Nos. 1-13-2501 and 1-13-3614 (consolidated)

THE APPELLATE COURT OF ILLINOIS
FIRST JUDICIAL DISTRICT

SARA MEEGAN, Plaintiff-Appellee, v. FLORENCE GONZALES, Defendant-Appellant.	))))))))))	On Appeal from the Circuit Court of Cook County, Law Division No. 09 L 009898 Honorable Vanessa Hopkins

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BRIEF AND APPENDIX OF PLAINTIFF-APPELLEE SARA MEEGAN

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POINTS AND AUTHORITIES

INTRODUCTION

Plaintiff Sara Meegan witnessed racial discrimination and improper suspensions of special needs students at George Washington High School. She reported these illegalities at a meeting with Chicago Board of Education officials. She also e-mailed these officials about her concerns.

As a result, her life was ruined. Defendant Florence Gonzales lied to Meegan's new employer about Meegan's competency and commitment as a teacher, causing a rescission of her job offer. Meegan also became *persona non grata* in the Chicago Public Schools, embodied by a letter in her personnel file foreclosing her employment opportunities there. Turning a bad dream into a prolonged nightmare, Gonzales repeated her lies in an effort to stymie Meegan's unemployment benefits.

Meegan sued for defamation, republication, tortious interference with a prospective contractual relationship, and retaliation under the Illinois Whistleblower Act. The jury found in her favor, and Gonzales now appeals. But most of her appellate contentions are waived. Post-trial motions require a defendant to establish a total lack of evidence for plaintiff's claims. Gonzales never contended Meegan failed to establish her *prima facie* elements. Gonzales instead argued tort immunity and privilege in what was a thinly disguised motion to dismiss.

Even if the Court reaches the merits, Meegan prevails. The jury's special interrogatory finding that Gonzales' statements were objectively false is insurmountable. And given the lopsided evidence, the jury's special interrogatory answers, and verdict, Gonzales can only argue privilege and immunity. But

absolute privilege is narrow and limited to legislative, judicial, and some quasi-judicial proceedings. Tort immunity is inapplicable because employee references are typically made by former employers, and providing such information does not further governmental policy.

Finally, the race-based evidence Gonzales challenges on appeal was never objected to at trial as prejudicial or irrelevant. She is thus barred from raising such arguments. In any event, this case revolved around Gonzales' race discrimination, making her racial indiscretions the height of relevance.

ISSUES PRESENTED FOR REVIEW

1. Did Gonzales waive her argument challenging the denial of her post-trial motions when she never moved to withdraw Meegan's counts from the jury for insufficient evidence?
2. Was Gonzales entitled to immunity under the Tort Immunity Act when she fabricated Meegan's work history to Meegan's potential employer?
3. Assuming *arguendo* that Gonzales has not waived the issue, were her defamatory statements privileged when she did not speak in a legislative, judicial, or quasi-judicial proceeding, and she admitted having no personal knowledge of Meegan's work history?
4. Assuming *arguendo* that Gonzales has not waived the issue, did Meegan present sufficient evidence on her defamation and republication claims?
5. Assuming *arguendo* that Gonzales has not waived the issue, did Meegan present sufficient evidence on her Illinois Whistleblower Act claim?
6. Assuming *arguendo* that Gonzales has not waived the issue, did Meegan present sufficient evidence on her tortious interference claim?
7. Gonzales never objected at trial to any testimony as prejudicial or irrelevant. Assuming *arguendo* that Gonzales has not waived the issue, is she entitled to a new trial due to the admission of testimony regarding Gonzales' racism when the case concerned Gonzales' retaliation for Meegan "blowing the whistle" on Gonzales' racial discrimination?

STATUTES, RULES, AND REGULATIONS

735 ILCS § 5/2-1201(d) - If several grounds of recovery are pleaded in support of the same claim, whether in the same or different counts, an entire verdict rendered for that claim shall not be set aside or reversed for the reason that any ground is defective, if one or more of the grounds is sufficient to sustain the verdict; nor shall the verdict be set aside or reversed for the reason that the evidence in support of any ground is insufficient to sustain a recovery thereon, unless before the case was submitted to the jury a motion was made to withdraw that ground.

735 ILCS § 5/2-1202(b) - Relief desired after trial in jury cases, heretofore sought by reserved motions for directed verdict or motions for judgment notwithstanding the verdict, in arrest of judgment or for new trial, must be sought in a single post-trial motion. Relief after trial may include the entry of judgment if under the evidence in the case it would have been the duty of the court to direct a verdict without submitting the case to the jury, even though no motion for directed verdict was made or if made was denied or ruling thereon reserved. The post-trial motion must contain the points relied upon, particularly specifying the grounds in support thereof, and must state the relief desired, as for example, the entry of a judgment, the granting of a new trial or other appropriate relief.

745 ILCS § 10/2-201 - Except as otherwise provided by Statute, a public employee serving in a position involving the determination of policy or the exercise of discretion is not liable for an injury resulting from his act or omission in determining policy when acting in the exercise of such discretion even though

abused.

740 § ILCS 174/30 - Damages. If an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring in a civil action against the employer for all relief necessary to make the employee whole, including but not limited to the following, as appropriate: (1) reinstatement with the same seniority status that the employee would have had, but for the violation; (2) back pay, with interest; and (3) compensation for any damages sustained as a result of the violation, including litigation costs and reasonable attorney's fees.

Supreme Court Rule 366(b)(2)(iii) - In jury cases the following rules govern: (iii) *Post-Trial Motion.* A party may not urge as error on review of the ruling on the party's post-trial motion any point, ground, or relief not specified in the motion.

STATEMENT OF FACTS

Sara Meegan

Meegan graduated from UCLA and taught in Los Angeles inner-city schools for seven years. Vol. 7 at 215-16. In 2006, she returned to Chicago and taught English as a probationary assigned teacher at George Washington High School. Vol. 7 at 218. Located in Chicago's southeast side, the school's student body is 60% Hispanic, 25% black, and the rest white. Vol. 7 at 219.

The school was well-run during Meegan's first year-and-a-half there. Vol. 7 at 220. Interim Principal Martin Klimesh was considered a "very good" administrator. *Id*. Meegan earned positive feedback from her superiors and had an unblemished record during the 2006-2007 school year. *Id*.

Florence Gonzales Becomes Principal

Gonzales replaced Klimesh in January 2008. Vol. 7 at 224. Local School Council ("LSC") representative Timothy Byer told Meegan that Gonzales was hired "to get rid of the black population at our school." Vol. 7 at 226-27. Numerous students also told Meegan that Gonzales' presence meant there would be far fewer black students. Vol. 7 at 228.

Gonzales' start was inauspicious: she never introduced herself to the school, and Meegan did not see her the first two weeks. Vol. 7 at 224-25. Chaos soon ensued. Vol. 7 at 231. Meegan observed the student population "spiral[ ] completely out of control in a state that I've never seen." *Id*. Student fights pitted blacks against Hispanics. Vol. 7 at 233-34. Tear gas, lockdowns, and brawls marred classes. Vol. 7 at 231. Latin King graffiti greeted visitors at the school's front

entrance. Vol. 7 at 232. Instead of being immediately scrubbed, as was customary, the graffiti remained for five days under Gonzales' watch. *Id*.

Most of the school's black students were not from the predominately Hispanic neighborhood. Vol. 7 at 234; Vol. 9 at 135-36. They attended George Washington via the "Options for Knowledge" program. *Id*. This program provided opportunities for select Chicago students to attend other public high schools. *Id*. Meegan explained, "it's a way to get into a better school than the one in their neighborhood." *Id*. Gonzales quashed the program after the 2008 school year, resulting in fewer black students. Vol. 8 at 82; Vol. 9 at 138.

Gonzales meted out race-based punishment. Vol. 7 at 235. Meegan was shocked: "I had never seen anything like it where . . . only the Latino party was not punished, only the black student was." *Id*. Gonzales was also quick to expel. *Id*. Instead of progressive discipline for minor infractions, students were gone. *Id*. Further, Meegan had to provide weekly grade reports only for the school's mainly black basketball team. Vol. 7 at 238-41.

