UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION

Case No. 1:26-cv-27895-DSL

ELIOTT RODRIGUEZ,

Plaintiff,

vs.

ALINA GARCIA, in her official capacity as Miami-Dade County Supervisor of Elections and member of the Miami-Dade County Canvassing Board; and MARÍA ELVIRA SALAZAR, solely as an interested-party defendant,

Defendants.
_____/

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PLAINTIFF'S OMNIBUS REPLY IN SUPPORT OF AMENDED EMERGENCY MOTION FOR PRELIMINARY INJUNCTION

1. The Supervisor publicly announced Salazar the winner "with or without a recount" while retaining recount authority and while her son-in-law represents Salazar. Salazar acknowledges both the relationship and the representation. (ECF No. 11 at 6-7 & n.2). The oppositions point to purported later remedies and two other Board members. None reach this conflict. The relief ECF No. 8 requests is narrow: a lawful, impartial recount in which the Supervisor does not participate in adjudicative decisions.

A. The Supervisor's response to this lawsuit reinforces the need for an impartial recount.

2. Yesterday, the Supervisor gave an interview on WPLG Local 10 in response to this lawsuit. *See* https://www.local10.com/video/this-week-in-south-florida/2026/11/08/this-week-in-south-florida-alina-garcia/. The interview brings her position into sharper focus. She accused "[t]he people that are suing me" of "trying to taint our elections," adding "they want to taint the

great job that we're doing, and I'm like, you know, no." **Exhibit A.** She called this lawsuit a "gimmick" and added: "JC Planas knows better." *Id.* Her media criticism targets the candidate seeking recusal and his counsel, and attributes an improper purpose to their request for an impartial decisionmaker. These accusations compound the conflict already before the Court: the Supervisor announced Congresswoman Salazar's victory while retaining authority over the recount, and her daughter and son-in-law represent Salazar. She now portrays the request to remove her from that adjudicative role as an attack on the election itself.

B. The due process question is the Supervisor's continued participation in this recount.

3. The inquiry is objective. *Caperton v. A.T. Massey Coal Co.* applies "objective standards that do not require proof of actual bias" and reserves constitutional recusal for the "extraordinary situation". 556 U.S. 868, 883, 887 (2009). *Davis v. Jones* confirms the threshold: an appearance-based statutory recusal violation "does not automatically mean the defendant was denied constitutional due process". 506 F.3d 1325, 1336 (11th Cir. 2007). This record clears that threshold. The Supervisor announced the winner of this unresolved contest, her son-in-law represents that candidate, she retains decisional authority after refusing recusal, and is now engaged in a media tour accusing the Plaintiff and his counsel of trying to taint the election through this very lawsuit. Each fact bears on the same pending adjudication. Together they create the risk that discretionary rulings will confirm a result she has already declared.

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4. *Davis* involved a family-counsel relationship, but it adjudicated a habeas corpus petition and its review was "confined to determining whether the state court decision was an unreasonable application of clearly established federal law as determined by the decisions from the Supreme Court in 1984". 506 F.3d at 1336. Moreover, Davis did "not allege[], and there is no evidence that Judge Teel had, any actual bias against Davis." The Eleventh Circuit further

explained that "we have no doubt that a federal judge would have been required to recuse if faced with the same situation as Judge Teel where the judge's brother appeared as an attorney representing a party before Judge Teel." *Id.* at 1332. Habeas relief was denied in *Davis* because the specific standard for habeas relief was not met. In contrast, this is not a habeas proceeding and there is significant evidence of actual bias by the Supervisor in this case.

5. The cited Doral recount totals cited are a red herring. The results show Fernandez's client being defeated by twelve votes, but the Defendants' filings disclose no individual disputed ruling or member vote and do not resolve the combined conflicts in this recount.

6. Likewise, the Supervisor's qualifiers that a changed result in the CD27 recount was "possible but not probable" and that, "Usually the trend we see is what continues," do not rescue her announcement of "the winner, with or without a recount," her decision to proceed with immediate family as her stated winner's counsel, or her partisan attacks on the Plaintiff in the media after this lawsuit was filed. An observer may predict, and J.C. Planas's 2018 prediction in that year's gubernatorial recount, which the Supervisor offers, identifies no adjudicative role of Planas (he had none), and concedes nothing about this recount. Supervisor Garcia, by contrast, is not an observer. She is an official who retains power over the same contest, whose close relatives represents the candidate she named, and who has attacked that candidate's opponent and announced its outcome. The Supervisor's decision to conflate the statements of a private election lawyer and of the Supervisor of Elections is itself concerning. "No right is more precious in a free country than that of having a voice in the election of those who make the laws under which, as good citizens, we must live. Other rights, even the most basic, are illusory if the right to vote is undermined." *Wesberry v. Sanders*, 376 U.S. 1, 17 (1964). Planas was an election lawyer and

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private citizen in 2018, and remains one in 2026. Garcia is an election administrator and adjudicator entrusted by the public to protect these precious rights. They have vitally distinct roles.

