

**New York Supreme Court**  
**Appellate Division – First Department**

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LUKASZ GOTTWALD p/k/a Dr. Luke, KASZ MONEY, INC.  
and PRESCRIPTION SONGS, LLC,

*Plaintiffs-Appellants,*

- against-

KESHA ROSE SEBERT p/k/a Kesha,

*Defendant-Respondent,*

- and-

PEBE SEBERT, VECTOR MANAGEMENT, LLC and JACK ROVNER,

*Defendants.*

KESHA ROSE SEBERT p/k/a Kesha,

*Counterclaim Plaintiff-Respondent,*

- against-

LUKASZ GOTTWALD p/k/a Dr. Luke, KASZ MONEY, INC.  
and PRESCRIPTION SONGS, LLC,

*Counterclaim Defendants-Appellants,*

- and-

DOES 1-25, inclusive,

*Counterclaim Defendants.*

**Appellate  
Case No.:  
2021-03036**

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**MOTION FOR LEAVE TO FILE BRIEF FOR *AMICAE CURIAE***

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

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LUKASZ GOTTWALD, p/k/a/ Dr. Luke, KASZ :  
MONEY, INC. and PRESCRIPTION SONGS, :  
LLC, :

Index No. 653118/14  
(New York County)

Plaintiffs-Appellants,

Appellate Case No.: 2021-03036

- against -

**NOTICE OF MOTION FOR LEAVE  
TO FILE *AMICAE CURIAE* BRIEF**

KESHA ROSE SEBERT, p/k/a Kesha, :  
Defendant-Respondent. :

-and-

PEBE SEBERT, VECTOR MANAGEMENT, LLC :  
and JACK ROVNER, :  
Defendants. :

KESHA ROSE SEBERT p/k/a Kesha, :  
Counterclaim Plaintiff- :  
Respondent, :

-against-

LUKASZ GOTTWALD p/k/a Dr. Luke, KASZ :  
MONEY, INC. and PRESCRIPTION SONGS :  
LLC, :

Counterclaim Defendants- :  
Appellants, :

-and-

DOES 1-25 inclusive, :  
Counterclaim Defendants :

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PLEASE TAKE NOTICE that upon the annexed affirmation of A. Mackenna White,  
dated April 15, 2022, and all exhibits attached thereto including a copy of the proposed brief of

*amicae curiae*, Maria Kim Grand and Catherine Reddington will move this court at the Appellate Division Courthouse, 27 Madison Avenue, New York, New York on Monday, April 25, 2022 at 10:00am., or as soon thereafter as counsel can be heard, for an order granting leave to Maria Kim Grand and Catherine Reddington to file a brief of *amicae curiae* in Support of Defendant-Respondent Kesha Rose Sebert, p/k/a/ Kesha in the above-styled action.

Defendant-Respondent, Kesha Rose Sebert, p/k/a Kesha has consented to the filing of this motion and proposed *amicae curiae* brief. Plaintiff-Appellant, Lukasz Gottwald, p/k/a Dr. Luke, does not consent.

Dated: New York, New York  
April 15, 2022

Respectfully submitted,

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SUPREME COURT OF THE STATE OF NEW YORK  
APPELLATE DIVISION: FIRST DEPARTMENT

----- X

LUKASZ GOTTWALD, p/k/a/ Dr. Luke, KASZ :  
MONEY, INC. and PRESCRIPTION SONGS, :  
LLC, :

Index No. 653118/14  
(New York County)

Plaintiffs-Appellants,

Appellate Case No.: 2021-03036

- against -

**AFFIRMATION OF A. MACKENNA  
WHITE IN SUPPORT OF MOTION  
BY MARIA KIM GRAND AND  
CATHERINE REDDINGTON FOR  
LEAVE TO FILE *AMICAE CURIAE*  
BRIEF**

KESHA ROSE SEBERT, p/k/a Kesha,  
Defendant-Respondent.

