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IN THE CIRCUIT COURT OF THE SIXTH  
JUDICIAL CIRCUIT IN AND FOR  
PINELLAS COUNTY, FLORIDA

JOHN WILLIAM LICCIONE,  
Plaintiff,

vs.

CASE NO.:  
24-003939-CI

CATHY SALUSTRI LOPER, et al.,  
Defendants.

\_\_\_\_\_ /

Pinellas County Courthouse  
Videoconference Hearing  
January 5th, 2026  
4:04 p.m. - 5:12 p.m.

HEARING

The above-styled cause came on for hearing  
before the Honorable Patricia A. Muscarella,  
Presiding Judge, via videoconference, Pinellas County  
Courthouse, Clearwater, Pinellas County, Florida, on  
the 5th day of January 2026.

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APPEARANCES:

JOHN WILLIAM LICCIONE, PRO SE  
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Attorney for the Defendants

Also Present: Cathy Salustri Loper  
Karla Kemp

(All parties appearing via videoconference.)

1                   (Whereupon, the following videoconference  
2                   proceedings were had:)

3                   THE COURT: Good afternoon. This is Judge  
4                   Muscarella. We're going to go on the record.

5                   MR. LAKE: Good afternoon, Your Honor.

6                   THE COURT: We're on the record on Liccione  
7                   versus Salustri Loper, et al., Case  
8                   Number 24-3939.

9                   I see Mr. Liccione is here. And Mr. Lake  
10                  is here. We have a court reporter. Ms. Cathy  
11                  Salustri.

12                 And who is Karla Kemp?

13                 MS. KEMP: I am.

14                 THE COURT: And you are?

15                 MS. KEMP: Here per John Liccione.

16                 THE COURT: Okay. In what capacity?

17                 MS. KEMP: I'm a witness.

18                 THE COURT: Okay. This is a motion to  
19                 dismiss so there's no witnesses.

20                 So you're welcome to stay, if you would  
21                 like, but you would not be allowed to he testify  
22                 about anything.

23                 MS. KEMP: I understand. I'm not  
24                 testifying today. He asked me to be present, so  
25                 that I was acknowledged as part of the situ- --

1 but I'm real. I'm here. I'm here in support.

2 THE COURT: Okay. So this is a motion to  
3 dismiss.

4 Mr. Lake, would you like to proceed?

5 MR. LAKE: I would. Thank you. Your  
6 Honor.

7 As you noted, I'm here for Ms. Loper and  
8 Thursday Morning Media, the two Defendants on  
9 the Third Amended Complaint.

10 And, as you noted, Ms. Loper is on the call  
11 as well.

12 I did want to clear up one thing, just so  
13 it's on the record here in this transcript --  
14 the Court's already seen this, I'm sure, in the  
15 Court file -- we filed a motion to dismiss and  
16 for attorney's fees. There also was mentioned  
17 in that motion a request to determine whether  
18 Plaintiff is a vexatious litigant. We're not  
19 asking the Court to take that up today.

20 Mr. Liccione asked me if we could put that off  
21 for another day, I agreed. We filed a  
22 stipulation. So I'll just be arguing for  
23 dismissal with prejudice and that the amended  
24 complaint violates the Anti-SLAPP Act; it does,  
25 and largely because Plaintiff attempts to

1 replead a claim that this Court already found to  
2 be without merit. Plaintiff's changes to that  
3 one cause of action from his Second Amended  
4 Complaint do not cure the defects that the Court  
5 already identified. And, in fact, the  
6 repleading actually provides additional grounds  
7 for dismissal with prejudice. Plaintiff  
8 persists in suing over an article that this  
9 Court's already found is not actionable. And  
10 the Anti-SLAPP Act requires dismissal with  
11 prejudice and award of attorney's fees.

12 The Court's already familiar with the  
13 anti-SLAPP law and why it applies in this case.  
14 So I'll just mention briefly that the Third  
15 Amended Complaint confirms the anti-SLAPP law  
16 applies, yet again Plaintiff has sued Ms. Loper  
17 and Thursday Morning Media because their  
18 newspaper, The Gabber, published a news article  
19 that didn't mention him concerning a debate  
20 among congressional candidates. The  
21 single-count complaint again focuses or presents  
22 a challenge to free speech in connection with a  
23 public issue and for the reasons this Court's  
24 already found is without merit.

25 Now, hoping for different result this time,

1 Plaintiff misstates the anti-SLAPP law in a way  
2 that frankly directly contradicts what Your  
3 Honor said just two months ago. The Third  
4 Amended Complaint, Paragraph 52, says this Court  
5 must, quote: Accept as true the factual  
6 allegations of the four corners of the complaint  
7 and draw all reasonable inferences therefrom in  
8 favor of the Plaintiff. That's entirely wrong,  
9 180 degrees wrong. Couldn't be more wrong. And  
10 it's for a reason this Court explained, on  
11 Page 6 of Your Honor's October 14th order. Your  
12 Honor correctly said, that the Anti-SLAPP  
13 Statute requires the trial court to do more than  
14 accept as true the factual allegations in the  
15 four corners of the complaint, do more than draw  
16 all reasonable inferences therefrom in favor of  
17 the claimant. Rather, the Court must apply a  
18 burden-shifting test. And Plaintiff's argument  
19 ignores that. He ignores that requirement and  
20 he repeatedly urges this Court to apply the  
21 ordinary Rule 1.140(b)(6) stand. He's just  
22 wrong. This is an anti-SLAPP case. And under  
23 the Second DCA's burden-shifting analysis,  
24 Plaintiff has the burden of showing that the  
25 Third Amended Complaint is not primarily based

1 on the exercise of First Amendment rights in  
2 connection with a public issue and is not  
3 without merit. And yet again Plaintiff does not  
4 meet that burden.

5 So let me turn to the reasons why. The  
6 Third Amended Complaint, as we've said, repeats  
7 Plaintiff's challenge to a news article  
8 concerning a debate that featured four  
9 congressional candidates but not Plaintiff. The  
10 word debate appears twice on the first page of  
11 the article with a photo of the debate venue.  
12 Nothing in the Third Amended Complaint, Your  
13 Honor, or more than a hundred pages of argument  
14 and exhibits that Plaintiff has filed since  
15 then, changes the content of the article. That  
16 article is exactly the same article that Your  
17 Honor reviewed two months ago. And it simply is  
18 not actionable for three reasons the Court's  
19 already found and then others that I'll address  
20 briefly in a moment.

21 First, as this Court's already found, the  
22 debate article did not contain a statement of  
23 and concerning Plaintiff. The debate article  
24 did not name Plaintiff. It did not refer to  
25 him. Plaintiff was not mentioned because the

1 article was about the debate participants, the  
2 recognized candidates in the democratic primary,  
3 not him, and the article didn't state any facts  
4 about it.

5 Plaintiff contends the article was about  
6 him because it was about the election but that's  
7 not enough to mean the article was of and  
8 concerning Plaintiff because, again, the article  
9 didn't state any facts about him in particular.  
10 The article talked about four recognized  
11 candidates, not Plaintiff.

12 Second, the debate article was not  
13 defamatory of Plaintiff. As this Court noted,  
14 the debate article didn't charge Plaintiff with  
15 an infamous crime. It doesn't tend to subject  
16 him to hatred, distrust, ridicule or disgrace,  
17 doesn't tend to injure him in his business or  
18 profession.

19 Now, Mr. Liccione would have the Court  
20 reconsider that holding. And says, well, the  
21 article prejudices me in the eyes of a  
22 substantial and respectable minority of the  
23 community or deters others from associating with  
24 me. That's in Paragraphs 53 and 54 of the Third  
25 Amended Complaint. But simply reciting those

1 words doesn't make them so. Because Plaintiff  
2 was not mentioned in the debate article, nothing  
3 in the article prejudiced him in the eyes of the  
4 community or would deter others from  
5 associating.

6 And among the many documents, the more than  
7 100 pages of documents that Plaintiff's filed  
8 recently, is an article that I think illustrates  
9 this point well. It shows why The Gabber's  
10 article is not defamatory. Plaintiff says  
11 another newspaper, the Florida Phoenix, reported  
12 that Plaintiff would not be a part of the debate  
13 because, the Phoenix reported, quote, He did not  
14 pass the party vetting process. That's Exhibit  
15 P to the supplement, specifically the supplement  
16 that Plaintiff filed December 23rd. He did not  
17 pass the vetting process. That article,  
18 Plaintiff says, was nonactionable neutral  
19 reporting. And he says it was the proper and  
20 non-defamatory way to report on the election.

