No. _____

In the Supreme Court of the United States

CRAIG MALIN,

Petitioner,

v.

SARAH WATSON, DEB ANSELM,
ASTRID GARCIA & LEE ENTERPRISES, INC.,

Respondents.

On Petition for Writ of Certiorari to the
Iowa Court of Appeals

PETITION FOR WRIT OF CERTIORARI

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Questions Presented

In 2022, a court informed Respondent Lee Enterprises that the "truth or falsity" of its 2015 casino-relocation reporting referencing Petitioner Craig Malin was "not definitively settled." Instead of correcting its reporting to comport with documents it then possessed, in 2023 Lee republished its unsettled casino controversy narrative to new audiences, again naming Malin. While doing so, Lee was using undisclosed technology to redirect exculpatory facts away from its newsrooms.

Malin asked Iowa courts whether Lee's redirection of facts away from newsrooms created a jury question of purposeful avoidance of truth under *Harte-Hanks Communications, Inc. v. Connaughton*, 491 U.S. 657 (1989). Iowa courts refused to answer. Instead, they imposed *Sullivan's* actual-malice burden by declaring Malin a public figure while refusing to decide whether Lee's conduct crossed the actual-malice boundary. On appeal, the constitutional question was deemed "not preserved" because the district court did not rule on it.

This case does not challenge *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964). It asks this Court to enforce actual-malice boundaries in the digital age: who is a public figure, can a media corporation use technology to secretly blind its own journalists to truth, and can fact become "opinion"? The questions presented are:

I. Whether an appellate court conducting independent review under *Bose Corp. v. Consumers Union*, 466 U.S. 485 (1984), may classify a private citizen as a public figure under *Gertz v. Robert Welch, Inc.*, 418 U.S. 323 (1974), based on (1) being an affiant in civil litigation, (2) information attributed to Petitioner's website without evidence it was there at publication, or (3) post-publication communications to the publisher.

II. Whether *Sullivan* and *Harte-Hanks* permit summary judgment on actual malice where a national media corporation, before publication, possessed contradictory public records while routing corrective communications containing exculpatory facts away from their intended newsroom recipients; and whether the Fourteenth Amendment permits a state appellate court to deem that purposeful-avoidance issue under *Harte-Hanks* forfeited solely because the trial court failed to rule, after a plaintiff presented it before judgment and renewed it through the state's prescribed procedure for obtaining an omitted ruling.

III. Whether, under *Milkovich v. Lorain Journal Co.*, 497 U.S. 1 (1990), and *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242 (1986), a court may remove a defamation-by-implication claim from the jury by applying state-law opinion or substantial-truth labels to isolated words, without determining whether a news publication reasonably conveys a provably false factual implication, where the record contains unrebutted evidence that disinterested readers understood the defamatory implication.

Parties to the Proceeding

Petitioner: Craig Malin

Respondents:
Sarah Watson, Lee Enterprises Reporter
Deb Anselm, Lee Enterprises Publisher
Astrid Garcia, Lee Enterprises Vice President
Lee Enterprises, Inc. (LEE)

Related Cases

Malin v. Watson, Anselm, Garcia & Lee Enterprises, Inc., No. LACE136939, Iowa District Court for Scott County. Judgment entered June 4, 2025; Rule 1.904(2) ruling entered July 15, 2025.

Malin v. Watson, Anselm, Garcia & Lee Enterprises, Inc., No. 25-1310, Iowa Court of Appeals. Judgment entered May 13, 2026; rehearing denied May 18, 2026.

Malin v. Watson, Anselm, Garcia & Lee Enterprises, Inc., No. 25-1310, Iowa Supreme Court. Further review denied August 5, 2026.

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Opinions Below

The Iowa Court of Appeals Opinion is at App. 7a; its Order denying rehearing is at App. 5a. The Iowa Supreme Court's Order denying further review is at App. 3a. The District Court's Ruling and Order are at App. 50a and App. 26a.

Jurisdiction

The Iowa Court of Appeals entered judgment May 13, 2026, and denied rehearing May 18, 2026. The Iowa Supreme Court denied further review on August 5, 2026. [App. 3a] This Court has jurisdiction under 28 U.S.C. § 1257(a).

Constitutional Provisions Involved

The First Amendment to the United States Constitution provides, in relevant part: "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ."

The Fourteenth Amendment to the United States Constitution provides, in relevant part: "No State shall . . . deprive any person of life, liberty, or property, without due process of law;"

Statement of the Case

A. Introduction

On August 31, 2023, Respondent Lee Enterprises, Inc. (Lee), then operating in seventy-five media markets in twenty-six states, published a news article in seven newspapers and websites reporting on civil litigation arising from a building collapse which killed three people in Davenport, Iowa in May 2023.

Lee's news article identified Petitioner Craig Malin as an expert witness affiant in that litigation, then reported the end of his employment as Davenport City Administrator eight years prior was a "resignation" that "followed controversy over a deal to grade the lot at the privately owned casino." [Am. Pet. D0020 ¶28] The online article hyperlinked to an October 2019 Lee article reporting a favorable trial verdict Lee secured on a 2017 tortious interference claim by Malin.[1]

At publication, Malin had not lived or worked in Iowa since 2015. He was an employee of a small Wisconsin village and volunteer firefighter,

[1] Respondent characterizes this case as relitigation of prior losses. It is not. This petition arises from a 2023 publication to new audiences. Petitioner references prior litigation facts only to document what Respondent knew prior to publishing the 2023 article.

who never discussed the building collapse litigation with the press.

Lee[2] possessed extensive information contrary to the "… resignation followed controversy …" sentence in the 2023 publication. Lee does not dispute it published three times in 2015 that Malin refused to resign [Lee SUMF Resp. D0054 ¶¶9, 15, 16] nor that an attorney working for the law firm representing Lee in this case supplied a draft agreement to Malin stating he was resigning, which Malin refused to sign. [Lee SUMF Resp. D0054 ¶¶23, 24]

Lee does not dispute Malin signed a new agreement with an end date, superseding his prior employment agreement, which had no end date. [Lee SUMF Resp. D0054 ¶25] Lee does not dispute Malin worked until the end of his tenure in the new agreement, which Lee possessed in prior litigation. [Lee SUMF Resp. D0054 ¶¶32, 28]

Malin did not resign. He worked to the end of a contract and left Davenport with a laudatory letter signed by every alderman and a Key to the City. [Am. Pet. D0020 ¶41]

[2] Respondents have litigated collectively as "Lee Enterprises." This petition follows their convention.

Regarding the casino "deal" in the 2023 article, Lee does not dispute a City of Davenport report prepared six months after Malin left[3] contains "no reference to any cost for grading the casino site," and states the "entire" project the casino built in 2015 would be funded from the casino development "alone".[4] [Lee SUMF Resp. D0054 ¶¶138, 140]

Lee's own reporting, also undisputed [Lee SUMF Resp. D0054 ¶¶155, 164] but without referencing Malin, reported the casino's relocation to Interstate 80 was a "win" for "Taxpayers", and reported as much as $56 million in economic impact from the project in a single year.

Lee admits a September 2022 ruling in litigation from a 2019 publication rejected its preclusion defenses. [Lee SUMF Resp. D0054 ¶62] Granting Lee summary judgment on other grounds, the 2022 preclusion ruling found the "truth or falsity" of Lee's prior "taxpayer burden reporting" was "not definitively settled" at the

[3] Lee does not dispute Malin found the report in 2021 and supplied it to Lee's counsel in prior litigation. [Lee SUMF Resp. D0054 ¶142]

[4] In June 2015, Lee published it was a "certainty" Davenport taxpayers were "unwittingly committed … to millions of dollars in site improvements on the Rhythm City Casino site." [Malin SJ App. D0072 169] The December 2015 City report -- which Lee possessed prior to 2023 [Lee SUMF Resp. D0054 ¶142] -- shows no such cost.

2019 trial but remained "at large." [Malin SJ App. D0072 ¶103 / App. 75a]. Lee does not dispute Malin delivered the 2022 ruling to the publisher and managing editor of Lee's Quad City Times in February 2023. [Lee SUMF Resp. D0054 ¶63]

The record contains no evidence that Lee updated its online 2019 article to reflect either the 2015 City report, which documents the "entire" project was funded by the casino "alone"; or the 2022 ruling that the "truth or falsity" of Lee's "taxpayer burden reporting" had not been settled at the 2019 trial.

In the 2023 sentence at issue, Lee reused the words "controversy" and "deal" from its 2019 article as the causal predicate of Malin's purported "resignation". Reinforcing the causal link, the online 2023 article hyperlinked to the 2019 article.

Malin emailed correction requests to the seven Lee newspapers that published the article. [Am. Pet. D0020 ¶¶ 50, 52, 54] No newspaper responded. Prior to the 2023 publication but unknown to Malin until Lee's 2025 admission in this case, Lee was corporately intercepting Malin's emails and redirecting them to a Lee vice president. [Lee SUMF Resp. D0054 ¶92]

Lee corporately refused correction.

B. Proceedings Below

Following Lee's refusal to correct the 2023 article, Malin sued for defamation, defamation by implication, and false light invasion of privacy. [Am. Pet. D0020 1-23]

Lee filed for summary judgment prior to Malin filing any interrogatory, request for production or request for admissions.

The District Court initially granted summary judgment to Lee while considering Malin a private citizen and relying on "substantial truth." [SJ Order D0063, App. 56a, 65a] The ruling did not address Malin's pleaded claim of defamation-by-implication.

The ruling also did not address Lee's admitted redirection of Malin's communications away from its newsrooms [Lee SUMF Resp. D0054 ¶92] -- a system whose documented interception point was Lee Vice President of HR and Legal Garcia [Malin SJ App. D0072 185,186 / App. 79a, 80a], the same corporate officer who took control of Malin's original retraction demand fourteen minutes after it arrived at Lee's Davenport newspaper in 2015, and then directed, "attorneys are handling it from here." [Malin SJ App. D0072 143 / App. 77a]

Because the District Court's initial ruling [App. 50a-73a] neither referenced constitutional

protections Malin presented nor any line in Malin's petition or briefs, Malin filed a Rule 1.904(2) motion.

Malin's Rule 1.904(2) briefs asked the District Court to address Lee's redirection of his communications away from newsroom personnel as purposeful avoidance of truth. Briefing spanned eight pages and cited conflict with *Sullivan* and *Harte-Hanks*.

The District Court again refused. Instead, it granted summary judgment for Lee by shifting grounds from private citizen / substantial truth to public figure / opinion. It did so while finding facts Malin asked the court to take judicial notice of were both "hotly contested" and involved "the very issues on which this case depends." [App. 27a, 28a]

The District Court's ruling on Malin's Rule 1.904(2) motion cited *Gertz* at 351 [App 31a, 33a] to declare Malin a public figure and then invoked *Bauer v. Brinkman*, 958 N.W.2d 194 (Iowa 2021), -- a case involving Facebook hyperbole -- to hold that the challenged sentence could indicate Lee was "expressing its opinion that Malin abused his office resulting in his resignation" [App 42a]. The District Court disregarded Malin's citation to *Milkovich*, where this Court rejected a categorical opinion privilege, 497 U.S. at 18.

Malin appealed and the Iowa Court of Appeals affirmed.

The Court of Appeals held Malin was a public figure, citing *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 826 (Iowa 2007). [App. 16a] Public-figure status was not decided in *Stevens*; the court only noted that Stevens "apparently admits" he was a public figure. *Id*.

The Court of Appeals public figure ruling was expressly based on (1) information purportedly related to litigation with Lee on Malin's personal website, [App. 16a] (2) 2024 letters from Malin to Lee [App. 16a], and (3) his affidavit in the building-collapse litigation [App. 17a].

The Court of Appeals analyzed isolated words for substantial truth, treated reader affidavits testifying to reputational harm as "speculative injury," and held Malin's purposeful-avoidance-of-truth claim "not preserved" because the District Court did not rule on it. [App. 22a]

The Court of Appeals affirmed the District Court's "mere opinion" ruling without referencing or reconciling Malin's reliance on *Milkovich*. Nor did it reference or reconcile citations to this Court's holdings in *Sullivan*, *Harte-Hanks*, or

Anderson. The federal questions presented here were raised repeatedly in Iowa courts.[5]

Malin filed a petition for rehearing, citing constitutional protections in *Sullivan*, *Gertz*, and *Milkovich*. The petition was denied the next business day. [App. 6a] The Iowa Supreme Court subsequently denied Malin's Application for Further Review [App. 3a].

Reasons For Granting The Petition

This Petition Satisfies Rule 10(c)

This case satisfies Rule 10(c) because lower courts decided important federal questions in ways that conflict with this Court's decisions in *Gertz*, *Harte-Hanks*, *Milkovich*, *Anderson, Bose*, and *Air Wisconsin Airlines Corp. v. Hoeper*, 571 U.S. 237 (2014). As sections I–III detail, the judgment below evaded this Court's rulings, disregarded undisputed evidence, and inverted chronology. Ruling by ruling, grounds shifted: first, private

[5] *Anderson*, *Gertz*, and *Sullivan* were first cited in Malin's January 22, 2025 brief [D0042 29 (*Anderson*), 34 (*Gertz*, *Sullivan*)], while *Harte-Hanks* and *Milkovich* were first cited in Malin's July 8, 2025 brief [D0067 7, 11]. The public-figure question was pressed and decided below on federal grounds. A party may support a preserved federal claim with authorities not presented below. *Yee v. City of Escondido*, 503 U.S. 519, 534–35 (1992). *Bose* states the standard of appellate review governing that preserved claim.

citizen and substantial truth, then public figure and "opinion," then a Catch-22 forfeiture of the purposeful-avoidance issue.

Each time a ground could no longer keep the case from a jury, another replaced it. Reasons changed; the result did not. The District Court first considered Malin as a private citizen. The following month, it declared him a public figure, imposing *Sullivan*'s actual-malice burden. The Court of Appeals sustained that burden with facts *Gertz* held "plainly" insufficient, 418 U.S. at 352, or nonexistent at publication.

The District Court twice refused to decide whether Lee's admitted conduct created a jury question under *Harte-Hanks*. The Court of Appeals then turned those refusals into forfeiture.

Iowa courts imposed *Sullivan*'s actual-malice burden on Malin contrary to this Court's precedents, and then refused to decide whether structural avoidance of truth crossed the boundary where *Sullivan*'s constitutional protection ends.

If the decision below stands, private-citizen status becomes an anachronism, and media corporations may secretly route exculpatory facts away from their own journalists and avoid a jury because no court will rule on an automated system keeping truth from newsrooms. Those outcomes are antithetical to *Sullivan* and the fundamental premise of adjudication.

I. Public-Figure Status Cannot Be Created From Refusal to Talk to the Press, Post-Publication Conduct, or Evidence Absent at Publication.

Public-figure status determines who bears *Sullivan's* actual-malice burden. It cannot be established from conduct that post-dates the challenged publication.

The Court of Appeals' ruling violates that principle and its responsibility under *Bose* to conduct independent review of constitutional facts.

A. The Court of Appeals Cited a State Case Where Public Figure Status was Conceded Rather Than This Court's Holding in *Gertz*.

The District Court [App. 31a, 33a] and Court of Appeals [App. 16a] share the same doctrinal defect. Both relied on the prefatory proposition from *Gertz*, 418 U.S. at 351, that a person who voluntarily injects himself into a public controversy may become a limited-purpose public figure.

But no Iowa court turned the page to this Court's actual holding on whether Gertz was or was not a public figure.

He was not.

At page 352, this Court applied its principle to facts and concluded Gertz was "plainly" not a public figure because he "never discussed either the criminal or civil litigation with the press," "was never quoted as having done so," and "plainly did not thrust himself into the vortex of this public issue." *Gertz*, 418 U.S. at 352.

Gertz's defamation claim was remanded by this Court for trial by jury, where he prevailed.

Malin's private-citizen position is stronger than Gertz's on every relevant dimension. Gertz was counsel in nationally covered litigation arising from a criminal prosecution of a police officer for murder. Malin was an affiant in a local civil matter. Neither talked to the press about the litigation they were involved in. Lee does not dispute that when the press contacted Malin after the 2023 publication, he refused to speak. [Lee SUMF Resp. D0054 ¶45]

If attorney Gertz was "plainly" not a public figure, a civil litigation affiant who refused to discuss the litigation with the press cannot be one merely because a media corporation published an article about the litigation.

The Court of Appeals' holding is inadequate under *Bose*[6] and directly conflicts with *Gertz*, 418 U.S. at 352 -- the page Lee, the District Court, and the Court of Appeals all failed to reach.

B. The Court of Appeals Failed to Conduct an Independent Review of the Record Under *Bose*.

The Court of Appeals cited Malin's personal website as a basis for public-figure status, stating, "there are documents linked to the site which contain his opinions about the previous lawsuits against Lee." [App. 16a] That ruling fails *Bose's* independent-review requirement, and the record proves the doctrinal evasion with precision.

Lee's counsel searched Malin's website. In a February 2025 appendix, attorney Jenny Juehring included 18 pages of printouts from Malin's website, none of which reference Lee Enterprises or any prior litigation. The website printouts (identifiable by their ©2025 Craig T. Malin notice) include links to a collection of 53 life-lessons, a compendium of work Davenport staff completed and three personal essays referencing not litigation with Lee, but milk and cookies, a fondness for rally racing, and being a volunteer

[6] The Court of Appeals cited *Stevens* [App. 16a] but *Stevens* did not decide public-figure status; it only noted Stevens "apparently admits" he was a public figure. 728 N.W.2d at 826. *Bose* requires *independent* review of the record and *Gertz* at 352 -- not reliance on a state case where public-figure status was conceded.

firefighter with an old pickup truck that won't start [examples at Fig. 1 and 2, below, larger scale at App. 81a, 82a].

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Fig.1 [DEF. SUPP. APP. 5]

Page 6

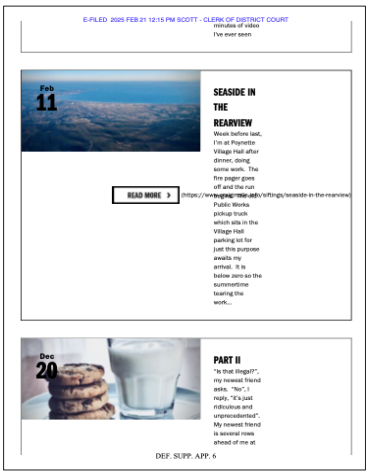


Fig.2 [DEF. SUPP. APP. 6]

Then, without any label or divider distinguishing what followed the website printouts, Lee's appendix included 62 pages of prior litigation discovery documents (pages 21 to 82), none of which carry any copyright notice date from Malin's website, from any year.

At page 113 of the 113-page appendix, attorney Juehring's affidavit refers to pages 21-82 and includes: "It appears these documents have at some point been removed from Malin's website

because I am unable to find them on his website now." [Def. Supp. App. D0052 113]

As Figures 3 and 4 below [App. 83a, 84a] illustrate, Lee's appendix included a page found on Malin's website at page 20. With similar typography to page 20 but without any divider, the next page (21) was the beginning of prior litigation documents. Counsel's affidavit explaining she could not find page 21 on Malin's website was on page 113. The structure of the appendix obscures what Lee did and did not find on Malin's website and reduces the likelihood a reader scrolling on a screen would notice that distinction.

