IN THE IOWA DISTRICT COURT FOR POLK COUNTY

PRESIDENT DONALD J. TRUMP, an individual, U.S. REPRESENTATIVE MARIANNETTE MILLER-MEEKS, an individual, and FORMER STATE SENATOR BRADLEY ZAUN, an individual, *Plaintiffs*, v. J. ANN SELZER, an individual, SELZER & COMPANY, DES MOINES REGISTER AND TRIBUNE COMPANY, and GANNETT CO., INC., *Defendants*.	Case No. CVCV069420 **REPLY IN SUPPORT OF DES MOINES REGISTER & TRIBUNE COMPANY AND GANNETT CO., INC.'S MOTION TO DISMISS PETITION**

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I. INTRODUCTION

In their Resistance, Plaintiffs mischaracterize the applicable legal standard in an attempt to get a free pass into discovery in a meritless lawsuit, merely belaboring what continues to be nothing more than a political grievance.

Plaintiffs cannot—and do not—assert any legally viable claim. In fact, Plaintiffs' claims are barred at the outset by the First Amendment. But even putting aside this clear and fundamental constitutional infirmity, Plaintiffs' fail to explain how any conceivable set of facts could support a legally viable claim under ICFA or Iowa's common law in this case. Plaintiffs' transparent attempt to rewrite those laws to justify their claims only underscores their flawed pleading strategy and should be rejected.

Acknowledging the constitutional guardrails and legal deficiencies set forth herein, the U.S. District Court for the Southern District of Iowa has already dismissed a putative class action on behalf of consumers alleging the same claims on the same underlying facts. Whether this Court views that ruling as preclusive or just strong precedent, the result is the same. There simply is no valid legal claim under ICFA or any common law based on the Iowa Poll.

Accordingly, Plaintiffs' lawsuit must be dismissed.

II. PLAINTIFFS' MISCHARACTERIZATION OF THE APPLICABLE LEGAL STANDARD SHOULD BE REJECTED

Plaintiffs' Resistance hides behind an overstated and mischaracterized version of the Iowa notice pleading standard. Plaintiffs' mischaracterization of the pleading standard is the primary argument and theme pervading their Resistance. Their overreliance on the notice pleading standard could not be more telling.

The relevant standard to be applied in this case is straightforward: Plaintiffs' claims must be dismissed if they are "legally deficient and [Plaintiffs have] no right of recovery as a matter of law." *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023) (citing *Meade v. Christie*, 974 N.W.2d 770, 775 (Iowa 2022). A motion to dismiss "challenges a petition's *legal sufficiency*." *Id.* (quoting *Meade*, 974 N.W.2d at 775) (emphasis added). And a claim is legally insufficient "when there exists no conceivable set of facts entitling the non-moving party to relief." *1000 Friends of Iowa v. Polk Cnty. Bd. of Supervisors*, 19 N.W.3d 290, 296 (Iowa 2025) (quotation omitted). Such claims fail the notice pleading standard. *See M.H. v. State*, 385 N.W.2d 533, 540 (Iowa 1986).

Plaintiffs would have this Court overlook these principles, relying instead on cherry-picked language from various cases that they misconstrue or distort to argue that motions to dismiss simply no longer exist in Iowa or that this Court somehow lacks the authority to dismiss this case.[1] (*See* Res. at 8–9.) To the contrary, the Iowa Supreme Court regularly dismisses cases—just like this one—where the plaintiffs' allegations, even accepted as true, were insufficient to establish a legally viable claim. *See Betz v. Mathisen*, 30 N.W.3d 240, 250 (Iowa 2026) (affirming dismissal of defamation claims); *Koester v. Eyerly-Ball Cmty. Mental Health Servs.*, 14 N.W.3d 723, 733–34 (Iowa 2024) (rejecting plaintiff's reliance on "precedents against granting" motions to dismiss under notice pleading standard because the case presented a "question of law for the court to decide"); *Harkrider*, 990 N.W.2d at 657 (affirming dismissal of state constitutional tort claims and even reversing denial of a motion to dismiss trespass and intentional infliction of emotional distress claims); *Riley Drive Entm't I, Inc.*, 970 N.W.2d 289, 291 (Iowa 2022) (affirming dismissal of case

[1] For the reasons stated herein and through Defendants' briefing on their motions to dismiss, this case is eminently dismissible under Rule 1.421(1)(f). Plaintiffs now argue that Iowa's notice pleading standard should rescue even legally deficient pleadings—*i.e.*, their Petition—from dismissal. Plaintiffs' view of the pleading standard, if accepted, would mean that Iowa's notice pleading jurisprudence has swallowed or even abrogated Rule 1.421(1)(f) itself. For preservation purposes, Press Defendants submit that Iowa's pleading standard cannot be so permissive as to render Rule 1.412(1)(f) ineffective and, if necessary, must be revisited to ensure that Iowa courts are equipped to dismiss defective Petitions in accordance with the Rules.

as moot); *Shumate v. Drake Univ.*, 846 N.W.2d 503, 516 (Iowa 2014) (affirming grant of motion to dismiss on the basis of no implied private right of action); *King v. State*, 818 N.W.2d 1, 35 (Iowa 2012) (affirming dismissal of constitutional and statutory education claims); *Berry v. Liberty Holdings, Inc.*, 803 N.W.2d 106, 108 (Iowa 2011) (affirming dismissal of wrongful discharge claim); *Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194, 200 (Iowa 2007) (affirming grant of motion to dismiss when alleged injuries were too remote to be cognizable); *Kingsway Cathedral v. Iowa Dep't of Transp.*, 711 N.W.2d 6, 12 (Iowa 2006) (reversing denial of motion to dismiss when facts as alleged did not constitute a taking); *Schmidt v. Mahoney*, 659 N.W.2d 552, 556 (Iowa 2003) ("In affirming the judgment of the district court, we recognize that an order granting a motion to dismiss for failure to state a claim may only be upheld if the petition on its face fails to set forth facts upon which relief could be granted under any circumstances. . . . Nevertheless, in other cases decided on the basis that no legal duty existed, we have approved disposition by means of such a motion." (collecting cases)). As these cases demonstrate, and contrary to Plaintiffs' core argument, "the liberal rule of notice pleading . . . does not mean all claims clear the bar." *King*, 818 N.W.2d at 37 (Iowa 2012) (Cady, C.J., concurring specially).

Iowa's trial courts likewise recognize the correct standard and dismiss deficient pleadings under Rule 1.421. *See Cason v. Bitcoin Depot Operating, LLC*, No. LACV108253, 2026 WL 540998, at *8 (Iowa Dist. Jan. 30, 2026) (dismissing ICFA claims on a motion to dismiss); *Rebarcak v. Wellmark, Inc.*, No. LACL162489, 2025 WL 4383974, at *6 (Iowa Dist. Nov. 23, 2025) (dismissing antitrust allegations on a motion to dismiss on statute of limitations grounds); *Harris v. Snap, Inc.*, No. LACV044283, 2024 WL 818341, at *4 (Iowa Dist. Feb. 19, 2024) (dismissing negligence and design defect allegations on a motion to dismiss when the allegations sought to hold the defendant liable for third-party content); *MidAmerican Energy Co. v. Knife*

River Midwest, LLC, No. LACV204749, 2023 WL 11944276, at *6–7 (Iowa Dist. Aug. 08, 2023) (dismissing claims based on violations of Iowa Code § 480 on the grounds that there is no express or implied cause of action); *Romare v. City of Ankeny*, No. CVCV064729, 2023 WL 12051664, at *2 (Iowa Dist. July 27, 2023) (dismissing claims for "fail[ing] to allege any facts constituting a violation of law").

This Court should follow the Iowa Supreme Court and its fellow district courts and dismiss this case in its entirety.

In so doing, the Court should reject Plaintiffs' numerous attempts to hide behind the notice pleading standard by mischaracterizing Press Defendants' arguments as going to the "weight and sufficiency of the evidence[.]" (Res. at 1.) These mischaracterizations by Plaintiffs instead lay bare the "legal[] insufficien[cy]" of their Petition. *Harkrider*, 990 N.W.2d at 650. This is not a "heightened pleading standard." (*Cf.* Res. at 18.) It is the same standard Iowa courts have used for decades to evaluate—and dismiss—legally deficient claims. Because "there exists no conceivable set of facts" that would entitle Plaintiffs to relief, Plaintiffs' claims are legally deficient, and they must be dismissed. *1000 Friends of Iowa*, 19 N.W.3d at 296.

In sum, Plaintiffs have "effectively "plead[ed] themselves out of court." *Struck v. Mercy Health Servs.-Iowa Corp.*, 973 N.W.2d 533, 538 (Iowa 2022); *see also Meade*, 974 N.W.2d at 779 ("[A] plaintiff can plead himself out of court by alleging facts that show he has no claim."). This is not a case based on a short, simple set of broad allegations supporting the claims in question. Plaintiffs' Petition is *very* specific about what they are alleging, what they are not alleging, and the bases for their claims. (*See, e.g.*, Res. at 30 (reiterating that Plaintiffs pleaded specific facts even though "there was no obligation on Plaintiffs to do so").) Plaintiffs have accomplished this level of detail through a year-and-a-half of briefing their claims in state and federal court, all the while doing everything in their power to avoid a ruling on them.

III. PLAINTIFFS CANNOT AND DO NOT ASSERT ANY LEGALLY VIABLE CLAIM

A. Plaintiffs' Claims are Barred by the First Amendment.

With respect to the constitutional issues in the case, Plaintiffs' Resistance presents a chain of arguments, each link of which is weaker than the last. It confirms that under no conceivable set of facts can the Petition state a cognizable legal claim. Plaintiffs cannot state a cause of action for protected reporting on a so-called "fake poll" under Iowa tort law by the simple expedient of labeling it a consumer fraud claim. (*Cf.* Pet. ¶¶ 65, 74.) The U.S. Supreme Court reaffirmed just two months ago, "The First Amendment is no word game. And the rights it protects cannot be renamed away or their protections nullified by 'mere labels.'" *Chiles v. Salazar*, 146 S. Ct. 1010, 1023 (2026) (quotation omitted). The lesson was apparently lost on Plaintiffs.

