
IN THE SUPREME COURT OF ILLINOIS

MAURO GLORIOSO	)	On Appeal
	)	from the Appellate Court of Illinois,
Appellee,	)	First District, No. 1-21-1526
)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of Cook County,
SUN-TIMES MEDIA HOLDINGS, LLC,	)	Illinois, Case No. 2021-L-000090
and TIM NOVAK,)	
	)	Honorable Judge Patricia O'Brien
Appellants.)	Sheahan, Judge Presiding

BRIEF AND ARGUMENT OF APPELLANTS

ORAL ARGUMENT REQUESTED

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NATURE OF THE ACTION AND JUDGMENT APPEALED FROM

The underlying action was brought by Plaintiff-Appellee MAURO GLORIOSO, former Executive Director of the Cook County Property Tax Appeal Board (PTAB), against Defendants-Appellants, SUN-TIMES MEDIA HOLDINGS, LLC, and TIMOTHY NOVAK (collectively “Sun-Times” or “Defendants”), for defamation based upon two newspaper articles that reported on Governor Pritzker’s promise to investigate “political influence” involving the tax appeal by Trump Tower in Chicago. Sun-Times appeals from the September 18, 2023, Modified Opinion of the First District Appellate Court, *Glorioso v. Sun-Times Media Holdings, LLC*, 2023 IL App (1st) 211526, affirming the circuit court’s order denying Defendants’ special motion to dismiss under the Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.* (“ICPA”) and request reversal in accordance with the First Amendment, Illinois common law, and with Justice Hyman’s Dissent requesting “clarification and correction” of the Majority’s interpretation of the ICPA.

STATEMENT OF THE ISSUES AND QUESTIONS PRESENTED

1. Whether the appellate court erroneously required news media defendants to prove under the ICPA that a public official’s defamation case is both meritless and retaliatory.
2. Whether the ICPA protects news reporting relating to official investigations of unelected political appointees.
3. Whether the uncontested record demonstrated that an investigated official’s litigation against a daily newspaper and its investigative reporter was a Strategic Lawsuit Against Public Participation (SLAPP).

4. Whether the First Amendment and Illinois law permit political appointees to sue for defamation based on potential implications a reader or listener might draw from factual and accurate reporting.

5. Whether the law of actual malice, special damages, and innocent construction render this defamation case by a political appointee against news media meritless under the ICPA.

STATEMENT OF JURISDICTION

On November 29, 2021, Sun-Times filed its petition for appeal pursuant to 735 ILCS 110/20(a) from the circuit court of Cook County's order on October 29, 2021, denying relief under the ICPA. On May 8, 2023, the court of appeals issued an Opinion, without entertaining oral argument under Rule 352, affirming the circuit court. On May 29, 2023, Sun-Times filed a Petition For Rehearing. On September 18, 2023, the appellate court issued a Modified Opinion ("Op.") with a dissent by Justice Hyman ("Dissent"). A1-33.¹ On January 24, 2024, this Court allowed the Petition For Leave to appeal under Rule 315.

STATUTES INVOLVED

Pursuant to Rule 341(h)(5), Sun-Times includes the following statutes and constitutional provisions pertinent to this matter in the Appendix: Illinois Citizen Participation Act, 735 ILCS 110/1, *et seq.*, The Constitution of the United States, Amendment 1. A166-69.

¹ Citations to the Appendix are abbreviated with the prefix "A." Citations to "S.R." refer to the Supporting Record, filed in the Appellate Court on November 29, 2021.

STANDARD OF REVIEW

Application of the ICPA is a question of statutory construction that is reviewed *de novo*. *Wright Dev. Grp., LLC 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.”). A fact submitted by a defendant’s affidavit or declaration is deemed admitted absent plaintiff’s counter-affidavit. *Zedela v. Gibson*, 165 Ill.2d 181, 185 (1995); see also *Andrews v. At World Properties, LLC*, 2023 IL App (1st) 1220950.

INTRODUCTION

“Speech on matters of public concern,” that “is a subject of legitimate news interest,” is “at the heart of the First Amendment.” *Snyder v. Phelps*, 562 U.S. 443, 451-53 (2011) (citations omitted and cleaned up). As Justice Hyman’s Dissent in this case recounts, Illinois historically has been in the forefront of championing these foundational rights, both by fostering a “free and inquisitive press” and by deterring Strategic Lawsuits Against Public Participation, or SLAPPs:

From the inception of our democracy, one of the most vital roles fulfilled by the press has been as the people’s lantern into the darkness of government affairs. Given this institutional distinction, anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes protect socially beneficial speech, especially a free and inquisitive press. The General Assembly intended Illinois’s anti-SLAPP statute, the Citizen’s Participation Act, to subject meritless SLAPPs to summary, expedited dismissal and attorney fees. (Op. (Dissent), ¶71) (A21).

Unfortunately, the majority of the appellate court adopted a course at odds with the General Assembly and this Court, erecting hurdles against enforcement of the ICPA and muddying substantive law. This case -- where a political appointee sued a newspaper because it reported the Governor’s promise to investigate a whistleblower complaint -- exemplifies why the “so-called retaliatory test the appellate court has employed is more likely to encourage than discourage SLAPPs.” *Id.*, ¶86 (A26). As Justice Hyman explained:

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. I believe the law in this area needs clarification and correction by our supreme court. (*id.*, ¶107) (A32)

The Dissent correctly diagnoses the majority’s opinion (“Majority”) as promulgating a new roadmap for disgraced political appointees to intimidate and harass an inquisitive citizenry. Sun-Times therefore asks the Court to reverse the Majority for the reasons stated in the

Dissent and those set forth herein to ensure that “the people’s lantern into the darkness of government affairs” continues to shine.

FACTUAL BACKGROUND

As befits a SLAPP, politics wends through this case. After Mauro Glorioso was removed for misconduct as Executive Director of the Cook County Property Tax Appeal Board (“PTAB”), he sued the Sun-Times daily newspaper and its award-winning “Watchdogs” reporter, Timothy Novak, for defamation. The case was prompted by a Sun-Times report that Governor Pritzker promised an official investigation into a whistleblower’s anonymous complaint filed with the Office of Executive Inspector General (“OEIG”). The OEIG Complaint charged that Glorioso “told” PTAB staff to withdraw an ALJ opinion that rejected Chicago Trump Tower’s tax appeal and rewrite it to recommend a substantial refund consistent with “Glorioso’s directive.” A99.

Glorioso’s Complaint principally alleged the Sun-Times “falsely identified Glorioso as being under investigation for pressuring PTAB staff” when he “was *not under investigation* for making such a ‘recommendation.’” A38, A48, A53 (emph. added). Glorioso alleged he “sustained special damages, to wit, the loss of his employment as Executive Director and General Counsel of PTAB.” A44, A47.

Nine months later, however, both allegations were proved false when the Executive Ethics Commission of The State of Illinois (EEC) released its Final Report for OEIG Case #19-02400, *In Re: Mauro Glorioso* (“Final Report”) on May 25, 2021. A126-38.²

² The Final Report was published on the State’s website at: <https://oeig.illinois.gov/content/dam/soi/en/web/oeig/investigations/documents/investigative-reports/19-02400-glorioso-1-0.pdf>. It is a government record for purposes of judicial notice. *May Dep’t Stores Co. v. Teamsters Union Loc. No. 743*, 64 Ill. 2d 153, 159 (1976); *City of Chicago v. Fed. Nat’l Mortg. Ass’n*, 2017 IL App (1st) 162449 (Recorder of Deeds

Published over Glorioso's objection, the Final Report showed Glorioso knew before he filed his suit that "Sun-Times reported accurately that the OEIG was investigating Glorioso." Op. (Dissent), ¶105 (A31). Moreover, Glorioso also knew that his "loss of employment" actually was because he had deleted official records. Op., ¶20 (A6-7); A134.

I. The OEIG Complaint And Sun-Times' FOIA Efforts

The facts below are taken from the Glorioso's unverified Complaint and its attached Sun-Times' articles, the Declaration of Timothy Novak and exhibits (Novak Decl.), and judicial notice of the Final Report and its exhibits. Glorioso filed no counter-affidavit.

Novak is an award-winning investigative reporter for the *Chicago Sun-Times* daily newspaper. A86.³ He had covered PTAB's Trump Tower appeal while it dragged for over ten years, but the genesis of the two Watchdog articles was an anonymous tip copying him on the Whistleblower's OEIG Complaint. A87-88, A93-102 (Novak Decl., ¶¶3-9; Ex A).

The Whistleblower charged violations of the Ethics Act (5 ILCS 430/5-5), ALJ Code of Professional Conduct (Exec. Order 2016-06), and Code of Professional Conduct (S. Ct. Rules. Art. VIII). The OEIG Complaint attached five pages, described as 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."

website); *Cebertowicz v. Baldwin*, 2017 IL App (4th) 160535 (Department of Corrections website); see also Ill. R. Evid. 201.

³ Novak's recognitions include multiple Chicago Bar Association awards, two Better Government Association George Bliss Awards for Excellence in Investigative Journalism, two George Polk Awards, a National Headliner Award, and the Tom Renner Award. The George Polk Award is the most prestigious national award after the Pulitzer Prize. Novak's first award was for exposing fraud in Chicago's "Hired Truck" program, which led to 49 indictments and the second led to appointment of a special prosecutor and then-Mayor Daley's nephew pleading guilty to manslaughter. A86 (Novak Decl., ¶2).

The gist of the OEIG Complaint was:

shortly after [ALJ] Nockov entered his written decision into PTAB's data base, **Glorioso told** [Chief ALJ] 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."

Nockov confirmed that Waggoner found the property warranted a large assessment reduction of many millions of dollars ***consistent with Glorioso's directive***. However, Nockov confirmed that ***Glorioso decided it was not the right time to publish*** Waggoner's decision. So Waggoner instructed a Springfield employee to withdraw it from the database on May 7, 2019, shown as "rDD." (A99) (emph. added)

Like the Dissent, Novak believed that the OEIG Complaint alone demonstrated that the Sun-Times' "articles do not deviate from fair and accurate reporting on the accusations." Op. (Dissent), ¶102 (A30-31); compare A87-88 (Novak Decl., ¶¶6-9). The Dissent summarized the gist as follows:

In the OEIG complaint, (i) Glorioso told Waggoner he wanted a reduction in the Trump Tower appeal because the property owner was the president, (ii) Waggoner complied with Glorioso's directive, (iii) Glorioso's ALJs followed his orders, and (iv) Glorioso's staff and Waggoner authored a revised report granting the reduction. (Op. (Dissent), ¶102) (A30-31)

Yet Novak did not rely solely on the OEIG Complaint. He followed up with OIEG and PTAB but both "declined comment." A88 (Novak Decl., ¶¶10-11). Glorioso "did not return [his] messages." *Id.* Novak even filed a FOIA request with PTAB only to have Glorioso exercise his official capacity to deny it. *Id.*; Op., ¶14 (A5). Ironically, Glorioso cited exemption Section 1(n) related to a "public body's adjudication of employee grievances or disciplinary cases" as a justification to withhold responsive materials from FOIA production to Novak. A104.

Months later, when PTAB’s new director released the records, “Glorioso’s emails show[ed] he knew he was the focus of the investigation.” Op. (Dissent), ¶105 (A31-32). For example, Glorioso authored a February 8, 2020, email entitled “Press Release” the day after the first Watchdog Article ran in which he agreed that the OEIG Complaint: “was initiated stating staff members *particularly* the *Executive Director* and the Chief Hearing Officer sought a desired result *based upon political bias.*” A124 (emph. added). PTAB emails also confirmed Glorioso supervised and approved Waggoner’s rewrite. Op. (Dissent), ¶105 (A31-32); A108-24.

II. Governor Pritzker’s Statement

Blocked by Glorioso at PTAB, Novak took his enquiries to the office of Governor Pritzker. A107-08. On January 29, 2020, Communication Director Emily Bittner emailed the Governor’s response that:

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.* (Op., ¶16 (A5), A107) (emph. added).

Novak considered this statement “official confirmation of an investigation” leaving him “no reason to doubt that officials were investigating whether Mr. Glorioso gave a ‘directive’ to Chief ALJ Waggoner to provide ‘a large reduction in the assessment’ because the taxpayer/owner was the President.” A89-90 (Novak Decl., ¶14).

III. The February and October 2020 Watchdogs Articles

Armed with the Governor’s promise, Sun-Times published the “The Watchdogs” investigative report as “*Probing Prez’s Chicago Tower Tax appeal*” on February 7, 2020,

headlined “President’s Chicago tax appeal on Trump Tower is under investigation.” It quoted Ms. Bittner and summarized her gist as “*investigations* that *center* on *whether* a Republican state official *pressured* his staff to cut the president a break.” A62, 64 (emph. added). The newspaper used these “colloquialisms to summarize the investigation described by the Administration for our lay readership.” A88-89 (Novak Decl., ¶12).

Eight months later, on October 9, 2020, Sun-Times was able to report that the Governor appointed Michael O’Malley as Executive Director under headline that “Gov Axes Official Who Pushed For \$1M Tax Refund On Trump Tower” and noted in the subhed that Glorioso “is under state investigation over his recommendation.” A82; (Compl. Ex.2(a)). Inside, Sun-Times reported the “administration appreciates Mauro Glorioso’s service to the state of Illinois, and we wish him well in his next endeavor.” A77.

Regarding the tax appeal, Sun-Times quoted PTAB that the Board was waiting “until the OEIG has completed its investigation... and will not discuss the merits of the case until such time” but had “decided that the best course of action is to continue the case.” *Id.* Sun-Times reported that ALJ Simeon Nockov had found Trump “didn’t merit a refund” but a “new report from PTAB’s chief administrative law judge, Steven Waggoner, now says Trump is entitled to refund because the property was over-assessed in 2011” and “points out that none of the government agencies that stand to lose money challenged the appeal that Burke filed for Trump in 2012.” A77-78 (Compl., Ex.2); A89 (Novak Decl., ¶13).

IV. The Complaint and Sun-Times’ 2-619.1 Motion

On January 23, 2021, Glorioso sued Sun-Times for 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). A35-84 (Compl., Exs.1-2(a)). The unverified 97-paragraph Complaint attached copies of Watchdog Articles but not the OEIG Complaint or Final Report. Cf. A35-84.

The gravamen of all 9 counts was a cobbled-together characterization of the Watchdog Articles as having “falsely identified Glorioso as being under investigation for pressuring PTAB staff to grant Trump Towers a real estate reduction in excess of \$1 million based on political loyalty, rather than the merits of the case, to ‘cut the president a break,’ and ‘rejecting PTAB staff’s decision to deny trump any award’ as a consequence of ‘Glorioso’s political motivations’ were ‘improperly driving the decision making.’” A38.

The Complaint admitted “[t]here was a confidential anonymous complaint” (*Id.* (Compl., ¶11) but alleged Sun-Times “dramatically distorted the substance of that complaint as described herein,” primarily because “there was no allegation in the anonymous 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.” A42 (Compl., ¶17) (emph. added). Glorioso’s complaint did not acknowledge anywhere that Whistleblower alleged “prohibited political activity” instigated by “Glorioso’s *directive*.” A99.

Sun-Times filed a Section 2-619.1 motion raising several independent grounds for dismissal, including the First Amendment, inadequate allegations of special damages and actual malice, fair report privilege and the innocent construction rule. Although the circuit court’s May 25, 2021 Order (“Mem. Order”) did not credit Glorioso’s allegation that Sun-Times accused him of committing the acts under investigation, it believed “a reasonable jury could find [the defendants’ articles] exaggerate[d] the scope of the governor’s

investigation and otherwise falsely attribute certain allegations to [Glorioso].” S.R. 152 (Mem. Order, p.11). The circuit court believed “[n]owhere in Bittner’s statement to Novak did she confirm that Glorioso in particular was being investigated or the scope of such an investigation.” S.R. 148. Even though the OEIG Complaint stated that Glorioso “told” Waggoner to change the opinion which he did “consistent with Glorioso’s directive,” the circuit court believed that the Whistleblower did not explicitly state “that Glorioso was in charge of writing or revising [the] decision.” S.R. 149. It therefore dismissed only the count for intentional infliction of emotional distress.

Because Sun-Times still lacked PTAB’s FOIA’d records at that point, it never published that Glorioso was “in charge of writing” the decision, only that there was an investigation into whether he pressured staff to rewrite it for political reasons. A35-84. Further, as the Dissent recognized, the circuit court’s suppositions were wrong on both counts because Glorioso knew Ms. Bittner referred to *In re: Mauro Glorioso* and Glorioso *had* supervised the revised opinion. A31-32 (Op. (Dissent), ¶105); A108-24. Sun-Times therefore moved for reconsideration as well as under the ICPA, contending that the case was a SLAPP. A2 (Op., ¶3); *Sandholm v. Kuecker*, 2012 IL 111443, ¶54 (ICPA immunity “properly raised in a section 2-619 motion to dismiss”). Although the ICPA Motion submitted Novak’s Declaration, Glorioso did not submit a counter-affidavit to support his unverified allegations.

V. The *In Re Glorioso* Final Report

Only days after briefing closed on the ICPA Motion, the EEC published a redacted version of the Final Report in Case #19-02400, *In Re: Mauro Glorioso*. Publication was delayed by Glorioso’s many objections. A141-65; *e.g.*, A141-48 (citing Glorioso’s

“objection,” “suggestions” to obscure his role, and request to “not... publish [the Final] Report, with Mr. Glorioso’s name unredacted.”). Although Glorioso’s objections failed to bury the Final Report entirely, they did delay its release and prompted extensive redactions relating to OEIG’s determination that the allegations were unsubstantiated.

Glorioso never entered his unredacted copy into the record, but the published Final Report and exhibits confirmed investigators interviewed him on September 29, 2020 (A137), before he sued Sun-Times on January 5, 2021. A35. Moreover, Glorioso stated that he was resigning “due to the fact the Governor desired a change and wanted to go in a different direction” without mentioning the Watchdog reports. A163. Finally, before Glorioso’s resignation was effective, PTAB preemptively removed and permanently banned him because “Glorioso violated PTAB policy, directives, and State law relating to the maintenance of records by deleting PTAB files and emails in October 2020 [so that] the OEIG recommends that a copy of this report be placed in Mr. Glorioso’s employment file, and that he not be rehired by the State.” Op. ¶20 (A6-7); *e.g.*, A136-37.

Sun-Times thereupon filed a motion to supplement the record to take judicial notice of the Final Report. S.R. 303-49. It had no effect on the circuit court, which denied the ICPA Motion on October 29, 2021 (the “ICPA Order”). *See* A2 (Op., ¶5). Although no longer disputing that Glorioso, and no one else, was investigated, the court believed “the implication to be drawn from defendants’ articles – specifically, [is] that plaintiff was the architect of the scheme or the primary target of the investigation.” Op. (Dissent), ¶102.

VI. Proceedings in the Appellate Court and Petition For Appeal

On November 29, 2021, Sun-Times filed its Petition for interlocutory appeal pursuant to Rule 306(a)(9). More than 17 months later, the court of appeals entered a Rule

352 order dispensing with oral argument and issued an opinion accepting the circuit court's hypothesis, citing 735 ILCS 5/2-615 pleading leniency inapplicable to defamation law and §2-619 motions.

The Sun-Times moved for rehearing and supplemented its motion with the intervening decision in *Andrews*, 2023 IL App (1st) 1220950, ¶12 (“If the facts within an affidavit dispute the allegations of the complaint and are not contradicted by a counter affidavit, the court must accept the facts in the affidavit as true.”). The court of appeals denied the motion but issued a modified opinion which conceded Glorioso was investigated and then fired for deleting the FOIA's records. Nevertheless, the Majority believed, *inter alia*, that the ICPA required Sun-Times to show Glorioso's case was meritless *and* retaliatory and the ICPA did not necessarily apply to a newspaper's investigative reporting or cover unelected political appointees. Op., ¶53 (A16). It also reiterated the circuit court's view that, “through a combination of omissions (of mentions in the Anonymous Complaint of others' alleged involvement in the scheme to reduce the property tax assessment) and additions (of statements assuming Glorioso's personal involvement and culpability)” that “Sun-Times's reporting could reasonably be read as not fair, accurate, or truthful by creating the implication that Glorioso was more culpable in the alleged activity than the anonymous complaint claimed” in his interactions with staff. Op., ¶¶58-59 (A18).

The Dissent reasoned, *inter alia*, that 1) the Majority's view of the ICPA is erroneous, unworkable, and counterproductive on multiple levels, and 2) the case was “unjustifiable” because the allegation that OEIG did not investigate Glorioso was false, and the “Watchdog” reports accurately summarized the Whistleblower's claim because the

ALJs (who were *not* investigated) were not independent but “followed Glorioso’s orders.” A21-32 (Op. (Dissent), ¶¶70-108).

ARGUMENT

The “Watchdog” reports fulfilled the “basic assumption of our political system that the press will often serve as an important restraint on government.” *Minneapolis Star & Trib. v. Minnesota Com’r of Revenue*, 460 U.S. 575, 585 (1983). The First Amendment consequently ensures that “[t]he 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). In particular, debates over public services receive highest First Amendment protection. *Auriemma v. Rice*, 910 F.2d 1449 (7th Cir.1990) (*en banc*); *Wright Dev. Group v. Walsh*, 238 Ill.2d 620, 636-39 (2010) (ICPA “expressly encompasses exercises of political expression directed at the electorate as well as government officials.”); *Leopold v. Levin*, 45 Ill.2d 434, 440-42 (1970) (“liberty of expression [is] constitutionally assured in a matter of public interest.”).⁴ Thus, well before the advent of the ICPA, the First Amendment charged the judiciary with determining, as a question of law, whether such lawsuits “constitute a forbidden intrusion on the field of free expression.” *Greenbelt Corp. Publ’g v. Bresler*, 398 U.S. 6, 11 (1970). In Illinois, for example, this Court requires defamation complaints to be pled “with a heightened level of

⁴ “[T]he First Amendment’s press and speech clauses greatly restrict the common law where the defendant is a member of the press ... or the subject matter of the supposed libel touches on a matter of public concern. [citation omitted] Where, as here, all of these considerations are present, the constitutional protection of the press reaches its apogee.” *Chapin v. Knight-Ridder, Inc.*, 993 F.2d 1087, 1091–92 (4th Cir. 1993); accord *Newton v. NBC, Inc.*, 930 F.2d 662,686 (9th Cir. 1991) (“Editorial decisions ... are best left to editors, not to judges and juries”); *Janklow v. Newsweek, Inc.*, 788 F.2d 1300, 1306 (8th Cir. 1986) (“Accounts of past events are always selective, and under the First Amendment the decision of what to select must almost always be left to writers and editors.”).

precision and particularity.” *Green v. Rogers*, 234 Ill.2d 478, 495 (2009); *Anderson v. Vanden Dorpel*, 172 Ill.2d 399, 408-12 (1996).

In this case, where a public official sued the press over reporting an official investigation, the Dissent succinctly explained why, “as a matter of law, Glorioso’s complaint fails to state claims for defamation.” Op. (Dissent), ¶102 (A30-31). Irrespective of the OEIG’s eventual findings, Glorioso falsely alleged that he “was not under investigation” and that he was fired due to the Watchdog reports instead of his own misconduct. Compare *Global Relief Found. v. New York Times*, 390 F.3d 973, 987-88 (7th Cir. 2003) (applying Illinois law to “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.”).

Inexplicably, the circuit and appellate courts drew speculative “implications” to keep this case on life support, to the point of suggesting the Watchdog reports should have blamed PTAB staffers who “conspicuously were *not* the subject of the OEIG investigation.” Op. (Dissent), ¶105 (A31-32) (emph. added). It is unclear why the lower courts reverted to editorializing and “considering what implications a reader or listener might draw” from undisputed facts. *Id.*, ¶104; see *Imperial Apparel v. Cosmo’s Designer Direct*, 367 Ill. App. 3d 48 (1st Dist. 2006), *mod. on reh’g, rev’d on other grounds and vacated*, 227 Ill.2d 381 (2008) (appellate court’s defamatory “interpretation” of newspaper advertisement vacated on First Amendment grounds); *Fin. Fiduciaries, LLC v. Gannett Co., Inc.*, 46 F.4th 654, 665-66 (7th Cir. 2022) (rejecting defamation alleging “the article ‘falsely implied that [plaintiff financial adviser] and Fiduciaries had committed criminal

acts” because “what the article did say was substantially true, and this shields Gannett from liability.”).

For reasons articulated by the Dissent and herein, the Opinion perversely encourages SLAPPs and erodes the foundations of the First Amendment by imposing extra-statutory burdens of proof on investigative reporters, exempting political appointees, and indulging in nebulous speculation over unpublished implications. Equally concerning is how the Opinion opens new fronts for suing publishers expected to report on matters of public concern. Not only is it impossible to know when unsaid implications may subject a reporter or advocate to liability, the Opinion also overrode the constitutional “actual malice” requirement, abandoned strictures against speculative special damages, and reverted to “balancing” reasonable constructions. The resulting uncertainties chill the press by encouraging public officials to litigate subjective inferences drawn from objectively accurate facts.

I. This Court Should Correct And Clarify Law That Encourages False Pleadings Against The Press

The Legislature enacted the ICPA to provide “utmost protection” for speech addressing “the operation of government” which must be “encouraged and safeguarded with great diligence.” 735 ILCS 110/5. As conceived, the ICPA “is broader than most anti-SLAPP acts enacted by other states across the country.” *Hammons v. Soc’y of Permanent Cosmetic Professionals*, 2012 IL App (1st) 102644, ¶20. The Legislature believed:

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. [citation omitted]. SLAPPs use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation. (Op. (Dissent), ¶72) (A22) (quoting *Sandholm*, 2012 IL 111443, ¶¶33, 34; *Wright Dev. Group*, 238 Ill.2d at

630).

Yet the Majority’s indulgence of one political appointee’s resentment “is more likely to encourage rather than discourage SLAPPs.” Op. (Dissent), ¶86 (A26).

Until now, investigative reporting into conduct of government presumptively was “the kind of activity that the legislature sought to protect.” *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶¶36, 43-48 (granting ICPA judgment despite allegation that weblog “implied” candidate’s wrongdoing because “the statement leaves the question of whether a crime was committed to government authorities rather than claiming that a crime had in fact occurred.”). The ICPA even lists “information” and “reports” before “opinions” and “arguments” (735 ILCS 110/5) and mandates that this scope must “be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b). This mandate literally includes “reports” by a daily newspaper providing “information” on official investigations.

Yet, the Majority erected hurdles to confound this statutory intent by cementing a “two prong meritless and retaliatory test” that few publishers could satisfy. It further subverted the protections for investigative reporting by exempting political appointees from coverage and requiring a newspaper to prove its reporting was “solely” in furtherance of reporting on public affairs. Although “the Act does not limit the protected rights to petitioning the government only” (*Wright Dev. Group*, 238 Ill.2d at 636), for the vast majority of investigative reporters, these impositions render the ICPA a dead letter.

A. “*How the Illinois Appellate Court Went Astray*” with the ICPA

Sun-Times scarcely can improve on Justice Hyman’s scholarly dissent on “How the Illinois Appellate Court Went Astray” in the wake of this Court’s *Sandholm* decision. 2012 IL 111443 (ICPA inapplicable because high school coach’s defamation case was not

“solely” based on parents’ campaign for his removal). In sum, the Majority imposed a “two-prong meritless and retaliatory standard” on defendant reporters that “weakened a potent deterrent to groundless lawsuits that target those who protest or raise concerns on matters of public interest.” Op. (Dissent), ¶73 (A22). Yet, “nowhere does *Sandholm* discuss, refer to, or hint at a two-prong meritless and retaliatory test, let alone require a movant to demonstrate the lawsuit as retaliatory.” *Id.*, ¶77 (A23).

The *Sandholm* Court described the burden-shifting procedure set forth under 735 ILCS 110/20(c) as follows:

defendants had the initial burden of proving that plaintiff’s lawsuit was solely ‘based on, relate[d] to, or in response to’ their acts in furtherance of their rights of petition, speech or association, or to participate in government. Only if defendants have met their burden does the plaintiff have to provide clear and convincing evidence that defendants’ acts are not immunized from liability ...”. (2012 IL 111443, ¶56).

Although “solely” did not appear in the statute itself, the Court inserted the qualifier because it believed “the legislature intended to target only meritless, retaliatory SLAPPs and did not intend to establish a new absolute or qualified privilege for defamation.”

As the Dissent explains, *Sandholm*’s reference to “retaliation” in this context “is descriptive rather than an element of a motion under the Act” because “if the suit was ‘solely’ based on a defendant exercising rights to petition, speak, associate, or participate in government, then by definition, it is meritless and subject to dismissal.” Op. (Dissent), ¶¶79, 81 (A23-24). Disregarding this logic, the Majority concretized an appellate split that “repeatedly fall[s] short of carrying out the Act’s mandate to construe it liberally ‘to effectuate its purposes and intent fully.’” Op. (Dissent), ¶73 (A22); compare *Herman v. Power Maint. & Constructors*, 388 Ill. App. 3d 352, 364 (4th Dist. 2009) (retaliation inferred from a meritless claim alone).

The First District’s error traces to *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, which since has been followed sporadically. Op. (Dissent), ¶¶82-84 (A24-25); compare *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶17 (disjunctive “meritless *or* retaliatory”). It is unclear why this misreading persists when, as the Dissent cogently observed:

Apart from having no basis, requiring that a defendant show a complaint is retaliatory and meritless ***makes no sense***. A meritless claim has no possibility of success, and allowing a plaintiff to proceed anyhow undermines judicial economy and annuls the Act’s aim to dispose of facially invalid cases quickly. Further, ***allowing meritless claims to proceed permits a plaintiff to engage in the abuse the Act sought to avoid***. (Op. (Dissent), ¶85) (A25-26) (emph. added).

The illogic may explain the appellate court’s inability to devise coherent criteria for proving retaliation. Opinions which measured how many months after publication plaintiffs took to file or attempted to weigh *ad damnums* proved “unworkable in practice” given the wide variations and strategic implications. Op. (Dissent), ¶86 (A26). Compared to filing a meritless defamation case against the press, such tactical choices are poor proxies for an objectively retaliatory motive. “Moreover, as noted, plaintiffs in SLAPPs whose claims are meritless are using the prospect of the cost, time, and stress of defending against the suits to intimidate and censor. And, to get around the caselaw, a plaintiff simply needs to ask for reasonable damages.” Op. (Dissent), ¶87 (A26).

The judicial toolbox to “deter frivolous pleading and litigation” has never required proof of retaliation. *McCarthy v. Taylor*, 2019 IL 123622, ¶28. Thus, in *Midwest REM Enterprises, Inc. v. Noonan*, 2015 IL App (1st) 132488, ¶86, the appellate court held 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.” In *Goral*, 2014 IL App (1st) 133236, ¶44, the plaintiff sued over reporting an investigation that was “conditioned ... upon the existence of other facts.” Here as well, the plaintiff, a public official, sued a newspaper for accurately publishing that he was under investigation.

Given the added constitutional dimensions at stake, a §2-619(a)(9) motion should not be held to a stricter standard than motions under Rule 137. *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶28, n.3 (“the analytical framework for evaluating a motion for Rule 137 sanctions may be useful for evaluating whether a claim is meritless and retaliatory under the Act.”); *Suhadolnik v. City of Springfield*, 184 Ill. App. 3d 155 (4th Dist. 1989) (affirmed 735 ILCS 5/2-611 sanctions for defamation case filed without “reasonable investigation”).

At a minimum, a lack of candor in the Complaint should satisfy *Sandholm* when the plaintiff “knew that the defendants’ statements about him were true.” *Brettman v. Breaker Press Co.*, 2020 IL App (2d) 190817-U, ¶36 (affirming ICPA dismissal because “We need not delve into [retaliation], however, because the plaintiffs have not presented any cogent argument on appeal that its complaint was filed for any reason other than retaliation”); see also *Levinger v. Morell*, 2022 WL 4552398, *4 (N.D. Ill. Sept. 29, 2022) (“substantial truth” of “probe” warranted Fed. R. Civ. P. 11 sanctions when “a reasonable inquiry into the facts has now shown that [defamation plaintiff’s] position is legally groundless”). In this case, Glorioso was aware of *In Re: Mauro Glorioso* before filing his complaint alleging Sun-Times falsely reported that he was under investigation.

Accordingly, the Court should clarify and correct that a reporter need not show that the plaintiffs’ case is *both* meritless and retaliatory in order to proceed under the ICPA.

B. “*The Reporting Was Solely in Furtherance of Government Participation*”

In addition to perpetuating an unworkable and counter-productive “retaliation” test, the Majority went a step farther by exempting political appointees and public employees from ICPA coverage while undercutting precedents protecting investigative reporting on “the operation of government” defined by the ICPA. Heretofore, 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 (blog questioning candidate eligibility); see *Op. (Dissent)*, ¶ 95 (“Letting the public know about the OEIG investigation could pressure the PTAB to assess its operations and make reforms if needed. As in *Ryan*, the Sun-Times wholly satisfied the first prong.”).

Instead, the Majority blithely created a “meaningless” loophole for public employees under the ICPA’s “straightforward” initial prong by:

concluding that a genuine question of fact exists “as to whether the articles *solely* alert the public to the investigation into PTAB” because (i) PTAB no longer employed Glorioso and (ii) the head of the PTAB is not an elected position, so voters could not remove him from his position. (*Op. (Dissent)*, ¶93) (A28) (citing *Op.*, ¶53) (emph. added).

The Majority leaves to the imagination what ulterior purpose might be served by a major daily newspaper publishing a “Watchdogs” report informing the public that the Governor promised to “thoroughly investigate” a whistleblower case and had asked PTAB to postpone acting on a substantial tax refund involving a United States President.

Unlike the parents’ complaints that prompted this Court’s rebalancing in *Sandholm*, the “report at issue here is an excellent example of the kind of activity that the legislature sought to protect, as shown by the Act’s own language.” *Ryan*, 2012 IL App (1st) 120005,

¶19 (“investigatory report that defendants produced uncovered questionable activity by members of the judiciary in the performance of their official duties” was “well within the [ICPA’s] scope”); *Satkar Hosp. Inc. v. Cook Cnty. Bd. of Review*, 2011 WL 4431029, *5 (N.D. Ill. Sept. 21, 2011) (“first two elements of the test ... are satisfied” when the “reports were directed at the public and addressed possible political corruption, an obvious matter of public concern”).

1. “Nothing in the Act limits speech about either current or former government employees.”

As the Dissent points out, there is no conceivable basis for differentiating between elected and appointed government officials and “nothing in the Act limits speech about either current or former government employees.” Op. (Dissent), ¶94 (A28). To exculpate one disgraced appointee, the Majority cavalierly exempt virtually the entire executive branch from the ICPA’s coverage along with most legislative and judicial administration. Thousands of federal, state and local employees in Illinois bear responsibility for health, safety, finance, education, transportation, and commerce decisions that impact the lives of citizens every day. If the Legislature intended to cover only elected officials, then it would have said so instead of mandating that the ICPA “be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b).

2. An appointee’s employment status does not void ICPA coverage

As the Dissent also realized, the Majority’s equally careless assumption that “PTAB no longer employed Glorioso” was incorrect. The February Article predated PTAB’s October removal of Glorioso by over eight months. Even were the Majority not factually mistaken, it offers no legal reasoning why an appointee’s removal or resignation should nullify a reporter’s ICPA protection. The court of appeals had previously held it

sufficient if “articles simply informed readers of information that he uncovered.” *Goral*, 2014 IL App (1st) 133236, ¶48.

The “operation of government” Sun-Times was covering for so many years was the disposition of the Trump Tower refund appeal, which remained unresolved even after PTAB fired Glorioso for misconduct. Irrespective of Glorioso’s fate, as of the October Article, PTAB announced that it was postponing a decision until after the investigation was concluded. Ultimately, the long running Trump Tower appeal approved a refund of millions of tax dollars and was the subject of civil action by numerous public agencies, unquestionably a matter of public concern. See *Cook Cnty. Bd. Of Review v. Ill. Prop. Tax App. Board*, 2023 IL App (1st) 210799-U.

3. The Majority Opinion conflicts with 735 ILCS 110/15

The above errors may flow from the Majority’s introduction of an extra “solely” limitation into the otherwise “straightforward” first factor that is incompatible with the ICPA’s express protection against claims made “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 ... *regardless of intent or purpose.*” 735 ILCS 110/15 (emph. added); see also *id.* at §110/30(b) (“This Act shall be construed liberally to effectuate its purposes and intent fully”). This fundamental misreading of both *Sandholm* and the ICPA allowed the Majority to improperly question the motives of a newspaper performing its core function of reporting governmental actions. Cf. *Lulay v. Peoria Journal-Star*, 34 Ill.2d 112, 114-15 (1966).

In *Sandholm*, to avoid “radically alter[ing] the common law by imposing a qualified privilege on defamation within the process of petitioning the government” (2012 IL

111443, ¶50), the Court inserted a “solely” qualifier into ICPA §15 to allow plaintiffs to seek genuine redress when the defendant’s ostensibly covered activity crossed the line into tort. The insert implicates the merits of the *plaintiff’s* “response,” not the defendant’s protected activity. See *id.* at ¶45 (“we construe the phrase ‘based on, relates to, or is in response to’ in section 15 to mean *solely* based on, related to, or 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.’”). As discussed above, the qualifier should be satisfied, at least in this context, when litigation prompted by protected activity is meritless in law, fact, or both.

