Filing # 216811768 E-Filed 02/14/2025 02:07:06 PM

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

ROBERT ROCHFORD

Plaintiff,

v. Case No.: 2024-CA-001976

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

Defendants.

_____/

DEFENDANTS JULIE MARCUS AND PINELLAS COUNTY CANVASSING BOARD'S RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO AMEND COMPLAINT

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Julie Marcus, in her capacity as Pinellas County Supervisor of Elections and Pinellas County Canvassing Board (herein "Pinellas Defendants"), by and through the undersigned counsel, pursuant to the Order on Case Management entered January 8, 2025, hereby respond in opposition to Plaintiff's Motion for Leave to Amend Complaint filed on January 28, 2025, and state as follows in support.

Summary.

Plaintiff, an unsuccessful U.S. congressional candidate in the November 2024 general election, initiated this action with a baseless attempt to contest his race. He now admits that this Court never had jurisdiction over that original subject matter, a conclusion entirely evident at the time the complaint was filed. Plaintiff now attempts to pivot to a theory centered on vague "problems with the Voter Rolls." The proposed amended complaint amounts to a speculative, legally and factually unsupported, generalized grievance with the voter rolls, without any rational nexus to concrete, particularized harm. Both the original complaint and the proposed amended

complaint demonstrate a drastic lack of legal and factual support. Allowing amendment at this stage is futile, with over three months having passed since the general election. The motion to amend should be denied expeditiously to end the needless expense of resources on this action which was doomed from its inception, by fault of none other than Plaintiff and his counsel.

Generally, "[l]eave of court shall be given freely when justice so requires." FLA. R. CIV. P. 1.190(b). However, despite Florida's liberal pleading amendment policy, it is appropriate to deny leave to amend if "the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile." *Arminger v. Associated Outdoor Clubs, Inc.*, 48 So. 3d 864, 868 (Fla. 2d DCA 2010) citing *Colandrea v. King*, 661 So. 2d 1250, 1251 (Fla. 2d DCA 1995). "A proposed amendment is futile if it is insufficiently pled … or is insufficient as a matter of law." *Id.* at 871. (Citations and quotations omitted).

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A. Amendment would be futile because the proposed amended complaint, like the original complaint, is both insufficiently pled and insufficient as a matter of law.

The proposed amended complaint contains numerous conclusory statements relating to the "Voter Roll," claiming without specific factual support that "[a]n examination of the Voter Roll shows that there is a multitude of 'clones' in the list of the voters who are registered to vote in Florida." (Prop. Amend. Compl., Doc. 47, ¶¶14-15.) Plaintiff asserts that "[b]y having clones … the system is open for individuals who can access or 'hack' into the government's computers to cast votes of the dormant clones…" (*Id.* at 16.)

The proposed amended complaint goes on to incorporate many of the same allegations from the original complaint regarding what he characterizes as an "incredible number" of vote-by-mail ballot requests, purportedly submitted when an undefined "Voter Fraud Protection System was off or being overridden." (*Id.* at ¶18.) He likewise incorporates the same substance about a

vote-by-mail ballot report published by the State of Florida. (*Id.* at ¶¶34-38.) Plaintiff admits that "it is not known or understood exactly who or how the Voter Roll is being corrupted, only that it is corrupted in spite of the efforts of the Defendants to cause the elections to be fair and transparent." (*Id.* at ¶48.)

i. Plaintiff's proposed claim for declaratory judgment is legally and factually insufficient.

The proposed amended complaint seeks 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.* at Count I, Prayer for Relief.) Plaintiff fails to state a cause of action for declaratory judgment, and lacks standing.

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"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) citing *Halpert v. Oleksy*, 65 So. 2d 762 (Fla. 1953)); *Abruzzo v. Haller*, 603 So. 2d 1338, 1339 (Fla. 1st DCA 1992). A declaratory judgment claim 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. *Apthorp. v. Detzner*, 162 So. 3d 236 (Fla. 1st DCA 2015). It is Plaintiff's 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 fails to plead the essential elements required to state a cause of action for declaratory relief. He has not alleged (1) a good faith dispute with the Pinellas Defendants; (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) any doubt as to a right or status; nor (4) a bona-fide,

actual, present, and practical need for the declaration. *Id.* Rather, Plaintiff has drafted a second complaint replete with speculation, misguided conclusory statements and sweeping suppositions of fraud and misconduct for which he identifies no real evidence. It is clear from the proposed pleading that amendment to include the count seeking declaratory judgment is futile.

ii. Plaintiff's proposed claim seeking a writ of mandamus is legally and factually insufficient.

Plaintiff fails to state a cause of action for a writ of mandamus. 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. *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); *Town of Manalapan v. Rechler*, 674 So.2d 789, 790 (Fla. 4th DCA 1996). "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." *RHS Corp. v. City of Boynton Beach*, 736 So. 2d 1211, 1213 (Fla. 4th DCA 1999).

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Here, the proposed amended complaint seeks a writ of mandamus requiring that the Pinellas Defendants conduct an investigation into "all causes for all issues regarding possible clone voters … huge numbers of Mail-In Ballot requests … and the overriding of all safety precautions on the internet…" (Prop. Amend. Compl., Doc. 47, Count II, Prayer for Relief.) This is clearly not a ministerial duty appropriate for mandamus. Plaintiff relies on unsupported conclusory statements and does not demonstrate that the Pinellas Defendants failed to perform any duty required of them.

