IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

CHRISTOPHER GLEASON, a Florida Citizen, Elector
and Candidate for Supervisor of Elections, Pinellas County

Plaintiff,

v.

Case No.: 24-003717-CI
UCN: 522024CA003717XXCICI

JULIE MARCUS, in her official capacity
as Pinellas County Supervisor of Elections, et al.,

Defendants.
_____/

DEFENDANT'S MOTION TO DISMISS PLAINTIFF'S [UN]VERIFIED COMPLAINT

All defendants sued in their official capacities as the Supervisor of Elections or employees thereof ("hereinafter Supervisor Defendants") move to dismiss Plaintiff's Complaint, by and through undersigned counsel, pursuant to Rule 1.140, Florida Rules of Civil Procedure, and in support thereof state as follows:

PRELIMINARY CONSIDERATIONS

August 20, 2024, was the day of the primary election in the state of Florida, and hence, Pinellas County. See, Fla. Stat. § 100.061 ("In each year in which a general election is held, a primary election for nomination of candidates of political parties shall be held on the Tuesday 11 weeks prior to the general election."); Fla. Const. Art. VI § 5 ("A general election shall be held in each county on the first Tuesday after the first Monday in November of each even-numbered year…"). At 2:34 PM on the day of the primary election, Plaintiff filed an unverified[1] Complaint

[1] Although Plaintiff asserts that the Complaint is verified, it lacks any oath, affirmation, or verification statement sworn under penalty of perjury as required by Fla. Stat. § 92.525(2) (2004).

for emergency injunctive relief seeking, in relevant part, to enjoin the Pinellas County Supervisor of Elections and certain members of her staff from completing their duty to count vote-by-mail ballots. The eleventh-hour Complaint is a web of vague, speculative, unsupported allegations aiming to attack his electoral opponent with outlandish inferences of wrongdoing based upon a complete misrepresentation of reality coupled with a grave misunderstanding of the Florida Election Code. On August 22, 2024, this Court entered an Order Denying Temporary Injunction Without Notice and Certifying Public Records Act Claim for Accelerated Hearing. (Doc. #18). The injunction was denied because Plaintiff failed to establish he would suffer immediate and irreparable injury, loss or damage before the adverse party could be heard in opposition; and because the Complaint was not verified, i.e., Plaintiff failed to affirm the facts or matters asserted within the Complaint were true. (Doc. #18). Plaintiff filed a Motion for Reconsideration of the Order the same date it was issued. (Doc. # 9). An accelerated hearing on Plaintiff's Chapter 119 Public Records Act claim was scheduled, noticed, and occurred on August 29, 2024. (Doc. #19). The Court did *not* find a violation of Chapter 119 at the hearing on August 29, 2024.

It is the Canvassing Board (an indispensable non-party), not the Supervisor Defendants, who canvass, or count ballots. The ballots for the August 20, 2024, election have been counted and Pinellas County election results certified.

MEMORANDUM OF LAW

I. Plaintiff's request for a temporary or preliminary injunction should be denied.

In the Complaint, Plaintiff seeks as a remedy, a temporary or preliminary injunction prohibit the Defendants from counting any vote-by-mail ballots sent without voter consent or sent to incorrect addresses in the upcoming August 20, 2024, election. As stated supra., it is the Canvassing Board (an indispensable non-party), not the Supervisor Defendants who canvass

ballots. All valid ballots for the August 20, 2024, election have already been counted and results certified. “[B]arring fraud, unfairness, disenfranchisement of voters, etc., it is too late to attack the validity of an election after the people have voted." *Levey v. Dijols*, 990 So. 2d 688, 692 (Fla. 4th DCA 2008). Plaintiff’s Complaint sets forth no ultimate facts upon which fraud, unfairness and disenfranchisement of voters can be found on the part of the Supervisor of Elections Defendants. Moreover, Plaintiff has failed to plead acts of fraud with particularity. Accordingly, the requested relief is not an available remedy. The sole statutory mechanism to bring an election contest after an election has taken place is enumerated in Fla. Stat. § 102.168. *Burns v. Tondreau*, 139 So. 3d 481, 486 (Fla. 3d DCA 2014).

