No. 130137

IN THE SUPREME COURT OF ILLINOIS

MAURO GLORIOSO, Appellee, v. SUN-TIMES MEDIA HOLDINGS, LLC, and TIM NOVAK, Appellants.	)	On appeal from the Appellate Court of Illinois, First Judicial District Case No. 1-21-1526 There on appeal from the Cook County Judicial Circuit, Cook County, Illinois Case No. 21-L-90

REPLY BRIEF OF APPELLANTS SUN-TIMES MEDIA HOLDINGS, LLC AND TIM NOVAK

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INTRODUCTION

With this appeal, the Court takes the opportunity to provide "clarification and correction" for this important area of First Amendment law. See A32 (Dissent, ¶107).[1] As written, the Illinois Citizen Participation Act ("ICPA") covers any lawsuit "on the grounds that [a] claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the *moving party's rights of* petition, *speech*, association, or to *otherwise* participate in government." 735 ILCS 110/15 (emphasis added). In *Wright Development Group v. Walsh*, 238 Ill.2d 620, 636 (2010) (emph. original) (hereinafter, "*Wright*"), the Court emphasized this language covers statements to a news reporter on matters of public concern "because the Act expressly encompasses exercises of political expression directed at the *electorate* as well as government officials."

Subsequently, in *Sandholm v. Kuecker*, 2012 IL 111443, the Court, faced with difficult facts, sought to balance the Legislature's protections for public discourse with access to the courts for truly injured citizens. *Id.* at ¶¶49-50. In the instant case, however, a public official sued a reporter for reporting on official investigations. The Texas Supreme Court in *Polk County Publishing Company v. Coleman*, 685 S.W.3d 71, 76 (Tex. 2024), recently highlighted this distinction under the analogous Texas Citizen's Participation Act:

> Unlike some TCPA appeals, this is exactly the kind of lawsuit—by a government official against a reporter in response to a critical news story—that all can agree has been subjected by the Legislature to early testing of its merits and to early appeals.

Unfortunately for citizenry and the free press in Illinois, the Majority's opinion inserted additional burdens on the press to benefit officialdom by improperly narrowing the

[1] Sun-Times refers to the Majority opinion (A1-21) as the "Majority" or ("Op.") and Justice Hyman's dissenting opinion (A21-32) as the "Dissent." Sun-Times refers to Plaintiff/Appellee's brief as "Response," cited as "Resp."

ICPA safeguards and adopting divergent common law precedents. Instead of fostering a free press, this complete reversal of Legislative intent encourages public officials to chill "political expression directed at the *electorate*" protected by *Wright* by "accomplishing what the Act was designed to prevent." A32 (Dissent, ¶107).

I. THE ICPA COVERS POLITICAL APPOINTEES WHO FILE FALSE ALLEGATIONS TO STIFLE INVESTIVATIVE REPORTING ON CONDUCT OF AGENCY PROCEEDINGS INVOLVING A FORMER PRESIDENT AND TAX REVENUES

Discussion of public services receive highest First Amendment protection. *Auriemma v. Rice,* 910 F.2d 1449 (7th Cir. 1990) (*en banc*). Whatever the balance that must be struck to preserve legitimate judicial access under the ICPA, the Response brief only confirms that Glorioso's case exemplifies a political appointee's SLAPP against an investigative reporter for calling attention to a matter of public concern.

There is no longer a dispute that the OEIG Complaint alleged that "***Glorioso told Waggoner*** he wanted a ***large reduction*** in the assessment ***because*** the taxpayer/owner of Trump Tower Chicago was the President of the United States" and Waggoner rewrote the draft "consistent with ***Glorioso's directive***." A99. It also is undisputed that the investigative reporting by Timothy Novak and the Chicago Sun-Times newspaper elicited the Governor's promise "to get to the bottom of what happened" and request that "PTAB should take no action until the investigation is complete" into "allegations of political motives improperly driving the decision making." A107.

Glorioso's repeated denials that he was "under investigation for pressuring PTAB staff" (A38-40 (Complaint at ¶¶10, 13)) were contradicted, first by the Governor's statement, and ultimately when Executive Ethics Commission of The State of Illinois (EEC) rejected Glorioso's objections to publishing its Final Report for OEIG Case #19-02400, *In*

Re: Mauro Glorioso ("Final Report") on May 25, 2021. A126-38. The Final Report also revealed that, contrary to Glorioso's allegations, PTAB removed him for related misconduct, including his deletion of "all of his e-mails relating to the 2011 Trump Tower property tax appeal, as well as additional related files on his PTAB computer and from office-wide computer systems." A6-7 (Op., ¶¶19-20); A134.

Confronted with a developed record, the Response effectively concedes between the lines that Glorioso's case never had merit. The Response (pg. 3) admits that the OEIG Complaint alleged the revised draft was ***"consistent with Glorioso's directive."*** The Response (pg. 21) further admits that: "**The *investigation* they claimed to be reporting on *was ongoing* and Defendants *took no position* as to its outcome**." Finally, the Response (pg. 26) argues against any judicial gloss on the ICPA because policy "**should be *up to the legislature* and not this court**."

Yet this appeal transcends any particular record because the outcome will have ramifications for a free press in Illinois. Defendants are gratified that the Court recognized the importance of these questions to the press and public and respectfully asks it to reset the "balance" consistent with the Legislature's policy to ensure a spirit of full and free enquiry into public affairs by the citizens of this State.

A. An investigatory report concerning questionable activity by a political appointee in the performance of his official duties is well within the ICPA's scope

Contrary to the Response's insinuation, this Court broadly construes the ICPA to "plainly include[] the rights to speech and association." *Wright*, 238 Ill.2d at 639 (quotation marks omitted). Accordingly, the court of appeals has long held that investigative reporting "is an excellent example of the kind of activity that the legislature sought to protect, as

shown by the Act's own language." *Ryan v. Fox TV Stations*, 2012 IL App (1st) 120005, ¶19. It subsequently clarified, consistent with *Wright*, that the ICPA protected a blogger's posts even if the "articles simply informed readers of information that he uncovered." *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶48. The Dissent observes that even the Majority "acknowledges that '*Ryan* [supports] the premise that reporting on the actions of a government agency in order to inform the voting public has value in maintaining a functioning democracy …." A27-28 (Dissent, ¶93 (quoting Op., ¶53)).

These precedents applied the ICPA's explicit protections for both "information" and "reports" independent of advocacy (735 ILCS 110/5), consistent with the Act's mandate that its scope "be construed liberally to effectuate its purpose and intent fully." 735 ILCS 110/30(b). Compare *Satkar Hospitality v. Cook County Bd.*, 2011 WL 4431029, at *5 (N.D. Ill. 2011) (ICPA required dismissal of news report concerning tax appeal and assessment of defense fees). Where the Majority erred was by carving a personal exception for Glorioso when "Glorioso's employment status is meaningless." A28 (Dissent, ¶94).

The Response misconstrues *Ryan* by arguing that it "expressly found that the media reports at issue were protected by the ICPA *not* because they were news reports concerning public officials or public issues." Resp. at 22 (emph. original). As the Majority acknowledged, *Ryan* instead expressly held that it was "indisputable" that the ICPA's first prong was satisfied *because* "[t]he investigatory report that defendants produced uncovered questionable activity by members of the judiciary in the performance of their official duties" and "communicated the findings of their investigation to the public and to members of local and state government via a televised newscast." 2012 IL App (1st) 120005, ¶19. Similarly, Novak "uncovered questionable activity" in the Trump Tower appeal and -- after Plaintiff

used his authority to withhold comment and records -- took his investigation all the way to the Governor's office before communicating his findings to the public.

Departing from the ICPA's text and these precedents, the Response grafts an extra-legal requirement onto the Act, *i.e.*, that information and reports must also sufficiently "appeal to the government or the electorate for relief or action." Resp. at 21. This highly subjective limitation cannot be squared with 735 ILCS 110/5 because Glorioso's focus on "petitioning" excludes "other expressions provided by citizens." A27 (Dissent, ¶92 (quoting 735 ILCS 110/5)). It also contravenes 735 ILCS 110/30(b), if only because it would exclude virtually all investigative reporting. The Legislature did not intend for the right to express concern about government to impose corresponding duties to advocate for a given solution.

Instead, the Majority and Dissent apparently agree that an appeal for action is unnecessary because "[l]etting the public know about the OEIG investigation could pressure the PTAB to assess its operations and make reforms if needed." A28 (Dissent, ¶95). Yet Sun-Times passed even Glorioso's artificial "petitioning" threshold when Novak extracted a public promise that: "The administration is determined to get to the bottom of what happened in this situation and will ensure that a thorough investigation is conducted." A107.

The Response also disingenuously equates reporting on government conduct with pure commercial speech when it likens Sun-Times to the "blogger" in *Hammons v. Society of Permanent Cosmetic Professionals,* whose actions were not "genuinely aimed at procuring favorable government action." Resp. at 22. *Hammons* declined to extend the ICPA to "anonymously authoring and publishing critical comments *aimed directly at a competitor* and available to *consumers* and potential consumers on a blog/message board." 2012

IL App (1st) 102644, ¶19 (emphasis added). In stark contrast, "reporting on the OEIG's investigation into Glorioso, the executive director of the board deciding real estate tax appeals, was undeniably newsworthy." A28 (Dissent, ¶95).

Finally, Glorioso chose not to rebut Novak's Declaration that his purpose was to communicate a "matter of public concern" (A90-91):

> Based upon my experience as an award winning reporter, including 16 years as an investigative reporter, I reported the investigations into official PTAB proceedings as a matter of public concern because they involved the assessment of taxes in Illinois and particularly for properties associated with the then President of the United States. Moreover, the OEIG Complaint alleged, with support from PTAB's database, that former Executive Director Glorioso participated in "prohibited unethical political activities and conflicts of interest," including giving "directives" to his staff to recommend a large reduction in the assessment "for political reasons" based on the identity of the taxpayer. Finally, the appeal has been pending for over ten years. Any one of these facts were newsworthy, let alone in combination, and especially of concern to the public in the context of alleged property tax improprieties involving Alderman Burke and Governor Pritzker, as also reported in the Articles and elsewhere in the press.

The Response does not deny that such "reporting on alleged government malfeasance could lead to reform, irrespective of an employee's status or position." A28 (Dissent, ¶94).

B. The Response belatedly concedes that the articles were neither false nor defamatory in order to evade the reach of the ICPA

Revealingly, Glorioso's effort to nullify the ICPA's first prong forced him to make the fatal concession that: "**The *investigation* they claimed to be reporting on *was ongoing* and *Defendants took no position* as to its outcome**." Resp. at 21 (emphasis added). Had he included this as an allegation in his Complaint instead of falsely denying he was under investigation (see A38, 48), his case could have been dismissed under section 2-615 because the First Amendment requires that a plaintiff suing a media defendant over matters of public concern prove falsity. *Philadelphia Newspapers v. Hepps,* 475 U.S. 767 (1986).

Absent an objectively false fact, the Court "need not reach the remaining issues" of actual malice, fair report, special damages, or innocent construction. *Imperial Apparel v. Cosmo's Designer Direct,* 227 Ill.2d 381, 401-02 (2008) ("a determination that language is not actionable under the first amendment is not only is fatal to plaintiffs' defamation claims, it precludes them from recovering under any of the other common law and statutory claims they asserted in their complaint. In light of this conclusion, we need not reach the remaining issues raised by the parties in this appeal.").

