UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

UNITED SOVEREIGN AMERICANS, INC., et al.,

Petitioners,

vs. CASE NO.: 4:24-cv-00327-MW-MAF

CORD BYRD, in his official capacity as the Florida Secretary of State, et al.,

Respondents.
_____/

RESPONDENTS BYRD AND MOODY'S MOTION TO DISMISS PETITION FOR RELIEF IN THE FORM OF AN AMENDED WRIT OF MANDAMUS

Respondents Cord Byrd, in his official capacity as the Secretary of State of the State of Florida, and Ashley Moody, in her official capacity as the Attorney General of the State of Florida, by and through undersigned counsel and pursuant to Fed. R. Civ. P. 12(b)(1) and 12(b)(6), hereby move to dismiss Petitioners' Second Amended Petition for Relief in the Form of an Amended Writ of Mandamus (hereinafter the Petition). ECF 18.

INTRODUCTION

On November 6, 2024, Petitioners filed the Petition alleging violations of the National Voter Registration Act (NVRA) and Help America Vote Act (HAVA).

Petitioners allege that there were various defects with the 2022 general election that they believe will occur in future general elections. Therefore, Petitioners request that this Court issue a Writ of Mandamus, compelling all Respondents to perform allegedly ministerial duties to ensure that these defects do not occur in future elections.

Respondents Byrd and Moody are officers of the State of Florida. *See* § 15.01, Fla. Stat.; § 16.01, Fla. Stat.; art. IV, § 10, Fla. Const.; art. XII, § 24, Fla. Const. The only relief sought against Byrd and Moody is mandamus. The Petition must therefore be dismissed because this Court lacks subject matter jurisdiction to order mandamus against state officials. Further, because Petitioners lack individual and organizational standing, the Court lacks subject matter jurisdiction for that additional reason. Furthermore, Petitioners fail to state a cause of action in which relief may be granted because they do not allege any clear right under HAVA, a mandatory duty necessitating mandamus, nor sufficient facts that no other relief is available.

LEGAL STANDARD

Under Rule 12(b)(1), a complaint must be dismissed if the court lacks subject matter jurisdiction. *Arbaugh v. Y&H Corp.*, 546 U.S. 500, 506 (2006). Article III prohibits federal courts from entertaining suits where they lack jurisdiction, which includes cases where the plaintiff lacks standing to "invoke the power of the federal courts." *Morales v. U.S. Dist. Ct. for S. Dist. of Fla.*, 580 F. App'x 881, 885 (11th Cir.

2014) (citing *Steele v. Nat'l Firearms Act Branch*, 755 F.2d 1410, 1413 (11th Cir.1985)). Thus, subject matter jurisdiction requires both that the plaintiff have standing to sue *and* that the court have power to issue the relief requested. *See id.* (finding lack of subject matter jurisdiction where the plaintiff failed to satisfy the Article III requirements for standing: injury, causation, and redressability); *Bailey v. Silberman*, 226 F. App'x 922, 924 (11th Cir. 2007) (holding that the district court properly dismissed the complaint because court lacked jurisdiction to issue the writ of mandamus).

Moreover, a complaint may also be dismissed for failure to state a claim under Rule 12(b)(6). In determining whether the plaintiff sufficiently plead a claim, the court must determine whether the complaint "contain[s] sufficient factual matter, accepted as true, to 'state a claim to relief that is plausible on its face.'" *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) (quoting *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007)). To survive a motion to dismiss, "the factual allegations must be enough to raise a right to relief above the speculative level . . . [and] must contain something more than a statement of facts that merely creates a suspicion of a legally cognizable right of action." *Twombly*, 550 U.S. at 555 (citations omitted).

ARGUMENT

I. This Court Lacks Jurisdiction to Issue a Writ of Mandamus Against Respondents Byrd and Moody.

Petitioners request that this Court enter a writ of mandamus compelling the State Respondents to comply with the National Voter Registration Act (NVRA) and

the Help Americans Vote Act (HAVA) ECF 18 at ¶ 246. Petitioner seeks no other relief from the State Respondents in the Petition. Id. at ¶¶ 242-291.

