No. 109463

IN THE
SUPREME COURT OF ILLINOIS

WRIGHT DEVELOPMENT GROUP, LLC a limited liability company,	)	**Appeal from the Appellate Court, First Judicial District**
Plaintiff-Appellee,	)	**No. 08-2783**
v.	)	
JOHN WALSH, an individual,	)	**There heard on Appeal from the Circuit Court of Cook County, Illinois The Honorable Thomas P. Quinn Trial Judge**
Defendant-Appellant,	)	
PIONEER NEWSPAPER, INC., a Delaware corporation d/b/a NEWS STAR; and SUN-TIMES MEDIA GROUP, INC., a Delaware corporation,	)	**No. 07 L 10487**
Defendants.	)	

BRIEF OF CITIZEN MEDIA LAW PROJECT, PUBLIC PARTICIPATION PROJECT, ONLINE NEWS ASSOCIATION, AND CHICAGO CURRENT AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT JOHN WALSH

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POINTS AND AUTHORITIES

BRIEF OF CITIZEN MEDIA LAW PROJECT, PUPLIC PARTICIPATION PROJECT, ONLINE NEWS ASSOCIATION, AND CHICAGO CURRENT AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT JOHN WALSH

STATEMENT OF INTEREST

As described more fully in the accompanying Motion of Citizen Media Law Project, Public Participation Project, Online News Association, and Chicago Current for Leave to File Brief as *Amici Curiae*, Citizen Media Law Project, Public Participation Project, Online News Association, and Chicago Current (collectively, "*Amici*") include media and related professional and advocacy organizations located in Illinois and throughout the United States that have an interest in protecting freedom of speech and citizen participation in government. In furtherance of that goal, *Amici* seek to ensure that the Illinois Citizen Participation Act (735 ILCS 110/1 *et seq.*) (the "CPA") – which is designed to combat "strategic lawsuits against public participation" or "SLAPP" suits – serves its purposes to protect citizens' rights to free expression and to deter baseless lawsuits that threaten public participation. *Amici* urge the Court to hold that unless defendant-appellant John Walsh ("Walsh") is given a full opportunity to vindicate his rights under the CPA, the CPA's important purposes will be thwarted.

BACKGROUND[1]

This case involves precisely the type of speech the Illinois General Assembly intended to protect when it passed the CPA. The underlying defamation suit brought by Wright Development Group, LLC ("Wright Development") concerns statements that Walsh made while attending a public forum convened by a Chicago alderman to

[1] *Amici* rely primarily upon the submissions of Walsh for a detailed recitation of the facts and procedural history and provide herein a brief summary of facts relevant to the arguments set forth herein.

determine the need for government action to confront problems with local developers and contractors. Walsh spoke with a reporter while at the forum, and some of his comments were published in a newspaper.

Wright Development sued Walsh, the newspaper, and its publishers, claiming that Walsh's comments constituted defamation *per se*. Walsh and the other defendants responded with motions to dismiss under 735 ILCS 5/2-615, and Walsh thereafter filed a motion to dismiss under the CPA. The trial court, after limited discovery and a hearing, denied Walsh's motion to dismiss under the CPA, apparently because the statements at issue were made to a reporter and not to the alderman or her representatives. Walsh filed an interlocutory appeal (in accordance with the CPA), and — while that appeal was pending — the trial court granted Walsh's motion to dismiss under 735 ILCS 5/2-615. The intermediate appellate court then entered an order finding Walsh's appeal of his motion under the CPA moot, reasoning that because Walsh "has already obtained the relief he sought, any action by this court would constitute an advisory opinion." *Wright Dev. Group, LLC. V. Walsh*, No. 1-08-2783 (Ill. App. Ct. Sept. 29, 2009).

While seemingly procedural in nature, this case goes to the heart of the policy motivations behind the CPA. *Amici* urge this Court to recognize in practice what the statutory language makes plain: the CPA protects speech such as Walsh's in this case and provides for procedures and remedies distinct from those available through a successful motion to dismiss under 735 ILCS 5/2-615 in cases where plaintiffs seek to chill such speech. Decisions effectively denying access to the fee-shifting provisions of the CPA should be reviewable regardless of whether the underlying case has been dismissed on alternate grounds.

ARGUMENT

I. The Citizen Participation Act's remedies are essential to deterring frivolous lawsuits that would otherwise chill protected speech and petitioning activities.

