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Exhibit A

Investigative Report of Investigating Grand Jury 30

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March 4, 2022 Order of the Honorable Kai N. Scott, of the Court of
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Exhibit C

Certificate of Compliance with Pa.R.A.P. 127

Exhibit D

Certificate of Compliance with Pa.R.A.P. 1603(e)

STATEMENT OF JURISDICTION

Pursuant to 42 Pa.C.S. § 722(5), the Supreme Court of Pennsylvania has exclusive jurisdiction of appeals from final orders of the court of common pleas in matters relating to the “convening, supervision, administration, operation or discharge of an investigating grand jury” or where the matter “directly affects such a grand jury or any investigation conducted by it.” *See also* Pa.R.A.P. 702(c) (providing that all petitions for specialized review under Pa.R.A.P. 1611 relating to the supervision of special prosecutions or investigations shall be filed in the Supreme Court).

NAME OF THE PARTY SEEKING REVIEW

This petition is filed on behalf of

[REDACTED]

[REDACTED]

who is identified in the investigating grand jury

report at issue as

[REDACTED]

ORDER IN QUESTION

Petitioner is seeking review of the following two Orders, which was entered by the Honorable Kai N. Scott, of the Court of Common Pleas of Philadelphia County, Supervising Judge of the Thirtieth County Investigating Grand Jury:

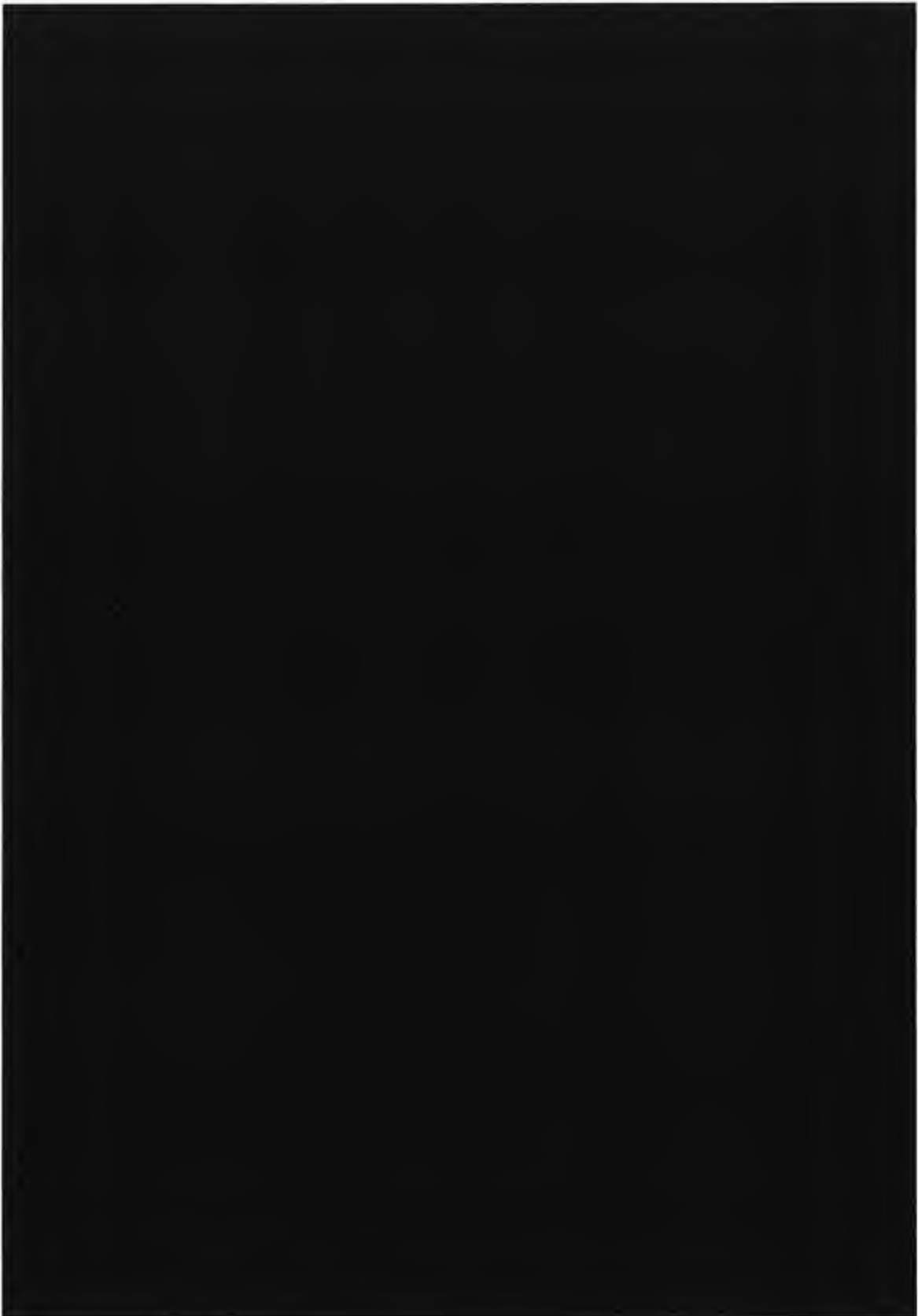
“AND NOW, this 4th day of March, 2022, it is hereby ORDERED that the within Unsealing Order and Exhibit A attached thereto shall be filed with the Clerk of Court under seal, and shall remain under seal until March 14, 2022, unless otherwise ordered by this Court or an appellate court.”