Special education students also did not escape Gonzales' wrath. Vol. 7 at 244. Behavior problems that normally would have warranted no discipline met severe punishment under Gonzales. *Id*. Meegan believed that suspending the special education students was illegal. *Id*.

Meegan Is Evaluated

Gonzales observed Meegan in the classroom once for 20 minutes. Vol. 7 at 249. She did not criticize Meegan's teaching abilities nor tell her she was

underperforming. *Id*. Rather, Gonzales "made several positive comments." *Id*. While Gonzales noted Meegan had six tardies (in actuality, she had two), Meegan did not challenge the miscalculation given the evaluation's positive tenor. *Id*.

Assistant principal Jeannine Gorny also observed Meegan once for 20 minutes. Vol. 8 at 2-3. Gorny did not criticize Meegan. Vol. 8 at 4. Based on the two observations, Meegan received a "satisfactory" rating on March 5, 2008. Vol. 8 at 5. There was nothing indicating she failed to provide her weekly lesson plans, because she had done so, e-mailing the school clerk who collected the plans each week. Vol. 4 at 847-64; Vol. 9 at 168-69; Second Supp. Record at 9-10.

Later that day, Meegan was given a non-renewal notice. Vol. 8 at 5-6. A non-renewal is not a termination. Second Supp. Record at 54-55. When Meegan received her notice, neither Gonzales nor Gorny told Meegan her skills were lacking. Vol. 8 at 5-6. Gonzales blamed the non-renewal on a projected drop in enrollment due to ending the Options for Knowledge program. Vol. 8 at 8. Gonzales offered to provide Meegan a letter of recommendation. *Id*.

Philip Corich Observes Meegan's Teaching

Philip Corich taught at George Washington for 21 years and was the athletic director his last year. Vol. 8 at 44. Corich shared a classroom with Meegan. *Id*. He said Meegan was not excessively tardy nor absent. Vol. 8 at 47-48. He also observed Meegan in her classroom and described her as "competent" and "doing a good job." Vol. 8 at 49.

Corich testified that LSC member Robert Rodriguez told him Principal Gonzales was hired to get rid of black students. Vol. 8 at 55-57. Additionally, Gonzales told Corich that he had to "clean up the ghetto," referring to the gym often used by black students. Vol. 8 at 58. She complained to Corich about basketball players "running around like a bunch of monkeys." Vol. 8 at 59.

The April 2008 LSC Meeting

George Washington's downward spiral necessitated an LSC meeting in April 2008. Vol. 8 at 15. It was attended by the Chicago Public Schools ("CPS") president, the head of CPS security, Gonzales, and her direct supervisor, area instructional officer Jerryelyn Jones. *Id*.

Meegan spoke at the meeting. Vol. 8 at 18. She disputed Gonzales' claim that the rampant violence was caused by the teachers. *Id*. Meegan said the violence instead resulted from Gonzales letting "all the administrators go as well as security and that they didn't have a handle on the gang situation and that it was being taken advantage of and that all of our safety was at stake." *Id*. Meegan asserted Gonzales discriminated against students based upon race and disability. Vol. 7 at 246-47; Vol. 8 at 17-19. Meegan cited as an example a discipline report from a school riot where black students bore the brunt of the punishment. Vol. 8 at 17-19.

Student Ernira Aljasak also spoke at the meeting about the racial hostility. Vol. 8 at 23. Shortly after the meeting, a security guard asked Meegan about Aljasak. Vol. 8 at 23-24. Meegan responded that she was an honor roll student with

impeccable attendance. Vol. 8 at 25. The next day, Aljasak was absent—her first suspension. *Id*.

The Remainder Of The 2008 School Year

Meegan taught at George Washington until mid-June 2008. Vol. 8 at 22. The April meeting changed nothing as Meegan saw no improvement in the school. *Id*. Further, special needs students continued to be suspended. *Id*. "We had a much lower African American population by that point, but the remaining African American students … knew… they weren't wanted." *Id*.

Meegan also e-mailed CPS President Arnie Duncan, union leaders, and CPS security about the illegal activities and race problems at George Washington. Vol. 8 at 13. Jerryelyn Jones was copied in the e-mail. *Id*.

Meegan's Job Search, Offer, and Rescission

The atmosphere at the school left Meegan dismayed. Vol. 8 at 26-27. She could not sleep, began smoking, was regularly sick, and cried often. *Id*. Her anxiety made her nauseous and she would vomit due to the "overwhelmingly ugly experience." Vol. 8 at 27-28. Nevertheless, Meegan began looking for a job and applied to hundreds of schools. Vol. 8 at 29.

She landed an interview at Amundsen High School, a Chicago Public School. *Id*. During the August 18, 2008 interview, Meegan told Amundsen Principal Carlos Munoz that her non-renewal at George Washington was due to an enrollment decline. *Id*. The next day, Meegan was offered a teaching position at Amundsen, which she immediately accepted. Vol. 8 at 32. After Munoz extended the offer, he

contacted Gonzales, who told him that Meegan was not renewed because she was constantly late, absent, and had performance issues. Vol. 9 at 13-15; 17-18. The impact on Munoz was immediate. Vol. 9 at 13-15. Once he determined Meegan had lied, "there was not any further necessity to inquire why." Vol. 9 at 14. Munoz never requested any attendance records or other proof of her punctuality. Vol. 9 at 18.

Meegan went to Amundsen two days later when Munoz confronted her and told her "you're just not an honest person." Vol. 8 at 34. Meegan's attempt to defend herself was dismissed by Munoz who replied, "you're always tardy, you're always late, you never turn in lesson plans and you always have excuses." Vol. 8 at 35. With that, the offer was withdrawn. *Id*. Meegan left in shock. *Id*.

Incredulous, Meegan e-mailed Gonzales' supervisor, Jerryelyn Jones, who said she would investigate. Second Supp. Record at 12-13. Jones followed up with Gonzales, who confirmed to Jones that Meegan "was always tardy, … always absent, … never turned in lesson plans, … always made excuses … and, in fact, … was tardy over 15, 20 times." *Id*. at 14.

The Aftermath

Disillusioned, Meegan applied for unemployment insurance. Second Supp. Record at 15. The Illinois Department of Employment Security ("IDES") told Meegan her employer accused her of misconduct and that she was terminated for cause. *Id*. After Meegan interviewed with the IDES, Meegan's "supervisor" disputed the unemployment a second time concerning the reason for her departure. *Id*. at 19; Second Supp. Record at 42.

Meegan reviewed her personnel file at the Board of Education. Second Supp. Record at 24. The front of the file contained a page in bold print warning that Meegan could not to be hired in any capacity by the CPS except as a day-to-day substitute teacher. *Id*. at 24-25. At that time, Meegan was still a probationary assigned teacher with the CPS. *Id*. at 25. The bold-printed page listed George Washington High School and the school's principal as Shirley Weiss. *Id*. at 26. Weiss was in actuality a secretary at the school. *Id*.

Meegan went without a full-time job for four years. Second Supp. Record at 27. Her life was in shambles as she needed food stamps, went without medical attention, and relied on her parents to support her child and her mortgage. *Id*. at 27-28. In Meegan's words, "my life stopped." *Id*. at 28.

Patricia Banks Is Punished For Speaking Out

Patricia Banks taught at George Washington for 23 years, retiring in June of 2011. Vol. 8 at 79. Banks noticed "a lot of racial, violent fights" occurring after Gonzales started. Vol. 8 at 84. She also saw black students suspended at a higher rate and for longer periods than Hispanics. *Id*. Blacks were also expelled more. Vol. 8 at 85. Gonzales used grade sheets only to determine the eligibility of the boys' basketball team. Vol. 8 at 86.