Despite this case involving core speech by the press as discussed above, the Majority inserted “solely” qualifiers into ICPA §15 *twice* and then employed its extra qualifier to question the motives underlying a newspaper’s protected activity. (*i.e.*, “*solely* based on, related to, or in response to ‘any act or acts of the moving party [*solely*] in furtherance of the moving party’s rights of ... speech ... or to otherwise participate in government.”). Exacerbating the problems for the press, the Majority’s misplaced statutory gloss will permit public officials to circumvent criticism by *inferring* unspecified ulterior motives for investigative journalism, vitiating the otherwise straightforward first factor.

Furthermore, the error conflates the burdens on the press with the official’s burden under § 20(c) of the ICPA. See *Goral*, 2014 IL App (1st) 133236, ¶64 (“Plaintiff has not proved by clear and convincing evidence that defendant made his statements for any reason other than to procure a favorable government outcome. We thus conclude that defendant was immune from suit under the Act and the trial court did not err in dismissing plaintiff’s complaint.”). By switching the burdens of proof on motive, the Majority obviated

Glorioso’s obligation, which he shirked, to submit “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.” Compare *Wright Dev. Group*, 238 Ill. 2d at 639 (“Wright Development has failed in its burden under the Act,” warranting ICPA dismissal and attorneys’ fees in favor of defendant) with Op., ¶53 (A15) (“the present matter is distinguishable from [*Ryan v. Fox Television Stations*], given the existence of a genuine question of fact as to whether the articles solely alert the public to the investigation into PTAB”).

The upshot is that the Majority effectively read most investigative reporting on “operations of government” out of the ICPA. By shifting an already subjective enquiry onto the press, the Opinion permits officials to chill criticism by *inferring* ulterior motives in traditional journalism and shifting the plaintiff’s burden of proof to “require a movant to demonstrate the lawsuit as retaliatory.” Op. (Dissent), ¶77 (A23). Unless corrected, the Majority has managed to neuter the ICPA, even in cases where a prize-winning reporter and leading daily newspaper sought official answers about an investigation that was “undeniably newsworthy and of interest to the public.” Op. (Dissent), ¶95 (A28).

C. Glorioso’s Conduct Easily Meets Retaliation Criteria

As this case evolved past the pleading stage, the mosaic of false allegations, unrefuted Novak Declaration, PTAB records, and EEC’s Final Report, individually and cumulatively reveal a manufactured SLAPP. *Goral*, 2014 IL App (1st) 133236, ¶30 (trial courts “may consider pleadings, depositions, and affidavits” in granting ICPA motions). Tellingly, Glorioso did not file a counter-affidavit in response to Sun-Times’ ICPA motion, move for discovery under the Act, or even submit his unpublished Final

Report to exculpate himself. *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 counteraffidavit or other evidentiary materials.”). One might infer that he could not dispute this record in good faith. *Midwest REM Enterprises*, 2015 IL App (1st) 132488, ¶86 (“complete absence of evidence that [defendant] said anything untrue” shows plaintiff “named her as a defendant solely to punish her for her participation in government.”).

A meritless pleading can survive dismissal if framed tactically. Here, Glorioso alleged Sun-Times “falsely identified Glorioso as being under investigation for pressuring PTAB staff” (A38, A48, A53) while separately trying to stop publication of the *In Re: Mauro Glorioso* Final Report which would have belied this allegation. Similarly, Glorioso alleged 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.” A42 (Compl., ¶¶11-17). The Dissent observed that the OEIG Complaint *literally* alleged the decision was switched for political reasons “consistent with Glorioso’s directive” and Glorioso approved redrafts. Op. (Dissent), ¶102 (A30-31). Yet Glorioso’s Complaint skirted 735 ILCS 5/2-606 by “failing to attach to his complaint a document that proved that his claim had no merit.” *Tierney v. Vahle*, 304 F.3d 734 (7th Cir. 2002).

Glorioso’s February 8, 2020, email contradicting his own Complaint underscores that this case was never in the service of truth. “A person does not have a legally protected right to a reputation based on the concealment of the truth.” *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1228 (7th Cir. 1993). After Glorioso denied comment and FOIA requests

that would have exposed him, Mr. O'Malley produced emails wherein Glorioso contradicted his own pleadings by 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." A124 (emphasis added); *Harrison v. Chicago Sun-Times, Inc.*, 341 Ill. App. 3d 555, 563 (1st Dist. 2003) ("Where the plaintiff's own characterization is not substantially different from the allegedly defamatory language, such language may be deemed substantially true.") (citation omitted).

Unbeknownst to Sun-Times, the EEC case was playing out while Glorioso was objecting to publication of the *In Re: Mauro Glorioso* Final Report to conceal the fact of his investigation and why he was removed. Compare *Global Relief Foundation.*, 390 F.3d at 985 ("The question again was timing. In short order, the accusations were made public and the report proved to be substantially true, as is sufficient under Illinois law."). Secrecy may have kept this case alive, but it ultimately confirmed that Glorioso knew the facts before he sued. A137 ("As an attorney with more than 20 years of experience ... Mr. Glorioso should have realized the seriousness of the litigation hold.").

Although it may not move the needle appreciably, the temporal proximity and "good-faith estimate" of damages factors were met as well. See *Hytel Group v. Butler*, 405 Ill. App. 3d 113, 126 (2d Dist. 2010) ("retaliatory intent may be inferred when a claim lacking merit is filed shortly after (4 months) the exercise of protected rights."); *Goral*, 2014 IL App (1st) 133236, ¶55 (3½ months). Glorioso alleged special damages when he knew PTAB removed him from office for breaking the law and his prayer for punitive damages required actual malice for alleged "defamatory statements concerning a matter of

public concern.” *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 227 Ill. 2d 381, 395 (2008). Yet his own emails admitted Sun-Times got it exactly right.

In sum, Glorioso offered no evidentiary justification for claiming that the OEIG Complaint did not allege staff acted “consistent with Glorioso’s directive;” he apparently tried to destroy the email admitting the Whistleblower accused him “particularly” of “political bias;” and he attempted to block publication of the Final Report. These uncontested, objective facts are more than sufficient to reverse the Opinion and remand for judgment of dismissal under the ICPA.

II. The Majority’s Invoking “Implications” Of “Unfairness” Undercuts This Court’s First Amendment Instruction That “A Statement Is Not Actionable Unless It Is Factual And False”

Under the First Amendment “a statement is not actionable unless it is factual and *false*.” *Imperial Apparel*, 227 Ill.2d at 401-02 (emph. original). Here, the “Sun-Times reported accurately that the OEIG was investigating Glorioso.” Op. (Dissent), ¶105 (A31). “The fact of the investigation was true.” *Global Relief Found.*, 390 F.3d at 986 (“We need not spend much time analyzing this article [that plaintiff charity was “receiving close federal scrutiny”] because as should already be clear this report was literally and absolutely true.”).

Once Sun-Times satisfied this constitutional threshold, “[t]he choice of material to go into a newspaper ... whether fair or unfair - constitute[s] the exercise of editorial control and judgment.” *Miami Herald*, 418 U.S. at 258. The Majority nevertheless believed that the Sun-Times also should have blamed obedient staffers, holding that a jury could read unfair “implications” into the Watchdogs text because:

Sun-Times’s reporting could reasonably be read as not fair, accurate, or truthful by creating the implication that Glorioso was more culpable in the

alleged activity than the anonymous complaint claimed, both in terms of his supposed actions and his supposed authority over PTAB employees. (Op., ¶59) (A18).

The Dissent correctly remonstrated (Op., ¶104) (A31) that this nebulous standard is not the law of Illinois, citing *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill.2d 558, 590 (2006):

The majority considers what implications a reader or listener might draw from the reporting. But the law does not. The law focuses on whether the reporting is factual and accurate.

Equally to the point, in *Imperial Apparel*, this Court had to admonish the appellate court against “believ[ing] that a reasonable reader might interpret” facts that are “indisputably true” and vacated its opinion for this fundamental error of law:

The appellate court also believed that a reasonable reader might interpret the ad as stating actual facts about the originality of the goods Imperial sold. . . . That Imperial got the idea for its “3 for 1” sale from Cosmo’s is a verifiable fact. Because it is indisputably true, however, it cannot be the basis for a defamation claim. Consistent with the first amendment, a statement is not actionable unless it is factual and *false*. (227 Ill.2d at 401-03) (emph. original).

See also *Parker v. Bank of Marion*, 296 Ill. App. 3d 1035, 1038 (5th Dist. 1998) (“This interpretation, while understandable, cannot be the basis of liability. The words spoken were true.”). Where “discussion of public affairs is concerned,” this factual and false threshold is constitutionally required. *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964). Removing the guardrails protecting critical speech imperils issue-driven journalism and advocacy. *Philadelphia Newspapers v. Hepps*, 475 U.S. 767 (1986) (First Amendment requires that a plaintiff suing a media defendant regarding a matter of public concern must prove falsity because “[f]reedoms of expression require `breathing space.’”) (citation omitted).

A. *The Majority’s “Implications” Were Counterfactual*

The Majority’s editorializing failed to appreciate that “the First Amendment guarantees ‘freedom of speech,’ a term necessarily comprising 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) (emph. original); *Wilkow v. Forbes*, 241 F.3d 552, 555-57 (7th Cir. 2001) (“Illinois does not require “all facts... that put the subject in the best light.”). The Dissent cogently explains:

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. (Op. (Dissent), ¶105) (A31-32).

Even Glorioso did not allege that staff was under investigation.

Ultimately, as the Dissent recognized and the Final Report’s caption confirmed, the Majority’s implications were proved “conspicuously” wrong because *only* Glorioso was named. *Id.* Therefore, it would have been “not fair, accurate or truthful” to the staff to have given voice to the Majority’s implication. Compare *Fin. Fiduciaries, LLC*, 46 F.4th at 665-66 (“what the article did say was substantially true, and this shields Gannett from liability.”); *Morgan v. Portfolio Media Inc.*, 2024 WL 532229, *5 (N.D. Ill. Feb. 9, 2024) (“Each of the articles at issue ‘conveys[s] to readers ‘a substantially correct account’ of the court orders at issue that does not include any defamatory ‘additions’ by Law360”) (cit. omitted).

For these reasons, if not reversed, the court of appeals' decision will expose virtually all investigative journalism in Illinois to the risk of protracted defamation litigation by disgruntled officialdom. Analogous to the reporting of the investigation in *Global Relief Foundation*, the Watchdog reports quoted official statements promising a “thorough

investigation” and requesting PTAB take no action. See also *Kapotas v. Better Gov’t Ass’n*, 2015 IL App (1st) 140534, ¶¶34-40 (“double dipping” headline confirmed by admission investigated county employee received pay while on leave); *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶45 (“classic conflict of interest” substantiated by admissions and exhibits).

B. *The Majority Undercuts Multiple First Amendment Protections*

The belated availability of the Final Report also mooted several subsidiary doctrines that preoccupied the lower courts in this case, such as subjective language, substantial truth, and fair report, which all admit to some degree of factual discrepancy.

As a corollary to falsity, the First Amendment ensures courts cannot infer defamation from “loose, figurative language” which are “subjective characterizations lacking precise and readily understood meaning.” *Imperial Apparel*, 227 Ill. 2d at 397 (whether competitors “inflate prices and compromise quality” not capable of objective proof); see also *Green*, 234 Ill.2d at 503 (statements lacked requisite specificity); *Law Offices of David Freydin, P.C. v. Chamara*, 24 F.4th 1122, 1130 (7th Cir. 2022) (criticisms of attorney did “not have precise and readily understood specific meanings.”). Sun-Times mitigated, rather than exaggerated, the Whistleblower’s terminology by substituting “pushed” and “pressured” for “told” and “directive.” “Words which are critical are not necessarily defamatory.” *Audition Div. Ltd. v. BBB*, 120 Ill. App. 3d 254, 257-258 (1st Dist. 1983) (“pressures clients to sign contracts” not defamatory). This Court protected stronger disparagement in *Green*, 234 Ill. 2d at 493 where it held that “misconduct” and “abuse” were “devoid of any specifics.”⁵

⁵ Although want of precision is applicable to both *per se* or *per quod* allegations, the analysis can overlap innocent construction, as happened in in *Green*. See also *Coghlan*, 2013 IL App (1st) 120891 (“fraud machine”); *Rose v. Hollinger*, 383 Ill. App. 3d 8, 17-18 (1st Dist. 2008) (causing “damage to our finances”); *Wilkow*, 241 F.3d at 555-56

Additionally, Illinois requires only substantial truth and “it is important to note that allegedly defamatory material is not actionable even where it is not technically accurate in every detail.” *Coghlan*, 2013 IL App (1st) 120891, ¶13; see also *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”). The Final Report confirmed the “gist” of the reporting was correct, *i.e.*, Governor Pritzker’s assurance that he would investigate “political motivations” *did* refer to Glorioso. Cf. *Levinger*, 2022 WL 4552398, *4 (“Plaintiff does not contest that the Attorney General investigated the gift card initiative due to allegations of vote buying.”) (citing *Lemons v. Chron. Pub. Co.*, 253 Ill. App. 3d 888, 890-91 (4th Dist. 1993)).

The lower courts fixated on the fair report privilege, apparently suggesting that Sun-Times should have spent more ink to criticize ALJs for doing Glorioso’s bidding even though Glorioso never alleged they were under investigation. Compare *Gist v. Macon Cnty. Sheriff’s Dept.*, 284 Ill. App. 3d 367, 371–72 (4th Dist. 1996) (dismissal “was also proper in light of the ‘substantial truth’ of the flyer” because false statements plaintiff “‘should be considered dangerous’ or was a ‘most wanted’ fugitive . . . are all secondary details, immaterial to the truth”). “Also, the anonymous complaint alleged he sought a specific result on the tax appeal based on political bias, which further supports that his complaint lacks merit.” Op. (Dissent), ¶ 105. Regardless, the privilege was superseded by truth when the Final Report confirmed that Governor Pritzker was referring to Glorioso being investigated for political favoritism. See *Bertha v. Daily Herald Newspaper*, 2022 IL App (2d) 210695-U, ¶20 (“This statement did not appear in the police reports [reporter] relied

(“unscrupulous business owners” who “robbed creditors”). Precedents are collected in *Byron v. Brickman*, 2019 IL App (5th) 180208-U, ¶¶17-19.

on, so the fair-report privilege does not protect it. Nonetheless, the statement was substantially true and, therefore, not actionable”).

It is unclear why the Majority endorsed inferential defamation after the court of appeals previously held that “regardless of whether ‘substantial truth’ may be an affirmative defense to a defamation action, we must address whether plaintiff sufficiently alleged any false statements in the articles published by the defendants.” *Kapotas*, 2015 IL App (1st) 140534, ¶34. Now, under the Majority’s iteration of the ICPA, it would require reporters to go down a rabbit hole to refute unpublished conjectures. Presumably, this discovery would enmesh Governor Pritzker and Ms. Bittner to explain that “allegations of political motivations improperly driving the decision making” referred to *In re Glorioso*; the OEIG investigators to explain their findings and Glorioso’s removal; the EEC regarding its determinations; the ALJs who allegedly acted “consistent with Glorioso’s directive;” and even PTAB members.

Recently, the court of appeals laid out the correct path in another defamation case (coincidentally involving Mr. Trump as well) under the maxim that “the cornerstone of defamation is the issuance of a false statement.” *Andrews*, 2023 IL App (1st) 1220950, ¶25, n.4. From this bedrock, it held that “the evidence attached to defendants’ section 2-619 motion further defeats and negates plaintiffs’ conclusory allegations of falsity and support defendants’ substantial truth defense.” *Id.*, at ¶19. This same approach should apply under the ICPA to political appointees who file SLAPPs against newspapers and their investigative reporters.

III. The Majority Opinion Nullified Illinois Precedents To Encourage SLAPPs By Political Appointees

Apart from the serious constitutional implications for investigative journalism, this case also was meritless and retaliatory under precedents governing actual malice, special damages, and the modified innocent construction rule. The Majority's departures on behalf of political appointees promises mischief for years to come.

A. *Glorioso's Refusal to Comment or Submit an Actual Malice Counteraffidavit Exposes the Constitutional Defect in His Case*

The First Amendment requires public officials to plead "actual malice." *Wanless v. Rothballer*, 115 Ill.2d 158 (1986). Actual malice requires "clear and convincing evidence" to "infer that a media defendant published defamatory statements in reckless disregard for their truth only when the defendant's investigation has revealed either insufficient information to support the defamatory accusations in good faith or creates a substantial doubt as to the truth of those accusations." *Costello v. Cap. Cities Commc'ns, Inc.*, 125 Ill.2d 402, 421 (1988); *Anderson v. Liberty Lobby*, 477 U.S. 242, 244 (1986).

Analytically, the OEIG Complaint, Governor's statement, FOIA records and Final Report cumulatively moot this enquiry because actual malice presupposes falsity. As the Dissent recognized, Glorioso's emails admitted – contrary to the Majority's hypotheticals – the Whistleblower had singled him out and Glorioso edited and approved the revised opinion. Op. (Dissent), ¶105 (A31-32). Regardless, under the First Amendment, reporting an investigation into allegations cannot rise to "actual malice" unless, at a minimum, the author adopts the third party's accusations. *Saenz v. Playboy Enterprises*, 841 F.2d 1309, 1318 (7th Cir. 1988) (no actual malice because reporting accusations former official condoned torture did not convey that reporter believed them to be true).

Glorioso made only conclusory allegations that Sun-Times “knew the statements of and concerning Glorioso were false” and “based on the anonymous complaint ... the February 7th Article was published with reckless disregard.” A44 (Compl., ¶26). Yet he neither quoted nor attached the “anonymous complaint” upon which this comparison depended. Compare *Desnick, M.D. v. ABC*, 233 F.3d 514, 517-518 (7th Cir. 2000) (“The plaintiff must show what the record contained that would bear on Kalish’s credibility.”).

In addition to moving under 735 ILCS 5/2-606, Sun-Times filed Novak’s Declaration under §2-619.1, wherein he averred:

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.” There also was no reason to doubt that officials were investigating “prohibited unethical political activities and conflicts of interest” alleged in the OEIG Complaint, including that Mr. Glorioso gave a “directive” to Chief ALJ Waggoner to provide “a large reduction in the assessment” because the taxpayer/owner was the President. (A89-90).

Novak’s Declaration is conclusive that he believed (correctly, as it turned out) Governor Pritzker promised to investigate “Glorioso’s directive” and not random ALJs. Compare *Reed v. Northwestern Pub. Co.*, 124 Ill.2d 495 (1988) (reporter’s failure to scrutinize grand jury report before publishing, based on report, police officer was implicated in burglary ring did not establish actual malice); *Knight v. Chicago Tribune*, 385 Ill. App. 3d 347 (1st Dist. 2008).

It also should be significant under the ICPA that Glorioso declined to contest Novak’s Declaration, forfeiting the constitutional crux of his Complaint when challenged. It was “incumbent” on Glorioso to file a counter-affidavit but he “offered no contrary testimony or counter-affidavits to put [the] testimony at issue.” *Hardiman v. Aslam*, 2019 IL App (1st) 173196, ¶31. Especially in defamation cases: “If the facts within an affidavit

dispute the allegations of the complaint and are not contradicted by a counteraffidavit, the court must accept the facts in the affidavit as true.” *Andrews*, 2023 IL App (1st) 1220950, ¶12; *Harris v. News-Sun*, 269 Ill. App. 3d 648, 650 (2d Dist. 1995). Glorioso pulled this lynchpin from his case when challenged but the Majority passes over this constitutional requirement, substituting its idiosyncratic gloss that the reporting “could” be unfair.

The Majority’s disregard for actual malice is particularly unwarranted when the administration *confirmed* it was investigating the “conduct alleged in this complaint,” including “allegations of political considerations improperly driving the decision making.” Moreover, the plaintiff asserting actual malice is the same official who obstructed Sun-Times’ reporting by declining comment, denying FOIA requests, and illegally destroying over 200 emails and records including “drafts of [PTAB Employee 1’s] decision” and others “related to FOIA requests from the [News Source 1].” A134. Had Glorioso commented, Sun-Times could have described his justification that “PTAB Employee 1’s decision” was so erroneous that it was appropriate for Glorioso to oversee, edit, and approve the replacement draft. A104-05, A109-24.

B. Glorioso Sued Sun-Times for Defamation Per Quod Even Though He Knew His Alleged “Special Damages” Were Self-Inflicted

Glorioso’s principal counts (Counts 1 and 2 (A41-48)) alleged defamation *per quod* even though this Court forbids *per quod* defamation plaintiffs from substituting “subjective belief” for “specific facts establishing the plaintiff’s special damages.” *Anderson*, 172 Ill.2d at 403-04, 416-17 (rejecting allegation plaintiff was leading job candidate but final interview was cancelled after defendants spoke to her prospective employer). Until now, the appellate court faithfully adhered to *Anderson*. *E.g.*, *Kapotas*, 2015 IL App (1st) 140534, ¶¶70-74 (citing authorities on failure “to sufficiently allege special damages”).

Consequently, Counts 1 and 2 required Glorioso to plead with specificity how the February and October Articles proximately caused him to incur pecuniary “special damages.” *Maag v. Ill. Coalition for Jobs*, 368 Ill. App. 3d 844 (5th Dist. 2006) (allegation flyer caused judge to lose retention “too speculative and uncertain to entertain as for special damages”). By denying the fact of the *In Re: Mauro Glorioso* investigation in his pleading, Glorioso sought to imply that the February Article was the only basis for Governor Pritzker to replace him.

The ICPA motion was not limited to deficient specificity, however, but also cited intervening causes, *i.e.*, the OEIG Complaint itself and the Governor’s promise to investigate it, to show there was “no causal connection between the statement and plaintiff’s purported special damages.” *Chang Hyun Moon v. Kang Jun Liu*, 2015 IL App (1st) 143606, ¶16 (“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.”) (emph. original).

The case clarified on May 25, 2021, when the Ethics Commission’s Final Report revealed the truth. Glorioso lost his employment, not because of Novak’s reporting, but because PTAB preemptively fired Glorioso for law breaking. With this reveal, the cover-up collapsed completely and Sun-Times promptly supplemented its ICPA motion with two undisputed facts:

First, the Final Report confirmed the intervening cause that OEIG *did* investigate Glorioso for at least *nine months* before Governor Pritzker decided to “go in a different direction” (A163); and second, apart from the Governor’s motives, the Final Report

confirmed that the superseding cause for Glorioso's alleged loss of employment was PTAB's discovery that he deleted "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." Op., ¶19 (A6).

Unsupported damages are one indication of a SLAPP. *Hytel Group*, 405 Ill. App. 3d at 119. Here, the plaintiff *knew* his removal was self-inflicted on October 14, 2020. A132 (explaining that on Oct. 5, 2020, Glorioso knew he was being removed). Worse, his Complaint roped in the October Article published *after* PTAB removed him. But see *Kapotas*, 2015 IL App (1st) 140534, ¶73 (no causation where plaintiff resigned before publication of investigative report). The Dissent correctly notes that the Majority confused its chronology regarding Glorioso's removal (Op. (Dissent), ¶94 (A28)) and the record admits to no other interpretation.

A proven superseding cause separates this "meritless" case even from dismissals on overly speculative inferences, such as *Anderson*. See *Hardiman*, 2019 IL App. (1st) 173196, ¶27 (lost honorarium). The Final Report so obliterated causation that it obscures that Glorioso's complaint was frivolous from the outset under *Anderson* because it elided multiple intervening causes including: 1) the Governor's independent agency and unique access to the *In Re Mauro Glorioso* case coupled with 2) an executive director "pressuring" staff in a politically sensitive case -- irrespective of his justifications. Unbooted speculation is meritless but, because Glorioso knew the superseding cause of his "special damages" was his own illegality, he crossed the line from speculation into fabrication of a SLAPP.

C. The Holding that a Reader “Could” Find an “Implication” Upsets this Court’s Modified Innocent Construction Rule to Benefit Political Appointees

Under this Court’s long-held modified innocent construction rule, where “statements are reasonably capable of an innocent construction [they are] not defamatory *per se*.” *Green*, 234 Ill.2d at 503 (innocently construing “abuse” and “misconduct” accusations against youth coach because they “are words with very broad meanings.”). There is no “balancing” of reasonable constructions. *Id.* at 500.

The *Goral* court applied this rule to hold that a blog’s reporting on an investigation was meritless under the ICPA because it “conditioned the existence of any crime upon the outcome of an investigation.” *Goral*, 2014 IL App (1st) 133236, ¶¶46-48; see also *Hurst v. Capital Cities Media*, 323 Ill. App. 3d 812, 817 (5th Dist. 2001) (report police interviewed plaintiff in investigation did not impute he committed the crime). The Majority, however, strayed from *Green* and *Goral* in its belief that “Sun-Times’s reporting *could* reasonably be read as not fair, accurate, or truthful by creating the *implication* that Glorioso was more culpable” in his actions or authority than the whistleblower claimed. *Op.*, ¶59 (A18) (emph. added).

Contra the Majority, innocent construction *presumes* hypothetical readers “could” find a defamatory construction – otherwise the rule would be superfluous. Furthermore, the Majority’s resort to conditional logic admits reasonable readers also “could” construe reporting an investigation literally as leaving determination of fault to the Governor. “The very word ‘could’ inherently connotes a subjective judgment.” *Brennan v. Kadner*, 351 Ill. App. 3d 963, 968-69 (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”). This

amorphous reading gave unduly short shrift to the literal construction — of constitutional dimension — that a reasonable person would not construe an investigation “as a factual assertion that plaintiff committed the offense.” *Id.*

Plainly, the Majority got innocent construction backwards, both by elevating *implications* over literal text and by disregarding alternate reasonable innocent constructions. *E.g., Harte v. Chicago Council of Lawyers*, 220 Ill. App. 3d 255, 261 (1st Dist. 1991) (that lawyer “was implicated in Operation Greylord” could mean “only intimately involved”). Under this inverted rule, reporters, advocates, documentarians, and anyone else seeking to speak on public concern cannot report newsworthy allegations made by third parties without risking that a judge might draw unfair implications. Absent a false statement, no publisher can be expected to foresee every implication that may reasonably arise from a given report. This was the settled law before the Majority chose to carve a loophole for political appointees that encourages SLAPPs against investigative reporters.

1. Sun-Times’ context and grammar “further qualified defendant’s articles by leaving the question of *whether* any violation of the law occurred”

“This court has emphasized that the context of the statement is critical in determining its meaning” when applying innocent construction. *Green*, 234 Ill.2d at 499. Sun-Times squarely placed its reports in the context of an unresolved investigation that does not necessarily impute culpability. *Brennan*, 351 Ill. App. 3d 963. Federal courts applying Illinois law also recognize this distinction. *Global Relief Found.*, 390 F.3d at 987-89 (“Ultimately, all of the reports were either true or substantially true recitations of the government’s suspicions about and actions against GRF.”); *Gerba v. Nat’l Hellenic Museum*, 2018 WL 3068409, *6 (N.D. Ill. 2018) (stating “there was an active restraining

order . . . is not the same thing as stating that he committed an underlying criminal offense”).

Although unnecessary, Sun-Times expressly reinforced this context with grammar by modifying “investigation” with the conjunction “whether.” The appellate court earlier endorsed such binary grammar as “leaving the question of whether any violation of law occurred to the [authorities].” *Goral*, 2014 IL App (1st) 133236, ¶¶46-48 (context “further qualified defendant's articles by leaving the question of whether any violation of the law occurred to the assessor's office and the State's Attorney.”) (citing authorities). Instead of adopting the OEIG Complaint, the Watchdog headlines and text could not have more clearly cautioned that it was only under investigation.

Until now, Illinois credited 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). Instead, the Majority jettisoned long-standing precedent that such reporting did not impute guilt. *E.g., Trembois v. Standard Ry. Equip.*, 337 Ill. App. 35, 43-44 (1st Dist. 1949) (“Arrest is no evidence of guilt.”).

2. The Majority’s “implications” disallowed for an innocent explanation for pushing ALJs to withdraw and rewrite the Trump Tower findings

Green protected “broad” and “generic” pejoratives of “abuse” and “misconduct” under both rules of pleading and innocent construction. *Green*, 234 Ill.2d 478. Here, the Sun-Times proactively softened the Whistleblower’s explicit charge that Glorioso issued an unlawful “directive” by substituting loose, permissive verbs, *e.g.*, “pushed” and

“pressured” for the imperatives “told” and “directive.” Compare *Audition Div.*, 120 Ill. App.3d at 257-258 (plaintiff “pressures clients to sign contracts” not defamatory).

Instead of exaggerating the OEIG Complaint, this mitigating language allowed for persuasion (akin to the coaching examples given in *Green*) rather than a diktat. See *Jacobson v. Gimbel*, 2013 IL App (2d) 120478 (“Marc Jacobson 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”).

Finally, Sun-Times published Waggoner’s justifications for a refund in October with the benefit of FOIA records. Compare A74-80 with *Green*, 234 Ill.2d at 501-02 (“multiple assurances” mitigated defamatory inference). The additional context allowed readers to infer that Glorioso harbored legitimate concerns, further negating a defamatory spin. *Kapotas*, 2015 IL App (1st) 150534, ¶¶60-67 (report included potentially nondefamatory reasons for medical doctor’s “double dipping” county compensation); *Harrison*, 341 Ill. App. 3d at 570–71 (“inside” text negated headline’s defamatory inference).⁶

The Majority inverted the innocent construction rule to elevate (unfounded) implications over reasonable constructions. Public officials should not chill citizens by predicating *per se* liability and presumed damages on unpublished “implications.” Unless

⁶ The foregoing does not exhaust innocent constructions recognized by this Court, including unsuitability for this particular political appointment. *Green*, 234 Ill.2d at 499; cf. *Kapotas*, 2015 IL App (1st) 140534, ¶56 (“double dipping” did not “impute that plaintiff lacks ability as a medical professional or violated any rule of medical ethics”) (citing *Vicars-Duncan v. Taktikos*, 2014 IL App (4th) 131064, ¶33 (that prosecutor bullied and told untruths did not obviously impute misconduct or lack of integrity in performing her job)).

reversed, the Majority will impair, not only the ICPA, but also Illinois common law and investigative journalism generally.

CONCLUSION

The challenge to keep the “lantern” of investigative journalism lit is difficult enough without publishers fearing protracted litigation from embarrassed officials over elusive “implications” of “unfairness.” Justice Hyman’s Dissent warns that an endorsement of false pleadings will perpetuate the very chill that the ICPA “was designed to prevent — the wasting of time, resources, and effort by the parties and the courts on unjustifiable and unsustainable claims.” Op. (Dissent), ¶107 (A32). Defendants therefore respectfully urge the Court to reverse and correct the appellate court’s errors of law and remand with appropriate instructions to enter judgment under the ICPA in favor of Defendant-Appellants.

Dated: April 3, 2024

Respectfully submitted,

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No. 130137

IN THE SUPREME COURT OF ILLINOIS

MAURO GLORIOSO)	On Petition for Leave to Appeal
	)	from the Appellate Court of Illinois,
Appellee,	)	First District, No. 1-21-1526
)	
v.	)	There Heard on Appeal from the
	)	Circuit Court of Cook County,
SUN-TIMES MEDIA HOLDINGS, LLC,	)	Illinois, Case No. 2021-L-000090
and TIM NOVAK,)	
	)	Honorable Judge Patricia O'Brien
Appellants.	)	Sheahan, Judge Presiding

CERTIFICATE OF COMPLIANCE

I certify that this Brief conforms to the requirements of Rules 341(a) and (b), and 315(h). The length of this Brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the Brief under Rule 342(a) is forty-three (43) pages.

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)	Honorable Judge Patricia O'Brien
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NOTICE OF FILING

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PLEASE TAKE NOTICE that on **April 4, 2024**, we electronically filed with the Illinois Supreme Court, the **BRIEF AND ARGUMENT OF APPELLANTS**, on behalf of Defendants-Petitioners, SUN-TIMES MEDIA HOLDINGS, LLC and TIM NOVAK, a copy of which is attached hereto and served upon you.

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STATE OF ILLINOIS)
)
COUNTY OF COOK) SS

CERTIFICATE OF SERVICE

I, the undersigned attorney for Defendants-Petitioners, after being first duly sworn on oath, depose and certify that a copy of the foregoing **Notice of Filing** and **Brief and Argument of Appellants** were served on the attorneys of record as addressed below, **via Microsoft Outlook e-mail transmission** on **April 4, 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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3	January 5, 2021 – Complaint (S.R. 2 – S.R. 51)	A35-84
4	March 15, 2021 – Declaration of Timothy Novak in Support of Sun-Times Media Holdings, LLC's Section 2-619 Motion to Dismiss	A85-124
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2023 IL App (1st) 211526
No. 1-21-1526
Opinion filed: May 8, 2023
Modified upon denial of rehearing: September 18, 2023

First Division

IN THE
APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

MAURO GLORIOSO,	)	Appeal from the Circuit Court of
	)	Cook County, Illinois.
Plaintiff-Appellee,)	
	)	No. 2021 L 000090
v.)	
	)	The Honorable
SUN-TIMES MEDIA HOLDINGS, LLC, and	)	Patricia O’Brien Sheahan,
TIM NOVAK,	)	Judge Presiding.
)	
Defendants-Appellants.)	

JUSTICE PUCINSKI delivered the judgment of the court, with opinion.
Justice Coghlan concurred in the judgment and opinion.
Justice Hyman dissented, with opinion.

OPINION

¶ 1 Since this court filed its opinion in this matter on May 8, 2023, defendants-appellants Sun-Times filed a petition for rehearing, plaintiff-appellee Glorioso filed a response, and defendants-appellants Sun-Times Media Holdings, LLC filed a reply. We find both parties to have presented strong arguments, and it is based on those new pleadings that this Court now modifies its prior Opinion. We have significantly modified this opinion based on our reading of defendants-appellants’ petition, which basically restates its arguments before the circuit court in not one, but

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two, motions to dismiss, both of which were denied and neither of which was appealed. The only issue before this court is the circuit court's denial of defendants-appellants' motion to dismiss pursuant to the Citizen Participation Act (Act) (735 ILCS 110/1 *et seq.* (West 2022)), in which Sun-Times argued that the plaintiff-appellee's complaint was a "Strategic Lawsuit Against Public Participation," or "SLAPP," and should have been dismissed.

¶ 2 Plaintiff-appellee Mauro Glorioso filed a complaint alleging defamation *per quod*, defamation *per se*, false light invasion of privacy, and intentional infliction of emotional distress arising from two sets of articles published in print and online in the Sun-Times and written by Tim Novak. First, defendants-appellants, Sun-Times Media Holdings, LLC, and Tim Novak (collectively, Sun-Times), filed a motion to dismiss pursuant to section 2-619.1 of the Code of Civil Procedure (Code) (735 ILCS 5/2-619.1 (West 2022)). The circuit court dismissed Glorioso's count of intentional infliction of emotional distress and denied the rest of the motion. Then, Sun-Times filed a combined motion to reconsider the denial of their original 2-619.1 motion to dismiss, or in the alternative, a 2-619(a)(1) motion to dismiss pursuant to the Code. See *id.* § 2-619(a)(1).

¶ 3 The circuit court denied the motion for reconsideration of its denial of the original 2-619.1 motion to dismiss. The circuit court also denied the alternative 2-619(a)(1) motion to dismiss pursuant to the Code.

¶ 4 On appeal, Sun-Times seeks review only of the circuit court's denial of its alternative request to dismiss the suit as a SLAPP pursuant to the Act.

¶ 5 For the reasons that follow, we affirm the circuit court's October 29, 2021, order denying the motion to dismiss the lawsuit under the Act and find that the underlying suit is not a SLAPP.

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¶ 6 Because the circuit court relied, in part, on its prior orders denying Sun-Times's motions to dismiss the defamation claims, we will refer to those issues only as they are pertinent to our analysis of the SLAPP issue appealed.

¶ 7 I. BACKGROUND

¶ 8 The underlying matter arises from a January 5, 2021, defamation suit filed by Glorioso against Sun-Times, alleging counts of defamation *per quod*, defamation *per se*, false light invasion of privacy, and intentional infliction of emotional distress over articles published by Sun-Times on their website and print newspaper on February 7, 2020; February 9, 2020; October 9, 2020; and October 11, 2020. The articles reported on an investigation by the Illinois Office of Executive Inspector General (OEIG) into the Illinois Property Tax Appeal Board (PTAB or Board) and its handling of the 2011 property tax appeal of the Trump International Hotel and Tower (Trump Tower) in Cook County, Illinois. On November 13, 2019, an anonymous whistleblower filed a complaint with the OEIG (Anonymous Complaint), naming several individuals at PTAB and alleging that the Trump Tower tax assessment was severely reduced for politically motivated reasons.

¶ 9 A. The Anonymous Complaint

¶ 10 The November 13, 2019, Anonymous Complaint lists five individuals against whom the complaint was brought: Steven Waggoner, Mauro Glorioso, Katherine Patti, Simeon Nockov, and Jennifer Vesely. At the time of the activities alleged in the Anonymous Complaint, Waggoner was the acting executive director of PTAB and its chief administrative law judge (ALJ). Glorioso was the chairman of the PTAB Board, but became the executive director of PTAB on March 27, 2019. The executive director oversees the day-to-day operations of PTAB, including its ALJs, and may review appeals and recommend decisions. Patti, Nockov, and Vesely were PTAB ALJs. ALJs

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conduct hearings and prepare written decisions on property tax assessment appeals, but the Board makes the final determination based on a majority vote of its members.

