Docket Number 81854

In the

SUPREME COURT

For the

STATE OF NEVADA

Lawra Kassee Bulen, as an individual;

Appellant,

v.

Steve Sanson, an individual, and Rob Lauer, an individual,

Respondents.

On Appeal from the Granting of Respondents' Motion to Dismiss
Eighth Judicial District Court Case No. A-18-784807-C

APPELLANT'S OPENING BRIEF

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IN THE SUPREME COURT OF THE STATE OF NEVADA

LAWRA KASSEE BULEN, Appellant, vs. STEVE SANSON, an Individual; ROB LAUER, an Individual, Respondent(s).	SUPREME COURT CASE NO. 81854 DISTRICT COURT CAS NO.: A-18-784807-C

APPEAL

From the Eighth Judicial District Court, Department IV

Clark County, Nevada

The Honorable Trevor L. Atkin

NRAP 26.1 DISCLOSURE

The undersigned counsel of record certifies that the following are persons and entities as described in NRAP 26.1(a), and must be disclosed. These representation are made in order that the judges of this court may evaluate possible disqualification or recusal:

The Appellant, Lawra Kassee Bulen is an individual, there are no parent corporations or publicly held companies owning 10 percent or more of the party's stock.

Appellant's prior attorney, Rena McDonald, withdrew in 2019. Attorney Brandon L. Phillips began representation in early 2020, and is the only attorney for the Appellant expected to present for argument.

Dated this 16th day of February, 2021

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I. JURISDICTIONAL STATEMENT

This is an appeal from an order of the Eighth Judicial District Court in and for the City of Las Vegas of Clark County, issued on August 21, 2020, granting Respondents' Motion to Dismiss Complaint Pursuant to NRS 41.660. *See* Order Granting Mot. ("Order"). The district court's Order is appealable pursuant to N.R.A.P. 3A(b)(3). On September 24, 2020, Appellant timely filed and served a notice of appeal, and then filed the Case Appeal Statement on October 8, 2020.

II. ROUTING STATEMENT

This matter is presumptively assigned to the Court of Appeals pursuant to NRAP 17(b)(7), because this case originated in the District Court.

III. STATEMENT OF THE ISSUES

I. **WHETHER THE DISTRICT COURT ERRED IN DISMISSING APPELLANT'S COMPLAINT PURSUANT TO NRS 41.660.**

II. **WHETHER THE DISTRICT COURT ERRED IN FINDING THAT RESPONDENTS' STATEMENTS WERE TRUTHFUL, MADE WITHOUTKNOWLEDGE OF FALSEHOOD, AND/OR WERE OPINIONS THAT THEREFORE COULD NOT BE DEFAMATORY.**

III. **WHETHER APPELLANT WAS AFFORDED AN OPPORTUNITY, WITHOUT DISCOVERY, TO SHOW PRIMA FACIE EVIDENCE OF A PROBABILITY OF PREVAILING ON THE CLAIM.**

IV. STATEMENT OF FACTS

Appellant's Complaint arose after Respondents' published multiple articles of and concerning the Appellant. Appellant alleged that those articles contained factual misrepresentations and that Respondents knew those statements at the time they published them were in fact false. Numerous specific statements made within the articles were entirely false and fabricated. Further those statements attacked Appellant's sexual conduct. Appellant specifically alleged, with evidence, that the articles contained false statements and that the articles were not opinion speech. Appellant specifically argued that Defendants speech was not protected by Anti-SLAPP statutes.

A. Time Line of Events

Date	Event
08/08/2018	Respondents published *Kassee Bulen, Political Gypsy?*
08/13/2018	Respondents published *Kasee Bulen Under Investigation After Being Charged With Ethics Violations In Complaint Filed With GLVAR*
08/20/2018	Respondents published *Kassee Bulen Attacks President Trump*
08/22-24/2018	Appellant alleged Respondents sent harassing text messages, in part claiming Appellant ". . .would be politically destroyed, Plaintiff [Appellant] would never work for any politically candidate ever again, stating that if she cared about the party she would play nice with Respondent Lauer."
08/25/2018	Respondent Lauer wrote and posted a 360 News Las Vegas article demeaning Appellant's character, calling her a liar and questioning her credibility.

