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IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PRESIDENT DONALD J. TRUMP, an individual, U.S. REPRESENTATIVE MARIANNETTE MILLER-MEEKS, an individual, and FORMER STATE SENATOR BRADLEY ZAUN, an individual, *Plaintiffs*, v. J. ANN SELZER, an individual, SELZER & COMPANY, DES MOINES REGISTER AND TRIBUNE COMPANY, and GANNETT CO., INC., *Defendants*.	Case No. CVCV069420 **BRIEF IN SUPPORT OF DES MOINES REGISTER & TRIBUNE COMPANY AND GANNETT CO., INC.'S MOTION TO DISMISS PETITION** **ORAL ARGUMENT REQUESTED**

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I. INTRODUCTION

The President of the United States, Donald J. Trump, brings this lawsuit to "seek[] accountability" for alleged "election interference." (Petition ¶ 1, D0001 ("Pet.").)

President Trump seeks to punish Iowa's largest newspaper, the Des Moines Register ("*The Register*"), which is published by the Des Moines Register & Tribune Co., and its parent company, USA TODAY, Co. (formerly Gannett Co., Inc. ("Gannett")), the nation's largest publisher of local newspapers and USA TODAY. The Des Moines Register & Tribune Co. and Gannett are referenced collectively herein as "Press Defendants." President Trump's claims, challenging the political campaign reporting of a community newspaper, derive from his frequent complaints about what he deems "fake news."

President Trump complains about the Iowa Poll, which was conducted by long-time Iowa pollster J. Ann Selzer ("Selzer") and her polling firm, Selzer & Co. (collectively, the "Selzer Defendants"), and published by *The Register* on November 2 and 3, 2024. President Trump's grievance is that the Iowa Poll had Vice President Kamala Harris leading him by 3 percentage points, 47% to 44%. However, on November 5, 2024, President Trump beat Harris in Iowa by 56% to 42%. President Trump apparently believes this somehow demonstrates that the mainstream media is not only biased against him but engaged in election interference to his detriment. But contrary to President Trump's theory, the constitutional protection of free speech and a free press does not simply evaporate when a plaintiff labels speech he does not like as "fraud." No court in this country has ever recognized a cause of action based on the publication of "fake news." This is no time to start. The very notion is an affront to the First Amendment of the United States Constitution.

There is no legal basis for President Trump to obtain the relief he seeks—indeed, such relief would violate core free speech principles. President Trump attempts to punish press coverage of which he disapproves through a tortured application of the Iowa Consumer Fraud Act, as well as through frivolous tort claims for fraudulent misrepresentation and negligent misrepresentation. If he had his way, these claims would become weapons for any candidate to challenge press coverage they did not like. His claims all fail to state a cause of action on which relief can be granted.

President Trump has also enlisted two Iowans, U.S. Representative Mariannette Miller-Meeks ("Rep. Miller-Meeks") and former Iowa State Senator Bradley Zaun ("Zaun"), to join his lawsuit in an apparent effort to avoid the jurisdiction of the federal courts. Regardless, their claims suffer the same inadequacies and do nothing to save this lawsuit from dismissal.

The Petition should be dismissed with prejudice.

II. BACKGROUND

A. The Iowa Poll

This lawsuit is about the Iowa Poll that Selzer conducted in 2024 and its results, which were published by *The Register* in several articles. (*See* Exs. A, C, D, F.) [1] While Plaintiffs allege

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[1] The Petition seeks to incorporate by reference documents and records not attached to it, including numerous articles from *The Register*'s reporting on the Iowa Poll. (*See, e.g.*, Pet. ¶¶ 1, 3, 64, 66.) Among them are the attached Exhibits A–K, which represent the core documents in this case. Judicial notice of these documents is appropriate because they are incorporated and embraced by Plaintiffs' Petition. *Hallett Constr. Co. v. Iowa State Highway Comm'n*, 154 N.W.2d 71, 74 (Iowa 1967) (deeming specifications incorporated by reference in a petition to be part of the petition); *Mormann v. Iowa Workforce Development*, 913 N.W.2d 554, 565 (Iowa 2018) (holding that judicial notice of exhibits attached to a petition is appropriate "to aid the Court in establishing facts relevant" to the claims). Indeed, the Petition makes more than 100 references to the Iowa Poll, and Plaintiffs' entire lawsuit is predicated on the Iowa Poll and *The Register*'s related articles. (*See* Pet., *passim*.) This Court should take judicial notice of the Exhibits because they are undisputed, integral to the claims, and "capable of accurate and ready determination from a source that cannot be reasonably questioned." *See Meade v. Christie*, 974 N.W.2d 770, 776 (Iowa 2022).

that Selzer and *The Register* conducted two polls related to the 2024 election cycle—the so-called "Harris Poll" and the so-called "Congressional Poll" (*id.* ¶¶ 1, 3)— there was only one: the Iowa Poll. Selzer polled likely voters in Iowa regarding the 2024 presidential and federal congressional races at multiple points in time, including in June, September, and October 2024. Plaintiffs' lawsuit is predicated on the results of the Iowa Poll conducted in October 2024.

On November 2, 2024, *The Register* published an article in its digital edition that provided the results of the Iowa Poll questions related to the presidential race. (Ex. A.) Those results showed then-Vice President Harris leading President Trump by three points (47% to 44%), which was within the poll's 3.4% margin of error. (Ex. A at A-2.) The article stated that a Harris victory would be a "shocking development," and Selzer herself stated that it would have been "hard for anybody to say they saw this coming," especially since neither candidate had campaigned in Iowa following the primaries. (*Id.* at A-1, A-2, A-3.) The article also pointed out that "[a] greater share of [President Trump's] supporters than [Harris's] say they are extremely or very enthusiastic about their pick." (*Id.* at A-5.)

The November 2 article provided extensive detail about how each candidate fared with respect to likely voters in various demographic categories. The poll results showed Harris leading all independent voters, independent women, women in general, those living in cities, those with a college degree, and voters over age 65. (*Id.* at A-6, A-7, A-9.) The poll showed President Trump ahead—and sometimes far ahead—with other groups of voters, including independent men, men in general, those identifying as evangelicals, and rural voters. (*Id.* at A-6, A-9.) The poll results revealed that different voting groups had different motivations for voting, with a majority of Harris supporters stating that "the future of the democracy" was their most important issue, while President Trump's supporters were focused on inflation and the economy. (*Id.* at A-10.) The article

also noted that only "a small universe of people" who previously supported President Trump switched their vote. (*Id.* at A-12.)

In addition, the November 2 article described in detail how the Iowa Poll was conducted:

About the Iowa Poll

> The Iowa Poll, conducted October 28–31, 2024, for *The Des Moines Register* and Mediacom by Selzer & Co. of Des Moines, is based on telephone interviews with 808 Iowans ages 18 or older who say they will definitely vote or have already voted in the 2024 general election for president and other offices.
>
> Interviewers with Quantel Research contacted 1,038 Iowa adults with randomly selected landline and cell phone numbers supplied by Dynata. Interviews were administered in English. Responses were adjusted by age, sex, and congressional district to reflect the general population based on recent census data.
>
> Questions based on the sample of 808 Iowa likely voters have a maximum margin of error of plus or minus 3.4 percentage points. This means that if this survey were repeated using the same questions and the same methodology, 19 times out of 20, the findings would not vary from the true population value by more than plus or minus 3.4 percentage points. Results based on smaller samples of respondents—such as by gender or age—have a larger margin of error.

(*Id.* at A-13, A-14.)

The November 2 article included the poll questionnaire that identified the eight presidential polling questions and responses from the polling rounds in October 2024, September 2024, June 2024, February 2024, March 2023, and November 2021. (*See generally* Ex. B.) The questionnaire showed that President Trump led former President Biden by 18 points in June 2024 polling, but that President Trump's lead had shrunk to four points when polling was repeated in September 2024 following Harris's nomination. (*Id.* at B-2.) The questionnaire also contained additional methodological details, including the sample size and margin of error specific to each question each time it was asked. (*See generally id.*)

On November 3, *The Register* published the same article regarding the presidential race in its print edition as well as an article about the congressional races in both its digital and print editions. (Exs. C, D, E, F.) With respect to the congressional races, the results suggested that, across

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the state, voters were "virtually tie[d] in [their] preference for a Democrat or a Republican for the U.S. House of Representatives," with Democrats having a slight edge. (Ex. D at D-2.) The article noted that it was "the first time since September 2020 that Democrats have held a statewide lead in the generic congressional ballot." (*Id.*) In particular, the results showed that voters in the first congressional district preferred the Democratic candidate over the Republican candidate by 16 points, "the largest in the district in any Iowa Poll this year." (*Id.* at D-5.) This was noteworthy, because Rep. Miller-Meeks, the Republican candidate in the first congressional district, had "defeated Bohannan[, the Democratic candidate in the first congressional district,] in 2022 by nearly 7 percentage points." (*Id.* at D-3.) Despite the poll results suggesting a 16-point differential, the article noted that "[e]lection forecasters rate the race as a toss-up." (*Id.* at D-5.) The article stated that, with respect to likely voters in the first congressional district, the ten percent of respondents who did not express a preference for either the Democratic or Republican category could be broken down as follows: "3% other, 2% wouldn't vote, 3% not sure/don't remember, 2% don't want to tell." (*Id.* at D-3.) The article detailed the state of the other three Iowa congressional races. (*Id.* at D-6 through D-9.) Finally, the article concluded with the same "About the Iowa Poll" explanation that was included in the article regarding the presidential polling results. (*Id.* at D-10.)

The November 3 digital article regarding the congressional polling results also provided the poll questionnaire. (*Id.* at D-10, D-11; Ex. E.) This questionnaire showed the Republican candidate in Iowa's first congressional district ("CD1" on the questionnaire), who was Rep. Miller-Meeks, losing ground between February 2024 and October 2024. (Ex. E at E-4.) This questionnaire contained the same methodological details, including the sample size and margin of error for each specific question each time it was asked. (*See generally id.*)

None of the articles analyzed or even mentioned Zaun's state senate race.

Immediately, on the same day *The Register* published the results of the Iowa Poll, President Trump rebuked it.[2] His contemporaneous criticisms were consistent with the substance of Plaintiffs' present Petition—*i.e.*, that the poll results inherently lacked credibility, could be disregarded, and were "so implausible that no objective pollster could honestly have advanced it." (Pet. ¶ 47.) Plaintiffs further allege that "*every other* mainstream Iowa poll . . . showed President Trump comfortably ahead." (*Id.* ¶ 49 (emphasis in original).)

The election was held on November 5, 2024. President Trump won the presidential election in Iowa, Rep. Miller-Meeks was re-elected to represent U.S. House Iowa District 1, and Zaun lost his State Senate re-election bid. (*Id.* ¶¶ 1, 3, 6.)

Following the election, both Selzer and *The Register* conducted a review of the Iowa Poll in light of the election results. On November 17, *The Register* published its findings and provided extensive follow-up information: (1) an editorial addressing its review (Ex. G); (2) a memorandum by Selzer titled, "Results of Internal Investigation of final Iowa Poll" (Ex. H); (3) two reports containing the complete Iowa Poll questionnaires with weighting and historical data (Exs. I, K); and (4) the cross-tabs of the polling data. (Ex. J; *see* Pet. ¶ 66.)

The internal review took "the form of testing plausible theories against available data," and Selzer and *The Register* concluded that "no likely single culprit has emerged to explain the wide disparity" between the poll results and the actual vote. (Ex. G at G-1.) *The Register* and Selzer considered a number of wide-ranging theories, including (1) the possibility that demographics

[2] The day the poll results were published, President Trump publicly declared that the Iowa Poll was "a fake poll done by a Trump hater who oversampled, by a lot, Democrats." (*See* Sara Dorn, *Why Outlier Poll Showing Harris Winning Iowa Could Spell Trouble for Trump*, FORBES (Nov. 3, 2024) (cited and incorporated in the Petition at ¶ 63), *available at* https://www.forbes.com/sites/saradorn/2024/11/03/why-outlier-poll-showing-harris-winning-iowa-could-spell-trouble-for-trump/.)

were skewed; (2) whether the poll failed "to detect the shift found nationally among men of color toward Trump"; (3) whether the polling, which concluded the Thursday before the election, "fail[ed] to capture late-deciders"; (4) whether the poll's weighting was flawed; and (5) whether voters' recollection of their previous voting history should "have been included as a weighting factor." (*Id.* at G-2.) The editorial candidly admitted that "[s]ome critics ha[d] accused the Iowa Poll of a Democratic bias." (*Id.*) However, statistician Nate Silver, who rates pollsters, had performed a calculation to determine whether any bias was present, and "[a]cross 54 Iowa Polls, he found a negligible result, a 0.1% tilt toward Democrats, a smaller bias figure than for all but one of the 25 top-rated polls." (*Id.*) The editorial noted that, before the Iowa Poll, Selzer had announced it would be her last. (*Id.*) It concluded with *The Register*'s promise "to evolve and find new ways to accurately take the pulse of Iowans on state and national issues." (*Id.* at G-3.)

Selzer's internal investigation memorandum contains an in-depth "data-heavy" analysis of seven possible theories for the disparity between the October poll results and the actual vote, including the ones discussed in the November 17 editorial and some additional theories. (*See generally* Ex. H.) She compared her poll results with Wisconsin's exit poll data to determine if the Iowa Poll's demographics were skewed, considered the principle of Newtonian physics ("[a]ction leads to reaction," meaning it is possible that the poll results could have animated either party), and addressed the possibility that respondents could have lied. (*Id.* at H-12, H-13.) In the end, after considering these theories, Selzer "found nothing to illuminate the miss" and stated that she would "continue to be puzzled by the biggest miss of [her] career." (*Id.* at H-1.)

Of the two questionnaire reports provided with the November 17 editorial, the first questionnaire report listed (1) all ten polling questions and 14 demographic questions; and (2) the response data from previous iterations of the Iowa Poll and previous election cycles. (Ex. I.) The

second questionnaire report included both the weighted and unweighted October 2024 response data for each question. (Ex. K.)

The cross-tabs included with the November 17 editorial were comprised of 145 tables of raw data. (Ex. J.) These tables included the verbatim text of all polling and demographic questions, the responses to all the questions, the number of respondents for each question (including the unweighted and weighted responses), and the results described as percentages and raw numbers. (*Id.*) With these tables, the responses to each question could be cross-referenced against demographics to see how the weighting of the raw data impacted the final results. (*Id.*)

The Register had a "long practice" of publishing the questionnaires, and the release of the Iowa Poll questionnaire was consistent with this practice. (Ex. G at G-1.) *The Register* released "the poll's full demographics, crosstabs and weighted and unweighted data, as well as a technical explanation from Selzer detailing her review, . . . [f]or transparency." (*Id.*)

Finally, *The Register* provided all the above-described materials regarding the Iowa Poll to the public free of charge. (*See* Pet. ¶ 112.) Plaintiffs' assertion that the Iowa Poll articles are now "hidden behind a paywall" is incorrect; the digital versions of the articles linked throughout the Petition remain available for any person to read free of charge—as long as that person has not exceeded their periodic allotment of free digital articles. (*Cf. id.* ¶ 1 n. 1.)