¶ 11 The Anonymous Complaint alleges that (1) ALJs Patti, Nockov, and Vesely worked together handling the Trump Tower property tax appeal between 2017 and 2018, (2) Nockov, with the help of Patti and Vesely, wrote a decision finding that the property did not warrant a property tax reduction, (3) on January 31, 2018, he entered the decision into PTAB's database, which meant that the decision was ready for presentation to the appointed members of the Board for approval, (4) Nockov told various PTAB employees that shortly after he entered his decision on the Trump Tower appeal, Glorioso told Waggoner he wanted a large reduction in the assessment of Trump Tower because the owner of the property was the president of the United States, (5) Waggoner then told Nockov to withdraw his decision and rewrite it to grant a large assessment reduction because the president was the owner and to "Make America Great Again,"¹ (6) Nockov withdrew his decision and, again with the assistance of Patti and Vesely, rewrote the decision so that it granted a reduction in the property tax assessment, (7) Nockov entered the new decision into PTAB's database on June 29, 2018, (8) Waggoner had the decision withdrawn later the same day; (9) Waggoner then took over handling the appeal himself, entering a third draft of the decision into the PTAB database on April 29, 2019, (10) the new draft granted a reduction of several million dollars on the Trump Tower property tax assessment, (11) the new draft was more in line with what Glorioso sought from Waggoner, (12) Nockov confirmed that Glorioso had Waggoner pull this draft as well because he felt it was not the right time to publish the decision, and (13) the decision was pulled from the database on May 7, 2019.

¹It is unclear from the Anonymous Complaint whether it was Waggoner or Glorioso who wanted the reduction because it was for the president and "to Make America Great Again."

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¶ 12 The Anonymous Complaint concludes by stating that, as of the time of filing the complaint, no written decision on the Trump Tower property tax assessment had been issued.

¶ 13 The allegations specific to Glorioso make the following accusations: (1) Glorioso told Chief ALJ Waggoner that he wanted a large reduction in the Trump Tower assessment because the owner was the president, (2) Waggoner's draft was more in line with what Glorioso wanted, and (3) Glorioso decided to pull the decision granting the reduction because he felt the timing was not right.

¶ 14 Sun-Times learned of the Anonymous Complaint when an anonymous source delivered a copy of the complaint to Sun-Times investigative reporter Tim Novak on or around December 23, 2019. Novak served PTAB with a request, pursuant to the Freedom of Information Act (FOIA) (5 ILCS 140/1 *et seq.* (West 2018)), to obtain all communications between PTAB and OEIG relating to the 2011 Trump Tower property tax appeal. The request was denied on January 21, 2020. Glorioso was named in the response from PTAB as one of the individuals who determined that the documents requested were exempt from FOIA; he was identified as the PTAB executive director and general counsel.

¶ 15 B. The OEIG Investigation Finds Complaint Against Glorioso Unfounded

¶ 16 OEIG opened an investigation based on the allegations of the Anonymous Complaint in 2019, captioned "In re: Mauro Glorioso, Case No. 19-02400." While he was unable to receive confirmation of the investigation from his FOIA request, on January 29, 2020, Novak received an e-mail statement from Emily Bittner, the communications director for the governor of Illinois, which stated the following:

"The administration is determined to get to the bottom of what happened in this situation, and will ensure that a thorough investigation is conducted. PTAB should take no action

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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.”

¶ 17 On June 8, 2021, the Board issued a unanimous Final Administrative Decision on the 2011 Trump Tower appeal, finding that a reduction of \$2,167,996 in the valuation of the property was warranted. The Executive Ethics Commission of the State of Illinois published a redacted version of the OEIG final report in “In re: Mauro Glorioso” (OEIG Final Report) on September 23, 2021. The OEIG final report confirmed that Glorioso had been under investigation, but redacted all information relating to the Anonymous Complaint on the basis that OEIG found the allegations to be unfounded.

¶ 18 C. The Second OEIG Investigation into Deleted E-mails

¶ 19 The OEIG Final Report also included information about a second complaint, received on October 15, 2020, which alleged that on October 5, 2020, Glorioso improperly deleted 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. OEIG found that Glorioso had been notified through various means in February of 2020 about a document hold requiring him to retain all documents and electronically stored information relating to the 2011 Trump Tower appeal until instructed that the document hold was over.

¶ 20 Based on the investigation, the OEIG Final Report found that Glorioso violated PTAB policy, directives, and state law relating to the maintenance of records by deleting PTAB files and e-mails. On September 23, 2020, Glorioso received notice that he would be terminated from his position. On October 5, 2020, PTAB announced internally that Glorioso would leave the agency

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on October 23, 2020. However, that date was moved up to October 14, 2020. As Glorioso was no longer employed by the State, OEIG recommended that a copy of its report be placed in his employment file and that he not be rehired by the State.

¶ 21 D. Sun-Times's Reporting on Glorioso

¶ 22 On February 7, 2020, Sun-Times published an article on its website, written by Novak, titled "President's Chicago Tax Appeal on Trump Tower Is Under Investigation." The subheading was "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." Tim Novak, *President's Chicago Tax Appeal on Trump Tower Is Under Investigation*, Chicago Sun-Times (Feb. 7, 2020), <https://chicago.suntimes.com/2020/2/7/21126855/donald-trump-tower-chicago-property-tax-appeal-investigation> [<https://perma.cc/5VEN-YCLQ>] (hereinafter, Novak, Tax Appeal Investigation). The article stated that (1) OEIG was investigating Glorioso based on an anonymous complaint, (2) Glorioso pressured his staff to rule in Trump's favor on his 2012 Trump Tower tax appeal, (3) Glorioso rejected his staff's decision to deny Trump any refund, (4) Glorioso and Waggoner declined to comment, (5) OEIG would not confirm whether it had received a complaint regarding Glorioso and Trump's appeal, (6) Sun-Times filed a public records request with PTAB for "correspondence among the inspector general, Glorioso, chief PTAB administrative law judge Steven Waggoner and hearing officer Simeon Nockov," (7) Governor Pritzker's staff would not confirm that a complaint had been filed "against Glorioso and four members of Glorioso's staff," and (8) PTAB rejected Sun-Times's FOIA request. *Id.*

¶ 23 The article also (1) describes Glorioso as a "Republican attorney from Westchester" and (2) quotes Bittner's statement to Novak. *Id.* On February 9, 2020, Sun-Times republished the article in its print edition.

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¶ 24 On October 9, 2020, Sun-Times published another article on its website by Novak regarding Glorioso, this one titled “Pritzker Dumps Official Who Pushed for Trump to Get \$1 Million Refund on Chicago Tower’s Taxes.” Tim Novak, *Pritzker Dumps Official Who Pushed for Trump to Get \$1 Million Refund on Chicago Tower’s Taxes*, Chicago Sun-Times (Oct. 9, 2020) <https://chicago.suntimes.com/2020/10/9/21509933/trump-tower-chicago-property-tax-dispute-pritzker-mauro-glorioso-illinois-property-tax-appeal-board> [https://perma.cc/MSV5-UZ3M] (hereinafter, Novak, Pritzker Dumps Official). The subheading reads, “Mauro Glorioso, a Westchester Republican the governor appointed to head the Illinois Property Tax Appeal Board, is under a state investigation over his Trump Tower recommendation.” *Id.* The article states that (1) Glorioso was under investigation for “trying to force a state agency to give President Donald J. Trump a refund of more than \$1 million on the property taxes he paid on his Chicago skyscraper,” (2) the investigation was based on an anonymous complaint claiming that Glorioso “ordered the agency to approve the \$1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund,” (3) “[a]ny tax refund for Trump would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of money: more than \$540,000 if the president gets what Glorioso wants,” (4) referring to Glorioso, “[t]he 64-year-old Westchester resident and staunch Republican rejected a report from hearing officer Simeon Nockov, who found that Trump didn’t merit a refund,” (5) Waggoner found Trump to be entitled to a refund because the Trump Tower property had been over-assessed in 2011, and (6) Waggoner recommended a reduced valuation of the property, which would result in a reduction in property taxes from \$2.5 million to \$1,031,350. *Id.* Sun-Times republished the article in its print edition on October 11, 2020.

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¶ 25 E. Glorioso’s Defamation Complaint

¶ 26 Glorioso filed his defamation suit against Sun-Times and Novak on January 5, 2021, alleging, across nine counts against both parties, defamation *per quod*, defamation *per se*, false light invasion of privacy, and intentional infliction of emotional distress. The two counts of defamation *per quod* relate specifically to the February 7 and 9, 2020, articles, while the two counts of defamation *per se* relate specifically to the October 9 and 11, 2020, articles. The remaining causes of action relate to all of the articles.

¶ 27 Regarding the defamation *per quod* counts, Glorioso claimed that Novak, having received a copy of the Anonymous Complaint, wrote the February 7, 2020, article, knowing that it was materially false, specifically because the Anonymous Complaint did not state that Glorioso “pressured his staff to cut the president a break”; “pressured his staff to rule in the president’s favor” or “reject[] the [PTAB] staff’s [and hearing officer’s] decision to deny Trump any refund”; or directed that the adjudication of the Trump Tower property tax appeal be driven by political motivations, rather than the merits of the case. See Novak, Tax Appeal Investigation, *supra*. Glorioso also claimed that (1) Novak knew that in 2018, when he allegedly told Waggoner that he wanted the president to be awarded a refund, Glorioso had not yet been appointed executive director and general counsel of PTAB, and (2) as then-chairman of the PTAB Board, he had no direct authority over PTAB hearing officers. Glorioso further claimed that Novak knowingly and falsely depicted Glorioso as:

“(i) taking wrongful action and using his authority solely for political purposes, unrelated to the merits of the Trump Tower real estate tax appeal; (ii) preventing a hearing officer’s decision from becoming finalized and published pursuant to those unethical motives; and

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(iii) demanding a politically-based result in the PTAB appeal, unrelated to the merits of the case.”

Glorioso further alleged that Novak knowingly and falsely depicted him as a corrupt political official, lacking integrity in his profession. Glorioso denied having directed that the initial decision submitted by ALJ Nockov on January 31, 2018, be rejected or that a finding in favor of Trump Tower and refunding more than \$1 million be substituted in its place. Glorioso claimed that, as a result of the publication of these false statements, he suffered special damages in the form of the loss of his employment as executive director and general counsel of PTAB—and the salary and benefits that came with the position—as well as damage to his reputation, humiliation, anxiety, and other mental distress.

¶ 28 Regarding the October 2020 articles, Glorioso alleged that they constitute defamation *per se* because the statements contained in the online article and its reprint were published with actual malice and portray Glorioso as lacking integrity in his profession. He cited specifically to the articles’ stating that he “pushed for” and “tr[ie]d to force a state agency to give” then-President Trump a \$1 million refund on the Trump Tower property tax and that he was under state investigation for his Trump Tower recommendation (see Novak, Pritzker Dumps Official, *supra*), both of which Glorioso denied in his complaint. He further claimed that the articles falsely characterize the Anonymous Complaint as having alleged that Glorioso ordered PTAB to “approve the \$1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund on the tax bill for the Trump International Hotel & Tower’s hotel and commercial space” (*id.*) and that Sun-Times and Novak knew that the Anonymous Complaint did not make such allegations. Glorioso repeated the claims from counts I and II that defendants were aware that Glorioso did not have the authority to direct any result in the Trump Tower appeal at the time of

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the alleged conduct and that defendants distorted the contents of the Anonymous Complaint in order to falsely depict Glorioso as having directed a result in a property tax appeal “solely for corrupt and political purposes, unrelated to the merit of the case.” He similarly contended that defendants used his anticipated termination and unrelated statements that he was a “staunch Republican” to distort the actions alleged in the Anonymous Complaint as having been politically motivated and corrupt. Additionally, Glorioso claimed that the articles’ false statements that the money Glorioso wanted to save then-President Trump “would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of the money” implied that his actions jeopardized much-needed funding for Chicago’s public schools, when no involved taxing district objected to the tax reduction.

¶ 29 Glorioso next alleged four counts of false light invasion of privacy, for both online articles and their reprints, on the basis that they falsely accused him of conduct showing a lack of integrity as executive director and general counsel of PTAB, which publicly depicted him in a false light.

¶ 30 Finally, he alleged a count of intentional infliction of emotional distress, claiming that the statements defendants published about him were extreme and outrageous, that defendants knew there was a high probability of him suffering extreme emotional distress over their publication, and that he did in fact suffer such distress. The circuit court dismissed this count.

¶ 31 II. THE PRESENT APPEAL

¶ 32 Sun-Times now appeals only from the denial of its motion to dismiss the suit as a SLAPP, pursuant to the Act.

¶ 33 In this alternative motion, raised for the first time in combination with a motion to reconsider the circuit court’s earlier denial of its motion to dismiss, Sun-Times argues that the

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articles satisfy the criteria required for immunity under the Act and Glorioso's suit should be dismissed as a SLAPP.

¶ 34

III. ANALYSIS

¶ 35

A. Standard of Review

¶ 36 A motion to dismiss a suit as a SLAPP under the Act is raised as a motion pursuant to section 2-619(a)(9) of the Code (735 ILCS 5/2-619(a)(9) (West 2022)), which seeks dismissal where the claim is “barred by other affirmative matter avoiding the legal effect of or defeating the claim.” (Internal quotation marks omitted.) *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 54; see also *Van Meter v. Darien Park District*, 207 Ill. 2d 359, 367 (2003). At issue on appeal is the question of “ ‘whether the existence of a genuine issue of material fact should have precluded the dismissal or, absent such an issue of fact, whether dismissal is proper as a matter of law.’ ” *Sandholm*, 2012 IL 111443, ¶ 55 (quoting *Kedzie & 103rd Currency Exchange, Inc. v. Hodge*, 156 Ill. 2d 112, 116-17 (1993)). The dismissal of a section 2-619 motion to dismiss is reviewed *de novo*. *Porter v. Decatur Memorial Hospital*, 227 Ill. 2d 343, 352 (2008).

¶ 37 The question of whether the suit should have been dismissed pursuant to the Act is a question of statutory construction; as such, we review the circuit court's interpretation of the statute *de novo*. *Sandholm*, 2012 IL 111443, ¶ 41; *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 31.

¶ 38 The legislature enacted the Act to combat the rise of meritless lawsuits used to retaliate against the defendants' attempt to participate in government through exercising their first amendment rights. *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶ 12; *Sandholm*, 2012 IL 111443, ¶¶ 33-34. In the Act, the guiding public policy is articulated as an interest in “strik[ing] 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

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in government” and “protect[ing] and encourag[ing] public participation in government to the maximum extent permitted by law.” 735 ILCS 110/5 (West 2022). The Act provides a defense against such “Strategic Lawsuits Against Public Participation,” or SLAPPs, where a defendant engages in “ ‘[a]cts in furtherance of the constitutional rights to petition, speech, association, and participation in government *** , regardless of intent or purpose, except when not genuinely aimed at procuring favorable government action, result, or outcome.’ ” *Goral*, 2014 IL App (1st) 133236, ¶ 32 (quoting 735 ILCS 110/15 (West 2010)). The legislature intended that the Act “shall be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b) (West 2022). In deciding whether a lawsuit should be dismissed pursuant to the Act, a court must first determine whether the suit is the type of suit the Act was intended to address. *Sandholm*, 2012 IL 111443, ¶ 43.

¶ 39 The circuit court, after noting that Sun-Times should have raised this argument in its initial section 2-619.1 motion to dismiss, determined that defendants had failed to meet their burden of showing that the suit should be dismissed as a SLAPP. We agree with the circuit court.

¶ 40 B. SLAPP Elements and Analysis

¶ 41 In *Sandholm*, our supreme court limited the Act’s application to SLAPPs, which it defined as lawsuits “solely based on, relating to, or 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.’ ” (Emphasis in original.) *Id.* ¶ 45 (quoting 735 ILCS 110/15 (West 2008)); see also *Goral*, 2014 IL App (1st) 133236, ¶ 33. If the plaintiff genuinely seeks “relief for damages for the alleged defamation or intentionally tortious acts of defendants,” it is not a SLAPP and not subject to dismissal under the Act. *Sandholm*, 2012 IL 111443, ¶ 45.

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¶ 42 A court considers three elements in determining whether a suit is subject to dismissal under the Act. The defendants have the burden of showing both of the first two elements: (1) that the defendants' acts were " 'in furtherance of their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action' "; and (2) that the plaintiff's claims are solely based on the aforementioned acts, which requires the defendants to show that the suit was (a) meritless and (b) retaliatory. See *Goral*, 2014 IL App (1st) 133236, ¶ 38.

¶ 43 If the defendants prove that their acts were in furtherance of their right to participate in government and that the suit is meritless and retaliatory, the burden then shifts onto the plaintiff to establish, by clear and convincing evidence, the third element—" 'that the defendants' acts were not genuinely aimed at solely procuring favorable government action.' " *Id.* ¶ 34 (quoting *Hammons v. Society of Permanent Cosmetic Professionals*, 2012 IL App (1st) 102644, ¶ 18).

¶ 44 C. Glorioso's Argument

¶ 45 Glorioso distinguishes the *Goral* and *Ryan* cases, arguing that the statements at issue in *Goral* merely questioned the plaintiff's eligibility and qualifications. It is true that we found in *Goral* that the defendant's statements were reasonably capable of an innocent construction because they were conditioned on the existence of other facts and did not actually accuse the plaintiff of committing a crime, thus holding that his statements were not defamatory *per se*. *Id.* ¶ 48. However, here, that is in question due to Glorioso's argument, with which the circuit court agreed, that defendants' statements could be reasonably construed as going beyond any innocent reporting on the investigation to defaming Glorioso because the articles are written around him, specifically, rather than about the investigation more broadly.

¶ 46 Glorioso next distinguishes *Ryan* on the basis that, in that case, we held that the reports communicated the findings of the investigation to the public and to the local government and

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sought comment and action from the Illinois Supreme Court and the chief judge of the circuit court. *Ryan*, 2012 IL App (1st) 120005, ¶ 19.

¶ 47 The circuit court did not substantively address whether the articles in question are the kind protected by the Act, whether the articles constitute acts in furtherance of Sun-Times's participation in government to procure favorable government action.

¶ 48 D. Sun-Times's Argument

¶ 49 Sun-Times equates its articles about Glorioso to the critical comments made in the blog posts in *Goral*, which we found to be protected political speech that would have been aimed at procuring favorable government action, even if the action sought was to encourage the electorate not to elect the plaintiff. *Goral*, 2014 IL App (1st) 133236, ¶ 63.

¶ 50 Sun-Times also relies on *Ryan*. In *Ryan*, we found that it was “indisputable” that the defendants' investigatory reporting fell within protected activity under the Act. *Ryan*, 2012 IL App (1st) 120005, ¶ 19. In that case, defendants aired a four-part investigative series accusing several Cook County circuit court judges, including the plaintiff, of leaving work early and generally shirking their judicial duties. *Id.* ¶¶ 2-8. Sun-Times compares its reporting on an official investigation into the acts of PTAB executive director and general counsel Glorioso and administrative law judges like Waggoner to the reporting on the behavior of judges in *Ryan*.

¶ 51 i. Whether Defendants' Reporting Was Solely in
Furtherance of Government Participation

¶ 52 The first factor the court considers in analyzing whether a lawsuit is a SLAPP is whether the actions alleged in the complaint are of the kind protected by the Act. This is the most straightforward prong. See *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 17. However, the parties

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here dispute whether Sun-Times's articles constitute acts in furtherance of government participation, seeking to procure favorable government action.

¶ 53 There is support in *Ryan* for 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 and operational government. However, the present matter is distinguishable, given the existence of a genuine question of fact as to whether the articles solely alert the public to the investigation into PTAB. The articles were published as news articles—factual reporting on the events of the investigation, the alleged PTAB scheme, and Glorioso's firing—as they occurred, rather than editorial or opinion pieces that present the thoughts and stance of the writer. While news reporting could include the goal of favorable government action, as we found in *Ryan*, the facts of this case do not unquestionably lead us to the same finding. There is, for example, no way for voters to remove Glorioso, since he was already fired and the head of PTAB is not an elected position. We cannot conclude that Sun-Times has sufficiently established that the articles were solely in furtherance of their right to participate in government to obtain favorable government action, and we find that there are issues of fact still unsettled at this pleading stage.

¶ 54 ii. Whether Glorioso's Claims Are Based Solely on
Sun-Times's Protected Speech

¶ 55 Turning to the second prong, we must establish whether Sun-Times has met its burden of showing that Glorioso's suit was solely based on their exercise of political rights. *Goral*, 2014 IL App (1st) 133236, ¶ 38. In order to do so, defendants must show that the suit was “ ‘meritless and was filed in retaliation against the [defendants'] protected activities in order to deter the [defendants] from further engaging in those activities.’ ” *Garrido*, 2013 IL App (1st) 120466, ¶ 18 (quoting *Ryan*, 2012 IL App (1st) 120005, ¶ 21).

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¶ 56 As our supreme court explained in *Sandholm*, where it originated the “meritless and retaliatory” standard, SLAPPs are by definition meritless, as the plaintiffs’ goal is to chill the defendants’ speech and “discourage opposition by others through delay, expense, and distraction.” *Sandholm*, 2012 IL 111443, ¶ 34. In *Garrido*, we articulated how to determine whether a suit is meritless or not, stating that a claim is not meritless if, for example, it was subject to dismissal under section 2-615, as immunity based on the Act is an affirmative defense that is properly brought under a section 2-619 motion to dismiss. *Garrido*, 2013 IL App (1st) 120466, ¶ 19; see also *Ryan*, 2012 IL App (1st) 120005, ¶ 26 (rejecting defendants’ argument that the claims were meritless because plaintiff failed to sufficiently plead a cause of action under the standard of section 2-615); *Hammons*, 2012 IL App (1st) 102644, ¶ 21. However, a suit *is* meritless if the defendant can disprove some element of the plaintiff’s claim. *Garrido*, 2013 IL App (1st) 120466, ¶ 19; see also *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 638 (2010) (plaintiff’s defamation claim was meritless because defendant showed that allegedly defamatory statement was actually true). We further explained that a SLAPP does not seek to make the plaintiff whole but, rather, only serves to punish or deter the defendant’s legitimate exercise of first amendment rights. *Garrido*, 2013 IL App (1st) 120466, ¶ 20. Because we cannot determine whether a lawsuit is a SLAPP based solely on the pleadings, we must accept all well-pled facts as true and analyze whether Sun-Times has affirmatively disproven some essential element of Glorioso’s complaint, which it attempts to do by arguing that the articles only contain statements that are substantially true and fair reporting or figurative speech that is nonactionable as defamatory content. See *id.* ¶ 23.

¶ 57 a. Whether Sun-Times Has Established the Suit Is Meritless

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¶ 58 Sun-Times challenges the merits of Glorioso’s complaint by arguing that the articles were substantially true, an innocent construction of the articles precludes judgment, and the articles are privileged as fair reports. The circuit court relied on its prior denial of Sun-Times’s first motion to dismiss, based on the same arguments but not invoking the Act, as well as its findings that Novak, through a combination of omissions (of mentions in the Anonymous Complaint of others’ alleged involvement in the scheme to reduce the property tax assessment) and additions (of statements assuming Glorioso’s personal involvement and culpability) left it a question of fact whether the articles were substantially true or whether they overstated Glorioso’s role and motivations in the alleged scheme beyond the actual allegations made by the whistleblower.

¶ 59 We find that Sun-Times’s reporting could reasonably be read as not fair, accurate, or truthful by creating the implication that Glorioso was more culpable in the alleged activity than the anonymous complaint claimed, both in terms of his supposed actions and his supposed authority over PTAB employees. These are questions of fact that allow Glorioso’s complaint to survive the pleading stage. Defendants have failed to meet their burden of proving that his lawsuit was meritless.

¶ 60 b. Whether Sun-Times Has Established the Suit Is Retaliatory

¶ 61 The next question is whether Glorioso’s lawsuit was filed with the goal of seeking damages for the harm that Sun-Times’s articles caused to his reputation and character or whether it was “solely based on, related to, or in response to the acts of defendants in furtherance of the rights of petition and speech,” intended to chill Sun-Times’s “participation in government or to stifle political expression.” *Sandholm*, 2012 IL 111443, ¶ 57. The courts look to two factors to conduct this analysis: “(1) the proximity in time between the protected activity and the filing of the complaint, and (2) whether the damages requested are reasonably related to the facts alleged in the

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complaint and are a ‘good-faith estimate of the extent of the injury sustained.’ ” *Ryan*, 2012 IL App (1st) 120005, ¶ 23 (quoting *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2010)). These factors are not exclusive “and there may well be other factors that are relevant.” *Id.* It is the defendants’ burden to show that the lawsuit was retaliatory. *Sandholm*, 2012 IL 111443, ¶ 57.

¶ 62 Regarding the timing of the lawsuit, Glorioso sued for defamation approximately 11 months after the publication of the first of the articles at issue. Glorioso argues that the length of time between publication and his suit supports a finding that the suit was not retaliatory, as it did not stifle defendants’ rights to petition, to speak, or to participate in government. See *Ryan*, 2012 IL App (1st) 120005, ¶ 23 (plaintiff filed complaint less than three days after the first segment of defendant’s reporting aired; proximity in time was “not necessarily dispositive evidence of retaliatory intent,” but was “a probative fact,” made more plausible by the fact that plaintiff filed suit before the last segment aired). It is true that waiting until shortly before the running of the statute of limitations on the first set of articles does not indicate an attempt to silence Sun-Times’s future reporting on Glorioso or PTAB. The approximately three months between the lawsuit and the October articles also does not suggest retaliation. Similarly, unlike instances where plaintiffs attempted to sue for punitively and disproportionately large sums of money, Glorioso seeks \$50,000; regardless of his intentions in suing, this does not provide evidence that the lawsuit was retaliatory. See *id.* ¶ 24 (damages of \$7 million in addition to punitive damages suggested retaliation; “[d]emanding damages in the millions for alleged defamation is a classic SLAPP scenario”); see also *Hytel*, 405 Ill. App. 3d at 126 (evidence of retaliation where extraordinarily high damages sought were not supported by the facts pled). We agree with the circuit court that it is a question of fact whether the timing and amount of damages sought indicate retaliatory behavior. However, these are not the only factors to consider, as we may also look to other relevant

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matters specific to the facts of this case. We will address the other points raised in defendants' petition below.

¶ 63 Sun-Times points to the e-mails it received through a FOIA request to PTAB that reveal that Glorioso was aware of the allegations of the anonymous complaint prior to filing his defamation suit, and, more notably, he acknowledged that the complaint accused him of having directed a particular result in the Trump Tower appeal based on his political bias rather than the merits of the appeal. In his complaint against Sun-Times and Novak, Glorioso takes issue with the articles' characterization of the anonymous complaint allegations as accusing him of precisely that. We emphasize that the defamation suit is not based on the existence of an investigation, which Glorioso concedes. Rather, he argues that the portrayal of the investigation unfairly centers on and inflates his actions and malintent. Furthermore, if he discussed the allegations against him, none of the e-mails Sun-Times obtained amount to an admission to the whistleblower's claims. Therefore, Glorioso's knowledge of the Anonymous Complaint's allegations does not indicate that his suit was retaliatory.

¶ 64 In determining whether the defendants have sufficiently shown that a purported SLAPP was retaliatory, the court applies the Act on a case-by-case basis. See *Hytel*, 405 Ill. App. 3d at 126. Considering the timing of the lawsuit and the amount of damages sought, as well as other factors raised by defendants, we cannot conclude that defendants have met their burden of proving that Glorioso's defamation suit was retaliatory in nature.

¶ 65 IV. SLAPP DETERMINATION

¶ 66 Sun-Times has not established that its articles were solely in furtherance of its right to participate in government to obtain favorable government action. Furthermore, there is sufficient evidence that a reasonable finder of fact could read Sun-Times's articles and determine that they

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do not constitute fair, accurate, and truthful reporting, for the reasons articulated by the circuit court. We find that Sun-Times has not sufficiently established that Glorioso's suit was meritless. Finally, Sun-Times has failed to meet its burden of showing that the suit was retaliatory, based on the facts and circumstances in this matter, including the timing of the suit and amount of damages sought. Because Sun-Times has not met its burdens, we need not consider the third element of a SLAPP, *i.e.*, the plaintiff's burden of proving by clear and convincing evidence that the acts of Sun-Times were not in furtherance of acts immunized by the Act. See 735 ILCS 110/20(c) (West 2022).

¶ 67

V. CONCLUSION

¶ 68 For the reasons stated above, we affirm the judgment of the circuit court, denying defendants' motion to dismiss pursuant to section 2-619 and the Act, and find that plaintiff's lawsuit is not a SLAPP.

¶ 69 Affirmed.

¶ 70 JUSTICE HYMAN, dissenting:

¶ 71 From the inception of our democracy, one of the most vital roles fulfilled by the press has been as the people's lantern into the darkness of government affairs. Given this institutional distinction, anti-SLAPP (Strategic Lawsuits Against Public Participation) statutes protect socially beneficial speech, especially a free and inquisitive press. At least 32 states and the District of Columbia have adopted anti-SLAPP statutes, with varying protections. The General Assembly intended Illinois's anti-SLAPP statute, the Citizen's Participation Act, to subject meritless SLAPPs to summary, expedited dismissal and attorney fees. *Sandholm v. Kuecker*, 2012 IL 111443, ¶¶ 35-36.

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¶ 72 By definition, SLAPPs are abusive, retaliatory lawsuits “ ‘aimed at preventing citizens from exercising their political rights or punishing those who have done so.’ ” *Id.* ¶ 33 (quoting *Wright Development Group, LLC v. Walsh*, 238 Ill. 2d 620, 630 (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.” *Id.* ¶ 34. “SLAPPs use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation.” *Wright Development Group, LLC*, 238 Ill. 2d at 630.

¶ 73 In ruling that the Sun-Times must establish that Glorioso’s claims are both meritless and retaliatory, the majority adheres to a decade of appellate court decisions considering the “meritless and retaliatory” standard. According to the appellate caselaw, the supreme court’s *Sandholm* opinion originated the “meritless and retaliatory” standard. I submit that a careful reading of *Sandholm* reveals that the appellate decisions stray from the reasoning underlying *Sandholm* and the legislature’s intent. In my view, *Sandholm* does not create or imply the “meritless and retaliatory” standard, which has essentially weakened a potent deterrent to groundless lawsuits that target those who protest or raise concerns on matters of public interest. At the same time, the appellate decisions have repeatedly fallen short of carrying out the Act’s mandate to construe it liberally “to effectuate its purposes and intent fully.” 735 ILCS 110/30(b) (West 2022).

¶ 74 With the benefit of the briefing on the petition to reconsider and reevaluation of the underlying caselaw, I respectfully dissent. Based on the record before us, restoring the supreme court’s actual holding in *Sandholm* and the legislature’s intent justifies the reversal of the circuit court’s order.

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¶ 75 How the Illinois Appellate Court Went Astray

¶ 76 To assess how we got here, we must closely examine *Sandholm* and the subsequent appellate court cases. In explaining the rationale and the type of lawsuit the Act was intended to thwart, our supreme court uses the words “only meritless, retaliatory” before SLAPPs (twice), SLAPP lawsuits (once) and SLAPP suits (once). First, notice that “retaliatory” comes before SLAPP in each instance, creating a consistent phrase. Second, there is a comma before every retaliatory” and not an “and.” This indicates “retaliatory” serves as an adjective describing SLAPP actions and is unrelated to “meritless.” Moreover, no variation or other sense of “retaliatory” appears in the opinion.

¶ 77 In addition, nowhere does *Sandholm* discuss, refer to, or hint at a two-prong meritless and retaliatory test, let alone require a movant to demonstrate the lawsuit as retaliatory. For example, the court said the Act is “aimed at discouraging and eliminating meritless, retaliatory SLAPPs, as they traditionally have been defined.” *Sandholm*, 2012 IL 111443, ¶ 42. The “purpose of the Act is to give relief, including monetary relief, to citizens who have been victimized by meritless, retaliatory SLAPP lawsuits.” (Emphasis and internal quotation marks omitted.) *Id.* ¶ 44. Thus, “retaliatory” describes the nature of SLAPP lawsuits—they are inherently retaliatory.

¶ 78 Besides, a meritless case is meritless whether retaliatory or not. Why would the supreme court indulge any meritless case, least of all a SLAPP suit?

¶ 79 Further support that retaliatory is descriptive rather than an element of a motion under the Act is *Sandholm*’s favorable reference to the Massachusetts Supreme Judicial Court opinion in *Duracraft Corp. v. Holmes Products Corp.*, 691 N.E.2d 935 (Mass. 1998). The *Duracraft* court does not even bring up in any way “retaliation.”

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¶ 80 More tellingly, the *Sandholm* court noted that *Duracraft* held “ ‘[t]he special movant who “asserts” protection for its petitioning activities would have to make a threshold showing through the pleadings and affidavits that the claims against it are “based on” the petitioning activities alone and have no substantial basis other than or in addition to the petitioning activities.” *Sandholm*, 2012 IL 111443, ¶ 47 (quoting *Duracraft*, 691 N.E.2d at). This requirement, according to our court, “ ‘serve[s] to distinguish meritless from meritorious claims, as was intended by the Legislature.’ ” *Id.* (quoting *Duracraft*, 691 N.E.2d at 943). Thus, in assessing whether a claim hinges on “petitioning activities alone,” the *Duracraft* court focused on the complaint’s merit or lack of merit, nothing else.

¶ 81 As in *Duracraft*, our supreme court concludes that if the suit was “solely” based on a defendant exercising rights to petition, speak, associate, or participate in government, then by definition, it is meritless and subject to dismissal. Our supreme court does not mention that the defendant must also show the suit was retaliatory. “[W]here a plaintiff files suit genuinely seeking relief for damages for the alleged defamation or intentionally tortious acts of defendants, the lawsuit is not *solely* based on defendants’ rights of petition, speech, association, or participation in government. In that case, the suit would not be dismissed under the Act.” (Emphasis added.) *Id.*

¶ 45.

¶ 82 So, where did the meritless *and* retaliatory standard, which the appellate court now routinely employs, originate? The appellate court decision in *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, issued shortly after *Sandholm*. Specifically, the *Ryan* court said that “a movant^[1] must affirmatively demonstrate that the nonmovant’s claim is a SLAPP within the meaning of the Act, that is, that the claim is meritless and was filed in retaliation against the movant’s protected activities in order to deter the movant from further engaging in those

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activities.” *Id.* ¶ 21. For support, *Ryan* cites paragraph 57 of the *Sandholm* case, which importantly does not contain the word “retaliatory” or include anything about retaliation.

¶ 83 The *Ryan* court also claims that paragraphs 33 and 34 of *Sandholm* define SLAPPs as “meritless and retaliatory”; but again, “retaliatory” does not appear in those paragraphs of *Sandholm*. To repeat, nowhere in *Sandholm* does the supreme court say a defendant must show that a plaintiff’s complaint is meritless *and* retaliatory. I believe *Ryan* misread *Sandholm*, placing a burden on a defendant to show that a plaintiff’s claims are both meritless and retaliatory, despite no support in the Act’s language or supreme court precedent.

¶ 84 Like the majority, numerous appellate courts have followed *Ryan*. In some cases, such as *Garrido v. Arena*, 2013 IL App (1st) 120466, ¶ 19, the court admitted that “[t]he Act itself does not expressly contain this requirement, and the second prong of the test originated in *Sandholm*, which did not define these terms.” Having said that, the court nevertheless followed *Ryan*. In other cases, such as *Samoylovich v. Montesdeoca*, 2014 IL App (1st) 121545, ¶ 27, the court refers to the “*Sandholm* standard” that “where a defendant fails to show that a plaintiff’s suit is meritless and retaliatory, the defendant is not entitled to have the suit dismissed under the Act,” though the court did not create that standard. In still other cases, the appellate court has followed *Ryan* with little examination of the source of this so-called retaliatory requirement. See, e.g., *Stein v. Krislov*, 2013 IL App (1st) 113806, ¶ 17 (citing *Ryan* and *Garrido* to conclude “defendants must affirmatively demonstrate that plaintiff’s suit was retaliatory and meritless”). But see *Capeheart v. Terrell*, 2013 IL App (1st) 122517, ¶ 17 (finding defendant did not demonstrate plaintiff’s suit was “meritless or retaliatory”).

¶ 85 Apart from having no basis, requiring that a defendant show a complaint is retaliatory and meritless makes no sense. A meritless claim has no possibility of success, and allowing a plaintiff

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to proceed anyhow undermines judicial economy and annuls the Act's aim to dispose of facially invalid cases quickly. Further, allowing meritless claims to proceed permits a plaintiff to engage in the abuse the Act sought to avoid.

¶ 86 Moreover, the so-called retaliatory test the appellate court has employed is more likely to encourage than discourage SLAPPs. As the majority notes, courts have generally assessed retaliation by looking at “(1) the proximity in time between the protected activity and the filing of the complaint, and (2) whether the damages requested are reasonably related to the facts alleged in the complaint and are a “good-faith estimate of the extent of the injury sustained.” ’ ” *Supra* ¶ 61 (quoting *Ryan*, 2012 IL App (1st) 120005, ¶ 23, quoting *Hytel Group, Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2010)). The first factor appears unworkable in practice. For example, in *Ryan*, the court found that filing a complaint quickly—three days after a news segment aired—was evidence of retaliation. In contrast, the *Stein* court concluded that waiting more than 11 months and filing shortly before the statute of limitations ran was evidence of retaliation.

¶ 87 Similarly, the appellate court has been inconsistent regarding the consequences of the amount of damages sought. On the one hand, the *Ryan* court found a damages request of \$7 million indicated retaliation, and, on the other, the *Stein* court found a damages request of \$50,000 and punitive damages did too. Moreover, as noted, plaintiffs in SLAPPs whose claims are meritless are using the prospect of the cost, time, and stress of defending against the suits to intimidate and censor. And, to get around the caselaw, a plaintiff simply needs to ask for reasonable damages.

¶ 88 By requiring defendants to show that a complaint is both meritless *and* retaliatory, *Ryan* and its progeny have improperly narrowed the Act contrary to its purpose.

