

IN THE CIRCUIT COURT FOR THE SIXTEENTH JUDICIAL CIRCUIT
KANE COUNTY, ILLINOIS

ELIZABETH and ROBERT EARL, MIKE)
FRALIC, MARY LU and GREG GUEST, CAROL)
HAYES, CAROLYN and PETER KRYSIAK,)
CYNTHIA LINN, MARY ELLEN and)
RICHARD O'ROURKE, DIANE PICCIUOLO,)
MAUREEN and WILLARD POTT, APRIL and)
ERIC SCHEIDLER, MARY and RICHARD)
VILIM, and JOHN WIESNER, and PRO-LIFE)
ACTION LEAGUE, INC., an Illinois non-profit)
corporation)

Plaintiffs,)

vs.)

STEVEN TROMBLEY, PLANNED)
PARENTHOOD OF ILLINOIS, as successor to)
PLANNED PARENTHOOD CHICAGO AREA,)
and GEMINI OFFICE DEVELOPMENT LLC)

Defendants.)

No. 07 LK 513

Hon. Judith M. Brawka

**MEMORANDUM IN SUPPORT OF DEFENDANTS' MOTION TO DISMISS
AMENDED COMPLAINT PURSUANT TO SECTION 2-619.1 AND FOR
FURTHER RELIEF UNDER THE CITIZEN PARTICIPATION ACT**

Plaintiffs' Amended Complaint does nothing to change the improper nature of the lawsuit they have attempted to bring. Illinois' Citizen Participation Act specifically protects the constitutional right to engage in the very type of speech that is at issue here. The Act was passed to put an end to lawsuits like this which attack citizens' exercise of their constitutional rights to participate in government. Moreover, the alleged statements are not defamatory -- plaintiffs' improper motive is evidenced by the complete absence of a viable claim. The alleged defamatory statements do not refer to or even mention any of the individual plaintiffs. Moreover, these plaintiffs have no possibility of stating a claim as these statements are capable of a reasonable innocent construction. The statements about the Pro-Life Action League are both true and protected by a qualified privilege. Allowing plaintiffs' defamation action to proceed would prohibitively compound the already significant burdens and risks faced by those who seek to participate publicly on issues of public concern and controversy. Plaintiffs' amended complaint should be dismissed with prejudice pursuant to Section 2-619.1.

BACKGROUND

The Opening of Planned Parenthood in Aurora

The heated community controversy surrounding Aurora's Planned Parenthood of Illinois¹ health center began in mid-2007 when it became known that a medical facility under construction was to have a Planned Parenthood clinic. (*See* Am. Compl. ¶ 11.) The Aurora Planned Parenthood health care center provides comprehensive gynecological services, including breast exams, pap tests, pregnancy tests, screening and treatment for sexually transmitted infections and abortion services. (*Id.* Ex. A, p. 1.)

¹ On March 1, 2008, Planned Parenthood Chicago Area changed its name to Planned Parenthood of Illinois.

Notwithstanding that the facility provides many important services for families in the community, Planned Parenthood faced vigorous opposition from persons who opposed it and its constitutionally protected healthcare activities. (*See id.* ¶¶ 10-11.) In response to this opposition, Planned Parenthood and its president, Steven Trombley, appealed to the citizens of Aurora and Aurora officials explaining the organization's plans and goals, as well as its concerns about safety. (*See id.* Ex. A & B.)

The individual plaintiffs are 17 individuals residing in Aurora or nearby communities who purportedly belong to an “*ad hoc* unincorporated association” called Fox Valley Families Against Planned Parenthood (“Fox Valley Families.”) (*Id.* ¶¶ 1, 5.) According to plaintiffs, they are among the “hundreds and thousands of persons who had opposed the opening and continue to oppose the ongoing operation” of the Planned Parenthood facility in Aurora. (*Id.* at ¶ 5.) As identified in the Amended Complaint, Fox Valley Families has taken various actions to protest the opening of the facility, including writing protest letters, contacting public officials, participating in prayer vigils and attending protests and rallies. (*Id.* ¶¶ 5,11.)

In response to Defendants' motion to dismiss, plaintiffs have added the Pro-Life Action League as a party to their Amended Complaint. (Am. Compl. ¶ 1.) The Pro-Life Action League “has over 5,000 members”. *See* <http://www.prolifeaction.org/faq/league.htm#members> (last visited May 14, 2008), a copy of which is attached hereto as Exhibit A.² According to plaintiffs, the Pro-Life Action League engages in “pro-life

² This Court may take judicial notice of the information about the organization contained on the Pro-Life Action League website for the purposes of the 2-619 motion. *People v. Young*, 355 Ill. App. 3d 317, 321 n.1 (2d Dist. 2005) (taking judicial notice of information on Department of Corrections website); *see also, Shen Wei (USA) Inc. v. Sempermed, Inc.*, 2007 U.S. Dist. LEXIS 7235, at *8 n.3 (N.D. Ill. Jan. 30, 2007) (“a court may take judicial notice of information publicly announced on a party's website [on motion to dismiss] as long as the website's authenticity is not

activism” throughout the United States. (Am. Compl. ¶ 1.) Eric Schiedler is the only individual plaintiff who is alleged to be both a member of the Fox Valley Families and the Pro-Life Action League. (*Id.*) Eric Scheidler established an office for the Pro-Life Action League in Aurora and acts as the Pro-Life Action League’s Communications Director. (*Id.* ¶ 1, 17)

The Publications At Issue

Plaintiffs’ claims arise from statements in two publications. First, plaintiffs have alleged that they were defamed by a letter Mr. Trombley wrote to Aurora Alderman Lawrence (“Letter to Alderman Lawrence”) on September 4, 2007. (*See Id.* ¶ 12, Ex. A.) While Plaintiffs only attach the letter sent to the alderman, the Amended Complaint acknowledges that Mr. Trombley also sent the letter to various other officials of the city of Aurora, including the Mayor. (*Id.*) At the time Mr. Trombley sent his letter, there was significant publicity over -- and much public debate regarding -- the manner through which Planned Parenthood obtained building permits for the Aurora facility. (*See Id.* ¶¶ 6-7.) Mr. Trombley's letter was written in response to persons who were asking the city of Aurora to prevent the opening of the Planned Parenthood facility because a Planned Parenthood subsidiary, Gemini, rather than Planned Parenthood itself, had developed and built the clinic. *Id.* He explained, “those that oppose these services and this facility have asked the city of Aurora to take action to prevent the opening of the facility” and “I am aware that last week you heard from a number of residents organized by the Pro-Life Action League....” (*Id.* Ex. A, at 1.) Mr. Trombley acknowledged his awareness of the

in dispute and it is capable of accurate and ready determination.”) (internal quotations omitted); *Lan Lan Wang v. Pataki*, 396 F. Supp. 2d 446, 458 (S.D.N.Y. 2005) (taking judicial notice of real estate listings on website and granting motion to dismiss).

politically-charged nature of the dispute surrounding the facility and the opposition that the organization faced among some in the community. (*Id.*) In addition to providing information about the various health care services Planned Parenthood was bringing to Aurora, Mr. Trombley's letter sought to explain to the city officials why Planned Parenthood found it necessary to develop the clinic through a subsidiary to protect the privacy and safety of those involved in the project during the permitting process. (*Id.* at 1-2 (stating "you will understand the urgency of our concerns [regarding safety] when you consider the following facts about the Pro-Life Action League and...Joe Schiedler.)) Seeking to illustrate the dangers faced by Planned Parenthood, its clients, as well as its vendors, Mr. Trombley described his past experiences with the Pro-Life Action League and its leader, Joe Scheidler. (*Id.* at 2-3 (stating "the activists of the Pro-Life Action League...have a well-documented history of violence against both persons and property as well as other related criminal activity.)) Mr. Trombley explained a prior jury verdict reached against the Pro-Life Action League for its unlawful activities and Joe Scheidler's praise for the misdeeds of anti-abortion extremists. (*Id.*) The 1998 jury verdict unanimously found that the Pro-Life Action League orchestrated 121 crimes involving threats of force or violence against health facilities that offered abortions. (*Id.*) *See also*, Jury Verdict from *NOW v. Schiedler, et al.*, No. 98 C 7808 (attached as Exhibit B) at 2.³ Mr. Trombley also included statements made by Joe Schiedler that advocated violence and actions that had been taken by members of the Pro-Life Action League towards those participating in the construction of the facility. (*Id.*) The letter defended Planned

³ This Court may take judicial notice of the jury verdict form previously submitted to the Court as Attachment C to plaintiffs' response to the original Motion to Dismiss. *Primax Recoveries, Inc. v. Atherton*, 851 N.E.2d 639, 644 (5th Dist. 2006) (taking judicial notice of order entered by another court).

Parenthood's actions in the permitting process and assured the alderman of Planned Parenthood's intent to serve the people of Aurora by providing them high-quality family health care services. (*Id.* at 3.) Mr. Trombley invited the alderman to contact him in order to ask any questions or to obtain any information regarding the issues in dispute. (*Id.*)

Plaintiffs also identify a Planned Parenthood announcement published in the *Aurora Beacon News* (the "Beacon Public Notice"). (Am. Compl. ¶ 21, Ex. B.) The Beacon Public Notice sought public support for the upcoming opening of the Planned Parenthood facility. (*Id.*) It explained Planned Parenthood's mission of meeting the health care needs of the community. (*Id.*) Most importantly, the Beacon Public Notice was a call to action for the citizens of Aurora. Planned Parenthood implored: "DON'T LET THE EXTREMISTS DENY VITAL HEALTH CARE TO THE PEOPLE OF AURORA." (*Id.*) The notice described the violent opposition Planned Parenthood had faced in the past, identifying the actions taken by the Pro-Life Action League and Joe Scheidler. (*Id.*) Highlighting concerns about the safety of those associated with Planned Parenthood, the notice also explained the prior jury verdict reached against the Pro-Life Action League for its unlawful activities. (*Id.*) The Beacon Public Notice assured the community that Planned Parenthood would not be deterred from its goals and would continue its pursuit of providing much needed family health care services. (*Id.*) The notice finished with the following appeal to all readers: "CALL YOUR ALDERMAN IN THE AURORA CITY COUNSEL AT 630.844.3619 AND LET THEM KNOW YOU SUPPORT PLANNED PARENTHOOD." (*Id.*)

Neither the Letter to Alderman Lawrence nor the Beacon Public Notice mentioned a single one of the individual plaintiffs, nor their organization—Fox Valley Families. (*See Am. Compl., Ex. A, B.*) The only anti-abortion activists identified in either publication were Joe Schiedler, not a plaintiff here, and the Pro-Life Action League. (*See id.*)

The Allegations Of Plaintiffs’ Amended Complaint

Plaintiffs allege the Defendants “have committed libel *per se*” by virtue of the statements contained in these two publications. (*Id.* ¶¶ 16, 23.) Notwithstanding that the Letter to Alderman Lawrence only referred to Joe Schiedler and the Pro-Life Action League, plaintiffs contend that the letter stated falsehoods that “pertained directly and unmistakably to the plaintiffs as well as others who have been opposing defendants’ proposed operation in Aurora.” (*Id.* ¶ 13.) The Amended Complaint suggests that Mr. Trombley’s statements are defamatory because “they cast the plaintiffs, and each of them, as well as others affiliated with Fox Valley Families in a false light as violent criminals guilty of serious felonies.” (*Id.* ¶ 16.)

