

**IN THE COURT OF APPEALS FOR THE
STATE OF GEORGIA**

Ronald SACK,

Appellant,

v.

David THOMPSON,

Appellee.

Appeal No. A26A2320

Superior Court of Walton
County, Georgia Civil Action
File No. SUCV2025002522

BRIEF OF APPELLANT RONALD SACK

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INTRODUCTION & SUMMARY OF ARGUMENT

Appellant Ronald Sack (“Sack”) appeals the Walton County Superior Court’s denial of his Anti-SLAPP Motion to Strike (“Motion”) a defamation suit filed by Appellee David Thompson (“Thompson”). The suit is premised on three social media posts (“the Posts”) that Sack made during a 2025 citizens’ effort to recall Thompson from his position as Chairman of the Walton County Board of Commissioners. The Posts appeared in online discussion groups where Walton County citizens editorialize about local events and politics. One Post raised ethical questions about Thompson’s participation in a Board of Commissioners’ vote on a matter affecting Thompson’s close business associate without disclosing the relationship or recusing himself. (V2-39). Two other Posts criticized Thompson for his conduct toward the citizens involved in the recall effort and questioned Thompson’s motives for holding public office. (V2-41, 43). All three posts constitute core political speech on matters of public concern.

This appeal challenges the Walton County Superior Court’s finding under O.C.G.A. § 9-11-11.1(b)(1) that Thompson has shown a probability of prevailing on defamation and denying Sack’s Motion. The statements in the Posts that Thompson pleads as defamatory are not legally actionable. They are either objectively true or substantially true statements of fact, or else statements of opinion and rhetorical hyperbole that are not capable of being proved true or false. Additionally, Thompson

is a public official who must prove constitutional actual malice by clear and convincing evidence. Thompson cannot meet this high standard. The statements are not capable of being proved false at all, nor has Thompson put forth facts or evidence showing that Sack knew the statements to be false, or seriously doubted their truth, at the time of publication. This Court should reverse and grant the Motion.

JURISDICTIONAL STATEMENT

The Court of Appeals has jurisdiction over this appeal under O.C.G.A. §§ 5-6-34(13) and 9-11-11.1(e), and because the issues presented are not reserved to the Supreme Court of Georgia. *See* Ga. Const. art. VI, § V, ¶ III; art. VI, § VI, ¶ II.

Appellant Sack filed his Motion to Strike Pursuant to O.C.G.A. § 9-11-11.1 (“Motion”) on February 23, 2025 in the Walton County Superior Court. (V3-67-68). The court held a hearing on March 23, 2026 (V5-1) and entered an Order denying the Motion on June 2, 2026. (V2-5). Sack timely filed Notice of Appeal on June 5, 2026. (V2-1-2, 5; *See* O.C.G.A. § 5-6-37). The Court docketed the Appeal on May 22, 2026. Sack was granted an extension until July 20, 2026 to file his brief. *See* Rule 16(b) of the Court of Appeals of the State of Georgia. Sack now files on that date.

ENUMERATION OF ERRORS

The Superior Court erred in denying Appellant Sack's Motion to Strike Pursuant to O.C.G.A. § 9-11-11.1(b)(1) because:

1. Appellee Thompson cannot show a probability of prevailing on the first element of his defamation claim which requires proof of a false statement of fact. The statements Thompson identifies are either objectively true or substantially true statements of fact, or else statements of opinion and rhetorical hyperbole that are not capable of being proved true or false. As a matter of law, they cannot support a defamation claim.
2. Because Appellee cannot show a probability of prevailing on the first element, there was no need for the Superior Court to consider whether he has shown a probability of prevailing on the third element, which is constitutional actual malice.
3. The Superior Court's Order failed to apply the correct legal standard for actual malice.
4. Appellee cannot show a probability of prevailing on actual malice because the record, viewed as a whole, does not support by clear and convincing evidence that Appellant knew any of his statements to be false or acted with reckless disregard as to their truth when he published.

STATEMENT OF THE CASE

In August 2025, Appellant Ronald Sack joined the bipartisan citizens’ group Walton in Action (“WIA”), serving as Vice Chair. (V3-95-96). This group was formed in response to Appellee David Thompson, Chairman of the Walton County Board of Commissioners, casting the deciding vote to increase property taxes by nearly 20% despite having run for re-election proclaiming, “No Millage Rate Increases!” (V3-96; V4-627-28, 653). This prompted WIA to review Thompson’s voting record. The Board of Commissioners’ official meeting minutes reflect that on February 1, 2022, the Board unanimously voted “to approve” the Town of Between’s annexing a commercial subdivision owned by Rosewood Development, LLC (“Rosewood”) located in unincorporated Walton County (“Annexation Vote”). (V3-215). Rosewood’s owner had applied to the Town of Between seeking the annexation. (V3-227-31). The annexation simplified, from a regulatory perspective, Rosewood’s use of the land and afforded the entire subdivision the benefit of being more favorably rezoned for development.¹

¹ About 5.5 acres of Rosewood’s subdivision was already located within the municipal limits of the Town of Between, with 19.04 acres of the subdivision located in unincorporated Walton County. The annexation unified the entire subdivision within the town, at which point the entire property was rezoned from Neighborhood Business (B2) to Planned Business Development (PBD). (V3-224-231; V3-213, 215; V4-573-74, 576).

At the time of the Annexation Vote, Rosewood had eleven on-going real estate deals with Appellee Thompson's personal company, Dewey Hogan Properties, LLC ("Dewey Hogan"), which Thompson refers to as he and his wife's "401K" or retirement plan. (V3-413-14; V4-422-23). Two of those deals involved outstanding mortgage loans from Dewey Hogan to Rosewood. (V3-415-16; V4-417-22). In a third deal, Dewey Hogan and Rosewood had jointly borrowed a loan. (V3-408-09). During the Annexation Vote, Thompson failed to disclose his close business relationship with Rosewood and did not recuse himself. (V4-443).

After consultation with and represented by experienced counsel, WIA member Nicole Roy ("Roy") obtained an application for a recall petition ("Recall Application") from the Walton County Board of Elections, asserting that Thompson's participation in the Annexation Vote constituted "misconduct" and "malfeasance" under Georgia's Recall Act of 1989, O.C.G.A. § 21-4-1 *et seq.* (V3-104-05). The Recall Application stated:

Chairman Thompson voted on an application by Rosewood Corporation on February 1, 2022, as to which he had a financial conflict of interest. At the time of his vote, Rosewood owed Chairman Thompson's Company, Dewey Hogan Properties, substantial sums of money (as evidenced by recorded debt instruments), and Rosewood's application directly and immediately affected Chairman Thompson's pecuniary interest.