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¶ 89 Reporting Was Solely in Furtherance of Government Participation

¶ 90 Under the plain language of *Sandholm*, a defendant's motion to dismiss under the Act should be granted if (i) the defendant's conduct was solely to further their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action and (ii) the plaintiff's claim is meritless. Based on the record, the Sun-Times has satisfied the actual test set out in *Sandholm*, so I would reverse the trial court and grant the motion to dismiss under the Act.

¶ 91 The majority finds that the Sun-Times did not sufficiently establish that its reporting on the Glorioso investigation was solely to further their right to participate in government to obtain favorable government action. I do not see it this way.

¶ 92 The Sun-Times relies on *Ryan*, 2012 IL App (1st) 120005, to support its argument that its reporting on the investigation was speech the Act protects. In *Ryan*, the defendants aired a four-part investigative series accusing several Cook County circuit court judges, including the plaintiff, of leaving work early and shirking their judicial duties. The *Ryan* court found it "indisputable that defendants' actions in this case satisfy the first prong of the test." *Id.* ¶ 19. The court concluded, "Such activity is well within the scope of the Act, and in fact the investigatory report at issue here is an excellent example of the kind of activity that the legislature sought to protect, as shown by the Act's own language." *Id.* The court also cited the Act's public policy, which states, "[t]he 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." 735 ILCS 110/5 (West 2010).

¶ 93 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

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democracy and operational government.” *Supra* ¶ 53. The majority, however, finds *Ryan* distinguishable, concluding that a genuine question of fact exists “as to whether the articles solely alert the public to the investigation into PTAB” because (i) PTAB no longer employed Glorioso and (ii) the head of the PTAB is not an elected position, so voters could not remove him from his position. *Supra* ¶ 53.

¶ 94 Glorioso’s employment status is meaningless. Nothing in the Act limits it to speech about either current or former government employees. Indeed, reporting on alleged government malfeasance could lead to reform, irrespective of an employee’s status or position. For instance, in *Ryan*, the court found the investigative reporting on the judges satisfied this first prong because it urged the supreme court and chief judge to take action, which they did. Incidentally, the majority has incorrectly stated Glorioso’s employment at the PTAB. His last day was October 14, 2020, after the Sun-Times published the articles in February 2020 and October 7 and 9, 2020.

¶ 95 Similarly, the Sun-Times’s reporting on the OEIG’s investigation into Glorioso, the executive director of the board deciding real estate tax appeals, was undeniably newsworthy and of interest to the public, regardless of his employment status and how he secured his position. Letting the public know about the OEIG investigation could pressure the PTAB to assess its operations and make reforms if needed. As in *Ryan*, the Sun-Times wholly satisfied the first prong.

¶ 96 Complaint Was Meritless

¶ 97 A claim is “meritless” under the Act if the defendant “disproves some essential element of the [plaintiff’s] claim.” *Garrido*, 2013 IL App (1st) 120466, ¶ 19. By contrast, the existence of an affirmative defense does not establish that a plaintiff’s claim is “meritless” under the second prong. *Id.* ¶ 27. We must examine Glorioso’s defamation claims to determine whether they have any merit.

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¶ 98 To qualify as defamatory, a statement must “harm[] a person’s reputation to the extent it lowers the person in the eyes of the community or deters the community from associating with her or him.” *Green v. Rogers*, 234 Ill. 2d 478, 491 (2009). To state a defamation claim, a plaintiff has to plead facts demonstrating (i) the defendant made a false statement about the plaintiff, (ii) the defendant made an unprivileged publication of that statement to a third party, and (iii) publication caused damages. *Id.*

¶ 99 There are two types of defamation: (i) *per se* and (ii) *per quod*. *Tuite v. Corbitt*, 224 Ill. 2d 490, 501 (2006). Defamatory *per se* occurs when the defamatory character is apparent on its face. *Id.*; *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 87 (1996). In Illinois, five categories of statements constitute defamatory *per se*, including words that impute a person: (i) has committed a crime, (ii) has been infected with a loathsome communicable disease, (iii) is unable to perform or lacks integrity in performing her or his employment duties, (iv) lacks ability or otherwise prejudices that person in her or his profession, and (v) has engaged in adultery or fornication. *Green*, 234 Ill. 2d at 491-92; *Tuite*, 224 Ill. 2d at 501. A plaintiff must plead defamation *per se* with a heightened level of precision and particularity because it relieves the plaintiff from having to prove actual damages to his or her reputation to recover. *Green*, 234 Ill. 2d at 495; *Bryson*, 174 Ill. 2d at 87.

¶ 100 If a statement is not defamation *per se*, a plaintiff may pursue a defamation *per quod* claim. An action for defamation *per quod* may exist where the statement’s defamatory character is not apparent on its face but extrinsic circumstances may demonstrate an injurious meaning or where the statement is defamatory on its face but not a category actionable *per se*. *Bryson*, 174 Ill. 2d at 103. To prevail, the plaintiff has to plead and prove actual damages of a pecuniary nature known as special damages. *Hill v. Schmidt*, 2012 IL App (5th) 110324, ¶ 25.

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¶ 101 The fair report privilege protects the news media from defamation actions when it reports information obtained from governmental and public proceedings on matters of public interest. *Harrison v. Chicago Sun-Times, Inc.*, 341 Ill. App. 3d 555, 572 (2003). The privilege also protects news accounts that are not complete reports but a fair abridgment of a proceeding. *Id.* In determining whether the privilege applies, a trial court compares the “gist” or “sting” of the alleged defamation in the official report or proceedings with the gist or sting in the news account. *Id.* If it is the same, the news item is a fair abridgment of the proceedings, and the reporting privilege applies. *Id.* When determining the gist or sting of the allegedly defamatory statements, the trial court “ ‘look[s] at the highlight of the article, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement.’ ” *Gist v. Macon County Sheriff’s Department*, 284 Ill. App. 3d 367, 371 (1996) (quoting *Vachet v. Central Newspapers, Inc.*, 816 F.2d 313, 316 (7th Cir. 1987)). A statement need not be “technically accurate in every detail” to be substantially true and nonactionable as defamatory content. *Id.* While substantial truth normally presents a question of fact for the jury, it may properly be decided as a matter of law when a reasonable jury would find that the statements were substantially true. *Id.*

¶ 102 As the Sun-Times notes, the articles do not deviate from fair and accurate reporting on the accusations. In the OEIG complaint, (i) Glorioso told Waggoner he wanted a reduction in the Trump Tower appeal because the property owner was the president, (ii) Waggoner complied with Glorioso’s directive, (iii) Glorioso’s ALJs followed his orders, and (iv) Glorioso’s staff and Waggoner authored a revised report granting the reduction. In refusing to dismiss the defamation claims, the circuit court noted, “the implication to be drawn from defendants’ articles—specifically, that plaintiff was the architect of the scheme or the primary target of the

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investigation.” But, in the absence of a false statement in the reporting, and there are none, the Sun-Times cannot be held legally accountable for negative implications that might result. *Andrews v. At World Properties, LLC*, 2023 IL App (1st) 1220950, ¶ 24 (plaintiff’s employer not accountable for negative implications that might have arisen from its social media post terminating plaintiff who admitted to “storming the capital” on January 6). Thus, as a matter of law, Glorioso’s complaint fails to state claims for defamation.

¶ 103 Like the trial court, the majority concludes the Sun-Times has not shown Glorioso’s claim is meritless because its “reporting could reasonably be read as not fair, accurate, or truthful by creating the implication that Glorioso was more culpable in the alleged activity than the Anonymous Complaint claimed, both in terms of his supposed actions and his supposed authority over PTAB employees.” *Supra* ¶ 59.

¶ 104 As noted, to state a claim for defamation, a plaintiff must plead facts demonstrating the defendant made a false statement about the plaintiff. The majority considers what implications a reader or listener might draw from the reporting. But the law does not. The law focuses on whether the reporting is factual and accurate. *Solaia Technology, LLC v. Specialty Publishing Co.*, 221 Ill. 2d 558, 590 (2006) (accuracy is “ ‘benchmark of the [fair report] privilege’ ” (quoting *Gist*, 284 Ill. App. 3d at 376)).

¶ 105 The Sun-Times reported accurately that the OEIG was investigating Glorioso. When determining the “gist” or “sting” of the allegedly defamatory statements, the trial court “ ‘look[s] at the highlight of the article, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement.’ ” *Gist*, 284 Ill. App 3d at 371 (quoting *Vachet*, 816 F. 2d at 316). Just because the anonymous complaint that launched the investigation named other individuals who took part in the alleged misconduct (but

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conspicuously were not the subject of the OEIG investigation), the Sun-Times's reporting on the investigation into Glorioso was neither false nor misleading. Further, the Sun-Times asserts that Glorioso's e-mails show he knew he was the focus of the investigation. Also, the anonymous complaint alleged he sought a specific result on the tax appeal based on political bias, which further supports that his complaint lacks merit.

¶ 106

Conclusion

¶ 107 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. I believe the law in this area needs clarification and correction by our supreme court.

¶ 108 I would reverse the trial court and grant the motion to dismiss.

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Glorioso v. Sun-Times Media Holdings, LLC, 2023 IL App (1st) 211526

Decision Under Review: Appeal from the Circuit Court of Cook County, No. 2021-L-00090; the Hon. Patricia O'Brien Sheahan, Judge, presiding.

Attorneys for Appellant: Damon E. Dunn and Seth A. Stern, of Funkhouser Vegosen Liebman & Dunn Ltd., of Chicago, for appellants.

Attorneys for Appellee: Phillip J. Zisook and William R. Klein, of Schoenberg Finkel Beederman Bell Glazer, LLC, of Chicago, for appellee.



CLERK'S OFFICE
APPELLATE COURT FIRST DISTRICT
STATE OF ILLINOIS
160 NORTH LA SALLE STREET, RM S1400
CHICAGO, ILLINOIS 60601

September 25, 2023

RE: MAURO GLORIOSO v. SUN-TIMES MEDIA HOLDINGS
General No.: 1-21-1526
County: Cook County
Trial Court No: 21-L-90

The Court today denied the petition for rehearing filed in the above entitled cause. The mandate of this Court will issue 35 days from today unless a petition for leave to appeal is filed in the Illinois Supreme Court.

If the decision is an opinion, it is hereby released today for publication.

Thomas D. Palella
Clerk of the Appellate Court

c: Clark Hill PLC
Schoenberg Finkel Beederman Bell Glazer, LLC

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

MAURO GLORIOSO,)
)
Plaintiff,)
v.)
)
SUN-TIMES MEDIA HOLDINGS, LLC, a Delaware)
limited liability company, and Tim Novak, an individual,)
)
Defendants.)

No. 2021 L 2021L000090

JURY DEMANDED

COMPLAINT

Plaintiff Mauro Glorioso (“Glorioso”), by his attorneys, Schoenberg Finkel Beederman Bell Glazer LLC, complains of defendants Sun-Times Media Holdings, LLC (“Sun-Times”) and Tim Novak (“Novak”) as follows:

General Allegations Common to All Counts

A. Parties, Jurisdiction and Venue

1. Plaintiff, Mauro Glorioso is a resident of Cook County, Illinois. Glorioso is an Illinois attorney, having been admitted to the Illinois Bar in 1997. Glorioso graduated from the John Marshall Law School in January, 1997. From 1997 through the present time, Mr. Glorioso’s law license has at all times been in good standing with the Illinois Attorney Registration and Disciplinary Commission and Illinois Supreme Court. From the time he was first admitted as an Illinois attorney in 1997 until the time of the publications complained of herein, Glorioso enjoyed an exemplary professional reputation.

2. From December, 2000 through October, 2020, Glorioso worked at the State of Illinois Property Tax Appeal Board (“PTAB” or, the “Agency”) in various capacities. PTAB is an Illinois administrative agency that hears and adjudicates tax assessment appeals after a final decision from the property tax board of review of any Illinois county.

3. From December, 2000 to November, 2008, Mr. Glorioso worked as an Administrative Law Judge for the Agency, hearing and adjudicating complex property tax cases concerning commercial properties. In November, 2008, Mr. Glorioso was appointed by the Governor of Illinois and confirmed by the Illinois Senate as one of five PTAB Board members (“Commissioners”). As a PTAB Commissioner, Glorioso, in conjunction with his fellow Commissioners, engaged in PTAB policy determinations and ruled on various matters before the Board in addition to reviewing and signing decisions submitted by PTAB staff. Mr. Glorioso was subsequently re-appointed by the next-sitting Illinois Governor to the PTAB Board in March, 2013 and confirmed by the Illinois Senate for a second term. Glorioso served in this capacity until April, 2016 when he was appointed by the next-sitting Illinois Governor and confirmed by the Illinois Senate as Chairman of the PTAB Board and as a PTAB Commissioner for a third term. In this capacity, Mr. Glorioso oversaw the activities and policies of the Board and directed Board action on various agency issues. Mr. Glorioso served in this capacity until March, 2019, when his term as Chairman expired.

4. Immediately upon the expiration of his term as Chairman of the PTAB Board in March, 2019, Mr. Glorioso was appointed by the current Governor of Illinois, J.B. Pritzker, as Executive Director and General Counsel of PTAB. In this capacity, he oversaw the day to day operations of PTAB, implemented policy as determined by the PTAB Board, coordinated activities with PTAB’s management team, reported to the Governor’s office on various issues, and appeared before the Illinois Senate and House committees regarding funding and appropriations. He also acted as a legislative liaison for PTAB.

5. In addition, Mr. Glorioso has served on the Illinois State Bar Association’s (“ISBA”) Board of Governors and was elected to serve in this position for three separate terms in the period 2004 through 2012 (2004-2005; 2006-2009; and 2009-2012). The Board of

Governors is the policy making and managing body for the more than 30,000 members of the ISBA. Mr. Glorioso has further been an active member and office holder of ISBA, and has served as its Treasurer and Secretary. He also has been elected numerous times as an ISBA Assembly Representative. Mr. Glorioso has also been an active member and participant in various local bar associations, including but not limited to the Chicago Bar Association, Women's Bar Association, the Illinois Trial Lawyers Association, and the Justinian Society of Lawyers, which he served as President in the period 2008 through 2009.

6. Defendant, Sun-Times Media Holdings, LLC ("Sun-Times"), owns print and on-line media, including but not limited to the Chicago Sun-Times which is published as a news daily throughout the Chicago metropolitan area and on the internet. The Sun-Times is published in and from Chicago, Illinois. Sun-Times is a Delaware limited liability company with its principal place of business located in Chicago, Illinois.

7. Defendant, Tim Novak is a staff reporter for the Sun-Times and wrote the articles complained of herein. On information and belief, Novak is an employee of Sun-Times and resides in Cook County, Illinois.

8. Jurisdiction and venue are proper in this Court because the statements at issue herein were first published in Chicago, Cook County, Illinois and the parties reside in or have their principal places of business in Cook County, Illinois.

B. Nature of Plaintiff's Claims

9. From the time he was first admitted as an Illinois attorney in 1997 until the time of the publications complained of herein, Glorioso enjoyed an exemplary reputation among his peers and within the community. From the time he was first hired as an administrative law judge at PTAB through October, 2020, Glorioso worked at the highest level of integrity honor,

and professionalism at PTAB. He determined the cases before him on their merits, based solely upon the facts of those cases and the law applicable to those facts.

10. On February 7, 2020, Defendant Sun-Times published through the Chicago Sun-Times website, an article written by Novak of and concerning Glorioso (the “February 7th Article”). The February 7th Article was captioned, “**President’s Chicago tax appeal on Trump Tower is Under investigation**”. (emphasis in original). The article included the subheading, “State inspector general, Pritzker administration 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.” A true and accurate copy of the February 7th Article is attached hereto as Exhibit “1”. The February 7th Article falsely identified Glorioso as being under investigation for pressuring PTAB staff to grant Trump Towers a real estate tax reduction in excess of \$1 million based upon political loyalty, rather than the merits of the case, to “cut the President a break,” and “rejecting PTAB staff’s decision to deny Trump any award” as a consequence of Glorioso’s “political motivations” were “improperly driving the decision-making.” The article falsely disparaged Glorioso throughout the Chicago metropolitan area and the State of Illinois.

11. There was a confidential, anonymous complaint filed with the State Inspector General regarding the Trump Tower PTAB tax appeal. However, Novak and Sun-Times dramatically distorted the substance of that complaint as described herein, publicly defamed Glorioso, and depicted him in a false light throughout the State of Illinois and to the general public.

12. On Sunday, February 9, 2020, Sun-Times republished a print version of the February 7th Article (“The February 9th Article”). On the front page of the Sunday Chicago Sun-Times edition of that date, Sun-Times additionally published an oversized color photo of Trump Tower, with a super-imposed photo of President Trump waving, and in large block letters

printed **“PROBING PREZ’S CHICAGO TOWER TAX APPEAL.”** Underneath that caption was the sub-heading, **“Two investigations looking into allegation that a Republican state agency head pressured staff to slash property taxes Trump paid in 2012.”** (emphasis in original). The front page then directed readers to “Tim Novak Reports” at pages 4-5, which reprinted the substance of the February 7th Article, along with a new heading in oversized block print: **“PREZ’S TAX APPEAL ON CHICAGO TOWER UNDER INVESTIGATION,”** (emphasis in original) followed by the subheading, **“State inspector, Pritzker administration looking into allegation a Republican state agency head pressured staff to slash \$2.5M property taxes Trump paid in 2012 to \$1M.”** The article also included a color photograph of Glorioso. A true and accurate copy of these pages is attached hereto as Exhibit 1(a). The substance and implications of the print version, like the February 7th online version, was that Glorioso’s Republican party affiliation and alleged allegiance to President Trump, rather than the merits of the case resulted in his pressuring PTAB staff to grant the Trump Tower PTAB tax appeal, “rule in the president’s favor, “reject...the staff’s decision to deny Trump any refund,” and award a more than \$1 million tax reduction that was underserved on the merits of the case, to “cut the president a break” as Glorioso’s “political motivations” were “improperly driving the decision-making.”

13. On October 9, 2020, Defendant Sun-Times published another article written by Novak of and concerning Glorioso (the “October 9th Article”). The October 9th Article, was captioned, **“Pritzker dumps official who pushed for Trump to get \$1 million refund on Chicago tower’s taxes.”** (emphasis in original). The article included the sub-heading, Mauro Glorioso, a Westchester Republican the governor appointed to head the Illinois Property Tax Appeal Board, is under a state investigation over his Trump Tower recommendation.” A true and accurate copy of the October 9th Article is attached hereto as Exhibit “2”). The Article

falsely identified Glorioso as having “pushed,” “pressured” and “being under investigation for trying to force a state agency to give President Donald J. Trump a refund of more than \$1 million on the property taxes he paid on his Chicago skyscraper eight years ago.” The article in its substance and implications charged that Glorioso pressured PTAB staff to grant Trump Towers a real estate tax reduction in excess of \$1 million, not on the merits of the case, but solely to assist President Trump. The article further stated of Glorioso that “The 64-year old Westchester resident and staunch Republican rejected a report from hearing officer Simeon Nockov, who found that Trump didn’t merit a refund because Burke’s law firm didn’t present sufficient evidence to support one.” The article falsely disparaged Glorioso throughout the Chicago metropolitan area and Illinois and elsewhere over the internet. Among other professional improprieties charged against Mr. Glorioso in the Sun-Times and Novak’s articles, is the false statement that “Any tax refund for Trump would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of money: more than \$540,000 if the president gets what Glorioso wants.” (Exhibit 2, p. 4).

14. On Sunday October 11, 2020, Sun-Times republished a print version of the October 9th Article in the Chicago Sun-Times (the “October 9th Article”). On the front page of the Sunday Chicago Sun-Times of that date was an oversized color photograph of Trump Tower and in large block letters, a new caption “**GOV AXES OFFICIAL WHO PUSHED FOR \$1M TAX REFUND ON TRUMP TOWER.**” (emphasis in original). Underneath the caption was a color photograph of Mauro Glorioso and the sub-heading “**Mauro Glorioso, a Westchester Republican who Pritzker appointed to head the Illinois Property Tax Appeal Board, is under state investigation over his recommendation.**” (emphasis in original). The front page introduction then directed readers to “Tim Novak Reports” at pages 18-19 of the

Sunday edition where the content of the October 9th Article was republished in modified form. The article included a modified heading in oversized, bold, uppercase letters, “**PRITZKER DUMPS OFFICIAL WHO PUSHED FOR TRUMP TO GET \$1M REFUND ON TOWER’S TAXES.**” A true and accurate copy of those pages is attached hereto as Exhibit 2(a).

15. On information and belief, the February 9th and October 11th print Articles were circulated in print form alone to more than 120,000 people each. In addition, links of the articles complained of herein were provided by Sun-Times to other publications in print and online and were generally circulated by Sun-Times on the internet.

COUNT I
Defamation Per Quod

(Against Sun-Times Media Holdings, LLC and Tim Novak)

16. Novak wrote, and the Sun-Times published the February 7th Article. In that article, Novak wrote that President Trump’s tax appeal regarding Trump Tower was under investigation. The investigation, according to Novak, focused upon whether Glorioso, as “a Republican state official,” “pressured his staff [at PTAB] to cut the president a break.” (Ex. 1, p.1). The article included an oversized photograph of Glorioso. In the article, Novak wrote that an anonymous complaint to the state inspector general’s office stated that “Glorioso, the executive director of the Illinois Property Tax Appeal Board, pressured his staff to rule in the president’s favor, rejecting the staff’s decision to deny Trump any refund.” Novak also reported that Governor Pritzker’s communications director stated that “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.” Novak’s article disclosed that he had reviewed the anonymous complaint. He wrote: “According to the complaint, Nockov [the PTAB staff hearing officer presiding over the Trump

Tower property tax appeal], decided Trump didn't prove his hotel and retail space had been overvalued by the Cook County Board of Review. ... After Trump appealed, the county agency had reduced the original property assessment made by former Cook County Assessor Joseph Berrios but not as much as Trump wanted. Trump then appealed to the state.” (Ex. 1, p.5).

17. Significantly, having acknowledged reviewing the anonymous complaint, Novak knew at the time of publication that his report concerning Glorioso was materially false. Contrary to Defendants' article, there were no statements in the anonymous complaint that Glorioso (i) “pressured his staff to cut the president a break”; (ii) “pressured his staff to rule in the president's favor” in the real estate property tax appeal concerning Trump Tower; or (iii) “reject... the [PTAB] staff's [and hearing officer's] decision to deny Trump any refund.” Further, there was no allegation in the anonymous 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.

18. In the February 7th Article, Novak and Sun-Times falsely depicted Glorioso as the director of and force behind a politically-motivated rejection of a PTAB staff-person/hearing officer's decision purportedly denying the Trump Tower PTAB appeal, and direction of a refund in favor of Trump Tower of a more than \$1 million refund for Trump Tower not based on the merits of the case, but simply to “cut the president a break,” which Novak reported would take needed funds away from the Chicago Board of Education. As Novak knew at the time of publication, there were no such allegations or suggestions in the anonymous complaint and there is no basis in fact for Novak's statements.

19. Defendants reported that the hearing officer's opinion in the Trump Tower appeal was written in January, 2018, but was not made public. The article reported that the anonymous complaint alleged that Glorioso pressured PTAB staff to rule in the president's

favor and rejected PTAB staff's decision to deny Trump any refund. However, by his own reporting, Novak knew that Glorioso had not been appointed by Governor Pritzker as the Executive Director and General Counsel of PTAB until the "summer" of 2019. (Ex. 1, p. 5). Prior to that time, Glorioso served as Chairman of the PTAB Board and as one of five PTAB Commissioners, and was without authority to unilaterally accept or not accept hearing officer decisions as hearing officer decisions are accepted or rejected collectively by the PTAB Board, not by individual Board members. Indeed, as Board Chairman, in 2018, Glorioso lacked direct supervisory authority over PTAB hearing officers.

20. Notwithstanding their purported access to the anonymous complaint, Novak and Sun-Times falsely depicted Glorioso as (i) taking wrongful action and using his authority solely for political purposes, unrelated to the merits of the Trump Tower real estate tax appeal; (ii) preventing a hearing officer's decision from becoming finalized and published pursuant to those unethical motives; and (iii) demanding a politically-based result in the PTAB appeal, unrelated to the merits of the case; all contrary to anonymous complaint the February 7th Article purported to be premised upon.

21. Defendants' distortion of the content of the anonymous complaint cited in the February 7th Article to falsely depict Glorioso directing a politically based decision in the Trump Tower real estate tax appeal unrelated to its merit, and Glorioso's alleged purposeful interference with a hearing officer's decision finding against Trump Tower do not constitute a fair report of the anonymous complaint.

22. The statements contained in the February 7th Article falsely depict Glorioso as a corrupt political official and lacking integrity in his occupation and profession.

23. Contrary to the content of the February 7th Article, Glorioso never directed that the hearing officer's initial decision in the Trump Tower PTAB property tax appeal be rejected,

or not be presented to the Board. Further, at no time did he direct that a PTAB decision finding in favor of Trump Tower and refunding more than \$1 million be substituted in its place. Further, at no time did he direct that any decision with any result be issued in the Trump Tower tax appeal. In addition, at no time did Glorioso direct that a decision in any PTAB case be determined on the basis of political affiliation rather than the merits of the case. Further, Glorioso was not charged with such conduct in the anonymous complaint.

24. As a direct consequence of Defendants' publication of the false statements contained in the February 7th Article, Glorioso sustained special damages, to wit, the loss of his employment as Executive Director and General Counsel of PTAB, including but not limited to his salary and benefits, including life insurance, and pension contributions, as well as expenses for medical care and treatment.

25. The statements contained in the February 7th Article in their substance and implications falsely depict Glorioso as a corrupt political official and lacking integrity in his occupation and profession, unrelated and contrary to the allegations of the anonymous complaint upon which Defendants purported to be reporting on. Accordingly, the statements in the February 7th Article constitute defamation *per quod*.

26. Novak and the Sun-Times published the February 7th Article with actual malice in that they knew the statements of and concerning Glorioso were false at the time of publication. In the alternative, based upon the anonymous complaint they acknowledged having, and the foregoing facts, the February 7th Article was published in reckless disregard of the truth so as to constitute actual malice.

27. Defendant Sun-Times facilitated Novak's disparagement and defamation of Glorioso to the public, and published those statements through the Chicago Sun-Times, other news media, and the internet throughout Illinois.

28. As a proximate result of Defendants' defamatory statements, Mauro Glorioso sustained injury to his reputation, humiliation, anxiety, embarrassment, mental anguish, and special damages as stated above.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants and Sun-Times Media Holdings LLC and Tim Novak jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT II

Defamation Per Quod

(Against Sun-Times Media Holdings, LLC and Novak)

29. On Sunday, February 9, 2020, the Sun-Times republished Defendants' February 7th Article in the Sun-Times' print edition. On the front page of that edition, Defendants published an oversized color photo of Trump Tower, with a super-imposed photo of President Trump waving, and in large block letters, the caption "**PROBING PREZ'S CHICAGO TOWER TAX APPEAL.**" (emphasis in original). **Underneath that caption was the sub-heading, "Two investigations looking into allegation that a Republican state agency head pressured staff to slash property taxes Trump paid in 2012."** (emphasis in original). This content had not been included in the February 7th Article. The front page then directed readers to "Tim Novak Reports" at pages 4-5. There, Defendants published a new caption printed in oversized letters read "**PREZ'S TAX APPEAL ON CHICAGO TOWER UNDER INVESTIGATION,**" (emphasis in original) followed by the subheading, "State inspector, Pritzker administration looking into allegation a Republican state agency head pressured staff to slash \$2.5M property taxes Trump paid in 2012 to \$1M." The article also included a color photograph of Glorioso. A true and accurate copy of these pages is attached hereto as Exhibit 1(a). The body of the article repeated the substance of the February 7th article as alleged in

Count I in paragraphs 16 through 20, which are incorporated herein by reference.

30. The February 9th Article was published as a distinct Sun-Times publication in the paper's Sunday print edition. On information and belief, the Sunday Sun-Times print editions have a greater circulation than the Sun-Times' daily print editions during the week. In addition, the February 9th Article received prominent front-page coverage and was published to a new audience in contrast to the February 7th online Article. In addition, the text of the captions and the photographs for the article changed to attract greater attention on both the front page and the article itself in contrast to the February 7th online publication. As a consequence of its publication in a different edition, on a different day, and in a different manner, published to a different audience, the February 9th Article constitutes a republication of the February 7th Article for which damages may be separately assessed.

31. Notwithstanding their purported access to the anonymous complaint, Novak and Sun-Times falsely depicted Glorioso as (i) taking wrongful action and using his authority solely for political purposes, unrelated to the merits of the Trump Tower real estate tax appeal; (ii) preventing a hearing officer's decision from becoming finalized and published pursuant to those unethical motives; and (iii) demanding a politically-based result in the PTAB appeal, unrelated to the merits of the case; all contrary to the anonymous complaint the February 9th Article purported to be premised upon.

32. Novak and the Sun-Times published the February 9th Article with actual malice in that they knew the statements of and concerning Glorioso were false at the time of publication. In the alternative, based upon the anonymous complaint they acknowledged having, and the foregoing facts, the February 9th Article was published in reckless disregard of the truth so as to constitute actual malice.

33. Defendants' distortion of the content of the anonymous complaint cited in the

February 9th Article and false reports of Glorioso directing a politically based decision in the Trump Tower real estate tax appeal unrelated to its merit, and Glorioso's alleged purposeful interference with a hearing officer's decision finding against Trump Tower do not constitute a fair report of the anonymous complaint.

34. As a direct consequence of Defendants' publication of the false statements contained in the February 9th Article, Glorioso sustained special damages, to wit, the loss of his employment as Executive Director and General Counsel of PTAB, including but not limited to his salary and benefits, including life insurance, and pension contributions, as well as expenses for medical care and treatment.

35. The statements contained in the February 9th Article in their substance and implications falsely depict Glorioso as a corrupt political official and lacking integrity in his occupation and profession, unrelated and contrary to the allegations of the anonymous complaint upon which Defendants purported to be reporting on. Accordingly, the statements in the February 9th Articles constitute defamation *per quod*.

36. Contrary to the content of the February 9th Article, Glorioso never directed that the hearing officer's initial decision in the Trump Tower PTAB property tax appeal be rejected, or not be presented to the Board. Further, at no time did he direct that a PTAB decision finding in favor of Trump Tower and refunding more than \$1 million be substituted in its place. Further, at no time did he direct that any decision with any result be issued in the Trump Tower tax appeal. In addition, at no time did Glorioso direct that a decision in any PTAB case be determined on the basis of political affiliation rather than the merits of the case. Further, the anonymous complaint the article was purportedly based upon did not include these accusations against Glorioso.

37. Defendant Sun-Times facilitated Novak's disparagement and defamation of Glorioso to the public, and published those statements through the Chicago Sun-Times, other news media, and the internet throughout Illinois.

38. As a proximate result of Defendants' defamatory statements, Mauro Glorioso sustained injury to his reputation, humiliation, anxiety, embarrassment, mental anguish, and special damages as stated above.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants and Sun-Times Media Holdings LLC and Tim Novak jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT III
Defamation Per Se

(Against Sun-Times Media Holdings, LLC and Novak)

39. Defendants' October 9th Article was published in the Chicago Sun-Times electronic edition on the internet.

40. The October 9th Article begins with the headline, "**Pritzker dumps official who pushed for Trump to get \$1 million refund on Chicago tower's taxes.**" (emphasis in original). A sub-heading of the article states "Mauro Glorioso, a Westchester Republican the governor appointed to head the Illinois Property Tax Appeal Board, is under a state investigation over his Trump Tower recommendation." Contrary to Defendants' publication, Glorioso neither pushed for Trump to get a \$1 million refund on Trump Tower's taxes, nor did he recommend a that a \$1 million refund on Trump Tower's real estate taxes be ordered by PTAB. Further, Glorioso was not under investigation for making such a "recommendation."

41. The October 9th Article further stated that the investigation concerned Glorioso "trying to force a state agency to give President Donald J. Trump a refund of more than \$1

million on the property taxes he paid on his Chicago skyscraper eight years ago. Contrary to the defendants' publication, at no time did Glorioso try to force or force PTAB to give President Trump a refund of more than \$1 million on the property taxes paid on Trump Tower.

42. Glorioso was terminated as PTAB Executive Director and General Counsel in October, 2020. The Sun-Times and Novak, used Glorioso's anticipated termination as a basis to publish further false and defamatory statements of and concerning Glorioso, including that he had exerted pressure to force PTAB to give a refund of more than \$1 million of Trump Tower property taxes. The October 9th Article further falsely reported that the anonymous complaint filed with the State Inspector General alleged that "Glorioso ordered the agency to approve the \$1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund on the tax bill for the Trump International Hotel and Tower's hotel and commercial space."

43. At the time of their publication, Novak and the Sun-Times were aware that no such allegation was contained in the alleged anonymous complaint and that they distorted its content in the article to falsely depict Glorioso as directing a result in a property tax case before PTAB solely for corrupt and political purposes, unrelated to the merit of the case. The Sun-Times and Novak further knew that at the time of the alleged corrupt conduct, Glorioso was a Board member and Commissioner who ruled on cases in conjunction with the Board of which he was a member, not PTAB's Executive Director, and was without authority to unilaterally direct or order any result in the Trump Tower tax appeal. Further, as Novak was aware, no PTAB decision is final or made public unless and until the PTAB Board rules on the decision as a body. Accordingly, the premise of the Article, that Glorioso was directing a politically-driven result in a PTAB appeal, during a time he was a PTAB Board member, is false and contrary to the manner in which PTAB decisions are adjudicated, determined by the Board, and finalized.

44. In the October 9th Article, Sun-Times and Novak further published that “any tax refund for Trump would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of the money: more than \$540,000 if the president gets what Glorioso wants.” (Ex. 2, p. 4). Accordingly, the article published not only that Glorioso directed PTAB to grant President Trump a more than \$1 million refund, independent of the content of the anonymous complaint cited in the articles, but also, that Glorioso’s corrupt, politically motivated conduct with respect to Trump tower’s PTAB appeal jeopardized needed funding for the Chicago public schools, a correlation which is false and without foundation.

45. The October 9th Article published by Defendants further identified Glorioso as a “staunch Republican” to falsely imply a political motivation behind Glorioso’s alleged conduct and reported that Glorioso “rejected a report from hearing officer Simeon Nockov, who found that Trump didn’t merit a refund because [Alderman Ed] Burke’s law firm didn’t present sufficient evidence to support one.” Sun-Times and Novak were aware that at the time of the purported rejection, based upon their prior February 7th Article, that Glorioso was a Board member and Commissioner of PTAB in the time frame alleged in the articles, and lacked any authority to unilaterally reject a report or decision from a PTAB hearing officer such as Nockov. Accordingly, the statements published by Sun-Times and written by Novak are false in their facts and implications.

46. Defendants’ false statements, both in print media and on the internet charged Glorioso with conduct showing a lack of integrity as the Executive Director and General Counsel of PTAB and constitute defamation *per se*.

47. Defendants published the October 9th Article with actual malice in that they knew the article’s statements of and concerning Glorioso were false at the time of publication.

In the alternative, Defendants published the October 9th Article in reckless disregard of the truth so as to constitute actual malice.

48. Defendants' distortion of the content of the anonymous complaint cited in the October 9th Article and false report of Glorioso directing a politically based result in the Trump Tower PTAB tax appeal, divorced from the merits of that case, and his alleged purposeful interference with a hearing officer's decision finding no basis for a reduction do not constitute a fair report of the anonymous complaint.

49. Defendant Sun-Times facilitated Novak's malicious disparagement and defamation of Glorioso to the public, and published those statements through the Chicago Sun-Times, other news media, and the internet.

50. As a proximate result of Defendants' defamatory statements, Glorioso sustained injury to his reputation, humiliation, anxiety, embarrassment, monetary damage, and mental anguish.

WHEREFORE, Plaintiff Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants Sun-Times Media Holdings, LLC and Tim Novak, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT IV

Defamation Per Se

(Against Sun-Times Media Holdings, LLC and Novak)

51. On Sunday, October 11, 2020, the Sun-Times republished Defendants' October 9th Article in the Sun-Times' print edition. The front page of the Sunday Chicago Sun-Times of that date displays an oversized color photograph of Trump Tower and in large block letters, a new caption "**GOV AXES OFFICIAL WHO PUSHED FOR \$1M TAX REFUND ON TRUMP TOWER.**" (emphasis in original). Underneath the caption is a color photograph of

Mauro Glorioso and the sub-heading, “**Mauro Glorioso, a Westchester Republican who Pritzker appointed to head the Illinois Property Tax Appeal Board, is under state investigation over his recommendation.** (emphasis in original). Each of these elements is unique to Defendants’ October 11th publication. The front-page introduction also directs readers to “Tim Novak Reports” at pages 18-19, where the content of the October 9th Article is republished. The article includes a new heading, not previously published in the October 9th Article, in oversized, bold, uppercase letters stating, “**PRITZKER DUMPS OFFICIAL WHO PUSHED FOR TRUMP TO GET \$1M REFUND ON TOWER’S TAXES.**” The article also includes a color photograph of Glorioso. A true and accurate copy of these pages is attached hereto as Exhibit 2(a). The body of the article repeats the substance of the October 9th article as alleged in Count III in paragraphs 38 through 43, which are incorporated herein by reference.