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PEOPLE, PROGRAMS, POLICIES & PROJECTS (cont.)

management system to coordinate the effort. • **No Fault Sewer Program:** Easy. Just call. • **Harassment Policy & Training:** Zero tolerance, and regular organization-wide training. • **Three Assistants Become Administrators:** Dee, Redmond and Tanisha move on, we reload with Cont. • **Fire Training Center:** Esprit de corps lives and breathes under the name of a man who defined it. • **Indoor Firing Range & Auditorium:** Training matters. Make it accessible. • **Greensheets Evolve:** They become white as we shrink staff, and then iPad polls as we continue the shrinkage. Malin fights the good fight for papyrus. • **Neighborhood Coordinator & Recognition Program:** A great city is built from strong neighborhoods. Let's support them. • **Credit Island Bridge:** We've engineered to match grant funding, and still elegant. • **Mississippi Place:** First new downtown office building in more than 20 years. • **Taylor School:** Building gets new life, with some tenants living their golden years in the school they went to as kids. • **Mobile Data Terminals & Radio Conversion:** The tool guys have tools. The good guys need tools at least as good. • **Fleet Efficiency:** Hybrids, electrics, turbo V8s instead of V8s... • **Downtown Recycling Center:** Downtown is a happening neighborhood. Happening neighborhoods recycle. • **Culture, Codified:** Every organization has a culture. Ours is in writing. • **Junior Theater Renaissance:** Theater upgrades and new leadership refreshes the beloved brand. • **Storm Ready Status:** Davenport, first of the Quads. • **Real E-Mail & Office Automation Software:** I just refused to use the cumbersome legacy software. The organization followed. • **Mayoral:** Closed university becomes senior housing. • **Rio Exodus, etc.:** Behind City Hall and elsewhere, better stormwater management through native landscapes. Swear to God, I once saw a beaver running to the tracks from the City Hall swale. • **Community Action Initiative:** How do we get better? We focus on the positive, and do more of it. • **Risk Management:** Internal Risk Division reduces expenses, focuses on safety. • **Beat Re- Alignment / Shift Overlap / Work Hours Change:** Who moved the bad guys' cheese? PD did. • **HAPPEN Program:** Turning abandoned houses into homes again. • **QCIC:** Federal grant connects all QC public safety answering points. • **Improved Tuition Reimbursement:** Expand your horizons. Work smarter. Be different, because the future will be different. • **Expansion of Park Seasonal Employees:** It's a seasonal product line, with a workforce that now matches. • **Mobile Playground:** Fire rig gets new life. • **Zoo:** Not even close to a core competency, and the animals are better off with better cans. • **Downtown Bakery!:** Oh So Sweet Rolls. • **Central Fire Renovation:** Oldest active fire station west of the Mississippi getting a forward looking adjunct, and a faithful restoration. • **Brick Laying Machine:** Genius PW invention, bringing the most long-lived streets back to Davenport. • **Credit Island Ledge Reconstruction:** A resilient island gets its flood resilient landmark. • **Fiber Study:** What policy approach best leverages our fiber optic network? Soon to determined. • **Davenport Today Communications Platform:** Davenport leads in openness. By a wide margin. Looks great, too. • **RiverRi Reinvestment District:** More than a year of hurdles ends with $10.75 million in state assistance. We plan the only "two-for" in the state, with $4 to $5 million in hotel tax from the reinvestment district flowing to the riverfront. • **Accessible Ferris Wheel Gondola:** Be at the ballpark July 13 (oh, so close). Watch Davenport lead the way again, with help from the RiverBandits and Genesis.

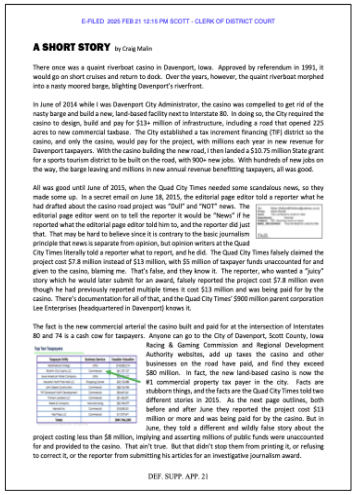
NEAR MISSES...

• **Pushpin:** No public cost whimsy meets negative media. Media licks its chops, and devours whimsy whole. • **Davenport Promise:** Planting the seed that a 19th century invention (12th grade) may not be up to the rigors of the 21st century. • **QI Grant:** Watering the seed, which later sprouts into 2035Q's dual graduation program when Dr. Tate arrives. Go Dr. Tate! • **Casino Ownership:** Dubuque and Polk County own casinos, and lower taxes with them. Lower Davenport taxes neither believed by some nor appreciated by others, and critique is unrelenting from the unappreciative camp. At least we break the Scott County casino monopoly and get nine acres of riverfront back. • **Red DFD Raptors & White & Black DPD Bees 2022s:** A gearhead can dream...

DEF. SUPP. APP. 20

Fig.3 [DEF. SUPP. APP. 20]

Page 21



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A SHORT STORY by Craig Malin

There once was a quaint riverboat casino in Davenport, Iowa. Approved by referendum in 1991, it would go on short cruises and return to dock. Over the years, however, the quaint riverboat morphed into a nasty moored barge, blighting Davenport's riverfront.

In June of 2014 while I was Davenport City Administrator, the casino was compelled to get rid of the nasty barge and build a new, land-based facility next to Interstate 80. In doing so, the City required the casino to design, build and pay for $13+ million of infrastructure, including a road that opened 225 acres to new commercial taxbase. The City established a tax increment financing (TIF) district so the casino, and only the casino, would pay for the project, with millions each year in new revenue for Davenport taxpayers. With the casino building the new road, I then landed a $10.75 million State grant for a sports tourism district to be built on the road, with 900+ new jobs. With hundreds of new jobs on the way, the barge leaving and millions in new annual revenue benefitting taxpayers, all was good.

All was good until June of 2015, when the Quad City Times needed some scandalous news, so they made some up. In a secret email on June 18, 2015, the editorial page editor told a reporter what he had drafted about the casino road project was "Dull" and "NOT" news. The editorial page editor went on to tell the reporter it would be "News" if he reported what the editorial page editor told him to, and the reporter did just that. That may be hard to believe since it is contrary to the basic journalism principle that news is separate from opinion, but opinion writers at the Quad City Times literally told a reporter what to report, and he did. The Quad City Times falsely claimed the project cost $7.8 million instead of $13 million, with $5 million of taxpayer funds unaccounted for and given to the casino, blaming me. That's false, and they know it. The reporter, who wanted a "juicy" story which he would later submit for an award, falsely reported the project cost $7.8 million even though he had previously reported multiple times it cost $13 million and was being paid for by the casino. There's documentation for all of that, and the Quad City Times' $900 million parent corporation Lee Enterprises (headquartered in Davenport) knows it.

The fact is the new commercial arterial the casino built and paid for at the intersection of Interstates 80 and 74 is a cash cow for taxpayers. Anyone can go to the City of Davenport, Scott County, Iowa Racing & Gaming Commission and Regional Development Authority websites, add up taxes the casino and other businesses on the road have paid, and find they exceed $80 million. In fact, the new land-based casino is now the #1 commercial property tax payer in the city. Facts are stubborn things, and the facts are the Quad City Times told two different stories in 2015. As the next page outlines, both before and after June they reported the project cost $13 million or more and was being paid for by the casino. But in June, they told a different and wildly false story about the project costing less than $8 million, implying and asserting millions of public funds were unaccounted for and provided to the casino. That ain't true. But that didn't stop them from printing it, or refusing to correct it, or the reporter from submitting his articles for an investigative journalism award.

DEF. SUPP. APP. 21

Fig.4 [DEF. SUPP. APP. 21]

The Court of Appeals' description matches not what Lee found on Malin's website in 2025 at pages 3–20,[7] but the prior litigation discovery documents at pages 21–82, which carry no record evidence of any publication date.

An appellate court conducting mandatory independent review under *Bose* cannot ground a public-figure ruling upon a premise directly contradicted by the record and defendant counsel's own sworn submission.

After securing a public-figure ruling[8] with its appendix in the Court of Appeals and while knowing Iowa appellate procedure permitted no reply to its resistance brief, Lee specifically directed the Iowa Supreme Court to appendix pages 21–82: "On his website, Malin has repeatedly published his opinions about his lawsuits against Lee Enterprises. See D0052 at 21–82." [Def. AFR Res. Br. 11, 12]. Lee did so without revealing its counsel swore she was "unable to find" pages 21–82 on Malin's website or

[7] Though not a public figure ruling, *Lindke v. Freed*, 601 U.S. 187 (2024), supports that a personal online presence does not lose its private character without a fact-specific connection between relevant subject matter and online content.

[8] The District Court declared Malin a public official, then acknowledged the objection that he "is no longer a public official" after leaving "not only the city but the state," and relied on limited-purpose public-figure status. [App. 32a–33a] The Court of Appeals rested its holding on public-figure grounds. [App. 15a–17a]

disclosing the existence of counsel's disclaiming affidavit on page 113.

Under *Anderson*, 477 U.S. at 255, credibility determinations, evidentiary weighing, and the drawing of legitimate inferences are jury functions, and "all justifiable inferences" are to be drawn for the nonmovant.

The only website publication-date evidence consists of links to three essays dated December 20, 2024, and February 11, and 14, 2025 [App 81a, 82a]. None of them reference Lee Enterprises and all are more than a year after August 2023.

Any independent review under *Bose* of Lee's appendix proves there is no record evidence of a single word being on Malin's website in 2023.[9]

At best, the structure of Lee's appendix spurred an inference without evidence that Malin's website contained active and relevant litigation-related content in 2023. But any independent review shows the Court of Appeals' website-based public-figure ruling lacks record support from 2023.

The ruling evades *Bose* and does precisely what *Anderson* prohibits at summary judgment.

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[9] In less than ten seconds any court can electronically search Lee's electronically filed PDF appendix [D0052] to confirm "2023" does not appear anywhere connected to Malin's website.

C. Post-Publication Conduct Cannot Establish Pre-Publication Public-figure Status.

The constitutional inquiry into public-figure status is fixed at the time of publication. A publisher cannot create its own defense by publishing a statement about a private citizen and then pointing to the citizen's subsequent response as retroactive justification for public-figure status.

In *Wolston v. Reader's Digest Ass'n, Inc.,* 443 U.S. 157, 167 (1979), this Court reaffirmed *Gertz* and held, "A private individual is not automatically transformed into a public figure just by becoming involved in or associated with a matter that attracts public attention." In the same Term this Court held in *Hutchinson v. Proxmire*, 443 U.S. 111, 135 (1979): "those charged with defamation cannot, by their own conduct, create their own defense by making the claimant a public figure."

The Court of Appeals expressly relied on a January 2024 letter to the editor which Lee never published, a January 2024 draft submission which was never published, and a May 2024 letter to Lee's CEO about a possible media conference which never occurred [App. 16a, 17a] -- all occurring months after the August 2023 publication.

Those private 2024 communications to Lee cannot establish Malin's constitutional status in 2023. They are the reasonable response of a private citizen to a defamatory publication, privately sent to Lee only.

D. The Decision Below Threatens Private-Citizen Status

If Malin can be a public figure for being a civil litigation participant who never talked to the press about the litigation, simply being a civil-litigation participant can make someone a public figure.[10]

If Malin can be a public figure based on information not on his website at publication, others with online presences[11] unrelated to any public controversy can become public figures.

If Malin can be a public figure for private post-publication communications to the publisher, anyone who privately requests a correction can become a public figure.

The stakes extend well beyond this case. Under the decision below, ordinary conduct may now make private citizens public figures,

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[10] The National Center for State Courts reports 16.49 million incoming civil cases in 2024. [www.courtstatistics.org]

[11] The Pew Research Center found 68% of American adults use Facebook alone. See Jeffrey Gottfried, *Americans' Social Media Use*, Pew Rsch. Ctr. (Jan. 31, 2024).

subjecting them to the same actual-malice burden borne by the President of the United States.[12]

The public-figure ruling below rests upon (1) a reading of *Gertz* contrary to this Court's plainly stated conclusion, (2) illusory website evidence Lee's own counsel swore she could not find, and (3) a calendar-defying premise that post-publication communications determine at-publication status.

The public-figure ruling should be summarily reversed.

II. No Precedent of This Court Permits a Media Corporation to Blind Its Newsrooms to Exculpatory Facts or State Courts to Turn Refusal to Rule into Forfeiture of a Constitutional Protection.

Actual malice under *Harte-Hanks* may be supported by circumstantial evidence, including a publisher having obvious reason to doubt its reporting and purposefully avoiding the truth.

This is such a case. Eleven months before Lee published the August 2023 article, a court rejected Lee's preclusion defenses in a prior case and ruled that the "truth or falsity" of its previous "taxpayer burden reporting" related to Malin was "not

[12] On substantially distinct facts, a defamation petition to this Court from President Trump is currently pending: *Trump v. Cable News Network, Inc.*, No. 26-223.

definitively settled" but remained "at large." [App. 75a] Malin hand-delivered that ruling to Lee's corporate hometown newspaper in February 2023. Lee admits the Court's language and does not dispute Malin's delivery [Lee SUMF Resp. D0054 ¶¶62, 63].

Under *St. Amant v. Thompson*, 390 U.S. 727, 732 (1968), a publisher cannot maintain good faith when there are "obvious reasons to doubt" its reporting. A court ruling finding reporting unsettled provides an obvious reason to doubt.

Rather than correct or update its prior publications, Lee left its 2019 trial verdict article online, unchanged. Eleven months later, Lee reused the words "controversy" and "deal" from its online 2019 article in its 2023 article describing Malin's purported "resignation", published to new audiences across seven newspapers, while hyperlinking to the uncorrected 2019 article.

A. Lee's Admitted Redirection of Malin's Communications Is Purposeful Avoidance of Truth Under *Harte-Hanks*.

This case presents purposeful avoidance of truth in its most institutional and modern form, employing automated information systems to keep exculpatory facts from reaching newsrooms.

Lee's redirection of corrective information to corporate headquarters is not contested. It is

admitted and has years of history. Lee does not dispute Malin's 2015 correction request to Lee's Davenport newspaper was forwarded to Vice President Garcia fourteen minutes after its arrival at the newspaper. [Lee SUMF Resp. D0054 ¶68] Lee does not dispute that a Lee employee emailed that Garcia stated: "attorneys are handling it from here." [Lee SUMF Resp. D0054 ¶69] That directive became a corporate system.

Garcia's role was not incidental: Lee does not dispute she attended the court-ordered settlement conference and the full 2019 trial -- remaining at the defense table after Lee's dismissal as a defendant[13] -- and signed discovery submittals in subsequent litigation. [Lee SUMF Resp. D0054 ¶¶37, 87–89] Garcia is Lee's Vice President of HR and Legal, through whom Lee litigated against Malin and controlled the flow of exculpatory facts.

After Lee published the 2023 article in seven newspapers, including papers which never previously reported on his separation or the casino project [Lee SUMF Resp. D0054 ¶¶50, 51], Malin did what a reasonable person would do; he emailed retraction demands to Lee employees at those newspapers. [Am. Pet. D0020 ¶¶50, 54] No employee responded. In this litigation seventeen

[13] At the 2019 trial, Malin testified, "I did not resign," to which Lee's defense counsel responded, "Fair enough. Shortly after your employment ended." [Malin SJ App. D0072 58–59]

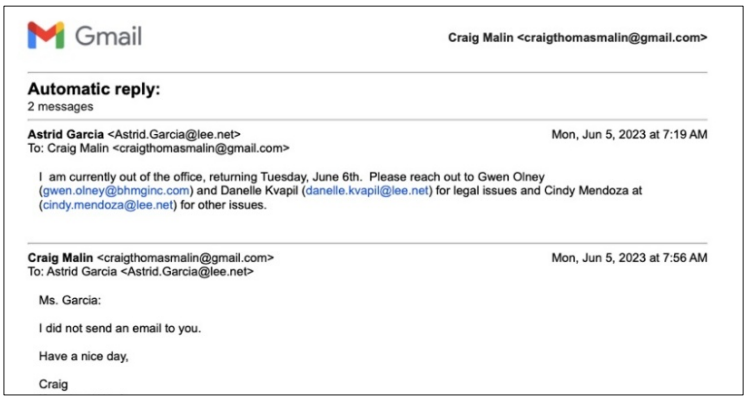
months later, Lee admitted Malin's emails were redirected [2.21.25 Lee SUMF Resp. D0054 ¶92], and the record documents Vice President Garcia as the interception point.

With its redirection system in place, Lee corporately refused correction.

Just as Lee's 2023 publication across seven newspapers was not an ordinary, single-locality news article, its corporate refusal to retract was not an ordinary refusal by a local editor. Lee's refusal was (and remains) part of a years-spanning practice of preventing newsrooms from seeing facts contrary to its narrative concerning Malin.[14]

Though Lee did not admit its email redirection system until 2025, it had been operational for years. In June 2023, an inadvertent "Out of Office" message from Vice President Garcia -- even though Malin had not sent an email to Garcia -- documents both Lee's automated corporate re-routing and Malin's "Have a nice day" reply (Fig. 5 next page) [Malin SJ App. D0072 185 / App. 79a].

[14] Malin does not contest Lee's right to have counsel review his communications. Lee's automated and surreptitious redirection of exculpatory information -- *so that newsrooms never see it* -- is functionally distinct: it prevents any exercise of the "editorial control and judgment" the First Amendment protects. *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974).



Gmail — Craig Malin <craigthomasmalin@gmail.com>

Automatic reply:
2 messages

Astrid Garcia <Astrid.Garcia@lee.net> Mon, Jun 5, 2023 at 7:19 AM
To: Craig Malin <craigthomasmalin@gmail.com>

I am currently out of the office, returning Tuesday, June 6th. Please reach out to Gwen Olney (gwen.olney@bhmginc.com) and Danelle Kvapil (danelle.kvapil@lee.net) for legal issues and Cindy Mendoza at (cindy.mendoza@lee.net) for other issues.

Craig Malin <craigthomasmalin@gmail.com> Mon, Jun 5, 2023 at 7:56 AM
To: Astrid Garcia <Astrid.Garcia@lee.net>

Ms. Garcia:

I did not send an email to you.

Have a nice day,

Craig

B. Concealment of Known, Undisputed Contrary Evidence Precludes Summary Judgment on Actual Malice.

Lee neither disputes the 2022 preclusion ruling determined the truth or falsity of its "taxpayer burden reporting" had not been settled in prior litigation [App. 75a, 76a] nor that a jury instruction in the 2019 trial permitted a verdict for defendants even if their publications were false. [Lee SUMF Resp. D0054 ¶59]

Lee does not dispute it possessed the 2015 City report Malin found in 2021 and supplied to Lee's counsel; a report containing no reference to any cost for grading the casino site and stating the "entire" project was funded by casino development "alone." [Lee SUMF Resp. D0054 ¶142] Lee does not dispute it reported the casino relocation as a

"win" for taxpayers, [Lee SUMF Resp. D0054 ¶155] (without referencing Malin).

