No. 131714

**IN THE SUPREME COURT OF ILLINOIS**

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| Nicholas T. Anderson,<br><br>*Appellant*,<br><br>*v.*<br><br>Meagan M. Smith (F/K/A Wohlfeil),<br>*Appellee* | On Petition for Leave to Appeal from the Appellate Court of Illinois, Fourth Dist., No. 4-16-0527<br><br>Appeal from the Circuit Court of Schuyler County, Illinois, No. 2018-L-2<br>Hon. Judge Robert Thomson, |

# BRIEF AND ARGUMENT OF APPELLEE

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***Appellee requests that the Court hear oral argument in this matter.***

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## STATEMENT OF THE CASE

This appeal raises the question how lower courts should resolve anti-SLAPP motions brought pursuant to the Illinois Citizens Protection Act, which outlines specific procedures a defendant follows to resolve litigation brought as retaliation for the exercise of First Amendment rights. *See* 735 ILCS 110/1, *et seq.* (the "CPA"). The CPA requires dismissal of a suit that 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." *See* 735 ILCS 110/15. This Court has parsed this language before in, *e.g.*, *Sandholm v. Kuecker*, 2012 IL 111443, and *Glorioso v. Sun-Times Media Holdings, LLC*, 2024 IL 130137, ¶ 55 ("*Glorioso II*"). But lower courts continue to split on precisely how to apply the *Sandholm* test.

Specifically, prong two of the *Sandholm* test evaluates a plaintiff's motive in bringing suit. The First District employs a "meritless and retaliatory" standard to evaluate intent, *see Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶ 21. But the Fourth District below rejected that approach, instead applying a "true goal" test. *Anderson v. Smith*, 2025 IL App (4th) 241076 ¶ 29, appeal allowed, 270 N.E.3d 867 (Ill. 2025). Because the Fourth District's test more closely

hews to the statute and *Sandholm*'s directive, the Court should affirm and remand with instructions to apply the correct test in the first instance.

## QUESTION PRESENTED

Whether the Fourth District's "true goal" test to evaluate motive in bringing suit is the best interpretation of the CPA and *Sandholm* because it preserves the proper role of the jury as factfinder and the benefits of the law.

## JURISDICTION AND STANDARD OF REVIEW

The circuit court denied Ms. Smith's motion for summary judgment on Mr. Anderson's claims against her under the Citizens Participation Act, 735 ILCS 110/1, *et seq.* ("CPA") on July 15, 2024. Ms. Smith filed a petition for interlocutory appeal of that denial on August 13, 2024. Her petition was granted. On March 7, 2025, the Appellate Court for the Fourth District reversed and remanded for further proceedings pursuant to its decision. Mr. Anderson filed a petition for review of that judgment on April 11, 2025. All petitions for review were timely, and this matter is properly before the Court. *See* Ill. Sup. Ct. R. 303, 308.

Ascertaining the correct interpretation of the Citizens Participation

Act, 735 ILCS 110/15, is a question of law reviewed *de novo*. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 41. In interpreting the Act, the Court strives to ascertain and give effect to the Legislature's intent, presuming "that the legislature did not intend absurdity, inconvenience, or injustice." *Id.*

## STATUTES INVOLVED

Pursuant to Illinois Supreme Court Rule 341(h)(5), Ms. Smith identifies one statute and one constitutional provision as implicated in this brief: the Citizen Participation Act, 735 ILCS 110/1, *et seq.*,[1] and the First Amendment to the Constitution of the United States.

## STATEMENT OF FACTS

On June 1, 2017, Meagan Smith attended a press conference at Central Park in Rushville, Illinois, in opposition to a proposed hog farming operation to be constructed near Littleton, Illinois. After the press conference, the Illinois Department of Agriculture and the Schuyler County Board were to hold a hearing at the Schuyler County Courthouse. (Smith, M. Dep., D8, 28, 98; E252–53). Citizens gathered prior to the hearing to peaceably express their views for and against the new measure,

[1] Per Rule 341(i), this brief relies on the Appellant's appendix.

holding signs and speaking out. *See id.*

When Ted Ufkes, a member of the Illinois agricultural industry, stood before television cameras at the press conference to give an interview in support of the project, Ms. Smith raised her sign behind him in silent protest, peaceably expressing her opposition to a government act, as is her right under the First Amendment. (D38, D282).

