

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT  
IN AND FOR LEON COUNTY, FLORIDA**

ROBERT ROCHFORD,

Plaintiff,

CASE NO.: 24-CA-001976

vs.

KATHY CASTOR, in her capacity  
As the Democratic candidate for  
U.S. Congressional District 14, *et. al.*,

Respondents.

**DEFENDANT, CRAIG LATIMER'S, RESPONSE IN OPPOSITION TO PLAINTIFF'S  
MOTION FOR LEAVE TO AMEND COMPLAINT**

Defendant, CRAIG LATIMER, in his official capacity as Hillsborough County Supervisor of Elections (hereinafter "SOE Latimer"), by and through his undersigned counsel, files this Response in Opposition to Plaintiff's Motion for Leave to Amend Complaint filed January 28, 2025. Plaintiff's amendment would be futile because his proposed Amended Complaint fails to state a cause of action in all respects, and could not so state one based on the core allegations therein, even upon further amendment. Plaintiff further lacks standing. Additionally, filing of the proposed Amended Complaint in Leon County would be subject to dismissal as violative of SOE Latimer's home venue privilege. Accordingly, SOE Latimer respectfully requests that the Court **DENY** Plaintiff's Motion for Leave to Amend, and **GRANT** SOE Latimer's December 27, 2024, Motion to Dismiss Verified Complaint and Contest of the November 5, 2024 General Election Results, based upon Plaintiff having stipulated in open court on January 8, 2025, to lack of jurisdiction.

## INTRODUCTION

After losing the Congressional District 14 race in the November 5, 2024, General Election, Plaintiff filed a one count complaint for election contest, taking issue with certain vote-by-mail request data available to candidates, parties, and committees. Defendants filed Answers and Affirmative Defenses and some Defendants, SOE Latimer included, filed Motions to Dismiss, principally based on the Court's lack of jurisdiction to entertain an election contest in a congressional race. Plaintiff admitted to this lack of jurisdiction at the Case Management Conference held on January 28, 2025, and orally sought leave to amend his complaint. Pursuant to the Court's instruction, Plaintiff filed on January 28, 2025, a Motion for Leave to Amend Complaint and Amend Style of the Cause, along with a proposed three-count Amended Complaint. Plaintiff now claims that he is not challenging the election in which he was a candidate, but rather the voter rolls at large. The Court ordered responses to a motion for leave to amend be filed by February 14, 2025.

Although leave to amend shall be freely granted, an exception to that is when amendment would be futile. Fla. R. Civ. P. 1.190(a); *Thompson v. Bank of New York*, 862 So. 2d 768, 769-70 (Fla. 4th DCA 2003). "A proposed amendment is futile if it is insufficiently pled ... or is insufficient as a matter of law." *Armiger v. Associated Outdoor Clubs, Inc.*, 48 So. 3d 864, 871 (Fla. 2d DCA 2010) (Citations and quotations omitted).

Here, amendment would be futile because Plaintiff's proposed Amended Complaint is both insufficiently pled and insufficient as a matter of law. In this Response, SOE Latimer focuses primarily on the legal insufficiency in that the proposed Amended Complaint legally fails to state a cause of action in all respects, and could not state one based on the core allegations therein, even upon further amendment. Plaintiff additionally lacks standing as to each count. Filing the Proposed

Amended Complaint would additionally be futile in that it would be subject to dismissal as violative of SOE Latimer's home venue privilege. The futility of each of Plaintiff's three causes of action set forth in the proposed Amended Complaint – Declaratory Judgment, Mandamus, and Pure Bill of Discovery – are addressed in turn, followed by a brief discussion of governmental entity home venue privilege and its application here.