Plaintiffs' Resistance relies on three propositions nowhere recognized in law. First, Plaintiffs claim *The Register*'s election poll reporting is "commercial speech." (Res. at 12–15.) Wrong. As the Supreme Court and numerous other courts have made clear, the "commercial speech" doctrine is limited to speech that proposes a commercial transaction—*i.e.*, advertising. In contrast, *The Register*'s campaign reporting challenged here is political speech protected at the heart of the First Amendment. Plaintiffs' claim that it may be penalized as "a classic consumer protection violation" is empty rhetoric, not a legal argument. (*Cf. id*. at 10.)

Second, Plaintiffs assert that, as purportedly false speech, *The Register*'s election news coverage falls outside the First Amendment's protection. (*Id.* at 16–18.) Wrong again. Because the Petition's "fake poll" claims cannot be wedged into one of the historically recognized First Amendment exceptions, they are constitutionally prohibited according to both the U.S. Supreme

Court and the Eighth Circuit. *United States v. Alvarez*, 567 U.S. 709, 719 (2012) (rejecting the "categorical rule" that "false statements receive no First Amendment protection"); *281 Care Comm. v. Arneson*, 638 F.3d 621, 634 n.2 (8th Cir. 2011) ("*281 Care Comm. I*") ("To the extent that defendants also argue in favor of application of fraud principles to all knowingly false speech, we reject the argument, noting the Supreme Court has carefully limited the boundaries of what is considered fraudulent speech.").

Third, Plaintiffs contend that the First Amendment's protections evaporate because they are private party litigants and not government actors. (Res. at 10, 14.) Wrong yet again. This contention is dubious out the outset given that one of the Plaintiffs is the sitting President of the United States. Regardless, attempts to impose civil liability in state courts on speech-based tort claims directly implicate the First Amendment, a long-recognized and indisputable principle, irrespective of the identity of the parties. *See, e.g.*, *New York Times Co. v. Sullivan*, 376 U.S. 254, 277 (1964).

Plaintiffs' constitutional arguments are so facially erroneous, they indicate either deliberate obfuscation or serious confusion about established First Amendment principles. The Resistance and the cases it cites only reinforce the conclusion that the Petition should be dismissed for failure to show any legal right to relief on any set of facts.

1. ***The Register*'s News Reporting on the Iowa Poll Results Is Editorial, Not Commercial, Speech.**

In apparent recognition of the First Amendment problems with challenging editorial speech, Plaintiffs inaccurately reframe *The Register*'s news coverage of the Iowa Poll as "selling a product to consumers, not reporting the news or engaging in political speech." (Res. at 11.)

Plaintiffs' attempt to save their claims by invoking the lesser protections afforded commercial speech is erroneous. They cite no authority for their position—because none exists.[2]

Commercial speech is speech that "does no more than propose a commercial transaction." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 421 (1993)[3]; *accord Va. State Bd. of Pharmacy v. Va. Citizens Consumer Council, Inc.*, 425 U.S. 748, 771 n. 24 (1976) ("There are commonsense differences between speech that does no more than propose a commercial transaction . . . and other varieties." (quotation omitted)). *The Register*'s challenged reporting did not propose *any* commercial transaction, let alone "solely" a commercial transaction. *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of N.Y.*, 447 U.S. 557, 561 (1980). To borrow Plaintiffs'

[2] To the contrary, Plaintiffs' argument is wrong as a matter of law. A "journalist's article is not commercial advertising, commercial promotion, or commercial speech." *Gmurzynska v. Hutton*, 355 F.3d 206, 210 (2d Cir. 2004); *see also Dex Media West, Inc. v. City of Seattle*, 696 F.3d 952, 963 (9th Cir. 2012) ("The full First Amendment protection of newspapers, magazines, television shows, radio programs, and the like demonstrates that the inclusion of commercial material does not support treating those publications and broadcasts as commercial speech entitled to less First Amendment protection."). The "non-commercial nature of a journalist's article cannot be overcome by [a] plaintiff claiming [that] an improper purpose motivated the publisher to run the article." *Croton Watch Co. v. Nat'l Jeweler Mag., Inc.*, No. 06 Civ. 662, 2006 WL 2254818, at *10 (S.D.N.Y. Aug. 7, 2006) (citation omitted).

[3] Plaintiffs' citation to *City of Cincinnati* (Res. at 14) conspicuously omits the following italicized portion from the sentence quoted: "[M]uch of the material in ordinary newspapers is commercial speech and, conversely . . . *the editorial content in respondents' promotional publications is **not** what we have described as 'core' commercial speech*." 507 U.S. at 423 (emphases added). With that proper context, this case compels the rejection of Plaintiffs' commercial speech argument. Plaintiffs similarly omit language from the other cases cited in their Resistance that limit the commercial speech doctrine by distinguishing its application from news reporting and political expression undertaken for profit. *Bd. of Trustees of State Univ. of N.Y. v. Fox*, 492 U.S. 469, 482 (1989) ("Some of our most valued forms of protected speech are uttered for a profit." (citation omitted)); *Ohralik v. Ohio State Bar Ass'n*, 436 U.S. 447, 458 (1978) (separating government regulation of solicitations by lawyers from "political expression or an exercise of associational freedom"). Other cases cited by Plaintiffs involved purely commercial speech in the form of advertising and are therefore inapplicable to the present case. *Zauderer v. Office of Disciplinary Counsel of Supreme Ct. of Ohio*, 471 U.S. 626, 637 (1985) (speech at issue is "advertising pure and simple"); *Florida Bar v. Went for It, Inc.*, 515 U.S. 618, 635 (1995) (case "concerns pure commercial advertising").

phrase, *The Register*'s campaign coverage was "constitutionally protected legitimate journalism or political opinion." (Res. at 11.) Plaintiffs' pleading necessarily concedes as much. (Pet. ¶¶ 1–3.) Contrary to Plaintiffs' argument, *The Register*'s reporting on the Iowa Poll results during of the 2024 presidential and congressional election cycles is core political speech that "occupies the highest rung of the hierarchy of First Amendment values, and is entitled to special protection." *Snyder v. Phelps*, 562 U.S. 443, 452 (2011) (quotation omitted); *Republican Party of Minn. v. White*, 536 U.S. 765, 774 (2002) (holding speech about the electoral process is "at the core of our First Amendment freedoms") (quotation omitted). (*See also* Pres. Def. Br. at 19–20.)

To bolster their flawed argument that the challenged reporting constitutes commercial speech, Plaintiffs next attempt to expand the definition of commercial speech far beyond its well-established reach to cover *any* speech by a for-profit entity. (Res. at 10–11.) However, Plaintiffs cannot sidestep the First Amendment by proclaiming without authority that Press Defendants were promoting "for-profit *products*" rather than reporting newsworthy information. (*Id.* at 11.) This theory was rejected decades ago, and for good reason: it ignores that both polling itself and *The Register*'s reporting of its results are protected under the First Amendment. *See Mills v. Alabama*, 384 U.S. 214, 218 (1966) (stating that a "major purpose" of the First Amendment is to protect "free discussion of . . . [political] candidates"); *Daily Herald Co. v. Munro*, 838 F.2d 380, 384 (9th Cir. 1988) (finding that political polling "requires a discussion between pollster and voter," and the poll itself is "speech protected by the First Amendment"). That Press Defendants sell newspapers and subscriptions for profit is of no moment. The Supreme Court has repeatedly held that speech is "protected even though it is carried in a form that is 'sold' for profit." *City of Cincinnati*, 507 U.S. at 420 (citing *Smith v. California*, 361 U.S. 147, 150 (1959) (books); then citing *Joseph Burstyn, Inc. v. Wilson*, 343 U.S. 495, 501 (1952) (motion pictures); then citing

Murdock v. Pennsylvania, 319 U.S. 105, 110 (1943) (religious pamphlets "invit[ing] the purchase of books")); *Sullivan*, 376 U.S. at 266 (newspaper political advertisement; "That the *Times* was paid for publishing the advertisement is as immaterial in this connection as is the fact that newspapers and books are sold." (citations omitted)).

If, as Plaintiffs claim, civil liability could attach merely by the publication of speech with a profit motive, the First Amendment's protection for political campaign speech would be rendered meaningless. *See Harte Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 667 (1989) ("If a profit motive could somehow strip communications of the otherwise available constitutional protection, our [protective precedents] . . . would be little more than empty vessels."). The Supreme Court has emphasized:

> If a newspaper's profit motive were determinative, all aspects of its operations—from the selection of news stories to the choice of editorial position—would be subject to regulation if it could be established that they were conducted with a view toward increased sales. *Such a basis for regulation clearly would be incompatible with the First Amendment*."

Pittsburgh Press Co. v. Pittsburgh Comm'n on Hum. Rels., 413 U.S. 376, 385 (1973) (emphasis added). Plaintiffs' commercial-speech arguments fail in the face of decades of contrary jurisprudence.

2. The Notice Pleading Standard Does Not Permit Plaintiffs to Evade the First Amendment.

This case is indisputably a First Amendment case, and Plaintiffs' claims are prohibited by the U.S. Constitution and the Iowa Constitution. Plaintiffs' efforts in their Resistance to escape the power and effect of the First Amendment are unavailing.

a. Plaintiffs' Invented First Amendment Exception for "False" Political Speech Is Constitutionally Impermissible.

Plaintiffs' Resistance neither acknowledges nor disagrees with the principle enunciated in Press Defendants' motion that the remedy for disagreement with political speech one does not like is counter-speech. *281 Care Comm. v. Arneson*, 766 F.3d 774, 793 (8th Cir. 2014) ("*281 Care Comm. II*") ("Especially as to political speech, counterspeech is the tried and true buffer and elixir.").[4] (*See* Press Defs' Br. at 22.)

Instead, in contravention of this principle, Plaintiffs are pursuing an action against Press Defendants for allegedly deceiving voters "as to the actual position of the respective candidates in the Iowa Presidential race." (Pet. ¶ 110) But the U.S. Supreme Court's decision in *Alvarez* affirms there is no "general exception to the First Amendment for false statements" and repudiates Plaintiffs' argument.[5] 567 U.S. at 718. Rather, "some false statements are inevitable if there is to be an open and vigorous expression of views in public and private conversation, expression the First Amendment seeks to guarantee." *Id.*

In an attempt to evade *Alvarez* altogether, Plaintiffs argue that they have "sustained actual damages"—including, in the case of President Trump, alleged "direct federal campaign expenditures"—as a result of *The Register*'s publication of the Iowa Poll. (Res. at 17.) However, this argument misses the mark. *Alvarez* explained why the historically recognized categories of

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[4] In tacit acknowledgement of the dispositive constitutional obstacles the Eighth Circuit's decisions in *281 Care Comm. I* and *II* present for their claims, Plaintiffs neither attempt to distinguish nor cite either case in their Resistance.