Banks heard Meegan talk at the April meeting about the discrimination. Vol. 8 at 88-89. Banks spoke in the same vein: "I felt that the administration was engaging in racial discrimination against the black teachers and African American students." Vol. 8 at 89. As a result, Gonzales removed Banks from her physical

education post of 23 years and put her in a special needs classroom, despite having never taught such a program. Vol. 8 at 91.

Nancy Kusler Is Punished For Speaking Out

Nancy Kusler has taught biology at George Washington for 13 years. Vol. 8 at 110. Shortly after Gonzales became principal, Kusler noticed increased conflicts between black and Hispanic students. Vol. 8 at 114. Further, black students were punished more. *Id*. Kusler did not have to complete grade sheets for Hispanic or white athletes. Vol. 8 at 119-20. Concerned, she wrote to Rachel Resnick at the Board of Education. Vol. 8 at 115. Gonzales then gave Kusler a disciplinary notice for misstating information about school incidents. Vol. 8 at 115-16.

Kusler also spoke at the April LSC meeting. Vol. 8 at 120-21. Echoing Meegan and Banks, Kusler complained about the racial discord. *Id*. Since Gonzales became principal, Kusler has seen a significant drop in black students and the number of black teachers plummet by almost two-thirds. Vol. 8 at 124-25.

James Archambeau Witnesses Gonzales' Racism

James Archambeau has taught physical and health education at George Washington for eight years. Vol. 8 at 131. Archambeau observed significant racial strife after Gonzales took over. Vol. 8 at 135. Racial fights became common. Vol. 8 at 136. After a riot, Archambeau saw Hispanic students sent to the principal's office while black students were sent to the police station. Vol. 8 at 137. He said the LSC hired Gonzales to target black students for expulsion. Vol. 8 at 139-40.

Gonzales made racist remarks to Archambeau. Vol. 8 at 137-38. She once told him, "I need help getting … these black ass kids out of our school." Vol. 8 at 138. She called Patricia Banks (an African-American) "nigger." Vol. 8 at 139. She told Archambeau that if "these black ass teachers don't conform to her rules" they would be removed. Vol. 8 at 140. In response, Archambeau complained to Rachel Resnick and requested an investigation. Vol. 8 at 142. He also went to another office within the Board of Education that investigated discrimination. Vol. 8 at 143. Finally, Archambeau stated that scrapping the Options for Knowledge program resulted in "very few" black students at George Washington. Vol. 8 at 131.

Thomas Stibich Falsifies Records For Gonzales

Thomas Stibich is a teacher and dean of students at George Washington. Vol. 8 at 156-57. He explained that expulsions went through Gonzales. Vol. 8 at 159. Of the students expelled during Gonzales' first semester, 90% were black. *Id*. The next year, the figure was 75%. Vol. 8 at 160. Stibich experienced firsthand Gonzales' obsession with race—answering her demands for monthly reports of the school's racial makeup. Vol. 8 at 161. Gonzales complained to Stibich that the school had "too many blacks." Vol. 8 at 163-64. She forced Stibich to doctor school records to downplay the disproportionate punishment of blacks. Vol. 8 at 162. He also heard Gonzales call Patricia Banks "nigger." Vol. 8 at 166.

Florence Gonzales

At trial, Gonzales did not recall Meegan speaking at the April meeting. Vol. 8 at 176. This contradicted her answers to Meegan's requests to admit, in which she

admitted Meegan spoke at the meeting. Vol. 9 at 159, 163. Nor did Gonzales recall any discussion of race or an increase in violence at the meeting. Vol. 8 at 176.

Gonzales acknowledged she told Munoz about Meegan's "tardiness, absenteeism . . . and no lesson plans." Vol. 9 at 127. However, Gonzales admitted she had no personal knowledge about these subjects. Vol. 9 at 152-55.

The Pleadings

Meegan sued for defamation *per se* (Count I), false light (Count II), and tortious interference with a prospective economic advantage (Count III). Vol. 1 at 3. Gonzales moved to dismiss. Vol. 1 at 20. The trial court denied Gonzales' motion to dismiss with respect to Count I, gave Meegan leave to re-plead Count III to include facts related to the corporate officer exception, and Meegan voluntarily dismissed Count II. Vol. 1 at 102. Meegan amended her complaint to allege defamation *per se*, republication of defamatory statements, and tortious interference with a prospective economic advantage. Vol. 1 at 104. Gonzales raised affirmative defenses for immunity under the Tort Immunity Act and absolute privilege, or alternatively, conditional privilege. Vol. 9 at 246-49; Vol. 10 at 2-3.

Ultimately, Meegan brought four claims to a jury: defamation, republication of defamation, tortious interference with a prospective contractual relationship, and retaliation under the Illinois Whistleblower Act ("IWA"). Vol. 10 at 5-9. The trial court used Gonzales' jury instructions and verdict forms. Vol. 3 at 581-82; Vol. 9 at 188-92. Gonzales did not provide verdict forms separating the four counts. Vol. 10 at 10-11.

The Trial

As set forth above, Meegan, Corich, Banks, Kusler, Archambeau, and Stibich testified at trial. At the conclusion of Meegan's case-in-chief, Gonzales moved for directed verdict. Vol. 8 at 223-25; Supp. Record at 70-79. The motion for directed verdict argued Gonzales was entitled to tort immunity and privilege. Supp. Record at 70-79. After a brief oral argument, the court entered and continued its ruling on the directed verdict motion. Vol. 8 at 249-51. Gonzales then presented her defense, which consisted of testimony from Munoz, Gonzales and the assistant principal she hired, Gorny. Vol. 9 at 64. Not a single George Washington teacher testified on Gonzales' behalf. Vol. 9 at 161-62.

After a week-long trial, the jury returned a $225,000 verdict for Meegan. Vol. 10 at 18-19. The jury also answered three special interrogatories submitted by Gonzales: (1) Gonzales was not acting within the scope of her employment when she made statements about Meegan to Munoz; (2) Gonzales was not acting within the scope of her employment when she made statements about Meegan to Jones; and (3) Gonzales' statements to Munoz and Jones about Meegan were false. Vol. 9 at 189-90; Vol. 10 at 21-22. Meegan was later awarded attorneys' fees, pursuant to the IWA, of $144,258. Vol. 5 at 1091.

The Post-Trial Motions

Gonzales' motions for directed verdict, judgment notwithstanding the verdict ("j.n.o.v."), and a new trial were denied. The trial court held that Gonzales was not

entitled to j.n.o.v. because she violated 735 ILCS § 5/2-1201(d) by not moving to withdraw specific counts from the jury. Vol. 5 at 1004-06. It also found Gonzales' statements were not privileged. Vol. 5 at 1007-12. The court concluded Gonzales waived her right to a new trial by failing to object to the evidence in question. Vol. 5 at 1012-15. Her renewed motion for directed verdict was also denied. Vol. 5 at 1091. The trial court granted Meegan additional attorneys' fees of $21,294. Second Supp. Record at 3.

ARGUMENT

I. Gonzales Waived Her Arguments Challenging The Denial Of The J.N.O.V. Motion.

An appeal is only as good as the record from which it arises. The Court will consider only those issues raised and preserved in the trial court. *Dopp v. Village of Northbrook*, 257 Ill. App. 3d 820, 824 (1st Dist. 1993). For that reason, Gonzales has waived most of her appellate arguments.

A. Gonzales never moved to withdraw Meegan's counts for insufficient evidence.

Gonzales is barred by 735 ILCS § 5/2-1201(d) from contesting the denial of her j.n.o.v. motion because she did not request that any count be withdrawn from the jury due to insufficient evidence.

735 ILCS § 5/2-1201(d) states:

> If several grounds of recovery are pleaded in support of the same claim … whether in the same or different counts, an entire verdict rendered for that claim shall not be set aside or reversed for the reason that any ground is defective, if one or more of the grounds is sufficient to sustain the verdict; nor shall the verdict be set aside or reversed for the reason that the evidence in support of any ground is insufficient to sustain a recovery thereon, unless before the case was submitted to the jury a motion was made to withdraw that ground….