Furthermore, to prove entitlement to a temporary injunction, Plaintiff is required to plead and prove the following elements: 1) a likelihood of irreparable harm; (2) unavailability of an adequate legal remedy; (3) a substantial likelihood of succeeding on the merits; and (4) considerations of the public interest support the entry of the injunction. *Salazar v.Hometeam Pest Def., Inc.*, 230 So. 3d 619, 621 (Fla. 2d DCA 2017). Moreover, “[t]he issuance of a temporary injunction remains an extraordinary remedy, granted sparingly.” *Id.*

Plaintiff seeks to enjoin the counting of ballots which have been cast. Plaintiff has failed to establish a likelihood of irreparable harm or the unavailability of an adequate legal remedy. A contest of election may be brought in conformity with Fla. Stat. § 102.168.

Plaintiff does not have a substantial likelihood of success on the merits of his claim and has failed to establish proof that any ballots were cast by persons not entitled to vote. Moreover, the Plaintiff had an ample opportunity to review mail ballots as provided in § 101.572(2) and § 101.6104, Fla. Stat. Specifically, § 101.572(2), Fla. Stat., allows for the public inspection of ballots under the supervision of the Supervisor of Elections, enabling political parties, candidates,

and authorized designees to inspect voter certificates and challenge signatures. Indeed, Plaintiff had authorized designees attending four of the six opportunities to review signatures on mail ballots. Additionally, pursuant to § 101.6104, Fla. Stat.:

> If any elector present for the canvass of votes believes that any ballot is illegal due to any defect apparent on the voter's certificate, the elector may, at any time before the ballot is removed from the envelope, file with the canvassing board a protest against the canvass of such ballot, specifying the reason he or she believes the ballot to be illegal. No challenge based upon any defect on the voter's certificate shall be accepted after the ballot has been removed from the return mailing envelope.

Given this framework, the Plaintiff's claims are without merit and based on a misunderstanding and misapplication of Florida law. The opportunity for review and challenge of mail ballot signatures and defects has been clearly established, and no credible evidence has been presented to suggest that the canvassing board acted outside its discretion. As such, the Plaintiff is unlikely to succeed on the merits, and his complaints amount to mere speculation. Moreover, the primary election includes federal congressional primaries and Article I, Section 5 of the United States Constitution provides: "Each House shall be the Judge of the Elections, Returns and Qualifications of its own Members." Pursuant to this clause, any contest regarding a congressional election can only be brought to the House of Representatives. *See, Morgan v. U.S.*, 801 F.2d 445 (U.S. App. D.C. 1986).

Finally, the public interest in this case is honoring the will of the voters and protecting the integrity of the elections. The interest of the public will not be served by the granting of a temporary injunction. As the Florida Supreme Court has recognized, it is the voters to whom the court "must give primary consideration." *Beckstrom v. Volusia County Canvassing Bd*., 707 So. 2d 720, 724 (Fla. 1998).

> The contestants have direct interests certainly, but the office they seek is one of high public service and utmost importance to the people, thus subordinating their interests to that of the people. Ours is a government of, by and for the people. Our federal and state constitutions guarantee the right of the people to take an active part in the process of that government, which for most of our citizens means participation via the election process. The right to vote is the right to participate; it is also the right to speak, but more importantly the right to be heard. We must tread carefully on that right or we risk the unnecessary and unjustified muting of the public voice. By refusing to recognize an otherwise valid exercise of the right of a citizen to vote for the sake of sacred, unyielding adherence to statutory scripture, we would in effect nullify that right.

Beckstrom v. Volusia County Canvassing Bd., 707 So. 2d 720, 724 (Fla. 1998), citing *Boardman v. Esteva*, 323 So. 2d 259, 263 (Fla. 1975). "Since there is no common law right to contest elections, any statutory grant must necessarily be construed to grant only such rights as are explicitly set out." *McPherson v. Flynn,* 397 So. 2d 665, 668 (Fla. 1981), citing *Pearson v. Taylor,* 159 Fla. 775, 32 So.2d 826 (1947). The statutory right is found in Fla. Stat. §102.168 (2024).

