CAUSE NO. 429-04031-2024

FREDERICK FRAZIER,	§	IN THE DISTRICT COURT OF
	§	
Plaintiff,	§	
	§	
v.	§	COLLIN COUNTY, TEXAS
	§	
PAUL CHABOT,	§	
	§	
Defendant.	§	429th JUDICIAL DISTRICT

Defendant Paul Chabot's Reply in Support of His TCPA Motion to Dismiss

Defendant Paul Chabot files this Reply in support of his Motion to Dismiss pursuant to the Texas Citizens Participation Act, TEX. CIV. PRAC. & REM. CODE Chapter 27 (the "TCPA") and would respectfully show as follows:

INTRODUCTION

Frederick Frazier has conceded the TCPA applies to this lawsuit. But with the burden shifted to him, he has chosen to abandon his pleaded claims. Instead, he substitutes new un-pleaded claims for which he has failed to provide notice under the Defamation Mitigation Act.

These new claims are no better than the discarded ones. Frazier now complains about blog posts. He complains that Chabot posted files relating to his criminal cases, including news articles published by others. He complains about the file names Chabot used. He complains about campaign signs that truthfully said Frazier had been "convicted," and "dishonorably discharged."

In addition to being un-pleaded, these statements are not actionable as defamation because they were substantially true and remain substantially true. Frazier was "convicted." He was "dishonorably discharged."

And now for the very first time, Frazier makes public his confidential TCOLE amendment to his F-5 Report, altering his dishonorable discharge to a general discharge. Plt's Resp. Ex. D. But this confidential change in administrative status, held close to the vest by Frazier until he was forced to disclose it in this lawsuit, does not permit Frazier to sue his political opponents for rightfully pointing out that he was dishonorably discharged from the Dallas Police Department. Moreover, Frazier's decision to withhold the F-5 amendment from Chabot and the public undercuts his allegations that Chabot acted with actual malice in describing his dishonorable discharge.

Frazier should have known better than to file this baseless lawsuit. He is a public official who must accept that criticism of his criminal conviction, plea bargain, and the resulting fall-out to his law enforcement career, is part and parcel of our functioning republic. And yet, after Frazier was convicted in a court of law for victimizing Paul Chabot and forced to pay restitution, he has victimized Chabot again by filing this misguided lawsuit.

Brazenly, Frazier misrepresents the factual record, offers unsubstantiated accusations in lieu of clear and specific evidence, and refuses to take responsibility for his crimes. As he downplays it, he was only **"convicted of a single misdemeanor**." Plt's Resp. at 24 (emphasis added). He admits that conviction to the Court. And yet he believes he can sue his political opponents for putting up campaign signs that truthfully say he was "convicted."

If this Court permits Frazier's attempt to judicially rewrite history, the question is: Which political opponent will Frazier sue next? This court must dismiss this suit, and it should sanction Frazier in an amount sufficient to deter him from bringing similar legal actions against other victims.

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ARGUMENT

Frazier's Petition must be dismissed because he concedes at TCPA Step One that the TCPA applies. This concession, and Frazier's abandonment of his pleaded claims in favor of new ones (that are no better) shows Frazier's § 27.009(b) motion is, itself, frivolous. At TCPA Step Two, Frazier has failed to present clear and specific evidence showing a prima facie case of defamation. He has abandoned his pleaded claims, and now complains of statements that are substantially true. And finally, at TCPA Step Three, Frazier does nothing to defeat Chabot's assertion that Frazier is libel-proof. In fact, his only substantive response is to trivialize his criminal convictions as being only **"convicted of a single misdemeanor."** Plt's Resp. at 24 (emphasis added). Likewise, Frazier's transition from complaining about statements preceding his May 9th demand letter, to complaining exclusively of statements published after this suit was filed, supports Chabot's defense that Frazier has failed to comply with his obligations under the Defamation Mitigation Act.

I. TCPA Step One: Frazier Concedes the TCPA Applies, and Thus Cannot Show Chabot's Motion Was Frivolous or Intended Solely to Delay.

By waiving any argument against application of the TCPA, Frazier has conceded TCPA Step One. This shifts the burden to him to prove a prima facie case for his claims of defamation. Because he has abandoned his pleaded claims in favor of new ones, the TCPA motion cannot be considered frivolous.

A. The TCPA applies because Frazier has waived any response to the contrary.

Given that this suit involves statements about a public official relating to his qualifications for office during his campaign for reelection, it is no surprise that Frazier has decided not to contest the TCPA's application. Accordingly, since he has waived any argument the Act doesn't apply, it

would be an abuse of a discretion not to reach TCPA Step Two. *See Grant v. Pivot Tech. Sols., Inc.,* 556 S.W.3d 865, 891 (Tex. App.—Austin 2018, pet. filed) (Argument that the TCPA did not apply was required to be presented to trial court and, therefore, could not be considered on appeal).

B. As a result of Chabot's TCPA motion, Frazier has abandoned his pleaded claims in favor of new claims about republication of news articles, file names, blog posts, and campaign signs.

Chabot's TCPA Motion has already borne fruit. Frazier's Petition at paragraph 20 provided a list of statements he believed were actionable as defamation, but Frazier has effectively abandoned all of these statements in favor of new allegations.

The allegations at ¶20 were:

- Frazier pled no contest to felony charges of impersonating a public official.
- Frazier used his legislative position to delay justice.
- Frazier engaged in criminal acts of petty thievery.
- Frazier is a "dirty cop."
- Frazier is a "dishonorable cop."
- Frazier is dishonorably discharged from the Dallas Police Department.
- Frazier lied to voters.
- Frazier slandered a disabled veteran.

For "the purposes of [his response]," Frazier now limits his allegations to two categories of statements: that he "was found guilty and convicted of an attempt to impersonate a public servant" and that he "received a dishonorable discharge from the Dallas Police Department." Plt's Resp. at 13. Frazier then attempts to substantiate these two types of statements by pointing to Chabot's republication of news articles on a website, his use of allegedly defamatory file names on the site, an out-of-context blog post, and campaign signs saying "convicted" and "dishonorably discharged." Plt's Resp. at 13-14.

