NO SURPRISES HERE: WHY SOCIAL MEDIA NEWS INFLUENCERS MAY BE ENTITLED TO PRESUIT NOTICE UNDER FLORIDA STATUTES, SECTION 770.01.

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I. INTRODUCTION

Social media has transformed American news consumption, reshaping the traditional landscape of journalism and information dissemination.[1] Indisputably, social media platforms such as X, TikTok, YouTube, Facebook, and Instagram have become primary sources of news, offering instant access to headlines, live updates, and diverse perspectives.[2] In fact, Elon Musk, owner of X, said recently that X "is the biggest source of news on Earth by far."[3]

Today, social media news influencers are everywhere.[4] In 2024, about one-in-five Americans said they regularly get news

1. *See generally*, *News Platform Fact Sheet*, PEW RSCH. CTR. (Sept. 17, 2024), https://www.pewresearch.org/journalism/fact-sheet/news-platform-fact-sheet/ [hereinafter *News Platform Fact Sheet*].

2. *Id.*

3. Elon Musk (@elonmusk), X, (Dec. 2, 2024, 3:11 PM), https://x.com/elonmusk/status/1863677355169837255?s=42&t=tBNhUvodSNSoKuBnVcHFpQ.

4. *See* Galen Stocking et al., *America's News Influencers*, PEW RSCH. CTR. 7 (Nov. 18, 2024), https://www.pewresearch.org/wp-content/uploads/sites/20/2024/11/PJ_2024.11.18_news-influencers_report.pdf [hereinafter *America's News Influencers*] (defining social media news influencers as persons "who regularly post about current events and civic issues on social media and have at least 100,000 followers on any of Facebook, Instagram, TikTok, X (formerly Twitter), or YouTube."). *Id.* at 5. Most social media news influencers are on X where 85% have a presence. *Id.* at 7.

from social media news influencers.[5] Among these Americans, most said that social media news influencers have helped them to better understand current events and civic issues.[6] However, concerns about fake news, use of artificial intelligence, and the diminishing role of traditional news media outlets are on the rise.[7]

Significantly, the diminishing role of traditional news media outlets has been apparent[8] and presents an important question: do the protections afforded to the traditional news media—namely, presuit notice requiring a prospective plaintiff to inform each possible defendant about their intention to file a defamation suit against them—now extend to social media news influencers? This Article argues that presuit notice protection should unquestionably extend to social media news influencers so as to comport with section 770.01's plain text and purpose.

This Article urges courts to adopt a broad interpretation of section 770.01, extending presuit notice protection to social media news influencers. First, Part II of this Article provides a historical background on section 770.01. Next, Part III specifically analyzes the ordinary meaning of "other medium" in the statute. Part IV additionally analyzes why public policy calls for the protection of social media news influencers. Finally, Part V recommends courts employ the totality of the circumstances test to determine which social media news influencers are entitled to presuit notice.

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5. *Id.* at 7–8, 16. Note that the authors of *America's News Influencers* conducted a nationally representative survey of Americans to better understand who regularly gets news from social media news influencers. *Id.* In attempting to better understand the makeup of the social media news influencer space and its audience, the authors examined a sample of 500 popular social media news influencers and their content, derived from more than 28,000 social media accounts. *Id.*

6. *Id.* at 8, 19. Specifically, 65% of Americans said social media "news influencers have helped them to better understand current events and civic issues." *Id.* From these social media news influencers, Americans said "they get a variety of different types of information, from basic facts and opinions to funny posts and breaking news." *Id.*

7. *See* Luxuan Wang & Naomi Forman-Katz, *Many Americans Find Value in Getting News on Social Media, but Concerns About Inaccuracy Have Risen*, PEW RSCH. CTR. (Feb. 7, 2024), https://www.pewresearch.org/short-reads/2024/02/07/many-americans-find-value-in-getting-news-on-social-media-but-concerns-about-inaccuracy-have-risen/. Still, Americans like getting news on social media rather than through traditional news media outlets (newspapers, periodicals, and radio and television broadcasting stations). *Id.* Specifically, Americans like getting news on social media because it is faster, more convenient, and allows for online social interaction. *Id.*

8. *News Platform Fact Sheet*, *supra* note 1. Relatively few Americans prefer print (4%) or radio (6%) for the news. *Id.* In 2024, just 26% of Americans said they often or sometimes get news in print, which is the lowest number ever recorded by the Pew Research Center. *Id.*

II. HISTORICAL BACKGROUND

Presuit notice as a condition precedent to filing suit for defamation is established by state law.[9] In 1933, the Florida State Legislature (hereinafter Legislature) enacted section 770.01, only requiring presuit notice be given to defendants whose allegedly defamatory statement(s) were published in a "newspaper" or "periodical":

> Before any civil action is brought for publication, in a *newspaper or periodical,* of a libel, the plaintiff shall, at least five days before instituting such action, serve notice in writing on defendant, specifying the article, and the statements therein, which he alleges to be false and defamatory.[10]

In 1976, however, section 770.01 was amended, broadly requiring presuit notice be given to defendants whose allegedly defamatory statement(s) were published or broadcasted in a newspaper, periodical, or "other medium":

> Before any civil action is brought for publication *or broadcast*, in a newspaper, periodical, *or other medium*, of a libel or slander, the plaintiff shall, at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory.[11]

Since 1976, the Legislature has been silent. No further amendments have been made nor has the Legislature clarified what it meant by "other medium."

Ordinarily, a plaintiff's failure to provide presuit notice requires dismissal of the suit for failure to state a cause of action.[12]

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9. RODNEY A. SMOLLA, LAW OF DEFAMATION, § 9:77, at 336–37 (2d ed. 2024). *See, e.g.*, MISS. CODE ANN. § 95-1-5 (2024) (requiring a prospective plaintiff to provide at least 10 days notice to a newspaper defendant).

10. FLA. STAT. § 770.01 (1950) (emphasis added).

11. FLA. STAT. § 770.01 (2024) (emphasis added).

12. *See* Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So. 2d 1376, 1377 (Fla. 4th DCA. 1997) (citing Gifford v. Bruckner, 565 So. 2d 887 (Fla. Dist. Ct. App. 1990); "If [s]ection 770.01 applies, defendant is entitled to certiorari relief from the trial court's refusal to dismiss the complaint for the failure to meet this pre-suit requirement." *Id.* (citing Bridges v. Williamson, 449 So. 2d 400 (Fla. 2d DCA 1984); Davies v. Bossert, 449 So. 2d 418 (Fla. 2d DCA 1984); Cummings v. Dawson, 444 So.2d 565 (Fla. 3d DCA 1984); Citron v. Shell, 689 So.2d 1288 (Fla. 4th DCA 1997).

