

**IN THE
SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT**

No. 15

EM 2022

**IN RE: THE THIRTIETH COUNTY INVESTIGATING GRAND
JURY**

BRIEF FILED ON BEHALF OF PETITIONER

Brief Filed on Behalf of Petitioner Pursuant to this Court's February 10, 2023 Order Granting Petitioner's Application for Specialized Review of the March 4, 2022 Order of the Honorable Kai N. Scott of Court of Common Pleas of Philadelphia County, Supervising Judge of the Thirtieth County Investigating Grand Jury, Ordering the Unsealing and Public Filing of the Investigating Grand Jury Report of Investigating Grand Jury 30. The Court's Order is docketed below at Misc. No. 0008094-2018.

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TABLE OF CONTENTS

Statement of Jurisdiction 1

Order in Question 2

Statement of Scope and Standard of Review 3

Statement of Questions Involved 5

Statement of the Case 7

Summary of the Argument 18

Argument 20

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..... 20

THE SUPERVISING JUDGE ERRED IN CONCLUDING THAT THE FINDINGS IN THE REPORT WERE SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE..... 30

PUBLICATION OF THE REPORT VIOLATES [REDACTED] [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] [REDACTED] IDENTITY..... 44

ANY CRITICISM OF A NAMED, NON-INDICTED INDIVIDUAL IN A GRAND JURY REPORT WARRANTS NOTICE AND AN OPPORTUNITY TO BE HEARD UNDER 42 PA.C.S. § 4552(E) AND THE SUPERVISING JUDGE'S DISCRETIONARY

DECISION TO PROVIDE NOTICE AND AN OPPORTUNITY TO BE HEARD TO SOME NAMED BUT NON-INDICTED INDIVIDUALS IN THE GRAND JURY'S REPORT FAILED TO COMPORT WITH PRINCIPLES OF DUE PROCESS AND THE FUNDAMENTAL RIGHT TO REPUTATION UNDER ARTICLE 1, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION, AS INTERPRETED BY *IN RE FORTIETH STATEWIDE INVESTIGATING GRAND JURY*, 190 A.3d 560 (Pa. 2018).....47

Conclusion.....61

TABLE OF AUTHORITIES

United States Supreme Court Cases

<i>Addington v. Texas</i> , 441 U.S. 418 (1979)	58
<i>Costello v. United States</i> , 350 U.S. 359 (1956).....	40
<i>Matthews v. Eldridge</i> , 424 U.S. 319 (1976).....	49-50

State Court Cases

<i>Arco v. Metalscraft Co. v. Shaw</i> , 70 A.2d 850 (Pa. 1950)	58-9
<i>Bundy v. Wetzel</i> , 184 A.3d 551 (Pa. 2018).....	49-50
<i>Commonwealth v. Lacombe</i> , 234 A.3d 602 (Pa. 2020).....	3
<i>Commonwealth v. Maldonado</i> , 838 A.2d 710 (Pa. 2003)	59-60
<i>Commonwealth v. Miller</i> , 198 A.3d 1187 (Pa. Super. 2018)	3
<i>Commonwealth v. Pownall</i> , 278 A.3d 885 (Pa. 2022)	9, 62
<i>Commonwealth v. Williams</i> , 733 A.2d 593 (Pa. 1999)	60
<i>In re: Adoption of Atencio</i> , 650 A.2d 1064 (Pa. 1994)	60
<i>In re: Fortieth Statewide Investigating Grand Jury</i> , 190 A.3d 560 (Pa. 2018)	<i>passim</i>
<i>In r.;</i> <i>Fortieth Statewide Investigating Grand Jury II</i> , 197 A.3d 712 (Pa. 2018)	8, 46, 54
<i>In re: Grand Jury Investigation No. 18</i> , 224 A.3d 326 (Pa. 2020)	3, 28
<i>Interest of N.B. – A.</i> , 224 A.3d 661 (Pa. 2020)	60
<i>K.B. v. Tinsley</i> , 208 A.3d 123 (Pa. Super. 2019).....	33

<i>Pennsylvania Dep't. of Labor and Industry v. Darlington</i> , 234 A.3d 865 (Commw. Ct. 2020)	32
<i>R. v. Dep't. of Public Welfare</i> , 636 A.2d 142 (Pa. 1994)	49
<i>Sutliff v. Sutliff</i> , 543 A.2d 534 (Pa. 1988)	58
<i>Wood v. Hughes</i> , 9 N.Y. 2d 144 (1961)	48

Rules

Pa.R.A.P. 702(c).....	1
Pa.R.A.P. 1611	1, 17

Statutes

Pa. Const. art. I § 1	45
18 Pa.C.S. § 508	9, 62
23 Pa.C.S. §§ 6301-6386.....	60
42 Pa.C.S. § 722(5)	1
42 Pa.C.S. § 726	1, 2
42 Pa.C.S. § 4548	21
42 Pa.C.S. § 4552	<i>passim</i>

Secondary Sources

<i>“Report and Recommendations of the Investigating Grand Jury Task Force,”</i> Published Nov. 2019	41
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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).

Additionally, in this matter, this Court has invoked its own extraordinary jurisdiction pursuant to 42 Pa.C.S. § 726 based on its determination that this appeal involves issues of immediate public importance.

ORDER IN QUESTION

Petitioner is seeking review of the following Order, 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.”

