

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, SELZER & COMPANY, DES MOINES REGISTER AND TRIBUNE COMPANY, and GANNETT CO., INC.,

Defendants.

Case No. CVCV069420

**MEMORANDUM IN SUPPORT OF
DEFENDANTS J. ANN SELZER AND
SELZER & COMPANY'S MOTION TO
DISMISS**

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INTRODUCTION

This is a frivolous case. There is no such thing in American law as a claim for “fraudulent news.” No court in any jurisdiction has ever held such a cause of action might be valid, and few plaintiffs have ever attempted to bring such outlandish claims. Those who have done so had their cases promptly dismissed.¹ There is good reason for this: “Fake news” has never been anything but a campaign slogan used by politicians seeking to dodge accountability. Plaintiffs wield the terms “fraud” and “election interference” like an alchemist’s incantation, hoping to transform political dross into legal gold. But no amount of vacuous repetition can convert their expansive concept of “fake news” to the very limited and specific *legal* concept of fraud. The Supreme Court has made clear a party cannot evade First Amendment scrutiny by “[s]imply labeling an action one for ‘fraud.’” *Illinois ex rel. Madigan v. Telemarketing Assocs., Inc.*, 538 U.S. 600, 617 (2003). And the attempt to do so here runs headlong into more than two centuries of constitutional history and tradition.

But the situation here is even worse than that. This isn’t the lead Plaintiff’s first rodeo. He is “a prolific and sophisticated litigant who is repeatedly using the courts to seek revenge on political adversaries.” *Trump v. Clinton*, 653 F. Supp. 3d 1198, 1210 (S.D. Fla. 2023), *aff’d*, 161

¹ *E.g.*, *Hollander v. CBS News, Inc.*, No. 16 Civ. 6624 (PAE), 2017 WL 1957485 (S.D.N.Y. May 10, 2017) (dismissing wire fraud claims based on allegedly false and misleading news stories about candidate Donald Trump), *aff’d but vacated on other grounds sub nom.*, *Hollander v. Garrett*, 710 Fed. App’x 35 (2d Cir. 2018); *Wash. League for Increased Transparency & Ethics v. Fox News*, No. 81512-1-1, 2021 WL 3910574 (Wash. Ct. App. Aug. 30, 2021) (affirming dismissal of claims under the Washington Consumer Protection Act against Fox News for allegedly false reporting about COVID-19); *Lafayette v. Abrami*, No. 25-CV-00624, 2025 WL 1617346, at *4–6 (Vt. Superior Ct. May 20, 2025) (dismissing with prejudice claims under Vermont Consumer Protection Act based on a newspaper’s “reporting and editorial decisions” and denying any further amendments as futile); *cf. Nat’l Inst. of Fam. & Life Advoc. v. Raoul*, 685 F. Supp. 3d 688, 695 (N.D. Ill. 2023) (enjoining application of Illinois Consumer Fraud Act to anti-abortion advocacy as “both stupid and very likely unconstitutional”).

F.4th 671 (11th Cir. 2025). *See* Memorandum Supporting Renewed Motion for Stay, D0050 at 13-22 (collecting cases). This case alone, initially filed in December 2024, saw multiple rounds of briefing on motions to dismiss when this matter was in federal court. And in all that time, with numerous briefs filed, Plaintiffs were never able to locate a single case that supports their “fake news” claims. Not one. And that will still be true when this pleading cycle ends.

Plaintiffs’ claims are barred by the First Amendment and the Iowa Constitution, and the Court should dismiss them with prejudice—just as the U.S. District Court for the Southern District of Iowa did in a nearly identical case that included all the claims in this case. *Donnelly v. Des Moines Register & Tribune Co., Inc.*, No. 4:25-cv-00150-RGE-WPK, 2025 WL 4648229, at *3 (S.D. Iowa Nov. 6, 2025). Even if Plaintiffs had raised cognizable claims, the Petition is fatally flawed on every level: Plaintiffs fail at the threshold to allege any recoverable damages, and do not state plausible claims, either on the law or on the facts as alleged. No court has ever accepted claims like these under any pleading standard, and this Court should not be the first.

FACTUAL AND PROCEDURAL BACKGROUND

This action is one of two intertwined cases arising from the *Des Moines Register*’s publication of the 2024 Iowa Poll, which projected that candidate Kamala Harris had taken the lead in Iowa shortly before the 2024 election. President Trump, along with two Iowa politicians, allege J. Ann Selzer, a pollster famous for buck-the-trend polls that defied conventional wisdom, manipulated the results of her final 2024 Iowa Poll to throw the election to the Democratic Party. (*See, e.g.*, Pet. ¶¶ 12, 14, 53–55, 71, 92.) From this, Trump and his ride-along plaintiffs allege they are newspaper readers defrauded by reading an article about the poll. (*Id.* ¶¶ 105–107, 136.) A subscriber to the newspaper brought a similar action in *Donnelly v. Des Moines Register*, and the

U.S. District Court for the Southern District of Iowa had no difficulty dismissing his claims with prejudice. 2025 WL 4648229, at *3.

A. Plaintiffs and another litigant bring frivolous lawsuits for “fake news.”

On December 16, 2024, President Trump sued pollster J. Ann Selzer, her company (Selzer & Company) (collectively “Selzer”), the *Des Moines Register*, and its parent company (Gannett Co., Inc.) (collectively “Press Defendants”), alleging the poll violated the Iowa Consumer Fraud Act (ICFA).² Three weeks later, a class action identified as “[b]uilding on President Trump’s lawsuit” designed to impose liability on a “fake news poll” was filed in this Court.³ It included not only the same kind of ICFA claim but added counts alleging fraudulent misrepresentation, negligent misrepresentation, and professional malpractice. Pl.’s Pet., *Donnelly v. Des Moines Register*, No. CVCV068445 (Iowa Dist. Ct. Polk Cnty. Jan. 6, 2025). Both cases were removed to federal court, where President Trump filed successive amended complaints adopting Donnelly’s fraudulent misrepresentation and negligent misrepresentation claims nearly word-for-word.

As procedural questions were litigated in federal court, President Trump refiled this Petition on June 30, 2025, adding Iowa plaintiffs Mariannette Miller-Meeks and Bradley Zaun. In doing so, Plaintiffs avoided application of Iowa’s Uniform Public Expression Protection Act

² Pl.’s Pet., *Trump v. Selzer*, No. 4:24-cv-449, Dkt. No. 1 1-1 (S.D. Iowa Dec. 17, 2024) (petition in *Trump v. Selzer*, removed from Iowa Dist. Ct. in and for Polk Cnty., Case No. CVCV068364) (“*Trump I*”) (Ex. A). The Selzer Defendants request this Court take judicial notice of its own files, those of the U.S. District Court for the Southern District of Iowa, and those of the U.S. Court of Appeals for the Eighth Circuit. *See* Iowa R. Evid. 5.201(b)–(d) (requiring a court to take judicial notice of facts not subject to reasonable dispute that can be “accurately and readily determined from sources whose accuracy cannot reasonably be questioned” when a party requests judicial notice). This request asks the Court to take notice of the nature of the allegations, motions, and court rulings, and that the filings were made, not the truth of the matters asserted therein.

³ Press Release, Ctr. for Am. Rts., *Subscriber sues Des Moines Register over fake news poll* (Jan. 7, 2025), <https://americanrights.org/cases/subscribers-sue-des-moines-register-over-fake-news-poll> [perma.cc/U6WV-TEGF].

(colloquially known as the “anti-SLAPP statute”), which took effect just hours later, at midnight on July 1. *See* Iowa Code § 652.1, *et seq.* After a series of procedural gambits in both the district court and the Eighth Circuit, lead Plaintiff was permitted to dismiss his federal lawsuit. That brings us to Plaintiffs’ current Petition.