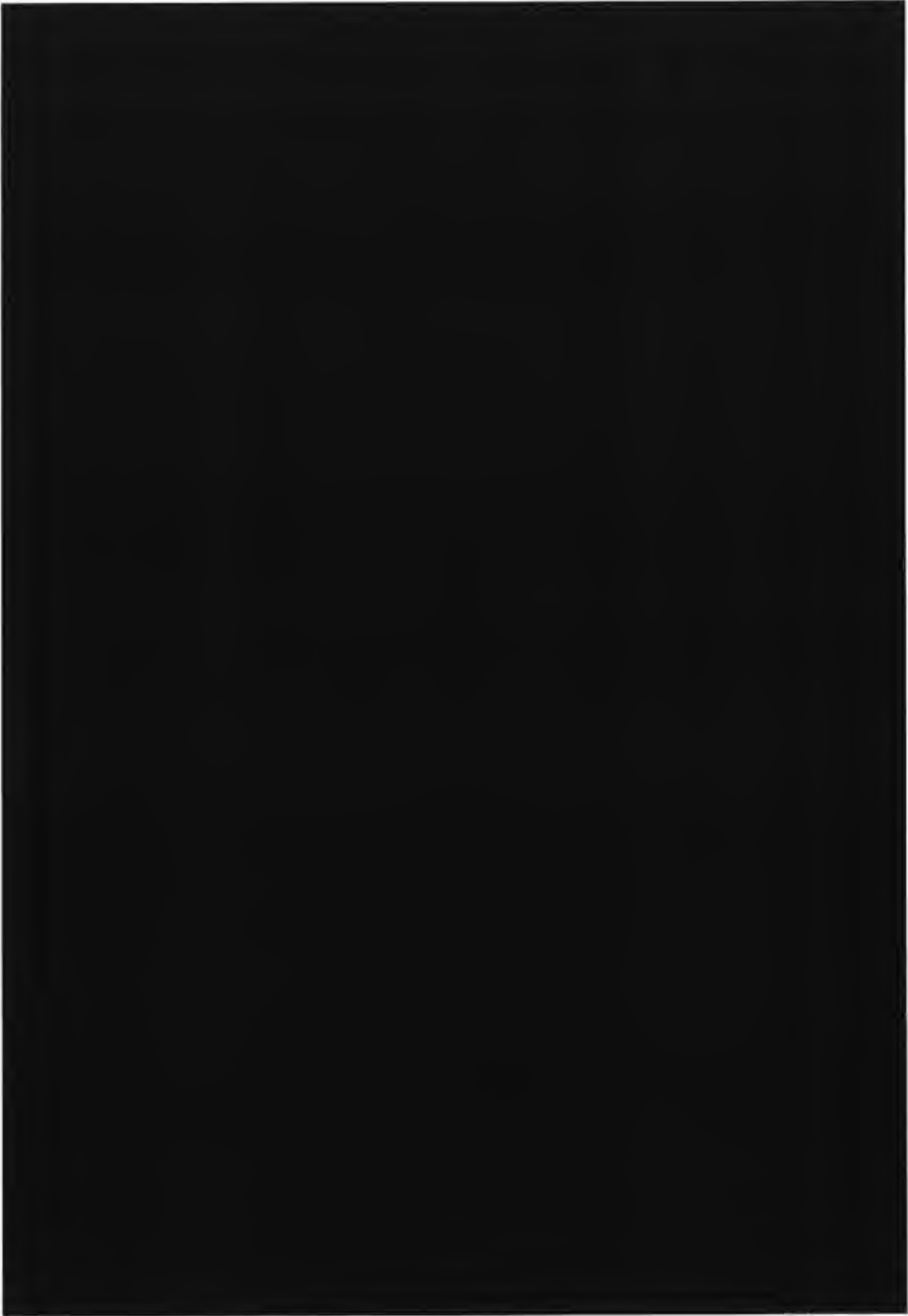
“AND NOW, this 4th day of March, 2022, it is hereby ORDERED that: Effective March 14, 2022, Report No. 2 of the Thirtieth County Investigating Grand Jury is UNSEALED, with such redactions and alterations as were previously ordered by the Court and are reflected in Exhibit A attached hereto.”