**I. Declaratory Judgment fails.**

In Count I, Plaintiff seeks an “explanation” pertaining to: 1) information contained within vote-by-mail request data; 2) a “fraud detection and prevention program” that he believes was “turned off”; and 3) what he has summarily concluded are “clones” within the voter rolls. Proposed Amended Complaint ¶ 53. For relief, he asks the Court to enter a Final Judgment “declaring that the voter rolls are corrupted and ordering such further and other relief as the Court may deem just and proper.” *Id.* “Wherefore” clause following ¶ 54. Plaintiff fails to state a cause of action for declaratory judgment, and lacks standing to pursue any such claim.

“To trigger jurisdiction under the declaratory judgment act, the moving party must show that he is in doubt as to the existence or nonexistence of some right or status, and that he is entitled to have such doubt removed.” *Kelner v. Woody*, 399 So. 2d 35, 37 (Fla. 3d DCA 1981). Stated another way, to invoke the jurisdiction of the Court, a declaratory judgment must contain, at its core, an actual or justiciable controversy between the parties “based on articulated facts which demonstrate a real threat of immediate injury” to a plaintiff. *See Apthorp v. Detzner*, 162 So. 3d 236, 240 (Fla. 1st DCA 2015). A plaintiff, as the one seeking such declaration, has the burden to demonstrate entitlement to such a declaration. *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d 851, 859 (Fla. 1st DCA 2013).

Plaintiff does not articulate any actual or justiciable legal controversy between himself and SOE Latimer. He has not alleged any of the following necessary elements of entitlement to a declaration: (1) a good-faith dispute between himself and SOE Latimer; 2) a justiciable question concerning the existence or non-existence of a right or status, or some fact on which such right or status may depend; (3) that he is in doubt as to any right or status; and (4) a bona-fide, actual, present, and practical need for the declaration. *See Id.*

Rather, the election contest claim having been abandoned, Plaintiff stands as an ordinary citizen and voter in Florida who has questions and areas he may not understand about the vote-by-mail data, the elections process, and the voter registration database, and has quickly jumped to his own conclusions. He now asks the Court in a legal forum to agree with him. That Plaintiff may harbor questions or misunderstandings about the Florida elections system does not create an actual or justiciable controversy appropriate for resolution in this Court. Plaintiff has not identified any dispute between himself and SOE Latimer, nor any right or status personal to Plaintiff that is at stake. He has not identified any real threat of immediate injury to himself. Accordingly, Plaintiff has not properly invoked the court's declaratory judgment jurisdiction as he has not stated a cause of action for declaratory judgment, he does not have standing, and he could not correct either upon still further amendment.

## **II. Mandamus too, is untenable.**

In his proposed Count II for Mandamus, Plaintiff alleges that Defendants must assure that elections are fair and transparent, and that it is their responsibility to investigate and make any necessary changes to “assure that the Voter Rolls are not corrupted nor able to be corrupted”. Proposed Amended Complaint ¶¶ 56–57. He alleges that Defendants have failed to investigate and make whatever changes are necessary to prevent corruption, and asks the Court to “order the

Defendants to fix and correct the issues with the Voter Rolls which permit corruption and to repair or eliminate the corruption, itself.” *Id.* ¶¶ 57–58.

Mandamus seeks to compel performance of a ministerial duty when a respondent has failed to perform such undisputable legal duty, and there are no adequate remedies at law. *See Jacobs Keeley, PPLC v. Chief Judge of Seventeenth Judicial Circuit*, 169 So. 3d 192, 193 (Fla. 4th DCA 2015). “A writ of mandamus is a common-law writ used to coerce the performance of any and all official duties where the official charged by law with the performance of such duty refused or failed to perform the same. . .” *State ex rel. Buckwalter v. City of Lakeland*, 150 So. 508, 511 (Fla. 1933). “A duty or act is defined as ministerial when there is no room for the exercise of discretion, and the performance being required is directed by law.” *Town of Manalapan v. Rechler*, 674 So. 2d 789, 790 (Fla. 4th DCA 1996). Notably, like any other cause of action, a Plaintiff must sufficiently allege standing. *See State ex rel. Hanna v. Lee*, 124 Fla. 588, 589 (Fla. 1936) (holding that a writ of mandamus “will not be granted merely for the purpose of defining the powers and duties of a public officer independent of any direct personal interest upon the part of him who seeks the relief.”).