[5] Plaintiffs seek to support their claims with inapt citations to defamation and other intentional tort cases. (Res. at 16.) But Plaintiffs' conclusion "would take the quoted language" from the cases they cite "far from its proper context." *Alvarez*, 567 U.S. at 718. The *Alvarez* Court disavowed precisely the theory espoused by Plaintiffs here by examining many of the same cases cited in the Resistance and emphasizing that the "few categories" of historically recognized exceptions to the First Amendment may not be expanded to create a general category of unprotected false speech: "These isolated statements in some earlier decisions do not support the Government's submission that false statements, as a general rule, are beyond constitutional protection." *Id*. Notably, Plaintiffs do not even attempt to address *Washington League for Increased Transparency & Ethics v. Fox News*, where, in a closely analogous case, the court rejected a similar fraudulent news claim because "none of the limited exceptions to the First Amendment apply to the false statements made by Fox hosts and guest commentators." No. 81512-1-I, 2021 WL 3910574, at *4 (Wash. Ct. App. Aug. 30, 2021).

unprotected speech—including fraud—cannot be expanded to other types of false statements. *Alvarez*, 567 U.S. at 718–19; *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 617 (2003) (cautioning that "[s]imply labeling an action one for 'fraud'" cannot avoid First Amendment limitations). The Eighth Circuit confirms that *Alvarez*'s reasoning applies to political campaign speech. *281 Care Comm. I*, 638 F.3d at 634 n.2. The existence *vel non* of "actual damages" is irrelevant to this constitutional inquiry.

A claim of "fraud" based on news reporting cannot withstand scrutiny under the First Amendment.[6] *See Madigan*, 538 U.S. at 620 (a fraud claim imposes "exacting" requirements to ensure "sufficient breathing room for protected speech" (citation omitted)). Permitting Plaintiffs' claims to proceed on this basis would violate a fundamental premise of free speech by granting Plaintiffs "freewheeling authority to declare new categories of speech outside the scope of the First Amendment." *United States v. Stevens*, 559 U.S. at 472. That would be a "startling and dangerous" proposition, subject to no principled limitation. *Id.* at 470. The First Amendment will not tolerate such a result.

b. Established First Amendment Principles Confirm That No Conceivable Set of Facts Could Support Plaintiffs' Claims.

Along with skirting *Alvarez*, Plaintiffs' Resistance fails entirely to address the U.S. Supreme Court's decision in *Hustler Magazine, Inc. v. Falwell*. 485 U.S. 46, 56 (1988). (*See* Press Defs' Br. at 24.) *Hustler*'s reasoning—which Plaintiffs attempt to skirt by mere incantation of Iowa's notice pleading standard (Res. at 22)—is dispositive of Plaintiffs' claims here.

[6] Plaintiffs' ICFA claim overtly seeks to "broadly balance the value of the speech against its societal costs to determine whether the First Amendment even applies" to Press Defendants' campaign reporting. *United States v. Stevens*, 559 U.S. 460, 460 (2010). "But the First Amendment's free speech guarantee does not extend only to categories of speech that survive an ad hoc balancing of relative social costs and benefits." *Id.* at 460–61.

First, Plaintiffs have not and cannot, as a matter of law, establish that Press Defendants' reporting on poll results of which they disapprove is "provably false" because the statements at issue necessarily related to the future: predictions of voting behavior in presidential and congressional elections in Iowa that had not yet occurred. *See 281 Care Comm. II*, 766 F.3d at 795 (holding that even a knowingly false communication about ballot initiatives was a "statement of conjecture about the future state of affairs should the ballot question pass or fail" and not provably false). Numerous courts have held that similar ratings and predictions are "not sufficiently factual to be susceptible of being proved true or false" because they are "a subjective interpretation of multiple objective data points leading to a subjective conclusion." *Aviation Charter, Inc. v. Aviation Research Grp./US*, 416 F.3d 864, 871 (8th Cir. 2005) (affirming dismissal of defamation claims arising from rating by aviation research service) (quotation and citation omitted); *see also Compuware Corp. v. Moody's Investors Servs.*, 499 F.3d 520, 529 (6th Cir. 2007) (affirming dismissal of defamation claim arising from credit rating as reflecting "a predictive opinion, dependent on a subjective and discretionary weighing of complex factors" that did not "communicate[] any provably false factual connotation"); *Biospherics, Inc. v. Forbes, Inc.*, 151 F.3d 180, 184 (4th Cir. 1998) (affirming dismissal of defamation claim arising from negative stock tip in article that "reflect[ed] the writer's subjective and speculative supposition" (citations omitted)).

Plaintiffs have no answer to these authorities; they instead continue their rote invocation of the "notice pleading standard employed by Iowa courts" and claim that, to survive dismissal, they only need to provide "'fair notice of the claim' that [the Iowa Poll is] false." (Res. at 21–22.) But this is a complete non sequitur. Under *no* set of facts can Plaintiffs give notice of, much less prove, "the Polls' [lack of] objective veracity" because the poll's predictions of electoral outcomes were not capable of being objectively verified as true or false. (*Id.*) In short, Plaintiffs cannot give notice of falsity relative to something that could never be proven false and expect that "notice" to carry the day. This circularity demonstrates that Plaintiffs' Resistance attenuates Iowa's notice pleading to a meaningless standard.

Second, Plaintiffs brush aside the constitutional "actual malice" standard as inconsequential. (Res. at 18–21.) But the robust protection afforded by the rigorous "actual malice" standard—which restricts liability for reporting about public officials to speech published with knowledge that it was false or with reckless disregard as to its truth or falsity[7]—cannot be so casually disregarded. *Sullivan*, 376 U.S. at 279–80; *Bose Corp. v. Consumers Union of U.S., Inc.*, 466 U.S. 485, 511 n.30 (1984); *Carr v. Bankers Tr. Co.*, 546 N.W.2d 901, 903 (Iowa 1996); *Blessum v. Howard Cnty. Bd. of Supervisors,* 295 N.W.2d 836, 843 (Iowa 1980).

The Petition contains no factual allegations that support Plaintiffs' conclusory recitation that Press Defendants published "knowingly false misrepresentations." (Pet. ¶ 133.) Plaintiffs offer nothing but sheer speculation that it is "likely" someone "deliberately manipulated" the polling samples or "simply made up the numbers as they came in," relying solely on the supposition of a third-party commentator. (Res. at 21; Pet. ¶ 70.) This speculation is directly contravened by the materials incorporated by reference in the pleading, including *The Register*'s November 2 and 3, 2024 articles, which disclosed in detail how the poll was conducted, the poll questionnaires and additional methodological details, and sample sizes and margins of error specific to each question. Indeed, Plaintiffs violate the very pleading principles they profess to rely on by their

[7] "Reckless disregard" has been defined as publishing while actually "entertain[ing] serious doubts as to the truth of [the] publication," *St. Amant v. Thompson*, 390 U.S. 727, 731 (1968), or publishing while subjectively possessing a "high degree of awareness of the probable falsity" of the publication. *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964).

mischaracterization of the undisputed factual information presented in the news articles integral to the Petition's allegations. *See State ex rel. Washington v. D'Apolito*, 156 Ohio St. 3d 77, 80 (Ohio 2018) ("A court is not required to accept allegations in a complaint as true when they are contradicted by documents attached to the complaint." (citation omitted)); *Kapoor v. Dybwad*, 49 N.E.3d 108, 120 (Ind. Ct. App. 2015) ("[A] court need not accept as true allegations that are contradicted by . . . exhibits attached to or incorporated in the pleading." (citation omitted)).

There is no conceivable set of facts that could satisfy the constitutional actual malice standard in this case.

3. Plaintiffs Cannot Circumvent the First Amendment by Characterizing This Action as a "Case About Private Actors."

Plaintiffs repeatedly assert that because this suit involves private rights of action rather than direct government regulation of speech, the First Amendment does not apply. (Res. at 10, 11, 14.) This assertion is flatly incorrect. The Constitution does not concern itself with *who* is attempting to restrict speech but whether application of state law to expressive activity is appropriately limited pursuant to the First Amendment.[8] Put another way, unconstitutional application of state law to suppress protected speech—whether by a private individual via a tort action or direct government regulation of speech—is tantamount to state suppression of speech. That is why in *Sullivan*, which itself involved a private tort cause of action, the Supreme Court analyzed whether the "law applied by the Alabama courts [was] constitutionally deficient for failure to provide the safeguards for freedom of speech and of the press" required by the Constitution. *Sullivan*, 376 U.S. at 264; *see also Price v. Viking Penguin, Inc.*, 881 F.2d 1426, 1430 (8th Cir. 1989) ("As the Bill of Rights became applicable to the states, the [F]irst [A]mendment became increasingly viewed as a limit

[8] Indeed, these "constitutional constraints on speech-based civil liability have deep roots, stretching back to the Framing era." Eugene Volokh, *Tort Liability and the Original Meaning of the Freedom of Speech, Press, and Petition*, 96 IOWA L. REV. 249, 250 (2010).

on state defamation law." (citation omitted)); *Philadelphia Newspapers, Inc. v. Hepps*, 475 U.S. 767, 777 (1986) ("[T]he need to encourage debate on public issues . . . [in] governmental-restriction cases is of concern in a similar manner in . . . case[s] involving a private suit for damages.").

Indeed, state and federal courts across the country have consistently and routinely imposed constitutional constraints on tort liability for decades, especially in the First Amendment context. Plaintiffs' efforts to evade these constraints attempts nothing less than to rewrite constitutional free speech law. *See, e.g.*, *Snyder*, 562 U.S. at 458 (applying First Amendment to private defamation, invasion of privacy, and intentional infliction of emotional distress claims); *Falwell*, 485 U.S. at 46 (applying First Amendment to private intentional infliction of emotional distress claim); *NAACP v. Claiborne Hardware Co.*, 458 U.S. 886, 916–17 (1982) (applying First Amendment to private tort claims arising from economic consequences of boycott); *Malin v. Quad-City Times*, 964 N.W.2d 10, at *1 (Iowa Ct. App. 2021) (table) (affirming verdict in favor of newspaper and journalist defendants on intentional interference with contract claim where jury instructions "essentially precluded liability if the jury found the defendants' actions were protected by the First Amendment").