The Court’s Order is docketed below at Misc. No. 0008094-2018.

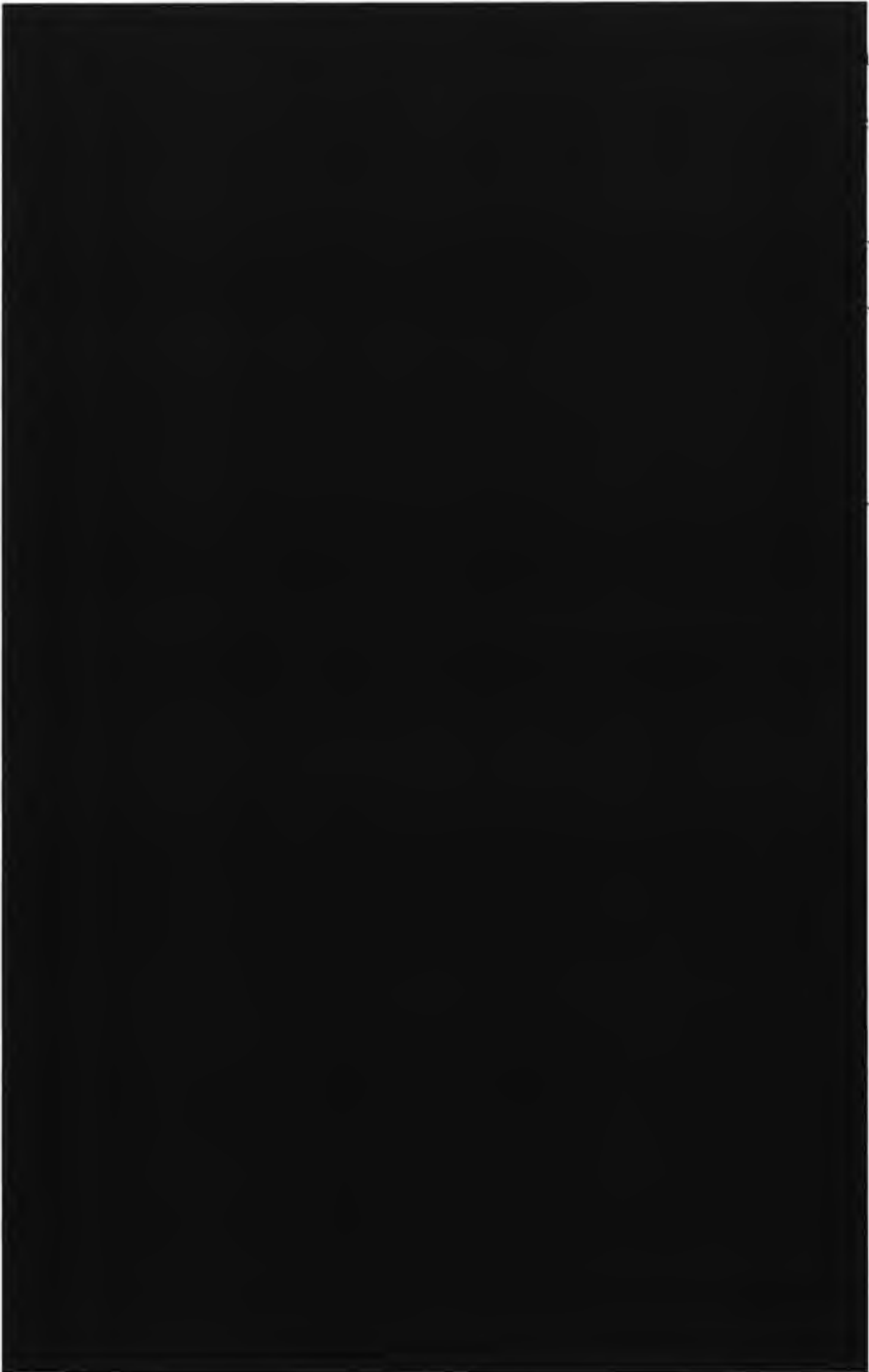
CONCISE STATEMENT OF THE CASE













Court of Common Pleas Judge Kai N. Scott, Supervising Judge of the Thirtieth County Investigating Grand Jury, permitted [REDACTED] [REDACTED] to submit a written response to the draft report. On July 19, 2021, [REDACTED] submitted [REDACTED] response to the court, along with a brief from [REDACTED] attorney, Gregory J. Pagano, Esquire, which raised three legal objections to the publication of the grand jury's report: (1) the report did not fall within the statutory definition of an "investigating grand jury

report” set forth at 42 Pa.C.S. § 4542; (2) publication of the report would irreparably harm and infringe on [REDACTED] constitutional right to [REDACTED] reputation; and (3) the conclusions reached by the grand jury’s report were not supported by the preponderance of the evidence. The Commonwealth then filed a responsive brief in which it opposed [REDACTED] [REDACTED] motion to seal the grand jury’s report.

