

No.

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IN THE APPELLATE COURT OF ILLINOIS,  
SECOND DISTRICT

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CARLA BURKHART and HERRICANE GRAPHICS, INC.,	)	Petition for Leave to Appeal Pursuant to
	)	SCR 306(a)(9) from the Circuit Court for
	)	the 18th Judicial Circuit
Plaintiffs-Respondents,	)	
	)	Case No. 2015-L-1244
v.	)	
	)	Trial Judge: Hon. Robert G. Kleeman
EDGAR COUNTY WATCHDOGS, INC.,	)	
KIRK ALLEN, ADAM ANDRZEJEWSKI,	)	Date of Petition for Leave:
KATHY HAMILTON, and CLAIRE BALL,	)	August 29, 2016
	)	Date of Denial of Order:
Defendants-Petitioners.	)	July 29, 2016
	)	

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**SUPPORTING RECORD**

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*Counsel for Defendant-Petitioner Andrzejewski*

Peter Breen

Law Office of Peter Breen, P.C.

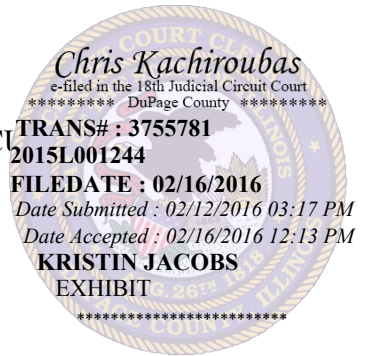
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IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT  
 WHEATON, DUPAGE COUNTY, ILLINOIS

CARLA BURKHART and HERRICANE )  
 GRAPHICS, INC., )  
 )  
 Plaintiffs, ) Case No. 2015-L-1244  
 )  
 v. )  
 ) The Hon. Kenneth L. Popejoy,  
 EDGAR COUNTY WATCHDOGS, INC., ) Judge Presiding  
 KIRK ALLEN, ADAM ADRZEJEWSKI, )  
 KATHY HAMILTON, and CLAIRE BALL, )  
 )  
 Defendants. )

**Defendant Adam Andrzejewski’s Corrected Motion to Dismiss Pursuant to 735 ILCS 5/2-619.1 and the Illinois Citizen Participation Act, 735 ILCS 110/1, et seq.**

Defendant Adam Andrzejewski<sup>1</sup>, by his undersigned counsel, respectfully moves that this Court dismiss Plaintiff’s Complaint pursuant to 735 ILCS 5/2-619.1 and the Illinois Citizen Participation Act (“CPA”), 735 ILCS 110/1, *et seq.*, and states in support as follows:

**I. Background.**

This lawsuit is part of the continuing public controversy over the College of DuPage (“COD”), a public community college, and its dedicated Foundation, an Illinois not-for-profit, recognized as a public charity under IRS Code § 501(c)(3). *See* Memo. of Understanding between College of DuPage and College of DuPage Foundation, Exhibit 1, Decl. of Adam Andrzejewski, ¶ 24.

Plaintiff Carla Burkhart is President of and performs work through Plaintiff Hericane Graphics, Inc. Compl., ¶ 8. Burkhart is also board member of the COD Foundation. Compl., ¶ 10. At the same time that Burkhart controlled the flow of funds to the College, through her position on the board of the Foundation, Hericane Graphics received hundreds of thousands of

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<sup>1</sup> Pronounced “An-gee-eff-ski.”

dollars in payments from the College. Compl., ¶¶ 11; Memo. of Understanding; Decl., ¶¶ 26-27 (*citing sources*).

Defendant Adam Andrzejewski is a nationally recognized leader in government reform and watchdog efforts. Decl., *passim*. He has been working since 2008 on reform and transparency efforts across the country, including at COD, and his work and commentaries have been featured regularly in traditional media sources. *Id.* More recently, through a FOIA request, Andrzejewski uncovered a May 9, 2014 email between the President of COD and its Board of Trustees, in which the President sought to invent a project to obtain \$20 million in state tax dollars. *Id.*, ¶ 23. After securing the buy-in of the Trustees, the COD President revealed plans to leverage the upcoming commencement address from former-Governor Pat Quinn, then in the midst of a tough re-election bid, to press the governor to release the funds. *See* Editorial Board, *Use it or lose it: College of DuPage email exposes the chase for tax dollars*, 7/7/14, CHICAGO TRIBUNE, (Feb. 11, 5:00 PM), [http://articles.chicagotribune.com/2014-07-07/opinion/ct-college-of-dupage-0707-20140707\\_1\\_college-board-dupage-president-robert-breuder-state-money](http://articles.chicagotribune.com/2014-07-07/opinion/ct-college-of-dupage-0707-20140707_1_college-board-dupage-president-robert-breuder-state-money).

Then, in September and October 2014, well over one year before this Complaint was filed, Andrzejewski would uncover and reveal to the public that millions of dollars, including a substantial portion of the payments to Hurricane, were delivered by the College through an “Imprest” account, which acted to shield the payments from public scrutiny and approval by the elected Board of Trustees of the College. Decl., ¶¶ 21, 25-27, 29-32; Adam Andrzejewski, *\$26 Million Selfie at Illinois Jr. College*, 9/10/14, FORBES, (Feb. 11, 5:00 PM), <http://www.forbes.com/sites/adamandrzejewski/2014/09/10/26-million-selfie-at-illinois-jr-college/#4b9b37f2794e> (“Other connected vendors include COD Foundation Board members- lobbyists and construction companies- received large non-disclosed payments. i.e. Hurricane

Graphics (\$227,157)"); *see also* Jake Griffin, *\$26 Million Spent on What? Administrators knew, but Trustees did not*, 9/17/14, DAILY HERALD, (Feb. 11, 5:00 PM), <http://www.dailyherald.com/article/20140917/news/140918556/> (describing these payments as having “skirted board scrutiny”); *see also* Watchdogs’ 2-619.1 Motion to Dismiss, 6-7. The use of “Imprest accounting” by the College would result in the *Washington Times* awarding COD a “Golden Hammer Award” for the worst example of government waste, fraud, corruption and abuse across America for the week. Drew Johnson, *How a college hid \$95 million in expense like booze, shooting clubs*, 10/2/14, Washington Times, (Feb. 11, 5:00 PM), <http://www.washingtontimes.com/news/2014/oct/2/golden-hammer-college-hid-95m-in-administrator-boo/?page=all> (“The College of DuPage spent \$435,365 on purchases from Herricane Graphics since 2009. Carla Burkhart, the owner of the graphic design company, is listed as a member of the College of DuPage foundation’s board of directors.”). After the Golden Hammer was awarded and further information came to light, Andrzejewski updated his earlier article. Adam Andrzejewski, *This College President Hid \$95 Million In Spending*, 10/9/14, FORBES, (Feb. 11, 5:00 PM), <http://www.forbes.com/sites/adamandrzejewski/2014/10/09/imprest-ive-this-college-president-shot-an-elephant-and-hid-95-million-in-spending/#71fe12936b0f> (noting that Herricane Graphics had actually received \$435,365 in Imprest funds over a six-year period); Decl., ¶ 27.

Plaintiffs’ specific allegations of defamation against Andrzejewski (Compl., ¶¶ 21-24) relate to the two *Forbes* articles and the *Washington Times* article mentioned above. All of these allegations occurred over one year prior to the filing of the Complaint. As Plaintiffs’ claims for direct defamation are time-barred, 735 ILCS 5/13-201, they instead plead a single count of “conspiracy,” in an attempt to hold Andrzejewski responsible for statements authored and

published by the Edgar County Watchdogs and Kirk Allen. Plaintiffs do not plead any specific facts that Andrzejewski formed an agreement with the Watchdogs and Allen to defame or tortiously harm Plaintiffs.

Adam Andrzejewski caught Plaintiffs and others with their hands in a proverbial “cookie jar” of taxpayer-funded excess and self-dealing at the College. He fulfilled the highest calling of a citizen in a free republic: he uncovered corruption in government and worked vigorously to root it out—and he was successful, including winning, in the span of less than a year, a tuition freeze, property tax freeze, and spending reform at COD. Decl., *passim*. His conduct here is protected by the First Amendment and is celebrated by every civic-minded taxpayer in DuPage and surrounding counties. Plaintiffs’ vague theory that Defendants are part of a “conspiracy” to harm them is so broad as to sweep within that conspiracy the *Daily Herald*, *Chicago Tribune*, *Washington Times*, and the many others who have reported on the various misdeeds that have been uncovered at COD over the past two years.

Plaintiffs’ lawsuit thus seeks solely to punish and chill the protected speech and petitioning activity of Adam Andrzejewski, not to redress any legitimate cognizable injury. This suit is a textbook “SLAPP”—a “Strategic Lawsuit Against Public Participation”—and must be dismissed pursuant to the CPA, 735 ILCS 110/1, *et seq.*

To avoid repetition of legal and factual arguments, Adam Andrzejewski adopts and incorporates by reference, as if fully set forth herein, the two (2-619.1 & CPA) Motions to Dismiss of Defendants Edgar County Watchdogs and Kirk Allen and the Motion to Dismiss and Memorandum of Defendant Kathy Hamilton.

## **II. Plaintiffs’ claims must be dismissed pursuant to the CPA.**

SLAPPs “use the threat of money damages or the prospect of the cost of defending against the suits to silence citizen participation.” *Sandholm v. Keucker*, 2012 IL 111443, ¶ 33

(citing *Wright Dev. Grp., LLC v. Walsh*, 238 Ill. 2d 620, 630 (2010)). “A SLAPP is ‘based upon nothing more than defendants’ exercise of their right, under the first amendment, to petition the government for a redress of grievances.’” *Id.* (quoting *Westfield Partners, Ltd. v. Hogan*, 740 F. Supp. 523, 525 (N.D. Ill. 1990)).

The CPA provides for dismissal of SLAPPs under the Act if “(1) the defendants’ acts were in furtherance of their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action; (2) the plaintiffs’ claims are solely based on, related to, or in response to the defendants’ ‘acts in furtherance’; and (3) the plaintiffs fail to produce clear and convincing evidence that the defendants’ acts were not genuinely aimed at solely procuring favorable government action.” *Goral v. Kulys*, 2014 IL App (1st) 133236, ¶ 34 (quoting *Hammons v. Soc’y of Permanent Cosmetic Prof’ls*, 2012 IL App (1st) 102644, ¶ 18).

