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No. 4-22-0622

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS ex rel., EMILY FOX	)	Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois
Relator/Appellant State of Illinois/Appellee	)	
	)	Circuit Court No. 21 L 000053
v.	)	
	)	Hon. Adam Giganti, Judge Presiding
JENNY THORNLEY	)	
Defendant	)	

BRIEF AND APPENDIX OF RELATOR-APPELLANT EMILY FOX

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ORAL ARGUMENT REQUESTED

TABLE OF POINTS AND AUTHORITIES

NATURE OF THE CASE

This case concerns whether the Attorney General can arbitrarily or – even worse – based on political conflicts of interest, require a court to dismiss a case under the Illinois False Claims Act (the "IFCA"), 740 ILCS 175/4(b) & (3), notwithstanding undisputed allegations and facts demonstrating that the people of the State have been defrauded. The answer to this question must be "No," as a matter of both statutory construction and Due Process.

Below, Relator Emily Fox filed suit on behalf of the People of the State of Illinois against former Illinois State Police Merit Board employee Jenny Thornley. Fox alleged a multifaceted scheme by Thornley that included resume fraud and payment for fraudulent overtime, fraudulent expenses, and a fraudulent worker's compensation claim. In total, this cost the People of the State of Illinois more than a half million dollars.

Fox provided both the Office of the Executive Inspector General (the "OEIG") and the Attorney General evidence documenting how Thornley, a former political operative of Illinois Governor J.B. Pritzker and a personal friend of the Governor's wife, M.K. Pritzker, committed her scheme. This included evidence that high-ranking members of the Governor's administration participated to facilitate the fraud, including Ann Spillane, the Governor's General Counsel. Thornley texted with M.K. Pritzker seeking the Governor's help. Thornley, who never worked in the Governor's office, listed the Governor as her personal supervisor and provided his personal phone number in support of her fraudulent worker's compensation claim. And Spillane became personally involved, accepting the facially false and fraudulent claim directly and then assuring through intervention with Central Management Services ("CMS") that the claim was paid.

It is no surprise that, in light of the evidence of the Governor and Ms. Spillane's involvement, both the OEIG and Attorney General refused to act. What was surprising was that, after Ms. Fox filed her case, the Attorney General sought to suppress it by seeking the case's dismissal. In his motion to dismiss, the Attorney General did not dispute the facts of the fraud. And he offered no rationale for seeking dismissal. Instead, he argued that he has unfettered discretion to require dismissal of an IFCA case – with or without reason. The Attorney General subsequently argued that a constitutional Due Process limitation on arbitrary government conduct "has no basis in Illinois law" as applied to himself in this context. Of course, that is not the law.

Nonetheless, the Circuit Court granted the Attorney General's motion and dismissed Fox's lawsuit. In doing so, the Circuit Court agreed that the Attorney General has near-unfettered discretion to dismiss IFCA cases. The ruling effectively renders the statutory hearing the IFCA requires a nullity. The Circuit Court further disregarded the plain evidence of government conflicts in this case. It then justified its decision by reference to arguments the Attorney General did not make in his motion but only raised in reply, none of which had merit as a matter of law. The Circuit Court stated it was not reaching the Due Process issue, but then in *dicta* endorsed a Due Process standard inconsistent with the principle that government action must be rational, based on public interest and not arbitrary. Fox appeals.

ISSUES PRESENTED FOR REVIEW

This appeal raises the following questions:

I. Whether the Circuit Court erred by allowing the Attorney General's motion to dismiss a *qui tam* case under the Illinois False Claims Act when that motion violated the Due Process Clause of the Fourteenth Amendment because it articulated no rationale for dismissal related to any legitimate governmental purpose.

II. Whether the Circuit Court erred when it construed the Illinois False Claims Act to give the Attorney General unfettered discretion to dismiss a *qui tam* case under the Illinois False Claims Act, rendering Fox's statutory right to a hearing an effective nullity, notwithstanding undisputed evidence the State was defrauded.

III. Whether the Circuit Court erred when it relied in granting the Attorney General's motion to dismiss entirely on pretextual arguments raised only in reply.

JURISDICTION

Illinois Supreme Court Rule 303(a) permits an appeal following the entry of a final judgment. Fox appeals from a final Order in this cause granting the State of Illinois' Motion to Dismiss. This case was maintained under seal pursuant to the Illinois False Claims Act (740 ILCS § 175/4) and records were not publicly available until a July 8, 2022, Order by the Circuit Court. Although the Order appealed from was dated March 7, 2022, the parties were not apprised of or provided a copy of it until two days before the file was unsealed, *i.e.*, on July 6, 2022. Prior to that date and/or the date the case file was made publicly available, the Order had not become effective. *Granite City Lodge No. 272, Loyal Order*

of Moose v. Granite City, 141 Ill. 2d 122, 126 (brackets in original) (1990) (holding that "'to protect [the interests of the litigants and public] it is necessary that they be apprised that a decision has been made by the judge and what the decision is. They would be so apprised when it has been expressed publicly, in words and at the situs of the case.'") (citation omitted). Fox timely filed her notice of appeal on July 21, 2022, fifteen days from July 6 when the parties were first apprised of the Circuit Court decision and thirteen days from the date the file was unsealed.

STATUTES INVOLVED

Illinois False Claims Act. 740 ILCS § 175/4.

740 ILCS § 175/4(c)

> (2) (A) The State may dismiss the action notwithstanding the objections of the person initiating the action if the person has been notified by the State of the filing of the motion and the court has provided the person with an opportunity for a hearing on the motion.

740 ILCS 175/4(b)

> (4) Before the expiration of the 60-day period or any extensions obtained under paragraph (3), the State shall:
>
> (A) proceed with the action, in which case the action shall be conducted by the State; or
>
> (B) notify the court that it declines to take over the action, in which case the person bringing the action shall have the right to conduct the action

740 ILCS 175/4(e)(4)(A).

> The court shall dismiss an action or claim under this Section, unless opposed by the State, if substantially the same allegations or transactions as alleged in the action or claim were publicly disclosed:
>
> (i) in a criminal, civil, or administrative hearing in which the State or its agent is a party;
>
> (ii) in a State legislative, State Auditor General, or other State report, hearing, audit, or investigation; or

(iii) from the news media,

unless the action is brought by the Attorney General or the person bringing the action is an original source of the information.

U.S. Constitution

Amend. XIV

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

STATEMENT OF FACTS AND PROCEDURAL HISTORY

I. THE RECORD FACTS: THE UNDISPUTED FACTS DEMONSTRATE THORNLEY'S FRAUD AND THE COMPLICITY OF HIGH-RANKING OFFICIALS IN THE GOVERNOR'S OFFICE AND THE OEIG

There is no dispute that Thornley made false statements to obtain more than a half million dollars from the People of the State of Illinois. Fox's complaint detailed this fraud with specificity. R. C.8-25.[1] Fox also provided the OEIG, the Attorney General and the Circuit Court with extensive documentary evidence supporting her allegations. R. C.112-668. The allegations and evidence are that Thornley engaged in the resume fraud, forgery, overtime fraud, expense reimbursement fraud and worker's compensation fraud as follows.

Thornley's Resume Fraud. Between May 2014 and July 2020, Thornley was employed by the Illinois State Police Merit Board (the "Merit Board"), an independent board that oversees hiring, training and discipline of Illinois State Police troopers. R. C.11. Thornley got that job and then obtained her salary and raises through false statements about

[1] Citations to the Record on Appeal bearing the prefix "R. C." correspond to citations to the Corrected Common Law Record. Citations bearing the prefix "R. R." correspond to the Report of Proceedings.

her resume, including that she had completed programs at the University of Illinois and Robert Morris University. R. C.11-12. In fact, Thornley was only enrolled in one class at the University of Illinois, which she failed. R. C.801-803. She failed all her classes at Robert Morris University. *Id.* Thus, for more than six years, Thornley used the false statements about degrees she never obtained to receive between $62,000 and $73,000 annually in base salary and raises – a total of over $360,000 in State money. Thornley also forged the signature of Reeve Waud, then Chairman of the Merit Board, to obtain a pay increase included in these numbers. R. C.15; C.858-863.

Thornley's Overtime Fraud. As part of Thornley's job duties at the Merit Board, she was expected to keep track of all her time spent working. R. C.13. At the end of each month, she was charged with submitting her time reports to the Merit Board's Executive Director, Jack Garcia ("Garcia") for approval and signature. *Id.* She also entered the data from her and all other Merit Board employees' timekeeping records into the State's central payroll system to effectuate payment for all hours worked as well as for any overtime for each payment period. *Id.*

Thornley regularly abused her position by entering false data into the State payroll system to cause payments to herself for overtime that she did not earn. R. C.14. She created false time-keeping records and fraudulent overtime requests and compensatory time forms in an attempt to conceal her fraud from the State. *Id.* Similar to her forgery of former Merit Board Chair Waud's signature to obtain a pay increase, Thornley forged Garcia's signature to approve her unearned overtime payments. R. C.15; R. C.287-295. Fox provided specific examples of Thornley submitting for overtime compensation that she did not earn in both her complaint and the documentation she gave the Attorney General and the Circuit Court.

R. C.13-16; *compare* R. C.839-843, *with* R. C.805-808. In total, Thornley obtained more than $67,071 based on 1,218 hours of fictional overtime that she never worked but falsely told the State that she did. R. C.15-16.

Thornley's Expense Reimbursement Fraud. Thornley further enriched herself at the expense of the State by submitting false travel vouchers and invoices for reimbursement of expenses that she did not incur. R. C.16. Thus, between July of 2015 and March of 2017, she submitted requests for reimbursement for alleged trips between Springfield and the Chicago area that either never took place or that were made for personal reasons. R. C.16-17. These allegations were supported by documentation showing that Thornley was in the office in Springfield on dates when the travel supposedly occurred. *Compare* R. C.867, *with* R. C.893. Thornley's travel reimbursements also included improper reimbursements for mileage and per diem payments to cover meals. R. C.17; C.865-905. The total in false payments was in the thousands of dollars.

Thornley's Workers' Compensation Fraud. The most convoluted of Thornley's fraud schemes involved a fabricated worker's compensation claim. The origin of this claim was Fox's whistleblowing about Thornley's overtime and other frauds. Fox first discovered Thornley's schemes in late 2019 based on a conversation between her and Thornley while each was employed by the Merit Board. R. C.17. Fox reported her concerns to Garcia. *Id.* Garcia asked Fox to investigate, which she did, documenting Thornley's 2019 overtime fraud. R. C.18. She gave this information to Garcia, who turned it over to the OEIG. *Id.*

Thereafter, Thornley asked a friend of Garcia's to send him a message on Thornley's behalf. That message was that Garcia "did not know who he was messing with" and that "the Governor's Office would get involved if Mr. Garcia did not back off." *Id.* At

the same time, Thornley also sent a text message to M.K. Pritzker thanking her for her friendship and saying "I need J.B. to know what is going on." R. C.473. Thornley then contacted the Office of the Governor and made an assault complaint against Garcia. R. C.18. This resulted in the retention of the law firm McGuire Woods to conduct an investigation of Thornley and her various claims, at a cost to taxpayers of more than $550,000. *Id.* Fox's whistleblowing to Garcia led to the McGuire Woods inquiry into Thornley's overtime fraud and Fox was a primary source for the investigation. Fox gave 12 hours of interviews and provided thousands of pages of documents to the firm to assist it. R. R.18. The investigation ended with a written report that found Thornley's accusation of an assault by Garcia incredible and without factual bases and confirmed Thornley's 2019 overtime theft. R. C.18; *see also* R. C.390. The Illinois State Police conducted its own, independent investigation and likewise found no evidentiary basis for Thornley's false claim of assault. R. C.116.

Shortly after making her fabricated assault charge to the Office of the Governor, in February 2020, Thornley made a worker's compensation claim, supposedly based on the "injuries" she incurred from the assault that McGuire Woods and the State Police had determined never happened. R. C.19. Though Thornley was then employed by the Merit Board and had never worked for the Office of the Governor, and despite there being no procedural precedent or basis to do so, Thornley made her worker's compensation claim directly to Spillane, the Governor's General Counsel. *Id.* The claim falsely listed Thornley's employer as the Office of the Governor and listed Gov. Pritzker as her direct supervisor, including his personal phone number on the claim. *Id.*; R. C.576. Spillane, as the Governor's General Counsel, necessarily knew Thornley's claim was false. *Id.* Yet

Spillane processed the claim and did not inform the Merit Board, Thornley's actual employer, about it. R. C.19.

In July 2020, after the investigations that proved Thornley had never been assaulted at all, and after Thornley had been terminated based on the results of the McGuire Woods investigation, Thornley started to collect worker's compensation benefits based on her fraudulent claim made through Spillane. R. C.20; R. C.1002-1003. The Merit Board was not made aware of this until September 2020 when, during a call with Fox, a manager at CMS told Fox that, on Spillane's direct order, Thornley's termination by the Merit Board in July had been effectively reversed so that benefits would be paid to her; Spillane did so notwithstanding that McGuire Woods and the ISP had determined the "assault" on which the worker's compensation claim was based never actually happened. *Id.*; R. C.20; C.582-584. That same CMS manager told Fox that Spillane, who was and still is the Governor's General Counsel, regularly participated in phone calls about Thornley's fraudulent claim, pressing it forward. *Id.* It was, as Fox alleged, a raw display of political power. R. C.20.

The consequence of Thornley's fraudulent worker's compensation claim was payment to her of more than $70,000 from the State. R. C.48. *After this case was filed*, Thornley finally stopped receiving benefits. R. R.22. However, the State never filed a claim to claw back any of the more than $70,000 in benefits that Spillane had secured for Thornley based on Thornley's facially fraudulent claim. *Id.* To the contrary, the Assistant Attorney General representing the State in the worker's compensation proceeding told the Merit Board the Attorney General had a conflict that prevented him doing so. R. R.23.

Ultimately, as a result of Thornley's schemes against the State, each of which involved false claims for payment, Thornley defrauded the People of the State of Illinois out of more than $500,000.

Fox, directly and through Garcia, complained to the OEIG about Thornley's fraud. This included in both January 2020 and September 2020. R. C.20-21; R. C.586-593. However, the OEIG refused to investigate. Instead, it sent Fox's complaint back to the Merit Board. R. C.21; C.595-596. Garcia wrote back explaining that that the Merit Board lacked the resources or expertise to investigate the alleged fraud, including the workers' compensation fraud made possible by Spillane's direct intervention. R. C.1014-1015. The OEIG still did nothing to investigate Thornley. Instead, the OEIG opened a separate and unsubstantiated investigation into Fox, apparently based on either Thornley's request or Spillane's direction. R. C.22.