21 Well, Your Honor, the prejudice to  
22 Plaintiff of an article that names him and says  
23 he didn't pass a vetting process is greater than  
24 the prejudice of a mere omission. Omitting  
25 Plaintiff from the debate article was less

1 harmful to his reputation than reporting that he  
2 did not pass a vetting process. By Plaintiff's  
3 own reasoning therefore the Gabber article was  
4 not defamatory.

5 Now turning to the third round that Your  
6 Honor cited on the Second Amended Complaint that  
7 also applies here, that is whether the article  
8 was materially false. It wasn't. As this Court  
9 found, the gist or main purpose of the debate  
10 article was to discuss candidates participating  
11 in the debate. As the Third Amended Complaint  
12 admits, the Plaintiff was not invited to  
13 participate in the debate. Right in that  
14 context, nothing in the debate article was  
15 materially false.

16 And the Second DCA has explained how courts  
17 are to evaluate whether a publication is  
18 materially false. And that's essential in  
19 defamation law because technical falsity isn't  
20 sufficient.

21 What makes an article materially false?

22 The second DCA in Hill against Lakeland  
23 Ledger says that courts are to eliminate the  
24 alleged falsities and then assess how the common  
25 mind would understand the publication without

1           them. Okay. In this case what does that mean?  
2           Well, the falsity that the Plaintiff alleges in  
3           the debate article would be eliminated and the  
4           article would be entirely truthful, by  
5           Plaintiff's standards, if the article had  
6           omitted the word "the." We take out the article  
7           "the" and then the article refers simply to four  
8           candidates, rather than the four candidates. Or  
9           look at it another way, if the article had said  
10          "the recognized candidates," "the party  
11          recognized candidates," that takes away the  
12          falsity that Plaintiff contends applies here.  
13          Even without the word "the" or even with the  
14          addition of the word "recognized," the gist of  
15          the article would be the same. There would be  
16          four recognized candidates, only four, and they  
17          were participating in a debate at the venue  
18          depicted in the article and -- in that the  
19          article mentions repeatedly. The common mind  
20          would come away from the revised article with  
21          the same meaning that the Plaintiff alleges,  
22          namely that the Democratic Party recognized only  
23          four candidates and held a debate to which only  
24          four recognized candidates were invited.

25                   For all those reasons, the debate article

1           wasn't materially false. And Plaintiff cites no  
2           case in which the word "the" made an article  
3           false or defamatory, and we haven't found one.

4           Also need to mention another aspect of why  
5           this article isn't materially false. The Gabber  
6           did report Plaintiff's candidacy both before and  
7           after this article. And that's discussed in the  
8           Third Amended Complaint's Paragraph 31 and 38.  
9           The Gabber's report also contacted Plaintiff,  
10          offered to write a profile of Plaintiff before  
11          the election. The Plaintiff declined to be  
12          interviewed. And, of course, Plaintiff's name  
13          did in fact appear on the ballot and he was able  
14          to reach voters through his own advertising.  
15          Right in that context, the debate article was  
16          not materially false.

17          Plaintiff pretends the article said these  
18          are the only candidates running for Congress.  
19          You may not vote for anybody else. Anyone we  
20          don't mention in this article has withdrawn.  
21          The debate article didn't say that. News  
22          articles routinely cover the leading candidates  
23          in an election, for example, Trump versus Biden,  
24          and don't mention the Libertarian or Green Party  
25          candidates. Doing so doesn't make those

1 articles false.

2 Now, in response --

3 Excuse me, Your Honor, may I get some  
4 water?

5 THE COURT: Of course.

6 MR. LAKE: Thank you.

7 In response to our motion, Plaintiff calls  
8 this a defamation by implication case and that  
9 characterization is interesting but it does not  
10 change the analysis. As the Florida Supreme  
11 Court explained in *Jews for Jesus against Rapp*,  
12 the defamation by implication doctrine  
13 recognizes the, quote, literally true  
14 statements. Literally true statements can be  
15 defamatory where they create a false impression.  
16 Well, the Third Amended Complaint in this case  
17 never says the debate article contained, quote,  
18 literally true statements. In fact, the Third  
19 Amended Complaint says the opposite. It says,  
20 at Paragraph 60, the article falsely asserted  
21 there were exclusively only the four candidates  
22 in the race. So the Third Amended Complaint  
23 says the article was not literally true. And  
24 under *Jews for Jesus*, it's literally true  
25 statements that support an implication claim.

1           So this can't be an implication claim. Mr.  
2           Liccione's pleaded his way out of that.

3           Well, what would an implication be? I want  
4           to give an example. It would be one that  
5           mentions the Plaintiff, contains entirely  
6           truthful statements about him but conveys a  
7           false impression. And so here's an example.  
8           Suppose a newspaper reported, quote, Fred Smith  
9           is running for congress. He was involved in a  
10          robbery in 2010. Smith does not deserve your  
11          vote. Okay. Those are literally true  
12          statements. But it turns out the newspaper  
13          failed to report Fred Smith was the victim of  
14          the robbery, not the robber. Yeah, he was  
15          involved, but he was involved as the victim --  
16          and the newspaper leaves that out. Those facts  
17          would support an implication claim. But that's  
18          not what happened here.

19          Moreover, as the Court has already found,  
20          the article didn't create a false impression  
21          because the gist of the article was correct,  
22          Plaintiff did not participate in the debate and,  
23          as he admits, was not a recognized candidate.  
24          The Gabber truthfully reported on the four  
25          recognized candidates. And as Your Honor noted

1 in your October 14th order, failure to report on  
2 Plaintiff is not actionable defamation.

3 Quoting the Gawker opinion from the Second  
4 DCA, Your Honor noted that the judgment of what  
5 is newsworthy must remain primarily a function  
6 of the publisher and Plaintiff's allegations of  
7 concealment and failure to report on matters  
8 relevant to his campaign are therefore  
9 meritless. That's at Page 15 of Your Honor's  
10 order.

11 That was true of the Second Amended  
12 Complaint and it's true of this one as well.

13 Plaintiff cites no defamation case, and we  
14 found none, where the Plaintiff was not  
15 mentioned in an article and claimed his omission  
16 made the article materially false or defamatory.  
17 That's not the kind of omission or implication  
18 that any court has ever found actionable, and  
19 this Court shouldn't be the first to do so.

20 Now, Mr. Liccione's response to our motion  
21 argues that the case of Jews for Jesus against  
22 Rapp gives him a defamation by implication  
23 claim. And specifically Paragraph 56 of his  
24 response paraphrases language from a treatise  
25 that the Florida Supreme Court cited in Jews for

1 Jesus. The Plaintiff ignores the facts in Jews  
2 for Jesus. That case involved an article that  
3 mentioned the plaintiff, Edith Rapp, by name --  
4 by name -- and Ms. Rapp claimed that article  
5 portrayed her in a false light. The Florida  
6 Supreme Court reviewed her claim and said we are  
7 not going to recognize false light in Florida.

8 So the Jews for Jesus court never had  
9 occasion to decide whether an article that  
10 doesn't mention a person is defamatory. Nothing  
11 in that opinion says an unmentioned plaintiff  
12 has a viable cause of action for either  
13 defamation or defamation by implication. And,  
14 in fact, the Florida Supreme Court said the  
15 opposite in this sense, it said all of the  
16 protections of defamation law extend to the tort  
17 of defamation by implication.

18 So calling this an implication case changes  
19 nothing. All of the requirements that Your  
20 Honor previously found apply, whether it is an  
21 implication case or not.

22 And I should mention, Your Honor, that the  
23 Jews for Jesus is not the only court opinion  
24 that Plaintiff's response mischaracterizes. The  
25 responses, Paragraphs 21, 58 and 59, include

1           quotations purportedly from Miami Herald against  
2           Hay and Hay against Independent Newspapers. In  
3           fact, quotations Plaintiff attributes to those  
4           opinions are not in them. Those quotations are  
5           not there.

6           And similarly the response, Paragraph 58,  
7           says Hay against Independent Newspapers was,  
8           quote, expressly approved, close quote, in Nodar  
9           against Galbreath, another Florida Supreme Court  
10          case, but, in fact, Nodar doesn't even mention  
11          Hay.

12          So Plaintiff continues to misrepresent  
13          legal authorities even after the Court, in your  
14          October 14th order, admonished him for doing so.