Petitioners assert that this Court has jurisdiction to issue a writ of mandamus to the State Respondents pursuant to 28 U.S.C. § 1651, the "All Writs Act." ECF 18 at ¶¶ 242-272. However, 28 U.S.C. § 1361 provides that "district courts shall have original jurisdiction of any action in the nature of mandamus *to compel an officer or employee of the United States or any agency thereto* to perform a duty owed to the plaintiff." (emphasis added). Federal district courts lack jurisdiction to issue writs of mandamus to compel state officials. *Bailey v. Silberman*, 226 Fed. Appx 922, 924 (11th Cir. 2007), citing to *Moye v. Clerk, DeKalb Cnty Sup. Court*, 474 F.2d 1275, 1276 (5th Cir. 1973); *see also Crook v. Mallard*, No. 4:19-cv-381-MW-HTC, 2019 WL 5270235 (N.D. Fla. Sept. 17, 2019), report and recommendation approved 2019 WL 5268557, Oct. 17, 2019. ("[F]ederal courts are without jurisdiction to issue writs compelling action by state officials in the performance of their duties where mandamus is the only relief sought"); *Casey v. Tucker*, No. 2:12-cv-651-FtM-29 DNF, 2012 WL 6615019 at *2 (M.D. Fla. Dec. 19, 2012) (same); *Davis v. Lansing*, 851 F.2d 72, 74 (2nd Cir. 1988) ("The federal courts have no general power to compel action by state officials" and when a plaintiff "expressly [seeks] relief in the nature of mandamus," a federal court lacks jurisdiction to grant such relief). Federal

Mandamus is available only to "compel an officer or employee of the United States or any agency thereof to perform a duty owed to the plaintiff." 28 U.S.C. § 1361.

Nor does the All Writs Act, 28 U.S.C. § 1651, provide this Court jurisdiction to entertain the Petition for Amended Writ of Mandamus separate and apart from 28 U.S.C. § 1361. "[T]he All Writs Act provides 'the Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.' 28 U.S.C. § 1651(a). "However, the Act does not empower a district court to create jurisdiction where none exists." *Casey v. Tucker*, 2012 WL 6615019 at *2. "To the contrary, a court may issue orders under the Act only to protect a previously and properly acquired jurisdiction." *Gehm v. New York Life Ins. Co*., 992 F.Supp. 209, 211 (E.D. N.Y. 1998).

Petitioners argue that this Court has "the authority to compel Respondent State officials because said officials are charged by the U.S. Constitution in the carrying out of federal law where Congress has asserted its power to 'alter' existing Florida federal election procedures as it did in exacting NVRA and HAVA." ECF 18 at ¶ 272. Plaintiffs, however, are unable to cite to any case law, statute, or constitutional provision supporting this novel theory. The Elections Clause and the Electors Clause authorize the states to conduct and regulate federal elections as a matter of state action. Art. I, § 4, cl. 1 & Art. II, § 1, cl. 2, U.S. Const. If state officials were

transformed into federal officials whenever they were responsible for discharging a state duty falling under the penumbra of federal law, thus giving the federal courts jurisdiction to issue writs of mandamus to compel the performance of their duties, there would be ample case law reflecting Petitioner's argument. Instead there is none.

Because State Respondents are Florida state officers, and because Petitioners allege only a claim for mandamus against them, this Court lacks subject matter jurisdiction over the most recent Petition for Amended Writ of Mandamus pursuant to Federal Rule of Civil Procedure 12(b)(1). The Petition must therefore be dismissed as to the State Respondents for lack of subject matter jurisdiction.

II. Petitioners Lack Standing Because They Fail to Allege Any Concrete or Particularized Injury.

a. The corporate entities lack standing because they suffered no injury and cannot plausibly claim "associational standing."