-and-

PEBE SEBERT, VECTOR MANAGEMENT, LLC :  
and JACK ROVNER, :  
Defendants. :

KESHA ROSE SEBERT p/k/a Kesha,  
Counterclaim Plaintiff-  
Respondent,

-against-

LUKASZ GOTTWALD p/k/a Dr. Luke, KASZ :  
MONEY, INC. and PRESCRIPTION SONGS :  
LLC, :

Counterclaim Defendants-  
Appellants,

-and-

DOES 1-25 inclusive,  
Counterclaim Defendants

----- X

A. MACKENNA WHITE, an attorney duly admitted to practice law before the courts of the State of New York, hereby affirms the following to be true under the penalty of perjury:

1. I am an attorney with the firm of Lewis Baach Kaufmann Middlemiss PLLC, 405 Lexington Avenue, Fl. 64, New York, New York 10174, and am counsel for Maria Kim Grand. I submit this affirmation in support of Maria Kim Grand and Catherine Reddington's motion for leave to file a brief as *amicae curiae* in support of Defendant-Respondent Kesha Rose Sebert, p/k/a Kesha.

2. Defendant-Respondent Kesha Rose Sebert p/k/a Kesha consents to Maria Kim Grand and Catherine Reddington's filing of this motion and *amicae curiae* brief.

3. Attached hereto as **Exhibit A** is a true and correct copy of a brief that Maria Kim Grand and Catherine Reddington seek to file as *amicae curiae*.

4. Attached hereto as **Exhibit B** is a true and correct copy of the Decision and Judgment from the Appellate Division, First Department of New York, dated March 10, 2022.

WHEREFORE, I respectfully request that this Court grant Maria Kim Grand and Catherine Reddington's motion for leave to file a brief as *amicae curiae* in support Defendant-Respondent Kesha Rose Sebert, p/k/a Kesha, a copy of which is attached hereto as Exhibit A.

Dated: New York, New York  
April 15, 2022



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A. Mackenna White, Esq.

# **Exhibit A**



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## STATEMENT OF INTEREST

The *Amicae Curiae* Catherine Reddington and Maria Kím Grand support the motion of Kesha Rose Sebert for reargument or leave to appeal because this Court’s March 10, 2022 holding that the November 2020 amendments to New York’s statute to curtail strategic lawsuits against public participation (“SLAPP”), N.Y. Civil Rights Law § 70 *et seq.* (“2020 Amendments”), lack retroactive effect could impact their defenses in pending defamation litigation, as well as the interests of innumerable other “survivors of sexual abuse” whose speech the New York Legislature intended to protect by the 2020 Amendments.<sup>1</sup> Both *Amicae* are victims of sexual misconduct, both spoke about that experience, both were sued for defamation, and both have founded their defense, in part, upon the actual-malice standard of the recent amendments—which were enacted during the pendency of both suits. The *Amicae* are representative of the population that the State Legislature sought to protect in amending the state’s anti-SLAPP laws: they are private figures of modest means who spoke on matters of overriding public concern and were sued for that speech. They are directly concerned in the New York courts’ construction of those amendments and should be permitted to participate as friends of the Court.

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<sup>1</sup> “Senate and Assembly Majorities Advance Anti-SLAPP Legislation to Protect Free Speech,” N.Y. State Legislature, <https://nyassembly.gov/Press/files/20200722a.php> (July 22, 2020) (“Legislative Enactment Statement”).

1. Ms. Reddington was sued for statements she made in connection with a Title IX investigation at Syracuse University and subsequent related social-media posts about her experience as the victim of sexual assault. Reddington stated that Alex Goldman sexually assaulted her following a fraternity party in April 2017, when they were both undergraduate students at Syracuse. The University credited Reddington's testimony, determined that Goldman violated its code of conduct, and expelled Goldman from the institution.<sup>2</sup> Reddington subsequently, in June 2018, posted on social media about her experiences as a victim of sexual assault and the trauma she endured, both from the assault and from the way her case was mishandled by law enforcement. Goldman sued Reddington for defamation in the Eastern District of New York in June 2018.<sup>3</sup> After the 2020 Amendments became law, Reddington filed a counterclaim under the amendments and moved for summary judgment on Goldman's claims, contending that the amendments operate to apply an actual-malice standard to pending cases.<sup>4</sup> Goldman disputes this point.<sup>5</sup> The summary judgment motion remains pending, and the court has allowed Goldman's request to file a motion for judgment on the pleadings to determine whether the 2020

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<sup>2</sup> See Complaint, *Goldman v. Reddington*, 1:18-cv-03662, ECF No. 1, ¶¶ 36–37 (E.D.N.Y. filed June 25, 2018).

<sup>3</sup> *Id.*

<sup>4</sup> Memorandum of Points and Authorities in Support of Motion for Summary Judgment, *Goldman v. Reddington*, 1:18-cv-03662, ECF No. 141 at 3–4 (E.D.N.Y. filed Feb. 4, 2022).

