>> ALL RISE. HEAR YE HEAR YE HEAR YE..THE FLORIDA SUPREME COURT IS NOW IN SESSION, ALL WHO HAVE CAUSE TO PLEA, DRAW NEAR. GIVE ATTENTION. YOU SHALL BE HEARD. GOD SAVE THESE UNITED STATES,THE GREAT STATE OF FLORIDA, AND THIS HONORABLE COURT.
LADIES AND GENTLEMEN, THE SUPREME COURT OF FLORIDA. PLEASE BE SEATED.
>> GOOD MORNING AND WELCOME TO THE FLORIDA SUPREME COURT. OUR FIRST CASE TODAY IS KEVIN VERICKER V. NORMAN CHRISTOPHER POWELL
CASE NO. SC2022-1042.
>> Dwyane A. Robinson,Petitioner: MAY IT PLEASE THE COURT GOOD MORNING DWAYNE A. ROBINSON
APPEARANCE FOR PETITIONER, THIS LAWSUIT IS ABOUT A VILLAGE ATTORNEY WHO FILED A LAWSUIT AGAINST A CITIZEN FOR ENGAGING IN POLITICAL SPEECH THAT IS AT THE VERY HEART OF THE FIRST AMENDMENT. SPEECH RELATED TO PUBLIC OBLIGATIONS AND DUTIES OF THE VILLAGE ATTORNEY. THIS IS A TEXTBOOK SLAPP SUIT THAT THE LEGISLATURE CLEARLY AND UNAMBIGUOUSLY PROHIBITED IN FLORIDA STATUTE 768 AND 295.
WE ARE ASKING THIS COURT TO RULE HERE TODAY THAT THERE IS IRREPARABLE HARM WHEN A TRIAL COURT PERMITS THE CONTINUATION OF A SLAPP SUIT AS A MATTER OF LAW. WHEN THAT SLAPP SUIT IS CONTRARY TO THE STATUTE AS WELL AS WELL-SETTLED CONSTITUTIONAL PRIVILEGES. THERE ARE TWO REASONS FROM THE TEXT TO SUPPORT THIS CONCLUSION . WHEN THE TRIAL COURT DENIES AND STRIKE THAT, EXCUSE ME, WHEN AN APPELLATE COURT DENIES IMMEDIATE REVIEW OF THIS LAWSUIT.
IT DENIES A RIGHT . WE WERE GIVEN UNDER SUBSECTION FOUR OF THE STATUTE THAT RESOLUTION OF A SLAPP CLAIM TWO, THE LEGISLATURE TOLD US IN SUBSECTION 1 OF THE STATUTE THAT THESE SLAPP SUITS INFRINGE ON FIRST AMENDMENT RIGHTS . THE SUPREME COURT HAS MADE IT VERY CLEAR THAT WHEN YOU HAVE AN INFRINGEMENT OF FIRST AMENDMENT RIGHTS. IT INFRINGES ON OUR SPEECH AND, MORE IMPORTANTLY, EVEN FOR A MINIMAL PERIOD OF TIME. IT CAUSES AN IRREPARABLE INJURY.
Justice: WE TALKED A LITTLE BIT ABOUT THE STATUTE. I KNOW YOU SAID IT GIVES THE RIGHT FOR SORT OF THIS EXPEDITED REVIEW.
HOW WOULD YOU DEFINE THAT . WOULD YOU DEFINE THAT AS A SUBSTANTIVE RIGHT. IT REALLY SEEMS TO BE MORE OF A PROCEDURAL ISSUE. IT GIVES A LOT OF PROCEDURES USES A LOT OF LOFTY LANGUAGE I WILL GIVE YOU THAT.
BUT THE RIGHT. IT GRANTS IS VERY NARROW. IT'S ESSENTIALLY PROCEDURAL AND HOW WOULD YOU DEFINE THIS IN A MORE SUBSTANTIVE WAY?
>> Dwyane A. Robinson,Petitioner: SURE WE DEFINE THIS AS A SUBSTANTIVE RIGHT IT'S NOT REALLY A PROCEDURAL RIGHT AND HERE IS WHY. WHAT WE HAVE TO TURN TO THE TEXT OF THE STATUTE WHICH CREATES A PROHIBITION A PROHIBITION ON THIS PARTICULAR TYPE OF SUIT. IT DOES THAT IN A NUMBER OF WAYS WE START FIRST WITH THE TITLE IT SAYS SLAPP SUITS ARE PROHIBITED THAT'S A SUBSTANTIVE

RIGHT. IT DID NOT EXIST BEFORE THE ENACTMENT OF THE STATUTE.
THEN YOU DISCUSS LOFTY LANGUAGE. I DISAGREE. IT IS LOFTY, I THINK I WOULD DEFINE IT MORE AS ENCOMPASSING THE FIRST AMENDMENT VALUES THAT THE LEGISLATURE SOUGHT TO PROTECT BY ADDING THIS EXTRA PROTECTION IN THE STATUTE. TO PROHIBIT SUITS THAT ALREADY BAR AS A MATTER OF CONSTITUTIONAL LAW FROM BEING LITIGATED IN FLORIDA COURTS. IF YOU LOOK. FOR INSTANCE, IN SUBSECTION 1, THE STATUTE SAYS "IT IS THE INTENT OF THE LEGISLATURE THAT SUCH LAWSUITS BE EXPEDITIOUSLY DISPOSED OF BY THE COURTS . COURTS, AS IN PLURAL THAT IS IN CONTRARY DISTINCTION TO THE FOURTH SUBSECTION OF THE STATUTE WHEN THE LEGISLATURE DISCUSSES MOTION TO DISMISS MOTION OF SUMMARY JUDGMENT AND REVERSAL OF THE COURT IN THE SINGULAR. YOU DO NOT HAVE EXPEDITIOUS RESOLUTION OF A LAWSUIT UNTIL PARTIES ARE ENTITLED TO THEIR APPEAL AS OF RIGHT TO HAVE IT RESOLVED BY AN APPELLATE COURT .
>> Justice Charles Canady: ISN'T THAT PART OF THE CONTEXT. IN SOME CASES THEY ARE GOING TO BE DISPUTED ISSUES OF FACT THAT WILL DETERMINE WHETHER OR NOT IT IS A SLAPP SUIT.
IT IS NEVER GOING TO BE POSSIBLE TO RESOLVE THESE OR IT IS NOT ALWAYS GOING TO BE POSSIBLE TO RESOLVE THESE CASES. SHORT OF A TRIAL.
WHERE THOSE FACTS ARE DECIDED.
ISN'T THAT CORRECT.
>> Dwyane A. Robinson,Petitioner: THAT IS ABSOLUTELY CORRECT JUSTICE CANADY AS THIS COURT HELD THE TUCKER CASE. WE HAVE THAT IN QUALIFIED IMMUNITY AS WELL. THERE ARE SOME QUESTIONS OF QUALIFIED IMMUNITY THAT CANNOT BE ANSWERED SHORT OF A TRIAL WE DON'T DENY EVERYONE THE RIGHT TO A INTERLOCUTORY APPEAL. IN THOSE INSTANCES.
>> Justice: QUALIFIED IMMUNITY HAS A BURDEN SHIFTING ASPECT WHICH WAS POINTED OUT IS ABSENT FROM THE STATUTE.
STRUCTURALLY, WHY DO YOU THINK THIS IS SIMILAR TO QUALIFIED IMMUNITY, NOT JUST LABELS. I KNOW IT SAYS PROHIBITED.
WHAT STRUCTURALLY MAKES IT EQUIVALENT TO QUALIFIED IMMUNITY IN YOUR VIEW
>> Dwyane A. Robinson,Petitioner: JUSTICE SASSO, IF YOU LOOK THE STATUTE WOULD SEEK TO DO. IT MERELY ADDRESSES FIRST AMENDMENT SPEECH THAT IS ALREADY PROTECTED BY THE FIRST AMENDMENT. THAT MEANS YOU ARE FREE FROM LIABILITY WERE FREE FROM PRIOR RESTRAINTS AS A MATTER OF FACT. WE HAVE ALREADY AN IMMUNITY FROM LIABILITY WHAT THE LEGISLATURE DOES. THAT'S ON TOP OF THAT A PROPHYLACTIC. A FREEDOM FROM THE ACTUAL SUIT ITSELF.
THAT IS WHY WE WOULD ARGUE IT IS A KIN TO QUALIFIED IMMUNITY. IT HAS THAT SAME ASPECT IMMUNITY FROM SUIT AS WELL . AS IMMUNITY FROM LIABILITY. WE SEE THAT BY THE WAY, IN THE TEXT OF THE STATUTE. IF WE TURN THE SUBSECTION 4 IT SAYS THE DEFENDANTS HAS A RIGHT TO AN EXPEDITIOUS RESOLUTION OF A SLAPP CLAIM. IT DOES NOT SAY EXPEDITIOUS RESOLUTION OF A SLAPP MOTION. THAT LANGUAGE IS ABSENT FROM THE STATUTE.
>> Chief Justice Carlos Muniz: BUT THE RIGHT YOU HAVE, TO THE EXTENT WE WANT TO