The Attorney General below did not offer any contradictory evidence and it did not dispute any of the facts alleged in Fox's complaint.

Additional record facts are discussed below, as relevant.

II. THE PROCEDURAL HISTORY: DESPITE THORNLEY'S UNDISPUTED FRAUD ON THE STATE, THE ATTORNEY GENERAL MOVES TO DISMISS AND THE CIRCUIT COURT GRANTS THAT MOTION

Notwithstanding the undisputed evidence of fraud by Thornley against the State of Illinois, and despite evidence of involvement in that fraud by members of the Governor's administration, including Spillane, the Governor's General Counsel, the Attorney General not only decided not to intervene in this case but took the extraordinary step of moving to dismiss it. R. C.34-39.

In its boilerplate motion, the Attorney General ignored the detailed allegations of Fox's complaint, disregarded the hundreds of pages of evidence Fox had provided, and stated in conclusory fashion that the allegations of the complaint were "legally deficient." R. C.38. The Attorney General offered no rationale or reason for dismissal. To the contrary, it argued that no rationale was required. Instead, it maintained that the hearing required for dismissal provided no role for the Court except as host and was "simply a formal opportunity for the Relator to convince the government not to end the case …." *Id.* The Attorney General cited out-of-jurisdiction cases that it claimed gave him "unfettered discretion" unbounded by any limitation on arbitrary and capricious government conduct. *Id.*

In response, Fox reviewed the record evidence of fraud and how it plainly established that Thornley had violated the IFCA by obtaining money from the State of Illinois by "knowingly present[ing], or caus[ing] to be presented false or fraudulent claim[s] for payment or approval" or else "knowingly mak[ing], us[ing], or caus[ing] to be made or used, a false record or statement material to a false or fraudulent claim." R. C.45-50 & C.52; *see also* 740 ILCS 175/3(a)(1)(A) & (B). Fox argued the IFCA could not be construed to require a hearing that was a mere formality. R. C.52-53. She also argued that all government conduct, including the Attorney General's, was in fact limited by the Fourteenth Amendment's Due Process clause, which forbids arbitrary and capricious government action. R. C.53-56.

Only then, in reply, did the Attorney General suggest any basis for its motion to dismiss. After first arguing that the notion of a "substantive due process limitation on the State's prosecutorial discretion regarding IFCA claims has no basis in Illinois law," the

Attorney General argued for the first time – and without basis – that its decision was based on the so-called public disclosure or government action bars to IFCA cases. R. C.63-68. The Attorney General also argued falsely that the State was pursuing compensation from Thornley separately. R. C.68-71. The Attorney General then argued that it was "mere speculation" that Illinois officials were conflicted in deciding whether this case should proceed. R. C.72-73. The Attorney General made this argument notwithstanding the specific, documented evidence of intervention by the Governor's office to effectively reverse Thornley's dismissal for theft of overtime and to order that her fraudulent claim be paid, without notice to the Merit Board, and despite two investigations finding Thornley was never injured at work.[2] The Attorney General's arguments were each unsupported and pretextual. At no point did the Attorney General dispute the fact or extent of Thornley's fraud.

The Circuit Court accepted the Attorney General's arguments and granted his motion. Doing so, it applied the incorrect standard of review, concluding that because the motion to dismiss was made pursuant to the IFCA, the Court was not required to accept the allegations of the complaint as true or draw reasonable inferences in its favor. R. C.76. The Circuit Court dated its ruling on March 7 but did not provide copies of the decision to the parties until July 6. It did not unseal the record, which would have allowed the parties to check for the decision, until July 8, 2022. This appeal promptly followed.

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[2] Thornley was fired by the Merit Board in July 2020 based on the McGuire Woods report conclusion that she had engaged in forgery and overtime theft during 2019. R. C.667-668. Between February 2020 and her termination, she had been on administrative leave and not eligible. R. C.18. She should not have been entitled to benefits after July 2020 because she was no longer a State employee. That is why Spillane, without telling the Merit Board, effectively reversed Thornley's termination so that Thornley could start receiving approximately $10,000 each month in State monies.

ARGUMENT

Despite clear evidence of a more than half-million dollar fraud against the State, and notwithstanding evidence of the Governor's office's intervention to facilitate that fraud, the Attorney General has, successfully so far, buried this case and stopped all efforts to compensate the People of the State for Thornley's fraud. The conduct of the Attorney General is shocking – including his position that his conduct is not limited by the Constitution's Due Process clause. The Circuit Court erred as a matter of both constitutional law and statutory construction when it agreed with the Attorney General to dismiss this case.

I. STANDARD OF REVIEW

This Court's review of the Circuit Court is *de novo. State ex rel. Saporta v. Mortg. Elec. Registration Sys.*, 2016 IL App (3d) 150336, ¶ 13 ("A dismissal of a *qui tam* action pursuant to section 4(c)(2)(A) of the Act (740 ILCS 175/4(c)(2)(A)) is akin to a motion to dismiss brought pursuant to section 2-619 of the Code of Civil Procedure (735 ILCS 5/2-619) in that the motion alleges a defense that defeats the claim; our review of such a dismissal is therefore *de novo.*") This is further so where the appeal presents an issue of statutory interpretation, *id.*, as well as whether constitutional rights have been violated, *Patel v. Ill. State Med. Soc'y*, 298 Ill. App. 3d 356, 370 (1st Dist. 1998) ("The standard of review for determining whether constitutional rights have been violated is *de novo*.")

The Circuit Court stated that because the Attorney General moved to dismiss pursuant to section 4(c)(2)(A) of the IFCA rather than section 2-615 of the Code of Civil Procedure the Court was not obliged to accept the allegations of the complaint as true and to draw all reasonable inferences in favor of Fox. R. C.76, n. 1. This was the Court's first error. As noted, dismissal pursuant to section 4(c)(2)(A) is equivalent to dismissal under

2-619 of the Code of Civil Procedure. *Saporta*, 2016 IL App (3d) 150336, ¶ 13. Thus, the Circuit Court was in fact obliged to accept Fox's allegations and to draw all the reasonable inferences therefrom in her favor. *See McHenry Twp. v. Cty. of McHenry*, 2022 IL 127258, ¶ 21 (affirming reversal of 2-619 dismissal and stating that, in such cases, the court must "accept as true the well-pleaded facts alleged in the complaint as well as all reasonable inferences that arise from them"). Had the Circuit Court done so, and had it properly applied the law, it would have denied the Attorney General's motion and this case would have proceeded.

II. THE CIRCUIT COURT ERRED BY ALLOWING THE ATTORNEY GENERAL'S MOTION TO DISMISS FOX'S *QUI TAM* CASE WHEN THAT MOTION VIOLATED THE DUE PROCESS CLAUSE OF THE FOURTEENTH AMENDMENT BECAUSE IT ARTICULATED NO RATIONALE RELATED TO ANY LEGITIMATE GOVERNMENTAL PURPOSE

Perhaps the most shocking thing the Attorney General stated below was that "Relator's substantive due process limitation on the State's prosecutorial discretion regarding IFCA claims has no basis in Illinois law." R. C.62. The State's highest-ranking law enforcement officer should know better: of course, his conduct is constrained by the requirements of Due Process under the Constitution.

The Supreme Court has long been clear that the exercise of state power leaves no room for the action of purely personal and arbitrary power. *Yick Wo v. Hopkins*, 118 U.S. 356, 370 (1886). The Supreme Court has not taken up substantive due process in the context of dismissal of *qui tam* cases pursuant to the False Claims Act, but the issue has been widely addressed by the U.S. Courts of Appeal and the Supreme Court this term has granted *certiori* in a case that may result in a definitive ruling. Because the IFCA is modeled after the federal False Claims Act, these decisions are relevant not only as to U.S.

constitutional law but also with regard to how to read the IFCA in that context. *See People ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.*, 2015 IL App. (1st)132999, ¶30 ("Illinois courts have relied on federal courts' interpretation of the federal False Claims Act (31 U.S.C. § 3730) for guidance in construing the Illinois False Claims Act.")

Contrary to the Attorney General's argument below, all but one federal circuit to address the issue have concluded that substantive Due Process constrains the government's decision to dismiss a *qui tam* False Claims Act case. Three of those federal circuits have defined that limitation to require that any government motion to dismiss articulate a rationale for dismissal that is related to a legitimate governmental purpose. The first of these cases is *United States ex rel. Sequoia Orange Co. v. Baird-Neece Packing Corp.*, 151 F.3d 1139, 1145 (9th Cir. 1998).

In *Sequoia Orange*, the Court required the government to: (1) articulate a valid governmental purpose; and (2) establish that there was a rational relationship between dismissal and accomplishment of that purpose. *Id.* In adopting this standard, the Court noted that the federal False Claims Act – like the IFCA – does not include a rule of decision for government motions to dismiss *qui tam* actions. *Id.* Rejecting the argument made by the Attorney General in this case that the role of the Court is simply to host a hearing, but not to "second-guess" the motion, the Court cited the False Claims Act's legislative history, which foresaw a hearing, and thus an actual judicial decision about dismissal, "'if the relator presents a colorable claim that the settlement or dismissal is unreasonable in light of existing evidence, that the Government has not fully investigated the allegations, or that the Government's decision was based on arbitrary or improper considerations.'" *Id.*, citing S. Rep. No. 99-345, at 26 (1986), *reprinted in* 1986 U.S.C.C.A.N. 5266, 5291. The Court

reasoned that such a hearing did not impinge unduly on executive prerogative as it simply imposed on the executive the same constitutional limits already imposed by the Constitution and enforced by the courts. *Id.* at 1145-46.

Since *Sequioa Orange*, other federal circuits have expressly adopted this standard. *E.g. Ridenour v. Kaiser-Hill Co.,* 397 F.3d 925, 936 (10th Cir. 2005) (explicitly adopting *Sequoia Orange* test).

One circuit, relied on by the Attorney General below, has gone another way, holding that the government has "unfettered discretion" to dismiss *qui tam* actions. R. C.38 *citing Swift v. United* States, 318 F.3d 250, 253 (D.C. Cir. 2003). No other circuit has adopted this outlier approach, though multiple circuits have explicitly rejected it. *See, e.g., Polansky v. Exec. Health Res*., 17 F.4th 376, 391 (3d Cir. 2021) (holding it was "unconvinced" by the reasoning of *Swift* and rejecting the "unfettered discretion" standard as "incongruous with other terms of the FCA"; affirming dismissal after District Court "exhaustively examined the interests of the parties, their conduct over the course of the litigation, and the Government's reasons for terminating the action"); *United States ex rel. Health Choice All., L.L.C. v. Eli Lilly & Co.*, 4 F.4th 255, 263-64 & 267-68 (5th Cir. 2021) (discussing circuit split and then applying *Sequoia Orange* rational basis standard; deciding based on government's articulated rationale that "further litigation … will undermine practices that benefit federal healthcare programs"); *United States ex rel. CIMZNHCA, LLC v. UCB, Inc.*, 970 F.3d 835, 851-52 (7th Cir. 2020) (rejecting *Swift* as inconsistent with Supreme Court Due Process jurisprudence and holding that rationality standard of *Sequoia Orange* requires no more than what is required by the Constitution itself).

The Circuit Court below cited *dicta* from the *CIMZNCHA* case to suggest that dismissal may only be denied where there is evidence the Attorney General has behaved in a manner that "shocks the conscience." R. C.86. The Seventh Circuit did observe in that case that conduct "shocking the conscience" would violate Due Process, but it did not apply that standard as the rule of decision in the case. *CIMZNCHA*, 970 F.3d at 852. Rather, the Court applied the rational basis standard, holding dismissal was appropriate because "[w]e must disagree with the suggestion that the government's decision here fell short of the bare rationality standard borrowed by *Sequoia Orange* from substantive due process cases." *Id.* The Court noted that dismissal was supported by the government's reference to nine different agency guidances, advisory opinions, and final rule-makings that "consistently held that the conduct complained of is probably lawful. Not only lawful, but beneficial to patients and the public." *Id.* That well-supported rationale, and not the "shocks the conscience" standard adopted by the Circuit Court in this case, was the basis for the decision in *CIMZNCHA.*

The only federal circuit to read the law similarly as the Circuit Court in this case is the Third Circuit, which so held even as it rejected the D.C. Circuit's approach and further recognized the incongruity of reading the False Claims Act to require that a trial court "hold a hearing on a pre-answer Government motion to dismiss at which it has no substantive role." *Polansky*, 17 F.4th 376, 390 n.16 & 391 (3d Cir. 2021). The Supreme Court has decided not to let that decision stand, granting *certiori* this past summer. *U.S., ex rel Polansky v. Exec. Health*, 2022 U.S. LEXIS 3021 (U.S., June 21, 2022). [3]

[3] The First Circuit has gone its own way, rejecting the approach of each of its sister circuits. *See Borzilleri v. Bayer Healthcare Pharm., Inc.*, 24 F.4th 32 (1st Cir. 2022). Even so, it began its analysis with the proposition that: "It is axiomatic that constitutional

In this case, the Attorney General made no attempt in his motion to satisfy any constitutional standard for dismissal, relying instead on the outlier decision of the D.C. Circuit in *Swift* that his authority to dismiss is "unfettered" and unbounded by Due Process. R. C.38. Neither could the Attorney General do what the government did in *CIMZNCHA* and make a case that Thornley's multiple frauds against the State were "probably lawful" or even "beneficial" to the public. The Attorney General mustered no argument in his motion for the rationality of its decision. His only argument was that, while not disputing the fact or size of the fraud, unarticulated "defects" led him to exercise what he called his unfettered discretion to end the case. R. C.39. This fails the rationality test imposed by Due Process. The Attorney General did not argue otherwise below, instead claiming he was not confined by constitutional Due Process at all. The Circuit Court essentially agreed, the consequence of which was a decision that violated Due Process and is properly reversed.[4]

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limitations attend any exercise of executive authority." *Id.* at 42. Critically, that court further held – contrary to the Attorney General in this case – that "the government is not obligation-free when it moves to dismiss a *qui tam* suit – *it must provide its reasons for dismissal*." *Id.* This requirement of an articulated and rational basis for dismissal is the consistent constitutional minimum required by the various circuit court decisions discussed above.

[4] Frankly, the Attorney General decision fails even a test requiring a shock to the conscience. Jenny Thornley defrauded the State of Illinois of a half million dollars. None of the facts supporting that fraud are disputed – and indeed they must be accepted as true as alleged in the complaint. Moreover, it is specifically alleged Spillane and others became involved in facilitating Thornley's worker's compensation scheme. R. C.19-20. Spillane participated in multiple phone calls with CMS about Thornley's fraudulent claim. Spillane and others in the Governor's office ordered CMS to effectively reverse Thornley's termination for overtime theft in order to secure for Thornley tens of thousands of dollars in corrupt payments of taxpayer money. *Id.* Fox raised these corrupt actions with the OEIG, which refused to investigate them. R. C.21. Then, when she filed this suit, the State's highest-ranking law enforcement officer intervened to quash her allegations, attempting to defend the Governor's office in its briefs. It is not the legal standard that applies, as discussed, but this conduct should shock the conscience of any citizen, law-enforcement personnel or judicial officer in the State of Illinois.