Plaintiffs may not weaponize consumer fraud law to punish *The Register*'s political campaign reporting without directly contravening the First Amendment. The U.S. Constitution and Iowa Constitution require that Plaintiffs' claims be dismissed in their entirety.

B. Plaintiffs Do Not Assert a Legally Viable Claim Under the Iowa Consumer Fraud Act (Count I).

Plaintiffs cannot establish standing to bring an ICFA claim, let alone any of the other elements of an ICFA claim. ICFA provides:

> A person shall not engage in a practice or act the person knows or reasonably should know is an unfair practice, deception, fraud, false pretense, or false promise, or the

> misrepresentation, concealment, suppression, or omission of a material fact, with the intent that others rely upon the unfair practice, deception, fraud, false pretense, false promise, misrepresentation, concealment, suppression, or omission in connection with the advertisement, sale, or lease of consumer merchandise . . . .

Iowa Code § 714H.3(1). "A consumer who suffers an ascertainable loss of money or property as the result of" one of the prohibited practices outlined in section 714H.3(2) "may bring an action at law to recover actual damages." *Id.* § 714H.5(1). To summarize, Plaintiffs need to show the following: (1) Defendants committed an unfair practice or deception; (2) with the intent that others rely on it in connection with the sale or advertisement of consumer merchandise; and (3) Plaintiffs relied on such unfair practice or deception; (4) resulting in actual damages to Plaintiffs that consist of an ascertainable loss of money or property.

As set forth in Press Defendants' opening brief, Plaintiffs have failed to even sufficiently plead their standing to assert an ICFA claim. President Trump does not allege the type of consumer harm that is meant to be protected by ICFA. (Press Defs' Br. at 34–36.) "In contrast to Article III standing, which addresses 'the constitutional power of a federal court to resolve a dispute,' statutory standing 'is simply statutory interpretation: the question it asks is whether [the legislature] . . . has accorded this injured plaintiff the right to sue the defendant to redress [the plaintiff's] injury.'" *Greenley v. Laborers' Int'l Union of N. Am.*, 271 F. Supp. 3d 1128, 1139 (D. Minn. 2017) (quoting *Miller v. Redwood Toxicology Lab'y, Inc.*, 688 F.3d 928, 934 (8th Cir. 2012)); *see also Rossley v. Drake Univ.*, 336 F. Supp. 3d 959, 965 (S.D. Iowa 2018) ("This requirement is distinct from the issue of whether the plaintiff has constitutional standing under Article III and instead requires courts to consider whether the plaintiff 'has a cause of action under the statute' in question.").

Even beyond Plaintiffs' lack of ICFA standing, their claims are deficient on every element.

1. Plaintiffs Do Not Allege Any Act That Violated ICFA.

As an initial matter, Plaintiffs must first be able to demonstrate that Press Defendants committed some act or practice that violated ICFA. In their Petition, Plaintiffs assert in conclusory fashion that Defendants engaged in two of ICFA's prohibited acts—*i.e.*, that Press Defendants' publication of the Iowa Poll results was (1) a "deception"; and (2) an "unfair act or practice." (Pet. ¶¶ 109–12); *cf.* Iowa Code § 714H.3(1). In their Resistance, Plaintiffs ignore the definition of an "unfair act or practice" and focus solely on the definition of deception. (Res. at 27–29.) Plaintiffs then insinuate the existence of deception by characterizing the Iowa Poll as not just a "miss" but as "manipulated" and "manufactured." (*Id.*) Such an attempted allegation should not be given credit by this Court. In any event, even giving credit to all of Plaintiffs' allegations, they do not amount to a deception or unfair practice under ICFA.

Under ICFA, "'[u]nfair practice' means an act or practice which causes substantial, unavoidable injury to consumers that is not outweighed by any consumer or competitive benefits which the practice produces." Iowa Code §§ 714.16(1)(i), 714H.2(9). Here too, ICFA reinforces that it applies only to *consumer* harm. Iowa law is likewise clear that the statute prohibits "unscrupulous *business* practices," such as sales or advertisements. *State ex rel. Miller v. Cutty's Des Moines Camping Club, Inc.*, 694 N.W.2d 518, 525 (Iowa 2005) (emphasis added); *see also State ex rel. Miller v. Vertrue, Inc.*, 834 N.W.2d 12, 34 (Iowa 2013) (applying the statute to advertising and marketing conduct). The only purportedly "unfair" conduct in this case is the publication of newspaper articles about the Iowa Poll—*not* the sale or advertisement of the newspaper. As discussed above, the publication of the articles is a protected speech activity, is not an inherently commercial act, and bears no qualities of general "unfairness." *Cutty's*, 694 N.W.2d at 525. Even if Plaintiffs continued to argue some sort of unfair practice occurred, for the reasons previously set forth in Press Defendants' opening brief, they do not adequately allege such a practice. (Press Defs' Br. at 40–42.)

Under ICFA, "'[d]eception' means an act or practice that is likely to mislead a substantial number of consumers." *See* Iowa Code § 714H.2(5). Moreover, the deception must mislead consumers as to a "material" fact. *Id.* A statement of fact is "material" under ICFA only if it creates a "misleading impression . . . involv[ing] information that is important to consumers and, hence, likely to affect their choice of, or conduct regarding, a product." *Vertrue*, 834 N.W.2d at 34 (citation modified). As mentioned in Press Defendants' opening brief, Plaintiffs do not meet this definition. (Press Defs' Br. at 37–40.)

Further, Plaintiffs do not square their allegations regarding an unfair practice or a deception with the First Amendment. In short, their alleged unfair practice and deception must be—and is, in fact, limited to—a proposal for a consumer transaction. Iowa Code § 714H.3(1). Plaintiffs allege nothing of the sort. As such, even if the Court accepted all of Plaintiffs' allegations (as well as indirect allegations and speculation) as true, Plaintiffs do not assert an act or practice that violated ICFA.

Moreover, the Court should not accept as true Plaintiffs' indirect allegation that the Iowa Poll was manipulated and/or manufactured. Plaintiffs' purport to assert two sets of factual allegations. The first set of allegations is nothing more than declaring: "*fake poll*." Plaintiffs claim they have asserted factual allegations that either support this declaration or, at minimum, establish Defendants' negligence. Specifically, Plaintiffs cite: (1) President Trump's wins in 2020 and 2016; (2) other "mainstream polling"; (3) Harris's internal polling (though it omits mention of President Trump's or Rep. Miller-Meeks's internal polling); (4) Iowa election results from 2016 to 2022; (5) some other pollsters not polling Iowa; and (6) Rep. Miller-Meeks's prior defeat of Bohannon.

(Res. at 4–6.) At minimum, this series of allegations undermines and defeats any argument by Plaintiffs suggesting they relied on the Iowa Poll results. It is also internally inconsistent with Plaintiffs' allegation that Selzer displayed a "pattern of malicious deceit and election interference" beginning at least as far back as the 2018 Iowa governor's race. (Pet. ¶ 32.) In addition, Plaintiffs allege other pollsters have done the same thing, suggesting there exists some sort of conspiracy to aid Democrats through polling. (*See* Res. at 4.) Regardless, and more importantly, all these allegations simply boil down to the generic claim that Republicans have performed better in elections than Democrats in recent years in Iowa. In short, Plaintiffs assert there has been a mainstream media conspiracy to produce "fake polls" to help Democrats.

The second set of factual allegations is also a common rhetorical tactic of President Trump: the ad populum fallacy, *i.e.*, "*they say*" or "*people say*." Apparently acknowledging that their individual allegations do not support any legal claim, Plaintiffs again insinuate that something about the Iowa Poll was "manipulated" or "manufactured." (Res. at 27–29.) However, perhaps because they lack any good faith basis to allege as much directly, they do so *indirectly*. Specifically, Plaintiffs' Resistance heavily relies on an obscure article by partisan pundit James Piereson (the "Piereson Article"). (*See id.* at 3–4, 40–41.)[9] In sum, Plaintiffs' purported allegations regarding falsified poll results in reality boil down to: "people say" this was a "fake poll."

In the companion *Donnelly* case, the U.S. District Court quickly and firmly rejected the Piereson Article as an impermissible pleading proxy: "While the Court takes as true the probability

[9] Indeed, Plaintiffs' Resistance confirms their reliance on these indirect allegations: "Plaintiffs ***do*** take issue with what they have alleged to be the ***falsified*** results of the Iowa Poll—that the fact that the Poll was so wrong was not a bug, but a feature, procured either by purposely overrepresenting Democrats in the population polled or by outright making up the numbers which underlay the Iowa Poll." (Res. at 28 (emphases in original).) The Resistance cites paragraphs 69, 70, and 92 of the Petition as support for the purported allegation; however, each of those paragraphs is simply a citation to the Piereson Article. (*Id.*; *see* Pet. ¶¶ 69–70, 92.)

of a five standard deviation error is one in 3.5 million, it is not required to take as true that a poll using Defendants' methodology would only deviate from the true election outcome once in 3.5 million samples because the factual predicate for such an assumption has not been alleged in the complaint." 2025 WL 4648229, at *5. Specifically, the *Donnelly* court explained:

> [T]his statistic appears to represent the two-side probability of a result at least five standard deviations from the true result. This one in 3.5 million statistic assumes the Iowa Poll methodology was capturing a true representative sample of the electorate. The Court notes Donnelly in other parts of the amended complaint cites to pollsters who use a different methodology, including PollFair, which reweighed the Selzer sample using historical election poll data. . . . Using this alternate methodology changed the poll results by nine points. This indicates the reason for differences among polls is the different weighting methodologies used by pollsters. Therefore, the assumption undergirding the one in 3.5 million claim appears to lack support in the amended complaint.