As a result, the public interest supports the dismissal of the injunction. For the reasons set forth herein, Plaintiff's request for a temporary injunction should be denied. The request for an injunction was not properly plead as a separate claim for relief, rather included in Plaintiff's prayer for relief. Notwithstanding the error in pleading, the requested relief is moot.

II. Plaintiff's Complaint should be dismissed because it fails to comply with basic rules of pleading.

Rule 1.110(b), Fla. R. Civ. P., provides that to set forth a claim for relief a complaint must contain "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief ...." "Whether a complaint is sufficient to state a cause of action is an issue of law." *Doe v. Baptist Primary Care, Inc*., 177 So. 3d 669, 674 (Fla. 1st DCA 2015). In determining whether a plaintiff has met his burden to survive a motion to dismiss, the court is limited to the specific allegations stated on the face of the operative complaint and its attachments. *Santiago v. Mauna Loa Invs., LLC*, 189 So. 3d 752, 755 (Fla. 2016). While "courts must liberally construe, and accept

as true, factual allegations in a complaint and reasonably deductible inferences therefrom," they need not accept ... conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party." *W.R. Townsend Contracting, Inc. v. Jensen Civil Construction, Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999). "Legal conclusions presented as allegations of fact . . . are not deemed true." *Point Conversions, LLC v. Omkar Hotels, Inc.*, 321 So. 3d 326, 328 (Fla. 1st DCA 2021).

Plaintiff filed a four-count complaint containing a single prayer for relief. Count I alleges a violation of the Florida Equal Protection Clause against all Defendants. Count II asserts an alleged violation of (multiple) Florida Election Laws against all Defendants. Count III alleges a violation of Florida Statutes, § 838.022, against all Defendants. Count IV asserts an alleged violation of the Public Records Act against all Defendants.

Instead of setting forth "a short and plain statement of the ultimate facts" as required by Rule 1.110(b), Fla. R. Civ. P., Plaintiff's Complaint is filled with supposition and legal conclusions. Additionally, Plaintiff fails to set forth his averments of claim in consecutively numbered paragraphs as required by Rule 1.110(f). Fla. R. Civ. P. Moreover, Plaintiff improperly joins claims regarding the primary election and vote-by-mail ballots and ballot requests and separate and distinct public records claims in violation of Rule 1.110(g). Fla. R. Civ. Pr.

Under Florida law, "[l]itigants at the outset of a suit must be compelled to state their pleadings with sufficient particularity for a defense to be prepared." *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561, 563 (Fla. 1988). Moreover, conclusory allegations are insufficient. *Stein v. BBX Cap. Corp.*, 241 So. 3d 874, 876 (Fla. 4th DCA 2018). "Florida is a fact-pleading jurisdiction, not a notice-pleading jurisdiction." *Deloitte & Touche v. Gencor Indus. Inc*., 929 So. 2d 678 (Fla 5th DCA 2006). A complaint "must set forth factual assertions that can be supported by evidence which gives rise to legal liability."

Barrett v. City of Margate, 743 So. 2d 1160, 1162-1163 (Fl. 4th DCA 1999). The "complaint must allege ultimate facts establishing each and every essential element of a cause of action in order to entitle the pleader to the relief sought." *Sanderson v. Eckerd Corp*., 780 So. 2d 930, 933 (Fla. 5th DCA 2001).

Moreover, the Complaint improperly commingles the allegations against all Defendants. See, *Aspsoft, Inc. v. WebClay*, 983 So. 2d 761, 768 (Fla. 5th DCA 2008). In *Veltmann v. Walpole Pharmacy, Inc.,* 928 F. Supp. 1161, 1163-64 (M.D. Fla. 1996), the court dismissed a complaint explaining that plaintiff's failure to separate each alleged act by each defendant into individually numbered paragraphs made it "virtually impossible to ascertain from the [c]omplaint which defendant committed which alleged act." *Id*. at 164. Although dismissed on other grounds, the court noted that plaintiff's general allegations against all the named defendants would have been sufficient grounds for dismissal as well. *Id*. Plaintiff's Complaint should similarly be dismissed.