Plaintiffs also allege that Defendants “*intended*” the Beacon Public Notice “to refer to plaintiffs who ‘opposed’ defendants’ facility and thus were *deemed by defendants* to be ‘extremists’ who were said to have well-documented criminal histories as well as a history of advocating criminal activity by others.” (*Id.*) (emphasis added). Plaintiffs provide no facts in support of these conclusions about Defendants’ “intentions”. (*See id.*)

Individual plaintiffs conclusorily allege that Defendants’ statements have harmed their reputations with and among their neighbors in Aurora and surrounding

communities. (*Id.*, at 18, 23.) Without any factual support, the new allegations of the Amended Complaint assert that plaintiffs' property values plummeted "owing to defendants' publicizing the fact" that the new facility contained bulletproof glass. (*Id.* at 23.) Finally, plaintiffs contend that, as a result of Defendants' statements the City of Aurora has limited their activities. (*Id.*)

ARGUMENT

SECTION 2-615 MOTION TO DISMISS

I. ILLINOIS'S CITIZEN PARTICIPATION ACT⁴ PROTECTS DEFENDANTS' RIGHT TO EXERCISE FREE SPEECH AND GRANTS THEM ABSOLUTE IMMUNITY AGAINST PLAINTIFFS' CLAIMS

The Citizen Participation Act provides persons who seek to petition government and speak out on political issues, like Defendants, the "utmost protection for free exercise of these rights..." 735 ILCS 110/5 (2007). Recognizing that the "rights of citizens and organizations to be involved and participate freely...must be encouraged and safeguarded with great diligence" the Act expressly immunizes the Defendants' exercise of free speech and disposes of this lawsuit in its entirety. *See id.*; 735 ILCS 110/15.

A. Purpose and Language of Illinois' Citizen Participation Act

The Illinois Legislature has recently joined a growing number of states⁵ in enacting legislation that provides added protection to individuals who speak out on matters of public concern. The Citizen Participation Act provides a remedy to individuals

⁴ Illinois' Citizen Participation Act is commonly referred to as an "Anti-SLAPP" statute. The statute is intended to address the "disturbing increase in lawsuits termed 'Strategic Lawsuits Against Public Participation'..." 735 ILCS 110/5.

⁵ States that have enacted Anti-SLAPP legislation include: AZ, AK, DE, FL, GA, HI, IN, LA, ME, MA, MN, MS, NE, NV, NM, NY, OK, OR, PA, RI, TN, UT, WA.

faced with harassing lawsuits whose purpose is to chill protected expression. *See* 735

ILCS 110/1 *et seq.* The very language of the Act explains this concern stating:

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

735 ILCS 110/5. Acknowledging the profound importance of safeguarding the ability of citizens and organizations to exercise their right of public speech and the methods of doing so, the Citizen Participation Act provides that any “acts in furtherance of the constitutional rights to petition, speech, association, and participation in government...*are immune from liability, regardless of intent or purpose*, except when not genuinely aimed at procuring favorable government action, result, or outcome.” 735 ILCS 110/15 (emphasis added.) In providing this unqualified immunity, the Act further explains that the statute “shall be construed liberally to effectuate its purposes and intent fully.” 735 ILCS 110/30(b). By creating this broad scope of protection for *any* speech aimed at procuring favorable government action, Illinois’ General Assembly was even more expansive in its language than many of the early Anti-SLAPP statutes it followed.

B. Defendants Are Protected From Plaintiffs’ Allegations Under the Citizen Participation Act

Both the Letter to Alderman Lawrence and the Beacon Public Notice are precisely the type of speech seeking to procure favorable governmental action that the Illinois legislature sought to protect with the Citizen Participation Act. Plaintiffs concede that both publications were made in the midst of the very public effort to stop Planned Parenthood from opening its facility. (*See* Am. Compl. ¶¶ 11, 12, 14.) This effort

included those opposed to the clinic's opening seeking support for their position from public officials. Indeed, plaintiffs describe their activities in opposition to Planned Parenthood and the facility as exercising "their First Amendment rights and civic duties to speak out on public issues of the utmost gravity..." (*See id.* ¶¶ 11-12.)

The Letter to Alderman Lawrence was written to a city official seeking government support for Planned Parenthood and the opening of the new facility. It was written in direct response to the protests and political action taken by persons opposing the opening of the facility and their complaints about how Planned Parenthood handled the permitting process. (*See id.*, Ex. A.) The letter expressed Mr. Trombley's views on the dispute, defended the actions that Planned Parenthood took to safeguard the facility, and shared his concerns about the safety of citizens associated with the Planned Parenthood facility—particularly those building the facility in the midst of such a politically charged situation. (*See id.*) Mr. Trombley sought the cooperation of the City of Aurora and requested that the alderman contact him with any questions. (*See id.* at 1, 3.) Without question, Mr. Trombley was openly and directly participating in the process of government by responding to his organization's opponents through an appeal to relevant government officials and seeking their support. As such, his statements are just the form of speech Illinois has deemed most important and worthy of its statutory protection: "the public policy of the State of Illinois is that the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence." 735 ILCS 110/5.

The Beacon Public Notice was, on its face, a direct appeal to the citizens of Aurora to participate in government and voice their opinion in the public debate: "CALL

YOUR ALDERMAN IN THE AURORA CITY COUNCIL AT 630.844.3619 AND LET THEM KNOW YOU SUPPORT PLANNED PARENTHOOD.” (See Am. Compl., Ex. B.) Like the letter, the Beacon Public Notice explained Planned Parenthood’s plans and goals and expressed concerns about the safety of those citizens associated with the new facility. (*Id.*) Such an advertisement clearly relates to the process of government—a direct appeal for support from local citizens on an issue of grave public concern.

Plaintiffs’ attack on the Defendants for these statements is precisely what the Citizen Participation Act was enacted to remedy -- private citizens having to face burdensome, expensive, and distracting litigation for exercising their First Amendment rights to seek governmental action. See *Shoreline Towers Condominium Ass’n v. Gassman*, No. 07 CH 06273 (March 25, 2008) (attached as Exhibit C) at 8 (recognizing that “the most frequent type of SLAPP suit is for defamation...” (internal citation omitted).)⁶

II. PLAINTIFFS’ DEFAMATION CLAIM FAILS AS A MATTER OF LAW

Even if Illinois’ Citizen Participation Act had not been enacted, plaintiffs’ Amended Complaint still warrants dismissal. As discussed in detail below, there is no legal basis for plaintiffs’ purported defamation claim.

When assessing a motion to dismiss where the conduct at issue is protected by the First Amendment the court must be particularly vigilant. See, e.g., *Kottle v. Northwest Kidney Ctrs.*, 146 F.3d 1056, 1063 (9th Cir. 1998) (quoting *Franchise Realty Interstate*

⁶ In *Shoreline*, Judge Pantle applied the Citizen Participation Act to dismiss the majority of the plaintiffs’ claims. Yet, she allowed the remaining counts to proceed based on her determination that the left over claims were related to conduct by the plaintiff that could not be deemed as genuinely aimed at procuring favorable government action. *Id.* at 13-14. There can be no question here that Defendants’ statements were aimed at procuring favorable action from the Aurora City Council.

Corp. v. San Francisco Local Joint Exec. Bd. of Culinary Workers, 542 F.2d 1076, 1083 (9th Cir. 1976)). Courts routinely grant motions to dismiss defamation claims that, like plaintiffs', are insufficiently pleaded and meritless. See *Seith v. Chicago Sun-Times, Inc.*, 371 Ill. App. 3d 124 (1st Dist. 2007) (innocent construction); *Salamone v. Hollinger Int'l, Inc.*, 347 Ill. App. 3d 837 (1st Dist. 2004) (same); *Kirchner v. Greene*, 294 Ill. App. 3d 672 (1st Dist. 1998) (same).

A. The Alleged Defamatory Statements Are Not “Of and Concerning” Individual Plaintiffs.

Plaintiffs' Amended Complaint states it is alleging a claim for defamation *per se*. (See Am. Compl. ¶¶ 16, 23.) Yet, the Illinois Supreme Court has instructed that in order to be considered defamatory *per se*, a challenged statement “must be so obviously and naturally harmful to the person to whom it refers that a showing of special damages is unnecessary.” *Anderson v. Vanden Dorpel*, 172 Ill. 2d 399, 411-12 (1996). Hence, to state a *per se* claim, the challenged statement “must be ‘of and concerning’ the plaintiff... *i.e.* that the alleged defamatory statement be identifiable about the plaintiff.” *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 765 (1st Dist. 2002) (internal citation omitted). Courts have further determined that if a statement “may reasonably be innocently interpreted or reasonably interpreted as referring to someone other than plaintiff, it cannot be actionable *per se*.” *Anderson*, 172 Ill. 2d at 412 (citing various cases). Despite plaintiffs' attempts to cast them otherwise, neither of the publications identify any of the individual plaintiffs or their organization Fox Valley Families nor can they be reasonably interpreted to have done so.

While the individual plaintiffs conclusorily contend that the challenged statements “pertained directly and unmistakably to the plaintiffs,” (Am. Compl. ¶ 13), a review of

the two publications attached to the Amended Complaint belies this contention. *See Friedman*, 282 Ill. App. 3d at 440 (“exhibits attached to the complaint control; allegations inconsistent with facts in the exhibits must be ignored.”). Not one of the 19 individual plaintiffs’ names is included anywhere in either the Letter to Alderman Lawrence or the Beacon Public Notice. Nor is Fox Valley Families mentioned in either publication.