V. PROCEDURAL HISTORY

1. On November 20, 2018, Appellant filed her Complaint. (Complaint AA –
2. On February 27, 2019, Appellant filed a Default against each Respondent.
3. On April 2, 2020, Respondents filed a Motion to Dismiss, which was refiled with corrections on April 3, 2020.
4. On April 20, 2020, Appellant filed an Opposition and Countermotion to the Motion to Dismiss.
5. On May 1, 2020, Respondents filed a Reply to the Opposition and Countermotion.
6. On May 12, 2020, Respondents' Motion and Appellant's Countermotion were heard and Respondents' Motion was denied without prejudice, Appellant's Countermotion was denied.
7. On May 22, 2020, Respondents filed a Motion to Set Aside the Default Judgment.
8. On June 8, 2020, Appellant filed an Opposition and Countermotion for Application for Default Judgment.
9. On June 19, 2020, Respondents filed a Reply and Opposition to the Countermotion for Application for Default Judgment.

10. On June 23, 2020, the Court heard arguments and Granted to the Motion to Set Aside the Default and Denied the Appellant's Countermotion as Moot.
11. On July 2, 2020, Respondents filed a Motion to Dismiss the Complaint pursuant to NRS 41.660. (Motion to Dismiss AA--)
12. On July 21, 2020, Appellant filed an Opposition to the Motion to Dismiss. (Opposition to the Motion to Dismiss AA--)
13. On July 28, 2020, Respondents filed a Reply in Support of the Motion to Dismiss. (Reply to the Motion to Dismiss AA--_
14. On August 4, 2020, the Court heard arguments and Granted Respondents' Special Motion to Dismiss. (Order August 21, 2020 – AA_
15. On September 1, 2020, the Respondents filed a Motion for Attorneys' Fees, Costs, and Additional Relief Pursuant to NRS 41.660 and NRS 41.670. (Motion for Attorneys' Fees AA
16. On September 15, 2020, the Appellant filed an Opposition to the Motion for Attorneys' Fees. (Opposition AA
17. On September 24, 2020, Appellant filed the Notice of Appeal.
18. On September 29, 2020, Respondents filed their Reply to the Opposition to the Motion for Attorneys' Fees. (Reply AA-

19. On October 6, 2020, the Court heard arguments on the Motion for Attorneys' fees and Granted the Motion for Attorneys' Fees and Costs, but Denied the request for Additional Relief. (See Order on Attorneys' Fees).

VI. LEGAL ARGUMENT

I. NRS 41.660 Special Motion to Dismiss is Specific to Statements of Opinion.

A. The Court Erred in Dismissing the Complaint Pursuant to NRS 41.660.

Strategic Lawsuits Against Public Participate ("SLAPP" suits) are an affront to freedom of expression. In the absence of an Anti-SLAPP law, plaintiffs file SLAPP units with impunity – knowing that the punishing expense of litigation is a given, and that even if they lose, they "win" by inflicting this punishment upon the defendant, and by showing others that they are litigious enough that one should not speak ill of them.[1] Such suits have the intent and effect of chilling free speech.

[1] As a prime example of a SLAPP defendant's pyrrhic victory, see *Vandersloot v. The Foundation for National Progress,* 7th District Court for Bonneville County, Idaho. Case No. CV-2013-532 (granting summary judgment for journalist organization defamation defendant after two years of litigation and $2.5 million in defense costs, but declining to award any attorneys' fees or sanctions); see also Monika Bauerlein and Clara Jeffrey, *We Were Sued by a Billionaire Political Donor, We Won. Here's What Happened,* MOTHER JONES (Oct. 8, 2015),

Seeking to prevent such abuses, the Nevada legislature passed the Anti-SLAPP law, NRS 41.635 *et. seq.* in 2013, and despite ignoble efforts to repeal it, our legislature re-committed to it in 2015.[2]

Under Nevada's Anit-SLAPP statute, NRS. 41.635 *et. seq.* if a lawsuit is brought against a defendant based upon the exercise of one's First Amendment rights, the defendant may file a special motion to dismiss. Evaluating the Anti-SLAPP motion is a two-step process. The Movant bears the burden on the first step, and the Non-Moving party bears the burden on the second ste. *John v. Doughals County Sch. Dist.*, 125 Nev. 746, 754 (Nev. 2009).

