

IN THE DISTRICT COURT OF APPEAL FOR THE STATE OF FLORIDA  
FOURTH DISTRICT

On Appeal from the Nineteenth Judicial Circuit  
in and for Martin County, Florida

MAGGY HURCHALLA,

Appellant,

vs.

CASE NO.: 4D18-1221

L.T. CASE NO.: 2013-001321-CA

LAKE POINT PHASE I, LLC,  
and LAKE POINT PHASE II, LLC,  
Florida limited liability companies,

Appellees.

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**MOTION FOR LEAVE TO FILE AMICUS CURIAE BRIEF IN SUPPORT  
OF APPELLANT MAGGY HURCHALLA'S MOTION FOR REHEARING  
EN BANC OR CERTIFICATION**

Pursuant to Florida Rules of Appellate Procedure 9.370 (c) and 9.300,  
Movants, Florida Wildlife Federation, Bullsugar.org, and the Pegasus Foundation,  
by and through the undersigned counsel, request leave to file the attached *amicus  
curiae* brief in support of Appellant Maggy Hurchalla's Motion For Rehearing En  
Banc Or Certification. As grounds therefore, Amici state as follows:

## **MOVANTS' INTEREST**

Amici represent the very type of civic-minded citizens whose communications to government and about governmental policy will now be stifled by the rulings and reasoning of the panel decision in this matter. They were granted leave to file a Friend of the Court brief on the merits in this case and did so, addressing the unique nature of environmental and scientific issues relative to tortious falsehood claims.

Florida Wildlife Federation, Inc. (“FWF”) is a Florida non-profit corporation, with approximately 60,000 members and supporters in Florida. FWF pursues its mission to conserve the natural resources of the state, advance environmental education, ethical outdoor recreation and sustainability by informing and advocating before governmental bodies. FWF often relies on technical and scientific information produced by others to support its positions. Potential tort liability resulting from good faith statements would greatly restrict FWF’s advocacy.

The Pegasus Foundation (“Foundation”) is a not-for-profit Massachusetts corporation with a mission to improve animal welfare in the United States, the Caribbean, on Native American lands, and in Africa. In Florida, the Foundation

helps homeless and abandoned dogs and cats with medical needs. It advocates for better services for animals and for preserving wildlife habitats. The Foundation is currently advocating to stop ongoing pollution that is harming the Indian River Lagoon and its human and animal inhabitants. Participation in environmental policy issues is critical to the goals of the Foundation and would be thwarted if it faced legal liability for its scientifically supported statements.

Bullsugar.org (“Bullsugar”) is a Florida non-profit membership organization. Its mission is to educate the public about water quality and related environmental issues and advocate for policies that further this mission. Bullsugar informs citizens and public officials about threats to clean water and advocates for policies to improve water quality. Its mission also includes discouraging dredging and filling of wetlands because of the crucial functions wetlands provide to the environment, including flood protection and water quality enhancement.

Environmental policies are often the subject of competing scientific opinion and perspectives. Bullsugar’s communications with public officials would be greatly hindered should it face potential legal liability for good faith advocacy statements made to government decision-makers about actions Bullsugar perceives as environmentally damaging.

As environmental advocates who regularly advance their organizations' positions by speaking to and before governmental bodies and courts, all Amici have experience with and important perspectives on the complex, debatable, and ever-changing nature of environmental issues, like those involved in this case.

**REASONS FOR AND RELEVANCE OF  
MOVANTS' *AMICUS CURIAE* BRIEF**

Each of the Amici organizations has a mission and practice to advocate to public officials and the public on behalf of their members and the public in support of environmental protection. Each is greatly and negatively impacted by the panel decision's rulings and reasoning. The decision appears to establish a rule that a citizen's qualified right of free speech requires that citizen, prior to speaking out, perform an analysis of his or her standing in the community, relationship with the intended target of the speech, the target's depth of knowledge about the matter, and the potential that a judge or jury might deem the intended statement to lack full accuracy, context and fairness. This would place an unconstitutional burden on citizens, whether lay or expert, experienced or newly engaged in government advocacy. It places an egregious barrier of uncertainty and overbearing responsibility to carefully research and craft any oral or written statement before being allowed to participate in government decision-making,

with dire financial consequences for a miscalculation.