<sup>5</sup> Memorandum of Points and Authorities in Opposition to Motion for Summary Judgment, *Goldman v. Reddington*, 1:18-cv-03662, ECF No. 146 at 4 n.3 (E.D.N.Y. filed Feb. 4, 2022).

Amendments should be applied retroactively with respect to the actual malice standard, based largely on this Court’s ruling.

2. Ms. Grand, an aspiring jazz musician, was sued for a letter she sent to about 40 industry colleagues describing “an ‘abusive dynamic’ and ‘sexual harassment’ in her relationship with” Steve Coleman, an acclaimed musician 36 years older than herself. *Coleman v. Grand*, 523 F.Supp.3d 244, 252 (E.D.N.Y. 2021) (quoting Grand’s letter). “Coleman and Grand had what both parties characterize as a rocky, on-and-off sexual relationship.” *Id.* at 250. When it ended, Grand wrote to “describe[] her ‘experience with’ ‘sexism in the music industry,’” asserting that—although her sexual relationship with Coleman “was legal and consensual”—it was tainted by a power imbalance, as Coleman used the opportunity to pressure Grand for sex. *Id.* at 252–254, 263. Coleman sued Grand for defamation in the Eastern District of New York. After more than two years of abusive litigation tactics—which bore marked similarity to Coleman’s abusive behavior as described in Grand’s letter—the court granted Grand’s motion for summary judgment, holding *inter alia* that the 2020 Amendments had retroactive effect. *Id.* at 258–59. Coleman appealed, raised retroactivity as a principal issue, and presented this Court’s ruling

as supplemental authority.<sup>6</sup> The case is scheduled for argument in the Second Circuit on May 13, 2022.

## STATEMENT OF THE ISSUE ADDRESSED

Whether the 2020 Amendments to New York’s anti-SLAPP regime—which were intended to remedy inadequacies in the existing regime and restore the Legislature’s original speech-protection purpose—apply to cases filed before and continued after those amendments became law.

## INTRODUCTION AND SUMMARY OF THE ARGUMENT

After robust majorities of both chambers voted to bolster New York’s anti-SLAPP protections, the State Legislature announced that it had corrected a “broken system” that “has led to . . . survivors of sexual abuse and others being dragged through the courts on retaliatory legal challenges solely intended to silence them.” Legislative Enactment Statement at 1. That message left no ambiguity. It had been roughly three years since, “[f]ollowing the reporting of sexual assault allegations against Harvey Weinstein, ‘#MeToo catapulted into the public’s consciousness in October 2017.’” *Coleman v. Grand*, 523 F. Supp. 3d 244, 259 (E.D.N.Y. 2021) (quoting *Elliott v. Donegan*, 469 F. Supp. 3d 40, 52 (E.D.N.Y. 2020)). The movement “was focused on how power dynamics and outdated expectations of gender roles in the workplace have worked to silence women.” *Elliott*, 469 F. Supp.

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<sup>6</sup> Opening Brief of Appellant, No. 21-800, ECF No. 52 at 14–29 (2d Cir. filed July 9, 2021); Brief of Appellee, No. 21-800, ECF No. 81 at 29–33 (2d Cir. filed Oct. 6, 2021).



3d at 52. But abusers saw defamation lawsuits as a powerful tool to thwart these new “conversations about what constitutes inappropriate behavior in professional settings and how to construe consent in sexual relationships.” *Id.* The Legislature could not have been clearer that *this specific* type of suit—designed to chill speech in the #MeToo era—was precisely the “broken” system that the 2020 Amendments were intended to fix.

The legislators who took that stand would no doubt be surprised to learn that the 2020 Amendments might be construed in court to do very little to effectuate that purpose. This Court’s ruling that the amendments reach only post-enactment suits would, if ossified as settled law, carve out more than three years of #MeToo speech from their protections. This would include the most compelling statements on the topic of sexual abuse and those published at the greatest personal risk to the speakers. It was those who *first* broke their silence in 2017 whose speech had the greatest public impact—and who stood out most prominently for reprisal. The Legislature could not have intended to condemn survivors of sexual abuse to three more years of silence. As shown below, overriding evidence demonstrates that it intended the opposite.

## **I. The Court Should Grant Rehearing**

A motion for leave to reargue should be granted “upon a showing that the court overlooked or misapprehended the facts or law or for some reason mistakenly

arrived at its earlier decision.” *Coke-Holmes v. Holsey Holdings, LLC*, 189 A.D.3d 1162, 1164 (2d Dep’t 2020). That standard is met here.

