

**IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT  
IN AND FOR PINELLAS COUNTY, FLORIDA – CIVIL DIVISION**

**JOHN WILLIAM LICCIONE,**

Plaintiff,

v.

**Case No.: 24-003939-CI**

**CATHY SALUSTRI-LOPER; et al**

Defendants.

\_\_\_\_\_ /

**PLAINTIFF’S RESPONSE IN OPPOSITION TO DEFENDANTS’  
MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR  
STAY / VEXATIOUS-LITIGANT RELIEF**

Plaintiff, John William Liccione, pro se, files this Response in Opposition to Defendants’ Motion to Dismiss Third Amended Complaint and for Stay / Vexatious-Litigant Relief (Dkt. 172) and states:

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## **I. INTRODUCTION AND REVIEW OF JULY 12<sup>TH</sup> GABBER ARTICLE**

1. The 3AC asserts a single, focused cause of action for defamation, including defamation by implication, arising from The Gabber's July 12, 2024 article about the Democratic primary for Florida's 13th Congressional District.
2. The 3AC attaches and incorporates key exhibits: (a) the Supervisor of Elections sample ballot showing five qualified Democratic candidates (including Plaintiff); (b) the complete July 12 article, including headline, sub-headline, photos, layout, and interstitial; (c) prior "Meet the Candidates" features published by The Gabber; (d) Plaintiff's paid campaign advertisement in The Gabber; (e) a photograph of Plaintiff's campaign sign located near The Gabber's office; (f) The Gabber's partial "correction"; and (g) a sworn voter affidavit attesting to how the article was understood.
3. The defamatory gist of the July 12 article emerges immediately from its opening elements. The very first thing an ordinary reader sees is the bold headline:

### **Meet the Democratic Candidates for the District 13 Congressional Election**

thus signaling that what follows is a comprehensive voter-guide presenting the full Democratic field for that specific Congressional election.

4. Immediately beneath that headline the article displays a generic stock photo of a hand holding an "I VOTED" sticker, that is not of the debate venue, not the St. Petersburg Marriott Clearwater, and has a background of blurry image of small, one-story hotel's pool area with deck chairs. It bears no resemblance to the event location. The image is credited "Photo courtesy of

the City of St. Petersburg,” further reinforcing to readers that this is an authoritative, civic-oriented voter-information piece—not a debate advertisement.



5. Directly under this stock photo, the caption unequivocally states in small-font:

**The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.**

*Photo courtesy of the City of St. Petersburg*

6. Thus, the caption is framed as a factual identification of a congressional election race that is unequivocally a *four-way race*, not a five-way race. It is *not* solely a description of debate participants. The article then profiles only those four individuals. Plaintiff—who indisputably appeared on the Supervisor of Elections ballot as the fifth Democratic candidate in the race and was known to Defendants as a qualified candidate still in the running at time of publication—was omitted entirely. Plaintiff argues this was deliberate, as the already well-pleaded facts and evidence show.

7. Immediately following this caption, the article introduces the candidate profiles with a large, bold-font section header and introduction to Whitney Fox, followed by a large, page-wide photo as follows:

## **Meet the District 13 Congressional Candidates: Whitney Fox**



8. The caption under Whitney Fox’s photo then reads:

**Whitney Fox looks to take the District 13 Congressional seat in the upcoming election.  
*Photo via FloridaPolitics***

9. Below follows a one-paragraph profile of Fox in normal-size font that Defendants state they had obtained, notably, *from Fox’s campaign website*.

“Fox’s website describes her as, “A mother who will fight to improve the quality of life for Florida’s 13th district and the American people. Some focuses for her candidacy include protecting women’s reproductive rights and healthcare. Also, she looks to protect Social Security and Medicare, and lower prescription drug costs.”

10. Next comes the presentation of candidate Mark Weinkrantz, which follows the same layout and content as Fox’s presentation, with one significant difference. Defendants state that Weinkrantz’ photograph was provided *by Mark Weinkrantz himself*. This proves that Defendants contacted Weinkrantz in advance of publication, notified him of the upcoming article, requested a photograph, and he provided one.

**Mark Weinkrantz**



What does Mark Weinkrantz hope to achieve if elected to the District 13 Congressional seat?

Photo Via Mark Weinkrantz

11. What follows next is the interstitial large-font and italicized, with a link to their article about the Pinellas County Supervisor of Elections race voter guide:

*The District 13 Congressional election candidates are not the only people you will vote for. [Read about the Pinellas County Supervisor of Elections candidates.](#)*

12. What then follows is the presentation of candidate Liz Dahan whose photo they obtained from FloridaPolitics and whose profile writeup they obtained from Dehan’s campaign website:

### **Liz Dahan**



**Liz Dahan prepares for the debate for the District 13 Congressional election.**

*Photo via FloridaPolitics*

“Dahan also focuses on protecting women’s rights. Her approach towards Social Security and medicare is similar to Fox’s. Also, her website states, “She is passionate about protecting Florida’s natural environment and recognizes that our vulnerability to rising sea levels, hurricanes, and coastal erosion requires bold legislative measures aimed at reducing carbon emissions, investing in renewable energy, and enhancing our natural defenses against climate-related disasters.”

13. Finally comes candidate Sabrina Bousbar’s profile whose picture was obtained from FloridaPolitics while her writeup was lifted from her campaign website:

### **Sabrina Bousbar**



**Sabrina Bousbar’s campaign for the District 13 Congressional election is heating up.**

*Photo via FloridaPolitics*

“Bousbar’s website describes her as a “public servant and commonsense problem solver.” Her goals are to make sure that families and individuals have access to viable “education, healthcare, housing, and jobs that every family needs and deserves.”

