

**No. SC2022-1042**

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**In the Supreme Court of Florida**

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KEVIN VERICKER,  
*Petitioner,*

v.

NORMAN CHRISTOPHER POWELL,  
*Respondent.*

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ON DISCRETIONARY REVIEW FROM  
THE THIRD DISTRICT COURT OF APPEAL  
DCA No. 3D22-645

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**REPLY BRIEF FOR PETITIONER**

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## INTRODUCTION

Respondent Norman Powell and his *amici* avoid any meaningful analysis of Florida’s anti–SLAPP statute. That is telling. Powell’s lawsuit is a classic SLAPP suit: a former village attorney sued a citizen critical of his public actions. The Legislature has prohibited suits of this nature.

Absent immediate appellate review, the express legislative intent to “prohibit[]” SLAPP suits and require their “expeditious[]” resolution would be rendered hollow. § 768.295(1), Fla. Stat. Certiorari jurisdiction necessarily exists; alternatively, this Court should expand rule 9.130.

## ARGUMENT

### **I. Florida’s Anti–SLAPP Statute Is A Prohibition On SLAPP Suits, Not Merely A Fee–Shifting Statute**

#### **A. Florida’s Anti–SLAPP Statute Is More Than Just A Fee–Shifting Statute**

1. Powell asserts that Florida’s anti–SLAPP statute is simply a fee–shifting law. That conclusion stems from his misreading of *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021).

*Lam* presented the question whether Florida’s anti–SLAPP statute imposes a heightened burden on SLAPP plaintiffs at the pleading stage. *Id.* at 193. The Third District concluded that it did not. *Id.* at 195, 197.

Nowhere does *Lam* discuss the contours of the statute’s prohibition on SLAPP suits contained in section 768.295(3) or the statute’s title. Subsection (3) is not even discussed. And the Third District’s decision in *Vericker* does not cite *Lam*, undercutting Powell’s assertion about *Lam*’s holding.

2. Powell and his *amici*<sup>1</sup> have excavated one sentence from *Lam* to transform Florida’s anti–SLAPP statute into something it is not. That sentence came from *Lam*’s discussion of *Bongino v. Daily Beast Co.*, 477 F. Supp. 3d 1310 (S.D. Fla. 2020).

In *Bongino*, the court confronted whether the fee–shifting provision in Florida’s anti–SLAPP statute “applies in a federal court exercising diversity jurisdiction.” *Id.* at 1322. *Bongino* concluded that

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<sup>1</sup> The plaintiffs in *Lam* submitted an *amicus* brief in support of Powell. See Br. of Pastor Carlos Enrique Luna Lam & Iglesia Casa de Dios as *Amici Curiae* (“Luna.Br.”).

Florida’s anti-SLAPP statute “fuses with”—rather than alters—the standards in the federal rules. *Id.* at 1323.

Therefore, when *Bongino* held that “Florida’s statute is a garden variety fee shifting provision,” it was in reference to the position that the statute did not conflict with federal pleading standards. *Id.* That was all *Lam* and *Bongino* held. No court has adopted Powell’s atextual interpretation.<sup>2</sup>

## **B. Powell’s Atextual Reading Of The Anti-SLAPP Statute Should Be Rejected**

### **1. Powell Erroneously Shuns Interpretive Canons**

Powell refuses to grapple with the statute’s text or ordinary rules of statutory interpretation and construction. Powell contends that there is “no occasion for resorting to the rules of statutory interpretation and construction” because, in his view, the language of the anti-SLAPP statute “is clear and unambiguous.” Ans.Br.22. Powell’s approach to statutory interpretation is no longer good law,

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<sup>2</sup> The student law review note cited by Powell (Ans.Br.18, 25–26) does not mention *Lam*; it discusses cases like *Bongino* and argues that Florida’s anti-SLAPP statute should apply in federal court. See Harris Blum, Note, *SLAPPING Back in Federal Court: Florida’s anti-SLAPP Statute*, 76 U. Miami L. Rev. 345, 362 (2021) (hereinafter “Blum”).

and was recently deemed by this Court to be “misleading and outdated.” *Conage v. United States*, 346 So. 3d 594, 598 (Fla. 2022).

As this Court explained, “judges must ‘exhaust “all the textual and structural clues” that bear on the meaning of a disputed text.” *Id.* (citation omitted). Powell’s refusal to even engage with the canons of statutory interpretation detailed in Vericker’s initial brief (at 19–31) is a concession that the canons do not support Powell’s interpretation.