Furthermore, an adequate retraction limits the plaintiff's recovery to actual damages as outlined in Section 770.02:

> If it appears upon the trial that said article or broadcast was published in good faith; that its falsity was due to an honest mistake of the facts; that there were reasonable grounds for believing that the statements in said article or broadcast were true; and that, within the period of time specified in subsection (2), a full and fair correction, apology, or retraction was, in the case of a newspaper or periodical, published in the same editions or corresponding issues of the newspaper or periodical in which said article appeared and in as conspicuous place and type as said original article or, in the case of a broadcast, the correction, apology, or retraction was broadcast at a comparable time, then the plaintiff in such case shall recover only actual damages.[13]

A. The Florida Supreme Court's Early Interpretation of Sections 770.01 and 770.02

Seventeen years after section 770.01's enactment, the Florida Supreme Court in *Ross v. Gore*[14] explained that the purpose of the statute was to "afford to newspapers and periodicals an opportunity *in every case* to make a full and fair retraction in mitigation of the damages which a person may have suffered by reason of the publication."[15] Specifically, the issue before the *Ross* Court was the constitutionality *vel non* of Chapter 16070—now, sections 770.01 and 770.02.[16] The *Ross* Court held both statutes were constitutional.[17]

Starting with section 770.01, the plaintiff-appellant in *Ross* argued that to construe the statute as requiring presuit notice was unconstitutional.[18] The *Ross* Court rejected this argument.[19] To construe the statute otherwise, according to the *Ross* Court, would not only defeat the plain text of the statute, but also its purpose to afford to newspapers and periodicals the right to retraction.[20] The

13. FLA. STAT. § 770.02(1) (2024).
14. Ross v. Gore, 48 So. 2d 412 (Fla. 1950) (en banc).
15. *Id.* at 415.
16. *Id.* at 413.
17. *Id.* at 414–15.
18. *Id.* at 414. Note that the Florida Supreme Court was the only appellate court in Florida from 1845 until 1956; hence, the author's use of "plaintiff–appellant."
19. *Id.* at 415.
20. *Id.*

Ross Court explained why newspapers and periodicals should be afforded this right:

> In the free dissemination of news, then, and fair comment thereon, hundreds and thousands of news items and articles are published daily and weekly in our newspapers and periodicals. This court judicially knows that it frequently takes a legal tribunal months of diligent searching to determine the facts of a controversial situation. When it is recalled that a reporter is expected to determine such facts in a matter of hours or minutes, it is only reasonable to expect that occasional errors will be made. Yet, since the preservation of our American democracy depends upon the public's receiving information speedily—particularly upon getting news of pending matters while there still is time for public opinion to form and be felt—it is vital that no unreasonable restraints be placed upon the working news reporter or the editorial writer.[21]

The rationale for affording newspapers and periodicals the right to retraction is a salutary one.[22] The *Ross* Court emphasized that securing this right is necessary to protect the public's need for speedy access to the news.[23] Without the ability to retract, the news media may become "so inhibited that its great and necessary function of policing our society through reporting its events and by analytical criticism would be seriously impaired."[24]

Turning to section 770.02, the plaintiff–appellant in *Ross* argued that limiting recovery to actual damages and preventing recovery of punitive damages granted a "special privilege" to newspapers and periodicals that violated the Equal Protection Clause of the Fourteenth Amendment.[25] The *Ross* Court also rejected this argument.[26] The *Ross* Court explained why newspapers and periodicals are granted such "special privilege":

> The opportunity to escape punitive damages exists only when there [was a] good faith, honest mistake, and reasonable ground of belief before publication, coupled with a full and fair retraction. The provision for retraction is peculiarly appropriate to newspapers and periodicals, as distinguished from private

21. *Id.*
22. *Id.*
23. *Id.*
24. *Id.* at 415.
25. *Id.* at 414.
26. *Id.*

> persons. There is a valid difference in the classes, in this respect, which is sufficient to sustain the validity of the provision under the "[E]qual [P]rotection" [C]lause.[27]

The *Ross* Court made clear that the special privilege of escaping punitive damages is a limited one, requiring: (1) a good faith, honest mistake; (2) a reasonable ground of belief before publication; and (3) a full and fair retraction.[28] In describing the appropriateness of retraction, the *Ross* Court distinguished newspapers and periodicals from "private persons."[29] Such distinction led courts to impose a "media defendant" requirement.

B. Media Defendants and Section 770.01

Following the Florida Supreme Court's early interpretation of section 770.01 in *Ross*, courts began imposing a "media defendant" requirement.[30] Relying on *Ross*, courts determined section 770.01 applied exclusively to newspapers and periodicals, not "private persons."[31] However, the statute's plain text does not expressly prohibit private persons from receiving presuit notice. As Judge King observed in *Laney v. Knight–Ridder Newspapers, Inc.*:[32]

> [Section 770.01] simply requires that a plaintiff, prior to bringing a civil action for publication or broadcast in a newspaper, periodical or other medium, "serve notice in writing on *the defendant*. . . ."The Court observes, however, that the [statute] fails to specify that notice need be provided only to media-defendants. If the [L]egislature did intend to so limit the applicability of this [statute], it seems logical that a specific restriction would have been inserted into the statute. One may

27. *Id.*
28. *Id.*
29. *Id.*
30. *See generally* Comins v. Vanvoorhis, 135 So. 3d 545 (Fla. 5th DCA 2014) (starting in 1982, discussing Florida case law that addressed the "media defendant" requirement). *See also* Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098, 1112 (Fla. 2008) (commenting "[u]nder Florida's defamation law, a prospective plaintiff is required to give a *media defendant* notice five days before initiating a civil action.") (emphasis added).
31. *See, e.g.*, Bridges v. Williamson, 499 So. 2d 400, 401 (Fla. 2d DCA 1984).
32. *See generally*, Laney v. Knight–Ridder Newspapers, Inc., 532 F. Supp. 910 (S.D. Fla. 1982).

> reasonably infer from the generality of the language, therefore, that the statute requires notice to all potential defendants. . . .[33]

In *Laney*, the issue before Judge King was whether the plaintiff was required to provide presuit notice to a person who wrote an allegedly defamatory letter that was later published in a newspaper.[34] The plaintiff in *Laney* argued that presuit notice did not apply to non-media defendants.[35] Judge King rejected this argument.[36] Judge King reasoned, "it would be grossly unfair to construe the statute in such a way as to deny non-media defendants the opportunity to mitigate actual damages. . . ."[37] This would be grossly unfair because "[presuit] [n]otice affords defendants the opportunity to issue a retraction or even to settle the overall conflict, thereby mitigating damages or eliminating litigation altogether."[38]

Although Judge King acknowledged the Florida Supreme Court's decision in *Ross* "provides perhaps the strongest support" for the plaintiff's argument, Judge King subsequently noted, "[the *Ross* Court] did not specifically describe the parameters of the statute's applicability, nor, for that matter, provide sufficient justification for its decisions to discuss applicability solely in terms of newspapers and periodicals."[39] But instead, "[t]he *Ross* Court may very well have discussed the applicability of the statute in these terms simply because the defendants in the case were media-defendants."[40]

Two years after *Laney*, however, Judge King's reasoning was rejected. In *Bridges*, the Second District Court of Appeal determined the Florida Supreme Court in *Ross* construed Section

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33. *Id.* at 912 (emphasis added) (citation omitted). *See also* Wagner v. Flanagan, 629 So. 2d 113, 115 (Fla. 1993). The Florida Supreme Court in *Wagner* addressed section 770.07 of the same chapter as section 770.01 and held section 770.07, which establishes the point in time when a cause of action for defamation accrues, applied to both media and non-media defendants. *Id.* The *Wagner* Court noted that while Chapter 770 mainly covers media defendants, the chapter is broadly titled "Civil Actions for Libel." *Id.* Thus, according to the *Wagner* Court, limiting section 770.07's applicability to only media defendants "would allow potentially endless liability since Florida Statutes contains no statute of repose for this particular tort." *Id.*

34. *Laney*, 532 F. Supp. at 911–12.