Between August 2021 and February 2022, Judge Scott held several hearings with respect to how the report should be redacted in the event that the report was released for publication.

On March 4, 2022, Judge Scott issued a final order in which she decreed that the report, presently under seal, would be released for publication on March 14, 2022. As a result, [REDACTED] represented by counsel, has filed this Petition for Specialized Review in accordance with the requirements of Pa.R.A.P. 1611.

QUESTIONS PRESENTED

1. Did the supervising judge err by ordering the public release of the investigating grand jury report of the Thirtieth County Investigating Grand Jury because the Report does not meet the statutory definition of an investigating grand jury report as that term is defined pursuant to 42 Pa.C.S. § 4542?

2. Did the supervising judge err in concluding that the findings in the report were supported by a preponderance of the evidence where the facts and testimony presented to the grand jury were manipulated and grossly distorted to support the Commonwealth's theory that [REDACTED]

[REDACTED] engaged in a cover-up or otherwise obstructed [REDACTED]
[REDACTED]

3. Does the publication of the report violate [REDACTED] constitutional right to protection of [REDACTED] reputation where the report contains conclusions that are unsupported by the preponderance of the evidence and where the redactions fail to meaningfully protect [REDACTED] identity?

**CONCISE STATEMENT OF REASONS WHY THE
TRIAL COURT ERRED**

I. THE SUPERVISING JUDGE ERRED BY ORDERING THE PUBLIC RELEASE OF THE INVESTIGATING GRAND JURY REPORT OF THE THIRTIETH COUNTY INVESTIGATING GRAND JURY BECAUSE THE REPORT DOES NOT MEET THE STATUTORY DEFINITION OF AN INVESTIGATING GRAND JURY REPORT AS THAT TERM IS DEFINED PURSUANT TO 42 PA.C.S. § 4542.

The Grand Jury Report of Investigating Grand Jury 30 at issue in the case *sub judice* is captioned [REDACTED]

[REDACTED] The stated objective of the report, as set forth in the document's introduction and reflected in its title, is to chronicle and examine the circumstances of [REDACTED], identify shortcomings in the [REDACTED] and apportion blame for [REDACTED] and the "failed" [REDACTED] that ensued. Because the report's express, stated purpose is to identify the responsibility of various parties for an [REDACTED], the grand jury's report in this case does not satisfy the statutory definition of an "investigating grand jury report" and, accordingly, because the grand jury lacked authority to adopt the report, the supervising judge erred when she ordered the document's public release.

The Investigating Grand Jury Act ("IGJA") authorizes grand juries to engage in two investigative functions: (1) to "inquire into offenses against

the criminal laws of the Commonwealth” and issue a presentment; and (2) to submit to the supervising judge of the grand jury an investigating grand jury report. 42 Pa.C.S. §§ 4548(a),(b); 42 Pa.C.S. § 4552.

The term “investigating grand jury report” is defined by the IGJA as follows:

[A] report submitted by the investigating grand jury to the supervising judge regarding conditions related to organized crime or public corruption or both; or proposing recommendations for legislative, executive, or administrative action in the public interest based upon stated findings.

42 Pa.C.S. § 4542. Thus, to qualify as an “investigative grand jury report” within the meaning of the statute, a report must pertain to either organized crime or public corruption or must propose recommendations for legislative, executive, or administrative action in the public interest.

The report at issue here unquestionably does not relate to either organized crime or public corruption. While the Commonwealth has argued that [REDACTED] obstructed the [REDACTED] into [REDACTED] [REDACTED] and therefore constitutes corruption, the term “public corruption” requires a public employee to engage in *unlawful* activity under color of law or connected to his or her public employment.¹ Because the [REDACTED]

¹ The IGJA defines “public corruption” as “[t]he unlawful activity under color of or in connection with any public office or employment of: (1) any public official or public employee, or the agent of any public official or public employee under color of or in

that were the subject of the report were *required* to [REDACTED]