Plaintiff’s vague and conclusory allegations as to corruption of the voter rolls and the exceedingly broad requested relief – demanding that Defendants undertake a broad “investigation” – do not, nor could they upon further amendment – state a cause of action for mandamus. An investigation, by its commonly understood nature, is an act involving discretion and decision making. Plaintiff’s request is not for a ministerial act to be performed. Further, Plaintiff fails to identify any direct personal interest necessary for standing.

The Third District Court of Appeal in *Centrust Sav. Bank v. City of Miami* affirmed dismissal of a petition for writ of mandamus filed by taxpayers and property owners seeking to

require the city to inspect property for possible building or zoning violations, and also to enforce fire resistivity provisions of the city's building code. *Centrust*, 491 So. 2d 576, 577 (Fla. 3d DCA 1986). The majority held that asking the city to perform building and zoning code inspections did not constitute the performance of a ministerial duty. *Id.* at 577. Just as in *Centrust*, asking SOE Latimer to perform voter registration list maintenance to remove what Plaintiff has summarily concluded are "clones" and to broadly investigate and make any necessary changes to "assure that the Voter Rolls are not corrupted nor able to be corrupted" are not ministerial duties appropriate for mandamus. Proposed Amended Complaint ¶¶ 15, 56–58. Voter registration list maintenance involves a complex statutory scheme that is continually ongoing and involves decision making based on interactions with voters as well as other evidence available to the SOE, and is in no way consistent with the performance of a discrete and undisputable ministerial duty.

Of note also in *Centrust*, the appellate court agreed with the lower court that the property owners lacked standing absent a claim that the property owners had suffered special injury apart from that suffered by the general public. *Centrust*, 491 So. 2d at 577. This holding by the majority in *Centrust* is consistent with the *Hanna* case noted above in which the Florida Supreme Court held that a direct personal interest was required in order to adequately demonstrate standing in a mandamus proceeding. *State ex rel. Hanna*, 124 Fla. at 589 ("The writ will not be granted merely for the purpose of defining the powers and duties of a public officer independent of any direct personal interest upon the part of him who seeks relief."). The same is true here. Plaintiff, having abandoned his election contest claim for lack of jurisdiction, does not allege any direct personal interest in the subject matter.

Because Plaintiff fails to state a cause of action for mandamus and he does not have standing to assert this claim, Count II for mandamus in the proposed Amended Complaint would fail at the pleading stage, and thus amendment to plead same would be futile.

### **III. A Pure Bill of Discovery is similarly untenable and fails.**

Plaintiff alleges that he is entitled to a pure bill of discovery to “marshall [sic] evidence to correct the voting issues present in the State of Florida”, namely what he believes to be “clones” or other aberrations within the voter registration system and to help answer questions he has surrounding the vote-by-mail request data related to the November 2024 General Election. Proposed Amended Complaint ¶¶ 4, 15–16. Plaintiff asks the Court to “[o]rder the Defendants to provide access to or produce any and all records related to the Voter Rolls and the voting which was done in 2024” so that he can “determine whether additional legal proceedings are warranted. *Id.* “Wherefore” clause following ¶ 61.

Plaintiff’s attempt to wield a pure bill of discovery in this broad and unfocused manner, and additionally alongside other proposed claims, is not a proper use of this limited cause of action. And, just as with the two claims discussed above, Plaintiff similarly lacks a sufficient legal interest to bring this count as well.