A. This Court recognized “that ‘ameliorative or remedial legislation’ should be given ‘retroactive effect in order to effectuate its beneficial purpose.’” *Gottwald v. Sebert*, No. 15495, 2022 WL 709757, at \*1 (N.Y.S. 3d Mar. 10, 2022) (quoting *In re Marino S.*, 100 N.Y.2d 361, 370–71, 795 N.E.2d 21, 26 (2003)). The 2020 Amendments are remedial and fit within this rule of construction.

The sponsoring memorandum announced that the preexisting anti-SLAPP law “failed to accomplish [its] objective,” in part because it was “narrowly interpreted by the courts,” and that the 2020 Amendments “will better advance the purposes that the Legislature *originally identified* in enacting New York’s anti-SLAPP law.” S52A Sponsor Mem. (July 22, 2020), <https://www.nysenate.gov/legislation/bills/2019/s52> (emphasis added). The Legislature had declared in 1992 that the anti-SLAPP law was intended to effectuate the “policy of the state that the rights of citizens to participate freely in the public process must be safeguarded with great diligence” and was meant to “provide the utmost protection for the free exercise of speech, petition and association rights.” SLAPP Suits—Costs and Fees, Compensatory and Punitive Damages to Defendants, 1992 Sess. Law News of N.Y. Ch. 767 (A. 4299). “The legislature further [found] that the threat of personal damages and litigation costs can be and has been used as a means of harassing, intimidating or punishing

individuals . . . who have involved themselves in public affairs.” *Id.* But, in 2020, the Legislature recognized that the statute “has been strictly limited to cases initiated by persons or business entities that are embroiled in controversies over a public application or permit.” S52A Sponsor Mem. That is a paradigmatic remedial purpose. *See In re Gleason (Michael Vee, Ltd.)*, 96 N.Y.2d 117, 122–23 (2001) (finding similar evidence established retroactive applicability based on the Legislature’s intent); *Nelson v. HSBC Bank USA*, 87 A.D.3d 995, 998 (2d Dep’t 2011) (same).

B. The Court’s opinion overlooks this history and its import. The Court found it significant that the amendment occurred “almost 30 years after the law was originally enacted, purportedly to advance an underlying remedial purpose.” *Gottwald*, 2022 WL 709757, at \*1. But the question is not whether the judiciary believes that a remedy was appropriate or achieved in the right way or on the right schedule; the “legislative goal,” standing alone, controls. *Matter of OnBank & Tr. Co.*, 90 N.Y.2d 725, 730, 688 N.E.2d 245, 247 (1997) (quotation marks omitted). Under that standard, it is sufficient that the Legislature actually intended “to advance an underlying remedial purpose,” as this Court recognized it did. *Gottwald*, 2022 WL 709757, at \*1.

The Court also quoted the Court of Appeals decision in *Matter of Regina Metro. Co. v. New York State Div. of Hous. & Cmty. Renewal*, 35 N.Y.3d 332 (2020),

for the proposition that “the United States Supreme Court had previously limited ‘the continued utility of the tenet that new “remedial” statutes apply presumptively to pending cases.’” *Gottwald*, 2022 WL 709757, at \*1 (quoting 35 N.Y.3d at 365). But this bypasses the context of that statement. *Regina Metro* recognized this limitation where retroactivity would “upset[] reliance interests.” 35 N.Y.3d at 365. As the U.S. Supreme Court case it quoted clarifies, “a statute introducing *damages liability*” for past conduct is not “the sort of ‘remedial change that should presumptively apply in pending cases.’” *Landgraf v. USI Film Prod.*, 511 U.S. 244, 285 n.37 (1994) (emphasis added). That was the problem with retroactivity in *Regina Metro*, where the Legislature amended the Rent Stabilization Law to create new liability for past transactions taken in reliance on prior law. *See* 35 N.Y.3d at 362–74.