(V3-142). The Recall Application was filed with the requisite number of voter signatures on October 17, 2025. (V4-631) Thompson challenged the recall. (V3-

122). His October 22, 2025 Verified Petition filed in the Walton County Superior Court (“Recall Court”) admits that he voted in favor of the Rosewood annexation and denies any pecuniary interest in the annexed property. (V3-129).

Starting on November 4, 2025, Thompson began serving deposition and hearing subpoenas on WIA Chairperson Gareth Fenley (“Fenley”) and twelve Walton County citizens (“the Circulators”) who had circulated the Recall Application to collect voters’ signatures. Sack was not one of them. (V3-105, 221, V4-631-32). During a November 5, 2025 conference with the Recall Court, Thompson’s counsel mentioned an intent to refer the Circulators for criminal prosecution for alleged “false swearing” based on the Recall Application (V3-106; V3-98; V4-633, 35).² On November 7, 2025, Thompson sent a letter threatening defamation lawsuits against Fenley and Nicole Roy’s attorney for statements made about Thompson subpoenaing the Circulators. (V4-632-33, 640-42). Fenley and Circulators reported feeling intimidated, harassed, and chilled by Thompson. (V3-97-98, 107, 221-22; V4-632-35).

² Thompson, through counsel, subsequently urged the Walton County Sheriff’s Office and the GBI to investigate Fenley, the Circulators, and Roy’s attorney for “false swearing” and filed criminal warrant applications in the Burke County Magistrate Court. (V4-549-54, 556-59, 644-46) (Stephen Milligan, *Warrant sought for leaders of recall: those who made false statements must pay price, attorney says*, WALTON TRIBUNE (Mar. 24, 2026)). To date, none of the applications have been granted.

In this context, Appellant Sack made three Facebook posts on November 11, 15, and 17, 2025 in the online editorial forums “Walton in Action/Stop Walton County Tax Hike - Public Forum” and “Walton County Rants and Raves 2.0.” (V2-23, 39, 41, 43). Sack’s Posts criticized Thompson for his participation in the Annexation Vote and his conduct towards county citizens in the course of challenging the Recall Application, and questioned his ethics and motives for holding public office. (V2-39, 41, 43).

On November 21, 2025, the Recall Court held a hearing on the Recall Application. The morning of the hearing, Thompson filed an Amended Verified Petition asserting for the first time that, based on viewing a videorecording of the February 1, 2022 Board of Commissioners’ meeting, he had presided over the Annexation Vote without saying “yea” or “nay.” (V3-233). He did not dispute that he neither disclosed his close financial relationship with Rosewood prior to the vote nor recused himself. (V3-233; V4-443). The Recall Court stated at the end of the Recall Hearing that it did not find a sufficient basis for the Recall. (V4-516).

After the Recall Hearing, Sack received a letter from Thompson’s counsel threatening him with a defamation lawsuit if he did not retract his three critical Facebook Posts. Thompson filed the instant defamation action on December 8, 2025. (V2-21, 35-37; V3-100).

On December 18, 2025, the Recall Court issued its written order that explicitly refrained from finding whether Thompson had voted on the Rosewood annexation. (V3-340-41, 344). It instead ruled that, even assuming Thompson had voted, it was not “misconduct or malfeasance” under the Georgia Recall Act because, *inter alia*, Thompson and his company had no ownership or financial interest in the annexed property. (V3-343-44).

Roy sought discretionary review of this ruling by the Georgia Supreme Court. (V3-347). Roy cited legal authorities including the Georgia Constitution, the common law of trusts (Restatement (Third) of Trusts § 78 (Comment e)), opinions of two attorneys general, and the Code of Judicial Conduct, supporting that a county commissioner’s failure to disclose a close business relationship with an entity who has business before the commission constitutes “misconduct or malfeasance” for purposes of a recall, and noting that Georgia appellate courts have never addressed the issue. (V3-360-73). With no comment on the merits, the Supreme Court declined to hear the appeal on January 21, 2026 (V4-537), making the Recall Court’s December 2025 Order final.

In February 2026, Sack updated his Post criticizing Thompson for the Annexation Vote. The update noted that since the Post was published, the Recall Court had ruled Thompson had no financial interest in the annexed property and Thompson had denied casting a vote on the annexation. (V4-539).

STANDARD OF REVIEW

The Georgia General Assembly “enacted the anti-SLAPP statute to encourage participation by the citizens of Georgia in matters of public significance through the exercise of their right to petition government for redress of grievances . . . [and] to prevent a chilling of that right through abuse of the judicial process.” *Neff v. McGee*, 346 Ga. App. 522, 524 (2018) (internal quotations omitted). The statute therefore provides a motion-to-strike procedure whereby a person subjected to a Strategic Litigation Against Public Participation (SLAPP) action may “end[] the suit quickly, summarily, and at minimal expense.” *Geer v. Phoebe Putney Health Sys., Inc.*, 310 Ga. 279, 282 (2020); O.C.G.A. § 9-11-11.1(b)(1).

“Appellate review of an order granting or denying an anti-SLAPP motion is de novo.” *Wilkes & McHugh, P.A. v. LTC Consulting, L.P.*, 306 Ga. 252, 263 (2019). This involves two steps. First, the court determines if the plaintiff’s claim arises from protected speech or petitioning activity as defined by O.C.G.A. § 9-11-11.1(c). *Id.* at 261-262. If so, the court determines if the plaintiff has established “a probability that [he] will prevail on the claim.” *Id.* at 262. This requires the plaintiff to “demonstrate that the complaint is both legally sufficient and supported by a sufficient prima facie showing of facts to sustain a favorable judgment if the evidence submitted by the plaintiff is credited.” *Id.*

At this second step, “the court does not weigh the credibility or comparative probative strength of competing evidence.” *Am. C.L. Union, Inc. v. Zeh*, 312 Ga. 647, 653 (2021) (internal quotes omitted). Accepting the plaintiff’s evidence as true, the court “take[s] into account the substantive evidentiary and legal standards that apply to such a defamation case,” *id.* at 654, and determines if the anti-SLAPP movant’s evidence “defeats the plaintiff’s showing as a matter of law.” *Wilkes & McHugh, P.A.*, 306 Ga. at 262 (internal quotes omitted).