**A. Adam Andrzejewski’s acts were in furtherance of his constitutional rights to participate in government.**

The Complaint essentially alleges a political dispute: that Andrzejewski wrote two unflattering articles and gave a critical interview on the scandal at COD; that he supposedly sought to direct “unjust and unfounded criticism of the COD Foundation and the Board of Directors of the COD Foundation” (Compl., ¶ 19), “to target the COD in an effort to publicly tarnish and discredit the COD Board and administration and propel Hamilton into the public spotlight” (*Id.*, ¶ 18), and to “tarnish the COD” (*Id.*, ¶ 20). *But see, supra* part I. & Decl., *passim*. These allegations, viewed along with Andrzejewski’s sworn Declaration submitted herewith and the sources cited therein, show that his actions were in furtherance of his constitutional rights of speech and petition and sought favorable government action. *See Wright Dev. Grp.*, 939 Ill. 2d at 636 (“[T]he Act expressly encompasses exercises of political expression directed at the electorate as well as government officials.”) (emphasis in original); *Shoreline Towers Condo. Ass’n v.*

*Gassman*, 404 Ill. App. 3d 1013, 1021-22 (1st Dist. 2010). Even more, Andrzejewski was successful in repeatedly obtaining favorable government action in relation to the College. *See Decl.*, *passim*. Plaintiffs concede this point, going so far as to attribute the April 2015 electoral victory of the “Clean Slate” COD trustee candidates to the alleged acts of Andrzejewski and the other Defendants here. Compl., ¶ 46.

**B. Plaintiffs’ claims are meritless.**

“To establish that plaintiff’s suit was ‘solely based on’ defendant’s exercise of his political rights, defendant must show that plaintiff’s suit is meritless and was filed in retaliation against his protected activities in order to deter him from further engaging in those activities.” *Goral*, ¶ 38 (internal citations and quotations omitted). “[A] claim is ‘meritless’ under the Act if the defendant ‘disproves some essential element of the [plaintiff’s] claim.’” *Id.* (quoting *Garrido*, 2013 IL App (1st) 120466, ¶ 19).

**1. Andrzejewski did not defame Plaintiffs.**

As noted *supra*, the Complaint, ¶¶ 21-24, alleges just three specific actions by Andrzejewski: writing September and October 2014 *Forbes* articles and giving an interview to the *Washington Times* in October 2014 about the COD scandal. As noted above, Plaintiffs’ Complaint was filed over one year after these publications, rendering any claims or damages connected to these allegations time-barred. 735 ILCS 5/13-201.

Even apart from the time-bar, Plaintiffs do not adequately allege that Andrzejewski defamed them. They claim that he referred to COD’s payments to Plaintiffs as an “accounting scheme,” as “non-disclosed payments,” and as “hidden transactions,” and that he referred to Herricane as “connected” and a “connected vendor” of COD. Compl., ¶¶ 21-23. First, these statements are true. *See supra*; Decl., ¶¶ 24-32 & *sources cited therein*. Second, even if not substantially true, words like “scheme,” “non-disclosed,” “hidden,” and “connected” are not

actionable, including because they are capable of innocent construction or are statements of opinion. *See* Watchdogs' CPA Motion to Dismiss, 8. (*citing among others, Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 761-62 (1st Dist. 2002) ("cheating the city" not actionable)) & Watchdogs' 2-619.1 Motion to Dismiss, 3-4, 6-7.

**2. Plaintiffs have not alleged any connection between Andrzejewski and the alleged defamatory communications of the Watchdogs and Allen.**

In subsequent paragraphs of the Complaint, Plaintiffs go on to allege a laundry list of supposedly defamatory publications about them by the Watchdogs and Allen, commencing in December 2014, two months after Andrzejewski's last alleged publication about Plaintiffs in October 2014. No facts are alleged to connect Andrzejewski's three publications to the many articles published by the Watchdogs and Allen. *See, e.g., Scott Johansen & Hytel Group, Inc. v. Haydysch*, 2015 U.S. Dist. LEXIS 159493 (N.D. Ill. Nov. 25, 2015) (dismissing civil conspiracy count where no allegation that defendants "instituted, commenced, or otherwise participated in" the underlying torts).

In fact, Plaintiffs have not alleged any specific facts that Andrzejewski agreed to defame them or commit torts against them. Nor have Plaintiffs specifically detailed any sort of agreement between Andrzejewski and the Watchdogs and Allen, for tortious purposes or otherwise. Plaintiffs instead rely on vague suppositions that Andrzejewski "supported and championed" former-COD-trustee Kathy Hamilton (Compl., ¶ 16); that Hamilton enlisted the Watchdogs "with the support of Andrzejewski" (Compl., ¶ 18); that Andrzejewski in an unspecified way conspired with the other Defendants "to further Hamilton's political career" (Compl., ¶ 19) and "attack Herricone and Burkhart in furtherance of their scheme to tarnish the COD and promote Hamilton" (Compl., ¶ 20); and that Andrzejewski "agreed or reached a mutual



understanding to undertake a campaign to unjustly and improperly attack the COD,” (Compl., ¶ 105), etc. *See also*, Hamilton Mot. to Dismiss, 1-2, 3-5.

First off, none of these are allegations of an agreement to defame Plaintiffs: even the unsupported allegation that the Defendants intended to “attack” Plaintiffs is nonspecific and—based on Plaintiffs’ receiving payments from a public body while serving on a nonprofit board directing funds to that same public body—supposed “attacks” detailing that relationship would not likely be tortious. Even so, “the mere characterization of a combination of acts as a conspiracy is insufficient to withstand a motion to dismiss. Instead, it is well established that, to allege a conspiracy, the complaint must set forth with particularity the facts and circumstances constituting the alleged conspiracy.” *Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 59 (internal quotations and citations omitted); *see Green v. Rogers*, 384 Ill. App. 3d 946, 967-68 (2d Dist. 2008), *rev’d on other grounds*, 234 Ill. 2d 478 (2009); *see also*, Hamilton Mot. to Dismiss, Sec. I, 3-6. No such particularity was attempted here. The conspiracy claim is meritless.

**3. Plaintiffs have not alleged an underlying tort to support the claim of conspiracy.**

Further, no “conspiracy” claim can lie if the Watchdogs and Allen did not defame Plaintiffs. Those Defendants have well detailed the substantial truth of, and legal protection for, all of the challenged statements in their 2-619.1 Motion to Dismiss, 3-8, & CPA Motion to Dismiss, 7-10. If the underlying defamation counts against the Watchdogs and Allen fail, the conspiracy count must also be dismissed. *See Coghlan*, 2013 IL App (1st) 120891, ¶ 59 (“ . . . conspiracy is not an independent tort: the conspiracy claim fails if the independent cause of action underlying the conspiracy allegation fails.”). And the Illinois Supreme Court, in *Wright Dev. Grp.*, 238 Ill. 2d at 638, relied on the substantial truth of allegedly defamatory statements to grant a CPA motion.

**C. Plaintiffs' claims are retaliatory.**

Retaliatory motive may be inferred from a variety of factors, including, for instance, the lack of a proper legal basis for the action or whether the facts alleged justify the damages sought. *Hytel Grp., Inc. v. Butler*, 405 Ill. App. 3d 113, 125-26 (2d Dist. 2010) (collecting cases).

As noted above, Plaintiffs have not alleged an agreement by Andrzejewski to defame them nor any specific involvement by him in the alleged defamations of the Watchdogs and Allen. In fact, the publications cited by Plaintiffs involving Andrzejewski are time-barred, so neither the publications nor any damages stemming from those publications are available to Plaintiffs. And, as noted *supra*, Andrzejewski's investigations and publications are absolutely true and have been verified by independent mainstream news sources.

Plaintiffs seek many millions of dollars in compensatory and punitive damages from Defendants, without justification or explanation. *See Hytel Grp., Inc. v. Butler*, 405 Ill. App. 3d 113, 126 (2d Dist. 2010) (claim for \$8 million "intended to strike fear into the defendant"). However, in point of fact, the most significant causes of the alleged damages to Plaintiffs are the ones that are time-barred: the public disclosure of (1) Plaintiffs receiving payments from the College while serving on the Foundation board and (2) Plaintiffs receiving hundreds of thousands in payments from the hidden "Imprest" funds. Those facts were disclosed and spread broadly in the public record in September and October 2014, well more than one year before the filing of this Complaint.

Plaintiffs have come to Court with with blinders on: their Complaint reads as if the wide-ranging, well-documented, and nationally-reported abuses at the College of DuPage never occurred. They entirely ignore their own role in the scandal at COD. Their claim for conspiracy against Andrzejewski is threadbare, meant only to chill his constitutional rights, not to seek legitimate relief.

**III. In the alternative, Plaintiffs' conspiracy claim must be dismissed pursuant to 735 ILCS 5/2-615.**

For the reasons provided *supra* in parts I. & II.B.1.-3.; Hamilton's Motion to Dismiss, ¶¶ 1-2; and Hamilton's Memo. in Support, 1-5, Plaintiffs' conspiracy claim must be dismissed.

**IV. In the alternative, Plaintiffs' conspiracy claim must be dismissed pursuant to 735 ILCS 5/2-619.**

For the reasons provided *supra* in parts I. & II.B.1.-3.; the Watchdogs' CPA Motion to Dismiss; and the Watchdogs' 2-619.1 Motion to Dismiss, Plaintiffs' conspiracy claim must be dismissed.

**V. Conclusion.**

The guilty parties here are the bad actors at COD—not Andrzejewski, not the other Defendants, and not the local, regional, and national media members who blew the whistle and shined a bright spotlight on those same bad actors. Plaintiffs are vendors who were receiving funds from a public body while at the same time controlling the flow of funds into that public body. Their payments were shielded from public view through the use of "Imprest accounting."

Even apart from the backdrop of a College marred by abuses, Plaintiffs' relationship and payments would naturally raise questions worthy of public scrutiny. Whether their actions were illegal or merely ill-advised, Plaintiffs cannot credibly claim surprise that they would become "politically toxic" (Compl., ¶ 51), once their actions were revealed to the public.

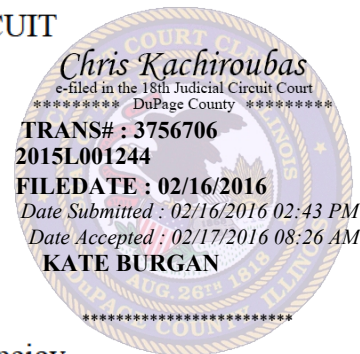
WHEREFORE, Defendant Adam Andrzejewski moves that this Court dismiss Plaintiffs' claims against him with prejudice, pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-619.1, and the Citizen Participation Act, 735 ILCS 110/1, *et seq.*, and for all other relief on the premises to which he may be justly entitled.