B. Procedural Background

President Trump has been trying to avoid dismissal of this lawsuit for over a year. He first filed this lawsuit against the Defendants in this Court on December 16, 2024. (*See* Ex. L: Petition, Polk County Case No. CVCV068364 (Dec. 16, 2024) ("Initial Petition").)[3] In his Initial Petition,

[3] For the Court's convenience, attached hereto as Exhibits L–W are copies of selected docket entries from other related judicial proceedings. Judicial notice of these materials is proper. *Meade*, 974 N.W.2d at 776. In the interests of efficiency and economy, not every cited docket

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President Trump asserted a single claim for violation of the Iowa Consumer Fraud Act, Iowa Code § 714H *et seq.* ("ICFA") against all Defendants, claiming that they committed "brazen election interference" by publishing a public opinion poll unfavorable to him in the lead up to the 2024 election. (*See id.*) On December 17, 2024, Gannett removed the lawsuit to federal district court. (*See* Ex. M: Docket for Case No. 4:24-cv-00449 (S.D. Iowa) at ECF No. 1 ("Ex. M.").)

On January 31, 2025, President Trump amended the Initial Petition to add two Iowa Plaintiffs—Rep. Miller-Meeks and Zaun. (Ex. N: Amended Complaint (Jan. 31, 2025) ("Amended Complaint").) Plaintiffs also added two additional claims for fraudulent misrepresentation and, in the alternative, negligent misrepresentation. (*See generally id.*)

The Parties agreed to brief Plaintiffs' motion to remand and Defendants' respective motions to dismiss simultaneously pursuant to a joint briefing schedule that they submitted to and that was accepted by the federal district court. (Ex. M at ECF No. 20.) Press Defendants' motion to dismiss the Amended Complaint, Plaintiffs' opposition, and Press Defendants' reply were fully submitted to the federal district court by April 17, 2025. (*Id.* at ECF Nos. 28, 29, 51, 61.) Plaintiffs' motion to remand and for attorneys' fees, Press Defendants' opposition, and Plaintiffs' reply were fully submitted to the federal district court by April 16, 2025. (*Id.* at ECF Nos. 30–32, 48, 61.)

On May 23, 2025, the federal district court issued an Order denying Plaintiffs' motion to remand and for attorneys' fees. (Ex. O: Order Re: Motions to Remand and for Attorneys' Fees (May 23, 2025).) In that Order, the federal district court ordered that Plaintiffs' Amended Complaint be "vacated as a nullity" and directed President Trump "to file a revised version of the Amended Complaint . . . omitting Bradley Zaun and Miller-Meeks as plaintiffs, and deleting any

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entry is attached as an exhibit, but each is available on the relevant court's public docket. Press Defendants will supplement the exhibits with any additional docket items from these related proceedings upon the Court's request.

allegations included solely to support their claims." (*Id.* at 11.) No other changes were permitted. (*Id.*) The federal district court gave President Trump seven days to file his revised Amended Complaint. (*Id.*) The federal district court also certified the Order for immediate interlocutory appeal. (*Id.* at 10–11.)

On May 30, 2025, the deadline to file his revised Amended Complaint, President Trump instead filed a Motion for Stay of All Remaining Deadlines. (Ex. M at ECF No. 66.) In that motion, President Trump sought a complete stay of all deadlines, including his deadline to file his revised Amended Complaint, until after the resolution of the not-yet-filed Petition for Permission to Appeal in the Eighth Circuit. (*Id.*) Plaintiffs then filed their Petition for Permission to Appeal on June 2, 2025. (*See* Ex. P: Docket for Case No. 25-8003 (8th Cir.) at 6/2/25 Petition for Permission to Appeal ("Ex. P").)

On June 6, 2025, the federal district court denied President Trump's motion for a stay. (Ex. Q: Order Denying Motion to Stay (June 6, 2025).) The federal district court concluded that "the movant has not, as yet, shown a strong likelihood of success or the presence of irreparable harm." (*Id*. at 2.) However, the federal district court extended President Trump's deadline to file his revised Amended Complaint until July 18, 2025. (*Id.*)

Then, on June 30, 2025, President Trump changed his course of action: he filed a notice of voluntary dismissal pursuant to Federal Rule of Civil Procedure 41(a)(1)(A)(i), (Ex. M at ECF No. 71); he filed a notice of withdrawal of his petition in the Eighth Circuit, (Ex. P at 6/30/25 Stipulation for Dismissal); and he, Rep. Miller-Meeks, and Zaun filed the instant Petition in this Court. (*See* Pet.) Press Defendants immediately moved to strike the notice of voluntary dismissal, (Ex. M at ECF No. 72), as well as the Eighth Circuit notice, (Ex. P at 6/30/25 Motion to Strike).

On July 2, 2025, the federal district court granted Press Defendants' motion to strike. (Ex. R: Order Re: Defendants' Motion to Strike (July 2, 2025).) Specifically, the federal district court ruled: "Because Trump's appeal confers jurisdiction to the Eighth Circuit over aspects of this case, Trump must first dismiss the appeal before voluntarily dismissing the district court case." (*Id*. at 2.) Further, the federal district court noted the Parties disagreed over whether the appeal was "docketed" and ruled that, "[r]egardless of whether the appeal has been docketed, Trump did not file a motion to dismiss the appeal in the district court, *see* Fed. R. App. P. 42(a), nor in the circuit court, *see id*. 42(b)." (*Id*. at 2–3.)

On July 3, 2025, the Eighth Circuit issued a Judgment denying Plaintiffs' petition for permission to appeal and denying Plaintiffs' stipulation for dismissal and Defendants' motion to strike as moot. (Ex. P at 7/3/25 Judgment.) On that same day, the Eighth Circuit also issued a Mandate, effectively granting the federal district court permission to proceed. (*Id.* at 7/3/25 Mandate.)

On July 8, 2025, Plaintiffs filed a Motion to Recall Mandate and Modify Opinion in the Eighth Circuit. (*Id.* at 7/8/25 Motion to Recall Mandate.) On July 18, 2025, Press Defendants filed their opposition to that motion, and the Selzer Defendants joined it. (*Id.* at 7/18/25 Responses in Opposition to Motion to Recall Mandate.)

On July 18, 2025, President Trump filed a Renewed Motion to Stay in the federal district court on the basis that the Parties and federal district court should wait for the Eighth Circuit to rule on his Motion to Recall Mandate and Modify Opinion. (Ex. M at ECF No. 83.) Again, President Trump did this on the deadline the federal district court gave him to file his revised Amended Complaint. And, again, President Trump did not follow the federal district court's order requiring him to file his revised Amended Complaint. On July 21, 2025, the Selzer Defendants

filed a resistance to President Trump's Renewed Motion to Stay (*id.* at ECF No. 84), and Press Defendants also filed a resistance two days later. (*Id.* at ECF No. 85.)

On July 23, 2025, the federal district court denied President Trump's Renewed Motion to Stay, finding that, even considering Plaintiffs' Eighth Circuit filings, President Trump had "not shown a strong likelihood of success or the presence of irreparable harm." (Ex. S: Order Denying Plaintiff's Renewed Motion to Stay at 2 (July 23, 2025).) The federal district court then ordered President Trump to file his revised Amended Complaint "no later than 5:00 p.m. Central Time on Friday, July 25, 2025." (*Id.* at 3.)

On July 24, 2025, the Eighth Circuit denied Plaintiffs' motion to recall its mandate. (Ex. P at 7/24/25 Order.) On July 25, 2025, President Trump filed his Revised Amended Complaint in the federal district court. (Ex. T: Revised Amended Complaint (July 25, 2025) ("Revised Amended Complaint").) The Selzer Defendants filed their motion to dismiss the Revised Amended Complaint on July 26, 2025 (Ex. M at ECF Nos. 89–90), and Press Defendants filed their motion to dismiss the Revised Amended Complaint on July 28, 2025. (*Id.* at ECF Nos. 91–92). In their respective motions to dismiss, Defendants argued that the Federal Lawsuit is barred by the First Amendment to the United States Constitution and that his substantive claims were not sufficiently pleaded. (*See generally id.*)

On July 29, 2025, Press Defendants requested that this Court stay this lawsuit until the resolution of the Federal Lawsuit or, alternatively, at least until the federal district court ruled on Defendants' pending motions to dismiss the Federal Lawsuit. (*See* Press Defendants' Mot. for Stay, D0027.) Plaintiffs resisted that motion, and Press Defendants filed a reply in support. (*See* Plaintiffs' Resistance, D0041; Press Defendants' Reply, D0043.)

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On August 13, 2025, President Trump filed a Petition for Writ of Mandamus in the Eighth Circuit seeking dismissal of the Federal Lawsuit. (Ex. U: Docket for Case No. 25-2603 (8th Cir.) at 8/13/25 Petition ("Ex. U").) Press Defendants resisted. (*Id.* at 8/29/25 Response.) On October 24, 2025, a panel of judges on the Eighth Circuit granted the Petition. (*Id.* at 10/24/25 Judgment.) On October 30, 2025, Defendants filed a Petition for Rehearing or Rehearing en Banc in the Eighth Circuit. (*Id.* at 10/30/25 Petition for Panel Rehearing or Rehearing En Banc.)

On November 7, 2025, Plaintiffs alerted this Court to both the Eighth Circuit's Judgment and Defendants' petition for rehearing and moved the Court to continue the hearing on Defendants' respective motions for stay of proceedings in this case until the Eighth Circuit ruled on Defendants' petition for rehearing. (*See* Plaintiffs' Mot. to Continue Hearing, D0045.) This Court granted that motion. (*See* Order, D0046.)

On November 21, 2025, the Eighth Circuit denied Defendants' Petition for Rehearing. (Ex. U at 11/21/25 Order.) On November 24, 2025, counsel alerted this Court via email, and the Court requested that the Parties identify mutually agreeable dates for a hearing. On December 1, 2025, the Eighth Circuit issued its mandate, and on December 2, 2025, the federal district court dismissed the Federal Lawsuit. (Ex. U at 12/1/25 Mandate; Ex. M at ECF No. 120.)

On December 10, 2025, this Court set a schedule for supplemental briefing on the pending motions for stay of proceedings (*see* Order, D0047), and set a hearing on those motions, which occurred on January 30, 2026. Following that hearing, the Court entered an Order setting a briefing schedule for Defendants' motions to dismiss. (Order, D0058.)

The three claims brought by Plaintiffs against Defendants in the instant Petition are the same three claims brought by President Trump against Defendants in the Federal Lawsuit. (*Compare* Ex. T: Revised Amended Complaint at 31–39 (asserting claims for violation of ICFA,

fraudulent misrepresentation, and negligent misrepresentation), *with* Pet. at 31–41 (asserting the same claims).) Further, the general background allegations and the allegations specific to President Trump and Defendants are nearly identical in both lawsuits. (*See generally id.*)

C. Plaintiffs' Lawsuit

Plaintiffs are clear about the nature of their lawsuit: They assert the lawsuit "seeks accountability for brazen election interference committed by the Defendants in favor of former Democratic presidential candidate Kamala Harris . . . , along with other Democrat candidates, through use of a manipulated, incorrect, and improperly leaked [Iowa Poll]." (Pet. ¶ 1.) Plaintiffs claim the polling "miss" was not "merely a coincidence" and that, instead, the Iowa Poll was an "attempt[] to corruptly influence and interfere in the outcome of the 2024 Presidential Election and other key election . . . ." (*Id.* ¶ 5.)

Further, Plaintiffs claim this effort by Selzer and others has been going on for years. (*Id.* ¶ 5.) Plaintiffs claim Selzer was "not the only pollster to engage in this corrupt practice" of producing "fake polls." (*Id.* ¶¶ 11, 12) Plaintiffs assert Selzer had "several other, far less publicized, egregious polling misses in favor of Democrats." (*Id.* ¶ 5). As examples of "Selzer's pattern of malicious deceit and election interference," Plaintiffs cite her polls in the 2018 Iowa governor's race; the 2020 U.S. Senate race in Iowa; and the 2022 Iowa Attorney General's race. (*Id.* ¶¶ 31–33.) Plaintiffs accuse Selzer of not only being "wrong in the end" with respect to these races, but that these polls "exposed that Defendants, led by Selzer, were manufacturing fake support for Democrat candidates to interfere in the elections." (*Id.* ¶ 34.)

At the same time, Plaintiffs admit Selzer had earned a "mainstream reputation for accuracy." (*Id.* ¶ 5.) Plaintiffs acknowledge: "Selzer has long enjoyed a celebrated, mainstream reputation for accurate polling." (*Id.* ¶ 29.) They note that in 2016 Clare Malone of *FiveThirtyEight*

described Selzer as 'the best pollster in politics'"; and that '[i]n a June 2024 rating of 2025 pollsters, Nate Silver rated Selzer first with an A+ score.'" (*Id.*)

In any event, Plaintiffs purport to "bring this action to redress the immense harm cause to them as individual candidates and as individual consumers, to the Trump 2024 Campaign, to Representative Miller-Meeks' Campaign, to Zaun's Campaign, and to millions of citizens in Iowa and across America by the [Iowa Poll]." (*Id.* ¶ 18.) To be clear, Plaintiffs do not claim they hired or paid Defendants to conduct the Iowa Poll. In fact, Plaintiffs do not claim their lawsuit has anything to do with them even purchasing *The Register*. Nor do Plaintiffs claim they were deceived by any alleged inaccuracy in the Iowa Poll. Rather, Plaintiffs claim they were harmed because the Iowa Poll negatively impacted their elections. Though, again, it is worth noting the President Trump immediately disclaimed the accuracy of the Iowa Poll on the day it was first published, (*supra* n.2), and maintains that he won a "resounding victory . . . consistent with Iowa's recent electoral history. (Pet. ¶ 7.) To be sure, Plaintiffs state that despite Defendants' purported efforts "to drive down enthusiasm for Republicans," "the November 5 Election was a monumental victory for President Trump in the Electoral College and the Popular Vote, resulting in an overwhelming mandate for his America First principles and the consignment of the radical socialist agenda to the dustbin of history." (*Id.* ¶ 8.) In that regard, Plaintiffs apparently assert they have damages relating to their campaigns having to spend additional time and resources to mitigate the effects of the Iowa Poll and, in Zaun's case, the loss of his Iowa State Senate seat. (*Id.* ¶¶ 124–26.)

In this lawsuit, Plaintiffs assert three counts against all four Defendants: (1) a claim under the Iowa Consumer Fraud Act, Iowa Code § 714H; (2) a claim of fraudulent misrepresentation; and (3) a claim of negligent misrepresentation. (*See generally id.*) In terms of their requested relief, Plaintiffs seeks monetary damages, attorney's fees, and injunctive relief compelling Defendants to

disclose all information relied upon in conducting the Iowa Poll and enjoining Defendants from published further such polls.

III. LEGAL STANDARD

Press Defendants now move to dismiss the Petition in its entirety pursuant to Iowa Rule of Civil Procedure 1.421(1)(f). "A motion to dismiss challenges a petition's legal sufficiency." *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023) (quoting *Meade v. Christie*, 974 N.W.2d 770, 775 (Iowa 2022)). Iowa courts grant motions to dismiss "when the petition's allegations, taken as true, fail to state a claim upon which relief may be granted." *Mueller v. Wellmark, Inc.*, 818 N.W.2d 244, 253 (Iowa 2012) (citing Iowa R. Civ. P. 1.421(1)(f)). Defendants are entitled to dismissal if "the petition shows the claim or claims are legally deficient and the plaintiff has no right of recovery as a matter of law." *Harkrider*, 990 N.W.2d at 650 (citing *Meade*, 974 N.W.2d at 775).

