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IN THE DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
FIRST DISTRICT

CASE NO.: 1D2025-1500
L.T. Case No.: 2024-CA-001976ROBERT

ROCHFORD,

Appellants,

v.

SECRETARY OF STATE CORD BYRD, in his capacity Chief Elections Officer, HILLSBOROUGH COUNTY CANVASSING BOARD, PINELLAS COUNTY CANVASSING BOARD, JULIE MARCUS, in her capacity as Supervisor of Elections, CRAIG LATTIMER, in his capacity as Supervisor of Elections, and the FLORIDA ELECTIONS CANVASSING COMMISSION,

Appellees.

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ON APPEAL FROM A FINAL ORDER OF DISMISSAL OF
THE CIRCUIT COURT FOR THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION

****

INITIAL BRIEF

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INTRODUCTION

The Appellant, ROBERT ROCHFORD (hereinafter referred to as the "Candidate"), is the Plaintiff in the Trial Court, and the Appellees, SECRETARY OF STATE CORD BYRD, in his capacity Chief Elections Officer, HILLSBOROUGH COUNTY CANVASSING BOARD, PINELLAS COUNTY CANVASSING BOARD, JULIE MARCUS, in her capacity as Supervisor of Elections, CRAIG LATTIMER, in his capacity as Supervisor of Elections, and the FLORIDA ELECTIONS CANVASSING COMMISSION, are the Defendants in the Trial Court. The symbol "R" will identify the documents in the Record on Appeal, and the symbol "T" will identify the May 25, 2025, hearing Transcript.

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STATEMENT OF THE CASE AND FACTS

The Candidate filed his Verified Complaint and Contest of the November 5, 2024 General Election Results, which was based on Florida Statute § 102.168. (R. 7 – 17.)

Thereafter, and following numerous motions to dismiss filed by the Appellees, a case management conference was held on January 8, 2025. The result of the conference was an order entered the same day, which mandated that the Candidate file a Motion to Amend his Complaint by

January 28, 2025, and that the Appellees had to file their responses to the Candidate's motion by February 14, 2025. (R. 95.)

<u>The Candidate's Motion for Leave to Amend</u>

Pursuant to the January 8, 2025, Order, the Candidate filed his Motion for Leave to Amend Complaint and Amend Style of the Cause on January 28, 2025. (R. 99 – 118.)

The Motion explained that part of the purpose of amending the Complaint was to change the nature of the case's cause of action. Rather than an election challenge, the Complaint would challenge the voter rolls with three causes of action: Declaratory Relief declaring that the voter rolls of Florida are corrupted, a Writ of Mandamus requiring the Appellees to investigate all causes for the inconsistencies in the voter roll and the vote by mail system, and a Pure Bill of Discovery to investigate the election irregularities. (R. 99 – 118.)

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As the Complaint no longer included an election challenge, the Defendant Kathy Castor was dropped as a party.

Attached to the Motion to Amend was the Amended Complaint. The Amended Complaint alleged, among other things, that specific statistical data showing 37,495 vote-by-mail ballot requests were made without the required identification, of which 29,544 were voted, multiple violations of

Florida Statute § 101.62, manual overrides of internal controls in the voting system, and that discovery is needed in regard to needed confidential information only in possession of the Appellees. (R. 99 – 118.)

<u>Appellees' Responses to the Candidate's Motion</u>

a. Craig Latimer's Response in Opposition

Supervisor of Elections Craig Lattimer filed his Response in Opposition to Plaintiff's Motion for Leave to Amend Complaint on February 14, 2025. Mr. Latimer's Response argued that each of the causes of action was inappropriate and could not prevail, and that the Home Venue Privilege would be violated if the case proceeded in Leon County. (R. 128 -139).

Mr. Latimer's Response was joined by the Hillsborough County Canvassing Board later that day. (R. 153 -154).

b. Pinellas County Canvassing Board, and Supervisor of Elections Julie Marcus, Response in Opposition

The Pinellas County Canvassing Board (hereinafter "PCCB"), and Supervisor of Elections Julie Marcus, filed their Response in Opposition to Plaintiff's Motion to Amend Complaint on February 14, 2025. The response argued that each of the causes of action were legally and factually insufficient, the Home Venue Privilege would be violated if the Complaint moved forward in Leon County, and that the Amended Complaint was sham

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pleading meant to circumvent the strictly construed contest of elections statute. (R. 119 -127).

