DCCA Case Nos. 21-CV-00893, 22-cv-4

In the District of Columbia Court of Appeals

LUKE ROSIAK,
APPELLANT,

v.

IMRAN AMAN et al.,
APPELLEES

ON APPEAL FROM THE SUPERIOR COURT FOR
THE DISTRICT OF COLUMBIA CIVIL DIVISION

APPELLANT LUKE ROSIAK'S OPENING BRIEF

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INTRODUCTION

"At the threshold it is the court, not the jury, that must vigilantly stand guard against even slight encroachments on the fundamental constitutional right of all citizens to speak out on public issues without fear of reprisal." *Myers v. Plan Takoma, Inc.*, 472 A.2d 44, 50 (D.C. 1983). This case represents much more than a "slight encroachment" on Appellant Luke Rosiak's ("Rosiak") fundamental free speech rights – it goes to the very heart of First Amendment-protected speech.

Rosiak is an investigative journalist who has written for *The Washington Times*, *Politico*, *The Washington Post*, *The Daily Beast*, *The Daily Caller*, and other news outlets. JA 41. In February 2017, he began reporting on a controversy surrounding five House of Representatives information technology (IT) professionals accused of breaking House rules, procurement fraud, unauthorized network access, and equipment theft. By the time Rosiak began his reporting, the five individuals implicated in the scandal—Appellees Imran Awan, Abid Awan, Jamal Awan, Tina Alvi, and Rao Abbas (together, the "Awans")—had already been banned from the House network, fired by their congressional employers, and were under criminal investigation. JA 411–413.

Using old-fashioned journalistic techniques such as reviewing official government reports, judicial proceedings, investigative proceedings, administrative

proceedings, published statements of the Inspector General of the House of Representatives, financial records, and many interviews with individuals who knew and worked with the Awans, Rosiak amassed information which he believed tended to prove the Awans had violated the law. JA 41–42. Along with reporting these findings in a series of articles for the Daily Caller, Inc. Rosiak eventually published them as a part of a book titled *Obstruction of Justice: How the Deep State Risked National Security to Protect the Democrats* ("Book"). JA 69–405.

After the Book's publication, the Awans filed a lawsuit asserting three claims for relief: defamation and false light invasion of privacy (Count I), intentional infliction of emotional distress (Count II), and unjust enrichment (Count III). JA 16–40 In response, Rosiak filed an anti-SLAPP motion,[1] which required the Awans to introduce evidence showing they were "likely" to succeed on the merits. The Awans' evidence did not dispute any of the Book's evidence. JA 485–696. They did not claim, for instance, that the government reports and briefings were misquoted, that the court documents were fabricated, or that the interviews didn't take place. *Id.* They didn't challenge the veracity of *any* of

[1] Appellant Salem Media Group, Inc. ("Salem") also filed its own anti-SLAPP motion and has appealed the Superior Court's ruling denying it. For the Court's convenience, Salem and Rosiak filed a joint appendix.

Rosiak's sources. *Id.* Instead, they objected only to the *conclusions* Rosiak drew from the undisputed evidence contained in the Book.

While Rosiak reported that the House Inspector General's report shows the Awans were guilty of hacking, JA 42, the Awans argue instead that it shows only "minor violations of House information-technology protocols." JA 23. While Rosiak asserted that the Awans' falsifying of House records to keep purchases below a $500 threshold constituted classic procurement fraud, JA 113–114, the Awans' try to absolve themselves by arguing that "[t]his procedure—frequently performed at the express direction of members of Congress—was routinely followed by IT workers across the Hill to avoid mandatory inventory reporting requirements." JA 23. And while Rosiak interprets a mutually negotiated DOJ plea agreement statement that the DOJ "uncovered no evidence" that Imran Awan violated various federal laws as evidence of a government coverup, JA 98, 350–360, the Awans contend that this conclusively "proves" their innocence. JA 27.

In short, the Awans quibbled with none of the hard evidence or facts Rosiak presented, only Rosiak's "subjective views, interpretations, theories, conjectures, and surmises" posited in response to *undisputed* facts. *Guilford Trans. Indus., Inc. v. Wilner*, 760 A.2d 580, 597 (D.C. 2000) (cleaned up). The Awans' claims fail for multiple reasons, but at the heart of this case is the right to freedom of thought and speech enshrined in both common law and the First Amendment. Rosiak unearthed

and examined undisputed facts, presented those facts to his audience, and then argued that those facts lead to a different conclusion than argued by the Awans. Rosiak's reporting, leading to Rosiak's conclusions, is core, First Amendment-protected activity. Allowing Rosiak to be sued for exercising his fundamental First Amendment freedoms is blatantly unconstitutional, and the Superior Court's denial of Rosiak's Anti-SLAPP motion was in error.

Rosiak asks this Court to reverse the Superior Court and remand the case with instructions to dismiss the Awans' Amended Complaint and award Rosiak fees and costs under D.C.'s Anti-SLAPP Act.

STATEMENT OF JURISDICTION

Denial of a special motion to dismiss under the D.C. Anti-SLAPP Act, D.C. Code § 16-5502(b), is immediately appealable under the collateral-order doctrine. *Competitive Enter. Inst. v. Mann*, 150 A.3d 1213, 1220 (D.C. 2016). Mr. Rosiak appeals the Superior Court's December 20, 2021, denial of his Anti-SLAPP Motion to Dismiss. JA 824–843.

ISSUES PRESENTED FOR REVIEW

1. Did the Superior Court err in finding it was Rosiak's burden to prove the "reasonableness" of the challenged statements rather than applying the constitutional standards applicable to media defendants speaking on

matters of public concern, which shift the burden to the Awans to prove the material falsity of challenged statements?

2. Did the Awans fail to carry their burden to show they are likely to prove, by clear and convincing evidence, that the challenged statements are materially false?

3. Did the Awans fail to carry their burden to show that they are likely to prove, by clear and convincing evidence, that Rosiak published the challenged statements with either subjective knowledge of the statements' falsity, or reckless disregard for whether the statements were false?

4. Did the Awans fail to carry their burden to show that they are likely to prove, by clear and convincing evidence, that Rosiak engaged in extreme or outrageous conduct and malice sufficient to sustain their Intentional Infliction of Emotional Distress claim?

5. Did the Awans fail to carry their burden to show that they are likely to prove, by clear and convincing evidence, that they had a quasi-contract with Rosiak and conferred a benefit on him sufficient to sustain their Unjust Enrichment claim?

STATEMENT OF THE CASE

On January 28, 2020, the Awans sued Defendants Salem, Rosiak, The Daily Caller, Inc., and The Daily Caller News Foundation for defamation and false light

invasion of privacy (Count 1), Intentional Infliction of Emotional Distress (Count 2), and Unjust Enrichment (Count 3). The Awans amended their Complaint on February 11, 2020, naming "Salem Media Group, Inc. doing business as Regnery Publishing" as a Defendant.

Rosiak was served with the Complaint on February 3, 2020. Both Rosiak and Salem filed Special Motions to Dismiss under the District of Columbia Anti-SLAPP Act on June 15, 2020. The Awans filed their Opposition to Defendants' Anti-SLAPP motions on August 7, 2020. Rosiak and Salem filed Replies on August 31, 2020. The Superior Court denied Defendants' Anti-SLAPP motions in its December 20, 2021, Order Denying Anti-SLAPP motions. Rosiak and Salem timely appealed.

STATEMENT OF FACTS

The Awans were IT workers and shared employees working for dozens of congressional offices off and on from 2004 until all of their House employers terminated them in 2017. JA 49, 486, 490, 495, 499, 503. As shared employees, from at least 2008 forward the Appellees had to sign a "Certification of Continuing Compliance" as a requirement of employment.[2] Ex. A, Shared Employee Manual

[2] "'Judicial notice may be taken at any time, including on appeal.'" *Robert Siegel, Inc. v. District of Columbia*, 892 A.2d 387, 395 n. 11 (D.C.2006) (quoting *United States v. Burch*, 169 F.3d 666, 671 (10th Cir.1999)). "A judicially noticed fact must be one not subject to reasonable dispute in that it is either (1) generally

at 10. Within this document was the attestation that they would "neither share [their] job duties nor sublet any portion of [their]official duties." *Id.* This rule for shared employees was also reflected in the House Ethics Manual. *Id.* at 5.

In 2016, the House Inspector General began investigating the Awans for accessing congressional servers without authorization, and procurement fraud. JA 23–24, 48–51. The Awans' affidavits admit both to violations of federal law and House rules on job-sharing[3] and procurement fraud—falsifying charges for equipment to evade the House's mandatory inventory tracking requirements.[4] Yet

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known within the territorial jurisdiction of the trial court, or (2) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned." *Id.* (cleaned up).

Rosiak respectfully asks this Court to judicially notice the House of Representatives Shared Employee Manual, publicly available and taken directly from the Committee on House Administration's website (cha.house.gov/sites/democrats.cha.house.gov/files/sharedemployeemanual.pdf) and attached to this brief as Exhibit A ("Shared Employee Manual").

[3] JA 490 ("We worked as a team."), JA 496 ("Working as a team allowed us to…."), JA 499 ("we worked as a team…"), JA 504 (stating they were "working as a team.").

[4] JA 492 ("[W]e'd ask the vendor to get us to [the $500 price], and if they could, they would do it and add the remainder of the cost of whatever the item was on as a shipping charge or some other charge so the office could bypass a longer process that would make it take longer to get the equipment."); JA 500 ("If things were priced over $500, the office had to follow certain procedures that made it take longer for the office to get the equipment. So…[I] would write to the vendor to request an iPad under $500. If the vendor could do it, they would allocate the rest of the cost of the iPad to Shipping or to a warranty so that the full cost would be under $500.").

they claim, as *ipse dixit*, that their admitted violations of these laws were trivial because everyone knew about it and Members of Congress asked them to do it. *Id.*

In September 2016, the House Inspector General's office informed House leaders of its investigation into the Awans concerning a variety of allegations. JA 23–24, 48–51. The matter was referred to the United States Capitol Police ("USCP") for a criminal investigation, and the FBI's Joint Terrorism Task Force assisted. JA 24. Allegations against the Awans included that they "illegally removed House data from the House network or from House Members' offices, stole the House Democratic Caucus Server, stole or destroyed House information technology equipment, [and] improperly accessed or transferred government information, including classified or sensitive information." JA 26–27, 48–51. As a result of these investigations, House officials barred the Awans from House network access in early February 2017. JA 26. The House's action led to all the Awans being terminated from their congressional employment. JA 24, 411–414.

