**THE SUPREME COURT OF FLORIDA**

CASE NO.: SC2025-0922
APPELLATE CASE NO.: 4D2025-1019
L.T. CASE NO.: 22-CA-000246

ELIZABETH ALEXANDER, et al,

Petitioners,

v.

PRESIDENT DONALD J. TRUMP,

Respondent.

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# BRIEF ON JURISDICTION OF RESPONDENT PRESIDENT DONALD J. TRUMP, ON REVIEW FROM THE FOURTH DISTRICT COURT OF APPEALS

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## STATEMENT OF THE ISSUES

Petitioners raise the question whether the Supremacy Clause and Article II of the United States Constitution entitles Petitioners to a stay of litigation because their adversary was elected President of the United States during the pendency of the suit.

The threshold question, however, which was resolved against Petitioners by both the circuit court and the district court, is whether Petitioners even have standing to raise Presidential immunities from suit under Article II, immunities which belong exclusively to Respondent as the singular occupant of the Executive Branch of the United States. *see* Art. II, § 1, U.S. Const. ("The executive Power shall be vested in a President of the United States of America.").

For jurisdictional purposes, the issue before this Court is far narrower: whether the Fourth District "construed" a provision of the United States Constitution when it applied settled law to conclude that Petitioners lacked standing to raise Article II immunity from suit in state court.[1]

[1] To the extent Petitioners press constitutional claims based upon their own Due Process rights, these arguments likewise cannot form the basis of this Court's jurisdiction, since the Due Process clause of the Constitution was never construed by the Fourth District.

## INTRODUCTION

The two courts below resolved Petitioners' motion to stay the litigation against them on the not-so-novel proposition that a party generally lacks standing to assert the constitutional rights of others. (A. 6) (citing *United States v. Hansen*, 599 U.S. 762, 769 (2023); and *Warth v. Seldin*, 422 U.S. 490, 499 (1975)). Although it referenced the United States Constitution, the Fourth District had no occasion to "construe" any provision of it since it held that Petitioners had no standing to raise constitutional privileges or immunities clearly belonging exclusively to the President of the United States. (A. 9) ("Though petitioners raise several speculative concerns about the potential impact this litigation may have on the ability of Respondent to fulfill his Presidential duties, they lack standing to raise such concerns."). Moreover, the Fourth District did not reach Petitioners' related but unsupported claim that allowing a sitting President to maintain a civil suit against them denies their rights to procedural due process. Because the district court neither decided the scope of the President's immunity under Article II and the Supremacy Clause nor construed the Due Process clause in any way, this Court simply lacks jurisdiction. However, even if this Court possessed

discretionary jurisdiction, which it does not, there is no reason to exercise it here where Petitioners raise only speculative concerns of potential harms that they themselves will never suffer.

## STATEMENT OF THE CASE AND FACTS

In their Statement of the Case and Facts, Petitioners stray far beyond the facts stated in the district court's opinion. They even falsely pretend that President Trump has never contested the articles published by *The New York Times* and *The Washington Post* maliciously and wrongly asserting that his campaign colluded with Russia to win the 2016 election. (Br. at 3). Petitioners further recite as fact the ludicrous assertion that they commissioned two independent reviews of this reporting, which somehow concluded that none of the reporting had been discredited by later disclosures. (Br. at 3). To put it mildly, Petitioners are not entitled to their own version of reality.

The two courts below have held that President Trump "sufficiently" "pled that the [Petitioners] engaged in a conspiracy to defame him." *Alexander v. Trump*, 404 So. 3d 425, 427 (Fla. 4th DCA 2025). Seeking to damage an ideological and political opponent, Petitioners purposefully resurrected "the now-debunked allegations

that [President Trump] colluded with the Russians to win the 2016 presidential election." *Id.* (Artau, J., concurring). As the amended complaint clearly alleged, Petitioners defamed President Trump by:

> vouch[ing] for the truth of reporting that had been ***debunked*** by all credible sources charged with investigating the ***false*** claim that the President colluded with the Russians to win the 2016 presidential election, including Special Counsel Robert Mueller, Attorney General William Barr, the House of Representatives' Permanent Select Committee on Intelligence, and the United States Senate's Select Committee on Intelligence.