14. And finally is the wrap-up paragraph which describes how Defendants cover local elections and invites readers to subscribe so as to make “an informed decision at the polls.”

### **Want More Election News?**

*The Gabber Newspaper* covers elections on the South Pinellas beaches, Gulfport, and South Pasadena. Want to make an informed decision at the polls? Subscribe to [The Weekly](#) and [The Beach Barnacle](#), our two weekly newsletters. And make [thegabber.com](http://thegabber.com) your homepage to stay up-to-date on all the news in Gulfport, South Pinellas, and the beaches.

15. It is clear to a reasonable person that Defendants deliberately *avoided* contacting Plaintiff, and avoided pulling content from Plaintiff’s campaign website to obtain his photo and profile content. A reasonable inference one can make is that Defendants knew that if they *did* provide Plaintiff advanced knowledge of publication, he would have had a written email record of prepublication contact and delivery of photograph and writeup. Defendants, their employees, and potentially others, acted in concert to *conceal* the upcoming publication from Plaintiff. This demonstrates a pre-meditated, pre-publication strategy designed to create the exact legal pretext for post-publication plausible deniability they have deployed in their defense in this case: Claiming after-the-fact that all along this was just an article about a debate, not a comprehensive Meet the Candidates voters’ guide about his congressional primary election, of the kind the record shows they always publish for local elections.

16. Taken together, this headline–photo–caption–section-header sequence communicates a single, clear, false message to readers: that there were only four Democratic candidates in the CD-13 primary and Plaintiff was not one of them. It is this publication-wide misrepresentation—not just a mere omission—that gives rise to Plaintiff’s defamation and defamation by implication claims.

17. When this evidentiary record and factual allegations are taken as true and all reasonable inferences are drawn in Plaintiff's favor, as required by Rule 1.140(b)(6), the 3AC states a plausible claim for defamation by implication under *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008), and its progeny. The 3AC also satisfies Plaintiff's burden under Florida's Anti-SLAPP statute and defeats Defendants' request for vexatious-litigant sanctions.

## **II. THE PRIOR DISMISSAL DEFENDANTS RELY ON HERE MISAPPLIED RULE 1.140(b)(6) AND *JEWES FOR JESUS***

18. In dismissing the Second Amended Complaint, the Court correctly cited *Jews for Jesus* for the general principles of defamation-by-implication, but the order applied that case only at a high level while overlooking the specific components of the published article that *Jews for Jesus* requires courts to evaluate. The prior dismissal did not address (a) whether the publication's structure and format communicated a false implication; (b) whether omission of a ballot-qualified Democratic candidate from a voter-guide-style presentation labeled "Meet the Democratic Candidates" created a misleading gist; or (c) whether the article, viewed as a whole, conveyed a false factual message to ordinary readers. As detailed in ¶¶3–16 above, the headline, stock photo attributed to the City of St. Petersburg, the express caption identifying "the four candidates," the bold section header "Meet the District 13 Congressional Candidates," and the subsequent four candidate profiles all combine to signal completeness and to represent falsely that the CD-13 Democratic field consisted of only four individuals. These are precisely the kinds of contextual meaning and implication issues that *Jews for Jesus* requires courts to evaluate, and the prior order did not analyze them.

19. In *Jews for Jesus, Inc. v. Rapp*, the Florida Supreme Court adopted Restatement (Second) of Torts § 563 comment c and held that a defendant may be liable for defamation where it

“juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts,” and may be held responsible for that implication “even though the individual facts are true.” 997 So. 2d at 1108. Under that standard, the question is the overall message or gist that reasonable readers would draw from the publication as a whole. As described in ¶¶3–16 above, Plaintiff alleges that the headline, image, caption, section header, and candidate profiles in the July 12 article were arranged and curated in a way that led ordinary readers to draw a false conclusion about who the Democratic candidates for District 13 were, and also to the false conclusion that only four candidates were running — that the race was a four-way contest rather than the five-way primary that actually appeared on the Supervisor of Elections ballot..

20. The explicit caption stating “The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater”, placed immediately beneath the headline “Meet the Democratic Candidates for the District 13 Congressional Election” and immediately above the bold section header “Meet the District 13 Congressional Candidates:”, makes this publication especially susceptible to an actionable implication under *Jews for Jesus*. The prior dismissal treated the article as if it were simply a notice about a debate. But an ordinary reader encountering this sequence — a voter-guide headline, a City-attributed stock photo, a caption referring to “the four candidates,” a section header introducing “Meet the District 13 Congressional Candidates:” and four profiles presented as the complete field — would reasonably understand the article as identifying the full roster of Democratic candidates, not merely debate participants. Under *Jews for Jesus*, the inquiry is whether the overall message conveyed is false or misleading, and here the message is

unmistakably that Plaintiff was *not* a Democratic candidate running in this specific election at all.

21. Florida’s ordinary-reader standard, articulated in Hay and Ane and approved by the Florida Supreme Court in Nodar, confirms that dismissal is improper where a publication is reasonably susceptible to a defamatory meaning. Hay requires that allegedly defamatory matter be read “as the common mind would normally understand it,” and Ane holds that a claim cannot be dismissed if the communication is “reasonably capable of a defamatory meaning.” Applying those standards here, an ordinary Democratic primary voter encountering the July 12 article as presented in ¶¶3–16—beginning with the headline “Meet the Democratic Candidates for the District 13 Congressional Election,” followed by a City-attributed stock photo, an express caption identifying “the four candidates,” a bold section header labeled “Meet the District 13 Congressional Candidates:”, and then four candidate profiles—could reasonably understand the publication to mean that the Democratic field consisted of only four candidates and that Plaintiff was not in the race at all. Under Hay, Ane, and Nodar, that determination must be left to the trier of fact. The prior dismissal inverted the Rule 1.140(b)(6) standard by accepting Defendants’ characterization of the article as a debate notice and drawing inferences in Defendants’ favor rather than Plaintiff’s. Because the ordinary-reader question and the publication’s contextual meaning are factual issues under Florida law, the claim cannot be dismissed at the pleading stage.

