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

Robert Rochford,
Plaintiff,

v. CASE No.: 2024 CA 001976

Cord Byrd, in his official capacity as
Secretary of State of Florida, *et al.*,
Defendants.
_____/

RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND

Defendant, Florida Secretary of State Cord Byrd, pursuant to this Court's Order on Case Management, responds in opposition to Plaintiff's Motion for Leave to Amend Complaint and Amend Style of the Cause. The Complaint should be dismissed with prejudice and the motion to amend denied as moot, or at least futile.

I. BACKGROUND

Plaintiff brought this action as an election contest challenging the results of the 2024 election for Congressional District 14. Defendants each raised the defense of lack of jurisdiction because the only entity entitled to hear such a challenge is the U.S. House of Representatives. *See* U.S. Const. art. I, § 5, cl. 1. At the case management conference, Plaintiff's counsel stated that Defendants' jurisdictional defense was "well-taken" and conceded that the Court lacked jurisdiction. Defendants noted that dismissal was therefore proper at that time; however, the Court granted Plaintiff's *ore tenus* request to file a motion to amend and recognized that Defendants could respond accordingly.

Plaintiff timely filed his motion to amend seeking to drop his election contest and bring three different causes of action instead – Count I seeks a declaratory judgment; Count II seeks a writ of mandamus, and; Count III seeks a pure bill of discovery. Prop. Am. Compl. ¶¶ 50-60.

II. ARGUMENT

Plaintiff ultimately wants election officials to "investigate" and "expla[in]" alleged aberrations in vote-by-mail request data and alleged duplicate registrations within the voter rolls that Plaintiff concludes are "clones" capable of mischief. Prop. Am. Compl. ¶¶ 53, 57. The Court should dismiss the Complaint with prejudice, Plaintiff having conceded the Court lacks jurisdiction, and deny Plaintiff's motion to amend as moot, or at least futile, for the reasons that follow.

A. <u>There is no subject matter jurisdiction now or with the proposed amendment</u>.

The absence of jurisdiction for any length of time or stage of litigation is fatal and requires dismissal with prejudice. *E.g.*, *Sosa v. Safeway Premium Finance Co.*, 73 So.3d 91, 116-17 (Fla. 2011). Plaintiff conceded that the Court lacks jurisdiction over his current complaint for an election contest to CD 14. *See* U.S. Const. art. I, § 5, cl. 1. That lack of jurisdiction should be met with a dismissal with prejudice because amendment is futile as only the US House of Representatives can hear the sole claim at issue. *E.g., State v. Crawford*, 10 So. 118, 121 (Fla. 1891) ("The constitution of the United States has not elsewhere given to this court the power to pass upon the

question of the legality of the election of a United States senator, but by [article I, section 5, clause 1] it has expressly excluded from it the right to do so."); *Opinion of the Justices*, 12 Fla. 686, 688–89 (1868) ("[I]t is out of our power to *decide* that the election was 'illegal and void,' that question being exclusively for the Senate of the United States."). To be sure, Plaintiff does not seek to amend his election contest. Plaintiff seeks to bring completely different causes of action by amendment. The proper course is to dismiss the current complaint with prejudice and Plaintiff can bring a different (and otherwise proper) action—if he can.

Even if a gap in the Court's jurisdiction was tolerable (which it is not, *e.g.*, *Sosa*, 73 So.3d 91), Plaintiff's suggested amendment is futile and should be denied because he lacks standing to bring the new causes of action. *E.g.*, *Tuten v. Fariborzian*, 84 So. 3d 1063, 1069 (Fla. 1st DCA 2012) (noting "the court need not allow an amendment that would be futile" and affirming denial where "there has been no showing…as to possible amendments…that would not be futile").

The Florida Constitution limits courts to matters where there exists standing, *i.e.*, an "injury" that needs to be "redress[ed]," Art. I, § 21, Fla. Const., through the exercise of "judicial power" directed at the party that caused the injury, Art. V, § 1, Fla. Const., consistent with Florida's explicit separations of powers provision, *see* Art. II, § 3, Fla. Const. Florida courts therefore "look to three familiar concepts—injury, causation, and redressability—to assess a plaintiff's standing." *Cmty. Power Network Corp. v. JEA*, 327 So. 3d 412, 415 (Fla. 1st DCA 2021); *see State v. J.P.*, 907 So. 2d 1101,

1113 n.4 (Fla. 2004). A plaintiff must: (1) "identify an actual or imminent injury that is concrete, distinct, and palpable;" (2) "establish a causal connection linking the injury to the conduct being challenged;" and (3) "show a substantial likelihood that the relief sought will remedy the alleged injury." *Id.*; *see also DeSantis v. Fla. Educ. Ass'n*, 306 So. 3d 1202, 1213–14 (Fla. 1st DCA 2020).