35. *Id.* at 912.

36. *Id.*

37. *Id.* at 913.

38. *Id.*

39. *Id.* at 912.

40. *Id.* at n.6.

770.01 to apply exclusively to media defendants.[41] The Second District Court of Appeal reasoned, after *Ross*, when Section 770.01 was amended, the Legislature, aware of *Ross*[42], never intended to extend the statute's applicability to non-media defendants.[43] Instead, "[t]he language of the statute is limited to newspapers, periodicals, and other media. Nowhere does the statute contain the words 'nonmedia' or 'private [persons].'"[44]

A week after the Second District Court of Appeal's opinion in *Bridges*, the Third District Court of Appeal in *Davies*[45] similarly determined Section 770.01 applied exclusively to media defendants.[46] According to the Third District Court of Appeal, however, not only were newspapers and periodicals media defendants, but so too were *radio and television broadcasting stations*.[47] The Third District Court of Appeal pointed out that the Legislature added "broadcast" to Section 770.01, as well as "broadcast" and "broadcasting station[s]" to several other parts of Chapter 770.[48] Taking this into consideration, the Third District Court of Appeal reasoned if the Legislature intended to extend Section 770.01's applicability at all, it was to radio and television broadcasting stations as other media.[49]

Ten years after the Third District Court of Appeal's opinion in *Davies*, the Fourth District Court of Appeal in *Mancini* was confronted with whether section 770.01 only applied to the newspaper itself and not to persons working for it.[50] Specifically,

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41. Bridges v. Williamson, 499 So. 2d 400, 401 (Fla. 2d DCA 1984).

42. "At that time, the [L]egislature was aware of *Ross* since it is presumed to be cognizant of the judicial construction of a statute when contemplating changes in the statute." *Id.* (citing Seddon v. Harpster, 403 So. 2d 409 (Fla. 1981)).

43. *Id.*

44. *Id.*

45. Davies v. Bossert, 449 So. 2d 418 (Fla. 3d DCA 1984).

46. *Id.* at 420.

47. *Id.*

48. *Id.* In more detail, the Third District Court of Appeal said, "[i]n 1976, the statute was amended to include reference to (1) 'broadcast' (in addition to 'publication'), (2) 'other medium' (in addition to 'newspaper and periodical'), and (3) 'slander' (in addition to 'libel') . . . [t]he following additions were also made to section 770.02: 'or broadcast station' in the section's heading; 'or broadcast' (as an addition to 'article'); and a reference to correction, apology, or retraction in the case of a broadcast. Section 770.03 was also amended so as to refer to broadcasting stations in general and not just to radio broadcasting stations. Section 770.04 refers specifically to the civil liability of an 'owner, licensee, or operator of a radio or television broadcasting station, and the agents, or employees of any such owner, licensee or operator.'" *Id.*

49. *Id.*

50. Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So. 2d 1376, 1377 (Fla. 4th DCA 1997).

the issue before the Fourth District Court of Appeal was whether a newspaper columnist was entitled to presuit notice.[51] The Fourth District Court of Appeal held the newspaper columnist was entitled to presuit notice.[52]

In so holding, the Fourth District Court of Appeal rejected the *Mancini* plaintiff-appellee's two arguments. First, the Fourth District Court of Appeal rejected the argument that section 770.01 only applied to the newspaper itself.[53] The Fourth District Court of Appeal reasoned, in part, that the statute's plain text makes no distinction between suits against the newspaper itself and the persons who write for it, without whom there would be no "newspaper."[54] Second, the Fourth District Court of Appeal rejected the argument that section 770.01 should be limited to the corporate entity because only the newspaper has the power to retract.[55] The Fourth District Court of Appeal reasoned it is not about who has the power to retract that defines the scope of the statute, but rather *whether a retraction occurs*, which is more easily accomplished by the author of the actual column.[56]

Interestingly, the Fourth District Court of Appeal made sure to explain that its decision in *Mancini* "does not conflict with the series of cases holding section 770.01 does not apply to 'non-media defendants.'"[57] The Fourth District Court of Appeal said:

> The use of the phrase "non-media defendant" in these cases was not meant to distinguish between individuals and corporations, *but rather to separate third parties who are not engaged in the dissemination of news and information through the news and broadcast media from those who are so engaged*. In *Davies* the defendant, found to be a "non-media defendant," was a private citizen who made the alleged defamatory statements over an emergency channel of a citizen's band radio. In *Bridges* the court declined to extend the reach of the statute to protect a private individual whose allegedly libelous statement had been republished by the newspaper. In *Gifford* the "non-media

51. *Id.*
52. *Id.*
53. *Id.* at 1378–79.
54. *Id.* at 1378.
55. *Id.* at 1379.
56. *Id.*
57. *Id.* at 1380.

> defendant" was an aerial advertising firm being sued for a banner towed overhead by airplane.[58]

The particularities of these cases aside, the Fourth District Court of Appeal notably explained that the term non-media defendant was not meant to distinguish between persons and corporations, "but rather to separate third parties who are not engaged in the dissemination of news and information through the news and broadcast media from those who are so engaged."[59] Therefore, a media defendant can either be a person or corporation engaged in the dissemination of news and information through the news and broadcast media.[60]

C. "Other Medium" and the Split Among Florida Courts

While newspapers and periodicals are clearly media defendants under section 770.01's "newspaper" and "periodical" language, Florida courts are split in their interpretation of "other medium," resulting in confusion about who is a media defendant under that language.

But as Judge Seitz stated in *Five for Ent. S.A. v. Rodriguez*,[61] it should be "well-settled" and "not even open for debate" that the internet is an 'other medium' because it makes no difference whether news is printed or found online.[62] Relying on the Fourth District Court of Appeal's opinion in *Mancini*, Judge Seitz reasoned that, where the internet is the medium, determining who is a media defendant requires analyzing whether the defendant is "engaged in the dissemination of news and information through the news and broadcast media."[63]

With Judge Seitz's reasoning in mind, the modern approach among Florida courts has been to adopt a broad interpretation of

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58. *Id.* (emphasis added).
59. *Id.*
60. *See id.*
61. Five for Ent. S.A. v. Rodriguez, 877 F. Supp. 2d 1321 (S.D. Fla. 2012).
62. *Id.* at 1327 (citing Alvi Armani Medical, Inc. v. Hennessey, 629 F. Supp 2d 1302, 1307 (S.D. Fla. 2008)). In *Alvi*, Judge Lennard acknowledged that "[w]hether the internet is included as part of the 'other medium' language . . . is an issue that has not been definitively resolved by the Supreme Court of Florida. . . ." 629 F. Supp 2d at 1307. Judge Lennard further pointed out that the cases cited to by the plaintiffs in *Alvi* to support their argument "pre-date, by at least a decade, the use of the internet by the general public, and do not directly address whether the internet is considered in the category of 'other medium' as contemplated by Section 770.01." *Id.* at 1308; *see* discussion *infra* Part IV.2.
63. *See id.* (quoting *Mancini*, 702 So. 2d at 1380).

