



Groups back environmentalist in 'malice' case

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Groups ranging from the Florida Wildlife Federation to the libertarian Cato Institute have urged the U.S. Supreme Court this month to take up an appeal by a prominent environmentalist who was hit with a \$4.4 million court verdict after fighting a project in Martin County.

The groups, in two friend-of-the-court briefs, argued that the appeal by Maggy Hurchalla, sister of the late U.S. Attorney General Janet Reno, raises critical First Amendment issues about communications between members of the public and the government. Property owners Lake Point I, LLC and Lake Point II, LLC sued Hurchalla, contending that she engaged in “tortious interference” when she worked behind the scenes to try to thwart the project, which included limestone mining, and undermine an agreement involving the county and the South Florida Water Management District.

A jury returned the \$4.4 million verdict against Hurchalla, and it was upheld by the state’s 4th District Court of Appeal. Hurchalla’s attorneys filed a petition at the U.S. Supreme Court in September after the Florida Supreme Court declined to hear the case. A brief filed this month by the Cato Institute, the Institute for Justice and what is known as the “Protect the Protest” task force contended that the case could have a “significant chilling of First Amendment freedoms” if it is not resolved by the Supreme Court.

“The First Amendment right to petition covers communications to government whether true or false, accurate or incorrect, relevant or unhelpful, and regardless of intent, when that communication is made in good-faith, and seeks to achieve a government result,” the Oct. 10 brief said. “It is the job of the government to determine the truth or falsity, accuracy or inaccuracy, relevance or unhelpfulness, and motive of people’s communications to that government and to act accordingly. It is not appropriate to put the courts in the position of censoring people’s communications with their government by creating a fear that, should a powerful private actor take issue with such speech, they may be disproportionately financially liable. This (Supreme) Court cannot permit our legal system to be used as a tool to suppress protected political speech.”

Several environmental groups, including the Florida Wildlife Federation, Friends of the Everglades and Bullsugar.org, filed a brief last week that raised similar arguments and pointed to

the “inherently debatable nature of scientific conclusions” in disputes about issues such as the mining project.

“The state court’s decision threatens the right to petition and seek government redress, and to provide valuable information essential for public debate,” the environmental groups’ brief said. “No citizen should be financially liable for a statement of opinion about a complex scientific, environmental or engineering study or conclusion simply because a judge or jury decides a contrary statement was more persuasive.”

A three-judge panel of the 4th District Court of Appeal weighed Hurchalla’s First Amendment arguments before ruling against her in June 2019. At least in part, the court looked at whether Hurchalla’s communications were protected speech or whether they involved malice. The judges cited a Jan. 4, 2013, email that Hurchalla sent to county commissioners that included a false statement about documented benefits of a stormwater treatment area that would be part of the project.

“These statements are examples of competent substantial evidence that clearly and convincingly proved that Hurchalla demonstrated actual malice in interfering with Lake Point’s contracts with the county and the (South Florida Water Management) district, by making statements she either knew were false or with reckless disregard as to whether they were false,” said the 12-page ruling, written by Judge Burton Conner and joined by Judges Dorian Damoorgian and Alan Forst. “Hurchalla’s comments were represented as statements of fact, as opposed to statements of pure opinion. Even if we viewed the statements as ‘mixed opinions,’ the statements would not be privileged under the First Amendment.”

While they have not filed arguments at the U.S. Supreme Court, the property owners’ attorneys argued in a lower-court brief that Hurchalla, a former Martin County commissioner, worked to breach the agreement involving the county and water management district. The county wound up paying \$12 million in a settlement over the alleged breach, according to court documents.

“Central to this campaign was Ms. Hurchalla’s repeated dissemination of information that she either knew was false or had a high degree of awareness of the information’s probable falsity,” the property owners’ brief said. “In her zeal to stop Lake Point, she did not engage in public protest; instead, she secretly poisoned the relationship between the county and Lake Point with false information behind the scenes.”