22. The prior dismissal order cited *Jews for Jesus* but did not apply its core requirements: to evaluate whether the arrangement of facts, the omission of a ballot-qualified candidate, and the overall structure and presentation of the article created a false implication or misleading gist. The order treated the publication as if it were merely a debate notice, without conducting the analysis

required under *Jews for Jesus*, *Hay*, *Ane*, and *Nodar*. As set forth in ¶¶3–16, the full text, sequence, and layout of the July 12 article present a much different—and actionable—implication. At this stage, Plaintiff is required only to plead a plausible claim, and all reasonable inferences must be drawn in his favor under Rule 1.140(b)(6). The meaning an ordinary reader would derive from the article’s presentation is a factual question that cannot be resolved on a motion to dismiss. By drawing inferences in Defendants’ favor, the prior dismissal inverted both the plausibility standard and the governing defamation-by-implication framework. With the complete context now pled, the Third Amended Complaint states a facially sufficient and plausible claim for defamation by implication.

### **III. QUANTITATIVE AND VISUAL ANALYSIS CONFIRMS THE ARTICLE IS A VOTER GUIDE, NOT A DEBATE PREVIEW**

23. Defendants’ present motion leans heavily on the prior order dismissing the Second Amended Complaint, citing it as though it conclusively resolved the sufficiency of any defamation claim arising from the July 12 article. But that order addressed a different pleading on a materially different record, and it cannot simply be imported onto the Third Amended Complaint. The 3AC adds detailed factual allegations, incorporates the full article and layout, and squarely pleads the implication theory that the prior order said was lacking. On this motion, the Court must evaluate the 3AC on its own terms under Rule 1.140(b)(6) and the governing defamation-by-implication authorities, rather than extending the prior order’s “Debate Article” framing to a now-expanded and corrected record.

24. As detailed in ¶¶3–16, the July 12 article must be evaluated as an ordinary reader experiences it: through its words, layout, typography, images, and omissions. Florida defamation law requires courts to consider a publication’s full presentation and overall message, not isolated

phrases. Linguistic and visual cues together determine a publication's gist and the implication it conveys.

25. Quantitatively, the article is dominated by the language and imagery of candidates, not a debate. The term "candidate(s)" appears six times, including in the most visually prominent locations: (a) the large headline, "Meet the Democratic Candidates for the District 13 Congressional Election," and (b) a section header that reinforces that branding with the stylized phrase "Meet the District 13 Congressional Candidates:" which appears directly above candidate Whitney Fox's name, picture, and profile. Candidate-centric language appears repeatedly in the body text.

26. By contrast, within the article itself, the word "debate" appears only three times, and only in small-font, incidental body text or a caption. "Debate" never appears in a headline, sub-headline, section heading, or other typographically emphasized location. The lexical balance and structural placement of terms thus strongly favor the interpretation that the article is a voter's candidate guide, not a debate announcement.

27. Visually, the article follows The Gabber's established "Meet the Candidates" voter-guide format. The largest font on the page is reserved for "Meet the Democratic Candidates..." in the headline. The sub-headline repeats the candidate focus. Below that are four large portrait-style photographs of individual candidates, each paired with text describing their background or positions—exactly how The Gabber presents candidates in its other voter guides.

28. There is no debate branding, no photograph of a debate stage, no debate logo or insignia, no visually separated box labeled "Debate Information," no logistical details about the debate venue, and no layout that would signal to a reader that this is primarily an event notice. The debate, to the extent it is mentioned at all, is visually subordinate to the candidate profiles.

29. The article also contains a prominent interstitial box directing readers to “meet the candidates” in the Supervisor of Elections race “to stay informed.” That internal cross-link uses the same “Meet the Candidates” branding and explicitly tells readers that reviewing candidate profiles is how to stay informed. This is a self-referential component of The Gabber’s broader voter-guide series, not a typical feature of a debate announcement.

30. Just as important is omission. The article’s structure—headline, sub-headline, “Meet the Candidates” branding, candidate photo array, and interstitial cross-link—communicates to an ordinary reader that the published list of four individuals comprises the entire Democratic candidate field (when it does not), and that it is a field of only four candidates (when it is not). When a publication adopts a format that signals completeness and then omits one ballot-qualified Democratic candidate, the omission itself communicates the false implication that the omitted candidate is not, in fact, a candidate.

31. The prior dismissal order did not undertake any quantitative or visual analysis of this sort. It did not note how often “candidate(s)” appears versus “debate,” did not acknowledge the “Meet the Democratic Candidates...” headline or sub-headline, did not address the candidate photo array or voter-guide format, and did not mention the interstitial cross-link. Instead, it repeatedly referred to the piece as a “debate article” and focused on Defendants’ characterization. Respectfully, that was error under Rule 1.140(b)(6) and inconsistent with *Jews for Jesus*, which requires a holistic view of context and implication.

32. The prior dismissal order, which Defendants continue to invoke in their latest motion to dismiss, repeatedly adopted Defendants’ characterization of the publication as a “Debate Article,” referring to it or to a “debate” a total of twenty-three (23) times in the written order. But the publication itself never uses the term “Debate Article,” and its headline contains no reference

to a debate. By labeling the publication a “Debate Article” as if that characterization were an established fact, the Court made a factual determination that cannot be made on a Rule 1.140(b)(6) motion. Whether an ordinary reader would understand the July 12 piece as a debate notice, a voter-information guide, or something else is a contextual meaning question reserved for the trier of fact under *Jews for Jesus, Hay, Ane, and Nodar*. At this stage, the Court must draw all reasonable inferences in Plaintiff’s favor, not accept Defendants’ litigation branding as fact.