"other medium" to include the internet, extending presuit notice protection to defendants engaged in disseminating news and information through blogs,[64] websites[65], and YouTube channels.[66] On the other hand, the anachronistic approach has been to adopt a narrow interpretation of "other medium," ignoring the internet and restricting presuit notice protection to newspapers, periodicals, and radio and television broadcasting stations.[67]

III. ANALYSIS— "OTHER MEDIUM" SHOULD BE BROADLY INTERPRETED

"Other medium" is not defined anywhere in section 770.01; however, courts should adopt a broad interpretation because its ordinary meaning, supported by the supremacy-of-text principle, requires such. Although analysis could stop there, the legislative purpose of the statute also requires a broad interpretation. As a matter of fact, Florida case law has treaded toward a broad interpretation for nearly half a century.

Alternatively, to adopt a narrow interpretation would strip "other medium" of its ordinary meaning and conflict with the supremacy-of-text principle—a principle that the Florida Supreme Court has declared strict adherence to.[68] Even more, a narrow interpretation would conflict with the legislative purpose of the

64. *See* Comins v. Vanvoorhis, 135 So. 3d 545, 559 (Fla. 5th DCA 2014).

65. *See* Plant Food Sys., Inc. v. Irey, 165 So. 3d 859, 861 (Fla. 5th DCA 2015).

66. *See* Grlpwr, LLC v. Rodriguez, 2023 WL 5666203 (N.D. Fla. Aug. 25, 2023).

67. *See, e.g.,* McQueen v. Baskin, 377 So. 3d 170, 181 (Fla. 2d DCA 2023).

68. *Advisory Op. to Governor re: Implementation of Amendment 4, The Voting Restoration Amendment*, 288 So. 3d 1070, 1078 (Fla. 2020) [hereinafter *Advisory Op.*] ("We therefore adhere to the 'supremacy-of-text principle': 'The words of a governing text are of paramount concern, and what they convey, in their context, is what the text means.'") (quoting ANTONIN SCALIA & BRYAN A. GARDNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS 56 (2012)). *See also* Nicholas P. McNamara, *What the Textualist Revolution in Florida Jurisprudence Means for Practitioners*, 98 FLA. B.J. 44, 44 (2024) ("Justice Kagan famously remarked in 2015 that 'we're all textualists now.' She was speaking about the federal judiciary, where the late Justice Scalia's brand of textualism has come to dominate. But here in Florida, not only is textualism dominant, it is arguably *mandatory* for practitioners since the Florida Supreme Court declared its adherence to 'the supremacy-of-text principle' . . . [t]his language is quoted from what has become the seminal treatise on textualism: Antonin Scalia and Bryan Garner's *Reading Law: The Interpretation of Legal Texts*. It is hardly an exaggeration to say that *Reading Law* has achieved blackletter status in this state. Indeed, as of February 23 of [2024], this work has been cited no less than 171 times by Florida's appellate courts since its 2012 publication. That being the case, it behooves the Florida practitioner — regardless of his or her opinions on textualism's merits — to become acquainted with its doctrines and methodologies.").

statute. "Other medium" should, thus, be broadly interpreted and courts should avoid going back in time by ignoring the internet.

A. The Plain Text of Section 770.01 Requires a Broad Interpretation of "Other Medium"

In 1976, when "other medium" was added to section 770.01 after newspaper and periodical, "other" was defined as "[e]xisting besides, or distinct from, that already mentioned or implied. . . ."[69] Moreover, "medium" (singular or "media" or "mediums") was defined as "[a]n intermediate agency, means, instrument, or channel."[70] Without referencing these ordinary definitions, courts have relied on the Florida Supreme Court's decision in *Ross* for the meaning of "other medium" as a whole.[71] Relying on *Ross*, "other medium" means looking at whether something is "operated to further the free dissemination of information *or* disinterested and neutral commentary or editorializing as to matters of public interest."[72]

Taken altogether and considering "other medium" appears right after "newspaper" and "periodical" in section 770.01, "other medium" ordinarily means an intermediate agency, means, instrument, or channel—besides a newspaper or periodical—that freely disseminates information *or* commentary or editorials on matters of public interest.[73] Per such ordinary meaning, which is broad, the internet is clearly an "other medium" because it is an intermediate means through which information *or* commentary or editorials on matters of public interest are freely disseminated. But more precisely, a social media account is an "other medium" because it is an intermediate channel on the internet that may freely disseminate such information *or* commentary or editorials on matters of public interest.

Furthermore, the ordinary meaning of "other medium" is supported by the supremacy-of-text principle.[74] Under the

69. WILLIAM LITTLE, ET AL., THE SHORTER OXFORD ENGLISH DICTIONARY 1470 (3d ed. 1973).

70. WILLIAM LITTLE, ET AL., THE SHORTER OXFORD ENGLISH DICTIONARY 1301 (3d ed. 1973).

71. *See, e.g.*, Comins v. Vanvoorhis, 135 So. 3d 545, 557 (Fla. 5th DCA 2014).

72. *Id.* ("[W]e look to the *Ross* decision to determine whether [a] blog is operated to further the free dissemination of information *or* disinterested and neutral commentary or editorializing as to matters of public interest.").

73. *See id.*

74. *See Advisory Op.*, *supra* note 68, at 1078.

supremacy-of-text principle, the text, "publication or broadcast, in a newspaper, periodical, or other medium," as it appears in section 770.01 is what it conveys—the statute broadly applies to publications or broadcasts in newspapers, periodicals, or *other media*.[75] "Other media" is not limited to the traditional news media; rather, it is broad and includes social *media*.[76]

The supremacy-of-text principle trumps the doctrine of *in pari materia*[77] and the *ejusdem generis* canon[78] used to interpret "other medium" by some Florida courts.[79] Most recently, the Second District Court of Appeal in *Mazur* and *McQueen* used both to interpret "other medium" and concluded "other medium" is limited to the traditional news media.[80] Concluding this, however, blatantly disregards section 770.01's text and, therefore, fails to adhere to the supremacy-of-text principle.

B. The Legislative Purpose Also Requires a Broad Interpretation of "Other Medium"

Although analysis could stop at section 770.01's plain text, it is worth discussing that the statute's legislative purpose also requires a broad interpretation.

In 1976, at the same time "other medium" was added to section 770.01 by the Legislature, so too was "broadcast."[81] As well, "broadcast" and "broadcast[ing] station[s]" were added to several

75. *See generally id.*; FLA. STAT. § 770.01 (2024).