15          All right. Let me turn to this affidavit  
16          apparently from Ms. Kemp, who's here today, this  
17          one affidavit, from one of the 51,221 voters in  
18          the primary election.

19          Ms. Kemp allegedly read the debate article,  
20          noticed Plaintiff wasn't mentioned and  
21          ultimately voted for another candidate. This  
22          anecdote is irrelevant to whether the Third  
23          Amended Complaint states a claim and that's for  
24          at least two reasons.

25          First, whether an article is defamatory is

1 an issue for the Court to decide as a matter of  
2 law. The applicable legal standards are  
3 objective, had not subjective. And that's from  
4 the Jews for Jesus opinion that Mr. Liccione  
5 cites. Objective standard. That means one  
6 person's alleged subjective reaction to the  
7 debate article does not inform the Court's  
8 assessment of whether the article is in fact  
9 materially false or is defamatory in the eyes of  
10 a substantial and respectable minority. That's  
11 a legal test for Your Honor to apply  
12 objectively. Because one voter's testimony  
13 doesn't shed light on this objective matter.  
14 The affidavit's just not relevant.

15 Now, second, the affidavit is irrelevant  
16 because it doesn't demonstrate that the article  
17 was materially false or defamatory. Ms. Kemp  
18 states that she planned to vote for either  
19 Plaintiff or one of her [sic] opponents, Whitney  
20 Fox. A month after the debate article was  
21 published, Ms. Kemp said she decided to vote for  
22 Ms. Fox, thus she might well have voted for Fox  
23 even without reading the debate article. The  
24 affiant doesn't say she thought any less of  
25 Plaintiff because of the article. So nothing

1 she says indicates the article was defamatory.

2 And moreover, Judge, by an objective  
3 standard, as the law requires, a reasonable  
4 reader's voting decision would not be guided by  
5 a single month-old article that did not mention  
6 Plaintiff, particularly in light of  
7 Plaintiff's -- I'm sorry -- in light of coverage  
8 of Plaintiff's candidacy in The Gabber and  
9 elsewhere before and after the debate article  
10 and in light of Plaintiff's own advertising.

11 The alleged defamatory meaning of a  
12 statement must be reasonable and not based on a  
13 stacking of inferences. That phrase we used in  
14 our motion to dismiss the last complaint was  
15 Trump against Cable News Network, and it still  
16 applies here. Giving this affidavit any weight  
17 would require an unwarranted stacking of  
18 inferences. A single voter's affidavit just  
19 doesn't objectively demonstrate that the article  
20 was false or defamatory.

21 Now, two other grounds for dismissal that  
22 Your Honor didn't need to reach on the last  
23 complaint but that I need to put on the record  
24 as well.

25 The Third Amended Complaint fails to plead

1 malice with the required convincing clarity. As  
2 a candidate for public office, Plaintiff is a  
3 public figure required to plead and to prove  
4 with convincing clarity that Defendant published  
5 a false statement knowing it was false or with  
6 reckless disregard for whether it was false.  
7 Actual malice is a demanding requirement. For  
8 example, failure to investigate before  
9 publishing even when a reasonably person -- I'm  
10 sorry -- even when a reasonably prudent person  
11 would have done so is not sufficient to  
12 establish a knowing falsehood or reckless  
13 disregard. The requisite mental state must be  
14 brought home to the individuals involved in the  
15 decision to publish. To meet the actual malice  
16 standard -- and this is from the Lam against  
17 Univision opinion from the Third DCA -- actual  
18 malice requires Plaintiff to plead sufficient  
19 facts to show that a materially false statement  
20 was, quote, fabricated, wholly imaginary, based  
21 on an unverified anonymous phone call,  
22 inherently improbable, or obviously worthy of  
23 doubt. So that's the high bar that has to be  
24 met under the actual malice standard.

25 Let's look at the facts of this case.

1           The Third Amended Complaint simply doesn't  
2           allege anything close to that. And, in fact, it  
3           demonstrates that actual malice cannot be shown.  
4           At the time of the debate article, considerable  
5           reason existed to doubt the status of  
6           Plaintiff's campaign and the viability of his  
7           candidacy. Shortly before the debate, Plaintiff  
8           was told the Democratic Party committee wouldn't  
9           be recognizing him as a qualified candidate and  
10          denied him participation in candidate forums  
11          alongside his four opponents. How do we know  
12          that? Because Plaintiff said that. He said  
13          that in his complaint in the PDEC case, which we  
14          filed a copy of in this case at Docket Number  
15          134. Consequently, the Democratic Party's  
16          official debate announcement listed only four  
17          candidates and not the Plaintiff.

18          Now, Plaintiff's response to our motion  
19          says that the announcement isn't in the record  
20          but he's wrong about that. It's a Docket Number  
21          134, Tab 10. And we included that record cite  
22          on Page 3 of our motion to dismiss.

23          But moreover, among the documents that  
24          Plaintiff filed late, in advance of this  
25          hearing, Friday afternoon, he filed essentially

1 the same document. Now, it's not the news  
2 release that announced the debate, but it's a  
3 screenshot of a Democratic Party web page that  
4 listed four candidates, the other four  
5 candidates and not Plaintiff. So Plaintiff's  
6 own filing on the eve of this hearing explains  
7 why Plaintiff was not mentioned in the debate  
8 article. And as The Gabber explained in an  
9 exhibit to the Third Amended Complaint, the  
10 newspaper didn't intentionally omit him, and  
11 when he complained the author of the article and  
12 the newspaper apologized for not mentioning him.  
13 The Gabber reported exactly what the Democratic  
14 Party was reporting. And when the Plaintiff  
15 later ran for another office, the newspaper  
16 conducted and prominently displayed an online  
17 survey that included Plaintiff. Then  
18 Plaintiff's supplement, filed December 23rd,  
19 included a copy of that coverage.

20 So given all of this, Plaintiff is simply  
21 unable to meet that clear and convincing burden  
22 of actual malice.

23 I'm going to wrap up, Your Honor. Just a  
24 couple minor points and then I'll conclude.

25 The debate article is protected by the

1 neutral report privilege for reasons we've  
2 explained in our motion. The Defendants are  
3 accused of being the editor and owner of a  
4 newspaper that published a neutral disinterested  
5 report on a matter of public concern. The  
6 article didn't mention Plaintiff, but instead  
7 presented neutral profiles of the debate  
8 participants consistent with the party's  
9 announcements and consistent with the  
10 announcement the Plaintiff filed Friday  
11 afternoon. The article, therefore, was  
12 privileged.

13 And, finally, the Third Amended Complaint  
14 fails because damages for lost election are  
15 considered too speculative and conjectural and  
16 thus cannot be awarded by a court. And that's a  
17 quote from case law that's cited in our motion.  
18 And this election-related lawsuit, Your Honor,  
19 is particularly speculative because, as the  
20 record shows, Plaintiff attributes his election  
21 losses not only to the Defendants, but also  
22 many, many other people and organizations.  
23 Because Plaintiff blames so many other people  
24 for his election defeats, his attempts to impose  
25 liability on Defendants for his losses, that is

1           these two defendants, including an election in  
2           which he received less than 4 percent of the  
3           vote, is far too speculative to support a  
4           defamation claim.

5           For all these reasons, a Third Amended  
6           Complaint is without merit and it should be  
7           dismissed with prejudice and with a finding that  
8           we are again entitled to an award of reasonable  
9           attorney's fees.

10           Thank you, Your Honor.

11           THE COURT: Thank you.

12           I've allocated 30 minutes for each side.  
13           So thank you for staying under that, Mr. Lake.

14           MR. LAKE: Thank you, Your Honor.

15           THE COURT: Mr. Liccione, you have  
16           30 minutes.

17           You're muted, sir.

18           MR. LICCIONE: My apologies. How's that?

19           THE COURT: That's good.

20           MR. LICCIONE: Okay. So, Your Honor,  
21           Defendants are relying heavily on the Smith  
22           versus Cuban American National Foundation case  
23           to argue for dismissal and anti-SLAPP relief  
24           based on substantial truth and gist or sting of  
25           the article, but they -- they actually

1 misrepresent that case entirely. Smith doesn't  
2 support dismissal at the pleading stage, let  
3 alone anti-SLAPP.