Rather than update its 2019 trial victory article to reflect a public record documenting the "entire" project was funded by the casino "alone," its own reporting of the "win" for taxpayers, or the 2022 ruling finding its prior reporting "not definitively settled," Lee left its uncorrected 2019 article online, retaining its "controversy" and casino "deal" language.

Then Lee hyperlinked to it -- in a new article published to new audiences across seven newspapers. [Lee Answ. to Am. Pet. D0027 ¶19]

Nowhere does Lee's 2023 article disclose that a court had found the truth or falsity of its taxpayer burden reporting "not definitively settled" eleven months prior. Nowhere does it state Lee previously reported Malin refused to resign or that the casino's relocation was a "win" for taxpayers.

Nothing in *Sullivan* protects a media corporation that refuses to correct publications, does so by keeping exculpatory facts away from its own newsrooms, and then recycles challenged reporting found to be unsettled by a court in new publications. Lee's corporate refusal to correct combined with corporate redirection of Malin's communications away from newsrooms is purposeful avoidance of truth, automated by information systems that did not exist in 1964.

Lee's justification for its corporate redirection system -- that Malin's communications were "threatening," "harassing," and "continuous" [App. 78a] -- is unsupported by any testimony in the record. The summary judgment record contains nine emails from Malin spanning almost ten years. [Malin SJ App. D0072 at 56, 57, 185, 187, 200-211, 212, 231 / Def. Supp. App. D0052 at 83, 84, 89-111] Nine record emails in a decade is not continuous.

A reasonable jury could conclude the purported "threat" was not to employees, but to Lee's narrative if contradictory facts reached reporters. Under *Anderson*, 477 U.S. at 255, whether the "threat" was Malin -- or exculpatory facts reaching newsrooms -- is a jury question.

Federal courts draw a consistent line: intentional withholding of exculpatory information creates a jury question on actual malice. Contested facts regarding "deletion of exculpatory material" go to juries. *Schiavone Constr. Co. v. Time, Inc.*, 847 F.2d 1069, 1091 (3d Cir. 1988). The Eleventh Circuit recently affirmed summary judgment for a network precisely because, "unlike *Schiavone*," there was "no evidence . . . that the network intentionally hid information that would have proven the challenged claims untrue." *Dershowitz v. Cable News Network, Inc.*, 153 F.4th 1189, 1194 (11th Cir. 2025), *cert. denied*, No. 25-770 (U.S. June 29, 2026).

Lee's admitted redirection system [Lee SUMF Resp. D0054 ¶92 / App. 78a] is the evidence *Dershowitz* lacked. *Harte-Hanks* found purposeful avoidance in a newspaper's "deliberate decision not to acquire knowledge." 491 U.S. at 692. Lee's automated redirection system kept corrective information from reaching its newsrooms in the first place. Lee's purposeful redirection and prepublication knowledge of exculpatory facts permit a reasonable jury to find actual malice by clear and convincing evidence. *Anderson*, 477 U.S. at 255–56.

C. *Sullivan* Does Not Protect a Corporate System that Prevents Documented Truth from Reaching Newsrooms.

Sullivan did not establish a categorical rule that refusal to retract is irrelevant to actual malice. In fact, it expressly left that question open, resolving only that the Times' failure to retract was not evidence of actual malice for two case-specific reasons:

> "First, the letter written by the Times reflected a reasonable doubt on its part as to whether the advertisement could reasonably be taken to refer to respondent at all. Second, it was not a final refusal, since it asked for an explanation on this point—a request that respondent chose to ignore." 376 U.S. at 286.

Neither reason in *Sullivan* exists here. Unlike *Sullivan*, Lee's 2023 publication named Malin and was preceded by its own prior reporting that Malin refused to resign and undisputed possession of both the 2015 report stating the casino "alone" funded its "entire" project and the 2022 "not definitively settled" court ruling.

The *reverse* of *Sullivan*: Malin tried to communicate with Lee newspapers both before and after the 2023 publication, but a computerized system that was neither conceived of in *Sullivan* nor protected by it was redirecting those communications to corporate headquarters.

Unlike *Sullivan*'s conditional refusal, Lee's was *institutional*. The fourteen-minute forwarding to a corporate vice president, the "attorneys are handling it from here" directive, and the automated redirection of Malin's correction requests away from newsrooms -- admitted only after Lee filed for summary judgment in this case -- document a news corporation operating in twenty-six states making a *deliberate structural choice* to keep its newsrooms (and readers) in the dark.

As then-Professor Kagan observed in 1993, *Sullivan* "has gone askew" when it "insulates powerful institutional actors" with "a far-reaching influence over society at large" from "charges of irresponsibility made by persons with little

societal influence and few avenues of self-protection." Elena Kagan, *A Libel Story: Sullivan Then and Now*, 18 Law & Soc. Inquiry 197, 221 (1993).

This case presents that concern in stark, 21st-century form: a media corporation refuses to correct online reporting while operating an undisclosed and automated system which prevents its own newsrooms from seeing contradictory facts. It then republishes its own challenged reporting to wider audiences and receives *Sullivan's* protection by default when state courts refuse to decide whether the actual-malice boundary was crossed.

The digital dimensions of this case sharpen the contemporary constitutional significance. *Sullivan* was decided in the age of print and microfilm, where falsehoods had comparatively limited distribution and receded over time.

Today, online publication is only the beginning of the harm; refusing to update online reporting to comport with facts later known carries the damage forward. False reporting maintained on searchable media websites, which are correctable system-wide in seconds, is immune to geography and impervious to time.

Where, as here, a news corporation leaves challenged statements live on searchable online platforms and admits that correction requests are routed away from newsroom personnel, the

decisions to silo information, maintain challenged statements online, and republish those statements to new audiences across multiple corporately owned platforms are not protected newsroom judgments. They are corporate business decisions.

No precedent of this Court permits a media corporation to refuse to correct online reporting contradicted by undisputed facts while relying on an automated fact-containment system to prevent contradictory facts from reaching reporters.

Sullivan protects breathing space for robust reporting. Secret corporate systems blocking truth from their own journalists lie well beyond that protected space.

D. The Decision Below Converts a Judicial Refusal to Rule into Forfeiture of a Timely Presented Federal Claim.

The Court of Appeals held the purposeful-avoidance-of-truth through admitted corporate redirection argument not preserved because "the District Court did not address this contention nor rule on it." [App. 22a] That ruling rests on a temporal impossibility. It is inadequate to bar this Court's review of the federal question and violates the Fourteenth Amendment.

Malin learned of Lee's corporate redirection admission on February 21, 2025 -- in Lee's own court filing during active briefing before the

District Court ruled. [Lee SUMF Resp. D0054 ¶92] The admission did not exist until Lee created it by filing.

Malin argued the redirection as contrary to *Sullivan's* protections seven days later -- months before the District Court ruled [Malin SJ Reply D0056 12-14]. The District Court's initial ruling ignored the issue entirely. Malin then used Iowa Rule 1.904(2) -- the prescribed mechanism for requesting rulings on omitted issues -- to again formally present the argument [Rule 1.904(2) Mot. D0064 23-26; Rule 1.904(2) Reply D0067 6-8, 12-13] Malin's final brief on his Rule 1.904(2) motion concluded as follows:

> "For the avoidance of doubt and to preserve all error, Plaintiff respectfully requests the Court address … D. Lee Enterprises' refusal to retract, supported by surreptitious redirection of Plaintiff's communications to a corporate vice president spanning some number of years, is not constitutionally protected conduct under *New York Times v. Sullivan*, and is facially contrary to United States Supreme Court rulings concerning avoidance of truth in *Harte-Hanks* and *Butts*." [Rule 1.904(2) Reply D0067 12, 13]

As the District Court did in its first ruling, in its final ruling it did not even mention Malin's constitutional claim. Malin appealed.

Lee did not contest preservation. The Court of Appeals nevertheless held the claim "not preserved" for the sole stated reason that the District Court "did not address this contention nor rule on it." [App. 22a]. That reasoning makes the court's multiple refusals to rule Malin's default.

Malin presented the federal claim during active summary-judgment briefing, obtained a ruling that omitted it, invoked Rule 1.904(2) specifically to obtain the missing ruling, and obtained a second ruling that omitted it again.

Malin did everything a litigant could do.[15]

The Eighth Circuit treats presented but unresolved issues differently. *Ryno v. City of Waynesville* explains that when a district court does not rule on a briefed issue, the ordinary response is remand; a purely legal, fully briefed issue may instead be decided on appeal. 58 F.4th 995, 1002–03 (8th Cir. 2023). In *BNSF Railway Co. v. Seats, Inc.*, the district court did not address alternative dismissal grounds, so the Eighth Circuit remanded them for consideration "in the

[15] *Meier*, the Iowa case cited below, confirms the adequacy defect. Forfeiture applied there because the litigant made no request for an omitted ruling. 641 N.W.2d at 537, 539. Malin did so -- twice.

first instance." 900 F.3d 545, 549 (8th Cir. 2018). *Payne v. Britten* adds that officials who timely asserted qualified immunity were "entitled to a ruling." 749 F.3d 697, 699–701 (8th Cir. 2014).

Such cases expose the distinction erased below: failure to timely present may forfeit a claim, but failure to decide a timely presented constitutional claim calls for decision or remand. Instead, evading *Bose*'s mandate to "independently decide" the constitutional threshold 466 U.S. at 511, the Court of Appeals made the District Court's omissions the reason no Iowa court would decide the federal claim.

Under Eighth Circuit law, the federal court in Iowa's capital city would decide the constitutional issue or require a ruling. Across the Des Moines River, Iowa's highest courts refuse to do either.

The Fourteenth Amendment does not permit a State to extinguish a federal claim through a procedural condition the litigant satisfied but the court frustrated.

This Court has long held that a State must afford a "real opportunity" to protect a right the State has no power to destroy. *Brinkerhoff-Faris Trust & Savings Co. v. Hill*, 281 U.S. 673, 682 (1930). A state procedural ground is inadequate when applied arbitrarily or unexpectedly. *Cruz v. Arizona*, 598 U.S. 17 (2023). Even an established rule becomes inadequate in an exceptional case

when its "exorbitant application" prevents consideration of a federal question. *Lee v. Kemna*, 534 U.S. 362, 376 (2002). This is such a case.

Iowa's preservation procedure did not fail because Malin neglected it. He used Rule 1.904(2) and expressly asked the District Court to decide the federal claim "to preserve all error."

The District Court failed to rule twice. Without citation to any federal authority, the Court of Appeals then made those judicial failures the basis for forfeiture. The very essence of judicial duty is "to say what the law is." *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803). It is not to make a court's refusal to say it a citizen's forfeiture of a constitutional protection.

III. A Defamation-by-Implication Claim Cannot Be Decided by Ignoring the Implication.

Iowa's procedural forfeiture trap was mirrored by its evasion of *Milkovich*: avoiding the provably-false-implication inquiry, *see* 497 U.S. at 19-21, by either (1) substituting state-law opinion or (2) substantial-truth analysis of isolated words.

In its final ruling, the District Court used the first approach. It held that the implication of the "resignation came after controversy" sentence indicated Lee was "expressing its opinion that

Malin abused his office resulting in his resignation, if, in fact, it meant to imply anything at all." [App. 42a][16]

The Court of Appeals used the second approach. It analyzed "resignation" and "controversy" in isolation, then affirmed without applying *Milkovich* to the implication conveyed by the causal framework of the challenged sentence.

A. The Court of Appeals Stated the Defamation-by-Implication Rule but Substituted a State-Law Opinion Label for the Federal Protection *Milkovich* Requires.

The Court of Appeals cited the Iowa defamation-by-implication standard: a publisher may create liability by "juxtapos[ing] a series of facts so as to imply a defamatory connection between them" or by creating "a defamatory implication by omitting facts." [App. at 14a, citing *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007)]

Stevens is generally consistent with *Milkovich*. Both recognize defamatory meaning may arise from implication through incorrect or incomplete facts. *Milkovich* supplies the constitutional floor: publications may not be immunized with an "opinion" label if the

[16] The District Court's ruling misstated the challenged sentence and plainly stated a fact question for a jury.

statement, context, or disclosed and omitted facts reasonably imply a provably false factual assertion. The Court of Appeals stated the defamation-by-implication rule but did not apply the constitutional principle in *Milkovich*.

The challenged sentence is: "The resignation followed controversy over a deal to grade the lot at the privately owned casino."

The defamatory implication of the challenged sentence is straightforward: a genuine controversy over a bad casino grading deal caused Malin's resignation. The sentence's construction uses the word "followed" to connect the *cause* of a casino deal controversy to the *effect* of a resignation. The sentence is presented as fact in a news article.

In 2023, Lee knew Malin refused to resign because it had previously published that fact. Lee knew Malin worked to the end of a contract and that contract did not have the word "resignation" in it. Lee knew the casino "deal" was a taxpayer "win" because it had previously published that fact. Lee knew the truth or falsity of its taxpayer burden reporting referencing Malin was not settled in 2023 because the District Court told Lee that in 2022.

Instead of analyzing whether Lee's sentence conveyed a false implication, the Court of Appeals focused on whether the words "resignation" and "controversy" were "substantially true" and on

whether a conceded claim[17] was material. [App. 19a] The Court of Appeals did not address whether incorrect or incomplete facts Lee published implied an actionable false assertion of fact under *Milkovich*.

With its "substantial truth" holding, the Court of Appeals relied on its own 2024 unpublished decision concerning different Lee publications from 2019. [App. 20a] The 2024 ruling did not alter the District Court's 2022 preclusion ruling that the truth or falsity of Lee's 2015 taxpayer burden reporting was "not definitively settled."[18]

Thus, in 2026 the Court of Appeals invoked its 2024 ruling's substantial-truth passage without acknowledging that the same ruling left undisturbed the 2022 District Court holding that the truth or falsity of Lee's prior taxpayer burden reporting was unsettled -- contrary to the

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[17] In February 2025, Malin conceded the Spiegel-title claim to focus on the more significant "resignation followed controversy" sentence (D0056 at 2). That concession was reiterated in Malin's Rule 1.904(2) brief (D0064 at 21). Yet both the District Court and Court of Appeals continued to rule on the conceded claim.

[18] *Malin v. Lee Enters., Inc.*, No. 22-1940, slip op. at 4, 8 (Iowa Ct. App. Jan. 24, 2024) (noting Lee's cross-appeal from the District Court's rejection of its res judicata defense and declining to address that alternative ground for affirmance).

"independent examination of the whole record" *Sullivan* requires. 376 U.S. at 285.

In August 2023, Lee knew it had prevailed at a 2019 tortious-interference trial where the jury could rule for defendants even if the publications were false. [Lee SUMF Resp. D0054 ¶59] In 2023 Lee knew it had obtained summary judgment concerning 2019 publications.

But in August 2023 Lee also knew it had three times reported Malin's refusal to resign, knew it had reported the casino's relocation was a taxpayer "win", and knew the 2022 District Court ruling found the "truth or falsity" of its 2015 "taxpayer burden reporting" was "not definitively settled", but remained "at large".

Under *Anderson*, what Lee knew and omitted before publishing in 2023 are facts for a jury.

B. The Courts Below Avoided Known Omitted Facts By Recasting a Reported-News Implication as "Mere Opinion".

Omitted facts are undisputed: Lee reported three times that Malin refused to resign; possessed the 2015 agreement with a specified end date; possessed the 2015 report containing no reference to any casino-site grading cost and stating the "entire" project was funded by the casino "alone"; knew the 2022 ruling left its taxpayer burden reporting "at large"; and had reported the casino

relocation as a taxpayer "win." [Lee SUMF Resp. D0054 ¶¶9, 15, 16, 28, 62, 138, 140, 142, 155].

Lee nevertheless omitted those facts, admitted "the details of the controversy are not in the 2023 article," and refused correction. [D0054 ¶131].

After Malin's Rule 1.904(2) motion exposed that the District Court's initial isolated-word "substantial truth" ruling did not and could not answer the defamation-by-implication claim pled, the District Court switched to an opinion defense.

The District Court did so by explaining "mere opinions are protected" with a citation to *Stevens*, 728 N.W.2d at 827, to which it added its own emphasis: "**unless it qualifies as an opinion**." [App. 38a] Having converted *Stevens's* state-law opinion proviso into a surrogate for *Milkovich* in a footnote, the District Court then invoked another state case -- *Bauer*, which involved not a factual sentence in seven newspapers, but emotionally charged hyperbole on Facebook.[19]

The District Court's ruling illustrates the *Milkovich* evasion, stating Lee was "expressing its opinion that Malin abused his office resulting in his resignation." [App. 42a] But whether Malin "abused his office" with a $56 million a year economic development "win" that preceded his

[19] Brinkman called *Bauer* a "Slum Lord" and "PIECE OF SHIT!!!" on Facebook. *Bauer*, 958 N.W.2d at 197.

"resignation" is not a free-floating "opinion". Lee's "resignation followed controversy…" sentence is tied to a specific employment agreement, a specific road construction project, and specific information Lee knew before publication but omitted from its 2023 news article.

Milkovich forecloses use of an "opinion" label to immunize a statement that implies provably false facts. 497 U.S. at 18–21.

In its Rule 1.904(2) ruling, the District Court recognized defamation by implication relies "on the falsity of what the statement implies" and "may occur even when all of the disputed statements are, strictly speaking, true." [App. 34a]

Then, while failing to reference sworn affidavits in the record from readers who all understood the defamatory implication, the District Court reclassified Malin as a limited-purpose public figure and, sua sponte, reached for a profanity-laced Facebook "opinion" case to salvage the prior "substantial truth" summary judgment it had granted Lee.

The Court of Appeals affirmed. Though Malin raised this Court's controlling precedent on opinion in *Milkovich* at both the District Court and Court of Appeals,[20] neither court referenced nor applied *Milkovich*. They both ruled as if *Milkovich*

[20] [Rule 1.904(2) Reply Br. 11, Appeal Br. 51, 52]

-- a landmark ruling after an "odyssey of litigation spanning nearly 15 years," 497 U.S. at 3 -- never happened.[21]

C. Unrebutted Evidence Demonstrates the Defamatory Implication was Understood, and *Anderson* Requires it to go to a Jury.

Three disinterested Iowans who read the 2023 news article at issue submitted sworn affidavits stating the publication made them less likely to trust Malin [Malin SJ App. D0072 221-229].

The Court of Appeals held those affidavits showed only "speculative injury" because Malin did not supply an employer affidavit or a "chart" of lost income. [App. 21a] That holding narrows reputational harm beyond what defamation law requires and weighs evidence at summary judgment -- which *Anderson* prohibits.

Defamation law protects reputation. Multiple sworn statements from disinterested readers that Lee's 2023 publication made them less likely to trust Malin are direct evidence of the specific effect that reading the challenged statement has on the mind of multiple disinterested readers. Under well-settled summary judgment law, whether such evidence is persuasive is a question for a jury.