Accordingly, allowing amendment to assert this count would be futile and amendment should be disallowed.

iii. Plaintiff's proposed claim seeking a pure bill of discovery is legally and factually insufficient.

"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).

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 following adoption of liberal rules of discovery

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in ordinary litigation, its use will be "relatively rare." *JM Family Enterprises, Inc. v. Freeman*, 758 So. 2d 1175, 1176 (Fla. 4th DCA 2000).

The proposed amended complaint here does not describe one of the very limited scenarios which would justify the extraordinary relief of a pure bill of discovery. It is clear that Plaintiff seeks to embark on an unjustified fishing expedition which is an entirely improper use of the equitable relief requested. Amendment to assert this ground is futile and should be disallowed.

B. The proposed amended complaint is a sham pleading which seeks to circumvent the strictly construed contest of election statute to litigate issues of illegal votes, or misconduct, fraud or corruption on the part of election officials and members of the canvassing board; issues which fall squarely under the contest of election statute.

Plaintiff admittedly failed to properly invoke jurisdiction to contest the subject election in the original complaint, and now that the strictly construed time limitation has come and gone, he seeks to circumvent the law and assert the same theories that are definitely time barred under the contest of election statute.

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Despite Plaintiff's attempt to characterize the amended complaint as a new and distinct cause of action, it contains many of the same unsupported facts and conclusory statements relating to "election fraud and misconduct that materially affected the outcome of the November 5, 2024 election." (Prop. Amend. Compl., Doc. 47, ¶48.) Plaintiff even cites to election contest cases like *Gore v. Harris*, discusses the nature of "election contests," and continues to speculate that "Plaintiff's allegations, including the unauthorized request and issuance of vote by mail ballots, the use of uncertified voting systems, and the breakdown of system internally controls, materially impacted the results of the election and therefore warrant judicial intervention." (*Id.* at ¶49.) These are exactly the issues contemplated by the contest of election statute. FLA. STAT. § 102.168 (2024).

There is a good reason why the election contest statute is strictly construed, subject to a 10-day filing window, and provides entitlement to an immediate hearing. *Id*. That is because "there is a public interest in promptness and finality of decision" in this type of litigation, for obvious reasons. *Kinzel v. City of N. Miami*, 212 So. 2d 327, 328 (Fla. 3d DCA 1968).

This attempt to circumvent the election contest statute and preserve this suit is disingenuous and an insult to the sanctity of the justice system. The proposed amended complaint represents a sham pleading, attempting to assert claims and theories which are definitively time bared by section 102.168, Florida Statutes. This Court should deny the motion and disallow amendment for this reason.

C. The proposed amended complaint is barred by laches because Plaintiff's extreme lack of diligence would prejudice the Pinellas Defendants.

The defense of laches requires proof of the following elements: "(1) lack of diligence by the party against whom the defense is asserted, and (2) prejudice to the party asserting the defense." *McCray v. State*, 699 So. 2d 1366, 1368 (Fla. 1997). The Pinellas Defendants, like the public at large, have an interest in the prompt resolution of issues raised in connection with a particular election. Now over three months since the subject general election, preparation is underway for the municipal elections set for March 11, 2025. The time for litigation of the issues raised in the proposed amended complaint has long since come and gone. The issues identified by Plaintiff date back to vote-by-mail ballot requests in September of 2024. Plaintiff did not file a legally sufficient complaint to raise these issues at the outset and has not exercised diligence in pursuing a prompt resolution.

If this suit is allowed to proceed, the Pinellas Defendants will be prejudiced by the need to expend time, resources, and energy on issues with an election that reached finality on November

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19, 2024, the date of final certification, all due to Plaintiff's lack of diligence. This Court should disallow amendment and avoid the wasteful expense of resources on this baseless lawsuit.

D. Amendment would be futile because the Pinellas County Supervisor of Elections is entitled to home venue privilege.

If the proposed amended complaint does not fall under the election contest statute, as Plaintiff apparently asserts, then under the common-law home venue privilege, venue in Leon County is improper. *Scott v. Thompson*, 326 So. 3d 123, 127 (Fla. 1st DCA 2021) (reversing denial of motion to dismiss for improper venue filed by Supervisors of Election). "[A]bsent a 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.* at 126 quoting *Fla. Dep't of Children and Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278, 1286 (Fla. 2004). There has been no waiver here without applicability of the contest of election statute and no other exception has been invoked. Thus, allowing amendment would be futile because Julie Marcus, in her capacity as Pinellas County Supervisor of Elections, is entitled to home venue in Pinellas County. Amendment should be disallowed for this reason.

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WHEREFORE, the Pinellas Defendants respectfully request that this Court deny Plaintiff's motion for leave to amend and enter an Order granting the Pinellas Defendants' motions to dismiss with prejudice.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 14, 2025, the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to **PETER TICKTIN, ESQ.**, Attorney for Plaintiff, **MARY HELEN FARRIS, ESQ.**, and **STEPHEN M. TODD, ESQ.,** Attorneys for Defendant Hillsborough County

Canvassing Board, **ASHLEY E. DAVIS, ESQ.**, and **JOSEPH S. VAN DE BOGART, ESQ.**, Attorneys for Defendant Secretary of State, and **COLLEEN E. O'BRIEN**, Attorney for Defendant Craig Latimer.

/s/ Andrew P. Keefe
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