Iowa courts accept well-pleaded facts in a pleading as true, but they do *not* accept a plaintiff's legal conclusions. *Nahas v. Polk Cnty.*, 991 N.W.2d 770, 775 (Iowa 2023). To survive dismissal, a petition must "contain[] factual allegations that give the defendant 'fair notice' of the claim so the defendant can adequately respond to the petition"; but even if a petition satisfies that requirement, it nevertheless must be dismissed "when there exists no conceivable set of facts entitling the non-moving party to relief." *1000 Friends of Iowa v. Polk Cnty. Bd. of Supervisors*, 19 N.W.3d 290, 296 (Iowa 2025) (citation modified).

Furthermore, it is not and cannot be disputed that this case concerns Defendants' "[e]xercise of the right of freedom of speech or of the press . . . guaranteed by the Constitution of the United States or the Constitution of the State of Iowa, on a matter of public concern." *See* Iowa Code § 652.2(2)(c). The Iowa Legislature has now codified its policy determination that Iowa courts *can and should* dismiss defective claims in such cases at the earliest available stage of the

case by incorporating the language of Rule 1.421(1)(f) into Iowa's Uniform Public Expression Protection Act. *See id.* § 652.7(1)(c)(2)(a); *see also* Iowa Code § 652.1, *et seq.* Though Plaintiffs filed their Petition one day before the statute became effective to evade its direct application to this suit, the statute nevertheless confirms that a Rule 1.421(1)(f) motion to dismiss is a proper procedural vehicle to terminate Plaintiffs' deficient claims, which this Court can and should utilize irrespective of the applicability of the statute to this case.

IV. ARGUMENT

The Petition attempts to disguise an impermissible frontal assault on the First Amendment as a run-of-the-mill consumer fraud action with three purported causes of action: violations of the Iowa Consumer Fraud Act ("ICFA"), fraudulent misrepresentation, and negligent misrepresentation. (Pet. ¶¶ 96–127, 128–38, 139–56.) But Plaintiffs' claimed consternation over "fake polls" and "fraudulent" reporting does not permit them to make an end run around foundational, constitutional free speech protections. (*Cf. id.* ¶¶ 12, 137.) The First Amendment disposes of the entire action. Separately and independently, the Court should dismiss Plaintiffs' claims with prejudice because it is apparent from the face of the Petition that Plaintiffs' claims fail to state a claim upon which relief may be granted.

A. The U.S. Constitution and the Iowa Constitution Bar Plaintiffs' Claims

The First Amendment of the U.S. Constitution and Article I, Section 7 of the Iowa Constitution[4] prohibit Plaintiffs from misusing ICFA and Iowa's common law to censor the press or penalize statements about political campaigns for several reasons.

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[4] Typically, Article 1, Section 7 of the Iowa Constitution is treated as coextensive with the First Amendment to the U.S. Constitution. *See City of W. Des Moines v. Engler*, 641 N.W.2d 803, 805–06 (Iowa 2002). However, the Iowa Supreme Court has always diligently reserved its right to interpret the Iowa Constitution to afford greater protections than its federal counterpart. *See, e.g.*, *State v. White*, 9 N.W.3d 1, 7, 17 (Iowa 2024) (ruling that the Iowa Constitution "includes a

First, the First Amendment does not tolerate Plaintiffs' interpretation of Iowa law—*i.e.*, that it may be used to regulate by litigation Press Defendants' federal election reporting. ICFA regulates commercial business practices and consumer transactions; it does not allow private litigants to police news reporting by a community newspaper. The challenged news coverage does not fall into any traditional category of unprotected speech. The opposite is true: political campaign reporting is at the zenith of First Amendment protections. Plaintiffs' attempt to misuse ICFA and the common law to punish alleged political misinformation must fail because "there is no free pass around the First Amendment." *281 Care Comm. v. Arneson*, 766 F.3d 774, 783 (8th Cir. 2014) ("*281 Care Comm. II*").

Second, to evade the foundational First Amendment protection afforded Press Defendants, Plaintiffs ask this Court to expand the fraud exception to the First Amendment to include an entirely new category of unprotected speech—which they have invented from whole cloth—for alleged "false narrative[s]" regarding political subjects. (Pet. ¶ 8.) No such exception exists, and the very proposition is anathema to our constitutional order.

Third, even if the speech at issue were not presumptively protected under the First Amendment and instead fell under one of the historical First Amendment exceptions (though it does not), Plaintiffs would still, at a minimum, have to establish that *The Register* published the

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guarantee of face-to-face confrontation" whereas the U.S. Constitution "reflects only a *preference* for face-to-face confrontation" (quotation omitted)); *Bierman v. Weier*, 826 N.W.2d 436, 449 (Iowa 2013) (holding that Iowa has the authority to extend protections against defamation actions to be "more protective of defendants than the First Amendment requires"). To any extent this Court or a future reviewing court may conclude that the First Amendment does not mandate immediate dismissal of all claims, Press Defendants do not waive and expressly reserve the right to argue that Article 1, Section 7 of the Iowa Constitution nevertheless does independently require that these claims be dismissed. All references herein to the First Amendment, the U.S. Constitution, and their attendant rights and protections therefore are asserted with equal force as to Article I, Section 7 of the Iowa Constitution throughout.

Iowa Poll results with the requisite degree of constitutional fault—*i.e.*, "actual malice." This standard is a constitutional floor for all of Plaintiffs' claims, but it can never be satisfied in this case. Rather, upon disregarding Plaintiffs' impermissible conclusory averments, the *allegations* in the Petition affirmatively demonstrate that there is no conceivable set of facts that could satisfy the elevated constitutional actual malice standard. Nor is there any conceivable set of facts that could show that the publication of the Iowa Poll results was a provably false statement of fact.

Fourth, in the alternative, Plaintiffs' weaponization of ICFA cannot survive strict scrutiny review, which restricts the government's ability to penalize Press Defendants' speech that Plaintiffs deem objectionable. The Eighth Circuit has expressly rejected the notion that a legal challenge even to *knowingly false* political speech can be bootstrapped onto a commercial fraud claim because such a claim fails to provide sufficient breathing room for protected speech. *281 Care Comm. v. Arneson*, 638 F.3d 621, 634 n.2 (8th Cir. 2011) ("*281 Care Comm. I*"). The linchpin of Plaintiffs' theory of recovery therefore has no traction as a matter of constitutional law.

1. Press Defendants' Political Campaign Reporting Is Entitled to Presumptive First Amendment Protection from Plaintiffs' Speech-Based Claims

Plaintiffs' claims are a frontal assault on the First Amendment, which embodies "a profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open." *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964). As the U.S. Supreme Court has emphasized, "speech concerning public affairs is more than self-expression; it is the essence of self-government." *Garrison v. Louisiana*, 379 U.S. 64, 74–75 (1964). For that reason, "speech on public issues occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quoting *Connick v. Myers*, 461 U.S. 138, 145 (1983)). It follows that "[t]he First Amendment 'has its fullest and most urgent applications' to speech uttered during a campaign for political office." *Citizens*

United v. FEC, 558 U.S. 310, 339 (2010) (quoting *Eu v. San Francisco Cnty. Democratic Cent. Comm.*, 489 U.S. 214, 223 (1989)). Indeed, "[p]rotection of political speech is the very stuff of the First Amendment." *Minn. Citizens Concerned for Life, Inc. v. Swanson*, 692 F.3d 864, 871 (8th Cir. 2012) (internal quotations and citation omitted).

Plaintiffs cannot overcome the First Amendment's protection for *The Register*'s news reporting on a paramount matter of public interest—*i.e.*, the alleged "most consequential election in memory" (Pet. ¶ 5)—under the guise of protecting commercial consumers from harm by misapplying IFCA and Iowa's common law. In *Snyder v. Phelps*, the Supreme Court ruled that speech on a "matter[] of public concern" could not be restricted even though it directly harmed the plaintiff by intentionally inflicting emotional distress in violation of state law. *See* 562 U.S. at 451–52. Although the abhorrent speech at issue in *Snyde*r "inflict[ed] great pain," it was nevertheless immunized from liability under the First Amendment—"to ensure that we do not stifle public debate." *Id*. at 460–61. Thus, to safeguard uninhibited public discourse, speech must be fully protected when, as here, it addresses "a subject of general interest and of value and concern to the public." *Id*. at 453 (internal quotation and citation omitted).

A recent case—involving a state consumer protection law claim challenging political speech, as here—reinforces the core teaching of the *Snyder* case. *See Washington League for Increased Transparency & Ethics v. Fox Corp.*, 19 Wash. App. 2d 1006, 2021 WL 3910574 (Wash. Ct. App. Aug. 30, 2021) ("*WASHLITE*") (unpublished). In *WASHLITE*, the plaintiff claimed that Fox News violated Washington's Consumer Protection Act ("WCPA") "by making statements, on-air, downplaying the danger posed by the coronavirus, describing the pandemic as a 'hoax,' and accusing government officials and media organizations of exaggerating the danger posed by COVID-19 in an attempt to undermine [then] former President Donald J. Trump." *Id*. at

*1 (footnote omitted). Recognizing that the allegedly actionable statements "clearly implicate matters of public concern and receive special First Amendment protections," (*id.* at *4), the *WASHLITE* court rejected the WCPA claim based on established First Amendment principles:

> [Plaintiff] cites no authority for the proposition that false statements about threats to public health, *even if recklessly made*, fall within any exception to the First Amendment. To the contrary, the Supreme Court in *Alvarez* disavowed the principle that false expressions in general receive a lesser degree of constitutional protections simply by virtue of being false.

Id. at *5 (emphasis added); *see also United States v. Alvarez*, 567 U.S. 709, 717–18 (2012) (holding the Stolen Valor Act invalid because it was not confined to the "few historic and traditional categories" of expression "where the law allows content-based regulation of speech") (internal quotations and citations omitted); *281 Care Comm. I*, 638 F.3d at 633–34 ("We find that the Supreme Court has never placed knowingly false campaign speech categorically outside the protection of the First Amendment and we will not do so today.").

So too here. Plaintiffs' claims—brought against a community newspaper for truthfully reporting poll results and information of unquestioned news value on a matter of "political concern to all Americans"—violate the First Amendment on their face. *WASHLITE*, 2021 WL 3910574, at *4. Plaintiffs' attempts to abuse ICFA and Iowa tort law to punish allegedly false political speech, "absent any evidence that the speech was used to gain a material advantage, . . . would give government a broad censorial power unprecedented in this Court's cases or in our constitutional tradition." *Alvarez*, 567 U.S. at 723 (emphasis added); *see also id.* at 731–32 (Breyer, J., concurring) (stating that "[l]aws restricting false statements about philosophy, religion, history, the social sciences, the arts, and the like" raise grave First Amendment concerns). Contrary to Plaintiffs' conclusory remarks—which are disregarded under the Rule 1.421(1)(f) standard—there is no general government power to punish alleged political falsehoods outside exceedingly narrow

exceptions which do not apply here—*i.e.*, defamation, fraud, and perjury.[5] (*Cf.* Pet. ¶ 124–26, 138, 153, 156.) To hold otherwise would put the "government in the unseemly position of being the arbiter of truth about political speech." *281 Care Comm. I*, 638 F.3d at 635–36. Under our constitutional system, the role of the "arbiter of truth" is committed to voters in the State of Iowa, not the courts. *Id*.

2. The Court Should Reject Plaintiffs' Attempt Expand the Fraud Exception to the First Amendment to Include "False" Political Speech

In our constitutional system, there is no cause of action for so-called "fake news"—full stop. "From 1791 to the present, . . . the First Amendment has permitted restrictions upon the content of speech in a few limited areas, and has never include[d] a freedom to disregard these traditional limitations." *United States v. Stevens*, 559 U.S. 460, 468 (2010) (internal quotations and citation omitted). These "historic and traditional categories" have never been extended to generalized claims of false political speech. *Id.*; *see 281 Care Comm. I*, 638 F.3d at 633–34 (confirming that even "knowingly false campaign speech categorically" falls within the protection of the First Amendment). The remedy for disagreement with political speech that someone does not like is counter-speech—*not* court-enforced damages under the guise of commercial regulations. *281 Care Comm. II*, 766 F.3d at 793 ("Especially as to political speech, counterspeech is the tried and true buffer and elixir.").

In derogation of these principles, Plaintiffs are pursuing an action against Press Defendants for publishing "deceptive polls designed to influence the outcome of an election." (Pet. ¶ 127.) In

[5] In addition to the Eighth Circuit's decision in *281 Care Comm. II*, other post-*Alvarez* decisions have invalidated state laws punishing election campaign "misinformation"—even where the laws were restricted to deliberately or recklessly falsified speech. *See, e.g.*, *Grimmett v. Freeman*, 59 F.4th 689 (4th Cir. 2023); *Susan B. Anthony List v. Driehaus*, 814 F.3d 466 (6th Cir. 2016).

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Alvarez, however, the Supreme Court reaffirmed there is no "general exception to the First Amendment for false statements." 567 U.S. at 718. "This comports with the common understanding that some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee." *Id*.

Accordingly, to safeguard our "profound national commitment to the principle that debate on public issues should be uninhibited, robust, and wide-open," speech is presumptively shielded by the First Amendment unless it falls within one of a small number of narrowly defined categories. *Sullivan*, 376 U.S. at 270; *see Alvarez*, 576 U.S. at 717–18. These categories, informed by history and tradition, do not include a general proscription of "false speech." *Alvarez*, 576 U.S. at 719 ("The Court has never endorsed the categorical rule . . . that false statements receive no First Amendment protection."). These narrow categories have never included—and may not now be elasticized to encompass—"fake news" about election campaigns. The First Amendment stands resolutely against demands to regulate "truth" in political reporting, even when the alleged fraud in political speech consists of "knowingly false speech." *281 Care Comm. I*, 638 F.3d at 634 n.2.

The *Alvarez* Court reiterated that false statements are only unprotected when there is some "legally cognizable harm associated with [the] false statement." *Alvarez*, 567 U.S. at 719. Accordingly, Plaintiffs' claims, which are based exclusively on allegedly false speech, cannot be maintained unless they demonstrate a legally cognizable harm. To do so, Plaintiffs claim that this suit fits into one of the *Alvarez* exceptions because it rises to the level of fraud. Although superficially "fraud" is a category of speech outside the First Amendment's protection, simply "labeling an action one for 'fraud,' of course, will not carry the day." *Illinois ex. rel. Madigan v. Telemarketing Assocs.*, 538 U.S. 600, 617 (2003). A fraud claim imposes "exacting" requirements

to ensure "sufficient breathing room for protected speech[,]" and a "[f]alse statement alone" does not result in liability. *Id.* at 620. Even accepting as true that Plaintiffs decided to devote unplanned time and money to their respective campaigns for office, inspired by their own speculation that *The Register*'s reporting of the Iowa Poll results might sway voters, that is of course not a legally cognizable injury. It is how democracy works.

Permitting claims of "fraud" based on news reporting would render the First Amendment illusory. And permitting Plaintiffs' claims here to proceed would violate a fundamental premise of free speech by granting Plaintiffs "freewheeling authority to declare new categories of speech outside the scope of the First Amendment." *Stevens*, 559 U.S. at 472. That is a "startling and dangerous" proposition, subject to no principled limitation. *Id*. at 470. The First Amendment does not tolerate such a result and requires dismissal of the Petition in its entirety.

