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

JOHN WILLIAM LICCIONE

APPELLANT

VS.

CATHY SALUSTRI-LOPER, ET AL

APPELLEE

LOWER CASE NUMBER:	24-003939-CI
LOWER TRIBUNAL JUDGE:	PATRICIA ANN MUSCARELLA
APPEAL CASE NUMBER:	2D2026-0281
CASE(S) RELATED TO APPEAL:	

RECORD ON APPEAL

REDACTED

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

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24-003939-CI

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SECTION 7

CASE SUMMARY

CASE NO. 24-003939-CI

JOHN WILLIAM LICCIONE
Vs.
CATHY SALUSTRI LOPER, et al

§ Location: **Section 7**
§ Judicial Officer: **MUSCARELLA, PATRICIA ANN**
§ Filed on: **09/03/2024**
§ Case Number History:
§ APPEAL CASE NUMBER: **2D2026-0281**
UNIFORM CASE NUMBER: **522024CA003939XXCICI**

CASE INFORMATION

Related Cases
24-002994-CI (CONSOLIDATED)

Statistical Closures
10/15/2025 CIVIL - DISMISSED AFTER HEARING - OTHER

Case Type: **OTHER CIVIL - CIRCUIT**

Case Status: **11/03/2025 REOPENED - OTHER**

Case Flags: **NOTICE OF HEARING APPEALED**

DATE — CASE ASSIGNMENT

Current Case Assignment

Case Number	24-003939-CI
Court	Section 7
Date Assigned	09/06/2024
Judicial Officer	MUSCARELLA, PATRICIA ANN

PARTY INFORMATION

		Lead Attorneys
PLAINTIFF	**LICCIONE, JOHN WILLIAM**	
DEFENDANT	**LOPER, CATHY SALUSTRI**	**LAKE, JAMES B** *Retained* 813-984-3060(W)
	LOPER, THOMAS	
	THURSDAY MORNING MEDIA INC	**LAKE, JAMES B** *Retained* 813-984-3060(W)
CLOSED DEFENDANT - AMENDED	**OTHER UNKNOWN CO CONSPIRATORS** Removed: 07/17/2025 AMENDED COMPLAINT/NO LONGER A PARTY	
CLOSED DEFENDANT - DISMISSED/DROPPED	**FOX, WHITNEY** Removed: 10/07/2024 NO LONGER A PARTY	**BARACK, RYAN D** *Retained* 727-441-4947(W)
	GRIFFITH, JENNIFER Removed: 11/20/2024 JUDGMENT - ORDER	**THURLOW, GEORGE A D** *Retained* 727-823-4191(W)
	HEINZEN, PATRICK Removed: 03/20/2025 NO LONGER A PARTY	
	MARCUS, JULIE Removed: 03/20/2025 NO LONGER A PARTY	**KREIDER, KIRBY Z** *Retained* 727-464-3354(W)
	WEINKRANTZ, MARK Removed: 04/04/2025	

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10/21/2024	AFFIDAVIT *(PLAINTIFF)*
10/21/2024	MOTION FOR SANCTIONS Party: CLOSED DEFENDANT - DISMISSED/DROPPED GRIFFITH, JENNIFER
10/22/2024	RESPONSE *TO MOTION TO DISMISS ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *A THE GABBER NEWSPAPERS WEBSITE ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *B THE GABBER JULY 12TH NEWS ARTICLE ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *D THE GABBER NEWSPAPERS CORRECTION ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *C JOHN LICCIONES EMAIL TO THE GABBER NEWSPAPER ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *E THE GABBERES 09262024 FRONT PAGE ARTICLE ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *F THE GABBER 04222024 ARTICLE ETC*

10/22/2024	AFFIDAVIT *OF PLAINTIFF*
10/22/2024	NOTICE OF CHANGE OF ADDRESS Party: PLAINTIFF LICCIONE, JOHN WILLIAM
10/22/2024	RESPONSE *TO MOTION TO DISMISS ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *A PUBLIC RECORDS REQUEST FOR MAIL BALLOT ORDER ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *B REQUEST FOR PRODUCTION OF DOCUMENTS ETC*
10/22/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *C EMAIL EXCHANGE WITH KIRBY KEIDER RE IP ADDRESS ETC*
10/22/2024	AFFIDAVIT *OF PLAINTIFF*
10/28/2024	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *C EMAIL EXCHANGE DATED 10212024*
10/28/2024	NOTICE OF HEARING *11122024 3:00 ZOOM*
10/28/2024	RESPONSE TO REQUEST FOR PRODUCTION
10/28/2024	RESPONSE *TO MOTION FOR SANCTIONS*
10/28/2024	AFFIDAVIT *OF PLAINTIFF*
10/28/2024	MOTION TO COMPEL DISCOVERY Party: PLAINTIFF LICCIONE, JOHN WILLIAM *AND REQUEST FOR EXPEDITED SHOW CAUSE HEARING*
10/29/2024	MOTION TO COMPEL DISCOVERY Party: PLAINTIFF LICCIONE, JOHN WILLIAM *AGAINST DEFTS JENNIFER GRIFFITH AND CATHY SALUSTRI LOPER AND REQUEST FOR EXPEDITED SHOW CAUSE HEARING*
10/29/2024	EXHIBIT *A- COPY OF RETURN OF SERVICE OF OF SUMMONS, AMENDED COMPLAINT AND OTHER DOCS SERVD ON JENNIFER GRIFFITH*
10/29/2024	

	EXHIBIT *B- COPY OF RETURN OF SERVICE OF SUMMONS, AMENDED COMPLAINT AND OTHER DOCS SERVED ON CATHY SALUSTRI LOPER*
10/29/2024	MOTION Filed by: PLAINTIFF LICCIONE, JOHN WILLIAM *TO SHORTEN TIME FOR DEFTS GRIFITH AND LOPER TO RESPOND TO PLTF S MOTION TO COMPEL DISCOVERY*
10/29/2024	PROPOSED ORDER UNSIGNED *ON PLTF S MOTION TO COMPEL DISCOVERY AND REQT FOR EXPEDITED SHOW CAUSE HEARING*
10/29/2024	RESPONSE TO REQUEST FOR PRODUCTION
10/29/2024	MEMORANDUM IN OPPOSITION TO *PLTFS MOTION TO COMPEL RESPONSES TO REQUEST FOR PRODUCTION AND MOTION TO SHORTEN TIM TO RESPOND TO REQUEST FOR PRODUCTION*
10/29/2024	RESPONSE TO REQUEST FOR PRODUCTION *AND OBJECTION AND RESPONSE TO MOTION*
10/31/2024	REPLY Party: PLAINTIFF LICCIONE, JOHN WILLIAM *TO MEMORANDUM IN OPPOSITION ETC*
11/04/2024	ORDER *ON COURTS MOTION TO STAY*
11/04/2024	MEMORANDUM IN OPPOSITION TO *MOTION TO COMPEL DISCOVERY AND TO RESCHEDULE CURRENTLY SCHEDULED MOTION TO DISMISS HEARING*
11/05/2024	PROPOSED ORDER UNSIGNED *ORDER OF DEFAULT AGAINST DEFT MARK WEINKRANTZ*
11/05/2024	AMENDED NOTICE OF HEARING *111224 3:00*
11/08/2024	CLERK DEFAULT - NOT ENTERED Party: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK *AFFIDAVIT RE MILITARY NOT FILED*
11/08/2024	RESPONSE *TO MOTION TO STAY PROCEEDINGS ETC*
11/09/2024	MOTION FOR FINAL JUDGMENT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *(DEFAULT) AGAINST DEFT MARK WEINKRANTZ AND REQUEST FOR HEARINGS*
11/11/2024	MEMORANDUM *IN RESPONSE TO THE COURTS MOTION WITH EXHIBITS*

11/11/2024	NOTICE OF APPEARANCE Party: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK *AND EMAIL DESIGNATION*
11/11/2024	NOTICE OF APPEARANCE Party: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK *AND EMAIL DESIGNATION*
11/11/2024	MOTION Filed by: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK *TO VACATE CLERK DEFAULT*
11/11/2024	RESPONSE *TO COURT S MOTION TO STAY AND ORDER (DEFT CATHY SALUSTRI LOPER S)*
11/12/2024	RESPONSE *TO MOTION TO STAY AND ORDER*
11/12/2024	RESPONSE *TO MOTION TO VACATE CLERK DEFAULT*
11/12/2024	MOTION FOR EXTENSION OF TIME Party: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK *TO FILE RESPONSE*
11/12/2024	MOTION TO DISMISS Party: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK *ALL COUNTS OF PETITION*
11/14/2024	NOTICE OF HEARING *11212024 3:15 TELEPHONIC*
11/18/2024	AMENDED NOTICE OF HEARING *11212024 3:15 TELEPHONIC*
11/19/2024	ORDER GRANTING *DEFTS MTN TO VACATE CLERK DEFAULT*
11/20/2024	ORDER GRANTING *MOTION TO CONSOLIDATE INTO 24-002994-CI AS TO JENNIFER GRIFFITH ONLY*
11/20/2024	NOTICE OF FILING *ATTACHED DEFT MATERIALS FOR CASE MANAGEMENT CONFERENCE*
11/20/2024	ORDER GRANTING *MOTION TO STAY*
11/26/2024	NOTICE *OF RECEIPT OF EXTORTIVE DEATH THREAT ETC*
11/26/2024	EXHIBIT

Party: PLAINTIFF LICCIONE, JOHN WILLIAM
A THE GONEGETGAETZ EMAIL

11/26/2024 EXHIBIT
Party: PLAINTIFF LICCIONE, JOHN WILLIAM
B THE HILL ARTICLE ON THE HACKING OF MATT GAETZ DOCUMENT TROVE ETC

02/20/2025 ACKNOWLEDGEMENT OF
NEW SUPREME COURT CASE: SC2025-0242

02/25/2025 COPY
TRUE COPY OF SUPREME COURT ORDER - THE PETITION FOR WRIT OF PROHIBITION IS HEREBY TRANSFERRED TO THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT, IN AND FOR PINELLAS COUNTY, FLORIDA FOR CONSIDERATION IN THE CONTEXT OF CASE NUMBERS 24-2994-CI AND 24-3939-CI. THE TRANSFER OF THIS CASE SHOULD NOT BE CONSTRUED AS AN ADJUDICTION OR COMMENT ON THE MERITS OF THE PETITION, NOR AS DETERMINATION THAT THE TRANSFEREE COURT HAS JURISDICTION OR THAT THE PETITION HAS BEEN PROPERLY DENOMINATED AS A PETITION FOR WRIT OF PROHIBITION. THE TRANSFEREE COURT SHOULD NOT INTERPRET THE TRANSFER OF THIS CASE AS AN INDICATION THAT IT MUST OR SHOULD REACH THE MERITS OF THE PETITION. ANY DETERMINATION CONCERNING WHETHER A FILING FEE SHALL BE APPLICABLE TO THIS CASE SHALL BE MADE BY THE TRANSFEREE COURT. ANY AND ALL PENDING MOTIONS IN THIS CASE ARE HEREBY DEFERRED TOT HE TRANSFEREE COURT. ANY FUTURE PLEADINGS FILED REGARDING THIS CASE SHOULD BE FILED IN THE ABOVE MENTIONED CIRCUIT COURT AT 14250 49TH STREET NORTH, CLEARWATER, FL 33762. SC2025-0242 / 2D2025-0297

02/25/2025 PETITION FOR
(EMERGENCY) WRIT OF CERTIORARI; WRIT OF PROHIBITION; WRIT OF MANDAMUS. TRANSFERRED FROM THE SUPREME COURT OF FLORIDA (SC2025-0242)

02/25/2025 CORRESPONDENCE
FROM PETITIONER TO SUPREME COURT OF FLORIDA

03/07/2025 COPY
TRUE COPY OF SUPREME COURT ORDER: PETITIONER'S MOTION FOR REHEARING, PETITION FOR EMERGENCY STAY, AND PETITION FOR EMERGENCY INJUNCTIVE RELIEF IS HEREBY DENIED. SC2025-0242

03/07/2025 ACKNOWLEDGEMENT OF
PETITION TRANSFERRED FROM SUPREME COURT TO 6TH CIRCUIT (SC2025-0242)

03/07/2025 PETITION FOR
(EMERGENCY) FOR ORDER TO SHOW CAUSE - TRANSFERRED FROM SUPREME COURT OF FLORIDA (SC2025-0242)

03/11/2025 TEXT
SUPREME COURT ORDER - PETITIONER'S MOTION FOR CLARIFICAITON ON JURISDICTION FILED WITH THIS COURT ON MARCH 10, 2025 IS HEREBY STRICKEN AS UNAUTHORIZED. SC2025-0242/2D2025-0297

03/13/2025 ORDER DENYING
PLAINTIFFS MOTION FOR DISQUALIFICATION OF JUDGE

03/20/2025 NOTICE OF VOLUNTARY DISMISSAL

03/24/2025	ORDER DENYING *TRANSFERRED PETITION*
04/01/2025	MOTION Filed by: PLAINTIFF LICCIONE, JOHN WILLIAM *TO LIFT STAY*
04/01/2025	PROPOSED ORDER UNSIGNED
04/04/2025	NOTICE OF VOLUNTARY DISMISSAL OF PARTY(S) Party: CLOSED DEFENDANT - DISMISSED/DROPPED WEINKRANTZ, MARK
04/12/2025	MOTION TO AMEND Party: PLAINTIFF LICCIONE, JOHN WILLIAM *SECOND COMPLAINT*
04/12/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *A - PROPOSED SECOND AMENDED COMPLAINT*
04/12/2025	CORRESPONDENCE TO CLERK RE *PROPOSED ORDER*
04/12/2025	PROPOSED ORDER UNSIGNED
04/22/2025	NOTICE *OF NO WRITTEN OPPOSITION TO PLTFS MOTN TO LIFT STAY AND REQUEST FOR PROMPT RULING*
05/07/2025	NOTICE OF HEARING *06102025 1:30 VIA ZOOM*
06/03/2025	RESPONSE *TO MOTION TO LIFT STAY*
06/03/2025	MEMORANDUM OF LAW *IN SUPPORT OF ANTI-SLAPP DEFENSES*
06/03/2025	RESPONSE *TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT*
06/03/2025	NOTICE OF FILING *DOCUMENTS IN CONNECTION WITH MOTIONS*
06/03/2025	MOTION TO STRIKE Party: PLAINTIFF LICCIONE, JOHN WILLIAM *UNTIMELY AND IMPROPER FILINGS*
06/03/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *A- COPY ORDER GRANTING IN PART AND DENYING*

	IN PART DEFT MOTION TO DISMISS AMENDED COMPLAINTS	
06/11/2025	NOTICE OF HEARING *06262025 1:30 2:30 VIA ZOOM*	
06/20/2025	MOTION TO DISMISS Party: DEFENDANT LOPER, CATHY SALUSTRI; CLOSED DEFENDANT - AMENDED OTHER UNKNOWN CO CONSPIRATORS *SECOND AMENDED COMPLAINT*	
06/24/2025	EMERGENCY MOTION Party: PLAINTIFF LICCIONE, JOHN WILLIAM *FOR CONTINUANCE OF 06262025 HEARING - UPDATE FROM COURT - GRANTED - ORDER FORTHCOMING*	
06/24/2025	EXHIBIT *A- DEFT COUNSEL LAKE S REFUSAL TO JOIN IN MOTION FOR CONTINUANCE - EMAIL EXCHANGE ETC*	
06/24/2025	EXHIBIT *B- JAWS FINAL 06262026[SIC] HEARING NOTICE CONFIRMATION EMAIL*	
06/24/2025	ORDER GRANTING *EMERGENCY MOTION FOR CONTINUANCE OF JUNE 26 2025 HEARING*	
06/25/2025	AMENDED NOTICE OF HEARING *07082025 3:30 (ZOOM)*	
07/02/2025	NOTICE *OF SUPPLEMENTAL AUTHORITY* *IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT AND REQUEST FOR JUDICIAL NOTICE WITH ATTACHMENT*	
07/02/2025	RESPONSE *AND MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS SECOND AMENDED COMPLAINT*	
07/17/2025	CORRESPONDENCE TO COURT RE *PROPOSED ORDER RCVD BY COURT 07142025*	
07/17/2025	ORDER GRANTING *MOTION TO LIFT STAY AND MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT*	
07/21/2025	CORRESPONDENCE FROM CLERK RE *FEE DUE*	
10/15/2025	CIVIL - CASE DISMISSED - AFTER HEARING Amount: 0.00	
10/15/2025	ORDER GRANTING (R) *MOTION TO DISMISS AND FOR ATTORNEYS FEE*	*Vol./Book 23329, Page 1553, 20 page Instrument # 2025295843*

11/03/2025	CASE REOPENED	
11/03/2025	AMENDED COMPLAINT *(THIRD)*	
11/03/2025	EXHIBIT *A - OFFICIAL SAMPLE BALLOT 08202024 PRIMARY ELECTION - PINELLAS COUNTY*	
11/03/2025	EXHIBIT *B - THE GABBER ONLINE ARTICLE DATED 07122024*	
11/03/2025	EXHIBIT *C - THE GABBER ONLINE ARTICLE DATED 10132021*	
11/03/2025	EXHIBIT *D - THE GABBER ONLINE ARTICLE DATED 12212023*	
11/03/2025	EXHIBIT *E - THE GABBER ONLINE ARTICLE DATED 12202023*	
11/03/2025	EXHIBIT *F - THE GABBER ONLINE ARTICLE DATED 12212023*	
11/03/2025	EXHIBIT *G - THE GABBER ONLINE ARTICLE DATED 07172024*	
11/03/2025	EXHIBIT *H - PLAINTIFFS CAMPAIGN AD PURCHASED WITH THE GABBER (PRE-PUBLICATION)*	
11/03/2025	EXHIBIT *I - PLAINTIFFS CONGRESSIONAL CAMPAIGN SIGN IN GULFPORT NEAR THE GABBER OFFICE*	
11/03/2025	EXHIBIT *K - THE GABBER ONLINE ARTICLE DATED 08152024*	
11/03/2025	EXHIBIT *J - SCREENSHOT OF PLAINTIFFS SAME DAY TEXT REPLY TO PATRICK HEINZENS 08132024 VOICEMAIL*	
11/03/2025	EXHIBIT *L - PINELLAS COUNTY SUPERVISOR OF ELECTIONS 2024 DEMOCRATIC PRIMARY ELECTION RESULTS SHOWING 80% VOTED BY MAIL*	
11/03/2025	EXHIBIT *M - SWORN AFFIDAVIT OF KARLA KAY KEMP*	
11/03/2025	EXHIBIT *N - DECLARATION OF JOHN LICCIONE*	
11/07/2025		*Vol./Book 23355,*

	FINAL ORDER OF DISMISSAL WITH PREJUDICE *VACATED ON 11122025 LINE 166*
11/12/2025	ORDER VACATING *ORDER DISMISSING CASE WITH PREJUDICE*
11/18/2025	CASE REOPENED
11/18/2025	MOTION TO DISMISS Party: DEFENDANT LOPER, CATHY SALUSTRI; DEFENDANT THURSDAY MORNING MEDIA INC *THIRD AMENDED COMPLAINT AND* *FOR STAY OF VEXATIOUS LITIGATION WITH ATTACHMENTS*
11/21/2025	STIPULATION *RE HEARING*
11/24/2025	NOTICE OF HEARING *12152025 1:30 VIA ZOOM*
12/08/2025	RESPONSE IN OPPOSITION TO *DEFENDANTS MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR STAY*
12/12/2025	AMENDED NOTICE OF HEARING *01052026 AT 4:00PM BY ZOOM*
12/23/2025	SUPPLEMENT *TO RESPONSE IN OPPOSITION TO DEFENDANTS* *MOTION TO DISMISS THIRD AMENDED COMPLAINT*
12/23/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *O - WEBSITE*
12/23/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *P - WEBSITE ARTICLE*
12/23/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *Q - WEBSITE ARTICLE*
12/23/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *R - WEBSITE ARTICLE*
12/23/2025	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *S - WEBSITE ARTICLE*
01/02/2026	SUPPLEMENT *TO RESPONSE IN OPPOSITION TO* *DEFENDANTS MOTION TO DISMISS THIRD AMENDED COMPLAINT (SECOND)*

01/02/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *T - PINELLAS DEMOCRATIC PARTY WEBPAGE COVERING THE 2024 AUGUST PRIMARY CANDIDATES*	
01/04/2026	NOTICE *OF SUPPLEMENTAL EXHIBITS (U AND V)*	
01/04/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *U - GABBER NEWSPAPERS SEARCH ENGINE OPTIMIZATION DECISIONS*	
01/04/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *V - GABBER NEWSPAPER REPORTER PATRICK HEINZENS VOICEMAIL*	
01/29/2026	ORDER GRANTING *DEFTS MTNS TO DISMISS WITHOUT PREJUDICE AND FOR ATTORNEYS FEES PLTF HAS 20 DAYS TO FILE THIRD AMENDED COMPLAINT*	
01/29/2026	ORDER GRANTING (R) *DEFTS MTN TO DISMISS WITH PREJUDICE THIRD AMENDED COMPLAINT*	*Vol./Book 23443, Page 1043, 25 page Instrument # 2026030753*
02/02/2026	NOTICE OF APPEAL Party: PLAINTIFF LICCIONE, JOHN WILLIAM *WITH COPY OF ORDER BEING APPEALED*	
02/02/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *A - ORDER GRANDING MOTION TO DISMISS THIRD AMENDED COMPLAINT WITH PREJUDICE*	
02/02/2026	NOTICE OF APPEAL RECORDED	
02/03/2026	LETTER FROM CLERK RE APPEAL NOTICE TO DCA	
02/03/2026	LETTER FROM 2ND DCA RE ASSIGN APPEAL NO. *2D2026-0281*	
02/03/2026	RETURNED FROM POST OFFICE *COPY OF ORDER VACATING ORDER DISMISSING WITH PREJUDICE RCVD BY COURT 02022026*	
02/03/2026	NOTICE OF FILING *APPLICATION FOR DETERMINATION OF CIVIL INDIGENT STATUS*	
02/04/2026	CASE REOPENED	
02/04/2026	MOTION TO STAY/ABATE Party: PLAINTIFF LICCIONE, JOHN WILLIAM *COLLATERAL PROCEEDINGS PENDING APPEAL*	

02/04/2026	PROPOSED ORDER UNSIGNED
02/05/2026	CASE REOPENED
02/05/2026	DCA ORDER FILING FEES DUE *THIS APPEAL HAS BEEN FILED WITHOUT A FILING FEE REQUIRED BY SECTION 35.22(2)(A), FLORIDA STATUTES. APPELLANT SHALL FORWARD THE REQUIRED $300.00 FILING FEE OR, IF APPLICABLE, A CERTIFICATE OR ORDER OF THE LOWER TRIBUNAL FINDING APPELLANT INSOLVENT PURSUANT TO SECTION 57.081, FLORIDA STATUTES, WITHIN FORTY DAYS FROM THE DATE OF THIS ORDER. IF THIS COURT DOES NOT RECEIVE EITHER OF THE ABOVE WITHIN THE PRESCRIBED TIME, THIS APPEAL MAY BE SUBJECT TO DISMISSAL WITHOUT FURTHER NOTICE. 2D2026-0281*
02/05/2026	MOTION Filed by: PLAINTIFF LICCIONE, JOHN WILLIAM *TO DISQUALIFY THE HONORABLE PATRICIA MUSCARELLA*
02/05/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *A - JAWS EMAIL NOTIFICATION OF PROPOSED ORDER OF DISMISSAL COVER LETTER PDF FILE UPLOAD*
02/05/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *B - JAWS EMAIL NOTIFICATION OF (PROPOSED) ORDER UPLOAD*
02/05/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *C - LICCIONE EMAILS REQUESTED COPIES OF UPLOADED JAWS FILINGS*
02/05/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *D - LIDIA TORRES EMAIL WITH SIGNED DISMISSAL ORDER ATTACHED*
02/05/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *E - CASE DOCKET*
02/05/2026	EXHIBIT Party: PLAINTIFF LICCIONE, JOHN WILLIAM *F - ORDER GRANTING MOTION TO DISMISS, WITH PREJUDICE*
02/06/2026	APPLICATION FOR INDIGENT STATUS DENIED Party: PLAINTIFF LICCIONE, JOHN WILLIAM
02/06/2026	RESPONSE *TO DISQUALIFICATION MOTION*
02/06/2026	EXHIBIT *1 - EMAIL*
02/12/2026	CERTIFICATE OF CLERK RE NON PAYMENT

	$130.00 2D2026-0281
02/12/2026	NOTICE OF COMPLIANCE *SUPPLEMENTAL* *WITH RULE 2.330 (C) AND 2.330(D)(3)*
02/16/2026	ORDER DENYING *PLTFS VERIFIED MOTION TO DISQUALITY THE HONORABLE PATRICIA MUSCARELLA*
02/17/2026	CASE REOPENED
02/17/2026	MOTION Filed by: PLAINTIFF LICCIONE, JOHN WILLIAM *FOR CLARIFICATION AND PRODUCTION* *REGARDING JANUARY 29, 2026 JAWS UPLOAD EVENTS*
02/18/2026	CASE REOPENED
02/18/2026	AFFIDAVIT OF ATTORNEY FEES
02/18/2026	MOTION Filed by: DEFENDANT LOPER, CATHY SALUSTRI; DEFENDANT THURSDAY MORNING MEDIA INC *FOR JUDGMENT FOR FEES AND COSTS*
03/06/2026	LETTER FROM 2ND DCA RE ASSIGN APPEAL NO. *(PETITION) 2D2026-0581*
03/06/2026	DCA ORDER FILING FEES DUE *(PETITION) THIS PETITION HAS BEEN FILED WITHOUT A FILING FEE REQUIRED BY SECTION 35.22(2)(A), FLORIDA STATUTES. PETITIONER SHALL FORWARD THE REQUIRED $300.00 FILING FEE OR, IF APPLICABLE, AN AFFIDAVIT OF INSOLVENCY IN CONFORMITY WITH THE REQUIREMENTS OF CHAPTER 57, FLORIDA STATUTES, TO THIS COURT WITHIN TWENTY DAYS FROM THE DATE OF THIS ORDER. IF THIS COURT DOES NOT RECEIVE EITHER OF THE ABOVE WITHIN THE PRESCRIBED TIME, THIS PETITION MAY BE SUBJECT TO DISMISSAL WITHOUT FURTHER NOTICE. 2D2026-0581*
03/06/2026	TRANSCRIPTION OF PROCEEDINGS *01052026*
03/10/2026	DCA ORDER *(PETITION) PETITIONER'S PETITION FOR WRIT OF PROHIBITION IS DENIED. NORTHCUTT, MORRIS, AND LABRIT, JJ., CONCUR. 2D2026-0581*
03/11/2026	STATUS REPORT TO COURT *RE: MOTION FOR EXTENSION OF TIME TO PREPARE RECORD TO DCA 2D2026-0281*

DATE	FINANCIAL INFORMATION	
	APPELLANT LICCIONE, JOHN WILLIAM	
	Total Charges	130.00
	Total Payments and Credits	130.00
	Balance Due as of 03/19/2026	**0.00**
	PLAINTIFF LICCIONE, JOHN WILLIAM	
	Total Charges	547.50

Total Payments and Credits	542.50
Balance Due as of 03/19/2026	**5.00**

Filing # 206083455 E-Filed 09/03/2024 03:51:36 PM

FORM 1.997. CIVIL COVER SHEET

The civil cover sheet and the information contained in it neither replace nor supplement the filing and service of pleadings or other documents as required by law. This form must be filed by the plaintiff or petitioner with the Clerk of Court for the purpose of reporting uniform data pursuant to section 25.075, Florida Statutes. (See instructions for completion.)

I. CASE STYLE

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

John Liccione
Plaintiff

Case # _____
Judge _____

vs.

Julie Marcus, Jennifer Griffith, Whitney Fox, Mark Weinkrantz, Cathy Salustri Lopes, Patrick Heinzen
Defendant

II. AMOUNT OF CLAIM

Please indicate the estimated amount of the claim, rounded to the nearest dollar. The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.

☐ $8,000 or less
☐ $8,001 - $30,000
☐ $30,001- $50,000
☐ $50,001- $75,000
☐ $75,001 - $100,000
☒ over $100,000.00

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x on both the main category and subcategory lines.

ELECTRONICALLY FILED 09/03/2024 03:51:34 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

CIRCUIT CIVIL

☐ Condominium
☐ Contracts and indebtedness
☐ Eminent domain
☐ Auto negligence
☒ Negligence—other
    ☐ Business governance
    ☒ Business torts
    ☐ Environmental/Toxic tort
    ☐ Third party indemnification
    ☐ Construction defect
    ☐ Mass tort
    ☐ Negligent security
    ☐ Nursing home negligence
    ☐ Premises liability—commercial
    ☐ Premises liability—residential
☐ Products liability
☐ Real Property/Mortgage foreclosure
    ☐ Commercial foreclosure
    ☐ Homestead residential foreclosure
    ☐ Non-homestead residential foreclosure
    ☐ Other real property actions

☐Professional malpractice
    ☐ Malpractice—business
    ☐ Malpractice—medical
    ☐ Malpractice—other professional
☐ Other
    ☐ Antitrust/Trade regulation
    ☐ Business transactions
    ☐ Constitutional challenge—statute or ordinance
    ☐ Constitutional challenge—proposed amendment
    ☐ Corporate trusts
    ☐ Discrimination—employment or other
    ☐ Insurance claims
    ☐ Intellectual property
    ☐ Libel/Slander
    ☐ Shareholder derivative action
    ☐ Securities litigation
    ☐ Trade secrets
    ☐ Trust litigation

COUNTY CIVIL

☐ Small Claims up to $8,000
☐ Civil
☐ Real property/Mortgage foreclosure

☐ Replevins
☐ Evictions
- ☐ Residential Evictions
- ☐ Non-residential Evictions

☐ Other civil (non-monetary)

COMPLEX BUSINESS COURT

This action is appropriate for assignment to Complex Business Court as delineated and mandated by the Administrative Order. Yes ☒ No ☐

IV. REMEDIES SOUGHT (check all that apply):
☒ Monetary;
☒ Nonmonetary declaratory or injunctive relief;
☒ Punitive

V. NUMBER OF CAUSES OF ACTION: [ ]
(Specify)

8

VI. IS THIS CASE A CLASS ACTION LAWSUIT?
☐ yes
☒ no

VII. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?
☐ no
☒ yes If "yes," list all related cases by name, case number, and court.
24-CV-002994, John Liccione vs Pinellas Democratic Exectitive Committee, et al
8:24-cv-02005-SDM-NHA Liccione vs Marcus, US District Tampa

VIII. IS JURY TRIAL DEMANDED IN COMPLAINT?
☒ yes
☐ no

IX. DOES THIS CASE INVOLVE ALLEGATIONS OF SEXUAL ABUSE?
☐ yes
☒ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief, and that I have read and will comply with the requirements of Florida Rule of Judicial Administration 2.425.

Signature: s/ John William Liccione Fla. Bar #
Attorney or party (Bar # if attorney)

John William Liccione 09/03/2024

(type or print name) Date

Filing # 206083455 E-Filed 09/03/2024 03:51:36 PM

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

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

JENNIFER GRIFFITH; in her official capacity as Chair of the Pinellas Democratic Executive Committee,

WHITNEY FOX,

MARK WEINKRANTZ,

CATHY SALUSTRI LOPES; In her role as owner and editor of The Gabber Newspaper**,**

PATRICK HEINZEN; In his role as reporter for The Gabber Newspaper;

and other unknown co-conspirators,

Defendants.

Case No.: _____

COMPLAINT FOR ELECTORAL FRAUD AND REQUEST FOR DAMAGES, A TRIAL BY JURY, AND INJUNCTIVE RELIEF

INTRODUCTION

1. Plaintiff, John William Liccione, a registered Democratic voter, taxpayer, and candidate in Florida's 13th Congressional District 2024 election, brings this action

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seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of the Defendants. These actions have infringed upon the integrity of the electoral process and Plaintiff's lawful rights as a candidate, a registered voter, and a taxpayer.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to the laws of the State of Florida, including, but not limited to, Fla. Stat. § 104.041 regarding fraud in connection with elections. The acts in question occurred within this judicial circuit, giving this Court venue to hear this case.

PARTIES

3. Plaintiff John William Liccione is a resident of Pinellas County, Florida, and was a candidate in the Democratic primary for the U.S. House of Representatives for Florida's 13th Congressional District held on August 20, 2024. Plaintiff is also founder and CEO of three media companies: Leaks Media, LLC, RussiLeaks USA, LLC, and The Crabber News, LLC.

4. Defendant Julie Marcus is the Supervisor of Elections for Pinellas County, Florida, and is sued in her official capacity.

5. Defendant Pinellas County Democratic Executive Committee (PDEC) and its Chair, Jennifer Griffith, are responsible for the oversight of Democratic Party operations in Pinellas County, including certain of the unlawful activities alleged herein. Jennifer Griffith is sued in her capacity as Chair of the PDEC.

6. Defendant Whitney Fox is mentioned as a beneficiary of and willing participant in the fraudulent activities described herein, in her capacity as a Congressional candidate in District 13, and is sued in her individual capacity.

7. Defendant Mark Weinkrantz is mentioned as a beneficiary of and a willing participant in the fraudulent activities described herein in his capacity as a Congressional candidate in District 13, and is sued in his individual capacity.

8. Defendant Cathy Salustri Lopes is a resident of Pinellas County and is owner and editor of The Gabber Newspaper, a local newspaper in Gulfport Florida. She is sued in her capacity as owner and editor of The Gabber.

9. Defendant Patrick Heinzen is a resident of Pinellas County and is sued in his capacity as a reporter at The Gabber Newspaper.

FACTUAL ALLEGATIONS

10. On information and belief, on a single day on Sunday, June 23, 2024, an anomalously high number of absentee ballot requests, exceeding 219,000, were submitted electronically to the Pinellas County Supervisor of Elections over the Internet.

11. This statistical anomaly should reasonably have triggered an automatic or manual fraud investigation, and a temporary stay in the certification of election results in the August 20, 2024 elections in Pinellas County, pending the outcome of an investigation which should have begun as early as Monday, June 24th under Defendant Julie Marcus' supervision. On information and belief, no such fraud investigation or temporary stay was ordered by Defendant Julie Marcus, nor by the State of Florida Supervisor of Elections.

12. On July 13, 2024, the Pinellas Democratic Party led by party chair Defendant Jennifer Griffith, hosted a Congressional District 13 candidate debate at the St. Petersburg/Clearwater Marriot hotel which had over 400 attendees. Plaintiff was not only not invited to participate, Griffith had the Pinellas Park police provide security for the event with specific instructions, on information and belief to be on the look-out for Plaintiff.

13. Plaintiff, having been denied a seat at the debate table, bought and held his own campaign event that night in a ballroom just down the hall from the Party debate. He spent over $28,000 to host his own event which included a 5-hour open bar with 2 separate bartender stations, free hors d'oeuvres, a DJ, decorations, a 200-seat ballroom, and a security detail, and 4 campaign event workers.

14. Slightly before or after the Party's debate ended, at around 8PM, Defendant Griffith had one or more Party operatives block the hallway with tables, in what was a successful effort to force attendees to exit the hotel down the back stairwell to prevent them from attending Plaintiff's "debate after-party," to hear his speech, and to otherwise engaged directly with him in conversation.

15. The Pinellas Park police officers in attendance were eyewitnesses to the blocking of the hallway.

16. The Mariott hotel event manager, Kathryn Middleton, was not only an eye witness to the blocking of the hallway, but, given it was a fire safety hazard and obstructed the free flow of traffic on the 2nd floor ballroom hallway, she ordered Defendant Griffith and/or her agents to remove the hallway obstructions.

17. Unfortunately, it was too late. By the time the table obstructions were removed, almost all debate attendees had left the building down the back stairwell having been so

coerced and intimidated into doing so by Defendant Griffith and her agents. Plaintiff's campaign event attendee count, in the end, would total less than 20 people.

18. On August 17, 2024, an insider whistleblower using the pseudonym "Tampa Girl" reported to Plaintiff via a RussiLeaks website contact form submittal that she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents. Said opponents one reasonably can conclude were Defendants Whitney Fox (the supposed 44-point winner), and Mark Weinkrantz (the only other man in the race).

19. Tampa Girl's allegations are provided here as submitted, verbatim:

> *"I hate to half to tell u bad news but there is fraud occuring in ur election. I needed the job an got paid to make balots for your opponents. I feel bad about it but need the money. Their is a lot of us working this weekend. I seen the ladys and the fat guy on the way in. I'll talk if I dont half to give back the money."*

20. This illicit ballot fraud activity was the semi-final act in what was has turned out to be a broader 14-month-long criminal conspiracy by Democratic Party officials such as Defendant Jennifer Griffith, and other Defendants, to manipulate the election results in favor of Whitney Fox and against Plaintiff, by way of voter suppression, voter intimidation, fraudulent misrepresentation, defamation, assault and battery, and tortious interference in economic advantage against Plaintiff and those who voted for him, or who didn't even know he existed as the 5th candidate.

21. According to Plaintiff's RussiLeaks website session logs, the source IP address of the device Tampa Girl used to submit her August 17th communique to RussiLeaks was 146.70.183.54.

22. The IP address geolocation lookup website called ShowMyIP (https://www.showmyip.com/bulk-ip-lookup/), mapped this IP address to the coordinates: 25.77 N -80.168 E, on August 18, 2024.

23. These coordinates map to a wharf at the Port of Miami on Dodge Island that is used by container vessels to load/unload shipping containers, and presumably, to embark, disembark, or to house passengers and crew or other individuals of foreign or domestic origin not wishing to come ashore.

24. According to the Domain registrars GoDaddy and Cloudflare, the IP address 146.70.183.54 is registered to a Romanian-based global Internet Service Provider named M247 Europe, SRL. According to M247 Europe's website, they operate in America out of a Miami data center and also have data centers in Los Angelos, New York City, and Ashburn VA.

25. MarineTrack.com, a website which allows users to track maritime vessels worldwide, shows that a Cypriot-flagged Chinese-built container ship named ARSOS that was manufactured in China in 2007 by the Hong Kong shipbuilder Shejaing Ouhua Shipbuilding, sailed up to Miami from the Cuban Port of Mariel on August 16th-17th.

26. On August 14th at 5:23 AM EDT while the ARSOS was sailing northwest along the southwestern coast of Cuba, the ARSOS turned off its AIS transponder at coordinates N20.899N, -083.3917 14th at 5:23AM EDT so as to conceal its position. Its transponder remained off for the next while inside Cuban territorial waters for the next day in a half as it as it navigated around the western coast of Cuba.

27. On August 15th at 1:35 PM EDT, the ARGOS briefly turned on its AIS transponder at coordinates 23.1012 E, -082.7993E, just 5 nautical miles from the Cuban port of Mariel. It began sailing southeast on a course of 159 degrees directly toward the port of

Mariel. It turned off its transponder again at 6:31PM EDT on August 15th. The ARSOS would remain transponder-silent for the next 33 hours.

28. On August 17th at 3:02AM EDT, the ARSOS sent an AIS message that it was underway at 18.6 knots on a course of 61 degrees at coordinates 23.9737N, 080.9363, which is 114 nautical miles from the Port of Miami.

29. The ARSOS docked at the Port of Miami at 4:08PM EDT on August 17th, at the *exact same* wharf on Dodge Island from which Tampa Girl's source IP address had just mapped two and a half hours earlier at 1:26PM: The time she would send her ballot fraud communique to RussiLeaks.

30. According to Google Maps, there is a Florida small business HR staffing company that shows a location at that exact same wharf on Dodge Island near marine terminal 3 and a large warehouse. That business is Dojnia Human Resources and Staffing. According to Florida Secretary of State business records, the company's sole owner is April Dojnia. The registered address of the business is 1800 N Bayshore Dr, Suite 3415, Miami, FL 33132, a high-rise building just 1.8 nautical miles from the ARSOS' docking wharf on Dodge Island with a direct line of sight to the Marine Terminal 3 wharf.

31. The Pinellas Supervisor of Elections outsources the publishing of its election results to a Tallahassee IT services company named VR Systems.

32. According to a leaked NSA document reported by Politico and other media outlets some 3 years after the 2016 election, Russian intelligence hacked VR Systems during the 2016 presidential election in North Carolina and in Florida. The hack was a result of a phishing campaign launched by Russia in what was a successful effort to get Donald Trump elected. (See: POLITICO Magazine: "*How close did Russia really come to hacking the 2016 election?*"

See: https://www.politico.com/states/florida/story/2019/12/26/politico-magazine-how-close-did-russia-really-come-to-hacking-the-2016-election-1237544

33. Just before the polls closed here on August 20th at 7:00PM, the Pinellas Supervisor of Elections website published a link to the VR Systems election results page. When Plaintiff accessed that page, he saw all Pinellas Country races showing zero votes for all candidates in every race with zero precincts reporting.

34. Some few minutes after the polls closed, the first non-zero preliminary results were posted online by VR Systems, and there was an anomaly. Every single Pinellas County race showed non-zero vote totals for all candidates, and a non-zero numbers of precincts reporting in, except one: The CD-13 Democratic primary race. VR Systems showed zero votes for all 5 CD-13 Congressional candidates, with precincts reporting in: This is a serious anomaly and a key indicator of fraud as well as of cyber-compromise of either VR Systems, the Pinellas County computer systems, or both.

35. Shortly later that evening, Plaintiff checked the results again and it showed that Whitney Fox had won the race by over 40 points over 2nd place finisher Sabrina Bousbar, with almost all precincts reporting in, and that Plaintiff had come in last with 3.9 percent of the vote.

36. Then, shortly thereafter, the VR Systems election results website became unavailable over the Internet, not only in Pinellas County, but across almost all counties across Florida. The results would not become visible, at least not to Plaintiff, until he checked them when he awoke in the morning.

37. Note: The fact that the VR Systems election results website became unreachable over the Internet is not in and of itself an indicator of fraud or hacking. However, the fact that the CD-13 race showed *zero returns and zero precincts reporting results*, just

before the outage, while all other races showed non-zero vote totals for every candidate in every other race, with a high number of precincts reporting in, is an indicator of fraud and a cyber-breach in the CD-13 Democratic primary race, specifically, and perhaps singularly.

38. One can reasonably conclude that if a precinct in CD-13 reported results for all other races, then it would have also reported non-zero results in the CD-13 race at the same time of night.

39. Further, previously on July 29th, Plaintiff's Microsoft account was hacked and his laptop was then infected, twice in the next 3 weeks leading up to the election. There were numerous unsuccessful login-attempts coming from IP addresses mapping mostly to China, a few mapped to Russia, and several more mapped to San Paulo Brazil. The IP address that was used to breach Plaintiff's account mapped to San Paulo.

40. After gaining control of Plaintiff's Microsoft account, the hacker uploaded a password-stealing trojan virus called LaZagne to Plaintiff's Microsoft OneDrive cloud storage. The trojan was then synced down to Plaintiff's laptop without him realizing it. The Lazagne trojan is known to be used by Russian, Iranian, and Chinese state actor hacking groups as published by the government sponsored MITRE-Att&CK system at attack.mitre.org.

41. On August 6th, Plaintiff's laptop began demonstrating key indicators of compromise, including the redirection of his web browser to inauthentic websites. His browser DNS lookups slowed to a crawl. Plaintiff took steps to find the malware and had believed he had disinfected the laptop. However, on August 17th, just 3 days before the election, Plaintiff's laptop once again slowed to a crawl. Then, his anti-virus

software reported that it had detected the LaZagne trojan and had removed/quarantined it.

42. This advanced persistent threat actor, in launching these cyber-attacks against Plaintiff in the last 3 weeks of the campaign, bled precious hours of Plaintiff's campaigning time as he fought to defend himself from the ongoing cyberattacks. It is form of insidious election interference by way of denial of Internet and computing services to a Congressional candidate who was in the home stretch of his primary race.

43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of The Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Heinzen,

44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) Congressional candidate that lives in Gulfport.

45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

46. On August 30, 2024, Plaintiff submitted on behalf of his media company The Crabber News, LLC, and in his personal capacity as a Congressional candidate and registered CD-13 voter, a public records request to the Pinellas County Supervisor of Elections asking for the list of source IP addresses that were logged by the County's

computer systems of every submitter of a request for an absentee ballot on the date of July 23, 2024 – the date some 219,000 ballot requests were allegedly submitted. To date, Plaintiff has not received the requested records, nor a human response – only an automated response.

47. Plaintiff would file an election fraud complaint with the Florida Secretary of State General Council's office which was deliver to and accepted on September 9, 2024. (EXHIBT D).

48. Plaintiff also filed a public records request to the Florida Secretary of State on September 3, 2024, requesting records pertaining to the State's IT service contracts with VR Systems.

COUNTS

COUNT I: VIOLATION OF FLORIDA STATUTE § 104.041 - FRAUD IN CONNECTION WITH ELECTIONS

49. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants, by actions and omissions described herein, engaged in fraudulent election practices prohibited under Fla. Stat. § 104.041, which have directly impacted the integrity of the electoral process and the Plaintiff's rights as a candidate.

COUNT II: CONSPIRACY TO COMMIT ELECTION FRAUD

50. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants conspired to manipulate election results through unlawful means including, but not limited to, the submission of fraudulent absentee ballots and the suppression of

lawful votes, in violation of Florida election laws and federal statutes, thereby damaging the Plaintiff.

COUNT III: VIOLATION OF 52 U.S.C. § 20511 - FEDERAL ELECTION FRAUD

51. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants engaged in actions that constitute election fraud under federal law, specifically 52 U.S.C. § 20511, by altering the outcome of an election through improper means and with intent to deceive.

COUNT IV: CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C. § 1983

52. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants, one acting under color of state law, deprived the Plaintiff of rights secured by the Constitution and laws of the United States, warranting relief under 42 U.S.C. § 1983.

COUNT V: COMPUTER FRAUD AND ABUSE ACT VIOLATION

(18 U.S.C. § 1030)

53. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants, or those acting in concert with them, knowingly and unlawfully accessed Plaintiff's computer without authorization or exceeding authorized access, and thereby

obtained information from a protected computer involved in interstate communication, resulting in damages and losses.

COUNT VI: INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

54. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants' actions have intentionally interfered with Plaintiff's prospective economic advantages, causing significant loss of business opportunities, future employment, lost future wages, and already incurred financial and reputational damages. Of note, the current salary of a sitting US Congressman is $175,000.

COUNT VII: VOTER INTIMIIDATION AND VOTER SUPPRESSION, CIVIL RIGHTS VIOLATIONS

(Specifically, as to Defendant Griffith)

(Under Florida Section 104.0615, 104.061, the federal Voting Rights Act of 1965, the Civil Rights Act of 1957, and Title 18, Section 594.)

55. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

56. Defendant Griffith and her political operatives blocked the 2nd floor ballroom hallway with tables to prevent voters from attending Plaintiff's campaign event at the St. Petersburg/Clearwater Marriot hotel on July 12, 2024. She did so in full view of the Pinellas Park police and the hotel event manager and her own lawyer who attended the

event. Voters were intimidated by way of physical and verbal coercion into not exiting the hotel through the front lobby by way of the ballroom stairwell or the elevator. They were forced out the back exit stairwell and into the rain, in the dark. This represents a criminal election violation under the following federal and Florida criminal statutes.

57. **Florida Statutes Section 104.0615 - Voter intimidation or suppression prohibited**: This law makes it a third-degree felony to use or threaten to use force, violence, or intimidation to induce or compel an individual to vote or refrain from voting. It also criminalizes attempts to prevent any eligible voter from freely exercising their right to vote.

58. **Florida Statutes Section 104.061 - Corruptly influencing voting**: This statute makes it illegal to use any device or scheme to influence voters corruptly.

59. At the federal level, several laws protect voters against suppression and intimidation, including:

60. **Voting Rights Act of 1965**: Particularly Section 11(b), which prohibits any person from intimidating, threatening, or coercing any other person for the purpose of interfering with their right to vote as they choose.

61. **Civil Rights Act of 1957**: This act, among other provisions, includes laws against conspiring to intimidate voters or to hinder the exercise of their voting rights.

62. **United States Code, Title 18, Section 594 - Intimidation of voters**: It is illegal under federal law for anyone to intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with their right to vote freely.

COUNT VIII: REQUEST FOR INJUNCTIVE RELIEF

63. Plaintiff seeks an emergency injunction to prevent further unlawful activities by the Defendants, to order Defendant Julie Marcus to produce requested election records

upon demand by Plaintiff, and to preserve the integrity of the electoral process, including oversight and monitoring of future elections and other such injunctive relief such as nullifying the congressional primary election, ordering a special election, and other relief as specified in the Demand for Relief section.

64. **Likelihood of Success on the Merits:** The complaint outlines substantial allegations of electoral fraud and conspiracy that, if proven, would constitute criminal violations of both Florida Statute § 104.041 and federal laws concerning election integrity.

65. **Absentee Ballot Request Gross Statistical Anomalies:** The detailed allegations provided with specificity, particularly the gross statistical anomalies in absentee ballot requests on July 23, 2024, coupled with the whistleblower's testimony supported by technical evidence (e.g., IP addresses, Chinese ship movements, the nexus in space and time of "Tampa Girl" with the Chinese container ship ARSOS, the hacking of Plaintiff's Microsoft account and laptop by likely China, strengthens the credibility of these allegations. The involvement of key election and party officials and a hostile foreign power as alleged underscores a coordinated effort to manipulate election outcomes, thereby supporting the Plaintiff's claims.

66. **Allegations with Specificity from Insider Whistleblower:** The likelihood of success on the merits will be increased substantially through the sworn testimony of the insider whistleblower "Tampa Girl," before any state or federal grand jury for which she may called to testify, and before a jury in this civil case. This whistleblower has selflessly come forward placing herself in harm's way with claims that she and others were paid by Democratic Party officials or others (which may include agents of a hostile foreign power brought to America by way of Cuba on a Chinese-built container ship), to

mark absentee ballots en masse, specifically, in favor of the Plaintiff's opponents to his detriment and that of the voters who cast their votes for him.

This direct testimony will provide concrete evidence of deliberate manipulation and fraudulent activities within the election process. This whistleblower evidence supports allegations of a systematic effort to skew the election results, demonstrating both the scope and the specific intent required to prove electoral fraud. The involvement of an insider who participated in the alleged fraud itself provides credible, firsthand information that directly ties the fraudulent activities to the detriment of the Plaintiff's electoral chances. It can be said that the likelihood of success on the merits turns substantially on the sworn testimony and credibility of "Tampa Girl" in the minds of the jury.

67. **Irreparable Harm:** If the election results remain "certified" in the absence of a thorough investigation of these allegations, the Plaintiff's right to a fair electoral process as both a candidate and a registered voter, and of the voters' rights, would be irreparably harmed. This is particularly critical given the role of the election in determining public office holders. The harm extends beyond the Plaintiff to the electorate of the 13th Congressional District, affecting their confidence in the electoral process and their representation, and wither their votes are nullified or otherwise diluted due to election fraud.

68. **Balance of Equities:** The harm to the Plaintiff and the electorate if the injunction is not granted (i.e., one nullifying the certification of fraudulent election results), far outweighs any inconvenience to the defendants. As of the date of this filing there are 74 days until the general election on November 5th. An issuance of the requested emergency injunction is necessary to ensure there is a duly nominated

Democratic challenger to incumbent Republican Anna Paulina Luna in the general election, and to ensure also that Ms. Luna isn't handed colorable legal grounds to overturn the general election on the basis of a rigged Democratic primary were she to lose in November. The public interest in ensuring a transparent and fraud-free election process is significant and supports taking the time necessary to resolve these serious allegations.

69. **Public Interest:** Upholding the integrity of the electoral process is of paramount public interest. Granting an injunction would serve this interest by ensuring that the election results reflect the true will of the voters, free from the taint of fraud or manipulation. It is in the public's interest to address and resolve allegations of electoral fraud promptly and thoroughly, thereby reinforcing trust in the democratic process.

70. **Standard of Review on a Motion to Dismiss:** The standard of review applicable in any civil case that is to be applied by the court for a complaint to survive a motion to dismiss on failure to state a claim, is that the Court must assume that the facts and allegations as alleged by Plaintiff are to be true and taken in a light most favorable to the Plaintiff. And, considering all the reasonable inferences one can make from those facts and allegations, would Plaintiff's case be more likely than not to survive a motion to dismiss. Plaintiff's complaint meets not only the injunctive standard of review, it also meets the "surviving a motion to dismiss on failure to state a claim" standard of review, thereby increasing substantially the likelihood of success on the merits.

COUNT IX:

VIOLATION OF FLORIDA PUBLIC RECORDS SUNSHINE LAW

(as to Defendant Julie Marcus)

71. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

72. Plaintiff is in violation of FL Section 11 in its refusal to timely product and deliver to Plaintiff the records requested on the IP addresses used by voters to submit their absentee ballot requests on the single day of June 23, 2024.

73. Production of these kinds of computer forensic records already existing as a matter of normal information technology systems operations as part of standard IT business practices and can normally be produced in less than an hour in a manner that doesn't reveal any personally identifiable information in a csv or excel file as an e-mail attachment.

74. In Florida, if a public official fails to comply with a valid public records request under the Sunshine Law, several remedies are available as specified in Chapter 119 of the Florida Statutes, as follows:

a. **Accelerated Hearing and Immediate Compliance (Section 119.11)**: The law mandates an immediate hearing when an action is filed to enforce public records provisions, giving the case priority over others. If a court orders an agency to open its records for inspection, the agency must comply within 48 hours unless the court specifies otherwise or an appellate court issues a stay.

b. **Penalties for Violation (Section 119.10)**: It's unlawful for any public official to violate the provisions of Chapter 119 regarding public records. Violations can lead to

suspension, removal from office, or fines depending on the severity and nature of the non-compliance.

c. **Attorney's Fees (Section 119.12)**: If a court finds that an agency unlawfully refused to allow a public record to be inspected or copied, it may award the reasonable costs of enforcement, including attorney fees, to the complainant.

COUNT X: DAMAGES

75. Plaintiff seeks compensatory damages over $1M and notifies the Court of his intent to also seek punitive damages for the injuries and losses sustained as a result of Defendants' unlawful and tortious actions, in amounts to be determined at trial.

DEMAND FOR RELIEF

WHEREAS, Plaintiff respectfully demands the following relief:

A. Judgment in favor of the Plaintiff on all counts;
B. Emergency injunctive relief in the from of nullifying the August 20th Democratic primary election results in CD-13;
C. Ordering a special election for the Congressional District 13 Democratic primary;
D. Ordering the Pinellas County Supervisor of Election to produce and deliver to Plaintiff the public election records already requested and otherwise will reasonably request in the future, at zero cost to Plaintiff;
E. Compensatory and punitive damages in amounts to be proven at trial;

F. Costs of suit and attorney's fees;

G. Any other relief the court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully Submitted,



John Liccione
Plaintiff, Pro Se
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2826 54th St S, Unit A
Gulfport, FL 33707

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CIRCUIT COURT, PINELLAS COUNTY, FLORIDA

CIVIL DIVISION

CIVIL COVER SHEET

FORM 1.997 The civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law. This form shall be filed by the plaintiff or petitioner for the use of the Clerk of Court for the purpose of reporting judicial workload data pursuant to Florida Statutes section 25.075. (See instructions for completion.)

I. CASE STYLE

Plaintiff John William Liccione

Case No.:

Vs.
Defendant Julie Marcus, Jennifer Griffith, Whitney Fox

Mark Weinkrantz, Cathy Salustri Lopes, The Gabber Newspaper, LLC

Section: Civil

II. AMOUNT OF CLAIM: Please indicate the estimated amount of the claim rounded to the nearest dollar. **The estimated amount of the claim is requested for data collection and clerical processing purposes only. The amount of the claim shall not be used for any other purpose.**

_____	$8,000 or less	_____	$50,001 - $75,000
_____	$8,001 - $30,000	_____	$75,001 - $100,000
_____	$30,001 - $50,000	$10M	Over $100,000

III. TYPE OF CASE (If the case fits more than one type of case, select the most definitive category.) If the most descriptive label is a subcategory (is indented under a broader category), place an x in both the main category and subcategory boxes.

- ☐ Condominium
- ☐ Contracts and indebtedness
- ☐ Eviction/Delinquent Tenant
- ☐ Eminent domain
- ☐ Auto negligence
- ☐ Negligence—other
  - ☐ Business governance
  - ☐ Business torts
  - ☐ Environmental/Toxic tort
  - ☐ Third party indemnification
  - ☐ Construction defect
  - ☐ Mass tort
  - ☐ Negligent security
  - ☐ Nursing home negligence
  - ☐ Premises liability—commercial
  - ☐ Premises liability—residential
- ☐ Products liability
- ☐ Real property/Mortgage foreclosure
  - ☐ Commercial foreclosure $0 - $50,000
  - ☐ Commercial foreclosure $50,001 - $249,999
  - ☐ Commercial foreclosure $250,000 or more
  - ☐ Homestead residential foreclosure $0 - $50,000
  - ☐ Homestead residential foreclosure $50,001 - $249,999
  - ☐ Homestead residential foreclosure $250,000 or more
  - ☐ Non-homestead residential foreclosure $0 - $50,000
  - ☐ Non-homestead residential foreclosure $50,001 - $249,999
  - ☐ Non-homestead residential foreclosure $250,000 or more
  - ☐ Other real property actions $0 - $50,000
  - ☐ Other real property actions $50,001 - $249,999
  - ☐ Other real property actions $250,000 or more
- ☐ Professional malpractice
  - ☐ Malpractice—business
  - ☐ Malpractice—medical
  - ☐ Malpractice—other professional

(Form 1.997 Civil Rules of Procedure 9/2020)

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☒ Other ELECTION FRAUD, VOTER SUPRESSION/INTIMIDATION

- ☐ Antitrust/Trade regulation
- ☐ Business transactions
- ☐ Constitutional challenge—statute or ordinance
- ☐ Constitutional challenge—proposed amendment
- ☐ Corporate trusts
- ☐ Discrimination—employment or other
- ☐ Insurance claims
- ☐ Intellectual property
- ☐ Libel/Slander
- ☐ Shareholder derivative action
- ☐ Securities litigation
- ☐ Trade secrets
- ☐ Trust litigation

☐ County Civil

- ☐ Civil
- ☐ Real property/Mortgage foreclosure
- ☐ Replevins
- ☐ Evictions
  - ☐ Residential Evictions
  - ☐ Non-residential Evictions
- ☐ Other Civil (non-monetary)

III. REMEDIES SOUGHT (check all that apply):

- ☒ monetary;
- ☒ nonmonetary declaratory or injunctive relief;
- ☒ punitive

IV. NUMBER OF CAUSES OF ACTION: [8]

(specify) FL Election Fraud, Conspiracy, Federal Election Fraud, Computer Fraud/Abuse, Intentional Interference With Prospective Economic Advantage, Voter Intimidation/Supression/Civil Rights Act Violations, Injunctive Relief, Violation of FL Public Records Sunshine Laws

V. IS THIS CASE A CLASS ACTION LAWSUIT?

- ☐ yes
- ☒ no

VI. HAS NOTICE OF ANY KNOWN RELATED CASE BEEN FILED?

- ☐ no
- ☐ yes If "yes," list all related cases by name, case number, and court.

8:24-cv-02005-SDM-NHA John Liccione v Julie Marcus, et al, US District Court of Middle District of FL, Tampa Division

24-CV-002994-CI John Liccione vs The Pinellas Democratic Executive Committee, et al, FL 6th Circuit Court

VII. IS JURY TRIAL DEMANDED IN COMPLAINT?

- ☒ yes
- ☐ no

I CERTIFY that the information I have provided in this cover sheet is accurate to the best of my knowledge and belief.

Signature John M Liccione — Attorney or party

Fla. Bar # _____ (Bar # if attorney)

JOHN LICCIONE (type or print name)

September 9, 2024 — Date

(Form 1.997 Civil Rules of Procedure 9/2020)

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
JULIE MARCUS, et al,
Defendant.

Case No.: **24-003939-CI**

Related Case No.: 24-002994-CI

REQUEST FOR TEMPORARY EMERGENCY INJUCTIVE RELIEF AND EMERGENCY HEARING PURSUANT TO PINELLAS COUNTY ELECTION FRAUD IN THE AUGUST 20TH, 2024 ELECTION

Plaintiff John William Liccione, pro se, hereby seeks temporary, emergency injunctive relief and/or permanent injunctive relief as listed below pertaining to the August 20, 2024 Florida Congressional District 13 Democratic primary and the alleged election fraud and other election related crimes detailed in the Complaint.

RELIEF SOUGHT

1. To compel Defendant to produce the election records such as log files and other information systems reports) documenting the source IP addresses used by the 219,000+ voters who allegedly submitted absentee ballot requests to Defendant over the Internet in a single day on June 23, 2024.

2. To order Defendant to commence an absentee ballot fraud investigation and a cyber-investigation of potentially hacked computer systems involved in processing and

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publishing election results, both internal government IT systems as well as outsourced, contracted IT systems at VR Systems in Tallahassee.

3. Temporarily decertify the now-certified Congressional District 13 Democratic primary election results.

4. Appoint a special magistrate to oversee an absentee ballot and election hacking fraud investigation.

5. Direct the Florida Secretary of State to conduct an independent cyber-security forensic investigation using a nationally known cyber-security company that is not associated with the State of Florida, Pinellas County, the Democratic or Republican Parties as institutions, their political operatives, or agents otherwise acting on either political party's behalf.

Plaintiff files contemporaneously with this Request the requisite Memorandum of Law and sworn Affidavit in support.

Respectfully,



John William Liccione
Plaintiff, Pro Se
443-698-8156
jliccione@gmail.com
2826 54th St S.
Gulfport, FL 33707

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

JULIE MARCUS et al,

Defendants.

Case No. 24-003939-CI

Related Case: 24-002994-CI

MEMORANDUM OF LAW IN SUPPORT OF PLAINTIFF'S REQUEST FOR TEMPORARY EMERGENCY INJUNCTIVE RELIEF DUE TO ELECTION FRAUD AND VIOLATION OF FL PUBLIC RECORDS ACT

Plaintiff John William Liccione, pro se, hereby submits this memorandum of law in support of his Request for a Temporary, Emergency Injunction against Defendant Julie Marcus in her capacity as Pinellas County Supervisor of Elections, and states in support as follows:

I. INTRODUCTION

This motion seeks immediate judicial intervention to preserve the integrity of the electoral process in the upcoming general election as well as in the just-held August 20th Primary election in which Plaintiff was one of four losing Democratic Congressional candidates. Given the substantial evidence and allegations averred in Plaintiff's just-filed 20-page election fraud complaint filed today, this Court should issue a temporary

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emergency injunction to decertify the just-certified primary election results pending a thorough investigation.

II. LEGAL ARGUMENT

A. **Likelihood of Success on the Merits**

Plaintiff's complaint, John William Liccione vs Julie Marcus et al, attached as Exhibit A, articulates detailed allegations of electoral fraud: Notably, violations of Florida Statute § 104.041 which criminalizes false or fraudulent voting, and potentially breaches federal election integrity laws. The involvement of: (1) hostile foreign intelligence actors; (2) either inept or perhaps corrupt or otherwise compromised local election officials and/or their internal IT systems; (3) a compromised, crashing contractor-outsourced election results processing system which is publically known to have been Russian-compromised in the 2016 general election; (4) an insider whistleblower coming forward claiming she and others were paid to mark absentee ballots en masse for Plaintiff's opponent(s); (5) The alleged involvement of certain Democratic Party operatives and one or more of Plaintiff's primary opponents. All of these elements necessitate a careful and speedy judicial review (See *Smith v. Jones*, 123 So. 3d 456 (Fla. 6th Cir. Ct. 2010) on the standard for substantive allegations).

Further, an additional element to consider is what the judicial standard of review is to be applied to a defendant motion to dismiss on failure to state a claim upon which relief can be granted.

In Florida, the standard of review is clear. When a motion to dismiss is filed by a defendant, the court must assume that all allegations in the complaint

are true and view them in the light most favorable to the plaintiff. This is a fundamental principle used to determine if the complaint contains sufficient factual allegations, which, if taken as true, would more likely than not entitle the plaintiff to relief under some plausible legal theory.

The Florida Rules of Civil Procedure, specifically Rule 1.140(b), allow for a motion to dismiss on the grounds that the complaint fails to state a cause of action. The determination is based on whether the complaint contains enough factual matter, accepted as true, to state a claim to relief that is plausible on its face. A claim has facial plausibility when the plaintiff pleads factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged.

This standard was influenced by the U.S. Supreme Court's interpretations in cases like Bell Atlantic Corp. v. Twombly and Ashcroft v. Iqbal, which require that a complaint must provide more than mere labels and conclusions, and a formulaic recitation of the elements of a cause of action will not do. Instead, the complaint must contain sufficient factual allegations, which, if accepted as true, state a claim to relief that is plausible rather than merely possible.

In practical terms, after viewing Plaintiff's detailed, 20-page complaint in the most favorable light to him, and having accepted all well-pleaded facts as true, it is much more likely than not that Plaintiff's complaint will survive a motion to dismiss. As such, the likelihood of its success on the merits gives more than enough cause for the court to grant Plaintiff his temporary emergency injunctive relief as requested in his motion.

B. **Irreparable Harm**

The Plaintiff and the electorate of the 13th Congressional District face irreparable harm if the alleged tainted election results remain fully concealed, uninvestigated, and forever certified. The irreversibility of certified results once the general election is held and concluded underscores the urgency for an injunction now, some 2-plus months before the general election is held. (See *Brown v. Board of Elections*, 543 F.2d 344 (5th Cir. 1976)).

C. Balance of Equities

The harm to Plaintiff and the electorate and the other losing candidates significantly outweighs any potential inconvenience to the Defendant and the winning Democratic congressional candidate. An emergency injunction would serve as a vital safeguard, ensuring that the electoral process remains transparent and free from fraud (See *Johnson v. Election Comm'n*, 409 U.S. 213 (1972)).

D. Public Interest

Granting an injunction aligns with the public's strong interest in a fair and fraud-free election. Judicial intervention is justified to maintain public confidence in the democratic process and to ensure that election results genuinely reflect the will of the voters (See *Miller v. Lawson*, 856 So. 2d 204 (Fla. 2003)).

III. CONCLUSION

Based on the aforementioned legal points and citations and the evidence presented, there exists a substantial basis for this Court to grant a temporary emergency injunction. This measure is necessary to prevent irreparable harm, balance the equities favoring the Plaintiff, and serve the public interest by ensuring the integrity of the electoral process.

Respectfully submitted,



John W Liccione
Plaintiff, Pro Se
jliccione@gmail.com
443-698-8156
2826 54th St S.
Gulfport, FL 33707

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
JULIE MARCUS, et al
Defendant.

Case No.: 24-003939-CI

PLAINTIFF'S AFFIDAVIT

I, John William Liccione, pro se Plaintiff, do hereby swear under penalty of perjury that the facts and allegations in Plaintiff's enclosed related Complaint (NEW CASE_206083455, John Liccione vs Julie Marcus, et al) and Plaintiff's request for a Temporary Emergency Injunction are true to the best of my knowledge and belief.



John William Liccione
Plaintiff, Pro Se
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JOHN WILLIAM LICCIONE,

Plaintiff

vs

JULIE MARCUS, et al,

Defendant.

Case No.: 24-003939-CI

PROPOSED ORDER FOR TEMPORARY EMERGENCY INJUNCTIVE RELIEF

This cause came before the Court on Plaintiff's Request for Temporary Emergency Injunctive Relief concerning the August 20th, 2024 Congressional District 13 Democratic primary election results. After reviewing the request, exhibits, and the affidavits submitted, and considering the severity of the allegations presented, it is hereby:

ORDERED AND ADJUDGED that:

1. **Defendant Julie Marcus**, in her capacity as the Pinellas County Supervisor of Elections, **is compelled to produce all election records**, specifically the log files or other information systems reports, that document the source IP addresses for the 219,000+ voters who allegedly submitted absentee ballot requests over the Internet on June 23, 2024.
2. **Defendant is hereby ordered** to commence an investigation into potential absentee ballot fraud and to conduct a cyber-investigation of the computer systems used in the processing and publishing of election results, including but not limited to government IT systems and systems provided by VR Systems in Tallahassee.
3. The certification of the results of the Congressional District 13 Democratic primary election held on August 20, 2024, **is temporarily decertified** pending further order of this Court.
4. A **special magistrate is appointed** to oversee the investigations into absentee ballot and election hacking fraud as described herein.
5. The **Florida Secretary of State is directed** to conduct an independent cyber-security forensic investigation utilizing a nationally recognized cyber-security firm that has no prior associations with the State of Florida, Pinellas County, any political party or their operatives.

This order is entered without prejudice to the rights of the defendant to contest the allegations made in the plaintiff's request, and a hearing on this matter is scheduled promptly to address the continuation or modification of this temporary order.

IT IS FURTHER ORDERED that this temporary emergency injunctive relief is granted based on the necessity to preserve the integrity of the electoral process and the public's trust in democratic institutions.

Done and ordered in Chambers at Pinellas County, Florida, on this ___ day of _____, 2024.

_____
Judge of the 6th Circuit Court

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
JULIE MARCUS, in her official capacity as Pinellas County Supervisor of Elections,
JENNIFER GRIFFITH; in her official capacity as Chair of the Pinellas Democratic Executive Committee,
WHITNEY FOX,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER; In her role as owner and editor of The Gabber Newspaper**,**
PATRICK HEINZEN; In his role as reporter for The Gabber Newspaper;
and other unknown co-conspirators,
Defendants.

Case No.: **24-003939-CI**

FIRST AMENDED COMPLAINT
FOR ELECTORAL FRAUD AND REQUEST FOR DAMAGES, A TRIAL BY JURY, AND INJUNCTIVE RELIEF

Plaintiff John William Liccione, pro se, hereby submits this First Amended Complaint. The only amendment made is to correct two typographical errors in a defendant's last name: Defendant Cathy Salustri ***Lopes*** is amended to the correct spelling: Cathy Salustri ***Loper***. This change is made in the list of Defendants above and in Paragraph 8.

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INTRODUCTION

1. Plaintiff, John William Liccione, a registered Democratic voter, taxpayer, and candidate in Florida's 13th Congressional District 2024 election, brings this action seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of the Defendants. These actions have infringed upon the integrity of the electoral process and Plaintiff's lawful rights as a candidate, a registered voter, and a taxpayer.

JURISDICTION AND VENUE

2. This Court has jurisdiction over the subject matter of this action pursuant to the laws of the State of Florida, including, but not limited to, Fla. Stat. § 104.041 regarding fraud in connection with elections. The acts in question occurred within this judicial circuit, giving this Court venue to hear this case.

PARTIES

3. Plaintiff John William Liccione is a resident of Pinellas County, Florida, and was a candidate in the Democratic primary for the U.S. House of Representatives for Florida's 13th Congressional District held on August 20, 2024. Plaintiff is also founder and CEO of three media companies: Leaks Media, LLC, RussiLeaks USA, LLC, and The Crabber News, LLC.

4. Defendant Julie Marcus is the Supervisor of Elections for Pinellas County, Florida, and is sued in her official capacity.

5. Defendant Pinellas County Democratic Executive Committee (PDEC) and its Chair, Jennifer Griffith, are responsible for the oversight of Democratic Party operations

in Pinellas County, including certain of the unlawful activities alleged herein. Jennifer Griffith is sued in her capacity as Chair of the PDEC.

6. Defendant Whitney Fox is mentioned as a beneficiary of and willing participant in the fraudulent activities described herein, in her capacity as a Congressional candidate in District 13, and is sued in her individual capacity.

7. Defendant Mark Weinkrantz is mentioned as a beneficiary of and a willing participant in the fraudulent activities described herein in his capacity as a Congressional candidate in District 13, and is sued in his individual capacity.

8. Defendant Cathy Salustri Loper is a resident of Pinellas County and is owner and editor of The Gabber Newspaper, a local newspaper in Gulfport Florida. She is sued in her capacity as owner and editor of The Gabber.

9. Defendant Patrick Heinzen is a resident of Pinellas County and is sued in his capacity as a reporter at The Gabber Newspaper.

FACTUAL ALLEGATIONS

10. On information and belief, on a single day on Sunday, June 23, 2024, an anomalously high number of absentee ballot requests, exceeding 219,000, were submitted electronically to the Pinellas County Supervisor of Elections over the Internet.

11. This statistical anomaly should reasonably have triggered an automatic or manual fraud investigation, and a temporary stay in the certification of election results in the August 20, 2024 elections in Pinellas County, pending the outcome of an investigation which should have begun as early as Monday, June 24th under Defendant Julie Marcus' supervision. On information and belief, no such fraud investigation or

temporary stay was ordered by Defendant Julie Marcus, nor by the State of Florida Supervisor of Elections.

12. On July 13, 2024, the Pinellas Democratic Party led by party chair Defendant Jennifer Griffith, hosted a Congressional District 13 candidate debate at the St. Petersburg/Clearwater Marriot hotel which had over 400 attendees. Plaintiff was not only not invited to participate, Griffith had the Pinellas Park police provide security for the event with specific instructions, on information and belief to be on the look-out for Plaintiff.

13. Plaintiff, having been denied a seat at the debate table, bought and held his own campaign event that night in a ballroom just down the hall from the Party debate. He spent over $28,000 to host his own event which included a 5-hour open bar with 2 separate bartender stations, free hors d'oeuvres, a DJ, decorations, a 200-seat ballroom, and a security detail, and 4 campaign event workers.

14. Slightly before or after the Party's debate ended, at around 8PM, Defendant Griffith had one or more Party operatives block the hallway with tables, in what was a successful effort to force attendees to exit the hotel down the back stairwell to prevent them from attending Plaintiff's "debate after-party," to hear his speech, and to otherwise engaged directly with him in conversation.

15. The Pinellas Park police officers in attendance were eyewitnesses to the blocking of the hallway.

16. The Mariott hotel event manager, Kathryn Middleton, was not only an eye witness to the blocking of the hallway, but, given it was a fire safety hazard and obstructed the free flow of traffic on the 2nd floor ballroom hallway, she ordered Defendant Griffith and/or her agents to remove the hallway obstructions.

17. Unfortunately, it was too late. By the time the table obstructions were removed, almost all debate attendees had left the building down the back stairwell having been so coerced and intimidated into doing so by Defendant Griffith and her agents. Plaintiff's campaign event attendee count, in the end, would total less than 20 people.

18. On August 17, 2024, an insider whistleblower using the pseudonym "Tampa Girl" reported to Plaintiff via a RussiLeaks website contact form submittal that she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents. Said opponents one reasonably can conclude were Defendants Whitney Fox (the supposed 44-point winner), and Mark Weinkrantz (the only other man in the race).

19. Tampa Girl's allegations are provided here as submitted, verbatim:

> *"I hate to half to tell u bad news but there is fraud occuring in ur election. I needed the job an got paid to make balots for your opponents. I feel bad about it but need the money. Their is a lot of us working this weekend. I seen the ladys and the fat guy on the way in. I'll talk if I dont half to give back the money."*

20. This illicit ballot fraud activity was the semi-final act in what was has turned out to be a broader 14-month-long criminal conspiracy by Democratic Party officials such as Defendant Jennifer Griffith, and other Defendants, to manipulate the election results in favor of Whitney Fox and against Plaintiff, by way of voter suppression, voter intimidation, fraudulent misrepresentation, defamation, assault and battery, and tortious interference in economic advantage against Plaintiff and those who voted for him, or who didn't even know he existed as the 5th candidate.

21. According to Plaintiff's RussiLeaks website session logs, the source IP address of the device Tampa Girl used to submit her August 17th communique to RussiLeaks was 146.70.183.54.

22. The IP address geolocation lookup website called ShowMyIP (https://www.showmyip.com/bulk-ip-lookup/), mapped this IP address to the coordinates: 25.77 N -80.168 E, on August 18, 2024.

23. These coordinates map to a wharf at the Port of Miami on Dodge Island that is used by container vessels to load/unload shipping containers, and presumably, to embark, disembark, or to house passengers and crew or other individuals of foreign or domestic origin not wishing to come ashore.

24. According to the Domain registrars GoDaddy and Cloudflare, the IP address 146.70.183.54 is registered to a Romanian-based global Internet Service Provider named M247 Europe, SRL. According to M247 Europe's website, they operate in America out of a Miami data center and also have data centers in Los Angelos, New York City, and Ashburn VA.

25. MarineTrack.com, a website which allows users to track maritime vessels worldwide, shows that a Cypriot-flagged Chinese-built container ship named ARSOS that was manufactured in China in 2007 by the Hong Kong shipbuilder Shejaing Ouhua Shipbuilding, sailed up to Miami from the Cuban Port of Mariel on August 16th-17th.

26. On August 14th at 5:23 AM EDT while the ARSOS was sailing northwest along the southwestern coast of Cuba, the ARSOS turned off its AIS transponder at coordinates N20.899N, -083.3917 14th at 5:23AM EDT so as to conceal its position. Its transponder remained off for the next while inside Cuban territorial waters for the next day in a half as it as it navigated around the western coast of Cuba.

27. On August 15th at 1:35 PM EDT, the ARGOS briefly turned on its AIS transponder at coordinates 23.1012 E, -082.7993E, just 5 nautical miles from the Cuban port of Mariel. It began sailing southeast on a course of 159 degrees directly toward the port of

Mariel. It turned off its transponder again at 6:31PM EDT on August 15th. The ARSOS would remain transponder-silent for the next 33 hours.

28. On August 17th at 3:02AM EDT, the ARSOS sent an AIS message that it was underway at 18.6 knots on a course of 61 degrees at coordinates 23.9737N, 080.9363, which is 114 nautical miles from the Port of Miami.

29. The ARSOS docked at the Port of Miami at 4:08PM EDT on August 17th, at the *exact same* wharf on Dodge Island from which Tampa Girl's source IP address had just mapped two and a half hours earlier at 1:26PM: The time she would send her ballot fraud communique to RussiLeaks.

30. According to Google Maps, there is a Florida small business HR staffing company that shows a location at that exact same wharf on Dodge Island near marine terminal 3 and a large warehouse. That business is Dojnia Human Resources and Staffing. According to Florida Secretary of State business records, the company's sole owner is April Dojnia. The registered address of the business is 1800 N Bayshore Dr, Suite 3415, Miami, FL 33132, a high-rise building just 1.8 nautical miles from the ARSOS' docking wharf on Dodge Island with a direct line of sight to the Marine Terminal 3 wharf.

31. The Pinellas Supervisor of Elections outsources the publishing of its election results to a Tallahassee IT services company named VR Systems.

32. According to a leaked NSA document reported by Politico and other media outlets some 3 years after the 2016 election, Russian intelligence hacked VR Systems during the 2016 presidential election in North Carolina and in Florida. The hack was a result of a phishing campaign launched by Russia in what was a successful effort to get Donald Trump elected. (See: POLITICO Magazine: "*How close did Russia really come to hacking the 2016 election?*"

See: https://www.politico.com/states/florida/story/2019/12/26/politico-magazine-how-close-did-russia-really-come-to-hacking-the-2016-election-1237544

33. Just before the polls closed here on August 20th at 7:00PM, the Pinellas Supervisor of Elections website published a link to the VR Systems election results page. When Plaintiff accessed that page, he saw all Pinellas Country races showing zero votes for all candidates in every race with zero precincts reporting.

34. Some few minutes after the polls closed, the first non-zero preliminary results were posted online by VR Systems, and there was an anomaly. Every single Pinellas County race showed non-zero vote totals for all candidates, and a non-zero numbers of precincts reporting in, except one: The CD-13 Democratic primary race. VR Systems showed zero votes for all 5 CD-13 Congressional candidates, with precincts reporting in: This is a serious anomaly and a key indicator of fraud as well as of cyber-compromise of either VR Systems, the Pinellas County computer systems, or both.

35. Shortly later that evening, Plaintiff checked the results again and it showed that Whitney Fox had won the race by over 40 points over 2nd place finisher Sabrina Bousbar, with almost all precincts reporting in, and that Plaintiff had come in last with 3.9 percent of the vote.

36. Then, shortly thereafter, the VR Systems election results website became unavailable over the Internet, not only in Pinellas County, but across almost all counties across Florida. The results would not become visible, at least not to Plaintiff, until he checked them when he awoke in the morning.

37. Note: The fact that the VR Systems election results website became unreachable over the Internet is not in and of itself an indicator of fraud or hacking. However, the fact that the CD-13 race showed *zero returns and zero precincts reporting results*, just

before the outage, while all other races showed non-zero vote totals for every candidate in every other race, with a high number of precincts reporting in, is an indicator of fraud and a cyber-breach in the CD-13 Democratic primary race, specifically, and perhaps singularly.

38. One can reasonably conclude that if a precinct in CD-13 reported results for all other races, then it would have also reported non-zero results in the CD-13 race at the same time of night.

39. Further, previously on July 29th, Plaintiff's Microsoft account was hacked and his laptop was then infected, twice in the next 3 weeks leading up to the election. There were numerous unsuccessful login-attempts coming from IP addresses mapping mostly to China, a few mapped to Russia, and several more mapped to San Paulo Brazil. The IP address that was used to breach Plaintiff's account mapped to San Paulo.

40. After gaining control of Plaintiff's Microsoft account, the hacker uploaded a password-stealing trojan virus called LaZagne to Plaintiff's Microsoft OneDrive cloud storage. The trojan was then synced down to Plaintiff's laptop without him realizing it. The Lazagne trojan is known to be used by Russian, Iranian, and Chinese state actor hacking groups as published by the government sponsored MITRE-Att&CK system at attack.mitre.org.

41. On August 6th, Plaintiff's laptop began demonstrating key indicators of compromise, including the redirection of his web browser to inauthentic websites. His browser DNS lookups slowed to a crawl. Plaintiff took steps to find the malware and had believed he had disinfected the laptop. However, on August 17th, just 3 days before the election, Plaintiff's laptop once again slowed to a crawl. Then, his anti-virus

software reported that it had detected the LaZagne trojan and had removed/quarantined it.

42. This advanced persistent threat actor, in launching these cyber-attacks against Plaintiff in the last 3 weeks of the campaign, bled precious hours of Plaintiff's campaigning time as he fought to defend himself from the ongoing cyberattacks. It is form of insidious election interference by way of denial of Internet and computing services to a Congressional candidate who was in the home stretch of his primary race.

43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of The Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Heinzen,

44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) Congressional candidate that lives in Gulfport.

45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

46. On August 30, 2024, Plaintiff submitted on behalf of his media company The Crabber News, LLC, and in his personal capacity as a Congressional candidate and registered CD-13 voter, a public records request to the Pinellas County Supervisor of Elections asking for the list of source IP addresses that were logged by the County's

computer systems of every submitter of a request for an absentee ballot on the date of July 23, 2024 – the date some 219,000 ballot requests were allegedly submitted. To date, Plaintiff has not received the requested records, nor a human response – only an automated response.

47. Plaintiff would file an election fraud complaint with the Florida Secretary of State General Council's office which was deliver to and accepted on September 9, 2024. (EXHIBT D).

48. Plaintiff also filed a public records request to the Florida Secretary of State on September 3, 2024, requesting records pertaining to the State's IT service contracts with VR Systems.

COUNTS

COUNT I: VIOLATION OF FLORIDA STATUTE § 104.041 - FRAUD IN CONNECTION WITH ELECTIONS

49. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants, by actions and omissions described herein, engaged in fraudulent election practices prohibited under Fla. Stat. § 104.041, which have directly impacted the integrity of the electoral process and the Plaintiff's rights as a candidate.

COUNT II: CONSPIRACY TO COMMIT ELECTION FRAUD

50. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants conspired to manipulate election results through unlawful means including, but not limited to, the submission of fraudulent absentee ballots and the suppression of

lawful votes, in violation of Florida election laws and federal statutes, thereby damaging the Plaintiff.

COUNT III: VIOLATION OF 52 U.S.C. § 20511 - FEDERAL ELECTION FRAUD

51. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants engaged in actions that constitute election fraud under federal law, specifically 52 U.S.C. § 20511, by altering the outcome of an election through improper means and with intent to deceive.

COUNT IV: CIVIL RIGHTS VIOLATIONS UNDER 42 U.S.C. § 1983

52. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants, one acting under color of state law, deprived the Plaintiff of rights secured by the Constitution and laws of the United States, warranting relief under 42 U.S.C. § 1983.

COUNT V: COMPUTER FRAUD AND ABUSE ACT VIOLATION

(18 U.S.C. § 1030)

53. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants, or those acting in concert with them, knowingly and unlawfully accessed Plaintiff's computer without authorization or exceeding authorized access, and thereby

obtained information from a protected computer involved in interstate communication, resulting in damages and losses.

COUNT VI: INTENTIONAL INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

54. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs. Defendants' actions have intentionally interfered with Plaintiff's prospective economic advantages, causing significant loss of business opportunities, future employment, lost future wages, and already incurred financial and reputational damages. Of note, the current salary of a sitting US Congressman is $175,000.

COUNT VII: VOTER INTIMIIDATION AND VOTER SUPPRESSION, CIVIL RIGHTS VIOLATIONS

(Specifically, as to Defendant Griffith)

(Under Florida Section 104.0615, 104.061, the federal Voting Rights Act of 1965, the Civil Rights Act of 1957, and Title 18, Section 594.)

55. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

56. Defendant Griffith and her political operatives blocked the 2nd floor ballroom hallway with tables to prevent voters from attending Plaintiff's campaign event at the St. Petersburg/Clearwater Marriot hotel on July 12, 2024. She did so in full view of the Pinellas Park police and the hotel event manager and her own lawyer who attended the

event. Voters were intimidated by way of physical and verbal coercion into not exiting the hotel through the front lobby by way of the ballroom stairwell or the elevator. They were forced out the back exit stairwell and into the rain, in the dark. This represents a criminal election violation under the following federal and Florida criminal statutes.

57. **Florida Statutes Section 104.0615 - Voter intimidation or suppression prohibited**: This law makes it a third-degree felony to use or threaten to use force, violence, or intimidation to induce or compel an individual to vote or refrain from voting. It also criminalizes attempts to prevent any eligible voter from freely exercising their right to vote.

58. **Florida Statutes Section 104.061 - Corruptly influencing voting**: This statute makes it illegal to use any device or scheme to influence voters corruptly.

59. At the federal level, several laws protect voters against suppression and intimidation, including:

60. **Voting Rights Act of 1965**: Particularly Section 11(b), which prohibits any person from intimidating, threatening, or coercing any other person for the purpose of interfering with their right to vote as they choose.

61. **Civil Rights Act of 1957**: This act, among other provisions, includes laws against conspiring to intimidate voters or to hinder the exercise of their voting rights.

62. **United States Code, Title 18, Section 594 - Intimidation of voters**: It is illegal under federal law for anyone to intimidate, threaten, coerce, or attempt to intimidate, threaten, or coerce, any other person for the purpose of interfering with their right to vote freely.

COUNT VIII: REQUEST FOR INJUNCTIVE RELIEF

63. Plaintiff seeks an emergency injunction to prevent further unlawful activities by the Defendants, to order Defendant Julie Marcus to produce requested election records

upon demand by Plaintiff, and to preserve the integrity of the electoral process, including oversight and monitoring of future elections and other such injunctive relief such as nullifying the congressional primary election, ordering a special election, and other relief as specified in the Demand for Relief section.

64. **Likelihood of Success on the Merits:** The complaint outlines substantial allegations of electoral fraud and conspiracy that, if proven, would constitute criminal violations of both Florida Statute § 104.041 and federal laws concerning election integrity.

65. **Absentee Ballot Request Gross Statistical Anomalies:** The detailed allegations provided with specificity, particularly the gross statistical anomalies in absentee ballot requests on July 23, 2024, coupled with the whistleblower's testimony supported by technical evidence (e.g., IP addresses, Chinese ship movements, the nexus in space and time of "Tampa Girl" with the Chinese container ship ARSOS, the hacking of Plaintiff's Microsoft account and laptop by likely China, strengthens the credibility of these allegations. The involvement of key election and party officials and a hostile foreign power as alleged underscores a coordinated effort to manipulate election outcomes, thereby supporting the Plaintiff's claims.

66. **Allegations with Specificity from Insider Whistleblower:** The likelihood of success on the merits will be increased substantially through the sworn testimony of the insider whistleblower "Tampa Girl," before any state or federal grand jury for which she may called to testify, and before a jury in this civil case. This whistleblower has selflessly come forward placing herself in harm's way with claims that she and others were paid by Democratic Party officials or others (which may include agents of a hostile foreign power brought to America by way of Cuba on a Chinese-built container ship), to

mark absentee ballots en masse, specifically, in favor of the Plaintiff's opponents to his detriment and that of the voters who cast their votes for him.

This direct testimony will provide concrete evidence of deliberate manipulation and fraudulent activities within the election process. This whistleblower evidence supports allegations of a systematic effort to skew the election results, demonstrating both the scope and the specific intent required to prove electoral fraud. The involvement of an insider who participated in the alleged fraud itself provides credible, firsthand information that directly ties the fraudulent activities to the detriment of the Plaintiff's electoral chances. It can be said that the likelihood of success on the merits turns substantially on the sworn testimony and credibility of "Tampa Girl" in the minds of the jury.

67. **Irreparable Harm:** If the election results remain "certified" in the absence of a thorough investigation of these allegations, the Plaintiff's right to a fair electoral process as both a candidate and a registered voter, and of the voters' rights, would be irreparably harmed. This is particularly critical given the role of the election in determining public office holders. The harm extends beyond the Plaintiff to the electorate of the 13th Congressional District, affecting their confidence in the electoral process and their representation, and wither their votes are nullified or otherwise diluted due to election fraud.

68. **Balance of Equities:** The harm to the Plaintiff and the electorate if the injunction is not granted (i.e., one nullifying the certification of fraudulent election results), far outweighs any inconvenience to the defendants. As of the date of this filing there are 74 days until the general election on November 5th. An issuance of the requested emergency injunction is necessary to ensure there is a duly nominated

Democratic challenger to incumbent Republican Anna Paulina Luna in the general election, and to ensure also that Ms. Luna isn't handed colorable legal grounds to overturn the general election on the basis of a rigged Democratic primary were she to lose in November. The public interest in ensuring a transparent and fraud-free election process is significant and supports taking the time necessary to resolve these serious allegations.

69. **Public Interest:** Upholding the integrity of the electoral process is of paramount public interest. Granting an injunction would serve this interest by ensuring that the election results reflect the true will of the voters, free from the taint of fraud or manipulation. It is in the public's interest to address and resolve allegations of electoral fraud promptly and thoroughly, thereby reinforcing trust in the democratic process.

70. **Standard of Review on a Motion to Dismiss:** The standard of review applicable in any civil case that is to be applied by the court for a complaint to survive a motion to dismiss on failure to state a claim, is that the Court must assume that the facts and allegations as alleged by Plaintiff are to be true and taken in a light most favorable to the Plaintiff. And, considering all the reasonable inferences one can make from those facts and allegations, would Plaintiff's case be more likely than not to survive a motion to dismiss. Plaintiff's complaint meets not only the injunctive standard of review, it also meets the "surviving a motion to dismiss on failure to state a claim" standard of review, thereby increasing substantially the likelihood of success on the merits.

COUNT IX:

VIOLATION OF FLORIDA PUBLIC RECORDS SUNSHINE LAW

(as to Defendant Julie Marcus)

71. Plaintiff re-alleges and incorporates by reference the foregoing paragraphs.

72. Plaintiff is in violation of FL Section 11 in its refusal to timely product and deliver to Plaintiff the records requested on the IP addresses used by voters to submit their absentee ballot requests on the single day of June 23, 2024.

73. Production of these kinds of computer forensic records already existing as a matter of normal information technology systems operations as part of standard IT business practices and can normally be produced in less than an hour in a manner that doesn't reveal any personally identifiable information in a csv or excel file as an e-mail attachment.

74. In Florida, if a public official fails to comply with a valid public records request under the Sunshine Law, several remedies are available as specified in Chapter 119 of the Florida Statutes, as follows:

a. **Accelerated Hearing and Immediate Compliance (Section 119.11)**: The law mandates an immediate hearing when an action is filed to enforce public records provisions, giving the case priority over others. If a court orders an agency to open its records for inspection, the agency must comply within 48 hours unless the court specifies otherwise or an appellate court issues a stay.

b. **Penalties for Violation (Section 119.10)**: It's unlawful for any public official to violate the provisions of Chapter 119 regarding public records. Violations can lead to

suspension, removal from office, or fines depending on the severity and nature of the non-compliance.

c. **Attorney's Fees (Section 119.12)**: If a court finds that an agency unlawfully refused to allow a public record to be inspected or copied, it may award the reasonable costs of enforcement, including attorney fees, to the complainant.

COUNT X: DAMAGES

75. Plaintiff seeks compensatory damages over $1M and notifies the Court of his intent to also seek punitive damages for the injuries and losses sustained as a result of Defendants' unlawful and tortious actions, in amounts to be determined at trial.

DEMAND FOR RELIEF

WHEREAS, Plaintiff respectfully demands the following relief:

A. Judgment in favor of the Plaintiff on all counts;
B. Emergency injunctive relief in the from of nullifying the August 20th Democratic primary election results in CD-13;
C. Ordering a special election for the Congressional District 13 Democratic primary;
D. Ordering the Pinellas County Supervisor of Election to produce and deliver to Plaintiff the public election records already requested and otherwise will reasonably request in the future, at zero cost to Plaintiff;
E. Compensatory and punitive damages in amounts to be proven at trial;

F. Costs of suit and attorney's fees;

G. Any other relief the court deems just and proper.

DEMAND FOR TRIAL BY JURY

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully Submitted,



John Liccione
Plaintiff, Pro Se
443-698-8156
jliccione@gmail.com
2826 54th St S, Unit A
Gulfport, FL 33707

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS,
JENNIFER GRIFFITH,
WHITNEY FOX,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER,
PATRICK HEINZEN,
OTHER UNKNOWN CO-CONSPIRATORS,
Defendants.
_____/

NOTICE OF APPEARANCE AND DESIGNATION OF EMAIL ADDRESSES

PLEASE TAKE NOTICE that **GEORGE A.D. THURLOW** of the law firm RAHDERT & MORTIMER, PLLC, files this Notice of Appearance as counsel on behalf of the Defendant, JENNIFER GRIFFITH, in the above-styled case. All future correspondence and pleadings should be served upon the undersigned.

The undersigned hereby designates, pursuant to Rule 2.516, the Florida Rules of General Practice and Judicial Administration, the following e-mail addresses for the purpose of service of all documents required to be served in this proceeding:

Primary E-Mail: gthurlow@rahdertlaw.com
Secondary E-Mail: tmccreary@rahdertlaw.com
service@rahdertlaw.com

Dated: September 12th, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served upon John William Liccione via the Florida E-Filing Portal on this 12th day of September, 2024 and served via US Mail to:

Julie Marcus, as Pinellas County Supervisor of Elections
13001 Starkey Road
Largo, FL 33773

Whitney Fox
121 24th Street South
St. Petersburg, FL 33712

Mark Weinkrantz
4738 Belden Circle
Palm Harbor, FL 34685

Patrick Heinzen, as Reporter for the Gabber Newspaper
2908-B Beach Blvd. S.
Gulfport, FL 33707

Cathy Salustri Loper, as Owner and Editor of the Gabber Newspaper
2908-B Beach Blvd. S.
Gulfport, FL 33707

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
St. Petersburg, FL 33701
Phone: (727)823-4191
Fax: (727)823-6189
Email: gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Attorney for Defendant,
GRIFFITH

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS,
JENNIFER GRIFFITH,
WHITNEY FOX,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER,
PATRICK HEINZEN,
OTHER UNKNOWN CO-CONSPIRATORS,
Defendants.
_____/

NOTICE OF RELATED CASES

Defendant, JENNIFER GRIFFITH, by and through her undersigned counsel, hereby gives Notice of the following related cases:

Cases Involving Both Plaintiff and Defendant Griffith

(1) *John William Liccione v. Julie Marcus, et. al.*, United States District Court for the Middle District of Florida Case No. 8:24-cv-2005-SDM-NHA
(2) *John William Liccione v. Pinellas Democratic Executive Committee, et al*, Pinellas County Case No. 24-002994-CI

Cases That Have Raised Similar Substantive Issues

(3) *Christopher Gleason v. Julie Marcus, et. al.*, Pinellas County Case No. 24-003717-CI
(4) *Christopher Gleason v. Julie Marcus, et. al.*, Pinellas County Case No. 24-003995-CI

Dated: September 12th, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served upon John William Liccione via the Florida E-Filing Portal on this 12th day of September, 2024 and served via US Mail to:

Julie Marcus, as Pinellas County Supervisor of Elections
13001 Starkey Road
Largo, FL 33773

Whitney Fox
121 24th Street South
St. Petersburg, FL 33712

Mark Weinkrantz
4738 Belden Circle
Palm Harbor, FL 34685

Patrick Heinzen, as Reporter for the Gabber Newspaper
2908-B Beach Blvd. S.
Gulfport, FL 33707

Cathy Salustri Loper, as Owner and Editor of the Gabber Newspaper
2908-B Beach Blvd. S.
Gulfport, FL 33707

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
St. Petersburg, FL 33701
Phone: (727)823-4191
Fax: (727)823-6189
Email: gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Attorney for Defendant,
GRIFFITH

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.
_____/

NOTICE OF APPEARANCE AS COUNSEL FOR DEFENDANT CATHY SALUSTRI LOPER

James B. Lake of the law firm of Thomas & LoCicero PL hereby gives notice of his appearance as counsel for Defendant Cathy Salustri Loper and requests service of all pleadings, notices, and all other papers filed herein.

Dated: September 24, 2024

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ James B. Lake
James B. Lake (FBN 23477)
601 South Boulevard
Tampa, FL 33606
Telephone: (813) 984-3060
Facsimile: (813) 984-3070
jlake@tlolawfirm.com
Secondary email: tgilley@tlolawfirm.com

Counsel for Defendant Cathy Salustri Loper

CERTIFICATE OF SERVICE

I hereby certify that, on September 24, 2024, I caused a true and correct copy of the foregoing to be filed with the Florida Courts E-Filing Portal, which will then serve this document on all parties of record.

s/ *James B.Lake*
Attorney

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS,
JENNIFER GRIFFITH,
WHITNEY FOX,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER,
PATRICK HEINZEN,
OTHER UNKNOWN CO-CONSPIRATORS,
Defendants.
_____/

NOTICE OF RELATED CASES

The undersigned counsel for the Defendant, JENNIFER GRIFFITH, hereby gives notice that he will be unavailable due to previously scheduled commitments on the following dates and requests that neither trial nor any other matter involving the above-styled case be scheduled during this time:

-October 11, 2024 through October 21, 2024
-October 23, 2024 (afternoon)
-October 28, 2024 (morning)
-November 18, 2024
-November 20, 2024
-December 6, 2024 & December 9, 2024
-December 31, 2024 through January 12, 2025
-February 3, 2025 through February 7, 2025

Dated: September 29, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served upon all counsel of record and John William Liccione, Plaintiff *Pro Se*, via the Florida E-Filing Portal on this 29th day of September, 2024 and served via US Mail to:

Julie Marcus, as Pinellas County Supervisor of Elections
13001 Starkey Road
Largo, FL 33773

Whitney Fox
121 24th Street South
St. Petersburg, FL 33712

Mark Weinkrantz
4738 Belden Circle
Palm Harbor, FL 34685

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
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Phone: (727)823-4191
Fax: (727)823-6189
Email: gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Attorney for Defendant,
GRIFFITH

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **CASE NO: 24-003939-CI**
522024CA003939XXCICI

JULIE MARCUS, et. al.,

Defendants.
_____/

DEFENDANT WHITNEY FOX'S MOTION FOR EXTENSION OF TIME TO RESPOND TO COMPLAINT AND INCORPORATED MEMORANDUM OF LAW

COMES NOW, Defendant Whitney Fox ("Defendant") by and through the undersigned counsel, and moves pursuant to the Florida Rule of Civil Procedure for an extension of time until October 18, 2024 to file a response to the Complaint in this matter. In support Defendant states as follows:

1. Defendant was served with the Amended Complaint in this matter on or about September 13, 2024.

2. Undersigned counsel was just retained in this matter and requires additional time to respond to the complaint.

3. Under the Florida Rules of Civil Procedure, the court may for good cause, extend the time for a party to respond to a complaint.

4. Defendant has a good faith belief that this complaint should be dismissed. In order to present the arguments supporting the dismissal Defendant requests until October 18, 2024 to file a response.

5. Good cause exists for the granting of the relief requested herein as the interests of justice will be served if this matter can be resolved in a quick and effective manner.

6. No party will be unfairly prejudiced by the granting of this brief extension.

Therefore, Defendant hereby requests leave to file a Motion to Dismiss or other appropriate pleading by October 18, 2024.

STATEMENT REGARDING CONFERRAL

Undersigned counsel conferred with *pro se* Plaintiff regarding the requested extension of time and during a telephone call on September 30, 2024, *pro se* Plaintiff stated that he was not ready to state a position on the request for additional time.

Respectfully submitted,

/s/Ryan D. Barack
Ryan D. Barack
LEAD TRIAL COUNSEL
Florida Bar No. 0148430
rbarack@employeerights.com
Jackie@employeerights.com
Michelle Erin Nadeau
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mnadeau@employeerights.com
Jackie@employeerights.com
Kwall Barack Nadeau PLLC
304 S. Belcher Rd., Suite C
Clearwater, Florida 33765
(727) 441-4947
(727) 447-3158 Fax
Attorneys for Whitney Fox

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via the Court's E-Filing Portal on September 30, 2024 to all counsel of record with a copy served via Email and U.S. Mail to:

John William Liccione, Plaintiff, Pro Se
6800 Gulfport Blvd S. Suite 201-116
South Pasadena, FL 33707
443-698-8156
john@voteliccione.org

/s/ Ryan D. Barack
Attorney

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION 19

John William Liccione,

Plaintiff,

v.

Case No.: 24-003939-CI
UCN: 522024CA003939XXCICI

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

Defendants.
_____/

NOTICE OF APPEARANCE AND DESIGNATION OF EMAIL ADDRESS PURSUANT TO RULE 2.516

The undersigned attorney, KIRBY Z. KREIDER, hereby files this Notice of Appearance as counsel of record for Defendant, **Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections**, in the above-styled cause of action and requests that all future pleadings, correspondence and any and all communication be directed to the undersigned.

Furthermore, pursuant to Florida Rule of Judicial Administration 2.516, the undersigned attorney hereby designates the following primary and secondary email addresses for service:

Primary Email Address: kkreider@pinellas.gov

Secondary Email Address: eservice@pinellas.gov

ELECTRONICALLY FILED 10/02/2024 03:01:40 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to **JOHN WILLIAM LICCIONE**, **PRO SE,** Plaintiff at jliccione@gmail.com, **GEORGE A.D. THURLOW, ESQ**., Attorney for Defendant **JENNIFER GRIFFITH**, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, **RYAN D. BARACK, ESQ.,** and **MICHELLE E. NADEAU, ESQ.**, Attorney for Defendant **WHITNEY FOX**, at rbarack@employeerights.com and mnadeau@ksblaw.com and **JAMES B. LAKE, ESQ.,** Attorney for Defendant **CATHY SALUSTRI LOPER**, at jlake@tlolawfirm.com and tgilley@tlolawfirm.com on the 2nd day of October 2024.

/s/ ***Kirby Z. Kreider***
KIRBY Z. KREIDER
Florida Bar No.:
Pinellas County Attorney's Office
315 Court Street, Sixth Floor
Clearwater, FL 33756
Phone: 727-464-3354 / Fax: 727-464-4147
Primary E-mail: kkreider@pinellas.gov
Secondary E-mail: eservice@pinellas.gov
Attorney for Attorney for Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections.

PCAO 489305

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION 19

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI
UCN: 522024CA003939XXCICI

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

Defendants.
_____/

DEFENDANT JULIE MARCUS' MOTION TO DISMISS, MOTION IN OPPOSITION TO INJUNCTIVE RELIEF

The Defendant, Julie Marcus (herein "Supervisor"), by and through undersigned counsel, moves to dismiss the First Amended Complaint for Electoral Fraud and Request for Damages (the "Complaint"), pursuant to:

(i) Florida Rule of Civil Procedure 1.140(b)(1) for lack of subject-matter jurisdiction, and

(ii) Florida Rule of Civil Procedure 1.140(b)(6) for failure to state a cause of action.

The Amended Complaint

Plaintiff, proceeding, *pro* se, filed the instant Complaint. Plaintiff was a candidate on the ballot for the August 20, 2024, race for the House of Representatives for the 13th District. Plaintiff did not win this race. Plaintiff makes allegations of election fraud but seeks relief in the form of monetary damages as well as emergency injunctive relief "nullifying the August 20th Democratic primary election results in CD-13." Compl., Prayer for Relief ¶ B. Despite Plaintiff's prayer for relief, this case does not constitute an election contest, nor does the Supervisor regard it as such. Plaintiff's injunctive relief sought demonstrates only that he is seeking relief that could only be

ELECTRONICALLY FILED 10/02/2024 03:53:38 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

granted following the strict statutory constrictions of Florida Statute § 102.168. Although this is plainly not an elections contest, a review of the election results is instructive in demonstrating that the Plaintiff lacks standing in this matter. Plaintiff received only 3.93% of the vote. There is no reality, even excluding what Plaintiff falsely concludes are "fraudulent mail-in ballots" in which Plaintiff wins. Plaintiff asserts that the facts alleged in the Complaint are evidence of conspiracy and fraud which "infringed on upon the integrity of the electoral process and Plaintiff's lawful rights as a candidate…" Compl, ¶ 1. The Complaint specifically names six defendants. Compl., ¶¶ 3-9. as well as "other unknown co-conspirators".

The Complaint sets forth 10 counts: (i) Count I – Violation of Florida Statute § 104.041 – Fraud in Connection with Elections, (ii) Count II – Conspiracy to Commit Election Fraud, (iii) Violation of 52 U.S.C. § 20511 – Federal Election Fraud, (iv) Count IV- Civil Rights Violations under 42 U.S.C. § 1983, (v) Count V- Computer Fraud and Abuse Act Violation, (vi) Count VI - Intentional Interference with Prospective Economic Advantage, (vii) Count VII – Voter Intimidation and Voter Suppression, Civil Rights Violation, (viii) Count VIII: Request for Injunctive Relief, (ix) Count IX – Violation of Florida Public Records Sunshine Law, (x) – Count 10 -Damages.[1]

The Complaint is based, in part, on an anonymous unverified tip from "Tampa Girl". Compl. ¶ 19. The alleged tip states that the "Tampa Girl" was paid to mark ballots for Plaintiff's Opponents. *Id.* The tip is wholly unverified and is devoid of any indicia of reliability. Moreover, the Supervisor was not a candidate for the August 20, 2024, primary race for the 13th Congressional District and as such no ballots could be marked in favor. Plaintiff's focus on the Supervisor is based on a conclusory allegation that "an anomalously high number of absentee ballot requests"

[1] The Supervisor refers to each count using the same language that Plaintiff used in the Complaint. This is meant only the sake of organization and does not reflect any adoption or acquiescence of Plaintiff's language.

were submitted to the Supervisor on June 23, 2024. Compl. ¶ ¶10 -11. Plaintiff's focus on so called "fraudulent" mail in ballots is meritless and based on absolutely no fact. Plaintiff states in his Complaint that the Supervisor "outsources the publishing of its election results to a Tallahassee IT services company named VR Systems ("VR"). Compl. ¶ 31. Plaintiff spends several paragraphs speaking about his perception of what the posted online results by VR were and states that although the results were initially viewable, they suddenly became unavailable. Compl. ¶ 32-36. Plaintiff then a that the VR website being unreachable combined with the non-zero reports that were posted *before* polls closed is an "indicator of fraud and cyber-breach in the CD-13 Democratic primary race…." Compl. ¶¶ 33, 37.

Plaintiff also spends several paragraphs discussing various IP addresses and maritime vessels in sequence with the "Tampa Girl" anonymous tip. Compl., ¶¶ 21-32. Plaintiff fails to show any logical link between those facts and accusations of fraud or conspiracy to any of the Defendants, including the Supervisor.

"A pleading which sets forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain… (2) a short and plain statement of the ultimate facts showing that the pleader is entitled to relief…" Fla. R. Civ. P. 1.110 (b) (emphasis added). "When ruling on a motion to dismiss for failure to state a cause of action, the trial court must accept the material allegations as true and is bound to a consideration of the allegations found within the four corners of the complaint." *Murphy v. Bay Colony Prop. Owners Ass'n*, 12 So. 3d 924, 926 (Fla. 2d DCA 2009). Additionally, "any reasonable inferences drawn from the complaint must be construed in favor of the non-moving party." *Rolle v. Cold Stone Creamery, Inc.*, 212 So. 3d 1073, 1076 (Fla. 3d DCA 2017). Florida is not a notice pleading jurisdiction and "it is not enough merely to advise the defendant of the theory of the action." *See*

Cunningham v. Fla. Dept. of Children & Families, 782 So. 2d 913, 919 (Fla. 1st DCA 2001). Dismissal is appropriate when a plaintiff has failed to properly and separately plead each element of the cause of action. *See Kislak v. Kreedian*, 95 So. 2d 510 (Fla. 1957) (complaint must properly inform the Defendant of the specific cause against it). The Complaint is further flawed as this is a shotgun pleading which is well established as insufficient in the State of Florida

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). "[W]here the elements of a cause of action are not pled in the complaint, they may not be inferred by the context of the allegations." *Sanderson v. Eckerd Corp.*, 780 So. 2d 930, 933 (Fla. 5th DCA 2001). These rules apply to self-represented litigants as well as attorneys.

Further, several Counts in the Complaint alleged fraud and/ or conspiracy. "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.

I. THE COMPLAINT SHOULD BE DISMISSED WITH PREJUDICE FOR LACK OF JURISDICTION.

Counts I, II, III, IV, V, VI, VIII should be dismissed for lack of jurisdiction because Plaintiff has not alleged facts to support standing against the Supervisor.

The Complaint does not allege any facts which demonstrate that he has standing to

maintain this post-election lawsuit in court against the Supervisor. "Standing is a threshold jurisdictional inquiry: the elements of standing are an indispensable part of the plaintiff's case." *Wood v. Raffensperger*, 981 F.3d 1307, 1313-14 (11th Cir. 2020) citing *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 561 (1992). " The Florida Supreme Court has stated that there are "three requirements that constitute the 'irreducible constitutional minimum' for standing. First, a plaintiff must demonstrate an 'injury in fact'; which is 'concrete,' 'distinct and palpable,' and 'actual or imminent.' Second, a plaintiff must establish 'a causal connection between the injury and the conducted complained of. "State *v. J.P.* 2d 1101, 113 n.4 (Fla. 2004) (internal citations omitted).

Plaintiff lacks standing because he fails to allege any injury which is traceable to the Supervisor. Moreover, Plaintiff merely alleges that the Supervisor should have issued a fraud investigation. Compl. ¶ 11. Plaintiff offers no authority that the Supervisor was required to initiate a fraud investigation based on the speculatory content of the Complaint. Plaintiff also falsely asserts that the Supervisor outsources the publishing of election results to a Tallahassee IT services company named VR Systems. Compl. ¶ 31. Plaintiff further wrongly alleges that the Supervisor published a link to the VR website which showed that all election results showed zero *prior* to the polls closing. Compl. ¶ 33 (emphasis added). All of the allegations fail to demonstrate injury which is "concrete, particularized, and actual or imminent; fairly traceable to the challenged action; and redressable by a favorable ruling." *Clapper v. Amnesty Int'l USA,* 568 U.S. 398, 409 (2013).

Plaintiff's Amended Complaint amounts to nothing more than an impermissible collateral attack on the August 20, 2024, primary election. "Electoral Fraud" is generally alleged in Counts I, II, and III, resulting in the speculative loss of the "salary of a sitting US Congressman." (Count VI). "At common law, except for limited application of quo warranto, there was no right to contest in court any public election, [as] such a contest is political in nature and therefore outside the

judicial power." *Norman v. Ambler*, 46 So. 3d 178, 181 (Fla. 1st DCA 2010), *quoting McPherson v. Flynn*, 397 So. 2d 665, 667 (Fla. 1981). "Courts must take care in post-election challenges to avoid disenfranchising voters without clear statutory warrant." *Id*. (emphasis added). As a result, the right to challenge the results of an election are limited to that conferred by Florida Statutes, § 102.168 and "should be construed in strict conformity with the language of the statute." *Norman v. Ambler*, 46 So. 3d 178, 181 (Fla. 1st DCA 2010). Plaintiff is, therefore, barred from challenging the certification of the 2024 primary election as his Complaint and Amended Complaint did not invoke nor were they filed in strict conformance with Section 102.168. Fla. Stat. § 102.168 (2024); *see Burns v. Tondreau*, 139 So. 3d 484, 485 (Fla. 3d DCA 2014) (describing the "crux of *McPherson*" as being "grounded in the doctrine of separation of powers and in the strict construction of section 102.168"); *see also Kinzel v. City of N. Miami*, 212 So. 2d 327 (Fla. 3d DCA 1968) (affirming the trial court's dismissal of an election contest complaint for failure to timely name the appropriate defendants); *see also Bailey v. Davis*, 273 So. 2d 422, 423 (Fla. 1st DCA 1973) (finding that defect could not be cured after the statute of limitations lapsed).

Here, Plaintiff is seeking to contest the results of an election without filing a contest of election in accordance with the statutory provisions, has not joined indispensable parties and is time barred from filing a second amended complaint attempting to conform to § 102.168. Accordingly, dismissal with prejudice is warranted because the Court lacks jurisdiction to hear this improper collateral attack on the August election and Plaintiff lacks standing.

I. Counts I and II should be dismissed for lack of jurisdiction because no private right of actions exists under criminal statute, Florida Statute § 101.041.

Plaintiff asserts violations of state criminal statue under Count I of his complaint. Compl., Claims for Relief, Count I. Section 104.041, Florida Statutes embodies a third-degree felony offense for the perpetration "of any fraud in connection with any vote cast…" Fla. Stat. § 104.041

(2024).

This statute does not provide a private right of action under Florida law for enforcement of its provisions. While some Florida election-related statutes provide private rights of action, Florida Statutes, Chapter 104 does not grant any such right. S*ee e.g.*, Section 97.023(3), 99.097(5), 101.161(3)(c)(1), 102.168(1) (providing private rights of action). Violations of Chapter 104 can be subject to prosecution as misdemeanors, felonies, or criminal violations of the Florida Election Code by the state attorney in the appropriate court of competent jurisdiction or be subject to complaint proceedings before the Florida Elections Commission. Fla. Stat. § 106.27(1), Florida Statutes; *see also,* Fla. Stat. §106.25(1), Florida Statutes ("Jurisdiction to investigate and determine violations of ... chapter 104 is vested in the Florida Elections Commission.)[2]

Under Florida law, "[i]t is axiomatic that whether a private right of action exists for a exists for a violation of a statute is a matter of legislative intent" and "[a]bsent a specific expression of such intent, a private right of action may not be implied." *United Auto. Ins. Co. v. A 1st Choice Healthcare Sys.*, 21 So. 2d 124, 128 (Fla. 3d DCA 2009). The Florida Legislature has not created a private right for citizens to bring civil claims under Chapter 104, Florida Statutes.

Thus, Count I should be dismissed with prejudice for lack of subject matter jurisdiction.

Count II – Conspiracy to Commit Election Fraud

Similarly, Count II – "conspiracy to commit election fraud" should be dismissed for a lack of subject matter jurisdiction as well as failure to state a claim for which relief can be granted. In Count II, Plaintiff alleges "conspiracy to commit election fraud". Count II is purely a summary statement which fails to set forth any specific facts and fails to cite to any local, state, or federal law. Compl., Claims for Relief, Count II. For the sake of argument, the Supervisor assumes that

[2] The Office of Election Crimes and Security are also vested with authority to investigate potential election crimes in the State of Florida and refer cases for prosecution. Fla. Stat. ¶ 97.022(2024).

this is an extension of the allegations and attempted relief from Count I. Whether it is called election fraud or conspiracy to commit election fraud, there still exists no private right of action for the reasons discussed above.

As such, Count II of this Complaint should be dismissed with prejudice.

II. Count Three should be dismissed for lack of jurisdiction as well as a failure to state a cause of action.

Count III – Violation of 52 U.S.C. § 20511 – Federal Election Fraud

In Count III, Plaintiff attempts to assert a claim under 52 U.S.C. § 20511. Section 20511 only provides criminal penalties; it does not expressly provide for any civil remedies. 52 U.S.C. § 20511. Federal criminal statutes do not afford civil remedies. *See Mantooth v. Richards*, 557, So. 2d 646, 646 (Fla. 4th DCA 1990).

Notwithstanding this issue, Plaintiff cannot show that he was denied the right to vote. The Complaint only states a "broader 14-month-long criminal conspiracy by Democratic Party officials such as Defendant, Jennifer Griffith, and other Defendants, to manipulate the election results in favor of Whitney Fox against Plaintiff . . ." Compl. ¶ 20. Therefore, even if 52 U.S.C. § 20511 did provide for a private right of action, which it does not, Plaintiff has not pled any facts that show he was unable to vote.

Thus, this Count should be dismissed with prejudice for lack of jurisdiction and a failure to state a cause of action.

III. Count IV, V, and VI should be dismissed for failure to state a cause of action.

Count IV – Civil Rights Violation under 42 U.S.C. 1983

Plaintiff alleges generally that fraudulent activities alleged in the Complaint constitute an economic disadvantage against him as well as though who voted for him. Compl. ¶ 20. Plaintiff summarily mentions that an "abnormal number of ballots were submitted to the Supervisor and

that the Supervisor failed to conduct a fraud investigation. Compl. ¶10-11. Plaintiff points to no facts to support the allegation that an anomalous number of ballots were submitted to the Supervisors Office. Further, Plaintiff points to no authority mandating the Supervisor to conduct a fraud investigation". Even still, Plaintiff fails to meet the basic pleading requirements let alone the heightened requirement for fraud-based claims.

Plaintiff alleges, without any distinction between defendants, that all the Defendants (including the Supervisor) that civil rights were violated under 42 U.S.C. § 1983. Section 1983 is not a source of substantive rights; rather, it is a vehicle for vindicating federal rights conferred elsewhere. *Graham v. Connor*, 490 U.S. 386, 293-94 (1989).

Plaintiff alleges that the violation of civil rights occurred through fraudulent act but activities but fails to make any concrete factual allegations of wrongdoing attributed to the Supervisor. Moreover, as this is a fraud-based claim Plaintiff falls well short of meeting the heightened requirements for pleading fraud/ conspiracy-based claims.

Therefore, this Count should be dismissed for failure to state a claim for which relief can be granted.

Count V – Computer Fraud and Abuse Act Violation

In Count V, Plaintiff makes a single conclusory allegation that "Defendants, or those acting in concert with them knowingly and unlawfully accessed Plaintiff's computer without authorization or exceeding authorization, and thereby obtained information from a protected computer involved in interstate communication, resulting in damages and losses. The Computer Fraud and Abuse Act, 18 U.S.C. § 1030 (the CFAA, imposes criminal and civil liability on individuals who access a computer without authorization or exceed authorized access. 18 U.S.C. § 1030 (2024).

Plaintiff again fails to state a claim even looking at the litany of allegations regarding IP addresses in the Complaint. Plaintiff states that on July 29th, 2024, his Microsoft account was hacked, and the login attempts were from various IP addresses coming from China, Russia, and Brazil. Compl. ¶ 39. Plaintiff further alleges that after being hacked that a "trojan virus was then synced down to Plaintiff's laptop…". Compl. ¶ 40. Plaintiff goes on to allege the various believed indicators of the virus that he experienced as well as the effects on his time. Compl. ¶ 41-42. Even if these allegations are true, Plaintiff has failed to cite any scintilla of evidence that any of the named Defendants were involved in the hacking of his computer.

Therefore, this Count should be dismissed as it fails to state a cause of action for which relief can be granted.

Count VI: Intentional Interference with Prospective Economic Advantage

The elements of a cause of action based on tortious interference with a business relationship are (1) the existence of a business relationship, (2) the defendant's knowledge of the relationship, (3) the defendant's intentional and unjustified interference with the relationship, (4) damage to the plaintiff as a result of the breach of the relationship. *Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 813 (Fla. 1994); *Sobi v. Fairfield Resorts, Inc.*, 846 So. 2d 1204 (Fla. 5th DCA 2003).

Here, while Plaintiff asserts that he has lost the salary of a US Congressman, he fails to show any facts that come close to supporting that claim. Again, Plaintiff never links any inactions or actions taken by the Supervisor which show or even suggest that the election results would have been different. Throughout the entire Complaint, Plaintiff does not show any business relationship or potential business relationship. Plaintiff cannot make a claim simply because he did not like the election results.

Therefore, Count VI of the Complaint should be dismissed.

Count VIII: Request for Injunctive Relief

Plaintiff seeks injunctive to relief prevent "further unlawful activities by the Defendants, to order Defendant Julie Marcus to produce requested election records upon demand by the Plaintiff, and to preserve the integrity of the electoral process…" Compl. ¶ 63. This motion for injunctive relief should be denied.

The issuance of an injunction generally requires: (1) a likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) a substantial likelihood of success on the merits; and (4) public interest considerations. *Naegele Outdoor Advertising Co., Inc., v. City of Jacksonville*, 659 So. 2d 1046, 1047 (Fla. 1995) (internal citations omitted).

Addressing the first prong, Plaintiff must show a likelihood of irreparable harm. *Id.* Although "a person exposed to a risk of future harm may pursue forward-looking injunctive relief to prevent the harm from occurring, at least so long as the risk of harm is sufficiently imminent and substantial." *Clapper v. Amnesty Int'l, USA*, 568 U.S. 398, 414 (2013). In this case, Plaintiff has failed to demonstrate not only that there is potential future harm but moreover, that there was harm in the past. Even if the Plaintiff had demonstrated past illegal conduct, which he has not, a showing that defendant has acted unlawfully in the past is not enough to demonstrate future harm. *United States v. City of Tampa*, 2024 U.S. Dist. Lexis. 110770, 10 (Fla. Mid. Dist. 2024) (citing *City of S. Miami*, 65. F. 4th at 637 ("Past occurrences of unlawful conduct do not establish standing to enjoin the threat of future conduct.")

Furthermore, Plaintiff makes speculatory allegations about perceived criminal conduct about the Supervisor and other Defendants that fall well short of the meeting even the first prong of the request measure of injunctive relief. Specifically focusing on the allegations against the Supervisor, Plaintiff has done nothing other than make conclusory allegations regarding perceived criminal or unlawful conduct. As discussed above, Plaintiff falls well short of even basic pleading

requirements and therefore cannot possibly meet the standard for showing a likelihood of success on the merits. The standard for a preliminary injunction requires that all prongs be met. Plaintiff has not even met the standard for basic pleading requirements let alone a showing of a likelihood of success on the merits. As such, this Court need not consider the other factors.

Count IX- Violation of Florida Public Records Law

Chapter 119, Florida Statutes ("Public Records Act") requires that "[e]very person who has custody of a public record shall permit the record to be inspected and copied by any person desiring to do so, at any reasonable time, under reasonable conditions, and under supervision by the custodian of the public records." Fla. Stat. § 119.07(1)(a) (2024). A custodian of public records "must acknowledge requests to inspect or copy records promptly and respond to such requests in good faith." Fla. Stat. § 119.07(1)(c) (2024). "A good faith response includes making reasonable efforts to determine … whether such a record exists and, if so, the location at which the record can be accessed." *Id*.

The only allegation under Count IX claims that "Plaintiff is in violation," not the Supervisor. Elsewhere in the Complaint, Plaintiff describes a public records request to the Supervisor which was submitted less than a week before he filed this suit, and he admits to receiving a response which he characterizes as automated. Compl., ¶ 46. But Plaintiff does not allege the content of the response and has not demonstrated a violation the Public Records Act, even after drawing all reasonable inferences in his favor. *Id.* Plaintiff has not stated any facts suggesting that the Supervisor's response to his request was not in complete compliance with the Public Records Act. Plaintiff, having admittedly received a response to his request, lacks any basis to support this claim which was filed only six days after submission of the request. *See Siegmeister v. Johnson*, 240 So. 3d 70, 73-74 (Fla. 1st DCA 2018) (pointing out that reasonable delay in a public records response is allowed and that mere delay does not create liability). Plaintiff does not

allege or establish unreasonable delay nor any failure to respond in in good faith by the Supervisor. Accordingly, the Complaint fails to state a cause of action for a violation of the Public Records Act and Count IX should be dismissed.

IV. Counts I, II, III, IV, V, VI, VIII should be dismissed failure to state a claim as they are shotgun pleadings.

As discussed above, each of the above listed counts fails to meet basic pleading standards. Plaintiff makes broad sweeping allegations against "Defendants" under the substantive counts of the Complaint, but rarely directs any allegations towards any specific Defendant. The issues are compounded by the fact that this is a shotgun pleading. A Complaint in which each count incorporates by reference all the allegations of each preceding count does not provide a short and plain statement of the ultimate facts as required by the rules of pleading, and it should be dismissed. *Gerentine v. Coastal Security Systems*, 529 So. 2d 1191, 1194 (Fla. 5th DCA 1988); *Frugoli v. Winn-Dixie Stores, Inc.*, 464 So. 2d 1292, 1293 (Fla. 1st DCA 1985). "[I]t is insufficient to plead opinions, theories, legal conclusions oar argument." *Barrett v. City of Margate*, 743 So.2d 1160, 1163 (Fla. 4th DCA 1999); *see also* Fla. R. Civ. P. 1.110(b) (requiring "a short and plain statement of the ultimate facts showing that the pleader is entitled to relief').

Counts I, II, III, IV, V, VI, and VIII all summarily "re-allege and incorporate by reference the foregoing paragraphs". The Supervisor is unable to ascertain what alleged actions or inactions by her constitute the basis for Plaintiff's allegations.

Therefore, Counts I, II, III, IV, V, VI, and VIII should be dismissed for failure to state a cause of action.

V. Damages

While the Plaintiff's Complaint should be dismissed and therefore is not entitled to damages, the Supervisor responds to Plaintiff's assertion seeking attorney's fees. The Supervisor

Compl., Demand for Relief, ¶ F. The Supervisor explicitly does not concede that any award of damages is appropriate. However, specifically as to attorney's fees – they are wholly inapplicable in this case even if it were to survive the Supervisor's Motion to Dismiss because Plaintiff proceeds *pro se.*

Pro se litigants are not entitled to an award of attorney's fees. *See Kay v. Ehrler*, 499 U.S. 432 (1991) (holding that a *pro se* litigant who is also a lawyer is not entitled to attorney's fees.) *see also 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)."); *see also 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.'").

WHEREFORE, the Defendant, Julie Marcus, respectfully request, that this Complaint be dismissed, and Plaintiff's Motion for Injunction be denied.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to **JOHN WILLIAM LICCIONE**, **PRO SE,** Plaintiff at jliccione@gmail.com, **GEORGE A.D. THURLOW, ESQ.**, Attorney for Defendant **JENNIFER GRIFFITH**, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, **RYAN D. BARACK, ESQ.,** and **MICHELLE E. NADEAU, ESQ.**, Attorney for Defendant **WHITNEY FOX**, at rbarack@employeerights.com and mnadeau@ksblaw.com and **JAMES B. LAKE, ESQ.,** Attorney

for Defendant **CATHY SALUSTRI LOPER**, at jlake@tlolawfirm.com and tgilley@tlolawfirm.com on the 2nd day of October 2024.

/s/ ***Kirby Z. Kreider***
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PCAO 489316

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

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

DEFENDANT JENNIFER GRIFFITH'S MOTION TO DISMISS AMENDED COMPLAINT

Defendant, JENNIFER GRIFFITH ("Griffith"), in her official capacity as Chair of the Pinellas County Democratic Executive Committee ("PCDEC"), hereby moves this Honorable Court to dismiss Plaintiff's Amended Complaint with Prejudice for lack of subject matter jurisdiction, failure to state a cause of action upon which relief may be granted, and pursuant to Fla. Stat. § 768.295 (Florida's "anti-SLAPP" statute), , and in support thereof states as follows:

I. INTRODUCTION

Griffith is the current Chair of the PCDEC and has served in that capacity since December 2022. She is included as a party to this lawsuit because Plaintiff alleges that she is "responsible for the oversight of Democratic Party in Pinellas County, including certain of the unlawful activities alleged" in the Amended Complaint (Amend. Compl. ¶ 5). To be very clear, this is an incorrect premise; PCDEC is a private, non-governmental organization that has no authority whatsoever to enforce laws or regulate elections. Rather, Plaintiff's primary motive for filing this lawsuit (which is the third lawsuit he filed against Griffith in a two-month period) is because PCDEC, a private organization which has freedom of speech and freedom of association rights, did not invite him to participate in a debate for the Democratic Party primary election (Amend. Compl. ¶¶ 12-13). Likewise, Defendant Marcus has nothing to do with PCDEC's events. None of the factual allegations besides those involving the debate (Amend. Compl. ¶¶ 12-17) have any connection to Griffith, or anything that may be in her control. Simply put, this

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lawsuit is filed against Griffith solely as retaliation for her and PCDEC executing their constitutional rights and freedoms.

This Court should dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction because the entirety of Plaintiff's Amended Complaint as it pertains to Griffith is premised upon her and PCDEC's exercise of their constitutional rights. The actions of PCDEC—which is recognized as a county-level political party under Florida law—and its internal governing procedures and right to associate with whom it desires, all of which are non-justiciable before this Court. However, even if this Court were to find that it has subject-matter jurisdiction over some or all counts of Plaintiff's Amended Complaint, this Court should still dismiss it as it fails to state a cause of action upon which relief may be granted and because it is a shotgun pleading.

Because this lawsuit aims to quiet the political speech of PCDEC and Griffith, Griffith requests that this Court deem this lawsuit to be a strategic lawsuit against public participation (SLAPP) that is prohibited under Florida's anti-SLAPP statute, Fla. Stat. § 768.295. Fla. Stat. § 768.295(3) states that "A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue." Plaintiff filed this lawsuit against Griffith because PCDEC and Griffith have exercised their constitutional right of free speech in connection with a public issue—namely the Democratic Primary for Florida's 13th Congressional District—in a way that has not been beneficial to Plaintiff's political campaign.

I. THE LEGAL STANDARD FOR A MOTION TO DISMISS—GENERALLY AND UNDER FLA. STAT. § 768.295

While a Motion to Dismiss generally requires a Court to simply accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant, the 2d DCA has held that a Motion to Dismiss based upon the anti-SLAPP statute requires the trial court to do more. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019); *Davis v. Mishiyev*, 339 So. 3d 449, 453 (Fla. 2d DCA 2022).

Rather, in a Motion to Dismiss based upon the anti-SLAPP statute, the Defendant must demonstrate a *prima facie* case that the anti-SLAPP statute applies—in that the Plaintiff's suit was based on some activity that would qualify as an exercise of the Defendant's First Amendment rights in connection to issues of public importance. *Id*. Then, the burden of proof shifts to the Plaintiff to demonstrate that the Defendants' activity was actionable and that the claims are not primarily based upon the Defendants' exercise of their first amendment rights. *Davis*, 339 So. 3d, at 453. This procedure serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss. *Gundel*, 264 So. 3d, at 314.

Denial of a Motion to Dismiss on anti-SLAPP grounds is an appealable non-final order. Notably, in *Gundel v. AV Homes, Inc.*, the 2d DCA quashed a trial court order denying a Motion to Dismiss, For Judgment on the Pleadings, or For Summary Judgment because the allegations contained within the pertinent counterclaim were too vague to permit the trial court to determine whether the alleged conduct was protected free speech. *Id*. at 315.

A prevailing party to a Motion to Dismiss under Fla. Stat. § 768.295 is entitled to the award of their reasonable attorney's fees and costs. Griffith requests that this Court grant her entitlement to her reasonable attorney's fees and costs under Fla. Stat. 768.295.

II. THERE IS A *PRIMA FACIE* CASE THAT PLAINTIFF'S LAWSUIT APPEARS TO BE A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION.

Of the forty-eight (48) paragraphs of factual allegations made in the Amended Complaint, only Paragraphs 5, 12-17, and 20 pertain to Griffith in any way. Paragraph 5 merely alleges who Griffith is, and Paragraph 20 makes numerous conclusory legal allegations without any factual support. Paragraphs 12-17 are the **sole** factual allegations directed at Griffith, and all of those allegations pertain to the debate hosted by PCDEC that Plaintiff was not invited to.

The decision to not invite Plaintiff to participate in PCDEC's debate is an act of speech and a decision implicating the freedom of association. This decision was Griffith and PCDEC's exercise of their First Amendment rights in connection to an issue of public importance—the Democratic Primary in Florida's 13th Congressional District. There is no legal barrier against

political parties taking internal steps affecting their own process for the selection of candidates. *Tashjian v. Repub. Party*, 479 U.S. 208, 224 (1986). That includes a political party opting not to provide a platform to a particular candidate. Additionally, the United States Supreme Court has held that political parties making endorsements in primary elections is protected political speech that may not be restricted by state or federal law. *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223-29 (1989). Certainly, this right would also extend to individual leaders of political parties.

Based on this clear showing that Defendants engaged in protected First Amendment speech, **Plaintiff now has the burden to demonstrate that the conduct of the Defendants was actionable.** Based on the allegations set forth in the Complaint, none of the alleged conduct of the Defendants is actionable. Therefore, this Court should dismiss Plaintiff's Complaint, find that it is a strategic lawsuit against public participation intended to have a chilling effect on the Defendants' ability to exercise their First Amendment rights, and grant Defendants' entitlement to their reasonable attorney's fees and costs pursuant to Fla. Stat. § 768.295.

III. THIS COURT LACKS SUBJECT MATTER JURISDICTION

a. Plaintiff lacks standing to bring forth Counts I, III, IV, and VII

Count I—Fla. Stat. § 104.041

Count I cites a criminal statute that does not provide a private right of action by an individual against an alleged violator of the statute. Setting aside the lack of jurisdiction and standing to enforce criminal provisions of the Florida Election Code, Plaintiff does not allege any action by Griffith in the vain of "perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast" as described by the statute. Fla. Stat. § 104.041 (2024). The sole allegation against Griffith is that she had some sort of supervisory duty, which is not established in fact or law and in fact does not exist. None of these allegations demonstrate a violation of section 104.041, Florida Statutes, even in a light most favorable to Plaintiff. Accordingly, Count II should be dismissed for failure to state a cause of action against Griffith.

Count III—Violation of 52 U.S.C. § 20511

Similar to Count I, Plaintiff attempts through a private civil action to have this Court impose criminal penalties upon Griffith. That is plainly not permissible.

Count IV—Civil Rights Violation under 42 U.S.C. § 1983

To bring a claim under 42 U.S.C. § 1983, a Plaintiff must have standing to do so. Standing requires the plaintiffs to allege enough facts to establish injury-in-fact, causation, and redressability. *Ladies Mem'l Ass'n v. City of Pensacola,* 34 F.4th 988, 992 (11th Cir. 2022). An injury in fact for standing purposes is a "legally protected interest" that is both "concrete and particularized" and "actual or imminent" (internal quotation marks and citations omitted)). *Id.* at 992-93.

Second, the Plaintiff must demonstrate that there is a "causal connection" between his injury and the conduct of which he complains—*i.e.*, the injury must be "fairly traceable" to the defendant's challenged actions and not the result of "the independent action of some third party not before the court." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021), quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)*;* see also *Spokeo, Inc. v. Robins*, 578 U.S. 856 (2016).

Finally, the Plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560 (quotation marks omitted). A mere recitation that the Government is violating one's constitutional rights is not concrete enough to establish standing. *Ladies Mem'l Ass'n*, 34 F.4th at 993.

Plaintiff has failed to plead an injury-in-fact against Griffith. Plaintiff has no legally protected interest to participate in PCDEC events or to have PCDEC promote his candidacy. There is also no causal connection between Plaintiff not being invited to a forum hosted by PCDEC (or by any role Griffith purportedly played in “supervising” other candidates) and his election loss. Plaintiff complains of not being invited to attend an event with approximately 300-400 attendees as the reason he lost his Congressional election, when he received approximately 27,000 fewer votes than the first-place candidate in his primary election. Additionally, any role Griffith played in “supervising” candidates and their conduct was merely voluntary and of no legal significance.

Finally, by Plaintiff's own admission, it is not likely that any of the alleged events would have changed the outcome of Plaintiff's election. In fact, in a YouTube video posted by Plaintiff, he admits the following: "I lost. I was last place with four [present] uh so I'm pretty sure I didn't win irrespective of ballot you know fake ballots" and described both Defendant Whitney Fox and second-place finisher Sabrina Bousbar as "good candidates." "The Takedown of Anna Paulina Luna" Episode 5: "Tampa Girl" YouTube, https://www.youtube.com/watch?v=WS8EfbZbC80 (last visited Sep 14, 2024) at 1:45-2:02.

Count VII: "Voter Intimidation and Voter, Suppression, Civil Rights Violations" under Fla. Stat. § 104.0615, § 104.061, the federal Voting Rights Act of 1965, the Civil Rights Act of 1957, and Title 118, Section 594

While imprecisely pled, Fla. Stat. § 104.0615 and § 104.061 are both criminal statutes that do not provide for private rights of action. The same can be said for 18 U.S.C. § 594 (Title 118, Section 594). Additionally, "[A]n unsuccessful candidate attempting to challenge the election results does not have standing under the Voting Rights Act." *Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989).

b. Any cognizable cause of action against Griffith and her decision to not invite Plaintiff to the debate is necessarily a non-justiciable matter of political party governance.

There is no legal barrier against political parties taking internal steps affecting their own process for the selection of candidates. *Tashjian v. Repub. Party*, 479 U.S. 208, 224 (1986). *Tashjian* and *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 222-24 (1989) control.

In *Eu*, the U.S. Supreme Court struck down California's legal ban on political parties making endorsements in primary elections on the grounds that it was an unconstitutional restriction on free speech. Specifically, the U.S. Supreme Court found that restricting a political party's governing body from "stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate is qualified for the position sought" is an unconstitutional restriction on speech because it "directly hampers the ability of a party to spread its message and voters seeking to inform themselves about the candidates and campaign issues." *Eu*, 489 U.S., at 223.

Eu further held that **political parties have the right to identify the people they wish to associate with,** and select a standard bearer who "best represents the party's ideologies and preferences." *Id.* at 224. This is due to political parties having the freedom of association under the First and Fourteenth Amendments to the United States Constitution. *Id.* at 223. This decision was resolute, with the Court going as far as saying that restrictions on speech are "particularly egregious where the State censors the political speech a political party shares with its members." *Id.* at 223-24. The debate which Plaintiff complains about was an event where a political party shared political speech with its members. It is non-justiciable to attempt to censor such speech through litigation.

Restricting political parties from this right "suffocates" them because it prevents parties from promoting candidates "'at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community'." *Id.* at 224, quoting *Tashjian v Republican Party of Connecticut,* 479 US 208, 216 (1986).

Even when taken as true, Plaintiff alleges that PCDEC found that Plaintiff did not pass their vetting process and accordingly denied Plaintiff a stage for his candidacy, while promoting other candidates. Based on clear legal precedent, Plaintiff was well within its constitutional rights to make that decision and promote any candidates it so desires.

Along these lines, in the recent case of *Donelon v. Pinellas Democratic Executive Committee*, Pinellas County Case No. 23-008089-CI, this Court dismissed the Plaintiff's Complaint, which concerned the elections process for PCDEC's Credentials Committee, on the grounds that based upon the authorities of *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), this Court lacked jurisdiction to hear an action regarding the internal operations of a political party such as PCDEC. PCDEC maintains that its candidate vetting process is a matter of internal operation that is non-justiciable by this Court.

IV. PLAINTIFF FAILS TO STATE A COGNIZABLE CAUSE OF ACTION AGAINST GRIFFITH

To state a cause of action, the Plaintiff must "set[] forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain… (2) **a short and plain statement of the ultimate facts showing that the pleader**

is entitled to relief…" Fla. R. Civ. P. 1.110 (b) (emphasis added). Florida is not a notice pleading jurisdiction and "it is not enough merely to advise the defendant of the theory of the action." See *Cunningham v. Fla. Dept. of Children & Families*, 782 So. 2d 913, 919 (Fla. 1st DCA 2001). Dismissal is appropriate when a plaintiff has failed to properly and separately plead each element of the cause of action. See *Kislak v. Kreedian*, 95 So. 2d 510 (Fla. 1957) (complaint must properly inform the Defendant of the specific cause against it).

The pleading requirements for fraud and conspiracy—which are involved in many of Plaintiff's causes of action—are heightened. "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.

The bare factual allegations that concern Griffith—who is the Chair of a non-governmental, private organization which has free speech rights and free association rights—which are in Paragraphs 12-17 of the Amended Complaint do not support **any** of Plaintiff's causes of action against Griffith. There is no factual allegation—other than a baseless allegation that Griffith somehow has "supervisory" authority—that Griffith played any role in the counting of votes.