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

On February 10, 2023, this Court issued an Order requesting full briefing and oral argument on the matters contained in the Petition for Specialized Review. The Court also elected to exercise its extraordinary jurisdiction pursuant to 42 Pa.C.S. § 726 and directed the parties to address the following additional question:

What type or degree of criticism of a named but nonindicted individual in a grand jury report warrants notice and an opportunity to be heard under 42 Pa.C.S. § 4552(e), and did the supervising judge’s discretionary decision to provide notice and an opportunity to be heard to some, though not all, named but nonindicted individuals in the grand jury’s report comport with principles of due process and the fundamental right to reputation under Article I, Section I of the Pennsylvania Constitution, as interpreted by *In re: Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560 (Pa. 2018)?

STATEMENT OF SCOPE AND STANDARD OF REVIEW

Whether the grand jury's report in the case *sub judice* satisfies the statutory definition of a grand jury report pursuant to 42 Pa.C.S. § 4542 is a question of law. *In re Grand Jury Investigation No. 18*, 224 A.3d 326 (Pa. 2020). Accordingly, this Court's scope of review is plenary and its standard of review is *de novo*. See *Commonwealth v. Lacombe*, 234 A.3d 602, 608 (Pa. 2020) ("As with all questions of law, our standard of review is *de novo* and our scope of review is plenary.").

The question of whether the trial court erred in concluding that the findings in the report were supported by a preponderance of the evidence is a question of law. Thus, this Court's scope of review is plenary and its standard of review is *de novo*. *Commonwealth v. Lacombe, supra*.

The issue of whether publication of the report violates petitioner's right to his reputation raises a question of constitutional law. "This Court's scope of review in making a determination on a question of law is, as always, plenary. As with all questions of law, the appellate standard of review is *de novo*." *Commonwealth v. Miller*, 198 A.3d 1187 (Pa. Super. 2018).

Whether the procedures provided for in the Grand Jury Act comport with principles of due process and adequately protect the constitutional right to one's reputation is also a question of law and thus this Court's scope of

review is plenary. *See In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560, 568 (Pa. 2018) (“We address the legal arguments [challenging the release of the grand jury report on the grounds that it violated petitioners’ rights to due process of law and protection of their reputations] presented on a plenary basis.”)

STATEMENT OF THE QUESTIONS INVOLVED

- I. 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?

(Not addressed by the lower court, as it did not issue a written opinion in this matter; impliedly answered in the negative since the lower court ordered the release of the report).

- II. DID THE SUPERVISING JUDGE ERR IN CONCLUDING THAT THE FINDINGS IN THE REPORT WERE SUPPORTED BY A PREPONDERANCE OF THE EVIDENCE?

(Not addressed by the lower court, as it did not issue a written opinion in this matter; impliedly answered in the negative since the lower court ordered the release of the report).

- III. DOES THE PUBLICATION OF THE REPORT VIOLATE [REDACTED] [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] [REDACTED] IDENTITY?

(Not addressed by the lower court, as it did not issue a written opinion in this matter; impliedly answered in the negative since the lower court ordered the release of the report).

IV. WHAT TYPE OR DEGREE OF CRITICISM OF A NAMED BUT NON-INDICTED INDIVIDUAL IN A GRAND JURY REPORT WARRANTS NOTICE AND AN OPPORTUNITY TO BE HEARD UNDER 42 PA.C.S. § 4552(E) AND DID THE SUPERVISING JUDGE'S DISCRETIONARY DECISION TO PROVIDE NOTICE AND AN OPPORTUNITY TO BE HEARD TO SOME, THOUGH NOT ALL, NAMED BUT NON-INDICTED INDIVIDUALS IN THE GRAND JURY'S REPORT COMPORT WITH PRINCIPLES OF DUE PROCESS AND THE FUNDAMENTAL RIGHT TO REPUTATION UNDER ARTICLE 1, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION, AS INTERPRETED BY *IN RE FORTIETH STATEWIDE INVESTIGATING GRAND JURY*, 190 A.3d 560 (Pa. 2018)?

(Not considered by the lower court as this Court raised this issue *sua sponte*).

STATEMENT OF THE CASE

I. Introduction

Here we are again. In the last five years, this Court has been called upon repeatedly to address challenges to Pennsylvania's Investigating Grand Jury Act (IGJA) and asked to consider whether the statute's provisions afford individuals sufficient constitutional protections, specifically with respect to the right to security of one's reputation and due process safeguards. Most recently, those issues have arisen in the context of clergy sexual abuse investigations, where, like here, the grand jury publicly accused named individuals of engaging in criminal behavior in a grand jury report but did not recommend the filing of criminal charges.

In *In re: Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560 (Pa. 2018) ("*In re: Fortieth*"), for example, approximately 300 current and former Catholic priests petitioned this Court for a due process remedy to secure their constitutionally guaranteed right to reputation after they learned that they had been named in a grand jury report that accused them of perpetrating or covering up child sexual abuse. This Court ultimately concluded that the procedural protections provided for in the IGJA, namely the right to file a written response, was not sufficient to protect the petitioners' constitutional rights. *Id.*, 190 A.3d at 574. Likewise, the Court observed that

the supervising judge’s statutorily authorized preponderance of the evidence-based review may provide inadequate protection in the grand jury setting, where the prosecutor controls the presentation of evidence. *Id.* Since the petitioners did not raise a facial constitutional challenge to the IGJA, however, the Court was only permitted to consider what remedies might be afforded to the petitioners. Ultimately, this Court determined that the only recourse expressly authorized by the statute was to order the permanent redaction of petitioners’ names and all other identifying information upon release of the report. See *In re Fortieth Statewide Investigating Grand Jury II*, 197 A.3d 712 (Pa. 2018) (“*In re Fortieth II*”).