Respectfully submitted,

/s/Peter Breen

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IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT  
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CARLA BURKHART and HERRICANE )  
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Plaintiffs, )

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EDGAR COUNTY WATCHDOGS, INC., )  
KIRK ALLEN, ADAM ADRZEJEWSKI, )  
KATHY HAMILTON, and CLAIRE BALL, )

Defendants. )

Case No. 2015-L-1244

The Hon. Kenneth L. Popejoy,  
Judge Presiding

**Declaration of Adam Andrzejewski**

On Oath, Adam Andrzejewski deposes and states as follows:

1. My name is Adam Andrzejewski. I am over 18 years old and am competent to make this declaration based on my personal knowledge of the facts herein.
2. I am a journalist, government watchdog, activist, concerned citizen, and property taxpayer to the College of DuPage, District #502.
3. Since 2008, I have spearheaded a movement – first in Illinois and now across America - to educate, engage and empower citizens to demand a transparent and accountable government by posting all public spending online. Our motto is ‘Every Dime. Online. In Real Time.’
4. I have helped pioneer a watchdog model of open data, citizen engagement, and earned media to help squeeze-out waste, fraud, corruption and taxpayer abuse. Our oversight work since May 2014 at College of DuPage, Glen Ellyn, IL shows the impact and importance of our citizen audit/engagement model.
5. I founded two non-partisan, non-profit organizations to help accomplish our

public policy goals: first, at For the Good of Illinois (501c4) in 2007, and now, at American Transparency (501c3). Our online portal is OpenTheBooks.com where we have captured and posted 2.5 billion individual government expenditures.

6. Our goal is to display ‘every dime taxed and spent at every level of government – federal, state, and local across America.’ We are approximately one-third of the way toward this historic objective. Currently, we believe that we are ‘the largest private repository of public spending in the world.’

7. I have pioneered the only mobile app for all federal spending (FY2001-FY2015), most state spending (49/50 states), and 36,000 local governments across America. Now, from their cell-phones, citizens can see exactly where government spends their tax dollars. It is free for Apple and Android users. Currently, we are working with many state treasurers, governors, and other officials on a pro-bono basis to help them display their spending in our app.

8. In 2013, our free Open The Books app won the prestigious ‘Best App Award’ from the Web Marketing Association. Our app was recently featured on October 6, 2015 in an editorial at The Wall Street Journal, by former U.S. Senator Tom Coburn: Tracking Government Waste, There’s An App For That.

9. As a contributor at Forbes, I write a bi-monthly column covering ‘the daily greed of federal, state and local politics.’ These 35 Forbes columns are popular with a reader base of approximately 500,000 unique views. My Forbes column debuted in June, 2014 – just a week after my oversight investigation at COD began. Each of my columns at Forbes is vetted by the Forbes Opinion Editor, Avik Roy, and a team of editors.

10. My columns cover a range of our non-partisan oversight work, including but not limited to:

- Our nationally leading oversight of Veterans Affairs salaries/bonuses – showcased twice by USA Today, Investor’s Business Daily, FOX News;
- Small Business Administration lending to the Wealthy Lifestyle - \$200 million to private country clubs, \$250 million to subdivisions of Fortune 100 companies, \$120 million into ZIP code 90210, and \$9.2 billion to wealthy investment bankers – showcased by Washington Times;
- College of DuPage – up to \$96 million in college payments ‘hidden’ from citizens and trustees – paid through ‘Imprest accounts’ – showcased by Daily Herald, Chicago Tribune, Washington Times;
- \$1 million in Illinois teacher’s pension paid after 1 day of substitute teaching, showcased by Chicago Tribune;
- a defense of the public policy of ‘forensic auditing’;
- highlight of Massachusetts’ \$10,000 ‘ransom’ payment request for the production of state pension data;
- Illinois ‘Big-Dogs Report’: the ‘highly compensated’ city managers and administrators that out-earn every governor of the 50 states – showcased by WGN9 TV segment on nightly news;
- Illinois Attorney General Lisa Madigan – an employee allowed to ‘work from home’ 500 round-trip miles and two states away from the office;
- our oversight of federal farm subsidies: city slickers and federal farm subsidies – Rev. Louis Farrakhan as a ‘farmer’ – showcased on FOX News and Washington Examiner;
- our oversight of the intersection of Chicago Mayor Rahm Emanuel’s campaign fund and city vendors – showcased on FOX News - John Stossel Special – Is Chicago the Next Detroit? – and showcased in the third Chicago mayors debate. Moderator Phil Ponce questioned Emanuel while referencing my work at Forbes;
- U.S. Post Office starts a grocery delivery business – the government takeover of everything;
- our battle to ‘open the books’ on State of California checkbook spending;
- our oversight of the Veterans Affairs scandal one-year later – out of 24,000 new positions added, less than 2,000 are doctors;
- our oversight of U.S. Export – Import Bank – top five corporations soak up 70-percent of the lending at this federal agency – showcased by Washington Times, Washington Examiner, and Heritage Foundation;

- oversight of Illinois state contractors still flying high – taxpayer funded airplanes for state vendors;
- the \$211,000 life-guards of Newport Beach, CA;
- our oversight of U.S. Environmental Protection Agency spending \$92 million on furniture, \$715 million on ‘criminal enforcement program,’ and \$6.5 million on guns, ammunition and military-style weapons – showcased by The Wall Street Journal, FOX News –Bill O’Reilly Show, Special Report with Bret Baier, and FOX and Friends; Investor’s Business Daily, Washington Times, Matt Drudge Report, FOX Business.

11. My personal rule is ‘every fact must have a supporting public document.’ I’ve never once violated that personal principle. For example, when I wrote about the COD/Herricane contracts, I had supporting materials from the College of DuPage Foundation’s website, plus the college payments into the company right down into the granular, individual payments with check/ACH numbers. Furthermore, independent, rigorous editing is a critical component of ensuring the fairness and accuracy of my editorials.

12. My entire body of work, over the last eight years, is a predicate to honest, smart, effective and efficient spending of taxpayer dollars. Our actions at COD were entirely consistent with this philosophy. Our oversight work made such an impact that it resulted in fundamental changes to college policy on taxes, student tuition, budget, and construction spending.

13. In 2008, in the spring and summer, my initial public advocacy successfully convinced the trustees at College of DuPage (COD) to post online all college checkbook payments and employee salaries. At the time, COD become the largest unit of government in Illinois to post online nearly ‘every dime’ of their spending. By 2009, I had convinced nearly 25 Illinois public school districts to post online roughly \$1 billion in checkbook expenditures on their own websites. Also in 2008-9, I was the resource for the first Counties in Illinois to post their checkbooks online: DuPage County spearheaded by Auditor Bob Grogan, Madison County, and Cook County.



14. Then, I unsuccessfully ran for Governor of Illinois (2009-2010) on transparency and accountability themes: “Post Every Dime, Online, In Real Time.” and issued the clarion call of a “forensic audit” of all state spending.

15. In March 2010, I worked with Illinois House leadership and legislators to introduce the “Forensic Audit Act of 2010” (HR1057) co-sponsored by 26 House Republicans. I drafted the legislation and kicked it off with a “Blue Room,” Springfield press conference with sponsors. In May 2010, the legislation was called for a roll-call vote but failed on a strict party-line vote.

16. Later, the Forensic/Recapture audit of Medicaid/Medicare (HB5242) quietly passes the General Assembly on an unanimous vote of both chamber and Gov. Quinn signs the legislation into law. Sponsoring legislators gave us press release credit.

17. In March 2011, I teamed up with State Representative Dwight Kay (R-Glen Carbon) and co-drafted a Forensic Audit of Workers Compensation (HR52). Speaker Michael Madigan embraced this audit (HR131) and it passed 111-00 in the Illinois House.

18. In September 2011, our OpenTheBooks.com website debuted with a “Blue Room” press conference at the Thompson Center, Chicago attended by the Illinois Senate minority leader and eight other state representatives and senators. We posted virtually every public salary and pension at every level of Illinois government.

19. In January 2013, I filed a lawsuit on behalf of For The Good of Illinois vs. Illinois Comptroller Judy Baar-Topinka to successfully open all State of Illinois line-by-line payments since 2005. It was a half-million vendors, on a half-billion transactions, for half-trillion dollars in state spending. We now display this spending on our website and inside our search applications.

20. In May 2013, The Wall Street Journal published my editorial, “Track Government

Spending on Your Phone,” where I called on citizens across America to use open data, engagement, and to begin asking questions of public officials. The Journal recognized our first-mover-advantage app - we successfully pushed all line-by-line federal spending transactions since 2000 to your cell-phone.

21. In May 2014, I realized that I wasn’t following my own advice – citizen engagement locally as outlined at in my 2013 Wall Street Journal editorial - and choose the College of DuPage as my local unit of government for an oversight investigation. I quickly found-out that the college was not following the 2008 policies that I’d won—I was told that the ordinances had disappeared from the board book. Instead, COD was using ‘Imprest Accounting’ funds to pay bills.

22. In my first public comment on May 22, 2014, I outlined three objectives that I hoped to accomplish while working with the Trustees, 1. Freeze student tuition; 2. Freeze property taxes, 3. Stop un-necessary construction spending and bring the dollars back into the classroom in accordance with college mission. All of these objectives were accomplished before the end of 2014.

23. In June 2014, after filing a Freedom of Information Act request, I exposed an email outlining a political strategy between COD President Robert Breuder and the Trustees to bring election support to incumbent Governor Pat Quinn in an effort to procure a \$20 million state construction grant. My exposure stopped the grant, which Governor Quinn’s spokesperson called, “extremely alarming.” My effort was given credit with two front-page articles at Daily Herald and a Chicago Tribune Board editorial –characterizing Breuder’s email as “a seedy little money grab.” Editorial Board, *Use it or lose it: College of DuPage email exposes the chase for tax dollars*, 7/7/14, CHICAGO TRIBUNE, (Feb. 11, 5:00 PM),

<http://articles.chicagotribune.com/2014-07-07/opinion/ct-college-of-dupage-0707->

[20140707\\_1\\_college-board-dupage-president-robert-breuder-state-money](http://articles.chicagotribune.com/2014-07-07/opinion/ct-college-of-dupage-0707-20140707_1_college-board-dupage-president-robert-breuder-state-money); Robert Sanchez &

Safiya Merchant, *Email prompts Governor to withhold \$20 million in funding for COD*, 7/3/14,

DAILY HERALD, (Feb. 11, 5:00 PM),

<http://www.dailyherald.com/article/20140702/news/140709530/>.

24. In the course of my investigation, among many other documents from the College of DuPage, I received a “Memorandum of Understanding Between the Board of Trustees of the College of DuPage and the College of DuPage Foundation,” a true and accurate copy of which is attached hereto as Exhibit 1. That Memorandum details the close relationship between the College, the Foundation, and their respective boards. For instance, according to the Memorandum, the College Board appoints the Executive Director of the Foundation.