On February 2, 2017, Politico reported that "[f]ive House employees are under criminal investigation amid allegations that they stole equipment from more than 20 member offices and accessed House IT systems without lawmakers' knowledge." JA 24, 411–414. Politico reported that access to the House network "was terminated for the five employees—four men and a woman," and quoted a senior House official as saying, "most members are proceeding with termination."

Id. Two days later, after the controversy had become a matter of national discussion, Luke Rosiak published the names of the five individuals who were under criminal investigation and had been banned by the House. JA 24.

Over the ensuing months, Rosiak published several stories relaying new revelations about the Awans. The information Rosiak developed in his reporting for these articles was eventually compiled and published into the Book. Rosiak's comprehensive investigation uncovered evidence Rosiak believed tended to prove violations of House ethics rules and federal law, procurement fraud, large quantities of missing equipment, and unauthorized access to House servers, among other concerns. JA 69–405. Rosiak's sources included House IT professionals and high-level Congressional employees, the Capitol Police, Pakistani reporters, and family and acquaintances of the Awans. *Id.* Rosiak's evidence includes reports from the House Inspector General, the House Sergeant-at-Arms, the Chief Administrative Officer, and the FBI; court records; business filings; and other contracts entered by the Awans. *Id.* The facts Rosiak uncovered led him to conclude that the highest levels of federal law enforcement were either actively engaged in a political coverup or declining to investigate because of the powerful people potentially implicated. *Id.*

In August 2018, Imran Awan pleaded guilty to bank fraud as a part of a plea agreement. JA 26–27. In the plea agreement was a mutually negotiated statement

that the Government had uncovered no evidence that Imran violated federal law with respect to the House computer systems, removed House data, stole House equipment, and certain other related claims. JA 27. None of the Awans other than Imran was a party to the DOJ plea agreement. *Id.*

Nearly two years after the Politico story revealed the scandal about the Awans, Salem released Rosiak's *Obstruction of Justice* on January 29, 2019. JA 28–29. The Awans filed this lawsuit, identifying nine defamatory statements included in the Book. JA 29–30. The challenged statements referred to Rosiak's claims of "hacking," "stealing the identity of an intelligence specialist," being a "mole" in Congress, stealing government electronic equipment, and paying Pakistani police officials to retaliate against his enemies. *Id.* Beyond the statements included in the Book, the Awans also complain that Rosiak repeated these opinions as he promoted the Book through various media appearances. JA 33–34.

SUMMARY OF ARGUMENT

With all parties agreeing Rosiak met anti-SLAPP's prong one burden, JA 831–832, the burden shifted to the Awans to present evidence establishing their claims were likely to succeed on the merits. In reviewing the Awans' claims, the Superior Court erroneously flipped the burden of proof and placed it on Rosiak in determining that Rosiak's claims lacked a "reasonable basis," JA 834, rather than applying the constitutionally-mandated standard for media defendants speaking on

matters of public concern, which requires the *plaintiff* to present evidence by which a jury could find the challenged statements were "materially false." The Awans did not present evidence showing Rosiak's statements were materially false as, in the context of the Book, Rosiak cited and discussed every piece of evidence the Awans claims "proves" their innocence, yet drew different conclusions from those undisputed, agreed-upon facts. The Book presented every piece of evidence from which Rosiak drew his conclusions, and Rosiak did not claim to base his opinions on privately held information. Thus, any conclusions Rosiak drew from the facts, even if they would be defamatory standing alone, in the context of the Book and media interviews promoting and discussing the Book, are protected opinion and thus could not form the basis of a viable defamation claim.

The Awans were public figures as a matter of law, as the House controversy in which they were embroiled predated Rosiak's reporting, and they had been the subject of intense media attention for years before Rosiak published the Book. The more than fifteen articles cited in the record discussing the controversy are but a small sample of the international news coverage surrounding these notorious events. JA 58, 408, 411, 414, 418, 421, 425, 428, 436, 440, 623, 631, 638, 644, 658, 663, 666, 672, 675, 689, 704. The Awans also directly sought to influence the controversy through an agent—their attorney—and through direct interviews with news media outlets. *Id.* Further, under the applicable standard for limited public

figures, the controversy was of such a nature as the Awans should have expected they would have an impact on its resolution. As public figures, the Awans needed to provide evidence that Rosiak knew his statements were false, or that he entertained serious doubts as to the truth of his statements. The Awans failed to carry their burden, as Rosiak stands by his reporting, which remains factually unrebutted, and he still believes it was truthful and accurate.

The Awans' Intentional Infliction of Emotional Distress claim fails because Rosiak's actions were not extreme or outrageous, or undertaken with malice, and the Awans provided no evidence of their "extreme emotional distress" beyond self-serving, conclusory statements without accompanying proof of injury during the applicable time, as would have been required by a court applying the correct law.

Finally, the Awans cannot recover on their Unjust Enrichment claim as a matter of law, because they cannot show that they conferred a benefit on Rosiak, the first element of the claim. For these reasons, this Court should reverse the Superior Court and remand the case with instructions for the Superior Court to dismiss the Awans' complaint with prejudice, and award Rosiak fees and costs.

STANDARD OF REVIEW

The Court reviews denials of an Anti-SLAPP motion de novo. *Doe No. 1 v. Burke*, 91 A.3d 1031, 1040 (D.C. 2014).

ARGUMENT

A Strategic Lawsuit Against Public Participation (SLAPP) is "an action filed by one side of a political or public policy debate aimed to punish or prevent opposing points of view." *Mann*, 150 A.3d at 1226. The movant bears the initial burden to "make [] a prima facie showing that the claim at issue *arises from* an act in furtherance of the right of advocacy on issues of public interest." *Am. Stud. Ass'n v. Bronner*, 259 A.3d 728, 733 (D.C. 2021) (quoting D.C. Code §§ 16-5501 to -5505). If the moving party meets that burden, the burden shifts to the responding party to "demonstrate[] that the claim is likely to succeed on the merits." *Id.*

In response to an anti-SLAPP motion, a plaintiff may not simply rely on the complaint's allegations, but must introduce evidence demonstrating a likelihood of success. *Id.* "The anti-SLAPP special motion to dismiss is essentially an expedited summary judgment motion," requiring "the court to test the legal sufficiency of the evidence presented." *Id*. The court must consider "whether the evidence suffices to permit a jury to find for the plaintiff." *Id.* at n. 38.

The Awans did not dispute, and the Superior Court agreed, that Rosiak met anti-SLAPP's prong one. JA 831–832. The only question is whether the Awans produced evidence that would allow "a jury properly instructed on the applicable

law and constitutional standards [to] reasonably find that the claim[s] [are] supported in light of the evidence that has been produced or proffered in connection with the motion." *Mann*, 150 A.3d at 1232. For the reasons discussed below, the Awans did not, and cannot, meet their burden for any of their claims.

I. THE SUPERIOR COURT FAILED TO APPLY THE STANDARD THE CONSTITUTION REQUIRES FOR MEDIA DEFENDANTS SPEAKING ON MATTERS OF PUBLIC CONCERN.

"[W]here challenged material addresses a public controversy such as [the] one that we have here, the First Amendment provides breathing space for journalists to criticize and interpret the actions and decisions of those involved." *Guilford*, 760 A.2d at 589 (quoting *Moldea v. New York Times Co.*, 22 F.3d 310, 317 (D.C. Cir. 1994)). "The threat of prolonged and expensive litigation is a real potential for chilling journalistic criticism and comment upon public figures and public affairs." *Myers*, 472 A.2d at 50. "Because the threat or actual imposition of pecuniary liability for alleged defamation may impair the unfettered exercise of [] First Amendment freedoms, the Constitution imposes stringent limitations upon the permissible scope of such liability." *Greenbelt Co-op. Pub. Ass'n v. Bresler*, 398 U.S. 6, 12 (1970).

When an alleged defamatory statement comes from a media defendant on a matter of public concern, the Constitution places the burden on the plaintiff to show the complained-of speech is false. *Philadelphia Newspapers, Inc. v. Hepps*,

475 U.S. 767, 776 (1986). This standard materially diverges from the common law defamation rule that the defendant bears the burden to prove the truth of a statement. *Id.*; *Bresler*, 398 U.S. at 12. In the context of anti-SLAPP, with a media defendant (Rosiak) speaking on a matter of public concern (a federal criminal investigation concerning United States House of Representatives workers), the burden is on the plaintiffs to provide evidence on which a jury is likely to find that the defendants' claims are materially false. *Bronner*, 259 A.3d at 733.

The Awans concede Mr. Rosiak is a media defendant and that this case involves matters of public concern. JA 21, 30–34. Yet the Superior Court ignored these fundamental premises when it applied the wrong standard in examining the Awans' evidence, did not consider whether the Awans provided information likely to prove material falsity, and instead concluded only that Mr. Rosiak's claims lacked a "reasonable basis." JA 834. It was the *Awans'* burden to provide evidence by which a jury was "likely" to find Mr. Rosiak's claims were "materially false." As shown below, the Awans did not meet their burden.

II. THE AWANS DID NOT PRODUCE EVIDENCE BY WHICH A PROPERLY INSTRUCTED JURY WAS LIKELY TO FIND THAT THE BOOK'S STATEMENTS ARE FALSE AND DEFAMATORY.