B. Allegations in Plaintiffs' Petition.

Defendant J. Ann Selzer is a resident of Des Moines, Iowa, and holds a Ph.D. in Communication Theory and Research from the University of Iowa. (Pet. ¶ 23.) She is the founder and president of Selzer & Company, which conducts opinion research, including polls. (*Id.*) Selzer has been the *Des Moines Register*'s primary pollster for four decades, overseeing all its polls—including its famous Iowa Poll. (*Id.*)

Selzer’s polls have a reputation for consistency and accuracy. (*Id.* ¶ 37.) In 2016, “Clare Malone of *FiveThirtyEight* described Selzer as ‘the best pollster in politics.’” (*Id.* ¶ 29.) And in a June 2024 rating of 25 pollsters, Nate Silver gave Selzer an A+ score and ranked her in the top tier. (*Id.*) Selzer’s polls were “regarded as the gold standard nationally and in Iowa.” (*Id.* ¶ 132.) Pollsters, however, are not seers. Every election has inaccurate and outlier polls which can be well afield of the final tally. *See, e.g.,* Nate Cohn, *Outlier Poll Results Are Inevitable. They’re Also Sometimes Right.*, N.Y. Times (June 26, 2024), <https://www.nytimes.com/2024/06/26/upshot/biden-trump-poll-outlier.html>. Selzer’s polling reflects this fact, occasionally missing the mark, but also producing surprising outliers that accurately foretold election results. *Id.*

The *Des Moines Register* published its final Iowa Poll of the 2024 presidential race on November 2 and 3, 2024. (*Id.* ¶ 1.)⁴ The poll surveyed 808 likely voters in Iowa. (*Id.* ¶¶ 1, 3.) It

⁴ Brianne Pfannenstiel, *Iowa Poll: Kamala Harris leapfrogs Donald Trump to take lead near Election Day*. *Here's how*, Des Moines Reg. (Nov. 2, 2024),

showed Mr. Trump trailing Kamala Harris by three points. (*Id.* ¶ 2.) It also asked respondents whether they would vote for a Republican or a Democrat in the congressional race. (*Id.* ¶ 3.) In Iowa’s First Congressional District, where incumbent Congresswoman Plaintiff Mariannette Miller-Meeks faced former state representative Democrat Christina Bohannon, the “Republican Party” response trailed the “Democratic Party” option by sixteen points. (*Id.*) The poll results were surprising because Selzer’s preceding polls showed Mr. Trump leading the race, and other contemporaneous polls showed him with a seven- to nine-point lead. (*Id.* ¶ 49.) The *Des Moines Register* published Selzer’s methodology, along with a detailed analysis of the poll that compared the latest results to previous polls. (*Id.* ¶¶ 1, 3.)

Mr. Trump and other Republicans immediately disputed the poll’s results. The same day Selzer released the poll, *PollFair* “reweighted” it using its own metrics and calculated that Mr. Trump was leading Iowa by six points. (*Id.* ¶ 68.) Three days later, President Trump won Iowa by thirteen points, and Miller-Meeks won by two-tenths of a point. (*Id.* ¶¶ 2–3.)

Winning, however, wasn’t enough for Mr. Trump or Ms. Miller-Meeks. Joined by Plaintiff Bradley Zaun, an Iowa state senator who lost his re-election bid (but whose race Selzer did not poll), they sued Selzer and the Press Defendants. Plaintiffs allege the final 2024 Iowa Poll was “fake” and was designed to foster enthusiasm for Democrats. (*Id.* ¶¶ 34, 74.) Selzer denies these fanciful conspiracies but must treat them as true for purposes of this motion.

Mr. Trump and Ms. Miller-Meeks assert their campaigns “expend[ed] extensive time and resources ... to mitigate and counteract the harms” of the Iowa Poll, though they do not specifically

6:01PM), <https://www.desmoinesregister.com/story/news/politics/iowa-poll/2024/11/02/iowa-poll-kamala-harris-leads-donald-trump-2024-presidential-race/75354033007> (last updated Nov. 7, 2024), archived at <https://archive.is/UqdGz>. Because the article releasing the poll is central to Plaintiffs’ claims and not in dispute, the Court may consider its contents on a motion to dismiss. See *Meade v. Christie*, 974 N.W.2d 770, 775 (Iowa 2022).

allege what those resources or expenditures were. (*Id.* ¶¶ 124–25.) Rep. Miller-Meeks alleges her close race triggered a “costly recount.” (*Id.* ¶ 84.) Under Iowa law, the State of Iowa—not Rep. Miller-Meeks or her campaign—paid for the recount. *See* Iowa Code § 50.48(2)(a). Mr. Zaun, who lost his state senate seat to Democrat Matt Blake by four points, alleges Blake’s victory “upon information and belief [was] fueled by momentum from” the Iowa Poll. (*Id.* ¶ 94.) Plaintiffs also allege the poll “deceived” Iowans who contributed to their campaigns. (*Id.* ¶¶ 110–11.)

C. The federal district court dismissed the same claims in *Donnelly v. Des Moines Register*.

While Plaintiffs successfully evaded federal scrutiny of their lawsuit, the federal district court dismissed the *Donnelly* lawsuit with prejudice. It held the First Amendment barred all five counts of Donnelly’s complaint, noting ““there is no free pass around the First Amendment.”” *Donnelly*, 2025 WL 4648229, at *3 (quoting *281 Care Comm. v. Arneson*, 766 F.3d 774, 783 (8th Cir. 2014) (*Arneson II*)). The court dismissed all claims on constitutional grounds, holding a party cannot evade First Amendment scrutiny by labeling his action one for fraud, *id.*, and that “publishing the results of a political opinion poll that matches the co-published methodology is not an unfair or deceptive practice.” *Id.* at *8. Additionally, the court held Donnelly’s allegations were insufficient to state a claim for relief as a matter of law for each of his claims, including the three claims raised in this lawsuit—fraudulent representation, negligent misrepresentation, and violating the ICFA. *Id.* at *6–9.

The Court observed that Donnelly “fails to cite to any authority finding an opinion poll of a future event constitutes a false factual assertion.” *Id.* at *7. It dismissed the fraudulent representation claim, explaining that “no false representation was made” because “the results of an opinion poll are not an actionable false representation merely because the anticipated results differ from what eventually occurred.” *Id.* at *6. It also dismissed the negligent misrepresentation

claim “because a pollster and a general circulation newspaper reporting on the results of an election poll are not in the business or profession of supplying information to a limited class of others who knowingly rely on the information.” *Id.* at *7. And it concluded the ICFA claim failed “because publishing the results of a political opinion poll that matches the co-published methodology is not an unfair or deceptive practice” and that any such claim “would face significant resistance from the First Amendment.” *Id.* at *8. The court noted that “Donnelly cites to no law which establishes that mere inaccuracy of an opinion poll constitutes an unfair practice.” *Id.*

LEGAL STANDARD

Iowa Rule of Civil Procedure 1.421(1)(f) mandates dismissal where a plaintiff’s “claims are legally deficient and the plaintiff has no right of recovery as a matter of law.” *White v. Harkrider*, 990 N.W.2d 647, 650 (Iowa 2023). In reviewing a motion to dismiss, the court accepts the petition’s well-pleaded factual allegations as true but does not accept legal conclusions. *Betz v. Mathisen*, 30 N.W.3d 240, 246 (Iowa 2026).

Under Iowa’s notice-pleading standard, a petition provides “fair notice” if it “informs the defendant of the incident giving rise to the claim and the claim’s general nature.” *King v. State*, 818 N.W.2d 1, 37 (Iowa 2012) (Cady, C.J., concurring). But notice pleading does not allow every claim to proceed. The standard “requires consideration of any conceivable set of facts, but only those facts that relate to and could prove the allegations made in the petition.” *Id.* And “[t]he allegations of the petition, if proven by the facts, must show entitlement to relief.” *Id.*

Iowa courts do not hesitate to dismiss cases where the question of legal duty is dispositive. *Schmidt v. Mahoney*, 659 N.W.2d 552, 556 (Iowa 2003) (“[I]n other cases decided on the basis that no legal duty existed, we have approved disposition by means of [a motion to dismiss].”). When the alleged facts do not establish a duty recognized by law, dismissal is appropriate at the

pleading stage because notice pleading “does not create a duty where it would otherwise not exist.” *Bawek v. Kawasaki Motors Corp., U.S.A.*, 313 N.W.2d 501, 502 (Iowa 1981). ICFA claims are likewise ripe for dismissal at the earliest stage, where a plaintiff does not allege any acts that could be an unfair practice under the law. *Cason v. Bitcoin Depot Operating, LLC*, No. LACV108253, 2026 WL 540998, at *5–6 (Iowa Dist. Jan. 30, 2026).

Iowa recently enacted an anti-SLAPP law that requires courts to promptly evaluate claims seeking to silence protected speech and mandates fee-shifting to discourage baseless lawsuits. Iowa Code § 652.1, *et seq.* Plaintiffs manipulated the timing of their filing hoping to avoid application of the law, but the Court has discretion to consider the law as reflecting Iowa’s public policy of dismissing SLAPPs like this lawsuit at the earliest possible stage. *Galloway v. State*, 790 N.W.2d 252, 255 (Iowa 2010) (noting that Iowa courts “have considered and weighed public policy concerns when deciding important legal issues”).

