motion for Summary Judgment, Perkins testifies that he never used a hacker and never engaged in cyber attacks. Based on the evidence presented, the Court finds that Watkins was at least negligent, that he published a false libelous statement that exposed plaintiffs to contempt, and that the law presumes damage to reputation. Plaintiff made a prima facie case as to their first claim in the complaint. Defendants failed to offer any evidence to create a genuine issue of material fact, much less substantial evidence.

In plaintiff's second defamation claim, they alleged that Watkins posted that plaintiffs campaigned to smear the former UA student, her family, and Watkins, and that Matrix worked closely with the *Tuscaloosa News* to smear the student. Perkins swore in his summary judgment affidavit that neither he nor Matrix engaged in a smear campaign or said anything false about the student or her family, and that plaintiffs never contacted the *Tuscaloosa News* about her. The *News* Publisher, Jim Rainey, testified that Watkins' allegation was false. The Court finds that plaintiffs made a prima facie case as to Count two. It presumes damages due to the nature of the accusation. Defendant offers no evidence to create a genuine issue of material fact.

Plaintiffs allege in their third claim for defamation that Watkins posted that the plaintiffs got "the Tuscaloosa News to run a cheesy editorial . . .that sucked up to the [Tuscaloosa businessman's] family." Perkins and Rainey testified that this claim is false,

with Rainey stating that "[n]either Perkins nor anyone affiliated with Matrix, LLC had anything whatsoever to do with this editorial, the opinions or facts contained in it, or the Newspaper's decision to publish it." The Court finds that plaintiffs presented a prima facie case, including showing that said Facebook statements exposed plaintiffs to public ridicule and contempt. Defendant's offer no evidence as to this third claim.

In their fourth claim, the plaintiffs alleged that defendants accused them of obstructing "the truth about a rape case for a fee." Perkins testified that "[t]his claim is entirely false." The Court finds that plaintiffs presented a prima facie case. It presumes damages due to the nature of the accusation. Defendants offer no evidence to create a genuine issue of material fact.

The fifth claim alleges that defendants posted the statement "Matrix has been working . . . to . . smear the name of [the UA student]." The title of the post was "Alabama Power Company Created a "Frankenstein' Called Matrix, LLC." In his summary judgment affidavit, Perkins states that "neither Matrix nor I has ever made any false statements about [the UA student] or her character." The Court finds that plaintiffs made a prima facie case as to the fifth claim, and that defendants failed to present evidence to create a genuine issue of material fact. The Court presumes damages due to the nature of the accusation.

The Court grants plaintiff's motion for summary judgment as to all claims in their complaint, and

orders that they are due to be granted Judgment as a matter of law. This includes judgment also against defendant Donald V. Watkins, P.C. In his Facebook posts, Watkins held himself out as affiliated with the law firm, Donald V. Watkins, P.C. "A corporation may be held liable for a slanderous utterance made by one of its agents if the slanderous utterance was made within the line and scope of the agent's employment." Cooper v. Alabama Farm Bureau Mut. Cas. Ins. Co., Inc. 385 So. 2d 630, 632 (Ala. 1980). The Court finds that this applies also to libelous statements by agents of professional corporations.

DEFENDANTS' COUNTERCLAIM

In their counterclaim, defendants contend that plaintiffs issued the following statement to the Alabama Political Reporter (APR) online website:

> *"Donald Watkins is a financially broken, desperate man suffering from psychological and behavioral problems that have brought him to the brink of ruin…….Under investigation by Federal agencies, he has spent the last several months lying and fabricating slanderous stories for which he must be being paid or has the promise of some reward..... In his post [sic] since October 26, he has told slanderous and libelous lies for which I intend to sue him. Then, through the lawsuit, we will find out who is paying Watkins to create these lies."*

In plaintiff's motion for summary judgment as to defendants' counterclaim, the plaintiffs contend that defendants have failed to produce evidence of essential element(s) of their case. Primary to the Court is the contention that defendants have produced no evidence that Perkins and/or Matrix made the above statement that is the basis their counterclaim. During deposition, Watkins testified that he spoke to the publisher about the APR post in question, but he did not ask him if Matrix was involved.