At that time, Nicholas Anderson, an agricultural industry contractor and the Plaintiff below, approached her, entering her personal space. (Smith, M. Dep., D34–39; Moon, S. Dep., D457–58, D462–63; Moon. A. Dep., D431–32; Johnson Dep. D131, D133–36; E 161, 184–186, 273–86). According to the testimony of multiple witnesses, Mr. Anderson's chest made contact with Ms. Smith's side. (*Id.*) Mr. Anderson's contact caused her to lose her balance and stumble. (Smith, M. Dep., D34–39). Taken aback, Ms. Smith exclaimed "I don't know you" and "don't touch me." (Smith, M. Dep., D36; Anderson Dep., D300; Moon, A. Dep., D432; E273–86). Ms. Smith left the area of the interview, going to find her phone to call the police. Along the way, Ms. Smith's mother found her in tears. (Smith, M. Dep., D029–030). Ms. Smith told her that she wanted to call the police, which her mother did. (Smith, K. Dep.,

D234).

The officer who responded to the scene took statements from Ms. Smith, her mother, her sister, and Mr. Anderson. (E273–86). More written statements were given by the parties and witnesses that night, and after an investigation, the police took Mr. Anderson to Schuyler County jail and booked him for assault. (E29; Anderson Dep., D309, D310). When interviewed, Mr. Anderson admitted to bodily contact with Meagan, stating he "may have brushed into her arm" (E273); in his deposition, he later further stated: "I could feel the sign and her right arm go by my right hand." (Anderson Dep., D302).

The matter was elevated to the Illinois State's Attorney Appellate Prosecutor's Office, where the special prosecutor filed a criminal complaint alleging Mr. Anderson committed battery. (Miller Dep., D366–37, D384; C168). On May 29, 2018, before the criminal complaint was filed, Mr. Anderson filed the underlying civil lawsuit, originally asserting only one claim: defamation. (C14–17). In a bench trial conducted on May 31, 2019, Mr. Anderson was acquitted of the criminal battery charge. (E2–250). Mr. Anderson then filed an Amended Complaint adding a claim for malicious prosecution. (C61–71). Ms. Smith sought dismissal

of both claims pursuant to sections 2-619 and 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-619, 2-615. (C80–87).

Mr. Anderson originally based his defamation claim, in part, on statements Ms. Smith made to law enforcement. (C15–16). Recognizing the absolute privilege attached to statements made to law enforcement (C125), Mr. Anderson then filed a Second Amended Complaint, which remains the operative pleading in the underlying proceedings. (C168–70). Judge Roger B. Thomson entered an order on the prior Motion to Dismiss, granting Ms. Smith's request for dismissal of the defamation claim pursuant to Section 2-619, and allowing Mr. Anderson to file an amended complaint (even though the Second Amended Complaint had already been filed three months prior). Judge Thomson denied the remainder of the relief sought in the Motion. (C175). Ms. Smith then sought dismissal of the Second Amended Complaint, in part, pursuant to CPA. (C176–207). Judge Thomson denied the Motion to Dismiss without prejudice via docket entry, (C10–11); no written order followed.

The case proceeded to discovery. The parties exchanged written discovery and conducted depositions. At the conclusion of discovery, Ms. Smith filed a Motion for Summary Judgment, again seeking relief under

the CPA in addition to summary judgment on Mr. Anderson's claims for defamation and malicious prosecution. (C451–79). A hearing was held on the Motion on January 31, 2024. (C13). Judge Thomson issued his ruling on July 15, 2024, denying the motion for summary judgment. (C674–75).

Ms. Smith appealed. The Appellate Court, Fourth District, reversed the judgment below, remanding with instructions. App. 1. Mr. Anderson appeals from that judgment.

## ARGUMENT

The CPA protects the First Amendment rights of Illinoisians not *only* from government actors but also from abuse by fellow citizens who might weaponize the courts to suppress protected activity, using the costs of litigation to chill cherished freedoms. *See* 735 ILCS 110/15. The Legislature intended the Act to "be construed liberally to effectuate its purposes and intent fully," *id.* at 110/30, evincing a clear intent to broadly protect the exercise of First Amendment rights from vexatious litigation.

The CPA furthers this end, in part, through Sections 15 and 20, which outline an expedited procedure by which a defendant like Ms. Smith may move the Court to dismiss a claim against her on the basis

that it amounts to retaliatory action for the exercise of a protected First Amendment right. *See* 735 ILCS 110/15, 110/20.

