

**IN THE FIRST DISTRICT COURT OF APPEAL
IN AND FOR THE STATE OF FLORIDA**

Robert Rochford,

Appellant,

v.

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

Secretary of State Cord Byrd, in his
capacity as Chief Elections Officer, et
al.

Appellees.

_____ /

**ANSWER BRIEF OF APPELLEES JULIE MARCUS
AND PINELLAS COUNTY CANVASSING BOARD**

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

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PRELIMINARY STATEMENT

Appellee, Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections, will be referred to as the “Pinellas Supervisor.” Appellee, Pinellas County Canvassing Board, will be referred to as the “Pinellas Canvassing Board.” These two appellees will be referred to together as the “Pinellas Appellees.” Appellant, Robert Rochford, will be referred to as “Rochford.” Appellee, Craig Latimer, in his capacity as Hillsborough County Supervisor of Elections, will be referred to as the “Hillsborough Supervisor.” References to the Initial Brief will be cited as (IB. page #). References to the Record on Appeal will be cited as (R. page #, paragraph #). References to the Hearing Transcript will be cited as (T. page #:line #-line #) or (T. page #:line #-page #:line #).

STATEMENT OF THE CASE AND FACTS

The most important aspect of this appeal is undisputed: the Trial Court properly dismissed Rochford’s election contest complaint based on a lack of jurisdiction because the U.S. House of Representatives possesses exclusive jurisdiction over the elections of its members. (T. 6:15-20); U.S. Const. Art. I, § 5, Cl. 1 (herein “Elections Clause”). The only issue in this appeal is whether the

Trial Court properly dismissed with prejudice and denied Rochford's motion for leave to amend.

SUMMARY OF THE ARGUMENT

The Trial Court properly dismissed the election contest complaint with prejudice because exclusive jurisdiction lied with the U.S. House of Representatives, as conceded by Rochford. An equally fatal basis for dismissal with prejudice rests upon Rochford's late filing of mandatory fees outside of the 10-day window following certification of the results; an essential component under the strictly construed election contest statute.

The Trial Court did not abuse its discretion in denying Rochford leave to amend because amendment would have been futile. Most importantly, the Pinellas Supervisor, like the Hillsborough Supervisor, was entitled to home-venue privilege once Rochford shifted the claims away from direct citation to election contest statute. The Pinellas Supervisor did not waive this defense as Rochford asserts. The home-venue privilege was not supported by law or fact in the election contest suit by operation of the legislature's express venue determination for contests of multi-

county elections. It is axiomatic that the Pinellas Supervisor could not waive a defense which was not available at the time of response.

Denial of leave to amend based on futility was also appropriate because the proposed amended complaint was both insufficiently pled and insufficient as a matter of law. Rochford failed to state a cause of action under any of the three desired claims for relief. It is apparent that Rochford's attempt to repackage and perpetuate his lawsuit as a general challenge to the voter rolls was a futile attempt to circumvent the election contest statute and litigate the same issues that he raised in the original complaint. If nothing else, the suit is time-barred by laches due to Rochford's extreme lack of diligence and prejudice to the Pinellas Appellees.

This Court should affirm the Final Judgment in favor of the Pinellas Appellees.

ARGUMENT

I. Standard of review.

The general standard of review for an order dismissing a complaint with prejudice based on a lack of subject matter jurisdiction is de novo. *Dept. of Revenue ex. Rel. Smith v. Selles*, 47

So. 3d 916, 918 (Fla. 1st DCA 2010) (“Whether a lower tribunal had subject matter jurisdiction is a question of law which an appellate court reviews de novo.”) Dismissal with prejudice is appropriate where “it conclusively appears that there is no possible way to amend the complaint to state a cause of action.” *McAlpin v. Roberts*, 195 So. 3d 1197, 1198 (Fla. 1st DCA 2016). A trial court may consider evidence beyond the four corners of the complaint in considering a motion to dismiss challenging subject matter jurisdiction. *All-South Subcontractors, Inc. v. Amerigas Propane, Inc.*, 206 So. 3d 77, 79 n.* (Fla. 1st DCA 2016) (citing *Steiner Transocean Ltd. v. Efremova*, 109 So. 3d 871, 873 & n.3 (Fla. 3d DCA 2013)).

An order denying leave to amend based on prejudice, abuse, or futility is reviewed for abuse of discretion. *Beanblossom v. Bay Dist. Sch.*, 265 So. 3d 657, 658-59 (Fla. 1st DCA 2019).

II. The Trial Court correctly dismissed Rochford’s election contest complaint with prejudice based on a lack of subject matter jurisdiction because the U.S. House of Representatives had exclusive jurisdiction and Rochford did not achieve strict compliance with the election contest statute.

Rochford initiated the underlying action by filing an election contest complaint after he lost the race for U.S. Congressional

District 14 in the general election of November 2024. (R. 7-10). The Pinellas Appellees each responded with an answer (as required by the election contest statute) and motions to dismiss with prejudice. (R. 38-56, 68-83). The first two grounds in the motions to dismiss provide ample support for dismissal of the election contest complaint with prejudice.

