



**IN THE SUPREME COURT OF THE STATE OF DELAWARE**

JOHN PAUL MAC ISSAC,

Plaintiff/Counterclaim  
Defendant Below,  
Appellant/Appellee,

v.

POLITICO LLC,  
ROBERT HUNTER BIDEN, and  
BFPCC, INC.,

Defendants/Counterclaim  
Plaintiff Biden Below,  
Appellees/Appellant Biden.

Case No.: 448, 2024

On Cross-Appeal from the Superior  
Court of the State of Delaware in  
C.A. No. S22C-10-012 RHR

**APPELLEE BFPCC INC.'S ANSWERING BRIEF**

**OF COUNSEL:**

David J. Burman (Pro Hac Vice)  
John M. Devaney (Pro Hac Vice)  
PERKINS COIE LLP  
700 Thirteenth Street N.W., Suite 800  
Washington, DC 20005-3960  
+1.202.654.6200

Joseph M. Turk (No. 6947)  
BFPCC, Inc.  
1000 N. West St., 6<sup>th</sup> Floor  
Wilmington, DE 19801  
+1.302.299.8542  
jturk522@gmail.com

Dated: March 19, 2025

*Counsel for BFPCC, Inc., Defendant  
Below, Appellee*

## TABLE OF CONTENTS

	PAGE
TABLE OF AUTHORITIES .....	iii
NATURE OF PROCEEDINGS.....	1
INTRODUCTION .....	2
SUMMARY OF THE ARGUMENT .....	3
STATEMENT OF FACTS .....	4
ARGUMENT .....	5
I. MAC ISAAC WAIVED ANY ARGUMENT THAT THIS COURT SHOULD REVERSE ANY SUPERIOR COURT HOLDINGS THAT HE FAILS TO RAISE IN HIS OPENING BRIEF. ....	5
Question Presented .....	5
Scope of Review.....	5
Merits.....	5
II. MAC ISAAC CANNOT ESTABLISH THAT HE IS A LIMITED PURPOSE PUBLIC FIGURE OR THAT HE WAS IDENTIFIED AS A RUSSIAN AGENT.....	7
Question Presented .....	7
Scope of Review.....	7
Merits.....	7
III. MAC ISAAC’S SECOND QUESTION DOES NOT IMPLICATE ANY STATEMENTS FROM BFPCC.....	9
Question Presented .....	9
Scope of Review.....	9
Merits.....	9

## TABLE OF CONTENTS (continued)

	PAGE
IV. MAC ISAAC’S THIRD QUESTION DOES NOT IMPLICATE BFPCC .....	10
Question Presented .....	10
Scope of Review .....	10
Merits .....	10
CONCLUSION .....	11

## TABLE OF AUTHORITIES

	<b>Page</b>
<b>CASES</b>	
<i>Mills v. Alabama</i> , 384 U.S. 214 (1966).....	7
<i>Monitor Patriot Co. v. Roy</i> , 401 U.S. 265 (1971).....	7
<i>Page v. Oath Inc.</i> , 270 A.3d 833 (Del. 2022) .....	7, 9, 10
<i>Roca v. E.I. du Pont de Nemours &amp; Co.</i> , 842 A.2d 1238 (Del. 2004) .....	5
<i>Silverman v. Silverman</i> , 206 A.3d 825 (Del. 2019) .....	7
<i>White v. State</i> , 2023 WL 3675801, *2 (Del. 2023).....	6
<b>RULES</b>	
Superior Court Civil Rule 15 .....	2
Superior Court Civil Rule 15(c)(3) .....	6
Supr. Ct. R. 8.....	6
Supr. Ct. R. 14(b)(vi)A(1).....	6
Supr. Ct. R. 14(b)(vi)A(3).....	6
<b>OTHER AUTHORITIES</b>	
First Amendment.....	7

## **NATURE OF PROCEEDINGS**

Mac Isaac's description of the nature of the proceedings fails to identify the Superior Court's statute of limitations ruling as to the Biden for President Campaign Committee (BFPCC) or to provide the procedural history of Mac Isaac's failure to serve BFPCC with his initial October 2022 complaint, his failure to include BFPCC in the caption of that complaint, his need to amend his complaint as to BFPCC and serve BFPCC in January 2023, and the lack of any reason that BFPCC should have known in October 2022 that Mac Isaac had meant to sue it.

## **INTRODUCTION**

Appellee BFPCC was one of four defendants that Appellant Mac Isaac apparently intended to sue for defamation in October 2022, for statements relating to the November 2020 presidential election. But Mac Isaac omitted BFPCC from the caption of his initial complaint and failed to serve BFPCC with the complaint. It was not until January 2023 – more than two years after the statements underlying the defamation claim – that Mac Isaac filed an amended complaint that added BFPCC to the caption and was served on BFPCC.

