No. 131714

IN THE SUPREME COURT OF ILLINOIS

NICHOLAS T. ANDERSON, Appellant v. MEGAN M. SMITH (F/K/A) WOHFEIL, Appellee. Judge	))))))))))))	On Petition for Leave to Appeal from the Appellate Court of Illinois Fourth District, No. 4-16-0527 Appeal from the Circuit Court of Schuyler County, Illinois, Case No. 2018-L-2 Honorable Judge Roger Thomson, Presiding

REPLY BRIEF AND ARGUMENT OF APPELLANT

ORAL ARGUMENT REQUESTED

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POINTS AND AUTHORITIES

INTRODUCTION

Appellee's principal refrain is that prong two is about motive, full stop, and that the *Anderson v. Smith*, 2025 IL App (4th) 241076 "true goal" test is the only reading that avoids redundancy and preserves the jury's role. That framing misstates both the CPA's text and this Court's construction of it.

The Citizen Participation Act is not a roving commission to litigate a plaintiff's heart. It is a targeted mechanism to identify *SLAPPs*—retaliatory suits that, as *Sandholm* explained, are brought to impose "delay, expense, and distraction," not to vindicate a legitimate injury. *Sandholm v. Kuecker*, 2012 IL 111443, ¶¶ 34, 44–45 (2012). The Act's public-policy section makes the Legislature's objective explicit: to "strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition [and] speak freely," while establishing "an efficient process for identification and adjudication of SLAPPs." 735 ILCS 110/5 (West 2022).

Appellee's "true goal" approach breaks that balance and makes efficiency impossible. It also reproduces, in fact amplifies, the very defect Appellant identified. Namely, purely subjective tests force courts to resolve motive disputes without meaningful discovery and on an expedited schedule, yielding inconsistent results and inviting mini-trials over intent. The better reading is the one Appellant now states plainly:

At prong two, the trial court should first require the movant to demonstrate that the plaintiff's claim lacks legal merit under the familiar standards of section 2-619 or summary judgment, depending on posture; only if that objective screen is satisfied should the court consider whether the suit is "solely" retaliatory rather than a bona fide effort to obtain relief.

This is the First District's objective/subjective synthesis and the only approach that honors (1) the Act's balancing mandate, (2) *Sandholm*'s refusal to presume a radical alteration of defamation and related common-law claims, and (3) the Legislature's instruction that SLAPP identification be "efficient." *Id.*, ¶ 50.

ARGUMENT

I. The Fourth District's "True Goal" Test Cannot Be Reconciled with the CPA's Text, *Sandholm*, or the Legislature's Express Balancing Mandate.

Appellee insists that prong two asks only whether a plaintiff is "genuinely seeking relief," not whether the claim is meritless. That is a false dichotomy. A plaintiff's "genuine" pursuit of relief cannot be separated from whether there is a legally cognizable basis for relief in the first place—particularly where the Legislature commanded an "efficient process" that must preserve the "balance" between petitioning rights on both sides. 735 ILCS 110/5 (West 2022).

A. The CPA's text and *Sandholm*'s holding require an objective merits screen to preserve the statute's balance and prevent an implied, sweeping privilege for defamatory speech.

The core statutory problem *Sandholm* confronted was not merely "motive." It was that a literal reading of section 15 would immunize all petitioning-related speech, even defamatory speech, whenever it was connected to participation in government. This Court rejected that result precisely because it would destroy the Legislature's declared balance and would radically alter common law without explicit authorization. *Sandholm*, 2012 IL 111443, ¶ 50, 962 N.E.2d 418 (Ill. 2012) (rejecting a construction that would impose a broad qualified privilege absent clear legislative intent).

That reasoning is not academic. A pure "true goal" test recreates the same defect in another form. If a defendant can obtain dismissal by litigating a plaintiff's alleged retaliatory motive, even where the plaintiff can prove falsity, fault, and damages, then prong two becomes a motive-driven privilege that swallows defamation and malicious prosecution whenever protected speech is in the background. The Legislature did not enact an intent-based immunity for defamatory speech; it enacted a process to identify SLAPPs while preserving legitimate suits for injury. 735 ILCS 110/5 (West 2022); *Sandholm*, 2012 IL 111443, ¶ 50, 962 N.E.2d 418 (Ill. 2012).

This is why "meritless" is not a rhetorical flourish. It is what makes a SLAPP a SLAPP. And it is why the workable approach is the First District's. Prong two requires a showing that the claim lacks merit under traditional merits frameworks, not a free-standing adjudication of motive divorced from the elements and defenses that define whether the plaintiff is entitled to relief.

B. Appellee's interpretation effectively deletes the "balance" mandate and converts "efficient identification" into subjective, evidentiary trench warfare.