33. When the article is viewed as an ordinary reader would—with attention to headline, sub-headline, layout, font size, repetition of “Meet the Candidates” branding, candidate photos, the cross-promotional “Meet the candidates” interstitial, the reference to “the four candidates...,” and the omission of one ballot-listed Democrat—Plaintiff’s allegation is more than plausible. The article conveyed the false and defamatory implication that (1) only four Democratic candidates existed in what they knew was a five-way race in CD-13, and (2) Plaintiff was not one of them. Under Rule 1.140(b)(6), this easily states a plausible defamation-by-implication claim.

#### **IV. THE 3AC STATES A PLAUSIBLE CLAIM FOR DEFAMATION BY IMPLICATION**

34. The Florida Supreme Court’s decision in *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008), expressly adopts Restatement (Second) of Torts § 563 comment c and recognizes a cause of action for defamation by implication. Under that rule, a defendant is liable where it “juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts,” and may be held responsible for that implication “even though the individual facts are true.” *Id.* at 1108. That is exactly what is alleged here:

Defendants assembled true facts about four candidates, omitted Plaintiff, and presented the result in a format that signals completeness, thereby implying—falsely—that Plaintiff was not a Democratic candidate at all.

35. Jews for Jesus further holds that defamation law focuses on the gist or substance of a publication, not the literal accuracy of discrete statements. A defendant may have “the details right but the gist wrong.” *Id.* Here, Plaintiff does not contest that four Democratic candidates participated in a debate. His allegation is that Defendants used a voter-guide headline (“Meet the Democratic Candidates for the District 13 Congressional Election”), candidate photographs, a structured “Meet the District 13 Congressional Candidates:” section header, and an interstitial urging readers to “meet the candidates ... to stay informed” to create the false gist that those four individuals comprised the entire Democratic field in CD-13. That is the core of defamation by implication under *Jews for Jesus*.

36. The Court in *Jews for Jesus* also reaffirmed the Restatement principle that a publication is defamatory if it tends to harm the plaintiff’s reputation in the eyes of a “substantial and respectable minority of the community,” rather than a numerical majority. *Id.* at 1109. Plaintiff easily meets this standard. Among Democratic primary voters—the relevant community—being erased from a published “Meet the Candidates” guide is inherently prejudicial. The Kemp affidavit confirms that at least one voter actually understood the article to mean that Plaintiff was no longer running and acted on that false belief. That is precisely the kind of reputational harm contemplated by *Jews for Jesus*.

37. The prior dismissal order cited *Jews for Jesus* only in a generalized way, without applying its critical analytic steps: (1) whether omitting Plaintiff from a publication that visually and textually signals completeness creates a defamatory implication; (2) whether the article’s

overall gist is false even if each isolated fact is technically true; and (3) whether the implication would prejudice Plaintiff in the eyes of a substantial and respectable minority of Democratic voters. Each of these inquiries is satisfied by the allegations in ¶¶3–16 and by the structure of the July 12 article. Because the 3AC plausibly alleges a false implication under the controlling standard, dismissal under Rule 1.140(b)(6) is improper.

#### **V. DEFENDANTS’ PARTY-DEBATE ARGUMENT MISCONSTRUES BOTH LAW AND FACT**

38. Defendants’ primary defense is that The Gabber’s article merely reflected the fact that the Pinellas County Democratic Party invited only four candidates to participate in its July 13 debate. From this, Defendants argue that the omission of Plaintiff was justified. But this argument rests on a fundamental logical error: it conflates (1) who a political party chooses to invite to a private event, with (2) who is a legally qualified candidate on the ballot, and with (3) how a newspaper chooses to present an article that adopts the formatting and structure of a voter guide. These are distinct concepts, and collapsing them violates the defamation-by-implication framework adopted in *Jews for Jesus*.

39. A political party’s decision to invite or exclude a candidate from a debate has no bearing on whether that person is a lawful candidate for office. Candidate qualification is determined by state election law, not party discretion. Plaintiff met all statutory requirements, paid the qualifying fee, and appeared on the official ballot as the fifth Democratic candidate in CD-13. Defendants’ reliance on a debate invitation list as if it defined the candidate field is legally incorrect and cannot justify presenting only four candidates as “the” Democratic candidates in a five-way primary.

40. Even if Defendants wished to report on the debate, nothing compelled it to present the debate's invitees as if they constituted the full candidate roster. A media outlet is free to describe who was invited to an event, but it may not — consistent with Jews for Jesus — use a “Meet the Candidates” headline, voter-guide layout, and curated candidate profiles to imply falsely that those invitees are the only candidates in the race. If Defendants wished merely to report on a debate, they could have said: “Four of the five Democratic candidates will attend tonight’s debate.” Instead, they omitted Plaintiff entirely while simultaneously adopting a format that signals completeness.

41. Defendants attempt to bootstrap the prior dismissal order to support this conflation, but that order applied a defective framework — treating the publication as a “Debate Article” rather than analyzing the actual headline, structure, caption, and layout. As explained in ¶¶17–21 and in Section III, the debate framing is neither textually supported nor contextually dominant in the article. It was therefore legal error under Rule 1.140(b)(6) to adopt Defendants’ characterization and resolve the publication’s meaning as a matter of law. Defendants cannot rely on an order that applied the wrong standard to defeat a now-expanded and corrected Third Amended Complaint.