III. Plaintiff's Complaint should be dismissed to the extent he fails to plead fraud with specificity.

"It is well established that '[t]he plaintiff must raise a prima facie case of fraud, rather than 'nibble at the edges of the concept' through speculation and supposition." *Tikhomirov v. Bank of N.Y. Mellon*, 223 So. 3d 1112, 1116 (Fla. 3d DCA 2017. Moreover, pursuant to Rule 1.120, Fla. R. Civ. P., "in all averments of fraud or mistake, the circumstances constituting fraud or mistake shall be stated with such particularity as the circumstances may permit." Plaintiff's Complaint is based entirely on speculation and supposition and fails to meet the pleading threshold necessary to assert fraud.

IV. Plaintiff's Complaint should be dismissed because he failed to name numerous indispensable parties including but not limited to the Canvasing Board.

Plaintiff asks this court to "[i]ssue a temporary restraining order (TRO) and preliminary injunction prohibiting the Defendants from counting any vote-by-mail ballots sent without voter consent or sent to incorrect addresses in the upcoming August 20, 2024, election." (Doc. #1, pg. 11 ¶d). The county canvassing board, not the Supervisor of Elections or staff thereof, is charged with the canvassing of vote-by-mail ballots. Fla. Stat. §§ 101.68, 102.141(2)(a)(2024). Accordingly, Plaintiff has failed to name the Canvassing Board as a party.

V. Plaintiff lacks standing to bring any of his claims, except to the extent he claims a violation of Florida Statutes Chapter 119 as it relates to a request that Plaintiff, not third parties, made.

"Generally, in order to have standing to bring an action the plaintiff must allege that he has suffered or will suffer a special injury." *Alachua County v. Scharps*, 855 So. 2d 195, 198 (Fla. 1st DCA 2003. Plaintiff asserts standing based on his status as "a registered voter, a taxpayer, and a candidate running for the office of Pinellas County Supervisor of Elections against the incumbent, Julie Marcus." (Doc. #1, ¶5). While the Plaintiff's status as a candidate, registered voter, and taxpayer may grant him standing to bring a contest of election under § 102.168, Fla. Stat., he brought no such action within the required timeframe. See Fla. Stat. § 102.168(2). Furthermore, Plaintiff does not allege that he received a vote-by-mail ballot without requesting one. As a result, he makes no allegations related to him personally as a registered voter, and, therefore, fails to establish standing to bring suit as such.

Plaintiff's status as a taxpayer is similarly insufficient to confer standing. The special injury requirement has an exception "where there is an attack upon constitutional grounds based directly upon the Legislature's taxing and spending power." *Id.* at 198-199. As a taxpayer, Plaintiff alleges no special injury conferring standing. Plaintiff's status as a former candidate similarly does not confer standing for the claims brought in the instant Complaint.

Wherefore, Plaintiff's Complaint, except the now moot Chapter 119 Public Records Act challenge, should be dismissed for lack of standing.

VI. Plaintiff's Complaint is based, largely, if not wholly, upon a misunderstanding and misapplication of the law.

a. As recognized by the Plaintiff, §101.62, Florida Statutes, governs request for vote-by-mail ballots.

Plaintiff's Complaint asserts, without factual basis, that the Pinellas County Supervisor of Elections, or her employees under her direction violated election laws. (Doc. #1, ¶10). Pursuant to § 101.62(a), Fla. Stat.:

> 1. The supervisor shall accept a request for a vote-by mail ballot only from a voter or, if directly instructed by the voter, a member of the voter's immediate family or the voter's legal guardian.
> 2. A request may be made in person, in writing, by telephone, or through the supervisor's website.
> 3. One request is deemed sufficient to receive a vote-by-mail ballot for all elections through the end of the calendar year of the next regularly scheduled general election, unless the voter or the voter's designee indicates at the time the request is made the elections within such period for which the voter desires to receive a vote-by-mail ballot.
> 4. The supervisor must cancel a request for a vote-by-mail ballot when any first-class mail or nonforwardable mail sent by the supervisor to the voter is returned as undeliverable. If the voter requests a vote-by mail ballot thereafter, the voter must provide or confirm his or her current residential address.

Fla. Stat. § 101.62(a) (2004).