CALL IT A RIGHT IS NOT TO BE SUBJECTED TO. THE SUIT LACKS MERRITT . IT KIND OF IS BEGGING THE QUESTION AS JUSTICE CANADY WAS SAYING IS JUST TO LABEL THIS JUST BECAUSE YOU SAY IT'S A SLAPP SUIT SOMEHOW IT IMPLICATES ALL OF THESE THINGS IT'S ACTUALLY A PRETTY WEIRD STATUTE. IN THAT WAY, AS JUSTICE SASSO WAS ALLUDING TO. ALL OF THESE OTHER STATES YOUR COLLEAGUES . THEY HAD THESE PROCEDURAL TRAPS TO WITH EVERYTHING THE CHANGE IT FROM THE NORMAL LAWSUIT.
BASICALLY IT JUST AS YOU CANNOT FILE A LAWSUIT WHERE THE LOSING SIDE ON THE MERITS HOW DOES THAT REALLY CHANGE ANYTHING OTHER THAN MAYBE PUTTING AN OBLIGATION ON THE TRIAL COURT. IF THERE IS A MOTION FILED TO PUT IT AT THE TOP OF THE PILE . RATHER THAN GETTING TO IT IN THE NORMAL COURSE OF THINGS.
>> Dwyane A. Robinson,Petitioner: WE DON'T PRESUME THAT THE LEGISLATURE DOES NEEDLESS ACTS. THE LEGISLATURE WAS SEEKING TO ACCOMPLISH SOMETHING BY ENACTING THIS STATUTE. WHAT THE STATUTE SAYS IS NOT MERELY ANY SUIT THAT IS MERITLESS. THE LEGISLATURE IS ADDRESSING SPEECH SPEECH THAT IS PROTECTED THAT WE ALL KNOW THE FIRST AMENDMENT PROVIDES A RIGHT TO BE FREE FROM LIABILITY.
>> Chief Justice Carlos Muniz: WE DON'T REALLY KNOW IF THAT'S HAPPENING HERE UNTIL LITIGATION HAS PLAYED ITSELF OUT.
>> Dwyane A. Robinson,Petitioner: NOT NECESSARILY.
>> Justice Charles Canady: DOESN'T THE LEGISLATURE ACCOMPLISH SOMETHING THROUGH THE PROVISION OF ATTORNEY'S FEES. WHICH MAY BE, IN SOME CASES, IT WOULD BE AVAILABLE ANYWAY. BUT NOT ALWAYS.
I'M SURE YOU HAVE AN INTEREST IN THE ATTORNEYS FEES. [LAUGHTER] I THINK THAT'S A SIGNIFICANT AND MEANINGFUL PROVISION OF THE LAW.
>> Dwyane A. Robinson,Petitioner: WHAT I WOULD SAY TO THAT JUSTICE CANADY IS THE LEGISLATURE DID NOT THINK ATTORNEYS FEES WOULD BE THE MEANINGFUL REMEDY BECAUSE IT GRANTED A PROHIBITION. IF WE LOOK AT THE TEXT OF THE STATUTE WOULD HAVE TO GO THROUGH THE TITLE WHERE IT TALKS ABOUT PROHIBITION SUBSECTION 1 SUBSECTION 2.
>> Chief Justice Carlos Muniz: I'M GLAD YOU BROUGHT UP SUBSECTION 2 . IT'S A GOOD FEATHER IN YOUR CAP.
I STRUGGLE TO FIND OPERATIVE WORDS OF PROHIBITION HERE. TAKE FOR EXAMPLE THE STATUTE SAYS "FREE SPEECH IN CONNECTION WITH PUBLIC ISSUES". IT MEANS ANY WRITTEN OR ORAL STATEMENT THAT IS PROTECTED UNDER APPLICABLE LAW AND IS MADE BEFORE A GOVERNMENTAL ENTITY IN CONNECTION WITH AN ISSUE UNDER CONSIDERATION OR REVIEW BY A GOVERNMENTAL ENTITY.
WHAT WAS THE ISSUE UNDER CONSIDERATION OR REVIEW BY A GOVERNMENTAL ENTITY THAT WAS THE SUBJECT OF THE SPEECH AT ISSUE IN THIS CASE.
>> Dwyane A. Robinson,Petitioner: NONE YOU HAVE TO KEEP READING THE REST OF THE SUBSECTION WHERE IT REFERS TO THE TYPES OF FIRST AMENDMENT CONDUCT THAT THE LEGISLATURE.

>> Chief Justice Carlos Muniz: OR IS MADE IN CONNECTION WITH A PLAY, MOVIE, TELEVISION PROGRAM, RADIO BROADCAST, AUDIOVISUAL BOOK NEWS REPORT OR THE OTHER, SIMILAR WORK.
>> Dwyane A. Robinson,Petitioner: . MR. VERICKER'S BLOG IS A MAGAZINE. IT IS AN ONLINE MAGAZINE ARTICLE, IT'S NOT UNDER CANONS OF CONSTRUCTION . THE PHRASE OTHER SIMILAR WORK CAN INCLUDE THINGS OF THE SAME TYPE OF MANNER AS THE PRECEDING ITEM THAT LISTS.
>> Chief Justice Carlos Muniz: YOU THINK THIS DOES THE WORK OF ESSENTIALLY SAYING ANYONE ANYTIME ANYONE SAYS ANYTHING IN ANY FORM OF PUBLICATION OR ON A BLOG ONLINE ON A TWEET. IT IS FREE SPEECH IN CONNECTION WITH PUBLIC ISSUES.
>> Dwyane A. Robinson,Petitioner: NO I'M NOT SAYING THAT AT ALL. JUSTICE COURIEL I'M SAYING THE SPEECH AT ISSUE HERE IS A MAGAZINE ARTICLE WHERE THE AUTHOR USED TRADITIONAL JOURNALISTIC SOURCES, PUBLIC RECORDS, WHERE HE INTERVIEWED SOURCES WHERE HE MADE CORRECTIONS. YES, THAT IS WITHIN THE PLAIN TEXT OF THE STATUTE TO GO BACK TO JUSTICE CANADY'S QUESTION ABOUT THE FEES. SO LET'S LOOK AT THE STATUTE. WE HAVE A CLEAR PROHIBITION IN THE TITLE. WE HAVE SUBSECTION 1 THAT TALKS ABOUT THE INTENT TO PROHIBIT THESE LAWSUITS. WITH SUBSECTION TWO THAT JUSTICE COURIEL JUST MENTIONED. WE THEN GO TO SUBSECTION 3 THAT HAS OTHER PROHIBITION LANGUAGE. WE THEN GET TO SUBSECTION NUMBER FOUR, AT THE VERY TAIL END OF THAT SUBSECTION, WE HAVE LANGUAGE ABOUT ATTORNEYS FEES. VERY MODEST ATTORNEYS FEES PROVISION.
>> Justice John Couriel: WHAT I'M GETTING AT. IF THE LEGISLATURE WANTED TO WORK IN A PROHIBITION IT COULD'VE SAID CIRCUIT COURTS WILL BE WITHOUT JURISDICTION TO HEAR A CASE IN WHICH THIS ALLEGATION IS MADE.
WHAT IS YOUR ANSWER TO THE FACT THAT THAT IS NOT WHAT WE HAVE. IT SEEMS INSTEAD TO BE TO USE THE LANGUAGE JUSTICE GROSSHANS WAS SAYING LOFTY PRECATORY WHY WOULD THE LEGISLATURE CHOOSE THIS WAY OF MAKING SOMETHING PROHIBITED. WHEN HE COULD'VE JUST DIVESTED THE JURISDICTION.
>> Dwyane A. Robinson,Petitioner: AGAIN YOU ARE MISSING THE TITLE. THE TITLE SAID "STRATEGIC LAWSUITS AGAINST.
>> Justice John Couriel: AGREED THAT IS YOUR BEST ARGUMENT THAT'S A LITTLE BIT OF LEGISLATURE WRAPPING ON THE PRESENT. I'M OPENING THE BOX AND THERE ISN'T MUCH INSIDE.
>> Dwyane A. Robinson,Petitioner: I DISAGREE WITH THAT TREMENDOUSLY JUSTICE COURIEL HERE IS WHAT IF WE LOOK AT SUBSECTION 1 IT TALKS ABOUT THE FACT THAT THE LEGISLATURE VIEWED THAT IT NEEDS TO PROHIBIT SLAPP SUITS TO PROTECT CONSTITUTIONAL RIGHTS. THEN WE HAVE ANOTHER EXAMPLE. ANOTHER CLUE FOR THE TEXT THAT SHOWS THE LEGISLATURE WAS SEEKING TO PROHIBIT THIS TYPE OF LAWSUIT. THEN WE GO TO SUBSECTION 3 WHERE IT EXPRESSLY SAYS THAT NO PERSON SHALL CAUSE A LAWSUIT OR CLAIM OF THIS NATURE TO BE FILED. THAT'S VERY SIMILAR TO THE LANGUAGE AT ISSUE IN CITIZENS V. [LISTING NAMES] .