## **2. The Anti-SLAPP Statute Immunizes Defendants From A Particular Type Of Suit**

Powell and his *amici* make much of the fact that the anti-SLAPP statute does not contain the word “immunity.” But that argument ignores the plain language of the statute and its title. And it undervalues the constitutional rights the Legislature sought to protect.

The anti-SLAPP statute provides: “A person or governmental entity in this state ***may not file or cause to be filed***” a SLAPP suit “against another person or entity without merit and primarily because such person or entity” has exercised their First Amendment rights. § 768.295(3), Fla. Stat. (emphasis added). As confirmed by the

statute’s title, meritless suits designed primarily to target First Amendment rights are “prohibited”—full stop. § 768.295. And this prohibition on SLAPP suits is secured by “a right to an expeditious resolution of a claim that a suit” is a SLAPP suit. § 768.295(4).

Powell and his *amici* fail in at least two respects. First, they do not address section 768.295(4)’s “right to an expeditious resolution” in light of this Court’s precedent recognizing its role to ensure procedural rules reflect legislative prerogatives. *See Univ. of Fla. Bd. of Trs. v. Carmody*, \_\_\_ So. 3d \_\_\_, 2023 WL 4359498, at \*7 (Fla. July 6, 2023) (“[I]t is within our constitutional authority to ensure that Florida’s procedural rules of court manifest the substantive legal enactments of the Legislature.”). Second, they are unable to distinguish the anti-SLAPP statute from other legislative enactments that authorize certiorari or interlocutory review.

For example, section 768.72, Florida Statutes, confers on all defendants a “statutory right . . . to be free of punitive damages allegations in a complaint until there is a reasonable showing by evidence in the record or proffered by the claimant.” *Globe Newspaper Co. v. King*, 658 So. 2d 518, 520 (Fla. 1995). Like the anti-SLAPP statute, section 768.72’s language is prohibitive in nature: “In any

civil action, ***no claim for punitive damages shall be permitted*** unless there is a reasonable showing by evidence in the record or proffered by the claimant which would provide a reasonable basis for recovery of such damages.” § 768.72(1), Fla. Stat. (emphasis added). Because that “statutory right” cannot be “restore[d]” on plenary appeal, *Globe Newspaper* held that nonfinal orders granting leave to assert a punitive damages claim should be reviewable by certiorari.<sup>3</sup>

Similarly, the Medical Malpractice Act “sets requirements that anyone contemplating a medical malpractice case must meet before filing suit in Florida.” *Carmody*, 2023 WL 4359498, at \*1. The Legislature did so to further its stated “intent . . . to provide a plan for prompt resolution of medical negligence claims.” § 766.201(2), Fla. Stat. And Florida courts have recognized that certiorari review is available “‘when the presuit requirements of a medical malpractice statute are at issue’ since the ‘purpose’ of the Medical Malpractice Act is ‘to avoid meritless claims and to encourage settlement for meritorious claims.’” *Carmody*, 2023 WL 4359498, at \*4 (citation

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<sup>3</sup> This Court has amended rule 9.130 to permit interlocutory review in that context. See Fla. R. App. P. 9.130(a)(3)(G).

omitted).<sup>4</sup> Although this Court did not grant certiorari relief in *Carmody*, it breathed meaningful protection into the statute by amending rule 9.130 to permit interlocutory review. *Id.* at \*7–8.

Similar to the punitive damages statute and the Medical Malpractice Act, the anti–SLAPP statute prohibits certain claims. See § 768.295(3), Fla. Stat. However, as all three judges below recognized, unlike the instances in which this Court has held that certiorari or interlocutory review is appropriate to protect substantive statutory rights, the anti–SLAPP statute is “rooted in public policy meant to protect **constitutional rights**.” R.1086 (Gordo, J., specially concurring) (emphasis added). By enacting section 768.295, the Legislature found that “prohibiting” SLAPP suits preserves interests of the highest order: “the right of persons to exercise . . . constitutional rights of free speech in connection with public issues,” in order to “assure the continuation of representative government in

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<sup>4</sup> The district courts of appeal have likewise recognized that substantive statutory rights backed up by presuit requirements, once lost, cannot be regained on post–judgment appeal, and have granted certiorari relief in several contexts. See, e.g., *Mancini v. Personalized Air Conditioning & Heating, Inc.*, 702 So. 2d 1346, 1377–78 (Fla. 4th DCA 1997).

this state.” § 768.295(1). The same cannot be said of the other statutory rights where Florida courts, including this one, have found certiorari or interlocutory review to exist.<sup>5</sup>

It would turn the concept of irreparable harm on its head to hold that statutory rights of a non-constitutional nature call for certiorari or interlocutory review, but a statutory right of constitutional magnitude does not.