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[21] Similarly, no Iowa court referenced *Harte-Hanks*.

Neither a "chart" nor a potential-employer affidavit is a legal prerequisite for evidencing reputational injury. In *Air Wisconsin*, 571 U.S. at 252–53 (applying *Masson v. New Yorker Magazine*, 501 U.S. 496, 517 (1991)), this Court unanimously explained: "In defamation law, the reputational harm caused by a false statement is its effect on a reader's or listener's mind."

The Court of Appeals' demand for a chart or a potential-employer affidavit at summary judgment conflicts with this Court's reputational-harm baseline. Malin presented unrebutted affidavits documenting that disinterested citizens understood the false implication from the 2023 publication and lowered their estimation of him because of it. *Anderson* requires that evidence to be credited at summary judgment, not weighed against the nonmovant as "speculative."

IV. Circumventing This Court and the Jury

The courts below did not decide this case under this Court's precedents; they systematically displaced them. The District Court:

1. granted summary judgment without applying *Harte-Hanks*' purposeful-avoidance standard, 491 U.S. at 692, to an admitted corporate system keeping facts from newsrooms;

2. declared facts involving "the very issues on which this case depends" to be "hotly contested" [App. 27a, 28a] and then left judgment against the nonmovant standing, inverting *Anderson*, 477 U.S. at 255;

3. found Malin to be a public figure by invoking *Gertz* contrary to its holding, 418 U.S. at 352, that involvement in litigation without speaking to the press "plainly" left Gertz a private individual;

4. evaded *Milkovich*, 497 U.S. at 18, by applying a state Facebook hyperbole case.

Next, the Court of Appeals:

5. affirmed public-figure status on a constitutional fact -- the website premise -- contradicted by sworn record evidence, evading the independent examination *Bose* commands, 466 U.S. at 510–11;

6. built the publisher's defense from Malin's post-publication responses to the publisher -- the maneuver *Hutchinson* forbids, 443 U.S. at 135;

7. while citing a state case where public-figure status was conceded, treated a civil litigation affidavit, never discussed with any reporter, as grounds for public-figure status, contrary to both *Wolston*, 443 U.S. at 167–68 and *Gertz,* 418 U.S. at 352;

8. held retraction-refusal evidence beyond consideration although every fact that shielded the Times in *Sullivan*, 376 U.S. at 286, is reversed here;

9. converted the trial court's repeated failure to rule into forfeiture of a federal actual-malice claim timely presented before judgment and expressly renewed under Rule 1.904(2).

This case illustrates how modern media-defamation rulings can circumvent the jury function this Court's precedents require: private citizens become public figures without evidence or grounding in this Court's plainly stated words, facts declared "hotly contested" become facts resolved against the nonmovant, news becomes "opinion" and sworn affidavits documenting reputational harm become "speculative". Time can even run backwards to keep a defamation case from a jury: private conduct after publication becomes public status at publication, and a ruling never issued becomes the issue never preserved.

In sum, Lee built a wall to keep facts from reporters; the courts below barred the door to truth reaching a jury.

The decision below transformed the attainable task of proving actual malice into an impossible one: purposeful-avoidance evidence was never adjudicated, and this Court's First

Amendment and jury precedents were misapplied, omitted[22], or evaded.

Truth in the public realm is necessary for democracy to function. In the digital age, that premise is tested here by nationally consequential questions of law presented on undisputed facts: when may a private citizen be treated as a public figure; may news reported as fact be immunized as "opinion"; and may a news corporation automate the redirection of corrective facts away from its own reporters without creating a jury question of purposeful avoidance of truth?

The courts below answered the public-figure and opinion questions contrary to this Court's precedents. They flatly refused to answer purposeful avoidance of truth, then made that judicial refusal to rule the basis for forfeiture -- creating the Fourteenth Amendment violation presented here.

Enforcing *Sullivan* in the digital age requires answers. This Court can and should provide them.

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[22] The citation omitted from *Stevens*, 728 N.W.2d at 826, upon which the Court of Appeals relied [App. 16a], does not lead to this Court's controlling application of *Gertz* at page 352.

V. This Case Is a Clean Vehicle Under Rule 10(c)

Rule 10(c) is satisfied because the decision below conflicts with this Court's First and Fourteenth Amendment precedents on a record that presents those conflicts cleanly.

First, the factual predicates for Question I are undisputed. Malin's 2024 communications to Lee came months after the 2023 publication at issue, the record contains not a single word of 2023 content from Malin's website, and no record evidence shows Malin spoke to the press concerning the civil litigation for which he was an affiant.

Second, the 2022 pre-publication court ruling declaring the truth or falsity of Lee's taxpayer burden reporting to be unsettled and Lee's corporate redirection of Malin's corrective communications away from newsrooms are not disputed.

Third, the preservation dimension of Question II presents a clear timeline from the court record. The date Lee filed its email redirection admission (February 21, 2025), the date Malin argued it (February 28, 2025) and the date the District Court ruled without addressing it (June 4, 2025) are record facts. The dates Malin used the state's prescribed rule to obtain an omitted ruling (June 17 and July 8, 2025) and the

date the District Court again ruled without addressing it (July 15, 2025) are record facts.

The documentary record makes the preservation ruling's temporal impossibility visible without any inference. This Court need not decide Iowa preservation law generally. It need decide only whether the extraordinary application made here is adequate to bar review of a timely presented federal claim.

Fourth, this Court need not resolve any factual dispute to decide the federal questions presented by Question III. The doctrinal failures to apply foundational precedents in *Milkovich* and *Anderson* require no parsing of facts; they are visible on the face of the rulings.

The merits rulings below rest on and are interwoven with federal law, with no plain statement of any independent state ground; this Court's jurisdiction follows. *Michigan v. Long*, 463 U.S. 1032, 1040–41 (1983).

Across this case, two doctrinal deficiencies recur and reinforce each other: (1) the decision below uses a cascade of evasive state-law surrogates to displace federal protections, and (2) that cascade requires disregarding when federal protections attach. Every intertwined ground supporting the judgment -- the public-figure ruling underlying the actual-malice burden, the forfeiture ruling, and the opinion, substantial-

truth, and injury rulings -- is one of those surrogates, and each is challenged here.

The questions in this case recur nationwide: whether a factual news sentence can be immunized as opinion; whether civil-litigation participation converts a private citizen into a public figure; and whether requesting corrections or maintaining a personal website can do so.

Unique here is the convergence, on undisputed facts, of three national issues: private-citizen status in the digital age, corporate control over facts reaching newsrooms, and summary-judgment rulings that bypass the jury function this Court's precedents protect.

Malin seeks not to weaken journalism but to strengthen it through two modest principles. The first: legal questions properly presented are ruled upon. The second: if a national news corporation refuses to correct its publications while systematically keeping facts from its own journalists, it should be willing to tell a jury why.

CONCLUSION

This petition for a writ of certiorari should be granted. At minimum, to protect citizens far beyond Malin, the public-figure ruling below should be summarily reversed.

Respectfully submitted,

__/s/ John T. Flynn_____

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IN THE SUPREME COURT OF IOWA

No. 25–1310

Scott County No. LACE136939

ORDER

CRAIG MALIN,

Plaintiff-Appellant,

vs.

SARAH WATSON, DEB ANSELM, ASTRID GARCIA and LEE ENTERPRISES, INC.,

Defendants-Appellees.

After consideration by this court, with Waterman and McDermott, JJ., taking no part, further review of the above-captioned case is denied.

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IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	Case Title
25-1310	Malin v. Watson

So Ordered

Susan Larson Christensen, Chief Justice

Electronically signed on 2026-08-05 08:39:02

IN THE COURT OF APPEALS OF IOWA

No. 25–1310

Scott County No. LACE136939

ORDER

CRAIG MALIN,

Plaintiff-Appellant,

vs.

SARAH WATSON, DEB ANSELM, ASTRID GARCIA and LEE ENTERPRISES, INC.,

Defendants-Appellees.

This matter comes before the court, Schumacher, P.J., and Ahlers, and Badding, JJ, upon the appellant's petition for rehearing. Upon consideration, the petition is denied.

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IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	Case Title
25-1310	Malin v. Watson

So Ordered

Julie A. Schumacher, Judge

Electronically signed on 2026-05-18 10:01:30

IN THE COURT OF APPEALS OF IOWA

No. 25-1310
Filed May 13, 2026

Craig Malin,
Plaintiff–Appellant,
v.
Sarah Watson, Deb Anselm, Astrid Garcia, and Lee Enterprises, Inc.,
Defendants–Appellees.

Appeal from the Iowa District Court for Scott County, The Honorable Mark D. Cleve, Judge.

AFFIRMED

John T. Flynn of Brubaker, Flynn & Darland, P.C., Davenport, attorney for appellant.

Ian J. Russell and Jenny L. Juehring
Lane & Waterman LLP, Davenport,
attorneys for appellees.

Considered without oral argument
by Schumacher, P.J., and Ahlers and Badding, JJ.

Opinion by Schumacher, P.J.
SCHUMACHER, Presiding Judge.

Craig Malin appeals the district court's granting of summary judgment in favor of the defendants on his claims of defamation, defamation by implication, and false light invasion of privacy, asserting the court erred in finding Malin is a public official, by ignoring affidavits from third parties stating Lee Enterprises, Inc.'s reporting caused them to trust Malin less, finding no malice based on corporate redirection of Malin's communications, in finding article I, section 7 of the Iowa Constitution does not guarantee a right to a jury trial for defamation claims, and in refusing to take judicial notice of alleged adjudicative facts.

BACKGROUND FACTS & PROCEEDINGS

Claims stemming from Malin's employment with the city of Davenport come before this court for the third time. Malin was employed as the city

administrator for Davenport from 2001 until 2015. His duties included implementing city policies of the city council, overseeing departments, and negotiating agreements for the city. One project that Malin pursued on behalf of the city was the conversion of a casino into a non-profit entity. While he was city administrator, Malin spoke to reporters, appeared on television, authored newspaper columns for the city, and lobbied on behalf of the city.

One of the defendants, Lee Enterprises, Inc. (Lee), is a media company based in Davenport that publishes newspapers throughout the country, including the Quad-City Times. The other defendants, Watson, Anselm, and Garcia are employed as journalists for Lee.

In 2015, the Quad-City Times published several editorials, columns, and articles related to Malin's negotiations concerning the construction of a casino in Davenport. The agreement bound the city to pay for the groundwork for the construction. These publications reported that Malin negotiated the agreement on behalf of the city absent approval of the city council. They also reported that the then-mayor requested that Malin resign from his position because he did not advise the city council of details concerning a vote to fund the casino development.

In 2015, pursuant to a separation agreement, Malin's employment with the city ended.

Then, in 2017, Malin filed suit against Lee, the Quad-City Times, and two columnists, claiming defamation, defamation by implication, and intentional interference with a contract. These claims were based on allegedly false statements within the 2015 Quad-City Times publications regarding Malin's role in the casino groundwork agreement. The district court granted summary judgment against Malin for his defamation claims. The intentional-interference claim proceeded to trial in 2019, with the jury returning a defense verdict. Malin appealed from this judgment, and this court affirmed. See *Malin v. Quad-City Times*, No. 19-1838, 2021 WL 1399837, at *3 (Iowa Ct. App. Apr. 14, 2021).

In 2020, Malin filed a second suit against Lee, its employees, and entities based on a 2019 editorial published in the St. Louis Post-Dispatch, a paper owned by Lee. The editorial was authored by the Post-Dispatch's editorial board, and it concerned the first lawsuit, alleging the suit could "put a chill on aggressive reporting that exposes wrongdoing." Malin's suit alleged defamation, false light invasion of privacy, unjust enrichment, intentional infliction of emotional distress, and negligent hiring. The defamation claims were again based on alleged

falsity of the 2015 reporting concerning the casino issue.

The district court granted summary judgment on all claims, finding Malin failed to prove malice. Malin appealed, and this court affirmed. See *Malin v. Lee Enters.,* No. 22-1940, 2024 WL 260087, at *4 (Iowa Ct. App. Jan. 24, 2024).

In 2023, Lee published another article, which is the subject of this appeal. This article concerned pending litigation stemming from a collapsed apartment building in Davenport. The article reported that Malin was retained as an expert and went on to discuss his prior employment and duties:

> Malin was Davenport's city administrator from 2001 to 2015. The city council approved a separation and transition agreement signed by Malin in 2015 after the then-mayor called on him to resign. The resignation followed controversy over a deal to grade the lot at the privately owned casino.
> . . . .
> Then-assistant city administrator, Corri Spiegel[,] was appointed interim city administrator upon Malin's departure, then hired on in a permanent capacity in 2016 from among three finalists and more than 30 applicants.

In response to the article, Malin filed a 107-page petition in district court alleging defamation,

defamation by implication, and false light invasion of privacy. The claims were based on the article stating Spiegel was the "assistant city administrator," rather than the "assistant to the city administrator," and that Malin's "resignation followed controversy over a deal to grade the lot at the privately owned casino." Malin takes issue with the terms "resignation," "controversy," and "assistant city administrator," alleging that he did not resign, his departure was not because of the casino controversy, and that Spiegel was not the "assistant city administrator."

Lee moved for summary judgment, and the district court granted it, finding the article was "substantially true" and Malin failed to show falsity in the reporting. Further, the court determined there was no genuine issue of material fact regarding injury, malice, or offensiveness. The district court also denied Malin's motion to reconsider, declining to take judicial notice of what Malin termed "adjudicative facts" and his claim that he was entitled to a jury trial under the Iowa Constitution.

ANALYSIS

Malin argues that there are several genuine issues of material fact that should have precluded summary judgment against him.

We review summary judgment motions for corrections of errors at law. Summary judgment is proper only when the entire record demonstrates the absence of a genuine issue of material fact and the moving party is entitled to judgment as a matter of law. Our review is accordingly limited to whether a genuine issue of material fact exists and whether the district court correctly applied the law. *Linn v. Montgomery*, 903 N.W.2d 337, 342 (Iowa 2017) (cleaned up). "We review the evidence in the light most favorable to the nonmoving party." *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007).

The three claims Malin asserts in this case are defamation, defamation by implication, and false light invasion of privacy. For the defamation claim, Malin is required to prove that Lee "(1) published a statement that (2) was defamatory (3) of and concerning [Malin], and (4) resulted in injury to [Malin]." *Bertrand v. Mullin*, 846 N.W.2d 884, 892 (Iowa 2014) (citation omitted). If it is determined that Malin is a public official, it must be established by clear and convincing evidence that the statement is false and was made with actual malice. Id. "A statement is made with actual malice when accompanied by 'knowledge that it was false or with

reckless disregard for its truth or falsity.'" Id. at 894 (citation omitted).

For defamation by implication, Malin must show that Lee "(1) juxtapose[d] a series of facts so as to imply a defamatory connection between them, or (2) create[d] a defamatory implication by omitting facts [such that] [Lee] may be held responsible for the defamatory implication, unless it qualifies as an opinion, even though the particular facts are correct." *Stevens*, 728 N.W.2d at 827 (third alteration in original) (citation omitted). "Defamation by implication arises, not from what is stated, but from what is implied" *Id.*

As for Malin's claim of false light invasion of privacy, he must show that Lee placed him "before the public in a false light," and "(1) the false light in which [Malin] was placed would be highly offensive to a reasonable person, and (2) [Lee] had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which [Malin] would be placed." *Bierman v. Weier*, 826 N.W.2d 436, 465 (Iowa 2013). False-light claims "are subject to the same constitutional restraints as defamation cases. It is unreasonable to allow a party to evade the standards surrounding defamation law because the plaintiff pled an alternative theory." *Jones v. Palmer Commc'ns, Inc.,* 440 N.W.2d 884, 894 (Iowa 1989) (internal citation

omitted) (disapproved of on other grounds by *Schlegel v. Ottumwa Courier, a Div. of Lee Enters., 585 N.W.2d 217* (Iowa 1998)).

I. Whether Malin Qualifies as a Public Official

We first must determine if Malin qualifies as a public official and thus is subject to the actual-malice standard. See *Bertrand*, 846 N.W.2d at 894. "[T]he 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs." *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966). "Those who, by reason of the notoriety of their achievements or the vigor and success with which they seek the public's attention, are properly classed as public figures and those who hold governmental office" *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 342 (1974).

Malin argues that he is not a public official because his separation from Davenport or the casino agreement is not "still a matter of lively public interest," there are no further "propositions for further change" concerning the separation or casino deal, and there was no "strong public interest" in any of the tasks that Malin performed for the city. See *Rosenblatt*, 383 U.S. at 87 n.14. Malin asserts that he "is so far removed from a former position of

authority that his responsibilities no longer ha[ve] the interest necessary to justify the [actual-malice] rule." *Id*. There are two circumstances that an individual may qualify as a public figure:

> In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.

Stevens, 728 N.W.2d at 826 (citation omitted). We agree with the district court that Malin qualifies as a public figure.

First, Malin operates a personal website that is open to the public to access. This website includes Malin's resumé, biography, and a compendium that describes his tenure as city administrator in a positive manner. Also, there are documents linked to the site which contain his opinions about the previous lawsuits against Lee.

Second, on January 1, 2024, Malin provided a letter to the editor for publication in the Quad-City Times concerning his grievances with Lee's reporting. Then, the next day, Malin submitted a draft for publication about the litigation against

Lee. On May 22, 2024, Malin sent a letter to Lee's chief executive officer informing him that Malin was intending to hold a media conference regarding the second lawsuit against Lee. The letter included a lengthy statement about the litigation that Malin wanted to publish.

Lastly, the reason that Lee published the 2023 article was because Malin inserted himself into the building-collapse litigation as an expert witness, an event that attracted national media coverage. He produced an affidavit with his expert opinion on the incident, which was a public filing. Malin has "voluntarily inject[ed] himself . . . into a particular public controversy and thereby [is] a public figure for a limited range of issues." *See id.*

II. Whether the 2023 Quad-City Times Statements were False and Made with Actual Malice

Because Malin is a public figure, he must "show that a reasonable jury could find by clear and convincing evidence that (1) the challenged statements . . . were false and (2) [Lee] made the statements with 'actual malice.'" *Id.* (citations omitted)). To prove malice, Malin must prove Lee knew the statements were false or published them with reckless disregard. Id. at 830. Reckless disregard requires "sufficient evidence to permit the

conclusion that [Lee] in fact entertained serious doubts as to the truth of [the] publication." *Id*. at 831 (citation omitted).

Beginning with Malin's contention that Lee falsely reported that he "resigned" from his position as city administrator, we agree with the district court that the statement was substantially true. See *Behr v. Meredith Corp*., 414 N.W.2d 339, 342 (Iowa 1987) ("If the underlying facts as to the gist or sting of the defamatory charge are undisputed, the court may determine substantial truth as a matter of law."). "Resignation" is defined as "[t]he act or an instance of surrendering or relinquishing an office, right, or claim. A formal notification of relinquishing an office or position; an official announcement that one has decided to leave one's job or organization, often in the form of a written statement." *Resignation*, Black's Law Dictionary (11th ed. 2019).