Id. at *5 n.1. In other words, the underlying factual predicate in the Piereson Article is a mistaken assumption and therefore its purported conclusion that the Iowa Poll must have been falsified is a mistake. For these and other reasons, this Court should reject Plaintiffs' allegations regarding the Piereson Article.

Moreover, Plaintiffs' mere citation to this third-party source is not a sufficient substitute for its own allegations. As fellow notice pleading jurisdictions confirm, such conclusory or inferential allegations are amongst those that need not be accepted as well-pleaded facts. *See, e.g.*, *Iqtunheimr, LLC v. Val Vista Lakes Cmty. Ass'n*, 586 P.3d 1081, 1082 (Ariz. Ct. App. 2026) ("Arizona courts assume the truth of all well-pled, material allegations in the complaint, but do not accept as true allegations consisting of conclusions of law, inferences or deductions that are not necessarily implied by well-pleaded facts, unreasonable inferences or unsupported conclusions from such facts, or legal conclusions alleged as facts."); *Joseph v. Shell Oil Co.*, 498 A.2d 1117, 1122 (Del. Ch. 1985) ("All well plead[ed] factual allegations must be accepted as true but legal conclusions and unsupported factual conclusions will not be deemed admitted."); *Schmidt v.*

Tavenner's Towing & Recovery, LLC, 448 P.3d 605, 607 (N.M. Ct. App. 2019) ("[U]nwarranted deductions of fact are not admitted."); *Azure Dolphin, LLC v. Barton*, 821 S.E.2d 711, 599 (N.C. 2018) ("[U]nwarranted deductions of fact are not admitted."); *Strickland v. Hedrick*, 669 S.E.2d 61, 73 (N.C. Ct. App. 2008) (courts are "not required . . . to accept as true allegations that are merely conclusory, unwarranted deductions of fact, or unreasonable inferences").

Finally, Plaintiffs' reliance on the Piereson Article is effectively a legal conclusion—*i.e.*, that statistical improbability establishes fraud prima facie—and is entitled to no deference. *See Kingsway*, 711 N.W.2d at 8 ("A motion to dismiss admits the well-pleaded facts in the petition, but not the conclusions."); *Struck*, 973 N.W.2d at 538 (courts "accept as true the petition's well-pleaded factual allegations, but not its legal conclusions"); *McDonough v. Anoka Cnty.*, 799 F.3d 931, 945 (8th Cir. 2015) ("Allegations that are no more than conclusions . . . are not entitled to the assumption of truth."). Indeed, the U.S. District Court for the Southern District of Iowa has already held as much. *See Donnelly*, 2025 WL 4648229, at *5 (holding that court was "not required to take as true that a poll using Defendants' methodology would only deviate from the true election outcome once in 3.5 million samples because the factual predicate for such an assumption has not been alleged in the complaint").

2. Plaintiffs Do Not Allege the Publication of the Iowa Poll Was in Connection with the Sale or Advertisement of Consumer Merchandise.

Next, Plaintiffs must be able to demonstrate that Press Defendants intended the alleged act or practice to be relied upon in connection with the sale or advertisement of consumer merchandise. Iowa Code § 714H.3(1) ("A person shall not engage in a practice or act the person knows or reasonably should know is an unfair practice [or] deception . . . with the intent that others rely upon the unfair practice or deception . . . in connection with the advertisement, sale, or lease of consumer merchandise . . . ."). This is a simple, plain reading of the statute. Yet Plaintiffs attempt to rewrite the requirement and then redefine the terms.

First, Plaintiffs' Petition does not address whether their claims are purportedly based on the sale or the advertisement of *The Register*; however, in their Resistance, Plaintiffs abandon and thereby waive any theory based on advertisement and rely *solely* on a theory of a "sale." (Res. at 30–32.) In fact, Plaintiffs do not even attempt to address the effect of their First Amendment argument that the act in question by Press Defendants was commercial speech and therefore would be limited to speech that "does no more than propose a commercial transaction." *City of Cincinnati*, 507 U.S. at 421. When read in conjunction with ICFA, the speech at issue would be limited to a proposal for a consumer transaction. *Id.*; Iowa Code § 714H.3(1). Regardless, Plaintiffs' disavowal of any violative act in connection with "advertisement" is fatal based on the First Amendment. (Res. at 30–32.) And, of course, Plaintiffs do not address the fact that the Iowa Poll was published for free to the public. (Press Defs' Br. at 8.)

Second, rather than grapple with their inability to effectively plead around ICFA's definition of "consumer merchandise," Plaintiffs merely brushoff Press Defendants' position in this regard as a "gotcha" argument. (*Compare* Res. at 26; *with* Press Defs' Br. at 42–45.) But—as Plaintiffs themselves admit—ICFA's plain statutory language makes clear that the statute's prohibitions apply only to conduct perpetrated "in connection with the advertisement, sale, or lease of *consumer merchandise*." Iowa Code § 714H.3(1) (emphasis added). (*See* Res. at 26.) And to constitute such "consumer merchandise," the merchandise itself must be "offered for sale or lease, or sold or leased, primarily for personal, family or household purposes." *Id.* § 714H.2(4). In short, an action brought under a consumer fraud statute must be predicated upon a consumer transaction. *See, e.g.*, *Albaugh v. The Reserve*, 930 N.W.2d 676, 684–85 (Iowa 2019) (sale and lease of residential units); *Bass v. J.C. Penney Co., Inc.*, 880 N.W.2d 751, 753–54 (Iowa 2016) (charges on online orders). In their Resistance, Plaintiffs attempt to dismiss their failure to plead or identify any predicate consumer transaction as a "purported oversight" and claim not to understand the relevance of the tactic. (Res. at 26.)

Further, "consumer merchandise" does not include goods or services purchased for business or professional purposes. The Iowa Supreme Court interpreted nearly identical language in the Door-to-Door Sales Act ("DDSA"), which defines "consumer goods or services" as "goods or services purchased, leased, or rented primarily for personal, family or household purposes." *See Morris v. Steffes Grp., Inc.*, 924 N.W.2d 491, 499 (Iowa 2019).[10] There, the Court explained that "the legislature utilized an approach based not on the objective nature of the goods or services but solely upon the primary purpose of the goods or services involved in the transaction." *Id.* at 499–500. Because the statute "used the phrase 'goods or services *purchased*' for personal use, not 'goods or services *sold*' for personal use, the Court concluded that "the legislature intended the focus of the DDSA to be on the intended use of the goods or services by the *buyer*, not the seller." *Id.* at 500. Particularly relevant here, the Court distinguished between "broadly defined consumer goods or services" and those "motivated by business purposes": "The limitation of door-to-door sales protection to broadly defined consumer goods or services transactions reflects an intent to exclude transactions motivated by business purposes." *Id.* In other words, allegations centered on professional or business purposes fall outside the scope of "consumer merchandise" in the ICFA context. *See also Union Story Trust & Savings Bank v. Sayer*, 332 N.W.2d 316, 319 (Iowa 1983)

[10] The commonalities between the DDSA and ICFA further indicate that the statutory interpretation exercise undertaken in *Morris* is equally applicable under ICFA as in the present case. *Morris*, 924 N.W.2d at 496 ("A violation of the DDSA is also a violation of the Iowa Consumer Fraud Act.").

(holding that loans to finance a commercial venture were not for personal, family or household purposes such that they fell within the definition of a "consumer loan" or "consumer credit transaction" under Iowa Consumer Credit Code).

Third, Plaintiffs attempt to break up the statutory intent requirement and improperly disassociate it into two parts: (1) the actor must intend that others rely upon the act or practice, and (2) the act or practice must be in connection with the sale of consumer merchandise. (Res. at 30–31.) Plaintiffs purport to satisfy their misconstrued "intent" requirement by pointing to Press Defendants' alleged political motivation in drumming up support for Democrats and voters' belief in the accuracy of the Iowa Poll; and they purport to satisfy their misconstrued "in connection" requirement by noting that the Iowa Poll results were published as part of a general circulation newspaper. (*Id.*) In other words, Plaintiffs attempt to bypass the mandatory throughline that Press Defendants intend that the act be relied upon by Plaintiffs in connection with the sale of the consumer merchandise. This is the same tactic Plaintiffs used in attempting to break up "consumer merchandise" into "consumer" and "merchandise" and then disassociating the two terms.

Plaintiffs assert that "nowhere is the motivation or animus behind an unfair practice addressed in the ICFA; all that the statute requires is that the violator 'intend[d] [sic] that others rely upon the unfair practice.'" (*Id.* at 31.) Plaintiffs argue that the only requirement goes to the "mens rea"[11] of a defendant, *i.e.*, its "intent that others rely upon the unfair practice." (*Id.* at 32.) Plaintiffs attempt to rewrite ICFA's plain-language intent requirement to permit an otherwise improper ICFA claim based on the theory that Press Defendants attempted to deceive voters with the Iowa Poll and that Plaintiffs had no choice but to mitigate that hypothetical harm. They do not

[11] "Mens rea" is criminal law concept referring to a "criminal intent." *See Eggman v. Scurr*, 311 N.W.2d 77, 78 (Iowa 1981). Plaintiffs' erroneous invocation of the term in this civil matter, where it has no application, should be disregarded.

allege Press Defendants deceived Plaintiffs into purchasing *The Register* or that Plaintiffs were thereby harmed when they did not get what they paid for. With this theory of their case, Plaintiffs outright ignore some ICFA requirements and attempt to rewrite others. But the Petition itself makes plain that Plaintiffs' complaint is that *voters* were supposedly deceived (*not* Plaintiffs). (Pet. ¶¶ 119–20 (alleging "the public could not discern who was truly leading in the Iowa Presidential race and, as a result, were, or could have been, badly deceived").)

In *Cutty's*, the Iowa Supreme Court affirmed that ICFA plaintiffs must show a "relation or nexus"—in other words, a "substantive connection"—between the alleged deception and the sale of consumer merchandise. 694 N.W.2d at 524–26. But here, Plaintiffs' standalone allegation appears to be that the alleged "deception" concerns the poll's accuracy—which is the editorial content of the newspaper, not a consumer-facing misrepresentation about a product being sold. As discussed *supra*, Plaintiffs do not contest that the Iowa Poll itself does not constitute or call for any consumer transaction, and therefore, it is not cognizable under ICFA.