### **C. Powell’s Policy Arguments And Improper Resort To Legislative History Are Unavailing**

1. Rather than confront the anti-SLAPP statute’s text, Powell addresses its legislative history. But it is “inappropriate[] [to] resort to legislative history before consulting [a] statute’s text and

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<sup>5</sup> This Court should also reject Powell’s effort to portray certiorari jurisdiction as limited to review of procedural deficiencies. Ans.Br.13–15 (discussing *Carmody*). In *Carmody*, this Court explained that in the context of considering certain orders denying motions to dismiss, certiorari review exists “solely to ensure that procedural aspects of the **presuit requirements are met.**” 2023 WL 4359498, at \*5 (emphasis added). There are no such pre-suit requirements under the anti-SLAPP statute. And certiorari is allowed to review orders unrelated to procedural deficiencies. *E.g.*, *Belair v. Drew*, 770 So. 2d 1164, 1167 (Fla. 2000) (certiorari authorized to review an order that contravened a mother’s constitutional privacy rights).

structure.” *Food Mktg. Inst. v. Argus Leader Media*, 139 S. Ct. 2356, 2364 (2019).

This Court instead “follow[s] ‘the supremacy-of-text principle,’” which instructs that “the words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.” *Ham v. Portfolio Recovery Assocs., LLC*, 308 So. 3d 942, 946 (Fla. 2020) (alteration adopted).<sup>6</sup>

2. Even if considered, the anti-SLAPP statute’s legislative history undermines the key policy argument Powell and his *amici* raise—namely, that the anti-SLAPP statute cannot be considered an immunity statute because it does not contain a broader array of procedural mechanisms.

Powell acknowledges that, in 2000, the Legislature scrapped draft bills that contained a stay-of-discovery mechanism and a burden-shifting framework. Ans.Br.25–26. But he ignores why the Legislature likely did so. House and Senate Staff Analyses pointed

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<sup>6</sup> This contrasts with “statutory history,” which “appropriately employed, . . . can cast light on ‘the context of the statute.’” *Progressive Express Ins. Co. v. SimonMed Imaging*, 363 So. 3d 1196, 1201 (Fla. 6th DCA 2023) (Sasso, C.J.); Init.Br.17–19.

out potential separation-of-powers issues with such provisions. See Blum, *supra*, at 366–67 & nn.146–50 (collecting legislative sources). The exclusion of those procedural mechanisms does not lead to the conclusion that the Legislature did not intend to prohibit SLAPP suits or otherwise immunize defendants from them. Rather, it shows that the Legislature sought to respect the separation of powers. See *Se. Floating Docks, Inc. v. Auto-Owners Ins. Co.*, 82 So. 3d 73, 78 (Fla. 2012).

## **II. Nonfinal Orders Denying Anti-SLAPP Motions As A Matter Of Law Cause Irreparable Harm That Cannot Be Remedied On Post-Judgment Appeal**

### **A. The Denial Of An Anti-SLAPP Motion Implicates First Amendment Rights**

1. Powell’s assertion that irreparable harm does not result from the denial of an anti-SLAPP motion minimizes and misstates the constitutional interests at stake.

In Powell’s view, because he alleges that Vericker has defamed him, and because defamatory speech is not constitutionally protected, Vericker has not been denied any constitutional rights. Ans.Br.36–37. Under Powell’s rationale, however, no constitutional rights would ever be implicated in defamation actions, because

plaintiffs, necessarily, claim that the speech at issue is not constitutionally protected. Powell misses the point. Expeditious review is needed to test whether a defendant is being sued for the exercise of his constitutional rights.

Powell's assertions about the nature of Vericker's speech are meritless. See Init.Br.5–8, 48–52. Powell cannot ignore the fact that, since he is a public figure, he “cannot recover . . . unless [Vericker] acted with ‘knowledge that [the alleged defamatory speech] was false or with reckless disregard of whether it was false or not.’” *Counterman v. Colorado*, 600 U.S. 66, 76 (2023) (quoting *N.Y. Times Co. v. Sullivan*, 376 U.S. 254, 280 (1964)). Such a rule exists due to “fear of ‘self-censorship’—the worry that without . . . a mental-state requirement, the uncertainties and expense of litigation will deter speakers from making even truthful statements.” *Id.* (quoting *Sullivan*, 376 U.S. at 279). Thus, to establish an entitlement to relief, Powell must satisfy *Sullivan*'s constitutional prerequisites. That alone demonstrates that constitutional interests are at stake. Certiorari or interlocutory review is necessary to confirm that constitutional hurdles have been cleared.