This Court has interpreted the CPA as outlining a "a three-part . . . test to determine whether a lawsuit is subject to dismissal pursuant to the Act." *Glorioso II, LLC*, 2024 IL 130137, ¶ 55. First, the movant (here, Ms. Smith) must show "(1) [Ms. Smith's] acts were in furtherance of [her] rights to petition, speak, associate, or otherwise participate in government to obtain favorable government action and (2) [Mr. Anderson's] claims are solely based on, related to, or in response to [her] exercise of these rights." *Id.* After she makes that showing (as Ms. Smith has here), a plaintiff can only defeat a CPA motion if he "prove[s] by clear and convincing evidence . . . [3] that [Ms. Smith's] acts were not genuinely aimed at procuring favorable government action." *Id.*

It is the second prong of this test (which this Court reads to ask whether the plaintiff's claims were filed "solely" in response to the exercise of protected rights) that has split the appellate courts. The First District has employed a "meritless and retaliatory" standard that asks whether "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 activities[.]" *Ryan*, 2012 IL App (1st) 120005, ¶ 21. The Fourth District below expressly rejected that test and instead adopted a "true goal" test, which requires "the defendant [to] show that it is not 'the true goal of [the] plaintiff's claims' to seek relief for damages for the defendant's allegedly wrongful act." *Anderson v. Smith*, 2025 IL App (4th) 241076, ¶ 29 (quoting *Sandholm*, 2012 IL 111443, ¶ 57).

The true goal test faithfully applies *Sandholm* and the CPA, because it harmonizes the CPA's motions practice with traditional dispositive motions practice, preserves the role of the jury as factfinder, and furthers the important goals the Legislature set in passing the CPA. 2012 IL 111443.

The text and history of the CPA evince an intent to *reduce* the burden of litigating covered claims—not *increase* it. The true goals test does this, while avoiding the twin perils of, on the one hand, supplanting the power of the jury to decide liability or, on the other, rendering anti-SLAPP motions non-dispositive, requiring defendants who prevail on anti-SLAPP motions to still seek summary judgment. *Id.* ¶¶ 37–39.

Mr. Anderson's brief does not deny these twin perils but rather dismisses the Appellate Court's concerns as "misplaced," highlighting the

"independent work" performed by other provisions of the CPA that, he alleges, give defendants adequate incentive to invoke its protections. Appellant's Brief at 8. The task before the Court, however, is not to decide whether litigants are given adequate incentives to avail themselves of the CPA's protections. The question is what the statute says. *Sandholm*, 2012 IL 111443 ¶ 41. The Appellate Court's resolution of that question here is unimpeachable. This Court should affirm.

## I. The Plain Text of the CPA Supports The "True Goal" Test.

The Court's goal in *Sandholm* was to faithfully discern the intent of the CPA and articulate a test that applies its text and meaning. The true goal test accomplishes that. Moreover, recent amendments to the CPA—though they do not control this case—confirm the statute's original meaning.

### A. The Text of the CPA and *Sandholm* Both Ask Whether A Plaintiff Genuinely Seeks Relief, Not Whether His Claims Are Meritless.

Illinois' CPA, like anti-SLAPP statutes in thirty-seven other States, provides a burden-shifting framework by which a defendant may seek to dispose of claims against her that implicate her rights under the First Amendment. *See Sandholm*, 2012 IL 111443 ¶ 56 (burden-shifting framework); *see* D. Keating et al, *Anti-SLAPP Statutes: 2025 Report Card*,

Institute for Free Speech https://www.ifs.org/anti-slapp-report/ (accessed Nov. 8, 2025) (surveying anti-SLAPP statutes in 38 states). It does so by offering expedited procedures only available in SLAPP cases. *See* 735 ILCS 110/17, 110/20, 110/25.

The text of the CPA in place at the time of this action (and at the time this Court decided *Sandholm*) required the dismissal of a claim that 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." *See* 735 ILCS 110/15; *see also Sandholm*, 2012 IL 111443, ¶ 37. The CPA directs courts to apply a liberal construction to its text. *See* 735 ILCS 110/30.

In *Sandholm*, this Court "construe[d] the phrase 'based on, relates to, or is in response to' in section 15 to mean *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.'" *Sandhom*, 2012 IL 111443, ¶ 45.