3. Even if Plaintiffs' Claims Were Permissible as a Threshold Matter, They Must Be Dismissed on Other First Amendment Principles

Even if—contrary to established First Amendment principles—*The Register*'s political campaign reporting was not endowed with presumptive First Amendment protection against an ICFA or tortious misrepresentation claim, the Petition nevertheless cannot overcome the additional constitutional privileges and defenses that would apply to Press Defendants' reporting. In *Hustler Magazine, Inc. v. Falwell*, the Supreme Court established that the same First Amendment defenses applicable to defamation suits govern intentional tort claims arising out of published statements concerning public officials. 485 U.S. 46, 56 (1988). Thus, Plaintiffs cannot recover on such a claim without showing, at a minimum, that the publication (i) "contains a false statement of fact," (ii) "made with 'actual malice,' *i.e.*, with knowledge that the statement was false or with reckless disregard as to whether or not it was true." *Id*. at 56. As delineated below, even if the Court were to accept Plaintiffs' faulty claim that The Register's political speech is not subject to presumptive

First Amendment protection, these additional constitutional limitations defeat Plaintiffs' claims in their entirety.

a. The Constitutional "Actual Malice" Standard Forecloses the Petition's Claims

Five decades ago, the United States Supreme Court recognized that "erroneous statement is inevitable in free debate and that it must be protected if the freedoms of expression are to have the 'breathing space' that they 'need . . . to survive.'" *Sullivan*, 376 U.S. at 271–72 (quoting *N.A.A.C.P. v. Button*, 371 U.S. 415, 433 (1963)). To carve out that "breathing space" such that "protected speech is not discouraged," *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 686 (1989), the *Sullivan* Court established the "actual malice" standard. *Sullivan*, 376 U.S. at 279–80. This standard, which protects "uninhibited, robust, and wide-open" debate on public issues, requires proof that the defendant published a false statement with knowledge that it was false, or with reckless disregard as to its truth or falsity. *Sullivan*, 376 U.S. at 270; *Walker v. Pulitzer Publ'g Co.*, 394 F.2d 800, 803 (8th Cir. 1968); *Carr v. Bankers Trust Co.*, 546 N.W.2d 901, 904 (Iowa 1996).

"The standard of actual malice is a daunting one." *Howard v. Antilla*, 294 F.3d 244, 252 (1st Cir. 2002) (quoting *McFarlane v. Esquire Magazine*, 74 F.3d 1296, 1308 (D.C. Cir. 1996). It is provable only by evidence that the defendant "realized that his statement was false or that he subjectively entertained serious doubt as to the truth of his statement." *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 n.30 (1984). Actual malice, also referred to as constitutional malice, therefore requires clear and convincing proof of Press Defendants' state of mind at the time the poll results were published. *Blessum v. Howard Cnty. Bd. of Supervisors,* 295 N.W.2d 836, 843 (Iowa 1980); *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). The test is subjective,

and negligence alone is insufficient. *Sullivan*, 376 U.S. at 279–80; *McCarney v. Des Moines Register & Tribune Co.,* 239 N.W.2d 152, 156 (Iowa 1976).

The Petition contains no factual allegations that support Plaintiffs' conclusory recitation that Press Defendants made "knowingly false misrepresentations." (Pet. ¶ 133.) This omission illustrates the complete absence of actual malice in this case. Indeed, for this very reason, the United States District Court for the Southern District of Iowa recently dismissed a parallel putative class action lawsuit asserting substantively identical claims to the present Petition because the plaintiff "assert[ed] only a bare legal conclusion accompanied by actual malice buzzwords that Defendants acted knowingly or recklessly." *Donnelly v. Des Moines Reg. and Trib. Co.*, No. 4:25-cv-00150, 2025 WL 4648229, at *5 (S.D. Iowa Nov. 6, 2025).

The same fatal infirmity plagues the present Petition. As in *Donnelly*, there are no factual allegations here that support the conclusion that *The Register* published the results of either a presidential or congressional election poll that intentionally erred in favor of the Democratic candidate. There are no factual allegations that Press Defendants purposefully relied on an unrepresentative sample or skewed demographics; used recklessly falsified or distorted polling data; deliberately prepared biased or misleading questionnaires; or knowingly adopted a flawed polling methodology. Nor are there any factual allegations that *The Register* had information from voters that contradicted the published poll results, or that the newspaper's personnel made any statements or conducted themselves in a manner indicating that they knew the polling results were incorrect.

The Petition's deficiencies are not limited to its fatal omissions, however. The Petition's allegations, and particularly its incorporation by reference of the relevant articles and their attachments, affirmatively demonstrate the factual predicate and basis for Press Defendants'

reporting determinations, including detailed methodological information and polling data from the Iowa Poll. (*See generally* Exs. A–G.) With these concessions, there is no conceivable set of facts under which Plaintiffs could prove that Press Defendants "realized that [their reporting] was false." *Bose Corp.*, 466 U.S. at 511 n.30.

Given their abject failure to demonstrate any possible set of facts demonstrating actual malice in the substance of the reporting, Plaintiffs pivot to speculation and various conclusory inferences, none of which can rescue their claims. First, Plaintiffs make much of the alleged pre-publication leak of the Iowa Poll's results (albeit without any related allegations with respect to Press Defendants). (Pet. ¶ 58.) Plaintiffs further speculate that *The Register* was part of a conspiracy "to paint an incorrect and cynical picture of the downward trajectory for President Trump" solely because the newspaper reported the results of a prominent Iowa poll that happened to get it wrong.[6] (*Id.* ¶ 48.) But Plaintiffs' conclusory statements that these speculative claims suggest an "abandonment of objectivity" in *The Register*'s reporting are unavailing as a matter of law. (*Id.* ¶ 55.) It is black-letter constitutional law that even political bias is insufficient to demonstrate actual malice. *See Donald J. Trump for President, Inc. v. WP Co. LLC*, No. 20-636, 2023 WL 1765193, *5 (D.D.C. Feb. 3, 2023) (holding that an "unadorned claim of animus and bias cannot save [a] deficient pleading") (citation omitted); *Trump v. Cable News Network, Inc.*,

[6] The Petition's speculation about ill motives—supposedly evinced by Press Defendants' publication of the Iowa Poll "to improperly influence the outcome of the 2024 Presidential Election and other electoral races" (Pet. ¶ 122)—misses the constitutional mark. "[W]hile such a bad motive may be deemed controlling for purposes of tort liability in other areas of the law, . . . the First Amendment prohibits such a result in the area of public debate about public figures." *Hustler*, 485 U.S. at 53. Further, as used in the First Amendment context, "actual malice" "has nothing to do with bad motive or ill will." *Harte-Hanks Commc'ns*., 491 U.S. at 666 n.7. Thus, under *Sullivan*, a plaintiff cannot demonstrate actual malice "merely through a showing of ill will or 'malice' in the ordinary sense of the term." *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 831 (Iowa 2007) (quoting *Harte-Hanks Commc'ns*, 491 U.S. at 666).

No. 22-61842, 2023 WL 4845589, *5 (S.D. Fla. July 28, 2023) ("Acknowledging that CNN acted with political enmity does not save this case; the Complaint alleges no false statement of fact."), *aff'd* No. 23-14044, 2025 WL 321203 (11th Cir. Nov. 18, 2025).

Therefore, because the Petition remains legally insufficient to state any claim upon which relief can be granted, it must be dismissed in its entirety regardless of whether this Court determines that *The Register*'s reporting is entitled to presumptive First Amendment protection.

b. Plaintiffs Challenge *The Register*'s Reporting on Estimates of Voting Behavior, Which Are Not Provably False Factual Statements

Further, Plaintiffs cannot, as a matter of law, establish that Press Defendants' reporting of poll results are statements of fact actionable under any legal theory. *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777–78 (1986). The Petition challenges statements that could not be verified as true or false at the time of publication because they necessarily related to *estimates* of voting behavior and the Iowa Poll's projection of potential *future* events—*i.e.*, the outcome of the 2024 presidential and congressional elections in Iowa. Indeed, "opinion polls of random selections of voters are snapshots with margins of error, and campaigns are, to say the least, dynamic projects." *See Scott v. Roberts*, 612 F.3d 1279, 1283 (11th Cir. 2010).

In *281 Care Comm. II*, the court applied this principle when it invalidated a Minnesota campaign law penalizing alleged knowingly false communications about ballot initiatives, holding that such speech was a "statement of conjecture about the future state of affairs should the ballot question pass or fail"; thus, it could not be deemed provably false as a matter of law. 766 F.3d at 795; *see also Trump v. Cable News Network, Inc.*, No. 23-14044, 2025 WL 3213203, at *2 (11th Cir. Nov. 18, 2025) (affirming dismissal of Trump's defamation claim against CNN for failure to adequately allege the falsity of CNN's statements describing Trump's conduct as a "Big Lie,"

reasoning that CNN's "subjective assessment of Trump's conduct is not readily capable of being proven true or false").

The same is true of the reporting on the Iowa Poll results published by *The Register*, which represented an inherently evaluative assessment of public sentiment about the respective candidates at a particular point in time predating the election—*i.e.*, at most, a subjective estimate of future voting behavior. Polling results do not and cannot qualify as false statements of fact for First Amendment purposes merely because they may later fail to align with the ultimate election outcome. *See Scott*, 612 F.3d at 1283.

If, as Plaintiffs insist, news coverage of political polling must exhibit inerrant prescience to avoid liability under state consumer fraud laws, such polling and reporting would be wrongly chilled to the detriment of an informed public. *Cf. Alvarez*, 567 U.S. at 723 ("The mere potential for the exercise of that power casts a chill, a chill the First Amendment cannot permit if free speech, thought, and discourse are to remain a foundation of our freedom.").

c. Plaintiffs' Demand for Injunctive Relief is Presumptively Unconstitutional

Fundamental First Amendment principles also bar Plaintiffs' demand for injunctive relief. Even if Plaintiffs could state a cognizable claim (although they cannot), injunctions directed against speech are presumptively invalid under the First Amendment—even where such speech is alleged to be actionable at law. Indeed, courts routinely refuse to award injunctive relief directed at speech on the basis that the injunction would constitute an unconstitutional prior restraint. *See Lemons v. Mycro Grp. Co.*, 667 F. Supp. 665, 667 (S.D. Iowa 1987) ("[G]enerally, the First Amendment prohibits prior restraint through injunction, and torts against the person such as defamation may not be enjoined[.] There is usually an adequate remedy at law to redress injury to personal rights" (internal citations omitted)); *see also United Youth Careers, Inc. vs. City of Ames*,

412 F. Supp. 2d 994, 1002 (S.D. Iowa 2006) ("Prior restraints on protected speech are particularly disfavored because 'a free society prefers to punish the few who abuse rights of speech after they break the law than to throttle them and all others beforehand.'" (quoting *S.E. Promotions, Ltd. v. Conrad*, 420 U.S. 546, 559 (1975))).

4. In the Alternative, Plaintiffs' Interpretation of ICFA as Applicable to Press Defendants' Political Reporting Would Fail Strict Scrutiny

Alternatively, even accepting Plaintiffs' erroneous notion that ICFA applies to Press Defendants' reporting of polling results in the midst of presidential and congressional elections, the statute's application in this context would nevertheless be subject to the most exacting level of constitutional scrutiny. *281 Care Comm. II*, 766 F.3d at 784 ("Here, because the speech at issue occupies the core of the protection afforded by the First Amendment, we apply strict scrutiny to legislation attempting to regulate it."). Accordingly, Plaintiffs must demonstrate that their interpretation of ICFA is "necessary to serve a compelling state interest and . . . is narrowly drawn to achieve that end." *Burson v. Freeman*, 504 U.S. 191, 198 (1992) (citation omitted). The burden of justifying restrictions on political speech under the strict scrutiny standard is "well-nigh insurmountable." *Meyer v. Grant*, 486 U.S. 414, 425 (1988). Count I of the Petition cannot survive strict scrutiny.

First, Plaintiffs' claims serve no compelling government interest. Plaintiffs urge that ICFA prevents allegedly false campaign speech from misleading voters to influence election outcomes. (Pet. ¶¶ 119–24.) However, no court has held that the government has any interest in policing such speech, much less a compelling one. *See, e.g.*, *Daily Herald Co. v. Munro*, 758 F.2d 350, 362 (9th Cir. 1984) (Norris, J., concurring) ("[T]he State cites no authority, and I know of none, for the proposition that government may restrict the collection and broadcasting of information about the political process out of concern for its impact on voting behavior."). Plaintiffs' ICFA claim

capsizes the First Amendment by transforming its central purpose of *protecting* political speech into a basis for regulating—or even prohibiting—it.

The Eighth Circuit has unequivocally rejected the use of general fraud principles to manufacture an interest in proscribing political speech, even where the speech is knowingly false:

> To the extent that defendants also argue in favor of application of fraud principles to all knowingly false speech, we reject the argument, noting the Supreme Court has carefully limited the boundaries of what is considered fraudulent speech. It has not included all false speech, *or even all knowingly false speech*.

281 Care Comm. I, 638 F.3d at 634 n.2 (emphasis added). This reasoning compels dismissal of the Petition.

Second, Plaintiffs' attempted misuse of ICFA and Iowa's common law is not actually necessary to remedy the purported fraud as strict scrutiny requires. The First Amendment mandates that any law's "chosen restriction on the speech at issue be 'actually necessary' to achieve its interest." *Alvarez*, 567 U.S. at 725 (internal citations omitted). Even indulging the fiction that ICFA can be used to prevent voters from even being exposed to purportedly false information regarding the results of a political poll, Plaintiffs must allege factual evidence of a "direct causal link" between such information and the harm alleged in the Petition, *i.e.*, a pecuniary loss or an election outcome actually altered by the information reported. *281 Care Comm. II*, 766 F.3d at 790. No such facts are alleged here that justify penalizing Press Defendants' speech under the rubric of a consumer fraud claim.

Neither are Plaintiffs' claims for relief justified by their unsupported allegations of "brazen election interference." (Pet. ¶ 1.) Iowa voters voted in favor of President Trump and Rep. Miller-Meeks. (*Id*. ¶¶ 2–3.) These electoral victories alone belie any causal link between the claims and any government interest in preserving voting integrity and fair elections. And the Iowa Poll did not poll voters at all with respect to Zaun's campaign. In short, Plaintiffs' claims are not 'actually

necessary' to avoid the purported harm alleged in the Petition—a harm that is worse than conjectural and is in fact nonexistent. *281 Care Comm. II*, 766 F.3d at 791 ("Such conjecture about the effects and dangers of false statements equates to implausibility as far as this analysis goes, because, when the statute infringes core political speech, we tend to not take chances."). This Court should take no such chance on infringing the First Amendment in service of entertaining Plaintiffs' defective claims. ICFA cannot be commandeered by candidates for political office as a vehicle to target press campaign coverage based on invented election-interference grievances.

Third, obvious less-restrictive means exist to protect any conceivable government interest in limiting Press Defendants' speech. "There is no reason to presume that counter-speech would not suffice to achieve the interests advanced and is a less restrictive means, certainly, to achieve the same end goal." *281 Care Comm. II*, 766 F.3d at 793. Indeed, with respect to speech on political campaign issues, "[p]ossibly there is no greater arena wherein counterspeech is at its most effective." *Id.* "It is the most immediate remedy to an allegation of falsity." *Id*. The application of this principle is acutely warranted in this context, where the opportunities for counter-speech are manifest and President Trump himself has repeatedly criticized the Iowa Poll, both before and after the election, and in unabashed terms. (Pet. ¶ 13.) "Such 'back and forth' is the way of the world in election discourse." *281 Care Comm. II*, 766 F.3d at 795.