25. On July 29, 2014 at Forbes, I wrote about my discovery of the world-class wine cellar, upscale French restaurant, \$192,000 spent on wine and wine accessories, \$600 million spent on building construction, President Dr. Breuder’s \$500,000 compensation package, and \$27,931 spent by COD on Breuder’s private shooting club. In addition, I showcased the extreme tuition spikes, and 20-percent student loan default rates. Adam Andrzejewski, *The Real Financial Crisis In College*, 7/29/14, FORBES, (Feb. 11, 5:00 PM),

[http://www.Forbes.com/sites/adamandrzejewski/2014/07/29/the-real-financial-crisis-in-](http://www.Forbes.com/sites/adamandrzejewski/2014/07/29/the-real-financial-crisis-in-college/#52698854780b)

[college/#52698854780b](http://www.Forbes.com/sites/adamandrzejewski/2014/07/29/the-real-financial-crisis-in-college/#52698854780b). On August 21, 2014, that oversight resulted in a 7-0 the reversal of a February 2014 student tuition hike and imposition a two-year student tuition freeze. Prior to the vote, I used my public comment to request that the board freeze tuition and also to open-the-books on their ‘Imprest accounting funds.’ The board voted 7-0 to discuss transparency of these payments at the next meeting.

26. On September 17, 2014, Jake Griffin at Daily Herald wrote the front-page watchdog investigation entitled, “\$26 Million Spent on What? Administrators knew, but Trustees did not.” Jake Griffin, *\$26 Million Spent on What? Administrators knew, but Trustees did not*, 9/17/14, DAILY HERALD, (Feb. 11, 5:00 PM), <http://www.dailyherald.com/article/20140917/news/140918556/>. This story was a local follow-up to my national Forbes column posted on September 10, 2014. Adam Andrzejewski, *\$26 Million Selfie at Illinois Jr. College*, 9/10/14, FORBES, (Feb. 11, 5:00 PM), <http://www.forbes.com/sites/adamandrzejewski/2014/09/10/26-million-selfie-at-illinois-jr-college/#4b9b37f2794e>. I posted a link within the Forbes column so citizens could review the 21,000 spending transactions - for themselves. This ‘crowd-sourcing,’ citizen audit gave us tips helping us expose the next round of wasteful spending practices at COD. In his piece, Jake Griffin verified my findings that during a 16-month period, \$26 million on 21,000 COD checkbook payments flowed to 5,613 vendors. All of this spending happened without trustee scrutiny.

27. On October 3, 2014, I wrote another piece at Forbes. Adam Andrzejewski, *This College President Hid \$95 Million In Spending*, 10/9/14, FORBES, (Feb. 11, 5:00 PM), <http://www.forbes.com/sites/adamandrzejewski/2014/10/09/imprest-ive-this-college-president-shot-an-elephant-and-hid-95-million-in-spending/#71fe12936b0f>. In that article, I revealed that, over a six-year period, Dr. Robert Breuder spearheaded \$95.6 million on 82,600 transactions to college vendors. Within the column, I highlighted the fact that The Washington Times conferred their “Golden Hammer Award” on COD for the worst example of waste, fraud, corruption and abuse across America for the week. Drew Johnson, *How a college hid \$95 million in expense like booze, shooting clubs*, 10/2/14, Washington Times, (Feb. 11, 5:00 PM),

<http://www.washingtontimes.com/news/2014/oct/2/golden-hammer-college-hid-95m-in-administrator-boo/?page=all>.

28. On December 19, 2014, because of our oversight work and clarion call to freeze property taxes, the trustees finally voted to freeze property taxes.

29. Carla Burkhart and Herricane Graphics were never a specific focus of my oversight work at COD, but only one vendor on a list of many receiving contracts. In fact, during our oversight investigation, the only time I referenced Burkhart or Herricane was within a listing of other COD Foundation board members who also received college contracts – where many of the contracts were conferred without bids or competition.

30. In my writing, I described Herricane and other vendors as ‘connected’ for several reasons:

- a. Carla Burkhart owned Herricane and Burkhart was a College of DuPage Foundation Board member.
- b. Carla Burkhart/ Herricane received over \$630,000 in college payments on contracts that were no-bid, or procured non-competitively.
- c. \$435,365 of COD payments to Herricane were hidden from COD board members, press and public because these payments flowed through the college’s “Imprest accounting funds.”
- d. Burkhart/Herricane was part of a much larger conflict-of-interest issue at the college: over \$192 million in college payments flowed to college Foundation board members since 2009 on mostly no-bid or non-competitive contracts.

31. I described the College of DuPage accounting system as a “scheme” for a number of reasons including the following:

- a. “Imprest” fund accounting was eliminated as of October 1, 2001 at the federal level with a U.S. Department of Treasury directive on November 9, 1999. (Feb. 11, 5:00 PM),  
[http://www.osec.doc.gov/ofm/cash/Final\\_Ch\\_6\\_Cash\\_Mgmt\\_Hdbk\\_Cash\\_Held\\_Outside\\_Treasury\\_9-23-11.pdf](http://www.osec.doc.gov/ofm/cash/Final_Ch_6_Cash_Mgmt_Hdbk_Cash_Held_Outside_Treasury_9-23-11.pdf).
- b. The U.S. Department of the Treasury defines “Imprest” accounting as “petty cash accounting.” Here’s the definition: “The Imprest Fund is a fixed cash or petty cash fund in the form of currency or coin that has been advanced to a cashier as “Funds Held Outside of Treasury.”” (Feb. 11, 5:00 PM),  
[https://www.fiscal.treasury.gov/fsservices/gov/pmt/impFund/impFund\\_home.htm](https://www.fiscal.treasury.gov/fsservices/gov/pmt/impFund/impFund_home.htm).
- c. The respected online resource, Strategic CFO says: “This fund is not utilized for any important financial matters such as Accounts Payable or paying off Outstanding Debt. This imprest account is created for the sole reason of taking care of the less crucial aspects of the organization”; (Feb. 11, 5:00 PM),  
<http://strategiccfo.com/wikicfo/imprest-account/>.
- d. While claiming transparency with every check, the college hid \$95.135 million from January 1, 2009 through August, 2014 with the use of “Imprest fund” accounting. It was a massive use of opaque fund accounting to send 82,600 payments to 6,788 school vendors without trustee or public scrutiny.
- e. The COD ‘rules’ for “Imprest” payments were limited to payments under \$15,000: but we found 232 times COD paid vendors for more than \$15,000 amounting to \$5.558 million!

- f. \$243,305 in payments for alcohol flowed to vendors through “Imprest” funds tagged as “instructional supplies.”
  - g. Even the college Comptroller Lynn Sapyta admitted that it ‘probably wasn’t the best decision...’ Katie Finlon, *College of DuPage Rejects “Illegitimate Spending” Claims*, NORTHERN PUBLIC RADIO, 10/8/14, (Feb. 11, 5:00 PM), <http://northernpublicradio.org/post/college-dupage-rejects-illegitimate-spending-claims>.
32. I described the College of DuPage payments to Burkhart/ Herricane as “non-disclosed” for a number of reasons including the following:
- a. All payments through the “Imprest” funds were aggregated and batched monthly in the COD Board of Trustee packets as a lump sum. There were no individual details, identifiers, or any delineation of vendor name and amount of payment.
  - b. For example, COD President Dr. Robert Breuder’s private dues to his shooting club were paid through “Imprest” and the trustees did not know COD paid this expense for many years. These payments were ‘non-disclosed,’ not authorized in Breuder’s employment contracts or addendums and were never discussed in a board meeting.
  - c. The same is true of Burkhart / Herricane payments flowing through Imprest – the trustees never saw the transactions.
  - d. By continuing practice for six years, these “Imprest” payments were “non-disclosed” to trustees and the public at large.

- e. Jake Griffin at Daily Herald and Drew Johnston at Washington Times both concurred in their reporting – that the “Imprest” payments were hidden from the public and the board of trustees at large.

FURTHER DECLARANT SAYETH NAUGHT.

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.

February 11, 2016

  
Adam Andrzejewski



**Memorandum of Understanding**  
**Between the**  
**Board of Trustees of College of DuPage**  
**and the**  
**College of DuPage Foundation**

THIS MEMORANDUM OF UNDERSTANDING, hereinafter known as the ("Agreement") is, entered into as of the 22<sup>nd</sup> day of June, 2009 (the "Effective Date"), between the Board of Trustees of College of DuPage, a body politic and corporate of College of DuPage, (hereinafter called the "College") and College of DuPage Foundation, an Illinois not-for-profit corporation, (hereinafter called the "Foundation").

**Preamble**

WHEREAS, the Foundation was established as a separate, not-for-profit corporate entity and exists for the principal purpose of advancing and furthering the aims and purposes of the College and is a private corporation organized and operated exclusively to receive, hold, invest, and administer property and to make expenditures to or for the benefit of the College; and

WHEREAS, the Foundation is dedicated to addressing, through building an endowment, the long-term academic and other institutional priorities of the College; and

WHEREAS, the Foundation is an organization described in Internal Revenue Code section 501(c)(3) and is classified as a publicly supported organization under Internal Revenue Code sections 509(a)(1) and 170(b)(1)(A)(iv); and

WHEREAS, the Foundation assists the College in generating private support and manages, invests, and administers private gifts and resources, including endowments, real property, and funds held for others, and acknowledging and stewarding gifts in accordance with donor intent and its fiduciary responsibilities; and

WHEREAS, the College desires the Foundation to continue its assistance to the College, including its fund-raising services directed toward expanding and enhancing the educational, research and service goals and capabilities of the College, and further desires to make available to the Foundation support towards meeting these objectives and will provide certain limited support to the Foundation to further both the College's and Foundation's purposes; and

WHEREAS, the College desires to set forth the basic terms of its relationship with the Foundation, in order to make clear the support the Foundation provides to the College; and

WHEREAS, the parties desire that the recitations hereinabove set forth in this preamble be adopted by reference and incorporated into the Memorandum of Understanding, the same as though set forth in full context.

NOW, THEREFORE, in consideration of the foregoing premises and the terms and conditions hereinafter provided, the parties agree as follows:

Exhibit  
1

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## ARTICLE 1

### Foundation's Responsibilities and Relationship to the College

The Foundation agrees:

- A. To receive, hold and administer gifts of property, real or personal, financial or otherwise, to be used for and on behalf of the College, its faculty, students, and staff, all according to the terms of any applicable gift agreement or other restrictions. In the event the donor does not specify the terms or all the terms for which the gift shall be used, then the Foundation shall administer and use the gift for the benefit of the College according to the College's needs and policies.
- B. To hold, manage and distribute such assets in its possession for the dedicated purpose of supporting the mission of the College and, as the primary depository of private gifts on behalf of the College, to transfer funds to the designated department within the College in compliance with applicable laws, College and Foundation policies, and gift agreements.
- C. To plan, direct and implement all phases of private sector fundraising efforts including special events, direct mail appeals, major and planned gift solicitations and corporate and foundation grants and to conduct such other fund-raising campaigns as may be deemed necessary and desirable by the Foundation.
- D. To identify, cultivate, evaluate and solicit, active and prospective donors and contributors for the benefit of the College, in conjunction with the College President and to secure for the benefit of the College's students, faculty, and programs, private monetary resources in the continuing quest for overall excellence.
- E. To continue to promote the College's best interests, when requested, within the region, state and nation and, when asked, to advise and counsel the various components of the College.
- F. To keep complete, accurate and confidential financial records of donors and donor funds, establish and enforce policies to protect donor confidentiality and privacy and provide access to data and records on a need-to-know basis in accordance with applicable laws and the Foundation's policies and guidelines.
- G. To provide appropriate stewardship, recognition and acknowledgment to donors through timely correspondence, gift clubs and recognition events.
- H. To adhere to applicable federal and state laws including the Uniform Prudent Investor Act and the Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act.
- I. To engage an independent accounting firm annually to conduct an audit of financial and operational records of the Foundation and provide the College with a copy of the audit and work with the College to ensure that the College can correctly report Foundation resources and activities as may be required for the financial statements of the College.