ARGUMENT AND CITATION OF AUTHORITY

On the first step of the anti-SLAPP analysis, the Superior Court (“Trial Court”) found that Sack’s Posts criticizing Thompson’s conduct as commissioner and questioning his fitness for office are statements in a public forum on a matter of public concern and therefore “protected activity” under O.C.G.A. § 9-11-11.1(c)(3). (V2-10). *See Buckley v. Valeo*, 424 U.S. 1, 14 (1976) (“The First Amendment affords the broadest protection” to “debate[s] on the qualifications of candidates” for public office); *Zeh*, 312 Ga. at 667 (“[f]ew personal attributes are more germane to fitness for office than dishonesty, malfeasance, or improper motivation”) (quoting *Garrison v. State of Louisiana*, 379 U.S. 64, 77 (1964)).

On the second step, the Trial Court concluded that Thompson has shown a probability of prevailing in proving the following elements of defamation: (1) a false and defamatory statement about him; (2) in an unprivileged communication; (3)

made with actual malice shown; and (4) the statement is actionable irrespective of special harm. (V2-10-18). As explained in Sections III-V below, the court erred because, as a matter of law, Thompson cannot show a probability of prevailing on the first or third elements of his claim.

I. True and Opinion Statements Cannot Support a Defamation Claim.

“Truth is a ‘perfect defense’ to a defamation action.” *Lucas v. Cranshaw*, 289 Ga. App. 510, 514 (2008). “In determining whether a statement is false, defamation law overlooks minor inaccuracies and concentrates upon substantial truth. A statement is not considered false unless it would have a different effect on the mind of the viewer from that which the pleaded truth would have produced.” *Mauck v. Athens Pride, Inc.*, 378 Ga. App. 18, 30 (2025). Thus, true and substantially true statements cannot support a defamation claim. Additionally,

a defamation action will lie only for a statement of fact. This is because a statement that reflects an opinion or subjective assessment, as to which reasonable minds could differ, cannot be proved false. As a result, a plaintiff who claims that a published opinion defamed him will generally be unable to carry his burden of proving the essential element of falsity.

Cottrell v. Smith, 299 Ga. 517, 523 (2016). This includes when a writer “express[es] his opinion of another person, however unreasonable the opinion or vituperous the expressing of it may be.” *Kendrick v. Jaeger*, 210 Ga. App. 376, 377 (1993).

To be sure, “there is no wholesale defamation exception for anything that might be labeled opinion.” *Cottrell*, 299 Ga. at 523. A statement couched as opinion

may still support a defamation claim if it “can reasonably be interpreted, according to the context of the entire writing in which the opinion appears, to state or imply defamatory facts about the plaintiff that are capable of being proved false.” *Id.* But, “a mere statement of opinion or rhetorical hyperbole cannot form the basis of a defamation claim” where it is not “capable of being proved false” and is “based upon facts already disclosed in the communication.” *Jaillett v. Ga. Television Co.*, 238 Ga. App. 885, 890 (1999). Correctly applying these standards, Thompson cannot show Sack made any false statement of fact.

II. Actual Malice at the Motion-to-Strike Stage is an “Extremely High” Bar.

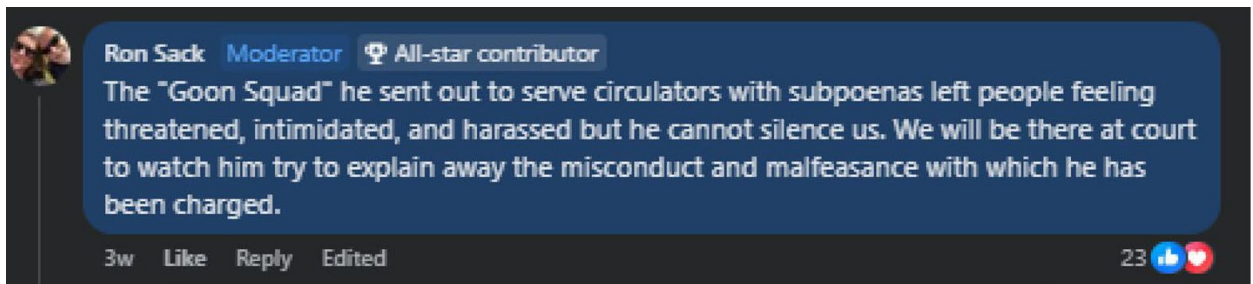
A public-official defamation plaintiff must prove actual malice -- defined as “knowledge of falsity or reckless disregard of the truth” -- by clear and convincing evidence. *Cottrell*, 299 Ga. at 525-26. This is an “extremely high” standard of proof. *Zeh*, 312 Ga. at 669.

At the motion-to-strike stage, the court does not merely review for “minimal merit” as to actual malice as the lower court erroneously held in this case. *See* (V2-15) (“Applying the minimal-merit standard, the Court concludes that Plaintiff [has put forth sufficient evidence] to permit a finder of fact to infer [actual malice].”). Rather, the court “independently review[s] the whole record as to the issue of actual malice to determine *whether the evidence satisfies the standard of clear and convincing evidence of actual knowledge or reckless disregard* that the disputed

statements were false.” *Zeh*, 312 Ga. at 655, 674 (applying this standard to reverse lower court’s denial of anti-SLAPP motion to strike) (emphasis added).

In other words, Thompson’s burden on actual malice is no lighter on a motion to strike than at later stages of the case, nor is the court’s scrutiny of actual malice any less rigorous. *See id.* at 654-55 (explaining that judicial review of actual malice is the same on a motion to strike as would apply at the summary judgment stage). The Trial Court therefore erred in holding that “[a]t the anti-SLAPP stage, . . . the standard [for actual malice] is materially different” than what Thompson’s “ultimate burden at trial will be to prove actual malice.” (V2-14). Applying the correct standard, Thompson cannot show actual malice.