735 ILCS § 5/2-1201(d).

Gonzales' challenge to the denial of her j.n.o.v. motion is waived pursuant to *Pavilon v. Kaferly,* 204 Ill. App. 3d 235 (1st Dist. 1990). In *Pavilon*, insufficient evidence on a defamation claim did not warrant reversing a general verdict for the plaintiff where the verdict was also based on other torts. *Id*. at 249. The defendant did not move to withdraw the defamation count from the jury, object to the defamation instruction, or request separate verdicts. *Id*. at 250. "Under such circumstances, he cannot now successfully argue that this court must presume that the verdict was based on the defamation count." *Id*. That is what occurred here.

A reviewing court should set aside the principle of waiver only for good reason: "to provide a just result [or] to maintain a sound and uniform body of precedent." *Dillon v. Evanston Hospital*, 199 Ill. 2d 483, 505 (2002). Neither concern is implicated here. Additionally, the primary purpose of waiver is to ensure that the trial court has the opportunity to correct any errors before they are raised on appeal. *Moller v. Lipov*, 368 Ill. App. 3d 333, 342 (1st Dist. 2006). This purpose is pertinent here, where the trial court was never asked to determine if Meegan had established the *prima facie* elements of her claims. Because Gonzales did not ask the court to make this determination, she waived her contention on appeal that the evidence was insufficient on the four counts.

On appeal, Gonzales contends the trial court erred in denying her motion for j.n.o.v. because it misconstrued § 2-1201. (Brief at 14). She claims that since she sought to remove Meegan's entire case from the jury's consideration and her post-trial motions also sought relief as to all counts, the trial court erred in relying on

§ 2-1201. (Brief at 16). But specificity is the soul of credibility, and Gonzales cites no language from her motion for directed verdict in which she specifically articulated that Meegan failed to prove the *prima facie* elements of her claims. Her directed verdict motion instead exclusively argued privilege and immunity. Supp. Record at 70-79. Thus, before the case was submitted to the jury, Gonzales failed to request that any count be withdrawn due to insufficient evidence. *Id*.

As such, Gonzales waived her right to move for j.n.o.v. Her motion for j.n.o.v. was improper due to not contesting the sufficiency of the evidence before the case went to the jury. Consequently, Gonzales cannot challenge the denial of the j.n.o.v. on appeal.

B. Gonzales' post-trial efforts focused on immunity and privilege.

It is axiomatic that issues not raised in a post-trial motion are waived on appeal. S. Ct. Rule 366(b)(2)(iii); *Raabe v. Maushak*, 55 Ill. App. 3d 169 (2d Dist. 1977). Gonzales' post-trial motions fixated on immunity and privilege, neglecting the elements of Meegan's claims. Supreme Court Rule 366 forecloses Gonzales' attempt to challenge the denial of her post-trial relief.

Furthermore, Gonzales succumbs to 735 ILCS § 5/2-1202(b), which along with Supreme Court Rule 366(b)(2)(iii), requires specificity in post-trial motions of jury matters. In other words, all issues and grounds for relief must be set forth with particularity. 735 ILCS § 5/2-1202(b); S. Ct. Rule 366(b)(2)(iii). Issues not delineated will not be preserved for appeal. *Wilson v. Clark*, 84 Ill. 2d 186, 189 (1981).

The significant specificity required is reflected by *Brown v. Decatur Memorial Hospital*, 83 Ill. 2d 344 (1980). In *Brown*, the plaintiff filed a post-judgment motion challenging the jury instructions. *Id*. at 348. The plaintiff's post-judgment motion stated: "The Court refused to give Plaintiff's tendered instructions 9, 11, and 16 … [and] … The Court gave, over objection of the Plaintiff, Defendant's tendered instructions 2, 3, and 4." *Id*. at 349. The Supreme Court held these contentions were inadequate under Rule 366 because they did not specify the grounds on which they were based. Thus, identifying the objectionable instructions, without describing them and explaining why they were objectionable, was not enough. *Id*. at 349-50.

Brown confirms Gonzales has not preserved her challenge to Meegan's IWA claim. She never argued the IWA elements were not met in her post-trial motions. Instead, she emphasized privilege and immunity in the context of defamation and republication, devoting the first 13 pages of her j.n.o.v. motion to these issues. Vol. 3 at 631-43. On the 16th page of her motion, she attacks the jury's "possible finding that Principal Gonzales tortiously interfered" with Meegan. Vol. 3 at 646. Noticeably absent is any mention of the IWA elements. In the j.n.o.v. section of the motion, Gonzales only addresses the IWA in the context of immunity. Vol. 3 at 644. Further, in the "new trial" section of her motion, she lists the IWA elements, but inexplicably does not contest them. Vol. 3 at 648. She merely (and only) argues the race-based evidence was improperly admitted. *Id*. Like the directed verdict motion, her post-trial missteps foreclose her avenues of appellate review.

In sum, Gonzales does not show where in the post-trial motions she cited to the trial record supporting her position on the IWA and Meegan's corresponding lack of evidence. Section 1202(b) and Rule 366 demand more. Like the plaintiff in *Brown*, Gonzales' contentions are barred.

C. Gonzales' use of a general verdict also demonstrates waiver.

Gonzales also waived her arguments on appeal because she used a general verdict form. A general verdict can be sustained on any of several bases of liability and will not be reversed by the impairment of one theory. *Schumacher v. Continental Air Transport Co.*, 204 Ill. App. 3d 432, 445 (1st Dist. 1990). In other words, where the verdict was sustainable on a theory of liability submitted to the jury, it will stand even though defective theories also exist. *Witherell v. Weimer*, 118 Ill. 2d 321, 329 (1987).

In *Schumacher,* the defendant failed to object to the general verdict form or tender a special verdict form. 204 Ill. App. 3d at 445. The First District scolded the defendant for not submitting separate forms—"a party who fails to do so waives its right to object on appeal regarding such an omission." *Id*., (citing *Beccue v. Rockford Park District,* 94 Ill. App. 2d 179, 196 (2d Dist. 1968)). The general verdict was thus upheld. *Schumacher*, 204 Ill. App. 3d at 446. Also thwarting Gonzales is *Lynch v. Collinsville Comm. Unit Dist*. No. 10, 82 Ill. 2d 415 (1980). "Had this defendant desired to ascertain upon which count or counts the jury returned its verdict, it could have done so by requesting a separate verdict upon each demand." *Id*. at 433. Since the defendant did not, it "could not take advantage of its failure." *Id*.

Finally, the Seventh Circuit, relying on Illinois law, deemed the argument Gonzales makes here "without merit" in *Bandura v. Orkin Exterminating Co., Inc.*, 865 F.2d 816 (7th Cir. 1988). The defendant sought to reverse a jury's verdict due to insufficient evidence on a products liability claim. *Id.* at 818-19. The jury returned a general verdict based on negligence, products liability, and consumer fraud. *Id.* at 819. Because evidence supported the consumer fraud allegations, the verdict was sustainable. *Id.*, (citing *Moore v. Jewel Tea Co.*, 46 Ill. 2d 288 (1970)).

Schumacher, *Lynch*, and *Bandura* establish Gonzales' efforts are futile. Meegan pled four causes of action and the jury returned a general verdict for her. The general verdict cannot be reversed based on insufficient evidence of one ground if no motion was made to withdraw that ground. 735 ILCS § 5/2-1201(d). Gonzales did not contest that Meegan failed to provide sufficient evidence on the IWA claim in her post-trial motions. Vol. 3 at 648. She also did not move to withdraw any of Meegan's claims for insufficient evidence in her directed verdict motion, and acquiesced to the jury instructions. Supp. Record at 70-79. Challenging the sufficiency of evidence on appeal despite not preserving the argument at trial has been repeatedly rejected by courts. The Court should hold similarly here.

II. The Tort Immunity Act Does Not Apply Because Providing A False Employment Reference Is Not Unique to Being A Principal.