Additionally, PCCB and Mrs. Marcus' response raised the affirmative defense of latches. (R. 119 -127).

Hearing on the Candidate's Motion

At the opening of the hearing, the Candidate's counsel explained that the Candidate's causes of action were essentially meant to be able to determine the issues that are going wrong here in the state of Florida, and these issues are extreme. (T. p. 6, lines 23 – 25.)

The Candidate's counsel first explained that the Candidate was seeking Declaratory Judgment, with the goal of the trial Court declaring that the Voter Rolls of Florida are corrupted, because the Voter Rolls for the State of Florida, particularly those of Pinellas County and Hillsborough County, were corrupted to the point where there needs to be some explanation of the statistically impossible abundance of voters who sought Mail-In Ballots on September 9, 2024. (T. p. 6-10.)

The Candidate's counsel also explained that a writ of mandamus was needed to instruct and otherwise make sure the Appellees investigate and ensure the voter rolls reflect the actual voters and legitimate voters of the state. (T. p. 8, lines 6 – 11.)

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The Candidate's counsel asked for the matter to be treated as a pure bill of discovery, something that is permitted in Florida that would facilitate an action just for the purpose of discovery of confidential information only available through the Appellees. (T. p. 8, lines 20 – 25.)

The Candidate's counsel pointed out that the various motions to dismiss filed by the Appellees were vague and rife with conclusory statements and sweeping suppositions, which was ironic due to the motions claiming the Candidates Amended Complaint was too full of conclusory statements and sweeping suppositions. (T. p. 9, lines 11 – 16.)

The undersigned counsel rebutted the Appellees arguments by highlighting the specific evidence cited in the specific election irregularities and circumstances contained within the Amended Complaint. (T. p. 9, lines 17 – 25), (T. p. 10, lines 1 - 25), (T. p. 16, lines 1 - 25).

Additionally, counsel refuted each of the Appellees' points in their motions to dismiss. The home venue privilege was waived when the appellees failed to raise it in their first motion to dismiss, the home venue privilege does not apply because there are different officers from different states, and judicial economy would favor one case rather than multiple cases on the same issue. (T. p. 15, lines 1 - 25), (T. p. 16, lines 1 - 21).

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Counsel made it clear that although the exception to the home venue privilege dealt with "joint tortfeasors," it also was modified by a later passage in the case of *Bd. of Cty. Comm'rs v. Grice, 438 So. 2d 392 (Fla. 1983)*, which stated that "The exercise of this discretion must be guided by considerations of justice, fairness, and convenience under the circumstances of the case." *Bd. of Cty. Comm'rs v. Grice*, 438 So. 2d 392, 395 (Fla. 1983). (T. p. 45, lines 1 - 17).

Later in the hearing, counsel went on to point out that even if the court lost its jurisdiction based on the loss of the election contest, defendant Mr. Byrd would still be part of the suit, as jurisdiction was not an issue as to that defendant. (T. p. 44, lines 6 - 11).

Counsel also argued that the Appellees failed to properly raise their laches argument, as the appellees failed to specify how they would be unfairly prejudiced. (T. p. 14, lines 20 - 25).

To support his arguments, the undersigned counsel cited numerous cases that supported his positions. (T. p. 16, lines 13 - 25), (T. p. 17, lines 1 - 5).

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The Candidate's Motion was Denied

Ultimately, the trial court entered an order on June 2, 2025, granting the Appellees' motions to dismiss and denying the Candidate's motion for leave to amend the complaint. (R. 174.)

The order states that it granted the motions to dismiss with prejudice, because any amendment to the Candidate's complaint would be futile. The order also states that the motion to amend is denied because of an apparent break in jurisdiction; however, even if the trial court did retain jurisdiction, the amended complaint also fails to state a cause of action for declaratory relief, a writ of mandamus, or a pure bill of discovery. (R. 174.)

This Appeal followed.