76. Social media—media in its name—is "other media."

77. The doctrine of *in pari materia* "requires courts to construe statutes that relate to the same subject matter together to harmonize those statutes and give effect to legislative intent." Mazur v. Baraya, 275 So. 3d 812, 817 (Fla. 2d DCA 2019) (quoting Anderson v. State, 87 So. 3d 774, 777 (Fla. 2012)).

78. The *ejusdem generis* canon orders, "[w]here general words follow an enumeration of two or more things, they apply only to persons or things of the same general kind or class specifically mentioned" (*ejusdem generis*). ANTONIN SCALIA & BRYAN A. GARNER, READING LAW: THE INTERPRETATION OF LEGAL TEXTS xiv (Thomas West 2012).

79. *See, e.g.,* Davies v. Bossert, 449 So. 2d 418, 420 (Fla. 3d DCA 1984) (using the doctrine of *in pari materia* to interpret "other medium" and concluding, since no other section of Chapter 770 says "other medium," the Legislature intended "other medium" to only extend to radio and television broadcasting stations).

80. Mazur v. Baraya, 275 So. 3d 812, 817–18 (Fla. 2d DCA 2019) (concluding, under the doctrine of *in pari materia*, the same as *Davies* and also concluding, under the *ejusdem generis canon*, "other medium" is limited by the specific terms before it—newspaper and periodical—thus, "other medium" only applies to the traditional news media); McQueen v. Baskin, 377 So. 3d 170, 179–80 (Fla. 2d DCA 2023) (directly quoting *Mazur* and concluding the same).

81. *Davies*, 449 So. 2d at 420; *see* discussion *supra* Part II.B.

other parts of Chapter 770.[82] Considering this, the Third District Court of Appeal in *Davies* reasoned, if the Legislature intended to extend section 770.01's applicability at all, it was to radio and television broadcasting stations as other media.[83] Such reasoning is consistent with the evolution of radio and television leading up to 1976.[84]

Perhaps then the Legislature only intended to extend presuit notice protection to radio and television broadcasting stations.[85] However, the Legislature simply did not put "radio and television broadcasting stations" in section 770.01 when it very easily could have.[86] Nor was it specific to say that "other medium" is limited to radio and television broadcasting stations.[87] Rather, the statute was left broad through "other medium" language. In light of the rapid evolution of radio and television before 1976, the Legislature was likely concerned with protecting evolving types of media. In order to protect evolving types of media, the Legislature likely reasoned "other medium" would suffice to cover such media. Hence, despite significant changes in society and in the media, the Legislature has not been particularly compelled to make any statutory changes.

Indeed, it is presumed that the Legislature was aware of the Florida Supreme Court's decision in *Ross* at the time of its 1976 amendments.[88] About 26 years earlier, the *Ross* Court explained that the purpose of section 770.01 was to afford to the media "an opportunity *in every case* to make a full and fair retraction in mitigation of damages which a person may have suffered by reason of the publication."[89] Remaining true to this purpose, social media

82. *Davies*, 449 So. 2d at 420.

83. *Id.*

84. *See* Karen Everhart et al., *Timeline: The History of Public Broadcasting in the U.S.*, CURRENT, https://current.org/timeline-the-history-of-public-broadcasting-in-the-u-s/ (last visited Apr. 24, 2025).

85. *See Davies*, 449 So. 2d at 420; *See also* Gifford v. Bruckner, 565 So. 2d 887, 888 (Fla. 2d DCA 1990) (citing to *Davies* for the conclusion that the Legislature only intended "other medium" to include radio and television broadcasting stations).

86. *See* Martinez v. State, 981 So. 2d 449, 452 (Fla. 2008) ("It is a basic rule of statutory construction that 'the Legislature does not intend to enact useless provisions, and courts should avoid readings that would render part of a statute meaningless.'") (quoting State v. Bodden, 887 So. 2d 680, 686 (Fla. 2004)).

87. *See* Laney v. Knight–Ridder Newspapers, Inc., 532 F. Supp. 910, 912 (S.D. Fla. 1982) ("If the legislature did intend to so limit the applicability of [section 770.01], it seems logical that a specific restriction would have been inserted into the statute.").

88. Bridges v. Williamson, 449 So. 2d 400, 401 (Fla. 2d DCA 1984).

89. Ross v. Gore, 48 So. 2d 412, 415 (Fla. 1950). *See* discussion *supra* Part I.A.

news influencers are better able to make retractions. As the Second District Court of Appeal suggested in *Mazur*, through technological advancements, emerging forms of media may be better able to issue retractions to their intended audience because they can be widely shared and apps can send push notifications to smartphones.[90]

C. Florida Case Law Has Treaded Toward a Broad Interpretation of "Other Medium"

For nearly half a century, Florida case law has treaded toward a broad interpretation of "other medium."[91] In recent years, "other medium" has been broadly interpreted due to the proliferation of the internet.[92] Notably, two decisions by the Fifth District Court of Appeal determined internet users were entitled to presuit notice because they engaged in the traditional functions of the news.[93]

Beginning with *Comins*, the Fifth District Court of Appeal held an online "blogger" was entitled to presuit notice.[94] In so holding, the Fifth District Court of Appeal relied, in part, on the writings of Judge Posner who discussed the new reality brought about by the blogosphere:

> The latest, and perhaps gravest, challenge to the journalistic establishment is the blog. Journalists accuse bloggers of having lowered standards. But their real concern is less high-minded—

90. Mazur v. Baraya, 275 So. 3d 812, 818-19 (Fla. 2d DCA 2019). The Second District Court of Appeal stated:

> [A]s technology develops and society's media consumption changes, becoming increasingly geared toward instantaneous access, the line between traditional news media and other forms of media may become blurred. Many people get their news via Facebook, YouTube, Twitter, Instagram, LinkedIn, or Reddit. Podcasts have boomed in popularity, and many cover current events. Shows and movies—many of which are documentaries, docuseries, or based on true stories—can be streamed on services such as Netflix, Amazon Prime Video, and Hulu. These technological developments may also make it easier to issue corrections and retractions that actually reach the intended audience. Apps can send push notifications with corrections or retractions straight to users' smart phones. Corrections and retractions can be posted to and shared widely on social media.

Id. (footnotes omitted).

91. *See* Comins v. Vanvoorhis, 135 So. 3d 545, 560 (Fla. 5th DCA 2014); *see also* Plant Food Sys., Inc. v. Irey, 165 So. 3d 859, 861 (Fla. 5th DCA 2015).

92. *See Comins,* 135 So. 3d at 559.

93. *Comins,* 135 So. 3d at 560; *See also Irey,* 165 So. 3d at 861.

94. *Comins,* 135 So. 3d at 559.