Because the challenged statements do not specifically identify any of the individual plaintiffs by name or Fox Valley Families, they cannot be defamatory *per se* as a matter of law. *Schaffer v. Zekman*, 196 Ill. App. 3d 727, 732 (1st Dist. 1990). In fact, numerous Illinois cases have dismissed claims like the ones here. *See, e.g., id.* at 733 (affirming dismissal of *per se* and *per quod* claims when plaintiff was not mentioned by name); *Schivarelli v. CBS, Inc.*, 333 Ill. App. 3d 755, 765 (1st Dist. 2002) (affirming dismissal of *per se* and *per quod* claims because they did not mention plaintiffs and therefore were not “of and concerning” them); *Mancari v. Infinity Broadcasting East, Inc.*, 2004 WL 2958765, *5 (N.D. Ill. Nov. 25, 2004) (dismissing defamation claim because statement did not identify plaintiff specifically and could be innocently construed).

In *Velle Transcendental Research Ass’n, Inc. v. Esquire, Inc.*, the court affirmed the dismissal of a defamation claim brought by Velle, a non-profit corporation, and its president Richard Brayton against Esquire Magazine. *Velle*, 41 Ill. App. 3d 799, 803 (1st Dist. 1976.) The challenged article referred to a different religious organization (“Ordo Templi Orientis”) as a cult and discussed Brayton’s wife’s participation in Ordo Templi Orientis. Plaintiffs contended that Velle and Brayton’s reputation had been injured because the public knew that Brayton and his wife were members of Velle at the time the

article was published and would infer that it too was a cult. The court dismissed plaintiffs' claims because "[t]he allegedly libelous publication *nowhere named any entity* called [Velle], *or any individual* named Richard Brayton." *Id.* at 803 (emphasis added). The *Velle* court noted that the complaint "merely concludes that Velle was referred to in the article as the 'Ordo Rempli Orientis'" and such a conclusion must be disregarded. *Id.*

Like the *Velle* plaintiffs, here plaintiffs seek to argue that they were allegedly harmed based on imputations that purportedly derive from Mr. Trombley's statements regarding the actions taken by others -- namely, the Pro-Life Action League and Joe Scheidler. (See Am. Compl. ¶¶ 14, 17.) Plaintiffs offer the unsubstantiated conclusion that Defendants "attempted to impute to these plaintiffs statements about third parties that were themselves false and misleading." (*Id.* at 20.) But as the *Velle* case demonstrates, Illinois does not permit defamation claims by imputation. Just as in *Velle*, plaintiffs sought to bridge the gap between the challenged statements and the allegations of the complaint by arguing that certain inferences about them could be drawn from the statements about others. As such, their claims fail because they are not "of and concerning" any of the plaintiffs and therefore are not actionable as a matter of law. See *Velle*, 41 Ill. App. 3d at 803; *Mancari*, 2004 WL 2958765 at *3 ("[w]hether a statement is capable of being understood as referring to the plaintiff is a question of law"); see also *Imperial Apparel, Ltd. v. Cosmo's Designer Direct, Inc.*, 367 Ill. App. 3d 48, 58 (1st Dist. 2006), *affirmed in part and reversed in part on other grounds*, 277 Ill. 2d 381, 390 (2008) (statements "did not refer to [plaintiffs] by name or give the last names of the [individual plaintiffs] and because ... the statements could reasonably be interpreted as referring to someone other than the plaintiffs...[they are] not actionable *per se*.").

B. The Publications Can Be Innocently Construed And Thus Are Not Defamatory.

It is a fundamental tenet of defamation law in this State that recovery “will not be allowed” if an allegedly defamatory statement “can reasonably be given an innocent construction.” *Anderson*, 172 Ill. 2d 399 at 412. Under the innocent construction rule, statements must be construed “stripped of innuendo and read in the best possible light.” *Makis v. Area Publ’ns Corp.*, 77 Ill. App. 3d 452, 457 (1st Dist. 1979). Moreover, “[i]f the statement is reasonably capable of a nondefamatory interpretation, given its context, it should be so construed, and there is no balancing of reasonable constructions.” *Chicago City Day School v. Wade*, 297 Ill. App. 3d 465, 471 (1st Dist. 1998). In other words, the claim must be dismissed “if there is *any* possible reasonable interpretation of the language.” *Id.* (citation omitted, emphasis added). The Illinois Supreme Court has emphasized that the innocent construction rule is a “rigorous standard,” recognizing that this rule favors defamation defendants, in that “a nondefamatory interpretation *must* be adopted” if reasonable. *Mittleman v. Witous*, 135 Ill. 2d 220, 234 (1989) (emphasis added), *affirmed in part and modified on other grounds*, 156 Ill. 2d 16 (1993). The “tougher standard is warranted” because of the presumption of damages for defamation *per se*. *Mittleman*, 135 Ill. 2d at 234. It is also justified because it “advances the constitutional interests of free speech and free press and encourages the robust discussion of daily affairs.” *Tuite v. Corbitt*, 224 Ill. 2d 490, 511 (2006).

Whether a statement is capable of innocent construction is a question of law. *Chapski v. Copley Press*, 92 Ill.2d 344, 352 (1982). *See also Tuite*, 224 Ill. 2d at 510 (“court is not ... required to accept the plaintiff’s *interpretation* of the disputed statement as defamatory *per se*.”) (emphasis in original); *Seith*, 371 Ill. App. 3d at 135-36

(statement “ties to the mob-linked 1st Ward,” considered in context of whole article, did not impute that he committed any crime).

Through selective editing, plaintiffs imply that in the letter to Alderman Lawrence, Mr. Trombley, in describing “zealots who have been opposing our new facility,” was, in fact, stating that all persons -- and thus, plaintiffs -- opposing the new facility were “zealots.” (*See* Am. Compl. ¶ 14.) It is clear, however, from the face of the Letter to Alderman Lawrence that Mr. Trombley did not make such a statement. Instead Mr. Trombley’s use of “zealot” was specifically in reference to his previous discussion of the Pro-Life Action League and Joe Schiedler and must be read in that context.

Anderson, 172 Ill. 2d at 412; *see also Mancari*, 2004 WL 2958765, at *3. Similarly, Mr. Trombley’s letter cannot be reasonably interpreted to state that all who opposed the new facility, or even all people from Aurora who opposed the new facility, have a well-documented history of violence and criminal activity. (*See* Am. Compl. ¶ 14.) When read in context, the meaning of Mr. Trombley’s statement is obvious: the Pro Life Action League has a well-documented history of violence. The relevant portion of the Letter to Alderman Lawrence states:

The activists in the Pro-Life Action League who have been opposing our new facility are headquartered in Aurora and have a well-documented history against both persons and property as well as other related criminal activity.

We think you will understand the urgency of our concerns when you consider the following facts about the Pro-Life Action League and its leader, Joe Schiedler.

(Am. Compl., Ex. A, at 2.)

Plaintiffs also argue that the Beacon Public Notice somehow defamed them. According to plaintiffs: “Defendants deliberately, falsely and recklessly intended that

said advertisement be understood, and it was understood, to refer to plaintiffs who ‘opposed’ defendants’ facility and thus were deemed by defendants to be ‘extremists’ who were said to have well-documented criminal histories as well as a history of advocating criminal activity by others.” (Am. Compl. ¶ 21.) Plaintiffs provide only this conclusory allegation, however, without any indication as to how the notice implicated them, and do not even provide any examples of which statements they allege to be defamatory. Like the letter, the Beacon Public Notice does not identify any organizations or individuals besides Joe Schiedler and the Pro-Life Action League. While the notice does ask Aurora residents to resist the influence of “extremists,” it does not in any way suggest that anyone besides Joe Schiedler and the Pro-Life Action League are radicals who use violent tactics. The distorted reading plaintiffs advocate alters Planned Parenthood’s intended message and is not supported by the actual substance of the publication. More importantly, such a reading is contrary to law. *See Green v. Trinity Int’l Univ.*, 344 Ill.App.3d 1079, 1093 (2d Dist. 2003) (courts must consider “statements in context, giving the words and their implications their natural and obvious meaning.”).

The court’s analysis in the *Mancari* case is instructive here. 2004 WL 2958765, at *2-5. In *Mancari*, plaintiffs Frank Mancari and his suburban car dealerships alleged WBBM Newsradio committed defamation *per se* by falsely stating that Bruno Mancari was a “suburban car dealer” when it knew that Frank Mancari was the car dealer and by suggesting that the car dealerships were an “illegal chop shops operation.” *Id.* at *1. In the *Mancari* case, the broadcast at issue did not even use either Bruno or Frank’s first name and plaintiff argued that a reasonable jury could believe that the broadcast was about Frank. *Id.* at *4. While the *Mancari* court actually agreed that such an

interpretation was possible, it dismissed that claim because “Illinois law expressly requires that ‘a nondefamatory interpretation must be adopted *if it is reasonable.*” *Id.* (emphasis in original) (*citing Anderson*, 172 Ill. 2d at 412-13). The *Mancari* court further instructed “if a statement is capable of two reasonable constructions, one defamatory and one innocent, the innocent one will prevail.” *Id.* (internal citations omitted).

In short, plaintiffs’ self-serving characterizations and constructions of the statements in the two publications are not well-pleaded facts to show why they are defamatory *per se*. See *Harris Trust and Sav. Bank v. Phillips*, 154 Ill. App. 3d 574, 581-82 (1st Dist. 1987), *reversed on other grounds*, 135 Ill. 2d 220 (1989). When a reasonable reading is given to the publications, they are capable of innocent construction and not actionable.

III. INDIVIDUAL PLAINTIFFS HAVE NOT ALLEGED AND CANNOT ESTABLISH A DEFAMATION *PER QUOD* CLAIM

Even if this court were to construe plaintiffs’ Amended Complaint as attempting to allege defamation *per quod* (rather than a *per se* claim),⁷ plaintiffs’ claims still fail as a matter of law for at least two additional reasons: plaintiffs fail to allege any special damages; and they have not pled extrinsic facts to show that others would perceive the statements about the Pro-Life Action League and Joe Scheidler as referring to them. See, *e.g.*, *Anderson*, 172 Ill. 2d at 416.

