United States Court of Appeals
For the First Circuit

No. 19-1389

THOMAS FRANCHINI,

Plaintiff, Appellee,

v.

INVESTOR'S BUSINESS DAILY, INC., d/b/a Investor's Business Daily,

Defendant, Appellant,

and

BANGOR PUBLISHING COMPANY, INC., d/b/a Bangor Daily News; MEG HASKELL; EDWARD MURPHY; GANNETT COMPANY, INC., d/b/a USA Today; DONOVAN SLACK; SALLY PIPES; MTM ACQUISITION, INC., d/b/a Portland Press Herald,

Defendants.

APPEAL FROM THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF MAINE

[Hon. George Z. Singal, U.S. District Judge]

Before[*]

Lynch, Circuit Judge,
and Saris[**], District Judge.

[*] Judge Torruella heard oral argument in this matter and participated in the semble, but he did not participate in the issuance of the panel's decision. The remaining two panelists therefore issued the opinion pursuant to 28 U.S.C. § 46(d).

[**] Of the District of Massachusetts, sitting by designation.

Russell B. Pierce, Jr., with whom Norman, Hanson & DeTroy, LLC were on brief, for appellant.

Raymond W. Belair, with whom Belair & Associates, P.C. were on brief, for appellee.

November 13, 2020

LYNCH, **Circuit Judge**. Investor's Business Daily (IBD) appeals from the denial of its special motion to dismiss under Maine's anti-SLAPP law Thomas Franchini's defamation suit against it for publishing an Op-Ed by Sally Pipes. Because Franchini failed timely to serve process on Sally Pipes, originally named as a defendant, the only defendant from which he seeks relief for this Op-Ed is IBD. The district court relied on its reading of language from Gaudette v. Mainely Media to deny the motion. 160 A.3d 539 (Me. 2017). We exercise our interlocutory jurisdiction and certify the underlying questions of law to the Maine Law Court. Me. R. App. P. 25(a).

I. Background

A. Facts.

IBD is a subscription news service with a national circulation. By uncontested affidavit, IBD's chief content officer, Chris Gessel, states that, beginning in 1990, IBD's founder gave "[IBD] the explicit charge . . . of not merely criticizing policies and programs, but also, where possible, putting forward reasonable solutions or policy responses." As part of that effort, "starting in the mid-to-late 1990s, [IBD] began writing . . . extensively about political, regulatory, economic and health care issues, with particular emphasis on favorably affecting public policy in Washington, D.C." IBD focused much of its commentary on "the debate raging in Washington and the

states over how best to reform our health care system." IBD invited columnists and policy makers to participate in the "IBD Brain Trust," which provided regular commentary on policy issues. IBD notes that its editorials and Op-Eds have attracted the attention of government bodies, with "literally dozens" of references to their pieces in the Congressional Record relating to the debate over the Affordable Care Act. Sally Pipes is a regular contributor to IBD's health care commentary. As part of IBD's continued commentary on health care policy, IBD published the December 22, 2017 Sally Pipes Op-Ed.

Sally Pipes submitted to the district court an uncontested declaration detailing at length her biography and stating that she intended her Op-Ed as a "call to action" to enlist public support for the policy reforms she advocates. She states:

> [] PRI's[1] nonprofit activities are intended to advance PRI's mission of educating the public and advocating for public policy solutions to current issues -- including, but not limited to, publications, events, media commentary, and community outreach. We consider these activities to be within PRI's exercise of its First Amendment rights to advance public policy perspectives and solutions of PRI's staff, scholars, and experts.

[1] According to Sally Pipes' declaration, "PRI is a San Francisco-based think tank founded in 1979. It is a 501(c)(3) nonprofit corporation whose mission is to advance free market-policy solutions to current governmental public policy issues. In particular, [Pipes'] own expertise is in the field of health care policy. [She] is the Thomas W. Smith Fellow in Health Care Policy at PRI."