Gonzales seeks to invoke the Illinois Local Governmental and Governmental Employees Tort Immunity Act. 745 ILCS § 10/2-201. The Tort Immunity Act provides that a public employee who abuses her discretion in determining policy is not liable for resulting injuries. *Id.* As such, it does not apply here.

A. Gonzales was not determining policy.

The Tort Immunity Act codifies the common-law distinction between discretionary acts and ministerial duties. *Stratman v. Brent*, 291 Ill. App. 3d 123, 130 (2d Dist. 1997). A public official is immune from liability for injuries caused by discretionary acts, but not ministerial duties. *Id*. at 130. To be discretionary, the act must be unique to a particular public office. *Id*. The discretionary act must also further a government policy. *Id*.

There is no authority holding that government policy is implicated by providing an employee reference. The futility of Gonzales' position is captured by *Stratman*, which held that providing information to potential employers was not unique to a police chief position. *Id*. at 131. As former employers routinely interact with prospective employers, the police chief was not exercising official discretion and did not further government policy. *Id*. For these reasons, tort immunity was denied. *Id*. Similarly, in talking to Munoz, Gonzales' actions were not unique to her position as a principal, nor was it an official duty or policy determination. Moreover, even if it was a policy determination, it would not absolve Gonzales' defamatory statements to Jones or the IDES. Per *Stratman*, providing referrals to a potential employer is not a policy determination, nor an exercise of discretion unique to a particular office. Tort immunity is inapplicable here as it was in *Stratman*.

Gonzales claims immunity based on two provisions of the Tort Immunity Act: 745 ILCS § 10/2-210 which immunizes public employees' provision of information, and § 2-201, which immunizes their policy decisions. (Brief at 18). Her contention

misapplies the relevant law and results from a myopic reading of the undisputed evidence. Gonzales relies on cases such as *Klug v. Chicago Sch. Reform Bd. of Trs.*, 197 F.3d 853 (7th Cir. 1999), and *Cameli v. O'Neal*, 1997 U.S. Dist. Lexis 9034 (N.D. Ill. 1997). But neither is binding nor persuasive authority here and neither resembles the instant facts.

Gonzales also cites *Goldberg v. Brooks*, where a bus ride aide reported to her principal that a bus driver was endangering students. 409 Ill. App. 3d 106 (1st Dist. 2011). Gonzales claims "immunity here is even stronger than *Goldberg*, because all the challenged communications occurred between Board employees." (Brief at 19). *Goldberg* is of no utility here because that case was dismissed at the pleadings stage. 409 Ill. App. 3d at 108. There was no special finding by the jury that the *Goldberg* defendants acted outside the scope of their employment. Nor was there a special finding that the defamatory comments in question were found by the jury to be objectively false. Finally, the plaintiff in *Goldberg* was a school bus driver who allegedly drove a school employee against her will, blocked a driveway in a dispute over a dog, and otherwise endangered students. *Id*. at 107-08. The defendants had a duty to report such misconduct. *Id*. These facts are far removed from Gonzales' deliberate efforts to defame and destroy Meegan. Thus, the facts at bar, special interrogatory answers, and verdict render Gonzales' reliance nugatory.

B. The jury found Gonzales acted outside the scope of her employment.

Gonzales argues it was clearly erroneous for the trial court to find she acted outside the scope of her employment when she defamed Meegan to Munoz, Jones,

and the IDES. (Brief at 19-20). She contends her statements fall within the scope of her duties as a principal under the Illinois School Code. (Brief at 20). However, the jury's answer to the special interrogatory that Gonzales acted outside the scope of her employment (which Gonzales submitted) eviscerates her position. Vol. 10 at 21-22. A special interrogatory is a check on the jury's general verdict that requires the jury to determine a specific issue of fact. *Simmons v. Garces*, 198 Ill. 2d 541, 563, 566 (2002). In fact, a special interrogatory serves "as guardian of the integrity of a general verdict in a civil jury trial." *O'Connell v. City of Chicago,* 285 Ill. App. 3d 459, 460 (1st Dist. 1996). Yet Gonzales casts it aside.

Gonzales asks the Court to ignore the special interrogatory finding—despite her request for it—that she acted outside the scope of her employment. In arguing she acted within the scope of her employment, Gonzales buries the special interrogatory in a sand of minutiae, not addressing it until the penultimate page of her brief. Even then, she merely states "no evidence at all places" Gonzales' conversation with Munoz and Jones outside the scope of her employment. (Brief at 36). Nothing else is said. This bare assertion is insufficient to disregard the jury's special interrogatory answer. It is for the jury to consider conflicts in evidence, the weight of the evidence, and the credibility of witnesses, which it did in answering the special interrogatory. Gonzales' conclusory-laced contention is not enough to carry the burden of vacating the special interrogatory.

In sum, Gonzales' tort immunity contentions either clash with the evidence,

ignore the jury's findings, or contradict controlling precedent. Tort immunity does not exist on these facts.

III. The Jury's Verdict On Defamation And Republication Should Not Be Disturbed.

A. Standard of review.

Even if the Court considers Gonzales' j.n.o.v. argument on defamation and republication, Meegan prevails. Gonzales' failure to request a specialized verdict precludes determining on which counts the jury found for Meegan. Thus, she must show that for each count, the evidence when viewed in the light most favorable to Meegan "so overwhelmingly favors the movant that no contrary verdict based upon the evidence could ever stand." *See Elam v. Lincoln Elec. Co.*, 362 Ill. App. 3d 884, 889 (1st Dist. 2005). An adverse ruling on a j.n.o.v. motion is reviewed *de novo*. *Evans v. Shannon*, 201 Ill. 2d 424, 427 (2002).

Additionally, although motions for directed verdicts and motions for j.n.o.v. are made at different times, they raise the same questions and are governed by the same principles. *Lawlor v. North American Corp. of Illinois*, 2012 IL 112530, ¶37. The standard of review on appeal "is a high one," in which the Court considers the evidence in the light most favorable to Meegan to determine whether there was a total lack of evidence for her claims. *See id*.

B. Impugning one's ability to perform her job is defamation *per se*.

A statement is defamatory if it harms the reputation of another in that "it lowers that person in the eyes of the community or deters third persons from associating with her." *Bryson v. News America Publications, Inc.*, 174 Ill. 2d 77, 87

(1996). To prove defamation, a plaintiff must establish the defendant made a false statement about the plaintiff and published that statement to a third party, damaging plaintiff. *Solaia Tech., LLC v. Specialty Publ. Co.,* 221 Ill. 2d 558, 579 (2006). Five classes of defamatory statements constitute defamation *per se*: (1) those imputing the commission of a crime; (2) those imputing infection with a communicable disease; (3) those imputing inability to perform or want of integrity in one's employment; (4) those prejudicing a party in his profession; and (5) those falsely alleging fornication or adultery. *Bryson*, 174 Ill. 2d at 88-89.

Gonzales knowingly made false statements to Munoz and Jones about Meegan's absenteeism and professional incompetency. Vol. 9 at 152-55. These lies spawned the rescission of Meegan's job offer. Vol. 8 at 35; Vol. 9 at 127. Gonzales' statements fall in the third and fourth defamation *per se* categories.

Statements castigating another's professional competence are actionable, without further proof of injury. Defamatory language harming the person to whom it refers renders a showing of special damages unnecessary. *Owen v. Carr*, 113 Ill. 2d 273, 277 (1986). In *Barakat v. Matz*, liability was found based on defendant's defamatory statement that plaintiff doctor's "practice was a joke." 271 Ill. App. 3d 662, 671 (1st Dist. 1995). Further, Gonzales cannot hide behind her statements as mere opinion. Illinois does not recognize the fact/opinion distinction in defamation cases. *Schivarelli v. CBS Inc.*, 333 Ill. App. 3d 755, 760 (1st Dist. 2002). Defamation *per se* existed here.