3. Plaintiffs Do Not Allege They Relied—and They Did Not Rely—on the Iowa Poll.

Plaintiffs' claims require that they be able to establish that Press Defendants intended Plaintiffs to rely on the allegedly violative act in connection with the sale of consumer merchandise but that they, in fact, relied upon such act in completing a consumer transaction. In short, the requisite intent plus the requisite reliance must be connected and result in a consumer transaction.

Plaintiffs completely disavow any sort of reliance in this case. Instead, Plaintiffs argue that reliance is not required. In short, they argue that "it is not *Plaintiffs*' reliance which is a component of an ICFA claim, but Defendants' intent to *induce* reliance." (Res. at 32.) Press Defendants do not dispute that ICFA requires Plaintiffs to prove, among other things, that Defendants had the "intent that others rely" on violative conduct before they can be held liable. *See* Iowa Code §

714H.3(1). However, Press Defendants' discrete point—relevant to this procedural moment and rooted in statutory interpretation and directly applicable caselaw—is that ICFA's proximate cause requirement inherently requires that Plaintiffs establish their reliance as consumers on a fraudulent act upon engaging in a consumer transaction. (Press Defs' Br. at 46–47.)

First, Plaintiffs do not engage with—much less refute—Press Defendants' argument that the statute's conspicuous *omission* of the clause providing that "it is not necessary . . . to allege or to prove reliance" (which is found in the portion of ICFA enforceable by the Iowa Attorney General but eliminated from the portion of ICFA providing for private rights of action) indicates that private plaintiffs must prove reliance to establish proximate causation. (*Id.* at 46 (comparing Iowa Code §§ 714.16(7) and 714H.3).)

Second, ICFA requires contractual privity for a private action. *See McKee v. Isle of Capri Casinos, Inc.*, 864 N.W.2d 518, 532 (Iowa 2015) ("If [the plaintiff] had no contractual right to the bonus . . . then she could not have suffered an ascertainable loss of money or property when she was denied that bonus."); *see also Mannino v. McKee Auto Ctr., Inc.*, No. 4:34-cv-00262, 2024 WL 4884440, at *3 (S.D. Iowa Sept. 5, 2024) (recognizing that "[t]he Iowa Supreme Court has rejected claims under the ICFA when a party does not have a contractual right to the property in dispute" and that the statutory prerequisite for an ICFA claim is a transaction between the plaintiff and defendant for "consumer merchandise"). Plaintiffs' claims are no different. Thus, even if the Iowa Poll qualified as consumer merchandise, Plaintiffs have failed to allege any cognizable interest in it. As established in *Donnelly*, to hold otherwise "would mean every poll cited favorably by [Plaintiffs] was similarly engaged in an unfair practice because they too published polls which did not accurately forecast the election outcome." 2025 WL 4648229, at *8.

Third, Plaintiffs fail to acknowledge the Illinois Supreme Court's interpretation of Illinois's analogous consumer fraud statute, where the court expressly held that reliance is necessary for a private plaintiff to establish proximate cause. *See Tri-Plex Tech. Servs., Ltd. v. Jon-Don, LLC*, 241 N.E.3d 454, 462 (Ill. 2024). In fact, Plaintiffs point to no case law supporting their position at all.

Fourth, if anything, Plaintiffs' treatment of the reliance requirement in their Resistance confirms that dismissal is warranted. They claim that the Petition "explains how polling itself can impact elections," including "voter choices and turnout." (Res. at 33 (citing Pet. ¶¶ 35–44).) They also claim that the Petition is "replete with allegations" that Defendants "intended the manipulated poll to be relied upon in drumming up support for Harris and other Democratic candidates." (*Id.* (citing Pet. ¶¶ 6, 54, 63).) But these allegations say nothing about whether or how *Plaintiffs* relied on the Iowa Poll when engaging in any consumer conduct. That is unsurprising because elsewhere, the Petition affirmatively alleges that Plaintiffs did not and could not justifiably rely on the Iowa Poll results. (*See, e.g.*, Pet. ¶ 47 (polling results were "so implausible that no objective pollster could have honestly advanced it"); *id.* ¶ 49 ("*every other* mainstream Iowa poll also showed President Trump comfortably ahead"); *id.* ¶ 51 (polling results were "remarkably out of line compared to election results in the prior four cycles"); *id.* ¶ 53 (polling results were in "sharp contrast to common sense, electoral history, all other public polls, and Harris's internal polling"); *id.* ¶¶ 78–80 (polling results were "a statistical impossibility and an absurd suggestion").) Yet again, Plaintiffs' own allegations effectively plead their ICFA claim out of court, and this Court should dismiss them. *See Meade*, 974 N.W.2d at 779.

4. Plaintiffs Do Not Allege Any Recoverable Damages.

Finally, Plaintiffs must have suffered actual damages that amounted to an ascertainable loss of money or property as a result of the consumer transaction. Iowa Code §§ 714H.3(2), 714H.5(1).

Plaintiffs fail to address how they have alleged "actual damages," or even how any actual damages are possible. Plaintiffs claim they "suffered damages in their efforts 'to mitigate and counteract the harms of the Defendants' conduct.'" (Res. at 33 (citing Pet. ¶¶ 124–25).) In their Resistance, Plaintiffs add the argument that "the damages suffered by Plaintiffs flowed from election interference which naturally flowed from the prohibited acts of Defendants." (*Id.* at 27.) But none of it comes close to providing notice of any actual damages or pleading a claim for damages that could be recoverable under *any* set of facts.

Plaintiffs again revert to their practice of indirect allegations and insinuations in an attempt to argue that anything possibly resembling actual damages could exist. Plaintiffs assert that "[t]he Petition repeatedly includes Plaintiffs among the class of consumers who purchased the Press Defendants' publications." (*Id.* at 26.) For support of this indirect allegation, Plaintiffs cite to the following quote from their Petition: "Consumers within and without Iowa who paid for subscriptions to the *Des Moines Register*, *USA Today*, and other Gannett-owned publications, or who otherwise purchased the publication, <u>**including Plaintiffs**</u>, were also badly deceived." (*Id.* at 26–27 (citing Pet. ¶ 110) (emphasis added in Resistance).) Plaintiffs do not specify whether they purchased "the publication" or rather had previously paid for subscriptions to some Gannett-owned publication. Importantly, elsewhere in the Petition, Plaintiffs make clear that neither President Trump nor Zaun purchased *The Register*. (Pet. ¶¶ 20–22.) Nor do Plaintiffs allege the purported deception had anything to do with their own individual entries into any consumer transactions. Rep. Miller-Meeks is the only Plaintiff alleged in the Petition to have purchased or subscribed to *The Register*—and the Petition is clear that her purchase decision was not in reliance on anything at issue in this lawsuit. (*See id.* ¶ 21.)

To the extent Plaintiffs are relying on interests identical to those of any other "consumer" of the Iowa Poll, then their interests have already been litigated by a competent court with jurisdiction in *Donnelly* as discuss *infra*. If, however, Plaintiffs are asserting some unique interest based on a theory of abstract political harm or deception, then they fail to establish any nexus between the purported violative conduct and a consumer transaction, and they have not stated a cognizable claim for damages under ICFA. Either way, Plaintiffs' ICFA claims must be dismissed.

At best, Plaintiffs' damages claim sounds in consequential damages, not the statutory prerequisite of "actual" and "ascertainable" damages. *See* Iowa Code § 714H.2. "Actual damages" are compensatory damages that are "proximately caused" by the prohibited act and "reasonably ascertainable in amount." *Id*. In contrast, consequential damages are "losses that do not flow directly and immediately from an injurious act but that result indirectly from the act." *Intercon Constr., Inc. v. Team Indus. Servs., Inc.*, No. 18-CV-2081, 2022 WL 16708449, at *13 (N.D. Iowa Nov. 4, 2022) (citation modified). Here, any purported damages stemming from publication of the Iowa Poll are not "actual damages" within the meaning of ICFA. Damages relating to political expenditures and losses, or general feelings of distrust of a publisher, do not represent an actual, tangible harm that can be traced to purchases of or subscriptions to *The Register*. Rather, they are collateral and indirect harms—the very definition of consequential damages—which fall outside the scope of recoverable "actual damages" under Iowa Code § 714H.2. Absent actual, ascertainable damages proximately caused by the alleged conduct, Plaintiffs' ICFA claim must fail.

Plaintiffs' Resistance simply does not respond to Iowa law's limitations on damages. Rather, Plaintiffs retreat from Press Defendants' arguments entirely and simply state that their allegations regarding damages were not meant to be "exhaustive[]." (Res. at 23.) In doing so, Plaintiffs imply that they need merely recite conclusory verbiage to the effect that they were generally damaged. But Plaintiffs have made clear in their Petition that any damages they claim are limited to time, resources, and expenditures by their campaigns. (Pet. ¶¶ 124–26.) To the extent any hypothetical damages would go beyond those allegations, they would be necessarily limited to Plaintiffs' roles in their political offices, not their individual capacities, which are also not cognizable under ICFA.

Illinois's analogous consumer fraud statute is instructive. Caselaw interpreting that statute clearly delineates between permissible "actual damages" and the kinds of speculative, non-cognizable harm that fail to state a claim. *See, e.g., In re SuperValu, Inc.*, 925 F.3d 955, 964 (8th Cir. 2019) (holding that a "claim under [the Illinois Consumer Fraud Act] requires the plaintiff to have suffered 'actual damage' as a result of the defendant's conduct"). In *Supervalu*, the Eighth Circuit acknowledged the statutory prerequisite to state a private claim for consumer fraud was allegations of "real and measurable out-of-pocket loss." *Id.* (citation modified). Indeed, mirroring the actual damages requirement in Iowa, courts have held that "speculative and conclusory" allegations of damages are "insufficient" to show actual damages. *Camasta v. Jos. A. Bank Clothiers, Inc.*, 761 F.3d 732, 739 (7th Cir. 2014).

For example, in *Camasta*, a plaintiff alleged that a clothier's advertised sales price was just the normal or regular retail price. *Id.* The Seventh Circuit resoundingly rejected the premise of "actual damages" in such a scenario. *Id.* at 740. The proper remedy for this scenario: Plaintiffs "could have shopped around and found a better price in the marketplace." *Id.* The same reasoning holds true here, as Plaintiffs' damages are entirely speculative and conclusory. If Plaintiffs believe the Iowa Poll was manipulated—which it was not—the proper remedy for them is to "shop around" and read other newspapers or poll results.