III. The November 11th Post Cannot Support a Defamation Claim.



A. This Post Contains No False Statement of Fact.

Thompson does not deny serving subpoenas on Fenley and the Circulators. (V2-28). These individuals report that an unknown man or men came to their homes, unannounced, at odd hours, peered in their windows, and loitered on their property. They describe that being served and deposed left them feeling threatened,

intimidated, and harassed. *See* (V3-221-22; V4-632, 634). The first sentence of Sack’s Post accurately describes their subjective feelings, which cannot be proven true or false. *See Gettner v. Fitzgerald*, 297 Ga. App. 258, 261 (2009) (“a statement that reflects an opinion or subjective assessment, as to which reasonable minds could differ, cannot be proved false”); *Krass v. Obstacle Racing Media, LLC*, 667 F. Supp. 3d 1177, 1202 (N.D. Ga. 2023) (holding that an article reporting that third parties felt “bullied” by the plaintiff was a “subjective assessment as to which reasonable minds could differ” and therefore not defamatory).

The Trial Court found that “Goon Squad” could “reasonably be understood . . . to assert as fact that Plaintiff [Thompson] dispatched a coordinated, threatening group to intimidate citizens and that Plaintiff was attempting to silence them,” when Thompson reports he sent only one, polite server. (V2-12). But even crediting Thompson’s account, the capitalization and quotation marks around “Goon Squad” clearly mark it as a figure of speech -- or hyperbole -- reflecting Sack’s opinion based on how the targets of the subpoenas felt. *See Horsley v. Feldt*, 304 F.3d 1125, 1131 (11th Cir. 2002) (noting that hyperbole is constitutionally protected as it “reflects the reality that exaggeration and non-literal commentary have become an integral part of social discourse”). This Court has found comparable, if not worse, descriptions to constitute protected opinion. *See, e.g., Swanson Towing & Recovery, LLC v. Wrecker 1, Inc.*, 342 Ga. App. 6, 11 (2017) (holding that defendants’ description of competing

business owners as “mean, vulgar, demeaning[] crook[s]” constituted “expressions of opinion, which are not actionable”). *See also Keohane v. Stewart*, 882 P.2d 1293, 1301 (Colo. 1994) (holding that terms like “sickie,” “terrorists,” and “sleaze” in letter to editor criticizing an allegedly corrupt judge and his associates were not defamatory because it was clear from the “[t]he overall tone of the letter” that the words “should not be taken literally”).

That “Goon Squad” could imply multiple persons when Thompson reports sending one server is immaterial given the hyperbolic use of the phrase. *See Weaver v. Millsaps*, 370 Ga. App. 513, 517–18 (2024) (finding non-actionable hyperbole where defendant stated that plural persons had received death threats although she was only aware of one person).

The statement “[H]e cannot silence us. We will be there in court . . .” is Sack’s aspirational expression of resolve not to be deterred by the subpoenas from attending the upcoming Recall Hearing. Aspirational statements are opinions, not facts. *See, e.g., Cox v. Red Hat, Inc.*, No. 1:23-CV-766 (RDA/WEF), 2025 WL 889888, at *10 (E.D. Va. Mar. 21, 2025) (holding that the statement, “I am getting her fired and she won’t be around long” was not defamatory because it “evinced an intent regarding what [defendant] hoped and intended to bring about but does not reflect any statement of fact”); *WCP/Fern Exposition Servs., LLC v. Hall*, 2011 WL 1157699, at *13 (W.D. Ky. Mar. 28, 2011) (“a prediction about a possible future event . . .

could not be grounded in *any* fact, much less a defamatory one, and is protected as pure opinion”) (emphasis in original).

Because the Post contains no false statement of fact that can support a defamation claim, all allegations in Thompson’s Complaint relating to this Post must be stricken. *See RCO Legal, P.S., Inc. v. Johnson*, 347 Ga. App. 661, 668 (2018) (on review of anti-SLAPP motion, holding that two of the allegedly offending statements “should have both been struck from the complaint because neither would have supported a claim for defamation”).

B. Thompson Cannot Show Actual Malice.

Because the Post contains no false statements of fact it was error for the Trial Court not to dismiss it on this basis alone, without considering actual malice. *See Paterno v. Superior Court*, 163 Cal. App. 4th 1342, 1349 (2008) (holding on anti-SLAPP motion that actual malice warrants no inquiry “without [] a prima facie showing that the defendant’s published statements contain provably false factual assertions”).³ The court compounded this error by failing to apply the correct actual malice standard.

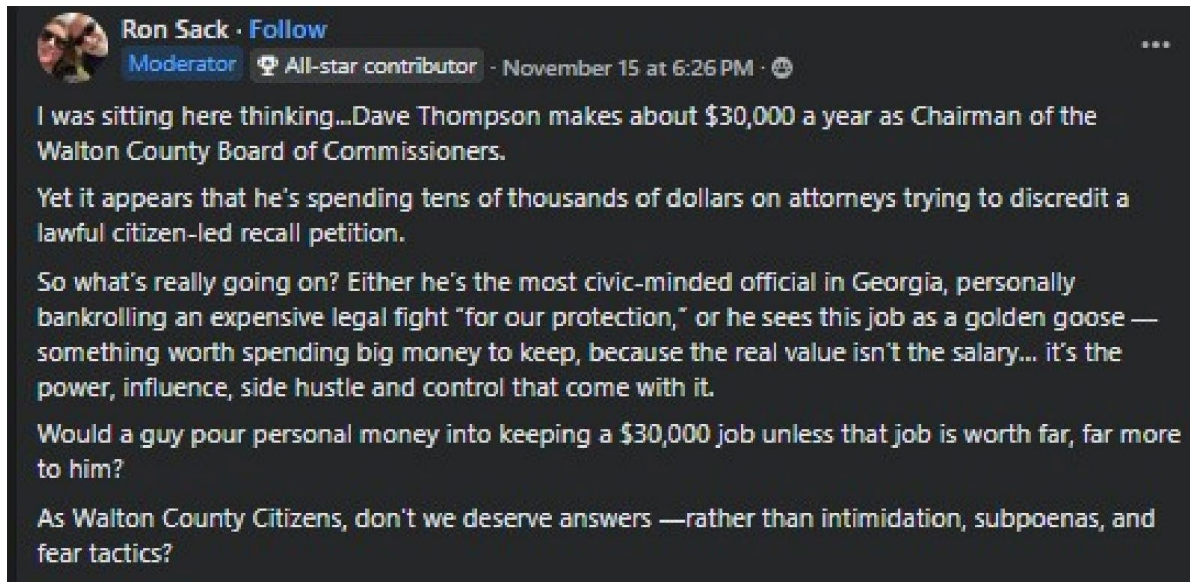
The court holds that Sack’s position as WIA Vice-Chair made the “actual circumstances of subpoena service [] uniquely accessible to [him]” such that “a