III. THE CIRCUIT COURT ERRED WHEN IT CONSTRUED THE ILLINOIS FALSE CLAIMS ACT TO PROVIDE THE ATTORNEY GENERAL UNFETTERED DISCRETION TO DISMISS A *QUI TAM* CASE, RENDERING FOX'S STATUTORY RIGHT TO A HEARING AN EFFECTIVE NULLITY, NOTWITHSTANDING UNDISPUTED EVIDENCE THE STATE WAS DEFRAUDED

In addition to misunderstanding the constitutional limits on the Attorney General's authority to dismiss, the Circuit Court erred in construing the IFCA to provide the Attorney General near-unfettered statutory authority to dismiss *qui tam* cases such that Fox's statutory right to a hearing was an effective nullity. This was legal error and further supports reversal.

The IFCA permits any person having information regarding a false claim to bring an action for herself, as a Relator or *qui tam* plaintiff, and for the benefit of the State. 740 ILCS 175/4(b). When a relator brings such an action the Attorney General may: (a) elect to intervene and proceed with the action itself, "in which case the action shall be conducted by the State"; or (b) notify the Court that the State declines to take over the action, "in which case the person bringing the action shall have the right to conduct the action." 740 ILCS 175/4(b)(4). The IFCA does give the Attorney General an option to seek dismissal of the case over the objection of the relator, but only after a hearing before the court. 740 ILCS 175/4(c)(2)(A).

As already discussed, the Attorney General's position below was that his right to seek and obtain dismissal was so absolute that no explanation was necessary (and therefore he offered none in his motion). He further argued that the statutory hearing may take place in a courtroom but that the judge essentially has no role and no decision to make. As the Attorney General argued, in his view, the statutory hearing is "simply a formal opportunity for the Relator to convince the government not to end the case …." R. C.38.

The Circuit Court agreed with this argument. Its analysis was based on a conclusion that while the statute required it to host a "hearing," "Illinois courts are not permitted to second-guess the State's decision to dismiss." R. C.80-81. The Circuit Court thus established what is in effect an irrebuttable presumption that the hearing must end by a ruling in the Attorney General's favor. By the Circuit Court's analysis, the "only exception" to this presumption is where the Relator can show "'glaring evidence of fraud or bad faith' by the State in seeking dismissal." (R. C.81 *citing State ex rel. Beeler, Schad & Diamond, P.C. v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 517 (1st Dist. 2006).

This Court has not directly addressed this issue before but the First District has, including in the *Burlington Coat Factory* case the Circuit Court cited. In that 16-year-old case, the First District effectively adopted the outlier D.C. Circuit position that the government has "unfettered discretion" to dismiss False Claims Act cases, *see* 369 Ill. App. at 516-17, a ruling that has since been rejected by nearly every other court to address the matter, as discussed above. Even then, the First District was conflicted, on the one hand stating that the statutory hearing should not inquire into the government's motives while on the other hand expressing reluctance to say that "the court's role in a section 4(c)(2)(A) hearing is solely to 'rubberstamp' the state's decision to dismiss a *qui tam* action over the relator's objections." *Id.* Ultimately, the First District in *Burlington Coat Factory* relied on the fact that "[n]either fraud nor bad faith" by the government was alleged in that case. *Id.* at 517. That is not the case here.

Further, as already noted, because the IFCA is modeled on the federal False Claims Act "Illinois courts have relied on federal courts' interpretation of the federal False Claims

Act (31 U.S.C. § 3730) for guidance in construing the Illinois False Claims Act." *QVC, Inc.*, 2015 IL App. (1st)132999, ¶30. And, again as already discussed in the context of Due Process, the approach of the federal courts is for District Courts to conduct a statutory hearing and to review the articulated rationale for dismissal and then determine whether that rationale makes sense. This is well supported and is consistent with the requirement for a rationale for dismissal that serves some legitimate governmental purpose. *See supra* at 17-19. As the Seventh Circuit put it in *CIMZNHCA*, the "law does not require the doing of a useless thing" and a "court is not called upon to serve as a mere convening authority" to "serve you some donuts and coffee" while the "parties carry on an essentially private conversation in its presence." 970 F.3d at 850.

The truth is, Illinois courts <u>*do*</u> conduct hearings on government motions to dismiss *qui tam* cases in which they review and consider the articulated reasons for dismissal in the motion to dismiss. Subsequent First District cases have given lip service to the *Burlington Coat Factory* decision but have also looked for substantive arguments that supported the bases of a government motion to dismiss. *See State ex rel. Hurst v. Fanatics, Inc.*, 2021 IL App (1st) 192159, ¶ 21 (noting lack of bad faith where State's motion was supported by substantive argument that evidence did not support finding of necessary scienter). The Circuit Court was required to do the same here.[5] There being no articulated reasons given

[5] The panel in *Burlington Coat Factory* largely relied on the notion that it was the Attorney General's and not the Court's prerogative to make decisions for the State. 369 Ill. App. 3d at 516. However, as *Sequoia Orange* addressed in its decision grounded in the Constitution and interpreting the analogous federal False Claims Act, it does not usurp executive power for a court to review whether executive authority has been exercised consistent with the law. That is precisely the historical role of the courts. 151 F.3d at 1145-46.

by the Attorney General in its motion to dismiss in this case, the necessary conclusion of such a review would have been that the motion should be denied.

That the Circuit Court erred when it granted the Attorney General's motion below is further supported by the unusual evidence of government conflict and involvement in the fraud in this particular case. The Circuit Court dismissed as "mere speculation" that the motion to dismiss was politically motivated, imposing the impossible standard on Fox to prove the Attorney General's subjective intent with "glaring evidence." R. C.82. While the Circuit Court took these words from *Burlington Coat Factory*, in that case there was not even an allegation of government conflict or fraud. Neither has any case ever applied this standard to decide a case in the presence of such allegations (and evidence), as here. A standard requiring "glaring evidence" of the Attorney General's subjective decision-making process when making a motion to dismiss would be a farce and an impossibility.

Looking at the holding and not the loose language of *Burlington Coat Factory*, it provides no guidance here. As the First District recognized, "[n]either fraud nor bad faith was alleged" in that case. 369 Ill. App. 3d at 517. Moreover, the Attorney General did provide a rationale for dismissal there. Specifically, while the Relator had alleged the defendant should have, but did not, collect Illinois Use Tax on internet sales, the Attorney General moved to dismiss because, in the State's opinion, there was "not a sufficient nexus with Illinois under the commerce clause for Burlington Direct, an out-of-state company, to collect use tax on sales to customers in Illinois." *Id.* at 510. Thus, the Attorney General in that case did provide a rationale consistent with a legitimate government purpose, *i.e.*, the power of the State to set its own tax policy. He did so without there being any suggestion of bad faith or conflicts of interest. The decision thus provides no guidance here, where

there was undisputed evidence of a half-million dollar fraud in which high-ranking members of State government were directly involved.

Unlike in *Burlington Coat Factory*, the present case is one in which, as the Attorney General stated at the hearing, "the wheels of justice" are not working and "State entities aren't working." R. R.8. Here, Fox specifically alleged and supported with documentation, the interventions by the Governor's office and Spillane to facilitate and advance Thornley's schemes. This included text messages to the Governor's wife, R. C.473; Thornley falsely stating in her worker's compensation application that she worked directly for the Governor, providing his personal phone number in support, R. C.576; and Spillane and others in the Governor's office directing CMS to reverse Thornley's July termination and to pay her benefits to which they knew she was not entitled (having participated in the investigation that led to her termination for overtime theft), R. C.582-584. Fox further alleged her attempts to get the OEIG to investigate Thornley's fraud and that agency's refusal to do so. R. C.21-22. The Circuit Court ignored these allegations, though it was obliged to accept them. Instead, it focused on whether the Governor's office knew about this case and whether there was "glaring evidence" the Governor's office pressured the Attorney General. R. C.82. That is unknowable at this stage in the litigation. What is knowable is that the Attorney General filed his motion to dismiss without reason, rationale or evidence. It is also known that the Attorney General knew of the facts in this case that implicated his colleagues, including the Governor and Spillane, who previously had a career in the Attorney General's office, rising to Chief of Staff of the prior Attorney General. These known facts are evidence of a government conflict of interest not alleged to exist in any of the cases cited below by either the Attorney General or the Circuit Court. Combined with

the absence of articulated bases in the Attorney General's motion, this conflict (if not complicity) supports denial of the Attorney General's motion to dismiss. The Circuit Court erred by holding otherwise.

IV. THE CIRCUIT COURT ERRED WHEN IT RELIED ON PRETEXTUAL ARGUMENTS RAISED BY THE ATTORNEY GENERAL ONLY IN REPLY.

The Circuit Court compounded its legal error by accepting and relying upon unsubstantiated and pretextual "reasons" the Attorney General only raised in its reply brief – or even for the first time at the hearing. As discussed, the Attorney General provided no rationale for dismissal in its actual motion. R. C.37-39. After Fox focused her response on this absence of supporting rationale, however, the Attorney General came up with two, facially pretextual, explanations, *i.e.*, the public disclosure and government action bars to IFCA cases. R. C.63-68. The Attorney General also falsely stated that it was seeking to remedy the alleged fraud in other proceedings. R. C.68-71. At the subsequent hearing, Fox objected to these "reasons" being considered at all. R. R.14-15. Fox argued: "I'd also note that none of the arguments the State made this morning about the complaint or Miss Thornley were made in its motion. None of them." R. R.14. Fox cited cases holding that issues raised for the first time on reply are deemed waived and should not be considered. R. R.16, *citing West-Howard v. Department of Children & Family Services*, 2013 IL App (4th) 120782, ¶ 28 (points first raised in reply waived) and *People v. Sparks*, 315 Ill. App. 3d 786, 790 (4th Dist. 2000) (State waived issue argued for first time in reply).) As argued below: "[T]his isn't just a technical point. The State's tactic effectively deprives Miss Fox of the opportunity to respond in writing to the arguments that were made in its reply brief and today." *Id.*

The Circuit Court ignored Fox's arguments, did not address or distinguish her authorities, and much of its opinion discusses the Attorney General's pretextual "reasons" as if they had been raised in the motion to dismiss and not brought up for the first time in reply – or even at the hearing itself. R. C.83-85. Not only was this improper, but the arguments themselves are entirely unsupported, serving only to further support the conclusion of government conflicts, bad faith and decision-making that is not rational or linked to any legitimate government purpose.

First, the Attorney General argued in reply that the public disclosure bar could be a defense to Fox's claim. The public disclosure bar applies when "substantially the same allegations as alleged in the action or claim were publicly disclosed (i) in a criminal, civil, or administrative hearing in which the State or its agent is a party; (ii) in a … State report, hearing, audit, or investigation; or (iii) from the news media, *unless … the person bringing the action is an original source of the information*." 740 ILCS 175/4(e)(4)(A) (emphasis added). The Attorney General asserted in reply that the public disclosure bar applies because "Relator's allegations were publicly disclosed in the McGuire Woods report and Thornley's worker's compensation case." R. C.65. This argument is entirely frivolous.

The public disclosure bar does not on its face apply if "the person bringing the action is an original source of the information." 740 ILCS 175/4(e)(4)(A). And Fox was clearly *an* original source of the McGuire Woods report. As she alleged in her complaint, she first brought Thornley's fraud to the attention of her supervisor, Garcia, in November of 2019, after Thornley told her she had requested overtime that Fox knew Thornley had not worked. R. C.17 & C.20-21. That was months before the McGuire Woods report, which was not complete until at least July of the following year. R. C.390. Moreover, the McGuire

Woods report was a result of Fox's whistleblowing. R. R.18 & R. C.9. Fox provided 12 hours of testimony to McGuire Wood and gave that firm hundreds of pages of documents. R. R.18. Her name appears *150* times as a source in the report. *Id.*

It is beyond the pale of reason to suggest in this context that Fox is not "an original source" of the allegations against Thornley because McGuire Woods put in its report what Fox had already told Garcia, the OEIG and McGuire Woods itself about Thornley. Equally incredible is that while it did not raise public disclosure until its reply brief, when it did so the Attorney General did not even mention the original source exception that appears on the face of the statute. This notwithstanding explicit allegations in the complaint that Fox was an original source R. C.20-21. The Circuit Court was required to accept these allegations as true – but it did not. To the contrary, it ignored the allegations and evidence that Fox was the source that led to and supported the July 2020 McGuire Woods report. *See* R. C.83.

The Attorney General's other public disclosure argument is equally frivolous. Specifically, it asserted that Thornley's worker's compensation fraud was disclosed by Thornley in an administrative proceeding she initiated to collect on that fraud. R. C.63-68. This proceeding supposedly took place in October 2020, the month after the Merit Board first learned of Thornley's claim. R. C.66. However, the Attorney General did not claim that Thornley stated in her administrative proceeding that she had committed a fraud as would be required for Thornley's claim itself to be the source of the public disclosure. Rather, at the hearing before the Circuit Court the Attorney General admitted that "we have no knowledge" of the worker's compensation claim other than that the State was contesting payment of additional benefits but was *not* asserting any counterclaim or trying to claw back the funds Thornley had already been paid. R. R.30-31. The argument that the false claim

itself (the worker's compensation proceeding that Thornley initiated) is a public disclosure fails to pass any straight-face test.

Moreover, Fox alleged that in September 2020, she had a call with a CMS manager who told her that Spillane had intervened for Thornley and effectively reversed her termination from the Merit Board so that Thornley could begin fraudulently collecting monthly payments in excess of $10,000 on her false claim. R. C.20 & C.582-584. Fox alleges that she immediately made a complaint to the OEIG disclosing what she had learned and, unlike Thornley, Fox did specifically disclose Thornley's fraud. R. C.20-21. This was one month before Thornley's administrative proceeding began, according to the Attorney General's own brief. Further demonstrating the conflicted position of the Attorney General in this matter, the Attorney General told CMS and the Merit Board that the reason it had made no counterclaim in the Thornley worker's compensation matter was due to the Attorney General's conflict of interest pursuing Thornley. R. R.23. That same conflict should have precluded the motion to dismiss in this case.