A claim for defamation must allege:

> (1) that the defendant made a false and defamatory statement concerning the plaintiff; (2) that the defendant published the statement without privilege to a third party; (3) that the defendant's fault in

> publishing the statement amounted to at least negligence[5]; and (4) either that the statement was actionable as a matter of law irrespective of special harm or that its publication caused the plaintiff special harm.

Close It! Title Servs., Inc. v. Nadel, 248 A.3d 132, 139 (D.C. 2021).

"Where the question of truth or falsity is a close one, a court should err on the side of nonactionability." *Liberty Lobby, Inc. v. Dow Jones & Co.*, 838 F.2d 1287, 1292 (D.C. Cir. 1988). "[I]f it is plain that a speaker is expressing a subjective view, an interpretation, a theory, conjecture, or surmise, rather than claiming to be in possession of objectively verifiable facts, the statement is not actionable." *Guilford*, 760 A.2d at 597 (cleaned up).

When the plaintiff bears the burden of proving the defendant's statements are materially false, the plaintiff must show more than minor inaccuracies or alterations. *Masson v. New Yorker Mag., Inc.*, 501 U.S. 496, 517 (1991). Finally, when reports are "accurate and full," but also include "rhetorical hyperbole," speech that—taken literally—would be untrue, is nonetheless protected. *Bresler*, 398 U.S. at 13–14.

For the Awans to survive Mr. Rosiak's anti-SLAPP motion, the Awans needed to provide the Court with sufficient evidence by which a properly instructed jury could reasonably find Mr. Rosiak's statements were false. *Mann*,

[5] In this case, as discussed in Section III below, the Awans are public figures and therefore must prove malice, not negligence.

150 A.3d at 1232. They have not, a fact demonstrated in spades by the Superior Court's failure to directly cite *any* evidence in support of its Order's defamation findings. JA 833–834.

A. The Evidence The Awans Claim "Proves" The Challenged Statements Were False Was Evidence Already Revealed And Discussed Extensively In The Book

When considering whether speech is defamatory, the court "cannot separate the words from their context." *Close It! Title Services, Inc. v. Nadel*, 248 A.3d 132, 139 (D.C. 2021); *Clawson v. St. Louis Post-Dispatch, L.L.C.*, 906 A.2d 308, 313-14 (D.C. 2006) ("[A] statement ... may not be isolated and then pronounced defamatory, or deemed capable of defamatory meaning. Rather, any single statement or statements must be examined within the context of the entire [publication]."); *see also Howard Univ. v. Best*, 484 A.2d 958, 989 (D.C. 1984) ("The plaintiff has the burden of proving the defamatory nature of the publication, and the publication must be considered as a whole, in the sense in which it would be understood by the readers to whom it is addressed.") (cleaned up). But allowing the Awans to alienate claims from their context is exactly what the Superior Court erroneously did.

The Awans claimed below to have presented evidence that "*proves*" the Book's claims are false. Yet every "proof" was also quoted verbatim and fully

addressed in the Book, often on the same pages that contain the challenged statements.

The central "proof of innocence" the Awans proffer is the following statement made in a plea agreement Imran Awan negotiated with the Department of Justice:

> The Government has uncovered no evidence that [Imran] violated federal law with respect to House computer systems. Particularly, the Government has found no evidence that [Imran] illegally removed House data from the House network or from House Members' offices, stole the House Democratic Caucus Server, stole or destroyed House information technology equipment, or improperly accessed or transferred government information, including classified or sensitive information.

JA 29 ("DOJ statement").

Far from being the smoking gun the Awans claim, the Book discussed the DOJ statement at length and quoted it in full, while providing Mr. Rosiak's opinion that the DOJ statement "dismissed—without explaining the obvious discrepancies—hard evidence gathered by nonpartisan House investigators." JA 98, 350–360; see Section II B.[6]

[6] Further, as discussed in Section II B, plea agreements are contracts containing mutually negotiated statements. This bargained for language doesn't constitute evidence of truth or falsity. 1 Federal Trial Handbook: Criminal § 11:32 (2021-2022 Edition) ("Plea negotiation contemplates a bargaining process, a mutuality of advantage and mutuality of disadvantage. The accused contemplates entering a plea to obtain concessions from the government. The government contemplates making some concession to obtain the accused's plea.").

The Awans and the Superior Court also relied heavily on statements made by Judge Chutkan in Imran's criminal proceedings. JA 825. These statements too were discussed extensively in the book, JA 358–365, including comments from Judge Chutkan that she had "heard very little facts in this case," and that her comments and beliefs were premised solely on the claims made by Imran's lawyers and the plea agreement. *Id.* The case over which she was presiding, after all, was about mortgage fraud, which put her in no position to have any special knowledge of other alleged wrongdoing. But even still, this "proof of falsity" was also presented alongside the very statements the Awans claim are defamatory. *Id.*

Finally, the Superior Court's opinion relied on statements of support made by Members of Congress. JA 833. The various Member affidavits to which the Court's opinion alludes show nothing more than those affiants' beliefs and impressions about the Awans in the form of testimonials. See, e.g., Declaration of Robert Wexler ¶ 5, JA 515 ("I *am not aware* of any information or evidence that suggests they did anything to compromise, jeopardize, or put at risk that data and information during their employment with my office.") (emphasis added); Declaration of Patrick Murphy ¶ 5, JA 517 ("I do not *believe* [the Awans] did anything to compromise, jeopardize, or put at risk that data and information during their employment with my office or thereafter.") (emphasis added). Yet Members' continued support for the Awans after themselves becoming caught up in a

compromising scandal, was also discussed directly in the Book, as well as a theory for why Members might continue to back the Awans even in the face of the damning evidence. JA 230. ("Meeks told *Politico*, 'I have seen no evidence that they [the Awans] were doing anything that was nefarious.'").

Context matters. And in the context of the Book, Mr. Rosiak discussed—at length—every piece of evidence on which the Awans rely to suggest Mr. Rosiak's statements are false. From an ocean of evidence and detail, the Awans plucked self-serving, acontextual fragments and constructed their case upon them—but the law does not allow the Court to ignore that ocean of evidence. For this Court to uphold the Superior Court's extraordinary ruling would be to endorse a cataclysmic shift in the law. It would hamstring investigative reporting and anyone wishing to challenge any official government narrative. The Book presented evidence its author believes tended to prove government misconduct at the highest levels, and violations of the law. It did so alongside *the very evidence* the Awans claim exonerates them. Yet for the act of reviewing evidence but drawing a different conclusion than that of the government, the Awans seek to hold Mr. Rosiak civilly liable, a goal at odds with well-settled law concerning journalism on matters of public interest.

Consider if the shoe were on the other foot. Imagine if a Washington Post reporter had uncovered evidence that he or she believed tended to prove a Congressional Republican staffer had engaged in procurement fraud and potentially

put at risk the national security of the United States. If the DOJ chose not to prosecute that staffer under circumstances suggesting a potential conflict of interest or political bias, yet the Post published a story detailing the evidence on which the reporter reasonably believed the DOJ's failure to prosecute was in error—or worse, that reporter could be held civilly liable for defamation simply for drawing a different conclusion from the DOJ, according to the trial court. Explaining the importance of the ideas that became the First Amendment, James Madison wrote, "The people shall not be deprived or abridged of their right to speak, to write, or to publish their sentiments; and the freedom of the press, as one of the great bulwarks of liberty, shall be inviolable." *New York Times Co. v. U.S.*, 403 U.S. 713, 716 (1971) (quoting 1 Annals of Cong. 434). The Superior Court's ruling undercuts bedrock principles of free speech and thought, and freedom of the press, enshrined both in logic and the First Amendment. It cannot stand.

B. The DOJ's Plea Statement Representations That It Couldn't Prove A Crime Is Not The Same Thing As Lack Of Evidence Of A Crime

"[A] plea agreement is a contract," the terms of which are negotiated between the parties. *In re Robertson*, 940 A.2d 1050, 1059 (D.C. 2008) (quoting *United States v. Jones*, 58 F.3d 688, 691 (D.C. 1995). The fact that parties trying to resolve a prosecution mutually negotiate statements in a plea agreement doesn't constitute evidence of truth or falsity. § 11:32. Right to

enforce plea agreement, 1 Federal Trial Handbook: Criminal § 11:32 (2021-2022 Edition) ("Plea negotiation contemplates a bargaining process, a mutuality of advantage and mutuality of disadvantage. The accused contemplates entering a plea to obtain concessions from the government. The government contemplates making some concession to obtain the accused's plea.").

In error, the Superior Court opined the DOJ statement "essentially cleared [Plaintiffs] of any wrongdoing through that investigation." JA 833. First, the Superior Court's finding erroneously puts words in the DOJ's mouth. Imran Awan's plea agreement—which incidentally only applied to Imran Awan not all the Plaintiffs—stated the DOJ "uncovered no evidence" and "found no evidence" supporting various claims. *Id.* This is materially different from a statement that no evidence *exists*, or that the Awans were cleared of wrongdoing. The DOJ's negotiated admission that it couldn't prove something that isn't the subject of the plea, is a far cry from being evidence of truth or falsity. There very well might be evidence which the government did not find, or chose not to highlight. Or the government could have been negligent in its investigation. The Superior Court ignored these relevant considerations in favor of the plaintiffs' strained, and self-serving mischaracterization of the Imran Awan plea statement.

The Book, again quoting the very statements on which the Superior Court's findings rely, posits a theory that the DOJ willfully ignored evidence of wrongdoing. JA 350–360. The Book then lists the evidence Mr. Rosiak believes the DOJ ignored, the sources for that evidence, and provides a theory as to why the DOJ might have looked the other way. *Id*, JA 48–51.

For example, the Book notes that "The Computer Fraud and Abuse Act plainly stated that "unauthorized access" to government computers was a felony, and the server logs proved that had occurred." JA 358. It notes that it is illegal for House employees to sublet their jobs, or to bill the government for work they did not personally perform—which the Awans have now admitted in this lawsuit. JA 150. It notes that the numerous House agencies documented that the Awans had systematically altered government financial records so that expensive equipment was falsely reported as costing less than $500, the threshold at which it could disappear without being noticed. *See, e.g.* JA 283.