A. The history and purposes of Anti-SLAPP laws underscore the importance of fee-shifting provisions.

The term SLAPP was coined to refer to suits brought against private parties or organizations who, through speech or other expressive conduct, seek to influence the decisions of a public entity. *See generally* George W. Pring and Penelope Canan, *SLAPPs: Getting Sued for Speaking Out* (1996). Many SLAPPs are not litigated through to judgments, and many SLAPP plaintiffs would not prevail on the merits.[2] Rather, such suits are intended to chill the defendants' exercise of their rights to free speech through the cost and stress of litigation. In addition to draining the resources of both their targets and the judicial system, the threat of SLAPPs discourages vigorous public discourse. Many of those targeted "will never again participate freely and confidently in the public issues and governance of their town, state, or country." *Id.* at 3.

Nearly thirty states have recognized the threats posed by SLAPPs and enacted some form of Anti-SLAPP legislation.[3] Most of these laws provide specialized

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[2] In one study of 228 SLAPP cases, 77% of cases were won in court by the defendants. This number may be artificially depressed by those cases in which defendants settled meritless claims to avoid the costs of further litigation. George W. Pring and Penelope Canan, *Strategic Lawsuits Against Public Participation: An Introduction for Bench, Bar and Bystanders*, 12 Bridgeport L. Rev. 937, 944 n.17 (1992).

[3] Ariz. Rev. Stat. Ann. §§ 12-751 to -752 (2010); Ark. Code Ann. §§ 16-63-501 to -508 (West 2010); Cal. Civ. Proc. Code § 425.16 (West 2010); Del. Code Ann. tit. 10, §§ 8136-8138 (2010); Fla. Stat. Ann. §§ 768.295, 720.304 (West 2010); Ga. Code Ann. § 9-11-11.1 (2010); Haw. Rev. Stat. §§ 634F-1 to -4 (2010); 735 Ill. Comp. Stat. Ann. 110/1-99 (West 2010); Ind. Code Ann. §§ 34-7-1-1 to -10 (West 2010); La. Code Civ. Proc. Ann. art. 971 (2010); Me. Rev. Stat. Ann. tit. 14, § 556 (2010); Md. Code Ann., Cts. & Jud. Proc. § 5-807 (West 2010); Mass. Gen. Laws ch. 231, § 59H (2010); Minn.

procedures by which a SLAPP defendant can move to dismiss a case at an early stage in the litigation, stay discovery pending the disposition of the motion, and seek expedited review.

If an Anti-SLAPP motion is successful, most states allow the defendant to recover attorneys' fees and costs from the SLAPP plaintiff.[4] Fee-shifting provisions are central to Anti-SLAPP laws, and scholars and practitioners alike have acknowledged the compelling policy interests underlying them. "[T]he evil of a SLAPP suit," writes San Francisco lawyer Jerome Braun, "is accomplished by its very pendency, with the accompanying threat of ruinous recovery and need for costly and distracting defense." Jerome I. Braun, *Increasing SLAPP Protection: Unburdening the Right of Petition in California*, 32 U.C. Davis L. Rev. 965, 994 (1999). A fee-shifting provision not only "leaves the target less threatened and freer to resist," *id.* at 997, it deters the SLAPP filer from bringing a frivolous suit in the first place. *See* Marnie Stetson, *Reforming SLAPP Reform: New York's Anti-SLAPP Statute*, 70 N.Y.U. L. Rev. 1324, 1342 (1995) ("If the filer knows . . . that upon resolution of the case, she might face an economic penalty greater than the potential economic benefits of silencing the opposition by SLAPPing, then that penalty could pose an effective deterrent."). Consequently, "[i]f courts are

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Stat. §§ 554.01-.05 (2010); Mo. Rev. Stat. § 537.528 (2010); Neb. Rev. Stat. §§ 25-21,241-246 (2010); Nev. Rev. Stat. Ann. §§ 41.635-.670 (West 2010); N.M. Stat. Ann. §§ 38-2-9.1, 38-2-9.2 (West 2010); N.Y. Civ. Rights Law §§ 70-a, 76-a (McKinney 2010), N.Y. C.P.L.R. 3211(g), 3212(h) (McKinney 2010); Okla. Stat. Ann. tit. 12, § 1443.1 (West 2010); Or. Rev. Stat. §§ 31.150-.155 (2010); 27 Pa. Cons. Stat. Ann. §§ 7707, 8301-05 (West 2010); R.I. Gen. Laws § 9-33-1 to -4 (2010); Tenn. Code Ann. §§ 4-21-1001 to -1004 (West 2010); Utah Code Ann. §§ 78B-6-1401 to -1405 (West 2010); Vt. Stat. Ann. tit. 12, § 1041 (2010); Wash. Rev. Code Ann. § 4.24.500-520 (West 2010).