First, the defendant must show, by a preponderance of the evidence, that the plaintiff's claim is "based upon a good faith communication in furtherance of the right to petition or the right to free speech in direct connection with an issue of public concern." NRS 41.660(3)(a). One of the specific statutory categories of protected speech is "communications made in direct connection with an issue of

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available at: http://www.motherjones.com/media/2015/10/mother-jones-vandersloot-melaleuca-lawsuit (last visited April 11, 2018).

[2] An Anit-SLAPP motion is a special creature, both substantively and procedurally, created by the Nevada legislature in 1993. *See* S.B. 405, 1993 Leg. Sess., 67th Sess. (Nev. 1993). The legislature then amended it in 1997. *See* A.B. 485, 1997 Leg. Sess., 69th Sess. (Nev. 1997). The legislature then gave the Nevada Anit-SLAPP law real teeth in 2013 when it passed Senate Bill 286. *See* S.B. 286, 2013 Leg., 77th Sess. (Nev. 2013). In 2015, there was an initial effort to attempt to repeal it, and instead further strengthened the law in 2015. *See* S.B. 444, 2015 Leg. Sess., 78th Sess., (Nev. 2015).

public interest in a place open to the public or in a public forum, which is truthful or is made without knowledge of tis falsehood." NRS 41.637(4).

Second, once the defendant meets the burden on the first prong, the burden then shifts to plaintiff, which must make a sufficient evidentiary showing that it has a probability of prevailing on the claim. NRS 41.660(3)(b); *see also John,* 125 Nev. at 754.

Nevada treats an Anti-SLAPP motion as a species of a motion for summary judgment. *See Stubbs v. Strickland*, 297 P.3d 326, 329 (Nev. 2013). However, it has some additional procedures to avoid the abusive use of discovery, and if the court grants the motion to dismiss, the defendant is entitled to an award of reasonable costs and attorney's fees, as well as an award of up to $10,000. NRS 41.670(1)(a)-(b).

Due to a relative dearth of case law applying Nevada's Anti-SLAPP statue, Nevada courts look to case law applying California's Anti-SLAPP statute, Cal. Code Civ. Proc. § 425.16, which shares many similarities with Nevada's law. See *John*, 125 Nev. 746 at 756 (stating that "we consider California case law because California's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute is similar in purpose and language to Nevada's anti-SLAPP statute").

NRS 41.660 defines this burden as "the same burden of proof that a plaintiff has been required to meet pursuant to California's anti-Strategic Lawsuit Against

Public Participation law as of the effective date of this act." at §12.5(2). Plaintiff cannot simply make vague accusations or provide a mere scintilla of evidence to defeat Gama's motion. Rather, to satisfy its evidentiary burden under the second prong of the Anit-SLAPP statute. Plaintiff must present "substantial evidence that would support a judgment of relief made in the plaintiff's favor." *S. Sutter, LLC v. LJ Sutter Partners, L.P.,* 193 Cal. App. 4th 634, 670 (2011); *see also Mendoza v. Wichmann,* 194 Cal. App. 4th 1430, 1449 (2011) (holding that "substantial evidence" of lack of probable cause was required to withstand Anti-SLAPP motion on malicious prosecution claim.)

Plaintiff must make "a sufficient *prima facie* showing of facts to sustain [its] burden of demonstrating a **high probability** that [Lauer and Sanson] published defamatory statements with knowledge of their falsity or while entertaining serious doubts as to their truth." *Burrill v. Nair,* 217 Cal. App. 4th 357, 390 (2013) (emphasis added).

To establish a cause of action for defamation, a plaintiff must allege: (1) a false and defamatory statement by the defendant concerning the plaintiff; (2) an unprivileged publication to a third person; (3) fault, amounting to at least negligence; and (4) actual or presumed damages. *See Wynn v. Smith,* 117 Nev. 6, 10 (Nev. 2001); *see also Pegasus v. Reno Newspapers, Inc.,* 118 Nev. 706, 718

(2002). A statement is only defamatory if it contains a factual assertion that can be proven false. *See Pope v. Motel 6,* 114 P.3d 277, 282 (Nev. 2005).