C. Chabot's TCPA motion cannot be frivolous or solely intended to delay when it has already yielded results.

Frazier's abandonment of his pleaded claims in favor of new, un-pleaded claims has serious implications discussed below that require this Court to grant dismissal. But moreover, they show that Chabot's TCPA motion has already borne fruit, meaning it could not possibly be frivolous or intended solely to delay.

TEX. CIV. PRAC. & REM. CODE § 27.009 permits a court to award court costs and reasonable attorney's fees to the nonmovant if it "finds that a motion to dismiss filed under this chapter is frivolous or solely intended to delay." An award under that section "is entirely discretionary and requires the trial court to find the motion was frivolous or solely intended to delay." *Lei v. Nat. Polymer Int'l Corp.*, 578 S.W.3d 706, 717 (Tex. App.—Dallas 2019, no pet.). "Frivolous" is not defined in the TCPA, but the Dallas Court of Appeals has explained that "the word's common understanding contemplates that a claim or motion will be considered frivolous if it has no basis in law or fact and lacks a legal basis or legal merit." *Pinghua Lei v. Nat. Polymer Int'l Corp.*, 578 S.W.3d 706, 717 (Tex. App.—Dallas 2019, no pet.) (quoting *Sullivan v. Tex. Ethics Comm'n*, 551 S.W.3d 848, 857 (Tex. App.—Austin 2018, pet. denied).

As a result of Chabot's TCPA motion, Frazier has been forced to concede the Act applies, and has been forced to present a prima facie case. That exercise has forced Frazier to abandon his pleaded claims and attempt to advance un-pleaded ones. Even if this Court were to (wrongly) deny Chabot's TCPA motion, it is *itself* frivolous to argue that Chabot's motion was frivolous or solely intended to delay proceedings. In reality, a case like this one—where a public official has sued his political opponent over statements made during a political campaign—is exactly the kind of case

for which the TCPA was adopted. Because Frazier has already abandoned his pleaded claims in his TCPA response, categorically this court cannot consider Chabot's TCPA motion to be frivolous.

II. TCPA Step Two: Frazier Has Failed to Present Prima Facie Evidence to Support His Claims of Defamation.

Frazier has totally failed to satisfy the second step of the TCPA analysis. The elements of defamation are (1) the publication of a false statement of fact to a third party, (2) that was defamatory concerning the plaintiff, (3) with the requisite degree of fault, and (4) damages, in some cases. *In re Lipsky*, 460 S.W.3d 579, 593 (Tex. 2015) (citing *WFAA-TV, Inc. v. McLemore*, 978 S.W.2d 568, 571 (Tex. 1998)).

Frazier pleaded a myriad of different claims of defamation. Since the TCPA applies (by his own concession), Frazier was required to establish by clear and specific evidence a prima facie case for each essential element of those many claims. TEX. CIV. PRAC. & REM. CODE § 27.005(c). "Clear and specific" evidence is "unambiguous," "free from doubt," and "explicit" or "referring to a particular named thing." *Lipsky*, 460 S.W.3d at 590 (quoting *KTRK Television v. Robinson*, 409 S.W.3d 682, 689 (Tex. App.—Houston [1st Dist.] 2013, pet. denied)). "[C]lear and specific" pertains to the quality of evidence required to establish a prima facie case, and the term "prima facie case" pertains to the amount of evidence necessary for a plaintiff to carry its minimal factual burden to support a rational inference establishing each essential element of a claim. *Grant*, 556 S.W.3d at 882.

Instead of attempting to support his various pleaded claims of defamation, Frazier has instead abandoned them in favor of new claims (that are no better than the old ones).

A. Abandoning his pleaded claims, Frazier has shifted to complaining about post-May 9th statements he didn't plead.

In his original petition, Frazier complained about a broad list of statements seemingly predating his May 9th demand letter to Chabot. But in his TCPA response, Frazier has narrowed his complaints to essentially two sets of statements published by Chabot "since the inception of [Frazier's] lawsuit." Plt's Resp. at 2. Frazier limits his new allegations as follows:

> "For the purposes of this motion, Mr. Frazier relies on Mr. Chabot's false published statements that Mr. Frazier was found guilty and convicted of an attempt to impersonate a public servant and that Mr. Chabot [sic] received a dishonorable discharge from the Dallas Police Department."
>
> Plt's Resp. at 13.

Beyond this broad characterization, Frazier has identified four actions by Chabot that allegedly support his claims. The following chart compares the original complained-of statements, and the actions alleged by Frazier in his TCPA response:

Complained of Statements in Original Petition:	Complained of Conduct in TCPA Response:
• Frazier pled no contest to felony charges of impersonating a public official. • Frazier used his legislative position to delay justice. • Frazier engaged in criminal acts of petty thievery. • Frazier is a "dirty cop." • Frazier is a "dishonorable cop." • Frazier is dishonorably discharged from the Dallas Police Department. • Frazier lied to voters. • Frazier slandered a disabled veteran. Frazier Petition ¶ 20, pg. 6	• Sharing two news articles on firefrazier.com stating that Frazier received a dishonorable discharge from the DPD. Plt's Resp. at 13, Frazier Exhibits F, G, H, and I. • Publishing a Register of Actions from Frazier's criminal case and titling the file "Frazier Conviction 3" and "Judge Finds GUILT on Frazier in State/Texas Ranger Case." Plt's Resp. at 13, Frazier Exhibits K & L. • A blog post on firefrazier.com that states Frazier "received 3 convictions." Plt's Resp. at 14, Frazier Exhibit J. • Placement of campaign signs that stated Frazier was "convicted" and "dishonorably discharged." Plt's Resp. at 14, Frazier Exhibits M, N, and S.

Forgetting his original pleaded statements, Frazier now complains that, "[a]s curated by Defendant Chabot, many of the documents published on firefrazier.com are false, outdated,

misleading, or intentionally misinterpreted to paint a picture of Mr. Frazier that is verifiably untrue." Plt's Resp. at 2. Because Frazier has abandoned his pleaded claims, this Court must dismiss the claims in Frazier's Original Petition because he has not attempted to meet his burden for them under TCPA Step Two.