First, what a pure bill of discovery is, and what it is not. “In the absence of an adequate legal remedy, equity has long authorized a pure bill of discovery as an appropriate remedy to obtain information such as the identity of a proper party defendant or the appropriate legal theory for relief.” *Trak Microwave Corp. v. Culley*, 728 So. 2d 1177, 1178 (Fla. 2d DCA 1998). “A bill of discovery may also be used to obtain information necessary for meeting a condition precedent to filing suit.” *RAV Bahamas Ltd. v. Marlin Three, LLC*, 333 So. 3d 1158, 1161 (Fla. 3d DCA 2022) (Quotations omitted).

“A pure bill of discovery, however, is not to be used to determine whether evidence exists to support an allegation, but rather to determine in the absence of an adequate legal remedy the identity of a proper party defendant or the appropriate legal theory for relief.” *Kirlin v. Green*, 955 So. 2d 28, 30 (Fla. 3d DCA 2007) (Quotations omitted). A pure bill of discovery is “not to be used as a fishing expedition to see if causes of action exist.” *Publix Supermarkets, Inc. v. Frazier*, 696 So. 2d 1369, 1371 (Fla. 4th DCA 1997). Finally, it is also not “available simply to obtain a preview of discovery obtainable once suit is filed. Such a use of the bill places an undue burden on the court system.” *Mendez v. Cochran*, 700 So. 2d 46, 47 (Fla. 4th DCA 1997).

Finally, like all causes of action generally, a sufficient interest of the Plaintiff (standing) must be demonstrated. *See First Nat. Bank of Miami v. Dade-Broward Co.*, 125 Fla. 594, 596 (Fla. 1936) (finding allegations sufficient for bill of discovery where the complainant alleged, among other things, the complainant’s right to the relief, the complainant’s relationship to the discovery claimed, and that the discovery attempted to be had was material *to the complainant’s rights*).

As explained in more detail in the following paragraphs, Plaintiff violates all of the above parameters in seeking to pursue this cause of action. He simultaneously attempts to use it as a broad fishing expedition – seeking “access to or [production of] any and all records related to the Voter Rolls and the voting which was done in 2024”, while also improperly attempting to utilize it in conjunction with other causes of action proposed to be filed alongside it. Proposed Amended Complaint “Wherefore” clause following ¶ 61. He also fails to demonstrate that any discovery attempted to be had is material to his rights.

Plaintiff’s request to use this equitable cause of action as a means to “marshall [sic] evidence to correct the voting issues present in the State of Florida” is nothing more than a broad fishing expedition that cases have repeatedly stated is not a proper use of the pure bill of discovery,



nor does it state such a cause of action. Proposed Amended Complaint ¶ 4; *Mendez*, 700 So.2d at 47. In *Mendez*, the plaintiff filed a bill of discovery seeking audiotapes of conversations allegedly recorded without permission. *Id.* at 47. The court concluded that there was nothing in the record distinguishing the plaintiff's claim from that of others who would use the same "investigation tool to seek information that might uncover a potential claim." *Id.* Courts recognize that while this cause of action remains available even following the adoption of liberal rules of discovery in ordinary litigation, its use will be "relatively rare." See *JM Family Enterprises, Inc. v. Freeman*, 758 So. 2d 1175, 1176 (Fla. 4th DCA 2000) (employees seeking to determine whether they could bring suit against employer for allegedly adverse employment actions were not entitled to pure bill of discovery where nothing distinguished their claim from that of others who would use it as an investigation tool to seek information on a potential claim). Here too, nothing in Plaintiff's Proposed Amended Complaint demonstrates Respondents' particular need for a pure bill of discovery, and the broad net that it attempts to cast – any and all information about Florida's voter rolls and voting in the 2024 General Election – would serve as nothing more than an improper fishing expedition.