The Appellate Court's subjective true goal test more faithfully applies the CPA's plain text and this Court's directive in *Sandholm*. It is the correct standard by which to resolve prong two under the CPA. That is because the CPA was designed to weed out claims that chill

protected activity—not simply to require the dismissal of meritless claims. A liberal protection for protective activity extends beyond dismissal for meritless-ness.

The purpose of anti-SLAPP motions is not to dispose of claims that a reasonable plaintiff would not have brought (in the abstract) but whether the plaintiff's claims are *actually* based on, related to, or in response to the movant's exercise of protected rights. *Glorioso II*, 2024 IL 130137 ¶ 55. In other words, where a plaintiff brings suit, what is "*the plaintiff's* intent?" *Sandholm*, 2012 IL 111443 ¶ 42 (emphasis added). Is he "*genuinely* seeking relief" or is he seeking to weaponize the costs of litigation to "chill participation in government through delay, expense, and distraction?" *Id.* ¶¶ 44–45 (emphasis added). The genuineness is all. The meritless and retaliatory standard answers a different question, namely, was there *any basis* to bring this claim? One of these questions hews to the statute's directive to insulate protected activity from litigation. The other simply asks whether a claim should be dismissed.

The true goal test is workable and consistent with the statute. *See* App. at 19-25, ¶¶ 64-84. The Appellate Court soundly reasoned that a plaintiff's intent "may be inferred by the finder of fact based on the

person's conduct as well as the circumstances." App. at 14, ¶ 48. Recognizing close parallels between inquiries into a plaintiff's motive for bringing a claim and traditional malice arguments, it reasoned that just as malice is often incapable of positive, direct proof, inquiries into a plaintiff's motive may also rely on inferences and deductions by the finder of fact. *Id.* ¶¶ 58–59. This inquiry is directed not to whether the plaintiff is *entitled* to relief but to whether he is even *genuinely seeking* relief—a distinction that prevents the trial court from intruding on the role of the jury, as no part of a jury's role consists of deciding whether the plaintiff had a good motive for bringing his claims. *See id.* ¶ 71, 77; *infra* at II-B.

The result is a workable procedure directed at the core question that the CPA and *Sandholm* advise courts to ask—the genuineness of plaintiff's motive—and one that threatens neither duplicative procedure nor constitutional doubt.

Appellant's critiques of the true goal test are complaints about anti-SLAPP procedure *as such*, not about the true goal standard. *See* Appellant Br. at 5 (complaining that anti-SLAPP motions are decided on "limited information"). There is good reason why, even as Mr. Anderson asks the Court to adopt an objective test, he fails to articulate what

objective test could effectuate the Legislature's intent. *See* Appellant Br. At 4, 6, 8. An objective test is incapable of answering the questions the CPA and *Sandholm* ask. The CPA excludes claims that *are* based on, relate to, or are in response to any act or acts of the moving party in furtherance of the moving party's rights—not claims that would not have been brought by a reasonable person under the circumstances or that a reasonable person would not consider to be based on the acts of the moving party. 735 ILCS 110/15; *see Long v. Elborno*, 376 Ill. App. 3d 970, 979 (2007) (distinguishing between "a subjective test of the plaintiff's intent" and an objective test based in reasonableness).

Nothing in the statute indicates an intention to regulate the reasonableness of defamation claims generally. *See* 735 ILCS 110/5, 110/15. Rather, it shows a clear intent to prevent *actual* abuse of the judicial process where "the plaintiff's intent in bringing suit" is to harass citizens and organizations for involving themselves in public affairs. *Sandholm*, 2012 IL 111443 ¶ 42; *see id.* Only a subjective standard addresses itself to that issue.

This Court should adopt the subjective, true goal framework as a consistent expression of the CPA and affirm in full, remanding with

instructions for the trial court to apply the subjective true goal standard at prong two.

### B. Recent Amendments To The CPA Confirm The True Goal Test Best Effectuates The Statute's Meaning.

Recent amendments of the CPA confirm what the statute was intended to do: liberally protect defendants from suits that target their constitutionally protected activity. Specifically, post-*Sandholm*, the Legislature revised the CPA to directly address the *Sandholm* test and make clear that a "claim does not need to *solely* pertain to the moving party's constitutional rights," because "this Act applies regardless of the motives of the person who brought the claim that the moving party is seeking to dispose of." IL LEGIS 104-431 (2025), 2025 Ill. Legis. Serv. P.A. 104-431 (S.B. 1181).