Additionally, it does not appear as though Plaintiff has pled the essential elements for any of his causes of actions to the extent such causes of action are cognizable and have private rights of action. Defendant Griffith will address these for the counts that are cognizable private causes of action.

Count II—Conspiracy to Commit Election Fraud

In Count IV, Plaintiff alleges that the PCDEC, Florida Democratic Party, Sherosky, and Griffith, engaged in a civil conspiracy to destroy his political campaign. See Compl. ¶¶ 65-67. A claim for civil conspiracy requires Plaintiff to prove four elements: "To state a cause of action for civil conspiracy, a plaintiff must plead '(1) an agreement between two or more parties; (2) to do an

unlawful act or a lawful act by unlawful means; (3) the execution of some overt act in pursuance of the conspiracy; and (4) damage to the plaintiff as a result of said acts.' (citations omitted)." *Logan v. Morgan & Bockius LLP*, 350 So. 3d 404, 412 (Fla. 2d DCA 2022). A claim for civil conspiracy must contain clear, positive and specific allegations; general allegations of conspiracy are not sufficient. *Parisi v. De Kingston*, 314 So. 3d 656, 661 (Fla. 3d DCA 2021); *World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 799 (Fla. 4th DCA 1999). The Complaint, as pled, fails on all four requirements.

i. There is not an agreement between two or more parties.

Based on the pleading, it is unclear what agreements were entered into between the PCDEC, Florida Democratic Party, Sherosky, and Griffith that are the subject of this count. There is no clear, positive and specific allegations of what these agreement(s) were. In *arguendo,* if the "vetting process" was the agreement, there is also no allegation that Defendant Sherosky (or the Florida Democratic Party) had any involvement in that process, that Defendant Griffith acted outside her official capacities as PCDEC Chair, or that members of the "PDEC candidate vetting committee" acted outside the scope of their official duties. Therefore, there is no second party to the "vetting process" insofar that it may be the agreement referenced by Plaintiff. Because there is no clear, positive, and specific allegation of an agreement between two or more parties, the count fails.

ii. There is no agreement to do an unlawful act or a lawful act by unlawful means occurred.

Additionally, there is no pleading sufficient to conclude that two or more parties agreed to do an unlawful act or a lawful act by unlawful means. None of the acts Griffith is alleged to have participated in constitute "election fraud"; the allegations concern Griffith and the PCDEC's conduct at a private, pre-election event where no voting occurred.

iii. It is unclear what the overt act in furtherance of the conspiracy was.

The Complaint does not contain clear, positive and specific allegations of what the overt act in furtherance of the conspiracy was.

iv. There is no adequate claim to damages.

Plaintiff has failed to adequately plead damages. Plaintiff's damages claims are wholly speculative. Plaintiff claims, without any support, that he has lost out on a Congressional salary of $175,000 and seeks over $1 million in damages. Plaintiff failed to plead any basis for this amount, and the damages Plaintiff claims – a speculative salary– are not reasonably ascertainable, thus the damages are not recoverable. See *Kennedy & Ely Ins., Inc. v. American Emp. Ins. Co.*, 179 So. 2d 248, 249 (Fla. 3d DCA 1965) (damages cannot be recovered if purely speculative); *Hogan v. Norfleet*, 113 So. 2d 437, 439 (Fla. 2d DCA 1959) ("Damages in a law action cannot be speculative or conjectural, but must be reasonably ascertainable.").

Based on the foregoing, Plaintiff has failed to effectively plead any of the requirements for a claim of civil conspiracy, and therefore, Count II of the Amended Complaint should be dismissed.

Count V: Computer Fraud and Abuse Act Violation (18 U.S.C. § 1030)

While 18 U.S.C § 1030 provides a private right of action if one of several acts are committed, there is no affirmative allegation that Griffith (or any of the other Defendants) accessed Plaintiff's computer—a necessary element. It is unclear who may have committed the alleged events in Paragraphs 39-42 of the Amended Complaint.

Count VI: Intentional Interference with Prospective Economic Advantage

In Florida, the legal claim of Intentional Interference with Prospective Economic Advantage (also known as "tortious interference with a business relationship" or "tortious interference with a prospective advantage") requires proving several elements. The claim is often raised when a third party intentionally disrupts a business relationship or opportunity. The elements a plaintiff must establish in Florida are:

1. **Existence of a Business Relationship**: The plaintiff must prove the existence of a business relationship with a third party that offers the probability of future economic benefit, even if the relationship is not formalized by a contract. However, this relationship

must be more than speculative, meaning it has to be a real, existing, or identifiable relationship.

2. **Defendant's Knowledge of the Relationship**: The defendant must have actual knowledge of the relationship between the plaintiff and the third party. It is not sufficient for the defendant to be merely aware of the possibility of a relationship.

3. **Intentional and Unjustified Interference by the Defendant**: The defendant must have intentionally acted to disrupt or interfere with the business relationship, and this interference must be unjustified. An unjustified interference usually means that the defendant had no legitimate reason or privilege to interfere with the relationship, such as competition in a free market.

4. **Damage to the Plaintiff as a Result of the Interference**: The plaintiff must demonstrate that they suffered actual damages or losses due to the defendant's interference. This could include lost profits, lost contracts, or other economic harm resulting directly from the disruption.

Ethan Allen, Inc. v. Georgetown Manor, Inc., 647 So. 2d 812, 814 (Fla. 1994). Damages may not be recovered on a speculative relationship. *Id.* at 815. There must also be specifically identifiable customers who were the subject of the alleged interference. See *Sarkis v. Pafford Oil*, 697 So. 2d 524, 526 (Fla. 1st DCA 1997) (affirming trial court's dismissal of complaint alleging tortious interference because "[t]he amended complaint d[id] not identify the customers who were the subject of the alleged interference."). The interference must also be "direct and intentional" and "without justification." *Lawler v. Eugene Wuesthoff Memorial Hosp. Ass'n*, 497 So. 2d 1261, 1263 (Fla. 5th DCA 1986) (holding that interference must be direct and intentional); see *Salit v. Ruden, McClosky, Smith, Schuster & Russell, P.A.*, 742 So. 2d 381 (Fla. 4th DCA 1991).

Plaintiff fails to plead the existence of a business relationship or that the Defendants' knew of any such relationship. No customers are specifically identifiable. Plaintiff's damages are entirely speculative. And, Griffith's conduct was fully justified; it was the exercise of her First and Fourteenth Amendment rights. Therefore, this Count also fails.

V. CONCLUSION

The *modus operandi* of this lawsuit and the other lawsuits that Plaintiff has filed against Ms. Griffith is to punish her and the PCDEC for exercising their First and Fourteenth Amendment rights by declining to provide Plaintiff's candidacy for Congress with a platform. The allegations made against Ms. Griffith in this Complaint are baseless, already the subject of other lawsuit, and any claim of conspiracy is without any factual support. Therefore, this Court should dismiss this lawsuit with prejudice and award Ms. Griffith and PCDEC entitlement to their reasonable attorney's fees and costs incurred in defending against this frivolous and retaliatory lawsuit that has no basis in fact and law.

WHEREFORE, Defendant, JENNIFER GRIFFITH, respectfully requests that this Court enter an Order Dismissing Plaintiff's Amended Complaint with prejudice, award Plaintiff her reasonable attorney's fees and costs, and grant Defendant any other relief this Court deems proper and just.

Dated: October 2, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon John William Liccione, Plaintiff *Pro Se*, via Florida E-Filing Portal email to jliccione@gmail.com, and Ryan D. Barack, Esquire, Michelle E. Nadeau, Esquire, Kirby Z. Kreider, Esquire, and James B. Lake, Esquire via Florida E-Filing Portal e-mail on this 2nd day of October, 2024.

/s/ George A.D. Thurlow

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S MOTION TO DISMISS FIRST AMENDED COMPLAINT AND FOR ATTORNEYS' FEES

Pursuant to Florida Rule of Civil Procedure 1.140 and Section 768.295 of the Florida Statutes, Defendant Cathy Salustri Loper ("Loper") moves this Court to dismiss with prejudice the First Amended Complaint ("Amended Complaint" or "AC") of John William Liccione ("Liccione" or "Plaintiff"), and for an award of fees under the Florida anti-SLAPP statute. The Complaint fails to state a cause of action against Loper, is without merit as to her, and was brought primarily because Loper exercised the constitutional right of free speech in connection with a public issue. Loper, therefore, is entitled to an order dismissing the Amended Complaint against her and awarding her reasonable attorneys' fees and costs.

Factual Background

1. Liccione's ten-count Amended Complaint presents a list of grievances primarily against the Pinellas County Supervisor of Elections and the Chair of the Pinellas County Democratic Executive Committee. AC ¶¶ 10-20, 33-38, 46-48. Liccione alleges that he was one of five candidates in an August 2024 Democratic primary election, and that the Democratic Party

did not invite him to participate in a July 2024 debate that featured the other four candidates. AC ¶¶ 1, 12, 13, 43.

2. The Amended Complaint mentions Loper in only four paragraphs. AC ¶¶ 8, 43, 44, 45. The Amended Complaint alleges that Loper is the owner and editor of a newspaper that published an article the day before the debate, and that the article did not mention him. AC ¶¶ 12, 43-45.[1]

3. Apparently because the newspaper's article about the debate listed the debate participants and not Liccione, Plaintiff has included Loper in this lawsuit. The Amended Complaint includes Loper by reference as one of the "Defendants" in counts alleging (1) violation of Section 104.041 of the Florida Statutes, (2) a conspiracy to commit election fraud, (3) violation of 52 U.S.C. Section 20511, (4) violation of 42 U.S.C. Section 1983, (5) violation of 18 U.S.C. Section 1030, and (6) intentional interference with prospective economic advantage. AC ¶¶ 49-54. An eighth count seeks "an emergency injunction to prevent further unlawful activities by the Defendants," which by reference includes Loper, and a tenth count states that Plaintiff seeks compensatory and punitive damages from "Defendants," which likewise by reference includes Loper. AC ¶¶ 63, 75.

Discussion

4. The Amended Complaint is a classic "shotgun" pleading. Each count incorporates all of the preceding paragraphs, and Loper is joined with all other Defendants in eight of the ten

[1] The news report did not mention Liccione because he was not among the debate's scheduled participants. A.C. ¶ 12. See also "July 13th Congressional District 13 Democratic Candidate Primary Debate," Pinellas Democratic Party News Release (July 6, 2024) (available online at https://us3.campaign-archive.com/?e=44ecd8245f&u=184627293a6f977c78f8e83b7&id=4a77ab680b). Prior to the filing of this action, the newspaper offered to cover Liccione's campaign in a separate article. He did not accept the offer.

counts. The Amended Complaint, however, never explains why Loper is included in these counts. For these reasons alone, the counts against Loper fail to state a cause of action against her and are without merit.

5. Each individual count also against Loper also fails and is meritless for other reasons.

6. Count One alleges a violation of a Florida statute, Section 104.041, that prohibits fraud in connection with the casting of a vote in an election. This count fails and is without merit because Section 104.041 is a criminal statute and does not provide a private right of action. *See Torres v. Shaw*, 345 So. 3d 970, 974 (Fla. 1st DCA 2022) (no private right of action under election-related statute); *Shiver v. Apalachee Pub. Co.*, 425 So. 2d 1173, 1175 (Fla. 1st DCA 1983) (criminal statute that prohibits corruptly influencing voters does not "confer a right of action on defeated candidates"). "Private citizens … are not empowered to sue under a criminal statute, which involves an executive function." *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022), *reh'g denied* (Sept. 2, 2022).

7. Count Two, for conspiracy to commit election fraud, fails and is without merit because "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). The failure of Count One means that the conspiracy count fails as well.

8. Count Three, for federal election fraud, fails and is without merit because the cited statute, 52 U.S.C. Section 20511, provides criminal penalties in narrow circumstances not alleged here. Section 20511 authorizes fines for intimidation, threats or coercion of voters; procuring or submitting false voter registration applications; or procuring, casting or tabulating false ballots. Loper is not accused of any of those things. Moreover, Section 20511 does not

provide a private right of action. *See Hall v. Valeska*, 509 Fed. Appx. 834, 837 (11th Cir. 2012) (finding that statute authorizing fine did "not provide for a private right of action"; dismissal affirmed).

9. Count Four, a claim for a civil rights violation under 42 U.S.C. Section 1983, fails against Loper and is without merit because the Amended Complaint does not allege Loper was a "state actor" and does not attribute any "state action" to her. Nor would the facts support such allegations. *See Emmanuelli v. Priebus*, 500 Fed. Appx. 886, 888 (11th Cir. 2012) (affirming dismissal of Section 1983 case challenging primary election rules, because political party's national committee chair was not state actor); *Idema v. Wager*, 120 F. Supp. 2d 361, 371 (S.D.N.Y. 2000) ("Actions by journalists in publishing a newspaper article do not constitute the requisite 'state action' to support state action claims."), *aff'd*, 29 Fed. Appx. 676 (2d Cir. 2002).

10. Count Five, for computer fraud, fails against Loper and is without merit because Loper is merely lumped in with other "Defendants" in a claim that they, "or those acting in concert with them, knowingly and unlawfully accessed Plaintiff's computer," allegedly in violation of the Computer Fraud and Abuse Act ("CFAA"). *See* A.C. ¶ 53 (citing 18 U.S.C. § 1030). The CFAA, however, provides a civil cause of action against only "the violator" of that law. *See* 18 U.S.C. § 1030(g). The few facts alleged concerning Loper (A.C. ¶¶ 43-45) do not remotely relate to any CFAA violation. Because Count Five does not identify Loper as "the violator" of any CFAA provision, this claim fails to state a cause of action. *See Agilysys, Inc. v. Hall*, 258 F. Supp. 3d 1331, 1344 (N.D. Ga. 2017) (dismissing CFAA claim against company, because complaint alleged former employee of plaintiff "was the individual who acted, or was the violator," not the company); *Trademotion, LLC v. Marketcliq, Inc.*, 857 F. Supp. 2d 1285, 1287 (M.D. Fla. 2012) ("Plaintiffs' allegations do not show an adequate connection between the

acts of the alleged violator (Anderson) and the actual Defendants in this suit to support a cause of action").

11. Count Six, for intentional interference with a prospective economic advantage, fails against Loper and is without merit because the tort of interference does not apply to "communications to the public at large." *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Loper is accused of nothing more than editing a newspaper that communicated an article to the public at large. As a matter of law, this is not interference.

12. Count Eight, for injunctive relief, fails against Loper and is without merit because this count seeks an injunction relating to management of future elections and a special election in the Democratic Congressional primary. A.C. ¶ 63. The Amended Complaint does not attribute to Loper any role or authority to manage elections, and of course she has none.

13. Moreover, if Count Eight is intended to seek injunctive relief restraining the speech of Loper or her newspaper, such relief is unavailable as a matter of law. *See Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559 (1976) ("prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights."); *Palm Beach Newspapers, LLC v. State*, 183 So. 3d 480, 482 (Fla. 4th DCA 2016) (reversing trial court order requiring newspaper to remove published materials from its website and explaining that injunctions are prior restraints that are "presumptively unconstitutional under the First Amendment.").

14. Finally, Count Ten presents merely a general plea for damages and does not state a cause of action. Count Ten, therefore, should be dismissed against Loper and is without merit.

Anti-SLAPP Motion

15. Plaintiff should be ordered to pay Loper's attorneys' fees under the Florida anti-SLAPP law, Section 758.295(3) of the Florida Statutes.

16. Section 758.295 prohibits "fil[ing] ... any lawsuit ... against another person or entity *without merit* and primarily because such person or entity has *exercised the constitutional right of free speech in connection with a public issue* ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution." Fla. Stat. § 758.295(3) (emphasis added). Where these two criteria are satisfied, the statute provides for a mandatory award of attorneys' fees. *Id.* § 768.295(4). Plaintiff's claims against Loper fall squarely within the statute's prohibition.

17. First, Plaintiff's claims against Loper were filed "primarily" – indeed, exclusively – as a result of Loper's exercise of "free speech in connection with public issues." The statute provides that such speech includes any "statement that is protected under applicable law and ... is made in or in connection with a ... ***news report***, or other similar work." *Id.* § 768.295(2)(a) (emphasis added). This protection applies to Loper because, as the Amended Complaint alleges, she "is sued in her capacity as owner and editor" of a newspaper that published a news report about an election. A.C. ¶¶ 8, 43. Loper is being sued over statements in a news report that does not mention Plaintiff.

18. Second, the instant suit was filed "without merit." As detailed above, the Complaint fails to state a cause of action against Loper.

19. Because Plaintiff's claims against Loper violate the anti-SLAPP statute, they should be dismissed. *See, e.g.*, *Goodwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (trial court departed from essential requirements of law in denying defendants' motion to dismiss

pursuant to the anti-SLAPP law); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same). For the same reason, the anti-SLAPP law mandates an award of Loper's attorneys' fees and costs. *See* Fla. Stat. § 768.295(4).

Conclusion

The Complaint fails to state a cause of action and should be dismissed with prejudice. And, pursuant to the anti-SLAPP statute, Loper should be awarded her costs and fees.

Respectfully submitted,

THOMAS & LOCICERO PL

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Attorneys for Cathy Salustri Loper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on October 3, 2024, the foregoing document was electronically with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: */James B. Lake/*
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **CASE NO: 24-003939-CI**

JULIE MARCUS, et. al.,

Defendants.
_____/

NOTICE OF VOUNTARY DISMISSAL WITH PREJUDICE

Plaintiff John William Liccione, pursuant to Fla.R.Civ.P. 1.420(a), hereby voluntarily dismisses his claims filed against Defendant Whitney Fox in the above-styled case with prejudice. Plaintiff John William Liccione and Defendant Whitney Fox have agreed that they will each bear their own fees and costs in this matter.

Respectfully submitted,

John Liccione
John Liccione (Oct 7, 2024 08:51 EDT)

John William Liccione
Plaintiff, Pro Se

CERTIFICATE OF SERVICE

I, John Liccione, Plaintiff, do hereby certify that on this 7th day of October, 2024, I did serve the above Plaintiff's Motion of Voluntary Dismissal With Prejudice (of Defendant Whitney Fox) on all Defendants in the manner of service specified below:

1. Ryan Barack, attorney for Defendant Whitney Fox (e-file and serve, email).
2. James Lake, attorney for Defendant Cathy Salustri Loper (via e-file and serve, email)
3. George Thurlow, attorney for Defendant Julie Marcus (e-file and serve, email)
4. Kirby Kreider, attorney for Julie Marcus (e-file and serve, email).
5. Defendant Mark Weinkrantz via postage pre-paid 1st class mail at 4738 Belden Circle, Palm Harbor, FL 34685
6. Defendant Patrick Heinzen via postage pre-paid 1st class mail at 12000 4th St N Apt 134, Saint Petersburg, FL 33716



John W. Liccione

EXHIBIT A

The Gabber Newspaper's Website "About" Page as captured on 10/7/24



thegabber.com/about-the-gabber-newspaper/

Relaunch to updat

ABOUT ADVERTISE! GET YOUR GABBER SUPPORT

Search this website

SEARCH

The GABBER

FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER

SUBSCRIBE NOW to get The Gabber delivered to your inbox every Thursday! THE WEEKLY

NEWS ARTS FOOD LIFESTYLE EVENTS GULFPORT WEBCAM CURRENT ISSUE CLASSIFIED ADS STORM COVERAGE

ABOUT THE GABBER

The GABBER

FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER

Gulfport's Number-One News Source

The Gabber Newspaper History

The Gabber Newspaper — originally the *Gulfport Gabber* — was founded in 1968 by George Brann, primarily to cover Gulfport city council. Brann's paper soon became a vital resource for the community, expanding the advertising base and coverage, to include features, community news and events. Elsie and Ted Havness bought the paper from Brann in 1980 and sold to Ken and Deb Reichart 1992, who owned the paper for 28 years before selling to Cathy Salustri Loper and Barry Loper in June 2020.

The Gabber Newspaper is the oldest independent weekly newspaper in Florida. We serve South Pinellas communities — from Redington Beach to Tierra Verde; from Gulfport to Pinellas Park; and in south, west, and downtown St. Petersburg, you'll find local news, community events, in-depth feature stories, and the most extensive classifieds of any weekly newspaper in the area.

The Gabber Newspaper is an independent, family owned newspaper. We're proud of our history and our future.

ELECTRONICALLY FILED 10/16/2024 10:50:37 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

future.



The Gabber Newspaper Mission

The Gabber Newspaper has no agenda other than to inform the public through accurate and honest reporting, to engage the community, and help us all better understand our hyper-local and regional world.

We believe all politics are local, and that what we do, as journalists and as private citizens — even on a small scale — echoes throughout our community. Our mission and values are at the heart of everything we do, from political and cultural reporting, to design elements and community involvement.

The Gabber Newspaper Policies on Fact Checking and Transparency

The Gabber Newspaper Policies on Fact Checking and Transparency

As a news outlet, our primary responsibility is to disseminate information in as clear, concise, and correct a manner as possible.

The Gabber Newspaper's editorial staff makes every effort to confirm the veracity of facts in articles. We do this as appropriate to the nature, complexity, and time constraints of the piece.

We check facts, not opinions. With hyperbolic statements, we verify the fact at its source and make every effort to clarify quotes that may be misleading.

As necessary, and whenever possible, writers and editorial staff independently verify facts, claims, and allegations, particularly those made by public officials or sources.

Corrections

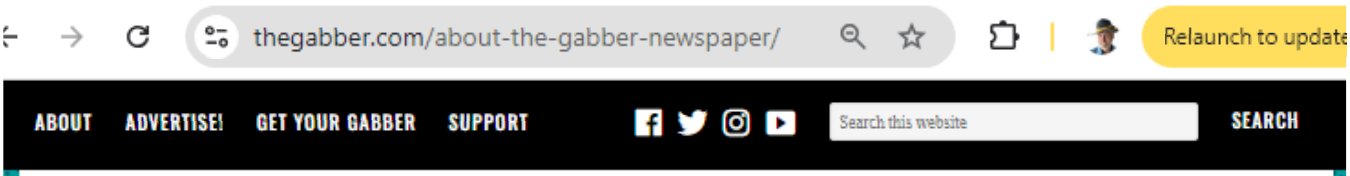
How we handle errors in our reporting is at the heart of our ethics and transparency policies. If we're wrong, we say so — and correct our mistake as swiftly as possible. We correct errors in print, online, and across social media platforms.

The Gabber Newspaper follows AP guidelines for corrections. Our writers must notify editorial staff of errors in reporting as soon as possible. We will acknowledge the error to our readers and address it clearly in an editor's note — at the top of the web post or in the first pages of our print issue. When we make corrections to a post online, we mark the date and time, and identify the incorrect information in the original post.

We welcome corrections and clarifications from our readers, and will print or post them as soon as they are verified. To report a correction or clarification, please email news@thegabber.com.

Ethics

Integrity matters. *The Gabber Newspaper* acts with integrity, in print and across our digital platforms, as



Ethics

Integrity matters. *The Gabber Newspaper* acts with integrity, in print and across our digital platforms, as we gather and report news to the community.

We will never knowingly circulate false information or rumors, violate public trust, or the confidence of our sources. *The Gabber Newspaper* strives to identify all sources. We're committed to transparency in collecting facts and assets. We do not tolerate plagiarism and all material gets proper citation.

If we get it wrong, we will verify, correct, and inform our readers as swiftly as possible. *The Gabber Newspaper* does not engage in quid pro quo. We do not report in return for advertising or any other leverage or compensation. All paid content in *The Gabber Newspaper* will be clearly marked as advertisement.

Ownership and Funding

The Gabber Newspaper is part of Thursday Morning Media, Inc., a for-profit Florida corporation wholly owned by Cathy Salustri Loper and Barry Loper. Thursday Morning Media receives the bulk of its funding from *The Gabber Newspaper* advertisers. Readers make donations. Some have also made loans to secure the paper's future in the community. **Owners in no way allow funding or investors to dictate editorial decisions.**

SUPPORT THE GABBER

Team Gabber brought back the print version of the newspaper, and we've redesigned our website to make it easier for you to get the news. We're not out of the woods yet, and every little bit helps pay our reporters, printer, and other expenses. Support local news and families — donate now to keep *The Gabber Newspaper* serving the community it loves!

Please support local news and The Gabber Newspaper!

EXHIBIT D

The Gabber Newspaper's Correction Published on 8/15/24
(as captured on 10/7/24

thegabber.com/voices-letters-to-the-editor-aug...
Relaunch to update
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NEWS ARTS FOOD LIFESTYLE EVENTS GULFPORT WEBCAM CURRENT ISSUE CLASSIFIED ADS STORM COVERAGE

Voices: Letters to the Editor August 15

August 15, 2024 by Cameron Healy



The August 15 letters to the editor of *The Gabber Newspaper*.
Photo by June Johns

The Gabber Newspaper's August 15 Letters to the Editor

Boat Communities

I've spent many years in and around your city and I'm disgusted with the negligence I see pertaining to your liveaboard community. After viewing the devastation of the last few minor storms, and now the loss of life, how will this city ever prepare for a more serious event? This town is overburdened with tons of untenable ordinances and the time has come to add a useful new one. It's time to apply and enforce restrictions on liveaboards close to shore.

GULFPORT FL WEBCAM



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GABBER GABS

Where Do You Go First To Prepare for a Hurricane?

- A home improvement store.
- The supermarket.
- I evacuate.
- Nowhere. I'm already prepared.

VOTE

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Florida's liveaboard community certainly makes the state a better place, but as usual, guidelines must be implemented at a local level for emergency preparedness and safety. Seeing the preventable loss of life and devastation happen over and over simply signals the need for greater enforcement and education. And the responsibility on this local waterway — whether you want to pawn off responsibility or not — rests with the city and not the state or feds. The damage here occurs to the city, and instead of again wasting months waiting for the salvage and pier repair is unacceptable and negligent.

Proper and regular inspection of the anchorage is necessary, as well as civic enforcement for those registered vessels not taking cleanup duties responsibly. There is also no reason based on safety that so many vessels should be moored that close to the shoreline or so close to each other. Especially since moored boats rely on other small vessels to get ashore anyway.

I've seen with my own eyes a patrol officer pestering people tying rowboats to the casino pier for little reason (you know who you are).

The time has come to manage that officer better, and move him into the harbor on a small craft for wiser lifesaving prevention and enforcement.

—Gino Batali, St. Petersburg

Read the August 1 Letters to the Editor.

Corrections

The Gabber Newspaper printed an article — "Meet the Democratic Candidates for the District 13 Congressional Election" — focusing on a scheduled debate hosted by the Pinellas Democratic Party.

The Pinellas Democratic Party showcased four of the candidates for running for congress. *The Gabber Newspaper* did not include candidates who were not participating in the event, including John Liccione.

The Gabber Newspaper did not intentionally omit Liccione, and regrets the mistake. *The Gabber Newspaper* reached out to Liccione, but did not receive a response.

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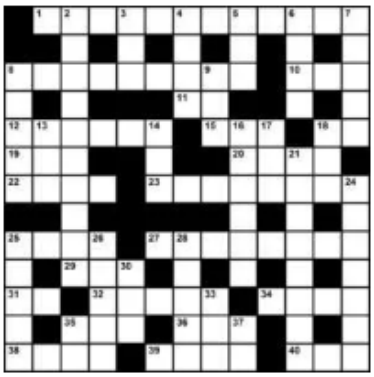
CROSSWORD





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We're the calm during the storm. No hype, only help!

Bookmark *The Gabber Newspaper*'s storm coverage page for quick access to relevant tropical storm updates. No hype, no guessing, just updates on shelters, sandbags, and closures. And sign up for text alerts to get real-time guidance and prep advice when there's a named storm heading our way. Also, check out our downtown Gulfport and beach web cams.

About Letters to the Editor

We want your letters! The Gabber Newspaper *encourages letters (one per person, per month). Include your real name and city. Please keep it short – <250 words. We may edit letters for content, clarity, and length. We don't print letters that incite violence or include attacks on private citizens.* The Gabber Newspaper *also doesn't print letters that intentionally mislead people. Letters may appear online and/or in print. We may print comments that appear on* The Gabber Newspaper's *website and social media. Opinions expressed do not necessarily represent the views of* The Gabber Newspaper *owners, advertisers, or staff. Send letters to news@thegabber.com or 2908-B Beach Blvd. S., Gulfport, FL, 33707.*

by Cameron Healy

SUPPORT THE GABBER

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Filed Under: Voices
Tagged With: Gulfport Florida, Gulfport Florida City Hall, Gulfport Florida Elections, Gulfport Florida Police, The Gabber Newspaper

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. **Case No. 24-003939-CI**
JULIE MARCUS, et al.,
Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT JENNIFER GRIFFITH'S

MOTION TO DISMISS

AND

REQUEST FOR HEARING

Plaintiff John Liccione, pro se, submits this response in opposition to Defendant Jennifer Griffith's (Griffith) Motion to Dismiss the Plaintiff's First Amended Complaint (Amended Complaint). Griffith's motion is fundamentally flawed, relying on unsupported facts, allegations, mischaracterizations, and a misapplication of relevant legal standards. Contrary to Defendant's claims, Plaintiff has alleged sufficient facts to establish a plausible basis for each cause of action against Griffith, including claims of voter intimidation, campaign interference, mail ballot fraud, conspiracy, and the implementation of a sham candidate vetting process, hastily instituted just after Plaintiff announced his candidacy in the spring of 2023. Defendant's conduct, as described in the complaint, extends far beyond the scope of constitutionally protected rights to speech and association, instead involving unlawful acts aimed at interfering with Plaintiff's campaign and manipulating the electoral process. For these reasons, Defendant's

ELECTRONICALLY FILED 10/16/2024 05:35:44 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

motion to dismiss should be denied in its entirety, allowing Plaintiff to proceed to discovery, present evidence, and litigate these significant issues.

1. Griffith's Sham Candidate Vetting Process

Defendant Griffith claims Plaintiff's exclusion from the debate and other party materials was due to a pre-existing "candidate vetting process" that he allegedly failed. Plaintiff asserts that if such a process exists, it must be applied equally to all candidates without discrimination based on sex, disability, or other unlawful criteria, and without corrupt or criminal motive or for criminal purposes. Defendant has provided no evidence that a vetting process existed before or after Plaintiff's candidacy was announced, nor that it was applied equally to all five candidates. Plaintiff alleges the process was selectively applied to exclude him, and only him, in violation of Democratic party policies, of their own values, and unlawfully.

Griffith does not argue that Plaintiff's political positions, values, or history conflict with Democratic Party values. Instead, she falsely and baldly asserted publicly that Plaintiff is a man of moral turpitude, without providing any basis for this claim. Plaintiff, has no criminal convictions and was found not guilty at trial in 2018 after being wrongfully accused and imprisoned as a PTSD-disabled male domestic violence survivor. He contends that Griffith's assertion is unsupported and defamatory, as Griffith was well aware during the alleged "vetting process" of Plaintiff's not-guilty-at-trial verdict.

Plaintiff alleges that no such vetting process existed until after he informed Griffith of his candidacy in the early spring of 2023. Plaintiff argues it was a sham, created to exclude him while giving the other four candidates unfettered access to party resources,

speaking engagements, and promotional opportunities, without subjecting them to the same scrutiny, while affording them the due-process opportunity to rebut negative background information.

No Pre-existing Vetting Process: The so-called vetting process conveniently appeared only after Plaintiff announced his candidacy, and Plaintiff alleges it was designed specifically to exclude him under the color of a Party policy that did not exist and had never before been applied to any Democratic candidate. Griffith has produced no records, documents, or minutes to substantiate the existence of this process before Plaintiff's candidacy was known, or even after. Plaintiff further alleges the process was applied only to him and not to the other candidates, demonstrating its discriminatory and pretextual nature.

A Broader Conspiracy: This sham vetting process is part of a broader conspiracy to interfere with Plaintiff's campaign and suppress his candidacy. Plaintiff's exclusion from the July 13th debate was not an isolated incident: It was part of a coordinated, 15-month effort by Griffith and her co-conspirators, which escalated well beyond the scope of first amendment protected activities. The Court must accept these well-pleaded allegations as true at the motion to dismiss stage (Conley v. Gibson, 355 U.S. 41 (1957)).

2. Griffith's Strawman Argument

Plaintiff acknowledges that the Democratic Party, as a private political organization, has the (non-absolute right) to adopt a candidate vetting process: as long as it is lawful and applied equally to all candidates irrespective sex, disability, race, age, and other categories of persons who are guaranteed protection from discrimination under law. It

is not an unfettered, "absolute right" any more than free speech and the right to bear arms are absolute rights. Defendant's claim that Plaintiff is arguing otherwise is a strawman argument that Plaintiff has not made. Plaintiff is not challenging the Party's right to create a lawful vetting process - equally applied – and with due process equally given to all candidates.

3. Mischaracterization of Constitutional Protections

Defendant Griffith argues that Plaintiff's claims infringe on her rights to freedom of speech and association when in fact, it was Plaintiff's free-speech rights that were violated by Griffith. Plaintiff has alleged that Defendant's actions involve wrongful acts beyond the protection of the First Amendment. The U.S. Supreme Court has held that certain forms of conduct, such as fraud, intimidation, and coercion, are not protected by the First Amendment (*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)). In particular, the alleged acts of blocking access to Plaintiff's campaign event and physically obstructing Plaintiff's communication with voters, as well as the theft of his campaign sign, fall outside the scope of protected activities. In United States v. Alvarez, 567 U.S. 709 (2012), the court ruled that false statements are not categorically protected under the First Amendment in the context of the Stolen Valor Act. In Schenck v. United States, 249 U.S. 47 (1919) the court held that speech creating a clear and present danger is not protected by the First Amendment, particularly in the context of coercive speech or speech encouraging unlawful acts.

The Political Speech on Plaintiff's Campaign Sign: Plaintiff's campaign sign, which read, **"*John Liccione for Congress: Building Florida, Saving America*,"** and "***voteliccione.org***" is a clear form of political speech protected by the

First Amendment. Unless Griffith is prepared to argue that "building Florida and saving America" are anathema to Democratic Party values, there was nothing remotely objectionable on Plaintiff's campaign sign that warranted her harassment and sign snatching. The content of this message on the sign directly communicated Plaintiff's overarching political vision for Florida and America at large, making it a critical part of his campaign communication. Defendant Griffith's act of removing this specific sign—while not touching the signs of any of the four other candidates—demonstrates that it was the political message along with his name and campaign website address on the sign, and *only* his sign, that triggered her unlawful action. This selective removal and campaign interference indicates that Griffith's intent was to suppress Plaintiff's political speech, rather than an honest attempt to exercise her own right to free expression. Such conduct falls outside the scope of constitutionally protected activities and constitutes unlawful interference with Plaintiff's campaign speech and his attempts to lawfully interact with voters.

Moreover, 52 U.S.C. § 10307(b) directly applies to the allegations in this case. This federal statute prohibits any form of intimidation, threats, or coercion that interferes with a person's ability to vote or participate in election-related activities and the political process in general. Defendant's obstruction of the hallway at Plaintiff's after-debate event, preventing voters from engaging with Plaintiff's campaign, is a direct violation of this statute. These acts are designed to suppress electoral participation and restrict access to political information, constituting voter intimidation and coercion.

In addition, under the *Reed v. Town of Gilbert* (576 U.S. 155 (2015)) ruling, while the case specifically involved content-based restrictions on speech, it affirms that political

speech and access to political information are critical under the First Amendment. Defendant's actions in barring voters from engaging with Plaintiff, from seeing his campaign signs, and interfering with his ability to communicate clearly to voters, violate these fundamental protections.

4. Physical Voter Intimidation and Coercion

Plaintiff has provided specific factual allegations of physical voter intimidation and coercion, including:

- **Blocking the Hotel Ballroom Hallway:** Defendant Griffith and her agents on July 13, 2024 at the St Petersburg/Clearwater Mariott Hotel, conspired to physically block her debate attendees from accessing Plaintiff's after-debate event and coerced them into exiting the hotel down the back exit stairwell. This conduct, aimed at interfering with Plaintiff's right to campaign freely, and voters' right to engage with him as a candidate in person, violates both state and federal laws prohibiting voter intimidation and coercion. (*52 U.S.C. § 10307(b); Fla. Stat. § 104.0615*).
- **Campaign Sign Theft and Harassment at St. Petersburg College:** Defendant Griffith personally removed Plaintiff's campaign sign in front of witnesses, followed by a public confrontation in the hallway instigated by her, that was aimed at preventing Plaintiff from engaging with voters and from seeing his campaign sign message. Then she continued to interfere by bringing a college security guard to where he was campaigning, on false pretenses, in an effort to stop him from campaigning and to remove his sign. These actions constitute

both voter intimidation and interference with lawful campaigning activities, which go beyond protected political speech.

5. Pattern of Escalating Misconduct Well Beyond Protected Speech, Assembly

Defendant's argument that her actions are protected as part of her freedom of speech and association ignores the broader pattern of escalating misconduct over Plaintiff's entire 15-month campaign. Plaintiff has alleged a systematic, deliberate, and *escalating* effort to interfere with his campaign, involving acts of voter intimidation and coercion, conspiracy to commit fraud, and campaign interference. This pattern includes not only exclusion from debates. It escalated well beyond into physical acts of intimidation, and harassment, and voter intimidation, based on clear bias against Plaintiff, which clearly fall outside any constitutional protection (*Wisconsin v. Mitchell*, 508 U.S. at 484).

6. Allegations of Conspiracy to Commit Mail Ballot Election Fraud Bolstered by Evidence

Plaintiff has sufficiently pled a conspiracy involving Defendant and others to commit election fraud, including the fraudulent submission of mail ballot orders over the Internet, and the marking of blank ballots without voter consent. These allegations are bolstered by specific evidence, including a whistleblower communique corroborating the fraudulent activities and a massive, singular, one-day spike in mail ballot orders. On June 23, 2024, Florida's publicly available mail ballot order records reflected an massive and never again seen spike of over 219,000 mail ballot orders on a Sunday—a highly suspicious and abnormal occurrence without precedent, that further supports Plaintiff's claims of mail ballot fraud. Under both federal and state law, such conduct constitutes

fraud and violates election laws. (*52 U.S.C. § 20511; Fla. Stat. § 104.041*). Defendant's motion to dismiss these claims is without merit.

7. Misapplication of Anti-SLAPP Statute: No Prima Facia Case Established

Defendant has failed to meet the burden of demonstrating a prima facie case under Florida's anti-SLAPP statute, which is intended to protect legitimate free speech or petitioning activity in connection with public issues. Plaintiff's allegations, including voter intimidation, campaign interference, conspiracy, and election fraud, fall squarely outside the scope of protected speech and cannot be shielded by the anti-SLAPP statute (*Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019)).

For a defendant to succeed under anti-SLAPP protections on a motion to dismiss, they must first make a prima facie showing that Plaintiff's claims are solely based on Defendant's exercise of their right to free speech or petitioning activity in connection with a public issue. To meet the burden of a prima facie anti-SLAPP claim at this stage, the Defendant must establish that:

a. <u>The Plaintiff's Lawsuit Based Solely on the Defendant's Exercise of First Amendment Rights:</u> Defendant has not presented sufficient evidence or even argument to demonstrate that Plaintiff's claims arise solely from constitutionally protected activities. The allegations in the complaint—including conspiracy, voter intimidation, coercion, physical interference, fraudulent mail ballot mass production, and improper conduct at Plaintiff's campaigning venues—fall squarely outside the scope of protected free speech. These actions, as described by Plaintiff, represent criminal and civil misconduct, which cannot be shielded by anti-SLAPP protections. Further, no affidavits or documented evidence were provided by the

Defendant to substantiate that the activities in question were constitutionally protected expressions related to a public issue, as required to invoke anti-SLAPP.

b. "The Lawsuit is Without Merit and Filed to Suppress Free Speech:" The defendant must also prove that the plaintiff's claims lack merit and were brought primarily to intimidate or silence the defendant's speech and right to freely assemble in connection to a public issue. Defendant has not met this burden. Plaintiff argues that blocking the hotel hallway so Griffith's debate attendees could be physically herded down a back exit stairwell to prevent them from attending Plaintiff's after-debate party after her "exclusive' debate (sans Liccione) was over, is neither protected speech, nor protected assembly or association. It prevented individual voters, en masse, from *peaceably assembling with Plaintiff* at his just-down-the-hall campaign event. Griffith is accusing Plaintiff of that for which she is clearly guilty.

Plaintiff's complaint is based on numerous specific allegations of wrongful conduct—such as conspiring to fraudulently order and mark mail-in ballots, orchestrating physical barriers at campaign events, battery, and conspiracy to suppress lawful political participation—that are cognizable legal claims. These claims address specific, unlawful acts by the Defendant and her agents that directly harmed Plaintiff's campaign and cannot be reasonably construed as an attempt by Plaintiff to restrict legitimate free speech.

The Florida Second District Court of Appeal has clarified that a prima facia showing requires clear evidence that Plaintiff's claims are directly related to and primarily aimed

at constitutionally protected activities. Gundel v. AV Homes, Inc., 264 So. 3d 304, 314 (Fla. 2d DCA 2019) states that the defendant must first present sufficient factual evidence showing that the plaintiff's lawsuit is based on protected First Amendment activity (such as free speech in connection with a public issue) before the burden shifts to the plaintiff. In this case, Defendant has failed to provide such evidence, relying instead on conclusory statements without supporting documentation or sworn affidavits.

c. Improper Motive by Plaintiff: Defendant's anti-SLAPP claim also fails to establish that Plaintiff's motive was primarily to suppress free speech rather than to remedy further wrongful acts, that directly impacted his campaign and the election at large, *at scale*. Plaintiff's allegations pertain to tangible, unlawful actions taken by Defendant and her agents that resulted in real harm to Plaintiff's ability to run an effective campaign. Without providing any factual basis for Plaintiff's alleged improper motive, Defendant's claim remains unsupported.

The court in Davis v. Mishiyev, 339 So. 3d 449, 453 (Fla. 2d DCA 2022), reinforced that a prima facie case under anti-SLAPP requires more than assertions; it requires actual evidence showing that the plaintiff's claims are primarily based on an exercise of constitutionally protected rights such as free speech. Here, the defendant has provided no affidavits, documents, or any evidence demonstrating that Plaintiff's claims were aimed solely at suppressing lawful free speech or assembly, rather than addressing specific unlawful behavior. Davis v. Mishiyev reinforces that anti-SLAPP motions require evidence, not just assertions, and defendants must make a prima facie showing that the lawsuit targets protected speech or petitioning activity. The burden shifts to the

plaintiff only if the defendant provides such evidence. Conclusory statements or bare assertions by the defendant, without evidence and supporting affidavits, are insufficient to shift the burden under anti-SLAPP statutes.

8. The Supervisory Role of Defendant Griffith

Defendant Griffith's claim that she lacks supervisory power over party members is without merit. As Party Chair and the Democratic Party Boss in Pinellas county, Griffith exercises significant control over party operations and activities. Plaintiff has sufficiently alleged that her role as Chair involved directing the actions that interfered with Plaintiff's campaign, including voter suppression tactics and fraudulent mail ballot activities. Griffith cannot evade responsibility for the actions of party members under her leadership, let alone her own wrongful acts.

9. Pattern of Misconduct

When considered as a whole, the allegations in the complaint describe a coordinated and deliberate effort by Defendant and her co-conspirators to obstruct Plaintiff's campaign through unlawful means. Defendant's reliance on the anti-SLAPP statute and First Amendment protections ignores the broader context of misconduct aimed at manipulating the electoral process and suppressing lawful political participation. (*Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

10. Conclusion

Defendant Griffith's conduct, as alleged, goes far beyond constitutionally protected free speech and association rights. Plaintiff has presented substantial allegations of voter intimidation, conspiracy, mail ballot fraud, campaign interference, and the implementation of a sham candidate vetting process aimed at excluding Plaintiff, and

only Plaintiff. These allegations are legally sufficient to proceed to discovery. Griffith's allegations are unsupported by sworn affidavit and evidence. The burden of proof is on Griffith to prove that her candidate vetting process existed, that it wasn't adopted just after Plaintiff announced his candidacy to target him and only him, that it was applied equally, and that due process was equally afforded to all 5 candidates. Griffith has not produced any such admissible evidence. There is no sworn affidavit attached to her motion to dismiss (nor to her recently-served Motion to Sanction Plaintiff). For these reasons, the Court must deny Defendant's motion to dismiss and allow Plaintiff to proceed to discovery, and to present evidence in support of these serious claims.

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendant Jennifer Griffith's Motion to Dismiss.

REQUEST FOR HEARING

Plaintiff requests a hearing on Defendant Griffith's this motion to dismiss.

Respectfully Submitted,

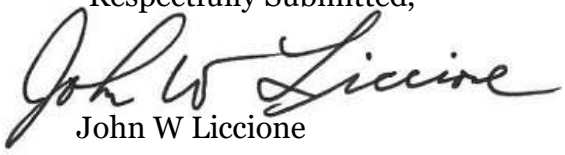


John W Liccione
6800 Gulfport Blvd S.
Ste 201-116
South Pasadena, FL 33707
443-698-8156
Jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this on the 16th day of October 2024, the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to GEORGE A.D. THURLOW, ESQ., Attorney for Defendant JENNIFER GRIFFITH, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, RYAN D. BARACK, ESQ. and MICHELLE E. NADEAU, ESQ., Attorney for Defendant WHITNEY FOX, at rbarack@employeerights.com, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, at jlake@tlolawfirm.com, and Defendant Mark Weinkrantz via postage prepaid first-class mail at 4738 Belden Circle, Palm Harbor, FL 34685.

Respectfully Submitted,



John W Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No.: **24-003939-CI**

JULIE MARCUS, et al
Defendants.
_____/

MOTION FOR CLERK DEFAULT
AGAINST DEFENDANT MARK WEINKRANTZ

1. Plaintiff, John William Liccione, pro se, hereby moves this Court to enter a default against Defendant Mark Weinkrantz, pursuant to Florida Rule of Civil Procedure 1.500(a), and in support thereof states as follows:

2. Defendant Mark Weinkrantz was properly served by Plaintiff's process server with the Summons and First Amended Complaint as his home at 4738 Belden Circle, Palm Harbor, FL 34685, on September 25, 2024, as evidenced by the Proof of Service that has been filed today with the Court and is also attached hereto as EXHIBIT A.

3. Pursuant to Florida Rule of Civil Procedure 1.140(a)(1), Defendant Weinkrantz was required to file a response or serve a responsive pleading to the Complaint within 20 days of being served, which was on or before October 15, 2024.

4. As of the date of this Motion, Defendant Mark Weinkrantz has failed to file any response, motion, or answer to the Complaint within the required time period, and no extension of time has been requested or granted.

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5. Florida Rule of Civil Procedure 1.500(a) provides that the clerk of the court shall enter a default against a party who fails to plead or otherwise defend as provided by law.

WHEREFORE, Plaintiff, John William Liccione, respectfully requests that the Clerk of the Court enter a default against Defendant Mark Weinkrantz for his failure to respond to the Complaint within the time required by law, and for such further relief as the Court deems just and proper.

Respectfully submitted,



John W Liccione
Plaintiff, Pro se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
Pro Se Plaintiff
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U.S. Mail postage prepaid to Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685, and via Florida Courts e-file and serve, on all other defendants, through their attorneys of record on this 18th day of October 2024.



John W Liccione

EXHIBIT A

Proof of Service of Defendant Mark Weinkrantz

Case No. 24-003939-CI

RETURN OF SERVICE

Court Stamp Here

Court IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA	
Plaintiff JOHN WILLIAM LICCIONE	Case # 24-003939-CI
Defendant JULIE MARCUS; ET AL	Hearing Date
Person to be Served Mark Weinkrantz	Came to Hand Date/Time 9/13/2024 5:10 PM
Manner of Service Personal	Service Date/Time 9/25/2024 12:42 PM
Documents FIRST AMENDED Complaint;Summons;CIVIL COVER SHEET	Service Fee $75.00

On **9/25/2024** at:
4738 Belden Cir, Palm Harbor, FL 34685 I served **Mark Weinkrantz** by:

Personally delivering **1** copy(ies) of **FIRST AMENDED Complaint, Summons and CIVIL COVER SHEET** to **Mark Weinkrantz**, with the date and hour of service endorsed thereon by me.

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:
I delivered the documents to Mark Weinkrantz with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a bald white male contact over 65 years of age, 5'8"-5'10" tall and weighing 160-180 lbs with glasses

Notary not required pursuant to F.S. 92.525(2).

I am over 18 years of age, not a party to nor interested in this case and I have the proper authority in the jurisdiction where I effected service, pursuant to Florida Statute Chapter 48. Per 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Suzanne DelRegno	APS 06560	9-25-24
	Process Server ID	Date Executed

Ref **REF-17107094**

abclegal John Liccione <john@voteliccione.org>

Tracking # **0144014812**

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. **Case No. 24-003939-CI**
JULIE MARCUS, et al.,
Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT JENNIFER GRIFFITH'S

MOTION TO DISMISS

AND

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motion to dismiss should be denied in its entirety, allowing Plaintiff to proceed to discovery, present evidence, and litigate these significant issues.

1. Griffith's Sham Candidate Vetting Process

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Plaintiff alleges that no such vetting process existed until after he informed Griffith of his candidacy in the early spring of 2023. Plaintiff argues it was a sham, created to exclude him while giving the other four candidates unfettered access to party resources,

speaking engagements, and promotional opportunities, without subjecting them to the same scrutiny, while affording them the due-process opportunity to rebut negative background information.

No Pre-existing Vetting Process: The so-called vetting process conveniently appeared only after Plaintiff announced his candidacy, and Plaintiff alleges it was designed specifically to exclude him under the color of a Party policy that did not exist and had never before been applied to any Democratic candidate. Griffith has produced no records, documents, or minutes to substantiate the existence of this process before Plaintiff's candidacy was known, or since. Plaintiff further alleges the process was applied only to him and not to the other candidates, demonstrating its discriminatory and pretextual nature.

A Broader Conspiracy: This sham vetting process was part of a broader conspiracy to interfere with Plaintiff's campaign and suppress his candidacy by unlawful means. Plaintiff's exclusion from the July 13th debate was not an isolated incident: It was part of a coordinated, 15-month effort by Griffith and her co-conspirators, which escalated well beyond the scope of first amendment protected activities. The Court must accept these well-pleaded allegations as true at the motion to dismiss stage (Conley v. Gibson, 355 U.S. 41 (1957)).

2. Griffith's Strawman Argument

Plaintiff acknowledges that the Democratic Party, as a private political organization, has the (non-absolute right) to adopt a candidate vetting process: assuming it is lawful. As an extreme thought exercise, if the "candidate vetting process" involves assaulting,

battering, and ultimately murdering the candidate they hate, invoking a political party "candidate vetting process' as a mantra, does not shield them from criminal or civil liability. Defendant's claim that Plaintiff is arguing otherwise is a strawman argument that Plaintiff has not made. Plaintiff is not challenging the Party's right to create a lawful vetting process - equally applied – irrespective of sex and disability (or race or religion or sexual orientation).

3. Mischaracterization of Constitutional Protections and Projection

Defendant Griffith argues that Plaintiff's claims infringe on her rights to freedom of speech and association when in fact, it was *Plaintiff's* free-speech rights, and Plaintiff's right to peaceably assemble with voters, that were violated *by Griffith and her agents*. She is projecting her own unlawful acts on to Plaintiff. Plaintiff has alleged that Defendant's actions involve wrongful acts far beyond the protection of the First Amendment. The U.S. Supreme Court has held that certain forms of conduct, such as fraud, intimidation, coercion, are not protected by the First Amendment (*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)). In particular, the alleged acts of blocking access to Plaintiff's campaign event and physically obstructing Plaintiff's communication with voters, as well as the removal of his campaign sign, fall outside the scope of protected activities. In United States v. Alvarez, 567 U.S. 709 (2012), the court ruled that false statements are not categorically protected under the First Amendment in the context of the Stolen Valor Act. In Schenck v. United States, 249 U.S. 47 (1919) the court held that speech creating a clear and present danger is not protected by the First Amendment, particularly in the context of coercive speech or speech encouraging unlawful acts.

The Political Speech on Plaintiff's Campaign Sign: Plaintiff's campaign sign, which read, **"*John Liccione for Congress: Building Florida, Saving America*,"** and "***voteliccione.org***" is a clear form of political speech protected by the First Amendment. Unless Griffith is prepared to argue that "Building Florida and Saving America" are somehow anathema to Democratic Party values, there was nothing remotely objectionable on Plaintiff's campaign sign that warranted her harassment and sign snatching, and calling security on him while he was talking to voters. The content of this message on the sign directly communicated Plaintiff's overarching political vision for Florida and America at large, making it a critical part of his campaign communication. Defendant Griffith's act of removing this specific sign—while not touching the signs of any of the four other candidates—demonstrates that it was the political message along with his name and campaign website address on the sign, and *only* his sign, that triggered her unlawful action. This selective sign removal and campaign interference indicates that Griffith's intent was to suppress Plaintiff's political speech, rather than an honest attempt to exercise her own right to free expression. Such conduct falls outside the scope of constitutionally protected activities and constitutes unlawful interference with Plaintiff's campaign speech and his attempts to lawfully interact with voters.

Moreover, 52 U.S.C. § 10307(b) directly applies to the allegations in this case. This federal statute prohibits any form of intimidation, threats, or coercion that interferes with a person's ability to vote or participate in election-related activities and the political process in general. Defendant's obstruction of the hallway at Plaintiff's after-debate event, preventing voters from attending Plaintiff's campaign event, is a direct violation

of this statute. These acts are designed to suppress electoral participation and restrict access to political information, constituting voter intimidation and coercion.

In addition, under the *Reed v. Town of Gilbert* (576 U.S. 155 (2015)) ruling, while the case specifically involved content-based restrictions on speech, it affirms that political speech and access to political information are critical under the First Amendment. Defendant's actions in barring voters from engaging with Plaintiff, from seeing his campaign signs, and interfering with his ability to communicate to voters without harassment and intimidation, violate these fundamental protections.

4. Physical Voter Intimidation and Coercion

Plaintiff has provided specific factual allegations of physical voter intimidation and coercion, including:

- **Blocking the Hotel Ballroom Hallway:** Defendant Griffith and her agents on July 13, 2024 at the St Petersburg/Clearwater Mariott Hotel, conspired to physically block her debate attendees from accessing Plaintiff's after-debate event and coerced them into exiting the hotel down the back exit stairwell. This conduct, aimed at interfering with Plaintiff's right to campaign freely, to peaceably assemble with voters, and voters' right to engage with him in person, violates both state and federal laws prohibiting voter intimidation and coercion. (*52 U.S.C. § 10307(b); Fla. Stat. § 104.0615*).
- **Campaign Sign Theft and Harassment at St. Petersburg College:** Defendant Griffith personally removed Plaintiff's campaign sign in front of witnesses, followed by a public confrontation in the hallway instigated solely by

her that was aimed at preventing Plaintiff from engaging with voters and from seeing his campaign sign message. Then she continued to interfere by bringing a college security guard to where he was campaigning, on false pretenses, in an effort to stop him from campaigning and to remove his sign. These actions constitute both voter intimidation and interference with lawful campaigning activities, which go beyond protected political speech.

5. Pattern of Escalating Misconduct Well Beyond Protected Speech, Assembly

Defendant's argument that her actions are protected as part of her freedom of speech and association cherry-picks the campaign vetting failing and the debate exclusion and ignores the broader pattern of escalating misconduct over Plaintiff's entire 15-month campaign. Plaintiff has alleged a systematic, deliberate, and *escalating* effort to interfere with his campaign, involving acts of voter intimidation and coercion, conspiracy to commit fraud, and campaign interference, and even battery and assault. This pattern includes not only exclusion from debates. It escalated well beyond into physical acts of intimidation, violence, and harassment, and voter intimidation, based on clear hatred and malice towards Plaintiff, which clearly fall outside any constitutional protection (*Wisconsin v. Mitchell*, 508 U.S. at 484).

6. Allegations of Conspiracy to Commit Mail Ballot Election Fraud Bolstered by Evidence

Plaintiff has sufficiently pled a conspiracy involving Defendant Griffith and others to commit election fraud, including the fraudulent submission of mail ballot orders over the Internet, and the marking of blank ballots without voter consent. These allegations

are bolstered by specific evidence, including a whistleblower communique corroborating the fraudulent activities and a massive, singular, one-day spike in mail ballot orders in Pinellas County. On June 23, 2024, Florida's publicly available mail ballot order records reflected a massive and never before or since seen spike of over 219,000 mail ballot orders on a Sunday—a highly suspicious and abnormal occurrence without precedent that was prima facie evidence of mail ballot ordering fraud. That further supports Plaintiff's claims of mail ballot fraud. Under both federal and state law, such conduct constitutes fraud and violates election laws. (*52 U.S.C. § 20511; Fla. Stat. § 104.041*). Defendant's motion to dismiss these claims is without merit.

7. Misapplication of Anti-SLAPP Statute: No Prima Facie Case Established

Defendant has failed to meet the burden of demonstrating a prima facie case under Florida's anti-SLAPP statute, which is intended to protect legitimate free speech or petitioning activity in connection with public issues. Plaintiff's allegations, including voter intimidation, campaign interference, battery and assault, conspiracy, and election fraud, fall squarely outside the scope of protected speech and cannot be shielded by the anti-SLAPP statute (*Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019)). For a defendant to succeed under anti-SLAPP protections on a motion to dismiss, they must first make prima facie showing that Plaintiff's claims are solely based on Defendant's exercise of their right to free speech or petitioning activity in connection with a public issue. To meet the burden of a prima facie anti-SLAPP claim at this stage, the Defendant must establish that:

a. <u>The Plaintiff's Lawsuit Based Solely on the Defendant's Exercise of First Amendment Rights:</u> Defendant has not presented sufficient evidence and allegations or argument to demonstrate that Plaintiff's claims arise <u>solely or</u>

primarily from constitutionally protected activities. Plaintiff's allegations in the Complaint—including conspiracy, voter intimidation, coercion, physical interference, fraudulent mail ballot mass production, and unlawful conduct at Plaintiff's campaigning venues—fall squarely outside the scope of protected free speech. These actions, as described by Plaintiff, represent criminal and civil misconduct, which cannot be shielded by anti-SLAPP protections. Further, no sworn affidavits or documented evidence were provided by the Defendant to substantiate that the activities in question were constitutionally protected expressions related to a public issue, as required to invoke anti-SLAPP.

b. "The Lawsuit is Without Merit and Filed to Suppress Free Speech:" The defendant must also prove that the plaintiff's claims lack merit and were brought primarily to intimidate or silence the defendant's speech and right to freely assemble in connection to a public issue. Defendant has not met this burden. Plaintiff argues that blocking the hotel hallway so Griffith's debate attendees could be physically herded down a back exit stairwell to prevent them from attending Plaintiff's after-debate party after her "exclusive' debate (sans Liccione) was over, is neither protected speech, nor protected assembly or association. It prevented individual voters, en masse, from *peaceably assembling with Plaintiff* at his just-down-the-hall campaign event. Griffith is accusing Plaintiff of that for which she is clearly guilty.

Plaintiff's complaint is based on numerous specific allegations of wrongful conduct—such as conspiring to fraudulently order and mark mail-in ballots, orchestrating physical barriers at campaign events, battery, and conspiracy to suppress lawful political

participation *by Plaintiff*—that are cognizable legal claims. These claims address specific, unlawful acts by the Defendant and her agents that directly harmed Plaintiff's campaign and cannot be reasonably construed as an attempt by Plaintiff to restrict legitimate free speech.

The Florida Second District Court of Appeal has clarified that a prima facie showing requires clear evidence that Plaintiff's claims are directly related to and primarily aimed at constitutionally protected activities. Gundel v. AV Homes, Inc., 264 So. 3d 304, 314 (Fla. 2d DCA 2019) states that the defendant must first present sufficient factual evidence showing that the plaintiff's lawsuit is based on protected First Amendment activity (such as free speech in connection with a public issue) before the burden shifts to the plaintiff. In this case, Defendant has failed to provide such evidence, relying instead on conclusory statements without supporting documentation or sworn affidavits.

c. Allegedly Improper Motive by Plaintiff: Defendant's anti-SLAPP claim also fails to establish that Plaintiff's motive was primarily to suppress free speech rather than to remedy further wrongful acts that directly impacted his campaign and the election at large, *at scale*. Plaintiff's allegations pertain to tangible, unlawful actions taken by Defendant and her agents that resulted in real harm to Plaintiff's ability to run an effective campaign. Without providing any factual basis for Plaintiff's alleged improper motive, Defendant's claim remains unsupported.

The court in Davis v. Mishiyev, 339 So. 3d 449, 453 (Fla. 2d DCA 2022), reinforced that a prima facie case under anti-SLAPP requires more than assertions; it requires actual

evidence showing that the plaintiff's claims are primarily based on an exercise of constitutionally protected rights such as free speech. Here, the defendant has provided no affidavits, documents, or any evidence demonstrating that Plaintiff's claims were aimed solely at suppressing lawful free speech or assembly, rather than addressing specific unlawful behavior. Davis v. Mishiyev reinforces that anti-SLAPP motions require evidence, not just assertions, and defendants must make a prima facie showing that the lawsuit primarily targets protected speech or petitioning activity. The burden shifts to the plaintiff only if the defendant provides such evidence. Conclusory statements or bare assertions by the defendant, without evidence and supporting affidavits, are insufficient to shift the burden under anti-SLAPP statutes.

8. The Supervisory Role of Defendant Griffith

Defendant Griffith's claim that she lacks supervisory power over party members is without merit. As Party Chair and the Democratic Party Boss in Pinellas county, Griffith exercises significant control over party operations and activities. Plaintiff has sufficiently alleged that her role as Chair involved directing the numerous unlawful and tortious actions that interfered with Plaintiff's campaigning abilities, including voter suppression tactics, campaign sign removal, candidate harassment, and fraudulent mail ballot ordering and ballot marking activities. Griffith cannot evade responsibility for the actions of party members under her leadership, let alone her own wrongful acts.

9. A Repeating and Escalating Pattern of Misconduct

When considered as a whole, the allegations in the complaint describe a coordinated and deliberate effort by Defendant and her co-conspirators to obstruct and fully destroy Plaintiff's campaign through unlawful means when he refused to withdraw from the

race. Defendant's reliance on the anti-SLAPP statute and First Amendment protections ignores the broader context of misconduct aimed at manipulating the electoral process and suppressing lawful political participation. (*Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

10. Conclusion

Defendant Griffith's conduct, as alleged, goes far beyond constitutionally protected free speech and association rights. Plaintiff has presented substantial allegations of voter intimidation, conspiracy, mail ballot fraud, campaign interference, battery and assault, and the implementation of a sham candidate vetting process aimed at preventing Plaintiff, and only Plaintiff, from winning the Democratic primary, at all costs. These allegations are legally sufficient to proceed to discovery.

Griffith's allegations are unsupported by sworn affidavit or evidence. The burden of proof is on Griffith to prove that her candidate vetting process existed, that it wasn't adopted just after Plaintiff announced his candidacy to target him and only him, that it was applied equally, and that due process was equally afforded to all 5 candidates. Griffith has not produced any such admissible evidence. There is no sworn affidavit attached to her motion to dismiss. For these reasons, the Court must deny Defendant's motion to dismiss and allow Plaintiff to proceed to discovery, and to present evidence in support of these serious claims.

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendant Jennifer Griffith's Motion to Dismiss.

REQUEST FOR HEARING

Plaintiff requests a hearing on Defendant Griffith's Motion to Dismiss.

Respectfully Submitted,



John W Liccione
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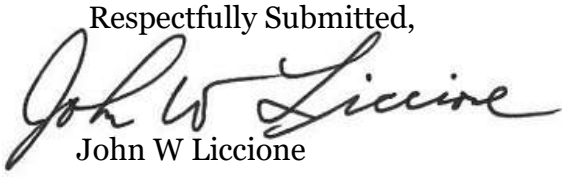
Ste 201-116
South Pasadena, FL 33707
443-698-8156
Jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this on the 21st day of October 2024, the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to GEORGE A.D. THURLOW, ESQ., Attorney for Defendant JENNIFER GRIFFITH, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, RYAN D. BARACK, ESQ. and MICHELLE E. NADEAU, ESQ., Attorney for Defendant WHITNEY FOX, at rbarack@employeerights.com, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, at jlake@tlolawfirm.com, and Defendant Mark Weinkrantz via postage prepaid first-class mail at 4738 Belden Circle, Palm Harbor, FL 34685.

Respectfully Submitted,



John W Liccione

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

John William Liccione,
Plaintiff,
v. **Case No.: 24-003939-CI**

Julie Marcus, et al
Defendants.

PLAINTIFF'S AFFIDAVIT

I, John William Liccione, Plaintiff, on this 21st day of October, 2024, do hereby solemnly swear under penalty of perjury that the facts and allegations in the enclosed Plaintiff's Response to Defendant Jennifer Griffith's Motion to Dismiss, are true and accurate to the best of my knowledge.



John W. Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS,
JENNIFER GRIFFITH,
WHITNEY FOX,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER,
PATRICK HEINZEN,
OTHER UNKNOWN CO-CONSPIRATORS,
Defendants.
_____/

DEFENDANT GRIFFITH'S MOTION FOR SANCTIONS

Defendant, JENNIFER GRIFFITH ("Griffith"), by and through her undersigned counsel, and pursuant to Fla. Stat. § 57.105 and Florida Rules of Civil Procedure 1.140 and 1.150, hereby move this Honorable Court for the entry of an order imposing sanctions against Plaintiff, JOHN WILLIAM LICCIONE, and in support thereof state as follows:

I. INTRODUCTION

This instant lawsuit is the third lawsuit that Plaintiff has filed against Griffith in a two-month period. None of these lawsuits have had any legal or factual merit, and have simply been retaliation by Plaintiff, who was a candidate in the Democratic Primary for Florida's 13th Congressional District, against those who did not support his candidacy and in two of these cases, the elections officials who administered the primary election which he lost in a landslide. Ms. Griffith is merely the Chair of a county-level political party; she has no role in administering elections, and as the Chair of a county-level political party, she and her political party have the right to decide whether or not to provide a platform to a particular candidate under the First Amendment to the United States Constitution. This Court should uphold Ms. Griffith's clear right to engage in political speech, and sanction the Plaintiff for filing numerous frivolous lawsuits that seek to interfere or punish Ms. Griffith for exercising her constitutional rights.

ELECTRONICALLY FILED 10/21/2024 02:29:56 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

II. FACTUAL BACKGROUND

1. Plaintiff was a candidate in the Democratic Primary for Florida's 13th Congressional District in the August 20, 2024 election.
2. Defendant Griffith has been the Chair of the Pinellas County Democratic Party ("PCDEC") since December 2022. PCDEC is a county-level affiliate of the Florida Democratic Party ("FDP").
3. In spring 2023, PCDEC decided to enact a "vetting process" for all Democratic candidates to determine which candidates PCDEC would provide a platform for in terms of being featured on PCDEC's website and at events. This is a very common process for political parties to utilize, and in fact, PCDEC referenced policies and legal guidance from at least three other counties in crafting its policy.
4. In June 2023, Plaintiff was informed that he did not meet the standards of PCDEC's vetting process based upon his background check and behavior, and was asked to stay away from party events (a request which Plaintiff did not oblige to on multiple occasions).
5. As confirmation of PCDEC's observations during the vetting process, the *Tampa Bay Times* ran a story on September 18, 2023[1] titled "Anna Paulina Luna's first congressional challenger has checkered past" making reference to Plaintiff having faced "trespassing and assault charges." The story makes mention of Plaintiff being "initially deemed incompetent to stand trial and involuntarily hospitalized."
6. Since being informed of his failing the vetting process in June 2023, Plaintiff made numerous social media and blog posts that chastised PCDEC and Griffith.
7. After an incident that Plaintiff alleged occurred between him and an officer of PCDEC[2], and PCDEC exercising its right to association by declining to invite Plaintiff to a Congressional debate, Plaintiff filed a lawsuit against Griffith, PCDEC, the PCDEC Secretary, and the Florida Democratic Party on July 3, 2024 (Case No. 24-002994-CI, hereinafter "*Liccione v. PCDEC*").

[1] https://www.tampabay.com/news/florida-politics/2023/09/18/john-liccione-anna-paulina-luna-congress-district-13-pinellas-democrat/

[2] In spite of Plaintiff's allegation that this incident occurred, he was unable to produce any witness to the St. Petersburg Police Department to support the complaint he filed.

8. In both social media posts and in his Complaint in *Liccione v. PCDEC*, Plaintiff mentions that he has sought two restraining orders against Griffith. While Griffith was never served with court documents from these proceedings—presumably because the Court denied Plaintiff's petition which means the Respondent is never served and there is no publicly available online record—she does not contest Plaintiff's allegations that he attempted to file these two actions against her.
9. On August 12th, 2024, Griffith (along with PCDEC and PCDEC Secretary Michael Sherosky) filed a Motion to Dismiss in *Liccione v. Griffith* under Florida's anti-SLAPP statute (Fla. Stat. § 768.295) on the grounds that (1) the primary purpose of Plaintiff's lawsuit was to quiet the protected political speech of Griffith and PCDEC; (2) that Griffith and PCDEC have a well-defined legal right to express their opinions on the qualifications of candidates for political office, such as the Plaintiff; and (3) that the other issues raised in the lawsuit were not properly pled and are non-justiciable, especially as it pertains to non-state actors such as Griffith and PCDEC. This Motion to Dismiss is set for hearing before the Honorable Thomas Ramsberger on October 1, 2024, and Defendant Griffith will supplement this Motion with the Court's ruling on the issues presented in the Motion to Dismiss.
10. After having notice of this legal defense, Plaintiff opted to include Griffith as a party to a federal lawsuit he filed on August 23, 2024 (*Liccione v. Marcus, et al*, United States District Court for the Middle District of Florida Case No. 8:24-cv-2005-SDM-NHA, hereinafter the "Federal Lawsuit"). Defendants Marcus, Fox, and Weinkrantz are also parties to the Federal Lawsuit. The Federal Lawsuit raised similar factual allegations, and attempted to plead similar causes of action, to this instant lawsuit, and sought Emergency Injunctive Relief based upon the unverified statements of "Tampa Girl." This instant lawsuit also relies upon the unverified statements of "Tampa Girl."
11. On August 26, 2024, The Honorable United States District Judge Steven D. Merryday entered an Order denying injunctive relief in the Federal Lawsuit. A copy of that order is attached as **Exhibit 1** to this Motion.
12. In his Order, Judge Merryday characterized the Federal Lawsuit as being:

> A candidate in the Democrat congressional primary, John Liccione allegedly received from an anonymous person "using the codename 'Tampa Girl'" an online message that purported to reveal the details of a

> scheme to manipulate the August 20, 2024 primary election. Based solely on Tampa Girl's message, the plaintiff sues an array of officials and requests a temporary restraining order to "prevent the certification of the August 20, 2024.

13. Judge Merryday's Order further concluded that "Nothing in the [Federal Lawsuit] establishes either a likelihood of success on the merits (an anonymous, hearsay message from 'Tampa Girl' supplies no prospectively admissible fact supporting relief)."
14. After Plaintiff (1) was served a copy of a Motion to Dismiss in *Liccione v. PCDEC* setting forth a cogent argument that Griffith's conduct was protected First Amendment Activity and (2) a Federal Judge found that there is "no prospectively admissible fact," including the anonymous statement from "Tampa Girl" support Plaintiff obtaining injunctive relief, Plaintiff opted to file this lawsuit—which is substantially similar to the Federal Lawsuit and contains overlapping allegations to those in *Liccione v. PCDEC*—on September 3, 2024.

III. THE THRESHOLD FOR SANCTIONS

15. Fla. Stat. § 57.105 governs sanctions that may be imposed on a litigant for raising unsupported claims or defenses. The statute states:

> (1) Upon the court's initiative or motion of any party, the court **shall** award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on **any claim or defense** at **any time** during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
> (a) Was not supported by the material facts necessary to establish the claim or defense; or
> (b) Would not be supported by the application of then-existing law to those material facts.

(emphasis added)

16. A party who does not have knowledge as to whether his or her claim or defense is supportable in fact and in law is required to make reasonable efforts to obtain such knowledge. See *Bowen v. Brewer*, 936 So. 2d 757 (Fla. 2d DCA 2006).
17. Attorney's fees awarded under Fla. Stat. § 57.105 are calculated from the time it was known or should have been known that the claim had no basis in fact or law. Thus, where

a claim was frivolous from the outset, the fee award should consider the defense of the claim from the beginning and not from the date of the filing of the motion for attorney's fees. See *Wood v. Haack*, 54 So. 3d 1082 (Fla. 4th DCA 2011).

18. Florida courts also have the ability to impose non-monetary sanctions.
19. The Florida Supreme Court has found it appropriate to sanction pro se litigants such as Plaintiff who "have abused the judicial process and otherwise misused [the] Court's limited judicial resources by filing frivolous, non-meritorious, or otherwise inappropriate filings" by prohibiting them from initiating further proceedings before the Court by prohibiting them from filing future pleadings, motions, or other requests unless such requests were signed by an attorney in good standing. *Lomax v. Taylor*, 143 So. 3d 920 (Fla. 2014).
20. The Second DCA, while recognizing the importance of access to the Courts, has found it appropriate to sanction pro se individuals by restricting their filing access in order to "prevent abusive filings" and stop "repetitious and frivolous pleadings." Harris *v. Gattie*, 263 So. 3d 829, 831 (Fla. 2d DCA 2019)
23. Sanctions may be imposed even when dismissal with prejudice is deemed too severe a remedy. *Rares v. Campbell*, 661 So. 2d 408 (Fla. 3d DCA 1995).

IV. EVEN AS A *PRO SE* LITIGANT, PLAINTIFF SHOULD HAVE BEEN AWARE THAT THIS INSTANT CASE HAD NO FACTUAL OR LEGAL MERIT BEFORE HE FILED IT.

24. Before filing any of his lawsuits, Plaintiff should have ascertained whether his theory was supported by any prospectively admissible fact or by law.
25. Even if Plaintiff did not bother ascertaining whether *Liccione v. PCDEC* was supported by fact or law before filing, he should have reviewed the law cited in the Motion to Dismiss which was served upon him well before he opted to file two other cases, including this instant action.
26. Even if Plaintiff did not bother ascertaining whether the Federal Lawsuit was supported by fact or law before filing, Plaintiff knew or should have known of Judge Merryday's Order in the Federal Lawsuit, which used exceptionally clear language to communicate that there were not material facts necessary to establish Plaintiff's claims, and that

anonymous statements from "Tampa Girl" were not admissible evidence. In spite of a federal judge making that finding, Plaintiff still opted to advance this cause based upon the same materials.

V. THE APPROPRIATE SANCTION AGAINST PLAINTIFF WOULD BE THE AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS, AND A PROHIBITION AGAINST FILING FURTHER ACTIONS AGAINST DEFENDANT GRIFFITH.

27. Upon the clear language of Fla. Stat. § 57.105(1), this Court must award Griffith her reasonable attorney's fees and costs should it reach the conclusion that Plaintiff knew or should have known that his case (a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts.
28. Plaintiff should have known that his case was not supported by the material facts necessary to support his claim or defense by August 26, 2024, the date Judge Merryday entered his order making that abundantly clear. And in reality, Plaintiff should have known that before filing either of his two previous lawsuits.
29. The monetary sanction of the award of attorney's fees in this case alone is insufficient. Based upon the clear fact that Plaintiff filed three cases against Griffith in a two month period, and that Plaintiff has represented that he filed two other cases against Griffith earlier this year, Plaintiff has apparently filed five (5) cases against Griffith this year, none of which have had any legitimacy.
30. It is also unknown whether a judgment for attorney's fees against Plaintiff, as a pro se litigant, would be collectable. That warrants serious consideration of alternative remedies.
31. The result of Plaintiff having filed five (5) lawsuits against Griffith—three (3) of which required hiring an attorney for a response—is that Griffith has had to expend time and money responding to these frivolous lawsuits.
32. In fact, it has come to the point where if Griffith hears a knock on the door early in the morning, Griffith and her family assume that it is Plaintiff attempting to serve her with yet another frivolous lawsuit.

33. This extreme abuse of process by Plaintiff as it pertains to Ms. Griffith deems a bar on filing pro se lawsuits—either in full or solely as it pertains to Ms. Griffith and the organizations she is affiliated with—as an appropriate and necessary sanction. Plaintiff is clearly not deterred by a Judge merely finding that his case is without merit; Plaintiff has shown that when that happens, he just goes to file another lawsuit.

VI. CONCLUSION

Plaintiff has clearly engaged in prohibited litigation tactics by filing an action against Griffith which knew was unsupported by fact and law, and in fact was informed of that by a Federal Judge in advance of filing. Pursuant to Fla. Stat. § 57.105(1), this Court should award Griffith her reasonable attorney's fees and costs incurred in defending this action. Given Plaintiff's pattern of filing frivolous actions pro se against Ms. Griffith, this Court should also impose a non-monetary sanction upon Plaintiff restricting his ability to file further pro se pleadings directed at Ms. Griffith.

Dated: September 16, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon John William Liccione via e-mail to JLiccione@gmail.com and by FedEx to 2826 54th Street South, Unit A, Gulfport, FL 33707 (Tracking # 778591286635) on this 16th day of September, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
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tmccreary@rahdertlaw.com
Attorneys for Defendant,
GRIFFITH

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. CASE NO. 8:24-cv-2005-SDM-NHA

JULIE MARCUS, et. al.,

Defendants.
_____/

ORDER

A candidate in the Democrat congressional primary, John Liccione allegedly received from an anonymous person "using the codename 'Tampa Girl'" an online message that purported to reveal the details of a scheme to manipulate the August 20, 2024 primary election. Based solely on Tampa Girl's message, the plaintiff sues an array of officials and requests a temporary restraining order to "prevent the certification of the August 20, 2024."

Under Local Rule 6.01(a), a motion for a temporary restraining order must include:

> (1) "Temporary Restraining Order" in the title;
> (2) specific facts — supported by a verified complaint, an affidavit, or other evidence — demonstrating an entitlement to relief;
> (3) a precise description of the conduct and the persons subject to restraint;
> (4) a precise and verified explanation of the amount and form of the required security;
> (5) a supporting legal memorandum; and
> (6) a proposed order.

Liccione's motion, imbedded in the complaint, fails to include a precise and verified explanation of the amount and form of the required security, fails to include a supporting legal memorandum, and fails to include a proposed order.

Also, under Local Rule 6.01(b) the legal memorandum must establish:

> (1) the likelihood that the movant ultimately will prevail on the merits of the claim,
> (2) the irreparable nature of the threatened injury and the reason that notice is impractical,
> (3) the harm that might result absent a restraining order, and
> (4) the nature and extent of any public interest affected.

Nothing in the complaint establishes either a likelihood of success on the merits (an anonymous, hearsay message from "Tampa Girl" supplies no prospectively admissible fact supporting relief) or the reason that notice is impractical. Liccione's facially insufficient motion for a temporary restraining order and all other pending motions (Docs. 3, 4, 5, 6) are **DENIED**.

ORDERED in Tampa, Florida, on August 26, 2024.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

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

John William Liccione,
Plaintiff,
v. **Case No.: 24-003939-CI**

Julie Marcus, et al
Defendants.

PLAINTIFF'S RESPONSE TO DEFENDANT CATHY SALUSTRI LOPER'S MOTION TO DISMISS FIRST AMENDED COMPLAINT

AND

REQUEST FOR HEARING

I. INTRODUCTION

1. Plaintiff John William Liccione ("Liccione") submits this response in opposition to the Motion to Dismiss filed by Defendant Cathy Salustri Loper ("Loper") and requests a hearing. Contrary to Loper's assertions, the First Amended Complaint ("Amended Complaint") sufficiently states causes of action against her based on her role as owner and editor of The Gabber Newspaper. The allegations surrounding the publication's content relate directly to voter suppression through fraudulent concealment, fraudulent misrepresentation, and publication of disinformation, which flagrantly violated Loper's own stated journalistic ethics, standards, and procedures for publishing corrections.

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2. Notably, Loper's actions cannot be protected under the guise of free speech, as they demonstrate clear malicious intent and support and a civil conspiracy to mislead voters. This case is akin to the ruling in Dominion Voting Systems v. Fox News Network, where the court found that the First Amendment does not shield knowingly false statements made with reckless disregard for the truth when it denied Fox News' motion to dismiss and allowed the case to proceed to discovery and trial. The principles established in Goldwater v. Ginzburg also underscore that failure to verify information can lead to liability when that information harms a candidate's reputation.

3. In addition, Loper's invocation of the Anti-SLAPP statute is misguided. The protections afforded to free speech do not extend to willfully published disinformation known to be false with the intent to mislead the public, particularly in the context of elections. The court should recognize that holding the news media accountable for their actions is crucial for maintaining the integrity of the electoral process, particularly in light of how these actions directly impacted Liccione's electoral chances.

II. MATERIAL FACTS AND EVIDENCE

1. Plaintiff hereby submits the following material facts and evidence not yet in the record in such detail, supported by attached EXHIBITS A through G, to provide additional texture and context to the facts as alleged in the Amended Complaint.

2. **EXHIBIT A:** The Gabber Newspaper Mission Statement and Policies on Fact Checking, Transparancy, Corrections, and Ethics. Material representations include the following:

> *a.* "*The Gabber Newspaper Mission: The Gabber Newspaper has no agenda other than to inform the public through accurate and honest reporting, to engage the community, and help us all better understand our hyper-local and regional world.*"

b. *"<u>The Gabber Newspaper Policies on Fact Checking and Transparency:</u> As a news outlet, our primary responsibility is to disseminate information in as clear, concise, and correct a manner as possible. The Gabber Newspaper's editorial staff makes every effort to confirm the veracity of facts in articles. We do this as appropriate to the nature, complexity, and time constraints of the piece. We check facts, not opinions. With hyperbolic statements, we verify the fact at its source and make every effort to clarify quotes that may be misleading. As necessary, and whenever possible, writers and editorial staff independently verify facts, claims, and allegations, particularly those made by public officials or sources.*

c. *"<u>Corrections:</u> How we handle errors in our reporting is at the heart of our ethics and transparency policies. If we're wrong, we say so — and correct our mistake as swiftly as possible. We correct errors in print, online, and across social media platforms. The Gabber Newspaper follows AP guidelines for corrections. Our writers must notify editorial staff of errors in reporting as soon as possible. We will acknowledge the error to our readers and address it clearly in an editor's note — **<u>at the top of the web post or in the first pages of our print issue.</u>** When we make corrections to a post online, **<u>we mark the date and time, and identify the incorrect information in the original post.</u>** We welcome corrections and clarifications from our readers, and **<u>will print or post them as soon as they are verified</u>**. To report a correction or clarification, please email news@thegabber.com." (emphasis added)*

d. "*<u>Ethics:</u> Integrity matters. The Gabber Newspaper acts with integrity, in print and across our digital platforms, as we gather and report news to the community. **<u>We will never knowingly circulate false information or rumors, violate public trust</u>**, or the confidence of our sources. The Gabber Newspaper strives to identify all sources. We're committed to transparency in collecting facts and assets. We do not tolerate plagiarism and all material gets proper citation. **<u>If we get it wrong, we will verify, correct, and inform our readers as swiftly as possible.</u>** The Gabber Newspaper does not engage in quid pro quo. We do not report in return for advertising or any other leverage or compensation. All paid content in The Gabber Newspaper will be clearly marked as advertisement."*

3. **EXHIBIT B:** The July 12, 2024 on-line Gabber article falsely reporting a supposedly 4-way Democratic Congressional race, absent Liccione. It still remains

on-line, uncorrected in its originally published form, as of October 7, 2024. Most relevant are the following (fraudulent mis-) representations:

a. The Headline: "***Meet the Democratic Candidates for the District 13 Congressional Election***" (Exhibit Pg 1)

b. The 1st Picture Caption: *"**The four candidates for the District 13 Congressional election** debate with each other on July 13 at the St. Petersburg Marriott Clearwater." (*Note: Conceals Liccione from readers and that Liccione was holding his own Marriott campaign event down the hall from the Congressional debate that the Party (Defendant Jennifer Griffith) refused to invite him to." (Exhibit B, Pg 1)

c. Header and Whitney Fox Feature Piece: "***Meet the District 13 Congressional Candidates***" sits above a page-wide picture of candidate Whitney Fox along with a feature write-up on Fox. (Ex B,Pg 2)

d. Mark Weinkrnatz Page-wide Picture and Feature Piece. (Ex B, Pg 3)

e. Liz Dahan Page-wide Picture and Feature Piece. (Ex B, Pg 4)

f. Sabrina Bousbar Page-wide Picture and Feature Piece. (Ex B, Pg 5)

g. The print version of the same Gabber article as was published and distributed 6 days later on July 18th, reinforcing same disinformation in hardcopy publication. (Ex B, Pg 6)

4. **EXHIBIT C:** Liccione August 11, 2024 email to The Gabber demanding they publish a correction and to run a front-page feature article on him (per their own policies and practices) to mitigate damage to his campaign: Includes Loper's non-responsive email which reads:

> *"Good morning. We did not include your name in the article because it was an article about candidates participating in a specific event, one which you did not participate. Our news and politics reporter, Patrick Heinzen, will be in touch with you tomorrow morning for a phone interview to ensure you have equal time."*

5. **EXHIBIT D:** The August 15, 2024 correction Loper ultimately published five days before the election, buried within the "Letters to the Editor" section, which misquotes and mischaracterizes the July 12th article. It reads:

> *"The Gabber Newspaper printed an article — "Meet the Democratic Candidates for the District 13 Congressional Election" — focusing on a scheduled debate hosted by the Pinellas Democratic Party. The Pinellas Democratic Party showcased four of the candidates for running for congress. The Gabber Newspaper did not include candidates who were not participating in the event, including John Liccione. The Gabber Newspaper did not intentionally omit Liccione, and regrets the mistake. The Gabber Newspaper reached out to Liccione, but did not receive a response."*

6. **EXHIBIT E**: The Front Page Story in The Gabber published on-line September 26, 2024. It self-servingly reports as the main story that Liccione is suing The Gabber for $10M (this lawsuit). Features a large cartoon picture of two birds in hats on a porch reading The Gabber Newspaper (not Liccione's picture). The Gabber's September 26h article contains the following material (mis-) representations in what is an attempt to try this case in the court of public opinion, to curry favor from its readers, and to raise donations to assist Loper in her defense against this lawsuit, as follows:

> *"The article Liccione references refers to **a meet-and-greet** held by the Pinellas Democrats. The organization invited neither Liccione **nor incumbent Anna Paulina Luna**, which is why Heinzen's article did not mention them. On Aug. 12, Loper emailed Liccione and explained this… Liccione did not respond to the email, nor did he grant Heinzen an interview…. The Gabber Newspaper has retained an attorney to represent it in the Liccione lawsuit against The Gabber Newspaper. While we believe this lawsuit will not cost us $10 million,*

> *attorneys are not inexpensive (nor should they be). This lawsuit chips at our resources, both financial and time. We hope a judge dismisses this case soon, so we can turn our attention back to reporting the news that matters to you, our faithful readers."*

7. **EXHIBIT F:** The Gabber Newspaper's 8/22/24 article quoting John Liccione's joke about his Congressional race at the April 16, 2024 Gulfport City Council meeting. Heinzen identifies Liccione as a US Congressional Candidate as follows:

> **"**Like the recent council elections here in Gulfport, my race is equally as nonpartisan and equally as non-controversial as that was." — ***"U.S. Congressional Candidate John Liccione, introducing himself to the council"***

III. ARGUMENT AND MEMORANDUM OF LAW

A. It is an undisputable fact that Loper violated every policy, procedure, and journalistic ethical standard she claims to follow: But only as it applied to Liccione.

8. In cannot be disputed that Defendant Loper, solely as her journalistic "standards" were applied to Liccione, has violated every single policy, procedure, and journalistic ethical standard, and her fact-checking and corrections publication commitments, that she herself purports to adhere to in her own publication. It is also undisputable that Loper and her reporter Heinzen *knew* Liccione was a candidate well before they published their July 12th 2024 article. (See **EXHIBIT F**, Pg 2)

9. It is also undisputable that prior to publishing The Gabber article, Loper *knew* Liccione had been excluded from the July 13th debate by Pinellas Democratic Party Chair Defendant Jennifer Griffith. It is undisputable that Loper made a conscious decision to conceal that fact from her readers, as well as concealing Defendant Griffith's reasons for

his debate exclusion. She has already admitted her knowledge of Liccione's debate exclusion in her own most recent front-page story on this lawsuit.

10. The key questions for this Court to consider when deciding whether to grant or deny Loper's motion to dismiss and her Anti-SLAPP and 1st Amendement arguments are these. Why, other than corrupt or malicious intent, would such a newspaper owner and her reporter *ever* choose to so flagrantly violate their own standards and practices in reporting on a US Congressional race in which their own home-town Gulfport Democrat is running in the primary? They already knew about his candidacy, and that the sole Gulfport congressional candidate in the race had been denied a seat at the debate table by the Democratic Party. The only "fact-checking" and follow-up reasonably necessary was to check their alleged "facts" with the excluded Democratic candidate – Liccione.

11. After having discovered that Liccione was not invited to the debate by the Democratic Party, if Loper didn't already know why, why would she *not* direct her reporter to reach out to Liccione for a comment on his unprecedented exclusion. The Pinellas Democratic party has *never before* excluded a qualified Democratic congressional candidate from one of its primary debate forums. That is obviously a topic of interest to local Gulfport residents, that one of their own was being excluded from the debate, and why. In fact, it could be reasonably said that that was a very important part of the story particularly for undecided District 13 vote-by-mail voters – especially those who were still undecided at the very time their mail-in ballots were arriving in their Gulfport mailboxes.

12. And what, if anything, was Liccione planning to do or to say publicly about his debate exclusion? What did Loper and Heinzen know in advance of publication or after

about Liccione's plan to hold his own event down the hall from the debate at the Marriott, and when did they know it?

13. Plaintiff argues that a reasonable inference the Court can make is that Loper's reason for her flagrant ethical violations were malice and corrupt and wrongful intent, to act against the public interest, and, that she had conspired with Defendant Jennifer Griffith and others to suppress knowledge of Liccione's campaign in precisely the same way Griffith was doing at the very same time on her Pinellas Democratic Party website, which also has never reported the existence of Liccione's candidacy, ever.

14. Another reasonable inference that can be drawn from the fact that Loper chose to publish the fake news article *at the worst possible moment* in the campaign – The day before the last Democratic Primary debate, and the day mail ballots were arriving in voters mailboxes - was so as to effect maximum damage to Liccione's campaign, in coordination with Defendant Griffith and other Democratic party operatives, at a time after Politico had reported that 30 percent of voters were still undecided.

15. Further, even those voters who had already heard about Liccione's candidacy, reading the fake news The Gabber article would lead them to believe that Liccione had dropped out of the race. What local newspaper, ever, would lie so flagrantly about a home-town Congressional candidate to its own home-town readers?

16. It is notable that Loper has now morphed her characterization of the *Congressional debate* at the Mariott held on July 13th into a simple, unimportant *"meet and greet held by the Pinellas Democrats."* This after she had previously reported it as a *Congressional debate hosted by the Democratic Party* in her July 12th article. This can be interpreted as a key indicator of "consciousness of guilt" as she seeks to effect

retroactive damage control to spin the negative causal effect on Liccione's campaign by excluding Liccione from her article.

17. The Court should also take notice of the fact that The Gabber Newspaper's July 12th article shows flattering pictures of Liccione's four opponents' which are accompanied by individual flattering write-ups of each candidate, which were derived from a review of their campaign websites, and that Whitney Fox was presented first ahead of Sabrina Bousbar who is alphabetically first. Whitney Fox was Defendant Griffith's and the Democratic Party's most favored candidate, and she would win the primary by 44 percentage points over 2nd place finisher Sabrina Bousbar. In contrast, The Gabber has never even asked for an interview with Liccione (until they received his email demanding they publish a correction). They have never published a picture of Liccione, or a feature article about him and his candidacy, at all, over the course of his entire 15-month campaign.

18. The Court should also take notice that Loper's reference to the Republican Anna Paulina Luna not being invited to participate in the *Democratic primary debate* is as patently ridiculous as it is immaterial. No Democratic party debate held, *ever*, has invited the Republican incumbent to a Democratic primary debate stage.

B. Loper Engaged in a Broader Conspiracy Spanning 15 Months

19. The Amended Complaint outlines a series of systemic irregularities and unlawful actions associated with the August 2024 primary election, emphasizing the suppression of his candidacy. The allegations against Loper are not merely incidental; they stem from her decision to conceal the very existence of Liccione as a candidate to her readers. They concealed that Liccione was holding a campaign event alongside a candidate debate event held on the same day at the same hotel, the day before both events were

held, and the day after mail-in ballots had just been mailed out to Pinellas County voters. From this, reasonable inferences can be made, given the nexus in circumstances, time, and timing of the mail-in ballot drop, that clearly paint Loper's motives in a brightly malicious light, actions which directly contributed to Liccione's election loss.

20. Loper's editorial choices and the motives behind them, are pivotal to understanding the broader conspiracy that affected voter awareness and choice. The failure to report on Liccione's candidacy at the moment mail-in ballots were going out to voters is inherently linked to the allegations of voter suppression and manipulation by way of disinformation, providing a basis for Loper's involvement in the alleged conspiracy.

21. The publication of The Gabber Newspaper article on July 12th that concealed from the public Liccione's candidacy, the fifth candidate in the Democratic primary, contradicts her stated mission. It raises serious concerns about the integrity, and ethics, of their journalistic practices, and the degree to which Defendant Loper's actions stemmed from corrupt intent, malice, and whether she was taking parting in a conspiracy versus acting in a truly independent fashion.

22. Further, the failure to publish a proper correction in accordance with Loper's own journalistic practices and standards for corrections, and given that Loper waited several *weeks* to publish a "non-conforming" correction which she buried deep within the "Letters to the Editor" section, coupled with her self-contradictory rationalization for having made the misrepresentations, not only undermines Loper's claims of objectivity and commitment to the truth and "independent" journalistic ethics, but it also demonstrates a blatant disregard for the electoral process and the rights of all its readers who are registered voters.

23. This fake news article and Loper's three big lies - (1) only 4 candidates, (2) Liccione's candidacy doesn't exist by way of fraudulent concealment, and (3), we didn't include Liccione because the article was only about those invited to the debate - serve as a critical example of how compromised journalistic practices can contribute to voter suppression, bewilderment, and eroded trust in our Democratic institutions, including our media outlets. Defendant Loper succeeded in destroying truth. Truth about who was even running in the local Congressional election as perceived in the minds of enough voters. It is a form of insidious and corrupt psychological warfare. Loper, along with Defendant Griffith and others, conspired to destroy truth and rig the election outcome in favor of Whitney Fox. And it worked.

C. Loper's Self-Contradictory Statements in her Correction (EXHIBIT D)

24. In her response to Liccione's demand for a correction, Loper claims falsely: "*We did not include your name in the article because it was an article about candidates participating in a specific event, one which you did not participate in.*" This assertion presents a critical inconsistency when juxtaposed with her further statement that "*The Gabber Newspaper did not intentionally omit Liccione.*" But that's exactly what Loper did…because, as she herself admits, the article was supposedly only about Candidates that she knew were attending the debate – and she obviously knew Liccione wasn't one of them.

25. These two statements cannot both be true at the same time. If Loper's justification for not including Liccione in the article hinges on the premise that it only covered candidates who were invited to the debate, then her claim of "not intentionally omitting" him becomes untenable. If the article was genuinely restricted to candidates who were invited, then Liccione's absence logically leads to his *intentional* omission

from the article by Loper. Conversely, if there was no intent to omit Liccione, then the article could not justifiably exclude him based on participation criteria, suggesting a failure in journalistic responsibility to inform the electorate about all candidates running for the congressional seat: Especially since he was actively campaigning and hosting an event in the same hotel at the same time just down the hall from the debate ballroom.

26. This glaring contradiction undermines Loper's credibility and highlights an obvious, willful effort to mislead voters regarding Liccione's candidacy, and to mislead this Court now as well, to conceal her malicious intent. The implications of such discrepancies are significant, as they illustrate a pattern of willful neglect towards factual reporting contrary to the very ethics and standards Loper espouses in her publication's policies.

27. Moreover, the failure to include Liccione's candidacy aligns with broader allegations of voter suppression and manipulative tactics, akin to the disinformation strategies exposed in cases like *Dominion Voting Systems v. Fox News*, where misleading narratives can significantly influence electoral outcomes and destroy reputations. As media accountability remains paramount in safeguarding democracy, Loper's self-contradictory and mutually exclusive claims illustrate a willful lapse in journalistic integrity for malicious reasons that warrants judicial review and proceeding to discovery without delay, much in the same manner Dominion was permitted to propound discovery of Fox News' executives and reporter and TV hosts' records.

IV. REBUTTAL OF LOPER'S SPECIFIC LEGAL ARGUMENTS

A. The Amended Complaint Does Not Constitute a Shotgun Pleading.

28. Loper's characterization of the Amended Complaint as a "shotgun" pleading is unfounded. Each count clearly incorporates relevant facts allegations, with adequate specificity, that outline the specific actions of each defendant, including Loper, and explains how those actions relate to the legal claims made. The Amended Complaint provides sufficient factual detail regarding Loper's actions and the impact they had on Liccione's candidacy, satisfying the requirement for clarity and specificity and detail in pleading.

B. Fraudulent Omission, and Voter Suppression.

29. Loper's argument that her actions fall under the protection of free speech neglects the fundamental principle that the First Amendment does not protect fraudulent or misleading speech about a public figure when it is undertaken for corrupt or malicious purposes. By deliberately and willfully omitting the existence of Liccione's campaign in the only Gabber article in the entire 15-month Congressional race that supposedly covered all the candidates, just a month before the election, Loper engaged in an act of voter suppression by way of fraudulent concealment and fraudulent misrepresentation. The Gabber Newspaper's publication failed to mention Liccione as the fifth candidate, and claimed falsely there were only 4 candidates, two critical details that directly impacted voter awareness and choice. This deliberate omission not only misinformed the electorate but also violated Liccione's rights as a candidate and a voter. Plaintiff argues that more than enough facts and allegations have been pleaded to supporting the presence of malicious intent and a reckless disregard for the truth.

30. The right to free speech does not extend to the publication of information that can mislead the public or suppress critical electoral information. The misleading nature of Loper's article constitutes a form of defamation by way of fraudulent concealment in combination with a big lie by omission, specifically designed to create a patently false narrative around the local Congressional electoral landscape. Loper wanted those in her audience who already knew about Liccione's candidacy to believe that Liccione had dropped out of the race. It was a one-two punch to Plaintiff's campaign at its most critical moment: just one day after mail-in ballots were sent out to voters. Loper's timing was pitch perfect and was fully coordinated with the Pinellas Democratic Party Chair, Defendant Jennifer Griffith and others in the Democratic party.

31. Just how did Loper and her reporter Defendant Heinzen even find out about the July 13th debate in the first place? It is likely they were informed by local Democratic party officials, and the Court can reasonably infer they specifically told Loper they didn't want the existence of Liccione's candidacy, or even a photograph of him, to appear in Loper's newspaper alongside their favored candidates, particularly their most favored candidate Whitney Fox.

32. As noted in *Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011), courts must evaluate whether the speech is misleading. Additionally, in the recent case of *Dominion Voting Systems v. Fox News Network, LLC*, the court ruled against Fox's motion to dismiss, noting that the First Amendment does not provide a blanket protection for statements made with actual malice or those that are knowingly false and made with reckless disregard for the truth. The court found that the statements made by Fox News were indicative of actual malice, which is relevant to this case as it establishes a

precedent that supports the notion that Loper's willful omissions and fraudulent misrepresentations cannot be shielded under the guise of free speech when they directly harm Liccione's electoral chances.

C. Violation of Section 104.041 and Other Statutory Claims.

33. While Loper argues that Section 104.041 does not provide a private right of action, the essence of Liccione's claims relates to the broader allegations of systemic election fraud and conspiracy to manipulate election outcomes, which includes actions taken by Loper in her capacity as a journalist, editor-in-chief, and newspaper owner. The allegations present a scenario in which Loper's actions contributed to a scheme designed to undermine the electoral process, which warrants a careful examination of her role in this context.

D. Civil Conspiracy and State Action.

34. Loper's assertion that there can be no conspiracy claim is wrong as a matter of fact and law, given the facts and allegations as pleaded. The Amended Complaint sufficiently alleges that Loper acted in concert with other defendants to perpetuate an unlawful scheme, with specificity and particularity. The publication's misleading content about the Congressional primary's 5-candidate pool directly aligns with the allegations of conspiracy. Furthermore, although Loper is a private citizen, the actions taken in connection with public elections can, under certain circumstances, establish sufficient ties to state action (e.g., Defendant Julie Marcus), especially when the conduct involves manipulation of the electoral process through disinformation and mail ballot fraud.

E. Intentional Interference with Prospective Economic Advantage.

35. The claim for intentional interference with prospective economic advantage is based on Loper's actions in publishing content that effectively excluded Liccione from vital voter engagement opportunities and voter knowledge of the existence of his very candidacy. As a candidate, Liccione's economic and reputational interests, particularly given that he is attempting to come off social security disability, were directly harmed by Loper's corrupt editorial decisions. They were not merely general public communications, but targeted actions laser-focused solely on Liccione that suppressed voter knowledge of his campaign, *and only his campaign*. Loper targeted no other candidate for exclusion, exactly as Defendant Jennifer Griffith did. Loper also suppressed voter knowledge of Liccione's critical campaign event held just down the hallway from the Congressional debate he was excluded from, an event at which Democratic party officials such as Defendant Jennifer Griffith went a bridge further, by acting in concert with others to physically block voter access to Liccione's event by using tables to barricade the hallway in front of his event ballroom at the Mariott.

F. Rebuttal of Anti-SLAPP Argument.

36. The Anti-SLAPP statute aims to protect individuals from retaliatory lawsuits targeting their free speech rights. However, it cannot shield defendants from liability for damages when their actions involve fraudulent conduct, intentional interference in an election, defamation, and other such civil causes of action. As outlined in *Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019), courts must carefully evaluate whether the alleged speech is genuinely related to a public issue, and, more importantly, whether it is delivered in good faith and without intent to mislead.

37. Loper's Motion fails to adequately address the intent behind her publication of such falsehoods and the tangible harm caused to Liccione's electoral prospects. The notion that Loper is entitled to attorney's fees under the Anti-SLAPP statute is misplaced because the allegations against her go way beyond mere speech; they are rooted in actions that undermine the very fabric of democratic processes by way of conspiracy to suppress voter knowledge of a "party-disfavored" Democratic Congressional candidate for Congress in his own town of Gulfport, Florida, and the greater Congressional District 13 in Pinellas County.

V. CONCLUSION

38. It is vital to hold Loper accountable not only for Plaintiff's pursuit of justice, but also to uphold the integrity of the electoral process for both voters and candidates, irrespective of political party. In Defendant Loper's case, as the only mainstream local media outlet based in Gulfport itself, it is vital to hold her accountable, like Dominion succeeded in doing with Fox News, and as Smartmatic has now done with One America News and Newsmax in their lawsuits, for the damages they caused that contributed to the social chaos and political violence that ensued in the aftermath of the 2020 election, and the damages Loper has caused Plaintiff.

39. Holding renegade "mainstream media" outlets liable for voter suppression, fraudulent concealment, disinformation peddling, and conspiracy by awarding not only compensatory, but also punitive damages, is the proper legal and social remedy to deter such wrongful behavior in the future by those purporting to hold journalistic ethics dear as their sales pitch and value proposition, and as a fund-raising strategy, to their audience.

WHEREAS, for the reasons stated above, Plaintiff respectfully requests that this Court:

A. Deny Defendant Loper's Motion to Dismiss and allow this case to proceed to discovery and trial.
B. To the extent the Court finds any particular section of the Amended Complaint legally deficient or lacking procedurally or otherwise, that it grant Plaintiff leave to submit a 2nd Amended Complaint.

REQUEST FOR HEARING

Plaintiff requests a hearing on this matter.

Respectfully submitted,



John W. Liccione, Plaintiff
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Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John Liccione, Plaintiff, do hereby certify that on this 7th day of October, 2024, I did serve the above Plaintiff's Response to Defendant Loper's Motion to Dismiss on all Defendants in the manner of service specified below:

1. James Lake, attorney for Defendant Cathy Salustri Loper (via e-file and serve, email)
2. George Thurlow, attorney for Defendant Jennifer Griffith (e-file and serve, email)
3. Ryan Barack, attorney for Defendant Whitney Fox (e-file and serve, email).
4. Kirby Kreider, attorney for Julie Marcus (e-file and serve, email).
5. Defendant Mark Weinkrantz via postage pre-paid 1st class mail at 4738 Belden Circle, Palm Harbor, FL 34685
6. Defendant Patrick Heinzen via postage pre-paid 1st class mail at 12000 4th St N Apt 134, Saint Petersburg, FL 33716



John W. Liccione

EXHIBIT A

The Gabber Newspaper's Website "About" Page as captured on 10/7/24



thegabber.com/about-the-gabber-newspaper/

Relaunch to updat

ABOUT ADVERTISE! GET YOUR GABBER SUPPORT

Search this website

SEARCH

The GABBER

FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER

SUBSCRIBE NOW to get The Gabber delivered to your inbox every Thursday! THE WEEKLY

NEWS ARTS FOOD LIFESTYLE EVENTS GULFPORT WEBCAM CURRENT ISSUE CLASSIFIED ADS STORM COVERAGE

ABOUT THE GABBER

The GABBER

FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER

Gulfport's Number-One News Source

The Gabber Newspaper History

The Gabber Newspaper — originally the *Gulfport Gabber* — was founded in 1968 by George Brann, primarily to cover Gulfport city council. Brann's paper soon became a vital resource for the community, expanding the advertising base and coverage, to include features, community news and events. Elsie and Ted Havness bought the paper from Brann in 1980 and sold to Ken and Deb Reichart 1992, who owned the paper for 28 years before selling to Cathy Salustri Loper and Barry Loper in June 2020.

The Gabber Newspaper is the oldest independent weekly newspaper in Florida. We serve South Pinellas communities — from Redington Beach to Tierra Verde; from Gulfport to Pinellas Park; and in south, west, and downtown St. Petersburg, you'll find local news, community events, in-depth feature stories, and the most extensive classifieds of any weekly newspaper in the area.

The Gabber Newspaper is an independent, family owned newspaper. We're proud of our history and our future.

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future.

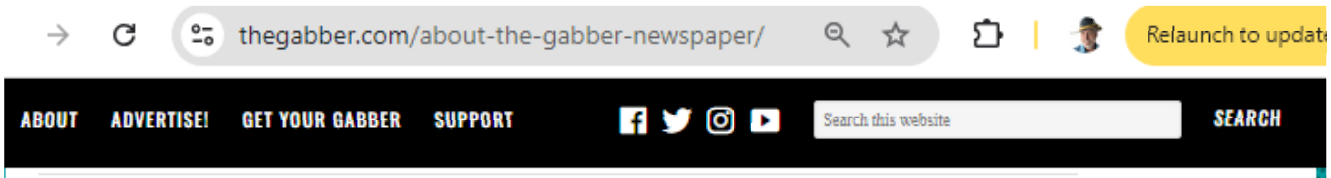


The Gabber Newspaper Mission

The Gabber Newspaper has no agenda other than to inform the public through accurate and honest reporting, to engage the community, and help us all better understand our hyper-local and regional world.

We believe all politics are local, and that what we do, as journalists and as private citizens — even on a small scale — echoes throughout our community. Our mission and values are at the heart of everything we do, from political and cultural reporting, to design elements and community involvement.

The Gabber Newspaper Policies on Fact Checking and Transparency



The Gabber Newspaper Policies on Fact Checking and Transparency

As a news outlet, our primary responsibility is to disseminate information in as clear, concise, and correct a manner as possible.

The Gabber Newspaper's editorial staff makes every effort to confirm the veracity of facts in articles. We do this as appropriate to the nature, complexity, and time constraints of the piece.

We check facts, not opinions. With hyperbolic statements, we verify the fact at its source and make every effort to clarify quotes that may be misleading.

As necessary, and whenever possible, writers and editorial staff independently verify facts, claims, and allegations, particularly those made by public officials or sources.

Corrections

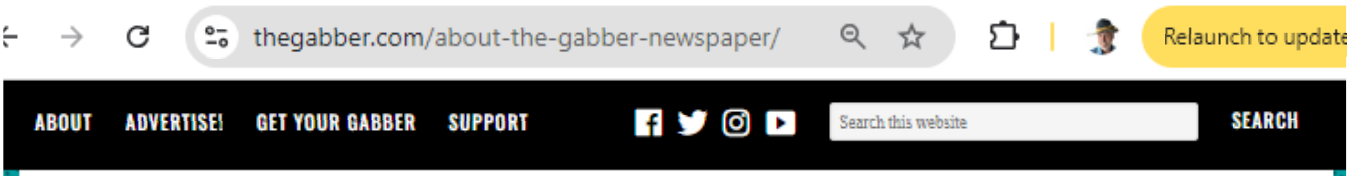
How we handle errors in our reporting is at the heart of our ethics and transparency policies. If we're wrong, we say so — and correct our mistake as swiftly as possible. We correct errors in print, online, and across social media platforms.

The Gabber Newspaper follows AP guidelines for corrections. Our writers must notify editorial staff of errors in reporting as soon as possible. We will acknowledge the error to our readers and address it clearly in an editor's note — at the top of the web post or in the first pages of our print issue. When we make corrections to a post online, we mark the date and time, and identify the incorrect information in the original post.

We welcome corrections and clarifications from our readers, and will print or post them as soon as they are verified. To report a correction or clarification, please email news@thegabber.com.

Ethics

Integrity matters. *The Gabber Newspaper* acts with integrity, in print and across our digital platforms, as



Ethics

Integrity matters. *The Gabber Newspaper* acts with integrity, in print and across our digital platforms, as we gather and report news to the community.

We will never knowingly circulate false information or rumors, violate public trust, or the confidence of our sources. *The Gabber Newspaper* strives to identify all sources. We're committed to transparency in collecting facts and assets. We do not tolerate plagiarism and all material gets proper citation.

If we get it wrong, we will verify, correct, and inform our readers as swiftly as possible. *The Gabber Newspaper* does not engage in quid pro quo. We do not report in return for advertising or any other leverage or compensation. All paid content in *The Gabber Newspaper* will be clearly marked as advertisement.

Ownership and Funding

The Gabber Newspaper is part of Thursday Morning Media, Inc., a for-profit Florida corporation wholly owned by Cathy Salustri Loper and Barry Loper. Thursday Morning Media receives the bulk of its funding from *The Gabber Newspaper* advertisers. Readers make donations. Some have also made loans to secure the paper's future in the community. **Owners in no way allow funding or investors to dictate editorial decisions.**

SUPPORT THE GABBER

Team Gabber brought back the print version of the newspaper, and we've redesigned our website to make it easier for you to get the news. We're not out of the woods yet, and every little bit helps pay our reporters, printer, and other expenses. Support local news and families — donate now to keep *The Gabber Newspaper* serving the community it loves!

Please support local news and The Gabber Newspaper!

EXHIBIT B

The Gabber July 12th News Article Falsely Reporting a Supposed 4-Way Democratic Congressional Primary and Concealing the Existence of Liccione's Campaign from Readers

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NEWS ARTS FOOD LIFESTYLE EVENTS GULFPORT WEBCAM CURRENT ISSUE CLASSIFIED ADS STORM COVERAGE

Meet the Democratic Candidates for the District 13 Congressional Election

July 12, 2024 by Patrick Heinzen



The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.
Photo courtesy of the City of St. Petersburg

GULFPORT FL WEBCAM



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Gulfport Beach Cam
Downtown Gulfport Cam
Gulfport Marina East Cam
Gulfport Marina West Cam

GABBER GABS

Which Gabber Webcam Is Your Favorite?

- The Marina Cams.
- Beach Cam.
- Downtown Gulfport Cam.
- Casino Cam.

VOTE

View Results
Polls Archive

With election season coming back around, Pinellas County residents look to learn more about the candidates up for election. The district stretches from the southern parts of St. Pete Beach up to Tarpon Springs. At 6 p.m. on July 13, the Pinellas Democratic Party hosts a debate between four candidates.

Meet the District 13 Congressional Candidates:

Whitney Fox

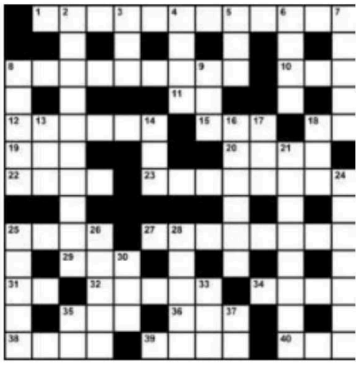


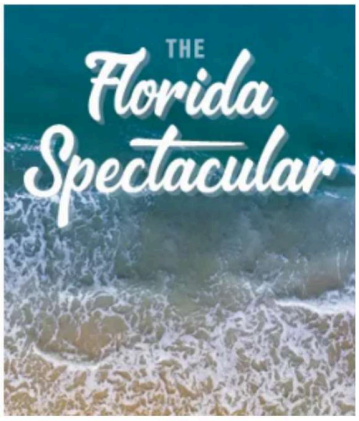
Whitney Fox looks to take the District 13 Congressional seat in the upcoming election.
Photo via FloridaPolitics

Fox's website describes her as, "A mother who will fight to improve the quality of life for Florida's 13th district and the American people. Some focuses for her candidacy include protecting women's reproductive rights and healthcare. Also, she looks to protect Social Security and Medicare, and lower prescription drug costs.



CROSSWORD





Mark Weinkrantz



What does Mark Weinkrantz hope to achieve if elected to the District 13 Congressional seat?
Photo Via Mark Weinkrantz

Weinkrantz is similar in his approach to women's reproductive freedoms. Along with this, his website highlights how, "He believes in the American Dream and recognizes the need for compassionate and comprehensive immigration policies that honor America's legacy as a nation of immigrants."

The District 13 Congressional election candidates are not the only people you will vote for. Read about the Pinellas County Supervisor of Elections candidates.

Liz Dahan



Liz Dahan prepares for the debate for the District 13 Congressional election.
Photo via FloridaPolitics

Dahan also focuses on protecting women's rights. Her approach towards Social Security and medicare is similar to Fox's. Also, her website states, "She is passionate about protecting Florida's natural environment and recognizes that our vulnerability to rising sea levels, hurricanes, and coastal erosion requires bold legislative measures aimed at reducing carbon emissions, investing in renewable energy, and enhancing our natural defenses against climate-related disasters."

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Sabrina Bousbar



Sabrina Bousbar's campaign for the District 13 Congressional election is heating up.
Photo via FloridaPolitics

Bousbar's website describes her as a "public servant and commonsense problem solver." Her goals are to make sure that families and individuals have access to viable "education, healthcare, housing, and jobs that every family needs and deserves."

Want More Election News?

The Gabber Newspaper covers elections on the South Pinellas beaches, Gulfport, and South Pasadena. Want to make an informed decision at the polls? Subscribe to The Weekly and The Beach Barnacle, our two weekly newsletters. And make thegabber.com your homepage to stay up-to-date on all the news in Gulfport, South Pinellas, and the beaches.

Debate Between Democrats

Meet the Democratic Candidates for the District 13 Congressional Election

By Patrick Heinzen

With election season coming back around, Pinellas County residents look to learn more about the candidates up for election. The district stretches from the southern parts of St. Pete Beach up to Tarpon Springs. At 6 p.m. on July 13, the Pinellas Democratic Party hosts a debate between four candidates.



FLORIDAPOLITICS

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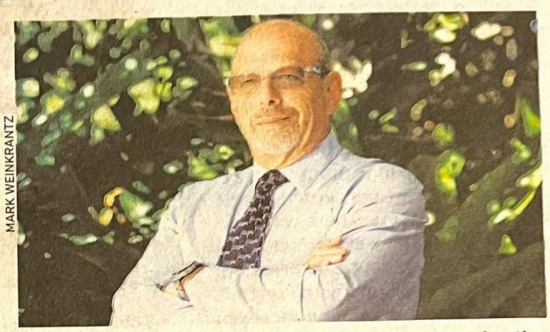

MARK WEINKRANTZ

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FLORIDAPOLITICS

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FLORIDAPOLITICS

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Sabrina Bousbar

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EXHIBIT D

The Gabber Newspaper's Correction Published on 8/15/24
(as captured on 10/7/24

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NEWS ARTS FOOD LIFESTYLE EVENTS GULFPORT WEBCAM CURRENT ISSUE CLASSIFIED ADS STORM COVERAGE

Voices: Letters to the Editor August 15

August 15, 2024 by Cameron Healy



The August 15 letters to the editor of *The Gabber Newspaper*.
Photo by June Johns

The Gabber Newspaper's August 15 Letters to the Editor

Boat Communities

I've spent many years in and around your city and I'm disgusted with the negligence I see pertaining to your liveaboard community. After viewing the devastation of the last few minor storms, and now the loss of life, how will this city ever prepare for a more serious event? This town is overburdened with tons of untenable ordinances and the time has come to add a useful new one. It's time to apply and enforce restrictions on liveaboards close to shore.

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Gulfport Beach Cam
Downtown Gulfport Cam
Gulfport Marina East Cam
Gulfport Marina West Cam

GABBER GABS

Where Do You Go First To Prepare for a Hurricane?

- A home improvement store.
- The supermarket.
- I evacuate.
- Nowhere. I'm already prepared.

VOTE

View Results
Polls Archive

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Florida's liveaboard community certainly makes the state a better place, but as usual, guidelines must be implemented at a local level for emergency preparedness and safety. Seeing the preventable loss of life and devastation happen over and over simply signals the need for greater enforcement and education. And the responsibility on this local waterway — whether you want to pawn off responsibility or not — rests with the city and not the state or feds. The damage here occurs to the city, and instead of again wasting months waiting for the salvage and pier repair is unacceptable and negligent.

Proper and regular inspection of the anchorage is necessary, as well as civic enforcement for those registered vessels not taking cleanup duties responsibly. There is also no reason based on safety that so many vessels should be moored that close to the shoreline or so close to each other. Especially since moored boats rely on other small vessels to get ashore anyway.

I've seen with my own eyes a patrol officer pestering people tying rowboats to the casino pier for little reason (you know who you are).

The time has come to manage that officer better, and move him into the harbor on a small craft for wiser lifesaving prevention and enforcement.

—Gino Batali, St. Petersburg

Read the August 1 Letters to the Editor.

Corrections

The Gabber Newspaper printed an article — "Meet the Democratic Candidates for the District 13 Congressional Election" — focusing on a scheduled debate hosted by the Pinellas Democratic Party.

The Pinellas Democratic Party showcased four of the candidates for running for congress. *The Gabber Newspaper* did not include candidates who were not participating in the event, including John Liccione.

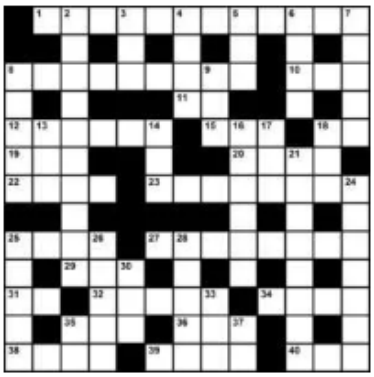
The Gabber Newspaper did not intentionally omit Liccione, and regrets the mistake. *The Gabber Newspaper* reached out to Liccione, but did not receive a response.

We're the calm during the storm. No hype, only help!

Bookmark *The Gabber Newspaper*'s storm coverage page for quick access to relevant tropical storm



CROSSWORD





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Bookmark *The Gabber Newspaper*'s storm coverage page for quick access to relevant tropical storm updates. No hype, no guessing, just updates on shelters, sandbags, and closures. And sign up for text alerts to get real-time guidance and prep advice when there's a named storm heading our way. Also, check out our downtown Gulfport and beach web cams.

About Letters to the Editor

We want your letters! The Gabber Newspaper *encourages letters (one per person, per month). Include your real name and city. Please keep it short – <250 words. We may edit letters for content, clarity, and length. We don't print letters that incite violence or include attacks on private citizens.* The Gabber Newspaper *also doesn't print letters that intentionally mislead people. Letters may appear online and/or in print. We may print comments that appear on* The Gabber Newspaper's *website and social media. Opinions expressed do not necessarily represent the views of* The Gabber Newspaper *owners, advertisers, or staff. Send letters to news@thegabber.com or 2908-B Beach Blvd. S., Gulfport, FL, 33707.*

by Cameron Healy

SUPPORT THE GABBER

Team Gabber brought back the print version of the newspaper, and we've redesigned our website to make it easier for you to get the news. We're not out of the woods yet, and every little bit helps pay our reporters, printer, and other expenses. Support local news and families — donate now to keep *The Gabber Newspaper* serving the community it loves!

Please support local news and The Gabber Newspaper!

Filed Under: Voices
Tagged With: Gulfport Florida, Gulfport Florida City Hall, Gulfport Florida Elections, Gulfport Florida Police, The Gabber Newspaper

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EXHIBIT C

John Liccione's email to The Gabber Newspaper
Demanding Publication of Correction,Feature Article, Litigation Hold on Records and Defendant Loper's Response

John Liccione for Congress
KIDS FIRST, ABOVE ALL ELSE

John Liccione <john@voteliccione.org>

John Liccione for Congress Letter to the Editor, Litigation Hold Notice, Cease and Desist

John Liccione <john@voteliccione.org> Sun, Aug 11, 2024 at 12:25 AM
To: news@thegabber.com

Consider today's Campaign Press Release below as Chapter 1 of my letter to the editor.

GabberGate Scandal Explodes in Florida CD-13 Congressional Race: The Gabber Newspaper Accused of Criminal Voter Suppression, Cover-up of Gulfport City Procurement Fraud

It has now been 29 days since published your fraudulent 7/12 article suppressing my voter turnout in a federal Congressional race in violation of State and Federal election laws by claiming there were only 4 candidates in the Democratic primary when you knew I am the 5th candidate.

Even Rupert Murdoch's Fox News reports on the EXISTENCE of all Democratic primary candidates in federal elections.

These are willful malicious acts that were and still are deliberately intended to cause me severe financial and election damages which continue to mount every hour.

It is now midnight on 8/9/11. You have yet to publish a correction, nor have you pulled down your fraudulent article, nor have you contacted me to do a feature story on me like you do, as a matter of standard practice, in elections affecting your readers, especially candidates living and running in Gulfport itself.

As of midnight, there are just 224 hours left until the polls open on August 10th.
224 hours left to take immediate corrective action. I'll give you 24.

NOTICE OF LITIGATION HOLD

You are hereby notified that pursuant to pending litigation against you, that all records pertaining to me in any way, and to my Congressional election at large, and with Pinellas Democratic Party officials, with Florida Democratic Party Officials, and with Democratic National Committee officials, from January 1, 2023 to present and on-going, are to be placed on litigation hold and preserved. Any attempts to destroy these records will subject you to discovery sanctions.

CEASE AND DESIST NOTICE

I hereby demand you cease and desist publishing falsehoods about my Congressional race and about me personally and any and all such other acts serving to suppress my voter turnout and damage my reputation.

What you do in the next 24 hours to correct your fake news article, to give me for the first time fair, balanced, and accurate news coverage, to offer free "corrective" advertising on both your website starting today as well as in your next printed edition, including placing my picture and article about me on your entire front page, and a full page story inside, and accurately covering the two Gulfport City Government scandals I've just exposed in the last 48 hours, will perhaps serve to stem a bit of the bleeding.

Tick tock.

John Liccione
The Rebel Democrat Engineer for Congress
Florida's 13th District
John@VoteLiccione.org
443-698-8156 (Signal/Ph)
www.voteliccione.org

John Liccione for Congress
KIDS FIRST, ABOVE ALL ELSE

John Liccione <john@voteliccione.org>

Re: John Liccione for Congress Letter to the Editor, Litigation Hold Notice, Cease and Desist

Cathy Salustri Loper <cathy@thegabber.com> Mon, Aug 12, 2024 at 10:46 AM
To: John Liccione <john@voteliccione.org>
Cc: Patrick Heinzen <cityhall@thegabber.com>

Mr. Liccione,

Good morning. We did not include your name in the article because it was an article about candidates participating in a specific event, one which you did not participate.

Our news and politics reporter, Patrick Heinzen, will be in touch with you tomorrow morning for a phone interview to ensure you have equal time.

Cathy Salustri
Publisher and Editor-in-Chief
E: cathy@thegabber.com
P: 727-321-6965 **M:** 727-656-5420
2908-B Beach Blvd. S., Gulfport, FL 33707
thegabber.com

The GABBER
FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER

EXHIBIT E

The Gabber's 9/26/24 Front-Page Article on Liccione Lawsuit

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FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER
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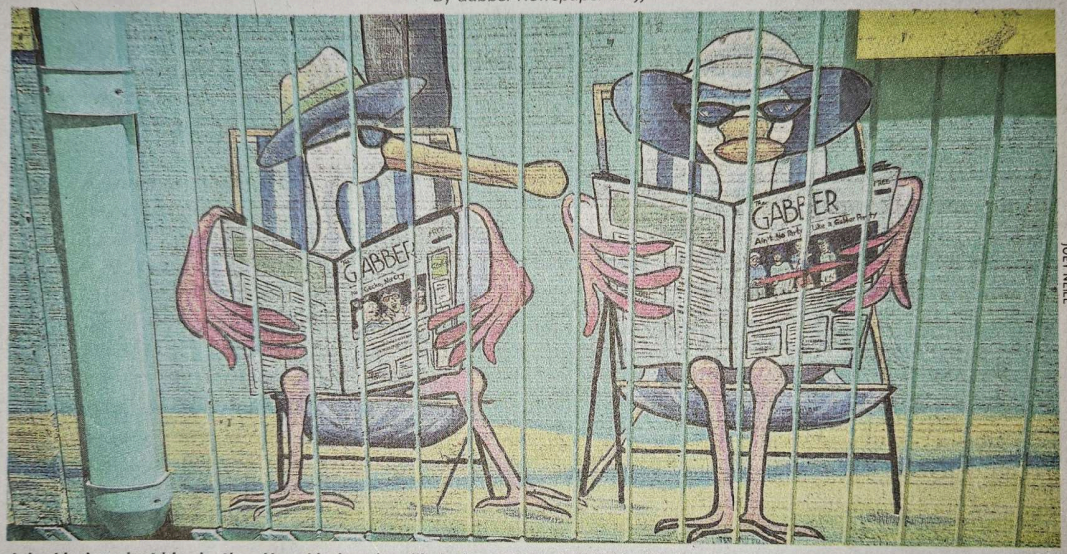
THE GABBER.COM
No. 2884 September 26, 2024- October 2, 2024

Sued for $10M

By *Gabber Newspaper Staff*



JOEY NELL

John Liccione lost his election. Now, Liccione has filed a lawsuit against *The Gabber Newspaper*, along with others, for $10 million.

For the first time in its 56-year history, someone is suing *The Gabber Newspaper*. John Liccione, a Gulfport resident who lost his primary bid to represent Florida's 13th Congressional District, has filed a suit against both Patrick Heinzen, *The Gabber Newspaper*'s news and politics reporter, and Cathy Salustri Loper, the owner and publisher of the paper.

Heinzen and Salustri Loper are not alone in this lawsuit, however. The case – 24-003939-CI – also names Pinellas Supervisor of Elections, Julie Marcus; Jennifer Griffith, Chair of the Pinellas Democratic Executive Committee; Whitney Fox, the successful

***Lawsuit* continued on page 6**







ELECTRONICALLY FILED 10/22/2024 09:58:48 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Lawsuit continued from cover

instructions for completion.) ...judicial workload data pursuant to Florida Statutes

I. CASE STYLE

Plaintiff John William Liccione

Case No.:

Vs.

Defendant Julie Marcus, Jennifer Griffith, Whitney Fox

Mark Weinkrantz, Cathy Salustri Lopes, The Gabber Newspaper, LLC

Section: Civil

CATHY SALUSTRI

II. AMOUNT OF CLAIM: Please indicate the estimated amount of the claim rounded to the neares
amount of the claim is requested for data collection and clerical processing purposes only. T
shall not be used for any other purpose.

_____ $8,000 or less	_____ $50,001 - $75,000
_____ $8,001 - $30,000	_____ $75,001 - $100,000
_____ $30,001 - $50,000	$10M Over $100,000

III. TYPE OF CASE (If the case fits more than one type of case, select the most defin
If the most descriptive label is a subcategory (is indented und
place an x in both the main category and subcategory boxes.

John Liccione is suing *The Gabber Newspaper*, among other entities, for $10M.

Democratic candidate for Florida's 13th District; Mark Weinkrantz, who ran in the Democratic primary for Florida's 13th District; and "other unknown co-conspirators," as the complaint reads.

What does Liccione say happened? Election fraud, conspiracy to commit election fraud, and federal election fraud; civil rights violations; computer fraud and abuse; intentional interference with prospective economic advantage; voter intimidation and voter suppression; and Government in the Sunshine violations.

Liccione wants $10 million. He also wants the judge to nullify the Aug. 20 primary results for Florida's 13th Congressional District, order a special election for same, and to order the Pinellas County Supervisor of Elections to "produce and deliver to Plaintiff the public elections records already requested and otherwise will reasonably request in the future, at zero cost to Plaintiff."



How Does *The Gabber Newspaper* Factor Into These Charges?

Here's what Liccione wrote in the complaint that includes his lawsuit against *The Gabber Newspaper*:

Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, The Gabber Newspaper, *published a fraudulent article about the CD-13 Congressional election in which* The Gabber *asserted falsely that there were only four Democratic candi-*

dates competing in the primary. Plaintiff was the fifth candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of The Gabber Newspaper *is Cathy Salustri Loper. The reporter who wrote the article is Patrick Heinzen.*

Plaintiff lives 100 yards from The Gabber *in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) Congressional candidate that lives in Gulfport.*

Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters."

The article Liccione references refers to a meet-and-greet held by the Pinellas Democrats. The organization invited neither Liccione nor incumbent Anna Paulina Luna, which is why Heinzen's article did not mention them. On Aug. 12, Loper emailed Liccione and explained this:

"Good morning. We did not include your name in the article because it was an article about candidates participating in a specific event, one which you did not participate. Our news and politics reporter, Patrick Heinzen, will be in touch with you tomorrow morning for a phone interview to ensure you have equal time."

Liccione did not respond to the email, nor did he grant Heinzen an interview. He did text Heinzen and encourage Heinzen to go with him to the FBI office.

"I know exactly what's going on inside the house and now is the time to cut a deal and deliver up your Boss [sic] on a silver platter," he texted Heinzen. After reading the text, Heinzen asked Salustri Loper for permission to block Liccione's number.

The Gabber Newspaper has retained an attorney to represent it in the Liccione lawsuit against *The Gabber Newspaper*. While we believe this lawsuit will *not* cost us $10 million, attorneys are not inexpensive (nor should they be). This lawsuit chips at our resources, both financial and time. We hope a judge dismisses this case soon, so we can turn our attention back to reporting the news that matters to you, our faithful readers. ◈

WGAB

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EXHIBIT F

The Gabber April 22, 2024 Article Establishing Defendants Loper's and Heinzen's Knowledge of Liccione's US Congressional Candidacy



thegabber.com/overheard-april-16-gulfport-city-coun...

Relaunch to update

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NEWS ARTS FOOD LIFESTYLE EVENTS GULFPORT WEBCAM CURRENT ISSUE CLASSIFIED ADS STORM COVERAGE

Overheard: April 16 Gulfport City Council

April 22, 2024 by Patrick Heinzen

At the April 16 Gulfport City Council meeting, the council talked about Almond Joy, big money, and decorum.

Photo by Cathy Salustri

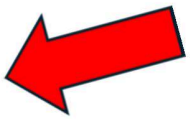
ELECTRONICALLY FILED 10/22/2024 09:58:48 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

"How do you feel about chocolate and coconut?" —*Ian O'Hara, asking an audience member after eating an Almond Joy prior to the meeting*

"This isn't just the first check from O'Maddy's; this is the third check. And they all look like this." — *Trevor Mallory, pointing at the amount on the check donated by O'Maddy's to Gulfport Little League*

"You can come up and ask a question if you like." —*Mayor Sam Henderson, talking to a woman in the crowd.*
"No, I just did." — *The woman, who refused to step up to the podium, instead yelling her public comment from the back of the crowd. This particular woman expressed her feelings vocally throughout the meeting, from the back of Council chambers.*

"Like the recent council elections here in Gulfport, my race is equally as nonpartisan and equally as non-controversial as that was." —*U.S. Congressional Candidate John Liccione, introducing himself to the council*



Read about presentations and proclamations, ordinances and resolutions, and the rules and policies for council meetings from the April 16 Gulfport City Council Meeting.

Unhappy Mayor

"People are asking to show each other respect, and then we can't even have a conversation without everyone going peanut gallery and laughing because of us trying to do the job. You'll have to forgive me if I'm not feeling real excited about anyone here commenting on the decorum that we're trying to talk about right now while you can't even let us finish a sentence. It's just bad manners. If everybody can't stop and let us have the discussion then we'll adjourn the meeting and we'll come back and we'll talk about it in an hour. And if we can't do it then we'll come back about it in another hour. Can we do what basic fifth graders do and sit down and follow the rules and show each other a minimum of respect?"

—*Mayor Sam Henderson, after slamming his gavel in response to audience members at the back of the crowd continually speaking up and laughing*

Overheard: April 16 Gulfport City Council is part of our ongoing efforts to include the flavor of City Council meetings. Our reporter includes things said at the meeting here but do not necessarily relate to a specific agenda item.

Read what we overheard at the April 2 Gulfport City Council meeting.

The Gabber Newspaper? We Go There

In 1968, our founder, George Brann, started *The Gabber Newspaper*, then called the *Gulfport Gabber*, to hold Gulfport City Council accountable. Read more of our city council coverage, and learn about our policies on reporting, fact-checking, and funding.

by Patrick Heinzen

SUPPORT THE GABBER

Team Gabber brought back the print version of the newspaper, and we've redesigned our website to make it easier for you to get the news. We're not out of the woods yet, and every little bit helps pay our reporters, printer, and other expenses. Support local news and families — donate now to keep *The Gabber Newspaper* serving the community it loves!

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Filed Under: Gulfport City Council, News, Voices

Tagged With: Gulfport City Council, Gulfport Florida, Gulfport Florida City Hall, Sam Henderson in Gulfport Florida

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

John William Liccione,
Plaintiff,
v. **Case No.: 24-003939-CI**

Julie Marcus, et al
Defendants.

PLAINTIFF'S AFFIDAVIT

I, John William Liccione, Plaintiff, on this 7th day of October, 2024, do hereby solemnly swear under penalty of perjury that the facts and allegations in the enclosed Plaintiff's Response to Defendant Cathy Salustri Loper's Motion to Dismiss, are true and accurate to the best of my knowledge.



John W. Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No. 24-003939-CI**

JULIE MARCUS et al,

Defendants.

_____/

NOTICE OF PLAINTIFF'S CHANGE OF ADDRESS

Plaintiff, John William Liccione, gives notice of his new address as follows:

Old Address: 2826 54th St. South, Gulfport, FL 33707

New Address: 6800 Gulfport Blvd S., Ste 201-116, South Pasadena, FL 33707

Respectfully submitted,



John W. Liccione, Pro Se
6800 Gulfport Blvd S.
South Pasadena, FL 33707
Email: jliccione@gmail.com
Phone: 443-698-8156

CERTIFICATION OF SERVICE

I, John Liccione, Plaintiff, do hereby certify that on this 22nd day of October 2024 I did serve the above Notice of Change of Address on all Defendants via the Court's e-file and serve portal.



John W Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No. 24-003939-CI**

JULIE MARCUS et al,

Defendants.

_____/

PLAINTIFF'S RESPONSE TO DEFENDANT JULIE MARCUS' MOTION TO DISMISS AND REQUEST FOR HEARING

Plaintiff, John William Liccione, pro se, respectfully submits this response in opposition to Defendant Julie Marcus' Motion to Dismiss, addressing and rebutting the arguments raised regarding lack of subject matter jurisdiction, failure to state a cause of action, and other procedural defenses. The Plaintiff argues that his claims under Florida Statute § 104.041, 52 U.S.C. § 20511, and 42 U.S.C. § 1983 establish sufficient grounds for the court's jurisdiction and provide legally cognizable claims of electoral fraud, civil rights violations, and voter suppression. Moreover, Plaintiff demonstrates that the complaint is not a "shotgun pleading" and that the allegations, viewed in the light most favorable to him, substantiate his claims for relief. Plaintiff seeks injunctive relief and damages based on significant evidence and detailed allegations that support his standing and likelihood of success on the merits. Accordingly, the Motion to Dismiss should be denied in its entirety.

ELECTRONICALLY FILED 10/22/2024 10:17:20 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

I. Subject Matter Jurisdiction (Rule 1.140(b)(1))

The defendant argues that the court lacks subject matter jurisdiction, particularly in relation to the election fraud claims and violations of federal election law. This argument fails because Plaintiff's complaint asserts claims under Florida Statute § 104.041, federal election law (52 U.S.C. § 20511), and 42 U.S.C. § 1983, which provide the court with appropriate jurisdiction to address election integrity issues and civil rights violations. Florida courts have subject matter jurisdiction over claims relating to fraudulent election practices when they are tied to allegations of systemic election fraud, which clearly falls within the purview of the court.

Florida courts have emphasized that allegations of election fraud, especially those affecting the electoral process, must be thoroughly examined. The Plaintiff's complaint details a series of fraudulent activities, including the massive, single-day volume of absentee ballot orders, and the alleged manipulation of the election results within the VR Systems Voter Focus software application which the Defendant Marcus and her staff and contractor VR Systems use to process mail ballot orders. These fall under Florida election statutes, which give the court subject matter jurisdiction. Additionally, 52 U.S.C. § 20511 allows for prosecution of federal election fraud, and 42 U.S.C. § 1983 enables claims involving civil rights violations under state actors, further reinforcing this Court's jurisdiction over the claims.

Florida Statute § 104.041 and Election Fraud Jurisdiction

Norman v. Ambler, 46 So. 3d 178 (Fla. 1st DCA 2010)

Holding: In this case, the court emphasized that election contests and fraud allegations must be carefully scrutinized because they impact the integrity of the

electoral process. It affirmed that election-related fraud falls within the jurisdiction of Florida courts as long as it is connected to election statutes.

Relevance: This case supports the argument that the Plaintiff's claims regarding fraudulent absentee ballot order processing and manipulation of election results under Florida election statutes fall squarely within the purview of the Florida courts.

McPherson v. Flynn, 397 So. 2d 665 (Fla. 1981)

Holding: The Florida Supreme Court ruled that courts must exercise jurisdiction over election fraud claims when they are grounded in Florida's election statutes, particularly when a plaintiff alleges systemic issues that could affect the integrity of the election.

Relevance: This case reinforces that Florida courts have jurisdiction to review claims of election fraud, such as those raised by the Plaintiff, as long as they invoke relevant Florida statutes like § 104.041.

Federal Election Law: 52 U.S.C. § 20511

Anderson v. United States, 417 U.S. 211 (1974)

Holding: This U.S. Supreme Court case involved the prosecution of election-related fraud under federal law. The Court recognized the broad authority of federal statutes to address fraudulent conduct in federal elections, including the willful falsification of election documents.

Relevance: This case highlights the federal jurisdiction over claims of federal election fraud under 52 U.S.C. § 20511, demonstrating that federal statutes grant jurisdiction to courts over such claims. The Plaintiff's allegations regarding election fraud in a federal

election (for U.S. House) would allow a court to address these issues under the federal statute.

United States v. Classic, 313 U.S. 299 (1941)

- **Holding**: The Court held that federal courts have jurisdiction over fraudulent practices affecting federal elections, as they implicate constitutional rights under federal election laws.
- **Relevance**: This case bolsters the Plaintiff's position by affirming that allegations of federal election fraud, such as those made under 52 U.S.C. § 20511, fall within the jurisdiction of federal courts and are prosecutable offenses.

42 U.S.C. § 1983: Civil Rights Claims

Monroe v. Pape, 365 U.S. 167 (1961)

Holding: The Supreme Court confirmed that 42 U.S.C. § 1983 allows individuals to bring claims against state actors for violations of their federal civil rights, including those tied to the administration of elections.

Relevance: The Plaintiff's claims against state actors (Supervisor of Elections and others) alleging violations of his civil rights through manipulation of election results can be properly heard under § 1983.

Reynolds v. Sims, 377 U.S. 533 (1964)

Holding: This case established the principle that the Equal Protection Clause of the 14th Amendment guarantees fair and equitable treatment in the voting process, which can be enforced through § 1983.

Relevance: Plaintiff's civil rights claims, which allege the violation of his rights as a candidate through election fraud, fall under the purview of § 1983 and give the court jurisdiction to address claims against state actors violating federal election rights.