52. The October 11th Article was published as a distinct Sun-Times publication in the paper’s Sunday print edition, having a greater circulation than the Sun-Times’ other daily print editions during the week. In addition, the October 11th Article received prominent front page coverage and was published to a new audience in contrast to the October 9th online Article. In addition, the text of the captions and the photographs for the article were changed to attract greater attention on both the front page and the article itself in Sun-Times’ Sunday edition in contrast to the October 9th online publication. As a consequence of its publication in a different edition, on a different day, and in a different manner, published to a different audience, the October 11th Article constitutes a republication of the October 9th Article for which damages may be separately assessed.

53. Defendants’ October 11th Article republished the October 9th Article, and added the additional front page headline, “**GOV AXES OFFICIAL WHO PUSHED FOR \$1M TAX REFUND ON TRUMP TOWER.**” (emphasis in original). It further changed the sub-heading

of the article to read: “**PRITZKER DUMPS OFFICIAL WHO PUSHED FOR TRUMP TO GET \$1M REFUND ON TOWER’S TAXES.**” (emphasis in original).

54. Contrary to Defendants’ publication, Glorioso neither pushed for Trump to get a \$1 million refund on Trump Tower’s taxes, nor did he recommend a that a \$1 million refund on Trump Tower’s real estate taxes be ordered by PTAB. Further, contrary to the content of the article, Glorioso was not under investigation for making such a “recommendation.”

55. The October 11th Article further stated that the investigation concerned Glorioso “trying to force a state agency to give President Donald J. Trump a refund of more than \$1 million on the property taxes he paid on his Chicago skyscraper eight years ago.” Contrary to the defendants’ publication, at no time did Glorioso try to force or force PTAB to give President Trump a refund of more than \$1 million on the property taxes paid on Trump Tower, nor was he so charged in the anonymous complaint.

56. Glorioso was terminated as PTAB Executive Director and General Counsel in October, 2020. The Sun-Times and Novak, used Glorioso’s anticipated termination as a basis to publish further false and defamatory statements of and concerning Glorioso, including that he had exerted pressure to force PTAB to give a refund of more than \$1 million of Trump Tower property taxes. The October 11th Article further falsely reported that the anonymous complaint filed with the State Inspector General alleged that “Glorioso ordered the agency to approve the \$1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund on the tax bill for the Trump International Hotel and Tower’s hotel and commercial space.”

57. At the time of their publication, Novak and the Sun-Times were aware that no such allegation was contained in the alleged complaint and that they distorted the content of the anonymous complaint in the article to falsely depict Glorioso as directing a result in a property

tax case before PTAB solely for corrupt and political purposes, unrelated to the merit of the case. The Sun-Times and Novak further knew that at the time of the alleged corrupt conduct, Glorioso was a Board member and Commissioner who ruled on cases in conjunction with the Board of which he was a member, not PTAB's Executive Director, and was without authority to unilaterally direct or order any result in the Trump Tower tax appeal. Further, as Novak was aware, no PTAB decision is final or made public unless and until the PTAB Board rules on the decision as a body. Accordingly, the premise of the Article, that Glorioso was directing a politically driven result in a PTAB appeal unrelated to its merit during a time he was a PTAB Board member, is false and contrary to the manner in which PTAB decisions are adjudicated, determined by the Board, and finalized.

58. In the October 11th Article, Sun-Times and Novak further published that "any tax refund for Trump would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of the money: more than \$540,000 if the president gets what Glorioso wants." (Ex. 2, p. 4). Accordingly, the article implied not only that Glorioso directed PTAB to grant President Trump a more than \$1 million refund, independent of the content of the anonymous complaint cited in the articles, but also, that Glorioso's corrupt, politically motivated conduct with respect to Trump tower's PTAB appeal jeopardized needed funding for the Chicago public schools, a correlation which is false and without foundation.

59. The October 11th Article published by Defendants further identified Glorioso as a "staunch Republican" to falsely suggest an improper politically based motive for their story and reported that Glorioso "rejected a report from hearing officer Simeon Nockov, who found that Trump didn't merit a refund because [Alderman Ed] Burke's law firm didn't present sufficient evidence to support one." Sun-Times and Novak were aware that at the time of the purported

rejection, based upon their prior February 7th Article, that Glorioso was a Board member and Commissioner of PTAB in the time frame alleged in the articles, and lacked any authority to unilaterally reject a report or decision from a PTAB hearing officer such as Nockov.

Accordingly, the statements published by Sun-Times and written by Novak are false in their facts and implications.

60. Defendants' false statements charged Glorioso with conduct showing a lack of integrity as the Executive Director and General Counsel of PTAB and constitute defamation *per se*.

61. Defendants published the October 11th Article with actual malice in that they knew the article's statements of and concerning Glorioso were false at the time of publication. In the alternative, Defendants published the October 11th Article in reckless disregard of the truth so as to constitute actual malice.

62. Defendants' distortion of the content of the anonymous complaint cited in the October 11th Article and false report of Glorioso directing a politically based result in the Trump Tower PTAB tax appeal, divorced from the merits of that case, and his alleged purposeful interference with a hearing officer's decision finding no basis for a reduction does not constitute a fair report of the anonymous complaint.

63. Defendant Sun-Times facilitated Novak's malicious disparagement and defamation of Glorioso to the public, and published those statements through the Chicago Sun-Times, other news media, and the internet.

64. As a proximate result of Defendants' defamatory statements, Glorioso sustained injury to his reputation, humiliation, anxiety, embarrassment, monetary damage, and mental anguish.

WHEREFORE, Plaintiff Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants Sun-Times Media Holdings, LLC and Tim Novak, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT V

False Light Invasion of Privacy

(Against Sun-Times Media Holdings, LLC and Tim Novak)

65. Glorioso realleges paragraphs 16 through 24, and paragraphs 26-28 of Count I.

66. The complained of February 7th Article published by Defendants placed Glorioso in a false light before the public which would be highly offensive to a reasonable person in that they falsely accused him of conduct showing a want of integrity as Executive Director and General Counsel of PTAB.

67. Defendant Sun-Times facilitated Novak's malicious depiction of Glorioso in a false light to the public, through its publication of the February 7th Article in the on-line copies of the Chicago Sun-Times and affiliated print and online newspapers.

68. As a proximate result of Defendants' publication, Mauro Glorioso was publicly depicted in a false light, and sustained humiliation, anxiety, embarrassment, mental anguish, injury to his reputation, the termination of his position as Executive Director and General Counsel of PTAB, and monetary damages proximately resulting therefrom including lost salary, lost employment benefits, and medical expenses.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants Sun-Times Media Holdings, LLC and Tim Novak jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT VI

False Light Invasion of Privacy

(Against Sun-Times Media Holdings, LLC and Tim Novak)

69. Glorioso realleges paragraphs 29 through 34 and 36 through 37 of Count II.

70. The statements published by Defendants placed Glorioso in a false light before the public in that they falsely accused him of conduct showing a want of integrity as an attorney and as Executive Director and General Counsel of PTAB.

71. Such statements publicly placed Glorioso in a false light that would be highly offensive to a reasonable person.

72. Defendant Sun-Times facilitated Novak's ability to maliciously depict Glorioso in a false light to the public, through its publication of the February 9th Articles in the print and on-line copies of the Chicago Sun-Times and affiliated print and online newspapers.

73. As a proximate result of Defendants' publication, Mauro Glorioso was publicly depicted in a false light, and sustained humiliation, anxiety, embarrassment, mental anguish, injury to his reputation, the termination of his position as Executive Director and General Counsel of PTAB, and monetary damages proximately resulting therefrom including lost salary, lost employment benefits, and medical expenses.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants Sun-Times Media Holdings, LLC and Tim Novak, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT VII

False Light Invasion of Privacy

(Against Sun-Times Media Holdings, LLC and Tim Novak)

74. Glorioso realleges paragraphs 39 through 45, and paragraphs 47-48 of Count III.

75. The complained of October 9th Article published by Defendants placed Glorioso in a false light before the public which would be highly offensive to a reasonable person in that

they falsely accused him of conduct showing a want of integrity as Executive Director and General Counsel of PTAB.

76. Defendant Sun-Times facilitated Novak's malicious depiction of Glorioso in a false light to the public, through its publication of the October 9th Article in the on-line copies of the Chicago Sun-Times and affiliated print and online newspapers.

77. As a proximate result of Defendants' publication, Mauro Glorioso was publicly depicted in a false light, and sustained humiliation, anxiety, embarrassment, mental anguish, injury to his reputation, the termination of his position as Executive Director and General Counsel of PTAB, and monetary damages proximately resulting therefrom including lost salary, lost employment benefits, and medical expenses.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants Sun-Times Media Holdings, LLC and Tim Novak jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT VIII

False Light Invasion of Privacy

(Against Sun-Times Media Holdings, LLC and Tim Novak)

87. Glorioso realleges paragraphs 51 through 59, and paragraphs 61-62 of Count IV.

88. The complained of October 11th Article published by Defendants placed Glorioso in a false light before the public which would be highly offensive to a reasonable person in that they falsely accused him of conduct showing a want of integrity as Executive Director and General Counsel of PTAB.

89. Defendant Sun-Times facilitated Novak's malicious depiction of Glorioso in a false light to the public, through its publication of the October 11th Article in the on-line copies of the Chicago Sun-Times and affiliated print and online newspapers.

90. As a proximate result of Defendants' publication, Mauro Glorioso was publicly depicted in a false light, and sustained humiliation, anxiety, embarrassment, mental anguish, injury to his reputation, the termination of his position as Executive Director and General Counsel of PTAB, and monetary damages proximately resulting therefrom including lost salary, lost employment benefits, and medical expenses.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Defendants Sun-Times Media Holdings, LLC and Tim Novak jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

COUNT IX

Intentional Infliction of Emotional Distress

(Against Sun-Times Media Holdings, LLC and Tim Novak)

91. Glorioso realleges paragraphs 16 through 24 and paragraphs 26-28 of Count I.

92. Glorioso realleges paragraphs 29 through 34 and paragraphs 36-37 of Count II.

93. Glorioso realleges paragraphs 39 through 45 and 47 through 49 of Count III.

94. Glorioso realleges paragraphs 51 through 59 and 61-63 of Count IV.

95. The statements published by Defendants of and concerning Glorioso were extreme, outrageous and would be offensive to a reasonable person.

96. Defendants knew that there was a high probability that their conduct would cause severe emotional distress to Glorioso.

97. Defendants' conduct and publications proximately caused severe emotional distress to Glorioso, and further caused him severe humiliation, anxiety, embarrassment, mental anguish, and monetary damages, including but not limited to expenses for required medical care and treatment.

WHEREFORE, Plaintiff, Mauro Glorioso respectfully requests that Judgment be entered in his favor and against Sun-Times Media Holdings, LLC and Tim Novak, jointly and severally, for compensatory damages in excess of \$50,000, punitive damages in an amount to be determined at trial, costs of suit, and all other relief the Court deems appropriate.

Respectfully submitted,

By: /s/ Phillip J. Zisook
One of the Attorneys for Mauro Glorioso

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THE WATCHDOGS NEWS POLITICS

President's Chicago tax appeal on Trump Tower is under investigation

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.

By Tim Novak | Feb 7, 2020, 5:15am CST



President Donald Trump is still trying to get a bigger cut in the \$2.5 million he paid in property taxes in 2012 on Trump International Hotel & Tower than what a Cook County agency gave him. | AP

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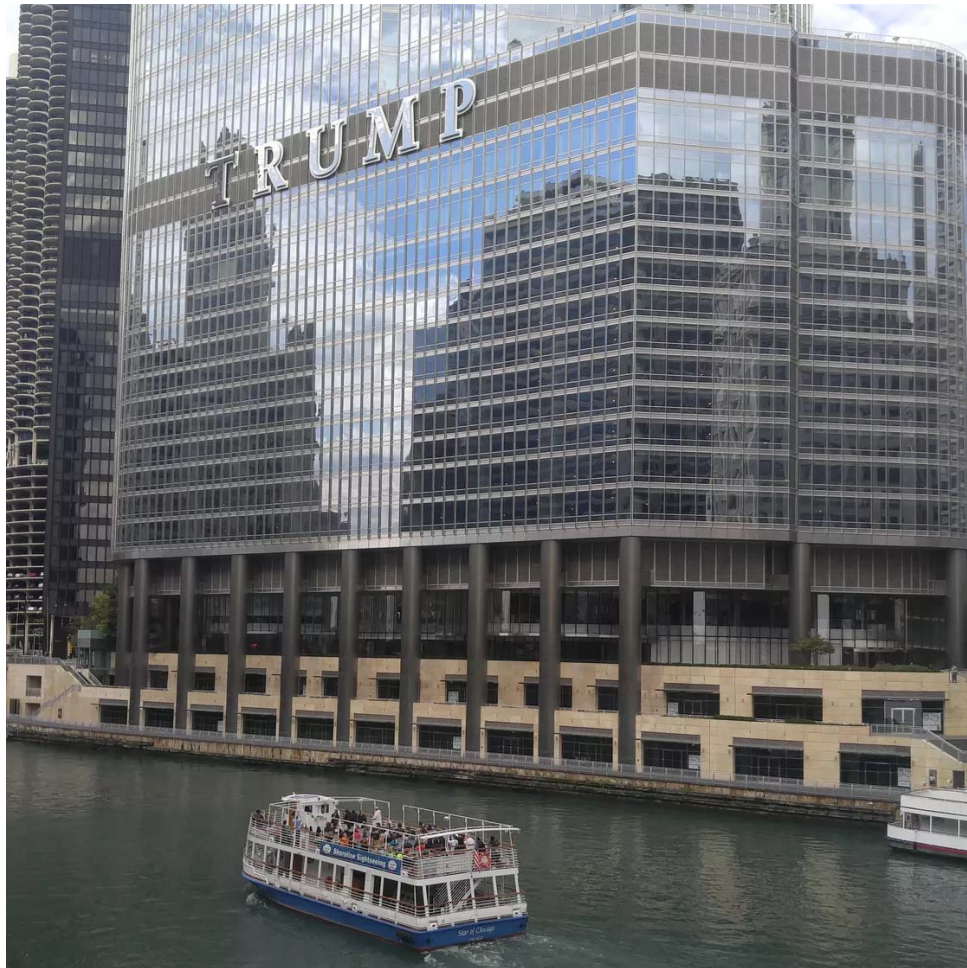
Mired in delays for seven years, President Donald Trump's appeal for a refund of at least \$1 million on his Chicago skyscraper is now the subject of two state of Illinois investigations that center on whether a Republican state official pressured his staff to cut the president a break.

Trump’s appeal of the 2012 property taxes he paid for **Trump International Hotel & Tower** has come under scrutiny by the state’s executive inspector general’s office and then Gov. J.B. Pritzker’s administration, the Chicago Sun-Times has learned.

Those are the result of an anonymous complaint the inspector general’s office received last fall that **Mauro Glorioso**, the executive director of the Illinois Property Tax Appeal Board, pressured his staff to rule in the president’s favor, rejecting the staff’s decision to deny Trump any refund.

Glorioso is a Republican attorney from Westchester the Democratic governor appointed as the state property tax agency’s executive director last summer.

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Trump International Hotel & Tower. | Trump International Hotel & Tower.

Pritzker's staff wouldn't confirm that a complaint has been filed against Glorioso and four members of Glorioso's staff. But the governor's office has opened its own inquiry regarding Trump's appeal.

"The administration is determined to get to the bottom of what happened in this situation and will ensure that a thorough investigation is conducted," Pritzker's communications director Emily Bittner says.

"PTAB should take no action until an investigation is complete," Bittner says. "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."


Pritzker himself came under fire for getting a total of \$330,000 in property tax cuts by claiming the historic mansion he bought next door to his home on the city's Gold Coast was "uninhabitable." That was after he let it fall into disrepair and disconnected all of the toilets, the Sun-Times revealed in 2017.

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<https://chicago.suntimes.com/2020/2/7/21126855/donald-trump-tower-chicago-property-tax-appeal-investigation>



Mauro Glorioso, the \$115,020-a-year executive director and general counsel of the Illinois Property Tax Appeal Board. | Illinois Property Tax Appeal Board

Glorioso didn't respond to messages seeking comment.

He has been a member of the state board since 2008, rising to chairman under Republican former Gov. Bruce Rauner. Glorioso held that post until Pritzker appointed him last summer as PTAB's executive director and general counsel, overseeing property tax appeals from across the state. Glorioso is paid \$115,020 a year.

The state Office of the Executive Inspector General wouldn't confirm that it received a complaint regarding Glorioso and Trump's appeal.

The Sun-Times filed a public records request with PTAB for correspondence among the inspector general, Glorioso, chief PTAB administrative law judge Steven Waggoner and hearing officer Simeon Nockov. According to the complaint, Nockov decided Trump didn't prove his hotel and retail space had been overvalued by the Cook County Board of Review, a three-member, elected panel. After Trump appealed, the county agency had reduced the original property assessment made by former Cook County Assessor Joseph Berrios but not as much as Trump wanted. Trump then appealed to the state.

Glorioso and his staff rejected the records request, saying, "The requested documents appear to be confidential and exempt from provisions of the Freedom of Information Act."

PTAB also refused to release Nockov's reports or drafts because the Trump appeal is still unresolved.

RELATED

Trump seeks more tax breaks on Chicago tower with Ald. Ed Burke's help

WATCHDOGS: The Donald & the Democrat; Burke saved Trump \$11.7M

Waggoner didn't respond to questions regarding the allegation before the inspector general but says the state board, not PTAB's staff, will determine whether Trump's assessment is reduced, which would trigger a tax refund.

“The written decision that is ultimately issued will include the board’s findings and rationale for making its determination of the correct assessment,” Waggoner says. “The board’s decisions are then subject to administrative review.”

Trump’s appeal was filed May 11, 2012, by Ald. Edward M. Burke and his law firm Klafter & Burke. Burke challenged the \$62.4 million value Cook County officials placed on the skyscraper’s hotel and retail space, much of which has never been occupied.

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Ald. Edward Burke (left) with then-presidential candidate Donald Trump at the City Club of Chicago in 2015. | AP

The Cook County state’s attorney’s office, which is fighting the appeal, argued the tax cuts Burke sought for Trump could cost taxpayers \$1 million of the \$2.5 million Trump paid in 2012 for the hotel room’s and retail space.

Half of that would come from the Chicago Public Schools and about 20 percent from the city of Chicago. City Hall and the school system could have intervened in Trump’s appeal but didn’t.

The county hasn’t produced any evidence to counter an estimate presented by Burke from appraiser Arthur Murphy, who argued at a public hearing on Dec. 12, 2017, that the

12/23/2020

Donald Trump tax appeal on Trump Tower Chicago under investigation - Chicago Sun-Times

skyscraper's vacant and never-leased retail space along the Chicago River downtown had a "negative value, so it's no value."

A month later, Nockov, the PTAB hearing officer, issued his decision on Trump's appeal.

Nockov's decision has never been made public. No further hearings are scheduled.

Nockov won't comment.

Burke, whose law firm has won more than \$14 million in property tax refunds for Trump's skyscraper over the years, couldn't be reached.

Burke's law firm stopped representing Trump in May 2018. **Burke announced that** decision after his brother, then-state Rep. Dan Burke, lost a Democratic primary election amid outrage from Hispanic voters over the alderman's legal work for a president pushing to build a wall along the Mexican border in a crackdown on illegal immigration.

Burke turned over his Trump cases to Patrick McNerney, an attorney with the law firm of Mayer Brown. McNerney is representing Trump in three other cases now before PTAB, including one filed in December, and five other cases pending in Cook County circuit court.

McNerney didn't respond to messages seeking comment.

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THE WATCHDOGS

TRUMP

PROBING PREZ'S CHICAGO TOWER TAX APPEAL

Two investigations looking into allegation that a Republican state agency head pressured staff to slash property taxes Trump paid in 2012 **TIM NOVAK REPORTS, PAGES 4-5**



AP/FILE PHOTO

WRITING OFF MORE MURDERS WITH NO ARRESTS BOOSTED CPD'S BIG TURNAROUND IN CLEARANCES

FRANK MAIN REPORTS, PAGES 6-7



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TOP NEWS

THE WATCHDOGS

PREZ'S TAX APPEAL ON CHICAGO TOWER UNDER INVESTIGATION

State inspector, Pritzker administration looking into allegation a Republican state agency head pressured staff to slash \$2.5M property taxes Trump paid in 2012 to \$1M

BY TIM NOVAK, STAFF REPORTER
tnovak@suntimes.com | @tnovaksuntimes

Mired in delays for seven years, President Donald Trump's appeal for a refund of at least \$1 million on his Chicago skyscraper is now the subject of two state of Illinois investigations that center on whether a Republican state official pressured his staff to cut the president a break.

Trump's appeal of the 2012 property taxes he paid for Trump International Hotel & Tower has come under scrutiny by the state's executive inspector general's office and then Gov. J.B. Pritzker's administration, the Chicago Sun-Times has learned.

Those are the result of an anonymous complaint the inspector general's office received last fall that Mauro Glorioso, the executive director of the Illinois Property Tax Appeal Board, pressured his staff to rule in the president's favor, rejecting the staff's decision to deny Trump any refund.

Glorioso is a Republican attorney from Westchester the Democratic governor appointed as the state property tax agency's executive director last summer.



Mauro Glorioso

Pritzker's staff wouldn't confirm that a complaint has been filed against Glorioso and four members of Glorioso's staff. But the governor's office has opened its own inquiry regarding Trump's appeal.

"The administration is determined to get to the bottom of what happened in this situation and will ensure that a thorough investigation is conducted," Pritzker's communications director Emily Bittner says.

"PTAB should take no action until an investigation is complete," Bittner says. "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."

Pritzker himself came under fire for getting a total of \$330,000 in property tax cuts by claiming the historic mansion he bought next door to his home on the city's Gold Coast was "uninhabitable." That was after he let it fall into disrepair and disconnected all of the toilets, the Sun-Times revealed in 2017.

Glorioso didn't respond to messages seeking comment.

He has been a member of the state board since 2008, rising to chairman under Republican former Gov. Bruce Rauner. Glorioso held that post until Pritzker appointed him last summer as PTAB's executive director and general counsel, overseeing property tax appeals from across the state. Glorioso is paid \$115,020 a year.





Ald. Edward Burke (left) with then-presidential candidate Donald Trump in 2015. AP FILE PHOTO

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The Sun-Times filed a public records request with PTAB for correspondence among the inspector general, Glorioso, chief PTAB administrative law judge Steven Waggoner and hearing officer Simeon Nockov. According to the complaint, Nockov decided Trump didn't prove his hotel and retail space had been overvalued by the Cook County Board of Review, a three-member, elected panel. After Trump appealed, the county agency had reduced the original property assessment made by former Cook County Assessor Joseph Berrios but not as much as Trump wanted. Trump then appealed to the state.

Glorioso and his staff rejected the records request, saying, "The requested documents appear to be confidential and exempt from provisions of the Freedom of Information Act."

PTAB also refused to release Nockov's reports or drafts because the Trump appeal is still unresolved.

Waggoner didn't respond to questions regarding the allegation before the inspector general but says the state board, not PTAB's staff, will determine whether Trump's assessment is reduced, which would trigger a tax refund.

"The written decision that is ultimately issued will include the board's findings and rationale for making its determination of the correct assessment," Waggoner says. "The board's decisions are then subject to administrative review."

Trump's appeal was filed May 11, 2012, by Ald. Edward M. Burke and his law firm Klafter & Burke. Burke challenged the \$62.4 million value Cook County officials placed on the skyscraper's hotel and retail space, much of which has never been occupied.

The Cook County state's attorney's office, which is fighting the appeal, argued the tax cuts Burke sought for Trump could cost taxpayers \$1 million of the \$2.5 million Trump paid in 2012 for the hotel rooms and retail space.

Half of that would come from the Chicago Public Schools and about 20% from the city of Chicago. City Hall and the school system could have intervened in Trump's appeal but didn't.

The county hasn't produced any evidence to counter an estimate presented by Burke from appraiser Arthur Murphy, who argued at a public hearing on Dec. 12, 2017, that the skyscraper's vacant and never-leased retail space along the Chicago River downtown had a "negative value, so it's no value."

A month later, Nockov, the PTAB hearing officer, issued his decision on Trump's appeal.

Nockov's decision has never been made public. No further hearings are scheduled. Nockov won't comment.

Burke, whose law firm has won more than \$14 million in property tax refunds for Trump's skyscraper over the years, couldn't be reached.

Burke's law firm stopped representing Trump in May 2018. Burke announced that decision after his brother, then-state Rep. Dan Burke, lost a Democratic primary election amid outrage from Hispanic voters over the alderman's legal work for a president pushing to build a wall along the Mexican border in a crackdown on illegal immigration.

Burke turned over his Trump cases to Patrick McNerney, an attorney with the law firm of Mayer Brown. McNerney is representing Trump in three other cases now before PTAB, including one filed in December, and five other cases pending in Cook County Circuit Court.

McNerney didn't respond to messages seeking comment.

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EXHIBIT 2



FILED DATE: 1/5/2021 12:12 PM 2021L000090

THE WATCHDOGS NEWS POLITICS

Pritzker dumps official who pushed for Trump to get \$1 million refund on Chicago tower's taxes

Mauro Glorioso, a Westchester Republican the governor appointed to head the Illinois Property Tax Appeal Board, is under a state investigation over his Trump Tower recommendation.

By Tim Novak | Oct 9, 2020, 4:15pm CDT



Then-presidential candidate Donald Trump and Ald. Edward Burke in 2015. Burke handled the property tax appeal that's at the center of a controversy in which Gov. J.B. Pritzker has now booted the head of the Illinois Property Tax Appeal Board, Mauro Glorioso. | AP

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Gov. J.B. Pritzker is dumping an Illinois official who's under investigation for trying to force a state agency to give President Donald J. Trump a refund of more than \$1 million on the property taxes he paid on his Chicago skyscraper eight years ago.

12/23/2020

J.B. Pritzker dumps Mauro Glorioso, who pushed for \$1 million property tax break for Chicago Trump Tower - Chicago Sun-Times

Mauro Glorioso, executive director and general counsel for the Illinois Property Tax Appeal Board, will be out of his job as of Thursday as the Trump case continues to cast a cloud over a state agency that's also grappling with a backlog of about 90,000 tax cases.

The agency's handling of Trump's tax appeal — filed by the Chicago law firm of Ald. Edward M. Burke (14th) — has been under investigation since November. That's when an anonymous complaint was filed with the Illinois Office of the Executive Inspector General, saying Glorioso ordered the agency to approve the \$1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund on the tax bill for the Trump International Hotel & Tower's hotel and commercial space. Trump's appeal cited vacant storefronts along the Chicago River in seeking the tax cut.

RELATED

President's Chicago tax appeal on Trump Tower is under investigation


Since April, Glorioso's staff has repeatedly placed Trump's proposed refund on PTAB's monthly agenda — only to have the five-member board of the state agency repeatedly postpone a decision, records show.

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<https://chicago.suntimes.com/2020/10/9/21509933/trump-tower-chicago-property-tax-dispute-pritzker-mauro-glorioso-illinois-property-tax-appeal-board> 3/8



Mauro Glorioso, the \$116,748-a-year executive director and general counsel of the Illinois Property Tax Appeal Board — until Thursday. | Illinois Property Tax Appeal Board

Any tax refund for Trump would come out of property taxes to the city of Chicago and eight other government agencies, the Chicago Public Schools losing the biggest chunk of money: more than \$540,000 if the president gets what Glorioso wants.

“PTAB has decided that the best course of action is to continue the case until the OEIG has completed its investigation, and the board has not, and will not, discuss the merits of the case until such time,” board chairman Kevin Freeman says.

The agency’s board meets again Tuesday — two days before Glorioso exits the agency where he has worked for 20 years, first as a hearing officer, then as a board member, before Pritzker appointed him executive director and top lawyer more than a year ago.

“The administration appreciates Mauro Glorioso’s service to the state of Illinois, and we wish him well in his next endeavor,” Pritzker’s press secretary Jordan Abudayyeh says in an email in response to questions.

Glorioso will be replaced by Michael O’Malley, an assistant Cook County state’s attorney, who has worked in the prosecutor’s real estate and public corruption units.

“With his extensive experience rooting out corruption, he will bring a qualified discerning eye to the property tax appeals process in Illinois,” Abudayyeh wrote.

Glorioso, who’s paid \$116,748 a year, didn’t return messages.

The 64-year-old Westchester resident and staunch Republican rejected a report from hearing officer Simeon Nockov, who found that Trump didn’t merit a refund because Burke’s law firm didn’t present sufficient evidence to support one.

A new report from PTAB’s chief administrative law judge, Steven Waggoner, now says Trump is entitled to a refund because the property was over-assessed in 2011, based on an appraisal that Burke’s firm submitted on Trump’s behalf.

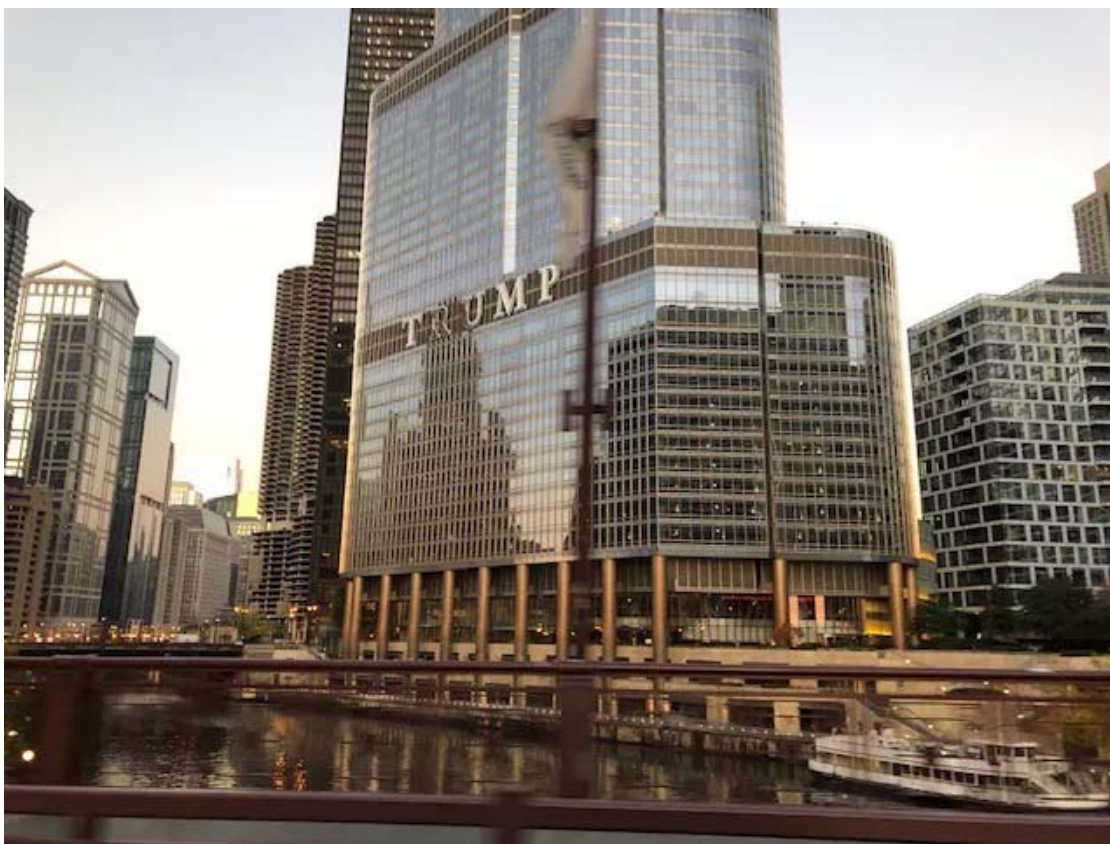
12/23/2020

J.B. Pritzker dumps Mauro Glorioso, who pushed for \$1 million property tax break for Chicago Trump Tower - Chicago Sun-Times

Under Waggoner's recommendation, Trump's 2011 assessment would be slashed to \$6.4 million from \$15.6 million. That would lower the tax bill from \$2.5 million to \$1,031,350.

If the state tax appeals board approves Waggoner's recommendation regarding the 2011 assessment, that could prompt Trump to seek additional refunds for his 2012 and 2013 property taxes, which were based on the higher assessment.

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Trump International Hotel & Tower in Chicago. | Lynn Sweet / Sun-Times file

In his report finding that Trump's downtown riverfront tower was assessed at too high a value by then-Cook County Assessor Joseph Berrios and the Cook County Board of Review, Waggoner points out that none of the government agencies that stand to lose money challenged the appeal that Burke filed for Trump in May 2012.

Usually, the city of Chicago's law department or the Chicago Board of Education contest appeals that ask to reduce a property assessment by at least \$1 million. But neither of them filed any objections in this case. A law department spokeswoman says that was because no one notified City Hall that Burke was seeking such a large refund for Trump.

12/23/2020

J.B. Pritzker dumps Mauro Glorioso, who pushed for \$1 million property tax break for Chicago Trump Tower - Chicago Sun-Times

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President Donald J. Trump formerly used now-indicted Ald. Edward M. Burke's law firm to handle property tax appeals for his Chicago tower — and got more than \$14 million for Trump. | AP

At the time, Burke was chairman of the Chicago City Council Finance Committee, and he routinely filed tax appeals that cost the city treasury millions of dollars — including, the Chicago Sun-Times has previously reported, more than \$14 million for Trump.

The alderman's law firm stopped representing Trump in May 2018, handing off this appeal and other pending Trump cases to Patrick McNerney at the law firm Mayer Brown.

Burke has since been indicted by a federal grand jury, accused of withholding city permits sought by a Burger King in his Southwest Side ward in a failed effort to get the restaurant owner to hire his firm to handle its property tax appeals.

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Gov. J.B. Pritzker has a property tax controversy of his own. | Fran Spielman / Sun-Times file

Burke and McNerney didn't return calls.

Pritzker and Trump have been at odds, critical of each other's responses to the coronavirus pandemic.

The governor is facing his own property tax controversy. **Federal investigators are looking into a \$330,000 tax break Pritzker got** from Berrios by asserting that the mansion he bought next door to his Gold Coast home was uninhabitable — in part because the toilets had been disconnected. Pritzker has repaid the tax break, which a **Sun-Times investigation brought to light**.

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EXHIBIT 2(a)

Sunday, October 11, 2020

One of Editor & Publisher's '10 That Do It Right 2020'

☁️ 74°/56° Forecast, Page 45

CHICAGO SUN-TIMES

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THE WATCHDOGS

GOV AXES OFFICIAL WHO PUSHED FOR \$1M TAX REFUND ON TRUMP TOWER

Mauro Glorioso, a Westchester Republican who Pritzker appointed to head the Illinois Property Tax Appeal Board, is under state investigation over his recommendation

TIM NOVAK REPORTS, PAGES 18-19

CRIMINAL CASES DRAG ON FOR YEARS AS COUNTY JUDGES APPROVE REPEATED DELAYS

A WATCHDOGS REPORT BY FRANK MAIN, PAGES 6-7



Louise "Momma Lue" Harper

After 60 years of feeding North Lawndale, restaurant owner 'Momma Lue' retiring

EVAN F. MOORE REPORTS, PAGE 43

Pierre Kezdy, bassist for influential punk rockers Naked Raygun, dead at 58

BY MAUREEN O'DONNELL, PAGE 14

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TOP NEWS

THE WATCHDOGS

PRITZKER DUMPS OFFICIAL WHO PUSHED FOR TRUMP TO GET \$1M REFUND ON TOWER'S TAXES

BY TIM NOVAK, STAFF REPORTER
tnovak@suntimes.com | @tnovaksuntimes

Gov. J.B. Pritzker is dumping an Illinois official who's under investigation for trying to force a state agency to give President Donald J. Trump a refund of more than \$1 million on the property taxes he paid on his Chicago skyscraper eight years ago.

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Illinois Office of the Executive Inspector General, saying Glorioso ordered the agency to approve the \$1 million payout for Trump, rejecting a staff report that found no valid reason to support the refund on the tax bill for the Trump International Hotel & Tower's hotel



Mauro Glorioso

and commercial space. Trump's appeal cited vacant storefronts along the Chicago River in seeking the tax cut.

Since April, Glorioso's staff has repeatedly placed Trump's proposed refund on PTAB's monthly agenda — only to have the five-member board of the state agency repeatedly postpone a decision, records show.