This change is not retroactive, so it does not strictly apply to this case. But the change is strong evidence of what the Legislature intended: to supplant *Sandholm* and dispense with any consideration of the plaintiff's motives in bringing suit (or, at the very least, to shift the burden from asking about a plaintiff's "sole purpose" to whether a SLAPP is one of several purposes in bringing suit).

As a matter of statutory construction, "[a] subsequent amendment to a statute may be an appropriate source for discerning legislative intent." *In re Det. of Lieberman*, 201 Ill. 2d 300, 320–21 (2002). Such a change is particularly helpful, as here, "where the amendment was enacted soon after controversies developed concerning interpretation of the original version of the statute." *Seibring v. Parcell's, Inc.*, 151 Ill. App. 3d 1003, 1005 (1987) (citation omitted)). The change in the CPA post-*Sandholm* clarifies what the Legislature intended *all along*, including in the version of the statute that applies to this case: strong protections favor of defendants like Ms. Smith (who would easily win her motion under the revised statute).

## II. The "True Goal" Standard Protects the Role of the Jury as Factfinder and the Benefits of Anti-SLAPP Procedure Articulated in *Sandholm*.

### A. The CPA Protects First Amendment Rights by Reducing the Burden of Litigating Defamation Claims.

This case asks the Court to resolve what was required under *Sandholm* for a defendant to show that a plaintiff's claims "are solely based on, related to, or in response to [the defendant's] exercise of [protected] rights." *Glorioso II*, 2024 IL 130137 ¶ 55. The Court can answer that question by reference to *Sandholm* itself, which outlined a

*subjective* test that looks directly to "the plaintiff's intent in bringing the suit." 2012 IL 111443 ¶ 42. Only a finding that "the plaintiff's intent in bringing suit" is to "chill defendants' rights" brings a claim "under the purview of the Act." *Id.* By contrast, the First District's test from *Ryan* asks whether a claim is "meritless and retaliatory," injecting a test the statute (and *Sandholm*) do not contemplate and trampling the very protections the CPA enshrines.

As the Appellate Court held, every possible application of the "meritless and retaliatory" standard fails in at least one of these ways. *See Anderson v. Smith*, 2025 IL App (4th) 241076 ¶¶ 32-46. Only a simpler inquiry into a plaintiff's subjective intent, informed by their conduct and the circumstances, successfully avoids diminishing either the dispositive nature of anti-SLAPP motions or litigants' rights to trial by jury.

### B. An Objective "Meritless and Retaliatory" Standard Is Redundant, Constitutionally Doubtful, or Defeats the Aims of the CPA.

The Appellate Court identified the practical and interpretive problems surrounding *Sandholm*'s second prong and the complications created by elevating *Sandholm*'s "meritless and retaliatory" rhetoric to

the status of a legal rule. *See id.* The question is not whether SLAPPs are meritless and retaliatory; by definition, they are. The question is the extent of review that the CPA contemplates at the anti-SLAPP stage. *Sandholm* does not specify whether a trial Court's determination that a claim is "meritless" at prong two is akin to judgment on the merits, in the form of a bench trial; resolution of a dispositive motion, as for summary judgment or judgment on the pleadings; a determination that a claim is frivolous and fails to state a claim; or something else. *See* App. at 10, ¶ 37.

As the Appellate Court concluded, all three of these options either intrude upon parties' rights to a jury trial or, contrary to the legislature's clear intent, render anti-SLAPP motions ineffectual at reducing the burden of litigating claims that implicate defendants' First Amendment rights. The first option (in which the trial court determines that the defendant is immune because she has no liability) poses two problems. First, it raises constitutional doubt by making the judge, rather than the jury, the ultimate factfinder. *See Knauerhaze v. Nelson*, 361 Ill. App. 3d 538, 564 (2005) ("Courts . . . will avoid any construction which would raise doubts as to the statute's constitutionality"). Second, it renders

anti-SLAPP *immunity* pointless because a judgment on the merits in a defendant's favor is at least as beneficial to her as immunity from the same claims obtained at the same time.