Because Amici advocate regarding governmental environmental policy and actions, the panel decision has particular and crucial importance to their mission and to the rights of all citizens regarding such matters. If statements made by citizens about complex, scientific, debatable, opinion-laden matters can be deemed tortious falsehoods if a judge or jury subsequently disagrees with their complete accuracy, free speech on such matters will end for all but the wealthiest of citizens. As environmental advocates before governmental bodies and courts, Amici have experience with, and an important perspective and understanding of, the complex, debatable, and ever-changing nature of environmental facts, such as those that are involved in this appeal. Amici believe that their experience and views as advocates for the protection of communities, ecosystems and wildlife during public discussion and debate about environmental and land use permitting and planning, can aid this Court in the resolution of this appeal.

These are the issues of great public importance the Amici seek to address.

### **BRIEF ARGUMENT IN SUPPORT OF MOTION**

As both litigation and the role of modern statutory programs and public advocacy and enforcement have grown, the strict “traditional” friend-of-the-court

brief “has long since ceased to be a reality.” Gidiere, P. Stephen III, *The Facts and Fictions of Amicus Curiae Practice in the Eleventh Circuit Court Of Appeals*, Seton Hall Circuit Review: Vol. 5: Iss. 1, Article 1 at 15 (2012).

In *Neonatology Associates, P.A. v. C.I.R.*, 293 F.3d 128, 130-32 (3rd Cir. 2002), Justice (then Circuit Judge) Alito, writing for the majority, rejected a restrictive standard for amicus participation. 293 F.2d at 130. The appellants in that case had opposed Amici participation because “the very term ‘amicus curiae’ suggests a degree of impartiality” and the term “means friend of the court, not friend of a party.” *Id.* at 131 (citations omitted). However, the Court explained that an advocate can be an appropriate amicus because

“strong (but fair) advocacy on behalf of opposing views promotes sound decision making. Thus, an amicus who makes a strong but responsible presentation in support of a party can truly serve as the court's friend.” *Id.* at 131.

The Court rejected the notion that adequate representation by a party precludes the appropriateness and value of an amicus brief in support of that party, opining:

“Even when a party is very well represented, an amicus may provide important assistance to the court. Some amicus briefs collect background or factual references that merit judicial notice. Some friends of the court are entities with particular expertise not possessed by any party to the case. Others argue points deemed too far-reaching

for emphasis by a party intent on winning a particular case. Still others explain the impact a potential holding might have on an industry or other group. Luther T. Munford, *When Does the Curiae Need An Amicus?*, 1 J.App. Prac. & Process 279 (1999). Accordingly, denying motions for leave to file an amicus brief whenever the party supported is adequately represented would in some instances deprive the court of valuable assistance.”

Id. at 132. (Internal quotation marks omitted).

Justice Alito concluded that “our court would be well advised to grant motions for leave to file amicus briefs unless it is obvious that the proposed briefs do not meet Rule 29’s criteria as broadly interpreted” and that this policy “is consistent with the predominant practice in the courts of appeals.” Id. at 133.

### **CONSENT OF THE PARTIES**

Appellee, Lake Point does not consent to this motion. Appellant Maggy Hurchalla does consent to this motion.

WHEREFORE, Amici request leave to file the attached amicus curiae brief in this matter.

Respectfully submitted this 23rd day of July, 2019.

/s/Richard Grosso

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 23rd day of July, 2019, the foregoing was electronically filed with the Clerk of Courts using the Florida Courts E-filing Portal, which will send a notice of electronic filing to the service list below:

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**CERTIFICATE OF COMPLIANCE**

I hereby certify that this motion was prepared in Times New Roman, 14-point font, in compliance with Rule 9.210(a)(2) of the Florida Rules of Appellate Procedure.

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