BFPCC moved for dismissal on the same grounds as the other defendants and, in addition, on the two-year statute of limitations. BFPCC argued that the amended complaint did not relate back to the original complaint under Superior Court Civil Rule 15. The Superior Court granted dismissal on all grounds raised by BFPCC, including that the claims against BFPCC were untimely. Mac Isaac fails to challenge that statute of limitations ruling in his Opening Brief. This provides a dispositive basis to, at a minimum, affirm the Superior Court's dismissal ruling as to BFPCC.

## **SUMMARY OF THE ARGUMENT**

1. Mac Isaac's Summary of Argument identifies no legal proposition bearing on the Superior Court's application of the statute of limitations to the claims against BFPCC.

2. As to Mac Isaac's numbered summary paragraph 1 (limited public figure), BFPCC joins in the denial by the other Appellees.

3. Mac Isaac's summary paragraph 2 (identification of Mac Isaac) is inapplicable to BFPCC because it is based on "Hunter Biden's statements," not BFPCC's. Beyond that, BFPCC joins in the denial by the other Appellees.

4. Summary paragraph 3 appears to duplicate paragraph 2 and not in fact summarize Appellant's third argument. That argument does not apply to BFPCC but addresses a "Politico Headline." Mac Isaac Brief at 22.

## **STATEMENT OF FACTS**

Mac Isaac omits from his statement of facts any facts related to his failure to properly commence his lawsuit against BFPCC until January 2023. As to the facts he does state, BFPCC joins in the responses of the other Appellees.

Mac Isaac's omission of BFPCC from the caption of his initial complaint is apparent from that complaint. Appellee BFPCC's Appendix B001. His first amended complaint is at Appellee BFPCC's Appendix B001, and the docket identifies the subsequent issuance of process and date of service of that complaint on BFPCC as January 31 and February 20, 2023, respectively. Cross-Appellant Biden's Appendix at A005. The Superior Court's statute of limitations ruling is at Appellant's Appendix A052, A067-70.



## **ARGUMENT**

### **I. MAC ISAAC WAIVED ANY ARGUMENT THAT THIS COURT SHOULD REVERSE ANY SUPERIOR COURT HOLDINGS THAT HE FAILS TO RAISE IN HIS OPENING BRIEF.**

#### **Question Presented**

Whether Mac Isaac has waived, by failing to raise in his Opening Brief, any arguments that the Superior Court incorrectly held (1) that he did not properly commence his lawsuit against BFPCC until January 20, 2023, and (2) that Mac Isaac’s lawsuit is outside the statute of limitations.

#### **Scope of Review**

“It is well established that to assure consideration of an issue by the court, the appellant must both raise it in the Summary of the Argument and pursue it in the Argument portion of the brief.” *Roca v. E.I. du Pont de Nemours & Co.*, 842 A.2d 1238, 1242 (Del. 2004) (cleaned up). Failure to do so results in waiver of the argument. *Id.*

#### **Merits**

Mac Isaac’s Opening Brief makes no argument that would support reversal of the judgment below in favor of BFPCC specifically. Indeed, Mac Isaac does not even mention the primary ground upon which the Superior Court granted judgment to BFPCC—that Mac Isaac did not properly commence his lawsuit against BFPCC until January 20, 2023, “well more than two years after the last defamatory

statement (as agreed to by the parties in their briefing).” Mac Isaac Appendix A069 (Ruling at 18). Mac Isaac does not dispute the agreement found by the Superior Court. Similarly, he has not given this Court any reason to think the Superior Court erred in applying the plain language of Superior Court Civil Rule 15(c)(3). “This Court’s rules provide that an appellant waives any argument not raised in the body of his opening brief.” *White v. State*, 2023 WL 3675801, \*2 (Del. 2023).

Nor does Mac Isaac challenge the Superior Court’s alternative holding that, as to BFPCC, the lawsuit would still be outside of the statute of limitations even if properly commenced on October 17, 2022. Indeed, in arguing below against Hunter Biden’s counterclaim, Mac Isaac proposed the same first date of discovery of injury, October 14, 2020, as the Superior Court used with respect to BFPCC.<sup>1</sup> Mac Isaac Cross-Appellant’s Appendix at A201-02.

