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

NEELAM TANEJA PERRY a/k/a
NEELAM TANEJA,

Plaintiff,

v. CASE NO.: 24-003892-CI

ROBERT ROCHFORD, et. al.,

Defendant.
_____/

DEFENDANT AMANDA COFFEY'S MOTION TO DISMISS PLAINTIFF'S COMPLAINT

AMANDA COFFEY, in her official capacity as Managing Assistant County Attorney with the Pinellas County Attorney's Office, by and through the undersigned counsel, pursuant to Fla. R. Civ. P. 1.140 and Fla. Stat. § 102.168, hereby moves this Honorable Court for an Order dismissing Plaintiff's Complaint with prejudice and asserts the following defenses.

"Courts must take care in post-election challenges to avoid disenfranchising voters without clear statutory warrant." *Norman v. Ambler*, 46 So. 3d 178, 181 (Fla. 1st DCA 2010). "Generally, there is no inherent power in the courts of Florida to determine election contests and the right to hold legislative office. *McPherson v. Flynn*, 397 So. 2d 665, 667 (Fla. 1981). The election contest statute on which this suit is based must be strictly construed. *McPherson* at 668 citing *Pearson v. Taylor*, 32 So. 2d 826 (Fla. 1947). "The statutory election contest has been interpreted as referring only to consideration of the balloting and counting process. *McPherson* at 668 citing *State v. ex rel. Peacock v. Latham*, 169 So. 597 (1936); *Farmer v. Carson*, 148 So. 557 (1933).

While Section 102.168, Florida Statutes, requires the filing of an answer and defenses to any election contest within ten days after the complaint was served, Florida law does not prohibit

motions seeking dismissal of such an action. *See e.g. Burns v. Tondreau*, 139 So.3d 481 (Fla. 3d DCA 2014) (affirming, in part, trial court's granting of a Motion to Dismiss of an election contest filed pursuant to Section 102.168, Fla. Stat.).

I. THIS COURT LACKS JURISDICTION BECAUSE U.S. CONGRESS HAS EXCLUSIVE AUTHORITY TO DECIDE THE ELECTION CONTEST ASSERTED IN THIS SUIT.

As an initial matter, Florida courts are without jurisdiction to entertain contests regarding elections for either the United States House of Representatives or the United States Senate, requiring dismissal of this case. *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 regarding a congressional election can only be brought to the U.S. House of Representatives. *Id.* Many other 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).

Florida jurisprudence has not yet decided whether primary elections are encompassed by the Elections Clause proscription of authority, but the Colorado Supreme Court has definitively found that they are. *Rogers v. Barnes*, 172 Colo. 550, 553 (Colo. 1970). In *Rogers*, the losing candidate in a U.S. Congressional primary contested the election based on illegal votes and other grounds. *Id* at 552.

> Quite clearly, then, section 5 empowers Congress, and Congress alone, to determine charges of voting irregularity, for example, stemming from a general election and concerning the offices of United States Senator and member of the United States House of Representatives. See, for example, *Laxalt v. Cannon*, 80 Nev. 588,

> 397 P.2d 466; *Keogh v. Horner*, 8 F. Supp. 933; and *Odegard v. Olson*, 264 Minn. 439, 119 N.W. 2d 717. Such jurisdiction being exclusive, no other body, including this Court, has the jurisdiction to hear and determine an election contest arising out of a general election for those two national offices. That such is the case demonstrated by the fact that though the legislature has enacted a series of statutes relating to general election contests, there is no statute providing for contesting the election of one to the United States Senate or the House of Representatives, such right having been reserved by the Constitution to Congress.
>
> The **issue** here to be resolved is **whether the same rule applies to a primary election where competing candidates are seeking a political party's nomination to, for example, the United States House of Representatives. We hold that it does and that this Court is without jurisdiction to hear and determine the matters now sought to be raised by Rogers, nor could it grant the relief which he seeks.**

Id at 553 (emphasis added).

Plaintiff aims to contest the election results of the republican primary for Representative in United States Congress, District 14 held on August 20, 2024. *See generally* Compl., Doc. 3. However, this Court lacks jurisdiction over this purported election contest because the Elections Clause of the U.S. Constitution excludes judicial jurisdiction and reserves authority to the U.S. House of Representatives. Accordingly, the Complaint should be dismissed with prejudice for lack of jurisdiction.