At present, the Appellant argued that there was no good faith communication in the publication of the statements that were in fact false. Appellant supported this argument through allegations in the Complaint and the supporting exhibits to the Complaint. Specifically, Appellants claimed in the Complaint that Respondents had no proof or belief that certain statements presented in their articles were opinion statements or that there was a good faith belief that those statements were true. a

Appellant satisfied the elements of defamation and has established that Respondents published multiple defamatory statements/articles against the Appellant. Those defamatory statements are as follows:

1. https://veteransinpolitics.org/2018/08/kassee-bulen-political-gypsy/ within the article, the Respondents in concert published the false statement that, "But according to the Nevada Secretary of State's official website and Clark County business records Kassee Bulen's company, Bulen Strategies, is not a licensed lawful business in the state of Nevada." This statement is false as Appellant did have a lawful business license. This factually false statement could have been easily verified had the Respondents performed any reasonable search on the NVSOS. The allegation that Appellant was conducting business without a proper license is both an allegation of wrongdoing, possibly fraud, and clearly an

action that would cast doubt on Respondent's business conduct and business reputation.

a. In the same article the Respondents stated, "Furthermore, according to public databases, Kassee Bulen or "Lawra Kassee Bulen" was charged and sentenced for Assault Causing Bodily Injury in Dallas Texas." This information had been sealed by the Court and was not available for publication. The case was dismissed and sealed by the Court. Even if the statement is true, it shows the length that Respondents have went to destroy Appellant's reputation and cast her in a false light.

b. In the same article the Respondents stated, "Bulen has lived in at least 6 states in the past 10 years filing bankruptcy and chased out of Republican Party groups in Arizona and St. George according to sources." Again, this statement is false and completely unsupported. Appellant disputes that the Respondents had any "sources" that supported this entirely false allegation. Appellant had not been chased out of any Republican Party groups in Arizona and/or St. George. In fact, Respondent had only lived in three (3) states at the time of the release of the article. It is factually impossible that Respondents had sources that Appellant had lived in six states as that had never occurred. The claim again tends to more likely than not lower the reputation of the Appellant The statement implies that

Appellant is committing some form of misconduct and that she has a history of misconduct and therefore needs to relocate.

a. In the same article, Respondents then attack Appellant's sexual conduct with no source to confirm such information when he stated, "Additionally, according to people we spoke with directly, several married men in other states have accused Kassee Bulen of trying to extort money out of them after she had an affair with them." Such a statement against her sexual conduct constitutes *Per Se* Defamation. The Appellant specifically disputes that claim by Respondents that they either had sources or had discussed Appellant's sexual conduct with any person at all. The allegation in the article claims that Appellant was guilty of a crime of moral turpitude. The Complaint clearly outlines the false statement and Plaintiff has the legal right to prove to this Court, through the discovery process that the statement was false and importantly was made without any third party source confirming the allegation.

b. Finally, in the same article, Respondents falsely claim that, "Kassee Bulen's issues are raising serious

> questions with voters regarding Fougere's failure to vet his staff and ultimately his judgment to run such an important public office." Again, this claim is false. Respondents fabricated the claim and had no actual proof that anyone was concerned about the Appellant and/or her conduct associated with the Fougere campaign. Frankly put, Appellant was not a hired staff member of Fougere's campaign. Appellant was a volunteer on his campaign. Her role while important, was not significant enough to raise concern among voters. Therefore, it is confirmed that in the first article the Respondents knowingly made no less than four false statements. All of which, Appellant properly alleged and could have presented evidence following the discovery process where she could have deposed witnesses and subpoenaed records supporting her claims.

Even should the District Court, which it failed to do, found that Respondents had satisfied their burden on Prong 1, and shifted the burden to Appellant, she set forth clear and specific evidence that would have allowed the Court to find that Appellant satisfied her burden at least as to the allegations of false statements, defamation, in Article 1.

Further, the Respondents' Articles presented the statements regarding the Appellant as factual assertions. The statements do not mention the word opinion or reach conclusionary opinions. The Respondents' Articles specifically are presented as factual statements allegedly supported by "sources" that in fact did not exist.