7. The administrative setting does not foreclose constitutional recusal. *League of Women Voters of Florida v. Scott* explains that the largely judicial history of constitutional recusals "does not limit *Caperton* from applying to non-judicial constitutionally required recusals". 366 F. Supp. 3d 1311, 1316 n.6 (N.D. Fla. 2018). *Scott* denied relief, but expressly observed that the Governor "has even recused himself from the Elections Canvassing Commission". *Id.* at 1317. The Supervisor chose the opposite course: "I will not recuse myself. There is no conflict." (ECF No. 8 at 6; ECF No. 1-1 at 51).

C. The state-remedy defense fails because no identified state procedure cures this injury.

8. This defense fails because there is no adequate state procedure. *Cotton v. Jackson* states that its rule "is not an exhaustion requirement". 216 F.3d 1328, 1331 n.2 (11th Cir. 2000); *see also Esso Standard Oil Co. v. López-Freytes*, 522 F.3d 136, 145 (1st Cir. 2008) (stating, in the distinct abstention context, that "[t]here is no requirement, however, that a litigant file a new, independent claim in state court prior to obtaining federal relief).

9. *McKinney v. Pate* holds that "the presence of a satisfactory state remedy mandates that we find that no procedural due process violation occurred". 20 F.3d 1550, 1564 (11th Cir. 1994). The operative word is satisfactory. "[T]he state procedure must be able to correct whatever deficiencies exist and to provide plaintiff with whatever process is due". *Cotton v. Jackson*, 216 F.3d 1328, 1331 (11th Cir. 2000). The proposed procedures fail that test: none supplies impartial adjudication of this recount.

10. The constitutional interest fixes what adequacy means here. *Ward v. Village of Monroeville* states: "Petitioner is entitled to a neutral and detached judge in the first instance." 409

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U.S. 57, 61-62 (1972). Likewise, "harm to the public that could not be remedied by a subsequent court decree" also demonstrates the absence of an adequate state remedy. *See Stretton v. Disciplinary Bd. of Supreme Court of Pennsylvania*, 944 F.2d 137, 140-41 (3d Cir. 1991). "[T]he potential impact on the parties caused by delay in obtaining a state ruling is a significant reason why state remedies may be insufficient. *Id.*

11. *Natural Lands, LLC v. City of Boca Raton* does not carry the defense. That decision reversed relief against biased city council members, including an order "enjoining them from participating in future variance application processes for the Parcel." 2025 WL 3202902, at *2-3 (11th Cir. Nov. 17, 2025). It rested on a conceded remedy: "both parties acknowledge that a writ of certiorari to a Florida state court was a remedy available to Natural Lands", after a completed variance hearing and denial. *Id.* at *1, *3. A neighboring-property proceeding showed that review working. On that footing, the court concluded that certiorari "could have remedied the precise harm that Natural Lands alleges: a procedurally defective, biased hearing". *Id.* at *3 & n.2. Natural Lands had a conceded writ, a completed quasi-judicial proceeding to review, and lacked the same kinds of emergent timelines and public electoral trust issues present here.

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12. Certiorari needs an adjudication to review. The writ is discretionary and confined to "the record of an inferior tribunal or agency in a judicial or quasi-judicial proceeding". *De Groot v. Sheffield*, 95 So. 2d 912, 915-16 (Fla. 1957). The record here holds a demand to the SOE's counsel and the Supervisor's refusal, not a Board recusal ruling with findings and a record to review. The Board's quasi-judicial function does not convert one member's refusal to step aside into a reviewable order. The Supervisor's public refusal identifies no completed Board adjudication for a circuit court to quash.

13. Section 102.141 supplies no such adjudication either. Subsection (1) excludes a member who is "an active participant in the campaign or candidacy of any candidate who has opposition in the election being canvassed". The complaint does not plead that predicate, and the Supervisor expressly explained in yesterday's WPLG interview that she is not engaged in that precise activity. *See* **Exhibit A**. Subsection (1)(b) names a substitute when the supervisor "is unable to serve or is disqualified," but it does not say who decides a contested constitutional disqualification. § 102.141(1), (1)(b), Fla. Stat. The Division of Elections advisory opinion cited by Congresswoman Salazar confirms the gap: "The statute is silent about who determines whether a member is disqualified", and "the canvassing board has no authority to disqualify or remove one of its members". Fla. Div. of Elections Op. DE 15-03, at 2 (2015). **Exhibit B**. The statute prescribes substitution but no Board proceeding for adjudicating this constitutional disqualification. Moreover, the advisory opinion explains that "ordinarily the statutory member must decide for him- or herself, based on personal knowledge of pertinent facts or circumstances, whether he or she is disqualified" and that "[a]ny dispute over whether a statutory member should or could be disqualified and replaced with a substitute might ultimately require judicial resolution." However, the opinion identifies no specific method procedure or method of obtaining judicial intervention. No authority identified by either Defendant reveals any such procedure or method of obtaining judicial intervention in a canvassing board recusal case.