The Circuit Court relied on the Attorney General's two public disclosure arguments that were raised only in reply and despite their utter lack of merit. R. C.83. In doing so, it not only improperly concluded it did not need to take Fox's contrary allegations as true but ignored those allegations altogether, concluding that it was enough for the Attorney General to say the words "public disclosure" no matter how facially frivolous the arguments may be. *Id.* The Circuit Court position that the Attorney General's raising these arguments in reply "tends to undercut" Fox's argument of conflicts and bad faith turns reason on its head: the truth is that the clearly pretextual and counterfactual nature of the Attorney General's

arguments help to demonstrate the conflicts of interests and bad faith that infect the Attorney General's motion throughout.

The other argument the Attorney General made for the first time on reply involved the so-called government action bar. This refers to the IFCA provision that a *qui tam* case may not be brought based on the same allegations that "are the subject of a civil suit or an administrative civil money penalty proceeding in which the State is already a party." 740 ILCS 175/4(e)(3). The purpose of the government action bar is to prevent duplicative recovery when the State is already pursuing monetary relief in civil or administrative proceeding. *See People ex rel. Lindblom v. Sears Brands, LLC*, 2019 IL App (1st) 180588, ¶ 36 ("The government action bar operates to promote the exposure of fraud while weeding out duplicative suits (based on the same allegations) that the government is or has been a party to because the government is capable of pursuing the suit itself.") Though no civil suit is alleged to exist against Thornley beyond this case, the Attorney General argued that Thornley's worker's compensation case was an "administrative money penalty proceeding." R. C.65. There is no basis for this argument, though the Circuit Court accepted it. R. C.83-84. It did so notwithstanding the Attorney General's admission that no "money penalty" is being sought by the State in the worker's compensation case, in part because the Attorney General has acknowledged his own conflict in doing so. *See* R. R.23 & 30-31.

The other reason no money can be clawed back from Thorley in the worker's compensation administrative proceeding is because, under the worker's compensation statute, no recoupment of past benefits can be recovered absent a conviction of the claimant for fraud. *See* 820 ILCS 305/25.5(f) and (g). Thornley has never been charged by the State, let alone convicted, for fraud on her worker's compensation claim, so there was no

possibility her worker's compensation case could become a "money penalty" proceeding. All of this was explained to the Circuit Court at the hearing, but it was ignored. [6] R. R.22-23.

Finally, the Attorney General pointed in its reply brief to the criminal prosecution of Thornley on a small subset of her overtime theft from 2019 as a "reason" for its motion to dismiss. R. C.68-71. It did not address that the criminal case against Thornley is neither a civil suit nor an administrative money penalty proceeding. The Attorney General's reply further omitted that it was Fox who brought the allegations against Thornley to the State's Attorney in Springfield, who bowed out asserting conflicts, and then to the State Appellate Prosecutor's Office. R. R.24. And the Attorney General glossed over the fact that the overtime fraud in the criminal case is a small subset (around $10,500 or 2%) of the total half million dollars of fraud alleged in this case. *See id.*

Fox was put in a severe disadvantage below by the Attorney General's tactic of reserving its "reasons" for reply, thus depriving Fox the ability to brief below the facial deficiencies of those "reasons." The Circuit Court should not have considered, let alone credited, these late-made arguments. If they had been considered, the extent to which each was unsupported as a matter of fact or law should have led to each argument being recognized for what it was: a pretext for an otherwise unsupported and unsupportable

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[6] Neither is it relevant, as the Attorney General argued below, that someday in the future the State might initiate a civil or administrative money penalty proceeding against Thornely. *See People ex rel. Lindblom v. Sears Brands, LLC*, 2018 IL App (1st) 171468, ¶ 32 (rejecting argument that possible future action by State forecloses relator's IFCA claim, stating: "Nothing in the statute's [IFCA's] express language demonstrates that the legislature intended to bar a *qui tam* action based on the possibility that the State *may* be a party in a civil suit or administrative civil money penalty proceeding in the future.").

motion to dismiss and just more evidence of the Attorney General's bad faith and/or conflicts of interest.

CONCLUSION

The Attorney General's motion to dismiss this case had one purpose: to quash exploration of the wide-ranging fraud that Fox alleged. The wheels of justice were broken in this case and no State official had any interest in ferreting out fraud that extended directly to the Governor's office and to his General Counsel. But this is precisely the sort of case for which the IFCA is designed.

It was a sad day in the State of Illinois when the Attorney General filed his motion to dismiss in this case. It is a tragedy that the reaction of the State's highest-ranking law enforcement official to the pattern of fraud alleged in Fox's complaint was to bury the case rather than pursue it. It was equally sad to see the Attorney General state below that he is unconstrained by the Due Process demanded by the Constitution. He is not so unconstrained. But he is conflicted and his motion to dismiss ought to have been denied for all of the reasons set forth herein. The Circuit Court's contrary ruling should be reversed and this case remanded to proceed.

Respectfully submitted,
Emily Fox, Relator-Appellant

By: /s/ Robert M. Andalman
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No. 4-22-0622

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS ex rel., EMILY FOX Relator/Appellant State of Illinois/Appellee v. JENNY THORNLEY Defendant	)	Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois Circuit Court No. 21 L 000053 Hon. Adam Giganti, Judge Presiding

APPENDIX TO BRIEF

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IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

Suppressed,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2021 L 000053
	)	
Suppressed,	)	
	)	
Defendant.	)	

OPINION AND ORDER

This cause is before the Court on a motion to dismiss the complaint [redacted]tiff, the State of Illinois (the "State"), pursuant to the State's authority under the Illinois False Claims Act, 740 ILCS 175/4(c)(2)(A). The relator, Emily Fox (the "Relator"), who filed the complaint, objects to dismissal. The Court has considered the written submissions and oral arguments by the State and the Relator, and for the reasons set forth below, the Court grants the State's motion.

BACKGROUND[1]

On April 9, 2021, the Relator filed a two-count complaint pursuant to the Illinois False Claims Act ("IFCA") under seal and served a copy of the complaint on the State. *See* 740 ILCS 175/4(b)(2). Broadly speaking, the complaint alleges that the defendant, Jenny Thornley ("Thornley"), a former State employee, engaged in resume fraud, timekeeping fraud, travel and expense reimbursement fraud, and worker's compensation fraud during her employment with the Illinois State Police Merit Board (the "Merit Board"). The complaint alleges that Thornley's conduct violates the IFCA.

[1] Given that the State's motion to dismiss arises under 740 ILCS 175/4(c)(2)(A), rather than Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, the Court is not obligated to accept the allegations of the complaint as true or to avoid consideration of materials outside the scope of the complaint and supporting exhibits. Regardless, the Court's recitation of the Relator's allegations is based on the Relator's complaint, the exhibits to the complaint, and the letter and materials the Relator submitted to the State pursuant to 740 ILCS 175/4(b)(2), all of which are in the record before the Court.

Count I alleges that Thornley violated Section 3(a)(1)(B) of the IFCA by knowingly creating false or fraudulent timekeeping records and travel vouchers that caused the State to pay her unearned overtime and improper reimbursements. Count II alleges that Thornley violated Section 3(a)(1)(A) of the IFCA by knowingly inputting false data into the State's payroll system to obtain payment for overtime hours she did not work, and by submitting fraudulent reimbursement requests for travel that did not occur and items for personal use. Contemporaneous with the filing of the complaint, the Relator also submitted an 8-page disclosure letter to the State and 27 exhibits that the Relator characterized as "substantially all material evidence" about the allegations in the complaint. 740 ILCS 175/4(b)(2).

The Relator worked with Thornley at the Merit Board prior to Thornley's termination from the agency. During the time period relevant to the complaint, the Relator was a Program Director at the Merit Board. The Relator alleges that Thornley defrauded the State in the following ways during her employment with the Merit Board:

1) By falsely representing that she completed two, two-year courses at the University of Illinois-Urbana-Champaign and Robert Morris University (Compl. ¶ 11);

2) By submitting into the State's central payroll system false and unapproved requests for overtime work and pay between 2014 and 2019 (Compl. ¶¶ 24–29);

3) By creating false documents that purported to roll-over unused compensatory time from prior fiscal years and falsely underreporting the compensatory time she was using (Compl. ¶ 23);

4) By submitting false travel vouchers and invoices for reimbursement for trips that Thornley did not take or took for personal reasons only (Compl. ¶¶ 32–33);

5) By submitting false invoices for golf cart rentals and admission booklets to the Illinois State Fair that were used by Thornley's family and friends (Compl. ¶ 35); and

6) By submitting a fraudulent workers' compensation claim in which she alleged a fabricated sexual assault allegation against her boss and misidentified her employer as the Governor's Office (Compl. ¶¶ 42, 27).

Prior to the filing of the complaint, the Merit Board terminated Thornley in July 2020 for the fraud alleged in the complaint. (Compl. ¶ 8; Relator's Disclosure Ltr. at 2, Ex. 27) According to the complaint, concerns about Thornley's timekeeping initially arose in late 2019. (Compl. ¶¶ 3, 51.) At that time, the Merit Board's then-Executive Director, Jack Garcia, initiated an investigation into Thornley's timekeeping. (Compl. ¶ 3.) Garcia, the Relator's supervisor, directed the Relator to assist with that investigation. (Compl. ¶¶ 3, 51.)

According to the complaint, on January 10, 2020, Garcia notified the Office of the Executive Inspector General ("OEIG") that Thornley was engaged in potential misconduct regarding her timekeeping. (Compl. ¶¶ 38–39.) Garcia subsequently made a formal complaint to the OEIG on January 22, 2020, and provided documents in support of his complaint at that time. (Relator's Disclosure Ltr. at 5, Ex. 10.) Among other things, Garcia's complaint to the OEIG alleged that Thornley had submitted fraudulent overtime requests and forged Garcia's signature on the paperwork purportedly approving those requests. (Relator's Disclosure Ltr., Ex. 10, Jan. 24, 2020 Illinois State Police Investigative Report.)

Subsequent to Garcia's January 22, 2020 complaint to the OEIG, Thornley accused Garcia of sexual assault. (Compl. ¶ 42; Relator's Disclosure Ltr. at 5.) On January 31, 2020, Thornley initiated a worker's compensation claim in which she reported that Garcia had groped her breast at the Merit Board's Springfield office on January 23, 2020. (Relator's Disclosure Ltr., Ex. 15.) The next day, February 1, 2020, Thornley detailed the assault accusation in an interview with attorneys from the Governor's Office, including the Governor's General Counsel. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 42.)

After learning of the assault allegation, the Governor's General Counsel recommended to the Merit Board that Garcia be placed on administrative leave, and that the Merit Board hire an

outside law firm, McGuireWoods LLP, to conduct an investigation of both the assault allegation against Garcia and the timekeeping misconduct allegations against Thornley. (Compl. ¶¶ 3, 42, 49.) The Merit Board implemented both recommendations.

Between February 2020 and July 2020, McGuireWoods conducted dozens of interviews regarding both sets of allegations against Garcia and Thornley, respectively. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 1.) In conducting its investigation, McGuireWoods looked into every instance of alleged timekeeping fraud by Thornley in 2019. The firm also investigated Thornley's alleged resume fraud. On July 19, 2020, McGuireWoods sent its 94-page final report to the Merit Board. That report reached two conclusions: (1) that there was sufficient evidence to support the fact that Thornley caused payments to herself for overtime she did not work; and (2) there was insufficient evidence to support a finding that Garcia sexually assaulted Thornley. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 1.)

Although Thornley had been placed on administrative leave in February 2020, she was terminated from the Merit Board after McGuireWoods completed its investigation in July 2020. (Relator's Disclosure Ltr., Ex. 27, July 21, 2020 Termination Ltr.; Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 12-13.)

On September 23, 2020, after learning that Thornley was temporarily receiving worker's compensation benefits based on her claim regarding the alleged sexual assault, the Relator filed a complaint with the OEIG accusing Thornley of worker's compensation fraud. (Relator's Disclosure Ltr., Exs. 17, 18; Compl. ¶ 54.) On December 15, 2020, the OEIG referred the Relator's complaint back to the Merit Board for "whatever action [the Executive Director] deem[s] appropriate." (Relator's Disclosure Ltr., Ex. 18.)

The Relator filed this action under seal on April 9, 2021. After being served with the complaint and the Relator's disclosures pursuant to 740 ILCS 175/4(b)(2), the Attorney General's Office, on behalf of the State, conducted an investigation and review of the Relator's IFCA claims. While that investigation was ongoing, on September 22, 2021, the State, acting through the State Appellate Prosecutor's Office, obtained a seven-count criminal indictment against Thornley accusing her of forgery, theft, and official misconduct based on her alleged timekeeping fraud during her employment with the Merit Board. The criminal indictment against Thornley remains pending.

On December 7, 2021, the State, acting through the Attorney General's Office, filed the present motion to dismiss pursuant to the State's authority under 740 ILCS 175/4(c)(2)(A). The motion has been fully briefed and the Court held a hearing on the motion on February 15, 2022.

LEGAL STANDARD

The IFCA gives the State broad discretion to dismiss false claims cases. *Scachitti v. UBS Financial Services,* 215 Ill. 2d 484, 512 (2005). This is true even if the relator objects to the dismissal. *Id.* ("Most critically, the Attorney General has authority to dismiss or settle the action at any time, despite the objections of the *qui tam* plaintiff."). The Appellate Court has confirmed that "'it is the state's prerogative to decide which case to pursue, not the court's.'" *State ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 21 (quoting *State ex rel. Beeler, Schad & Diamond, P.C. v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 517 (1st Dist. 2006)). If the State exercises its prerogative to dismiss the action, the relator must be "notified by the State of the filing of the motion" and afforded "an opportunity for a hearing on the motion" before the court. 740 ILCS 175/4(c)(2)(A). Illinois courts are not permitted to second-guess the State's decision to dismiss, *QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 14, but

rather must presume that the State is acting in good faith. 740 ILCS 175/4(c)(2)(A); *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517.

The only exception to the State's broad discretion to dismiss a false claims case is if there is "glaring evidence of fraud or bad faith" by the State in seeking dismissal. *Burlington Coat Factory*, 369 Ill. App. 3d at 517.

ANALYSIS

The State has moved to dismiss the Relator's complaint based on its broad discretion under the IFCA to oversee the claims brought in the State's name under that statute. *Scachitti*, 215 Ill. 2d at 512. When presented with such a motion, the Court's role is not to "second guess the State's decision to dismiss by conducting an inquiry into the State's motivations." *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. The only requirements prior to dismissal are that the Relator be "notified by the State of the filing of the motion [to dismiss]" and be provided with "an opportunity for a hearing on the motion." 740 ILCS 175/4(c)(2)(A). In this case, the Court finds that these two requirements have been satisfied. The State notified the Relator of its motion to dismiss filing on December 7, 2021, and the Court conducted a hearing on the motion on February 15, 2022.