Meanwhile, the second and third options (resolution of the claim on a dispositive motion) would make anti-SLAPP procedure redundant with existing dispositive motion practice. But the Legislature passed the CPA to add *an additional* protection for this specific type of suit. Courts must give effect to that statute and avoid any construction of it that would render it meaningless. *Id.* Under the second and third options, a defendant would file a dispositive motion, see it denied, then file an effectively identical motion with additional procedural safeguards of a 90-day time limit, stay of discovery, and possible award of attorney's fees. The net effect would be to *increase* litigation procedure in defamation suits; not to decrease it. That is an inconceivable construction of the CPA.

Mr. Anderson's brief does not resolve these redundancies and constitutional doubts. Though it appears to endorse the redundant, rather than the constitutionally dubious, variety of objective tests, it never takes a position among them. Appellant Brief at 8. Resting on the bromide that meritlessness is undesirable, it argues that the other

procedural safeguards (90-day time limit, stay of discovery, and attorney's fees) somehow solve the redundancy of options two and three. It further argues that the Appellate Court's rejection of the "meritless and retaliatory" standard is primarily based on an *empirical* contention as to the percentage of anti-SLAPP motions that are resolved in movants' favors. Each of these arguments fails.

Crucially, Mr. Anderson's brief does *not* choose from among any of the three possible constructions of an objective standard and, therefore, does not provide this Court with an answer to the key question in this appeal—what test the trial court applies at prong two. He settles for repeating that the trial court's analysis should be an objective one but does not explain what that objective analysis should be, leaving courts in the limbo where they have languished for thirteen years since *Sandholm*. *See Glorioso v. Sun-Times Media Holdings, LLC*, 2023 IL App (1st) 211526, ¶ 107 ("*Glorioso I*") (Hyman, J., dissenting) (seeking "clarification and correction by our supreme court"). Mr. Anderson's argument for an objective "meritless and retaliatory" standard lacks any particulars to show what that test would be and how it avoids the failings that the Appellate Court identified. However, even in vague sketches,

his defense of an objective standard fails.

First, as discussed above, the additional procedural safeguards offered to an anti-SLAPP movant do not diminish the problem of redundancy with other dispositive motions. To the contrary, they exacerbate it and highlight the absurdity that would result as a defendant would file an anti-SLAPP motion, see it denied, then file motions for dismissal or summary judgment asking effectively identical questions. The CPA is intended to diminish the burden of litigation, not augment it. Mr. Anderson does not explain how the presence of these procedural safeguards resolves the problem of redundancy identified by the Appellate Court. His argument on this central point assures that any concern about redundancy is "misplaced" because the CPA does the "independent work" of offering additional procedural safeguards (90-day time limit, stay of discovery, and attorney's fees), giving defendants adequate incentive to file anti-SLAPP motions. Appellant Brief at 8. But the CPA contemplates *substantive relief*, which is why it offers a unique hearing process.

Further, incentive questions are not an answer to blatant procedural redundancy. Again, they exacerbate it, making it nearly

certain that once a defendant has had his traditional dispositive motions adjudicated, he will have "a concrete reason" to file another motion asking the exact same question of the Court, complete with an automatic discovery stay and a hearing. Appellant Brief at 8; *see* 735 ILCS 110/20. The result would be a perversion of what was designed as a means of reducing litigation into a means of prolonging it. That is in direct conflict with the statute.

Worse, if the Court adopted the First District's standard by allowing a bench trial, it would infringe on litigants' rights to a jury. *See* App. at 11, ¶ 38. Courts in other states that have adopted anti-SLAPP procedures are sensitive to this concern. *See, e.g., Opinion of the Justs.*, 641 A.2d 1012, 1015 (N.H. 1994) (proposed anti-SLAPP legislation requiring courts to "resolve the merits of a disputed factual claim" violated right to jury trial); *Lafayette Morehouse, Inc. v. Chron. Publ'g Co.*, 44 Cal. Rptr. 2d 46, 52–53 (1995) (anti-SLAPP procedure did not violate right to jury trial where plaintiff needed to make only *prima facie* case). An objective "meritless and retaliatory" standard, if it took such a form, would undoubtedly violate the parties' rights to have claims resolved by a jury.

Second, Mr. Anderson devotes a section of his brief to arguing that the "linchpin" of the Appellate Court's decision is this Court's recognition in *Sandholm* that "defendants win eighty to ninety percent of all SLAPP suits litigated on the merits." App. as 12–13, 23 ¶¶ 42, 75 (quoting *Sandholm*, 2012 IL 111443 ¶ 34); Appellant Brief at 6–8. Mr. Anderson argues with the methodology of the underlying study and its "limitations," contending that these empirical limitations should inform our understanding of a "meritless" suit. Appellant Brief at 7.