4 First of all, Smith went to a jury trial.  
5 It was allowed to proceed to jury. The jury  
6 found for the plaintiff in that case on the  
7 defamation claim. The defendant never filed a  
8 motion to dismiss or invoke anti-SLAPP. The  
9 case proceeded to discovery, trial and verdict.  
10 The appellate court reversed only because the  
11 trial judge failed to consider the gist and the  
12 sting of the entire 30-minute broadcast  
13 interview in context. They only focused on the  
14 isolated defamatory statements. The reversal  
15 was posttrial, emphasizing that the full context  
16 of the 30-minute documentary negated defam- --  
17 this is -- negated the defamatory meaning,  
18 something impossible to access -- to assess at  
19 the pleading without evidence.

20 So here defendants are asking this Court to  
21 do the opposite. I called this the don't look  
22 up defense. They're -- they want you to ignore  
23 the context, like the headline of the article.  
24 Don't look up at the headline. Don't look up at  
25 the headline, Your Honor, because if you do you

1 will see that this -- they -- they published a  
2 headline that said that this was about the  
3 candidates, the Democratic candidates running  
4 for this in this election. Don't look at that,  
5 Your Honor, in your -- in your -- in your gist  
6 analysis.

7 Second is the layout of the article and the  
8 word count dominance of this being about the  
9 candidates in this election versus the --  
10 there's like 380 or so words on candidates in  
11 the election versus about 50 words pertaining to  
12 the debate's location, that -- that four the  
13 can- -- four candidates were going to be  
14 debating the four candidates and the place and  
15 time for this event.

16 Now, two things could be true at once. It  
17 can be both an article about the candidate field  
18 and a voter guide, and an article about the  
19 debate that the candidates are going to be  
20 attending. Here, the question is what's the  
21 dominant theme and the subordinate theme as read  
22 and experienced by a normal voter and reader of  
23 this content.

24 So Smith actually supports the opposite of  
25 what they're claiming. It supports proceeding

1 to fact-finding, not dismissal. It reversed for  
2 considering statements out of context, which is  
3 what Defendants urge here by relabeling a meet  
4 the candidates voter guide as a narrow debate  
5 article. And he's -- and Mr. Lake is doing it  
6 again here, repeating like a mantra, debate  
7 article, debate article, so that you don't look  
8 at the headline and you don't look at the left  
9 side of the sentence that sits under the caption  
10 which says the four candidates that are running  
11 in this election debate at this date, at this  
12 place.

13 They're basically, Your Honor, asking you  
14 to take a willful blind eye to the headline of  
15 the article in your gist analysis. And that, I  
16 argue, Your Honor, that that's improper at the  
17 motion to dismiss phase. Perhaps it would be  
18 okay, say, in a motion for summary judgment, but  
19 here I would argue that it's a matter for the  
20 jury, the fact finders, to decide because  
21 they're -- they're -- like Karla Kemp,  
22 they're -- they're not a lawyer, they're not a  
23 judge, they're democratic voters trying to  
24 figure out who's running and what the positions  
25 and bios are.

1           In short, Your Honor, this case -- these  
2           cases that -- the Jews for Jesus case and the --  
3           and the Smith case show courts that -- let  
4           plausible implication claims go forward for  
5           conjectural review, not dismiss them under the  
6           anti-SLAPP at pleadings. Defendants' selective  
7           citations are distorting the law to  
8           short-circuit that process.

9           And now I'd like to focus next on the  
10          ordinary voter reader experience of which  
11          Ms. Karla Kemp is sort of an archetype. I  
12          didn't know Karla Kemp until she reached out to  
13          me. I think it was October this year. So I  
14          would like to -- to walk you through, Your  
15          Honor, the way that normal voters approach this  
16          material. The first thing -- in Ms. Kemp's case  
17          was, which is typical, is she did a Google  
18          search on the race to find out who was running  
19          and -- and the like. She had heard before about  
20          me and had decided that it was going to be  
21          between me and Whitney Fox. And she went to  
22          look up the latest news and she found The Gabber  
23          article.

24          And I would -- Your Honor, I would like to  
25          point you to Exhibit U, that is The Gabber's

1 search engine results or the Google search  
2 engine results for this Gabber article. And I  
3 want to -- I'm not -- I'm not sure if you're  
4 aware how the SEO stuff works, the search engine  
5 optimization, but there are two editorial  
6 decisions that the Defendant had to make here.  
7 The first is what the content article is going  
8 to be, the juxtaposition, the layout, the  
9 headline, the subtitle and all -- all that. But  
10 then there's a second set of decisions about how  
11 to optimize that article for the search engines.  
12 And so --

13 MR. LAKE: I'm going to object to this.  
14 These facts are outside the record.

15 THE COURT: Sustained.

16 MR. LICCIONE: They're inside the record as  
17 of today or yesterday.

18 THE COURT: It's irrelevant what the search  
19 engines are optimized for, sir. I don't -- it's  
20 a motion to dismiss.

21 MR. LICCIONE: Your Honor, the user  
22 experience of the normal voter searching for the  
23 candidate information online is the very first  
24 encounter with The Gabber's content. It's part  
25 of the voter experience and that's why it's

1 relevant because it's -- whatever you put in the  
2 search engine, dominant and subordinate, the  
3 only --

4 THE COURT: There's no allegations by you  
5 or the defense about anything to do with search  
6 optimization.

7 MR. LICCIONE: It's what gets people to  
8 click on the link to get to the article.

9 THE COURT: That's evidence outside of --  
10 of what my purview is today.

11 MR. LICCIONE: Okay. So my understanding,  
12 Your Honor, is that all the evidence I've  
13 submitted to date in advance of this hearing is  
14 incorporated into the complaint, it's part of  
15 the three corners of the complaint. That's what  
16 I thought. I guess --

17 So that's what Exhibit -- Exhibit U is. It  
18 just shows you what The Gabber chose to publish  
19 with search engine optimization material.

20 And so the point I wanted to make there is  
21 that's what drew Karla Kemp's side, the normal  
22 voter trying to get more information. The first  
23 impression she got, before she clicked through,  
24 was that this was an article that -- that  
25 this -- this election was a four-candidate

1 election, which was reinforced when she got to  
2 the article. And so anyway, that's that.

3 So then she gets to the article and the  
4 first thing she sees is the headline, that this  
5 article is a meet the candidates, the democratic  
6 candidates running in this election.

7 THE COURT: Mr. Liccione, if you would like  
8 to go over what her affidavit says -- certainly  
9 Mr. Lake -- did but putting words in her mouth  
10 are two different things. So if you would like  
11 to identify and quote what's in the affidavit --  
12 Mr. Lake did -- so I'm going to allow you to do  
13 that, but putting words outside --

14 MR. LICCIONE: Yeah, that's -- that's  
15 what -- okay. Sure.

16 So the affidavit is Exhibit M.

17 And she explains that she did a Google  
18 search on her phone for information on the  
19 platforms of the Democratic candidates for the  
20 race, the Pinellas race, as I explained -- as I  
21 planned to vote early.

22 She says --

23 And that's the second paragraph.

24 In the first paragraph she just defines  
25 herself as a Democratic registered voter in the

1 county -- in the district.

2 She says: The misleading article written  
3 by The Gabber newspaper swayed my vote in the  
4 2024 Democratic Primary Election for  
5 Congressional Seat District 13.

6 In my search results -- which is what  
7 Exhibit U represents, I found an article by a  
8 local paper, The Gabber, entitled: Meet the  
9 candidates for the District 13 Congressional  
10 Election.

11 As I knew a local resident of Gulfport,  
12 Florida, a suburb of St. Pete, who was also a  
13 former editor of a newspaper, I was -- I'm  
14 paraphrasing -- I was aware of the reputation  
15 The Gabber had for its accuracy.

16 Having done -- already done a little bit of  
17 research -- and I was going to choose between  
18 Liccione and Fox.

19 However, after reading the article, I was  
20 shocked and disappointed that there were -- was  
21 no information on Liccione.

22 I double-clicked the title and date of the  
23 article to make sure that I had the right  
24 information. The article was affirmatively  
25 covering all the candidates for the Democratic

1 Party's District 13 Congressional Election.

2 There was no reference to his not being  
3 interviewed but still running.

4 As a result I came to the conclusion that  
5 Liccione, the Plaintiff, must have dropped out  
6 of the primary race, and consciously decided  
7 that it would have to be Whitney Fox.

8 I also did not see the follow-up retraction  
9 explain- -- or correction -- she says  
10 retraction -- explaining their discrepancy at  
11 leaving him out of the article prior to the  
12 debate and primary runoff election. I was not  
13 even aware of it until October this year -- this  
14 year.

15 Ultimately, I voted for Whitney Fox for the  
16 Pinellas County primary as a direct result of  
17 The Gabber article making me think that I [sic]  
18 had withdrawn his candidacy.