"Each distinct publication of a defamatory statement inflicts an independent injury from which a defamation cause of action may arise." *DeWispelare v. DeWispelare*, No. 05-24-00176-CV, 2024 WL 4262403, at *13 (Tex. App.—Dallas Sep. 23, 2024, no pet. h.) (citing *Akin v. Santa Clara Land Co.*, 34 S.W.3d 334, 340 (Tex. App.—San Antonio 2000, pet. denied)) For a defamation cause of action, the TCPA analysis applies to each statement complained of. *See Azteca Int'l Corp. v. Ruiz*, No. 13-21-00241-CV, 2022 WL 17983161, at *25-26 (Tex. App.—Corpus Christi Dec. 29, 2022, pet. denied) (allowing some complained of statements under a defamation cause of action to proceed under the TCPA and dismissing others); *see also Connor v. McCormick*, No. 03-18-00813-CV, 2020 Tex. App. 2020 WL 102034, at *13-14 (Tex. App.—Austin Jan. 9, 2020, pet. denied) (It is proper for a trial court to "consider each allegedly defamatory statement separately in deciding whether dismissal of a claim based on that statement was proper under the TCPA."); *see also Better Bus. Bureau of Metro Dall., Inc. v. Ward*, 401 S.W.3d 440, 443 (Tex. App.—Dallas 2013, pet. denied) (TCPA requires courts "to treat any claim by any party on an individual and separate basis").

In 2021, the Texas Supreme Court clarified the interaction between the TCPA and pleaded "claims," particularly in the context of amended pleadings. *Montelongo v. Abrea*, 622 S.W.3d 290, 300-301 (Tex. 2021). According to the Court, plaintiffs are required to give fair notice of "not just alleged facts, but of the claim and the relief sought such that the opposing party can prepare a

defense and ascertain from the pleading the nature and basic issues of the controversy and what testimony will be relevant." *Id.* at 300.

Because Texas defamation law treats each alleged statement as a separate defamation cause of action, Frazier was required both to plead the claims that he was asserting, and defend them with clear and specific evidence. Instead, Frazier has neglected to put on a prima facie case for any of his pleaded claims, and has instead attempted to satisfy his burden with claims that he concedes occurred after the "inception of this lawsuit." Plt's Resp. at 2. Accordingly, Frazier's pleaded claims must be dismissed under the TCPA.

B. Frazier now complains about news articles, file names, blog posts, and campaign signs that were substantially true.

To the extent this Court reaches Frazier's new, un-pleaded claims, these too fail to be actionable as defamation for various reasons, primarily because they are substantially true.

Frazier first complains of two news articles Chabot republished on his website, one from WFAA and one from the Dallas Morning News. Plt's Resp. at 13. He claims that because Chabot republished these news articles on his website, he adopted them as his own and is thus liable for defamation. Plt's Resp. at 14.[1] He then complains that Frazier used defamatory file names in posting information about his criminal cases, that he posted a blog post saying that Frazier "received 3

[1] These particular claims about republishing news articles on firefrazier.com are expressly prohibited by Section 230(c)(1) of the Communications Decency Act. "As courts uniformly recognize, § 230 immunizes internet services for third-party content that they publish, including false statements, against causes of action of all kinds." *Marshall's Locksmith Serv. Inc. v. Google, LLC*, 925 F.3d 1263, 1267, 441 U.S. App. D.C. 196 (D.C. Cir. 2019). "[T]he posting of third-party content" from one website to another "is plainly within the immunity provided by § 230[.]") *Monsarrat v. Newman*, 28 F.4th 314, 319 (1st Cir. 2022) (citing *Marshall's*, 925 F.3d at 1268-69).

convictions," and that he posted campaign signs saying "convicted" and "dishonorably discharged." Plt's Resp. at 13-14.

Frazier complains that calling his plea of guilty in exchange for deferred adjudication a "conviction" is defamatory. Plt's Resp. at 13. But the Texas Supreme Court recently clarified that minor inaccuracies in the description of the legal process cannot support a defamation claim. The Texas Supreme Court instructed that courts must "judge the truth or falsity of an allegedly defamatory statement by identifying the 'gist' of what the statement conveys about the plaintiff to a reasonable reader of the entire article. If the gist of the challenged statement, within the context of the article as a whole, is true, then the statement is considered substantially true and therefore not actionable—even if the statement errs in the details." *Polk Cty. Publ'g Co. v. Coleman*, 685 S.W.3d 71, 73 (Tex. 2024)

"Establishing the falsity of an allegedly defamatory article is not as simple as showing that the article contains a statement that falls short of literal truth." *Id.* If a statement is substantially true, it is not false. *KBMT Operating Co. v. Toledo*, 492 S.W.3d 710, 714 (Tex. 2016). Assessing substantial truth requires more than merely asking whether one statement plucked from a lengthy article is true or false. Instead, "the meaning of a publication, and thus whether it is false and defamatory, depends on a reasonable person's perception of the entirety of a publication and not merely on individual statements." *Turner v. KTRK Television, Inc.*, 38 S.W.3d 103, 115 (Tex. 2000). An allegedly defamatory article is substantially true if its "gist" is correct, regardless of whether it "err[s] in the details." *Tatum*, 554 S.W.3d at 629 (quoting *Neely v. Wilson*, 418 S.W.3d 52, 63-64 (Tex. 2013)). In other words, a news article "with specific statements that err in the details

but that correctly convey the gist of a [true] story is substantially true" and therefore not actionable. *Neely*, 418 S.W.3d at 63-64.

"[The common law] overlooks minor inaccuracies and concentrates upon substantial truth." *Masson v. New Yorker Magazine*, 501 U.S. 496, 516 (1991). "Minor inaccuracies do not amount to falsity so long as 'the substance, the gist, the sting, of the libelous charge be justified.'" *Id.* (quoting *Heuer v. Kee*, 59 P.2d 1063, 1064 (Cal. 1936)). "Put another way, the statement is not considered false unless it 'would have a different effect on the mind of the reader from that which the pleaded truth would have produced.'" *Masson*, 501 U.S. at 516.