SECTION 627.3516S1 THE OPERATIVE LANGUAGE IN THERE. EVEN IF YOU DON'T AGREE WITH US FULLY ON THE TEXTUAL IMMUNITY HERE. THERE IS ALSO THE FIRST AMENDMENT RIGHTS THAT GRANTS MR. VERICKER AND OTHERS LIKE HIM THE RIGHT TO INTERLOCUTORY REVIEW. THE LEGISLATURE HAS MADE THE DETERMINATION IN THIS STATUTE THAT SLAPP SUITS INFRINGE CONSTITUTIONAL RIGHTS, BUT NOT ALL SLAPP SUITS.
>> Justice: CAN I ASK A QUESTION ABOUT THE STATUTE WHERE IT PLAYS IN THE PROCESS OF TRIAL, I WOULD YOU AGREE THAT THIS IS DISTINCTLY A PRETRIAL ISSUE?
>> Dwyane A. Robinson,Petitioner:
>> Justice:, FOR INSTANCE, WHEN YOU FILED YOUR MOTION. YOU LOSE, DOES THIS STATUTE DO ANY MORE WORK OF PROTECTING YOU IN THE LAWSUIT.
>> Dwyane A. Robinson,Petitioner: NATURALLY IF YOU'RE FORCED TO GO TO TRIAL. IN SOME INSTANCES, I AGREE WITH JUSTICE CANADY THAT THE ARE CASES WHERE THERE ARE FACTUAL QUESTIONS THAT HAVE TO BE RESOLVED AS TO WHETHER SOMEBODY'S A PUBLIC FIGURE HERE. THAT IS NOT IN DISPUTE . I THINK YOU ARE GENERALLY CORRECT. THE LEGISLATURE'S INTENT WAS TO STOP THESE CASES IN THEIR TRACKS SO ONCE YOU ARE AT THE TRIAL STAGE EXCEPT FOR ATTORNEYS FEES. THERE'S REALLY NOT MUCH FORCE THEREAFTER. BUT IF I CAN CLOSE THE LOOP ON JUSTICE CANADY'S QUESTION ABOUT THE ATTORNEYS FEES. JUST KEEP IN MIND THE ATTORNEYS FEES ARE AT VERY TAIL END OF THE STATUTE IN SUBSECTION 4 THE GUTS OF THE STATUTE IS NOT ATTORNEYS FEES. IT'S ALMOST THE TAIL WAGGING THE DOG TO CONCLUDE THAT THE LEGISLATURE WENT THROUGH ALL OF THE STEPS JUST TO HAVE A MODEST ATTORNEYS FEES PROVISION.
>> Justice: DO YOU AGREE WITH THE IDEA THAT IF YOU LOST THE MOTION AND WENT TO TRIAL THAT HE WOULD NOT BE ABLE TO PLAIN ANY ATTORNEYS FEES UNDER THE STATUTE?
FOR ANY OF THE COSTS ASSOCIATED WITH THE LAWSUIT.
>> Dwyane A. Robinson,Petitioner: I DON'T THINK I WOULD NECESSARILY AGREE WITH THAT JUSTICE GROSSHANS. iT HAS NOT COME UP IN THE BRIEFING, BUT HERE IS WHY. WHEN YOU HAVE A TRUE LAWSUIT WHEN THERE ARE DISPUTED ISSUES OF FACT THAT HAVE TO BE RESOLVED AT THE TRIAL LEVEL. I DON'T THINK THAT WE DENY THE OTHER RIGHTS UNDER THE STATUTE, SUCH AS ATTORNEYS FEES SIMPLY BECAUSE I COULDN'T GET MY RIGHT TO IMMEDIATE AND EXPEDITIOUS REVIEW. WHAT THIS COURT SAID AS EARLY AS LAST YEAR IN CARMODY, WHICH IS VERY IMPORTANT TO THIS ANALYSIS . THIS COURT HAS ALLOWED AMENDMENTS TO THE RULES OF PROCEDURE WHICH IS ANOTHER ALTERNATIVE OPTION ASKED FOR WHETHER THERE ARE SUBSTANTIVE RIGHTS GRANTED UNDER STATUTE AND THIS COURT WAS THE ONLY MECHANISM TO PROTECT THOSE RIGHTS. HERE WE ARE DEALING FUNDAMENTAL FIRST AMENDMENT FREEDOMS THAT THE LEGISLATURE PASSED MULTIPLE TIMES IN MULTIPLE DIFFERENT AREAS SOMETIMES UNANIMOUSLY AND OTHER TIMES WITH ONE DISSENTING VOTE.
>> Justice Charles Canady: MAYBE I MISUNDERSTOOD YOU.

DID YOU NOT RECOGNIZE . ARE YOU NOT RECOGNIZING THAT THIS IS A PREVAILING PARTY ATTORNEY FEES PROVISION.
>> Dwyane A. Robinson,Petitioner: I AGREE IT IS.
>> Justice Charles Canady: IF YOU LOSE, YOU DON'T GET ATTORNEYS FEES.
>> Dwyane A. Robinson,Petitioner: IT'S ACTUALLY OPPOSITE IF I LOSE I CLAIM THE OTHER SIDE WILL LIKELY GET ATTORNEY'S FEES. THAT IS THE WISDOM OF THE STATUTE. I THINK THAT'S WHY WE'VE NOT SEEN A PROLIFERATION OF SLAPP SUITS.
>> Justice: ISN'T THAT THE POINT. THE STATUTE DOES WORK. IT CAN BE A DETERRING STATUTE WITHOUT CREATING A RIGHT TO INTERLOCUTORY REVIEW.
GIVE A STRONGLY WORDED STATUTE. THIS MOTIVE KIND OF COMPONENT TO IT THAT MIGHT NEED TO WORK ITS WAY OUT THROUGH A TRAIL.
THE LEGISLATURE AND PROHIBITING CAN ALSO PRESCRIBE A REMEDY FOR VIOLATIONS OF THE POLICY DECISIONS. I'M JUST WONDERING WHY THE ATTORNEYS FEES WHICH I DO THINK DOES MORE WORK. THEN I DON'T THINK WE CAN SAY IT'S OF NO BETTER, BECAUSE 57-105 DOES THE SAME THING IT DOES MORE WORK THAN THAT.
WHY IS IT NOT A LEGISLATIVE DECISION HERE TO SAY WE PROHIBIT IT AND WANT TO DETER THEM . IN OUR VIEW, THE PROPER REMEDY IS ATTORNEYS FEES.
>> Dwyane A. Robinson,Petitioner: BECAUSE THE LEGISLATURE HAS MADE A DIFFERENT CHOICE. THE LEGISLATURE COULD HAVE SAID TO GET ATTORNEYS FEES AND THAT IS ALL THE DETERRENT WE THINK IS NEEDED TO STOP THE SUITS IN THEIR TRACKS.
THE LEGISLATURE SAID REPEATEDLY OVER AND OVER. THESE SUITS ARE PROHIBITED, IT IS OUR INTENT THAT THESE SUITS BE PROHIBITED BECAUSE THEY INFRINGE ON CONSTITUTIONAL RIGHTS. NO CAUSE OF ACTION SHALL BE FILED WHERE THE SUIT HAS NO MERIT. I THINK THAT IS THE ANSWER TO THAT QUESTION JUSTICE SASSO. THERE'S ALSO THE FIRST AMENDMENT INTEREST.
>> Justice: I WANT TO FOLLOW UP. I JUST WANT TO MAKE SURE I UNDERSTAND THE ATTORNEYS FEES, IT SAYS THE COURT SHALL AWARD THE PREVAILING PARTY REASONABLE ATTORNEYS FEES AND COSTS INCURRED IN CONNECTION WITH A CLAIM THAT AN ACTION WAS FILED IN VIOLATION OF THIS SECTION.
YOU FILED YOUR SUMMARY JUDGMENT YOU HAVE LOST.
LET'S SAY YOU DON'T HAVE A RIGHT TO APPEAL. YOU GO TO TRIAL . YOU WIN.
BUT YOU CAN'T CLAIM THIS IF YOU ARE NOT ARGUING THIS TO A JURY CORRECT THIS JUST FOR PRETRIAL PURPOSES?
HOW WOULD YOU GET FEES UNDER THIS STATUTE FOR THE REST OF THE CLAIM. WHEN THAT WAS DENIED.
>> Dwyane A. Robinson,Petitioner: .IT WOULD BE UNDER THE TRADITIONAL RULES OF CIVIL PROCEDURES WITHIN 30 DAYS OF ANY JUDGMENT TO FILE A MOTION AND LETS SAY I PREVAILED AT TRIAL ON THIS ISSUE. I PROVED THAT THIS CLAIM WAS WITHOUT MERIT.
I WOULD EXPLAIN TO THE COURT THAT THIS IS A SLAPP SUIT.
TO PUT A PIN ON THE POINT I WAS TRYING TO MAKE EARLIER, THE LEGISLATURE DID NOT DEFINE SLAPP SUITS TO BE ANY CLAIM ANYONE RAISES UNDER THE FIRST