This case presents a scenario similar to the one the Court confronted in *In re Fortieth*. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] And, while the supervising judge allowed petitioner’s name to be redacted in the report, his identity is readily ascertainable based on other identifying information in the report given his duties and responsibilities at the [REDACTED]

Petitioner thus urges this Court to do what it could not in the *In re: Fortieth* case: declare the IGJA statute unconstitutional on its face. Given the one-sided, non-adversarial nature of a grand jury's fact-finding process, the discretionary procedural protections provided for in the statute – the supervisory judge's allowance to provide notice and an opportunity to be heard – are simply inadequate safeguards. Likewise, the preponderance of the evidence standard is an insufficient standard to apply in the grand jury setting, where a grand jury can easily be manipulated by the prosecutor, who has no duty to present exculpatory evidence or even present a balanced view of the facts. The ease with which the grand jury process can be abused was recently made evident in *Commonwealth v. Pownall*, 278 A.3d 885 (Pa. 2022), where the Philadelphia District Attorney's Office secured a grand jury presentment against a police officer who shot a fleeing suspect without providing legal definitions for the various degrees of murder and without instructing the grand jury that the justification statute, 18 Pa.C.S. § 508, might provide the officer with a complete defense to a homicide charge. *See Commonwealth v. Pownall, supra*, (Dougherty, J., *concurring*) (characterizing the Pownall presentment as a "foul blow" and questioning the completeness of the factual record presented to the grand jury).

If no action is taken, the problems that confronted this Court in *In re: Fortieth* will persist, as evidenced by the issues raised in this case. The Commonwealth will continue to expend enormous resources convening grand juries to investigate potentially criminal or otherwise problematic allegations. Grand juries will continue, using the methods and procedures provided for in the IGJA, to issue reports that are critical of individuals, and those individuals will claim, correctly, that their constitutional rights have been violated by the secret, one-sided nature of the grand jury process and the lack of sufficient procedural safeguards provided for in the statute. This Court can pave the way for the legislature to revisit and improve the substantive and procedural protections that are part of the grand jury process by declaring the IGJA unconstitutional. For the reasons discussed herein, petitioner respectfully asks this Court to do just that.

II. Factual and Procedural History

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

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[REDACTED]

[REDACTED]

[REDACTED]

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, filed a Petition for Specialized Review in accordance with the requirements of Pa.R.A.P. 1611.

On February 10, 2023, this Court granted Petitioner’s Petition for Specialized Review and requested briefing and oral argument on the four issues contained herein.

SUMMARY OF ARGUMENT

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 in 42 Pa.C.S. § 4542. Pursuant to the statute, a report must either regard conditions related to organized crime or public corruption or both, or propose recommendations for legislative, executive, or administrative action in the public interest based upon stated findings.

The report at issue here does not relate to either organized crime or public corruption, and does not recommend legislative, executive, or administrative action. Rather, the express purpose of the report is to apportion . Since the report does not meet the definition of a report under 42 Pa.C.S. § 4542, the grand jury lacks the authority to adopt the report under the law and the supervising judge therefore erred when she ordered the document's public release.

The supervising judge also 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]

[REDACTED]

Further, publication of the report violates petitioner's constitutional right to protection of his reputation because not only does the report contain conclusions that are unsupported by a preponderance of the evidence, but the redactions in the report fail to meaningfully shield his identity. The report itself reveals petitioner's [REDACTED] and contains details about his duties and responsibilities that make his identity obvious to any of the [REDACTED] or anyone who conducts a Google search of the [REDACTED] organizational structure. Given the identifying information contained in the report, the mere avoidance of the use of petitioner's name does nothing to shield his identity. Accordingly, publication of the report violates petitioner's constitutional right to protection of his reputation.

Finally, the supervising judge's discretionary decision to provide notice and an opportunity to be heard failed to comport with principles of due process and the fundamental right to reputation under Article 1, Section 1 of the Pennsylvania Constitution, as interpreted by this Court's decision in *In re: Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560 (Pa. 2018). The right to file a written response to the allegations contained in the report did

not adequately protect petitioner's right to his reputation. Further, the use of the preponderance of the evidence standard in the grand jury setting is an insufficient safeguard to protect an individual's right to his reputation.

ARGUMENT

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 subsequent [REDACTED], and apportion blame for [REDACTED] and the [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,

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] 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] reform, these recommendations were clearly 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

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 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.

main sections addresses legislative, executive, or administrative action in the public interest. To quote directly from the report:

[REDACTED]

- [REDACTED]

- [REDACTED]

[REDACTED]

[REDACTED]

○

[REDACTED]

○

[REDACTED]

[REDACTED]

Grand Jury Report, Investigating Grand Jury 30 (“IGJ 30 Report”), pp. 6-8.

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] [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 [REDACTED] [REDACTED] (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 two paragraphs arguably contain administrative recommendations in that they suggest improved [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] was hampered in its investigative efforts by a lack of resources and the

effects of the COVID-19 pandemic,² and describes a [REDACTED]
[REDACTED].

The Commonwealth claims that petitioner was wrong to argue that the report's recommendations constituted a mere afterthought, even though the headings, structure, and organization of the report all clearly indicate that this was the case.³ In making this argument, the Commonwealth cited to four recommendations and explained that because the grand jury report mentioned these proposals, the report fell within the ambit of a grand jury report.