Here, the Succession, Transition, and Separation Agreement that "terminat[ed] [the] employment relationship" was mutual and reflected an agreement between Malin and the city that "Malin hereby terminates his employment with the City . . . ." The Agreement reflected that Malin relinquished his position with formal notification. There was no "reckless disregard for the truth" nor any proof the statement was false and is thus absent malice and

not defamatory. *Stevens*, 728 N.W.2d at 831. Malin fails to show any genuine issue of material fact concerning falsity or malice based on this reporting.

Next, Malin takes issue with Lee's reporting that Spiegel's job title at the time Malin was city administrator was "assistant city administrator" rather than "assistant to the city administrator." It is not clear how this statement was false or reported with malice. The district court was correct in its analysis that "[t]his error is so inconsequential that it may be a scrivener's error. In any event, the omission of a preposition (to) and a definite article (the) in a[] government title do not go to the 'gist' and 'sting' of the article." See *Behr*, 414 N.W.2d at 342 ("We determine the gist or sting by looking at the highlight of the publication, the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement." (cleaned up)). Further, the statement was not about Malin. We find Malin failed to show a genuine issue of material fact regarding the alleged defamatory nature of this statement by Lee.

Lastly, Malin contends the article's statement that "[t]he resignation followed controversy over a deal to grade the lot at the privately owned casino" amounts to defamation made with malice. He asserts that the controversy was created by Lee's

reporting and did not exist independently. Again, we agree with the district court that no genuine issue of material fact exists regarding the defamatory nature of this reporting.

In Malin's prior lawsuit against Lee, we determined Lee's reporting of the casino controversy was substantially true because "Quad-City Times had published reports about Malin's involvement in a casino project in Davenport. That is a factually correct statement—Quad City Times did make such reports about Malin. And Malin does not dispute the reports played a part in his 'departure from office' as stated in the publications." *Malin*, 2024 WL 260087, at *4. The statement was substantially true because the record is replete with evidence that shows there was a controversy related to the casino project, and Lee simply reported it prior to the 2023 article. And, even if there was not a "controversy" between Malin and the city, he has failed to demonstrate any reputational injury or that he was placed in a false light which "would be highly offensive to a reasonable person." *See Bertrand*, 846 N.W.2d at 892; *Bierman*, 826 N.W.2d at 465, 447 (noting "an Iowa plaintiff must establish actual reputational harm when suing a media defendant, and not merely emotional distress or humiliation").[1]

[1] At the district court, Malin asserted that employers may be less willing to hire him because of Lee's reporting. In support

of this assertion, Malin provided affidavits with preprinted questions that were filled out by "disinterested parties" who stated they were less likely to trust Malin because of the article. We do not find these affidavits indicate anything more than speculative injury. As the district court pointed out, "[h]e provided no affidavit from a potential employer who was warned away by Lee Enterprises' reporting. He provided no chart determining a loss of income or any other cognizable damages."

Because Malin cannot prove falsity of the alleged defamatory reporting by Lee, his defamation and false-light claims fail to generate a genuine issue of material fact to survive summary judgment. *Jones*, 440 N.W.2d at 894; *Bertrand*, 846 N.W.2d at 892. Also, based on the above analysis, Malin has not shown a genuine issue of material fact regarding his defamation-by-implication claim. We agree with the district court that the alleged implications from Lee's reporting did not imply a defamatory purpose or, importantly, malice.[2] See *Stevens*, 728 N.W.2d at 827–28; *Bauer v. Brinkman*, 958 N.W.2d 194, 198 (Iowa 2021).

[2] Although defamation by implication can occur when the alleged omission or inclusion of facts, not opinions, "imply a defamatory connection between them," a plaintiff must still prove malice to survive summary judgment. See Stevens, 728 N.W.2d at 827–28, 31 (citation omitted).

Lastly, Malin argues that Lee's diversion of his communications to the newspaper with "corrections"

to its legal staff indicates an avoidance of the truth, showing malice. The district court did not address this contention nor rule on it. It is therefore not preserved for our review. *Meier v. Senecaut*, 641 N.W.2d 532, 537 (Iowa 2002).

III. Whether Article I, Section 7 of the Iowa Constitution Guarantees the Right to a Jury Trial for Defamation Claims

Malin next asserts that the Iowa Constitution requires a jury trial for all defamation claims and thus bars summary judgment. He bases this claim on the language of article I, section 7, which provides that "every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right In all prosecutions or indictments for libel, the truth may be given in evidence to the jury . . . ." (emphasis added). Malin cites *State v. White*, arguing that because "[t]he meaning of those words was fixed when they were adopted," the word "prosecution" is meant to apply to civil defamation claims, thus requiring a jury trial. *See 9* N.W.3d 1, 10–11 (Iowa 2024).

We agree with the district court that article I, section 7 is properly understood to only apply to criminal prosecutions. As the district court stated:

(1) [T]he Article uses the word "acquit," which implied a criminal prosecution, (2) the Article employs the word "charge," again indicating that the text was directed at criminal libel, and (3) the Article limits its application to "prosecutions or indictments," both of which are criminal actions. The Court cannot find even a scrap of evidence that Article I[,] § 7 applies to civil cases or that it prevents summary adjudication of defamation claims.[3]

[3] The district court cited Black's Law Dictionary, 12th edition (2024), with definitions of "acquit," "charge," "prosecution," and "indictment." Malin's briefs cite Webster's 1828 dictionary, arguing the framers of the Iowa Constitution "all commonly understood and used" the words "prosecution" and "acquit" in a civil context, precluding application of summary judgment for defamation claims. Our supreme court precedent contradicts that argument. *See, e.g., Villarini v. Iowa City Cmty. Sch. Dist.,* 21 N.W.3d 129, 135–36 (Iowa 2025); *Bauer*, 958 N.W.2d at 202; *Bierman*, 826 N.W.2d at 451–52; *Bandstra v. Covenant Reformed Church*, 913 N.W.2d 19, 55 (Iowa 2018).

Further, and importantly, article I, section 7 uses the language "[i]n all prosecutions or indictments for libel, the truth may be given in evidence to the jury . . . ." (emphasis added). The use of the discretionary term "may," as opposed to a

mandatory term such as "shall," strongly indicates that there is no requirement of a jury trial or preclusion of summary judgment for defamation claims. We find the district court did not err in this determination.

IV. Whether the District Court Erred in Refusing to Take Judicial Notice of Alleged Adjudicative Facts

Malin's motion pursuant to Iowa Rule of Civil Procedure 1.904(2) requested the district court to take judicial notice of "Adjudicative Facts" that concerned prior Lee reporting and corporate procedures. The district court denied this request, finding the facts were "hotly contested." Lee and Watson both assert that error is not preserved on this issue. We agree.

Malin never raised this judicial-notice issue in his summary judgment filings. He addressed the issue for the first time in his rule-1.904(2) motion. Although the district court denied the request for judicial notice, because the issue was not raised in prior motions, it was not preserved for our review. *See Winger Contracting Co. v. Cargill, Inc.*, 926 N.W.2d 526, 543 (Iowa 2019) (holding that because a new issue, with "different factual predicate[s]," was not presented in the cross-motions for summary judgment and first introduced in a rule-1.904(2)

motion, the claim was not preserved); *Harvest Credit Mgmt. VII, L.L.C. v. Lucas,* No. 08-0014, 2009 WL 1676660, at *2 (Iowa Ct. App. June 17, 2009) ("A motion pursuant to rule 1.904(2) is not properly used as a method to introduce a new issue, not previously raised before the court").

CONCLUSION

For the reasons above, we affirm the district court's grant of summary
judgment in favor of the defendants.

AFFIRMED.



IOWA APPELLATE COURTS

State of Iowa Courts

Case Number	Case Title
25-1310	Malin v. Watson

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IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

Craig Malin,
Plaintiff–Appellant,
v.
Sarah Watson, Deb Anselm, Astrid Garcia, and Lee Enterprises, Inc.,
Defendants–Appellees.

CASE NO. LACE136939

DENYING PLAINTIFF'S MOTION TO RECONSIDER

RULING

Previously, the Court granted the Defendants' ("Lee Enterprises") Motion for Summary Judgment on all of the Plaintiff's ("Malin") claims. Now, Malin asks the Court to reconsider that ruling. He argues that the Court failed to consider parts of his argument, and he asks the Court to:
(1) take Judicial Notice of Adjudicative Facts, (2) address Malin's Defamation by Implication Argument, and (3) address Malin's argument under

Article I, Section 7 of the Iowa Constitution. Lee Enterprises resists the Motion to Reconsider and moves the Court to sanction Malin under Iowa Rule of Civil Procedure 1.413(1). For the following reasons, the Court DENIES Malin's Motion to Reconsider, and it DENIES Lee Enterprises Motion for Sanctions.

I. JUDICIAL NOTICE

Malin first asks the Court to take judicial notice of certain "adjudicative facts." Iowa Rule of Evidence 5.201 governs the taking of judicial notice:

> The court may judicially notice a fact that is not subject to reasonable dispute because it:
> (1) Is generally known within the trial court's territorial jurisdiction; or
> (2) Can be accurately and readily determined from sources whose accuracy cannot reasonably be questioned.[1]

[1] Iowa R.E. 5.201

All of Malin asks the Court to judicially notice are hotly contested (for example: that Lee Enterprises concealed certain information, that it refused to correct false assertions in its own reporting, and that it refused to properly contextualize certain statements about Malin). Judicial notice is appropriate for simple, uncontestable facts, like the day of the week on

which a certain date fell or the weather in a specific location at a specific time. The 'facts' that Malin asks the Court to find involve, among other things, what individuals thought, how editorial decisions should have been made, and whether reporting was true or false. These are the very issues on which this case depends, and it would be improper for the Court to take judicial notice of these 'facts.' Therefore, the Court DENIES Malin's request for judicial notice.

II. DEFAMATION BY IMPLICATION

Malin's second argument is that the Court's original ruling failed to consider his claim for Defamation by Implication. The Court notes that, in his original briefing, Malin conflated False Light Invasion of Privacy with Defamation by Implication, stating, "On page 13 of their brief, defendants correctly cite defamation by implication, otherwise known as "false light…"[2]

[2] Scott Co. Case No. LACE136939 (D0042) at pg. 39.

Now, Malin bifurcates his argument, asking the Court to analyze Defamation by Implication separately from his false light claim. Having reviewed the Petition and the Summary Judgment briefing, the Court finds that Malin has, albeit tenuously, pled a claim for Defamation by Implication.

Defamation by Implication differs from False Light Invasion of Privacy in important ways. A False Light claim comprises the following:

> One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (1) the false light in which the other was placed would be highly offensive to a reasonable person, and (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.[3]

[3] *Bierman v. Weier*, 826 N.W.2d 436, 465 (Iowa 2013).

On the other hand: Defamation by implication arises, not from what is stated, but from what is implied when a defendant juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts, [such that] he may be held responsible for the defamatory implication, unless it qualifies as an opinion, even though the particular facts are correct.[4]

[4] *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 827 (Iowa 2007).

Normally, "truth is a complete defense to defamation."[5]

[5] *Huegerich v. IBP, Inc.,* 547 N.W.2d 216, 221 (Iowa 1996).

But, unlike other defamation claims, which require proof of falsity, Defamation by Implication may occur even when all of the disputed statements are, strictly speaking, true.[6]

[6] *Stevens*, 728 N.W.2d 823, 827. ("The statements at issue, i.e., that Stevens rarely attended the events he covered; that his original column contained numerous factual errors and unsubstantiated claims; and that Stevens' redraft continued to include factual errors and "near" libelous characterizations, were all basically true.")

This is so because Defamation by Implication does not rely on the falsity of the statement itself but rather on the falsity of what the statement implies. Because Malin correctly points out that the Court did not previously address his Defamation by Implication claim, the Court will now review that issue.

To analyze Malin's Defamation by Implication claim, the Court must first determine whether Malin must meet the heightened defamation standards expounded in *New York Times Co. v. Sullivan* and *Gertz v. Robert Welch, Inc.* In those cases, the United States Supreme Court determined that the First Amendment to the United States Constitution imposes additional requirements on state law defamation plaintiffs. Specifically, if the plaintiff is a "public official."[7]

[7] *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964) ("The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.").

or a "public figure" or a limited public figure,"[8]

[8] *Gertz v. Robert Welch, Inc.,* 418 U.S. 323, 351 (1974) ("In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.")

then he must prove "actual malice," meaning that the defamatory statement was made with knowledge of falsity or with reckless disregard for its truth or falsity.[9]

[9] *Jones v. Palmer Commc'ns, Inc.,* 440 N.W.2d 884, 890–91 (Iowa 1989), disapproved of on other grounds by *Schlegel v. Ottumwa Courier, a Div. of Lee Enters., Inc.,* 585 N.W.2d 217 (Iowa 1998) ("Speech concerning public officials and public figures was still protected by the actual malice requirement. For private plaintiffs, the states were free to interpret state law and apply any level of protection for the defendant below strict liability.")

The question, then, is whether Malin falls within one of the recognized categories to which the actual malice standard applies. The Court concludes that he does. Under the Standard announced in *Rosenblatt v. Baer*, 383 U.S. 75, 85 (1966), "the 'public official' designation applies at the very least to those among the hierarchy of government employees who have, or appear to the public to have, substantial responsibility for or control over the conduct of governmental affairs."

Malin is the former City Administrator for the City of Davenport. From that post, he wielded substantial political power within the city. His position, his responsibilities in that position, and his influence and prominence in the daily life of the city make his actions matters of public concern and press scrutiny. This scrutiny of political officials is the taproot of the First Amendment; without it, democratic accountability is little more than a parchment promise. As a member of local government, who wielded substantial influence and commanded substantial sums of money, Malin qualifies as a public official covered by the actual malice standard.

It may be objected that Malin was a public official during his tenure as City Administrator, but now that he has left not only the city but the state, he is no longer a public official. However, the actual

malice standard applies not only to public officials but also to public figures. Relevant here is the idea of a "limited public figure," that is a person who, "voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues."[10]

[10] *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 351 (1974).

Here, Malin accepted a role as an expert witness in the litigation surrounding the Davenport building collapse. Indeed, Lee Enterprises' disputed reporting was focused on Malin's role in that lawsuit. Because Malin added his voice to the hue and cry surrounding the building collapse and because he has injected himself into the litigation surrounding that contentious issue, he qualifies as a "limited public figure" covered by the actual malice standard.

So where does that leave the analysis? With this question: is Lee Enterprises entitled to summary judgment on Malin's Defamation by Implication claim? As noted above, Malin must not only make out a claim for Defamation by Implication; he must also, because he is a public official or a limited purpose public figure, prove actual malice. However, when the Plaintiff must prove actual malice, the summary judgment standard changes. As the Iowa Supreme Court has described it: The New York Times analysis requires a plaintiff resisting a

motion for summary judgment to do more than show a genuine issue of material fact; he must produce evidence from which a fact finder could reasonably find malice by clear and convincing evidence. As the Court stated in *Anderson v. Liberty Lobby, Inc.,* where the *New York Times* "clear and convincing" evidence requirement applies, the trial judge's summary judgment inquiry as to whether a genuine issue exists will be whether the evidence presented is such that a jury applying that evidentiary standard could reasonably find for either the plaintiff or the defendant. Thus, where the factual dispute concerns actual malice, clearly a material issue in a *New York Times* case, the appropriate summary judgment question will be whether the evidence in the record could support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not.[11]

[11] *Stevens v. Iowa Newspapers, Inc.,* 728 N.W.2d 823, 830 (Iowa 2007).

In *Stevens*, the Iowa Supreme Court applied this standard and found that the disputed statements, although strictly speaking true, could be read to have a defamatory implication.

The facts in *Stevens* are instructive. In that case, the newspaper published an allegation that Stevens, a sports columnist who had a falling out

with the newspaper's editorial staff, "in fact, rarely attended events upon which he wrote columns."[12]

[12] *Stevens v. Iowa Newspapers, Inc.*, 711 N.W.2d 732 (Iowa Ct. App. 2006), aff'd, 728 N.W.2d 823 (Iowa 2007).

This statement was true. As the Iowa Court of Appeals explained, "In his deposition, Stevens admitted that he attended only eighteen percent of the over 300 events of which he wrote."[13]

[13] *Id.*

Nevertheless, the Court of Appeals held—and the Iowa Supreme Court affirmed—that Stevens' claim could proceed because, taken in the light most favorable to the non-moving party, there were questions for the factfinder as to the falsity of the statement's implication and the newspaper's knowledge of falsity or reckless disregard for the truth.

In the instant case, Malin argues that Lee Enterprises' reporting, especially the "resignation came after controversy" sentence, falsely implies that he was abusing his office, which precipitated his resignation. This leaves the Court to answer two questions: (1) is there a fact question as to the implication of Lee Enterprises statements? And (2) is there sufficient record evidence to, "support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not?"[14]

[14] *Stevens v. Iowa Newspapers, Inc.,* 728 N.W.2d 823, 830 (Iowa 2007).

Beginning with the implication allegedly contained in Lee Enterprises' reporting, Malin states:

This is a defamation by implication case. Plaintiff's petition asserts the August 31, 2023 Lee Enterprises publication is, "…implicitly defamatory insofar as Defendants, through the justaposition of words and the concealment of facts known to or recklessly disregarded by Defendants, creates the implication that Plaintiff engaged in abuse of Plaintiff's public office resulting in his "resignation" "(Paragraph 92, at D0020).

To survive summary judgment, Malin must first demonstrate several things: (1) he must show that the disputed words can bear a defamatory implication; (2) he must show that the implication was a fact, not an opinion; and (3) that Lee Enterprises gave the defamatory implication with "actual malice."

It is for the court to determine whether the defendants' words were capable of a defamatory meaning and for the jury to determine whether they actually had that effect on the reader. According to the Restatement,

(1) The court determines

(a) whether a communication is capable of bearing a particular meaning, and

(b) whether that meaning is defamatory.[15]

[15] *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 830 (Iowa 2007).

Basically, the Court must determine whether the following words can bear the defamatory implication Malin ascribes to them: "Malin was Davenport's city administrator from 2001 to 2015. The city council approved a separation and transition agreement signed by Malin in 2015 after the then-mayor called on him to resign. The resignation followed controversy over a deal to grade the lot at the privately owned casino."

The Court finds that the words cannot bear Malin's proposed defamatory implication. Controversy is baked into the workings of local government. The controversy mentioned in the paragraph could have been related to something as serious as abuse of power or about something much more innocuous. The statement is simply too nebulous to bear the implication Malin ascribes to it.[16]

[16] *Stevens v. Iowa Newspapers, Inc.,* 728 N.W.2d 823, 832 (Iowa 2007).

But even if the Court accepts the premise that the words could bear the meaning Malin argues for, he fails on the other steps in the analysis. As noted above, to qualify as a "false implication" for purposes of a Defamation by Implication claim, the

implication must make factual allegations, mere opinions are protected. [17]

[17] Id. at 827 ("Defamation by implication arises, not from what is stated, but from what is implied when a defendant (1) juxtaposes a series of facts so as to imply a defamatory connection between them, or (2) creates a defamatory implication by omitting facts, [such that] he may be held responsible for the defamatory implication, **unless it qualifies as an opinion**, even though the particular facts are correct.") (emphasis supplied).