AMENDMENT IS A VERY LIMITED SCOPE AND AS JUSTICE COURIEL POINTED TO THE SECTION IN TWO WAYS. I THINK ALSO BY HAVING A PREVAILING PARTY THAT GOES BOTH WAYS. THAT IS PART OF THE REASON, WE HAVE NOT SEEN A PROLIFERATION OF SLAPP SUITS IN FLORIDA BECAUSE DEFENDANTS LIKE US KNOW IF WE LOSE THAT MOTION WE ARE GOING TO BE SUBJECT TO FEES.
>> Chief Justice Carlos Muniz: I WONDER IF I COULD RETURN. THERE IS A LITTLE BIT OF A SLIGHT SHELL GAME GOING ON, ON THE ONE HAND, WHEN YOU TALK ABOUT THE CORE SPEECH NATURE OF THIS PROTECTION . IT IS LIKE YOU'RE FOCUSED ON THAT FIRST CLAUSE OF THE DEFINITION.
THAT YOU AND I WERE DISCUSSING EARLIER.
AND I AGREE IT IS CLEARLY CORE PROTECTED SPEECH. WHEN WE TALK ABOUT A MATTER UNDER CONSIDERATION BY REVIEW OF A GOVERNMENTAL ENTITY. THE PROBLEM IS YOU TOLD ME YOU'RE NOT TRAVELING UNDER THAT. YOU HAVE INSTEAD SAID THE NO MATTER UNDER CONSIDERATION OF A GOVERNMENTAL ENTITY IS A SUBJECT OF THIS.
THUS, WE ARE NOT REALLY IN CORE FIRST AMENDMENT SPEECH LAND. IT COULD BE A BLOG POST ABOUT BEEKEEPING. IT COULD BE SOME OTHER STATEMENT THAT ISN'T THE CORE TO THE MISSION AND YET YOU WERE TELLING US THAT WE SHOULD BE LOOKING AT THAT PART OF THE DEFINITION IN EVALUATING YOUR ENTITLEMENT TO A PROHIBITION HERE. ON LITIGATION, I GUESS MY QUESTION TO YOU JETTISONING THE BATTLE HYMN OF THE REPUBLIC STYLE ARGUMENT ABOUT CORE POLITICAL SPEECH. CAN YOU DEFEND THE ACTUAL BLOG POST AT ISSUE IN THIS CASE AND WHY THAT SHOULD BE THE SUBJECT OF AN ANTI-SLAPP PROHIBITION.
>> Dwyane A. Robinson,Petitioner: ABSOLUTELY JUSTICE COURIEL IN THIS CASE, MR. VERICKER ISSUED MULTIPLE BLOG POST ABOUT THE VILLAGE ATTORNEY FOR NORTH BAY VILLAGE.
IN THOSE POSTS, HE DOCUMENTED HOW MR POWELL WAS IN ESSENCE NOT A NICE GUY, A CORRUPT GUY FOR LACK OF A BETTER WORD. AND BY THE WAY HE'S BEEN VINDICATED IN MULTIPLE RESPECTS. BECAUSE OF THAT. MR POWELL LOST HIS JOB IN NORTH BAY VILLAGE, AND INDEED SOME OF THE POSITIONS THE MR. VERICKER TOOK WERE VINDICATED BY THE COURTS. OTHER POLITICAL SPEECH THAT HE ENGAGED IN. HE CALLED INTO QUESTION LEGAL DECISIONS OR LEGAL OPINIONS THAT MR POWELL PROVIDED TO THE CITY COUNCIL. AND EXPLAIN WHY HE THINKS THAT THAT WAS WRONG. HIS INTERPRETATION OF CERTAIN ISSUES. THAT GOES TO THE HEART OF THE FIRST AMENDMENT. HOW WE REGULATE AND HOW WE CRITIQUE AND TALK ABOUT OUR PUBLIC OFFICIALS. WHEN WE CHILL SPEECH WE ROB THE MARKETPLACE OF IDEAS, NOT JUST MR. VERICKER'S ABILITY TO SPEAK. THE RISK OF PUNISHMENT FOR DOING SO. IT ROBS THE PUBLIC ITSELF OF THE RIGHT TO HEAR THOSE DISSENTING POINTS OF VIEW. THAT'S WHY WE HAVE IRREPARABLE INJURY AS WELL. UNDER THE CONSTITUTION. THE LEGISLATURE HAS MADE A DETERMINATION THAT THESE SLAPP SUITS AS DEFINED IN FRINGE CONSTITUTIONAL RIGHTS. MY FRIENDS ON THE OTHER SIDE WANT YOU TO DISAGREE WITH THE LEGISLATURE AND SAY NO NO NO, WE THINK THERE IS A SUBSET OF SLAPP SUITS AS DEFINED THAT DO

NOT EFFECT CONSTITUTIONAL RIGHTS. WE WOULD SUBMIT TO YOU THAT THIS ROLE OF THIS COURT IS NOT TO SUPPLEMENT OR TO SUPPLANT THE DICTATES OF THE LEGISLATURE. I SEE MY TIME IS RUNNING SHORT. I WILL SAY THIS BEFORE I RESERVE THE REST OF MY TIME. THE SUPREME COURT HAS MADE CLEAR THAT EVEN WHEN YOU HAVE FOR MINIMAL PERIODS OF TIME AN INFRINGEMENT ON FIRST AMENDMENT RIGHTS, IT IS UNQUESTIONABLY IRREPARABLE HARM . THAT'S WHAT WE HAVE HERE. I RESERVED THE REST OF MY TIME FOR REBUTTAL.
>> Chief Justice Carlos Muniz: YOU HAVE A MINUTE TOTAL FOR REBUTTAL.
>> Chief Justice Carlos Muniz: ALMOST RAN OUT. I'M GIVING YOU A LITTLE BIT OF EXTRA WHEN YOU COME BACK.
>> Andrew M. Feldman,Respondent: .THANK YOU, MR. CHIEF JUSTICE, FELLOW JUSTICES ANDREW M. FELDMAN
APPEARANCE FOR RESPONDENT MR POWELL IS PRESENT IN FRONT OF YOUR HONORS.
TO START WITH I WOULD TAKE ISSUE WITH THE CHARACTERIZATION THAT MY CLIENT IS NOT A NICE GUY. HE HAPPENS TO BE A VERY NICE GUY BUT MOVING FORWARD TO THE POINT. THE REASON WE ARE HERE IS ACTUALLY A RELATIVELY NARROW LEGAL QUESTION.
SHOULD THESE CASES GO UP ON CERTIORARI REVIEW AFTER THE TRIAL COURT HAS TAKEN A LOOK AND DETERMINED THAT THERE IS INSUFFICIENT FACTS IN THE RECORD . FOLLOWING THE SUMMARY JUDGMENT HEARING TO ALLOW THE CASE TO GO TO TRIAL, APPLY THE APPROPRIATE LEGAL STANDARD. THE ANSWER TO THAT. WHEN YOU LOOK AT THE HISTORY OF YOUR CASE LAW FROM TUCKER TO. [LISTING NAMES] TO CITIZEN PROPERTY . I BELIEVE IT WAS CORYELL JUST RECENTLY THE UF CASE. CERTIORARI IS NOT THE APPROPRIATE MECHANISM FOR THIS TYPE OF REVIEW. THE SECOND DISTRICT COURT OF APPEAL IN GLENDALE WITH UTMOST RESPECT TO THOSE JUDGES GOT IT WRONG. THE THIRD DISTRICT SAID NO. FOURTH DISTRICT HAS SAID NO . THE FIFTH DISTRICT HAS SAID NO.
>> Justice: DON'T YOU THINK MOST OF THE DISTRICT COURTS THAT HAVE DECLINED FELT THAT THEY WERE SORT OF BOUND BY SOME OF THE LANGUAGE, ESPECIALLY SINCE THEY INDICATED THAT THEY THOUGHT SOME SORT OF REVIEW FIT WITH THE PURPOSE AND SORT OF LAYOUT OF THE STATUTE. THEY EXPRESSED RESERVATIONS THEY HAD CONCERNS BUT AT THE END OF THE DAY THEY FELT THEY COULD NOT GRANT THAT JURISDICTION. HOW WOULD YOU RESPOND TO THAT.
>> Andrew M. Feldman,Respondent: I WOULD FIRST RESPOND BY THE FACT THAT THINKING THEY COULD NOT GRANT THAT JURISDICTION BASED ON YEARS OF JURISPRUDENCE FROM THIS COURT IS THE CORRECT APPROACH. THIS COURT SHOULD UPEND THE CERTIORARI IN A SITUATION OVER A STATUTE LIKE THIS. NUMBER ONE, NUMBER TWO. WHAT THEY DID DO WAS. THEY SUGGESTED THAT THIS BE LOOKED AT FURTHER. THEY DIDN'T THINK THIS WAS A QUESTION THAT SHOULD BE LOOKED AT FURTHER. I THINK YOU SAW THAT IN OUR CASE COMING OUT OF THE THIRD DISTRICT COURT OF APPEAL. THIS COURT ACTUALLY HAD THAT OPPORTUNITY TO DO THAT VERY THING. OUR CASE WAS STAYED. MULTIPLE CASES WERE STAYED