As further illustration, Iowa's competition laws contain nearly identical damages language as the private right of action under ICFA. *Compare* Iowa Code § 533.12 ("[A] person who is injured . . . by conduct prohibited under this chapter may bring suit to . . . [r]ecover actual damages."), *with id.* § 714H.5(1) ("A consumer who suffers an ascertainable loss of money or property as the result of a prohibited practice or act in violation of this chapter may bring an action at law to recover actual damages."). The Iowa Supreme Court, interpreting this language, has held that dismissal under the notice pleading standard is appropriate for failing to adequately allege ascertainable damages. *See Southard v. Visa U.S.A. Inc.*, 734 N.W.2d 192, 194 (Iowa 2007) (citing Iowa Code § 553.12(2)). The Court held that on the face of the plaintiff's complaint, the alleged injuries were too remote to be cognizable, even under Iowa's generous notice pleading standard. *See id.* at 195. Simply put, Plaintiffs allege abstract and remote harms for which ICFA—and even Iowa's common law—does not provide any remedy. *See id.* at 197 (emphasizing that the remoteness of an injury "is not based upon a factual inquiry" but rather is a proper subject for legal determination).

Like the Iowa competition law in *Southard*, ICFA's private right of action only contemplates statutory standing for consumers who have experienced actual, ascertainable damages from a transaction. *See id.* at 199 (finding standing lacking where damages were "speculative at worst" and plaintiffs were not "consumers of the defendants' products"). Thus, Plaintiffs' naked assertion that their allegations regarding damages are "sufficient at this stage of the litigation" is not only unsupported—it contradicts Iowa law. (*Cf.* Res. at 25.) Plaintiffs' grievances stem from abstract, remote injuries. They are not the "actual damages" for which ICFA's private right of action provides a remedy.

Plaintiffs' Resistance fails to remedy any of the numerous and independently sufficient bases to dismiss their ICFA claim set forth in Press Defendants' motion to dismiss. The claim must be dismissed with prejudice.

C. Plaintiffs Do Not Assert a Legally Viable Claim for Fraudulent Misrepresentation (Count II).

Press Defendants raise multiple, independent grounds for dismissal of Plaintiffs' fraudulent misrepresentation claim, including that (1) the Iowa Poll is a non-actionable statement of opinion rather than an actionable false representation, (2) Plaintiffs did not justifiably rely on the Iowa Poll, and (3) Plaintiffs' alleged injuries are not redressable under the recognized measures of damages for fraudulent misrepresentation. (Press Defs' Br. at 48–53.) In their Resistance, Plaintiffs respond only the latter of these arguments—*i.e.*, redressability—and have done so unpersuasively. (Res. at 35–36.) Insofar as Plaintiffs failed to address the other two grounds for dismissal, they should be deemed conceded, and the fraudulent misrepresentation claim should be dismissed irrespective of the question of redressability.

First, Plaintiffs do not contest that the Iowa Poll is a non-actionable statement of opinion for purposes of their common law tort claims. (*Compare id.* (omitting argument on actionability for tort claim); *with id.* at 27–28 (arguing actionability under ICFA).) Press Defendants demonstrated in their opening brief that the Iowa Poll results are statements of political opinion, not actionable representations of fact, because opinion polls are inherently evaluative snapshots of voter sentiment at a given point in time, subject to margins of error, not guarantees of future election performance. "[U]nder Iowa law, 'a mere statement of honest opinion' does not give rise to a claim for fraud." *Tralon Corp. v. Cedarapids, Inc.*, 966 F. Supp. 812, 827 (N.D. Iowa 1997) (quoting *Hoefer v. Wisc. Educ. Assoc. Ins. Tr.*, 470 N.W.2d 336, 340 (Iowa 1991) (en banc)). Press Defendants further demonstrated that they published the full methodology alongside the Iowa Poll results, allowing any reader to evaluate the Iowa Poll for themselves. Plaintiffs do not address or attempt to distinguish the cases cited by Press Defendants and identify no authority allowing that a political opinion poll can constitute an actionable false representation for a fraudulent misrepresentation claim.

Second, Plaintiffs do not engage at all with the justifiable-reliance requirement. To prevail on a claim for fraudulent misrepresentation, Plaintiffs must be able to demonstrate that they "acted in reliance on the truth of the representation and [were] justified in relying on the representation[.]" *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 400 (Iowa 2001) (en banc). Plaintiffs' allegations affirmatively defeat their own justifiable reliance claim: the Petition identifies no act by Plaintiffs taken in reliance on the Iowa Poll results, and Plaintiffs allege that the Iowa Poll was facially unreliable from the moment of its publication. (Pet. ¶¶ 47, 49.) In other words, Plaintiffs allege both that they did not rely on the Iowa Poll *and* that it would have been unreasonable for them to do so. (*Id.* ¶¶ 47, 49, 53–57; *see* Press Defs' Br. at 50–51.) Plaintiffs' Resistance does not rebut this argument or even acknowledge the justifiable-reliance requirement. (Res. at 34–36.)

Lastly, Plaintiff's sole argument on redressability is unavailing. As set forth in Press Defendants' opening brief, Iowa law recognizes only two forms of damages for fraudulent misrepresentation: (1) out-of-pocket damages; and (2) benefit-of-the-bargain damages. *See Midwest Home Distrib., Inc. v. Domco Indus. Ltd.*, 585 N.W.2d 735, 739 (Iowa 1998). (*See also* Press Defs' Br. at 51.) Plaintiffs do not argue that they sustained benefit-of-the-bargain damages; they only address their alleged out-of-pocket damages. (Res. at 35–36.)

Out-of-pocket damages are calculated by giving "the defrauded party the difference between the value of what the party has parted with and the value of what the party has received." *Midwest Home Distrib.*, 585 N.W.2d at 739. This measure of damages requires that a plaintiff

(1) part with something of value, and (2) receive something of lesser value from a defendant. Plaintiffs argue in their Resistance that they sustained out-of-pocket damages because they "expended resources to mitigate the harms of the Iowa Poll." (Res. at 36.) However, none of Plaintiffs' alleged expenditures in this case were paid *to* any of the Defendants, Press Defendants neither received anything of value *from* Plaintiffs nor provided anything of value to Plaintiffs in exchange. (*See* Press Defs' Br. at 52; *cf.* Pet. ¶ 124.) Further, neither a type nor quantum of alleged "expended resources" are identified anywhere in the Petition or Resistance; nor are the purported "harms" or needed "mitigat[ion]" set forth. Therefore, even though Plaintiffs claim to have incurred expenditures "out of pocket" in a colloquial sense, such expenditures are not "out-of-pocket damages" as a matter of Iowa law. Plaintiffs' argument regarding redressability simply does not address, much less overcome, the fundamental mismatch between Plaintiffs' purported injuries and the remedies available under Iowa law for fraudulent misrepresentation.

The relevant inquiry at this stage is whether the Petition, on its face, forecloses any cognizable damages theory. It does. There is no conceivable set of facts under which Plaintiffs' alleged injuries—*i.e.*, their respective political campaigns' "expended resources" and that they generally were "deceived"—can be shoehorned into Iowa law's well-established damages framework for fraudulent misrepresentation claims. (*Cf.* Pet. ¶¶ 110–11; Res. at 35–36.)

Plaintiffs' Resistance confirms that their fraudulent misrepresentation claim must be dismissed.

D. Plaintiffs Do Not Assert a Legally Viable Claim for Negligent Misrepresentation (Count III).

As with the fraudulent misrepresentation claim, Press Defendants raised multiple, independent grounds for dismissal of Plaintiffs' negligent misrepresentation claim, including that (1) Press Defendants are not in the business of supplying information under Iowa law, (2) Press

Defendants did not supply the Iowa Poll to Plaintiffs for their benefit or guidance, (3) Plaintiffs do not claim reasonable reliance on the Iowa Poll, and (4) Plaintiffs do not claim any damages were proximately caused by the Iowa Poll. (Press Defs' Br. at 54–58.) Rather than address Press Defendants' arguments head on, Plaintiffs' Resistance pivots to an irrelevant theory about the alleged leak of the poll results and a perplexing invocation of the doctrine of *res ipsa loquitur*. Neither cures—or even really addresses—the defects in Plaintiffs' negligent misrepresentation claim.

First, Plaintiffs do not meaningfully contest that Press Defendants are not in the business of supplying information in an advisory capacity. Under Iowa law, a negligent misrepresentation claim requires that the defendant owes a duty of care to the plaintiff, which "arises only when the information is provided by persons in the business or profession of supplying information to others," *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 124 (2001) (en banc), in a "special relationship of advice and guidance," *In re Est. of Maddigan*, No. 03-0048, 2004 WL 1159659, at *2 (Iowa Ct. App. May 26, 2004). Plaintiffs highlight this very point: "The Supreme Court of Iowa has explicitly held that when it comes to negligent misrepresentation, 'those liable are only those who supply information in an advisory capacity and are manifestly aware of how the information will be used and intend to supply it for that purpose.'" (Res. at 37 (quoting *Van Sickle Constr. Co. v. Wachovia Com. Mortg., Inc.*, 783 N.W.2d 684, 691 (Iowa 2010) (cleaned up)).)

Plaintiffs' Resistance conflates a "pecuniary interest" in publishing information with the "advisory capacity" that Iowa law requires. Plaintiffs argue that because Press Defendants had a pecuniary interest in the Iowa Poll and "succeeded in generating enormous buzz," they were "exactly the type of entities that 'supply information in an advisory capacity.'" (*Id.* at 38 (citation modified).) Plaintiff cites no authority in the law for this proposition, and there is none. Indeed, if a pecuniary interest in publishing information was alone sufficient to create an advisory relationship with every person who reads it, then every for-profit newspaper, broadcaster, media outlet, blogger, and even social media influencer would owe a supplemental duty of care to every reader, listener, or viewer of their content and for every subject of their commentary. Iowa law does not support such a sweeping expansion of the tort. The cases cited by Press Defendants in their motion, which Plaintiffs do not address, hold precisely the opposite: general circulation newspapers do not fall within the class of defendants contemplated by Iowa's negligent misrepresentation tort, because they do not act as advisors to a limited class of persons. (Press Defs' Br. at 54–57.)