Second, this cause of action is also improper where Plaintiff attempts to utilize it in conjunction with a proposed suit containing two other causes of action. Plaintiff alleges that there is evidence of corruption in the Florida voter rolls and proposes to file two distinct causes of action – for declaratory judgment and mandamus – based on that purported evidence. A pure bill of discovery is not "available simply to obtain a preview of discovery obtainable once suit is filed. Such a use of the bill places an undue burden on the court system." *Mendez*, 700 So. 2d at 47. Here, because Plaintiff attempts to file two other distinct causes of action based on alleged evidence that he believes shows corruption of the voter rolls, a separate cause of action sounding

in an equitable bill of discovery is not simultaneously available to obtain more of that same evidence that he could obtain through normal discovery if his two distinct claims were viable and progressed.

Lastly, just as with the preceding two attempted causes of action addressed, here too Plaintiff demonstrates no personal legal stake or interest in the discovery that he seeks. As a result, he also has no standing to file a pure bill of discovery.

Summarizing the problems with this proposed third count, Plaintiff has not stated a cause of action for a pure bill of discovery to obtain specific and targeted information such as identities of proper parties or information necessary to satisfy a condition precedent. He simply believes he is entitled to vast and unlimited discovery to review what he already believes to be largescale corruption of Florida's voting rolls. This is not a proper use of this vehicle and he does not state a cause of action, nor could he, upon further amendment of the complaint.

#### **IV. Home Venue Privilege would be violated and require dismissal.**

With Plaintiff having abandoned his election contest claim, there remains no statutory exception to the home venue privilege that SOE Latimer is entitled to as a governmental entity headquartered in Hillsborough County. *See Scott v. Thompson*, 326 So. 3d 123, 126 (Fla. 1st DCA 2021). "The home venue privilege is a common-law doctrine that provides that, absent waiver or exception, venue in a suit against the State, or an agency or subdivision of the State, is proper only in the county in which the defendant maintains its principal headquarters." *Id.* (Quotations omitted). There are four recognized exceptions: (1) statutory waiver; (2) the entity is the 'sword wielder'; (3) the entity is sued as a joint tortfeasor; and (4) a 'good cause' petition under chapter 119 for public records. *Id.* In *Scott*, none of the exceptions were present and the supervisors of elections in eight Florida Counties, none of whom were headquartered in Leon County, were

entitled to dismissal of a complaint brought in Leon County seeking retention of ballot images. *Id.* at 125-27.

The same is true here. None of the statutory exceptions to home venue privilege are present for Plaintiff's three new proposed equitable claims. For this additional reason, the proposed Amended Complaint would be futile because it would be subject to dismissal as to SOE Latimer as violative of the home venue privilege, and thus amendment to plead same should be denied.

### **CONCLUSION**

Plaintiff, having acknowledged that his election contest claim lacked jurisdiction in this court, stands now in the context of this proposed Amended Complaint as a citizen and Florida voter. While Plaintiff, like many citizens, may have a desire to better understand how the election process works and how the various state statutes and regulations work in voter registration, list maintenance, and vote-by-mail request data, such questions and conclusions that he has jumped to as citizen and voter do not transform to legal or equitable causes of action against SOE Latimer. Because each of the claims in Plaintiff's proposed Amended Complaint fail to state a cause of action, and could not state causes of action upon further amendment, and because Plaintiff lacks standing as to each, amending his original election contest claim would be futile. As discussed above, futility also exists due to violation of the home venue privilege subjecting an Amended Complaint to dismissal as to SOE Latimer.

**WHEREFORE**, Defendant SOE Latimer respectfully requests that the Court **DENY** Plaintiff's Motion for Leave to Amend Complaint and **GRANT** SOE Latimer's December 27, 2024, Motion to Dismiss Verified Complaint, based upon lack of jurisdiction having been admitted to by Plaintiff in open court on January 8, 2025.

Dated: February 14, 2025

Respectfully submitted,

/s/ Colleen E. O'Brien

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 14th day of February, 2025, a true copy of this Response in Opposition to Plaintiff's Motion for Leave to Amend Complaint was filed electronically with the Clerk of Court through the Florida Courts eFiling Portal, which shall serve a copy via e-mail to all counsel of record.

/s/ Colleen E. O'Brien

Attorney