It is worth noting that three of the four proposals were contained in a *single paragraph*:

[REDACTED]

² [REDACTED]
[REDACTED]
[REDACTED]

³ See "Commonwealth's Response in Opposition to Petition for Specialized Review" p. 18.

[REDACTED]

IGJ 30 Report, pp. 102-3. The fourth recommendation, which was awarded its own paragraph, reads as follows:

[REDACTED]

IGJ 30 Report, p. 103. Thus, in a sprawling report that spans more than 100 pages, the Commonwealth devoted just two paragraphs (of the 223 contained in the report) to recommendations. While the Commonwealth claims that the bulk of the report is comprised of factual findings that illustrate and underscore the need for its proposals, the truth remains that 99% of the report is an unnecessary, *ultra vires* attack excoriating the actions of [REDACTED] and how they conducted their [REDACTED].

Clearly, the IGJ 30 Report provides some long-awaited answers for the [REDACTED] who understandably questioned the events and circumstances that led to his [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 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 28 was unable to conclude its [REDACTED]

[REDACTED] with an indictment or a report, Investigating Grand Jury 30

attempted to pick up where the previous grand jury had left off and strived to bring [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.

The supervising judge also erred when she determined that the findings contained in the report were supported by a preponderance of the evidence.⁴

The purpose of the grand jury's report was two-fold: (1) [REDACTED]

[REDACTED] and (2) [REDACTED]

[REDACTED]

⁴ Judge Scott did not issue a written opinion or make 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.

[REDACTED]

[REDACTED].

Petitioner concedes, after reviewing the transcripts of the grand jury proceedings, that the report's conclusion that the [REDACTED]

[REDACTED]

[REDACTED] is supported by a preponderance of the evidence. In other words, there was testimony to establish that it was more probable than not that all the

following facts were true: [REDACTED]

Thus, the Commonwealth established by a preponderance of the evidence that [REDACTED]

[REDACTED]

[REDACTED]. Given these facts, the grand jury had a factual basis for finding by a preponderance of the evidence that the [REDACTED] all shared responsibility for [REDACTED].

The same cannot be said for the second finding in the report: [REDACTED]

[REDACTED]

[REDACTED]. Although the preponderance of the evidence standard is [REDACTED] the investigation into [REDACTED] is not supported even by the preponderance of the evidence because the evidentiary inferences needed to reach this conclusion are either not reasonable or are squarely refuted by the testimony presented to the grand jury.

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

Here, the report concludes the existence of a [REDACTED] based on several facts that bear no logical relationship to each other and claims that find no support in the evidence. Specifically, petitioner contests the following findings, which are not supported by even a preponderance of the evidence: (1) [REDACTED]

[REDACTED]; and (2) [REDACTED]
[REDACTED]
[REDACTED]

The report relies on these findings to support its ultimate conclusion that [REDACTED]
[REDACTED]. However, since each of the premises underlying this conclusion is demonstrably false, as set forth in detail below, there is simply no evidence to support the report’s findings of [REDACTED]
[REDACTED]

1 [REDACTED] investigated by the [REDACTED] and the [REDACTED]

The grand jury's report opens with the remarkable claim that [REDACTED] [REDACTED] was never thoroughly investigated and uses this premise as evidence that [REDACTED] [REDACTED]. According to the report:

[REDACTED]

IGJ 30 Report, p.3.

The conclusion that there was no thorough investigation is false, however, because the testimony presented to the grand jury shows that an investigation into [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. See IGJ 30 Report, p. 33; N.T. 8/8/16, pp. 14-21.

While the grand jury report casts aspersions on [REDACTED] for failing to visit the [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]. Thus, the report's claim that the [REDACTED] [REDACTED] is flatly contradicted by the evidence, and thus the report's finding that [REDACTED] [REDACTED] investigation is not supported by a preponderance of the evidence.

2. There is no evidence to suggest that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED].

The false claim that [REDACTED]

is not the only shortcoming in the grand jury's report, which is replete with other instances of unsupported accusations of criminal conduct leveled against [REDACTED]. Perhaps the most serious allegation made in the report is that [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] These allegations are especially problematic because they are squarely refuted by the evidence.

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

IGJ 30 Report, p. 40 (emphasis added).

The grand jury's unfounded speculation that [REDACTED] might have interfered in the investigation despite all evidence to the contrary is nothing short of outrageous.

As the quoted excerpt shows, the grand jury investigated [REDACTED]

[REDACTED]

[REDACTED] The grand jury also determined, by [REDACTED]

[REDACTED]

[REDACTED] Despite this evidence confirming

[REDACTED]

[REDACTED] the report nonetheless concludes that it was possible [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

The suggestion that [REDACTED] [REDACTED] investigation 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] shows that the grand jury's findings are plainly not supported by a preponderance of the evidence, and lends credence to this 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”).

At the end of the day, the grand jury’s finding [REDACTED] rests on nothing more than observations about how the investigation might have proceeded more effectively. It is worth noting, however, that identifying missteps in the process of [REDACTED] [REDACTED], without more, establishes only a lack of professionalism, [REDACTED]. For instance, the report catalogs the following unrelated errors and points to them as evidence that the investigation was

[REDACTED]:

- [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]”
[REDACTED]

- “ [REDACTED]
[REDACTED]
[REDACTED]
[REDACTED]

[REDACTED]

[REDACTED]

The report cites to these events to conclude: “[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

[REDACTED] IGJ 30 Report, p.8.