"If a ballot is requested to be mailed to an address other than the voter's address on file in the Florida Voter Registration System, the request must be made in writing." Fla. Stat. § 101.62(b). The only exception is for absent uniformed services voters or overseas voters who are "not required to submit a signed, written request for a vote-by-mail ballot that is being mailed to an address other than the voter's address on file in the Florida Voter Registration System." *Id.*

The Supervisor has neither the luxury nor obligation to cross-reference the voter's address on file in the Florida Voter registration System with nongovernmental third-party databases as

Plaintiff suggests. (Doc. #1, ¶13). Rather, the Supervisor must comply with address list maintenance as provided for in Fla. Stat. § 98.065. Moreover, the timing of the mailing of vote-by-mail ballots is governed by State law. "No later than 45 days before each … primary election… the supervisor of elections shall send a vote by mail ballot… to each absent uniformed services voter and to each overseas voter who has requested a vote-by-mail ballot. Fla. Stat. § 101.62(3)(a) (2024). For all other vote-by-mail ballot requests, the supervisor shall mail such ballot "between the 40th and 33rd days before the … primary election" or thereafter "within 2 business days after receiving a request for such a ballot, but no later than the 12th day before election day." Fla. Stat. § 101.62(3)(b), (c) (2024). These statutory timelines evidence Plaintiff's ability to raise his claims prior to election day and his calculated failure to do so.

Plaintiff's absolute reliance on the requirement of Florida Administrative Code Rule 1S-2.055 is misplaced. Section 101.62(a), Fla. Stat., states, "[t]he department shall prescribe by rule by October 1, 2023, a uniform statewide application to make a written request for a vote-by-mail ballot which includes fields for all information required in this subsection." The department complied and promulgated Rule 1S-2.055. Notably, however, the Rule did not become effective until April 17, 2024. As of the effective date of the Rule, written requests for vote-by-mail ballots "must be made using Form DS-DE 160." (emphasis added). The DS-DE 160 form was not effective until April 17, 2024, and, therefore, vote-by-mail ballot requests submitted prior to April 17, 2024, would not have a DS-DE 160. However, in accord with Florida Statutes, the rule recognizes that requests may also be submitted in person, by telephone, or through a supervisor's website. Rule 1S-2.055(3), F.A.C. (2024).

The promulgation of § 101.62, Fla. Stat., did not invalidate written vote-by-mail ballot requests which were made prior April 17, 2024, in accordance with Florida law.

> It is axiomatic that an administrative rule cannot enlarge, modify or contravene the provisions of a statute. As a result, when an administrative rule conflicts with the enabling statute, the statute will control. *See, e.g., Fla. Dep't of Revenue v. A. Duda & Sons, Inc.*, 608 So. 2d 881, 884 (Fla. 5th DCA 1992) ("In the event of a conflict between a statute and an administrative regulation on the same subject, the statute governs.

Phillips v. Leon Cty. Public Works, 277 So. 3d 1076, 1079-1080 (Fla. 1st DCA 2019).

Therefore, the requirement of the DS-DE 160 for written requests only impacts vote-by-mail ballot requests made after April 17, 2024. As a result, written vote-by-mail requests submitted prior to April 17, 2024 which, therefore, could not have been made on a DS-DE 160 are still valid requests for vote-by-mail ballots for all elections occurring "through the end of the calendar year of the next regularly scheduled general election" unless the request indicates a shorter period for which the voter desires to receive a vote-by-mail ballot, or otherwise canceled. Fla. Stat. § 101.62 (2024).

In ruling on a motion to dismiss, trial courts should interpret applicable statutes in conjunction with facts pled. *Woozly v. Gov't Emp. Ins. Co.*, 360 So. 2d 1153, 1154 (Fla. 3d DCA 1978). In this case, Plaintiff has failed to state a cause of action based on the current state of Florida Law and the speculatory allegations contained with the Complaint.

VII. Plaintiff fails to allege ultimate facts conferring jurisdiction upon this Court to issue a declaratory judgment as sought by the Plaintiff.

While Plaintiff's Complaint fails to contain a count pleading for declaratory relief, Plaintiff requests three separate declarations in his prayer for relief. In *May v. Holley*, the Florida Supreme Court set forth the standard for determining the sufficiency of a declaratory judgment complaint.

> Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the

> facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

May v. Holley, 59 So. 2d 636, 639 (Fla. 1952). "[A]bsent a bona fide need for a declaration based on present, ascertainable facts, the circuit court lacks jurisdiction to render declaratory relief." *Santa Rosa County v. Admin. Comm'n, Div. of Admin. Hearings*, 661 So. 2d 1190, 1193 (Fla. 1995). There are no present, ascertained, or ascertainable facts from which it can be found that the Supervisor Defendants violated any election laws. Therefore, Plaintiff's request for declaratory relief should be denied.

VIII. Count I should be dismissed because Plaintiff failed to state a claim upon which relief can be granted for violations of Equal Protection.

Plaintiff asserts in Count I that the disparate treatment he suffered was the "unauthorized and unrequested distribution of vote-by-mail ballots, creating a situation where ballots could be cast illegally, diluting the lawful votes of the Plaintiff and of others." (Count I, §2). Assuming for a moment that the Plaintiff's allegations were anchored in reality for the purpose of this motion to dismiss, it is evident that the Plaintiff is being treated the same as all similarly situated voters. Furthermore, Plaintiff alleges no facts from which it can be found that any harm to Plaintiff as a candidate for office is different than any harm to other candidates for office. In addition to failing to state ultimate facts from which it can be found that Plaintiff was treated differently, for purposes of standing, there are no facts from which it can be found that Plaintiff suffered any different harm than similarly situated people. "It is well settled under Florida law that all similarly situated persons are equal under the law and must be treated alike." *Ocala Breeders' Sales Co. v. Fla. Gaming Ctrs.*, 793 So. 2d 899, 901 (Fla. 2001). Plaintiff's Complaint is devoid of any factual

allegation by which he can be found to be treated differently from similarly situated people and, therefore dismissal is warranted.

IX. Count II requires dismissal because Plaintiff failed to state a claim upon which relief can be granted for violations of the Florida Elections Law.

While failing to set forth ultimate facts in Count II, Plaintiff sets forth conclusions that the Defendants engaged in violations of (1) ballot request procedures, (2) unlawful distribution of ballots (3) improper handling of vote-by-mail ballots, (4) improper handling of returned vote-by-mail ballots, (5) attempting to cast fraudulent votes by sending ballots to addresses where voters no longer reside; (6) by "knowingly allowing or facilitating the casting of multiple votes or voting in someone else's name;" (7) by sending ballots to unverified addresses and refusing to comply with the public records law; (8) by diluting lawful votes and facilitating fraud; and (9) by ordering vote-by-mail ballots on behalf of individuals who were not immediate family members. In addition to setting forth no ultimate facts to support these salacious and defamatory allegations, Plaintiff fails to set forth any grounds from which it can be found that citizens double voted or cast votes for other individuals. Plaintiff's allegations as to the effect of these alleged activities is highly speculative and conjectural. Moreover, there is no authority suggesting that the proper resolution would be to throw out votes, as sought by the Plaintiff. See, *McLean v Bellamy*, 437 So. 2d 737, 743-744 (Fla. 1st DCA 1983) (finding that the statutory provisions setting forth the criteria for the issuance of absentee ballots were directory, but failing to "glean from the provisions of that section a legislative intent that the failure to follow the letter of its provisions should result in the invalidation of absentee ballots cast by qualified electors who are also qualified to vote absentee.") As noted in *Mclean*, there is no legislative declaration in applicable Florida Statues from which it can be found that "strict compliance with the provision of law is essential to the validity of the

ballot or that the failure to strictly follow any of its provisions will cause the ballot not to be counted." *Id.*, at 744.

X. Count III demands dismissal because Section 838.022, Florida Statutes, is a criminal statute and provides no civil cause of action.

Section 838.022, Fla. Stat., is a criminal statute that contains no private cause of action in civil lawsuits. Plaintiff's attempt to invoke this statute is not just legally baseless but a clear stunt to misuse the judicial process. The mere pleading of a violation of this statute is immaterial, impertinent, and scandalous and should be stricken per Rule 1.140(f), Fla. R. Civ. P.

XI. Count IV should be dismissed for failure to state a cause of action on which relief may be granted or in the alternative, is moot.