19 So that's what's in her sworn affidavit.

20 So you see, Your Honor, that's why I was  
21 pointing you to what she saw, which was Exhibit  
22 U, when she -- when she did the search on the --  
23 on the camp- -- on that race.

24 So that was her user experience. That's  
25 what was in her mind as she experienced The

1 Gabber content through Google's -- you know,  
2 through search -- search through the -- search  
3 result through [sic] the article and post  
4 article.

5 And now that takes me to post-publication  
6 content or conduct.

7 Excuse me.

8 I reached out to The Gabber requesting a  
9 correction after I found this article. And on  
10 August 13th, Patrick Heinzen and the reporter,  
11 whose byline is on the article, is a Gabber --  
12 was a Gabber reporter -- he sent -- he left a  
13 voicemail for me apolo- -- apologizing for a  
14 mistake and making an expressed commitment to  
15 publish a short candidate profile about me, and  
16 this is Exhibit V in the -- in the binder.  
17 Exhibit V is a -- a transcript of his voicemail.

18 And this is in -- I pleaded this. It's  
19 in --

20 I responded to this -- this --

21 So he actually said he was going to commit  
22 to publishing a short candidate profile about  
23 me, which is what I asked for. So it was a  
24 commitment from this news organization to  
25 correct it in a proper way and according to

1           their own journalist ethic standards, but he  
2           asked me to respond the same day to meet the --  
3           the print hard-copy deadline. And I responded  
4           the same day. And that's reflected in Exhibit J  
5           in the -- in my binder. And I directed him to  
6           my campaign website for content as well as my  
7           LinkedIn profile. And subsequent to that, The  
8           Gabber never published a profile about me. That  
9           was a separate -- that was a post-publication,  
10          post-notification, actionable. That -- that  
11          seriously makes this an actionable defamation by  
12          implication case cause they were given proper  
13          notice, they promised to cure, they failed to  
14          sure.

15                 Instead what they did was they published a  
16          self-conflicting, confusing correction and  
17          buried it. Not -- it didn't go into the article  
18          itself. They never updated the article. It  
19          went into the letters to the editor section.  
20          And what it said was -- and this is -- this is  
21          exhibit -- let's see -- a correction -- I'm  
22          trying to find it in the exhibit list. Oh,  
23          okay, it's Exhibit K, Your Honor, Exhibit K in  
24          the binder. What it said was -- first, it  
25          repeated the article title -- headline, the same

1 headline, that it's -- this is a meet the --  
2 meet the candidates running in this race. And  
3 then it -- it -- it claimed that -- it  
4 literally -- the Defendants literally admit that  
5 they deliberately left out me out of the article  
6 because I wasn't in the debate intentionally.

7 And then they follow up the very next --

8 MR. LAKE: Objection, Your Honor. That  
9 mischaracterizes the allegations in the  
10 complaint. The allegations are -- the  
11 complaint -- are that The Gabber said this was a  
12 mistake.

13 MR. LICCIONE: I was about to follow up  
14 with that. Okay. So let me finish, if I -- if  
15 I may, Your Honor.

16 I was just describing the first admission,  
17 right. And then in the very next sentence they  
18 say, oh, we didn't -- it was unintentional to  
19 exclude Mr. Liccione. We made a mistake. We  
20 apologize to -- to the readers. Those two  
21 things can't both be true at once. You can't  
22 deliberately exclude me for some editorial  
23 reason, while in the next sentence say, oh, I  
24 didn't mean to exclude him. We didn't mean to  
25 exclude him. It was a mistake. We are sorry.

1           So they've admitted that they did it  
2           deliberately and they -- they did it  
3           deliberately. That's really not in dispute.  
4           But then they turn it around. So even the  
5           correction was deceptive. They ended the  
6           correction by saying that they had reached out  
7           to me and that I never responded, which is also  
8           a false statement. And that -- that is shown in  
9           Exhibit J, which is the screenshot of my text  
10          reply to Patrick Heinzen on August 13th.

11           So the entire correction they published and  
12          buried in the letters to the editor section  
13          is -- is -- was totally inadequate and just --  
14          would just confuse people. Well, did you  
15          intentionally omit him or did you do it -- was  
16          it a mistake that you didn't intend to make?  
17          That just goes to -- that's the sort of thing,  
18          Your Honor, that can't be de-conflicted at this  
19          stage of the case. That's something -- that  
20          like a credibility determination on -- on --  
21          that should go to the jury.

22           So that's their post-publication conduct.

23           I mean, Your Honor, I've -- I've approached  
24          the Tampa Bay Times with the same sort of thing.  
25          They published an article, which is actually

1 part of the exhibit list here. The Tampa Bay  
2 Times published an article back in August 2023  
3 saying -- basically saying there were no  
4 Democrats at all running in the race against  
5 Amma Luna, who was the incumbent. And I reached  
6 out to them. I said, hey, I -- I -- I filed to  
7 run, I'm qualified -- I mean, I filed to run in  
8 June 2023. You left -- you know, I'm -- I'm  
9 running. I'm the only candidate in the race.  
10 And they published a correction. They -- they  
11 actually updated and corrected the -- the  
12 erroneous article and they named me as the first  
13 candidate that -- that filed in June of 2023.  
14 And guess what? I didn't sue the Tampa Bay  
15 Times. They -- they did what normal newspapers  
16 do when notified of an omission or -- or, you  
17 know, or something that is false.

18 So at this stage to determine whether the  
19 case has merit or is meritless, the Court --  
20 because that's what the anti-SLAPP law requires.  
21 It requires -- one of the elements of an  
22 anti-SLAPP determination is is this a meritless  
23 case on its face or is -- does it -- do I state  
24 a plausible defamation by implication case. And  
25 what I argue is that I have here -- I met the

1 Jews for Jesus standard for defamation by  
2 implication.

3 And -- and now I want to move into field  
4 defining content.

5 As you saw in the headline, the dominant --  
6 the dominant theme of this article is that this  
7 is a complete voter guide to the candidate field  
8 in this election -- it literally says it in the  
9 headline -- meet the candidates running in this  
10 election. And then -- and then they want to  
11 make it a debate article.

12 In the case of another local newspaper,  
13 which is the Florida Phoenix -- and this is  
14 Exhibit P -- the Florida Phoenix also wrote an  
15 article about my race in this particular  
16 election. And they also reported, as -- as  
17 Mr. Lake said, they also revealed that I was the  
18 fifth candidate. Right? And they accurately  
19 did report the reason why I wasn't invited to  
20 the debate -- this other event that they were  
21 talking about. So it was a different candidate  
22 forum than this -- this particular debate that  
23 we're talking about here. They accurately  
24 reported I was one of the five. They named me.  
25 They bolded my name, just like the other

1 candidates. They didn't include my picture,  
2 though, which -- which bugged me at the time,  
3 but, again, I didn't sue the Florida Phoenix. I  
4 didn't even reach out for a -- for a correction  
5 cause there's really nothing to correct, so that  
6 is not -- that's not actionable.

7 Unlike this case, where the defamation by  
8 implication is they're implying that I'm not a  
9 viable candidate. And Mr. Lake -- I think I  
10 just heard him say Liccione -- something to the  
11 effect that Liccione at that point was not a  
12 viable candidate. All right? So they've  
13 already made the decision.

14 They've also -- he's also used the words  
15 several times, "recognized candidates." That's  
16 pretty vague because when you say recognized  
17 candidates, recognized by whom? Is it  
18 recognized by the owner of The Gabber? Is it  
19 recognized by the Democratic Party? Is it  
20 recognized by the State of Florida Division of  
21 Elections as a qualified candidate? Is it  
22 recognized by other news media outlets? Just --  
23 just inserting recognized doesn't solve the  
24 problem that they have.

25 And if you -- if you -- the fact is if you

1 change the four in there -- in their article to  
2 five, that changes the meaning of the story. It  
3 acknowledges a full candidate field of five.  
4 When you say the four candi- -- he says just the  
5 word "the." When you say The four candidates  
6 together and the four candidates running in this  
7 election and the subject of the sentence -- a  
8 sentence, and you change the four to five, that  
9 completely alters the meaning of the entire  
10 article. The gist of the entire article has  
11 changed.

12 So that -- that meets the requirements  
13 under Jews for Jesus and Smith. That -- that  
14 addresses the falsity and the materiality.