ARGUMENT

I. The First Amendment and Article I, Section 7 of the Iowa Constitution Bar Plaintiffs’ Claims.

The First Amendment and Article I, Section 7 of the Iowa Constitution are a complete bar to Plaintiffs’ “fraudulent news” claims.⁵ Speech is presumptively protected by the First Amendment—especially speech about politics and public affairs—and the courts have repeatedly reaffirmed that unprotected categories (including obscenity, child pornography, defamation, fraud, incitement, fighting words, and speech integral to criminal activity) are few, specifically defined, and not subject to expansion. *United States v. Stevens*, 559 U.S. 460, 468–70 (2010). Plaintiffs seek to illegitimately expand these categories to include “fake news,” a tag line that may play well

⁵ The “Iowa Constitution generally imposes the same restrictions on the regulation of speech as does the federal constitution.” *State v. Milner*, 571 N.W.2d 7, 12 (Iowa 1997).

for some on the campaign trail but has no place in America’s constitutional jurisprudence. The Supreme Court has expressly declined to recognize a general exception for “false speech.” *United States v. Alvarez*, 567 U.S. 709, 722 (2012). Undaunted by this, Plaintiffs “take[] as [their] premise the conclusion to be proved,” *i.e.*, that “[t]he expressions ... in issue are not protected by the First Amendment.” *Bursey v. United States*, 466 F.2d 1059, 1082 (9th Cir. 1972). Such an approach “has it backwards.” *Id.*

A. The First Amendment Was Adopted to Bar Government Authority from Declaring News “False” and Controlling Political Speech.

Neither statutory nor common law may be used to punish news coverage and analysis of a political campaign, speech that the Supreme Court has held is not only presumptively protected but “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) (internal quotation marks omitted). Likewise, from its earliest days, the Iowa Supreme Court has recognized “the freedom of speech and the press is so fully recognized, and so highly prized” that a judge could not abuse contempt proceedings to silence a critical journalist. *Dunham v. State*, 6 Iowa 245, 257 (1858). Given the obvious affront to basic constitutional values, Plaintiffs try to change the subject by framing their claims around a state consumer protection law applicable to misrepresentations “in connection with the advertisement, sale, or lease of consumer merchandise.” Iowa Code § 714H.3(1). Undaunted by the poor fit between commercial transactions and speech on public affairs, Plaintiffs try to pound a square peg into a round hole without any attempt to reconcile the constitutional mismatch.

1. The Government Cannot be the Arbiter of Truth.

The earliest lessons of our Republic confirmed that the government could neither be trusted to protect only “truth” nor empowered to punish “falsity.” The Sedition Act of 1798 made it a

crime to “write, print, utter or publish ... any false, scandalous and malicious writing or writings against the government” with the intent to defame Congress or the President. Sedition Act of 1798, 1 Stat. 596. The Act was a reaction to what Congress saw as Adams Derangement Syndrome.⁶ It “was less a piece of legislation than an act of vengeance by federalist lawmakers who decided to strike back at the republican newspapers that they felt had been demonizing their intentions and slandering their character.”⁷ As the Iowa Supreme Court put it, “we need to look no further than the Sedition Act of 1798 to further understand that ... unscrupulous individuals would use the coercive force of government to censor their critics and retain power.” *Bertrand v. Mullin*, 846 N.W.2d 884, 900 (Iowa 2014).

While many Sedition Act prosecutions were prompted by partisan rants, others were predicated on allegedly “false” factual statements.⁸ Newspaper editors in cities like Philadelphia, New York, and Boston were charged with sedition, as were publishers in smaller towns in Connecticut and Vermont. *Id.* at 101. Ten people were convicted under the Act, including seven journalists, while another editor was tried but acquitted. *Id.*; Burns, *supra*, at 362. During this purge, five republican papers were shuttered or ceased publication for at least some period. Blumberg, *supra*, at 101.

⁶ “Most of those convicted [under the Sedition Act] would be prosecuted for criticizing Adams.” Charles Slack, *LIBERTY’S FIRST CRISIS: ADAMS, JEFFERSON, AND THE MISFITS WHO SAVED FREE SPEECH* 109 (New York: Atlantic Monthly Press, 2015). Representative John Allen of Connecticut advocated for the Act as being necessary to punish publication of “the most shameless falsehoods against the Representatives of the people.” Eric Burns, *INFAMOUS SCRIBBLERS: THE FOUNDING FATHERS AND THE ROWDY BEGINNINGS OF AMERICAN JOURNALISM* 356–57 (2006).

⁷ Burns, *supra*, at 356. See Leonard Levy, *LEGACY OF SUPPRESSION* 258 (1960).

⁸ Phillip I. Blumberg, *REPRESSIVE JURISPRUDENCE IN THE EARLY AMERICAN REPUBLIC: THE FIRST AMENDMENT AND THE LEGACY OF ENGLISH LAW*, 119 (2010).

The Sedition Act expired by its own terms and was never tested in court, but the consensus of history is that it was fundamentally at odds with the First Amendment. *New York Times Co. v. Sullivan*, 376 U.S. 254, 276 (1964). As one of his first acts as President, Thomas Jefferson pardoned and remitted the fines of those convicted under the law, which he considered “a nullity as absolute and as palpable as if Congress had ordered us to fall down and worship a golden image.” 4 JEFFERSON’S WORKS 555-56 (Washington ed.) (Letter to Abigail Adams, July 22, 1804). That experience with the nation’s initial effort to prohibit false speech “first crystallized a national awareness of the central meaning of the First Amendment.” *Sullivan*, 376 U.S. at 273. The consensus regarding the Sedition Act’s invalidity has conditioned the “fabric of jurisprudence woven across the years.” *Commonwealth v. Lucas*, 34 N.E.3d 1242, 1253 (Mass. 2015).

As it laid the foundation for modern First Amendment jurisprudence, the Supreme Court made clear the government cannot be the arbiter of truth. In *Near v. Minnesota*, it struck down a law permitting suppression of malicious, scandalous, and defamatory newspapers, magazines, or other periodicals. 283 U.S. 697 (1931). *Near* involved an injunction barring publication of a “scandal sheet” called *The Saturday Press*, in which “[m]any of the statements are so highly improbable as to compel a finding that they are false,” and “[i]n every edition slanderous and defamatory matter predominates to the practical exclusion of all else.” *Id.* at 724 (Butler, J., dissenting). Nevertheless, the Court held the Minnesota law was “the essence of censorship.” *Id.* at 713.

These limitations on government action include civil lawsuits. *Sullivan*, 376 U.S. at 265 (“It matters not that that law has been applied in a civil action[.]”); *see also Snyder*, 562 U.S. at 451 (“The Free Speech Clause of the First Amendment ... can serve as a defense in state tort suits.”). “What a State may not constitutionally bring about by means of a criminal statute is

likewise beyond the reach of its civil law,” because “fear of damage awards” can be “markedly more inhibiting than the fear of prosecution under a criminal statute.” *Sullivan*, 376 U.S. at 277. The prospect of civil liability can be ““a form of regulation that creates hazards to protected freedoms markedly greater than those that attend reliance upon the criminal law.”” *Id.* at 278 (quoting *Bantam Books, Inc. v. Sullivan*, 372 U.S. 58, 70 (1963)). Plaintiffs’ theory that a political opinion poll could be the subject of a lawsuit improperly asks this Court to sit as an arbiter of truth and ignores the First Amendment’s protection for political speech.

2. The Government Cannot Control Political Discourse.

The Supreme Court has repeatedly reaffirmed that the First Amendment “has its fullest and most urgent application to speech uttered during a campaign for political office.” *Citizens United v. FEC*, 558 U.S. 310, 339 (2010) (citation and internal quotes omitted). Speech about the political process is “at the core of our First Amendment freedoms,” *Republican Party of Minn. v. White*, 536 U.S. 765, 774 (2002) (internal quotes omitted), because a “major purpose” of the First Amendment was to protect “free discussion of ... candidates,” *Mills v. Alabama*, 384 U.S. 214, 218 (1966). The “First Amendment affords the broadest protection” to “[d]iscussion of public issues.” *McIntyre v. Ohio Elections Comm’n*, 514 U.S. 334, 346 (1995) (citation and internal quotes omitted). Thus, election polling is “speech protected by the First Amendment” both because it “requires a discussion between pollster and voter” and the resulting poll itself “is speech.” *Daily Herald Co. v. Munro*, 838 F.2d 380, 384 (9th Cir. 1988). The First Amendment accords speech in this area a wide berth because “erroneous statement[s] [are] inevitable in free debate, and [they] must be protected if the freedoms of expression are to have the breathing space that they need to survive.” *Sullivan*, 376 U.S. at 271–72 (cleaned up). See *Bertrand*, 846 N.W.2d at 898 (the First Amendment’s breathing space is necessary “to permit meaningful political speech to survive”).