2. Powell’s *amici* likewise minimize constitutional interests. According to *amici*, “[t]here is nothing inherent in a pending defamation lawsuit that chills a party from speaking to the public.” Luna.Br.17. Florida and 31 other states see things differently. As then–Judge Kavanaugh explained, anti–SLAPP statutes “give more breathing space for free speech about contentious public issues” and “try to decrease the “chilling effect” of certain kinds of libel litigation and other speech–restrictive litigation” “by making it easier to dismiss defamation suits at an earlier stage of the litigation.” *Abbas v. Foreign Policy Grp., LLC*, 783 F.3d 1328, 1332 (D.C. Cir. 2015) (citation omitted).

*Amici*’s claim that SLAPP suits do not chill speech stems, in part, from their view that “[h]istorically, newspapers or other publishers that are sued for defamation[] continue publishing and speaking during litigation.” Luna.Br.18. Whether empirically true or not, the assertion is at odds with both the U.S. Supreme Court’s constitutional analysis and the Legislature’s findings in adopting the anti–SLAPP statute. *Cf. Hustler Magazine, Inc. v. Falwell*, 485 U.S. 46, 52 (1988) (“[A] rule that would impose strict liability on a publisher of false factual assertions would have an undoubted

‘chilling’ effect on speech relating to public figures that does have constitutional value. ‘Freedoms of expression require “breathing space.”’); § 768.295(1), Fla. Stat. (“It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues . . . .”). In neither *Sullivan* nor *Hustler Magazine* did the Supreme Court require a showing that the defendant’s actual speech was chilled before extending constitutional protections. Nor should this Court do so here, as *amici* advocate for. See Luna.Br.18.

Moreover, *amici*’s argument is unavailing because the anti-SLAPP statute protects the free speech rights of **everyone**, not just media organizations. *Amici*’s claim that media organizations continue to speak amid defamation suits says nothing of regular litigants, such as Vericker.

3. Finally, Powell asserts that, even if constitutional rights are at stake, no irreparable harm will result. The primary case Powell relies on offers no support for his position.

In *Jaye v. Royal Saxon, Inc.*, 720 So. 2d 214, 215–16 (Fla. 1998), this Court found that irreparable harm did not exist for certiorari

purposes when a jury trial demand is erroneously stricken. That makes sense, as a case can always be re-tried before a jury.

Not so when First Amendment rights are at issue. When speech is chilled, the harm is immediate. “[W]ould-be speakers remain silent, [and] society will lose their contributions to the ‘marketplace of ideas.’” *United States v. Hansen*, 599 U.S. 762, 770 (2023) (citation omitted). That is why “[t]he loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.” *Roman Cath. Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 67 (2020) (citation omitted).

*Amici’s* reliance on *Gadsden County Times Inc. v. Horne* is likewise misplaced. 382 So. 2d 347 (Fla. 1st DCA 1980) (denying certiorari in a First Amendment case). Luna.Br.18–19. *Gadsden* was decided nearly twenty years before section 768.295’s enactment. And it has since been overtaken by later decisions holding that certiorari review is appropriate for restrictions on First Amendment rights that cannot be remedied on plenary appeal. See Init.Br.39–40 (discussing *Rodriguez ex rel. Posso–Rodriguez v. Feinstein*, 734 So. 2d 1162 (Fla. 3d DCA 1999)); *Delgado v. Miller*, 314 So. 3d 515, 517–18 (Fla. 3d DCA 2020). Moreover, *Gadsden* found that a favorable ruling on the

constitutional question would not “dispose of th[e] litigation,” unlike in Vericker’s case. 382 So. 2d at 349 (noting that “actual malice” was not at issue).

**B. The Loss Of Immunity From Anti–SLAPP Suits Cannot Be Restored On Post–Judgment Appeal**

Absent certiorari or interlocutory review, the right conferred by section 768.295 not to be subject to SLAPP suits (i.e., its immunity) will be lost forever. Powell does not address this.