15 They knew I was a fifth candidate. They  
16 made deliberate editorial decisions to convey  
17 the false impression that I didn't even exist as  
18 a candidate at the time of publication. And  
19 there are two -- two types of voters, two --  
20 sort of two classes of voters. One -- one is  
21 the set of voters that knew I was running, like  
22 Ms. Kemp, and the other set of voters that never  
23 heard of me as a candidate. Right?

24 And so in Ms. Kemp's case it -- it served  
25 to change her mind. Right? So it shows the

1 impact the falsity of -- created in the mind of  
2 a normal voter's mind as she experienced it.  
3 You'd have to -- you'd have to rewrite the  
4 headline in order to get to where the Defendants  
5 want you to get to, Your Honor, and that's not  
6 appropriate at the motion to dismiss phase or  
7 anti-SLAPP phase.

8 So I've already covered the comparative  
9 coverage with The Tampa Bay Times, the Florida  
10 Phoenix -- I'm sorry -- the Florida Politics  
11 article, which is Exhibit O. Right in the  
12 headline, Five candidates that are run- -- you  
13 know, running for this case [sic]. Again,  
14 they -- they covered me. They -- you know,  
15 that's not an actionable -- I mean, there's  
16 nothing actionable at that paper. They  
17 accurately and correctly, not falsely, reported  
18 the proper field count.

19 This complaint meets The New York Times v.  
20 Sullivan standard for actual malice. That's  
21 reckless disregard -- known falsity, reckless  
22 disregard for the truth. They knew there were  
23 five candidates. They knew what they were  
24 doing. And they attribute the decision-making  
25 to the Democratic Party's publication. We were

1           just publishing the data that we got from the  
2           Democratic Party and they -- I've attached  
3           that -- I'm sorry -- the Defendants attached  
4           that to one of their -- I think they said -- you  
5           said -- he said it was Tab 10, Docket 134, was  
6           the actual ad that they a claim they base this  
7           article on.

8                     Now, that statement is nothing more than  
9           attorney argument because it's not supported by  
10          any sworn affidavit or any sworn declaration or  
11          unsworn declaration. It's outside the four  
12          corners of the complaint. The Court should not  
13          accept that. It's outside the four corners.

14                    So -- so we have no idea really of what  
15          their sources really were cause no one stood up  
16          and -- and testified, you know, filed a sworn  
17          affidavit as to where they really got their  
18          content from. So it shouldn't be considered at  
19          the motion to dismiss phase. That's an issue  
20          for discovery.

21                    One moment, Your Honor.

22                    THE COURT: Okay.

23                    MR. LICCIONE: So this -- Defendants did  
24          this in the Second Amended Complaint and in  
25          their -- in their motion to dismiss. They

1 mention the phrase "debate," "debate article,"  
2 "debate" about, I don't know, 30 times. And  
3 they -- there's no mention of the word "meet,"  
4 "meet the candidates," "meet the candidates that  
5 are running in this election." Right? So again  
6 their motion does not merely defend what they  
7 publish, it asks the Court to rewrite it. And  
8 the fact that they need to add words like  
9 register -- "recognized candidates" and add  
10 limitations that are not in the article itself,  
11 is proof of materiality. They propose  
12 interpretation -- their proposed interpretations  
13 depend on inserting qualifiers the publication  
14 never used, such as treating candidates as  
15 meeting debate participants or adding narrowing  
16 language like recognized. The July 12th  
17 publication does not use that language. It  
18 could have. And if you look at the -- the  
19 Democratic ad for the event, they literally  
20 changed the title. The title in the Democratic  
21 Party ad for this debate had the word debate in  
22 the title. These are the candidates that are  
23 going to be in this debate. It's a -- it's a --  
24 it's an event advertisement.

25 They, under The Gabber banner, they chose

1 to edit to -- they claim they got that language  
2 from the Democratic Party ad, but then they  
3 changed the headline, which changes the entire  
4 scope of the article that any reasonable person  
5 upon coming on that article would assume this is  
6 an article about the candidates that are running  
7 in this election without any qualifications.  
8 Right? So they -- they rewrote -- they -- they  
9 rewrote the -- the headline in the advertisement  
10 by the Democratic Party turning it into a  
11 voter-guide candidate field article, just like  
12 all their other candidate -- meet-the-candidates  
13 articles, which I provide as evidence here in  
14 the Second Amended Complaint.

15 I am looking at:

16 Exhibit C. The St. Peter- -- Meet the  
17 Candidates; St. Petersburg Election, in  
18 October 2021.

19 Exhibit D. The Gabber article, Meet the  
20 Candidates for the Madeira Beach Election  
21 Season.

22 Exhibit E. Meet the Candidates for the  
23 Treasure Island Election.

24 Exhibit F. Meet the Candidates for the  
25 St. Pete Beach Election Season; December 21,

1           2023.

2           And, again, in G, The Gabber article, Meet  
3           the Candidates for St. Pete Beach's District 2  
4           Election, which they published five days after  
5           they published this article on July 17, 2024.

6           Obviously their practice and standard is  
7           they always -- they've always published these  
8           articles for these elections that are local with  
9           the headline: Meet the candidates in this  
10          election.

11          And so this is the --

12          And they always reach out -- in their own  
13          articles they say this. They always reach out  
14          to all the candidates to -- to contact them, to  
15          get feedback, maybe get a picture. They give  
16          all the candidates the opportunity to provide  
17          them information. In my case, in this race they  
18          concealed that they were going to run this  
19          article from me, whereas Mark Weinkrantz, one of  
20          the other candidates, it looks like they reached  
21          out to him and got him to provide him his photo,  
22          cause their article says they got the photo from  
23          Mark Weinkrantz. They didn't reach out to me.  
24          And in every other case, even if the -- the  
25          candidate doesn't respond, they still list the

1 candidate as one of the candidates running. It  
2 doesn't matter that -- there's no qualification  
3 about, well, this candidate's not viable so  
4 we're not going to run it. They reach -- their  
5 policy was to reach out to all the candidates in  
6 every election that they covered.

7 So as far as the anti-SLAPP goes, Your  
8 Honor, anti-SLAPP is not a license to defame by  
9 directly defaming or by implication, by  
10 positioning things and leaving things out and  
11 putting headlines in that are -- that are  
12 misleading. It doesn't provide immunity for  
13 publishing a false field of finding statement of  
14 fact. The statute prohibits lawsuits that are  
15 without merit and primarily because the  
16 defendant exercised protected speech or petition  
17 rights. This case is the opposite. It is  
18 meritorious on the pleadings and it targets a  
19 false factual implementation. The field  
20 defining message that there were only four  
21 candidates in this election, they reinforced it  
22 before they clicked the -- the -- in the search  
23 engine results, they reinforced it on the page  
24 itself, the web page itself and then compounded  
25 it post-publication by their failure to cure, by

1           their failure to commit to follow through on the  
2           commitment to publish an equivalent profile --  
3           or at least a minimally equivalent public  
4           profile of me in the same article. And then  
5           they -- so -- and then -- and then their actual  
6           supposed correction they published was  
7           self-contradictory, confuses and it's actually  
8           an admission of intent and deliberate omission  
9           followed by a statement that they didn't -- they  
10          didn't mean to do it or didn't -- didn't realize  
11          they were doing it.

12                 While anti-SLAPP does protect speaking on  
13          public issues, it doesn't convert a fact-based  
14          defamation claim into an unlawful SLAPP suit.

15                 The statute expressly applies only to  
16          actions without merit and primarily to punish  
17          speech.

18                 I'm not suing, Your Honor, to silence their  
19          debate coverage or their election coverage. I'm  
20          suing because they published and maintained a  
21          false voter stating -- false vote facing  
22          candidate field statement in a meet the  
23          candidates running in this election publication  
24          and then they doubled down with a contradictory  
25          explanation and a false no response claim -- no

1 response from me claim that's contradicted in  
2 the record before you. And procedurally the  
3 anti-SLAPP can't be -- I don't believe can be  
4 used to short-circuit the ordinary gist analysis  
5 of a defamation by implication claim or force  
6 the Court to accept their reframing of the gist  
7 of this article at the pleading stage.

8 The anti-SLAPP --

9 THE COURT: I have a question for you,  
10 Mr. Liccione.

11 MR. LICCIONE: Yes, Your Honor.

12 THE COURT: My reading of the article, and  
13 I've only seen copies of it in the pleadings and  
14 responses, is that right under the -- in the  
15 article it says, This is the voters and that  
16 anybody could click on that and see the full  
17 candidate slate at the Supervisor of Election --  
18 Pinellas County Supervisor of Election, I  
19 believe. Is that not accurate?