The Relator objects to dismissal, but the IFCA is clear that the State may obtain dismissal over a relator's objection. *Id.* The Relator has also not identified the type of "glaring evidence of fraud or bad faith" required for the Court to override the State's broad prosecutorial discretion over IFCA claims. *Burlington Coat Factory*, 369 Ill. App. 3d at 517.

The Relator's response to the State's motion to dismiss cites allegations about purported "complicity" by the Governor's Office in Thornley's alleged fraud, specifically, her temporary receipt of worker's compensation benefits during and for a period after the McGuireWoods investigation. (Resp. at 1–2; Compl. ¶¶ 46–48.) The Relator alleges that Thornley's claimed

personal connections to the Governor and the Governor's wife led to special handling of Thornley's worker's compensation claim, which, in Relator's view, was based on a fabricated sexual assault allegation. (Compl. ¶¶ 2–4, 46–48.) The Relator claims that she has raised "disturbing evidence of State complicity in [Thornley's] conduct at the highest levels of State government, supporting the conclusion that the State's motion is not, in fact, in good faith." (Resp. at 13.)

The Relator's allegations of "complicity" are not sufficient to override the presumption of good faith that the Court must afford to the State's decision to seek dismissal. *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. As an initial matter, the Relator's allegations relate exclusively to the Governor's Office and purported intervention regarding Thornley's worker's compensation claim. None of these allegations speak to the decision by the Attorney General's Office, as counsel for the State, to seek dismissal of the Relator's IFCA claims.

At most, the Relator has offered mere speculation that the Attorney General's Office is "succumbing to political pressure" to seek dismissal of this case. (Resp. at 10.) The Illinois Appellate Court has held, however, that "glaring evidence," not mere speculation, is necessary for a court to override the State's decision to seek dismissal of IFCA claims. *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. The Relator in this case has not produced evidence that the Governor's Office even knows about the Relator's complaint at this point. As required by the IFCA, the complaint was filed under seal and disclosed to the Court and the Attorney General's Office. 740 ILCS 175/4(b)(2). The Court cannot infer without evidence that the Attorney General's Office is "succumbing to political pressure" from the Governor's Office to dismiss a case that the Governor's Office may not even be aware of at this point. (Resp. at 10.)

The Attorney General's Office has also identified multiple credible reasons why it seeks dismissal in this case. Specifically, the Attorney General's Office has identified multiple points at which the State learned of the allegations against Thornley prior to the filing of the Relator's complaint. The complaint itself acknowledges that Thornley was investigated for timekeeping misconduct by a law firm retained by the Merit Board and terminated based on the law firm's findings in July 2020—ten months prior to the filing of Relator's complaint. (Compl. ¶¶ 30–31.) The State's prior knowledge of the allegations against Thornley means that the complaint is potentially subject to the public disclosure bar under the IFCA. 740 ILCS 175/4(e)(4)(A).

The Relator has countered that she is an "original source" of the allegations against Thornley because of the Relator's role in assisting the Merit Board's Executive Director, Jack Garcia, uncover some of the initial evidence regarding Thornley's alleged overtime fraud. (Compl. ¶ 50.) The Court does not need to resolve, however, whether the Relator is in fact an "original source" within the meaning of the IFCA. The State need not definitively establish that an IFCA complaint is legally defective in order to exercise its prosecutorial discretion to dismiss. The State is not in the position of a defendant seeking to defeat a plaintiff's claim; the State is the plaintiff in an IFCA case, 740 ILCS 175/4(b)(1), and can decide for itself whether to pursue the claims brought in its name, *id.* § (c)(2)(A). While not a prerequisite for dismissal, the fact that the State has raised a fair question about a potential legal defect in the complaint tends to undercut the Relator's contention that the State is acting fraudulently or in bad faith in seeking dismissal.

In addition to the public disclosure bar, the State has also pointed out that Thornley's worker's compensation claim is the subject of an ongoing administrative proceeding in which the State is a party: *Thornley v. State*, Case No. 20WC025256. That proceeding, which began in October 2020, predates the filing of the complaint. The State has asserted that the Relator's

allegations regarding Thornley's worker's compensation claim are precluded by the IFCA's government action bar because those allegations are "the subject of a civil suit or an administrative money penalty proceeding in which the State is already a party." 740 ILCS 175/4(e)(3). At the hearing on the State's motion, the Relator noted that Thornley herself initiated the administrative proceeding after her termination from the Merit Board. It is not clear, however, that this fact alters the applicability of 740 ILCS 175/4(e)(3), which refers to the State being a "party" without any requirement that the State be the plaintiff or the initiating party in the administrative proceeding. Here again, the Court need not resolve whether the government action bar applies to the Relator's claims. The relevant point is that the State's identification of a credible potential defect with the complaint undercuts the Relator's ability to show "glaring evidence of fraud or bad faith." *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517.

In addition to potential legal defects with the Relator's complaint, the State has also identified additional reasons why it is seeking dismissal. The State notes that the allegations in the complaint overlap significantly with the seven-count criminal indictment against Thornley currently pending before this Court in *State v. Thornley*, Case No. 2021-CF-811. The State points out that if convicted, Thornley could be required to pay restitution to the State for her alleged overtime and travel and expense reimbursement fraud. *See* 730 ILCS 5/5-5-6(f). The State contends that the potential availability of restitution against Thornley in her criminal case makes the Relator's IFCA claims duplicative and unnecessary to make the State whole. The Relator responds that the existence of a parallel criminal case does not preclude civil claims under the IFCA. While that may be true, it is well within the State's prosecutorial discretion under the IFCA to decide that an IFCA civil action on top of a criminal action against the same defendant for the same underlying conduct is duplicative and an inefficient use of the State's resources.

The State has also identified recent debt collection actions naming Thornley that, in the State's view, raise concerns about whether any monetary judgment obtained through this IFCA action would ultimately be collectable. The inability to collect a judgment is also a legitimate factor for the State to weigh in the exercise of its prosecutorial discretion. Given that Thornley has been terminated from her job, indicted, and faces debt collection proceedings, it is not an unreasonable exercise of prosecutorial discretion to decide against protracted IFCA litigation in these circumstances.

The State has also expressed concern about inviting IFCA litigation any time a State employee is caught lying about their timekeeping or work expenses. The State points out that other enforcement mechanisms exist to punish this type of misconduct—termination, criminal prosecution, investigations and proceedings under the State Officials and Employees Ethics Act, 5 ILCS 430/20-50—and that the State prefers to focus its limited IFCA enforcement resources on high-value cases. The setting of enforcement priorities and the allocation of resources in accordance with those priorities is core to the prosecutorial discretion vested in the executive branch. The Relator may disagree with those enforcement priorities or how they apply to this case, but it is not the Court's role to intrude on the State's prosecutorial discretion.

Lastly, the Relator urges the Court to apply a subset of federal cases considering the federal False Claims Act that infer a substantive due process limitation on the government's ability to dismiss claims under the False Claims Act. The Court notes that Relator has not identified any cases from Illinois courts applying this analysis to the IFCA. Regardless, the Court need not decide whether there is a substantive due process limitation, grounded in the U.S. Constitution, on the State's ability to dismiss an IFCA claim. Even if the Court applied this substantive due process analysis in the present case, the result would not change. The bar for establishing a substantive due

process violation based on a discretionary executive action is extremely high. According to the U.S. Court of Appeals for the Seventh Circuit, the executive action must "shock the conscience," "offend even hardened sensibilities," or come "too close to the rack and the screw to permit of constitutional differentiation." *United States ex rel. CIMZNHCA, LLC v. UCB, Inc.*, 970 F.3d 835, 852 (7th Cir. 2020) (quoting *County of Sacramento v. Lewis*, 523 U.S. 883, 846 (1998); *Rochin v. California*, 342 U.S. 165, 172 (1952)). The State's decision to seek dismissal in this case does not approach this high standard.

CONCLUSION

The IFCA affords the State substantial prosecutorial discretion over what claims may be brought in the State's name. The State has exercised its discretion to seek dismissal of this case. The Relator objects to the State's dismissal request, but the IFCA permits dismissal at the State's request over the Relator's objection. The Relator has not offered the "glaring evidence of fraud or bad faith" required for this Court to override the State's prosecutorial discretion. *Burlington Coat Factory*, 369 Ill. App. 3d at 517. The Court grants the State's motion to dismiss the complaint pursuant to 740 ILCS 175/4(c)(2)(A).

Accordingly, IT IS HEREBY ORDERED:

(1) the State's Motion to Dismiss is granted;

(2) Relator's Complaint is dismissed with prejudice;

(3) the State is granted 14 days, from the date this Order is entered, to (a) file redacted copies of any exhibits or documents containing personal identity information in compliance with Illinois Supreme Court Rule 138 and (b) submit a list of all documents in the Court file that can be unsealed and made public to the Sangamon County Circuit Clerk; and

(4) the Sangamon County Circuit Clerk is directed to unseal and make public the documents identified by the State in 3(b).

ENTERED: MARCH 7, 2022

[redacted]

Circuit Judge Adam Giganti
Circuit Court of Sangamon County

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4/9/2021 2:48 PM
Paul Palazzolo
7th Judicial Circuit
Sangamon County, IL

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS, *ex rel.* EMILY FOX,	)	
Plaintiff,	)	
v.	)	Case No. 2021L 000053
JENNY THORNLEY,	)	**FILED UNDER SEAL PURSUANT TO 740 ILCS 175/4(b)(2)**
Defendant.	)	JURY TRIAL DEMANDED

COMPLAINT

The People of the State of Illinois, *ex rel.* Emily Fox ("Fox" or the "Relator"), bring this action against Jenny Thornley ("Thornley" or "Defendant"), alleging as follows:

I. NATURE OF THE CASE

1. This action is brought in the public interest for and on behalf of the People of the State of Illinois, *ex rel.* Emily Fox, pursuant to the Illinois False Claims Act ("IFCA"), 740 ILCS 175/1 *et seq.* The purpose of this action is to recover damages and civil penalties from false records, statements and claims made, used and caused to be made or presented by Thornley to obtain payments from the State of Illinois (the "State").

2. Thornley was an employee of the Illinois State Police Merit Board (the "Merit Board"). Between 2014 and 2020, Thornley knowingly engaged in a scheme to defraud the State, most recently with the apparent complicity of Illinois Governor J.B. Pritzker, his wife, Mary Kathryn Pritzker ("M.K. Pritzker") and the Governor's Office, including Ann Spillane, the Governor's General Counsel. Thornley's scheme has included: making and using false records and statements, including forgeries, to procure benefits and induce payments to her by the State;

falsifying data in the State's central payroll system; creating false timekeeping records and overtime requests; and submitting false travel and reimbursement vouchers.

3. The Relator is an employee of the Merit Board and first raised concerns about Thornley to Jack Garcia, the Merit Board's Executive Director. When Garcia further directed the Relator to investigate Thornley's conduct, Thornley made statements that Garcia "did not know who he was messing with" and that "the Governor's Office would get involved if Mr. Garcia did not back off." When Garcia did not relent to these threats, Thornley leveraged her relationships with Governor Pritzker and/or M.K. Pritzker to make false accusations to the Governor's Office that Garcia had assaulted her. For example, she sent a text message to M.K. Pritzker thanking her for her friendship and stating that "I need J.B. to know what's going on." Thereafter, Spillane and others in the Governor's Office became directly involved. They advised the Merit Board to put Garcia on administrative leave while a private law firm that the Governor's Office recommended conducted an investigation that cost the State in excess of $550,000.00. That investigation concluded that Thornley's accusations against Garcia were untrue. The investigation also confirmed that Thornley had defrauded the State by submitting false overtime records. A subsequent investigation by the Illinois State Police independently concluded that Thornley's accusations against Garcia were false.

4. Despite having been twice proven false, Thornley continued and continues to collect benefits from the State based on the same debunked accusations against Garcia. The success of Thornley's most recent false statements is a consequence of the direct involvement of the Governor's Office, including Spillane, on her behalf, as further alleged below. There is no reason the Governor's Office should be involved in Thornley's schemes, except for Thornley's personal and political relationships with the Governor and/or M.K. Pritzker.

5. The Relator asked the Office of the Executive Inspector General (the "OEIG") to investigate Thornley's misconduct. The OEIG refused. Instead, in retaliation for the Relator's complaints, the OEIG has initiated an investigation of the Relator, apparently based on more false accusations by Thornley. This appears again to be a direct consequence of pressure from the Office of the Governor, including Spillane.

6. The IFCA provides that any person who knowingly presents or causes to be presented a false claim to the government for payment or approval is liable for a civil penalty for each such claim submitted or paid, plus three times the amount of the damages sustained by the government and other relief. The Act further permits any person having information regarding a false claim to bring an action for herself, as a Relator or *qui tam* plaintiff, and for the government. Based on these provisions, the Relator seeks to recover against Thornley all available damages, civil penalties, and other relief.

II. THE PARTIES

7. Emily Fox is a citizen and resident of the State of Illinois and Sangamon County. She is an employee of the Merit Board. Section 4(b) of the IFCA, 740 ILCS 175/4(b), authorizes private persons to bring civil actions on behalf of themselves and on behalf of the State of Illinois against any person violating Section 3 of the IFCA. Fox brings this action on behalf of herself and on behalf of the State of Illinois pursuant to Section 4(b). Fox does so as a *qui tam* plaintiff, or Relator.

8. Jenny Thornley is a citizen and resident of the State of Illinois and of Sangamon County. Until July 2020, Thornley served in the Public Service Administrator role at the Merit Board. Thornley was terminated for cause from the Merit Board in July 2020, including because of her false claims of payment made to the State. Despite her termination, the State is still paying

Thornley because individuals at the Governor's Office, or at the behest of that office, effectively reversed Thornley's termination. Thornley further filed a fraudulent workers' compensation claim, based upon the twice-disproven allegations against Garcia. In her claim, Thornley asserted that she is an employee of the Governor's Office when she is not. This claim proceeded with the full knowledge, support and participation of Governor's Office staff, including Spillane. Thornley has a personal and political relationship with the Governor and M.K. Pritzker as demonstrated, in part, by Thornley's online social media presence where she has posted multiple pictures of herself together with them.

III. JURISDICTION AND VENUE

9. This Court has jurisdiction over the subject matter of this action as it involves claims arising exclusively under Illinois statutes, specifically the IFCA, 740 ILCS 175/2, *et. seq*.