Appellee's construction cannot be squared with the Act's command to "strike a balance" and "establish an efficient process for identification and adjudication of SLAPPs." 735 ILCS 110/5 (West 2022). If prong two becomes a subjective "true goal" inquiry untethered from merits, courts will face precisely what *Sandholm* sought to avoid: extended hearings over intent, competing inferences, credibility disputes, and conjecture, often without discovery, while the plaintiff is forced to defend the lawsuit's very legitimacy on an artificially truncated record. That is not "efficient." It is the opposite, namely, a motive trial at the outset, on affidavits, under time pressure, with little guidance on burdens or standards.

II. Proper Statutory Construction Confirms Prong Two Requires an Objective Merits Screen (and, at Most, a Limited Retaliatory-Intent Inquiry), Not a Free-Standing Motive Trial.

Appellant accepts Appellee's critique that the opening brief should have been clearer about the precise methodology urged. To clarify, the Appellant urges adoption of the First Appellate District's objective/subjective test for the following reasons.

A. Start with the statute as a whole and give effect to the Legislature's express statement of purpose.

Section 5 is not surplusage. The General Assembly declared that the "purpose" of the Act is (1) balancing competing petition and speech rights and (2) creating an "efficient process" to identify SLAPPs. 735 ILCS 110/5 (West 2022). Any prong-two construction must do both. A purely subjective test does neither. It diminishes the plaintiff's right to petition the courts for redress of genuine wrongs by inviting dismissal based on alleged retaliatory feelings rather than legal entitlement. And it is inefficient because it forces courts to decide what is, at bottom, an evidentiary question of intent at the very stage the CPA compresses and, without leave of court, stays discovery.

B. Read Section 15 in light of *Sandholm*'s warning against implied common-law upheaval.

Section 15 applies to motions to dispose of claims "on the grounds that the claim is based on, relates to, or is in response to" protected acts. 735 ILCS 110/15 (West 2022). Standing alone, that phrasing is broad enough to capture virtually any defamation claim arising out of public controversy. *Sandholm* refused to read it that way precisely because it would "radically alter the

common law" by creating a privilege for defamatory petitioning activity absent explicit legislative direction. *Sandholm*, 2012 IL 111443, ¶ 50 (2012).

The Fourth District's "true goal" test reintroduces the same radical alteration through motive. It places legitimate tort claims at risk of dismissal not because they fail as a matter of law, but because a court concludes the plaintiff's subjective "true goal" was not sufficiently pure. That is not a "balance." It is a doctrinal shortcut to immunity.

C. The 2025 amendments do not validate the Fourth District. They undermine motive-centered prong-two adjudications and confirm the Legislature understood it was changing the law prospectively.

Appellee leans heavily on the 2025 amendments, quoting new language to section 15: "The claim does not need to solely pertain to the moving party's constitutional rights as this Act applies regardless of the motives of the person who brought the claim that the moving party is seeking to dispose of." Pub. Act 104-0431, § 5 (eff. Aug. 21, 2025) (adding language to 735 ILCS 110/15). But Appellee's reliance proves too much and, on close reading, cuts against a prong-two motive trial.

1. **The amendment is expressly prospective.**

The General Assembly added an applicability provision: "[t]he changes made to this Act by this amendatory Act […] apply only to actions commenced on or after January 1, 2026." Pub. Act 104-0431, § 32 (eff. Aug. 21, 2025). That is not a "clarification" of existing law; it is a prospective change.

2. **The amendment rejects motive inquiries ("regardless of the motives"), not endorses them.**

Appellee argues the amendment points toward a purely subjective test. Yet the plain language says the Act applies "regardless of the motives" of the person who brought the claim. Pub. Act 104-0431, § 5. That is the opposite of a framework that centers prong two on adjudicating the plaintiff's "true goal" and subjective intent. If anything, it suggests prong-two analysis must be grounded in something other than motive, namely, the objective legal posture of the claim.

3. **Even if subsequent amendments can inform intent, they cannot be used to rewrite *Sandholm* retroactively.**

Appellee correctly cites that subsequent amendments may sometimes be relevant to legislative intent. *In re Det. of Lieberman*, 201 Ill. 2d 300, 320–21, 776 N.E.2d 218 (Ill. 2002). But here, the General Assembly itself declared the changes apply prospectively beginning January 1, 2026. Pub. Act 104-0431, § 32. The controlling law for this case remains the statute as construed by *Sandholm* and *Glorioso*.

Proper statutory analysis therefore does not propel the Court toward the Fourth District's motive trial. It confirms the need for a prong-two methodology that (a) preserves the Act's balance, (b) avoids implied immunities, and (c) supplies an efficient, administrable rule. That rule is the First District's objective merits screen, applied through traditional section 2-619 and summary judgment frameworks.