42. The fallacy in Defendants’ reasoning is straightforward: exclusion from a party debate does not justify implying exclusion from the ballot. Yet that is exactly the implication conveyed by presenting only four candidates in a voter-guide format. Under Florida law, a publisher may not rely on a technically true fact (who was invited to a debate) to create a false implication about a materially different fact (who is a candidate). Jews for Jesus expressly prohibits this—truth in fragments does not immunize a false gist. Defendants’ “party-debate” argument therefore fails as a matter of law and cannot support dismissal.

## **VI. DEFENDANTS' ADMISSIONS SUPPORT ACTUAL MALICE AND DEFEAT ANY "NEUTRAL REPORTAGE" THEORY**

43. Defendants claim, in their unsworn and unverified motion, that they relied on a Democratic Party "debate advertisement" when deciding whom to include in the July 12 article. But there is no competent evidence of any such advertisement in the record. Defendants have not filed a copy of the ad, have not attached it as an exhibit, have not provided an affidavit attesting to its existence or contents, and have not identified who created it, how they obtained it, or who may have forwarded it to them. On a Rule 1.140(b)(6) motion, the Court is confined to the four corners of the operative complaint and its attachments—not to unsworn factual narratives in a motion. Accordingly, Defendants' debate-advertisement story should not be accepted as fact or used to defeat a well-pled claim.

44. Even if the Court were to assume for the sake of argument that some such Party advertisement existed and was seen by Defendants, their own description of their pre-publication process still supports a finding of reckless disregard. Defendants claim that they were aware that the Party had chosen not to "recognize" Plaintiff as a candidate, and they describe in the article contacting Weinkrantz, pulling photographs of the four Party-recognized candidates from FloridaPolitics, and lifting biographical material and issue summaries from those candidates' campaign websites. At the same time, they willfully concealed the article from Plaintiff before publication, did not contact him for comment or material, and did not pull any information from his campaign website or from readily available photographs and coverage of Plaintiff in outlets such as the Tampa Bay Times. A reasonable inference at this stage is that Defendants deliberately avoided Plaintiff and are now withholding details about who provided them with the alleged Party debate advertisement and related materials—likely to protect a partisan source such as local Party leadership or operatives—because disclosing that provenance would further

underscore the partisan, non-neutral character of their sourcing. Taken together, this selective curation of four favored candidates, combined with the total exclusion and concealment of Plaintiff, plausibly alleges that Defendants knew, or at minimum consciously disregarded, that they were not presenting the actual ballot-qualified Democratic field.

45. Armed with that knowledge, they did not follow their own standard practice and contact Plaintiff. Instead, they chose to publish a branded “Meet the Democratic Candidates” guide featuring only the four Party-recognized candidates, in a format that signals completeness, without noting for its readers that Plaintiff remained a certified candidate excluded from the debate. At minimum that alleges reckless disregard for the truth sufficient to support actual malice.

46. Neutral-report privilege does not apply. Defendants were not neutrally quoting or attributing the Democratic Party’s view of who the candidates were. In the article itself, they never identify the Party as the source of the debate event information or of the four-candidate lineup. By contrast, they expressly attribute the stock photo (“Photo courtesy of the City of St. Petersburg”), identify outside sources for the candidate photos (FloridaPolitics, Mark Weinkrantz), and draw writeups from the four candidates’ own campaign websites—yet nowhere do they tell readers that the selection of only four candidates came from a Party debate invitation or Party materials. Having chosen to publish the four-candidate slate under The Gabber’s own corporate and “Meet the Democratic Candidates” branding, without attributing it to the Party or presenting it as the Party’s opinion, Defendants made the implication their very own. They cannot retroactively reframe the article as neutral reportage of the Party’s position when, on the face of the publication, the Party is never identified as the source of the omission. They cannot have it both ways.

**VII. DEFENDANTS' RELIANCE ON EXTRA-RECORD MATERIALS IS IMPROPER, HEARSAY, AND CANNOT SUPPORT DISMISSAL**

47. Defendants' motion repeatedly cites materials that are not part of the record and cannot be considered on a Rule 1.140(b)(6) motion to dismiss. These include: (a) an unauthenticated and unproduced "Democratic Party news release" allegedly listing only four candidates (Motion at p. 10), and (b) allegations extracted from Plaintiff's pleadings in an entirely separate case, the PDEC matter (Motion at p. 9, citing DN 134 Tabs 4, 5, 10). None of these documents are attached to the 3AC, none are authenticated, and none are before the Court as evidence. A motion to dismiss cannot introduce new facts or extra-record materials.

48. Under Florida law, allegations in a pleading from another lawsuit constitute hearsay when offered to prove the truth of the matter asserted. Courts may take judicial notice of the existence of another case or its filings, but may not accept the allegations in those filings as true, nor may they be used as evidence to establish factual propositions in a different case.

Defendants' reliance on statements from the PDEC case violates this fundamental rule and attempts to convert Plaintiff's unproven allegations into admissions—a use Florida law does not permit.

49. The same is true of the alleged "Democratic Party news release." Defendants did not attach it to their motion, did not file it separately, did not authenticate it, did not identify its author or provenance, and did not provide any sworn declaration attesting to its existence or content. The Court therefore cannot consider it for any purpose on this motion. Unsworn attorney argument about what such a document "said" or "listed" is not evidence and cannot defeat a well-pled claim.

50. Rule 1.140(b)(6) strictly confines the Court to the four corners of the operative complaint and its attachments. Matters outside the pleadings may not be considered unless the motion is converted to one for summary judgment, which Defendants have not requested and which would require notice and an opportunity to present evidence—none of which occurred here.

Defendants’ attempt to smuggle facts into the record through citations to unrelated case filings and descriptions of unfiled documents is therefore improper.