First, admitting the "investigation . . . was ongoing" conclusively demonstrates that Glorioso pursued a meritless case because "[t]he fact of the investigation was true." *Global Relief Found. v. New York Times,* 390 F.3d 973, 986-89 (7th Cir. 2003). The headline that "President's Chicago tax appeal on Trump Tower is under investigation" was true. That Glorioso himself knew the Governor was "thoroughly" investigating him was confirmed by the Final Report naming Glorioso -- and "conspicuously" only Glorioso. A31-32 (Dissent, ¶105). There was no legitimate reason to allege otherwise.

Second, the admission "Defendants took no position as to its outcome" proves that the Articles were not defamatory because they left "the question of whether any violation of law occurred to the [Governor]." *Goral*, 2014 IL App (1st) 133236, ¶¶46-48 (citing authorities). Illinois has long recognized in a variety of contexts that reporting an investigation does not impute guilt. *E.g., Hurst v. Capital Cities Media*, 323 Ill. App. 3d 812 (5th Dist. 2001); see also *Global Relief Found.,* 390 F.3d at 986-89. To hold otherwise would unconstitutionally impair virtually all court reporting as well as most other newsworthy coverage. See Appellant's Br. at 14, fn. 4.

Because Sun-Times's summary of the allegations "was not couched in terms of a factual assertion that plaintiff committed the offense" the Articles could not be defamatory regardless of how the OEIG Complaint is interpreted. *Brennan v. Kadner,* 351 Ill. App. 3d 963, 968-69 (1st Dist. 2004). Absent objective falsity or express adoption of the allegations, the Response collapsed every other argument it advanced to defend the merits of its case.

C. This case always was meritless because Glorioso knew Governor Pritzker was investigating whether his "directive" improperly pressured PTAB's staff

"The Sun-Times reported accurately that the OEIG was investigating Glorioso." A31 (Dissent, ¶105).[2] Only after Glorioso failed to block EEC's publication of the *In Re Mauro Glorioso* Final Report did he backtrack to concede he was under an "ongoing" investigation. Resp. at 24. The Final Report exposed his allegation that the Articles "falsely identified Glorioso as being under investigation for pressuring PTAB staff to grant Trump Towers a real estate tax reduction" and vindicated the Sun-Times's report that "State inspector general, Pritzker administration are looking into allegation a Republican state agency head pressured staff to slash by $1M the $2.5M in property taxes Donald Trump paid in 2012." See A62.

Unable to maintain Glorioso's charade, the Response resorts to blame shifting, implying that the Sun-Times should have *falsely* portrayed Waggoner as under investigation as well. Yet Glorioso neither alleged below, nor argues now, that Governor Pritzker investigated anyone else. The Sun-Times correctly understood the Governor was referring to his

[2] The Response criticizes the Dissent for considering the Sun-Times Rule 367 Petition, even though that is the purpose of Rule 367. Yet the Majority also acknowledged mistaken assumptions in its modified opinion. A1-2. Despite the Legislature mandated expedited scrutiny of SLAPP motions, the appeal lingered for approximately a year before the appellate court denied oral argument under Rule 352.

political appointee's "directive" as "driving" the decision. If Glorioso disagreed, he should have attached the *complete* Final Report as an exhibit. Instead, he withheld it along with the OEIG Complaint and PTAB emails, making the tactical decision not "to attach to his complaint a document that proved that his claim had no merit." *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002).

The Dissent succinctly disposed of both the Response and the Majority's editorializing in one sentence, recognizing: "Just because the anonymous complaint that launched the investigation named other individuals who took part in the alleged misconduct (but conspicuously were not the subject of the OEIG investigation), the Sun-Times's reporting on the investigation into Glorioso was neither false nor misleading." A31-32 (Dissent, ¶105).[3]

Here, "the anonymous complaint alleged [plaintiff] sought a specific result on the tax appeal based on political bias, which further supports that his complaint lacks merit." A32 (Dissent, ¶105). Even if Sun-Times truthfully could have reported Waggoner was under investigation (it could not), the First Amendment affords "the decision of both what to say and what *not* to say." *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796–97 (1988); *Wilkow v. Forbes*, 241 F.3d 552, 555-57 (7th Cir. 2001) (magazine need not publish "all facts…that put the subject in the best light."). It follows that editorial framing

[3] Of interest may be recent illustrations of the interplay between fair report and falsity in two unreported orders. E.g., *Bertha v. Daily Herald Newspapers*, 2022 IL App (2d) 210695-U, ¶20 ("This statement did not appear in the police reports [reporter] relied on, so the fair-report privilege does not protect it. Nonetheless, the statement was substantially true and, therefore, not actionable"); *Brettman v. Breaker Press*, 2020 IL App (2d) 190817-U, ¶35 (affirmed ICPA dismissal because statement from partial grand jury transcripts that death threat against official was traced to plaintiff's home was true regardless of who made the threat).

of these true facts "cannot be the basis for a defamation claim." *Imperial Apparel*, 227 Ill.2d at 397, 402 ("because [statement] is indisputably true, however, it cannot be the basis for a defamation claim.").[4]

Nevertheless, the Sun-Times's ICPA case did not rest on section 2-615 sufficiency of Glorioso's conclusory pleadings or even its fair summary of the OEIG Complaint. The ICPA motion was brought under section 2-619.1, supported by an uncontested declaration with multiple exhibits and supplemented with public records that contradicted Glorioso's allegations of falsity. *Midwest REM Enterprises, Inc. v. Noonan*, 2015 IL App (1st) 132488, ¶86, *as modified on denial of reh'g* (Nov. 10, 2015) ("complete absence of evidence" of falsity showed suit was "solely to punish" defendant").

To evade the inconvenient Record, the Response myopically focuses on the OEIG Complaint and fair report privilege, offering the revisionist interpretation the Dissent swiftly punctured above. Despite the alleged but-for causation attributed to Glorioso's directive, the Response strives to make Waggoner the "fall guy." Yet neither Governor Pritzker nor his appointee believed at the time that Glorioso was exonerated by charges that he "told" Waggoner to withdraw Nockov's opinion and recommend a refund and Waggoner's revisions were "consistent with Glorioso's directive." The Governor reacted by investigating Glorioso, not Waggoner, as Sun-Times reported.

[4] The Response concedes that Glorioso is reduced to arguing "embellishments" rather than falsehoods. Resp. at 20, 41, 49. But see *Fin. Fiduciaries, LLC v. Gannett Co., Inc.*, 2021 WL 5911276, at *2 (W.D. Wis. Apr. 29, 2021), *aff'd*, 46 F.4th 654 (7th Cir. 2022) ("in spite of the minor inaccuracies or embellishments by the reporter, the Article was a substantially true account of the Geisler Trust litigation, and therefore was not actionable.") (collecting authorities). Sun-Times did describe Waggoner's role, however, including his rationale for reversing ALJ Nockov. See A66-67.

For ICPA purposes, Glorioso's contemporaneous reaction was even more revealing. He wrote an email describing the OEIG Complaint as: "stating staff members *particularly the Executive Director* and the Chief Hearing Officer sought a desired result based upon political bias." A123-24 (emphasis added). As the Dissent noted, other PTAB emails demonstrated that Waggoner was not some rogue actor but compliantly drafting for Glorioso's approval. For example, Glorioso sent Waggoner an "***edited version of the Trump Tower case***" on November 12, 2019, to which Waggoner replied "***Okay. I will make the changes***." See A121-22. To cover up his supervisory role, however, Glorioso abused his position to deny Novak's FOIA request for the OEIG Complaint, PTAB docket and emails -- inadvertently confirming an investigation by citing exemption Section 1(n) for a "public body's adjudication of employee grievances or disciplinary cases." A88, A104. (Novak Decl., ¶¶10-11); see also A5 (Op., ¶14), A31-32 (Dissent, ¶105). Glorioso's attempt to cover his tracks by destroying this evidence prompted PTAB to remove him and ban him from future employment. [5]

The "gist" always was about the Governor's promise, as reported, to thoroughly investigate Glorioso due to "allegations of political motivations improperly driving the decision making." Sun-Times did not precipitously publish on the anonymous tip but pursued the story until it obtained the Governor's promise to "to get to the bottom" of the Whistleblower's allegations. To provide background for the Governor's promise, the Sun-Times necessarily distilled the multipage OEIG Complaint "that launched the investigation" down to a few generalizations. Ironically, to ensure readers would know it took "no position on

[5] The Court might consider why, if the OEIG Complaint, emails, and redacted portions of the Final Report benefitted Glorioso, he took such unusual pains to keep them out of the record.

its outcome" (Resp. at 21), Sun-Times used conditional language and even softened the Whistleblower's imperatives ("told" and "directive") against Glorioso with subjective and permissive verbs ("pressured" and "pushed") that allowed for legitimate persuasion. *Audition Div., Ltd. v. Better Bus. Bureau of Metro. Chicago, Inc.*, 120 Ill. App. 3d 254, 257–58 (1st Dist. 1983) (verb "pressured" neither libelous *per se* or *per quod*).

Finally, Sun-Times' reporting conformed to the OEIG Complaint by explicitly allowing for *multiple* actors besides Glorioso. Grammatically, there must be subordinates for "Glorioso's directive" to "push" (and per the OEIG Complaint (A97), these witnesses worked with Glorioso in Des Plaines rather than with Waggoner in Springfield) and the Governor's reference to "driving" echoed the Whistleblower's allegation that the executive director delegated drafting to staff. (Although, as noted above by the Dissent, the surviving PTAB records documented Glorioso's intimate supervision of drafting and timing of the rewrite. A31-32 (Dissent, ¶105)). Of course, the conspicuous distinction the Response avoids is that Waggoner was not investigated. Ironically, were Glorioso editing the Sun-Times to falsely portray Waggoner as under investigation, it would be Waggoner complaining of defamation.

In sum, Sun-Times correctly understood that Governor Pritzker meant "Glorioso's directive" when he promised to investigate "allegations of improper motives *driving* the decision making." A107 (emph. added). Glorioso nevertheless sued, initially denying he was under investigation and now blaming staff for following his "directive." As the Dissent recognized, neither theory of the case withstood a fair reading of the OEIG Complaint and ultimately both were conclusively disproved by the Final Report.

II. THE ICPA SHOULD BE CONSTRUED TO EFFECTUATE THE LEGISLATURE'S INTENT TO ENCOURAGE INVESTIGATIVE REPORTING INTO OFFICIAL CONDUCT

Ignoring the Dissent's contention that appellate courts "have improperly narrowed the Act contrary to its purpose" (A26 (Dissent, ¶88)), the Response argues that "if the ICPA is to be broadly expanded, as Defendants and Amici urge, the Illinois Legislature, not this Court, must act." Resp. at 26-27. Yet the Legislature had already decided for expansive coverage and "allowing meritless claims to proceed permits a plaintiff to engage in the abuse the Act sought to avoid." A25-26 (Dissent, ¶85).