[] Within my expertise of health care policy, I have appeared as a policy expert in many public forums to address national and international audiences on health care. My appearances have included documentaries, prominent programs and broadcasts of major national networks. I am a regular contributor as an op-ed columnist on health care policy, and a regular columnist or frequent contributor of opinion editorials to a number of publishers, including, but not limited to, a regular column on health care policy to Forbes.com. I am the author of a number of books on health care policy in the United States, including my first book published in 2004, with are foreword by Milton Friedman, Miracle Cure: How to Solve America's Health Care Crisis and Why Canada Isn't the Answer, and my latest book, The False Promise of Single Payer Health Care, published by Encounter Books in March 2018. The intention behind all of my writings and public appearances my intentions [sic] is to inform individuals with scholarship, research, and expertise on current public policy issues under consideration by the government; and to influence public participation in the health care policy debates of our times and advance public policy solutions to those health care policy issues. I endeavor to reach the widest national and international public audiences with my writings and my appearances in prominent programming.

[] I am not an employee of IBD. I submit op-ed columns to IBD in my role as president and CEO of PRI, as described above, or in furtherance of my professional capacity as a health care scholar and expert. My intentions are to inform the debate on health care policy, to encourage informed public participation in government policies on health care, and to influence governmental public policy on health care. At the end of my op-ed . . . there is a call to action ("The VA is in shambles. Absent reform that allows vets to seek care in the private sector, our

> veterans will continue to be subjected to subpar care."), and more information is provided about me and my position at PRI, encouraging readers to follow these issues and to learn more about these health care policy issues at the Department of Veterans Affairs, and referencing available information from PRI and my other publications. This call to action is reflective of my intent to enlist public participation in the health care policy issues under consideration by national and local governmental bodies.
>
> [] I submitted the op-ed in issue . . . with these intentions. In criticizing the Department of Veterans Affairs' treatment of our nation's veterans, and the widespread growing concern that the U.S. Department of Veterans Affairs' recent record of substandard care and unsatisfactory institutional response to those incidents of substandard care, in my opinion the Department is an example of the risks and ill-fated results of governmental controlled health care systems. [sic] Specifically, I was drawing upon information disclosed in two reasonably reliable sources: the GAO report referenced in the article, indicating that several VA medical facilities have ignored an unsatisfactory number of patient complaints; and the USA Today report, which included the reference to the public claims[2] against Thomas Franchini and the government's inadequate or questionable response to them.

[2] In its briefing IBD has provided the publicly available docket numbers for these claims. They are: Case Numbers 1:14-cv-00399-JDL; 1:14-cv-00503-JDL; 1:14-cv-00551-JDL; 1:15-cv-220-JDL; 1:15-cv-00525-JDL, all currently pending in the District of Maine.

The Pipes Op-Ed, titled "VA Negligence is Killing Our Veterans," published on December 22, 2017, and said to be defamatory, states:

> A bombshell report just revealed that a Department of Veterans Affairs hospital knowingly hired a physician with a record of more than a dozen cases of malpractice, including the death of a patient. Other recent VA physician recruits include a known sexual predator and a dangerous felon.
>
> A separate analysis from the Government Accountability Office determined that several VA medical facilities had ignored roughly half of all patient complaints.
>
> These are merely the latest additions to a laundry list of shameful incidents at VA medical centers. The agency seems incapable of delivering high-quality care to the patients it serves -- or even holding its employees accountable. Our nation's heroes are suffering the consequences.
>
> VA medical facilities are infamous for administering low-quality care. The latest GAO report, which examined five VA medical centers from 2013 to 2017, proves as much. Administrators of the medical centers were supposed to monitor and review the performance of 112 doctors "after concerns were raised (by patients) about their clinical care." . . . .
>
> When administrators do find hard evidence of malpractice, they often sweep it under the rug. An October USA Today expose [sic] of VA facilities revealed at least 126 cases in which employees committed fireable offenses. Instead of immediately terminating these doctors and nurses, the VA asked them to resign -- and gave them secret settlements on their way out the door. In about 75% of the settlements, administrators omitted the

> incidents from employees' records and even recommended them to other employers.
>
> Consider the case of Thomas Franchini, a podiatrist at a Maine VA hospital. Franchini botched 88 procedures. He severed a patient's tendon during one surgery and failed to successfully fuse one woman's ankle in another. The latter's leg had to be amputated as a result.
>
> Franchini wasn't fired for any of these errors. Instead, the VA allowed him to resign and return to private practice . . . .
>
> The VA is in shambles. Absent reform that allows vets to seek care in the private sector, our veterans will continue to be subjected to subpar care.