First, Florida courts are without jurisdiction over the subject matter of election contests for either the United States House of Representatives or the United States Senate. *Morgan v. United States*, 801 F.2d 445 (U.S. App. D.C. 1986). “Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members...” U.S. Const. Art. I, § 5, Cl. 1 (herein “Elections Clause”). Pursuant to the Elections Clause, any contest of a congressional election can only be brought to the U.S. House of Representatives.¹ *Id.* Rochford conceded this at the outset of argument during the

¹ Many courts have confirmed that state and federal courts lack jurisdiction to decide suits contesting general elections of U.S. Congress members. See e.g. *Burchell v. State Bd. Of Election Comm’rs*, 252 Ky. 823, 826 (Ky. App. 1934); *Young v. Mikva*, 66 Ill. 2d 579 (Ill. 1977); *McLeod v. State Bd. Of Canvassers*, 304 Mich. 120, 123-24 (Mich. 1942); *Wyman v. Durkin*, 115 N.H. 1, 2-3 (N.H. 1975).

hearing on May 28, 2025. (T. 6:15-20). This alone demonstrates that the Trial Court was correct to grant the dismissal with prejudice, as there is admittedly no set of facts that could bring a U.S. Congressional election under the jurisdiction of any Florida court. The U.S. Constitution explicitly excludes judicial jurisdiction and reserves authority to the U.S. House of Representatives. Dismissal with prejudice was appropriate and required.

Second, Rochford was late in filing his election contest “complaint, together with the fees prescribed in chapter 28, with the clerk of the circuit court within 10 days after midnight of the date” of final certification of the election. Fla. Stat. § 102.168 (2024) (emphasis added). The general election reached final certification on November 19, 2024. (R. 51-53). Rochford had until 12:00 a.m. on November 29, 2024 to file the complaint and chapter 28 fees. Fla. Stat. § 102.168 (2024). He did not do so until December 2, 2024. (R. 54-56). There is nothing in the record to dispute these facts.

Rochford’s untimely compliance with the strictly construed election contest statute supports the Trial Court’s dismissal with prejudice. *See Kinzel v. City of N. Miami*, 212 So. 2d 327 (Fla. 3d DCA 1968); *Bailey v. Davis*, 273 So. 2d 422 (Fla. 1st DCA 1973). In

Kinzel, the Court affirmed dismissal of an election contest complaint for failure to timely name the appropriate defendants. *Id.* at 328. “[T]he general proposition that when a statutory action is availed of the provisions for its exercise must be strictly followed” is especially applicable with regard to a statutory action for an election contest. *Id.* The Court explained that “there is a public interest in promptness and finality of decision” in this type litigation. *Id.* See also *Bailey* at 422-23 (Fla. 1st DCA 1973) (affirming dismissal with prejudice upon a finding that failure to timely comply with the election contest statute could not be cured).

Both *Kinzel* and *Bailey* establish that the Trial Court properly dismissed Rochford’s election contest because the statutory provisions were not strictly satisfied, and the time for compliance had passed.

This Court should affirm the Trial Court’s Final Judgment in favor of the Pinellas Appellees following the dismissal with prejudice.

III. The Trial Court properly exercised discretion by denying Rochford leave to amend because futility was evident in light of the home-venue privilege as well as the legal and factual insufficiency of the proposed amended complaint.

Generally, leave to amend “shall be given freely when justice so requires.” Fla. R. Civ. P. 1.190(b). But where an amendment would be futile, would prejudice the opposing party, or where the privilege to amend has been abused, denial of leave to amend is appropriate. *Harrison v. Dept. of Mgmt. Servs., Div. of State Grp. Ins.*, 339 So. 3d 504, 505 (Fla. 1st DCA 2022) citing *Newberry Square Fla. Laundromat, LLC v. Jim’s Coin Laundry and Dry Cleaners, Inc.*, 296 So. 3d 584, 589 (Fla. 1st DCA 2020).

A. Futility of allowing amendment was clear based upon the Pinellas and Hillsborough Supervisor’s entitlement to home venue privilege.

Allowing Rochford leave to file the proposed amended complaint would have been futile, primarily due to the home-venue privilege afforded to both the Pinellas Supervisor and Hillsborough Supervisor. “[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).

A statutory exception to home-venue privilege applied to the original election contest complaint, designating venue in Leon County “if the election or referendum covered more than one county,” like the election that Rochford lost. Fla. Stat. 102.1685; (R. 8 ¶7-8). In other words, Leon County was proper venue for the original, attempted election contest suit rendering the home-venue privilege unavailable to the Pinellas Supervisor and not waived as Rochford asserts.

Having admittedly initiated the election contest before the Trial Court with no jurisdiction, Rochford sought leave to file an amended complaint which did not include “an election challenge but rather a challenge to the voter rolls.” (R. 100 ¶3). Home-venue privilege would be undeniably available to the Pinellas Supervisor and Hillsborough Supervisor in defense of the proposed amended complaint, dictating dismissal. Therein lies key support for the Trial Court’s finding of futility.