For this to be true, however, I [REDACTED]

The grand jury's careless cataloging of unrelated investigative missteps committed by numerous individuals working in different [REDACTED] [REDACTED] simply does not amount to proof of [REDACTED], even using the generous preponderance of the evidence standard. At best, the grand jury's report shows that the investigation into [REDACTED] would almost certainly have proceeded more effectively and efficiently if the [REDACTED] had handled it from the outset. Petitioner wishes to point out once again, however, that such observations are not the proper subject of an investigative grand jury report pursuant to 42 Pa.C.S. § 4542. Moreover, because the findings contained in the document are not supported by even a preponderance of the evidence, the report should not be publicly released.

III. PUBLICATION OF THE REPORT VIOLATES [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]

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

Further, while petitioner's name has been redacted in the grand jury's report, his identity is obvious to any of the [REDACTED] [REDACTED] or to anyone who conducts a Google search of the [REDACTED]. The report itself reveals that petitioner holds the [REDACTED]

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 events surrounding 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, particularly in this era of [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, he 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 his reputation, petitioner respectfully asks this Court to determine that the supervising judge erred in entering an order authorizing the release of the report.

IV. ANY CRITICISM OF A NAMED, NON-INDICTED INDIVIDUAL IN A GRAND JURY REPORT WARRANTS NOTICE AND AN OPPORTUNITY TO BE HEARD UNDER 42 PA.C.S. § 4552(E) AND THE SUPERVISING JUDGE'S DISCRETIONARY DECISION TO PROVIDE NOTICE AND AN OPPORTUNITY TO BE HEARD TO SOME NAMED BUT NON-INDICTED INDIVIDUALS IN THE GRAND JURY'S REPORT FAILED TO COMPORT WITH PRINCIPLES OF DUE PROCESS AND THE FUNDAMENTAL RIGHT TO REPUTATION UNDER ARTICLE 1, SECTION 1 OF THE PENNSYLVANIA CONSTITUTION, AS INTERPRETED BY *IN RE FORTIETH STATEWIDE INVESTIGATING GRAND JURY*, 190 A.3d 560 (Pa. 2018).

- A. Any criticism of a named but non-indicted individual in a grand jury report warrants at the very least notice and an opportunity to be heard pursuant to 42 Pa.C.S. § 4552(E).**

As set forth in previous sections of this brief, a grand jury report can cause irreparable damage to an individual's reputation. The conclusions contained therein need only be supported by the least stringent evidentiary standards and have not been subjected to adversarial testing. As one court observed:

In the public mind, accusation by report is indistinguishable from accusation by indictment and subjects those against whom it is directed to the same public condemnation and opprobrium as if they had been indicted. An indictment charges a violation of a known and certain public law and is but the first step in a long process in which the accused may seek vindication through exercise of the right to a public trial, to a jury, to counsel, to confrontation of witnesses against him, and if convicted, to an appeal. A report, to the contrary, based as it is upon the grand jury's own criteria of public or private morals, charges the violation of subjective and unexpressed standards of morality and is the first and last step of the judicial process. It is at once an accusation and a final condemnation, and, emanating from a judicial body occupying a position of respect and importance in the community, its potential for harm is incalculable.

Wood v. Hughes, 9 N.Y. 2d 144, 154, 173 N.E. 2d 21, 26 (1961). The inherent unfairness in producing a grand jury report led the Grand Jury Task Force, formed by this Court in 2017, to propose abolishing grand jury reports in their entirety. The Task Force explained:

A majority of the Task Force finds the reporting function to be contrary to the American grand jury's traditional role as the protector of individual rights, as significant due process concerns are implicated in the normal course of creating and disseminating a report. Relatedly, grand jury reports are created via a markedly one-sided process.

"Report and Recommendations of the Investigating Grand Jury Task Force," published Nov. 2019. The release of the grand jury report thus has the potential to negatively impact an individual's reputation. Because the right to one's reputation in Pennsylvania is a "fundamental constitutional entitlement," *In re: Fortieth, supra*, 190 A.3d at 572, any criticism of a named,

non-indicted individual requires the provision of some measure of due process. *See R. v. Commonwealth, Dep't. of Public Welfare*, 636 A.2d 142, 149 (Pa. 1994) (reputation is a fundamental constitutional interest in Pennsylvania that cannot be infringed without due process).

Given that the IGJA statute itself provides for the due process safeguards of notice and the opportunity to be heard (albeit on a discretionary basis), each individual who is subject to *any* kind of criticism in a grand jury report should be afforded these basic protections because criticism inherently poses a risk to one's reputation. This conclusion is consistent with the due process test employed by this Court in *Bundy v. Wetzel*, 184 A.3d 551 (Pa. 2018), where the Court adopted the tripartite test announced in *Matthews v. Eldridge*, 424 U.S. 319, 335 (1976) to determine what process is due before the state deprives a citizen of a fundamental right. As the *Bundy* Court explained:

Ascertaining what process is due entails a balancing of three considerations: (1) the private interest affected by the governmental action; (2) the risk of an erroneous deprivation together with the value of additional or substitute safeguards; and (3) the state interest involved, including the administrative burden of the additional or substitute procedural requirements would impose on the state.

Id., 184 A.3d at 557.

In *In re: Fortieth, supra*, this Court applied the *Bundy-Matthews* factors to determine whether the IGJA statute provided sufficient due process to named but non-indicted priests who were accused of sexually abusing children or covering up the sexual abuse in a 900-page grand jury report. The Court used the test to conclude:

the private interest affected by Report 1 is a fundamental one equivalent to life, liberty and property: the risk of an erroneous deprivation is substantial in light of the inherent limitations of the grand jury system, and the administrative burden in providing *some* additional process [beyond that provided for in the IGJA] is not too great a requirement.