Pipes listed other examples of allegedly subpar care at the VA, identifying at least one other doctor by name. Midway through the Op-Ed, there is an imbedded IBD banner ad, which advertises: "No Hidden Agenda: Get News From a Pro-Free Market, Pro-Growth Perspective." The Op-Ed describes Pipes as follows: "Pipes is President, CEO, and Thomas W. Smith Fellow in Health Care Policy at the Pacific Research Institute. Her latest book is The Way out of Obamacare (Encounter 2016). Follow her on twitter @sallypipes." At the bottom of the page, the Op-Ed invites readers to "[c]lick here for more Commentary and Opinion from Investor's Business Daily."

B. Procedural History.

Franchini brought a suit in federal court in the District of Maine against IBD and Pipes, claiming the Pipes Op-Ed defamed

him. He also sued other news outlets and reporters for different publications about him. IBD and the other defendants, save Pipes, moved to dismiss for failure to state a claim, on the basis that Franchini failed to adequately plead "actual malice" as required to show defamation.[3] IBD also filed a special motion to dismiss, arguing that if Maine law applied, Maine's anti-SLAPP law barred this suit. It also argued that California law applied, but the district court did not decide that question. The district court denied IBD's special motion under its reading of the Maine Law Court's holding in Gaudette, 160 A.3d 539.[4]

The district court did not discredit Sally Pipes' uncontradicted declaration that she published her piece to enlist public participation in order to influence national health care

[3] Sally Pipes did not join in these motions because she was not served until June 14, 2019 -- after the district court ruled on the other defendants' joint motion to dismiss and after IBD brought this appeal. Pipes eventually separately moved to dismiss on the grounds she had been improperly served, the Maine district court lacked personal jurisdiction, and California and Maine's anti-SLAPP statutes barred the suit. The district court granted Sally Pipes' motion to dismiss for improper service and lack of personal jurisdiction. It denied without prejudice Pipes' motion under California and Maine's anti-SLAPP laws, reasoning that IBD's appeal from the court's denial of its special motion to dismiss "divest[ed] the court of jurisdiction regarding the application of any anti-SLAPP statute to the publication of the IBD article."

[4] As to the 12(b)(6) motion, the district court agreed Franchini failed to plead actual malice, but deferred decision until the close of discovery on whether Franchini needed to plead malice to proceed with his claims.

policy. Nor did it make any adverse finding of fact relating to IBD's uncontested declaration that the Sally Pipes Op-Ed was part of an editorial effort to "favorably affect[] public policy."

IBD timely appealed the district court's denial of its special motion to dismiss. It raised only the question of whether the district court erred in denying relief under the Maine anti-SLAPP statute. We asked the parties to also brief whether or not we have jurisdiction to hear this appeal.

II. This court has appellate jurisdiction.

This is an interlocutory appeal from the district court's denial of IBD's special motion to dismiss. This court may "hear appeals from judgments that are not complete and final if they 'fall in that small class which finally determine claims of right separable from, and collateral to, rights asserted in the action, too important to be denied review and too independent of the cause itself to require that appellate consideration be deferred until the whole case is adjudicated.'" Godin v. Schencks, 629 F.3d 79, 83-84 (1st Cir. 2010) (quoting Nieves-Marquez v. Puerto Rico, 353 F.3d 108, 123 n.13 (1st Cir. 2003)). "[T]he interlocutory order must present: (1) a conclusive decision, (2) distinct from the merits of the action, (3) on an important issue, (4) which would effectively be unreviewable on appeal from a final judgment." Id. at 84 (citing Awuah v. Coverall N. Am. Inc., 585 F.3d 479, 480 (1st Cir. 2009); Will v. Hallock, 546 U.S. 345, 349

(2006)). In Godin we concluded we had interlocutory jurisdiction over an appeal from the district court's finding that Maine's anti-SLAPP law did not apply in diversity actions in federal court. Id. We did not reach whether a substantive decision under Maine's anti-SLAPP law would be immediately appealable. In this case, we have interlocutory jurisdiction.

Each of the four Godin factors favor jurisdiction. The decision is conclusive. In Godin we held that an order denying relief under Maine's anti-SLAPP law was immediately appealable because "the order [was] conclusive as to 'the disputed question.'" Id. (quoting Will, 546 U.S. at 349). The same is true here.[5] IBD has been conclusively denied the protection of Maine's anti-SLAPP law.