Based on the trial testimony, the jury could have found that Meegan accurately described Munoz's comments to her about what Gonzales said. In fact, Munoz and Gonzales echoed Meegan's testimony. Vol. 8 at 35; Vol. 9 at 152-55. The jury was further entitled to gauge the credibility of the witnesses and to find Gonzales republished these statements to Jerryelyn Jones and the IDES. Second Supp. Record at 12-13. Finally, the jury could conclude that Gonzales' statements caused the rescission of Meegan's offer, as Munoz conceded. Vol. 9 at 13-15.

C. Gonzales did not have an absolute privilege to defame.

Gonzales asserts her remarks about Meegan are privileged. (Brief at 23). Gonzales made this argument in her motion to dismiss. After briefing, Judge Diane Larsen rejected it. Vol. 4 at 843. Gonzales recycled the argument in post-trial pleadings, where Judge Vanessa Hopkins also rejected it. Vol. 5 at 1091.

Absolutely privileged communications are rare. *Weber v. Cueto,* 209 Ill. App. 3d 936, 941 (5th Dist. 1991). A communication is absolutely privileged when made "in the discharge of a duty under express authority of law." *Id.* at 942, (citing RESTATEMENT (SECOND) OF TORTS § 592A, at 257 (1977)). Only one who is required by law to publish defamatory matter is absolutely privileged to do so. RESTATEMENT (SECOND) OF TORTS § 592A, at 257. Absolute privilege is limited to legislative, judicial, and some quasi-judicial proceedings. *Barakat*, 271 Ill. App. 3d at 667.

The Court should deny absolute privilege here, as was done in *Stratman,* 291 Ill. App. 3d 123. The plaintiff in *Stratman* was a former police officer who applied for positions with federal agencies. *Id.* at 126-27. The defendant, a chief of police

and plaintiff's former boss, made defamatory statements during a background check. *Id.* at 127-28. Defendant claimed absolute privilege as a public official acting in his official capacity. *Id.* at 133. The court disagreed because the defendant did not have a duty to provide prospective employers with information about former employees. *Id.* Since the action was outside the scope of police chief duties, there was no absolute privilege. *Id.*

Also supporting Meegan is *Ramsey v. Greenwald,* 91 Ill. App. 3d 855 (2d Dist. 1980). The plaintiff's supervisor told management the plaintiff was drunk at work and had drugs. *Id.* at 857. The defendant claimed an absolute privilege in making the statements. *Id.* at 863. The Court held that even though a defendant may possess a privilege to report an employee's performance, no privilege exists to maliciously defame him. *Id.*

Gonzales' defamatory statements were not made during legislative, judicial, or quasi-judicial proceedings. In fact, Gonzales points to no instance in the trial record where she claimed the defamatory statements were made during such a proceeding. Nor could she. The statements were of Gonzales' own volition and made to colleagues, along with the IDES. Because her lies were not within the narrow scope of protected instances, absolute privilege is inapt. Furthermore, nothing establishes Gonzales had a duty to provide Munoz or Jones (or the IDES) with information about Meegan's employment history. Gonzales may have had a duty to report evaluations to the Board of Education, but that is not what happened.

Gonzales spoke with another principal, not the Board itself. No privilege exists because she was not acting pursuant to a governmental duty.

Sidestepping analogous cases, Gonzales cites *Horwitz v. Board of Education of Avoca School District No. 37,* a federal case applying Illinois law. 260 F.3d 602 (7th Cir. 2001). But in *Horowitz*, the administrator charged with defamation was responding to questions from concerned parents about plaintiff's absence from school. The administrator was also following official duties. *Id.* at 618. Further distinguishable is *Anderson v. Beach,* 386 Ill. App. 3d 246 (1st Dist. 2008). In *Anderson*, plaintiff police officer sued a fellow officer for defamation. *Id.* at 247. Defendant first wrote her commanding officer asserting plaintiff was incompetent. *Id.* Defendant then republished these statements to fellow officers. *Id.* The communications were absolutely privileged when directed to a commanding officer and conditionally privileged when published to fellow officers. *Id.* at 252. Privilege existed because defendant was legally obligated to report police misconduct. *Id.* at 249. In sharp contrast, Gonzales had no legal obligation to fabricate Meegan's work history to Munoz, Jones, or the IDES.

In sum, courts apply absolute privilege in limited, precise, and fact-specific circumstances not present here. Gonzales' inability to point to analogous case law establishes she is overreaching.

D. Gonzales did not have a conditional privilege to defame.

Like absolute privilege, Gonzales' conditional privilege claim was rejected before trial by Judge Larsen and after trial by Judge Hopkins.

Illinois recognizes three categories of conditional privilege: (1) situations involving an interest of the person who publishes the defamatory matter; (2) situations in which an interest of the person to whom the matter is published; and (3) situations involving a recognized public interest. *Kuwik v. Starmark Star*, 156 Ill. 2d 16, 29 (1993). But a defendant who abuses her conditional privilege by publishing defamatory material is liable. *Anderson*, 386 Ill. App. 3d at 252; RESTATEMENT (SECOND) OF TORTS § 599, at 286 (1977). A privileged communication loses protection if the publisher: (1) knew it was false or recklessly disregarded its falsity, i.e., malice; (2) published it for an improper purpose; (3) published it to people not reasonably believed to be necessary recipients; or (4) did not reasonably believe that publication was necessary to accomplish its privileged purpose. *Kuwik*, 156 Ill. 2d at 29-30; RESTATEMENT (SECOND) OF TORTS § 599, Comment A, at 286.

1. The evidence established Gonzales' malice.

Gonzales acted with malice because she had no personal knowledge of Meegan's punctuality or competency. Indeed, Gonzales admitted she did not specifically know about Meegan's lesson plans, tardies, or absences. Vol. 9 at 152-55. In fact, the evidence established Meegan provided her lesson plans. Vol. 4 at 847-64. While personal animosity alone will not show malice, it is relevant. *Kessler v. Zekman*, 250 Ill. App. 3d 172, 180 (1st Dist. 1993). Malice often requires inquiry into the defendant's state of mind. *Id.* And subjective issues such as knowledge, recklessness, and mindset are classic jury questions. *Kuwik*, 156 Ill. 2d at 27.

Here, Gonzales' malice stemmed from multiple sources—the nature of the defamation itself, the falsity of Gonzales' representations, and her animosity towards Meegan for exposing the racial cleansing at George Washington. Vol. 8 at 18-24. Moreover, Meegan proved Gonzales retaliated against those she perceived as foes. Patricia Banks and Nancy Kusler both spoke out against Gonzales. In turn, Gonzales removed Banks from her physical education post of 23 years and put her in a special needs classroom, despite having never taught such a program. Vol. 8 at 91. Gonzales served Kusler with a disciplinary notice after she complained to the Board of Education about racial discrimination. Vol. 8 at 115-16.

Regardless of Gonzales' purported interest, and that the statements were made to other officials, any privilege Gonzales might have possessed was squandered because she knew the statements were false. *See Anderson* 386 Ill. App. 3d at 252. And like *Barakat*, whether statements were malicious is for the jury to decide, which it did against Gonzales. *See Barakat*, 271 Ill. App. 3d at 669. Thus, Gonzales asks the Court to find a conditional privilege despite a special interrogatory finding—which she sought—that no such privilege exists. Vol. 9 at 189-90; Vol. 10 at 21-22. Like the special interrogatory concerning the scope of employment, Gonzales seeks to evade the special interrogatories in which the jury found her statements were objectively false. She cannot, as the special interrogatory findings obviate conditional privilege.