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14. The Supervisor's own timing highlights the lack of an adequate state remedy. The Supervisor calls the injury premature until the Board makes a harmful decision, but the election contest statute is not a "satisfactory state remedy": it permits challenges to "the certification of election", and its misconduct and ballot grounds demand an effect "sufficient to change or place in doubt the result of the election". § 102.168(1), (3)(a), (c), Fla. Stat. The right to an impartial

decisionmaker before adjudication is axiomatic, however, and in the electoral context, absent the request relief in this action, the harm to the candidates, voters, public, and electoral process writ large will be irrevocable regardless of whether the Supervisor's conduct amounts to "misconduct" that is "sufficient to change or place in doubt the result of the election". Again, "harm to the public that could not be remedied by a subsequent court decree" demonstrates the absence of an adequate state remedy. *See Stretton*, 944 F.2d at 141 (3d Cir. 1991).

15. *Natural Lands*' reasoning does not change that. The court observed that "a state court quashing a decision because of bias places significant pressure on the City Council to conform its conduct to ensure due process". 2025 WL 3202902, at *3. That presupposes a court positioned to quash for bias. Here, none of the Defendants' suggested state court remedies establishes that corrective route, and none supplies impartial adjudication of this recount within its timetable.

16. Mandamus fares no better. It demands "a clear legal right to the performance of a clear legal duty". *De Groot*, 95 So. 2d at 916. Division of Elections Opinion DE 15-03 makes clear that whether to recuse is a decision for the individual canvassing board member, so mandamus is plainly unavailable.

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D. One seat on a three-member Board can cast the deciding vote.

17. The Supervisor can cast the deciding vote in a 2-1 Board decision. The Supervisor's label of her future vote as "non-dispositive" ignores that arithmetic. *Van Meter v. City of Lanett*, cited by the Supervisor, reasoned from a completed tally: "because the final vote was 4-2, Van Meter would have been terminated by a 3-2 vote were Crawley's vote to be excluded". 504 F. Supp. 2d 1229, 1233 (M.D. Ala. 2007). And the Supreme Court explained in *Williams v.*

Pennsylvania holds that "an unconstitutional failure to recuse constitutes structural error even if the judge in question did not cast a deciding vote". 579 U.S. 1, 14 (2016).

E. The imminent recount makes the injury concrete, and narrow relief protects public confidence.

18. The hearing is set for November 9 at 9 a.m., and the recount starts at 10 a.m. The irreparable harm is the Supervisor's adjudicative participation under this constitutionally intolerable conflict. Congresswoman Salazar agrees that once an unconstitutional conflict is established, a litigant "need not await an adverse ruling". (ECF No. 11 at 10). This motion stops no count. It requests that one official's adjudicative participation be restrained because her combined circumstances create an intolerable constitutional risk in a recount still to come. That participation is the injury the requested restraint prevents. It does not depend on a demonstrably wrong ballot ruling afterward.

19. The public interest reaches beyond the two candidates. *Purcell v. Gonzalez* states: "Confidence in the integrity of our electoral processes is essential to the functioning of our participatory democracy." 549 U.S. 1, 4 (2006). Later judicial review may correct a ruling, but its adequacy must account for what a recount asks the public to trust. A recount decided with a constitutionally disqualified official invites distrust of its result and of future elections run under the same tolerance for conflicts. That risk is prospective, and it weighs alongside the irreparable harm shown above. The combination here is concrete: an official who announced victory while retaining authority over the announced winner's recount, with her close relative serving as that candidate's counsel, and after subjecting a candidate to partisan attack. A rule leaving that combination unchecked would invite the same conflicts in Florida and elsewhere.

20. Likewise, an impartial recount protects whichever candidate ultimately wins. *Bost v. Illinois State Board of Elections* recognizes that candidates "have an obvious personal stake in

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how the result is determined and regarded." 607 U.S. 71, 79 (2026). That stake belongs to Rodriguez now, and a lawful, impartial recount protects Congresswoman Salazar equally if she prevails. Public confidence strengthens the reason to prevent that injury.

F. Conclusion

21. The Court should enter the participation restraint sought in the operative amended motion, or alternatively, narrowly tailored relief that affords meaningful relief under these circumstances.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was furnished through the Court's CM/ECF system on November 9, 2026, to all counsel of record.

/s/ Marc A. Burton
Marc A. Burton, Esq.