The decision is distinct from the merits of the action. The legal issues raised in this appeal are distinct from the issues the court would address in a final decision. The statutory questions raised in this appeal will not be considered in any final

[5] The fact that the district court did not reach whether or not California's anti-SLAPP law applies does not change our analysis. Franchini did not raise this argument in his opening brief, so it is waived. Pignons S.A. de Mecanique v. Polaroid Corp., 701 F.2d 1, 3 (1st Cir. 1983). Even if it is not waived, it is meritless. That IBD could receive relief under a different statute does not undermine our determination that the district court's order is conclusive as to whether relief is available under the Maine law. See Godin, 629 F.3d at 84.

decision, just as this appeal does not consider essential elements of defamation.

The decision concerns an important issue of law. In Godin we looked to whether "the issue raised is 'weightier than the societal interests advanced by the ordinary operation of final judgment principles.'" Id. at 84 (quoting Lee-Barnes v. Puerto Ven Quarry Corp., 513 F.3d 20, 26 (1st Cir. 2008)); see also Mohawk Indus., Inc. v. Carpenter, 558 U.S. 100, 117 (2009) ("[A]n interest qualifies as important . . . if it is weightier than the societal interests advanced by the ordinary operation of final judgment principles.") (internal quotation marks and citations omitted). It is well established there is a strong public interest in the protection of the right to petition. See Borough of Duryea v. Guarnieri, 564 U.S. 379, 397 (2011). Maine's courts further understand the anti-SLAPP law to create a substantive right against "meritless lawsuits brought with the intention of chilling or deterring the free exercise of the defendant's First Amendment right to petition the government." Schelling v. Lindell, 942 A.2d 1226, 1229 (Me. 2008). This appeal implicates important societal interests in both First Amendment protections for media outlets, and the substantive statutory rights created under Maine law.

The decision is also effectively unreviewable on appeal from a final order. The stated purpose of Maine's anti-SLAPP statute is to shield defendants from the burden of meritless

litigation. It gives defendants who fall under the statute the right to avoid litigation directed against their legitimate exercise of the right to petition. Id. at 1230. IBD is denied meaningful relief if it must go through the time and expense of fully litigating this matter before it can address the anti-SLAPP issue. Indeed, the Maine Law Court has reached the same conclusion in permitting state interlocutory appeals from denials of Maine's anti-SLAPP law. Id. at 1229–30 ("We allow interlocutory appeals from denials of special motions to dismiss brought pursuant to the anti-SLAPP statute because a failure to grant review of these decisions at this stage would impose additional litigation costs on defendants, the very harm the statute seeks to avoid, and would result in a loss of defendants' substantial rights.").

We conclude we have jurisdiction to hear this appeal.[6]

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[6] The more persuasive authority from other circuits also permits interlocutory appeals in these circumstances. At least seven decisions from four circuits have allowed appeals from denials of anti-SLAPP motions. Schwern v. Plunkett, 845 F.3d 1241, 1244 (9th Cir. 2017) (permitting an interlocutory appeal from a denial of a motion to dismiss under the Oregon anti-SLAPP law); NCDR, L.L.C. v. Mauze & Bagby, P.L.L.C., 745 F.3d 742, 750–52 (5th Cir. 2014) (allowing an interlocutory appeal from denial of relief under the Texas anti-SLAPP law); Liberty v. Microflo, 718 F.3d 138, 148 (2d Cir. 2013) (allowing an interlocutory appeal from denial of relief under California's anti-SLAPP law); DC Comics v. Pacific Pictures Corp., 706 F.3d 1009, 1014-15 (9th Cir. 2013) (same); Henry v. Lake Charles Am. Press, L.L.C., 566 F.3d 164, 179-81 (5th Cir. 2009) (allowing an interlocutory appeal from denial of relief under the Louisiana anti-SLAPP law); Batzel v. Smith, 333 F.3d 1018, 1025 (9th Cir. 2003) (superseded in other parts by statute) (allowing an interlocutory appeal under an earlier version of the California anti-SLAPP law); see also Los

III. Certification to the Maine Law Court.

The purpose of the Maine anti-SLAPP statute, as stated in the text of the statute, is to protect "the moving party's exercise of [their] right of petition under the Constitution of the United States or the Constitution of Maine." Me. Rev. Stat. tit. 14, § 556. The Maine Law Court has determined the right to petition under the statute is at least coextensive with the constitutional right to petition. Pollack v. Fournier, 237 A.3d 149, 153 (Me. 2020) (anti-SLAPP statute applies if the defendant can establish "'the suit was based on some activity that would qualify as an exercise of the defendant's First Amendment right to petition.'" (quoting Hearts with Haiti, Inc. v. Kendrick, 202 A.3d 1189, 1193-94 (Me. 2019)).