A. Individual Plaintiffs Failure To Plead Special Damages Requires Dismissal.

⁷ Illinois recognizes two different types of defamation: defamation *per se* and defamation *per quod*. Statements are defamatory *per quod* if they (1) are not apparently defamatory on their face such that they do not convey injurious meaning without additional allegations of extrinsic facts or innuendo, or (2) do not fall under one of the *per se* categories of defamation, but are still defamatory on their face. *Schivarelli*, 333 Ill. App. 3d at 759.

Because individual plaintiffs fail to allege defamation *per se*, they must set forth special damages with particularity. *Schaffer*, 196 Ill. App. 3d at 733. With respect to damages, the bulk of plaintiffs' allegations only assert conclusions that their reputations have been harmed and that their First Amendment rights have been restricted, specifically with respect to their protest and counseling activities. (Am. Compl. ¶¶ 23, 18.) These general, conclusory allegations fail to support special damages as a matter of law, and thus any *per quod* claim fails. *See Schaffer*, 196 Ill. App. 3d at 733 (citing several Illinois cases that have held public hatred, injury to business reputation, ill health, emotional distress, damage to good name as insufficient to constitute special damages); *see also Anderson*, 172 Ill. 2d at 416-17 (dismissing conclusory special damages allegations that "plaintiff 'has been damaged monetarily by losing gainful employment and wages' and that she 'has suffered great mental pain and anguish and incurred great expense for the treatment thereof.'")

Moreover, plaintiffs' newly-added allegations that their "property values plummeted owing to defendants' publicizing the fact that they had installed bulletproof glass in their new facility, coupled with their false propaganda about plaintiffs' zealotry and 'well documented history of advocating violence against both persons and property as well as other related criminal activity'" fare no better. (Am. Compl. ¶ 23.) As discussed in *Anderson*, such general allegations regarding loss in property value are insufficient to state a claim. *Id.* at 416-17; *see also Maag v. Ill. Coal. For Jobs, Growth*

and Prosperity, 368 Ill. App. 3d 844, 853 (5th Dist. 2006) (allegations of economic loss do not qualify as special damages).⁸

B. Individual Plaintiffs Fail To Plead Extrinsic Facts Implying Defamatory Meaning.

The new allegations in the Amended Complaint that the allegedly defamatory publications “were reasonably understood by plaintiffs’ neighbors and by many other citizens throughout Aurora and the Fox River Valley to refer to everyone who appeared at the site . . .” are entirely conclusory. (Am. Compl. ¶ 16.) Plaintiffs have failed to put forth any facts supporting those conclusions. Accordingly, these allegations also fail. *See, e.g., Schaffer*, 196 Ill. App. 3d at 731 (affirming defamation *per quod* dismissal for failure to plead extrinsic facts); *see also Behringer v. Page*, 204 Ill.2d 363, 369 (2003) (“Illinois is a fact-pleading jurisdiction [requiring plaintiff to] allege facts sufficient to bring his or her claim within the scope of the cause of action asserted.”).

IV. PLAINTIFFS FAIL TO STATE A CLAIM AGAINST GEMINI

Plaintiffs’ Amended Complaint is nearly silent with respect to Defendant Gemini. In fact, plaintiffs only allegations regarding Gemini are that it “is a subsidiary or affiliate of Planned Parenthood,” that Gemini “was Planned Parenthood’s active co-partner and joint adventurer” (Am. Compl. ¶ 4), and that Mr. Trombley, in authoring the Letter to Alderman Lawrence “act[ed] for himself and also on behalf of defendants Planned Parenthood and Gemini.” (*Id.* ¶ 12.) This conclusory allegation regarding the letter is contradicted by the actual exhibit. In the Letter to Alderman Lawrence, Mr. Trombley

⁸ With respect to the allegations regarding the effect of statements about “bulletproof glass” at the facility, it should be noted that no such statements appear in either of the allegedly defamatory publications and thus can have no relevance here. Further, even if such a statement existed, plaintiffs fail to allege any causal link between the bulletproof glass at the facility and any purported devaluation to their property. In fact, more than half of the plaintiffs do not even live in Aurora. (*See* Am. Compl. ¶ 16.)

states that he is writing in his capacity as “President and CEO of Planned Parenthood/Chicago Area.” (*Id.*, Ex. A, at 3.) Gemini is *never* identified as a signatory of the letter. (*Id.*) Gemini is not even mentioned in the Beacon Public Notice. (*See id.*, Ex. B.)

Although plaintiffs have altered their original allegations to self-servingly label Gemini as a “co-partner and joint adventurer” in the “cooperative effort to establish the nation’s largest abortion facility,” such conclusory allegations do not alter the facts. (*See id.* ¶ 4.) Gemini is merely a subsidiary of Planned Parenthood. As such it cannot be held liable for Planned Parenthood or Mr. Trombley’s actions. *Forsythe v. Clark USA, Inc.*, 224 Ill. 2d 274, 291 (2007) (“the mere fact of a parent-subsidary relationship, without a great deal more, does not give rise to liability”); *see also Divco-Wayne Sales Fin. Corp. v. Martin Vehicle Sales, Inc.*, 45 Ill.App.2d 192, 196 (1st Dist. 1963) (holding that parent-subsidary relationship would not render wholly-owned subsidiary liable). More importantly, plaintiffs’ new allegation does not state that Gemini had any role in making the statements at issue. Gemini should be dismissed as a defendant in this action.

SECTION 2-619 MOTION TO DISMISS

IV. THE PRO-LIFE ACTION LEAGUE’S CLAIMS MUST BE DISMISSED

A. The Pro-Life Action League’s Claims Fail Because The Allegedly Defamatory Statements Are True

The Letter to Alderman Lawrence and the Beacon Public Notice discussed some of the factual findings reached by a jury with respect to the Pro-Life Action League in 1998. The statements about the documented history of the Pro-Life Action League’s violent conduct *are* true. As such they *a fortiori* meet the legal standard of being “substantially true” and are not actionable as a matter of law. *Harrison v. Chicago Sun-*

Times, Inc., 341 Ill. App. 3d 555, 563 (1st Dist. 2003) (substantial truth is a question of law when no reasonable jury could find that it had not been established).⁹ As discussed in further detail below, the post-verdict procedural history of the *NOW v. Schiedler* litigation did nothing to undermine the underlying factual findings of the jury cited in the statements at issue. Accordingly, it was both fair and substantially true to recite those findings and Defendants can not be liable for having done so.

Under Illinois law, courts have dismissed defamation claims based on substantial truth in cases where the alleged statements had less connection to the underlying facts than exist here. For example, in *Maag*, flyers opposing a judge's re-election that stated he "participated in rulings that benefited criminal defendants" were substantially true even if they were "simplistic and misleading." 368 Ill. App. 3d at 852. Similarly, in *Global Relief Foundation, Inc. v. New York Times Co.*, the court granted summary judgment based on substantial truth despite "editorial spin" in reporting by AP regarding plaintiffs' suspected support of terrorists. 2003 WL 403135, at *6 (N.D. Ill. Feb. 20, 2003), *aff'd*, 390 F.3d 973 (7th Cir. 2004); *see also Cianci v. Pettibone Corp.*, 298 Ill. App. 3d 419 (1st Dist. 1998) (granting summary judgment based on substantial truth because statements made about plaintiff's unethical use of the company's courier service were admitted in a deposition).

1. The *NOW v. Schiedler* Verdict

Plaintiffs allege that Defendants' description of the jury's findings against the Pro-Life Action League in 1998 was "palpably false and misleading" because the district

⁹ A defendant establishes a "substantial truth" defense when she shows that the "gist" or "sting" is true. *Id.* at 563. Further, the statement is protected even if it "is not technically accurate in every detail." *Id.* at 564. Importantly, "the burden of proving falsity rests on the plaintiff." *Haynes v. Alfred A. Knopf, Inc.*, 8 F.3d 1222, 1228 (7th Cir. 1993) (citing *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 776 (1986)).

court decision was subsequently reversed twice by the United States Supreme Court. (Am. Compl. ¶ 20.) In both the Letter to Alderman Lawrence and the Beacon Public Notice, Defendants list and describe the crimes proven at the 1998 trial, prefacing their statements with “After a six-week trial in 1998 . . . These crimes proven at trial included . . .”. (See Am. Compl., Ex. A & B.)

Just as Mr. Trombley stated, a jury *did* in fact convict Joe Scheidler and the Pro-Life Action League of 121 crimes in 1998. (See Ex. B at 2.) Jury verdicts will support a truth defense in defamation actions. See, e.g., *Murphy v. Modroll*, 2006 WL 2328588, at *2 (Ky. App. Aug. 11, 2006) (finding jury verdict supported defendant’s statement because statement was an opinion based on disclosed facts); *Wehling v. CBS*, 721 F.2d 506, 508 (5th Cir. 1983) (jury verdict of guilt conclusively established the truth of CBS’s broadcast statement that defendant was defrauding the United States and students).

The *NOW* jury verdict was affirmed in relevant part by the Seventh Circuit in 2001 and then reversed by the Supreme Court in 2003 on the sole legal issue of whether the Pro-Life Action Network, among others, “obtained” property from its victims as required for a violation under the Hobbs Act. The United States Supreme Court did not overturn the jury’s factual findings. See *Scheidler v. Now, Inc.*, 537 U.S. 393 (2003) (“*NOW I*”). Most importantly, even in their decisions overturning the lower court rulings on legal grounds, the United States Supreme Court acknowledged more than once that the Pro-Life Action League committed crimes. In *NOW II*, the Court noted that, “petitioners’ counsel readily acknowledged at oral argument that *aspects of his clients’ conduct were criminal.*” *Id.* at 404 (emphasis added). Perhaps even more instructive was the Court’s statement that:

The crime of coercion, which more accurately describes the nature of petitioners' actions, involves the use of force or threat of force to restrict another's freedom of action . . . individuals who, like petitioners, ***employed threats and acts of force and violence*** to dictate and restrict the actions and decisions of businesses.