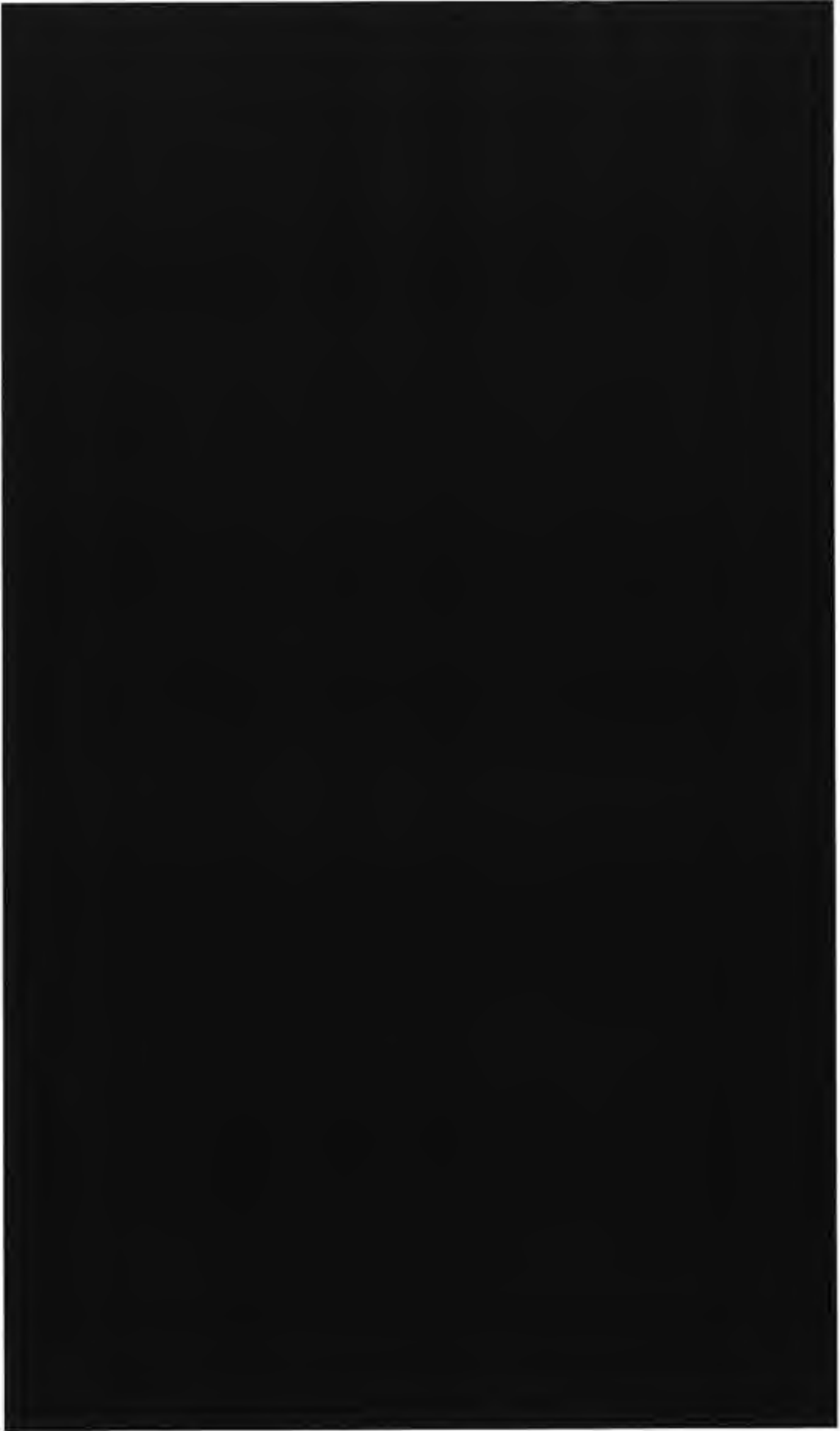
[REDACTED] their actions were not unlawful, and thus the report does not in any way relate to public corruption.

Accordingly, the only way for the Thirtieth County Grand Jury Report at issue here to qualify as an authorized “investigative grand jury report” under the IGJA is if the report proposes recommendations for legislative, executive, or administrative action in the public interest.

As set forth in some detail above, however, this is not the stated justification or purpose of the report, which plainly provides that its unequivocal purpose is to apportion blame for [REDACTED] [REDACTED]. While the report admittedly makes some public policy suggestions for [REDACTED], it is clear that these recommendations were added as an afterthought based on the report’s content, length and structure. The introduction to the report, which sets out the objectives and organization of the document, explains that the report is divided into three sections. Not one of these three main sections addresses legislative, executive, or administrative action in the public interest. To quote directly from the report:

[REDACTED]

connection with any public office or employment; or (2) any candidate for public office or the agent of any candidate for public office.” 42 Pa.C.S. § 4542.





[REDACTED]

Nowhere in the report's comprehensive preamble or detailed summary of its contents does it address the issue of policy recommendations or administrative action. In fact, although the report itself is 107-pages long (not counting the appendix), the description of the circumstances of [REDACTED], the documentation of the subsequent investigations and the assignment of blame constitute 100 of the 107 pages (or more than 93% of the report's content). Of the seven pages allotted for the section entitled "Status of Investigation & Next Steps/Recommendations" (which the drafters of the report did not see fit to even mention in the document's introduction and statement of purpose) a total of four paragraphs arguably contain administrative recommendations in that they suggest [REDACTED]

[REDACTED]. These suggestions, however, include no specific recommendations. The bulk of the seven pages allotted to this section of the report instead attempts to explain and excuse how the [REDACTED]

[REDACTED]

[REDACTED]

Clearly, the IGJ 30 Report provides some long-awaited answers for the

[REDACTED]

[REDACTED]

However, where, as here, the primary purpose of a grand jury report is to provide relief for an individual or specific victims when a criminal prosecution is not possible, this Court has determined that such a report will not automatically be found to fall within the statutory definition of an “investigating grand jury report” just because it contains some proposed executive or administrative actions.