Corporate Petitioners United Sovereign Americans and Citizens Defending Freedom are both corporate entities; the former incorporated in Missouri and the later in Florida. ECF 18 at ¶¶ 61, 62.

The corporate Petitioners fail to identify an injury or the "invasion of a legally protected interest," nor can they adequately identify how that injury affects them "in a personal and individual way." *See Gill v. Whitford,* 585 U.S. 48, 65 (2018) (quoting *Lujan,* 504 U.S. at 560). Neither United Sovereign Citizens nor Citizens Defending

Freedom can vote in federal elections and therefore cannot identify an invasion of a legally protected interest.

The United States District Court for the District of Maryland addressed a similar issue in a civil action brought by United Sovereign and found that the corporate entities did not have standing. *See Maryland election Integrity, LLC v. Maryland State Board of Elections*, No. SAG-24-00672, 2024 WL 2053773 (D. Md. May 8, 2024) ("the alleged harm is 'simply a setback to the organization's abstract social interests' rather than a 'concrete and demonstrable injury to the organization's activities.'") (quoting *Havens Realty Corp. v. Coleman*, 455 U.S. 363, 379 (1982)).

To the extent the corporate entities rest their claim of standing on the individual Petitioners, otherwise known as 'associational standing,' their complaint also fails. First, the complaint is devoid of any reference to individual Petitioners' membership in United Sovereign Americans or Citizens Defending Freedom. To allege standing, an association must plausibly plead that: (a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit." *Doe v. Stincer*, 175 F.3d 879, 882 (11th Cir. 1999) (quoting *Hunt v. Wash. State Apple Advertising Comm'n*, 432 U.S. 333, 343 (1977)). Petitioners' associational standing fails because none of the individual Petitioners are alleged to be members of the

corporate Petitioners. And, as explained below, none of the individual Petitioners "have standing to sue in their own right." *See, e.g., Hunt*, 432 U.S. at 343.

b. The individual Petitioners lack standing because they have suffered no injury.

The remaining Voting Petitioners claim to be Florida residents and are purportedly registered voters and in some cases candidates for elected office within the State of Florida. ECF 18, ¶¶ 144, 149. Similar to the *Maryland* case, none of the Voting Petitioners provide any information as to whether they voted in Florida elections. *See Maryland*, 2024 WL 2053773; *see also Gill*, 585 U.S. at 65 ("a person's right to vote is individual and personal in nature."). Petitioners allege generalized grievances applicable to every voter within the State of Florida, e.g. "The prayer for relief seeks the protection of Petitioners' rights, as well as those of every voting citizen of the state, to have their vote fairly counted . . . ." *See* ECF 18, ¶ 53. Therefore, the alleged injuries are not particularized and concrete as to any Petitioner. *See Lujan,* 504 U.S. at 573–74 ("We have consistently held that a plaintiff raising only a generally available grievance about government—claiming only harm to his and every citizen's interest in proper application of the Constitution and laws, and seeking relief that no more directly and tangibly benefits him than it does the public at large—does not state an Article III case or controversy."); *Maryland,* 2024 WL 2053773, *4 (citing *Moore v. Circosta,* 494 F. Supp. 3d 289, 312 (M.D.N.C. 2020) ("[T]he notion that a single person's vote will be less valuable

as a result of unlawful or invalid ballots being cast is not a concrete and particularized injury in fact necessary for Article III standing."); *Iowa Voter All. v. Black Hawk Cnty.,* 515 F. Supp. 3d 980, 991 (N.D. Iowa 2021) ("Because plaintiffs cannot show how the counties' alleged violations compromised the integrity of the election such that they were injured in a personal and individual way, their injury is undifferentiated from the injury to any other citizen."); *O'Rourke v. Dominion Voting Sys. Inc*., No. 20-CV-03747, 2021 WL 1662742, at *6–8 (D. Colo. Apr. 28, 2021) (collecting cases dismissing allegations of election fraud for failure to show standing), aff'd, No. 21-1161, 2022 WL 1699425 (10th Cir. May 27, 2022), cert. denied sub nom. *O'Rourke v. Dominion Voting Sys*., No. 22-305, 2022 WL 17408191 (U.S. Dec. 5, 2022)).