By contrast, the 2020 Amendments do not “impair rights a party possessed when he acted, increase a party’s liability for past conduct, or impose new duties with respect to transactions already completed, thus impacting substantive rights.” *Id.* at 365 (quotation marks omitted). “Because the statute is remedial in nature and does not impair vested rights, it should be applied retroactively.” *In re Marino S.*, 100 N.Y.2d 361, 371, 795 N.E.2d 21, 26 (2003). The 2020 Amendments modify *defenses* to legal claims created by New York law, and a plaintiff does not have a vested right in a lawsuit that has not reached a judgment. *Boardwalk & Seashore*

*Corp. v. Murdock*, 286 N.Y. 494, 498, 36 N.E.2d 678, 680 (1941) (“Parties obtain no vested rights in the orders or judgments of courts while they are subject to review.”); *Civ. Serv. Bar Ass’n, Loc. 237, Int’l Bhd. of Teamsters v. City of New York*, 99 A.D.2d 264, 273, 472 N.Y.S.2d 925, 931, *aff’d*, 64 N.Y.2d 188, 474 N.E.2d 587 (1984) (same); *see also Hodes v. Axelrod*, 70 N.Y.2d 364, 369–70, 515 N.E.2d 612, 615 (1987) (discussing the framework for determining when a due process interest attaches to a court judgment). The Court of Appeals has distinguished retroactive impact on lawsuits from retroactive impact on judgments and recognized that only the latter upsets reliance interests. *See Becker v. Huss Co.*, 43 N.Y.2d 527, 542, 373 N.E.2d 1205, 1210 (1978).

C. This Court also found it significant that “[t]he legislature did not specify that the new legislation was to be applied retroactively.” *Gottwald*, 2022 WL 709757, at \*1. But explicit references to pending suits are unnecessary; legislative history of the type discussed above is sufficient. *See Gleason*, 96 N.Y.2d at 122; *OnBank*, 90 N.Y.2d at 730 & n.3; *Becker*, 43 N.Y.2d at 541–44. And the Legislature did provide compelling textual indicia of retroactive intent.

First, the Legislature considered and *rejected* draft text that would have limited the 2020 Amendments to post-enactment cases. As proposed, the amendments were set to “take effect immediately” and only “apply to actions commenced on or after such date.” A5991, § 3 (2019–20) (as introduced). But the

Legislature amended the bill to eliminate that limitation and state only that “[t]his act shall take effect immediately.” A5991, § 4 (2019–20) (as enacted). Further, the 1992 statute *did* contain a post-enactment limitation, providing that only lawsuits filed after the enactment date were covered by the new law. *See* L.1992, ch. 767, § 6. The Legislature knew how to reach only post-enactment suits, if that was indeed its intent. But it confronted that prospective-only option in 2020 and rejected it.

Second, the 2020 Amendments require plaintiffs to pay attorney fees in covered lawsuits “commenced *or continued*” without a substantial basis in law. N.Y. Civ. Rights Law § 70-a(1) (emphasis added). “The legislature’s explicit use of the phrase ‘commenced or continued’ demonstrates its unmistakable intent to subject a party to liability under the SLAPP Act if that party *either* commenced *or* continued to pursue a proscribed lawsuit after the effective date of the Act.” *Anderson Dev. Co. v. Tobias*, 116 P.3d 323, 337 (Utah 2005). In this way, the amendments treat each moment of the ongoing prosecution as a new injury to the defendant and reject a distinction between lawsuits “pending” as of enactment and lawsuits filed later. In this sense, the legislation need not “apply retroactively to pending claims,” *Gottwald*, 2022 WL 709757, at \*1, since the *continuance* of claims is a prospective event that the amendments plainly reach. *See Anderson Dev.*, 116 P.3d at 337 (“Although ADC initially filed its suit against Tobias and Feld before the passage of the SLAPP Act, it continued its lawsuit after the Act became effective.”).

## II. The Court Should Grant Leave To Appeal

If the Court denies rehearing it should grant leave to appeal. Review in the Court of Appeals is appropriate where the question presented has “far-reaching consequences,” *Neidle v. Prudential Ins. Co. of Am.*, 299 N.Y. 54, 56, 85 N.E.2d 614 (1949), and is “of state-wide interest and application,” *Town of Smithtown v. Moore*, 11 N.Y.2d 238, 241, 183 N.E.2d 66 (1962). This case qualifies.

A. The lawsuits against the *Amicae* demonstrate that the issue is not unique to this action. The *Amicae* and Ms. Sebert are just three individuals who have recently had the courage to speak on the topic of sexual abuse, at great discomfort and risk of retaliation.<sup>7</sup> And numerous other actions, arising in many other speech contexts, also raise the question presented and are pending in state and federal courts.<sup>8</sup> This should be no surprise. The Legislature amended the anti-SLAPP law because “[r]ecent experience has shown that there are an increasing number of deep

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<sup>7</sup> Indeed, the suits have taken an enormous financial and emotional toll on the *Amicae*, costs that the Legislature also expected to abate with the passage of the 2020 Amendments by penalizing plaintiffs who brought meritless suits for the purpose of silencing those exercising their free speech rights in good faith about matters of public concern. *See, e.g.*, N.Y. Civil Rights Law § 70-a.