A reasonable person would consider the gist of Chabot's characterization of Frazier's guilty plea in exchange for deferred adjudication as a conviction to be substantially true. Frazier "enter[ed] a plea of guilty" in cause # 219-82367-2022. Frazier further agreed, if trial were necessary, to "judicially confess [his] guilt." He stated: "I am pleading guilty in this case because I am criminally responsible for the offense charged, and I agree that any testing would confirm . . . my guilt of this offense." Def's TCPA Mot. Exhibit Q.[2]

For his complaint that Chabot published a "blog post" claiming Frazier "received 3 convictions," Frazier has plucked one phrase out of the entire website devoted to the details of his criminal cases that provides readers with all of the relevant primary documents. Plt's Resp. at 14.

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[2] Likewise, the complained-of statements can be viewed as rhetorical hyperbole. "'Rhetorical hyperbole' has been defined as 'extravagant exaggeration [that is] employed for rhetorical effect.'" *Backes v. Misko*, 486 S.W.3d 7, 26 (Tex. App.—Dallas 2015) (citation omitted). The colorful use of terms which might otherwise refer to criminal conduct is often found to be rhetorical hyperbole rather than an actual accusation that a crime was committed. "For example, the use of 'rewarding,' 'ripping off,' and 'bilking' when reviewed in context have been considered rhetorical hyperbole." *Id.* (citation omitted).

Frazier doesn't say when that post was made, but he neglects an April 29, 2024 post which fully explains the details of Frazier's "no contest plea, which is treated as equivalent to a guilty plea in court" and for which "he received one year of probation and deferred adjudication." *See* https://firefrazier.com/f/setting-the-record-straight-frazier's-deceitful-announcement.

Indeed, the WFAA article that Frazier complains Chabot didn't use instead of an older version states that "Frazier had earlier pleaded no contest, **the equivalent of a guilty plea**, to two counts of impersonating a public official, a misdemeanor charge." Plt's Resp., Exhibit P at 2 (emphasis added). A guilty plea results in a conviction even if it is later expunged from a defendant's record. The gist of Chabot's statement is substantially true.

As the Supreme Court of Texas noted:

> "But even the reasonable reader who understands the procedural significance of [a legal term] would not necessarily assume that the author of this news article is using the word in a legally precise sense. In fact, anyone who appreciates lawyerly precision has probably read plenty of news stories about legal affairs that gloss over lawyerly distinctions or contain inadvertent mischaracterizations of legal or procedural concepts. These journalistic imprecisions are not to be applauded, and they certainly can mislead the average reader in some cases. But errors of law by those reporting on the law are not automatically actionable as defamation. If it were otherwise, the "freedom . . . of the press" would be hard-pressed indeed. *See* U.S. Const. amend. I (protecting the "freedom . . . of the press").
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> *Polk Cty. Publ'g Co.*, 685 S.W.3d at 73.

Even if Chabot committed some technical legal error and inadvertently mischaracterized Frazier's guilty plea in favor of probation and deferred adjudication as a "conviction," the gist of what he was saying was and is correct. *Id.* Frazier admitted he was "criminally responsible for the offense charged." Def's TCPA Mot. Exhibit Q.[3] Frazier was required to pay victim restitution to

[3] Likewise, the complained-of statements can be viewed as rhetorical hyperbole. "'Rhetorical hyperbole' has been defined as 'extravagant exaggeration [that is] employed for rhetorical effect.'" *Backes*, 486 S.W.3d at 26 -(citation omitted). The colorful use of terms which might otherwise refer

Chabot "for the loss or damage to [Chabot] or [his] property at the time the offense was committed." Def's TCPA Mot. Exhibit J. Frazier was forced to pay this restitution to Chabot, the victim of his Frazier's crimes. Because Chabot's characterization of this as a conviction is substantially true, Frazier cannot use that statement to meet his burden under TCPA Step Two.[4]

C. A conviction for a misdemeanor does not result in removal from office, meaning Frazier's claims don't meet the test for defamation of a public official.

Frazier cites *Clark v. Jenkins*, 248 S.W.3d 418, 437 (Tex. App.—Amarillo 2008, pet. denied) for the premise that statements "that a member of [a] city council was convicted of a felony were defamatory" and that such statements were "defamatory per se." Plt's Resp. at 18; 22.

But *Clark* actually stands for a different rule that shows that, under Texas law, he cannot recover for defamation as a public official. "[A]s a general rule a publication concerning a public officer, in order to be libelous per se, must be of such a character as, if true, would subject him to removal from office." *Clark*, 248 S.W.3d at 437 (citing *Fitzjarrald v. Panhandle Publishing Co.,* 228 S.W.2d 499, 503 (1950); *Rawlins v. McKee,* 327 S.W.2d 633, 637 (Tex. Civ. App.—Texarkana 1959, writ ref'd. n.r.e.); 50 Tex.Jur.3d *Libel and Slander* §34 (2000); *Marshall v. Mahaffey,* 974 S.W.2d

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to criminal conduct is often found to be rhetorical hyperbole rather than an actual accusation that a crime was committed. "For example, the use of 'rewarding,' 'ripping off,' and 'bilking' when reviewed in context have been considered rhetorical hyperbole." *Id.* (citation omitted).

[4] Moreover, to the extent Frazier complains of general statements that he was "convicted" as opposed to having multiple convictions, he concedes in his response that he has been convicted. In attempted to downplay the application of the "libel proof plaintiff" doctrine, Frazier describes himself as only "a man **convicted** of a single misdemeanor." Plt's Resp. at 24 (emphasis added).

942, 949 (Tex. App.—Beaumont 1998, pet. denied); *Houston Chronicle Pub. Co. v. Flowers,* 413 S.W.2d 435, 438 (Tex. Civ. App.—Beaumont 1967, no writ).

Here, Frazier complains that Chabot describes his plea deal for deferred adjudication for a Class A misdemeanor as a "conviction." This characterization was protected because it was substantially true, and/or rhetorical hyperbole. But even if the statement were unconnected from the facts of Frazier's prosecution and plea deal, such a statement would still not be actionable because conviction of a misdemeanor would not subject Frazier to removal from office. In Texas, the rule is that a person is ineligible for service in the legislature if he is finally convicted of a felony. TEX. ELEC. CODE § 141.001(a)(4). Frazier has failed to establish his complained of statements are defamation per se.

D. Frazier can't complain about his "dishonorable discharge" because he hid his confidential TCOLE F-5 amendment from Chabot and the public.