10. Venue is proper in Sangamon County, Illinois because Thornley committed the unlawful acts at issue in this county.

IV. FACTUAL ALLEGATIONS

A. Thornley's Employment with the Merit Board

11. Thornley's employment with the Merit Board began in May 2014, ended in July 2020. Her employment and various increases in compensation that she requested and obtained were based on false statements and dishonesty. Thus, in CMS-100 forms seeking employment or pay increases, Thornley listed herself as having completed a 2-year course in Labor Law at the University of Illinois-Urbana-Champaign and a 2-year course in Business & Legal Administration from Robert Morris University. In fact, Thornley enrolled in only one, non-degree class at the University of Illinois. She failed that class and received no credit for it. Thornley enrolled in multiple classes at Robert Morris University, but in fact failed each of them and never received

credit for them. Thornley's statements that she had completed two-year courses at these universities was simply false. Yet she was hired and paid salaries and pay increases based on these false statements.

12. Thornley's position with the Merit Board included fiscal and budget oversight components, as well as human resources. Her job included participating in various budget planning activities, preparing various fiscal and budget documents for the agency and its employees, inputting employee data into the State's payroll system, tracking employee time off, overview and control of expenditures and purchasing as well as tracking personnel information and documentation.

13. Thornley had knowledge of Merit Board rules and regulations, including without limitation policies and practices related to employee timekeeping and reimbursement, as well as access to all staff personnel files and fiscal documentation, including travel expenditures, overtime and compensatory time request forms and reimbursement forms.

14. During her employment, Thornley was the only Merit Board employee with access to the State's central payroll system, into which the raw data from all Merit Board employees' timekeeping records were input (by Thornley) in order to receive payment from the State.

15. Thornley knowingly abused her position, responsibilities, and access to make repeated false claims for payment to the State.

B. Thornley's False Statements Made to Obtain Payments from the State

16. While employed by the Merit Board, Thornley repeatedly submitted false statements to the State to receive money from it. In addition to her multiple false statements about her education on CMS-100 forms and resumes that were submitted to the State to induce it to pay

her salary and pay increases, Thornley's scheme included dozens of other false statements made to secure unearned overtime and compensatory pay, travel and other reimbursements, as follows.

1. Thornley Caused the State to Pay Her Unearned Overtime

17. While employed by the Merit Board, Thornley was expected to keep track of her own time for each day. Thornley, like other Merit Board employees, recorded her working time on an "Attendance Report" that included several different documents that specified "Time In", "Time Out," time spent "Out of Office," "Hours Worked," amount of "Time Used," amount of "Time Earned" and whether the time used was vacation time, sick time, personal time, or compensatory time.

18. Thornley, like other Merit Board employees, was also expected to keep track of vacation time used, sick time used, personal time used, compensatory time used, overtime earned or requested, and compensatory time earned for each month.

19. At the end of each month, Thornley, like other Merit Board employees, was expected to submit their Attendance Reports for the month, as well as any vacation, sick, personal or compensatory time used forms, or overtime request forms to Director Garcia for his signature.

20. Thornley was different from other Merit Board employees, however, in that it was her responsibility to manually enter the data from all Merit Board employees' timekeeping records, including her own, into the State's central payroll system to effectuate payment for each employees' hours worked, as well as for any overtime earned during any specified payment period.

21. Thornley's responsibilities further included tracking employees' time-off accruals, which she did through an "Attendance Report Summary" in which she recorded "Vacation", "Sick", "Personal Leave" and "EET Time" for herself and other Merit Board employees.[1]

22. Thornley regularly abused her position by knowingly submitting false data for herself into the State's payroll system to cause payments to herself for overtime that she did not earn. She did so dozens of times leading to tens of thousands of dollars of improper payments to her by the State.

23. Thornley then created false timekeeping records and fraudulent overtime request and compensatory time forms in an attempt to conceal her scheme from Garcia, the Merit Board and the State during routine fiscal audits. This included Thornley creating documents that purported to "roll-over" unused "compensatory time" from prior fiscal years (which is not permitted) and under-reporting the compensatory time she was using, as well as inflating the amount of overtime she earned.

24. For example, Thornley's Attendance Reports state that she worked 13.5 hours of overtime in May 2019, 8 hours in June 2019, 32.5 hours in September 2019, and 11.25 hours in December 2019. Thornley entered false statements to this effect in the State central payroll system, which caused the State to make payments to her to which she was not entitled. In addition, Thornley made false statements in the State central payroll system that led to her being paid 10 hours of overtime in April 2019 despite her not having submitted any overtime requests or compensatory time forms for April 2019, and despite her April Attendance Report not reflecting any overtime.

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[1] EET Time refers to Equivalent Earned Time pursuant to Section 310.490(e)(1) of the Illinois Administrative Code, however, Thornley appeared to track compensatory time earned in the "EET Time" section of the Attendance Report Summary form.

25. Thornley did not work overtime in the months and on the days that she claimed in the examples listed in the prior paragraph. This is confirmed by the fact that Garcia approved no such overtime, the Relator was present in the office and observed that Thornley did not work any such overtime, as well as security camera footage of the Merit Board offices that evidence Thornley was not present to work that overtime. Thus, for example, the Relator reviewed security camera footage that demonstrated while Thornley claimed to work a total of 182.5 hours in September 2019, 32.5 hours of which were claimed to be overtime for which she sought and received payment by the State, in fact only worked 113 hours at the office that month.

26. On information and belief, Thornley went so far as to forge Garcia's signature on overtime approvals. In other cases, she entered overtime into the system as "approved" even though it had not been approved by Garcia.

27. In addition, after Thornley left the Merit Board, the Relator found on her computer an approval of increased pay signed with the electronic signature of Reeve Waud, then the Chairman of the Merit Board. Waud later confirmed that this was not his actual signature, or electronic signature and that this was a forgery utilized by Thornley to obtain payments from the State.

28. The amount of overtime paid to Thornley exceeds any of the totals she claimed in her own timekeeping records, and her payroll record confirms that she was paid for more compensatory time than she had properly accrued.

29. Specific examples of Thornley's false statements in particular months are pleaded above. In total, Thornley's false statements that she entered into the State payroll system resulted in her being paid $7,114.81 in overtime in 2014 (147.5 hours); $17,770.73 in overtime in 2015

(439.5 hours); $24,736.11 in overtime in 2016 (444 hours); $6,885.93 in overtime in 2017 (141 hours); and $10,563.56 in overtime in 2019 (46 hours).

30. Consistent with these allegations, the law firm recommended by the Governor's Office, which was paid $550,000.00 by the State, concluded that Thornley did not receive authorization to work overtime she claimed; falsely stated the amount of overtime for which she claimed payment; and caused payments to herself by her false statements for overtime that she did not work.

31. Thornley was fired by the Merit Board in July 2020 after that investigation confirmed her misconduct.

2. Thornley Caused Herself to Be Reimbursed for Travel That Did Not Occur

32. Thornley's job responsibilities did not generally require her to travel. However, since at least 2015 Thornley's scheme to obtain improper payments from the State through false claims included submission of false travel vouchers and invoices for reimbursement for travel expenses and mileage costs for trips she did not take and/or for trips taken for personal reasons and not for Merit Board business.

33. For example, beginning in July of 2015 through March of 2017, Thornley submitted requests for reimbursement for alleged trips between Springfield and the Chicago area for work purposes, even though those trips either did not occur or else were made for personal reasons. As a result, Thornley was paid thousands of dollars by the State. Similarly, she submitted requests for reimbursement for travel to Chicago on December 9, 2016, falsely stating that she departed at 6:00 a.m. that day and returned at 9:00 p.m. Her Attendance Record for the same day states that she arrived at work at 8:00 a.m. and went home at 4:30 p.m. There are many other examples of similar false statements to secure reimbursement for travel that did not occur.

34. For each of the trips Thornley falsely claimed to have made, she not only sought reimbursement for expenses, but also falsely stated that she was due and was paid additional amounts, sometimes to include mileage costs for use of her personal vehicle and also a per diem from the State to cover meals. Thornley was paid thousands of additional dollars by the State as a result of these false travel reimbursement requests.

3. Thornley Caused Herself to Be Paid Other Improper Reimbursements

35. Additional records show that, in August of 2019, Thornley submitted invoices for golf cart rentals and admission booklets to the Illinois State Fair totaling $990. Thornley falsely stated that the admission booklets and cart would be used by the Merit Board. In fact, the admission booklets were used by Thornley and her family and friends, including political connections, as was the golf cart.

C. Thornley Actively Concealed her Misconduct

36. Thornley maintained control over the records within the Merit Board that would reveal her false statements. She was the only person at the Merit Board who entered payroll data, such as overtime, into the State payroll system.

37. For this reason, Thornley's misconduct was only discovered in late November 2019, when Thornley made a comment to the Relator about a request for overtime pay that Thornley was making. The Relator was concerned by this comment because she had been in the office the prior month and had not seen Thornley working overtime. The Relator shared her concern with Garcia, who informed the Relator that he had not approved any overtime for Thornley, as required by Merit Board policy.

38. At Garcia's request, the Relator than checked with the Illinois Comptroller website and learned that Thornley had collected more than $10,000 in 2019 in overtime none of which had been authorized or approved.

39. The Relator collected information confirming Thornley's misconduct, submitted that information to Garcia and he made a complaint to the OEIG about Thornley on or about January 10, 2020.

40. On or about January 28, 2020, Thornley reached out to a friend of Garcia and asked that friend to contact Garcia to tell him that he, Garcia, "did not know who he was messing with" and that "the Governor's Office would get involved if Mr. Garcia did not back off." This was apparently a reference to a personal and political friendship between Thornley and the Governor and M.K. Pritzker.

41. At the end of January 2020, Thornley stole from the Merit Board offices originals of payroll documents, including the Relator's documents. Some but not all of these records have been recovered.

42. Thornley then contacted the Office of the Governor and falsely accused Garcia of assaulting her. As pleaded above, this led to Garcia (who was then leading the investigation into Thornley's abuses) being placed on administrative leave. The following investigation, which cost the taxpayers' $550,000.00: (a) disproved Thornley's accusations; and (b) confirmed her false statements and overtime theft in 2019. The Illinois State Police subsequently conducted its own investigation and concluded that Thornley's accusations were false.

43. With regard to the independent investigation, in or about February 2020, Thornley initiated a lawsuit seeking to enjoin the investigation altogether. That effort failed but did delay the investigation into Thornley's misconduct for months.

44. In sum, from the beginning, Thornley has actively attempted to conceal and to thwart discovery of her misconduct. This included by hiding documents, altering them and even forging records to cover up her scheme. And Thornley did conceal that scheme until the Relator became suspicious of her in November 2019.

45. Thornley's efforts to conceal her conduct provide additional evidence that Thornley knew that her conduct was wrong and that her conduct has been willful.

D. Thornley's Ongoing Schemes Include Participation by the Office of the Governor

46. Thornley continues to this day to seek money from the State of Illinois on false pretenses, now with the active complicity and cooperation of the Office of the Governor.

47. In February 2020, Thornley made a workers' compensation claim based on "psychological injury" that she said resulted from the assault by Garcia that did not happen according to two different investigations. However, Thornley did not make this claim to the Merit Board, which employed her. Instead, leveraging her relationship with the Pritzkers, Thornley made the claim directly to the Governor's General Counsel, Spillane. And Spillane accepted that claim and processed it, even though the claim falsely listed Thornley's employer as the Governor's Office rather than the Merit Board. Thornley also claimed that the Governor was her direct supervisor and she provided multiple phone numbers to confirm this with Governor Pritzker himself. Of course, these statements were false, as Spillane would have had to know. Spillane nonetheless pressed the claim forward.

48. Although it should have been notified immediately as Thornley's employer, the Merit Board did not learn about Thornley workers' compensation claim until September 2020, after Thornley had already been paid tens of thousands of dollars in benefits. That fraud on the

State could not have happened without the complicity of Spillane and others in the Governor's Office.

49. Notably, the Merit Board had not been made aware of Thornley's false workers' compensation claim when it terminated Thornley in July 2020 for making false claims to the State for payment. Instead, the Merit Board was only informed of the claim in September 2020. In a call between the Relator and Central Management Services ("CMS") in September 2020, a manager in that office told the Relator that Thornley's termination from the Merit Board was effectively reversed on direction of Spillane and others in the Governor's Office. The Relator was also told by that same CMS manager that Spillane regularly participated in calls about Thornley's false claim. This extraordinary level of involvement by the Governor's General Counsel in a workers' compensation claim involving an independent agency of State government is a raw demonstration of improper political influence to assist a friend and supporter of the Governor at the expense of the People of the State of Illinois. It is made worse by the fact that the entire premise of Thornley's workers' compensation claim is the "assault" by Garcia that was debunked and proven false by both the $550,000.00 independent investigation undertaken by a law firm the Governor's Office recommended and then again by an independent investigation of the Illinois State Police.

E. The Relators' Disclosures to the State

50. The matters alleged herein have not been "publicly disclosed" within the meaning of the IFCA. Furthermore, Relator is an original source, pursuant to 740 ILCS 175/4 (e)(4)(A)(iii), and she voluntarily disclosed to the State the evidence and information at issue before filing this action under the IFCA.

51. Specifically, after first raising her concerns with Garcia in November 2019, the Relator began an internal investigation for the Merit Board and reported the results of that

investigation to Garcia and Merit Board General Counsel, Daniel Dykstra. The Relator's review of Merit Board documents and information during that investigation resulted in discovery of tens of thousands of dollars of improper overtime Thornley had secured for herself between 2014 and 2019, as alleged further above.

52. In January 2020, Garcia informed the OEIG about the evidence the Relator had collected, including by making a formal complaint to the OEIG about Thornley based on information the Relator had gathered. The OEIG took no action and issued no report concerning Thornley's misconduct.

53. Further, in the course of attempting to locate documents on the Merit Board's computer, the Relater discovered travel and reimbursement records of the Merit Board that substantiated the travel and reimbursement false claims pleaded above. The Relator provided this information to Garcia, who reported it to the Merit Board.

54. When the Relator learned in September 2020 about Thornley's fraudulent workers' compensation claim, she made a formal complaint about that fraud to the OEIG, specifically including the information from CMS that the fraudulent claim had been pressed by the Governor's General Counsel, Spillane. Again, the OEIG took no action. To the contrary, the OEIG sent the Relator's claim back to the Merit Board.

55. Despite the Relator's best efforts to have some authority in the State take action to correct the harm to the People of the State of Illinois from Thornley's misconduct, no action has been taken to do so. This protection of a person who has defrauded the State is apparently based directly upon the intervention of the Governor's Office and Spillane in particular.

F. Retaliation Against the Relator

56. While the OEIG has refused to take any action with regard to Garcia's complaint based on information the Relator provided, and further while the OEIG refused to even investigate the Relator's own OEIG complaint against Thornley, the OEIG has informed the Relator that she is the subject of an OEIG complaint made against her in retaliation by Thornley. The OEIG has acted on that complaint and continues to do so. The Relator contends that this retaliatory pursuit of her is driven in part by the involvement in the case of the Governor's Office and Spillane, from which the OEIG is not independent.