The Iowa Supreme Court, in *Bauer v. Brinkman*, provided a test for classifying facts and opinions: We use a four-factor test to determine whether an alleged defamatory statement can reasonably be interpreted as alleging actual facts or is a protected expression of opinion. First, we consider "whether the alleged defamatory statement 'has a precise core of meaning for which a consensus of understanding exists or, conversely, whether the statement is indefinite and ambiguous.' " Second, we consider to what degree the statement is "objectively capable of proof or disproof." Third, we examine "the context in which the alleged defamatory statement occurs." Fourth, we contemplate "the broader social context" the alleged defamatory statement fits into.[18]

[18] *Bauer v. Brinkman*, 958 N.W.2d 194, 198 (Iowa 2021), as amended (Apr. 21, 2021) (cleaned up)

Under this test, if the alleged implication is both a fact and false, then the case may go forward. If it is an opinion or the implication is true, then summary judgment is appropriate. Beginning with the first Bauer factor, the Court must ask whether the statement has a precise or ambiguous meaning. The Court finds that the alleged implication (that Malin abused his office resulting in his resignation) does not bear a precise, agreed-upon meaning. In a pluralistic and raucous political environment like ours, what constitutes "abuse" of office is in the eye of the beholder. Members of different political parties, activist groups, or religious communities will each have different views of the role and purpose of government. Because they have different ideas about the proper use of government offices, they will have different views about what amounts to abuse of office. With such broad discourse of ideas, the Court cannot find that the first Bauer factor favors a finding that the implication Malin identifies in Lee Enterprises' reporting is a factual implication.

The second Bauer factor requires the Court to consider, "to what degree the statement is 'objectively capable of proof or disproof.'" This factor, too, weighs against Malin. It is a common, vigorous epithet directed at political officials that they have "abused their office" or "abused their power."[19]

[19] See https://www.aclu-il.org/en/news/speaking-out-against-abuse-power;
https://americanoversight.org/abuse-of-power-comes-as-no-surprise-including-trumps-militarized-suppression-of-protest/;
https://www.npr.org/2025/06/09/nx-s1-5427168/los-angeles-national-guard-trump-legal-question;
https://www.brennancenter.org/our-work/analysis-opinion/supreme-court-and-abuse-power.

Such allegations are, again, seldom capable of proof or disproof because, in context, the term "abuse" does not have a fixed meaning—abuse by a comptroller is different from abuse by a dog catcher. In the same way, the implication that Malin's alleged abuse of public office resulted in his separation from the city is all but impossible to prove or disprove. Presumably, numerous parties (the city council, the mayor, the members of the City Administrator's office, and the constituents of Davenport) played either a direct role or exerted indirect influence in Malin's separation from the city. Each of these parties had their own reasoning in support of the separation. Therefore, the implication that "abuse of office" was a contributing factor in Malin's separation (which is now more than a decade in the past) is

impossible to conclusively prove or refute. The second Bauer factor indicates that the implication of Lee Enterprises' story was an opinion, not a fact.

The third Bauer factor requires the Court to consider the allegedly defamatory matter in context. Here, the allegedly false implication came in a news story describing Malin's history with the city of Davenport. Because the story was a reported piece, rather than an op-ed, the context supports the argument that the implication arising from the "resignation came after controversy" sentence was a factual one. Though it is a close call, the Court, drawing all reasonable inferences in Malin's favor, finds that the third *Bauer* factor indicates that the implication was factual, not opinion.

Finally, the Court must look at the broader "social context" of the implication. As the Iowa Supreme Court has noted, "[t]he proper inquiry "is not the literal wording of the statement but what a reasonable reader or listener would have understood the author to have said."[20]

[20] *Bauer v. Brinkman*, 958 N.W.2d 194, 200 (Iowa 2021), as amended (Apr. 21, 2021).

Lee Enterprises published its story after a tragic building collapse in the city of Davenport. The story covered developments in the litigation surrounding the collapse, including the building-collapse-

plaintiffs' retention of Malin as an expert witness. It described Malin's history with the city briefly and in a measured tone. The story did not dwell on the "controversy" surrounding Malin, it did not sharply attack his credibility, nor did it mention his previous lawsuits against Lee Enterprises' publications. Read not only in its textual context but in its social context, the implication of the "resignation came after controversy" sentence indicates that Lee Enterprises was expressing its opinion that Malin abused his office resulting in his resignation, if, in fact, it meant to imply anything at all.

Taken together, the Court finds that the Bauer factors show that the disputed implication was a statement of opinion rather than fact. As an opinion, the statement is not actionable, even under the *Stevens* framework. The difference between *Stevens* and this case is that the implication in Stevens (that he fabricated his columns)[21]

[21] *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 831 (Iowa 2007).

contained factual allegations and was, therefore, actionable. Contrarily, in this case, the implication (that Malin's abused his office leading to his resignation) is, at most, an opinion mixed with vigorous epithet and, therefore, it cannot bear a defamatory meaning.

Although the Court's determination that Lee Enterprises' implication was an opinion incapable of bearing a defamatory meaning resolves this case, the Court finds, in the alternative, that Malin has failed to produce record evidence to, "support a reasonable jury finding either that the plaintiff has shown actual malice by clear and convincing evidence or that the plaintiff has not."[22]

[22] *Id.* at 830.

Malin's actual malice argument hangs on two allegations: (1) that Lee Enterprises knew that it was imparting a false implication because Malin had provided it with documentation proving that he did not "resign" and (2) Lee Enterprises willfully failed to retract or correct its story after Malin asked it to.

Malin's argument is difficult to parse because he focuses not on the implication of Lee Enterprises' statements but on the statements themselves. But in a Defamation by Implication claim, the Court is concerned about the falsehood and actual malice of the implication itself. Ultimately, though, the Court finds that Malin has not provided enough record evidence for a reasonable fact finder to determine by clear and convincing evidence that Lee Enterprises knew that it was giving a false implication or that it acted with reckless disregard for the truth of the implication.[23]

[23] Again, the difference between this case and *Stevens* is instructive. In *Stevens*, a representative of the newspaper testified during her deposition that she knew a sports columnist was not required to attend events on which he reported. As the Iowa Court of Appeals noted: "Although Harmann claimed her statement was not intended as a comment on Stevens's credibility, she conceded it was intended to express that "he often offered opinions that did not have a basis in fact or a basis in his research." In addition, Harman admitted personal attendance at the events was not essential for an "opinion" or "issue" columnist like Stevens." (*Stevens v. Iowa Newspapers, Inc.,* 711 N.W.2d 732 (Iowa Ct. App. 2006), aff'd, 728 N.W.2d 823 (Iowa 2007)). This statement, read in the light most favorable to Stevens, would have allowed a reasonable fact finder to conclude that Harman knowingly gave a false implication about Stevens' work. Here, on the other hand, Malin fails to provide similar deposition evidence showing Lee Enterprises' actual malice.

III. ARTICLE I §7 OF THE IOWA CONSTITUTION

Finally, Malin contends that the Iowa Constitution entitles him to present his claims to a jury—essentially that the Iowa Constitution bars summary adjudication of defamation claims. Malin's argument relies on the text of Article I §7 of the Iowa Constitution, which states (emphasis supplied):

Every person may speak, write, and publish his sentiments on all subjects, being responsible for the abuse of that right. No law shall be passed to restrain or abridge the liberty of speech, or of the press. **In all prosecutions or indictments for libel, the truth may be given in evidence to the jury**, and if it appears to the jury that the matter charged as libelous was true, and was published with good motives and for justifiable ends, the party shall be acquitted.

According to Malin, this case is a "prosecution" because he is pursuing (prosecuting) a libel claim; therefore, under the terms of constitution, the truth should be presented to a jury. Malin's argument is fatally flawed.

First, by its terms, the provision is discretionary. It uses the elective term "may" rather than the mandatory term "shall." So, there is no reason to infer that the Article requires presentation to a jury and bars summary adjudication of defamation claims.

Second, and more pressingly, Article I §7, properly understood, is directed only at criminal prosecutions. Several clues support this conclusion: (1) the Article uses the word "acquit," which implies a criminal prosecution, [24]

[24] ACQUIT, Black's Law Dictionary (12th ed. 2024) ("To clear (a person) of a criminal charge; specif., to give an official

decision in a court of law that someone is not guilty of a crime.").

(2) the Article employs the word "charge," again indicating that the text was directed at criminal libel, [25]

[25] CHARGE, Black's Law Dictionary (12th ed. 2024) ("A formal accusation of an offense as a preliminary step to prosecution.").

and (3) the Article limits its application to "prosecutions[26]

[26] PROSECUTION, Black's Law Dictionary (12th ed. 2024) ("The commencement and carrying out of any action or scheme. 2. A criminal proceeding in which an accused person is tried.").

or indictments,"[27]

[27] INDICTMENT, Black's Law Dictionary (12th ed. 2024) ("The formal written accusation of a crime, made by a grand jury and presented to a court for prosecution against the accused person.").

both of which are criminal actions[28]

[28] In an attempt to save his argument, Malin plucks examples from Iowa caselaw where the term "prosecute" has been used to describe a civil lawsuit, e.g. "his case was dismissed for failure to prosecute." However, these examples represent the exception, not the rule. But even if the Court grants the premise that "prosecute" may be interchangeably used in both the criminal and the civil realm, it need not accept that "prosecute" in this context refers to a civil claim—the text and

context of Article I §7 will not bear that conclusion. In the Court's view, the framers of the Iowa Constitution used the term "indictment" to refer to cases started by a grand jury. And the word
"prosecution" to refer to criminal cases begun by other means, for example a trial information. By this reading, Article I §7 has no application whatever to civil cases.

The Court cannot find even a scrap of evidence that Article I §7 applies to civil cases or that it prevents summary adjudication of defamation claims.

Third and finally, Article I §7 protects the defendant, not the plaintiff. The whole thrust of the Article is that the truth may be given as a defense, which if proven, results in acquittal. But Malin is the Plaintiff in this case. By its plain text, the Article does not apply to him.

Malin's reliance on Article I §7 of the Iowa Constitution is misplaced. There is neither a textual basis for nor a historical tradition supporting the idea that the Iowa Constitution forecloses summary adjudication of defamation claims. Consequently, the Court DENIES Malin's Motion to Reconsider with respect to his constitutional argument.

IV. *LEE ENTERPRISES' MOTION FOR SANCTIONS*

Lee Enterprises, in its resistance to Malin's Motion to Reconsider, asks the Court to sanction

Malin for making what it describes as frivolous arguments. Iowa Rule of Civil Procedure 1.413(1) provides, in part: Counsel's signature to every motion, pleading, or other paper shall be deemed a certificate that: counsel has read the motion, pleading, or other paper; that to the best of counsel's knowledge, information, and belief, formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification, or reversal of existing law; and that it is not interposed for any improper purpose, such as to harass or cause an unnecessary delay or needless increase in the cost of litigation.

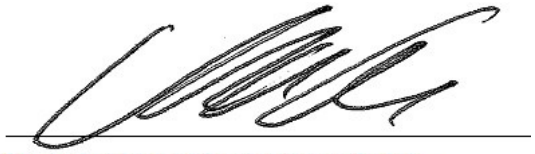
Here, the Court finds that Malin's arguments are not deserving of sanction. He correctly notes that the Court failed originally to address the Defamation by Implication claim and, although the Court disagrees with his interpretation of Article I §7 of the Iowa Constitution, the argument is germane to the case. None of the arguments were so obviously intended to harass or delay as to warrant sanctions. Accordingly, Lee Enterprises' Motion for Sanctions is DENIED.

CONCLUSION

The Court, having reviewed the Motion to Reconsider and the Cross Motion for Sanctions rules as follows:

1. Malin's Motion for Judicial Notice is DENIED.
2. Malin's Motion to Reconsider as it relates to his Defamation by Implication claim is DENIED.
3. Malin's Motion to Reconsider as it relates to his argument under the Iowa Constitution is DENIED.
4. Lee Enterprises Motion for Sanctions is DENIED at this time.

SO ORDERED



Mark D. Cleve, District Court Judge,
Seventh Judicial District of Iowa

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IN THE IOWA DISTRICT COURT FOR SCOTT COUNTY

Craig Malin,
Plaintiff–Appellant,
v.
Sarah Watson, Deb Anselm, Astrid Garcia, and Lee Enterprises, Inc.,
Defendants–Appellees.

CASE NO. LACE136939

GRANTING THE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT

INTRODUCTION

On May 15, 2025, this case came before the Court on the Defendant's Motion for Summary Judgment, the Plaintiff's Motion for Partial Summary Judgment, and the Defendant's Motion to Strike the Plaintiff's Motion for Partial Summary Judgment. Attorney, Jenny Juehring argued on behalf the Defendants (collectively "Lee Enterprises"). Attorney, John Flynn argued on behalf of Plaintiff, Craig Malin ("Malin"). For the following reasons, the

Court GRANTS Lee Enterprises' Motion for Summary Judgment.

FACTUAL BACKGROUND

"The resignation followed controversy over a deal to grade the lot at the privately owned casino," and "Spiegel was Malin's assistant city administrator from August 2015 through June 2015." These lines appeared in a Quad-City Times ("QC Times") article dated September 3, 2023. Just over a month later, Malin (the former city administrator of the City of Davenport) filed this defamation lawsuit against Lee Enterprises.

This is not Malin's first lawsuit against Lee Enterprises. Twice before, he has litigated against the publisher. The first time because of the QC Times' reporting on Malin's role in the construction of the Rhythm City Casino—reporting which contributed to Malin's departure from his position as the city administrator for the city of Davenport.[1]

[1] See generally *Malin v. Quad-City Times*, 964 N.W.2d 10 (Iowa Ct. App. 2021) (describing Malin's original lawsuit).

The second time because several of Lee Enterprises' newspapers published editorials denouncing Malin's lawsuit against the QC Times.[2]

[2] See generally *Malin v. Lee Enters., Inc.,* 4 N.W.3d 468 (Iowa Ct. App.), cert. denied, 145 S. Ct. 165 (2024) (describing Malin's second lawsuit).

Both of these lawsuits were decided against Malin.

According to Malin, Lee Enterprises' statements in the September 2023 article were false and defamatory for two reasons: (1) Malin did not 'resign' his position with the city of Davenport and (2) Spiegel was not the 'assistant city administrator,' she was the 'assistant to the city administrator.' Malin sues for: (1) False Light Invasion of Privacy, (2) Defamation, and (3) for Injunctive Relief. Malin requests that the Court award damages, grant an injunction, and order Lee Enterprises to append the following note to its September 2023 article:

1) Craig Malin did not hire Corri Spiegel as Assistant City Administrator for the City of Davenport.

2) Craig Malin did not resign from his position as Davenport City Administrator. Malin left the City of Davenport pursuant to a Separation, Succession and Transition agreement, with a laudatory letter signed by every alderman.

Lee Enterprises answered Malin's Petition, then moved for summary judgment. Malin resisted and filed a cross motion for partial summary judgment. Lee Enterprises moved to strike that motion. Because the Court finds that Lee Enterprises is entitled to summary judgment, it DENIES Malin's

Motion for Partial Summary Judgment and Lee Enterprises's Motion to Strike Malin's Motion for Partial Summary Judgment.

DISCUSSION

Malin seeks damages for False Light Invasion of Privacy and Defamation; he also asks the Court for Injunctive Relief.

A. FALSE LIGHT INVASION OF PRIVACY

Malin's first claim is for False Light Invasion of Privacy, this claim arises in the following circumstances:

One who gives publicity to a matter concerning another that places the other before the public in a false light is subject to liability to the other for invasion of his privacy, if (1) the false light in which the other was placed would be highly offensive to a reasonable person, and (2) the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed.[3]

[3] *Bierman v. Weier,* 826 N.W.2d 436, 465 (Iowa 2013).

False Light Invasion of Privacy is often pled as an alternative to Defamation. Like other speech- based torts, the claim implicates the First Amendment to the United States' Constitution.

1. CONSTITUTIONAL STRICTURES

The First Amendment protects speech from government intrusion; therefore, a False Light Plaintiff must overcome several constitutional barriers before he can recover damages:

"[F]alse light" cases are subject to the same constitutional restraints as defamation cases. It is unreasonable to allow a party to evade the standards surrounding defamation law because the plaintiff has pled an alternative theory. In an action such as this, both parties are subject to the restraints of the law of defamation, even if a "false light" action has been pled.[4]

[4] *Jones v. Palmer Commc'ns, Inc.*, 440 N.W.2d 884, 894 (Iowa 1989), disapproved of on other grounds by *Schlegel v. Ottumwa Courier, a Div. of Lee Enters., Inc.,* 585 N.W.2d 217 (Iowa 1998) (internal citations omitted).

The limitations that the Constitution places on Defamation law vary depending on the identity of the plaintiff. If the plaintiff is a private citizen, then the Court needs only consider state law—any quantum of proof greater than strict liability is permissible. If, however, the party alleging defamation is a "public figure," then he must prove "actual malice."[5]

[5] *See Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); See also *Jones v. Palmer Commc'ns, Inc.*, 440 N.W.2d 884, 890–91 (Iowa 1989), disapproved of on other grounds by *Schlegel v. Ottumwa Courier, a Div. of Lee Enters., Inc.*, 585

N.W.2d 217 (Iowa 1998) ("Speech concerning public officials and public figures was still protected by the actual malice requirement. For private plaintiffs, the states were free to interpret state law and apply any level of protection for the defendant below strict liability. *Gertz* also provided that the actual malice standard applied to any award of punitive damages in an action for defamation.")

There are two ways in which a person may qualify as a public figure:

In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.[6]

[6] *Stevens v. Iowa Newspapers, Inc.,* 728 N.W.2d 823, 826 (Iowa 2007)

The question whether a person is a public figure is one that the Court must decide as a matter of law.[7]

[7] § 29:43. Questions for court—Law, 8A American Law of Torts § 29:43 ("It is a question of law for the court whether a plaintiff, within the modern doctrine of constitutional privileges and limitations on recovery for asserted defamation, is a public official or a public figure.");

Rosenblatt v. Baer, 383 U.S. 75, 88 (1966) ("We remark only that, as is the case with questions of privilege generally it is for the trial judge in the first instance to determine whether the proofs show respondent to be a 'public official.'"); see also *Anderson v. Low Rent Hous. Comm'n of Muscatine*, 304 N.W.2d 239 (Iowa 1981) (upholding a Court's determination as a matter of law that the plaintiff was a public figure).

If the Court finds that the plaintiff is a public figure, then, to succeed on his defamation claim, he must demonstrate that the defendant acted with "actual malice."

Actual malice may be found if the plaintiff proves, "that the falsehood was published with knowledge of its falsity or with reckless disregard of whether it was true or false."[8]

[8] *Id.* at 77; see also *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964) ("The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.")