THE CASES BEHIND HOURS WERE STAYED. WHILE THIS COURT CONSIDERED A RULE AMENDMENT AND ULTIMATELY DETERMINED THAT THE RULES SHOULD NOT BE AMENDED TO ALLOW INTERLOCUTORY REVIEW OF THIS.
>> YOU HAVE YEARS OF CASE LAW BASICALLY SAYING THAT CERT IS NOT THE APPROPRIATE HERE.
THAT LAW SHOULD NOT BE OVERTURNED SO THE COURTS WERE RIGHT. GUESS THEY WERE BOUND. BUT THEY ALSO SUGGESTED THIS BE LOOKED AT AND IT HAS BEEN LOOKED AT. THERE IS, FRANKLY, NOTHING NEW UNDER THE SUN. BASED ON THE RECOMMENDATIONS THAT MY FRIENDS WHO BROUGHT THIS CASE BEFORE YOU ARE NOW ASKING THAT IS REALLY DIFFERENT FROM WHAT THIS COURT LOOKED AT WHEN IT INITIALLY EVALUATED THE RULE AMENDMENT QUESTION AND DECLINED UNANIMOUSLY TO AMEND THE RULE TO ALLOW REVIEW FOR THESE TYPES OF CASES.
>> Chief Justice Carlos Muniz: I'M SORRY TO INTERRUPT YOU. CAN YOU ADDRESS THE FIRST AMENDMENT CHILLING ASPECT TO ME THAT'S THE ONLY PART OF THE ARGUMENT THAT SORT OF GIVES ME PAUSE. IT SEEMS LIKE JUST THE RIGHT NOT TO BE SUBJECTED TO MERITLESS LAWSUIT. IT SEEMS LIKE A GARDEN-VARIETY THING THAT HAS BEEN REJECTED AS IRREPARABLE HARM. BUT TO THE EXTENT THAT I GUESS POTENTIALLY IF YOU ARE UNDER ONE OF THESE SUITS, IT MAY PREVENT YOU FROM EXERCISING YOUR FIRST AMENDMENT RIGHTS. THERE MAY BE KIND OF A DE FACTO SORT OF OVER BREADTH TYPE OF ANALOGY, COULD YOU ADDRESS THAT IN THE CONTEXT OF IRREPARABLE HARM.
>> Andrew M. Feldman,Respondent: . I THINK THAT THE ISSUE THE QUESTION OF THE FIRST AMENDMENT IN IRREPARABLE HARM. FIRST OF ALL, MR. CHIEF JUSTICE, NOBODY IS GOING TO QUESTION THAT FIRST AMENDMENT RIGHTS ARE IMPORTANT. THERE ARE PLENTY OF RIGHTS THAT ARE IMPORTANT THE RIGHT TO ACCESS TO THE COURTS ENSHRINED IN THE FLORIDA CONSTITUTION IS IMPORTANT AND NEEDS TO BE BALANCED HERE. BUT EVEN WHEN YOU LOOK AT FIRST AMENDMENT RIGHTS IRREPARABLE HARM YOU STILL NEED A SITUATION THAT CANNOT BE RESOLVED ON PLENARY APPEAL. THE FACT THAT YOU HAVE A CONSTITUTIONAL ISSUE WHETHER IT'S A FIRST AMENDMENT OR ANOTHER AVENUE OF THE CONSTITUTION, IT RAISES THOSE ISSUES CONSTITUTIONAL ISSUES THAT POP UP ALL THE TIME IN LITIGATION,DEFAMATION CASES.
>> Chief Justice Carlos Muniz: DO YOU CONCEDE THAT THE HARM THE PETITIONER HAS ARTICULATED IF SUBSTANTIATED, WOULD BE AN IRREPARABLE HARM CHILLING FIRST AMENDMENT SPEECH?
>> Andrew M. Feldman,Respondent: CHILLING FIRST AMENDMENT SPEECH.
>> Chief Justice Carlos Muniz: I THINK IT IS PRETTY SAFE TO SAY UNDER OUR CASE LAW, THE WE HAVE RECOGNIZED THAT AN IMPACT OF THE KIND ALLEGED IN THE ASSERTION OF A CONSTITUTIONAL FREEDOM LIKE FREEDOM OF SPEECH CONSTITUTES IRREPARABLE HARM DO YOU NOT CONCEDE THAT.
>> Andrew M. Feldman,Respondent: I WOULD CONCEDE THAT CHILLING FIRST AMENDMENT MIGHT CAUSE IRREPARABLE HARM IF YOU HAD A STATUTE THAT

CHILLED FIRST AMENDMENT SPEECH THAT WILL CAUSE IRREPARABLE HARM. MR. VERICKER HAS NOT BEEN SUED BY MR POWELL. HIS SPEECH HAS NOT BEEN CHILLED.
HE HAS BEEN SUED FOR OBVIOUSLY.
>> Chief Justice Carlos Muniz: WE DISAGREE ON THE MERITS DEFINITION. IT IS NOT PROTECTED . THERE IS THIS HIGHER THRESHOLD. I'M ASSUMING THAT THE IRREPARABLE HARM ARGUMENT IN THIS CONTEXT IS THAT FOR PENDENCY OF THE LITIGATION, THE PERSON WHO WOULD OTHERWISE BE CONTINUING TO MAKE SIMILAR STATEMENTS AND IF IT TURNS OUT THAT THEY ARE PROTECTED . YOU BASICALLY CAN'T GET THAT TIME BACK. WE ARE NOT TALKING ABOUT SOMETHING. OBVIOUSLY, THIS PARTICULAR SUIT IS ABOUT THINGS THAT HAVE ALREADY BEEN SET, BUT TO THE EXTENT THAT THE EXISTENCE OF LITIGATION WILL STOP YOU FROM SAYING THE SAME THING. IF IT TURNS OUT THAT, IN FACT, IT IS PROTECTED, WHICH I AGREE WE CANNOT ASSUME THAT IT IS . BUT ISN'T THAT THE TYPE OF THING WE WOULD KIND OF LOOKING BACK ON IT, THEN CONSIDER TO HAVE BEEN IRREPARABLE HARM?
>> Andrew M. Feldman,Respondent: I THINK THIS COURT TO START WITH . NO. RESPECTFULLY.
TO START WITH. THIS COURT HAS SAID MULTIPLE TIMES THAT ENGAGING IN ONGOING LITIGATION, THE COST AND THE EXPENSE AND THE TIME OF ENGAGING IN ONGOING LITIGATION IS NOT IRREPARABLE HARM. THE FIRST AMENDMENT DOES NOT CHANGE THAT. TO GO BACK TO YOUR QUESTION JUSTICE COURIEL . CERTAINLY IF SOMEBODY'S SPEECH WAS SHUT DOWN, THERE WOULD BE A FIRST AMENDMENT ISSUE. BUT, IN FLORIDA . YOU CANNOT EVEN GET AN INJUNCTION TO STOP PEOPLE FROM SPEAKING FOR THAT VERY TO STOP PEOPLE FROM SPEAKING FOR THAT VERY REASON. WHAT YOU HAVE HERE YOU HAVE A SITUATION WHERE YOU HAVE A PARTY WHO HAS RAISED THIS ISSUE AT THE 23RD HOUR. CANDIDLY, THIS CASE IS THE POSTER CHILD OF HOW THIS SHOULD NOT BE DONE.
WE WERE SET FOR TRIAL TWICE WHEN THIS ISSUE HAD POPPED UP.
IF THE LEGISLATURE IS THINKING ABOUT EXPEDITIOUS RESOLUTION TO AVOID THE IMPACT OF LITIGATION. THIS IS NOT THE CASE THAT DEMONSTRATE THAT THAT WAS DONE. BUT THAT ASIDE, THIS ISSUE HAS BEEN RAISED . IT HAS BEEN DONE IN FRONT OF THE TRIAL COURT. IT IS BEEN PROJECTED BASED ON THE FACTS AND THE EVIDENCE. AND NOW THE CASE NEEDS TO MOVE FORWARD TO TRIAL. YOU GOT ACTUALLY THE RIGHT TO ACCESS TO THE COURT THAT HAS BEEN DELAYED OR BEING DENIED.
IF YOU OPEN UP THE IDEA OF CERTIORARI REVIEW INTERLOCUTORY REVIEW TO DEAL WITH THESE ISSUES. WHAT ABOUT THE PLAINTIFF'S RIGHTS? WHERE IS THE RIGHT TO GET HIS CASE TO THE COURTS TO MOVE FORWARD?
ALL OF THIS CAN BE RESOLVED AT THE END OF THE TRIAL. GOING TO THE QUESTION THAT WAS RAISED REGARDING ATTORNEYS FEES. FOR EXAMPLE, THE ANSWER ACTUALLY IS NO. YOU WOULD NOT GET ATTORNEYS FEES JUST IF YOU LOST THAT CLAIM. THEN WIN THE CASE AT TRIAL UNLESS THERE WAS SOME OTHER MECHANISM