51. Because Defendants’ extra-record materials cannot be considered, the only operative facts for purposes of this motion are those pled in the 3AC and its attachments. On that record, Plaintiff has more than plausibly alleged a false and defamatory implication, reckless disregard, and injury to reputation. Defendants’ improper reliance on hearsay, unauthenticated materials, and unsworn factual assertions cannot serve as a basis for dismissal.

#### **VIII. PLAINTIFF SEEKS REPUTATIONAL AND RELATED DAMAGES, NOT “ELECTION-LOSS” DAMAGES**

52. Plaintiff does not seek damages for losing the election and does not ask the Court to revisit or second-guess electoral outcomes. The 3AC seeks only reputational harm and campaign-related injuries that Florida law recognizes as independent categories of defamation damages. These include loss of visibility, voter confusion, donor confusion, disruption to campaign operations, and the financial and logistical costs associated with counteracting a misleading publication. The Kemp affidavit confirms that at least one voter actually believed Plaintiff was no longer running because of the article—demonstrating precisely the type of reputational and community-perception harm that Florida defamation law protects against.

53. These categories of harm are fully cognizable under Florida law. Under *Jews for Jesus*, defamation occurs where the publication tends to harm the plaintiff in the eyes of a “substantial and respectable minority of the community,” not only where financial or electoral outcomes are affected. Damage to a political candidate’s reputation, standing, and perceived legitimacy among primary voters is classic reputational injury, and Plaintiff has pled specific, non-speculative harms directly traceable to Defendants’ false implication. These allegations easily satisfy Rule 1.140(b)(6).

**IX. FLORIDA’S ANTI-SLAPP STATUTE DOES NOT APPLY BECAUSE PLAINTIFF’S CLAIM IS NOT “WITHOUT MERIT” AND WAS NOT FILED “PRIMARILY BECAUSE” OF DEFENDANTS’ SPEECH**

54. As an initial matter, the July 12 article does not merely imply a falsehood—it contains an objectively false statement of fact. The caption expressly states: “***The four candidates for the District 13 Congressional election...***” when, as a matter of public record, five Democratic candidates were legally qualified and appeared on the Supervisor of Elections ballot and Defendants knew it. This statement is false on its face and independently actionable. And critically, once the article falsely identifies “*The four candidates*,” the rest of the sentence—whether describing that they would debate each other, attend an event, meet the president, or anything else—is irrelevant; the defamatory falsity lies in the identification of the candidate field sizer itself. In addition, the Florida Supreme Court’s decision in *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008), adopts Restatement (Second) of Torts §563 cmt. c and recognizes defamation by implication, under which a defendant may be liable where it “juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts,” even when individual facts are true. Both forms of defamation—

literal known falsity and implication—are pled here, and neither can be dismissed as “without merit.”

55. Section 768.295(3) bars only claims that are both (1) without merit and (2) filed primarily because the defendant exercised rights of free speech. Defendants satisfy neither element.

**A. Under the cases Plaintiff submitted, meaning, implication, and gist are questions for the trier of fact—not grounds for deeming a claim “without merit.”**

56. In *Jews for Jesus*, the Florida Supreme Court held that defamation may arise where a defendant “juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts,” and that a defendant may be liable “even though the individual facts are true.” That is the precise theory pled here.

57. In *Nodar v. Galbreath*, the Court reaffirmed that defamatory meaning is a factual issue, because meaning depends on how reasonable listeners interpret words in context.

58. *Hay v. Independent Newspapers* — expressly approved in *Nodar* — holds that allegedly defamatory language must be evaluated “as the common mind would normally understand it,” and when language is susceptible to a defamatory meaning, “the issue is for the jury.” 450 So. 2d 293, 295–96 (Fla. 2d DCA 1984)

59. *Miami Herald Publ’g Co. v. Ane* likewise held that when a publication is “reasonably capable of a defamatory meaning,” the case “must be submitted to a jury”—not dismissed as a matter of law.

60. These cases show that Plaintiff’s implication claim cannot be labeled “without merit” under Anti-SLAPP because Florida law treats its core issues—context, implication, gist, omission, and reader understanding—as factual, not legal, questions.

**B. *Gundel* requires a merits evaluation and burdens Defendants—not Plaintiff—with disproving merit.**

61. In *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019), the court held that Anti-SLAPP does not authorize a perfunctory four-corners dismissal. Instead, the trial court must conduct a meaningful merits evaluation. Critically, *Gundel* also holds that the party invoking Anti-SLAPP protection—the defendant—bears the burden of proving both prongs of §768.295(3): (1) that the claim is “without merit,” and (2) that it was filed “primarily because” of protected speech. Plaintiff bears no burden under the statute.

62. Applying *Gundel*, Defendants cannot meet their burden. A merits evaluation under *Jews for Jesus, Hay, Ane, and Nodar* confirms that Plaintiff has pled a viable defamation-by-implication claim—and, independently, a literal falsity claim. Defendants therefore cannot establish the “without merit” prong.

**C. *Bongino* confirms that “without merit” means the defamation claim fails under Florida defamation law. Plaintiff’s does not.**

63. In *Bongino v. Daily Beast*, the court held that a suit is “without merit” for Anti-SLAPP purposes only when the underlying defamation claim fails as a matter of Florida defamation law. In that case, the article was not defamatory because it conveyed no implication of wrongdoing; thus the claim failed outright.

64. Here, Plaintiff’s claim falls squarely within *Jews for Jesus* implication doctrine and on top of that presents a literal known-false statement. It therefore cannot be deemed “without merit.”