Because the Legislature intended broad immunity, Sun-Times wholeheartedly endorses the Response's acknowledgment that this Court should enforce that intent liberally when public officials "SLAPP" newspapers. As the Dissent explains, nothing in the ICPA's expedited decision process requires proof that the SLAPP is "meritless and retaliatory," nor did it exempt political appointees or shift proving their respective motives to defendants. A23-26 (Dissent, ¶¶75-88). Public policy therefore favors clarifying *Sandholm* and reversing the Majority consistent with the Legislature's intent. [6]

As matters stand, the appellate court went astray by placing additional, judicially dispositive, fingers on the scale. A23-26 (Dissent, ¶¶75-88). The Dissent sought a more nuanced path, at least in the arena where the power imbalance favors public officials. Cf. *Nat'l Rifle Ass'n of Am. v. Vullo*, 144 S. Ct. 1316, 1322 (2024) ("Government officials

[6] Amici and some commentators fear *Sandholm's* ambiguities allowed courts to reduce the ICPA to a virtual dead letter. See Berman, et al., *The Rapid Evolution of Illinois's Anti-SLAPP Statute*, COMM. LAW., March 2014, at 26, 28 (2014) ("the Illinois Supreme Court effectively added new language to the [ICPA]…. According to the court's decision in *Sandholm*, the [ICPA] exists only to protect parties from 'meritless, retaliatory suits,' and defendants must additionally prove that the plaintiff filed suit solely in retaliation."); see also Madiar & Sheahan, *Illinois' New Anti-SLAPP Statute*, 96 ILL. BAR J. at 620, 622, 623 (Dec. 2008).

cannot attempt to coerce private parties in order to punish or suppress views that the government disfavors."). The *Sandholm* court's praiseworthy concerns with access to justice were informed by circumstances where parents plausibly defamed a high school coach. In the investigative reporting context, however, encouraging SLAPPs burdens not only speech but also the public's right to know about critical government functions. As the Texas Supreme Court recently observed, *Sandholm*'s considerations do not translate to political assaults on truthful investigative reporting. *Polk County Publishing Company*, 685 S.W.3d 71 (reversing to grant newspaper's anti-SLAPP motion and dismiss a state prosecutor's claim that he was defamed in an article discussing a wrongful murder conviction because "gist" was true).

The Response tries to flip the script by portraying this appeal as seeking to "judicially expand" the ICPA "to immunize media speech generally on matters of public concern." Resp. at 17. Yet, as explained above, even the Majority believes that 735 ILCS 110/15 includes investigative reporting. Taking its anti-press animus a step further, the Response posits that the ICPA "was never intended to serve as an extra layer of speech rights and protections for the benefit of the media." Resp. at 17. But why would the ICPA not protect the "press" – which is explicitly referenced in the First Amendment – from meritless litigation? Nothing in *Wright* or *Sandholm* supports downgrading the press and "the so-called retaliatory test the appellate court has employed is more likely to encourage than discourage SLAPPs." A26 (Dissent, ¶86).

In arguing against Illinois precedent that investigative reporting into government conduct does not qualify as "speech" or "participation in government," Glorioso advocates for a rapidly dwindling and discredited judicial gloss on SLAPP statutes elsewhere. The

textual distinction he draws between anti-SLAPP statutes in other jurisdictions is largely illusory, as demonstrated by developments in the only jurisdictions he discusses, Maine and Massachusetts. Resp. at 26-27. This Court should decline the invitation.

In Maine, *Gaudette v. Mainely Media, LLC,* exemplifies an egregious departure from statutory intent, similar to the Majority opinion below. See 160 A.3d 539, 543-44, n.3 (Me. 2017) The court's false dichotomy that excluded news reports prompted Maine to legislatively reverse the opinion and clarify its intent that anti-SLAPP recourse covers the "[e]xercise of the right of freedom of speech or of the press . . . on a matter of public concern. See 14 M.R.S. § 733(2)(B) (effective Jan. 1, 2025); see also 14 M.R.S. §§ 731 *et seq.* (effective Jan. 1, 2025).

In Massachusetts, the supreme court, from which *Sandholm* took inspiration, recently walked back its complex SLAPP analysis in *Bristol Asphalt v. Rochester Bituminous Products*, 493 Mass. 539 (2024). Compare Resp. at 26, fn.14. The court overturned its controversial 2017 decision that required evaluation of the SLAPP filer's "primary motivating goal" for bringing suit, even though it was more liberal than the "sole" motivation adopted by *Sandholm*. It also held that appellate review of anti-SLAPP decisions will henceforth be *de novo*, not for abuse of discretion. Massachusetts therefore provides an object lesson for abandoning unnecessary judicial qualifiers which altered the legislature's intent.

Other anti-SLAPP statutes which the Response interprets as covering only "speech in furtherance of government participation" instead readily cover good faith reporting on matters of public interest. Compare Resp. at 26, fn. 15 with, *e.g.*, *Moreira-Brown v. Las Vegas Review Journal, Inc.*, 648 F. Supp. 3d 1278, 1287-88 (D. Nev. Jan. 3, 2023) (statute

applies to news article about judicial proceedings because "as the Supreme Court of Nevada has recognized,…'news media acts as an agent of the people to inform the public.'") (cit. omitted) *aff'd,* 2024 WL 1596456 at *2 (9th Cir. Apr. 12, 2024) (the "article was also made in a public forum, as it was authored for and distributed in a newspaper"); *Avid Telecom LLC v. Frankel,* 2023 WL 8234272, at *2 (D. AZ. Nov. 28, 2023) (Arizona statute "extends to the 'right to petition' in any context as well as the 'right of speech, … the press, [and] … to freely associate or … peaceably assemble'") (cit. omitted).

Competing national media centers, such as New York and California recognize the need for effective anti-SLAPP enforcement. New York's recent anti-SLAPP amendments eliminated the "grossly irresponsible manner" exception while requiring *all* plaintiffs to prove constitutional "actual malice." N.Y. Civ. Rights Law §70-a(1)(a). Akin to Illinois Supreme Court Rule 137, New York imposes fees if the plaintiff "commences or continues" a meritless case. *Reeves v. Associated Newspapers, Ltd.,* 210 N.Y.S. 3d 25 (Sup. Ct. App. N.Y. Apr. 9, 2024) (publishers of online news article may request attorney's fees).

Finally, the Response irresponsibly argues for perpetuating errors at the expense of fundamental freedoms. Resp. at 45-46. Although it seeks to pry apart the Dissent and Sun-Times' retaliation analyses, there is little daylight between them. From the start, Sun-Times' Rule 306(a)(9) Petition for Leave to Appeal argued within available precedent:

> Meritlessness alone evidences retaliation. *Herman v. Power Maint.*, 388 Ill. App. 3d 352 (4th Dist. 2009); *Midwest REM. v. Noonan,* 2015 IL App (1st) 132488. It is difficult to imagine a more meritless SLAPP.

See SA32.[7] Sun-Times always argued that retaliation should be subsumed within merit when public officials SLAPP newspapers.

[7] To rebut the Response's waiver contention, Sun-Times attaches its Rule 306(a)(9) Petition in a Supplementary Appendix under Rule 342, cited as "SA."

Supplementary evidence of retaliation supported rather than contradicted this analysis. There is no rational for suffering meritless litigation that chills First Amendment rights but certainly all of *Sandholm's* rubrics for identifying true SLAPPs (whether denominated as "solely", "meritless" and "retaliatory") are met when the false statements appear in the official's pleading rather than the reporting. *Sandholm* also recognizes that initial -- or continued -- meritlessness is not avoided with facile pleadings because defendants may move under section 2-619(a)(9) or for summary judgment with evidence contradicting, *e.g.*, conclusory allegations of falsity, actual malice, and special damages. *Sandholm*, 2012 IL 111443, ¶¶54-56. See also 735 ILCS 110/20.

The Dissent, free of a litigant's constraints, picked up on Sun-Times' argument while proposing a scholarly rationale for this Court to revisit and dispense with redundancies altogether. A22-26 (Dissent, ¶¶73-88). The distinctions may be academic but Sun-Times endorses the Dissent's more efficient and conceptually elegant approach.

III. THE COURT SHOULD ENSURE THAT THE DIVERGENT COMMON LAW PRECEDENTS IN THE MAJORITY OPINION DO NOT PERSIST TO CONFOUND ILLINOIS LAW OF DEFAMATION

This Reply will not dwell further on retaliation and common law defects. *Imperial Apparel* teaches that resolution of those errors are unnecessary if the Sun-Times and Dissent correctly construe the ICPA and First Amendment. 227 Ill.2d at 401-02. For completeness, however, Sun-Times briefly addresses why the Court should ensure that the Majority's divergent strains of law are not perpetuated.

First, appellate precedents are unyielding that a defamation plaintiff's failure to file a counter-affidavit is fatal, especially with respect to actual malice. Appellant's Brief at Argument § III(A). Glorioso's allegations of actual malice are, charitably, opaque. Resp.

at 38-41. Because Glorioso abjured a counter-affidavit, however, Novak's averments, including that "I had no reason to doubt the investigations based on the official statements, actions and information known to me at the time, including the Administration's confirmation that it was investigating 'allegations of political motivations improperly driving the decision making'" must be accepted as true. Compare A89-90 with *Reed v. Northwestern Pub. Co.*, 124 Ill.2d 495 (1988). The Majority casts an unconstitutional pall over investigative reporting by giving officials a free pass to invade the reporter's privilege and evade the ICPA's discovery restrictions. See 735 ILCS 5/8-901 *et seq.* (Illinois' reporter's privilege statute); 735 ILCS 110/20.

Second, Glorioso's conclusory allegation of special damages consisted of inadmissible speculation ultimately negated under section 2-619 by self-inflicted causation. Compare *Anderson v. Vanden Dorpel*, 172 Ill.2d 399 (1996) with Resp. at 42-44. He did not even allege Governor Pritzker read the newspaper's summary of the OEIG Complaint, let alone explain why the Governor would have relied on "hearsay" instead of the source document his investigators vetted for months. Yet, even had Glorioso alleged causation with *particularity* (*Anderson*, 172 Ill.2d at 407-412), the Governor's options were mooted by PTAB's superseding decision to fire and *ban* Glorioso from state employment.

Third, the Response's acknowledgement that "defendants took no position on the outcome" of the *In re Mauro Glorioso* investigation conclusively admits to at least one reasonable innocent construction under *Green v. Rogers*, 234 Ill.2d 478 (2009) as well as under *Goral, supra*, at 7. *Contra* the Response, the Majority's belief that the Articles "could" create "an implication" that Waggoner was as culpable, inherently admits that readers "could" find the Dissent's construction *also* was reasonable. Compare A18 (Op.,

¶59) with *Brennan*, 351 Ill. App. 3d at 968-69. Failure to complete this Court's analysis stands *Green* on its head and threatens to foment confusion among litigants and courts alike.

CONCLUSION

As Justice Hyman recognized, "Allowing this non-meritorious suit to continue accomplishes what the Act was designed to prevent—the wasting of time, resources, and effort by the parties and the courts on unjustifiable and unsustainable claims." A32 (Dissent, ¶107). The Majority's straining to salvage this prototypical SLAPP threatens to extinguish the ICPA and chill all constitutionally protected journalism in Illinois. Sun-Times respectfully requests that this Court adopt the Dissent's reasoning to "reverse [and] grant the motion to dismiss under the Act" (A27 (Dissent, ¶90)) and for such other relief as the Court deems appropriate.