> it is the threat that bloggers, who are mostly amateurs, pose to professional journalists and their principal employers, the conventional news media. A serious newspaper, like The Times, is a large, hierarchical commercial enterprise that interposes layers of review, revision and correction between the reporter and the published report and that to finance its large staff depends on advertising revenues and hence on the good will of advertisers and (because advertising revenues depend to a great extent on circulation) readers. These dependences constrain a newspaper in a variety of ways. But in addition, with its reputation heavily invested in accuracy, so that every serious error is a potential scandal, a newspaper not only has to delay publication of many stories to permit adequate checking but also has to institute rules for avoiding error—like requiring more than a single source for a story or limiting its reporters' reliance on anonymous sources—that cost it many scoops.
>
> Blogs don't have these worries. Their only cost is the time of the blogger, and that cost may actually be negative if the blogger can use the publicity that he obtains from blogging to generate lecture fees and book royalties. Having no staff, the blogger is not expected to be accurate. Having no advertisers (though this is changing), he has no reason to pull his punches. And not needing a large circulation to cover costs, he can target a segment of the reading public much narrower than a newspaper or a television news channel could aim for. He may even be able to pry that segment away from the conventional media. Blogs pick off the mainstream media's customers one by one, as it were.
>
> * * *
>
> What really sticks in the craw of conventional journalists is that although individual blogs have no warrant of accuracy, the blogosphere as a whole has a better error-correction machinery than the conventional media do. The rapidity with which vast masses of information are pooled and sifted leaves the conventional media in the dust. Not only are there millions of blogs, and thousands of bloggers who specialize, but, what is more, readers post comments that augment the blogs, and the information in those comments, as in the blogs themselves, zips around blogland at the speed of electronic transmission.
>
> This means that corrections in blogs are also disseminated virtually instantaneously, whereas when a member of the mainstream media catches a mistake, it may take weeks to

> communicate a retraction to the public. This is true not only of newspaper retractions—usually printed inconspicuously and in any event rarely read, because readers have forgotten the article being corrected—but also of network television news . . .[95]

The Fifth District Court of Appeal in *Comins* found it hard to dispute the emergence of the blog as a medium, and bloggers as disseminators of news and information.[96] Acknowledging that there are millions of blogs worldwide, the Fifth District Court of Appeal noted "the word 'blog' itself is an evolving term and concept."[97] However, the Fifth District Court of Appeal defined "blog" as "a site operated by a single individual or a small group that has primarily an informational purpose, most commonly in an area of special interest, knowledge or expertise of the blogger, and which usually provides for public impact or feedback."[98]

Following its decision in *Comins*, the Fifth District of Appeal in *Irey* similarly held a "website publisher" was entitled to presuit notice.[99] The Fifth District Court of Appeal found the website was a "public medium" and the website publisher, who published "various purportedly scientific, technical, and medical journals and information," was a disseminator of news and information.[100]

Most recently, in *Grlpwr* Judge Kent Wetherell II held a YouTuber, a specific type of social media influencer, was entitled to presuit notice.[101] Judge Wetherell II concluded the YouTuber's channel "qualifies as an 'other medium' because it is operated to disseminate information, provide commentary, and editorialize on a matter of public interest—[multi-level marketing]."[102]

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95. *Id.* at 558–59 (citing Richard A. Posner, *Bad News*, N.Y. TIMES (July 31, 2005), https://www.nytimes.com/2005/07/31/books/review/bad-news.html).

96. *Id.* at 559–60.

97. *Id.* at 559.

98. *Id.*

99. Plant Food Sys., Inc. v. Irey, 165 So. 3d 859, 861 (Fla. 5th DCA 2015).

100. *Id.*

101. Grlpwr, LLC v. Rodriguez, No. 3:23cv16480-TKW-HTC, 2023 WL 5666203, at *2 (N.D. Fla. Aug. 25, 2023).

102. *Id.* Furthermore, Judge Wetherell II reasoned "[t]he fact that Defendant has an 'anti-[multi-level marketing]' agenda does not undermine that conclusion because there is no indication that she is editorializing on behalf of a client." *Id.* (citing Tobinick v. Novella, No. 9:14-CV-80781, 2015 WL 1191267, at *9 (S.D. Fla. Mar. 16, 2015) (discussing that having a particular agenda "does not rob [a defendant] of the protections afforded [to the defendant] by the pre-suit notice statute.")).

Like *Comins*, *Irey*, and *Grlpwr*, where a blog, website, and YouTube channel are "other media," social media accounts are "other media." Also, like *Comins*, *Irey*, and *Grlpwr*, where bloggers, website publishers, and YouTubers are disseminators of news and information, social media news influencers are disseminators of news and information.

IV. ANALYSIS—PUBLIC POLICY CALLS FOR THE PROTECTION OF SOCIAL MEDIA NEWS INFLUENCERS

Rooted in the freedom of the press secured by the First Amendment of the United States Constitution and Article I, section 4 of the Florida Constitution, public policy prioritizes the need of the American people for the free dissemination of news over those offended or embarrassed by news shared about them.[103] In keeping with public policy, a broad interpretation of "other medium" will safeguard the free dissemination of news, as well as help to avoid unnecessary litigation.

A. Broadly Interpreting "Other Medium" Safeguards the Free Dissemination of News

Broadly interpreting section 770.01 safeguards the free dissemination of news. As emphasized by the Florida Supreme Court in *Ross*:

> The public has an interest in the free dissemination of news. This interest was well stated by that great American, Thomas Jefferson, in the following words: 'The only security of all is in a free press. The force of public opinion cannot be resisted, when permitted freely to be expressed. The agitation it produces must be submitted to. It is necessary to keep the waters pure. *No government ought to be without censors: and where the press is free no one ever will*.' It is true that there are occasions when the freedom of the press is abused, just as some individuals abuse their right to speak and write their sentiments freely. But, in discussing this problem, Thomas Jefferson said: 'Some degree of abuse is inseparable from the proper use of every thing; and in no instance is this more true, than in that of the press. It has accordingly been decided by the practice of the States, that it is better to leave a few of its noxious branches

103. *Id.*

> to their luxuriant growth, than by pruning them away, to injure the vigor of those yielding the proper fruits.' The present statute provides sufficient safeguards against irresponsibility on the part of the press, were the statute to be made more stringent either by judicial interpretation or legislative enactment, the press could become so inhibited that its great and necessary function of policing our society through reporting its events and by analytical criticism would be seriously impaired.[104]

Significantly, the Florida Supreme Court in *Ross* advised against construing section 770.01—either through "judicial interpretation or legislative enactment"—in a way that constrains the free dissemination of news.[105] The *Ross* Court also emphasized the importance of "fair comment" and "analytical criticism," stating "it is vital that no unreasonable restraints be placed upon the working news reporter or the editorial writer."[106]

Social media news influencers can be likened to the working news reporter or the editorial writer. No unreasonable restraints should be placed upon them, especially in light of the American people's growing dependence on them for news.[107] To unreasonably restrain social media news influencers and to deny them presuit notice protection under a narrow interpretation of section 770.01 would be to constrain the free dissemination of news.