**D. Plaintiff did not file this lawsuit “primarily because” of Defendants’ speech.**

65. Plaintiff did not sue to silence or punish protected political commentary. He sued to correct a specific, known-false factual assertion and defamatory implication—that he was not a Democratic congressional candidate in District 13 at all—and to recover legally proper damages, including the reputational harm that Florida defamation law expressly recognizes. Falsely asserting that Plaintiff was not a legally qualified candidate is defamatory per se, because it directly injures him in his political vocation, public standing, credibility, and community reputation, and therefore requires no proof of special damages. The 3AC also alleges facts showing actual malice: Defendants knew Plaintiff remained a certified candidate, yet published a voter-guide-formatted article that falsely presented only four candidates and omitted Plaintiff entirely. In addition, it is noteworthy—and the Court may take notice—that even today, more than fifteen months after being sued on September 3, 2024, Defendants have still not removed or corrected the original defamatory article, thereby continuing to publish the false statement and prolonging the harm to Plaintiff’s reputation. This case challenges a narrow false factual representation in a voter-guide format—not political opinion or commentary.

66. Plaintiff narrowed claims, amended pleadings when the court granted explicit leave to do so, complied with court directives, and supported allegations with documents and a sworn affidavit. Nothing in the record suggests retaliatory motive. This lawsuit falls far outside the intended scope of §768.295.

**E. Anti-SLAPP dismissal and fee-shifting must be denied.**

67. Because Plaintiff’s claim is not “without merit,” was not filed “primarily because” of Defendants’ speech, and because Defendants cannot satisfy their statutory burden under

§768.295(3), their Anti-SLAPP motion must be denied. Fee-shifting to Plaintiff is likewise unavailable.

**X. DEFENDANTS’ VEXATIOUS-LITIGANT ARGUMENT FAILS UNDER BOTH THE PRE-JULY 2025 AND THE CURRENT VERSION OF § 68.093**

**A. Exhibits A-C are inadmissible and outside the four corners of the complaint, and should be stricken**

68. Defendants’ motion includes three exhibits: Exhibit A, a “Congressional Primary Election Results” document; Exhibit B, a memorandum opinion from Plaintiff’s District of Columbia case, *Liccione v. VR Systems Inc., et al.*, No. 1:25-cv-01028-APM; and Exhibit C, the dismissal order from Plaintiff’s Middle District of Florida case, No. 8:24-cv-02005-SDM-NHA, and a printout of that federal case’s docket. None of these materials are attached to or incorporated by reference into the Third Amended Complaint. Defendants filed no sworn affidavit authenticating them, no motion or request for judicial notice under §§ 90.202–.203, Fla. Stat., and no notice affording Plaintiff an opportunity to be heard on any proposed judicial notice. On a Rule 1.140(b)(6) motion to dismiss, however, the Court is confined to the four corners of the operative complaint and its attachments. Prior orders from other courts, election-result printouts, and federal dockets are extra-record materials that cannot be treated as evidence to defeat a well-pled claim unless they are properly presented for judicial notice—and even then, judicial notice extends to their existence, not to the truth of contested factual conclusions within them.

**B. Defendants’ vexatious-litigant argument fails on its face**

69. Even if the Court were to accept their exhibits and characterizations at face value, Defendants do not allege—nor could they—facts satisfying the minimum statutory threshold in §

68.093. Plaintiff has not commenced, prosecuted, or maintained five or more pro se civil actions in Florida state courts, all finally and adversely determined against him, within any relevant lookback period. Because Defendants' own narrative does not meet the statute's basic numerical and adverse-determination requirements, their request for any vexatious-litigant designation or restriction must be denied.

70. Even if the Court were to proceed beyond the threshold defects identified above, Defendants' argument still fails under both the pre-2025 and current versions of § 68.093. The pre-2025 statute—governing this action as filed on September 3, 2024—required a litigant to have commenced, prosecuted, or maintained, pro se, five or more qualifying civil actions in Florida state courts within the preceding five years, all of which had to have been finally and adversely determined against that litigant. Plaintiff does not come close to meeting that definition. The 2025 amendments broaden the statute's reach by extending the lookback period to seven years, expanding the types of proceedings that qualify as “actions,” and adding alternate behavioral triggers such as repeated re-litigation or repeated unmeritorious filings.

71. But even under this expanded version, the primary numerical trigger still requires five or more actions finally and adversely determined, and the alternative triggers require a documented pattern of frivolous or repetitive conduct that is wholly absent here. Nothing in the text of either version supports Defendants' attempt to treat three unrelated lawsuits—several of which did not end adversely to Plaintiff—as sufficient to invoke vexatious-litigant restrictions.

72. Defendants' counting and case outcomes are also wrong. Plaintiff has not commenced, prosecuted, or maintained five or more qualifying pro se civil actions in Florida state courts in the relevant period, full stop. And let alone five or more that were finally and adversely determined against him. Several of them were either (a) settled before judgment, (b) resolved by

post-judgment settlement that resulted in payment to Plaintiff, (c) resolved post-judgement with mutual no-damages/fees award walkaway, or (d) were filed in federal court. Under both the pre-2025 and current versions of § 68.093, such matters do not qualify as “civil actions” that have been finally and adversely determined for vexatious-litigant purposes.

73. Defendants also appear to count Plaintiff’s petitions for injunctive or protective relief as “civil actions” toward the statutory threshold. But § 68.093 distinguishes between ordinary civil actions governed by the Florida Rules of Civil Procedure and other types of special statutory proceedings. Temporary-injunction or restraining-order petitions of the kind Plaintiff filed against a party official are special proceedings; they are not the sort of fully litigated civil actions the vexatious-litigant statute was intended to count.

74. Nor do Plaintiff’s federal filings change the analysis. The pre-2025 statute counts only actions in Florida state courts, not federal courts. The 2025 amendment expands the concept of “action” to include certain proceedings in other state courts or in federal court, but it does not retroactively convert earlier federal lawsuits into qualifying actions for purposes of this case. And even if it did, Plaintiff still has not accumulated three let alone five finally adverse determinations, nor has any court found his filings frivolous, malicious, or harassing within the meaning of the alternate triggers in the current statute. Plaintiff’s federal cases were filed on August 23, 2025 (Tampa) and on April 7, 2025 (D.D.C). As such, they are not qualifying federal cases.