Id. at 405-06 (emphasis added).¹⁰ Thus, the Supreme Court's only position on the factual findings described by Defendants was to acknowledge them as true and to suggest that the Pro-Life Action League and the other defendants were in fact guilty of the crime of coercion. *Id.*

2. The Beacon Public Notice Photograph

Plaintiffs allege that the photograph of a Planned Parenthood facility destroyed by arson in Michigan was “understood, to refer to plaintiffs who ‘opposed’ defendants’ facility . . .” (Am. Compl. ¶ 21.) But the Beacon Public Notice does *not* accuse any of the plaintiffs of arson. In fact, the caption of the photo in the Notice describes it as “A Planned Parenthood facility destroyed by arson ***in Michigan.***” (Am. Compl., Ex. B) (emphasis added). Plaintiffs’ suggestion that it refers to conduct by anyone in Aurora is contrary to the very text of the document. *See Friedman*, 282 Ill. App. 3d at 440 (“exhibits attached to the complaint control; allegations inconsistent with facts in the exhibits must be ignored.”) Moreover, any such reading would be contrary to defamation jurisprudence. *Chicago City Day School*, 297 Ill. App. 3d at 471 (if statement “reasonably capable” of nondefamatory interpretation, it must be so construed).

¹⁰ The second Supreme Court case that plaintiffs mention involved such a narrow legal issue—the scope of underlying acts required for a Hobbs Act violation—that it did not reference any facts from any of the prior cases. *See Scheidler v. NOW, Inc.*, 547 U.S. 9 (2006) (“*NOW III*”).

B. The Pro-Life Action League's Claims Fail Because The Allegedly Defamatory Statements Are Protected By Qualified Privilege

The allegedly defamatory statements are also protected by qualified privilege because they involved recognized interests of public safety and access to medical care. The existence of a qualified privilege is a question of law.¹¹ *Turner v. Fletcher*, 302 Ill. App. 3d 1051, 1055 (Ill. App. Ct. 1999). Illinois courts follow the Restatement (Second) of Torts to determine whether a qualified privilege exists. *Id.* at 1056. There are three general categories of qualified privilege:

- (1) situations which involve some interest of the person who publishes the defamatory matter;
- (2) situations which involve some interest of the person to whom the matter is published or of some third person; and
- (3) situations which involve a recognized interest of the public.

Id. at 1055; *see also Quinn v. Jewel Food Stores, Inc.*, 276 Ill. App. 3d 861, 871 (1995) (same). To determine whether a qualified privilege exists, courts look to the occasion that gave rise to the allegedly defamatory statement to determine if that occasion provided a duty or interest that would entitle it to protection as a matter of public policy. *Turner*, 302 Ill. App. 3d at 1055; *Quinn*, 276 Ill. App. 3d at 871. In doing so, the court must weigh the value of the protected interest against the degree of damage expected from the publication of the allegedly defamatory material. *Turner*, 302 Ill. App. 3d at 1055; *Wexler v. Morrison Knudsen Corp.*, 2000 U.S. Dist. LEXIS 16789, *17 (N.D. Ill. Nov. 15, 2000) (“Qualified privilege effectuates the policy of facilitating the free flow of information in order ultimately to unearth the correct information.”).

¹¹ Once a defendant has shown the existence of a qualified privilege, the burden shifts to the plaintiff to show that the privilege was abused. *Id.* If the plaintiff's pleadings and exhibits do not reveal a genuine issue of material fact, the defendant will receive a judgment as a matter of law. *Id.*

Here, the recognized interests of public safety and access to medical care were involved in the allegedly defamatory communications. The Letter to Alderman Lawrence defended the actions that Planned Parenthood took to safeguard the facility in order to provide health care services and shared Mr. Trombley's concerns about the safety of citizens associated with the Planned Parenthood facility—particularly those building the facility in the midst of such a politically charged situation. (*See Am. Comp., Ex. A.*) In his letter, Mr. Trombley sought the cooperation of the City of Aurora and requested that the Alderman contact him with any questions. (*See Id.* at 1, 3.) Mr. Trombley described past events surrounding the Pro-Life Action League and its leader, Joe Scheidler, in an effort to illustrate the potential dangers faced by his organization and its members. *Id.* at 2-3. Similarly, the Beacon Public Notice explained the organization's plans and goals and expressed concerns about the safety of those citizens associated with the new facility. (*See Am. Comp. Ex. B.*)

In cases such as this, where a recognized interest of the public is involved, courts have granted dispositive motions based on a qualified privilege. *See, e.g., Locsmondy v. Arrow Pneumatics*, 2001 WL 109810 (N.D. Ill. Feb. 5, 2001) (qualified privilege applied because of public interest in “protecting victims, witnesses, and investigators of sexual harassment.”); *see also Wexler*, 2000 U.S. Dist. LEXIS 16789 at *20 (qualified privilege applied because of “[public] interest in eradicating racial harassment in the workplace.”).

V. THE INDIVIDUAL PLAINTIFFS, INCLUDING ERIC SCHEIDLER, DO NOT HAVE A CLAIM FOR GROUP DEFAMATION

Because Eric Scheidler is a member of the Pro-Life Action League, plaintiffs have alleged that statements about the Pro-Life Action League can be imputed to Eric Scheidler personally, as a member, and to the other individual plaintiffs who “have been

associated with the League owing to their association with Eric Scheidler.” (Am. Compl. ¶ 17.) These attenuated efforts to allege group defamation cannot survive as a matter of law. The Pro-Life Action League is an organization of 5,000 individuals and, as such, statements about a group of that size cannot be construed as referring to unnamed individual group members.¹² See *Gintert v. Howard Publications, Inc.*, 565 F. Supp. 829, 833 (N.D. Ind. 1983) (dismissing claims relating to groups of 165 and 2000 stating “no action will lie for the publication of defamatory words directed at a large group”); see also PROSSER & KEETON ON TORTS 750 (4th ed., 1971)).

In *Michigan United Conservation Clubs v. CBS News*, 485 F.Supp. 893, 897 (W.D. Mich. 1980), the court pointed to both the RESTATEMENT (SECOND) OF TORTS § 564 (1977) as well as a legion of cases in other jurisdictions for its holding that statements about a large group could not support a defamation claim. *Id.* at 897-900; see also *Sanderson v. Ind. Soft Water Servs.*, 2004 U.S. Dist. LEXIS 15671 (D. Ind. 2004) (rejecting concept of group libel).

The Pro-Life Action League is too large for any statements made about it to be understood as referring specifically to any individual plaintiffs without mentioning any of them with more particularity.¹³ To hold otherwise would subvert basic First Amendment protections on political speech.

¹² Aware that the law of group defamation negates their claims, plaintiffs now allege that “[t]he League is a small organization with only three voting members” while simultaneously acknowledging that it is engaged in pro-life activism “around the United States” and “it often refers... to those who participate in its demonstrations and other activities as ‘members.’” (Am. Compl. ¶¶ 1, 17.)

¹³ The same analysis would apply to any attempt that plaintiffs would make to assert a claim on behalf of the “hundreds and thousands” who opposed the opening and operation of the Aurora facility. (See Am. Compl. ¶ 5.) See also *Imperial Apparel*, 227 Ill. 2d at 402 (disparaging statements about groups based on ethnicity or religion are not actionable as defamation).

CONCLUSION

The ability of citizens to participate in government is the foundation of a democracy. With this lawsuit, plaintiffs have attempted to sue Defendants for exercising that right. The Illinois General Assembly has unequivocally decreed that such lawsuits cannot be tolerated. To allow this case to proceed would discourage citizen participation in constitutionally-protected activities and ultimately chill vital public speech. The Court should dismiss plaintiffs' Amended Complaint with prejudice.

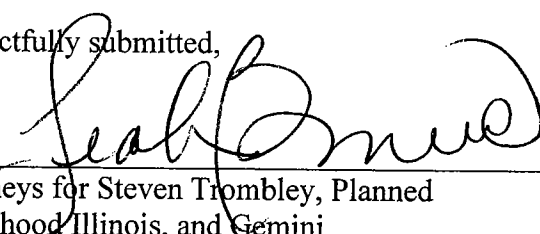
WHEREFORE, Defendants respectfully request the following relief:

- A. Dismiss the case with prejudice.
- B. Award Defendants all reasonable attorney's fees and costs incurred in connection with this motion pursuant to 735 ILCS 110/25.
- C. Such other and further relief that this Court deems equitable and just under the circumstances.

Dated: May 14, 2008

Respectfully submitted,

By:



Attorneys for Steven Trombley, Planned
Parenthood Illinois, and Gemini
Office Development LLC

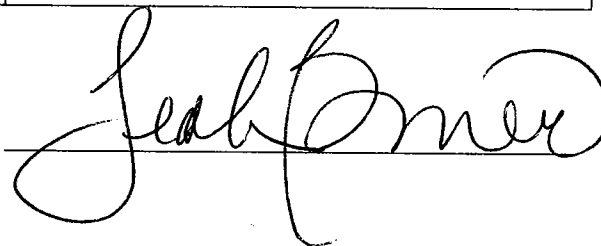
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12416612

Certificate of Service

Leah Bruno, hereby certifies that she served copies of the foregoing **Memorandum In Support of Defendants' Motion To File Memorandum In Support Of Motion To Dismiss Amended Complaint Pursuant To Section 2-619.1 and For Further Relief Under The Citizen Participation Act** on the parties named below by electronic mail and the manners indicated on May 14, 2008:

<p><u>By Messenger Delivery</u></p> <p>Thomas Brejcha Thomas More Society 29 South LaSalle Street Suite 440 Chicago, IL 60603</p>	<p><u>By U.S. Mail</u></p> <p>Jason R. Craddock Box 1514 Sauk Village, IL 60411</p>
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QUESTIONS & ANSWERS

League Questions and Answers

Here you will find the answers to the most frequently asked questions about the Pro-Life Action League. See also the separate About the League section of our website.

- **When was the Pro-Life Action League founded?**
- **What does the Pro-Life Action League do to fight abortion?**
- **What is the Pro-Life Action League's position on the use of violence to fight abortion?**
- **How many members does the Pro-Life Action League have?**
- **How does one become a member of the Pro-Life Action League?**
- **Does the Pro-Life Action League have a chapter in my area?**
- **What is the tax status of the Pro-Life Action League?**
- **Where does the Pro-Life Action League receive its funding?**

When was the Pro-Life Action League founded?

The Pro-Life Action League was founded in 1980 by Joseph Scheidler with the aim of saving babies from abortion through non-violent direct action.

What does the Pro-Life Action League do to fight abortion?