As a threshold matter, Chabot contends the statement "Frederick Frazier was dishonorably discharged from the Dallas Police Department" is true, regardless of whether that status was subsequently altered to a general discharge by the Texas Commission on Law Enforcement ("TCOLE"). An administrative change relevant to Frazier's future reemployment as a police officer has no bearing on the public's right to accurately describe the circumstances of his departure from DPD.

However, to the extent Frazier complains about Chabot's statements regarding his dishonorable discharge between May 9, 2024, and October 14, 2024, Frazier cannot prove that such statements were made with actual malice because Frazier withheld from Chabot and the public the confidential information he now readily provides to the Court.

A review of Frazier's Exhibit D shows that it was confidential. On the cover page, Frazier's F-5 Report of Separation of Licensee is described as "confidential." Pl's Resp., Ex. D. The third page of Exhibit D is stamped at the top "CONFIDENTIAL." That document shows that Frazier reached a settlement agreement with TCOLE in his proceeding at the State Office of Administrative Hearings to require entry of an order directing Frazier's F-5 Report to be amended to reflect that he received a general discharge. This affirms that, prior to the issuance of that confidential order, Frazier was dishonorably discharged from DPD. This means the public could, and still can say that Frazier *was* dishonorably discharged.

Deriding Chabot as a "bizarrely close of [sic] observer of Mr. Frazier's life," Frazier claims that Chabot "was aware that Mr. Frazier was the recipient of a general discharge from the DPD" when Chabot maintained news articles about Frazier's dishonorable discharge on the firefrazier.com website in July and September 2024 and when he posted the Fire Frazier campaign signs. Plt's Resp. at 9. However, Frazier offers no proof that Chabot "was aware" of such a fact, even to the extent it was relevant at that point. Instead, Frazier claims that TCOLE "sent a letter to DPD acknowledging and requiring official records to reflect that Mr. Frazier received a general discharge from the DPD." But Frazier offers no evidence that Chabot (or the voters, for that matter) were aware of such a letter.

As the recipient of the order amending his F-5 Report, Frazier could have included the F-5 amendment with his demand letter sent to Chabot on May 9th; he did not. *See* Def's TCPA Mot. Exhibit CC; Plt's Resp. Exhibit R. Likewise, on or about May 9th, Frazier posted a page entitled "Dismissal" to his campaign website. *See* Chabot Reply Exhibit 1. That page declares "The Charges Were Dismissed! Frazier Is NOT Dishonorably Discharged!" *Id.* Frazier goes on to

compare his trials to the prosecutions faced by President Trump. *Id*. But as of October 17, 2024, Frazier still has not posted to his campaign website the very exhibit he now shares with the Court as Frazier Exhibit D.[5]

In his Declaration in Support of his TCPA Motion to Dismiss, Chabot testified that he had never seen Frazier's Exhibit D. As Chabot stated:

> It is my understanding that Frazier had no arrangement with the Dallas Police Department to change his discharge status from a dishonorable discharge to a general discharge. I have heard that Frazier appealed his discharge status to a state agency in Austin and that the agency has made some determination with regard to the discharge status. However, Frazier has provided no copy of any document to confirm this is true, either with his cease-and-desist letter or accompanying this lawsuit. I do not believe he has ever published any documentation to confirm a change in his discharge status to the public.
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> Chabot Dec. at 2.

Frazier has no evidence to contradict Chabot's testimony. In fact, Chabot had requested information from TCOLE regarding Frazier's F-5 Report. But as can be seen from the attached Chabot Reply Exhibit 2, TCOLE withheld the information from Chabot and requested a ruling from the attorney general that the F-5 Report and related information was confidential under TEX. OCCUP. CODE § 1701.454.

This Court should not find that Frazier's successful appeal to the State Office of Administrative Hearings to change his dishonorable discharge from the Dallas Police Department

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[5] One can only speculate why Frazier kept Exhibit D from Chabot and the public so long. Perhaps it is because it shows that he received a general discharge, which is less than an honorable discharge, and that it is true that from the time of his resignation from DPD until May 8th, 2024, Frazier was, in fact, dishonorably discharged from DPD. This effort to conceal Exhibit D from Chabot and the public supports the conclusion that a reasonable person would not see a substantial difference between a politician who was dishonorably discharged and one who was dishonorably discharged, but later settled a lawsuit against his former employer to have that status changed to a general (but less than honorable) discharge.

to a general discharge renders the statement "Frederick Frazier was dishonorably discharged" actionable as defamation. One cannot un-ring a bell and Frazier cannot erase history through a SOAH order. It will always be a fact that he was dishonorably discharged. Likewise, the fact that Frazier still received a less-than-honorable discharge, even after the successful administrative appeal, belies the idea that reasonable people would see a difference if they were aware of all of the relevant facts.

Regardless, Frazier offers no evidence that Chabot acted with actual malice. On the contrary, the evidence shows that Chabot sought to confirm or deny whether Frazier's discharge status had been altered and was stymied in his efforts by the F-5 report's confidential status and Frazier's refusal to supply the document to him or to the public.

E. There is no evidence Frazier suffered damages.

Frazier entitles Section 1-D of his response "Mr. Frazier suffered damages as a result of Mr. Chabot's statements." Plt's Resp. at 22. But he then spends a page and a half talking about presumed damages for defamation *per se* instead of actually telling the Court how he was harmed. In his Original Petition at ¶29, Frazier claimed he suffered "impairment of reputation and standing in the community; personal humiliation; and mental anguish and suffering" and impairment of "campaign efforts, . . . loss of employment, loss of business, and loss of clients."

Where's the beef? In his TCPA response, Frazier doesn't even have the decency to say that Chabot's campaign signs caused his defeat at the polls. He certainly offers no evidence of "mental anguish and suffering." We don't even get a doctor's note about a headache.

It was Frazier's burden to show that the statements he complains of caused him actual damages—not that he was hurt as a consequence of his own actions and that Chabot subsequently

talked about it. Proof of actual injury is required to obtain actual damages for a statement on a matter of public concern lest the "uncontrolled discretion of juries to award damages" chill speech. *Brady v. Klentzman*, 515 S.W.3d 878, 891 n.3 (Tex. 2017). When faced with a TCPA motion, the plaintiff must present specific facts demonstrating they suffered damages and that those damages resulted from the statement at issue. *See Lipsky*, 460 S.W.3d at 592-3, 595-6.