*Id.* at 429 (emphasis added).

Several[2] of the Petitioners sought to dismiss President Trump's claims based upon personal jurisdiction. The circuit court rejected their arguments, and on August 6, 2024, those Petitioners sought review of that decision in the Fourth District, arguing that the complaint failed to sufficiently plead a tort against them occurring in Florida, among other things. *Alexander*, 404 So. 3d at 425.

On November 5, 2024, while the nonfinal appeal was pending, Respondent was elected President of the United States in a historic and sweeping electoral victory. Following the election, Petitioners did not move in either the circuit court or the district court to stay the

[2] All but the one Florida resident, Neil Brown.

litigation. Rather, on November 12, 2024, Petitioners moved for oral argument in the district court on their nonfinal appeal (which was denied by the court).

President Trump was sworn in as the 47th President of the United States of America on January 20, 2025. While Petitioners filed the instant motion for stay in the circuit court based upon Respondent's status as President, they did not ask the district court to stay their nonfinal appeal on the motions to dismiss. On February 12, 2025, the Fourth District issued its opinion affirming the circuit court's denial of their motions. *See Alexander*, 404 So. 3d at 425. The Fourth District issued its mandate, no further review was sought, and the case returned to the circuit court for litigation on the merits.

Petitioners eventually sought a ruling from the circuit court on their motion to stay the litigation. The circuit court rejected Petitioners' argument. Petitioners then filed a petition for writ of certiorari in the district court.

The Fourth District rejected Petitioners' requested stay solely on the basis of standing, stating "[i]mmunities and privileges, by their very nature, inure solely to the benefit of the individual for whom they are intended. Thus, application of a governmental immunity cannot

be asserted by the Petitioners as private citizens." (A. 6). "In sum, the right to claim burdens on executive functions belongs to the Executive Branch—not to its opponent." (A. 8)

The district court's decision was based on settled precedent from the United States Supreme Court that constitutional privileges and immunities can only be asserted by the person for whom they are intended. The Fourth District explained:

> [T]he law is clear that such privileges are not available to third parties to claim, nor may such privileges be asserted by others on the officials' behalf. *See*, *e.g.*, *United States v. Reynolds*, 345 U.S. 1, 7, 73 S.Ct. 528, 97 L.Ed. 727 (1953) (executive privilege "can neither be claimed nor waived" by a third party). The principle of standing says that, generally, one cannot assert someone else's constitutional rights. *United States v. Hansen*, 599 U.S. 762, 769, 143 S.Ct. 1932, 216 L.Ed.2d 692 (2023); see also *Warth v. Seldin*, 422 U.S. 490, 499, 95 S.Ct. 2197, 45 L.Ed.2d 343 (1975) (explaining that a litigant must assert his own legal rights and interests).

(A. 6).

Because Petitioners lacked standing to raise Article II and the Supremacy Clause as the basis for relief in their favor, the Fourth District had no occasion to construe either provision of the United States Constitution in denying relief. While the district court may have described the Constitution's grant of all Executive Power to the

President to give context to its analysis of Petitioners' claims, absent from the opinion is any "construction" of a constitutional provision. The court repeatedly made clear its decision was based on Petitioners' lack of standing to assert the constitutional provision they raised.

Petitioners sought discretionary review in this Court, arguing the Fourth District construed a provision of the United States Constitution.

## ARGUMENT

### I. THE FOURTH DISTRICT APPLIED ESTABLISHED SUPREME COURT PRECEDENT TO CONCLUDE THAT PETITIONERS LACKED STANDING. IT DID NOT CONSTRUE ANY PROVISION OF THE UNITED STATES CONSTITUTION.