The Pro-Life Action League fights abortion with a variety of tactics and strategies. In his book, *CLOSED: 99 Ways To Stop Abortion*, as the title suggests, Joe Scheidler identifies nearly 100 ways to fight abortion, all of which have been employed by the League over the years.

The League especially concentrates maintaining a presence at abortion facilities for prayer and counseling, public protest like our Face the Truth Tours, youth outreach, working with the media, and defending and promoting pro-life activism.

For more details on these activities, see the About the League section of this site.

What is the Pro-Life Action League's position on the use of violence to fight abortion?

The Pro-Life Action League utterly opposes the use of violence in the fight against abortion, whether directed at abortion facilities and equipment, abortion providers or clinic staff or

abortion proponents.

Our reasons for opposing violence are summarized in "Violence: Why It Won't Work", Chapter 81 of Joe Scheidler's activist handbook, *CLOSED: 99 Ways To Stop Abortion*.

How many members does the Pro-Life Action League have?

The Pro-Life Action League has over 5,000 members who support our work with their prayers and charitable donations. Many of these members participate in pro-life activism, either with the League in the Chicago area or in their own cities and towns.

The League also has a dozen full- and part-time staff members and regular office volunteers who manage day-to-day operations and activities.

How does one become a member of the Pro-Life Action League?

To become a member of the Pro-Life Action League, either make a tax-deductible donation to the Pro-Life Action League or join in our activities.

Does the Pro-Life Action League have a chapter in my area?

At this time, the Pro-Life Action League does not have chapters in cities outside Chicago. However, we keep in contact with many different pro-life groups around the country who are involved in many of the same kinds of activities that we are.

What is the tax status of the Pro-Life Action League?

The Pro-Life Action League is a 501(c)(3) not-for-profit organization. A copy of the League's IRS tax status statement is available upon request by calling our office at 773-777-2900. Contributions to the League are tax-deductible.

How does the Pro-Life Action League receive its funding?

The Pro-Life Action League is a not-for-profit organization funded solely by charitable donations. We receive no funding from any level of government.

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4-20-18

Scheidler, et al

SPECIAL INTERROGATORIES AND VERDICT FORM

We, the jury in this action, unanimously find as follows:

1. Is the Pro-Life Action Network (PLAN) a group of people or organizations associated together for a common purpose?

Yes No

2. Were the following Defendants associated with PLAN? (see Jury Instruction No. 20 for the definition of "associated with")

Joseph Scheidler Yes No

Andrew Scholberg Yes No

Timothy Murphy Yes No

Pro-Life Action League Yes No

Operation Rescue Yes No

3. Did the following Defendants participate in the operation or management of PLAN? (see Jury Instruction No. 21 for a definition of participation in operation or management)

Joseph Scheidler Yes No

Andrew Scholberg Yes No

Timothy Murphy Yes No

Pro-Life Action League Yes No

Operation Rescue Yes No

4. Did any Defendant, or any other person associated with PLAN, commit any of the following acts?

		Yes	Number of Acts	No
(a)	Acts or threats involving extortion against any patient, prospective patient, doctor, nurse, or clinic employee, in violation of federal law	✓	21	
(b)	Acts or threats involving extortion against any patient, prospective patient, doctor, nurse, or clinic employee, in violation of the law of any state	✓	25	
(c)	Threats of murder against a doctor, nurse, or clinic employee		0	✓
(d)	Attempt or conspiracy to do any of the acts listed above, even if the act was not actually carried out	✓	25	
(e)	Acts or threats of physical violence to any person or property	✓	4	
(f)	Travel across state lines, or the use of the mail or telephone, with intent to commit or facilitate an unlawful act, such as extortion, under state or federal law	✓	23	
(g)	Attempt to do an act described in (f) above, even if the act was not actually carried out	✓	23	
(h)	Causing another person to do an act described in (f) above		0	✓

5. Were at least two (2) of these acts committed during any ten-year period?

Yes No

6. If you answered "yes" to any item of 4(a) or 4(b), was your answer based solely on blockades of clinic doors or sit-ins within clinics, without more?

Yes No

7. Did PLAN or persons associated with PLAN engage in a "pattern" of at least two of the acts that you found in Question 4 above? (see Jury Instruction No. 28 for the definition of "associated with")

Yes No

8. Did any of the acts that you found in Question 4 above affect interstate commerce? (see Jury Instruction No. 19 for the definition of interstate commerce)

Yes No

9. If any defendant or any person associated with PLAN committed any two (2) acts described or listed above in question number 4 within any 10 year period, did those acts proximately cause injury to the business or property of the following plaintiffs? (see Jury Instruction No. 28 for the definition of proximate cause)

The women represented by NOW:

Yes No

Delaware Women's Health Organization:

Yes No

Summit Women's Health Organization:

Yes No

If you answered "yes" to Questions 1, 5, 7 and 8, and if you found that at least two acts were committed in Question 4, and if you answered "yes" as to any Defendant(s) in Questions 2 and 3, you have found those Defendant(s) liable on Claim I, and you should proceed to the next question:

10. As to the Defendants whom you have found liable on Claim I, what amount will adequately compensate these Plaintiffs for their RICO injuries?

Summit Women's Health Organization \$ 54,471.23

Delaware Women's Health Organization \$ 31,455.64

If you found all of the Defendants liable on Claim I, you need not proceed any further; simply go to the last page and sign and date the Verdict Form.

If you did not find all of the Defendants liable on Claim I, you should answer the following questions as to Claim II for any such Defendant(s):

11. Did the following Defendants combine or agree with one another or with others to operate PLAN through a pattern of acts illegal under RICO?

Joseph Scheidler Yes No

Andrew Scholberg Yes No

Timothy Murphy Yes No

Pro-Life Action League Yes No

Operation Rescue Yes No

12. As to the Defendant or Defendants whom you have found liable on Claim II, what amount will adequately compensate these Plaintiffs for their RICO injuries?

Summit Women's Health Organization \$ _____

Delaware Women's Health Organization \$ _____

Please now sign and date the verdict form and tell the bailiff that you have reached a verdict

4-20-98
Date

[Signature]
Foreperson

[Signature]
Juror

[Signature]
Juror

[Signature]
Juror

[Signature]
Juror

[Signature]
Juror

Juror

Juror

Juror

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Juror

Juror

IN THE CIRCUIT COURT OF COOK COUNTY, ILLINOIS
COUNTY DEPARTMENT, CHANCERY DIVISION

SHORELINE TOWERS CONDOMINIUM)
ASSOCIATION, et al.,)
)
Plaintiffs,)
)
v.)
)
DEBRA GASSMAN)
)
Defendant.)

No. 07 CH 06273

Hon. Kathleen Pantle

ORDER

This matter comes before the court on Defendant, Debra Gassman's ("Gassman"), Motion to Dismiss, pursuant to 735 ILCS 5/2-619. Gassman is a former resident of Shoreline Towers Condominiums, located at 6301 North Sheridan Road in Chicago, a twin-tower condominium consisting of commercial and residential units. (Complaint, ¶¶ 1 & 7). In or about 2004, when defendant was still a resident, a dispute arose between her and Shoreline Towers Condominium Association ("Association") regarding an Association rule that prohibited unit owners from placing personal objects of any sort in the common elements, including common hallways and doorways. (Complaint, ¶¶ 13, 15, 16). Gassman, who is of the Jewish faith, took issue with the rule because it prohibited her ability to display a mezuzah on her doorway. A mezuzah is commanded by Jewish law to be placed on every door in a home or business owned by a Jewish person. 14 *Encyclopedia Judaica 2nd Edition*, 156-57. In an attempt to remedy the effects of this rule, Gassman filed several suits alleging religious discrimination.

On March 15, 2006, Gassman filed a religious discrimination claim with the Illinois Department of Human Rights, which was dismissed on January 29, 2007 for lack of substantial

evidence. (Complaint, ¶¶ 22-24). Then, in May 2005, she filed a religious discrimination complaint with the Office of the Attorney General of the State of Illinois. This action was closed on November 28, 2005 pursuant to the Association's voluntary amendment of its rules on September 12, 2005. (Complaint, ¶¶ 20-21). The amendment states "the display of any religious symbol is limited to one per unit; is limited to display on the door or doorframe of the resident's unit..." (Complaint, Exhibit 1). On May 20, 2005, Gassman filed a religious discrimination complaint with the City of Chicago Commission on Human Relations, an action that is still pending. (Complaint ¶¶ 18-19). Finally, on September 16, 2005, she filed a religious discrimination claim against the Association in the United States District Court for the Northern District of Illinois. On August 7, 2006, the Association prevailed on partial summary judgment and on November 2, 2006, the Association prevailed after a jury trial. (Complaint, ¶¶ 26-29).

It is plaintiffs' contention that defendant began a campaign of harassment and intimidation against plaintiffs and used her position as a Public Defender to conspire with members of the Cook County Sheriff's Department ("Sheriff") and the Chicago Police Department ("CPD") to further her purpose. (Complaint, ¶¶ 31-33). Plaintiffs allege this behavior interfered with the day-to-day operations of the Association to such an extent that it is unable to allocate sufficient resources for the proper administration of the property. (Complaint, ¶ 34).

Beginning in July, 2005, plaintiffs claim Gassman began supplying inaccurate and damaging information to the Jewish Star, a publication geared primarily to the Jewish community. Based on the information provided by the defendant, the Jewish Star referred to the Association's rule as a "Mezuzah Ban" and plaintiffs contend this characterization essentially labeled them as anti-Semitic. (Complaint, ¶¶ 36-39).

On October 20, 2005, the Association had arranged for a charter bus to take residents to attend a harbor meeting regarding the development of a local harbor marina located directly to the east of Shoreline Towers. Residents were notified of this meeting by flyers that were handed out and posted in the common areas. Plaintiffs allege defendant began tearing down the signs in the lobby and screaming that the Association shouldn't be having the meeting. She then approached Edward Frischholz ("Frischholz"), the president of the Board of Directors of the Association and a plaintiff in the instant action, and began an argument. This argument was witnessed by at least five people and culminated in accusing him of threatening her with bodily harm. None of those who allegedly witnessed the incident corroborated defendant's version of the argument. Immediately following the argument, Gassman called the CPD and officers arrived to investigate. These officers went into defendant's unit to speak with her and when the Association's property manager knocked on the door to check on the status of the investigation she saw multiple wine glasses on the coffee table where the police had been sitting with defendant. No charges were ever filed. (Complaint, ¶¶ 71-83). On the same day, Defendant spoke with four Association employees and asked if Frischholz had ever discriminated against them, to which they gave a negative response. (Complaint, ¶ 62).