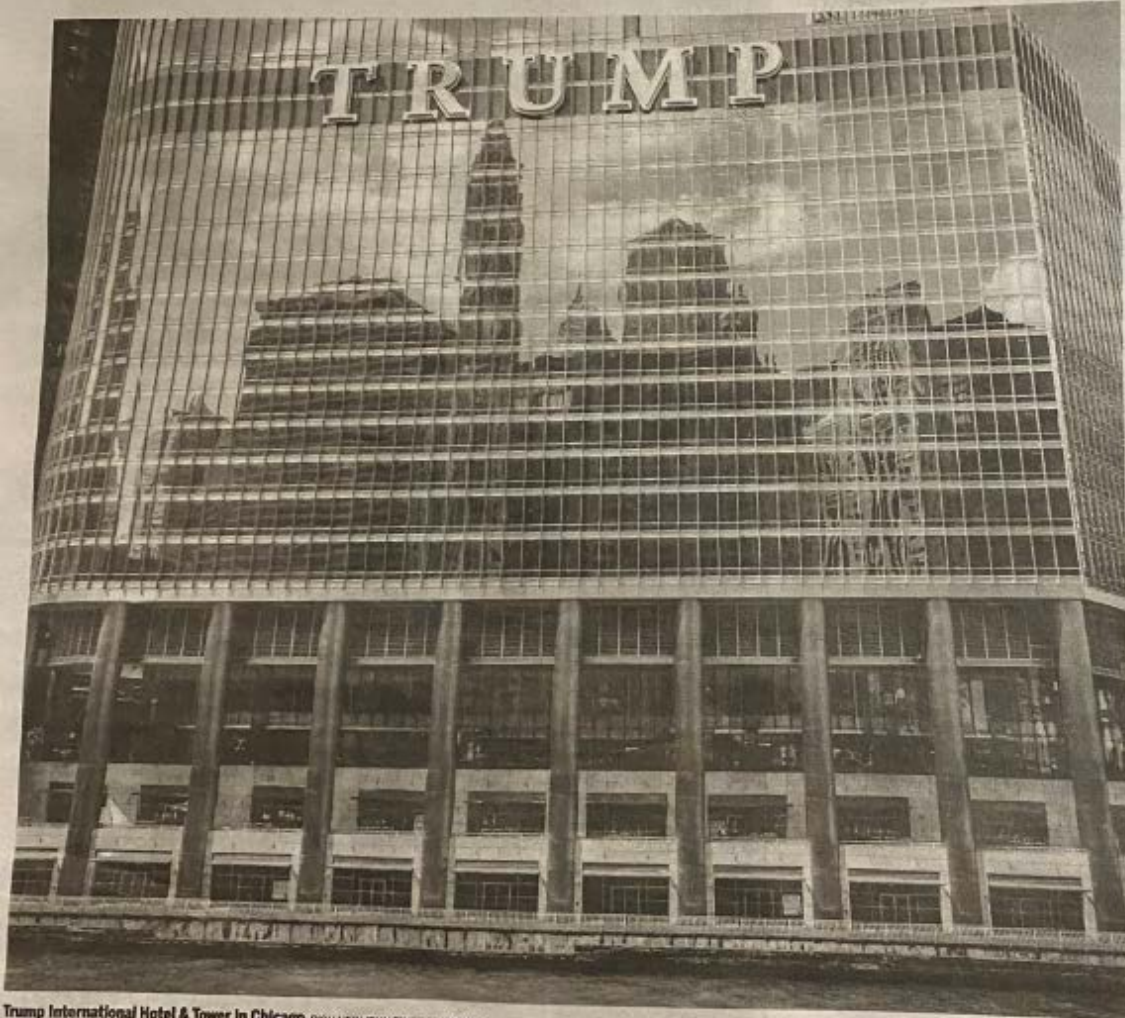
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Glorioso will be replaced by Michael O'Malley, an assistant Cook County state's attorney, who has worked in the prosecutor's real estate and public corruption units.



Trump International Hotel & Tower in Chicago RICH HEIN/SUN-TIMES FILE PHOTO

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Then-presidential candidate Donald Trump and Ald. Edward Burke in 2015. Burke handled the property tax appeal that's at the center of a controversy in which Gov. J.B. Pritzker has now booted the head of the Illinois Property Tax Appeal Board, Mauro Glorioso. AP FILE PHOTO

"With his extensive experience rooting out corruption, he will bring a qualified, discerning eye to the property tax appeals process in Illinois," Abudayyeh wrote.

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including, the Chicago Sun-Times has previously reported, more than \$14 million for Trump.

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Gov. J.B. Pritzker

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EXHIBIT 1

**IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, LAW DIVISION**

MAURO GLORIOSO,)	
)	
Plaintiff,)	
)	
vs.)	
)	
SUN-TIMES MEDIA HOLDINGS, LLC and	)	Case No.: 2021 L 90
TIMOTHY NOVAK, individually,	)	Calendar D
)	
Defendants.)	
)	

DECLARATION OF TIMOTHY NOVAK

1. My name is Timothy Novak. I am a reporter for *Chicago Sun-Times*, a daily newspaper and media source focused on newsworthy events in the Chicago Metro area. I am over 18 years of age and am competent to execute this Declaration.

2. I have been a reporter for the *Chicago Sun-Times* since 1995 and investigative reporter since 2000 focusing on exposing corruption in the State of Illinois. I have received multiple national and local awards for my reporting, including numerous awards from the Chicago Bar Association, two Better Government Association George Bliss Awards for Excellence in Investigative Journalism, two George Polk Awards, a National Headliner Award, and the Tom Renner Award. The George Polk Award is the most prestigious national award after the Pulitzer Prize. My first Polk Award was for reporting fraud in Chicago’s “Hired Truck” program, which led to 49 corruption indictments. My reporting that earned my second Polk Award led to appointment of a special prosecutor and then-Mayor Daley's nephew pleading guilty to manslaughter. Prior to Sun-Times, I was a reporter for City News Bureau and daily newspapers in Texas, California, Missouri, and Illinois.

3. I am familiar with the Trump Tower appeal pending before the PTAB, having attended the hearing, and I have questioned PTAB about its status in following years. I also am familiar with the *Chicago Sun-Times* reporting published under my byline in February and October, 2020, including Articles under headlines such as “President’s Chicago tax appeal on Trump Tower is under investigation” and “Pritzker dumps official who pushed for Trump to get \$1million refund on Chicago towers taxes” (the “February Article” and “October Article”).

4. I have reviewed the Complaint that Mauro Glorioso filed naming me as a defendant and exhibits thereto (the “Glorioso Complaint”). The Glorioso Complaint refers to an “anonymous complaint” filed with the State of Illinois Office of Executive Inspector General (OEIG) as one of the sources for the “February Article” but did not quote or attach a copy of the “anonymous complaint” as an exhibit.

5. I have attached a copy of the OEIG Complaint referring to Mr. Glorioso as **Exhibit A** along with its mailing envelope. The OEIG Complaint was mailed to me by an anonymous source who substituted the Chicago Sun-Times’ address for his or her return address to ensure anonymity. I have no knowledge of the source’s identify.

6. The OEIG Complaint names Mauro Glorioso as a “subject” against whom the whistleblower is complaining and the summary on the first page alleges:

“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).”

7. The OEIG Complaint also attached five pages, described as 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 concerns the Trump Tower appeal.

8. With respect to Mr. Glorioso, the OEIG Complaint's statement, among other things, alleges (on page 2) 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; 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." It further alleged that Waggoner later took over the case and "found the property warranted a large assessment reduction of many millions of dollars consistent with Glorioso's directive."

9. The statement also alleged (on page 3): "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." The database appeared to confirm the OEIG Complaint's allegation that the initial ALJ decision was withdrawn and reentered. The OEIG Complaint requested an investigation of Mr. Glorioso, among others.

10. Based on this information, I filed a FOIA request with PTAB to follow up on the OEIG Complaint. As evidenced by **Exhibit B** to my declaration, PTAB declined to provide the information I had requested on January 21, 2020, naming Mr. Glorioso as one of the decision-makers who refused to provide the requested information.

11. I also attempted to obtain comment from the OEIG, PTAB, the Governor's Office, Mr. Glorioso and others. The PTAB and OEIG declined comment. Mr. Glorioso did not return my messages.

12. I was, however, able to obtain an official statement for attribution from the Governor's Communication Director, Emily Bittner, confirming an ongoing investigation into allegations of improper political motivations, which statement was quoted in the February Article:

“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.”

Ms. Bittner’s email containing her statement is **Exhibit C** to my Declaration. Accordingly, the Chicago Sun-Times was able to report official confirmation of an investigation into “whether” Mr. Glorioso “pressured his staff to cut the President a break.” I used the conjunction and colloquialisms to summarize the incomplete investigation described by the Administration for our lay readership.

13. The October Article reported the Governor “is dumping an Illinois official who’s under investigation,” which facts appear undisputed by Mr. Glorioso. The PTAB also provided an official statement, quoted in the October Article, that it would continue the Trump Tower appeal “until the OEIG has completed its investigation [and will] not discuss the merits until such time.” Notwithstanding the OEIG Complaint and official statements, the October Article included a potentially innocent explanation for PTAB staff replacing the first ALJ’s decision, reporting that chief ALJ Waggoner based his recommendation on Trump Tower’s appraisal that the property “was assessed too high” due to vacant store fronts and the fact that interested agencies failed to object.

14. When the *Chicago Sun-Times* published the February Article and October Article, I believed all facts reported were true. 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.” There also was no reason to doubt that officials were investigating “prohibited unethical political activities and conflicts of interest” alleged in the OEIG

Complaint, including that Mr. Glorioso gave a “directive” to Chief ALJ Waggoner to provide “a large reduction in the assessment” because the taxpayer/owner was the President.

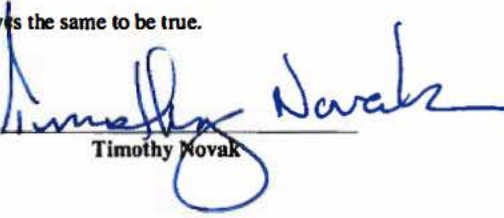
15. No facts have been provided to me since that contradict any of my reporting. Mr. Glorioso did not contact me and PTAB refused to comply with my FOIA requests until after he was replaced. On or about November of 2020, PTAB responded to my FOIA requests by providing links to, among other things, PTAB emails relating to the Trump Tower appeal. Nothing in the FOIA disclosures was inconsistent with the Administration’s statement or the OEIG Complaint. I have attached relevant emails as **Group Exhibit D** that demonstrate Mr. Glorioso was involved in changing the original recommendation. PTAB also produced an email Plaintiff wrote to himself, dated February 8, 2020, in which he described the OEIG Complaint in very similar terms: “Prior to becoming a final decision by the board an anonymous complaint was initiated stating staff members particularly the Executive Director and the Chief Hearing Officer sought a desired result based upon political bias.” Finally, I reviewed the PTAB minutes for January 12, 2021, submitted by new Executive Director O’Malley and published online, which report PTAB still was continuing Trump Tower Appeal due to the OEIG investigation.

16. 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, also reported in these Articles and elsewhere by the press.

Under penalties as provided by law pursuant to Section 1-109 of the Code of Civil Procedure, the undersigned certifies that the statements set forth in this instrument are true and correct, except as to matters therein stated to be on information and belief and as to such matters the undersigned certifies as aforesaid that he verily believes the same to be true.

Executed on March 5, 2021.

By: 
Timothy Novak

FILED DATE: 3/5/2021 5:05 PM 2021L000090

EXHIBIT A

Tim Novak, reporter
Chicago Sun-Times
30 North Racine Ave.
3rd Floor
Chicago, IL 60607



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for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

COMPLAINT

Please type or print clearly below. Return completed form to: Office of Executive Inspector General, Division of Investigations, 69 West Washington Street, Suite 3400, Chicago, IL 60602. Alternatively, you may fax the form to our office at (312) 814-5479. Our toll-free hotline number is (866)814-1113. TTY: 1-888-261-2734.

(Your) Contact Information

Name:* Anonymous

Date: Nov. 13, 2019

*The OEIG accepts anonymous complaints

Age: _____ Sex: M F

Address:

Street Address _____

City _____

State _____

Zip Code _____

Home Phone: _____

Business Phone: _____

Other Phone: _____

Email Address: _____

What is your preferred method of contact? _____

Are you employed by the State of Illinois, a State public university, CTA, Metra, Pace, or RTA?

Yes No

If yes, which agency? _____

Job Title: _____

Is your complaint against an employee(s), agency, or someone doing business with the State of Illinois, CTA, Metra, Pace, or RTA?

Yes No

If yes, which agency? Property Tax Appeal Board

Have you notified any other federal, State, or local agency of your complaint or filed a lawsuit or grievance related to these matters?

Yes No

If yes, with which agency did you file a complaint? _____

What is the complaint number? _____

Has your complaint been resolved? Yes No

If yes, briefly summarize the results:

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).

Have you previously filed a complaint with the OEIG?

Yes No

If yes, please list any known OEIG case numbers: _____

Is this complaint related to your previously filed OEIG complaint?

Yes No

Please be aware that your complaint(s) may be referred to other government agencies including the agency referred to in your complaint.

If your complaint is referred, do you consent to the release of your identity as the complainant? Yes No

If the OEIG conducts an investigation and issues a report, do you consent to being identified as the complainant in that report? Yes No

Subject Information (person(s) against whom you are complaining)

Subject's Name: Steven Waggoner Phone: 217-782-6076

Approximate Age: 60 Sex: M F

Address: 402 Stratton Office Building, 401 South Spring Street

Street Address
Springfield, IL 62706

City State Zip Code

Agency Employed: PTAB Job Title: Chief ALJ

Additional Information: Former Acting Executive Director of PTAB

Subject's Name: Mauro Glorioso Phone: 847-294-4121

Approximate Age: 55 Sex: M F

Address: Suite LL-54, 9511 Harrison Street

Street Address
Des Plaines, IL 60016

City State Zip Code

Agency Employed: PTAB Job Title: Executive Director

Additional Information: Former Chairman of the Board of PTAB

Subject's Name: Katherine Patti Phone: 847-294-4121

Approximate Age: 60 Sex: M F

Address: Suite LL-54, 9511 Harrison Street

Street Address
Des Plaines, IL 60016

City State Zip Code

Agency Employed: PTAB Job Title: Deputy Chief ALJ

Additional Information: _____

Subject's Name: Simeon Nockov Phone: 847-294-4121

Approximate Age: 35 Sex: M F

Address: Suite LL-54, 9511 Harrison Street

Street Address
Des Plaines, IL 60016

City State Zip Code

Agency Employed: PTAB Job Title: ALJ

Additional Information: _____

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Please be aware that your complaint(s) may be referred to other government agencies including the agency referred to in your complaint.

If your complaint is referred, do you consent to the release of your identity as the complainant? Yes No

If the OEIG conducts an investigation and issues a report, do you consent to being identified as the complainant in that report? Yes No

Subject Information (person(s) against whom you are complaining)

Subject's Name: Jennifer Vesely Phone: 847-294-4121

Approximate Age: 48 Sex: M F

Address: Suite LL-54, 9511 Harrison Street
Des Plaines, IL 60016
City State Zip Code

Agency Employed: PTAB Job Title: ALJ

Additional Information: _____

Subject's Name: _____ Phone: _____

Approximate Age: _____ Sex: M F

Address: _____
Street Address
City State Zip Code

Agency Employed: _____ Job Title: _____

Additional Information: _____

Subject's Name: _____ Phone: _____

Approximate Age: _____ Sex: M F

Address: _____
Street Address
City State Zip Code

Agency Employed: _____ Job Title: _____

Additional Information: _____

Subject's Name: _____ Phone: _____

Approximate Age: _____ Sex: M F

Address: _____
Street Address
City State Zip Code

Agency Employed: _____ Job Title: _____

Additional Information: _____

FILED DATE: 3/5/2021 5:05 PM 2021L000090

Complaint Information

Please summarize your complaint, including the date and time of alleged incident(s) (please attach any documentation or other evidence in support of your complaint):

See attached five pages: 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.

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Please list other person(s) who could be a witness to the misconduct you have alleged:

PTAB employees	PTAB Des Plaines office
_____ Name	_____ Any identifying information (Agency, Title, Telephone Number, etc.)
_____ Name	_____ Any identifying information (Agency, Title, Telephone Number, etc.)
_____ Name	_____ Any identifying information (Agency, Title, Telephone Number, etc.)

Complaint Taken By:*

*To be completed by the OEIG

Illinois law provides that the identity of any individual providing information to an Executive Inspector General shall be kept confidential and may not be disclosed without the consent of that individual or when disclosure of the individual's identity is otherwise required by law. 5 ILCS 430/20-90(a). Illinois law states that any person who intentionally makes, to an Executive Inspector General, a false report alleging misconduct is guilty of a Class A misdemeanor. 5 ILCS 430/50-5(d).

OEIG COMPLAINT, dated November 13, 2019UNLAWFUL AND UNETHICAL VIOLATIONS OF THE
STATE OFFICIALS AND EMPLOYEES ETHICS ACT
(5 ILCS 430/5-5)THE ADMINISTRATIVE LAW JUDGE CODE OF PROFESSIONAL CONDUCT
(Executive Order 2016-06)ILLINOIS RULES OF PROFESSIONAL CONDUCT
(Illinois Supreme Court Rules, Art. VIII)

The Property Tax Appeal Board (PTAB) is a State of Illinois agency with the purpose of ruling on property assessment appeals. The Des Plaines office solely handles appeals for Cook County properties. The cases are assigned to Administrative Law Judges to rule based on the facts and law. The facts are established in a variety of ways, mostly through the documents submitted as evidence and hearing testimony.

In May 2012, the taxpayer/owner of a property at 401 North Wabash Street, Chicago, Illinois 60611 filed an appeal with PTAB of its 2011 assessment from the Cook County Board of Review. The corporate name of the subject property is 401 N. Wabash Venture, LLC, and is commonly known as Trump Tower Chicago. The appeal before PTAB consists of hundreds of Property Index Numbers (17-10-135-039-1001 through 1339) for hotel and commercial space. PTAB clerical staff assigned docket number 11-24443 for the appeal. Attorney Edward M. Burke of the law firm Klafter & Burke represented the appellant from the time the appeal was filed with PTAB until May 2019. Burke served then, and still does, as a City of Chicago Alderman of the 14th Ward. The appellant submitted an appraisal in support of its argument of over-valuation, and requested an assessment reduction of many millions of dollars. PTAB notified the Board of Review of the appeal and sent to it a copy of the appraisal and other evidence submitted by the appellant. The Board of Review submitted an appraisal as its response. Despite the appellant's assessment reduction request of millions of dollars, no other local taxing bodies, such as the Chicago Public Schools or City of Chicago, intervened in the appeal.

The parties were notified the appeal was ready for hearing in April 2014, but they asked for some postponements. In about October 2017, Katherine Patti, Deputy Chief ALJ at the Des Plaines office, assigned the appeal to ALJ Simeon Nockov. Patti and ALJ Jennifer Vesely assisted Nockov in all aspects of the appeal. Nockov conducted a hearing on December 12, 2017. Patti and Vesely consulted with him about the hearing beforehand. Patti attended the hearing, as did many news media reporters. Patti and Vesely helped Nockov write the decision, finding the subject property did not warrant an assessment reduction. On January 31, 2018, Nockov entered his written decision into PTAB's database for presentation to appointed members of the PTAB for approval. A copy of the database Case History for Docket No. 11-24443 is attached. Nockov's database entry of January 31st is shown as "DD." This code designates "Decision Drafted."

Mauro Glorioso was the Chairman of the PTAB; Steven Waggoner was Acting Executive Director and Chief ALJ. Both Glorioso and Waggoner are licensed Illinois attorneys. Waggoner is based in Springfield, but has administrative authority over all PTAB employees throughout Illinois. Nockov confirmed to many PTAB employees: that shortly after Nockov entered his written decision into PTAB's database, 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." Nockov also confirmed to many PTAB employees that Waggoner sent emails to Nockov and exchanged telephone conversations with him about why Waggoner instructed Nockov to grant a large assessment reduction. Nockov complied with Waggoner's command and withdrew his written decision. The Case History entry later on January 31st is shown as "rDD." The "r" designates "reversed" for the Decision Drafted entry. All of these actions and communications were performed during regular compensated work-time.

Glorioso was appointed Executive Director of PTAB in March 2019 and relinquished his position as Board Chairman. On May 30, 2019, Burke, the appellant's attorney, was indicted for various alleged crimes by a federal Grand Jury. A new attorney substituted his appearance for the appellant on May 31st. On that same day, Waggoner made data entries to reflect the substitution of attorneys.

In the meantime and during compensated work hours, Nockov consulted with Patti and Vesely, and with their help rewrote large portions of the decision to comply with Waggoner's political directives. They ruled on a small assessment reduction in the rewritten decision. Nockov then entered the rewrite into PTAB's database on June 29, 2018, shown as "DD" in the database. However, later on that same date an employee of the Springfield office of PTAB was instructed by Waggoner to withdraw Nockov's rewritten decision by reserving the database decision, shown as "rDD."

It is standing PTAB practice for the ALJ who conducted the hearing to write the decision. But, shortly after the instruction was made to withdraw Nockov's rewrite, Waggoner took over the case as the ALJ in charge of writing the decision, even though Waggoner was not present at the December 2017 hearing. As a consequence, he did not have the benefit of observing witnesses and gauging their credibility, ruling on procedural and evidentiary matters, or directing the focus of judicial inquiry. Yet, Nockov confirmed that Waggoner found the property warranted a large assessment reduction of many millions of dollars, consistent with Glorioso's directive. Waggoner entered his written decision in PTAB's database on April 29, 2019, shown as "DD" in the database. However, Nockov confirmed that Glorioso decided that it was not the right time to publish Waggoner's decision. So, Waggoner instructed a Springfield employee to withdraw it from the database on May 7, 2019, shown as "rDD." All of this conduct was made during regular compensated work hours. As of the filing of this Complaint, the decision has not been

reentered into the database and submitted to the PTAB for final approval. But, the original and rewritten decisions, as well as all emails, are easily discoverable in the Central Management Services controlled database.

The citizens of Illinois deserve honest services and professionalism from their public servants. Yet, those were denied to the citizens by the prohibited unethical political activities and conflicts of interest perpetrated by Waggoner, Glorioso and those PTAB employees who participated in their scheme. The Ethics Act makes clear that any "executive, director, supervisor, or State employee" shall not "perform any prohibited political activity during any compensated time" or "misappropriate the services of any State employee by requiring that State employee to perform any prohibited political activity..." 5 ILCS 430/5-15. The facts show that Waggoner, for prohibited political reasons, made sure that the decision in the Trump Tower Chicago appeal would result in a large reduction. Glorioso, Nockov, Patti and Vesely participated in this scheme. Their conduct was done during regular work hours when they should have been devoting their services to legitimate State business.

Nockov, Patti and Vesely were under an affirmative ethical obligation as ALJs employed by the State of Illinois and as licensed attorneys to report this conduct. The Administrative Law Judge Code of Professional Conduct, created by Executive Order 2016-06, prohibits unethical conduct by ALJs. Rule 2.4--External Influences on Judicial Conduct, states "An ALJ shall not: (B) permit family, social, political, financial, or other interests or relationships to influence the ALJ's judicial conduct or judgment." Rule 2.13--Upholding the Integrity of the Legal Profession, states (B) An ALJ having knowledge that another ALJ has committed a violation of this Code that raises a substantial question regarding the ALJ's honesty, trustworthiness, or fitness as an ALJ in other respects shall take appropriate action, including informing the appropriate authority." These Rules track the requirements of a lawyer's responsibilities as enumerated and explained in the Illinois Rules of Professional Conduct. But, Nockov, Patti and Vesely have not disclosed to the OEIG or ARDC any of Waggoner's conduct and their many communications with him. By failing to report this unethical conduct, and even participating in it, these State of Illinois employees have misappropriated State resources. They are using Waggoner's unlawful political pressure and ethical lapses as leverage to protect them from disciplinary actions.

The facts set forth in this Complaint go beyond mere reasonable belief; we have stated facts supported with actions of individuals, dates and docket information. These facts can be easily verified by the OEIG's independent inquiry of interviewing witnesses, obtaining and analyzing documents, and forensic analysis of emails and database entries. We request the OEIG to investigate this conduct and report it to the Governor and appropriate law enforcement agencies.

CASE HISTORY FOR DOCKET NO. 11-24443

APPELLANT: 401 NORTH WABASH VENTURE, LLC
SAME AS ATTORNEY
SAME AS ATTORNEY, IL 99999

ATTORNEY: MAYER BROWN LLP
PATRICK J. MCNERNEY
71 SOUTH WACKER DRIVE
Chicago, IL 60606-4637

FILED DATE: 3/5/2021 5:05 PM 2021000090

Trans- action Number	Docket Number	Trans- action Code	User ID	Audit Date	Audit Time	Letter/ Received Date	Re- versed
70285690	11-24443	rDD	DEGAN	05-07-2019	09:43:53	04-29-2019	N
5040593	11-24443	LHNOT	SWAGGON	04-29-2019	11:08:58	12-12-2017	N
05040592	11-24443	DD	SWAGGON	04-29-2019	11:04:48	04-29-2019	Y
170175347	11-24443	rDD	DEGAN	06-29-2018	12:37:58	06-29-2018	N
17611174	11-24443	DD	SNOCKOV	06-29-2018	12:07:02	06-29-2018	Y
05034648	11-24443	EA	SWAGGON	05-31-2018	15:41:14	- -	N
05034647	11-24443	COMMENT	SWAGGON	05-31-2018	15:40:16	- -	N
Received Motion to Substitute attorneys.							
05034646	11-24443	MAM	SWAGGON	05-31-2018	15:39:07	05-31-2018	N
1769800	11-24443	rDD	SNOCKOV	01-31-2018	08:36:16	01-31-2018	N
1769615	11-24443	DD	SNOCKOV	01-31-2018	08:33:11	01-31-2018	Y
02522462	11-24443	COMMENT	KPATTI	10-27-2017	15:23:30	- -	N
Presiding ALJ was changed after Tom Kelley asked to be recused.							
18220410	11-24443	LHNOT	KMCAULI	10-26-2017	08:37:12	10-26-2017	N
18218529	11-24443	LHNOT	KMCAULI	09-20-2017	13:05:06	09-20-2017	N
18216634	11-24443	LHPNOT	KMCAULI	08-04-2017	13:57:13	08-04-2017	N
1828398	11-24443	LHPNOT	KMCAULI	02-14-2017	13:53:34	02-14-2017	N
1828395	11-24443	rLHPNOT	KMCAULI	02-14-2017	13:20:14	02-14-2017	N
1828392	11-24443	LHPNOT	KMCAULI	02-14-2017	13:17:35	02-14-2017	Y
1841281	11-24443	LHPNOT	ANGUYEN	10-13-2016	13:15:01	10-13-2016	N
1841279	11-24443	rLHPNOT	ANGUYEN	10-13-2016	12:01:29	10-13-2016	N
1841277	11-24443	LHPNOT	ANGUYEN	10-13-2016	11:57:44	10-13-2016	Y
02518248	11-24443	COMMENT	KPATTI	10-11-2016	12:14:02	- -	N
ASA request for continuance & PHC / aplt no objtn// PTAB Order granting contnce							

1824762	11-24443	LHNOT	KMCAULI	08-22-2016	09:08:37	08-22-2016	N
05320503	11-24443	LHRDY	CREED	04-11-2014	10:54:21	04-11-2014	N
05320502	11-24443	RCIRDY	CREED	04-11-2014	10:54:06	- -	N
5739266	11-24443	MCE	CWASILE	02-24-2014	13:27:20	02-24-2014	N
5739265	11-24443	MCN	CWASILE	02-24-2014	13:27:20	02-24-2014	N
6528517	11-24443	MCCER	CPLANIT	12-13-2013	14:36:00	12-12-2013	N
6251693	11-24443	LCNOT	KBELL	11-19-2013	11:12:46	11-22-2013	N
6251692	11-24443	LANOT	KBELL	11-19-2013	11:12:46	11-22-2013	N
6251678	11-24443	RAIRDY	KBELL	11-19-2013	11:10:50	- -	N
16327356	11-24443	MAE	EBURGET	10-04-2013	15:18:35	10-03-2013	N
16228167	11-24443	LAAKX90	KBELL	07-08-2013	09:54:33	07-08-2013	N
16228157	11-24443	RAIXG	KBELL	07-08-2013	09:53:14	- -	N
089171150	11-24443	AP	ECASTRO	04-10-2013	09:02:34	- -	N
added PIN that wasn't on imported spreadsheet, but is on first page of appeal fo							
089145411	11-24443	AP	ECASTRO	05-15-2012	10:04:23	- -	N
089145410	11-24443	EA	ECASTRO	05-15-2012	09:57:29	- -	N
089145409	11-24443	MANA	ECASTRO	05-15-2012	09:56:12	04-09-2012	N

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EXHIBIT B



State of Illinois
PROPERTY TAX APPEAL BOARD

William G. Straton Office Bldg.
111 South Spring St., Rm. 402
Springfield, Illinois 62706
(T) 217.782.6076
(F) 217.785.4425
(TTY) 217.785.4427

MAURO GLORIOSO
Executive Director & General Counsel

Suburban North Regional Office
9511 W. Harrison St., Suite LL-54
Des Plaines, Illinois 60016
(T) 847.294.4121
(F) 847.294.4799

January 21, 2020

Tim Novak
30 N. Racine Ave., Suite 300
Chicago, IL 60607
tnovak@suntimes.com (Sent via e-mail)

RE: FOIA Request – Docket No. 2011-24443

Dear Mr. Novak:

This is in response to your request of January 10, 2020, to the Property Tax Appeal Board to review all documents and communications between the Illinois Property Tax Appeal Board and the Office of the Executive Inspector General (OEIG) regarding the PTAB case 2011-24443, Trump Tower 401 N. Wabash Chicago. Included within the request were any communications, including emails the OEIG exchanged with Mauro Glorioso, Steven Waggoner and Simeon Nockov.

The Property Tax Appeal Board hereby denies your request pursuant to sections 7(1)(a), 7(1)(f), 7(1)(n) and section 7.5(h) of the Freedom of Information Act (5 ILCS 140/7(1)(a), (1)(f), (1)(n) and 5 ILCS 140/7.5(h)). Additionally, the Property Tax Appeal Board finds the requested documents appear to be confidential and exempt from provisions of the Freedom of Information Act pursuant to Sections 20-90 and 20-95 of the State Officials and Employees Ethics Act (5 ILCS 430/20-90, 20-95). Those who determined that these documents are exempt from FOIA include: Dan House, FOIA Officer; Steven M. Waggoner, Chief Administrative Law Judge; and Mauro Glorioso, Executive Director and General Counsel.

Please be advised that the notice of denial of your Freedom of Information Act (FOIA) request can be reviewed by the Public Access Counselor pursuant to Section 9.5 of the Freedom of Information Act (5 ILCS 140/9.5). The name and address of the Public Access Counselor is:

Sarah Pratt
Public Access Counselor
Office of the Attorney General

BOARD MEMBERS

William L. Freeman
Chicago

Jim Bilotta
Frankfort

Robert J. Steffen
South Barrington

Dana D. Kinion
Springfield

www.ptab.illinois.gov

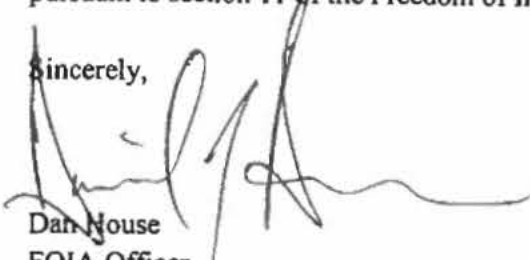
FILED DATE: 3/5/2021 5:05 PM 2021L000090

Page 2
January 21, 2020

500 S. 2nd Street
Springfield, Illinois 62701
Phone: 1-877-299-FOIA
(1-877-299-3642)
Fax: (217) 782-1396

You also have the right to have judicial review of the denial of access to inspect or copy the records pursuant to section 11 of the Freedom of Information Act (5 ILCS 140/11).

Sincerely,



Dan House
FOIA Officer
Property Tax Appeal Board

EXHIBIT C

From: **Bittner, Emily** <Emily.Bittner@illinois.gov>
Date: Wed, Jan 29, 2020 at 9:38 AM
Subject: RE: [External] Re: Sun-Times request regarding 2011 PTAB case over Trump Tower
To: Novak, Tim <tnovak@suntimes.com>

Hey Tim – here’s a statement on this, thank you again for your patience.

The administration is determined to get to the bottom of what happened in this situation, and will ensure that 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.

FILED DATE: 3/5/2021 5:05 PM 2021L000090

EXHIBIT D

House, Dan

From: Kevin Freeman <klf860@gmail.com>
Sent: Tuesday, October 6, 2020 12:27 PM
To: Duarte, Lisa
Subject: Fwd: [External] Fwd: Sun-Times questions regarding \$1 million tax cut for Trump Tower

FYI

Sent from my iPad

Begin forwarded message:

From: "Glorioso, Mauro" <Mauro.Glorioso@illinois.gov>
Date: October 6, 2020 at 12:12:05 PM CDT
To: Kevin Freeman <klf860@gmail.com>
Cc: "Glorioso, Mauro" <Mauro.Glorioso@illinois.gov>
Subject: RE: [External] Fwd: Sun-Times questions regarding \$1 million tax cut for Trump Tower

Sure would like to know who the leaker is? He has been calling me to comment. I have been advised not to speak to him under any circumstances from my attorney William J Quinlan. (you can mention his name to Hynes their families are very close and the fathers had a law firm together) He was my attorney at the IG interview last week

Also did you get my e-mail that my original service date is December 1, 2000 and my 20 year service date is December 1, 2020; so that is the magic number. If I can stay till then it would be most appreciated.
 I was told by several sources never to retire in the middle of a month but always on the 1st. If you retire in the middle you have a gap in health insurance coverage.

I would appreciate the consideration from those involved

Thanks

Mauro M. Glorioso



Mauro M. Glorioso, JD
 Executive Director/General Counsel
 Property Tax Appeal Board
 W.G. Stratton Office Bldg.
 401 S. Spring St.
 Room 402
 Springfield, IL 62706
 (T) 217.782.6076
 (F) 217.557.9429

FILED DATE: 3/5/2021 5:05 PM 2021L000090

mauro.glorioso@illinois.gov

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Des Plaines, IL 60016
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(F) 847.294.4799
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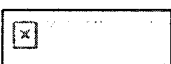
From: Kevin Freeman <klf860@gmail.com>
Sent: Tuesday, October 6, 2020 12:02 PM
To: Glorioso, Mauro <Mauro.Glorioso@illinois.gov>
Subject: [External] Fwd: Sun-Times questions regarding \$1 million tax cut for Trump Tower

FYI. I have not responded and have sent to G's office for their thoughts. Will keep you posted. -KLF

----- Forwarded message -----

From: Novak, Tim <tnovak@suntimes.com>
Date: Tue, Oct 6, 2020 at 11:39 AM
Subject: Re: Sun-Times questions regarding \$1 million tax cut for Trump Tower
To: Kevin Freeman <klf860@gmail.com>

Mr. Freeman,
I have been told that Mr. Glorioso plans to resign from PTAB. Is this true?
Thank you,
Tim Novak

	<p>Tim Novak Reporter | Metro Desk</p> <p>p: (312) 321-2891 m: (312) 307-7767 e: tnovak@suntimes.com chicago.suntimes.com 30 N. Racine Ave. Suite 300 Chicago, Illinois 60607</p>
<p>We're America's Hardest-Working Paper. See Why.</p>	

We're America's Hardest-Working Paper. [See Why.](#)

On Sat, Sep 26, 2020 at 10:57 AM Kevin Freeman <klf860@gmail.com> wrote:

Ah yes, that's because we want a regular check point to either discuss and decide the case once the investigation is complete or continue if it is not.

Sent from my iPhone

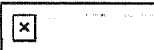


FILED DATE: 3/5/2021 5:05 PM 2021L000090

On Sep 26, 2020, at 6:49 AM, Novak, Tim <tnovak@suntimes.com> wrote:

Thank you, Mr. Freeman.

I now understand the board's position on the Trump Tower appeal, but I'm confused why the staff would keep placing it on the agenda.

Best,
Tim Novak

	Tim Novak Reporter | Metro Desk
 	p: (312) 321-2891 m: (312) 307-7767 e: tnovak@suntimes.com chicago.suntimes.com 30 N. Racine Ave. Suite 300 Chicago, Illinois 60607
We're America's Hardest-Working Paper. See Why.	

We're America's Hardest-Working Paper. [See Why.](#)

On Sat, Sep 26, 2020 at 6:15 AM Kevin Freeman <kf860@gmail.com> wrote:

Mr Novak:

Apologies for the delay, but I just received your voicemail(s) at my office number. Unfortunately our VM notification system wasn't working and given that I am working remotely, all of my calls are via my cell or on Microsoft Teams.

In any case, PTAB has decided that the best course of action is to continue the case until the OEIG has completed its investigation and the board has not, and will not, discuss the merits of the case until such time.

Regarding the OEIG investigation itself, please understand that I am not at liberty to discuss a pending investigation.

Thank you.

Regards,

Kevin Freeman

On Fri, Sep 25, 2020 at 12:28 PM Novak, Tim <tnovak@suntimes.com> wrote:

Good afternoon, Mr. Freeman.

I am inquiring about the 2011 property tax assessment appeal on Trump Tower, which has been on the PTAB board's agenda several times this year, only to be postponed or tabled to a later meeting.

Earlier this year, the governor's office had advised PTAB not to take action on the Trump appeal while the OEIG and the governor were investigating allegations that PTAB's executive director was advocating for a reduction that would lead to a \$1 million refund for President Trump.

I have a few questions.

Why has the PTAB board repeatedly tabled action on the 2011 appeal for Trump Tower? Is it because of the inquiries from OEIG and the governor's office?

The OIEG had directed Steven Waggoner to investigate the anonymous complaint and report back to the OEIG by Feb. 17, 2020. Has Mr. Waggoner done that? What were the results of his findings?

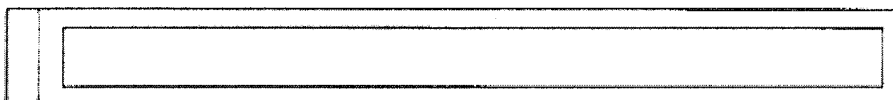
Have you discussed the Trump Tower appeal with the governor's office?

PTAB's original administrative law judge, Simeon Nockov, recommended that the PTAB uphold the 2011 assessment on Trump Tower, denying any financial relief. Mr. Nockov's recommendation has apparently been discarded as the PTB staff is urging the board to grant the assessment reduction sought by Trump Tower's original attorney Alderman Edward M. Burke, which would result in a refund of more than \$1 million. Why did PTAB staff reject Mr. Nockov's recommendation? Why did PTAB staff side with the appraisal provided by Burke's law firm?

I would like to talk with you about this case prior to publication of a story in the Sun-Times.

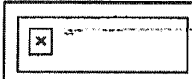


You may reach me on my cell phone, 312-307-7767, or through my email at tnovak@suntimes.com.