[4] State Anti-SLAPP statutes vary as to whether the fee award is mandatory or discretionary.

willing to use their discretionary powers broadly and are quick to award fees in countersuits by the targets, SLAPP suits may become less appealing to file and less onerous to defend." Dwight H. Merriam & Jeffrey A. Benson, *Identifying and Beating a Strategic Lawsuit Against Public Participation*, 3 Duke Envt'l L. & Pol'y F. 17, 33 (1993).

B. The Citizen Participation Act's fee-shifting provisions are essential to achieving its objectives.

The General Assembly enacted the CPA in 2007 to confront the growing problem of SLAPP cases in Illinois. The accompanying public policy statement acknowledged "a disturbing increase" in SLAPPs. Legislators observed that "[t]he threat of SLAPPs significantly chills and diminishes citizen participation in government, voluntary public service, and the exercise of these important constitutional rights." 735 ILCS 110/5.

The CPA provides several specialized mechanisms meant to ease the burden of defending against SLAPPs. These mechanisms include a 90-day time limit for hearing and decision, expedited review, and a stay of discovery pending disposition of the motion. 735 ILCS 110/20. In addition, the CPA provides for the mandatory award of "reasonable attorney's fees and costs incurred in connection with the motion" if successful. 735 ILCS 110/25. This mandatory award of fees contrasts with discretionary awards available in several other states[5] and underscores the importance the Illinois General Assembly placed on fee-shifting as a financial deterrent to frivolous and socially destructive litigation.

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[5] *E.g.*, Me. Rev. Stat. Ann. tit. 14, § 556 (2010); Neb. Rev. Stat. §§ 25-21, 241-246 (2010); N.Y. Civ. Rights Law §§ 70-a, 76-a (McKinney 2010).

The General Assembly intended that the CPA be construed broadly to deter abusive litigation. In introducing the bill for debate, its sponsor, Representative Jack Franks, told the story of two of his constituents who "were sued by a developer, threatened with bankruptcy, not being able to pay their legal fees, even though the . . . developer's lawsuit was thrown out on three separate occasions." 95th Ill. Gen. Assem., House Proceedings, May 31, 2007. Representative Franks specifically stated that the bill "would stop [that] type of abuse." *Id.*

The CPA cannot perform this deterrent function without adequate appellate review of decisions effectively denying an award of attorneys' fees. If the denial of a motion or award of fees under the CPA cannot be reviewed after the case itself is dismissed or otherwise resolved, the very problem identified by Representative Franks as the motivation behind the CPA will go unaddressed.

II. The Citizen Participation Act's purposes will be thwarted if a defendant is not granted full adjudication of his or her fee claim.

Although this Court has not yet addressed the question of whether the attorneys' fees provisions in the CPA are central to its purpose, the highest courts in many other states have affirmed that attorneys' fees provisions are crucial to the effectiveness of their states' Anti-SLAPP statutes. *E.g.*, *Ketchum v. Moses*, 24 Cal. 4th 1122, 1131 (2001) (the California Anti-SLAPP statute is "intended to discourage such strategic lawsuits against public participation by imposing the litigation costs on the party seeking to 'chill the valid exercise of the constitutional rights'"); *Fabre v. Walton*, 781 N.E.2d 780, 786 (Mass. 2002) (quoting the lower court's observation that "the purpose of the [Anti-SLAPP] statute is to reimburse persons for costs and attorney's fees"); *Alves v. Hometown Newspapers, Inc.*, 857 A.2d 743, 752 (R.I. 2004) (quoting the legislative

findings that SLAPP-related litigation should be "resolved quickly with minimum cost to citizens who have participated in matters of public concern"). Though expedited procedures for hearing, deciding, and appealing motions to dismiss greatly assist SLAPP defendants, fee awards provide a concrete deterrent to those considering litigation to silence their critics.