Plaintiffs also contend in December, 2005, defendant used her influence with the Congregation of Beth Shalom of East Rogers Park ("Congregation") to publicly provoke an altercation between the congregation and Frischholz during a meeting in Shoreline's hospitality room. Apparently, following the amendment to the rules, Frischholz chose to display a crucifix on the door outside his unit and a member of the Congregation covered it up with a garbage bag. (Complaint, ¶¶ 84-87).

In March, 2006, Gassman approached the front desk clerk, LaVelle Barnett ("Barnett"), and attempted to gain access to confidential information, such as employee timecards and guest sign-in sheets. In April, 2006, after looking at the sign-in sheets, defendant told Barnett that she thought Frischholz was getting drug deliveries from the employees of Granville Liquors. She said Granville Liquors was allegedly tied to drug trafficking activities. She also told him she had friends on the "police force" and would be monitoring Frischholz and his guests for suspicious behavior. A few days after this exchange Barnett noticed an unmarked police car in front of the property. (Complaint, ¶¶ 42-47).

On April, 16, 2006, defendant told Boyan Ferouw, an employee, that she was being harassed. (Complaint, ¶ 63). She also told him about the pending litigation and that he should stay away from Frischholz because he was a "bad person." The following day, on April 17th, she accused Carlos Reyes, another employee, of desecrating her mezuzah. (Complaint, ¶ 65).

In the summer of 2006, defendant began to question Barnett about employees whose names were on the timecards at the front desk. She asked him why Edward Rakauskas, an Association employee, was coming from one of Frischholz's units and proceeded to opine that it was because he was his homosexual lover. She also told Barnett that Frischholz was involved in a lawsuit related to alleged misconduct with one of his patients. She also asked if he was aware of any sexual and/or medical relationship with another board member, Jan Treptow. She further inquired whether Frischholz had after-hours access to the Association's management office and whether this access included the lock box that contained the Association's emergency keys to all units. She questioned on numerous occasions if he and other employees felt their jobs were at risk if they spoke out against Frischholz and mentioned she was trying to figure out why former employees had stopped working for the Association. (Complaint, ¶¶ 48-53).

On November 7, 2006, election day, the building's lobby served as a polling place for the 2nd precinct. During this time the Assistant Building Manager observed Gassman pull up to the main entrance of the building in an unmarked police car with an unidentified sheriff, who was later recognized as having visited her on several other occasions. According to Connie Watkins, a front desk employee, she had heard this individual referred to by defendant as her "spy cop". After some time, the defendant and sheriff entered the building and while defendant was starting to vote the sheriff went into the management office and began asking people, including an elderly resident, if they had a problem with "this woman". It was soon determined "this woman" was the defendant and the reason for the sheriff's inquiry was because defendant thought she was being "stared down". These questions were not related to any official investigation. (Complaint, ¶¶ 88-112).

On January 10, 2007, defendant claimed her laptop had been stolen from her unit by someone using the Association's emergency keys. She asked the doorman if he had seen a black kid and he responded that he had seen an African American man who asked about a wireless connection, but who didn't have a computer. He indicated this man told him his attorney had informed him the building had a wireless connection. The Association thinks this was one of Gassman's clients. Later that evening defendant came back with a CPD officer who told the Association not to let the surveillance tapes disappear. Defendant was later contacted by an Association employee to see if there was any more information surrounding the theft of the computer. This employee also told her the tapes had been secured, but there might be copying fee. Gassman told this person the Association could face civil and criminal charges for assessing a fee. (Complaint, ¶¶ 113-131).

Finally, on January 25, 2007, defendant entered the management office and complained that a potential purchaser of her condominium had backed out because he/she was told there was going to be a special assessment and certain window replacements would be occurring. This exchange created enough of a commotion that employees that were outside of the office heard it and came in to investigate. (Complaint, ¶¶ 133-138).

Based on these alleged facts plaintiffs have filed a ten Count Complaint.

- (1) Count I requests an Injunction on behalf of the Association seeking to enjoin Gassman from interfering with the day to day operations of the Association. (Complaint, ¶ 150).
- (2) Count II is Defamation (Association) relating to the incidents involving allegations of using the emergency keys to steal defendant's laptop, when defendant told Belinda Collins the Association was engaged in misconduct that could result in criminal and civil liability and for telling an employee that the Association had interfered with the sale of her unit by giving false information to a potential buyer. (Complaint, ¶¶ 139-164).
- (3) Count III requests an Injunction (Defamation-Association) enjoining defendant from defaming the Association's character and reputation. (Complaint, p. 27).
- (4) Count IV is Defamation (Frischholz) and relates to defamation about Frischholz regarding alleged misconduct with one of his patients, being involved in drug trafficking and for defendant telling the Jewish Star that he was anti-Semitic. (Complaint, p. 29).
- (5) Count V seeks an Injunction (Defamation-Frischholz) enjoining Gassman from defaming Frischholz's character and reputation. (Complaint, p. 32).
- (6) Count VI is Intentional Infliction of Emotional Distress (Frischholz) for incidents in which Defendant told Barnett Frischholz was getting illegal drug deliveries, that one of the Association employees was his homosexual lover, for telling him there was misconduct with one of his patients, asking if he had access to the Association's emergency keys and if employees felt their jobs were at risk for speaking against him. (Complaint, p. 34).
- (7) Count VII asks for an Injunction (Emotional Distress-Frischholz) enjoining defendant from inflicting emotional distress upon Frischholz.
- (8) Count VIII is Civil Conspiracy alleging defendant used her position as a Public Defender to conspire with members of the Sheriff's Department and the CPD. (Complaint, p. 39).
- (9) Count IX is Malicious Prosecution (Association and Frischholz) for filing all of the suits even after the Association prevailed. (Complaint, p. 42).
- (10) Count X is a Civil Rights Claim (Frischholz) claiming defendant used her position as a Public Defender in violation of §1983 of the *Civil Rights Act*.

Defendant filed a Motion to Dismiss ("Motion") plaintiffs' complaint, pursuant to §2-619. Plaintiffs responded to this motion, defendant replied and the Anti-Defamation League ("ADL") filed an *Amicus Curiae* Brief ("Brief"). For a motion to dismiss under 735 ILCS 5/2-619, all well-pleaded facts and reasonable inferences are accepted as true for the purpose of the motion and the motion should be granted only if the plaintiff can prove no set of facts that would support a cause of action. *Feltmeier v. Feltmeier*, 207 Ill.2d 263, 277-78 (2003).

Defendant argues the entire Complaint should be dismissed pursuant to the Illinois Anti-Strategic Lawsuits Against Public Participation Act ("Anti-SLAPP"), which was enacted on August 28, 2007 and entitled the Citizen Participation Act ("Act"). IL ST CH 735 ILCS 110/1-110-99. The public policy behind the Act states that "the constitutional rights of citizens and organizations to be involved and participate freely in the process of government must be encouraged and safeguarded with great diligence...it is in the public interest and it is the purpose of this Act to strike a balance between the rights of person to file lawsuits for injury and the constitutional rights of persons to petition, speak freely, and otherwise participate in government. 735 ILCS 110/5. Gassman contends she brought her original claims against plaintiffs because she believed she had been the victim of religious discrimination by the plaintiffs when they repeatedly removed her mezuzah from the doorpost of her condominium. (Motion, ¶ 6). As a result, in part, of her actions to challenge the Association's rule, the City of Chicago passed an amendment to the City's Fair Housing Ordinance, making it illegal for condominium associations to interfere with the religious observances of building tenants. The State of Illinois also enacted a similar law. (Motion, ¶ 7). Also, the complaint to the Illinois Attorney General caused the Association to amend their rules to permit the display of religious objects outside owners' doors. (Motion, ¶ 8). It is defendant's contention that it was in the wake of these

lawsuits and her success in getting the Association to amend their rules that plaintiffs filed their complaint. (Motion, ¶ 9).

The first thing that must be determined is whether the plaintiff's complaint is in fact a SLAPP lawsuit. There is no distinct formula for determining whether a SLAPP lawsuit lies, but there are some allegations that frequently appear:

Libel and slander, tortious interference with contract or business advantage, conspiracy... are only the most frequent claims alleged in SLAPP complaints. Additionally, process violations of malicious prosecution; judicial or administrative abuse of process; constitutional and civil rights violations; and other violations of the law such as trespass, nuisance, emotional harms... The SLAPP action may encompass allegations of a myriad number of claims, and "shotgun" pleading is frequent. Most cases are filed in state rather than federal courts and, in fact, the disputes are essentially local in nature.

(emphasis added) Dacrr-Bannon, 22 Causes of Action 317, §3. See also Tate, 33 Loy. L.A. L. Rev. at 804-05 ("The most frequent type of SLAPP suit is for defamation, but the causes of action are myriad."). Illinois case law on this subject is scarce, but some guidance may be found in the cases decided in California, where courts have recognized the existence of SLAPP suits in a number of contexts. *Briggs v. Eden Council for Hope and Opportunity*, 969 P.2d 564 (Cal. 1999) (public organization assisting tenants to pursue legal claims against landlord falls under anti-SLAPP statute); *Walsh v. Peskin*, No. A097306, 2002 WL 1897986, at *2-*3 (Cal. Ct. App. 2002) (condominium association board member's act of encouraging tenants to file an action for wrongful eviction was in furtherance of the constitutional right of petition and, therefore, was protected by the anti-SLAPP statute); *Dowling v. Zimmerman*, 85 Cal. App. 4th 1400, 1418-20 (Cal. Ct. App. 2001) actions conducted by lessees and lawyer in defense of condominium owner's forcible detainer actions protected by anti-SLAPP statute; *Foothills Townhome Ass'n v. Christiansen*, 65 Cal. App., 4th 688, 694-95 (Cal. Ct. App. 1998) (suit in retaliation for

homeowner challenging assessment involved matters of sufficient public interests to invoke the protections of the anti-SLAPP statute). These cases serve to show the method to determine if a complaint is a SLAPP suit is not a bright line test, but rather a case by case analysis to determine if the suit is ultimately directed at conduct falling within the defendant's rights of petition, speech, association or participation.