TO GET IT LIKE A PROPOSAL FOR SETTLEMENT OR SOMETHING.
>> Justice Jamie Grosshans: LET ME FOLLOW UP WITH THE QUESTION ON THAT.
WE HAVE A STATUTE THAT ARGUABLY IS DESIGNED TO PREVENT MERITLESS LITIGATION IN A VERY INTENTIONAL WAY.
WHICH I DON'T THINK WE HAVE SPECIFICALLY ADDRESSED IN SORT OF OUR CERTIORARI REVIEW OF ONGOING LITIGATION IT IS NOT IRREPARABLE HARM. WE HAVE A STATUTE THAT IS LIKE THIS IS PROHIBITED. WE HAVE THAT. THEN WE HAVE A REMEDY OF ATTORNEYS FEES.
I THINK THIS IS WHAT I WAS ASKING THE OTHER SIDE, AND I THINK YOU AGREE WITH ME BRING THIS CLAIM LOSE TO A TRIAL JUDGE. THEY SAY: THIS DOES NOT APPLY. . CLEAR ERROR. WE WILL SAY THE TRIAL JUDGE IS WRONG. NOW YOU WILL GO THROUGH A TRIAL AND ACCORDING TO YOUR INTERPRETATION THERE WOULD BE NO ENTITLEMENT TO FEES. IF THE DEFENSE WINS CORRECT SO THE ENTIRE PURPOSE OF THE STATUTE IS DEFEATED. NOW YOU WENT FROM A MERITLESS LAWSUIT AND YOU DON'T GET FEES.
CORRECT? AM I CORRECT IN MY HYPOTHETICAL.
>> Andrew M. Feldman,Respondent: YOU ARE CORRECT, BUT I THINK THE CONCERN THAT YOU MAY BE EXPRESSING IS NOT ACTUALLY CORRECT. IF I MAY.
YOU ARE CORRECT IN THE FACT THAT THE WAY THAT I READ THE STATUTE. IF YOU LOSE ON THE CLAIM, THAT IS BEING BROUGHT YOU DON'T GET ATTORNEYS FEES. THE CLAIM IS THAT THE ACTION IS IN VIOLATION OF THE STATUTE WHICH REQUIRES TWO THINGS IT BE WITHOUT MERIT AND IT BE BROUGHT PRIMARILY BECAUSE OF WHAT THE LEGISLATURE IS LOOKING TO AVOID, WHICH BY THE WAY THIS IS INHERENTLY A VERY FACTUAL QUESTION. BUT THAT ASIDE.
>> Justice Charles Canady: IT DOESN'T HAVE TO BE. ONE VIEW OF THAT IS YOU LOOK AT IT OBJECTIVELY. IF IT IS ABOUT SPEECH THE FALLS WITHIN THE CATEGORY OF THE STATUTE . THAT IS WHAT THE CLAIM THAT IS THE FOCUS OF THE CLAIM. THAT WASN'T IN SOMEBODY'S BRAIN, BUT THAT IS WHAT THE CLAIM IS.
>> Andrew M. Feldman,Respondent: I UNDERSTAND THAT. BUT THE IDEA OF WHAT THE CLAIM IS OR WHATEVER IT MAY BE IF YOU'RE LOOKING IT HAS TO BE. FIRST OF ALL, THAT HAS TO MEAN SOMETHING.
IT CAN'T JUST BE WITHOUT MERIT BECAUSE WITHOUT MERIT AND YOU HAVE PRIMARILY BECAUSE . THE LEGISLATURE PUT THAT IN THERE TO SAY WE NEED MORE THAN A NON MERITORIOUS LAWSUIT. WE NEED A LAWSUIT THAT IS ALSO BROUGHT PRIMARILY BECAUSE OF THIS, PRIMARILY BECAUSE THIS PERSON IS TRYING TO SHUT IT DOWN OR PRIMARILY BECAUSE THIS PERSON IS TRYING TO SHUT DOWN PUBLIC PARTICIPATION. RESPECTFULLY JUSTICE CANADY UNLESS IT IS SITTING THERE ON THE FACE OF THE DOCUMENTS ON THE FACE OF THE PLEADINGS THAT DOESN'T REQUIRE YOU TO TAKE A LOOK AT AT THE PERSON AND WHAT IS DRIVING THEIR DECISION-MAKING.
AND GOING BACK TO THE QUESTION THAT YOU TALK ABOUT JUSTICE GROSSHANS IN TERMS OF THE ATTORNEYS FEES DOES IT DEFEAT THE REMEDY OF THE STATUTE? NO. BECAUSE THE LEGISLATURE CREATED THE REMEDY.

THE LEGISLATURE TOOK THE STATUTE AND CREATED A MECHANISM WITH IT. IT'S NOT 57-105. 57-105 DOES NOT HAVE THE PRIMARILY BECAUSE COMPONENT NUMBER ONE. 57 – 105. YOU CAN'T IMPLEMENT IT UNLESS YOU GIVE 21 DAYS NOTICE WITH A MOTION . THE STATUTE DOES NOT REQUIRE A MILLISECOND OF NOTICE.
IT IS SEPARATE FROM 557 – 105. THIS IS A PREVAILING PARTY STATUTE. THIS BASICALLY SAYS WHOEVER IS GOING TO RAISE THIS ISSUE IF IT IS THE PETITIONER OR THE PLAINTIFF, I'M SORRY, WHEN THEY FILE THE LAWSUIT . BE AWARE IF IT IS THE DEFENDANT WHEN THEY RAISE THE ISSUE. BE AWARE.
YOU ARE GOING TO THROW THIS STATUTE INTO THE MIX. WHETHER IT'S BY THE RINGING OF YOUR LAWSUIT OR THE RAISING OF THE CLAIM, THEN WHICH THE DEFENDANT HAS TO DO. THE PLAINTIFF IS NOT GOING TO COME ALONG AND FILE A LAWSUIT AND SAY IT IS A SLAPP LAWSUIT WHICH THE DEFENDANT HAS TO DO. YOU ARE NOW ON THE HOOK FOR ATTORNEYS FEES TIED TO THAT CLAIM.
>> Justice: HOW DOES THAT PROMISE THE PROHIBITION IN THE TITLE OF THE STATUTE. SOUNDS LIKE THE STATUTE YOU'RE DESCRIBING WOULD BE TITLED SOMETHING LIKE SLAPP SUITS PENALIZED.
SLAPP SUITS DISINCENTIVIZED. ATTORNEYS FEES FOR SLAPPS SUITS.
IN WHAT SENSE IS WHAT YOU ARE DESCRIBING AS THE OPERATIVE STATE OF THE LAW A PROHIBITION ON SLAPP SUITS.
>> Andrew M. Feldman,Respondent: JUSTICE COURIEL. FIRST OF ALL I WOULD SUGGEST WHEN YOU LOOK AT WHAT THE LEGISLATURE GENERALLY DOES WITH STATUTES . THE LEGISLATIVE LAW GENERALLY DOES ONE OF TWO THINGS. IT INCENTIVIZES PEOPLE TO DO THINGS NOT INCENTIVIZING IT REQUIRES PEOPLE TO DO THINGS. OR IT PROHIBITS PEOPLE FROM DOING THINGS. IT PENALIZES YOU FOR DOING THINGS. THERE ARE OTHER STATUTE THAT ARE OUT THERE. WHISTLEBLOWER STATUTES ONE THAT KIND OF POPS INTO MIND THAT HAS A PROHIBITION SITTING THERE IN THE NAME OF WHATEVER IT MAY BE. THE LEGISLATURE DOESN'T.
>> Justice John Couriel: YOU MENTIONED WHISTLEBLOWERS. I'M WONDERING I WANT TO LOOK AT THAT. CAN YOU POINT US TO ANOTHER STATUTE THAT CLAIMS TO PROHIBIT SOME CONDUCT, THEN IN THE END JUST AFFIXES ATTORNEYS FEES AS A PENALTY FOR ENGAGING IN IT?
ANY OTHER EXAMPLE THAT FITS WHAT YOU ARE DESCRIBING?
>> Andrew M. Feldman,Respondent: OFF THE TOP OF MY HEAD . CANDIDLY, ONE IS NOT COMING TO MY MIND. I KNOW THE WHISTLEBLOWER WAS ONE THAT KIND OF POPPED INTO MY HEAD.
>> Justice John Couriel: YOUR ARGUMENT IS LIKE A PROHIBITION PLUS A FINE. WE SHOULD THINK OF THE ATTORNEYS FEES AS A FINE FOR THE PROHIBITED CONDUCT IN THIS CONTEXT IS THAT BASICALLY WHAT YOU'RE SAYING.
>> Andrew M. Feldman,Respondent: YOU SHOULD THINK OF ATTORNEYS FEES AS A CONSEQUENCE FOR THE PROHIBITED CONDUCT OR THE CONDUCT, THE LEGISLATURE IS SAYING THAT THEY DO NOT WANT YOU TO DO.
THAT IS WHAT STATUTES DO. THEY EITHER REQUIRE YOU TO STEP FORWARD, OR THEY SAY YOU BETTER NOT STEP FORWARD. IN THE CIVIL ARENA THE LEGISLATURE