The cases above demonstrate that Florida courts have subject matter jurisdiction over election fraud claims under Florida Statute § 104.041 and federal election law (52 U.S.C. § 20511). Moreover, 42 U.S.C. § 1983 empowers the courts to address civil rights violations by state actors during elections. Therefore, the Defendant's argument that the court lacks jurisdiction is unfounded. The Plaintiff's complaint, based on Florida statutes, federal election law, and civil rights protections, provides a valid basis for the court's jurisdiction over the case.

II. Failure to State a Cause of Action (Rule 1.140(b)(6))

The motion claims that Plaintiff has failed to state a cause of action. This argument is equally unavailing for several reasons:

Florida Statute § 104.041 - Fraud in Connection with Elections (Count I): The defendant argues that no private right of action exists under this statute. However, the statute criminalizes fraudulent voting practices and Plaintiff, as a candidate in the election, and as a registered voter, has a vested interest in ensuring the integrity of the election process. As held in Johnson v. Election Comm'n, the courts have a role in examining allegations that materially affect the election's outcome. Plaintiff has pleaded with sufficient specificity that the fraudulent actions impacted the election's integrity, making his claim justiciable. Additionally, while criminal charges may be initiated under this statute, the court has the authority to provide injunctive relief and assess the merits of election integrity allegations.

Federal Election Fraud and Conspiracy (Counts II and III): The motion argues that Plaintiff cannot bring a claim under 52 U.S.C. § 20511 because it does not explicitly provide a private right of action. However, Plaintiff's allegations of conspiracy to manipulate absentee ballots, supported by whistleblower testimony and technical and statistical evidence that support a claim of prima facie fraud, implicate violations of the Federal Election Campaign Act. Furthermore, Plaintiff's claims under 42 U.S.C. § 1983 sufficiently allege that the fraud occurred not only under the supervision of state officials triggering civil remedies for the deprivation of constitutional rights.

Computer Fraud and Abuse Act (Count V): The defendant claims that Plaintiff has failed to state a claim under the CFAA. However, Plaintiff provides detailed allegations regarding unauthorized access to his computer system, including specific references to IP addresses associated with foreign entities (China, Russia, Brazil). These actions directly impacted Plaintiff's ability to participate in the election process, causing both financial and reputational damage. These allegations meet the CFAA's requirements by demonstrating that Plaintiff suffered economic loss due to unauthorized access of a protected system, both Plaintiff's, and Defendant's protected computer systems, by a hostile foreign power.

III. Shotgun Pleading Allegation

The defendant claims that the complaint constitutes a shotgun pleading, as it incorporates allegations from previous counts into subsequent claims. While some repetition exists, this alone is insufficient to dismiss the complaint. In ***Frugoli v. Winn-Dixie Stores, Inc.,*** the court ruled that a complaint should only be dismissed if the incorporation by reference makes it impossible for the defendant to ascertain the

nature of the claims. Here, Plaintiff's complaint is sufficiently detailed, specifying individual allegations against each defendant and providing ample factual basis for each count. In the event the Court finds that more specificity is necessary for Defendant to properly mount a defense against a particular count, Plaintiff would ask the court to grant him leave to amend his complaint to correct any such pleading deficiencies.

IV. Standing

The defendant argues that Plaintiff lacks standing because he has not demonstrated a concrete injury. This argument is flawed because Plaintiff has sufficiently alleged that the fraudulent activities directly impacted his candidacy and the outcome of the election as well as the degree to which is vote was diluted in not just his race, but in every race on the ballot. Plaintiff asserts both tangible and intangible harm, including economic loss due to election fraud (the loss of future earnings in Congress), his diminished political prospects and harm to his rights as a voter and candidate. The Florida Supreme Court has held that candidates have standing to challenge election results where there are allegations of systemic fraud that could have altered the outcome, as articulated in Norman v. Ambler.

V. Injunctive Relief

The defendant also opposes Plaintiff's request for emergency injunctive relief, claiming that the Plaintiff has not demonstrated a likelihood of success on the merits or irreparable harm. Plaintiff has provided ample evidence, including whistleblower testimony, a massive and facially fraudulent statistical anomaly in mail ballot orders on a single day, detailed accounts of missing metadata (IP Addresses) associated with on-line mail ballot orders, and election results being manipulated. These allegations are

substantial enough to meet the burden for a preliminary injunction, as they directly challenge the integrity of the election process. Courts have consistently ruled, such as in Miller v. Lawson, that allegations of election fraud warrant emergency relief to prevent irreparable harm to the democratic process.

THE POST-ELECTION "COVER-UP PHASE"
ADDITIONAL RELEVANT FACTUAL ALLEGATIONS AND EVIDENCE NOT YET IN THE COURT RECORD

VI. New post-election wrongful acts bolster election fraud claims: Implicate Defendant Julie Marcus and her 3 attorneys

(Note: The following paragraphs are now numbered for ease of reference.)

1. Additional facts have emerged since the primary election indicating the election fraud conspiracy by Defendant Marcus and others within the PSOE has shifted gears and has entered the "cover-up phase" which has been on-going and continuing since shortly after Plaintiff filed this lawsuit in early September.

A Retroactive Mass Reduction in the Mail Ballot Request Count for June 23, 2024

2. Prior to Plaintiff filing this lawsuit September 3, 2024, the mail ballot request count for June 23, 2024 stood at 219,892 within the then-published State of Florida vote-by-mail request file.

3. However, in the file the State published on September 28, 2024, the vote-by-mail ballot request count for the date of June 23, 2024 had dropped to just *fifteen (15)* requests: From 219,892 to 15.

4. Also, the September 28th State-published data also shows that on September 9, 2024, some *198,259* mail ballot requests were received by the PSOE in a single day.

The Cover-Up of the IP Addresses

5. Further, Plaintiff hereby notifies the court that in the weeks since Plaintiff filed the Amended Complaint, Defendant Marcus and her three attorneys have acted to unlawfully obstruct Plaintiff's two separate requests for production of the over 219,000 source IP addresses that were used on June 23, 2024 to submit on-line mail ballot orders either through their contractor VR Systems, or directly to the PSOE. This represents two additional acts in furtherance of the conspiracy to commit election fraud and now, has risen to the level of obstruction of justice.

6. The attorneys who are engaged with Defendant Marcus to further this cover-up phase of the conspiracy are: (1) Attorney Matt Smith - General Counsel of the PSOE; (2) Pinellas County Attorney Andrew Keefe representing Defendant Marcus; and (3), Pinellas County Attorney Kirby Kreider representing Defendant Marcus.

7. On August 30th, Plaintiff, in his role as owner and CEO of The Crabber News, LLC, submitted a simple public records request pursuant to the Florida Public Records Act, asking for the aforementioned IP addresses from the on-line ballot orders from June 23rd and their date/timestamps. He explicitly stated that he did not need any personally identifiable information (PII) on the voters submitting the on-line orders. (See **EXHIBIT A** – email exchanges between John Liccione, The Communications Dept of the PSOE Office, and General Counsel Matt Smith)

8. In response, PSOE General Counsel Matt Smith emailed Plaintiff stating that there were "*no records responsive to his request*." Plaintiff asked to meet with Matt

Smith and PSOE staff at their offices to discuss how it could be possible that they did not collect and retain the IP address records for mail ballot orders on June 23rd.

9. Smith responded, saying that Plaintiff's records request case was closed and that because Plaintiff was suing the PSOE, he would not meet with him and referred Plaintiff to their litigation attorneys (i.e., Andrew Keefe and Kirby Kreider).

10. On September 12, 2024, Plaintiff served upon Defendant Marcus Plaintiff's First Request for Production of Documents (**EXHIBIT B**) along with the Summons and the First Amended Complaint. This gave Defendant Marcus 45 days to produce the requested records, which were the aforementioned source IP addresses of the on-line mail ballot orders on June 23rd, timestamps, and additional related voter information and firewall logs from 6/23/24.

11. On October 22, 2024, Marcus' attorney Kirby Kreider called Plaintiff and claimed that her client was unable to meet the deadline and asked for a 45-day extension.

12. The reason she gave for the request was that her client had to reach out to an outside contractor to obtain the information and that required more time.

13. When Plaintiff repeated back his understanding of what she had just said, that the PSOE didn't have the records internally but an outside contractor did, Ms. Kreider began walking back her statement and claimed she was not representing that an outside contractor had the records. She did not name who the contractor was. She would no longer acknowledge that an outside contractor was involved.

14. She went on further to say something to the effect that indicated she wasn't willing to provide any guarantee that her client could produce the requested records even if he were to agree to a 45-day extension.

15. Plaintiff explained to Ms. Kreider that the PSOE's contractor VR Systems, through their Voter Focus software which is the mail ballot ordering software used to process mail ballot orders, records and stores the IP addresses of on-line mail ballot orders, and that there is also fraud detection feature that detects fraud by IP address. She claimed she had no knowledge of it.

16. Plaintiff explained that VR Systems' own web-published Voter Focus user manual shows images of these features within which the source IP addresses are clearly shown in the screenshots of the Voter Focus software application for mail ballot orders. She claimed lack of knowledge. She ended the call by telegraphing her intent to file a motion to extend the 45-day discovery deadline.

17. In a follow-up email Plaintiff sent Ms. Kreider the next day, he memorialized their phone conversation and he attached the four key sections of the Voter Focus on-line user manual that he had referenced on the phone call. His email and the attached Voter Focus software manual pages and screenshots are attached as **EXHIBIT C.**

CONCLUSION

Plaintiff has presented sufficient facts and legal arguments to demonstrate that his claims are both valid and justiciable. The Plaintiff's allegations of electoral fraud, while complex, are supported by a series of factual assertions that merit further inquiry, rather than dismissal at this early stage. The Plaintiff has clearly outlined the alleged fraudulent actions, including the manipulation of the records of mail ballot order counts, and other irregularities, which, if proven, would undermine the integrity of the election process. Additionally, the Plaintiff's claims of conspiracy and violations of his civil rights, particularly under 42 U.S.C. § 1983, are not speculative, but based on concrete allegations that deserve to be evaluated on their merits in a court of law.

Moreover, the Supervisor's motion to dismiss for lack of standing should be denied, as Plaintiff has adequately demonstrated an injury-in-fact, traceable to the Defendants' actions, that can be redressed by this Court. The facts indicating that the election fraud conspiracy has entered a new cover-up phase involving the concealment of records and the retroactive tampering of mail ballot order counts since the election, are compelling. Plaintiff has also made a clear and well-supported request for injunctive relief to preserve the integrity of the electoral process, which aligns with public interest and the prevention of future harm. As such, this Court should deny Defendant's Motion to Dismiss and allow the case to proceed to discovery, where the factual disputes can be fully explored.

WHEREFORE, for the foregoing reasons, the Plaintiff respectfully requests that the Court:

A. Deny Defendant Marcus' Motion to Dismiss and allow the case to proceed to discovery and trial.
B. Grant Plaintiff leave to file a Second Amended Complaint so he may incorporate the new facts alleged herein from the "cover-up phase"; and to permit him to add new counts and new Defendants to this action as appropriate, potentially including but not limited to:
    1. Violation of the Florida Public Records Act (Marcus)
    2. Fraudulent Concealment (Marcus, Matt Smith)
    3. Fraudulent Misrepresentation (Marcus, Smith)
    4. Violation of Florida and Federal RICO Statutes (Marcus, others)
    5. Defamation (Defendants Loper and Griffith)

REQUEST FOR HEARING

Plaintiff requests a hearing on Defendant Marcus' Motion to Dismiss.

Respectfully submitted,

John W Liccione, Plaintiff, Pro Se
jliccione@gmail.com
443-698-8156
jliccione@gmail.com
6800 Gulfport Blvd S. Ste 201-116
South Pasadena, FL 33707

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this the 22nd day of October 2024, the foregoing Plaintiff's Response to Defendant Marcus' Motion to Dismiss was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to KIRBY KREIDER, attorney for Defendant Julie Marcus, GEORGE A.D. THURLOW, ESQ., Attorney for Defendant JENNIFER GRIFFITH, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, and Defendant Mark Weinkrantz via postage prepaid first-class mail at 4738 Belden Circle, Palm Harbor, FL 34685.

Respectfully Submitted,

John W Liccione

EXHIBIT A

John Liccione's Public Records Request for Mail Ballot Order IP Addresses
and
PSOE General Counsel Matt Smith's
"We have no records responsive to your request"
Response on September 17, 2024

The Crabber

Public Records Request: 2024-392 from John Liccione

5 messages

publicrecordsrequest <publicrecordsrequest@votepinellas.gov> Fri, Aug 30, 2024 at 7:33 PM
Reply-To: "McKnight-Taylor, Ashley" <ataylor@votepinellas.gov>
To: "john@thecrabber.com" <john@thecrabber.com>

Dear John Liccione,

This will acknowledge receipt of your public records request. We are reviewing our records to determine if there are any records responsive to your request. Once this has been determined, we will provide either the records, or for more extensive requests, an estimate of the cost to provide these records.

You requested the following records:
"A .csv file or excel spreadsheet report showing the source IP address of each and every individual who submitted an absentee ballot request to the Pinellas Supervisor of Elections over the Internet on June 23, 2024. The report need not provide any personally identifiable information, just the following 2 columns: (1) Date/Time of submission; (2) Source IP Address of submitter. It is noted that this type of metadata is typically available as a cybersecurity standard practice in web server logs, firewall logs, cloud service provider (e.g., Cloudflare) reports, and other off-the-shelf IT logging and reporting systems. It would typically take an IT person with proper access credentials less than 30 minutes to generate it and export it to a csv or Excel file."

To inquire about the status of your public records request, please call 727-464-8683.

Thank you,

Communications Department,
Pinellas County Supervisor of Elections Office

Smith, Matt <masmith@votepinellas.gov> Tue, Sep 17, 2024 at 10:07 AM
To: "john@thecrabber.com" <john@thecrabber.com>
Cc: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>

Mr. Liccione,

We have no records responsive to your request.

Thanks,

Matt Smith

General Counsel

Representing Julie Marcus, Supervisor of Elections

13001 Starkey Rd., Largo, FL 33773

(727) 464-5751

masmith@votepinellas.gov

Find us on Facebook ~ Follow us @VotePinellas

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. -- F.S. 668.6076

Conforme a la legislación de Florida, las direcciones de correo electrónico son registros públicos. Si no desea que su correo electrónico se divulgue como respuesta a una solicitud de registros públicos, no envíe un correo electrónico a esta entidad. En su lugar, póngase en contacto con esta oficina por teléfono o por escrito. -- F.S. 668.6076

From: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>
Sent: Friday, August 30, 2024 7:33 PM
To: john@thecrabber.com
Subject: Public Records Request: 2024-392 from John Liccione

Dear John Liccione,

[Quoted text hidden]

John Liccione <john@thecrabber.com> Tue, Sep 17, 2024 at 6:33 PM
To: "Smith, Matt" <masmith@votepinellas.gov>
Cc: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>

Mr Smith,

I'd like to schedule a meeting with you and whomever on PSOE staff you deem appropriate on this records request at your earliest convenience.
Please let me know if you're willing to discuss this matter at your offices and if so, when.

Regards,

John Liccione
[Quoted text hidden]

Smith, Matt <masmith@votepinellas.gov> Wed, Sep 18, 2024 at 1:58 PM
To: John Liccione <john@thecrabber.com>
Cc: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>

Mr. Liccione –

As we have provided you with a response to your public records request, we consider the request complete and the matter closed.

Since you have made this public records request an issue in your current lawsuit against this office (24-003939-CI), please refer all future correspondence regarding this matter to our litigation attorneys.

Thank you,

Matt Smith

General Counsel

Representing Julie Marcus, Supervisor of Elections

13001 Starkey Rd., Largo, FL 33773

(727) 464-5751

masmith@votepinellas.gov

Find us on Facebook ~ Follow us @VotePinellas

Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. -- F.S. 668.6076

Conforme a la legislación de Florida, las direcciones de correo electrónico son registros públicos. Si no desea que su correo electrónico se divulgue como respuesta a una solicitud de registros públicos, no envíe un correo electrónico a esta entidad. En su lugar, póngase en contacto con esta oficina por teléfono o por escrito. -- F.S. 668.6076

[Quoted text hidden]

EXHIBIT B

Plaintiff's First Request for Production of Documents and Proof of Service for Defendant Julie Marcus

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

To Defendant: Julie Marcus

From: Plaintiff John Liccione

Case No.: 24-003939-CI, *John Liccione vs Julie Marcus, et al*

Plaintiff John Liccione hereby submits to Defendant Julie Marcus, Pinellas County Supervisor of Elections, this first Request for Production of Documents.

All non-privileged computer session and transaction logs and reports which captured and stored the computer forensic details, metadata, and voter data which together serve to document the submittal of vote-by-mail ballot requests to Pinellas County Supervisor of Elections' (SOE) computer systems directly over the Internet or otherwise, or indirectly through the computer systems of the SOE's contractors, or, loaded via physical insertion of removable storage devices (i.e., thumb drives, portable hard drives), **solely on the date of June 23, 2024:** Said metadata and data to include but not be limited to the following:

1. The source IP addresses of all vote-by-mail ballot requester user sessions and submittal transactions that resulted in the successful or unsuccessful submittal of vote-by-mail ballot requests.
2. The names, and addresses of the submitters.
3. The type of web client used to submit the requests.
4. The date/time of submittal.
5. The names and versions of each software application used to receive, process, store, and report out the above ballot requests, as was fielded in production on the date of June 23, 2024, and any subsequent versions the applications may have been updated to or roll-ed back from after June 23, 2024.
   SOE and contractor firewall logs which captured and recorded the above vote-by-mail ballot submittal sessions.

If Defendant Marcus or any SOE vendor working for SOE, such as VR Systems, claims privilege over any such data as legal grounds for not complying with this request, state the nature and legal grounds for the privilege and the reason which such information cannot be provided if maintained under court seal.

Respectfully submitted,



John W Liccione
Plaintiff, Pro Se
443-698-8156
jliccione@gmail.com
September 11, 2024

1197966 -A

SPECIAL PROCESS SERVICE
Pinellas County, Florida
Bob Gualtieri, Sheriff

RETURN OF SERVICE

Court IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA	
Plaintiff John William Liccione	Case # 24-003939-CI
Defendant Julie Marcus; et al	Hearing Date
Person to be Served Julie Marcus	Came to Hand Date/Time 9/12/2024 6:54 AM
Manner of Service Substitute	Service Date/Time 9/12/2024 9:32 AM
Documents Summons;Complaint;Exhibits;Cover Sheet;PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS	Service Fee $140.00

On **9/12/2024** at:
Pinellas County Supervisor of Elections, Election Service Center, 13001 Starkey Rd., Largo, FL 33773 I served **Julie Marcus** by:

Personally leaving **1** copy(ies) of **Summons, Complaint, Exhibits, Cover Sheet and PLAINTIFF’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** at his/her usual place of abode with **Casey Speagal**, who is 15 years of age or older, a person residing therein of who confirmed the Defendant resides at the above address and informed that person of the contents thereof, with the date and hour of service endorsed thereon by me.

THE DESCRIPTION OF THE PERSON WITH WHOM THE COPY OF THIS PROCESS WAS LEFT IS AS FOLLOWS:
I delivered the documents to Casey Speagal who identified themselves as the authorized to accept with identity confirmed by subject stating their name. The individual accepted service with direct delivery. The individual appeared to be a brown-haired white female contact 35-45 years of age, 5'8"-5'10" tall and weighing 180-200 lbs. This location is a Pinellas county government agent Casey Spiegel is authorized to accept

Notary not required pursuant to F.S. 92.525(2).

I am over 18 years of age, not a party to nor interested in this case and I have the proper authority in the jurisdiction where I effected service, pursuant to Florida Statute Chapter 48. Per 28 U.S.C. § 1746, I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

John Shultz	19948	9-13-24
	Process Server ID	Date Executed

Ref **REF-17103154**

abclegal **John Liccione** <john@voteliccione.org>

Tracking # **0142817423**

EXHIBIT C

John Liccione email exchange with Kirby Keider regarding IP address discovery production extension and attached
VR Systems Voter Focus Software On-Line User Manual
Sections and Screenshots Showing IP Addresses

14 Pages Total

ELECTRONICALLY FILED 10/22/2024 10:17:20 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Gmail John Liccione <jliccione@gmail.com>

Re: RFP Extension Request Conversation 10.21.2024

1 message

John Liccione <jliccione@gmail.com> Mon, Oct 21, 2024 at 7:57 PM
To: "Kreider, Kirby" <kkreider@pinellas.gov>

Ms. Kreider,

I am writing to address the inaccuracies and incomplete nature of your email recap regarding our phone conversation, which lasted over 15 minutes, and to provide you relevant records of VR Systems itself.

During that call, we discussed two separate matters:

1. **Meeting Request:** I inquired about meeting with your client in person to discuss election fraud concerns. You informed me that your client is unavailable due to them being too busy.

2. **Discovery Extension Request:** The majority of our conversation revolved around your request for a 45-day extension on discovery related to the IP addresses and related information for mail ballot orders received on 6/23/2024. Here is a summary of the key points:

    - Discovery is due on 10/28, 45 days after your client was served. You requested an additional 45 days, stating that your client needs more time because they must rely on an external contractor to obtain the requested information.
    - When I acknowledged that your client does not have the information internally and needs external assistance, presumably from VR Systems, you seemed to backtrack on your initial statement.
    - You also appeared hesitant or unwilling to commit to whether your client will be able to produce the requested records at all. When I asked if the contractor could at least confirm the availability of the records, you refrained from providing any assurance. Without a clear guarantee of delivery, I see no reason to agree to a 45-day extension.
    - I also mentioned that VR Systems' Voter Focus software captures the IP addresses of all online mail ballot requests, as detailed in their on-line user manual. You seemed unfamiliar with this, and indicated that this is outside your area of expertise.

For your reference, I have attached four relevant sections from the Voter Focus online user manual, including "About Capturing Questionable Vote-by-Mail Requests from the Web" and "How to Process Vote-by-Mail Requests Submitted on Your Website." These documents clearly show that Voter Focus captures and retains IP addresses and integrates them into its fraud detection case management system.

Given that the PSOE likely has staff trained on Voter Focus, generating the necessary reports should be a simple task. Even if no one internally is trained, VR Systems, with its administrative privileges, can easily produce a report showing the IP addresses of mail ballot orders from 6/23/2024. This is central to my case, and I trust you understand its importance.

Therefore, all that is required to obtain the IP addresses and timestamps is a single email or phone call to VR Systems' CEO, from either you, Matt Smith, or your IT team. While I can issue a subpoena for this information, such delays are becoming obstructive.

In light of this, your request for an additional 45 days, without any commitment to produce the records, is untenable. You have already had six weeks to generate a report that takes less than five minutes to run.

If necessary, I will subpoena the CEO of VR Systems to testify and produce the records, which would be a public spectacle. However, I urge you to provide at least the IP addresses and timestamps for the 219,000+ ballot orders from 6/23/2024 by Tuesday. As an officer of the court, now informed that the software your client uses routinely collects and retains the requested information, you are professionally obligated to produce it without further delay.

Failure to do so may result in discovery sanctions.

Regards,

John Liccione

On Mon, Oct 21, 2024 at 2:48 PM Kreider, Kirby <kkreider@pinellas.gov> wrote:

> Good Afternoon,
>
> Please let this email serve to confirm the contents of our conversation today. The County has requested an additional 45 days to be able to answer the request for production in this matter. The request for extension is not a comment on the content of the request rather the extension request was made in good faith to be able to fully respond to the best of our capabilities.
>
> I've attached my co-counsel Mr. Keefe on this email.
>
> Thank you,

Kirby Z. Kreider

Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, 6th Floor

Clearwater, FL 33756

Phone: (727) 464-3354

Fax: (727) 464-4147

kkreider@pinellas.gov

All government correspondence is subject to the public records law.

4 attachments



QuestionWebRequestsPageShowingIPAddressesCircled.png
396K

3 of 14



FraudDetectionParametersInterface.png
196K

About Capturing Questionable Vote-By-Mail Requests from the Web.pdf
421K

How to Process Vote-by-Mail Requests Submitted on Your Website.pdf
281K

4 of 14

https://content.vrsys.co/help/vf/Content/Vote_by_Mail/Dialog__Vote-by-Mail_Fraud_Detection_Parameters.htm

VoterFocus

Overview and Basics | Features | Administration | References

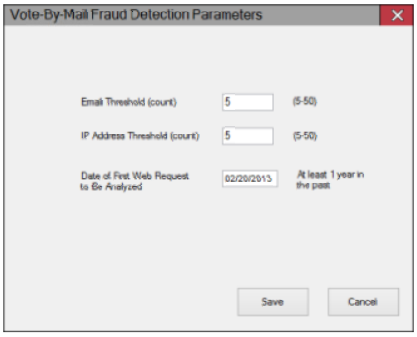
Search

You are here: References > Voter Focus Dialogs > Vote by Mail > Vote-by-Mail Fraud Detection Parameters

Last Updated: 12/21/2023

Vote-By-Mail Fraud Detection Parameters

To access: **Vote By Mail > Vote-By-Mail Fraud Detection > Utility**



On this dialog, you establish the parameters under which the fraud-detection program runs. For more about this facility, see About Capturing Questionable Vote-By-Mail Requests from the Web.

Fields and Controls on this Dialog

Email Threshold	The number of requests having the same email address that will cause the program to capture the requests.
IP Address Threshold	The number of requests having the same IP address that will cause the program to capture the requests.
Date of First Web Request to be Analyzed	The date at which the program should begin evaluating web requests. This date must be at least a year in the past. The program will look at all requests submitted on this date and thereafter until today, including those that have already been processed into voter records.

Vote by Mail
- Copy Vote-by-Mail Requests from a Prior Election
- Deliver Ballots
- Email List of Candidates
- Mail-Ballot Adjustments
- Return Ballots
- Maintain Requester Information
- Maintenance--Vote-by-Mail Tab
- Name Format for Labels/Data Files
- Print Envelope Sort Order
- Print Replacement Ballots
- Process Undeliverable Ballot Images
- Pull List of Voter Changes
- Release Ballot
- Relia-Vote Utilities
- Reprint Mail-Ballot Labels or Envelopes
- Resend an Email
- Retrieve Images-Generic Envelope Reader
- Return Ballots Batch Header
- Return Ballots Batch Header-Generic Envelope Reader
- Review Returned Ballots
- Select Type of Voter
- Vote-by-Mail Addresses
- Vote-by-Mail Flexible Report
- Vote-by-Mail Fraud Detection Case Details

https://content.vrsys.co/help/vf/Content/Vote_by_Mail/Report__Questionable_Web_Requests_for_an_Election.htm

Questionable Web Requests for Spring Election

Voter Id | Matches

Absentee Request Fax Number Matches

502747319	8506682838
502747529	8506682838
502747756	8506682838

Absentee Request Requestor Matches

502778201	Jones, Tom Addr1: 145 Fake St.
502778201	Jones, Tom Addr1: 145 Fake St.

Mailing Address Matches

502016584	[MAIL 1, MCITY 34233]
502747432	[MAIL 1, MCITY 34233]

Web Absentee Request Destination Email Address Matches

502120014	support@vrsystems.com
502747003	support@vrsystems.com
502747321	support@vrsystems.com
502747583	support@vrsystems.com
502747600	support@vrsystems.com
502747600	support@vrsystems.com
502747715	support@vrsystems.com
502747715	support@vrsystems.com
502779720	support@vrsystems.com

Web Absentee Request Source IP Address Matches

502120014	12.123.45.243
502747321	12.123.45.243
502747583	12.123.45.243
502747600	12.123.45.243
502747600	12.123.45.243
502747715	12.123.45.243
502747715	12.123.45.243
502747003	12.123.65.243
502779720	12.123.65.243

5 of 14

MENU

eb Requests for an

Last Updated: 12/12/2023

ion

Detection Reports

ebsite that might be
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ring Questionable

Vote-by-Mail Reports
- Absentee Activity Dump
- Absentee Alert Report
- Absentee Audit Report
- Absentee Ballot Balance Sheet
- Absentee Ballots Issued by Ballot Style
- Absentee Ballots Issued by Operator
- Absentee Ballots Not Voted
- Absentee Ballots where Return Is Blocked
- Absentee Ballot Style Changes
- Absentee Request Activity
- Absentee Requests by Non-Family Requesters
- Absentee Request Totals by How Requested
- Absentee Status for All Absentee Voters
- Absentee Status for Domestic Voters
- Absentee Status for Email/Fax-Delivery Voters
- Absentee Totals for an Election
- Active Cases in Vote-by-Mail Fraud Detection

Capturing Questionable Vote-By-Mail Requests from the Web

Voter Focus offers an optional feature to help detect fraudulent Vote-By-Mail requests submitted on your website through the Absentee/Mail Ballot Request Form. The requests are blocked from being processed into voter records, thus preventing the release of mail ballots to those intent upon voter fraud.

To use this feature, you run the Fraud Detection program, which scans requests from a specified time period, looking for those originating from the same IP address or having the same email address for ballot delivery. Requests whose addresses present no issue are passed to the Web Request Queue for processing into voter records. But questionable requests are detained for user review.

During your review, you can release a detained request to the Web Request Queue or you can put an indefinite hold on it. Where an address is known to be legitimate, you can set the Fraud Detection program to pass all requests associated with that address.

The Fraud Detection feature is under **Vote By Mail > Vote-By-Mail Fraud Detection**. To see this feature, your county must have this option selected:

VOTER FOCUS ADMIN > System Options > Vote By Mail > Use Vote-By-Mail Fraud Detection

And the user must have the permission:

VoteByMailFraudDetection

We recommend you run the Fraud Detection program and evaluate its findings on a daily basis.

How Fraud Detection Works

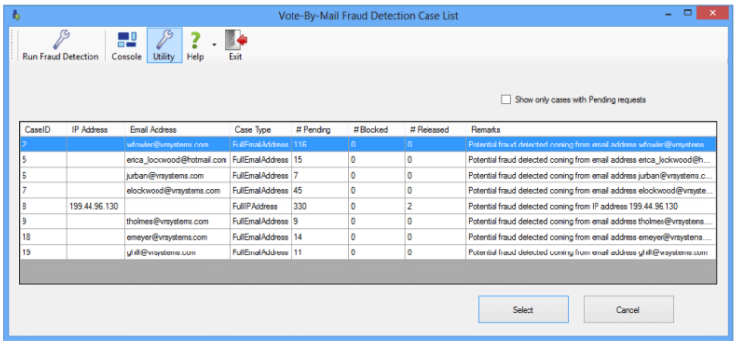
The Fraud Detection program uses these parameters on the Vote-By-Mail Fraud Detection Parameters dialog to determine whether a request should be held for review:

Email Threshold—The number of requests having the same email address at which the program will begin capturing the requests. For example, if the threshold is 5, the program will pass the first four requests with this email address but will detain the fifth and all subsequent requests with this address.

IP Address Threshold—The number of requests having the same IP address at which the program will begin capturing the requests. As with the email threshold, the program will detain any request meeting or exceeding the threshold.

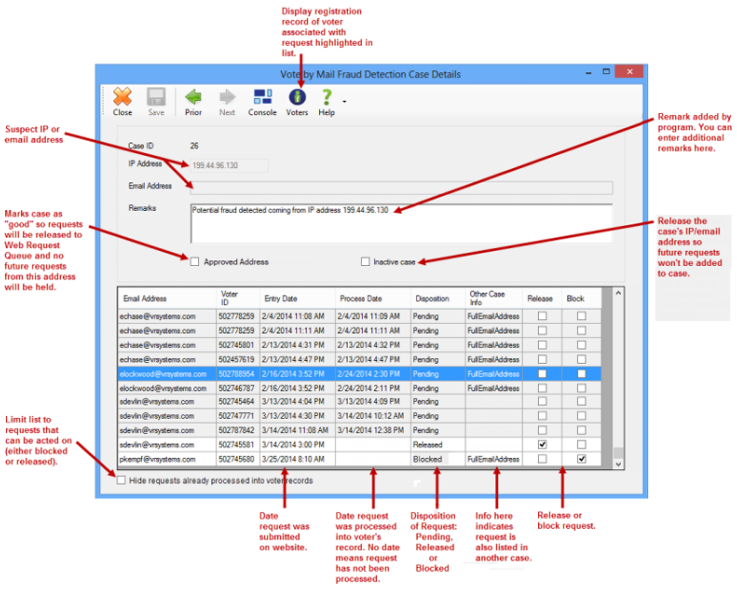
Date of First Web Request to be Analyzed—The date at which the program will begin evaluating web requests. This date must be at least a year in the past. The program will look at all requests submitted on this date and thereafter until today, including those that have already been processed into voter records.

The program checks all requests submitted on the website, beginning with the first request on the start date, placing a hold on any request exceeding the email or IP address threshold, except for those that have already been processed into voter records. It then presents the user with its findings, organized as a list of fraud cases, as shown in the screenshot below. Each case contains the web requests exceeding the threshold for a particular IP or email address.



You can then open a case, examine its requests, and make determinations on individual requests within the case or a general determination on the case itself:

- For individual requests, you can either release the request, block it, or leave it pending. A released request goes to the Web Request Queue where it can then be processed into the voter's record by the county user responsible for web request processing. Released requests continue to appear in the case list, as do requests that have been processed. If you don't want to see processed requests, you have the option of hiding them, so you can focus on requests that can still be acted upon.
- For cases where the address is known to be legitimate, you can mark the address as approved, which releases all requests in the case to the Web Request Queue and allows any future requests associated with the address to be passed by the fraud detection program. Approving an address lets you pass requests from known locations, such as public libraries, where voters might use public computers to submit Vote-By-Mail requests.



Disposition of Requests

Web requests have one of three dispositions:

Pending—For counties using fraud detection, all web requests are assigned this disposition when they come into the Voter Focus system.

Note: For counties not using fraud detection, web requests are automatically assigned the Released disposition when they enter the system. Should a county turn on the fraud detection option, those requests will appear in a case should either of their addresses meet a threshold, but their disposition will remain

Released. Should the county turn off fraud detection, the disposition of all web requests will be changed to Released.

Released—This disposition is assigned by the user upon determination that the request is legitimate. It allows the request to enter the Web Request Queue for processing into the voter's record. Requests with the disposition Released will continue to appear in the case, even after they have been processed. If a county does not use fraud detection, all web requests are assigned the disposition Released.

Blocked—This disposition is assigned by the user upon determination that the request is fraudulent. It prevents entry of the request into the Web Request Queue. Should a Blocked request be reevaluated later as legitimate, it can be released by selecting the **Release** check box on the Vote By Mail Fraud Detection Case Details dialog.

If a request appears in more than one case and you change its disposition in one of those cases, the change will be reflected in the other case.

Running the Fraud Detection Program

To run the Fraud Detection program, go to **Vote By Mail > Vote-By-Mail Fraud Detection > Run Fraud Detection**. During the run, if the programs finds new requests matching an existing case, it adds those requests to the case and displays a message indicating how many were added. If the program finds a new address meeting one of the prescribed thresholds, it will ask if you want to create a new case. If you say yes, the new case is added to the list of existing cases on the Vote-By-Mail Fraud Detection Case List dialog. If you say no, the requests associated with the suspect address will still be marked as Pending, even though a case has not been created. On subsequent runs of the program, if the same thresholds are used, you will be asked again if a new case should be created for those requests.

When counting the requests to meet one of the prescribed thresholds, the program does not consider whether a request has already been processed from the Web Request Queue into a voter's record. The first requests from an IP or email address that do not meet the threshold will not be stopped by the Fraud Detection program, so it is possible that a new case will contain requests that have already been processed, delivered, and perhaps even voted. (The same is true for requests processed before the county began using the fraud detection facility.) These requests cannot be "pulled back" or otherwise blocked by the Fraud Detection program.

The program does not evaluate the election for which a request is being made; requests for different elections can appear in a single case.

An all-elections request is considered a single request for the purpose of the Fraud Detection program.

Approving "Good" Addresses

In situations where an IP or email address is from a known legitimate source, you can mark the address as approved. This releases all requests in the case to the Web Request Queue unless a request appears in another case where the address is not approved. Approving an address allows any future requests associated with the address to be passed by the Fraud Detection program. To identify a case as good, select **Approved Address** on the Vote-By-Mail Fraud Detection Case Details dialog.

Note that if you select **Approved Address** and then clear this check box, the disposition of individual requests in the case will be reset to the settings in the last saved version of the case.

Making a Case Inactive

A case can be made inactive, which releases the once questionable IP or email address so that future requests with the address will be passed by the Fraud Detection program. This allows for situations where an internet service provider dynamically assigns a previously questionable IP address to a new, presumably legitimate location.

If you inactivate a case—by selecting **Inactive Case** and clicking **Save** on the Vote By Mail Fraud Detection Case Details dialog—the disposition of any requests in the case is essentially frozen. Inactive cases do not appear on the Vote-By-Mail Fraud Detection Case List, so the case itself can no longer be viewed and the disposition of requests in the case cannot be changed, unless they happen to appear in other, still active, cases.

Fraud Detection Reports

- Active Cases in Vote-By-Mail Fraud Detection
- Approved Addresses in Vote-By-Mail Fraud Detection
- Blocked Requests in Vote-By-Mail Fraud Detection
- Inactive Cases in Vote-By-Mail Fraud Detection
- Questionable Web Requests for an Election

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Process Vote-By-Mail Requests Submitted Through Your Website

> **Note:** This feature is available only to counties that have either VR Tower or the Move Act Information Service and deploy the Mail Ballot Request Form web service on their website.

If your county allows voters to submit Vote-By-Mail requests on your website using the Mail Ballot Request Service web service, the information from these requests flows from the website to the Web Vote-By-Mail Request Queue. This eliminates the need to rekey the information from the request forms into voter records. All that's required is to check the web request and give Voter Focus the go-ahead to insert it into the voter's record.

> **Note:** The WebServicesJurisdictionClient.exe program must be running for voters to be able to use this service.

Only voters who can be validated as registered voters in your county will be allowed to make Vote-By-Mail requests on your website. The web service manages this by verifying the applicant's last name, first name, date of birth, and address against the local voter registration database.

> **Note:** Mail ballot requests that require the voter to complete an affidavit because they chose to have the mail ballot delivered to a new address that is not currently on file with FVRS do not appear in the Web Vote-By-Mail Request Queue in Voter Focus to prevent premature data entry.

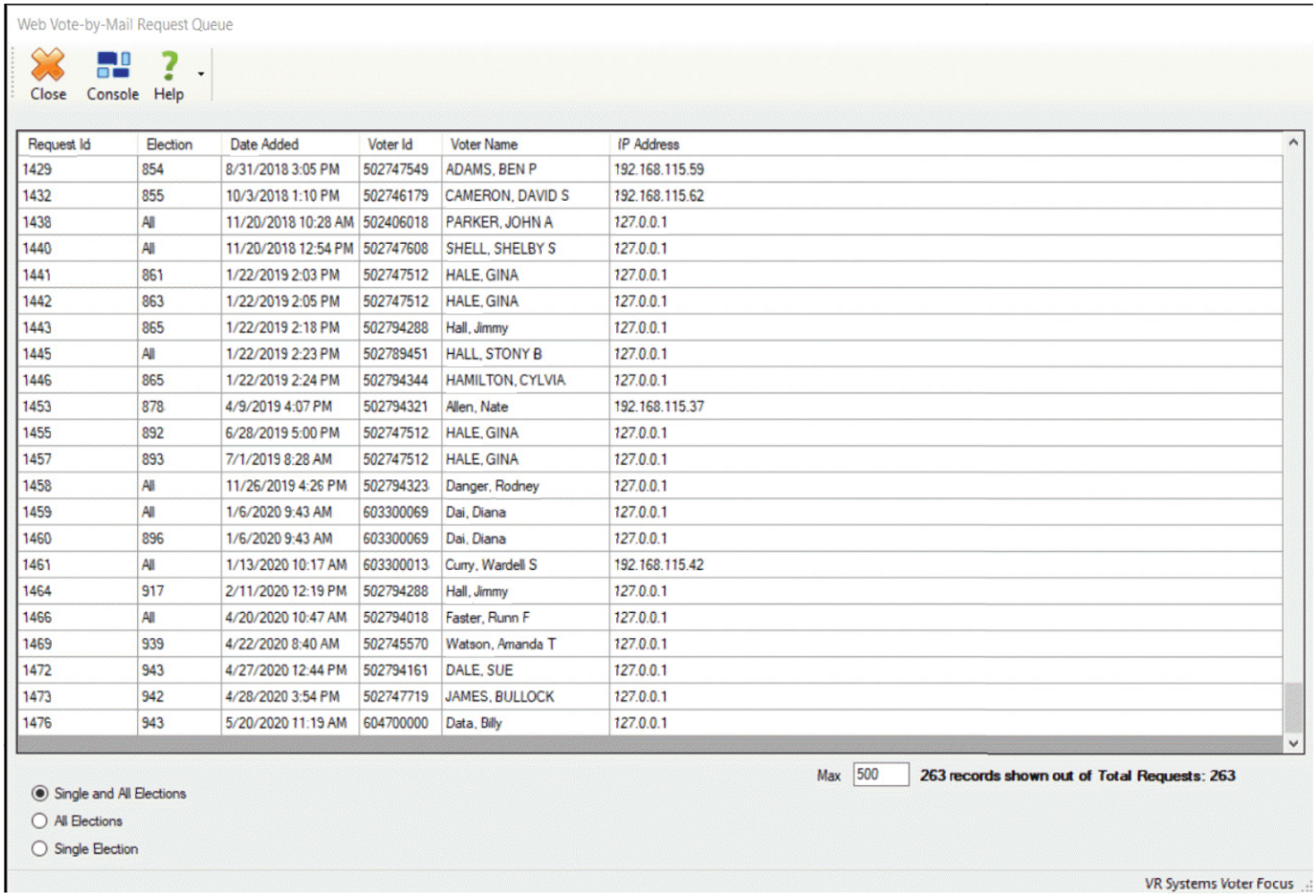
Your county will also receive an email for each voter who has submitted a Vote-By-Mail request online.

> **Note:** An email is not sent if the voter is required to complete an affidavit.

The email address submitted by the voter will be stored in the **E-Mail** field on the voter's **Vote-By-Mail** tab, replacing any previously entered email address. (These emails are not considered public record.)

For a list of the voters who have submitted web requests that have not yet been processed, run the Pending Web Absentee Requests report.

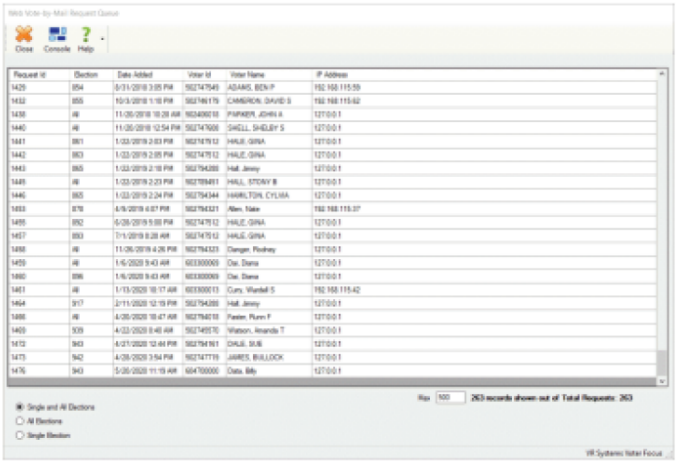
Processing a request from the website creates an entry on the voter's **Comms** tab called **Web Absentee Request**. Double-click this entry to see a summary of the request on the **View Web Absentee Request** dialog.


Web Vote-by-Mail Request Queue
Close
Console
Help
Request Id | Election | Date Added | Voter Id | Voter Name | IP Address
1429 | 854 | 8/31/2018 3:05 PM | 502747549 | ADAMS, BEN P | 192.168.115.59
1432 | 855 | 10/3/2018 1:10 PM | 502746179 | CAMERON, DAVID S | 192.168.115.62
1438 | All | 11/20/2018 10:28 AM | 502406018 | PARKER, JOHN A | 127.0.0.1
1440 | All | 11/20/2018 12:54 PM | 502747608 | SHELL, SHELBY S | 127.0.0.1
1441 | 861 | 1/22/2019 2:03 PM | 502747512 | HALE, GINA | 127.0.0.1
1442 | 863 | 1/22/2019 2:05 PM | 502747512 | HALE, GINA | 127.0.0.1
1443 | 865 | 1/22/2019 2:18 PM | 502794288 | Hall, Jimmy | 127.0.0.1
1445 | All | 1/22/2019 2:23 PM | 502789451 | HALL, STONY B | 127.0.0.1
1446 | 865 | 1/22/2019 2:24 PM | 502794344 | HAMILTON, CYLVIA | 127.0.0.1
1453 | 878 | 4/9/2019 4:07 PM | 502794321 | Allen, Nate | 192.168.115.37
1455 | 892 | 6/28/2019 5:00 PM | 502747512 | HALE, GINA | 127.0.0.1
1457 | 893 | 7/1/2019 8:28 AM | 502747512 | HALE, GINA | 127.0.0.1
1458 | All | 11/26/2019 4:26 PM | 502794323 | Danger, Rodney | 127.0.0.1
1459 | All | 1/6/2020 9:43 AM | 603300069 | Dai, Diana | 127.0.0.1
1460 | 896 | 1/6/2020 9:43 AM | 603300069 | Dai, Diana | 127.0.0.1
1461 | All | 1/13/2020 10:17 AM | 603300013 | Curry, Wardell S | 192.168.115.42
1464 | 917 | 2/11/2020 12:19 PM | 502794288 | Hall, Jimmy | 127.0.0.1
1466 | All | 4/20/2020 10:47 AM | 502794018 | Faster, Runn F | 127.0.0.1
1469 | 939 | 4/22/2020 8:40 AM | 502745570 | Watson, Amanda T | 127.0.0.1
1472 | 943 | 4/27/2020 12:44 PM | 502794161 | DALE, SUE | 127.0.0.1
1473 | 942 | 4/28/2020 3:54 PM | 502747719 | JAMES, BULLOCK | 127.0.0.1
1476 | 943 | 5/20/2020 11:19 AM | 604700000 | Data, Billy | 127.0.0.1
Max 500
263 records shown out of Total Requests: 263
Single and All Elections
All Elections
Single Election
VR Systems Voter Focus

Note: An entry is not made on the voter's Comms tab if the voter is required to complete an affidavit.

To process the Vote-By-Mail requests submitted on your website:

1. Go to **Vote By Mail > Process Web Requests** to open the Web Vote-by-Mail Request Queue. The requests that were submitted on your website and are awaiting processing are listed.



   Initially, the requests are ordered by when they were added to the queue (that is, the *Date Added* column) and respective of the filters at the bottom of the dialog.

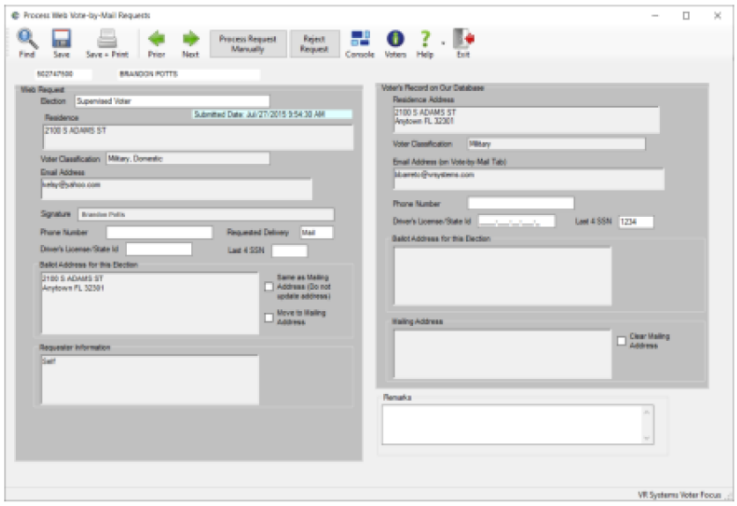
   Note: You can re-sort by a different column or change the sort order (ascending or descending) by clicking any column header.

2. You can do the following to limit the number of requests that display in the grid:
   - Select to display **Single and All Elections**, or limit the grid display to only **All Elections** or only **Single Election** requests.
   - Leave the default **Max** number to display in the queue, which is 500 requests, or change the selection.

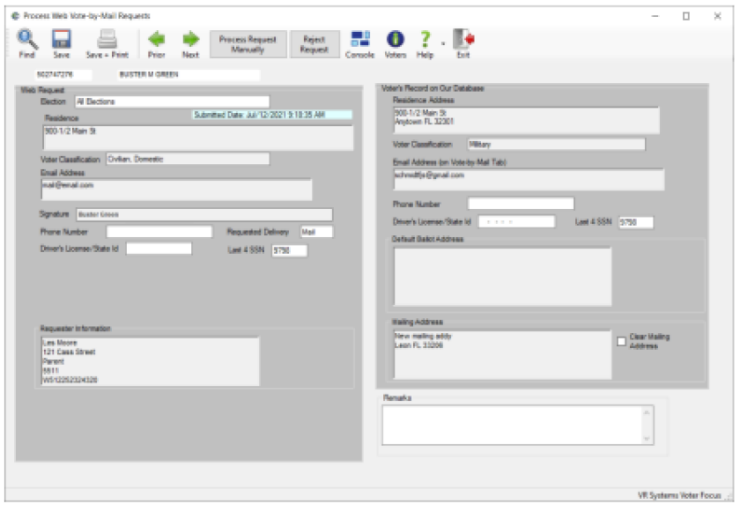
   Note:
   - Changing the Max setting to a significantly greater number may affect the system's response time to load and also re-load (after processing a request and returning to the grid) requests.
   - The system retains changes to the Max setting. The next time you return to the dialog, your last setting remains in effect.

3. Click an entry in the list to display the request in the Process Web Vote-By-Mail Requests dialog. The left pane displays the data submitted by the voter on the website form. Vote-By-Mail related data from the voter's record is shown in the right pane. The **Election** field in the **Web Request** pane indicates whether the request is for all elections or a specific election.

Process Web Vote-By-Mail Dialog for Single Election:



Process Web Vote-By-Mail Dialog for All-Elections:



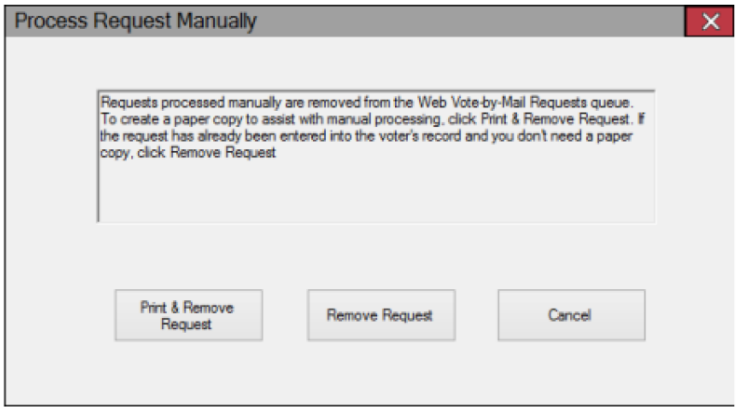
4. Review the information provided by the voter and compare it to the data from their record.
    - If the voter requested delivery of their ballot by email, they must provide an email address in the **Email Address** field as well as an address to show that they are a UOCAVA voter in the **UOCAVA Address Provided by Voter** field. You can pick up this address as their mailing address by selecting **Move to Mailing** address. (The **UOCAVA Address Provided by Voter** field won't appear if the voter did not provide this information on the online form.)
    - If the voter provided an address where the ballot is to be mailed for a single election only, it appears in **Ballot Address for this Election**. When you save the request, this address is copied to the **Ballot Address for this Election** field in the voter's record (Vote-By-Mail Address dialog), unless you select **Same as Mailing Address (Do not update address)**.
    - Use the **Remarks** box for any notes about the request, such as comments on the voter’s eligibility or the existence of previous requests for the election.
5. Take the appropriate action to process the request:
    - **If the request looks good,** click **Save** to process the request into the voter's record. Clicking **Save + Print** will save the request and print an Absentee Request Information Sheet to your Windows default printer. Information in the following fields of the web request is copied to the voter's record, overwriting any information in the record:

        - **Voter Classification**

- **Email Address**. Copied to the email address on the **Vote-By-Mail** tab, not the **Maint** tab.
- **Ballot Address for this Election**. (Single Election) Copied to Ballot Address for this Election, unless you selected *Same as Mailing Address (Do not update address)*.
- **Ballot Address for All Elections**. (All Elections) Overwrites the default ballot address. If your county does not use default ballot addresses, the address on the web request is stored with each election.

- **If the voter already has a request on file for this election,** you will see the message *Absentee Ballot Already Requested. Voter record must be used to update existing request or put on second and third request*. This means that the request cannot be processed through the web request feature as this feature only handles initial requests.

  Go to **VOTER REGISTRATION > Voter Maintenance** and take appropriate action in the voter's record to update the request or record a second/third request. Once the request has been handled manually, return to the request in the queue and click **Process Request Manually**.



  Do one of the following to remove the request from the queue and move to the next request:

  - To produce a hard copy of the voter's request before removing it from the queue, click **Print & Remove Request**.
  - To remove it from the queue with no printout, click **Remove Request**.

- **If you believe the request should be rejected,** type a reason for the rejection into the **Remarks** box. Some reasons—for example the voter's status is Ineligible or the voter cannot be found—are inserted automatically by Voter Focus. You can change this text or amend it, if you want. Then click **Reject Request** to remove the request from the web queue and go to the next voter's request.

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

John William Liccione,
Plaintiff,
v. **Case No.: 24-003939-CI**

Julie Marcus, et al
Defendants.

PLAINTIFF'S AFFIDAVIT

I, John William Liccione, Plaintiff, on this 22nd day of October, 2024, do hereby solemnly swear under penalty of perjury that the facts and allegations in the enclosed Plaintiff's Response to Defendant Julie Marcus' Motion to Dismiss, are true and accurate to the best of my knowledge and belief.



John W. Liccione

EXHIBIT C

John Liccione email exchange with Kirby Keider regarding IP address discovery production extension and attached
VR Systems Voter Focus Software On-Line User Manual
Sections and Screenshots Showing IP Addresses

14 Pages Total

ELECTRONICALLY FILED 10/28/2024 10:49:13 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Gmail John Liccione <jliccione@gmail.com>

Re: RFP Extension Request Conversation 10.21.2024

1 message

John Liccione <jliccione@gmail.com> Mon, Oct 21, 2024 at 7:57 PM
To: "Kreider, Kirby" <kkreider@pinellas.gov>

Ms. Kreider,

I am writing to address the inaccuracies and incomplete nature of your email recap regarding our phone conversation, which lasted over 15 minutes, and to provide you relevant records of VR Systems itself.

During that call, we discussed two separate matters:

1. **Meeting Request:** I inquired about meeting with your client in person to discuss election fraud concerns. You informed me that your client is unavailable due to them being too busy.

2. **Discovery Extension Request:** The majority of our conversation revolved around your request for a 45-day extension on discovery related to the IP addresses and related information for mail ballot orders received on 6/23/2024. Here is a summary of the key points:

    - Discovery is due on 10/28, 45 days after your client was served. You requested an additional 45 days, stating that your client needs more time because they must rely on an external contractor to obtain the requested information.
    - When I acknowledged that your client does not have the information internally and needs external assistance, presumably from VR Systems, you seemed to backtrack on your initial statement.
    - You also appeared hesitant or unwilling to commit to whether your client will be able to produce the requested records at all. When I asked if the contractor could at least confirm the availability of the records, you refrained from providing any assurance. Without a clear guarantee of delivery, I see no reason to agree to a 45-day extension.
    - I also mentioned that VR Systems' Voter Focus software captures the IP addresses of all online mail ballot requests, as detailed in their on-line user manual. You seemed unfamiliar with this, and indicated that this is outside your area of expertise.

For your reference, I have attached four relevant sections from the Voter Focus online user manual, including "About Capturing Questionable Vote-by-Mail Requests from the Web" and "How to Process Vote-by-Mail Requests Submitted on Your Website." These documents clearly show that Voter Focus captures and retains IP addresses and integrates them into its fraud detection case management system.

Given that the PSOE likely has staff trained on Voter Focus, generating the necessary reports should be a simple task. Even if no one internally is trained, VR Systems, with its administrative privileges, can easily produce a report showing the IP addresses of mail ballot orders from 6/23/2024. This is central to my case, and I trust you understand its importance.

Therefore, all that is required to obtain the IP addresses and timestamps is a single email or phone call to VR Systems' CEO, from either you, Matt Smith, or your IT team. While I can issue a subpoena for this information, such delays are becoming obstructive.

In light of this, your request for an additional 45 days, without any commitment to produce the records, is untenable. You have already had six weeks to generate a report that takes less than five minutes to run.

If necessary, I will subpoena the CEO of VR Systems to testify and produce the records, which would be a public spectacle. However, I urge you to provide at least the IP addresses and timestamps for the 219,000+ ballot orders from 6/23/2024 by Tuesday. As an officer of the court, now informed that the software your client uses routinely collects and retains the requested information, you are professionally obligated to produce it without further delay.

Failure to do so may result in discovery sanctions.

Regards,

John Liccione

On Mon, Oct 21, 2024 at 2:48 PM Kreider, Kirby <kkreider@pinellas.gov> wrote:

> Good Afternoon,
>
> Please let this email serve to confirm the contents of our conversation today. The County has requested an additional 45 days to be able to answer the request for production in this matter. The request for extension is not a comment on the content of the request rather the extension request was made in good faith to be able to fully respond to the best of our capabilities.
>
> I've attached my co-counsel Mr. Keefe on this email.
>
> Thank you,

Kirby Z. Kreider

Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, 6th Floor

Clearwater, FL 33756

Phone: (727) 464-3354

Fax: (727) 464-4147

kkreider@pinellas.gov

All government correspondence is subject to the public records law.

4 attachments



QuestionWebRequestsPageShowingIPAddressesCircled.png
396K

3 of 14



FraudDetectionParametersInterface.png
196K

About Capturing Questionable Vote-By-Mail Requests from the Web.pdf
421K

How to Process Vote-by-Mail Requests Submitted on Your Website.pdf
281K

4 of 14

https://content.vrsys.co/help/vf/Content/Vote_by_Mail/Dialog__Vote-by-Mail_Fraud_Detection_Parameters.htm

VoterFocus

Overview and Basics | Features | Administration | References

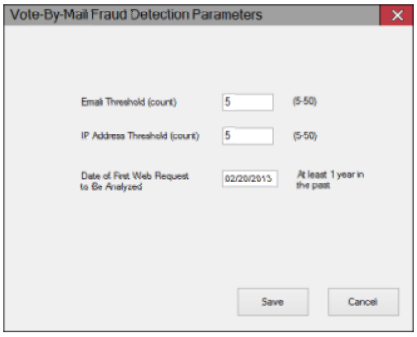
Search

You are here: References > Voter Focus Dialogs > Vote by Mail > Vote-by-Mail Fraud Detection Parameters

Last Updated: 12/21/2023

Vote-By-Mail Fraud Detection Parameters

To access: **Vote By Mail > Vote-By-Mail Fraud Detection > Utility**



On this dialog, you establish the parameters under which the fraud-detection program runs. For more about this facility, see About Capturing Questionable Vote-By-Mail Requests from the Web.

Fields and Controls on this Dialog

Email Threshold	The number of requests having the same email address that will cause the program to capture the requests.
IP Address Threshold	The number of requests having the same IP address that will cause the program to capture the requests.
Date of First Web Request to be Analyzed	The date at which the program should begin evaluating web requests. This date must be at least a year in the past. The program will look at all requests submitted on this date and thereafter until today, including those that have already been processed into voter records.

Vote by Mail
- Copy Vote-by-Mail Requests from a Prior Election
- Deliver Ballots
- Email List of Candidates
- Mail-Ballot Adjustments
- Return Ballots
- Maintain Requester Information
- Maintenance--Vote-by-Mail Tab
- Name Format for Labels/Data Files
- Print Envelope Sort Order
- Print Replacement Ballots
- Process Undeliverable Ballot Images
- Pull List of Voter Changes
- Release Ballot
- Relia-Vote Utilities
- Reprint Mail-Ballot Labels or Envelopes
- Resend an Email
- Retrieve Images-Generic Envelope Reader
- Return Ballots Batch Header
- Return Ballots Batch Header-Generic Envelope Reader
- Review Returned Ballots
- Select Type of Voter
- Vote-by-Mail Addresses
- Vote-by-Mail Flexible Report
- Vote-by-Mail Fraud Detection Case Details

https://content.vrsys.co/help/vf/Content/Vote_by_Mail/Report__Questionable_Web_Requests_for_an_Election.htm

Questionable Web Requests for Spring Election

Voter Id	Matches
Absentee Request Fax Number Matches	
502747319	8506682838
502747529	8506682838
502747756	8506682838
Absentee Request Requestor Matches	
502778201	Jones, Tom Addr1: 145 Fake St.
502778201	Jones, Tom Addr1: 145 Fake St.
Mailing Address Matches	
502016584	[MAIL 1, MCITY 34233]
502747432	[MAIL 1, MCITY 34233]
Web Absentee Request Destination Email Address Matches	
502120014	support@vrsystems.com
502747003	support@vrsystems.com
502747321	support@vrsystems.com
502747583	support@vrsystems.com
502747600	support@vrsystems.com
502747600	support@vrsystems.com
502747715	support@vrsystems.com
502747715	support@vrsystems.com
502779720	support@vrsystems.com
Web Absentee Request Source IP Address Matches	
502120014	12.123.45.243
502747321	12.123.45.243
502747583	12.123.45.243
502747600	12.123.45.243
502747600	12.123.45.243
502747715	12.123.45.243
502747715	12.123.45.243
502747003	12.123.65.243
502779720	12.123.65.243

5 of 14

MENU

eb Requests for an

Last Updated: 12/12/2023

ion

Detection Reports

ebsite that might be
ss, requestors other
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ring Questionable

Vote-by-Mail Reports
- Absentee Activity Dump
- Absentee Alert Report
- Absentee Audit Report
- Absentee Ballot Balance Sheet
- Absentee Ballots Issued by Ballot Style
- Absentee Ballots Issued by Operator
- Absentee Ballots Not Voted
- Absentee Ballots where Return Is Blocked
- Absentee Ballot Style Changes
- Absentee Request Activity
- Absentee Requests by Non-Family Requesters
- Absentee Request Totals by How Requested
- Absentee Status for All Absentee Voters
- Absentee Status for Domestic Voters
- Absentee Status for Email/Fax-Delivery Voters
- Absentee Totals for an Election
- Active Cases in Vote-by-Mail Fraud Detection

Capturing Questionable Vote-By-Mail Requests from the Web

Voter Focus offers an optional feature to help detect fraudulent Vote-By-Mail requests submitted on your website through the Absentee/Mail Ballot Request Form. The requests are blocked from being processed into voter records, thus preventing the release of mail ballots to those intent upon voter fraud.

To use this feature, you run the Fraud Detection program, which scans requests from a specified time period, looking for those originating from the same IP address or having the same email address for ballot delivery. Requests whose addresses present no issue are passed to the Web Request Queue for processing into voter records. But questionable requests are detained for user review.

During your review, you can release a detained request to the Web Request Queue or you can put an indefinite hold on it. Where an address is known to be legitimate, you can set the Fraud Detection program to pass all requests associated with that address.

The Fraud Detection feature is under **Vote By Mail > Vote-By-Mail Fraud Detection**. To see this feature, your county must have this option selected:

VOTER FOCUS ADMIN > System Options > Vote By Mail > Use Vote-By-Mail Fraud Detection

And the user must have the permission:

VoteByMailFraudDetection

We recommend you run the Fraud Detection program and evaluate its findings on a daily basis.

How Fraud Detection Works

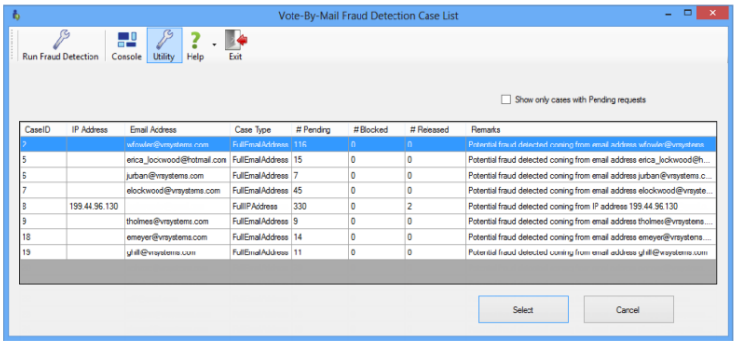
The Fraud Detection program uses these parameters on the Vote-By-Mail Fraud Detection Parameters dialog to determine whether a request should be held for review:

Email Threshold—The number of requests having the same email address at which the program will begin capturing the requests. For example, if the threshold is 5, the program will pass the first four requests with this email address but will detain the fifth and all subsequent requests with this address.

IP Address Threshold—The number of requests having the same IP address at which the program will begin capturing the requests. As with the email threshold, the program will detain any request meeting or exceeding the threshold.

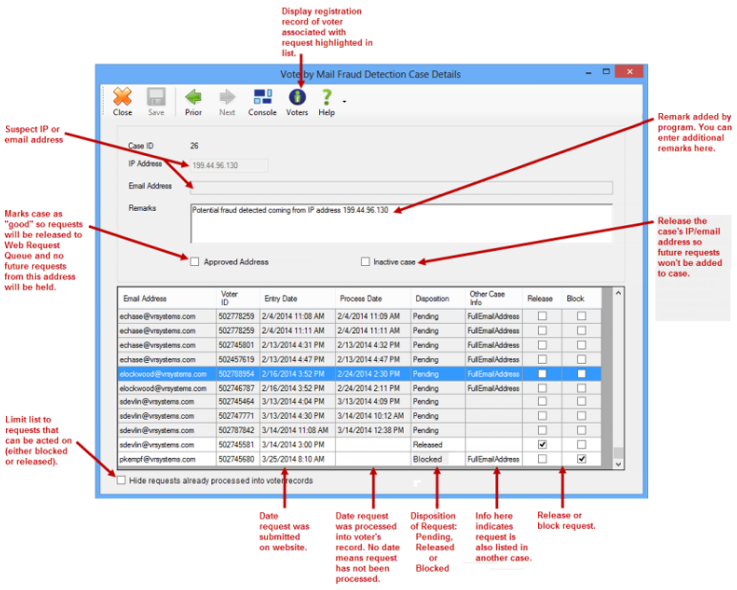
Date of First Web Request to be Analyzed—The date at which the program will begin evaluating web requests. This date must be at least a year in the past. The program will look at all requests submitted on this date and thereafter until today, including those that have already been processed into voter records.

The program checks all requests submitted on the website, beginning with the first request on the start date, placing a hold on any request exceeding the email or IP address threshold, except for those that have already been processed into voter records. It then presents the user with its findings, organized as a list of fraud cases, as shown in the screenshot below. Each case contains the web requests exceeding the threshold for a particular IP or email address.



You can then open a case, examine its requests, and make determinations on individual requests within the case or a general determination on the case itself:

- For individual requests, you can either release the request, block it, or leave it pending. A released request goes to the Web Request Queue where it can then be processed into the voter's record by the county user responsible for web request processing. Released requests continue to appear in the case list, as do requests that have been processed. If you don't want to see processed requests, you have the option of hiding them, so you can focus on requests that can still be acted upon.
- For cases where the address is known to be legitimate, you can mark the address as approved, which releases all requests in the case to the Web Request Queue and allows any future requests associated with the address to be passed by the fraud detection program. Approving an address lets you pass requests from known locations, such as public libraries, where voters might use public computers to submit Vote-By-Mail requests.



Disposition of Requests

Web requests have one of three dispositions:

Pending—For counties using fraud detection, all web requests are assigned this disposition when they come into the Voter Focus system.

Note: For counties not using fraud detection, web requests are automatically assigned the Released disposition when they enter the system. Should a county turn on the fraud detection option, those requests will appear in a case should either of their addresses meet a threshold, but their disposition will remain

Released. Should the county turn off fraud detection, the disposition of all web requests will be changed to Released.

Released—This disposition is assigned by the user upon determination that the request is legitimate. It allows the request to enter the Web Request Queue for processing into the voter's record. Requests with the disposition Released will continue to appear in the case, even after they have been processed. If a county does not use fraud detection, all web requests are assigned the disposition Released.

Blocked—This disposition is assigned by the user upon determination that the request is fraudulent. It prevents entry of the request into the Web Request Queue. Should a Blocked request be reevaluated later as legitimate, it can be released by selecting the **Release** check box on the Vote By Mail Fraud Detection Case Details dialog.

If a request appears in more than one case and you change its disposition in one of those cases, the change will be reflected in the other case.

Running the Fraud Detection Program

To run the Fraud Detection program, go to **Vote By Mail > Vote-By-Mail Fraud Detection > Run Fraud Detection**. During the run, if the programs finds new requests matching an existing case, it adds those requests to the case and displays a message indicating how many were added. If the program finds a new address meeting one of the prescribed thresholds, it will ask if you want to create a new case. If you say yes, the new case is added to the list of existing cases on the Vote-By-Mail Fraud Detection Case List dialog. If you say no, the requests associated with the suspect address will still be marked as Pending, even though a case has not been created. On subsequent runs of the program, if the same thresholds are used, you will be asked again if a new case should be created for those requests.

When counting the requests to meet one of the prescribed thresholds, the program does not consider whether a request has already been processed from the Web Request Queue into a voter's record. The first requests from an IP or email address that do not meet the threshold will not be stopped by the Fraud Detection program, so it is possible that a new case will contain requests that have already been processed, delivered, and perhaps even voted. (The same is true for requests processed before the county began using the fraud detection facility.) These requests cannot be "pulled back" or otherwise blocked by the Fraud Detection program.

The program does not evaluate the election for which a request is being made; requests for different elections can appear in a single case.

An all-elections request is considered a single request for the purpose of the Fraud Detection program.

Approving "Good" Addresses

In situations where an IP or email address is from a known legitimate source, you can mark the address as approved. This releases all requests in the case to the Web Request Queue unless a request appears in another case where the address is not approved. Approving an address allows any future requests associated with the address to be passed by the Fraud Detection program. To identify a case as good, select **Approved Address** on the Vote-By-Mail Fraud Detection Case Details dialog.

Note that if you select **Approved Address** and then clear this check box, the disposition of individual requests in the case will be reset to the settings in the last saved version of the case.

Making a Case Inactive

A case can be made inactive, which releases the once questionable IP or email address so that future requests with the address will be passed by the Fraud Detection program. This allows for situations where an internet service provider dynamically assigns a previously questionable IP address to a new, presumably legitimate location.

If you inactivate a case—by selecting **Inactive Case** and clicking **Save** on the Vote By Mail Fraud Detection Case Details dialog—the disposition of any requests in the case is essentially frozen. Inactive cases do not appear on the Vote-By-Mail Fraud Detection Case List, so the case itself can no longer be viewed and the disposition of requests in the case cannot be changed, unless they happen to appear in other, still active, cases.

Fraud Detection Reports

- Active Cases in Vote-By-Mail Fraud Detection
- Approved Addresses in Vote-By-Mail Fraud Detection
- Blocked Requests in Vote-By-Mail Fraud Detection
- Inactive Cases in Vote-By-Mail Fraud Detection
- Questionable Web Requests for an Election

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Process Vote-By-Mail Requests Submitted Through Your Website

> **Note:** This feature is available only to counties that have either VR Tower or the Move Act Information Service and deploy the Mail Ballot Request Form web service on their website.

If your county allows voters to submit Vote-By-Mail requests on your website using the Mail Ballot Request Service web service, the information from these requests flows from the website to the Web Vote-By-Mail Request Queue. This eliminates the need to rekey the information from the request forms into voter records. All that's required is to check the web request and give Voter Focus the go-ahead to insert it into the voter's record.

> **Note:** The WebServicesJurisdictionClient.exe program must be running for voters to be able to use this service.

Only voters who can be validated as registered voters in your county will be allowed to make Vote-By-Mail requests on your website. The web service manages this by verifying the applicant's last name, first name, date of birth, and address against the local voter registration database.

> **Note:** Mail ballot requests that require the voter to complete an affidavit because they chose to have the mail ballot delivered to a new address that is not currently on file with FVRS do not appear in the Web Vote-By-Mail Request Queue in Voter Focus to prevent premature data entry.

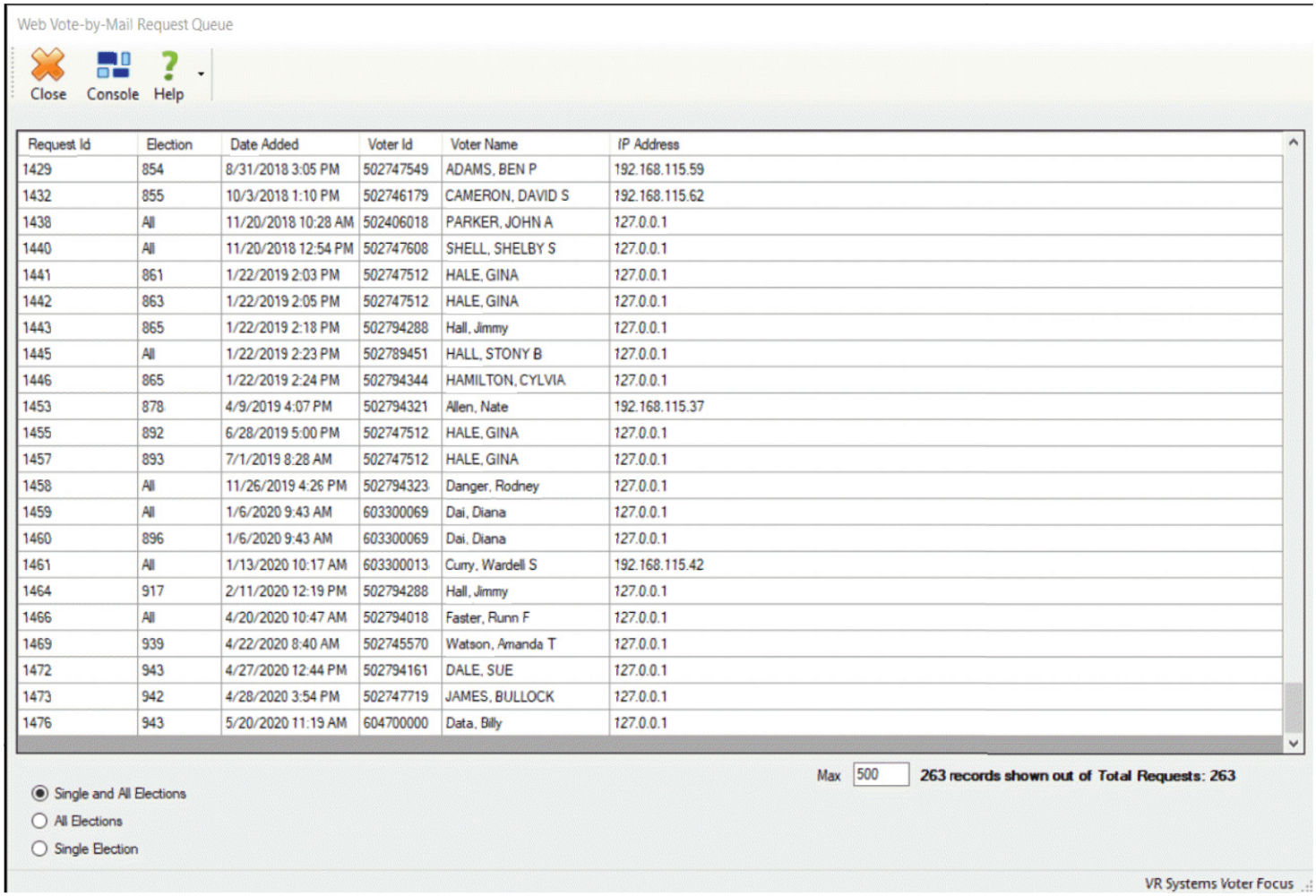
Your county will also receive an email for each voter who has submitted a Vote-By-Mail request online.

> **Note:** An email is not sent if the voter is required to complete an affidavit.

The email address submitted by the voter will be stored in the **E-Mail** field on the voter's **Vote-By-Mail** tab, replacing any previously entered email address. (These emails are not considered public record.)

For a list of the voters who have submitted web requests that have not yet been processed, run the Pending Web Absentee Requests report.

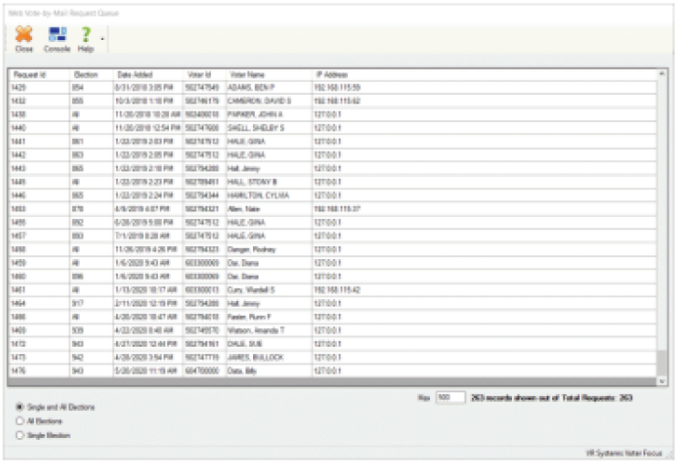
Processing a request from the website creates an entry on the voter's **Comms** tab called **Web Absentee Request**. Double-click this entry to see a summary of the request on the **View Web Absentee Request** dialog.


Web Vote-by-Mail Request Queue
Close
Console
Help
Request Id | Election | Date Added | Voter Id | Voter Name | IP Address
1429 | 854 | 8/31/2018 3:05 PM | 502747549 | ADAMS, BEN P | 192.168.115.59
1432 | 855 | 10/3/2018 1:10 PM | 502746179 | CAMERON, DAVID S | 192.168.115.62
1438 | All | 11/20/2018 10:28 AM | 502406018 | PARKER, JOHN A | 127.0.0.1
1440 | All | 11/20/2018 12:54 PM | 502747608 | SHELL, SHELBY S | 127.0.0.1
1441 | 861 | 1/22/2019 2:03 PM | 502747512 | HALE, GINA | 127.0.0.1
1442 | 863 | 1/22/2019 2:05 PM | 502747512 | HALE, GINA | 127.0.0.1
1443 | 865 | 1/22/2019 2:18 PM | 502794288 | Hall, Jimmy | 127.0.0.1
1445 | All | 1/22/2019 2:23 PM | 502789451 | HALL, STONY B | 127.0.0.1
1446 | 865 | 1/22/2019 2:24 PM | 502794344 | HAMILTON, CYLVIA | 127.0.0.1
1453 | 878 | 4/9/2019 4:07 PM | 502794321 | Allen, Nate | 192.168.115.37
1455 | 892 | 6/28/2019 5:00 PM | 502747512 | HALE, GINA | 127.0.0.1
1457 | 893 | 7/1/2019 8:28 AM | 502747512 | HALE, GINA | 127.0.0.1
1458 | All | 11/26/2019 4:26 PM | 502794323 | Danger, Rodney | 127.0.0.1
1459 | All | 1/6/2020 9:43 AM | 603300069 | Dai, Diana | 127.0.0.1
1460 | 896 | 1/6/2020 9:43 AM | 603300069 | Dai, Diana | 127.0.0.1
1461 | All | 1/13/2020 10:17 AM | 603300013 | Curry, Wardell S | 192.168.115.42
1464 | 917 | 2/11/2020 12:19 PM | 502794288 | Hall, Jimmy | 127.0.0.1
1466 | All | 4/20/2020 10:47 AM | 502794018 | Faster, Runn F | 127.0.0.1
1469 | 939 | 4/22/2020 8:40 AM | 502745570 | Watson, Amanda T | 127.0.0.1
1472 | 943 | 4/27/2020 12:44 PM | 502794161 | DALE, SUE | 127.0.0.1
1473 | 942 | 4/28/2020 3:54 PM | 502747719 | JAMES, BULLOCK | 127.0.0.1
1476 | 943 | 5/20/2020 11:19 AM | 604700000 | Data, Billy | 127.0.0.1
Max 500
263 records shown out of Total Requests: 263
Single and All Elections
All Elections
Single Election
VR Systems Voter Focus

Note: An entry is not made on the voter's Comms tab if the voter is required to complete an affidavit.

To process the Vote-By-Mail requests submitted on your website:

1. Go to **Vote By Mail > Process Web Requests** to open the Web Vote-by-Mail Request Queue. The requests that were submitted on your website and are awaiting processing are listed.



   Initially, the requests are ordered by when they were added to the queue (that is, the *Date Added* column) and respective of the filters at the bottom of the dialog.

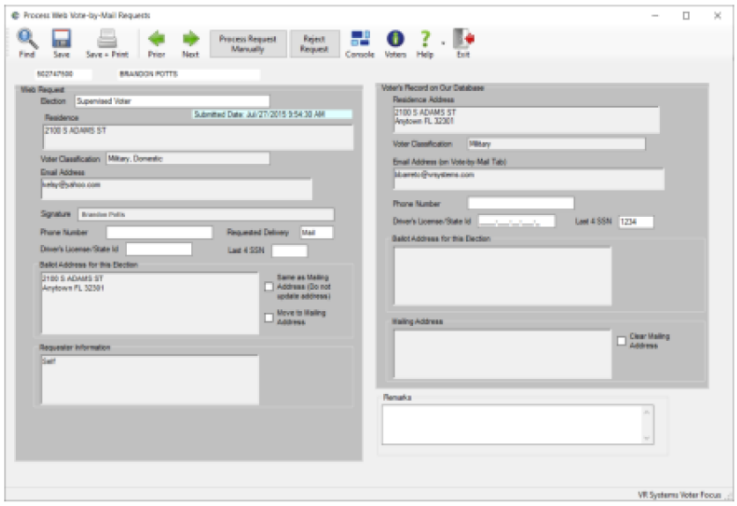
   Note: You can re-sort by a different column or change the sort order (ascending or descending) by clicking any column header.

2. You can do the following to limit the number of requests that display in the grid:
   - Select to display **Single and All Elections**, or limit the grid display to only **All Elections** or only **Single Election** requests.
   - Leave the default **Max** number to display in the queue, which is 500 requests, or change the selection.

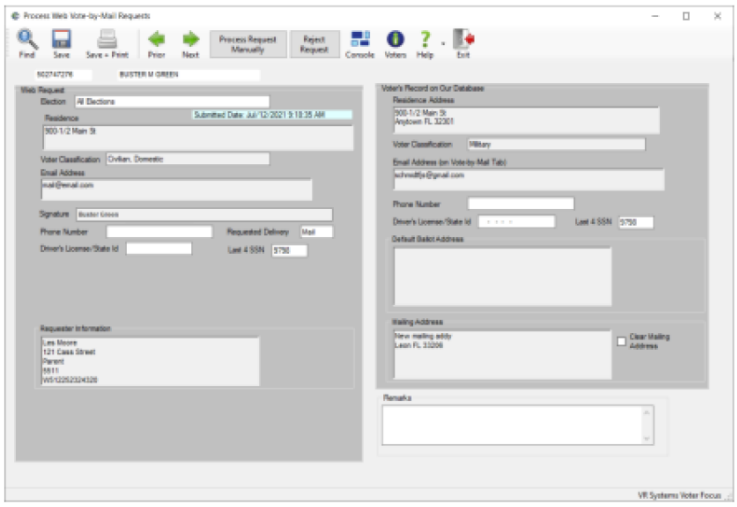
   Note:
   - Changing the Max setting to a significantly greater number may affect the system's response time to load and also re-load (after processing a request and returning to the grid) requests.
   - The system retains changes to the Max setting. The next time you return to the dialog, your last setting remains in effect.

3. Click an entry in the list to display the request in the Process Web Vote-By-Mail Requests dialog. The left pane displays the data submitted by the voter on the website form. Vote-By-Mail related data from the voter's record is shown in the right pane. The **Election** field in the **Web Request** pane indicates whether the request is for all elections or a specific election.

Process Web Vote-By-Mail Dialog for Single Election:



Process Web Vote-By-Mail Dialog for All-Elections:



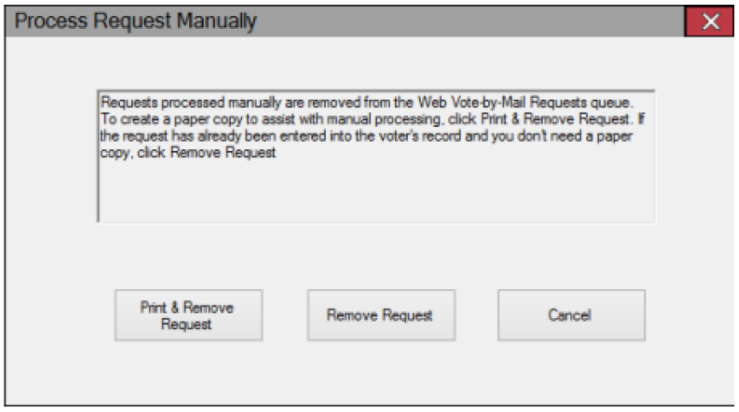
4. Review the information provided by the voter and compare it to the data from their record.
    - If the voter requested delivery of their ballot by email, they must provide an email address in the **Email Address** field as well as an address to show that they are a UOCAVA voter in the **UOCAVA Address Provided by Voter** field. You can pick up this address as their mailing address by selecting **Move to Mailing** address. (The **UOCAVA Address Provided by Voter** field won't appear if the voter did not provide this information on the online form.)
    - If the voter provided an address where the ballot is to be mailed for a single election only, it appears in **Ballot Address for this Election**. When you save the request, this address is copied to the **Ballot Address for this Election** field in the voter's record (Vote-By-Mail Address dialog), unless you select **Same as Mailing Address (Do not update address)**.
    - Use the **Remarks** box for any notes about the request, such as comments on the voter’s eligibility or the existence of previous requests for the election.
5. Take the appropriate action to process the request:
    - **If the request looks good,** click **Save** to process the request into the voter's record. Clicking **Save + Print** will save the request and print an Absentee Request Information Sheet to your Windows default printer. Information in the following fields of the web request is copied to the voter's record, overwriting any information in the record:

        - **Voter Classification**

- **Email Address**. Copied to the email address on the **Vote-By-Mail** tab, not the **Maint** tab.
- **Ballot Address for this Election**. (Single Election) Copied to Ballot Address for this Election, unless you selected *Same as Mailing Address (Do not update address)*.
- **Ballot Address for All Elections**. (All Elections) Overwrites the default ballot address. If your county does not use default ballot addresses, the address on the web request is stored with each election.

- **If the voter already has a request on file for this election,** you will see the message *Absentee Ballot Already Requested. Voter record must be used to update existing request or put on second and third request*. This means that the request cannot be processed through the web request feature as this feature only handles initial requests.

  Go to **VOTER REGISTRATION > Voter Maintenance** and take appropriate action in the voter's record to update the request or record a second/third request. Once the request has been handled manually, return to the request in the queue and click **Process Request Manually**.



  Do one of the following to remove the request from the queue and move to the next request:

  - To produce a hard copy of the voter's request before removing it from the queue, click **Print & Remove Request**.
  - To remove it from the queue with no printout, click **Remove Request**.

- **If you believe the request should be rejected,** type a reason for the rejection into the **Remarks** box. Some reasons—for example the voter's status is Ineligible or the voter cannot be found—are inserted automatically by Voter Focus. You can change this text or amend it, if you want. Then click **Reject Request** to remove the request from the web queue and go to the next voter's request.

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

JOHN WILLIAM LICCIONE,
Plaintiff
v. Case No. 24-003939-CI
JULIE MARCUS,
JENNIFER GRIFFITH, et al,
Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT GRIFFITH'S

MOTION FOR SANCTIONS

INTRODUCTION

1. Plaintiff, **John William Liccione ("Liccione")**, pro se, submits this response in opposition to **Defendant Jennifer Griffith's ("Griffith") Motion for Sanctions**. The motion not only lacks merit but is also procedurally deficient. Defendant Griffith has failed to provide a sworn affidavit to authenticate the factual allegations on which her motion relies, violating established procedural requirements. As shown below, without such verification, Defendant's motion lacks credibility and should be denied in its entirety.

LEGAL STANDARD

2. Sanctions are an extraordinary remedy reserved for instances of clear bad faith or serious abuse of judicial process. **See Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991)**. Under **Florida Statutes § 57.105**, sanctions may only be imposed when a party or their attorney knowingly files a claim that lacks any factual or legal basis. Courts in Florida must exercise caution in imposing sanctions, as they are appropriate

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only in cases involving indisputable and egregious conduct. **See Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980)**.

3. **Thompson v. Citizens Nat'l Bank of Leesburg, 433 So. 2d 32 (Fla. 5th DCA 1983)**, is central to understanding the procedural requirements for any motion introducing new facts. In Thompson, the court emphasized that motions based on facts not present in the record must be supported by an affidavit or sworn testimony to authenticate those facts. A motion that lacks supporting affidavits or verified evidence is thus considered procedurally deficient. Defendant's failure to provide this fundamental evidentiary support in her motion is a critical procedural flaw that undermines her credibility and warrants denial of her motion for sanctions.

The E. Jean Carrol v. Donald Trump Defamation Cases are Analogous to Griffith's Pattern of Continuing and Escalating Misconduct

4. A relevant case precedent can be applied here from the E. Jean Carroll v. Donald Trump defamation cases in New York. After Carroll initially won $5 million in damages for defamation and sexual abuse, Trump refused to stop and escalated his defamatory remarks. As a result, Carroll filed another defamation lawsuit, leading to an additional $83.3 million jury award for both punitive and compensatory damages in January 2024. This illustrates how ongoing harmful behavior from a defendant, despite previous legal consequences, can justify successive lawsuits. Similarly, Plaintiff's continued legal actions were necessary to address Defendant Griffith's ongoing interference and misconduct after the first lawsuit was filed on July 3, 2024. Instead of ceasing her unlawful actions, Defendant Griffith intensified her interference with Plaintiff's campaign, including efforts to physically block voters from attending his campaign event on July 13, 2024, engaging in mass mail ballot fraud, and further acts of

defamation. These acts escalated leading up to the August 20, 2024, election necessitating additional legal action from Plaintiff.

ARGUMENT AND MEMORANDUM OF LAW

I. The Procedural Deficiencies in Defendant's Motion Are Fatal Under Thompson

4. Defendant Griffith's motion relies on numerous factual allegations that are not present in the case record and lack the necessary affidavit or sworn testimony for authentication. According to **Thompson v. Citizens Nat'l Bank of Leesburg**, the absence of a supporting affidavit makes the motion procedurally deficient and undermines its foundation. In Thompson, the court held that unsupported factual assertions, when presented without verification, lack the procedural integrity required to be considered by the court. Griffith's failure to adhere to this procedural standard is fatal to her motion and should result in its denial. **See Thompson, 433 So. 2d at 34**.

5. Defendant's motion introduces a range of allegations—regarding Plaintiff's supposed motives, campaign conduct," and purported interactions with PCDEC— plus her alleged "candidate vetting process that are speculative, unsupported by the case record, and unaccompanied by any sworn affidavit. Such a procedural omission directly contravenes the precedent established in Thompson, which underscores that factual claims not contained within the case record must be substantiated by an affidavit to establish credibility. Defendant's reliance on unverified claims reflects a failure to meet Florida's procedural standards, rendering her motion unfit for consideration.

II. Defendant's Motion Is Rife with Speculative Allegations Unsupported by Evidence

6. Griffith's motion mischaracterizes the nature and status of Plaintiff's active lawsuits, asserts unsupported claims regarding Plaintiff's campaign and personal conduct, and makes inaccurate statements about Plaintiff's prior legal history. Each of these points introduces extraneous facts not present in the case record, and Griffith has not provided the affidavit required to authenticate such assertions under Florida motion practice.

A. Misleading Claims on the Status of Plaintiff's Lawsuits

7. Defendant Griffith incorrectly asserts that Plaintiff has filed five frivolous lawsuits against her. This is factually misleading. In reality, two actual lawsuits which seek damages are currently active and await substantive hearings and pre-trial rulings, with the first case scheduled for a hearing on Defendant's Motion to Dismiss on **November 21, 2024**. The second case was referred by the U.S. District Court in Tampa to a magistrate judge and placed on a fast-track docket under the Federal IDEAS program. This procedural action underscores that the court does not view Plaintiff's tort and election fraud and interference claims as frivolous, and Griffith's portrayal of these cases is disingenuous and unsupported by evidence.

B. False Assertions Regarding Plaintiff's Campaign Conduct

8. Griffith alleges that Plaintiff engaged in disruptive behavior following the PCDEC candidate vetting process. Contrary to Defendant's claims, Plaintiff's interactions with PCDEC were respectful and professional, including a $1,200 donation to support a PCDEC event, which was later refunded. Plaintiff's "behavior," as Griffith inaccurately describes, was limited to attendance at standard PCDEC meetings and events where he introduced himself and disclosed his candidacy for public office. Defendant's

unsupported characterization of Plaintiff's alleged misconduct is unsubstantiated, and she has not provided any affidavit or sworn testimony to verify these claims.

9. Defendant also alleges that Plaintiff attended PCDEC events after being "asked to stay away," a claim that is patently false. Plaintiff received no such directive, either verbally or in writing, and was simply informed that he could not publicly speak at PCDEC events. During the July 13, 2024, Candidate Debate, Plaintiff did not attend PCDEC's debate but instead held his own campaign event at the same venue down the hall at the St. Petersburg/Clearwater Marriott hotel. Plaintiff alleges that Griffith obstructed attendees from his event in front of Pinellas Park police officers and the hotel events manager, by physically blocking the hallway, constituting voter intimidation and campaign interference. Griffith's account of these events is unsupported by any verified evidence or affidavit.

C. Mischaracterization of Plaintiff's Legal History

10. Griffith references an October 2023 Tampa Bay Times article concerning Plaintiff's "checkered past" to introduce irrelevant information about dismissed charges and expunged records. This attempt to invoke Plaintiff's past as a pretext for attacking his credibility is both misleading and without relevance to the current litigation. Defendant knew or should have known that Plaintiff was exonerated and had his records expunged, making her portrayal misleading. Griffith's characterization of Plaintiff as possessing a "checkered past" is defamatory and lacks any affidavit to substantiate these claims.

III. The Lack of a Supporting Affidavit Undermines the Motion's Credibility

11. Griffith's failure to include a sworn affidavit to support her factual claims violates the procedural requirements clearly set forth in **Thompson v. Citizens Nat'l Bank**

of Leesburg. The absence of verified evidence not only undermines the credibility of her motion but also denies the Court a reliable foundation upon which to evaluate the factual merits of her allegations. Without an affidavit, Griffith's motion is procedurally deficient, lacking the integrity required to substantiate her request for sanctions. **See H.L. Brown, III, P.A. v. George S. Koulianos, D.O., P.A., 930 So. 2d 808 (Fla. 2d DCA 2006)** (affidavits required to support motions based on evidence outside the case record).

IV. Plaintiff's Claims Are Not Frivolous or Filed in Bad Faith

12. Griffith has not demonstrated that Plaintiff's claims lack merit or were filed in bad faith. Plaintiff's allegations address substantive issues of voter intimidation, campaign interference, defamation, and election fraud, and earlier unlawful acts such as campaign sign snatching, battery and assault, each of which warrants judicial consideration. Courts have consistently held that multiple filings do not equate to an abuse of process if each filing addresses discreet and specific instances of misconduct. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990) (sanctions inappropriate where a claim has arguable support in law or fact).

V. Defendant's Attempt to Use Multiple Filings as Grounds for Sanctions Is Unfounded

13. Griffith's argument that Plaintiff's successive filings warrant sanctions is baseless. Each filing responds to a specific instance of campaign interference, voter obstruction, or defamation, election fraud, and underscores the ongoing nature of Griffith's cumulative interference in Plaintiff's campaign. Defendant has failed to meet the burden under **Florida Statutes § 57.105**, which requires a lack of both legal and factual support for the imposition of sanctions. Plaintiff's filings are substantiated by credible

claims requiring judicial review, and Griffith's attempt to portray these actions as frivolous is unsupported by any verified evidence.

CONCLUSION

14. Defendant Griffith's Motion for Sanctions is procedurally and substantively deficient, failing to comply with the evidentiary requirements established in **Thompson v. Citizens Nat'l Bank of Leesburg, 433 So. 2d 32 (Fla. 5th DCA 1983)**, which mandates that motions introducing extrinsic facts must be supported by a sworn affidavit or verified evidence. The absence of such an affidavit renders Griffith's motion procedurally flawed, undermining its credibility and admissibility.

15. Griffith's reliance on unsupported factual assertions also violates Florida's established standards for motion practice, as reinforced in **H.L. Brown, III, P.A. v. George S. Koulianos, D.O., P.A., 930 So. 2d 808 (Fla. 2d DCA 2006)**, which emphasizes that affidavits are essential for motions that present facts outside the record. Without verified evidence, Griffith's motion lacks the procedural integrity required for consideration.

16. Plaintiff's claims are not frivolous or made in bad faith; rather, they seek redress for substantial grievances involving voter intimidation, defamation, and campaign interference—legitimate issues warranting judicial consideration. As the U.S. Supreme Court explained in **Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990)**, sanctions are inappropriate when a claim has arguable support in law or fact, highlighting that Defendant's reliance on sanctions is premature and unfounded. Further, under **Florida Statutes § 57.105**, sanctions are an extreme measure

requiring clear evidence that both legal and factual support are absent, a burden Griffith has failed to meet.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Deny Defendant's Motion for Sanctions in its entirety;

B. Other relief as the court deems appropriate.

Respectfully submitted,



John W Liccione, Plaintiff
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this on the 28st day of October 2024, the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to GEORGE A.D. THURLOW, ESQ., Attorney for Defendant JENNIFER GRIFFITH, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, and via postage pre-paid 1st class mail to: Defendant Patrick Heinzen at 4200 54th Ave S #1382, St. Petersburg, FL 33711, and Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685.



John W. Liccione

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

John William Liccione,
Plaintiff,
v. **Case No.: 24-003939-CI**

Julie Marcus, et al
Defendants.

PLAINTIFF'S AFFIDAVIT

I, John William Liccione, Plaintiff, on this 28st day of October, 2024, do hereby solemnly swear under penalty of perjury that the facts and allegations in the Plaintiff's enclosed Response to Defendant Jennifer Griffith's Motion for Sanctions, are true and accurate to the best of my knowledge.



John W. Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. **Case No. 24-003939-CI**

JULIE MARCUS, et al,
Defendants.

_____/

MOTION TO SHORTEN TIME
FOR DEFENDANTS GRIFFITH AND LOPER TO RESPOND TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY

COMES NOW, Plaintiff, **John William Liccione ("Liccione")**, pro se, and respectfully moves this Court to shorten the time for Defendants Jennifer Griffith and Cathy Salustri Loper to respond to Plaintiff's contemporaneously filed **Motion to Compel Discovery**. In support of this Motion, Plaintiff states as follows:

BACKGROUND

1. As stated in Plaintiff's contemporaneously filed Motion to Compel Discovery**,** on September 12, 2024, Plaintiff served a First Request for Production of Documents on Defendant Jennifer Griffith. On September 13, 2024, Plaintiff served an identical First Request for Production of Documents on Defendant Cathy Salustri Loper. Each request required a response within 45 days per Rule 1.350.
2. **Defendants' Noncompliance**: As of the date of this Motion, the 45 day discovery deadline has passed and neither Defendant has provided any response, sought a protective order, nor filed any objections to Plaintiff's discovery demands.

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Both Defendants have instead filed Motions to Dismiss, which are now scheduled for a hearing on November 12, 2024 at 3:00 PM before Judge Muscarella. It is noted that Defendant Griffith filed her Motion to Dismiss on October 2, 2024, while Defendant Loper filed her Motion to Dismiss on October 3, 2024. As such, both Defendants had four *unencumbered* weeks *after* having filed their motions to dismiss, to produce the requested documents.

3. **Upcoming Deadlines**: The Court has set a deadline of November 7, 2024, for Plaintiff to submit all evidence and pleadings for the November 12 hearing. Given that the hearing is only 14 days away, and the filing deadline is 9 days away, Plaintiff seeks an expedited order compelling Defendants to produce the records sought to avoid prejudicing Plaintiff's defense. He also seeks a postponement of the November 12th hearing until at least two weeks after the Defendants have delivered the discovery materials to him.

LEGAL STANDARD

4. **Authority to Shorten Time**: Under Florida Rule of Civil Procedure 1.090(b), the Court may shorten the time required for parties to perform procedural actions such as responding to a motion to compel discovery in advance of a motion to dismiss hearing, for cause shown. Courts have discretion to shorten response deadlines where justice requires, especially when necessary to prevent prejudice.

ARGUMENT

DEFENDANTS' WAIVER OF RIGHT TO CONTEST DISCOVERY AND CONTEMPORANEOUS FILING OF MOTION TO COMPEL DISCOVERY

5. **Contemporaneous Filing of Motion to Compel Discovery**: Plaintiff has contemporaneously filed a **Motion to Compel Discovery** and a Request for a

Show Cause Hearing against Defendants Jennifer Griffith and Cathy Salustri Loper, requesting immediate compliance with Plaintiff's First Request for Production of Documents. Given the short timeline between today's date and the upcoming November 12, 2024, hearing on Defendants' Motions to Dismiss, Plaintiff's Motion to Compel Discovery would otherwise not be ripe for consideration until after the November 12th hearing, which would deprive Plaintiff of the necessary information critical to his defense due to Defendants' willful discovery non-compliance.

6. **Defendants' Waiver of Rights by Non-Response**: The Florida Rules of Civil Procedure, particularly Rule 1.380, along with case law such as *Bank of New York v. Calloway* (157 So. 3d 1064) and *American Funding, Ltd. v. Hill* (402 So. 2d 1369), establish that failing to respond to discovery requests within the required timeframe without filing objections, a motion for a protective order, or asserting privileges can result in the waiver of those rights. Specifically, Rule 1.380(d) addresses the failure of a party to attend their own deposition or serve answers to interrogatories or respond to a request for inspection, which can result in sanctions, including compelling discovery and requiring the non-compliant party to pay reasonable expenses caused by the failure. By failing to respond in any manner whatsoever to Plaintiff's discovery requests within the allotted 45-day period, Defendants Griffith and Loper have waived their rights to object to discovery if no good cause is shown for the failure to comply.
7. **Need for Immediate Court Intervention**: Due to the pressing deadline, Plaintiff respectfully requests that the Court grant the Motion to Shorten Time for Defendants to respond to Plaintiff's Motion to Compel Discovery, or in the

alternative, to immediately grant Plaintiff's Motion to Compel against both Defendants without any hearing. Without immediate intervention, Plaintiff will be unfairly prejudiced by Defendants' failure to comply with discovery obligations, as the motion to dismiss November 12 hearing date approaches.

8. **Urgency of Expedited Discovery**: The requested documents, communications between Defendants and third parties concerning Plaintiff, are essential for Plaintiff to counter the factual claims made in Defendants' Motions to Dismiss. Without this information, Plaintiff is unable to prepare a complete defense for the November 12 hearing, which risks unfairly prejudicing Plaintiff's case.
9. **No Prejudicing Defendants' Cases in Shortening Time to Respond** Plaintiff argues that Defendants have prejudiced their own case through their own willful acts of discovery non-compliance, concealment, and obstruction. Postponing the Motion to Dismiss until after Defendant's have met their discovery obligations does not prejudice Defendants' cases in any manner.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Grant this Motion to Shorten Time for Defendants Jennifer Griffith and Cathy Salustri Loper to respond to Plaintiff's Motion to Compel Discovery
B. Grant any further relief that the Court deems just and proper.

Respectfully submitted,



John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John W Liccione, HEREBY CERTIFY that on this 29th day of October 2024, the foregoing Motion to Shorten Time was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to Kirby Kreider, attorney for Julie Marcus, George A.D. Thurlow, Esq., Attorney for Defendant Jennifer Griffith, James B. Lake, Esq., Attorney for Defendant Cathy Salustri Loper, and via postage pre-paid first-class mail to Defendant Patrick Heinzen at 4200 54th Ave S #1382, St. Petersburg, FL 33711, and Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685.

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. **Case No. 24-003939-CI**
JULIE MARCUS, et al.,
Defendants.

ORDER ON PLAINTIFF'S MOTION TO COMPEL DISCOVERY AND REQUEST FOR EXPEDITED SHOW CAUSE HEARING

THIS MATTER, having come before the Court upon Plaintiff's Motion to Compel Discovery Against Defendants Jennifer Griffith and Cathy Salustri Loper, and Request for Expedited Show Cause Hearing, the Court having reviewed the Motion, the pleadings, and being otherwise fully advised, it is hereby ORDERED and ADJUDGED as follows:

1. **Motion to Compel Discovery**: Plaintiff's Motion to Compel Discovery is **GRANTED**. Defendants Jennifer Griffith and Cathy Salustri Loper are hereby ordered to produce all documents responsive to Plaintiff's First Request for Production of Documents, served on September 12 and 13, 2024, respectively, within seven (7) days of this Order.
2. **Show Cause Hearing**: The Court hereby schedules an Expedited Show Cause Hearing for Defendants Griffith and Loper on _____, at which time Defendants shall appear and explain their failure to comply with Plaintiff's discovery requests within the timeframe provided by law.
3. **Postponement of Motion to Dismiss Hearing**: The Court hereby postpones the Motion to Dismiss hearing, previously scheduled for **November 12, 2024**,

until such time as Defendants have fully complied with Plaintiff's discovery requests, and Plaintiff has had adequate time to review the documents. The new date for the Motion to Dismiss Hearing shall be scheduled at least **two (2) weeks** following Defendants' compliance with this Order.

4. **Sanctions for Noncompliance**: Should Defendants Griffith and Loper fail to comply with this Order to producing the requested documents within the specified timeframe, they may be subject to sanctions under **Florida Rule of Civil Procedure 1.380(b)**, including but not limited to an award of costs, attorney's fees, entry of default judgement, and other sanctions as the Court deems appropriate.
5. **Additional Relief**: The Court reserves jurisdiction to grant any additional relief deemed just and proper.

DONE AND ORDERED this _____ day of _____, 2024.

HONORABLE _____

Judge of the Circuit Court

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS,
JENNIFER GRIFFITH,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER,
PATRICK HEINZEN,
OTHER UNKNOWN CO-CONSPIRATORS,
Defendants.
_____/

DEFENDANT GRIFFITH'S CONSOLIDATED MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL RESPONSES TO REQUEST FOR PRODUCTION AND MOTION TO SHORTEN TIME TO RESPOND TO REQUEST FOR PRODUCTION

Defendant, JENNIFER GRIFFITH, by and through her undersigned counsel, hereby files this Consolidated Memorandum in Opposition to Plaintiff's Motion to Compel Responses to Request for Production and Plaintiff's Motion to Shorten Time to Respond to Request for Production, and in support thereof states as follows:

1. On October 29, 2024, Plaintiff filed a Motion to Compel Responses to Request for Production against Defendant Griffith (as well as Defendant Loper) alleging that Ms. Griffith was served a Request for Production alongside the Amended Complaint on September 12, 2024, and did not respond within forty-five (45) days as required by the Rules of Civil Procedure.
2. In *arguendo*, if Plaintiff's assertion regarding the service of the Request for Production is accurate, the deadline to respond would have been October 28, 2024.
3. In spite of Plaintiff's allegations that a Request for Production was served on Ms. Griffith, the court file has no indication that a Request for Production was filed on Ms. Griffith until October 19, 2024 (Doc # 49).

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4. Based on the October 19, 2024 filing date of the Request for Production, Defendant's counsel believed that responses were due on or before November 20, 2024.
5. Undersigned counsel was not provided with a copy of any Request for Production which may have been served alongside the Amended Complaint.
6. Plaintiff made no effort to confer with counsel for Ms. Griffith as required for an *ex parte* order under local Administrative Order No. 2020-011 PA/PI-CIR regarding the purported failure to respond to the Request for Production.
7. Any failure to respond on or before October 28, 2024, if such date was actually a deadline for a response, was due to mistake, ambiguity or excusable neglect, and not out of any desire to delay providing response. Therefore, good cause exists for the failure to respond.
8. Without waiving the arguments stated above, in an abundance of caution, Defendant Griffith will file initial responses and/or objections to the Request for Production alongside this Memorandum on October 29, 2024—ten (10) days after counsel was served a copy of the Request.
9. In addition to his Motion to Compel, Plaintiff seeks expedited discovery from Defendants on the grounds that there is an upcoming hearing on Defendants' Motions to Dismiss, and seeks a continuance of that hearing due to no discovery responses being received.
10. Plaintiff's argument is entirely founded upon this Court's practice preference that evidence and pleadings be submitted to the Judge in hard copy on or before November 7, 2024, for the November 12, 2024 hearing on Defendants' Motions to Dismiss.
11. Notably, the November 12, 2024 hearing <u>is not</u> noticed as an evidentiary hearing. Therefore, Plaintiff will be unable to introduce evidence at such hearing.
12. Hearings on Motions to Dismiss are rarely held as evidentiary hearings. A Motion to Dismiss is a purely technical motion dealing with issues of law in which generally only evidence contained within the four corners of Plaintiff's Amended Complaint may be considered. *Steiner Transocean Ltd. v. Efremova*, 109 So. 3d 871, 873 (Fla. 3d DCA 2013). While exceptions to that general rule exist, Plaintiff's Request for Production does not touch on the procedural and technical issues raised within Defendant Griffith's

Motion to Dismiss nor would Defendant Griffith have documents or communications in her possession that would defeat dismissal under Florida's anti-SLAPP statute. See *Id.*

13. No case law supports Plaintiff's contention that he is entitled to a continuance of the Motion to Dismiss hearing. Even with summary judgment, "Summary judgment may be granted, even though discovery has not been completed, when the future discovery will not create a disputed issue of material fact." *Estate of Herrera v. Berlo Indus., Inc*., 840 So. 2d 272, 273 (Fla. 3d DCA 2003). Further, "[a] trial court has the discretion to deny a continuance of a summary judgment hearing where the outstanding discovery items are immaterial to the dispositive issues in the case." *Crespo v. Fla. Entm't Direct Support Org.*, 674 So. 2d 154, 155 (Fla. 3d DCA 1996). Simply put, the discovery being sought by Plaintiff is immaterial to the issues raised in Defendant's Motion to Dismiss, and thus this Court can resolve those issues in spite of pending discovery.
14. Accordingly, whether or not the Defendants have responded to Plaintiff's discovery requests is irrelevant to the Court being able to hear Defendants' non-evidentiary Motion to Dismiss.
15. Additionally, granting a continuance would be a violation of Defendant's rights under Fla. Stat. § 768.295. Ms. Griffith's Motion to Dismiss seeks dismissal pursuant to Fla. Stat. § 768.295. Fla. Stat. § 768.295(4) states that "As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the . . . response" to the Defendant's Motion. Plaintiff filed his response to Defendant Griffith's Motion to Dismiss on October 16, 2024 (Doc # 45). Thus, it is practicable to have a hearing on November 12, 2024.

WHEREFORE, Defendant, JENNIFER GRIFFITH, respectfully requests that this Court enter an Order (1) denying Plaintiff's Motion to Compel; (2) denying Plaintiff's Motion to Shorten Time; and (3) denying Plaintiff's request for a continuance of the November 12, 2024 Motion to Dismiss hearing.

Dated: October 29, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was served upon all counsel of record and John William Liccione, Plaintiff *Pro Se*, via the Florida E-Filing Portal on this 29th day of October, 2024 and served via US Mail to:

Mark Weinkrantz
4738 Belden Circle
Palm Harbor, FL 34685

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
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Email: gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Attorney for Defendant,
GRIFFITH

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. **Case No.: 24-003939-CI**
JULIE MARCUS, et al.,
Defendants.

_____/

PLAINTIFF'S REPLY TO DEFENDANT GRIFFITH'S MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO COMPEL DISCOVERY

Comes now Plaintiff, in reply to Defendant Griffith's memorandum, and respectfully provides the following in support of Plaintiff's Motion to Compel Discovery:

A. Defendant Griffith was Properly Served on September 12, 2024, and the Response Deadline was October 28, 2024.

1. **Proof of Service Confirms Personal Service Date**: Defendant Griffith was personally served with the **Request for Production**, along with the **Summons and First Amended Complaint**, by Plaintiff's process server, Stephen Cerda, at her residence at 305 S. Tessier Cr., St. Pete Beach, FL 33706, on **September 12, 2024**. This is documented in the proof of service affidavit, e-filed on October 19, 2024, and attached as **Exhibit A** to Plaintiff's Motion to Compel.
2. **Response Deadline Based on Service Date**: According to the Rules of Civil Procedure, Defendant Griffith's response was due **45 days from the date of personal service** on September 12, 2024, setting the response deadline as

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October 28, 2024. Defendant's response on October 29, 2024, is therefore untimely.

B. Griffith's Failure to Inform Her Attorney of the Request for Production When She Was Served on September 12th Constitutes Intentional Party Misconduct, Not Excusable Neglect.

3. **Intentional Concealment by Defendant**: Defendant Griffith's failure to deliver the Request for Production to her attorney, Mr. Thurlow, and her failure to inform him of the service, cannot be characterized as attorney error or neglect. This is a matter of **party misconduct**, as Griffith was fully aware of the Request for Production but allegedly chose not to disclose it to her attorney.
4. **Distinction from Attorney Willful Neglect Doctrine**: The willful neglect doctrine applies when an **attorney** fails to file something on time or otherwise mishandles a case, and the client argues that they were unaware or uninvolved in the neglect. Here the opposite is true. Griffith herself is responsible for not relaying the request for production document to her attorney, meaning her actions fall squarely under party misconduct. Courts do not excuse discovery violations resulting from a party's own intentional withholding of information from their attorney. (See *Smith v. J.L. Marks Enterprises, Inc.*, 888 So. 2d 787, 789 (Fla. 4th DCA 2004) [affirming trial court's authority to impose sanctions on a party who fails to fulfill their discovery obligations]; *Cessna v. Montgomery*, 63 Md. App. 65, 491 A.2d 347 (1985) [holding that parties are ultimately responsible for ensuring compliance with discovery requirements].)
5. **Party Obligation to Cooperate with Attorney**: It is well established that parties have a duty to provide their attorneys with all necessary information and

documents. Failure to do so is not grounds for excusable neglect but instead may lead to sanctions due to non-compliance with discovery obligations. (See *Harris v. Harris*, 984 So. 2d 1155, 1158 (Fla. 1st DCA 2008) [holding that a party's failure to provide relevant information to counsel can constitute intentional disregard for the discovery process].)

C. Defendant's Opposition Conflates and Confuses the Service Date with the E-Filing Date of the *Proof of Service*.

6. **Misleading Interpretation of Service/Filing Dates**: Defendant's opposition memo conflates and confuses the relevance and ramifications of the e-*filing date of the proof of service*, October 19, 2024, with the actual *date of service*, September 12, 2024. The Rules of Civil Procedure clarify that the relevant timeline for discovery response begins from the date of personal service, not the subsequent date of the filing of proof of service. Defendant attempts confuse the Court with this misrepresentation of the law and timeline is not a valid defense and only serves to delay compliance.

D. Plaintiff's Motion to Compel Discovery is Properly Filed, and Defendant's Attempt to Avoid Discovery is Untenable.

7. **Defendant's Argument on Relevance is Baseless**: Defendant's assertion that Plaintiff's Request for Production is immaterial to the Motion to Dismiss is irrelevant. Florida courts maintain that discovery obligations are not suspended by the pendency of motions unless explicitly stayed, which is not the case here. Defendant's delay is simply an attempt to sidestep discovery, which courts have routinely rejected. (See Garcia v. Wal-Mart Stores E., LP, 302 So. 3d 553, 556

(Fla. 5th DCA 2020) [holding that discovery may proceed despite pending motions unless stayed by court order]; Patrowicz v. Wolff, 110 So. 3d 973, 975 (Fla. 2d DCA 2013) [stating that the filing of a motion to dismiss does not automatically stay discovery].)

8. **Discovery Obligations Are Not Suspended by a Motion to Dismiss:** Defendant's reliance on the pendency of a Motion to Dismiss to justify her delayed response is misplaced. Even if the Motion to Dismiss addresses procedural issues or matters of law, it does not override her obligation to comply with discovery timelines, absent a stay, which she did not request, *and has still failed to request even now*.

E. Plaintiff's Motion to Shorten Time is Justified Due to Defendant's Deliberate Delay.

9. **Intentional Delay Justifies Expedited Relief**: Defendant Griffith's intentional concealment of the Request for Production from her attorney has severely delayed Plaintiff's access to discovery materials necessary for trial preparation. Granting Plaintiff's Motion to Shorten Time is both necessary and appropriate given Defendant's obstructive actions and will allow Plaintiff adequate time to review the documents in preparation for upcoming proceedings.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Grant Plaintiff's Motion to Compel Discovery and order Defendant Griffith to produce all requested documents immediately;

B. Sanction Defendant Griffith and her attorney for her intentional obstruction of the discovery process by means of willful concealment and subterfuge; and,

C. Grant any further relief this Court deems just and proper.

Respectfully submitted,



John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John W Liccione, HEREBY CERTIFY that on this 31st day of October 2024, the foregoing Response to Defendant Griffith's Memorandum in Opposition to Plaintiff's Motion to Compel Discovery was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to Kirby Kreider, attorney for Julie Marcus, George A.D. Thurlow, Esq., Attorney for Defendant Jennifer Griffith, James B. Lake, Esq., Attorney for Defendant Cathy Salustri Loper, and via postage pre-paid first-class mail to Defendant Patrick Heinzen at 4200 54th Ave S #1382, St. Petersburg, FL 33711, and Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685.



John W Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

THE COURT'S MOTION TO STAY AND ORDER

PLEASE TAKE NOTICE that the Court hereby moves *sua sponte* to stay the instant proceeding.

1. The Court has become aware that Plaintiff filed suit on August 23, 2024 in the United States District Court for the Middle District of Florida, case number 8-24-cv-2005-SDM-NHA ("federal action").

2. The federal action involves many of the same defendants, some of the same claims, and the same nucleus of facts as the instant case.

3. Plaintiff did not file the instant action until September 3, 2024.

4. "Generally, when a state lawsuit is filed that involves the same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated." *Roche v. Cyrulnik*, 337 So. 3d 86, 88 (Fla. 3d DCA 2021) (citations omitted). In *OPKO Health, Inc. v. Lipsius*, the Third District of Florida further stated the following:

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> Although a trial court has broad discretion to order or refuse a stay of an action pending before it, it is nonetheless an abuse of discretion to refuse to stay a subsequently filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues. This rule is based on principles of comity.

OPKO Health, Inc. v. Lipsius, 279 So. 3d 787, 791 (Fla. 3d DCA 2019) (citing *Fla. Crushed Stone Co. v. Travelers Indem. Co.*, 632 So. 2d 217, 220 (Fla. 5th DCA 1994)).

5. For this general rule of comity to apply, the causes of action asserted in the two cases need not be identical nor must the two actions have identical parties. *Roche*, 337 So. 3d at 88 (citations omitted).

6. Because Plaintiff filed his federal action prior to the instant case, the Court hereby moves to stay the instant proceeding until Plaintiff's federal action has been adjudicated.

Additionally, it is further **ORDERED** as follows:

1. The Court's Motion to Stay will be heard at the previously-scheduled hearing on **November 12, 2024** at **3:00 P.M.**

2. Any party who opposes the instant Motion is directed to file and serve a written response and memorandum of law opposing the instant Motion. The Court requests that any such opposition also be personally served on the undersigned by **10:00 A.M.** on **November 12, 2024** at section7@jud6.org.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 4th day of November, 2024.

24-003939-CI 11/4/2024 1:06:25 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 11/4/2024 1:06:25 PM

Honorable Patricia A. Muscarella
Circuit Civil Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the parties listed below this 4th day of November, 2024 in the manner specified below.

_____
Judicial Assistant

Copies furnished to:

Parties served by email

John Liccione
jliccione@gmail.com
Plaintiff

Kirby Z. Kreider, Esq.
kkreider@pinellas.gov
eservice@pinellas.gov
Counsel for Defendant, Julie Marcus

George A.D. Thurlow, Esq.
gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Counsel for Defendant, Jennifer Griffith

James B. Lake, Esq.
1861 53rd St. S.
jlake@tlolawfirm.com
tgilley@tlolawfirm.com
Counsel for Defendant, Cathy Salustri Loper

Parties served by U.S. mail

Mark Weinkrantz
4738 Belden Circle
Palm Harbor, FL 34685
Defendant

Patrick Heinzen
1785 40th Ave. N.
St. Petersburg, FL 33714
Defendant

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
DIVISION 19

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

Case No.: 24-003939-CI
UCN: 522024CA003939XXCICI

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

Defendants.
_____/

DEFENDANT JULIE MARCUS'S MEMORANDUM IN OPPOSITION TO MOTION TO COMPEL DISCOVERY AND TO RESCHEDULE CURRENTLY SCHEDULED MOTION TO DISMISS HEARING

The Defendant, Julie Marcus (herein "Supervisor"), by and through undersigned counsel, moves to oppose to Plaintiff's Motion to Compel Discovery (the "Complaint"), and as ground states as follows:

1. Plaintiff seeks expedited treatment of a discovery motion and asks to cancel motion hearings without any valid basis.
2. The case is currently scheduled for multiple Motions to Dismiss on November 12, 2024, as a result of the coordination and agreement of the parties.
3. Each Motion to Dismiss is non-evidentiary in nature.
4. Defendant Marcus's Motion to Dismiss points to deficiencies such as a lack of subject matter jurisdiction and failure to state a claim for which relief can be granted.
5. Hearings on Motions to Dismiss are rarely held as evidentiary hearings. A Motion to Dismiss is a purely technical motion dealing with issues of law in which generally only

evidence contained within the four corners of Plaintiff's Amended Complaint may be considered. *Steiner Transocean Ltd. v. Efremova*, 109 So.3d 871, 873 (Fla.3d DCA2013).

6. Plaintiff's Request for Production in no way impacts the issues raised in Marcus's to Motion to Dismiss and therefore Plaintiff's argument that he is prejudiced and needs the hearing on the Motions to Dismiss argument is without merit.
7. Discovery issues are premature at this juncture given the pending Motion to Dismiss, and the objections to the Request for Production which were made in good faith. Counsel conferred with the Plaintiff prior to the filing of the objections but was not able to reach a resolution.
8. In Paragraph 6 of his Motion, Plaintiff sets forth his believe that the burden would be minimal. Plaintiff's assumptions are incorrect.
9. The discovery requests are overly burdensome even under ordinary circumstances. The burdensome nature of the requests is exacerbated by the impact of recent Hurricanes Helene and Milton.
10. The impacts were so severe that Governor Ron DeSantis issued Executive Order Number 24-212 and 24-234 affecting the implementation of certain provisions of the Florida Election Code.
11. The Pinellas County Supervisor's Office efforts and resources are dedicated to the current election.
12. In Paragraph 7 of Plaintiff's Motion to Compel Discovery and Request for an Expedited Hearing to Show Cause, Plaintiff continues to ignore that it is well settled that voter information is confidential.

13. Plaintiff has not demonstrated a basis for expedited treatment of the motion to compel, nor any reason to cancel hearing time on motions directed at the pleadings.

WHEREFORE, Defendant, Marcus requests that this Honorable Court deny Plaintiff's Motion to Compel Discovery.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to **JOHN WILLIAM LICCIONE**, **PRO SE,** Plaintiff at jliccione@gmail.com, **GEORGE A.D. THURLOW, ESQ**., Attorney for Defendant **JENNIFER GRIFFITH**, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, and **JAMES B. LAKE, ESQ**., Attorney for Defendant **CATHY SALUSTRI LOPER**, at jlake@tlolawfirm.com and tgilley@tlolawfirm.com on the 4th day of November 2024.

/s/ ***Kirby Z. Kreider***
KIRBY Z. KREIDER
Florida Bar No.: 125856
Pinellas County Attorney's Office
315 Court Street, Sixth Floor
Clearwater, FL 33756
Phone: 727-464-3354 / Fax: 727-464-4147
Primary E-mail: kkreider@pinellas.gov
Secondary E-mail: eservice@pinellas.gov
Attorney for Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections.

PCAO 494725

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al,
Defendants.
_____/

ORDER OF DEFAULT AGAINST DEFENDANT MARK WEINKRANTZ

THIS CAUSE came before the Court on Plaintiff, John William Liccione's, Motion for Clerk Default Against Defendant Mark Weinkrantz filed on October 18, 2024. The Court, having reviewed the motion and the record, and being otherwise fully advised in the premises, finds as follows:

Defendant Mark Weinkrantz was properly served with the Summons and First Amended Complaint at his residence, 4738 Belden Circle, Palm Harbor, FL 34685, on September 25, 2024, as evidenced by the Proof of Service filed with the Court.

Pursuant to Florida Rule of Civil Procedure 1.140(a)(1), Defendant Weinkrantz was required to file a response or serve a responsive pleading within 20 days of service, on or before October 15, 2024.

As of the date of Plaintiff's motion, Defendant Weinkrantz has failed to file any response, motion, or answer within the required time, and no extension of time has been requested or granted.

Under Florida Rule of Civil Procedure 1.500(a), the Clerk of Court is required to enter a default against a party who fails to plead or otherwise defend as provided by law.

Accordingly, it is hereby ORDERED AND ADJUDGED:

Plaintiff's Motion for Default is **GRANTED.**

The Clerk of the Court is **DIRECTED** to enter a default against Defendant Mark Weinkrantz for failure to respond to the First Amended Complaint within the time required by law.

Plaintiff may proceed to seek a default judgment against Defendant Mark Weinkrantz as permitted by law.

DONE AND ORDERED in Chambers at Pinellas County, Florida, this ____ day of _____, 2024.

_____
Circuit Judge

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al,
Defendants.
_____/

ENTRY OF CLERK DEFAULT

AGAINST DEFENDANT MARK WEINKRANTZ

THIS CAUSE came before the Court on Plaintiff, John William Liccione's, Motion for Clerk Default Against Defendant Mark Weinkrantz filed on October 18, 2024. The Clerk, having reviewed the motion and the record, and being otherwise fully advised in the premises, finds as follows:

Defendant Mark Weinkrantz was properly served with the Summons and First Amended Complaint at his residence, 4738 Belden Circle, Palm Harbor, FL 34685, on September 25, 2024, as evidenced by the Proof of Service filed with the Court.

Pursuant to Florida Rule of Civil Procedure 1.140(a)(1), Defendant Weinkrantz was required to file a response or serve a responsive pleading within 20 days of service, on or before October 15, 2024. Defendant Weinkrantz has failed to file any response, motion, or answer within the required time, and no extension of time has been requested or granted.

Under Florida Rule of Civil Procedure 1.500(a), the Clerk of Court is required to enter a default against a party who fails to plead or otherwise defend as provided by law.

Accordingly, Default against Defendant Mark Weinkrantz is hereby **ENTERED**.

NOT ENTERED AFFIDAVIT RE MILITARY NOT FILED

_____
Clerk of the Court

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
JULIE MARCUS, et al.,
Defendants.

Case No.: 24-003939-CI

PLAINTIFF'S RESPONSE TO THE COURT'S BLANKET SUA SPONTE MOTION TO STAY PROCEEDINGS AS IT APPLIES TO DEFENDANTS LOPER, HEINZEN, AND WEINKRANTZ

COMES NOW the Plaintiff, John William Liccione, pro se, and hereby files this response to the Court's sua sponte Motion to Stay Proceedings against all Defendants, in particular as it applies to Defendants Cathy Salustri Loper, Patrick Heinzen, and Mark Weinkrantz, and states as follows:

1. **Lack of Federal Case Involvement for Defendants Loper and Heinzen**

Defendants Cathy Salustri Loper and Patrick Heinzen are not parties in the federal case currently pending in the United States District Court for the Middle District of Florida (Case No.: 8-24-cv-2005-SDM-NHA). Therefore, staying the proceedings against Defendants Loper and Heinzen in this state case would be inappropriate and would unduly delay Plaintiff's right to pursue claims against them in a forum at a time when no federal proceedings against them are currently pending.

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2. Defendant Weinkrantz Defaulted as of October 16th, 2024

Defendant Mark Weinkrantz is in default in this state action as of October 16, 2024, and Plaintiff filed a Motion for Clerk Default on October 18th. Under Florida law, a defaulted defendant is considered to have admitted the well-pleaded allegations of the complaint and has forfeited the right to further contest liability. Staying proceedings against Weinkrantz would be procedurally improper and would delay Plaintiff's pursuit of a default judgment and award and collection of damages without valid grounds, particularly as Weinkrantz has shown no participation or intent to defend even some 21 days after Plaintiff filed his Motion for Clerk Default on October 18th, 2024. The Clerk Entry of Default against Weinkrantz is procedurally mandatory under these circumstances.

LEGAL ARGUMENT

A. Comity Does Not Justify a Stay for Defendants Not Involved in Federal Action

The doctrine of comity, as cited by the Court, generally supports a stay only where both actions involve the same nucleus of facts and the same parties or substantially similar issues. In *Roche v. Cyrulnik*, 337 So. 3d 86 (Fla. 3d DCA 2021), and *OPKO Health, Inc. v. Lipsius,* 279 So. 3d 787 (Fla. 3d DCA 2019), stays were granted due to overlapping parties and claims. In this case, Defendants Loper and Heinzen are not parties to the federal case, and their alleged conduct in the state action does not overlap with matters pending in federal court. Therefore, principles of comity do not require a stay for Defendants Loper and Heinzen, as there is no risk of inconsistent results.

B. Procedural Status of Weinkrantz Requires Moving Forward with Default Judgement Proceedings

Under Florida Rule of Civil Procedure 1.500, once a default has been entered, a defendant is deemed to have admitted all well-pleaded allegations of the complaint. The court in *Cinkat Transp., Inc. v. Maryland Cas. Co.*, 596 So. 2d 746 (Fla. 3d DCA 1992) held that a party in default is generally precluded from contesting liability, having forfeited the right to challenge the complaint's allegations. Similarly, in *Becerra v. Equity Imports, Inc.*, 551 So. 2d 486 (Fla. 3d DCA 1989) and *Somero v. Hendry Gen. Hosp.*, 467 So. 2d 1103 (Fla. 4th DCA 1985), the courts affirmed that a default serves as an admission of liability, leaving only the determination of damages.

Allowing a stay in such cases would hinder the efficient administration of justice, as stated in *Board of Regents v. Stinson-Head, Inc.,* 504 So. 2d 1374 (Fla. 4th DCA 1987), where the court emphasized that defaulted parties should not be permitted to circumvent the consequences of their default. Since Defendant Weinkrantz has failed to respond, he has forfeited his right to contest the allegations, and a stay would improperly delay Plaintiff's ability to obtain a timely default judgment.

Moreover, Plaintiff is prepared to dismiss the parallel federal suit against Weinkrantz upon this Court's entry of an order of default and an award and collection of the damages sought in this case. Thus, a timely judgment in this state proceeding would not only streamline judicial resources but would also make the federal case against Weinkrantz unnecessary, resulting in the dismissal of claims against him in federal court. Accordingly, a sua sponte stay would delay justice without purpose, as the state

court's resolution of Plaintiff's claims against the defaulted defendant would avoid duplicative litigation and conserve judicial resources at both the state and federal levels.

In summary, the entry of default establishes Weinkrantz' liability and entitles Plaintiff to proceed to judgment without delay. A sua sponte stay would unjustly hinder and delay Plaintiff's ability to pursue damages efficiently, and, given Plaintiff's commitment to dismiss the federal case against Weinkrantz upon a favorable judgment, such a stay would serve no legitimate purpose.

C. Potential Prejudice to Plaintiff

A stay of proceedings against Loper, Heinzen, and Weinkrantz would cause undue prejudice to Plaintiff, as it would unreasonably delay his right to proceed with the claims against them.

CONCLUSION

WHEREFORE, Plaintiff respectfully requests that this Court deny the Motion to Stay Proceedings against Defendants Cathy Salustri Loper, Patrick Heinzen, and Mark Weinkrantz, allowing Plaintiff to proceed with his claims against these defendants without delay, and grant such further relief as deemed just and proper.

Respectfully submitted,

/s/ John W Liccione
John William Liccione
Pro Se Plaintiff
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Plaintiff's Response in Opposition to Court's Motion to Stay was served on Defendants Julie Marcus and Jennifer Griffith vi counsel of record via the Court's e-file and e-serve system, and via postage pre-paid 1st class mail on Defendants Mark Weinkrantz and Patrick Heinzen on this 9th day of November 2024.

/s/ John W Liccione
John W Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No.: **24-003939-CI**

JULIE MARCUS, et al
Defendants.
_____/

MOTION FOR DEFAULT FINAL JUDGMENT
AGAINST DEFENDANT MARK WEINKRANTZ
AND REQUEST FOR
HEARINGS ON UNLIQUIDATED AND PUNITIVE DAMAGES

COMES NOW, the Plaintiff, John William Liccione, pro se, and respectfully moves this Court for entry of a Final Judgment of Default against Defendant Mark Weinkrantz a Requests a hearing on unliquidated and punitive damages, and states as follows:

1. **Service of Summons and Complaint:** Defendant Mark Weinkrantz was properly served with the Summons and First Amended Complaint at his residence, 4738 Belden Circle, Palm Harbor, FL 34685, on September 25, 2024, as evidenced by the Proof of Service filed with the Court.
2. **Failure to Respond:** Pursuant to Florida Rule of Civil Procedure 1.140(a)(1), Defendant Weinkrantz was required to file a response or serve a responsive pleading within 20 days of service, which was on or before October 15, 2024. To date,

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Defendant Weinkrantz has failed to file any response, motion, or answer, and no extension of time has been requested.

3. **Clerk's Error Docketing Motion for Clerk Default Causes Delay:** Plaintiff filed a Motion for Clerk Default against Defendant Weinkrantz on October 18, 2024. However, the Clerk erroneously entered the Motion for Clerk Default as a Motion for *Court* Default and held it for review by the Judge, instead of entering Clerk Default as is required under Rule 1.500(a). As such, Plaintiff was procedurally barred from filing for Default Judgement unjustly. Plaintiff was not able to get the Clerk to acknowledge the error until 11/8/24 after having made 3 phone calls, upon which time the Clerk corrected the error and entered it as a Motion for Clerk Default.
4. **Entry of Clerk Default Still Pending:** Plaintiff filed an (unsigned) Entry of Clerk Default for the Clerk's signature on November 8, 2024 at 10:45AM. (Exhibit A). However, the Clerk has still not entered default against Weinkrantz as of this filing.
5. **Unliquidated Damages Hearing:** Plaintiff's claims involve unliquidated damages, which require further proceedings to determine the precise amounts. While the entry of default establishes Defendant Weinkrantz' liability, a hearing is necessary to assess and calculate the damages due.
6. **Punitive Damages:** Plaintiff is also entitled to seek punitive damages pursuant to Florida Statute § 768.72 under the "intentional misconduct or gross negligence standard," which, if permitted by the Court, require further proceedings to determine the precise amount. Plaintiff hereby requests the Court to grant him leave to seek punitive damages and to convene a single, combined hearing on both unliquidated and punitive damages in the interests of efficiency and speedy justice. Grounds for punitive damages include intentional mail ballot fraud, which Defendant Weinkrantz

has admitted to by way of default. A Congressional candidate engaging in mail ballot fraud in a federal election clearly meets the standard of review on intentional misconduct and gross negligence.

7. Under Florida Statute § 768.72(2), the standard for "intentional misconduct" that justifies an award of punitive damages is defined as follows: "*Intentional misconduct means that "the defendant had actual knowledge of the wrongfulness of the conduct and the high probability that injury or damage to the claimant would result and, despite that knowledge, intentionally pursued that course of conduct, resulting in injury or damage."*

8. Here, Defendant Weinkrantz has admitted intentional misconduct – mail ballot fraud, and it directly caused Plaintiff's loss in his Congressional primary election.

WHEREFORE, Plaintiff, John William Liccione, respectfully requests that this Court:

A. Enter a Final Default Judgment against Defendant Weinkrantz on the issue of liability;
B. Set a hearing for the determination of unliquidated damages due to Plaintiff; and
C. Grant Plaintiff leave to seek punitive damages and combine a hearing on punitive damages with the unliquidated damages hearing;
D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ John W Liccione
John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished by U.S. Mail to Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685, and via the Florida Courts e-file and serve system on all other defendants through their attorneys of record on this 9th day of November 2024.

/s/ John W Liccione
John W Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS, et al,
Defendants.
_____/

MEMORANDUM IN RESPONSE TO THE COURT'S MOTION TO STAY INSTANT PROCEEDING

Defendant, JENNIFER GRIFFITH, hereby responds to this Court's *sua sponte* Motion to Stay this Instant Proceeding, and in support thereof states as follows:

(1) Griffith agrees with the facts and general legal principles set forth in the Court's *sua sponte* Motion to Stay, and does not necessarily oppose said Motion in full, but wishes to clarify a few key items on the record for this Court.

(2) In the federal action, a IDEAL Case Management Hearing was held before The Honorable Natalie H Adams on October 30, 2024 where Plaintiff, JOHN LICCIONE, indicated that he intended to file a Motion for Leave to Amend and file an Amended Complaint. A copy of the Clerk's Minutes are attached as **Exhibit 1** to this response. This likely amendment means that there may not be an expeditious resolution of the federal action on the horizon and/or the factual overlap may no longer be as apparent.

(3) Under principles of comity, Florida state court litigation need not be stayed because of a previously filed action in a federal district court in Florida. *Shooster v. Bt Orlando P'ship*, 766 So. 2d 1114, 1116 (Fla. 5th DCA 2000); also see *ITT-Community Dev. Corp. v. Halifax Paving, Inc.*, 350 So. 2d 116 (Fla. 1st DCA 1977), *cert. denied*, 359 So. 2d 1215 (Fla. 1978); *State ex rel. Dos Amigos, Inc. v. Lehman*, 131 So. 533 (Fla. 1930).

(4) Florida courts may depart from the rule of comity where necessary to protect its citizens or to enforce some paramount rules of public policy. *State Farm Mut. Auto. Ins. Co. v. Roach*, 945 So. 2d 1160, 1164-65 (Fla. 2006). This has become known as the public

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policy exception. It requires *both* a Florida citizen in need of protection *and* a paramount Florida public policy.

(5) Defendant Griffith's seeks dismissal of this instant case under Florida's anti-SLAPP statute, Fla. Stat. § 768.295. The statute requires that "the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response." Fla. Stat. § 768.295(4).

(6) Fla. Stat. § 768.295 states that "It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues." This is a "clear public policy directive" from the Florida Legislature. *Vericker v. Powell*, 343 So. 3d 1278, 1281 (Fla. 3d DCA 2022). While there is no case law on this issue, this "clear public policy directive" in Florida's anti-SLAPP statute may depart from the general rule of comity as Ms. Griffith is a Florida citizen in need of protection from strategic lawsuits against public participation, and Florida's anti-SLAPP statute is a paramount Florida public policy.

(7) In enacting Fla. Stat. § 768.295, the Florida Legislature found that:

> "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment, and interruption of their duties, and . . . these lawsuits are an abuse of the judicial process and are used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs . . . .
>
> Ch. 2000-174, § 1, Laws of Fla.

(8) Florida's anti-SLAPP statute creates a substantive legal right to not be victim to Strategic Lawsuits Against Public Participation, and denial of Motions to Dismiss and/or for Summary Judgment under anti-SLAPP are appealable non-final orders. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 310-11 (Fla. 2d DCA 2019).

(9) A potential alternative to a complete stay—which would recognize the importance of the principle of comity while also dealing with the public policy exception to comity--would be for this Court to review the Motion to Dismiss solely on anti-SLAPP grounds.

(10) Another important item for this Court to realize is that Mr. Liccione's first lawsuit against Defendant Griffith, which shares some common factual allegations to this instant action, is another state lawsuit (Case No. 24-002994-CI) which is before The Honorable Judge Thomas Ramsberger. Due to the impacts of Hurricane Helene, the first hearing in that case is not set until November 21, 2024. Therefore, it is a question as to whether the principle of comity applies or whether the *Colorado River* Doctrine applies. Notably, Defendant Griffith has raised the *Colorado River* Doctrine in her Motion to Dismiss in the federal action, which is filed as **Exhibit 2** to this response.

(11) If this Court were to stay this action due to the underlying principles of comity, there is a question as to what court this Court should defer to. Florida law is clear that "the court which *first exercises its jurisdiction* acquires exclusive jurisdiction to proceed with that case." *Siegel v. Siegel*, 575 So. 2d 1267, 1272 (Fla. 1991) (emphasis added), quoting *Bedingfield v. Bedingfield*, 417 So. 2d 1047, 1050 (Fla. 4th DCA 1982)). "It is the well established law of Florida that where two courts have concurrent jurisdiction of a cause of action, the first court to exercise jurisdiction has the exclusive right to hear all issues or questions arising in the case." *Royal Globe Ins. Co. v. Gehl*, 358 So. 2d 228, 229 (Fla. 3d DCA 1978). Court is generally considered to be a judicial circuit.