57. The Relator is a single, working woman who supports herself through her job at the Merit Board. She has raised issues of fraud against the State as a whistleblower because she is offended by Thornley's conduct and by the political protection Thornley has received from the Governor's Office, even after Thornley's accusations against Garcia were twice proven false. The Relator makes this complaint notwithstanding her profound fear that by doing so she will become a target of further retaliation by Governor Pritzker, his General Counsel and the OEIG.

G. Procedural Compliance

58. Pursuant to Section 4(b)(2) of the IFCA, this complaint is to be filed in camera and remain under seal for a period of at least 60 days and shall not be served on the Defendants until the Court so orders.

59. Pursuant to Section 4(b) and 4(c) of the IFCA, the State, acting by and through the Attorney General, may elect to intervene and proceed with this action, within a period of 60 days, after it has received both the Complaint and a Statement of Material Evidence and information relating to the instant action.

60. Pursuant to Section 4(b)(2) of the Act, the Relator will provide to the Attorney General, following the filing of the instant Complaint, a statement of material evidence and information. The statement of material evidence and information will support the Relator's assertions and contentions regarding the submission of false and fraudulent claims by Thornley.

COUNT I
(Violations of the Illinois False Claims Act, 740 ILCS § 175/3(a)(1)(B))
Knowingly Creating False or Fraudulent Records Material to False Claims

61. The Relator re-alleges and incorporates herein by referenced paragraphs 1 through 57 above, as though fully set forth herein.

62. Acting as aforementioned, Thornley knowingly, or acting with deliberate ignorance, or with reckless disregard for the truth, made, used, completed, or caused to be made, used or completed false or fraudulent timekeeping records, and travel vouchers material to her false claims for overtime and false claims for travel reimbursement.

63. As a direct and proximate result of this falsification of records, Thornley caused the State to pay her tens of thousands of dollars in unearned funds.

64. As a direct and proximate result of Thornley's illegal and fraudulent conduct as set forth above, the State of Illinois has been damaged in a substantial amount to be fully determined at trial.

COUNT II
(Violations of the Illinois False Claims Act, 740 ILCS § 175/3(a)(1)(A))
Knowingly Presenting False or Fraudulent Records to the State of Illinois to Induce Payment

65. The Relator re-alleges and incorporates herein by referenced paragraphs 1 through 57 above, as though fully set forth herein.

66. Acting as aforementioned, Thornley knowingly, or acting with deliberate ignorance, or with reckless disregard for the truth, caused false and/or fraudulent claims for payment to be presented to the State of Illinois.

67. Specifically, as set forth above, Thornley input false data into the State's payroll system to effectuate payment to herself for overtime hours she did not earn, submitted false travel vouchers for reimbursement for travel she did not take, and submitted fraudulent claims for reimbursement for golf carts and admission booklets which she used for personal use.

68. By causing the presentment or submission of these false records to the State for payment Thornley caused the State to pay her tens of thousands of dollars in unearned funds and benefits.

69. As a direct and proximate result of Thornley's illegal and fraudulent conduct as set forth above, the State of Illinois has been damaged in a substantial amount to be fully determined at trial.

WHEREFORE, Plaintiff, Relator Emily Fox, on behalf of the People of the State of Illinois, by and through her undersigned counsel, respectfully requests the entry of judgment in against Thornley:

(a) Requiring Thornley to pay, as compensatory damages, an amount equal to the false and fraudulent claims that she submitted for payment to the State of Illinois and for which she received payment;

(b) Requiring Thornley to pay the maximum civil penalty, up to $11,000, for each and every false claim submitted and each false record created;

(c) Awarding the State of Illinois and the Relator all fees and costs of this civil action, including reasonable attorneys' fees;

(d) Awarding the Relator the maximum Relator's share under the Illinois False Claims Act; and

(e) Providing for all such other and further relief as is just and proper under the circumstances.

JURY DEMAND

The Relator hereby demands a jury in this case.

Respectfully Submitted,

EMILY FOX, RELATOR

By: /s/ Robert M. Andalman
One of her attorneys

Robert M. Andalman (ARDC No. [redacted])
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EFILED
7/21/2022 11:15 AM
Paul Palazzolo
7th Judicial Circuit
Sangamon County, IL
2021L 000053

APPEAL TO THE ILLINOIS APPELATE COURT, FOURTH DISTRICT
FROM THE CIRCUIT COURT OF SANGAMON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel., EMILY FOX,	)	
Relator/Appellant,	)	
v.	)	Case No. 21 L 000053
JENNY THORNLEY,	)	Hon. Adam Giganti
Defendant/Appellee.	)	

NOTICE OF APPEAL

NOTICE IS HEREBY GIVEN, pursuant to Illinois Supreme Court Rule 303(a), that Relator Emily Fox, hereby appeals to the Appellate Court of Illinois, Fourth Judicial District, from the Order entered in this cause granting the State of Illinois' Motion to Dismiss (the "Order"). This case was maintained under seal and records were not publicly available until a July 8, 2022, Order by the Circuit Court. Although the Order appealed from was dated March 7, 2022, the parties were not provided a copy of it until two days before the file was unsealed, *i.e.*, on July 6, 2022. Prior to that date and/or the date the case file was made publicly available, the Order had not become effective consistent with Illinois Supreme Court holdings that "'to protect [the interests of the litigants and public] it is necessary that they be apprised that a decision has been made by the judge and what the decision is. They would be so apprised when it has been expressed publicly, in words and at the situs of the case.'" *Granite City Lodge No. 272, Loyal Order of Moose v. Granite City*, 141 Ill. 2d 122, 126 (brackets in original) (1990), citing *People ex rel. Schwartz v. Fagerholm*, 17 Ill. 2d 131, 135-36 (1959).

Copies of the Order and the July 8, 2022, unsealing Order are attached hereto as Exhibits A and B, respectively, and incorporated herein.[1]

WHEREFORE, Relator prays that the Appellate Court reverse the Circuit Court's Order and reinstate the Complaint in this case, allowing the Relator to proceed, and for such other relief as the Court deems necessary and just.

Dated: July 21, 2022

Respectfully Submitted,

EMILY FOX, RELATOR

By: /s/ Robert M. Andalman
One of her attorneys

Robert M. Andalman (ARDC No. [redacted])
randalman@aandglaw.com
Diana Guler (ARDC No. [redacted])
dguler@aandglaw.com
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312-348-7629 (phone)
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[1] Although the Order provided a procedure for unsealing the case in March of 2022, the parties were not apprised at that time and the Clerk did not in fact unseal the docket until after the July 8, 2022, Order was entered.

CERTIFICATE OF FILING AND SERVICE

I, Robert Andalman, an attorney, certify that on July 21, 2022, I electronically filed the foregoing ***NOTICE OF APPEAL*** with the Clerk of the Circuit Court for the Seventh Judicial Circuit, Sangamon County, Illinois by using the Odyssey eFileIL system.

I further certify that on July 21, 2022, the foregoing ***NOTICE OF APPEAL*** was served by email and via the Odyssey eFileIL system on the below named participants:

Eileen E. Boyle Perich (ARDC No. [redacted])
Assistant Attorney General
Office of the Illinois Attorney General
100 West Randolph Street, 11th Floor
Chicago, Illinois 60601
Phone: (773) 590-7089
E-mail: eileen.boyleperich@ilag.gov
Counsel for the State of Illinois

I further certify that on July 21, 2022, the foregoing ***NOTICE OF APPEAL*** was served by certified mail on the below named individual.

Jenny Thornley
[redacted]

Under penalties as provided by law pursuant to section 1-109 of the Illinois Code of Civil Procedure, I certify that the statements set forth in this instrument are true and correct to the best of my knowledge, information, and belief.

/s/ Robert M. Andalman

Robert M. Andalman (ARDC No. [redacted])
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dguler@aandglaw.com
Counsel for Relator, Emily Fox

EXHIBIT

A

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

Suppressed,	)	
	)	
Plaintiff,	)	
	)	
v.	)	Case No. 2021 L 000053
	)	
Suppressed,	)	
	)	
Defendant.	)	

FILED

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Clerk of the Circuit Court

OPINION AND ORDER

This cause is before the Court on a motion to dismiss the complain[redacted]ntiff, the State of Illinois (the "State"), pursuant to the State's authority under the Illinois False Claims Act, 740 ILCS 175/4(c)(2)(A). The relator, Emily Fox (the "Relator"), who filed the complaint, objects to dismissal. The Court has considered the written submissions and oral arguments by the State and the Relator, and for the reasons set forth below, the Court grants the State's motion.

BACKGROUND[1]

On April 9, 2021, the Relator filed a two-count complaint pursuant to the Illinois False Claims Act ("IFCA") under seal and served a copy of the complaint on the State. *See* 740 ILCS 175/4(b)(2). Broadly speaking, the complaint alleges that the defendant, Jenny Thornley ("Thornley"), a former State employee, engaged in resume fraud, timekeeping fraud, travel and expense reimbursement fraud, and worker's compensation fraud during her employment with the Illinois State Police Merit Board (the "Merit Board"). The complaint alleges that Thornley's conduct violates the IFCA.

[1] Given that the State's motion to dismiss arises under 740 ILCS 175/4(c)(2)(A), rather than Section 2-615 of the Code of Civil Procedure, 735 ILCS 5/2-615, the Court is not obligated to accept the allegations of the complaint as true or to avoid consideration of materials outside the scope of the complaint and supporting exhibits. Regardless, the Court's recitation of the Relator's allegations is based on the Relator's complaint, the exhibits to the complaint, and the letter and materials the Relator submitted to the State pursuant to 740 ILCS 175/4(b)(2), all of which are in the record before the Court.

Count I alleges that Thornley violated Section 3(a)(1)(B) of the IFCA by knowingly creating false or fraudulent timekeeping records and travel vouchers that caused the State to pay her unearned overtime and improper reimbursements. Count II alleges that Thornley violated Section 3(a)(1)(A) of the IFCA by knowingly inputting false data into the State's payroll system to obtain payment for overtime hours she did not work, and by submitting fraudulent reimbursement requests for travel that did not occur and items for personal use. Contemporaneous with the filing of the complaint, the Relator also submitted an 8-page disclosure letter to the State and 27 exhibits that the Relator characterized as "substantially all material evidence" about the allegations in the complaint. 740 ILCS 175/4(b)(2).

The Relator worked with Thornley at the Merit Board prior to Thornley's termination from the agency. During the time period relevant to the complaint, the Relator was a Program Director at the Merit Board. The Relator alleges that Thornley defrauded the State in the following ways during her employment with the Merit Board:

1) By falsely representing that she completed two, two-year courses at the University of Illinois-Urbana-Champaign and Robert Morris University (Compl. ¶ 11);

2) By submitting into the State's central payroll system false and unapproved requests for overtime work and pay between 2014 and 2019 (Compl. ¶¶ 24–29);

3) By creating false documents that purported to roll-over unused compensatory time from prior fiscal years and falsely underreporting the compensatory time she was using (Compl. ¶ 23);

4) By submitting false travel vouchers and invoices for reimbursement for trips that Thornley did not take or took for personal reasons only (Compl. ¶¶ 32–33);

5) By submitting false invoices for golf cart rentals and admission booklets to the Illinois State Fair that were used by Thornley's family and friends (Compl. ¶ 35); and

6) By submitting a fraudulent workers' compensation claim in which she alleged a fabricated sexual assault allegation against her boss and misidentified her employer as the Governor's Office (Compl. ¶¶ 42, 27).

Prior to the filing of the complaint, the Merit Board terminated Thornley in July 2020 for the fraud alleged in the complaint. (Compl. ¶ 8; Relator's Disclosure Ltr. at 2, Ex. 27) According to the complaint, concerns about Thornley's timekeeping initially arose in late 2019. (Compl. ¶¶ 3, 51.) At that time, the Merit Board's then-Executive Director, Jack Garcia, initiated an investigation into Thornley's timekeeping. (Compl. ¶ 3.) Garcia, the Relator's supervisor, directed the Relator to assist with that investigation. (Compl. ¶¶ 3, 51.)

According to the complaint, on January 10, 2020, Garcia notified the Office of the Executive Inspector General ("OEIG") that Thornley was engaged in potential misconduct regarding her timekeeping. (Compl. ¶¶ 38–39.) Garcia subsequently made a formal complaint to the OEIG on January 22, 2020, and provided documents in support of his complaint at that time. (Relator's Disclosure Ltr. at 5, Ex. 10.) Among other things, Garcia's complaint to the OEIG alleged that Thornley had submitted fraudulent overtime requests and forged Garcia's signature on the paperwork purportedly approving those requests. (Relator's Disclosure Ltr., Ex. 10, Jan. 24, 2020 Illinois State Police Investigative Report.)

Subsequent to Garcia's January 22, 2020 complaint to the OEIG, Thornley accused Garcia of sexual assault. (Compl. ¶ 42; Relator's Disclosure Ltr. at 5.) On January 31, 2020, Thornley initiated a worker's compensation claim in which she reported that Garcia had groped her breast at the Merit Board's Springfield office on January 23, 2020. (Relator's Disclosure Ltr., Ex. 15.) The next day, February 1, 2020, Thornley detailed the assault accusation in an interview with attorneys from the Governor's Office, including the Governor's General Counsel. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 42.)

After learning of the assault allegation, the Governor's General Counsel recommended to the Merit Board that Garcia be placed on administrative leave, and that the Merit Board hire an

outside law firm, McGuireWoods LLP, to conduct an investigation of both the assault allegation against Garcia and the timekeeping misconduct allegations against Thornley. (Compl. ¶¶ 3, 42, 49.) The Merit Board implemented both recommendations.

Between February 2020 and July 2020, McGuireWoods conducted dozens of interviews regarding both sets of allegations against Garcia and Thornley, respectively. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 1.) In conducting its investigation, McGuireWoods looked into every instance of alleged timekeeping fraud by Thornley in 2019. The firm also investigated Thornley's alleged resume fraud. On July 19, 2020, McGuireWoods sent its 94-page final report to the Merit Board. That report reached two conclusions: (1) that there was sufficient evidence to support the fact that Thornley caused payments to herself for overtime she did not work; and (2) there was insufficient evidence to support a finding that Garcia sexually assaulted Thornley. (Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 1.)

Although Thornley had been placed on administrative leave in February 2020, she was terminated from the Merit Board after McGuireWoods completed its investigation in July 2020. (Relator's Disclosure Ltr., Ex. 27, July 21, 2020 Termination Ltr.; Relator's Disclosure Ltr., Ex. 12, McGuireWoods Report, at 12-13.)