Procedurally, Respondents' Motion only attacked the single claim in the article that Respondents published a statement concerning a sealed litigation case involving the Appellant. Therefore, since that single statement in the article was true, the Appellant cannot have a claim of defamation and/or defamation per se. Respondents' claim is unsupported by any relevant case law. A single statement of fact, even if true, does not negate the fact that the published article contains numerous false statements, specifically as alleged in the Complaint. There were numerous other false statements and any such statements were not verified by any source. As the claims in the Respondents' articles falsely claim Appellant has committed crimes of moral turpitude, Appellant has the legal right to prove that the claims are false and thus constitute defamation.

Second, the Respondents published an Article detailing a GLVAR Complaint and Investigation. As stated in the Complaint, on August 13, 2018, Defendants in concert published a second defamatory article titled *KASSEE BULEN UNDER INVESTIGATION AFTER BEING CHARGED WITH ETHICS*

VIOLATIONS IN COMPLAINT FILED WITH GLVAR.

https://veteransinpolitics.org/2018/08/kassee-bulen-under-investigation-after-being-charged-with-ethics-violations-in-complaint-filed-with-glvar/. (hereinafter "GLVAR Article"). Specifically, the article made the following false and defamatory claims against the Appellant:

"An ethics complaint was filed this week with the Great Las Vegas Association of Realtors against Lawra Kassee Bulen." This statement is, was, and was confirmed to be false. This publication was seen by thousands of viewers on Defendants' social media. Importantly, the publication was so widely seen that the Greater Las Vegas Association of Relators (GLVAR) the governing authority of the Realtors, became aware of the publication. Respondents' Motion to Dismiss claims that Respondents obtained a copy of the complaint and therefore relied on that information when they published the article. However, as was confirmed by GLVAR, through multiple emails, that alleged complaint was never filed or submitted to GLVAR. Therefore, as Appellant alleged in the Complaint, Respondents fabricated the GLVAR Complaint and therefore had no basis to rely on the complaint because the Respondents knew the complaint was false.

The publication failed to contain a scintilla of truth, GLVAR confirmed that it had not received any complaint against the Appellant. GLVAR's confirmation establishes the blatant disregard the Respondents held for the truth. Respondents

have and are willing to create total fabrications, publish them, and present them as truth to their thousands of followers on social media. Once the post is published, the irreparable harm is done. The personal harm to the Appellant is impossible to measure. The harm to her reputation, her career, her ability to maintain employment, her ability to maintain any normal lifestyle. The Respondents are relentless in their pursuit of the Appellant. The Respondents continue to post new articles against the Appellant, even continue to publish articles against Appellant after the Order Granting the Motion to Dismiss.

Within the GLVAR Article Respondents referenced several "Standard of Practice" rules thereby presenting the image that Appellant had violated ethical standards set for Realtors. Even more troubling, the Respondents fabricated an Ethics Complaint Form that appears to be a redacted copy of the filed the Complaint, which was almost wholly redacted and actually showed no evidence that a Complaint was actually filed.

Violating the Rules of Ethics clearly supports Appellant's claims against the Respondents for defamation and defamation *per se*. If, as Appellant alleged, Respondents fabricated the GLVAR Complaint themselves or through a third party then clearly Appellant had a valid cause of action for Defamation. Further, the title of the article falsely claimed that Appellant was under investigation. Again, this statement is false, as confirmed by GLVAR President's email that

specifically stated no such complaint had even been filed against the Plaintiff. Therefore, there was no basis of which to investigate the Plaintiff for alleged ethics violations. (Opposition to the Motion to Dismiss -Exhibit 2 – GLVAR Email).

Respondents are not protected by Anti-SLAPP statutes when Respondents' statements are false and constitute defamation. Anti-SLAPP protects opinion speech, not false speech. The District Court granted Respondents' Motion to Dismiss relying on an erroneous interpretation of Anti-SLAPP statues. However, such an Order of Dismissal is not supported when the Respondents statements are clearly false and/or fabricated. Appellant was entitled to discovery on the claims and allegations set forth in the Complaint. As evidence of the falsity of the statements would constitute defamation and defamation *per se*.