An FBI memo dated December 6, 2016, said the Awans "failed to disclose on their House Financial Disclosure Statements" outside business activities. JA 324. A review of the Awans' financial disclosure forms shows repeated misrepresentations, for instance failing to disclose ownership in outside businesses which the Awans ran while simultaneously making

$160,000 salaries from the House. JA 231. Abid Awan declared on House ethics forms that he had no liabilities the same year he declared bankruptcy and listed hundreds of thousands of dollars in liabilities in federal court. JA 155–157. Lying on these forms is a federal crime. 18 U.S.C. § 1001.

The DOJ's failure to prosecute numerous alleged crimes does not mean that somehow these records, or the mountain of other documents referenced in the Book, ceased to exist. Further, the Book posits a potential motive for the DOJ's failure to act: that the Awans' misconduct also implicated members of Congress in wrongdoing, who had a strong incentive to ensure that the story went away. See Section II C. The Awans did not attempt refute *any* of the Book's evidence. Instead, they seek to stifle Rosiak's right to have and express an opinion independent of the Awans' narrative. The Awans did not provide the Court with any evidence that would allow a reasonable jury to find the Book's statements are materially false.

C. The Awans' Affidavits Support The Book's Claims That The Awans Violated Federal Law And House Rules

The Awans' supporting affidavits show, conclusively, the Awans openly flouted federal law and the House ethics rules with the full knowledge, consent, and participation of Members of Congress and their staff. 2 U.S.C. § 4701 states, "No employee of Congress, either in the Senate or the House, shall sublet to, or

hire, another to do or perform any part of the duties or work attached to the position to which he was appointed." The governing language from this statute has been in effect since 1895. *Id.*

This rule was included and discussed within the House Ethics Manual every year the Awans worked in the House of Representatives. JA 48; Ex. A, Shared Employee Manual at 5. All House Members, officers, and employees are required to take ethics training discussing the requirements of the House Ethics Manual within 60 days after beginning House employment and annually thereafter.

The Committee on House Administration further publishes a Shared Employee Manual specifically outlining the rules and regulations for shared employees. Ex. A, Shared Employee Manual. The rules reflected in the Shared Employee Manual have been the House's governing guidance for shared employees since July 30, 2008, and this Manual has been required reading for every shared employee since March 2009. *Id.* The Shared Employee Manual states on page 5:

> Job-sharing
>
> **Per House Ethics Manual**
>
> House Employees, including Shared Employees, shall not share their job duties with other individuals employed by different Member of Committee offices or individuals who are not on the House payroll.

Ex. A, at 5.

All shared employees receive a copy of the Shared Employee Manual and "must verify that they have reviewed and understand the guidelines by signing the Acknowledgment of Receipt and Understanding of Shared Employee Manual and Certification of Continuing Compliance with the Mandatory Provisions Incorporated Therein." Ex. A, Shared Employee Manual at 3. That verification requires shared employees to attest that: (1) they have reviewed and understand the Shared Employee Manual, (2) they will not share their job duties or sublet any portion of their official duties, (3) they will remain in compliance with all laws and regulations in the Shared Employee Manual and abide by all House statutes, rules and regulations, and (4) they must execute an updated version of the Shared Employee Manual certification at the start of each Congress. Ex. A, Shared Employee Manual at 10. While the House of Representatives employed the Awans, Imran Awan would have had to have signed the Shared Employee Manual's certification at least seven times, JA 486, Jamal Awan three times, JA 490, Abid Awan seven times, JA 495, Tina Alvi seven times JA 499, and Rao Abbas four times, JA 503.

Despite these repeated attestations, the Awans' declarations admit that they openly flouted the law by knowingly violating the House rules against sharing job responsibilities. JA 490 ("We worked as a team."), JA 496 ("Working as a team allowed us to…."), JA 499 "we worked as a team…"), JA 504 (stating they were

"working as a team."). This "team" work entailed work that directly violated the mandates of the Shared Employee Manual certification including using a shared inbox for separate members' requests and working for members' offices for which they were not employed. JA 490. The Awans' declarations repeatedly admitted that they violated federal law dating to 1895 and long enshrined in House rules, but they brushed off these ethical violations by labeling these rules—without support or explanation—as "minor," JA 501, and "administrative," JA 493, JA 504. They additionally claimed—again without support or explanation—that those pointing out these violations were biased against Muslims. See e.g., JA 501.

Further, the Awans' declarations repeatedly state that their employers were aware of and endorsed their participation in House ethics violations and procurement fraud. See JA 499 ("everybody we worked for knew, we worked as a team, too"; JA 491–492 (stating rules violations were undertaken "with the knowledge of our employers."). These remarkable admissions were backed up by the affidavits from House Members and staff familiar with the Awans' workplace misconduct.

Representative Gregory Meeks admitted that "I and other members of Congress" knew that the Awans were "working as a team rather than individually for each member." JA 507. Josh Rogin—Chief of Staff for the Chairman of the House Ethics Committee—stated he was "intimately aware of the way that the

[Awans] worked as a team and how they procured equipment." JA 519. Former staffer Joshua Scott Lamel stated he "was aware of the way that Imran worked with others as a team" and how Imran "procured equipment." JA 530. By virtue of the annual ethics training which they had to attend, each of the affiant staffers and Members would have been aware Federal law and the House rules prohibited job-sharing, and, even outside the clear related ethical guidelines, Members and staff should have known that falsifying invoices to bypass House procurement reporting requirements violates the law.

To oppose Mr. Rosiak's anti-SLAPP motion, the Awans had to present evidence showing that the Book's claims were materially false. Instead, they presented evidence proving they broke federal law and the House ethics rules, just as the Book claimed. That the Awans' employers joined them and encouraged them in these violations shows, at best, ignorance of the House ethics rules and procurement guidance, or at worst, a conspiracy to violate them. Either scenario is diametrically the opposite of evidence of innocence. The fact that the DOJ claimed it found *no* evidence the Awans broke *any* laws on Capitol Hill, when the Awans admit freely under penalty of perjury that they *did*, shows that Rosiak's skepticism of the DOJ's conduct and conclusions was well-founded.

D. Mr. Rosiak Presented The Evidence From Which He Drew His Conclusions, Did Not Claim To Base His Opinions On Any Privately Held Information, And The Awans Did Not Dispute The Veracity Of Any Of The Book's Evidence

"Expressions of opinion are entitled to constitutional protection unless they imply the existence of undisclosed defamatory facts as the basis of the opinion." *Myers v. Plan Takoma, Inc.*, 472 A.2d 44, 47 (D.C. 1983). Further, members of the media are protected by a "long recognized doctrine" which allows them "fair comment on matters of public interest" "so long as the opinions expressed are based on true facts. *Boley v. Atl. Monthly Grp.*, 950 F.Supp.2d 249, 259 (D.D.C. 2013) (cleaned up). Opinions drawn from fully disclosed facts are constitutionally protected. *Id*. ("Here, … the facts on which the opinion 'shady' was based were fully disclosed in the leaflet. There is no suggestion in the leaflet that the authors relied on privately held information outside of what was stated in the publication to substantiate the comments made about the plaintiffs therein.").

Here, the Book presented all the evidence on which Rosiak drew his conclusions—evidence which the Awans did not refute in their Anti-SLAPP Opposition. Rosiak's statements were "accurate and full," meaning even if they were to include "rhetorical hyperbole," his challenged statements would still be protected opinion. *Bresler*, 398 U.S. at 13–14. The Awans have proffered no evidence whatsoever to establish that Rosiak relied on undisclosed facts to reach

his conclusions—an omission that eviscerates their defamation claims as a matter of law, given the undisputed facts of this case.

1. Rosiak based his hacking opinions on House reports, briefings, and memos.

The Awans claim allegations they "hacked the House" and had "unauthorized access to House data" are defamatory. JA 29–30. The only evidence the Awans provided to the Court showing that they could prevail on their claims were the DOJ plea statement (which is contractual, not evidentiary), personal affidavits denying the Book's conclusions, and affidavits from various Members detailing what the Awans' *authorized* access entailed. JA 483–689.

The Superior Court determined that "through numerous affidavits and declarations from House members and staff, it is clear that [Awans] did not have access to classified or confidential national security matter." The affidavits and declarations from House members and staff were the only evidence the Superior Court referenced in support of its findings, yet Member and staff affidavits affirmed only that the Awans' *job descriptions*—or their "*authorized access*"—"did not involve handling any classified or secret information or national security matters." Gregory Meeks, JA 506; Marcia Fudge, JA 509; Cedric Richmond, JA 511; Robert Wexler, JA 514; Patrick Murphy, JA 516. The Book makes clear it was not the Awans' "authorized access," but their "*unauthorized* access" from

which Rosiak drew his hacking theories—and on this, the Member and staff declarations are silent.

The Book claims the Awans inappropriately used their positions as House IT professionals to access House data to which they were not supposed to be privy. JA 94, 135. The Book cites specific evidence in support of its claims, evidence which the Awans did not dispute in their Opposition. The Awans' Opposition did not dispute that, for instance, that House Inspector General Theresa Grafenstine created reports and briefed Members of Congress on the fact that the Awans, besides their work for forty-four member offices, were:

> logging onto servers of other members of Congress who they didn't work for. They were logging in using members of Congress' personal usernames. They were funneling massive amounts of data off the network. [And] [t]hey were accessing the House Democratic Caucus server with a bizarre frequency—five thousand times within a few months.

JA 121; see also JA 48–51.