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STANDARD OF REVIEW

"As a general rule, 'the standard of review of an order dismissing a complaint with prejudice is de novo.'" *Wilmington Sav. Fund Soc'y, FSB v. Contreras*, 278 So. 3d 744, 747 (citing *Chimera Servs., Inc. v. Prevatt*, 267 So. 3d 556, 557 (Fla. 5th DCA 2019))."In ruling on a motion to dismiss, the trial court must confine itself to the four corners of the complaint, accept the allegations of the complaint as true, and construe the allegations in the light most favorable to the plaintiff." *Brooke v. Shumaker, Loop & Kendrick, LLP*,

828 So. 2d 1078, 1080 (Fla. 2d DCA 2002), (citing *Hosp. Constructors Ltd. v. Lefor*, 749 So. 2d 546 (Fla. 2d DCA 2000)).

The appellate court usually reviews the denial of a motion for leave to amend a complaint under an abuse of discretion standard. *CHHS Hosp. Co. LLC v. Harmon*, 381 So. 3d 679, 680 (Fla. Dist. Ct. App. 2024). However, "Questions regarding the trial court's jurisdiction are reviewed de novo." *Marlin Yacht Mfg., Inc. v. Nichols*, 254 So. 3d 1022, 1024 (Fla. 4th DCA 2018); *see also State v. Green*, 256 So. 3d 957, 958 (Fla. 1st DCA 2018) ("We review de novo the issue of whether a trial court's jurisdiction expired or was divested.").

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SUMMARY OF THE ARGUMENT

The trial court made multiple errors in its Order dismissing the case with prejudice and denying the Candidates Motion for Leave to file an Amended Complaint.

The trial court's first error was granting the Appellees' Motions to Dismiss, because the trial court's finding of futility was legally erroneous. The causes of action in the Amended Complaint were justiciable by the trial court and supported by numerous facts, and the trial court failed to explain in any way why the causes of action were futile.

The trial court also erred when denying the Candidate's Motion for leave to Amend his Complaint, as the court retained jurisdiction over the causes of action raised by the Candidate, as the Appellees waived their right to raise the home rule privilege, and the matter before the trial court fell under an exception to the home rule privilege.

Furthermore, the trial court's pronouncement that the Candidate's proposed amendment failed to state a cause of action for anything justiciable, which would be normally brought in a Motion to Dismiss, was also erroneous. The causes of action were well pled, and supported by the allegations made in the amended Complaint.

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ARGUMENT

I. The Court's Finding of Futility Was Legally Erroneous

The Amended Complaint attached to the Candidate's Motion for Leave to Amend had just shy of 50 paragraphs detailing the basis for the causes of action in the Amended complaint. The factual allegations regarding voter roll irregularities and statutory violations present sufficient grounds for judicial consideration. The proposed complaint also detailed the factual allegations regarding systematic breakdowns in voter roll integrity, including specific statistical data showing 37,495 vote-by-mail ballot requests made without required identification, of which 29,544 were voted. The complaint further

alleges Florida Statute § 101.62 violations and presents evidence of manual overrides of internal controls in the voting system. Finally, the complaint alleges that discovery is needed in regard to confidential information only in possession of the Appellees.

For declaratory relief under Florida Statutes Chapter 86, the Amended Complaint seeks a determination regarding the right to fair elections with uncorrupted voter rolls. The Candidate alleged a bona fide dispute concerning the present voter role controversy exists that concerns the right of every American to a free and fair election. In addition, all the antagonistic parties were before the court, and the relief sought did not merely involve the giving of legal advice or answering questions propounded from curiosity.

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For mandamus relief, the Amended Complaint laid out that the American people have a clear right to free and fair elections, and that it the Appellees are responsible to assure that the elections in their various jurisdictions must be fair and transparent. No other remedy exists that would ensure that the issues raised in the Amended Complaint are investigated and corrected to ensure that the Voter Rolls are not corrupted nor able to be corrupted.

As for pure bill of discovery, the Candidate's cause of action seeks to access sensitive and confidential records to investigate suspected external

access to voter rolls, which would otherwise be unavailable without a pure bill of discovery.

What was confounding to the Candidate was the lack of explanation by the trial court given his comprehensive causes of action and the allegations supporting them. Neither the trial court's order, nor the hearing transcript provides any reasoning as to how or why the causes of action, or any amendment thereto, would be futile.