Several courts in California, which has one of the country's oldest Anti-SLAPP laws, have squarely addressed the question of whether a defendant's Anti-SLAPP motion becomes moot after a plaintiff voluntarily dismisses the underlying claims. These courts have repeatedly held that a SLAPP defendant can continue to litigate his or her claims for fees under these circumstances. *E.g.*, *Wilkerson v. Sullivan*, 121 Cal. Rptr. 2d 275 (Cal. Ct. App. 2002); *Coltrain v. Shewalter*, 77 Cal. Rptr. 2d 600 (Cal. Ct. App. 1998). These decisions emphasize that review of a litigant's Anti-SLAPP motion should be available regardless of the disposition of the underlying case. In California — far from constituting an advisory opinion — such review is required to vindicate the substantive rights conferred by the state's Anti-SLAPP statute.

Other California cases support the view that Anti-SLAPP claims may proceed independently from the underlying litigation. In *Pfeiffer-Venice Properties v. Bernard*, the court held that a plaintiff had the right to petition for an award of attorneys' fees even though the original action had been dismissed *sua sponte* by the trial court. 123 Cal. Rptr. 2d 647 (Cal. Ct. App. 2002). Similarly, in *Moore v. Liu*, the court held that denying review of a defendant's Anti-SLAPP motion for fees after the case was dismissed "works a nullification of an important provision" of the California Anti-SLAPP law. 81 Cal. Rptr. 2d 807, 811 (Cal. Ct. App. 1999). Although the trial court had observed the

availability of alternative statutory mechanisms for awarding attorneys' fees in cases of abusive litigation, the court of appeals rejected this option, reasoning that it "would prolong both the defendant's predicament and the plaintiff's abusive behavior." *Id.* Rather, the defendant was entitled to direct review of her Anti-SLAPP motion. *See also Moraga-Orinda Fire Protection Dist. v. Weir*, 10 Cal. Rptr. 3d 13, 15 (Cal. App. 1st Dist. 2004) ("resolution of the underlying action . . . does not moot a fee request under the SLAPP statute").

If Illinois courts do not allow defendants to proceed with claims for attorneys' fees under the CPA even after a case's dismissal on other grounds, "SLAPP plaintiffs could achieve most of their objectives with little risk by filing a SLAPP lawsuit, forcing the defendant to incur the effort and expense of preparing a special motion then dismissing without prejudice." Stephen L. Kling, *Missouri's New Anti-SLAPP Law*, 61 J. Mo. B. 124, 128 (2005). Indeed, "[t]he specter of the action being refiled. . . would continue to have a chilling effect on the defendant's exercise of First Amendment Rights. At that point the plaintiff would have accomplished all of the wrongdoing that triggers the defendant's eligibility for attorneys fees, but the defendant would be cheated of redress." *Id.*

Whether or not the case brought against Walsh is ultimately determined to constitute a SLAPP, he ought not be denied review of his claims under the CPA (and the possibility of a fee award) merely because he prevailed on separate grounds. If upheld, the appellate court's dismissal of his case as moot would suggest that a denial of a claim or award of fees under the CPA could never be reviewable if the case were dismissed or

disposed of alternatively. Such a reading is contrary to the language and purpose of the CPA and would gut its utility in deterring meritless litigation.[6]

III. Walsh's motion to dismiss under the Citizen Participation Act should not have been denied merely because he made the statements at issue to a reporter.

A. Statements to the press fall squarely within the protections afforded by the Citizen Participation Act.

Not only is there a live controversy surrounding Walsh's entitlement to attorneys' fees, the substance of his appeal has merit. While the lower court offered little to explain its denial of Walsh's motion to dismiss under the CPA, the trial judge appeared to believe that only statements made directly to a government official qualify for protection. *See, e.g.*, Transcript of Oral Argument at 7, *Wright Dev. Group, LLC v. Walsh*, No. 07-L-10487 (Ill. Cir. Ct. Jul. 29, 2008) ("the [CPA] talks about giving you the right to address