Together with this overview of the House Inspector General's findings, the Book cites specific incidences of unauthorized access contained within the House Inspector General's report, including claims that Abid Awan continued to log onto the servers of a Member of Congress after the Member had fired Abid. JA 121. The Book also discusses a report from the House's Chief Administrative Officer detailing Abid Awan's access to House Democratic servers in 2016 after then

House member Xavier Becerra had told him to cease that access. JA 48–51, 148–150. Rosiak also introduced documents from briefings with the House Inspector General stating the Awans "logged into 15 member offices and the Democratic Caucus, although they were not employed by the offices they accessed," JA 49, Awans not employed by the Democratic Caucus logged onto the Caucus server over 5,000 times over a 7-month period suggesting—as the Inspector General termed it—"nefarious purposes," JA 50, and the Awans used Member credentials to log onto the Democratic Caucus instead of their own credentials, JA 51. The Awans do not dispute that these documents exist, that the documents say what the Book alleges, or that any of these allegations happened.

The Awans do not suggest that *any* of the Book's cited evidence about claims of hacking was false or misleading. See eg. JA 48–51, 94, 134, 143, 149–150, 288, 297, 358. Instead, they argue that Rosiak's conclusions drawn as a result of that evidence were defamatory. But opinions about facts are just that—opinion, which as a matter of law cannot be defamatory. *Bresler*, 398 U.S. at 13–14; *Boley*, 950 F.Supp.2d at 259.

In the context of the Book, where these undisputed facts were extensively reviewed and discussed, Rosiak's audience would have known Rosiak's claims of hacking were expressing his "subjective view, [] interpretation, [] theory, conjecture, or surmise" based on the cited evidence. *Guilford*, 760 A.2d at 597

(cleaned up). The hacking claims were not removed from the native context in which they were made—surrounded by undisputed facts showing examples of the Awans' unauthorized access to House servers. Rosiak's claims of hacking are protected opinion, and nothing the Awans presented would allow a reasonable jury to find those opinions were materially false.

2. Rosiak based his opinion that Imran Awan solicited a bribe from another House IT official on reported conversations with that House IT official.

The Book quotes from a Democrat IT specialist using the pseudonym Stephen Taylor. In one excerpt, the Democrat IT specialist claimed that Awan tried to solicit a bribe from him to land a contract with a newly elected Congresswoman. JA 161. Mr. Rosiak provided his readers with the context for these claims, including the name of the Congresswoman, the time frame in which this alleged conversation occurred, and the name of the company with which, after the Democrat IT specialist declined by stating that such a quid quo pro would be illegal, the office ultimately contracted. *Id.* Based on these disclosed facts, Rosiak argued that those facts showed Awan had solicited a bribe. Rosiak did not "imply the existence of any undisclosed defamatory facts as the basis of the opinion." *Myers*, 472 A.2d at 47. He provided the context, the source of the information, and then proffered a theory for his readers on what he thought that information tended to prove. Even if, in isolation, this claim would be defamatory, in context of

journalism on a matter of public interest, this conclusion is protected opinion. *Bresler*, 398 U.S. at 13–14.

3. Rosiak based his opinion that Imran Awan stole an intelligence specialist's identity on Awan's use of an email address associated with that intelligence staffer's name.

The Awans claim allegations Imran Awan "stole the identity of an intelligence specialist" are defamatory. JA 29. The only evidence the Awans provided to the Court in support of their claims are conclusory denials in their affidavits which don't address any of the facts underlying Rosiak's opinions. JA 485–487.

The Book reports that Mr. Rosiak found evidence that Imran Awan was using the email address 123@mail.house.gov. JA 172, 183. Imran Awan used and controlled that email address, including for communication on private contracts such as personal rental agreements. *Id.* The name associated with this address, which auto-populated when it was sent in an email, was that of a national security staffer who had studied military strategy at the United States Army War college and staffed Representative Andrew Carson on the Intelligence Committee. JA 182–186. The Book's claims that Imran Awan stole the identity of an intelligence specialist are protected opinion based on disclosed facts about Imran Awan's use of an email address associated with an intelligence specialist's name. And again, the Awans did not suggest that any of this evidence was false in their anti-SLAPP

motion, only that the *opinions* drawn from the undisputed evidence should have been different.

4. The challenged statements and that Awan was "a mole," stealing equipment, and threatening violence were also based on disclosed and undisputed facts.

Rosiak's opinion that Imran Awan bragged about being "a mole" in Congress[7] was based on conversations with Imran's second wife via polygamous marriage, Sumaira Siddique, in which she claimed that Imran had made these statements. JA 362.

Rosiak's opinion that Imran Awan was stealing cell phones and sending iPads and iPhones to government officials in Pakistan was based on claims made by Democrat House Administration official Eddie Flaherty and an extended family member of the Awans, Syed Ahmed. JA 197 ("Syed—who knew the brothers well and had even loaned Abid money—told me that Abid was sending iPads and iPhones to government officials in Pakistan.").

Rosiak's opinion that the Awans were "stealing a couple hundred thousand in laptops" and "charged hundreds of thousands of dollars of equipment to congressional offices, sometimes delivered straight to their homes, but never took

[7] "Mole" is further not a defined term, and its definition can be different for different people. Even if this claim were not protected opinion (and it is), it is a subjective statement that cannot be proven true or false, and therefore not actionable defamation. *See Mann*, 150 A.3d at 1244.

the invoices to the chiefs of staff" was based on direct quotes from Inspector General briefings, the contents of which are undisputed, where the IG reported, among other violations, 75 pieces of missing equipment (laptops, iPads, TVs, video conferencing equipment, and computers) with a purchase price of $118,416 written off by a member of Congress because the Awans could not produce them, $219,000 in outstanding invoices (many over 500 days old) owed to a vendor that had not been paid and were unknown to member offices, and equipment delivered to the home of some employees, instead of the House of Representatives, thus bypassing internal controls. JA 26, 49; see also JA 105–114, 170, 270, 289–291.

Rosiak's opinion that Imran Awan bragged about torturing his enemies in Pakistan was based on a lawsuit filed against Imran Awan in Pakistan by his fellow plaintiff Hina Alvi in 2017 alleging that he made violent threats, JA 276–278, conversations with Imran's second wife Sumaira Siddique where she discussed Imran Awan's repeated threats against her and her family, JA 94, 340–342, and conversations with a Democrat House IT aide who claimed Imran Awan bragged about torturing others, JA 161–163.

Every challenged statement the Awans claim as defamatory was drawn from undisputed facts and evidence discussed in the Book, meaning the entirety of the Awans' defamation complaints attack protected opinion. The Awans have not claimed that *any* of the evidence on which the Book's claims are based is false or

defamatory. Instead, they context the conclusions Rosiak drew, based on those undisputed facts. Every one of those claims is protected opinion.

E. The DOJ Plea Statement, Applies, At Best, Only To Imran Awan.

The Awans' complaint, on its face, admits that the DOJ statement only pertains to Imran Awan. JA 27 (stating the "extraordinary paragraph in the plea agreement" "affirmatively *exonerate[es] Imran Awan* of any wrongdoing related to his employment in the House.") (emphasis added). Yet the Court relied on the DOJ statement to make a sweeping, unsupported finding that "the United States Department of Justice conducted an investigation into the allegations *against the Plaintiffs* and that the investigation concluded *that Plaintiffs* had not violated any laws, nor [] committed any crimes…." JA 833 (emphasis added). None of the other four Plaintiffs was a party to the DOJ's plea agreement. And, other than self-serving claims in their affidavits, none of the other four Plaintiffs have provided evidence that they have been "exonerated" by the DOJ, a meaningless concept in these circumstances. Even if the DOJ statement *had* shown the Rosiak's claims were materially false—and it did not—the statement would only be evidence favoring Imran Awan, not any of the other parties.

III. THE AWANS MUST PROVE MALICE BECAUSE THEY WERE PUBLIC FIGURES PRIOR TO THE DATE OF THE BOOK'S PUBLICATION.

Public figures are required "to prove greater fault by a greater degree of factual certainty than private plaintiffs," because they have "ready access…to mass media of communication, both to influence policy and to counter criticism of their views and activities." *Fridman v. Orbis Business Intelligence Ltd.*, 229 A.3d 494, 504 (D.C. 2020) (cleaned up). General purpose public figures hold positions of persuasive power and influence and are public figures for all purposes. *Id.* Limited-purpose public figures assume roles "in the forefront of particular public controversies in order to influence the resolution of the issues involved," and are only public figures in relation to the related controversy. *Moss v. Stockard*, 580 A.2d 1011, 1029 (D.C. 1990) (quoting *Gertz v. Robert Welch*, 418 U.S. 323, 345 (1974)). Whether someone is a public figure is a "question of law to be resolved by the court." *Id.*

A. The Awans Were Public Figures, As They Are Central Figures In, And Attempted To Influence, A Public Controversy

Under the *Waldbaum* framework used in this jurisdiction, the trial court first must "decide whether there is a public controversy, and determine its scope." *Waldbaum v. Fairchild Publications, Inc.*, 627 F.2d 1287, 1296-97 (D.C. Cir. 1980). This requires the court to determine "whether the controversy to which the defamation relates was the subject of public discussion *prior* to the

defamation." *Moss*, 580 A.2d at 1030. Next, the court asks "whether 'a reasonable person would have expected persons beyond the immediate participants in the dispute to feel the impact of its resolution." *Id*. (quoting *Waldbaum,* 627 F.2d at 1297). If both these prongs are met, the court considers "whether the alleged defamation was germane to the plaintiff's participation in the controversy." *Id.* at 1031.

After the court defines the controversy, it examines the plaintiff's role in the controversy to determine whether he or she "achieved a special prominence in the debate, and either 'must have been purposefully trying to influence the outcome or could realistically have been expected, because of his position in the controversy, to have an impact on its resolution." *Waldbaum*, 627 F.2d at 1298. "Ultimately, 'the touchstone remains whether the individual has assumed a role of special prominence in the affairs of society…that invites attention and comment.'" *Moss*, 580 A.2d at 1030 (quoting *Tavoulareas v. Piro*, 817 F.2d 762, 773 (D.C. Cir. 1987)).