The hypothetical possibility that the alleged problems in the 2022 combined federal and state elections in Florida could resurface in the 2026 federal election is speculative at best and does not give rise to a certain impending injury. *See* ECF 18, ¶ 23. In fact, Petitioners repeatedly allege throughout their complaint what they "believe and therefore aver," but fail to base their beliefs in anything tangible. See generally ECF 18. "Allegations of possible future injury do not satisfy the requirements of Article III." *Whitmore v. Arkansas*, 495 U.S. 149, 158 (1990)).

The Sixth Circuit Court of Appeals addressed a similar issue in *Shelby Advocates for Valid Elections v. Hargett*, 947 F.3d 977 (6th Cir. 2020) ("In the

absence of imminent harm, the individual plaintiffs have no standing to sue and thus no basis for moving forward with their claims."). In *Shelby,* the Sixth Circuit held that Plaintiffs' alleged injuries based on "prior system vulnerabilities, previous equipment malfunctions, and past election mistakes," did not create a cognizable imminent risk of harm. *Id.* at 981. Notably, Petitioners do not allege that any of these issues impacted their ability to register for the 2024 election. *See id.* at 981 (6th Cir. 2020) (noting plaintiffs' allegations of past election issues failed to meet injury in fact because, inter alia, "they do not allege that [the issues] ever happened to any of them or in any election in which they were candidates").

Because Petitioners have "failed to demonstrate the imminence of any injury in fact, depriving them of Article III standing to bring this claim," *see id*. at 983, this Court again lacks subject matter jurisdiction over Petitioner's claims against the State Respondents. The most recent Petition must be dismissed for this reason as well.[1]

III. Petitioners fail to state a cause of action on which relief may be granted.

A Writ of Mandamus is a "drastic" remedy which may only be granted in "extraordinary circumstances." *Allied Chem. Corp. v. Daiflon, Inc.*, 449 U.S. 33, 34 (1980). Mandamus is only appropriate where "(1) the plaintiff has a clear right to the

[1] Given Petitioners' inability to show an imminent, particularized injury, they cannot establish standing. There is no need discuss traceability and redressability.

relief requested; (2) the defendant has a clear duty to act; and (3) no other adequate remedy is available." *Morales*, 580 F. App'x at 885.

Petitioners fail to establish a clear right to relief. Petitioners base their entire Petition on the Help America Vote Act (HAVA) and the alleged voter registration discrepancies which, they insist, violate HAVA. Petitioners correctly state that HAVA governs voting system errors. However, Petitioners mistakenly assume that alleged voter registration errors constitute a voting system error governed by HAVA.

52 U.S.C. § 21081(a)(5) concerns "[t]he error rate of the voting system in counting ballots (determined by taking into account only those errors which are attributable to the voting system and *not attributable to an act of the voter*) . . ." (emphasis added). A voting system is defined as:

> (1) *the total combination of mechanical, electromechanical, or electronic equipment* (including the software, firmware, and documentation required to program, control, and support the equipment) that is used—
>
> (A) to define ballots;
>
> (B) to cast and count votes;
>
> (C) to report or display election results; and
>
> (D) to maintain and produce any audit trail information; and
>
> (2) the practices and associated documentation used—
>
> (A) to identify system components and versions of such components;
>
> (B) to test the system during its development and maintenance;
>
> (C) to maintain records of system errors and defects;
>
> (D) to determine specific system changes to be made to a system after the initial qualification of the system; and
>
> (E) to make available any materials to the voter (such as notices, instructions, forms, or paper ballots).