Moreover, the Petition points out that "*every other* mainstream Iowa poll" correctly predicted the election's outcome in favor of President Trump (Pet. ¶ 49 (emphasis in original)), underscoring that "[t]he remedy for speech that is false is speech that is true." *Alvarez*, 567 U.S. at 727. President Trump ignores that his own bully pulpit, together with the results of the other polls Plaintiffs cite, provide more than ample means to counter the specious election interference allegations saturating the Petition. This alone demonstrates that Plaintiffs' interpretation of ICFA

and Iowa's common law "is not narrowly tailored to achieve the [purported] goal." *281 Care Comm. II*, 766 F.3d at 794 ("[C]ounterspeech, alone, establishes a viable less restrictive means of addressing the preservation of fair and honest elections . . . and preventing fraud on the electorate.").

For these many reasons, Plaintiffs' fundamental misapprehension of Iowa law cannot satisfy strict scrutiny, and their ICFA claim must be rejected.

B. The Petition Asserts No Legally Viable Claim for Relief Under the Iowa Consumer Fraud Act (Count I)

Plaintiffs' Petition also fails as a matter of law because none of Plaintiffs' three pleaded claims state a claim upon which relief could be granted. Plaintiffs' first claim argues that Press Defendants violated ICFA by publishing the results of the Iowa Poll.

ICFA sets out the bounds of consumer fraud claims as follows:

> A person shall not engage in a practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise . . . .

Iowa Code § 714H.3(1). "A consumer who suffers an ascertainable loss of money or property as the result of" one of the prohibited practices outlined in section 714H.3(2) "may bring an action at law to recover actual damages." *Id.* § 714H.5(1).

Plaintiffs' ICFA claim fails for numerous reasons, including that Plaintiffs (1) lack statutory standing to state an ICFA claim; (2) neither allege nor identify any conduct by Press Defendants that could constitute a violation of ICFA; (3) neither allege nor identify any purported wrongful conduct by Press Defendants that was "in connection with the sale, lease, or advertisement" of "consumer merchandise"; and (4) suffered no ascertainable loss of money or

property proximately caused by the Iowa Poll. For these reasons, the Court should dismiss Plaintiffs' ICFA claim.

1. Plaintiffs Lack Statutory Standing Under ICFA

Plaintiffs do not allege the type of consumer harm that ICFA is meant to protect against. "'Standing' refers to a party's right to bring a legal action." *1000 Friends of Iowa*, 19 N.W.3d at 297. Statutory standing refers to any statutory prerequisite for a potential plaintiff to have a right to bring a claim under that provision.

ICFA provides, "A consumer who suffers an ascertainable loss of money or property as the result of a prohibited practice or act in violation of this chapter may bring an action at law to recover actual damages." Iowa Code § 714H.5(1). Because ICFA is a consumer fraud statute, all prohibited acts under the chapter must have been perpetrated "in connection with the advertisement, sale, or lease of *consumer merchandise*." *Id.* § 714H.3(1) (emphasis added). ICFA defines "[c]onsumer" as "a natural person or the person's legal representative," and it defines "[c]onsumer merchandise" as "merchandise offered for sale or lease, or sold or leased, primarily for personal, family, or household purposes." *Id.* § 714H.2(3), (4). "Merchandise," in turn, is defined as "any objects, wares, goods, commodities, intangibles, securities, bonds, debentures, stocks, real estate or services." *Id.* §§ 714H.2(6), 714.16(e).

Plaintiffs do not have statutory standing to bring an action under ICFA. In the Petition, Plaintiffs attempt to elide the purpose of the private right of action for ICFA violations by citing the definitions of "consumer" and "merchandise" while ignoring that ICFA provides a specific definition for "consumer merchandise." (Pet. ¶¶ 99, 101, 108.) Indeed, Plaintiffs' claims have nothing whatsoever to do with a consumer transaction; rather, they are expressly about purported "election interference." (*Id.* ¶ 1.) By advocating for an interpretation of ICFA that eliminates the

need for a claim to involve a consumer transaction, Plaintiffs seek to transform ICFA into a generic "Iowa Fraud Act" applicable to any grievance they can imagine. This is unlawful.

Plaintiffs' Petition suggests that they are aware of this fatal defect. Plaintiffs attempt to claim that they each qualify as a "consumer" under ICFA because each "acquired, read, and [had] been deceived by" the Iowa Poll. (*Id.* ¶¶ 105–07.) With this allegation each Plaintiff acknowledges he or she must plead *more* than a status of a "natural person." Iowa Code § 714H.2(3). At the same time, they do *not* allege they purchased a copy of (or subscribed to) *The Register* because of the publication of the Iowa Poll results, which is required for any of them to have standing to pursue this ICFA claim.

In addition, Plaintiffs' claim fails because ICFA requires contractual privity, which Plaintiffs do not and cannot allege. Claims under the statute rise or fall on the existence and breach of a contract between the parties. *See McKee v. Isle of Capri Casinos, Inc.*, 864 N.W.2d 518, 532 (Iowa 2015) ("If [the plaintiff] had no contractual right to the bonus, and we have already determined she did not, then she could not have suffered an ascertainable loss of money or property when she was denied that bonus."); *see also Mannino v. McKee Auto Ctr., Inc.*, No. 4:34-cv-00262, 2024 WL 4884440, at *3 (S.D. Iowa Sept. 5, 2024) ("The Iowa Supreme Court has rejected claims under the ICFA when a party does not have a contractual right to the property in dispute."). Plaintiffs do not assert any predicate contractual relationship here.

Finally, Plaintiffs do not have standing because they do not allege any ascertainable damages that qualify for relief. ICFA contains explicit limitations on damages. For example, ICFA makes clear that: (1) campaign contributions do not qualify as damages, *see* Iowa Code § 714H.3(1); (2) expenditures on behalf of a separate legal entity (such as a campaign or federal office) do not qualify as damages, *see id.* § 714H.2(3); (3) plaintiffs cannot sue for alleged damages

incurred by other individuals, *see id.* § 714H.5(1); and (4) an individual can obtain equitable relief only after a finding that there was a violation of ICFA, *see id.* § 714H.5.

Here, President Trump's allegations of damages are merely that he "sustained actual damages by having to expend extensive time and resources, including direct federal campaign expenditures, to mitigate and counteract the harms of the Defendants' conduct." (Pet. ¶ 124.) Likewise, Rep. Miller-Meeks's allegations of damages are that she "sustained actual damages due to the need to expend extensive time and resources, to mitigate and counteract the harms of the Defendants' conduct." (*Id.* ¶ 125.) And Zaun's allegations of damages are that he "sustained actual damages due to the loss of his Senate seat." (*Id.* ¶ 126.) Plaintiffs do not explain how an alleged loss of time (even "extensive" time) can constitute actual damages under ICFA. Nor do they provide a basis to claim that an alleged expenditure of vague and undefined (and therefore unascertainable) "resources" constitutes actual damages under ICFA. Furthermore, Plaintiffs fail to provide any basis to claim that the alleged loss of a congressional seat constitutes actual damages under ICFA. Plaintiffs, as individuals, cannot claim any damages whatsoever that their respective *campaigns* may have incurred, and Plaintiffs cannot sue on behalf of any person other than themselves.

The Iowa Legislature included ICFA's statutory standing requirements to make its reach clear. Plaintiffs lack statutory standing in this case. The Court should dismiss their ICFA claim.

2. Plaintiffs Do Not Allege Any Act That Violated ICFA

Plaintiffs' ICFA claim also fails because the Petition does not allege any conduct by Press Defendants that is prohibited by ICFA. Plaintiffs claim in conclusory fashion that Defendants engaged in two of ICFA's prohibited acts—*i.e.*, that Press Defendants' publication of the poll was (1) a "deception"; and (2) an "unfair act or practice." (Pet. ¶¶ 109–12); *cf.* Iowa Code § 714H.3(1).

But Defendants' conduct as alleged was neither: To the contrary, Defendants' actions—*i.e.*, conducting a political poll and publishing articles discussing, analyzing, and opining on the results—are permissible and *protected* activities under the law.

a. Publishing a Political Poll Is Not an Actionable "Deception"

Plaintiffs claim that Press Defendants made misstatements of material fact and engaged in deceptive conduct by publishing the Iowa Poll results. They allege that the reporting caused consumers to be "misled into believing that Harris was leading President Trump in the Iowa Presidential race and . . . that Bohannan was leading Representative Miller-Meeks in the 1st Congressional District Race." (Pet. ¶ 109.) The Petition then relies on the bare (and incorrect) conclusory statement that poll results suggesting "who is winning the race in question and by how much" constitutes a statement of "material fact[]." (*Id.*)

Under ICFA, "'[d]eception' means an act or practice that is likely to mislead a substantial number of consumers as to a material fact or facts." *See* Iowa Code § 714H.2(5). Therefore, a "deception" requires a statement of purported *fact*. The determination of whether a statement is an opinion or actionable statement of fact is a question of law for this Court to decide. *Others First, Inc. v. Better Bus. Bureau of Greater St. Louis, Inc.*, 829 F.3d 576, 580–81 (8th Cir. 2016); *see Andrew v. Hamilton Cnty. Pub. Hosp.*, 960 N.W.2d 481, 489 (Iowa 2021). As a matter of law, a statement of the results of a political opinion poll is not an actionable statement of fact regarding the unknown and unknowable results of a *future* election. This is true for several reasons.

First, the Iowa Poll, and indeed all polls, are not intended to be—and self-evidently cannot be—a guarantee of a future election performance. *See Scott*, 612 F.3d at 1283. Rather, "opinion polls of random selections of voters are snapshots with margins of error, and campaigns are, to say the least, dynamic projects." *Id.* Indeed, Plaintiffs affirmatively plead this very fact by describing

"inaccurate" polling results from past elections and "outlier" polls where multiple pollsters project different results for the same election. (*See* Pet. ¶¶ 31–33, 49, 130.) Plaintiffs cannot plead a permissible ICFA claim by mere speculation and claiming in conclusory fashion that the Iowa Poll was as an "intentionally deceptive misrepresentation[]." (*Id.* ¶ 134.) Rather, the claim is merely a bare, unsupported legal conclusion, based solely on post-election hindsight. There is no precedent to support the notion that a political opinion poll can be a misleading representation *of fact* as the law requires.

Second, even if the Iowa Poll results could be considered statements of "fact," the poll results do not satisfy ICFA's requirement that the alleged misstatement concern a *material* fact. *See* Iowa Code §§ 714H.2(5), 714H.3(1). Plaintiffs allege that "the only material facts that matter when it comes to polling . . . [are] who is winning the race in question and by how much." (Pet. ¶ 109.) But under ICFA, "material" is a legally defined term of art, not dependent on Plaintiffs' subjective conclusion on what should be the "only material facts" in the case. A statement of fact is "material" under ICFA only if it creates a "misleading impression . . . involv[ing] information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product." *State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12, 34 (Iowa 2013) (citation modified). For example, in *Vertrue*, the Iowa Supreme Court held that "underlying performance terms of [a] membership offer were material as they presumably constituted *the most important factor* affecting consumers' decisions to enter into a long-term obligation to pay . . . monthly premiums." *Id.* at 37 (emphasis added).

In this case, of course, Plaintiffs do not allege that the Iowa Poll results affected their "choice of, or conduct regarding" *The Register* or any other consumer product or merchandise. *Cf. id.* at 34. Rep. Miller-Meeks is the only Plaintiff who pleads that she *ever* purchased—or even

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considered purchasing—*The Register*; but she notably does *not* allege that the publication of the Iowa Poll affected her purchase decision. (Pet. ¶ 21.)

Third, Plaintiffs do not allege that any of the underlying polling data was incorrect or falsified, that the published methodology was not implemented as described, or that Press Defendants misstated or lied about the results. Instead, Plaintiffs state their conclusion—without any supporting allegations of fact—that the Iowa Poll was "utterly wrong and intentionally misleading." (Pet. ¶ 2.) But a *post hoc* comparison of the poll results against the subsequent election results is insufficient to state a fraud claim as a matter of law. *See, e.g.*, *BJC Health Sys. v. Columbia Cas. Co.*, 478 F.3d 908, 918 (8th Cir. 2007) (finding that when a complaint merely "expresses disagreement with [a] conclusion . . . , but it does not specify where and how the analysis falls short," the complaint fails to state a claim for fraud).

Lastly, Plaintiffs cannot have been misled because they knew (or should have known, if they in truth read the articles at issue) how the poll was conducted. With the publication of the Iowa Poll, Press Defendants included detailed descriptions about how the Iowa Poll was performed, the questions of which it was comprised, the tabulated results from the respondents, and the factors on which Selzer weighted the responses. (*See generally* Exs. B, E, I, J, K.) In other words, Press Defendants fully disclosed all the information Plaintiffs would have needed to evaluate the poll's methodology. This alone is fatal to Plaintiffs' claim that Defendants made misstatements of material fact. *See Bass v. J.C. Penney Co., Inc.*, 880 N.W.2d 751, 764 (Iowa 2016) (rejecting an ICFA claim alleging misrepresentations as to shipping and handling charges when underlying documentation "plainly demonstrated" exactly what those charges would be).

Because Plaintiffs' claim that Defendants engaged in an act of "deception" under ICFA is not supported by any alleged facts and is to the contrary prohibited as a matter of law, the claim must be dismissed.

b. Publication of the Iowa Poll Results Is Not an "Unfair Act or Practice"

The publication of the Iowa Poll results is likewise not an actionable "unfair act or practice." (Pet. ¶ 110.) Under ICFA, "'[u]nfair practice' means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces." Iowa Code §§ 714.16(1)(i), 714H.2(9). Here too, ICFA reinforces that it applies only to *consumer* harm. Iowa law is likewise clear that the statute prohibits "unscrupulous *business* practices," such as sales or advertisements. *State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 525 (Iowa 2005) (emphasis added); *see also Vertrue, Inc.*, 834 N.W.2d at 34 (applying the statute to advertising and marketing conduct). The only purportedly "unfair" conduct in this case is the publication of newspaper articles about the Iowa Poll—*not* the sale or advertisement of the newspaper. As discussed above, the publication of the articles is a protected speech activity, is not an inherently commercial act, and bears no qualities of general "unfairness." *Cutty's*, 694 N.W.2d at 525.

Further, Plaintiffs' alleged "injuries" do not constitute consumer harm and are neither substantial nor unavoidable. The only injuries alleged are: (1) Plaintiffs' subjective feelings that they "were badly deceived and misled"; (2) President Trump's evidently unilateral decision "to divert campaign and financial resources to Iowa" after reading the Iowa Poll; and (3) Rep. Miller-Meeks allegedly being "forced to fight a recount." (Pet. ¶¶ 110–11.) At the outset, none of these are consumer injuries that could support an ICFA claim. They are—at most—conceptual injuries based on Plaintiffs' own apparent misunderstandings of the nature of political polls.

Plaintiffs' first alleged injury—being "badly deceived and misled"—is belied by President Trump's own definitive allegation that he was *not* deceived: he states in the Petition that he "certainly could not have trailed Harris by three points in Iowa at any time in the 2024 cycle." (*Id.* ¶ 7.) Plaintiffs do not allege that they credited the poll results or relied on them to make any consumer decisions, because they in fact did not. Plaintiffs were not "deceived" by the Iowa Poll and were perfectly capable of disregarding its analysis and conclusion based on their own claimed certainty that it was inaccurate. Further, to the extent Plaintiffs were "deceived and misled," any injury was easily avoidable if they (together with their well-staffed and capable campaigns) simply read the published underlying polling data and reached their own conclusions about their import.