(12) Under Florida law, the jurisdiction where service of process occurred first takes priority as the court having first exercised jurisdiction. *Opko Health, Inc. v. Lipsius*, 279 So. 3d 787, 793 (Fla. 3d DCA 2019). For Defendant Griffith, that would be the Sixth Judicial Circuit, and specifically the case before Judge Ramsberger.[1] Therefore, applying comity purely to the federal case may not make sense.

WHEREFORE, Defendant JENNIFER GRIFFITH respectfully requests that this Court consider denying, in full or in part, the *sua sponte* Motion to Stay Instant Proceedings, or in the event that this Court grants the Motion to Stay Instant Proceedings, offer clear

[1] Counsel has not identified any Florida case law pertaining to scenarios where there are two pending cases, before two different Judges, in the same state-level judicial circuit.

instructions on how to apply the underlying principles of comity to Defendant Griffith, including stating which court is being deferred to.

Dated: November 11, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served upon John William Liccione, Plaintiff *Pro Se*, and all counsel of record via Florida E-Filing Portal, as well as to The Honorable Patricia Muscarella via email to Section7@Jud6.org, on this 11th day of November, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
St. Petersburg, FL 33701
Phone: (727)823-4191
Fax: (727)823-6189
Email: gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Attorney for Defendant GRIFFITH

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

CLERK'S MINUTES

The Honorable Natalie H. Adams
Courtroom 11A

Liccione v. Marcus, et al
8:24-cv-02005-SDM-NHA

Date: October 30, 2024	**Court Reporter**: **Digital**
	Interpreter: N/A
Time: 2:59 PM–3:53 PM | Total: 54 min	**Deputy Clerk**: Clara Reaves
Plaintiff's Counsel	**Defense Counsel**
John Liccione, Pl.- Pro se	Andrew Keefe, Def.

IDEAL Case Management Hearing

All parties present.

Court explains IDEAL program and asks parties if they have questions or concerns.

Court answers questions from parties.

Court asks parties to file a consent to the program within a week if they'd like to participate. Otherwise, parties should file a case management report in accordance with local rules.

Oral motion by plaintiff to extend response deadline to Dkts. 11 and 16. No objection. Oral order granted. Responses due by November 20, 2024.

Plaintiff indicates he intends to move to file an amended complaint.

Court in recess.

EXHIBIT 2

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,
Plaintiff,

v. CASE NO. 8:24-cv-02005-SDM-NHA

JULIE MARCUS, et. al.
Defendants.
_____/

DEFENDANT GRIFFITH'S MOTION TO DISMISS

Defendant Jennifer Griffith, as Chair of the Pinellas Democratic Executive Committee ("Griffith"), through undersigned counsel, moves to dismiss the Complaint for Emergency Injunctive Relief (the "Complaint"), under (i) Rule 12(b)(6) for failure to state a claim upon which relief can be granted; (ii) Rule 12(b)(1) for lack of subject-matter jurisdiction; and (iii) Fla. Stat. § 768.295 as a prohibited strategic lawsuit against public participation.

INTRODUCTION

This lawsuit is merely another one of Plaintiff's retaliatory acts against those who either (i) did not support his campaign for United States Congress in Florida's 13th Congressional District or (ii) were charged with counting the votes of the Democratic primary election which Plaintiff lost in a landslide.

Griffith has served as Chair of the Pinellas County Democratic Executive Committee a/k/a Pinellas Democratic Executive Committee ("PCDEC") since December 2022. PCDEC is a county-level political party established under Florida law, being an affiliate of the Florida Democratic Party ("FDP"). Like most county-level political parties under FDP's umbrella, it has limited funding and does not even have a federal campaign treasury to expend money in federal elections. Defendant Fried, who was elected as Chair of the FDP in February 2023, is also a party to this lawsuit. Political parties are private organizations; they are not government actors.

As is clearly within their First Amendment rights to political speech and freedom to assemble, Griffith and PCDEC enacted a vetting process in early 2023 to evaluate the qualifications (or lack thereof) of candidates for public office, and to only have PCDEC provide a platform for candidates who passed this process.

Around the time PCDEC enacted its vetting process, Plaintiff announced his candidacy in the Democratic Primary for United States Congress in Florida's 13th Congressional District. Accordingly, Plaintiff was one of the first candidates evaluated under this vetting process. This evaluation took place in May and June 2023. And, based upon the criteria set forth in the vetting process, he did not pass this vetting process and PCDEC opted to not provide his candidacy with a

platform. PCDEC asked him to not attend their events and informed him that he would not be able to participate in those events.

In spite of not passing PCDEC's vetting process, Plaintiff continued his campaign for United States Congress. However, his campaign was almost all, if not entirely, self-funded and he struggled to gain any significant traction. Plaintiff used his social media and blog presence to regularly attack Griffith and PCDEC, which in most instances likely constituted Plaintiff's protected First Amendment speech. Between June 2023 and June 2024, there were a few in-person altercations between Plaintiff and Griffith, all instigated by Plaintiff, one of which Plaintiff has alleged outside of this lawsuit that he responded with requests for two different restraining orders against Griffith, which were presumably denied.[1]

However, Liccione's efforts to litigate against Griffith and PCDEC did not stop with the denied restraining order; in fact, that was merely the beginning. On July 3, 2024, Liccione filed his first lawsuit against Griffith and PCDEC (as well as against PCDEC Secretary Michael Sherosky and the FDP) in Florida's Sixth Judicial Circuit (Pinellas County Case No. 24-002994-CI). The theme of that lawsuit was that Liccione's candidacy was harmed as a result of him not passing

[1] As the restraining orders were presumably denied, Griffith was never served a copy of any petition or court order from those matters and there is no publicly available record from the Pinellas County Clerk of Court.

PCDEC's vetting process, and sought an injunction to allow him to participate in the July 13, 2024 Congressional Candidate forum hosted by PCDEC, as well as monetary damages for $10 million. The lawsuit included tort claims against the Defendants as well as counts for conspiracy, violation of federal and state Election Laws, and violations of federal and state civil rights laws and the Americans with Disabilities Act. Defendant Griffith currently has a pending Motion to Dismiss filed under Florida's anti-SLAPP statute (Fla. Stat. § 768.295) in that case set for hearing on October 1, 2024.

After being served with a Motion to Dismiss under Florida's anti-SLAPP statute in his initial lawsuit, Plaintiff opted to file this instant lawsuit in federal court.[2] This lawsuit raises nearly identical causes of action for Violation of Civil Rights under 42 U.S.C. § 1983 (Count I); Violation of the Florida Election Code under Fla. Stat. § 104.041 (Count II); Violation of the Federal Voting Rights Act under 52 U.S.C. § 10307 (Count III); Violation of the Florida Election Code under Fla. Stat. § 104.0515 (Count IV); Conspiracy to Commit Election Fraud and Voter Suppression (Count V); and request for injunctive relief, which this Court has already denied.

[2] Plaintiff also sought to transfer his initial state-level lawsuit to this Court and have it consolidated with this action. This Court denied Plaintiff's Motion to Consolidate Cases.

Since this Court has already denied Plaintiff's request for injunctive relief on the grounds that it is based upon "no prospectively admissible fact supporting relief," Defendant will simply address Counts I-V in her Motion to Dismiss.

MEMORANDUM OF LAW

I. THIS LAWSUIT SHOULD BE DISMISSED UNDER F.R.C.P. 12(B)(6) FOR FAILURE TO STATE A CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED.

To survive a Motion to Dismiss under F.R.C.P. 12(b)(6), a complaint must "state a claim for relief that is plausible on its face." *Florida Action Comm., Inc. v. Seminole Cnty.,* 212 F. Supp. 3d 1213, 1223 (M.D. Fla. 2016), citing *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 570 (2007). For a claim to be plausible, it must plead "factual content that allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." *Radiation Med. Physicians, P.A. v. TomoTherapy Inc.*, 533 F. Supp. 3d 1127, 1134 (M.D. Fla. 2021), citing *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Notably, "'the tenant that a court must accept as true all of the allegations contained in a complaint is inapplicable to legal conclusions,' and '[t]hreadbare recitals of the elements of a cause of action, supported by mere conclusory statements, do not suffice.'" *Princeton Excess & Surplus Lines Ins. Co. v. Hub City Enterprises, Inc.*, 418 F. Supp. 3d 1060, 1064 (M.D. Fla. 2019), citing *Iqbal*, 556 U.S. at 678.

As this Court has already ruled, this lawsuit is based upon "no prospectively admissible evidence." Plaintiff's complaint, in its entirety, is based upon vague, speculative, and conclusory statements of fact and law devoid of any substantive allegations demonstrating that Griffith violated any law. Plaintiff falls shockingly short of meeting even the most basic pleading requirements and most certainly does not meet the heightened burden of specificity required when pleadings claims involving fraud or conspiracy. The heightened requirements regarding fraud and conspiracy will be discussed in detail herein.

Count I – Violation of 42 U.S.C. § 1983

Plaintiff alleges generally that fraudulent activities alleged in the complaint constitute a deprivation of the voters' right to a fair and free election. (Compl. ¶ 35). Plaintiff fails to state any facts to tie Griffith, who is merely a volunteer leader of a political organization, to fraudulent action or inaction pertaining to the administration of the election. Further, Plaintiff alleges that the violation of civil rights occurred through fraudulent activities fails to make any concrete factual allegation let alone factual allegations that meet the heightened requirement for fraud-based claims. Fed. R. Civ. P. 9(b).

Count I should be dismissed for failure to state a cause of action.

Count II – Violation of the Florida Election Code (Fla. Stat. § 104.041)

Setting aside the lack of jurisdiction and standing to enforce criminal provisions of the Florida Election Code, Plaintiff does not allege any action by Griffith in the vain of "perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast" as described by the statute. Fla. Stat. § 104.041 (2024). The sole allegation against Griffith is that she had some sort of supervisory duty, which is not established in fact or law and in fact does not exist. None of these allegations demonstrate a violation of section 104.041, Florida Statutes, even in a light most favorable to Plaintiff. Accordingly, Count II should be dismissed for failure to state a cause of action against Griffith.

Count IV – Violation of the Florida Election Code (Fla. Stat. § 104.0515)

Again, setting aside the standing and jurisdictional shortcomings, Plaintiff does not allege any facts demonstrating that Griffith engaged in the deprivation of or interference with any persons voting rights as contemplated by the statute. Fla. Stat. § 104.0515 (2024). The occurrences at campaign events such as those hosted by Plaintiff or PCDEC is entirely unrelated to one's right to vote, which is what is contemplated under this statute. The Complaint does not allege that Griffith engaged in other acts. Count IV should also be dismissed for failure to state a cause of action against Griffith.

Count III – Violation of 52 U.S.C.§10307

Complaint still fails to plead any specific facts connected to Griffith which would constitute violations of that right. This Count, like the balance of the Complaint, is devoid of any allegations that Griffith committed any act or inaction which would fall under the statute. This statute pertains to actual voting and has nothing to do with attendance at political campaign events. Accordingly, Count III should be dismissed for failure to state a cause of action.

Count V – Violation of 18 U.S.C.§371

Ignoring for a moment the lack of standing to assert a private right of action to enforce federal criminal statutes, as with all other claims asserted in this Complaint, Plaintiff fails to make any factual allegations against Griffith would otherwise establish this claim.

Additionally, it is unclear which counts are directed at Griffith. The allegations under each specific count are directed generally at "Defendants" or "Defendants and their co-conspirators" with no indication of any action or inaction attributed to Griffith.[3] As such, Counts I through V should be dismissed for failure to state a cause of action.

[3] The paragraph numbering under Counts I through V is not sequential. This citation is intended to encompass all allegations under each of the five counts.

II. THIS LAWSUIT SHOULD BE DISMISSED UNDER F.R.C.P. 12(B)(1) FOR LACK OF SUBJECT-MATTER JURISDICTION.

On a Motion to Dismiss for lack of subject-matter jurisdiction under F.R.C.P. 12(B)(1), a defendant may raise both facial and factual attacks. A facial attack questions the sufficiency of the pleading. In reviewing a facial attack, a trial court accepts the allegations in the complaint as true. On the other hand, when a court reviews a complaint under a factual attack, the allegations have no presumptive truthfulness, and the court that must weigh the evidence has discretion to allow affidavits, documents, and even a limited evidentiary hearing to resolve disputed jurisdictional facts. *Garcia v. Copenhaver, Bell & Assocs., M.D.S.*, 104 F. 3d 1256, 1260–1261 (11th Cir. 1997).

This instant complaint raises both facial and factual deficiencies in pleading. For factual deficiencies, this court need not confine its evaluation to the face of the pleadings, but may review or accept any evidence, such as affidavits, or it may hold an evidentiary hearing. *Nat'l Ass'n of the Deaf v. Florida*, 980 F. 3d 763, 774–776 (11th Cir. 2020).

A. This Court lacks subject-matter jurisdiction on Count I because Plaintiff lacks standing.

To bring a claim under 42 U.S.C. § 1983, a Plaintiff must have standing to do so. Standing requires the plaintiffs to allege enough facts to establish injury-in-fact, causation, and redressability. *Ladies Mem'l Ass'n v. City of*

Pensacola, 34 F.4th 988, 992 (11th Cir. 2022).

An injury in fact for standing purposes is a "legally protected interest" that is both "concrete and particularized" and "actual or imminent" (internal quotation marks and citations omitted)). *Id.* at 992-93.

Second, the Plaintiff must demonstrate that there is a "causal connection" between his injury and the conduct of which he complains—*i.e.*, the injury must be "fairly traceable" to the defendant's challenged actions and not the result of "the independent action of some third party not before the court." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021), quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992); see also *Spokeo, Inc. v. Robins*, 578 U.S. 856 (2016).

Finally, the Plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560 (quotation marks omitted). A mere recitation that the Government is violating one's constitutional rights is not concrete enough to establish standing. *Ladies Mem'l Ass'n*, 34 F.4th at 993.

Plaintiff has failed to plead an injury-in-fact against Griffith. Plaintiff has no legally protected interest to participate in PCDEC events or to have PCDEC promote his candidacy. There is also no causal connection between Plaintiff not being invited to a forum hosted by PCDEC (or by any role Griffith purportedly played in "supervising" other candidates) and his election loss. Plaintiff

complains of not being invited to attend an event with approximately 300-400 attendees as the reason he lost his Congressional election, when he received approximately 27,000 fewer votes than the first place candidate in his primary election. Additionally, any role Griffith played in "supervising" candidates and their conduct was merely voluntary and of no legal significance.

Finally, by Plaintiff's own admission, it is not likely that any of the alleged events would have changed the outcome of Plaintiff's election. In fact, in a YouTube video posted by Plaintiff, he admits the following: "I lost. I was last place with four [present] uh so I'm pretty sure I didn't win irrespective of ballot you know fake ballots" and described both Defendant Whitney Fox and second-place finisher Sabrina Bousbar as "good candidates." "The Takedown of Anna Paulina Luna" Episode 5: "Tampa Girl" YouTube, https://www.youtube.com/watch?v=WS8EfbZbC80 (last visited Sep 14, 2024) at 1:45-2:02.

B. This Court lacks jurisdiction on Count III because an unsuccessful candidate attempting to challenge the election results does not have standing under the Voting Rights Act.

Plaintiff seeks a "temporary restraining order to prevent the certification of the August 20, 2024, election results in Florida's 13th Congressional District primary rase and all other elections in Pinellas County held on August 20th." (Compl., Prayer for Relief, ¶ A.). This request is based in part on a claimed violation of the Federal Voting Rights Act. (Compl., Count III). The Eighth

Circuit Court of Appeals has explained that the U.S. Attorney General or a private litigant seeking to protect his or her right to vote has standing under the Voting Rights Act, but Plaintiff is not an "aggrieved voter suing to protect his right to vote." *Roberts v. Wamser*, 883 F.2d 617, 621 (U.S. App. 8th Cir. 1989). "[A]n unsuccessful candidate attempting to challenge the election results does not have standing under the Voting Rights Act." *Id.* Further, Plaintiff does not allege Griffith participated in any intimidation, threats, or coercion which he basis his Count III claim on as it pertain to the actual election (merely a preceding campaign event), and thus Plaintiff lacks standing because the alleged injury under Count III is not traceable to these parties. Accordingly, Count III of the Complaint should be dismissed for lack of jurisdiction.

C. No cogent federal cause of action was pled, and this Court does not have supplemental jurisdiction to hear any state-level causes of action in the absence of a well-pled federal question.

Because this Court lacks subject-matter jurisdiction over the federal questions presented in the Complaint, and that there is no diversity of citizenship or other conditions that would give rise to federal jurisdiction, this Court lacks jurisdiction over the remaining counts.

D. This Court lacks subject-matter jurisdiction under the *Younger abstention doctrine.*

Based upon the *Younger abstention doctrine*, this Court should decline to rule on this issues as it pertains to Ms. Griffith as it is being asked to intervene in a matter that is already pending in state court. Under the *Younger abstention doctrine*, a federal court may not interfere with or enjoin a criminal prosecution, a civil proceeding akin to a criminal prosecution, or a civil proceeding involving orders "uniquely in furtherance of the state [court's] ability to perform [its] judicial function." *Sprint Commc'ns, Inc. v. Jacobs*, 571 U.S. 69, 72-73 (2013). "A district court may abstain under the *Younger* doctrine if three conditions exist: there are state proceedings that are (1) currently pending; (2) involve an important state interest; and (3) will provide the federal plaintiff with an adequate opportunity to raise his or her constitutional claims." *Nimer v. Litchfield Township Board of Trustees*, 707 F.3d 699, 701 (6th Cir. 2013); *see Bice v. Louisiana Public Defender Bd.*, 677 F.3d 712, 716 (5th Cir. 2012).

E. Alternatively, this Court should stay proceedings under the *Colorado River* Doctrine.

Alternatively, under the *Colorado River* Doctrine, this Court should stay this proceeding. The *Colorado River* doctrine permits a federal court to stay a case involving questions of federal law when a concurrent state action is pending in which identical issues are raised. *Colorado River Water Conservation Dist. v. United*

States, 424 U.S. 800, 816 (1976). The decision to stay a case under the *Colorado River* doctrine is based upon concerns of judicial efficiency and economy. *Id.* at 817. There are two currently pending state actions which raise identical issues.

District courts follow a two-step inquiry to determine whether *Colorado River* abstention is warranted. *Mochary v. Bergstein*, 42 F. 4th 80, 85 (2d Cir. 2022); *Gold-Fogel v. Fogel*, 16 F. 4th 790, 800–801 (11th Cir. 2021); *Driftless Area Land Conservancy v. Valcq*, 16 F. 4th 508, 526 (7th Cir. 2021). First, the court must make a "threshold determination" whether the state and federal proceedings are "parallel." *Mochary v. Bergstein*, 42 F.4th 80, 85 (2d Cir. 2022). "Suits are parallel when substantially the same parties are contemporaneously litigating substantially the same issue in another forum." *Day v. Union Mines, Inc.*, 862 F.2d 652, 655 (7th Cir. 1988); *Dittmer v. Cty. of Suffolk*, 146 F.3d 113, 116 (2d Cir. 1998); *Gold-Fogel v. Fogel*, 16 F.4th 790, 800 (11th Cir. 2021). If the actions are deemed parallel, the court must then weigh several factors from *Colorado River* to determine if exceptional circumstances: justify abstention including:

> (1) whether the controversy involves a res over which one of the courts has assumed jurisdiction; (2) whether the federal forum is less inconvenient than the other for the parties; (3) whether staying or dismissing the federal action will avoid piecemeal litigation; (4) the order in which the actions were filed and whether proceedings have advanced more in one forum than in the other; (5) whether federal law provides the rule of decision; and (6) whether the state procedures are adequate to protect the plaintiff's federal rights.

Niagara Mohawk Power Corp. v. Hudson River-Black River Regulating Dist., 673 F.3d 84, 99 (2d Cir. 2012); *Colo. River Water Conservation Dist. v. United States*, 424 U.S. 800, 818 (1976).

III. THIS LAWSUIT SHOULD BE DISMISSED AS A PROHIBITED STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION UNDER FLA. STAT. § 768.295.

This court has recognized that Fla. Stat. § 768.295 applies in federal court because it creates a substantive right that must be applied. See *Gov't Emples. Ins. Co. v. Glassco Inc.*, No. 8:19-cv-1950-KK1VI-JSS, 2021 U.S. Dist. LEXIS 183510, *7-15 (M.D. Fla. Sep. 24, 2021); *Reed v. Chamblee*, No. 3:22-cv-1059-TJC-PDB, 2024 U.S. Dist. LEXIS 2449, *12-19 (M.D. Fla. Jan. 5, 2024). While these cases deal with state-level claims before the federal court under diversity jurisdiction, the 10th Circuit Court of Appeals applied Oklahoma's similar anti-SLAPP statute to claims where a federal court exercises supplemental jurisdiction over state law claims in a federal question lawsuit. *Barnett v. Hall, Estill, Hardwick, Gable, Golden & Nelson, P.C.* 956 F. 3d 1228, n. 2 (10th Cir. 2020).

On its face, this lawsuit is filed under federal question jurisdiction but also presents explicit state-level causes of action where the Plaintiff is seeking to have this Court exercise supplemental jurisdiction. The Complaint is constituted of two counts that expressly fall under federal law (Counts I and III), two counts

that expressly fall under state law (Counts II and IV), and one tort claim for conspiracy that would also be governed under state-level substantive law (Count V). Therefore, Florida's anti-SLAPP statute can be applied to, at a minimum, the state level causes of action. A prevailing party to a Motion to Dismiss under Fla. Stat. § 768.295 is entitled to the award of their reasonable attorney's fees and costs.

Additionally, Griffith disputes that this lawsuit has in fact raised a federal question. Whether a case "arises under" federal law is determined by the well-pleaded complaint rule--that is, whether "a federal question is presented on the face of the plaintiff's properly pleaded complaint." *Caterpillar, Inc. v. Williams,* 482 U.S. 386, 392 (1987). As was previously set forth, the Complaint is not properly pled and thus does not clearly set forth a federal question on the face of a properly pled Complaint. If the Court agrees that a federal question is not "presented on the fact of the plaintiff's properly pled complaint" as is required, this Court may apply Fla. Stat. § 768.295 to the entirety of this lawsuit.

While a Motion to Dismiss generally requires a Court to simply accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant, the 2d DCA has held that a Motion to Dismiss based upon the anti-SLAPP statute requires the trial

court to do more. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019); *Davis v. Mishiyev*, 339 So. 3d 449, 453 (Fla. 2d DCA 2022).

Rather, in a Motion to Dismiss based upon the anti-SLAPP statute, the Defendant must demonstrate a *prima facie* case that the anti-SLAPP statute applies—in that the Plaintiff's suit was based on some activity that would qualify as an exercise of the Defendant's First Amendment rights in connection to issues of public importance. *Id*. Then, the burden of proof shifts to the Plaintiff to demonstrate that the Defendants' activity was actionable and that the claims are not primarily based upon the Defendants' exercise of their first amendment rights. *Davis*, 339 So. 3d, at 453. This procedure serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss. *Gundel*, 264 So. 3d, at 314.

Denial of a Motion to Dismiss on anti-SLAPP grounds is an appealable non-final order. Notably, in *Gundel v. AV Homes, Inc.*, the 2d DCA quashed a trial court order denying a Motion to Dismiss, For Judgment on the Pleadings, or For Summary Judgment because the allegations contained within the pertinent counterclaim were too vague to permit the trial court to determine whether the alleged conduct was protected free speech. *Id*. at 315.

The factual allegations that pertain to Ms. Griffith (Compl. ¶ 25-28, 30-32) are all conclusory statements of law that are unsupported by any material facts.

Ms. Griffith has no supervisory authority over Democratic campaigns and is not a state actor. Rather, these statements, to the extent they present any facts, merely accuse Ms. Griffith of not supporting Plaintiff's candidacy for Congress. The speech of Ms. Griffith and PCDEC constituted exercise of their First Amendment rights in connection to an issue of public importance—the Democratic Primary in Florida's 13th Congressional District.

Both the Florida Supreme Court and the United States Supreme Court have held that expressing one's opinion about who should serve in public office, such as United States Congress, is political speech that falls within the protection of the First Amendment. *In re Code of Judicial Conduct*, 603 So. 2d 494, 496 (Fla. 1992). "[T]he First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Concerned Citizens for Judicial Fairness v. Yacucci*, 162 So. 3d 68, 73 (Fla. 4th DCA 2014), citing *Eu v. San Francisco Cnty. Democratic Ctr. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

Additionally, the United States Supreme Court has held that political parties making endorsements[4] in primary elections is protected political speech that may not be restricted by state or federal law. *Eu v. S.F. Cty. Democratic Cent.*

[4] While there are technical distinctions between PCDEC making an endorsement in a primary election and PCDEC engaging in a "vetting process," as is alleged in the Complaint, those distinctions are not relevant to this instant case.

Comm., 489 U.S. 214, 223-29 (1989). Certainly, this right would also extend to individual leaders of political parties. There is no legal barrier against political parties taking internal steps affecting their own process for the selection of candidates. *Tashjian v. Repub. Party*, 479 U.S. 208, 224 (1986).

Based on this clear showing that Griffith engaged in protected First Amendment speech, **Plaintiff now has the burden to demonstrate that the conduct of the Defendants was actionable.** Based on the allegations set forth in the Complaint, none of the alleged conduct of Griffith is actionable. Therefore, this Court should dismiss Plaintiff's Complaint, find that it is a strategic lawsuit against public participation intended to have a chilling effect on the Defendant's ability to exercise their First Amendment rights, and grant Defendant's entitlement to their reasonable attorney's fees and costs pursuant to Fla. Stat. § 768.295.

CONCLUSION

This Court should dismiss Plaintiff's Complaint, with prejudice, because it fails to state a cause of action upon which relief may be granted, because this Court lacks subject-matter jurisdiction over the claims presented, and because this is a prohibited lawsuit against public participation under Florida's anti-SLAPP statute (Fla. Stat. § 768.295).

WHEREFORE, Defendant, JENNIFER GRIFFITH, respectfully requests that this Court dismiss Plaintiff's Complaint with prejudice, award Defendant entitlement to her reasonable attorney's fees and costs, and grant Defendant any other relief this Court deems proper and just.

LOCAL RULE 3.01(g) CERTIFICATION

I HEREBY CERTIFY that (a) the movant, through undersigned counsel, has conferred with the Plaintiff by telephone ; (b) that the parties do not agree on the resolution of any part of this Motion; and (c) that undersigned counsel had a telephone conference with Plaintiff on September 16, 2024 to discuss the Motion

Dated this 16th day of September, 2024.

Respectfully submitted,

George A.D. Thurlow
George A.D. Thurlow, Esquire
Florida Bar No. 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue
Suite 200
St. Petersburg, FL 33701
Telephone: (727)823-4191
Email: gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
Attorney for Defendant, GRIFFITH

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of September, 2024, I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel of record.

George A.D. Thurlow
George A.D. Thurlow, Esquire
Florida Bar No. 1019960
Attorney for Defendant, GRIFFITH

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 24-003939-CI

CHRISTOPHER ACHEY,
Plaintiff
v.
JULIE MARCUS, et al,
Defendant.
_____/

NOTICE OF APPEARANCE

JOHN F. McGUIRE, ESQUIRE hereby files his Notice of Appearance as attorney of record for the Defendant, MARK WEINKRANTZ, in the above-styled action, and hereby requests that he be notified of all future hearings in this matter and copied on all pleadings and Orders filed in this matter.

DESIGNATION OF E-MAIL ADDRESS

McGuire Law Offices Pursuant to Rule of Judicial Administration 2.516(b)(1)(A) hereby designates undersigned counsel's electronic mail addresses as follows:

E-Service Electronic Address Primary:	info@mcguirelawoffices.com
E-Service Electronic Address Secondary:	defense@mcguirelawoffices.com
E-Service Electronic Address Tertiary:	rgray@mcguirelawoffices.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above has been furnished to the Clerk of the Court by e-filing and a copy to Plaintiff on this day of November 11, 2024.



_____
John F. McGuire, Esquire
McGuire Law Offices, P.A.
1173 NE Cleveland Street
Clearwater, FL 33755
(727) 446-7659
FBN: 000401

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 24-003939-CI

JOHN WILLIAM LICCIONE,
Plaintiff
v.
MARK WEINKRANTZ, et al,
Defendant.
_____/

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McGuire Law Offices Pursuant to Rule of Judicial Administration 2.516(b)(1)(A) hereby designates undersigned counsel's electronic mail addresses as follows:

E-Service Electronic Address Primary:	info@mcguirelawoffices.com
E-Service Electronic Address Secondary:	defense@mcguirelawoffices.com
E-Service Electronic Address Tertiary:	rgray@mcguirelawoffices.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above has been furnished to the Clerk of the Court by e-filing and a copy to Plaintiff on this day of November 11, 2024.



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Clearwater, FL 33755
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 24-003939-CI

JOHN WILLIAM LICCIONE,
Plaintiff
v.
MARK WEINKRANTZ, et al,
Defendant.
_____/

MOTION TO VACATE CLERK DEFAULT

COMES NOW, Defendant, MARK WEINKRANTZ, files this MOTION TO VACATE CLERKS DEFAULT pursuant to Fla. R. Civ. P. 1.540, and hereby moves this Court for an Order Vacating the Clerk's Default against Defendant issued in this matter, and in support thereof states as follows:

SUMMARY

1. This is a complaint that stems from the Democratic Primary.
2. Plaintiff filed on counts ranging from violation of Florida statutes of election fraud, conspiracy, federal election fraud, violation of federal computer laws.
3. Defendant Mark Weinkrantz, lost at the Democratic Primary, receiving only 7.2% of the votes.
4. Defendant was not a beneficiary as alleged in the complaint
5. Undersigned counsel was only notified of Defendant's involvement in this suit when they were informed of the in-person hearing.

MEMORANDUM OF LAW AND ANALYSIS

6. Florida Rule of Civil Procedure 1.540 states that a party may also seek relief from a decree, order, or proceeding for "… mistake, inadvertence, surprise, or excusable neglect…"
7. The judicial authority in this State has consistently held that "… inaction results from clerical or secretarial error, reasonable misunderstanding, a system gone awry, or any other of the foibles to which human nature is heir." *Elliott v. Aurora Loan Servs. LLC,* 31 So. 3d 304, 307 (Fla. 4th DCA 2010). See also *Perez Mesa v. Miami-Dade County*, 278 So.3d 818 (Fla. 3rd DCA 2019) ; *Emerald Coast Utilities Authority v. Bear Marcus Pointe, LLC*, 227

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So.3d 752 (Fla. 1st DCA 2017). In fact, Rule 1.540 "…envisions an honest mistake made during the regular course of litigation, including those that result from oversight, neglect, or accident." P*aladin Props. v. Family Inv. Enters.*, 952 So.2d 560, 562 (Fla. 2nd DCA 2007)(citing (citing *Schrank v. State Farm Mut. Auto. Ins. Co.*, 438 So.2d 410, 412 (Fla. 4th DCA 1983); *Pompano Atlantis Condo. Ass'n v. Merlino*, 415 So.2d 153, 154 (Fla. 4th DCA 1982)).

8. Defendant has meritorious defenses, , in that they did not benefit from any fraud alleged, contends that no fraud took place, and did not win the democratic primary, coming in 4th place out of 5 candidates.
9. Due to the fact that the Defendant has shown excusable neglect, meritorious defenses, and diligent action upon learning of the default, justice requires that the Clerk's Default be vacated, and the Defendant be permitted to properly defend against the frivolous claims by the Plaintiff in this matter.

WHEREFORE, Defendant MARK WEINKRANTZ respectfully requests that this Court enter an order to VACATE Clerks Default, DENY Motion for Default, allow time for Defendant to file an answer and affirmative defenses..

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-filing to the Clerk of the Court and a copy to plaintiff via e-mail on this day of November 11, 2024.

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Attorney for Defendant

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S
RESPONSE TO COURT'S MOTION TO STAY AND ORDER

Defendant Cathy Salustri Loper ("Loper") responds to the Court's Motion to Stay and Order as follows: Loper does not oppose a stay of this proceeding, subject to her "right to an expeditious resolution" of her pending Anti-SLAPP Motion to Dismiss "at the earliest possible time after" the stay is lifted. *See* § 768.295(4), Fla. Stat. (2023).

Respectfully submitted,

THOMAS & LOCICERO PL

By: */James B. Lake/*
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jlake@tlolawfirm.com
601 South Boulevard
Tampa, FL 33606
Telephone: (813) 984-3060
Secondary email: tgilley@tlolawfirm.com

Attorneys for Cathy Salustri Loper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Nov. 11, 2024, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and

attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

By: /*James B. Lake*/
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.,

Defendants.

_____/

DEFENDANT JULIE MARCUS'S RESPONSE TO COURT'S MOTION TO STAY AND ORDER

Defendant Julie Marcus ("Marcus") responses to the Court's Motion to Stay and Order as follows: Marcus does not oppose a stay of this proceeding.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to **JOHN WILLIAM LICCIONE**, **PRO SE,** Plaintiff at jliccione@gmail.com, **GEORGE A.D. THURLOW, ESQ**., Attorney for Defendant **JENNIFER GRIFFITH**, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, and **JAMES B. LAKE, ESQ.,** Attorney for Defendant **CATHY SALUSTRI LOPER**, at jlake@tlolawfirm.com and tgilley@tlolawfirm.com on the 12th day of November 2024.

/s/ ***Kirby Z. Kreider***
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Florida Bar No.: 125856
Pinellas County Attorney's Office
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Phone: 727-464-3354 / Fax: 727-464-4147
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Attorney for Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections.

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

JULIE MARCUS, et al.,

Defendants.

_____/

PLAINTIFF'S RESPONSE TO DEFENDANT MARK WEINKRANTZ'S

MOTION TO VACATE CLERK DEFAULT

COMES NOW, Plaintiff **John William Liccione**, and hereby submits this response to Defendant Mark Weinkrantz' Motion to Vacate Clerk Default, respectfully urging the Court to deny the Motion. Plaintiff rebuts Defendant's arguments as follows:

Rebuttal to Defendant's Summary Points

1. **A Motion to Vacate Clerk Default is Premature**

   The Clerk has yet to enter Default and the Court has yet to enter a Default Final Judgement against Defendant Weinkrantz. As such, there is no Clerk Default Entry in the docket, nor has there been entered a Default Final Judgement. Thus, this Motion to Vacate is premature. The court cannot vacate a Default Judgement that doesn't yet exist.

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2. **Relevance of Primary Election Outcome (Paragraphs 1 & 3):**

   Defendant's assertion that he lost the Democratic primary with 7.2% of the votes does not absolve him of potential involvement in alleged fraudulent activities. The issue here is not Defendant's success in the election but rather his role in an alleged conspiracy to engage in fraudulent conduct which resulted in damages to Plaintiff. Losing the primary does not negate his potential involvement in unlawful acts, nor does it excuse his failure to respond to the complaint.

3. **Alleged Lack of Benefit from the Fraud (Paragraph 4):**

   Defendant claims he was not a beneficiary of the alleged fraud. However, Plaintiff's complaint implicates Defendant as an active participant in a scheme intended to influence the election process unlawfully. The legal standard for fraud does not require that Defendant personally benefit from the fraud if the Plaintiff suffered damages as a result. Defendant's argument about lack of benefit does not excuse his failure to timely respond to the complaint.

4. **Claim of Late Notification (Paragraph 5):**

   Defendant's attorney's assertion that "he" was unaware of Defendant's involvement until notified of an in-person hearing is unsupported by evidence and was a function of inexcusable neglect on the part of Defendant Weinkrantz. Weinkrantz was served with the complaint on September 25, 2024, and had ample time to hire a lawyer and respond before the entry of default. Failing to monitor or respond to legal actions against him does not constitute excusable neglect. Defendant's inaction was not the result of any legitimate misunderstanding or clerical error but rather reflects a disregard for the court's deadlines.

5. **Defendant's Delay in Filing Motion to Vacate**

   Defendant waited until November 11, 2024—approximately 25 days after Plaintiff filed his Motion for Clerk Default—to hire an attorney and to file this Motion to Vacate. Defendant's delay in hiring counsel and filing this motion demonstrates a lack of diligence and respect for court deadlines. Further, Defendant failed to file a timely response within the required 20-day period following the filing of Plaintiff's Motion for Clerk Default, further weakening any claim of excusable neglect. Defendant's substantial delay and missed deadlines without valid justification does not support vacating the Clerk's Default, even if one had been already entered.

Rebuttal to Defendant's Legal Arguments (Memorandum of Law and Analysis)

5. **Florida Rule of Civil Procedure 1.540 and Excusable Neglect (Paragraphs 6 & 7):**

   Defendant argues excusable neglect based on clerical or human error as described in cases like *Elliott v. Aurora Loan Servs. LLC*. However, Defendant has not demonstrated any specific clerical error or administrative mistake that led to the default. Rule 1.540 does allow relief for genuine mistakes or misunderstandings, but it does not protect a defendant who simply failed to act within the required timeframe without a valid reason.

   In this case, the default arose due to Defendant's failure to file any responsive pleading within the allotted time, not because of any error beyond his control. Defendant's failure to respond to the complaint for an extended period reflects neglect, but it is not excusable under Rule 1.540.

6. **Alleged Meritorious Defenses (Paragraph 8):**

   Defendant claims to have meritorious defenses, asserting that he did not benefit from any alleged fraud, that no fraud took place, and that he lost the primary election. However, these assertions are insufficient to meet the standard for vacating a default. A "meritorious defense" under Florida law must be supported by a showing of genuine, specific, and substantial defenses.

   Merely denying the allegations without evidence or specific factual support is insufficient to justify vacating the default. Defendant has not provided any factual evidence or plausible defense that addresses the complaint's allegations, such as how he was uninvolved in any alleged conspiracy or election fraud activities. As such, Defendant's claim of a meritorious defense is unsupported and should not be grounds for vacating the default.

7. **Lack of Diligence in Responding to the Default (Paragraph 9):**

   Defendant's claim that he acted diligently upon learning of the default is unsubstantiated. The record shows that Defendant failed to respond to the complaint within the required timeframe, and his Motion to Vacate was filed only after the filing of the Motion for Clerk. A party seeking to vacate a default must demonstrate prompt action upon learning of the default, which Defendant has not convincingly shown. Defendant's delay in responding does not reflect diligence but rather an attempt to circumvent the consequences of his inaction.

Conclusion

In summary, there is no Clerk Default nor a Court Default Judgement that exists that can yet be vacated. Even if there was, Defendant has failed to demonstrate excusable neglect, a meritorious defense, or diligent action sufficient to meet the standard under Rule 1.540. Defendant's arguments do not justify vacating the default, as they are unsupported by evidence and fail to address the substantive issues in Plaintiff's complaint. Allowing Defendant to avoid default without a valid justification would unfairly prejudice Plaintiff's case and reward Defendant's lack of responsiveness.

WHEREFORE, Plaintiff respectfully requests that this Court DENY Defendant Mark Weinkrantz' Motion to Vacate Clerk Default.

Respectfully submitted,

/s/ John W. Liccione
John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been furnished via the Court's e-file and serve system to all parties listed below on this November 12th, 2024. to GEORGE A.D. THURLOW, ESQ. Attorney for Defendant JENNIFER GRIFFITH, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, and JOHN MCGUIRE, attorney for Defendant MARK WEINKRANTZ.

/s/ John W Liccione
John W Liccione

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 24-003939-CI

JOHN WILLIAM LICCIONE,
Plaintiff
v.
MARK WEINKRANTZ, et al,
Defendant.
_____/

MOTION FOR EXTENSION OF TIME TO FILE RESPONSE

COMES NOW, Defendant, MARK WEINKRANTZ, files this MOTION FOR EXTENSION OF TIME TO FILE RESPONSE to Plaintiff's Amended Complaint. And as grounds in support thereof, states as follows:

SUMMARY

1. This is a complaint that stems from the Democratic Primary.
2. Plaintiff filed on counts ranging from violation of Florida statutes of election fraud, conspiracy, federal election fraud, violation of federal computer laws.
3. Florida Rule of Civil Procedure 1.090(b) provides, in pertinent part, as follows:
   When an act is required or allowed to be done at or within a specified time by order of court, by these rules, or by notice given thereunder, for cause shown the court at any time in its discretion (1) with or without notice, may order the period enlarged if request therefore is made before the expiration of the period originally prescribed or as extended by a previous order or (2) upon motion made and notice after the expiration of the specified period, may permit the act to be done when failure to act was the result of excusable neglect….
4. Accordingly, based on the circumstances outlined above and well-established Florida law, the Defendant requests and moves this Court for additional time to respond to Plaintiff's Amended Complaint.
5. The above request for an enlargement of time is asserted in good faith and is not being filed by the undersigned for purposes of delay.

WHEREFORE, Defendant MARK WEINKRANTZ respectfully requests that this Court enter an order to GRANT Defendant's Motion for Extension of Time to file Response.

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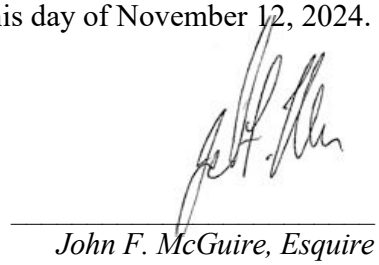
CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by e-filing to the Clerk of the Court and a copy to plaintiff via e-mail on this day of November 12, 2024.



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Attorney for Defendant



IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION
CASE NO.: 24-003939-CI

JOHN WILLIAM LICCIONE,
Plaintiff
v.
MARK WEINKRANTZ, et al,
Defendant.
_____/

DEFENDANT MARK WEINKRANTZ' MOTION TO DISMISS

COMES NOW, Defendant, MARK WEINKRANTZ, by and through his undersigned counsel, moves to Dismiss all counts of Plaintiffs Petition for failure to state a claim and failure to join an indispensable party. The grounds are as follows:

STATEMENT OF CLAIM

1. Plaintiff filed this original complaint on 9/03/2024
2. Plaintiff then filed the amended complaint on 9/05/2024
3. Plaintiff's complaint consists of 9 counts alleging election fraud.
4. Plaintiff alleged Defendant Mark Weinkrantz, who was 4th place in the democratic primary out of 5, was involved in a scheme to pay for votes.
5. Plaintiff provided no evidence that Defendant Mark Weinkrantz was involved in any scheme.
6. Defendant Mark Weinkrantz only received 7.2% of the votes on the Democratic primary.
7. The only "evidence" alleged was the quote of an alleged whistleblower, who's argument is factually impossible, in that they would not have even been able to cast a ballot for multiple individuals running in the democratic primary for the 13th district of Florida.
8. The Plaintiff's own admitted complaint shows that the "whistleblower" has no link to the district.

LACK OF JURISDICTION

9. Counts I through VIII should be dismissed for lack of jurisdiction because Plaintiff has not alleged facts to support standing against Defendant Mark Weinkrantz.
10. The Florida Supreme Court has held that there are "three requirements that constitute the irreducible constitutional minimum for standing". *State v. J.P*. 2d 1101, 113 n.4 (Fla. 2004).
    a. These three prongs are 1) 'injury in fact', one which is concrete, distinct and palpable, and actual or imminent; 2) a plaintiff must establish the causal connection between the injury and the conduct complained of; and 3) a plaintiff must show a substantial likelihood that the request relief will remedy the alleged injury in fact" *id.*
    b. Plaintiff has failed to show any injury in fact, as the Plaintiff was last place in the democratic primary, one where the democratic nominee lost by nearly 10%.
    c. There is no connection between the conduct and the injury alleged.
    d. There is no remedy alleged which can alleviate the injury, as the relief requested would not change the result of any election, and no actual economic damages have been alleged.
11. The Complaint does not allege any facts which show any conspiracy or fraud against Defendant Mark Weinkrantz.
12. Additionally, The only allegation tied to Defendant Mark Weinkrantz is that an unnamed, untraceable "whistleblower" alleged that this unknown, likely nonexistant individual saw "the fat guy on the way in".
    a. This description does not name Defendant Mark Weinkrantz, and does not describe Defendant Mark Weinkrantz.

FAILURE TO STATE A CAUSE OF ACTION

13. Counts I through VIII should be dismissed for Failure to state a cause of action upon which relief can be granted.
14. There is not a single well-pleaded cause of action, and there is no remedy which can be provided by Defendant Mark Weinkrantz
15. No requested relief can be provided, and any requested relief for action is Moot, as the Democratic nominee lost the general election by nearly 10%.
16. Dismissal is appropriate when a plaintiff has failed to properly and separately plead each element of the cause of action. See Kislak v. Kreedian, 95 So. 2d 510 (Fla. 1957) (complaint must properly inform the Defendant of the specific cause against it).
    a. There is no clear allegation of acts against Defendant Mark Weinkrantz, and no clear allegation as to which counts in the complaint apply to Defendant Mark Weinkrantz.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the original of the above has been furnished to the Clerk of the Court by e-filing and a copy to Plaintiff, by E-mail on this day of November 12, 2024.



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McGuire Megna Attorneys.
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FBN: 1049305
Attorney for Defendant

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO VACATE CLERK DEFAULT

THIS CAUSE came before the Court on November 12, 2024 upon the Motion to Vacate Clerk Default ("Motion") filed by Defendant, MARK WEINKRANTZ ("Defendant") on November 11, 2024, and the Court, having considered the Motion, the case file, the applicable law, the argument of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS and ORDERS** the following:

1. "There is a strong preference for lawsuits to be decided on the merits[.]" *Sunstate Courier, Inc. v. Byron*, 629 So. 2d 1095, 1096 (Fla. 2d DCA 1994) (citation omitted).

2. Although Plaintiff sought entry of a clerk's default, a default has not been entered against Defendant.[1]

3. Defendant's Motion is hereby **GRANTED** to the extent that he seeks leave to respond to Plaintiff's Complaint without the effect of a default.

4. Defendant's Motion to Dismiss dated November 12, 2024 is hereby accepted as

[1] On or about November 8, 2024, the clerk rejected Plaintiff's request for a clerk default against Defendant because Plaintiff failed to file an affidavit of non-military service as to Defendant.

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Defendant's response to the Amended Complaint.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

24-003939-CI 11/19/2024 5:59:32 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 11/19/2024 5:59:32 PM

Honorable Patricia A. Muscarella
Circuit Civil Judge

Copies furnished to:

Parties served by email

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Counsel for Defendant, Mark Weinkrantz

Parties served by U.S. mail

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Defendant

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs.

Case No.: 24-003939-CI
Companion Case with
Case No.: 24-002994-CI

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

Defendants.
_____/

ORDER GRANTING COURT'S ORE TENUS MOTION TO CONSOLIDATE
***** DIRECTIONS TO THE CLERK OF COURT *****

THIS CAUSE came before the Court on November 12, 2024 upon the Court's *ore tenus* Motion to Consolidate ("Motion"), and the Court, having considered the Motion, the case file, the applicable law, the agreement of the parties, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. This matter concerns the following cases currently pending in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida: *John William Liccione vs. Julie Marcus, et. al.*, Case No. 24-003939-CI, Section 7, the Honorable Patricia Muscarella presiding ("Section 7 Case") and *John William Liccione vs. Pinellas Democratic Executive Committee*, Case No. 24-002994-CI, Section 19, the Honorable Thomas Ramsberger presiding ("Section 19 Case").

2. Defendant, JENNIFER GRIFFITH ("Ms. Griffith") is a party in both of the aforementioned cases. The operative complaints in both cases involve considerable factual and legal overlap as to Ms. Griffith.

3. Florida Rule of Civil Procedure 1.270(a) states the following:

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> **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

4. At the case management hearing on November 12, 2024 in the Section 7 Case, the Court proposed transferring and consolidating all claims against Ms. Griffith in the Section 7 Case to the previously-filed Section 19 Case as a means of promoting judicial economy in accordance with Rule 1.270(a). The parties stipulated to the Court's proposal.

5. Because the Section 7 Case and the Section 19 Case involve common questions of law and fact involving Ms. Griffith, it would be an inefficient use of party and judicial resources to litigate these related disputes before different trial court judges. Both cases will proceed more efficiently with a single trial court judge presiding over the claims against Ms. Griffith. Accordingly, the efficient administration of justice requires reassignment of the Section 7 Case claims against Ms. Griffith to the Section 19 Case. Said transfer will not delay either action as the cases were filed within 65 days of each other and involve a similar procedural posture, nor will said transfer result in any substantial inconvenience, delay, or expense for the parties or the Court.

Accordingly, it is

ORDERED and ADJUDGED:

1. The Court's Motion is hereby **GRANTED** pursuant to Fla. R. Civ. P. 1.270(a) and in accordance with the stipulation made by all parties at the November 12, 2024 hearing. Hereinafter, Section 19 of this Court shall have jurisdiction over the claims made against Ms. Griffith in the Section 7 Case. All future matters concerning claims made against Ms. Griffith shall be addressed to Section 19 of this Court.

2. The Pinellas Clerk of Court is **DIRECTED** to docket this Order in both Case No.

24-003939-CI and Case No. 24-002994-CI.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

24-003939-CI 11/20/2024 11:20:16 AM
Circuit Judge Patricia A. Muscarella
Honorable Patricia A. Muscarella
24-003939-CI 11/20/2024 11:20:16 AM
Circuit Civil Judge

Copies furnished to:

Parties served by email

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Counsel for Defendant, Mark Weinkrantz

Parties served by U.S. mail

Patrick Heinzen
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St. Petersburg, FL 33714
Defendant

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

COMPANION WITH:
Case No. 24-003939-CI

NOTICE OF FILING DEFENDANTS' MATERIALS FOR CASE MANAGEMENT CONFERENCE

Defendants, PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, MICHAEL JOHN SHEROSKY, and JENNIFER W. GRIFFITH, by and through their undersigned counsel, hereby give Notice of Filing the enclosed materials in support of their positions in advance of the Case Management Conference set in this matter for November 21, 2024 at 3:15pm.

Dated: November 20, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing documents were served upon John William Liccione, Plaintiff *Pro Se*, and all counsel of record on this 20th day of November, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
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Attorneys for Defendants,
PCDEC, SHEROSKY, and
GRIFFITH

RAHDERT & MORTIMER, PLLC

ATTORNEYS AT LAW

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GEORGE K. RAHDERT
THOMAS E. REYNOLDS (1948-2010)
STEPHEN MORTIMER
JOSEPH F. MILLIGAN
GEORGE A.D. THURLOW

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November 20, 2024

The Honorable Judge Thomas Ramsberger
Sixth Judicial Circuit—Circuit Civil Section 19
545 First Avenue North
Room 200
St. Petersburg, FL 33701

VIA FLORIDA E-FILING PORTAL AND E-MAIL TO SECTION19@JUD6.ORG

Re: *John William Liccione vs. Pinellas Democratic Executive Committee, et al*
John William Liccione vs. Jennifer Griffith, et al
Case No. 24-002994-CI and Case No. 24-003939-CI
Materials for Case Management Conference
November 21, 2024—3:15pm

Dear Judge Ramsberger:

In advance of this Court's Case Management Conference in Case No. 24-002994-CI (for all Defendants) and Case No. 24-003939-CI (solely for Defendant Griffith), which is set for November 21, 2024 at 3:15pm, I am providing the following materials for you to consider in advance of the hearing on behalf of Defendants PCDEC, Griffith, and Sherosky.

Relevant sections of the provided case law is highlighted. Page numbers and bookmark numbers are indicated

1. Amended Notice of Telephonic Case Management Conference (pgs. 003-005)

Court Filings—Case No. 24-002994-CI

2. Defendants PCDEC, Griffith, & Sherosky's Motion to Dismiss Amended Complaint (pgs. 006-039)
3. Plaintiff's Response to Defendants' Motion to Dismiss (Original) Complaint (pgs. 040-060)
4. Plaintiff's Motion to Stay and/or Consolidate Case with Federal Case (pgs. 061-063)
5. Defendants' Memorandum in Opposition to Plaintiff's Motion to Stay Proceedings (pgs. 064-068)
6. Plaintiff's Motion for Leave to File Second Amended Complaint (pgs. 069-073)
7. Plaintiff's Motion to Strike Appearance of Attorney George Thurlow (pgs. 074-078)

8. Defendants' Response in Opposition to Plaintiff's Motion to Strike Appearance of Attorney George Thurlow (pgs. 079-081)
9. Plaintiff's Notice of Receipt of Extortive Death Threat (pgs. 082-094)

Court Filings—Case No. 24-003939-CI

10. Order Granting Court's *Ore Tenus* Motion to Consolidate (pgs. 095-097)
11. Order Granting Court's Motion to Stay (pgs. 098-101)
12. Defendant Griffith's Motion to Dismiss (pgs. 102-114)
13. Plaintiff's Response to Defendant Griffith's Motion to Dismiss (pgs. 115-127)
14. Defendant Griffith's Motion for Sanctions (pgs. 128-136)
15. Plaintiff's Response to Motion for Sanctions (pgs. 137-144)

Authorities on Free Speech and Assembly Rights of Political Parties

16. *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214 (1989) (pgs. 145-170)
17. *Tashjian v. Repub. Party*, 479 U.S. 208 (1986) (pgs. 171-207)
18. *Concerned Citizens for Judicial Fairness v. Yacucci*, 162 So. 3d 68 (Fla. 4th DCA 2014) (pgs. 208-217)
19. Order Granting Defendant's Motion to Dismiss in *Donelon v. Pinellas Democratic Executive Committee,* Pinellas County Case No. 23-008089-CI. (pgs. 218-219)

Authorities on Motions to Dismiss filed under Florida's anti-SLAPP Statute (Fla. Stat. § 768.295)

20. Fla. Stat. Ann. § 768.295 (LexisNexis, Lexis Advance through the 2024 regular session) (pgs. 220-235)
21. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019) (pgs. 236-253)
22. *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (pgs. 254-263)

Authorities Regarding Whether Political Parties Are Considered State Actors

23. *Kissinger v. Mahoning Cnty. Republican Party*, 677 F. Supp. 3d 716 (N.D. Ohio 2023) (pgs. 264-280)
24. *Emmanuelli v. Priebus*, 2012 U.S. Dist. LEXIS 52064 (M.D. Fla. 2012), aff'd by *Emmanuelli v. Priebus*, 500 Fed. Appx. 886 (11th Cir. 2012). (pgs. 281-288)

Authorities on Disqualification of Defendants' Attorneys

25. Fla. Bar Reg. R. 4-3.7 (Rule and Commentary) (pgs. 289-291)
26. *Allstate Ins. Co. v. English,* 588 So. 2d 294, 295 (Fla. 2d DCA 1991) (pgs. 292-295)
27. *AlliedSignal Recovery Trust v. AlliedSignal, Inc.,* 934 So. 2d 675, 680 (Fla. 2d DCA 2006) (pgs. 296-307)

Sincerely,

George A.D. Thurlow, Esquire
Counsel for Defendants PCDEC,
Griffith, and Sherosky

Cc: John William Liccione (via email)

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

COMPANION WITH:
Case No. 24-003939-CI

AMENDED NOTICE OF TELEPHONIC HEARING
Amended to Include Plaintiff's Newly Filed Motions

YOU ARE HEREBY NOTIFIED that the above-styled cause has been set for a telephonic **CASE MANAGEMENT CONFERENCE** as designated below:

DATE:	November 21, 2024
TIME:	3:15 pm (30 minutes)
JUDGE:	The Honorable Thomas Ramsberger

ALL PENDING MOTIONS IN THIS INSTANT CASE (CASE No. 24-002994-CI) AS WELL AS ALL MATTERS PERTAINING TO DEFENDANT JENNIFER GRIFFITH IN CASE NO. 24-003939-CI[1] WILL BE HEARD AT THIS CASE MANAGEMENT CONFERENCE.

As of this filing, those Pending Motions include:

CASE NO 24-002994-CI:

- Plaintiff's Motion to Stay Proceedings (Doc # 17)
- Defendants' PCDEC, Sherosky, and Griffith's Motion to Dismiss Amended Complaint with Prejudice as a Strategic Lawsuit Against Public Participation (Doc #PENDING, filed November 14, 2024)[2]
- Plaintiff's Motion for Leave to File Second Amended Complaint (Doc #PENDING, filed November 17, 2024)
- Plaintiff's Motion to Strike Appearance of Attorney George Thurlow (Doc #PENDING, filed November 18, 2024)

[1] At a November 12, 2024 hearing, The Honorable Patricia Muscarella ruled that this Court and The Honorable Thomas Ramsberger, in Case No. 24-002994-CI, should have jurisdiction over Defendant Jennifer Griffith in Case No. 24-003939-CI. An Order to this extent is forthcoming.
[2] This Motion replaces Defendants' Motion to Dismiss Complaint (Doc #15), which came moot upon Plaintiff filing an Amended Complaint on November 7, 2024 (Doc #31)

CASE NO 24-003939-CI:

- Defendant Griffith's Motion to Dismiss Amended Complaint (Doc #40)
- Defendant Griffith's Motion for Sanctions (Doc #55)
- Plaintiff's Motion to Compel Discovery Against Defendants Jennifer Griffith and Cathy Salustri Loper (Doc #71)
- Plaintiff's Motion to Shorten Time for Defendants Griffith and Loper to Respond to Plaintiff's Motion to Compel Discovery (Doc #74)

Should additional Motions be filed with the Court before this Case Management Conference in either Case No. 24-002994-CI or in Case No. 24-003939-CI (pertaining only to Defendant Griffith), this Court may consider those Motions at this Hearing without further notice.

HELD VIA: Conference Call
Dial-in number (US): (425) 436-6303
Access code: 141878#

INSTRUCTIONS FOR SECTION 19

UNTIL FURTHER NOTICE, ALL HEARINGS set before Judge Thomas Ramsberger, Civil Section 19 will be conducted by TELEPHONE CONFERENCE.
ZOOM VIDEO CONFERENCE (upon approval).
(Zoom requests shall be made directly to the JA via e-mail prior to requesting / scheduling a hearing).

At the time of your hearing please use the **conference call line** that appears above in this Notice of Hearing to reach the Judge. This number will be used for all hearings so when you join the call its possible another hearing may be in progress so please mute your line and do not place the call on hold because that will activate hold music that all the other participants will hear.

Please call in at your scheduled hearing time and no sooner than 5 minutes prior to avoid too many parties on the line at once. Judge Ramsberger will make every effort to stay on schedule regarding hearing times but due to the high volume of calls, you may expect a wait time, please be patient and remain on mute (not hold) until the judge calls your case.

Judge Ramsberger has requested all lawyers please notify any Pro Se litigants of this change and provide them with the conference call number and access code listed below.

If you have been waiting on the phone for longer than 15 minutes, please call Valerie at (727)582-7874 to verify your case is on the docket.

Dated: November 18, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice has been served upon John William Liccione, Plaintiff *pro se*, via Florida E-Filing Portal on this 18th day of November, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
St. Petersburg, FL 33701
Phone: (727)823-4191
Fax: (727)823-6189
Email: gthurlow@rahdertlaw.com
service@rahdertlaw.com
tmccreary@rahdertlaw.com
Attorney for Defendants, PDEC, Griffith & Sherosky

IMPORTANT

If you are a person with a disability who needs an accommodation in order to participate in this proceeding, you are entitled, at no cost to you, to the provision of certain assistance. Please contact:

Human Rights Office
400 S. Ft. Harrison Ave., Ste. 500
Clearwater, FL 33756

Phone: 727.464.4062 V/TDD
Or 711 for the hearing impaired

Contact should be initiated at least seven days before the scheduled court appearance, or immediately upon receiving this notification if the time before the scheduled appearance is less than seven days.

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

DEFENDANTS' PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, SHEROSKY, AND GRIFFITH'S MOTION TO DISMISS AMENDED COMPLAINT WITH PREJUDICE AS A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION

Defendants, PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE ("PCDEC"), MICHAEL SHEROSKY[1] ("SHEROSKY"), and JENNIFER GRIFFITH[2] ("GRIFFITH"), by and through their undersigned attorneys, hereby move this Court, pursuant to Florida Rules of Civil Procedure 1.140(b)(1) and 1.140(b)(6), to dismiss the Amended Complaint on the grounds that it is an impermissible strategic lawsuit against public participation, that this court (and any other court) lacks subject matter jurisdiction, for failure to state a cause of action upon which relief can be granted, and as a shotgun pleading, and in support thereof state as follows:

I. INTRODUCTION

Plaintiff's *modus operandi* in filing this lawsuit is to seek revenge against PCDEC, its Chair, and its Secretary for declining to support Plaintiff's candidacy for United States Congress and declining to provide Plaintiff with a platform for his candidacy. Since filing this instant lawsuit, Plaintiff has continued this retaliatory course of conduct through filing another lawsuit in the Sixth Judicial Circuit and filing a lawsuit in the United States District Court for the Middle District of Florida. None of these lawsuits have any merit.

[1] Michael Sherosky is the duly elected Secretary of the PCDEC, which is an unpaid, volunteer, and part-time position.
[2] Jennifer Griffith is the duly elected Chair of the PCDEC, which is an unpaid, volunteer position.

This Court should dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction because the entirety of Plaintiff's Amended Complaint is based upon the Defendants' exercise of free speech, the actions of PCDEC—which is recognized as a county-level political party under Florida law—and its internal governing procedures and right to associate with whom it desires, all of which are non-justiciable before this Court. However, even if this Court were to find that it has subject-matter jurisdiction over some or all counts of Plaintiff's Amended Complaint, this Court should still dismiss it as it fails to state a cause of action upon which relief may be granted and because it is a shotgun pleading. This Court should also dismiss Count V of the Amended Complaint as Plaintiff lacks standing to bring such claim.

Additionally, as this lawsuit aims to quiet the political speech of PCDEC, Griffith, and Sherosky, the Defendants request that this Court deem this lawsuit to be a strategic lawsuit against public participation (SLAPP) that is prohibited under Florida's anti-SLAPP statute, Fla. Stat. § 768.295. Fla. Stat. § 768.295(3) states that "A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue." Plaintiff filed this lawsuit against PCDEC, Griffith, and Sherosky because PCDEC, Griffith, and Sherosky have exercised their constitutional right of free speech in connection with a public issue—namely the Democratic Primary for Florida's 13th Congressional District—in a way that has not been beneficial to Plaintiff's political campaign.

II. THE LEGAL STANDARD FOR A MOTION TO DISMISS—GENERALLY AND UNDER FLA. STAT. § 768.295

While a Motion to Dismiss generally requires a Court to simply accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant, the 2d DCA has held that a Motion to Dismiss based upon the anti-SLAPP statute requires the trial court to do more. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019); *Davis v. Mishiyev*, 339 So. 3d 449, 453 (Fla. 2d DCA 2022).

Rather, in a Motion to Dismiss based upon the anti-SLAPP statute, the Defendant must demonstrate a *prima facie* case that the anti-SLAPP statute applies—in that the Plaintiff's suit was based on some activity that would qualify as an exercise of the Defendant's First

Amendment rights in connection to issues of public importance. *Id*. Then, the burden of proof shifts to the Plaintiff to demonstrate that the Defendants' activity was actionable and that the claims are not primarily based upon the Defendants' exercise of their first amendment rights. *Davis*, 339 So. 3d, at 453. This procedure serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss. *Gundel*, 264 So. 3d, at 314.

Denial of a Motion to Dismiss on anti-SLAPP grounds is an appealable non-final order. Notably, in *Gundel v. AV Homes, Inc.*, the 2d DCA quashed a trial court order denying a Motion to Dismiss, For Judgment on the Pleadings, or For Summary Judgment because the allegations contained within the pertinent counterclaim were too vague to permit the trial court to determine whether the alleged conduct was protected free speech. *Id*. at 315.

A prevailing party to a Motion to Dismiss under Fla. Stat. § 768.295 is entitled to the award of their reasonable attorney's fees and costs.

III. THERE IS A *PRIMA FACIE* CASE THAT PLAINTIFF'S LAWSUIT APPEARS TO BE A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION.

Of the forty-nine (49) paragraphs of factual allegations made in the Complaint, forty-one (41) of those paragraphs (Compl. ¶ 8-21, 30-56) in some way relate to Plaintiff's status as a candidate for United States Congress in Florida's 13th Congressional District, and the acts that the Defendants allegedly took in opposition to the Plaintiff's candidacy for Congress. Additionally, Plaintiff requests injunctive relief in the Complaint (Compl. ¶ 49-51, 84(e)) that would force PCDEC to permit Plaintiff to attend its events for the explicit purposes of advancing Plaintiff's political candidacy.

The speech of all three defendants who take part in this motion (PCDEC, Griffith, and Sherosky) constituted exercise of their First Amendment rights in connection to an issue of public importance—the Democratic Primary in Florida's 13th Congressional District. Both the Florida Supreme Court and the United States Supreme Court have held that expressing one's opinion about who should serve in public office, such as United States Congress, is political speech that falls within the protection of the First Amendment. *In re Code of Judicial Conduct*, 603 So. 2d 494, 496 (Fla. 1992). "[T]he First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Concerned Citizens for*

Judicial Fairness v. Yacucci, 162 So. 3d 68, 73 (Fla. 4th DCA 2014), citing *Eu v. San Francisco Cnty. Democratic Ctr. Comm.*, 489 U.S. 214, 223 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272 (1971)).

Additionally, the United States Supreme Court has held that political parties making endorsements[3] in primary elections is protected political speech that may not be restricted by state or federal law. *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223-29 (1989). Certainly, this right would also extend to individual leaders of political parties. There is no legal barrier against political parties taking internal steps affecting their own process for the selection of candidates. *Tashjian v. Repub. Party*, 479 U.S. 208, 224 (1986).

Based on this clear showing that Defendants engaged in protected First Amendment speech, **Plaintiff now has the burden to demonstrate that the conduct of the Defendants was actionable.** Based on the allegations set forth in the Amended Complaint, none of the alleged conduct of the Defendants is actionable. Therefore, this Court should dismiss Plaintiff's Amended Complaint with prejudice as it is a strategic lawsuit against public participation intended to have a chilling effect on the Defendants' ability to exercise their First Amendment rights, and grant Defendants' entitlement to their reasonable attorney's fees and costs pursuant to Fla. Stat. § 768.295.

IV. PCDEC'S "VETTING PROCESS" FOR CANDIDATES IS PROTECTED FIRST AMENDMENT ACTIVITY THAT IS NON-JUSTICIABLE BY THIS COURT, OR ANY OTHER COURT.

Without dissecting the factual allegations made by the Plaintiff, or analyzing whether specific causes of action exist or were sufficiently pled, this Court may dismiss Counts III, IV, V, VI, VIII, and VIII of the Amended Complaint as they present non-justiciable claims over which this Court lacks subject-matter jurisdiction. Namely, this Court lacks jurisdiction because this lawsuit pertains to the decisions made by a county-level political party, the leadership of that county-level political party, and a state-level political party regarding a primary election for United States Congress. Given that the overwhelming amount of the facts pled in the Complaint relate to that theme, none of the claims made are justiciable.

[3] While there are technical distinctions between PCDEC making an endorsement in a primary election and PCDEC engaging in a "vetting process," as is alleged in the Complaint, those distinctions are not relevant to this instant case.

a. PCDEC IS A POLITICAL PARTY THAT HAS A LEGAL RIGHT TO ASSOCIATE OR NOT ASSOCIATE WITH PARTICULAR CANDIDATES, AND CONDUCT ITS PRIMARY ELECTIONS IN THE MANNER IT SO DESIRES.

The case of *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 222-24 (1989) controls. In *Eu*, the U.S. Supreme Court struck down California's legal ban on political parties making endorsements in primary elections on the grounds that it was an unconstitutional restriction on free speech. Specifically, the U.S. Supreme Court found that restricting a political party's governing body from "stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate is qualified for the position sought" is an unconstitutional restriction on speech because it "directly hampers the ability of a party to spread its message and voters seeking to inform themselves about the candidates and campaign issues." *Eu*, 489 U.S., at 223. *Eu* further held that political parties—due to their freedom of association--have the right to identify the people they wish to associate with, and select a standard bearer who "best represents the party's ideologies and preferences." *Id.* at 224. This decision was resolute, with the Court going as far as saying that restrictions on speech are " particularly egregious where the State censors the political speech a political party shares with its members." *Id.* at 223-24.

Restricting political parties from this right "suffocates" them because it prevents parties from promoting candidates "'at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community'." *Id.* at 224, quoting *Tashjian v Republican Party of Connecticut,* 479 US 208, 216 (1986).

Even when taken as true, Plaintiff alleges that PCDEC found that Plaintiff did not pass their vetting process and accordingly denied Plaintiff a stage for his candidacy, while promoting other candidates. Based on clear legal precedent, Plaintiff was well within its constitutional rights to make that decision and promote any candidates it so desires.

b. THIS COURT HAS PREVIOUSLY UPHELD PCDEC'S RIGHT TO CONTROL ITS OWN INTERNAL GOVERNING PROCEDURES.

Along these lines, in the recent case of *Donelon v. Pinellas Democratic Executive Committee*, Pinellas County Case No. 23-008089-CI, this Court dismissed the Plaintiff's Complaint, which concerned the elections process for PCDEC's Credentials Committee, on the

grounds that based upon the authorities of *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), this Court lacked jurisdiction to hear an action regarding the internal operations of a political party such as PCDEC. PCDEC maintains that its candidate vetting process is a matter of internal operation that is non-justiciable by this Court.

c. PLAINTIFF PREVIOUSLY SOUGHT REDRESS THROUGH THE FLORIDA DEMOCRATIC PARTY, WHICH WAS DENIED.

The bottom line is that political parties have the right to control the selection of their candidates free from undue state interference such as court rulings. Plaintiff's entire lawsuit is a gripe he has with a political party and its officers over the political party exercising its First Amendment rights in controlling its internal affairs in relation to candidate selection. This court does not have subject-matter jurisdiction over such a lawsuit, and therefore, this Court should dismiss this lawsuit.

d. DEFENDANTS SHEROSKY AND GRIFFITH HAVE A RIGHT TO SUPPORT OR OPPOSE CANDIDATES IN THEIR INDIVIDUAL CAPACITIES.

As individuals both Griffith and Sherosky enjoy a right of freedom of association under the First and Fourteenth Amendment to the United States Constitution. *Eu*, 489 U.S., at 224. That means that this Court cannot require them to promote or support Plaintiff's candidacy for the same reasons it cannot require the same of PCDEC.

e. THE CLAIMS BROUGHT IN COUNT V VI OF THE COMPLAINT IS SIMILARLY NON-JUSTICIABLE.

While Defendants maintain that ALL of the claims made in this Complaint should be barred as at all times relevant, Defendants were engaging in protected political speech, the claims of Count VI the Complaint can be dismissed upon a similar theory. In Count VI, Plaintiff throws numerous conclusory legal allegations against the wall, hoping something will stick. Plaintiff alleges that the Defendants are in violation of several civil rights laws, though upon closer inspection, it is evident these laws are entirely inapplicable to the facts asserted by Plaintiff.

Plaintiff's claims fly in the face of PCDEC, Griffith, and Sherosky's constitutional guarantees of freedom of association. Plaintiff claims rely on his misguided belief that the

Defendants are required to associate with Plaintiff, required to prefer Plaintiff as a candidate over others, and required to support Plaintiff's campaign. These assumptions are false. The PCDEC is a private organization (and its officers are private individuals) and Plaintiff's claims implicate vital rights of association guaranteed by the United States Constitution. The United States Supreme Court has explained that the "[f]reedom of association would prove an empty guarantee if associations could not limit control over their decisions to those who share the interests and persuasions that underlie the association's being." *Democratic Party v. Wisconsin ex rel. LaFollette*, 450 U.S. 107, 122 (1981), note 22, p. 122, quoting L. Tribe, American Constitutional Law 791 (1978).

While Plaintiff may be unhappy that his campaign has not been supported by Defendants, there is no legal obligation for Plaintiff to receive the support he seeks. To that extent, Plaintiff's Complaint runs counter to PCDEC's Constitutional rights of association and right to manage its own internal affairs.

i. ADA Claim

Plaintiff claims, in wholly conclusory fashion, that Defendants discriminated against him on account of his suffering from Post-Traumatic Stress Disorder ("PTSD"), in violation of the ADA. See Compl. ¶ 71-72. Plaintiff claims Defendants discriminated against him in the activities of public life and engagement, and specifically regarding his political campaigning.

The ADA, however, is entirely inapplicable to Plaintiff's claims. The ADA broadly covers five groups of entities: employers, state and local governments, public transit, businesses that are open to the public, and telecommunications. See 42 U.S.C. § 12101 et. seq. PCDEC, Griffith, and Sherosky are not a state or local government, a public transit, or telecommunications entity. Likewise, the PCDEC, Griffith, and Sherosky are not Plaintiff's employer, or a business open to the public. It is clear on its face; the ADA is entirely inapplicable to the facts alleged.

ii. Civil Rights Claims

Plaintiff claims that Defendants, including PCDEC, Griffith, and Sherosky, have violated his civil rights. Specifically, Plaintiff claims that the PCDEC, Griffith, and Sherosky are discriminating against him on account of his age and sex. *See* Compl. ¶ 73. The allegations that Plaintiff was targeted on account of his age or sex are conclusory and need not be assumed true.

Plaintiff's conclusory allegation that he is being discriminated against because of his age and sex is based on his assertion that the PCDEC, Griffith, and Sherosky are supporting a younger, female candidate. *See* Compl. ¶ 73. The PCDEC is a private association and has constitutional rights to choose with whom it associates, and to choose which candidate it does, or does not, support in an election.

Plaintiff asserts that the FDP has violated the Florida Civil Rights Act ("FCRA"). *See* Compl. ¶¶ 74-75. But no provision of the FCRA would appear to apply to the FDP herein. The FDP is not Plaintiff's employer. *See* Fla. Stat. § 760.10. It is not a place of public accommodation. *See* Fla. Stat. § 760.08. Plaintiff has not identified any Florida Statute that makes it unlawful discrimination for a person or political association to choose to support one candidate over another. Likewise, Plaintiff failed to plead any fact showing that any disfavor shown to him by Defendants is on account of his age or gender.

iii. Public Employment Claims

Plaintiff claims that Defendants have violated Section 112.044, Florida Statutes, which prohibits discrimination on account of age in certain activities conducted by public employers. *See* Compl. ¶75. This provision is entirely inapplicable to the PCDEC, let alone Griffith and Sherosky in their individual capacities. The statute defines an "employer" for its purposes as "the state or any county, municipality, or special district or any subdivision or agency thereof." *See* Fla. Stat. § 112.044(2)(b). PCDEC, Griffith, and Sherosky do not fit into any of these categories. Thus, the prohibited activities provisions do not apply to the Defedants. *See* Fla. Stat. § 112.044(3) ("[I]t is unlawful for an ***employer*** to….") (emphasis added). As this provision of law does not apply to the Defendants, Plaintiff's claims based upon it must fail.

iv. Voting Rights Act of 1965 Claim

Plaintiff claims Defendants have violated the Voting Rights Act of 1965, without explanation. *See* Compl. ¶ 77. Plaintiff asserts that the Act includes provisions that impact campaign practices and "outlaws tactics that may be used to intimidate or disenfranchise voters, which can indirectly affect campaign activities." *Id*. But Plaintiff does not allege any fact to show that the PCDEC, Griffith, or Sherosky have intimidated or disenfranchised voters.

Among other prohibitions, the Voting Rights act of 1965 prohibits persons from intimidating, threatening, coercing, or attempting to intimidate, threaten or coerce, for voting, attempting to vote, or urging or aiding any person to vote. *See* 52 U.S.C. § 10307(b). Even assuming the facts alleged to be true, and taken in a light most favorable to Plaintiff, nothing in Plaintiff's Complaint shows that the PCDEC, Griffith, or Sherosky have intimidated, threatened, coerced, or attempted to intimidate, threaten, or coerce any person for voting, attempting to vote, or urging another to vote. The Act does not prohibit the PCDEC, Griffith, or Sherosky from choosing to not support Plaintiff's campaign, or from undertaking any of the alleged actions in the Complaint. Plaintiff has failed to show any violation of the Voting Rights Act of 1965 and this claim must fail.

v. Federally Protected Activities Claim

For similar reasons, Plaintiff's claim that Defendants have violated 18 U.S.C. § 245 must fail. Plaintiff states that this provision makes it a federal crime "to interfere with federally protected activities, including voting in federal elections" and that the provision "provides penalties for anyone 'who uses force or threat of force to intimidate or interfere with a person's right to vote or campaign.'" Compl. ¶ 78. But as a criminal statute, it does not provide any civil remedies for Plaintiff, and Plaintiff has no right to bring suit to enforce the provision. Further, prosecutions under the statute may only be undertaken "upon the certification in writing of the Attorney General, the Deputy Attorney General, the Associate Attorney General, or any Assistant Attorney General specially designated by the Attorney General" that such prosecution is "in the public interest and necessary to secure substantial justice…." 18 U.S.C. § 245(a)(1). Plaintiff simply has no right to bring a claim under this section.

Moreover, even if Plaintiff had a right of action under this provision, Plaintiff has failed to plead any facts to show that the PCDEC, Griffith, or Sherosky have intimidated or interfered with a person's right to vote or campaign—because they have not. Thus, Plaintiff's claim fails.

vi. Intimidation of Voters Claim and Influencing Voters Claim

Plaintiff asserts Defendants are in violation 18 U.S. Code § 594, which prohibits intimidation of voters, and 18 U.S. Code § 597, which prohibits a person from making or offering an expenditure to any person to either vote for or against any candidate, or to vote or

withhold his or her vote. *See* Compl. ¶¶ 79, 80; *see also* 18 U.S.C. §§ 594, 597. Both statutes are criminal statutes which do not provide civil remedies and for which Plaintiff has no right of action. *See Id*.

Further, even if Plaintiff had a right of action under these statutes, his claim fails. Plaintiff failed to allege any ultimate facts showing that the PCDEC, Griffith, or Sherosky have intimidated or interfered with any persons right to vote – which to be clear, the PCDEC, Griffith, or Sherosky have not done – nor did Plaintiff allege any fact showing that the PCDEC, Griffith, or Sherosky made any expenditure to any person to either vote for or against any candidate, or to vote or withhold his or her vote. Thus, Plaintiff's claim fails.

vii. Internal Bylaws Claim

Finally, Plaintiff asserts that the PCDEC and FDP bylaws have been violated, as the Defendants have promoted one candidate over another. The PCDEC (and FDP) have a right to manage its own internal affairs. Any alleged violation of internal bylaws should be managed through the internal dispute process within the PCDEC and FDP.

Interference into the internal processes of the PCDEC and FDP implicates vital rights of association guaranteed by the Constitution. As noted by the United States Supreme Court in an action challenging recommendation of the Credentials Committee at the 1972 Democratic National Convention regarding seating of delegates:

> Judicial interference in this area traditionally has been approached with great caution and restraint. (citations omitted) It has been understood since our national political parties first came into being as voluntary associations of individuals that the convention itself is the proper forum for determining intra-party disputes as to which delegates shall be seated.

O'Brien v. Brown, 409 U.S. 1, 4 (1972). Such is the case here as well. The proper and exclusive forum for determining the dispute between the parties to this action lies within the PCDEC and/or FDP's internal dispute procedures, not the judiciary. Both the PCDEC and FDP have mechanisms to hear and determine the dispute between these parties. There is no legal basis to bring a claim in circuit court for a violation of PCDEC or FDP bylaws.

V. THE COMPLAINT FAILS TO STATE A CAUSE OF ACTION UPON WHICH RELIEF MAY BE GRANTED.

While this Court should find that this is a strategic lawsuit against public participation where all of the Defendants' alleged conduct is protected under the First Amendment, it is also true that the Plaintiff did not sufficiently plead any causes of action. Under Florida Rule of Civil Procedure 1.140(b)(6), a complaint should be dismissed if it fails to state a cause of action upon which relief can be granted. While the allegations in the complaint must be taken as true and all reasonable inferences should be made in favor of the plaintiff, the Complaint still falls short. The Complaint is replete with conclusory statements, lacks specific factual allegations, and fails to provide a clear and concise statement of the claims. The Complaint does not provide sufficient factual basis for the alleged claims of vicarious liability, conspiracy, violation of election laws, and civil rights violations.

A. The Complaint fails to state a cause of action against Sherosky for Battery (Count I).

To assert a case for battery against Sherosky, the Plaintiff must demonstrate that (1) Sherosky intended to touch the Plaintiff, (2) that Sherosky actually touched the Plaintiff, and (3) that the physical contact between the Plaintiff and Sherosky was harmful or offensive. *Chorak v. Naughton*, 409 So. 2d 35 (Fla. 3d DCA 1982); *Gatto v. Publix Supermarket, Inc.*, 387 So. 2d 377 (Fla. 3d DCA 1980).

For a battery to occur, a defendant must take some positive, affirmative action that is intended to cause contact with the plaintiff. 1 Florida Torts § 20.03 (2024). It is the intent to perform the physical contact and not the intent or desire to cause harm, that is dispositive in determining whether intent to accomplish a battery exists [*see, e.g.* McDonald v. Ford, 223 So. 2d 553, 555 (Fla. 2d DCA 1969) (gist of battery cause of action is not defendant's hostile intent, but absence of plaintiff's consent to contact). Therefore, it is irrelevant as to whether Sherosky had any desire to harm the Plaintiff.

The Complaint contains contradictory allegations as to whether Sherosky actually touched the Plaintiff. The fact allegations Complaint allege that Sherosky "forcefully knocked off the hat Plaintiff was wearing" (Amend. Compl. ¶ 34), that Sherosky invaded Plaintiff's "physical space" (Amend. Compl. ¶ 36), and most significantly, that "Sherosky's body came within five

inches of Plaintiff's face" (Compl. ¶ 36). None of these allege that Sherosky actually touched the Plaintiff, and in fact, one such allegation directly contradicts that assertion. This contradicts the conclusory legal allegation of Paragraph 58 of the Amended Complaint.

Additionally, Plaintiff's complaint fails to state—either in the pled facts or in its conclusory legal statements—that the physical contact between Plaintiff was harmful or offensive. For contact to be harmful, it must result in bodily injury. *Glickstein v. Setzer*, 78 So. 2d 374 (Fla. 1955). For contact to be offensive, it must offend a reasonable person's sense of dignity. See *Gatto v. Publix Supermarket, Inc*., 387 So. 2d 377 (Fla. 3d DCA 1980), *citing* Restatement (Second) of Torts §§ 19, 21. Examples of this kind of offensive conduct include a man continually trying to embrace a woman despite her repeated resistance to his overtures or smearing filth on another person's face. Contacts that are customary or common in social relations are not offensive contacts that will support a cause of action for battery; examples include a tap on the shoulder to attract attention, a friendly grasp of the arm, or casual pushing to make a passageway. *See* Prosser and Keeton on Torts § 9 (West 5th ed. 1984). While Defendant Sherosky maintains that he never touched Plaintiff, knocking off someone's hat (the alleged conduct per Amend. Compl. ¶ 34) at a crowded event (the St. Petersburg Pride Parade) does not rise to the level of harmful or offensive conduct.

Because the Complaint fails to clearly allege whether Sherosky actually touched the Plaintiff, and because even if true, Plaintiff's allegations of Sherosky's conduct do not rise to the level of "harmful or offensive contact," this Court should dismiss the Plaintiff's count for battery against Defendant Sherosky.

B. The Plaintiff fails to state a cause of action against Defendant Sherosky for Assault.

To establish a claim for assault against Defendant Sherosky, the Plaintiff must demonstrate that (1) that Sherosky either intended to cause the plaintiff to fear immediate injury or intended to actually injure the plaintiff; (2) that Sherosky's apparent present ability to inflict an injury caused the plaintiff to reasonably apprehend bodily injury; and (3) that either Sherosky's conduct or the circumstances made it appear that bodily injury was imminent. *Lay v. Kremer*, 411 So. 2d 1347, 1349 (Fla. 1st DCA 1982); *Sullivan v. Atlantic Federal Sav. & Loan Ass'n.*, 454 So. 2d 52 (Fla. 4th DCA 1984).

The Plaintiff merely alleges—through conclusory statements unsupported by the facts--that "Defendant Sherosky intentionally acted in a threatening manner, causing Plaintiff to have a reasonable apprehension of imminent harmful contact" and that "As a result of Defendant Sherosky's conduct, Plaintiff suffered emotional distress." Amend. Compl. ¶ 61-62. Notably, Plaintiff did not allege that Sherosky intended to cause the Plaintiff to fear immediate injury or intended to actually injure the Plaintiff. Additionally, while the Plaintiff claims he had "a reasonable apprehension of imminent harmful contact," he does not allege that Sherosky had an apparent present ability to inflict injury upon him.

The facts pled in the Complaint ultimately do not support a cause of action for assault, and therefore, this Court should dismiss Count II of the Complaint against Defendant Sherosky.

C. The Complaint fails to state a cause of action against PCDEC or Griffith for vicarious liability (Count III).

The Complaint does not allege sufficient facts to support a cause of action to establish that Defendants Griffith and PCDEC are vicariously liable for the alleged actions of Defendant Sherosky. "General principles of vicarious liability establish that a principal is responsible for the wrongful acts of its agent if the agent was either acting '(1) within the scope of [its authority], or (2) during the course of [the agency] and to further a purpose or interest of the [principal].'" *Trevarthen v. Wilson*, 219 So. 3d 69, 72 (Fla. 4th DCA 2017) (alteration in original) (quoting *Valeo v. E. Coast Furniture Co*., 95 So. 3d 921, 925 (Fla. 4th DCA 2012)). Notably, the Complaint fails to allege that Defendant Sherosky was acting (1) within the scope of his authority as Secretary of PCDEC or (2) was acting as an agent to further a purpose or interest of the PCDEC. On its face, this Count fails.

The sole allegation of how PCDEC and Griffith are vicariously liable for Sherosky's purported conduct is that "Defendants Griffith and the Pinellas Democratic Executive Committee, being in proximity to the assault incident and in positions of authority, were either aware of, condoned, or failed to intervene in the actions taken by Defendant Sherosky." (Amend. Compl. ¶ 39) and that Defendants Griffith and PCDEC have failed to discipline Sherosky (Amend. Compl. ¶ 40). While PCDEC and Griffith dispute the factual accuracy of that claim and the legal conclusions it makes, such a claim is legally insufficient to support vicarious liability.

There are no facts pled in the Complaint which support Plaintiff's conclusion that Sherosky "acted within the scope of his authority and under the apparent or actual oversight of the PDEC and the Florida Democratic Party," (Amend. Compl. ¶ 64) nor is any theory about how Defendant Griffith personally liable stated.

The Complaint's pleading that Sherosky is an officer of PCDEC (Amend. Compl. ¶ 5) is insufficient to demonstrate that his alleged battery and assault were conducted as an agent of PCDEC. A plaintiff's mere showing that an agent was on duty at the time he assailed someone does not establish that the conduct occurred within the scope of agency. *See Garcia v. Duf*fy, 492 So.2d 435, 438 (Fla. 2d DCA 1986). Instead, the agent's conduct must be "of the kind he was employed to perform," must occur "substantially within the time and space limits authorized or required by the work to be performed," and must be "activated at least in part by a purpose to serve the master." *Iglesia Cristiana La Casa Del Señor, Inc. v. L.M*., 783 So.2d 353, 357 (Fla. 3d DCA 2001).

Plaintiff has made no such showing herein. The Plaintiff has not alleged that Sherosky was engaged by the PCDEC to perform any conduct of the kind akin to assault or battery. The alleged actions, even when assumed true, are beyond the scope of authority Sherosky would have as the Secretary of the Pinellas Democratic Executive Committee. Further, Plaintiff failed to plead any fact showing that the alleged battery was done, at least in part, to serve the purpose or interests of the PCDEC. The alleged actions of Sherosky were the actions of a private individual taken purely in his personal capacity. The alleged conduct is far outside the scope of Sherosky's official duties as PCDEC Secretary. The claim must be dismissed.

D. The Complaint fails to state a cause of action against PCDEC, Griffith, or Sherosky for civil conspiracy.

In Count IV, Plaintiff alleges that the PCDEC, Florida Democratic Party, Sherosky, and Griffith, engaged in a civil conspiracy to destroy his political campaign. See Amend. Compl. ¶¶ 65-67. A claim for civil conspiracy requires Plaintiff to prove four elements: "To state a cause of action for civil conspiracy, a plaintiff must plead '(1) an agreement between two or more parties; (2) to do an unlawful act or a lawful act by unlawful means; (3) the execution of some overt act in pursuance of the conspiracy; and (4) damage to the plaintiff as a result of said acts.' (citations omitted)." *Logan v. Morgan & Bockius LLP*, 350 So. 3d 404, 412 (Fla. 2d DCA 2022). A claim

for civil conspiracy must contain clear, positive and specific allegations; general allegations of conspiracy are not sufficient. *Parisi v. De Kingston*, 314 So. 3d 656, 661 (Fla. 3d DCA 2021); *World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 799 (Fla. 4th DCA 1999). The Complaint, as pled, fails on all four requirements.

i. There is not an agreement between two or more parties.

Based on the pleading, it is unclear what agreements were entered into between the PCDEC, Florida Democratic Party, Sherosky, and Griffith that are the subject of this count. There is no clear, positive and specific allegations of what these agreement(s) were. In *arguendo,* if the "vetting process" was the agreement, there is also no allegation that Defendant Sherosky had any involvement in that process, that Defendant Griffith acted outside her official capacities as PCDEC Chair, or that members of the "PDEC candidate vetting committee" acted outside the scope of their official duties. Therefore, there is no second party to the "vetting process" insofar that it may be the agreement referenced by Plaintiff. Because there is no clear, positive, and specific allegation of an agreement between two or more parties, the count fails.

ii. There is no agreement to do an unlawful act or a lawful act by unlawful means occurred.

Additionally, there is no pleading sufficient to conclude that two or more parties agreed to do an unlawful act or a lawful act by unlawful means. Defendants PCDEC, Griffith, and Sherosky all have free speech rights under the First Amendment to the United States Constitution and the Florida Constitution. Plaintiff alludes to the unlawful act being defamation as Plaintiff makes conclusory statements claiming he was defamed (Compl. ¶ 13, 19, 35, 36, 40, 52, 66, 82, 84).

Therefore, the allegations of conspiratorial acts in the complaint allege nothing unlawful but merely unsubstantiated, conclusory claims of "defamation."

iii. It is unclear what the overt act in furtherance of the conspiracy was.

The Complaint does not contain clear, positive and specific allegations of what the overt act in furtherance of the conspiracy was.

iv. There is no adequate claim to damages.

Plaintiff has failed to adequately plead damages. Plaintiff's damages claims are wholly speculative. Plaintiff claims, without any support, that he has lost out on over $10 million in campaign donations, a figure that is over two and a half times the total amount raised by all candidates in the race, including the sole Republican candidate. Plaintiff failed to plead any basis for this amount, and the damages Plaintiff claims – lost campaign donations – are not reasonably ascertainable, thus the damages are not recoverable. See *Kennedy & Ely Ins., Inc. v. American Emp. Ins. Co.*, 179 So. 2d 248, 249 (Fla. 3d DCA 1965) (damages cannot be recovered if purely speculative); *Hogan v. Norfleet*, 113 So. 2d 437, 439 (Fla. 2d DCA 1959) ("Damages in a law action cannot be speculative or conjectural, but must be reasonably ascertainable.").

Based on the foregoing, Plaintiff has failed to effectively plead any of the requirements for a claim of civil conspiracy, and therefore, Count IV of the Amended Complaint should be dismissed.

E. Plaintiff fails to state a cause of action of how PCDEC, Griffith, and Sherosky violated Florida's election laws.

Plaintiff has failed to plead with any specificity what election laws were violated by the PCDEC, Griffith, and/or Sherosky, and Count V should be dismissed for failing to provide a short and plain statement identifying the facts entitling Plaintiff to relief. See Fla. R. Civ. P. 1.110(b)(2). The Complaint has failed to apprise either this Court or Defendants PCDEC, Griffith, and Sherosky with sufficient certainty of the nature of the claims alleged, thus warranting dismissal. *Ocala Loan Co. v. Smith*, 155 So. 2d 711, 715–16 (Fla. 1st DCA 1963).

As identified above, the Complaint fails to allege that PCDEC, Griffith, and/or Sherosky performed any unlawful act. Even assuming the facts alleged to be true, the conduct of which Plaintiff complains PCDEC, Griffith, and Sherosky is alleged to have undertaken is not conduct that violates any law, let alone state or federal elections laws, which is likely why Plaintiff has failed to identify any specific election law violated. Thus, Count V should be dismissed.

F. Plaintiff fails to state a cause of action of how PCDEC, Griffith, and Sherosky violated his civil rights or the ADA.

While Defendants assert that the ADA, federal civil rights law, and state civil rights law are wholly inapplicable to the claims presented in this case, Defendant still failed to plead a cause of action if those laws were somehow applicable.

Plaintiff's claim still would fail if the ADA was applied to any of the Defendants in this context. A required element of an ADA claim is that a Plaintiff show "he or she was subjected to unlawful discrimination because of his disability." *Holly v. Clairson Indus., L.L.C.*, 492 F.3d 1247, 1255–56 (11th Cir. 2007). Plaintiff fails to allege any facts showing that he was subjected to any discrimination **because** of his having PTSD or that he was otherwise prohibited from engaging with the FDP on account of having PTSD. Thus, his claim further fails. Additionally, Plaintiff has failed to exhaust administrative remedies provided by the ADA. "Before filing an ADA complaint, a plaintiff must exhaust administrative remedies provided by the ADA." *Jones v. Bank of America*, 985 F. Supp. 2d 1320, 1330 (M.D. Fla. 2013), citing *Wilkerson v. Grinnell Corp.,* 270 F.3d 1314, 1317 (11th Cir. 2001).

G. Plaintiff fails to state a cause of action for defamation against any of the Defendants.

Plaintiff, as a political candidate, is a public figure and thus there is an increased level of scrutiny to any defamation claims he may make. To succeed on any sort of defamation claim against PCDEC, Griffith, or Sherosky, Plaintiff would not only need to prove that any of the alleged statements of fact made by PCDEC, Griffith, or Sherosky were false but would also need to demonstrate that such statements were made with "actual malice." *Mile Marker, Inc. v. Petersen Publ'g, L.L.C.*, 811 So. 2d 841, 845 (Fla. 4th DCA 2002).

Under the actual malice test, a public figure plaintiff must establish that the disseminator of the information either knew the alleged defamatory statements were false, or published them with reckless disregard despite awareness of their probable falsity. *Id.* Furthermore, the claimant must prove the existence of actual malice by clear and convincing evidence. *Id.* "That is, he must be able to show—well beyond a preponderance of the evidence—that the defendants published a defamatory statement either with actual knowledge of its falsity or with a 'high degree of awareness' of its 'probable falsity.'" *Berisha v. Lawson*, 973 F.3d 1304, 1312 (11th Cir. 2020) (quoting *Garrison v. Louisiana*, 379 U.S. 64, 74 (1964)). Plaintiff must produce evidence that the defendants "actually entertained serious doubts as to the veracity of the published account, or

[were] highly aware that the account was probably false." *Michel v. NYP Holdings, Inc.*, 816 F.3d 686, 703 (11th Cir. 2016). None of the facts pled indicate that Defendants PCDEC, Griffith, or Sherosky knew the statements they purportedly made were false or acted with reckless disregard of their probable falsity.

In the context of political campaigns, Florida courts have found that "the frequent use of ill-considered, name calling attacks" is protected even if such attacks were impolite, unfair, and should elicit an apology. *Pullum v. Johnson*, 647 So. 2d 254, 258 (Fla. 1st DCA 1994). Specifically, in *Pullum v. Johnson*, the First DCA concluded that calling a prominent citizen in the community a "drug pusher" in the context of a political debate cannot be reasonably interpreted as stating "actual facts" subject to a defamation claim. *Id.*

Describing someone as "a man of moral turpitude" (as Plaintiff alleges was the defamatory speech in Amend. Compl. ¶ 24, 43, 84), stating that he is "unfit to be a Democratic candidate" (Amend. Compl. ¶ 84), and stating that Plaintiff is "a physical threat to her and others" (Amend. Compl. ¶ 84) are necessarily statements of opinion that are not subject to defamation claims because they are statements that cannot be discernably established as true or false. *Rammsen v. Collier County Publ'g Co.*, 946 So. 2d 567, 571 (Fla. 2d DCA 2006); *Fortson v. Colangelo*, 434 F. Supp. 2d 1369, 1383 (S.D. Fla. 2006). Such statements are certainly more tame than alleging an individual who is not a candidate for office of being a "drug pusher."

Plaintiff offers no evidence or factual support regarding his allegation that Defendant Griffith stated to anyone that Plaintiff was a "a wife-beating stalker." **Additionally, Plaintiff has failed to state any defamation claim against Defendant Sherosky.**

Additionally, Plaintiff failed to meet his condition precedent of bringing a claim for defamation pursuant to Fla. Stat. § 770.01. Plaintiff alleges that Defendant Griffith, individually and in her capacity as PCDEC Chair, "made false, defamatory statements to the Tampa Bay Times and other media outlets." (Amend. Compl. ¶ 84). Essentially, Plaintiff is alleging that Defendant Griffith's purportedly libelous or slanderous statements were published or broadcast in a newspaper, periodical, or other medium. Therefore, pursuant to Fla. Stat. § 770.01, the Plaintiff is required to "at least 5 days before instituting such action, serve notice in writing on the defendant, specifying the article or broadcast and the statements therein which he or she alleges to be false and defamatory." Plaintiff served no such notice. Accordingly, dismissal is

appropriate. *Canonico v. Callaway,* 26 So.3d 53, 54 (Fla. 2d DCA 2010). "Failure to comply with the notice provision of section 770.01 requires dismissal of the complaint for failure to state a cause of action." *Mancini v. Personalized Air Conditioning & Heating, Inc.*, 702 So.2d 1376, 1377 (Fla. 4th DCA 1997).

Besides conclusory allegations of defamation, it is not unlawful "to blacklist" a candidate from Democratic Political Action Committees or other donors. It is not unlawful to deny Plaintiff speaking opportunities at private events. It is not unlawful for a media company to publish an article that does not mention Plaintiff. It is not unlawful for other candidates to publish candidate survey polls that omit Plaintiff's name. It is not unlawful for the PCDEC or Griffith to choose not to discipline Sherosky. Likewise, it is not unlawful for the PCDEC to reject an internal complaint for failing to meet required standards.

VI. PLAINTIFF LACKS STANDING TO BRING A CIVIL ACTION TO ENFORCE CHAPTER 104 OF FLORIDA'S ELECTIONS LAW.

In Count V, Plaintiff alleges that the Defendants, including the PCDEC, Griffith, and Sherosky, have violated state and federal election laws. *See* Compl. ¶ 68. Plaintiff does specify any specific law violated in this Count. In the body of his Complaint, Plaintiff does allege that Defendants' actions were in violation of the Election Code, codified as Chapter 104, Florida Statutes.[4] *See* Compl. ¶ 54. However, Plaintiff does not specify any other specific election laws, state or federal, anywhere else in his Complaint.

The statutes cited by the Plaintiff do not provide for a private right of action, and therefore Plaintiff lacks standing. Plaintiff must have legal standing to bring his claim, and any statute-based private rights of action must be legislatively created and show textual support. *QBE Ins. Corp. v. Chalfonte Condo. Apartment Asso., Inc*., 94 So. 3d 541, 551 (Fla. 2012) (explaining that whether a statutory cause of action should be judicially implied depends on the "actual language used in the statute" and "the context in which the language lies").

While some election-related statutes provide private rights of action, *see e.g.*, §§ 97.023(3), 99.097(5), 101.161(3)(c)(1), 102.168(1) Fla. Stat, Chapter 104 does not grant any such right. Violations of are of Chapter 104 can be subject to prosecution as misdemeanors, felonies, or

[4] Nor does Plaintiff have standing to enforce federal election laws. *See* Count IV, Section D. v and v-., supra.

criminal violations of the Florida Election Code by the state attorney in the appropriate court of competent jurisdiction, *see* §106.27(1), Fla. Stat., or be subject to complaint proceedings before the Florida Elections Commission, *see* Fla. Stat. §106.25(1) ("Jurisdiction to investigate and determine violations of this chapter and chapter 104 is vested in the Florida Elections Commission."); *see also* Fla. Admin. Code R. B-1.0025.

"It is axiomatic that whether a private right of action exists for a violation of a statute is a matter of legislative intent" and "[a]bsent a specific expression of such intent, a private right of action may not be implied." *United Auto. Ins. Co. v. A 1st Choice Healthcare Sys*., 21 So. 3d 124, 128 (Fla. 3d DCA 2009)

The Legislature has not created a private right for private citizens to bring civil claims under Chapter 104. Such a right cannot be implied. Thus, Plaintiff's claims based upon Chapter 104 must be dismissed.

VII. PLAINTIFF'S CLAIMS FOR BATTERY (COUNT I) AND ASSAULT (COUNT II) ARE WHOLLY UNSUPPORTED BY THE POLICE REPORT CITED IN THE COMPLAINT.

While outside of the four corners of the Plaintiff's Complaint, this Court should also consider the St. Petersburg Police Department incident report (attached as **Exhibit 1**) as part of Defendant Sherosky's *prima facie* case that Counts I and II of this Amended Complaint are made primarily as a strategic lawsuit against public participation, and that Plaintiff does not have a meritorious claim against Mr. Sherosky.

In the Incident Report, Plaintiff was unable to identify any witnesses to the alleged battery and assault in what was a crowded area where hundreds, if not thousands, of individuals and multiple uniformed law enforcement officers were present. Additionally, Plaintiff represented that he did not suffer any injuries. Ex. 1, pg. 2,-4, 7.

Meanwhile, in this incident report, Defendant Sherosky provided the St. Petersburg Police Department (SPPD) with the names of four individuals who were in physical proximity to him at the time Plaintiff alleges the battery and assault took place. Of those four individuals, the SPPD spoke with four individuals (Denise Rodriguez, Lacy Hollings, Jennifer Griffith, and Demario Jives), all of whom confirmed that they were nearby and were aware of no battery between Mr. Sherosky and Plaintiff. As well, the police officer present in the assembly area where this incident

purportedly took place was unaware of anything happening. Ultimately, the SPPD found there was no probable cause to further investigate. In fact, when they interviewed Defendant Sherosky, Defendant Sherosky was not even read his Miranda rights because it was seen as a totally voluntary conversation and there were no incriminating statements leading the officer to believe that Mr. Sherosky committed a crime.

While the standards for civil and criminal conduct do admittedly differ, the facts contained within the Incident Report indicate that there is little factual support for Plaintiff's claims against Mr. Sherosky, which goes to further Mr. Sherosky's argument that a *prima facie* case exists that this action is a strategic lawsuit against public participation.

VIII. THE AMENDED COMPLAINT SHOULD BE DISMISSED AS A SHOTGUN PLEADING.

Florida Circuit courts routinely dismiss complaints as shotgun pleadings for failing to meet the basic pleading requirements of Florida Rule of Civil Procedure 1.110(b). *See Generation to Generation, Inc. v. State*, No. 2022-CA-980, 2023 WL 11820639, at *1 (Fla. 2nd Cir. Ct. Apr. 11, 2023) (dismissing a complaint for being "a procedurally defective 'shotgun pleading' and fail[ing] to give the remaining Defendants adequate notice of the claims lodged against them and the grounds in support thereof"); *see also U.S. Bank Nat. Ass'n v. The Grand Bellagio at Baywatch Condominium Ass'n, Inc*., No. 16-000337-CI-020, 2016 WL 11725761, at *1 (Fla. 6th Cir. Ct. Oct. 11, 2016) (dismissing a counterclaim for commingling separate and distinct claims against multiple defendants); *Cannie v. City of Jacksonville*, No. 16-2019-CA-8617, 2022 WL 21768635, at *1 (Fla. 4th Cir. Ct. Mar. 04, 2022) (dismissing a complaint as a shotgun pleading). For these same reasons, Plaintiff's Complaint should be dismissed as an impermissible shotgun pleading.

IX. CONCLUSION

The clear *modus operandi* of this lawsuit and all of its counts is Plaintiff's gripe with the Pinellas County Democratic Executive Committee (PCDEC) and its leadership for enacting a "candidate vetting" process which Plaintiff failed, and that PCDEC's leadership are not supporting Plaintiff's candidacy. However, the Defendants are well within their protected First Amendment rights to conduct a "candidate vetting" process and not support Plaintiff's candidacy. For that reason, Plaintiff's claims should be dismissed with prejudice. Additionally, this Court should deem

this lawsuit to be a strategic lawsuit against public participation as its primary purpose is to interfere with the Defendants' ability to exercise their well-established rights to engage in political speech. If for some reason, this Court were to conclude that this is not a strategic lawsuit against public participation as it pertains to some or all Defendants, this Court should still dismiss this action for lack of subject-matter jurisdiction, lack of standing, failure to state a cause of action, and for being a shotgun pleading.

WHEREFORE, Defendants PINELLAS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE, JENNIFER GRIFFITH, and MICHAEL SHEROSKY respectfully request that this Court dismiss Plaintiff's Complaint with prejudice, find that Plaintiff's Complaint constitutes a strategic lawsuit against public participation, grant Defendants the entitlement to their reasonable attorney's fees and costs, and award Defendants any other relief that this Court deems proper and just.

Dated: November 14, 2024

/s/ George A.D. Thurlow
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PCDEC, GRIFFITH, and SHEROSKY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon John William Liccione, Plaintiff *Pro Se*, via Florida E-Filing Portal on this 14th day of November, 2024.

/s/ George A.D. Thurlow
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Attorney for Defendants,
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EXHIBIT 1

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

JAMES DONELON,
PLAINTIFF,

v. **Case No. 23-008089-CI**

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
DEFENDANT.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE, having come before this Court on December 4, 2023, on Defendant Pinellas Democratic Executive Committee's Motion to Dismiss. Plaintiff appeared *pro se* and counsel appeared on behalf of Defendant. This Court, having review the Motion and having heard the argument of Plaintiff and Defendant's counsel, and is otherwise duly advised in its premises, it is hereby **ORDERED AND ADJUDGED** as follows:

(1) Defendant's Motion to Dismiss for failure to state a cause of action is **GRANTED** without prejudice.

(2) Plaintiff may file an Amended Complaint on or before December 15, 2023.

(3) Notwithstanding this Court granting the Motion to Dismiss without prejudice, this Court, based upon the authorities of *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), finds that it lacks jurisdiction to hear an action regarding the internal operations of a political party such as Defendant.

(4) If Plaintiff opts to file an Amended Complaint, Plaintiff must demonstrate in such Amended Complaint why this Court should not rely on *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000) in determining that this Court lack jurisdiction, and must specifically cite case law demonstrating that this Court has jurisdiction to establish this Court's jurisdiction.

(5) By stipulation of the parties, Defendant's counsel may upload the Proposed Order to JAWS and then email a copy of the signed Order to Plaintiff at DemDonelon@hotmail.com.

Ordered in Chambers in St. Petersburg, Pinellas County, Florida.

Electronically Conformed 12/5/2023
Thomas Ramsberger

CIRCUIT COURT JUDGE

Copies to:

-James Donelon, Plaintiff *pro se*

-George A.D. Thurlow, Esquire and George K. Rahdert, Esquire, attorneys for Defendant

EXHIBIT 2

St. Petersburg Police Department
Incident/Investigation Report

Case Number: 2024-022685
Report Type: BATTERY SIMPLE

031

Incident Information

Date/Time Reported	Date/Time From	Date/Time To	Officer
06/23/2024 13:35	06/22/2024 17:30	06/23/2024 13:35	(46910) ANAMUAH-MENSAH, AMALIA A

Incident Location	
480 Bayshore Dr Se, St Petersburg, FL 33701	
Case Status: FURTHER INVESTIGATION	**Case Disposition:**

Incident Report Dissemination State Attorney CASA **Other:**

Charges

#	Charge Type	Description	Statute	UCR	Att/Com
1	State	SIMPLE BATTERY-TOUCH OR STRIKE	784.03(1)(A)(1)	13B	

Alcohol, Drugs or Computers Used	Location Type	Premises Entered	Forced Entry	Weapons
Alcohol Drugs Computers	PARK / WOODLAND / FIELD		Yes No	1. Personal Weapons (hands,

Entry	Exit	Criminal Activity	
		NONE/ UNKNOWN	2. 3.

Bias Motivation	Bias Target	Bias Circumstances	Hate Group

Victims

Seq. #	Type	Injuries	Residency Status	Ethnicity
1	INDIVIDUAL	None	Non-Resident	Non-Hispanic

Name(Last, First, M)	Race	Sex	DOB	Age
LICCIONE, JOHN WILLIAM	W	M	03/26/1960	64

Address	Cell Phone:	Home Phone
2826 54TH ST S APT. A, GULFPORT, FL 33707		(727) 422-2051

Employer Name/Address	Business Phone
DEMOCRATIC CONGRESS	

Victim of Crimes	Height	Weight	Hair	Eyes	Place of Birth	Occupation
1	509	0	WHI	BLU		POLITICIAN

Missing Person/Runaway Notes

Suspects

Seq. #	Type	Name(Last, First, M)
1	INDIVIDUAL	SHEROSKY, MICHAEL JOHN

AKA	Race	Sex	DOB	Age	Height	Weight
	W	M	11/20/1970	53		

Address	Cell Phone:	Home Phone
3415 ANNETTE CT, CLEARWATER, FL 33761		(727) 631-4118

Employer Name/Address	Occupation:	Business Phone
PINELLAS DEMOC COMMITTEE	SECRETARY	

Scars, Marks, Tatoos or other distinguishing features

Physical Characteristics

Suspect Details and Notes

Related Name Relationships

LICCIONE, JOHN WILLIAM	is	Acquaintance	to	SHEROSKY, MICHAEL JOHN

Incident Report Narrative

SYNOPSIS
= = = = = = = = = = = = =

This report details a Late Reported Simple Battery without injuries whereby the victim and suspect are known to each other professionally. The victim alleged the suspect slapped him with an open hand in the head knocking off his hat at the float staging area at Albert Whitted Park prior to the start of the PRIDE parade during a verbal altercation. The victim said there were witnesses however he neither obtained any witness information at the time of the alleged offense nor notify officers that were nearby. Contact via telephone was made with the suspect which negated the victim`s allegations. The victim desires prosecution, however due to the lack of evidence and no witnesses probable cause was not established at the time of reporting.

SCENE DESCRIPTION
= = = = = = = = = = = = =

The alleged offense was reported to have occurred at 480 Bayshore Blvd SE, Albert Whitted Park, in the parade float/vehicle staging area. This area was staffed with officers as well as bike patrol units circulating.

VICTIM STATEMENTS
(John Liccione)
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Liccione advised he is running for Congress with the Democratic Party. Liccione said there is an ongoing dispute with him and Jennifer Griffith within the Democratic Party. Liccione said he is the target of defamation from Griffith and her supporters since they learned he has a history of reported domestic violence. As such there is growing animosity within the Democratic Party between Liccione and Griffith which extends to their supporters and staff. Liccione advised he attempted to get an injunction because he had signs removed by supporters of the opposition.

Incident Report Narrative

Liccione said he was at PRIDE to march in the parade since he is running for Congressional office. He was in the designated float/vehicle holding area at Albert Whitted Park prior to the start of the parade. While in the holding area Liccione said he was approached by Michael Sherosky (provided the name Mike Sheroski phone number) who is the secretary of the Pinellas Democratic Committee and a verbal argument ensued. Liccione said Sherosky was berating him and calling him names when Liccione said to the effect, " you want to hit me." Liccione said after baiting Sherosky, he was slapped with an open hand knocking his hat off.

Liccione said there was no injury and he subsequently began recording and photographing Sherosky. Liccione said there were many people around and believed someone witnessed the incident however he did could not provide anyone`s information and said he would ask around within the party and get back to officers when he found someone.

When asked why the incident was not reported at the time, Liccione said he did not want to miss the parade. When it was relayed to Liccione that there were officers assigned to that area and throughout the event that could have addressed the issue, Liccione acknowledged seeing officers but still did not want to miss the parade.

Liccione desires prosecution.

SUSPECT STATEMENTS
(Michael Sherosky)
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Contact was made with Sherosky via telephone after leaving a voicemail. Sherosky provided his demographics which matched information obtained from DAVID.

Sherosky was obliging and said he would speak with me about the alleged incident prior to the start of the PRIDE parade.

Sherosky said he was waiting in the staging area for the parade to start when he noticed Liccione. He advised that Liccione is not to be near Griffith and he approached Liccione to tell him to not get closer to her and to stay away from her. As a result an argument began. Sherosky said Liccione began baiting him by saying, "You want to hit me? You want to hit me? You want to hit me?" Sherosky replied, "I would love to hit you." Sherosky advised despite the taunts from Liccione he did not hit him. Sherosky indicated there were police officers all around, and despite the desire to hit Liccione he did not. Sherosky said Liccione began recording at the end of the argument.

Sherosky said at one point there were three to five officers on bicycles that stopped near them. He said Liccione stopped, stood at attention and saluted.

Sherosky indicated that during campaigns all candidates have to be vetted. It was learned that Liccione had a domestic violence record and his behavior at events were concerning. As a result, candidate Griffith is fearful of him and has hired an off duty police officer/deputy to be present at their meetings in the Icot Center in Clearwater. Sherosky initially thought that hiring an off duty officer was excessive but realized it was warranted with Liccione`s behavior. Sherosky said their next meeting is the following day.

Sherosky said he did not hit Liccione and they only want him to stay away from Griffith.

OFFICER ACTIONS/OBSERVATIONS
= =

On this date, I arrived in full uniform to the lobby of the St. Petersburg Police Department to take a report on a late reported Simple Battery. Upon entering the lobby, Liccione was readily identifiable as he wore his campaign hat and a sport coat with a name badge.

Incident Report Narrative

I obtained Liccione`s statements and did not observe any injuries to his head/face. When Liccione was asked why he did not report at the time of occurrence to any of the number of officers present while witnesses could have been obtained he indicated he was worried about how long it would take.

I provided Liccione with a case number, my name, and informed him that without evidence and witnesses it will be he said/he said.

I then did a Law Enforcement search for the suspect with negative results. I called the number provided by Liccione for Sherosky and left a voicemail. Sherosky returned my call and he was then identified. Sherosky provided the above captioned statements and was provided my name and case number.

Due to the Totality of the Circumstances at the time of reporting Probable Cause could not be established for a Battery as there are no injuries or witnesses.

EOR/NFA

Incident Report Continuation

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
06/26/2024 15:19:45	FOLLOW UP	(34546) MILLER, KENNETH S
Contact Name		
Case Status: FURTHER INVESTIGATION		**Case Disposition:**

Witnesses

Seq. #	Name (Last, First, M)	Race	Sex	DOB	Age
1	RODRIGUEZ, DENISE	W	F	03/08/1962	62

Address | **Cell Phone:** (727) 215-9708 | **Home Phone**

Employer Name/Address | **Occupation:** | **Business Phone**

Witness Type
EYE WITNESS

Witness Notes

Seq. #	Name (Last, First, M)	Race	Sex	DOB	Age
2	HOLLINGS, LACY KAY	W	F	01/06/1980	44

Address | **Cell Phone:** (213) 610-2830 | **Home Phone**
1214 MICHIGSN BLVD, DUNEDIN, FL 34698

Employer Name/Address | **Occupation:** | **Business Phone**

Witness Type
EYE WITNESS

Witness Notes

Seq. #	Name (Last, First, M)	Race	Sex	DOB	Age
3	GRIFFITH, JENNIFER JO	W	F	08/12/1972	51

Address | **Cell Phone:** | **Home Phone**
904 79TH ST S, ST PETERSBURG, FL 33707 | (727) 409-6719

Employer Name/Address | **Occupation:** | **Business Phone**

Witness Type
EYE WITNESS

Witness Notes

Property

Description	Serial Number	Make/Model
BWC OF MICHAEL`S STATEMENT		
Owner	**License / State**	**Color**
LICCIONE, JOHN WILLIAM		

Status	Status Officer	Quantity	Units of Measure	Value
BODY CAMERA	(34546) MILLER, KENNETH S	1.00	DU	$1.00

Gun Type	Caliber	Finish	Grip	Gun Stock

Condition	Gun Test	Test Type	Sight Test	Sight Type
	Yes No		Yes No	

Property Notes

Jewelry Type

Jewelry Type	Metal	Karat	Gender	Style	Size	Weight

	Stone Type	Count	Shape	Weight	Color
Stone 1		0			
Stone 2		0			

Description	Serial Number	Make/Model
CELLPHONE VIDEO FROM COMP		
Owner	**License / State**	**Color**
LICCIONE, JOHN WILLIAM		

Status	Status Officer	Quantity	Units of Measure	Value
AXON: EVIDENCE.COM	(34546) MILLER, KENNETH S	1.00	DU	$1.00

Gun Type	Caliber	Finish	Grip	Gun Stock

Condition	Gun Test	Test Type	Sight Test	Sight Type
	Yes No		Yes No	

Property Notes

Jewelry Type

Jewelry Type	Metal	Karat	Gender	Style	Size	Weight

	Stone Type	Count	Shape	Weight	Color
Stone 1		0			
Stone 2		0			

Supplement Narrative

Supplement Narrative

NARRATIVE
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This is a followup to a simple battery. On 06/26/24 I reviewed the online post by John Liccione about this incident. I then contacted the complainant for this case, John Liccione and spoke to him briefly about this incident. He informed me he had a cellphone video of the incident and I provided him a link for evidence.com. He indicated he wanted to press charges, did not suffer any injuries, and wanted follow through with this case. He later submitted the cellphone video around the time of the incident and I reviewed it. The cellphone video shows John Liccione and Mike speaking to each other before the Pride Parade started, but no assault or battery takes place on this video. I asked if anyone there would have seen this incident and he said everyone but specifically mentioned Jennifer Griffith saw it. I then responded to speak to Michael Sherosky at his residence in Clearwater in person.

I spoke to Michael at his residence and he allowed me in. I informed him this was a voluntary statement and he could terminate our conversation at any point if he wished. He was not read his Miranda Rights as this was totally voluntary and no incriminating statements leading me to believe he committed a crime were made. I activated my BWC and took his statement. For exact statements and for any clarifications please refer to the BWC. In summary, Mike provided me the background behind John and informed me he has been harrassing Jennifer Griffith who leads the Democratic Party for Pinellas. They have had to hire off duty deputies for their meetings in Clearwater because of John. Mike has witnessed interactions that are aggressive toward Jennifer by John at these meetings and doesn`t know why he is even there. Mike stated before the Pride Parade he was in the area waiting to walk in the parade when he noticed John walking toward Jennifer when he spotted her. Because of the previous interactions, he feared for her safety and immediately walked to get between the two of them. He made no contact with John and John did not make contact with him. Mike stated John pulled out his cellphone and started filming him and was accusing him of knocking his hat off. Mike stated this did not happen and believes John has some mental issues. Mike continued to participate in the parade and avoided any further action with John. Mike stated he saw the internet post from John about him being accused of assaulting him which was not true. Mike says John films everything and hopes it caught this incident to clear him.

Mike then provided me four witnesses that may or may not have seen anything but were there at the time. I contacted Jennifer Griffith and left a message for her to contact me back. I then contacted Denis Rodriguez. Denise stated she was with Mike at the Prid Parade. She did not witness any interaction between Mike and John. Denise went into the history of John and how they had to hire off duty deputies at their meetings because of his behavior. Denise does not believe Mike would hit John but would get between John and Jennifer to protect her. Denise stated everyone would have been talking about this if it really happened in the parade. Denise stated she saw John`s post on the internet about the allegations and has no idea what he is talking about.

I then spoke to Lacy Hollings. Lacy was with Mike of and on at the Pride Parade. She did not see anything like John posted about and Mike would not have done that. She did not see any interaction with Mike and John, but John records everything on his cellphone so if there is a video that would be what happened. Lacy stated he films everything with his cellphone.

The night of 6/26/24, Jennifer returned my phone call. Jennifer repeated what everyone else had told me about John`s behavior toward her and the reason she had to hire deputies for their meeting was because of his repeated harrassment. Jennifer stated she was at the Pride Parade with MIke and did not see him hit John. Jennifer stated she saw John that day and hid behind Demario to avoid him. Jennifer stated there were a ton of cops in the area and if this had happened she knows the cops were right there. All of the witnesses and people involved with this case stated there was a heavy cop presence to include cops on bikes right in this area. Jennifer stated she is working on a restraining order against John because of his repeated behavior. Jennifer stated that Mike was out of her sight at times due to the large event but it had hit John everyone would have been talking about it.

It should be noted Sgt. T. Hancock was the Sgt in the assembly area where this would have taken place. He mentioned there was nothing reported about this. There was a heavy police presence in the assembly area and John did not flag down any officer about this incident. I was also the Incident commander for the Pride Parade and nothing was reported at the station while this event was going on.

At this time this case is closed and there is no probable cause for the battery. If new witnesses or videos come forward this case will reopen. There were no cameras that would have caught this incident based on their location.

Supplement Narrative

CLOSED

Supplement Information

Supplement Date	Supplement Type	Supplement Officer
06/27/2024 12:57:07	FOLLOW UP	(34546) MILLER, KENNETH S
Contact Name		
Case Status: FURTHER INVESTIGATION		**Case Disposition:**

Witnesses

Seq. #	Name (Last, First, M)	Race	Sex	DOB	Age
4	JIVES, DEMARIO	B	M	08/22/1984	39

Address	Cell Phone: (651) 301-4135	Home Phone
Employer Name/Address	**Occupation:**	**Business Phone**

Witness Type
EYE WITNESS

Witness Notes

Supplement Narrative

NARRATIVE
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On 6/27/24 Demario Jives returned my phone call. Demario stated he was in the Pride Parade assembly area when this incident was supposed to have taken place. Demario stated Jennifer saw John and was wanting to avoid him. Demario stated Jennifer got behind him to avoid any issues with John. Demario stated Mike was there as well as John was coming toward but he never saw any battery take place. Demario stated if someone got hit there would have been a big commotion and cops were everywhere. I took no further action.

EOR

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

John William Liccione,

Plaintiff,

v. **Case No.: 24-002994-CI**

Pinellas Democratic

Executive Committee, et al

Defendants.

_____/

PLAINTIFF'S RESPONSE TO DEFENDANTS GRIFFITH, SHEROSKY, AND THE PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE'S MOTION TO DISMISS

Plaintiff John William Liccione, pro se, hereby files this response in opposition to the above-named Defendants' joined Motion to Dismiss, and states in support as follows:

I. Rebuttal to Defendants' Anti-SLAPP Argument

Defendants' use of Florida's anti-SLAPP statute as the basis for dismissal is an obvious strawman argument. Defendants assert that Plaintiff's lawsuit constitutes a Strategic Lawsuit Against Public Participation (SLAPP): This is a mischaracterization of Plaintiff's claims. Florida's anti-SLAPP statute, Fla. Stat. § 768.295, is designed to prevent lawsuits that silence free speech related to public participation. In this case, Plaintiff does not seek to silence Defendants' protected speech, but rather to address unlawful and

ELECTRONICALLY FILED 11/07/2024 11:11:47 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

wrongful behavior, including physical assault and battery, defamation, election and campaign interference, and violation of his civil rights.

Defendants are free to criticize Plaintiff or make non-malicious, non-defamatory public statements regarding their negative opinions of him. However, physical violence, defamatory statements made with actual malice, intentional interference in lawful campaigning activities, campaign sign theft, voter suppression or intimidation, and civil rights violations are not protected by the First Amendment or any Florida statute.

This case traces back to a now 15-month pattern of escalating misconduct which crossed the line into fully actionable behavior when Defendant Jennifer Griffith made false and per se defamatory statements to a Tampa Bay Times reporter on or before October 29, 2023, where she branded Plaintiff as a man of "moral turpitude." Further, she referred to a previous defamatory Tampa Bay Times article from September 15 2023 as her justification for having failed him in her "candidate vetting process," which had ended some six months prior in June of 2023.

Since then, Defendants escalated their efforts to interfere with Plaintiff's campaign by engaging in physical and verbal harassment of him, physical confrontation, campaigning interference, battery and assault, and campaign sign theft. By referring to the Tampa Times September article whose headline claimed that Plaintiff had a "checkered past" and that had faced "assault" and other criminal charges, without acknowledging his not guilty verdict and his case dismissals, Griffith painted Plaintiff in a false light as a wife-beating stalker to the voters and the public at large, knowing full well he had been exonerated, out of actual malice and hatred.

Political violence and election interference do not constitute protected speech, as Defendants suggest. Snatching a campaign sign, harassing a candidate in a public college building as he was speaking to voters, and physically battering and assaulting a Democratic Congressional candidate at a Pride Parade, are not lawful exercises of free speech. Rather, they are direct violations of Plaintiff's constitutional and civil rights and other tortious acts that give rise to Plaintiff's claims.

Defendants knew that painting Plaintiff in a false light as a wife-beater stalker was a Congressional campaign death sentence. In the alternative, Defendant Griffith could have simply chosen to tell the media that yes, Plaintiff had filed to run as a Democrat, yes, he was the first to declare was the only Democrat who had yet to file, and stopped there. In response to further questioning by the Times reporter, she could have simply focused on other potential candidates. She could have said the party neither positively endorses, nor negatively endorses any candidates in a contested primary. She did not have to disclose to the reporter that there was an alleged candidate vetting process, or that Liccione had allegedly failed the process, or why. She did not have to disclose that the party would not recognize or promote him as a candidate. She was under no obligation to say anything negative or anything at all about Liccione other than perhaps acknowledging that he had filed to run as a Democrat. Instead, she branded him with the moral turpitude label and effectively called him a wife-beater and passed the buck to the Tampa Bay Times. This is a clear indication of per se defamation and actual malice.

II. Rebuttal to Defendants' Arguments Regarding Failure to State a Claim

A. Battery and Assault Claims

Defendants argue that Plaintiff has failed to state claims for battery and assault, asserting that no physical injury occurred and relying on the police report. However, Plaintiff's complaint provides detailed allegations that satisfy the elements of both torts under Florida law.

Battery: Plaintiff alleges that Defendant Michael Sherosky knocked his hat off without his consent at the St. Petersburg Pride Parade and that he was shocked and offended by it. Florida law only requires unwanted physical contact offensive to a reasonable person to establish battery, not physical injury. By knocking Plaintiff's hat off, Sherosky committed the intentional, harmful contact that forms the basis of Plaintiff's claim for battery. This action was both offensive and unwanted, and thus qualifies as battery under Florida law.

Further, a new witness, who is a member of the PDEC, has come forward and will testify that at a PDEC meeting after the Pride Parade, Sherosky bragged to two other members that he had knocked Plaintiff's hat off and that Liccione "was lucky he didn't do worse." This testimony corroborates Plaintiff's account and demonstrates the intentional and malicious nature of Defendant Sherosky's actions.

Assault: Plaintiff alleges that Sherosky's aggressive conduct, including his verbal threats and close physical proximity (within five inches of Plaintiff's face), placed Plaintiff in reasonable fear of imminent harm. Florida law defines assault as creating a reasonable apprehension of imminent harmful or offensive contact. By aggressively approaching Plaintiff and confirming his desire to strike him, Sherosky's actions created

a reasonable fear of harm, which constitutes assault. Plaintiff recorded portions of the incident, which capture Sherosky's admissions of his aggressive behavior, further supporting Plaintiff's claim.

B. Defamation Per Se and Actual Malice

Plaintiff's defamation claim arises from Defendant Jennifer Griffith's false statements to the Tampa Bay Times that Plaintiff was a man of "moral turpitude," made in November of 2023. Under Florida law, defamation per se includes false statements that accuse someone of engaging in criminal or morally repugnant behavior, considered acts of moral turpitude. These statements are inherently defamatory and do not require proof of special damages.

Defamation Per Se: Griffith's use of the term "moral turpitude" was a knowingly false statement of fact that directly impugns Plaintiff's character and fitness to run for public office. This statement falsely suggested that Plaintiff had engaged in serious unethical or criminal conduct, which would naturally expose him to hatred, contempt, or ridicule, which, in fact, it did as alleged. Under Florida defamation law, this constitutes defamation per se, as it inherently damages Plaintiff's reputation.

Actual Malice: Plaintiff is a public figure and must demonstrate that the defamatory statements were made with actual malice—that is, with knowledge of falsity or reckless disregard for the truth (see ***New York Times Co. v. Sullivan, 376 U.S. 254 (1964)).*** Plaintiff has adequately pled actual malice by showing that Griffith recklessly ignored exculpatory evidence, including Plaintiff's court records exonerating him of previous charges. Despite Plaintiff's full disclosure of this information, Griffith falsely labeled him a man of moral turpitude, knowing these statements were untrue or with

reckless disregard for their truth, and knowing that she would be quoted by the Times reporter in his article.

Griffith's Ongoing Pattern of Misconduct: The lawsuit alleges unlawful campaign interference, defamatory statements, and harassment. It demonstrates an intentional, malicious effort to destroy Plaintiff's reputation and candidacy, further supporting the claim of actual malice.

C. Violation of Civil Rights and Election Interference

Civil Rights Violations: Defendants' discriminatory conduct towards Plaintiff violates federal civil rights laws and the Americans with Disabilities Act (ADA). Plaintiff has a recognized disability (PTSD) under the ADA, and Defendants' actions, including exclusion from party events, defamation, and physical harassment, directly interfered with Plaintiff's rights to equal participation in public and political life.

The ADA protects individuals from discrimination in public accommodations and activities. Defendants' pattern of behavior—refusing to recognize Plaintiff's candidacy, excluding him from events, and engaging in physical and verbal harassment—demonstrates a concerted effort to deny Plaintiff his rights based on his disability and sex, in violation of the ADA and the Civil Rights Act of 1964.

Election Interference: Defendants violated both Florida election law (Chapter 104) and federal election laws by engaging in a pattern of conduct that interfered with Plaintiff's lawful campaign activities. Removing campaign signs, by Defendant Griffith, physically harassing Plaintiff during his campaign events at a hotel and in a state college hallway, and spreading knowingly false and defamatory information through the media, constituted unlawful interference designed to harm Plaintiff's campaign. Defendants'

conduct is expressly prohibited by statutes that ensure candidates are able to campaign free from undue interference or intimidation.

D. Conspiracy

Plaintiff has adequately alleged a conspiracy among Defendants to destroy his candidacy through unlawful means, including defamation, battery, and election interference. To state a claim for civil conspiracy under Florida law, Plaintiff must allege an agreement between two or more parties to commit an unlawful act or a lawful act by unlawful means, and that an overt act was taken in furtherance of that agreement.

Plaintiff's allegations describe a coordinated effort among Defendants Griffith, Sherosky, and the PDEC to undermine his campaign by excluding him from party resources, defaming him, and harassing him and intimidating and blocking voters from engaging with him during campaign events. This concerted action led to direct financial, reputational, and emotional harm to Plaintiff, satisfying the elements of a civil conspiracy claim.

III. Defendants' and Their Witnesses' Unsupported Factual Allegations

Defendants' motion contains unsupported factual allegations that are not part of the case record and are not backed by sworn affidavits or evidence, in violation of Florida Rule of Civil Procedure 1.140. In one example, in the footnotes on Page 1 of the Motion they assert that Defendant Griffith and Sherosky hold unpaid volunteer positions with the PDEC. These statements are unsupported by any sworn affidavits or evidence and are merely speculative assertions designed to minimize their liability. Further, it is noted that they have not actually alleged that they were not paid by a third party other than PDEC to destroy Plaintiff's campaign. In another example, the witnesses in the

attached police report were not sworn witnesses, they were all associates of the Defendants, and there is no sworn affidavit attached by any of the witnesses nor even of the Defendants.

This absence of supporting evidence and sworn affidavits should be noted by the Court. These unsupported factual allegations in the narrative in Defendants' motion, as well as in unsworn statements made by the people who Defendants offered up as friendly witnesses who were interviewed by the St Petersburg police and included in their police report, should not be relied upon in considering the Motion to Dismiss. Assessment of the credibility of the Defendant's witnesses under oath who are subject to cross examination, is a matter for a jury as the proper finders of fact, not the judge considering a motion to dismiss. As such, the entire police report and all references to its contents should be stricken, as well as all other alleged facts not within the court record.

IV. Campaign Interference and Violation of Plaintiff's Constitutional Rights

Defendant Griffith's actions when she swiped Plaintiff's campaign sign at the St. Petersburg College Epicenter, then harassed him after he replaced it, then brought over a security guard to stop his campaigning, constitutes unlawful campaign interference. Plaintiff's sign, which read simply, "*John Liccione for Congress, Building Florida, Saving America, voteliccione.org*", was a form of protected political speech under the First Amendment. By removing this sign, Griffith interfered with Plaintiff's ability to campaign and violated his constitutional rights.

Griffith's interference did not stop there. When Plaintiff returned to the hallway to replace his sign, stood next to it, and resumed campaigning, Griffith approached him

and harassed Plaintiff while he was attempting to engage voters as they left her PDEC meeting room. Thus, he lost the opportunity to speak to most of the voters as they left, and Plaintiff alleges that this was by design. She then escalated her interference further by enlisting the help of a college security officer in an effort to have Plaintiff's sign removed and to prevent him from lawfully campaigning on public property over which she had no authority to demand anything, let alone a campaign sign removal by a Democratic Congressional candidate she happens to hate.

This conduct by Griffith constitutes election interference and a violation of Plaintiff's First Amendment rights as well. Griffith, by using her position as Chair of the PDEC to block Plaintiff's political speech and lawful campaigning activities, as well as acting in her personal capacity as an alleged "unpaid volunteer," sought to suppress Plaintiff's message and prevent other voters from hearing about his candidacy. Election interference of this kind is unlawful under Florida Statutes Chapter 104 (Election Code: Violations; Penalties), as well as federal election laws, which protect candidates' rights to campaign without undue interference.

V. The Sham Candidate Vetting Process – A Cover Story Adopted in Response to Plaintiff's Candidacy Applied Only to Plaintiff

Plaintiff argues that Defendants' alleged "candidate vetting process" was nothing more than a sham, designed specifically to target and destroy Plaintiff's candidacy by unlawful means just as their favored candidate, Whitney Fox, had entered the race. It is a catch-phrase cover story used first as a sword to destroy Plaintiff's candidacy, and now as a shield to escape liability for their unconstitutional discriminatory behavior and their other tortious and unlawful acts.

Defendants have invoked this catch phrase “candidate vetting process,” as a mantra over and over, but they offer no evidence or sworn affidavits that such a candidate vetting process actually exists, when precisely it was enacted, why it was enacted, what it consists of, whether it was applied to Plaintiff’s opponents, whether other candidates were afforded due process to rebut any negative issues raised, and what precisely was it that they allegedly found that supposedly indicated Plaintiff was a man of “moral turpitude.”

What if, as an example, the Defendants had decided that they wanted a young white female candidate to run against the Republican incumbent Anna Luna, who is a young, white Congresswoman, as opposed to an older male candidate? Or a protestant instead of a Catholic? Or a white woman instead of a black man? Or a non-PTSD-disabled candidate versus a disabled one. Or a female domestic violence survivor versus a male domestic violence survivor.

If there was a candidate vetting process at all, and if it was lawful under state and federal lawy, and if it was applied lawfully and equally to all candidates, the burden is on Defendants to allege it under sworn oath by affidavit, and in discovery, and by producing their internal records and communications in support of their statements in their motion. Their failure to do so in their motion to dismiss speaks volumes. The absence of any attached sworn affidavits from defendants or witnesses speaks volumes.

Prior to Plaintiff informing Defendant Griffith of his intent to run in the early spring of 2023 at a PDEC meeting, neither the PDEC nor Griffith had ever implemented any sort of candidate vetting process. They claim they got the “vetting process” from somewhere, that other Party organizations use it, but they don’t say where and they don’t say who.

They provide no such evidence. They want the Court to simply take their unsworn word for it in their motion to dismiss.

Immediately after Plaintiff declared his candidacy to Griffith, she and PDEC officers such as Sherosky, conspired to pre-exclude Plaintiff as a party-recognized candidate, and their scheme was to use a “candidate vetting process” cover story to shield them from liability for what they were about to do to Plaintiff.

The vetting process, hastily adopted by the PDEC after Plaintiff informed them he was running, was opaque, remains opaque, and targeted Plaintiff and only him. Plaintiff was requested to submit a “candidate vetting form”, which he did, fully disclosing the not guilty at trial verdict and the dismissal of charges against him in relation to false and disproven domestic violence accusations. At least one other candidate was not asked to submit such a vetting form, by his own admission in public. Plaintiff offered to provide Griffith with all relevant court records proving his exonerations. However, Griffith cut off all communications with Plaintiff, willfully refusing to accept his proof or consider the exonerating evidence he told her he would provide: His expunged case records.

Defendants knew that Plaintiff had been more likely than not falsely accused by his ex-wife, that he had been wrongfully imprisoned, and that he had been exonerated. They also knew that Plaintiff was a PTSD-disabled male domestic violence survivor, but chose to ignore these facts and instead engaged in a campaign to publicly defame him as a man of “moral turpitude.”

Plaintiff argues had he been a female PTSD-disabled domestic violence survivor who had been falsely accused of domestic violence by her husband and later exonerated, particularly if she had been the only one in the marriage who had been hospitalized with

visual evidence of bruising and possible poisoning as noted in the candidate's hospital records as Plaintiff was, Defendants would have championed her as a symbol of grit, determination, and courage: A champion of the Me Too Movement. Instead, Defendants chose to disbelieve the man, and to instead believe the ex-wife, on the basis of sex. They considered him still guilty after being proven innocent. Plaintiff argues that this is the *actual* basis for their malice and outright hatred towards Plaintiff. It is noted that per the Pinellas CASA website home page, 1 in 3 women have experienced domestic violence while 1 out of 4 men have also experienced domestic violence.

What was done in the way of a criminal background investigation of Plaintiff? A simple Google search where they found his wife's false accusations but not his not-guilty-at-trial verdict sheet? Did they access Maryland Case Search and find there were no public records indicating criminal convictions? We don't know because they are not saying: And none of them have signed sworn affidavits.

They used Plaintiff's ex-wife's false accusations as a sword to destroy his candidacy out of malice, hate, and unlawful discrimination. Now they are using their status as a political organization and as champions for female domestic violence victims as a shield to avoid accountability for their tortious acts. They destroyed Plaintiff's reputation by branding him a man of moral turpitude—an act of per se defamation out of malice and with reckless disregard for the truth, and clear discrimination based on his sex and disability. These are reasonable inferences the court can make from the facts and circumstantial evidence as pleaded by Plaintiff.

Further, Plaintiff argues that had Defendant Michael Sherosky been accused of assault and battery at the St. Pete pride parade by a *female* Democratic Congressional candidate

while she was campaigning with voters in the pride parade assembly area, Griffith and the PDEC would have *immediately* removed him from his position as Secretary: They would have *assumed* the female candidate was telling the truth. Their failure to act to discipline Sherosky in *this* instance reveals the unlawful discriminatory nature of their actions, their actual malice and hatred towards Plaintiff.

This sham vetting process, coupled with the disparate treatment of Plaintiff as compared to other candidates and the basis of his sex and disability, constitutes a violation of Plaintiff's civil rights under Florida and federal law.

VI. Florida Volunteer Protection Act (Fla. Stat. § 768.1355) Does Not Apply

Defendants' reliance on the Florida Volunteer Protection Act (FVPA) to shield Griffith and Sherosky from liability fails to past muster as a matter of law and should be rejected. The Pinellas Democratic Executive Committee (PDEC) does not qualify as a tax-exempt nonprofit organization under 26 U.S.C. § 501(c), the statute referenced in the FVPA. Relevant subsections of 26 U.S.C. § 501(c), including:

- 501(c)(3): Charitable organizations.
- 501(c)(4): Social welfare organizations.
- 501(c)(6): Business leagues and chambers of commerce.

Political organizations like the PDEC do not fall within these categories, and thus, cannot claim immunity under the FVPA.

Furthermore, even if the FVPA did apply, it does not protect volunteers in cases of willful or criminal misconduct, gross negligence, or intentional harm. Plaintiff's complaint alleges intentional misconduct by Griffith and Sherosky, including

harassment, interference with Plaintiff's campaign, physical assault, and defamation—all of which are intentional acts and render them ineligible for protection under the FVPA.

Further, Political party chairs and other executives, whether paid employees or not, are party leaders who recruit volunteers, supervise volunteers, and fire volunteers, and paid employes, including those who maintain the Party's website and what gets published on it.

VII. Rebuttal to Battery and Assault Police Report Arguments

Defendants' reliance on the police report to dismiss Plaintiff's claims of battery and assault is misplaced and unsupported by the facts. The police report does not provide conclusive evidence of the events, the witness statements were unsworn, and the investigation itself was flawed. Plaintiff addresses the following points:

Witness Credibility and Bias: The witnesses interviewed in the police report are associates of Defendants Griffith and Sherosky. These witnesses were provided by Sherosky and Griffith themselves, raising serious concerns about their impartiality and credibility. Given their proximity to Sherosky and their personal connections, these individuals may have tailored their testimony to align with his version of events. They must be subject to testimony under oath and cross examination before a jury. The lack of independent, unbiased witnesses further calls the objectivity of the police report into question.