Section 119.07(1), Fla. Stat., requires that "[e]very person who has custody of a public record…permit the record to be inspected and copied…at any reasonable time. The right to access, however, must be balanced with the public agency's obligation to protect exempt or confidential records. See §119.01(2)(a) (2024) ("As each agency increases its use of and dependence on electronic recordkeeping, each agency must provide reasonable public access to records electronically maintained and must ensure that exempt or confidential records are not disclosed except as otherwise permitted by law." (Emphasis added).

The Exhibits attached to Plaintiff's complaint establish that he was not denied public records. The exhibits attached to a complaint "are encompassed within the four corners of the complaint and must be considered therewith" on a motion to dismiss." *Abele v. Sawyer*, 750 So. 2d 70, 74 (Fla. 4th DCA 1999); see also Fla. R. Civ. P. 1.130(b) ("Any exhibit attached to a pleading shall be considered a part thereof for all purposes.").

Plaintiff's exhibits show that on Wednesday, July 17, 2024, Plaintiff, as a candidate for office, e-mailed a public record's request to the "Custodian of Records" at the Pinellas County

Supervisor of Elections (votepinellas.gov), and the Department of state (dos.myflorida.com). Specifically, Plaintiff requested "[c]opies of any and all Logs, List(s) and/or documents of the Pinellas County Voters who have requested a vote by mail ballot be mailed to them for the August 20th Primary Election." Even more specific, Plaintiff sought "the official and comprehensive records" from the "county's election authorities", which would be the information the Supervisor is required to compile pursuant to Fla. Stat. § 101.62(2).

> Upon receipt of a public records request, an agency may:
>
> If the nature or volume of public records requested to be inspected or copied pursuant to this subsection is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or both, the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the cost incurred for such extensive use of information technology resources or the labor cost of the personnel providing the service that is actually incurred by the agency or attributable to the agency for the clerical and supervisory assistance required, or both

Fla. Stat. § 119.07(4)(d) (2024). The agency also may require an advance deposit of fees associated with the production of the records. As the Second District Court of Appeals has recognized, a "policy of requiring an advance deposit seems prudent given the legislature's determination that taxpayers should not shoulder the entire expense of responding to an extensive request for public records." "[T]he reasonableness of a policy and its application — based on the facts in a particular case — guides whether an abuse of discretion is shown." *Board of County Commissioners of Highlands County v. Colby*, 976 So. 2d 31, 37 (Fla. 2d DCA 2008). As a result, in *Colby*, the court held that the agency could collect an advance deposit of the special service charge before conducting the search for the public records, so long as the estimate was reasonable and based on the labor costs actually incurred by or attributed to the agency. *Id*.; see, Fla. Stat.

§119.07(4) ("The custodian of public records shall furnish a copy…of the record upon payment of the fee prescribed by law.").

The Exhibits to Plaintiff's Complaint prove Plaintiff received a good faith response promptly, or no later than a reasonable time, eight days later. See, Fla. Stat. § 119.0701(4) (2024) (providing that "[a] contractor who complies with a public records request within 8 business days after [a written notice to a public agency and its contractor of a public requests with a statement that the contractor has not complied with the request] is sent is not liable for the reasonable costs of enforcement [of the public records law].") The response advised how he could receive the list of mail ballot requests and sought clarification of the broader request for "any and all documents." On Thursday, July 25, 2024, a response was sent advising Plaintiff as follows

(a) "as a candidate with opposition" he was "entitled to the list of mail ballot requests after filing [his] oath of acquisition."

(b) that it would "require an estimated 18,000 hours to compile the logs and documents for each voter who requested a mail ballot" (documents Plaintiff was requesting beyond those he was entitled to as a candidate pursuant to Florida Statute 101.62(2));

(c) of the agency's right to charge a special service charge for the extensive effort;

(d) that "[t]he estimated cost for fulfilling [his] request will be provided upon determining the exact scope and volume of records responsive to [his] request;"

(e) offering to "work with [Plaintiff] to narrow the scope of [his] request to make it more manageable and cost-effective;"

(f) requesting Plaintiff advises his "preference" regarding narrowing the scope of his request to reduce the cost, or receiving a "full cost estimate for processing the entire request as currently stated;" and

(g) advising that if a response was not received within 30 days…the Supervisor of Elections [would] consider the request closed."