Clearly, based on the statutory language, examples of common SLAPP allegations and using a case by case analysis, the complaint filed by plaintiffs, at least in regards to the Counts involving the Association, is a SLAPP suit. Plaintiffs attempt to avoid the characterization of their complaint as being a SLAPP suit by arguing that it was not filed in an attempt to quell or stop Gassman from further demonstration or outcry because all claims have already been raised by defendant and have been dismissed or tried to verdict in plaintiffs' favor (Response, p. 8). The fact that defendant's claims have all been adjudicated does not prevent the instant action from being characterized as a SLAPP suit. "The Act applies to any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is *in response to* any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." (emphasis added) 735 ILCS 110/15. The statutory language clearly demonstrates that the statute does not require there be pending attempts to further the moving party's rights. Plaintiffs also seek to have their complaint disqualified as a SLAPP suit by arguing that defendant's suits were based on a dispute between a unit owner and an association on a personal issue to Gassman regarding personal concerns, not issues of major public concerns. This argument truly lacks merit when viewed in conjunction with all of the changes that were made, in part, because of defendant's claims. As was

previously mentioned, not only did the Association change its rules, but the City of Chicago and State of Illinois passed laws as well.

The next issue which must be addressed is plaintiffs' argument that the Act is not retroactive and, even if it was, defendant's behavior is not the type contemplated to be covered. (Response, p. 1). Their argument is based on the fact that plaintiffs filed the instant action against Gassman on March 7, 2007 and the Act was enacted over five months later on August 28, 2007.

In determining whether a statute applies retroactively the seminal case is *Commonwealth Edison Co. v. Will County Collector*, 196 Ill.2d 27 (2001), where the Court concluded that the principles discussed in the United States Supreme Court decision in *Landgraf v. USI Film Products*, 511 U.S. 244 (1994), were the appropriate means for resolving retroactivity under Illinois law. Among the principles stated in *Landgraf* are the following: (1) Legislative intent controls (Id. at 280); (2) "A statute does not operate 'retrospectively' merely because it is applied in a case arising from conduct antedating the statute's enactment." (Id. at 269); (3) "When the intervening statute authorizes or affects the propriety of prospective relief, application of the new provision is not retroactive." (Id. at 273); (4) "Because rules of procedure regulate secondary rather than primary conduct, the fact that a new procedural rule was instituted after the conduct giving rise to the suit does not make application of the rule at trial retroactive." (Id. at 275), and; (5) "We sometimes said that new 'remedial' statutes like new 'procedural' ones, should presumptively apply to pending cases." (Id. at 265). Plaintiffs argue there was no legislative intent that this statute be applied retroactively because there is not language in the Act itself and there is no discussion regarding the issue in the legislative history. (Response, p. 5).

The Act applies to any claim that is “based on, relates to, or is in response to any act or acts of the moving party in furtherance of the moving party’s rights of petition, speech, association, or to otherwise participate in government.” 735 ILCS 110/15. The synopsis of the Bill (Response, Exhibit C) states: “Applies to motions in cases concerning SLAPP lawsuits that *have been filed* to discourage citizen participation in government. The statute “shall be construed liberally to effectuate its purposes and intent fully.” (emphasis added) 735 ILCS 110/30(b). Although there is no discussion in Illinois courts regarding retroactivity under this Act, the First District Illinois Appellate Court has held:

Statutes and amendatory acts are presumed to operate prospectively unless the statutory language is so clear as to admit of no other construction. One of the exceptions to this general rule is that statutes or amendments which relate only to remedies or forms of procedure are given retrospective application.

People v. Theo, 133 Ill. App. 2d 684, 687 (Ill. App. Ct. 1971). Also, California courts again offer guidance. “The anti-SLAPP statute is a procedural statute, the purpose of which is to screen out meritless claims. It is well settled that applying changed procedural statutes to the conduct of existing litigation, even though the litigation involves an underlying dispute that arose from conduct occurring before the effective date of the new statute, involves no improper retrospective application.” *Soukup v. Law Offices of Herbert Hafif*, 39 Cal. 4th 260, 280 (Cal. 2006). “The new [anti-SLAPP] statute applies to lawsuits brought before its effective date because it constituted a procedural change regulating the conduct of ongoing litigation and thus triggered no retroactivity concerns.” *Ingels v. Westwood One Broad. Servs., Inc.*, 129 Cal. App. 4th 1050, 1065 (Cal. Ct. App. 2005).

Using the retroactivity standards announced by the Illinois Courts and examining the reasoning used by the California courts, this court finds the Act is procedural in nature and

applies to the instant SLAPP suit. Clearly, the suits brought by Gassman in the original litigation were an attempt to exercise her constitutional rights and plaintiffs' Complaint, at least with regards to several of the Counts, was in response to Defendant's furtherance of said rights, therefore, the Act mandates dismissal of Counts I, II, III, VIII, IX and X.

There is an additional reason to dismiss Count X. Count X is brought by Frischholz and pleads an alleged civil rights violation. He pleads in a conclusory manner that Gassman "used her position as a Public Defender" to conspire with members of the Cook County Sheriff's Department and the Chicago Police Department to violate Frischholz's rights. Generally, public defenders (and their assistants such as Gassman) do not act under color of state law when performing a lawyer's traditional functions as counsel to a defendant in a criminal proceeding. *Polk County v. Dodson*, 454 U.S. 312, 325 (1981). A person acts under color of state law only when exercising power "possessed by virtue of state law and made possible only because the wrongdoer is clothed with the authority of state law." *Dodson*, 454 U.S. at 317 quoting *United States v. Classic*, 313 U.S. 299, 326 (1941). Count X contains no factual allegations to support the claim that Gassman, by virtue of her employment with the Cook County Public Defender's Office, was clothed with the authority of state law. Thus, she has the status of a private party.

Though, under Section 1983, a private party who conspires with one or more public officials to deprive another of a right secured by the Constitution and laws of the United States is acting "under color of law" within the terms of Section 1983, this construction of Section 1983 does not provide a cause of action for conspiracy *per se*. *Lesser v. Braniff*, 518 F.2d 538, 540 (1975). An actual denial of due process is required before a cause of action under Section 1983 arises. *Id.* Frischholz has pleaded no facts in support of an allegation that his constitutional rights were actually violated.

Counts IV and V alleging Defamation with regards to Frischholz shall stand. Gassman has accused Frischholz of being involved in unlawful narcotics activity, a felony, which are words which impute a crime. She has also accused him of misconduct with a patient, an allegation which clearly prejudices Frischholz in his profession. The alleged statements of Gassman have nothing to do with the other disputes or her lawsuits, but constitute affirmative statements on her part to damage Frischholz. When considering a motion to dismiss brought pursuant to Anti-SLAPP laws, a court must consider the actual objective of the suit and grant the motion if the true goal is to interfere with and burden the defendant's exercise of his free speech and petition rights. *Ingles v. Westwood One Broadcasting Services, Inc.*, 129 Cal.App.4th 1050, 1064 (2005). Anti-SLAPP legislation is intended to protect those who speak out on public or political issues from being sued into silence. Fring and Canan, *SLAPPS: Getting Sued for Speaking Out* 1-3 (1996).

However, Anti-SLAPP legislation is not intended to protect those who actually commit torts. Anti-SLAPP legislation does not permit a person to actually defame another and then seek the protection of the statute. The law is intended to protect those who are in danger of being sued solely because of their valid attempts to petition the government. Mary Dixon and Adam Schwartz, *In Support of Senate Bill 1434 ("The Citizen Participation Act")* (June 18, 2007). Accusing Frischholz of being a narcotics dealer and engaging in misconduct with a patient has nothing to do with Gassman's valid attempts to petition the government. The types of allegations pleaded by Frischholz have been at the heart of many defamation lawsuits, (See e.g., *Tuite v. Corbett*, 224 Ill.2d 490 (2006) (imputing criminal acts); *Barakat v. Matz*, 271 Ill.App.3d 662 (1995) (imputing an inability to perform or a want of integrity in the performance of professional duties)) and so this Court cannot conclude that the true goal of Frischholz's claims is to interfere

with and burden Gassman's exercise of free speech and petition rights. Most, if not all, reasonable people would file a defamation lawsuit against a defendant who made false accusations of drug dealing and misconduct with a patient. At this stage of the litigation, considering the allegations in the Complaint in the light most favorable to the non-movant, the Court finds that these counts are well-pleaded.

"To make out a claim for defamation, the plaintiff must set out sufficient facts to show that a defendant made a false statement concerning him, that there was an unprivileged publication to a third party with fault by the defendant, which caused damage to the plaintiff." *Myers v. Levy*, 348 Ill. App. 3d 906, 914 (Ill. App. Ct. 2004). "Defamatory statements may be actionable *per se* or actionable *per quod*. A publication is defamatory *per se* if it is so obviously and naturally harmful to the person to whom it refers that a showing of special damages is unnecessary and extrinsic facts are not needed to explain it." *Id.* "Illinois courts have recognized four categories of statements that are considered defamatory *per se*: (1) words that impute the commission of a crime; (2) words that impute infection with a loathsome communicable disease; (3) words that impute an inability to perform or a want of integrity in the discharge of duties of office or employment; or (4) words that prejudice a party, or impute lack of ability, in his or her trade, profession, or business." *Id.*

Counts VI and VII alleging Intentional Infliction of Emotional Distress with regards to Frischholz shall also stand.

To successfully plead a cause of action for intentional infliction of emotional distress, the plaintiff must allege conduct that goes beyond mere insults, indignities, threats, annoyances, petty oppressions or trivialities. It is not enough that the defendant acts with a tortious or even criminal intent, that he intended to inflict emotional distress, or that his conduct can be characterized by malice. Further, the emotional distress must be so severe that no reasonable man could be expected to endure it. The intensity and

the duration of the distress are factors to be considered in determining its severity.

Lundy v. Calumet City, 209 Ill. App. 3d 790, 793 (Ill. App. Ct. 1991). The facts plead are sufficient for these Counts to survive this Motion to Dismiss and Gassman's alleged behavior is not of the type contemplated to be protected by the Act.

Accordingly, defendant's Motion to Dismiss is granted pursuant to the Citizen Participation Act as to Counts I, II, III, VIII, IX, X and denied as to Counts IV, V, VI, VII.

DATE:

~~Kathleen M. [unclear]~~