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[6] In other analogous contexts involving statutes that provide for attorneys' fees to prevailing parties, voluntary withdrawal, dismissal, or other disposition of an underlying claim does not prevent adjudication of the fee issue. For example, Rule 11 of the Federal Rules of Civil Procedure (like the CPA) aims to deter abuse of the legal process. *Compare* 735 ILCS 110/5 *with* Fed. R. Civ. P. 11(c). In *Cooter & Gell v. Hartmarx Corp.*, the Supreme Court upheld the district court's award of fees to a defendant under Rule 11 even though plaintiff had voluntarily dismissed his complaint, noting that "motions for costs or attorney's fees are 'independent proceeding[s] supplemental to the original proceeding and not a request for a modification of the original decree.'" 496 U.S. 384, 395-96 (1990) (citation omitted). "Thus, even 'years after the entry of a judgment on the merits' a federal court could consider an award of counsel fees.'" *Id.* (quoting *White v. New Hampshire Dept. of Employment Security*, 455 U.S. 445, 451 n.13 (1982)). The Mississippi Court of Appeals recently reached a similar result in a case under a state analogue of Rule 11. *See Illinois Central R. Co. v. Broussard*, 19 So.3d 821, 823 (Miss. Ct. App. 2009) (adjudicating the prevailing party's request for attorneys' fees under Miss. R. Civ. P. 11(b) despite the dismissal of the principal personal injury claim because the plaintiff was dead at the time the claim was filed). In *Garrison v. Baker*, the Ninth Circuit held – in the context of a malicious prosecution claim – that, if voluntary dismissal were to terminate the action, then plaintiffs could "achieve most of their objective with little risk – by filing a SLAPP suit, forcing the defendant to incur the effort and expense of preparing a special motion to strike, then dismissing the action without prejudice." 208 F.3d 221 (9th Cir. 2000) (citation omitted).

the government about your grievances . . . it doesn't immunize you from every step that you are ever going to take outside of the [alderman's] meeting.").

In fact, by its terms, the CPA applies to "any motion to dispose of a claim in a judicial proceeding on the grounds that the claim is based on, relates to, or is in response to *any act or acts of the moving party in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government.*" 735 ILCS 110/15 (emphasis added). Nothing in the words "any act or acts" suggests a requirement of direct appeal to a government official. Nor are the designated rights limited to the right to petition the government only; they plainly include "speech," "association," and "participat[ion] in government" as well.

When the General Assembly enacted the CPA in 2007, approximately twenty-six states had enacted some form of Anti-SLAPP legislation. Of these, some on their face protect *only* statements made directly to the government. *See, e.g.,* Ariz. Rev. Stat. §§ 12-751 to -752 (2010); Del. Code Ann. tit. 10, §§ 8136-8138 (2010); Fla. Stat. Ann. §§ 768.295, 720.304 (West 2010); Ga. Code Ann. § 9-11-11.1 (2010); Haw. Rev. Stat. §§ 634F-1 to -4 (2010); Mo. Rev. Stat. § 537.528 (2010); N.M. Stat. Ann. §§ 38-2-9.1; 38-2-9.2 (West 2010); Okla. Stat. Ann. tit. 12, § 1443.1 (West 2010); 27 Pa. Cons. Stat. Ann. §§ 7707, 8301-05 (West 2010); Tenn. Code Ann. §§ 4-21-1001 to -1004 (West 2010); Wash. Rev. Code Ann. § 4.24.500-520 (West 2010). For example, Washington's Anti-SLAPP law protects a claim or information conveyed to an agency regarding a matter of reasonable concern to that agency. Wash. Rev. Code Ann. § 4.24.510. Other states' laws explicitly mention statements directed at the public that are likely to encourage government review or more broadly protect speech or statements made in connection

with issues of public interest. *See, e.g.*, Cal. Civ. Proc. Code § 425.16 (West 2010); Ind. Code Ann. §§ 34-7-1-1 to -10 (West 2010); La. Code Civ. Proc. Ann. art. 971 (2010); Me. Rev. Stat. Ann. tit. 14, § 556 (2010); Md. Code Ann., Cts. & Jud. Proc. § 5-807 (West 2010); Neb. Rev. Stat. §§ 25-21, 241-246 (2010); N.Y. Civ. Rights Law §§ 70-a, 76-a (McKinney 2010); Or. Rev. Stat. §§ 31.150-.155 (2010); R.I. Gen. Laws § 9-33-1 to -4 (2010). For example, Indiana's law provides protection for an "act in furtherance of a person's right of petition *or free speech*." Ind. Code Ann. § 34-7-7-2 (emphasis added). With the benefit of comparing these states' different policy choices, the General Assembly chose to write legislation that affords broader protection, clearly including speech and assembly within the ambit of the CPA's protected activities.

Given the statute's breadth, the trial court's cramped reading has no basis in the statutory language and is antithetical to the General Assembly's purpose in enacting the CPA.