Plaintiffs' second alleged injury—the Trump campaign's purported diversion of "campaign and financial resources to Iowa"—is not a consumer injury suffered by either President Trump or the other Plaintiffs in their individual capacities, nor does it flow from the publication of the Iowa Poll. (*See id.* ¶ 110.) To the extent President Trump and his campaign decided to expend time and campaign funds in Iowa, those expenditures were not paid to any of the Defendants nor did they in any other way benefit Defendants.

Likewise, Plaintiffs' third alleged injury—that Rep. Miller-Meeks was "forced to fight a recount"—is not a consumer injury suffered by either Rep. Miller-Meeks or the other Plaintiffs in their individual capacities, nor does it flow from the publication of the Iowa Poll. (*See id.* ¶ 111.) Not only is "facing a recount" *not* a consumer injury *at all*, but the alleged recount did not cause any payments or other benefits to flow to Defendants.

Plaintiffs have failed to plead any conduct by Defendants that is prohibited by ICFA.[7] As a result, this Court should dismiss Plaintiffs' ICFA claim in its entirety.

3. Plaintiffs Do Not Allege the Publication of the Iowa Poll Was in Connection with the Sale or Advertisement of Consumer Merchandise

Additionally, Plaintiffs fail to state a cognizable ICFA claim because they do not plead any facts to provide notice of any theory of their case by which Defendants' actions in conducting and publishing the Iowa Poll were in connection with the sale of consumer merchandise.

Because the purpose of ICFA's private right of action is to protect individual consumers, the statute requires that the allegedly wrongful conduct have a direct relational nexus to a consumer activity. *Mannino*, 2024 WL 4884440, at *3 (citing *Deng v. White*, No. 18-1672, 2019 WL 6358427, at *5 (Iowa Ct. App. Nov. 27, 2019)). The statutory language itself enforces this requirement by mandating that consumer plaintiffs demonstrate that the conduct that allegedly violates ICFA was done "in connection with the advertisement, sale, or lease of consumer merchandise." Iowa Code § 714H.3(1).

ICFA and Iowa case law define the relevant terms and phrases incorporated into this commerce requirement. "'[C]onsumer merchandise' means merchandise offered for sale or lease, or sold or leased, primarily for personal, family, or household purposes." Iowa Code § 714H.2(4).[8]

[7] In a strained "kitchen-sink" pleading effort, Plaintiffs state in conclusory fashion that the Iowa Poll was "deceptive, misleading, unfair, and *the result* of concealment, suppression, and omission of material facts." (*See* Pet. ¶ 113 (emphasis added).) This language is not consistent with the language of the statute and states no ICFA claim. *Cf.* Iowa Code § 714H.3 (reflecting no mention of a prohibitive practice that is the "result" of something). Rather, the Petition's only pleaded (but insufficient) claims of violative conduct are that the Iowa Poll was a "deception" or an "unfair act or practice." (*See* Pet. ¶¶ 109–11.) To the extent Plaintiffs intended to plead additional forms of allegedly violative conduct, they failed to state claims upon which relief may be granted.

[8] Because the entire thrust of Plaintiffs' Petition is that the "merchandise" harmfully impacted their respective political campaigns, they of course cannot claim to have used *The Register* "primarily for *personal, family, or household purposes*." *Id.* (emphasis added). To allow

For purposes of this lawsuit, Plaintiffs allege the "merchandise" at issue consists of *The Register*'s "physical newspapers" and "online newspapers."[9] (Pet. ¶ 108.)

The term "'[s]ale' means any sale or offer for sale of consumer merchandise for cash or credit." Iowa Code § 714H.2(8). The term "[a]dvertisement' includes the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation to acquire any title or interest in any merchandise." *Id.* § 714H.2(2) (incorporating the definition of the term as set forth in Iowa Code § 714.16(1)(a)).[10] Finally, the phrase "in connection with," as explained by the Iowa Supreme Court, "is commonly defined as 'related to, linked to, or associated with,'" and in the context of a consumer fraud claim, requires a showing of "some relation or nexus" between the prohibited act and the merchandise in question. *Cutty's*, 694 N.W.2d at 526 (citations and quotations omitted).

Synthesizing these definitions, the law is clear: to state a claim for an ICFA violation, Plaintiffs must plead that they were harmed by Defendants' prohibited conduct that was *related to the sale or advertisement of* The Register*'s newspaper*. Plaintiffs have not done so. To the contrary,

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Plaintiffs to bring a claim based on alleged professional use of a good or service would be an improper, atextual, and substantial expansion of the scope of ICFA.

[9] Plaintiffs also nominally allege that the merchandise in this case includes any "other content that contained the [poll]." (Pet. ¶ 108.) This allegation, however, is impermissibly vague and wildly overbroad. Plaintiffs' claim would then encompass every article, interview, podcast, political advertisement, opinion piece, or book that discusses (even unfavorably) the Iowa Poll and its results, written or spoken by anyone (including non-parties) in any medium or forum. Defendants cannot possibly know, let alone have control over, all of the potential "content that contained" the results of the poll at issue, nor is every such piece of "content" consumer merchandise. Plaintiffs' only cognizable allegation regarding any "merchandise" in this lawsuit, therefore, covers only *The Register*'s physical and digital newspaper.

[10] Unlike "sale" and "advertisement," ICFA does not define the term "lease"; however, the widely understood and plain language meaning of the term is "a contract by which one conveys real estate, equipment, or facilities for a specified term and for a specified rent." *See Lease*, Merriam-Webster Dictionary, *available at* https://www.merriam-webster.com/dictionary/lease. No construction of the Petition can conceivably implicate any "lease" under the statute, nor does the Petition make any such allegation.

in fact, Plaintiffs affirmatively claim that the allegedly violative conduct was *politically*—not commercially—motivated. Plaintiffs allege (however implausibly) that the publication of the poll was for the sole purpose of "manufacturing fake support for Democrat candidates to interfere in the elections." (Pet. ¶ 34.) And the gravamen of Plaintiffs' alleged harm is that they were "misled" by this poll as to the actual position of respective candidates in various elections. (*Id.* ¶¶ 109–11.) Even if that were true (though it plainly is not), it only confirms that neither the alleged harmful conduct—*i.e.*, publishing and releasing the poll—nor the alleged harm—*i.e.*, Plaintiffs' professed fear of losing their respective elections—was "in connection with" the "sale" or "advertisement" of "consumer merchandise." *Cf.* Iowa Code § 714H.3.

Furthermore, Plaintiffs did not plead that the publication of the Iowa Poll had any nexus whatsoever to their purchase of *The Register*. Again, President Trump and Zaun do not claim to have purchased *The Register*, and Rep. Miller-Meeks does not allege that her decision to purchase *The Register* had anything to do with the Iowa Poll. (Pet. ¶ 21.)

Moreover, Plaintiffs concede that the articles and poll results were made freely and publicly available, meaning they were not required to buy *The Register* or engage in any consumer purchase whatsoever to read the articles about the results of the poll. (*Id.* ¶¶ 1 n.1, 112, 135, 155.) Therefore, the publication of the poll results was not an act in connection with the sale or advertisement of the merchandise as required by ICFA.

Finally, Plaintiffs do not plead that the publication of the Iowa Poll had any nexus to any advertisement for *The Register*. As is clear from its definition, the purpose of an advertisement is meant to induce a consumer to enter into a transaction to purchase merchandise. *See* Iowa Code § 714H.2(2); *State v. Cutsick*, 84 N.W.2d 554, 556 (Iowa 1957) ("[A]dvertising is a method, in a broad sense, of soliciting the public to purchase the wares advertised."); *see also* Note, *Consumer*

Protection Under the Iowa Consumer Fraud Act, 54 IOWA L. REV. 319, 325 (1968) ("Virtually every type of *sales appeal* made to *customers* . . . can be brought within the 'advertisement' definition [under ICFA]." (emphasis added)).

There is nothing in the Iowa Poll or the articles referencing it that amounts to any attempt to "induce" Plaintiffs to purchase *The Register*; the Iowa Poll and related articles do not constitute a call to action to purchase anything at all. Plaintiffs admit as much in their Petition, as they claim that the purpose of Press Defendants' release of the poll was alleged "election inference," (Pet. ¶ 1), not an attempt to sell newspapers or gain subscribers. And relevant here is the fact that the articles were admittedly published and available to the public *free of charge*, which vitiates any claim that the publication of the poll was meant to incite any purchase. The Petition therefore fails to allege any conceivable connection to any advertisement under ICFA.[11]

Plaintiffs have failed to plead the foundational requirement that the allegedly wrongful conduct has a relational nexus to the sale or advertisement of any consumer merchandise. Nor have Plaintiffs sufficiently pleaded that they were harmed "in connection with" the "sale" or "advertisement" of *The Register*. *Cf.* Iowa Code § 714H.3. Therefore, the Court should dismiss Plaintiffs' ICFA claim.

[11] If Plaintiffs nevertheless attempt to claim the publication of the Iowa Poll and its results was somehow an "advertisement," ICFA then specifically exempts the claims. It provides:

> This chapter *shall not apply* to . . . the newspaper, magazine, publication, or other print media in which the advertisement appears, including the publisher of the newspaper, magazine, publication, or other print media in which the advertisement appears, . . . including an employee, agent, or representative of the publisher, newspaper, magazine, publication or other print media . . . .

Id. § 714H.4(1)(c) (emphasis added). It is undisputed that *The Register* is a newspaper and that the Des Moines Register is its publisher. (Pet. ¶ 25.) Gannett, as owner of the Des Moines Register (*id.* ¶ 26), is also a publisher under the statute. Should the Court entertain the idea that the Iowa Poll is an "advertisement" for *The Register* for purposes of ICFA, this exception fully bars Plaintiffs' ICFA claim.

4. Plaintiffs Do Not Allege They Relied—and They Did Not Rely—on the Iowa Poll

Plaintiffs' ICFA claim also fails because ICFA requires any claimed damages be proximately caused by the prohibited conduct. Iowa Code §§ 714H.5(1), 714.16(2)(a). The statute does not independently define "proximate cause," but the Iowa Supreme Court has held that the question of "proximate cause" is also rightly framed as a "scope-of-liability issue," *i.e.*, that liability must be limited to "'harms that result from risks created by the actor's wrongful conduct, but for no others.'" *Thompson v. Kaczinski*, 774 N.W.2d 829, 838 (Iowa 2009) (quoting Restatement (Third) of Torts § 29, cmt. e). In other words, when there is no wrongful conduct identified—as in the present case—there are no attendant risks of harm that would satisfy ICFA's proximate cause requirement.

Furthermore, ICFA itself indicates what is required for Plaintiffs to show proximate cause: reliance on the fraudulent act by the consumer when entering into a consumer transaction. Before there was a private right of action under ICFA, the Iowa Attorney General was expressly *not* required to prove its own reliance on the fraudulent act; however, the private right of action statute, which is the operative provision in this case, removed that exception. *Compare* Iowa Code § 714.16(7) ("[I]t is not necessary in an action for reimbursement or an injunction, to allege or to prove reliance . . . ."), *with id.* § 714H.3(1) (requiring that a defendant have the "intent that others rely" on the fraudulent conduct to be liable). Private plaintiffs now must establish proximate cause through a showing of reliance. *Id.* §§ 714H.3, 714.16(2)(a).

"The Iowa Consumer Fraud Act was patterned after the Illinois Consumer Fraud Act[,]" so we may look to Illinois courts' application of their own consumer fraud act for guidance. *See State ex rel. Miller v. Hydro Mag, Ltd.*, 436 N.W.2d 617, 621 (Iowa 1989). And the Illinois Supreme Court recently confirmed that plaintiffs must demonstrate reliance to prevail on a private

right of action under the statute: "In order to establish the element of proximate causation, a plaintiff must prove that it was actually deceived by the misrepresentation. If the plaintiff has neither seen nor heard a deceptive statement, it cannot have relied on the statement and, consequently, cannot prove that the statement was the proximate cause of its injury." *Tri-Plex Tech. Servs., Ltd. v. Jon-Don, LLC*, 241 N.E.3d 454, 462 (Ill. 2024) (citation modified).

In their Petition, Plaintiffs do not plead that they relied on the Iowa Poll when engaging in any consumer conduct, much less that any reliance would be justified. Plaintiffs do not even plead whether or how they relied on the articles or poll data, nor do they allege that the underlying poll data was inaccurate. Only approximately 72 hours passed between the first publication of the Iowa Poll and the close of the election in Iowa. (*See* Pet. ¶¶ 1–2.) Plaintiffs do not identify a single act from that period that demonstrates that they relied on the articles in question to make a consumer purchase decision of any kind.[12] The Petition categorically fails to provide any notice to Press Defendants of the nature of the claimed injury.

Plaintiffs do not—and cannot—plead reliance on the Iowa Poll as to any consumer decision by any of them. Therefore, Plaintiffs can neither plead nor show proximate cause, and the Court should dismiss their ICFA claim. *Cf.* Iowa Code §§ 714H.5, 714.16(2)(a).

[12] The plain reason Plaintiffs do not allege any acts of reliance is because no such reliance in fact occurred. President Trump publicly made clear that he affirmatively rejected—not relied upon—the results of the Iowa Poll. The Petition incorporates an article reporting on President Trump's dismissal of the Iowa Poll within 24 hours of its publication as "a fake poll done by a Trump hater who oversampled, by a lot, Democrats." (*See* Pet. ¶ 63 (citing Sara Dorn, *Why Outlier Poll Showing Harris Winning Iowa Could Spell Trouble for Trump*, FORBES (Nov. 3, 2024), *available at* https://www.forbes.com/sites/saradorn/2024/11/03/why-outlier-poll-showing-harris-winning-iowa-could-spell-trouble-for-trump/).)

C. Plaintiffs Assert No Actionable Claim for Fraudulent Misrepresentation (Count II)

In addition to their attempt to manipulate the purpose and use of ICFA, Plaintiffs also attempt to abuse Iowa's common law tort of fraudulent misrepresentation to evade the constitutional protections of free speech and free press. *But see Telemarketing Assocs.,* 538 U.S. at 617) ("Simply labeling an action one for 'fraud,' of course, will not carry the day."). To state a cognizable claim for fraudulent misrepresentation, a plaintiff must plead and be able to prove each of the following: "'(1) representation, (2) falsity, (3) materiality, (4) scienter, (5) intent to deceive, (6) reliance, and (7) resulting injury and damage.'" *Van Sickle Const. Co. v. Wachovia Com. Mortg., Inc.*, 783 N.W.2d 684, 687 (Iowa 2010) (quoting *Lloyd v. Drake Univ.*, 686 N.W.2d 225, 233 (Iowa 2004)).

As with Plaintiffs' ICFA claim, Plaintiffs' fraudulent misrepresentation claim is fatally defective due to self-defeating allegations and weak attempts to circumvent well-established law and principles. The Petition demonstrates that none of these elements can be established under any conceivable set of facts, and each individual elemental failure independently renders the claim dismissible. Most saliently, there is no actionable false representation, no reliance, and no resulting damages. The Court should reject Plaintiffs' attempt to use Iowa's tort law to silence political speech that they do not like.

1. Plaintiffs Did Not Plead an Actionable False Representation

Plaintiffs plead that the alleged misrepresentations at issue are the Iowa Poll results, where there were allegedly "false misrepresentations of the state of the races." (Pet. ¶ 131.) This conclusory contention demonstrates a fundamental misunderstanding of both opinion polling and the law of fraudulent misrepresentation.