- J. To develop gift acceptance guidelines and policies in accordance with the College's mission, goals and objectives.
- K. To provide seed grants for new program development for various departments of the College for the purpose of securing and stewarding institutional relationships and partnerships.
- L. To provide scholarships to the students and staff of the College.
- M. To maintain and manage an endowment, including establishing fund agreements with donors to the endowment and setting and implementing investment and distribution policies and procedures that will prudently steward the principal of the endowment and honor donor intent, as prescribed by the Uniform Prudent Investor Act, the Uniform Management of Institutional Funds Act or Uniform Prudent Management of Institutional Funds Act and other applicable Illinois law.
- N. To receive, hold, manage, invest, and disperse contributions of cash, securities, patents, copyrights, and other forms of property including immediately vesting gifts and deferred gifts that are contributed in the form of planned and deferred gift instruments and disposition or allocation of real estate or other forms of tangible property.
- O. To permit the College President to serve as an *ex-officio* member of the Foundation Board and its Executive Committee.
- P. To pay or reimburse the College President for expenses related to fundraising activities and otherwise advancing the College/Foundation upon receipt of such documentation as is required under applicable College and Foundation policies.
- Q. To disclose any terms, conditions, or limitations imposed by the donor or legal determination on any gift transferred or distributed to the College.

## ARTICLE II

### College's Responsibilities and Relationship to the Foundation

The College agrees :

- A. To provide the Foundation with appropriately furnished and equipped space.
- B. To pay for the Foundation's expenses for printing and promotional materials in connection with the fund-raising activities of the Foundation.
- C. To assist with such marketing services, as is necessary, for the Foundation to accomplish its goals. Such assistance includes:
  - Development of print and promotional materials; and
  - Authorization to use the College name, logo and marketing brand.
- D. To assist in the strategic aspects promoting donor investment.

- E. To provide, to the extent possible, information technology support including software and hardware necessary to the Foundation to carry out its functions.
- F. To contribute funds, to the extent possible, to help pay the salaries of Foundation personnel.
- G. To have the President of the College recommend to the College's Board of Trustees, after consultation with the Foundation's Board of Trustees, a person to serve as Executive Director of the Foundation.
- H. To consider the recommendations of the Executive Director regarding staffing requirements of the Foundation.
- I. To support the operations of the Foundation by assigning, at the College's discretion, College personnel to assist the Foundation.
- J. To provide accurate accounting for scholarship awards and for any expenses that will be paid from Foundation resources subject to prior approval of the Executive Director of the Foundation.
- K. To create and enforce College policies, where deemed necessary and appropriate, that support the Foundation's ability to respect the privacy and confidentiality of donor records and to recognize that the Foundation is a private corporation with the authority and obligations to keep all records and data confidential consistent with the requirements of law.
- L. To communicate, through the College President, institutional priorities and long-term plans as approved by the Board of Trustees and the leadership to the Foundation and to include the Foundation as an active and prominent participant in the strategic planning for the College.
- M. To have the College President's duties include assuming a prominent role in the Foundation's fund-raising activities.
- N. To acknowledge the Foundation as a separate entity from the College with expertise in coordinating and in implementing all aspects of a resource development department and in maintaining a comprehensive, growing fund-raising program.
- O. To honor the terms, conditions, or limitations imposed by donor or legal determination on any gifts transferred from the Foundation.

### **ARTICLE III**

#### **Term, Termination and Amendments**

- A. The term of this Memorandum of Understanding shall be five years from the Effective Date and shall continue thereafter from year to year unless either party shall give to the other written notice of termination as provided below.
- B. Either party may, upon 90 days prior written notice to the other, terminate this Memorandum of Understanding without cause.

- C. Either party may terminate this Memorandum of Understanding for cause in the event the other party defaults in the performance of its obligations and fails to cure the default within a reasonable time period after receiving written notice of such default.
- D. This Agreement contract may not be assigned without prior written consent of the parties.
- E. Specific projects or activities not already covered by this Memorandum of Understanding may be agreed upon between the parties in writing as an amendment hereto, which shall constitute a portion of this Memorandum as though originally contained herein.
- F. Should the Foundation cease to exist or cease to be an organization described in Internal Revenue Code section 501(c)(3), the Foundation will transfer its assets and property to or among the College or any one or more foundations affiliated with the College that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). If none of the College or its affiliated foundations are then so described, the Foundation will distribute its assets and property to one or more organizations that are organized and operated exclusively for charitable and educational purposes within the meaning of Internal Revenue Code sections 501(c)(3) and 170(c)(2)(B). The Foundation agrees to transfer such assets and property in a manner that furthers the best interests of the College, as determined in consultation with the College.
- G. This Memorandum of Understanding may be amended only upon the written agreement of the College and the Foundation.

#### **ARTICLE IV**

##### **Background of the Parties**

The Foundation and the College have two separate and different systems for selection of their leadership and governance.

- A. The College is governed by The College Board of Trustees which is composed of elected individuals who represent the voters of the District and one student representative, who has an advisory vote, elected by the student body for a one-year term. The College Board of Trustees is responsible for overseeing the mission, leadership, and operations of the College. The College Board of Trustees is responsible for setting priorities and long term plans for the College and legally accountable for the performance and oversight of all aspects of the College. The College Board of Trustees is responsible for the employment, compensation and evaluation of the President of the College.
- B. The Foundation is a separately incorporated Illinois not-for-profit corporation governed by its Board of Trustees. The Foundation's Board of Trustees is responsible for the control and management of all assets of the Foundation, including the prudent management of all gifts consistent with donor intent. The Foundation Board of Trustees is responsible for the performance and oversight

of all aspects of its operations based on a comprehensive set of Bylaws that clearly address the Board's fiduciary responsibilities, including expectations of all individual Board members to comply with ethical guidelines and policies.

## **ARTICLE V**

### **General Terms**

- A. To ensure effective achievement of the terms of this Memorandum of Understanding, the College's officers and Board of Trustees and the Foundation's officers and Board of Trustees are encouraged to hold periodic meetings to foster and maintain productive relationships and ensure open and continuing communications and alignment of priorities.
- B. Nothing contained herein shall be deemed to prevent the College from entering into agreements with other entities or related foundations with obligations and purposes similar to those expressed in the Memorandum of Understanding.
- C. The College and the Foundation acknowledge that each is an independent entity and agree that neither will be liable, nor will be held out by the other as liable, for any of the other's contracts, torts, or other acts or omissions, or those of the other's trustees, directors, officers, staff, or other agents.
- D. All correspondence, solicitations, activities, and advertisements concerning the Foundation shall reflect the Foundation, the College, and the relationship between them appropriately.
- E. The College shall be permitted to audit the financial records of the Foundation, but shall not be permitted to audit donor records.
- F. No provision of this Memorandum of Understanding shall be deemed to create a partnership or joint venture between the College and the Foundation.

IN WITNESS WHEREOF, the parties have caused this Memorandum of Understanding to be executed by their duly authorized representatives as of the day and year first above written.

**ATTEST:**

**Board of Trustees of  
College of DuPage**

By: \_\_\_\_\_  
Chair

By: \_\_\_\_\_  
College President

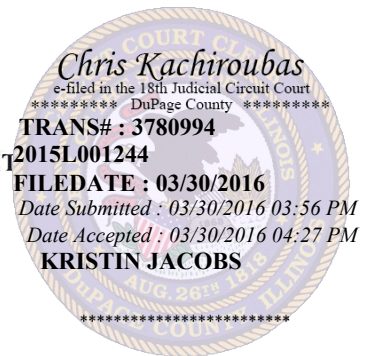
By: \_\_\_\_\_  
Secretary

**ATTEST:**

**Board of Trustees of  
College of DuPage Foundation**

By: \_\_\_\_\_  
President

By: \_\_\_\_\_  
Executive Director



IN THE CIRCUIT COURT OF THE 18<sup>TH</sup> JUDICIAL CIRCUIT  
DuPAGE COUNTY, ILLINOIS

CARLA BURKHART AND HERRICANE  
GRAPHICS, INC.,

Plaintiff,

vs.

EDGAR COUNTY WATCHDOGS, INC., *et al.*,

Defendants.

Case No. 15 L 001244

**PLAINTIFFS' RESPONSE TO  
MOTION TO DISMISS OF ADAM ANDRZEJEWSKI**

NOW COME the Plaintiffs, CARLA BURKHART (“Burkhart”) and HERRICANE GRAPHICS, INC. (“HGI”), by and through their attorneys, GRIFFIN | WILLIAMS LLP, and for their response in opposition to the Motion to Dismiss Pursuant to 735 ILCS 5/2-619.1 filed by the Defendant, ADAM ANDRZEJEWSKI (“Andrzejewski”), state as follows:

**Introduction**

This lawsuit emanates from a targeted campaign of tortious acts committed by the Defendants against Burkhart and HGI designed to promote the political career of Kathy Hamilton at the expense of Plaintiffs. As detailed in Count VIII of the Complaint for conspiracy, the Plaintiffs seek damages resulting from the near total loss of their business due to Andrzejewski and his role in the creation of more than 20 defamatory blog posts on the *Illinois Leaks* blog.<sup>1</sup> The posts accuse the Plaintiffs of engaging in a pay to play scheme at the College of DuPage (“COD”) and fraudulently executing an architectural services contract to avoid bidding requirements. Both accusations allege criminal conduct and are untrue. As alleged, in

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<sup>1</sup> The entirety of the blog posts concerning the College of DuPage as well as the Plaintiffs are filed as Plaintiffs’ Group Exhibit A under separate cover and incorporated herein by reference. The posts can also be viewed at <http://edgarcountywatchdogs.com/>.



teaming with Mrs. Hamilton, Andrzejewski enlisted and promoted the Edgar County Watchdogs, Inc. (“ECWI”) to wreak havoc at the College of DuPage (“COD”) and propel Mrs. Hamilton into the spotlight. In doing so, he became a co-conspirator in the creation and publication of more than 20 tortious and defamatory writings.