2. Gonzales knew her comments were false.

Further, it cannot be said that the jury's finding of falsity and republication when viewed in the light most favorable to Meegan so overwhelmingly favors Gonzales that no contrary verdict can stand. *See Elam,* 362 Ill. App. 3d at 889. While Gonzales' brief disregards the slew of damning facts against her, facts do not cease to exist because they are ignored. Meegan had not only her testimony and submitted lesson plans, but also Philip Corich's testimony which exposed the fiction Meegan was late and incompetent. Vol. 4 at 847-64; Vol. 8 at 47-49. Furthermore, Banks and Kusler testified Meegan spoke at the April meeting and that the topics of race and violence were broached. Vol. 8 at 88-89, 120-21. Yet Gonzales could not recall Meegan speaking at the April meeting. Vol. 8 at 176. This contradicted her answers to Meegan's requests to admit, in which she admitted Meegan spoke at the meeting. Vol. 9 at 159. Nor could Gonzales recall any discussion of race or an increase in violence at the meeting. Vol. 8 at 176. This is unlikely, given the school's downward spiral which necessitated the April meeting attended by CPS officials and Jerryelyn Jones. Vol. 8 at 15.

Thus, the difference between the parties' evidence is not a gap, but a chasm. Gonzales only presented her self-serving testimony about Meegan's purported tardiness, absences, and lack of lesson plans—which she admitted was not based on personal knowledge. Vol. 9 at 152-55. Gonzales never cited Meegan for such neglect. Moreover, Meegan's CPS file, other than the letter rendering Meegan

persona non grata, was pristine. Ignoring these realities captures Gonzales' cavalier approach to the facts.

Additionally, Gonzales republished her defamation about Meegan to the IDES on two separate occasions to get unemployment benefits withheld. Second Supp. Record at 15-17. Gonzales made these statements knowing their falsity. Gonzales failed to carry her burden in showing her statements were true and that she republished them for a proper purpose. Gonzales asks the Court to overturn the jury's verdict on defamation and republication that she presented enough evidence that when viewed for Meegan, overwhelmingly favors Gonzales. The Court should decline to do so.

IV. The Jury's Verdict On The IWA Claim Should Not Be Disturbed.

As set forth above, Gonzales waived any argument regarding whether Meegan presented sufficient evidence on her IWA claim. But even if the Court considers Gonzales' j.n.o.v. challenge, Meegan prevails.

A. Under the IWA, Gonzales employed Meegan.

The jury found for Meegan on the IWA claim, effectively determining Gonzales was Meegan's "employer" as a matter of fact. The IWA states that "[i]f an employer takes any action against an employee in violation of Section 15 or 20, the employee may bring a civil action against the employer for all relief necessary to make the employee whole." 740 § ILCS 174/30. The IWA defines "Employer" as:

> [A]n individual, sole proprietorship, partnership, firm, corporation, association … a school district, combination of school districts, or

> governing body of a joint agreement of any type formed by two or more school districts; … and any person acting within the scope of his or her authority express or implied on behalf of those entities in dealing with its employees.

740 ILCS § 5/174-5.

The fundamental principle of statutory construction is to effectuate legislative intent. *Bowne of Chicago, Inc. v. Human Rights Comm'n*, 301 Ill. App. 3d 116, 119 (1st Dist. 1998). The most reliable window to legislative intent is the law's language, which is given its plain and ordinary meaning. *Boaden v. Dept. of Law Enforcement*, 171 Ill. 2d 230, 237 (1996). And the IWA specifically delineates individuals and school districts as "employers."

B. Gonzales retaliated against Meegan in violation of the IWA.

Under the IWA, an employer may not make or enforce a policy preventing an employee from disclosing information to a government agency if the employee has reasonable cause to believe the information discloses a violation of a State or federal law. 740 ILCS § 174/10. Further, an employer may not retaliate against an employee for disclosing information to a government agency where the employee has reasonable cause to believe the information discloses a violation of a State or federal law. 740 ILCS § 174/15(b).

The trial testimony established Gonzales was a vindictive principal who gave no quarter to anyone she perceived as disloyal. Meegan, Corich, Banks, Kusler, Archambeau, and Stibich testified about how Gonzales ran George Washington. Her

ruthless approach ensnared students and staff alike. Vol. 8 at 23-24, 91. Meegan was punished for objecting to and reporting the racial discrimination and improper suspensions of special needs students. She lost a job offer, was rendered virtually unemployable in the CPS system, and was almost denied unemployment benefits. This is the epitome of retaliation. Meegan established an IWA claim, and the jury properly found in her favor. Gonzales is silent on this point.

C. The IWA does not protect its violators.

The plain meaning of the IWA, coupled with the jury's verdict and special interrogatory answers, prove that Gonzales, as a Chicago Board of Education principal, is an "employer" under the statute. The notion that the IWA protects one who violates it is untenable. Instructive on this point is *Healy v. Vaupel*, 133 Ill. 2d 295 (1990). While involving sovereign immunity and agents of the state, its reasoning applies. *Healy* held that sovereign immunity affords no protection when it is alleged the state agent violated statutory or constitutional law or exceeded his authority. *Id.* at 308. In those instances, a personal action against the agent lies. *Id.* Moreover, an agent's illegal actions always exceed his authority. *Id.*

Gonzales was employed as an agent of the Board of Education. In that capacity, the jury found she violated the IWA by retaliating against Meegan. The IWA protects persons from retaliation for reporting illegal behavior in an employment setting. Further, Gonzales exceeded her authority insofar as she cannot violate state law by retaliating against a whistleblower. Gonzales cannot seek refuge in the very law she broke.

Lastly, Gonzales claims the IWA claim falls because Meegan "failed report [sic] Defendant's alleged race discrimination to anyone outside the Board." (Brief at 32). This assertion ignores the record. The audience at the April LSC meeting was diverse: CPS officials, CPS security, the principal, her direct supervisor, the assistant principal, teachers, students, school board members, and presumably, parents as well. Gonzales' claim is thus meritless.

V. The Jury's Verdict On Tortious Interference Should Not Be Disturbed.

Like defamation, republication, and the IWA retaliation claim, Gonzales never moved to withdraw the tortious interference with prospective economic advantage claim from the jury for insufficient evidence. Supp. Record at 70-79. As set forth above, Gonzales cannot now challenge this count.

If the Court does consider this issue, Gonzales fares no better. To prevail on a claim for tortious interference with a prospective economic advantage, a plaintiff must prove: (1) a reasonable expectation of entering into a valid business relationship; (2) the defendant's knowledge of the plaintiff's expectancy; (3) purposeful interference by the defendant that prevents the plaintiff's legitimate expectancy from ripening into a valid business relationship; and (4) damages to the plaintiff due to the interference. *Schott v. Glover*, 109 Ill. App. 3d 230, 235 (1st Dist. 1982). The jury correctly found Meegan established these elements.

Gonzales argues that as an agent of the Board of Education, she is part of the Board of Education and therefore not a third party capable of interfering with a Board of Education contract. (Brief at 30). The "corporate officer" exception says

otherwise. Courts apply this exception to principals working for education boards. *See Cromley v. Board of Education*, 699 F. Supp. 1283 (N.D. Ill. 1988) (applying Illinois law).

In *Cromley*, the plaintiff sued an education board for constitutional violations along with a state claim for tortious interference with a contractual relationship. 699 F. Supp. at 1286-87. *Cromley* held that a "corporate officer exception" to immunity for a tortious interference claim exists for principals. *Id*. at 1299. *Cromley* compared corporate executives to principals and determined that although executives are privileged to act for their corporations, when the action undermines the corporation and exceeds corporate authority, immunity ceases to exist. *Id*. Similar to executives, principals are privileged to act for a board of education and are protected as such. *Id*. at 1299. But under Illinois law, where the acts of principals tortiously interfere with a prospective contract to further personal goals or to injure the other party to the contract, no privilege exists. *Id*., (citing *Fuller Co. v. Chicago College of Osteopathic Medicine*, 719 F.2d 1326 (7th Cir. 1983); *Medina v. Spotnail, Inc.*, 591 F. Supp. 190 (N.D. Ill. 1984)).

In knowingly and maliciously defaming Meegan, Gonzales did so intending to harm Meegan for speaking out about the discrimination. Gonzales' tortious interference with Meegan's employment contract also undermined her employer, the Board of Education. By defaming Meegan and republishing to Munoz, Jones, and IDES, and causing Meegan to lose her job, Gonzales intentionally injured Meegan in retaliation for speaking out about the illegalities at George Washington.