“"In ruling on a motion for leave to amend, "all doubts should be resolved in favor of allowing an amendment, and the refusal to do so generally constitutes an abuse of discretion unless it clearly appears that allowing the amendment would prejudice the opposing party, the privilege to amend has been abused, or amendment would be futile."” *Quality Roof Servs. v. Intervest Nat'l Bank*, 21 So. 3d 883, 885 (Fla. Dist. Ct. App. 2009); quoting *Cason v. Fla. Parole Comm'n*, 819 So. 2d 1012, 1013 (Fla. 1st DCA 2002). A proposed amendment is futile only if it is insufficiently pleaded or is insufficient as a matter of law. See *Quality Roof Servs. v. Intervest Nat'l Bank*, 21 So. 3d 883 (Fla. Dist. Ct. App. 2009).

As to the issue of futility, in the case of *Harrison v. Dep't of Mgmt. Servs., Div. of State Grp. Ins.,* 339 So. 3d 504, (Fla. Dist. Ct. App. 2022), that court found that the Trial court's implicit denial of appellant's motion for leave

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to amend was improper because the trial court's orders provided no comment or reasoning regarding prejudice or futility. See *Harrison v. Dep't of Mgmt. Servs., Div. of State Grp. Ins*., 339 So. 3d 504, 2022 Fla. App. LEXIS 3889 (Fla. 1st DCA 2022). Like the matter before this Court, no reasoning was offered by the trial court as to how or why the fact dense Amended Complaint was futile, or how another amendment would be futile.

The lack of any explanation of the trial courts reasoning, coupled with the facts raised in the proposed Amended Complaint and the standard that "all doubts should be resolved in favor of allowing an amendment," the trial court's determination that "any amendment would be futile" fails to meet the established standard for futility under Florida law.

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II. *<u>The Trial Court Preserved Jurisdiction</u>*

The trial court erred when denying the Candidate's Motion for leave to Amend his Complaint, as the court retained jurisdiction over the causes of action raised by the Candidate.

The central facet of the jurisdiction issue was the home rule privilege. However, this privilege was waived when it was not raised during the Appellees' first Motions to Dismiss. The Appellees raised a counter argument to this point during the hearing; however, because the relief sought in the original complaint is nearly identical to that sought by the amended

complaint, the failure to raise the home rule privilege is fatal to the Appellees' argument.

Even if the Appellees did not waive the home rule privilege, the trial court should have ultimately retained its jurisdiction over the matter in the interest for judicial economy as well as the the exception to the home rule privilege. As was argued by the Candidate's counsel at hearing, a trial court may dispense with the home venue privilege when the governmental entity is sued as a joint tortfeasor. This exception is guided by considerations of justice, fairness, and convenience, particularly when the governmental defendant's actions combine with others to cause a single injury. See *Fla. Dep't of Children & Families v. Sun-Sentinel, Inc.*, 865 So. 2d 1278 (Fla. 2004). Here, multiple parties were brought in from neighboring counties related to the 2024 election, where significant anomalies have led reasonable people to conclude the voter rolls are compromised. The alternative would be that multiple cases across the state would proceed on the same group of facts.

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As previously stated, the joint tortfeasor exception is guided by considerations of justice, fairness, and convenience, particularly when the governmental defendant's actions combine with others to cause a single injury. See *Fla. Dep't of Children & Families v. Sun-Sentinel, Inc.*, 865 So.

2d 1278 (Fla. 2004). Given the complex matters that intertwine each of the Appellees, it only makes sense that the trial court would retain its jurisdiction over the whole matter.

III. The Amended Complaint Stated Justiciable Causes of Action

The trial court went on to further deny the Candidate's Motion for Leave to file his Amended Complaint for an alleged failure to state a cause of action for anything justiciable, however, this is incorrect.

As discussed in a previous section above, the trial court's pronouncement that the Candidate's proposed amendment failed to state a cause of action for anything justiciable, which would be normally brought in a Motion to Dismiss, was also erroneous.