Second, Plaintiffs do not contest that the Iowa Poll was not supplied for their personal benefit or guidance and have thereby conceded that dismissal is proper. The Petition itself alleges that the Iowa Poll was "published online" and "nationally distributed" to the general public, not supplied to Plaintiffs for the purpose of advising Plaintiffs or their campaigns. (Pet. ¶ 1.) Under no conceivable set of facts could Plaintiffs show that Press Defendants knew or intended that Plaintiffs would rely on the Iowa Poll for "guidance"; rather, the Petition affirmatively pleads that the claim fails this requirement. (*Id.*; *see* Press Defs' Br. at 56–57.)

Third, to survive dismissal, it must be possible for Plaintiffs to show that they reasonably relied on the Iowa Poll in a transaction, that Press Defendants intended the information to influence, *and* that the Iowa Poll was the proximate cause of compensable damages. Plaintiffs do not address any of these requirements in their Resistance on negligent misrepresentation at all, instead relying on a blanket cross-reference to arguments made elsewhere. (Res. at 36–37.) As discussed *supra*, Plaintiffs' allegations affirmatively defeat any claim of reasonable reliance. And

Plaintiffs' ongoing refusal to identify *any* feasible, cognizable damages, much less damages proximately caused by the Iowa Poll rather than by independent campaign decisions, is fatal to their negligent misrepresentation claim.

Finally, Plaintiffs' fallback theories of negligence in preventing a "leak" and *res ipsa loquitur* are simply irrelevant to the elements of the negligent misrepresentation claim and cannot save it from dismissal. Plaintiffs' entire *res ipsa loquitur* argument rests on the premise that a poll's deviation from election results is itself evidence of negligence. But a statistical improbability does not conjure a cognizable negligent misrepresentation claim where one otherwise cannot exist on the elements of the claim, and Plaintiffs cite no authority for such a proposition. (*Cf. id.* at 40.) Regarding Plaintiffs' theory about the leak of the poll results, such allegations are not directed toward Press Defendants and cannot support a claim against them in any event. But more importantly, the allegations about the poll leak are simply irrelevant to *any* element of the negligent misrepresentation claim. Plaintiffs' case citations—regarding duties owed by a North Carolina architect in his employment contract and by a financial institution to protect customers' personal information—bear no similarity to these factual allegations and no relation to a negligent misrepresentation claim. (*Id.*)

Plaintiffs' Resistance provides no basis to avoid dismissal of their legally deficient negligent misrepresentation claim.

E. Plaintiffs' Claims Against Defendants Are Foreclosed by the U.S. District Court's Dismissal of Identical Claims.

The U.S. District Court's rulings of law on the identical claims in the *Donnelly* case are key to the outcome of this motion. First, the federal court's determinations as to the import and effect of the First Amendment to the U.S. Constitution on these claims must be accorded due weight. Irrespective of whether this Court formally applies issue preclusion, the basic principles and policies behind the doctrine confirm that the *Donnelly* decision is—at minimum—standing decisional authority with unique and powerful persuasive force that cannot simply be ignored.

Plaintiffs' arguments against the application of issue preclusion principles ask this Court to overlook the undeniable identity between this case and the *Donnelly* case. Indeed, Plaintiffs suggest the "claims" at issue are somehow "different." (Res. at 48.) But to the contrary, this case purports to advance ICFA and common law misrepresentation claims—just like *Donnelly*. And its factual allegations center on Selzer Defendants' conducting of the Iowa Poll and Press Defendants' publication of its results—just like *Donnelly*. This Court should reject Plaintiffs' attempt to evade the inescapable legal overlap of these two cases and instead see Judge Ebinger's decision for what it is: a directly analogous and dispositive legal analysis that the Court should apply here.

Plaintiffs argue that issue preclusion is not appropriately invoked against them as a general matter because Defendants were not "strangers" to the *Donnelly* lawsuit. (*Id.* at 43.) According to Plaintiffs, the only time defensive issue preclusion applies is where "the defendant in the second action" was "a stranger to the judgment in the first action" and "relies upon the prior judgment" in the second action. (*Id.* (quoting *Dettman v. Kruckenberg*, 613 N.W.2d 238, 244 (Iowa 2000)). But that is not the law in Iowa. Plaintiffs can be "strangers" to the initial action, too. Indeed, defendants routinely invoke issue preclusion to prevent plaintiffs from relitigating issues that were previously raised by other plaintiffs. *See, e.g.*, *Brown v. Kassouf*, 558 N.W.2d 161, 164–65 (Iowa 1997); *State ex rel Casas v. Fellmer*, 521 N.W.2d 738, 742–43 (Iowa 1994); *Opheim v. Am. Interinsurance Exch.*, 430 N.W.2d 118, 120–21 (Iowa 1988); *Bryan v. Hall*, 367 N.W.2d 251, 255 (Iowa Ct. App. 1985); *see also Lyons v. Andersen*, 123 F. Supp. 2d 485, 499–501 (N.D. Iowa 2000) ("*Bryan*, *Casas*, *Opheim*, and *Brown* all involved the defensive application of issue preclusion against a plaintiff who was not a party to an action where the issue in question was litigated previously.").

Plaintiffs also argue that they are not "connected in interest with" the *Donnelly* plaintiffs. They complain that Press Defendants have merely identified a "general similarity" between this case and the *Donnelly* case that fails "to show that the parties themselves" have a sufficient connection. (Res. at 43.) But the similarities Press Defendants identified are not "general"—they are deep, specific, and direct:

- This case and the *Donnelly* case were filed within a few weeks of each other;
- After the *Donnelly* pleading was filed, Plaintiffs amended the present Petition to add mirror-image fraudulent and negligent representation claims, which were absent from the original pleading;
- Both cases were assigned to U.S. District Judge Ebinger on removal to federal court;
- At the time Judge Ebinger dismissed *Donnelly*, the parties to this case had fully submitted a motions to dismiss Plaintiffs' claims;
- Judge Ebinger stated that *Donnelly* and President Trump's case were related; and
- Donnelly's counsel actively participated in Plaintiffs' case by seeking leave to file an amicus brief, demonstrating coordinated efforts with Plaintiffs.

(*See* Press Defs' Br. at 63–64.)

Plaintiffs seek to discount these connections by citing cases in which the parties had a so-called "clear connection" with each other. (*See* Res. at 45–46.) But the coordination of the parties here and in *Donnelly* is itself a "clear connection," and Plaintiffs' case citations do not hold otherwise. *Cf. Basel v. City of Ankeny*, 810 N.W.2d 896, at *2 (Iowa App. Feb. 1, 2012) (table). The *Donnelly* case and President Trump's federal case were much more intertwined than the two lawsuits at issue in *Basel*. Issue preclusion is a highly fact-intensive inquiry. *See Loudner v. United States*, 330 F. Supp. 2d 1074, 1080 (D.S.D. 2004) (noting that application of issue preclusion to a plaintiff who was not a party to a prior action is a "fact-intensive inquiry" (quoting *Black Clawson Co. v. Kroenert Corp.*, 245 F.3d 759, 764 (8th Cir. 2001))). As discussed above, there is ample basis for this Court to conclude that Plaintiffs are "connected in interest" with the *Donnelly* plaintiff.

Finally, Plaintiffs assert that the "first prerequisite" for issue preclusion is not met because the issues in this case and the *Donnelly* case are not identical. (Res. at 49.) Plaintiffs advance two grounds for this assertion—(1) that the federal court "sidestepped" the "core factual contention" underlying Plaintiffs' Petition; and (2) that the federal court "relied on pleading standards which are inapplicable to this case[.]" (*Id.* at 48–50.) Both fail.

First, Plaintiffs argue that the issues here are not identical because the federal court's decision "take[s] for granted facts which Plaintiffs dispute as the foundation of their Petition: that Selzer accurately reported the results or methodology of her poll." (*Id.* at 48.) Plaintiffs argue that federal court did not predicate its rulings on whether the poll's methodology was fraudulently manipulated and that the *Donnelly* case therefore did not involve "precisely the same" issues. (*Id.* at 48–49.)

To start, Plaintiffs' characterization of the federal case is wrong. The federal court did not "sidestep" or "take for granted" allegations about poll manipulation or falsification—the *Donnelly* plaintiffs simply did not assert them. Regardless, the supposedly "core factual contention" underpinning Plaintiffs' entire Petition amounts to a small handful of paragraphs, which exclusively quote a non-appended third-party source but do not themselves affirmatively allege that the Iowa Poll deliberately "made up the numbers" or overrepresented Democrats in the sample. (*Id.* at 48–49 (citing Pet. ¶¶ 69, 70, 92).) The face of the Petition reveals that this is not a "core" contention; it is only labeled as such in Plaintiffs' resistance in service of their narrative that the *Donnelly* and *Trump* cases merely share "general" similarities. (*Id.* at 43.) But the similarities go far beyond the realm of generality: the two cases involve *identical* claims against *identical* defendants based upon *identical* conduct.

Second, Plaintiff cannot hide behind Iowa's notice pleading standard to mask the similarities between this case and the *Donnelly* case. Plaintiffs cite no authority from Iowa for the proposition that different pleading standards foreclose any consideration of issue preclusion principles. And courts outside Iowa have rejected arguments similar to the one Plaintiffs raise here. *See Landers v. Quality Comyn's, Inc.*, No. 62181, 2014 WL 3784254, at **1–2 (Nev. July 30, 2014) (table) (rejecting argument that state court cannot give preclusive effect to a federal district court judgment simply "because the federal court's ruling was based on the federal *Twombly-Iqbal* 'plausibility' pleading standard").

Therefore, this Court should give effect to the U.S. District Court's ruling in *Donnelly*, which is on all fours with the present case, whether by formal application of the issue preclusion doctrine or by reliance thereon as pivotal persuasive authority.

IV. CONCLUSION

For the reasons stated herein, Press Defendants' motion to dismiss should be granted and all counts should be dismissed with prejudice.

Dated: July 6, 2026

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CERTIFICATE OF SERVICE

I certify that on July 6, 2026, I electronically filed the foregoing with the Clerk of Court using the EDMS system, which will send notification of such filing to all parties participating in the Court's electronic filing system.

/s/ Sandy Ellingson