Nor does Powell meaningfully engage with Justice Canady’s separate opinions finding that irreparable harm existed in *Citizens Property Insurance Corp. v. San Perdido Association, Inc.*, 104 So. 3d 344 (Fla. 2012), and *Rodriguez v. Miami–Dade County*, 117 So. 3d 400 (Fla. 2013). Instead, Powell simply states that Justice Canady joined the majority opinion in *Carmody*. Ans.Br.43 n.15. *Carmody*, however, expressly declined to consider the irreparable harm prong of certiorari review. 2023 WL 4359498, at \*4. It instead only addressed whether the trial court departed from the essential requirements of the law. So Powell’s reference to Justice Canady joining the Court’s opinion in *Carmody* is misguided.

### **III. The Trial Court Departed From The Essential Requirements Of The Law In Denying Vericker's Certiorari Petition**

The trial court departed from the essential requirements of the law (A) by failing to apply *Sullivan's* actual malice standard, and (B) by failing to provide reasoning behind its summary judgment ruling, as required by Florida Rule of Civil Procedure 1.510(a). Rather than defend the trial court's order, Powell seeks to rewrite it.

A. Powell does not identify where the trial court discusses actual malice. Instead, he points to the ***parties'*** trial court briefing and the summary judgment hearing transcript. Ans.Br.51. But that does not amount to a judicial ruling. And Powell fails to mention that the trial court's summary judgment order is based on a proposed order ***that his counsel drafted.*** Compare R.1020–22 (proposed order) *with* R.1023–24 (summary judgment order).

And notwithstanding that, Vericker contends that certiorari (or interlocutory) review will establish that the summary judgment evidence fails to satisfy *Sullivan's* standard. Powell fails to identify any summary judgment evidence that shows Vericker acted with actual malice when reporting about Powell's qualifications, his registration as a strip club lobbyist, or accusations of Powell

“ma[king] up a new law” regarding a commissioner’s appointment, all matters addressed in the initial brief. Init.Br.6–7. Powell deflects to other claimed defamatory statements.

But as the Third District may consider on remand, the new statements Powell pivots to also do not satisfy the substantial constitutional standards. Powell claimed that Vericker defamed him by writing that “Powell obtained an ‘illegal’ severance payment.” Ans.Br.2–3. The summary judgment record, however, reflected that Florida Statutes allowed only for a few months of severance pay, not the yearlong severance Powell obtained. R.247, 405:14–15; *see also* § 215.425(4)(a)1., Fla. Stat. (limiting severance exceeding more than twenty weeks of compensation).

Powell asserted that North Bay Village lawyers determined that one-year’s severance was permissible notwithstanding the Florida statute because he provided additional consideration, i.e., waiver of his right to sue the Village. R.405:14–18. But, even if that analysis were correct, it does not mean Vericker knew of the analysis, agreed with it, or otherwise acted with actual malice. *See Harte–Hanks Commc’ns, Inc. v. Connaughton*, 491 U.S. 657, 667 (1981) (“[W]e have made clear that the defendant must have made the false publication

with a ‘**high degree of awareness** of probable falsity’ . . . or must have ‘entertained serious doubts as to the truth of his publication.’” (citations omitted; emphasis added)); *see also* R.239(¶11).

Powell’s other contention relates to an alleged accusation by Vericker that Powell “committed a crime by filing a fabricated and false police report.” Ans.Br.3. But Vericker did not write that Powell committed a crime or fabricated that complaint. Vericker’s commentary read that “[Powell’s] **got** a big, lying, dishonest, false police report that **he is pushing . . .**” R.245 (emphasis added). Vericker’s commentary expressly stated that another individual (a four-time felon) “concocted” the report. R.168.

Vericker’s writing suggested that Powell played a role in genesis of the false complaint, *id.*, and an investigative report by the Village’s former internal affairs administrator supported that commentary. R.239(¶11);R.295–98. That report detailed that Powell initiated the investigation by presenting unfounded charges to the then–police chief for investigation following receipt of an anonymous and unsigned email. R.296. The former administrator detailed that Powell refused to cooperate with the investigation into the source of the false accusation and described the unsigned email Powell purportedly

received as an “**allegedly** anonymous email.” R.296–97 (emphasis added). Moreover, the former administrator accused Powell and other Village officials of ambushing him and causing his “abrupt” departure from the Village in an apparent attempt to quash his findings debunking the anonymous complaint. *Id.* Vericker’s commentary was thus substantially true and did not amount to actual malice. *See Smith v. Cuban Am. Nat’l Found.*, 731 So. 2d 702, 706 (Fla. 3d DCA 1999) (“Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the ‘gist’ or the ‘sting’ of the statement is true.”).<sup>7</sup>

B. With respect to the trial court’s failure to adequately explain its summary judgment ruling, rule 1.510(a) requires that the trial court do more than “make a conclusory statement that there is or is not a genuine dispute as to a material fact.” *In re Amends. to Fla. Rule of Civil Procedure 1.510*, 317 So. 3d 72, 77 (Fla. 2021).