Because efforts to regulate “truth” in political commentary are presumptively unconstitutional and subject to strict scrutiny, courts across the country have struck down laws that, like the Sedition Act, allow the government to assess truth in the political arena. *See Arneson II*, 766 F.3d at 784–85 (invalidating Minnesota law prohibiting knowingly false statements on ballot measures); *Grimmett v. Freeman*, 59 F.4th 689, 692 (4th Cir. 2023) (invalidating North Carolina statute prohibiting false statements about candidates “knowing such report to be false or in reckless disregard of its truth or falsity”); *Susan B. Anthony List v. Driehaus*, 814 F.3d 466, 476 (6th Cir. 2016) (invalidating Ohio law prohibiting knowingly false statements about candidates); *Lucas*, 34 N.E.3d at 1253 (invalidating Massachusetts law prohibiting false statements about candidates and ballot measures); *Rickert v. State Pub. Disclosure Comm’n*, 168 P.3d 826, 846 (Wash. 2007) (en banc) (invalidating Washington law prohibiting false statements of material fact about political candidates). This lawsuit is a close cousin to those illegitimate laws.

B. Plaintiffs Cannot Justify Expanding Unprotected Categories of Speech.

Although certain specified categories of speech lack First Amendment protection, the Supreme Court has made quite clear the government cannot avoid constitutional limitations simply by invoking “mere labels of state law.” *Sullivan*, 376 U.S. at 269 (internal quotes omitted). Rather, any such exception to First Amendment protection “must be measured by standards that satisfy the First Amendment.” *Id.* Both the Supreme Court and the Eighth Circuit have held unprotected categories of speech are few, precisely defined, and do not include what Plaintiffs propose here—a general exception for allegedly “false” speech or alleged “election interference” in the form of news reporting. Nor may the concept of fraud be stretched to include political commentary, which appears to be Plaintiffs’ ultimate objective.

1. Speech is Presumptively Protected, and the Court has Rejected Creating New Categories of Unprotected Speech.

The First Amendment presumptively protects speech, and the burden is always on those who would restrict or penalize speech to prove otherwise. *United States v. Playboy Ent. Grp.*, 529 U.S. 803, 816, 818 (2000); *United States v. Alvarez*, 617 F.3d 1198, 1205 (9th Cir. 2010) (“[W]e presumptively protect all speech against government interference, leaving it to the government to demonstrate ... a compelling need to remove some speech from protection[.]”), *aff’d*, 567 U.S. 709 (2012). As the Eighth Circuit summarized the law, “we presumptively protect all speech, including false statements, in order that clearly protected speech may flower in the shelter of the First Amendment.” *281 Care Comm. v. Arneson*, 638 F.3d 621, 636 (8th Cir. 2011) (“*Arneson I*”) (quoting *Alvarez*, 617 F.3d at 1217). The Supreme Court subsequently affirmed this reading of the Constitution. *Alvarez*, 567 U.S. at 722.

Alvarez relied on a long line of cases to strike down the Stolen Valor Act and confirm what has always been the law. “‘From 1791 to the present,’ the First Amendment has ‘permitted restrictions upon the content of speech in a few limited areas.’” *Counterman v. Colorado*, 600 U.S. 66, 73 (2023) (quoting *Stevens*, 559 U.S. at 468). These “historic and traditional categories long familiar to the bar” include obscenity, child pornography, defamation, fraud, incitement, fighting words, and speech integral to criminal activity. *Stevens*, 559 U.S. at 468, 471 (cleaned up) (collecting cases). The Court has rejected any “freewheeling authority to declare new categories of speech outside the scope of the First Amendment” and steadfastly resists as “startling and dangerous” any attempt to expand these categories. *Id.* at 470, 472. The Court has repeatedly reaffirmed these principles, *id.* at 468–69, 472, and the Eighth Circuit has followed this command. *Arneson I*, 638 F.3d at 634–35 (declining to extend unprotected categories).

Any claim that speech is unprotected fails at the threshold if it does not meet the constitutionally required elements of the category in question. For example, an allegation that given speech is “obscene” means nothing if the designated speech does not fall within the applicable constitutional test, which, for obscenity would require that the speech be “in some significant way, erotic,” *Cohen v. California*, 403 U.S. 15, 20 (1971), in addition to meeting the necessary prongs of the applicable test. *Miller v. California*, 413 U.S. 15 (1973). Same with “fighting words” or incitement, where the threshold elements set the categorical boundaries. *Cohen*, 403 U.S. at 20. This is equally true for all the unprotected categories. Plaintiffs might have tried to call an inaccurate poll defamatory, obscene, or integral to criminal conduct, but the mere use of any of these labels would be laughable and would not affect constitutional protections for the speech in question without first establishing the elements required for each category. And the same logic controls any allegation of fraud, where the Supreme Court has explained “[s]imply labeling an action one for ‘fraud’ ... will not carry the day.” *Madigan*, 538 U.S. at 617.

Former Justice Souter explained why this is so: “Reviewing speech regulations under fairly strict categorical rules keeps the starch in the standards for those moments when the daily politics cries loudest for limiting what may be said.” *Denver Area Educ. Telecomms. Consortium, Inc. v. FCC*, 518 U.S. 727, 774 (1996) (Souter, J., concurring). His words were prophetic and apply directly here—this case is *nothing but* an attempt to let politics warp the law.

2. Plaintiffs’ Attempt to Expand the Concept of Fraud is Illegitimate and Has Been Roundly Rejected.

Plaintiffs try to shoehorn their claim into an unprotected category by calling the Iowa Poll “fake” and asserting that actionable “fraud” occurred. But, in “the famous words of Inigo Montoya from the movie, *The Princess Bride*, ‘You keep using that word. I do not think it means what you think it means.’” *Pro Com., LLC v. K & L Custom Farms, Inc.*, 870 N.W.2d 273, 2015 WL

2406782, at *5 n.3 (Iowa. Ct. App. 2015) (table). As a matter of basic law, Plaintiffs’ allegations about polls and news stories they dislike have nothing to do with fraud. *See infra* Section II.C-D. They also sprinkle the petition with loose talk of “election interference,” (Pet. ¶¶ 1–3, 32, 55, 65), although they stop short of including a separate claim on that basis, perhaps out of awareness that “no court has held that a scheme to rig an election itself constitutes money or property fraud,” *Westchester Cnty. Indep. Party v. Astorino*, 137 F. Supp. 3d 586, 604 (S.D.N.Y. 2015). Plaintiffs cannot stretch the boundaries of unprotected speech to serve their political narrative.

Both the Supreme Court and the Eighth Circuit have rejected the shaky foundation on which this case is built. Both courts have held that there is no general First Amendment exception for “false speech,” as Plaintiffs assume, and both have rejected expanding the concept of fraud to encompass political commentary, which is the objective of this case. Specifically, the Supreme Court made clear that “false speech” in general is not excluded from First Amendment protection, *Alvarez*, 567 U.S. at 720–22, and a party cannot evade First Amendment scrutiny simply by crying “fraud.” *Madigan*, 538 U.S. at 617. Applying these precedents, the Eighth Circuit declined to expand the categories of unprotected speech to include “knowingly false” political speech. *Arneson I*, 638 F.3d at 633–36; *Arneson II*, 766 F.3d at 784–85. In particular, the *Arneson II* court concluded that allowing potential liability for “false” political speech would open “a Pandora’s box to disingenuous politicking.” *Id.* at 796. This case is Exhibit A for that concern.

Importantly, the courts explained why historically limited First Amendment exceptions (including fraud) cannot be expanded as Plaintiffs hope to do here. *See Alvarez*, 567 U.S. at 720–22. The Eighth Circuit in *Arneson I* expressly rejected the government’s attempt to apply “fraud principles to all knowingly false speech,” 638 F.3d at 634 n.2, which is the crux of Plaintiffs’ case. It explained that “the Supreme Court has carefully limited the boundaries of what is considered

fraudulent speech” and that it does not include “all false speech, or even all knowingly false speech.” *Id.* (citing *Madigan*, 538 U.S. at 620). State law fraud claims have “[e]xacting proof requirements” including that “the defendant made the representation with the intent to mislead the listener, and succeeded in doing so.” *Id.* (internal quotes omitted). *See United States v. Kepler*, 879 F. Supp. 2d 1006, 1009 n.1 (S.D. Iowa 2011) (finding that “fraud is not mere lying,” because lying, by itself, “lacks an essential element of a fraud claim: proof of detrimental reliance or actual harm to the plaintiff”) (citing *Madigan*, 538 U.S. at 620–21).