As discussed *supra*, the Iowa Poll is not an actionable misrepresentation because, *inter alia*, Defendants published the Iowa Poll methodology and opinion polls are not meant to be guarantees of future election performance. (*See supra* Section IV(B)(2)(a).)

"[U]nder Iowa law, 'a mere statement of honest opinion' does not give rise to a claim for fraud." *Tralon Corp. v. Cedarapids, Inc.*, 966 F. Supp. 812, 827 (N.D. Iowa 1997) (quoting *Hoefer v. Wisc. Educ. Assoc. Ins. Tr.*, 470 N.W.2d 336, 340 (Iowa 1991); *see also West v. W. Cas. and Sur. Co.*, 846 F.2d 387, 393 (7th Cir. 1988) ("A statement that merely expresses an opinion . . . does not constitute an actionable misrepresentation."). The Iowa Poll was just that: an opinion. Therefore, it, as a matter of law, is not an actionable false "representation" for the purpose of a fraudulent misrepresentation claim.

2. Plaintiffs Did Not Plead Any Justifiable Reliance on the Iowa Poll

To state a claim for fraudulent misrepresentation, Plaintiffs must allege that they "acted in reliance on the truth of the representation and [were] justified in relying on the representation[.]" *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 400 (Iowa 2001). There is no liability unless the alleged misrepresentation "increased the risk" of a plaintiff acting in reliance on it. *See Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 742 (Iowa 2009). In other words, to show reliance, a plaintiff must plead that they took an action (or refrained from taking an action) because of the representation at issue.

But acting in reliance on an alleged misrepresentation is not enough: a plaintiff must also show that the reliance was *justified*. *See id.* at 736; *Hammes v. JCLB Props. LLC*, 764 N.W.2d 552, 556 (Iowa Ct. App. 2008); *Lockard v. Carson*, 287 N.W.2d 871, 878 (Iowa 1980). In determining whether a plaintiff's reliance on a defendant's alleged misrepresentation was justified, Iowa courts employ a subjective test, considering whether "plaintiffs, *in view of their own*

information and intelligence, had a right to rely on the representations" when taking or refraining from a particular action. *Hammes*, 764 N.W.2d at 556 (emphasis added); *Lockard*, 287 N.W.2d at 878; *Spreitzer*, 778 N.W.2d at 737 ("[T]he justified standard followed in Iowa means the reliance does not necessarily need to conform to the standard of a reasonably prudent person, but depends on the qualities and characteristics of the particular plaintiff and the specific surrounding circumstances.").

First, as discussed above, Plaintiffs do not plead any facts to support the claim that they took any action in reliance on the article or poll results, depriving Press Defendants of even the barest notice of the nature of the claims against them. In their Petition, Plaintiffs make the unsupported and conclusory claim that they "justifiably relied on the Defendant Polls." (Pet. ¶ 136). But Iowa law requires that they have affirmatively "*acted* in reliance on the truth of the representation." *See Gibson*, 621 N.W.2d at 400 (emphasis added). Nowhere in the Petition do Plaintiffs articulate how their alleged reliance manifested in any action by them.

Furthermore, even if any of the Plaintiffs pleaded that they took some action in reliance on the published poll results, they do not—and cannot—plead that their reliance was *justified*. *See Spreitzer*, 779 N.W.2d at 736. To the contrary, Plaintiffs affirmatively allege that the poll results were unreliable on their face such that Plaintiffs could not possibly have justifiably relied on them. (Pet. ¶¶ 53–57.) Plaintiffs' allegations thereby defeat their own fraudulent misrepresentation claim. They allege that the Iowa Poll was "so implausible that no objective pollster could honestly have advanced it" (*id.* ¶ 47), and that "*every other* mainstream Iowa poll also showed President Trump comfortably ahead." (*Id.* ¶ 49 (emphasis in original).) They further allege that they were familiar with multiple previous Selzer polls that did not match the final election results, including the 2022 Iowa Attorney General election, the 2018 Iowa governor election, and Iowa's 2020 U.S. Senate

race. (*Id.* ¶¶ 31–34.) In other words, Plaintiffs allege *both* (1) that Selzer's polling was not credible because it departed from other polls available at the time and she had other historical misses; *and* (2) that Plaintiffs were nevertheless justifiably deceived by it. (*Compare id.* ¶ 136, *with id.* ¶¶ 53–57.) But both cannot be true.

The allegations in Plaintiffs' Petition, taken together, demonstrate that Plaintiffs took no direct action in reliance on the publication of the poll results, and furthermore, they would not have been justified in doing so. There is no conceivable set of facts that would permit Plaintiffs to prevail on this claim.

3. Plaintiffs' Alleged Injuries Are Not Redressable by a Claim for Fraudulent Misrepresentation

Plaintiffs allege further that they were harmed by the publication of the poll results based on a vague, purported negative impact on their campaigns and on the electoral process more generally. They allege they were "injured by the fraudulence of the Defendant Polls . . . [because] as readers of the *Des Moines Register* and Selzer's polls, [they] were entitled to accurate information, not to be misled by fraudulent misrepresentations." (*Id.* ¶ 137.) However, these are not the kinds of harms that a claim for fraudulent misrepresentation can redress. Rather, Iowa law recognizes only two forms of damages in fraudulent misrepresentation cases, neither of which Plaintiffs allege: (1) out-of-pocket damages and (2) benefit-of-the-bargain damages (plus consequential damages). *See Midwest Home Distrib., Inc. v. Domco Indus. Ltd.*, 585 N.W.2d 735, 739–41 (Iowa 1998).

First, out-of-pocket damages allow a plaintiff to recover a "pecuniary loss suffered as a result of the recipient's reliance upon the misrepresentation[.]" *Putman v. Walther*, 973 N.W.2d 857, 864 (Iowa 2022). They are calculated by giving "the defrauded party the difference between the value of what the party has parted with and the value of what the party has received." *Midwest*

Home Distrib., 585 N.W.2d at 739; *see also Cornell v. Wunschel*, 408 N.W.2d 369, 380 (Iowa 1987). None of the Plaintiffs plead that they "parted with" anything in their individual capacity as a result of the poll, nor that they failed to receive the expected return value. The only Plaintiff to allege a pecuniary loss of any kind is President Trump, who claims that he paid "direct federal campaign expenditures," though he does not allege the nature of the expenditures, where they were incurred, to whom they were paid, whether the expenditures were paid by him individually or by his campaign, or whether his campaign did not receive the political campaign value for what he paid. (*Cf.* Pet. ¶ 124.) Plaintiffs have failed to state any claim for out-of-pocket damages.

Second, benefit-of-the-bargain damages are intended to place "the defrauded party 'in the same financial position as if the fraudulent misrepresentation had been in fact true.'" *Cornell*, 408 N.W.2d at 380 (quoting Dan B. Dobbs, *Handbook on the Law of Remedies* § 9.2, at 595 (1973)). Benefit-of-the-bargain damages are available for economic injuries. Courts generally award them when a fraudulent misrepresentation occurs in the context of a transaction. *See id.* at 382 ("'[D]eceit is an economic, not a dignitary tort, and resembles, in the interests it seeks to protect, a contract claim more than a tort claim.'" (quoting Dobbs, § 9.2, at 602)); *Midwest Home Distrib.*, 585 N.W.2d at 741–42 (distributor agreement); *Putman*, 973 N.W.2d at 864 (sale of property); *Bates v. Allied Mut. Ins. Co.*, 467 N.W.2d 255, 260 (Iowa 1991) (insurance agreement); *Lloyd*, 686 N.W.2d at 232–33 (employment agreement).

Moreover, the Restatement provision adopted by Iowa courts limits the application of benefit-of-the-bargain damages in fraudulent misrepresentation cases by requiring that these damages be based on an underlying contract *with the defendant*. Restatement (Second) of Torts § 549; *see also, e.g.*, *Cornell*, 408 N.W.2d at 380 (noting Iowa's adoption of Section 549 of the Restatement). "When the plaintiff has not entered into any transaction with the defendant but has

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suffered his pecuniary loss through reliance upon the misrepresentation in dealing with a third person," then benefit-of-the-bargain damages are not the appropriate measure of damages. Restatement (Second) of Torts § 549, cmt. g. In other words, where the plaintiff and the defendant are not parties to an underlying contract, courts award only out-of-pocket damages, and not benefit-of-the-bargain damages. *See, e.g.*, *Dier v. Peters*, 815 N.W.2d 1, 9–11 (Iowa 2012) (deeming financial support of child paid by man allegedly misled to believe he was the father as "out-of-pocket" damages). This rule categorically applies to any expense paid out for any reason to non-parties to this action in relation to Plaintiffs' respective campaign activities.

The goal of benefit-of-the-bargain damages is to put a plaintiff "in the same financial position as if the fraudulent misrepresentation *had in fact been true*." *Cornell*, 408 N.W.2d at 380 (emphasis added) (quoting Dobbs, § 9.2, at 595). This principle reveals the mismatch between Plaintiffs' claims and the available remedies. As discussed above, political polls cannot be "true" or "false" vis-à-vis final election results. Even if poll results could have been "true" in the way Plaintiffs plead, the counterfactual means that the goal of any damages would be to put President Trump in the financial position he would have been in if he had *lost* the election. This calculation of damages is neither pleaded nor calculable.

In sum, Plaintiffs are not eligible for out-of-pocket *or* benefit-of-the-bargain damages because the publication of the poll results was not made within the context of any transaction or ongoing business relationship between Plaintiffs and Press Defendants, and Plaintiffs did not incur any out-of-pocket expenses as a result of the publication.

D. The Petition Does Not State a Claim for Negligent Misrepresentation (Count III)

Plaintiffs assert a claim for negligent misrepresentation against Press Defendants based on their publication of the Iowa Poll. Plaintiffs must establish the following elements for a negligent misrepresentation claim:

> (1) the defendant was in the business or profession of supplying information to others; (2) the defendant intended to supply information to the plaintiff or knew that the recipient intended to supply it to the plaintiff; (3) the information was false; (4) the defendant knew or reasonably should have known that the information was false; (5) the plaintiff reasonably relied on the information in the transaction that the defendant intended the information to influence; (6) and the false information was the proximate cause of damage to the plaintiff.

McLeodUSA Telecomm. Servs., Inc. v. Qwest Corp., 469 F. Supp. 2d 677, 692 (N.D. Iowa 2007) ("*McLeod*"). The Petition's bare and conclusory incantation of these elements fails as a matter of law. Plaintiffs' claim fails on every element, including at the threshold with the absence of any actionable false statement of fact as discussed *supra*. *See Dierickx v. DreamDirt Farm & Ranch Real Estate, LLC*, 30 N.W.3d 744, 754–56 (Iowa Ct. App. 2025). The other elements fare no better as set forth below. Accordingly, the Court should dismiss Plaintiffs' claim for negligent misrepresentation.

1. Press Defendants Are Not in the Business or Profession of Supplying Information Under Iowa Law

"[A]n essential element of negligent misrepresentation is that the defendant must owe a duty of care to the plaintiff." *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 124 (2001). "[T]his duty arises only when the information is provided by persons in the business or profession of supplying information to others." *Id.* (citing *Hendricks v. Great Plains Supply Co.*, 609 N.W.2d 486, 492 (Iowa 2000)). This is a "special relationship of advice and guidance." *In re Estate of Maddigan*, No. 03-0048, 2004 WL 1159659, at *2 (Iowa Ct. App. May 26, 2004); *see also Jensen v. Sattler*, 696 N.W.2d 582, 588 (Iowa 2005) ("Absent a special relationship giving rise to a duty

of care, a plaintiff cannot establish negligent misrepresentation."). Whether the defendants owe a legal duty is "always a question of law for the court." *Dinsdale Constr., LLC v. Lumber Specialties, Ltd.*, 888 N.W.2d 644, 649 (Iowa 2016) (quoting *Fry v. Mount*, 554 N.W.2d 263, 265 (Iowa 1996)).

Plaintiffs appear to presume that this element is satisfied simply because Press Defendants are the publishers of a newspaper. They offer the conclusory statement that Press Defendants operate "in the business or profession of supplying information to others" and therefore owed a duty of care to "foreseeable third parties [specifically, Plaintiffs] as members of a limited class of persons who would be contemplated to use and rely upon the [Iowa Poll]." (Pet. ¶¶ 142–43 (quoting *Sain*, 626 N.W.2d at 123).) however, as a matter of law, Press Defendants do *not* operate in the business or profession of supplying information to others as that element is applied under Iowa law because they do not operate in an "advisory capacity." Plaintiffs' claim for negligent misrepresentation therefore fails.

To determine whether a party is in the "business or profession of supplying information to others" for purposes of a negligent misrepresentation claim, Iowa courts examine the nature of the relationship between the purveyor and consumer of information, and not "the subject matter of the transaction between the plaintiff and the defendant[.]" *Sain*, 626 N.W.2d at 125. Critically, "a person in the profession of supplying information for the guidance of others acts *in an advisory capacity* and is manifestly aware of the use that the information will be put, and *intends* to supply it *for that purpose*." *Conveyor Co. v. Sunsource Tech. Servs.*, 398 F. Supp. 2d 992, 1014 (N.D. Iowa 2005) (emphases added). On this basis, Iowa courts have "recognized professionals such as accountants, abstractors, . . . attorneys," and high-school guidance counselors as individuals in the business or profession of supplying information who have the requisite duty of care. *Sain*, 626 N.W.2d at 123 (citing *Ryan v. Kanne*, 170 N.W.2d 395, 402 (Iowa 1969)).

In contrast, Press Defendants are not "recognized professionals" who acted in an "advisory capacity" for Plaintiffs. *Id.*; *Conveyor Co.*, 398 F. Supp. 2d at 1014. They were not retained by Plaintiffs, or anyone, to conduct and publish the Iowa Poll for any individual's advisory benefit. Plaintiffs do not plead and cannot plead that any Defendant conducted the poll and published its results *for the purpose and intent of advising* Plaintiffs or their respective campaigns. Accordingly, while Press Defendants are publishers of a newspaper, they were not "in the business or profession of supplying information" to establish a legal duty to Plaintiffs under Iowa law. On this basis alone, Plaintiffs' claims for negligent misrepresentation should be dismissed.

2. Press Defendants Did Not Supply the Iowa Poll to Plaintiffs for Their Benefit or Guidance

Plaintiffs suggest that they should be deemed "members of a limited class of persons who would be contemplated to use and rely upon" the Iowa Poll and that they are thereby entitled to a duty of care by Press Defendants to publish accurate polling. (Pet. ¶ 142.) Plaintiffs once again misapprehend Iowa law. Although the Iowa Supreme Court recognizes an advisor's duty to third parties, that duty extends only "to persons for whose benefit and guidance the [advisor] *knows* the information is *intended*." *Sain*, 626 N.W.2d at 123 (quoting *Ryan*, 170 N.W.2d at 403) (emphases added). "Instead of using foreseeability of harm to limit the scope of the duty of care," Iowa courts "rel[y] upon a stricter standard of knowledge." *Id.*

No Plaintiff claims that the Iowa Poll was conducted and published with the intent that they would individually rely on it, nor that Press Defendants had knowledge of any such intent. To the contrary, Plaintiffs affirmatively plead that the Iowa Poll was *not* intended for them because the results were "published online" and "nationally distributed" to the *general public*. (Pet. ¶ 1.) Moreover, Plaintiffs do not and cannot allege that Press Defendants knew Plaintiffs would rely on the Iowa Poll to make campaign-related decisions and/or expenditures. None of Plaintiffs'

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respective campaigns hired any Defendant to advise them or provide polling services. Under no conceivable set of facts could Plaintiffs show that Defendants knew or intended that any of the Plaintiffs would rely on the Iowa Poll for "guidance." *See Sain*, 626 N.W.2d at 123.