In *In re Grand Jury Investigation 18*, 224 A.3d 326 (Pa. 2020), this Court examined whether a grand jury report related to an investigation concerning allegations of sexual abuse by the petitioner upon numerous children over a period of 40 years fell within the statutory definition of a grand jury report pursuant to 42 Pa.C.S. § 4542. This Court held that because the report clearly did not relate to organized crime or public corruption, it was

[REDACTED]

required to consider whether the report “propose[d] recommendations for legislative, executive, or administrative action in the public interest.” *Id.*, 224 A.3d at 332. The Court noted that while the grand jury’s recommendations proposed executive or administrative action, when those recommendations were read in the context of the report as a whole, they could not bring the report within the purview of the statutory definition because the recommendations were not directed at broad-based legislative, executive, or administrative action. The Court explained:

“...[T]he recommended actions focus exclusively on: (1) punishing a specific person for alleged criminal conduct for which the person cannot be tried due to the running of the relevant statutes of limitation; and (2) providing resources and catharsis to the victims of these alleged crimes. To be clear, that is not to say that the public does not have some generalized public interest in governmental action that brings healing to victims of unspeakable abuse. However, it is not “in the public interest,” as contemplated by the Act, to utilize an investigating grand jury report to mete out punishment or provide relief for specific victims of unproven, albeit serious crimes when the traditional means of bringing an individual to justice – *e.g.*, criminal prosecution – are otherwise unavailable.

Id., 224 at 332. As the *Grand Jury Investigation 18* case makes clear, context is important in determining whether a report satisfies the statutory criteria for an investigative grand jury report. If the purpose of an investigation is to attain justice for a specific individual or group of individuals because a criminal prosecution is not possible, a grand jury’s report will not fall within

42 Pa.C.S. § 4542's definition of an investigating grand jury report simply because the report happens to mention in passing proposals for reform.

And yet that is the exact scenario in this case. After Investigating Grand Jury [REDACTED] was unable to conclude its investigation into [REDACTED] [REDACTED] with an indictment or a report, Investigating Grand Jury [REDACTED] attempted to pick up where the previous grand jury had left off and strived to bring closure to [REDACTED]. While this was a laudable endeavor, the grand jury's report identifying the responsibility of various parties for [REDACTED] does not fall within the purview of the IGJA just because the report's drafters tacked on a couple of paragraphs of generalized recommendations at the end of the document. Accordingly, petitioner respectfully submits that the grand jury lacked the authority to adopt the report under the law, and that the supervising judge therefore erred when she ordered the document's public release.

II. THE SUPERVISING JUDGE ERRED IN CONCLUDING THAT THE FINDINGS IN THE REPORT WERE SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE WHERE THE FACTS AND TESTIMONY PRESENTED TO THE GRAND JURY WERE MANIPULATED AND GROSSLY DISTORTED TO SUPPORT THE COMMONWEALTH'S THEORY THAT [REDACTED] ENGAGED IN A COVER-UP OR OTHERWISE OBSTRUCTED [REDACTED]

The supervising judge also erred when she determined that the findings contained in the report were supported by a preponderance of the evidence.³ In fact, as shown by the contents of the report itself, several of the grand jury's particularized findings are squarely *refuted* by the evidence. For this reason, too, the supervising judge erred in ordering the publication of the grand jury's report.⁴

A preponderance of the evidence standard is tantamount to a more likely than not inquiry. *Pennsylvania Department of Labor and Industry v.*

³ Petitioner recognizes that the legislature has determined that the preponderance of the evidence standard applies to grand jury matters. However, should this Court grant [REDACTED] petition and permit [REDACTED] to file a brief, petitioner requests permission to also address the question of whether this standard is constitutionally sufficient in light of the one-sided nature of grand jury proceedings and the attendant risk to an unindicted individual's reputation posed by grand jury proceedings. Additionally, petitioner requests permission to brief and address the related issue of whether the Grand Jury Act is unconstitutional in that it permits the issuance of a report without meaningful safeguards such as the opportunity to cross-examine witnesses or present a defense.

⁴ Judge Scott did not issue a written opinion or make express findings of fact or conclusions of law with respect to application of the preponderance of evidence standard to the findings in the grand jury's report.