³ Georgia courts “may look to California case law” when interpreting and applying O.C.G.A. § 9-11-11.1. *See Wilkes & McHugh, P.A.*, 306 Ga. at 258.

finder of fact could conclude that [Sack] possessed obvious reasons to doubt the ‘Goon Squad’ characterization at the time he published it.” (V2-16-17). But the actual malice “standard is a subjective one – there must be sufficient evidence to permit the conclusion that the defendant *actually had* a ‘high degree of awareness of . . . probable falsity.’” *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989) (quoting *Garrison*, 379 U.S. at 74) (emphasis added). The alleged existence of reason to doubt does not prove the defendant actually doubted. *See, e.g., Krass*, 667 F. Supp. 3d at 1212-13 (holding that plaintiff’s arguments about why defendant should have doubted the witnesses’ accounts did not show actual malice).

Here, the Trial Court can point to no evidence that Sack doubted, or even had serious reason to doubt, the Circulators’ reports of how they felt about being served. He was not present at their respective homes to know the “actual circumstances” of service. He heard from them afterwards that they were feeling threatened, intimidated, and harassed, as reaffirmed in affidavits filed with the Trial Court. (V3-97, 221-22; V4-632). It is therefore not possible to establish by clear and convincing evidence that Sack disbelieved or seriously doubted the Circulators’ subjective feelings. (V3-100).

IV. The November 15th Post Cannot Support a Defamation Claim.



A. This Post Contains No False Statement of Fact.

Here, Sack speculates about Thompson's motive for "personally bankrolling an expensive legal" defense against the Recall (undisputed fact) when his commissioner's salary is only \$30,000/year (undisputed). (V2-41). Thompson admits it is not about the money for him because he gives away his salary. (V2-27). Sack speculates based on these true facts that Thompson "is either the most civic-minded official in Georgia . . . or he sees this job as a golden goose" whose "real value" is "the influence, side hustle and control that come with it." (V2-41). This kind of speculation is protected opinion, as recognized in *Collins v. Cox Enterprises, Inc.*, 215 Ga. App. 679 (1994). In *Collins*, the plaintiff sued over an editorial that accused him of believing he could fool voters into electing him by changing his name

to be similar to the then-current governor's name. *See id.* at 679. Granting judgment on the pleadings for the defendant, this Court held:

[the] editorial opinion that Collins hoped to fool voters by running for public office under the name John Frank Collins while Joe Frank Harris was governor does not imply an assertion of objective fact that might be proved false; rather it is merely speculation as to Collins' motive based on his behavior.

Id. The same is true here where Sack is speculating as to Thompson's motive based on his true behavior.

The Trial Court claims that Sack's speculation about "power, influence, side hustle and control" allows for the "implicit imputation" that Thompson has improperly "converted the office to personal financial gain." (V2-13).⁴ But the Post says nothing of the sort, and Georgia law does not allow Thompson or the Trial Court to project defamatory meaning where none exists. "The defamatory character of written material must appear on its face," and a "subjective decision to impute innuendo to [a writing] is simply not actionable as defamation per se." *Zarach v. Atlanta Claims Ass'n*, 231 Ga. App. 685, 689 (1998).

"When determining whether words are defamatory as a matter of law, courts may not hunt for strained constructions . . . and must rely upon the words themselves

⁴ Thompson's Complaint similarly tries to spin "power, influence, side hustle and control" to mean "corruption, self-dealing, [] misuse of office," "misuse of public funds or other unlawful benefit," or "unlawful, improper, or unethical conduct." (V2-27).

in considering whether a statement was defamatory per se.” *Id.* Looking at Sack’s words, all county commissioners enjoy “power, influence, . . . and control” by virtue of being the executives and legislators for the county. For most of them, their commission seat is also a “side hustle” – i.e., “work performed for income supplementary to one’s primary job”⁵ – because their primary employment is something else.⁶ These benefits, that Sack collectively and hyperbolically references as “a golden goose,”⁷ inure to all county commissioners, are not reputationally damaging, and thus Sack’s statement is not defamatory as a matter of law. *See Thomason v. Times-Journal, Inc.*, 190 Ga. App. 601, 602 (1989) (finding that a statement is not defamatory if it does not have a reputationally damaging meaning).

Moreover, even if Sack’s “words themselves,” 231 Ga. App. at 389, could be twisted to imply that Thompson values his commission seat as a means to “personal financial gain” (V2-13), the Post only speculates that this is Thompson’s motive (“*So what’s really going on? Either he’s the most civic-minded . . . or he sees this job as*

⁵ See Definition of “side hustle” at: <https://www.merriam-webster.com/dictionary/side%20hustle>. (V3-81).

⁶ See Walton County Commissioners Bio Pages at: <https://www.waltoncountyga.gov/322/Board-of-Commissioners> (landing page for Walton County Commissioners’ biographical statements). (V3-81).

⁷ Hyperbole is protected opinion as “exaggerated and non-literal commentary have become an integral part of social discourse.” *Horsley*, 304 F.3d at 1131.

a golden goose”). It does not assert that improper gain has occurred. The statement therefore remains protected opinion. *See Collins*, 215 Ga. App. at 679 (“[C]onjecture regarding [plaintiff]’s motive cannot be proven as absolutely true or false and therefore is the sort of opinion that is not actionable as libel.”).

Finally, the Post rhetorically asks, “As Walton County Citizens, don’t we deserve answers -- rather than intimidation, subpoenas, and fear tactics?” (V2-41). This, again, is opinion. Affidavits filed in the trial court show that by November 15, 2025, citizens seeking to hold Thompson accountable as their public official were feeling intimidated and scared due to his subpoenas, talk of “false swearing” charges, and threats of defamation lawsuits. (V3-221-22; V4-631-35). Sack’s value judgment that citizens deserve answers rather than the foregoing treatment is an opinion not capable of being proved true or false. *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 339-40 (1974) (“[T]here is no such thing as a false idea.”).