52 U.S.C. § 21081(b) (emphasis added).

HAVA does *not* provide that potential errors in voter *registration* constitute voter *system* errors. Petitioners mistakenly allege that they are entitled to relief based upon errors on the part of *voters* and not voting systems, which HAVA explicitly states it does not cover. *See* 52 U.S.C. § 21081(a)(5). Therefore, Petitioners fail to state that they have a clear right to relief under HAVA.

Next, in showing that the defendant has a clear duty to act, the plaintiff must provide a nondiscretionary duty. *Heckler v. Ringer*, 466 U.S. 602, 616 (1984). Here, Petitioners fail to allege any nondiscretionary duty on the part of Respondents Byrd and Moody. Petitioners request that this Court compel Respondents to investigate, correct, or prosecute officials not conforming with the law. ECF 18 at p. 65. The only support that Petitioners give for this being a nondiscretionary act is the conclusive statement "Respondents ministerially perform their duties as the law intended." *Id.* However, none of these actions are a mandatory, non-discretionary duty on the part of Respondents Byrd or Moody.

In terms of Respondent Moody, her role as the Attorney General is clothed with considerable discretion. *Thompson v. Wainwright*, 714 F.2d 1495, 1500 (11th Cir. 1983). The Attorney General is not mandated to investigate or prosecute any crime. *See* § 16.56, Fla. Stat. (listing the offenses that the Attorney General *may* investigate and prosecute); *Bondi v. Tucker*, 93 So. 3d 1106, 1109 (Fla. Dist. Ct. App.

2012) ("[T]he Attorney General's discretion to litigate, or intervene in, legal matters deemed by her to involve the public interest and that her standing cannot be challenged or adjudicated." (cleaned up)). It should also be noted that Petitioners admit that the decision to prosecute is discretionary. *See* ECF 18 at p. 65 ("where warranted in their discretion, prosecuting persons or entities . . .").

Moreover, as discussed above, Respondents request that this Court order Respondent Byrd to perform some action based on these allegations. *See generally* ECF 18 at ¶ 51. However, naked allegations devoid of factual allegations to support a mandatory duty owed by Respondent Byrd are insufficient to state a claim for mandamus. *See Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009) ("Nor does a complaint suffice if it tenders 'naked assertions' devoid of 'further factual enhancement.'" (citation omitted)).

Furthermore, Petitioners do not sufficiently allege that no other relief is available. In Petitioners' Requested Relief, they state that declaratory or injunctive relief is not available because harm from the 2024 election "is not yet realized and Petitioners are seeking prospective relief beginning in 2026." ECF 18 at ¶ 257. However, Petitioners state throughout the entire Petition that their alleged injuries stem from alleged discrepancies appearing from the 2022 election. *See generally id.* Thus, the fact that Petitioners cannot allege any harm from the 2024 election would have no bearing on this Petition. Furthermore, the fact that Petitioners are seeking

prospective relief does not prohibit them from seeking injunctive relief. *See Gagliardi v. TJCV Land Tr.*, 889 F.3d 728, 734 (11th Cir. 2018) ("Injunctive relief, unlike damages, is inherently prospective in nature."). The basis of mandamus is to grant relief where plaintiffs cannot seek relief in another way. *See Hoever v. Dep't of Homeland Sec.*, 637 F. App'x 565, 566 (11th Cir. 2016) ("Thus, a plaintiff cannot resort to the extraordinary remedy of mandamus where there is an adequate alternative "avenue for relief[.]" (citation omitted)). Because Petitioners cannot establish the three requirements to issue a writ of mandamus, the Petition should be dismissed pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a claim upon which relief may be granted.

CONCLUSION

For the reasons set forth above, the most recent Petition for Relief in the Form of an Amended Writ of Mandamus [ECF 18] should be dismissed.

Respectfully submitted this 3rd day of January 2025.

ASHLEY MOODY
FLORIDA ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which provides notice to all parties this 3rd day of January 2025.

/s/ Timothy L. Newhall
Timothy L. Newhall