Lack of Independent Witnesses: Despite the police report noting that hundreds, if not thousands, of people were present at the pride parade, the police only interviewed the four witnesses cherrypicked by Griffith and Sherosky, all of whom are PDEC or

PDEC-sanctioned Democratic Club members or officers. No effort was made to interview independent, neutral bystanders who may have observed the incident, despite many of them being visibly identifiable in Plaintiff's video footage. This oversight significantly undermines the completeness and reliability of the investigation, especially given the crowded environment where independent observations were likely. Further, the alleged witnesses are not even claiming that they saw Liccione there. They are not claiming that they saw Liccione and Sherosky standing next to each other, or even speaking to each other. Not seeing an alleged crime is not proof that a crime wasn't committed.

Physical Injury Not Required for Battery or Assault: Defendants argue that the absence of physical injury negates the battery and assault claims. This is legally incorrect. Under Florida law, battery only requires unwanted and offensive physical contact, and assault requires that the Plaintiff be placed in reasonable apprehension of imminent harm. Physical injury is not a requirement to sustain either claim. Plaintiff's allegations of unwanted offensive contact and fear of imminent harm are sufficient to maintain the claims.

The Criminal and Civil Standards of Review are Different: Police Report Does Not Establish Facts: The police report is merely a summary of a preliminary investigation which included non-sworn statements made by Defendants Griffith, Sherosky, and their own associates. The absence of probable cause for criminal charges does not preclude success in a civil action, where the burden of proof is lower. The report simply reflects the initial findings based on a limited investigation consisting of

unsworn interviews of Defendant-favorable alleged witnesses, and the police's failure to pursue the matter further, does not negate the occurrence of battery or assault.

Given the biased witnesses, lack of independent testimony, and the fact that the police report was an initial investigation rather than a conclusive finding, the Defendants cannot rely on the report to dismiss Plaintiff's claims.

A New PDEC Witness Who is Not an Acolyte of Griffith Has Emerged Claiming an Admission of Guilt From Sherosky and Bragging About His Battery at Pride Parade: Plaintiff proffers to the Court under attached sworn affidavit that a witness has come forward who is a long-time member of PDEC. The witness was present at a PDEC meeting where he witnessed Sherosky bragging to two other PDEC members about having knocked Plaintiff's hat off his head at the pride parade, and that he (Sherosky) had said that "he (Liccione) was lucky he didn't get worse."

XIII. The State Actor Doctrine Application to PDEC, Griffith, and Sherosky

Plaintiff asserts that the State Actor Doctrine applies to the Pinellas Democratic Executive Committee (PDEC), its Chair Jennifer Griffith, and member Michael Sherosky, due to their reliance on state resources and involvement in state-supported events. Specifically:

Smith v. Allwright, 321 U.S. 649 (1944): In Smith v Allwright, the U.S. Supreme Court applied the Fifteenth Amendment to address racial discrimination in primary elections conducted by the Texas Democratic Party. The case focused on the Democratic Party's policy of excluding African American candidates from participating fairly or at all in its primary elections.

The Fifteenth Amendment states that "The right of citizens of the United States to vote shall not be denied or abridged by the United States or by any State on account of race, color, or previous condition of servitude." This amendment prohibits states from denying or limiting the right to vote based on race. In Smith, the Supreme Court held that the primary election, although conducted by a political party, was an essential part of the state's electoral process. Therefore, the Texas Democratic Party's actions in administering the primary election were considered state action, making them subject to the Fifteenth Amendment as applied to a racial minority candidate for public office.

The Court ruled that, because the primary election was a critical step in the state's election process, the racial exclusion in that election was unconstitutional under the Fifteenth Amendment. This decision was pivotal because it established that political parties, when conducting functions central to public governance (like primary elections), are acting as state agents and must uphold constitutional protections against racial discrimination against candidates. The ruling invalidated "white primary" practices that had previously been used to disenfranchise African American voters in Southern states, marking a significant step toward enforcing the Fifteenth Amendment in voting rights.

Ludtke v. Kuhn, 461 F. Supp. 86 (S.D.N.Y. 1978) - Use of State-Owned Venue for PDEC Meetings: The PDEC holds its monthly membership meetings at the St. Petersburg College Epicenter in Clearwater, a facility owned by the State of Florida, within which Plaintiff attempted to lawfully campaign outside the PDEC meeting room. By utilizing state property for recurring official functions, the PDEC benefits from state resources in much the same way as private entities that use public spaces under a lease

or other formal agreement. This setup mirrors **Ludtke v. Kuhn,** where the court found state action in the New York Yankees' operational practices, exclusion of female reporters form the lockerrooms, on the basis of sex, within the publicly owned Yankee Stadium. Similarly, PDEC's regular use of state-owned facilities places its actions within the realm of state action subject to Constitutional protections.

Reliance on State Actors for Primary Elections: The PDEC and the Democratic Party in Pinellas County rely entirely on state actors, specifically the Pinellas County Supervisor of Elections and the Florida Department of State, Division of Elections, to administer and conduct their primary elections. These elections are fully funded by the taxpayers of Florida, further entangling the Democratic Party's primary election activities with state resources and authority. By outsourcing the conduct and management of the primary election to Pinellas County and Florida state actors, the PDEC subjects its operations to the requirements of the state actor doctrine, much like the entwinement seen in Smith v. Allwright.

Griffith's Actions as a De Facto State Agent: At the PDEC meeting at the St Petersburg College Epicenter, Griffith attempted to enforce what she claimed was a "college policy" prohibiting campaign signage in and around the Epicenter grounds. Acting in her capacity as PDEC Chair, Griffith purported to enforce these rules against Plaintiff's campaign materials, effectively placing herself in the role of a state actor as a security and policy enforcer. Plaintiff challenged Griffith's authority, arguing that she lacked legitimate state-delegated power to enforce such regulations. Griffith's actions at a state-owned venue, under the pretense of exercising state authority, constitute state action under ***Burton v. Wilmington Parking Authority, 365 U.S. 715 (1961)***,

where actions of a private entity held within a publicly-owned facility were deemed state actions due to the "symbiotic relationship" with a government agency.

Defendants' Involvement in the City-Managed St. Petersburg Pride Parade: The St. Petersburg Pride Parade is a public event run and supported by the City of St. Petersburg, which provides financial, logistical, and police security for crowd control and safety. Both Griffith and Sherosky, as representatives of PDEC, participated in this city-supported event as did Plaintiff. In the parade assembly area, Sherosky acted as a security figure on behalf of Griffith and the PDEC members, attempting to control who could engage or be prevented from engaging with the PDEC group and their supporters. He specifically targeted Plaintiff, and only Plaintiff. This conduct parallels the actions in Smith v. Allwright, where the U.S. Supreme Court ruled that when a political party uses state resources and authority to perform election-related functions, its actions become subject to constitutional scrutiny. Here, the PDEC's participation in a publicly managed City event aligns with the principle that state-supported functions by a political entity, such as voter outreach and public parade participation, are subject to constitutional review.

In summary, based on Smith v. Allwright, Ludtke v. Kuhn, and Burton v. Wilmington Parking Authority, the PDEC, Griffith, and Sherosky's interactions with state facilities, enforcement of purported state policies, reliance on state actors for election administration, and involvement in publicly managed events qualify as state action. Therefore, their conduct toward Plaintiff, including alleged discrimination and interference, should be considered under the protections afforded by the Constitution.

IX. Conclusion

In light of the above arguments and supporting facts, Plaintiff respectfully requests that this Court deny Defendants Griffith, Sherosky, and the Pinellas Democratic Executive Committee's Motion to Dismiss. Plaintiff has sufficiently alleged facts and legal grounds to proceed to discovery, where further evidence can be gathered, and to trial, where a jury can assess the credibility of witnesses and evaluate Defendants' liability for the alleged harms.

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendants Griffith, Sherosky, and the Pinellas Democratic Executive Committee's Motion to Dismiss and allow this case to move forward to discovery and trial.

`

Respectfully submitted,



John Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John William Liccione, Plaintiff, on this 7th day of November 2024, hereby certify that the forgoing Plaintiff's Response to Defendants' Motion to Dismiss were e-served on all defendants through their attorney George Thurlow via the Court's e-file and e-serve system.



John W. Liccione

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA

John William Liccione,
Plaintiff,
v.
Pinellas Democratic Executive Committee
Florida Democratic Party **Case No. 24-002994-CI**
Michael John Sherosky
Jennifer W Griffith,
Defendants.

Motion to Stay Proceedings
and
Notice to Court of New Federal Lawsuit and With Motion to Move This Case to the US District Court of the Middle District of Florida and Merge the 2 Cases

Plaintiff hereby gives notice to this Court that on Friday, August 23, 2024, he filed an election ballot fraud lawsuit in the US District Court of the Middle District of Florida, Tampa Division, and that he has moved to have this case transferred to federal court and merged with his federal case. Federal case no. 8:24-cv-02005-SDM-NHA, ***John W. Liccione vs Julie Marcus, et al.***

Plaintiff notifies this court that the grounds for transferring this case are two-fold. First, Plaintiff alleges that the wrongful actions by defendants alleged in *this* case were part of a 14-month-long criminal conspiracy by defendants in this case, to engage in voter suppression, voter intimidation, political violence, civil rights violations, and other tortious and criminal acts. Second, Plaintiff alleges in his federal case that the actions of these defendants represent the final

set of acts in furtherance of the criminal conspiracy to suppress the votes for Plaintiff and other candidates in his Congressional primary by way of ballot fraud, voter/candidate intimidation, and other election and civil rights violations. It is also noted that in his federal case, Plaintiff is accusing both Democratic and Republican party and government officials in this long-running criminal conspiracy.

Plaintiff's 95-page federal complaint is attached hereto as EXHIBIT A.

Given the above, Plaintiff moves that the Court issue a temporary stay in these proceedings pending a determination by the federal court as to whether this case will be transferred and merged with Plaintiff's federal case.

Respectfully Submitted,



John W Liccione
Plaintiff, Pro se
6800 Gulfport Blvd S. Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

Certification of Service

Plaintiff hereby certifies that on this 26th day of August, 2024, this Motion to stay along with a copy of the attached federal complaint were e-served upon the attorneys representing the 4 defendants on August 26, 2024 via both email and through Florida's e-file and serve system.



John W Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
FLORIDA DEMOCRATIC PARTY,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO STAY PROCEEDINGS

Defendants, PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, MICHAEL JOHN SHEROSKY, and JENNIFER W. GRIFFITH, by and through their undersigned counsel, hereby submit this Memorandum in Opposition to Plaintiff's Motion to Stay Proceedings (Doc # 17, filed August 26, 2024), and in support thereof, state as follows:

1. In his Motion, Plaintiff seeks to have this Court stay proceedings in this instant case because he filed a lawsuit in the United States District Court of the Middle District of Florida (Case No. 8:24-cv-020005-SDM-NHA) on August 23, 2024, Defendant Griffith is a party in that lawsuit, and that he sought to have this case transferred to federal court.
2. The legal reality that a Plaintiff is not permitted to remove a case that he filed in state court into federal court. That right belongs exclusively to the Defendants. Accordingly, the federal court denied Plaintiff's Motion to transfer this case into federal court. See **Exhibit A**.
3. Rather, the Plaintiff's federal lawsuit is merely another strategic lawsuit against public participation that he has opted to file against Ms. Griffith and the Chair of Defendant Florida Democratic Party (Nikki Fried) and

non-parties to this instant case, the Pinellas County Supervisor of Elections (The Honorable Julie Marcus) and Supervisor Marcus's Chief Deputy.

4. In his Order (attached as **Exhibit A**), the Honorable Judge Steven D. Merryday found that as it pertains to the federal lawsuit, "Nothing in the complaint establishes either a likelihood of success on the merits . . . or the reason that notice is impractical" and that there is "no prospectively admissible fact supporting relief."
5. The fact that there is no basis for removal of this case to federal court, that the Plaintiff's Motion to Remove this case to federal court has already been denied by the federal court, and that there is "no prospectively admissible fact supporting relief" means that this Court should deny the Plaintiff's Motion to Stay Proceedings and continue with haste in ultimately disposing with this case.
6. Defendants request that this Court deny this Motion based upon the written submissions, but will agree to have this heard at the October 1, 2024 hearing should this Court opt to hear this Motion.

Wherefore, Defendants, PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, MICHAEL JOHN SHEROSKY, and JENNIFER W. GRIFFITH, respectfully request that this Court enter an order denying Plaintiff's Motion to Stay Proceedings and grant Defendants any other relief that this Court deems proper and just.

Dated: August 28, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Notice has been served upon Mark Herron, Esquire and Steven Cary, Esquire, counsel for Defendant Florida Democratic Party, via Florida E-Filing Portal, and upon John William Liccione, Plaintiff *pro se*, via Florida E-Filing Portal and via US Mail to 6800 Gulfport Boulevard South, Suite 201-116, South Pasadena, FL 33707 on this 28th day of August, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
St. Petersburg, FL 33701
Phone: (727)823-4191
Fax: (727)823-6189
Email: gthurlow@rahdertlaw.com
service@rahdertlaw.com
tmccreary@rahdertlaw.com
Attorney for Defendants,
PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
GRIFFITH, and SHEROSKY

EXHIBIT A

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. CASE NO. 8:24-cv-2005-SDM-NHA

JULIE MARCUS, et. al.,

Defendants.
_____/

ORDER

A candidate in the Democrat congressional primary, John Liccione allegedly received from an anonymous person "using the codename 'Tampa Girl'" an online message that purported to reveal the details of a scheme to manipulate the August 20, 2024 primary election. Based solely on Tampa Girl's message, the plaintiff sues an array of officials and requests a temporary restraining order to "prevent the certification of the August 20, 2024."

Under Local Rule 6.01(a), a motion for a temporary restraining order must include:

> (1) "Temporary Restraining Order" in the title;
> (2) specific facts — supported by a verified complaint, an affidavit, or other evidence — demonstrating an entitlement to relief;
> (3) a precise description of the conduct and the persons subject to restraint;
> (4) a precise and verified explanation of the amount and form of the required security;
> (5) a supporting legal memorandum; and
> (6) a proposed order.

Liccione's motion, imbedded in the complaint, fails to include a precise and verified explanation of the amount and form of the required security, fails to include a supporting legal memorandum, and fails to include a proposed order.

Also, under Local Rule 6.01(b) the legal memorandum must establish:

> (1) the likelihood that the movant ultimately will prevail on the merits of the claim,
> (2) the irreparable nature of the threatened injury and the reason that notice is impractical,
> (3) the harm that might result absent a restraining order, and
> (4) the nature and extent of any public interest affected.

Nothing in the complaint establishes either a likelihood of success on the merits (an anonymous, hearsay message from "Tampa Girl" supplies no prospectively admissible fact supporting relief) or the reason that notice is impractical. Liccione's facially insufficient motion for a temporary restraining order and all other pending motions (Docs. 3, 4, 5, 6) are **DENIED**.

ORDERED in Tampa, Florida, on August 26, 2024.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA

John William Liccione,
Plaintiff,
v. **Case No.: 24-002994-CI**

Pinellas Democratic Executive Committee;

Michael John Sherosky - in his official capacity
as Secretary of PDEC and in his personal capacity;
Jennifer W Griffith - in her official capacity
as Chair of PDEC and in her personal capacity**;**
Defendants.

_____/

PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff, **John William Liccione,** pro se, and respectfully moves this Court for leave to file his Second Amended Complaint in the above-captioned matter pursuant to Florida Rule of Civil Procedure 1.190(a), and states as follows:

1. **Introduction and Basis for Amendment**

   Plaintiff filed the original Complaint in this action on July 3, 2024. Plaintiff filed a second complaint in the 6th Circuit Court on September 9, 2024, Liccione v Julie Marcus, et al, Case no. 24-003939-CI, that also included Jenniffer Griffith as one of the defendants for her subsequent wrongful acts performed after July 3 2024. Since that filing, new information, and relevant facts and new wrongful acts have emerged, and certain claims and parties have been adjusted to better

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reflect the scope and specifics of Plaintiff's claims. At a recent hearing on November 12th before Judge Patricia Muscarella in Case No. 24-003939-CI, Judge Muscarella, in consultation with Judge Ramsberger, who is presiding over this case, together decided sua sponte that the claims against Defendant Griffith in 24-003939-CI should be combined with this case for purposes of judicial efficiency. Plaintiff consented to the transfer of Defendant Griffith and it was so ordered by Judge Muscarella. This occurred just a few days after Plaintiff had filed his First Amended Complaint in this case, which has now become outdated. This then sets the stage for this Motion and for the Court to grant it.

2. **Summary of Likely Changes to be addressed in the 2nd Amended Complaint**

The Second Amended Complaint will incorporate the following changes currently being considered:

a. **Addition of New Counts**

1. **Defamation:** A new Count VII for Defamation was added in the First Amended Complaint, and will retained.
2. **Violation of Plaintiff's First Amendment Rights to Free Speech and to Peaceably Assemble:** Plaintiff alleges that Defendant Griffith swiped his campaign sign from the St Petersburg College epicenter hallway. The sign was a form of political speech and read: "*John Liccione for Congress: Building Florida, Saving America; voteliccione.org*". Then she interfered with Plaintiff's rights to peaceably assemble and to make his political speech in publicly owned facilities at the college and at a St.

Petersburg Pride parade, when he was attempting to "peaceably assemble" with voters and to make his political speeches to them.

b. **Removal of a Party**: The Florida Democratic Party was removed as a Defendant in this action. (Voluntarily dismissed by Plaintiff)

c. **Removal of Request for Injunctive Relief**: Plaintiff will eliminated his request for injunctive relief.

d. **Inclusion of Additional Facts**: The 2nd Amended Complaint will contain updated factual allegations, including events and misconduct by the Defendants and damage suffered after the initial Complaint's filing.

3. **Legal Standard for Granting Leave to Amend**

Under Florida Rule of Civil Procedure 1.190(a), "leave of court [to amend a pleading] shall be given freely when justice so requires." Florida courts generally permit amendments liberally, especially when amendments enable the case to be adjudicated on its merits and do not cause undue prejudice or delay. The proposed amendments are made in good faith to clarify Plaintiff's claims and include relevant new facts, to include new claims, and for purposes of combination and consolidation of two cases, and they do not unfairly prejudice Defendants or delay the proceedings. In this particular case, it is both Judge Muscarella and Judge Ramsberger themselves that have acted sua sponte to have Defendant Griffith removed from Case 24-003939-CI and those new claims against be incorporated into this case. It would be inappropriate and prejudicial to Plaintiff for this Court to *not* grant him leave to file a Second Amended Complaint under the circumstances.

4. **No Prejudice or Delay to Defendants**

   Granting leave to amend will not result in any undue prejudice or delay for Defendants. The primary changes will reflect Plaintiff's additional defamation claim and 1st Amendment violation claims, mail ballot fraud claims, and the removal of the Florida Democratic Party as a party, and the injunctive relief sought, along with relevant updates to factual allegations that occurred post-filing.

5. **Good Faith and Justice Require Amendment**

   Plaintiff respectfully submits that justice requires the filing of a Second First Amended Complaint, which accurately reflects the current facts and claims in this case. The amendment is sought in good faith to ensure the fair and complete adjudication of all issues.

WHEREFORE, Plaintiff, **John William Liccione**, respectfully requests that this Court grant this Motion for Leave to File a Second Amended and set deadlines for filing and responses thereto at the currently scheduled November 21, 2024 case management hearing.

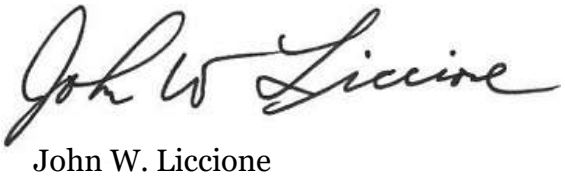
Respectfully submitted,

/s/ John W. Liccione
John W. Liccione
Pro Se Plaintiff
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707,
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John William Liccione, hereby certify that a true and correct copy of the foregoing Motion for Leave to File Second Amended Complaint was e-served on all defendants through their attorney George Thurlow via the Court's e-file and e-serve system on this 17th day of November 2024.

Respectfully submitted,



John W. Liccione

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

John William Liccione,
Plaintiff,
v. **Case No.: 24-002994-CI**

Pinellas Democratic Executive Committee (PDEC), et al;
Defendants.
_____/

PLAINTIFF'S MOTION TO STRIKE APPEARANCE OF ATTORNEY GEORGE THURLOW

COMES NOW the Plaintiff, **John William Liccione**, pro se, and respectfully moves this Honorable Court to strike the appearance of Attorney **George Thurlow**, counsel for Defendant Jennifer W. Griffith, and states as follows:

I. Nature of the Motion

1. Plaintiff seeks an order striking the appearance of Attorney George Thurlow on the grounds that he is a material necessary eyewitness to certain of the wrongful acts alleged in Plaintiff's First Amended Complaint that are alleged to have occurred at the St. Petersburg/Clearwater Marriott on July 13, 2024 where a Democratic Congressional debate event, and Plaintiff's own campaign event, were held down the hall from each other. As such, his testimony is integral to Plaintiff's claims of conspiracy, election interference, and voter intimidation and coercion.

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2. Additionally, Attorney Thurlow's appearance in this case occurred on July 30, 2024, after the alleged events, precluding the application of attorney-client privilege to his observations. Attorney Thurlow himself confirmed, unprompted, during his initial phone call with Plaintiff, that he himself had attended the July 13th congressional debate.

II. Relevant Facts

Attorney Thurlow's Involvement as an Eyewitness

3. Plaintiff alleges in his First Amended Complaint that on July 13, 2024 an incident occurred involving Defendants at the St. Petersburg Clearwater Marriott during and after a congressional debate hosted by the Pinellas Democratic Executive Committee (PDEC), just down the hall from Plaintiff's own campaign event.

4. During Attorney Thurlow's first phone call with Plaintiff, he voluntarily stated, without prompting, that he was in attendance at the July 13th congressional debate.

5. Attorney Thurlow's firsthand knowledge of the events that transpired is critical to establishing key facts in this case.

Timing of Attorney Thurlow's Entrance

6. The incident in question at the Mariott occurred on the night of **July 13, 2024**, and Attorney Thurlow did not enter his appearance as counsel until **July 30, 2024**.

7. Attorney Thurlow's observations at the event are not protected by attorney-client privilege and are subject to discovery and testimony.

Conflict of Interest/Roles

8. As a material and necessary witness to these events, Attorney Thurlow's role as legal counsel conflicts with his role as witness.

III. Legal Basis for the Motion

Rule 4-3.7(a), Florida Rules of Professional Conduct:

9. The Rule states that: "*A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client*."

10. *Allstate Ins. Co. v. English*, 588 So. 2d 294 (Fla. 2d DCA 1991). This case sets the standard for disqualification where an attorney is a necessary witness.

11. Bar Opinion: Florida Bar Ethics Opinion 90-4 also address such attorney conflicts under Rule 4-3.7(a).

Necessity of Testimony:

12. Attorney Thurlow's attendance at the event and his interactions with Defendants and other attendees, the venue staff, the police, and other individuals make his testimony indispensable to Plaintiff's claims.

13. His firsthand knowledge of the alleged events and the actions of Defendants and others present, and their impact on voters attending including their being allegedly blocked from accessing Plaintiff's down-the-hall campaign event, is critical for determining the facts of this case.

Timing and Attorney-Client Privilege: Because the Marriot incident occurred prior to Attorney Thurlow's appearance in this case on July 30, 2024, no attorney-client privilege attaches to his observations before, during, and immediately after the event.

Further, Mr Thurlow's communications with any attendee at the July 13th Marriot event, including all non-defendants, are not privileged.

Prejudice to Plaintiff: Allowing Attorney Thurlow to serve as counsel while simultaneously being a necessary witness would prejudice the Plaintiff's ability to fairly litigate the case and could create confusion for the jury. Attorney Thurlow's dual role creates an unavoidable appearance of impropriety and undermines the integrity of the proceedings.

IV. Relief Sought

WHEREFORE, Plaintiff respectfully requests this Honorable Court to:

A. Strike the appearance of Attorney George Thurlow as counsel for Defendant Jennifer W. Griffith.

B. Direct that Attorney Thurlow, nor anyone from his law firm, shall not act as advocate for any party in this case.

C. Grant any other relief this Court deems just and proper.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Plaintiff, Pro se
6800 Gulfport Blvd S.
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served upon all Defendants through their attorney George Thurlow via the Court's e-file and e-serve portal on this 18th day of November, 2024.

s/ John W. Liccione
John W. Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

COMPANION WITH:
Case No. 24-003939-CI

DEFENDANTS' RESPONSE IN OPPOSITION TO PLAINTIFF'S MOTION TO STRIKE APPEARANCE OF ATTORNEY GEORGE THURLOW

Defendants, PINELLAS COUNTY DEMOCRATIC EXECUTIVE COMMITTEE ("PCDEC"), JENNIFER W. GRIFFITH ("GRIFFITH"), and MICHAEL JOHN SHEROSKY ("SHEROSKY"), by and through their undersigned counsel, hereby submit this response in opposition to Plaintiff's, JOHN WILLIAM LICCIONE, Motion to Strike Appearance of Attorney George Thurlow, and in support thereof states as follows:

1. Plaintiff seeks to strike the appearance of Defendants' attorney George Thurlow on the grounds that Defendants' attorney attended an event—a debate hosted by PCDEC--which attended by approximately 300 people, and thus is a "material necessary eyewitness."
2. Disqualifying an attorney is a matter of no small consequence, and as a result the party seeking disqualification must demonstrate prejudice that can be cured only by disqualification. See *Caruso v. Knight*, 124 So. 3d 962 (Fla. 4th DCA 2013). It is considered an "extraordinary remedy." *Singer Island v. Budget Constr. Co.*, 714 So. 2d 651, 652 (Fla. 4th DCA 1998)
5. While captioned a Motion to Strike, the Plaintiff's Motion is in essence a Motion to Disqualify Counsel. Motions to disqualify should be viewed with some skepticism, because they are often filed for improper purposes such as harassment. *Id.*
6. Fla. Bar Reg. R. 4-3.7 generally states that "A lawyer shall not act as advocate **at a trial** in which the lawyer is likely to be a **necessary** witness on **behalf** of the **client**,"

(emphasis added) providing a number of exceptions. Without waiving other meritorious arguments, the Defendants maintain that the exception that "disqualification of the lawyer would work substantial hardship on the client" applies.

7. This matter is not currently set for trial and there are currently pending pre-trial motions that are dispositive.
8. Mr. Thurlow is not a necessary witness of this event. A lawyer is not a necessary witness when there are other witnesses available to testify to the same information. *Allstate Ins. Co. v. English*, 588 So. 2d 294, 295 (Fla. 2d DCA 1991); *Steinberg v. Winn-Dixie Stores,* 121 So. 3d 622, 624-25 (Fla. 4th DCA 2013). Hundreds of other people could testify to the same matters as Mr. Thurlow, including but not limited to representatives of his client.
9. Mr. Thurlow's clients are the Defendants, not Mr. Liccione. Therefore, this rule is not relevant or dispositive as Defendants have no intention of calling Mr. Thurlow as a witness.
10. Additionally, "The requirement that a lawyer withdraw when he expects to be a witness was not intended to permit an opposing party to call him as a witness and disqualify him from serving as counsel." *AlliedSignal Recovery Trust v. AlliedSignal, Inc*., 934 So. 2d 675, 680 (Fla. 2d DCA 2006); *see also Devins v. Peitzer*, 622 So. 2d 558, 558 (Fla. 3d DCA 1993) (holding that defendant's announced intention to call plaintiff's counsel as a witness is not a basis for disqualification).
11. Mr. Thurlow's attendance at this debate was in furtherance of his ongoing legal representation of PCDEC. PCDEC first retained Mr. Thurlow and his firm, RAHDERT & MORTIMER, PLLC, to represent them in another matter in approximately August 2023, and the firm, and primarily Mr. Thurlow, has represented PCDEC ever since. Attorney-client privilege would apply to any conversations between Mr. Thurlow, other attorneys in his firm, and representatives of PCDEC concerning potential or actual legal representation during that period. Mr. Thurlow and his clients first became aware of this instant lawsuit on or around July 8, 2024.
12. Plaintiff is also disclosing contents of a conversation that, to the best of counsel's recollection, was a privileged settlement communication.

WHEREFORE, Defendants respectfully request that this Court deny Plaintiff's Motion to Strike Appearance of Attorney George Thurlow and grant Defendants any other relief that this Court deems proper and just.

Dated: November 20, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document has been served upon John William Liccione, Plaintiff *pro se*, via Florida E-Filing Portal and via US Mail to 6800 Gulfport Boulevard South, Suite 201-116, South Pasadena, FL 33707 on this 20th day of November, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
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Attorney for Defendants,
PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
GRIFFITH, and SHEROSKY

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA CIVIL DIVISION
SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v. Case No. 24-002994-CI

JULIE MARCUS, et al.,
Defendants.
_____/

PLAINTIFF'S NOTICE OF RECEIPT OF EXTORTIVE DEATH THREAT AND THREAT OF FINANCIAL PENALTIES AND REQUEST FOR RELIEF

1. Plaintiff John Liccione hereby gives this Court notice that on November 15 2024, he received an email (referred to herein as "*The GoneGetGaetz email*") stating his life is in danger and that he may be arrested and prosecuted by the incoming Trump administration (presumably by the new attorney general Matt Gaetz), if he doesn't drop his election fraud/interference lawsuits and shut his mouth and stop leveling political attacks on Donald Trump, Matt Gaetz, Anna Paulina Luna, and Lauren Boebert. It tells Plaintiff to expatriate himself to another country.

2. The *GoneGetGaetz* email refers to President Elect Donald Trump's nominee for US Attorney General Matt Gaetz. The sender used a single use "burner" email account gonegetgaetz@proton.me, which was deactivated immediately after the email was sent.

3. The email reads as follows and is attached as EXHIBIT A:

gonegetgaetz <gonegetgaetz@proton.me> Thu, Nov 14, 2024 at 12:12 PM
To: "jliccione@gmail.com" <jliccione@gmail.com>

"For reasons which will become apparent, I need to stay anonymous. It has come to my attention that you are on lists which will be used by the incoming administration. You should not be surprised, given your activities and posting history. Remember your Gaetz/Boebert/Luna posting? It was noted. Remember your Putin posts? Remember your video at the Russian embassy? All of that was noted. It is unclear what exactly these lists will be used for, but it can't be good. I suspect it will be for arrest or detainment. Perhaps expulsion. Perhaps worse. If you have the ability, you need to leave. There is a movement to expat to **[COUNTRY 1]** *and regroup there. Consider that. I strongly urge you to go silent. No more political posts. No more calling the police. No more political rallies. No more lawsuits. No more political musical performances. If you do these things, you will be found and taken. I am sure of this. They are trying to simplify the chess board by removing pieces. You are a piece that is easy to remove and no one will notice, will they? Keep yourself safe by taking action today. These are dark days and darker days are ahead. No one can help you if you won't help yourself first. You won't get any further communications as long as you are in the US. We will find you, should you expatriate. Good luck, Patriot."*

4. Today, just 5 days later, numerous media outlets including the New York Times and The Hill are reporting that a hacker had hacked into an attorney-shared document cache containing sworn testimony from the two women that have been accusing Matt Gaetz of having sex with one of them at a party when she was 17 years old. (See EXHIBIT B).

5. Coincidentally, earlier this morning, Pinellas County Attorney, Andrew Keefe, a colleague of Attorney Kirby Kreider, and both who represent Defendant

Julie Marcus (and her deputy Dustin Chase) in their official capacities as Pinellas County Supervisor of Elections officials in Plaintiff's federal election fraud lawsuit (8:24-cv-02005-SDM-NHA), and Julie Marcus in related case 24-003939-CI, contacted Plaintiff and threatened to file for "substantial" attorney's fees if Plaintiff refused to dismiss his state and federal lawsuits against his clients, "*soon*." Attorney Keefe indicated that the attorney's fees are already substantial and that they will continue to mount if Plaintiff refuses to dismiss these cases "with prejudice, soon."

6. From Plaintiff's perspective, the "*GoneGetGaetz*" email is a veiled threat craftily written to appear as if coming from a helpful friend.

7. From Plaintiff's perspective, particularly as a pro se litigant, he is reasonably in fear for his safety, freedom, and financial well-being.

8. The pressure to drop this election fraud lawsuit and the related federal lawsuit has now reached a fever pitch. It appears that the "they" referred to in the e-mail will perhaps stop at nothing to ensure the massive mail ballot fraud Plaintiff has alleged caused his primary loss, and now has gotten Trump and Anna Paulina Luna re-elected, is not exposed, so as to ensure the 2024 Presidential and Congressional election results are not overturned.

9. With only 62 days until Donald Trump is sworn in as the 47th President of the United States, and with Matt Gaetz facing possible Senate confirmation as AG and perhaps will get a temporary recess appointment by Trump on 1/21/2024, Plaintiff now has every expectation that the pressure on him to dismiss his election fraud lawsuits for no financial consideration will only increase in frequency and severity.

The Hacking of the Judicial Process

10. Plaintiff is under extreme duress now, and as such, any settlement agreements he may be extorted or otherwise coerced to entering into with Defendants Jennifer Griffith, Michael Sherosky, or the Pinellas Democratic Executive Committee, an agreement which may require him to dismiss this case with prejudice without any financial consideration for the substantial damages he has suffered, will be deemed unenforceable under Federal or state law, given the circumstances.

The Current Case Posture

11. There is a Case Management Hearing currently scheduled for November 21, 2024 at 3:00PM via teleconference (or Zoom). All outstanding pleadings will allegedly be heard at this hearing, although, only 30 minutes have been allotted.

12. Plaintiff has just filed a motion for leave to file a Second Amended Complaint due to the Court's decision to transfer all claims against Defendant Griffith in Case No. 24-003939-CI over to Case No. 24-002994-CI.

13. Thus, now pending before the Court are the following:

a. Plaintiff's Motion for Leave to File a Second Amended Complaint
b. Plaintiff's Motion to Strike Appearance of Defendants' Attorney George Thurlow
c. Plaintiff's Motion to Compel Discovery Against Defendants Jennifer Griffith (and Cathy Salustri Loper)
d. Defendants Motion to Dismiss First Amended complaint (not yet ripe for consideration – moot if leave granted to file 2nd amended complaint)
e. Defendant Griffith's Motion for Sanctions

Conclusion

14. Due to the GoneGetGaetz email threats; (2) the sudden phone call from County Attorney Andrew Keefe threatening to file for substantial attorney's fees if Plaintiff doesn't dismiss this case and the other federal case against Julie Marcus; coupled with (3) these new public disclosures of the hacking of Matt Gaetz' alleged child victim's and eyewitness' sworn testimony document trove, the Court must intervene to preserve the integrity of the judicial process given the stakes involved.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Refer these matters to the State Attorney and the Florida Department of Law Enforcement for criminal investigation.
B. Other such relief as the Court considers appropriate.

Respectfully Submitted,



John W Liccione, Plaintiff, pro se
6800 Gulfport Blvd S.
Ste 201-116
South Pasadena, FL 33707
443-698-8156
Jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John William Liccione, Plaintiff, pro se, hereby certify that on this 19th day of November, 2024, I did serve this Notice via the Court's e-file and serve portal on **George Thurlow,** attorney for Defendants Jennifer Griffith, Michael Sherosky, and the Pinellas Democratic Executive Committee.



John W Liccione

EXHIBIT A

The GoneGetGaetz Email

Liccione vs Marcus, et al

Gmail John Liccione <jliccione@gmail.com>

Lists

1 message

gonegetgaetz <gonegetgaetz@proton.me> Thu, Nov 14, 2024 at 12:12 PM
To: "jliccione@gmail.com" <jliccione@gmail.com>

For reasons which will become apparent, I need to stay anonymous. It has come to my attention that you are on lists which will be used by the incoming administration. You should not be surprised, given your activities and posting history. Remember your Gaetz/Boebert/Luna posting? It was noted. Remember your Putin posts? Remember your video at the Russian embassy? All of that was noted. It is unclear what exactly these lists will be used for, but it can't be good. I suspect it will be for arrest or detainment. Perhaps expulsion. Perhaps worse. If you have the ability, you need to leave. There is a movement to expat to [redacted] and regroup there. Consider that. I strongly urge you to go silent. No more political posts. No more calling the police. No more political rallies. No more lawsuits. No more political musical performances. If you do these things, you will be found and taken. I am sure of this. They are trying to simplify the chess board by removing pieces. You are a piece that is easy to remove and no one will notice, will they? Keep yourself safe by taking action today. These are dark days and darker days are ahead. No one can help you if you won't help yourself first. You won't get any further communications as long as you are in the US. We will find you, should you expatriate. Good luck, Patriot.

EXHIBIT B

The Hill article on the hacking of Matt Gaetz' Document Trove Containing Sexual Assault Victim/Witness Testimony

Liccione v Marcus, et al

HOUSE

Hacker gains access to testimony in Gaetz investigations: reports

BY REGINA ZILBERMINTS -11/19/24 12:45 PM ET

FOLLOW ON Google News

A hacker gained access to witness testimony related to investigations into former Rep. Matt Gaetz (R-Fla.), who resigned from Congress last week after President-elect Trump tapped him for attorney general, multiple news outlets reported Tuesday.

The unidentified person, using the name “Altam Beezley,” downloaded the information on Monday afternoon, according to The New York Times, which was the first to report on the breach.

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The Times and CBS News reported that the file is part of a civil defamation case. The Times also reported it includes sealed files from the Justice Department and House Ethics Committee.

The materials do not appear to have been made public. Interest in the files may be at an all-time high, given Gaetz's looming confirmation process.

The Ethics Committee has been investigating Gaetz for years over allegations of sexual misconduct and illicit drug use, among other claims. Gaetz, whom the Justice Department declined to charge after investigating the same matters, has vigorously denied wrongdoing.

The Florida Republican resigned from Congress as the release of the Ethics Committee's report was imminent, a source familiar with the matter told The Hill last week.

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While the panel doesn't generally release information about former lawmakers, the committee is facing mounting pressure to make its findings public.

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Senators on both sides of the aisle have said they would like to see the report as they mull whether to confirm Gaetz as the nation's top prosecutor, and on Monday Rep. Susan Wild (D-Pa.), the top Democrat on the Ethics Committee, said she thinks the report should be released.

Updated at 1:18 p.m. EST

TAGS GAETZ CONFIRMATION FIGHT MATT GAETZ SUSAN WILD TRUMP CABINET

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs.

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

Defendants.
_____/

Case No.: 24-003939-CI
Companion Case with
Case No.: 24-002994-CI

ORDER GRANTING COURT'S ORE TENUS MOTION TO CONSOLIDATE
***** DIRECTIONS TO THE CLERK OF COURT *****

THIS CAUSE came before the Court on November 12, 2024 upon the Court's *ore tenus* Motion to Consolidate ("Motion"), and the Court, having considered the Motion, the case file, the applicable law, the agreement of the parties, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. This matter concerns the following cases currently pending in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida: *John William Liccione vs. Julie Marcus, et. al.*, Case No. 24-003939-CI, Section 7, the Honorable Patricia Muscarella presiding ("Section 7 Case") and *John William Liccione vs. Pinellas Democratic Executive Committee*, Case No. 24-002994-CI, Section 19, the Honorable Thomas Ramsberger presiding ("Section 19 Case").

2. Defendant, JENNIFER GRIFFITH ("Ms. Griffith") is a party in both of the aforementioned cases. The operative complaints in both cases involve considerable factual and legal overlap as to Ms. Griffith.

3. Florida Rule of Civil Procedure 1.270(a) states the following:

> **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

4. At the case management hearing on November 12, 2024 in the Section 7 Case, the Court proposed transferring and consolidating all claims against Ms. Griffith in the Section 7 Case to the previously-filed Section 19 Case as a means of promoting judicial economy in accordance with Rule 1.270(a). The parties stipulated to the Court's proposal.

5. Because the Section 7 Case and the Section 19 Case involve common questions of law and fact involving Ms. Griffith, it would be an inefficient use of party and judicial resources to litigate these related disputes before different trial court judges. Both cases will proceed more efficiently with a single trial court judge presiding over the claims against Ms. Griffith. Accordingly, the efficient administration of justice requires reassignment of the Section 7 Case claims against Ms. Griffith to the Section 19 Case. Said transfer will not delay either action as the cases were filed within 65 days of each other and involve a similar procedural posture, nor will said transfer result in any substantial inconvenience, delay, or expense for the parties or the Court.

Accordingly, it is

ORDERED and ADJUDGED:

1. The Court's Motion is hereby **GRANTED** pursuant to Fla. R. Civ. P. 1.270(a) and in accordance with the stipulation made by all parties at the November 12, 2024 hearing. Hereinafter, Section 19 of this Court shall have jurisdiction over the claims made against Ms. Griffith in the Section 7 Case. All future matters concerning claims made against Ms. Griffith shall be addressed to Section 19 of this Court.

2. The Pinellas Clerk of Court is **DIRECTED** to docket this Order in both Case No.

24-003939-CI and Case No. 24-002994-CI.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

Electronically Conformed 11/20/2024
Honorable Patricia A. Muscarella
Patricia Muscarella
Circuit Civil Judge

Copies furnished to:

Parties served by email

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

ORDER GRANTING COURT'S MOTION TO STAY

THIS CAUSE came before the Court on November 12, 2024 upon the Court's Motion to Stay ("Motion") dated November 4, 2024, and the Court, having considered the Motion, the case file, the applicable law, the argument of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS** the following:

1. On August 23, 2024, Plaintiff filed a federal lawsuit in the Middle District of Florida, Case No.: 8:24-cv-02005-SDM-NHA ("the federal lawsuit").

2. On September 3, 2024, Plaintiff initiated the instant lawsuit. The federal lawsuit and the instant lawsuit contain many of the same defendants. Additionally, there is significant factual overlap between the two actions.

3. "Generally, when a state lawsuit is filed that involves the same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated." *Roche v. Cyrulnik*, 337 So. 3d 86, 88 (Fla. 3d DCA 2021) (citations omitted).

4. It is "an abuse of discretion to refuse to stay a subsequently filed state court action

in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues." *OPKO Health, Inc. v. Lipsius*, 279 So. 3d 787, 791 (Fla. 3d DCA 2019) (citation omitted).

5. For this general rule of comity to apply, the causes of action asserted in the two cases need not be identical nor must the two actions have identical parties. *Roche*, 337 So. 3d at 88 (citations omitted).

6. The federal lawsuit and the instant lawsuit involve the same nucleus of facts, namely allegations of election fraud by the various Defendants as to the August 20, 2024 Democratic primary election for Florida's 13th Congressional District.

7. Counsel for Defendants stipulated to staying the instant litigation pending the outcome of the federal lawsuit assuming the following conditions were observed: 1) claims against Defendant, JENNIFER GRIFFITH would be transferred to Section 19 and joined with Plaintiff's prior lawsuit (See Order Granting Court's Ore Tenus Motion To Consolidate); 2) all Defendants who asserted an anti-SLAPP defense did not waive their right to an expedited hearing if such is necessary upon resolution of the federal lawsuit (see section 768.295(4), Fla. Stat. (2024)).

8. Although Plaintiff has objected to the issuance of a stay, the Court finds that the above-provided rule of comity applies and requires the Court to stay the instant action until the federal lawsuit has been adjudicated.

Accordingly, it is

ORDERED and ADJUDGED:

1. The Court's Motion is hereby **GRANTED.**

2. Plaintiff is required to file a copy of the final judgment for the federal lawsuit with this Court within **FIVE (5) DAYS** of the final judgment's date of entry.

3. The Court shall conduct a case management conference in the instant matter within **THIRTY (30) DAYS** of the entry of final judgment in the federal lawsuit to determine which, if any, of Plaintiff's claims in the instant lawsuit require adjudication by this Court. The Court shall hear any remaining anti-SLAPP defenses, if any, at said case management conference.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

Electronically Conformed 11/20/2024
Patricia Muscarella

Honorable Patricia A. Muscarella
Circuit Civil Judge

Copies furnished to:

Parties served by email

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Counsel for Defendant, Mark Weinkrantz

Parties served by U.S. mail

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St. Petersburg, FL 33714
Defendant

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
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JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

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

DEFENDANT JENNIFER GRIFFITH'S MOTION TO DISMISS AMENDED COMPLAINT

Defendant, JENNIFER GRIFFITH ("Griffith"), in her official capacity as Chair of the Pinellas County Democratic Executive Committee ("PCDEC"), hereby moves this Honorable Court to dismiss Plaintiff's Amended Complaint with Prejudice for lack of subject matter jurisdiction, failure to state a cause of action upon which relief may be granted, and pursuant to Fla. Stat. § 768.295 (Florida's "anti-SLAPP" statute), , and in support thereof states as follows:

I. INTRODUCTION

Griffith is the current Chair of the PCDEC and has served in that capacity since December 2022. She is included as a party to this lawsuit because Plaintiff alleges that she is "responsible for the oversight of Democratic Party in Pinellas County, including certain of the unlawful activities alleged" in the Amended Complaint (Amend. Compl. ¶ 5). To be very clear, this is an incorrect premise; PCDEC is a private, non-governmental organization that has no authority whatsoever to enforce laws or regulate elections. Rather, Plaintiff's primary motive for filing this lawsuit (which is the third lawsuit he filed against Griffith in a two-month period) is because PCDEC, a private organization which has freedom of speech and freedom of association rights, did not invite him to participate in a debate for the Democratic Party primary election (Amend. Compl. ¶¶ 12-13). Likewise, Defendant Marcus has nothing to do with PCDEC's events. None of the factual allegations besides those involving the debate (Amend. Compl. ¶¶ 12-17) have any connection to Griffith, or anything that may be in her control. Simply put, this

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lawsuit is filed against Griffith solely as retaliation for her and PCDEC executing their constitutional rights and freedoms.

This Court should dismiss Plaintiff's Amended Complaint for lack of subject matter jurisdiction because the entirety of Plaintiff's Amended Complaint as it pertains to Griffith is premised upon her and PCDEC's exercise of their constitutional rights. The actions of PCDEC—which is recognized as a county-level political party under Florida law—and its internal governing procedures and right to associate with whom it desires, all of which are non-justiciable before this Court. However, even if this Court were to find that it has subject-matter jurisdiction over some or all counts of Plaintiff's Amended Complaint, this Court should still dismiss it as it fails to state a cause of action upon which relief may be granted and because it is a shotgun pleading.

Because this lawsuit aims to quiet the political speech of PCDEC and Griffith, Griffith requests that this Court deem this lawsuit to be a strategic lawsuit against public participation (SLAPP) that is prohibited under Florida's anti-SLAPP statute, Fla. Stat. § 768.295. Fla. Stat. § 768.295(3) states that "A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue." Plaintiff filed this lawsuit against Griffith because PCDEC and Griffith have exercised their constitutional right of free speech in connection with a public issue—namely the Democratic Primary for Florida's 13th Congressional District—in a way that has not been beneficial to Plaintiff's political campaign.

I. THE LEGAL STANDARD FOR A MOTION TO DISMISS—GENERALLY AND UNDER FLA. STAT. § 768.295

While a Motion to Dismiss generally requires a Court to simply accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant, the 2d DCA has held that a Motion to Dismiss based upon the anti-SLAPP statute requires the trial court to do more. *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019); *Davis v. Mishiyev*, 339 So. 3d 449, 453 (Fla. 2d DCA 2022).

Rather, in a Motion to Dismiss based upon the anti-SLAPP statute, the Defendant must demonstrate a *prima facie* case that the anti-SLAPP statute applies—in that the Plaintiff's suit was based on some activity that would qualify as an exercise of the Defendant's First Amendment rights in connection to issues of public importance. *Id*. Then, the burden of proof shifts to the Plaintiff to demonstrate that the Defendants' activity was actionable and that the claims are not primarily based upon the Defendants' exercise of their first amendment rights. *Davis*, 339 So. 3d, at 453. This procedure serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss. *Gundel*, 264 So. 3d, at 314.

Denial of a Motion to Dismiss on anti-SLAPP grounds is an appealable non-final order. Notably, in *Gundel v. AV Homes, Inc.*, the 2d DCA quashed a trial court order denying a Motion to Dismiss, For Judgment on the Pleadings, or For Summary Judgment because the allegations contained within the pertinent counterclaim were too vague to permit the trial court to determine whether the alleged conduct was protected free speech. *Id*. at 315.

A prevailing party to a Motion to Dismiss under Fla. Stat. § 768.295 is entitled to the award of their reasonable attorney's fees and costs. Griffith requests that this Court grant her entitlement to her reasonable attorney's fees and costs under Fla. Stat. 768.295.

II. THERE IS A *PRIMA FACIE* CASE THAT PLAINTIFF'S LAWSUIT APPEARS TO BE A STRATEGIC LAWSUIT AGAINST PUBLIC PARTICIPATION.

Of the forty-eight (48) paragraphs of factual allegations made in the Amended Complaint, only Paragraphs 5, 12-17, and 20 pertain to Griffith in any way. Paragraph 5 merely alleges who Griffith is, and Paragraph 20 makes numerous conclusory legal allegations without any factual support. Paragraphs 12-17 are the **sole** factual allegations directed at Griffith, and all of those allegations pertain to the debate hosted by PCDEC that Plaintiff was not invited to.

The decision to not invite Plaintiff to participate in PCDEC's debate is an act of speech and a decision implicating the freedom of association. This decision was Griffith and PCDEC's exercise of their First Amendment rights in connection to an issue of public importance—the Democratic Primary in Florida's 13th Congressional District. There is no legal barrier against

political parties taking internal steps affecting their own process for the selection of candidates. *Tashjian v. Repub. Party*, 479 U.S. 208, 224 (1986). That includes a political party opting not to provide a platform to a particular candidate. Additionally, the United States Supreme Court has held that political parties making endorsements in primary elections is protected political speech that may not be restricted by state or federal law. *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 223-29 (1989). Certainly, this right would also extend to individual leaders of political parties.

Based on this clear showing that Defendants engaged in protected First Amendment speech, **Plaintiff now has the burden to demonstrate that the conduct of the Defendants was actionable.** Based on the allegations set forth in the Complaint, none of the alleged conduct of the Defendants is actionable. Therefore, this Court should dismiss Plaintiff's Complaint, find that it is a strategic lawsuit against public participation intended to have a chilling effect on the Defendants' ability to exercise their First Amendment rights, and grant Defendants' entitlement to their reasonable attorney's fees and costs pursuant to Fla. Stat. § 768.295.

III. THIS COURT LACKS SUBJECT MATTER JURISDICTION

a. Plaintiff lacks standing to bring forth Counts I, III, IV, and VII

Count I—Fla. Stat. § 104.041

Count I cites a criminal statute that does not provide a private right of action by an individual against an alleged violator of the statute. Setting aside the lack of jurisdiction and standing to enforce criminal provisions of the Florida Election Code, Plaintiff does not allege any action by Griffith in the vain of "perpetrating or attempting to perpetrate or aid in the perpetration of any fraud in connection with any vote cast, to be cast, or attempted to be cast" as described by the statute. Fla. Stat. § 104.041 (2024). The sole allegation against Griffith is that she had some sort of supervisory duty, which is not established in fact or law and in fact does not exist. None of these allegations demonstrate a violation of section 104.041, Florida Statutes, even in a light most favorable to Plaintiff. Accordingly, Count II should be dismissed for failure to state a cause of action against Griffith.

Count III—Violation of 52 U.S.C. § 20511

Similar to Count I, Plaintiff attempts through a private civil action to have this Court impose criminal penalties upon Griffith. That is plainly not permissible.

Count IV—Civil Rights Violation under 42 U.S.C. § 1983

To bring a claim under 42 U.S.C. § 1983, a Plaintiff must have standing to do so. Standing requires the plaintiffs to allege enough facts to establish injury-in-fact, causation, and redressability. *Ladies Mem'l Ass'n v. City of Pensacola,* 34 F.4th 988, 992 (11th Cir. 2022). An injury in fact for standing purposes is a "legally protected interest" that is both "concrete and particularized" and "actual or imminent" (internal quotation marks and citations omitted)). *Id.* at 992-93.

Second, the Plaintiff must demonstrate that there is a "causal connection" between his injury and the conduct of which he complains—*i.e.*, the injury must be "fairly traceable" to the defendant's challenged actions and not the result of "the independent action of some third party not before the court." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021), quoting *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 560 (1992)*;* see also *Spokeo, Inc. v. Robins*, 578 U.S. 856 (2016).

Finally, the Plaintiff must show that it is "likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision." *Lujan*, 504 U.S. at 560 (quotation marks omitted). A mere recitation that the Government is violating one's constitutional rights is not concrete enough to establish standing. *Ladies Mem'l Ass'n*, 34 F.4th at 993.

Plaintiff has failed to plead an injury-in-fact against Griffith. Plaintiff has no legally protected interest to participate in PCDEC events or to have PCDEC promote his candidacy. There is also no causal connection between Plaintiff not being invited to a forum hosted by PCDEC (or by any role Griffith purportedly played in “supervising” other candidates) and his election loss. Plaintiff complains of not being invited to attend an event with approximately 300-400 attendees as the reason he lost his Congressional election, when he received approximately 27,000 fewer votes than the first-place candidate in his primary election. Additionally, any role Griffith played in “supervising” candidates and their conduct was merely voluntary and of no legal significance.

Finally, by Plaintiff's own admission, it is not likely that any of the alleged events would have changed the outcome of Plaintiff's election. In fact, in a YouTube video posted by Plaintiff, he admits the following: "I lost. I was last place with four [present] uh so I'm pretty sure I didn't win irrespective of ballot you know fake ballots" and described both Defendant Whitney Fox and second-place finisher Sabrina Bousbar as "good candidates." "The Takedown of Anna Paulina Luna" Episode 5: "Tampa Girl" YouTube, https://www.youtube.com/watch?v=WS8EfbZbC80 (last visited Sep 14, 2024) at 1:45-2:02.

Count VII: "Voter Intimidation and Voter, Suppression, Civil Rights Violations" under Fla. Stat. § 104.0615, § 104.061, the federal Voting Rights Act of 1965, the Civil Rights Act of 1957, and Title 118, Section 594

While imprecisely pled, Fla. Stat. § 104.0615 and § 104.061 are both criminal statutes that do not provide for private rights of action. The same can be said for 18 U.S.C. § 594 (Title 118, Section 594). Additionally, "[A]n unsuccessful candidate attempting to challenge the election results does not have standing under the Voting Rights Act." *Roberts v. Wamser*, 883 F.2d 617, 621 (8th Cir. 1989).

b. Any cognizable cause of action against Griffith and her decision to not invite Plaintiff to the debate is necessarily a non-justiciable matter of political party governance.

There is no legal barrier against political parties taking internal steps affecting their own process for the selection of candidates. *Tashjian v. Repub. Party*, 479 U.S. 208, 224 (1986). *Tashjian* and *Eu v. S.F. Cty. Democratic Cent. Comm.*, 489 U.S. 214, 222-24 (1989) control.

In *Eu*, the U.S. Supreme Court struck down California's legal ban on political parties making endorsements in primary elections on the grounds that it was an unconstitutional restriction on free speech. Specifically, the U.S. Supreme Court found that restricting a political party's governing body from "stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate is qualified for the position sought" is an unconstitutional restriction on speech because it "directly hampers the ability of a party to spread its message and voters seeking to inform themselves about the candidates and campaign issues." *Eu*, 489 U.S., at 223.

Eu further held that **political parties have the right to identify the people they wish to associate with,** and select a standard bearer who "best represents the party's ideologies and preferences." *Id.* at 224. This is due to political parties having the freedom of association under the First and Fourteenth Amendments to the United States Constitution. *Id.* at 223. This decision was resolute, with the Court going as far as saying that restrictions on speech are "particularly egregious where the State censors the political speech a political party shares with its members." *Id.* at 223-24. The debate which Plaintiff complains about was an event where a political party shared political speech with its members. It is non-justiciable to attempt to censor such speech through litigation.

Restricting political parties from this right "suffocates" them because it prevents parties from promoting candidates "'at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community'." *Id.* at 224, quoting *Tashjian v Republican Party of Connecticut,* 479 US 208, 216 (1986).

Even when taken as true, Plaintiff alleges that PCDEC found that Plaintiff did not pass their vetting process and accordingly denied Plaintiff a stage for his candidacy, while promoting other candidates. Based on clear legal precedent, Plaintiff was well within its constitutional rights to make that decision and promote any candidates it so desires.

Along these lines, in the recent case of *Donelon v. Pinellas Democratic Executive Committee*, Pinellas County Case No. 23-008089-CI, this Court dismissed the Plaintiff's Complaint, which concerned the elections process for PCDEC's Credentials Committee, on the grounds that based upon the authorities of *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), this Court lacked jurisdiction to hear an action regarding the internal operations of a political party such as PCDEC. PCDEC maintains that its candidate vetting process is a matter of internal operation that is non-justiciable by this Court.

IV. PLAINTIFF FAILS TO STATE A COGNIZABLE CAUSE OF ACTION AGAINST GRIFFITH

To state a cause of action, the Plaintiff must "set[] forth a claim for relief, whether an original claim, counterclaim, crossclaim, or third-party claim, must state a cause of action and shall contain… (2) **a short and plain statement of the ultimate facts showing that the pleader**

is entitled to relief…" Fla. R. Civ. P. 1.110 (b) (emphasis added). Florida is not a notice pleading jurisdiction and "it is not enough merely to advise the defendant of the theory of the action." See *Cunningham v. Fla. Dept. of Children & Families*, 782 So. 2d 913, 919 (Fla. 1st DCA 2001). Dismissal is appropriate when a plaintiff has failed to properly and separately plead each element of the cause of action. See *Kislak v. Kreedian*, 95 So. 2d 510 (Fla. 1957) (complaint must properly inform the Defendant of the specific cause against it).

The pleading requirements for fraud and conspiracy—which are involved in many of Plaintiff's causes of action—are heightened. "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.

The bare factual allegations that concern Griffith—who is the Chair of a non-governmental, private organization which has free speech rights and free association rights—which are in Paragraphs 12-17 of the Amended Complaint do not support **any** of Plaintiff's causes of action against Griffith. There is no factual allegation—other than a baseless allegation that Griffith somehow has "supervisory" authority—that Griffith played any role in the counting of votes.

Additionally, it does not appear as though Plaintiff has pled the essential elements for any of his causes of actions to the extent such causes of action are cognizable and have private rights of action. Defendant Griffith will address these for the counts that are cognizable private causes of action.

Count II—Conspiracy to Commit Election Fraud

In Count IV, Plaintiff alleges that the PCDEC, Florida Democratic Party, Sherosky, and Griffith, engaged in a civil conspiracy to destroy his political campaign. See Compl. ¶¶ 65-67. A claim for civil conspiracy requires Plaintiff to prove four elements: "To state a cause of action for civil conspiracy, a plaintiff must plead '(1) an agreement between two or more parties; (2) to do an

unlawful act or a lawful act by unlawful means; (3) the execution of some overt act in pursuance of the conspiracy; and (4) damage to the plaintiff as a result of said acts.' (citations omitted)." *Logan v. Morgan & Bockius LLP*, 350 So. 3d 404, 412 (Fla. 2d DCA 2022). A claim for civil conspiracy must contain clear, positive and specific allegations; general allegations of conspiracy are not sufficient. *Parisi v. De Kingston*, 314 So. 3d 656, 661 (Fla. 3d DCA 2021); *World Class Yachts, Inc. v. Murphy*, 731 So. 2d 798, 799 (Fla. 4th DCA 1999). The Complaint, as pled, fails on all four requirements.

i. There is not an agreement between two or more parties.

Based on the pleading, it is unclear what agreements were entered into between the PCDEC, Florida Democratic Party, Sherosky, and Griffith that are the subject of this count. There is no clear, positive and specific allegations of what these agreement(s) were. In *arguendo,* if the "vetting process" was the agreement, there is also no allegation that Defendant Sherosky (or the Florida Democratic Party) had any involvement in that process, that Defendant Griffith acted outside her official capacities as PCDEC Chair, or that members of the "PDEC candidate vetting committee" acted outside the scope of their official duties. Therefore, there is no second party to the "vetting process" insofar that it may be the agreement referenced by Plaintiff. Because there is no clear, positive, and specific allegation of an agreement between two or more parties, the count fails.

ii. There is no agreement to do an unlawful act or a lawful act by unlawful means occurred.

Additionally, there is no pleading sufficient to conclude that two or more parties agreed to do an unlawful act or a lawful act by unlawful means. None of the acts Griffith is alleged to have participated in constitute "election fraud"; the allegations concern Griffith and the PCDEC's conduct at a private, pre-election event where no voting occurred.

iii. It is unclear what the overt act in furtherance of the conspiracy was.

The Complaint does not contain clear, positive and specific allegations of what the overt act in furtherance of the conspiracy was.

iv. There is no adequate claim to damages.

Plaintiff has failed to adequately plead damages. Plaintiff's damages claims are wholly speculative. Plaintiff claims, without any support, that he has lost out on a Congressional salary of $175,000 and seeks over $1 million in damages. Plaintiff failed to plead any basis for this amount, and the damages Plaintiff claims – a speculative salary– are not reasonably ascertainable, thus the damages are not recoverable. See *Kennedy & Ely Ins., Inc. v. American Emp. Ins. Co.*, 179 So. 2d 248, 249 (Fla. 3d DCA 1965) (damages cannot be recovered if purely speculative); *Hogan v. Norfleet*, 113 So. 2d 437, 439 (Fla. 2d DCA 1959) ("Damages in a law action cannot be speculative or conjectural, but must be reasonably ascertainable.").

Based on the foregoing, Plaintiff has failed to effectively plead any of the requirements for a claim of civil conspiracy, and therefore, Count II of the Amended Complaint should be dismissed.

Count V: Computer Fraud and Abuse Act Violation (18 U.S.C. § 1030)

While 18 U.S.C § 1030 provides a private right of action if one of several acts are committed, there is no affirmative allegation that Griffith (or any of the other Defendants) accessed Plaintiff's computer—a necessary element. It is unclear who may have committed the alleged events in Paragraphs 39-42 of the Amended Complaint.

Count VI: Intentional Interference with Prospective Economic Advantage

In Florida, the legal claim of Intentional Interference with Prospective Economic Advantage (also known as "tortious interference with a business relationship" or "tortious interference with a prospective advantage") requires proving several elements. The claim is often raised when a third party intentionally disrupts a business relationship or opportunity. The elements a plaintiff must establish in Florida are:

1. **Existence of a Business Relationship**: The plaintiff must prove the existence of a business relationship with a third party that offers the probability of future economic benefit, even if the relationship is not formalized by a contract. However, this relationship

must be more than speculative, meaning it has to be a real, existing, or identifiable relationship.

2. **Defendant's Knowledge of the Relationship**: The defendant must have actual knowledge of the relationship between the plaintiff and the third party. It is not sufficient for the defendant to be merely aware of the possibility of a relationship.

3. **Intentional and Unjustified Interference by the Defendant**: The defendant must have intentionally acted to disrupt or interfere with the business relationship, and this interference must be unjustified. An unjustified interference usually means that the defendant had no legitimate reason or privilege to interfere with the relationship, such as competition in a free market.

4. **Damage to the Plaintiff as a Result of the Interference**: The plaintiff must demonstrate that they suffered actual damages or losses due to the defendant's interference. This could include lost profits, lost contracts, or other economic harm resulting directly from the disruption.

Ethan Allen, Inc. v. Georgetown Manor, Inc., 647 So. 2d 812, 814 (Fla. 1994). Damages may not be recovered on a speculative relationship. *Id.* at 815. There must also be specifically identifiable customers who were the subject of the alleged interference. See *Sarkis v. Pafford Oil*, 697 So. 2d 524, 526 (Fla. 1st DCA 1997) (affirming trial court's dismissal of complaint alleging tortious interference because "[t]he amended complaint d[id] not identify the customers who were the subject of the alleged interference."). The interference must also be "direct and intentional" and "without justification." *Lawler v. Eugene Wuesthoff Memorial Hosp. Ass'n*, 497 So. 2d 1261, 1263 (Fla. 5th DCA 1986) (holding that interference must be direct and intentional); see *Salit v. Ruden, McClosky, Smith, Schuster & Russell, P.A.*, 742 So. 2d 381 (Fla. 4th DCA 1991).

Plaintiff fails to plead the existence of a business relationship or that the Defendants' knew of any such relationship. No customers are specifically identifiable. Plaintiff's damages are entirely speculative. And, Griffith's conduct was fully justified; it was the exercise of her First and Fourteenth Amendment rights. Therefore, this Count also fails.

V. CONCLUSION

The *modus operandi* of this lawsuit and the other lawsuits that Plaintiff has filed against Ms. Griffith is to punish her and the PCDEC for exercising their First and Fourteenth Amendment rights by declining to provide Plaintiff's candidacy for Congress with a platform. The allegations made against Ms. Griffith in this Complaint are baseless, already the subject of other lawsuit, and any claim of conspiracy is without any factual support. Therefore, this Court should dismiss this lawsuit with prejudice and award Ms. Griffith and PCDEC entitlement to their reasonable attorney's fees and costs incurred in defending against this frivolous and retaliatory lawsuit that has no basis in fact and law.

WHEREFORE, Defendant, JENNIFER GRIFFITH, respectfully requests that this Court enter an Order Dismissing Plaintiff's Amended Complaint with prejudice, award Plaintiff her reasonable attorney's fees and costs, and grant Defendant any other relief this Court deems proper and just.

Dated: October 2, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon John William Liccione, Plaintiff *Pro Se*, via Florida E-Filing Portal email to jliccione@gmail.com, and Ryan D. Barack, Esquire, Michelle E. Nadeau, Esquire, Kirby Z. Kreider, Esquire, and James B. Lake, Esquire via Florida E-Filing Portal e-mail on this 2nd day of October, 2024.

/s/ George A.D. Thurlow

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. **Case No. 24-003939-CI**
JULIE MARCUS, et al.,
Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT JENNIFER GRIFFITH'S

MOTION TO DISMISS

AND

REQUEST FOR HEARING

Plaintiff John Liccione, pro se, submits this response in opposition to Defendant Jennifer Griffith's (Griffith) Motion to Dismiss the Plaintiff's First Amended Complaint (Amended Complaint). Griffith's motion is fundamentally flawed, relying on unsupported facts, allegations, mischaracterizations, and a misapplication of relevant legal standards. Contrary to Defendant's claims, Plaintiff has alleged sufficient facts to establish a plausible basis for each cause of action against Griffith, including claims of voter intimidation, campaign interference, mail ballot fraud, conspiracy, and the implementation of a sham candidate vetting process, hastily instituted just after Plaintiff announced his candidacy in the spring of 2023. Defendant's conduct, as described in the complaint, extends far beyond the scope of constitutionally protected rights to speech and association, instead involving unlawful acts aimed at interfering with Plaintiff's campaign and manipulating the electoral process. For these reasons, Defendant's

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motion to dismiss should be denied in its entirety, allowing Plaintiff to proceed to discovery, present evidence, and litigate these significant issues.

1. Griffith's Sham Candidate Vetting Process

Defendant Griffith claims Plaintiff's exclusion from the debate and other party materials was due to a pre-existing "candidate vetting process" that he allegedly failed. Plaintiff asserts that if such a process exists, it must be applied equally to all candidates without discrimination based on sex, disability, or other unlawful criteria, and without corrupt or criminal motive or for criminal purposes. Defendant has provided no evidence that a vetting process existed before or after Plaintiff's candidacy was announced, nor that it was applied equally to all five candidates. Plaintiff alleges the process was selectively applied to exclude him, and only him, in violation of Democratic party policies, of their own values, and unlawfully.

Griffith does not argue that Plaintiff's political positions, values, or history conflict with Democratic Party values. Instead, she falsely and baldly asserted publicly that Plaintiff is a man of moral turpitude, without providing any basis for this claim. Plaintiff, has no criminal convictions and was found not guilty at trial in 2018 after being wrongfully accused and imprisoned as a PTSD-disabled male domestic violence survivor. He contends that Griffith's assertion is unsupported and defamatory, as Griffith was well aware during the alleged "vetting process" of Plaintiff's not-guilty-at-trial verdict.

Plaintiff alleges that no such vetting process existed until after he informed Griffith of his candidacy in the early spring of 2023. Plaintiff argues it was a sham, created to exclude him while giving the other four candidates unfettered access to party resources,

speaking engagements, and promotional opportunities, without subjecting them to the same scrutiny, while affording them the due-process opportunity to rebut negative background information.

No Pre-existing Vetting Process: The so-called vetting process conveniently appeared only after Plaintiff announced his candidacy, and Plaintiff alleges it was designed specifically to exclude him under the color of a Party policy that did not exist and had never before been applied to any Democratic candidate. Griffith has produced no records, documents, or minutes to substantiate the existence of this process before Plaintiff's candidacy was known, or even after. Plaintiff further alleges the process was applied only to him and not to the other candidates, demonstrating its discriminatory and pretextual nature.

A Broader Conspiracy: This sham vetting process is part of a broader conspiracy to interfere with Plaintiff's campaign and suppress his candidacy. Plaintiff's exclusion from the July 13th debate was not an isolated incident: It was part of a coordinated, 15-month effort by Griffith and her co-conspirators, which escalated well beyond the scope of first amendment protected activities. The Court must accept these well-pleaded allegations as true at the motion to dismiss stage (Conley v. Gibson, 355 U.S. 41 (1957)).

2. Griffith's Strawman Argument

Plaintiff acknowledges that the Democratic Party, as a private political organization, has the (non-absolute right) to adopt a candidate vetting process: as long as it is lawful and applied equally to all candidates irrespective sex, disability, race, age, and other categories of persons who are guaranteed protection from discrimination under law. It

is not an unfettered, "absolute right" any more than free speech and the right to bear arms are absolute rights. Defendant's claim that Plaintiff is arguing otherwise is a strawman argument that Plaintiff has not made. Plaintiff is not challenging the Party's right to create a lawful vetting process - equally applied – and with due process equally given to all candidates.

3. Mischaracterization of Constitutional Protections

Defendant Griffith argues that Plaintiff's claims infringe on her rights to freedom of speech and association when in fact, it was Plaintiff's free-speech rights that were violated by Griffith. Plaintiff has alleged that Defendant's actions involve wrongful acts beyond the protection of the First Amendment. The U.S. Supreme Court has held that certain forms of conduct, such as fraud, intimidation, and coercion, are not protected by the First Amendment (*Wisconsin v. Mitchell*, 508 U.S. 476 (1993)). In particular, the alleged acts of blocking access to Plaintiff's campaign event and physically obstructing Plaintiff's communication with voters, as well as the theft of his campaign sign, fall outside the scope of protected activities. In United States v. Alvarez, 567 U.S. 709 (2012), the court ruled that false statements are not categorically protected under the First Amendment in the context of the Stolen Valor Act. In Schenck v. United States, 249 U.S. 47 (1919) the court held that speech creating a clear and present danger is not protected by the First Amendment, particularly in the context of coercive speech or speech encouraging unlawful acts.

The Political Speech on Plaintiff's Campaign Sign: Plaintiff's campaign sign, which read, **"*John Liccione for Congress: Building Florida, Saving America*,"** and "***voteliccione.org***" is a clear form of political speech protected by the

First Amendment. Unless Griffith is prepared to argue that "building Florida and saving America" are anathema to Democratic Party values, there was nothing remotely objectionable on Plaintiff's campaign sign that warranted her harassment and sign snatching. The content of this message on the sign directly communicated Plaintiff's overarching political vision for Florida and America at large, making it a critical part of his campaign communication. Defendant Griffith's act of removing this specific sign—while not touching the signs of any of the four other candidates—demonstrates that it was the political message along with his name and campaign website address on the sign, and *only* his sign, that triggered her unlawful action. This selective removal and campaign interference indicates that Griffith's intent was to suppress Plaintiff's political speech, rather than an honest attempt to exercise her own right to free expression. Such conduct falls outside the scope of constitutionally protected activities and constitutes unlawful interference with Plaintiff's campaign speech and his attempts to lawfully interact with voters.

Moreover, 52 U.S.C. § 10307(b) directly applies to the allegations in this case. This federal statute prohibits any form of intimidation, threats, or coercion that interferes with a person's ability to vote or participate in election-related activities and the political process in general. Defendant's obstruction of the hallway at Plaintiff's after-debate event, preventing voters from engaging with Plaintiff's campaign, is a direct violation of this statute. These acts are designed to suppress electoral participation and restrict access to political information, constituting voter intimidation and coercion.

In addition, under the *Reed v. Town of Gilbert* (576 U.S. 155 (2015)) ruling, while the case specifically involved content-based restrictions on speech, it affirms that political

speech and access to political information are critical under the First Amendment. Defendant's actions in barring voters from engaging with Plaintiff, from seeing his campaign signs, and interfering with his ability to communicate clearly to voters, violate these fundamental protections.

4. Physical Voter Intimidation and Coercion

Plaintiff has provided specific factual allegations of physical voter intimidation and coercion, including:

- **Blocking the Hotel Ballroom Hallway:** Defendant Griffith and her agents on July 13, 2024 at the St Petersburg/Clearwater Mariott Hotel, conspired to physically block her debate attendees from accessing Plaintiff's after-debate event and coerced them into exiting the hotel down the back exit stairwell. This conduct, aimed at interfering with Plaintiff's right to campaign freely, and voters' right to engage with him as a candidate in person, violates both state and federal laws prohibiting voter intimidation and coercion. (*52 U.S.C. § 10307(b); Fla. Stat. § 104.0615*).
- **Campaign Sign Theft and Harassment at St. Petersburg College:** Defendant Griffith personally removed Plaintiff's campaign sign in front of witnesses, followed by a public confrontation in the hallway instigated by her, that was aimed at preventing Plaintiff from engaging with voters and from seeing his campaign sign message. Then she continued to interfere by bringing a college security guard to where he was campaigning, on false pretenses, in an effort to stop him from campaigning and to remove his sign. These actions constitute

both voter intimidation and interference with lawful campaigning activities, which go beyond protected political speech.

5. Pattern of Escalating Misconduct Well Beyond Protected Speech, Assembly

Defendant's argument that her actions are protected as part of her freedom of speech and association ignores the broader pattern of escalating misconduct over Plaintiff's entire 15-month campaign. Plaintiff has alleged a systematic, deliberate, and *escalating* effort to interfere with his campaign, involving acts of voter intimidation and coercion, conspiracy to commit fraud, and campaign interference. This pattern includes not only exclusion from debates. It escalated well beyond into physical acts of intimidation, and harassment, and voter intimidation, based on clear bias against Plaintiff, which clearly fall outside any constitutional protection (*Wisconsin v. Mitchell*, 508 U.S. at 484).

6. Allegations of Conspiracy to Commit Mail Ballot Election Fraud Bolstered by Evidence

Plaintiff has sufficiently pled a conspiracy involving Defendant and others to commit election fraud, including the fraudulent submission of mail ballot orders over the Internet, and the marking of blank ballots without voter consent. These allegations are bolstered by specific evidence, including a whistleblower communique corroborating the fraudulent activities and a massive, singular, one-day spike in mail ballot orders. On June 23, 2024, Florida's publicly available mail ballot order records reflected an massive and never again seen spike of over 219,000 mail ballot orders on a Sunday—a highly suspicious and abnormal occurrence without precedent, that further supports Plaintiff's claims of mail ballot fraud. Under both federal and state law, such conduct constitutes

fraud and violates election laws. (*52 U.S.C. § 20511; Fla. Stat. § 104.041*). Defendant's motion to dismiss these claims is without merit.

7. Misapplication of Anti-SLAPP Statute: No Prima Facia Case Established

Defendant has failed to meet the burden of demonstrating a prima facie case under Florida's anti-SLAPP statute, which is intended to protect legitimate free speech or petitioning activity in connection with public issues. Plaintiff's allegations, including voter intimidation, campaign interference, conspiracy, and election fraud, fall squarely outside the scope of protected speech and cannot be shielded by the anti-SLAPP statute (*Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019)).

For a defendant to succeed under anti-SLAPP protections on a motion to dismiss, they must first make a prima facie showing that Plaintiff's claims are solely based on Defendant's exercise of their right to free speech or petitioning activity in connection with a public issue. To meet the burden of a prima facie anti-SLAPP claim at this stage, the Defendant must establish that:

a. <u>The Plaintiff's Lawsuit Based Solely on the Defendant's Exercise of First Amendment Rights:</u> Defendant has not presented sufficient evidence or even argument to demonstrate that Plaintiff's claims arise solely from constitutionally protected activities. The allegations in the complaint—including conspiracy, voter intimidation, coercion, physical interference, fraudulent mail ballot mass production, and improper conduct at Plaintiff's campaigning venues—fall squarely outside the scope of protected free speech. These actions, as described by Plaintiff, represent criminal and civil misconduct, which cannot be shielded by anti-SLAPP protections. Further, no affidavits or documented evidence were provided by the

Defendant to substantiate that the activities in question were constitutionally protected expressions related to a public issue, as required to invoke anti-SLAPP.

b. "The Lawsuit is Without Merit and Filed to Suppress Free Speech:" The defendant must also prove that the plaintiff's claims lack merit and were brought primarily to intimidate or silence the defendant's speech and right to freely assemble in connection to a public issue. Defendant has not met this burden. Plaintiff argues that blocking the hotel hallway so Griffith's debate attendees could be physically herded down a back exit stairwell to prevent them from attending Plaintiff's after-debate party after her "exclusive' debate (sans Liccione) was over, is neither protected speech, nor protected assembly or association. It prevented individual voters, en masse, from *peaceably assembling with Plaintiff* at his just-down-the-hall campaign event. Griffith is accusing Plaintiff of that for which she is clearly guilty.

Plaintiff's complaint is based on numerous specific allegations of wrongful conduct—such as conspiring to fraudulently order and mark mail-in ballots, orchestrating physical barriers at campaign events, battery, and conspiracy to suppress lawful political participation—that are cognizable legal claims. These claims address specific, unlawful acts by the Defendant and her agents that directly harmed Plaintiff's campaign and cannot be reasonably construed as an attempt by Plaintiff to restrict legitimate free speech.

The Florida Second District Court of Appeal has clarified that a prima facia showing requires clear evidence that Plaintiff's claims are directly related to and primarily aimed

at constitutionally protected activities. Gundel v. AV Homes, Inc., 264 So. 3d 304, 314 (Fla. 2d DCA 2019) states that the defendant must first present sufficient factual evidence showing that the plaintiff's lawsuit is based on protected First Amendment activity (such as free speech in connection with a public issue) before the burden shifts to the plaintiff. In this case, Defendant has failed to provide such evidence, relying instead on conclusory statements without supporting documentation or sworn affidavits.

c. Improper Motive by Plaintiff: Defendant's anti-SLAPP claim also fails to establish that Plaintiff's motive was primarily to suppress free speech rather than to remedy further wrongful acts, that directly impacted his campaign and the election at large, *at scale*. Plaintiff's allegations pertain to tangible, unlawful actions taken by Defendant and her agents that resulted in real harm to Plaintiff's ability to run an effective campaign. Without providing any factual basis for Plaintiff's alleged improper motive, Defendant's claim remains unsupported.

The court in Davis v. Mishiyev, 339 So. 3d 449, 453 (Fla. 2d DCA 2022), reinforced that a prima facie case under anti-SLAPP requires more than assertions; it requires actual evidence showing that the plaintiff's claims are primarily based on an exercise of constitutionally protected rights such as free speech. Here, the defendant has provided no affidavits, documents, or any evidence demonstrating that Plaintiff's claims were aimed solely at suppressing lawful free speech or assembly, rather than addressing specific unlawful behavior. Davis v. Mishiyev reinforces that anti-SLAPP motions require evidence, not just assertions, and defendants must make a prima facie showing that the lawsuit targets protected speech or petitioning activity. The burden shifts to the

plaintiff only if the defendant provides such evidence. Conclusory statements or bare assertions by the defendant, without evidence and supporting affidavits, are insufficient to shift the burden under anti-SLAPP statutes.

8. The Supervisory Role of Defendant Griffith

Defendant Griffith's claim that she lacks supervisory power over party members is without merit. As Party Chair and the Democratic Party Boss in Pinellas county, Griffith exercises significant control over party operations and activities. Plaintiff has sufficiently alleged that her role as Chair involved directing the actions that interfered with Plaintiff's campaign, including voter suppression tactics and fraudulent mail ballot activities. Griffith cannot evade responsibility for the actions of party members under her leadership, let alone her own wrongful acts.

9. Pattern of Misconduct

When considered as a whole, the allegations in the complaint describe a coordinated and deliberate effort by Defendant and her co-conspirators to obstruct Plaintiff's campaign through unlawful means. Defendant's reliance on the anti-SLAPP statute and First Amendment protections ignores the broader context of misconduct aimed at manipulating the electoral process and suppressing lawful political participation. (*Bell Atl. Corp. v. Twombly*, 550 U.S. 544 (2007)).

10. Conclusion

Defendant Griffith's conduct, as alleged, goes far beyond constitutionally protected free speech and association rights. Plaintiff has presented substantial allegations of voter intimidation, conspiracy, mail ballot fraud, campaign interference, and the implementation of a sham candidate vetting process aimed at excluding Plaintiff, and

only Plaintiff. These allegations are legally sufficient to proceed to discovery. Griffith's allegations are unsupported by sworn affidavit and evidence. The burden of proof is on Griffith to prove that her candidate vetting process existed, that it wasn't adopted just after Plaintiff announced his candidacy to target him and only him, that it was applied equally, and that due process was equally afforded to all 5 candidates. Griffith has not produced any such admissible evidence. There is no sworn affidavit attached to her motion to dismiss (nor to her recently-served Motion to Sanction Plaintiff). For these reasons, the Court must deny Defendant's motion to dismiss and allow Plaintiff to proceed to discovery, and to present evidence in support of these serious claims.

WHEREFORE, Plaintiff respectfully requests that the Court deny Defendant Jennifer Griffith's Motion to Dismiss.

REQUEST FOR HEARING

Plaintiff requests a hearing on Defendant Griffith's this motion to dismiss.

Respectfully Submitted,

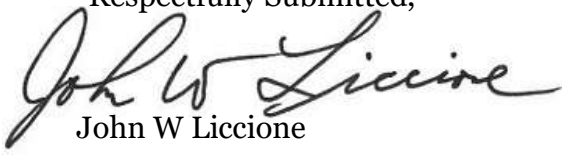


John W Liccione
6800 Gulfport Blvd S.
Ste 201-116
South Pasadena, FL 33707
443-698-8156
Jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this on the 16th day of October 2024, the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to GEORGE A.D. THURLOW, ESQ., Attorney for Defendant JENNIFER GRIFFITH, at gthurlow@rahdertlaw.com, tmccreary@rahdertlaw.com and service@rahdertlaw.com, RYAN D. BARACK, ESQ. and MICHELLE E. NADEAU, ESQ., Attorney for Defendant WHITNEY FOX, at rbarack@employeerights.com, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, at jlake@tlolawfirm.com, and Defendant Mark Weinkrantz via postage prepaid first-class mail at 4738 Belden Circle, Palm Harbor, FL 34685.

Respectfully Submitted,



John W Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-003939-CI

JULIE MARCUS,
JENNIFER GRIFFITH,
WHITNEY FOX,
MARK WEINKRANTZ,
CATHY SALUSTRI LOPER,
PATRICK HEINZEN,
OTHER UNKNOWN CO-CONSPIRATORS,
Defendants.
_____/

DEFENDANT GRIFFITH'S MOTION FOR SANCTIONS

Defendant, JENNIFER GRIFFITH ("Griffith"), by and through her undersigned counsel, and pursuant to Fla. Stat. § 57.105 and Florida Rules of Civil Procedure 1.140 and 1.150, hereby move this Honorable Court for the entry of an order imposing sanctions against Plaintiff, JOHN WILLIAM LICCIONE, and in support thereof state as follows:

I. INTRODUCTION

This instant lawsuit is the third lawsuit that Plaintiff has filed against Griffith in a two-month period. None of these lawsuits have had any legal or factual merit, and have simply been retaliation by Plaintiff, who was a candidate in the Democratic Primary for Florida's 13th Congressional District, against those who did not support his candidacy and in two of these cases, the elections officials who administered the primary election which he lost in a landslide. Ms. Griffith is merely the Chair of a county-level political party; she has no role in administering elections, and as the Chair of a county-level political party, she and her political party have the right to decide whether or not to provide a platform to a particular candidate under the First Amendment to the United States Constitution. This Court should uphold Ms. Griffith's clear right to engage in political speech, and sanction the Plaintiff for filing numerous frivolous lawsuits that seek to interfere or punish Ms. Griffith for exercising her constitutional rights.

ELECTRONICALLY FILED 10/21/2024 02:29:56 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

II. FACTUAL BACKGROUND

1. Plaintiff was a candidate in the Democratic Primary for Florida's 13th Congressional District in the August 20, 2024 election.
2. Defendant Griffith has been the Chair of the Pinellas County Democratic Party ("PCDEC") since December 2022. PCDEC is a county-level affiliate of the Florida Democratic Party ("FDP").
3. In spring 2023, PCDEC decided to enact a "vetting process" for all Democratic candidates to determine which candidates PCDEC would provide a platform for in terms of being featured on PCDEC's website and at events. This is a very common process for political parties to utilize, and in fact, PCDEC referenced policies and legal guidance from at least three other counties in crafting its policy.
4. In June 2023, Plaintiff was informed that he did not meet the standards of PCDEC's vetting process based upon his background check and behavior, and was asked to stay away from party events (a request which Plaintiff did not oblige to on multiple occasions).
5. As confirmation of PCDEC's observations during the vetting process, the *Tampa Bay Times* ran a story on September 18, 2023[1] titled "Anna Paulina Luna's first congressional challenger has checkered past" making reference to Plaintiff having faced "trespassing and assault charges." The story makes mention of Plaintiff being "initially deemed incompetent to stand trial and involuntarily hospitalized."
6. Since being informed of his failing the vetting process in June 2023, Plaintiff made numerous social media and blog posts that chastised PCDEC and Griffith.
7. After an incident that Plaintiff alleged occurred between him and an officer of PCDEC[2], and PCDEC exercising its right to association by declining to invite Plaintiff to a Congressional debate, Plaintiff filed a lawsuit against Griffith, PCDEC, the PCDEC Secretary, and the Florida Democratic Party on July 3, 2024 (Case No. 24-002994-CI, hereinafter "*Liccione v. PCDEC*").

[1] https://www.tampabay.com/news/florida-politics/2023/09/18/john-liccione-anna-paulina-luna-congress-district-13-pinellas-democrat/

[2] In spite of Plaintiff's allegation that this incident occurred, he was unable to produce any witness to the St. Petersburg Police Department to support the complaint he filed.

8. In both social media posts and in his Complaint in *Liccione v. PCDEC*, Plaintiff mentions that he has sought two restraining orders against Griffith. While Griffith was never served with court documents from these proceedings—presumably because the Court denied Plaintiff's petition which means the Respondent is never served and there is no publicly available online record—she does not contest Plaintiff's allegations that he attempted to file these two actions against her.
9. On August 12th, 2024, Griffith (along with PCDEC and PCDEC Secretary Michael Sherosky) filed a Motion to Dismiss in *Liccione v. Griffith* under Florida's anti-SLAPP statute (Fla. Stat. § 768.295) on the grounds that (1) the primary purpose of Plaintiff's lawsuit was to quiet the protected political speech of Griffith and PCDEC; (2) that Griffith and PCDEC have a well-defined legal right to express their opinions on the qualifications of candidates for political office, such as the Plaintiff; and (3) that the other issues raised in the lawsuit were not properly pled and are non-justiciable, especially as it pertains to non-state actors such as Griffith and PCDEC. This Motion to Dismiss is set for hearing before the Honorable Thomas Ramsberger on October 1, 2024, and Defendant Griffith will supplement this Motion with the Court's ruling on the issues presented in the Motion to Dismiss.
10. After having notice of this legal defense, Plaintiff opted to include Griffith as a party to a federal lawsuit he filed on August 23, 2024 (*Liccione v. Marcus, et al*, United States District Court for the Middle District of Florida Case No. 8:24-cv-2005-SDM-NHA, hereinafter the "Federal Lawsuit"). Defendants Marcus, Fox, and Weinkrantz are also parties to the Federal Lawsuit. The Federal Lawsuit raised similar factual allegations, and attempted to plead similar causes of action, to this instant lawsuit, and sought Emergency Injunctive Relief based upon the unverified statements of "Tampa Girl." This instant lawsuit also relies upon the unverified statements of "Tampa Girl."
11. On August 26, 2024, The Honorable United States District Judge Steven D. Merryday entered an Order denying injunctive relief in the Federal Lawsuit. A copy of that order is attached as **Exhibit 1** to this Motion.
12. In his Order, Judge Merryday characterized the Federal Lawsuit as being:

> A candidate in the Democrat congressional primary, John Liccione allegedly received from an anonymous person "using the codename 'Tampa Girl'" an online message that purported to reveal the details of a

> scheme to manipulate the August 20, 2024 primary election. Based solely on Tampa Girl's message, the plaintiff sues an array of officials and requests a temporary restraining order to "prevent the certification of the August 20, 2024.

13. Judge Merryday's Order further concluded that "Nothing in the [Federal Lawsuit] establishes either a likelihood of success on the merits (an anonymous, hearsay message from 'Tampa Girl' supplies no prospectively admissible fact supporting relief)."
14. After Plaintiff (1) was served a copy of a Motion to Dismiss in *Liccione v. PCDEC* setting forth a cogent argument that Griffith's conduct was protected First Amendment Activity and (2) a Federal Judge found that there is "no prospectively admissible fact," including the anonymous statement from "Tampa Girl" support Plaintiff obtaining injunctive relief, Plaintiff opted to file this lawsuit—which is substantially similar to the Federal Lawsuit and contains overlapping allegations to those in *Liccione v. PCDEC*—on September 3, 2024.

III. THE THRESHOLD FOR SANCTIONS

15. Fla. Stat. § 57.105 governs sanctions that may be imposed on a litigant for raising unsupported claims or defenses. The statute states:

> (1) Upon the court's initiative or motion of any party, the court **shall** award a reasonable attorney's fee, including prejudgment interest, to be paid to the prevailing party in equal amounts by the losing party and the losing party's attorney on **any claim or defense** at **any time** during a civil proceeding or action in which the court finds that the losing party or the losing party's attorney knew or should have known that a claim or defense when initially presented to the court or at any time before trial:
> (a) Was not supported by the material facts necessary to establish the claim or defense; or
> (b) Would not be supported by the application of then-existing law to those material facts.

(emphasis added)

16. A party who does not have knowledge as to whether his or her claim or defense is supportable in fact and in law is required to make reasonable efforts to obtain such knowledge. See *Bowen v. Brewer*, 936 So. 2d 757 (Fla. 2d DCA 2006).
17. Attorney's fees awarded under Fla. Stat. § 57.105 are calculated from the time it was known or should have been known that the claim had no basis in fact or law. Thus, where

a claim was frivolous from the outset, the fee award should consider the defense of the claim from the beginning and not from the date of the filing of the motion for attorney's fees. See *Wood v. Haack*, 54 So. 3d 1082 (Fla. 4th DCA 2011).

18. Florida courts also have the ability to impose non-monetary sanctions.
19. The Florida Supreme Court has found it appropriate to sanction pro se litigants such as Plaintiff who "have abused the judicial process and otherwise misused [the] Court's limited judicial resources by filing frivolous, non-meritorious, or otherwise inappropriate filings" by prohibiting them from initiating further proceedings before the Court by prohibiting them from filing future pleadings, motions, or other requests unless such requests were signed by an attorney in good standing. *Lomax v. Taylor*, 143 So. 3d 920 (Fla. 2014).
20. The Second DCA, while recognizing the importance of access to the Courts, has found it appropriate to sanction pro se individuals by restricting their filing access in order to "prevent abusive filings" and stop "repetitious and frivolous pleadings." Harris *v. Gattie*, 263 So. 3d 829, 831 (Fla. 2d DCA 2019)
23. Sanctions may be imposed even when dismissal with prejudice is deemed too severe a remedy. *Rares v. Campbell*, 661 So. 2d 408 (Fla. 3d DCA 1995).

IV. EVEN AS A *PRO SE* LITIGANT, PLAINTIFF SHOULD HAVE BEEN AWARE THAT THIS INSTANT CASE HAD NO FACTUAL OR LEGAL MERIT BEFORE HE FILED IT.

24. Before filing any of his lawsuits, Plaintiff should have ascertained whether his theory was supported by any prospectively admissible fact or by law.
25. Even if Plaintiff did not bother ascertaining whether *Liccione v. PCDEC* was supported by fact or law before filing, he should have reviewed the law cited in the Motion to Dismiss which was served upon him well before he opted to file two other cases, including this instant action.
26. Even if Plaintiff did not bother ascertaining whether the Federal Lawsuit was supported by fact or law before filing, Plaintiff knew or should have known of Judge Merryday's Order in the Federal Lawsuit, which used exceptionally clear language to communicate that there were not material facts necessary to establish Plaintiff's claims, and that

anonymous statements from "Tampa Girl" were not admissible evidence. In spite of a federal judge making that finding, Plaintiff still opted to advance this cause based upon the same materials.

V. THE APPROPRIATE SANCTION AGAINST PLAINTIFF WOULD BE THE AWARD OF REASONABLE ATTORNEY'S FEES AND COSTS, AND A PROHIBITION AGAINST FILING FURTHER ACTIONS AGAINST DEFENDANT GRIFFITH.

27. Upon the clear language of Fla. Stat. § 57.105(1), this Court must award Griffith her reasonable attorney's fees and costs should it reach the conclusion that Plaintiff knew or should have known that his case (a) was not supported by the material facts necessary to establish the claim or defense; or (b) would not be supported by the application of then-existing law to those material facts.
28. Plaintiff should have known that his case was not supported by the material facts necessary to support his claim or defense by August 26, 2024, the date Judge Merryday entered his order making that abundantly clear. And in reality, Plaintiff should have known that before filing either of his two previous lawsuits.
29. The monetary sanction of the award of attorney's fees in this case alone is insufficient. Based upon the clear fact that Plaintiff filed three cases against Griffith in a two month period, and that Plaintiff has represented that he filed two other cases against Griffith earlier this year, Plaintiff has apparently filed five (5) cases against Griffith this year, none of which have had any legitimacy.
30. It is also unknown whether a judgment for attorney's fees against Plaintiff, as a pro se litigant, would be collectable. That warrants serious consideration of alternative remedies.
31. The result of Plaintiff having filed five (5) lawsuits against Griffith—three (3) of which required hiring an attorney for a response—is that Griffith has had to expend time and money responding to these frivolous lawsuits.
32. In fact, it has come to the point where if Griffith hears a knock on the door early in the morning, Griffith and her family assume that it is Plaintiff attempting to serve her with yet another frivolous lawsuit.

33. This extreme abuse of process by Plaintiff as it pertains to Ms. Griffith deems a bar on filing pro se lawsuits—either in full or solely as it pertains to Ms. Griffith and the organizations she is affiliated with—as an appropriate and necessary sanction. Plaintiff is clearly not deterred by a Judge merely finding that his case is without merit; Plaintiff has shown that when that happens, he just goes to file another lawsuit.

VI. CONCLUSION

Plaintiff has clearly engaged in prohibited litigation tactics by filing an action against Griffith which knew was unsupported by fact and law, and in fact was informed of that by a Federal Judge in advance of filing. Pursuant to Fla. Stat. § 57.105(1), this Court should award Griffith her reasonable attorney's fees and costs incurred in defending this action. Given Plaintiff's pattern of filing frivolous actions pro se against Ms. Griffith, this Court should also impose a non-monetary sanction upon Plaintiff restricting his ability to file further pro se pleadings directed at Ms. Griffith.

Dated: September 16, 2024

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing document was served upon John William Liccione via e-mail to JLiccione@gmail.com and by FedEx to 2826 54th Street South, Unit A, Gulfport, FL 33707 (Tracking # 778591286635) on this 16th day of September, 2024.

/s/ George A.D. Thurlow
George A.D. Thurlow, Esquire
FBN 1019960
Rahdert & Mortimer, PLLC
535 Central Avenue, Suite 200
St. Petersburg, FL 33701
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Attorneys for Defendant,
GRIFFITH

EXHIBIT 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. CASE NO. 8:24-cv-2005-SDM-NHA

JULIE MARCUS, et. al.,

Defendants.
_____/

ORDER

A candidate in the Democrat congressional primary, John Liccione allegedly received from an anonymous person "using the codename 'Tampa Girl'" an online message that purported to reveal the details of a scheme to manipulate the August 20, 2024 primary election. Based solely on Tampa Girl's message, the plaintiff sues an array of officials and requests a temporary restraining order to "prevent the certification of the August 20, 2024."

Under Local Rule 6.01(a), a motion for a temporary restraining order must include:

> (1) "Temporary Restraining Order" in the title;
> (2) specific facts — supported by a verified complaint, an affidavit, or other evidence — demonstrating an entitlement to relief;
> (3) a precise description of the conduct and the persons subject to restraint;
> (4) a precise and verified explanation of the amount and form of the required security;
> (5) a supporting legal memorandum; and
> (6) a proposed order.

Liccione's motion, imbedded in the complaint, fails to include a precise and verified explanation of the amount and form of the required security, fails to include a supporting legal memorandum, and fails to include a proposed order.

Also, under Local Rule 6.01(b) the legal memorandum must establish:

> (1) the likelihood that the movant ultimately will prevail on the merits of the claim,
> (2) the irreparable nature of the threatened injury and the reason that notice is impractical,
> (3) the harm that might result absent a restraining order, and
> (4) the nature and extent of any public interest affected.

Nothing in the complaint establishes either a likelihood of success on the merits (an anonymous, hearsay message from "Tampa Girl" supplies no prospectively admissible fact supporting relief) or the reason that notice is impractical. Liccione's facially insufficient motion for a temporary restraining order and all other pending motions (Docs. 3, 4, 5, 6) are **DENIED**.

ORDERED in Tampa, Florida, on August 26, 2024.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

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

JOHN WILLIAM LICCIONE,
Plaintiff
v. Case No. 24-003939-CI
JULIE MARCUS,
JENNIFER GRIFFITH, et al,
Defendants.
_____/

PLAINTIFF'S RESPONSE TO DEFENDANT GRIFFITH'S

MOTION FOR SANCTIONS

INTRODUCTION

1. Plaintiff, **John William Liccione ("Liccione")**, pro se, submits this response in opposition to **Defendant Jennifer Griffith's ("Griffith") Motion for Sanctions**. The motion not only lacks merit but is also procedurally deficient. Defendant Griffith has failed to provide a sworn affidavit to authenticate the factual allegations on which her motion relies, violating established procedural requirements. As shown below, without such verification, Defendant's motion lacks credibility and should be denied in its entirety.

LEGAL STANDARD

2. Sanctions are an extraordinary remedy reserved for instances of clear bad faith or serious abuse of judicial process. **See Chambers v. NASCO, Inc., 501 U.S. 32, 45-46 (1991)**. Under **Florida Statutes § 57.105**, sanctions may only be imposed when a party or their attorney knowingly files a claim that lacks any factual or legal basis. Courts in Florida must exercise caution in imposing sanctions, as they are appropriate

ELECTRONICALLY FILED 10/28/2024 01:07:53 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

only in cases involving indisputable and egregious conduct. **See Roadway Express, Inc. v. Piper, 447 U.S. 752, 764 (1980)**.

3. **Thompson v. Citizens Nat'l Bank of Leesburg, 433 So. 2d 32 (Fla. 5th DCA 1983)**, is central to understanding the procedural requirements for any motion introducing new facts. In Thompson, the court emphasized that motions based on facts not present in the record must be supported by an affidavit or sworn testimony to authenticate those facts. A motion that lacks supporting affidavits or verified evidence is thus considered procedurally deficient. Defendant's failure to provide this fundamental evidentiary support in her motion is a critical procedural flaw that undermines her credibility and warrants denial of her motion for sanctions.

The E. Jean Carrol v. Donald Trump Defamation Cases are Analogous to Griffith's Pattern of Continuing and Escalating Misconduct

4. A relevant case precedent can be applied here from the E. Jean Carroll v. Donald Trump defamation cases in New York. After Carroll initially won $5 million in damages for defamation and sexual abuse, Trump refused to stop and escalated his defamatory remarks. As a result, Carroll filed another defamation lawsuit, leading to an additional $83.3 million jury award for both punitive and compensatory damages in January 2024. This illustrates how ongoing harmful behavior from a defendant, despite previous legal consequences, can justify successive lawsuits. Similarly, Plaintiff's continued legal actions were necessary to address Defendant Griffith's ongoing interference and misconduct after the first lawsuit was filed on July 3, 2024. Instead of ceasing her unlawful actions, Defendant Griffith intensified her interference with Plaintiff's campaign, including efforts to physically block voters from attending his campaign event on July 13, 2024, engaging in mass mail ballot fraud, and further acts of

defamation. These acts escalated leading up to the August 20, 2024, election necessitating additional legal action from Plaintiff.

ARGUMENT AND MEMORANDUM OF LAW

I. The Procedural Deficiencies in Defendant's Motion Are Fatal Under Thompson

4. Defendant Griffith's motion relies on numerous factual allegations that are not present in the case record and lack the necessary affidavit or sworn testimony for authentication. According to **Thompson v. Citizens Nat'l Bank of Leesburg**, the absence of a supporting affidavit makes the motion procedurally deficient and undermines its foundation. In Thompson, the court held that unsupported factual assertions, when presented without verification, lack the procedural integrity required to be considered by the court. Griffith's failure to adhere to this procedural standard is fatal to her motion and should result in its denial. **See Thompson, 433 So. 2d at 34**.

5. Defendant's motion introduces a range of allegations—regarding Plaintiff's supposed motives, campaign conduct," and purported interactions with PCDEC— plus her alleged "candidate vetting process that are speculative, unsupported by the case record, and unaccompanied by any sworn affidavit. Such a procedural omission directly contravenes the precedent established in Thompson, which underscores that factual claims not contained within the case record must be substantiated by an affidavit to establish credibility. Defendant's reliance on unverified claims reflects a failure to meet Florida's procedural standards, rendering her motion unfit for consideration.

II. Defendant's Motion Is Rife with Speculative Allegations Unsupported by Evidence

6. Griffith's motion mischaracterizes the nature and status of Plaintiff's active lawsuits, asserts unsupported claims regarding Plaintiff's campaign and personal conduct, and makes inaccurate statements about Plaintiff's prior legal history. Each of these points introduces extraneous facts not present in the case record, and Griffith has not provided the affidavit required to authenticate such assertions under Florida motion practice.

A. Misleading Claims on the Status of Plaintiff's Lawsuits

7. Defendant Griffith incorrectly asserts that Plaintiff has filed five frivolous lawsuits against her. This is factually misleading. In reality, two actual lawsuits which seek damages are currently active and await substantive hearings and pre-trial rulings, with the first case scheduled for a hearing on Defendant's Motion to Dismiss on **November 21, 2024**. The second case was referred by the U.S. District Court in Tampa to a magistrate judge and placed on a fast-track docket under the Federal IDEAS program. This procedural action underscores that the court does not view Plaintiff's tort and election fraud and interference claims as frivolous, and Griffith's portrayal of these cases is disingenuous and unsupported by evidence.

B. False Assertions Regarding Plaintiff's Campaign Conduct

8. Griffith alleges that Plaintiff engaged in disruptive behavior following the PCDEC candidate vetting process. Contrary to Defendant's claims, Plaintiff's interactions with PCDEC were respectful and professional, including a $1,200 donation to support a PCDEC event, which was later refunded. Plaintiff's "behavior," as Griffith inaccurately describes, was limited to attendance at standard PCDEC meetings and events where he introduced himself and disclosed his candidacy for public office. Defendant's

unsupported characterization of Plaintiff's alleged misconduct is unsubstantiated, and she has not provided any affidavit or sworn testimony to verify these claims.

9. Defendant also alleges that Plaintiff attended PCDEC events after being "asked to stay away," a claim that is patently false. Plaintiff received no such directive, either verbally or in writing, and was simply informed that he could not publicly speak at PCDEC events. During the July 13, 2024, Candidate Debate, Plaintiff did not attend PCDEC's debate but instead held his own campaign event at the same venue down the hall at the St. Petersburg/Clearwater Marriott hotel. Plaintiff alleges that Griffith obstructed attendees from his event in front of Pinellas Park police officers and the hotel events manager, by physically blocking the hallway, constituting voter intimidation and campaign interference. Griffith's account of these events is unsupported by any verified evidence or affidavit.

C. Mischaracterization of Plaintiff's Legal History

10. Griffith references an October 2023 Tampa Bay Times article concerning Plaintiff's "checkered past" to introduce irrelevant information about dismissed charges and expunged records. This attempt to invoke Plaintiff's past as a pretext for attacking his credibility is both misleading and without relevance to the current litigation. Defendant knew or should have known that Plaintiff was exonerated and had his records expunged, making her portrayal misleading. Griffith's characterization of Plaintiff as possessing a "checkered past" is defamatory and lacks any affidavit to substantiate these claims.

III. The Lack of a Supporting Affidavit Undermines the Motion's Credibility

11. Griffith's failure to include a sworn affidavit to support her factual claims violates the procedural requirements clearly set forth in **Thompson v. Citizens Nat'l Bank**

of Leesburg. The absence of verified evidence not only undermines the credibility of her motion but also denies the Court a reliable foundation upon which to evaluate the factual merits of her allegations. Without an affidavit, Griffith's motion is procedurally deficient, lacking the integrity required to substantiate her request for sanctions. **See H.L. Brown, III, P.A. v. George S. Koulianos, D.O., P.A., 930 So. 2d 808 (Fla. 2d DCA 2006)** (affidavits required to support motions based on evidence outside the case record).

IV. Plaintiff's Claims Are Not Frivolous or Filed in Bad Faith

12. Griffith has not demonstrated that Plaintiff's claims lack merit or were filed in bad faith. Plaintiff's allegations address substantive issues of voter intimidation, campaign interference, defamation, and election fraud, and earlier unlawful acts such as campaign sign snatching, battery and assault, each of which warrants judicial consideration. Courts have consistently held that multiple filings do not equate to an abuse of process if each filing addresses discreet and specific instances of misconduct. See Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990) (sanctions inappropriate where a claim has arguable support in law or fact).

V. Defendant's Attempt to Use Multiple Filings as Grounds for Sanctions Is Unfounded

13. Griffith's argument that Plaintiff's successive filings warrant sanctions is baseless. Each filing responds to a specific instance of campaign interference, voter obstruction, or defamation, election fraud, and underscores the ongoing nature of Griffith's cumulative interference in Plaintiff's campaign. Defendant has failed to meet the burden under **Florida Statutes § 57.105**, which requires a lack of both legal and factual support for the imposition of sanctions. Plaintiff's filings are substantiated by credible

claims requiring judicial review, and Griffith's attempt to portray these actions as frivolous is unsupported by any verified evidence.

CONCLUSION

14. Defendant Griffith's Motion for Sanctions is procedurally and substantively deficient, failing to comply with the evidentiary requirements established in **Thompson v. Citizens Nat'l Bank of Leesburg, 433 So. 2d 32 (Fla. 5th DCA 1983)**, which mandates that motions introducing extrinsic facts must be supported by a sworn affidavit or verified evidence. The absence of such an affidavit renders Griffith's motion procedurally flawed, undermining its credibility and admissibility.

15. Griffith's reliance on unsupported factual assertions also violates Florida's established standards for motion practice, as reinforced in **H.L. Brown, III, P.A. v. George S. Koulianos, D.O., P.A., 930 So. 2d 808 (Fla. 2d DCA 2006)**, which emphasizes that affidavits are essential for motions that present facts outside the record. Without verified evidence, Griffith's motion lacks the procedural integrity required for consideration.

16. Plaintiff's claims are not frivolous or made in bad faith; rather, they seek redress for substantial grievances involving voter intimidation, defamation, and campaign interference—legitimate issues warranting judicial consideration. As the U.S. Supreme Court explained in **Cooter & Gell v. Hartmarx Corp., 496 U.S. 384, 393 (1990)**, sanctions are inappropriate when a claim has arguable support in law or fact, highlighting that Defendant's reliance on sanctions is premature and unfounded. Further, under **Florida Statutes § 57.105**, sanctions are an extreme measure

requiring clear evidence that both legal and factual support are absent, a burden Griffith has failed to meet.

RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Deny Defendant's Motion for Sanctions in its entirety;

B. Other relief as the court deems appropriate.

Respectfully submitted,



John W Liccione, Plaintiff
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this on the 28st day of October 2024, the foregoing document was filed with the Clerk of the Circuit Court by using the Florida Courts E-Filing Portal and simultaneously served through the E-Portal to GEORGE A.D. THURLOW, ESQ., Attorney for Defendant JENNIFER GRIFFITH, JAMES B. LAKE, ESQ., Attorney for Defendant CATHY SALUSTRI LOPER, and via postage pre-paid 1st class mail to: Defendant Patrick Heinzen at 4200 54th Ave S #1382, St. Petersburg, FL 33711, and Defendant Mark Weinkrantz at 4738 Belden Circle, Palm Harbor, FL 34685.



John W. Liccione

Caution
As of: September 14, 2024 9:27 PM Z

Eu v. San Francisco County Democratic Cent. Comm.

Supreme Court of the United States

December 5, 1988, Argued ; February 22, 1989, Decided

No. 87-1269

Reporter

489 U.S. 214 *; 109 S. Ct. 1013 **; 103 L. Ed. 2d 271 ***; 1989 U.S. LEXIS 1042 ****; 57 U.S.L.W. 4251

EU, SECRETARY OF STATE OF CALIFORNIA, et al. v. SAN FRANCISCO COUNTY DEMOCRATIC CENTRAL COMMITTEE et al.

Prior History: [****1] APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT.

Disposition: 826 F. 2d 814, affirmed.

Core Terms

election, endorsements, political party, ban, candidates, central committee, chair, parties, governing body, voters, compelling state interest, regulation, restrictions, provisions, residents, campaign, northern, prevents, burdens, leaders, rights, freedom of association, associational rights, internal affairs, term of office, factionalism, composition, limits, rotate

Case Summary

Procedural Posture

Defendant state officials challenged the decision of the United States Court of Appeals for the Ninth Circuit, which granted summary judgment to plaintiff political parties on their claims that California state election laws that prohibited the political parties from endorsing candidates and regulated their internal affairs violated their free speech and free association rights under the United States Constitution.

Overview

California had a complex set of laws that governed political parties in the state, including a ban on the political parties' ability to endorse primary candidates and regulations on their internal affairs. The political parties filed suit against the state officials to block the enforcement of these laws. The district court granted summary judgment to the political parties, which the circuit court affirmed. On further appeal, the Court affirmed. The Court held that the ban on primary endorsements violated

the free speech and free association rights of the political parties because it directly hampered the ability of the political parties to spread its message without advancing a compelling state interest. The Court held that the regulations over the internal affairs of the political parties violated the political parties' free association rights because it directly affected who would represent the parties.

Outcome

The Court affirmed the decision of the court of appeals, which had declared California's ban on primary endorsements by the political parties and regulation of the internal affairs of the political parties unconstitutional.

LexisNexis® Headnotes

Constitutional Law > Congressional Duties & Powers > Elections > Time, Place & Manner Restrictions

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Political Speech

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > General Overview

HN1[] **Elections, Time, Place & Manner Restrictions**

A State's broad power to regulate the time, place, and manner of elections does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. To assess the constitutionality of a state election law, the courts first examine whether it burdens rights protected by the First and Fourteenth Amendments. If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest and is narrowly tailored to serve that interest.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Political Speech

Constitutional Law > Bill of

Rights > Fundamental Freedoms > General Overview

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > General Overview

HN2[] **Freedom of Speech, Political Speech**

Debate on the qualifications of candidates is integral to the operation of the system of government established by our Constitution. Indeed, the First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office. Free discussion about candidates for public office is no less critical before a primary than before a general election. In both instances, the election campaign is a means of disseminating ideas as well as attaining political office.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Political Speech

HN3[] **Freedom of Speech, Political Speech**

A highly paternalistic approach limiting what people may hear is generally suspect, but it is particularly egregious where the State censors the political speech a political party shares with its members.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN4[] **Fundamental Freedoms, Freedom of Association**

It is well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. Freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preferences.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Political Speech

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

HN5[] **Freedom of Speech, Political Speech**

Maintaining a stable political system is, unquestionably, a compelling state interest.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Political Speech

HN6[] **Freedom of Speech, Political Speech**

Certainly the State has a legitimate interest in fostering an informed electorate. However, a State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism. While a State may regulate the flow of information between political associations and their members when necessary to prevent fraud and corruption, there is no evidence that California's ban on party primary endorsements serves that purpose.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

HN7[] **Fundamental Freedoms, Freedom of Association**

A political party's determination of the structure which best allows it to pursue its political goals, is protected by the Constitution. Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

HN8[] **Fundamental Freedoms, Freedom of Association**

A State indisputably has a compelling interest in preserving the integrity of its election process. Toward that end, a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest. For example, a State may impose certain eligibility requirements for voters in the general election even though they limit parties' ability to garner support and members. A State may impose restrictions that promote the integrity of primary elections.

Lawyers' Edition Display

Decision

California law banning endorsement of primary candidates by parties' governing bodies held to violate parties' speech and association rights under Federal Constitution's First Amendment.

Summary

Provisions of the California Elections Code (1) forbade the official governing bodies of political parties from endorsing candidates in party primaries, (2) restricted the organization and composition of such official governing bodies, (3) limited the term of office for a party's state central committee chair, and (4) required that the chair rotate between residents of northern and southern California. Various county central committees of the Democratic and Republican parties, and other groups and individuals active in partisan politics in California, brought an action in the United States District Court for the Northern District of California against state officials responsible for enforcing the Code. The plaintiffs contended that the provisions in question deprived political parties and their members of the rights of free speech and free association guaranteed by the Federal Constitution's First and Fourteenth Amendments. The District Court granted summary judgment for the plaintiffs as to the provisions in question, and the United States Court of Appeals affirmed (792 F2d 802). On appeal, the United States Supreme Court vacated and remanded (479 US 1024, 93 L Ed 2d 820, 107 S Ct 864) for further consideration in light of its decision in Tashjian v Republican Party of Connecticut (1986) 479 US 208, 93 L Ed 2d 514, 107 S Ct 544. After supplemental briefing, the Court of Appeals concluded that its previous decision was supported by the Tashjian decision, supra, and accordingly reinstated its judgment affirming the District Court's decision (826 F2d 814).

On appeal, the United States Supreme Court affirmed. In an opinion by Marshall, J., joined by Brennan, White, Blackmun, Stevens, O'Connor, Scalia, and Kennedy, JJ., it was held that (1) the provision concerning endorsement of primary candidates (a) infringed upon the free speech rights of parties and their members, because it directly hampered the ability of a party to spread its message and hamstrung voters seeking to inform themselves about the candidates and the campaign issues, (b) infringed upon political parties' freedom of association, because the provision prevented parties from promoting candidates at the crucial juncture at which the appeal to common principles may be translated into concerted action and, hence, to political power in the community, and (c) could

not be justified as advancing the state's compelling interests in maintaining a stable political system, protecting primary voters from confusion and undue influence, or preserving party stability; and (2) the provisions regulating the parties' internal affairs (a) burdened the freedom of association of political parties and their members, because such provisions limited a party's discretion in how to organize itself, conduct its affairs, and select its leaders, and (b) could not be justified as serving compelling state interests in preserving the integrity of the election process, insuring the democratic management of a party's internal affairs, or preventing regional friction.

Stevens, J., concurring, joined the court's opinion, but expressed the view that such phrases as "compelling state interest" were too convenient and result-oriented to be helpful for constitutional analysis.

Rehnquist, Ch. J., did not participate.

Headnotes

CONSTITUTIONAL LAW §940.5 > freedom of speech and association -- party endorsement of primary candidates -- > Headnote:

LEdHN[1A][⬇] [1A]***LEdHN[1B]***[⬇] [1B]***LEdHN[1C]***[⬇] [1C]***LEdHN[1D]***[⬇] [1D]***LEdHN[1E]***[⬇] [1E]***LEdHN[1F]***[⬇] [1F]***LEdHN[1G]***[⬇] [1G]***LEdHN[1H]***[⬇] [1H]***LEdHN[1I]***[⬇] [1I]***LEdHN[1J]***[⬇] [1J]

A state elections code provision that forbids the official governing bodies of political parties from endorsing candidates in party primaries violates the free speech rights, guaranteed by the Federal Constitution's First and Fourteenth Amendments, of political parties and their members, because the provision, which affects speech that is at the core of the electoral process and of the First Amendment freedoms, directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues; such a provision infringes upon political parties' freedom of association protected by the First and Fourteenth Amendments, because the provision prevents parties from promoting candidates at the crucial juncture at which the appeal to common principles may be translated into concerted action and, hence, to political power in the community; such a provision may not be justified as advancing the state's compelling interests in maintaining a stable political system and protecting primary voters from confusion and undue influence, where the state does not

adequately explain how the provision advances those interests; nor may the provision be justified as serving a compelling state interest in party stability, since preserving party unity during a primary is not a compelling state interest.

CONSTITUTIONAL LAW §940.5 > freedom of association -- regulation of party's internal structure -- > Headnote:

LEdHN[2A][⬇] [2A]***LEdHN[2B]***[⬇] [2B]***LEdHN[2C]***[⬇] [2C]***LEdHN[2D]***[⬇] [2D]***LEdHN[2F]***[⬇] [2F]

State statutory provisions that (1) restrict the organization and composition of the official governing bodies of political parties, (2) limit the term of office for a party's state central committee chair, and (3) require that the chair rotate between residents of northern and southern parts of the state burden the freedom of association, guaranteed by the Federal Constitution's First and Fourteenth Amendments, of political parties and their members, because such provisions limit a party's discretion in how to organize itself, conduct its affairs, and select its leaders; such provisions cannot be justified as serving a compelling state interest in preserving the integrity of the election process, where the state does not show that the provisions are necessary to insure the order and fairness of elections; such provisions cannot be justified as serving a compelling state interest in the democratic management of a party's internal affairs, where state intervention is not necessary to prevent the derogation of the civil rights of party adherents, because the state has no interest in protecting the integrity of the party against the party itself; the provisions regulating the party chair cannot be justified as preventing regional friction, because a state cannot substitute its judgment for that of a party as to the desirability of a particular internal party structure.

CONSTITUTIONAL LAW §940.5 > First Amendment -- validity of state regulations -- > Headnote:

LEdHN[3][⬇] [3]

A state's broad power to regulate the time, place, and manner of elections does not extinguish the state's responsibility to observe the limits established by the rights of the state's citizens under the Federal Constitution's First Amendment; to assess the constitutionality of a state election law, a

court first examines whether the law burdens rights protected by the First and Fourteenth Amendments; if the challenged law burdens the rights of political parties and their members, the law can survive constitutional scrutiny only if the state shows that the law advances a compelling state interest and is narrowly tailored to serve that interest.

CONSTITUTIONAL LAW §940.5 > freedom of speech -- election campaigns -- primaries -- > Headnote:

LEdHN[4][] [4]

The Federal Constitution's First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office; for First Amendment purposes, free discussion about candidates for public office is no less critical before a primary than before a general election, since in both instances, the election campaign is a means of disseminating ideas as well as attaining political office.

CONSTITUTIONAL LAW §933 > First Amendment -- censorship -- political speech -- > Headnote:

LEdHN[5][] [5]

A state's highly paternalistic approach limiting what people may hear is generally suspect under the Federal Constitution's First Amendment, but it is particularly egregious where the state censors the political speech that a political party shares with its members.

CONSTITUTIONAL LAW §940.5 > freedom of association -- political parties -- > Headnote:

LEdHN[6][] [6]

Partisan political organizations enjoy freedom of association protected by the Federal Constitution's First and Fourteenth Amendments; such freedom of association means not only that an individual voter has the right to associate with the political party of her choice, but also that a political party has a right to identify the people who constitute the association and to select a standard bearer who best represents the party's ideologies and preferences.

CONSTITUTIONAL LAW §940.5 > right of

association -- > Headnote:

LEdHN[7][⬇] [7]

Imposing limitations on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is a restraint on the federal constitutional right of association.

CONSTITUTIONAL LAW §940.5 > free speech and association -- political stability -- informed electorate -- > Headnote:

LEdHN[8A][⬇] [8A]***LEdHN[8B]***[⬇] [8B]

For purposes of the rule that a state's burden on the rights to free speech and free association can survive constitutional scrutiny only if a compelling governmental interest is served, maintaining a stable political system is a compelling state interest, and a state has a legitimate interest in fostering an informed electorate.

ELECTIONS §2 > flow of political information -- > Headnote:

LEdHN[9][⬇] [9]

A state may properly regulate the flow of information between political associations and their members when necessary to prevent fraud and corruption.

APPEAL §1331.5 > what reviewable -- > Headnote:

LEdHN[10A][⬇] [10A]***LEdHN[10B]***[⬇] [10B]

On appeal from a United States Court of Appeals decision that affirmed a United States District Court judgment holding that a state's election code provisions violated the free speech and associational rights of political parties, the United States Supreme Court will not disturb the District Court's ruling that the central committees of various political parties had authorization and capacity to bring and maintain the litigation, where the Court of Appeals did not disturb this ruling.

CONSTITUTIONAL LAW §940.5 > freedom of association -- political parties -- > Headnote:

LEdHN[11][⬇] [11]

A political party's determination of the structure which best allows it to pursue its political goals is

protected by the Federal Constitution; freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders.

CONSTITUTIONAL LAW §940.5 > associational rights -- integrity of election process -- regulation of parties -- > Headnote:

LEdHN[12A][] [12A]***LEdHN[12B]***[] [12B]

For purposes of the federal constitutional requirement that laws burdening the associational rights of political parties and their members serve a compelling state interest, a state has a compelling interest in preserving the integrity of its election process; toward that end, a state may properly enact laws that interfere with a political party's internal affairs when necessary to insure that elections are fair and honest; for example, a state may properly impose certain eligibility requirements for voters in the general election, even though they limit the ability of political parties to garner support and members, where such requirements are necessary to insure that elections are fair and honest; however, a state cannot justify regulating a party's internal affairs without showing that such regulation is necessary to insure an election that is orderly and fair.

APPEAL §1331.5 > what reviewable -- > Headnote:

LEdHN[13A][] [13A]***LEdHN[13B]***[] [13B]

On appeal from a United States Court of Appeals decision holding that a state's election code provisions, purportedly designed to curb friction within political parties, violate the parties' free speech and associational rights, the United States Supreme Court need not address the contention that the challenged laws weaken rather than strengthen parties, where the Supreme Court finds that the state has no compelling interest in curbing intraparty friction as long as the electoral process remains fair and orderly.

Syllabus

Section 11702 of the California Elections Code (Code) forbids the official governing bodies of political parties to endorse or oppose candidates in primary elections, while § 29430 makes it a misdemeanor for any candidate in a primary to claim official party endorsement. Other Code sections dictate the organization and composition of

parties' governing bodies, limit the term of office for a party's state central committee chair, and require that the chair rotate between residents of northern and southern California. Various party governing bodies, members of such bodies, and other politically active groups and individuals brought suit in the District Court, claiming, *inter alia*, that these Code provisions deprived parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments. The District Court granted summary judgment for the plaintiffs as to the provisions in question, and the Court of Appeals affirmed.

Held: The challenged California election laws are invalid, since they burden the [****2] First Amendment rights of political parties and their members without serving a compelling state interest. Pp. 222-233.

(a) The ban on primary endorsements in §§ 11702 and 29430 violates the First and Fourteenth Amendments. By preventing a party's governing body from stating whether a candidate adheres to the party's tenets or whether party officials believe that the candidate is qualified for the position sought, the ban directly hampers the party's ability to spread its message and hamstrings voters seeking to inform themselves about the candidates and issues, and thereby burdens the core right to free political speech of the party and its members. The ban also infringes a party's protected freedom of association rights to identify the people who constitute the association and to select a standard-bearer who best represents the party's ideology and preferences, by preventing the party from promoting candidates at the crucial primary election juncture. Moreover, the ban does not serve a compelling governmental interest. The State has not adequately explained how the ban advances its claimed interest in a stable political system or what makes California so peculiar that it [****3] is virtually the only State to determine that such a ban is necessary. The explanation that the State's compelling interest in stable government embraces a similar interest in party stability is untenable, since a State may enact laws to prevent disruption of political parties from without but not from within. The claim that a party that issues primary endorsements risks intraparty friction which may endanger its general election prospects is insufficient, since the goal of protecting the party against itself would not justify a State's substituting its judgment for that of the party. The State's claim that the ban is necessary to protect primary voters from confusion and undue influence must be

viewed with skepticism, since the ban restricts the flow of information to the citizenry without any evidence of the existence of fraud or corruption that would justify such a restriction. Pp. 222-229.

(b) The restrictions on the organization and composition of the official governing bodies of political parties, the limits on the term of office for state central committee chairs, and the requirement that such chairs rotate between residents of northern and southern California cannot be [****4] upheld. These laws directly burden the associational rights of a party and its members by limiting the party's discretion in how to organize itself, conduct its affairs, and select its leaders. Moreover, the laws do not serve a compelling state interest. A State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure that elections are orderly, fair, and honest, and California has made no such showing. The State's claim that it has a compelling interest in the democratic management of internal party affairs is without merit, since this is not a case where intervention is necessary to prevent the derogation of party adherents' civil rights, and since the State has no interest in protecting the party's integrity against the party itself. Nor are the restrictions justified by the State's claim that limiting the term of the state central committee chair and requiring that the chair rotate between northern and southern California help to prevent regional friction from reaching a critical mass, since a State cannot substitute its judgment for that of the party as to the desirability of a particular party structure. Pp. 229-233. [****5]

Counsel: Geoffrey L. Graybill, Jr., Deputy Attorney General of California, argued the cause for appellants. With him on the briefs were John K. Van de Kamp, Attorney General, Richard D. Martland, Chief Assistant Attorney General, and N. Eugene Hill, Assistant Attorney General.

James J. Brosnahan argued the cause for appellees. With him on the brief was Cedric C. Chao. *

Judges: Marshall, J., delivered the opinion of the Court, in which all other Members joined, except Rehnquist, C. J., who took no part in the consideration or decision of the case. Stevens, J., filed a concurring opinion, post, p. 233.

Opinion by: MARSHALL

Opinion

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* *Stuart R. Blatt* filed a brief for the Libertarian National Committee as *amicus curiae*.

[*216] [***277] [**1016] JUSTICE **MARSHALL** delivered the opinion of the Court.

LEdHN[1A][⬆] [1A] ***LEdHN[2A]***[⬆] [2A]The California Elections Code prohibits the official governing bodies of political parties from endorsing candidates in party primaries. It also dictates the organization and composition of those bodies, limits [***278] the term of office of a party chair, and requires that the chair rotate between residents of northern and southern California. The Court of Appeals for the Ninth Circuit held that these provisions [****6] violate the free speech and associational rights of political parties and their members guaranteed by the First and Fourteenth Amendments. 826 F. 2d 814 (1987). We noted probable jurisdiction, 485 U.S. 1004 (1988), and now affirm.

I

A

The State of California heavily regulates its political parties. Although the laws vary in extent and detail from party to party, certain requirements apply to all "ballot-qualified" parties. [1] [****7] The California Elections Code (Code) provides that the "official governing bodies" for such a party are its "state convention," "state central committee," and "county central committees," Cal. Elec. Code Ann. § 11702 (West [*217] 1977), and that these bodies are responsible for conducting the party's campaigns. [2] At the same time, the Code provides [**1017] that the official governing bodies "shall not endorse, support, or oppose, any candidate for nomination by that party for partisan office in the direct primary election." *Ibid.* It is a misdemeanor for any primary candidate, or a person on her behalf, to claim that she is the officially endorsed candidate of the party. § 29430.

Although the official governing bodies of political parties are barred from issuing endorsements, other groups are not. Political clubs affiliated with a party, labor organizations, political action

[1] A "ballot-qualified" party is eligible to participate in any primary election because: (a) during the last gubernatorial election one of its candidates for state-wide office received two percent of the vote; (b) one percent of the State's voters are registered with the party; or (c) a petition establishing the party has been filed by ten percent of the State's voters. Cal. Elec. Code Ann. § 6430 (West 1977).

In the interest of simplicity, we use the terms "ballot-qualified party" and "political party" interchangeably.

[2] The Code requires the state central committee of each party to conduct campaigns for the party, employ campaign directors, and develop whatever campaign organizations serve the best interests of the party. Cal. Elec. Code Ann. § 8776 (West Supp. 1989) (Democratic Party); § 9276 (Republican Party); § 9688 (American Independent Party); § 9819 (Peace and Freedom Party). The county central committees, in turn, "have charge of the party campaign under general direction of the state central committee." § 8940 (Democratic Party); § 9440 (Republican Party); § 9740 (American Independent Party); § 9850 (Peace and Freedom Party). In addition, they "perform such other duties and services for th[e] political party as seem to be for the benefit of the party." § 8942 (Democratic Party); § 9443 (Republican Party); § 9742 (American Independent Party); § 9852 (Peace and Freedom Party).

committees, other [****8] politically active associations, and newspapers frequently endorse primary candidates. [3] With the official party organizations silenced by the ban, it has been possible for a candidate with views antithetical to [***279] those of her party nevertheless to win its primary. [4]

[****9] [*218] In addition to restricting the primary activities of the official governing bodies of political parties, California also regulates their internal affairs. Separate statutory provisions dictate the size and composition of the state central committees; [5] [****10] set forth rules governing the selection and removal of committee members; [6] fix the maximum term of office for the chair of the state central committee; [7] require that the chair rotate between residents of northern and southern California; [8] specify the time and place of committee meetings; [9] [****11] and [*219] limit [**1018] the dues parties may impose on members. [10] Violations of these provisions are criminal offenses punishable by fine and imprisonment.

B

Various county central committees of the Democratic and Republican Parties, the state central committee of the Libertarian Party, members of various state and county central

[3] For example, while voters cannot learn what the Democratic state and county central committees think of candidates, they may be flooded with endorsements from disparate groups across the State such as the Berkeley Democratic Club, the Muleskinners Democratic Club, and the District 8 Democratic Club. Addendum to Motion to Affirm or to Dismiss 39a para. 7 (Addendum) (declaration of Mary King, chair of the Alameda County Democratic Central Committee); Addendum 48 para. 7 (declaration of Linda Post, chair of San Francisco County Democratic Central Committee).

[4] In 1980, for example, Tom Metzger won the Democratic Party's nomination for United States House of Representative from the San Diego area, although he was a Grand Dragon of the Ku Klux Klan and held views antithetical to those of the Democratic Party. Addendum 15a para. 2 (declaration of Edmond Costantini, member of the Executive Board of the Democratic state central committee).

[5] For example, the Code dictates the precise mix of elected officials, party nominees, and party activists who are members of the state central committees of the Republican and Democratic Parties as well as who may nominate the various committee members. Cal. Elec. Code Ann. §§ 8660, 8661, 8663 (West 1977 and Supp. 1989) (Democratic Party); §§ 9160-9164 (Republican Party). Other parties are similarly regulated. See § 9640 (American Independent Party); §§ 9762, 9765 (Peace and Freedom Party).

[6] §§ 8663-8667, 8669 (Democratic Party); §§ 9161-9164, 9168, 9170 (Republican Party); §§ 9641-9644, 9648-9650 (West 1977) (American Independent Party); §§ 9790-9794 (West 1977 and Supp. 1989) (Peace and Freedom Party).

[7] The Code limits the term of office of the chair of the state central committee to two years and prohibits successive terms. See § 8774 (West Supp. 1989) (Democratic Party); § 9274 (West 1977) (Republican Party); § 9685 (American Independent Party); § 9816 (West 1977 and Supp. 1989) (Peace and Freedom Party).

[8] § 8774 (West Supp. 1989) (Democratic state central committee); § 9274 (West 1977) (Republican state central committee); § 9816 (West 1977 and Supp. 1989) (Peace and Freedom state central committee).

[9] §§ 8710, 8711 (West Supp. 1989) (Democratic state central committee); §§ 8920, 8921 (West 1977 and Supp. 1989) (Democratic county central committee); § 9210 (West Supp. 1989) (Republican state central committee); §§ 9420-9421 (West 1977 and Supp. 1989) (Republican county central committee); §§ 9730-9732 (American Independent county central committee); § 9800 (West 1977) (Peace and Freedom state central committee); §§ 9830, 9840-9842 (Peace and Freedom county central committee).

[10] §§ 8775, 8945 (West 1977 and Supp. 1989) (Democratic Party); § 9275 (Republican Party); §§ 9687, 9745 (West 1977) (American Independent Party); §§ 9818, 9855 (Peace and Freedom Party).

committees, and other groups and individuals active in partisan politics in California brought this action in federal court against state officials responsible for enforcing the Code (State or California). [11] They contended that the ban on primary endorsements and the restrictions on internal party governance deprive political parties and their members of the rights of free speech and free association guaranteed by the First and Fourteenth Amendments of the [***280] United States Constitution. [12] The first count of the complaint challenged the ban on endorsements in partisan primary elections; the second count challenged the ban on endorsements in nonpartisan school, county, and municipal elections; and the third count challenged the [****12] provisions that prescribe the composition of state central committees, the term of office and eligibility criteria for state central committee chairs, the time and place of state and county central committee meetings, and the dues county committee members must pay.

[*220] The plaintiffs moved for summary judgment, in support of which they filed 28 declarations from the chairs of each plaintiff central committee, prominent political scientists, and elected officials from California and other States. The State moved to dismiss and filed a cross-motion [****13] for summary judgment supported by one declaration from a former state senator.

The District Court granted summary judgment for the plaintiffs on the first count, ruling that the ban on primary endorsements in §§ 11702 and 29430 violated the First Amendment as applied to the States through the Fourteenth Amendment. The court stayed all proceedings on the second count under the abstention doctrine of *Railroad Comm'n of Texas* v. *Pullman Co.*, 312 U.S. 496 (1941). [13] [****14] On the third count, the court ruled that the laws prescribing the composition of state central committees, limiting the committee chairs' terms of office, and designating that the chair rotate between residents of northern and southern

[11] The plaintiffs sued March Fong Eu, Secretary of State of California; John K. Van de Kamp, Attorney General of California; Arlo Smith, District Attorney of San Francisco County; and Leo Himmelsbach, District Attorney of Santa Clara County.

[12] The plaintiffs also asserted that the statutes violated the Equal Protection Clause of the Fourteenth Amendment. Because the District Court held that the statutes violate the First Amendment, it did not reach this claim.

[13] An appeal was then pending in the California Supreme Court presenting a First Amendment challenge to a ban on endorsements by political parties of candidates in nonpartisan school, county, and municipal elections. The California Supreme Court ultimately decided that the Code did not prohibit such endorsements and so did not reach the First Amendment question. *Unger* v. *Superior Court*, 37 Cal. 3d 612, 692 P. 2d 238 (1984). A ban on party endorsements in nonpartisan elections subsequently was enacted by ballot initiative. A Federal District Court has ruled that this ban violates the First and Fourteenth Amendments. *Geary* v. *Renne*, 708 F. Supp. 278 (ND Cal.), stayed, 856 F. 2d 1456 (CA9 1988).

California violate the First Amendment. [14] The court denied summary judgment [**1019] with respect to the statutory provisions establishing [*221] the time and place of committee meetings and the amount of dues. Civ. No. C-83-5599 MHP (ND Cal., May 3, 1984).

The Court of Appeals for the Ninth Circuit affirmed. 792 F. 2d 802 (1986). This Court vacated that decision, 479 U.S. 1024 (1987), and remanded for further consideration in light of *Tashjian* v. *Republican Party of Connecticut*, 479 U.S. 208 (1986).

After supplemental briefing, the Court of Appeals again affirmed. 826 F. 2d 814 (1987). The court first rejected the State's arguments based [***281] on nonjusticiability, lack of standing, Eleventh Amendment immunity, and *Pullman* abstention. 826 F. 2d, at 821-825. [****15] Turning to the merits, the court characterized the prohibition on primary endorsements as an "outright ban" on political speech. *Id.*, at 833. "Prohibiting the governing body of a political party from supporting some candidates and opposing others patently infringes both the right of the party to express itself freely and the right of party members to an unrestricted flow of political information." *Id.*, at 835. The court rejected the State's argument that the ban served a compelling state interest in preventing internal party dissension and factionalism: "The government simply has no legitimate interest in protecting political parties from disruptions of their own making." *Id.*, at 834. The court noted, moreover, that the State had not shown that banning primary endorsements protects parties from factionalism. *Ibid.* The court concluded that the ban was not necessary to protect voters from confusion, stating, "California's ban on preprimary endorsements is a form of paternalism that is inconsistent with the First Amendment." *Id.*, at 836.

The Court of Appeals [****16] also found that California's regulation of internal party affairs "burdens the parties' right to govern themselves as they think best." *Id.*, at 827. This interference with the parties' and their members' First Amendment rights was not justified by a compelling state interest, for a State has a legitimate interest "in orderly elections, [*222] not orderly parties." *Id.*, at 831. In any event, the court noted, the State had failed to submit "'a shred of evidence,'" *id.*, at 833

[14] The District Court invalidated the following Code sections: Cal. Elec. Code §§ 8660, 8661, 8663-8667, 8669 (West 1977 and Supp. 1989) (Democratic state central committee); §§ 9160, 9160.5, 9161, 9161.5, 9162-9164 (Republican state central committee); § 9274 (West 1977) (Republican state central committee chair); and § 9816 (West 1977 and Supp. 1989) (Peace and Freedom state central committee chair). In addition, it held that § 29102 (West 1977) was unconstitutional as applied.

(quoting Civ. No. C-83-5599 (ND Cal., May 3, 1984)), that the regulations of party internal affairs helped minimize party factionalism. Accordingly, the court held that the challenged provisions were unconstitutional under the First and Fourteenth Amendments.

II

LEdHN[3][] [3]***HN1***[] A State's broad power to regulate the time, place, and manner of elections "does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens." *Tashjian* v. *Republican Party of Connecticut*, 479 U.S., at 217.To assess the constitutionality of a state election [****17] law, we first examine whether it burdens rights protected by the First and Fourteenth Amendments. *Id.*, at 214; *Anderson* v. *Celebrezze*, 460 U.S. 780, 789 (1983). If the challenged law burdens the rights of political parties and their members, it can survive constitutional scrutiny only if the State shows that it advances a compelling state interest, *Tashjian, supra*, at 217, 222; *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 184 (1979); *American Party of Texas* v. *White*, 415 U.S. 767, 780, and n. 11 (1974); *Williams* v. *Rhodes*, 393 U.S. 23, 31 (1968), and is narrowly tailored to serve that interest, *Illinois Bd. of Elections, supra*, at 185; *Kusper* v. *Pontikes*, 414 U.S. 51, 58-59 (1973); *Dunn* v. *Blumstein*, 405 U.S. 330, 343 (1972).

[***282] [**1020] A

LEdHN[1B][] [1B] ***LEdHN[4]***[] [4]We first consider California's prohibition on primary endorsements by the official governing bodies of political [****18] parties. California concedes that its ban implicates the First Amendment, Tr. of Oral Arg. 17, but contends that the burden is "miniscule." *Id.*, at 7. We disagree. The ban directly affects speech which "is at the core of our electoral [*223] process and of the First Amendment freedoms." *Williams* v. *Rhodes, supra*, at 32. We have recognized repeatedly that ***HN2***[] "debate on the qualifications of candidates [is] integral to the operation of the system of government established by our Constitution." *Buckley* v. *Valeo*, 424 U.S. 1, 14 (1976) *(per curiam);* see also *NAACP* v. *Claiborne Hardware Co.*, 458 U.S. 886, 913 (1982); *Carey* v. *Brown*, 447 U.S. 455, 467 (1980); *Garrison* v. *Louisiana*, 379 U.S. 64, 74-75 (1964). Indeed, the First Amendment "has its fullest and most urgent application" to speech uttered during a campaign for political office. *Monitor Patriot Co.* v. *Roy*,

401 U.S. 265, 272 (1971); see also *Mills* v. *Alabama*, 384 U.S. 214, 218 (1966). [****19] Free discussion about candidates for public office is no less critical before a primary than before a general election. Cf. *Storer* v. *Brown*, 415 U.S. 724, 735 (1974); *Smith* v. *Allwright*, 321 U.S. 649, 666 (1944); *United States* v. *Classic*, 313 U.S. 299, 314 (1941). In both instances, the "election campaign is a means of disseminating ideas as well as attaining political office." *Illinois Bd. of Elections, supra*, at 186.