B. Thompson Cannot Show Actual Malice.

Because the Post contains only speculation as to motive and no false statement of fact it was error for the Trial Court not to dismiss it on this basis alone, without considering actual malice. *See Collins*, 215 Ga. App. at 679 (“The issue of actual malice, however, is not even reached in this case because the allegedly false statement . . . is the type of editorial opinion that cannot be held libelous.”). The court also again failed to apply the correct legal standard for actual malice. It claims

that the “implication that [Thompson] has converted the office to personal financial gain” is “contradicted” by Thompson’s donating his salary, and that Sack engaged in “grossly inadequate investigation” by not discovering this through Open Records requests -- although the court does not identify any public record containing this information. The court finds that these facts support an inference of reckless disregard. (V2-17). This ruling is wrong on multiple levels.

First, Thompson’s donating his salary supports rather than “contradicts” Sack’s speculation that Thompson’s fight for his commission seat is not about the salary. Second, reckless disregard “is not measured by whether a reasonably prudent man would have published, or would have investigated before publishing.” *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968). Instead, “there must be a showing by clear and convincing evidence that the defendant purposeful[ly] avoid[ed] investigation with the intent to prevent discovering the truth.” *Zeh*, 312 Ga. at 673 (internal quotations omitted). In other words, “[t]here must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication,” *St. Amant*, 390 U.S. at 731, and then avoided investigating so as not to confirm those doubts. *Zeh*, 312 Ga. at 673.

It is not possible to show that Sack entertained serious doubts as to the truth of his conjecture about Thompson’s motive for defending his commissioner seat because such statements, by their very nature, are not capable of being proved true

or false. *Collins*, 215 Ga. App. at 679. Moreover, failing to consult available records prior to speaking does not constitute actual malice, even if a false statement of fact was made (not the case here) and a public record contradicted it (no such record identified here). *See Zeh*, 312 Ga. at 674 (holding that the ACLU's failure to review public court records that would have contradicted a false statement of fact in their blog post did not satisfy actual malice).

In sum, Thompson cannot show a probability of proving that the November 15th Post contains a false statement of fact made with actual malice. Thompson's allegations based on this Post must be stricken. *See Johnson*, 347 Ga. App. at 668.

[continued on following page]

V. The November 17th Post Cannot Support a Defamation Claim.



Ron Sack · Follow

Moderator
All-star contributor

November 17 at 11:01 AM · 🌐

Thompson Recall Application

For Thompson's lawyers, the following is my personal opinion as a citizen of Walton County. Many of you citizens are eager to sign the petition to remove Dave Thompson for your own reasons, but here is my plain-English interpretation of the official Recall Application and why it matters.

"What happened?"

On February 1, 2022, Dave Thompson voted on an annexation application submitted by a local development corporation. At the time of that vote, the applicant owed money to Thompson's company, Dewey Hogan Properties. In my view, approving the annexation directly benefited Thompson financially, and any decision that affects a public official's own pocketbook is a textbook conflict of interest.

"What an honest, transparent commissioner with integrity would have done:"

1. Disclosed the financial relationship, and
2. Recused himself from the vote entirely.

In my opinion, Thompson did neither — and that is the core reason listed on the Recall Application.

"Why is this an issue now?"

Some people ask why this matters in 2025 if it happened in 2022. My answer is simple: most of us trusted Thompson at the time. We assumed he was putting taxpayers ahead of himself. It wasn't until citizens began digging into records and connecting the dots that the truth surfaced. I've been told by other commissioners that Thompson owns so many LLCs and side operations that even they struggle to keep up with all the connections. That alone should concern anyone who values transparency.

I want commissioners who are above reproach, and in my opinion, Dave Thompson does not meet that standard.

"His response speaks volumes" - Now that the recall is underway, Thompson has chosen to:

1. Threaten lawsuits,
2. Issue subpoenas,
3. Depose ordinary citizens,
4. Take actions that, in my opinion, come across as harassing to petitioners,
5. Attempt to silence taxpayers, and
6. Attempt to intimidate volunteers.

What stands out to me is that none of these actions actually dispute the reason for the recall. He has never denied the underlying conduct or the financial conflict of interest that led to his vote.

"The louder the noise, the clearer the truth becomes"

Much like the Wizard behind the curtain, Thompson is making a tremendous amount of noise and bluster — but not offering a single meaningful defense of his actions. That tells me everything I need to know.

I do not like or trust this man to protect my interests. In my opinion, he appears far more interested in benefiting himself financially than in serving the public. Thompson is living proof why Walton County citizens deserve a new commissioner who operates in the open, follows ethical standards, and serves the people instead of himself. Taxpayer money should not be used as a piggy bank for questionable County projects which residents have opposed.

Dave Thompson, in my opinion you should have taken the high road and resigned. My prediction is that you will now be leaving office in shame.

A. This Post Contains No False Statement of Fact.

The trial court erroneously found that six statements in the Post “are capable of being proved true or false” and that Thompson proffered evidence of falsity:

- (i) Thompson voted on the Rosewood annexation,
- (ii) While Rosewood owed money to Thompson’s company,
- (iii) He directly benefited financially from the vote,
- (iv) He failed to disclose his relationship with Rosewood,
- (v) He failed to recuse from the vote, and
- (vi) He never denied the underlying conduct or the financial conflict of interest that led to the vote.

(V2-12, 39). Contrary to the court’s finding, Thompson confirmed the truth of statements (ii), (iv), and (v). He testified that his company made mortgage loans to Rosewood that were outstanding at the time of the Annexation Vote. (V3-415-16; V4-417-22). He also testified that he did not disclose his relationship with Rosewood at the time of the vote. Nor did he recuse. (V3-233-34; V4-443).

Statements (i), (iii) and (vi) are not false statements of fact.

Thompson Voted: At the time Sack published the Post, this statement was true; Thompson was on record affirming he had voted. (V3-129 - “While Chairman Thompson admits to voting in favor of the Rosewood Annexation . . .”). The Post went on to criticize Thompson for not “disclos[ing] the financial relationship” with Rosewood and not “recus[ing] himself from the vote entirely” as “an honest, transparent commissioner with integrity would have done.” (V2-39).