The Supreme Court confirmed these essential limitations, explaining that fraud is confined to false claims made to “secure moneys or other valuable considerations [such as] offers of employment.” *Alvarez*, 567 U.S. at 723; *see also id.* at 734 (Breyer, J., concurring) (“Fraud statutes ... typically require proof of a misrepresentation that is material, upon which the victim relied, and which caused actual injury.”). The Court has long made clear that a litigant cannot just allege fraud and hope to prevail, and that any attempt to bring a fraud claim without satisfying its essential elements “would support swift dismissal.” *Madigan*, 538 U.S. at 617.

In this respect, the statutory or common law elements of any fraud claim are inextricably intertwined with these constitutional limits. The “[e]xacting proof” required to show fraud exists “to provide sufficient breathing room for protected speech.” *Id.* at 620. And any argument to expand the definition of fraud as Plaintiffs attempt in this case “would give government a broad censorial power unprecedented in [the Supreme] Court’s cases or in our constitutional tradition.” *Alvarez*, 567 U.S. at 723. Thus, Plaintiffs’ failure to plead the essential elements of their fraud and

misrepresentation claims (*see infra* at 23-33) dooms this case at the outset as a matter of constitutional law.⁹

3. Plaintiffs Have Offered No Nonfrivolous Basis to Change the Law.

Plaintiffs' problems run far deeper than their admitted inability to identify a single case supporting their novel claim that a political poll somehow qualifies as "fraud." Lawyers may be allowed significant latitude to make creative arguments to modify the law, but they must acknowledge what the law is and explain how controlling precedents might be distinguished. *Barnhill v. Iowa Dist. Court for Polk Cnty.*, 765 N.W.2d 267, 279 (Iowa 2009). Lawyers can ethically argue to change the law or overturn precedent, but to do so, they must understand and explain the prevailing law and give reasons why it should be changed. *16 Front Street, LLC v. Mississippi Silicon, LLC*, 886 F.3d 549, 561 (5th Cir. 2018); *Meyer v. U.S. Bank Nat. Ass'n*, 792 F.3d 923, 929 (8th Cir. 2015); *see also* Iowa Rule of Civil Procedure 1.413. While lawyers may engage in notice pleading, there comes a point in every case "when the attorney must acknowledge controlling precedent with 'candor and honesty' while asserting reasons to modify or change existing law." *Barnhill*, 765 N.W.2d at 279.

For the Plaintiffs, that time is now. Where, as here, the attorney has "no authority" to support a novel claim, sanctions may be appropriate. *Everly v. Knoxville Cmty. Sch. Dist.*, 774 N.W.2d 488, 495 (Iowa 2009). Given the lead Plaintiff's track record of abusive litigation tactics, *e.g.*, *Trump v. Clinton*, 161 F.4th at 691, combined with more than a year of prior federal litigation

⁹ That said, the constitutional floor would remain even if a state were to alter local requirements for fraud (*i.e.*, by eliminating intent to deceive or damages as required elements). Doing so would be no more constitutionally permissible than a state law that attempted to alter the definition of obscenity, *State v. Wedelstedt*, 213 N.W.2d 652, 656 (Iowa 1973), or defamation, *Sullivan*, 376 U.S. at 271–72.

in this case during which time Plaintiffs have offered neither supporting authority nor any coherent theory of liability, the burden is on them to show how this case is not an abuse of the system.

C. Plaintiffs’ Theory of Liability Should be Rejected Under Any First Amendment Standard.

The *Donnelly* court was correct to brand Plaintiffs’ “novel attempt to impose liability for news prediction” an “absurdity.” *Donnelly*, 2025 WL 4648229, at *9. Cases like this are almost unheard of for a reason, and it is why courts have promptly dismissed fraud or misrepresentation claims against media organizations because of their news reports, finding that “none of the limited exceptions to the First Amendment apply.” *E.g., Wash. League for Increased Transparency & Ethics*, 2021 WL 3910574, at *4–5 (citing *Alvarez*, 567 U.S. at 717).

No court has ever adopted Plaintiffs’ extraordinary theory of liability for “false news” because it has no limiting principle. Litigants proposing similar theories have all failed. For example, the Southern District of Florida, affirmed by the Eleventh Circuit, rejected a “novel and unprecedented expansion of the scope of tort law” seeking to hold the Weather Channel liable for alleged damage caused by an incorrect forecast. *Brandt v. Weather Channel, Inc.*, 42 F. Supp. 2d 1344, 1345–46 (S.D. Fla. 1999), *aff’d*, 204 F.3d 1123 (11th Cir. 1999).

The *Donnelly* court cited *Brandt*, noting the “litany of absurd suits which could follow from imposing” a legal duty on prognosticators, “such as construction workers suing when they pour concrete in reliance on a weather report forecasting no rain or commuters suing when they are stuck in traffic and late to work because the news reported there would be light traffic.” *Donnelly*, 2025 WL 4648229, at *9. *Brandt* explained that “[p]redicting possible future events whose outcome is uncertain is not an exact science for which a [publisher] should be held liable.” *Brandt*, 42 F. Supp. 2d at 1346. Applying that principle here, the district court observed that, like

weather forecasting, “political opinion polls are predictive and inherently uncertain.” *Donnelly*, 2025 WL 4648229, at *9.

Similarly, the Eastern District of New York rejected an attempt to contort the elements of fraud against protected speech. *Demuth Dev. Corp. v. Merck & Co., Inc.*, 432 F. Supp. 990 (E.D.N.Y. 1977). *Demuth* involved a “novel claim” against chemical encyclopedia publisher Merck for “willful misrepresentation” of the toxicity of a chemical used in Demuth’s equipment that it alleged scared away purchasers. *Id.* at 991. The court, despite the allegation of intentional wrongdoing, explained Demuth could not “point to any relationship of the parties, arising out of contract or otherwise, which in morals or good conscience, placed Merck under any duty towards plaintiff or its business.” *Id.* at 993 (internal quotes omitted). The court held “Merck’s right to publish free of fear of liability is guaranteed by the First Amendment, and the overriding societal interest in the untrammelled dissemination of knowledge.” *Id.* (citing *Gertz v. Robert Welch, Inc.*, 418 U.S. 323, 340 (1974)). At this point, it bears recalling that no Plaintiff has alleged that they ever entered into any relationship, arising out of contract or otherwise, with either J. Ann Selzer personally or with Selzer & Company.

In dismissing Donnelly’s complaint, the district court held the First Amendment barred all five counts, finding “there is no free pass around the First Amendment.” *Donnelly*, 2025 WL 4648229, at *3 (quoting *Arneson II*, 766 F.3d at 783). Additionally, the district court held that two elements essential to any fraud or misrepresentation claim—false representation of fact and a legal duty—were entirely absent. *Id.* at *6 (“No false representation was made”). The threshold element is missing here because “results of an opinion poll are not an actionable false representation merely because the anticipated results differ from what eventually occurred.” *Id.* The *Donnelly* court also declined to find a legal duty in that circumstance because doing so “would have a chilling effect

which is unacceptable under our Constitution.” *Id.* at *9 (quoting *Stancik v. CNBC*, 420 F. Supp. 2d 800, 808 (N.D. Ohio 2006)).

Beyond all that, Plaintiffs compound the constitutional problem by asking this Court for an injunction to prevent the publication of “any further deceptive polls.” (Pet. ¶ 127.) Such an order is a classic prior restraint—“the most serious and the least tolerable infringement on First Amendment rights,” *Neb. Press Ass’n v. Stuart*, 427 U.S. 539, 559 (1976), and “the essence of censorship,” *Near*, 283 U.S. at 713. As a matter of basic law, this Court cannot censor future speech because of Plaintiffs’ hunch that it might be “deceptive.” *See, e.g., Cognitest Corp. v. Riverside Publ’g Co.*, No. 94 C 4741, 1995 WL 382984, at *2 (N.D. Ill. June 22, 1995) (granting dismissal of request “to enjoin future, as-yet unspoken and unidentified speech which the plaintiffs assert will be false if spoken”); *Murray Energy Holdings Co. v. Mergermarket USA, Inc.*, No. 2:15-cv-2844, 2016 WL 3365422, at *8 (S.D. Ohio June 17, 2016) (dismissing request for an order prohibiting defendants from future statements, noting “it operates as an unconstitutional prior restraint on speech”).