---

<sup>1</sup> For unknown reasons, Mac Isaac’s brief attributes specific dates missing in his complaint to alleged statements of BFPCC. Brief at 12-13. But the Superior Court found that the complaint specifies only the earliest date, October 14, 2020, and that the statute had run on it (and presumably the others under the single publication rule) by the time even the first, defective complaint was filed (but not served on BFPCC). Mac Isaac Appendix A068-69 (Ruling at 17-18). Mac Isaac did not present the specific date information (and working internet link) from his Opening Brief to the Superior Court and thus has failed to preserve any issue. Supr. Ct. R. 8, 14(b)(vi)A(1), A(3).

## **II. MAC ISAAC CANNOT ESTABLISH THAT HE IS A LIMITED PURPOSE PUBLIC FIGURE OR THAT HE WAS IDENTIFIED AS A RUSSIAN AGENT.**

### **Question Presented**

Whether the Superior Court correctly found that Mac Isaac was a limited purpose public figure or whether he was identified as a Russian agent.

### **Scope of Review**

A trial court's decision to grant a motion to dismiss is reviewed *de novo*. *Page v. Oath Inc.*, 270 A.3d 833, 842 (Del. 2022). Questions of law are reviewed *de novo*. *Silverman v. Silverman*, 206 A.3d 825, 829 (Del. 2019).

### **Merits**

Mac Isaac's Question I is limited to whether he is a limited purpose public figure. Question II is limited to whether he was identified as a Russian agent rather than just an unwitting tool of suspected Russian efforts to interfere in the election. Those issues were raised by all defendants. Either would be a sufficient alternative ground for affirming as to BFPCC, and both are informed by important First Amendment interests. *See, e.g., Monitor Patriot Co. v. Roy*, 401 U.S. 265, 271–72 (1971) (First Amendment “has its fullest and most urgent application precisely to the conduct of campaigns for political office”); *Mills v. Alabama*, 384 U.S. 214, 210 (1966) (“[T]here is practically universal agreement that a major purpose of that Amendment was to protect the free discussion of governmental affairs, [including] discussion of candidates”).

BFPCC relies upon the briefs of the other Appellees as to those issues, but the Court need not even reach them as to BFPCC because Mac Isaac has not preserved and cannot prevail on the statute of limitations issue.

### **III. MAC ISAAC’S SECOND QUESTION DOES NOT IMPLICATE ANY STATEMENTS FROM BFPCC.**

#### **Question Presented**

Whether the Superior Court correctly found that certain statements—none of which implicate BFPCC—lacked defamatory meaning.

#### **Scope of Review**

A trial court’s decision to grant a motion to dismiss for failure to state a claim is reviewed *de novo*. *Page*, 270 A.3d at 842.

#### **Merits**

In addition, Mac Isaac’s second question addresses only statements by Hunter Biden: “Hunter Biden’s . . . statements against Plaintiff,” Brief at 19; “Biden imputed,” *id.*; “Biden’s statements,” *id.* at 20; “Biden’s statement,” *id.*; “Biden stated,” *id.*; and “Biden is leading the world to believe....” *Id.* at 21. Mac Isaac does not analyze under that question whether the Superior Court erred in its analysis of any of his complaint’s alleged BFPCC statements.

#### **IV. MAC ISAAC’S THIRD QUESTION DOES NOT IMPLICATE BFPCC.**

##### **Question Presented**

Whether the Superior Court correctly found that the Politico headline—which does not implicate BFPCC—lacked defamatory meaning.

##### **Scope of Review**

A trial court’s decision to grant a motion to dismiss for failure to state a claim is reviewed *de novo*. *Page*, 270 A.3d at 842.

##### **Merits**

Mac Isaac’s third question is expressly limited to “the headline published by Defendant Politico.” Mac Isaac Opening Brief at 22 (and the heading on the same page refers to “Politico Headline”). That argument does not apply to BFPCC.

## CONCLUSION

The Court should affirm the Superior Court's dismissal of Mac Isaac's claims against all defendants and in any event should affirm the Superior Court's grant of BFPCC's motion to dismiss on statute of limitations grounds.

Dated: March 19, 2025

Respectfully submitted,

OF COUNSEL:

/s/ Joseph M. Turk

David J. Burman (Pro Hac Vice)  
John M. Devaney (Pro Hac Vice)  
PERKINS COIE LLP  
700 Thirteenth Street N.W., Suite 800  
Washington, DC 20005-3960  
Telephone: +1.202.654.6200  
Facsimile: +1.202.654.6211  
DBurman@perkinscoie.com  
JDevaney@perkinscoie.com

Joseph M. Turk (No. 6947)  
BFPCC, Inc.  
1000 N. West St., 6<sup>th</sup> Floor  
Wilmington, DE 19801  
Telephone: +1.302.299.8542  
jturk522@gmail.com

*Counsel for BFPCC, Inc., Defendant Below,  
Appellee*