Dated: June 18, 2024

SUN-TIMES MEDIA HOLDINGS, LLC and **TIM NOVAK**,
Appellants,

By: /s/ *Damon E. Dunn*
One of their Attorneys

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No. 130137

IN THE SUPREME COURT OF ILLINOIS

MAURO GLORIOSO, Appellee, v. SUN-TIMES MEDIA HOLDINGS, LLC, and TIM NOVAK, Appellants.	)	On appeal from the Appellate Court of Illinois, First Judicial District Case No. 1-21-1526 There on appeal from the Cook County Judicial Circuit, Cook County, Illinois Case No. 21-L-90

CERTIFICATE OF COMPLIANCE

I certify that the length of the Reply Brief of Appellants conforms to the requirements of Rules 341(a) and (b). The length of this Brief, excluding the pages of 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 nineteen (19) pages.

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NOTICE OF FILING

TO: Phillip J. Zisook
William R. Klein
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300 S. Wacker Drive, Suite 1500
Chicago, IL 60606

PLEASE TAKE NOTICE that on **June 18, 2024**, we electronically filed with the Appellate Court of Illinois for the First Judicial District, the **REPLY BRIEF OF APPELLANTS SUN-TIMES MEDIA HOLDINGS, LLC AND TIM NOVAK**, a copy of which is attached hereto and served upon you.

Dated: June 18, 2024

SUN-TIMES MEDIA HOLDINGS, LLC and **TIM NOVAK**,
Appellants,

By: /s/ *Damon E. Dunn*
One of their Attorneys

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CERTIFICATE OF SERVICE

I, the undersigned attorney for Appellant, after first being duly sworn on oath, depose and certify that a copy of the foregoing **Notice of Filing** and **Reply Brief** were served on the attorney of record as addressed above, **via Odyssey eFileIL and Microsoft Outlook e-mail transmission** as set forth below on June 18, 2024.

/s/ *Damon E. Dunn*

[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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IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAURO GLORIOSO Plaintiff-Respondent, v. SUN-TIMES MEDIA HOLDINGS, LLC, and TIM NOVAK Defendants-Petitioners.	)	On Appeal from the Cook County Judicial Circuit, Cook County, Illinois Case No. 21-L-90

PETITION FOR LEAVE TO APPEAL OF SUN-TIMES MEDIA HOLDINGS, LLC, AND TIM NOVAK PURSUANT TO SUPREME COURT RULE 306(a)(9)

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POINTS AND AUTHORITIES

INTRODUCTION

In this defamation case, the former Executive Director of the Cook County Property Tax Appeal Board ("PTAB") sued over news reports that the Governor of Illinois had decided to investigate and remove him after a whistleblower complained that the Director pushed ALJs to recommend tax refunds for property of a United States President, *i.e.*, Trump Tower Chicago. Government records and the Director's own admissions show that the reports were true and he knew that when he sued. Because this case is a uniquely meritless and abusive SLAPP, or Strategic Lawsuit Against Public Participation, the Defendant Petitioners, Sun-Times Media Holdings, LLC ("STM") and Timothy Novak (collectively, "Sun-Times"), petition this Court pursuant to Illinois Supreme Court Rule 306(a)(9) and 735 ILCS 110 *et seq.* ("ICPA") to accept this appeal and reverse the denial of their Motion To Dismiss Pursuant To The Illinois Citizen's Participation Act or Alternatively Reconsider Denial Of Motion To Dismiss Pursuant To Section 2-619.1. The decision appealed from is a question raised by the pleadings on whether the Defendants' reporting is protected by the ICPA.

On January 5, 2021, Plaintiff Mauro Glorioso ("Plaintiff" or "Glorioso"), the fired Executive Director, sued after Sun-Times reported official investigations into "whether" Glorioso "pressured" his staff to reduce property taxes on Trump Tower for political reasons. Glorioso alleged, *inter alia*, Sun-Times misrepresented the whistleblower's complaint to the Office of the Inspector General ("OEIG Complaint"), even though it also quoted confirmation by Governor Pritzker's Communication Director. (S.R. 8-9; 11). Glorioso's pleadings did not attach the OEIG Complaint, which explicitly alleged Glorioso

"told" his Chief ALJ to pull a draft and gave a "directive" to reduce Trump Tower Chicago's tax assessment for "political reasons."

Consequently, Sun-Times had to submit the Declaration of Tim Novak attaching the OEIG Complaint with the confirming email from Gov. Pritzker's spokesperson and Glorioso's official emails mirroring the Sun-Times's report. The Circuit Court denied the Motion to Dismiss. Sun-Times moved for reconsideration and judgment under the ICPA, arguing that Glorioso's lawsuit was a prohibited ("SLAPP") based on the unrebutted Novak Declaration and The Executive Ethics Commission Of The State of Illinois published Redacted Version Of OEIG Final Report for Case #19-02400 *In Re: Mauro Glorioso* ("Final Report"), which established the investigation and grounds for Glorioso's removal. (S.R. 159; 303). The Circuit Court nevertheless entered an order denying reconsideration and ICPA relief and ordered the case to proceed. (A 1).

STATEMENT OF THE ISSUES FOR REVIEW

Whether the Circuit Court erred in denying the Motion to Dismiss under the Illinois Citizen Participation Act?

STATEMENT OF JURISDICTION

This Court has jurisdiction pursuant to **Supreme Court Rule 306(a)(9)**, which permits a defendant to file a petition for leave to appeal "from an order of the circuit court denying a motion to dispose under the Citizen Participation Act (735 ILCS 110/1 *et seq.*)." The Circuit Court issued an order which denied the Sun-Times' Motion to Dismiss under the Citizen Participation Act on October 29, 2021. (A 1).

STATUTES AT ISSUE (EXCERPTED)

(735 ILCS 110/1)
Sec. 1. Short title. This Act may be cited as the Citizen Participation Act.

(735 ILCS 110/5)

Sec. 5. Public policy. Pursuant to the fundamental philosophy of the American constitutional form of government, it is declared to be the public policy of the State of Illinois that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence. The information, reports, opinions, claims, arguments, and other expressions provided by citizens are vital to effective law enforcement, the operation of government, the making of public policy and decisions, and the continuation of representative democracy. The laws, courts, and other agencies of this State must provide the utmost protection for the free exercise of these rights of petition, speech, association, and government participation.

Civil actions for money damages have been filed against citizens and organizations of this State as a result of their valid exercise of their constitutional rights to petition, speak freely, associate freely, and otherwise participate in and communicate with government. There has been a disturbing increase in lawsuits termed "Strategic Lawsuits Against Public Participation" in government or "SLAPPs" as they are popularly called.

The threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights. This abuse of the judicial process can and has been used as a means of intimidating, harassing, or punishing citizens and organizations for involving themselves in public affairs.

It is in the public interest and it is the purpose of this Act to strike a balance between the rights of persons to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, associate freely, and otherwise participate in government; to protect and encourage public participation in government to the maximum extent permitted by law; to establish an efficient process for identification and adjudication of SLAPPs; and to provide for attorney's fees and costs to prevailing movants.

(735 ILCS 110/10)

Sec. 10. Definitions. In this Act:

"Government" includes a branch, department, agency, instrumentality, official, employee, agent, or other person acting under color of law of the United States, a state, a subdivision of a state, or another public authority including the electorate.

"Person" includes any individual, corporation, association, organization, partnership, 2 or more persons having a joint or common interest, or other legal entity.

"Judicial claim" or "claim" include any lawsuit, cause of action, claim, cross-claim, counterclaim, or other judicial pleading or filing alleging injury.

"Motion" includes any motion to dismiss, for summary judgment, or to strike, or any other judicial pleading filed to dispose of a judicial claim.

"Moving party" means any person on whose behalf a motion described in subsection (a) of Section 20 is filed seeking dismissal of a judicial claim.

"Responding party" means any person against whom a motion described in subsection (a) of Section 20 is filed.

(735 ILCS 110/15)

Sec. 15. Applicability. This Act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government.

Acts in furtherance of the constitutional rights to petition, speech, association, and participation in government are immune from liability, regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.

(735 ILCS 110/20)
Sec. 20. Motion procedure and standards.

(a) On the filing of any motion as described in Section 15, a hearing and decision on the motion must occur within 90 days after notice of the motion is given to the respondent. An appellate court shall expedite any appeal or other writ, whether interlocutory or not, from a trial court order denying that motion or from a trial court's failure to rule on that motion within 90 days after that trial court order or failure to rule.

(b) Discovery shall be suspended pending a decision on the motion. However, discovery may be taken, upon leave of court for good cause shown, on the issue of whether the movants acts are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.

(c) The court shall grant the motion and dismiss the judicial claim unless the court finds that the responding party has produced clear and convincing evidence that the acts of the moving party are not immunized from, or are not in furtherance of acts immunized from, liability by this Act.

(735 ILCS 110/25)
Sec. 25. Attorney's fees and costs. The court shall award a moving party who prevails in a motion under this Act reasonable attorney's fees and costs incurred in connection with the motion.

(735 ILCS 110/30)
Sec. 30. Construction of Act.

(a) Nothing in this Act shall limit or preclude any rights the moving party may have under any other constitutional, statutory, case or common law, or rule provisions.

(b) This Act shall be construed liberally to effectuate its purposes and intent fully.

STATEMENT OF FACTS

This case was filed after Governor Pritzker replaced Glorioso with Michael O'Malley as Executive Director and General Counsel of PTAB but before the Final Report of *In Re Mauro Glorioso* was published. What marks it as a SLAPP is that Glorioso: 1) misrepresented the OEIG Complaint, 2) falsely alleged he was not under investigation for

political meddling as reported, and 3) concealed that he was removed for illegally destroying official records instead of Sun-Times' reporting the OEIG investigation.

I. OEIG investigates whether Glorioso issued a political directive

In 2019, an anonymous whistleblower complaint submitted to OEIG ("OEIG Complaint") named Glorioso and various PTAB staff as committing:

> Prohibited political activities and conflicts of interest under the Ethics Act (5 ILCS 430/5-5). Unethical political influence and dishonesty under ALJ Code of Professional Conduct (Exec. Order 2016-06). Unethical violations of attorney Code of Professional Conduct (S. Ct. Rules. Art. VIII).

(S.R. 179). The OEIG Complaint attached a "three page statement of prohibited political activity, conflicts of interest and unethical acts by attorneys; and two-page Case History for PTAB docket No. 11-24443," the PTAB docket number concerning the Trump Tower tax appeal. With respect to Glorioso, the whistleblower alleged:

> Glorioso told Waggoner he wanted a large reduction in the assessment because the taxpayer/owner of Trump Tower Chicago was the President of The United States;" that Waggoner then told Nockov that he should withdraw his written decision and rewrite it to give a large assessment reduction; and that Waggoner told Nockov that his reason for wanting a large reduction was because the President was the owner and to "Make America Great Again".

(S.R. 178). It further alleged that Chief ALJ Waggoner subsequently "found the property warranted *a large assessment reduction of many millions of dollars consistent with Glorioso's directive*. (emph. added). *Id.*

The Complaint's statement also alleged (page 3) that the reversal constituted: "prohibited unethical political activities and conflicts of interest perpetrated by . . . Glorioso"; that the large reduction was for "political reasons"; and Glorioso "participated in this scheme." (S.R. 178-79). The OEIG Complaint requested an

investigation of Glorioso, among others. (S.R. 179). Accordingly, OEIG opened *In Re: Mauro Glorioso*, Case #19-02400 in 2019. (S.R. 310).