In re: Fortieth, supra, 190 A.3d at 575, n. 23 (emphasis in original).

While this Court ultimately concluded that the procedural protections provided for in the IGJA (the right to notice and a written response) were constitutionally inadequate, the report at issue in the case was admittedly exceptional in that it was “a 900-page report otherwise impugning an individual as a sexual predator or facilitator alongside more than 300 others amidst the hierarchy of a religious institution.” *Id.*, 590 A.3d at 574. Nonetheless, even a far less inflammatory report will implicate the same fundamental protected interest to one’s reputation, and create a high risk of erroneous deprivation, resulting in the need for due process protections. Accordingly, application of the *Bundy-Matthews* factors suggests that all individuals subjected to any degree of criticism in a grand jury report should

be provided with notice and an opportunity to be heard. In some cases, where the criticisms directed towards an individual are not overly reproachful, these minimal safeguards may prove adequate in protecting the fundamental right to reputation.

B. The Supervising Judge’s decision to provide notice and an opportunity to be heard to some named but non-indicted individuals in the grand jury’s report failed to comport with principles of due process and the fundamental right to reputation under Article 1, Section 1 of the Pennsylvania Constitution, as interpreted by *In re Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560 (Pa. 2018).

This Court, *sua sponte*, asked the parties to consider whether the Supervising Judge’s decision to provide named but non-indicted individuals with notice and an opportunity to be heard comported with protected constitutional rights as set forth in this Court’s opinion in *In re: Fortieth Statewide Investigating Grand Jury*, 190 A.3d 560 (Pa. 2018). The short answer to this question is no. The longer answer requires a detailed examination of the *In re: Fortieth* case and the various holdings contained therein.

In 2016, the Pennsylvania Attorney General initiated grand jury proceedings to investigate allegations of child sexual abuse by individuals associated with six of the eight Pennsylvania dioceses of the Roman Catholic Church, failure to make mandatory reports, acts endangering the welfare of

children, and obstruction of justice. *Id.*, 190 A.3d at 562. Prior to the expiration of its term, the Fortieth Statewide Investigating Grand Jury submitted a report of its findings to the supervising judge. Unlike a conventional report couched in investigatory terms, this report had an entirely different character:

[T]he introductory passages of the report pronounce that the grand jury will identify over three hundred “predator priests” by name and describe their conduct in terms of “what they did – both the sex offenders and those who concealed them[,] ... shin[ing] a light on their conduct, because that is what the victims deserve.” Report 1, at 2. The balance of the report extensively furnishes detailed elaborations condemning the conduct of the alleged predators and those within the Church hierarchy who may have facilitated the abuses and/or failed to intervene.

Id., 190 A.3d at 563-64. The petitioners, former and current Catholic priests, challenged the release of Report 1 on the grounds that they were denied due process of law and that the public release of the report would impair their reputations in violation of their constitutional rights.

The supervising judge accepted Report 1. However, because the report censured the conduct of individuals who were not charged with crimes, the judge devised a procedure to provide notice to living individuals who were named or implicated in the report and gave them 30 days to respond to the material findings of the report. *Id.*, 190 A.3d at 565.

Dozens of individuals responded with challenges to the report, with most alleging that they were named or identified in the report in a way that infringed on their right to reputation. They also claimed that they were denied due process of law based on the lack of an opportunity to be heard by the grand jury itself or in a pre-deprivation hearing before the supervising judge. *Id.*, 190 A.3d at 565.

The supervising judge concluded that because the grand jury had issued the report as an investigative – and not an adjudicative – body, the statutory procedures allowing for notice and an opportunity to be heard provided sufficient process to justify the release of the report. Further, he found that providing any additional protections would fundamentally alter the IGJA’s procedures and create too great an administrative burden. *Id.*, 190 A.3d at 567. The supervising judge certified his orders so that they could be immediately appealed, but still ordered the public release of Report 1. The affected petitioners filed emergency applications to stay the release of the report. This Court granted a stay and permitted the parties to brief their legal arguments.

In the appeal, the petitioners did not challenge the provisions of the IGJA on constitutional grounds or challenge the release of Report 1. Instead, they requested a pre-deprivation hearing so that unsupported, false, and/or

misleading findings could be excised from the report prior to its release. *Id.*, 190 A.3d at 571. The Commonwealth, however, opposed the granting of any additional process and claimed that the right of written response provided for in 42 Pa.C.S. § 4552(e) was sufficient to protect the petitioners' reputational interests and satisfy due process norms. *Id.*, 190 A.3d at 571-72.

This Court ultimately held that the petitioners had been deprived of the opportunity to respond to the grand jury's condemnations in a meaningful way. *Id.*, 190 A.3d at 575. The Court, however, could not decide what process-related remedial measures – if any – would justify release of the report containing specific criticisms of the petitioners given that the grand jury's term had already expired. Accordingly, the Court permitted publication of the report but also ordered the temporary redaction of the petitioners' names and other identifying information pending oral argument before the Court and disposition of the remedy question.⁶

While the *In re: Fortieth* Court failed to agree upon a remedy for the petitioners, it did announce several important holdings. First, the Court affirmed that the protection of one's reputation is a fundamental right under the Constitution and is “not some lesser-order precept.” *Id.*, 190 A.3d at 572.