This Court's jurisdiction to exercise discretionary review of a lower court's decision is limited to one that "construes" a constitutional provision. *See Schermerhorn v. Loc. 1625 of Retail Clerks Intern. Ass'n, AFL-CIO*, 141 So. 2d 269, 271–72 (Fla. 1962) (internal citations omitted), *aff'd sub nom.*, *Retail Clerks Intern. Ass'n, Loc. 1625, AFL-CIO v. Schermerhorn*, 375 U.S. 96 (1963). This Court has explained that the lower court must have "undertake[n] to eliminate existing doubts arising from the language or terms of the constitutional provision." *Id.* It is not enough to simply cite a

constitutional provision; rather, the court must "construe" the constitutional provision in reaching its decision. *See Ogle v. Pepin*, 273 So. 2d 391, 393 (Fla. 1973). Further, this Court has also made clear that applying a provision of the constitution "is not synonymous with [c]onstruing; the former is NOT a basis for our jurisdiction, while the [e]xpress construction of a constitutional provision is." *Rojas v. State*, 288 So. 2d 234, 236 (Fla. 1973).

The Fourth District's opinion applied well-settled precedent on standing to reject Petitioners' claims without construing any provision of the Constitution. Throughout its opinion, the Fourth District made clear the sole basis for its holding was Petitioners' lack of standing to raise Presidential prerogatives. (A. 5) ("But such privileges are afforded to the President alone, not to his litigation adversaries") (citations omitted); (A. 7) ("Even though litigants may be entitled to claim a privilege, they may also voluntarily elect not to.") (citations omitted); (A. 8) ("In sum, the right to claim burdens on executive functions belongs to the Executive Branch—not to its opponent. . . . Though Petitioners raise several speculative concerns . . . they lack standing to raise such concerns.").

The Fourth District did recognize that the Vesting Clause bestows the executive power of the United States upon "a President," and the powers and immunities flowing from it belong to that office. This was nothing new as the U.S. Supreme Court has affirmed, "[u]nder our Constitution, the executive Power—all of it—is vested in a President." *Seila Law LLC v. CFPB*, 591 U.S. 197, 203 (2020). Thus, the privileges and immunities inherent in and flowing from Article II belong only to the President. They can be asserted by him and only on his consent. *See*, *e.g.*, *United States v. Reynolds*, 345 U.S. 1, 7 (1953) (explaining that executive privilege "can neither be claimed nor waived" by a third party).

In sum, the Fourth District did not "construe" a constitutional provision. Rather, the court cited (and applied) the "principle of standing" as previously articulated by the U.S. Supreme Court. (A. 6). The court did not endeavor to create a new constitutional rule, nor did it even apply the constitutional provisions at issue in reaching its decision. The court's decision was based on Petitioners' lack of standing to assert the privilege, not on any construction of the words contained in Article II. In fact, contrary to Petitioners' primary assertion that "[t]his case squarely presents the question that the

U.S. Supreme Court left unanswered in *Jones*," (Br. of Appellant, at 1) (referring to *Clinton v. Jones*, 520 U.S. 681 (1997)), the Fourth District's opinion did not decide that question but instead concluded that Petitioners' reliance on that case was "misplaced" since *Jones* involved a request by a President to stay litigation. (A. 6). Any discussion of Article II's immunity was dicta as the Fourth District resolved the case on standing grounds.

This Court only has jurisdiction to exercise its discretionary review of a district court's opinion when the court below "construes" a constitutional provision. Since that did not occur in this case, this Court must decline review.

## II. EVEN IF THIS COURT HAD JURISDICTION, IT SHOULD DECLINE REVIEW SINCE THE FOURTH DISTRICT'S OPINION CHARTED NO NEW TERRITORY, THE ISSUES ARE UNLIKELY TO RECUR, AND PETITIONERS' ARGUMENTS ARE SO OBVIOUSLY WRONG.