Courts have consistently dismissed negligent misrepresentation claims against general circulation newspapers for precisely this reason. *See Gutter v. Dow Jones, Inc.*, 490 N.E.2d 898, 900 (Ohio 1986) (holding that "a newspaper reader . . . does not fall within a special limited class" of permissible plaintiffs); *see also Ginsburg v. Agora, Inc.*, 915 F. Supp. 733, 739 (D. Md. 1995) ("The publication is offered to the general public and the information provided in the publication is of a general nature, that is, it is not specifically tailored to [the] financial situation of any individual subscriber."); *Stancik v. CNBC*, 420 F. Supp. 2d 800, 807–08 (N.D. Ohio 2006). A contrary result would in effect extend liability to all the world, risking unbounded exposure and imposing on the press "the 'intolerable burden' of demonstrating . . . that its efforts to determine the accuracy of any given report were reasonable." *Ginsburg*, 915 F. Supp. at 739 (citing *Daniel v. Dow Jones & Co., Inc.*, 520 N.Y.S. 2d 334, 339 (N.Y. Civ. Ct. 1987)); *see also Time Inc. v. Hill*, 385 U.S. 374, 389 (1967). Plaintiffs' proposed application of the tort would allow anyone who is the subject of critical news reporting to sue, investigate via litigation discovery, and intimidate its author and publisher. Iowa law does not countenance such a result.

Because Plaintiffs do not and cannot plead or show that the Iowa Poll was for their "benefit and guidance," or that Defendants had actual knowledge that the Plaintiffs' campaigns would rely on the Iowa Poll, their claim for negligent misrepresentation fails.

3. Plaintiffs Do Not Claim Reasonable Reliance on the Iowa Poll or Any Damages Proximately Caused by the Iowa Poll

To state a cognizable claim for negligent misrepresentation, Plaintiffs must also have "reasonably relied on the information in the transaction that the [Defendants] intended the

information to influence." *McLeod*, 469 F. Supp. 2d at 692. And, like a claim for fraudulent misrepresentation, Plaintiffs must show any reliance is *justified*. *See Union Cnty., IA v. Piper Jaffray & Co., Inc.*, 741 F. Supp. 2d 1064, 1112 (S.D. Iowa 2010) (citing *Pollmann v. Belle Plaine Livestock Auction, Inc.*, 567 N.W.2d 405, 409–10 (Iowa 1997); *Midwest Home Distrib., Inc.*, 585 N.W.2d at 743. As detailed *supra*, Plaintiffs do not plead any reliance on the Iowa Poll, justified or otherwise. (*See supra* Section IV(C)(2).) Accordingly, their claim for negligent misrepresentation fails.

Furthermore, Plaintiffs must be able to show that the allegedly "false information was the proximate cause of damage to the plaintiff." *McLeod*, 469 F. Supp. 2d at 692. Plaintiffs must also show "that, but for [Defendants'] negligence . . . [P]laintiffs' injury would not have occurred." *Boone Cnty. Comm. Credit Union v. Masel*, No. 02-0822, 2003 WL 1050344, at *4 (Iowa Ct. App. Mar. 12, 2003) (citing *Hasselman v. Hasselman*, 596 N.W.2d 541, 545 (Iowa 1999)). But Plaintiffs identify no compensable damages whatsoever, much less plead any support for a claim that any damages were proximately caused by Press Defendants' conduct. (*See supra* Sections IV(B)(1), IV(C)(3).)

E. Plaintiffs Are Estopped from Bringing Their Claims Against Defendants

For the reasons stated above, this Court should dismiss this Petition in its entirety on its face and as a matter of law. As further support for the propriety of this outcome, Iowa law's doctrine of issue preclusion and its underlying principles should be deemed to bar—whether de jure or de facto—Plaintiffs' claims.

Press Defendants identified the *Donnelly* case in their Motion for Stay of Proceedings. (*See* Mot. for Stay at 3 n.2, D0028; Reply to Mot. for Stay at 5 n.3, D0043; Supp. Mem. at 2–3, D0049.) The present case was likewise pending before the same U.S. District Court for the Southern District

of Iowa for nearly a year. The federal district court expressly held that the two cases had "significantly overlapping subject matter" because, *inter alia*, both cases "center[] around the Des Moines Register's publication of the Selzer presidential election poll" and the defendants in the *Donnelly* case were the same defendants in President Trump's federal lawsuit and in this lawsuit. (Reply to Mot. for Stay, D0043, at 5 n.3.) The federal district court dismissed the *Donnelly* case with prejudice on November 6, 2025, finding that Donnelly's substantive claims—which share substantive identity with Plaintiffs' claims in this case—violated the First Amendment and failed to state a claim upon which relief could be granted. (*See generally* Ex. V: Order Granting Defendants' Motions to Dismiss (Jan. 2, 2026) (the "*Donnelly* MTD Order").)

The federal district court's order dismissing the *Donnelly* case should have a preclusive effect on Plaintiffs' claims in this action. The purpose of issue preclusion is to prevent relitigation of identical issues in a subsequent action to avoid conflicting answers to the same questions. *Clark v. State*, 955 N.W.2d 459, 465 (Iowa 2021); *Lemartec Eng'g & Constr. v. Advance Conveying Techs., LLC*, 940 N.W.2d 775, 779 (Iowa 2020). "Issue preclusion applies to both factual and legal issues raised and resolved in a previous action." *Lemartec*, 940 N.W.2d at 779.

Issue preclusion bars relitigation of all of Plaintiffs' claims. Iowa courts perform a four-part test, referred to as the "*Hunter* test," to determine when issue preclusion bars a party from relitigating an issue:

> (1) the issue concluded must be identical; (2) the issue must have been raised and litigated in the prior action; (3) the issue must have been material and relevant to the disposition of the prior action; and (4) the determination made of the issue in the prior action must have been necessary and essential to the resulting judgment.

Hunter v. City of Des Moines, 300 N.W.2d 121, 123 (Iowa 1983).

When issue preclusion is invoked in a defensive manner, courts do not require privity with a party to the prior suit. *Id.* Rather, issue preclusion applies "where the four prerequisites . . . are

satisfied and where the party against whom the doctrine is invoked defensively 'was so connected in interest with one of the parties in the former action as to have had a full and fair opportunity to litigate the relevant claim or issue and be properly bound by its resolution.'" *Id.* (quoting *Bertran v. Glens Falls Ins. Co.*, 232 N.W.2d 527, 533 (Iowa 1975)).

As set forth below, each condition of the *Hunter* test is satisfied here. Therefore, even irrespective of the formal applicability of the doctrine to this case, the policy purposes of Iowa's issue preclusion rule are served by relying upon the federal court's ruling in *Donnelly* to dismiss the present case in its entirety.

1. The Issues in This Case and the *Donnelly* Case Are Identical

The issues raised in this case are identical to the issues raised in the *Donnelly* case. Here, Plaintiffs' Petition alleges three counts: violation of ICFA, fraudulent misrepresentation, and negligent misrepresentation. (*See* Petition ¶¶ 96–156). In articulating the basis of their ICFA claim, Plaintiffs allege here that

> Defendants engaged in an "unfair act or practice" because the publication and release of the [Iowa Poll] "cause[d] substantial, unavoidable injury to consumers that [was] not outweighed by any consumer benefits which the practice produced," to wit: consumers, including Plaintiffs, were badly deceived and misled as to the actual position of the respective candidates in the Iowa Presidential [and Iowa 1st Congressional District] race.

(*Id.* ¶ 110–11) (second and third alterations in original). Plaintiffs claim that the Iowa Poll was deceptive, misleading, and unfair under ICFA. (*Id.* ¶¶ 113–14). In support of their fraudulent misrepresentation claim, they assert that the Iowa Poll involved "intentionally deceptive misrepresentations." (*Id.* ¶¶ 130–38). In support of their negligent misrepresentation claim, Plaintiffs assert that "[n]ewspaper journalists and pollsters are supposed and expected to be in the business of supplying accurate, reliable information to others" and "[c]onsumers and readers of

newspapers and online media content . . . are part of the limited class of foreseeable third parties who rely on the information provided by these professionals." (*Id.* ¶¶ 146–56).

In the *Donnelly* case, the plaintiff raised these precise claims based upon the very same conduct—*i.e.*, Press Defendants' publication of the Iowa Poll. In support of his ICFA claim, Donnelly asserted that Press Defendants' decision "to report the poll as an accurate news items when in fact it was obviously inaccurate constituted an unfair practice, deception, fraud, misrepresentation of a material fact." (*See* Ex. W: First Amended Complaint ¶ 164 (June 2, 2025) (Donnelly Compl.").) In support of his fraudulent misrepresentation claim, Donnelly asserted that Defendants "knowingly published untrustworthy news when it ran the Iowa Poll," which amounted to an intentionally deceptive misrepresentation. (*Id.* ¶¶ 128–37). And in support of his negligent misrepresentation claim, Donnelly asserted that "[n]ewspaper journalists and pollsters are in the business of supplying accurate, reliable information to others" and "[n]ewspaper subscribers are a limited class of foreseeable third parties who rely on the information provided by these professionals." (*Id.* ¶¶ 149–50).

In other words, the *Donnelly* case raised the same claims against the same Defendants predicated on the same allegations as in the present case.

2. The Issues Raised by Plaintiffs in This Case Were Raised and Litigated in *Donnelly* and Were Material, Relevant, Necessary, and Essential to the *Donnelly* Court's Disposition

Further, the identical issues raised by Plaintiffs here were raised and thoroughly litigated in the *Donnelly* case. "An issue is raised and litigated when submitted for determination through a 'motion to dismiss for failure to state a claim.'" *Soults Farms v. Schafer*, 797 N.W.2d 92, 105 (Iowa 2011) (quoting *Bascom v. Jos. Schlitz Brewing Co.*, 395 N.W.2d 879, 884 (Iowa 1986)).

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The federal district court in *Donnelly* ruled on the issues presented in this case on their merits when granting Press Defendants' and Selzer Defendants' respective motions to dismiss.

With respect to Donnelly's ICFA claim, the federal district court concluded, *inter alia*, (1) "publishing the results of a political opinion poll that matches the co-published methodology is not an unfair or deceptive practice" (*see Donnelly* MTD Order at 15); and (2) "[p]ublication of the Iowa Poll cannot have been deceptive because readers knew exactly how the poll was conducted and what results it yielded—readers were therefore informed of all material facts needed to judge the reliability of the poll." (*Id.* at 17).

With respect to Donnelly's fraudulent misrepresentation claim, the *Donnelly* court concluded, *inter alia*, (1) "the results of an opinion poll are not an actionable false representation merely because the anticipated results differ from what eventually occurred"; and (2) "Defendants told readers exactly what they did and how they did it. Therefore, no false representation was made." (*Id.* at 12.).

And with respect to Donnelly's negligent misrepresentation claim, the *Donnelly* court concluded that Defendants did not owe a duty to Donnelly because (1) a "pollster and a general circulation newspaper reporting on the results of an election poll are not in the business or profession of supplying information to a limited class of others who knowingly rely on the information" (*id.* at 14); and (2) "[b]ecause a newspaper and a pollster do not act as an advisor to a limited class of persons when it reports on the poll results of a national election." (*Id.* at 15).

The *Donnelly* court dismissed each count with prejudice on its merits. (*See generally Donnelly* MTD Order.) Based upon the substance of the *Donnelly* court's order, it is not and cannot be disputed that the issues raised here were raised and litigated in the *Donnelly* case. The *Donnelly* court's analysis centered squarely on the overlapping issues such that they were not only material

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and relevant, but necessary and essential to the disposition of the *Donnelly* case. For these reasons, each prerequisite of the *Hunter* test has been established.

3. The Parties to the *Donnelly* Case and This Case Are Connected in Interest

The Court can apply issue preclusion in cases which do not involve identical parties if "'the party against whom issue preclusion is invoked was so connected in interest with one of the parties in the former action as to have had a full and fair opportunity to litigate the relevant claim or issue and be properly bound by its resolution.'" *See Brown v. Kassouf*, 558 N.W.1d 161, 163–64 (Iowa 1997) (quoting *Opheim v. Am. Interinsurance Exch.*, 430 N.W.2d 118, 120 (Iowa 1988)). The procedural circumstances demonstrate that the interests of the plaintiff in the *Donnelly* case and Plaintiffs in this case are so interconnected that Plaintiffs can be bound by the motion to dismiss order entered in the *Donnelly* case.

President Trump's federal case—in which Rep. Miller-Meeks and Mr. Zaun attempted to join as defendants—and the *Donnelly* case were filed within weeks of each other, reflecting the contemporaneous nature of the claims and the substantial factual and legal overlap. (*Compare* Ex. L (President Trump's Initial Petition filed on Dec. 16, 2024), *with* Ex. W (Donnelly's Petition filed Jan. 6, 2024).) Both cases were assigned to the Honorable U.S. District Judge Rebecca Goodgame Ebinger. At the time Judge Ebinger issued her order dismissing the *Donnelly* case, all parties in the present case had already submitted for her consideration motions to dismiss President Trump's identical federal case. (*Compare* Ex. M at ECF Nos. 89–92 (Defendants' motions to dismiss President Trump's Revised Amended Complaint filed on July 26 and 28, 2025), *with* Ex. V (the *Donnelly* MTD Order issued on Jan. 2, 2026).) In other words, the federal district court was fully apprised of Plaintiffs' positions and arguments on the propriety of the claims when the *Donnelly* case was dismissed. Indeed, the *Donnelly* court acknowledged its appraisal of the substantive

issues in the *Trump* case when it held that the two cases were "related," expressly recognizing the overlapping issues, claims, and parties. (Reply to Mot. for Stay at 5 n.3, D0043.) Indeed, Donnelly's counsel actively participated in the related *Trump* litigation by filing a motion for admission *pro hac vice* and seeking to file an amicus brief in the *Trump* case, demonstrating the coordinated efforts and shared legal strategies between plaintiffs' counsel in both cases. (Ex. M at ECF Nos. 38, 38-1, 39.)

These procedural circumstances weigh heavily in favor of dismissal, as they confirm that President Trump had a full and fair opportunity to litigate the very issues he now week to relitigate and that Plaintiffs are connected in interest with Donnelly such that it would be unfair to allow Plaintiffs to claim now that the *Donnelly* court's ruling is not dispositive. Allowing this case to proceed would undermine Iowa's issue preclusion policy and the principles of finality and judicial efficiency.

V. CONCLUSION

For the reasons stated herein, this Court should grant Press Defendants' Motion to Dismiss pursuant to Iowa Rule of Civil Procedure 1.421(1)(f) and dismiss the Petition in full and with prejudice.

Dated: March 30, 2026

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ATTORNEYS FOR DEFENDANTS DES MOINES REGISTER AND TRIBUNE COMPANY AND GANNETT CO., INC.

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CERTIFICATE OF SERVICE

I certify that on March 30, 2026, I electronically filed the foregoing with the Clerk of Court using the EDMS system, which will send notification of such filing to all parties participating in the Court's electronic filing system.

/s/ Paulette Ohnemus