⁶ In *In re: Fortieth II*, 197 A.3d 712 (Pa. 2018), the Court concluded that the only remedy available to the petitioners was to order that the temporary redaction of their names and other identifying information be made permanent.

Second, the Court held that in light of the incendiary nature of the report, the right to a written response provided for by the statute was an inadequate due process safeguard. *Id.*, 190 A.3d at 574. Next, the Court observed that use of a preponderance of the evidence standard may be insufficient to serve as a protective measure in the grand jury setting, which is not an adversarial process and where “the evidence is controlled by a single presenter – the attorney for the Commonwealth – free from any requirements to adduce legally competent evidence, or exculpatory proofs.” *Id.* Finally, the Court observed that the IGJA statute is subordinate to the Constitution and accordingly, to the extent the minimal procedures provided for by the statute are insufficient to protect fundamental constitutional rights, the statute may be unconstitutional as applied. *Id.*, 190 A.3d at 575.

These conclusions show that the IGJA is fundamentally flawed and fails to provide adequate safeguards to secure individuals’ rights to due process and the fundamental right to one’s reputation. In a case such as this one, where petitioner has been accused of reprehensible criminal conduct –  the court’s decision to grant him notice and permission to file a written response does not provide him sufficient process to protect the right to his reputation and raises the exact same due process concerns the Court identified in *In re: Fortieth*.

1. The right to file a written response to the allegations contained in the report did not adequately protect petitioner's right to his reputation.

In *In re: Fortieth I*, this Court held that the right to file a written response to a 900-page report impugning an individual as a sexual predator was an ineffective procedural safeguard. *Id.*, 190 A.3d at 574. As this Court explained in *In re: Fortieth II*:

We found the first procedure – the discretionary right of the supervising judge to allow named but nonindicted individuals to submit a written response to the report conferred by 42 Pa.C.S. § 4552(e) – to be inadequate, given that such a response would be hearsay, and, because of the voluminous size and scope of Report 1, there is a likelihood that, to a reader, the response would pale in significance to the overall report. Moreover, because the report contains numerous allegations involving the reprehensible behavior of a multiplicity of individuals, we deemed the cumulative effect of those allegations as likely to inflame a reader's ire, and, thus, impede his or her capacity to evaluate the credibility of an individual's response.

In re: Fortieth II 197 A.3d at 715.

While the report at issue in the case *sub judice* is less voluminous than the 900-page one cited in *In re: Fortieth I*, it is still an expansive document that accuses numerous [REDACTED]

[REDACTED]

[REDACTED]. And, because the average layperson is unfamiliar with the one-sided nature of grand jury proceedings, the lower standard of proof that is used, and the relaxed evidentiary rules that apply, the report will

likely be credited over petitioner's written response. As this Court observed in *In re: Fortieth I*, such a report "will be seen as carrying the weight of governmental and judicial authority," and the grand jury is regarded as "embodying the voice of the community with respect to its specific findings." *Id.*, 190 A.3d at 573.

Further, in order to defend himself and refute some of the grand jury's incorrect findings, petitioner was required to disclose specific details about his duties and responsibilities within the [REDACTED] that make his identity obvious to anyone who reads the report and his rebuttal.⁷ Thus, in exercising his right to file a written response to attempt to protect his right to his reputation, petitioner faced a Hobson's Choice; disclosure of his identity by providing specific facts to support his denials of wrongdoing or foregoing the opportunity to provide a meaningful response with general denials that might better conceal his identity. Due process requires more.

⁷ See *i.e.*, Petitioner's Response to IJG Report, p. 1 ([REDACTED])

2. Use of the preponderance of the evidence standard by the grand jury to support its findings in a grand jury report does not adequately protect an individual's right to his reputation.

Pursuant to 42 Pa.C.S. § 4552(b), a supervising judge may file a grand jury report as a public record “only if the report ... is supported by a preponderance of the evidence.” As this Court has noted, however, the preponderance of the evidence standard may serve as an inadequate procedural safeguard in the context of grand jury proceedings. *See In re: Fortieth*, 190 A.3d at 512 (given the contents of the report, “the supervising judge’s statutory preponderance-based review may be inadequate, in the grand jury setting, to serve as a protective measure”). As this Court explained:

The application of this standard is best suited to adversarial proceedings where competing litigants present evidence to be weighed by a factfinder – indeed, the preponderance of the evidence is the general standard upon which most civil matters are resolved. *See, e.g., Sutliff v. Sutliff*, 518 Pa. 378, 385, 543 A.2d 534, 538 (1988).

Id., 190 A.3d at 574.

The preponderance standard is the lowest evidentiary standard by which a party can carry the burden of persuasion. *Arco Metalscraft v. Shaw*, 70 A.2d 850 (Pa. 1950). In *Addington v. Texas*, 441 U.S. 418, 423 (1979), the United States Supreme Court explained that the preponderance standard, where litigants share the risk of error in roughly equal fashion, is applied in civil cases because “society has a minimal concern with the outcome of such

private suits.” This Court echoed this belief in *Commonwealth v. Maldonado*, 838 A.2d 710 (Pa. 2003) when it explained the rationales for adopting different burdens of proof in different types of cases:

Briefly, the function of a standard of proof is to instruct the factfinder as to the level of confidence that society believes he should have in the correctness of his conclusion; furthermore, different standards of proof reflect differences in how society believes the risk of error should be distributed as between the litigants. Thus, the most stringent standard—beyond a reasonable doubt—is applicable in criminal trials due to the gravity of the private interests affected; these interests lead to a societal judgment that, given the severe loss that occurs when an individual is erroneously convicted of a crime, the public should bear virtually the entire risk of error. The preponderance-of-the-evidence standard, by contrast, reflects a belief that the two sides should share the risk equally; for this reason, it is applicable in a civil dispute over money damages, where the parties may share an intense interest in the outcome, but the public's interest in the result is “minimal.”