Even if jurisdiction exists, which is not the case, this Court should decline discretionary review. First, the Fourth District did not change any existing rules. No court has ever recognized a constitutional right under Article II for the President's litigation adversaries to compel a stay of litigation against his wishes. Second, this issue is unlikely to recur and so does not warrant this Court's

intervention. Third, Petitioners' argument regarding "official acts" was not passed upon below and is so obviously wrong it does not require this Court's review.

### A. The Fourth District charted no new constitutional territory.

Petitioners mistakenly claim that the Fourth District's opinion altered the legal landscape by addressing presidential immunity in state-court litigation. But the Fourth District applied existing law to conclude that Article II does not permit private plaintiffs to stay litigation on behalf of the President and against his wishes. In *Jones*, *Zervos*, and *United Atlantic Ventures, LLC v. TMTG Sub Inc.*, the question was whether the President may assert immunity as a defendant. By contrast, in this case "the President is the *plaintiff*," and it is Petitioners who seek to invoke the immunity against the President. *Id.* at *3 (emphasis added).

No case has ever held (or even suggested) that private plaintiffs can invoke the President's immunity against him. The Fourth District applied the settled principle that invocation of Presidential immunity is done solely by the President, who alone decides how and when to assert it. *Id.* at *3–4. As the Fourth District explained, regardless of the outcomes in *Jones*, *Zervos*, or *United Atlantic Ventures,* "the law

is clear"—and has always been clear—that Presidential immunity is "not available to third parties to claim" on the President's behalf. *Id.* at *2. That holding, backed by U.S. Supreme Court precedent, does not merit the Court's review.

### B. Petitioners marshal no evidence that this issue is likely to repeat.

Petitioners argue review is warranted since this issue is likely to repeatedly occur. The sparse record of such issues arising in the nearly 250-year history of our country belies their argument. The Fourth District faithfully applied existing law, and its decision provides a clear path for other courts to follow if this issue were to arise again.

### C. Petitioners' official acts argument is analytically confused and wrong on the merits.

Petitioners claim a stay is required until President Trump leaves office because the 2017 Pulitzer Prize-winning articles reported on "official acts," thus placing them in issue. Setting aside that Petitioners are being sued for their conduct occurring in 2022 when President Trump was not in office, their "official acts" argument confuses two distinct Article II immunities. "Official acts" immunity is a substantive defense that applies regardless of whether the

President is in office at the time of litigation. *See Trump v. United States*, 603 U.S. 593, 631-32 (2024) (applying official acts immunity to President Trump following his first term); *Nixon v. Fitzgerald*, 457 U.S. 731, 749–756 (1982) (similar). By contrast, the kind of immunity improperly invoked by Petitioners is designed to protect a sitting President from the unique burdens of defending unwelcome lawsuits during his tenure. Petitioners' argument lends no support for a stay since the courts would need to confront any distinct questions raised by official-acts immunity whether the case was litigated today or four years from now.

## CONCLUSION

The Fourth District correctly rejected Petitioners' attempt to invoke privileges belonging to the President of the United States. The Fourth District's reasoning was based on long-settled precedent regarding standing, and not on any construction of a provision of the U.S. Constitution. Accordingly, this Court lacks jurisdiction to review this case. Moreover, there is simply no reason for this Court to exercise any discretionary jurisdiction it may have to review this case.

## CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on August 4, 2025, the foregoing was filed electronically using the Florida Court's E-filing Portal and will be electronically served upon all counsel of record:

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## CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that this jurisdictional brief complies with the font requirements of Fla. R. App. P. 9.045(b) in that it was computer generated using Bookman Old Style 14-point font.

I FURTHER HEREBY CERTIFY that it does not exceed the word-count limits of Fla. R. App. P. 9.210(a)(2)(a) in that it contains 2,403 words, exclusive of the cover sheet, tables of content and citations, statement of issues presented, and certificates of service and compliance.

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