The U.S. Supreme Court stated that "the plain language of Rule 56(c) mandates the entry of summary judgment, after adequate time for discovery and upon motion, against the party who fails to make a showing sufficient to establish the existence of an element essential to that party's case, and on which the moving party is 'entitled to judgment as a matter of law' because the nonmoving party has failed to make a showing on an essential element of her case with respect to which she has the burden of proof." Celotex Corp. v. Catrett, 477 U.S. 317, 322-23 (1986), quoting Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 250 (1986). The Alabama Supreme Court has acknowledged the Celotex holding. "A moving party 'need not prove a negative in order to prevail on a motion for summary judgment.'" Ex parte General Motors, 769 So. 2d 903, 935 (Ala. 1989) quoting from Lawson State Community College v. First Continental Leasing Corp., 529 So. 2d 926, 935 (Ala. 1988).

Further, "[w]hen the basis of a summary judgment motion is a failure of the nonmovant's (Watkins) evidence, the movant's burden, however is limited to informing the court of the basis of its motion—that is, the moving party must indicate where the nonmoving party's case suffers an evidentiary failure." Rector v. Better House, Inc., 820 So. 2d 75, 79-80 (Ala. 2001). "Mere conclusory allegations or speculation that fact issues exist will not defeat a properly supported summary judgment motion and bare argument or conjecture does not satisfy the nonmoving party's burden to offer facts to defeat the motion." Crowne Investments, Inc. v. Bryant, 638 So. 2d 873, 878 (Ala. 1994). The Court finds that the moving party, plaintiff here, revealed an "evidentiary failure".

Without the defendants providing evidence that plaintiffs published the statement, an essential element of its case of which it would have the burden of proof at trial, the Court does not address the failure of proof of other elements. The Court finds that plaintiffs are due to be GRANTED judgment as a matter of law as to defendants' counterclaim for defamation.

This matter is set for a hearing on July 7, 2021 at 10:00 a.m. on the plaintiffs' damages.

DONE this 31st day of May, 2021.

/s/ ALLEN W. MAY, JR.

CIRCUIT JUDGE

APPENDIX B

August 20, 2021, Final Judgment

IN THE CIRCUIT COURT OF
TUSCALOOSA COUNTY, ALABAMA

MATRIX, LLC,	)	
PERKINS JOSEPH W JR.,	)	
Plaintiffs	)	
	)	
V.	)	Case No.: CV-2017-901408.00
	)	Filed:
WATKINS DONALD V,	)	August 20, 2021
DONALD V. WATKINS, P.C.,	)	
Defendants.	)	

FINAL JUDGMENT

This matter came before the Court for a determination of damages. On May 31, 2021, the Court granted plaintiffs' Motion for Summary Judgment on their five defamation claims, and set July 7, 2021 for a hearing on damages. On July 5, 2021, the plaintiffs filed a memorandum brief in support of damages. At the July 7th hearing, Attorneys Cason Kirby and Todd Campbell appeared for plaintiffs; no one appeared for defendants. At that hearing, the Court heard plaintiffs' arguments for $2 million in compensatory damages and took the damages determination under advisement. On July 11, 2021, the defendants filed a Motion for Extension of Time apprising the Court of defendant Watkins'

legal status in the federal system, and contending that discovery was incomplete, among other things. On July 14, 2021, plaintiffs filed an Opposition to Defendant's Motion for Extension of Time, and on that same day filed a proposed order on damages for the Court's consideration. On August 6, 2021, defendants filed an opposition to plaintiff's proposed order on damages claiming that venue was improper, contending that plaintiffs' damages request was unreasonable and not warranted, and suggesting that the Court grant plaintiffs $1 in nominal damages, if any.

In its earlier order granting the plaintiffs' Motion for Summary Judgment, the Court found that defendants' actions constituted defamation per se which, under the law, creates an inference of "injury to reputation as a natural consequence of the defamation and, as a result, the plaintiff is entitled to presumed damages" for reputation, Nelson v. Lapeyrouse Grain Corp., 534 So. 2d 1085, 1091-92 (Ala. 1988), and to presumed damages for mental anguish. Pensacola Motor Sales, Inc. v. Daphne Automotive, LLC, 155 So. 3d 930, 943 (Ala. 2013); Also see Liberty Nat. Life Ins. Co. v. Daugherty, 840 So. 2d 152, 160 (Ala. 2002). ("[G]eneral damages that are presumed to flow from defamation per se include the loss or impairment of reputation and/or standing in the community and mental anguish or suffering.")

In determining a reasonable amount to assign for these presumed damages, the Court looks to appellate decisions in this State regarding defamation damages, which are scarce, and it seeks guidance from

other jurisdictions. In Alabama, "[i]t is not necessary, in order to recover general damages for words which are actionable per se, that the plaintiff should have suffered any actual or constructive pecuniary loss. In such action, the plaintiff is entitled to recover as general damages for the injury to his feelings which the libel of the defendant has caused and the mental anguish or suffering which he has endured as a consequence thereof." Johnson Publishing Company v. Davis, 124 So. 2d 441, 452 (1960).