II. After official confirmation, Sun-Times reported the investigation

On or about December 23, 2019, an anonymous source delivered a copy of the OEIG Complaint to investigative reporter Novak. (S.R. 172). Novak served FOIA requests on PTAB relating to the adjudication of the Trump Tower appeal to establish if there was an official investigation. On or about January 21, 2020, Glorioso participated in denying those FOIA requests and later declined requests for comment. (S.R. 167).

On January 29, 2020, however, Emily Bittner, in her capacity as Communication Director for the Governor of Illinois, emailed the following statement to Novak:

> The administration is determined to get to the bottom of this situation and will insure a *thorough investigation* is conducted. PTAB should take no action until an investigation is complete. In general, it would be entirely inappropriate for a legal decision on a property tax appeal to be impacted by *any of the conduct alleged in this complaint, including the allegations of political motivations improperly driving the decision making*. (emph. added).

(S.R. 186). With official confirmation of a "thorough investigation" into "allegations of political motivations improperly driving the decision making," Sun-Times quoted Bittner to report an investigation into the OEIG Complaint in a February, 2020 article headlined "*President's Chicago tax appeal on Trump Tower is under investigation.*" It reported "investigations that center on *whether* a Republican state official pressured his staff to cut the president a break." (S.R. 29) (emphasis added).

Eight months later, in October, 2020, Sun-Times reported that the Governor "is dumping an Illinois official who's under investigation for trying to force a state agency" to give the President a refund. (S.R. 41). It reported Governor Pritzker replaced Glorioso with

O'Malley and, to confirm the investigation was ongoing, quoted PTAB's statement that the agency was waiting "until the OEIG has completed its investigation [and will] not discuss the merits until such time." (S.R. 44). As background, it reported one ALJ initially denied the refund but chief ALJ Waggoner recommended refunding over $1million dollars because the property "was assessed too high" due to vacant store fronts. *Id.*

All of Sun-Times reporting emphasized, in headlines, subheadings, and text, that it was reporting an "investigation" into "whether" Glorioso committed the acts alleged in the OEIG Complaint. All articles quoted official sources confirming the investigation still was underway and not finished. Sun-Times reported that Glorioso did not respond to messages seeking comment. (S.R. 32; 44).

III. Glorioso sues, claiming false reports cost him his position

On January 5, 2021, Glorioso sued Sun-Times and Novak, alleging defamation *per quod* (Counts I and II), defamation *per se* (Counts III and IV), false light invasion of privacy (Counts V-VIII), and intentional infliction of emotional distress (Count IX). (S.R. 1-26). He claimed there was "no allegation in the [OEIG Complaint] that Glorioso directed that a legal decision on the Trump Tower property tax appeal be driven by political motivations rather than the merits of the case." *Id.* ¶11-17. Glorioso's pleading did *not* attach the OEIG Complaint, which had literally accused him of issuing a "directive" to Waggoner that "he wanted a large reduction in the assessment because the taxpayer/owner of Trump Tower Chicago was the President of The United States." (S.R. 178).

Sun-Times moved to dismiss pursuant to Section 2-619.1 (S.R. 52), supported by the Declaration of Novak, which included the OEIG Complaint and Glorioso's February 8, 2020 email to PTAB which expressly agreed with Sun-Times that the OEIG Complaint

""stat[ed] staff members *particularly the Executive Director . . . sought a desired result based upon political bias*." (S.R. 202-03) (emph. added). Novak also attached FOIA'd emails PTAB had produced *after* publication that confirmed Glorioso ordered, oversaw, reviewed, edited and approved the drafts that Waggoner prepared pursuant to his "directive." (S.R. 193-201). Novak's Declaration averred that he did not (and still does not) harbor any doubts as to the truth of his reporting. (S.R. 168-69).

Although Glorioso did not file a counter-affidavit, the Circuit Court entered a written order denying Sun-Times' motion, except for dismissing the claim for Intentional Infliction of Emotional Distress (Count IX) ("MTD Order"). (S.R. 142). The MTD Order did not address Novak's unrebutted Declaration, or credit Glorioso's allegation that the OEIG Complaint did not allege political motives, but instead independently reasoned that "a reasonable jury could find the defendants exaggerated the OEIG Complaint's allegations of the plaintiff's involvement in the scheme." Because the MTD Order did not identify a false fact, Defendants moved for reconsideration and judgment in their favor under the ICPA, contending that the lawsuit was a meritless and retaliatory SLAPP (S.R. 159 (Motion); S.R. 204 (Supporting Memorandum)). The ICPA Motion again submitted the Novak Declaration and explained that the Circuit Court could not salvage Glorioso's lawsuit without identifying a false fact in the reporting. (S.R. 214 – 218).

IV. *In re Mauro Glorioso* Final Report reveals why Glorioso was removed

Days after briefing closed, The Executive Ethics Commission Of The State of Illinois published a Redacted Version Of OEIG Final Report for Case #19-02400 *In Re: Mauro Glorioso* (the "Final Report"), having denied Glorioso's request not to publish. (S.R. 310). The Final Report confirmed Glorioso was under investigation and he had

averred he was leaving "due to the fact the Governor desired a change and wanted to go in a different direction" with no mention of the February 9, 2020 article. (S.R. 347, ¶ 16).

More importantly, the Final Report revealed why "access to his [Glorioso's] PTAB email and other PTAB systems was terminated on October 14, 2020, and he was removed from the office". OEIG found Glorioso "violated PTAB policy, directives, and State law relating to the maintenance of records by deleting PTAB files and emails in October 2020." (S.R. 321). OEIG recommended Glorioso not be rehired by the State of Illinois and PTAB agreed. *Id.*; (S.R. 324). Significantly, Glorioso started illegally deleting Trump Tower records only days after receiving Novak's September 30, 2020 FOIA request.

VII. The Circuit Court denies relief based on "implications"

Defendants filed a motion to supplement the record with the Final Report (S.R. 303) but it had no effect on the Circuit Court, which denied the ICPA Motion on October 29, 2021 (the "ICPA Order") (S.R. 361). The ICPA Order again reasoned the reporting could have downplayed Glorioso's role relative to his staff because "the implication to be drawn from defendants' articles – specifically, that plaintiff was the architect of the scheme or the primary target of the investigation." (S.R. 364). The ICPA Order did not acknowledge Novak's Declaration attaching the OEIG Complaint alleging Glorioso's "directive", the Bittner email confirming an investigation into all allegations, and Glorioso's PTAB email that the investigation focused "particularly" on his political motivations, or the Final Report confirming OEIG's *In Re Gloroso* investigation.

LEGAL STANDARD FOR ICPA APPEALS

Consistent with Legislature's mandate for expedited resolution of First Amendment questions, Rule 306(a)(9) authorizes petitions for interlocutory appeals from orders

denying relief under the ICPA. *See also* 735 ILCS 110/20 ("an appellate court shall expedite any appeal or other writ, whether interlocutory or not, from a Circuit court order denying [an ICPA] motion"). Motions for judgment under the ICPA can be filed at any point in a case because the ICPA permits "any motion to dismiss, for summary judgment, or to strike, or any other judicial pleading filed to dispose of a judicial claim," 735 ILCS 110/10, and "applies to any motion to dispose of a claim in a judicial proceeding." 110/15.

Whether the ICPA immunizes a defendant from suit is a question of statutory construction that is reviewed *de novo. Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 31; *Wright Dev. Grp. v. Walsh*, 238 Ill. 2d 620, 634 (2010) ("the trial court's denial of Walsh's [ICPA] motion was based upon an interpretation of the Act. Accordingly, because a question of law is presented, we apply the de novo standard of review.").

The ICPA mandates dismissal of "Strategic Lawsuits Against Public Participation" because "[t]he threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights." 735 ILCS 110/5. The Legislature determined that, to counter SLAPPs, "the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence." *Id.* It therefore explicitly protects "information" and "reports" (735 ILCS 110/5) and mandates that its scope "be construed liberally to effectuate its purposes and intent fully." 735 ILCS 110/30(b). See also *Wright Dev. Grp.*, 238 Ill. 2d at 639; *Shoreline Towers Condo. Ass'n v. Gassman*, 404 Ill. App. 3d 1013, 1022 (1st Dist. 2010).

"Plaintiffs in SLAPP suits do not intend to win but rather to chill a defendant's speech or protest activity and discourage opposition by others through delay, expense, and

distraction." *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 34. Accordingly, judgment for the defendant under the ICPA is appropriate if: "(1) the defendants' acts were in furtherance of their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action; (2) the plaintiffs' claims are solely based on, related to, or in response to the defendants' 'acts in furtherance'; and (3) the plaintiffs fail to produce clear and convincing evidence that the defendants' acts were not genuinely aimed at solely procuring favorable government action." *Goral*, 2014 IL App (1st) 133236, ¶ 34 (affirming ICPA dismissal of politician's claims against blogger that questioned his eligibility because blog was true or subject to innocent construction).

Reporting official investigations into "whether" PTAB's Executive Director improperly influenced the Trump Tower appeal is "the kind of activity that the legislature sought to protect". *Goral*, 2014 IL App (1st) 133236, ¶36; *Ryan v. Fox Television*, 2012 IL App (1st) 120005, ¶19 (news report criticizing judges). Thus, the ICPA governs this case. *Satkar Hospitality v. Cook County Bd.*, 2011 WL 4431029, *5 (N.D. Ill. 2011) (ICPA required dismissal of news report concerning tax appeal and assessment of defense fees).

Interlocutory appeals, whether under Rule 306 or 308, are particularly suited to combat efforts to chill the press from exercising First Amendment freedoms on matters of public concern. *Harrison v Sun-Times*, 341 Ill. App. 3d 555 (2003) (interlocutory mandate issued under Rule 308 reversed order denying motion to dismiss on certified questions finding newspaper report was: 1) substantially true; 2) a fair report; and 3) capable of innocent construction); *Hurst v. Capital Cities Media*, 323 Ill. App. 3d 812 (5th Dist. 2001) (certified question under Rule 308). Particularly where the ICPA is implicated, an "appellate court should grant leave to appeal if reasonably debatable grounds, fairly

challenging the order, are presented." *Rollins v. Ellwood*, 141 Ill. 2d 244, 280 (1990) (reversing denial of Rule 306 petition) (int. citations omitted). *See also Allied Am. Ins. Co. v. Culp*, 243 Ill. App. 3d 490, 492 (2d Dist. 1993) (treating notice of appeal as Rule 306 petition and granting petition).

GROUNDS FOR APPEAL

Investigative reporting inherently furthers freedoms protected by the ICPA. *See* 735 ILCS 110/5; 735 ILCS 110/30(b); *Goral*, 2014 IL App (1st) 133236, ¶ 31 (protecting blogger's reporting). As discussed below, it is evident Glorioso did not intend to win – but solely to retaliate and chill speech – because his central allegations rely on blatant falsifications and concealment of evidence. *Sandholm*, 2012 IL 111443, ¶ 34.

Only a cursory comparison of Sun-Times reporting to the OEIG Complaint is needed to reveal this case as a meritless SLAPP because Glorioso's denial that the whistleblower alleged political motives are outright false. The inquiry could stop there, yet, the record contains ample additional evidence of a SLAPP. [1] It is unclear what set of facts possibly could satisfy the Circuit Court, which issued the ICPA Order despite all of the following uncontroverted facts, any one of which signifies meritless retaliation:

1) The OEIG Complaint alleged: "Glorioso *told* Waggoner *he wanted a large reduction* in the assessment *because* the taxpayer/owner of Trump Tower Chicago *was the President of The United States*;" [and Waggoner] "found the property warranted a large assessment reduction of many millions of dollars *consistent with Glorioso's directive*." (S.R. 178)(emph. added). The whistleblower listed Glorioso as a "perpetrat[or]" of the "scheme". (S.R. 179).