<sup>8</sup> *See, e.g.*, *VIP Pet Grooming Studio, Inc. v. Sproule*, No. 21-04228 (2d Dep’t); *NOVAGOLD Res., Inc. v. J Cap. Research USA LLC*, 20-CV-2875 (LDH) (PK), 2022 WL 900604, at \*8 (E.D.N.Y. Mar. 28, 2022); *Great Wall Med. PC v. Levine*, No. 157517/2017, 2022 WL 869725, at \* 1, \*3 (Sup. Ct. N.Y. Cty. Mar. 8, 2022); *Kesner v. Buhl*, 20 Civ. 3454 (PAE), 2022 WL 718840, at \*11 (E.D.N.Y. Mar. 10, 2022); *Ctr. for Med. Progress v. Planned Parenthood Fed’n of Am.*, 20-cv-7670, 2021 WL 3173804, at \*8 n.3 (S.D.N.Y. July 27, 2021); *Sweigert v. Goodman*, 18-cv-8653, 2021 WL 1578097, at \*2 (S.D.N.Y. Apr. 22, 2021); *Reus v. ETC Hous. Corp.*, 72 Misc. 3d 479, 485 n.\* (Sup. Ct. Clinton Cty. 2021); *Project Veritas v. N.Y. Times Co.*, No. 63921/2020, 2021 WL 2395290, at \*7 (Sup. Ct. N.Y. Cty. Mar. 18, 2021); *Sackler v. Am. Broad. Cos.*, 71 Misc. 3d 693, 698 (Sup. Ct. N.Y. Cty. 2021); *Palin v. N.Y. Times Co.*, 510 F. Supp. 3d 21, 27 (S.D.N.Y. 2020).

pocketed individuals who have outrageously used New York’s court system as a means to harass New Yorkers who have publicly disagreed with them.” Legislative Enactment Statement at 1. The Legislature recognized that this occurs “[t]oo often.” *Id.* The probable consequence of an amendment targeting a pervasive problem is that the question of retroactive reach is raised in numerous pending cases.

And these cases are not mere statistics; each is a unique attack on unique speech and a unique person. The Legislature found that “[t]hese types of threats often incentivize self-censorship and thus stifle free speech.” *Id.* That would have been the case for both *Amicae* and Ms. Sebert had they not had the courage to speak out, and the Legislature intended to mitigate their personal risk in their doing so. Similar examples abound. *See, e.g.,* Ellie Shechet, *A Comedian Called Out an Alleged Rapist—And Was Sued for \$38 Million*, Jezebel (Nov. 2, 2017), <https://jezebel.com/a-comedian-called-out-an-alleged-rapist-and-was-sued-for-1819818078> (describing lawsuit filed against woman who spoke out about rape by a successful comedian); *Manhattan Doctor Sues Patient For \$1 Million For Posting Negative Reviews Online*, CBS News New York (May 29, 2018), <https://www.cbsnews.com/newyork/news/million-dollar-online-review-lawsuit/#Ww6bLFzVH4ctwitter> (describing lawsuit filed for negative Yelp review). The amended anti-SLAPP law was intended to have sweeping reach, the free-speech rights of innumerable persons is of fundamental concern to the State and its



judiciary, and the question presented is consequently of statewide interest and impact.

B. Denial of leave to appeal would create a significant risk of inconsistent rulings in similar cases, depending on the forum. Every judicial opinion cited in footnote 8, above, held that the 2020 Amendments apply to pending cases. This Court's contrary holding creates the type of conflict among courts that necessitates immediate review in the Court of Appeals.