Instead of backing up his pleaded allegations of, for example, "mental anguish and suffering," Frazier instead attempts to rely on the doctrine of defamation *per se* to support the presumption that he was damaged. But Chabot's statements were not defamatory *per se*, because Chabot merely reported about Frazier's criminal conviction and plea bargains and resignation in lieu of termination. He did not accuse Frazier of some *fourth* crime for which he had not already been taken to task by the criminal justice system.

Because the statements about Frazier were public and about matters of public concern, the First Amendment requires competent evidence to support an award of actual or compensatory damages when the speech is public or the level of fault is less than actual malice. *See Firestone,* 424 U.S. at 459, 96 S.Ct. 958; *Gertz,* 418 U.S. at 349–50, 94 S.Ct. 2997. Thus, the Constitution only allows juries to presume the existence of general damages in defamation *per se* cases where: (1) the speech is not public, or (2) the plaintiff proves actual malice. *See Dun & Bradstreet,* 472 U.S. at 761, 105 S.Ct. 2939; *Gertz,* 418 U.S. at 349–50, 94 S.Ct. 2997." *Hancock v. Variyam*, 400 S.W.3d 59, 65–66 (Tex. 2013). Because the speech at issue here is public and Frazier cannot prove actual malice, he is not entitled to presumed damages.

F. With no evidence Chabot acted with knowledge of falsity or reckless disregard of the truth, Frazier fails the "actual malice" standard for public officials.

The status of the person allegedly defamed determines the requisite degree of fault. *Lipsky*, 460 S.W.3d at 593. A public official must prove actual malice. *WFAA-TV, Inc.*, 978 S.W.2d at 571. "Actual malice" is a legal term of art that means that the statement was made with knowledge of its falsity or with reckless disregard for its truth. *Lipsky*, 460 S.W.3d at 593 (citing *Huckabee v. Time Warner Entm't Co.*, 19 S.W.3d 413, 420 (Tex. 2000)). Frazier concedes he is a public official. *See* Petition at ¶17 ("Frazier is a Texas House Representative for District 61."). Consequently, Frazier must prove actual malice.

To establish actual malice, the plaintiff must prove that the defendant published a defamatory falsehood "with knowledge that it was false or with reckless disregard of whether it was false or not." *WFAA-TV*, 978 S.W.2d at 571 (quoting *New York Times Co. v. Sullivan*, 376 U.S. 254, 279-80 (1964)). When the defendant's words lend themselves to more than one interpretation, the plaintiff must establish that the defendant either knew that the words would convey a defamatory message or had reckless disregard for their effect. *New Times, Inc. v. Isaacks*, 146 S.W.3d 144, 162 (Tex. 2004), *cert. denied*, 545 U.S. 1105 (2005). Failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish reckless disregard. *Harte-Hanks Commc'ns v. Connaughton*, 491 U.S. 657, 688.

Here, Frazier has no evidence that Chabot knew any statement he made was false or had reckless disregard to its falsity. On the contrary, Chabot's declaration shows his statements were not only accurate at the time he made them, but he continues to stand by them today. The evidence shows that Frazier withheld contextual information from Chabot and the public, and that Chabot

attempted to gather more information, which he published in a comprehensive fashion to readers of the firefrazier.com website.

Although this Court need never reach this point as the statements at issue are not substantially false as a matter of law, Frazier's lack of evidence of actual malice is sufficient reason to defeat his public official defamation claims.

III. TCPA Step Three: Frazier Affirms Chabot's Defenses.

Finally, Frazier has no answer for Chabot's defenses. He is a libel-proof plaintiff. And his reliance exclusively on post-May 9th statements means he has categorially failed to comply with the Defamation Mitigation Act. Accordingly, this case must be dismissed.

A. Frazier's claims are barred as a libel-proof plaintiff.

The libel-proof plaintiff doctrine applies where the evidence of record shows (1) that the plaintiff engaged in criminal or antisocial behavior in the past and (2) that his activities were widely reported to the public. *McBride v. New Braunfels Herald-Zeitung*, 894 S.W.2d 6, 10 (Tex. App.—Austin 1994, writ denied); *see also Swate v. Schiffers*, 975 S.W.2d 70, 74 (Tex. App.—San Antonio 1998, pet. denied) (physician whose reputation had already been ruined by derogatory newspaper articles and public censure by state medical board was libel-proof and could not hold newspaper liable for defamation).

Frazier cannot dispute that he engaged in criminal behavior and that his activities were widely reported to the public. Indeed Frazier was charged, indicted, convicted, or plead guilty to multiple crimes. *See* Def's TCPA Mot. Exhibits H, I, J, N, O, P, and Q.

Frazier's only response is to downplay his own criminal responsibility, arguing without precedent that "this doctrine is simply inapplicable to a man convicted of a single misdemeanor." Plt's Resp. at 24.

Frazier was convicted of a misdemeanor. He entered a guilty plea in order to resolve another. These facts were widely reported, and they directly relate to Frazier's claims against Chabot. Frazier's criminal and antisocial behavior made such an impression on Republican Primary voters that they voted overwhelmingly against him, an incumbent. *See* https://ballotpedia.org/Frederick_Frazier (Republican primary runoff election 2024). Under Texas law, Frazier is libel-proof on these matters and cannot sue someone for reporting on them.

B. With Frazier's switch to complaining about post-May 9th publications, his non-compliance with the DMA is even more clear.

In response to Chabot's TCPA Motion, Frazier has now switched to complaining about a set of publications by Chabot that all post-date his May 9th demand letter. On May 9, 2024, Frazier's attorney complained: "You have published emails and other messages, often forwards of defamatory statements from the Colin County Citizens for Integrity PAC, indicating that Rep. Frazier has been 'convicted' and is 'dishonorably discharged'. These statements are of course incorrect and are defamatory to Rep. Frazier."