Thank you,
Tim Novak



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FILED DATE: 3/5/2021 5:05 PM 2021L000090

	Tim Novak Reporter Metro Desk
 	p: (312) 321-2891 m: (312) 307-7767 e: tnovak@suntimes.com
chicago.suntimes.com 30 N. Racine Ave. Suite 300 Chicago, Illinois 60607	
We're America's Hardest-Working Paper. See Why.	

We're America's Hardest-Working Paper. [See Why.](#)

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House, Dan

From: Nockov, Simeon
Sent: Friday, June 29, 2018 12:36 PM
To: Waggoner, Steve
Cc: Egan, David
Subject: RE: 401 North Wabash (Trump Tower) (11-24443)

Sure!

Dave, could you reverse it and delete the file please?

Thanks!

Simeon

From: Waggoner, Steve
Sent: Friday, June 29, 2018 12:20 PM
To: Nockov, Simeon
Cc: Egan, David
Subject: RE: 401 North Wabash (Trump Tower) (11-24443)

Simeon,

Let's not transfer this to the July folder until I have had a chance to review with Mauro and see how he wants to proceed with this.

Thanks.

smw

From: Nockov, Simeon
Sent: Friday, June 29, 2018 12:14 PM
To: Waggoner, Steve <STEVE.WAGGONER@Illinois.gov>
Cc: Patti, Katherine <KATHERINE.PATTI@Illinois.gov>
Subject: 401 North Wabash (Trump Tower)

Hi Steve,

Attached is the Trump Tower decision with a full reduction to the appraisal value, per your request. Since I am leaving shortly, I did the decision date and moved the file into the July board meeting folder.

Have a great weekend!

Simeon

Simeon Nockov JD, LL.M.
 Administrative Law Judge
 Property Tax Appeal Board
 847.294.4218

FILED DATE: 3/5/2021 5:05 PM 2021L000090

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House, Dan

From: Waggoner, Steve
Sent: Friday, June 29, 2018 12:22 PM
To: Glorioso, Mauro
Subject: FW: 401 North Wabash (Trump Tower) (11-24443)

FILED DATE: 3/5/2021 5:05 PM 2021L000090

Mauro,
FYI.
smw

From: Waggoner, Steve
Sent: Friday, June 29, 2018 12:20 PM
To: Nockov, Simeon
Cc: David.Egan@Illinois.gov
Subject: RE: 401 North Wabash (Trump Tower) (11-24443)

Simeon,

Let's not transfer this to the July folder until I have had a chance to review with Mauro and see how he wants to proceed with this.

Thanks.

smw

From: Nockov, Simeon
Sent: Friday, June 29, 2018 12:14 PM
To: Waggoner, Steve <STEVE.WAGGONER@Illinois.gov>
Cc: Patti, Katherine <KATHERINE.PATTI@Illinois.gov>
Subject: 401 North Wabash (Trump Tower)

Hi Steve,

Attached is the Trump Tower decision with a full reduction to the appraisal value, per your request. Since I am leaving shortly, I did the decision date and moved the file into the July board meeting folder.

Have a great weekend!

Simeon

Simeon Nockov JD, LL.M.
Administrative Law Judge
Property Tax Appeal Board
847.294.4218

House, Dan

From: Waggoner, Steve
Sent: Friday, June 29, 2018 12:22 PM
To: Glorioso, Mauro
Subject: FW: 401 North Wabash (Trump Tower)
Attachments: 2011-24443.docx

Mauro,

FYI.

Let me know how you want to proceed with this. (I have not had a chance to read the revised version yet.)

The Board members may want to review this since this is a high profile property.

Thanks.

SMW

From: Nockov, Simeon
Sent: Friday, June 29, 2018 12:14 PM
To: Waggoner, Steve
Cc: Patti, Katherine
Subject: 401 North Wabash (Trump Tower)

Hi Steve,

Attached is the Trump Tower decision with a full reduction to the appraisal value, per your request. Since I am leaving shortly, I did the decision date and moved the file into the July board meeting folder.

Have a great weekend!

Simeon

Simeon Nockov JD, LL.M.
Administrative Law Judge
Property Tax Appeal Board
847.294.4218

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House, Dan

From: Waggoner, Steve
Sent: Thursday, May 30, 2019 7:24 AM
To: Glorioso, Mauro
Subject: Decisions

FILED DATE: 3/5/2021 5:05 PM 2021L000090

Mauro,

Are you good to let Trump Tower and the Jackson County power plant decisions go to the Board for consideration at the June meeting?

Thanks.

Steven M. Waggoner
Chief Administrative Law Judge
Illinois Property Tax Appeal Board
Wm. G. Stratton Office Building
401 South Spring Street, Room 402
Springfield, IL 62706

217.785.4459 (T)
217.785.4425 (F)

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FILED DATE: 3/5/2021 5:05 PM 2021L000090

From: Waggoner, Steve
Sent: Friday, August 23, 2019 2:51 PM
To: Glorioso, Mauro <Mauro.Glorioso@illinois.gov>
Subject: RE: Trump Tower

Thanks.

I thought I lost it.

Have a good weekend.

Steven M. Waggoner
Chief Administrative Law Judge
Illinois Property Tax Appeal Board
Wm. G. Stratton Office Building
401 South Spring Street, Room 402
Springfield, IL 62706

217.785.4459 (T)
217.785.4425 (F)

From: Glorioso, Mauro
Sent: Friday, August 23, 2019 2:50 PM
To: Waggoner, Steve <STEVE.WAGGONER@Illinois.gov>
Subject: RE: Trump Tower

Not yet, still reviewing for edits

Mauro M. Glorioso



Mauro M. Glorioso, JD
Executive Director/General Counsel
Property Tax Appeal Board
W.G. Stratton Office Bldg.
401 S. Spring St.
Room 402
Springfield, IL 62706
(T) 217.785.4439
(F) 217.557.9429
mauro.glorioso@illinois.gov

North Suburban Regional Office
Property Tax Appeal Board
9511 W. Harrison St.

Suite LL-54
Des Plaines, IL 60016
(T) 847.294.4121
(F) 847.294.4799
www.ptab.illinois.gov

From: Waggoner, Steve
Sent: Friday, August 23, 2019 2:38 PM
To: Glorioso, Mauro <Mauro.Glorioso@illinois.gov>
Subject: Trump Tower

Mauro,

Did you send me Trump Tower with your edits.

If so, I think I deleted it or misfiled it in e-mail folders.

Thanks.

Steven M. Waggoner
Chief Administrative Law Judge
Illinois Property Tax Appeal Board
Wm. G. Stratton Office Building
401 South Spring Street, Room 402
Springfield, IL 62706

217.785.4459 (T)
217.785.4425 (F)

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House, Dan

From: Waggoner, Steve
Sent: Tuesday, November 12, 2019 2:12 PM
To: Glorioso, Mauro
Subject: RE: Trump Tower

Follow Up Flag: Follow up
Flag Status: Flagged

Okay.

I will make the changes.

Thanks.

Steven M. Waggoner
 Chief Administrative Law Judge
 Illinois Property Tax Appeal Board
 Wm. G. Stratton Office Building
 401 South Spring Street, Room 402
 Springfield, IL 62706

217.785.4459 (T)

217.785.4425 (F)

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From: Glorioso, Mauro
Sent: Tuesday, November 12, 2019 1:58 PM
To: Waggoner, Steve
Cc: Glorioso, Mauro
Subject: Trump Tower

Steve-please find attached the edited version of the Trump Tower case. Some of the edits were merely to tone down some of the criticisms of Murphy as it appears you beat him up enough.
 I find your decision to be well-written and well-reasoned, comprehensive and to the point.
 I further agree with your written conclusion of value.

Thank you

Mauro M. Glorioso



Mauro M. Glorioso, JD
Executive Director/General Counsel
Property Tax Appeal Board
W.G. Stratton Office Bldg.
401 S. Spring St.
Room 402
Springfield, IL 62706
(T) 217.785.4439
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mauro.glorioso@illinois.gov

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Thanks

Mauro M. Glorioso



Mauro M. Glorioso, JD
Chairman
Property Tax Appeal Board
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401 S. Spring St.
Room 402
Springfield, IL 62706
(T) 217.785.4439
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9511 W. Harrison St.
Suite LL-54
Des Plaines, IL 60016
(T) 847.294.4121
(F) 847.294.4799
www.ptab.illinois.gov

From: Glorioso, Mauro <Mauro.Glorioso@illinois.gov>
Sent: Saturday, February 8, 2020 2:18 PM
To: Glorioso, Mauro <Mauro.Glorioso@illinois.gov>
Subject: PTAB Docket No. 11-24443-C-3

Bullet points for press release/letter of support for staff by board of directors

-Each decision is decided on its own merits without respect to parties or property

- Once case is heard and a decision drafted it is reviewed by other hearing officers
 - In larger cases, C-3/I-3, the case is reviewed by Chief Hearing Officer and other hearing officers with similar experience
 - In this case, the recommended decision was reviewed by the Chief Hearing Officer and three other hearing officers that have written similar decisions
-
- There was no directive issued by the Executive Director to have a certain result
 - There was no political bias on the part of the Executive Director or the Chief Hearing Officer
 - The recommended decision is before the board of directors and does not become a decision of the PTAB unless and until a majority vote occurs
 - The final decision is the board's decision not the staff, the Chief Hearing Officer or the Executive Director.
 - The decision is based solely on the merits, the evidence and testimony of the parties
 - The only testimony was by the appellant's appraisal witness based upon his appraisal which was in evidence.
 - The board of review provided no witness and no appraisal and there were no intervening parties
 - The appellant requested a reduction to the appraised value based upon the evidence and testimony presented and due to the fact the appraised value nearly doubled in one year in the same triennial.
 - Prior to becoming a final decision by the board an anonymous complaint was initiated stating staff members, particularly the Executive Director and the Chief Hearing Officer sought a desired result based upon political bias
 - We have reviewed the complaint and find it to be without merit, lacking in factual material and making assumptions that were clearly erroneous.
 - We stand behind our Executive Director and Chief Hearing Officer who have 20 years and 33 years experience respectively and have never been the subject of a complaint.
 - We find that in the course of our many years combined as board members to never have had any such concerns about these two individuals
 - We find their professionalism and integrity and reputation to be beyond reproach.
 - We do this in order to support these two individuals and to assist in restoring their good names and reputations.

Signed/Board of Directors/Date

Mauro M. Glorioso



Mauro M. Glorioso, JD
Chairman
Property Tax Appeal Board
W.G. Stratton Office Bldg.
401 S. Spring St.
Room 402
Springfield, IL 62706
(T) 217.785.4439
(F) 217.557.9429
mauro.glorioso@illinois.gov

North Suburban Regional Office

FILED DATE: 9/29/2021 5:03 PM 2021L000090

Exhibit A

IN THE EXECUTIVE ETHICS
COMMISSION OF THE STATE OF
ILLINOIS

IN RE: MAURO GLORIOSO) OEIG for the Agencies of the
Illinois Governor
Case #19-02400

PUBLICATION OF REDACTED VERSION OF OEIG FINAL
REPORT

Below is the redacted final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused and others uninvolved. To balance these interests, the Commission may redact certain information contained in this report. Additionally, the Commission redacts certain information that relates to allegations against a person who was found not to have committed a violation. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission. Further, in publishing the below redacted final summary report, the Commission makes no finding of law or fact for or against any individual or entity referenced therein.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and Mauro Gloriosos’s last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

Office of the Executive Inspector General
for the Agencies of the Illinois Governor
Summary Report

I. ALLEGATIONS

[Pursuant to Section IV, Part B, the OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance. The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

On October 15, 2020, the OEIG received a second complaint relating to the [Property Tax Appellant] Appeal. Specifically, the complaint alleged that on October 5, 2020, Executive Director Mauro Glorioso improperly deleted all of his emails related to the [Property Tax Appellant] Appeal, as well as additional files from both his assigned PTAB computer and office-wide computer systems.¹

II. BACKGROUND

A. Structure and Function of PTAB

PTAB is a five-member board (Board) that hears appeals from parties who are dissatisfied with property values determined by county boards of review (BOR).² While it cannot change tax rates established by local taxing bodies, PTAB has statutory authority to independently assess the property value on which such taxes are based, and thereby impact the amount of taxes due.

To effectuate its duties, PTAB employs an Executive Director to oversee its day-to-day operations, as well as ALJs and other staff to review appeals and recommend decisions.³ These employees are based in two offices – one in Springfield and another in Des Plaines. With limited exceptions, the Des Plaines ALJs handle appeals in Cook County, while the Springfield ALJs handle appeals in all other counties.⁴ ALJs are given “full authority over the conduct of [the] hearing and the responsibility for submission of the matter to the Board for decision.”⁵ Once an ALJ submits a decision, the Board makes a final determination in its own name, based on a majority vote.⁶

¹[The information in this footnote is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this section pursuant to 5 ILCS 430/20-52(a).]

² See 35 ILCS 200/16-160.

³ PTAB decides many appeals based solely on the written record but may also hold hearings on legal or factual issues as needed. See 86 Ill. Admin. Code 1910.67(a) and (b).

⁴ The primary exception is that appeals for properties connected to ALJs in one office are assigned to ALJs in the other office. Additionally, appeals decided solely on a written record may be assigned to an ALJ from either office.

⁵ See 86 Ill. Admin. Code 1910.67.

⁶ See 86 Ill. Admin. Code 1910.12(g); 35 ILCS 200/16-185.

As [Identifying Information Redacted], [PTAB Employee 1] is the ultimate supervisor for all ALJs. On a practical basis, he is also the day-to-day supervisor for the Springfield ALJs, while [PTAB Employee 2], as [Identifying Information Redacted], is the day-to-day supervisor for the Des Plaines ALJs.⁷ All ALJs are subject to the ALJ Code, and those qualified as attorneys are also subject to the Attorney Rules.⁸ Mr. Glorioso served as Executive Director from March 27, 2019 until October 14, 2020, and was responsible for carrying out PTAB directives, effectuating its mission statement, and complying with various legal and regulatory reporting requirements. Prior to serving as Executive Director, Mr. Glorioso was a voting member of PTAB from 2009 through 2019 (including a three-year period as Chairman from 2016 through 2019).

B. 2011 [Property Tax Appellant] Assessment

The Cook County Assessor is initially responsible for determining the value of all real estate in Cook County for tax purposes. The Assessor does this by first determining the “fair cash value” of the property then applying a “multiplier” linked to the property’s classification; for commercial properties like [Property Tax Appellant], the multiplier is 25%. The assessed value then forms the basis of the actual tax bill—issued by the Cook County Treasurer—after the application of an equalization factor calculated by the Illinois Department of Revenue and tax rates set by various local taxing bodies.⁹ These assessments can be appealed within the Assessor’s office, or to the Cook County BOR.¹⁰ [The remainder of the information in this subsection paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

III. INVESTIGATION

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

A. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

1. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

⁷ [PTAB Employee 2] has served as [Identifying Information Redacted] for the Des Plaines office since 2014.

⁸ See Executive Order 2016-16 (establishing that hearing officers are subject to the ALJ Code); Attorney Rules 8.5 (establishing that “[a] lawyer admitted to practice . . . is subject to the disciplinary authority of this jurisdiction[.]”).

⁹ See <https://www.cookcountyassessor.com/how-commercial-properties-are-valued> (last visited November 5, 2020).

¹⁰ See <https://www.cookcountyassessor.com/frequently-asked-questions> (last visited November 5, 2020).

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

2. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

B. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

1. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

a. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the

OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

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[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

b. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

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[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

c. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

2. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

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[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

C. Mr. Glorioso's Deletion of Relevant PTAB Files and Emails

1. Mr. Glorioso's background

Mr. Glorioso is an attorney and was first admitted to the Illinois bar on 1997. After a few years in private practice, Mr. Glorioso joined PTAB as an ALJ in 2000. He served in that role until 2009, when he became a PTAB Board member. In 2016, he was promoted to Chairman, a role he retained until 2019. In early 2019, he left his Chairman position to accept an appointment to serve as PTAB's Executive Director and General Counsel. Mr. Glorioso told the OEIG that as

Executive Director and General Counsel, he was responsible for carrying out directives from the PTAB, effectuating its mission statement, and complying with various legal and regulatory reporting requirements. He also stated that he worked primarily out of the Des Plaines office, but visited the Springfield office regularly.

In addition to his employment with PTAB, Mr. Glorioso has served in several significant volunteer roles with [Attorney-related Professional Association]. As set forth in Mr. Glorioso's resume in his personnel file, he has been a member of the [Attorney-related Professional Association] continually since 1998. He served as a member of [Attorney-related Professional Association] 's [Identifying Information Redacted] from 2004 to 2012. As a member of [Identifying Information Redacted], Mr. Glorioso was responsible for voting on advisory ethics opinions issued by [Attorney-related Professional Association].¹¹ While serving on [Identifying Information Redacted], Mr. Glorioso was also appointed to one-year terms as [Attorney-related Professional Association]'s Secretary (2008-2009) and Treasurer (2009-2010).

On October 5, 2020, PTAB internally announced that Mr. Glorioso would leave the agency on October 23, 2020. However, due to certain events discussed below, Mr. Glorioso's access to his PTAB email and other PTAB systems was terminated on October 14, 2020, and he was removed from the office.

2. Notice of the litigation hold

Based on a review of Mr. Glorioso's Illinois.gov account, the OEIG identified an email dated February 20, 2020 from [Identifying Information Redacted] [PTAB Employee 3] to Mr. Glorioso and other PTAB employees. The email had the subject line "Document Hold.docx" and attached a Word document of the same name.¹² The document – a memorandum also dated February 20, 2020 and bearing the subject line "[Property Tax Appellant]; PTAB Docket No. [Identifying Information Redacted]" – instructed all recipients that they had a "legal obligation to preserve all Documents and [Electronically Stored Information]" related to the [Property Tax Appellant] Appeal, and that such materials "must not be discarded, deleted, altered, or destroyed." The memorandum stated that it covered both "final and draft" documents, including emails, memoranda, and "any electronic data compilation from which information can be obtained." The memorandum stated that the order to preserve documents and ESI was "necessarily broad and [should be interpreted] in the broad sense it is intended." While the document had no specific end date, it stated that recipients would be contacted "when the preservation/litigation hold is lifted."

¹¹ See [Attorney-related Professional Association Website] (last visited May 12, 2021).

¹² Although the litigation hold stated that PTAB IT staff would take the necessary steps to "deactivate any program that automatically deletes stored files or e-mail," [PTAB Employee 4] stated that he was not aware of anyone within PTAB sharing the litigation hold with the Department of Innovation and Technology (DoIT). Such a step should have been taken because, as [PTAB Employee 4] explained, DoIT hosts and maintains the servers that backup PTAB's IT infrastructure. In this case, the failure to alert DoIT did not impact the investigation, as [PTAB Employee 4] was able to restore the deleted [Specified Network Drive] materials from DoIT's backups before the end of the retention period. Nevertheless, the OEIG recommends that PTAB institute formal procedures to ensure that any future litigation holds are shared with DoIT, so that backups will be preserved in a forensically sound manner.

The OEIG's review of Mr. Glorioso's emails also found that Mr. Glorioso, on February 20, 2020, referenced discussions of the litigation hold with [PTAB Employee 3], several hours before she sent it out. Additionally, Mr. Glorioso was copied on a February 13, 2020 email from [PTAB Employee 1] to [PTAB Employee 3] with the subject line "Document Hold." That email attached a document identical to the memorandum circulated by [PTAB Employee 3] on February 20, 2020, except for the date.

Documents obtained by the OEIG during this investigation also show that Mr. Glorioso was present during the Executive Session of PTAB's February 11, 2020 Board Meeting, where the litigation hold covering "any and all documents, and electronically stored information involving and pertaining to the [Property Tax Appellant] [A]ppeal" was discussed.

3. Interview of [PTAB Employee 4], PTAB [Identifying Information Redacted]

OEIG investigators interviewed [PTAB Employee 4], PTAB's [Identifying Information Redacted], on February 9, 2021. [PTAB Employee 4] stated that he had a Bachelor's degree in Computer Science from the University of Illinois, and had worked in IT for various State agencies – including CMS and PTAB – for more than a decade.

[PTAB Employee 4] stated that on October 5, 2020, PTAB internally announced that Mr. Glorioso would be leaving the agency later in the month. He stated that on October 8, 2020, he began preparing a packet of electronic materials for the incoming Executive Director to get up to speed. As a part of that effort, he used Mr. Glorioso's computer to access Mr. Glorioso's assigned network folder 9[Specified Network Drive]), so that he could include its contents in the aforementioned packet. According to [PTAB Employee 4], the [Specified Network Drive] was linked to Mr. Glorioso's Illinois.gov account, and could only be accessed by someone who knew Mr. Glorioso's login and password. He stated that it was theoretically possible for an IT employee with full backend access to access Mr. Glorioso's [Specified Network Drive], but that he saw no evidence of such access occurring in this case.

[PTAB Employee 4] stated that his review of Mr. Glorioso's computer revealed that the [Specified Network Drive] was virtually empty. He explained to the OEIG that the [Specified Network Drive] was backed up automatically on a nightly basis, and that he reviewed each night's backup to determine if and when files had been deleted. In doing so, [PTAB Employee 4] found that a large number of files were present in the October 4 backup, but were missing from the October 5 backup. According to [PTAB Employee 4], he saw no evidence of anyone other than Mr. Glorioso accessing the [Specified Network Drive].

[PTAB Employee 4] explained that the [Specified Network Drive] deletions appeared suspicious to him, in part because a few days prior, PTAB [Identifying Information Redacted] [PTAB Employee 5] reported that Mr. Glorioso had improperly transferred some emails.¹³ [PTAB

¹³ [PTAB Employee 4] recalled that [PTAB Employee 5] reported two tech-support conversations with Mr. Glorioso regarding email storage. Specifically, [PTAB Employee 5] reported that on September 30, 2020, Mr. Glorioso requested and received assistance in creating folders in his Outlook program, purportedly to make the emails easier to find. [PTAB Employee 5] also reported that on October 1, 2020, Mr. Glorioso again requested and received assistance

Employee 4] further explained that his suspicions grew after he discovered that the very first deleted file he restored from Mr. Glorioso's [Specified Network Drive] directly referenced the [Property Tax Appellant] Appeal in the filename. After conducting additional searches, [PTAB Employee 4] determined that at least 25 of the deleted files that he was able to recover related to the [Property Tax Appellant] Appeal, including various Board meeting minutes and reports, drafts of [PTAB Employee 1]'s decision, and other related materials. Accordingly, he reported the matter to PTAB Board Chairman Kevin Freeman on October 14, 2020. [PTAB Employee 4] told the OEIG that later the same day, Mr. Freeman directed him to change Mr. Glorioso's password and remove him from the network.

[PTAB Employee 4] told the OEIG that after Mr. Glorioso was removed, he contacted the Department of Innovation and Technology (DoIT) to determine how best to recover emails that Mr. Glorioso may have deleted. [PTAB Employee 4] indicated that DoIT told him that even if a user emptied the "Trash" folder via Outlook, the materials would still be retained for 45 days in a separate "Trash" folder on PTAB's Exchange email server.¹⁴ [PTAB Employee 4] told the OEIG that when he checked the "Trash" folder on the Exchange server, he found that thousands of emails had been deleted from Mr. Glorioso's Outlook "Trash" folder on October 2, 2020. According to [PTAB Employee 4], because these emails were recovered from the "Trash" folder on the Exchange server, they had to have been deleted twice – first from Mr. Glorioso's Outlook inbox, and second from Mr. Glorioso's Outlook "Trash" Folder. After conducting several searches on the deleted emails, [PTAB Employee 4] found that over 200 of them were related to the [Property Tax Appellant] Appeal. [PTAB Employee 4] explained that the materials could only have been deleted by Mr. Glorioso or by a DoIT employee with administrator access. [PTAB Employee 4] stated that he saw no evidence of the latter.

[PTAB Employee 4] documented these events in a memorandum that he authored on October 14, 2020 and provided to Mr. Freeman the same day. This memorandum was in turn provided to the OEIG on October 15, 2020. Upon review, the events [PTAB Employee 4] described in his interview were consistent with his memorandum.

4. OEIG's review of recovered materials

The OEIG obtained and independently reviewed all of the deleted materials related to the [Property Tax Appellant] Appeal that [PTAB Employee 4] was able to recover in order to determine whether the deletion substantively impacted the OEIG investigation. In doing so, the OEIG found that most of the recovered materials were identical or highly similar to materials previously obtained during this investigation, while the others were related to FOIA requests from the [News Source 1]. Due to these similarities, investigators determined that the recovered

in organizing his emails. [PTAB Employee 5] further reported on this second call, Mr. Glorioso reported that he transferred files to a personal thumb drive. [PTAB Employee 4] told the OEIG that he directed [PTAB Employee 5] to tell Mr. Glorioso that such transfers were prohibited. [PTAB Employee 5] then reported that Mr. Glorioso agreed to stop copying emails in this fashion, and to remove the previously-transferred emails from the thumb drive. [PTAB Employee 4] told the OEIG that he did not recall that Mr. Glorioso ever previously requested assistance in organizing his emails.

¹⁴ [PTAB Employee 4] also explained that DoIT maintained copies of all emails, including deleted materials that would otherwise be lost after the 45-day retention period on the Exchange server.

materials did not affect the outcome of the investigation into the underlying complaint [The information in the remainder of this sentence is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this sentence pursuant to 5 ILCS 430/20-52(a).].

On February 19, 2021, the OEIG contacted Mr. Glorioso's counsel requesting an interview with Mr. Glorioso regarding the deletion of PTAB materials. Mr. Glorioso's counsel responded on March 5, 2021 and indicated that Mr. Glorioso might agree to such an interview, but requested additional time. After sending numerous calls and emails over the next several months, the OEIG informed Mr. Glorioso's counsel via email on May 11, 2021, that it would proceed with its investigation if the interview was not scheduled by May 21, 2021. Mr. Glorioso's counsel acknowledged receipt of the email, but did not make any further contact with the OEIG.

IV. ANALYSIS

- A. **[The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this section pursuant to 5 ILCS 430/20-52(a).]**

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

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B. Allegation that Mr. Glorioso Improperly Deleted Materials Related to the [Property Tax Appellant] Appeal

PTAB’s Employee Handbook requires employees to “conduct themselves in a responsible and professional manner in all work situations,”¹⁵ and specifically prohibits them from attempting to “conceal, alter, mutilate, obliterate, or destroy record or documents” belonging to the agency.¹⁶ In addition, the State Records Act provides that all records created or received by or under the authority of or coming into the custody, control, or possession of public officials of the State in the course of their public duties are the property of the State and may not be mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, in whole or in part, except as provided by law.¹⁷

On February 20, 2020, Mr. Glorioso and other PTAB employees received a litigation hold notice, instructing them to maintain all materials related to the [Property Tax Appellant] Appeal – including both draft and final copies of all documents, emails and memoranda. The OEIG’s analysis of Mr. Glorioso’s email records shows that he received a draft copy of the litigation hold notice a week earlier. He also acknowledged in his OEIG interview that he was aware of the

¹⁵ PTAB Employee Handbook Section 7.1 – Professional Conduct.

¹⁶ PTAB Employee Handbook Section 7.2(c) – Care of Official Documents, Money and Property.

¹⁷ 5 ILCS 160/3(a). “Records” includes physical and electronic materials made, produced, executed, or received by any State agency in pursuance of State law or in connection with the transaction of public business and preserved as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State, or because of the informational data contained therein (*Id.* at 160/2). Any person who knowingly and without lawful authority alters, destroys, defaces, removes, or conceals any public record commits a Class 4 felony (*Id.* at 160/11).

OEIG's investigation of the appeal. As an attorney with more than 20 years of experience in State government and high-level volunteer positions with [Attorney-related Professional Association], Mr. Glorioso should have realized the seriousness of the litigation hold.

Nevertheless, on October 2, 2020 three days after his interview with the OEIG more than 200 emails related to the [Property Tax Appellant] Appeal were deleted from Mr. Glorioso's email account. The following week, on October 5, 2020, dozens of additional files related to the [Property Tax Appellant] Appeal were deleted from Mr. Glorioso's [Specified Network Drive]. [PTAB Employee 4] informed the OEIG that these deletions could only have been performed by Mr. Glorioso or DoIT employees with full administrative access to State IT systems, and that he saw no evidence of any such activity by DoIT. It is also clear, at least with respect to the emails, that Mr. Glorioso's deletions were intentional, as they required Mr. Glorioso to first move the items to his Outlook "Trash" folder and then empty that folder. Despite repeated efforts – extending over several months – to reach out to Mr. Glorioso via his counsel, the OEIG was unable to schedule a second interview with Mr. Glorioso to obtain his explanation for this conduct.

Based on this record, the OEIG finds that there is reasonable cause to conclude that Mr. Glorioso deleted numerous emails and other documents related to the [Property Tax Appellant] Appeal, and that in so doing, Mr. Glorioso violated the PTAB Employee Handbook's general document retention rules, the litigation hold notice specifically in place for the [Property Tax Appellant] Appeal, and the State Records Act. Accordingly, the allegation that Mr. Glorioso violated PTAB policy, directives, and State law relating to the maintenance of records by deleting PTAB files and emails in October 2020 is **FOUNDED**.¹⁸

V. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS**:

- **UNFOUNDED** – [The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]
- **FOUNDED** – Mauro Glorioso violated PTAB policy, directives, and State law relating to the maintenance of records by deleting PTAB files and emails in October 2020.

Because Mr. Glorioso is no longer a State employee, the OEIG recommends that a copy of this report be placed in Mr. Glorioso's employment file, and that he not be rehired by the State.

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

¹⁸ The OEIG concludes that an allegation is "founded" when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

FILED DATE: 9/29/2021 5:03 PM 2021L000090

Date: May 25, 2021

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington St., Suite 3400
Chicago, IL 60602

Francis Sohn
Assistant Inspector General #157

Jasmine Velazquez
Supervising Investigator #133



Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

**AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY
RESPONSE FORM**

Case Number: 19-02400

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

~~We have implemented all of the OEIG recommendations. Please provide details as to actions taken:~~

We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within 30 days from the original return date.

~~We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:~~



Signature

Property Tax Appeal Board – Executive Director

Print Agency and Job Title

Michael O'Malley

Print Name

06/10/2021

Date



Office of Executive Inspector General
for the Agencies of the Illinois Governor
www.inspectorgeneral.illinois.gov

**AGENCY OR ULTIMATE JURISDICTIONAL AUTHORITY
RESPONSE FORM**

Case Number: 19-02400

Return 20 Days After Receipt

Please check the box that applies. (Please attach additional materials, as necessary.)

We have implemented all of the OEIG recommendations. Please provide details as to actions taken:

- PTAB followed the recommendation of the OEIG and placed a copy of the OEIG report in Mr. Glorioso's employment file.
- PTAB followed the recommendation of the OEIG and drafted the policies of the agency regarding the assignment, reassignment, drafting, reviewing and approval of ALJ recommendations to the board (decisions). These policies are the subject of a memorandum which will be sent to staff and discussed at an all-staff meeting in July 2021. These policies will also be incorporated into the employee manual which is in the process of being updated.

~~We will implement some or all of the OEIG recommendations but will require additional time to do so.
We will report to OEIG within 30 days from the original return date.~~

~~We do not wish to implement some or all of the OEIG recommendations. Please provide details as to what actions were taken, if any, in response to OEIG recommendations:~~

[Redacted Signature]

Signature

Property Tax Appeal Board – Executive Director

Print Agency and Job Title

Michael O'Malley

Print Name

07/15/2021

Date

IN THE EXECUTIVE ETHICS COMMISSION
OF THE STATE OF ILLINOIS

IN RE: MAURO GLORIOSO) #19-02400

RESPONDENT'S SUGGESTIONS FOR REDACTION / PUBLIC RESPONSE

Please check the appropriate line and sign and date below. If no line is checked, the Commission will not make your response public if the redacted report is made public.

- Below is my public response. Please make this response public if the summary report is also made public; or
- Below are my suggestions for redaction. I do not wish for these suggestions to be made public.


Respondent's Signature

09/09/2021
Date

Instructions: Please write or type suggestions for redaction or a public response on the lines below. If you prefer, you may attach separate documents to this form. Return this form and any attachments to:

EEC.CMS@illinois.gov
Illinois Executive Ethics Commission
401 S. Spring Street, Room 513 Wm. Stratton Building
Springfield, IL 62706

Please see attached documents

Response letter

Redaction suggestions

Affidavit



William J. Quinlan

T 312 629 6012

F 312 971 1070

wjq@quinlanfirm.com

FILED DATE: 9/29/2021 5:03 PM 2021L000090

September 9, 2021

Via Email & FedEx

Executive Ethics Commission
401 S. Spring St.
513 Wm. Stratton Building
Springfield, IL 62706

Via email to: [REDACTED]

Re: Release of Redacted OEIG Report

Dear Ms. Casey and the Executive Ethics Commission:

We represent Mauro Glorioso. We are in receipt of your August 17, 2021 letter and Report regarding the investigation conducted by the Office of Executive Inspector General for the Agencies of the Illinois Governor (“OEIG”) relating to the October 15, 2020 complaint (the “Second Complaint”) filed against Mr. Glorioso, alleging that Mr. Glorioso, while still employed by the Property Tax Appeal Board (“PTAB”), purposefully and wrongfully deleted certain emails from his PTAB email account. Thank you for the opportunity to respond to these allegations.

The Report concludes that Mr. Glorioso intentionally destroyed PTAB emails and computer files related to an ongoing investigation of the OEIG. According to the Report, the OEIG found that “there is reasonable cause to conclude that Mr. Glorioso deleted numerous emails and other documents related to the [Property Tax Appellant] Appeal, and that in so doing, Mr. Glorioso violated the PTAB Employee Handbook’s general document retention rules, the litigation hold notice specifically in place for the [Property Tax Appellant] Appeal, and the State Records Act.” (Report, pg. 11.)

These conclusions are unfounded and unwarranted. Mr. Glorioso knew that his emails had been backed-up by the PTAB IT department when he deleted them from his local inbox, and further had been told by the OEIG investigator investigating the first complaint relating to the [Property Tax Appellant] Appeal that the OEIG did not need any further materials.

Not only does the Report lack any factual predicate to support its conclusion, it further wrongly applies the State Records Act, 5 ILCS 160/3. The Report concludes that Mr. Glorioso

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September 9, 2021
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violated the Act because he deleted from his email inbox previously backed-up emails (Report, pgs. 10-11); but if that were correct, then any time a state employee deletes an email from his or her work email account, that employee violates the Act. Such a result is untenable. The application of the Act in this matter merely castigates Mr. Glorioso for the same actions that state employees likely do daily.

The Commission should not exercise its discretion, *see* 5 ILCS 430/20-52(a), and publish the Report, with Mr. Glorioso's name unredacted, based solely on the fact that Mr. Glorioso deleted emails from his local inbox that he knew were backed-up and that were already in the hands of the OEIG. As detailed below, and supported by the enclosed Affidavit of Mr. Glorioso, Mr. Glorioso engaged in no wrongdoing, and this Report should be overturned.

I. This Matter is Independent of, and Should not be Included with, the First Complaint.

Initially, we do not agree that this subject should be included with the first complaint, #19-02400 (the "First Complaint"), submitted to the Office of Executive Inspector General, which was the subject of the [Property Tax Appellant] Appeal. The subject of this matter is a separate issue and should be referred to independent of the First Complaint, which was determined to be unfounded.

Section 1620.330 of the OEIG Investigation Policy Procedures Manual provides that "multiple case initiation forms that relate to the same alleged acts of misconduct may be consolidated for purposes of investigation." But, the alleged acts of misconduct in the two complaints are not "the same." Indeed, as discussed below, considering the OEIG interviewed Mr. Glorioso regarding the First Complaint and informed him that they had all the documents they needed, and only after that did Mr. Glorioso delete any emails, it is clear that these two complaints are unrelated and should not have been treated as such by the OEIG. Combining the two complaints into one Report only serves to prejudice Mr. Glorioso and creates an unfair implication that Mr. Glorioso's actions in deleting certain emails was directly related to the First Complaint, of which the OEIG has presented no evidence.

II. Mr. Glorioso's Conduct Was Consistent with PTAB Practices and He Did Not Intentionally Destroy Any PTAB Emails or Records.

Mr. Glorioso did not intentionally destroy or remove the materials referenced in the Report. The emails were backed-up by the PTAB IT department and maintained by the Illinois Department of Innovation & Technology ("DoIT"). Indeed, the Report itself acknowledges that the recovered emails were identical or highly similar to the emails already obtained by the OEIG, and that investigators determined that the recovered materials did not affect the outcome of the investigation in the First Complaint. (Report, pg. 8.)

A. Background

Mr. Glorioso worked at the PTAB from December 1, 2000, until October 14, 2020. (Aff., ¶¶ 3-6.) He began as an administrative law judge from 2000–2008. (Aff., ¶ 3.) He served as a PTAB Board member from 2008–2019 (Aff., ¶ 4), and was promoted to Chairman of the Board from 2016–2019. (Aff., ¶ 5.) From March 27, 2019–October 14, 2020, he served as the Executive Director of the PTAB. (Aff., ¶ 6.) In his 20 years of service, Glorioso never had an OEIG complaint filed against him and was never the subject of an ethics investigation. (Aff., ¶ 25.) [REDACTED] the First Complaint was ultimately concluded to be unfounded [REDACTED]

Mr. Glorioso knew the PTAB's procedures for backing up emails. He knew that the PTAB's IT department backed-up employees' email accounts regularly, if not daily. (Aff., ¶ 10-11.) The [REDACTED] also informed staff that information on their work computers was backed-up regularly with DoIT. (Aff., ¶ 10.) Should anyone need access to the PTAB's backed-up information, staff were to notify [REDACTED], and he would submit a request to DoIT to obtain it. (Id.) Based on [REDACTED] direction, Mr. Glorioso understood that, pursuant to the PTAB's document retention policy, backups of these emails and files continued to be available with the DoIT should anyone need to view them. (Aff., ¶ 22.) He understood that the backups would be available as he deleted the files. (Id.) Indeed, the nightly backup of Mr. Glorioso's email was confirmed by the OEIG. (Report, pg. 7).