The House's investigation in the Awans began in 2016, and the press began reporting about the controversy on February 2, 2017. JA 411–413 ("Five House employees are under criminal investigation amid allegations that they stole equipment from more than 20 member offices and accessed House IT systems without lawmakers' knowledge" and "[a]ccess to the House network was

terminated for the five employees—four men and a woman….”). Thus, the controversy at issue was the subject of public discussion before the Book’s alleged defamation on January 29, 2019. [8]

Yet the controversy to which the alleged defamation relates was also subject of public discussion well before Mr. Rosiak’s first published article on the matter on February 4, 2017. The Awans wish to split hairs suggesting that their names were not public until Mr. Rosiak and the Daily Caller, Inc. revealed them, but that is not the applicable test. The test is whether the “controversy” was “the subject of public discussion prior to the [alleged] defamation,” not whether any individual names related to the public controversy had been revealed. *Burke*, 91 A.3d at 1042 (quoting *Moss*, 580 A.2d at 1030). The controversy and the Awans’ implication in it were already well-defined before Mr. Rosiak’s first report. Only their names were lacking. JA 411–413.

Given the allegations of potential fraud, self-dealing, and unauthorized network access in the highest levels of government, a reasonable person would expect persons beyond the immediate participants to feel the effect of its resolution. And the alleged defamation was directly related to the Awans’ participation in the controversy.

[8] Per the Court’s order, the only speech at issue here is speech after January 29, 2019. JA 830–831.

While the Awans deny trying to influence the controversy in one breath, they admit to it in the very next. Imran Awan's declaration states that his counsel was commenting to the press about the investigations on his behalf. JA 487 ("Before the publication of the book…I did not comment on these claims or the investigation publicly *because I had a lawyer who was doing that for me*."). Imran Awan also directly communicated with *The Washington Post* for its July 3, 2018, story about the investigation. JA 663 ("Awan *told The Washington Post in an interview* before Tuesday's hearing that he questions whether the case would have been pursued if he did not have a Pakistani name.") (emphasis added).

The Awans also had special prominence in the debate for being fired by the House and under investigation by multiple government agencies. The scandal, of which the Awans were at the center, invited significant attention and comment. By the book's January 29, 2019, publication, all the Awans had been named in numerous news articles surrounding the investigation into their House activities. *Id.* All had also been banned from working for the House of Representatives. JA 411–413. It was realistic to expect that, because of their position in the controversy, they would have an impact on its resolution.

Even before the events that led to the House's banning of the Awans, Imran Awan was already the subject of international scrutiny for being an "influential" figure in the United States government. A Pakistani newspaper published an article

about Imran Awan titled "Influential expat shields father from long arm of law." JA 58–63. The article claimed that Imran Awan's father had engaged in "high-profile swindling," yet had not been prosecuted because Imran Awan had "easy access to the corridors of power and that's why he was able to pressurize the police to dance to his tunes." *Id.* The article further accused Imran Awan of threatening a widow to make her transfer him property belonging to her late husband. *Id.*

The public has a "general interest in the qualifications-including the honesty—of any government employee." *Moss*, 580 A.2d at 1030. One who "hobnob[s] with high officials … runs the risk that personal tragedies that for less well-connected people would pass unnoticed may place him at the heart of a public controversy." *Clyburn v. News World Commc'ns, Inc.*, 903 F.2d 29, 33 (D.C. Cir. 1990). This is even more true for the Awans who, by virtue of making $160,000 per year in the House of Representatives, were senior staff subjected to additional ethics training and mandatory financial reporting. The fact that Members of Congress and senior House staff have repeatedly come to their defense in the press, JA 440–443, and in this lawsuit, JA 506–529, shows the Awans "had access to channels of communication to defend themselves... ." *Jankovic v. Int'l Crisis Grp.*, 822 F.3d 576, 584-85 (D.C. Cir. 2016) (citations omitted). All of the Awans meet the test for being public or limited public figures at the center of a scandal at the

highest levels of the United States government, and the Superior Court's ruling to the contrary is clear error.

B. The Awans Did Not Establish That They Are "Likely" To Prove Actual Malice By "Clear And Convincing Evidence."

Public figures must establish actual malice to recover for defamation. "The burden of proving actual malice requires the plaintiff to demonstrate with clear and convincing 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, 520 at n. 30 (1984). This requirement is, intentionally, "very difficult to meet" to protect freedom of expression. *Pearce v. E.F. Hutton Grp., Inc.*, 664 F. Supp. 1490, 1511 (D.D.C. 1987). To survive an anti-SLAPP motion, a public figure plaintiff must introduce evidence "capable of showing by the clear and convincing standard that appellees acted with actual malice in publishing" their allegedly defamatory statements. *Fridman*, 229 A.3d at 510.

The Awans have not, and cannot, meet their burden. Chiefly this is because all the complained-of statements are protected speech. They are opinions and theories Mr. Rosiak drew from the undisputed facts laid out in his Book. *See* Section II. Beyond that, the Awans have not provided evidence that Rosiak realized his statements were false or entertained doubts about them. He did not

entertain doubts then, and still does not to this day. Every "proof" the Awans offered to this Court was evidence already discussed in the Book. Rosiak knew about that "proof," discussed that "proof" openly, and came to a different conclusion about what that "proof" meant. Even if Rosiak's statements were defamatory—and they are not—he believed them to be true based on the facts and evidence he had at his disposal when he made his claims. JA 42–45.

IV. THE AWANS' INTENTIONAL INFLICTION OF EMOTIONAL DISTRESS CLAIM FAILS BECAUSE THEY SHOW NEITHER MALICE NOR HARM.

To succeed on a claim of intentional infliction of emotional distress, a plaintiff must show 1) extreme and outrageous conduct on the part of the defendant which 2) intentionally or recklessly 3) causes the plaintiff severe emotional distress. *District of Columbia v. Tulin*, 994 A.2d 788, 800 (D.C. 2010). "The requirement of outrageousness is not an easy one to meet." *Drejza v. Vaccaro*, 650 A.2d 1308, 1312 (D.C. 1994). The conduct must be "so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community." *Williams v. District of Columbia*, 9 A.3d 484, 493-94 (D.C. 2010) (quotation omitted). "Severe emotional distress," requires a showing beyond mere mental anguish and stress and must be of so acute a nature that harmful physical consequences are likely to result." *Mann*, 150 A.3d at 1261.

"As a constitutional matter, a public figure 'may not recover for the tort of intentional infliction of emotional distress by reason of publication[]…without showing in addition that the publication contains a false statement of fact which was made with actual malice.'" *Mann*, 150 A.3d at 1260-61 (quoting *Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 56 (1988)).

Here, there was nothing extreme or outrageous about Rosiak's conduct. Rosiak was reporting on a violation of the public trust in the halls of Congress, which is of great public interest. JA 697–698. He relied on House investigative reports and other government documents, relatives of the Awans (including Imran's second wife via polygamy), former tenants and business associates of the Awans, employees of the House, Capitol Police, and other reputable sources of information before publishing. JA 697–703. His reporting cannot be "beyond all possible bounds of decency," "atrocious," or "utterly intolerable in a civilized community." He wrote a thoroughly researched book quoting interviews with many sources, detailing government reports and briefings, and then drew conclusions about what he believed those undisputed facts tended to prove, showing his work so that his audience could draw their own conclusions. This is not extreme or outrageous conduct. It is sound journalism,

For the same reasons, there was also nothing intentional or reckless about Rosiak's actions. His Book was methodical, well sourced, and presented every

piece of evidence the Awans claim "proves" their innocence. See Section II. Finally, other than their own self-serving statements, the Awans did not provide any evidence showing severe emotional distress. They did not provide evidence of harmful physical consequences such as doctors' bills, therapy notes, or other information which would tend to show the extent of the damage to their persons. They also did not produce evidence that their alleged emotional distress came as a result of the fallout from the Book as opposed to the House's actions banning them from network access, the criminal investigations and conviction prior to the Book's publication, or the reporting from other news outlets. The Awans cannot prevail as they have "not produced or proffered evidence that they are likely to succeed in proving that they suffered severe emotional distress." *Mann*, 150 A.3d at 1261. And as shown above, they provided no evidence of malice as required by public figures.

V. The Awans Cannot Recover On Their Unjust Enrichment Claim.

Unjust enrichment is a "theory of quasi-contract." *News World Communications v. Thompson*, 878 A.2d 1218, 1222 (D.C. 2005). A claim for unjust enrichment requires that: (1) the plaintiff conferred a benefit on the defendant; (2) the defendant retained that benefit; and (3) under the circumstances, the defendant's retention of the benefit was unjust. *Id.* The claim applies when the defendant's failure to pay for the plaintiff's services gives "rise to a duty of

restitution." *Vila v. Inter-American Investment Corp.*, 570 F.3d 274, 284 (D.C. Cir. 2009). For instance, when a plaintiff performs services with the expectation of payment which is later refused, *Id.*, or when a plaintiff provided an idea to the defendant and the defendant later uses the idea without compensating the plaintiff. *News World Communications*, 878 A.2d at 1222. "The cause of action for unjust enrichment accrues upon presentment and subsequent rejection of a bill for services, or as soon as the services were rendered." *Id.* at 1223 (quoting *Zic v. Italian Gov't Travel Office*, 149 F.Supp.2d 473, 476 (N.D.Ill. 2001)).

Here, none of the Awans "conferred" a benefit upon Rosiak. None of the Awans requested payment for services rendered or had a payment for services rendered rejected. There was no contractual or quasi-contractual relationship between Rosiak and the Awans, and to counsel's knowledge, there is not a single case where a party has argued, let alone prevailed, on an unjust enrichment claim where the parties to the lawsuit had no pre-existing relationship. Yet, the Superior Court summarily concluded, without identifying a single fact in support, that "[t]his Court finds that a properly instructed jury could look at the totality of the circumstances regarding the defamation claims and unjust enrichment claims and find for Plaintiffs." JA 840.