HAS NUMBER OF WAYS OF ENFORCING THAT OF PENALIZING PEOPLE FOR THAT OR DISINCENTIVIZING PEOPLE FOR THAT. IT IS ATTORNEY FEES.
IT IS THE BIGGEST HAMMER THAT THEY HAVE IN THE CIVIL ARENA. OR CERTAINLY ONE OF THE BIGGEST HAMMERS THAT THEY HAVE IN THE CIVIL ARENA. FRANKLY, READING PROHIBITED AS AN IMMUNITY IN THIS SECTION OF THE CODE THAT IN 13 OTHER PLACES DEFINES IMMUNITY WITH SPECIFICITY. RESPECTFULLY, JUSTICE COURIEL IS READING WAY TOO MUCH INTO THE STATUTE FOR THE LEGISLATURE DID IT 13 TIMES IN 768 ALONE. THEY KNEW HOW TO DO IT. I DON'T KNOW HOW.
>> Justice John Couriel: I'M SORRY TO INTERRUPT. CAN YOU HELP US UNDERSTAND THE STATUTE. I HAVE TO ADMIT THE STATUTE IS SUCH, IT IS HARD NOT TO HAVE THE VIEW OF THIS CASE COLORED BY HOW RIDICULOUS THE STATUTE IS. [LAUGHTER] IF YOU READ SECTION 4. THIS IS A TWO-STEP THING WITH THE COURT. FIRST, THE COURT IS JUST CONSIDERING A MOTION TO DISMISS OR FOR SUMMARY JUDGMENT ON THE MERITS OF LITIGATION WHICH IS LIKE ANY OTHER DEFAMATION CASE INVOLVING A PUBLIC FIGURE . THEN YOU VIEW THAT THERE IS THIS KIND OF STEP 2 WHERE IF THE COURT DETERMINES IT IS WITHOUT MERIT, THEN IT ALSO HAS TO ENTERTAIN A SUMMARY JUDGMENT MOTION WITH THESE AFFIDAVITS OVER WHETHER IT WAS "PRIMARILY BECAUSE SUCH PERSON OR ENTITY EXERCISED," WHICH HAS THIS SORT OF RETALIATION TO IT . I KNOW JUSTICE CANADY IS SAYING ONE WAY TO READ IT IS SORT OF COLLAPSE THAT INTO THE MERITS JUST SAY KIND OF BY DEFINITION, EVERY ONE OF THESE CASES IS GOING TO HAVE TO DO WITH SPEECH ABOUT A PUBLIC ISSUE RIGHT.
YOU READ THIS IS BASICALLY THIS KIND OF FACTUAL QUESTION ABOUT THE MOTIVATION FOR THE LAWSUIT BEING LIKE KIND OF AN INDEPENDENT ISSUE THAT THEN IS IN PLAY AFTER IT HAS BEEN DETERMINED TO BE WITHOUT MERIT IN TERMS OF JUST LOOKING AT IT IS A GARDEN VARIETY LAWSUIT.
>> Andrew M. Feldman,Respondent: I DO, MR. CHIEF JUSTICE.
I GUESS IN THE HYPOTHETICAL THE TRIAL COURT COULD POTENTIALLY LOOK TO DO BOTH OF THOSE AT ONE TIME.
>> Chief Justice Carlos Muniz: IF THE COURT SAYS AS A MATTER OF JUST THE REGULAR LAW . I CANNOT SAY IT IS WITHOUT MERIT. JUST LOOKING AT IT AS A DEFAMATION CASE. REALLY THE SLAPP PART OF IT NEVER REALLY COMES INTO PLAY BECAUSE IN THAT SENSE, ARGUABLY, THE ONLY THING THAT REALLY MAKES A SLAPP CASE DIFFERENT THAT IS THIS KIND OF EXTRA THING ABOUT PENALIZING SOMEBODY FOR HAVING THIS KIND OF NEFARIOUS MOTIVE FOR FILING THE LAWSUIT.
>> Andrew M. Feldman,Respondent: YES BY THE WAY, WHEN YOU LOOK AT THE DEFINITION OR WHEN YOU LOOK AT THE DESCRIPTION OR THE LANGUAGE BASICALLY SAYS SUCH LAWSUITS AS HERE AND DESCRIBED.
IT THEN LAYS OUT WHAT THAT DESCRIPTION IS, AND THE LEGISLATURE DOES IT WITHIN AND IN BETWEEN THEM. WHETHER IT WOULD BE IN A HYPOTHETICAL THING ONE PROCEEDING OR A SECOND ONE LIKE YOU DESCRIBED . WE DETERMINE NOW IT IS WITHOUT MERIT. LET'S LOOK AT THE INTENT. IT HAS TO BE BOTH . THEY CAN'T COLLAPSE.

THEY ARE NOT SEPARATE. IT'S NOT OR. IT'S AND.
IT HAS TO MEAN SOMETHING ELSE BECAUSE WITHOUT MERIT . YOU DON'T NEED STATUTE EVEN TO DO THAT.
>> Chief Justice Carlos Muniz: THE LEGISLATURE. I DON'T KNOW WHAT IT MEANS TO PROHIBIT A LAWSUIT WITHOUT MERIT.
>> Andrew M. Feldman,Respondent: I DON'T KNOW EITHER.
I DON'T KNOW WHAT IT MEANS TO PROHIBIT A LAWSUIT WITHOUT MERIT.
BUT FRANKLY, THIS STATUTE IT HAS AN ENFORCEMENT MECHANISM.
I AGREE IT IS ODD. BUT THE WEIGHT THE STATUTE IS JUST WORDED AS A WHOLE.
BUT IT HAS AN ENFORCEMENT MECHANISM, AND THAT ENFORCEMENT MECHANISM IS PREVAILING PARTY ATTORNEYS FEES.
>> Justice: CAN I ASK YOU A VERY TECHNICAL HYPOTHETICAL.
WE HAVE THIS SUMMARY JUDGMENT DENIED BY THE TRIAL COURT. NO RIGHT TO APPEAL. WE GO THROUGH A WHOLE TRIAL. DEFENDANT LOSES. DEFENDANT APPEALS. AND HAS ALL OF THEIR POINTS AS A GOOD APPEAL LAWYER WILL MAKE. AND THE APPELLATE COURT DETERMINES THAT THAT SUMMARY JUDGMENT SHOULD HAVE BEEN GRANTED.
THEY SHOULD HAVE PREVAILED ON THEIR ANTI-SLAPP CLAIM.
DO THEY GET FEES FOR EVERYTHING BELOW. IF NOT, THE REMEDY THAT WOULD BE. THEY SHOULD HAVE WON AT THAT STAGE EARLY ON.
I THINK THE EXACT WORDS ACTION WAS FILED IN VIOLATION OF THIS SECTION TO A CLAIM WHICH IS REALLY A PRE-SUIT ISSUE. IT IS NOT A TRIAL ISSUE.
IS THE REMEDY APPROPRIATE THEN THAT THEY WOULD NOW GET THESE FOR THIS ENTIRE PROCESS?
OR JUST FOR THAT PORTION RELATED TO THIS SLAPP.
>> Andrew M. Feldman,Respondent: JUSTICE GROSSHANS. I'M NOT SURE IF I CAN ANSWER YOUR QUESTION IN THE TIME REMAINING. I MAY I GO OVER . THANK YOU SIR. TO ANSWER YOUR QUESTION. IN THAT HYPOTHETICAL IF THE REASON IF THE REASON IT GOT REVERSED WAS BECAUSE THE DENIAL OF THE SUMMARY JUDGMENT UNDER THE SLAPP ISSUE ITSELF UNDER THAT CLAIM WAS ERRONEOUS, THEN YES, THE PERSON WOULD HAVE TO FILE THE APPROPRIATE MOTION AT THE APPELLATE LEVEL AND MAKE THE APPROPRIATE MOVE AT THE TRIAL LEVEL ETC. ASSUMING ALL THE PROCEDURAL BOXES WERE CHECKED TO GET THAT THEN YES, BECAUSE THEY WOULD HAVE ULTIMATELY PREVAILED ON THAT CLAIM.
WITH THAT BEING REVIEWED AT THE APPELLATE LEVEL. IT IS NO DIFFERENT THAN ANY OTHER SITUATION WHERE YOU HAVE REVIEW OF A DENIAL OF A SUMMARY JUDGMENT.
IN A SITUATION WHERE THERE COULD BE PREVAILING PARTY ATTORNEYS FEES. AND THAT HAPPENS, FRANKLY, WHETHER IT IS STATUTORY OR IT IS CONTRACTUAL, WHICH PROVIDES FOR FEES THAT HAPPENS ALL THE TIME.
IF I MAY JUST BRIEFLY CLOSE UP, MR. CHIEF JUSTICE?
AT THIS POINT IN TIME THE APPROPRIATE THING TO DO. WE WOULD SUBMIT CERTIORARI IS NOT APPROPRIATE HERE. THE THIRD DISTRICT GOT IT RIGHT. THIS