20 MR. LICCIONE: I'm not sure what you're  
21 referencing, Your Honor. You're -- are you  
22 referencing the July 12th article?

23 THE COURT: The debate -- what's so-called  
24 the debate article.

25 MR. LICCIONE: Okay. Not a debate article,

1 Your Honor. Not a debate article.

2 So that's Exhibit B in -- in the Third  
3 Amended Complaint.

4 I'm sorry. Could you characterize -- could  
5 you repeat that, what you said?

6 THE COURT: I believe -- my recollection is  
7 that that article, The Gabber article, also  
8 referred everyone to the complete slate, which  
9 would have included your name, in the same  
10 article as a reference of all the candidates  
11 that were going to be voted upon. I didn't go  
12 look at that, but I think that's what it was  
13 referencing in the Pinellas County Supervisor's  
14 election format.

15 MR. LICCIONE: Okay. I have -- I have in  
16 front of me, Your Honor. Here, this was Exhibit  
17 B. That's the article. And I don't believe  
18 that's true. So I'm looking through the pages.  
19 When it references -- you're saying references  
20 Supervisor of Elections.

21 There's an interstiter -- interstitial that  
22 says: The District 13 Congressional election  
23 candidates are not the only people who you will  
24 vote for. Read about the Pinellas County  
25 Supervisor of Election candidates. Right? So

1           it referred them to another election.

2           THE COURT: It refers them to all the  
3           elections is my recollection. I could be wrong  
4           about that.

5           MR. LICCIONE: Well, yeah -- yeah, I'm  
6           reading it as it sits in the -- in the article,  
7           Your Honor. It says, Read about the Pinellas  
8           County Supervisor election candidates.

9           That's the candidates running for the  
10          supervisor elections, Your Honor. That's not --  
11          read about the candidates -- that's their -- a  
12          link to their own article, Your Honor, The  
13          Gabber's own article about the Supervisor of  
14          Elections election.

15          THE COURT: Okay. I misunderstand that.

16          MR. LICCIONE: Yeah.

17          THE COURT: Okay.

18          MR. LICCIONE: Yeah, that's Chris -- that  
19          was Chris Gleason v. Julie Marcus. Right?

20          THE COURT: Okay.

21          MR. LICCIONE: So this is -- so that's --  
22          that's a --

23          THE COURT: So it's not to the supervisor  
24          or alleged -- no references to the Supervisor of  
25          Elections slate of qualified candidates? I was

1 mistaken then.

2 MR. LICCIONE: Correct. That's correct,  
3 Your Honor.

4 THE COURT: Okay.

5 All right. Please proceed. You've had  
6 over 30 minutes. So we'd like to conclude this,  
7 Mr. Liccione.

8 MR. LICCIONE: Okay. Wrap it up here.

9 The governing question here, Your Honor, is  
10 not how a judge would parse this article, how a  
11 lawyer would re-characterize it or how a  
12 newspaper owner would defend it after the fact  
13 with post- -- post-hoc -- post-hoc  
14 rationalizations. The question is how the  
15 public -- the publication would be understood by  
16 an ordinary reader and voter encountering it in  
17 the real world, the ordinary reader standard  
18 especially important in a voter facing meet the  
19 candidates publication? Voters don't approach  
20 such articles as legal briefs or editorial  
21 exercise -- exercises, they approach them to  
22 learn who's running in what election and what  
23 are their issues and their backgrounds, who to  
24 vote for.

25 As the pleadings and exhibits show,

1 Defendant's publication conveyed pre-clicked on  
2 the page and some post-publication conduct, a  
3 false field-defining message that there were  
4 only four candidates in the race and I was  
5 wasn't one of those four obviously.

6 At the pleading stage the Court must accept  
7 Plaintiff's well-pleaded facts as true as it  
8 pertains to meritor- -- whether it is  
9 meritorious.

10 The Court may not resolve credibility  
11 conflicts created by Defendants' own  
12 contradictory explanations nor should it be  
13 adopting a post hoc interpretation made by the  
14 Defendants that doesn't match the actual article  
15 in the ordinary reader's experience.

16 So they're asking you to close your eyes to  
17 the dominant headline and subheaders that say  
18 meet the Democratic candidates in this election,  
19 in bold, large type, while the debate is  
20 mentioned only briefly at a ratio -- a  
21 domination ratio of six to one, candidates  
22 running in this election over a debate event.  
23 So this framing -- the framing of how you  
24 perceive the article, we -- we have two  
25 different framings of this article and mine is

1 more plausible than Defendants'.

2 And so in the gist analysis here, I would  
3 request that you take this -- all my  
4 well-pleaded facts as true and in a light -- and  
5 all inferences in my favor when deciding whether  
6 this is a merit -- you know, has merit, and  
7 therefore defeats the anti-SLAPP claim at this  
8 stage of the case.

9 Thank you, Your Honor.

10 THE COURT: Thank you.

11 Mr. Lake?

12 MR. LAKE: Thank you, Your Honor.

13 And I'll be brief. Just need to correct a  
14 couple of things.

15 One, Mr. Liccione said something about why  
16 I use the word "recognized." I use the word  
17 recognized as part of the material false  
18 analysis because that was his word in his First  
19 Amended Complaint in the PDEC case. He said the  
20 party won't be recognizing him as qualified  
21 candidate. So that's why that word was there,  
22 because he said he was not recognized as a  
23 qualified candidate.

24 Second of all, he -- he tried to say that  
25 The Gabber refused to publish a follow-up. And

1 I think he mischaracterized his Exhibit J, one  
2 of the documents he filed in the hundred pages  
3 of supplements. That has Mr. Liccione saying,  
4 when The Gabber asked to write a profile about  
5 him, You already have access to everything you  
6 need for a profile on my campaign website career  
7 pages and there's a good bio write-up on my  
8 LinkedIn [sic] Page that provides good detail.  
9 In other words, he refused to provide an  
10 interview, which is our point with regard to  
11 actual malice. That's why that's accurate and  
12 that's in the record.

13 Essentially -- and this is perhaps the most  
14 important point, Your Honor, Plaintiff wants to  
15 use the court system as -- to make himself an  
16 editor. He has -- and he used the word  
17 "ethics," what do ethical journalists do. Your  
18 Honor's quotation from the Gawker opinions, I  
19 think, is crucial on this. It's simply not the  
20 Court's role or Mr. Liccione's role, as a  
21 political candidate, to tell newspapers how to  
22 cover the race, whether they need to mention the  
23 third-party candidate, whether they need to  
24 mention the Green Party candidate, whether they  
25 need to mention Mr. Liccione's candidacy. The

1 First Amendment does not put the government or  
2 candidates in that role. Editors get to decide  
3 that. And -- and I think that's the big problem  
4 here. And we can see that even if we step back  
5 and look at all the various causes of action  
6 that Mr. Liccione has asserted in this case.  
7 He's tried desperately to come up with some  
8 claim that lets him --

9 MR. LICCIONE: Objection, Your Honor.  
10 Objection, Your Honor. Objection, Your Honor.  
11 He's --

12 (Crosstalk.)

13 THE COURT: Hold on. Hold on.  
14 What is your objection?

15 MR. LICCIONE: He's moving into the area of  
16 vexatious litigant territory.

17 THE COURT: Not necessarily but I hear your  
18 objection.

19 You may continue, Mr. Lake.

20 MR. LAKE: Thank you, Your Honor.

21 And I've made my point. This is an attempt  
22 to edit the newspaper, which The Gawker opinion  
23 makes clear that's not appropriate for the Court  
24 to do or for a litigant to do.

25 Couple other minor points and then I'll --

1 I'll wrap.

2 The question about the ordinary reader that  
3 Mr. Liccione referred to a moment ago, that's an  
4 objective standard. It's not a subjective  
5 standard. And so his characterization of the  
6 affidavit, none of that changes the objective  
7 standard.

8 He admits that this case really does turn  
9 on the use of the word "the" in a couple of  
10 places. And to me, Your Honor, the legal issue  
11 of material falsity can't simply turn on the  
12 three letters, the word "the." That simply  
13 can't be the case or else materially falsity --  
14 material falsity is a meaningless standard.  
15 Mr. Liccione may believe that an ethical  
16 newspaper would have done this differently. He  
17 may believe the correction wasn't done the way  
18 he would have written it, but those aren't the  
19 kind of issues that provide a cause of action,  
20 certainly not in a country with a First  
21 Amendment.