As a matter of federal constitutional law, "[t]he right to petition allows citizens to express their ideas, hopes, and concerns to their government and their elected representatives," and is "generally concerned with expression directed to the government seeking redress of a grievance."

Lobos Renewable Power, LLC v. Americulture, Inc., 885 F.3d 659, 663-68 (10th Cir. 2018), cert. denied sub nom. AmeriCulture, Inc. v. Los Lobos Renewable Power, LLC, 139 S. Ct. 591 (2018) (permitting an interlocutory appeal from district court's finding that New Mexico's anti-SLAPP statute did not apply in federal court); but see Ernst v. Carrigan, 814 F.3d 116, 118-119 (2d Cir. 2016) (denial of relief under Vermont's anti-SLAPP was not immediately appealable because issues on appeal were inseparable from the merits).

Borough of Duryea, 564 U.S. at 388. "[T]he First Amendment protects the right of corporations to petition legislative and administrative bodies." First Nat. Bank of Bos. v. Bellotti, 435 U.S. 765, 791 n.31 (1978); see also Citizens United v. Fed. Election Comm'n, 558 U.S. 310, 355 (2010) (quoting same). The key inquiry for purposes of the right to petition is whether the petitioning activity "relates to a matter of public concern." Borough of Duryea, 564 U.S. at 398. Case law concerning other First Amendment protections is informative as to the scope of the right to petition. Id. at 388 (the "the right to speak" and the "right to petition" are "cognate rights"). Under the "cognate" free speech right, the Supreme Court has recognized that "editorial opinion on matters of public importance . . . is entitled to the most exacting degree of First Amendment protection." F.C.C. v. League of Women Voters of California, 468 U.S. 364, 375-76 (1984).

The Maine statute provides for a special motion to dismiss "[w]hen a moving party asserts that the civil claims . . . against the moving party are based on the moving party's exercise of the moving party's right to petition under the Constitution of the United States or the Constitution of Maine. Me. Rev. Stat. tit. 14, § 556. It defines "a party's exercise of its rights to petition" as:

> any written or oral statement made before or submitted to a legislative, executive, or judicial body, or any other governmental

> proceeding; any written or oral statement made in connection with an issue under consideration or review by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to encourage consideration or review of an issue by a legislative, executive or judicial body, or any other governmental proceeding; any statement reasonably likely to enlist public participation in an effort to effect such consideration; or any other statement falling within constitutional protection of the right to petition government.

Me. Rev. Stat. tit. 14, § 556. The Maine Law Court has stated that this language is to be read broadly. Desjardins v. Reynolds, 162 A.3d 228, 236 (Me. 2017) ("The Legislature has chosen to protect petitioning activity by broadly defining a 'party's exercise of its right of petition.'") (quoting Me. Rev. Stat. tit. 14, § 556). The statute protects, "any statement reasonably likely to enlist public participation in an effort to effect [] consideration" of an issue of public concern. Me. Rev. Stat. tit. 14, § 556 (emphasis added).

The district court relied on the language in Gaudette that "Maine's anti-SLAPP statute is not applicable to newspaper articles unless those articles constitute the newspaper petitioning on its own behalf or the party seeking to invoke the anti-SLAPP statute is a party that used the newspaper to broadcast the party's own petitioning activity." 160 A.3d at 543. The district court did not comment on footnote three in Gaudette, which

states, "[b]ecause the news reports at issue in this appeal do not constitute petitioning activity, we need not speculate on when news reporting or editorializing might constitute petitioning activity." Id. at 543 n.3.

IBD argues that Gaudette is distinguishable on the undisputed facts of this case. In Gaudette, neither the reporter nor the newspaper intended to express a viewpoint or enlist public participation through the pieces at issue. Id. at 542-43. Instead, the newspaper merely "document[ed] others' exercise of their right to petition." Id. at 543. The articles in question reported on grand jury proceedings without calls for reform or action by the public or a governmental body. Id. Both the newspaper and the reporter were engaged in ordinary newsgathering as part of their business.[7] Id. at 540-41.