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<sup>7</sup> Nor is there any validity to Powell’s assertions about the illegal copying of Homeland Security information. Ans.Br.53. Powell does not deny that a federal lawsuit provides an adequate basis for the commentary. *Id.* He, instead, contends that the federal lawsuit Vericker relied on to support his statement about the copying was not filed until after Vericker’s commentary. *Id.* But Vericker had pre-filing notice of the complaint. R.1012:24–1013:3.

Vericker does not dispute that his petition to the Third District lacked argument regarding the rule 1.510(a) omission. But he raised that issue for review in his jurisdictional brief to this Court. Juris.Init.Br.1. And Powell’s jurisdictional brief did not contest Vericker’s ability to do so. Powell has arguably waived his contention that the question is not properly before this Court. In any event, on remand, the Third District may decide whether to deem Vericker’s position waived. *See Westerheide v. State*, 831 So. 2d 93, 105 (Fla. 2002) (“[O]nce an appellate court has jurisdiction it may . . . consider any item that may affect the case.”).

#### **IV. The Court Should Amend Rule 9.130 To Retroactively Permit Interlocutory Review Of Nonfinal Orders Denying Anti-SLAPP Motions As A Matter Of Law**

In the alternative, this Court should amend rule 9.130. *See* Init.Br.55.

Powell and his *amici* suggest that limiting appellate review to nonfinal orders “based solely on constitutional defenses” is not a meaningful limitation. *See* Ans.Br.58–59; Luna.Br.20–21. But the proposed rule constrains review to summary judgment orders, eliminating review of orders denying motions to dismiss. The proposed rule also limits review to constitutional defenses and

requires that the order deny the motion “as a matter of law,” another constraint. *E.g., Hastings v. Demming*, 694 So. 2d 718, 720 (Fla. 1997).

*Amici* assert (Luna.Br.21) that allowing interlocutory appeals will delay discovery and litigation. The proposed rule contains no automatic stay. Regardless, there is no right to discovery or litigation for a lawsuit the Legislature has prohibited.

Finally, *amici* argue that the anti-SLAPP statute’s requirement that a suit be brought “without merit and primarily because” of the exercise of protected speech is a “factual issue” not fit for appellate review. Luna.Br.21–22. Far from it. Section 768.295(3) does not include a *mens rea* requirement that requires the target of a SLAPP suit to prove intent. *See* Init.Br.27–30.

### **CONCLUSION**

The Court should confirm that certiorari jurisdiction exists here or, alternatively, retroactively amend rule 9.130.

Dated: November 30, 2023

Respectfully submitted,

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## **CERTIFICATE OF SERVICE**

**I HEREBY CERTIFY** that a true and correct copy of the foregoing was served on November 30, 2023, via electronic mail using the Court's ePortal system upon Neal Kodsi (nkodsi@feldmankodsi.com), and Andrew Feldman (afeldman@feldmankodsi.com), Feldman Kodsi, Datran Center, 9100 S. Dadeland Blvd., Suite 1500, Miami, FL 33156, (305) 445-2005 *Counsel for Respondent*; Rachel E. Fugate (rfugate@shullmanfugate.com), Deanne K. Shullman (dshullman@shullmanfugate.com), and Minch Minchin (mminchin@shullmanfugate.com), Shullman Fugate PLLC, 100 S. Ashley Dr., Suite 600, Tampa, FL 33602, (813) 935-5098, *Counsel for Amici Curiae News and Media Organizations*; and Beverly A. Pohl (beveryl.pohl@nelsonmullins.com), Nelson Mullins Riley & Scarborough LLP, Lynn Financial Center, 1905 NW Corporate Blvd., Suite 310, Boca Raton, FL 33431, (954) 745-5249, Mark F. Raymond (mark.raymond@nelsonmullins.com), Nelson Mullins Riley & Scarborough LLP, 2. S. Biscayne Blvd., 21st Floor, Miami, FL 33131,

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**CERTIFICATE OF COMPLIANCE**

**I HEREBY CERTIFY** that this brief was prepared in Bookman Old Style, 14–point font, and contains 3,990 words, in compliance with rules 9.045(b) and 9.210(a)(2)(B) of the Florida Rules of Appellate Procedure.

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