[1] False light falls with defamation. See, *e.g.*, *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124, 139 (2007) ("Because the plaintiff's unsuccessful defamation *per se* claim is the basis of his false-light claim, plaintiff's false-light invasion of privacy claim fails as well"); *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶¶ 17-18 (false light claims based on defamation *per quod* require special damages).

2) PTAB FOIA'd emails confirm Glorioso's admitted the OEIG Complaint "stat[ed] staff members *particularly the Executive Director* . . . sought a desired result based upon *political bias*." (S.R. 202-03) (emph. added).

3) PTAB FOIA'd emails confirm Glorioso ordered, oversaw, edited, and approved the drafts his subordinate, Waggoner, prepared pursuant to his "directive." (S.R. 192-201).

4) Gov. Pritzker's Communications Director confirmed: "the administration will insure a thorough investigation is conducted [because] it would be entirely inappropriate for a legal decision on a property tax appeal to be impacted by any of the conduct alleged in this complaint, including the allegations of *political motivations improperly driving the decision making.* (S.R. 186) (emph. added).

5) An official investigation captioned *In Re: Mauro Glorioso*, Case #19-02400, was opened in 2019, with no evidence of other investigations opened for PTAB staff. (S.R. 310).

6) According to Glorioso's Declaration to OEIG, Gov. Pritzker decided to replace Glorioso as Executive Director only because Gov. Pritzker "desired a change and wanted to go in a different direction." (S.R. 347, ¶ 16).

7) Glorioso was removed from office for breaking the law and banned from future employment by the State of Illinois. (S.R. 321; 324).

8) Novak never doubted the truthfulness of his reporting because, as explained in his uncontradicted Declaration, he believed it was consistent with official confirmation of the OEIG Complaint. (S.R. 168-60, ¶¶ 14-16).

9) Glorioso declined Novak's invitation to tell his side of the story before publication and participated in the denial of Novak's FOIA requests. (S.R. 167, ¶¶ 10-11).

Yet, instead of applying the ICPA, or basic Constitutional and Illinois law governing defamation, the Circuit Court theorized – without any basis – that *In Re Glorioso* might have focused instead on *staff's compliance* rather than their Executive Director's "directive." The Circuit Court's questioning such editorial judgment injects a

Constitutional dimension but, more pragmatically, its reasoning frustrates the ICPA by requiring Sun-Times to *dis*prove a hypothetical "exaggeration," apparently by issuing subpoenas to a labyrinth of State officials, investigators and agencies to peel back the relative roles of everyone involved.

I. Glorioso Denied And Concealed The Truth To Enable This SLAPP

Debates on public services receive highest First Amendment protection. *Auriemma v. Rice*, 910 F.2d 1449 (7th Cir.1990) (en banc). This case is inherently meritless because its central premises are demonstrably false: (a) the OEIG Complaint *did* claim Glorioso directed a politically motivated refund, (b) Glorioso *was* investigated and (c) Sun-Times did *not* cause his termination. To shield those verities, Glorioso refused comment on the record, denied FOIA requests to PTAB, omitted the OEIG Complaint from his Complaint at Law in violation of 735 ILCS 5/2-606, and made allegations blatantly contradicted by his own admissions in violation of Rule 137.

The cover-up collapsed completely when the Ethics Commission revealed that, although Gov. Pritzker decided to remove Glorioso for his own reasons, PTAB preemptively fired him because OEIG found he broke State law by destroying official records. No longer can Glorioso conceal the fact of *In Re Glorioso* Case #19-02400. See *Koshinski v. Trame*, 2017 IL App (5th) 150398 (judicial notice under Ill. R. Evid. 201(b)); *May Dep't Stores Co. v. Teamsters Union Loc. No. 743*, 64 Ill. 2d 153, 159 (1976) (judicial notice of public documents); *Village of Riverwoods v. BG Ltd. P'ship*, 276 Ill.App.3d 720, 724 (1st Dist. 1995) (same). It was for lawbreaking, not truthful reporting nine months earlier, that the State banned Glorioso from future employment.

Yet, despite unrefuted facts substantiated by official records of which Glorioso was aware, Glorioso filed and maintains a false pleading. The Circuit Court discarded these facts under the rubric of "fairness" to salvage his case and drive it towards discovery and trial. Instead, the ICPA, informed by the First Amendment, requires dismissal so that this Court should accept the Legislative intent for this interlocutory appeal to dispose of Glorioso's SLAPP. [2]

A. Reporting the Fact of an "Investigation Itself" is Not Defamatory

Fundamentally, this case is a SLAPP because reporting the fact of the "investigation" is not actionable -- regardless of the truth of the charges being investigated. *Global Relief Foundation v. New York Times*, 390 F.3d 973, 987 (7th Cir. 2004) ("We reject [plaintiff's] argument that these media defendants must be able to prove the truth of the government's charges before reporting on the investigation itself."); *Hurst*, 323 Ill. App. 3d 812 (5th Dist. 2001) (on certified question: report that police "interviewed plaintiff" in rape investigation did not impute guilt).

Sun-Times quoted announcements of the investigation by Governor Pritzker's spokesperson in February and PTAB in October and the headlines, subheadings, and text expressly reference an ongoing "investigation" to answer "whether" the Trump Tower refund was politically motivated. *See Brennan v. Kadner*, 351 Ill. App. 3d 963, 969 (1st Dist. 2004) ("The statement was not couched in terms of a factual assertion that plaintiff committed the offense of mail fraud, but as conjecture… The very word 'could' inherently

[2] Although the final report was redacted with respect to the first whistleblower complaint because OEIG determined it was unfounded, the controversy resumed with *Cook County Board of Review v. Illinois Property Tax Appeal Board et al.,* No. 01-21-0799, which also sought appellate review in this court because PTAB's decision was "legally erroneous [and] against the manifest weight of the evidence."

connotes a subjective judgment."). Glorioso's counter-textual theory that Sun-Times "jumped the gun" by pronouncing his guilt ignores both literal text and the rule of construction that news reports must be read in context and their entirety. *Harrison*, 341 Ill. App. 3d at 571 (holding that front page headline cannot be read in isolation from interior content on certified questions of substantial truth and fair report).

B. The ICPA Order Erred by Conjuring "Implications" Contrary to the Record

"[O]ur supreme court … has repeatedly held falsity is an element of the defamation plaintiff's cause of action," *Kapotas v. Better Gov't Ass'n*, 2015 IL App (1st) 140534, ¶34. Glorioso's lawsuit also was meritless from the start because he cannot prove falsity. *Goral*, 2014 IL App (1st) 133236, ¶ 40 ("a claim is "meritless" under the Act if the defendant "disproves some essential element of the [plaintiff's] claim."). Here, none of the reported facts depart from Novak's unrefuted Declaration and exhibits. *Lindahl v. City of Des Plaines*, 210 Ill. App. 3d 281, 299 (1st Dist. 1991) ("the trial court properly dismissed this case because courts must accept an affidavit as true if it is uncontradicted by a counter-affidavit or other evidentiary materials."). The OEIG Complaint, Ms. Bittner's statement, and Glorioso's own emails all confirm the substance of Novak's reporting, even apart from the Final Report. *Wright*, 238 Ill. 2d at 638 (granting ICPA motion where plaintiff could not establish falsity).

Although the Circuit Court had the *In Re Mauro Glorioso* Final Report, it refused to dismiss, inventing its own "implication to be drawn from defendants' articles – specifically, that plaintiff was the architect of the scheme or the primary target of the investigation." Yet all of public records established that, even if the Circuit Court's "implications" might be defamatory, they were true. (S.R. 364).

The Final Report captioned *In Re: Mauro Glorioso*, even as redacted, establishes an investigation focused on Glorioso. Only the Circuit Court seems to think OEIG also opened investigations into ALJ's because no such investigations are even *alleged*. The ICPA Order cites nothing to support this hypothesis, which required the Circuit Court to misread the OEIG Complaint's literal charge that Glorioso personally "told" his subordinate to refund the President's taxes for political reasons, that staff implemented "a large assessment reduction . . . consistent with Glorioso's directive" and Glorioso "perpetrated" the "scheme". It must also ignore Glorioso official emails, which admit the investigation focused "particularly" on him and show him exercising oversight on the revised draft. (S.R. 202-03; S.R. 193-201). Finally, there is no logical rational to even suppose OEIG focused on blaming ALJs for obedience to their Executive Director.

Regardless, it was an error of law to even venture such a finding because hypothetical implications drawn from true facts cannot "be the basis for a defamation claim." *Imperial Apparel v. Cosmo's Designer Direct*, 227 Ill. 2d 381, 397, 401 (2008) (despite embellishments, "because [competitor's appropriation of sales concept] is indisputably true, however, it cannot be the basis for a defamation claim."); *Parker v. Bank of Marion*, 296 Ill.App.3d 1035, 1038 (5th Dist. 1998) (if "words spoken were true" then inferences "cannot be the basis for liability").

Indeed, courts have granted ICPA motions despite similar arguments regarding the fairness of true reporting and hypothetical inferences from true facts. *Brettman v. Breaker Press*, 2020 IL App (2d) 190817-U, ¶ 34 (affirmed ICPA dismissal because statement from partial grand jury transcripts that death threat against official was traced to plaintiff's home was true regardless of who made the threat); *Goral*, 2014 IL App (1st) 133236, ¶ 63

(blogger's bias irrelevant under ICPA when facts reported were true). This is consistent with the Supreme Court's recognition that the content of news reports "should be left to the exercise of journalistic discretion." *Arkansas Educ. Television Comm'n v. Forbes,* 523 U.S. 666, 674 (1998). Accordingly, defamation requires the element of "falsity" rather than judges' subjective evaluations of whether true reports should add more "context" to soften the sting to public officials' reputations. *Kapotas*, 2015 IL App (1st) 140534, ¶ 34.

C. Glorioso was Not Defamed by Sun-Times Not Naming his ALJs

Rather than identifying false facts, the ICPA Order criticized Sun-Times for *not* printing *more* secondary facts, *i.e.,* names and photographs of staffers. (S.R. 365) ("the February articles single out plaintiff by photo, name, the place of origin, and his career history, but only refer to the other individuals named in the OEIG Complaint as 'four members of Glorioso's staff'"). This novel theory of liability (mandating the impugning of underlings) is an error of constitutional magnitude because: "The choice of material to go into a newspaper … whether fair or unfair - constitute[s] the exercise of editorial control and judgment." *Miami Herald v. Tornillo*, 418 U.S. 241, 258 (1974). "[E]diting is what editors are for; and editing is selection and choice of material." *Columbia Broad. Sys. v. Democratic Nat. Comm.,* 412 U.S. 94, 124 (1973) (discouraging "erosion of the journalistic discretion" under repealed FCC "fairness doctrine").