III. Appellee's Redundancy Argument Inverts the Statute: the CPA Expressly Channels Traditional Merits Frameworks While Adding Independent, SLAPP-Specific Relief.

Appellee argues, consistent with the Fourth Appellate District, that any objective prong-two inquiry is "redundant" with existing dispositive motions. However, the use of traditional

objective criteria to resolve the applicability of the CPA does not render the CPA redundant as the CPA adds independent, SLAPP-specific consequences and timing.

The CPA expressly contemplates disposition through traditional vehicles ("motion to dismiss" and "motion for summary judgment") while providing a distinct, SLAPP-specific overlay: expedited hearing and decision, fee shifting, and stays. See 735 ILCS 110/20, 110/25 (West 2022). That "independent work" is not a hand-waving "incentive" argument. It is the Legislature's chosen mechanism to mitigate SLAPP harms: delay, expense, and distraction. *Sandholm*, 2012 IL 111443, ¶¶ 34, 44–45, 962 N.E.2d 418 (Ill. 2012). The fact that the Act uses familiar procedural tools does not make it redundant; it makes it administrable.

And it is not "absurd" that the CPA overlaps with ordinary motion practice. The CPA does what ordinary motion practice does not. It forces an early, accelerated merits screen tailored to SLAPP allegations and ties that screen to mandatory fee shifting for prevailing movants. 735 ILCS 110/25 (West 2022). Appellee's "redundancy" argument is a policy objection to the statute's design, not a textual argument for rewriting prong two into a motive trial.

IV. The Fourth District's "Threshold" Showing Highlights the Central Defect of Purely Subjective Tests: No Burdens, No Standards, and No Principled Way to Resolve Evidentiary Disputes on an Expedited, Discovery-Stayed Record.

Appellee claims Appellant "invented" a prima facie framework and evidentiary standard. That misstates Appellant's point. Appellant described what any motive-based prong-two test necessarily requires to be applied in court.

The Fourth District requires the trial court to decide whether the plaintiff's "sole intent" was retaliation. A court cannot decide that question unless the test assigns the burden and identifies the standard of proof. Yet the Fourth District requires the movant make a threshold

showing, then directs the trial court to conduct a fact-intensive hearing to resolve the true goal of the plaintiff. However, the Fourth District does not say who carries the burden on intent or what standard governs when the evidence conflicts. That silence is not an academic gap. It makes the test unadministrable.

Thus, Appellee's criticism proves Appellant's point. The "true goal" approach sends trial courts down a path with no map. It forces plaintiffs to defend subjective motives without discovery on an accelerated timeline. It forces judges to decide what lies inside a litigant's mind from affidavits with no guidance on how to resolve conflicting evidence provided by the parties. Kant's warning fits this setting. "Even the strictest examination of our actions cannot lead us completely to the secrets of our own hearts." Immanuel Kant, *Groundwork of the Metaphysics of Morals* (1785). The CPA is not supposed to require that kind of guesswork. It is supposed to supply an efficient process to identify and dispose of meritless SLAPPs.

CONCLUSION

For these reasons, Appellant respectfully requests that this Court reject the Fourth District's free-standing "true goal" test, adopt the First Appellate District's objective/subjective framework with a rigorous objective merits screen at prong two (applied through traditional section 2-619 / summary judgment standards), reverse the judgment below, and remand with instructions consistent with this Court's ruling.

Respectfully submitted,

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	)	
Appellee.	)	Honorable Judge Roger Thomson, Judge
	)	Presiding

CERTIFICATE OF COMPLIANCE

I certify that this Reply Brief conforms to the requirements of Supreme Court Rules 341(a) and (b), and 315(h). The length of this Reply Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is nine (9) pages.

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NOTICE OF FILING

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PLEASE TAKE NOTICE that on **February 17, 2026**, we electronically filed with the Illinois Supreme Court, the **REPLY BRIEF AND ARGUMENT OF APPELLANT**, on behalf of Appellant, Nicholas T. Anderson, a copy of which is attached hereto and served upon you.

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STATE OF ILLINOIS)
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CERTIFICATE OF SERVICE

I, the undersigned attorney for Appellant, after being first duly sworn on oath, depose and certify that a copy of the foregoing **Notice of Filing** and **Reply Brief and Argument of Appellant** were served on the attorneys of record as addressed below, **via Microsoft Outlook e-mail transmission** on **February 17, 2026.**

/s/Dustin Clark

[x] Under penalties as provided by law pursuant to 735 ILCS 5/1-109, I certify that the statements set forth herein are true and correct.

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