II. PINELLAS COUNTY IS THE IMPROPER VENUE TO CONTEST AN ELECTION WHICH COVERS MORE THAN ONE COUNTY.

Even if Florida courts had jurisdiction over election contests focused on U.S. congressional seats, venue for the present action would only be proper in Leon County. The republican primary election in District 14 for U.S. Congress, at issue in this suit, covers both Pinellas and Hillsborough counties. FLORIDA'S US CONGRESSIONAL DISTRICTS 2022, *Polygon layer, US_Congress-2022-P000C0109, District 14*

https://www.arcgis.com/apps/mapviewer/index.html?panel=gallery&suggestField=true&layers=67c4b83cdbdb495cba4730a36afa4175 (last accessed September 16, 2024).

> The venue for contesting a nomination or election or the results of a referendum shall be in the county in which the contestant qualified or in the county in which the question was submitted for referendum **or, if the election or referendum covered more than one county, then in Leon County**.

FLA. STAT. § 102.1685 (2024) (emphasis added). Accordingly, venue is improper in Pinellas County courts and the Complaint should be dismissed with prejudice.

III. PLAINTIFF HAS FAILED TO JOIN INDISPENSABLE PARTIES INCLUDING THE ELECTIONS CANVASSING COMMISSION.

Plaintiff sues the other candidates in her race along with the Pinellas County Supervisor of Elections (herein "Supervisor") and, without even a remotely viable basis, Amanda Coffey, but has not included the Elections Canvassing Commission. *See generally* Compl., Doc. 3. Plaintiff requests to enjoin the Supervisor of Elections from certifying the results of the republican primary election for U.S. Congress, District 14. Compl., Doc. 3, Prayer for Relief, ¶ 2. But the Supervisor does not certify elections results. The responsibility to certify elections lies squarely and plainly with the Pinellas County Canvassing Board at the county and local level; and the Elections Canvassing Commission at the federal, state, and multi-county level. FLA. STAT. §§ 102.141; 102.111; 102.121 (2024). The republican primary for U.S. Congress, District 14 is a federal election and thus, "[t]he Elections Canvassing Commission is an indispensable party." FLA. STAT. § 102.168(4) (2024). Further, Plaintiff seeks to restrain and enjoin "any and all Republican Parties" such as the "Republican Party of Hillsborough County" or "Pinellas County" and the "Republican National Committee" from nominating any other candidate from her race. Compl., Doc. 3, Prayer for Relief, ¶ 3. None of these organizations are included in the suit and they are indispensable as

they have an interest in the subject matter and the requested relief is impossible without them. Accordingly, the Complaint should be dismissed for failure to join indispensable parties.

IV. THE COMPLAINT SHOULD BE DISMISSED BECAUSE IT 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, failing to meet the pleading threshold necessary to assert fraud.

V. THE COMPLAINT SHOULD BE DISMISSED FOR FAILURE TO STATE A CAUSE OF ACTION.

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 internally inconsistent factual claims, 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) citing *Response*

Oncology, Inc. v. Metrahealth Insurance Co., 978 F.Supp. 1052, 1058 (S.D. Fla. 1997). "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).

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).

Plaintiff's disorganized complaint consisting of incoherent statements, conclusory and irrelevant allegations, fails to state facts which demonstrate any viable basis to contest the results of the August 20, 2024, primary election under section 102.168, Florida Statutes. Plaintiff makes sweeping conclusions of misconduct, fraud, corruption, and illegal votes without any specific factual allegations to demonstrate their reality.

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 averments in consecutively numbered paragraphs as required by Rule 1.110(f). Fla. R. Civ. P.