B. Futility of allowing amendment was also evinced by the legally and factually insufficient content of the proposed amended complaint which was both insufficiently pled and insufficient as a matter of law.

Futility of amendment is also clear from the legal and factual insufficiency of the proposed amended complaint.

A pure bill of discovery “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 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).

Rochford’s argument demonstrates he intends to use the pure bill of discovery and declaratory relief claims to advance an improper fishing expedition. He argued a need for amendment “to determine the issues that are going wrong here in Florida” but also noted that “there’s probably no guilt on the part of any of the defendants.” (T. 6:21-7:18). He referenced “aberrations” in the

numbers of vote-by-mail ballots, indicating his desire “to see the explanation for it.” (T. 7:25-8:11). Rochford envisioned the Trial Court taking “a look at our voter rolls in this action for declaratory relief to basically determine whether or not the voter rolls are corrupted...” (T. 12:17-22).

Rochford doesn't describe any of the very limited scenarios which would justify the extraordinary relief of a pure bill of discovery. He likewise does not establish “an actual or justiciable controversy between the parties based on articulated facts which demonstrate a real threat of immediate injury to a plaintiff” which would make declaratory relief appropriate. *Apthorp. v. Detzner*, 162 So. 3d 236 (Fla. 1st DCA 2015). It is clear from the proposed amended complaint that the declaratory judgment and pure bill of discovery claims are futile. (R. 103-118).

Similarly, the proposed count seeking a writ of mandamus is equally devoid of legal and factual support. The writ request was aimed at requiring the Pinellas Appellees to 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...” (R. 115-116,

Count II, Prayer for Relief). This is clearly not a ministerial duty appropriate for mandamus rendering Count II futile like Counts I and III.

This Court should affirm the Trial Court's denial of leave to amend based on futility.

IV. Denial of leave to amend based on futility was alternatively within the Trial Court's sound discretion because the proposed amended complaint was time-barred by the doctrine of laches as a function of Rochford's extreme lack of diligence in pursuing time-sensitive election litigation, thereby prejudicing the Pinellas Appellees.

This Court can "affirm a trial court's ruling on any alternate basis." *Fla. Now v. State*, 832 So. 2d 911, 915 (Fla. 1st DCA 2002). One such basis is laches as asserted by the Pinellas Appellees below. (R. 125-26); (T. 32:3-34:1). The defense of laches requires proof of: "(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 lack of diligence is glaring in the record and timeline. Rochford did not seek expedited or emergency treatment by the Trial Court. The motion to amend to a vague challenge to the November 2024 voter rolls wasn't

filed until January 28, 2025, over two months after final certification of the election. (R. 51-53, 99). The hearing on that motion occurred another four months later on May 28, 2025. (T. 1).

The Pinellas Appellees, like the public at large, have an interest in the prompt resolution of litigation raised in connection with a particular election. The perpetuation of litigation after over six months had passed since final certification of the election would have been inherently prejudicial to the Pinellas Appellees, resulting in the unjustified expense of time, energy, and resources to defend against issues that should have been raised and pursued to finality with haste.

The lack of diligence and prejudice support the finding of futility and denial of leave to amend. This Court should affirm the Final Judgment.

V. Denial of leave to amend was alternatively appropriate because the proposed amended complaint sought 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 were time-barred under the election contest statute.

Rochford sought to revive his admittedly doomed election contest suit by asserting the same facts and theories that were definitely time barred under the contest of election statute in the proposed amended complaint. 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.” (R. 113-14, ¶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 internal controls, materially impacted the results of the election and therefore warrant judicial intervention.” (R. 113-14, ¶49). These are exactly the issues contemplated by the contest of election statute. Fla. Stat. § 102.168 (2024).

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*, 212 So. 2d at 328. The proposed amended

complaint constituted a sham pleading which sought to circumvent the election contest statute and extend the life of the suit. This supports the Trial Court's denial of leave to amend.

CONCLUSION

This Court should affirm the Final Judgment which followed dismissal of the election contest suit with prejudice and denial of leave to amend. The Trial Court clearly lacked subject-matter jurisdiction over the U.S. Congressional election contest complaint which was rightly dismissed with prejudice. Allowing leave to file the proposed amended complaint would have been futile due to the home-venue privilege, glaring insufficiency of the claims and allegations coupled with an extreme lack of diligence and prejudice to the Pinellas Appellees. The Trial Court was justified in dismissal of the election contest with prejudice and was within its sound discretion to deny Rochford's motion for leave to amend.

CERTIFICATE OF SERVICE

I certify that on March 17, 2026, this document has been furnished to the following by portal:

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CERTIFICATE OF COMPLIANCE

I hereby certify, pursuant to Florida Rule of Appellate Procedure 9.045, that this brief complies with the word count limitation of Rule 9.210, Florida Rules of Appellate Procedure, in that it contains 2,940 words (including words in headings, footnotes, and quotations), according to the word-processing system used to prepare this document. This document also complies with the line spacing, type size and type face requirements of Rule 9.045,

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