LEdHN[1C][] [1C]***LEdHN[5]***[] [5]California's ban on primary endorsements, however, prevents party governing bodies from stating whether a candidate adheres to the tenets of the party or whether party officials believe that the candidate is qualified for the position sought. This prohibition directly hampers the ability of a party to spread its message and hamstrings voters seeking to inform themselves about the candidates and the campaign issues. See *Tashjian, supra*, at 220-222; *Pacific Gas & Electric Co.* v. *Public Utilities Comm'n of California*, 475 U.S. 1, 8 (1986); *Brown* v. *Hartlage*, 456 U.S. 45, 60 (1982); [****20] *First National Bank of Boston* v. *Bellotti*, 435 U.S. 765, 791-792 (1978). ***HN3***[] A "highly paternalistic approach" limiting what people may hear is generally suspect, *Virginia State Bd. of Pharmacy* v. *Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748, 770 [*224] (1976); see also *First National Bank of Boston, supra*, at 790-792, but it is particularly egregious where the State censors the political speech a political party shares with its members. See *Roberts* v. *United States Jaycees*, 468 U.S. 609, 634 (1984) (O'Connor, J., concurring).

LEdHN[1D][] [1D]***LEdHN[6]***[] [6]Barring political parties from endorsing and opposing candidates not only burdens their freedom of speech but also infringes upon their freedom of association. ***HN4***[] It is [***283] well settled that partisan political organizations enjoy freedom of association protected by the First and Fourteenth Amendments. *Tashjian, supra*, at 214; see also *Elrod* v. *Burns*, 427 U.S. 347, 357 (1976) (plurality opinion). Freedom of association means not only that an individual [****21] voter has the right to associate with the political party of her choice, *Tashjian, supra*, at 214 (quoting *Kusper, supra*, at 57), but also that a political party has a right to "'identify the people who constitute the association,'" *Tashjian, supra*, at 214 (quoting *Democratic Party* [**1021] *of United States* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107, 122

(1981)); cf. *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 460-462 (1958), and to select a "standard bearer who best represents the party's ideologies and preferences." *Ripon Society, Inc.* v. *National Republican Party*, 173 U. S. App. D. C. 350, 384, 525 F. 2d 567, 601 (1975) (Tamm, J., concurring in result), cert. denied, 424 U.S. 933 (1976).

LEdHN[1E][] [1E]***LEdHN[7]***[] [7]Depriving a political party of the power to endorse suffocates this right. The endorsement ban prevents parties from promoting candidates "at the crucial juncture at which the appeal to common principles may be translated into concerted action, [****22] and hence to political power in the community." *Tashjian, supra*, at 216. Even though individual members of the state central committees and county central committees are free to issue endorsements, imposing limitations [*225] "on individuals wishing to band together to advance their views on a ballot measure, while placing none on individuals acting alone, is clearly a restraint on the right of association." *Citizens Against Rent Control/Coalition for Fair Housing* v. *Berkeley*, 454 U.S. 290, 296 (1981).

LEdHN[1F][] [1F]***LEdHN[8A]***[] [8A]Because the ban burdens appellees' rights to free speech and free association, it can only survive constitutional scrutiny if it serves a compelling governmental interest. [15] [****24] The [*226] State offers two: stable government [***284] and

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[15] California contends that it need not show that its endorsement ban serves a compelling state interest because the political parties have "consented" to it. In support of this claim, California observes that the legislators who could repeal the ban belong to political parties, that the bylaws of some parties prohibit primary endorsements, and that parties continue to participate in state-run primaries.

This argument is fatally flawed in several respects. We have never held that a political party's consent will cure a statute that otherwise violates the First Amendment. Even aside from this fundamental defect, California's consent argument is contradicted by the simple fact that the official governing bodies of various political parties have joined this lawsuit. In addition, the Democratic and Libertarian Parties moved to issue endorsements following the Court of Appeals' invalidation of the endorsement ban.

There are other flaws in the State's argument. Simply because a legislator belongs to a political party does not make her at all times a representative of party interests. In supporting the endorsement ban, an individual legislator may be acting on her understanding of the public good or her interest in reelection. The independence of legislators from their parties is illustrated by the California Legislature's frequent refusal to amend the election laws in accordance with the wishes of political parties. See, *e. g.*, Addendum 12a-13a paras. 7-9 (declaration of Bert Coffey, chair of the Democratic state central committee). Moreover, the State's argument ignores those parties with negligible, if any, representation in the legislature.

That the bylaws of some parties prohibit party primary endorsements also does not prove consent. These parties may have chosen to reflect state election law in their bylaws, rather than permit or require conduct prohibited by law. Nor does the fact that parties continue to participate in the state-run primary process indicate that they favor each regulation imposed upon that process. A decision to participate in state-run primaries more likely reflects a party's determination that ballot participation is more advantageous than the alternatives, that is, supporting independent candidates or conducting write-in campaigns. See *Storer* v. *Brown*, 415 U.S. 724, 745 (1974); *Anderson* v. *Celebrezze*, 460 U.S. 780, 799, n. 26 (1983).

Finally, the State's focus on the parties' alleged consent ignores the independent First Amendment rights of the parties' members. It is wholly undemonstrated that the members authorized the parties to consent to infringements of members' rights.

protecting voters from confusion and undue influence. [16] ***HN5***[⬆] Maintaining [**1022] a stable political system is, unquestionably, a compelling state interest. See *Storer* v. *Brown*, 415 U.S., at 736. California, however, never adequately explains how banning parties from endorsing or opposing primary candidates advances that interest. There is no [****23] showing, for example, that California's political system is any more stable now than it was in 1963, when the legislature enacted the ban. Nor does the State explain what makes the California system so peculiar that it is virtually the only State that has determined that such a ban is necessary. [17]

[16] The State also claims that the ban on primary endorsements serves a compelling state interest in "'confining each voter to a single nominating act.'" *Tashjian* v. *Republican Party of Connecticut*, 479 U.S. 208, 225, n. 13 (1986) (quoting *Anderson, supra*, at 802, n. 29). This argument is meritless. It fails to distinguish between a nominating act -- the vote cast at the primary election -- and speech that may influence that act. The logic of the State's argument not only would support a ban on endorsements by every organization and individual, but also would justify a total ban on all discussion of a candidate's qualifications and political positions. Such a blanket prohibition cannot coexist with the constitutional protection of political speech.

The State's claim that the endorsement ban is necessary to serve any compelling state interest is called into question by its argument before the District Court and the Court of Appeals that this action is not justiciable because the State has never enforced the challenged election laws. 826 F. 2d 814, 821 (1987).

[17] New Jersey also bans primary endorsements by political parties. N. J. Stat. Ann. § 19:34-52 (West 1964); see Weisburd, Candidate-Making and the Constitution: Constitutional Restraints on and Protections of Party Nominating Methods, 57 S. Cal. L. Rev. 213, 271-272, n. 343 (1984). Florida's statutory ban on primary endorsements by political parties was held to violate the First Amendment. See *Abrams* v. *Reno*, 452 F. Supp. 1166, 1171-1172 (SD Fla. 1978), aff'd, 649 F. 2d 342 (CA5 1981), cert. denied, 455 U.S. 1016 (1982). Several States provide formal procedures for party primary endorsements. See, *e. g.*, Conn. Gen. Stat. § 9-390 (1967 and Supp. 1988); R. I. Gen. Laws § 17-12-4 (1988); see also Advisory Commission on Intergovernmental Relations, The Transformation in American Politics: Implications for Federalism 148 ([redacted]

[****25]

[*227] ***LEdHN[1G]***[⬆] [1G]The only explanation the State offers is that its compelling interest in stable government embraces a similar interest in party stability. Brief for Appellants 47. The State relies heavily on *Storer* v. *Brown, supra*, where we stated that because "splintered parties and unrestrained factionalism may do significant damage to the fabric of government," 415 U.S., at 736, States may regulate elections to ensure that "some sort of order, rather than chaos . . . [***285] accompan[ies] the democratic processes," *id.*, at 730. Our decision in *Storer*, however, does not stand for the proposition that a State may enact election laws to mitigate intraparty factionalism during a primary campaign. To the contrary, *Storer* recognized that "contending forces within the party employ the primary campaign and the primary election to finally settle their differences." *Id.*, at 735. A primary is not hostile to intraparty feuds; rather it is an ideal forum in which to resolve them. *Ibid.; American Party of Texas* v. *White*, 415 U.S., at 781. [****26] *Tashjian*

recognizes precisely this distinction. In that case, we noted that a State may enact laws to "prevent the disruption of the political parties from without" but not, as in this case, laws "to prevent the parties from taking internal steps affecting their own process for the selection of candidates." 479 U.S., at 224.

It is no answer to argue, as does the State, that a party that issues primary endorsements risks intraparty friction which may endanger the party's general election prospects. Presumably a party will be motivated by self-interest and not engage in acts or speech that run counter to its political success. However, even if a ban on endorsements saves a political party from pursuing self-destructive acts, that would [*228] not justify a State substituting its judgment for that of the party. See *ibid.*; *Democratic Party of United States*, 450 U.S., at 124. Because preserving party unity during a primary is not a compelling state interest, we must look elsewhere to justify the challenged law.

LEdHN[1H][⬆] [1H]***LEdHN[8B]***[⬆] [8B]***LEdHN[9]***[⬆] [9]***LEdHN[10A]***[⬆] [10A]The State's second justification for the ban on party endorsements and statements of opposition is that it [****27] is necessary to protect primary voters from confusion and undue influence. ***HN6***[⬆] Certainly the State [**1023] has a legitimate interest in fostering an informed electorate. *Tashjian, supra*, at 220; *Anderson* v. *Celebrezze*, 460 U.S., at 796; *American Party of Texas* v. *White, supra*, at 782, n. 14; *Bullock* v. *Carter*, 405 U.S. 134, 145 (1972); *Jenness* v. *Fortson*, 403 U.S. 431, 442 (1971). However, "'[a] State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism.'" *Tashjian, supra*, at 221 (quoting *Anderson* v. *Celebrezze, supra*, at 798). [18] While a State may regulate [***286] the [*229] flow of information between political associations and their members when necessary to prevent fraud and corruption, see

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[18] It is doubtful that the silencing of official party committees, alone among the various groups interested in the outcome of a primary election, is the key to protecting voters from confusion. Indeed, the growing number of endorsements by political organizations using the labels "Democratic" or "Republican" has likely misled voters into believing that the official governing bodies were supporting the candidates.

The State makes no showing, moreover, that voters are unduly influenced by party endorsements. There is no evidence that an endorsement issued by an official party organization carries more weight than one issued by a newspaper or a labor union. In States where parties are permitted to issue primary endorsements, voters may consider the parties' views on the candidates but still exercise independent judgment when casting their vote. For example, in the 1982 New York Democratic gubernatorial contest, Mario Cuomo won the primary over Edward Koch, who had been endorsed by the party. That year gubernatorial candidates endorsed by their parties also lost the primary election to nonendorsed candidates in Massachusetts and Minnesota. Even where the party-endorsed candidate wins the primary, one study has concluded that the party endorsement has little, if any effect, on the way voters cast their vote. App. 97-98 paras. 10, 14-17 (declaration of Malcolm E. Jewell, Professor of Political Science, University of Kentucky).

Buckley v. *Valeo*, 424 U.S., at 26-27; *Jenness* v. *Fortson, supra*, at 442, [****28] there is no evidence that California's ban on party primary endorsements serves that purpose. [19]

[redacted] ***LEdHN[10B]***[↑] [10B]

LEdHN[1I][↑] [1I]Because the ban on primary endorsements by political parties burdens political speech while serving no compelling governmental interest, we hold that §§ 11702 and 29430 violate the [****30] First and Fourteenth Amendments.

B

LEdHN[2B][↑] [2B]***LEdHN[11]***[↑] [11]We turn next to California's restrictions on the organization and composition of official governing bodies, the limits on the term of office for state central committee chair, and the requirement that the chair rotate between residents of northern and southern California. These laws directly implicate the associational rights of political parties and their members. As we noted in *Tashjian*, ***HN7***[↑] a political party's "determination . . . of the structure which best allows it to pursue its political goals, is protected by the Constitution." 479 U.S., at 224. Freedom of association also encompasses a political party's decisions about the identity of, and the process for electing, its leaders. See *Democratic Party of United States, supra* (State cannot dictate process of selecting state delegates to Democratic National [**1024] Convention); [*230] *Cousins* v. *Wigoda*, 419 U.S. 477 (1975) (State cannot dictate who may sit as state delegates to Democratic National Convention); cf. *Tashjian, supra*, at 235-236 (Scalia, J., dissenting) [****31] ("The ability of the members of [a political p]arty to select their own candidate . . . unquestionably implicates an associational freedom").

LEdHN[2C][↑] [2C]The laws at issue burden these rights. By requiring parties to establish official governing bodies at the county level, California prevents the political parties from governing themselves with the structure they think best. [20] And by specifying who [***287] shall be the members of the parties' official governing

[19] The State suggested at oral argument that the endorsement ban prevents fraud by barring party officials from misrepresenting that they speak for the party. To the extent that the State suggests that only the primary election results can constitute a party endorsement, Tr. of Oral Arg. 8-9, it confuses an endorsement from the official governing bodies that may influence election results with the results themselves. To the extent that the State is claiming that the appellees are not authorized to represent the official party governing bodies and their members, the State simply is reasserting its standing claim, which the District Court rejected. Civ. No. C-83-5599 (ND Cal., June 1, 1984) ("[T]he plaintiff central committees . . . have authorization and capacity to bring and maintain this litigation"). The Court of Appeals did not disturb this ruling, 826 F. 2d, at 822, n. 17; nor do we.

[20] For example, the Libertarian Party was forced to abandon its region-based organization in favor of the statutorily mandated county-based system.

bodies, California interferes with the parties' choice of leaders. A party might decide, for example, that it will be more effective if a greater number of its official leaders are local activists rather than Washington-based elected officials. The Code prevents such a change. A party might also decide that the state central committee chair needs more than two years to successfully formulate and implement policy. The Code prevents such an extension of the chair's term of office. A party might find that a resident of northern California would be particularly effective in promoting the party's message and in unifying the party. The Code prevents her from chairing the state central committee unless the preceding chair was from [****32] the southern part of the State.

Each restriction thus limits a political party's discretion in how to organize itself, conduct its affairs, and select its leaders. Indeed, the associational rights at stake are much stronger than those we credited in *Tashjian*. There, we found that a party's right to free association embraces a right to allow registered voters who are not party members to vote in the party's primary. Here, party members do not seek to [*231] associate with nonparty members, but only with one another in freely choosing their party leaders. [21]

[****33] ***LEdHN[2D]***[] [2D]***LEdHN[12A]***[] [12A]Because the challenged laws burden the associational rights of political parties and their members, the question is whether they serve a compelling state interest. ***HN8***[] A State indisputably has a compelling interest in preserving the integrity of its election process. *Rosario* v. *Rockefeller*, 410 U.S. 752, 761 (1973). Toward that end, a State may enact laws that interfere with a party's internal affairs when necessary to ensure that elections are fair and honest. *Storer* v. *Brown*, 415 U.S., at 730. For example, a State may impose certain eligibility requirements for voters in the general election even though they limit parties' ability to garner support and members. See, *e. g., Dunn* v. *Blumstein*, 405 U.S., at 343-344 (residence requirement); *Oregon* v. *Mitchell*, 400 U.S. 112, 118 (1970) (age minimum); *Kramer* v. *Union Free School Dist. No. 15*, 395 U.S. 621, 625 (1969) (citizenship requirement). We have also recognized that a State may impose restrictions that promote the integrity of primary elections. See,

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[21] By regulating the identity of the parties' leaders, the challenged statutes may also color the parties' message and interfere with the parties' decisions as to the best means to promote that message.

[****34] *e. g., American Party of Texas* v. *White*, 415 U.S., at 779-780 (requirement that major political parties nominate candidates through a primary and that minor parties nominate candidates through conventions); *id.*, at 785-786 (limitation on voters' participation to one primary and bar on voters both voting in a party primary and signing a petition supporting an independent candidate); *Rosario* v. *Rockefeller, supra* (waiting periods before voters may change party registration and participate [**1025] in another party's primary); *Bullock* v. *Carter*, 405 U.S., at 145 [***288] (reasonable filing fees as a condition of placement on the ballot). None of these restrictions, however, involved direct regulation of [*232] a party's leaders. [22] Rather, the infringement on the associational rights of the parties and their members was the indirect consequence of laws necessary to the successful completion of a party's external responsibilities in ensuring the order and fairness of elections.

[****35] In the instant case, the State has not shown that its regulation of internal party governance is necessary to the integrity of the electoral process. Instead, it contends that the challenged laws serve a compelling "interest in the 'democratic management of the political party's internal affairs.'" Brief for Appellants 43 (quoting 415 U.S., at 781, n. 15). This, however, is not a case where intervention is necessary to prevent the derogation of the civil rights of party adherents. Cf. *Smith* v. *Allwright*, 321 U.S. 649 (1944). Moreover, as we have observed, the State has no interest in "protect[ing] the integrity of the Party against the Party itself." *Tashjian*, 479 U.S., at 224. The State further claims that limiting the term of the state central committee chair and requiring that the chair rotate between residents of northern and southern California helps "prevent regional friction from reaching a 'critical mass.'" Brief for Appellants 48. However, [*233] a State cannot substitute its judgment for that of the party as to the desirability of a particular internal party structure, any [****36] more than it can tell a party that its

[22] *Marchioro* v. *Chaney*, 442 U.S. 191 (1979), is not to the contrary. There we upheld a Washington statute mandating that political parties create a state central committee, to which the Democratic Party, not the State, had assigned significant responsibilities in administering the party, raising and distributing funds to candidates, conducting campaigns, and setting party policy. *Id.*, at 198-199. The statute only required that the state central committee perform certain limited functions such as filling vacancies on the party ticket, nominating Presidential electors and delegates to national conventions, and calling state-wide conventions. The party members did not claim that these *statutory* requirements imposed impermissible burdens on the party or themselves, so we had no occasion to consider whether the challenged law burdened the party's First Amendment rights, and if so, whether the law served a compelling state interest. *Id.*, at 197, n. 12. Here, in contrast, it is state law, not a political party's charter, that places the state central committees at a party's helm and, in particular, assigns the statutorily mandated committee responsibility for conducting the party's campaigns.

proposed communication to party members is unwise. *Tashjian, supra*, at 224.

LEdHN[12B][⬆] [12B]***LEdHN[13A]***[⬆] [13A]In sum, a State cannot justify regulating a party's internal affairs without showing that such regulation is necessary to ensure an election that is orderly and fair. Because California has made no such showing here, the challenged laws cannot be upheld.[23]

LEdHN[13B][⬆] [13B]

III

LEdHN[1J][⬆] [1J] ***LEdHN[2F]***[⬆] [2F]For the reasons stated above, we hold that the challenged California election laws burden the [***289] First Amendment rights of political parties and their members without serving a compelling state interest. Accordingly, the judgment of the Court of Appeals is

Affirmed.

CHIEF JUSTICE REHNQUIST took no part in the consideration or decision of this case.

[23] Because we find that curbing intraparty friction is not a compelling state interest as long as the electoral process remains fair and orderly, we need not address the appellees' contention that the challenged laws weaken rather than strengthen parties.

Concur by: [****37] STEVENS

Concur

JUSTICE **STEVENS**, concurring.

Today the Court relies on its opinion in *Illinois Bd. of Elections* v. *Socialist Workers Party*, 440 U.S. 173, 183-185 (1979) -- and, in particular, on a portion of that opinion that I did not join -- for its formulation of [**1026] the governing standards in election cases. In that case Justice Blackmun explained his acceptance of the Court's approach in words that precisely express my views about this case. He wrote:

> "Although I join the Court's opinion . . ., I add these comments to record purposefully, and perhaps somewhat belatedly, my unrelieved discomfort with what [*234] seems to be a continuing tendency in this Court to use as tests such easy phrases as 'compelling [state] interest' and 'least drastic [or restrictive] means.' See, *ante*, at 184, 185, and 186. I have never been able fully to appreciate just what a 'compelling state interest' is. If it means 'convincingly controlling,' or 'incapable of being overcome' upon any balancing process, then, of course, the test merely announces an inevitable result, and the test is no test at all.

> And, for me, 'least drastic means' is a slippery slope [****38] and also the signal of the result the Court has chosen to reach. A judge would be unimaginative indeed if he could not come up with something a little less 'drastic' or a little less 'restrictive' in almost any situation, and thereby enable himself to vote to strike legislation down. This is reminiscent of the Court's indulgence, a few decades ago, in substantive due process in the economic area as a means of nullification.
>
> "I feel, therefore, and have always felt, that these phrases are really not very helpful for constitutional analysis. They are too convenient and result oriented, and I must endeavor to disassociate myself from them. Apart from their use, however, the result the Court reaches here is the correct one. It is with these reservations that I join the Court's opinion." *Id.*, at 188-189.

With those same reservations I join the Court's opinion today.

References

25 Am Jur 2d, Elections 117-119, 123-125, 129-131, 150-152

USCS, Constitution, Amendments 1, 14

US L Ed Digest, Constitutional Law 940.5; Elections 2

Index to Annotations, Elections and Voting; Freedom of Association; Freedom of Speech and Press; [****39] Politics and Political Matters

Annotation References:

Supreme Court's views regarding First Amendment guaranties of freedom of speech or of the press as applied to electoral or referendum process. 71 L Ed 2d 1000.

Supreme Court's views regarding First Amendment right of association as applied to advancement of political beliefs. 67 L Ed 2d 859.

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As of: September 14, 2024 9:37 PM Z

Tashjian v. Republican Party

Supreme Court of the United States

October 8, 1986, Argued ; December 10, 1986, Decided

No. 85-766

Reporter

479 U.S. 208 *; 107 S. Ct. 544 **; 93 L. Ed. 2d 514 ***; 1986 U.S. LEXIS 25 ****; 55 U.S.L.W. 4057

TASHJIAN, SECRETARY OF STATE OF CONNECTICUT v. REPUBLICAN PARTY OF CONNECTICUT ET AL.

Prior History: [****1] APPEAL FROM THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT.

Disposition: 770 F.2d 265, affirmed.

Core Terms

voters, candidates, qualifications, elections, convention, state legislature, voting, federal election, parties, rights, nominee, ballot, primary election, Framers, raiding, select, political party, registered, contends, enrolled, franchise, nominate, freedom of association, general election, closed primary, restricting, decisions, delegates, prescribe, statewide

Case Summary

Procedural Posture

Appellees, a political party, its federal office holders, and its state chairman challenged Conn. Gen. Stat. § 9-431 (1985), requiring voters in any party primary to be registered members of that party. The United States Court of Appeals for the Second Circuit affirmed the order of the district court granting summary judgment in favor of the political party. Appellant Secretary of the State of Connecticut sought review.

Overview

The political party challenged the eligibility provision of Conn. Gen. Stat. § 9-431 on the ground that it deprived the party of its First Amendment right to enter into political association with individuals of its own choosing. The appellate court affirmed the summary judgment in favor of the party holding that § 9-431 substantially interfered with the party's first amendment right to define its associational boundaries. The Secretary contended that § 9-431 was a narrowly tailored

regulation advancing compelling state interests by ensuring the administrability of the primary system, preventing raiding, and protecting the responsibility of party government. The Court found that the state's enforcement of its closed primary system burdened the First Amendment rights of the party. Added costs alone were not sufficient to burden the party's freedom of association, nor did the statute prevent raiding when a raid could be organized at the 11th hour. The interests which the Secretary adduced in support of the statute were insubstantial, and thus the statute, as applied to the party, impermissibly burdened the rights of the party protected by the First and Fourteenth Amendments.

Outcome

The Court affirmed the judgment of the appellate court and held that the challenged statute impermissibly burdened the rights of the political party and its members protected by the First and Fourteenth Amendments.

LexisNexis® Headnotes

Governments > State & Territorial Governments > Elections

HN1[] **State & Territorial Governments, Elections**

See Conn. Gen. Stat. § 9-431 (1985).

Governments > State & Territorial Governments > Elections

Tax Law > ... > S Corporations > Election of S Status > Termination of S Election

HN2[] **State & Territorial Governments, Elections**

Constitutional challenges to specific provisions of a state's election laws cannot be resolved by any litmus-paper test that will separate valid from invalid restrictions. Instead, a court must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the state as justifications for the burden imposed by its rule. In passing judgment, the deciding court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden the plaintiff's rights.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Scope

Constitutional Law > Substantive Due Process > Scope

HN3[] **Fundamental Freedoms, Freedom of Association**

Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech. The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

HN4[] **Fundamental Freedoms, Freedom of Association**

The freedom to join together in furtherance of common political beliefs necessarily presupposes the freedom to identify the people who constitute the association.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

HN5[] **Fundamental Freedoms, Freedom of Association**

Acts of public affiliation may subject the members of political organizations to public hostility or discrimination; under those circumstances an association has a constitutional right to protect the privacy of its membership rolls.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

HN6[] **Fundamental Freedoms, Freedom of Association**

Any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherents.

Constitutional Law > Congressional Duties & Powers > Elections > Time, Place & Manner Restrictions

Constitutional Law > Congressional Duties & Powers > General Overview

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > General Overview

Governments > State & Territorial Governments > Elections

HN7[] **Elections, Time, Place & Manner Restrictions**

The United States Constitution grants to the states a broad power to prescribe the times, places and manner of holding elections for senators and representatives, U.S. Const. art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the state's responsibility to observe the limits established by the First Amendment rights of the state's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, or the freedom of political association.

Governments > State & Territorial Governments > Elections

HN8[] **State & Territorial Governments, Elections**

While a state is of course entitled to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could on the same ground limit the ballot access of a new major party.

Governments > State & Territorial Governments > Elections

HN9[] **State & Territorial Governments, Elections**

A state may have a legitimate interest in seeking to curtail "raiding," whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary, because that practice may affect the integrity of the electoral process.

Governments > State & Territorial

Governments > Elections

HN10[] **State & Territorial Governments, Elections**

There can be no question about the legitimacy of the state's interest in fostering informed and educated expressions of the popular will in a general election. To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters inform themselves for the exercise of the franchise.

Governments > State & Territorial

Governments > Elections

HN11[] **State & Territorial Governments, Elections**

A state's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of information to them must be viewed with some skepticism. The state's legitimate interests in preventing voter confusion and providing for educated and responsible voter decisions in no respect make it necessary to burden the party's rights.

Constitutional Law > Bill of Rights > Fundamental Freedoms > Freedom of Association

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

HN12[] **Fundamental Freedoms, Freedom of Association**

A state, or a court, may not constitutionally substitute its own judgment for that of the political party. The party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution of the United States. And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression

as unwise or irrational.

Constitutional Law > Bill of Rights > Fundamental Freedoms > General Overview

Constitutional Law > Elections, Terms & Voting > General Overview

HN13[] **Bill of Rights, Fundamental Freedoms**

See U.S. Const. art. I, § 2, cl. 1.

Constitutional Law > Elections, Terms & Voting > US Senate Terms & Vacancies

HN14[] **Elections, Terms & Voting, US Senate Terms & Vacancies**

See U.S. Const. amend. XVII.

Constitutional Law > Elections, Terms & Voting > General Overview

Governments > Federal Government > Elections

HN15[] **Constitutional Law, Elections, Terms & Voting**

The Qualifications Clause and the parallel provision of the Seventeenth Amendment require only that anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote in federal legislative elections.

Constitutional Law > Elections, Terms & Voting > General Overview

HN16[] **Constitutional Law, Elections, Terms & Voting**

Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice, the requirements of U.S. Const. art. I, § 2, cl. 1, and the Seventeenth Amendment apply to primaries as well as to general elections. The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is applicable to every stage in the selection process.

Constitutional Law > Elections, Terms & Voting > General Overview

HN17[] **Constitutional Law, Elections, Terms & Voting**

The Qualifications Clauses of U.S. Const. art. I, §

2, and the Seventeenth Amendment are applicable to primary elections in precisely the same fashion that they apply to general congressional elections.

Business & Corporate Law > Distributorships & Franchises > Franchise Relationships > Franchise Agreements

Constitutional Law > Elections, Terms & Voting > US Senate Terms & Vacancies

Governments > Federal Government > Elections

Constitutional Law > Elections, Terms & Voting > General Overview

Constitutional Law > Elections, Terms & Voting > Voting Age

HN18[] **Franchise Relationships, Franchise Agreements**

The achievement of the goal of the Qualifications Clause, which is to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections, does not require that qualifications for exercise of the federal franchise be at all times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given state. The fundamental purpose of the Qualifications Clauses contained in U.S. Const. art. I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the state legislature are also qualified to participate in the election of senators and members of the House of Representatives.

Lawyers' Edition Display

Decision

Connecticut prohibition of political party's choice to permit independents to vote in certain party primary elections held to violate freedom of association under First and Fourteenth Amendments.

Summary

A Connecticut statute allowed only party members to vote in a primary election for a nomination to public office by a major political party. In 1983, one of the state's two major political parties adopted a rule (1) attempting to permit independents--registered voters not affiliated with any political party--to vote in the party's primaries for federal and statewide public offices, while (2)

remaining silent as to the party's primaries for nominations for the state legislature. Then, challenging the state statute, the party, its federal officeholders, and its state chairperson filed suit in the United States District Court for the District of Connecticut against the Secretary of the State of Connecticut, who was charged with the administration of the state's election statutes. The District Court granted summary judgment in favor of the party and its members, expressing the view that the statute (1) imposed a substantial burden on their right of association under the First and Fourteenth Amendments to the United States Constitution, and (2) was not supported by any compelling state interests (599 F Supp 1228). On appeal, the United States Court of Appeals for the Second Circuit affirmed, expressing the view that (1) the qualifications clauses of Art I, 2, cl 1, and the Seventeenth Amendment to the United States Constitution, requiring that voters in elections for the United States House of Representatives and Senate have the same qualifications as voters in elections for the most numerous branch of the state legislature, did not apply to party primaries; and (2) the state statute prohibiting the party rule substantially interfered with the party's constitutional right of political association, by determining who was eligible to participate in the party's candidate selection process (770 F2d 265).

On appeal, the United States Supreme Court affirmed. In an opinion by Marshall, J., joined by Brennan, White, Blackmun, and Powell, JJ., it was held that (1) the state's statutory prohibition of the party's primary voting rule placed an unconstitutional burden on the fundamental freedom of political association guaranteed by the First and Fourteenth Amendments, while the interests asserted by the state in defense of the statute were insubstantial, and (2) the party rule did not violate the qualifications clauses of Art I, 2, cl 1, and the Seventeenth Amendment, because the clauses did not require a perfect symmetry, even though the clauses did apply to congressional primary elections.

Stevens, J., joined by Scalia, J., dissented, expressing the view that, under the circumstances, allowing independents to vote in primary elections for the United States House of Representatives and Senate, while prohibiting such voters from participating in primary elections for the state house of representatives, violated the qualifications clauses of Art I, 2, cl 1, and the Seventeenth Amendment.

Scalia, J., joined by Rehnquist, Ch. J., and

O'Connor, J., dissented, expressing the view that the Connecticut restriction on a party's primary voting to party members was constitutional, and that the Supreme Court's opinion exaggerated the importance of the associational interest at issue, if indeed such an interest existed.

Headnotes

CONSTITUTIONAL LAW §940.5 > ELECTIONS §2 > party choice to allow independents to vote in primaries -- freedom of association -- > Headnote:

LEdHN[1A][⬇] [1A]***LEdHN[1B]***[⬇] [1B]***LEdHN[1C]***[⬇] [1C]***LEdHN[1D]***[⬇] [1D]***LEdHN[1E]***[⬇] [1E]***LEdHN[1F]***[⬇] [1F]***LEdHN[1G]***[⬇] [1G]

A state statute which prohibits a political party from exercising its choice to permit independents--registered voters not affiliated with any party--to vote in the party's primary elections for federal and statewide offices places an unconstitutional burden on the fundamental freedom of political association guaranteed by the First and Fourteenth Amendments to the United States Constitution, where (1) any interference with the freedom of a political party is simultaneously an interference with the freedom of its adherents; (2) under the circumstances, there is no conflict between the associational interests of members and nonmembers over voting in such elections; (3) a state law which permits registration as a party member until noon of the last business day preceding a primary is not a satisfactory response, for it requires action by the voters rather than the party, and insists upon a public act of affiliation with the party as a condition of association; (4) the power of the state under the Constitution (Art I, 4, cl 1) to prescribe the time, place, and manner of holding elections for United States Senators and Representatives, which power is matched by state control over the election process for state offices, does not extinguish the state's responsibility to observe the limits established by the First Amendment rights of the state's citizens; and (5) the interests which the state asserts in defense of the statute are insubstantial. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented from this holding.)

ELECTIONS §2 > primaries -- different qualifications for federal congressional and state legislative voters -- > Headnote:

LEdHN[2A][⬇] [2A]***LEdHN[2B]***[⬇]

[2B]***LEdHN[2C]***[⬇] [2C]***LEdHN[2D]***[⬇] [2D]***LEdHN[2E]***[⬇] [2E]

A political party's rule permitting independents--registered voters not affiliated with any party--to vote in the party's primary elections for the United States House of Representatives and Senate, while remaining silent as to voting by such independents in the party's primary elections for the state legislature, does not violate the Federal Constitution's clauses on qualifications of federal congressional electors (Art I, 2, cl 1, and the Seventeenth Amendment), where (1) the two clauses apply to the state's primary elections in precisely the same fashion as they apply to general congressional elections, (2) the two clauses do not require perfect symmetry, and (3) the party rule does not disenfranchise any voter in a federal congressional election who is qualified to vote in a primary or general election for the more numerous house of the state's legislature. (Stevens and Scalia, JJ., dissented from this holding.)

CONSTITUTIONAL LAW §940.5 > ELECTIONS §1 > First Amendment -- tests -- > Headnote:

LEdHN[3][⬇] [3]

Constitutional challenges to specific provisions of a state's election laws cannot be resolved by any "litmus-paper test" that will separate valid from invalid restrictions; instead, a court must (1) consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that a plaintiff seeks to vindicate, and (2) identify and evaluate the precise interests put forward by the state as justifications for the burden imposed by its rule; a court must not only determine the legitimacy and strength of each of these state interests, but also consider the extent to which these interests make it necessary to burden the plaintiff's rights.

CONSTITUTIONAL LAW §36.3 > freedom of speech and association -- due process -- > Headnote:

LEdHN[4][⬇] [4]

Freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the "liberty" assured by the due process clause of the Federal Constitution's Fourteenth Amendment, which embraces freedom of speech.

CONSTITUTIONAL LAW §940.5 > freedom of political association -- extent -- > Headnote:

LEdHN[5A][] [5A]***LEdHN[5B]***[] [5B]***LEdHN[5C]***[] [5C]

The freedom of association protected by the First and Fourteenth Amendments of the United States Constitution includes partisan political organization; the right to associate with the political party of one's choice is an integral part of this basic constitutional freedom; freedom to join together in the furtherance of common political beliefs necessarily presupposes the freedom to identify the people who constitute the association; a political party's determination of the boundaries of its own association, and of the structure which best allows it to pursue its political goals, is protected by the Constitution.

CONSTITUTIONAL LAW §940.5 > political organization -- privacy of members -- > Headnote:

LEdHN[6A][] [6A]***LEdHN[6B]***[] [6B]

A political organization has a constitutional right to protect the privacy of its membership rolls, where acts of public affiliation may subject the members of the organization to public hostility or discrimination.

ELECTIONS §3 > time, place, and manner -- right to vote -- > Headnote:

LEdHN[7][] [7]

The power of a state under the United States Constitution (Art I, 4, cl 1) to regulate the time, place, and manner of holding elections for United States Senators and Representatives, which power is matched by state control over the election process for state offices, does not justify, without more, abridgment of the fundamental right to vote.

CONSTITUTIONAL LAW §940.5 > ELECTIONS §2 > party primary -- freedom of association -- administrative cost -- > Headnote:

LEdHN[8][] [8]

Even assuming the factual accuracy of contentions as to the possibility of future increases in the cost of administering a state's primary election system due to a party rule permitting independents--registered voters not affiliated with any political party--to vote in the party's primary elections for federal and

statewide office, such contentions do not form a sufficient basis for infringing the First Amendment right of freedom of political association by prohibiting such a party rule.

ELECTIONS §2 > primaries -- raiding by other party -- > Headnote:

LEdHN[9][] [9]

A possible state interest in seeking to curtail "raiding"--a practice whereby voters in sympathy with one political party designate themselves as voters of another party so as to influence or determine the results of the other party's primary--is not implicated by the state's prohibition of one party's choice to permit independents (registered voters not affiliated with any political party) to vote in certain party primaries, where, under state law, (1) the independents need only register as party members to vote in the primary, and (2) the state permits such registration as late as noon on the business day preceding the primary.

CONSTITUTIONAL LAW §940.5 > ELECTIONS §1 > primary and general elections -- relation -- freedom of association -- > Headnote:

LEdHN[10A][] [10A]***LEdHN[10B]***[] [10B]

A state has a legitimate interest in fostering informed and educated expressions of the popular will in a general election, but this interest is not sufficient to justify, under the First and Fourteenth Amendments to the United States Constitution, the state's prohibition of a party rule permitting independents--registered voters not affiliated with any political party--to vote in certain party primaries, on the grounds that voters would be misled by party labels in the ensuing general election, where (1) the United States Supreme Court's cases reflect faith in the ability of individual voters to inform themselves about campaign issues, (2) in the state in question, to be listed on a primary ballot requires that a candidate have obtained at least 20% of the vote at a party convention which only party members may attend, and (3) the argument in favor of such a prohibition disregards the substantial benefit the party rule provides the party and its members in seeking to choose successful candidates, given the numerical strength of independent voters in that state. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented in part from this holding.)

to a single nominating act.

CONSTITUTIONAL LAW §940.5 > ELECTIONS §2 > party primary -- freedom of association -- protecting integrity of party -- > Headnote:

LEdHN[11A][] [11A]***LEdHN[11B]***[] [11B]

Even if a state is correct that its prohibition of a political party's rule permitting independents--registered voters not affiliated with any party--to vote in certain party primaries protects the integrity of the two-party system and the responsibility of party government, a state or court may not constitutionally substitute its own judgment for that of the party; under the freedom of association for the advancement of political beliefs, as is true of all First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational. (Scalia, J., Rehnquist, Ch. J., and O'Connor, J., dissented from this holding.)

ELECTIONS §2 > single nominations -- > Headnote:

LEdHN[12A][] [12A]***LEdHN[12B]***[] [12B]

A state may adopt a policy of confining each voter

CONSTITUTIONAL LAW §9 > construction -- new subject matter -- > Headnote:

LEdHN[13][] [13]

In determining whether a provision of the United States Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar, for in setting up an enduring framework of government, they undertook to carry out for the indefinite future and in all the vicissitudes of changing human affairs, those fundamental purposes which the instrument itself discloses.

ELECTIONS §2 > constitutional voter qualifications -- stages applicable -- > Headnote:

LEdHN[14][] [14]

The goal--under Art I, 2, cl 1, and the Seventeenth Amendment to the United States Constitution--of assuring that the members of the United States Congress are chosen by the people can only be secured if that principle is applicable to every stage

in the selection process; the constitutional voter qualifications of these clauses apply to primaries as well as to general elections (1) where the state law has made the primary an integral part of the procedure of choice, or (2) where in fact the primary effectively controls the choice.

Syllabus

A Connecticut statute (§ 9-431), enacted in 1955, requires voters in any political party primary to be registered members of that party. In 1984, appellee Republican Party of Connecticut (Party) adopted a Party rule that permits independent voters -- registered voters not affiliated with any party -- to vote in Republican primaries for federal and statewide offices. The Party and the Party's federal officeholders and state chairman (also appellees) brought an action in Federal District Court challenging the constitutionality of § 9-431 on the ground that it deprives the Party of its right under the First and Fourteenth Amendments to enter into political association with individuals of its own choosing, and seeking declaratory and injunctive relief. The District Court granted summary judgment in appellees' favor, and the Court of Appeals affirmed.

Held:

1. Section 9-431 impermissibly burdens the rights of the Party and its members protected by the First and Fourteenth Amendments. Pp. 213-225.

(a) The freedom of association protected by those Amendments includes [****2] partisan political organization. Section 9-431 places limits upon the group of registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. The fact that the State has the power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote or, as here, the freedom of political association. Pp. 213-217.

(b) The interests asserted by appellant Secretary of State of Connecticut as justification for the statute -- that it ensures the administrability of the primary, prevents voter raiding, avoids voter confusion, and protects the integrity of the two-party system and the responsibility of party government -- are insubstantial. The possibility of increases in the cost of administering the election system is not a

sufficient basis for infringing appellees' First Amendment rights. The interest in curtailing raiding is not implicated, [****3] since § 9-431 does not impede a raid on the Republican Party by independent voters; independent raiders need only register as Republicans and vote in the primary. The interest in preventing voter confusion does not make it necessary to burden the Party's associational rights. And even if the State were correct in arguing that § 9-431 in providing for a closed primary system is designed to save the Party from undertaking conduct destructive of its own interests, the State may not constitutionally substitute its judgment for that of the Party, whose determination of the boundaries of its own association and of the structure that best allows it to pursue its political goals is protected by the Constitution. Pp. 217-225.

2. The implementation of the Party rule will not violate the Qualifications Clause of the Constitution -- which provides that the House of Representatives "shall be composed of Members chosen . . . by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature" -- and the parallel provision of the Seventeenth Amendment, because it does not disenfranchise [****4] any voter in a federal election who was qualified to vote in a primary or general election for the more numerous house of the state legislature. The Clause and the Amendment are not violated by the fact that the Party rule establishes qualifications for voting in congressional elections that differ from the qualifications in elections for the state legislature. Where state law, as here, has made the primary an integral part of the election procedure, the requirements of the Clause and the Amendment apply to primaries as well as to general elections. The achievement of the goal of the Clause to prevent the mischief that would arise if state voters found themselves disqualified from participating in federal elections does not require that qualifications for exercise of the federal franchise be precisely equivalent to the qualifications for exercising the franchise in a given State. Pp. 225-229.

Counsel: Elliot F. Gerson, Special Assistant Attorney General of Connecticut, argued the cause for appellant. With him on the briefs were Joseph I. Lieberman, Attorney General, and Barney Lapp, Daniel R. Schaefer, and Henry S. Cohn, Assistant Attorneys General.

David S. Golub argued the cause and [****5] filed

a brief for appellees. *

[****6]

Judges: MARSHALL, J., delivered the opinion of the Court, in which BRENNAN, WHITE, BLACKMUN, and POWELL, JJ., joined. STEVENS, J., filed a dissenting opinion, in which SCALIA, J., joined, post, p. 230. SCALIA, J., filed a dissenting opinion, in which REHNQUIST, C. J., and O'CONNOR, J., joined, post, p. 234.

Opinion by: MARSHALL

Opinion

[*210] [***521] [**546] JUSTICE **MARSHALL** delivered the opinion of the Court.

LEdHN[1A][↑] [1A] ***LEdHN[2A]***[↑] [2A]Appellee Republican Party of the State of Connecticut (Party) in 1984 adopted a Party rule which permits independent voters -- registered voters not affiliated with any political party -- to vote in Republican primaries for federal and statewide offices. Appellant Julia Tashjian, the Secretary of the State of Connecticut, is charged with the administration of the State's election statutes, which include a provision requiring voters in any party primary to be registered members [*211] of that party. Conn. Gen. Stat. § 9-431 (1985). [1] Appellees, who in addition to the Party include the Party's federal officeholders and the Party's state chairman, challenged this eligibility provision on the ground that it deprives the Party of its First Amendment right to enter into political association with [****7] individuals of its own choosing. The District Court granted summary judgment in favor of appellees. 599 F.Supp. 1228 (Conn. 1984). The Court of Appeals affirmed. 770 F.2d 265 [**547] (CA2 1985). We noted probable

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* Briefs of amici curiae urging reversal were filed for the State of New York et al. by Robert Abrams, Attorney General of New York, Robert Hermann, Solicitor General, Patrick Barnett-Mulligan, Lisa Margaret Smith, and Betsy Broder, Assistant Attorneys General, Charles A. Graddick, Attorney General of Alabama, Robert K. Corbin, Attorney General of Arizona, and Anthony B. Ching, Solicitor General, Charles M. Oberly III, Attorney General of Delaware, Jim Smith, Attorney General of Florida, Neil F. Hartigan, Attorney General of Illinois, and Roma J. Stewart, Solicitor General, William J. Guste, Jr., Attorney General of Louisiana, James E. Tierney, Attorney General of Maine, and Cabanne Howard, Deputy Attorney General, Brian McKay, Attorney General of Nevada, Lacy H. Thornburg, Attorney General of North Carolina, Nicholas J. Spaeth, Attorney General of North Dakota, Anthony J. Celebrezze, Jr., Attorney General of Ohio, Michael Turpen, Attorney General of Oklahoma, LeRoy S. Zimmerman, Attorney General of Pennsylvania, W. J. Michael Cody, Attorney General of Tennessee, and A. G. McClintock, Attorney General of Wyoming; and for William J. Cibes, Jr., et al. by Timothy D. Bates.

Stephen E. Gottlieb filed a brief for James MacGregor Burns et al. as amici curiae urging affirmance.

Bruce A. Morrison, pro se, filed a brief for Senator Christopher J. Dodd et al. as amici curiae.

[1] ***HN1***[↑] The statute provides in pertinent part: "No person shall be permitted to vote at a primary of a party unless he is on the last-completed enrollment list of such party in the municipality or voting district. . . ."

jurisdiction, 474 U.S. 1049 (1986), and now affirm.

I

In 1955, Connecticut adopted its present primary election system. For major parties, [2] the process of candidate selection for federal and statewide offices requires a statewide convention of party delegates; district conventions are held to select candidates for seats in the state legislature. The party convention may certify as the party-endorsed candidate any person receiving more than 20% of the votes cast in a roll-call vote at the convention. Any candidate not endorsed by the party [****8] who received 20% of the vote may challenge the party-endorsed candidate in a primary election, in which the candidate [***522] receiving the plurality of votes becomes the party's nominee. Conn. Gen. Stat. §§ 9-382, 9-400, 9-444 (1985). Candidates selected by the major parties, whether through convention or primary, are automatically accorded a place on the ballot at the general election. [*212] § 9-379. The costs of primary elections are paid out of public funds. See, *e. g.*, § 9-441.

The statute challenged in these proceedings, § 9-431, has remained substantially unchanged since the adoption of the State's primary system. [****9] In 1976, the statute's constitutionality was upheld by a three-judge District Court against a challenge by an independent voter who sought a declaration of his right to vote in the Republican primary. *Nader* v. *Schaffer*, 417 F.Supp. 837 (Conn.), summarily aff'd, 429 U.S. 989 (1976). In that action, the Party opposed the plaintiff's efforts to participate in the Party primary.

Subsequent to the decision in *Nader*, however, the Party changed its views with respect to participation by independent voters in Party primaries. Motivated in part by the demographic importance of independent voters in Connecticut politics, [3] in September 1983 the Party's Central Committee recommended calling a state convention to consider altering the Party's rules to allow independents to vote in Party primaries. In January 1984 the state convention adopted the Party rule now at issue, which provides:

"Any elector enrolled as a member of the Republican Party and any elector not enrolled as a member of a party shall be eligible to vote in

[2] A "major party" is defined as "a political party or organization whose candidate for governor at the last-preceding election for governor received . . . at least twenty per cent of the whole number of votes cast for all candidates for governor." Conn. Gen. Stat. § 9-372(5)(B) (1985). The Democratic and Republican parties are the only major parties in the State under this definition.

[3] The record shows that in October 1983 there were 659,268 registered Democrats, 425,695 registered Republicans, and 532,723 registered and unaffiliated voters in Connecticut. 2 App. to Juris. Statement 244.

primaries for nomination of candidates for the offices of United States Senator, United States Representative, Governor, [****10] Lieutenant Governor, Secretary of the State, Attorney General, Comptroller and Treasurer." App. 20.

During the 1984 session, the Republican leadership in the state legislature, in response to the conflict between the newly enacted Party rule and § 9-431, proposed to amend the statute to allow independents to vote in primaries when permitted by Party rules. The proposed legislation was defeated, [*213] substantially along party lines, in both houses of the legislature, which at that time were controlled by the Democractic Party. [4]

[****11] The Party and the individual appellees then commenced this action in the District Court, seeking a declaration that § 9-431 infringes appellees' right to freedom of association [**548] for the advancement of common political objectives guaranteed by the First and Fourteenth Amendments, and injunctive relief against its further enforcement. After discovery, the parties submitted extensive stipulations of fact to the District Court, which granted summary judgment for appellees. The District Court concluded that "[any] effort by the state to substitute its judgment for that of the party on . . . the question of who is and is not sufficiently allied in interest with the [***523] party to warrant inclusion in its candidate selection process . . . substantially impinges on First Amendment rights." 599 F.Supp., at 1238. Rejecting the state interests proffered by appellant to justify the statute, the District Court held that "as applied to the Republican Party rule permitting unaffiliated voters to participate in certain Republican Party primaries, the statute abridges the right of association guaranteed by the First Amendment." *Id.*, at 1241.

The [****12] Court of Appeals affirmed, holding that § 9-431 "substantially interferes with the Republican Party's first amendment right to define its associational boundaries, determine the content of its message, and engage in effective political association." 770 F.2d, at 283.

II

LEdHN[3][↑] [3]We begin from the recognition that ***HN2***[↑] "[constitutional] challenges to specific provisions of a State's election laws . . . cannot be resolved by any 'litmus-paper test' that will separate valid from invalid restrictions."

[4] In the November 1984 elections, the Republicans acquired a majority of seats in both houses of the state legislature, and an amendment to § 9-431 was passed, but was vetoed by the Democratic Governor.

Anderson v. *Celebrezze*, [*214] 460 U.S. 780, 789 (1983) (quoting *Storer* v. *Brown*, 415 U.S. 724, 730 (1974))."Instead, a court . . . must first consider the character and magnitude of the asserted injury to the rights protected by the First and Fourteenth Amendments that the plaintiff seeks to vindicate. It then must identify and evaluate the precise interests put forward by the State as justifications for the burden imposed by its rule. In passing judgment, the Court must not only determine the legitimacy and strength of each of those interests, it also must consider the extent to which those interests make it necessary to burden [****13] the plaintiff's rights." 460 U.S., at 789.

LEdHN[4][] [4]***LEdHN[5A]***[] [5A]The nature of appellees' First Amendment interest is evident. "It is beyond debate that ***HN3***[] freedom to engage in association for the advancement of beliefs and ideas is an inseparable aspect of the 'liberty' assured by the Due Process Clause of the Fourteenth Amendment, which embraces freedom of speech." *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 460 (1958); see *NAACP* v. *Button*, 371 U.S. 415, 430 (1963); *Bates* v. *Little Rock*, 361 U.S. 516, 522-523 (1960). The freedom of association protected by the First and Fourteenth Amendments includes partisan political organization. *Elrod* v. *Burns*, 427 U.S. 347, 357 (1976) (plurality opinion); *Buckley* v. *Valeo*, 424 U.S. 1, 15 (1976). "The right to associate with the political party of one's choice is an integral part of this basic constitutional freedom." *Kusper* v. *Pontikes*, 414 U.S. 51, 57 (1973).

LEdHN[5B][] [5B]The Party here contends that § 9-431 impermissibly burdens the right of its members to determine for themselves with whom they will associate, [****14] and whose support they will seek, in their quest for political success. The Party's attempt to broaden the base of public participation in and support for its activities is conduct undeniably central to the exercise of the right of association. As we have said, ***HN4***[] the freedom to join together in furtherance of common political beliefs "necessarily presupposes the freedom to identify the people who [**549] constitute the association." [***524] *Democratic Party of* [*215] *United States* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107, 122 (1981).

LEdHN[6A][] [6A]A major state political party necessarily includes individuals playing a broad spectrum of roles in the organization's activities. Some of the Party's members devote substantial portions of their lives to furthering its political and

organizational goals, others provide substantial financial support, while still others limit their participation to casting their votes for some or all of the Party's candidates. Considered from the standpoint of the Party itself, the act of formal enrollment or public affiliation with the Party is merely one element in the continuum of participation in Party affairs, and need not be [****15] in any sense the most important. [5]

LEdHN[6B][⬆] [6B]

LEdHN[1B][⬆] [1B]Were the State to restrict by statute financial support of the Party's candidates to Party members, or to provide that only Party members might be selected as the Party's chosen nominees for public office, such a prohibition of potential association with nonmembers would clearly infringe upon the rights of the Party's members under the First Amendment to organize with like-minded citizens in support of common political goals. As we have said, ***HN6***[⬆] "'[any] interference with the freedom of a party is simultaneously an interference with the freedom of its adherents.'" *Democratic Party, supra*, at 122 [****16] (quoting *Sweezy* v. *New Hampshire*, 354 U.S. 234, 250 (1957)).[6] The statute here places limits upon the group of [*216] registered voters whom the Party may invite to participate in the "basic function" of selecting the Party's candidates. *Kusper* v. *Pontikes, supra*, at 58.The State thus limits the Party's associational opportunities at the crucial juncture at which the appeal to common principles may be translated into concerted action, and hence to political power in the community. [7]

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[5] Indeed, ***HN5***[⬆] acts of public affiliation may subject the members of political organizations to public hostility or discrimination; under those circumstances an association has a constitutional right to protect the privacy of its membership rolls. *Bates* v. *Little Rock*, 361 U.S. 516, 523-524 (1960); *NAACP* v. *Alabama ex rel. Patterson*, 357 U.S. 449, 462 (1958).

[6] It is this element of potential interference with the rights of the Party's members which distinguishes the present case from others in which we have considered claims by nonmembers of a party seeking to vote in that party's primary despite the party's opposition. In this latter class of cases, the nonmember's desire to participate in the party's affairs is overborne by the countervailing and legitimate right of the party to determine its own membership qualifications. See *Rosario* v. *Rockefeller*, 410 U.S. 752 (1973); *Nader* v. *Schaffer*, 417 F.Supp. 837 (Conn.), summarily aff'd, 429 U.S. 989 (1976). Similarly, the Court has upheld the right of national political parties to refuse to seat at their conventions delegates chosen in state selection processes which did not conform to party rules. See *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107 (1981); *Cousins* v. *Wigoda*, 419 U.S. 477 (1975). These situations are analytically distinct from the present case, in which the Party and its members seek to provide enhanced opportunities for participation by willing nonmembers. Under these circumstances, there is no conflict between the associational interests of members and nonmembers. See generally Note, Primary Elections and the Collective Right of Freedom of Association, 94 Yale L. J. 117 (1984).

[7] Appellant contends that any infringement of the associational right of the Party or its members is *de minimis*, because Connecticut law, as amended during the pendency of this litigation, provides that any previously unaffiliated voter may become eligible to vote in the Party's primary by enrolling as a Party member as late as noon on the last business day preceding the primary. Conn. Gen. Stat. § 9-56 (1985). Thus, appellant contends, any independent voter wishing to participate in any Party primary may do so. This is not a satisfactory

LEdHN[1C][⬆] [1C]

[****17] ***LEdHN[1D]***[⬆] [1D] ***LEdHN[1E]***[⬆] [1E]

[****18]

[*217] [**550] ***LEdHN[1F]***[⬆] [1F]***LEdHN[7]***[⬆] [7]It [***525] is, of course, fundamental to appellant's defense of the State's statute that this impingement upon the associational rights of the Party and its members occurs at the ballot box, for ***HN7***[⬆] the Constitution grants to the States a broad power to prescribe the "Times, Places and Manner of holding Elections for Senators and Representatives," Art. I, § 4, cl. 1, which power is matched by state control over the election process for state offices. But this authority does not extinguish the State's responsibility to observe the limits established by the First Amendment rights of the State's citizens. The power to regulate the time, place, and manner of elections does not justify, without more, the abridgment of fundamental rights, such as the right to vote, see *Wesberry* v. *Sanders*, 376 U.S. 1, 6-7 (1964), or, as here, the freedom of political association. We turn then to an examination of the interests which appellant asserts to justify the burden cast by the statute upon the associational rights of the Party and its members.

III

Appellant contends that § 9-431 is a narrowly tailored regulation which advances the State's compelling interests [****19] by ensuring the administrability of the primary system, preventing raiding, avoiding voter confusion, and protecting the responsibility of party government.

A

Although it was not presented to the Court of Appeals as a basis for the defense of the statute, appellant argues here that the administrative burden imposed by the Party rule is a sufficient ground on which to uphold the constitutionality of [*218] § 9-431. [8] [***526] Appellant contends that the

response to the Party's contentions for two reasons. First, as the Court of Appeals noted, the formal affiliation process is one which individual voters may employ in order to associate with the Party, but it provides no means by which the members of the Party may choose to broaden opportunities for joining the association by their own act, without any intervening action by potential voters. 770 F.2d, at 281, n. 24. Second, and more importantly, the requirement of public affiliation with the Party in order to vote in the primary conditions the exercise of the associational right upon the making of a public statement of adherence to the Party which the State requires regardless of the actual beliefs of the individual voter. Cf. *Wooley* v. *Maynard*, 430 U.S. 705, 714-715 (1977); *West Virginia Board of Education* v. *Barnette*, 319 U.S. 624, 633-634 (1943). As counsel for appellees conceded at oral argument, a requirement that independent voters merely notify state authorities of their intention to vote in the Party primary would be acceptable as an administrative measure, but "[the] problem is that the State is insisting on a public act of affiliation . . . joining the Republican Party as a condition of this association." Tr. of Oral Arg. 40.

[8] The District Court entered no findings of fact as to the potential

Party's rule would require the purchase of additional voting machines, the training of additional poll workers, and potentially the printing of additional ballot materials specifically intended for independents voting in the Republican primary. In essence, appellant claims that the administration of the system contemplated by the Party rule would simply cost the State too much.

[****20] ***LEdHN[8]***[⬆] [8]Even assuming the factual accuracy of these contentions, which have not been subjected to any scrutiny by the District Court, the possibility of future increases in the cost of administering the election system is not a sufficient basis here for infringing appellees' First Amendment rights. Costs of administration would likewise increase if a third major party should come into existence in Connecticut, thus requiring the State to fund a third major-party primary. [**551] Additional voting machines, poll workers, and ballot materials would all be necessary under these circumstances as well. But the State could not forever protect the two existing major parties from competition solely on the ground that two major parties are all the public can afford. Cf. *Anderson* v. *Celebrezze*, 460 U.S. 780 (1983); *Williams* v. *Rhodes*, 393 U.S. 23 (1968). ***HN8***[⬆] While the State is of course entitled to take administrative and financial considerations into account in choosing whether or not to have a primary system at all, it can no more restrain the Republican Party's freedom of association for reasons of its own administrative convenience than it could [****21] on the same ground limit the ballot access of a new major party.

[*219] B

LEdHN[9][⬆] [9]Appellant argues that § 9-431 is justified as a measure to prevent raiding, a practice "whereby voters in sympathy with one party designate themselves as voters of another party so as to influence or determine the results of the other party's primary." *Rosario* v. *Rockefeller*, 410 U.S. 752, 760 (1973). While we have recognized that ***HN9***[⬆] "a State may have a legitimate interest in seeking to curtail 'raiding,' since that practice may affect the integrity of the electoral process," *Kusper* v. *Pontikes*, 414 U.S., at 59-60;*Rosario* v. *Rockefeller, supra*, at 761, that interest is not

administrative changes necessary to implement the Party rule. As appellant conceded at oral argument, the only evidence in the record before the District Court relating to the administration of the rule was a statement by the State's election attorney in testimony before the legislature that the system would be "workable." *Id.*, at 20. Appellant relies here upon affidavits concerning potential administrative burden which were submitted to the Court of Appeals in support of appellant's request for a stay, entered after this Court noted probable jurisdiction.

implicated here. [9] The statute as applied to the Party's rule prevents independents, who otherwise cannot vote in any primary, from participating in the Republican primary. Yet a raid on the Republican Party primary by independent voters, a curious concept only distantly related to the type of raiding [***527] discussed in *Kusper* and *Rosario*, is not impeded by § 9-431; the independent raiders need only register as Republicans and vote in the primary. Indeed, [****22] under Conn. Gen. Stat. § 9-56 (1985), which permits an independent to affiliate with the Party as late as noon on the business day preceding the primary, see n. 7, *supra*, the State's election statutes actually *assist* a "raid" by independents, which could be organized and implemented at the 11th hour. The State's asserted interest in the prevention of raiding provides no justification for the statute challenged here.

[****23] [*220] C

Appellant's next argument in support of § 9-431 is that the closed primary system avoids voter confusion. Appellant contends that "[the] legislature could properly find that it would be difficult for the general public to understand what a candidate stood for who was nominated in part by an unknown amorphous body outside the party, while nevertheless using the party name." Brief for Appellant 59. Appellees respond that the State is attempting to act as the ideological guarantor of the Republican Party's candidates, ensuring that voters are not misled by a "Republican" candidate who professes something other than what the State regards as true Republican principles. Brief for Appellees 28.

LEdHN[10A][↑] [10A]As we have said, ***HN10***[↑] "[there] can be no question about the legitimacy of the State's interest in fostering informed and educated expressions of the popular will in a general election." *Anderson* v. *Celebrezze*, 460 U.S., at 796. [**552] To the extent that party labels provide a shorthand designation of the views of party candidates on matters of public concern, the identification of candidates with particular parties plays a role in the process by which voters [****24] inform themselves for the exercise of the franchise. Appellant's argument depends upon the belief that voters can be "misled" by party

[9] As we have previously noted, a study commission established by the national Democratic Party concluded that "'the existence of "raiding" has never been conclusively proven by survey research.'" *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U.S., at 122-123, n. 23 (quoting Openness, Participation and Party Building: Reforms for a Stronger Democratic Party 68 (Feb. 17, 1978)). In view of our conclusion that § 9-431 is irrelevant to the question of raiding, we express no opinion as to whether the continuing difficulty of proving that raiding is possible attenuates the asserted state interest in preventing the practice.

labels. But "[our] cases reflect a greater faith in the ability of individual voters to inform themselves about campaign issues." *Id.*, at 797. Moreover, appellant's concern that candidates selected under the Party rule will be the nominees of an "amorphous" group using the Party's name is inconsistent with the facts. The Party is not proposing that independents be allowed to choose the Party's nominee without Party participation; on the contrary, to be listed on the Party's primary ballot continues to require, under a statute not challenged here, that the primary candidate have obtained at least 20% of the vote at a Party convention, which only Party [*221] members may attend. Conn. Gen. Stat. § 9-400 (1985). If no such candidate seeks to challenge the convention's nominee in a primary, then no primary is held, and the convention nominee becomes the Party's nominee in the general election without any intervention by independent voters. [10] Even assuming, however, that putative candidates defeated at the Party convention [****25] will have an increased incentive under the Party's rule to make primary challenges, hoping to attract more substantial support from independents than [***528] from Party delegates, the requirement that such challengers garner substantial minority support at the convention greatly attenuates the State's concern that the ultimate nominee will be wedded to the Party in nothing more than a marriage of convenience.

LEdHN[10B][↑] [10B]In arguing that the Party rule interferes with educated decisions by voters, appellant also disregards the substantial benefit which the Party rule provides to the Party and its members in seeking to choose successful candidates. Given the numerical strength of independent voters in the State, one of the questions most likely to occur to Connecticut Republicans in selecting candidates for public office is how can the Party most effectively appeal to the independent voter? By [****26] inviting independents to assist in the choice at the polls between primary candidates selected at the Party convention, the Party rule is intended to produce the candidate and platform most likely to achieve that goal. The state statute is said to decrease voter confusion, yet it deprives the Party and its members of the opportunity to inform themselves as to the level of support for the Party's candidates among a critical group of electors. ***HN11***[↑] "A State's claim that it is enhancing the ability of its citizenry to make wise decisions by restricting the flow of

[10] The record does not disclose the proportion of Connecticut Republican Party nominations that are the result of primary contests.

information to them must be viewed with some skepticism." *Anderson* v. *Celebrezze, supra*, at 798. The State's legitimate interests in preventing voter confusion [*222] and providing for educated and responsible voter decisions in no respect "make it necessary to burden the [Party's] rights." 460 U.S., at 789.

D

LEdHN[11A][⬆] [11A]Finally, appellant contends that § 9-431 furthers the State's compelling interest in protecting the integrity of the two-party system and the responsibility of party government. Appellant argues vigorously and at length that the closed primary system chosen by the state legislature [****27] promotes responsiveness by elected officials and strengthens the effectiveness of the political parties.

The relative merits of closed and open primaries have been the subject of substantial debate since the beginning of this century, [**553] and no consensus has as yet emerged. [11] [****28] Appellant [*223] [***529] invokes a long and distinguished line of political scientists and public officials who have been supporters of the closed primary. But our role is not to decide whether the state legislature was acting wisely in enacting the closed primary system in 1955, or whether the Republican Party makes a mistake in seeking to depart from the practice of the past 30 years. [12]

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[11] At the present time, 21 States provide for "closed" primaries of the classic sort, in which the primary voter must be registered as a member of the party for some period of time prior to the holding of the primary election. See Ariz. Rev. Stat. Ann. § 16-467 (1984); Cal. Elec. Code Ann. § 501 (West Supp. 1986); Colo. Rev. Stat. § 1-2-203 (Supp. 1986); Conn. Gen. Stat. § 9-431 (1985); Del. Code Ann., Tit. 15, § 3161 (1981); Fla. Stat. § 101.021 (1985); Kan. Stat. Ann. § 25-3301 (1981); Ky. Rev. Stat. §§ 116.045, 116.055 (1982); Me. Rev. Stat. Ann., Tit. 21-A, § 141 *et seq*. (Supp. 1986-1987); Md. Ann. Code, Art. 33, § 3-8 *et seq*. (1985); Neb. Rev. Stat. § 32-530 (1984); Nev. Rev. Stat. § 293.287 (1985); N. M. Stat. Ann. § 1-4-16 (1985); N. Y. Elec. Law § 1-104.9 (McKinney 1978); N. C. Gen. Stat. § 163.74 (1982 and Supp. 1985); Okla. Stat., Tit. 26, § 1-104 (1976); Ore. Rev. Stat. § 247.201 (1985); Pa. Stat. Ann., Tit. 25, § 2832 (Purdon 1963); S. D. Codified Laws § 12-4-15 (1982); W. Va. Code § 3-1-35 (1979); Wyo. Stat. § 22-5-212 (1977). Sixteen States allow a voter previously unaffiliated with any party to vote in a party primary if he affiliates with the party at the time of, or for the purpose of, voting in the primary. See Ala. Code § 17-16-14(b) (1985); Ark. Stat. Ann. § 3-126 (1976); Ga. Code Ann. § 21-2-235 (1982); Ill. Rev. Stat., ch. 46, para. 7-43(a) (1986); Ind. Code § 3-10-1-6 (Supp. 1986); Iowa Code §§ 43.41, 43.42 (1985); Mass. Gen. Laws § 53:37 (1984); Miss. Code Ann. § 23-15-575 (1986 pamphlet); Mo. Rev. Stat. § 115.397 (1978); N. H. Rev. Stat. Ann. § 654:34II (1986); N. J. Stat. Ann. § 19:23-45 (West Supp. 1986); Ohio Rev. Code Ann. § 3513.19 (Supp. 1985); R. I. Gen. Laws § 17-9-26(c) (1981); S. C. Code §§ 7-5-120, 7-9-20 (1976 and Supp. 1985); Tenn. Code Ann. § 2-7-115(b)(2) (1985); Tex. Elec. Code Ann. § 162.003 (1986). Four States provide for nonpartisan primaries in which all registered voters may participate, Alaska Stat. Ann. §§ 15.05.010, 15.25.090 (1982); La. Rev. Stat. Ann. §§ 18:401B, 18:521B (West 1979 and Supp. 1986); Va. Code § 24.1-182 (1985); Wash. Rev. Code § 29.18.200 (1965), while nine States have adopted classical "open" primaries, in which all registered voters may choose in which party primary to vote. Haw. Rev. Stat. § 12-31 (Supp. 1984); Idaho Code §§ 34-402, 34-404, 34-904 (Supp. 1986); Mich. Comp. Laws §§ 168.575, 168.576 (1967 and Supp. 1986); Minn. Stat. § 204D.08(4) (1985); Mont. Code Ann. § 13-10-301(2) (1985); N. D. Cent. Code § 16.1-11-22 (Supp. 1985); Utah Code Ann. § 20-3-19(2) (Supp. 1986); Vt. Stat. Ann., Tit. 17, § 2363 (1982); Wis. Stat. §§ 5.37, 6.80 (1983-1984).

[12] We note that appellant's direct predictions about destruction of the integrity of the election process and decay of responsible party government are not borne out by the experience of the 29 States which have chosen to permit more substantial openness in their primary systems than Connecticut has permitted heretofore.

We have previously recognized the danger that "splintered parties and unrestrained factionalism may do significant damage to the fabric of government." *Storer* v. *Brown*, 415 U.S., at 736. We upheld a California statute which denied access to the ballot to any independent candidate who had voted in a party primary or been registered as a member of a political party within one year prior to the immediately preceding primary election. We said:

"[The] one-year disaffiliation provision furthers the State's interest in the stability of its political system. We also consider that interest as not only permissible, but compelling and as outweighing the interest the candidate and his supporters may have in making a late [*224] rather than an early decision [****29] to seek independent ballot status." *Ibid*.

The statute in *Storer* was designed to protect the parties and the party system against the disorganizing effect of independent candidacies launched by unsuccessful putative party nominees. This protection, like that accorded to parties threatened by raiding in *Rosario* v. *Rockefeller*, 410 U.S. 752 (1973), is undertaken to prevent the disruption of the political parties from without, and not, as in this case, to prevent the parties from taking internal steps affecting their own process for the selection of candidates. The forms of regulation upheld in *Storer* [**554] and *Rosario* imposed certain burdens upon the protected First and Fourteenth Amendment interests of some individuals, both voters and potential candidates, in order to protect the interests of others. In the present case, the state statute is defended on the ground that it protects the integrity of the Party against the Party itself.

LEdHN[5C][↑] [5C]***LEdHN[11B]***[↑] [11B]***LEdHN[12A]***[↑] [12A]Under these circumstances, the views of the State, which to some extent represent the views of the one political party transiently [***530] enjoying majority power, as to the optimum methods for preserving [****30] party integrity lose much of their force. The State argues that its statute is well designed to save the Republican Party from undertaking a course of conduct destructive of its own interests. But on this point "even if the State were correct, ***HN12***[↑] a State, or a court, may not constitutionally substitute its own judgment for that of the Party." *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U.S., at 123-124 (footnote omitted). The Party's determination of the boundaries of its own association, and of the

structure which best allows it to pursue its political goals, is protected by the Constitution. "And as is true of all expressions of First Amendment freedoms, the courts may not interfere on the ground that they view a particular expression as unwise or irrational." *Id*., at 124. [13]

LEdHN[12B][⬆] [12B]

[****31] [*225] We conclude that the State's enforcement, under these circumstances, of its closed primary system burdens the First Amendment rights of the Party. The interests which the appellant adduces in support of the statute are insubstantial, and accordingly the statute, as applied to the Party in this case, is unconstitutional.

IV

LEdHN[2B][⬆] [2B]Appellant argues here, as in the courts below, that implementation of the Party rule would violate the Qualifications Clause of the Constitution, Art. I, § 2, cl. 1, and the Seventeenth Amendment because it would establish qualifications for voting in congressional elections which differ from the voting qualifications in elections for the more numerous house of the state legislature. [14] The Party rule as adopted permits independent voters to vote in Party primaries for the offices of United States Senator and Member of the House of Representatives, and for statewide offices, but is silent as regards [*226] primaries held to contest nominations for seats in the state legislature. See *supra*, at [***531] 212. Appellant contends that the Qualifications Clause and the Seventeenth Amendment require an absolute [**555] symmetry of qualifications [****32] to vote in elections for Congress and the lower house of the state legislature, and that the Party rule, if implemented according to its terms, would require lesser qualifications for voting in Party primaries

[13] Our holding today does not establish that state regulation of primary voting qualifications may never withstand challenge by a political party or its membership. A party seeking, for example, to open its primary to all voters, including members of other parties, would raise a different combination of considerations. Under such circumstances, the effect of one party's broadening of participation would threaten other parties with the disorganization effects which the statutes in *Storer* v. *Brown*, 415 U.S. 724 (1974), and *Rosario* v. *Rockefeller*, 410 U.S. 752 (1973), were designed to prevent. We have observed on several occasions that a State may adopt a "policy of confining each voter to a single nominating act," a policy decision which is not involved in the present case. See *Anderson* v. *Celebrezze*, 460 U.S. 780, 802, n. 29 (1983); *Storer* v. *Brown, supra*, at 743. The analysis of these situations derives much from the particular facts involved. "The results of this evaluation will not be automatic; as we have recognized, there is 'no substitute for the hard judgments that must be made.'" *Anderson* v. *Celebrezze, supra*, at 789-790 (quoting *Storer* v. *Brown, supra*, at 730).

[14] ***HN13***[⬆] Article I, § 2, cl. 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature." ***HN14***[⬆] The Seventeenth Amendment, which provides for the direct election of United States Senators, states in pertinent part that "[the] electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

for federal office than for state legislative office.

The Court of Appeals rejected appellant's argument, holding that the Qualifications Clause and the parallel provision of the Seventeenth Amendment do not apply to primary elections. 770 F.2d, at 274. [****33] The concurring opinion took a different view, reaching the conclusion that ***HN15***[⬆] these provisions require only that "anyone who is permitted to vote for the most numerous branch of the state legislature has to be permitted to vote" in federal legislative elections. *Id*., at 286 (Oakes, J., concurring). We agree.

LEdHN[13][⬆] [13] ***LEdHN[14]***[⬆] [14]We recognize that the Federal Convention, in adopting the Qualifications Clause of Article I, § 2, was not contemplating the effects of that provision upon the modern system of party primaries. As we have said:

"We may assume that the framers of the Constitution in adopting that section, did not have specifically in mind the selection and elimination of candidates for Congress by the direct primary any more than they contemplated the application of the commerce clause to interstate telephone, telegraph and wireless communication, which are concededly within it. But in determining whether a provision of the Constitution applies to a new subject matter, it is of little significance that it is one with which the framers were not familiar. For in setting up an enduring framework of government they undertook to carry out for the indefinite future and in all [****34] the vicissitudes of the changing affairs of men, those fundamental purposes which the instrument itself discloses." *United States* v. *Classic*, 313 U.S. 299, 315-316 (1941).

[*227] The fundamental purpose underlying Article I, § 2, cl. 1, that "[the] House of Representatives shall be composed of Members chosen . . . by the People of the several States," like the parallel provision of the Seventeenth Amendment, applies to the entire process by which federal legislators are chosen. ***HN16***[⬆] "Where the state law has made the primary an integral part of the procedure of choice, or where in fact the primary effectively controls the choice," the requirements of Article I, § 2, cl. 1, and the Seventeenth Amendment apply to primaries as well as to general elections. *United States* v. *Classic, supra*, at 318; see *Smith* v. *Allwright*, 321 U.S. 649, 659-660 (1944). The constitutional goal of assuring that the Members of Congress are chosen by the people can only be secured if that principle is

applicable to every stage in the selection process. If primaries were not subject to the requirements of the Qualifications Clauses contained [****35] in Article I, § 2 and the Seventeenth Amendment, the fundamental principle of free electoral choice would be subject to the sort of erosion these prior decisions were intended to prevent.

[***532] ***LEdHN[2C]***[⬆] [2C]Accordingly, we hold that ***HN17***[⬆] the Qualifications Clauses of Article I, § 2, and the Seventeenth Amendment are applicable to primary elections in precisely the same fashion that they apply to general congressional elections. Our task is then to discover whether, as appellant contends, those provisions require that voter qualifications, such as party membership, in primaries for federal office must be absolutely symmetrical with those pertaining to primaries for state legislative office.

Our inquiry begins with an examination of the Framers' purpose in enacting the first Qualifications Clause. It is clear that the Clause was intended to avoid the consequences of declaring a single standard for exercise of the franchise in federal elections. The state governments represented at the Convention had established varying [**556] voter qualifications, and substantial concern was expressed by delegates as to the likely effects of a federal voting qualification which disenfranchised voters eligible [****36] to vote in the States. James [*228] Wilson argued that "[it] would be very hard and disagreeable for the same persons, at the same time, to vote for representatives in the State Legislature, and to be excluded from a vote for those in the National Legislature." J. Madison, Journal of the Federal Convention 467 (E. Scott ed. 1893) (hereinafter Madison's Journal). Oliver Ellsworth predicted that "[the] people will not readily subscribe to a National Constitution, if it should subject them to be disfranchised." *Id.*, at 468. Benjamin Franklin argued, in the same vein, that "[the] sons of a substantial farmer, not being themselves freeholders, would not be pleased at being disfranchised, and there are a great many persons of that description." *Id.*, at 471. James Madison later defended the resulting provision on similar grounds:

"To have reduced the different qualifications in the different States, to one uniform rule, would probably have been as dissatisfactory to some of the States, as it would have been difficult to the Convention. The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every [****37] State; because it is conformable to the standard

already established, or which may be established by the State itself." The Federalist No. 52, p. 354 (J. Cooke ed. 1961).

LEdHN[2D][] [2D]In adopting the language of Article I, § 2, cl. 1, the Convention rejected the suggestion that a property qualification was necessary to restrict the availability of the federal franchise. See Madison's Journal 468-473; 2 M. Farrand, The Records of the Federal Convention of 1787, pp. 200-216 (1966). Far from being a device to limit the federal suffrage, the Qualifications Clause was intended by the Framers to prevent the mischief which would arise if state voters found themselves disqualified from participation in federal elections. ***HN18***[] The achievement of this goal does not require that qualifications for exercise of the federal franchise be at all [*229] times precisely equivalent to the prevailing qualifications for the exercise of the franchise in a given State. The fundamental purpose of the Qualifications Clauses contained in Article I, § 2, and the Seventeenth Amendment is satisfied if all those qualified to participate in the selection of members of the more numerous branch of the [***533] state legislature [****38] are also qualified to participate in the election of Senators and Members of the House of Representatives.

LEdHN[2E][] [2E]Our conclusion that these provisions do not require a perfect symmetry of voter qualifications in state and federal legislative elections takes additional support from the fact that we have not previously required such absolute symmetry when the federal franchise has been expanded. In *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), five Justices agreed that the Voting Rights Act Amendments of 1970 could constitutionally establish a minimum age of 18 for voters in federal elections, while a majority of the Court also concluded that Congress was without power to set such a minimum age in state and local elections. See *id*., at 117-118 (Black, J., announcing the judgments of the Court). Appellant's reading of the Qualifications Clause, which would require identical voter qualifications in state and federal legislative elections, is plainly inconsistent with these holdings. We hold that the implementation of the Party rule does not violate the Qualifications Clause or the Seventeenth Amendment because it does not disenfranchise any voter [****39] in a federal election who is qualified to vote in a primary or general election for the more numerous house of the state legislature.

V

LEdHN[1G][] [1G]We conclude that § 9-431

impermissibly burdens the rights of the Party and its [**557] members protected by the First and Fourteenth Amendments. The interests asserted by appellant in defense of the statute are insubstantial. The judgment of the Court of Appeals is

Affirmed.

Dissent by: STEVENS; SCALIA

Dissent

[*230] JUSTICE **STEVENS**, with whom JUSTICE SCALIA joins, dissenting.

The threshold issue presented by this case is whether, consistently with the Constitution, a State may permit a voter to participate in elections to the Congress while preventing that same person from voting for candidates to the most numerous branch of the state legislature. If we respect the plain language of Article I, § 2, cl. 1, of the Constitution and the Seventeenth Amendment, the intent of the Framers, and the reasoning of the opinions in *Oregon* v. *Mitchell*, 400 U.S. 112 (1970), we must answer that question in the negative.

Every person who votes in a federal election for a Member of the House of Representatives or for a United States Senator must be [****40] qualified to vote for candidates to the most numerous branch of the state legislature. The Constitution has imposed this condition of voter eligibility on congressional elections since 1789 [1] and on senatorial elections since the Seventeenth Amendment was ratified in 1913. [2]

As [***534] the Court recognizes, *ante*, at 227, a primary election is part of the process by which Members of the House and Senate are "chosen . . . by the People." U.S. Const., Art. I, § 2, cl. 1. Cf. *United States* v. *Classic*, 313 U.S. 299, 315 (1941). In Connecticut one of the [****41] qualifications for voters in Republican Party primary elections for the lower house of the state legislature is that the person be "on the last-completed enrollment list of such party in the municipality or voting district. . . ." Conn. Gen. Stat. § 9-431 (1985). Thus, only enrolled Republicans may vote in the Republican primary for the state legislature.

[*231] The Court today holds, however, that pursuant to the Republican Party of Connecticut's rules, the State must permit independent, as well as

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[1] Article I, § 2, cl. 1, provides: "The House of Representatives shall be composed of Members chosen every second Year by the People of the several States, and the Electors in each State shall have the Qualifications requisite for Electors of the most numerous Branch of the State Legislature."

[2] "The electors in each State shall have the qualifications requisite for electors of the most numerous branch of the State legislatures."

enrolled Republican, electors to vote in the Republican primary for the House of Representatives and the Senate of the United States. This facial disparity between the qualifications for electors of House and Senate candidates and the more stringent qualifications for electors to the state legislature violates both Qualifications Clauses.

The Court does not dispute the fact that the plain language of the Constitution requires that voters in congressional and senatorial elections "shall have" the qualifications of voters in elections to the state legislature. The Court nevertheless separates the federal voter qualifications from their state counterparts, inexplicably treating the [****42] mandatory "shall have" language of the Clauses as though it means only that the federal voters "may but need not have" the qualifications of state voters. In support of this freewheeling interpretation of the Constitution, the Court relies on what it describes as the Framers' purpose in enacting the first Qualification Clause and on the judgment in *Oregon* v. *Mitchell, supra*. Neither of these arguments withstands scrutiny.

The excerpts from the debate among the Framers quoted by the Court, *ante*, at 227-229, related to a motion made by Gouverneur Morris to amend a draft of proposed Art. I, § 1, that had been prepared by the Committee on Detail. To understand the full significance of that debate it is necessary first to consider the provision that Gouverneur Morris wanted to change and [**558] then to consider the nature of his proposed amendment.

Justice Stewart accurately summarized that background in his opinion in *Oregon* v. *Mitchell, supra*:

> "An early draft of the Constitution provided that the States should fix the qualifications of voters in congressional elections subject to the proviso that these qualifications might [****43] 'at any Time be altered and superseded by the Legislature of the United States.' The records of [*232] the Committee on Detail show that it was decided to strike the provision granting to Congress the authority to set voting qualifications and to add in its stead a clause making the qualifications 'the [***535] same from Time to Time as those of the Electors, in the several States, of the most numerous Branch of their own Legislatures.' The proposed draft reported by the Committee on Detail to the Convention included the following:

> 'The qualifications of the electors *shall be the same*, from time to time, as those of the electors in the several States, of the most numerous branch of their own legislatures.' Art. IV, § 1."
>
> 400 U.S., at 289 (concurring in part and dissenting in part) (footnotes omitted; emphasis added).

Thus, the draft that the Federal Convention of 1787 was considering when Gouverneur Morris made his motion was abundantly clear -- the qualifications of the federal electors "shall be the same" as the electors of the legislatures of the several States. J. Madison, Journal of the Federal Convention 449-450 (E. Scott ed. 1893). This provision [****44] would ensure uniformity of electors' qualifications within each State, but would not impose a uniform nationwide standard. [3]

It was this clause that Gouverneur Morris proposed to strike in order to substitute a clause permitting Congress to prescribe the electoral qualifications or to adopt a provision "which would restrain the right of suffrage to freeholders." *Id.*, at 467. Not surprisingly, his proposal was defeated by a vote of 7 to 1 because it would have disenfranchised a large number of voters in States that did not impose a property qualification on the right to vote. *Id.*, at 467, 468, 471-472. Despite the Court's reliance on the concerns that led the [*233] Framers to reject the Morris [****45] proposal, they shed absolutely no light on the reasons why the Committee on Detail had previously decided that the voters' qualifications in state and federal elections "shall be the same."

The Court's reliance on the holding in *Oregon* v. *Mitchell* is equally misguided. That case tested the constitutionality of certain parts of the Voting Rights Act Amendments of 1970, 84 Stat. 314, including the section that lowered the minimum age of voters in both state and federal elections from 21 to 18. Four Members of the Court concluded that Congress had no such power; [4] [****46] four other Members of the Court concluded that the entire statute was valid. [5] Thus, the conclusions of all eight of those Justices were consistent with the proposition that the Constitution requires the same

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[3] James Wilson referred to this part of the Report of the Committee on Detail as "well considered," and "he did not think it could be changed for the better. It was difficult to form any uniform rule of qualifications, for all the States." J. Madison, Journal of the Federal Convention 467 (E. Scott ed. 1893).

[4] See opinion of Justice Harlan, 400 U.S., at 152, 212-213 (concurring in part and dissenting in part), and opinion of Justice Stewart, *id.*, at 281, 287-289 (joined by Burger, C. J., and BLACKMUN, J.).

[5] See opinion of Justice Douglas, *id.*, at 135, 141-144, and the joint opinion, *id.*, at 229, 280-281 (opinion of BRENNAN, WHITE, and MARSHALL, JJ.).

qualifications for state and federal elections. [6] [***536] Only Justice Black concluded [**559] that the statute was invalid insofar as it applied to state elections but valid insofar as it applied to federal elections. 400 U.S., at 125-130.

Even Justice Black's reasoning, however, supports a literal reading of the Qualifications Clause in the absence of a federal statute prescribing a different rule for federal elections. For he relied entirely on the provision in Art. I, § 4, that empowers Congress to alter a State's regulations concerning the times, places, and manner of holding elections for Senators and Representatives. 400 U.S., at 119-124. In Justice [*234] Black's opinion, the qualifications that the States prescribed for their own voters for state offices [****47] "were adopted for federal offices unless Congress directs otherwise under Art. I, § 4." *Id*., at 125.

In this case there is no federal statute that purports to authorize the State of Connecticut to prescribe different qualifications for state and federal elections. Thus, there is no authority whatsoever for the Court's refusal to honor the plain language of the Qualifications Clauses. An interpretation of that language linking federal voters' qualifications in each State to the States' existing qualifications exactly matches James Madison's understanding:

"The provision made by the Convention appears therefore, to be the best that lay within their option. It must be satisfactory to every State; because it is conformable to the standard already established, or which may be established by the State itself." The Federalist No. 52, p. 354 (J. Cooke ed. 1961).

I respectfully dissent.

JUSTICE SCALIA, with whom THE CHIEF JUSTICE and JUSTICE O'CONNOR join, dissenting.

Both the right of free political association and the State's authority to establish arrangements that assure fair and effective party participation in the election process are essential to democratic [****48] government. Our cases make it clear that the accommodation of these two vital interests does not lend itself to bright-line rules but requires careful inquiry into the extent to which the one or the other interest is inordinately impaired under the facts of the particular case. See *Anderson* v. *Celebrezze*, 460 U.S. 780, 788-790 (1983); *Storer* v. *Brown*, 415 U.S. 724, 730 (1974). Even

[6] This was certainly the view of Justice Harlan, see *id*., at 210-211, and of Justice Stewart and the two Justices who joined his opinion, see *id*., at 287-290. As Justice Stewart observed: "The Constitution thus adopts as the federal standard the standard which each State has chosen for itself." *Id*., at 288. The opinions of Justice Douglas and JUSTICE BRENNAN are silent on the issue.

so, the conclusion reached on the individuated facts of one case sheds some measure of light upon the conclusion that will be reached on the individuated facts of the next. Since this is an area, moreover, in which the predictability of decisions is important, [*235] I think it worth noting that for me today's decision already exceeds the permissible limit of First Amendment restrictions upon the States' ordering of elections.

[***537] In my view, the Court's opinion exaggerates the importance of the associational interest at issue, if indeed it does not see one where none exists. There is no question here of restricting the Republican Party's ability to recruit and enroll Party members by offering them the ability to select Party candidates; Conn. [****49] Gen. Stat. § 9-56 (1985) permits an independent voter to join the Party as late as the day before the primary. Cf. *Kusper* v. *Pontikes*, 414 U.S. 51 (1973). Nor is there any question of restricting the ability of the Party's members to select whatever candidate they desire. Appellees' only complaint is that the Party cannot leave the selection of its candidate to persons who are *not* members of the Party, and are unwilling to become members. It seems to me fanciful to refer to this as an interest in freedom of association between the members of the Republican Party and the putative independent voters. The Connecticut voter who, while steadfastly refusing to register as a Republican, casts a vote in the Republican primary, forms no more meaningful an "association" with the [**560] Party than does the independent or the registered Democrat who responds to questions by a Republican Party pollster. If the concept of freedom of association is extended to such casual contacts, it ceases to be of any analytic use. See *Democratic Party of United States* v. *Wisconsin ex rel. La Follette*, 450 U.S. 107, 130-131 (1981) (POWELL, J., dissenting) [****50] ("[Not] every conflict between state law and party rules concerning participation in the nomination process creates a burden on associational rights"; one must "look closely at the nature of the intrusion, in light of the nature of the association involved, to see whether we are presented with a real limitation on First Amendment freedoms").

The ability of the members of the Republican Party to select their own candidate, on the other hand, unquestionably [*236] implicates an associational freedom -- but it can hardly be thought that that freedom is unconstitutionally impaired here. The Party is entirely free to put forward, if it wishes, that candidate who has the highest degree of

support among Party members and independents combined. The State is under no obligation, however, to let its party primary be used, instead of a party-funded opinion poll, as the means by which the party identifies the relative popularity of its potential candidates among independents. Nor is there any reason apparent to me why the State cannot insist that this decision to support what might be called the independents' choice be taken *by the party membership in a democratic fashion*, rather than [****51] through a process that permits the members' votes to be diluted -- and perhaps even absolutely outnumbered -- by the votes of outsiders.

The Court's opinion characterizes this, disparagingly, as an attempt to "[protect] the integrity of the Party against the Party itself." *Ante*, at 224. There are two problems with this characterization. The first, and less important, is that it is not true. We have no way of knowing that a majority of the Party's members is in favor of allowing ultimate selection of its candidates for federal and statewide office to be determined by persons outside the Party. That decision was not made by democratic ballot, but by [***538] the Party's state convention -- which, for all we know, may have been dominated by officeholders and office seekers whose evaluation of the merits of assuring election of the Party's candidates, vis-a-vis the merits of proposing candidates faithful to the Party's political philosophy, diverged significantly from the views of the Party's rank and file. I had always thought it was a major purpose of state-imposed party primary requirements to protect the general party membership against this sort of minority control. See [****52] *Nader* v. *Schaffer*, 417 F.Supp. 837, 843 (Conn.), summarily aff'd, 429 U.S. 989 (1976). Second and more important, however, *even if* it were the fact that the majority of the Party's members wanted its candidates to be [*237] determined by outsiders, there is no reason why the State is bound to honor that desire -- any more than it would be bound to honor a party's democratically expressed desire that its candidates henceforth be selected by convention rather than by primary, or by the party's executive committee in a smoke-filled room. In other words, the validity of the state-imposed primary requirement itself, which we have hitherto considered "too plain for argument," *American Party of Texas* v. *White*, 415 U.S. 767, 781 (1974), presupposes that the State *has* the right "to protect the Party against the Party itself." Connecticut may lawfully require that significant elements of the democratic election process be democratic -- whether the Party wants

that or not. It is beyond my understanding why the Republican Party's delegation of its democratic choice to a Republican Convention can be proscribed, but [****53] its delegation of that choice to nonmembers of the Party cannot.

In the case before us, Connecticut has said no more than this: Just as the Republican [**561] Party may, if it wishes, nominate the candidate recommended by the Party's executive committee, so long as its members select that candidate by name in a democratic vote; so also it may nominate the independents' choice, so long as its members select him by name in a democratic vote. That seems to me plainly and entirely constitutional.

I respectfully dissent.

References

25 Am Jur 2d, Elections 116-119, 129-131, 150-152, 159; 77 Am Jur 2d, United States 23

USCS, Constitution, Article I 2 cl 1, Article I 4 cl 1, Amendments 1, 14, 17

US L Ed Digest, Constitutional Law 940.5; Elections 2, 4

Index to Annotations; Congress; Due Process; Elections and Voting; Freedom of Association; Legislature; States

Annotation References:

Supreme Court's views regarding the First Amendment right of association as applied to the advancement of political beliefs. 67 L Ed 2d 859.

Supreme Court's views as to concept of "liberty" under due process clauses of Fifth and Fourteenth Amendments. 47 L Ed 2d 975.

What provisions of the Federal Constitution's Bill of Rights are applicable to the states. 18 L Ed 2d 1388, 23 L Ed 2d 985.

Fourteenth Amendment as affecting nomination or election to state office. 11 L Ed 2d 1057, 23 L Ed 2d 782.

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Concerned Citizens for Judicial Fairness v. Yacucci

Court of Appeal of Florida, Fourth District

September 3, 2014, Decided

No. 4D14-2971

Reporter

162 So. 3d 68 *; 2014 Fla. App. LEXIS 13670 **; 39 Fla. L. Weekly D 1869

CONCERNED CITIZENS FOR JUDICIAL FAIRNESS, INC., Appellant, v. PHILIP J. YACUCCI, Appellee.

Subsequent History: Related proceeding at In re Yacucci, 2017 Fla. LEXIS 2184 (Fla., Nov. 2, 2017)

Prior History: [**1] Appeal of a non-final order from the Circuit Court for the Nineteenth Judicial Circuit, St. Lucie County; George A. Shahood, Senior Judge; L.T. Case No. 2014CA001711.

Core Terms

injunction, temporary injunction, website, video, allegations, defamation, candidate, reasons, newspaper, stories

Case Summary

Overview

HOLDINGS: [1]-The circuit court erred in temporarily enjoining a political organization from saying anything about a candidate, because the injunction violated the First Amendment, the complaint failed to comply with Fla. R. Civ. P. 1.110(b) and 1.610(c), and the order contained no factual findings, lacked the necessary precision about what was being enjoined, was overly broad, and lacked supporting detail.

Outcome

Order reversed.

LexisNexis® Headnotes

Governments > Local Governments > Elections

Governments > State & Territorial Governments > Elections

***HN1*[] Local Governments, Elections**

See § 106.011(9), Fla. Stat. (2014).

Civil Procedure > Pleading & Practice > Pleadings > General Overview

HN2[] **Pleading & Practice, Pleadings**

Fla. R. Civ. P. 1.110(b) provides that when verification of a document is required, the document filed shall include an oath, affirmation, or the following statement: Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN3[] **Injunctions, Preliminary & Temporary Injunctions**

As an extraordinary remedy, a temporary injunction should be sparingly granted and only after the moving party has alleged and proved facts entitling it to relief.

Civil Procedure > Remedies > Injunctions > General Overview

Constitutional Law > ... > Fundamental Rights > Procedural Due Process > General Overview

HN4[] **Remedies, Injunctions**

At a contested hearing, the party opposing an injunction has the opportunity to cross-examine witnesses and challenge the allegations of the complaint. Only where a temporary injunction is sought without notice is the evidence in support of the injunction limited to affidavits or a verified pleading. Fla. R. Civ. P. 1.610(a)(2).

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Irreparable Harm

Evidence > Burdens of Proof > Allocation

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Likelihood of Success

Civil Procedure > ... > Injunctions > Grounds for Injunctions > Public Interest

Evidence > Weight & Sufficiency

HN5[] **Grounds for Injunctions, Irreparable Harm**

The party seeking an injunction must prove: (1) it

will suffer irreparable harm unless the injunction is entered; (2) there is no adequate remedy at law; (3) there is a substantial likelihood that the party will succeed on the merits; and (4) that considerations of the public interest support the entry of the injunction. The party seeking the injunction has the burden of providing competent, substantial evidence to satisfy each of these elements.

Civil Procedure > ... > Injunctions > Grounds for Injunctions > General Overview

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN6[] **Injunctions, Grounds for Injunctions**

A trial court's order granting a temporary injunction must contain clear, definite, and unequivocally sufficient factual findings to support each of the four conclusions necessary to justify entry of the injunction.

Evidence > Types of Evidence

HN7[] **Evidence, Types of Evidence**

An attorney's unsworn argument does not constitute evidence.

Civil Procedure > Remedies > Injunctions > Preliminary & Temporary Injunctions

HN8[] **Injunctions, Preliminary & Temporary Injunctions**

Fla. R. Civ. P. 1.610(c) states that every temporary injunction shall specify the reasons for entry and shall describe in reasonable detail the act or acts restrained without reference to a pleading or another document.

Civil Procedure > Remedies > Damages > General Overview

Torts > Intentional Torts > Defamation > General Overview

Civil Procedure > Remedies > Injunctions > General Overview

Torts > Intentional Torts > Defamation > Libel

HN9[] **Remedies, Damages**

In Florida, temporary injunctive relief is not available to prohibit the making of defamatory or

libelous statements. One reason for this is that there is an adequate remedy at law, an action for damages.

Torts > ... > Defamation > Public Figures > Actual Malice

Torts > ... > Defamation > Public Figures > Political Candidates

HN10 **Public Figures, Actual Malice**

As public figures, political candidates may pursue defamation actions, provided that they are able to prove actual malice on the part of the defamer.

Torts > ... > Defamation > Public Figures > Political Candidates

HN11 **Public Figures, Political Candidates**

The law expects a political candidate to accept republication of previous newspaper stories as their lot.

Torts > Intentional Torts > Defamation > General Overview

Torts > Intentional Torts > Invasion of Privacy > General Overview

HN12 **Intentional Torts, Defamation**

Invasion of privacy is subject to the same First Amendment considerations as defamation and provides a separate cause of action for redress.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Political Speech

HN13 **Freedom of Speech, Political Speech**

The First Amendment has its fullest and most urgent application to speech uttered during a campaign for political office.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative Restraints > Prior Restraint

HN14 **Judicial & Legislative Restraints, Prior Restraint**

Prior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights.

Constitutional Law > ... > Fundamental Freedoms > Judicial & Legislative

Restraints > Prior Restraint

HN15[] **Judicial & Legislative Restraints, Prior Restraint**

In a prior restraint context, the concept that a statement on a public issue may be suppressed because it is believed by a court to be untrue is entirely inconsistent with constitutional guarantees and raises the spectre of censorship in a most pernicious form.

Counsel: Louis C. Arslanian, Plantation, for appellant.

Ashley N. Minton of Minton Law, P.A., Fort Pierce, for appellee.

Judges: WARNER and MAY, JJ., concur.

Opinion by: GROSS

Opinion

[*70] GROSS, J.

This case involves a temporary injunction issued during a political campaign that limits what a political organization may say about a candidate. For multiple reasons, not the least of which is that the injunction is a prior restraint on speech in violation of the First Amendment, we entered an order dated August 22, 2014, reversing the temporary injunction in its entirety. This is the opinion that explains that ruling.

This case arises out of a contested race for county court judge in St. Lucie County. Philip Yacucci is the incumbent and Stephen Smith is the challenger. The election was on August 26, 2014. Concerned Citizens for Judicial Fairness, Inc. is an electioneering communications organization.[1]

Yacucci filed suit against Smith and Citizens for defamation, invasion of privacy, and intentional infliction of emotional distress. The complaint sought damages and injunctive relief.

The salient facts alleged in the complaint can be summarized as follows. Citizens and Smith are linked because the only contributors to Citizens are affiliated with the law firm that employs Smith. There is a website pertaining to this election. The complaint generally alleges that Smith and Citizens are responsible for what is posted on the website without explaining how or why.

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[1] Section 106.011(9), Florida Statutes (2014), defines an "[e]lectioneering communications organization" as:

> ***HN1***[] [A]ny group, other than a political party, affiliated party committee, or political committee, whose election-related activities are limited [**2] to making expenditures for electioneering communications or accepting contributions for the purpose of making electioneering communications . . . .

The home page of the website says this:

Palm Beach Post or State Attorney Investigation, Yacucci Accused of:

*Battery on his wife

*Aggravated Assault with a Firearm

*Unlawful Compensation

*Failure to pay child support

The website publishes a series of headlines above the first sentence of newspaper stories. Clicking on a headline takes the reader to what purports to be the full newspaper story. Each story is identified as being published in *The Palm Beach Post* and by the date. Eight of the [**3] stories were published from 1992-93; one story [*71] was published in 2007. The reporters who wrote the stories are identified.

The website contains links to "three commercially produced video advertisements." The complaint describes the videos as follows:

> The first video alleged that a State Attorney investigation revealed that a witness testified that the Plaintiff was in a car with his children when he pointed a gun at a man and said "I'm going to blow your head off." The video further stated that the same witness said the Plaintiff pushed his wife and said he was going to kill her.
>
> The second video alleged that the Plaintiff was accused of battery on his wife, aggravated assault with a firearm, and unlawful compensation. The video goes on to discuss the Plaintiff's current salary and the alleged foreclosure of his home. Finally the video discusses the allegation that the Plaintiff was threatened with 20 days in jail for failure to pay child support.
>
> The third video again discussed the alleged foreclosure of the Plaintiff's home and the threat to the Plaintiff of 20 days in jail for failure to pay child support.

The complaint alleges that an "individual" identified as Irene Leroux emailed [**4] members of the Florida Bar, "en masse," a link to the website. Based on "a diligent investigation," Yacucci "became aware" that Citizens "purchased what looks to be large blocks of commercial time, presumably to air the videos located on the website over broadcast television."

Yacucci generally alleges that the statements contained in the newspaper stories were false. The complaint sets forth reasons why Yacucci believes the allegations are misleading. For example, attached as an exhibit to the complaint is a Close-

Out Memo prepared on December 29, 1991, by a state attorney appointed to investigate certain criminal allegations. The Memo explains in detail the reasons that no criminal charges were filed against either Yacucci or his former wife or his former wife's friend.

Yacucci "verif[ied] and approve[d]" the "contents" of the complaint. We note that such a verification fails to comply with ***HN2***[⬆] Florida Rule of Civil Procedure 1.110(b) which provides that "[w]hen verification of a document is required, the document filed shall include an oath, affirmation, or the following statement":

> Under penalty of perjury, I declare that I have read the foregoing, and the facts alleged therein are true and correct to the best of my knowledge and belief.

Count V of the [**5] complaint sought a temporary injunction. There was a temporary injunction hearing at which the attorneys for all sides appeared. No witnesses were called. No exhibits were introduced in evidence. Over objection, Yacucci's attorney argued as if the allegations in the complaint were established facts. She complained about the website's "many false and misleading claims" and provided unsworn testimony about the true facts in the case. She said that an FDLE investigation "pretty much refuted" certain criminal charges and that no charges were filed "because there wasn't enough evidence on them."

On August 8, 2014, the circuit court declined to enter a temporary injunction against Smith; the court did, however, enjoin Citizens

> from operating [the website] from disseminating any material contained therein in the form of websites, direct mailers, television commercials, radio commercials and/or any other format for dissemination, or any other information about the Plaintiff.

The court set a $10,000 injunction bond.

On August 13, 2014, this Court stayed the operation of the temporary injunction.

[*72] ***HN3***[⬆] As an extraordinary remedy, a temporary injunction should be sparingly granted and only after the moving [**6] party has alleged and proved facts entitling it to relief. *See Liberty Fin. Mtg. Corp. v. Clampitt*, 667 So. 2d 880, 881 (Fla. 2d DCA 1996); *Hiles v. Auto Bahn Fed'n, Inc.*, 498 So. 2d 997, 998 (Fla. 4th DCA 1986). ***HN4***[⬆] At a contested hearing, the party opposing an injunction has the opportunity to cross examine witnesses and challenge the allegations of the

complaint. Only where a temporary injunction is sought without notice is the evidence in support of the injunction limited to affidavits or a verified pleading. *See* Fla. R. Civ. P. 1.610(a)(2).

HN5[⬆] The party seeking the injunction must prove: (1) it will suffer irreparable harm unless the injunction is entered, (2) there is no adequate remedy at law, (3) there is a substantial likelihood that the party will succeed on the merits, and (4) that considerations of the public interest support the entry of the injunction. *See Masters Freight, Inc. v. Servco, Inc.*, 915 So. 2d 666, 666 (Fla. 2d DCA 2005); *Cordis Corp. v. Prooslin*, 482 So. 2d 486, 489-90 (Fla. 3d DCA 1986). The party seeking the injunction "has the burden of providing competent, substantial evidence" to satisfy each of these elements. *SunTrust Banks, Inc. v. Cauthon & McGuigan, PLC*, 78 So. 3d 709, 711 (Fla. 1st DCA 2012). ***HN6***[⬆] A trial court's order granting a temporary injunction must contain "[c]lear, definite, and unequivocally sufficient factual findings [to] support each of the four conclusions necessary to justify entry of" the injunction. *Liberty Fin.*, 667 So. 2d at 881 (quoting *City of Jacksonville v. Naegele Outdoor Advertising Co.*, 634 So. 2d 750, 754 (Fla. 1st DCA 1994), *approved*, 659 So. 2d 1046 (Fla. 1995)).

For numerous reasons, the temporary injunction cannot stand.

First, Yacucci offered no evidence to support the injunction, only [**7] the unsworn argument of counsel. ***HN7***[⬆] An attorney's unsworn argument does not constitute evidence. *See, e.g., Rowe v. Rodriguez-Schmidt*, 89 So. 3d 1101, 1104 (Fla. 2d DCA 2012).

Second, the temporary injunction contains no factual findings whatsoever and lacks the necessary precision about what is being enjoined. ***HN8***[⬆] Florida Rule of Civil Procedure 1.610(c) states that every temporary injunction "shall specify the reasons for entry [and] shall describe in reasonable detail the act or acts restrained without reference to a pleading or another document." Contrary to the rule, the court's order refers generally to the website, so the injunction is overly broad. *See Chevaldina v. R.K./FL Mgmt., Inc.*, 133 So. 3d 1086, 1091 (Fla. 3d DCA 2014). The order lacks the detail to support "each of the four conclusions necessary to justify entry of" the injunction. *Liberty Fin.*, 667 So. 2d at 881 (quoting *City of Jacksonville*, 634 So. 2d at 754).

Third, the general rule ***HN9***[⬆] in Florida is that "temporary injunctive relief is not available to

prohibit the making of defamatory or libelous statements." *Vrasic v. Leibel*, 106 So. 3d 485, 486 (Fla. 4th DCA 2013). One reason for this is that there is an adequate remedy at law, an action for damages. *Id*. ***HN10***[] As public figures, political candidates may pursue defamation actions, provided that they are able to prove actual malice on the part of the defamer. *See Dockery v. Fla. Democratic Party*, 799 So. 2d 291, 293-94 (Fla. 2d DCA 2001); *Pullum v. Johnson*, 647 So. 2d 254, 257 (Fla. 1st DCA 1994); *Barnes v. Horan*, 841 So. 2d 472, 479-80 (Fla. 3d DCA 2002) (involving defamation action by losing candidate for State Attorney).

[*73] Yacucci has failed to demonstrate that this [**8] case falls within the limited exception to the general rule for cases where "defamatory words are made in the furtherance of the commission of another intentional tort." *Chevaldina*, 133 So. 3d at 1090; *see, e.g., Murtagh v. Hurley*, 40 So. 3d 62 (Fla. 2d DCA 2010) (involving tort of tortious interference with advantageous business relationship); *Zimmerman v. D.C.A. at Welleby, Inc.*, 505 So. 2d 1371 (Fla. 4th DCA 1987) (same). On its face, the complaint fails to demonstrate the conduct required for intentional infliction of emotional distress—conduct "'so outrageous in character, and so extreme in degree, as to go beyond all possible bounds of decency, and to be regarded as atrocious, and utterly intolerable in a civilized community.'" *Allen v. Walker*, 810 So. 2d 1090, 1091 (Fla. 4th DCA 2002) (quoting *Metro. Life Ins. Co. v. McCarson*, 467 So. 2d 277, 278-79 (Fla. 1985)). ***HN11***[] The law expects a political candidate to accept republication of previous newspaper stories "as their lot. . . . [T]he first amendment demands a hide that tough." *Ollman v. Evans*, 750 F.2d 970, 1005, 242 U.S. App. D.C. 301 (D.C. Cir. 1984) (Bork, J., concurring) (concerning a private defamation suit against newspaper columnists for statements made during a political controversy). ***HN12***[] Invasion of privacy is subject to the same First Amendment considerations as defamation and provides a separate cause of action for redress. *See Post-Newsweek Stations Orlando, Inc. v. Guetzloe*, 968 So. 2d 608, 610-11 (Fla. 5th DCA 2007).

Fourth, and most importantly, the trial court's injunction, issuing in the last three weeks of a political campaign, is "a classic example of prior restraint on speech triggering [**9] First Amendment concerns." *Vrasic*, 106 So. 3d at 486; *Chevaldina*, 133 So. 3d at 1090. Such concerns make the injunction contrary to the public interest.

HN13[] "[T]he First Amendment 'has its fullest and most urgent application' to speech uttered during a campaign for political office." *Eu v. San Francisco Cnty. Democratic Ctr. Comm.*, 489 U.S. 214, 223, 109 S. Ct. 1013, 103 L. Ed. 2d 271 (1989) (quoting *Monitor Patriot Co. v. Roy*, 401 U.S. 265, 272, 91 S. Ct. 621, 28 L. Ed. 2d 35 (1971)).

HN14[] "[P]rior restraints on speech and publication are the most serious and the least tolerable infringement on First Amendment rights." *Neb. Press Ass'n v. Stuart*, 427 U.S. 539, 559, 96 S. Ct. 2791, 49 L. Ed. 2d 683 (1976). To allow a temporary injunction such as this one to stand would be to make courts into censors, deciding what candidates can and cannot say. The political process should not be subject to the whims of a local judge who may favor one candidate over another. ***HN15***[] "The concept that a statement on a public issue may be suppressed because it is believed by a court to be untrue is entirely inconsistent with constitutional guarantees and raises the spectre of censorship in a most pernicious form." *Wilson v. Superior Court*, 13 Cal. 3d 652, 119 Cal. Rptr. 468, 532 P.2d 116, 120 (Cal. 1975).

For these reasons, we reverse the temporary injunction in its entirety.

WARNER and MAY, JJ., concur.

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

JAMES DONELON,
PLAINTIFF,

v. **Case No. 23-008089-CI**

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
DEFENDANT.
_____/

ORDER GRANTING DEFENDANT'S MOTION TO DISMISS

THIS CAUSE, having come before this Court on December 4, 2023, on Defendant Pinellas Democratic Executive Committee's Motion to Dismiss. Plaintiff appeared *pro se* and counsel appeared on behalf of Defendant. This Court, having review the Motion and having heard the argument of Plaintiff and Defendant's counsel, and is otherwise duly advised in its premises, it is hereby **ORDERED AND ADJUDGED** as follows:

(1) Defendant's Motion to Dismiss for failure to state a cause of action is **GRANTED** without prejudice.

(2) Plaintiff may file an Amended Complaint on or before December 15, 2023.

(3) Notwithstanding this Court granting the Motion to Dismiss without prejudice, this Court, based upon the authorities of *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000), finds that it lacks jurisdiction to hear an action regarding the internal operations of a political party such as Defendant.

(4) If Plaintiff opts to file an Amended Complaint, Plaintiff must demonstrate in such Amended Complaint why this Court should not rely on *Repub. Party v. Davis*, 18 So. 3d 1112 (Fla. 3d DCA 2009) and *Cal. Democratic Party v. Jones*, 530 U.S. 567 (2000) in determining that this Court lack jurisdiction, and must specifically cite case law demonstrating that this Court has jurisdiction to establish this Court's jurisdiction.

ELECTRONICALLY FILED 12/5/2023 6:12:53 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

(5) By stipulation of the parties, Defendant's counsel may upload the Proposed Order to JAWS and then email a copy of the signed Order to Plaintiff at DemDonelon@hotmail.com.

Ordered in Chambers in St. Petersburg, Pinellas County, Florida.

23-008089-CI 12/5/2023 6:12:52 PM
Circuit Judge Thomas Ramsberger
23-008089-CI 12/5/2023 6:12:52 PM

CIRCUIT COURT JUDGE

Copies to:

-James Donelon, Plaintiff *pro se*

-George A.D. Thurlow, Esquire and George K. Rahdert, Esquire, attorneys for Defendant

Fla. Stat. § 768.295

Current through the 2024 regular session.

LexisNexis® Florida Annotated Statutes > Title XLV. Torts. (Chs. 766 — 774) > Chapter 768. Negligence. (Pts. I — II) > Part I. General Provisions. (§§ 768.041 — 768.395)

§ 768.295. Strategic Lawsuits Against Public Participation (SLAPP) prohibited.

(1) It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. Therefore, the Legislature finds and declares that prohibiting such lawsuits as herein described will preserve this fundamental state policy, preserve the constitutional rights of persons in Florida, and assure the continuation of representative government in this state. It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts.

(2) As used in this section, the phrase or term:

(a) "Free speech in connection with public issues" means any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

(b) "Governmental entity" or "government entity" means the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the

state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof.

(3) A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

(4) A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

(5) In any case filed by a governmental entity which is found by a court to be in violation of this section, the governmental entity shall report such finding and provide a copy of the court's order to the Attorney General no later than 30 days after such order is final. The Attorney General shall report any violation of this section by a governmental entity to the Cabinet, the President of the

Senate, and the Speaker of the House of Representatives. A copy of such report shall be provided to the affected governmental entity.

History

S. 1, ch. 2000-174; s. 1, ch. 2015-70, effective July 1, 2015.

Annotations

Notes

Amendment Notes

The 2015 amendment rewrote the section.

Notes to Decisions

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

Civil Procedure: Summary Judgment: Motions for Summary Judgment

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: English Rule

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

Civil Procedure: U.S. Supreme Court Review

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Scope of Freedom

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Strategic Lawsuits Against Public Participation

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom to Petition

Governments: Local Governments: Claims By & Against

Torts: Business Torts: Commercial Interference: Contracts: Defenses

Torts: Public Entity Liability: Liability: General Overview

Civil Procedure: Pleading & Practice: Defenses, Demurrers & Objections: Failures to State Claims

Overview: *Writ of certiorari granted because defendants established a departure from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute, § 768.295, Fla. Stat. (2020).*

- Section 768.295(4), Fla. Stat. (2020), permits a SLAPP defendant to file a motion to dismiss, a motion for final judgment entered in favor of the SLAPP defendant, or a motion for summary judgment.

Davis v. Mishiyev, 339 So. 3d 449, 2022 Fla. App. LEXIS 3212 (Fla. 2nd DCA 2022).

Civil Procedure: Summary Judgment: Motions for Summary Judgment

Overview: *Writ of certiorari granted because defendants established a departure from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute, § 768.295, Fla. Stat. (2020).*

- Section 768.295(4), Fla. Stat. (2020), permits a SLAPP defendant to file a motion to dismiss, a motion for final judgment entered in favor of the SLAPP defendant, or a motion for summary judgment.

Davis v. Mishiyev, 339 So. 3d 449, 2022 Fla. App. LEXIS 3212 (Fla. 2nd DCA 2022).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: English Rule

Overview: *Where the animal shelter's defamation suit against the volunteer was resolved by arbitration, the trial court correctly denied her motion for attorney's fees under the Anti-SLAPP statute, § 768.295(4), Fla. Stat. because the trial court made no specific findings that the animal shelter's actions violated the Anti-SLAPP statute.*

- Section 768.295, Fla. Stat. provides for an award of attorney's fees to a party who prevails on an Anti-SLAPP claim: A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section.

  Lee v. Animal Aid, Inc., 2024 Fla. App. LEXIS 1508 (Fla. 4th DCA Feb. 28, 2024).

Civil Procedure: Remedies: Costs & Attorney Fees: Attorney Expenses & Fees: Statutory Awards

Overview: *Trial court correctly denied plaintiff's motion for attorney's fees under the provision of the Anti-SLAPP statute, § 768.295(4), Fla. Stat., since she never obtained a ruling that defendant's claim violated the Anti-SLAPP statute. Plaintiff, as a pro se litigant on her Anti-SLAPP motion, was not entitled to attorney's fees.*

- Further, § 768.295, Fla. Stat. provides for an award of attorney's fees to a party who prevails on an Anti-SLAPP claim: A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action

or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

- A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under § 768.295(4), Fla. Stat.
- Merely raising the Anti-SLAPP statute as an affirmative defense, where the court's order granting summary judgment neither mentioned nor relied on the Anti-SLAPP provision, will not entitle the party to fees under the Anti-SLAPP statute. It is clear that there must be an express finding by the trial court that the petitioner's suit violated the Anti-SLAPP statute for the defendant to be entitled to fees under § 768.295(4), Fla. Stat.
- The Anti-SLAPP statute provides only for attorney fees and costs incurred in connection with a claim that an action was filed in violation of this sectionâ in other words, fees and costs incurred in connection with the SLAPP motion itself. § 768.295(4), Fla. Stat.

Lee v. Animal Aid, Inc., 388 So. 3d 25, 2024 Fla. App. LEXIS 4562 (Fla. 4th DCA 2024).

Overview: *Where the animal shelter's defamation suit against the volunteer was resolved by arbitration, the trial court correctly denied her motion for attorney's fees under the Anti-SLAPP statute, § 768.295(4), Fla. Stat. because the trial court made no specific findings that the animal shelter's actions violated the Anti-SLAPP statute.*

- Section 768.295, Fla. Stat. provides for an award of attorney's fees to a party who prevails on an Anti-SLAPP claim: A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section.
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- It is clear that there must be an express finding by the trial court that the petitioner's suit violated the Anti-SLAPP statute for the defendant to be entitled to fees under § 768.295(4), Fla. Stat.

Lee v. Animal Aid, Inc., 2024 Fla. App. LEXIS 1508 (Fla. 4th DCA Feb. 28, 2024).

Civil Procedure: Appeals: Appellate Jurisdiction: State Court Review

In a suit arising from a lost election, the court dismissed the petition for a writ of certiorari because petitioners failed to demonstrate the jurisdictional prerequisite by failing to make a prima facie showing of irreparable harm sufficient to invoke the court's certiorari jurisdiction based on the underlying action being barred under Florida's Anti-SLAPP statute, which protects the exercise of the right of free speech in connection with public issues. WPB Residents for Integrity in Gov't, Inc. v. Materio, 284 So. 3d 555, 2019 Fla. App. LEXIS 16456 (Fla. 4th DCA 2019).

Residents were granted a writ of certiorari and the order denying their motion to dismiss was quashed because the trial court departed from the essential requirements of law and failed to adhere to the language of the SLAPP statute by not dismissing the developer's counterclaim as a SLAPP suit since vagueness of the developer's allegations did not permit trial court to determine if the developer's claims were primarily based on protected activities. Gundel v. AV Homes, Inc., 264 So. 3d 304, 2019 Fla. App. LEXIS 1339 (Fla. 2nd DCA 2019).

Civil Procedure: U.S. Supreme Court Review

Court granted a writ of certiorari and quashed the trial court's order denying defendants' motion to dismiss plaintiff's action for defamation and intentional interference with a business relationship because defendants established a departure from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute. Davis v. Mishiyev, 339 So. 3d 449, 2022 Fla. App. LEXIS 3212 (Fla. 2nd DCA 2022).

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Scope of Freedom

Overview: *Where the animal shelter's defamation suit against the volunteer was resolved by arbitration, the trial court correctly denied her motion for attorney's fees under the Anti-SLAPP statute, § 768.295(4), Fla. Stat. because the trial court made no specific findings that the animal shelter's actions violated the Anti-SLAPP statute.*

- Florida's anti-SLAPP statute prohibits a person from filing a cause of action that is: (a) without merit; and (b) primarily because the defendant exercised the constitutional right of free speech in connection with a public issue. § 768.295(3), Fla. Stat. A SLAPP is a lawsuit, cause of action, claim, cross-claim, or counterclaim filed against a person or entity that is without merit and filed primarily because the person or entity engaged in the exercise of a right protected by the First Amendment, U.S. Const. amend. I.

  Lee v. Animal Aid, Inc., 2024 Fla. App. LEXIS 1508 (Fla. 4th DCA Feb. 28, 2024).

Constitutional Law: Bill of Rights: Fundamental Freedoms: Freedom of Speech: Strategic Lawsuits Against Public Participation

Overview: *Trial court correctly denied plaintiff's motion for attorney's fees under the provision of the Anti-SLAPP statute, § 768.295(4), Fla. Stat., since she never obtained a ruling that defendant's claim violated the Anti-SLAPP statute. Plaintiff, as a pro se litigant on her Anti-SLAPP motion, was not entitled to attorney's fees.*

- Florida's anti-SLAPP statute prohibits a person from filing a cause of action that is (a) without merit and (b) primarily because the defendant exercised the constitutional right of free speech in connection with a public issue. § 768.295(3), Fla. Stat.
- The legislature outlined within the statute the purpose of the Anti-SLAPP provision:It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. § 768.295(1), Fla. Stat. (2018).
- A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under § 768.295(4), Fla. Stat.
- Merely raising the Anti-SLAPP statute as an affirmative defense, where the court's order granting summary judgment neither mentioned nor relied on the Anti-SLAPP provision, will not entitle the party to fees under the Anti-SLAPP statute. It is clear that there must be an express finding by the trial court that the petitioner's suit violated the Anti-SLAPP statute for the defendant to be entitled to fees under § 768.295(4), Fla. Stat.

- The Anti-SLAPP statute provides only for attorney fees and costs incurred in connection with a claim that an action was filed in violation of this sectionâ in other words, fees and costs incurred in connection with the SLAPP motion itself. § 768.295(4), Fla. Stat.

Lee v. Animal Aid, Inc., 388 So. 3d 25, 2024 Fla. App. LEXIS 4562 (Fla. 4th DCA 2024).

Overview: *Where the animal shelter's defamation suit against the volunteer was resolved by arbitration, the trial court correctly denied her motion for attorney's fees under the Anti-SLAPP statute, § 768.295(4), Fla. Stat. because the trial court made no specific findings that the animal shelter's actions violated the Anti-SLAPP statute.*

- Florida's anti-SLAPP statute prohibits a person from filing a cause of action that is: (a) without merit; and (b) primarily because the defendant exercised the constitutional right of free speech in connection with a public issue. § 768.295(3), Fla. Stat. A SLAPP is a lawsuit, cause of action, claim, cross-claim, or counterclaim filed against a person or entity that is without merit and filed primarily because the person or entity engaged in the exercise of a right protected by the First Amendment, U.S. Const. amend. I.
- Section 768.295, Fla. Stat. provides for an award of attorney's fees to a party who prevails on an Anti-SLAPP claim: A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section.
- A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under § 768.295(4), Fla. Stat.
- It is clear that there must be an express finding by the trial court that the petitioner's suit violated the Anti-SLAPP statute for the defendant to be entitled to fees under § 768.295(4), Fla. Stat.

Lee v. Animal Aid, Inc., 2024 Fla. App. LEXIS 1508 (Fla. 4th DCA Feb. 28, 2024).

Overview: *Writ of certiorari granted because defendants established a departure from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute, § 768.295, Fla. Stat. (2020).*

- A SLAPP suit is defined in relevant part as any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue. § 768.295(3), Fla. Stat. (2020). The statute defines free speech in connection with public issues as any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work. § 768.295(2)(a).

- Section 768.295, Fla. Stat. (2020), was enacted because the legislature acknowledged the inconsistency between SLAPP suits and the constitutional right to free speech in connection with public issues and, therefore, that the statute was intended to assist in expeditiously disposing of such suits. § 768.295(1). The very filing and continuation of such suits had a chilling effect on constitutional rights and the harm that results from the court's improper denial of a motion to dismiss is precisely the harm that the Anti-SLAPP statute seeks to preventâ unnecessary litigation. The protection afforded by § 768.295 could not be restored once it was lost through litigation and that without the availability of certiorari review, the substantive right created by the Anti-SLAPP statute is illusory, the policy underlying the creation of the statute is frustrated, and the protection afforded by the statute is rendered meaningless for defendants.

- Section 768.295(4), Fla. Stat. (2020), permits a SLAPP defendant to file a motion to dismiss, a motion for final judgment entered in favor of the SLAPP defendant, or a motion for summary judgment.

Davis v. Mishiyev, 339 So. 3d 449, 2022 Fla. App. LEXIS 3212 (Fla. 2nd DCA 2022).

Court granted a writ of certiorari and quashed the trial court's order denying defendants' motion to dismiss plaintiff's action for defamation and intentional interference with a business relationship because defendants established a departure from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute. Davis v. Mishiyev, 339 So. 3d 449, 2022 Fla. App. LEXIS 3212 (Fla. 2nd DCA 2022).

Final order dismissing appellants' defamation action with prejudice pursuant to Florida's Anti-SLAPP Statute was proper even though the court agreed that the statute did not create a different motion to dismiss standard because appellants failed to plead facts that, if proven, would establish actual malice. However, the dismissal with prejudice was improper and the court remanded without prejudice to amend the complaint. Lam v. Univision Communs., Inc., 329 So. 3d 190, 2021 Fla. App. LEXIS 13845 (Fla. 3rd DCA 2021).

In the school's action against a parent for tortious interference, certiorari was the appropriate mechanism for review of the order denying his motion to dismiss pursuant to the Anti-SLAPP statute; however, the petition was denied as he failed to show that the trial court departed from the essential requirements of the law. Because the action was based on the parent's private social media communications that were not privileged, the school met its burden to demonstrate that its claims were not "primarily" based on the exercise of First Amendment rights. Baird v. Mason Classical Acad., Inc., 317 So. 3d 264, 2021 Fla. App. LEXIS 5027 (Fla. 2nd DCA 2021).

In a suit arising from a lost election, the court dismissed the petition for a writ of certiorari because petitioners failed to demonstrate the jurisdictional prerequisite by failing to make a prima facie showing of irreparable harm sufficient to invoke the court's certiorari jurisdiction based on the underlying action being barred under Florida's Anti-SLAPP statute, which protects the exercise of the right of free speech in connection with public issues. WPB Residents for Integrity in Gov't, Inc. v. Materio, 284 So. 3d 555, 2019 Fla. App. LEXIS 16456 (Fla. 4th DCA 2019).

Residents were granted a writ of certiorari and the order denying their motion to dismiss was quashed because the trial court departed from the essential requirements of law and failed to adhere to the language of the SLAPP statute by not dismissing the developer's counterclaim as a SLAPP suit since vagueness of the developer's allegations did not permit trial court to determine if the developer's claims were primarily based on protected activities. Gundel v. AV Homes, Inc., 264 So. 3d 304, 2019 Fla. App. LEXIS 1339 (Fla. 2nd DCA 2019).

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- The legislature outlined within the statute the purpose of the Anti-SLAPP provision:It is the intent of the Legislature to protect the right in Florida to exercise the rights of free speech in connection with public issues, and the rights to peacefully assemble, instruct representatives, and petition for redress of grievances before the various governmental entities of this state as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution. It is the public policy of this state that a person or governmental entity not engage in SLAPP suits because such actions are inconsistent with the right of persons to exercise such constitutional rights of free speech in connection with public issues. § 768.295(1), Fla. Stat. (2018).

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claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response. The court may award, subject to the limitations in s. 768.28, the party sued by a governmental entity actual damages arising from a governmental entity's violation of this section. The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section.

Lee v. Animal Aid, Inc., 388 So. 3d 25, 2024 Fla. App. LEXIS 4562 (Fla. 4th DCA 2024).

Overview: *Where the animal shelter's defamation suit against the volunteer was resolved by arbitration, the trial court correctly denied her motion for attorney's fees under the Anti-SLAPP statute, § 768.295(4), Fla. Stat. because the trial court made no specific findings that the animal shelter's actions violated the Anti-SLAPP statute.*

- Section 768.295, Fla. Stat. provides for an award of attorney's fees to a party who prevails on an Anti-SLAPP claim: A person or entity sued by a governmental entity or another person in violation of this section has a right to an expeditious resolution of a claim that the suit is in violation of this section.

Lee v. Animal Aid, Inc., 2024 Fla. App. LEXIS 1508 (Fla. 4th DCA Feb. 28, 2024).

Torts: Business Torts: Commercial Interference: Contracts: Defenses

In the school’s action against a parent for tortious interference, certiorari was the appropriate mechanism for review of the order denying his motion to dismiss pursuant to the Anti-SLAPP statute; however, the

petition was denied as he failed to show that the trial court departed from the essential requirements of the law. Because the action was based on the parent's private social media communications that were not privileged, the school met its burden to demonstrate that its claims were not "primarily" based on the exercise of First Amendment rights. Baird v. Mason Classical Acad., Inc., 317 So. 3d 264, 2021 Fla. App. LEXIS 5027 (Fla. 2nd DCA 2021).

Torts: Public Entity Liability: Liability: General Overview

Trial court erred in granting summary judgment to a deputy sheriff in a wrongful death action as a jury question remained as to whether the sheriff acted in a willful and wanton manner in placing the decedent in a more dangerous situation than he would have been in had the sheriff simply left him alone, so as to justify the imposition of liability against the sheriff, in spite of Fla. Stat. § 768.28(9)(a); further, the issue was not whether the deputy should have taken the decedent into custody. Lemay v. Kondrk, 923 So. 2d 1188, 2006 Fla. App. LEXIS 3442 (Fla. 5th DCA 2006).

Research References & Practice Aids

RESEARCH REFERENCES & PRACTICE AIDS

Treatises

Florida Torts, V. Actions Involving Specific Parties, Chapter 80 Liabilities of Public Entities and Employees, I. Legal Background, E. Specific Public Entities, Functions, and Employees, § 80.56 SLAPP Suits by Governmental Entities.

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Gundel v. AV Homes, Inc.

Court of Appeal of Florida, Second District

February 1, 2019, Opinion Filed

Case No. 2D18-899

Reporter

264 So. 3d 304 *; 2019 Fla. App. LEXIS 1339 **; 44 Fla. L. Weekly D 351; 2019 WL 405843

NORMAN GUNDEL; WILLIAM MANN; and BRENDA N. TAYLOR, individually and on behalf of all similarly situated persons, Petitioners, v. AV HOMES, INC. and AVATAR PROPERTIES, INC., Respondents.

Subsequent History: Decision reached on appeal by, Remanded by Gundel v. AV Homes, Inc., 2020 Fla. App. LEXIS 2168 (Fla. Dist. Ct. App. 2d Dist., Feb. 21, 2020)

Prior History: [**1] Petition for Writ of Certiorari to the Circuit Court for Polk County; Andrea Teves Smith, Judge.

Core Terms

Residents, Anti-SLAPP, motion to dismiss, counterclaim, trial court, amenities, lawsuit, summary judgment motion, claimant, government entity, entity, summary judgment, pleadings, contesting, meetings, allegations, attended, damages, posted, rights, essential requirement, certiorari review, cause of action, public issue, free speech, expeditiously, homeowners, immunity

Case Summary

Overview

HOLDINGS: [1]-The residents were granted a writ of certiorari and the order denying their motion to dismiss was quashed because the trial court departed from the essential requirements of law and failed to adhere to the language of the Strategic Lawsuit Against Public Participation statute (SLAPP), §§ 720.304 and 768.295, Fla. Stat., (2017), by not dismissing the developer's counterclaim as a SLAPP suit as the

vagueness of the developer's allegations did not permit the trial court to determine if the developer's claims were primarily based on protected activities, as the SLAPP statute requires.

Outcome

Petition granted; order denying residents' motion to dismiss quashed.

LexisNexis® Headnotes

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN1[] **Defenses, Demurrers & Objections, Motions to Dismiss**

Before a court may grant certiorari relief from the denial of a motion to dismiss, the petitioner must establish the following three elements: (1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal. The latter two elements are jurisdictional. Certiorari review has been limited as a matter of policy to avoid piecemeal review of pretrial orders. However, in numerous cases, Florida courts have permitted certiorari review to determine whether a party was afforded the proper process through procedural compliance with the statutory requirements. Appellate courts do have certiorari jurisdiction to review whether a trial judge has conformed with the procedural requirements of § 768.72, Fla. Stat., (1993). Moreover, certiorari review is appropriate where an order implicates a violation of the parties' constitutional rights which cannot be remedied on plenary review.

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN2[] **Defenses, Demurrers & Objections, Motions to Dismiss**

An alleged error arising from a motion to dismiss is remediable on appeal regardless of whether the motion is granted or denied. Certiorari may be precluded not by the availability of a mechanism for correcting the error itself; rather, the remedy must alleviate the harm that results from the error.

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN3[] **Appellate Jurisdiction, State Court Review**

In the context of the Anti-SLAPP statute, § 768.295, Fla. Stat., the harm that results from the court's improper denial of a motion to dismiss or in its failure to rule on pending motions for summary judgment and judgment on the pleadings is precisely the harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation. That is, if certiorari review is not available, the substantive right created by the Anti-SLAPP statute is illusory and the very policy that animates the decision to prevent SLAPP suits is frustrated such that the "statutory protection becomes essentially meaningless for the individual defendant.

Civil Procedure > Judgments > Summary Judgment > Motions for Summary Judgment

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN4[] **Summary Judgment, Motions for Summary Judgment**

The Anti-SLAPP statute, § 768.295, Fla. Stat., plainly authorizes the filing of a motion to dismiss or motion for summary judgment. While it does not elaborate on a motion seeking dismissal, the statute expressly provides that once a motion for summary judgment, together with supplemental affidavits, has been filed, the claimant shall thereafter file a response and any supplemental affidavits. The statute then

establishes the duty of the court to, as soon as practicable, set a hearing on the motion, which shall be held at the earliest possible time after the claimant files its response. Therefore, the statute sets forth the procedural mechanisms by which a SLAPP defendant may invoke its substantive right—a motion seeking dismissal or summary judgment—as well as the requirement to hear such motions expeditiously. The language of §§ 720.304(4)(c) and 768.295(4), Fla. Stat., are identical in terms of the procedure to be used by the parties and the trial court.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > ... > Responses > Defenses, Demurrers & Objections > Motions to Dismiss

HN5[] **Entitlement as Matter of Law, Appropriateness**

Although it is true that motions for dismissal and motions for summary judgment serve separate purposes, are not interchangeable, and one may not be substituted for another,. That one motion cannot substitute for the other does not allow the court to decline to rule on an otherwise facially and substantively sufficient motion.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Civil Procedure > Judgments > Summary Judgment > Motions for Summary Judgment

HN6[] **Entitlement as Matter of Law, Appropriateness**

Fla. R. Civ. P. 1.510 governs summary judgment and provides that a party against whom a claim or counterclaim is asserted or a declaratory judgment is sought may move for a summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits. Fla. R. Civ. P. 1.510(b). It further provides that the judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law. Fla. R. Civ. P. 1.510(c). The content of the

document and its attachments must support the relief requested, thereby allowing the court to rule upon the motion based upon its respective purpose and standard. The character of a motion will depend upon its grounds or contents, and not on its title.

Civil Procedure > ... > Summary Judgment > Entitlement as Matter of Law > Appropriateness

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN7[] **Entitlement as Matter of Law, Appropriateness**

The Anti-SLAPP statute, § 768.295(3), Fla. Stat., authorizes the filing of a motion seeking dismissal and a motion seeking summary judgment. Whereas the statute sets forth the procedures for considering a motion for summary judgment, the statute is silent as to the burden or procedure for considering a motion to dismiss. The language of the statute does, however, attach the action to the claimant rather than the SLAPP defendant: a person or governmental entity in this state may not file, thus prohibiting the claimant from taking action, rather than a person or entity may not be sued by a governmental entity or another person. § 768.295(3). The statutory language supports requiring the claimant to meet a burden.

Counsel: Kristin A. Norse and Stuart C. Markman of Kynes, Markman & Felman, P.A., Tampa; and Kenneth G. Turkel and Shane B. Vogt of Bajo Cuva Cohen & Turkel, P.A., Tampa, for Petitioners.

Daniel J. Fleming and Christian M. Leger of Gray Robinson, P.A., Tampa, for Respondents.

Judges: BLACK, Judge. MORRIS and LUCAS, JJ., Concur.

Opinion by: BLACK

Opinion

[*306] BLACK, Judge.

Norman Gundel, William Mann, and Brenda N. Taylor (the Residents) seek a writ of certiorari quashing the trial court's order denying their motion to dismiss the counterclaim filed by Avatar Properties, Inc., in the Residents' class action lawsuit against Avatar Properties and its parent company, AV Homes, Inc. The Residents assert that by failing to adhere to the language of sections 720.304 and 768.295, Florida Statutes (2017), and by not dismissing the counterclaim as a Strategic Lawsuit Against Public Participation (SLAPP) suit the court departed from the essential requirements of law. We grant the petition and quash the order denying the Residents' motion to dismiss.

I. Background

[**2] The Residents filed a class action complaint against AV Homes and Avatar Properties alleging violations of Florida's Homeowners' Association Act, §§ 720.301-720.407, and Florida's Deceptive and Unfair Trade Practices Act, §§ 501.201-501.213, Fla. Stat. (2017), and seeking declaratory relief, injunctive relief, and damages. A brief discussion of the claims in the Residents' complaint and Avatar Properties' counterclaim is necessary to provide context to our decision.

Avatar Properties is the developer of Solivita, the community in which the Residents own homes. In their complaint, the Residents claimed that Avatar Properties and AV Homes violated the law when they created both the Solivita Community Association and the Club Plan, each of which require Solivita homeowners to pay fees.[1] [*307] The Residents claim that the imposition of both of these fees is not legal and that certain marketing for the community was deceptive. In creating Solivita, Avatar Properties also established two community development districts (CDDs) to fund infrastructure within the community through additional assessments on homeowners.

The Residents' lawsuit arose after Avatar Properties proposed to sell the Club amenities, as established by the Club Plan, to the CDDs at a cost of $73.7 million. The purchase would be financed through the issuance of bonds, to be repaid by Solivita homeowners [**3] including the Residents. The Residents

[1] Membership in both the Solivita Community Association and the Club Plan are mandatory for Solivita homeowners. The association fee is an assessment. The Club Plan governs the "Club amenities" and establishes the "Club dues" or Club fees, which include both expenses, similar to common-area upkeep expenses, and "Club membership fees." The Club amenities are exclusively owned by the "Club Owner," Avatar Properties, and as alleged by the Residents, the Club membership fees are collected "without deduction of expenses or charges in respect of the Club" as profit to Avatar Properties.

expressed concerns about the proposed sale and publicly commented on the propriety of the $73.7 million suggested purchase price and bond validation proceedings.[2] They posted on Internet blogs, spoke at Solivita CDD meetings, distributed handouts at CDD meetings, commented at other local meetings at which Solivita homeowners were present, and circulated a petition to have the Club amenities appraised. The Residents obtained an appraisal setting the fair market value of the Club amenities at $19.25 million. The Residents also posted on the Internet information about the Bond Validation Case, the mechanism by which the CDDs would be granted the bonds to purchase the amenities. The posts included links to the court filings and summaries of the allegations.

After a failed motion to dismiss the Residents' lawsuit, Avatar Properties filed its answer and a counterclaim. The counterclaim raised three counts which the Residents allege seek to hold the Residents liable for damages based on constitutionally protected conduct: engaging in free speech, defending and prosecuting lawsuits, and engaging in discourse with governmental entities, the CDDs. Count I [**4] of the counterclaim alleged that the Residents breached the purchase and sale agreements "by actively and vocally contesting the validity and enforceability of: (1) the mandatory nature of the membership in the Club; (2) the Club Dues and Membership Fees; and (3) [Avatar Properties'] right to sell the Club [amenities] at its sole discretion." Count II alleged that the Residents breached the affirmative covenant running with the land—the requirements of membership in the Club Plan—"by contesting the validity of the Club Plan, [Avatar Properties'] right to collect Club Dues, and [Avatar Properties'] right to sell the Club [amenities]." Count III of the counterclaim sought a declaratory judgment finding "that the Club [amenities] (and the fees associated therewith) are not subject to [chapter 720]." Count IV claimed tortious interference with contractual relations, alleging that the Residents "unjustifiably interfered with [Avatar Properties'] agreement with the CDDs by contesting the enforceability of the Club Plan." Each count realleged the paragraphs outlining the Residents' conduct: (1) engaging in "extra judicial conduct aimed at frustrating" the sale of the Club amenities to the [**5] CDDs, including posting "misleading information" on the Solivita blog, "handing out fliers to residents that included inaccurate information[,] and contesting [*308] [Avatar Properties'] right to collect Club [d]ues"; (2) attending meetings of local

[2] The bond litigation (Bond Validation Case) remains pending below but has not been consolidated with the action at issue here.

clubs/classes for homeowners and contesting the sale of the Club amenities to the CDDs for the requested price; (3) asking residents "to sign petitions contesting [Avatar Properties'] right to sell the Club [amenities]"; and (4) "by virtue of this [lawsuit]" continuing to frustrate Avatar Properties' "contractual interests." Avatar Properties claimed damages of "increased attorneys' fees in the Bond Validation Case, as well as the delay, frustration, and potential loss of the planned sale to the CDDs," and it argued that the Residents "unjustifiably interfered with [Avatar Properties'] agreement with the CDDs." The purchase agreement between Avatar Properties and the CDDs, dated December 1, 2016, was included in the attachments to the counterclaim.