The 80-90% statistic, quoted just twice by the Appellate Court, was included for the purpose of supporting two propositions. First,

> [i]f it is true that 80% to 90% of SLAPP claims fail at trial, then 10% to 20% of them succeed; in other words, even some meritorious claims are SLAPP claims. Therefore, *Sandholm* does not stand for the principle that a SLAPP claim is meritless because it will necessarily *lose* if litigated on the merits; rather, a SLAPP claim is meritless because it does not *deserve* to be litigated on the merits.

App. at 12, ¶ 42. Second, that "to defer a finding that the plaintiff's claim is a SLAPP claim until after the claim is litigated on the merits at a jury trial deprives the defendant of the efficient resolution guaranteed by the Act." *Id.* at 23, ¶ 75. These conclusions are uncontroversial and form the basis of all anti-SLAPP legislation: that a SLAPP claim is meritless because it does not deserve to be litigated on the merits, and to require a

defendant to litigate it on the merits deprives her of the benefits that the CPA was intended to protect. *See id.*

The Court can see that judicial statistics did not form any notable part of the Appellate Court's reasoning, which was instead devoted to carefully distilling from both *Sandholm* and statutory text the only non-duplicative approach to prong two that fulfils the Legislature's clearly expressed intent without raising other serious constitutional concerns. Mr. Anderson does not appear to dispute that a SLAPP claim is meritless because it does not deserve to be litigated on the merits nor that the CPA is intended to screen out such claims. Rather, he ignores much of the Appellate Court's reasoning and errantly characterizes its decision as one based primarily on judicial statistics. That is a straw man.

The Appellate Court's opinion skilfully navigates a lingering ambiguity from *Sandholm* that has troubled Illinois courts for thirteen years. It resolves the issue in a manner faithful to the statute's design, going directly to the core aim of evaluating "the plaintiff's intent in bringing suit" and dispensing with those claims designed to "abuse . . . the judicial process" by weaponizing litigation itself rather than "genuinely seeking relief for damages." *Sandholm*, 2012 IL 111443

¶¶ 42–43, 45. Mr. Anderson identifies no flaw in that reasoning and provides the Court no basis to reverse a decision that, by adopting the subjective true goal standard, most directly addresses the evils that the CPA was designed to remedy while avoiding procedural redundancy and constitutional doubt. The Court should affirm.

## III. The "True Goal" Standard Provides a Workable Standard for Trial Courts that Does Not Unduly Burden Defamation Plaintiffs.

Mr. Anderson argues that the Appellate Court's formulation unduly burdens defamation plaintiffs and provides insufficient guidance to trial courts as to how to determine a plaintiff's true goal in bringing suit. Both of these contentions are baseless—particularly where no clear explanation has been offered as to what objective standard courts might follow that avoids the problems of redundancy and constitutional doubt.

Mr. Anderson considers it "hard to imagine a plausible scenario where the movant could not *raise a question of fact* as to whether the nonmovant's interest in bringing the suit was to stifle government participation." Appellant Brief at 5 (emphasis added). Mr. Anderson moves the goalposts. An anti-SLAPP movant need do more than "raise a question;" she must actually *persuade* the trial court that the suit was

brought for the prohibited purpose of imposing on her the burden of litigation rather than in genuine pursuit of relief. The Appellate Court said so clearly when it remanded "with directions for [the trial court] to ascertain whether Smith has supplied sufficient evidence to support a conclusion that the true goal of Anderson's claims is to chill participation in government or to stifle political expression." App. at 25, ¶ 83. Nowhere does it say that merely "rais[ing] a question of fact" will be sufficient to obtain relief. *Compare id. with* Appellant Brief at 5. If a trial court deemed prong two satisfied by the mere raising of a question, that would be reversible error under the Appellate Court's decision.

Contrary to Mr. Anderson's argument, the Appellate Court provided clear and correct guidance to trial courts under a workable true goal standard, recognizing that though it might deviate from recent practice of some courts, 735 ILCS 110/20(c), *Sandholm*, 2012 IL 111443 ¶ 56, and *Glorioso II*, 2024 IL 130137 ¶ 67, all *require* courts to engage in factfinding and weighing evidence in resolving anti-SLAPP motions. The choice of a subjective versus an objective standard at prong two does not implicate that question.