However, "verdicts for defamation per se are not suitable for comparison because each case is factually unique." Government Micro Resources, Inc. v. Jackson, 624 S.E. 2d 63, 73 (Va. 2006). There is no single standard for tabulating presumed defamation damages. For example, there is no formula for determining defamation damages within academia, where a department chairman disseminated a reprimand letter to other universities and various journals that accused a plaintiff professor of unethical conduct, Slack v. Stream, 988 So. 2d 516 (Ala. 2008), $212,000 in compensatory damages; nor a separate formula for defamation by the chairman of the board of a corporation for defamation published to other corporate executives about his former executive officer's mismanagement, Government Micro Resources, Inc., 624 S.E. 2d 63 (Va. 2006), $5 million in compensatory damages and $1 million in punitive damages; nor one for defamatory statements by an insurance company to policyholders that a former agent had pocketed premiums, Liberty National Life Ins. Co. v.

Daughtery, 840 So. 2d 152, (Ala. 2002), $300,000 in compensatory damages; nor one for employees of one car dealership telling prospective customers that the owner of a competing dealership, an Iranian American, was a terrorist, Pensacola Motor Sales, Inc., v. Daphne Automotive, LLC, 155 So. 3d 930, 943 (Ala. 2013), $1.25 million in compensatory damages and $5 million in punitive damages; nor is there a formula for defamation over the internet, in particular Facebook, as we have in this case before the Court.

As referenced above, in a defamation per se case, damages to reputation and for mental anguish are presumed. In assigning an amount for the plaintiffs' damages, the factors the Court considers here include the following: the tragic circumstances that surrounded the defendants' defamatory publications; the reprehensible conduct alleged, especially that of plaintiffs' purported actions against the family of the deceased former University of Alabama student; that there were a series of defamatory publications; the breadth of the publications—over Facebook; the accusation of crimes, including cyber sabotage; the effect on plaintiffs' business, that it weakened the company's relationships with major clients; that it exposed the plaintiffs to contempt and ridicule; and that when given the opportunity, defendants failed to retract.

An award of damages "must reasonably compensate the [plaintiffs] for the harm to [his/its] reputation and for mental anguish." *Alabama Pattern Jury Instructions—Civil (3rd Edition),* §23.11.

Applying the case law to the cumulative consideration of the factors listed above justifies as reasonable a sizable award of damages to plaintiffs for injury to reputation and for mental anguish. Regarding mental anguish, it "includes anxiety, embarrassment, anger, fear, frustration, disappointment, worry or annoyance, and convenience." Horton Homes, Inc., v. Brooks., 832 So. 2d 44, 53 (Ala. 2001). However, our state appellate courts "give stricter scrutiny to an award of damages based on mental anguish where the victim has offered little or no direct evidence concerning the degree of suffering he or she has experienced." Liberty Nat. Life Ins. Co. v. Daugherty, 840 So. 2d at 163.

While the plaintiffs have presented evidence of mental anguish that falls under the Horton Homes definition cited above, the Court finds that it is not as compelling or direct as the injury to reputation. Still the Court assesses as reasonable a compensatory damages award for the plaintiffs of 1.5 million dollars ($1,500,000.000).

The Court enters final judgment in favor of plaintiffs, Joseph Perkins and Matrix, LLC, and against defendants, Donald V. Watkins and Donald V. Watkins, P.C., jointly and severally, in the amount of 1.5 million dollars ($1,500,000.00).

DONE this 20th day of August, 2021.

/s/ ALLEN W. MAY, JR.
CIRCUIT JUDGE

APPENDIX C

August 20, 2021, Final Judgment

Rel: September 23, 2022

STATE OF ALABAMA - JUDICIAL DEPARTMENT
THE SUPREME COURT
SPECIAL TERM, 2022

No. 1200892

Donald V. Watkins and Donald V. Watkins, P.C. v. Matrix, LLC, and Joseph W. Perkins, Jr. (Appeal from Tuscaloosa Circuit Court: CV-17- 901408).

SHAW, Justice.

AFFIRMED. NO OPINION.

See Rule 53(a)(1) and (a)(2)(F), Ala. R. App. P.

Parker, C.J., and Bolin, Wise, Bryan, Sellers, Mendheim, Stewart, and Mitchell, JJ., concur.