Ultimately, this suit over results of an election poll is nothing more than a political stunt, an effort to punish the Defendants for speech Plaintiffs did not like, and an attempt to pervert the law. Plaintiffs’ allegation that an outlier poll constitutes “fraud” contradicts the most basic First Amendment principles. The *Donnelly* court thus correctly dismissed all counts with prejudice on constitutional grounds, and this Court should do the same.

II. Plaintiffs Fail to State a Claim as a Matter of Law.

A. Plaintiffs Lack Standing.

Even if the First Amendment did not bar this action, Plaintiffs lack standing because their claims seek recovery for alleged harm to third parties. Under Iowa law, “the burden [is] on plaintiffs to show (1) a specific, personal, and legal interest in the litigation, and (2) injury.” *City*

of *Dubuque v. Iowa Trust*, 519 N.W.2d 786, 789 (Iowa 1994); see also *League of United Latin Am. Citizens of Iowa v. Pate*, 20 N.W.3d 822, 830 (Iowa 2025) (“[A] party must satisfy two requirements to have standing to sue. First, the wrong alleged must produce a legally cognizable injury. Second, the party must be among those who have sustained the legally cognizable injury.” (citations and internal quotes omitted)). Iowa’s two-prong approach largely “parallels the federal doctrine,” *Godfrey v. State*, 752 N.W.2d 413, 418 (Iowa 2008), requiring a plaintiff to demonstrate an injury traceable to the challenged conduct and likely to be redressed by the requested relief. See *Iowa Citizens for Cmty. Improvement v. State*, 962 N.W.2d 780, 791 (Iowa 2021) (emphasizing that, in addition to injury, “traceability and redressability are a part of standing in Iowa,” and recognizing the Iowa Supreme Court’s longstanding practice of treating federal-court standing rulings as persuasive authority). At bottom: “If the court can’t fix your problem, if the judicial action you seek won’t redress it, then you are only asking for an advisory opinion.” *Id.*

Plaintiffs here fail to meet either of these essential requirements for standing. On its face, the Petition alleges only injuries that are *not* personal to the three Plaintiffs. Here, Plaintiffs filed suit in their *personal* capacities (see Pet. ¶¶ 124–25), and Plaintiffs Trump and Miller-Meeks won their races. Both Plaintiffs allege that, as candidates, they “expended extensive time and resources,” including “campaign expenditures” to “counteract the harms” of the Iowa Poll. *Id.* But the Supreme Court has made clear that a campaign is “a legal entity distinct from the candidate.” *FEC v. Cruz*, 596 U.S. 289, 294 (2022). “Courts exist to hear claims brought by injured parties,” and any alleged harm to Plaintiffs’ campaigns is not cognizable. *Dickey v. Iowa Ethics & Campaign Disclosure Bd.*, 943 N.W.2d 34, 40 (Iowa 2020).

For his part, Mr. Zaun claims he “sustained actual damages due to the loss of his Senate seat” but does not explain what those damages are given that the poll did not mention him or even

poll his race. (Pet. ¶ 126.) Nor would recovery against Selzer “redress” Mr. Zaun’s alleged harm because (1) any campaign expenses belong to his campaign and (2) recovery against a pollster who has never mentioned him or his race cannot be “redressed” with monetary damages. *See League of United Latin Am. Citizens of Iowa*, 20 N.W.3d at 833 (“[T]he standing doctrine limits the judiciary to the exercise of its constitutional power of deciding cases capable of judicial redress by the entry of a judgment within the bounds of the judicial power.”).

B. Plaintiffs Fail to Allege Recoverable Damages.

Even if Plaintiffs had standing, each claim fails at the starting gate because they do not plead legally cognizable damages. *See Briehl v. Gen. Motors Corp.*, 172 F.3d 623, 630 (8th Cir. 1999) (damages are an “essential element” of a tort claim). First, stating the obvious: President Trump and Congresswoman Miller-Meeks won their elections, and Selzer did not poll Mr. Zaun’s race *at all*. Plaintiffs’ purported damages rest on vague assertions of harm to nonparties and violate core principles of causation.

Mr. Trump and Ms. Miller-Meeks allege that, as candidates, they incurred “campaign expenditures” to “counteract the harms” of the Iowa Poll.¹⁰ But, as explained above, a campaign is “a legal entity distinct from the candidate.” *Cruz*, 596 U.S. at 294. Mr. Trump and Ms. Miller-Meeks allege no cognizable harm to them *as individuals* from the Iowa Poll and thus do not plead a colorable claim for damages. Mr. Zaun does not explain what his damages are, or how he could have suffered financial damage from a poll that did not mention him or poll his race. (Pet. ¶ 126.) Critically, courts have held election loss damages are “speculative and conjectural” because “there

¹⁰ (Pet. ¶¶ 124–25; *see also id.* ¶¶ 13, 15 [harm to “their Campaigns and affiliated entities”]; ¶ 18 [action brought to redress harm “to the Trump 2024 Campaign, to Representative Miller-Meeks’ Campaign, to Zaun’s Campaign, and to millions of citizens in Iowa and across America”].).

may be not less than a thousand factors which enter into the vagaries of an election.” *Southwestern Publ’g Co. v. Horsey*, 230 F.2d 319, 322–23 (9th Cir. 1956). So even if Plaintiffs had standing, they seek nothing more than unrecoverable, speculative election loss damages. *Id.* at 322.

Plaintiffs’ Petition also does not support legally cognizable causation between the Iowa Poll and the alleged damages. For fraud to be the legal cause of a plaintiff’s damages, the loss must “connect[] to the misrepresentation in a way to which the law attaches legal significance.” *Spreitzer v. Hawkeye State Bank*, 779 N.W.2d 726, 740 (Iowa 2009) (citing Restatement (Second) of Torts § 548A, cmt. a). Relying on statements by a speaker who (1) did not direct them to the complaining party and (2) made them for a purpose unrelated to the alleged damages is not a connection with a legal significance. *See, e.g., Charles Schwab Corp. v. Bank of Am. Corp.*, 883 F.3d 68, 91–92 (2d Cir. 2018) (third-party reliance on a statement being merely “foreseeable” is insufficient because it would trigger “boundless liability”). Plaintiffs can no more sue a newspaper pollster for diverted resources than a farmer could sue a TV weatherman for crop damage due to unexpected frost. *Brandt*, 42 F. Supp. 2d at 1345–46.

The remaining “damages” Plaintiffs assert are not cognizable. Plaintiffs allege “[m]illions of Americans ... were lied to, deceived, and maligned by” the Iowa Poll. (Pet. ¶ 13.) But courts are not “a vehicle for the vindication of the value interests of concerned bystanders.” *FDA v. All. for Hippocratic Med.*, 602 U.S. 367, 382 (2024) (citation and internal quotes omitted). And feeling “deceived,” “lied to,” and “maligned” by a poll does not constitute cognizable harm because, as explained above, even intentionally false statements, without more, do not provide a basis for liability. *See* Iowa Code § 714H.2(1) (“[a]ctual damages” must be ascertainable amounts and do not include “mental distress”). A plaintiff still must adequately allege a cognizable cause of action, *Madigan*, 538 U.S. at 620, but the Plaintiffs here have not done so.

C. Plaintiffs Fail to State a Claim Under the ICFA.

Plaintiffs have no ICFA claim against Selzer because, as the *Donnelly* court explained, “publishing the results of a political opinion poll that matches the co-published methodology is not an unfair or deceptive practice.” *Donnelly*, 2025 WL 4648229, at *8. The poll’s methodology, released contemporaneously with the results, informed readers “exactly how the poll was conducted and what results it yielded.” *Id.* at *9. On this ground alone, Judge Ebinger dismissed Donnelly’s ICFA claim with prejudice. The same result is warranted here.

The ICFA’s plain text forecloses Plaintiffs’ claim against Selzer. *See Mulhern v. Catholic Health Initiatives*, 799 N.W.2d 104, 113 (Iowa 2011) (where a statute’s “language is plain and unambiguous, [courts] will look no further” in assessing statutory meaning). To state a claim under the ICFA, a plaintiff must allege “an unfair practice [or] deception” through a false statement “of a material fact, with the intent that others rely upon [it], ... in connection with the advertisement, sale, or lease of consumer merchandise.” Iowa Code § 714H.3(1). As a threshold matter, Plaintiffs identify no statements *by Selzer* to sell the *Register* (or anything else). Nor do they allege they purchased or leased anything from Selzer. Because there was no transaction, there is no predicate for a consumer claim, especially against Selzer.