The Awans only allege that "defendants made money and otherwise financially benefitted, to the detriment of the plaintiffs." JA 38. It seeks "Rosiak's personal royalties from the publication of the book; any advance he may have obtained on those royalties; any income made by Rosiak from his employment at *The Daily Caller*…; and any speaking or related fees associated with appearances by Rosiak to discuss his book…." *Id.* Thus, any quasi-contractual (or contractual) relationship alluded to is between Rosiak and other parties (his publisher, employer, and those paying him for speaking engagements), not between Rosiak and the Awans. The Awans seek benefits conferred by *other parties*, not by themselves, which does not meet the required elements of the claim. The Superior Court erred as a matter of well-settled law in not dismissing Count III.

CONCLUSION

Rosiak requests that the Court reverse the Superior Court's ruling on his anti-SLAPP motion in its entirety, remand the case with instructions for the Superior Court to dismiss the Awans' complaint with prejudice and award Rosiak his fees and costs.

Dated: July 30, 2022

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CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing was served on all counsel of record via the District of Columbia Court of Appeals Appellate E-filing System on August 4, 2022.

/s/ David A. Warrington
David A. Warrington

Exhibit A

Shared Employee Manual

March, 2009

Overview of Guidelines

Purpose of Guidelines

The following guidelines have been prepared by the Office of the Chief Administrative Officer (CAO) and are being issued by the Committee on House Administration (CHA) in response to the recommendations outlined by the Office of Inspector General (OIG) Special Report, *Controls Over Shared Employees Need Significant Improvement*, published on May 21, 2008. In this report, the OIG provides recommendations for improving the general oversight and management of "Shared Employees" within the U.S. House of Representatives (House).

These guidelines are an expansion of CHA Resolution #110-7 (copy in Appendix 1).

All Shared Employees will receive a copy of this document and must verify that they have reviewed and understand the guidelines by signing the Acknowledgment of Receipt and Understanding of Shared Employee Manual and Certification of Continuing Compliance with the Mandatory Provisions Incorporated Therein (copy in Appendix 2).

A summarized listing of the statutes and regulations that apply to Shared Employees is in Appendix 4.

Overview of Shared Employees

Definition of Shared Employees

Per Member's Handbook

The term "Shared Employee," as defined by CHA, refers to an employee who is paid by more than one employing authority of the U.S. House of Representatives.[1] *However, these guidelines only shall apply to those Shared Employees who work for three or more offices, independent of each other.*

The following guidelines are set forth in the Member's Handbook, which outline the policy on Shared Employees.

1. Two or more employing authorities of the House may employ the same individual.

2. Shared Employees must work in the office of an employing authority, but are not required to maintain office space in the office of each employing authority. The pay from each employing authority shall reflect the duties actually performed for each employing authority. The name, title, and pay of such an individual will appear on each employing authority's Payroll Certification.

[1] Member's Handbook, Committee on House Administration, pg. 11.

Shared Employees may not receive pay totaling more than the highest rate of basic pay in the Speaker's Pay Order applicable to the positions they occupy.

3. Employees may not be shared between a Member or Committee office and the office of an Officer of the House if the employee, in the course of duties for an Officer, has access to financial information, payroll information, equipment account information, or information systems of either Member, Committee, or Leadership offices.

Policies and Procedures

Disclosure of Shared Employee Status

Per CHA Committee Resolution # 110-7
In accordance with CHA Committee Resolution # 110-7, “Each House employee who, during any pay period, is simultaneously employed by three or more House employing authorities is required to inform each employing authority in writing of the employee’s employment status and any change in employment status with other employing authorities.” This disclosure shall include the names of the individual Members for whom the shared employee works.

In addition, Shared Employees shall formally notify within 30 days, in writing, the offices for which they work of changes to employment, be it acquiring a position with additional offices or resignation from an office. A sample disclosure notice is included in this document as Appendix 3.

Quarterly, the CAO shall formally notify offices employing a Shared Employee of the offices for which the Shared Employee works.

Financial Disclosure Statement

Per CHA Committee Resolution # 110-7

In accordance with CHA Committee Resolution # 110-7, “Each House employee who is simultaneously employed by three or more House employing authorities for more than 60 days during a calendar year must file a Financial Disclosure Statement under 5 U.S.C. app § 101 et seq. by May 15 of each year.” This statement is required regardless of total compensation for the year.

By January 15 of each year, the CAO will notify the Office of the Clerk in writing of those Shared Employees who need to file a Financial Disclosure statement for the preceding calendar year.

Supervision

It is important that Shared Employees receive adequate supervision in their day-to-day duties and responsibilities as it pertains to their assigned positions. Shared Employees are responsible for ensuring the supervisors

in each of their respective House offices and entities receive the necessary information to properly and timely account for their specific work hours and location.

It is recommended that supervision include the following:

- Maintaining, reviewing and authorizing the employee's time and attendance record.

- Conducting weekly status report meetings on the work activities that the employee is currently assigned.

- Performing regular reviews of the employee's performance and functional expertise.

- Ensuring employees attend all mandatory training on a regular basis.

Job-sharing

Per House Ethics Manual

House employees, including Shared Employees, shall not share their job duties with other individuals employed by different Member or Committee offices or individuals who are not on the House payroll.

Subcontracting

Per House Ethics Manual and 2 U.S.C. § 101

House employees, including Shared Employees, are prohibited from subletting any portion of their official duties to someone else.[2, 3]

External Employment and Contracting Arrangements

Per CHA Committee Resolution # 110-7

Per CHA Committee Resolution # 110-7, "Any Shared Employee engaged in any outside employment or business activity may not directly, or indirectly through such outside employment or business activity, sell, lease, or otherwise provide any goods or assets to any House office or entity."

Background Investigations

Due to the sensitive nature of the information to which Shared Employees may be exposed during day-to-day job functions, it is recommended that Member and Committee offices request a Capitol Police Criminal History Records Check on potential Shared Employees.

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[2] House Ethics Manual, Committee on Standards of Official Conduct, 110th Congress, 2nd Session, 2008 ed., pg. 279.
[3] See 2 U.S.C. § 101.

Shared employees should contact the CAO Office of Human Resources, within 30 days of signing the Acknowledgment of Receipt and Understanding of the Shared Employee Manual, to arrange for the background investigation.

After receiving the results, the Office of Human Resources will provide the results to the Office of Administrative Counsel. Shared employees and the employing offices will be notified by the office of the Administrative Counsel of the results of the background investigation. In the event that an item appears on the background investigation report, the employing office is encouraged to work with the shared employee to determine the circumstances of the item before taking any action on that item. "

Internal Controls

House offices and entities must maintain an environment that supports a strong internal control structure to achieve increased effectiveness and efficiency of operations and minimize exposure to risk. The U.S. Government Accountability Office (GAO) Standard for Internal Control in the Federal Government provides the overall framework for establishing and maintaining internal controls.

Shared Employees, particularly those serving as Financial Administrators, play a key role in processing and recording financial transactions for House offices and entities. As a result, Shared Employees also need to be an integral part of ensuring that adequate internal controls exist over financial transactions.

An effective system of internal controls may be defined as one where the accounting work of one employee is complemented and verified by the work of another employee – both employees working independently and without duplication of each other's work. Related to the duties of Shared Employees, there are basically three functions (Authorization, Recording, and Custody) that have a significant effect on internal controls. As a rule, no one person should be in control – working independently and without review or oversight – of two or more of these functions. In an ideal world, there would be segregation of duties separating the staff that performs the authorization, recording and custody functions. However, this is not always possible in a small office. In these instances, compensating controls, which generally involve control activity after the transaction is complete, must be developed and used.

The following example considers one of the primary Shared Employee scenarios and reviews the internal and compensating controls involved. If a Shared Employee drafts the required forms to initiate a financial transaction, a more senior office employee will perform the authorization function by reviewing the forms for correctness and completeness before providing their signed approval. The Shared Employee will continue to record transactions into the financial books for the office; however a more senior employee of the office would review monthly financial reports and selected transactions to ensure the accuracy and completeness of the transactions. Finally, items ordered for the office will be delivered to the

office and signed for by an individual other than the Shared Employee (constituting custody). This will also eliminate the Shared Employee receiving office goods at locations other than an official House location. The scenario described in this example provides segregation of duties and compensating controls over the financial transaction.

Telecommuting

Per CHA Telecommuting Policy

The definition of "telecommuting," as defined by CHA: "*is a working arrangement, mutually agreed upon by the employee and the employing office, whereby the employee works at an alternative work site on specified days and/or for specified hours.*"[4]

Member and Committee offices may allow Shared Employees to telecommute; however, Shared Employees must abide by the House Telecommuting Policy, established by CHA.[5] Specific aspects of this policy include, but are not limited to:

Telecommuting employees are required to sign a Telecommuting Agreement prior to participation in the employing office's telecommuting program.

The "alternative work site**"** must be approved by the employing office for use by qualified employees as a location from which the employees may telecommute (e.g., residence or telecommuting center). The alternative work site may not be a political, campaign, or commercial office. The alternative work site must be approved by all House offices and entities for which the Shared Employee will be performing work at that alternative work site.

Use of Personal Equipment

Per CHA Telecommuting Policy

As outlined in the House Telecommuting Policy, established by the CHA, except for telecommuters utilizing commercial or government telecommuting centers, the telecommuting employee may only use computer hardware and software supplied by the House. The House retains ownership and control of any and all hardware, software, equipment, data or documents placed in alternative work site. Only portable (e.g., desktop or laptop computers, portable facsimile machines, and portable copiers) House equipment may be transferred to the alternative work site.[6]

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4 Committee on House Administration, United States House of Representatives, Telecommuting Policy, on the Internet at http://cha.house.gov/telecommuting_policy.aspx (visited June 10, 2008).

5 Committee on House Administration, United States House of Representatives, Telecommuting Policy, on the Internet at http://cha.house.gov/telecommuting_policy.aspx (visited June 10, 2008).