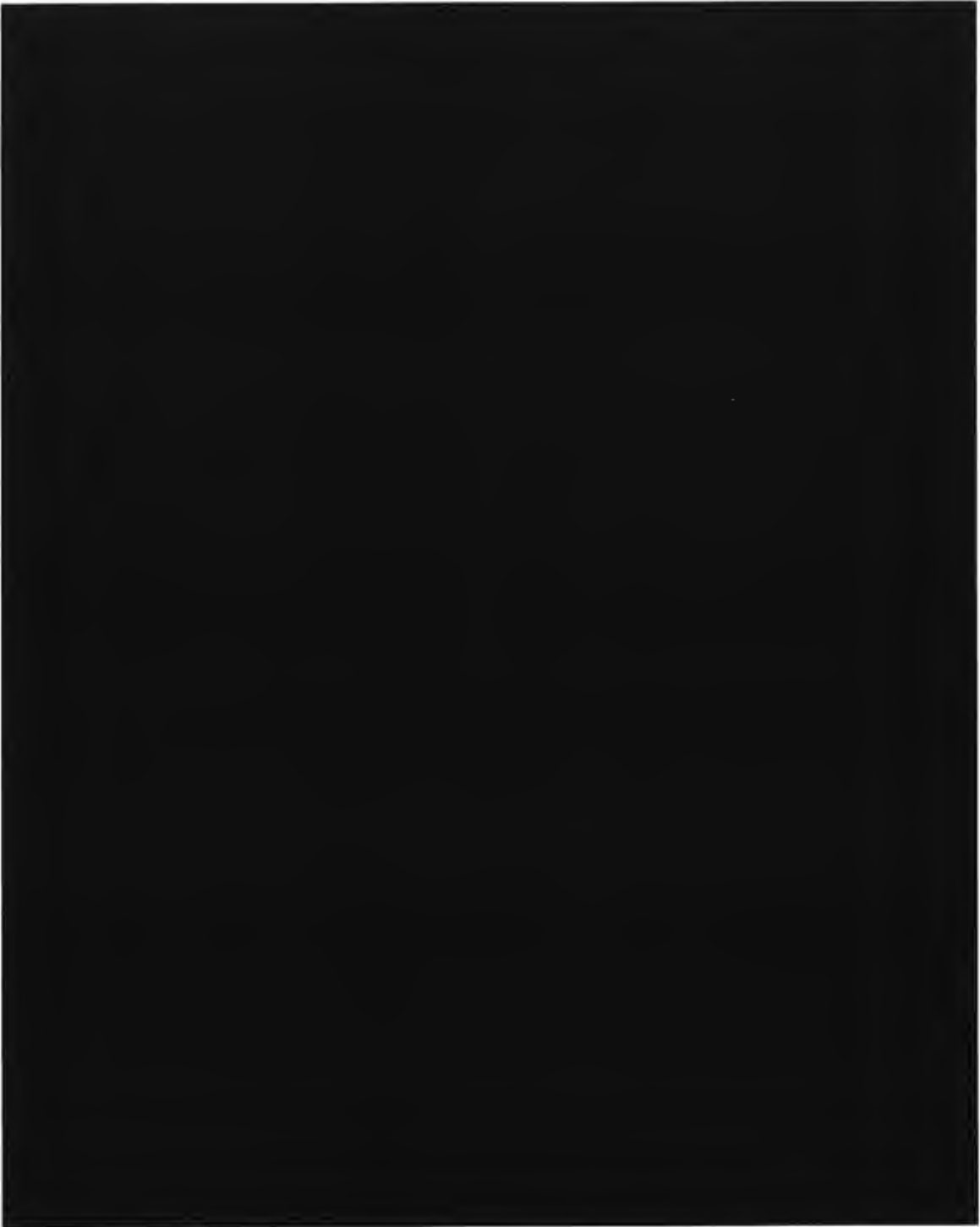
Darlington, 234 A.3d 865 (Pa. Commw. Ct. 2020). A preponderance of the evidence is such evidence as leads a fact-finder to find the existence of a contested fact is more probable than its non-existence. Alternatively, a “preponderance of the evidence standard is defined as the greater weight of the evidence, *i.e.*, to tip a scale slightly is the criteria or requirement for preponderance of the evidence.” *K.B. v. Tinsley*, 208 A.3d 123, 128 (Pa. Super. 2019).

The contents of the IGJ 30 Report show that that the grand jury’s particularized findings of criminal conduct are not supported by even a preponderance of the evidence. For example, the report concludes that several [REDACTED] participated in a cover-up and [REDACTED]. In support of this claim, the report explains:

[REDACTED]

[REDACTED] In fact, the report shows that an investigation into

[REDACTED]



[REDACTED] is flatly contradicted by the evidence presented to the grand jury, and thus the report's finding that [REDACTED] intentionally acted to obstruct [REDACTED] is not supported by a preponderance of the evidence.