75. The statute also focuses on litigants who “repeatedly relitigate or attempt to relitigate” the same issues against the same parties, or who repeatedly file pleadings that have already been ruled on in the same action. Plaintiff has never previously sued these Defendants over this article, this July 12 publication, or this defamation claim. There is no history of repeated

litigation of the same issues against these parties. Defendants' effort to shoehorn unrelated election-integrity litigation, battery and assault, and party-bylaws disputes, and exempt federal cases into § 68.093 is inconsistent with the statute's text and purpose.

76. Plaintiff's conduct in this case bears no resemblance to the abusive, repetitive, or harassing filing practices that § 68.093 was enacted to curb. Plaintiff has timely complied with every Court order, filed amendments only when expressly granted leave, voluntarily dismissed parties and claims to narrow the case, and supported his pleadings with documentary evidence and sworn verification. Defendants' invocation of the vexatious-litigant statute is not a good-faith application of § 68.093. It is a transparent attempt to weaponize the statute's extraordinary remedies—an automatic stay and mandatory surety bond—(1) to stigmatize a pro se political opponent, (2) to derail a facially viable defamation-by-implication claim on the eve of dispositive motions, and (3) to exploit Plaintiff's limited financial resources in order to deny him meaningful access to the courts. Such misuse of the statute defeats its purpose and offends Article I, Section 21 of the Florida Constitution.

77. For all these reasons, the Court should reject Defendants' invocation of § 68.093, and decline to impose any vexatious-litigant designation, security requirement, or filing restriction on Plaintiff under either the pre-2025 or current version of the statute, and strike their Exhibits A, B, and C.

## XI. CONCLUSION

78. Defendants' motion is a meritless attempt to derail a well-pled defamation claim through procedural overreach. The Third Amended Complaint establishes a textbook case of defamation—both literal falsity and by implication—under *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008). The Gabber's July 12, 2024, article falsely declared "The four candidates for the District 13 Congressional election..." despite Defendants' knowledge of Plaintiff's qualified candidacy, as evidenced by his paid advertisement, signage near their office, and the Supervisor of Elections' ballot (3AC Ex. A, D, E). Their own "correction" (3AC Ex. F) admits intentional exclusion due to Plaintiff's absence from the PDEC debate, yet contradictorily calls it an "inadvertent error"—a damning admission of actual malice. The Gabber's established practice of listing all candidates in prior "Meet the Candidates" features (3AC Ex. C) further confirms the article's design as a voter guide, rendering Plaintiff's omission defamatory to the ordinary reader.

79. Defendants' reliance on unauthenticated, extra-record exhibits (A–C) violates the four-corners rule, lacking affidavits or judicial notice requests under Fla. Stat. §§ 90.202–.203. Their Anti-SLAPP defense fails—the 3AC is far from "without merit" under *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). Their vexatious-litigant claim is baseless; § 68.093's 2025 amendments apply prospectively, and Plaintiff's 2025 record shows meritorious outcomes, including monetary and neutral settlements (Ex. D–F), not frivolous conduct.

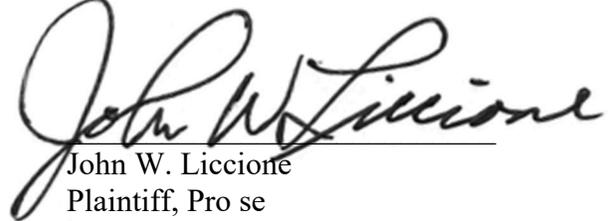
80. The Court should deny the motion, strike Exhibits A–C, vacate any stay, and permit discovery. To do otherwise would reward Defendants' tactics and deny Plaintiff's constitutional right to open courts (Fla. Const. Art. I, § 21).

81. For these reasons, Plaintiff respectfully requests that the Court:

- A. Deny Defendants' Motion to Dismiss the Third Amended Complaint;
- B. Deny Defendants' request for Anti-SLAPP dismissal and attorneys' fees;
- C. Strike or disregard Exhibits A–C as inadmissible and extra-record;
- D. Deny Defendants' request for vexatious-litigant designation, stay, or bond; and
- E. Allow this case to proceed to discovery so that the facts may be fully developed.

Dated: December 8, 2025

Respectfully submitted,

A handwritten signature in black ink that reads "John W. Liccione". The signature is written in a cursive style with a horizontal line underneath the name.

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## TABLE OF AUTHORITIES

### CASES

*Bongino v. Daily Beast Co.*, 477 F. Supp. 3d 1310 (S.D. Fla. 2020)

*Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019)

*Hay v. Independent Newspapers, Inc.*, 450 So. 2d 293 (Fla. 2d DCA 1984)

*Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008)

*Miami Herald Publ'g Co. v. Ane*, 423 So. 2d 376 (Fla. 3d DCA 1982)

*Nodar v. Galbreath*, 462 So. 2d 803 (Fla. 1984)

### STATUTES

Fla. Stat. § 68.093 (pre–July 1, 2025 version)

Fla. Stat. § 68.093 (2025 version)

Fla. Stat. § 768.295

Fla. Stat. §§ 90.202, 90.203

### OTHER AUTHORITY

Restatement (Second) of Torts § 563 cmt. c

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on December 8, 2025, a true and correct copy of the foregoing Response was filed electronically with the Clerk of the Court via the Florida e-Filing Portal and served via the e-Filing Portal and email on *James B. Lake*, Esq (jlake@tlolawfirm.com), counsel for Defendants.

*/s/ John W. Liccione*