6 Committee on House Administration, United States House of Representatives, Telecommuting Policy, on the Internet at http://cha.house.gov/telecommuting_policy.aspx (visited June 10, 2008).

A Shared Employee may use equipment supplied by one office by which he or she is employed for all work performed on behalf of the House.

Information Security

Per HISPOL 10.0

Shared Employees, while conducting official duties, shall utilize House assigned email accounts for all Internet communication to House entities. The use of other personal or commercial email accounts is strictly prohibited. Shared Employees are to follow all House Information Security Policies (HISPOLs). Current HISPOLs for all House employees can be found on HouseNet.

Record Storage

Per HISPOL 2.0

Shared Employees must have an established system to keep all House paper records secure. Shared Employees shall notify employing offices of the systems in place to secure all sensitive office information.

Original documents should be stored in the physical location of the House office or entity employing the Shared Employee. Shared Employees may take only secondary copies, either saved to an automated medium or paper copies, to an alternative work site.

APPENDIX 1: Committee Resolution #110-7

COMMITTEE ON HOUSE ADMINISTRATION
110TH CONGRESS

COMMITTEE RESOLUTION # 110-7
7/30/08

Resolved, that the regulations of the Committee on House Administration pertaining to shared employees are amended as follows:

1. **Each House employee who, during any pay period, is simultaneously employed by three or more House employing authorities is required to inform each employing authority in writing of the employee's employment status and any change in employment status with other employing authorities;**
2. **(Upon Committee approval of the Shared Employee Manual) -- Each House employee who, during any pay period, is simultaneously employed by three or more House employing authorities is required to file with the House Finance Office a signed *Acknowledgment of Receipt and Understanding of Shared Employee Manual and Certification of Continued Compliance* upon becoming simultaneously employed by three or more employing authorities. (see attached *Acknowledgement and Certification*)**
3. **Each House employee who is simultaneously employed by three or more House employing authorities for more than 60 days during a calendar year must file a Financial Disclosure Statement under 5 U.S.C app§ 101 et. seq. by May 15 of each year.**
4. **Any House employee engaged in any outside employment or business activity may not directly, or indirectly through such outside employment or business activity, sell, lease, or otherwise provide any goods or assets to any House office or entity.**

Resolved further, that the Chairman of the Committee on House Administration is authorized to make technical and conforming amendments to the above regulations upon issuance and inclusion in the Congressional Handbooks.

APPENDIX 2: Acknowledgment of Receipt and Understanding of Shared Employee Manual and Certification of Continuing Compliance with The Mandatory Provisions Incorporated Therein

Revised: March 2009

As a Shared Employee, I, _____, hereby certify that:

- I have received a copy of, reviewed and understand the Shared Employee Manual.
- I understand that the Manual is intended to provide me with both general and specific information about House practices, policies, and procedures attendant to being a shared employee of three or more employing authorities.
- I will maintain office space the offices of one of the employing authorities for whom I work.
- The pay I receive from each employing authority will reflect the duties actually performed for each employing authority.
- I will not work for both a Member or Committee and an Officer of the House if, as an employee of an Officer, I have access to financial information, payroll information, equipment account information, or information systems of a Member, Committee, or Leadership office.
- I will inform each employing authority, in writing, of all of the offices for which I am working, and will inform each employing authority, in writing, or any change in this status.
- If I am employed simultaneously by three or more House employing authorities for more than 60 days during a calendar year, I will file a Financial Disclosure Statement by May 15th of each year, pursuant to 5 U.S.C. App. §101 et seq.
- I will neither share my job duties nor sublet any portion of my official duties.
- I will not sell, lease, or otherwise provide any goods or assets to any House office or entity through any outside employment or business activity.
- I will abide by the House Telecommuting Policy.
- I will utilize House assigned email accounts for all of my work for House offices.
- I will have an established system to keep all House records under my control secure.
- I acknowledge and understand that employment within the House is at-will, and that each employee serves at the pleasure of the employing authority(s).
- I understand and acknowledge that the Shared Employee Manual does not create an actual or implied contract of employment, nor confer any right to remain an employee of any House office, nor otherwise change in any respect the employment-at-will relationship between employing authority(s) and myself.
- I am currently, and will take all necessary steps to remain, in compliance with the mandatory provisions of law and regulation described in the Shared Employee Manual, and will abide by all House statutes, rules and regulations, whether they are or are not noted in this certification or the Shared Employee Manual.
- I will execute an updated version of this certification at the start of each Congress or as requested by the Committee on House Administration.

_____ _____

(Signature of Shared Employee) (Date)

APPENDIX 3: Notice to House Employing Authorities of Change in Employment Status

To: Rep. ABC, Chairman DEF, Rep. KLM, Rep. XYZ
(all Employing Authorities)

From: Jenny Threejobs (shared employee)

Date:

Pursuant to Committee on House Administration Resolution # 110 – 7, this notice is to inform you of the offices for which I am currently working, as a Shared Employee:

Current Employing Authorities:

Office	Title
Rep. ABC	Shared Employee
Committee DEF	Shared Employee
Rep. KLM	Shared Employee

Dropped Employing Authorities:

Office	Title
Rep. XYZ	Shared Employee

cc: Payroll & Benefits

APPENDIX 4: Statutes and Regulations that Apply to

Shared Employees

Statutes

2 U.S.C. 101

> No employee of Congress, either in the Senate or House, shall sublet to, or hire, another to do or perform any part of the duties or work attached to the position to which he was appointed.

5 U.S.C. App 101 -111 {These sections detail requirements for filing a Financial Disclosure Statement.}

House Regulation

House Ethics Manual, p. 279 – All House employees cannot share job duties and cannot sublet

CHA Regulations

CHA Committee Resolution #110-7 – Shared employee's notification requirements

House Telecommuting Policy

> Telecommuting *is a working arrangement, mutually agreed upon by the employee and the employing office, whereby the employee works at an alternative work site on specified days and/or for specified hours.*
>
> Telecommuting employees are required to sign a Telecommuting Agreement prior to participation in the employing office's telecommuting program.
>
> "The Alternative Work Site" must be "approved by the employing office for use by qualified employees as a location from which the employees may telecommute (e.g., residence or telecommuting center). The alternative work site may not be a political, campaign, or commercial office."
>
> Except for telecommuters utilizing commercial or government telecommuting centers, the telecommuting employee may only use computer hardware and software supplied by the House. The House retains ownership and control of any and all hardware, software, equipment, data or documents placed in alternative work site. Only portable (e.g., desktop or laptop computers, portable facsimile

machines, and portable copiers) House equipment may be transferred to the alternative work site.[7]

Members' Handbook – Definition of Shared Employee

CAO Regulations

HISPOL 002.0

Users must take measures to limit who can access files and printed information – only those who need the information should be able to get it.

HISPOL 010.0

Users of House sensitive information must not store or transmit sensitive information on any public access system such as e-mail or via the Internet without protective measures (e.g., using encryption).

7 Committee on House Administration, United States House of Representatives, Telecommuting Policy, on the Internet at http://cha.house.gov/telecommuting_policy.aspx (visited June 10, 2008).

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing was served on all counsel of record via the District of Columbia Court of Appeals Appellate E-filing System on August 4, 2022.

/s/ David A. Warrington
David A. Warrington

District of Columbia
Court of Appeals

REDACTION CERTIFICATE DISCLOSURE FORM

Pursuant to Administrative Order No. M-274-21 (filed June 17, 2021), this certificate must be filed in conjunction with all briefs submitted in all cases designated with a "CV" docketing number to include Civil I, Collections, Contracts, General Civil, Landlord and Tenant, Liens, Malpractice, Merit Personnel, Other Civil, Property, Real Property, Torts and Vehicle Cases.

I certify that I have reviewed the guidelines outlined in Administrative Order No. M-274-21 and Super. Ct. Civ. R. 5.2, and removed the following information from my brief:

1. All information listed in Super. Ct. Civ. R. 5.2(a); including:

   - An individual's social-security number
   - Taxpayer-identification number
   - Driver's license or non-driver's' license identification card number
   - Birth date
   - The name of an individual known to be a minor
   - Financial account numbers, except that a party or nonparty making the filing may include the following:

     (1) the acronym "SS#" where the individual's social-security number would have been included;
     (2) the acronym "TID#" where the individual's taxpayer-identification number would have been included;
     (3) the acronym "DL#" or "NDL#" where the individual's driver's license or non-driver's license identification card number would have been included;
     (4) the year of the individual's birth;
     (5) the minor's initials; and
     (6) the last four digits of the financial-account number.

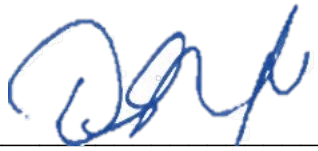
2. Any information revealing the identity of an individual receiving mental-health services.

3. Any information revealing the identity of an individual receiving or under evaluation for substance-use-disorder services.

4. Information about protection orders, restraining orders, and injunctions that "would be likely to publicly reveal the identity or location of the protected party," 18 U.S.C. § 2265(d)(3) (prohibiting public disclosure on the internet of such information); *see also* 18 U.S.C. § 2266(5) (defining "protection order" to include, among other things, civil and criminal orders for the purpose of preventing violent or threatening acts, harassment, sexual violence, contact, communication, or proximity) (both provisions attached).

5. Any names of victims of sexual offenses except the brief may use initials when referring to victims of sexual offenses.

6. Any other information required by law to be kept confidential or protected from public disclosure.



Signature

21-CV-00893, 22-cv-4

Case Number(s)

David A. Warrington

Name

August 2, 2022

Date

DWarrington@dhillonlaw.com

Email Address

CERTIFICATE OF SERVICE

The undersigned attorney hereby certifies that a true and correct copy of the foregoing was served on all counsel of record via the District of Columbia Court of Appeals Appellate E-filing System on August 4, 2022.

/s/ David A. Warrington
David A. Warrington