Blame-shifting aside, Illinois does not require "all facts that put the subject in the best light." *Wilkow v Forbes*, 241 F.3d 552, 555-57 (7th Cir. 2001); *Brettman*, 2020 IL App (2d) 190817-U, ¶ 34 (lawsuit was meritless under ICPA even if report was based on partial transcript). Sun-Times should not waste valuable column inches by hanging minions out to dry to mitigate for their Director. *Harrison*, 341 Ill. App. 3d at 572 (courts must be

cognizant of newspaper "space limitations"). Instead, the First Amendment grants broad editorial discretion, forbidding questions of fairness – as opposed to falsity – from reaching juries. *Goral*, 2014 IL App (1st) 133236, ¶ 63 (blogger's bias against politician irrelevant under ICPA). Indeed, compelled publication is a quintessential First Amendment violation. *Janus v. American Federation of State, County & Municipal Employees, Council 31 (AFSCME)*, 6138 S. Ct. 2448, 2460, 2464, 2486 (2018); *Riley v. Nat'l Fed'n of the Blind of N.C., Inc.*, 487 U.S. 781, 796–97 (1988).

A "fish rots from the head" and the public interest peaks with officials who issue "directives" rather than underlings compelled to carry them out. *Contra* the Circuit court's belief that the reports *under*stated the roles of Glorioso's subordinates, they actually may have *over*stated their roles, to Glorioso's benefit. Sun-Times *did* report the roles of Glorioso's subordinates, even naming Waggoner as author of the revised draft (S.R. 44-45), but was unable to report that Glorioso reviewed, edited, and approved Waggoner's work because Glorioso had denied Novak's FOIA request for PTAB records.

D. Substantial Truth and Fair Report Render Secondary "Implications" Immaterial

"[A]n allegedly defamatory statement is not actionable if it is substantially true, even though it is not technically accurate in every detail." *Gist v. Macon County Sheriff's Dept.*, 284 Ill. App. 3d 367, 371 (4th Dist. 1996). The reporting context need only to convey the underlying "gist" or "sting." *Harrison*, 341 Ill. App. 3d at 569 ("kidnapped" conveyed "gist or sting" of charge even if not "technically precise term"); *Seith v. Chicago Sun-Times*, 371 Ill. App. 3d 124 (1st Dist. 2007). Indeed, the rule requires dismissal despite discrepancies, misstatements and outright mistakes. *Gist*, *supra*, (false flyer that plaintiff "'should be considered dangerous' or was a 'most wanted' fugitive … are all secondary

details, immaterial to the substantial truth of the Crime Stoppers flyer"); *Lemons v. Chronicle Pub. Co.*, 253 Ill. App. 3d 888, 890 (4th Dist. 1993) (misreported number of convictions and offense details).

Lacking false facts, the Circuit Court improperly invented "implications" to fault truthful reporting. *Global Relief Found.*, 390 F.3d at 985-89 (report's "sting" that government was investigating "ties to terrorism" held substantially true). Detailing exactly how Glorioso's ALJs followed his orders cannot alter the "gist" that the OEIG Complaint literally accused Glorioso of *telling* Waggoner he wanted a reduction because Trump was president and Waggoner complied with Glorioso's "directive." Regardless, Sun-Times *did* report the involvement of Glorioso's "staff" and that Waggoner authored the revised report (S.R. 30; 44-45). Not only did the Circuit Court fail to identify false statements of fact but its intrusion into editorial judgments on "secondary details" extended to *how many times* Sun-Times should have reported the *obvious* fact that Glorioso did not act alone, and even to selection of photographs. (A 5; A 7 – 8) (suggesting publication of Glorioso's official photograph contributed to defamatory "context").

This substantial truth analysis carries over into the privilege to fairly report on official proceedings as long as the summaries fairly convey the "gist" or "sting" regardless of "whether" the whistleblower's charges were true. *Harrison, supra* at 569. All that is required is textual comparison of the reporting with, for example, Ms. Bittner's statement or the OEIG Complaint. If anything, Sun-Times actually *softened* the "sting" by substituting "pushed" for "directive" and reporting potentially legitimate reasons for replacing ALJ Nockov's draft opinion, including the vacant storefronts at Trump Tower (S.R. 34-35). *Kapotas*, *supra*, at ¶¶60-67.

E. Objectivity: Figurative Verbs are Not Actionable

The First Amendment prohibits defamation actions based on "loose, figurative language." *Imperial*, 227 Ill. 2d at 401 ("inflate prices and compromise quality" dismissed). Even the ICPA Order does not explicitly dispute that verbs like "pushed" and "pressured" are too subjective for defamation. *Green v. Rogers*, 234 Ill. 2d 478, 493 (2009) ("misconduct" and "abuse" held "devoid of any specifics"). They certainly are *less* objective -- and pejorative -- than the whistleblower's accusation that Glorioso gave a "directive." *Vachet v. Central Newspapers*, 816 F.2d 313, 316-17 (7th Cir. 1987) ("Vachet's reputation was no more damaged by what the articles stated than by his admission that he was arrested for harboring a fugitive"). Because the operative verbs are not sufficiently objective to be capable of proof to a jury, there is no viable theory of the case regardless of who or what OEIG investigated in *In Re Mauro Glorioso*.[3]

II. Actual Malice: The ICPA Order Ignored Glorioso's Failure to Counter Novak's Declaration

Glorioso's status as a public official required "clear and convincing" evidence of "actual malice," *i.e,* that *Sun-Times* knew the complained of statements were false or made them with a reckless disregard for their falsity. *St. Amant v. Thomas*, 390 U.S. 727, 731 (1968) (actual malice "is not measured by whether a reasonably prudent man would have

[3] Subjective language is not defamatory regardless of "fairness." *Rose v. Hollinger*, 383 Ill. App. 3d 8, 17-18 (1st Dist. 2008) ("damage to our finances"); *Schivarelli v. CBS*, 333 Ill. App. 3d 755 (1st Dist. 2002) ("cheating the City"); *Coghlan v. Beck*, 2013 IL App (1st) 120891 ("fraud machine" and "theft"); *Matchett v. Chicago Bar*, 125 Ill. App. 3d 1004 (1st Dist. 1984) (unqualified); *Wilkow v. Forbes*, 241 F.3d, 552, 555-56 (7th Cir. 2001) ("unscrupulous business owners" who "robbed creditors"). Precedents recently were collected in *Byron v Brickman*, 2019 IL App (5th) 180208-U, 17-19 ("corrupt" judge lacks a precisely understood meaning).

published, or would have investigated before publishing"). It follows that, under the First Amendment, reporting unproven accusations cannot rise to "actual malice." *Saenz v. Playboy*, 841 F.2d 1309, 1318 (7th Cir. 1988).

Here, the Circuit Court's belief that the scope of *In re Glorioso* was "unclear" necessarily negated actual malice because it was impossible for Novak to recklessly disregard an "unclear" fact. (A 16). Similarly, the Circuit Court's reliance on "implications" contradicted actual malice because the reporter must recklessly disregard a false fact instead of anticipating hypothetical inferences. *Cf. Knight v. Chicago Tribune*, 385 Ill. App. 3d 347 (1st Dist. 2008). Instead, the ICPA Order simply ignored Novak's Declaration averring that he did not harbor any doubts about the truth of his reporting (because it was, literally, true). (S.R. 168-60, ¶¶ 14-16).

Indeed, Glorioso *already knew* he was the "primary target" of *In Re Mauro Glorioso* before alleging the February Article was a "drastic distortion." He had contradicted this allegation in an earlier PTAB email by admitting that the whistleblower "stat[ed] staff members *particularly* the *Executive Director* and the Chief Hearing Officer *sought a desired result* based upon *political bias*." (S.R. 202-03). (emphasis added). Had Glorioso not denied Novak's FOIA request (ironically citing FOIA exceptions for OEIG investigations (S.R. 183)), the February article could have quoted his email *verbatim*. Instead, Novak had to wait until he could *quote* Gov. Pritzker's official acknowledgment that the administration was investigating the whistleblower's allegations of "improper political motivations".

Finally, Glorioso's telling failure to submit a counter-affidavit is dispositive under Illinois law. *Hardiman v. Aslam*, 2019 IL App. 1st 173196, ¶ 31 (defense judgment on

actual malice required because "incumbent" on plaintiff to file counter-affidavit). "If facts within an affidavit dispute the allegations of the complaint and are not contradicted via a counter-affidavit, the court must accept the facts in the affidavit as true." *Harris v. News-Sun*, 269 Ill.App.3d 648, 650 (2d Dist. 1995); *Landon v. Jarvis*, 255 Ill.App.3d 439, 446-47 (1st Dist. 1993) ("If a critical issue of material fact is refuted by affirmative matter, a motion made pursuant to section 2-619(a)(9) may be granted."); *Lindahl*, 210 Ill. App. 3d at 299.

In sum, Glorioso pled no support for his false and conclusory allegation (*cf. Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 43), then utterly failed to rebut Novak's Declaration (or that Glorioso had agreed with Novak before he claimed "drastic distortions"), but the Circuit Court disregarded the First Amendment, ICPA, and controlling Illinois law, opting instead for essentially *per se* liability.

III. Special Damages: Glorioso Was Removed And Banned For Illegally Purging Official Records

Even *after* the Final Report disposed of Glorioso's falsehoods, the ICPA Order credulously accepted speculation that Gov. Pritzker – after announcing the investigation to Sun-Times – replaced Glorioso because Sun-Times *quoted* his Communications Director rather than for his own reasons. Both defamation *per quod* and false light require specific *facts* capable of proving that a false report proximately caused economic "special damages." *Kapotas, supra*, ¶¶ 70-74 ("can no longer expect valid business relationships to form" held "failed to sufficiently allege special damages" citing authorities); *Schaffer v. Zekman*, 196 Ill. App. 3d 727, 733 (1st Dist. 1990) (dismissing defamation *per quod* claims because alleging defamation caused medical expenses "insufficient to plead special damages with particularity"). Here, Glorioso knew (1) the Governor was investigating him

irrespective of news reports and (2) PTAB fired him for illegally destroying official records, but falsely blamed Sun-Times while trying to block the Final Report's publication.

Even putting aside the Final Report, the Circuit Court erred because Glorioso showed "no causal connection between the statement and plaintiff's purported special damages," *i.e.,* getting fired. *Moon v. Liu*, 2015 IL App (1st) 143606, ¶¶14-18 ("there is nothing in the record which would allow a trier of fact to infer that plaintiff's wife filed for divorce *because* defendants claimed that plaintiff threatened to turn in church members to the IRS, rather than any of plaintiff's other 'issues' with the church or alleged misconduct.").[4] Here, the Circuit Court could not even identify the predicate false fact about the OEIG Complaint in the February Article which Gov. Pritzker supposedly believed, notwithstanding his access to the *original* document. See also *Rivera v. Allstate Ins. Co.*, 2021 IL App (1st) 200735, ¶51 (special damages allegations insufficient because "[t]hey do not allege any specific facts to show that a prospective employer refused to hire them because of the alleged defamatory statements.").