Thus, Meegan was damaged by Gonzales' deliberate interference with Meegan's expectancy of a teaching contract with Amundsen High School. The jury correctly found for Meegan on this count.

VI. Gonzales Cannot Demonstrate She Is Entitled To A New Trial.

Gonzales claims "racially inflammatory testimony" deprived her of a fair trial. (Brief at 32). But once again, her argument is barred. Gonzales failed to object at trial to the relevance or prejudice of any witnesses' testimony.

A. Standard of review.

The same standard of review as a j.n.o.v. motion is employed in deciding whether a party is entitled to a new trial. The ultimate question is whether the verdict, when viewing the evidence in the light most favorable to the nonmoving party, so overwhelmingly favors the movant that the jury's conclusion was unreasonable. *Redmond v. Socha*, 216 Ill. 2d. 622, 655 (2005). The granting of a motion for a new trial lies in the trial court's discretion. *In re Village of Bridgeview*, 139 Ill. App. 3d 744 (1st Dist. 1985). The Court will grant the motion if it believes that prejudicial error occurred or the jury's verdict was against the manifest weight of the evidence. *Sitowski v. Buck Brothers, Inc.*, 147 Ill. App. 3d 282 (1st Dist. 1986).

B. Gonzales never objected to the evidence she challenges.

A challenge to evidence must be made when the error occurs, or it is waived. *Jacobs v. Holley,* 3 Ill. App. 3d 762, 763 (2d Dist. 1972). Objections must be specific to inform the court of the grounds for the objection, and an overruled general objection will not preserve appellate review. *Id.* Finally, where a movant fails to

identify any evidentiary rulings which were either an abuse of discretion or error of law, a new trial is not required. *Favia v. Ford Motor Co.,* 381 Ill. App. 3d 809, 822 (1st Dist. 2008).

Gonzales waived her right to contest the evidence presented at trial. Waiver is demonstrated by *Gillespie v. Chrysler Motors Corp*. 135 Ill. 2d. 363 (1990). *Gillespie* held that where evidence is admitted, the party that opposes it must both object to the lack of proof at the time the evidence is introduced and later renew that objection by moving to strike the evidence. *Id.* at 373. Also instructive is *Simmons v. Garces*, 198 Ill. 2d 541 (2002). *Simmons* held the denial of a motion *in limine* does not preserve an objection to disputed evidence that is later introduced. Rather, when a motion *in limine* is denied, a contemporaneous objection to the evidence when it is offered is required to preserve the issue. *Id*. at 569.

Nothing in Gonzales' brief warrants the Court deviating from this established precedent. Gonzales never objected on prejudice or relevance grounds to the testimony of Meegan's witnesses. The only time Gonzales even uttered the word "prejudicial" was during her motion *in limine* arguments. Vol. 6 at 138. Yet this was not reiterated at trial. In her brief, Gonzales notes she objected to Nancy Kusler's testimony about racial discrimination on cumulative grounds. (Brief at 34). This is insufficient. First, a cumulative objection is distinct from relevance or prejudicial grounds. Second, Gonzales never objected during the "at least three other witnesses" who testified about Gonzales' racism. Vol. 8 at 118. Nor can her objections to Thomas Stibich save her. (Brief at 34). Those objections concerned

testimony about another race discrimination lawsuit against Gonzales—not relevance or prejudice. Vol. 8 at 165-67. Because Gonzales failed to challenge evidence on the particular grounds at the time the alleged error occurred, she has both waived the argument and failed to show any abuse of discretion.

C. The racial hostility evidence was the height of relevance.

If the Court reaches the merits, it should reject Gonzales' inexplicable position. Gonzales feigns surprise that the issue of race pervaded the trial, arguing Gonzales "was not on trial for racial discrimination." (Brief at 33). She was on trial for retaliating against someone accusing her of racial discrimination. Gonzales is splitting hairs, and given her baffling array of racism, her desperation is understandable.

This case was about race discrimination. Gonzales' "case within a case" description represents a flight from reality. (Brief at 36). A cursory review of Meegan's opening statement demonstrates the case centered on Gonzales' illegal machinations in reducing the black student population and how she retaliated against anyone who complained. Vol. 7 at 189-205. Gonzales argues that due to the opening statement, "the tenor of the case had already been set and the jury irrevocably tainted." (Brief at 34). Gonzales' frustration is disingenuous: she never objected during the opening statement nor moved for a mistrial.

The trial testimony validated the opening statement. Meegan, Corich, Banks, Kusler, Archambeau, and Stibich all testified about Gonzales' virulent racism. "Nigger," "monkeys," "black ass kids," and "black ass students" were slurs Gonzales

spewed. Vol. 8 at 58-59; 138-40; 166. Testimony about such language vindicated Meegan raising the discrimination issue at the April meeting and her e-mail to CPS officials. In turn, Meegan's complaints spawned Gonzales' retaliation, defamation, and republication. Finally, consider how Gonzales framed the retaliation claim: "Gonzales retaliated against Plaintiff because at a meeting in April of 2008, Plaintiff stated . . . African-American students were intentionally being treated in a discriminatory manner by Defendant and . . . African-American students receiving much harsher punishments for the same infractions committed by non-African-American students." Supp. Record at 15-16. To now claim evidence about racial discrimination was unfair and irrelevant is belied by Gonzales' own words.

Not confined by the rigors of fact, Gonzales accuses Meegan "of assassinating Defendant's character" by introducing the evidence of racism. (Brief at 35). Given that Gonzales is being sued for defamation, this irony should not go unnoticed. Meegan has not assassinated Gonzales' character; these wounds are self-inflicted. Far from having "no connection" as Gonzales claims, her racism was integral to a case involving Meegan punished for speaking out about systematic racial cleansing.

A trial court exceeds its discretion "only where no reasonable person would take the view adopted by [it]." *Lewy v. Koeckritz Int'l, Inc.*, 211 Ill. App. 3d 330, 334 (1st Dist. 1991). Gonzales cannot carry this burden. A new trial is not needed.

D. The trial court did not abuse its discretion in excluding the LSC meeting minutes.

Finally, Gonzales contends she was entitled to introduce the LSC meeting minutes to counter Meegan's evidence that Gonzales ended the Options for

Knowledge program. (Brief at 35). However, Gonzales did not produce these documents during discovery. The trial court correctly found introducing the minutes could constitute surprise and prejudice Meegan. Vol. 9 at 4-7. Further, the minutes were not used to cross-examine any witness. Vol. 9 at 6.

Most critically, Gonzales made no offer of proof regarding the minutes. An offer of proof is necessary to preserve error in the exclusion of evidence. *Turgeon v. Commonwealth Edison Co.*, 258 Ill. App. 3d 234, 241 (2d Dist. 1994). The offer of proof indicates to the circuit court, opposing party, and the appellate court the substance of the excluded testimony. *Id.* at 240. When a party fails to make an offer of proof, the issue is waived. *In re Kamesha J.*, 364 Ill. App. 3d 785, 792 (1st Dist. 2006). Absent an offer of proof, appellate courts will not speculate what the evidence would have shown and will affirm. *Id.* The Court should do so here.

CONCLUSION

To the extent Gonzales' arguments are not waived, the evidence does not so overwhelmingly favor Gonzales and thus she cannot meet this high standard. The Court should leave the jury's verdict intact and affirm the circuit court's denial of the motion for j.n.o.v. and a new trial.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

I, John T. Moran, Jr., certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages containing the Rule 341(d) cover, the Rule 341(h)(1) statement of points and authorities, this Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a) is 45 pages.

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Date: January 15, 2015

CERTIFICATE OF SERVICE

The undersigned certifies that on the 15th day of January, 2015, the Brief of Appellee Sara Meegan was served by depositing a true and correct copy of the same in the United States mail, postage prepaid, addressed to:

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