Commonwealth v. Maldonado, supra, 838 A.2d at 715.

In *Maldonado*, this Court was asked to consider what burden of proof, consistent with due process, was required to establish that the defendant was a sexually violent predator within the meaning of Pennsylvania’s “Megan’s Law,” the Registration of Sexual Offender’s Act. In finding that the clear and convincing evidentiary standard was applicable, the Court noted that a convicted defendant’s liberty and reputational interests as a result of being classified a sexually violent predator were more substantial than the loss of

money, and thus required a more stringent evidentiary standard than a preponderance of the evidence:

This Court has mandated an intermediate standard of proof – clear and convincing evidence –when the interests at stake in a state proceeding are both particularly important and more substantial than mere loss of money. Notwithstanding the state's civil labels and good intentions, the Court has deemed this level of certainty necessary to preserve fundamental fairness in a variety of government-initiated proceedings that threaten the individual involved with a significant deprivation of liberty or stigma.

Id., 838 A.2d at 715, citing *Commonwealth v. Williams*, 733 A.2d 593, 605 (Pa. 1999).

The constitutional interests at stake here are no less significant than those in *Maldonado*, or in other situations where this Court has determined that the clear and convincing standard applies. See *In re Adoption of Atencio*, 650 A.2d 1064, 1066 (Pa. 1994) (in an involuntary termination of parental rights proceeding, the burden of proof is on the party seeking termination to establish by clear and convincing evidence the existence of grounds for termination); *Interest of N.B.-A.*, 224 A.3d 661 (Pa. 2020) (citing the requisite standard of proof for a finding of child abuse pursuant to the Child Protective Services Law, 23 Pa.C.S. § 6301-6386, is clear and convincing evidence). Accordingly, petitioner asks this Court to conclude that the IGJA's provision that the conclusions contained in a grand jury report need only be supported

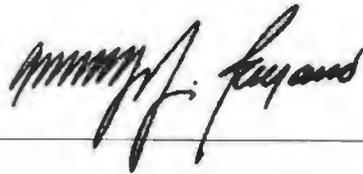
by a preponderance of the evidence is unconstitutional given the important interests at stake.

CONCLUSION

The [REDACTED] is nothing short of [REDACTED], and [REDACTED] deserves to understand the circumstances that led to his [REDACTED]. But given that the [REDACTED], it was wholly improper for Investigating Grand Jury 30 to prepare a written report assigning [REDACTED] suggesting that petitioner and others [REDACTED] with an in [REDACTED]. A grand jury report is simply not a vehicle for attaining justice when there is insufficient evidence to initiate a criminal prosecution. And this report, which clearly states that its unequivocal purpose is to apportion blame for [REDACTED], is thus not an “investigating grand jury report” within the meaning of 42 Pa.C.S. § 4542.

This case lays bare many of the problems inherent in Pennsylvania’s Investigating Grand Jury Act. The target of a grand jury investigation and/or the subject of a grand jury report has no meaningful way to challenge the allegations against him and lacks even the right to know what evidence was presented to the grand jury to support its findings. Given that recent cases

have made clear that the grand jury process can be easily manipulated by unscrupulous prosecutors,⁸ the existing due process safeguards in the IGJA are simply inadequate to protect the reputational interests of a non-indicted individual who is the subject of a grand jury report. At the very minimum, due process requires a meaningful opportunity to be heard and the requirement that the grand jury's findings be supported by clear and convincing evidence. For all of these reasons, petitioner respectfully asks this Court to order that Grand Jury Report 30 remain under seal and to rule that the IGJA is unconstitutional.

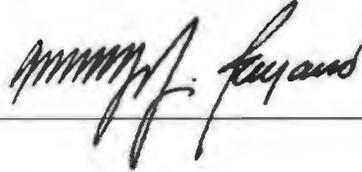


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⁸ See, i.e., *Commonwealth v. Pownall*, 278 A.3d 885 (Pa. 2022), where the Philadelphia District Attorney's Office (the same office that supervised the grand jury in this case) obtained a grand jury presentment charging a police officer with homicide without providing the grand jury with the legal definitions for the various types of murder or manslaughter or instructing the grand jury that the justification statute, 18 Pa.C.S. § 508, might provide Officer Pownall with a complete defense to criminal charges.

CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 2135

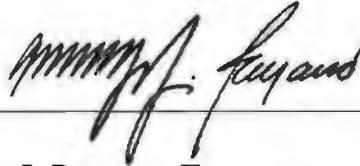
I certify that this filing complies with the 14,000 word limit specified
in Pa.R.A.P. 2135.

A handwritten signature in black ink, appearing to read "Gregory J. Pagano", is written above a horizontal line.

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CERTIFICATE OF COMPLIANCE WITH PA.R.A.P. 127

I certify that this filing complies with the provisions of the *Public Access Policy of the Unified Judicial System of Pennsylvania: Case Records of the Appellate and Trial Courts* that require filing confidential information and documents differently than non-confidential information and documents.

A handwritten signature in black ink, appearing to read "Gregory J. Pagano", is written over a horizontal line.

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