Even if this Court stands by its ruling, its decision is insufficient to resolve the question presented in all (or even most) cases. The question presented has been raised in many federal diversity actions, and federal courts "are not strictly bound by state intermediate appellate courts" on questions of state law and may reach different conclusions based on "other persuasive data that the highest court of the state would decide otherwise." *DiBella v. Hopkins*, 403 F.3d 102, 112 (2d Cir. 2005) (citation omitted). As a result, until the Court of Appeals decides the question presented, rulings at odds with this Court's are likely to continue. In fact, at least one decision after this Court's ruling applied the 2020 anti-SLAPP amendments retroactively. *NOVAGOLD Res., Inc., v. J Capital Res. USA LLC*, 20-cv-2875, 2022 WL 900604, at \*9 (E.D.N.Y. Mar. 28, 2022). Further, the Second Department is currently considering the question presented and will not be bound by this Court's ruling. *VIP Pet Grooming Studio, Inc. v. Sproule*, No. 21-04228. There is a

significant and unacceptable risk that, if the Court of Appeals does not resolve this conflict, different rules will apply to similarly situated cases depending solely on forum.

C. The question presented is fit for Court of Appeals review for the additional reason that it is “novel.” 22 N.Y.C.R.R. § 500.22(b)(4). Courts affording the 2020 Amendments retroactive reach have relied on *Gleason*, which reaffirmed that “remedial legislation should be given retroactive effect in order to effectuate its beneficial purpose,” 96 N.Y.2d at 122; *see, e.g., NOVAGOLD Res.*, 2022 WL 900604, at \*8; *Coleman*, 523 F. Supp. 3d at 258. This Court, however, without citing *Gleason*, suggested that the subsequent *Regina Metro* decision “limited” the scope of this principle. *Gottwald*, 2022 WL 709757, at \*1. As noted, *Regina Metro* addressed legislation creating liability for prior conduct that upset weighty reliance interests and should not be read to reach cases like this one, where no such interests are impaired. But, whether or not this Court agrees, any conflict between and among Court of Appeals decisions presents a novel question for the Court of Appeals to resolve. If *Regina Metro* abrogated *Gleason*, it is the Court of Appeals’ responsibility to announce that. This Court should grant leave to appeal to allow the issues to be resolved in a uniform fashion governing all similarly situated cases.

## CONCLUSION

The Court should either rehear this case and conclude that the 2020 anti-SLAPP amendments reach cases pending prior to enactment or grant leave to appeal.

Dated: New York, New York  
April 15, 2022

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## **PRINTING SPECIFICATION STATEMENT**

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## APPENDIX A

Descriptions of *amicae*:

**Catherine Reddington** is an independent person. She is a 2019 graduate of Syracuse University. In April 2017, after attending a fraternity party, Ms. Reddington was sexually assaulted by a classmate, Alex Goldman. She reported the assault to the university, and after an investigation, Mr. Goldman was found responsible for violating the school's sexual assault policy and expelled. A year later, in June 2018, Ms. Reddington posted on social media about her experiences as a victim of sexual assault and the trauma she endured, both from the assault and from the way she perceived her case was mishandled by law enforcement. As a result of her posts, Mr. Goldman sued Ms. Reddington for defamation and tortious interference in the Eastern District of New York, alleging that she knowingly falsified her claims that he had sexually assaulted her. The case proceeded through discovery, and Mr. Reddington's summary judgment motion to dismiss Mr. Goldman's claims is currently pending before Judge Rachel P. Kovner.

**Maria Kim Grand** is an independent person. She is a professional jazz saxophonist and a founding member of We Have Voice, a collective of musicians and performers formed to bring awareness to issues of inequality in the music industry. As part of that effort, in November 2017, Ms. Grand circulated a letter detailing what she believed to be sexual harassment carried out by her mentor, Steven Coleman, during a years-long tumultuous personal and professional relationship. In October 2018, Mr. Coleman sued Ms. Grand for libel in the Eastern District of New York alleging that the statements in her letter were false. On February 21, 2021, Judge Vitaliano granted Ms. Grand summary judgment on all of Mr. Coleman's claims. On July 7, 2021, Mr. Coleman appealed the decision to the United States Court of Appeals for the Second Circuit. Oral arguments are scheduled to be held May 13, 2022.

**APPENDIX B**

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## **Exhibit B**

Supreme Court of the State of New York

Appellate Division, First Judicial Department

Manzanet-Daniels, J.P., Mazzarelli, González, Shulman, Rodriguez, JJ.

15495 & LUKASZ GOTTWALD professionally known as Index No. 653118/14  
M-0497 DR. LUKE, et al., Case No. 2021-03036  
Plaintiffs-Appellants,

-against-

KESHA ROSE SEBERT professionally known  
as KESHA,  
Defendant-Respondent,

PEBE SEBERT et al.,  
Defendants.