B. Protecting statements to the press furthers the Citizen Participation Act's goal of safeguarding speech, petitioning activities, and participation in government.

A communication to the press such as Walsh's is clearly within the protections afforded by the CPA for "speech." The First Amendment, the Supreme Court has stated, "was fashioned to assure unfettered interchange of ideas for the bringing about of political and social changes desired by the people." *Roth v. United States*, 354 U.S. 476, 484 (1957). Uninhibited freedom to communicate with the press encourages the exchange of ideas and points of view that is the very purpose of the First Amendment's speech protections. Justice Stewart noted more than three decades ago that "'[e]nlightened choice by an informed citizenry is the basic ideal upon which an open society is

premised'" and that "[o]ur society depends heavily on the press for that enlightenment." *Houchins v. KQED, Inc.*, 438 U.S. 1, 17 (1978) (Stewart, J., concurring) (quoting *Branzburg v. Hayes*, 408 U.S. 665, 726 (1972) (Stewart, J., dissenting); *see Mills v. Alabama*, 384 U.S. 214, 219 (1966) ("[T]he press serves and was designed to serve as a powerful antidote to any abuses of power by governmental officials and as a constitutionally chosen means for keeping officials elected by the people responsible to all the people whom they were selected to serve."). Encouraging citizens to speak openly to the press furthers the general societal interest in free speech and promotes the widest possible dissemination of ideas and information. The CPA protects these values by ensuring that putative speakers are not subject to costly legal proceedings aimed at suppressing their exercise of constitutionally protected rights.

Furthermore, statements to the press contribute to the petitioning and government participation activities expressly described in – and protected by – the CPA. Speech to the press provides officials with information essential to government policymaking, and the right to petition the government, in the words of Justice William O. Douglas, "is not limited to writing a letter or sending a telegram to a congressman; it is not confined to appearing before the local city council, or writing letters to the President or Governor or Mayor." *Adderley v. Florida*, 385 U.S. 39, 49–50 (1966) (Douglas, J., dissenting).

Moreover, by informing the public, media reports motivate citizens to discuss, debate, and petition the government on issues of public concern. The Supreme Court has "consistently recognized the unique role that the press plays in 'informing and educating the public, offering criticism, and providing a forum for discussion and debate.'" *Austin v. Michigan Chamber of Commerce*, 494 U.S. 652, 667 (1990) (quoting *First Nat'l Bank*

v. Bellotti, 435 U.S. 765, 781 (1978) (overruled on other grounds by *Citizens United v. Federal Election Com'n*, 130 S. Ct. 876 (2010)); *see also Cox Broad. Co. v. Cohn*, 420 U.S. 469, 491 (1975) ("[I]n a society in which each individual has but limited time and resources with which to observe at first hand the operations of his government, he relies necessarily upon the press to bring to him in convenient form the facts of those operations."). The important connection between speaking to and through the press and government participation places statements like Walsh's squarely within the coverage of the CPA.[7]

Consider the case of a citizen's group that, as part of a plan to defeat a proposed development, testifies at a public hearing and writes letters and gives interviews to the local press. According to the restrictive reading adopted by the trial court, the CPA would protect the former activities but not the latter. This result would be troubling, given that often "the best way to freely 'petition the government' effectively and then inform the general public of certain issues is by using print or broadcast media." *See* London Wright-Pegs, *The Media SLAPP Back: An Analysis of California's Anti-SLAPP Statute and the Media Defendant*, 16 U.C.L.A. Ent. L. Rev. 323, 331 (2009).

Under the trial court's construction, a law aimed at protecting citizen participation in government would fail to protect one of the most effective and efficient means of disseminating ideas and influencing government action. Excluding speech from the CPA's protections merely because it passes through the media before reaching the

[7] Notably, the CPA refers broadly in its definition of "government" to "the electorate," 735 ILCS 110/10, suggesting that, at the very least, "participat[ion] in government" includes political expression aimed at influencing and persuading fellow citizens.

government or the public would be strikingly inconsistent with both the language and the purposes of the CPA.

C. Numerous states have held statements to reporters to be proper subjects of the protections of Anti-SLAPP laws.

Although the CPA, on its face, covers a wide range of activities relating to speech, petitioning, and association, no Illinois court has addressed the application of the CPA to statements made by defendant to reporters. Numerous courts in other jurisdictions with Anti-SLAPP statutes similar to (or, indeed, even narrower than) the CPA, however, have held that such statutes apply to communications with members of the news media.