The ICFA is a consumer fraud statute designed to protect Iowa consumers deceived into buying or leasing a product. It allows consumers to recover damages if they suffer an “ascertainable loss of money or property as the result” of deception or fraud. *Id.* § 714H.5(1). Here, Plaintiffs allege no “deception” or “fraud” to induce them into a transaction with Selzer, nor do they allege any “ascertainable loss of money or property.” And the Petition identifies no instance of the ICFA ever being applied to a context other than actual or attempted contractual privity

between a seller/lessor and a consumer. Plaintiffs' ICFA claim, in words, purpose, and substance, is nowhere close to what the ICFA covers.¹¹

First, Plaintiffs do not allege Selzer sold or leased anything to them. And the ICFA defines "advertisement" as "the attempt by publication, dissemination, solicitation, or circulation to induce directly or indirectly any person to enter into any obligation or acquire any title or interest in any merchandise." Iowa Code § 714H.2(2) (citing and incorporating Iowa Code § 714.16(1)(a)). The Iowa Poll offered and induced no obligation or transaction; *it's an opinion poll*. It did nothing more than attempt to measure which candidates were leading and set out its methodology for its findings. (Pet. ¶ 1.) The Iowa Poll is textually outside the ICFA's scope.

Second, a political opinion poll of the Iowa electorate is not "consumer merchandise." Under Iowa law, "[c]ourts generally presume words contained in a statute or rule are used in their ordinary and usual sense with the meaning commonly attributed to them." *Off. of Consumer Advoc. v. Iowa Utils. Bd.*, 744 N.W.2d 640, 643 (Iowa 2008). Under the ICFA, "consumer merchandise" is "merchandise offered for sale or lease, or sold or leased, *primarily for personal, family, or household purposes*." Iowa Code § 714H.2(4) (emphasis added).¹² In other words, "consumer merchandise" refers to the everyday goods Iowans purchase, like ovens and can openers. A

¹¹ By its plain terms, the ICFA applies to commercial transactions, not political commentary. Plaintiffs' attempt to extend the law outside its traditional context here renders it unconstitutional as applied, because it would reach political speech and news coverage the speaker "reasonably should know" are false. *See Sullivan*, 376 U.S. at 288 (evidence of negligently false speech is "constitutionally insufficient"); *Bertrand*, 846 N.W.2d at 894 (same).

¹² Merriam-Webster defines the possessory form of "personal" as "intended for private use or use by one person." It defines "family" as "the basic unit in society traditionally consisting of two parents rearing their children." And "household" means "those who dwell under the same roof and compose a family." *Personal*, Merriam-Webster.com, <https://www.merriam-webster.com/dictionary/personal> (updated Feb. 20, 2025); *Family*, <https://www.merriam-webster.com/dictionary/family> (updated Feb. 20, 2025); *Household*, <https://www.merriam-webster.com/dictionary/household> (updated Feb. 20, 2025).

comprehensive opinion poll of the Iowa electorate commissioned by a newspaper of general circulation is not “merchandise” “primarily for personal, family, or household purposes.” Iowa Code § 714H.2(4); *see Butts v. Iowa Health Sys.*, 863 N.W.2d 36 (Iowa Ct. App. 2015) (unpublished table decision), 2015 WL 1046119, at *9 (holding ICFA inapplicable where a defendant “does not offer or sell consumer merchandise”). Plaintiffs’ Petition alleges the “merchandise” is a newspaper (or subscriptions to online newspapers), not the poll. (*See* Pet. ¶ 108.) That necessarily concedes the ICFA claim against Selzer, because Plaintiffs do not allege Selzer made representations to them about the newspaper.

Finally, the Iowa Poll did not “relate[] to a material fact or facts” in an advertisement, sale, or lease. Iowa Code § 714H.3(1). Under the ICFA, it is not enough to allege a “deceptive” or “fraudulent” representation generally. Instead, a plaintiff “must prove that the prohibited practice relat[ing] to a material fact” was conveyed “in connection with the advertisement, sale, or lease of consumer merchandise.” *Id.* Plaintiffs allege the poll involved the “concealment, suppression, and omission of material facts.” (Pet. ¶¶ 113–14, 122–23). But this misconstrues the concept of materiality, which relates to whether the asserted representation is sufficiently important to the transaction that it would induce a buyer into making a purchase, not whether the representation exists. *See* Restatement (Second) of Torts § 538 (1977). Plaintiffs point to no representation by Selzer to them related to the advertisement, sale, or lease of consumer merchandise, much less a material one. Again, Plaintiffs try to break free from the constraints of the “fraud” category of unprotected speech by trying to turn a false statement, standing alone, into a cause of action, precisely what *Madigan*, *Alvarez*, and *Arneson* prohibit. *See supra* Section I.B.

The representation Plaintiffs rely upon is the poll results. But those results are not, and do not relate to, “a material fact or facts” in an advertisement, sale, or lease. Material facts in consumer

transactions are representations of price, use restrictions, a car's gas mileage, or bedding thread count. Not only is the poll not a representation in connection with an advertisement or sale/lease; it also plays no role as a material fact in a representation. As the *Donnelly* court explained, because "[n]o factual information regarding how the poll was conducted was withheld," readers "knew exactly how the poll was conducted and what results it yielded" and were "therefore informed of all material facts needed to judge the reliability of the poll." *Donnelly*, 2025 WL 4648229, at *9.¹³ Bottom line: "No claim exists without the assertion that Defendant manipulated a material fact in a manner prohibited by the ICFA." *Cason*, 2026 WL 540998, at *6 (granting motion to dismiss).

Plaintiffs' ICFA claim is misplaced. It is not a consumer fraud claim, and this Court should dismiss it.

D. Plaintiffs Fail to State a Fraudulent Misrepresentation Claim.

Plaintiffs' allegations likewise cannot support a common law claim for fraudulent misrepresentation. Judge Ebinger got it right: Selzer "told readers exactly what [she] did and how [she] did it. Therefore, no false representation was made." *Donnelly*, 2025 WL 4648229, at *6. Because no false representation was made, the *Donnelly* court dismissed the claim with prejudice. *Id.* at *7.

To establish a fraudulent misrepresentation claim, a plaintiff must prove "(1) defendant made a representation to the plaintiff, (2) the representation was false, (3) the representation was material, (4) the defendant knew the representation was false, (5) the defendant intended to deceive the plaintiff, (6) the plaintiff acted in reliance on the truth of the representation and was justified

¹³ Judge Ebinger also observed that authorizing a claim for unfair practice based on the inaccuracy of an opinion poll "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." *Donnelly*, 2025 WL 4648229, at *8.

in relying on the representation, (7) the representation was a proximate cause of plaintiff's damages, and (8) the amount of damages." *Gibson v. ITT Hartford Ins. Co.*, 621 N.W.2d 388, 400 (Iowa 2001). Plaintiffs fail even to allege facts for more than half of the required elements.

As an initial matter, Plaintiffs' lawsuit misunderstands fraud. Fraud is "[a] knowing misrepresentation or knowing concealment of a material fact made to induce another to act to his or her detriment." *Fraud*, Black's Law Dictionary (12th ed. 2024). It requires not just a false statement, but one made by the defendant in the context of persuading the plaintiff to "part[] with money, or property of value, in reliance upon the defendant's representations." William L. Prosser, *Handbook of the Law of Torts* § 105, at 684 (4th ed. 1971); see *Alvarez*, 567 U.S. at 722–23 (distinguishing false statements generally from fraud). The classic example of fraud is a crooked used-car salesman rolling back an odometer. See Restatement (Second) of Torts § 525 cmt. b illus. 1. This is not that.

Selzer made no representation of any kind to Plaintiffs, with whom she had no relationship whatsoever. Plaintiffs do not allege the Iowa Poll was "material" to an inducement directed to Plaintiffs by Selzer, or that Selzer intended to induce them into a transaction.¹⁴ Nor, as explained in Section II.B, *supra*, do they allege cognizable damages. Plaintiffs therefore fail to plead Elements (1), (3), (5), (6), (7), and (8).