Count I asserts election fraud, but merely states in conclusory terms that supposed "anomalies of Hillsborough County and Pinellas County results prove Fraud." Compl., Doc. 3, Count I. Plaintiff attempts to support this conclusory allegation with various vague and indefinite allegations, which frankly are impossible to make any sense of. Count II claims "[m]isconduct by defendants" and concludes that the "defendants individually and collectively conspired against the Plaintiff to unfairly win the election" by fabricating votes, forms, documents, and signatures. Compl., Doc. 3, Count II. But Plaintiff doesn't make a single allegation demonstrating that Amanda Coffey did anything unlawful. Plaintiff incorrectly asserts that Amanda Coffey was on the Canvassing Board and should have recused herself. Mrs. Coffey was never a member and merely acted as counsel to the Board. The Complaint demonstrates absolutely no basis to include Mrs. Coffey as a defendant. Count III asserts conspiracy generally towards "The Defendants" in conclusory terms, without any facts demonstrating even a minutia of conspiracy as to any defendant, and certainly not on the part of Mrs. Coffey. Count IV concludes that corruption occurred, again without any factual support, even after drawing all reasonable inferences in Plaintiff's favor. Count V points vaguely to a conflict of interest, but like all other counts, rings factually hollow. The few comprehensible facts asserted in this frivolous, unfounded, and outlandish complaint do not support a viable claim to contest the subject election under any count asserted. The Complaint warrants dismissal with prejudice.

Moreover, Plaintiff does not even attempt to establish that any imaginary misconduct, fraud, or corruption was "sufficient to change or place in doubt the result of the election" as required. FLA. STAT. § 102.168(3)(a) (2024). Plaintiff doesn't allege or discuss the numbers, but she lost her race with only 1,594 votes representing only 5.5 percent of the total. FLORIDA DEPARTMENT OF STATE, DIVISION OF ELECTIONS, *August 20, 2024, Primary Election, Republican*

Primary, United States Representative, District: 14, https://results.elections.myflorida.com/Index.asp?ElectionDate=8/20/2024&DATAMODE=It (last accessed September 15, 2024). The winner, Robert Rochford, received 15,575 votes constituting 54.1 percent. *Id*. It is not enough to speculate with wishful thinking. Outcome changing misconduct, fraud or corruption must be established through the factual allegations to contest an election on these grounds. Plaintiff doesn't even come close.

Likewise, Plaintiff has not alleged any evidence of illegal votes or rejection of legal votes sufficient to change or place in doubt the result of the election. Plaintiff vaguely hints at "forged signatures" or "signatures from Artificial Intelligence," but again doesn't identify with any particularity the amount of any such votes. Compl., Doc. 3, page 5. Broad brush allegations related to mail-in ballots are included with claims that "[i]t is easy to destroy the votes for plaintiff, duplicate ballots, alter ballots and forge ballots." *Id* at page 4. But, again, details regarding the amount and method of illegal voting are absent in the Complaint. Any claim of bribery is so unsupported by the Complaint that it merits no further discussion beyond pointing out that there is not a single concrete allegation which demonstrates that any elector, election official or canvassing board member was given or offered a bribe or reward to secure Robert Rochford's victory. Plaintiff's Complaint is profoundly meritless and warrants immediate dismissal with prejudice.

Setting the fundamental shortcomings aside, 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.

CONCLUSION

Every count of Plaintiff's vague, speculative, and conclusory complaint is entirely devoid of substantive allegations which demonstrate any misconduct, fraud, or corruption on the part of any defendant, and certainly not Amanda Coffey, even with the benefit of drawing all reasonable inferences in favor of Plaintiff. Nor does the Complaint set forth facts to show illegal votes, rejection of legal votes or bribery. Plaintiff falls profoundly short of meeting even the most basic pleading requirements and most certainly does not meet the heightened burden of specificity required when pleading claims involving fraud or conspiracy. Even if Plaintiff had stated a viable cause of action to contest the subject election, jurisdiction is with the U.S. House of Representatives pursuant to the U.S. Constitution, not the Circuit Courts of Florida. If any Florida court had jurisdiction, venue would be in Leon County because the election at issue covers two counties. At the end of the day, Plaintiff has not identified any valid evidence within any category of section 102.168(3), Florida Statutes, sufficient to change or place doubt in the result of the election at issue. This Court should dismiss the Complaint with prejudice and ensure that no further time or resources are spent on this utterly baseless lawsuit.

WHEREFORE, Amanda Coffey, in her official capacity as Managing Assistant County Attorney, hereby moves this Honorable Court for an Order dismissing Plaintiff's Complaint dated August 29, 2024, with prejudice, and any such further relief which this Court deems just and appropriate.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on September 16, 2024, the foregoing document was filed with the Clerk of the Court by using the Florida Courts E-Filing Portal, and served to the following parties:

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