In *Global Waste Recycling, Inc., v. Mallette*, for example, the Rhode Island Supreme Court held that the comments that defendant homeowners made to a local newspaper questioning the practices of the plaintiff recycling facility were protected by the state Anti-SLAPP statute. 762 A.2d 1208, 1213-14 (R.I. 2000). The *Mallette* court explained, "[m]aking loud and public complaints to newspaper reporters is a frequently used method for members of a community to affect local matters or concern." *Id.* at 1211. Notably, the court explicitly rejected the argument that the statements "must be made *before* some type of legislative, judicial, or administrative body and not to the public via the print media." *Id.* at 1213 (internal quotation marks omitted). Relying on *Mallette*, the Rhode Island Supreme Court in *Alves v. Hometown Newspapers, Inc.*, affirmed a lower court ruling that the defendant author of letters to the editor of a local newspaper criticizing a proposed school building project fell under the protections of the Anti-SLAPP statute and was entitled to summary judgment. 857 A.2d 743, 753 (R.I. 2004); *compare Maietta Construction, Inc., v. Wainwright*, 847 A.2d 1169, 1173 (Me.

2004) (holding that letters to the mayor, city council, and local newspapers criticizing the plaintiff developer were covered under Maine Anti-SLAPP statute).

Louisiana's Anti-SLAPP statute is similar to the CPA in that it applies to "any act of that person in furtherance of the person's right of petition or free speech under the United States or Louisiana Constitution in connection with a public issue." La. Code Civ. Proc. Ann. art. 971(A)(1) (2010). In *Aymond v. Dupree*, the Louisiana Court of Appeal, Third Circuit, held that this statute applied to a city water board commissioner's statements expressing lack of confidence in the water board attorney's "control" of matters involving the waterworks district, including statements to a local newspaper to that effect. 928 So.2d 721, 730-731 (La.App. 3 Cir. 2006). The court found that the plaintiff board attorney's defamation action arose from the commissioner's "exercise of his right of free speech regarding a public issue." *Id.* at 727.

In *Browns Mill Development Co., Inc. v. Denton*, the Court of Appeals of Georgia held that the defendant's dissemination to the media of an environmental report opposing county land use patterns and specific development plans constituted a petition to the county government involving matters of public concern and interest and thus fell under the Georgia Anti-SLAPP statute. 543 S.E.2d 65, 68 (Ga. App. 2000). The court concluded that the report "was directed to the media and government personnel and officials regarding the same issues that were before the Commissioners and was intended to dramatize and indirectly influence the Commission action." *Id.* at 69. The scope of the Georgia statute at issue in *Denton* is remarkably similar to the CPA. The Georgia law applies to acts "in furtherance of the right of free speech or the right to petition government . . . in connection with an issue of public interest or concern." Ga. Code

Ann. § 9-11-11.1 (2010). Likewise, the CPA protects "any act or acts in furtherance of the moving party's rights of petition, speech, association, or to otherwise participate in government." 735 ILCS 110/15.

Walsh's statements in the instant case should be treated under the CPA as the courts in Rhode Island, Louisiana, Georgia, and Maine treated similar statements to the press under their states' respective Anti-SLAPP statutes. There is simply no reason for this Court to endorse the trial court's exceedingly narrow reading of the CPA.

CONCLUSION

For the foregoing reasons, *Amici* urge this Court to hold that the denial of Walsh's motion under the CPA is not moot because the underlying case was dismissed on grounds separate and apart from the CPA. To the extent the Court reaches the merits of Walsh's CPA motion, *Amici* urge the Court to find that statements to reporters – such as those at issue in this case – are proper subjects of a motion under the CPA given the broad protections afforded by the CPA. Ruling in this manner would be entirely consistent with the plain language of the CPA, its intent, and the intent of Anti-SLAPP laws more broadly.

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 18 pages.

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CERTIFICATE OF SERVICE

The undersigned attorney hereby states that she caused three copies of the foregoing BRIEF OF CITIZEN MEDIA LAW PROJECT, PUBLIC PARTICIPATION PROJECT, ONLINE NEWS ASSOCIATION, AND CHICAGO CURRENT AS *AMICI CURIAE* IN SUPPORT OF DEFENDANT-APPELLANT JOHN WALSH, to be served via express mail on March 3, 2010, upon:

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