\_\_\_\_\_  
SAMUEL D. ISALY  
Amicus Curiae.

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Mitchell Silberberg & Knupp LLP, New York (Christine Lepera of counsel), for appellants.

O'Melveny & Myers LLP, New York (Leah Godesky of counsel), for respondent.

Carter Ledyard & Milburn LLP, New York (Alan S. Lewis and John J. Walsh of counsel), for Samuel D. Isaly, amicus curiae.

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Order, Supreme Court, New York County (Jennifer G. Schecter, J.), entered on or about June 30, 2021, which granted defendant's motion for a ruling that Civil Rights Law § 76-a applies to plaintiffs' defamation claims against her and for leave to assert a counterclaim against plaintiffs under Civil Rights Law § 70-a, unanimously reversed, on the law, without costs, and the motion denied.

Contrary to the decision of the motion court and in other nonbinding decisions (see e.g. *Palin v New York Times Co.*, 510 F Supp 3d 21 [SD NY 2020]), there is



insufficient evidence supporting the conclusion that the legislature intended its 2020 amendments to the anti-strategic lawsuit against public participation (anti-SLAPP) law (*see* Civil Rights Law § 70 *et seq.*) to apply retroactively to pending claims such as the defamation claims asserted by plaintiffs in this action.

The Court of Appeals has stated, in general terms, that “ameliorative or remedial legislation” should be given “retroactive effect in order to effectuate its beneficial purpose” (*Matter of Marino S.*, 100 NY2d 361, 370-371 [2003], *cert denied* 540 US 1059 [2003]), and this Court, in limited circumstances, has found the requisite legislative intent to apply a statute retroactively based on the remedial nature of the statute (*see e.g. Matter of Jaquan L. [Pearl L.]*, 179 AD3d 457 [1st Dept 2020] [retroactive application of amendment that acts remedially to expand existing benefits to a class of persons arbitrarily denied those benefits by the original legislation]). Nevertheless, in *Matter of Regina Metro. Co., LLC v New York State Div. of Hous. & Community Renewal* (35 NY3d 332 [2020]), the Court of Appeals noted that the United States Supreme Court had previously limited “the continued utility of the tenet that new ‘remedial’ statutes apply presumptively to pending cases” (35 NY3d at 365), and it has otherwise noted that “[c]lassifying a statute as remedial does not automatically overcome the strong presumption of prospectivity since the term may broadly encompass any attempt to supply some defect or abridge some superfluity in the former law” (*Majewski v Broadalbin-Perth Cent. School Dist.*, 91 NY2d 577, 584 [1998] [internal quotation marks omitted]). In addition, where, as here, the fact that the legislature has provided that amendments shall “take effect immediately,” even though that may evince a “sense of urgency,” the meaning of that phrase is, at best, “equivocal”

in an analysis of retroactivity (*Majewski*, 91 NY2d at 583; see *Aguaiza v Vantage Props., LLC*, 69 AD3d 422 [1st Dept 2010]).

In light of the above principles and the factual evidence that the amendments to New York's anti-SLAPP law were intended to better advance the purposes of the legislation by correcting the narrow scope of the prior anti-SLAPP law, we find that the presumption of prospective application of the amendments has not been defeated. The legislature acted to broaden the scope of the law almost 30 years after the law was originally enacted, purportedly to advance an underlying remedial purpose that was not adequately addressed in the original legislative language. The legislature did not specify that the new legislation was to be applied retroactively. The fact that the amended statute is remedial, and that the legislature provided that the amendments shall take effect immediately, does not support the conclusion that the legislature intended retroactive application of the amendments.

Given the conclusion that the 2020 amendments expanding the scope of Civil Rights Law § 76-a do not apply retroactively to cover plaintiffs' pending defamation claims, the motion seeking a ruling to that effect and for leave to assert a Civil Rights

Law § 70-a counterclaim premised on plaintiffs' claims being subject to the anti-SLAPP law must be denied in both respects.

**M-0497 – *Lukasz Gottwald v Kesha Rose Sebert***

Motion of nonparty Samuel D. Isaly for leave to file brief as amicus curiae, granted.

THIS CONSTITUTES THE DECISION AND ORDER  
OF THE SUPREME COURT, APPELLATE DIVISION, FIRST DEPARTMENT.

ENTERED: March 10, 2022

A handwritten signature in black ink, appearing to read "Susanna M. Rojas". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Susanna Molina Rojas  
Clerk of the Court