On September 23, 2020, after learning that Thornley was temporarily receiving worker's compensation benefits based on her claim regarding the alleged sexual assault, the Relator filed a complaint with the OEIG accusing Thornley of worker's compensation fraud. (Relator's Disclosure Ltr., Exs. 17, 18; Compl. ¶ 54.) On December 15, 2020, the OEIG referred the Relator's complaint back to the Merit Board for "whatever action [the Executive Director] deem[s] appropriate." (Relator's Disclosure Ltr., Ex. 18.)

The Relator filed this action under seal on April 9, 2021. After being served with the complaint and the Relator's disclosures pursuant to 740 ILCS 175/4(b)(2), the Attorney General's Office, on behalf of the State, conducted an investigation and review of the Relator's IFCA claims. While that investigation was ongoing, on September 22, 2021, the State, acting through the State Appellate Prosecutor's Office, obtained a seven-count criminal indictment against Thornley accusing her of forgery, theft, and official misconduct based on her alleged timekeeping fraud during her employment with the Merit Board. The criminal indictment against Thornley remains pending.

On December 7, 2021, the State, acting through the Attorney General's Office, filed the present motion to dismiss pursuant to the State's authority under 740 ILCS 175/4(c)(2)(A). The motion has been fully briefed and the Court held a hearing on the motion on February 15, 2022.

LEGAL STANDARD

The IFCA gives the State broad discretion to dismiss false claims cases. *Scachitti v. UBS Financial Services,* 215 Ill. 2d 484, 512 (2005). This is true even if the relator objects to the dismissal. *Id.* ("Most critically, the Attorney General has authority to dismiss or settle the action at any time, despite the objections of the *qui tam* plaintiff."). The Appellate Court has confirmed that "'it is the state's prerogative to decide which case to pursue, not the court's.'" *State ex rel. Schad, Diamond & Shedden, P.C. v. QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 21 (quoting *State ex rel. Beeler, Schad & Diamond, P.C. v. Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d 507, 517 (1st Dist. 2006)). If the State exercises its prerogative to dismiss the action, the relator must be "notified by the State of the filing of the motion" and afforded "an opportunity for a hearing on the motion" before the court. 740 ILCS 175/4(c)(2)(A). Illinois courts are not permitted to second-guess the State's decision to dismiss, *QVC, Inc.*, 2015 IL App (1st) 132999, ¶ 14, but

rather must presume that the State is acting in good faith. 740 ILCS 175/4(c)(2)(A); *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517.

The only exception to the State's broad discretion to dismiss a false claims case is if there is "glaring evidence of fraud or bad faith" by the State in seeking dismissal. *Burlington Coat Factory*, 369 Ill. App. 3d at 517.

ANALYSIS

The State has moved to dismiss the Relator's complaint based on its broad discretion under the IFCA to oversee the claims brought in the State's name under that statute. *Scachitti*, 215 Ill. 2d at 512. When presented with such a motion, the Court's role is not to "second guess the State's decision to dismiss by conducting an inquiry into the State's motivations." *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. The only requirements prior to dismissal are that the Relator be "notified by the State of the filing of the motion [to dismiss]" and be provided with "an opportunity for a hearing on the motion." 740 ILCS 175/4(c)(2)(A). In this case, the Court finds that these two requirements have been satisfied. The State notified the Relator of its motion to dismiss filing on December 7, 2021, and the Court conducted a hearing on the motion on February 15, 2022.

The Relator objects to dismissal, but the IFCA is clear that the State may obtain dismissal over a relator's objection. *Id.* The Relator has also not identified the type of "glaring evidence of fraud or bad faith" required for the Court to override the State's broad prosecutorial discretion over IFCA claims. *Burlington Coat Factory*, 369 Ill. App. 3d at 517.

The Relator's response to the State's motion to dismiss cites allegations about purported "complicity" by the Governor's Office in Thornley's alleged fraud, specifically, her temporary receipt of worker's compensation benefits during and for a period after the McGuireWoods investigation. (Resp. at 1–2; Compl. ¶¶ 46–48.) The Relator alleges that Thornley's claimed

personal connections to the Governor and the Governor's wife led to special handling of Thornley's worker's compensation claim, which, in Relator's view, was based on a fabricated sexual assault allegation. (Compl. ¶¶ 2–4, 46–48.) The Relator claims that she has raised "disturbing evidence of State complicity in [Thornley's] conduct at the highest levels of State government, supporting the conclusion that the State's motion is not, in fact, in good faith." (Resp. at 13.)

The Relator's allegations of "complicity" are not sufficient to override the presumption of good faith that the Court must afford to the State's decision to seek dismissal. *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. As an initial matter, the Relator's allegations relate exclusively to the Governor's Office and purported intervention regarding Thornley's worker's compensation claim. None of these allegations speak to the decision by the Attorney General's Office, as counsel for the State, to seek dismissal of the Relator's IFCA claims.

At most, the Relator has offered mere speculation that the Attorney General's Office is "succumbing to political pressure" to seek dismissal of this case. (Resp. at 10.) The Illinois Appellate Court has held, however, that "glaring evidence," not mere speculation, is necessary for a court to override the State's decision to seek dismissal of IFCA claims. *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517. The Relator in this case has not produced evidence that the Governor's Office even knows about the Relator's complaint at this point. As required by the IFCA, the complaint was filed under seal and disclosed to the Court and the Attorney General's Office. 740 ILCS 175/4(b)(2). The Court cannot infer without evidence that the Attorney General's Office is "succumbing to political pressure" from the Governor's Office to dismiss a case that the Governor's Office may not even be aware of at this point. (Resp. at 10.)

The Attorney General's Office has also identified multiple credible reasons why it seeks dismissal in this case. Specifically, the Attorney General's Office has identified multiple points at which the State learned of the allegations against Thornley prior to the filing of the Relator's complaint. The complaint itself acknowledges that Thornley was investigated for timekeeping misconduct by a law firm retained by the Merit Board and terminated based on the law firm's findings in July 2020—ten months prior to the filing of Relator's complaint. (Compl. ¶¶ 30–31.) The State's prior knowledge of the allegations against Thornley means that the complaint is potentially subject to the public disclosure bar under the IFCA. 740 ILCS 175/4(e)(4)(A).

The Relator has countered that she is an "original source" of the allegations against Thornley because of the Relator's role in assisting the Merit Board's Executive Director, Jack Garcia, uncover some of the initial evidence regarding Thornley's alleged overtime fraud. (Compl. ¶ 50.) The Court does not need to resolve, however, whether the Relator is in fact an "original source" within the meaning of the IFCA. The State need not definitively establish that an IFCA complaint is legally defective in order to exercise its prosecutorial discretion to dismiss. The State is not in the position of a defendant seeking to defeat a plaintiff's claim; the State is the plaintiff in an IFCA case, 740 ILCS 175/4(b)(1), and can decide for itself whether to pursue the claims brought in its name, *id.* § (c)(2)(A). While not a prerequisite for dismissal, the fact that the State has raised a fair question about a potential legal defect in the complaint tends to undercut the Relator's contention that the State is acting fraudulently or in bad faith in seeking dismissal.

In addition to the public disclosure bar, the State has also pointed out that Thornley's worker's compensation claim is the subject of an ongoing administrative proceeding in which the State is a party: *Thornley v. State*, Case No. 20WC025256. That proceeding, which began in October 2020, predates the filing of the complaint. The State has asserted that the Relator's

allegations regarding Thornley's worker's compensation claim are precluded by the IFCA's government action bar because those allegations are "the subject of a civil suit or an administrative money penalty proceeding in which the State is already a party." 740 ILCS 175/4(e)(3). At the hearing on the State's motion, the Relator noted that Thornley herself initiated the administrative proceeding after her termination from the Merit Board. It is not clear, however, that this fact alters the applicability of 740 ILCS 175/4(e)(3), which refers to the State being a "party" without any requirement that the State be the plaintiff or the initiating party in the administrative proceeding. Here again, the Court need not resolve whether the government action bar applies to the Relator's claims. The relevant point is that the State's identification of a credible potential defect with the complaint undercuts the Relator's ability to show "glaring evidence of fraud or bad faith." *Burlington Coat Factory Warehouse Corp.*, 369 Ill. App. 3d at 517.

In addition to potential legal defects with the Relator's complaint, the State has also identified additional reasons why it is seeking dismissal. The State notes that the allegations in the complaint overlap significantly with the seven-count criminal indictment against Thornley currently pending before this Court in *State v. Thornley*, Case No. 2021-CF-811. The State points out that if convicted, Thornley could be required to pay restitution to the State for her alleged overtime and travel and expense reimbursement fraud. *See* 730 ILCS 5/5-5-6(f). The State contends that the potential availability of restitution against Thornley in her criminal case makes the Relator's IFCA claims duplicative and unnecessary to make the State whole. The Relator responds that the existence of a parallel criminal case does not preclude civil claims under the IFCA. While that may be true, it is well within the State's prosecutorial discretion under the IFCA to decide that an IFCA civil action on top of a criminal action against the same defendant for the same underlying conduct is duplicative and an inefficient use of the State's resources.

The State has also identified recent debt collection actions naming Thornley that, in the State's view, raise concerns about whether any monetary judgment obtained through this IFCA action would ultimately be collectable. The inability to collect a judgment is also a legitimate factor for the State to weigh in the exercise of its prosecutorial discretion. Given that Thornley has been terminated from her job, indicted, and faces debt collection proceedings, it is not an unreasonable exercise of prosecutorial discretion to decide against protracted IFCA litigation in these circumstances.

The State has also expressed concern about inviting IFCA litigation any time a State employee is caught lying about their timekeeping or work expenses. The State points out that other enforcement mechanisms exist to punish this type of misconduct—termination, criminal prosecution, investigations and proceedings under the State Officials and Employees Ethics Act, 5 ILCS 430/20-50—and that the State prefers to focus its limited IFCA enforcement resources on high-value cases. The setting of enforcement priorities and the allocation of resources in accordance with those priorities is core to the prosecutorial discretion vested in the executive branch. The Relator may disagree with those enforcement priorities or how they apply to this case, but it is not the Court's role to intrude on the State's prosecutorial discretion.

Lastly, the Relator urges the Court to apply a subset of federal cases considering the federal False Claims Act that infer a substantive due process limitation on the government's ability to dismiss claims under the False Claims Act. The Court notes that Relator has not identified any cases from Illinois courts applying this analysis to the IFCA. Regardless, the Court need not decide whether there is a substantive due process limitation, grounded in the U.S. Constitution, on the State's ability to dismiss an IFCA claim. Even if the Court applied this substantive due process analysis in the present case, the result would not change. The bar for establishing a substantive due

process violation based on a discretionary executive action is extremely high. According to the U.S. Court of Appeals for the Seventh Circuit, the executive action must "shock the conscience," "offend even hardened sensibilities," or come "too close to the rack and the screw to permit of constitutional differentiation." *United States ex rel. CIMZNHCA, LLC v. UCB, Inc.*, 970 F.3d 835, 852 (7th Cir. 2020) (quoting *County of Sacramento v. Lewis*, 523 U.S. 883, 846 (1998); *Rochin v. California*, 342 U.S. 165, 172 (1952)). The State's decision to seek dismissal in this case does not approach this high standard.

CONCLUSION

The IFCA affords the State substantial prosecutorial discretion over what claims may be brought in the State's name. The State has exercised its discretion to seek dismissal of this case. The Relator objects to the State's dismissal request, but the IFCA permits dismissal at the State's request over the Relator's objection. The Relator has not offered the "glaring evidence of fraud or bad faith" required for this Court to override the State's prosecutorial discretion. *Burlington Coat Factory*, 369 Ill. App. 3d at 517. The Court grants the State's motion to dismiss the complaint pursuant to 740 ILCS 175/4(c)(2)(A).

Accordingly, IT IS HEREBY ORDERED:

(1) the State's Motion to Dismiss is granted;

(2) Relator's Complaint is dismissed with prejudice;

(3) the State is granted 14 days, from the date this Order is entered, to (a) file redacted copies of any exhibits or documents containing personal identity information in compliance with Illinois Supreme Court Rule 138 and (b) submit a list of all documents in the Court file that can be unsealed and made public to the Sangamon County Circuit Clerk; and

(4) the Sangamon County Circuit Clerk is directed to unseal and make public the documents identified by the State in 3(b).

ENTERED: MARCH 7, 2022

[redacted]

Circuit Judge Adam Giganti
Circuit Court of Sangamon County

EXHIBIT

B

FILED

JUL 08 2022

38

[redacted] Clerk of the Circuit Court

IN THE CIRCUIT COURT FOR THE SEVENTH JUDICIAL CIRCUIT
SANGAMON COUNTY, ILLINOIS

PEOPLE OF THE STATE OF ILLINOIS ex rel., EMILY FOX,

Plaintiff,

v.

JENNY THORNLEY,

Defendant.

Case No: 2021-L 53

ORDER

The court orders the entire court file be unsealed. Furthermore, pursuant to the April 11, 2022 Order, all agreed-upon redacted exhibits shall be substituted for those that had previously been filed under seal.

DATED: July 8, 2022

Enter: [redacted]

Adam Giganti, *Circuit Court Judge*

No. 4-22-0622

IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

PEOPLE OF THE STATE OF ILLINOIS ex rel., EMILY FOX Relator/Appellant State of Illinois/Appellee v. JENNY THORNLEY Defendant	)	Appeal from the Circuit Court of the Seventh Judicial Circuit, Sangamon County, Illinois Circuit Court No. 21 L 000053 Hon. Adam Giganti, Judge Presiding

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IN THE APPELLATE COURT OF ILLINOIS
FOURTH JUDICIAL DISTRICT

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CERTIFICATE OF COMPLIANCE

I certify that this brief conforms to the requirements of Rules 341(a) and (b). The length of this brief, excluding the pages or words contained in the Rule 341(d) cover, the Rule 341(h)(1) table of contents and statement of points and authorities, the Rule 341(c) certificate of compliance, the certificate of service, and those matters to be appended to the brief under Rule 342(a), is 30 pages and 9,237 words.

Dated: October 25, 2022

/s/Robert M. Andalman
Robert M. Andalman
Counsel for Relator-Appellant, Emily Fox

NOTICE OF FILING AND CERTIFICATE OF SERVICE

I, Robert Andalman, an attorney, certify that on October 25, 2022, I electronically filed the foregoing ***BRIEF AND APPENDIX OF RELATOR-APPELLANT EMILY FOX*** with the Clerk of the Court for the Illinois Appellate Court, Fourth Judicial District, by using the Odyssey eFileIL system.

I further certify that on October 25, 222 the foregoing ***BRIEF AND APPENDIX OF RELATOR-APPELLANT EMILY FOX*** was served by email and via the Odyssey eFileIL system on the below named participants:

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