Plaintiff has alleged an interest in election integrity that is shared equally among all voters.[1] Such a "generalized interest" however is insufficient to establish standing, "no matter how sincere." *Hollingsworth v. Perry*, 570 U.S. 693, 706 (2013); *see id.* at 706-08 (further explaining the Court's "repeated[]" holding); *see also Wood v. Raffensperger*, 981 F.3d 1307, 1314 (11th Cir. 2020). Moreover, Plaintiff has failed to allege any actual or imminent injury to that interest that is not hypothetical. *DeSantis v. Fla. Educ. Ass'n*, 306 So. 3d at 1214 (finding "any injury to students or teachers from being forced to return to the classroom is purely hypothetical" where no students or teachers were alleged to have been so forced). Plaintiff alleges only a possibility of fraud or misconduct and does not allege that any fraud or misconduct occurred.

Specifically, Plaintiff alleges there are "*suspect* ballots" and "*questionable* ballots." Prop. Am. Compl. ¶ 25 (emphasis added). Plaintiff alleges "misconduct and fraud" were "*invited*." Prop. Am. Compl. ¶ 32 (emphasis added). Plaintiff alleges the vote-by-

[1] Any interest Plaintiff alleges as a "candidate" is immaterial because Plaintiff's proposed amended complaint does not challenge the results of his failed candidacy. *See* Prop. Am. Compl. ¶¶ 1-3. Plaintiff's only interest in his proposed amended complaint is as an alleged "registered Republican." *Id.* ¶ 2.

mail process "is *compromised*" and this "*allows*, *invites*, and *encourages* fraud, misconduct, and corruption." Prop. Am. Compl. ¶¶ 40-41 (emphasis added); *see also id.* at ¶ 43 ("considered null and compromised"); ¶ 42 ("could allow for unchecked fraudulent activities"); ¶ 46 ("creates an environment which invites rampant fraudulent behavior"). But nowhere does Plaintiff allege any fraud or misconduct *occurred*. Nor does Plaintiff allege he requested records or any other information from Supervisors to confirm his suspicions. *C.f. Barber v. Moody*, 229 So.2d 284 (Fla. 1st DCA 1969), *certiorari denied* 237 So.2d 753 (reversing dismissal where officials "had possession of the absentee ballots and documents alleged to be illegal, had denied appellant the opportunity to see same before the complaint was filed").

To be sure, Plaintiff concedes he does "not know[] or understand exactly who or how the Voter Roll is being corrupted," and can only assume that the clones mean "the system is open" for "hack[ing]" and "cast[ing] votes of the dormant clones" "undetected." Prop. Am. Compl. ¶¶ 16, 48. Indeed, Plaintiff's causes of action for declaration, writ of mandamus, and writ of discovery seek to compel the Secretary and two Supervisors of Elections to figure out if something is even amiss to begin with. Prop. Am. Compl. ¶¶ 50-61. Plaintiff's hypothesis and suspicion are not injuries sufficient for standing. *See McCall v. Scott*, 199 So. 3d 359, 366 (Fla. 1st DCA 2016) (explaining that speculative and conclusory allegations of harm cannot confer standing).

Additionally, at least as to the Secretary, any injury relating to fraudulent votes, assuming that can be inferred from Plaintiff's suspicions, is not traceable to or redressable by the Secretary. The Supervisors of Elections are tasked with the actual administration of elections, including: registering voters and maintaining accurate voter rolls by removing ineligible voters or duplicate registrations, §§ 98.015(10), 98.045, 98.065, 98.075, Fla. Stat.; receipt and processing of vote-by-mail requests, including data reporting, § 101.62, Fla. Stat., and; receipt, safekeeping, and canvassing of vote-by-mail ballots, §§ 101.67-101.68, Fla. Stat. Any explanation or correction of the voter rolls or vote-by-mail data that Plaintiff seeks would come from the Supervisors. *See id.*

To be sure, Plaintiff alleges only that the Secretary has "allow[ed]" violations (that are not alleged or pursued in this action) "by" the two Defendant Supervisors of Elections.[2] Prop. Am. Compl. ¶ 39. Of course, Plaintiff's request for statewide relief would require joining the other 65 Supervisors as necessary parties—which he