After this Post was published, Thompson amended his position to assert that he presided over the vote, without saying “yea” or “nay.” (V3-233-34). Sack has updated the Post to note this. (V4-539). Thompson has continued to affirm, however, that in presiding over the vote, he neither disclosed his close business relationship with Rosewood, nor recused himself entirely. (V4-443). The gist and sting of the statement thus remains the same whether Thompson voted or presided.⁸ The statement is therefore substantially true and not actionable. *See Mauck*, 378 Ga. App. at 30 (“A statement is not considered false unless it would have a different effect on the mind of the viewer from that which the pleaded truth would have produced”); *Weaver*, 370 Ga. App. at 517 (holding that minor factual errors “which do not go to the substance, the gist, the sting of a story are not actionable” for defamation).

⁸ To illustrate, if the Post were conformed to Thompson’s account, it still reads substantially the same:

On February 1, 2022, Dave Thompson presided over a vote ~~voted~~ on an annexation application submitted by a local development corporation. At the time of that vote, the applicant owed money to Thompson’s company, Dewey Hogan Properties. In my view, approving the annexations directly benefited Thompson financially, and any decision that affects a public official’s own pocketbook is a textbook conflict of interest. ‘What an honest, transparent commissioner with integrity would have done. 1. Disclosed the financial relationship, and 2. Recused himself from the vote entirely. In my opinion, Thompson did neither[.]’ (V2-39).

Thompson Directly Benefitted: The Post states, “At the time of that [annexation] vote, the applicant [Rosewood], owed money to Thompson’s company, Dewey Hogan Properties. In my view, approving the annexation directly benefitted Thompson financially.” (V2-39). This two-sentence combination is a true statement of fact (Rosewood owed Thompson’s company money), followed by Sack’s hyperbolic opinion about the significance of that disclosed fact (Sack believes Thompson directly benefitted). *See Lucas*, 289 Ga. App. at 514 (holding that “a mere statement of opinion or rhetorical hyperbole [] cannot form the basis of a defamation claim” where it is “based upon facts already disclosed in the communication” because the statement then “implies nothing other than the speaker’s subjective interpretation of the facts”).

There are several reasons why the reasonable reader understands “directly benefitted Thompson financially” to be Sack’s opinion. First, the Post was published in citizen discussion groups, including “Walton County Rants and Raves 2.0.” Readers of such forums “should be predisposed to view them with a certain amount of skepticism, [] with an understanding that they will likely present one-sided viewpoints rather than assertions of provable facts.” *Summit Bank v. Rogers*, 206 Cal. App. 4th 669, 696 (2012) (speaking about Craigslist “Rants and Raves”). *See also Cmty. Newspaper Holdings, Inc. v. King*, 299 Ga. App. 267, 270 (2009) (“[a]

publication claimed to be defamatory must be read and construed in the sense in which the readers to whom it is addressed would ordinarily understand it”).

Second, the Post is a full-throated ventilation of Sack’s perspective on Thompson’s participation in a vote that facilitated the development affairs of his close business associate and debtor, with whom Thompson’s company had eleven on-going deals at the time. (V4-422-23). Sack discloses his bias by telling the reader: “the following is my personal opinion as a citizen of Walton County,” “here is my plain-English *interpretation* of the Recall Application and why it matters” (emphasis added), and “I want commissioners who are beyond reproach.” (V2-39). This further informs the reader that “direct financial benefit” is Sack’s “interpretation” (V2-39) -- which he reinforces by prefacing it with “[i]n my view” -- not an assertion of verified fact.

Ollman v. Evans, 750 F.2d 970 (D.C. Cir. 1984) confirms this point. There, the court held an op-ed’s assertion that an academic scholar “has no status within the profession but is a pure and simple activist” was “rhetorical hyperbole,” even though its substance could be disproved. *Id.* at 989-90. The court found that the op-ed context “predispose[s] the average reader to regard what is found there to be opinion.” *Id.* at 987. The court further reasoned that “the thrust of the column, taken as a whole, is to raise questions about [plaintiff’s] scholarship and intentions, not to state conclusively from [defendants’] first-hand knowledge that [plaintiff] is not a

scholar.” *Id.* at 990 (distinguishing an op-ed from “a newspaper article purporting to publish facts”).

The same is true here where Sack’s Post was published in editorial forums with the purpose of raising questions about Thompson’s ethics based on what appeared to be a self-serving vote, not to provide a first-hand accounting of Thompson’s finances. Because the tenor of the Post is so overwhelmingly opinion, the reasonable reader understands the statement about direct financial benefit to be rhetorical hyperbole. *See id.* at 991 (“The provision of breathing space [for freedom of speech] counsels strongly against straining to squeeze factual content from a single sentence in a column that is otherwise clearly opinion.”) (citing *Gertz*, 418 U.S. at 342).

Thompson Never Denied the Underlying Conduct or Financial Conflict of Interest – This statement was true when published and thus cannot support a defamation claim. *See Lucas*, 289 Ga. App. at 512. At the time of publication, Thompson’s Verified Petition *affirmed* (rather than denied) that he had voted, which is the “underlying conduct” at issue. (V3-129). The Post identified the “financial conflict of interest” to be: “At the time of the vote, the applicant [Rosewood] owed money to Thompson’s company.” (V2-39). Thompson does not deny this fact either. He affirms that his company had extended two mortgage loans to Rosewood that were outstanding at the time of the Annexation Vote. (V3-415-16; V4-417-22).

Characterizing this as a “conflict of interest” is a matter “with respect to which reasonable men might entertain differing opinions” and therefore “is not libelous.” *Kendrick*, 210 Ga. App. at 377. *See Koly v. Enney*, 269 F. App’x 861, 865 (11th Cir. 2008) (holding that phrase “a serious conflict of interest” was inactionable as opinion when based on disclosed facts); *Savage v. Pac. Gas & Elec. Co.*, 21 Cal. App. 4th 434, 445 (1993) (“[B]e [it] reasonable or unreasonable . . . the expressed belief in the existence of a conflict of interest does not imply an objective fact that can be proved to be true or false.”).

Thompson’s Reaction to the Recall Effort – The Post states, “Now that the recall is underway, Thompson has chosen to: 1. Threaten lawsuits, 2. Issue subpoenas, 3. Depose ordinary citizens, 4. Take actions that, in my opinion, come across as harassing to petitioners, 5. Attempt to silence taxpayers, and 6. Attempt to intimidate volunteers.” (V2-39). The Trial Court did not find that Thompson could prevail in showing this statement to be false but referenced it in the actual-malice finding. (V2-16-17).