B. Broadly Interpreting Section 770.01 Helps to Avoid Litigation

Broadly interpreting section 770.01 also helps to avoid litigation. As stated in *Tobinick v. Novella*:[108]

> Under the plain language of [section 770.01], notice must be given prior to the filing of the suit—and understandably so, as post-suit notice is meaningless, both in concept and in practice. In practice, it serves no purpose; once suit has been filed, the complaint itself should provide sufficient notice of the claims. In concept, it defeats the purpose of the statute, which "is designed to allow a defendant the opportunity to be put on

104. Ross v. Gore, 48 So. 2d 412, 415 (Fla. 1950).
105. *Id.*
106. *Id. See* discussion *supra* Part II.B.
107. *News Platform Fact Sheet*, *supra* note 1.
108. Tobinick v. Novella, No. 9:14-CV-80781, 2015 WL 1191267, at *7 (S.D. Fla. Mar. 16, 2015).

> notice so as to take necessary steps to mitigate potential damages *and perhaps avoid . . . litigation*.[109]

The opportunity to avoid litigation has already been identified by the Florida Supreme Court in *Ross* as an important reason justifying presuit notice due to "the opprobrium consequent even to an unfounded suit for libel."[110] Taking *Ross* into account, Judge King in *Laney*, pointed out that "[a]t the very least, [presuit] notice may afford [a defendant] the chance to consult with an attorney about legal matters with which [the defendant] may be extremely unfamiliar."[111]

Like the traditional news media, social media news influencers should be given the opportunity to avoid litigation through presuit notice. Denying presuit notice protection and thereby obstructing any right to retraction because social media news influencers are not the news media in the "traditional sense" would frustrate section 770.01's plain text and purpose. In the interest of judicial economy, social media news influencers should be allowed the right to retraction.

V. RECOMMENDATION—THE TOTALITY OF THE CIRCUMSTANCES TEST[112]

Broadly interpreting "other medium" to include the internet and thereby opening the door to every internet user, who can now claim they are media defendants under section 770.01, may give some pause—especially considering a plaintiff's failure to provide presuit notice to qualified media defendants ordinarily requires dismissal of the suit.[113] With respect to social media, there are currently billions of social media accounts and thousands of "social media news influencers."[114] However, a self-proclaimed social

109. *Id.*

110. Ross v. Gore, 48 So. 2d 412, 415 (Fla. 1950).

111. Laney v. Knight–Ridder Newspapers, Inc., 532 F. Supp. 910, 913 (S.D. Fla. 1982).

112. Cue the collective sigh of bright line rule proponents.

113. *See* Mancini v. Personalized Air Conditioning & Heating, Inc., 702 So. 2d 1376, 1377 (Fla. 4th DCA 1997).

114. *See Global Social Media Statistics*, DATAREPORTAL, https://datareportal.com/social-media-users (last visited Mar. 24, 2025) (reporting "there were 5.24 billion social media users around the world at the start of January 2025, equating to 63.8 percent of the total global population"). *See also America's News Influencers*, *supra* note 4 (examining a sample of 500 popular social media news influencers and their content, derived from more than 28,000 social media accounts, suggesting there are thousands of social media news influencers).

media news influencer, for example, who has shared only a few instances of the news to a small number of people, may not actually be a social media news influencer. Necessarily, the totality of the circumstances test should be employed to determine whether a social media news influencer—or any internet user for that matter—is a media defendant entitled to presuit notice.

Over the years, courts have looked at a multitude of factors to determine whether a defendant is, in fact, a media defendant entitled to presuit notice. These factors include, but are not limited to, whether the defendant: (1) disseminates news and information; (2) has a wide reach; (3) speedily posts; (4) publishes various scientific, technical, and medical journals and information; (5) shares articles that have an informational purpose and allow for public impact or feedback; and (6) initiates uninhibited, robust, and wide-open debate on public issues.[115]

1. Dissemination of News and Information

At a very basic level, a defendant should disseminate news and information. In *Mancini*, the Fourth District Court of Appeal explained that a media defendant can either be a person or corporation engaged in the dissemination of news and information through the news and broadcast media.[116] Relying on the Fourth District Court of Appeal's decision in *Mancini*, Judge Seitz found the defendants in *Rodriguez* were non-media defendants.[117] More specifically, Judge Seitz said,

> Turning to the Complaint, the Court finds no meaningful allegations that the Defendants were engaged in the dissemination of news and information. The Complaint provides that [Defendant 1] posted a press release on his personal website as well as [on Defendant 2's], both of which are available to the public. The Complaint provides no other allegations concerning any other information disseminated from the websites. For example, there is no indication that the websites ever disseminated any other information, whether it be traditional news or simply self-promotional or "infomercial" materials. Assuming that the press release constituted news,

115. These factors have been consolidated from a number of Florida cases addressing section 770.01 as expanded upon below.

116. *Mancini*, 702 So. 2d at 1380.

117. Five for Ent., S.A. v. Rodriguez, 877 F. Supp. 2d 1321, 1327 (S.D. Fla. 2012).

> the one-time publication of that press release does not render [Defendants] of the news media. They are private parties with their own websites who released information about the cancellation of [Defendant 1's] tour on one occasion. Finding that [Defendants] were media parties on these facts would abolish any distinction between private parties and members of the media.[118]

In finding the defendants in *Rodriguez* were non-media defendants, Judge Seitz determined the defendants' one-time press release on their websites did not render them a part of the news media.[119] Importantly, Judge Seitz noted the defendants never disseminated the news nor any other information on their websites besides the one-time press release.[120]

Very basically, courts should first observe whether a social media news influencer disseminates news and information. Where there is no dissemination of news and information, a social media "news" influencer is hardly such.

2. Wide Reach

A defendant should also have a wide reach. In *Zelinka v. Americare Healthscan, Inc.*,[121] the Fourth District Court of Appeal held a defendant who posted on an internet "message board" was not a media defendant.[122] The Fourth District Court of Appeal reasoned that, by merely posting a message on the board, the defendant was "a mere internet-using, private individual."[123] However, the Fourth District Court of Appeal acknowledged, in dictum, that "[i]t may well be that someone who maintains a web site and regularly publishes internet 'magazines' on that site might be considered a 'media defendant' who would be entitled to notice."[124] Judge Lenard found this to be true in *Alvi*.[125]

In *Alvi*, one of the issues before Judge Lenard was whether the plaintiffs were required to provide presuit notice to a media

118. *Id.*
119. *Id.*
120. *Id.*
121. Zelinka v. Americare Healthscan, Inc., 763 So. 2d 1173 (Fla. 4th DCA 2000).
122. *Id.* at 1173.
123. *Id.*
124. *Id.* at 1175.
125. Alvi Armani Med., Inc. v. Hennessey, 629 F. Supp 2d 1302, 1308 (S.D. Fla. 2008).

company and its principal owner.[126] The media company was "the owner, host, and publisher of a website called the 'Hair Restoration Network,'" that was "identified as being 'dedicated to providing information to the consumer public about the hair restoration and transplant industry . . . .'"[127] The principal owner controlled the website.[128] As such, the defendants in *Alvi* argued they were media defendants entitled to presuit notice.[129] Judge Lenard agreed.[130] Judge Lenard ruled *Zelinka* was inapposite to the case in *Alvi* because the defendants were not mere internet-using, private individuals.[131]