In his Section 2-619.1 Motion, Andrzejewski argues for dismissal under the Illinois Citizen Participation Act (the “Act”) because Plaintiffs have not sufficiently alleged a cause of action for conspiracy or the predicate torts. While Andrzejewski spends an inordinate amount of time promoting his accomplishments as a government watchdog in his Declaration, he fails to aver to or present any other evidence. Most notably, Andrzejewski fails to aver that (1) he was not involved in a conspiracy to promote Mrs. Hamilton, (2) that his conspiratorial acts were in furtherance of obtaining favorable government action and (3) that the writings of ECWI were true and not defamatory. Merely arguing that a claim is not sufficiently pled as a matter of law is not adequate to carry the defendant’s burden. *Sandholm v. Kuecker*, 2012 IL 111443, ¶ 55-8, 962 N.E.2d 418, 356 Ill.Dec. 733 (Ill. 2012); See also *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1<sup>st</sup>) 120005, ¶ 26, 979 N.E.2d 954, 366 Ill.Dec. 153 (1<sup>st</sup> Dist. 2012). Rather, Andrzejewski must bring forth affirmative evidence to establish undisputed facts that disprove Plaintiffs’ claim which is presumed legally sufficient under a Section 2-619 review. As discussed below, Andrzejewski has woefully failed to meet his burden.

### Argument

**A. The Plaintiffs’ Complaint Genuinely Seeks Damages For Business Losses And Was Filed More Than A Year After The Harassment Began And On The Last Day Of The Statute Of Limitations Relative To Co-Defendants. It Is Not A SLAPP.**

The Supreme Court’s decision *Sandholm v. Kuecker*, 2012 IL 111443 at ¶ 1, precludes defendant from obtaining relief under the Act.

In *Sandholm*, the Supreme Court determined that the legislature intended the Act “to target only meritless, retaliatory SLAPPs and did not intend to establish a new absolute or qualified privilege for defamation.” *Sandholm*, 2012 IL 111443 at ¶ 50. In accordance with this determination, the Supreme Court interpreted the phrase “ ‘based on, relates to, or is in response to’ ” in Section 15 of the Act 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.’ ” (Emphasis in original.) *Sandholm*, 2012 IL 111443 at ¶ 45. The Court expounded, “[s]tated another way, where 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 defendant’s rights of petition, speech, association, or participation in government. In that case, the suit would not be subject to dismissal under the Act.” *Sandholm*, 2012 IL 111443 at ¶ 45. The Court concluded that the plaintiff’s lawsuit was not solely based on, related to, or in response to the acts of the defendants in furtherance of their rights of petition and speech because the “true goal” of the plaintiff’s lawsuit was not to chill participation in government or stifle political expression, but to seek damages for the personal harm to his reputation from the defendants’ alleged defamatory and tortious acts. *Sandholm*, 2012 IL 111443 at ¶ 57.

Under *Sandholm*, a lawsuit may only be dismissed under the Act if:

(1) the defendants’ acts were in furtherance of their right to petition, speak, associate, or otherwise participate in government to obtain favorable government action; (2) the plaintiffs’ claims are solely based on, related to, or in response to the defendants’ “acts in furtherance”; and (3) the plaintiffs fail to produce clear and convincing evidence that the defendants’ acts were not genuinely aimed at solely procuring favorable government action. *Id.* ¶ 43.

Merely because defendants' activities are the kind that the Act is designed to protect does not necessarily mean that plaintiff's lawsuit is a SLAPP. *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1<sup>st</sup>) 120005 at ¶ 20.

**1. Andrzejewski Has Not Established Clear And Convincing Evidence Of Protected Acts.**

In his Motion, Andrzejewski argues that the articles he wrote in late 2014 are protected under the Act and in furtherance of his right to participate in government to obtain favorable government outcome. However, Andrzejewski ignores the fact that the Complaint and Count VIII thereof for conspiracy do not seek damages for the articles he wrote. The Complaint seeks damages for Andrzejewski's role in the creation of the defamatory posts of ECWI. This Court should not conclude that a conspiracy to wreak havoc at COD and defame the Plaintiffs in order to promote the political career of Mrs. Hamilton has any relation to obtaining favorable government outcome. If such a conclusion was warranted, which it is not, the Court is without averments of Andrzejewski as to his role in the conspiracy. Absent such averments, Andrzejewski cannot establish by clear and convincing evidence that the acts of the defendant upon which the claims are based, i.e. his role in the conspiracy to promote Mrs. Hamilton's political rise, are in furtherance of his right to participate in government to obtain favorable government outcome.

**2. Andrzejewski Cannot Satisfy The Section 15 Analysis That Plaintiffs' Claim Is Solely Based On His Acts.**

The next step in the analysis is to determine whether plaintiff's claim is "solely based on" defendant's protected acts. *Sandholm* stated that a lawsuit is not "solely based on" protected acts and therefore is not subject to dismissal under the Act if "a plaintiff files suit genuinely seeking

relief for damages for the alleged defamation or intentionally tortious acts of defendants.” *Sandholm*, 2012 IL 111443 at ¶ 45.

Under *Sandholm*, there are two required showings to prove that a lawsuit is a SLAPP solely based on, related to or in response to a protected act. The movant must show that the lawsuit is (1) retaliatory and (2) meritless. *Sandholm*, 2012 IL 111443 at ¶ 43-5.

**a. Plaintiffs’ Claims Are Not Retaliatory.**

To determine retaliatory intent, the two factors most helpful to consider are (1) the proximity in time of the protected activity and the filing of the complaint and (2) whether the damages requested are a good faith estimate of the injury sustained. *Sandholm*, 2012 IL 111443 at ¶ 43-5. However, in his argument concerning retaliation, Andrzejewski cites *Hytel Group, Inc. v. Butler*, and argues that the failure to plead a cause of action is evidence of retaliatory intent. However, the ruling in *Hytel* was abrogated by the decision in *Sandholm*. Therein, the Supreme Court held that merely arguing that a claim is not sufficiently pled as a matter of law is not adequate to carry the defendant’s burden. *Sandholm*, 2012 IL 111443 at ¶ 55-8; See also *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1<sup>st</sup>) 120005 at ¶ 26.

Andrzejewski’s deliberate avoidance of the two retaliatory factors courts most often view to determine retaliatory intent is telling and with good reason – the factors weigh heavily against him. In relying on his articles as his protected act, Andrzejewski creates a 15 month time frame between his last article written in October of 2014 and the filing of the Complaint at the end of December 2015. There is absolutely no temporal proximity to the filing of the lawsuit and the professed protected activity. Absent such proximity, no conclusion can be drawn that the lawsuit was designed to inhibit or enjoin Andrzejewski from engaging in protected activity.

In addition, the alleged damages are a good faith estimate of the injury sustained. In Count VIII, Plaintiffs seek damages for conspiracy with predicate torts of defamation, tortious interference and misappropriation. The relief requested is an eventual award in an amount in excess of \$50,000 and punitive damages of more than \$1,000,000. The damages alleged in the Complaint include actual economic damages of \$200,000 alone in 2015 relative to lost sales, the expectation that similar losses will result in 2016 and beyond, damages for loss of reputation and goodwill and punitive damages. In fact, it is entirely likely that Plaintiffs' business will fail as a result of the unrelenting cloud of corruption the Defendants' defamation has created via the internet and various search engines.

In quantifying the Plaintiffs' losses, they are entitled to credit for lost sales as well as credit for lost goodwill, or value, in their business. Assuming *arguendo* that Plaintiffs would only be entitled to losses for 2015 and not beyond, their lost sales would be approximately \$200,000 and the lost business value, or goodwill, would likely be in excess of \$200,000 (assuming a 1 x multiplier of gross sales in relation to business value is a conservative estimate). Thus, one year of the Plaintiffs' losses would include actual, economic damages of not less than \$400,000. Assuming Plaintiffs losses continue and cannot be mitigated, these damages will increase significantly.

In addition, the \$400,000 figure does not account for loss of reputation. In a defamation *per se* lawsuit, damages to reputation are presumed and where such a presumption has been coupled with proof of actual damages, Illinois courts have affirmed awards of in excess of \$1,000,000 for loss of reputation alone. See *Leyshon v. Diehl Controls North America, Inc.*, 407 Ill.App.3d 1, 12-3, 946 N.E.2d 864, 349 Ill.Dec. 368 (1<sup>st</sup> Dist. 2010)(approving an award of \$2,000,000 for loss of reputation). In addition, as discussed in *Leyshon*, courts have recognized

the propriety of a multiple of three times actual damages when awarding punitive damages. *Leyshon v. Diehl Controls North America, Inc.*, 407 Ill.App.3d at 13-24 (approving an award of \$6,000,000 in punitive damages).

Thus, based upon 2015 economic losses alone, Plaintiffs have conservatively alleged compensatory damages of more than \$400,000 and punitive damages in excess of \$1,000,000 and provided a good faith, factual basis to sustain a damages award of nearly \$1,500,000 in compensatory damages and \$4,500,000 in punitive damages.

**b. Plaintiffs' Claims Are Not Meritless.**

With respect to their burden to prove Plaintiffs' claims are meritless, Andrzejewski continues to rely on his prior arguments that Plaintiffs' have failed to allege a claim against him. As recognized by *Sandholm*, merely arguing that a claim is not sufficiently pled as a matter of law is not adequate to carry the defendant's burden. *Sandholm*, 2012 IL 111443 at ¶ 55-8; See also *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1<sup>st</sup>) 120005 at ¶ 26. Rather, defendants must bring forth affirmative evidence to establish undisputed facts that disprove Plaintiffs' claim which is presumed legally sufficient under a Section 2-619 review. Defendants have not even attempted to do so. The Declaration of Andrzejewski fails to deny involvement in the conspiracy with Mrs. Hamilton, Kirk Allen and ECWI. Further, the Declaration fails to address the veracity of ECWI's blog posts accusing the Plaintiffs of engaging in a pay to play scheme and fraudulently represented themselves as architects in the 2012 Signage Design Contract.

In the end, however, the ultimate holding in *Sandholm* cannot be overcome by Andrzejewski. When the defendant's acts cause actual injury to the plaintiffs and a lawsuit properly seeks redress for those acts, the lawsuit cannot, as a matter of law, be considered "solely based on" protected acts. As detailed in *August v. Hanlon*, 2012 IL App (2d) 111252, ¶ 30, 975

N.E.2d 1234, 363 Ill.Dec. 925 (2<sup>nd</sup> Dist. 2012), when a pleading alleges economic damages for the harm to plaintiff's reputation and the relief sought by plaintiff is, in part, compensatory in nature, the defendant cannot prove that a complaint is "*solely* based on" protected acts. Further, as recognized in *Ryan v. Fox Television*, even where a lawsuit appears retaliatory and lacks actual damages, it will not be considered a SLAPP unless the claims are also meritless and the defendants bring forth undisputed evidence that disproves the plaintiff's claims. *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1<sup>st</sup>) 120005 at ¶ 23-6.