In their answer, the Residents admitted that they posted information on the Solivita blog and that they "distributed handouts at CDD public meetings"; they admitted to attending classes for residents [**6] held by a local club and speaking about the proposed sale of the Club amenities to the CDDs; they admitted that they sought and obtained signatures on a petition for a fair market value appraisal of the Club amenities; and they admitted that Avatar Properties "is trying to sue [the Residents] for filing the above styled class action." The Residents also admitted that they "vocally contested the validity of certain aspects of the Club Plan and the proposed sale of the Club [amenities], as asserted in the official court records in the Bond Validation Case." The Residents filed the affidavit of Mr. Gundel, one of the Residents. Mr. Gundel averred that he made comments and distributed handouts about the proposed purchase of the Club amenities at public CDD meetings "in late 2015 or 2016"; that he posted on the Solivita blog about the Bond Validation Case; that he attended a February 10, 2017, CDD meeting and distributed information about the proposed purchase; that he attended a March 15, 2017, CDD meeting and presented the appraisal petition; and that he attended an April 19, 2017, CDD meeting and presented the appraisal report and another handout. He further averred that after the class [**7] action lawsuit was filed, he attended three more meetings of the CDD and spoke about the proposed purchase.

II. The Anti-SLAPP motion

Simultaneously with their answer, the Residents also filed a "Motion to Dismiss, For Judgment on the Pleadings or For Summary Judgment on Counterclaim and For Award of Attorneys' Fees and Costs Under Florida's Anti-SLAPP Statutes." The motion alleged that Avatar Properties' counterclaim "openly violates

Florida's Anti SLAPP Statutes because it seeks damages from the [Residents] because they assembled, engaged in free speech, and sought redress before their government," citing sections 768.295 and 720.304.[3]

The Anti-SLAPP statute provides, in pertinent part:

> A person or governmental entity in this state may not file or cause to be filed, through its employees or agents, any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue, [*309] or right to peacefully assemble, to instruct representatives of government, or to petition for redress of grievances before the various governmental entities of this state, [**8] as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.

§ 768.295(3). The Anti-SLAPP statute defines "[f]ree speech in connection with public issues" as

> any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work.

§ 768.295(2)(a). "Governmental entity" is defined as "the state, including the executive, legislative, and the judicial branches of government and the independent establishments of the state, counties, municipalities, corporations primarily acting as instrumentalities of the state, counties, or municipalities, districts, authorities, boards, commissions, or any agencies thereof." § 768.295(2)(b).

The Residents' motion quotes the Anti-SLAPP statute and the operative paragraphs from the counterclaim, and it cites Mr. Gundel's affidavit. The Residents argued that "simply allowing SLAPPs to proceed violates the very constitutional rights Florida's Anti-SLAPP Statutes were implemented to protect" and that [**9] the trial court was tasked with determining two issues: (1) whether the

[3] For purposes of this opinion, we will refer to section 768.295 as Florida's Anti-SLAPP statute. Both chapter 718 and chapter 720 also contain anti-SLAPP provisions, respectively related to condominium unit owners and parcel owners. §§ 718.1224, 720.304(4), Fla. Stat. (2017).

counterclaim was brought "primarily" because the SLAPP defendants engaged in a protected activity, and (2) whether the counterclaim is "without merit." As to the first issue, the Residents argued that the counterclaim was based solely on protected activities relating to either the Bond Validation Lawsuit or the class action. As to the second issue, the Residents outlined in detail why Avatar Properties' claims were meritless. The Residents sought an expeditious hearing of the motion and dismissal of the counterclaim or judgment in favor of the Residents.

In response, Avatar Properties argued that the Residents expressly waived any constitutional protections afforded to them when they contractually agreed to the Club Plan. In essence, Avatar Properties argued that the contract paragraphs which the Residents claim are legally invalid are the paragraphs which form Avatar Properties' defense. Avatar Properties did not argue that material facts remained in dispute.

Following a hearing, the trial court entered its order denying the Residents relief. The court treated the Residents' motion only as a motion to dismiss, stating [**10] that the Residents could not "substitute a motion to dismiss for either a motion for summary judgment or a motion for judgment on the pleadings." As a result, the court did not consider the motion as a motion for summary judgment or motion for judgment on the pleadings. Based only on the allegations of Avatar Properties' counterclaim, the court found that the Residents failed to show that their conduct fell within the protections of the Anti-SLAPP statute and that the Residents failed to establish that their conduct was made "in connection with" an existing judicial proceeding.

III. Analysis

A. Certiorari jurisdiction

HN1[⬆] "Before a court may grant certiorari relief from the denial of a motion to dismiss, the petitioner must establish the [*310] following three elements: '(1) a departure from the essential requirements of the law, (2) resulting in material injury for the remainder of the case (3) that cannot be corrected on postjudgment appeal.'" *Williams v. Oken*, 62 So. 3d 1129, 1132 (Fla. 2011) (quoting *Reeves v. Fleetwood Homes of Fla., Inc.*, 889 So. 2d 812, 822 (Fla. 2004)). The latter two elements are jurisdictional. *Id.*

Certiorari review has been limited "as a matter of policy to avoid piecemeal review of pretrial orders." *Id.* at 1134. "However, in numerous cases, Florida courts have permitted certiorari review to determine [**11] whether [a party] was afforded the proper process through procedural compliance with the statutory requirements." *Id.; see also Globe Newspaper Co. v. King*, 658 So. 2d 518, 519 (Fla. 1995) ("[A]ppellate courts do have certiorari jurisdiction to review whether a trial judge has conformed with the procedural requirements of section 768.72[, Florida Statutes (1993)] . . . ."). Moreover, certiorari review is appropriate where an "order implicates a violation of the parties' constitutional rights which cannot be remedied on plenary review." *Rodriguez ex rel. Posso-Rodriguez v. Feinstein*, 734 So. 2d 1162, 1163 (Fla. 3d DCA 1999); *see also SP Healthcare Holdings, LLC v. Surgery Ctr. Holdings, LLC*, 110 So. 3d 87, 91 (Fla. 2d DCA 2013) (citing *Rodriguez* for this standard).

Here, the Residents contend that "the legislature has made it a matter of Florida public policy to recognize and dismiss SLAPP suits expeditiously because the very filing and continuation of" SLAPP suits has the chilling effect on constitutional rights that the Anti-SLAPP statute was enacted to prevent and that, therefore, the jurisdictional prongs of the certiorari standard have been met. We agree.

The legislature enacted the Anti-SLAPP statute in 2000. In creating section 768.295, the legislature specifically found that

> "Strategic Lawsuits Against Public Participation" or "SLAPPs," are typically dismissed as unconstitutional, but often not before the defendants are put to great expense, harassment, [**12] and interruption of their duties, and . . . these lawsuits are an abuse of the judicial process and are used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs . . . .

Ch. 2000-174, § 1, Laws of Fla. The legislature further found that "it is essential in our democracy that the constitutional rights of citizens to participate fully in the process of government be uniformly, consistently, and comprehensively protected and encouraged" and that "the threat of financial liability, litigation costs, . . . and other personal losses from groundless lawsuits seriously affects . . . individual rights," which courts have recognized as harming individuals' fundamental rights. *Id.*

The statutory language and its stated purpose, in addition to case law governing similar statutes, supports our conclusion that the jurisdictional prongs of the certiorari standard have been met. Section 768.295(3) creates a right not to be subject to meritless suits filed "primarily because [the defendant] has exercised the constitutional right of free speech in connection with a public issue, or right to peacefully assemble, to instruct representatives of government, or to petition [**13] for redress of grievances before the various governmental entities of this state." *Cf. Globe Newspaper*, 658 So. 2d at 519 ("We read section 768.72 to create a substantive legal right not to be subject to a punitive damages claim . . . until the trial court makes a determination that there is a reasonable [*311] evidentiary basis for recovery of punitive damages.").

To the extent that Avatar Properties argues that the Residents have not established that this court may exercise certiorari jurisdiction because ***HN2***[⬆] "an alleged error arising from a motion to dismiss is remediable on appeal regardless of whether the motion is granted or denied," Avatar Properties misconstrues the certiorari standard. As this court has stated, "certiorari may be precluded not by the availability of a mechanism for correcting the error itself; rather, the remedy must alleviate *the harm that results from the error*." *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 132 (Fla. 2d DCA 2015).

HN3[⬆] In the context of the Anti-SLAPP statute, the harm that results from the court's improper denial of a motion to dismiss or in its failure to rule on pending motions for summary judgment and judgment on the pleadings is precisely the harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation. *See* ch. 2000-174, § 1; *cf. Williams*, 62 So. 3d at 1133-34 ("The certiorari exception [**14] for the chapter 766 presuit requirements is premised on the purpose of the Medical Malpractice Reform Act—to avoid meritless claims and to encourage settlement for meritorious claims." (footnote omitted)); *Globe Newspaper*, 658 So. 2d at 520 ("[A] plenary appeal cannot restore a defendant's statutory right under section 768.72 to be free of punitive damages allegations in a complaint until there is a reasonable showing by evidence in the record or proffered by the claimant."); *Fla. Hosp. Med. Servs., LLC v. Newsholme*, 255 So. 3d 348, 350 (Fla. 4th DCA 2018) ("Certiorari jurisdiction lies to review whether a trial court has complied with the procedural requirements of section 768.72(1)." (citing *Tilton v. Wrobel*, 198 So. 3d 909, 910 (Fla. 4th DCA 2016))). In that way, the Anti-SLAPP statute bears some similarity to statutes providing for immunity from suit where the statutory protection cannot be adequately restored

once it is lost through litigation and trial. *See James v. Leigh*, 145 So. 3d 1006, 1008 (Fla. 1st DCA 2014) ("When the trial court denies a motion to dismiss on immunity grounds, certiorari review of the non-final order is proper because absolute immunity protects a party from having to defend a lawsuit at all and waiting until final appeal would render such immunity meaningless if the lower court denied dismissal in error." (citing *Fla. State Univ. Bd. of Trs. v. Monk*, 68 So. 3d 316, 318 (Fla. 1st DCA 2011))); *see also LoBiondo v. Schwartz*, 199 N.J. 62, 970 A.2d 1007, 1020 (N.J. 2009) (discussing the two categories of anti-SLAPP statutes and citing Florida's as within [**15] the category that "include[s] a legislative declaration that a public participant who has exercised his or her free speech right, sometimes in statutorily defined manner, enjoys immunity"). That is, if certiorari review is not available, the substantive right created by the Anti-SLAPP statute "is illusory and the very policy that animates the decision to" prevent SLAPP suits is frustrated such that the "statutory protection becomes essentially meaningless for the individual defendant." *See Keck v. Eminisor*, 104 So. 3d 359, 365-66 (Fla. 2012) (quoting *Tucker v. Resha*, 648 So. 2d 1187, 1190 (Fla. 1994)).[4]

[*312] B. Departure

1. Procedural mechanisms for resolution

The Residents contend that the trial court departed from the essential requirements of law by failing to adhere to the procedures set forth in the Anti-SLAPP statute. They argue that the statute expressly permits

[4] We have found only two Florida state cases discussing SLAPP suits: *Two Islands Development Corp. v. Clarke*, 239 So. 3d 115 (Fla. 3d DCA 2018), and *Florida Fern Growers Ass'n v. Concerned Citizens of Putnam County*, 616 So. 2d 562 (Fla. 5th DCA 1993). Neither case discusses whether certiorari relief is warranted in the context of SLAPP suits. *Two Islands* does, however, affirm the dismissal with prejudice of three counts of a lawsuit against homeowners who protested the development of land and "interfer[ed] in and prevent[ed] a settlement" of an ongoing action involving the vested rights of property owners, holding—without elaboration—that the trial court properly dismissed those counts "upon a determination that those counts were barred by Florida's anti-SLAPP statute, section 720.304, Florida Statutes (2015)." 239 So. 3d at 121, 126 n.10. *Florida Fern Growers*, in addressing the argument that a particular lawsuit was a SLAPP suit, stated, "[a] SLAPP suit has been described as 'one filed by developers, unhappy with the public protest over a proposed development, filed against leading critics in order to silence criticism of the proposed development.'" 616 So. 2d at 570 (quoting *Westfield Partners, Ltd. v. Hogan*, 740 F.Supp. 523, 525 (N.D. Ill. 1990)). We note, too, that "[l]itigants' right to interlocutory appeal of anti-SLAPP motion decisions has been acknowledged in state courts in California, Georgia, Maine, Massachusetts, New Mexico, and Pennsylvania, and federal courts have allowed immediate appeal of holdings under the anti-SLAPP statutes of California, Louisiana, and Georgia." Carson Hilary Barylak, Note, *Reducing Uncertainty in Anti-SLAPP Protection*, 71 Ohio St. L.J. 845, 879-80 (2010) (footnotes omitted). The Maine Supreme Court has stated that it permits "interlocutory appeals from denials of special motions to dismiss brought pursuant to the anti-SLAPP statute because a failure to grant review of these decisions at this stage would impose additional litigation costs on defendants, the very harm the statute seeks to avoid, and would result in a loss of defendants' substantial rights." *Schelling v. Lindell*, 2008 ME 59, 942 A.2d 1226, 1229-30 (Me. 2008).

resolution of SLAPP claims through a motion for summary judgment and that the court's failure to consider their motion as both a motion to dismiss and a motion for summary judgment constitutes a departure.

The Anti-SLAPP statute provides that

> [a] person or entity sued by a governmental entity or another person in violation of this section has a right to [**16] an expeditious resolution of a claim that the suit is in violation of this section. A person or entity may move the court for an order dismissing the action or granting final judgment in favor of that person or entity. The person or entity may file a motion for summary judgment, together with supplemental affidavits, seeking a determination that the claimant's or governmental entity's lawsuit has been brought in violation of this section. The claimant or governmental entity shall thereafter file a response and any supplemental affidavits. As soon as practicable, the court shall set a hearing on the motion, which shall be held at the earliest possible time after the filing of the claimant's or governmental entity's response.

§ 768.295(4).[5] ***HN4***[] The Anti-SLAPP statute plainly authorizes the filing of a motion to dismiss or motion for summary judgment. While it does not elaborate on a motion seeking dismissal, the statute expressly provides that once a motion for summary judgment, "together with supplemental affidavits," has been filed, the claimant (Avatar Properties) "shall thereafter file a response and any supplemental affidavits." *Id.* The statute then establishes the duty of the court to, "[a]s soon [**17] as practicable, . . . set a hearing on the motion, which shall be held at the earliest possible time after" the claimant files its response. *Id.* Therefore, the statute sets forth the procedural mechanisms by which a SLAPP defendant may invoke its substantive right—a motion seeking dismissal or summary [*313] judgment—as well as the requirement to hear such motions expeditiously.[6]

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[5] The language of sections 720.304(4)(c) and 768.295(4) are identical in terms of the procedure to be used by the parties and the trial court, as applicable to this case.

[6] We note that while the statute does not state that a SLAPP defendant may file a motion for judgment on the pleadings, as it does a motion for summary judgment, it provides that a defendant "may move the court for an order . . . granting final judgment." § 768.295(4).

HN5[] And although it is true that motions for dismissal and motions for summary judgment serve separate purposes, "are not interchangeable, and one may not be substituted for another," contrary to the trial court's determination not to hear the motion for summary judgment filed by the Residents with their motion to dismiss, motions filed in the alternative are permitted. *See U.S. Bank Nat'l Ass'n on Behalf of Holders of the Home Equity Asset Tr. 2002-4 Home Equity Pass-Through Certificates, Series 2002-4 v. Doepker*, 223 So. 3d 1083, 1084 (Fla. 2d DCA 2017) (citing *Holland v. Anheuser Busch, Inc.*, 643 So. 2d 621, 622-23 (Fla. 2d DCA 1994)). That one motion cannot substitute for the other does not allow the court to decline to rule on an otherwise facially and substantively sufficient motion.

As relevant here, ***HN6***[] Florida Rule of Civil Procedure 1.510 governs summary judgment and provides that "[a] party against whom a claim [or] counterclaim . . . is asserted or a declaratory judgment [**18] is sought may move for a summary judgment in that party's favor as to all or any part thereof at any time with or without supporting affidavits." Fla. R. Civ. P. 1.510(b). It further provides that "[t]he judgment sought must be rendered immediately if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to judgment as a matter of law." Fla. R. Civ. P. 1.510(c). The content of the document and its attachments must support the relief requested, thereby allowing the court to rule upon the motion based upon its respective purpose and standard. *Cf. HSBC Bank USA, Nat'l Ass'n for Deutsche Alt-A Sec. Mortg. Loan Tr., Series 2007-OA5 v. Nelson*, 246 So. 3d 486, 489 (Fla. 2d DCA 2018) ("[T]he character of a motion will depend upon its grounds or contents, and not on its title." (quoting *Jones v. Denmark*, 259 So. 2d 198, 200 n.1 (Fla. 3d DCA 1972))). The Residents' motion for summary judgment was supported by the contemporaneously filed affidavit of Mr. Gundel and sought judgment in favor of the Residents; Avatar Properties did not raise any material facts in dispute in its response to the motion, and it did not file any affidavits in opposition. That the Residents' motion was filed as a motion to dismiss, motion for summary judgment, and motion for [**19] judgment on the pleadings does not relieve the trial court of its statutory obligations to consider the motion under each standard where the motion was facially sufficient and in compliance with the rules of civil procedure and to set a hearing "[a]s soon as practicable" and "at the earliest possible time."

Because the statute allows for the filing of either or both a motion to dismiss and a motion for summary judgment, and because the motions may be filed within one document under an alternative heading, the trial court departed from the essential requirements of the law in declining to consider the Residents' motion as a motion for summary judgment. The motion should be heard on the evidence and pleadings on record as of the date of the hearing on the motion to dismiss.

2. Dismissal

The Residents also contend that the trial court departed from the essential requirements of law in denying the motion to dismiss based on its application of an "inapt" [*314] dismissal standard, that applied to motions to dismiss for failure to state a cause of action. *See, e.g., Blue Supply Corp. v. Novos Electro Mech., Inc.*, 990 So. 2d 1157, 1159 (Fla. 3d DCA 2008). The Residents argue that the motion to dismiss was not based on Avatar Properties' failure to state a cause of action because the Anti-SLAPP [**20] statute focuses not on whether a cause of action has been sufficiently alleged but on whether the activity that is alleged to have given rise to the cause of action is protected activity; they contend that the trial court's failure to consider Mr. Gundel's affidavit and Avatar Properties' failure to file any conflicting evidence constitutes a departure. The Residents' argument suggests that a motion to dismiss based on the Anti-SLAPP statute requires the trial court to do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant. We agree.

As discussed above, ***HN7***[⬆] the Anti-SLAPP statute authorizes the filing of a motion seeking dismissal and a motion seeking summary judgment. Whereas the statute sets forth the procedures for considering a motion for summary judgment, the statute is silent as to the burden or procedure for considering a motion to dismiss. The language of the statute does, however, attach the action to the claimant rather than the SLAPP defendant: "[a] person or governmental entity in this state may not file," thus prohibiting the claimant from taking action, rather than "a person [**21] or entity may not be sued by a governmental entity or another person." § 768.295(3). The statutory language supports requiring the claimant to meet a burden.

Placing the initial burden on the SLAPP defendant to set forth a prima facie case that the Anti-SLAPP statute applies and then shifting the burden to the claimant to demonstrate that the claims are not "primarily" based on First Amendment rights in connection with a public issue and not "without merit" serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss. *See, e.g., Volkswagen Aktiengesellschaft v. Jones*, 227 So. 3d 150, 155 (Fla. 2d DCA 2017) (discussing the shifting burden for motions to dismiss based on lack of personal jurisdiction); *Becker v. Clark*, 722 So. 2d 232, 233 (Fla. 2d DCA 1998) (discussing the shifting burden for motions to dismiss based on qualified immunity). In considering motions to dismiss as to its anti-SLAPP statute, the Maine Supreme Court has stated that "the defendant carries the initial burden to show that the suit was based on some activity that would qualify as an exercise of the defendant's First Amendment right to petition the government" such that the anti-SLAPP statute applies and then "the burden falls on the plaintiff to demonstrate that the defendant's activity" is actionable. *Schelling v. Lindell*, 2008 ME 59, 942 A.2d 1226, 1229 (Me. 2008) (quoting [**22] Title 14 M.R.S. § 556). The trial court here found that the Residents (1) "failed to show that [their] alleged conduct . . . constitute[d] protected statements before government entities" based on the "[in]sufficient context" in Avatar Properties' counterclaim and (2) "failed to show that their alleged conduct was made 'in connection with' or 'in the course of' an existing judicial proceeding" based on the conduct being "limitedly described [and] lack[ing] sufficient context and temporality" in Avatar Properties' counterclaim. The effect of placing the burden exclusively on the SLAPP defendant based only on the claimant's allegations allows the claimant to avoid dismissal by being intentionally vague, thus thwarting the purpose of the statute.

[*315] Here, the vagueness of Avatar Properties' allegations as to the dates of specific conduct and as to the conduct itself prevents the trial court from determining from the face of the counterclaim that the Residents' actions constitute "free speech in connection with public issues" or instruction of representatives of government. Thus, while it may be clear from the face of the counterclaim that Avatar Properties has based some part of its claims on [**23] the filing of the class action and on the Residents' opposition to the Bond Validation Case, the trial court could not determine that Avatar Properties' claims were primarily based on protected activities, as the Anti-SLAPP statute requires. The Residents' motion

and supporting affidavit attempt to provide the facts necessary to support dismissal. The trial court must expeditiously address the merits of the Residents' motion under the appropriate standard. *See* § 768.295(4).

IV. Conclusion

The petition for writ of certiorari is granted. The order denying the Residents' "Motion to Dismiss, For Judgment on the Pleadings or For Summary Judgment on Counterclaim and For Award of Attorneys' Fees and Costs Under Florida's Anti-SLAPP Statutes" is quashed for the reasons stated herein.

Petition granted; order quashed.

MORRIS and LUCAS, JJ., Concur.

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Davis v. Mishiyev

Court of Appeal of Florida, Second District

May 11, 2022, Decided

No. 2D21-1726

Reporter

339 So. 3d 449 *; 2022 Fla. App. LEXIS 3212 **; 47 Fla. L. Weekly D 1039; 2022 WL 1482687

ORLANDO DAVIS and BEASLEY MEDIA GROUP, LLC, Petitioners, v. ERIK MISHIYEV, Respondent.

Prior History: [**1] Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Caroline Tesche Arkin, Judge.

Core Terms

trial court, motion to dismiss, deny a motion, allegations, essential requirement, certiorari review, public issue, defamation, defamatory

Case Summary

Overview

HOLDINGS: [1]-The court granted a writ of certiorari and quashed the trial court's order denying defendants' motion to dismiss plaintiff's action for defamation and intentional interference with a business relationship because defendants established a departure from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute, § 768.295, Fla. Stat. (2020).

Outcome

Petition granted; conflict certified.

LexisNexis® Headnotes

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN1[] **Freedom of Speech, Strategic Lawsuits Against Public Participation**

A SLAPP suit is defined in relevant part as any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity

without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue. § 768.295(3), Fla. Stat. (2020). The statute defines free speech in connection with public issues as any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, magazine article, musical work, news report, or other similar work. § 768.295(2)(a).

Civil Procedure > US Supreme Court Review > Jurisdiction on Certiorari

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN2[] **US Supreme Court Review, Jurisdiction on Certiorari**

In order to obtain certiorari relief based on the denial of a motion to dismiss, a petitioner must establish a departure from the essential requirements of the law that results in a material injury that cannot be corrected on post-judgment appeal. Certiorari review may be utilized to determine whether a party was afforded the proper process through procedural compliance with the statutory requirements. Moreover, certiorari review is appropriate where an order implicates a violation of the parties' constitutional rights which cannot be remedied on plenary review.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN3[] **Freedom of Speech, Strategic Lawsuits Against Public Participation**

Section 768.295, Fla. Stat. (2020), was enacted because the legislature acknowledged the inconsistency between SLAPP suits and the constitutional right to free speech in connection with public issues and, therefore, that the statute was intended to assist in expeditiously disposing of such suits. § 768.295(1). The very filing and continuation of such suits had a chilling effect on constitutional rights and the harm that results from the court's improper denial of a motion to dismiss is precisely the harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation. The protection afforded by § 768.295 could not be restored once it was lost through litigation and that

without the availability of certiorari review, the substantive right created by the Anti-SLAPP statute is illusory, the policy underlying the creation of the statute is frustrated, and the protection afforded by the statute is rendered meaningless for defendants.

Civil Procedure > US Supreme Court Review > Jurisdiction on Certiorari

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN4[] **US Supreme Court Review, Jurisdiction on Certiorari**

The availability of a mechanism for correcting an error in a post-judgment appeal is not dispositive of the court's certiorari jurisdiction, and in order for the court to conclude that there is no irreparable harm, the remedy must alleviate the harm that results from the error. But because a post-judgment appeal cannot remedy the very harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation—a petitioner clearly establishes irreparable harm when seeking review of an order denying a motion to dismiss under the Anti-SLAPP statute.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

HN5[] **Motions to Dismiss, Failure to State Claim**

A motion to dismiss based on the Anti-SLAPP statute requires the trial court do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant.

Civil Procedure > ... > Defenses, Demurrers & Objections > Motions to Dismiss > Failure to State Claim

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

Civil Procedure > Judgments > Summary Judgment > Motions for Summary Judgment

HN6[] **Motions to Dismiss, Failure to State Claim**

Section 768.295(4), Fla. Stat. (2020), permits a SLAPP defendant to file a motion to dismiss, a motion for final judgment entered in favor of the SLAPP defendant, or a motion for summary judgment.

Constitutional Law > ... > Fundamental Freedoms > Freedom of Speech > Strategic Lawsuits Against Public Participation

Evidence > Burdens of Proof > Allocation

HN7[] **Freedom of Speech, Strategic Lawsuits Against Public Participation**

The Anti-SLAPP statute places the initial burden on a SLAPP defendant to set forth a prima facie case that the Anti-SLAPP statute applies and that once that burden is met, the burden is shifted to the SLAPP plaintiff to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit. Applying the statute in this manner serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss. Otherwise, if the burden was placed exclusively on the SLAPP defendant based solely on the plaintiff's allegations, the plaintiff could avoid dismissal by being intentionally vague, thus thwarting the purpose of the statute.

Counsel: Rachel E. Fugate, Allison S. Lovelady, and Minch Minchin of Shullman Fugate PLLC, Tampa, for Petitioners.

Erik Mishiyev, Pro se.

Judges: MORRIS, Chief Judge. LAROSE and BLACK, JJ., Concur.

Opinion by: MORRIS

Opinion

[*450] MORRIS, Chief Judge.

Orlando Davis and Beasley Media Group, LLC, seek a writ of certiorari to quash the trial court's order denying their motion to dismiss Erik Mishiyev's suit for defamation and intentional interference with a business relationship. The underlying suit was based on alleged defamatory statements made by Davis, as an employee and representative of Beasley, about Mishiyev.[1] We

[1] Mishiyev brought his action against Davis "in his capacity as [a] Radio Personality for" Beasley as well as against Davis individually. Mishiyev alleged that his damages were caused by Davis on behalf

conclude that the trial court departed from the essential requirements of law by applying an incorrect motion-to-dismiss standard rather than the standard applied to motions to dismiss filed pursuant to Florida's Anti-SLAPP statute, section 768.295, Florida Statutes (2020).[2] We therefore grant the petition.

BACKGROUND

Davis is a program director for Beasley's radio station WiLD 94.1. Mishiyev is a rival entertainment personality whose professional name is "DJ Short-E."

In the portion of his complaint alleging defamation, Mishiyev alleged generally [**2] that Davis and Beasley published defamatory statements between 2004 and 2020 and that Davis made untrue statements about him. Mishiyev referred to one specific incident, occurring on or about April 17, 2020, where he claimed that Davis uploaded a video to Instagram wherein he promoted his radio show and then claimed he was the reason DJ Short-E "ain't made it." Mishiyev also alleged that in 2017, a Facebook video related to Davis's show accused Mishiyev of abusing drugs. He asserted that Davis used social media "to falsely claim, orally and in writing, that [Mishiyev] abused drugs and other slanderous statements," but Mishiyev did not provide the dates of these statements nor did he provide any additional details relating to those statements or the "other slanderous statements" referenced. Mishiyev also did not provide dates or further details about other specific incidences of alleged defamatory conduct. Mishiyev did assert, however, that Davis continuously disrespected him which resulted in a lack of opportunities for Mishiyev in the music industry. He further argued that his success as a DJ was "hindered greatly" by Davis and Beasley's conduct, including Mishiyev's YouTube channels [**3] being terminated and his being denied the opportunity to play in local venues. He contended that Davis gained attention by defaming Mishiyev and continuing to slander him on and off air. He asserted that the defamatory statements were intentionally published and distributed among "dozens of associates in the [m]usic industry."

In his claim for intentional interference with a business relationship, Mishiyev essentially relied on his allegations from the defamation claim and asserted that he had a business relationship "with the Defendants." He then argued that Davis's

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of Beasley. We therefore refer to Davis and Beasley jointly when referring to the alleged wrongful conduct.

[2] "SLAPP" stands for Strategic Lawsuits Against Public Participation.

actions in defaming him constituted interference with the business relationship.

Attached to the complaint were screenshots of Davis's Facebook page wherein he mentioned Mishiyev and stated in relevant part that "[i]t's DJ Short-E Job Fair Day, the day where I get to listen to how I'm crazy and a hater for NOT offering this guy a job, or guess [sic] spot or moral support." The date of that post was February [*451] 13, 2017. Another attached screenshot of what appears to be comments made by third parties on a Facebook post contains a circled post that says simply, "Orlando dropped the 'Cocaine-yyy' and 'Booger Sugar' Oh lawd." It [**4] is not clear whether those comments were from the original Facebook post as the screenshot indicates it was taken on February 16, 2017. Other attached screenshots of what appear to be comments from another social media platform briefly mention Mishiyev, but there is no indication what Mishiyev found problematic in those comments.

Davis and Beasley moved to dismiss Mishiyev's complaint pursuant to section 768.295, arguing that Mishiyev's complaint was a SLAPP suit.[3] In their motion, Davis and Beasley argued that it was apparent on the face of the complaint that the challenged speech was made on Beasley's radio broadcasts or in connection with such broadcasts and that the speech thus constituted free speech in connection with a public issue which was protected under the statute. Davis and Beasley also raised other arguments attacking the merit of Mishiyev's claims, but due to our disposition, those arguments need not be discussed.

In response to the argument that the Anti-SLAPP statute applied, Mishiyev did not offer any evidence relating to his claims beyond what was alleged in the complaint. He admitted that the challenged statements were made on Beasley's radio broadcasts or in connection therewith, but he contended that the statute did not apply because Beasley did not file any affidavits and because the statements were not made before a governmental entity and were not related to an issue under review by a governmental entity.

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[3] ***HN1***[↑] A SLAPP suit is defined in relevant part as "any lawsuit, cause of action, claim, cross-claim, or counterclaim against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue." § 768.295(3). The statute defines "free speech in connection with public issues" as

> any written or oral statement that is protected under applicable law and is made before a governmental entity in connection with an issue under consideration or review by a governmental entity, or is made in or in connection with a play, movie, television program, radio broadcast, [**5] audiovisual work, book, magazine article, musical work, news report, or other similar work.

§ 768.295(2)(a).

The trial court conducted a hearing on Davis and Beasley's motion but did not make any oral rulings. Thereafter, the trial court entered an order denying the motion. The order contained no findings or reasoning.

ANALYSIS

HN2[] In order to obtain certiorari relief based on the denial of a motion to dismiss, a petitioner must establish a departure from the essential requirements of the law that results in a material injury that cannot be corrected on postjudgment appeal. *See Sabra Health Care Holdings III, LLC v. Est. of DeSantis ex rel. DeSantis*, 331 So. 3d 1258, 1259-60 (Fla. 2d DCA 2022). This court has recognized that certiorari review may be utilized "to determine whether [a party] was afforded the proper process [**6] through procedural compliance with the statutory requirements." *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 310 (Fla. 2d DCA 2019) (alteration in original) (quoting *Williams v. Oken*, 62 So. 3d 1129, 1134 (Fla. 2011)). "Moreover, certiorari review is appropriate where an 'order implicates a violation of the parties' constitutional rights which cannot be remedied on plenary review.'" *Id.* (quoting *Rodriguez ex rel. Posso-Rodriguez v. Feinstein*, 734 So. 2d 1162, 1163 (Fla. 3d DCA 1999)).

[*452] *Gundel* squarely addressed whether certiorari review was appropriate to review an order denying a motion to dismiss a SLAPP suit. ***HN3***[] We recognized that section 768.295 was enacted because the legislature acknowledged the inconsistency between SLAPP suits and the constitutional right to free speech in connection with public issues and, therefore, that the statute was intended to assist in expeditiously disposing of such suits. *Gundel*, 264 So. 3d at 310; *see also* § 768.295(1). We explained that "the very filing and continuation of" such suits had a "chilling effect on constitutional rights" and that "the harm that results from the court's improper denial of a motion to dismiss . . . is precisely the harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation." *Gundel*, 264 So. 3d at 310-11. We further explained that the protection afforded by section 768.295 could not be restored once it was lost through litigation and that without the availability of certiorari review, "the substantive right created [**7] by the Anti-SLAPP statute 'is illusory,'" the policy underlying the creation of the statute is frustrated, and the protection afforded by the statute is rendered meaningless for defendants. *Id.* at 311 (quoting *Keck v. Eminisor*, 104 So. 3d 359, 365 (Fla. 2012)). ***HN4***[] We also explained that the availability of a mechanism for correcting

an error in a postjudgment appeal is not dispositive of this court's certiorari jurisdiction and that in order for this court to conclude that there is no irreparable harm, "the remedy must alleviate *the harm that results from the error*." *Id.* (quoting *Gawker Media, LLC v. Bollea*, 170 So. 3d 125, 132 (Fla. 2d DCA 2015)); *accord Baird v. Mason Classical Acad., Inc.*, 317 So. 3d 264, 267-68 (Fla. 2d DCA 2021) (quoting *Fountainbleau, LLC v. Hire Us, Inc.*, 273 So. 3d 1152, 1155 (Fla. 2d DCA 2019)). But because a postjudgment appeal cannot remedy the very harm that the Anti-SLAPP statute seeks to prevent—unnecessary litigation—a petitioner clearly establishes irreparable harm when seeking review of an order denying a motion to dismiss under the Anti-SLAPP statute. *Baird*, 317 So. 3d at 267-68; *Gundel*, 264 So. 3d at 311.

We acknowledge that one Florida court expressly disagrees with this court as to whether a petitioner can establish irreparable harm from an order denying a motion to dismiss a SLAPP suit for purposes of obtaining certiorari review. *See WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 559-61 (Fla. 4th DCA 2019) (certifying conflict with *Gundel*). Thus we certify conflict with *Materio* as to this issue only.

But having concluded in accordance with this district's case [**8] law that irreparable harm has been established where a trial court denies a motion to dismiss under section 768.295, we must focus on the issue of whether the denial was a departure from the essential requirements of the law.

In *Gundel*, the petitioners argued in part that the trial court departed from the essential requirements of the law because it applied an incorrect standard: the standard for dismissal applied to motions to dismiss based on failure to state a cause of action. 264 So. 3d at 313-14.[4] The petitioners [*453] argued that the motion to dismiss was not based on a failure to state a cause of action because the Anti-SLAPP statute "focuses not on whether a cause of action has been sufficiently alleged but on whether the activity that is alleged to have given rise to the cause of action is protected activity." *Id.* at 314. ***HN5***[⬆] We agreed that "a motion to dismiss based on the Anti-SLAPP statute requires the trial court do more than accept as true the factual

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[4] ***HN6***[⬆] Section 768.295(4) permits a SLAPP defendant to file a motion to dismiss, a motion for final judgment entered in favor of the SLAPP defendant, or a motion for summary judgment. And in *Gundel*, the SLAPP defendants filed their motion in the alternative as a motion to dismiss, motion for summary judgment, and motion for judgment on the pleadings. 264 So. 3d at 313. We granted the petition primarily based on the trial court's failure to alternatively consider the motion to dismiss as a motion for summary judgment, but as explained herein, we agreed with the SLAPP defendants that in construing their motion exclusively as a motion to dismiss, the trial court erred by applying the burden of proving the application of the Anti-SLAPP statute solely on them. *Id.* at 314.

allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant." *Id.*

HN7[⬆] We explained that the statute places the initial burden on a "SLAPP defendant to set forth a prima facie case that the Anti-SLAPP statute applies" and that once [**9] that burden is met, the burden is shifted to the SLAPP plaintiff "to demonstrate that the claims are not 'primarily' based on First Amendment rights in connection with a public issue and not 'without merit.'" *Id.* Applying the statute in this manner "serves the purpose of the statute and conforms with the procedures employed in considering other statutorily-based motions to dismiss." *Id.* Otherwise, if the burden was placed exclusively on the SLAPP defendant based solely on the plaintiff's allegations, the plaintiff could avoid dismissal "by being intentionally vague, thus thwarting the purpose of the statute." *Id.*

This court found it problematic that the trial court solely applied the burden to the SLAPP defendants and failed to consider one of the SLAPP defendants' affidavits; we also took issue with the trial court's conclusion that the SLAPP defendants failed to show that their conduct was protected activity under the Anti-SLAPP statute and that they failed to establish their conduct was made "in connection with" an existing judicial proceeding. *Id.* at 309, 314. We explained in relevant part that the vagueness of the SLAPP counterplaintiff's allegations as to the dates of specific conduct and as to the conduct [**10] itself prevented the trial court from determining from the face of the counterclaim that the SLAPP defendants' actions constituted "free speech in connection with public issues." *Id.* at 315. Consequently, the trial court could not determine that the counterclaims were primarily based on protected activities. *Id.*

Here too the vagueness of Mishiyev's allegations regarding the dates of the alleged defamatory statements as well as the conduct itself necessarily prevented the trial court from determining whether Davis and Beasley's conduct constituted "free speech in connection with public issues" and from determining whether Mishiyev's complaint was based primarily on protected conduct.

We note that our review was somewhat hampered by the lack of findings—such as those made in *Gundel*—either orally at the hearing or in the trial court's written order denying Davis and Beasley's motion. The trial court simply denied the motion without explanation. But due to the vagueness of Mishiyev's allegations, it appears that the trial court did not analyze the Anti-SLAPP statute when

ruling on the motion to dismiss because, as already explained, the trial court could not have made the necessary determinations under [**11] the statute. Rather, the unelaborated order of dismissal suggests that the trial court denied the motion utilizing an incorrect motion-to-dismiss standard.[5] We therefore conclude [*454] that Davis and Beasley established a departure from the essential requirements of law, and we grant the petition. In accordance with *Gundel*, we note that the trial court must review the merits of Davis and Beasley's motion under the appropriate standard for motions to dismiss filed pursuant to the Anti-SLAPP statute.

Petition granted; conflict certified.

LAROSE and BLACK, JJ., Concur.

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[5] We note that Davis and Beasley raised additional arguments such as Mishiyev's claims being barred by the expiration of the statute of limitations and that the statements constituted pure opinion. Clearly, due to the trial court's denial of their motion, it rejected those claims. We need not address the merits of those arguments given our holding that the petition should be granted for other reasons.

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Kissinger v. Mahoning Cnty. Republican Party

United States District Court for the Northern District of Ohio, Eastern Division
June 16, 2023, Decided; June 16, 2023, Filed
CASE NO. 4:22-CV-00709

Reporter

677 F. Supp. 3d 716 *; 2023 U.S. Dist. LEXIS 105560 **

DAVID KISSINGER, et al., Plaintiffs, vs. MAHONING COUNTY REPUBLICAN PARTY, et al., Defendants.

Core Terms

state actor, Sanctions, proposed amended complaint, Elections, motion to dismiss, county board, allegations, Amend, candidate, state action, futile, subject matter jurisdiction, Defendants', protested, rights, political party, private conduct, emails, oppose, nexus, lack of subject matter jurisdiction, election process, district court, existing law, state law, circumstances, Headquarters, deprivation, pleaded, shouted

Counsel: [**1] For David Kissinger, Cheryl Kissinger, Plaintiffs: Sarah Thomas Kovoor, Kovoor Law, Warren, OH.

For Mahoning County Republican Party, Thomas P. McCabe, In his professional and personal capacity, Defendants: A. Ross Douglass, Boardman, OH; Frank G. Mazgaj, Hanna, Campbell & Powell, Akron, OH; Robert E. Duffrin, Whalen Duffrin, Canton, OH.

For Robert L. Aurandt, In his professional and personal capacity, Defendant: Frank G. Mazgaj, Hanna, Campbell & Powell, Akron, OH; Martin P. Desmond, Youngstown, OH.

For David W. Johnson, In his professional and personal capacity, Defendant: Craig G Pelini, Pelini, Campbell & Williams - North Canton, North Canton, OH; Curt C. Hartman, Cincinnati, OH; Stephen J. Chuparkoff, Cincinnati Insurance - Akron, Akron, OH.

Judges: CHARLES E. FLEMING, UNITED STATES DISTRICT JUDGE.

Opinion by: CHARLES E. FLEMING

Opinion

[*720] **MEMORANDUM OPINION AND ORDER**

Although in its procedural infancy, the contentiousness of the dispute in this case is plain: before the Court is (1) Defendant David Johnson's Motion to Dismiss for Lack of Jurisdiction (ECF No. 18); (2) Defendants Mahoning County Republican Party ("MCRP") and Thomas McCabe's Motion to Dismiss for Lack of Jurisdiction and Failure to State a Claim (ECF [**2] No. 21); (3) Defendant Robert Aurandt's Motion to Dismiss (ECF NO. 22); (4) Johnson's Motion for Sanctions made under Fed. R. Civ. P. 11 (ECF No. 24); (5) Plaintiffs' Cross-Motion for Sanctions against all Defendants (ECF No. 29); (6) Johnson's Motion to Strike Portions of Plaintiffs' Response to Johnson's Motion for Sanctions (ECF No. 31); and (7) Plaintiffs' Motion for Leave to Amend Complaint (ECF No. 36).

For the reasons stated in this Memorandum Opinion and Order, Defendants' Motions to Dismiss made under Rule 12(b)(1) are **GRANTED**; Defendants' Motions to Dismiss made under Rule 12(b)(6) are **DENIED AS MOOT**; Plaintiffs' Motion for Leave to Amend Complaint is **DENIED** on futility grounds; Johnson's Motion for Sanctions is **DENIED**; Johnson's Motion to Strike is **GRANTED**; and Plaintiffs' Cross-Motion for Sanctions is **STRICKEN**.

I. FACTUAL BACKGROUND

A. The Incident at MCRP Headquarters

Plaintiffs allege that they went to MCRP Headquarters on April 27, 2022, to deliver political campaign signs supporting political candidates whom Former President Donald Trump had not endorsed. (ECF No. 1, Compl., PageID# 4). Senator J.D. Vance, who had at that time been campaigning for the position he now holds and had received the Former President's [**3] endorsement, was at the MCRP Headquarters that day for a scheduled speech. (*Id.* at PageID# 4-5; ECF No. 36-1, Proposed Am. Compl., PageID# 193). Plaintiffs protested the speech from outside the building, and Plaintiff David Kissinger held a sign that stated, "VANCE IS A FRAUD / TRUMP IS SELLING US OUT TO PETER THIEL," apparently offending the attendees inside. (*Id.*). Plaintiff alleges that Aurandt "led a physical assault on Mr. Kissinger" by taking his sign and throwing Mr. Kissinger to the ground. (*Id.*). The Proposed Amended Complaint explains that proposed new-

party defendants, Dennis Zimmet and Brian Devine, also participated in the assault on Mr. Kissinger, and that all three men threatened the protestors, claiming they would to "kick their asses." (ECF No. 36-1, PageID# 188, 194). Plaintiffs claim that they were business invitees expressing purely political speech, and that their removal from Senator Vance's speech violated their First Amendment rights. (ECF No. 1, PageID# 5, 7). (These events are collectively referred to as the "Incident").

While the Incident precipitated the instant lawsuit, the parties' contretemps did not begin or end there. The Proposed Amended Complaint alleges that the [**4] parties had been at odds in early 2021 over a vote by the members of the Columbiana County Board of Elections (for which Johnson serves as Chairman); the vote regarded the purchase of new voting machines. (ECF No. 36-1, PageID# 191). Mr. Kissinger and Johnson exchanged heated words over the vote, and Plaintiffs collected over 600 signatures opposing the new machines. (*Id.*). In September of 2021, Plaintiffs protested a fundraising event for Governor Mike DeWine at the Columbiana County Republican Party ("CCRP") headquarters, during which Johnson shouted to [*721] Plaintiffs that they are "RINOs" ("Republican In Name Only"); Johnson's brother also threatened protestors and shouted obscenities until police asked him to leave. (*Id.* at PageID# 192).

On April 10, 2022, Plaintiffs and Johnson were again at loggerheads. This time it was about Johnson's alleged involvement in a scandal involving money that was missing from the Ohio GOP. (*Id.*). Plaintiff Cheryl Kissinger alleges that an editorial letter she drafted and sent to three Columbiana County newspapers entitled "Audit Lies" was not immediately published because it referred to Johnson as a liar, a term to which the editor objected. (*Id.*). The [**5] letter was eventually published on April 28, 2022 (one day after the Incident), with a new title, "Local Business Owner-Citizen Offers Opinion."[1] On May 2, 2022, Johnson published a letter to the editor of the Morning Journal, purportedly containing false, offensive, and derogatory statements about Plaintiffs. (ECF No. 1, PageID# 10). Johnson also posted derogatory comments about Plaintiffs on the Columbiana County Republican Party's Facebook page on the same day. (*Id.*). Johnson allegedly called Ms. Kissinger "a liar, a lunatic, a 'nut job,' an

[1] The Proposed Amended Complaint suggests that the editor sent a copy of Ms. Kissinger's letter to Johnson prior to its publication, and made changes to the title because of sympathies for Johnson.

anarchist, ANTIFA, etc." (ECF No. 36-1, PageID# 192). At another point over the last year, Plaintiffs claim that they placed a four-foot sign in front of their business that read, "Don't forget to vote for Rick Barron," an apparent political adversary of Johnson. (*Id.* at PageID# 193). A known Johnson associate and CCRP volunteer came to Plaintiffs' business and shouted at them for supporting Barron. (*Id.*).

B. The Complaint and Proposed Amended Complaint

The tension between Plaintiffs and Johnson culminated in Plaintiffs' filing of their seven-count Complaint against Defendants on May 2, 2022—the same day that Johnson's editorial was published. [**6] (ECF No. 1). The Complaint bases federal court jurisdiction on 28 U.S.C. § 1343 (civil rights) and 28 U.S.C. § 1367 (supplemental jurisdiction). (ECF No. 1, PageID# 6; ECF No. 36-1, PageID# 189-90). Specifically, Plaintiffs seek to invoke this Court's subject matter jurisdiction in Count One of the Proposed Amended Complaint, which asserts that all Defendants conspired to violate Plaintiffs' First Amendment rights in violation of 42 U.S.C. § 1983.[2] The Proposed Amended Complaint alleges that the current Defendants are all state actors, and thus properly subject to a § 1983 claim, based on the following facts:

- MCRP is a subsidiary of the Republican National Committee ("RNC") and recipient of Federal Elections Commission funding. (ECF No. 36-1, PageID# 185, ¶ 7).

- McCabe is an agent and/or employee of MCRP, and Director of the Mahoning County Board of Elections. (*Id.* at PageID# 185-86, ¶ 9).

- Aurandt is an agent and/or employee of MCRP, a member of the Mahoning County Board of Elections with one of four votes in matters relating to McCabe's employment and compensation. (*Id.* at PageID# 186, ¶ 10).

- Johnson serves on the Columbiana County Board of Elections as its Republican Chairman (*id.* at ¶ 11), and [*722] he is an agent and/or employee acting on behalf of [**7] the Columbiana County Republican Party, Mahoning County Republican Party, and Ohio Republican Party (*id.* at ¶ 12); the Treasurer of

[2] The original Complaint also included a § 1983 claim, but it was asserted only against McCabe and MCRP.

the Ohio Republican Party (*id.* at ¶ 13); and the State Central Committeeman for the Republican Party in the 33rd State Senate District, which includes Columbiana and Mahoning Counties (*id.* at PageID# 186-87, ¶¶ 14-15).

• John Doe 3 is an agent and or employee of MCRP. (*Id.* at PageID# 187, ¶ 20).

The Proposed Amended Complaint seeks to add two additional defendants, Dennis Zimmet and Brian Devine, to replace John Does 1 and 2 named in the original Complaint, respectively. Plaintiffs allege that Zimmet and Devine are both agents and/or employees of the MCRP and/or the Ohio Republican Party. Beyond Plaintiffs' § 1983 claim against all of the existing and additional Defendants, Plaintiffs assert state-law claims for Battery, Assault, Negligence, Loss of Consortium, Defamation, False Light, and Civil Conspiracy. (ECF No. 36-1, PageID# 195-200). (Zimmet and Devine, together with Johnson, McCabe, and Aurandt, are referred to as the "Individual Defendants").

C. The Pending Motions

1. Motions to Dismiss

Johnson, McCabe, MCRP, and Aurandt all filed Motions to Dismiss the Complaint, [**8] primarily focused on whether this Court has subject matter jurisdiction to hear this case. (*See* ECF Nos. 18, 21, & 22). Defendants argue that none of the defendants are state actors against whom a § 1983 claim may lie, and therefore there is no valid federal question to support this Court's jurisdiction. (ECF No. 18, PageID# 72-75; ECF No. 21, PageID# 84-86; ECF No. 22, PageID# 97-98). Plaintiffs respond that the defendants are state actors for the reasons explained in the Proposed Amended Complaint. (*See* ECF No. 35, PageID# 167, 171). Plaintiffs suggest that Defendants had two distinct goals on the day of Senator Vance's speech: "to one end acting out their individual political aims but for a second end, doing so with their offices in mind and with the ends they could achieve by way of those positions likewise in mind." (*Id.*).

2. Motion for Sanctions and Motion to Strike

Johnson filed a Motion for Sanctions, in which he asserts that Plaintiffs' Complaint violates Fed. R. Civ. P. 11 because it is not supported by existing

law or by a nonfrivolous argument for extending, modifying, or reversing existing law. (ECF No. 24). Johnson claims that the allegations in Plaintiffs' Complaint are nothing more than political [**9] grandstanding; he asserts Plaintiffs know that their claims are based on private, not state, action, and that the law does not support federal court jurisdiction nor a valid § 1983 claim. (*Id.*).

Plaintiffs opposed Johnson's Motion on August 7, 2022, and moved for Cross-Sanctions, claiming that Johnson's Motion for Sanctions is itself sanctionable because it was filed solely to gain leverage in this case. (ECF No. 29, PageID# 151). Plaintiffs also oppose Johnson's Motion for Sanctions within their response to the defendants' Motions to Dismiss, arguing that this case presents an opportunity for this Court to expand existing law relating civil liability for political parties. (ECF No. 35, PageID# 165). Johnson moved to strike Plaintiffs' Cross-Motion for Sanctions, asserting that Plaintiffs failed to serve him with their Cross-Motion as required by Rule 11(c)(2). (ECF No. 31, PageID# 157-58). Plaintiffs did not oppose Johnson's Motion to Strike.

[*723] *3. Motion for Leave to Amend Complaint*

Finally, Plaintiffs have moved to amend their Complaint. (ECF No. 36). The Proposed Amended Complaint substitutes Dennis Zimmet for John Doe 1 and Brian Devine for John Doe 2. (*Id.* at PageID# 179-80). Substantively, the Proposed [**10] Amended Complaint seeks to expand their § 1983 claim to all defendants under a theory that they were all conspiring with one another to violate Plaintiffs' civil rights. (*Id.* at PageID# 181). It also explains that Defendants hold various state-government offices, which clarifies Plaintiffs' allegations of state action supporting their § 1983 claim. (*Id.*). Johnson opposes Plaintiffs' Motion for Leave on futility grounds, claiming that the Proposed Amended Complaint does not cure the jurisdictional defect within the original Complaint. (ECF No. 39, PageID# 217).

II. MOTION STANDARDS

A. Motion to Dismiss Pursuant to Fed. R. Civ. P. 12(b)(1)

Defendants each filed a Motion to Dismiss this case under Rule 12(b)(1) and/or 12(b)(6) of the Federal Rules of Civil Procedure for lack of subject matter jurisdiction and failure to state a claim upon which

relief can be granted. (ECF Nos. 18, 21 & 22). The Court must first determine whether it has subject matter jurisdiction under Rule 12(b)(1), since a lack of subject matter jurisdiction renders Defendants' Rule 12(b)(6) motions moot. *Moir v. Greater Cleveland Reg'l Transit Auth.*, 895 F.2d 266, 269 (6th Cir. 1990) (citing *Bell v. Hood*, 327 U.S. 678, 682, 66 S. Ct. 773, 90 L. Ed. 939 (1946)). Title 28 U.S.C. § 1331 provides for what is commonly referred to as federal question jurisdiction: "The district courts shall have original jurisdiction of all civil actions arising under the Constitution, laws, or treaties of the United States." [**11] Determining whether a district court has federal question jurisdiction requires the Court to look beyond the plaintiff's characterization of his claim and "see whether the alleged claim actually 'arises under' the Constitution or federal statutes and is not made solely for the purpose of obtaining jurisdiction." *Bush v. State Indus., Inc.*, 599 F.2d 780, 784 (6th Cir. 1979).

When a defendant challenges subject matter jurisdiction, "the plaintiff has the burden of proving jurisdiction in order to survive the motion." *Moir*, 895 F.2d at 269 (citing *Rogers v. Stratton Indus., Inc.*, 798 F.2d 913, 915 (6th Cir. 1986)). A facial attack like that which Defendants assert "challenges the sufficiency of the pleading, and the court takes the allegations in the complaint as true and construes them in the light most favorable to the plaintiff." *Cox v. Bd. of Cnty. Comm'rs of Franklin Cnty.*, 436 F. Supp. 3d 1070, 1077 (S.D. Ohio 2020) (citing *United States v. Ritchie*, 15 F.3d 592, 598 (6th Cir. 1994)). "A case is properly dismissed for lack of subject matter jurisdiction when the court lacks the statutory or constitutional power to adjudicate the case." *Nowak v. Ironworkers Loc. 6 Pension Fund*, 81 F.3d 1182, 1187 (6th Cir. 1994).

B. Motion for Leave to Amend Complaint

Pleading amendments are governed by Fed. R. Civ. P. 15. Rule 15(a)(2), which provides that, in instances of amendment other than amending within 21 days of service of the initial complaint, "a party may amend its pleading only with the opposing party's written consent or the court's leave," and that "[t]he court should freely give [**12] leave when justice so requires." Plaintiffs' Complaint was filed on May 2, 2022. (EFC No. 1). Plaintiffs filed their Motion for Leave to Amend Complaint on September 13, 2022. (EFC No. 36). The 21 [*724] days allowed to amend without leave had expired, meaning that Fed. R. Civ. P. 15(a)(2) applies. Johnson opposes the

proposed amendment. (EFC No. 39).

The Supreme Court, in *Foman v. Davis*, 371 U.S. 178, 182, 83 S. Ct. 227, 9 L. Ed. 2d 222 (1962), held that courts may not deny an amendment request without explaining its reasoning for doing so, and clarified the grounds that could justify denial of such a request:

> Rule 15(a) declares that leave to amend "shall be freely given when justice so requires" . . . . In the absence of any apparent or declared reason—such as undue delay, bad faith, or dilatory motive on the part of the movant, repeated failure to cure deficiencies by amendments previously allowed undue prejudice to the opposing party by virtue of allowance of the amendment, *futility of the amendment*, etc.—the leave should, as the rule requires, be "freely given." . . . outright refusal to grant leave without any justifying reason appearing for the denial is not an exercise of discretion.

(Emphasis added).

Whether a proposed amendment is "futile" is governed by the standard applicable to a motion [**13] to dismiss. *Miller v. Calhoun Cnty.*, 408 F.3d 803, 817 (6th Cir. 2005) (citing *Neighborhood Dev. Corp. v. Advisory Council on Historic Pres.*, 632 F.2d 21, 23 (6th Cir. 1980)). The Sixth Circuit recognizes that "a proposed amendment is futile if the amendment could not withstand a Rule 12(b)(6) motion to dismiss." *Rose v. Hartford Underwriters Ins. Co.*, 203 F.3d 417, 420 (6th Cir. 2000); *see Pyskaty v. Wide World of Cars, LLC*, 856 F.3d 216, 224-25 (2d Cir. 2017) ("Futility is a determination, as a matter of law, that proposed amendments would fail to cure prior deficiencies or fail to state a claim under Rule 12(b)(6)."); *Bauchman for Bauchman v. West High Sch.*, 132 F.3d 542, 562 (10th Cir. 1997) ("A court properly may deny a motion for leave to amend as futile when the proposed amended complaint would be subject to dismissal for any reason.").

III. DISCUSSION

A. The State Action Doctrine

The question central to nearly every motion before the Court is whether the Complaint (or Proposed Amended Complaint) establishes a federal question that invokes this Court's subject-matter jurisdiction. Plaintiffs' only federal claim, made under § 1983, requires that the defendants were state actors acting

under color of state law when they allegedly conspired to deprive Plaintiffs of their constitutional right to engage in free speech and political protest. 42 U.S.C. § 1983; *see Shelley v. Kraemer*, 334 U.S. 1, 13, 68 S. Ct. 836, 92 L. Ed. 1161 (1948) (holding that § 1983 liability cannot attach to "merely private conduct, no matter how discriminatory or wrongful").

A § 1983 claim requires (1) "the deprivation of a right secured by the Constitution or laws of the United States" and (2) that "the [**14] deprivation was caused by a person acting under color of state law." *Tahfs v. Proctor*, 316 F.3d 584, 590 (6th Cir. 2003) (quoting *Ellison v. Garbarino*, 48 F.3d 192, 194 (6th Cir. 1995). The absence of either element means that the § 1983 claim has not been pleaded. *Lausin v. Bishko*, 727 F. Supp. 2d 610, 625 (N.D. Ohio 2010). Whether a party is a state actor is a question of law. *Blum v. Yaretsky*, 457 U.S. 991, 996-98, 102 S. Ct. 2777, 73 L. Ed. 2d 534 (1982).

State action occurs when a defendant exercised power "possessed by virtue of state law ***and made possible only because*** the wrongdoer is clothed with the authority of state law." *West v. Atkins*, 487 U.S. 42, 49, [*725] 108 S. Ct. 2250, 101 L. Ed. 2d 40 (1988) (emphasis added). *See Almand v. DeKalb Cnty., Ga.*, 103 F.3d 1510, 1513 (11th Cir. 1997) (finding that police officer who used his position to gain access to victim's home to rape her was not a state actor because the break-in and rape were not accomplished nor made possible solely because of the police officer's state employment). The Court must therefore determine whether Defendants impinged Plaintiffs' civil rights via the powers they possess by virtue of their respective offices, or as mere private individuals. *Monroe v. Pape*, 365 U.S. 167, 183-84, 81 S. Ct. 473, 5 L. Ed. 2d 492 (1961), overruled on other grounds by *Monell v. Dep't of Social Servs.*, 436 U.S. 658, 98 S. Ct. 2018, 56 L. Ed. 2d 611 (1978) (discussing *United States v. Classic*, 313 U.S. 299, 325-26, 61 S. Ct. 1031, 85 L. Ed. 1368 (1941), which held that election officials obligated to count ballots by statute could be held liable under a statute, which criminalized the deprivation of constitutional rights by a person acting under color of any law, when they allegedly failed to count all ballots cast).

Private conduct becomes state action under [**15] § 1983 when the conduct is "fairly attributable to the state." *Lugar v. Edmondson Oil Co.*, 457 U.S. 922, 947, 102 S. Ct. 2744, 73 L. Ed. 2d 482 (1982). Federal courts use several tests for determining whether a defendant should be a state actor for the purpose of a § 1983 claim: the public function, state

compulsion, and nexus tests are three of the most common. *Wolotsky v. Huhn*, 960 F.2d 1331, 1335 (6th Cir. 1992). The state official test, which is derivative of the nexus test, is also useful when a private party holds a state office. *Lindke v. Freed*, 37 F.4th 1199, 1202-03 (6th Cir. 2022). Relevant here,[3] the public function tests provides that private conduct is deemed state action when a person "exercised powers traditionally reserved exclusively to the state." *Chapman v. Higbee Co.*, 319 F.3d 825, 833 (6th Cir. 2003). The doctrine is interpreted narrowly, with only functions like holding elections, exercising eminent domain, and operating a company-owned town falling within its scope. *Id.* at 833-34 (citing *Flagg Bros. v. Brooks*, 436 U.S. 149, 157-58, 98 S. Ct. 1729, 56 L. Ed. 2d 185 (1978); *Jackson v. Metropolitan Edison Co.*, 419 U.S. 345, 352-53, 95 S. Ct. 449, 42 L. Ed. 2d 477 (1974); *Marsh v. Alabama*, 326 U.S. 501, 505-09, 66 S. Ct. 276, 90 L. Ed. 265 (1946)).

Also relevant is the nexus test, under which a private party may be a state actor if her actions are either subject to the government's "management or control" or "entwined with governmental policies." *Lindke*, 37 F.4th at 1203 (quoting *Brentwood Acad. v. Tenn. Secondary Sch. Athletic Ass'n*, 531 U.S. 288, 296, 121 S. Ct. 924, 148 L. Ed. 2d 807 (2001)). Since § 1983 cannot apply to private individuals engaged in purely private conduct, the nexus test asks whether a sufficiently close nexus exists "between the state and the *challenged action*." *Blackwell v. Allen*, No. 22-1300, 2022 U.S. App. LEXIS 35494, 2022 WL 17832191, at *4 (6th Cir. Dec. 21, 2022) (citing *Wilcher v. City of Akron*, 498 F.3d 516, 520 (6th Cir. 2007)) (emphasis in original). This is [**16] because "not every action undertaken by a person who happens to be a state actor is attributable to the state." *Waters v. City of Morristown*, 242 F.3d 353, 359 (6th Cir. 2001). To be a state actor, a public official's relevant conduct must have occurred "in the course of performing an actual or apparent duty of his office . . . unless the conduct is such that the actor could not have behaved as [*726] he did without the authority of his office." *Waters*, 242 F.3d at 359 (citing West, 487 U.S. at 49-50).

In *Blackwell*, for example, an attorney acting as a city's law director as part of his overall private law practice was alleged to have used his position to deny Freedom of Information Act ("FOIA") requests from a concerned citizen inquiring as to the contract between the city and the attorney's law

[3] The Court will not analyze Defendants' conduct under the state compulsion test since none of the parties have argued for its application and it is inapposite to the allegations in the Complaint.

firm. 2022 U.S. App. LEXIS 35494, [WL] at *1. The citizen responded to the denial by sending a self-generated internet meme of the attorney and his law partner wearing women's clothing, and the attorney responded to the citizen with personal attacks targeting the citizen's character and physical disability. *Id.* The Sixth Circuit found that, although the attorney held an official position with the city and used the same email address to issue the personal attacks that he used to transmit the FOIA request denials, the personal-attack emails were private conduct not suitable for a § 1983 claim. [**17] 2022 U.S. App. LEXIS 35494, [WL] at *5. This was because there were no allegations in the complaint that the city supervised or approved the emails or that they were somehow entwined with a governmental policy; rather, the attorney sent the emails from his personal law-firm email address, mostly outside business hours, and without any apparent connection to his role as the city's law director. *Id.*

B. MCRP is Not a State Actor

Plaintiffs allege that MCRP is a state actor because it is "a subsidiary of the Republican National Committee ("RNC"), [and] a recipient of Federal Elections Commission ("FEC") funding." (ECF No. 36-1, PageID# 185). MCRP's Motion to Dismiss argues that the law does not transform political parties into state actors unless they are required to follow a legislative directive pertaining to the election process. (ECF No. 21, PageID# 85). Since MCRP was not engaged in conduct directed by the RNC or State of Ohio, MCRP argues that it cannot be a state actor for § 1983 purposes. (*Id.* at PageID# 186).

Indeed, the times in which a political party may be considered a state actor are few and far between. In *Smith v. Allwright*, 321 U.S. 649, 659-64, 64 S. Ct. 757, 88 L. Ed. 987 (1944), the Supreme Court determined that the Texas Democratic Party (a private organization) was a state actor because [**18] the state's legislature directed the Party to decide the primary election participants, thus limiting the choice of the general-voting electorate. In *Terry v. Adams*, 345 U.S. 461, 469-70, 73 S. Ct. 809, 97 L. Ed. 1152 (1953), the Court held in a plurality decision that a private democratic club, the "Jaybird Association," was also a state actor because its primary had "become an integral part, indeed the only effective part, of the elective process that determine[d] who shall rule and govern in the county."

On the other side of the coin, the Sixth Circuit has

clarified that "[t]he primary election cases do not hold that a political party is part of the state, or that any action by a political party other than conducting an election is state action." *Banchy v. Republican Party of Hamilton Cnty.*, 898 F.2d 1192, 1196 (6th Cir. 1990) (quoting *California Republican Party v. Mercier*, 652 F. Supp. 928, 934 (C.D. Cal. 1986)). Instead, the political parties in those cases "were state actors[] acting under color of state law insofar as they had been assigned an 'integral part' in the election process, a governmental function." *Id.* That principle directed the result in *Banchy*, in which the Sixth Circuit found that the Ohio Republican Party was a private actor when it did not permit its newly-elected precinct executives to participate in the election of their respective ward chairmen. (*Id.*). The same principle applied in *Libertarian Party of Ohio v. Husted*, 831 F.3d 382, 396 (6th Cir. 2016), [*727] where [**19] the Ohio Republican Party was *not* a state actor when it used the process dictated by statute to file protests against nomination petitions filed by the Ohio Libertarian Party; since "any private citizen with standing is authorized by Ohio law to file a protest against a candidate's nominating petition," the Ohio Republican Party's protests were not fairly attributable to the state, and thus were private conduct.

Applying the same principle here, MCRP is not a state actor for the purpose of Plaintiffs' § 1983 claim. MCRP permitted then-senatorial-candidate Vance to use its private headquarters to speak to supporters. (ECF No. 36-1, PageID# 188, ¶ 26; PageID# 193, ¶ 44). Providing a forum for a political candidate to speak is not analogous to participating in the election process. Like the Ohio Republican Party in both *Banchy* and *Libertarian Party of Ohio*, MCRP was not assigned an "integral part in the election process" when it permitted candidate Vance to speak. Private individuals and organizations alike routinely invite political candidates to speak on private property to support fundraising and voter outreach efforts. Since neither the Complaint nor the Proposed Amended Complaint includes allegations that MCRP engaged [**20] in the type of activity that is typically considered state action, Plaintiffs' § 1983 claim is not pleaded against MCRP. *See Lausin v. Bishko*, 727 F. Supp. 2d 610, 625 (N.D. Ohio 2010) (explaining that an absence of state action on the part of a defendant means that "a § 1983 claim has not been pleaded" against them).

C. The Individual Defendants Are Not State Actors For The Purpose of This Case

The same result must be reached with respect to Johnson, McCabe, Aurandt, and the John Does, Zimmet and Devine. Under the state official derivative of the nexus test, these Defendants (and proposed defendants) can only be state actors if their actions in relation to Plaintiffs were occasioned in some way by the positions that Plaintiffs allege they hold.

1. McCabe, Aurandt, Zimmet, and Devine

McCabe, the chairman of the MCRP and Director of the Mahoning County Board of Elections (ECF No. 36-1, PageID# 185, ¶ 9), is generally alleged to have conspired with the other defendants to deprive Plaintiffs of their constitutional rights prior to and during the Incident. This Court has already determined that MCRP is not a state actor under the circumstances alleged. Therefore, McCabe's position as Chairman and the other Individual Defendants' alleged associations with the [**21] MCRP are irrelevant to this inquiry. Aurandt, who purportedly attacked Mr. Kissinger with Zimmet and Devine, serves with McCabe on the Mahoning County Board of Elections.

Whether any Individual Defendants hold positions on county boards of election is similarly irrelevant. Like the city attorney in *Blackwell*, whose derogatory and offensive emails were not the product of his position, neither the Complaint nor the Proposed Amended Complaint allege facts supporting the claim that the Individual Defendants' attendance at candidate Vance's speech was related to their state positions. The Proposed Amended Complaint describes candidate Vance's speech as a private gathering on private property, meaning that all one needed to gain access was an invitation. (*See* ECF No. 36-1, PageID# 194, ¶ 46[4]). While the Individual Defendants allegedly did much more than [*728] simply attend candidate Vance's speech, the Proposed Amended Complaint does not allege that they attacked Mr. Kissinger or attempted to remove him at the direction of a state actor, be it a county board of elections or any other political or governmental office. That said, none of the Individual Defendants are state actors in the eyes of the law.

*2. [**22] Johnson*

The Proposed Amended Complaint alleges that Defendants' conspiracy produced more than just the

[4] The Proposed Amended Complaint explains that Senator Vance was speaking from inside the MCRP Headquarters, and that protesters remained outside near the building's entrance. Plaintiffs do not allege that MCRP Headquarters is public property.

Incident. Plaintiffs also allege that Johnson began harassing and threatening them in furtherance of the conspiracy in early 2021. (ECF No. 36-1, PageID# 191, ¶ 38). Four discreet events to achieve this end are alleged: (1) Johnson and his brother taunted Plaintiffs while they protested a fundraising event for Governor Mike DeWine, calling them RINOs and shouting obscenities (*id.* at PageID# 191-92, ¶ 39); (2) Johnson responded to Ms. Kissinger's letter to the editor with his own letter to the editor and social media posts, calling her "a liar, a lunatic, a 'nut job,' an anarchist, ANTIFA, etc." (*id.* at PageID# 12, ¶ 41); (3) an unnamed Johnson associate harassed and shouted at Plaintiffs over a political sign they posted in front of their business (*id.* at PageID# 193, ¶ 43); and (4) after the Incident, Johnson posted photos of and messages concerning Plaintiffs, claiming that Ms. Kissinger "is a fringe lunatic nut job...a vindictive hater and proven LIAR. If she could spell anarchist, she'd be one" (*id.* at PageID# 194, ¶ 47).

There are no factual allegations in the Proposed Amended [**23] Complaint that support a finding that the Columbiana County Board of Elections or another state entity[5] directed Johnson to engage in a name-calling and intimidation campaign targeting Plaintiffs. Instead, the Proposed Amended Complaint tells the story of former friends and political allies—Johnson and Plaintiffs—whose relationship soured over time due to differences of opinion relating to Republican Party initiatives and candidates. (ECF No. 36-1, PageID# 191-94). Any member of the public can write letters to the editor, make antagonistic social media posts, and harass other members of the public about their political opinions; these activities allegedly undertaken by Johnson, however unflattering and juvenile they may have been, were not the product of an actual or apparent duty Johnson has to the Columbiana County Board of Elections, nor occasioned by the authority he has as a board member. *See Waters v. City of Morristown*, 242 F.3d 353, 359 (6th Cir. 2001). Since there are no facts pleaded in the Proposed Amended Complaint connecting Johnson's alleged conduct with Johnson's position at the Columbiana County Board of Elections or some other state entity, and since any member of the public could have engaged in all of the conduct that Johnson [**24] is alleged to have committed,

[5] In addition to his position with the Columbiana County Board of Elections, Plaintiffs allege that Johnson is an agent and/or employee of the CCRP and MCRP, the Treasurer of the Ohio Republican Party, and the State Central Committeeman for the Republican Party in the 33rd State Senate District. (ECF No. 36-1, PageID# 186-87). The analysis for determining whether other branches of the Republican Party are state actors is identical to this Court's analysis of whether MCRP is a state actor. Thus, Johnson's positions within various levels of the Republican Party are not relevant.

Johnson also is not a state actor.

Absent any state action pleaded in the § 1983 claim in Plaintiffs' Complaint and the Proposed Amended Complaint, this [*729] Court lacks subject matter jurisdiction to hear this case. Because the Proposed Amended Complaint does not cure this Court's lack of subject matter jurisdiction, its filing would be futile.

D. Defendant Johnson's Motion for Sanctions, Plaintiffs' Cross-Motion for Sanctions, and Johnson's Motion to Strike Plaintiffs' Cross-Motion for Sanctions

Consistent with the tone of the dispute between Johnson and Plaintiffs, both parties have asked the Court to award sanctions against the other for their court filings. (ECF No. 24; ECF No. 29). The district court is empowered to award sanctions for party or counsel misconduct even when it lacks subject matter jurisdiction to hear the case in which the request for sanctions is made, so long as the misconduct is collateral to the merits of the case. *Willy v. Coastal Corp.*, 503 U.S. 131, 136-37, 112 S. Ct. 1076, 117 L. Ed. 2d 280 (1992). *See Cooter & Gell v. Hartmarx Corp.*, 496 U.S. 384, 110 S. Ct. 2447, 110 L. Ed. 2d 359 (1990) (affirming award of sanctions after the plaintiff had voluntarily dismissed the case). "[It is well established that a federal court may consider collateral issues after an action is no longer pending . . . . [An] imposition [**25] of a Rule 11 sanction is not a judgment on the merits of an action. Rather, it requires the determination of a collateral issue: whether the attorney has abused the judicial process, and, if so, what sanction would be appropriate." *Willy*, 503 U.S. at 138 (quoting *Cooter*, 496 U.S. at 395-96).

Fed. R. Civ. P. 11(b) provides that an attorney submitting a court filing to the Court represents, *inter alia*, that the filing "is not being presented for any improper purpose, such as to harass, cause unnecessary delay, or needlessly increase the cost of litigation," and that "the claims, defenses, and other legal contentions are warranted by existing law or by a nonfrivolous argument for extending, modifying, or reversing existing law or for establishing new law." Fed. R. Civ. P. 11(b)(1) and (2). Rule 11(c) provides the enforcement mechanism for Rule 11(b)'s requirements, and states that a court may impose sanctions on a party and his attorney. When a party asks the Court to sanction another party, "[t]he motion must be served under Rule 5, but it must not be filed or be

presented to the court if the challenged paper, claim, defense, contention, or denial is withdrawn or appropriately corrected within 21 days after service or within another time the court sets."

Rule 11(c)(1) gives the Court discretion to award sanctions, and Rule 11(c)(4) requires [**26] that any sanction the Court imposes is "limited to what suffices to deter repetition of the conduct or comparable conduct by others similarly situated." The Sixth Circuit does not permit district courts to use Rule 11 as a "general fee-shifting device." *Orlett v. Cincinnati Microwave, Inc.*, 954 F.2d 414, 420 (6th Cir. 1992) (quoting Stephen B. Burbank, *Rule 11 in Transition: The Report of the Third Circuit Task Force on Federal Rule of Civil Procedure 11*, 12 (1989)). District courts are instead encouraged to consider "the nature of the violation committed, the circumstances in which it was committed, the circumstances (including the financial state) of the individual to be sanctioned, and those sanctioning measures that would suffice to deter that individual from similar violations in the future." *Id.* (quoting Burbank, *supra*, at 40).

First, Johnson's Motion to Strike informs the Court that Plaintiffs' Cross-Motion for sanctions did not comply with the safe-harbor provision in Rule 11(c)(2). (ECF No. 31, PageID# 158). Plaintiffs did not oppose this Motion nor provide any evidence of compliance with the Rule. Johnson's Motion to Strike is therefore granted, and Plaintiffs' Cross-Motion for Sanctions is denied.

[*730] As for Johnson's Motion for Sanctions, the Court does not agree that Plaintiffs' Complaint warrants sanctions, monetary or otherwise. [**27] While this Court ultimately finds that it does not have subject matter jurisdiction to hear Plaintiffs' case, it does so only after the foregoing lengthy analysis. Each of the defendants could be state actors under circumstances other than those present in this case, and the Court's analysis and conclusion does not suggest that Plaintiffs' attempt at a § 1983 claim was so wrong that they or future plaintiffs need to be deterred from filing such a pleading. Further, while the Court understands that the parties' motions and briefs likely generated significant attorney fees, this case does not present the Court with cause to depart from the American Rule, which requires parties to pay for their own lawyers. *See Orlett v. Cincinnati Microwave, Inc.*, 954 F.2d 414, 420 (6th Cir. 1992). The Plaintiffs are individuals, presumably without deep corporate pockets, and the nature and circumstances of the conduct for which Johnson seeks sanctions simply do not warrant same.

IV. CONCLUSION

None of Defendants are state actors for the purpose of Plaintiffs' only federal claim, which is made under 42 U.S.C. § 1983. This Court is therefore without jurisdiction to hear Plaintiffs' Complaint, and the Proposed Amended Complaint does not cure the jurisdictional deficiency present in this case. As [**28] such, Johnson's Motion to Dismiss for Lack of Subject Matter Jurisdiction (ECF No. 18), McCabe and MCRP's Motion to Dismiss under Federal Rule 12(b)(1) (ECF No. 21), and Aurandt's Motion to Dismiss under Federal Rule 12(b)(1) (ECF No. 22) are **GRANTED**. Plaintiff's Motion for Leave to Amend Complaint (ECF No. 36) is **DENIED**. McCabe, MCRP, and Aurandt's Motions to Dismiss under Federal Rule 12(b)(6) are **DENIED AS MOOT**.

Futher, since Plaintiffs failed to comply with the safe-harbor portion of Rule 11, Johnson's Motion to Strike (ECF No. 31) is **GRANTED**, and Plaintiffs' Cross-Motion for Sanctions (ECF No. 29) is hereby **STRICKEN**. Finally, Johnson's Motion for Sanctions is **DENIED**.

IT IS SO ORDERED.

Dated: June 16, 2023

/s/ Charles E. Fleming

CHARLES E. FLEMING

U.S. DISTRICT COURT JUDGE

JUDGMENT ENTRY

For the reasons stated in the accompanying Memorandum Opinion and Order, this matter is DISMISSED WITHOUT PREJUDICE.

IT IS SO ORDERED.

Dated: June 16, 2023

/s/ Charles E. Fleming

CHARLES E. FLEMING

U.S. DISTRICT COURT JUDGE

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Emmanuelli v. Priebus

United States District Court for the Middle District of Florida, Tampa Division

April 13, 2012, Decided; April 13, 2012, Filed

Case No. 8:12-cv-199-T-24-AEP

Reporter

2012 U.S. Dist. LEXIS 52064 *; 2012 WL 1252827

RALPH A. EMMANUELLI, and HILLSBOROUGH HISPANIC COALITION, INC., Plaintiffs, v. REINCE PRIEBUS, in his official capacity as Chair of the Republican National Committee, Defendant.

Subsequent History: Affirmed by Emmanuelli v. Priebus, 2012 U.S. App. LEXIS 25245 (11th Cir. Fla., Dec. 11, 2012)

Core Terms

delegates, state action, national convention, allegations, convention, election, voting, joint action, presidential, percent, rights, voters

Counsel: [*1] For Ralph A. Emmanuelli, Hillsborough Hispanic Coalition, Inc., Plaintiffs: Michael Alan Steinberg, LEAD ATTORNEY, Michael A. Steinberg & Associates, Tampa, FL.

For Reince Priebus, in his official Capacity as Chair of the Republican National Committee, Defendant: Bradford D. Kimbro, Joseph H. Varner, III, LEAD ATTORNEYS, Holland & Knight, LLP, Tampa, FL; John R. Phillippe, Jr., LEAD ATTORNEY, PRO HAC VICE, Republican National Committee, Washington, DC.

Judges: SUSAN C. BUCKLEW, United States District Judge.

Opinion by: SUSAN C. BUCKLEW

Opinion

ORDER

This cause comes before the Court on Defendant Reince Priebus' Motion to Dismiss (Doc. No. 4). Plaintiffs Ralph A. Emmanuelli and Hillsborough Hispanic Coalition, Inc. ("Coalition") have filed a response in opposition (Doc. No. 8). The Court directed the parties to supply supplemental briefing addressing the issue of "whether, and in what circumstances, political parties are considered

covered entities *for purposes of Section 2 of the Act*," (Doc. No. 9), and the parties filed memoranda in response to that order (Doc. Nos. 10, 11). For the reasons stated herein, the motion to dismiss is GRANTED.

I. Background

Plaintiffs have alleged the following: Emmanuelli is a citizen [*2] and registered Republican voter in Pinellas County, Florida. The Coalition is a non-profit corporation with the stated purpose of promoting, protecting, and defending the rights of the Hispanic community under the constitution and laws of the United States of America. Priebus is the Chair of the Republican National Committee ("RNC").

The RNC's rules mandate that "no primary, caucus, or convention to elect . . . delegates to the national convention shall accrue prior to the first Tuesday in March in the year in which a national convention is held, except Iowa, New Hampshire, South Carolina and Nevada may begin their processes at any time on or after February 1 [of a national convention year] . . . ." (Doc. No. 1 at 1). The RNC's rules also mandate that if a state violates the rules relating to the timing of the delegate-selection process, the number of that state's convention delegates will be reduced by fifty percent.

Florida's legislature set the state's presidential primary for January 31, 2012, and the State Republican Party opted to accept the results of the primary to determine its delegate selection for the national convention. In reaction, New Hampshire, Iowa, and South Carolina [*3] scheduled their primaries and caucuses in January, before the Florida primary. The RNC reduced the delegates from all of these states.

Plaintiffs allege that, by allowing Iowa, New Hampshire, South Carolina and Nevada to hold their primaries first, the RNC has given those states "significant influence" on the selection of a presidential nominee, power to eliminate candidates who are not top vote-getters, and ability to skew the debate to reflect their own dominant demographics. Because the percentage of registered Republican Hispanic voters in the early voting states is small compared to the percentage of registered Republican Hispanic voters nationwide, Plaintiffs contend "presidential candidates often stake out positions that are contrary to the positions supported by Hispanic American voters." (Doc. No. 1 at 3).

Plaintiffs seek "a judicial declaration concerning whether the 50 percent delegate reduction penalty imposed by the RNC against the State of Florida for holding its Presidential Primary Election on January 31, 2012, violates the due process [1] and equal protection clauses of the United States Constitution, as well as 42 U.S.C. § 1983 and Section Two of the Voting Rights Act, [*4] 42 U.S.C. § 1973." (Doc. No. 1 at 4).

The crux of Plaintiffs' argument is that, by reducing Florida's number of delegates to the Republican National Convention by fifty percent, Priebus has "underenfranchised" Hispanic Republican voters. Priebus moves for dismissal on four grounds: (1) the complaint fails properly to assert subject matter jurisdiction because Plaintiffs lack standing; (2) Plaintiffs' claims are nonjusticiable; (3) the complaint fails to allege a claim under the Fourteenth Amendment; and (4) the complaint fails to state a claim under Section Two of the Voting Rights Act ("Act"). However, because the Court has determined that there is no state action implicated in this case, which is a required element for both of Plaintiffs' claims, the Court will address only that issue. [2]

II. Standard of Review

In deciding a motion to dismiss, the district court must view the complaint in the light most favorable to the plaintiff. *Murphy v. Fed. Deposit Ins. Corp.*, 208 F.3d 959, 962 (11th Cir. 2000). Federal Rule of Civil Procedure 8(a)(2) requires a pleading to contain a short and plain statement of the claim showing the pleader is entitled to relief so that the defendant receives fair notice of what the claim is and the grounds upon which it rests. *Bell Atl. Corp. v. Twombly*, 550 U.S. 544, 555, 127 S. Ct. 1955, 167 L. Ed. 2d 929 (2007).

Rule 8 does not require a claimant to set out in detail the facts upon which he bases his claim, but "it demands more than an unadorned, the-defendant-unlawfully-harmed-me accusation." *Ashcroft v. Iqbal*, 556 U.S. 662, 129 S. Ct. 1937, 1949, 173 L. Ed. 2d 868 (2009). To survive a motion to dismiss, a complaint must allege sufficient facts, accepted as true, to state a plausible

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[1] Although Plaintiffs refer to the due process clause under the "Preliminary Allegations" of their complaint, neither Count I nor Count II allege a violation of the due process clause.

[2] The Court notes, however, that the justiciability of Plaintiffs' claims and the applicability of the Act are far from clear. *See, e.g., Wymbs v. Republican State Exec. Comm. of Fla.*, 719 F.2d 1072, 1076-77 (11th Cir. 1983) [*5] (addressing justiciability); *Nelson v. Dean*, 528 F. Supp. 2d 1271, 1282 (N.D. Fla. 2007) (citing *LaRouche v. Fowler*, 77 F. Supp. 2d 80 (D.D.C. 1999) (addressing the Act)).

claim for relief. *Id.* If a complaint's well-pleaded facts "do not permit the court to infer more than the mere possibility of misconduct," the complaint stops [*6] short of plausibility and does not show the plaintiff is entitled to relief. *Id.* at 1950. Furthermore, while the Court must assume that all of a complaint's factual allegations are true, this assumption is inapplicable to legal conclusions. *Id.* at 1949. A plaintiff may not open the door to discovery "armed with nothing more than [legal] conclusions." *Id.* at 1950.

However, regardless of the factual allegations, a court "may dismiss a complaint on a dispositive issue of law." *Acosta v. Campbell*, 309 F. App'x 315, 318 (11th Cir. 2009) (per curiam). Dismissal is proper when "no construction of the factual allegations will support the cause of action." *Marshall Co. Bd. of Educ. v. Marshall Co. Gas Dist.*, 992 F.2d 1171, 1174 (11th Cir. 1993).

III. Whether there was State Action in this Case?

Count I is a claim under 42 U.S.C. § 1983 based on Priebus' alleged violation of the equal protection clauses of the Constitution; therefore, Plaintiffs must demonstrate that Priebus was a state actor. 42 U.S.C. § 1983 ("Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen [*7] of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . ."); *Peterson v. Ramirez*, 428 F. App'x 908, 909 (11th Cir. 2011) ("Section 1983 claims can only be asserted against state actors.").

Count II claims a violation of Section 2 of the Act, which similarly governs conduct of only states or political subdivisions thereof. 42 U.S.C. § 1973(a) ("No voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color . . . ."). The Act provides: "[t]he term 'political subdivision' shall mean any county or parish, except that where registration for voting is not conducted under the supervision of a county or parish, the term shall include any other subdivision of a State which conducts registration for voting." *Id.* at §

19731(c)(2).

Priebus contends that, in order to state a claim of deprivation of their [*8] equal protection rights via § 1983, Plaintiffs must establish that the alleged deprivation was committed under the color of state law. He argues that the RNC is a private, unincorporated entity, and that Plaintiffs' allegations are legally insufficient to establish that the RNC's delegate selection rules are state action. In support, Priebus notes that Florida has not endorsed, adopted, or enforced the RNC's delegate selection rules; and that the outcome of Florida's primary does not determine who will appear on the ballot for the general election, but instead, the Republican nominee will be selected at the Republican National Convention.

Plaintiffs cite *Nelson v. Dean* as suggesting that under certain circumstances, a political party's actions may constitute state action, and that there is a reasonable probability that state action would be found where there is evidence of racial discrimination in the primary process. 528 F. Supp. 2d 1271, 1276-77 (N.D. Fla. 2007). However, Plaintiffs concede that *Nelson* was not decided on the issue of state action, that *Nelson* made no ruling with respect to that issue, and that neither the Supreme Court nor any federal court of appeals has addressed [*9] state action under the circumstances presented in this case.

The Eleventh Circuit has employed three tests to determine whether the action of a private entity may be attributed to the state: "(1) the public function test; (2) the state compulsion test; and (3) the nexus/joint action test." *Focus on the Family v. Pinellas Suncoast Transit Auth.*, 344 F.3d 1263, 1277 (11th Cir. 2003).

> The public function test limits state action to instances where private actors are performing functions traditionally the exclusive prerogative of the state. The state compulsion test limits state action to instances where the government has coerced or at least significantly encouraged the action alleged to violate the Constitution. The nexus/joint action test applies where the state has so far insinuated itself into a position of interdependence with the private party that it was a joint participant in the enterprise.

Id. (internal quotation marks and alterations omitted). To charge a private party with state action under the nexus/joint action standard, "the governmental body and private party must be intertwined in a symbiotic relationship [, and] . . . the symbiotic relationship must involve the specific

[*10] conduct of which the plaintiff complains." *Id.* at 1278 (internal quotation marks omitted).

Plaintiffs do not contend that the state somehow coerced or compelled Priebus to reduce Florida's number of convention delegates; rather, their argument focuses on "the public functions and joint action" that are entailed in Florida's Republican primary process. (Doc. No. 1 at 6). For example, Plaintiffs contend that Florida and the RNC operate jointly. Specifically, Plaintiffs have alleged that because Florida "violate[d] the rules of the Republican party relating to the timing of" its primary, and because the State Republican Party "has opted to accept the results of this election to determine its delegate selection to the Republican National Convention," the RNC has decided to reduce Florida's delegate count by half. (Doc. No. 1 at 2). Essentially, Plaintiffs have alleged that because Florida disobeyed the RNC, the RNC is penalizing Florida by reducing its number of convention delegates. Priebus argues that it is inconsistent to claim that the RNC's punitive actions toward Florida can be attributed to the State of Florida. Priebus' point is well taken. The precipitating event in this case was [*11] the Florida legislature's decision to set Florida's presidential primary on January 31, 2012 — well before the time mandated by the RNC. As a result, the RNC decided to cut Florida's convention delegates by fifty percent. It is unclear to this Court how Plaintiffs can contend that Florida and the RNC operated jointly in this instance when Florida and the RNC are clearly at odds. *See Nelson*, 528 F. Supp. 2d at 1276 ("[T]he state had nothing to do with the adoption of the [Democratic National Committee's ("DNC")] delegate selection rules or the decision not to seat delegates chosen in violation of those rules. Indeed, the DNC has vigorously resisted the state's rescheduling of the primary and the state party's announced intention to use the primary results as a basis for selecting delegates. In that sense the DNC's decisions have been the very antithesis of state action."). Accordingly, the Court rejects Plaintiffs' argument that Florida and the RNC have operated jointly.

Additionally, Plaintiffs assert that the RNC is a political organization that performs significant public functions, as well as functions that are sufficiently intertwined with government operations as to constitute [*12] joint action with state authorities. (Doc. No. 1 at 5). Specifically, Plaintiffs note that: (1) Florida law establishes statutory regulations and requirements for the two major political parties; (2) the State of Florida

guarantees a position on the general election ballot for the RNC's nominee; (3) the RNC and a variety of government functionaries coordinate in the candidate selection process and the primary and general elections — including the determination of which names are included on the primary ballot; and (4) Florida law directs that the delegates for specific candidates be allocated by party rule to assure that those votes count in the nominating process. (Doc. No. 1 at 5-8).

However, the Court concludes that these allegations are insufficient to establish that — in enforcing its internal rules and decreasing Florida's convention delegates by fifty percent — the RNC either "performed [a] function[] traditionally the exclusive prerogative of the state," or engaged in a joint enterprise with the state. Consequently, Plaintiffs' complaint does not establish that there was any state action present in this case to state a claim under § 1983.

Similarly, Plaintiffs have failed to [*13] state a claim under Section 2 of the Act. Although the Supreme Court has determined that, in certain limited circumstances, a political party may be a covered entity under Section 5 of the Act, [3] Plaintiffs have not cited, and the Court has not found, any authority supporting the proposition that under these facts, a political party can be considered a "State or political subdivision" thereof for purposes of Section 2 of the Act. With no such supporting authority, the Court is disinclined to expand the purview of Section 2. This is especially true in a case like the one presented here, where the state and the RNC are so obviously at loggerheads.

IV. Conclusion

Accordingly, it is ORDERED AND ADJUDGED that Priebus' Motion to Dismiss (Doc. No. 4) is GRANTED. Because no construction of these factual allegations will establish a cause of action under § 1983 or Section 2 of the Act, amendment would be futile, and Plaintiffs' complaint is dismissed with prejudice. The Clerk is directed to enter judgment in favor of Priebus and to close this case.

DONE AND ORDERED at Tampa, Florida, this 13th day of April, 2012.

/s/ Susan C. Bucklew

SUSAN C. BUCKLEW [*14]

United States District Judge

[3] *Morse v. Republican Party of Va.*, 517 U.S. 186, 225, 116 S. Ct. 1186, 134 L. Ed. 2d 347 (1996).

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Fla. Bar Reg. R. 4-3.7

Current through changes received by October 24, 2024.

FL - Florida Local, State & Federal Court Rules > Rules Regulating The Florida Bar > Chapter 4. Rules of Professional Conduct > 4-3. ADVOCATE

Rule 4-3.7. Lawyer as Witness.

(a) When Lawyer May Testify. A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client unless:

(1) the testimony relates to an uncontested issue;

(2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;

(3) the testimony relates to the nature and value of legal services rendered in the case; or

(4) disqualification of the lawyer would work substantial hardship on the client.

(b) Other Members of Law Firm as Witnesses. A lawyer may act as advocate in a trial in which another lawyer in the lawyer's firm is likely to be called as a witness unless precluded from doing so by rule 4-1.7 or 4-1.9.

History

Amended eff. March 23, 2006 (933 So.2d 417).

Annotations

Commentary

COMMENT

Combining the roles of advocate and witness can prejudice the tribunal and the opposing party and can also involve a conflict of interest between the lawyer and client.

The trier of fact may be confused or misled by a lawyer serving as both advocate and witness. The combination of roles may prejudice another party's rights in the litigation. A witness is required to testify on the basis of personal knowledge, while an advocate is expected to explain and comment on evidence given by others. It may not be clear whether a statement by an advocate-witness should be taken as proof or as an analysis of the proof.

To protect the tribunal, subdivision (a) prohibits a lawyer from simultaneously serving as advocate and necessary witness except in those circumstances specified. Subdivision (a) (1) recognizes that if the testimony will be uncontested, the ambiguities in the dual role are purely theoretical. Subdivisions (a) (2) and (3) recognize that, where the testimony concerns the extent and value of legal services rendered in the action in which the testimony is offered, permitting the lawyers to testify avoids the need for a second trial with new counsel to resolve that issue. Moreover, in such a situation the judge has firsthand knowledge of the matter in issue; hence, there is less dependence on the adversary process to test the credibility of the testimony.

Apart from these 2 exceptions, subdivision (a) (4) recognizes that a balancing is required between the interests of the client and those of the tribunal and the opposing party. Whether the tribunal is likely to be misled or the opposing party is likely to suffer prejudice depends on the nature of the case, the importance and probable tenor of the lawyer's testimony, and the probability that the lawyer's testimony will conflict with that of other witnesses. Even if there is risk of such prejudice, in determining whether the lawyer should be disqualified, due regard must be given to the effect of disqualification on the lawyer's client. It is relevant that one or both parties could reasonably foresee that the lawyer would probably be a witness. The conflict of interest principles stated in rules 4-1.7, 4.1-9, and 4-1.10 have no application to this aspect of the problem.

Because the tribunal is not likely to be misled when a lawyer acts as advocate in a trial in which another lawyer in the lawyer's firm will testify as a necessary witness, subdivision (b) permits the lawyer to do so except in situations involving a conflict of interest.

In determining if it is permissible to act as advocate in a trial in which the lawyer will be a necessary witness, the lawyer must also consider that the dual role may give rise to a conflict of interest that will require compliance with rules 4-1.7 or 4-1.9. For example, if there is likely to be substantial conflict between the testimony of the client and that of the lawyer, the representation involves a conflict of interest that requires compliance with rule 4-1.7. This would be true even though the lawyer might not be prohibited by subdivision (a) from simultaneously serving as advocate and witness because the lawyer's disqualification would work a substantial hardship on the client. Similarly, a lawyer who might be permitted to simultaneously serve as an advocate and a witness by subdivision (a)(3) might be precluded from doing so by rule 4-1.9. The problem can arise whether the lawyer is called as a witness on behalf of the client or is called by the opposing party. Determining whether such a conflict exists is primarily the responsibility of the lawyer involved. If there is a conflict of interest, the lawyer must secure the client's informed consent. In some cases, the lawyer will be precluded from seeking the client's consent. See rule 4-1.7. If a lawyer who is a member of a firm may not act as both advocate and witness by reason of conflict of interest, rule 4-1.10 disqualifies the firm also. See terminology for the definition of "confirmed in writing" and "informed consent."

Subdivision (b) provides that a lawyer is not disqualified from serving as an advocate because a lawyer with whom the lawyer is associated in a firm is precluded from doing so by subdivision (a). If, however, the testifying lawyer would also be disqualified by rule 4-1.7 or 4-1.9 from representing the client in the matter, other lawyers in the firm will be precluded from representing the client by rule 4-1.10 unless the client gives informed consent under the conditions stated in rule 4-1.7.

Notes to Decisions

Civil Procedure: Counsel: General Overview

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Allstate Ins. Co. v. English

Court of Appeal of Florida, Second District

October 30, 1991, Filed

Case No. 91-02620

Reporter

588 So. 2d 294 *; 1991 Fla. App. LEXIS 10872 **; 16 Fla. L. Weekly D 2774

ALLSTATE INSURANCE COMPANY, Petitioner, v. BRIAN ENGLISH and DIANE ENGLISH, Respondents

Notice: [**1] Released for Publication November 18, 1991.

Prior History: Petition for Writ of Certiorari to the Circuit Court for Hillsborough County; Daniel E. Gallagher, Judge.

Core Terms

summary judgment motion, respondents', disqualification motion, subrogation rights, opposing counsel, former counsel, trial court, disassociate, disqualified, authorities, proceedings, impairment, withdraw

Case Summary

Procedural Posture

In a breach of contract action, petitioner insurer sought review of the judgment of the Circuit Court for Hillsborough County (Florida). Petitioner sough a writ of certiorari to quash an order that granted respondent husband and wife's motion to disqualify petitioner's counsel.

Overview

In a breach of contract action, petitioner insurer sought a writ of certiorari to quash an order that granted the respondent husband and wife's motion to disqualify petitioner's counsel. The court granted certiorari, quashed the lower court order that disqualified petitioner's counsel, and remanded for further proceedings. The court held that the lower court departed from the essential requirements of the law in granting the respondents' motion to disqualify petitioner's counsel. The court determined that there was nothing to indicate that petitioner's counsel was likely to be a necessary witness on behalf of his client. The court further determined that even if counsel was called, there was no showing that any testimony he might give

would be sufficiently adverse to the factual assertions or account of events offered on behalf of the client. In addition, the court concluded that even if counsel's testimony were necessary, another member of the firm could represent petitioner.

Outcome

In a breach of contract case, the court granted certiorari to petitioner insurer, quashed the lower court order that disqualified petitioner's counsel, and remanded for further proceedings. The court held that the lower court departed from the essential requirements of the law in granting the respondents' motion to disqualify petitioner's counsel.

LexisNexis® Headnotes

Civil Procedure > Attorneys > General Overview

Criminal Law & Procedure > Trials > Witnesses > Presentation

HN1[] **Civil Procedure, Attorneys**

The rule requiring a lawyer to withdraw when he expects to be a witness in a case was not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel.

Counsel: W. Douglas Berry, and Melinda J. Brazel of Butler, Burnette & Pappas, Tampa, for Petitioner.

Bruce A. Walkley of Walkley & Walkley, Tampa, and Scott Charlton of Clark, Charlton & Martino, Tampa, for Respondents.

Judges: Danahy, A.C.J., and Frank and Hall, JJ., Concur.

Opinion by: PER CURIAM

Opinion

[*295] Allstate Insurance Company (Allstate) petitions this court for a writ of certiorari to quash an order that granted the respondents' motion to disqualify Allstate's counsel, the law firm of Butler, Burnette & Pappas. The respondents have brought an action against Allstate for breach of contract based upon a homeowner's insurance policy. Pursuant to the authorities cited below, we grant the petition and quash the order.

The motion to disqualify the firm was based in part on the fact that attached to Allstate's motion for summary judgment was a letter which Paul B. Butler, Jr., a member of the firm, had written to the

respondents' former counsel. The motion for summary judgment was based, in part, on the respondents' alleged impairment [**2] of Allstate's subrogation rights under the policy by entering into a third-party settlement. The letter attached to the motion advised the respondents' former counsel that any impairment of Allstate's subrogation rights could jeopardize a claim under the policy. The respondents alleged that they intend to depose Mr. Butler to refute the allegations contained in the letter, and as such, Mr. Butler will become a witness and therefore, should not be an advocate. Respondents also argued at the hearing on the motion that they intend to call Mr. Butler as a witness at trial to establish a material fact in their case against Allstate. The trial judge granted the motion because he did not want to "keep Mr. Butler in and then find out that his involvement is much more than he says it is."

After carefully reviewing the record provided to us, as well as the controlling authorities, we conclude that the trial court departed from the essential requirements of the law in granting the respondents' motion to disqualify Allstate's counsel. First, there is nothing, including Mr. Butler's letter attached to the motion for summary judgment, to indicate that he "is likely to be a *necessary* witness [**3] on behalf of his . . . client" on a contested matter. Fla. Bar Code Prof. Resp., D.R. 4-3.7(a) (emphasis added); *In re Estate of Gory,* 570 So. 2d 1381 (Fla. 4th DCA 1990). On the contrary, Mr. Butler represented to the trial court that he would not be testifying on behalf of Allstate, and it is apparent that the letter attached to the motion for summary judgment was not necessary. *Cf. Hardemon v. Fish,* 325 So. 2d 411 (Fla. 3d DCA 1976) (inappropriate for counsel to attach his affidavit in support of motion for summary judgment where affidavit went to material issue).

Second, even if the respondents called Mr. Butler as their witness, there has been no showing at this stage of the proceedings that any testimony he might give would be "sufficiently adverse to the factual assertions or account of events offered on behalf of the client." *Ray v. Stuckey,* 491 So. 2d 1211, 1213 (Fla. 1st DCA 1986).

Further, respondents have not demonstrated that Mr. Butler is an essential or indispensable witness in this proceeding, that is, there are other witnesses available to testify to the same information. *Arcara v. Philip M. Warren, P.A.,* 574 So. 2d 325 (Fla. 4th DCA 1991); [**4] *Laura McCarthy, Inc. v. Merrill-Lynch Realty/Cousins, Inc.,* 516 So. 2d 23 (Fla. 3d DCA 1987); *Ray,* 491 So. 2d at 1214. In

this regard we observe that our sister courts have stated:

HN1[↑] The rule requiring a lawyer to withdraw when he expects to be a witness in a case "was not designed to permit a lawyer to call opposing counsel as a witness and thereby disqualify him as counsel."

[*296] *Arcara,* 574 So. 2d at 326, quoting *Cazares v. Church of Scientology of California, Inc.,* 429 So. 2d 348, 350 (Fla. 5th DCA), *review denied,* 438 So. 2d 831 (Fla. 1983). *See also Ray*, 491 So. 2d at 1214 (same); *Beavers v. Conner,* 258 So. 2d 330 (Fla. 3d DCA 1972) (opposing counsel should not be permitted to force disassociation between counsel and client just by calling counsel as adverse witness); *Hill v. Douglass,* 248 So. 2d 182 (Fla. 1st DCA 1971), *quashed on other grounds,* 271 So. 2d 1 (Fla. 1972) (lawyer need not withdraw from case where possibility exists that he or she might be called to testify by adversary as this would create [**5] situation in which adversary could disassociate client's chosen counsel). We further note that even if Mr. Butler's testimony were necessary, another member of his firm may represent Allstate, unless precluded by disciplinary rules 4-1.7 or 4-1.9. Fla. Bar Code Prof. Resp., D.R. 4-3.7(b); *In re Estate of Gory,* 570 So. 2d at 1383.

Accordingly, we grant the petition, quash the trial court's order that disqualified Allstate's counsel, and remand for further proceedings consistent with this opinion.

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AlliedSignal Recovery Trust v. AlliedSignal, Inc.

Court of Appeal of Florida, Second District

August 9, 2006, Opinion Filed

Case No. 2D05-4251

Reporter

934 So. 2d 675 *; 2006 Fla. App. LEXIS 13247 **; 31 Fla. L. Weekly D 2087

ALLIEDSIGNAL RECOVERY TRUST, Petitioner, v. ALLIEDSIGNAL, INC., Respondent.

Subsequent History: Released for Publication August 25, 2006.

Prior History: [**1] Petition for Writ of Certiorari to the Circuit Court for Polk County; Robert L. Doyel, Judge.

Allied Signal Recovery Trust v. Allied Signal, Inc., 298 F.3d 263, 2002 U.S. App. LEXIS 15346 (3d Cir. Del., 2002)

Disposition: Petition previously granted and the trial court order quashed.

Core Terms

disqualification, disqualify, founders, opposing party, trial court, conflicting interest, own client

Case Summary

Procedural Posture

Plaintiff debtor sued appellee corporation in the Circuit Court for Polk County (Florida), for fraud. After filing suit, the debtor filed for bankruptcy protection. The bankruptcy court authorized the formation of appellant trust to pursue for the debtor's creditors the claim against the corporation. After the trial court granted the corporation's motion to disqualify the trust's counsel, the trust petitioned for a writ of certiorari review.

Overview

After the debtor purchased a subsidiary of the corporation, the trust's attorney, who represented the debtor in the transaction, allegedly discovered misrepresentation's regarding the subsidiary's financial condition. The trust waived any potential conflict of interest that the attorney might have had in representing the trust. On appeal, the court found that the attorney's disqualification was inappropriate because Fla. R. Bar 4-3.7 was inapplicable as the rule contemplated the attorney

testifying on his client's behalf. However, the trust announced that it would not call the attorney to testify. Additionally, the corporation failed to articulate how any advice regarding asset protection planning that the attorney allegedly provided the debtor's founders created a conflict under Fla. R. Bar 4-1.7 and 4-1.9 as the founders and the trust shared an interest in securing a meaningful recovery from the corporation. Finally, any unsworn testimony issue could have been addressed by the trial court's diligent supervision. Therefore, by disqualifying the attorney, the trial court departed from the essential requirements of law, causing irreparable harm to the trust.

Outcome

The petition for a writ of certiorari was granted, and the order below was quashed.

LexisNexis® Headnotes

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

HN1[] **Appellate Jurisdiction, State Court Review**

Certiorari is the proper remedy to seek review of an order granting or denying a motion to disqualify counsel or a law firm. After all, an order disqualifying counsel denies the right to choose one's counsel and works a material injury that cannot be remedied on appeal.

Civil Procedure > Attorneys > Disqualification of Counsel

HN2[] **Attorneys, Disqualification of Counsel**

The unsworn witness theory centers on the possibility that a lawyer with personal knowledge of the underlying facts could, through his demeanor or questioning of witnesses, improperly suggest the lawyer's personal views on a matter, thus providing the equivalent of unsworn testimony in a case.

Civil Procedure > Attorneys > Disqualification of Counsel

HN3[] **Attorneys, Disqualification of Counsel**

Disqualification is an extraordinary remedy to be used sparingly.

Civil Procedure > Attorneys > Disqualification of Counsel

HN4[] **Attorneys, Disqualification of Counsel**

Disqualification is an immensely unusual remedy.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Client Relations > General Overview

Legal Ethics > Professional Conduct > General Overview

HN5[] **Attorneys, Disqualification of Counsel**

An order disqualifying counsel must be tested against the standards imposed by the Florida Rules of Professional Conduct.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Client Relations > Appearance of Impropriety

Legal Ethics > Client Relations > Duties to Client > Effective Representation

Legal Ethics > Professional Conduct > Tribunals

HN6[] **Attorneys, Disqualification of Counsel**

See Fla. R. Bar 4-3.7.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Client Relations > Appearance of Impropriety

Legal Ethics > Client Relations > Duties to Client > Effective Representation

Legal Ethics > Professional Conduct > Tribunals

HN7[] **Attorneys, Disqualification of Counsel**

Fla. R. Bar 4-3.7 prohibits a lawyer from serving as trial counsel for a client where he is likely to be a necessary witness for that client. Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client. This dual role could create a conflict if the lawyer's testimony is at odds with that of his client. Moreover, the dual role could prejudice the opposing party by bolstering the lawyer's testimony for his client because it comes from an advocate.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Client Relations > Appearance of Impropriety

Legal Ethics > Client Relations > Duties to Client > Effective Representation

Legal Ethics > Professional Conduct > Tribunals

HN8[] **Attorneys, Disqualification of Counsel**

Fla. R. Bar 4-3.7 contemplates a lawyer testifying on his client's behalf.

Legal Ethics > Client Relations > Conflicts of Interest

HN9[] **Client Relations, Conflicts of Interest**

The general rule is that a lawyer may not represent a client if such representation will be directly or materially adverse to the interests of a current or former client. Fla. R. Bar 4-1.7 and 4-1.9.

Legal Ethics > Client Relations > Conflicts of Interest

HN10[] **Client Relations, Conflicts of Interest**

See Fla. R. Bar 4-1.7(a).

Legal Ethics > Client Relations > Conflicts of Interest

HN11[] **Client Relations, Conflicts of Interest**

See Fla. R. Bar 4-1.9(a).

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Professional Conduct > Tribunals

HN12[] **Attorneys, Disqualification of Counsel**

The requirement that a lawyer withdraw when he expects to be a witness is not intended to permit an opposing party to call him as a witness and disqualify him from serving as counsel.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Professional Conduct > Tribunals

HN13[] **Attorneys, Disqualification of Counsel**

Florida has declined to adopt a proposed rule mandating automatic disqualification resulting from testimony for an opposing party.

Legal Ethics > Client Relations > Conflicts of Interest

Legal Ethics > Professional Conduct > Tribunals

***HN14*[] Client Relations, Conflicts of Interest**

Whether a lawyer who is likely to be called to testify for an adverse party should decline further representation of his client can be addressed under the framework of Fla. R. Bar 4-1.7 and 4-1.9.

Legal Ethics > General Overview

***HN15*[] Legal Ethics**

The Florida Code of Professional Responsibility has been replaced by the Florida Rules of Professional Conduct, effective January 1, 1987.

Civil Procedure > Attorneys > Disqualification of Counsel

Legal Ethics > Professional Conduct > Tribunals

***HN16*[] Attorneys, Disqualification of Counsel**

The actual or perceived evils of an attorney being an unsworn witness can be addressed by diligent supervision of trial proceedings by a trial judge.

Counsel: Donald B. Ayer, Gregory M. Shumaker, Edward K.M. Bilich, Michael S. Fried of Jones Day, Washington, D.C.; and John W. Frost, II, of Frost, Tamayo, Sessums & Aranda, P.A., Bartow, for Petitioner.

Benjamin H. Hill, III, and Dennis P. Waggoner of Hill, Ward & Henderson, P.A., Tampa; Steven D. McCormick, PC of Kirkland & Ellis, LLP, Chicago, Illinois; Major B. Harding and John Beranek of Ausley & McMullen, P.A., Tallahassee; Eugene F. Assaf and Craig S. Primis of Kirkland & Ellis, LLP, Washington, D.C., for Respondent.

Judges: LaROSE, Judge. CASANUEVA and CANADY, JJ., Concur.

Opinion by: LaROSE

Opinion

[*676] LaROSE, Judge.

AlliedSignal Recovery Trust (Trust), a group of creditors of Breed Technologies, Inc. (Breed), petitioned this court for certiorari review of an interlocutory order disqualifying its trial counsel, Geoffrey Stewart, in Breed's fraud lawsuit against

AlliedSignal, Inc. (AlliedSignal). In an [*677] earlier order, we granted the petition and quashed [**2] the trial court's order. We take this opportunity to explain our reasoning.

At the outset, we note that ***HN1***[] "certiorari is the proper remedy to seek review of an order granting or denying a motion to disqualify counsel or a law firm." *Gonzalez v. Chillura*, 892 So. 2d 1075, 1076 (Fla. 2d DCA 2004). After all, an order disqualifying counsel denies the right to choose one's counsel and works a material injury that cannot be remedied on appeal. *Id.* at 1076-77; *City of Lauderdale Lakes v. Enter. Leasing Co.*, 654 So. 2d 645, 646 (Fla. 4th DCA 1995).

The underlying facts are straightforward. Breed manufactured automobile air bag systems. Safety Restraint Systems (SRS), an AlliedSignal division, also manufactured automobile safety products. Breed retained Mr. Stewart, long-time counsel for Breed and its founders, to negotiate the purchase of SRS from AlliedSignal. In late 1997, Breed acquired SRS for $ 710,000,000.

In mid-1998, Breed allegedly learned that SRS's financial condition was significantly worse than previously represented by AlliedSignal. Breed's financial condition deteriorated and bankruptcy loomed. In 1999, Mr. Stewart advised [**3] Breed's founders to restructure their personal financial affairs to avoid potential mismanagement claims by Breed's creditors. Mr. Stewart also conducted an investigation that allegedly revealed that AlliedSignal had concealed critical financial information about SRS and seriously misrepresented SRS's past and projected earnings. In the summer of 1999, Breed, represented by Mr. Stewart, sued AlliedSignal. In defense, AlliedSignal contended that Mr. Stewart concocted his discovery of alleged fraud to insulate Breed's founders from mismanagement claims.

Several weeks after filing suit, Breed filed for bankruptcy protection. As part of Breed's restructuring, the bankruptcy court authorized formation of the Trust to pursue the fraud claims against AlliedSignal on behalf of Breed's creditors. In effect, Breed's claims were transferred to the Trust. "After payment of fees and expenses, any recovery from Allied Signal by the Trust [would] be distributed to Breed's creditors." *Allied Signal Recovery Trust v. Allied Signal, Inc.*, 298 F.3d 263, 266 n.2 (3d Cir. 2002). The Trust retained Mr. Stewart as its counsel.

AlliedSignal moved to disqualify Mr. Stewart. The motion [**4] stressed that Mr. Stewart had an

extensive and lengthy relationship with Breed and its founders, the fraud claims were based on Mr. Stewart's investigation, and the asset protection advice he gave to Breed's founders created a conflict between him and the Trust. According to AlliedSignal, Mr. Stewart would be a key trial witness or, at a minimum, an impermissible "unsworn witness." [1]

The Trust opposed the motion. It argued that disqualification was limited to two situations: (1) where the lawyer is a necessary witness for his own client; or (2) where the attorney, when called as a witness for the other side, will provide testimony prejudicial to his client and the client either does not consent to waive the conflict [**5] or does consent and the court finds the consent unreasonable.

Although the Trust saw no conflict, it waived any potential conflict of interest that Mr. Stewart might have in representing [*678] the Trust. Further, the Trust disavowed any need or intention to call Mr. Stewart to testify at trial. The Trust certainly did not act injudiciously; the trustee consulted with Trust beneficiaries, sophisticated business entities, and financial institutions represented by competent lawyers. They supported Mr. Stewart's continued role as counsel, recognizing his expertise, detailed knowledge of the legal and factual issues in the case, and familiarity with Breed and its personnel. Nevertheless, the trial court disqualified Mr. Stewart. It concluded that Mr. Stewart was a necessary witness for AlliedSignal, was likely to be an "unsworn witness" at trial, and that any conflict waiver by the Trust was unreasonable.

HN3[] Disqualification is an extraordinary remedy to be used sparingly. *Therriault v. Berghmans*, 788 So. 2d 1119, 1120 (Fla. 2d DCA 2001); *Arcara v. Philip M. Warren, P.A.*, 574 So. 2d 325, 326 (Fla. 4th DCA 1991). ***HN4***[] Disqualification is an "immensely unusual remedy. [**6] " *Whitener v. First Union Nat'l Bank of Fla.*, 901 So. 2d 366, 370 (Fla. 5th DCA 2005). ***HN5***[] An order disqualifying counsel "'must be tested against the standards imposed by [the] Rules of Professional Conduct.'" *Tobkin v. Tobkin*, 843 So. 2d 961, 962 (Fla. 4th DCA 2003) (quoting *City of Lauderdale Lakes*, 654 So. 2d at 646); *accord Ray v. Stuckey*, 491 So. 2d 1211, 1213 (Fla. 1st DCA 1986); *Cazares v. Church of Scientology of Cal., Inc.*, 429 So. 2d 348, 349 (Fla. 5th DCA 1983).

[1] ***HN2***[] The "unsworn witness" theory centers on the possibility that a lawyer with personal knowledge of the underlying facts could, through his demeanor or questioning of witnesses, improperly suggest the lawyer's personal views on a matter, thus providing the equivalent of unsworn testimony in the case.

Measured against these standards, Mr. Stewart's disqualification was inappropriate.

The Rules Regulating the Florida Bar provide:

> **Rule 4-3.7. Lawyer as witness***HN6*[⬆] **(a) When Lawyer May Testify.** A lawyer shall not act as advocate at a trial in which the lawyer is likely to be a necessary witness on behalf of the client except where:
>
> (1) the testimony relates to an uncontested issue;
>
> (2) the testimony will relate solely to a matter of formality and there is no reason to believe that substantial evidence will be offered in opposition to the testimony;
>
> (3) the testimony relates to the nature and value of legal services [**7] rendered in the case; or
>
> (4) disqualification of the lawyer would work substantial hardship on the client.

HN7[⬆] Rule 4-3.7 prohibits a lawyer from serving as trial counsel for a client where he is likely to be a necessary witness for that client. "Combining the roles of advocate and witness can prejudice the opposing party and can involve a conflict of interest between the lawyer and client." Rule 4-3.7 cmt. This dual role could create a conflict if the lawyer's testimony is at odds with that of his client. Moreover, the dual role could prejudice the opposing party by bolstering the lawyer's testimony for his client because it comes from an advocate. *See Scott v. State*, 717 So. 2d 908, 910 (Fla. 1998).

Rule 4-3.7 is inapplicable here, however; ***HN8***[⬆] the rule contemplates the lawyer testifying on his client's behalf. The Trust conceded that Mr. Stewart was not a necessary witness and announced that it would not call him to testify. Nonetheless, the trial court disqualified Mr. Stewart because of potential prejudice to AlliedSignal if it called him to testify: "[T]he court's focus is on prejudice to the opposing party who calls him as a witness, not on the prejudice [**8] to his own client contemplated by the analysis under Rule 4-3.7." Neither the rule nor its comment supports disqualification on this basis.

[*679] As for AlliedSignal's concern that Mr. Stewart's prior representation of Breed's founders creates a conflict with the Trust, we do not quarrel with ***HN9***[⬆] the general rule that a lawyer may not represent a client if such representation will be directly or materially adverse to the interests of a current or former client. *See* Rules Regulating the Florida Bar 4-1.7, 4-1.9:

Rule 4-1.7. Conflict of interest; general rule

HN10[↑] **(a) Representing Adverse Interests.** A lawyer shall not represent a client if the representation of that client will be directly adverse to the interests of another client, unless:

(1) the lawyer reasonably believes the representation will not adversely affect the lawyer's responsibilities to and relationship with the other client; and

(2) each client consents after consultation.

. . . .

Rule 4-1.9. Conflict of interest; former client

HN11[↑] A lawyer who has formerly represented a client in a matter shall not thereafter:

(a) represent another [**9] person in the same or a substantially related matter in which that person's interests are materially adverse to the interests of the former client unless the former client consents after consultation . . . .

The Trust retained Mr. Stewart solely to pursue claims against AlliedSignal and waived any conflict of interest. *See* rule 4-1.7 cmt. consultation and consent ("A client may consent to representation notwithstanding a conflict."). Any recovery would inure to the benefit of the Trust and, ultimately, to Breed's creditors. Any potential claim against Breed's founders was not a Trust asset; such a claim, if any, might belong to the reorganized Breed, an entity not represented by Mr. Stewart. [2] Under the circumstances, therefore, it is not evident that any conflict existed. Assuming that Mr. Stewart provided asset protection planning for Breed's founders, AlliedSignal failed to articulate how that advice created a conflict. It seems obvious that Breed's founders and the Trust shared an interest in securing a meaningful recovery from AlliedSignal.

[**10] We discern that AlliedSignal's central conflict concern is that Mr. Stewart will be a key witness for AlliedSignal, especially as to his investigation of AlliedSignal's alleged fraud. On our record, we are not persuaded that this rationale warrants disqualification. We find *Allstate Insurance Co. v. English*, 588 So. 2d 294 (Fla. 2d DCA 1991), instructive. In *English*, we quashed an order granting a motion to disqualify Allstate's lawyer because he would be called to testify for the other side. *Id.* at 295. We observed that there had

[2] We question AlliedSignal's standing to assert this actual or perceived conflict. AlliedSignal was not Mr. Stewart's current or former client as contemplated by rule 4-1.7 or rule 4-1.9. If anyone had an objection to Mr. Stewart's representation, it would have been Breed's creditors.

been no showing that any testimony the lawyer might give would be "'sufficiently adverse to the factual assertions or account of events offered on behalf of the client.'" *Id.* (quoting *Ray*, 491 So. 2d at 1213 (following old rule 5-102(B) that lawyer who might be witness for opposing party may continue representation until prejudice to his own client is apparent)); *see also Cazares*, 429 So. 2d at 350 (same).

Like Allstate's counsel in *English*, Mr. Stewart was not going to testify for his own client. *See* Rule 4-3.7. But, because AlliedSignal could call Mr. Stewart [*680] to testify [**11] against his client, the trial court concluded that any conflict waiver given by the Trust was unreasonable because "[a] disinterested lawyer would not take the chance" that a jury could react negatively to Mr. Stewart's extensive involvement with Breed. AlliedSignal, however, made no showing that Mr. Stewart would give any testimony "sufficiently adverse to the factual allegations or account of events offered on behalf of the [Trust]." To allow disqualification without such a showing invites mischief.

HN12[↑] The requirement that a lawyer withdraw when he expects to be a witness was not intended to permit an opposing party to call him as a witness and disqualify him from serving as counsel. *Id.* at 295-96; *Arcara*, 574 So. 2d at 326; *Ray*, 491 So. 2d at 1214; *Cazares*, 429 So. 2d at 350; *see also Beavers v. Conner*, 258 So. 2d 330, 332-33 (Fla. 3d DCA 1972) (stating opposing counsel should not be permitted to force disassociation between counsel and client just by calling counsel as adverse witness); *Hill v. Douglass*, 248 So. 2d 182, 183 (Fla. 1st DCA 1971), *quashed on other grounds*, 271 So. 2d 1 (Fla. 1972) [**12] (stating lawyer need not withdraw from case where he or she might be called to testify by adversary as this would create situation in which adversary could disassociate client's chosen counsel).

AlliedSignal's reliance on *Live & Let Live, Inc. v. Carlsberg Mobile Home Properties, Ltd.-'73*, 388 So. 2d 629 (Fla. 1st DCA 1980), is misplaced. That case addresses the former code of professional responsibility. *See* Fla. Bar Code of Prof. Resp. D.R. 5-102(B). [3] [**13] In updating its

[3]

> If, after undertaking employment in contemplated or pending litigation, a lawyer learns or it is obvious that he or a lawyer in his firm may be called as a witness *other than on behalf of his client*, he may continue the representation until it is apparent that his testimony is or may be prejudicial to his client. (Emphasis supplied.)

The concern of rule D.R. 5-102(B) was that trial counsel "might be

professional conduct rules in 1987, ***HN13***[⬆] Florida declined to adopt a proposed rule mandating automatic disqualification resulting from testimony for an opposing party. [4]

AlliedSignal's reference to *Fleitman v. McPherson*, 691 So. 2d 37 (Fla. 1st DCA 1997), is also inapposite. *Fleitman*, decided after the adoption of the new rules, held that "when it is shown that the attorney will be an indispensable witness or when the attorney becomes a 'central figure' in the case, disqualification is appropriate." *Id.* at 38 (citing *City of Lauderdale Lakes*, 654 So. 2d at 646). However, the lawyers in *Fleitman* and *City of Lauderdale Lakes* were likely to be "featured witnesses" at trial for their own clients. Neither case, therefore, supports disqualification of Mr. Stewart because he might be a witness for AlliedSignal.

The trial court also found that Mr. Stewart should be disqualified as an "unsworn witness." This theory has no express support [**14] in the Rules Regulating the Florida Bar or Florida case law. The trial court nevertheless relied on *Marrero v. State*, 478 So. 2d 1155 (Fla. 3d DCA 1985), as a basis for disqualification. *Marrero*, however, involved a prosecutor whose improper [*681] questioning of a witness demonstrated his involvement in the underlying events and was an impermissible attempt at impeachment. *Id.* at 1157. That is not the case here. Further, ***HN16***[⬆] the actual or perceived evils of the "unsworn witness" can be addressed by diligent supervision of trial proceedings by the trial judge. *See Levin, Middlebrooks, Mabie, Thomas, Mayes & Mitchell, P.A. v. U.S. Fire Ins. Co.*, 639 So. 2d 606, 608-09 (Fla. 1994) ("Clearly, a trial judge has the inherent power to do those things necessary to enforce its orders, to conduct its business in a proper manner, and to protect the court from acts obstructing the administration of justice."); *accord Moakley v. Smallwood*, 826 So. 2d 221, 224 (Fla. 2002).

By disqualifying Mr. Stewart, the trial court departed from the essential requirements of law, causing irreparable harm to the Trust. We grant the petition for writ [**15] of certiorari and quash the order below.

Petition previously granted and the trial court order

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inhibited from attacking his own credibility or arguing to the fact-finder the lack of credibility of his testimony, thus affecting his ability to properly represent his client." *Ray*, 491 So. 2d at 1213 . ***HN14***[⬆] Whether a lawyer who is likely to be called to testify for an adverse party should decline further representation of his client can be addressed under the framework of rule 4-1.7 and rule 4-1.9. *See* rule 4-3.7, cmt.

[4] ***HN15***[⬆] The Code of Professional Responsibility was replaced by the Rules of Professional Conduct, effective January 1, 1987. *The Fla. Bar Re Rules Regulating the Fla. Bar*, 494 So. 2d 977 (Fla.), *opinion corrected by* 507 So. 2d 1366 (Fla. 1986).

quashed.

CASANUEVA and CANADY, JJ., Concur.

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

ORDER GRANTING COURT'S MOTION TO STAY

THIS CAUSE came before the Court on November 12, 2024 upon the Court's Motion to Stay ("Motion") dated November 4, 2024, and the Court, having considered the Motion, the case file, the applicable law, the argument of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS** the following:

1. On August 23, 2024, Plaintiff filed a federal lawsuit in the Middle District of Florida, Case No.: 8:24-cv-02005-SDM-NHA ("the federal lawsuit").

2. On September 3, 2024, Plaintiff initiated the instant lawsuit. The federal lawsuit and the instant lawsuit contain many of the same defendants. Additionally, there is significant factual overlap between the two actions.

3. "Generally, when a state lawsuit is filed that involves the same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated." *Roche v. Cyrulnik*, 337 So. 3d 86, 88 (Fla. 3d DCA 2021) (citations omitted).

4. It is "an abuse of discretion to refuse to stay a subsequently filed state court action

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in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues." *OPKO Health, Inc. v. Lipsius*, 279 So. 3d 787, 791 (Fla. 3d DCA 2019) (citation omitted).

5. For this general rule of comity to apply, the causes of action asserted in the two cases need not be identical nor must the two actions have identical parties. *Roche*, 337 So. 3d at 88 (citations omitted).

6. The federal lawsuit and the instant lawsuit involve the same nucleus of facts, namely allegations of election fraud by the various Defendants as to the August 20, 2024 Democratic primary election for Florida's 13th Congressional District.

7. Counsel for Defendants stipulated to staying the instant litigation pending the outcome of the federal lawsuit assuming the following conditions were observed: 1) claims against Defendant, JENNIFER GRIFFITH would be transferred to Section 19 and joined with Plaintiff's prior lawsuit (See Order Granting Court's Ore Tenus Motion To Consolidate); 2) all Defendants who asserted an anti-SLAPP defense did not waive their right to an expedited hearing if such is necessary upon resolution of the federal lawsuit (see section 768.295(4), Fla. Stat. (2024)).

8. Although Plaintiff has objected to the issuance of a stay, the Court finds that the above-provided rule of comity applies and requires the Court to stay the instant action until the federal lawsuit has been adjudicated.

Accordingly, it is

ORDERED and ADJUDGED:

1. The Court's Motion is hereby **GRANTED.**

2. Plaintiff is required to file a copy of the final judgment for the federal lawsuit with this Court within **FIVE (5) DAYS** of the final judgment's date of entry.

3. The Court shall conduct a case management conference in the instant matter within **THIRTY (30) DAYS** of the entry of final judgment in the federal lawsuit to determine which, if any, of Plaintiff's claims in the instant lawsuit require adjudication by this Court. The Court shall hear any remaining anti-SLAPP defenses, if any, at said case management conference.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

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Circuit Judge Patricia A. Muscarella
~~24-003939-CI 11/20/2024 7:44:03 PM~~
Honorable Patricia A. Muscarella
Circuit Civil Judge

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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA CIVIL DIVISION
SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v. Case No. 24-003939-CI

JULIE MARCUS, et al.,
Defendants.
_____/

PLAINTIFF'S NOTICE OF RECEIPT OF EXTORTIVE DEATH THREAT AND THREAT OF FINANCIAL PENALTIES AND REQUEST FOR RELIEF

1. Plaintiff John Liccione hereby gives this Court notice that on November 15 2024, he received an email (referred to herein as "*The GoneGetGaetz email*") stating his life is in danger and that he may be arrested and prosecuted by the incoming Trump administration (presumably by the new attorney general Matt Gaetz), if he doesn't drop his election fraud lawsuits and shut his mouth and stop leveling political attacks on Donald Trump, Matt Gaetz, Anna Paulina Luna, and Lauren Boebert. It tells Plaintiff to expatriate himself to another country.

2. The *GoneGetGaetz* email refers to President Elect Donald Trump's nominee for US Attorney General Matt Gaetz. The sender used a single use "burner" email account gonegetgaetz@proton.me, which was deactivated immediately after the email was sent.

3. The email reads as follows and is attached as EXHIBIT A:

ELECTRONICALLY FILED 11/26/2024 11:40:18 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

gonegetgaetz <gonegetgaetz@proton.me> Thu, Nov 14, 2024 at 12:12 PM
To: "jliccione@gmail.com" <jliccione@gmail.com>

"For reasons which will become apparent, I need to stay anonymous. It has come to my attention that you are on lists which will be used by the incoming administration. You should not be surprised, given your activities and posting history. Remember your Gaetz/Boebert/Luna posting? It was noted. Remember your Putin posts? Remember your video at the Russian embassy? All of that was noted. It is unclear what exactly these lists will be used for, but it can't be good. I suspect it will be for arrest or detainment. Perhaps expulsion. Perhaps worse. If you have the ability, you need to leave. There is a movement to expat to **[COUNTRY 1]** *and regroup there. Consider that. I strongly urge you to go silent. No more political posts. No more calling the police. No more political rallies. No more lawsuits. No more political musical performances. If you do these things, you will be found and taken. I am sure of this. They are trying to simplify the chess board by removing pieces. You are a piece that is easy to remove and no one will notice, will they? Keep yourself safe by taking action today. These are dark days and darker days are ahead. No one can help you if you won't help yourself first. You won't get any further communications as long as you are in the US. We will find you, should you expatriate. Good luck, Patriot."*

4. Today, just 5 days later, numerous media outlets including the New York Times and The Hill are reporting that a hacker had hacked into an attorney-shared document cache containing sworn testimony from the two women that have been accusing Matt Gaetz of having sex with one of them at a party when she was 17 years old. (See EXHIBIT B).

5. Coincidentally, earlier this morning, Pinellas County Attorney, Andrew Keefe, who represents both Defendant Julie Marcus and her deputy Dustin Chase

in their official capacities as Pinellas County Supervisor of Elections officials in Plaintiff's federal election fraud lawsuit (8:24-cv-02005-SDM-NHA), contacted Plaintiff and threatened to file for "substantial" attorney's fees if Plaintiff refused to dismiss his state and federal lawsuits against his clients, "*soon*." Attorney Keefe indicated that the attorney's fees are already substantial and that they will continue to mount if Plaintiff refuses to dismiss these cases "with prejudice, soon."

6. From Plaintiff's perspective, the "*GoneGetGaetz*" email is a veiled threat craftily written to appear as if coming from a helpful friend.

7. From Plaintiff's perspective, particularly as a pro se litigant, he is reasonably in fear for his safety, freedom, and financial well-being.

8. The pressure to drop this election fraud lawsuit and the related federal lawsuit has now reached a fever pitch. It appears that the "they" referred to in the e-mail will perhaps stop at nothing to ensure the massive mail ballot fraud Plaintiff has alleged caused his primary loss, and now has gotten Trump and Anna Paulina Luna re-elected, is not exposed, so as to ensure the 2024 Presidential and Congressional election results are not overturned.

9. With only 62 days until Donald Trump is sworn in as the 47th President of the United States, and with Matt Gaetz facing possible Senate confirmation as AG and perhaps will get a temporary recess appointment by Trump on 1/21/2024, Plaintiff now has every expectation that the pressure on him to dismiss his election fraud lawsuits for no financial consideration will only increase in frequency and severity.

The Hacking of the Judicial Process

10. Plaintiff is under extreme duress now, and as such, any settlement agreements he may be extorted or otherwise coerced to entering into with Defendants Julie Marcus,

Cathy Salustri Loper, and Mark Weinkrantz, agreements that may demand him to dismiss his lawsuits with prejudice and without any financial consideration for the substantial financial damages he has suffered, will be deemed unenforceable contracts under Federal or state law, given the circumstances.

The Current Case Posture

11. At the recent November 12th hearing, the Court transferred Plaintiff's claims against Defendant Jennifer Griffith to Case No. 24-002994-CI.

12. The Court also denied Plaintiff's Motion for Clerk Default and Motion for Default Judgement against Defendant Weinkrantz, and it granted Weinkrantz' motion to extend the deadline for filing an Answer to Plaintiff's complaint, which Weinkrantz has done by way of filing a motion to dismiss.

13. Still pending before the Court are the following:

a. Plaintiff's motion to compel discovery against Defendant Marcus
b. Plaintiff's motion to compel discovery against Defendant Loper
c. The Court's sua sponte motion to stay proceedings against one or more of Defendants Marcus, Loper, and Weinkrantz.
d. Defendant Marcus' Motion to Dismiss
e. Defendant Loper's Motion to Dismiss
f. Defendant Weinkrantz' Motion to Dismiss (which is not yet ripe as it awaits Plaintiff response)

Conclusion

14. Due to the GoneGetGaetz email threats; (2) the sudden phone call from County Attorney Andrew Keefe threatening to file for substantial attorney's fees if Plaintiff

doesn't dismiss this case and the other federal case against Julie Marcus; coupled with (3) these new public disclosures of the hacking of Matt Gaetz' alleged child victim's and eyewitness' sworn testimony document trove, the Court must intervene to preserve the integrity of the judicial process given the stakes involved.

REQUEST FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Refer these matters to the State Attorney and the Florida Department of Law Enforcement for criminal investigation.

B. Other such relief as the Court considers appropriate.

Respectfully Submitted,



John W Liccione, Plaintiff, pro se
6800 Gulfport Blvd S.
Ste 201-116
South Pasadena, FL 33707
443-698-8156
Jliccione@gmail.com

CERTIFICATE OF SERVICE

I, John William Liccione, Plaintiff, pro se, hereby certify that on this 19th day of November, 2024, I did serve this notice via the Court's e-file and serve portal and via email, as follows:

- **Kirby Kreider and Andrew Keefe,** attorneys for Defendant Julie Marcus, at kkreider@pinellas.gov and akeefe@pinellas.gov;
- **Thomas McGuire**, attorney for Defendant Mark Weinkrantz, at defense@mcguirelawoffices.com.



John W Liccione

EXHIBIT A

The GoneGetGaetz Email

Liccione vs Marcus, et al

Gmail John Liccione <jliccione@gmail.com>

Lists

1 message

gonegetgaetz <gonegetgaetz@proton.me> Thu, Nov 14, 2024 at 12:12 PM
To: "jliccione@gmail.com" <jliccione@gmail.com>

For reasons which will become apparent, I need to stay anonymous. It has come to my attention that you are on lists which will be used by the incoming administration. You should not be surprised, given your activities and posting history. Remember your Gaetz/Boebert/Luna posting? It was noted. Remember your Putin posts? Remember your video at the Russian embassy? All of that was noted. It is unclear what exactly these lists will be used for, but it can't be good. I suspect it will be for arrest or detainment. Perhaps expulsion. Perhaps worse. If you have the ability, you need to leave. There is a movement to expat to [redacted] and regroup there. Consider that. I strongly urge you to go silent. No more political posts. No more calling the police. No more political rallies. No more lawsuits. No more political musical performances. If you do these things, you will be found and taken. I am sure of this. They are trying to simplify the chess board by removing pieces. You are a piece that is easy to remove and no one will notice, will they? Keep yourself safe by taking action today. These are dark days and darker days are ahead. No one can help you if you won't help yourself first. You won't get any further communications as long as you are in the US. We will find you, should you expatriate. Good luck, Patriot.

EXHIBIT B

The Hill article on the hacking of Matt Gaetz' Document Trove Containing Sexual Assault Victim/Witness Testimony

Liccione v Marcus, et al

HOUSE

Hacker gains access to testimony in Gaetz investigations: reports

BY REGINA ZILBERMINTS -11/19/24 12:45 PM ET

FOLLOW ON Google News

A hacker gained access to witness testimony related to investigations into former Rep. Matt Gaetz (R-Fla.), who resigned from Congress last week after President-elect Trump tapped him for attorney general, multiple news outlets reported Tuesday.

The unidentified person, using the name “Altam Beezley,” downloaded the information on Monday afternoon, according to The New York Times, which was the first to report on the breach.

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The Times and CBS News reported that the file is part of a civil defamation case. The Times also reported it includes sealed files from the Justice Department and House Ethics Committee.

The materials do not appear to have been made public. Interest in the files may be at an all-time high, given Gaetz's looming confirmation process.

The Ethics Committee has been investigating Gaetz for years over allegations of sexual misconduct and illicit drug use, among other claims. Gaetz, whom the Justice Department declined to charge after investigating the same matters, has vigorously denied wrongdoing.

The Florida Republican resigned from Congress as the release of the Ethics Committee's report was imminent, a source familiar with the matter told The Hill last week.

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While the panel doesn't generally release information about former lawmakers, the committee is facing mounting pressure to make its findings public.

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Senators on both sides of the aisle have said they would like to see the report as they mull whether to confirm Gaetz as the nation's top prosecutor, and on Monday Rep. Susan Wild (D-Pa.), the top Democrat on the Ethics Committee, said she thinks the report should be released.

Updated at 1:18 p.m. EST

TAGS GAETZ CONFIRMATION FIGHT MATT GAETZ SUSAN WILD TRUMP CABINET

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ACKNOWLEDGMENT OF NEW CASE
Thursday, February 20, 2025

RE: John William Liccione,
Petitioner(s)

v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

Case Number: SC2025-0242
Lower Tribunal Case Number(s): 2D2025-0297; 522024CA002994XXCICI, 522024CA003939XXCICI

Case Type: Original Proceedings - Writ - Prohibition

The Florida Supreme Court has received the EMERGENCY PETITION FOR WRIT OF CERTIORARI, WRIT OF PROHIBITION, AND WRIT OF MANDAMUS reflecting a filing date of February 20, 2025.

To pay the $300 filing fee through the portal, go to the "Document" page after entering the case number. On the "Documents" page, after clicking the "Add" button, navigate to the "Pay Fee" category. Select the "PAY CASE FILING FEE - $300", then go to the bottom of the page and upload a one-page Filing Fee Paid letter, stating that you are paying the fee through the portal. The fee amount and the fields to enter the payment information will be on the "Review and Submit" page. Your fee must be paid within ten days.

Filed, FEB 20, 2025, 15:21, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Please be sure to register for your Appellate Case Information System (ACIS) account. For more information on registering please visit https://www.flcourts.gov/ACIS.

TW

cc:

2DCA CLERK
PINELLAS CLERK
KIRBY ZOE KREIDER
JOHN WILLIAM LICCIONE
HON. PATRICIA ANN MUSCARELLA
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

Filed, FEB 20, 2025, 15:21, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

FILED
CRIMINAL COURT RECORDS
FEB 25 2025
KEN BURKE
CLERK OF CIRCUIT COURT & COMPTROLLER

Supreme Court of Florida

TUESDAY, FEBRUARY 25, 2025

John William Liccione,
Petitioner(s)
v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

SC2025-0242
Lower Tribunal No(s).:
2D2025-0297;
522024CA002994XXCICI;
522024CA003939XXCICI

The petition for writ of prohibition is hereby transferred to the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, for consideration in the context of case numbers 522024CA002994XXCICI and 522024CA003939XXCICI. The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of prohibition. The transferee court should not interpret the transfer of this case as an indication that it must or should reach the merits of the petition. Any determination concerning whether a filing fee shall be applicable to this case shall be made by the transferee court. Any and all pending motions in this case are hereby deferred to the transferee court.

Any future pleadings filed regarding this case should be filed in the above mentioned circuit court at 14250 49th Street North, Clearwater, FL 33762.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

A True Copy
Test:

SC2025-0242 2/25/2025

John A. Tomasino
Clerk, Supreme Court
SC2025-0242 2/25/2025

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HON. THOMAS M. RAMSBERGER
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IN THE SUPREME COURT OF FLORIDA

FILED
CIVIL COURT RECORDS DEPARTMENT
FEB 2 5 2025
KEN BURKE
CLERK CIRCUIT COUNTY COURT & COMPTROLLER

JOHN WILLIAM LICCIONE,

Petitioner,

v.

HON. THOMAS M. RAMSBERGER and HON. PATRICIA MUSCARELLA,

Respondents.