[2] Plaintiff also alleges that "[b]ecause it is the responsibility of the Secretary of State as the chief elections officer of the State of Florida to obtain and maintain uniformity in the interpretation and implementation of the election laws, Chief Election Officer Cord Byrd is in violation" of various statutes himself for allowing the Supervisors' alleged violations occur. Prop. Am. Compl. ¶ 39. But Plaintiff does not bring any cause of action to enforce those alleged violations. Regardless, "there is no private right of action against the Florida Secretary of State under section 97.012, Florida Statutes," which is the statute that makes him the chief elections officer. *Thompson v. Byrd*, 2020 CA 1238 (2d Jud. Cir.) (Order Granting Def's Mt. to Dismiss Am. Compl. April 25, 2024).

could not do because of each Supervisor's home venue privilege. *See Scott v. Thompson*, 326 So.3d 123 (Fla. 1st DCA 2021), *rev. denied by* 2021 WL 5905963 (Fla. 2021).

B. <u>The proposed amended complaint fails to state any cause of action</u>.

Even if Plaintiff had standing to bring the proposed amended complaint, amendment would be futile because it fails to state any cause of action. The "right to amend is not unlimited" and a proposed amendment should be denied where it would be "futile." *Beanblossom v. Bay Dist. Schools*, 265 So.3d 657, 659 (Fla. 1st DCA 2019).

Count I seeks declaratory relief for an "explanation" of alleged aberrations in the vote-by-mail and voter roll data and "correct[ion]" based on "the right to a fair election which requires an uncorrupted Voter Roll." Prop. Am. Compl. ¶ 53. In order to be entitled to declaratory relief, Plaintiff must allege: (1) a good-faith dispute between himself and the Secretary; 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. *Rhea v. District Bd. Of Trustees of Santa Fe College*, 109 So. 3d 851, 859 (Fla. 1st DCA 2013). Plaintiff has not alleged any of these elements.

Plaintiff, at best, is suspicious about matters ultimately within the control of the 67 Supervisors of Election and therefore states *no* dispute between himself and the Secretary or any actual, present, and practical need for a declaration against

anyone as explained in section A. Nor does Plaintiff allege any justiciable question concerning any right. Fair elections and clean and accurate voter rolls are accomplished through compliance with the various statutes in Florida's Election Code and related provisions. Plaintiff has not alleged any one of those provisions has been violated in some way or that any one of those provisions provides a cause of action to compel an investigation into any person's suspicions. There must be a right or status set forth in statute or the constitution to question through use of Chapter 86. Chapter 86 is not a catchall. *Torres v. Shaw*, 345 So.3d 970, 976 (Fla. 1st DCA 2022). Moreover, that statute must include an enforcement provision, *i.e.*, a right of private action, a determination that cannot be made without knowing what statute to evaluate. *See Jones v. Schiller*, 345 So. 3d 406 (Fla. 1st DCA 2022) (holding that section 99.021 provided no right that could be enforced through declaratory judgment and comparing that provision to various others that do provide a right of action). Plaintiff has not alleged any right or status in question to begin any analysis and has therefore failed to allege any cause of action for declaratory judgment.

Count II seeks an extraordinary writ of mandamus requiring Defendants to generally "investigate and make whatever changes are necessary." Prop. Am. Compl. ¶¶ 57-58. To obtain a writ of mandamus against the Secretary, Plaintiff must have a "clear legal right" to the requested relief already certainly established in law, the Secretary must have an "indisputable legal duty" to perform the requested action, such that "the performance being required is directed by law" without any discretion,

and Plaintiff must have no other adequate remedy available. *E.g.*, *Fla. Agency for Healthcare Admin. v. Zuckerman Spaeder, LLP*, 221 So. 3d 1260, 1263 (Fla. 1st DCA 2017). Plaintiff has not shown even a prima facie case for relief.[3]

Plaintiff has failed to allege where or what right to an "investigation" or right to undefined "changes" exist, let alone rights that are "clearly and certainly established in the law." *Fla. League of Cities v. Smith*, 607 So.2d 397, 401 (Fla. 1992) (denying mandamus relief where there was at least a provision cited but the Court would have to "establish[] the 'clear' and 'certain' legal right in the same opinion in which mandamus would be granted"). Any "investigation" lacks defined bounds that would cabin the exercise of discretion and the allowance to "make whatever changes necessary" secure the endeavor as quintessentially *not* ministerial. *See Thompson v. Reno*, 546 So.2d 83 (Fla. 3d DCA 1989) (affirming dismissal because state attorney's "decision to investigate and file [a civil removal] action is a discretionary decision which cannot be controlled by a writ of mandamus"). Nor is it something "directed by law" to perform. Plaintiff also has available remedies through the Public Records Act and various legal remedies found throughout the Election Code and caselaw.