Respondents also published a video of Appellant – Alleged "Never Trumper." The "Never Trumper" allegation by the Respondents was based on video that Appellant never agreed to have to be produced. The video was shot in front of a green screen and was edited by the Respondents without Appellant's input, direction or approval. The Complaint alleges the video was falsely edited by the Respondents to again shed false light on the Plaintiff. (Complaint Pg. 5, Ln. 15-28). The allegations in the Complaint state that the heavily edited video was intended to make Appellant appear to be unfit to participate in political campaigns

and lower Appellant's reputation. In fact, the article and publicity received from that publication did in fact damage Appellant's reputation and caused her to lose political involvement in campaigns.

To determine whether a statement is one of protected opinion or an actionable factual assertion, the court must ask "whether a reasonable person would be likely to understand the remark as an expression of the source's opinion or as a statement of existing fact." *Pegasus v. Reno Newspapers, Inc.*, 118 Nev. 706, 715 (Nev. 2002). Courts look to the context of the statement, the language used, and whether the statement can be proven false to determine whether it is capable of a defamatory meaning. *See Flowers v. Carville*, 112 F. Supp. 2d 1202, 1211 (D. Nev. 2000). The Supreme Court has also observed that statements on matters of public concern must be provably false in order to be actionable. *See Milkovich v. Lorain Journal Co.*, 497 U.S. 1, 20 (1990). The *Milkovich* court also acknowledged that "imaginative expression," "loose, figurative" language, and "rhetorical hyperbole" are not provably false. *Milkovich*, 497 U.S. at 20-21. Whether a statement is one of opinion or objective fact is a question of law. *See Baker v. L.A. Herald Exam'r*, 42 Cal. 3d 254, 260 (1986). The District Court failed to view the Respondents' speech as statements of existing fact. Respondents had, as alleged by Appellant, had no specific support to allege that the published statements were in fact true. Evidence presented by the Appellant clearly established, at minimum, a dispute of fact that

should not have been decided/determined by a dispositive motion. Issues of fact are left to the jury to decide.

VII. Conclusion

The issues on Appeal all stem from the dismissal of Appellant's Complaint. The District Court erred in dismissing the Complaint at the initial stage of the litigation. The Motion only attacked a single assertion in the Complaint. The Motion failed to address the totality of the claims and causes of action presented by the Appellant in the Complaint. Further, the allegations in the Complaint and the supporting evidence attached to the Complaint clearly set forth a prima facia case upon which the District Court erred in properly evaluating.

Based on the foregoing, the District Court erred in Dismissing the Complaint and subsequently Ordering Attorneys' Fees and Costs to the Respondents. The Orders should be set aside and Appellant's Complaint must be reinstated.

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CERTIFICATE OF COMPLIANCE

1. I hereby certify that this Opening Brief complies with the formatting requirements of NRAP 32(a)(4), the typeface requirement of NRAP 32(a)(5) and the type style requirements of NRAP 32(a)(6) because:

This Opening Brief has been prepared in a proportionally spaced typeface using Times New Roman in 14 font size;

2. I further certify that this brief complies with the page -or- type volume limitations of NRAP 32(a)(7) because, excluding the parts of the brief exempted by NRAP 32(a)(7)(C), it is either:

Proportionately spaced, has a typeface of 14 points or more and contains 4,172 words; and

Does not exceed 30 pages.

3. Finally, I hereby certify that I have read this appellate brief, and to the best of my knowledge, information, and belief, it is not frivolous or interposed for any improper purpose. I further certify that this brief complies with all applicable Nevada Rules of Appellate Procedure, in particular NRAP 28(e)(1), which requires every assertion in the brief regarding matters in the record to be supported by a reference to the page and volume number, if any, of the transcript or appendix where the matter relied on is to be found. I understand that I may be subject to

sanctions in the event that the accompany brief is not in conformity with the requirements of the Nevada Rules of Appellate Procedure.

DATED this 16th day of February, 2021.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing with the Clerk of the Court for the Nevada Supreme Court by using the appellate CM/ECF system on February 16, 2021.

Participants in the case who are registered CM/ECF users will be served by the appellate CM/ECF system.

I further certify that I am not aware of any of the participants in the case that are not registered CM/ECF users.

DATED this 16th, day of February , 2021.

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