As Chabot argued in his TCPA Motion, Frazier's letter was insufficient under TEX. CIV. PRAC. & REM. CODE § 73.055(d). For example, it did not "state with particularity" the statements complained of, **including their time and place of publication**. *Id.* at (d)(3) (emphasis added). Therefore, a DMA request for correction, clarification, or retraction must necessarily follow allegedly defamatory statements, not precede them. But Frazier now complains about publications that occurred after May 9th, including the placement of campaign signs around polling places

during the May runoff election, and posts of news articles and commentary to firefrazier.com. Plt's Resp. at 13-14.

Under the plain language of the DMA, dismissal is required. And *Hogan v. Zoanni,* 627 S.W.3d 163 (Tex. 2021), *reh'g denied* (Sept. 3, 2021) supports this conclusion. In that case, Justice Boyd joined with the dissenters to hold that a plaintiff who makes an insufficient request for correction, clarification, or retraction (as opposed to failing to send one at all) is barred from maintaining an action for defamation. *See Id.* at 182-183 (Boyd, J., concurring). While a plurality of the Court in *Hogan* held that total failure to comply with the DMA prescribed only abatement and a loss of exemplary damages, the Hecht dissent (joined by Justices Blacklock and Huddle), concluded that an insufficient request required dismissal. *Id.* at 189-190. On that particular point, Justice Boyd's concurrence agreed, establishing a plurality in favor of the opposite position in circumstances like these. *Id.* at 182-183.

Because Frazier failed to serve a sufficient request for correction, clarification or retraction, and now tries to justify his suit only upon statements made after his insufficient letter was served, dismissal of this suit is required as a matter of law pursuant to TEX. CIV. PRAC. & REM. CODE §73.055.

PRAYER FOR RELIEF

For the foregoing reasons, Defendant Paul Chabot respectfully requests the Court grant the following relief:

a. Dismiss this action against Chabot with prejudice;

b. Award Chabot his reasonable attorneys' fees incurred in defending this action and conditional attorneys' fees on appeal;

c. Award sanctions against Plaintiff Frederick Frazier in an amount sufficient to deter him from bringing similar actions in the future; and

d. Grant Chabot such other and further relief to which he may be entitled.

Respectfully Submitted,

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Attorneys for Defendant Paul Chabot

CERTIFICATE OF SERVICE

I hereby certify that on October 18, 2024, a true and correct copy of the above and foregoing has been e-filed and e-served via Texas e-File to all counsel of record for those parties that have appeared in this action in accordance with the Texas Rules of Civil Procedure.

/s/ Tony K. McDonald

EXHIBIT
Ch. Reply 1

DISMISSAL

DISMISSED!

The Charges Were Dismissed!
Frazier Is NOT Dishonorably Discharged!

"The legal case my opponent built her entire campaign upon, has been dismissed by an independent judge who had a deep understanding of the case and evidence. I cannot compare my situation to Donald Trump's, who has been hounded by radical Democrats with little or no proof. My case was a simple misdemeanor. But my case has given me a profound appreciation of how blind bitterness leads people to push politically motivated issues as far as they can if they think it will give them a political advantage. It gave me a small taste of what President Trump faces now. We should all support President Trump at this time. Take it from me: it will mean a lot to him. The strength and calm he shows under immense pressure is amazing. Though small, this now-dismissed case was very serious to me and my family. Politicians and police officers should be held to the highest standard. I am so thankful to everyone who supported me and believed in me until this positive, successful end. With this behind us, I invite you to look at my legislative record on the reverse side. If you like what I have done and what I am working on, I humbly ask for your vote."

FREDERICK
FRAZIER
REPUBLICAN STATE REPRESENTATIVE

FREDERICK FRAZIER'S ACCOMPLISHMENTS AND PRIORITIES

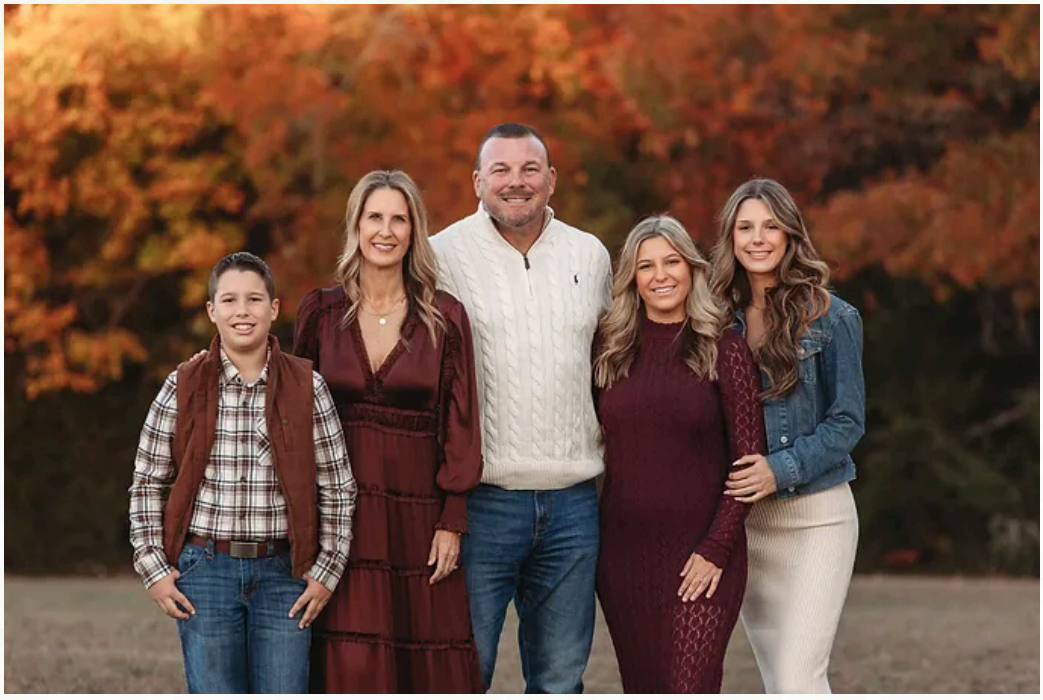
RECOGNIZED BY PRESIDENT DONALD TRUMP for his outstanding work in law enforcement. Frazier was named one of the Nation's Top Cops and was appointed to President Trump's Law Enforcement Commission, where he served as the only Commissioner from Texas.