Mr. Glorioso also knew that, when litigation holds were in place, the standard procedure was for investigators to retrieve any applicable emails via the backup disks that were maintained by DoIT. (Aff., ¶ 12.) Indeed, while Mr. Glorioso did provide documents to the OEIG as part of its investigation, the OEIG had accessed every document, including Mr. Glorioso's emails, that it needed as part of its investigation of the First Complaint. (Aff. ¶¶ 15, 17-19.) The OEIG implicitly acknowledges this latter point, noting that "the OEIG found that most of the recovered materials were identical or highly similar to materials previously obtained during this investigation." (Report, pg. 8.)

B. Mr. Glorioso Neither Intended to Destroy nor Actually Destroyed Any Emails or Files upon Departing from the PTAB

Throughout his long history at the PTAB, Mr. Glorioso found that the PTAB's electronic storage practices routinely allowed employees to delete emails and electronic files from their work computers. (Aff., ¶¶ 8-11, 20-22.) This was because the PTAB backed-up its employees' email accounts nightly. (Report, pg. 7.) Mr. Glorioso further understood that employees regularly deleted emails and files as a matter of practice. (Aff., ¶ 8.) Departing employees did the same so that their replacements could have an easier time transitioning into their new roles, as was done here. (Aff., ¶¶ 20-21.)

On September 23, 2020, Mr. Glorioso was informed that he was being terminated. (Aff., ¶ 16.) Six days later, he sat for an interview with the OEIG regarding the First Complaint. (Aff., ¶ 17.) [REDACTED], an OEIG investigator, conducted the interview, which was transcribed. At that interview, [REDACTED] specifically told Mr. Glorioso that they had all the

documents they needed regarding the First Complaint and their investigation, and that he did not need to retain any of those documents, including emails. (Aff., ¶ 19.) We request the Commission to review the transcript and further provide us a copy.¹

After the interview, and while preparing for his departure, Mr. Glorioso discussed with [REDACTED] of the PTAB IT Department, how to best clean out his emails prior to his replacement's start date. (Aff., ¶ 20.) [REDACTED] provided him with guidance about how to properly delete his emails and how to delete a number of emails at any one time. (Id.) No member of the PTAB IT staff informed him that he could not delete information from his computer or suggested he not do so once it came to their attention. (Aff., ¶ 22.)

After discussing cleaning up his email inbox and computer with the IT Department, Glorioso deleted certain emails and files on his work computer. (Aff., ¶ 21.) Specifically, he deleted emails or files that pertained to matters not presently before the PTAB, routine Board administrative functions, and other old emails. (Id.) Every email he deleted locally had already been backed-up by the IT department and maintained by DoIT. (Aff., ¶ 23.) Indeed, the Commission has not presented any evidence that Mr. Glorioso permanently deleted any email that had not already been backed-up.

As for the litigation hold, based on his knowledge that all PTAB emails were backed-up nightly, and further based on his understanding that OEIG investigators often accessed the backups of employees' emails as part of their investigations, Mr. Glorioso reasonably presumed that any emails or files meeting the requirement of the litigation hold would automatically be backed-up and that the investigators would have access to those emails. (Aff., ¶ 12.) Indeed, this is what happened, as investigators had access to, and questioned Mr. Glorioso about, all relevant emails and documents that pertained to the First Complaint. (Aff., ¶¶ 15-19.)

III. Mr. Glorioso Has Fully Cooperated with the OEIG Investigation

Mr. Glorioso fully cooperated with the OEIG's investigation. In December of 2019, the OEIG launched an investigation [REDACTED] based on the First Complaint. During this investigation, the OEIG requested—and Glorioso provided—numerous documents, including all of the emails from his time as the Executive Director of the PTAB, that related to the decision in question. (Aff., ¶¶ 14-15.) He also issued written responses to OEIG requests and agreed to submit for an interview with OEIG officials. (Aff., ¶¶ 15-17.) He provided the OEIG with any and all materials requested. (Aff., ¶¶ 18-19.) He never obstructed or otherwise failed to comply with any OEIG request.

¹ Similarly, Mr. Glorioso has submitted a FOIA request to the PTAB for all documents related to the First and Second Complaint.

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His cooperation with the OEIG demonstrates that his deletion of certain emails was neither meant to nor actually obstructed the OEIG's investigation of the First Complaint. During his September 29, 2020 interview with OEIG officials, the officials questioned Glorioso using copies of the very same emails that the Report suggests he deleted. (Aff., ¶ 17) (Report, pg. 8.) Mr. Glorioso had previously sent copies of these emails to the OEIG, and he answered questions to the officials' satisfaction. (Aff., ¶¶ 17-18.) The OEIG did not request any additional information during or following this interview. (Aff., ¶ 18.) There is no evidence to support the false accusation that he somehow sought to obstruct the OEIG investigation or to stymie any FOIA response.

In short, none of Mr. Glorioso's actions impeded any investigation by the OEIG because, as referenced in the Report, the recovered emails and files "were identical or highly similar to materials previously obtained during the investigation." (Report, pg. 8.) Indeed, the Report neglects to note that, as Executive Director, Mr. Glorioso was well aware that his emails had been backed-up and were maintained by DoIT. (Aff., ¶¶ 10-12, 22-23.) Further, before he had even locally deleted a single email, ██████████ of the OEIG told him that they had every document they needed. (Aff., ¶ 19.) Mr. Glorioso could not possibly have deleted his emails locally intending to impede the OEIG's investigation. Any conclusion to the contrary is unfounded.

IV. Mr. Glorioso Did Not Commit Sufficient Misconduct for the Commission to Exercise Its Discretion and Publish the Report. At a Minimum, the Report must be Redacted.

Initially, there has been a mishandling of this Second Complaint. First, Mr. Glorioso was completely unaware that there was a second complaint, as he was never served with a copy, in violation of 5 ILCS 430/20-50(d) ("A copy of the complaint filed with the Executive Ethics Commission must be served on all respondents named in the complaint"). Likewise, the OEIG's conclusions and recommendations were reached without his input, further in violation of Section 430/20-50(e).

Indeed, the OEIG is using Mr. Glorioso's silence — his not sitting for a second interview and thus not commenting directly on the allegations — to conclude that he knowingly deleted his emails to obstruct the OEIG's investigation. That is improper. Under the doctrine of use immunity, "when a government employee is coerced, under threat of disciplinary action, to account for his activities while on the job, any statements he may make are inadmissible against him in any subsequent criminal proceedings Moreover, the employee's refusal to answer can form the basis for disciplinary action *if he has been informed that use immunity has attached.*" *Blunier v. Board of Fire and Police Com'rs of City of Peoria*, 190 Ill. App. 3d 92, 103-04 (3d Dist. 1989) (emphasis added).² The OEIG did not comply with these requirements, but is now attempting to use Mr. Glorioso's silence against him. This is especially relevant considering the OEIG has recommended that Mr. Glorioso violated the State Records Act, which amounts to a Class 4 felony. *See* 5 ILCS 160/11. (Report, page 10 n.17.)

And regarding the purported violation of the State Records Act, the Act does not even

² To the extent this does not apply because Mr. Glorioso is no longer an employee, it is apparent that the OEIG lacks jurisdiction to investigate and issue the Report as it relates to the Second Complaint, which was filed after Mr. Glorioso's employment with the PTAB ended.

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apply, as it explicitly states that “extra copies of documents preserved only for convenience of reference . . . are not included within the definition of records as used in this Act.” 5 ILCS 160/2. Every email that Mr. Glorioso deleted from his inbox was backed-up by the IT department and was always available. (Aff., ¶¶ 10-11, 23.) Instead, Mr. Glorioso merely deleted old emails from his local inbox — emails that were ultimately redundant and in the possession of the OEIG — that were preserved only for convenience of reference, as they had already been permanently preserved by the IT department through its nightly backups. Applying the Act in this matter would lead to absurd results. If Mr. Glorioso is found to have violated the Act because he deleted old emails that had already been backed-up by the IT Department, then every state employee that has ever deleted an email from his or her computer would have violated the Act. Such a result is untenable. Thus, the Act does not apply or it appears that the Act is being arbitrarily applied to Mr. Glorioso.

Similarly, the Report’s reliance on the PTAB Employee Handbook is misplaced. (Report, pgs. 10-11.) The Handbook mirrors the State Record Act and provides that “it is unlawful to conceal, alter, obliterate, or destroy records or documents, or to remove or attempt to remove such records or documents with the intention of performing such actions.” Regarding the first clause, the Report acknowledges that Mr. Glorioso’s emails had been backed-up and retained by the PTAB. (Report, pg. 8.) It thus is clear that Mr. Glorioso did not “conceal, alter, mutilate, obliterate, or destroy records or documents,” as those documents had already been permanently maintained by DoIT — and Mr. Glorioso knew this to be the case. Regarding the second clause, the Report fails to identify a single piece of evidence that Mr. Glorioso removed or attempted to remove such records “with the intention” of concealing or destroying those documents. Again, Mr. Glorioso deleted his emails only because he knew they had been backed-up, and further because the OEIG had told him that they had every document they needed. If the PTAB intended its Handbook to prevent all employees from deleting any emails, the Handbook should say as much. It does not, however, and the OEIG is seeking to punish Mr. Glorioso for deleting already backed-up emails that the OEIG always had access to.

Likewise, by publishing the Report as written, Mr. Glorioso may be deprived of his liberty interest in his post-employment reputation. To demonstrate such a deprivation, a plaintiff would have to “show that (1) he was stigmatized by the defendant’s conduct, (2) the stigmatizing information was publicly disclosed, and (3) he suffered a tangible loss of other employment opportunities as a result of public disclosure.” *Johnson v. Martin*, 943 F.2d 15, 16 (7th Cir. 1991).

Finally, comparing Mr. Glorioso’s purported conduct with that of other state employees subject to OEIG investigations demonstrates that the Commission’s recommendations, especially as it relates to recommending that Glorioso not be rehired by the State, are unduly oppressive. For example, in one instance, a State employee was found to have made sexually-oriented comments and used “highly-offense race-based language,” but the Commission did not even recommend that he not be rehired by the State. (*See In re Sawyer*, Case No. 18-00921, published Aug. 20, 2019.) In another case, the Commission found that a University of Illinois employee violated the University’s computer and network systems policy by using his University email for commercial or profit-making purposes, but the Commission did not recommend terminating his employment, let alone that he not be rehired by the State. (*See In re Gallivan*, Case No. 17-02400, published Aug. 20, 2019.) In yet another case, the Commission concluded that a state employee had failed to cooperate with the OEIG investigation by making false statements to the OEIG, in violation of

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the Ethics Act, and merely recommended that her employer “discipline” her. (*See In re Campbell*, Case No. 15-01145, published Nov. 16, 2017.) Mr. Glorioso being recommended to not be rehired by the State after he deleted emails that were redundant and backed-up, and only after being given permission to do so, is unreasonable.

Perhaps most telling, though, is that we have not been able to find a single report issued by the Commission, based on a complaint and OEIG investigation, concluding that an employee engaged in wrongful conduct by deleting emails from his local inbox that had already been backed-up and that, in no way, impacted an OEIG investigation.

V. Conclusion

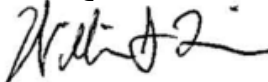
Context matters, and here, the OEIG’s Report is disconnected from context. As Executive Director, Mr. Glorioso was well aware that the PTAB, and DoIT, had maintained all of his emails. He fully cooperated with the OEIG’s investigation of the First Complaint, and sat for a three-hour interview on September 29, with [REDACTED]. After that interview, [REDACTED] told Mr. Glorioso that the OEIG had all the documents they needed regarding their investigation. Only then did Mr. Glorioso delete old emails; emails that Mr. Glorioso knew were already backed-up and maintained by DoIT.

Accordingly, no facts substantiate any misconduct. Mr. Glorioso has no history of misconduct at the PTAB, or otherwise, and he took his obligations at the PTAB very seriously. We respectfully request you issue a finding of UNFOUNDED and further request that this Report NOT be published. Additionally, we request that the recommendation that Mr. Glorioso not be considered for rehiring be REVERSED. At a minimum, the Commission should redact Mr. Glorioso’s name from the final Report, with further appropriate redactions. (See the attached Recommended Redactions, attached hereto as Exhibit A.) This response should also be published along with the Report, with Mr. Glorioso’s name redacted. If the Commission still chooses to exercise its discretion and publish this Report without redactions, we request that this response be publicly filed along with the Report.

Should you or the Committee have any further questions or concerns, please contact me so that we can reach an expeditious resolution of this matter.

Sincerely,

THE QUINLAN LAW FIRM, LLC



William J. Quinlan

Enclosures

cc: Mauro Glorioso (via email only)
 David Hutchinson (via email only)
 Alex Walsdorf (via email only)

IN THE EXECUTIVE ETHICS
COMMISSION OF THE STATE OF
ILLINOIS

IN RE: [REDACTED]) OEIG Case [REDACTED]

PUBLICATION OF REDACTED VERSION OF OEIG FINAL
REPORT

Below is the redacted final summary report from an Executive Inspector General. The General Assembly has directed the Executive Ethics Commission (Commission) to redact information from this report that may reveal the identity of witnesses, complainants or informants and “any other information it believes should not be made public.” 5 ILCS 430/20-52(b).

The Commission exercises this responsibility with great caution and with the goal of balancing the sometimes-competing interests of increasing transparency and operating with fairness to the accused and others uninvolved. To balance these interests, the Commission may redact certain information contained in this report. Additionally, the Commission redacts certain information that relates to allegations against a person who was found not to have committed a violation. The redactions are made with the understanding that the subject or subjects of the investigation have had no opportunity to rebut the report’s factual allegations or legal conclusions before the Commission.

The Commission received this report from the Governor’s Office of Executive Inspector General (“OEIG”) and a response from the agency in this matter. The Commission, pursuant to 5 ILCS 430/20-52, redacted the final report and mailed copies of the redacted version and responses to the Attorney General, the Executive Inspector General for the Governor, and [REDACTED] last known address.

The Commission reviewed all suggestions received and makes this document available pursuant to 5 ILCS 430/20-52.

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OEIG SUMMARY REPORT**I. ALLEGATIONS**

[Pursuant to Section IV, Part B, the OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance. The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

On October 15, 2020, the OEIG received a second complaint relating to the [Property Tax Appellant] Appeal. Specifically, the complaint alleged that on October 5, 2020, [REDACTED] [REDACTED] improperly deleted all of his emails related to the [Property Tax Appellant] Appeal. [REDACTED]

II. BACKGROUND**A. Structure and Function of PTAB**

PTAB is a five-member board (Board) that hears appeals from parties who are dissatisfied with property values determined by county boards of review (BOR).² While it cannot change tax rates established by local taxing bodies, PTAB has statutory authority to independently assess the property value on which such taxes are based, and thereby impact the amount of taxes due.

To effectuate its duties, PTAB employs an Executive Director to oversee its day-to-day operations, as well as ALJs and other staff to review appeals and recommend decisions.³ These employees are based in two offices – one in Springfield and another in Des Plaines. With limited exceptions, the Des Plaines ALJs handle appeals in Cook County, while the Springfield ALJs handle appeals in all other counties.⁴ ALJs are given “full authority over the conduct of [the] hearing and the responsibility for submission of the matter to the Board for decision.”⁵ Once an ALJ submits a decision, the Board makes a final determination in its own name, based on a majority vote.⁶

As [Identifying Information Redacted], [PTAB Employee 1] is the ultimate supervisor for all ALJs. On a practical basis, he is also the day-to-day supervisor for the Springfield ALJs, while

¹[The information in this subsection paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this section pursuant to 5 ILCS 430/20-52(a).]

² See 35 ILCS 200/16-160.

³ PTAB decides many appeals based solely on the written record but may also hold hearings on legal or factual issues as needed. See 86 Ill. Admin. Code 1910.67(a) and (b).

⁴ The primary exception is that appeals for properties connected to ALJs in one office are assigned to ALJs in the other office. Additionally, appeals decided solely on a written record may be assigned to an ALJ from either office.

⁵ See 86 Ill. Admin. Code 1910.67.

⁶ See 86 Ill. Admin. Code 1910.12(g); 35 ILCS 200/16-185.

[PTAB Employee 2], as [Identifying Information Redacted], is the day-to-day supervisor for the Des Plaines ALJs.⁷ All ALJs are subject to the ALJ Code, and those qualified as attorneys are also subject to the Attorney Rules.⁸ [Redacted]

[Redacted] was responsible for carrying out PTAB directives, effectuating its mission statement, and complying with various legal and regulatory reporting requirements. [Redacted]

B. 2011 [Property Tax Appellant] Assessment

The Cook County Assessor is initially responsible for determining the value of all real estate in Cook County for tax purposes. The Assessor does this by first determining the “fair cash value” of the property then applying a “multiplier” linked to the property’s classification; for commercial properties like [Property Tax Appellant], the multiplier is 25%. The assessed value then forms the basis of the actual tax bill—issued by the Cook County Treasurer—after the application of an equalization factor calculated by the Illinois Department of Revenue and tax rates set by various local taxing bodies.⁹ These assessments can be appealed within the Assessor’s office, or to the Cook County BOR.¹⁰ [The remainder of the information in this subsection paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this subsection pursuant to 5 ILCS 430/20-52(a).]

III. INVESTIGATION

[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

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⁷ [PTAB Employee 2] has served as [Identifying Information Redacted] for the Des Plaines office since 2014.

⁸ See Executive Order 2016-16 (establishing that hearing officers are subject to the ALJ Code); Attorney Rules 8.5 (establishing that “[a] lawyer admitted to practice . . . is subject to the disciplinary authority of this jurisdiction[.]”).

⁹ See <https://www.cookcountyassessor.com/how-commercial-properties-are-valued> (last visited November 5, 2020).

¹⁰ See <https://www.cookcountyassessor.com/frequently-asked-questions> (last visited November 5, 2020).

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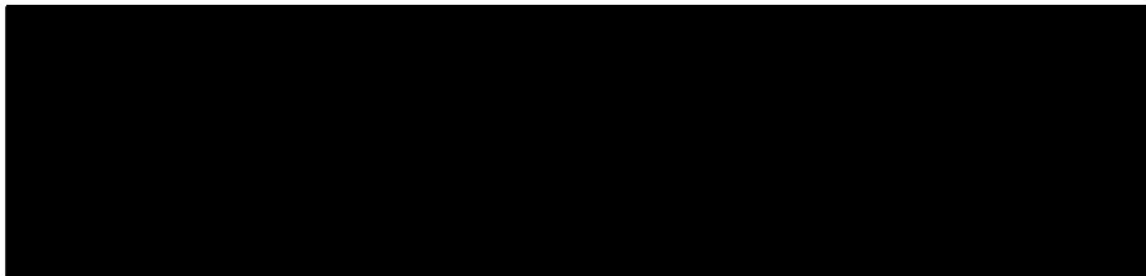
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C. [REDACTED] Deletion of Relevant PTAB Files and Emails

1. [REDACTED] background

[REDACTED] is an attorney and was first admitted to the Illinois bar on 1997. After a few years in private practice, [REDACTED] joined PTAB [REDACTED] in 2000. [REDACTED]

██████████ he was responsible for carrying out directives from the PTAB, effectuating its mission statement, and complying with various legal and regulatory reporting requirements. He also stated that he worked primarily out of the Des Plaines office, but visited the Springfield office regularly.



On October 5, 2020, PTAB internally announced that ██████████ would leave the agency on October 23, 2020. However, due to certain events discussed below, ██████████ access to his PTAB email and other PTAB systems was terminated on October 14, 2020, and he was removed from the office.

2. Notice of the litigation hold

Based on a review of ██████████ Illinois.gov account, the OEIG identified an email dated February 20, 2020 from [Identifying Information Redacted] [PTAB Employee 3] to ██████████ and other PTAB employees. The email had the subject line “Document Hold.docx” and attached a Word document of the same name.¹² The document – a memorandum also dated February 20, 2020 and bearing the subject line “[Property Tax Appellant]; PTAB Docket No. [Identifying Information Redacted]” – instructed all recipients that they had a “legal obligation to preserve all Documents and [Electronically Stored Information]” related to the [Property Tax Appellant] Appeal, and that such materials “must not be discarded, deleted, altered, or destroyed.” The memorandum stated that it covered both “final and draft” documents, including emails, memoranda, and “any electronic data compilation from which information can be obtained.” The memorandum stated that the order to preserve documents and ESI was “necessarily broad and [should be interpreted] in the broad sense it is intended.” While the document had no specific end date, it stated that recipients would be contacted “when the preservation/litigation hold is lifted.”

The OEIG’s review of ██████████ emails also found that ██████████ on February 20, 2020, referenced discussions of the litigation hold with [PTAB Employee 3], several hours

¹¹ See <https://www.isba.org/committees/professionalconduct> (last visited May 12, 2021).

¹² Although the litigation hold stated that PTAB IT staff would take the necessary steps to “deactivate any program that automatically deletes stored files or e-mail,” [PTAB Employee 4] stated that he was not aware of anyone within PTAB sharing the litigation hold with the Department of Innovation and Technology (DoIT). Such a step should have been taken because, as [PTAB Employee 4] explained, DoIT hosts and maintains the servers that backup PTAB’s IT infrastructure. In this case, the failure to alert DoIT did not impact the investigation, as [PTAB Employee 4] was able to restore the deleted P: Drive materials from DoIT’s backups before the end of the retention period. Nevertheless, the OEIG recommends that PTAB institute formal procedures to ensure that any future litigation holds are shared with DoIT, so that backups will be preserved in a forensically sound manner.

before she sent it out. Additionally, [REDACTED] was copied on a February 13, 2020 email from [PTAB Employee 1] to [PTAB Employee 3] with the subject line "Document Hold." That email attached a document identical to the memorandum circulated by [PTAB Employee 3] on February 20, 2020, except for the date.

Documents obtained by the OEIG during this investigation also show that [REDACTED] was present during the Executive Session of PTAB's February 11, 2020 Board Meeting, where the litigation hold covering "any and all documents, and electronically stored information involving and pertaining to the [Property Tax Appellant] [A]ppeal" was discussed.

3. Interview of [PTAB Employee 4], [Identifying Information Redacted]

OEIG investigators interviewed [PTAB Employee 4], PTAB's [Identifying Information Redacted], on February 9, 2021. [PTAB Employee 4] stated that he had a Bachelor's degree in Computer Science from the University of Illinois, and had worked in IT for various State agencies – including CMS and PTAB – for more than a decade.

[PTAB Employee 4] stated that on October 5, 2020, PTAB internally announced that [REDACTED] would be leaving the agency later in the month. He stated that on October 8, 2020, he began preparing a packet of electronic materials for the incoming [REDACTED] to get up to speed. As a part of that effort, he used [REDACTED] computer to access [REDACTED] assigned network folder (P: Drive), so that he could include its contents in the aforementioned packet. According to [PTAB Employee 4], the P: Drive was linked to [REDACTED] Illinois.gov account, and could only be accessed by someone who knew [REDACTED] login and password. He stated that it was theoretically possible for an IT employee with full backend access to access [REDACTED] P: Drive, but that he saw no evidence of such access occurring in this case.

[PTAB Employee 4] stated that his review of [REDACTED] computer revealed that the P: Drive was virtually empty. He explained to the OEIG that the P: Drive was backed up automatically on a nightly basis, and that he reviewed each night's backup to determine if and when files had been deleted. In doing so, [PTAB Employee 4] found that a large number of files were present in the October 4 backup, but were missing from the October 5 backup. According to [REDACTED] he saw no evidence of anyone other than [REDACTED] accessing the P: Drive.

[PTAB Employee 4] explained that the P: Drive deletions appeared suspicious to him, in part because a few days prior, PTAB [Identifying Information Redacted] [PTAB Employee 5] reported that [REDACTED] had improperly transferred some emails.¹³ [PTAB Employee 4] further

¹³ [PTAB Employee 4] recalled that [PTAB Employee 5] reported two tech-support conversations with [REDACTED] regarding email storage. Specifically, [PTAB Employee 5] reported that on September 30, 2020, [REDACTED] requested and received assistance in creating folders in his Outlook program, purportedly to make the emails easier to find. [PTAB Employee 5] also reported that on October 1, 2020, [REDACTED] again requested and received assistance in organizing his emails. [PTAB Employee 5] further reported on this second call [REDACTED] reported that he transferred files to a personal thumb drive. [PTAB Employee 4] told the OEIG that he directed [PTAB Employee 5] to tell [REDACTED] that such transfers were prohibited. [PTAB Employee 5] then reported that [REDACTED] agreed to stop copying emails in this fashion, and to remove the previously-transferred emails from the thumb drive. [PTAB Employee 4] told the OEIG that he did not recall that [REDACTED] ever previously requested assistance in organizing his emails.

explained that his suspicions grew after he discovered that the very first deleted file he restored from ██████████ P: Drive directly referenced the [Property Tax Appellant] Appeal in the filename. After conducting additional searches, [PTAB Employee 4] determined that at least 25 of the deleted files that he was able to recover related to the [Property Tax Appellant] Appeal, including various Board meeting minutes and reports, drafts of [PTAB Employee 1]’s decision, and other related materials. Accordingly, he reported the matter to PTAB Board Chairman Kevin Freeman on October 14, 2020. [PTAB Employee 4] told the OEIG that later the same day, Mr. Freeman directed him to change ██████████ password and remove him from the network.

[PTAB Employee 4] told the OEIG that after ██████████ was removed, he contacted the Department of Innovation and Technology (DoIT) to determine how best to recover emails that ██████████ may have deleted. [PTAB Employee 4] indicated that DoIT told him that even if a user emptied the “Trash” folder via Outlook, the materials would still be retained for 45 days in a separate “Trash” folder on PTAB’s Exchange email server.¹⁴ [PTAB Employee 4] told the OEIG that when he checked the “Trash” folder on the Exchange server, he found that thousands of emails had been deleted from ██████████ Outlook “Trash” folder on October 2, 2020. According to ██████████ because these emails were recovered from the “Trash” folder on the Exchange server, they had to have been deleted twice – first from ██████████ Outlook inbox, and second from ██████████ Outlook “Trash” Folder. After conducting several searches on the deleted emails, [PTAB Employee 4] found that over 200 of them were related to the [Property Tax Appellant] Appeal. [PTAB Employee 4] explained that the materials could only have been deleted by ██████████ or by a DoIT employee with administrator access. [PTAB Employee 4] stated that he saw no evidence of the latter.

[PTAB Employee 4] documented these events in a memorandum that he authored on October 14, 2020 and provided to Mr. Freeman the same day. This memorandum was in turn provided to the OEIG on October 15, 2020. Upon review, the events [PTAB Employee 4] described in his interview were consistent with his memorandum.

4. OEIG’s review of recovered materials

The OEIG obtained and independently reviewed all of the deleted materials related to the [Property Tax Appellant] Appeal that [PTAB Employee 4] was able to recover in order to determine whether the deletion substantively impacted the OEIG investigation. In doing so, the OEIG found that most of the recovered materials were identical or highly similar to materials previously obtained during this investigation, while the others were related to FOIA requests from the [News Source 1]. Due to these similarities, investigators determined that the recovered materials did not affect the outcome of the investigation into the underlying complaint [The information in the remainder of this sentence is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this sentence pursuant to 5 ILCS 430/20-52(a).].

¹⁴ [PTAB Employee 4] also explained that DoIT maintained copies of all emails, including deleted materials that would otherwise be lost after the 45-day retention period on the Exchange server.

On February 19, 2021, the OEIG contacted ██████████ counsel requesting an interview with ██████████ regarding the deletion of PTAB materials. ██████████ counsel responded on March 5, 2021 and indicated that ██████████ might agree to such an interview, but requested additional time. After sending numerous calls and emails over the next several months, the OEIG informed ██████████ counsel via email on May 11, 2021, that it would proceed with its investigation if the interview was not scheduled by May 21, 2021. ██████████ counsel acknowledged receipt of the email, but did not make any further contact with the OEIG.

IV. ANALYSIS

- A. [The information in this subsection is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this section pursuant to 5 ILCS 430/20-52(a).]**

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B. Allegation that [REDACTED] Improperly Deleted Materials Related to the [Property Tax Appellant] Appeal

PTAB's Employee Handbook requires employees to "conduct themselves in a responsible and professional manner in all work situations,"¹⁵ and specifically prohibits them from attempting to "conceal, alter, mutilate, obliterate, or destroy record or documents" belonging to the agency.¹⁶ In addition, the State Records Act provides that all records created or received by or under the authority of or coming into the custody, control, or possession of public officials of the State in the course of their public duties are the property of the State and may not be mutilated, destroyed, transferred, removed, or otherwise damaged or disposed of, in whole or in part, except as provided by law.¹⁷

On February 20, 2020, [REDACTED] and other PTAB employees received a litigation hold

¹⁵ PTAB Employee Handbook Section 7.1 – Professional Conduct.

¹⁶ PTAB Employee Handbook Section 7.2(c) – Care of Official Documents, Money and Property.

¹⁷ 5 ILCS 160/3(a). "Records" includes physical and electronic materials made, produced, executed, or received by any State agency in pursuance of State law or in connection with the transaction of public business and preserved as evidence of the organization, function, policies, decisions, procedures, operations, or other activities of the State, or because of the informational data contained therein (*Id.* at 160/2). Any person who knowingly and without lawful authority alters, destroys, defaces, removes, or conceals any public record commits a Class 4 felony (*Id.* at 160/11).

notice, instructing them to maintain all materials related to the [Property Tax Appellant] Appeal – including both draft and final copies of all documents, emails and memoranda. The OEIG’s analysis of [REDACTED] email records shows that he received a draft copy of the litigation hold notice a week earlier. He also acknowledged in his OEIG interview that he was aware of the OEIG’s investigation of the appeal. [REDACTED]

Nevertheless, on October 2, 2020 – three days after his interview with the OEIG – more than 200 emails related to the [Property Tax Appellant] Appeal were deleted from [REDACTED] email account. The following week, on October 5, 2020, dozens of additional files related to the [Property Tax Appellant] Appeal were deleted from [REDACTED] P: Drive. [PTAB Employee 4] informed the OEIG that these deletions could only have been performed by [REDACTED] or DoIT employees with full administrative access to State IT systems, and that he saw no evidence of any such activity by DoIT. It is also clear, at least with respect to the emails, that [REDACTED] deletions were intentional, as they required [REDACTED] to first move the items to his Outlook “Trash” folder and then empty that folder. Despite repeated efforts – extending over several months – to reach out to [REDACTED] via his counsel, the OEIG was unable to schedule a second interview with [REDACTED] to obtain his explanation for this conduct.

Based on this record, the OEIG finds that there is reasonable cause to conclude that [REDACTED] deleted numerous emails and other documents related to the [Property Tax Appellant] Appeal, and that in so doing, [REDACTED] violated the PTAB Employee Handbook’s general document retention rules, the litigation hold notice specifically in place for the [Property Tax Appellant] Appeal, and the State Records Act. Accordingly, the allegation that [REDACTED] violated PTAB policy, directives, and State law relating to the maintenance of records by deleting PTAB files and emails in October 2020 is **FOUNDED**.¹⁸

V. FINDINGS AND RECOMMENDATIONS

As a result of its investigation, the OEIG concludes that there is **REASONABLE CAUSE TO ISSUE THE FOLLOWING FINDINGS:**

- **UNFOUNDED** – [The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]
- **FOUNDED** – [REDACTED] violated PTAB policy, directives, and State law relating to the maintenance of records by deleting PTAB files and emails in October 2020.

Because [REDACTED] is no longer a State employee, the OEIG recommends that a copy of this report be placed in [REDACTED] employment file, [REDACTED]

¹⁸ The OEIG concludes that an allegation is “founded” when it has determined that there is reasonable cause to believe that a violation of law or policy has occurred, or that there has been fraud, waste, mismanagement, misconduct, nonfeasance, misfeasance, or malfeasance.

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[The information in this paragraph is redacted because it relates to an allegation that the OEIG determined was unfounded. Therefore, the Commission exercises its discretion to redact this paragraph pursuant to 5 ILCS 430/20-52(a).]

Date: May 25, 2021

Office of Executive Inspector General
for the Agencies of the Illinois Governor
69 W. Washington St., Suite 3400
Chicago, IL 60602

Francis Sohn
Assistant Inspector General #157

Jasmine Velazquez
Supervising Investigator #133

AFFIDAVIT OF MAURO GLORIOSO

I, Mauro Glorioso, state as follows:

1. I am a licensed attorney in Illinois.
2. I have personal knowledge of the matters and facts set forth in this Affidavit and, if sworn as a witness, I can testify competently to those matters and facts.
3. From 2000–2008, I served as an Illinois Property Tax Appeal Board (“PTAB”) Administrative Law Judge.
4. From 2008–2019, I served as a Board member at the PTAB.
5. I served as Chairman of the PTAB Board from 2016–2019.
6. From March 27, 2019, to October 14, 2020, I served as the Executive Director of the PTAB.
7. While I worked at the PTAB, I primarily worked out of its Des Plaines office.
8. In my experience at the PTAB, I recall other employees cleaning their computers of outdated or unnecessary files, including emails, before they left their positions.
9. IT staff would often suggest to me that I clean my email inbox by deleting emails, as I had a large amount of emails in my inbox.
10. [REDACTED] had informed the PTAB staff, including me, that information on our work computers was regularly, if not daily, backed up with the Illinois Department of Innovation & Technology (“DoIT”). He stated that if we needed to access backed up information, we should ask him to submit a “slip” (a request) to the DoIT to obtain it.
11. Based on my experience and 20-year career, I was aware that every employee’s email was regularly backed up by the PTAB’s IT department and maintained by DoIT.

12. I was also aware that, in the event a litigation hold was placed on any documents, DoIT would have backups of all emails. Indeed, it was customary for investigators from the OEIG to work with DoIT to access any emails related to their investigations.
13. On [REDACTED]
[REDACTED]
14. In December of 2019, the Illinois Office of Executive Inspector General ("OEIG") began investigating [REDACTED] regarding the decision-making process in the [REDACTED]
15. During its investigation, I cooperated with all of the OEIG's requests for information. In response to OEIG requests, I produced many documents, issued written responses to OEIG questions, and agreed to participate in an interview with OEIG officials. When producing documents, I produced all work emails and any other documents requested by the OEIG in my possession relating to the [REDACTED].
16. On September 23, 2020, I was informed that I would be terminated from my position as Executive Director of the PTAB due to the fact that the Governor desired a change and wanted to go in a different direction.
17. On September 29, 2020, the OEIG interviewed me as part of its investigation concerning the [REDACTED] appeal. Two officials questioned me about the events surrounding the appeal. During the interview, they used copies of my work emails and other documents to question me. I remember sending those emails to the OEIG as part of the documents I produced to them.

18. The OEIG officials did not request any additional information from me during or after my interview. Nor have the officials suggested to me that they believed my production of documents during the investigation has been incomplete.
19. One of the officials, [REDACTED], specifically told me that the OEIG had every document they needed relating to the investigation.
20. After learning of my impending termination as the [REDACTED], I contacted [REDACTED] of the PTAB IT department to notify him that I wanted to clean my email and files so there was no unnecessary or outdated information for my replacement. [REDACTED] showed me how to delete my emails and any other documents.
21. After discussing cleaning my emails and files with the IT department, I began deleting emails and files from my work computer. I deleted emails and files that did not pertain to matters presently before the PTAB, other old emails, and emails relating to routine Board administrative functions (such as setting agendas for old Board meetings). Any removal from my work computer of emails or other data was done in an effort to reduce the clutter on the computer for the benefit of my replacement.
22. When that information was removed from my computer, I was under the firm good-faith belief (based on conversations with and/or information from [REDACTED] and [REDACTED]) that backups of that information would be readily available at the DoIT should anyone need to view the information. No one from the PTAB IT department, or any other individual, had ever suggested to me that such a practice was not allowed.
23. To the best of my knowledge, backups of any emails or files I deleted on my work computer are available today at the DoIT should anyone wish to view them.
24. I officially left the PTAB on October 14, 2020.

25. In my 20-year tenure at the PTAB, I had no history of misconduct or any ethical violation.

I declare under penalty of perjury of the laws of this state that the foregoing statements are true and correct.

Date: 09/09/2021



Mauro Glorioso

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Illinois Citizen Participation Act

735 ILCS 110/1, et seq.

(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.

Illinois Citizen Participation Act

735 ILCS 110/1, et seq.

"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.

Illinois Citizen Participation Act

735 ILCS 110/1, et seq.

(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.

(735 ILCS 110/35)

Sec. 35. Severability. The provisions of this Act are severable under Section 1.31 of the Statute on Statutes.

(735 ILCS 110/99)

Sec. 99. Effective date. This Act takes effect upon becoming law.

Constitution of the United States

Amendment 1

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

Appellate Court Case No.: _____

**IN THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT**

MAURO GLORIOSO	)	On Appeal from the Cook County
	)	Judicial Circuit, Cook County,
Plaintiffs-Respondents,	)	Illinois
)	
v.)	Circuit Court Case No. 21-L-90
)	
SUN-TIMES MEDIA HOLDINGS, LLC,)	
and TIM NOVAK)	
)	
Defendant-Petitioner.)	

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