As previously recognized, Andrzejewski does not even attempt to adduce evidence to prove the veracity of the blog posts or deny his involvement in the conspiracy. Ultimately, the fact remains that Plaintiffs do not seek to enjoin or prevent the Andrzejewski from engaging in protected acts, but to be compensated for the damages wrought by the Defendants' tortious acts.

**3. Andrzejewski's Acts Were Not Genuinely Aimed At *Solely* Procuring Favorable Government Action.**

To the extent the burden of proof in this analysis shifts to Plaintiffs, which it should not under the *Sandholm* standard, the undisputed allegations of the Complaint provide ample evidence to conclude that Andrzejewski's actions were not *solely* aimed at procuring favorable government action. As alleged in the Complaint, the Defendants' acts were motivated by a conspiracy to propel Kathy Hamilton to power of COD. Andrzejewski's affidavit does not deny such a conspiracy. Assuming the Plaintiff's allegations to be true, Andrzejewski's actions were aimed at advancing the political career of Kathy Hamilton and not just at procuring favorable government action at COD.

Further, as discussed in the Plaintiffs' Response To Motion To Dismiss Of Edgar County Watchdogs And Kirk Allen Pursuant To The Illinois Citizen Participation Act, the scope and

breadth of the attack unleashed on the Plaintiffs was never solely aimed at ending no-bid contracts between COD and COD Foundation members.

**B. Plaintiffs Have Alleged A Cause Of Action Based On Conspiracy.**

Andrzejewski intermingles confusing arguments under both a Section 2-619 standard and Section 2-615 standard concerning the failure to plead facts to support the conspiracy claim. As the Court must recognize, under Section 2-619, the Plaintiffs' Complaint is presumed legally sufficient. To the extent he asserts a Section 2-615 review, sufficient facts have been plead at this stage to survive such a motion.

The elements of a civil conspiracy are: (1) a combination of two or more persons, (2) for the purpose of accomplishing by some concerted action either an unlawful purpose or a lawful purpose by unlawful means, (3) in the furtherance of which one of the conspirators committed an overt tortious or unlawful act. *Adcock v. Brakegate, Ltd.*, 164 Ill.2d 54, 62–63, 206 Ill.Dec. 636, 645 N.E.2d 888 (Ill. 1994). While Andrzejewski challenges the sufficiency of the underlying predicate torts based on the arguments of other Defendants, his true argument in his Motion is that Plaintiffs have failed to allege he acted in concert with the other Defendants. Andrzejewski's argument ignores the allegations of Paragraphs 105 of the Complaint which alleges as follows:

105. In or about May 2014, Hamilton, Andrzejewski, Allen & ECWI agreed or reached a mutual understanding to undertake a campaign to unjustly and improperly attack the COD, the COD Board, the COD Foundation and the COD Foundation Board with slanted, prejudicial, untrue and defamatory accusations of corruption and fraud to raise attention to Hamilton and her efforts to end the supposed corruption and fraud and catapult her into higher political office.

Thus, the Plaintiffs have alleged the so called conspiracy agreement.

The so called conspiracy agreement is also evinced by an article written by Andrzejewski on April 16, 2015 wherein with regard to the COD he states, “[W]orking hand-in-hand with Vice



Chairman Kathy Hamilton and the noted Edgar County Watchdogs, *we've* had a lot of success.” (emphasis added). See Exhibit B attached hereto. As alleged in the Complaint, the article acknowledges the existence of the “oversight investigation that *we* kicked off back in May, 2014. (emphasis added). Thus, Andrzejewski’s own pen admits the concerted action.<sup>2</sup>

Even if this Court were to view such allegations as circumstantial, the Illinois Supreme Court has held that allegations of multiple actors engaged in concerted actions that led to tortious activity are sufficient to make a reasonable inference that all parties were acting in concert at the pleading stage. See *Fritz v. Johnston*, 209 Ill.2d 302, 317-8, 807 N.E.2d 461, 282 Ill.Dec. 837 (Ill. 2004). In other words, once persons act in concert, if any of them commits a tort in furtherance thereof, all conspirators are liable. Clearly, Plaintiffs have alleged such concerted actions with respect to the Defendants and the COD from 2014 through 2015.

### Conclusion

As explained in *Sandholm*, a lawsuit is not “solely based on” protected acts under the Act if “a plaintiff files suit genuinely seeking relief for damages for the alleged defamation or intentionally tortious acts of defendants.” *Sandholm*, 2012 IL 111443 at ¶ 45. In this case, Plaintiffs have filed suit against Andrzejewski and others for their concerted acts that led to more than 20 outrageous, defamatory blog posts that litter the internet and have ruined the Plaintiffs’ business. The Motion should be denied.

**WHEREFORE**, the Plaintiffs, CARLA BURKHART and HERRICANE GRAPHICS, INC. request that the Motion to Dismiss be denied and for such other and further relief as is deemed equitable and just.

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<sup>2</sup> While not pled in the Complaint, the existence of the article supports the allegations of Paragraph 105 and, to the extent necessary, could be alleged in an Amended Complaint.

CARLA BURKHART & HERRICANE  
GRAPHICS, INC.

By:  \_\_\_\_\_  
One of Their Attorneys

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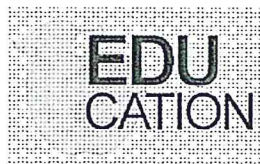


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### Breaking... Federal Subpoenas at College of DuPage

by Administrator | Thursday April 16, 2015 10:30 am

*"Reform at College of DuPage is just a beginning..."*  
 Daily Herald | April 16, 2015  
 Read my editorial please click here

*College of DuPage Under Federal Investigation*  
 By Jodi Cohen & Stacy St. Clair  
 Chicago Tribune | April 16, 2015  
 Read article please click here

Breaking news in today's Chicago Tribune, federal law enforcement recently issued two subpoenas at College of DuPage (COD). Two wide-ranging subpoenas asked for documents and records relating to administrator perks, foundation- vendor relationships, and college enrollment calculations.

This is just the latest development in the oversight investigation that we kicked off back in May, 2014. Please read summary here.

In today's Daily Herald, my editorial – COD's Reform Movement Just the Beginning – I recap our eleven month oversight investigation and advocate three important reforms:

- Aggressive financial transparency – from the top of the appropriation into the subcontractor level. Expose all the spending to sunlight.
- Adversarial forensic audits – root out and squeeze out the corruption.
- Prosecution of wrong-doing – but a 45 Day Forgiveness period for whistleblowers. You're safe if you blow the whistle. After 45 Days, the record is codified for investigation.
- Stop insider feeding at the COD piggy-bank: 'Reverse auction' goods and services to qualified bidders transparently, online and bid down the costs of procurement. No more no-bid contracts to insiders.

Working hand-in-hand with Vice Chairman Kathy Hamilton and the noted Edgar County Watchdogs, we've had a lot of success. Together, we stopped payment on a \$20 million corrupted state grant; discovered and exposed \$100 million in hidden "Imprest" spending payments since 2009; froze property taxes; and froze student tuition.

Kathy Hamilton recruited the 'Clean Slate' candidates. The three-candidate slate swept into the new majority two weeks ago in the election. Congratulations!

Our reform movement starts with COD, but is just a beginning. Grab on and start asking questions of your local unit of government.

Start your search at OpenTheBooks.com and download our free mobile app here.

(And stay tuned on COD – our best work still has yet to publish.)

For the Good of Illinois

ADAM ANDRZEJEWSKI  
Founder & Chairman, For The Good of Illinois

PS. WE NEED YOUR HELP! PLEASE HELP OUR TEAMS WITH A \$25, \$50, \$100, \$250 or \$500 DONATION. THANK YOU.

FOR THE GOOD OF ILLINOIS

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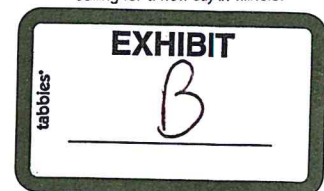
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*Join the thousands who are calling for a new day in Illinois.*

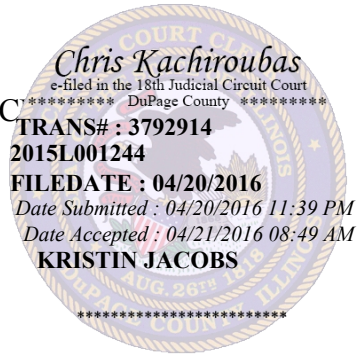


Our Allies Arrest Illinois Park Board  
 by administrator | Thursday June 26, 2014 9:20 am  
 Last night, NBC5- Chicago TV showcased the Citizen Arrest of the Clark County Park Board by John Kraft and Kirk [...]

C000486

\$232 Million Isn't Enough at College of

IN THE CIRCUIT COURT FOR THE 18TH JUDICIAL CIRCUIT  
WHEATON, DUPAGE COUNTY, ILLINOIS



CARLA BURKHART and HERRICANE )  
GRAPHICS, INC., )  
) )  
Plaintiffs, )  
) )  
v. )  
) )  
EDGAR COUNTY WATCHDOGS, INC., )  
KIRK ALLEN, ADAM ANDRZEJEWSKI, )  
KATHY HAMILTON, and CLAIRE BALL, )  
) )  
Defendants. )

Case No. 2015-L-1244

The Hon. Ronald D. Sutter,  
Judge Presiding

**Defendant Adam Andrzejewski’s Reply in Support of his Motion to Dismiss Pursuant to 735 ILCS 5/2-619.1 and the Illinois Citizen Participation Act, 735 ILCS 110/1, et seq.**

Plaintiffs have not produced one scintilla of evidence<sup>1</sup> to support their claims. They’ve not challenged Adam Andrzejewski’s Background statement of facts. Motion, at 1-4. They’ve not rebutted his Declaration. Plaintiffs have not disputed that, while they controlled the flow of funds into the College of DuPage, they simultaneously sought and received no-bid contracts and non-disclosed payments out of the College of DuPage.

Mr. Andrzejewski has disproven Plaintiffs’ allegations 1) that a conspiracy to defame them was formed and existed and 2) that Andrzejewski participated in such a conspiracy. Even more, Andrzejewski has conclusively demonstrated the truth and worth of his statements in relation to the College of DuPage, along with the favorable governmental actions he obtained through his work.