To be clear, this statement cannot be proven false. Thompson cannot dispute that he threatened lawsuits against Fenley and Roy’s counsel. (V4-640-42). Thompson also cannot dispute that he issued subpoenas and deposed the citizen Circulators. (V2-26; V4-632). Based on Thompson’s behavior, Sack speculates that his motive was to “[a]ttempt to silence taxpayers” who were trying to recall him and

to “intimidate volunteers” who collected signatures for the Recall. (V2-39). As discussed in Section IV.A above, speculation about Thompson’s motives is protected opinion. *See Collins*, 215 Ga. App. at 679.

The statement that Thompson’s actions “come across as harassing to [Recall] petitioners” is Sack’s subjective assessment based on how Circulators reported feeling and is therefore not capable of being proven true or false. (V3-97-98, 222, V4-632, 634). *See Gettner*, 297 Ga. App. at 261; *Krass*, 667 F. Supp. 3d at 1202.

B. Thompson Cannot Show Actual Malice.

Because the Post contains no false statements of fact it was error for the Trial Court not to dismiss it on this basis alone, without considering actual malice. *See Paterno*, 163 Cal. App. 4th at 1349; *Collins*, 215 Ga. App. at 679. The court further erred by applying the wrong standard. It states that Sack had a “duty to investigate” before posting but failed to exercise “even ordinary diligence” by not consulting “public sources . . . bearing on whether and how [Thompson] participated in the annexation matter . . . and the absence of any direct ownership interest by Plaintiff in the annexed Rosewood property.” (V2-15-16).⁹ This holding completely eschews constitutional actual malice which “is not measured by whether a reasonably prudent man . . . would have investigated before publishing,” *St. Amant*, 390 U.S. at 731, but

⁹ The Post never asserts that Thompson had a pecuniary interest in the particular annexed property, only that Rosewood owed Thompson money. (V2-39).

instead requires proof of “subjective awareness of probable falsity when the material was published.” *Zeh*, 312 Ga. at 669. Absent clear and convincing evidence that the defendant “entertained serious doubts as to the truth of his publication,” *St. Amant*, 390 U.S. at 731, the Georgia Supreme Court rejects the notion that failure to consult available records -- even ones directly contradicting a defendant’s statement -- constitutes actual malice. *See Zeh*, 312 Ga. at 674. Here, the Trial Court points to no evidence that Sack subjectively entertained serious doubts about the truth of his November 17th statements at the time of publication.

The court repeatedly cites *Lake Park Post v. Farmer*, 264 Ga. App. 299 (2003) in support of its actual-malice finding. (V2-15-17). But that case is far afield. There, a deputy sheriff sued two journalists for repeatedly publishing articles stating that he murdered an arrestee by beating him with a flashlight. *Id.* at 299. Copious evidence, accumulated over time, refuted those statements including a video of the arrest, eyewitness accounts, a medical examiner's report and coroner’s inquest testimony, and a GBI investigation finding no evidence the plaintiff had hit the arrestee. *Id.* at 303-304. This exculpatory information was largely known to the defendants, or otherwise available to them, but they continued publishing new articles with the same accusatory statements about the deputy, without mentioning any of the contradictory evidence. *Id.* at 299, 304-305. On this record, the court affirmed there was clear and convincing evidence of reckless disregard for the truth. *Id.* at 305.

The record here bears no resemblance. Thompson cannot even establish Sack's Posts contained false statements of fact, let alone that Sack repeatedly published false statements in the face of overwhelming and directly contradictory evidence. In fact, the documents identified by the Trial Court support, or are consistent with, Sack's statements. The "February 1, 2022 meeting record" (V2-16) shows the Annexation Vote carried unanimously, with no recorded abstentions or recusals. (V3-215). This is facially consistent with Sack's statement -- and Thompson's own Verified Petition at the time (V3-129) -- that Thompson participated in the vote.¹⁰ The "related annexation materials" identify Rosewood as the owner of the annexed property and Thompson's Verified Petition denies pecuniary interest in the property (V2-16, V3-129, V3-203-05), but neither document contradicts Sack's statement that Rosewood owed Thompson's company money, referring to the two mortgage loans (V2-39) -- not to mention the other nine real-estate ventures Rosewood and Thompson were involved in together at the time. (V3-292-93). Finally, unlike the *Lake Park Post* defendants, Sack updated his Post

¹⁰ Thompson argues that a videorecording -- that is not part of the record in this case -- shows he presided but did not cast a vote. (V4-658). Assuming this is true, Sack's not locating and viewing the video prior to posting cannot, as a matter of law, prove actual malice. This is because when Sack posted, Thompson was on record affirming he had voted, obviating any need to investigate further at that point. *See Zeh*, 312 Ga. at 673 (failure to investigate constitutes actual malice only if defendant "purposeful[ly] avoid[ed] investigation with the intent to prevent discovering the truth.").

to disclose contrary information, including the Recall Court’s finding, that developed after he published. (V4-539). In sum, the Trial Court erred in finding that Thompson can prove by clear and convincing evidence that any statement in Sack’s November 17th Post was published with actual malice. All allegations in the Complaint premised on this Post must be stricken. *See Johnson*, 347 Ga. App. at 668.

CONCLUSION

Thompson validly exercised his right to challenge the citizens’ Recall effort and prevailed. Georgia’s anti-SLAPP statute does not allow him to now exact revenge on Sack for speaking truth and opinion on matters of public concern while that Recall effort was unfolding and before any adjudication of its merits. Because Thompson cannot meet his proof burden under O.C.G.A. § 9-11-11.1(b)(1), this Court should reverse and grant Sack’s Motion to Strike, insuring that citizen “debate on public issues” in Walton County continues to be “uninhibited, robust, and wide-open.” *New York Times Co. v. Sullivan*, 376 U.S. 254, 270 (1964).

Respectfully submitted, this 20th day of July, 2026.

This submission does not exceed the word count limit imposed by Rule 24 of the Court of Appeals of the State of Georgia.

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CERTIFICATE OF SERVICE

I hereby certify that I have, this day, served a true and correct copy of the foregoing **Brief of Appellant Ronald Sack** upon all parties by transmitting to the following attorney of record a copy of the same via email contemporaneously with the filing of the same. I certify that there is a prior agreement with Appellee to allow documents in a PDF format sent via email to suffice for service.

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