The ICPA Order then compounded this error by ignoring the dispositive revelation in the Final Report that Glorioso was banned for lawbreaking and had concealed this dispositive fact. There can be no special damages when, regardless of Gov. Pritzker's reasons, PTAB removed Glorioso from office *before* his departure date, and *banned* him

[4] The ICPA Order never addresses Sun-Times's controlling precedents on speculative special damages. *E.g., Anderson v. Vanden Dorpel*, 172 Ill. 2d, 399 (1996) (interview cancelled after defendant spoke to prospective employer); *Hardiman v Aslam*, 2019 IL App. (1st) 173196 ¶¶27-28 (lost contributions and honorarium); *Kapotas*, 2015 IL App (1st) 140534, ¶73 (cancelled interview); *Maag v. Ill.Coalition for Jobs*, 368 Ill. App. 3d 844, 854 (5th Dist. 2006) (that flyer caused lost retention "too speculative and uncertain to entertain as special damages"); *Taradash v. Adelet/Scott-Fetzer*, 260 Ill. App. 3d. 313, 318 (1st Dist. 1993) (no allegation "clients advised [plaintiff] that their decision not to do business with him was based on the statements made by defendant").

from State employment, because he *illegally* destroyed evidence. (S.R. 321; 324). Glorioso's blatant falsifying of the reason for his removal, similar to his falsifying of the OEIG Complaint's allegation of political motives for his directive to PTAB staff, warrants ICPA dismissal and Rule 137 sanctions.

IV. Innocent Construction: the ICPA Order May Not Premise *Per Se* Liability on Potentially Defamatory Constructions

Glorioso's two *per se* counts are subject to the innocent construction rule, which requires dismissal regardless of whether a defamatory construction is *more* reasonable. *Goral*, *supra*, ¶¶ 46-48 (ICPA dismissal under innocent construction rule); *Green v. Rogers*, 234 Ill. 2d 478, 499 (2009) (innocently construing "misconduct" and child "abuse" assertions against coach); *Kirchner v. Greene*, 294 Ill. App. 3d 672, 679 (1st Dist. 1998) ("Even statements that constitute defamation per se are not actionable where they are reasonably capable of an innocent construction."). The rule forecloses the Circuit Court's reliance on "implications" because a judge instead must "prevent[] a case from getting to the jury if there is any possible reasonable interpretation of the language". *Chicago City Day School v. Wade*, 297 Ill. App. 3d 465, 471 (1st Dist. 1998).

The ICPA Order inexplicably *inverted* this Rule by considering *only* if a defamatory construction was reasonable. (A 6) ("a reasonable jury could find the defendants exaggerated the OEIG Complaint's allegations of the plaintiffs involvement in the scheme."). Yet the Rule *assumes* a "reasonable" defamatory construction – otherwise it would be superfluous. Instead, it instructs that, "[i]]f the complained-of statement may reasonably be innocently interpreted, it cannot be actionable as *per se* defamation." *Seith v. Chicago Sun-Times*, 371 Ill. App. 3d 124, 135 (1st Dist. 2007) (innocently construing alleged "ties" to mobsters). Inherently, the ICPA Order's reasoning admits that "a

reasonable jury [*instead*] could find" an innocent construction, i.e., "that defendants did [*not*] exaggerate the OEIG Complaint".

Here moreover, there are multiple innocent constructions. As noted above, reporting a pending investigation must be innocently construed as an open question. *Goral*, *supra*, ¶¶ 46-48 (ICPA dismissal pursuant to innocent construction rule where blog left "the question of whether any violation of the law occurred to the assessor's office and the State's Attorney."); *Trembois v. Standard Ry. Equip.*, 337 Ill. App. 35, 43-44 (1st Dist. 1949) ("charge that [plaintiff] was arrested on a rape charge does not say that he is guilty of rape."). Courts should presume that "the general public today is capable of evaluating the actual worth of information, gleaned from a complaint or preliminary pleading … the public is now aware that a complaint or other pleadings is one-sided and yet to be proven." *Newell v. Field Enterprises*, 91 Ill. App. 3d 735, 747-48 (1st Dist. 1980).[5]

For similar reasons, conditional grammar ("whether") and subjective verbs ("pressured") are innocently construed. *Goral*, *supra*, ¶¶ 46-48 (ICPA dismissal of "whether any violation of the law occurred"); *Audition Div. v BBB*, 120 Ill. App.3d 254,

[5] The ICPA Order ignored dismissals of more direct accusations. *E.g., Kopotas, supra*, ¶56 ("double dipping" did not "impute that plaintiff lacks ability as a medical professional or violated any rule of medical ethics"); *Vicars-Duncan v. Tactikos*, 2014 IL App (4th) 131064 (that prosecutor bullied and told untruths did not necessarily impute misconduct or lack of integrity in performing legal work); *Coghlan*, 2013 IL App (1st) 120891, ¶67 ("the term [theft] does not necessarily imply the commission of a criminal act."); J*acobson v. Gimbel*, 2013 IL App (2d) 120478 ("helped Stuart kill himself" did not convey "what the defendant meant by the term "'help'"); *Adams v Sussman & Hertzberg*, 292 Ill. App. 3d 30, 47 (1st Dist. 2000) ("something to do with car theft . . . does not state that plaintiff had committed a car theft"); *Harte v. Chicago Council of Lawyers*, 220 Ill. App. 3d 255, 261 (1st Dist. 1991) ("implicated in Operation Greylord" versus "only intimately involved"); *Knafel v. Chicago Sun-Times*, 413 F.3d 637, 641 (7th Cir. 2005) ("prostitute" versus "woman who wants a longer term relationship with a man because of his money").

257-258 (1st Dist. 1983) (dismissed accusation plaintiff "pressures clients to sign contracts"). This is particularly the case where exculpatory facts negate *per se* spin. *Harrison*, 341 Ill. App. 3d at 570 ("inside" text negated alleged defamatory headline's inference). In context, "pressuring" for a refund includes innocently "pushing" ALJ Waggoner's analysis. *Kapotas*, 2015 IL App (1st) 140534, ¶¶ 60-67 (excuses referenced in report must be read in conjunction to require innocent construction of headline). Yet the ICPA Order omits the reported legitimate excuses -- such as vacant retail space. Compare *Green*, 234 Ill. 2d at 501-02 ("multiple assurances" mitigated defamatory inference).

In sum, the ICPA Order got the Rule backwards and its formulation inherently admits to a "reasonable" innocent construction.

V. Glorioso's Conduct Easily Meets Retaliation Criteria Under The ICPA

Notwithstanding the Circuit Court's reasoning, this case is facially retaliatory, as evidenced by Glorioso's "failing to attach to his complaint a document that proved that his claim had no merit." *Tierney v. Vahle*, 304 F.3d 734, 738 (7th Cir. 2002); *see also* 735 ILCS 5/2-606. Meritlessness alone evidences retaliation. *Herman v. Power Maint.*, 388 Ill. App. 3d 352 (4th Dist. 2009); *Midwest REM. v. Noonan*, 2015 IL App (1st) 132488. It is difficult to imagine a more meritless SLAPP.

The core allegation is that Sun-Times "drastically distorted" the OEIG Complaint because the whistleblower did not allege "Glorioso *directed* that a legal decision on the Trump Tower property tax appeal be *driven by political motivations* rather than the merits of the case." (S.R. 9 ¶ 17) (emphasis added). *See also* (S.R. 10-11, ¶ 23). Yet the whistleblower explicitly alleged the ALJ opinion was reversed consistent with "*Glorioso's directive"* to reduce Trump Tower's taxes because Trump "*was the President of The United*

States. (S.R. 179) (emph. added). After Novak's Declaration discredited the "drastic distortion" allegation, Glorioso pivoted to argue Sun-Times accused him of committing the acts under investigation. The Circuit Court did not credit this switch-up, acknowledging Sun-Times reported an "investigation" into "whether" Glorioso did what the whistleblower alleged. *E.g., Global Relief Foundation.*, *supra*; *Goral*, *supra*.

Glorioso's FOIA'd emails demonstrate that he also knew his allegation of actual malice was utterly false, amounting to a violation of Supreme Court Rule 137. *Fremarek v. John Hancock Mut. Life Ins. Co.*, 272 Ill. App. 3d 1067, 1074 (1995) (reversing denial of Rule 137 sanctions because Rule 137's "aim is to restrict litigants who plead frivolous or false matters."); *Hernandez v. Williams,* 258 Ill. App. 3d 318, 319 (3d Dist. 1994) (sanctions justified where attorney did not conduct adequate inquiry into the facts). With respect to special damages, Glorioso also concealed his removal and ban from State employment for violating PTAB policies, directives and State law, which conclusively damaged his reputation for professional integrity and competence as an attorney. (S.R. 321) ("As an attorney with more than 20 years of experience … Mr. Glorioso should have realized the seriousness of the litigation hold.").

Aside from meritless allegations, "there may well be other factors that are relevant." *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶ 23. Here, Glorioso also: misrepresented that the OEIG Complaint did not allege he issued a "directive" when it literally stated that staff withdrew and rewrote the opinion "consistent with Glorioso's directive;" declined comment and denied FOIA requests, concealed (but fortunately failed to eradicate) official emails that he "particularly" was accused of "political bias;" and tried

to block publication of the Final Report's revelation that news reports did not cause his removal and Statewide bar on employment.

This conduct leaves no doubt that Glorioso willfully filed a false Complaint to punish Sun-Times for accurately reporting the OEIG Complaint and to deter reporting on the investigation's outcome. *Midwest REM Enterprises*, 2015 IL App (1st) 132488, ¶ 86 *mod. on denial of reh'g* (Nov. 10, 2015) ("The complete absence of evidence that Ruth said anything untrue to investigators or the court shows both that plaintiffs filed a meritless claim against Ruth and that they named her as a defendant solely to punish her for her participation in government.").

Although not a necessary finding, retaliation also is evident from proximity in time between speech and the lawsuit and an *ad damnun* that does not represent a "good-faith estimate" of damages. *Hytel Group v. Butler*, 405 Ill. App. 3d 113, 126 (2d Dist. 2010) (4 months signified retaliation); *Goral, supra,* ¶54 (3½ months). Here, Glorioso sued *after* he *knew* PTAB removed him from office *for breaking the law*. Yet he prayed for *punitive* damages without substantiation and knowing that his own official emails admitted Sun-Times got it exactly right. *Bloomfield v. Retail Credit*, 14 Ill. App. 3d 158, 170 (1st Dist. 1973) ("Substantial damages are not presumed" even for defamation *per se*).[6]

[6] Section 5/2-604 limits *ad damnums* "to the minimum extent necessary to comply with the circuit rules" but no ISCR 222(b) affidavit was filed in support. See also Section 5/2-604 (limiting personal injury *ad damnums* "to the minimum extent necessary to comply with the circuit rules of assignment where the claim was filed."); Cir. Ct. Cook Co. G.O. 2.1(a)(1)(i) (instructing plaintiffs to allege a general prayer for relief requesting "damages in excess of $30,000.").

CONCLUSION

Glorioso's Complaint is the prototypical SLAPP suit, although it is rare to find any case so blatantly meritless and retaliatory. The Circuit court's straining for implications and exaggerations to salvage the case only encourages SLAPPs to punish Constitutionally-protected journalism, diverting the time and resources of the press, the court system, and government officials enmeshed in defending their investigation of this disgruntled public official. Accordingly, Petitioners respectfully request that this Court grant leave to appeal and reverse the ICPA Order.

Dated: November 29, 2021

SUN-TIMES MEDIA HOLDINGS, LLC, and **TIMOTHY NOVAK,**
Defendants-Petitioners

By: /s/ Damon E. Dunn
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Appellate Court Case No.: _____

IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAURO GLORIOSO Plaintiff-Respondent, v. SUN-TIMES MEDIA HOLDINGS, LLC, and TIM NOVAK Defendants-Petitioners.	)	On Appeal from the Cook County Judicial Circuit, Cook County, Illinois Circuit Court Case No. 21-L-90

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