In accordance with § 101.62(2), Fla. Stat., supervisors of elections are required to compile information on vote-by-mail ballot requests that must be updated and made available each day beginning 60 days before the primary, and contemporaneously provided to the Division of Elections.

Plaintiff would have fallen within the limited types of entities able to access this confidential and exempt information upon filing qualification papers for election, and while he remained a candidate with opposition in an upcoming election. Fla. Stat. § 101.62(2). However, pursuant to Administrative Rule 1S-2.043(2), those statutorily allowed access to this confidential and exempt information may obtain the list from the State, only after they submit an online request application, Form DS-DE 146. Similarly, in Pinellas County, to receive the list, those authorized by law must submit an Oath of Acquisition Form, which substantially mirrors the DS-DE 146.

Plaintiff's Complaint contains no facts from which it can be found (a) that he was entitled to the requested records or (b) responded to the Supervisor of Elections in response to their reply to him of July 25, 2024. There was no refusal to provide the requested records or unjustified delay.

The filing of an oath of acquisition post-election does not cure this defect because Plaintiff is no longer statutorily authorized to this confidential and exempt information pursuant to Fla. Stat. § 101.62(2). Plaintiff is not "a candidate who has filed qualification papers and is opposed in an upcoming election." He is not entitled the specific confidential and exempt information identified in Fla. Stat. § 101.62. Pursuant to Administrative Rule 1S-2.043(3)(d)(1)(a), "Authorization for access is only valid through the earlier of the end of the general election year in which authorization was initially granted or until the person or entity is no longer statutorily entitled to the information,

whichever is applicable." (Emphasis added). Accordingly, Plaintiff's Chapter 119 Public Records Act claim, to the extent it sought confidential and exempt information, is moot.

Count IV is similarly moot based on the Court finding no violation of Chapter 119 at the expedited hearing on August 29, 2024.

XII. As a *pro se* litigant, Plaintiff is not entitled to attorney's fees.

Pro se litigants are not entitled to an award of attorney's fees." *Kay v. Ehrler*, 499 U.S. 432, 435, 111 S. Ct. 1435, 113 L. Ed. 2d 486 (1991); see, *Massengale v. Ray*, 267 F. 3d 1298, 1302-03 (11th Cir. 2001) ("Because a party proceeding *pro se* cannot have incurred attorney's fees as an expense, a district court cannot order a violating party to pay a *pro se* litigant a reasonable attorney's fee as part of a sanction."); see also, *City of Riviera Beach v. Lozman*, 672 Fed. Appx. 892, 899 (11th Cir. 2016)."); *U.S. v. Evans*, 561 Fed. Appx. 877, 880 (11th Cir. 2014) ("[*P*]*ro se* litigants are entitled to an award of attorney fees only to the extent that the 'services of an attorney were utilized and fees incurred.'") [*12] (citation omitted); *Torres v. Miami-Dade Cty.*, No. 15-24013-CIV, 2019 U.S. Dist. LEXIS 45428, 2019 WL 1281213, at * 3 (S.D. Fla. Mar. 20, 2019) ("Plaintiff's request for attorney's fees . . . is denied as he is a *pro se*, non-lawyer, litigant not entitled to such fees."); *DeBose v. Univ. of S. Fla. Bd. of Trs.*, No. 8:15-cv-2787, 2018 U.S. Dist. LEXIS 228698, 2018 WL 8919870, at *1 (M.D. Fla. Oct. 19, 2018) ("[A] *pro se* plaintiff, as a matter of law, cannot recover attorney's fees for representing herself."). *Lee v. Animal Aid, Inc.*, 2024 Fla. App. LEXIS 4562, *11-12.

WHEREFORE, Defendants respectfully request this Honorable Court enter an order dismissing Plaintiffs Unverified Complaint and grant any other relief deemed appropriate.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Circuit Court by using the Florida E-Filing Portal and simultaneously emailed to **CHRISTOPHER GLEASON**, Plaintiff at gleasonforpinellas@gmail.com, cpgleason72@gmail.com and immutabletruth@protonmail.com on the 11th day of September 2024.

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