The Amended Complaint had almost 50 paragraphs of factual allegations that supported the three causes of action raised in the Amended Complaint. Voter roll irregularities, statutory violations, and the need for discovery of sensitive information was laid out in the first 50 paragraphs and throughout the Amended Complaint. The proposed complaint detailed specific statistical data showing 37,495 vote-by-mail ballot requests made without required identification, of which 29,544 were voted. The complaint alleged Florida Statute § 101.62 violations and evidence of manual overrides of internal controls in the voting system. Finally, the complaint alleges that

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discovery is needed in regard to confidential information only in possession of the Appellees.

The Amended Complaint also pled each of the required elements to bring each of the causes of action against the Appellees.

For declaratory relief under Chapter 86, Florida Statutes, the proposed complaint seeks a determination regarding the right to fair elections with uncorrupted voter rolls. Here, the Candidate claimed that there was a bona fide dispute concerning the present voter role controversy which concerns the right of every American to a free and fair election. All of the antagonistic parties were before the court, and the relief sought did not merely involve the giving of legal advice or answering questions propounded from curiosity.

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For mandamus relief, the Amended Complaint laid out that the American people have a clear right to free and fair elections, and that it the Appellees are responsible to assure that the elections in their various jurisdictions must be fair and transparent. No other remedy exists that would ensure that the issues raised in the Amended Complaint are investigated and corrected to ensure that the Voter Rolls are not corrupted nor able to be corrupted.

As for pure bill of discovery, the Candidates cause of action seeks to access sensitive and confidential records to investigate suspected external

access to voter rolls, which would otherwise be unavailable without a pure bill of discovery.

CONCLUSION

This Court should reverse the trial court's decision denying the candidates Motion for Leave to File his Amended Complaint and granting the Appellees' Motions to Dismiss, and remand the case to proceed on its merits.

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CERTIFICATE OF COMPLIANCE

I HEREBY CERTIFY that the foregoing Appellant's Brief complies with Rule 9.100(1) and Rule 9.210(a)(2), Florida Rules of Appellate Procedure, and that this Brief has been submitted in Arial 14-point font and complies with the applicable word count requirement in Rule 9.210 in contains 2701 words.

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DESIGNATION OF EMAIL ADDRESSES FOR SERVICE
(Pursuant to Rule 2.516 Fla. R. Jud. Admin.)

The undersigned attorneys of The Ticktin Law Group hereby designate the following Email Addresses for service in the above styled matter. Service shall be complete upon emailing to the following email addresses in this Designation, provided that the provisions of Rule 2.516 are followed.

Serv549@LegalBrains.com; Serv536@LegalBrains.com; Serv512@LegalBrains.com

SERVICE IS TO BE MADE TO EACH AND EVERY EMAIL ADDRESS LISTED IN THIS DESIGNATION AND TO NO OTHERS.

CERTIFICATE OF SERVICE

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been emailed this **21st day of August 2025**, to **MELISSA ANNE FOSS, ESQUIRE**, mfoss@votehillsborough.gov, **COLLEN O'BRIEN, ESQUIRE**, cobrien@votehillsborough.gov, Hillsborough County Supervisor of Elections Office, Counsel for Craig Latimer, 601 E. Kennedy Boulevard, 16th Floor, Tampa, Florida 33602, **ANDREW P. KEEFE, ESQUIRE**, eservice@pinellas.gov, Senior Assistant County Pinellas County Attorney's Office, Counsel for Pinellas County Canvassing Board and Julie Marcus, 315 Court Street, Sixth Floor, Clearwater, Florida 33756, **LAURA L. VAUGHAN, ESQUIRE**, lvaughan@lauravaughanlaw.com, Counsel for Kathy Castor, 3016 W. Harbor View Avenue, Tampa, Florida 33611, **STEPHEN M. TODD, ESQUIRE**, todds@hcfl.gov, Henryka@hcfl.gov, Pages@hcfl.gov, Sr. Assistant County Attorney, Counsel for Hillsborough County Canvassing Board, P.O. Box 1110, Tampa, Florida 33601-1110, **ASHLEY DAVIS, ESQUIRE**, Ashley.davis@dos.fl.gov, **GENEVIEVE MCNALIS, ESQUIRE**, Genevieve.mcnalis@dos.fl.gov, jenna.mclanahan@dos.fl.gov, Florida Department of State, Counsel for Secretary of State Cord Byrd, 500 South Bronough Street, Gray Building, Suite 100, Tallahassee, Florida 32399-0250.

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