In contrast, Sally Pipes' declaration that she works "to advance free market-policy solutions to current governmental public policy issues" is uncontested. Indeed, she ended her Op-Ed with a call for reforms to permit veterans to seek private sector health care. Nor was the defendant in Gaudette similar to IBD, a "pro-free market" and "pro-growth" media outlet engaged in

[7] Indeed, the court compared Gaudette to the Massachusetts Supreme Judicial Court's decision in Fustolo v. Hollander, 920 N.E.2d 837, 842 (Ma. 2010), which interpreted Massachusetts's analogous anti-SLAPP law. Gaudette, 160 A.3d at 543. In Fustolo, the reporter responsible for the article "affirmatively denie[d] representing a particular viewpoint." Fustolo, 920 N.E.2d at 843.

a decades-long effort to influence health care policy at the national level, which stated it published Pipes' Op-Ed to provide a forum for her views. The nature of the pieces may also be dissimilar. The Op-Ed piece calls for specific reforms at the VA, revealing the viewpoint of both the author and the publisher.

Apart from these distinctions, IBD argues that Sally Pipes plainly engaged in petitioning activity, and IBD should be able to invoke the anti-SLAPP statute to protect its decision to publish her protected activity.

IBD also argues the Maine Law Court has protected analogous statements published in newspapers, as acknowledged in Gaudette. 160 A.3d at 542. In Schelling, the Maine Law Court applied the anti-SLAPP provisions to a letter to the editor, expressing support for a recently enacted bill, and criticizing by name a legislator who voted against it. 942 A.2d at 1230-31. In Maietta Construction, Inc. v. Wainwright, the Maine Law Court applied the anti-SLAPP law to letters to the mayor and city council calling for the city to take action against a named construction company, which were published in a local newspaper. 847 A.2d 1169, 1173 (Me. 2004).

IBD further argues that preventing it from invoking the anti-SLAPP statute for Pipes' protected activity would cause results not intended by the legislature. IBD argues Franchini's suit would have been barred if he had properly served Pipes,

because she could then have invoked the anti-SLAPP statute as the author of the piece. But since he failed to do so, Franchini would be permitted to proceed against IBD alone, contrary to legislative intention.

IBD next argues it was also engaged in petitioning activity on its own behalf. We have previously described IBD's uncontested declaration. IBD selected a columnist with a particular viewpoint that aligned with its own. Both the columnist's and IBD's views are discernible from the Op-Ed. The Op-Ed also refers readers to further commentary and opinion "from Investor's Business Daily." A banner embedded in the Op-Ed also invites readers to "Get News From a Pro-Free Market, Pro-Growth Perspective."[8] Because the district court did not address this argument and the Gaudette footnote expressly reserved it, we think

[8] All other requirements of the anti-SLAPP statute have been met. If the defendant shows the claim is based on their exercise of their right to petition, then the plaintiff must produce some evidence that the defendant's petitioning activity "was devoid of any reasonable factual support" and caused actual injury. Gaudette, 160 A.3d at 542. In making that determination, the court must consider "the pleading and supporting and opposing affidavits stating the facts upon which the liability or defense is based." Me. Rev. Stat. tit. 14, § 556. Defendants have submitted affidavits showing that Sally Pipes had reasonable factual support for her Op-Ed, because she relied on public records, a Government Accountability Office report, and news reports in USA Today. Franchini has provided no evidence to the contrary.

this question is appropriately resolved by the Maine Law Court. See 160 A.3d at 543 n.3.

We may certify a question to the Maine Law Court where there are "questions of [Maine] law . . . that may be determinative of the cause and . . . there is no clear controlling precedent in the decisions of the Supreme Judicial Court." Me. R. App. P. 25(a).

IV. Conclusion.

We therefore certify the following question to the Maine Supreme Judicial Court:

> Should IBD's special motion to dismiss be granted under Me. Rev. Stat. tit. 14, § 556 (Maine's anti-SLAPP law)?

We welcome any further comments the Law Court may have on relevant Maine law. The Clerk of this court is directed to forward to the Maine Supreme Judicial Court, under the official seal of this court, a copy of the certified question, our opinion in this case, and copies of the briefs and appendix filed by the parties. We retain jurisdiction over this appeal pending resolution of the certified question.