Mr. Anderson's objections to the standard are directed at anti-

SLAPP procedure *as such* rather than at the Appellate Court's true goal standard. He argues that "[t]he Fourth Appellate District provides scant guidance to the lower courts as to how to determine the true goal of the plaintiff other than to point to the malice standard," that "malice is typically proven by a preponderance of the evidence, after full discovery, and is determined by the ultimate finder of fact" and that "lower courts are asked to make a dispositive decision with limited information." Appellant Brief at 5.

The Appellate Court defined malice, for anti-SLAPP purposes, as existing where "the plaintiff bringing the claim is using the litigation process, as opposed to the outcome of that process, as a weapon against the defendant." App. at 18, ¶ 58. That corresponds to precisely what the CPA is designed to deter: SLAPPs, by which plaintiffs abuse the judicial process to harass citizens for involving themselves in public affairs. 735 ILCS 110/5; *see City of Columbia v. Omni Outdoor Advert., Inc.*, 499 U.S. 365, 380 (1991) (distinguishing use of the process versus pursuit of outcome).

The Appellate Court's adoption of the subjective true goal standard furthers that intent by directing courts, per *Sandholm*, "to examine the

plaintiff's intent in bringing the suit" rather than "whether a reasonable plaintiff might have brought these claims under the circumstances." App. at 14, ¶ 48 (quoting, in part, *Sandholm*, 2012 IL 111443 ¶ 53). Mr. Anderson does not offer an argument against this nor explain what is unclear. Similarly, his procedural arguments that "malice is typically proven by a preponderance of the evidence, after full discovery, and is determined by the ultimate finder of fact" and that "lower courts are asked to make a dispositive decision with limited information" are observations without argument. Anti-SLAPP motions may be decided by a court before full discovery and, therefore, without additional information that discovery might provide or, as in this case, after discovery and motions for summary judgment. That is a feature that the legislature, in adopting the CPA, accepted in creating an anti-SLAPP procedure. If Mr. Anderson's argument is a policy argument against anti-SLAPP procedure as such, that is a concern he can raise with the Illinois legislature. Imposing a subjective, rather than an objective, standard at prong two is downstream of that choice and does not affect the availability of discovery or the volume of information at a court's disposal when resolving an anti-SLAPP motion. His arguments are tangential to

the question presented.

## IV. The Propriety of the Trial Court's Analysis Under the "Meritless and Retaliatory" Standard Is Not Properly Before this Court.

Mr. Anderson argues, in Section IV of his brief, that the trial court's application of the First District's "meritless and retaliatory" standard from *Ryan*, 2012 IL App (1st) 120005, was correct. That question was never decided by the Appellate Court, which remanded for the application of the correct test. Once the Appellate Court decided that the standard applied by the trial court was the wrong one, it confined its analysis to articulating the subjective true goal standard and instructing the trial court to redo its analysis under that standard. App. at 24–25, ¶¶ 82–84.

The proper application of the "meritless and retaliatory" standard is not before this Court. If this Court were to reverse, holding that *Ryan*'s "meritless and retaliatory" standard is correct, the proper course would be to remand to the Appellate Court with instructions to apply the "meritless and retaliatory" standard. *See, e.g., Powell v. Dean Foods Co.*, 2012 IL 111714, ¶ 48 ("[G]iven its disposition of the case, the appellate court did not address the remaining issues raised . . . on appeal.

Accordingly, we remand the cause to the appellate court for consideration and resolution of the remaining issues.").

## CONCLUSION

The Court should affirm the judgment of the Appellate Court.

*I certify that this brief conforms to the requirements of Rules 341(a) and (b). 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 6,000 words.*

Dated: February 2, 2026

Respectfully submitted,

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## CERTIFICATE OF SERVICE

The undersigned certifies that on February 2, 2026, I electronically submitted a true and correct copy of the foregoing *Brief and Argument of Appellee* to the Clerk of Court using the Court's approved electronic filing service provider.

The undersigned hereby further certifies that one copy of the foregoing *Brief and Argument of Appellee* was served via electronic mail on February 2, 2026, to the following counsel/parties of record to this appeal:

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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 Certificate of Service are true and correct.

Dated: February 2, 2026 */s/ Slade Mendenhall*
Slade Mendenhall