Therefore, courts should determine whether a social media news influencer is more than just a "mere [I]nternet-using, private individual." A social media news influencer with a wide reach is likely not a mere internet-using, private individual. A wide reach is not determined solely by the amount of followers or subscribers a social media news influencer has, but also through engagement (likes, comments, shares, etc.) with the public—followers and non-followers alike.[132]

3. Speedy Posts

Regarding speed, a defendant should post breaking news. The Florida Supreme Court in *Ross* emphasized that Americans need *speedy* access to the news.[133] In its discussion as to why newspapers and periodicals should be afforded the right to retraction, the *Ross* Court noted that reporters are expected to determine the facts of a controversial situation in a matter of *hours or minutes*.[134] While errors will inevitably occur, the *Ross* Court maintained that "the preservation of our American democracy depends upon the public's receiving information speedily—particularly upon getting news of pending matters while there still is time for public opinion to form and be felt . . . ."[135]

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126. *Id.* at 1307.
127. *Id.* at 1303–04.
128. *Id.* at 1304.
129. *Id.*
130. *Id.* at 1308.
131. *Id.*
132. *See Influencer Marketing: A Research Guide*, LIBR. CONG., https://guides.loc.gov/influencer-marketing/metrics-and-costs (last visited Apr. 13, 2025).
133. Ross v. Gore, 48 So. 2d 412, 415 (Fla. 1950).
134. *Id.*
135. *Id.*

Today, social media news influencers are expected to post the facts of a situation in a matter of *seconds*. Courts should look at the speed at which a social media news influencer posts news for consumption.

4. Publishing Various Scientific, Technical, and Medical Journals and Information

Furthermore, a defendant should publish various scientific, technical, and medical journals and information. In *Irey*, the Fifth District Court of Appeal held a "website publisher" was entitled to presuit notice because the website publisher published "various purportedly scientific, technical, and medical journals and information."[136] Where a social media news influencer posts various scientific, technical, and medical journals and information, the social media news influencer posts newsworthy information. To courts, this should be a factor that indicates a social media news influencer is a media defendant.

5. Sharing Articles that have an Informational Purpose and Allow for Public Impact or Feedback

A defendant should also share articles that have an informational purpose and allow for public impact or feedback. In *Comins*, the Fifth District Court of Appeal held an online "blogger" was entitled to presuit notice.[137] In so holding, the Fifth District Court of Appeal defined "blog" as "a site operated by a single individual or a small group that has primarily an informational purpose, most commonly in an area of special interest, knowledge or expertise of the blogger, and which usually provides for public impact or feedback."[138]

Courts should observe whether a social media news influencer shares articles that have an informational purpose and allow for public impact or feedback. For example, a social media news influencer should share articles to the public about politics, foreign affairs, popular culture, and other topics.

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136. Plant Food Sys., Inc. v. Irey, 165 So. 3d 859, 861 (Fla. 5th DCA 2015); *See* discussion *supra* Part II.C.

137. Comins v. Vanvoorhis, 135 So. 3d 545, 559 (Fla. 5th DCA 2014); *See* discussion *supra* Part II.C.

138. *Id.*

6. Initiating Uninhibited, Robust, and Wide-Open Debate on Public Issues

Finally, a defendant should initiate uninhibited, robust, and wide-open debate on public issues. In *Ortega Trujillo v. Banco Central Del Ecuador*,[139] Judge King held, in part, that a public relations firm was not a media defendant.[140] Specifically, Judge King rejected the argument advanced by the public relations firm that it was entitled to presuit notice for a press release it sent to the news media.[141] Judge King explained "[b]y definition, all news media disseminates information, but it is a syllogism to conclude . . . that all those who disseminate information automatically qualify as news media."[142]

The "news media," according to Judge King, functions "to inform and to initiate 'uninhibited, robust, and wide-open debate on public issues.'"[143] Judge King reasoned that no matter how "nebulous"[144] the definition of news media is, it was certain the public relations firm did not fall within it.[145] According to Judge King, "[i]t does not logically follow that because [the public relations firm] sent copies of the Press Release to various parties, including major South Florida news media, [the public relations firm] itself qualifies as media."[146]

Finally, courts should examine whether a social media news influencer initiates uninhibited, robust, and wide-open debate on public issues. A social media news influencer does not merely send information to the news media, but rather institutes debate on important public issues.

VI. CONCLUSION

The recommendation to employ the totality of the circumstances test may not satisfy academic or practical

139. Ortega Trujillo v. Banco Cent. Del Ecuador, 17 F. Supp. 2d 1334 (S.D. Fla. 1998).
140. *Id.* at 1338.
141. *Id.*
142. *Id.*
143. *Id.* (internal quotation marks omitted) (citing Gertz v. Robert Welch, Inc., 418 U.S. 323, 339 (1974)).
144. Something that is "nebulous" is "lacking definite form or limits." *Nebulous*, VOCABULARY.COM, https://www.vocabulary.com/dictionary/nebulous (last visited Apr. 13, 2025).
145. *Trujillo*, 17 F. Supp. 2d at 1338.
146. *Id.*

preferences for tidiness, symmetry, or precision. However, it is likely the only suitable solution for such a convoluted issue as whether a social media news influencer—or any internet user—is entitled to presuit notice. Employing the totality of the circumstances test remains true to section 770.01's text which has been left necessarily broad to cover evolving types of media.

Certainly, the Legislature may amend section 770.01 to include a more precise definition of "other medium" or a set of factors it decides are more appropriate. The Legislature, however, has remained silent, allowing Florida case law to tread toward a broad interpretation of "other medium" for nearly half a century. Under a broad interpretation of "other medium," courts have found blogs, websites, and YouTube channels to be other media. Courts have, thus, not hesitated to extend presuit notice protection to bloggers, website publishers, and YouTubers as media defendants. Why should social media news influencers be any different? A social media news influencer's account is an "other medium." Therefore, courts should extend presuit notice protection to social media news influencers as media defendants.

Of course, there are thousands of social media news influencers. But not all social media news influencers may actually be one. To determine whether a social media news influencer really is one, courts should examine whether the defendant via a social media account:

> (1) Disseminates news and provides commentary;
> (2) Has a wide reach;
> (3) Speedily posts;
> (4) Publishes various scientific, technical, and medical journals and information;
> (5) Shares articles that have an informational purpose and allow for public impact or feedback; and
> (6) Initiates uninhibited, robust, and wide-open debate on public issues.

This is not an exhaustive list; however, they are factors courts have deemed important over the years. Until the Legislature breaks its silence, whether a social media news influencer—or any internet user—is entitled to presuit notice is a question of fact for determination on a case-by-case basis.

Regardless of individual opinions on the merits of the totality of the circumstances test, it is indisputable that social media has transformed American news consumption. Social media news influencers have stepped into the void left by a diminishing traditional news media industry, performing the same principal function of disseminating news and information to the American people. Presuit notice protection should unquestionably extend to social media news influencers.