STOOD UP TO THE LIBERAL LEFT AND BANNED SEX CHANGE SURGERY ON MINORS. Those life-destroying mutilations of children too young to understand the implications are now illegal in Texas. Great Britain just did the same. Sadly, they will continue some in the USA as long as Joe Biden serves and radical progressives put extreme ideas ahead of the wellbeing of children.

VOTED TO ALLOW EDUCATION DOLLARS TO FOLLOW THE STUDENT to any private or public school, allowing parents to ensure the best education possible for their children. We have great schools locally, but education is failing our children in other ISDs around Texas. We must do better.

BANNED MEN FROM COMPETING IN WOMEN'S SPORTS. You need only watch one footrace, swim meet, or wrestling match to see how unfair it was. Progressives have abandoned women and girls.

SERVED NORTH TEXAS FOR 28 YEARS AS A POLICE OFFICER, earning the highest honors the field offers. Frederick served 14 years as a Special Deputy U.S. Marshal. He understands how to control crime and the stress and danger police officers face in 2024.



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Privacy Policy

TEXAS COMMISSION ON LAW ENFORCEMENT

EXHIBIT
Ch. Reply 2

May 22, 2024

The Honorable Ken Paxton
Attorney General of Texas
Office of the Attorney General
Open Records Division
P.O. Box 12548
Austin, Texas 78711

via PIA e-filing System

Re: 10 & 15 day brief - Request for an Attorney General Letter Ruling
TCOLE ID# Chabot ORR

Dear General Paxton:

Under Tex. Gov't Code ch. 552 (PIA), the Texas Commission on Law Enforcement (TCOLE) seeks an Attorney General Letter Ruling in response to the enclosed request for appeal status of a F-5 Report of Separation (F-5 Report) of a TCOLE licensee.[1]

TCOLE raises PIA sections .101 through .163, Texas Occupations Code sections 1701.454, and 1701.4525(a)[2] to withhold the enclosed reports.[3]

TCOLE submits this letter to serve as its brief and correspondence requesting a decision from the Attorney General as to whether the requested information or any portions are excepted from disclosure under the PIA. This letter is within the ten and fifteen business days from the date the request was received.[4] It also serves as the statement of the claimed exceptions applicability, along with other items, submitted according to the PIA's procedural requirements.

BACKGROUND

When a Texas peace officer, jailer, or telecommunicator separates from their employing law enforcement agency, the agency must submit an F-5 Report of Separation to TCOLE.[5]

The report characterizes the nature of separation (i.e. "discharge") as honorable, general, or dishonorable. Procedurally, the separating agency must deliver a copy to the licensee by hand delivery or certified mail.[6]

Primarily, F-5 Report exists to protect the public from "wandering officers" with disreputable employment histories and, as such, are used by potential employing agencies to determine a law enforcement applicant's fitness for employment.[7] To illustrate the seriousness of an F-5 Report, a TCOLE license is automatically suspended and subject to revocation after the holder receives a second dishonorable discharge.[8]

A licensee may appeal the nature of an F-5 Report discharge by filing an appeal with TCOLE.[9] TCOLE then refers the case to the State Office of Administrative Hearings (SOAH).[10] The parties

on appeal are the licensee and separating agency, not TCOLE.[11] Once the case is heard, SOAH either orders TCOLE to change the report or that the report stays the same.[12]

APPLICABLE PROVISIONS

Texas Occupations Code § 1701.454 makes the information submitted to TCOLE and related to an F-5 Report confidential.[13]

An F-5 Report may be released if the person subject to the report "resigned or was terminated due to substantiated incidents of excessive force or violations of the law other than traffic offenses."[14]

Here, neither the requestor's submission nor the F-5 Report establishes the factual determinations needed to release the F-5 Report under either exception.[15] As such, TCOLE may not release the F-5 Report.[16]

Thanks again and please let me know if you have any questions,

Jennie Hilbig
Assistant General Counsel
Telephone: (512) 936-7711

Enclosures: as stated

cc: Paul Chabot - w/o enclosures *via email:* paul@chabotstrategies.com

[1] Tex. Occ. Code § 1701.452(a),(d),(g). 37 Tex. Admin. Code §§ 217.7, .8 (Tex. Comm'n on Law Enforcement, Enrollment, Licensing, Appointment, and Separation (2014)). Exhibit A - Request for Information.

[2] Senate Bill 1445 (88R) repealed 1701.4525. However, it was continued in effect until March 1, 2024. "A separation that occurs before March 1, 2024, is governed by the law in effect immediately before the effective date of the Act, and the former law is continued in effect for that purpose." Act of May 28, 2023, 88th Leg., R.S., ch. 1104, §§ 22(3), 26, 2023 Tex. Gen. Laws.

[3] Confidential Exhibit B – Requested information related to the F-5 Report

[4] Exhibit A, request received May 9, 2024.

[5] Tex. Occ. Code § 1701.452(b).

[6] Tex. Occ. Code § 1701.452(d); 37 Tex. Admin. Code § 217.7(f).

[7] *See* Tex. Occ. Code § 1701.451, .452; 37 Tex. Admin. Code § 217.7(a); House Comm. on Law Enforcement, Bill Analysis, Tex. H.B. 2677, 79th Leg. R.S. (2005).

[8] Tex. Occ. Code § 1701.4521(a).

[9] Tex. Occ. Code § 1701.4525(a); 37 Tex. Admin. Code § 217.8(a).

[10] *See* Tex. Occ. Code § 1701.4525(a); 37 Tex. Admin. Code § 217.8(c).

[11] Tex. Occ. Code § 1701.4525(g); 37 Tex. Admin. Code § 217.8(d).

[12] Tex. Occ. Code § 1701.4525(e); 37 Tex. Admin. Code § 217.8(e).

[13] Tex. Occ. Code § 1701.454; *see* Tex. Att'y Gen. OR2004-2523 (previous determination that F-5 Reports are confidential. However, TCOLE has been informed this previous determination is no longer applicable).

[14] *Id.* at (a).

[15] *See* Exhibit A, Request for Information; Exhibit B. Requested information related to the F5 report.

[16] *See* Tex. Occ. Code § 1701.454(b).