Because Malin's claim fails irrespective of his "public figure" status, the Court will analyze the elements as though he were a private citizen.

In order to succeed on his false light claim, Malin must show: (1) publicity, (2) falsity, (3) malice, and (4) offensiveness.

2. PUBLICITY

The Iowa Supreme Court has adopted the Second Restatement of Torts' definition of publicity. That definition states:

> "Publicity" [for an invasion of privacy claim] means that the matter is made public, by communicating it to the public at large, or to so many persons that the matter must be regarded as substantially certain to become one of public knowledge. The difference is not one of the means of communication, which may be oral, written or by any other means. It is one of a communication that reaches, or is sure to reach, the public.
>
> Thus it is not an invasion of the right of privacy ... to communicate a fact concerning the plaintiff's private life to a single person or even to a small group of persons. On the other hand, any publication in a newspaper or a magazine, even of small circulation, or in a handbill distributed to a large number of persons, or any broadcast over the radio, or statement made in an address to a large audience, is sufficient to give publicity

within the meaning of the term.... The distinction, in other words, is one between private and public communication.[9]

[9] Restatement (Second) of Torts § 652D cmt. a, at 384–85.

Here, Lee Enterprises undoubtedly gave publicity to matters concerning Malin. The QC Times has a wide readership, it published a story referring to Malin by name, and it intended—quite explicitly—to circulate its story to the public.

3. FALSITY

Turning to the second element, if Malin is to succeed on his False Light claim, then he must show falsity.[10]

[10] *Anderson v. Low Rent Hous. Comm'n of Muscatine*, 304 N.W.2d 239, 248 (Iowa 1981) ("The 'false light' variety of invasion of privacy is predicated upon an untruthful publication which places a person before the public in a manner that would be highly offensive to a reasonable person. The essential element of untruthfulness differentiates "false light" from the other forms of invasion of privacy and many times affords an alternate remedy for defamation even though it is not necessary for a plaintiff to prove that he or she was defamed." (Internal citations omitted. Underlining supplied.)).

In defining falsity, the Iowa Supreme Court has stated that, "[t]he statement that the plaintiff must prove false is not the literal wording of the

statement but what a reasonable reader or listener would have understood the author to have said."[11]

[11] *Yates v. Iowa W. Racing Ass'n,* 721 N.W.2d 762, 771 (Iowa 2006).

Here, the statements at issue are: (1) "The resignation followed controversy over a deal to grade the lot at the privately owned casino," and (2) that Malin hired now-former Davenport City Administrator Corrin Spiegel to be his Assistant City Administrator. These are fact statements, meaning that they can be either true or false. If they are false in the relevant sense, then Malin has carried his burden to show falsity and the case may proceed. If, on the other hand, the statements are true—or substantially true—then Malin has not shown falsity and his case must fail.

To qualify as "true," a statement need not be literally and semantically true in every particular; it is enough that the statement is "substantially true." As the Iowa Supreme Court has noted:

> [I]t is no longer necessary for a libel defendant to establish the literal truth of the publication in every detail as long as the "sting" or "gist" of the defamatory charge is substantially true.

The gist or sting of the defamatory charge, according to one court, is "the heart of the matter in question—the hurtfulness of the utterance." *Vachet v. Central Newspapers, Inc.,* 816 F.2d 313, 316 (7th Cir.1987). We determine the gist or sting by "look[ing] at the highlight of the [publication], the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement." Id. (newspaper articles falsely stated plaintiff was arrested on a warrant; method of arrest held immaterial to the truth of defamatory statement that plaintiff was arrested and charged with harboring suspected rapist of an elderly woman).

If the underlying facts as to the gist or sting of the defamatory charge are undisputed, the court may determine substantial truth as a matter of law. In that event, the test, for summary judgment purposes, is whether the plaintiff would have been exposed to any more opprobrium had the publication been free of error. [12]

[12] *Behr v. Meredith Corp*., 414 N.W.2d 339, 342 (Iowa 1987) (some internal citations omitted).

Here, the "gist" of Lee Enterprises article is that Malin was hired as an expert witness to opine on the foreseeability of the Davenport building collapse. The article identifies Malin, it

explores his expert report, and it describes his work experience and his history with the City of Davenport. Because the underlying facts are undisputed, the Court may determine substantial truth as a matter of law. It will take Malin's complaints in turn.

i. MALIN'S OBJECTIONS TO THE SENTENCE, "THE RESIGNATION FOLLOWED CONTROVERSY OVER A DEAL TO GRADE THE LOT AT THE PRIVATELY OWNED CASINO."

With respect to the first statement, Malin objects to two points: first, he asserts that he did not "resign" his position with the City; second, he argues that the "controversy" surrounding the casino is a Potemkin village—a false creation proceeding from Lee Enterprises' brain.

According to Malin, Lee Enterprises use of the term "resignation" in the sentence "The resignation followed controversy over a deal to grade the lot at the privately owned casino," is a false statement. Malin asserts that he did not resign; instead, he "separated" from his employment with the city of Davenport. Malin goes on to state that he specifically insisted that

the City not describe his departure from city government as a resignation, and, therefore, the QC Times and Lee Enterprises' use of the term "resignation" is defamatory. The Court cannot agree.

Black's Law Dictionary defines "resign" as:

To formally announce one's decision to leave a job or an organization <to resign from the army>. 2. To give up or give back (an office, trust, appointment, etc.) to those by whom it was given; to surrender <the officer resigned his commission>. 3. To abandon the use or enjoyment of; to give up any claim to <the monk resigned his inheritance>.[13]

[13] RESIGN, Black's Law Dictionary (12th ed. 2024).

It defines "resignation" as:

The act or an instance of surrendering or relinquishing an office, right, or claim. 2. A formal notification of relinquishing an office or position; an official announcement that one has decided to leave one's job or organization, often in the form of a written statement. 3. Hist. The surrender to the lord of the vassal's interest in land. — resign, vb.[14]

[14] RESIGNATION, Black's Law Dictionary (12th ed. 2024).

The American Heritage Dictionary defines "resign" as:

2. To give up (a position, for example), especially by formal notification. 3. To relinquish (a privilege, right, or claim). See Synonyms at relinquish. v.intr. To give up one's job or office; quit, especially by formal notification: resign from a board of directors.[15]

[15] RESIGN, American Heritage Dictionary (5th ed. 2022).

It defines "resignation" as: "An oral or written statement that one is resigning a position or office: submitted his resignation."[16]

[16] RESIGNATION, American Heritage Dictionary (5th ed. 2022).

Other definitions run in the same vein.

By whichever definition the Court adopts, Lee Enterprises' article is substantially true, and, therefore, Malin cannot show falsity. The simple fact is that Malin did "give up" his position as Davenport City Administrator. Not only did he give up his position, he did so by formal notification i.e. an official written agreement with the city.[17]

[17] Defendant's App. pg. 17–35.

The mere existence of a more precise synonym to describe Malin's departure from city government does not make the QC Times' statements false.

Furthermore, the Court cannot find that Malin, "would have been exposed to any more opprobrium had the publication been free of

error." Malin would not have suffered any additional obloquy had the disputed sentence read, "The separation followed controversy over a deal to grade the lot at the privately owned casino."

Malin's second objection to the first statement is the article's use of the word "controversy." Essentially, Malin argues that the only "controversy" preceding his departure from his position as Davenport City Administrator was created by false reporting from Lee Enterprises' publications. Again, the Court cannot agree.

Black's Law Dictionary defines "controversy" as: "A disagreement or a dispute, esp. in public."[18]

[18] CONTROVERSY, Black's Law Dictionary (12th ed. 2024).

The American Heritage Dictionary, in similar language, defines "controversy" as: "A dispute, especially a public one, between sides holding opposing views."[19]

[19] CONTROVERSY, American Heritage Dictionary (5th ed. 2022).

Here, Lee Enterprises and its publications took one position on the propriety of Malin's arrangements with Rhythm City Casino, Malin took the opposite position. This debate occurred in public. It was a controversy. It does not matter that Lee Enterprises and the QC Times unearthed the controversy—that is often what

reporting does. But even granting the entirety of Malin's theory (that the statement was false and that the controversy was a simulacrum), he would have suffered no greater opprobrium had the sentence been error free. Again, the Court finds that the disputed statement was "substantially true" and, therefore, it cannot be grounds for a claim of False Light Invasion of Privacy.

ii. MALIN'S OBJECTION TO THE STATEMENTS THAT HE HIRED CORRIN SPIEGEL TO BE HIS ASSISTANT CITY ADMINISTRATOR.

Malin next takes exception to Lee Enterprises' report that he, Malin, hired Corrin Spiegel to be his Assistant City Administrator. This statement is false, Malin argues, because Spiegel was the Assistant to the City Administrator. This alleged error is so inconsequential that it may be a scrivener's error. In any event, the omission of a preposition (to) and a definite article (the) in an government title do not go to the "gist" and "sting" of the article.[20]

[20] *Behr v. Meredith Corp.,* 414 N.W.2d 339, 342 (Iowa 1987) ("We determine the gist or sting by "look[ing] at the highlight of the [publication], the pertinent angle of it, and not to items of secondary importance which are inoffensive details, immaterial to the truth of the defamatory statement." *Id.* (newspaper articles falsely stated plaintiff

was arrested on a warrant; method of arrest held immaterial to the truth of defamatory statement that plaintiff was arrested and charged with harboring suspected rapist of an elderly woman)."

Simply put, the alleged error is not the sort of "falsity" with which a False Light claim is concerned. Moreover, were the sentence error free, no more opprobrium would accrue to Malin's account.

4. MALICE

A False Light plaintiff must show not only that the Defendant published false claims, but also that "the actor had knowledge of or acted in reckless disregard as to the falsity of the publicized matter and the false light in which the other would be placed." Here, Malin has not shown that Lee Enterprises published false statements. Consequently, he cannot show malice.

5. OFFENSIVENESS

A False Light Plaintiff may recover if and only if the objectionable statement "would be highly offensive to a reasonable person." In defining offensiveness, the Second Restatement of Torts creates a spectrum: on the one side, if a statement contains only minor errors, then the Plaintiff will not be able to recover; on the other side, if the statement contains major misrepresentations as to the Plaintiff's history or

character, then the Plaintiff may be able to recover.[21]

[21] Restatement (Second) of Torts § 652E Cmt. C (1977)

In this case, taking Malin's claims in their best light, Lee Enterprises' mistakes amount to nothing more than minor errors. No reasonable person would be highly offended by the use of "resignation" instead of "separation," or by the use of "Assistant City Administrator" instead of "Assistant to the City Administrator." These mistakes, minor as they are, cannot be highly offensive.

Malin fails in this case to raise a genuine issue of material fact as to falsity, malice, and offensiveness. Therefore, the Court GRANTS Lee Enterprises' Motion for Summary Judgment as to Malin's False Light claim.

B. DEFAMATION

As an alternative to his False Light claim, Malin accuses Lee Enterprises of Defamation.

A trial court's initial task in a defamation action is to decide whether the challenged statement is "capable of bearing a particular meaning, and whether that meaning is defamatory." Restatement (Second) of Torts § 614(1) (1977); see also *Levy v. Am. Mut. Liability Ins. Co.*, 196 A.2d 475, 476 (D.C.1964) ("It is only when the court can say that the publication is not reasonably capable of any defamatory meaning

and cannot be reasonably understood in any defamatory sense that it can rule, as a matter of law, that it was not libelous.").[22]

[22] *Yates v. Iowa W. Racing Ass'n,* 721 N.W.2d 762, 771–72 (Iowa 2006).

As noted above, the First Amendment restricts the scope of Defamation claims. The limitations that the Constitution places on Defamation law vary depending on the identity of the plaintiff. If the plaintiff is a private citizen, then the Court needs only consider state law—any quantum of proof greater than strict liability is permissible. If, however, the party alleging defamation is a "public figure," then he must prove "actual malice."[23]

[23] See *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 342 (1974); See also *Jones v. Palmer Commc'ns, Inc.,* 440 N.W.2d 884, 890–91 (Iowa 1989), disapproved of on other grounds by *Schlegel v. Ottumwa Courier, a Div. of Lee Enters., Inc.,* 585 N.W.2d 217 (Iowa 1998) ("Speech concerning public officials and public figures was still protected by the actual malice requirement. For private plaintiffs, the states were free to interpret state law and apply any level of protection for the defendant below strict liability. Gertz also provided that the actual malice standard applied to any award of punitive damages in an action for defamation.")

There are two in which a person may qualify as a public figure:

In some instances an individual may achieve such pervasive fame or notoriety that he becomes a public figure for all purposes and in all

contexts. More commonly, an individual voluntarily injects himself or is drawn into a particular public controversy and thereby becomes a public figure for a limited range of issues. In either case such persons assume special prominence in the resolution of public questions.[24]

[24] *Stevens v. Iowa Newspapers, Inc.*, 728 N.W.2d 823, 826 (Iowa 2007)

The question whether a person is a public figure is one that the Court must decide as a matter of law.[25]

[25] § 29:43. Questions for court—Law, 8A American Law of Torts § 29:43 ("It is a question of law for the court whether a plaintiff, within the modern doctrine of constitutional privileges and limitations on recovery for asserted defamation, is a public official or a public figure."); *Rosenblatt v. Baer*, 383 U.S. 75, 88 (1966) ("We remark only that, as is the case with questions of privilege generally it is for the trial judge in the first instance to determine whether the proofs show respondent to be a 'public official.'"); see also *Anderson v. Low Rent Hous. Comm'n of Muscatine*, 304 N.W.2d 239 (Iowa 1981) (upholding a Court's determination as a matter of law that the plaintiff was a public figure).

If the Court finds that the plaintiff is a public figure, then, to succeed on his defamation claim, he must demonstrate that the defendant acted with "actual malice."

Actual malice may be found if the plaintiff proves, "that the falsehood was published with knowledge of its falsity or with reckless disregard of whether it was true or false."[26]

[26] *Id*. at 77; see also *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964) ("The constitutional guarantees require, we think, a federal rule that prohibits a public official from recovering damages for a defamatory falsehood relating to his official conduct unless he proves that the statement was made with 'actual malice'—that is, with knowledge that it was false or with reckless disregard of whether it was false or not.").

Because Malin's claim fails irrespective of his "public figure" status, the Court will analyze the elements as though he were a private citizen. So, in order to succeed on his Defamation claim, Malin must make out a prima facie case of the following: "(1) publication, (2) of a defamatory statement, (3) which was false and (4) malicious, (5) made of and concerning the plaintiff, (6) which caused injury."[27]

[27] *Bierman v. Weier*, 826 N.W.2d 436, 443 (Iowa 2013).

There is no doubt that the first and fifth elements support Malin: it is clear that Lee Enterprises published an article of and concerning him. However, on the remaining elements (defamatory nature, falsity, malice, and injury) Malin's case falls flat.

1. DEFAMATORY NATURE

The Court must first determine whether the disputed statement had a defamatory meaning: "A communication is defamatory if it tends so to harm the reputation of another as to lower him in the estimation of the community or to deter third persons from associating or dealing with him."[28]

[28] Restatement (Second) of Torts § 559 (1977).

Here, Malin has not shown that the statement is defamatory. The statement that Malin "resigned" after "controversy" does not, without more, harm his reputation or deter other parties from associating with him—neither does the statement that Malin hired Corrin Spiegel to be his "Assistant City Administrator."

2. FALSITY

As noted above, the Court finds that Malin has not shown that the disputed statements were false, thereby failing to overcome Lee Enterprises "substantial truth" defense.

3. MALICE

A Defamation plaintiff must show not only that the Defendant published false claims, but also that the publication was with "malice." "To show malice, there must be an intent to inflict harm through falsehood. Actual antagonism or contempt has been held insufficient to show malice."[29]

[29] *Jones v. Palmer Commc'ns, Inc.*, 440 N.W.2d 884, 894 (Iowa 1989), disapproved of on other grounds by *Schlegel v. Ottumwa Courier, a Div. of Lee Enters., Inc.,* 585 N.W.2d 217 (Iowa 1998).

Here, Malin cannot show malice because Lee has not published false statements. But even assuming for the sake of argument that the statements are false, Malin has not marshalled any evidence that Lee Enterprises acted with

any intent to harm him. Indeed, had Lee Enterprises wanted to damage Malin's reputation, it could have used more pointed language and made more ludicrous claims.

4. INJURY

Finally, Malin fails to show any injury. At the hearing, he suggested that employers may be less willing, because of Lee Enterprises' reporting, to hire him. Malin's argument is little more than speculation. He provided no affidavit from a potential employer who was warned away by Lee Enterprises' reporting. He provided no chart demonstrating a loss of income or any other cognizable damages.

C. INJUNCTIVE RELIEF

Because the Court GRANTS the Defendants' Motion for Summary Judgment, Malin is not entitled to Injunctive Relief.

CONCLUSION

Part of the First Amendment's purpose is to stand as a bulwark, protecting people's freedom to speak and write without fear of government oversight. Malin's suit invites the Court to overstep that bulwark and act as Lee Enterprises' copy editor. The Court declines that invitation. For the reasons stated above, the Court GRANTS the Defendants' Motion for Summary Judgment in its entirety, and it

DENIES Malin's Partial Motion for Summary Judgment.

SO ORDERED

State of Iowa Courts

Case Number	Case Title
LACE136939	MALIN CRAIG VS LEE ENTERPRISES INC

Type: ORDER FOR JUDGMENT

So Ordered

Mark D. Cleve, District Court Judge,
Seventh Judicial District of Iowa

Electronically signed on 2025-06-04 11:52:28

Record Documents

Verbatim text of page 8 of September 11, 2022, District Court for Scott County Ruling on Parties' Cross Motions for Summary Judgment in Case LACE132888 (granting Lee's motion for summary judgment relative to 2019 publications) [Malin SJ App. D0072, pg. 103]

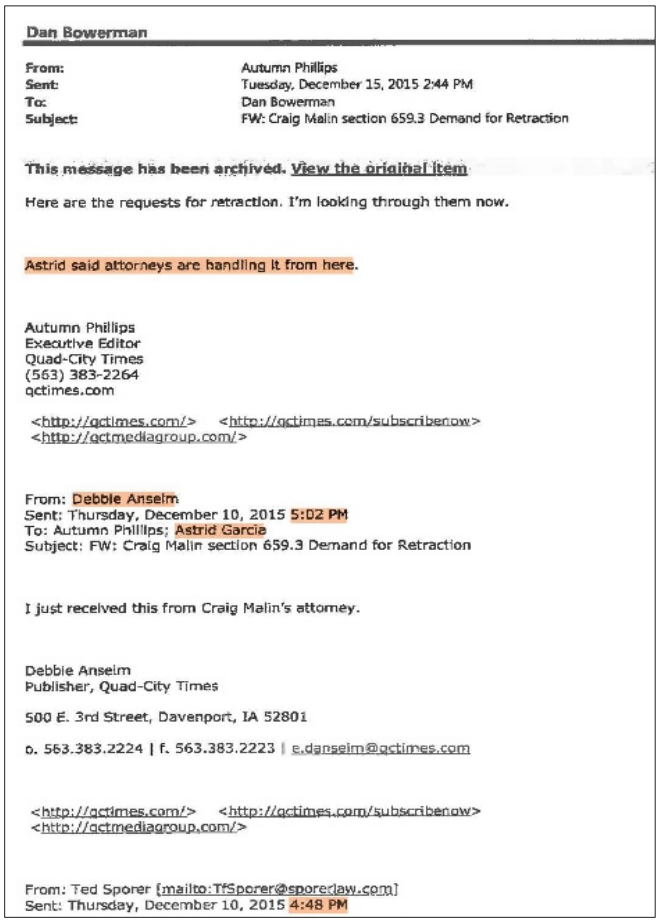
…"burden reporting was already decided as a necessary and essential issue: the prior ruling on summary judgment and the jury's general verdict on Plaintiff's claim for tortious interference. Upon review of the Court's prior summary judgment, the Court finds that the truth or falsity of the taxpayer burden reporting was a crucial fact in the Court's prior summary judgment ruling on Plaintiff's previous defamation case. The determination of the truth or falsity of those taxpayer burden claims was not subsidiary to Plaintiff's case, rather, the determination was the very heart of Plaintiff's legal claims. Petition at Law and Jury Demand, p. 2-8, 9-19, 21, 23-25, 27, 29, 31, Malin No. LACE129075 (EDMS). However, the determination of the truth or falsity of that issue was not essential to the Court's resolution of Plaintiff's claim. Rather, the Court dismissed Plaintiff's petition on the grounds that

Plaintiff had not proved reputational harm. Id. at p. 21.