The report is replete with other instances of unsupported accusations of

[REDACTED] For example, in another section of the report, the grand jury speculates that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

As this excerpt from the report makes clear, the grand jury [REDACTED]

[REDACTED]

The suggestion that [REDACTED]

[REDACTED] is not supported by the evidence that was

presented to the grand jury. In fact, the evidence squarely disproves this theory. The fact that the report nonetheless suggests that this evidence points to [REDACTED] involvement in a cover-up shows that the grand jury's findings are plainly not supported by a preponderance of the evidence, and lends credence to the Supreme Court's observation that safeguards are needed to protect the publicly accused from a grand jury that is not bound by the rules of evidence that normally protect the accused from baseless or prejudicial information. *See Costello v. United States*, 350 U.S. 359, 360 (1956) ("The grand jury can hear any rumor, tip, hearsay, or innuendo it wishes, in secret, with no opportunity for cross-examination"). *See also In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 574 (Pa. 2018) (finding that the preponderance standard "can be too effortlessly satisfied in the grand jury setting, where the evidence is controlled by a single presenter – the attorney for the Commonwealth – free from any requirement to adduce legally competent evidence, or exculpatory proofs").

**III. PUBLICATION OF THE REPORT VIOLATES [REDACTED]
[REDACTED]'S CONSTITUTIONAL
RIGHT TO PROTECTION OF [REDACTED] REPUTATION WHERE
THE REPORT CONTAINS CONCLUSIONS THAT ARE
UNSUPPORTED BY THE PREPONDERANCE OF THE
EVIDENCE AND WHERE THE REDACTIONS FAIL TO
MEANINGFULLY PROTECT [REDACTED]
[REDACTED]**

As discussed at length in the preceding section, IGJ Report 30 contains baseless accusations of criminal conduct made against [REDACTED] [REDACTED] and other [REDACTED] are not supported by a preponderance of the evidence. Despite the fact that an [REDACTED]

[REDACTED]

[REDACTED] has nonetheless been accused of obstructing justice and impeding [REDACTED]. And, while [REDACTED] name has been redacted in the grand jury's report, [REDACTED] identity is [REDACTED]

[REDACTED]

Accordingly, publication of the report, which does not meet the definition of an investigating grand jury report and which contains conclusions that are not

supported by a preponderance of the evidence, violates petitioner's constitutional right to protection of [REDACTED] reputation.

The Pennsylvania Constitution guarantees an individual's fundamental right to security in his reputation under Article I, Section. The right is seen as so important that it is established in the opening passage of the Pennsylvania Constitution's Declaration of Rights under the title "inherent rights of mankind," and is characterized as an "indefeasible" guarantee. Pa Const. art. I § 1. *See also In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 562 (Pa. 2018) ("[T]he right of citizens to security in their reputations is not some lesser-order precept" but "[r]ather in Pennsylvania it is a fundamental constitutional entitlement").

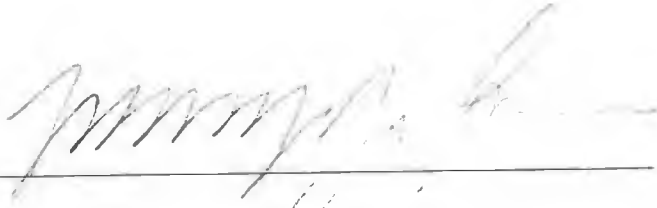
The publication of IGJ Report 30 will cause immeasurable reputational harm to petitioner, particularly because the grand jury did not issue a presentment or indictment and the report thus constitutes the official last word on the [REDACTED]. The Commonwealth will not be called upon to substantiate its accusations, and petitioner will not have the opportunity to disprove them in a court of law. Further, while the report is likely to receive extensive negative publicity, [REDACTED] [REDACTED] members of the public are generally not aware that the accusations contained in the report were not proven in an adversarial

proceeding or that prosecutors had no legal obligation to present the grand jury with exculpatory evidence. In *In re Fortieth Statewide Investigating Grand Jury*, 197 A.3d 712 (Pa. 2018), this Court recognized the gravity of the risk to one’s reputation that arises out of the fact that a grand jury report “will be seen as carrying the weight of governmental and judicial authority” and that the grand jury is seen as “embodying the voice of the community with respect to its specific findings.” *Id.*, 197 A.3d at 573.

Petitioner has not been charged with a crime. Despite this fact, [REDACTED] will be condemned in the court of public opinion without a meaningful opportunity to contest the allegations in the report if the report is made public. Since the release of the report would irreparably damage petitioner’s constitutional right to protection of [REDACTED] reputation, petitioner respectfully asks this Court to determine that the supervising judge erred in entering an order authorizing the release of the report.

CONCLUSION

For all of the above-stated reasons, Petitioner respectfully requests that this Court grant [REDACTED] Petition for Specialized Review Pursuant to Pa.R.A.P. 1611.



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