Even if an actionable "representation" existed, Plaintiffs fail to plead Element 6, justifiable reliance. In Iowa, the "justifiable-reliance standard does not mean a plaintiff can blindly rely on a

¹⁴ Plaintiffs' assertion that they were "misled by fraudulent misrepresentations" cannot support a damages claim (particularly against Selzer, from whom they bought nothing). (Pet. ¶ 137.) On Element 5, Plaintiffs allege that the poll was published with an "intent to deceive Plaintiffs, other candidates for elected office, their readers, and the broader electorate with false Polls." (*Id.* ¶ 134.) Again, Plaintiffs misconstrue how fraud (and the ICFA) work by failing to allege that the allegedly false representation was for the purpose of inducing a transaction, which is what separates merely "false" statements from the unprotected category of fraud.

representation.” *Spreitzer*, 779 N.W.2d at 737. Rather, “[a] person may not justifiably rely on a professional representation if ‘red flags’ signal such reliance is unwarranted.” *Young ex rel. Young v. Rally Appraisal, L.L.C.*, 928 N.W.2d 660, 2019 WL 1486608, at *4 (Iowa Ct. App. 2019) (unpublished table decision).

Here, Plaintiffs allege the Selzer Poll defied “common sense, electoral history, [and] all other public polls.” (Pet. ¶ 53.) If that were true, what could Plaintiffs possibly claim to have relied on? They allege media coverage identified the poll as an “outlier,” *id.* ¶ 63, that Selzer had a history of undercounting Republican support, *id.* ¶¶ 29–33, and that “any responsible pollster or journalist with experience in Iowa politics would recognize the clear inaccuracy” of the poll. (*Id.* ¶ 133.) Yet, inexplicably, despite repeated allegations that the poll had “obvious[]” problems such that everyone with experience in Iowa politics would recognize it as an unreliable outlier, Plaintiffs assert that they “justifiably relied on” it.¹⁵ (*Id.* ¶ 136.) Nonsense. In hyping Selzer’s alleged polling inaccuracies, Plaintiffs concede the element of reliance.

Plaintiffs failed to allege six of the eight elements of fraudulent misrepresentation, and the few they allege are foreclosed by the *Donnelly* ruling. This Court should accordingly dismiss the claim.

E. Plaintiffs Fail to State a Negligent Misrepresentation Claim.

Plaintiffs’ negligent misrepresentation claim fails because Selzer owed them no legal duty. “As with all negligence actions, an essential element of negligent misrepresentation is that the defendant must owe a duty of care to the plaintiff.” *Sain v. Cedar Rapids Cmty. Sch. Dist.*, 626 N.W.2d 115, 124 (Iowa 2001). As the *Donnelly* court observed, Iowa courts limit negligent

¹⁵ Plaintiffs do not explain what they “relied on” Selzer’s poll for. To vote? To buy something? They do not say and thus have no claim.

misrepresentation claims to “recognized professionals” like “accountants, abstractors, and attorneys [who] owe a duty of care in supplying information to foreseeable third parties as members of a limited class of persons who would be contemplated to use and rely upon the information.” *Donnelly*, 2025 WL 4648229, at *7 (quoting *Sain*, 626 N.W.2d at 123). By contrast, “a pollster and a general circulation newspaper reporting on the results of an election poll are not in the business or profession of supplying information to a limited class of others who knowingly rely on the information.” *Id.* Judge Ebinger dismissed *Donnelly*’s negligent misrepresentation claim with prejudice because he “failed to plausibly allege Defendants owed him a duty.” *Id.* The same principle warrants dismissal here.

To the extent Selzer owed anyone a duty, it was to the *Des Moines Register*, which contracted for Selzer’s work. But newspapers and their sources of information owe no legal duty to the general public. As the Fifth Circuit explained, “[i]f a newspaper prints incorrect information, if a scientist publishes careless statements in a treatise, or if an oil company prints an inaccurate road map, they cannot be ‘liable’ to those of the general public who read their works absent some special relationship between [the] writer and reader.” *De Bardeleben Marine Corp. v. United States*, 451 F.2d 140, 148 (5th Cir. 1971); *see also Stancik*, 420 F. Supp. 2d at 808 (“[N]ews broadcasters do not owe the general public a heightened duty of care.”); *Brandt*, 42 F. Supp. 2d at 1345–46 (refusing to “impose on a television broadcaster of weather forecasts a general duty to viewers”). As another court explained, “[a]ccuracy in news reporting is certainly a desideratum, but the chilling effect of imposing a high duty of care on those in the business of news dissemination and making that duty run to a wide range of readers or TV viewers would have a chilling effect which is unacceptable under our Constitution.” *Tumminello v. Bergen Evening Rec., Inc.*, 454 F. Supp. 1156, 1160 (D.N.J. 1978).

Critically, notice pleading “does not create a duty where it would otherwise not exist.” *Bawek*, 313 N.W.2d at 502. Dismissal is warranted where, as here, the absence of legal duty precludes recovery. *See Schmidt v. Mahoney*, 659 N.W.2d 552, 556 (Iowa 2003) (affirming dismissal and observing that “in other cases decided on the basis that no legal duty existed, we have approved disposition by means of [a motion to dismiss].”); *Unertl v. Bezanson*, 414 N.W.2d 321, 324 (Iowa 1987) (affirming dismissal and noting the “liberality of our pleading rules cannot overcome the fact that the plaintiffs have failed to show the existence of a legal duty owed to them.”). Because Selzer owed Plaintiffs no duty, dismissal of their negligent misrepresentation claim is appropriate, as Plaintiffs have “no right of recovery as a matter of law.” *White*, 990 N.W.2d at 650.¹⁶

Plaintiffs’ negligent misrepresentation claim fails on the other elements, too. To establish a negligent misrepresentation claim, a plaintiff must prove: “(1) the defendant was in the business or profession of supplying information to others; (2) the defendant intended to supply information to the plaintiff or knew that the recipient intended to supply it to the plaintiff; (3) the information was false; (4) the defendant knew or reasonably should have known that the information was false; (5) the plaintiff reasonably relied on the information in the transaction that the defendant intended the information to influence; (6) and the false information was the proximate cause of damage to the plaintiff.” *Doe v. Grinnell Coll.*, 473 F. Supp. 3d 909, 937 (S.D. Iowa 2019) (citation omitted).

Plaintiffs’ misrepresentation claim is a shoe that doesn’t fit. Negligent misrepresentation allows recovery against those who provide information knowing that recipients intend to rely on it to make decisions, and harm results from that reliance because the supplier’s services fell below

¹⁶ The issue of duty is so elemental that the Iowa Supreme Court has affirmed sanctions where a party had no good-faith basis for claiming defendants owed them a duty. *Barnhill*, 765 N.W.2d at 275.

the legal standard of care. *Sain*, 626 N.W.2d at 124–25. In those situations, the information supplier, because of its contractual (or similar) relationship with the recipient, can be held liable because it “is manifestly aware of the use that the information will be put, and intends to supply it for that purpose.” *Id.* at 125. For example, if a home inspection company prepares a report knowing prospective buyers will rely on it when deciding whether to purchase the building, the inspection company may be liable for negligent misrepresentation if the report is inaccurate, the inspector’s preparation of the report fell below the legal standard of care, and a buyer relied on the report to his detriment. *Burbach v. Radon Analytical Laboratories, Inc.*, 652 N.W.2d 135 (Iowa 2002).

Plaintiffs’ Petition is deficient on its face. Elements (1), (2), and (4) fail because Plaintiffs do not allege Selzer supplied her poll for the purpose of informing a decision regarding a transaction. Element (5) fails because Plaintiffs do not allege they relied on Selzer’s poll to determine a course of action. And Element (6) fails because Plaintiffs do not allege any damages they suffered as a result of *relying on* Selzer’s poll. The claim is facially and constitutionally deficient. And, as the *Donnelly* court explained, Element (3) fails as well because Selzer told “readers exactly what [it] did and how [it] did it. Therefore, no false representation was made.” *Donnelly*, 2025 WL 4648229, at *6.

Accordingly, this Court should dismiss Plaintiffs’ negligent misrepresentation claim on state law grounds as well as constitutional grounds.

CONCLUSION

As is sadly true of many of lead Plaintiff’s cases, “[t]his case should never have been brought. Its inadequacy as a legal claim was evident from the start. No reasonable lawyer would have filed it. Intended for a political purpose, none of the counts of the amended complaint stated a cognizable legal claim.” *Trump v. Clinton*, 653 F. Supp. 3d at 1207. This Court should dismiss

Plaintiffs' claims with prejudice to avoid allowing the legal system to "dishonestly advance a political narrative." *Id.*

Dated: March 30, 2026

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on March 30, 2026, I electronically filed the foregoing document with the Clerk of Court by using the Iowa Judicial Branch electronic filing system, which will send a notice of electronic filing to all counsel of record.

/s/ Robert Corn-Revere