The issue was likewise not definitively settled by the general jury verdict in that case. See e.g. *In re Richardson's Estate*, 93 N.W.2d 777, 782 (Iowa 1958) ("In view of the general verdict of the jury in favor of defendant we are unable to determine as to what issues were given special consideration by the jury; whether one or all of the issues involved produced determination of the case in favor of defendant"). The Iowa Court of Appeals specifically noted that the jury "either found that Malin failed to prove the falsity of the defendant's statements…or found the defendants were entitled to First Amendment protections." Malin, 2021 WL 1399837 at *3. As the Court can find no certainty as to which of these issues the jury found in favor of the defendants, "the whole subject-matter" of those two issues is "at large." Richardson, 93 N.W.2d at 784. Thus, issue preclusion does not apply as to the truth or falsity of Defendants' taxpayer burden claims.

The Court now considers claim preclusion. "Claim preclusion is 'based on the principle that a party may not split or try his claim piecemeal …. A party must litigate all matters growing" …

Dec. 2015 Lee Enterprises "attorneys are handling it from here" email [Malin SJ App. D0072, pg. 143]



Dan Bowerman

From: Autumn Phillips
Sent: Tuesday, December 15, 2015 2:44 PM
To: Dan Bowerman
Subject: FW: Craig Malin section 659.3 Demand for Retraction

This message has been archived. View the original item

Here are the requests for retraction. I'm looking through them now.

Astrid said attorneys are handling it from here.

Autumn Phillips
Executive Editor
Quad-City Times
(563) 383-2264
qctimes.com

<http://qctimes.com/> <http://qctimes.com/subscribenow>
<http://qctmediagroup.com/>

From: Debbie Anselm
Sent: Thursday, December 10, 2015 5:02 PM
To: Autumn Phillips; Astrid Garcia
Subject: FW: Craig Malin section 659.3 Demand for Retraction

I just received this from Craig Malin's attorney.

Debbie Anselm
Publisher, Quad-City Times

500 E. 3rd Street, Davenport, IA 52801

o. 563.383.2224 | f. 563.383.2223 | e.danselm@qctimes.com

<http://qctimes.com/> <http://qctimes.com/subscribenow>
<http://qctmediagroup.com/>

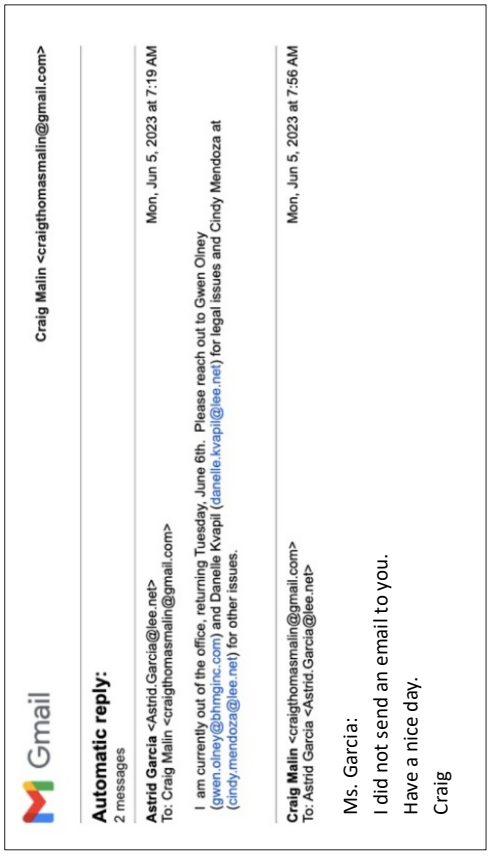
From: Ted Sporer [mailto:TfSporer@sporerlaw.com]
Sent: Thursday, December 10, 2015 4:48 PM

Verbatim text of Lee's Feb. 2025 Response to Malin's SUMF [Lee SUMF Resp. D0054 ¶92]

"92. In an apparent attempt to maintain strict corporate control of Lee Enterprises' years-spanning corporate cover-up, Garcia appears to be intercepting emails from Malin to Lee Enterprises employees. Malin discovered this by accident, receiving multiple "Out of Office" emails directly from Garcia on what appear to be multiple days off for Garcia, moments after sending emails to Lee Enterprises employees. App. 185 - 187.

RESPONSE: Defendants admit that due to the threatening and harassing nature of Malin's continuous communications directed to Lee Enterprises employees that his emails are directed to Lee Enterprises' counsel. Defendants deny the remaining allegations in paragraph 92 because Malin does not cite to "those parts of the pleadings, depositions, answers to interrogatories, admissions on file and affidavits which support such contentions." Iowa R. Civ. P. 1.981(8). Defendants further deny paragraph 92 contains a material fact for purposes of summary judgment."

Astrid Garcia Out of Office
Auto Reply Screenshots
[Malin SJ App. D0072, pg. 185, 186]



Gmail — Craig Malin <craigthomasmalin@gmail.com>

Automatic reply:
2 messages

Astrid Garcia <Astrid.Garcia@lee.net> — Mon, Jun 5, 2023 at 7:19 AM
To: Craig Malin <craigthomasmalin@gmail.com>

I am currently out of the office, returning Tuesday, June 6th. Please reach out to Gwen Olney (gwen.olney@bhmginc.com) and Danelle Kvapil (danelle.kvapil@lee.net) for legal issues and Cindy Mendoza at (cindy.mendoza@lee.net) for other issues.

Craig Malin <craigthomasmalin@gmail.com> — Mon, Jun 5, 2023 at 7:56 AM
To: Astrid Garcia <Astrid.Garcia@lee.net>

Ms. Garcia:

I did not send an email to you.

Have a nice day.

Craig

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Gmail

Craig Malin <craigthomasmalin@gmail.com>

Automatic reply: Letter To Editor

2 messages

Astrid Garcia <Astrid.Garcia@lee.net> Mon, Jan 1, 2024 at 11:07 AM
To: Craig Malin <craigthomasmalin@gmail.com>

I am currently out of the office, returning Thursday, January 4th. Please reach out to Gwen Olney (gwen.olney@bhmginc.com) and Danelle Kvapil (danelle.kvapil@lee.net) for legal issues and Cindy Mendoza at (cindy.mendoza@lee.net) for other issues.

Juehring, Jenny <JJuehring@l-wlaw.com> Mon, Jan 1, 2024 at 11:07 AM
To: Craig Malin <craigthomasmalin@gmail.com>

Thank you for your email. I am out of the office on maternity leave. I will periodically check my emails. If you need immediate assistance, please contact my legal assistant, Allie Melton, at (563) 324-3246, or amelton@l-wlaw.com.

Page 5 of Lee's Feb. 2025 Sup. Appendix
[Lee Sup. App. D0052, pg. 5]

Found by Lee counsel on Malin's website in 2025



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53 THINGS I'VE LEARNED

(/53-things-I-have-learned/)

SIFTINGS

(/siftings/) SEE ALL SIFTINGS ›

Feb 14

SWOONAGE

unspeakably lithe
037s vs. those
cheating audi
quattro bastards
sultry 80s synth
the greatest four

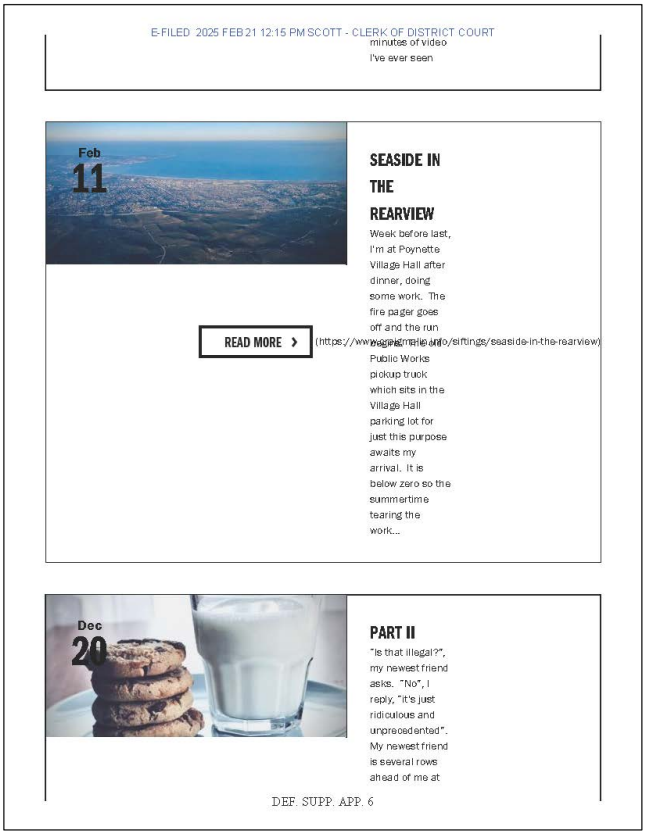
READ MORE ›

(http://www.craigmalin.info/siftings/swoonage)

DEF. SUPP. APP. 5

Page 6 of Lee's Feb. 2025 Sup. Appendix
[Lee Sup. App. D0052, pg. 6]

Found by Lee counsel on Malin's website in 2025



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minutes of video
I've ever seen

Feb
11

SEASIDE IN THE REARVIEW

Week before last, I'm at Poynette Village Hall after dinner, doing some work. The fire pager goes off and the run [illegible] to Public Works pickup truck which sits in the Village Hall parking lot for just this purpose awaits my arrival. It is below zero so the summertime tearing the work...

READ MORE ›

(https://www.malinmedia.info/siftings/seaside-in-the-rearview)

Dec
20

PART II

"Is that illegal?", my newest friend asks. "No", I reply, "it's just ridiculous and unprecedented". My newest friend is several rows ahead of me at

DEF. SUPP. APP. 6

Page 20 of Lee's Feb. 2025 Sup. Appendix [Lee Sup. App. D0052, pg. 20]

The end of 18 pages found by Lee counsel on Malin's website in 2025

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PEOPLE, PROGRAMS, POLICIES & PROJECTS (cont.)

management system to coordinate the effort. • **No Fault Sewer Program:** Easy. Just call. • **Harassment Policy & Training:** Zero tolerance, and regular organization-wide training. • **Three Assistants Become Administrators:** Dee, Redmond and Tanisha move on, we reload with Corri. • **Fire Training Center:** Esprit de corps lives and breathes under the name of a man who defined it. • **Indoor Firing Range & Auditorium:** Training matters. Make it accessible. • **Greensheets Evolve:** They become whites as we shrink staff, and then iPad pdfs as we continue the shrinkage. Malin fights the good fight for papyrus. • **Neighborhood Coordinator & Recognition Program:** A great city is built from strong neighborhoods. Let's support them. • **Credit Island Bridge:** Value engineered to match grant funding, and still elegant. • **Mississippi Plaza:** First new downtown office building in more than 20 years. • **Taylor School:** Building gets new life, with some tenants living their golden years in the school they went to as kids. • **Mobile Data Terminals & Radio Conversion:** The bad guys have tools. The good guys need tools at least as good. • **Fleet Efficiency:** Hybrids, electrics, turbo V6s instead of V8s... • **Downtown Recycling Center:** Downtown is a happening neighborhood. Happening neighborhoods recycle. • **Culture, Codified:** Every organization has a culture. Ours is in writing. • **Junior Theater Renaissance:** Theater upgrades and new leadership refreshes the beloved brand. • **Storm Ready Status:** Davenport, first of the Quads. • **Real E-Mail & Office Automation Software:** I just refused to use the cumbersome legacy software. The organization followed. • **Marycrest:** Closed university becomes senior housing. • **Bio Swales, etc.:** Behind City Hall and elsewhere, better stormwater management through native landscapes. Swear to God, I once saw a beaver running to the tracks from the City Hall swale. • **Community Action Initiative:** How do we get better? We focus on the positive, and do more of it. • **Risk Management:** Internal Risk Division reduces expenses, focuses on safety. • **Beat Re- Alignment / Shift Overlap / Work Hours Change:** Who moved the bad guys' cheese? PD did. • **HAPPEN Program:** Turning abandoned houses into homes again. • **QCIC:** Federal grant connects all QC public safety answering points. • **Improved Tuition Reimbursement:** Expand your horizons. Work smarter. Be different, because the future will be different. • **Expansion of Park Seasonal Employees:** It's a seasonal product line, with a workforce that now matches. • **Mobile Playground:** Fire rig gets new life. • **Zoo:** Not even close to a core competency, and the animals are better off with better care. • **Downtown Bakery!:** Oh So Sweet Rules. • **Central Fire Renovation:** Oldest active fire station west of the Mississippi getting a forward looking adjunct, and a faithful restoration. • **Brick Laying Machine:** Genius PW invention, bringing the most long-lived streets back to Davenport. • **Credit Island Lodge Reconstruction:** A resilient island gets its flood resilient landmark. • **Fiber Study:** What policy approach best leverages our fiber optic network? Soon to determined. • **Davenport Today Communications Platform:** Davenport leads in openness. By a wide margin. Looks great, too. • **River80 Reinvestment District:** More than a year of hurdles ends with $10.75 million in state assistance. We plan the only "two-fer" in the state, with $4 to $5 million in hotel tax from the reinvestment district flowing to the riverfront. • **Accessible Ferris Wheel Gondola:** Be at the ballpark July 13 (oh, so close). Watch Davenport lead the way again, with help from the RiverBandits and Genesis.

NEAR MISSES...

• **Pushpin:** No public cost whimsy meets negative media. Media licks its chops, and devours whimsy whole. • **Davenport Promise:** Planting the seed that a 19th century invention (12th grade) may not be up to the rigors of the 21st century. • **I3 Grant:** Watering the seed, which later sprouts into DCSD's dual graduation program when Dr. Tate arrives. Go Dr. Tate! • **Casino Ownership:** Dubuque and Polk County own casinos, and lower taxes with them. Lower Davenport taxes neither believed by some nor appreciated by others, and critique is unrelenting from the unappreciative camp. At least we break the Scott County casino monopoly and get nine acres of riverfront back. • **Red DFD Raptors & White & Black DPD Boss 302s:** A gearhead can dream...

Page 21 of Lee's Feb. 2025 Sup. Appendix
[Lee Sup. App. D0052, pg. 21]

The start of 62 pages not found by Lee counsel on Malin's website in 2025

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A SHORT STORY by Craig Malin

There once was a quaint riverboat casino in Davenport, Iowa. Approved by referendum in 1991, it would go on short cruises and return to dock. Over the years, however, the quaint riverboat morphed into a nasty moored barge, blighting Davenport's riverfront.

In June of 2014 while I was Davenport City Administrator, the casino was compelled to get rid of the nasty barge and build a new, land-based facility next to Interstate 80. In doing so, the City required the casino to design, build and pay for $13+ million of infrastructure, including a road that opened 225 acres to new commercial taxbase. The City established a tax increment financing (TIF) district so the casino, and only the casino, would pay for the project, with millions each year in new revenue for Davenport taxpayers. With the casino building the new road, I then landed a $10.75 million State grant for a sports tourism district to be built on the road, with 900+ new jobs. With hundreds of new jobs on the way, the barge leaving and millions in new annual revenue benefitting taxpayers, all was good.

All was good until June of 2015, when the Quad City Times needed some scandalous news, so they made some up. In a secret email on June 18, 2015, the editorial page editor told a reporter what he had drafted about the casino road project was "Dull" and "NOT" news. The editorial page editor went on to tell the reporter it would be "News" if he reported what the editorial page editor told him to, and the reporter did just that. That may be hard to believe since it is contrary to the basic journalism principle that news is separate from opinion, but opinion writers at the Quad City Times literally told a reporter what to report, and he did. The Quad City Times falsely claimed the project cost $7.8 million instead of $13 million, with $5 million of taxpayer funds unaccounted for and given to the casino, blaming me. That's false, and they know it. The reporter, who wanted a "juicy" story which he would later submit for an award, falsely reported the project cost $7.8 million even though he had previously reported multiple times it cost $13 million and was being paid for by the casino. There's documentation for all of that, and the Quad City Times' $900 million parent corporation Lee Enterprises (headquartered in Davenport) knows it.


Dull.

The fact is the new commercial arterial the casino built and paid for at the intersection of Interstates 80 and 74 is a cash cow for taxpayers. Anyone can go to the City of Davenport, Scott County, Iowa Racing & Gaming Commission and Regional Development Authority websites, add up taxes the casino and other businesses on the road have paid, and find they exceed $80 million. In fact, the new land-based casino is now the #1 commercial property tax payer in the city. Facts are stubborn things, and the facts are the Quad City Times told two different stories in 2015. As the next page outlines, both before and after June they reported the project cost $13 million or more and was being paid for by the casino. But in June, they told a different and wildly false story about the project costing less than $8 million, implying and asserting millions of public funds were unaccounted for and provided to the casino. That ain't true. But that didn't stop them from printing it, or refusing to correct it, or the reporter from submitting his articles for an investigative journalism award.

Top Ten Taxpayers

Taxpayer Entity	Business Service	Taxable Valuation
MidAmerican Energy	Utility	$ 43,653,274
Rhythm City Casino LLC	Commercial	$41,757,127
Iowa American Water Company	Utility	[illegible]
Macerich North Park Mall LLC	Shopping Center	$33,133,180
John Deere Construction	Commercial	$28,150,784
TIF Source of North Development	Commercial	$24,641,161
Putnam Landlord LLC	Commercial	$21,430,297
Deere & Company	Manufacturing	$20,184,275
Menards Inc	Commercial	$19,540,193
Telo Texas LLC	Commercial	$17,375,471
Totals		$441,966,343