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<sup>1</sup> Plaintiffs attached to their Response to Defendant Andrzejewski’s Motion to Dismiss an unauthenticated, incomplete, unsourced single page styled as their “Exhibit B.” Defendant objects to the inclusion of that page as improper and urges that the Court disregard and strike that “Exhibit B.”

So as not to unnecessarily repeat his previous arguments and those of the other Defendants, Andrzejewski adopts and incorporates by reference as if fully set forth herein his own previous arguments and those of Defendants Kirk Allen, Edgar County Watchdogs, Kathy Hamilton, and Claire Ball in their respective 2-615, 2-619.1, and Citizen Participation Act Motions to Dismiss and Replies in support of those Motions.

**I. Andrzejewski's actions are in furtherance of his right to participate in government.**

Plaintiffs argue that Andrzejewski's actions are not "in furtherance of his right to participate in government to obtain favorable government outcome." Response, at 4.<sup>2</sup> This is ludicrous. First, the Andrzejewski Declaration recounts his actions in detail, which are core First Amendment free speech, assembly, and petitioning activity. Second, the motive Plaintiffs (falsely and without any factual support) ascribe to Defendants—to advance the political career of Kathy Hamilton—is a proper motive under the Act, as it is "in furtherance of the constitutional rights to petition, speech, association, and participation in government." 735 ILCS 110/15, 110/10 ("government" includes "the electorate"). Third, it is Plaintiffs' burden, by clear and convincing evidence, to prove Andrzejewski's actions were not genuinely aimed at achieving favorable government action—a task that is impossible in the face of the actual specific favorable government action obtained by Andrzejewski in response to his work, detailed in his Declaration.

**II. Plaintiffs' suit is a retaliatory SLAPP.**

On the standard of whether this suit is retaliatory, Plaintiffs urge the Court to limit its analysis to only two factors: 1) nearness in time between the alleged torts and the filing of the Complaint and 2) damage amounts stated in the Complaint. Response, at 5. However, Plaintiffs'

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<sup>2</sup> Plaintiffs attempt to put Defendants to a "clear and convincing" standard on this point, without support. The Citizen Participation Act places a "clear and convincing" burden on the party responding to the motion (the Plaintiff), not the movant (the Defendant). 735 ILCS 110/20(c).

case citations do not support so limiting the Court: otherwise all that would be necessary to avoid the application of the Act would be for plaintiffs to wait roughly two or three months after the alleged torts to file suit and to avoid reciting specific damage numbers in their complaints.

On this point, Andrzejewski is in a similar position to Mrs. Noonan in *Midwest Rem Enters. v. Noonan*, 2015 IL App (1st) 132488 ¶ 86. Plaintiffs there dragged Mrs. Noonan into court on a conspiracy theory, alleging that she had conspired with her husband and lied in her reports to investigators to further his tortious conspiracy. The Appellate Court upheld Mrs. Noonan's right to dismissal per the Citizen Participation Act, holding that, "[t]he 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." *Id.* Just as in *Midwest rem Enters.*, the record here shows no evidence that Andrzejewski has lied or done anything wrong to Plaintiffs.

Plaintiffs further critique Andrzejewski's reliance on *Hytel Grp., Inc. v. Butler*, 405 Ill. App. 3d 113, 125-26 (2d Dist. 2010) (*collecting cases*), as improper, on the theory that *Hytel* was abrogated by *Sandholm v. Keucker*, 2012 IL 111443. Plaintiffs are flat wrong. Plaintiffs cite paragraphs 55-58 of the Supreme Court's *Sandholm* decision for their proposition, but those paragraphs neither address *Hytel* nor limit this Courts' ability to perform a robust retaliation analysis. *Hytel* is a Second District case, on point, and it remains good law as to its retaliation analysis. Plaintiffs further citation to *Ryan v. Fox Television Stations, Inc.*, 2012 IL App (1st) 120005, ¶ 26 does not demand an alternate result—and even if it did, this Court would be bound by the Second District in *Hytel*, not the First District in *Ryan*.<sup>3</sup>

### **III. Plaintiffs' claim is meritless.**

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<sup>3</sup> The Watchdogs have also provided thorough argument on this point in their Reply, at 4-7.

Plaintiffs argue that Andrzejewski “ignores the allegations of Paragraphs [sic] 105 of the Complaint” that a conspiracy was formed and existed. However, Andrzejewski specifically cited and addressed that paragraph (and others) in his Motion to Dismiss, at 7-8. The fact remains that Plaintiffs have not met their burden to “set forth with particularity the facts and circumstances constituting the alleged conspiracy.” Motion, at 8 (*quoting Coghlan v. Beck*, 2013 IL App (1st) 120891, ¶ 59).

Plaintiffs’ Complaint was threadbare and insufficient in its allegations of conspiracy, and Andrzejewski has now slammed the door shut on those claims, definitively disproving them by demonstrating the following:

- Plaintiffs are time-barred from recovering for Andrzejewski’s specific alleged wrongful actions<sup>4</sup> (Motion, at 6);
- Andrzejewski is a nationally respected good government advocate (e.g., Decl. pars. 3-10, 13-20);
- Andrzejewski adheres to the highest standards of journalistic integrity and truth (e.g., Decl. pars. 11-12);
- Andrzejewski uncovered numerous irregular and unethical practices at the College that were later chronicled in mainstream media sources (e.g., Decl. pars. 21-27);
- Andrzejewski secured favorable government action on taxes, tuition, transparency, and construction at the College (e.g., Decl. pars. 12-13, 22, 25, 28);
- Andrzejewski did not specifically target the Plaintiffs other than as one of many on a long list of vendors to the College (Decl. par. 29); and

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<sup>4</sup> Insofar as Plaintiffs suffered damages, it now appears they were the result of Andrzejewski’s (time-barred) public revelations in Spring, Summer, and Fall 2014, not the actions of the Watchdogs in 2015. *See* Exhibit 1 to the Watchdogs’ Reply in Support of their CPA Motion.

- Andrzejewski’s description of Foundation board members who were vendors of the College as “connected,” their payments as “non-disclosed” and part of an “accounting scheme” are fully accurate and well-supported (e.g., Decl. pars. 30-32).

Addressing the pleading requirements for conspiracy, Plaintiffs have argued *Fritz v. Johnston*, 209 Ill. 2d 302, 318 (2004) to the Court, claiming that:

allegations of multiple actors engaged in concerted actions that led to tortious [*sic*] activity are sufficient to make a reasonable inference that all parties were acting in concert at the pleading stage. In other words, once persons act in concert, if any of them commits a tort in furtherance thereof, all conspirators are liable.

Response, at 10.

Plaintiffs neglect the fact that the Supreme Court in *Fritz* disagreed with plaintiffs and instead *granted* a motion to dismiss by two of the defendants there, because:

There are simply no facts to support the conclusion that Gaffney and Ford conspired with Johnston and/or Bergstrom to force plaintiff from his post, or even that they were aware that the reports to the State Police were, as plaintiff alleges, intentionally falsified. Plaintiff’s statement that they conspired is insufficient—the complaint must contain more than the conclusion that there was a conspiracy, it must allege specific facts from which the existence of a conspiracy may properly be inferred. With respect to defendants Gaffney and Ford, no such facts were pled. *Fritz*, 209 Ill. 2d at 318 (2004).

Just as in *Fritz*, Plaintiffs have not alleged facts—nor could they have, based on the uncontested evidence of record—that Andrzejewski agreed with the other Defendants to defame the Plaintiffs, nor that he had any knowledge of any alleged falsehoods in communications of the other Defendants. *See also Midwest Rem Enters.*, discussed *supra*. The evidence of record shows that Andrzejewski’s actions were entirely true and lawful.<sup>5</sup> There is no conspiracy here.

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<sup>5</sup> As is shown in the Watchdogs’ Motion and Reply papers, their alleged statements were true and non-defamatory, such that no conspiracy exists because no underlying tort was committed.



Plaintiffs haled Andrzejewski into Court knowing that they had no facts connecting him to the alleged defamations, and that any claims against him were time-barred. Plaintiffs instead wanted to punish Andrzejewski for his protected speech and petitioning activities, activities that uncovered corrupt practices at the College of DuPage. The scandal there captured the attention of the community, the state, and the nation. Andrzejewski has done a public service, and the Citizen Participation Act vindicates his constitutional rights and requires that this case against him be dismissed.

WHEREFORE, Defendant Adam Andrzejewski moves that this Court dismiss Plaintiffs' claims against him with prejudice, pursuant to the Illinois Code of Civil Procedure, 735 ILCS 5/2-619.1, and the Citizen Participation Act, 735 ILCS 110/1, *et seq.*, and for all other relief on the premises to which he may be justly entitled.

Respectfully submitted,

/s/Peter Breen

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### **CERTIFICATE OF SERVICE**

I, Peter Breen, an attorney of record herein, certify that I served this Reply on all counsel of record via email to their email addresses of record on Wednesday, April 20, 2016.

/s/Peter Breen

No.

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IN THE APPELLATE COURT OF ILLINOIS,  
SECOND DISTRICT

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CARLA BURKHART and HERRICANE )  
GRAPHICS, INC., )  
 )  
Plaintiffs-Respondents, )  
 )  
v. )  
 )  
EDGAR COUNTY WATCHDOGS, INC., )  
KIRK ALLEN, ADAM )  
ANDRZEJEWSKI, KATHY HAMILTON, )  
and CLAIRE BALL, )  
 )  
Defendants-Petitioners. )

) Petition for Leave to Appeal Pursuant  
) to SCR 306(a)(9) from the Circuit  
) Court for the 18th Judicial Circuit  
)  
) Case No. 2015-L-1244  
)  
) Trial Judge: Hon. Robert G. Kleeman  
)  
) Date of Petition for Leave:  
) August 29, 2016  
) Date of Denial of Order:  
) July 29, 2016  
)

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**ATTORNEY CERTIFICATION OF SUPPORTING RECORD**

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This Supporting Record has been prepared and certified in the form required for transmission to the reviewing court. It consists of one (1) volume of common law record, as follows:

**TABLE OF CONTENTS OF RECORD ON APPEAL**

VOLUME I		
Record Page No.	Date	Description
C445-455	2/16/16	Defendant Adam Andrzejewski's Corrected Motion to Dismiss
C456-474	2/16/16	Defendant Adam Andrzejewski's Declaration in Support of Motion to Dismiss
C475-486	3/30/16	Plaintiffs' Response to Motion to Dismiss of Adam Andrzejewski
C487-492	4/20/16	Defendant Adam Andrzejewski's Reply in Support of Motion to Dismiss

I do further certify that this certification of the record pursuant to Supreme Court Rule 324 issued out of my office this 29th day of August, 2016.

A handwritten signature in black ink that reads "Peter Breen". The signature is written in a cursive style and is positioned above a solid horizontal line.

*Counsel for Defendant-Petitioner Andrzejewski*

Peter Breen

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