22 He's asking you to close your eyes on the  
23 debate references in the article. So I disagree  
24 with the idea that we're closing our eyes on  
25 parts of the article. He's closing his eyes on

1 the photograph that's at the top of the article  
2 that says this is a debate and this is the venue  
3 for a debate.

4 Oh, and finally, Your Honor, just -- it's a  
5 minor but it's not -- I just don't want the  
6 Court to be confused when you review the record.  
7 Mr. Liccione referred a couple of times to a  
8 Democratic Party advertisement. There's not an  
9 advertisement. There was an announcement, a  
10 news release, that we've asked the Court to take  
11 judicial notice of, that we filed in the record.  
12 If the Court doesn't want to take judicial  
13 notice of that news release, you can look at the  
14 photographs that Mr. Liccione filed Friday.  
15 They both do exactly the same thing. They show  
16 that the party, the organizer of the debate, the  
17 organizer of this primary election recognized  
18 four candidates, the ones the article listed.

19 Thank you, Your Honor.

20 THE COURT: Thank you.

21 Okay. I'm going to take the decision --  
22 I'm going to reserve on the decision and think  
23 about your arguments today.

24 I'm not going to ask for proposed. I think  
25 we fleshed out both arguments quite extensively.




## 1 CERTIFICATE

2 STATE OF FLORIDA )  
3 : SS  
4 COUNTY OF PINELLAS )

5  
6 I, VICTORIA PAEZ NEIL, Shorthand Reporter,  
7 certify that I was authorized to and did  
8 stenographically report the foregoing proceedings;  
9 and that the transcript is a true and complete record  
10 of my stenographic notes.

11 I further certify that I am not a relative,  
12 employee, attorney, or counsel of any of the parties,  
13 nor am I a relative or employee of any of the  
14 parties' attorney or counsel connected with the  
15 action, nor am I financially interested in the  
16 action.

17 Dated this 4th day of March 2026.

18  
19  
20   
21 VICTORIA PAEZ NEIL  
22 Notary Public - State of Florida  
23 My Commission No. HH 405099  
24 My Commission Expires: 7-20-27  
25

<p> <b>&amp;</b> 2:5  <b>1140b6</b> 6:21  <b>12th</b> 44:16 49:22  <b>13th</b> 34:10 37:10  <b>14th</b> 6:11 15:1 17:14  <b>23rd</b> 9:16 22:18  <b>24003939ci</b> 5  <b>30minute</b> 25:12,16  <b>4th</b> 60:17  <b>5th</b> 10,24  <b>[sic]</b> 18:19 33:17 34:3 42:13 55:8 (5)  <b>able</b> 12:13  <b>about</b> 3:22 8:1,4,5,6,9,10 14:6 21:20 26:2,8,11,17,18 28:19 29:10 30:5 34:15,22 35:8 36:13 39:15,21,23 44:2 45:6 47:3 50:24 51:4,7,11,13 54:15 55:4 57:2 58:23 (36)  <b>abovestyled</b> 20  <b>accept</b> 6:5,14 43:13 49:6 53:6 (5)  <b>access</b> 25:18 55:5  <b>according</b> 34:25  <b>accuracy</b> 32:15  <b>accurate</b> 49:19 55:11  <b>accurately</b> 39:18,23 42:17  <b>accused</b> 23:3  <b>acknowledged</b> 3:25  <b>acknowledges</b> 41:3  <b>act</b> 4:24 5:10  <b>action</b> 5:3 16:12 56:5 57:19 60:15,16 (6)  <b>actionable</b> 5:9 7:18 15:2,18 35:10,11 40:6 42:15,16 (9)  <b>actions</b> 48:16  <b>actual</b> 20:7,15,17,24 21:3 22:22 42:20 43:6 48:5 53:14 55:11 (11)  <b>actually</b> 5:6 24:25 26:24 34:21 37:25 38:11 48:7 (7)  <b>ad</b> 43:6 44:19,21 45:2 (4)  <b>add</b> 44:8,9  <b>adding</b> 44:15  <b>addition</b> 11:14  <b>additional</b> 5:6  <b>address</b> 7:19  <b>addresses</b> 41:14  <b>admission</b> 36:16 48:8  <b>admit</b> 36:4 </p>	<p> <b>admits</b> 10:12 14:23 57:8  <b>admitted</b> 37:1  <b>admonished</b> 17:14  <b>adopting</b> 53:13  <b>advance</b> 21:24 30:13  <b>advertisement</b> 44:24 45:9 58:8,9 (4)  <b>advertising</b> 12:14 19:10  <b>affiant</b> 18:24  <b>affidavit</b> 17:15,17 18:15 19:16,18 31:8,11,16 33:19 43:10,17 57:6 (12)  <b>affidavit's</b> 18:14  <b>affirmatively</b> 32:24  <b>after</b> 12:7 17:13 18:20 19:9 32:19 34:9 46:4 52:12 (8)  <b>afternoon</b> 3:3,5 21:25 23:11 (4)  <b>again</b> 5:16,21 7:3 8:8 24:8 27:6 40:3 42:13 44:5 46:2 (10)  <b>against</b> 10:22 13:11 15:21 17:1,2,7,9 19:15 20:16 38:4 (10)  <b>ago</b> 6:3 7:17 57:3  <b>agreed</b> 4:21  <b>al</b> 6 3:7  <b>allegations</b> 6:6,14 15:6 30:4 36:9,10 (6)  <b>allege</b> 21:2  <b>alleged</b> 10:24 18:6 19:11 51:24 (4)  <b>allegedly</b> 17:19  <b>alleges</b> 11:2,21  <b>allocated</b> 24:12  <b>allow</b> 31:12  <b>allowed</b> 3:21 25:5  <b>alone</b> 25:3  <b>alongside</b> 21:11  <b>already</b> 4:14 5:1,5,9,12,24 7:19,21 14:19 32:16 40:13 42:8 55:5 (13)  <b>also</b> 2:9 4:16 10:7 12:4,9 23:21 32:12 33:8 37:7 39:14,16,17 40:14,14 50:7 (15)  <b>alters</b> 41:9  <b>always</b> 46:7,7,12,13 (4)  <b>am</b> 3:13 45:15 60:11,13,15 (5)  <b>amended</b> 4:9,23 5:3,15 6:4,25 7:6,12 8:25 10:6,11 12:8 13:16,19,22 15:11 17:23 19:25 </p>	<p> 21:1 22:9 23:13 24:5 43:24 45:14 50:3 54:19 (26)  <b>amendment</b> 7:1 56:1 57:21  <b>american</b> 24:22  <b>amma</b> 38:5  <b>among</b> 5:20 9:6 21:23  <b>analysis</b> 6:23 13:10 26:6 27:15 49:4 54:2,18 (7)  <b>anecdote</b> 17:22  <b>announced</b> 22:2  <b>announcement</b> 21:16,19 23:10 58:9 (4)  <b>announcements</b> 23:9  <b>anonymous</b> 20:21  <b>another</b> 4:21 9:11 11:9 12:4 17:9,21 22:15 39:12 51:1 (9)  <b>antislapp</b> 4:24 5:10,13,15 6:1,12,22 24:23 25:3,8 28:6 38:20,22 42:7 47:7,8 48:12 49:3,8 54:7 (20)  <b>anybody</b> 12:19 49:16  <b>anyone</b> 12:19  <b>anything</b> 3:22 21:2 30:5  <b>anyway</b> 31:2  <b>apolo</b> 34:13  <b>apologies</b> 24:18  <b>apologize</b> 36:20  <b>apologized</b> 22:12  <b>apologizing</b> 34:13  <b>apparently</b> 17:16  <b>appear</b> 12:13  <b>appearances</b> 2:1  <b>appearing</b> 2:17  <b>appears</b> 7:10  <b>appellate</b> 25:10  <b>applicable</b> 18:2  <b>applies</b> 5:13,16 10:7 11:12 19:16 48:15 (6)  <b>apply</b> 6:17,20 16:20 18:11 (4)  <b>appreciate</b> 59:1,6  <b>approach</b> 28:15 52:19,21  <b>approached</b> 37:23  <b>appropriate</b> 42:6 56:23  <b>approved</b> 17:8  <b>archetype</b> 28:11  <b>are</b> 3:14 10:17,23 12:18 14:11 15:8 16:6 17:4,4 18:2 23:2,14 24:8,21 25:20 26:19 27:10,25 28:7 29:5,14,19 31:10 36:10,11,25 41:19 42:12 </p>
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