COURT SHOULD AFFIRM THE DECISION OF THE THIRD DISTRICT COURT OF APPEALS, IT SHOULD REVERSE GUNDELL, TO THE EXTENT AND THE SECOND DISTRICT DECISIONS THAT FOLLOWED TO THE EXTENT THAT THEY ARE INCONSISTENT WITH THE DECISION OF THIS COURT, IT SHOULD LIFT THE STAY THAT'S GOING ON IN THE TRIAL COURT BELOW. IT SHOULD ALLOW MR POWELL TO HAVE HIS DAY IN COURT, AND FINALLY TAKE THIS TO TRIAL WHEN A SUMMARY JUDGMENT HAS BEEN DENIED. THANK YOU FOR YOUR TIME YOUR HONORS.
>> Chief Justice Carlos Muniz: .THANK YOU.
>> Dwyane A. Robinson,Petitioner: MY FRIENDS ON THE OTHER SIDE MADE A LOT OF CONCESSIONS THAT I THINK ARE HELPFUL TO THIS DISCUSSION. YOU HEARD THEM CONCEDE TO YOUR QUESTION JUSTICE GROSSHANS THAT THERE IS A MEANING OF THE STATUTE THAT WOULD ESSENTIALLY RENDER IT MEANINGLESS YOU GET NO RIGHT TO FEES AND YOU DON'T GET THE EXPEDITIOUS RESOLUTION OF YOUR CLAIM. TURNING TO JUSTICE CANADY DIRECTLY. RIGHT THERE IS NOT A MOTIVATION REQUIREMENT IN THE STATUTE. HOW DO WE KNOW WE LOOK TO THE PLAIN TEXT OF THE STATUTE. WE IGNORE HYPER LITERAL READINGS. IF WE READ SUBSECTION 3 AS REQUIRING A MENTAL STATE REQUIREMENT THAT TOTALLY IS IN CONTRARY DISTINCTION TO SUBSECTION 4 WHERE THE LEGISLATURE HAS DESIGNED THAT SLAPP MOTIONS WILL BE RESOLVED AT THE PLEADING STAGE. THERE IS NO SCENARIO THAT ANY DEFENDANT IS GOING TO KNOW THE MENTAL STATE OF A PLAINTIFF AT THE PLEADING STAGE. IT IS INCONSISTENT. AND BY THE WAY WE TURN BACK TO SUBSECTION 3. IT IS INCONSISTENT TO HAVE A SUIT THAT HAS MERIT, THEREFORE, IT IS SPEECH PROTECTED BY THE CONSTITUTION. WE SHOULD NOT READ THESE AS SEPARATE ELEMENTS, THE LEGISLATURE IS DESCRIBING A TYPE OF SUIT THAT THE CONSTITUTION ALREADY PROHIBITS, AND THEY ARE SAYING YOU ALREADY HAVE IMMUNITY FROM LIABILITY WE'RE ADDING IMMUNITY FROM SUIT, THE STATUTE DOES SOMETHING EXIST. THE URGE TO RENDER IT MEANINGLESS. THAT IS NOT WHAT THIS COURT IS ENGAGED IN DOING.
>> CAN ASK YOU? THIS MAY BE A REALLY STUPID QUESTION. DO YOU VIEW THIS STATUTE ONLY DEALING WITH THESE SORT OF CASES WHERE THE SUBJECT MATTER OF THE LAWSUIT ITSELF HAS TO DO WITH SPEECH OR COULD IT BE I SUE YOU FOR SOME EMPLOYMENT VIOLATION, BUT IT TURNS OUT THAT MY MOTIVATION FOR IT IS TO PUNISH YOU FOR SPEECH.
>> Dwyane A. Robinson,Petitioner: IT IS THE FORMER CHIEF JUSTICE MUNIZ IT SAYS THAT THIS STATUTE SUBSECTION 3 SPEECH IS PROTECTED BY THE FIRST AMENDMENT AS WELL. AS FOR THE CONSTITUTION AND WE HEARD OUR FRIENDS ON THE OF THE SITE CONCEDE THAT THE CHILLING OF THE SPEECH IS IRREPARABLE HARM WHAT THEY TOLD YOU IS THAT IT ONLY APPLIES IF IT IS A STATUTE THAT IS NOT WITH THE U.S. CONSTITUTION.
>> Chief Justice Carlos Muniz: IT SEEMS LIKE IF YOU JUST READ THE STATUTE. IT COULD BE TALKING ABOUT SUITS WHEN LITIGATION ITSELF IS NOTHING TO DO WITH SPEECH ON ITS FACE . YOU CAN'T FILE A LAWSUIT WITHOUT MERIT . PART ONE . THEN, IF IT TURNS LAWSUIT COULD HAVE OR BE RELATED TO ANYTHING. PART TWO,

YOUR MOTIVATION FOR FILING THE LAWSUIT WAS BECAUSE SUCH PERSON OR ENTITY HAS EXERCISED THEIR CONSTITUTIONAL RIGHT OF FREE SPEECH. BUT YOU ARE THINKING THAT IS NOT WHAT THE STATUTE IS ABOUT. IS EVERY SINGLE CASE IS GOING TO BE A SPEECH CASE.
>> Dwyane A. Robinson,Petitioner: IT IS GOING TO BE A SPEECH CASE SPEECH HAS DIFFERENT VARIETIES THEY COULD BE TO PETITION THE GOVERNMENT THAT IS COVERED IN SUBSECTION 2A, WHICH JUSTICE COURIEL SPOKE ABOUT. IT IS TALKING ABOUT FIRST AMENDMENT SPEECH BUT OUR FRIENDS CONCEDED THAT YOU CAN HAVE IRREPARABLE HARM WHEN YOU'RE CHILLING SPEECH. BUT WHAT HE TOLD YOU IS YOU NEED TO HAVE A STATUTE THAT INFRINGES ON SPEECH TO HAVE THAT IRREPARABLE HARM THAT IS NOT WHAT THE US SUPREME COURT SAID IN SULLIVAN . SULLIVAN CREATED SUBSTANTIAL RIGHTS BASED ON A DEFAMATION LAWSUIT ON THE IDEA THAT YOU NEED TO HAVE BREATHING ROOM FOR THE FIRST AMENDMENT. THEY UNWITTINGLY HAVE CONCEDED THE VERY ESSENCE OF OUR CASE.
>> Chief Justice Carlos Muniz: YOU HAVE 30 SECONDS TO WRAP UP UP
>> FOR THESE REASONS, WE REQUEST THE COURT QUASH THE THIRD DISTRICT DECISION BELOW. IF THE GOAL HERE IS TO STOP SLAPP SUITS THE WAY TO DO THAT IS TO GRANT INTERLOCUTORY REVIEW. IF YOU RENDER THE SLAPP STATUTE MEANINGLESS, OR SIMPLY ATTORNEYS FEES IT'S OPEN SEASON FOR SLAPP SUITS IN FLORIDA YOU WILL GET SUITS AGAINST SPEAKERS ON THE RIGHT AND SPEAKERS ON THE LEFT. WE WILL TOTALLY DEFEAT THE LEGISLATIVE PURPOSE, THANK YOU FOR YOUR TIME, WE ASK THAT YOU AGAIN QUASH THIS DECISION GRANT CERTIORARI REVIEW, RETROACTIVELY AMEND RULE 9.130 SO WE MAY PROCEED.
>> Chief Justice Carlos Muniz:THANK YOU VERY MUCH.