[3] No response to Count II is due unless and until the Court first determines that Plaintiff has shown a "prima facie case for relief" and ordered the Secretary to respond. Rule 1.630, R. Civ. P. The Secretary nevertheless provides this response for the Court to dismiss the request outright. Should the Court issue a show cause order, the Secretary will properly and more fully respond.

Count III seeks a "pure bill of discovery" so that Plaintiff can investigate his alleged suspicions "to determine the issues" if, indeed there are any. Prop. Am. Compl. at ¶ 60. This is not an acceptable use of a bill of discovery. *Trak Microwave Corp. v. Culley,* 728 So.2d 1177, 1178 (Fla. 2d DCA 1998).

Whatever authority remains for such an equitable action,[4] it is limited and rare since pleading standards have been relaxed and a comprehensive system of discovery has been created. *See id.*; *see also Kirlin v. Green*, 955 So. 2d 28, 29-30 (Fla. 3d DCA 2007); *accord JM Fam. Enterprises, Inc. v. Freeman*, 758 So. 2d 1175, 1176 (Fla. 4th DCA 2000). Consequently, it may be easier to discuss what the action *cannot* be used for. A bill of discovery cannot 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). Nor can it be used to confirm whether evidence exists to support suspected legal theories. *RAV Bahamas Ltd. v. Marlin Three, LLC*, 333 So.3d 1158, 1161-62 (Fla. 3d DCA 2022).

In *Kaplan v. Allen*, for example, the personal representative of a decedent's estate "believe[ed] that the circumstances of the decedent's death suggested suicide, and perhaps professional malpractice on the part of her psychiatrist," whom she had just left an appointment with. 837 So. 2d 1174, 1175 (Fla. 4th DCA 2003). The

[4] A pure bill of discovery was created when there was no concept of discovery at common law, in order to aid in a separate action at law. *See Thrasher v. Doig*, 18 Fla. 809 (Fla. 1882).

personal representative therefore sought a bill of discovery to obtain the medical records and depose the psychiatrist. *Id.* Because the personal representative's suspicion lacked any alleged evidence "sufficient to justify the good faith filing of a medical malpractice claim," the trial court granted the psychiatrist's motion to dismiss. *Id.* at 1176. The Fourth District affirmed "[b]ecause of the speculative nature" the claims. *Id.*

Here too, Plaintiff's allegations are based on his "good reason to suspect" from "unexplained" data and "unanswered" questions, rather than any allegations sufficient to, in good faith, state any particular cause of action. Prop. Am. Compl. ¶ 60. Plaintiff expressly seeks the discovery to "find evidence" and "determine the issues pertaining to the Voter Rolls in Florida..." Prop. Am. Compl. ¶¶ 60-61. Plaintiff is not even seeking discreet items or testimony, which is also required. *Publix Supermarkets, Inc. v. Frazier*, 696 So.2d 1369, 1371 (Fla. 4th DCA 1997) (citing *First Nat' Bank of Miami v. Dade–Broward Co.*, 171 So. 510, 510–11 (Fla. 1936)). Plaintiff seeks "any and all records related to the Voter Rolls and the voting which was done in 2024." Prop. Am. Compl. (wherefore). Florida had a total of 13,949,168 active registered voters as of book closing for the 2024 General Election, 78.9 percent of which voted.[5] Plaintiff's proposed bill of discovery fails to state a cause of action.

[5] Bookclosing reports and turnout data can be found on the Division's website.

III. CONCLUSION

Plaintiff concedes that the Court lacks jurisdiction over the current action for an election contest to Congressional District 14. The contest cannot be amended due to the U.S. House of Representative's sole jurisdiction to hear it, and no amendment of the election contest is even sought. The Court should therefore dismiss the action with prejudice. Plaintiff would be free to file a new cause of action, assuming he can state a justiciable controversy and cause of action. Even if the conceded break in jurisdiction could be cured with a different cause of action, which it cannot, what Plaintiff proposes to bring through amendment is not justiciable and additionally, fails to state a cause of action. The Court should therefore dismiss the action with prejudice and deny the motion to amend as moot or, at least deny the motion to amend as futile.

Date: February 14, 2025

Respectfully submitted,

/s/ Ashley E. Davis

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 14th day of February, 2025, a true copy of the foregoing was filed electronically with the Clerk of Court by using E-portal, which shall serve a copy to all counsel of record.

/s/ Ashley E. Davis
Attorney