Case No: [ ]

Case Nos.: 2D2025-0297

L.T. No: 24-003939-CI;

L.T. No.: 24-002994-CI

EMERGENCY PETITION FOR WRIT OF CERTIORARI, WRIT OF PROHIBITION, AND WRIT OF MANDAMUS

COMES NOW, Petitioner, JOHN WILLIAM LICCIONE, pro se, and respectfully petitions this Honorable Court to issue a Writ of Certiorari, Writ of Prohibition, and Writ of Mandamus to disqualify Judges Thomas Ramsberger and Patricia Muscarella, vacate their prior orders, and prohibit the contempt hearing that is being directed by Judge Ramsberger to be moved back from April 10th (a month

after Petitioner's March 11th Gulfport mayoral election) to the week of February 24th (or other date prior to the mayoral election). In support of this petition, Petitioner states as follows:

I. JURISDICTION

1. This Court has jurisdiction under Article V, Section 3(b)(7) of the Florida Constitution and Florida Rule of Appellate Procedure 9.030(a)(3), which grant the Florida Supreme Court authority to issue writs of certiorari, prohibition, and mandamus.

2. The Second District Court of Appeal has denied Petitioner's prior petition for writ of prohibition, necessitating this Court's intervention to prevent manifest injustice and irreparable harm.

II. BASIS FOR PETITION

3. Petitioner has just discovered that 6th Circuit Court Judges Thomas Ramsberger and Patricia Muscarella both have personal conflicts of interest in the instant cases, as they are both necessary material witnesses, and are potentially implicated in the very election fraud allegations lying at the heart of Petitioner's claims.

4. This petition is based on newly discovered evidence of the two judges' conflict of interest. This new evidence was just reported to Petitioner on February

13, 2025, by a recent candidate for Pinellas Supervisor of Elections, Christopher Gleason who has brought his own election fraud lawsuits in , Case No. 24-003717 and Case No. 24-003995, cases based substantially on a similar set of facts and allegations.

5. Public records confirm that vote-by-mail (VBM) ballot requests under both Judge's names and voter ID's were recorded by the Pinellas County Supervisor of Elections' VR Systems ballot request processing system, per the Florida Division of Elections own published records, on Sunday, June 23, 2024. The judges VBM requests were among over 219,000 mail ballot requests that were recorded by the PSOE on Sunday, June 23, 2024. Of those, 97 percent which showed missing, mandatory Social Security (last 4) and/or Driver's License number entries in violation of Florida law. The State records show those fields as "N/N" in both columns instead of "Y/Y" for 97 percent of the over 219,000 VBM orders received on June 23, 2024. Judge Ramsberger and Judge Muscarella's ID fields are two of those 97 percent showing "N/N" for voter identification numbers within the State VBM request report.

6. As affected voters whose VBM ballot requests are in question, and as Judges who themselves could now potentially be implicated in this VBM ballot election fraud and on-going cover-up scheme, given that both have steadfastly refused to enforce the rules of discovery, and one (Judge Ramsberger) has now threatened

Petitioner with 6-months incarceration for arguing for clarification of his ambiguous Order, they cannot impartially preside over cases involving the legitimacy of the same June 23, 2024 VBM ballot request data collected from the PSOE, the State, and their elections systems contractor, VR Systems.

7. This data was sent to the State by the PSOE. The State created an aggregate VBM Ballot request text file covering the entire state's VBM ballot request data. Florida Division of Elections published that text file on their own web portal and made it available to active candidates for download in the August 2024 primary election as well as the general election.

8. Canon 3(E) of the Florida Code of Judicial Conduct requires recusal where a judge's impartiality "might reasonably be questioned." Here, the judges' participation as both adjudicators and affected parties violates judicial ethics and due process.

9. Attached as EXHIBITs M and N are the sworn affidavits of Christopher Gleason, a 2024 candidate for Pinellas County Supervisor of Elections. He lost his election to PSOE Julie Marcus and has brought two election fraud lawsuits alleging the same factual allegations regarding the over 219,000 VBM ballot requests recorded in Pinellas County on June 23, 2024.[1] Judge Patricia Muscarella

[1] 24-003717-CI CHRISTOPHER GLEASON Vs. JULIE MARCUS, et Al, APPEALED PATRICIA ANN MUSCARELLA
24-003995-CI CHRISTOPHER GLEASON Vs. JULIE MARCUS, et al, APPEALED PATRICIA ANN MUSCARELLA

is presiding over both of these cases and significantly, she ordered that all his Exhibits be sealed, and she denied Mr. Gleason discovery. These are key indicators of intent to conceal her personal conflict of Interest Petitioner's and Mr. Gleason's election fraud cases. Both cases are currently under appeal in the 2nd DCA.[2]

10. Mr Gleason, as shown in the attached Exhibit M, has in his possession the State of Florida's VBM ballot request counts that the Florida Division of Elections makes available for download in their normal course of business. It is in the form of a comma-delimited text (.txt) file. As attested to in his affidavit, Mr. Gleason downloaded the official state VBM data file, and he found the June 23, 2024 VBM ballot request irregularities cited in this petition. In particular, he cites the VBM requests recorded for that day under the names and voter ID's of Judges Thomas Ramsberger and Patricia Muscarella. Their records bear the letters "**N/N**" in the SSAN/Driver's license fields.

11. Attached as EXHIBIT is the sworn affidavit of John Siamas, a 2024 candidate for Florida State Senate District 61 who lost his primary to incumbent Edward Hooper. Mr. Siamas would file his own similar election fraud lawsuit in Leon County Siamas-vs- Hooper, et al - 2024-CA-001457). Like

[2]2D2024-2688 GLEASON V. MARCUS, ET AL

III. REQUEST TO BLOCK CONTEMPT HEARING AND VACATE ORDERS

10. Judge Ramsberger has improperly threatened Petitioner with up to six months of imprisonment during an active mayoral campaign (Gulfport election: March 11, 2025), violating First Amendment rights and retaliating for election fraud allegations and Petitioner's attempt to make oral argument at a January 28th telephonic hearing on his Motion for Clarification.

11. Judge Ramsberger signaled through his clerk on Thursday February 14th 2024 that the Judge is insisting that the contempt show cause hearing be moved way up from its currently scheduled date of April 10, 2025 (after Petitioner's Gulfport mayoral election), to February 17, 2025 (Presidents' day) or February 18th, three weeks *before* the election, further exacerbating the deliberate retaliatory harm to Petitioner. Now, just yesterday, Judge Ramsburger's assistant emailed the parties that the Judge would not hold the hearing next week, but no dates were proposed. As such, the April 10th hearing date scheduling order remains in effect.

Judge Patricia Muscarella - Facts in Case 24-003939-CI

12. Judge Patricia Muscarella sua sponte issued a stay order in the Clearwater case (24-003939-CI) on November 20, 2024, despite the case's direct relevance to urgent election-related proceedings.

13. Without any party's motion, Judges Muscarella and Ramsberger then coordinated behind the scenes to orchestrate the improper transfer of Defendant Jennifer Griffith's election fraud and election interference related counts in 24-003939-CI over to Judge Ramsberger's court in 24-002994-CI. Then, Judge Muscarella presented it as a fait accompli to Petitioner and the Defendants at a hearing on her sua sponte motion to stay proceedings (which she granted to herself) further demonstrating bias, and potential ex parte collusion.

14. It is noted that Case No.. 24-002994-CI was filed on July 3, 2024. It is now seven months old and to date, not a single answer to a single interrogatory, nor a single document been yet produced by any defendant, due to the judicial acts of commission and omission by Judge Ramsberger, who has even now refused to issue an order compelling discovery against any Defendant despite Petitioner having file a motion to compel discovery back in November 2024.

15. Finally, it is noted that Case No. 24-00393-CI was filed on September 3, 2024, is now in its sixth month and again, not a single interrogatory has been answered, nor has a single document been produced by any Defendant, due to the judicial acts of commission and omission by Judge Ramsberger.

16. The two Respondents' direct and personal involvement and possible implication in the VBM ballot request fraud evidence from June 23, 2024, and combined with their subsequent judicial acts to suppress discovery in these two

cases, and when one ties in Judge Muscarella's behavior in the Christopher Gleasons two cases, and Judge Ramsberger's threat of imprisonment; when taken as a whole and in a light least favorable to the two Respondents and all the reasonable inference that can be made therefrom, demonstrates an coordinated effort to violate Petitioner's right to propound discovery, to threaten bodily seizure in violation of the 4th Amendement, and to conceal evidence of their own VBM ballot requests with missing SSAN and Driver's license numbers..

17. These are serious due process violations which rise to the level of potential criminal abuse of process and intrinsic fraud, requires immediate appellate intervention by this Court, referral to the State's Attorney's Office and the FDLE, the Florida Judicial Ethics Advisory Committee, and reasonably requires the Court to direct the convening of special grand jury overseen by a Special Master and a Special Prosecutor due to Respondent's concurrently-running federal RICO election fraud lawsuit.[3]

[3] A Special Master is necessary because Respondent has also brought a federal election fraud RICO lawsuit in the US District of the Middle District of Florida, Tampa Division, against Florida's Chief of Election Crimes and Security, Andrew Darlington, Secretary of State Cord Byrd, VR Systems CEO Mindy Perkins, Julie Marcus, Matthew Smith, and Governor Ron DeSantis (Liccione-v-DeSantis, et al – Case No. 8:24-cv-02005-SDM-NHA)

IV. LEGAL BASIS FOR RELIEF

Disqualification

18. Rule 2.330(d) of the Florida Rules of General Practice and Judicial Administration mandates disqualification where:

- A judge has personal knowledge of disputed facts,
- A judge's impartiality may reasonably be questioned, or
- A judge is a potential witness in the proceeding.

19. The presence of Judges Ramsberger and Muscarella on the disputed June 23, 2024 VBM request records the State of Florida has published, records that showed no proper voter ID information evidence ("N/N") when recorded on a Sunday when the PSOE and polls were closed, makes them *at least* material witnesses, if not possible judicial co-conspirators in the alleged election fraud scheme. This requires their mandatory disqualification.

20. Rule 2.330(f) provides that upon a motion for disqualification, the judge must "immediately enter an order granting disqualification" if legally sufficient grounds are presented.

21. In *Sutton v. State*, the Florida Supreme Court emphasized that orders on petitions for writs of prohibition are reviewable by certiorari, particularly when addressing issues of judicial recusal and conflicts of interest.

22. The Second District Court of Appeal issued its denial of Petitioner's February 10, 2025, Petition for Writ of Prohibition on February 12, 2025, without comment. The February 10th petition did not contain this new evidence of judicial conflicts of interest because Petitioner did not receive evidence their conflicts until February 13, 2025.

23. Since both Judges likely knew that they had requested their VBM ballots on June 23, 2024, they both should have immediately recused themselves from these cases. The June 23, 2024, VBM ballot request spike occurred on a Sunday, a day when the Pinellas Supervisor of Elections office was closed.

24. This indicates the requests had to have come in over the Internet, or, via some nefarious (or even innocent) mechanism that the Pinellas County Supervisor Elections is steadfastly refusing to disclose in these two cases. Meanwhile, Judges Ramsberger and Muscarella continue to enable the cover-up by refusing to enforce the rules of discovery. This potentially implicates the Judges themselves now as judicial co-conspirators.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests this Honorable Court to:

A. Treat this petition as one for writ of certiorari to review the Second District Court of Appeal's denial of Petitioner's prior petition for writ of prohibition.

B. Alternatively, issue a Writ of Prohibition preventing Judge Ramsberger from proceeding with the contempt hearing against Petitioner in Case no. 24-002994-CI.

C. Issue a Writ of Mandamus ordering Judge Muscarella to vacate her sua sponte stay order in the Clearwater case in Case No. 24-003939-CI.

D. Enter an Order of Disqualification removing Judges Ramsberger and Muscarella from presiding over all related cases due to their personal conflict of interest and necessary witness status.

E. Vacate Judge Ramsberger's December 20, 2024 Order granting in part and denying in part Defendants' Motion to Dismiss in 24-002994-CI, as it was made under improper judicial influence and bias.

F. Vacate Judge Ramsberger's January 31, 2025 Order denying Petitioner's Motion for Clarification (24-002994-CI).

G. Order the Pinellas County State's Attorney's Office to appoint a special prosecutor and to convene a special grand jury overseen by a Special Magistrate.

H. Refer this matter to the Florida Department of Law Enforcement;

I. Refer this matter to the Florida Judicial Ethics Advisory Committee.

J. Grant any further relief deemed just and proper in the interest of justice.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Petitioner, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

Table of Exhibits: Next Page

Table of Exhibits	
Exhibit	Description
A	Ramsberger Order Denying in Part and Granting in Part Motion to Dismiss
B	Liccione Motion for Clarification
C	Judge Ramsberger Order Denying Motion for Clarification, Motion for Extension to File 2nd Amended Complaint
D	Ramsberger Motion to Dismiss Hearing Transcript - 12/13/2024.
E	Ramsberger Motion for Clarification Hearing Transcript - 01/28/2025
F	Ramsberger Show Cause Hearing Order (set in for 2/11/25)
G	Ramsberger Show Cause Hearing Scheduling Order (set in for 4/10/25)
H	Ramsberger Judicial Assistant Emails declaring 4/10/25 Ramsberger scheduling conflict and demanding hearing reset back to week of 2/17/25.
I	Judge Muscarella's Sua Sponte Motion/Proposed Order to Stay Proceedings
J	Muscarella's Order Granting Court's Motion to Stay (11/20/24)
K	Muscarella order transferring Defendant Griffith to Ramsberger's court.
L	Affidavit of Christopher Gleason filed 10/1/24 in Case No. 24-003717-CI
M	Sworn Statement of Christoper Gleason Dated 2/14/2025
N	Affidavit of John Siamas dated 2/15/2025
O	2nd DCA Order Denying Writ of Prohibition

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on Respondents Judges Thomas Ramsberger and Patricia Muscarella, as well as on all Defendants, including Julie Marcus and Dustin Chase through their counsel Kirby Kreider; Jennifer Griffith, the Pinellas Democratic Executive Committee, and Michael Sherosky via their counsel George Thurlow; and Cathy Salustri Loper through her counsel James Lake, via the Florida E-Filing Portal and via email on this February 16, 2025.

/s/ John W. Liccione

EXHIBIT A

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

COMPANION WITH:
Case No. 24-003939-CI

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S AMENDED COMPLAINTS

THIS CAUSE, having come before the Court upon Defendants Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #34 in Case No. 24-002994-CI, filed November 14, 2024) and Defendant Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #40 in Case No. 24-003939-CI, filed on October 2, 2024, and re-filed as part of Doc #45 in Case No. 24-002994-CI, pg. 103-115, on November 20, 2024), and this Court, having reviewed the memoranda and materials filed by counsel and Plaintiff *pro se*, and having heard arguments from Plaintiff *pro se* and counsel for Defendants, this Court hereby **ORDERS AND ADJUDGES** as follows:

Case No. 24-002994-CI: Defendants Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #34 in Case No. 24-002994-CI, filed November 14, 2024)

1. This Court **DENIES** Defendants' Motion to Dismiss on Counts I and II as they pertain to Defendant Michael Sherosky, but will require Plaintiff to re-plead Counts I and II in any amended pleading. In such an amended pleading, Plaintiff shall provide specific allegations pertaining to damages.
2. This Court **GRANTS** Defendants' Motion to Dismiss , without prejudice, with leave to amend, on Counts III and IV.

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

3. This Court **GRANTS** Defendants' Motion to Dismiss on Count V pursuant to Fla. Stat. § 768.295.
4. This Court **GRANTS** Defendants' Motion to Dismiss on Counts VI and VII, without prejudice, with leave to amend.
5. This Court **GRANTS** Defendants' Motion to Dismiss on Count VIII with prejudice, as damages do not exist as an independently-pled count.

Case No. 24-003939-CI: Defendant Jennifer Griffith's Motion to Dismiss Amended Complaint

6. This Court **GRANTS** Defendant's Motion to Dismiss on all counts, without prejudice, with leave to amend. If Plaintiff opts to file an Amended Complaint, the Amended Complaint must make specific allegations supporting that he has a private right of action against the Defendant with sufficient allegations.

Plaintiff shall have until December 30, 2024 to file a Second Amended Complaint, if he so desires.

Counsel for the Defendants shall file their response to the Second Amended Complaint within twenty (20) days and make every effort to schedule a hearing on any Motion(s) either pending or filed in response to a Second Amended Complaint within 45-60 days of the Second Amended Complaint being filed. Should any or all of the Defendants move to dismiss a subsequently-filed Second Amended Complaint, the meet-and-confer requirement for such a Motion is waived.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Nothing in this Order shall be construed as an adjudication of Defendants' legal or factual defenses, including the applicability of Fla. Stat. § 768.295, except as otherwise provided and Defendants' are permitted to raise these issues for adjudication by the Court in subsequent Motions.

Entered in Chambers, St. Petersburg, Pinellas County, Florida on this 20th day of December, 2024.

CIRCUIT COURT JUDGE
Thomas Ramsberger

Copies to:

-John William Liccione, Plaintiff *Pro Se*

-George A.D. Thurlow, Esquire, Counsel for Defendants

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

EXHIBIT B

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-002994-CI**

PINELLAS DEMOCRATIC

EXECUTIVE COMMITTEE, et al.,

Defendants.

_____/

MOTION FOR CLARIFICATION

Plaintiff, **John William Liccione**, pro se, respectfully requests clarification of the Court's bench order and subsequent written order, which denied in part and granted in part Defendants' motion to dismiss the First Amended Complaint. Plaintiff seeks clarification to resolve ambiguities and inconsistencies that prejudice his ability to proceed with this case and meet Court-ordered deadlines. Specifically, Plaintiff requests that the Court clarify that while Defendants may raise the anti-SLAPP defense in a motion for summary judgment after discovery, assuming no material facts remain in dispute, they are barred from re-litigating the anti-SLAPP defense in a motion to dismiss under the doctrine of collateral estoppel. Plaintiff also seeks confirmation that, now that the Court has effectively ruled the anti-SLAPP statute does not apply to Counts I and II (battery and assault), Plaintiff is entitled to attorney's fees and costs if he prevails in this lawsuit, and that Defendant PDEC may be held liabile for the wrongful acts of Defendant Sherosky when acting in his capacity as Secretary of PDEC. In support of this motion, Plaintiff states as follows:

I. CURRENT CASE POSTURE

1. During the December 13, 2024, hearing on Defendants' motion to dismiss, this Court issued rulings from the bench as follows:

Rulings on Motion to Dismiss in Case No. 24-002994-CI

- **Count I (Battery)**: DENIED.
- **Count II (Assault)**: DENIED.
- **Count III (Vicarious Liability)**: GRANTED, without prejudice, with leave to amend.
- **Count IV (Conspiracy)**: GRANTED, without prejudice, with leave to amend.
- **Count V (Violation of Election Laws)**: GRANTED, with prejudice.
- **Count VI (Violation of Civil Rights)**: GRANTED, without prejudice, with leave to amend.
- **Count VII (Defamation)**: GRANTED, without prejudice, with leave to amend.
- **Count VIII (Damages)**: GRANTED, with leave to amend, with instructions to incorporate damages pleadings into each count.

Rulings on Counts from Merged Case No. 24-002994-CI Pertaining to Defendant Griffith

- **Count I (Violation of Fla. Stat. § 1104.041 – Fraud in Connection With Elections)**: GRANTED, without prejudice, with leave to amend.
- **Count II (Conspiracy to Commit Election Fraud)**: GRANTED, without prejudice, with leave to amend.

- **Count III (Violation of 52 U.S.C. § 120511 – Federal Election Fraud)**: GRANTED, without prejudice, with leave to amend.
- **Count IV (Civil Rights Violations under 18 U.S.C. § 11030)**: GRANTED, without prejudice, with leave to amend.
- **Count V (Computer Fraud and Abuse Act Violation under 18 U.S.C. § 1030)**: GRANTED, without prejudice, with leave to amend.
- **Count VI (Intentional Interference With Prospective Economic Advantage)**: GRANTED, without prejudice, with leave to amend.
- **Count VII (Voter Intimidation and Voter Suppression, Civil Rights Violations under Florida Section 104.0615, 104.061, the federal Voting Rights Act of 1965, the Civil Rights Act of 1957, and Title 18, Section 594)**: GRANTED, without prejudice, with leave to amend.
- **Count VIII (Request for Injunctive Relief)**: GRANTED, without prejudice, with leave to amend.
- **Count IX**: Not applicable to these Defendants and thus not merged into this case.
- **Count X (Damages)**: DENIED, with instructions to incorporate damages pleadings into each count.

2. At the conclusion of the hearing, Defendants' counsel, George Thurlow, requested clarification on whether Defendants' defenses raised in the motion to dismiss could be repleaded in response to Plaintiff's anticipated Second Amended Complaint.

3. The Court's written order, entered on December 20, 2024, contained the following language, some of which Plaintiff objected to during his meet and confer conference on the Order with Defendant's Counsel George Thurlow:

- "This Court DENIES Defendant's Motion to Dismiss on Counts I and II as they pertain to Defendant Michael Sherosky, but will require Plaintiff to re-plead Counts I and II in any amended pleading. In such an amended pleading, Plaintiff shall provide specific allegations pertaining to damages."
- "Nothing in this Order shall be construed as an adjudication of Defendants' legal or factual defenses, *including the applicability of Fla. Stat. § 768.295*, except as otherwise provided, and Defendants are permitted to raise these issues for adjudication by the Court in subsequent Motions." (emphasis added)

Additionally, Plaintiff notes that Defendant Sherosky is being sued in both his official capacity as (now former) Secretary of the Pinellas Democratic Executive Committee (PDEC) and in his personal capacity. Therefore, the denial of the motion to dismiss on Counts I and II applies not only to Defendant Sherosky's liability, but also to Defendant PDEC's.

4. This language creates ambiguity and confusion as to whether Defendants may reassert their anti-SLAPP defense in a motion to dismiss, and under what circumstances, despite the Court's prior ruling denying dismissal of Counts I and II, and ambiguity about which of the three Defendants can be held liable under Counts I and II.

II. PREJUDICE TO PLAINTIFF

5. Plaintiff must decide by December 30, 2024, whether to file a Second Amended Complaint or whether to proceed solely on Counts I and II, by Court-ordered filing deadline. The ambiguities and omissions in the Court's order prejudices Plaintiff's ability to make this decision, as it is unclear whether Defendants may re-litigate the anti-SLAPP defense in a motion to dismiss, and which Defendants are liable.

6. The Court's written order appears to reverse its bench ruling, which categorically denied Defendants' motion to dismiss Counts I and II. This reversal undermines the finality of the Court's initial ruling and creates uncertainty regarding the applicability of the anti-SLAPP statute.

7. Furthermore, now that the Court has effectively ruled that the anti-SLAPP statute does not apply to Counts I and II, Plaintiff is entitled to attorney's fees and costs if he prevails in this lawsuit under Fla. Stat. § 768.295(4): A *prevailing party* in an action where the anti-SLAPP statute is invoked is entitled to recover reasonable attorney's fees and costs incurred. Plaintiff requests confirmation that this entitlement applies to him as the prevailing party on the anti-SLAPP issue for Counts I and II.

III. MEMORANDUM OF LAW

8. The Court has already expeditiously denied the Defendant's prior motion to dismiss the First Amended Complaint, which was predicated on the anti-SLAPP statute and other grounds. This denial constitutes a determination that the Defendant failed to meet the statutory burden required to invoke the protections of the anti-SLAPP statute at this stage of the proceedings.

9. Allowing the Defendant to re-litigate the anti-SLAPP defense in a subsequent motion to dismiss undermines the letter and spirit of the anti-SLAPP statute, which was enacted to ensure the prompt resolution of such defenses at the outset of litigation. The statute's purpose is to prevent the chilling effect of meritless lawsuits and to protect parties from the undue burden and expense of prolonged litigation.

10. The anti-SLAPP statute provides a procedural mechanism for the early dismissal of claims that improperly target constitutionally protected activities. Courts have

consistently recognized that the statute's protections are significantly eroded if defendants (and plaintiffs too) are forced to repeatedly litigate the same issues, as this perpetuates the very type of harm the statute seeks to prevent.

11. The doctrine of collateral estoppel (issue preclusion) further supports barring the Defendant from re-litigating the anti-SLAPP defense in a subsequent motion to dismiss. Under Florida law, collateral estoppel applies when: (1) the parties or their privies are the same; (2) the issue is identical to one previously litigated; and (3) the issue was fully litigated and decided by a court of competent jurisdiction. These elements are satisfied here, as the Court has already ruled on the inapplicability of the anti-SLAPP statute in the prior motion to dismiss under Counts I and II.
12. The legislative intent behind the anti-SLAPP statute, as well as its procedural framework, underscores the necessity of resolving anti-SLAPP defenses swiftly and definitively. Allowing the Defendant to reassert the same defense in a piecemeal fashion contravenes this intent and imposes unnecessary delays and costs on the Plaintiff, contrary to the statute's purpose.
13. Plaintiff respectfully requests that this Honorable Court clarify that the Defendant is precluded from re-litigating the anti-SLAPP defense in a subsequent motion to dismiss and that any further assertion of this defense must be raised, if at all, in a motion for summary judgment after all material facts are no longer in dispute.
14. **Anti-SLAPP Statute Has Been Found to Not Apply to Counts I and II**:
    Florida’s anti-SLAPP statute, codified in Fla. Stat. § 768.295, protects against meritless lawsuits aimed at chilling constitutional rights. However, claims of battery and assault as pleaded here, as already effectively found by this Court, are *not* acts of public

participation protected under the statute. By denying Defendants' motion to dismiss Counts I and II, the Court has already determined that the anti-SLAPP statute does not apply to these claims…and by extension… to all other claims dismissed without prejudice.

15. **Collateral Estoppel (Issue Preclusion)**:

    The doctrine of collateral estoppel bars Defendants from re-litigating the anti-SLAPP defense in a motion to dismiss. The Court's denial of the motion to dismiss on Counts I and II constitutes a substantive determination that the anti-SLAPP defense is inapplicable to this lawsuit in its entirety because the Court has found this lawsuit to be *meritorious* enough to have already survived a motion to dismiss on anti-SLAPP and all other grounds pleaded by Defendants. Allowing Defendants to reassert this defense, at all, in a subsequent motion to dismiss would violate principles of judicial economy, finality, and collateral estoppel (issue preclusion).

16. **Anti-SLAPP Defense in Summary Judgment**:

    Defendants may raise the anti-SLAPP defense in a motion for summary judgment after discovery, provided no material facts remain in dispute. This approach aligns with the purpose of the anti-SLAPP statute, which is to resolve meritless claims expeditiously (and by inference also allowing *meritorious* claims to proceed expeditiously), while preserving the right to litigate legitimate disputes.

17. **Entitlement to Attorney's Fees and Costs**:

    Under Fla. Stat. § 768.295(4), a *prevailing party* in an action involving the anti-SLAPP statute is entitled to recover reasonable attorney's fees and costs. Now that the Court has

ruled the anti-SLAPP statute does not apply to Counts I and II (battery and assault) Plaintiff is entitled to recover his fees and costs if he prevails in this lawsuit.

IV. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court clarify its order and definitively find that:

A. Battery and assault are not protected acts of public participation eligible for protection under Fla. Stat. § 768.295.
B. Plaintiff has already pleaded sufficient facts and allegations of battery and assault and damages in Counts I and II in his First Amended Complaint sufficient for the Court to reaffirm its denial of the Motion to Dismiss on Counts I and II.
C. Defendants are barred under the doctrine of collateral estoppel from re-litigating the anti-SLAPP defense in a motion to dismiss.
D. The Motion to Dismiss is denied on Counts I and II as to Defendants Michael Sherosky in both his capacity as Secretary of Defendant PDEC, and in his personal capacity, and that PDEC may be held liable for Sherosky's tortious acts as alleged under Counts I and II;
E. Plaintiff, if he prevails in this lawsuit, is entitled to recover reasonable attorney's fees and costs under Fla. Stat. § 768.295(4).

Respectfully submitted,

/s/ John W. Liccione
John W Liccione, Plaintiff, pro se
6800 Gulfport Blvd S.
Ste 201-116
South Pasadena, FL 33707
443-698-8156
Jliccione@gmail.com

CERTIFICATION OF COMPLIANCE WITH MEET AND CONFER ORDER

Pursuant to the applicable rules and administrative orders of the Sixth Judicial Circuit, I hereby certify that I and Defendants' counsel George Thurlow made a good faith effort to meet and confer on this motion and did in fact meet and confer on this day. We were unable to come to any agreement on this motion.

/s/ John W. Liccione

CERTIFICATION OF SERVICE

I, John William Liccione, Plaintiff, on this 21st day of December 2024, hereby certify that the forgoing Plaintiff's Motion for Clarification was e-served on all defendants through their attorney George Thurlow via the Court's e-file and e-serve system and via email.

/s/ John W. Liccione

EXHIBIT C

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

ORDER ON PLAINTIFF'S MOTION FOR CLARIFICATION AND MOTION FOR EXTENSION OF TIME TO FILE SECOND AMENDED COMPLAINT

THIS CAUSE, having come before the Court at a telephonic hearing on January 28, 2025 upon Plaintiff's Motion for Clarification (Doc # 64, filed December 21, 2024) and Plaintiff's Motion for Extension of Time of Filing Deadline for Second Amended Complaint (Doc # 65, filed December 30, 2024), and the Court, having reviewed Plaintiff's Motions and heard Plaintiff's oral argument, and being otherwise fully and duly advised in its premises, hereby **ORDERS AND ADJUDGES** as follows:

1. Plaintiff's Motion for Clarification (Doc # 64, filed December 21, 2024) is **DENIED**. The Court finds that the Order on Defendant's Motion to Dismiss entered on December 20, 2024 (Doc # 62) speaks for itself, and is sufficiently clear.
2. Plaintiff's Motion for Extension of Time of Filing Deadline for Second Amended Complaint (Doc # 65, filed December 30, 2024) is **DENIED**. The Court notes that as the Order on Defendant's Motion to Dismiss provided for a deadline of December 30, 2024 to file a Second Amended Complaint, and Plaintiff has still not filed such, Plaintiff has already received an extension of nearly a month in filing such. If Plaintiff desires to file a Second Amended Complaint, it must be filed by February 4, 2025 at 4:00pm local time.

Ordered in Chambers, St. Petersburg, Pinellas County, Florida on this ____ day of January, 2025.

24-002994-CI 1/31/2025 12:55:45 PM
Circuit Judge Thomas Ramsberger
24-002994-CI 1/31/2025 12:55:45 PM

_____
The Honorable Thomas M. Ramsberger
Circuit Court Judge

Copies to: John William Liccione (Plaintiff *Pro Se*) and George A.D. Thurlow, Esq.

ELECTRONICALLY FILED 1/31/2025 12:55:46 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

EXHIBIT D

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

ORIGINAL

CIVIL DIVISION
CASE NO. 24-002994-CI
CASE NO. 24-003939-CI

JOHN WILLIAM LICCIONE,
Plaintiff

V.

PINELLAS DEMOCRATIC EXECUTIVE COMPANION WITH:
COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants

HEARING

DATE: DECEMBER 13, 2024
REPORTER: VANESSA MCCORMICK

400 North Ashley Drive, Suite 2600
TAMPA, FL 33602
100 East Pine Street, Suite 308
ORLANDO, FL 32801
CORPORATE
4651 Salisbury Road, 4th Floor
JACKSONVILLE, FL 32256

APPEARANCES

PRO SE:

JOHN WILLIAM LICCIONE
6800 Gulfport Boulevard South
Suite 201-116
South Pasadena, Florida 33707
jliccione@gmail.com
(Appeared via teleconference)

ON BEHALF OF THE DEFENDANT, PINELLAS DEMOCRATIC EXECUTIVE COMPANION WITH: COMMITTEE, MICHAEL JOHN SHEROSKY, JENNIFER W. GRIFFITH:

George A.D. Thurlow, Esquire
Rahdert & Mortimer, PLLC
535 Central Avenue
Suite 200
St. Petersburg, Florida 33701
Telephone No.: (727) 823-6189
E-mail: gthurlow@rahdertlaw.com
(Appeared via teleconference)

Also Present: Thomas Ramsberger, Judge

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STIPULATION

The hearing was taken at MILESTONE REPORTING COMPANY, 315 EAST ROBNINSON STREET, SUITE 510, ORLANDO, FLORIDA 32801, via teleconference in which all participants attended remotely, on FRIDAY the 13th day of DECEMBER 2024 at 10:31 p.m. (ET); said hearing was taken pursuant to the FLORIDA Rules of Civil Procedure.

PROCEEDINGS

THE COURT: Good morning. This is Judge Ramsberger for case number 24-2994. Do we have the plaintiff on?

MR. LICCIONE: Yes, sir. This is John Liccione.

THE COURT: All right. And you're still representing yourself? You're pro se, correct?

MR. LICCIONE: Yes, sir.

THE COURT: The three defendants that I have listed here are the Pinellas Democratic Executive Committee, Michael Sherosky, and Jennifer Griffith. Do we have counsel for those three defendants?

MR. THURLOW: Yes. George Thurlow, Your Honor, on behalf of all three defendants.

THE COURT: All right. Thank you. And for the plaintiff: originally, I believe the Democratic -- for the Democratic Party was part of the lawsuit. It looks like they're not part of it. Did you withdraw your -- did you dismiss them from the Complaint?

MR. LICCIONE: Yes, sir, I had. I did that.

THE COURT: Okay. And do we have a court reporter today?

THE REPORTER: Yes, Your Honor. Vanessa

McCormick, court reporter with Milestone Reporting Company.

THE COURT: All right. Good morning, Vanessa. And is there anybody else on the call that we haven't identified yet?

MR. LICCIONE: Your Honor, this is Mark Herring. I'm counsel for a Democratic Party, and I'm just an interested listener.

THE COURT: Very good. Good morning to you. And is there anybody else on the call today?

All right. Counsels, we were -- folks, we were here on November 21. We've -- we accomplished a couple of things on that date. One thing that we did not accomplish is addressing the defendants' Motion to Dismiss. And I believe that Motion to Dismiss, Mr. Thurlow, was filed on August 12 on behalf of the three defendants; is that accurate?

MR. THURLOW: That is correct. That was a Motion to Dismiss the original Complaint. Plaintiff subsequently filed an Amended Complaint in early November, so we filed a very similar Motion to Dismiss Amended Complaint on November 14th.

THE COURT: Okay. So it is your position, Defense, that the operative complaint is the Amended Complaint that is filed on --

MR. THURLOW: Yeah.

THE COURT: -- November 7th?

MR. THURLOW: Yes, Your Honor.

THE COURT: Okay. And for the plaintiff, that's your understanding; is your operative complaint, meaning the complaint that's the one to be challenged today, is the one that is filed on November 7 of 2024?

MR. LICCIONE: No, Your Honor. Yesterday, I filed a Motion for Reconsideration of the Court's denial of my previous Motion for Leave to file a Second Amended Complaint, so that motion, I believe, is before the Court. Your assistant said she had forwarded that to you today, so I would state that that is -- a determination on that Motion for Reconsideration is necessary because I obviously -- I've -- my position is that the Second Amended Complaint, as was attached to this Motion for Reconsideration, a draft of, you know -- a proposed Second Amended Complaint is in the Court's possession.

THE COURT: Counsel? All right. The operative complaint today for the purposes of this hearing is the one filed by Plaintiff on November 7 of 2024. If you filed a Motion for Reconsideration, the Court

doesn't know if that's been noticed for hearing or not today.

Mr. Thurlow, is it your understanding that that motion has been noticed for hearing today?

MR. THURLOW: The notice of hearing says that there is a case management conference where all pending motions to be addressed. I believe that motion was filed yesterday and has not been docketed, Your Honor.

THE COURT: Do you oppose, Mr. Thurlow, hearing the Motion to Reconsider?

MR. THURLOW: I do, because I believe it's -- the amendment would futile and prejudicial since my client filed a Motion to Dismiss under Florida's anti-SLAPP statute, which requires hearing as soon as practicable. And this is our third attempt at trying to have a hearing on our Motion to Dismiss.

THE COURT: Okay. For the plaintiff, I won't consider your Motion for Reconsideration today because it wasn't timely noticed for hearing under our rules of procedure. You are welcome to set that for hearing in the future if you'd like to. We're going to go forward with the defendants' Motion to Dismiss, and that's relative to the Complaint -- the Amended Complaint filed November 7 of 2024.

Mr. Thurlow, was there any other motions that you've set for hearing today?

MR. THURLOW: There's also a Motion to Dismiss. As you may recall, the Court consolidated claims from another case filed by the plaintiff as it pertains to defendant Griffith. And we also filed a Motion to Dismiss Amended Complaint on that case. And there is a lot of overlapping legal issues to those. So I'm happy to address both of those motions together because of the law, and our arguments are going to be extremely similar on both.

THE COURT: Okay. And effectively, what's gone on, just so we're clear and the record's clear, is that in a lawsuit that the plaintiff filed in Clearwater, that lawsuit included other defendants, but it also included Jennifer Griffith. And via a hearing with Judge Muscarella, and a conversation with Judge Muscarella and myself, Judge Muscarella entered an order that effectively consolidated Jennifer Griffith as a defendant in the Clearwater case to a defendant here in what we'll call the -- if you all could pick up your microphone. I'm getting a lot of paper shuffling. If you could please remove yourself from microphones and just use held or handsets, please.

What happened then was, any claims that were made against Jennifer Griffith in the Clearwater case have now been consolidated into the St. Petersburg case. And what I mean by St. Petersburg case is case 242994. So to be abundantly clear, Mr. Thurlow, any claims that were made against Jennifer Griffith in the Clearwater case, which is now consolidated with this case, you would like to address that in that Motion to Dismiss today?

MR. THURLOW: Correct, Your Honor.

THE COURT: And you'd like to do that as a combined Motion to Dismiss and address it as one argument, correct?

MR. THURLOW: Yes, Your Honor.

THE COURT: Okay. So is there any other pending motion that was noticed for today for the defendant?

MR. THURLOW: Just the case management --. At the time the notice of hearing was filed, there were, I believe, four other pending motions. Plaintiff filed a Motion to Strike my appearance on November 18th. And then in the Clearwater case before it was consolidated, my client, Ms. Griffith, filed a Motion for Sanctions, and the plaintiff filed a Motion to Compel Discovery, and a Motion to

Shorten Time to Respond to Discovery.

THE COURT: Okay. And then other than that, for Plaintiff, is there anything else that was noticed for hearing today?

MR. LICCIONE: I think that covers it, Your Honor.

THE COURT: Okay. On a time-permitted basis, I'll address as many of those motions as we can. Before we run out of time today, I want to make certain that we address the Motion to Dismiss, which will be, basically, a combined motion. It will be the motion filed on August 12 of 2024, along with the Motion to Dismiss filed in case number 243939. Again, that's the Clearwater case. And to be abundantly clear, that motion only addresses any causes of action that were alleged against Jennifer Griffith in that action. And then we will have a case management conference to make sure we understand what is going to happen going forward.

With regard to your motion, Mr. Thurlow, the motion that you filed in case 243939, did you happen to refile it in this case?

MR. THURLOW: I'm not sure I did, Your Honor.

THE COURT: Okay.

MR. THURLOW: I believe we actually did. We

filed a notice of filing a binder before the last hearing, and it was -- part of that binder we filed with the Court. Would a docket number be helpful for you?

THE COURT: Yes, please.

MR. THURLOW: Give me one moment. I'm just going to pull that up. I believe it would be docket number 45 in this instant case, Your Honor. And that is a long document, so I'll tell you what page number it is in just a second. It will be starting at page 102 of that -- or 103 in the PDF, Your Honor.

THE COURT: Okay. Give me a moment to locate that. Okay, I have that motion in front of me. And also, let me do this. I want to make sure that I've got the correct complaint in front of me. I originally pulled up the first complaint, which, again, has now been amended. So we're working off the Amended Complaint filed November 7 of 2024. Okay.

And again, Mr. Thurlow, as you begin to make your argument, your motion relates to all three defendants, and what's now going to be included with that is your additional Motion to Dismiss on behalf of Ms. Griffith, correct?

MR. THURLOW: Correct, Your Honor.

THE COURT: All right. Go ahead and make your argument, and then we'll hear a response from Plaintiff.

MR. THURLOW: All right. Thank you, Your Honor. We're here on defendants Pinellas County Democratic Executive Committee, Jennifer Griffith, and Michael Sherosky's Motion to Dismiss Amended Complaint in case number 24-002994-CI, as well as defendant Jennifer Griffith's Motion to Dismiss Amended Complaint in case number 24-003939-CI. Given the high amount of similarity in these motions, we're going to address them together.

And you see in both lawsuits is what are known as strategic lawsuits against public participation, which are prohibited under Florida Statute Section 768.295. The plaintiff was a candidate for -- in the Democratic Primary for Florida's 13th Congressional District, the seat currently held by Congresswoman Anna Paulina Luna, and is now a candidate for mayor of Gulfport. And the defendants are respectively -- the county-level Democratic Party in Pinellas County is now former chair, Jennifer Griffith, and is now former secretary, Michael Sherosky. At the time the case was filed,

Ms. Griffith was chair, and Mr. Sherosky was secretary of the party.

And what Florida's anti-SLAPP statute does, is it prohibits lawsuits that are primarily filed against defendants for exercising First Amendment rights in connection to an issue of public importance. A primary election for United States Congress, which had over 50,000 votes in our county, is clearly an issue of public importance. What occurred is that the county- level Democratic Primary and its then chair and secretary opted not to provide the plaintiff a platform for his candidacy and prohibited from letting him attend their event --

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MR. THURLOW: -- the burden shifts to the plaintiff to demonstrate that the defendants' activity was in fact actionable, and that these claims are not primarily based upon the defendants'

exercise of their first amendment right. In spite of aspersions to the contrary, the Democratic Party is a private organization, and neither the DEC nor its officers are state actors.

The Democratic Party at the county or state level plays no role in counting votes. In our binder of court filings and case law, we provided a couple of analogous cases, which I'll address later on: Kissinger v. Mahoning County Republican Party, and Emmanuelle (phonetic) v. -- which clarifies that the burden to place a political party as a state actor is very steep, even when that political party is working hand-in-hand with election officials in their non-public capacities to achieve mutual political goals, which is not the case here. Plaintiff has failed to meet that very high burden.

The gist of this is that political parties have the right to identify people they wish to associate with. And according to the U.S. Supreme Court case of Eu v. San Francisco County Democratic Central Committee, political parties select a standard-bearer who "best represents the party's ideologies and preferences."

The U.S. Supreme Court concluded that a judicial restriction of a political party's

governing body from conceding whether a candidate adheres to the tenets of that party or whether politic party officials believes that the candidate is qualified for the position sought is an unconstitutional restriction on free speech. That is because it directly hampered the ability of the party to spread its message and voters seeking to inform themselves about the candidates and campaign issues. The court even went as far as to say the restrictions are particularly egregious when it is a state-censoring speech that a political party shares for its' members.

What the plaintiff is seeking for this Court to do is to penalize a political party to the form of censorship for not sharing Plaintiff's speech with its members. In fact, I have stated in Exhibit 1 of Plaintiff's filings, that was filed earlier this week, the plaintiff wants an endorsement for his candidacy of mayor of Gulfport in a potential settlement. This is clearly political --

MR. LICCIONE: Objection, Your Honor. Objection, Your Honor. Settlement discussions are not appropriate in a motions' to dismiss hearing.

THE COURT: Who's making that objection? Mr. Liccione?

MR. LICCIONE: Yes, sir.

THE COURT: Okay. I'll sustain the objection. I won't consider settlement. Go ahead, mister -- Mr. Thurlow.

MR. THURLOW: Okay, yes. And in case number -- this instant case, the plaintiff has brought a defamation count against all three defendants, but has only pled it against Ms. Griffith, alleging she was acting in her official capacity as chair. And since Plaintiff, as a political candidate is a public figure, he must meet an actual malice threshold.

The actual malice threshold requires that a public figure plaintiff must prove, one, publication by the defendant. Two, a false statement. Three, acknowledge reckless disregard to falsity. Four, actual damage. And five, that the statement is, in fact, defamatory. And Plaintiff seems to be centered on an -- on a statement that Ms. Griffith made in the Tampa Bay Times saying that the plaintiff is a man of "moral turpitude."

Ultimately such a statement is protected, it's opinion speech. It is not discernibly true or false. What moral turpitude even means is a context-dependent statement. It means different things than

say, criminal court versus an employment contract.

Saying someone is unfit to be a democratic candidate, which is another one of the allegations, is also a statement of opinion. And even if these statements cross into factual statements, they still do not meet the actual malice threshold. But this still really boils down to the decision to not provide Plaintiff a platform, not invite him to a debate. And these comments made about Plaintiff were all First Amendment speech in relation to a public issue. And my client seeks dismissal under the anti-SLAPP statute. The burden now falls to the Plaintiff to demonstrate that this state -- these statements were actionable and we don't believe he'll be able to do that.

And this past week, in the case of Flynn v. Wilson, the Second DCA case, 2D-2024-0 278, the Second DCA entered an opinion affirming an Anti-SLAPP motion for summary judgment in that case. And basically, they focused on whether the defendants had serious doubts to the truthfulness, which my client -- there's no evidence alleged that my client's ever had serious doubts to the truthfulness.

And the last paragraph of that opinion, I think

really delivers the gist of the issue. And that paragraph is, "We have the privilege of living in a country with a profound national commitment to the principle that debate on public issues should be uninhibited robust and wide open. And that it may well include --, caustic, and sometimes unpleasantly sharp," Sullivan, 376 U.S. 270. And then like it or not, such attacks are characteristic feature of our democracy, regardless of the political persuasion of the speaker and regardless of the political persuasion of the public figure on the receiving end of that speech. As the trial court noted, the defendants' tweets may not have been polite and they may not have been fair, but the First Amendment required neither. And so we affirm.

Then turning to the case of Kissinger v. Mahoning County Republican Party, which is 677 Fed. Supp. 3d 716. It's a 2023 case from the Northern District of Ohio that's really highly analogous to this instant case. In Kissinger, the plaintiffs attempted to deliver materials to a local Republican Party headquarters for candidates who are not endorsed by former President Trump at a time when JD Vance, who was then running for U.S. Senate in Ohio, was at the party's headquarters campaigning

and the Republican Party said they were not allowed to deliver materials for JD Vance's opponents at that time.

The plaintiff proceeded to stand outside party headquarters protesting, and they alleged an individual assaulted them by taking a campaign sign and throwing Plaintiff to the ground. And this specific incident was a culmination of an ongoing feud. And in Kissinger, the court ultimately held that the local Republican Party and the individuals associated with it, including those who actually serve on a county elections board, were not state actors and that the court lacked subject matter jurisdiction to hear such claims, for simply non-justiciable issues.

And the facts of Kissinger are highly similar to this case, where a local Democratic Party informed the plaintiff he was not welcome at their events and they would not provide a platform for their candidacy. Plaintiff then alleges a physical altercation with a party, or official of the party, which my client disputes. But regardless of the factual veracity of that allegation, the end result is that my client were not state actors, had a right to engage in political speech about Plaintiff's

candidacy, that this Court does not have jurisdiction over the claims involving a political party.

Dismissal under Florida's anti-SLAPP statute is with prejudice and defendants would be entitled to the award of reasonable attorney fees and costs under the statute. However, even if this court were to decide that anti-SLAPP did not apply, dismissal still would not be appropriate because of this lack of subject matter jurisdiction. And that there's a clear failure to state a cause of action upon which release may be granted.

In this instant case Counts number I and II are tort claims against Mr. Sherosky. While this Court does have jurisdiction over tort claims, neither is sufficiently pled. For Count number I, the Complaint -- the Amended Complaint is entirely contradictory as to whether Mr. Sherosky ever touched the plaintiff. In fact, paragraph 36 alleges that Mr. Sherosky "came within 5 inches of Plaintiff's face." Coming within 5 inches of someone seems to infer that there was not any touching and actually touching someone is an element of battery. And even if Mr. Sherosky touched the plaintiff, the contact, the hat falling off, was not

harmful or offensive as far as the law could see, therefore the count failed.

The same thing can be said of Count II. It failed to allege the required elements of battery. Count III, which is a claim for vicarious liability against the Pinellas Democratic Executive Committee and Ms. Griffith, fails to state the claim for vicarious liability. There's a Count IV, the claim for civil conspiracy. It is not properly pled. Counts V and VI are non-justiciable issues. There is no private rights of action under the statute cited by Plaintiff. And Count VII is not properly pled. Therefore, I mean, these counts should all be dismissed.

Then turning to the allegations in the companion case, 24-003939-DI, Counts I, III, IV, and VI. The statute cited by the plaintiff do not provide for private rights of action. Therefore, the plaintiff doesn't have standing to bring these counts. And then for Counts V and VI, whether it might be private rights of action, the plaintiff has failed to seize the required elements. So we ask for dismissal of that Complaint as well. Thank you, Your Honor.

THE COURT: Plaintiff, your response to the

motions to dismiss, plural, as in both of them together. Go ahead, please.

MR. LICCIONE: Yes, Your Honor. First, I want to point out that in the second case, that's been combined as to Jennifer Griffith. In that case in Clearwater, there's -- there are additional factual allegations of events that occurred after this case was filed and those -- and counts. And that's particularly the count of election fraud, mail ballot fraud, on the part of Griffith and the Democratic Party. All right, so I just want to point out that that's an additional count that's now combined here.

So first of all, I'd like to address the anti-SLAPP argument. I'll start off by saying that anti-SLAPP protections are not absolute. The defendants are incorrectly arguing that their behavior and their statements and their actions are all immune under the anti-SLAPP statute. The statute actually only applies to speech made in connection with a public issue or issue of public concern.

So for example, calling me an ass in public, that's protected speech because that's an opinion. In this case, Defendant's defamatory statements were not expressions of opinion, but were very specific,

false factual assertions, easily disproven by court records, showing I was found not guilty of assaulting my wife in Maryland. So false factual assertions that can be easily verified as false and that they knew were false because there was a court record, a not guilty verdict sheet, from that trial that I was found not guilty of all counts. And they knew it, that -- it was true because I told them and I offered to provide Jennifer Griffith a copy of the not guilty verdict sheet, and she ignored it, or she realized it was untrue, but she said it anyway. And that's sort of the definition. That is the definition of reckless disregard for the truth.

So the argument that these were just political opinions? Yeah, you can call me an ass in public. Sure. But I'm not suing because Michael Sherosky called me an ass, and he did and admitted to it on camera, once I took my cell phone out. I'm suing him for assault -- for battery to start with, because he knocked my hat off my head and not only was -- it wasn't just a hat. It was a hat that had a pride parade stuck in the back of it. And I was -- about to March in the St. Petersburg Pride Parade.

So when it comes to offensive physical contact, it wasn't just the hat he knocked off my head. It

was the pride parade flag he knocked off my head. This is Democrat on Democrat political violence at a pride parade, right? Now that's not just offensive physical contact, it's outrageous physical contact within that particular context.

I'll also point out about this -- the battery count, that Mr. Thurlow just self -- he just contradicted himself in the course of a couple of sentences about that. The first thing he said, and he said this twice actually, that I had pleaded that my hat had fallen off my head and that's ridiculous. That's just a misrepresentation of what -- of the facts as pled and what's in the court record. I never said my hat fell off my head. If my hat just fell off my head without Sherosky, you know, knocking it off -- I wouldn't have filed a --

THE COURT: Plaintiff? Plaintiff? Plaintiff? Direct me to the paragraph numbers in your Amended Complaint that you're speaking about. Go ahead, please.

MR. LICCIONE: Okay, give me a second.

THE COURT: When either side argues about what is being pled, the best source is to go to the pleading itself and let the Court read it verbatim. So in this context, Plaintiff, you're arguing that

the defendant is misrepresenting your pleading. Please direct the Court to which paragraph or paragraphs are you speaking about, so the Court can review it at the same time you're making your argument.

MR. LICCIONE: Oh, fair enough, Your Honor. So starting with paragraph 30 is the first that talks about engaging in political violence, assault, and battery. So paragraph 30. 30, going on 34, 36. Okay, so it goes to paragraph 36. So the description of this incident starts there on those paragraphs.

THE COURT: And then in paragraph 36, Plaintiff, what I heard from Mr. Thurlow earlier was -- and his argument was a contradiction about alleging a battery, but yet in 36, identifying that the defendant Sherosky came "within 5 inches of Plaintiff's face." So I want to make sure I understand. Is it your argument that paragraph 36 is incorrect or that Mr. Thurlow misunderstood that?

MR. LICCIONE: No. That -- the 36 goes to the assault claim, Your Honor. Putting me in fear for, you know, my personal safety. That doesn't go to the battery claim. This happened right after I walked away from Mr. Sherosky, that he followed me,

stalked me, and then he put his body like 5 inches in front of me on camera. It's on the --

THE COURT: Please continue with whatever -- please continue your argument. But again, if you're going to argue allegations, please direct the Court to the specific paragraph in the Complaint.

MR. LICCIONE: Okay, will do. So let's see, let me get back on track here. All right, so let's talk about the defamation and the actual malice standard. When you're, you know, talking about a public figure, say Ms. Midigan (phonetic) is the public figure.

THE COURT: I'm sorry, Plaintiff? Plaintiff, let me inquire one more time of something different then. Speaking of your comment just a moment ago that paragraph 36 then speaks to the assault, not the battery, which allegations support the battery claim? In other words, an unwanted physical contact?

MR. LICCIONE: That ends at -- that starts at 30 and ends at 34.

THE COURT: Okay. And again, which of those paragraphs are you alleging an unwanted physical contact?

MR. LICCIONE: 34, where I say, "Defendant Sherosky without provocation forcefully knocked off

the hat Plaintiff was wearing which prominently displayed a pride flag and hurled -- and hurl insults at him." And that's not -- that's protected, this is just context of malice. It's proof of malice, it doesn't go to battery because hurling insults at somebody, like calling them an ass is protected speech.

Oh. And then he confirmed when asked that he wanted to hit Plaintiff. Actually, that actually goes to the assault as well. But the first -- most of that paragraph 34 up to the hurled insults part is the necessary elements properly pled for a claim of battery.

And under -- I will point out that there -- Mr. Thurlow is arguing that even that knocking someone's hat off is not offensive physical contact. Right? Now under the -- under Clark v. State, the First DCA found that they recognized that an unconsented touching of something intimately connected with the victim's body constitutes battery. Same thing in Nash v. State, the Fourth DCA found that grabbing a purse held by the victim was deemed sufficient for a battery charge as the purse was considered an extension of the person. As certainly the hat on my head and the Pride flag stuck into the back of it

was intimately connected to my physical person. And so this -- that's sort of a fallacious argument. This is a black letter case law here. So I'm focused on the battery because they're basic -- the defendants are basically arguing that political violence by a political party officer against a congressional candidate in public is protected speech and behavior under the anti-SLAPP statute. Right? So it -- so for example, it's sort of like Donald Trump at one of his rallies say, knock -- you know, knock the hell out of or, you know, knock the hell out of that guy for, you know, interrupting my speech.

It's trying to -- it is inciting political violence at a political event, which is what the St. Pete Pride Parade was. It was a -- you know, it's a political event. I'm there to campaign as a supporter of Pride rights, you know, equal rights. And this democrat-on-democrat, you know, violence is -- was never supposed to be -- it's an unlawful -- it's a criminal act. And now Mr. Thurlow claims -- talks about this police report and all that. The police report that he had attached to his motion is a -- is a -- there were -- number one, the witnesses that were quoted were not sworn -- those -- none of

those were sworn statements. So the -- second, the people who were in the report that the police interviewed were all cherry-picked by Jennifer Griffith. They're friends, associates of Jennifer Griffith. They're members of the defense. They're members of defendant PDEC.

Those are all obviously biased witnesses, and it's not appropriate to -- in the motions to dismiss phase to consider that their statements are, you know, true. They certainly don't prove that it didn't -- that the battery didn't happen. That they -- the only thing, if they're telling the truth is that they didn't see the bat -- a battery and if it did happen. So I would ask, those are not appropriate to be considered at the motion to dismiss phase, because my allegations as pleaded are supposed to be taken as true and in the light most favorable to me and all the inferences that can be made from those factual allegations when determining a motion to dismiss on a failure to state a claim.

My -- now I'll go to the -- let me think. I'm going to go to -- next to the defamation and the evidence of actual malice standard when it -- when you're defaming a public figure. They -- Mr. Thurlow submitted a couple days ago, a notice of

supplemental authority. And he called out the Michael Flynn case. Now in the Michael Flynn case, it basically -- it's the difference between statements of an opinion and verifiably untrue facts. Misstatements of facts that are verifiably untrue and that is verifiable that they knew they were -- the person making those statements knew they were untrue.

And in this case, as I said before, there is a not -- I was found not guilty. It's verifiable that I was found not guilty. Defendant Griffith knew I had been found not guilty. I told her in my candidate vetting form, I had been found not guilty. I offered in that candidate vetting form to provide the not guilty verdict sheet to her. She cut off all communications with me and the next communication I had after going dark and silent for the -- for several weeks, was that you failed the candidate vetting process and she wouldn't tell me why. And I didn't find out why until November of 2023, when she told the Tampa Bay Times --

THE COURT: Plaintiff.

MR. LICCIONE: -- I had --

THE COURT: Plaintiff. Plaintiff, are these in the allegations that you've alleged in your Amended

Complaint?

MR. LICCIONE: Yes, they are.

THE COURT: Okay. What paragraphs so I can follow along?

MR. LICCIONE: Okay. Let's see. Let me go -- okay. Starting on -- okay. Let's see. Section -- paragraph 47.

Okay. May I -- may I proceed, Your Honor?

THE COURT: You are welcome to.

MR. LICCIONE: All right. As a direct result of the Griffith disinformation and defamation campaign, Tampa Bay Times published two defamatory articles about me and it caused catastrophic damage to my campaign, my reputation, et cetera. Jennifer Griffith and others in PDEC have falsely claimed to third parties like Tampa Bay Times that I'm guilty of -- I'm a man of mortal turpitude and in her later pleadings here, she followed up by indicating that it was the assault against -- the alleged assault against my wife in Maryland, in which I was found not guilty at trial in 20 minutes. So these were patently false accusations that Jennifer Griffith was making. She knew there existed a court record proving I was found not guilty. And therefore it's verifiable. The court public records that I was

found not guilty. And I published these court records on my campaign website as well. So under the Flynn standard, this -- these are verifiable facts that were verifiably false, basically. The statements that she made to The Times.

And then in paragraph 51, if you skip ahead a little bit, Griffith and PDEC defamation disinformation campaign ended up being republished in a total of -- in terms of what I could find, four mainstream media outlets in this area that cover Florida in this area, Tampa Bay Times, Florida Politics, Politicos Florida Playbook, The Gabber Newspaper. No, that's not the next part. The Gabber is not part of this. But the -- these news -- these media outlets took the lead, you know, Jennifer Griffith was the chair of the party here in Pinellas. So they assumed she -- that she wasn't lying, right? They published it as if what she told them was true. And so let's see. Let me see where this continues.

Okay. So going back to the previous argument, I see there's additional paragraphs here in support of the assault and battery claim. paragraph 53, they engaged -- this goes to the conspiracy as well. Conspiracy to promote political violence and defame

Plaintiff in an all-out effort to undermine my congressional campaign and -- which I lost because of this. And it is because of election fraud that I'm alleging Defendants took part in. Mail ballot fraud. I lost the election. I lost political donations. My reputation has been destroyed. And I believe in -- as I said in paragraph 54, that this is a premeditated act, an attempt to provoke a violent response from me at the Pride Parade is to get me, like, arrested or whatever. So as it -- as it goes to the battery claim, in order for you to dismiss this case under the anti-SLAPP statute, Your Honor, you'd have to basically condone or find that battering someone at a -- at a, you know, a political event, like a Pride Parade where a candidate was marching is protected behavior, whether it's the right to assemble or the right to -- well, it's a physical battery claim that's properly plead.

So the second part of this is that under the state actor standard, Mr. Thurlow claims that his clients are not state actors. And this is incorrect as a matter of law based on case precedent. In the case Smith v. Allwright, the U.S. Supreme Court held that it addressed racial discrimination in

primary elections. This man, Lonnie Smith was an African-American voter in Texas, was denied a right to vote in a Democratic primary. Why? Because the Democratic Party in Texas had implemented a voter vetting process. And the vetting process -- what -- had one criteria. You had to be White. You couldn't be Black. All right? So that's a form of a vetting process for voters. Now in this case, the Supreme Court found that because the Texas Democratic Party relies on the state of Texas to run its primary elections. It's not an internal election within a private organization.

They depend on the state and rely on the state to execute the primary elections on their behalf; thereby, creating that very, very strong entwinement between the party and the state. That makes them a state actor subject to constitutional scrutiny. And in this case, it was racial discrimination. In my case, it's discrimination on the basis of sex and disability and my status as a male domestic violence survivor, coping with PTSD because of acts of violence against me by my ex-wife. And so the state actor doctrine applies here. And then there's Ludke v. Kuhn, which was a case where a female reporter that worked for this Sports Illustrated --

THE COURT: Mr. Liccione, I'd like it if I could interrupt you momentarily. You're claiming that the Pinellas Democratic Executive Committee is a state actor; is that correct?

MR. LICCIONE: Yes. Due to in very serious entwinement with the state, yes.

THE COURT: Okay. All right. Are you claiming that Mr. Sherosky individually or Ms. Griffith individually are state actors?

MR. LICCIONE: Yes.

THE COURT: Okay. And the case that you recited from Texas, did I hear you clearly to state that in that circumstance, that Democratic Party ran the actual election?

MR. LICCIONE: No. They relied on the State of Texas to run the election for the primary election for them.

THE COURT: Okay. Go ahead, please.

MR. LICCIONE: You know, if it -- like, your Honor, if they were running their own primary election internally and not depending on the state to run everything, you know, for that election to process the votes and count them and all that, if they ran it internally, like they were electing their own internal officers for -- which is what

they do in the -- in the -- in the party here. In fact, we just had an election on last Monday, this past Monday of new officers in which Jennifer Griffith stepped down and a new chair of the Pinellas Democratic Executive Committee --

THE COURT: Counsel.

MR. LICCIONE: -- was elected.

THE COURT: Mr. Liccione.

MR. LICCIONE: Yes.

THE COURT: Please don't go beyond the pleadings. Stay within your pleadings, sir. Go ahead.

MR. LICCIONE: Okay. Will do. The second case is Ludke v. --

THE COURT: Sir, do you have a question why I directed you to do that?

MR. LICCIONE: No. No, Your Honor.

THE COURT: You're giving me information outside the scope of your pleadings and you just referenced earlier an understanding that courts are required at that motion-to-dismiss stage to stay within the four corners. So Counsel, the -- or Mr. Liccione, the reason I'm directing you to stay with your pleading is you're giving me information outside your pleading, which I'm not supposed to

consider, and I won't. So thus, I'm asking you to do this, please stay within the pleading. Go ahead, please.

MR. LICCIONE: Okay. So Your Honor, my understanding is that Mr. Thurlow just made an argument that they're a private organization, not subject to state, you know, scrutiny, the -- this Court's jurisdiction, because they're private and I'm providing an example of ways in which they do private things and private elections. Right? And so what you're saying, I think is that that's outside the four corners of my Complaint in my response to Mr. Thurlow's argument; is that correct? I'm not objecting to it. I'm just trying to -- you're limiting my ability to provide examples that I know. Oh, I understand what you're saying, Your Honor. I'll just -- if I could move on.

THE COURT: Please do.

MR. LICCIONE: All right. In the case of Ludke v. Kuhn, Ludke was a female reporter for the Sports Illustrated who was attempting to gain access to interview New York Yankees baseball players in the 1977 World Series in the -- in the -- in the Yankee Clubhouse at Yankee Stadium. In the -- in the case of Bowie Kuhn, who was the commissioner of Major

League Baseball back then, as soon as he found out that the Yankees were about to let her into their locker room to interview players. He by fiat in the moment, instituted a reporter vetting process and prevented her from getting -- gaining access to the -- to the Yankees Clubhouse and any other clubhouse across Major League Baseball.

Now in the case -- in this case, she filed a civil rights action against Bowie Kuhn and other defendants argued that the policy violated her rights under the 14th Amendment on the basis of her sex. The U.S. District Court for the Southern District of New York held that the policy constituted state action and violated Ludke's equal protection rights. And the court reasoned that the City's significant -- the City's ownership of Yankee Stadium, the facility and the New York Yankees lease arrangement with the Yankees with the State of New York. New York City's lease arrangement with the Yankees rendered the teams and Major League Baseball's actions subject to constitutional scrutiny. So -- it's all about the state actor doctrine and the degree to which there's an entwinement between the private organization, and public facilities, and the -- and the state. So

this is a case with another -- there's another vetting policy. This one was based, not on race, but on sex, and it was supplied to -- she was the first woman that tried to gain access to a major league baseball clubhouse -- you know, locker room.

Further, in this case, at the St. Pete College Epicenter in Clearwater, Florida, every month Ms. Griffith and PDEC defendants lease or rent a meeting room inside the St. Pete College Epicenter in Clearwater. That facility is a state-owned facility. They're a state college, right? So she leases a meeting room, just a meeting room inside the epicenter. She did not lease the hallway outside the meeting room or the lobby, right? She has -- only has really any kind of authority inside the meeting room. Now, Mr. Thurlow claims that a sign was stolen or swiped my campaign sign, which just said John Liccione for Congress. She -- he's claiming that the sign was swiped inside the meeting room. It wasn't. It was as properly pled, it was -- it was swiped in the hallway where I was camp -- attempting to campaign and talk to voters as they left her meeting. I wasn't interfering with the meeting. I was expressing my First Amendment right to free speech. The speech on my -- the writing on

my sign with speech. I was -- again, I was trying to talk to voters as they left her meeting. I'm basically campaigning in the hall -- I'm literally campaigning in the hallway in a peaceful way, not interfering with her proceedings, and she came out of the -- stormed out of the meeting room when it was over and got and started haranguing me and assumed -- attempted to assume the role of state actor to enforce what she claimed was the college policy of not letting political signage inside their building.

She literally said that to me, take your sign down. You're not allowed to have -- this college won't allow you to have campaign signs anywhere, so take the sign down.

And I just -- I told her, hey, deescalate. You don't have no power over me, you know, here. I'm not doing anything wrong.

And then she went and grabbed a security officer and told her -- and snitched on me and then he came back and he just looked at the sign and did not -- did nothing, right? So that's sort of a couple wrongful acts, that's trying to assume the role of state actor to enforce a college policy, a state college policy of no campaign sign, and then

interfering with my electioneering, my campaigning activity, preventing me from displaying my political sign, my campaign sign, preventing me from talking to voters as they -- and again, and introducing myself to voters as they left her meeting and we're outside her meeting.

So I want to make it clear. This is a sort of an additional case where she -- there -- there's state actor entwinement because she's leasing the facility from the state and she herself attempted to assume the role, just by her own behavior, of the -- of a state actor enforcing a college policy, state college policy, so that -- none of that is protected -- is protected behavior under the First Amendment or under the -- or it's -- or under the anti-SLAPP statute. The anti-SLAPP statute can't be used to dismiss non-frivolous claims. The SLAPP protections don't extend to shield conduct or statements that are actionable under established legal principles. My claims for defamation, conspiracy, and election interference are all grounded in substandard law and are not frivolous, and they're certainly not retaliatory.

Your Honor, I'm -- I was basically trying to get this misbehavior, this -- these wrongful acts to

stop. That was my motivation for filing these lawsuits. It wasn't to quell free speech, you know, political --

THE COURT: Plaintiff. I appreciate your description of your motivation, but once again, if you could stay within the four corners of your Complaint. We're also at 11:20, running out of time. So I'd respectfully ask the plaintiff to do your best to wrap up in the next two minutes with your response to the motions to dismiss.

MR. LICCIONE: Okay. Your Honor, when Mr. Thurlow makes an argument in support of his Motion to Dismiss, I'm allowed to counter that to rebut that argument, and that's what I'm doing. I'm staying within the four corners of the Complaint, the Motion to Dismiss, and Mr. Thurlow's argument. And I'd ask that you allow me to continue and not -- and not interrupt me in the middle of it on the claim that it's outside the four corner of the Complaint.

THE COURT: Mr. Liccione -- Mr. Liccione, let me make sure I'm clear about something with you, sir. You started to describe to me your intent behind your actions, the filing of this Complaint. You started to describe to me that you just wanted

your actions to stop. As much as I appreciate you sharing that with me, it's not pertinent to your pleading, and it's not pertinent to the motions to dismiss that we're hearing today, so yes, sir.

MR. LICCIONE: Your --

THE COURT: I'll be redirecting you back to -- I am redirecting you back to your pleadings and any argument that's germane, either in factor in law, but to go outside the scope of that is frankly, a waste of our time in light of the fact that we now have nine minutes left for the hearing, sir. Go ahead and please wrap those for the next minute and a half. Thank you.

MR. LICCIONE: Okay, Your Honor. I will point out that in the introduction to mister -- to Defendant's Motion to Dismiss, the first paragraph states -- the first sentence says, "Plaintiff's modus operandi in filing this lawsuit is to seek revenge against PCDEC and its chair and its secretary for declining to support Plaintiff's candidacy for the United States Congress and declining to provide Plaintiff" -- "Plaintiff with a platform for his candidacy." So I think what I'm hearing you say, Your Honor, is that I'm not allowed to rebut the first sentence, the first -- he -- he's

saying that I have a -- a lawsuit.

THE COURT: Mr. Liccione -- Mr. Liccione, you're welcome to rebut whatever you'd like to, sir, but I'm going to be extremely candid with you. When the court reads a paragraph like that, it has no legal bearing on my decision-making. I completely understand why one party wants to refute what's going on, and that happens pretty much in every case. From a legal and technical and procedural standpoint, that's not something that I look to as a basis to be a decision- maker under these motions today. So sir, you're welcome to spend the rest of your one minute telling me about the intent behind your Complaint, if you'd like to, but you're unfortunately losing time to get to the substantive arguments on a legal or factual basis. Go ahead, Mr. Liccione. In the next minute, you're welcome to conclude however way you'd like to, sir.

MR. LICCIONE: Okay, Your Honor. I had no way of knowing that, but that's why I was --. Thank you. So my -- the anti-SLAPP statutes don't apply to election fraud, right? A political party, political operatives, political party officers engaging in mail ballot fraud is not an anti-SLAPP protected behavior. It's criminal. It's a violation of my

civil rights to free and fair elections. So the defendants' motion, it really misapplies First Amendment protections, the reliance on the First Amendment to shield their conducts misplaced. While the First Amendment certainly protects expressions of opinion, it doesn't protect defamatory statements made out of malice, actual malice or reckless disregard for the truth. It doesn't shield conduct that constitutes election interference, voter intimidation as I pled, civil rights violations, assault, battery. And my pleadings, my allegations when taken as true, establish that defendants exceeded the bounds of constitutionally protected speech. And I'll leave it there, Your Honor. I think that's -- my minutes up.

THE COURT: Have you had a full opportunity to respond to the motion today?

MR. LICCIONE: No, Your Honor. You cut -- you said I only had one minute left and I wasn't done, but --

THE COURT: How much more time do you need?

MR. LICCIONE: I'd like another three minutes, Your Honor.

THE COURT: Go ahead. Three minutes.

MR. LICCIONE: Okay. And mister -- Defendant's

Motion to Dismiss makes numerous factual allegations that are not in the court record and are not supported by sworn affidavit. On page 1 of their Motion to Dismiss, if you look at the footnotes, it says that Michael Sherosky is the duly elected secretary of the PCDEC, which is an unpaid volunteer part-time position. There's no -- there's no sworn affidavit about that. It's not in the case record.

Jennifer Griffith is an unpaid volunteer position as well. Again, not in the case record, not supported by sworn affidavit. And this is true throughout. I -- I'm not sure you were aware I -- I'm sort of saying this because I'm -- I don't know in advance whether you will consider something, an unsworn factual statement that's not sworn by sworn affidavit. So I want to make sure that the Court doesn't consider things that are not supposed to -- that, you know, you said is, you know, you're not going to supposed to consider, so --

I want to talk about the Marriott Hotel incident where I was -- where defendants erected tables to prevent voters from attending and talking with me at my campaign event, which was held down the hall in the Marriott Hotel from the Democratic Congressional debate that I -- that I was invited

to. And by the way, they can not invite me to debate. That's protected behavioral speech, but blocking tables -- of placing blocking tables in the hallway of a hotel to prevent and forcing the voters that attended their event down the back exit, the side exit stairwell in the rain at night, that's not protected speech. That's campaign inter -- that's election interference, campaign interference, so that -- I hadn't spoken about that before.

I would say -- I'll wrap up saying that they have failed to make a prima facie case that this is a strategic lawsuit against public participation. All of these -- I'm suing them because of all these wrongful acts, battery, assault, defamation with actual malice, election interference, election fraud, civil rights violations. They're state actors. They're so entwined with the state through the Dallas County Supervised Elections, which runs the primary elections for them, that they're subject to constitutional scrutiny and civil rights violations are proper to be these -- those counts are properly brought. Thank you, Your Honor. That's it.

THE COURT: Plaintiff, have you had that full opportunity now to respond to both of the defense

motions to dismiss?

MR. LICCIONE: Yes, sir.

THE COURT: For the -- Mr. Thurlow, do you have any rebuttal that I haven't already heard fairly quickly. Go ahead, please.

MR. THURLOW: I'll just highlight that Kissinger v. Mahoning County Republican Party case at page 727. Providing a forum for a candidate to speak is not analogous to participating in the election process. That is what the court held in that case, and I think that ultimately is a very relevant fact. And the plaintiff also admitted that he was criminally charged, both in his pleading and in his argument. And that means that there's some probable cause for those criminal charges, presumably. So in terms of a legal basis for actual malice, I don't think he's met it. Thank you, Your Honor.

THE COURT: Mr. Thurlow, have you had a full opportunity to argue both of your motions today?

MR. THURLOW: Yes, Your Honor.

THE COURT: And again, Mr. Liccione, you've had a full opportunity to respond to both motions, correct?

MR. LICCIONE: Yes, sir.

THE COURT: Okay. Mr. Thurlow, please prepare an order for me today. I'll walk through count by count. On Counts I and II, I'll deny the Motion to Dismiss on the bases of Count I being battery and Count II being assault. I'm going to -- I am going to ask for the repleading of those, though, within an amended complaint because I want to make sure that I understand what the damages are that's being alleged, primarily for it to support the subject matter jurisdiction. With regard to Count III, vicarious liability, I'm granting it, but with leave to amend. The concern the Court has based upon the arguments in reading Count III, it simply says vicariously liable, but then it references Paragraphs 8 through 56, more along the lines of a more definitive statement. I believe Plaintiff has an obligation to explain to each one of the defendants separately as to what actions occurred that support some type of vicarious liability and more importantly vicarious liability of what?

In paragraph 64, which is the only pertinent paragraph of Count III, other than paragraph 63, being a reallegation of Paragraphs 8 through 56, it simply says that Griffith and Pinellas Democrat Executive are liable for the actions of Sherosky.

Again, that requires a more definitive statement as to what conspiracy -- conspiratorial acts occurred for each defendant. So relative to Count III, it's granted with leave to amend. I'll talk about the timeframe in which to file an amended complaint in a moment. The same applies under Count IV, which is conspiracy. Again, in paragraph 65, the plaintiff realleges Paragraphs 8 -- 8 through 56, but then lumps all of the defendants together with regard to a violation of election loss. The concern I have there is it talks about how the allegation in 69, the defendants' actions intended to impede Plaintiff's ability to campaign freely. This is the intent of Florida Statute 768.25 -- 295. I'm dismissing Count V with prejudice per the argument of defense Counsel that the case law authority in Florida supports dismissal with prejudice. So Count V, violation of election laws against all defendants is dismissed with prejudice. With regard to Count VI, violation of civil rights, I'm granting the Motion to Dismiss without prejudice. In other words, leave to amend. It's not proper to allege violations of Florida law along with federal law. If the plaintiff's in a position to feel like violations of civil rights occurred according to

Florida law, that would stand as one count. If you believe that violations of federal law standalone, that would be a second count. The other concern that I have is -- let me look back here at my note.

Plaintiff argues that he is a protected class. It doesn't really argue the protected class status, not a requirement, but a suggestion that when Plaintiff amends this count, that can -- that Plaintiff clarify exactly his standing as a protected class under either a state or a federal civil rights violation. So again, under Count number VI, that's dismissed without prejudice. Count VII is also dismissed without prejudice to refile an amended complaint, alleging all of the elements necessary to meet a defamation claim that's required as a matter of pleading.

With Count VIII, that's granted with prejudice. Count VIII is not a standalone count. Counts are causes of action. Count VIII simply describes damages. Again, as a suggestion for Plaintiff and not a requirement, this Court must have subject matters -- subject matter jurisdiction, which requires a threshold amount being seeked as a recovery. You've alleged in some of these, at least one of these, that you meet the threshold above

$50,000. Suggestion, but not a requirement, that you identify what you believe damages have occurred per your count, as opposed to leaving it just to a final count for damages. Because again, procedurally that's not accurate. A count for damages should be pled as damages supporting, or -- that are supported by causes of action.

I'm going to give the -- in light of the fact that it's December 13th, I will give the defense -- plaintiff until December 30 to file an amended complaint. Mr. Thurlow, any -- and I'm sorry, you also argued with regard to the causes of action filed in the Clearwater case, what's been referenced to this case, 393 -- excuse me, 24-3939, the Clearwater case. I agree with defense counsel that there's no private rights of action, and it fails to allege sufficient elements. I will grant it without prejudice to see if the plaintiff can resurrect that and be able to describe the basis to have a private right of action under those claims, but more particularly the plaintiff shall replete specific elements to support those allegations.

Mr. Thurlow, any questions about what's in that order today? Anything else you'd like to address in that order today?

MR. THURLOW: To clarify, with the counts granted without prejudice, was that under anti-SLAPP, or for other reasons?

THE COURT: I -- I'm sorry, I -- I'm not sure if I understand your question. Ask it again, please.

MR. THURLOW: So you granted the Motion to Dismiss on Counts VI, VII, and -- VI and VII without prejudice, as well as in the Clearwater case, I believe all the counts without prejudice.

Does that make any kind of decision on the applicability of anti-SLAPP, or is the Court deferring ruling on that?

THE COURT: No. The Court is fine that what you all call anti-SLAPP, it's actually referred to as the SLAPP statute 768.295. That statute applies to Paragraph number 5, which is the violation of election laws. Again, I'm going to not necessarily apply it for purposes of dismissing with prejudice. As to Count VI, I am going to give the plaintiff an opportunity to reallege that in an amended complaint. And I want to be clear for Defense because I think this might go part and parcel to your question. There's no prohibition, once an amended complaint is filed, to reargue the SLAPP

statute to see if it's applicable to what's been in -- under the amended complaint.

Mr. Thurlow, does that address your question?

MR. THURLOW: Yes, it does, Your Honor.

THE COURT: Okay. Anything else, Mr. Thurlow, for the preparation of the order today?

MR. THURLOW: Not at this time.

THE COURT: Plaintiff, any questions about what's in the order, and any -- anything else you believe the Court should address in that order today?

MR. LICCIONE: Yes, Your Honor. I was a little fuzzy on when you were covering the Clearwater counts. Could you identify again for me which counts --

THE COURT: All counts in the Clearwater case -- all counts in the Clearwater case, which is case number 24-3939-CI, that applied to Jennifer Griffith, because those were consolidated.

And as a -- as a side note, if you will, Jennifer Griffith is no longer part of the pleadings in case number 24-3939. I need the Clearwater case. So anything that applies to Jennifer Griffith must be contained in the amended complaint that the plaintiff files if Plaintiff chooses to file that

amended complaint and does so by December 30th. The dismissal is granted without prejudice.

Making a note for you, Mr. Liccione, that I don't believe you've properly identified a private right of action, and I don't believe you've properly pled sufficient allegations to submit your causes of action. I'm giving you another opportunity to do that.

The defense counsel has an opportunity to come back once you filed that amended complaint and file whatever response he would like to. If it includes a notion to dismiss, the Court will reconsider any argument that he would like to make, which would include, but not be limited to that the plaintiff hasn't established a private right of action, and/or that the plaintiff hasn't sufficiently alleged the required elements to support each cause of action, and the applicability of the SLAPP statute.

Mr. Liccione, does that help clarify your question?

MR. LICCIONE: Yes, sir. I'm good.

THE COURT: Anything else -- anything else that you would like the Court to address in that order today?

MR. LICCIONE: No, sir.

THE COURT: Mr. Liccione, you're required to start working with Plaintiff's -- Defense counsel on a case management order that basically gets us to full disposition. I would ask that you start to circulate a draft of that, knowing however, that you have a deadline of December 30 to file an amended complaint if you choose to.

Any questions on that?

MR. LICCIONE: You're talking about a draft of the amended -- the new amended complaint, correct, Your Honor?

THE COURT: The order today is granting the Motion to Dismiss. The only two counts that I did not grant the Motion to Dismiss, are Counts I and II.

MR. LICCIONE: Okay.

THE COURT: The battery -- the battery count and the assault count. Let me be clear, if the plaintiff doesn't file an amended complaint, all of the other counts have gone away, to use a manner speaking, including anything that was filed against Ms. Griffith in case 24-3939. If you do not file an amended complaint, then you'd have to make sure that this Court understands how you meet the subject matter threshold to support your battery claim and

your assault claim. If you file an amended complaint, again, you must readdress Counts II through VIII, and again, VIII being damages, which the Court finds is not a cause of action. And you're also addressing all of the counts that you include against Ms. Griffith in case number 24-3939. The deadline to file that amended complaint is December 30.

Mr. Liccione, any other questions?

MR. LICCIONE: Yeah -- yes, Your Honor. I was just asking about when you said that I need to start circulating a draft. I need to start circulating a draft. I'm just trying to get clarity on what -- a draft of what exactly?

THE COURT: A case management order. If you'll read our administrative orders, we require a case management order that acts as a scheduling order that gets this case to full disposition within the Supreme Court mandated timeframe, okay?

MR. LICCIONE: Right. But you said that Mr. Thurlow is supposed to draft it, not me. So he's the one that needs to circulate it, correct? I'm just trying to get clarity on that, who drafts the order?

THE COURT: I believe you're confused. So let

me clarify. The order from today is granting the motions to dismiss separately. In all civil litigation, we require a case management order that acts as a scheduling order.

MR. LICCIONE: Well --

THE COURT: The plaintiff --

MR. LICCIONE: Okay.

THE COURT: -- if you look at -- if you look at the case file, in the case file there's a case management status order filed on August 29 of 2024.

If you go to paragraph 7 of that order, it specifically states what the plaintiff's obligations are. Please make sure you comply with that.

MR. LICCIONE: All right. I'll do. Thank you.

THE COURT: From a case management standpoint, what I'm going to do is this, I'm going to have any other -- all other pending motions to be reset, because we've run out of time today, along with another case management conference. And what I'm going to do is this, Mr. Thurlow, please include the meet and confer requirement as I've described previously before any future motions are filed. The parties shall meet and confer. If a motion is filed, it shall be set for hearing. In my opinion, that's timely set as 30 days or less. And if there

is a hearing that there's another meet and confer before the hearing occurs, counsel's failure to meet and confer is not necessarily actionable amongst the parties. The Court will simply take that into consideration if the Court wants to consider imposing sanctions.

So counsels -- or excuse me, so parties on both sides, Mr. Liccione and Mr. Thurlow, please don't file arguments about a failure to meet and confer and seek sanctions. You're welcome to bring that up in the context of any hearing we have, but please make sure that you understand, it is mandated by the Court for meets and confers.

Mr. Thurlow, the latitude here is this, I don't know your response to the amended complaint that's required to be filed by December 30. If your response is another motion to dismiss, again, I would ask you, and I'm sorry, the exception will be no meet and confer if it's a motion to dismiss. And the reason for the exception is, I would imagine that it's going to be very similar arguments that you both have made. If you all would like to confer on it, you are welcome to, but I'll -- I won't require for a motion to dismiss.

So Mr. Thurlow, if your response to the amended

complaint is a motion dismiss, I would ask that you get that filed for a hearing timely. I would ask that you work with the -- Mr. Liccione to have enough time for that motion to be heard. Also include a case management conference, and also include all pending motions. It's difficult to find an hour on my docket, it's less difficult to find a half hour. What I'm trying to do is get you back timely, but also at the same time, trying to create a sufficient amount of time to hear as many motions as we can.

With that as the objective, we'll do our best to balance it, but I want to make sure we have at least enough time to hear any motion to dismiss as well as a case management. All of the pending motions will also be noticed and we'll hear it on a time permitted basis.

Mr. Thurlow, if you choose to file an answer and amended complaint, then counsels, I would ask you to set all pending motions in a case management conference within the next 45 to 60 days after the answer and affirmative defense have been filed.

Mr. Thurlow, any questions on that?

MR. THURLOW: No, Your Honor.

THE COURT: I don't need to include that in a

case management order per se, since we have a court reporter today, but that's the objective, depending on how the defense responds to the amended complaint.

For the plaintiff, any questions about the case management discussion?

MR. LICCIONE: No, sir.

THE COURT: Everybody on this call have a great rest of your day and stay safe.

MR. THURLOW: Thank you, Your Honor.

MR. LICCIONE: Thank you, Your Honor.

THE REPORTER: Thank you, Your Honor.

(HEARING CONCLUDED AT 11:44 A.M. ET)

C E R T I F I C A T E

STATE OF FLORIDA)

COUNTY OF ORANGE)

I, Vanessa McCormick, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceeding, and that said transcript is a true record of the said proceeding.

I FURTHER CERTIFY that I am not of counsel for, related to, or employed by any of the parties or attorneys involved herein, nor am I financially interested in said action.

Submitted on: February 7, 2025



Vanessa McCormick

Court Reporter, Notary Public

EXHIBIT E

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

ORIGINAL

CASE NO.: 24-002994-CI
DIVISION: SECTION 19

JOHN LICCIONE,
Petitioner

V.

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, ET AL,
Respondents

HEARING

DATE: JANUARY 28, 2025
REPORTER: DANIELA RODRIGUEZ-GUERRERO

400 North Ashley Drive, Suite 2600
TAMPA, FL 33602
100 East Pine Street, Suite 308
ORLANDO, FL 32801
CORPORATE
4651 Salisbury Road, 4th Floor
JACKSONVILLE, FL 32256

APPEARANCES

PRO SE:

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Telephone No.: (443) 698-8156
E-mail: jliccione@gmail.com
(Appeared via teleconference)

ON BEHALF OF THE RESPONDENTS, PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, MICHAEL J. SHEROSKY, AND JENNIFER W. GRIFFITH:

George A.D. Thurlow, Esquire
Rahdert & Mortimer, P.A.
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St. Petersburg, Florida 33701
Telephone No.: (727) 823-4191
E-mail: GThurlow@rahdertlaw.com
(Appeared via teleconference)

Also Present: Thomas Ramsberger; Mark Herron, Interested Party

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STIPULATION

The hearing was taken at MILESTONE REPORTING COMPANY, 315 EAST ROBINSON STREET, SUITE 510, ORLANDO, FLORIDA 32801, via teleconference in which all participants attended remotely, on TUESDAY the 28th day of JANUARY 2025 at 3:30 p.m. (ET); said hearing was taken pursuant to the FLORIDA Rules of Civil Procedure

PROCEEDINGS

THE COURT: Afternoon. This is Judge Ramsberger for the 3:30 hearing. This is case 24-2994. Do we have counsel, or do we have the plaintiff on?

MR. LICCIONE: Yes. Plaintiff John Liccione here.

THE COURT: You're still pro se; is that correct?

MR. LICCIONE: That's correct, sir.

THE COURT: All right. And how about for the defendants? Do we have counsel on the call?

MR. THURLOW: Yes. George Thurlow on behalf of Defendant Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith.

THE COURT: All right. And then good afternoon. How about a court reporter? Do we have a court reporter today?

THE REPORTER: Yes, Your Honor. Daniela Rodriguez with Milestone.

THE COURT: All right. Good. Good afternoon. Again, Daniela, we spoke earlier. You were on before my last hearing was over, correct?

THE REPORTER: Yes, Your Honor.

THE COURT: Thank you. Anybody else on the

call today?

MR. HERRON: Yes. Mark Herron, an interested citizen.

THE COURT: All right. Good afternoon. Welcome. To listen in, please mute your microphone. Anybody else? All right. I see two motions filed by the plaintiff. One is in a motion to extend a deadline to file a second amended complaint. Looks like that motion was filed December 30th, 2024. And then the second motion by Plaintiff is a motion for clarification. Mr. Liccione, did -- let me start with this. Did you get a copy of the transcript from the last hearing that we had back on December 13th of 2024?

MR. LICCIONE: I haven't yet, Your Honor.

THE COURT: You prepared the order granting the defendant's Motion to Dismiss Plaintiff's Amended Complaints; is that correct?

MR. LICCIONE: No. George Thurlow did. Attorney Thurlow did.

THE COURT: Mr. Thurlow you prepared that order?

MR. THURLOW: That is correct, Your Honor. I prepared that order, ran it by Mr. Liccione, who has an objection, which was noted in our cover letter.

THE COURT: Okay. Mr. Liccione, I've gone through the order before I have entered it, and the order is consistent with my notes, and I would think consistent with a transcript of the hearing with regard to addressing each and every one of the counts in your amended -- or in your complaint. And I want to be clear, I believe you unilaterally filed an amended complaint already that the courts rejected, so this would be addressing a time in which you were to file an amended complaint, which gave you December 30th of 2024 to file that complaint, correct?

MR. LICCIONE: Yes, sir.

THE COURT: Okay. So sir, I'm going to start with this premise. This order is consistent with my notes. It clearly goes through and either denies or grants, and it says with or without prejudice when appropriate. So what is the clarification that you're looking for that's not clear from this order?

MR. LICCIONE: Yeah. There are two areas on this order. The one is the last paragraph which says, "Nothing in this order shall be construed as an adjudication of defendant's legal or factual defenses, including the applicability of Florida Statute 768-95, except as otherwise provided, and

Defendants are permitted to raise these issues for adjudication by the court in subsequent motions." So there's that issue. That -- that's the one I'm requesting clarification on, as I've pleaded in my motion for clarification. And then the second thing is on the first page of the order, there's a Number 1 that talks about -- you denied the motion to dismiss on Counts 1 and 2 of battery and assault as they -- "as they pertain to defendant Michael Sherosky." So there's a second issue there that I'm seeking clarification on. And the clarification is going to drive my decision, assuming you grant me an extension, on whether I do file an amended complaint, second amended complaint. Because in the absence of clarification, my -- I feel I'm being prejudiced because I'm not sure. Anyway, so that -- I'll stop there. So that's what I -- so that's what I'm seeking clarification on. Those are the things that I -- Mr. Thurlow and I did not agree with. So you know -- and that's what I'm seeing clarification on here.

THE COURT: Okay. And I want to be careful about something, and I'll put it on the record this way. When somebody asks for clarification, they certainly have that right, and I certainly have the

obligation to look. What's difficult for me is to go back and change something that might be inconsistent with a prior ruling. And so if I have a hesitancy to clarify something that does not need to be clarified, I want Plaintiff to understand. That's the concern this Court always has. So in other words, I'm not being asked to re-rule on something. That would be a motion for reconsideration. Let me address the second -- the first point first. If you go to that last paragraph, when it says, counsel -- excuse me, when it says that, forgive me, "nothing in this order shall be construed." Plaintiff, I'm not sure what else to tell you other than the plain reading of this is pretty clear. I have not made any ruling on the merits of any applicable defenses. Depending on whether you file an amended complaint or not will determine how the defendant responds. And again, you seem to be somewhat versed in the law, so you should understand that parties are entitled to respond to lawsuits. A response could be another motion to dismiss. If they file what's called a responsive pleading, then that's an answer. It may include affirmative defenses. It may include a counterclaim. So my understanding of the reason why

defense counsel put this in there is to make it clear. The only thing that I've ruled upon at the hearing was your complaint, so nothing is to be construed in this order that would limit anything that the defense wants to respond to. I want to be abundantly clear about something. It doesn't mean that their answer and affirmative defenses and any counterclaim goes forward. It just means they have a right to go ahead and raise those as defenses. So nothing's been adjudicated today in this order that I entered on December 20th. Plaintiff, any questions about the clarification?

MR. LICCIONE: Am I going to be made -- given the opportunity to make oral argument, Your Honor, or not? I'd like to clarify --

THE COURT: None. No, none whatsoever, because Mr. Liccione, you asked for clarification, and my clarification is that the document speaks for itself. I've given --

MR. LICCIONE: That -- that's -- let me talk --

THE COURT: -- you some additional information so you can understand the plain reading of it, but the plain reading of it is --

MR. LICCIONE: I'm going to go on the record now, Your Honor --

THE COURT: -- no adjudication of the defense -- - legal or factual defenses regardless of the --

MR. LICCIONE: -- that you denied the motion to dismiss on Counts 1 and 2 --

THE COURT: Mr. Liccione, can you stop talking?

MR. LICCIONE: -- which were based on an anti-SLAPP defense.

THE COURT: Mister --

MR. LICCIONE: You grant -- you denied their motion.

THE COURT: -- Liccione, can you stop talking? Counsel --

MR. LICCIONE: Therefore, anti-SLAPP has been knocked down and this now rescue is now barred by lateral estoppel from being brought up on argument again.

THE COURT: Are you done, Mr. Liccione?

MR. LICCIONE: So your statements, Your Honor, that --

THE COURT: Liccione, are you done?

MR. LICCIONE: No, I'm not done.

THE COURT: Okay. Counsel, I'm adjourning this hearing. We're resetting it in person. Mr. Liccione, I'm going to include an order to show cause hearing for you. Sir, I gave you a warning to

stop talking because you're interrupting the Court's business. That's contemptible, okay? What I'm going to do is have a hearing in person. We're going to address your motions today in person, as well as my order to show cause why not to hold you in contempt for interrupting the Court and interrupting the Court's business. If you cannot afford an attorney, I'll appoint a public defender to represent you. If I make a finding of contempt, then I'll do the penalty phase. The penalty phase may include issuing sanctions, which may include incarceration up to one day short of six months. Mr. Liccione, do you have any questions about resetting these motions for hearing in person, along with an order to show cause hearing for your conduct?

MR. LICCIONE: I understand what you're saying, sir.

THE COURT: Very good. I'll make sure that we do this within the next two to three weeks, if possible, Mr. Thurlow, please reach out to my office through my judicial assistant and I'll be providing dates and times to have that in hearing. Actually, I'm going to correct myself. That's just going to be on an order to show cause hearing. The motion

for clarification is denied because the order speaks for itself. Mr. Liccione decided to interrupt the Court and not wants to hear a clarification on Number 1. Number 1, Paragraph number 1 in the order clearly speaks for itself. So the response by this Judge to this pro se plaintiff is, the plain reading of the order speaks for themselves on both issues raised. No need for further clarification. Therefore, motion denied. Motion for Deadline denied. That -- excuse me. Mr. Liccione, I want to be clear about something. I'm denying your request for an extension. However, you already got it by 30 days because we're here at least one month later. In my order that Mr. Thurlow is going to prepare and upload to JAWS by no later than 4:00 p.m. tomorrow, the Court is going to extend your deadline to file an amended complaint, if desired, by no later than 4:00 p.m., and that's going to be one week from today. So Mr. Thurlow, you can include that date and time, one week from today. If it's not filed by then, then it's delinquent. Mr. Thurlow, any question about the order today that I'll have you prepare so it's uploaded to JAWS?

MR. THURLOW: No questions, Your Honor.

THE COURT: 1 and 2 denied. However, because

Plaintiff came back 30 days after the deadline, I believe Mr. Thurlow, that's going to be February 4th, correct?

MR. THURLOW: That's my read of the calendar, Your Honor.

THE COURT: February 4th of 2025, 4:00 p.m. deadline for second amended -- for the amended complaint, if Plaintiff desires. So now what I'll do is have Plaintiff -- you reach out to my judicial assistant and you can coordinate a date and time with Mr. Liccione to have his order show cause hearing in person. Mr. Thurlow, any questions about that?

MR. THURLOW: No questions, Your Honor.

THE COURT: Very good. Make sure that there's a court reporter present. Mr. Liccione, any questions about the Court's order today?

MR. LICCIONE: No, sir.

THE COURT: Thank you, sir. Have a good rest of your day and stay safe, everybody.

MR. THURLOW: Thank you, Your Honor.

MR. HERRON: Thank you, Your Honor.

(HEARING CONCLUDED AT 3:41 P.M. ET)

C E R T I F I C A T E

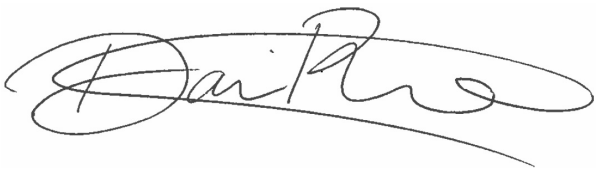
STATE OF FLORIDA)

COUNTY OF ORANGE)

I, Daniela Rodriguez-Guerrero, Court Reporter and Notary Public for the State of Florida at Large, do hereby certify that I was authorized to and did report the foregoing proceeding, and that said transcript is a true record of the said proceeding.

I FURTHER CERTIFY that I am not of counsel for, related to, or employed by any of the parties or attorneys involved herein, nor am I financially interested in said action.

Submitted on: February 7, 2025



DANIELA RODRIGUEZ-GUERRERO

Court Reporter, Notary Public

EXHIBIT F

IN THE CIRCUIT COURT IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA, CIVIL DIVISION
CASE NO.: 24-002994-CI-19

JOHN WILLIAM LICCIONE,
Plaintiff,
vs.

PINELLAS DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL,
Defendants.
_____/

ORDER TO SHOW CAUSE

THIS CAUSE came before the Court for telephonic hearing on January 28, 2025, during which the Plaintiff, John William Liccione, disrupted the Court numerous times and, after being advised by the Judge to not disrupt the hearing, continued to disrupt the Court's business. The Plaintiff engaged in similar conduct during two prior telephonic hearings. The Court is hereby entering this Order to Show Cause for the Plaintiff to explain why the Court should not find the Plaintiff in direct criminal contempt pursuant to Fla. R. Crim. P. 3.830 for the Plaintiff's misconduct during the hearing. Therefore, it is hereby

ORDERED AND ADJUDGED as follows:

The Plaintiff, John William Liccione, is hereby **ordered to appear in person** before the Court on:

Date/Time: **Tuesday, February 11, 2025, at 11:45a.m.**
Judge: **Thomas Ramsberger, Circuit Judge**
Location: **St. Petersburg Judicial Building**
545 1st Avenue North, 2nd Floor, Courtroom 2A
St. Petersburg, Florida 33701

The Plaintiff will at that time provide the Court with testimony as to why he should not be found in contempt. Should the Court find the Plaintiff in contempt, then the Court will set another hearing to determine if any sanctions will be imposed upon the Plaintiff, including but not limited to, incarceration for such contempt.

FAILURE OF JOHN WILLIAM LICCIONE TO APPEAR IN COURT AT THE SCHEDULED TIME MAY RESULT IN THE COURT ISSUING A WARRANT FOR HIS ARREST. IF ARRESTED, YOU MAY BE HELD IN JAIL UP TO FORTY-EIGHT (48) HOURS BEFORE A HEARING IS HELD.

DONE AND ORDERED at St. Petersburg, Pinellas County, Florida, on February _____, 2025.

Electronically Conformed 2/3/2025
Thomas Ramsberger
_____
THOMAS RAMSBERGER
Circuit Judge

Copies furnished via JAWS to:
John William Liccione, Plaintiff, Pro Se
George Thurlow, Counsel for Defendants

EXHIBIT G

IN THE CIRCUIT COURT IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA, CIVIL DIVISION
CASE NO.: 24-002994-CI-19

JOHN WILLIAM LICCIONE,
Plaintiff,
vs.

PINELLAS DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL,
Defendants.
_____/

AMENDED
ORDER TO SHOW CAUSE

THIS CAUSE came before the Court for telephonic hearing on January 28, 2025, during which the Plaintiff, John William Liccione, disrupted the Court numerous times and, after being advised by the Judge to not disrupt the hearing, continued to disrupt the Court's business. The Plaintiff engaged in similar conduct during two prior telephonic hearings. The Court is hereby entering this Order to Show Cause for the Plaintiff to explain why the Court should not find the Plaintiff in direct criminal contempt pursuant to Fla. R. Crim. P. 3.830 for the Plaintiff's misconduct during the hearing. Therefore, it is hereby

ORDERED AND ADJUDGED as follows:

The Plaintiff, John William Liccione, is hereby **ordered to appear in person** before the Court on:

Date/Time: **Thursday, April 10, 2025, at 11:45a.m.**
Judge: **Thomas Ramsberger, Circuit Judge**
Location: **St. Petersburg Judicial Building**
545 1st Avenue North, 2nd Floor, Courtroom 2A
St. Petersburg, Florida 33701

The Plaintiff will at that time provide the Court with testimony as to why he should not be found in contempt. Should the Court find the Plaintiff in contempt, then the Court will set another hearing to determine if any sanctions will be imposed upon the Plaintiff, including but not limited to, incarceration for such contempt.

FAILURE OF JOHN WILLIAM LICCIONE TO APPEAR IN COURT AT THE SCHEDULED TIME MAY RESULT IN THE COURT ISSUING A WARRANT FOR HIS ARREST. IF ARRESTED, YOU MAY BE HELD IN JAIL UP TO FORTY-EIGHT (48) HOURS BEFORE A HEARING IS HELD.

DONE AND ORDERED at St. Petersburg, Pinellas County, Florida, on February _____, 2025.

24-002994-CI 2/11/2025 3:34:16 PM
Circuit Judge Thomas Ramsberger
24-002994-CI 2/11/2025 3:34:16 PM

THOMAS RAMSBERGER
Circuit Judge

Copies furnished via JAWS to:
John William Liccione, Plaintiff, Pro Se
George Thurlow, Counsel for Defendants

ELECTRONICALLY FILED 2/11/2025 3:34:17 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

EXHIBIT H

Gmail John Liccione <jliccione@gmail.com>

RE: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

George Thurlow <GThurlow@rahdertlaw.com> Wed, Feb 12, 2025 at 3:11 PM
To: John Liccione <jliccione@gmail.com>
Cc: Teresa McCreary <TMcCreary@rahdertlaw.com>

Mr. Liccione:

If you are truly unavailable on 2/18, I can also make the time on 2/17 work. Please advise as to your availability.

George Thurlow, Esq.

Associate Attorney

Rahdert & Mortimer, PLLC

535 Central Avenue

Suite 200

St. Petersburg, FL 33701

Office: (727)823-4191 ext. 409

Fax: (727)513-5600

GThurlow@RahdertLaw.com

THIS MESSAGE AND ANY FILES TRANSMITTED WITH IT ARE CONFIDENTIAL AND INTENDED SOLELY FOR THE INDIVIDUAL OR ENTITY TO WHOM THEY ARE ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE USE OF THE CONTENTS OF THIS TRANSMISSION IS PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, DESTROY IT IMMEDIATELY. ***CONFIDENTIAL***

From: Section19 <Section19@jud6.org>
Sent: Wednesday, February 12, 2025 3:09 PM
To: George Thurlow <GThurlow@rahdertlaw.com>; Teresa McCreary <TMcCreary@rahdertlaw.com>; Milestone Reporting (Scheduling@milestonereporting.com) <Scheduling@milestonereporting.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Good afternoon Attorney Thurlow,

Thank you for your email.

This Order to Show Cause hearing needs to be scheduled sooner rather than later.

The only other dates I now have available are as follows:

M Feb. 17 11:45am

TH Feb. 20 11:45am

Please let me know as soon as possible which of these dates works best.

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

* *UNTIL FURTHER NOTICE*, *ALL HEARINGS* set before Judge Thomas Ramsberger will be conducted by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

Please state the date the motion was filed when requesting a hearing time slot via JAWS.

All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: George Thurlow <GThurlow@rahdertlaw.com>
Sent: Wednesday, February 12, 2025 12:16 PM
To: Section19 <Section19@jud6.org>; Teresa McCreary <TMcCreary@rahdertlaw.com>; Milestone Reporting (Scheduling@milestonereporting.com) <Scheduling@milestonereporting.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Dear Ms. McGivern:

I am available February 18th but not February 19th. Mr. Liccione has advised that he is unavailable on February 18th, and has requested that the hearing be set sometime after March 11th and has advised of his unavailability for several dates in March after 3/11.

George Thurlow, Esq.

Associate Attorney

Rahdert & Mortimer, PLLC

535 Central Avenue

Suite 200

St. Petersburg, FL 33701

Office: (727)823-4191 ext. 409

Fax: (727)513-5600

GThurlow@RahdertLaw.com

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From: Section19 <Section19@jud6.org>
Sent: Wednesday, February 12, 2025 10:48 AM
To: Teresa McCreary <TMcCreary@rahdertlaw.com>; Milestone Reporting (Scheduling@milestonereporting.com) <Scheduling@milestonereporting.com>
Cc: George Thurlow <GThurlow@rahdertlaw.com>; John Liccione <jliccione@gmail.com>
Subject: RE: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Good morning Teresa,

Thank you for your email.

I apologize, however, I need to move the April 10, 2025, 11:45am hearing due to a conflict.

Please let me know if Mr. Liccione and Attorney Thurlow are available on one of the following dates/times:

T Feb. 18 11:45am, 1:15pm

W Feb. 19 8:45, 11:45am

I appreciate your assistance. Again, I apologize for the inconvenience.

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

* *UNTIL FURTHER NOTICE*, *ALL HEARINGS* set before Judge Thomas Ramsberger will be conducted by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

Please state the date the motion was filed when requesting a hearing time slot via JAWS.

All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: Teresa McCreary <TMcCreary@rahdertlaw.com>
Sent: Wednesday, February 12, 2025 10:08 AM
To: Milestone Reporting (Scheduling@milestonereporting.com) <Scheduling@milestonereporting.com>
Cc: George Thurlow <GThurlow@rahdertlaw.com>; John Liccione <jliccione@gmail.com>; Section19 <Section19@jud6.org>
Subject: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Please schedule a court reporter to appear in person on April 10, 2025 at 11:45 am. Attached is a copy of the Amended Order to Show Cause for the information you may require.

Note that this is an IN PERSON hearing.

Please let me know if you have any questions. Thank you.

Teresa M.O. McCreary, FRP

Florida Registered Paralegal

FBN #0292645; CTM-103885

Paralegal/Legal Assistant

to George K. Rahdert, Esquire

Rahdert & Mortimer, PLLC

535 Central Avenue

St. Petersburg, FL 33701

Phone: (727) 823-4191 X428

Fax: (727) 823-6189

EFax: 7275135600@hostmyfax.com

Email: TMcCreary@rahdertlaw.com



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EXHIBIT I

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

THE COURT'S MOTION TO STAY AND ORDER

PLEASE TAKE NOTICE that the Court hereby moves *sua sponte* to stay the instant proceeding.

1. The Court has become aware that Plaintiff filed suit on August 23, 2024 in the United States District Court for the Middle District of Florida, case number 8-24-cv-2005-SDM-NHA ("federal action").

2. The federal action involves many of the same defendants, some of the same claims, and the same nucleus of facts as the instant case.

3. Plaintiff did not file the instant action until September 3, 2024.

4. "Generally, when a state lawsuit is filed that involves the same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated." *Roche v. Cyrulnik*, 337 So. 3d 86, 88 (Fla. 3d DCA 2021) (citations omitted). In *OPKO Health, Inc. v. Lipsius*, the Third District of Florida further stated the following:

> Although a trial court has broad discretion to order or refuse a stay of an action pending before it, it is nonetheless an abuse of discretion to refuse to stay a subsequently filed state court action in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues. This rule is based on principles of comity.

OPKO Health, Inc. v. Lipsius, 279 So. 3d 787, 791 (Fla. 3d DCA 2019) (citing *Fla. Crushed Stone Co. v. Travelers Indem. Co.*, 632 So. 2d 217, 220 (Fla. 5th DCA 1994)).

5. For this general rule of comity to apply, the causes of action asserted in the two cases need not be identical nor must the two actions have identical parties. *Roche*, 337 So. 3d at 88 (citations omitted).

6. Because Plaintiff filed his federal action prior to the instant case, the Court hereby moves to stay the instant proceeding until Plaintiff's federal action has been adjudicated.

Additionally, it is further **ORDERED** as follows:

1. The Court's Motion to Stay will be heard at the previously-scheduled hearing on **November 12, 2024** at **3:00 P.M.**

2. Any party who opposes the instant Motion is directed to file and serve a written response and memorandum of law opposing the instant Motion. The Court requests that any such opposition also be personally served on the undersigned by **10:00 A.M.** on **November 12, 2024** at section7@jud6.org.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 4th day of November, 2024.

Electronically Conformed 11/4/2024
Patricia Muscarella

Honorable Patricia A. Muscarella
Circuit Civil Judge

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the parties listed below this 4th day of November, 2024 in the manner specified below.

_____
Judicial Assistant

Copies furnished to:

Parties served by email

John Liccione
jliccione@gmail.com
Plaintiff

Kirby Z. Kreider, Esq.
kkreider@pinellas.gov
eservice@pinellas.gov
Counsel for Defendant, Julie Marcus

George A.D. Thurlow, Esq.
gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Counsel for Defendant, Jennifer Griffith

James B. Lake, Esq.
1861 53rd St. S.
jlake@tlolawfirm.com
tgilley@tlolawfirm.com
Counsel for Defendant, Cathy Salustri Loper

Parties served by U.S. mail

Mark Weinkrantz
4738 Belden Circle
Palm Harbor, FL 34685
Defendant

Patrick Heinzen
1785 40th Ave. N.
St. Petersburg, FL 33714
Defendant

EXHIBIT J

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

ORDER GRANTING COURT'S MOTION TO STAY

THIS CAUSE came before the Court on November 12, 2024 upon the Court's Motion to Stay ("Motion") dated November 4, 2024, and the Court, having considered the Motion, the case file, the applicable law, the argument of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS** the following:

1. On August 23, 2024, Plaintiff filed a federal lawsuit in the Middle District of Florida, Case No.: 8:24-cv-02005-SDM-NHA ("the federal lawsuit").

2. On September 3, 2024, Plaintiff initiated the instant lawsuit. The federal lawsuit and the instant lawsuit contain many of the same defendants. Additionally, there is significant factual overlap between the two actions.

3. "Generally, when a state lawsuit is filed that involves the same nucleus of facts as a previously filed federal lawsuit, principles of comity and the desire to avoid inconsistent results require the stay of the subsequently filed state action until the prior filed federal action has been adjudicated." *Roche v. Cyrulnik*, 337 So. 3d 86, 88 (Fla. 3d DCA 2021) (citations omitted).

4. It is "an abuse of discretion to refuse to stay a subsequently filed state court action

in favor of a previously filed federal action which involves the same parties and the same or substantially similar issues." *OPKO Health, Inc. v. Lipsius*, 279 So. 3d 787, 791 (Fla. 3d DCA 2019) (citation omitted).

5. For this general rule of comity to apply, the causes of action asserted in the two cases need not be identical nor must the two actions have identical parties. *Roche*, 337 So. 3d at 88 (citations omitted).

6. The federal lawsuit and the instant lawsuit involve the same nucleus of facts, namely allegations of election fraud by the various Defendants as to the August 20, 2024 Democratic primary election for Florida's 13th Congressional District.

7. Counsel for Defendants stipulated to staying the instant litigation pending the outcome of the federal lawsuit assuming the following conditions were observed: 1) claims against Defendant, JENNIFER GRIFFITH would be transferred to Section 19 and joined with Plaintiff's prior lawsuit (See Order Granting Court's Ore Tenus Motion To Consolidate); 2) all Defendants who asserted an anti-SLAPP defense did not waive their right to an expedited hearing if such is necessary upon resolution of the federal lawsuit (see section 768.295(4), Fla. Stat. (2024)).

8. Although Plaintiff has objected to the issuance of a stay, the Court finds that the above-provided rule of comity applies and requires the Court to stay the instant action until the federal lawsuit has been adjudicated.

Accordingly, it is

ORDERED and ADJUDGED:

1. The Court's Motion is hereby **GRANTED.**

2. Plaintiff is required to file a copy of the final judgment for the federal lawsuit with this Court within **FIVE (5) DAYS** of the final judgment's date of entry.

3. The Court shall conduct a case management conference in the instant matter within **THIRTY (30) DAYS** of the entry of final judgment in the federal lawsuit to determine which, if any, of Plaintiff's claims in the instant lawsuit require adjudication by this Court. The Court shall hear any remaining anti-SLAPP defenses, if any, at said case management conference.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

Electronically Conformed 11/20/2024
Patricia Muscarella

Honorable Patricia A. Muscarella
Circuit Civil Judge

Copies furnished to:

Parties served by email

John Liccione
jliccione@gmail.com
Plaintiff

Kirby Z. Kreider, Esq.
kkreider@pinellas.gov
eservice@pinellas.gov
Counsel for Defendant, Julie Marcus

George A.D. Thurlow, Esq.
gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Counsel for Defendant, Jennifer Griffith

James B. Lake, Esq.
jlake@tlolawfirm.com
tgilley@tlolawfirm.com
Counsel for Defendant, Cathy Salustri Loper

John F. McGuire, Esq.
info@mcguirelawoffices.com
defense@mcguirelawoffices.com
rgray@mcguirelawoffices.com

Counsel for Defendant, Mark Weinkrantz

Parties served by U.S. mail

Patrick Heinzen
1785 40th Ave. N.
St. Petersburg, FL 33714
Defendant

EXHIBIT K

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs.

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

Defendants.
_____/

Case No.: 24-003939-CI
Companion Case with
Case No.: 24-002994-CI

ORDER GRANTING COURT'S ORE TENUS MOTION TO CONSOLIDATE
***** DIRECTIONS TO THE CLERK OF COURT *****

THIS CAUSE came before the Court on November 12, 2024 upon the Court's *ore tenus* Motion to Consolidate ("Motion"), and the Court, having considered the Motion, the case file, the applicable law, the agreement of the parties, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. This matter concerns the following cases currently pending in the Circuit Court of the Sixth Judicial Circuit in and for Pinellas County, Florida: *John William Liccione vs. Julie Marcus, et. al.*, Case No. 24-003939-CI, Section 7, the Honorable Patricia Muscarella presiding ("Section 7 Case") and *John William Liccione vs. Pinellas Democratic Executive Committee*, Case No. 24-002994-CI, Section 19, the Honorable Thomas Ramsberger presiding ("Section 19 Case").

2. Defendant, JENNIFER GRIFFITH ("Ms. Griffith") is a party in both of the aforementioned cases. The operative complaints in both cases involve considerable factual and legal overlap as to Ms. Griffith.

3. Florida Rule of Civil Procedure 1.270(a) states the following:

> **Consolidation.** When actions involving a common question of law or fact are pending before the court, it may order a joint hearing or trial of any or all the matters in issue in the actions; it may order all the actions consolidated; and it may make such orders concerning proceedings therein as may tend to avoid unnecessary costs or delay.

4. At the case management hearing on November 12, 2024 in the Section 7 Case, the Court proposed transferring and consolidating all claims against Ms. Griffith in the Section 7 Case to the previously-filed Section 19 Case as a means of promoting judicial economy in accordance with Rule 1.270(a). The parties stipulated to the Court's proposal.

5. Because the Section 7 Case and the Section 19 Case involve common questions of law and fact involving Ms. Griffith, it would be an inefficient use of party and judicial resources to litigate these related disputes before different trial court judges. Both cases will proceed more efficiently with a single trial court judge presiding over the claims against Ms. Griffith. Accordingly, the efficient administration of justice requires reassignment of the Section 7 Case claims against Ms. Griffith to the Section 19 Case. Said transfer will not delay either action as the cases were filed within 65 days of each other and involve a similar procedural posture, nor will said transfer result in any substantial inconvenience, delay, or expense for the parties or the Court.

Accordingly, it is

ORDERED and ADJUDGED:

1. The Court's Motion is hereby **GRANTED** pursuant to Fla. R. Civ. P. 1.270(a) and in accordance with the stipulation made by all parties at the November 12, 2024 hearing. Hereinafter, Section 19 of this Court shall have jurisdiction over the claims made against Ms. Griffith in the Section 7 Case. All future matters concerning claims made against Ms. Griffith shall be addressed to Section 19 of this Court.

2. The Pinellas Clerk of Court is **DIRECTED** to docket this Order in both Case No.

24-003939-CI and Case No. 24-002994-CI.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of November, 2024.

Electronically Conformed 11/20/2024
Honorable Patricia A. Muscarella
Patricia Muscarella
Circuit Civil Judge

Copies furnished to:

Parties served by email

John Liccione
jliccione@gmail.com
Plaintiff

Kirby Z. Kreider, Esq.
kkreider@pinellas.gov
eservice@pinellas.gov
Counsel for Defendant, Julie Marcus

George A.D. Thurlow, Esq.
gthurlow@rahdertlaw.com
tmccreary@rahdertlaw.com
service@rahdertlaw.com
Counsel for Defendant, Jennifer Griffith

James B. Lake, Esq.
jlake@tlolawfirm.com
tgilley@tlolawfirm.com
Counsel for Defendant, Cathy Salustri Loper

John F. McGuire, Esq.
info@mcguirelawoffices.com
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rgray@mcguirelawoffices.com
Counsel for Defendant, Mark Weinkrantz

Parties served by U.S. mail

Patrick Heinzen
1785 40th Ave. N.
St. Petersburg, FL 33714
Defendant

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

CHRISTOPHER GLEASON,

Plaintiff,

CASE NO.: 24-003717-CI
UCN:522024CA003717XXCICI

v.

JULIE MARCUS, in her official capacity as Pinellas County Supervisor of Elections;
DUSTIN CHASE, in his official capacity as Deputy Supervisor of Elections of Pinellas County, Florida;
MATT SMITH, in his official capacity as General Counsel for Pinellas County Supervisor of Elections;
KELLY L. VICARI, in her individual and professional capacity;
JARED D. KAHN, in his individual and professional capacity;
and the **CANVASSING BOARD OF PINELLAS COUNTY**
Defendants.

AFFIDAVIT OF CHRISTOPHER GLEASON REGARDING CHAIN OF CUSTODY AND ANALYSIS FOR STATEWIDE VOTE BY MAIL EARLY VOTING LIST

STATE OF FLORIDA
COUNTY OF PINELLAS

BEFORE ME, the undersigned authority, personally appeared Christopher

Gleason, who, being duly sworn, deposes and says as follows:

1. Affiant's Identity:

My name is Christopher Gleason, and I am the plaintiff in the above-captioned case. I am over the age of 18, competent to make this affidavit, and have personal knowledge of the facts stated herein.

2. Purpose of Affidavit:

This affidavit is made to establish the chain of custody for the Statewide Vote By Mail Early Voting List (the "Voting List") that I obtained directly from the Florida Division of Elections at the following url:

https://countyballotfiles.floridados.gov/VoteByMailEarlyVotingReports/Reports

3. Acquisition of Voting List:

On or about and between the dates of 07/14/2024 – 09/29/2024, I personally accessed the Florida Division of Elections secure online system for authorized individuals as clearly stated in FL Stat 101.62 and FAC 1S-2.043. I used the following secure URL:

https://countyballotfiles.floridados.gov/VoteByMailEarlyVotingReports/Reports

provided to me by the Division of Elections to download the daily updates of the Statewide Vote By Mail Early Voting List.

4. Secure Download Process:

The Florida Division of Elections provided me access to the Voting List via the following secure link https://countyballotfiles.floridados.gov/VoteByMailEarlyVotingReports/Reports , which required my unique login credentials provided by the Division. These credentials were assigned specifically for my use as a registered recipient of the Voting List after directly registering with the State at the following url: https://countyballotfiles.floridados.gov/Account/Register

5. Receipt of Voting List:

Upon logging into the secure platform between the dates of 07/14/2024 to 09/29/2024, I downloaded the Voting List, which was provided in .txt and/or .zip format. I saved the downloaded files directly to my computer under secure conditions, ensuring that the data was not altered.

6. Handling and Storage:

After downloading the Voting List, I took immediate steps to preserve the integrity of the data. The files were securely stored on my computer, which is protected by encryption and password protection. No unauthorized individuals had access to the Voting List from the time I downloaded it until it was submitted in connection with this case.

7. Integrity of the Data:

I affirm that the Voting List downloaded from the Florida Division of Elections has not been altered, modified, or tampered with in any way. The files I obtained are in the same condition as when I downloaded them directly from the Division's secure platform.

8. Submission of Voting List:

I am submitting the Voting List as evidence in this case. The data submitted is a true and accurate copy of what I obtained from the Florida Division of Elections, and it is presented in its original, unaltered form.

9. Affirmation of Chain of Custody:

I attest that I was the sole individual who downloaded, handled, and maintained the Voting List from the time of its acquisition until its submission in this case. The chain of custody has remained intact, and there have been no unauthorized accesses or alterations to the Voting List.

10. Illegally Requested Vote By Mail Ballots/ Altered Vote By Mail Election Records

I attest that on 09/03/2024 I reviewed the Pinellas County Vote By Mail Ballot Reports.

The Pinellas County Report showed that 219,675 Vote By Mail Ballots were requested on Sunday 06/23/2024. The Pinellas County Supervisor of Elections Office was closed for business on 06/23/2024.

I attest that on 09/29/2024 I reviewed the Pinellas County Report, it showed that there were now 20 Requests for Vote By Mail Ballots requested on 06/23/2024 and that now 198,166 requests for Vote By Mail Ballots were made on 09/09/2024.

11. Public Records Requests Made To Miami Dade and Pinellas County Supervisor of Elections Offices.

I attest that Public Records Requests were made to the Pinellas County Supervisor of Elections Office for the Public Records/ Election Records documenting the Vote By Mail Ballot Requests by voters.

An estimate of 18,000 hours to complete this task was provided. To provide the responsive records, this information would take less than 5 minutes to generate.

VR Systems publicly available product documentation for Vote By Mail Reports can be readily found available on the internet at the following url:

https://content.vrsys.co/help/vf/Content/Vote_by_Mail/List_of_Vote-by-Mail_Reports.htm See Exhibit 2

A request was made for the IP Addresses of the voters who made the Vote By Mail Ballot Requests on 06/23/2024 via the Supervisor of Elections Office.

See Exhibit 3

The Pinellas County Supervisor of Elections custodian of records stated that there were no "Responsive Records" related to these Vote By Mail Requests.

See Exhibit 4

This information could also be easily provided via the VR Systems Reporting Functionality as documented on the VR Systems publicly available website url:

https://content.vrsys.co/help/vf/Content/Vote_by_Mail/Dialog__Web_Vote-by-Mail_Request_Queue.htm . See Exhibit 5

12. Numerous Requests For Vote By Mail Ballots Being Returned As Undeliverable Were Made

I attest that this information was never provided in a timely manner, despite the fact that to provide this information could have easily been generated in under 5 minutes. The information related to generating and processing undeliverable vote by mail ballots is well documented at the following publicly available VR Systems website url:

https://content.vrsys.co/help/vf/Content/Voter_Registration/How_to_Process_Undeliverable_Mail%20and%20Third-Party%20Address%20Changes.htm
See Exhibit 6

FURTHER AFFIANT SAYETH NAUGHT.

Dated this 29th day of Sept, 2024.

Christopher Gleason

Plaintiff

NOTARY ACKNOWLEDGMENT

STATE OF FLORIDA

COUNTY OF PINELLAS

SWORN TO and subscribed before me this 29th day of Sept, 2024 by Christopher Gleason, who is personally known to me or who has produced FL Drivers License as identification.

Notary Public

State of Florida

My Commission Expires: [insert date]

[Seal]

NOTARY PUBLIC STATE OF FLORIDA

CHRISTINE PETERS
Commission # HH 496653
Expires February 26, 2028

EXHIBIT 2

List of Vote-By-Mail Reports

Reports Generated as By-Products of Program Runs

- Absentee Audit Report
- Absentee Requests Created for All Elections Voters
- Ballots Issued in Deliver Ballots Run
- Canvassing Referral Sheet
- Envelope Reader Referred Ballots by Tray
- Ordered List of Absentee Labels
- Requests Copied from Election to Election
- UOCAVA Voters Not Yet Notified that their ballot has been received
- UOCAVA Voters Not Yet Notified that their request has been received
- Voters Not Yet Notified of Free Access System

Reports Replaced by Vote-By-Mail Flexible Report

- Absentee Status for All Absentee Voters
- Absentee Status for Domestic Voters
- Absentee Status for Email/Fax-Delivery Voters
- Absentee Status for Military & Civilian Overseas Voters
- Unsent Email/Fax Absentee Ballots
- FWAB Ballots Received

Reports for Generic Envelope Reader Interface

- Export Mail-Ballot Status Data
- Envelope Reader Referred Ballots by Tray Report

Reports Available on Reports Dialog

Summary Totals Reports

- Absentee Request Totals by How Requested
- Absentee Totals for an Election
- Countywide Demographic Totals for Absentee and Early Voting
- Demographic Totals by District for Absentee and Early Voting
- Demographic Totals by Precinct for Absentee and Early Voting
- Party Totals by District for Absentee and Early Voting

Vote-By-Mail Voter Lists

- Absentee Alert Report
- Absentee Ballots Not Voted
- Absentee Ballots where Return Is Blocked
- Absentee Requests by Non-Family Requesters
- Active Voters Without Absentee Requests
- Canceled and Ineligible Absentee Requests
- Count of Absentee Returns by Operator
- Export Email List for an Election
- FPCA and All-Elections Voters
- In-Office Absentee Voters
- Line Printer Absentee Status Report
- Vote-By-Mail Flexible Report
- Voters Reactivated by Absentee Request
- Voters Voting Absentee Ballots
- Voters Voting Both Advance and Absentee Ballots
- Voters Who Returned Absentee Ballots

Vote-By-Mail Ballot Reports

- Absentee Ballot Balance Sheet
- Absentee Ballots Issued by Ballot Style
- Absentee Ballots Issued by Operator
- Affidavit to Cure Unsigned Ballots
- Ballots Returned Temporarily Away
- Count of Absentee Requests by Ballot Style
- Count of In-Office Absentee Ballots Issued by Ballot Style
- Export of Returned Absentee Ballot by Batch Number
- Pending Web Absentee Requests
- Replacement Ballots Issued
- Returned Absentee Ballots by Batch Number
- Unreviewed and Referred Absentee Ballots

Vote-By-Mail Audit Reports

- Absentee Activity Dump
- Absentee Ballot Style Changes
- Absentee Request Activity
- Possible Voting Irregularities
- Referred Absentee Ballots

Fraud Detection Reports

- Active Cases
- Approved Addresses
- Blocked Vote-By-Mail Requests
- Inactive Cases
- Questionable Web Requests for an Election

Relia-Vote Reports

- Relia-Vote Missing Valid Envelopes Report
- Relia-Vote Status Report



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EXHIBIT 3

PLAINTIFF'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

To Defendant: Julie Marcus

From: Plaintiff John Liccione

Case No.: 24-003939-CI, *John Liccione vs Julie Marcus, et al*

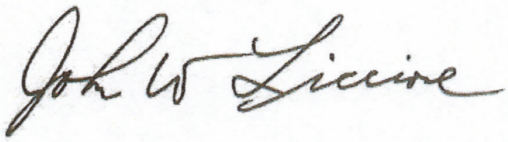
Plaintiff John Liccione hereby submits to Defendant Julie Marcus, Pinellas County Supervisor of Elections, this first Request for Production of Documents.

All non-privileged computer session and transaction logs and reports which captured and stored the computer forensic details, metadata, and voter data which together serve to document the submittal of vote-by-mail ballot requests to Pinellas County Supervisor of Elections' (SOE) computer systems directly over the Internet or otherwise, or indirectly through the computer systems of the SOE's contractors, or, loaded via physical insertion of removable storage devices (i.e., thumb drives, portable hard drives), **solely on the date of June 23, 2024:** Said metadata and data to include but not be limited to the following:

1. The source IP addresses of all vote-by-mail ballot requester user sessions and submittal transactions that resulted in the successful or unsuccessful submittal of vote-by-mail ballot requests.
2. The names, and addresses of the submitters.
3. The type of web client used to submit the requests.
4. The date/time of submittal.
5. The names and versions of each software application used to receive, process, store, and report out the above ballot requests, as was fielded in production on the date of June 23, 2024, and any subsequent versions the applications may have been updated to or roll-ed back from after June 23, 2024.
   SOE and contractor firewall logs which captured and recorded the above vote-by-mail ballot submittal sessions.

If Defendant Marcus or any SOE vendor working for SOE, such as VR Systems, claims privilege over any such data as legal grounds for not complying with this request, state the nature and legal grounds for the privilege and the reason which such information cannot be provided if maintained under court seal.

Respectfully submitted,



John W Liccione
Plaintiff, Pro Se
443-698-8156
jliccione@gmail.com
September 11, 2024

EXHIBIT 4

John Liccione <john@thecrabber.com>

Public Records Request: 2024-392 from John Liccione

5 messages

publicrecordsrequest <publicrecordsrequest@votepinellas.gov> Fri, Aug 30, 2024 at 7:33 PM
Reply-To: "McKnight-Taylor, Ashley" <ataylor@votepinellas.gov>
To: "john@thecrabber.com" <john@thecrabber.com>

Dear John Liccione,

This will acknowledge receipt of your public records request. We are reviewing our records to determine if there are any records responsive to your request. Once this has been determined, we will provide either the records, or for more extensive requests, an estimate of the cost to provide these records.

You requested the following records:
"A .csv file or excel spreadsheet report showing the source IP address of each and every individual who submitted an absentee ballot request to the Pinellas Supervisor of Elections over the Internet on June 23, 2024. The report need not provide any personally identifiable information, just the following 2 columns: (1) Date/Time of submission; (2) Source IP Address of submitter. It is noted that this type of metadata is typically available as a cybersecurity standard practice in web server logs, firewall logs, cloud service provider (e.g., Cloudflare) reports, and other off-the-shelf IT logging and reporting systems. It would typically take an IT person with proper access credentials less than 30 minutes to generate it and export it to a csv or Excel file."

To inquire about the status of your public records request, please call 727-464-8683.

Thank you,

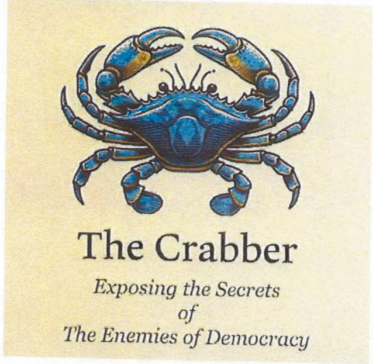
Communications Department,
Pinellas County Supervisor of Elections Office

John Liccione <john@thecrabber.com> Fri, Aug 30, 2024 at 7:48 PM
To: Christopher Gleason <GleasonForPinellas@gmail.com>

Hi Chris,

I just submitted this laser-focused record request on source IP addresses of 6/23 ballot-requesters to the SOE in my persona as CEO of my new media company, "The Crabber," which I just incorporated on 8/15/24.

John Liccione
Founder and CEO
The Crabber News, LLC
thecrabber.com
john@thecrabber.com



[Quoted text hidden]

Smith, Matt <masmith@votepinellas.gov> Tue, Sep 17, 2024 at 10:07 AM
To: "john@thecrabber.com" <john@thecrabber.com>
Cc: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>

Mr. Liccione,

We have no records responsive to your request.

Thanks,

Matt Smith

General Counsel

Representing Julie Marcus, Supervisor of Elections

13001 Starkey Rd., Largo, FL 33773

(727) 464-5751

masmith@votepinellas.gov

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Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. -- F.S. 668.6076

Conforme a la legislación de Florida, las direcciones de correo electrónico son registros públicos. Si no desea que su correo electrónico se divulgue como respuesta a una solicitud de registros públicos, no envíe un correo electrónico a esta entidad. En su lugar, póngase en contacto con esta oficina por teléfono o por escrito. -- F.S. 668.6076

From: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>
Sent: Friday, August 30, 2024 7:33 PM
To: john@thecrabber.com
Subject: Public Records Request: 2024-392 from John Liccione

Dear John Liccione,

[Quoted text hidden]

John Liccione <john@thecrabber.com> Tue, Sep 17, 2024 at 6:33 PM
To: "Smith, Matt" <masmith@votepinellas.gov>
Cc: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>

Mr Smith,

I'd like to schedule a meeting with you and whomever on PSOE staff you deem appropriate on this records request at your earliest convenience.
Please let me know if you're willing to discuss this matter at your offices and if so, when.

Regards,

John Liccione
[Quoted text hidden]

Smith, Matt <masmith@votepinellas.gov> Wed, Sep 18, 2024 at 1:58 PM
To: John Liccione <john@thecrabber.com>
Cc: publicrecordsrequest <publicrecordsrequest@votepinellas.gov>

Mr. Liccione –

As we have provided you with a response to your public records request, we consider the request complete and the matter closed.

Since you have made this public records request an issue in your current lawsuit against this office (24-003939-CI), please refer all future correspondence regarding this matter to our litigation attorneys.

Thank you,

Matt Smith

General Counsel

Representing Julie Marcus, Supervisor of Elections

13001 Starkey Rd., Largo, FL 33773

(727) 464-5751

masmith@votepinellas.gov

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Under Florida law, email addresses are public records. If you do not want your email address released in response to a public-records request, do not send electronic mail to this entity. Instead, contact this office by phone or in writing. – F.S. 668.6076

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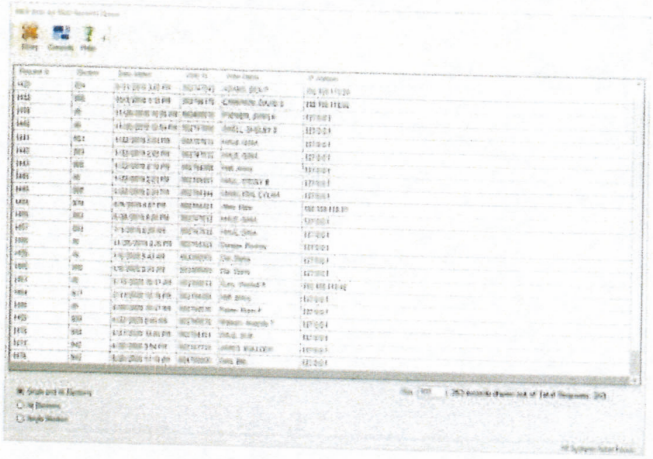
[Quoted text hidden]

EXHIBIT 5

Web Vote-By-Mail Request Queue

To access: **Vote By Mail > Process Web Requests**

This dialog lists the Vote-By-Mail requests that voters have submitted using the Absentee/Mail Ballot Request Form on your website.



Initially, the requests are ordered by when they were added to the queue (that is, the *Date Added* column) and respective of the filters at the bottom of the dialog.

- Select to display **Single and All Elections**, or limit the grid display to only **All Elections** or only **Single Elections**.
- Leave the default **Max** number to display in the queue, which is 500 requests, or change the selection.

> **Note:**
>
> - Changing the Max setting to a significantly greater number may affect the system's response time to load and also re-load (after processing a request and returning to the grid) requests.
> - The system retains changes to the Max setting. The next time you return to the dialog, your last setting remains in effect.

To sort by a different column or change the sort order (ascending or descending), click any column header.

For an overview of the Process Web Requests feature, see About Vote-By-Mail Requests Submitted Online. To learn how to process both single and all-elections requests, review Process Vote-By-Mail Requests Submitted Through Your Website.

> **Note:** If your county uses Vote-By-Mail Fraud Detection, web requests are intercepted before they enter the queue and are not released into the queue

until the Fraud Detection program is run.

Note: to VR Tower Counties In Website Maintenance, you can create a CSV list of request submitted on the website during a specified time period. Use the list to confirm that email notifications are going to the right recipients in the elections office and to verify that web requests are entering the request queue.



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EXHIBIT 6

Process Undeliverable Mail and Third-Party Address Changes

This topic describes how to process undeliverable postal items and notices of a voter address change from third-party agencies.

Important:

For Undeliverable Mail Ballots—

- Do not process an undeliverable Vote-By-Mail ballot as undeliverable mail unless the package contains a change-of-address notice from the Postal Service.
- For undeliverable ballots without a third-party address change, follow the instructions in Process an Undeliverable Vote-By-Mail Ballot.
- For ballots with an address change, refer the return as described in Process an Undeliverable Vote-By-Mail Ballot. Then, process the package as undeliverable mail with a third-party address change, as described below.

When the Postal Service is unable to deliver mail (other than mail ballots) to a voter and returns it to your office, it should be processed as undeliverable mail. In addition to undeliverable postal items, the following items should also be processed as undeliverable mail:

- Jury notices with changes of address
- Changes of address from an NCOA vendor that your county is not processing using the automated NCOA processing facility provided in Voter Focus.
- HSMV lists of voters who have surrendered their Florida driver license in another state and have provided a new out-of-state address.

These items, plus undeliverable mail that includes a change-of-address notice, fall into the category of third-party address changes. Depending on the type of address change (residential or mailing, in-county, or out-of-county) the proper notice will be scheduled to be sent to the voter requesting confirmation of the address change. A log is posted to the voter's audit noting the address change and the notice(s) scheduled.

The processing of undeliverable mail for which there is no change of address schedules the voter to receive a Final Notice and adds an entry to their audit log that the notice is scheduled. When the notice is sent, a record of that event is added to the Comms tab in the voter's record. Should a Final Notice be returned as undeliverable, no further communications are scheduled for the voter, and the voter will be placed in the queue of voters who are ready to be made Inactive. Should the voter subsequently request a mail

ballot or cast a ballot during an election, Voter Focus will remove them from the Inactive queue.

If a voter previously made an all-elections or FPCA Vote-By-Mail request, processing undeliverable mail with no change of address or an out-of-state address automatically triggers the cancellation of any outstanding Vote-By-Mail requests for future elections (unless a ballot has already been delivered) and sets the expiration date of the all-elections/FPCA request to today's date. The process also schedules a Cancelled Requests Notice to be sent to the voter.

To process undeliverable mail or a third-party address change:

1. Go to **VOTER REGISTRATION > Record Undeliverable Mail**.
2. Do one of the following:
    - **Scan First enabled**—On the **Process Undeliverable Mail** dialog, double-click on the desired row from the **Images** grid. The **Find a Voter** and **Batch Images** dialogs open. You can clip the signature area of the image, if one exists, to index a copy of the voter's signature. Otherwise, continue to the next step.
    - **Scan First disabled**—On the **Voter Management** dialog, accept today's date or enter an earlier date when the mail (or jury notice) was returned to your office and click **OK**. (The **Comms** tab in the voter's record will show this date in the **Date** column.) The **Find a Voter** dialog opens.
3. If you are working with a bar code wand, wand the bar code to open the voter's record; otherwise, do a local search by name. The **Undeliverable Mail** dialog opens with the voter's information in the fields.



4. Check the date in the **Last Activity Date** field and determine if you have had activity from this voter since you received the mail or jury notice in the office. If the date in **Last Activity Date** is earlier than the date the item arrived in the office, continue with the next step.

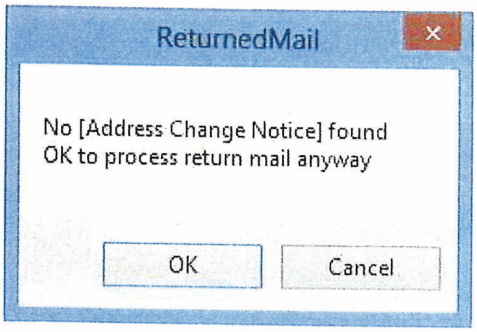
   If the date in the **Last Activity Date** field is later than the date the item arrived, do not process the item, because the voter has either contacted the elections office or voted since you received it. Click **Close** to complete the procedure.
5. If your county wants the note *Address Update Required* to appear with the voter's name on subsequent precinct registers (and EViD screens), select **Change Status to "Address Update Required"**.
6. In the **Mail Type** box, select the type of item you are processing. You can toggle the list of options between **Classic Mail Types** and **Voter Mail Types**. The option **Other Mail** can be any item not covered by the other options, such as a sample ballot or a mail ballot. The selection in this box is sticky for this undeliverable mail session; once you select a mail type, it remains selected for the next voter unless

you change it. This lets you quickly process a batch of similar items for different voters.

Note:

- If the item is a combo card, select **Address Change Notice** as the mail type.
- If the voter was previously sent a Notice of Potential Ineligibility, the notice will also be listed in the **Mail Type** box.

7. Click one of the following:
   - **No Address Change**—If the undeliverable item has no change-of-address notice. You will see the message *An Address Final Notice will be sent to the voter*. Click **OK** to finish processing the item. You can now restart this procedure to process undeliverable mail for another voter.
   - **Forwarding Address**—If the item shows a change of address for the voter. If the mail type you selected does not match with sent mail records in the system, a message displays.



   Verify that you have the right voter and have selected the correct type of mail item. If the mail was truly sent without being recorded in the system, click **OK** to continue processing the undeliverable mail.

Voter doesn't have a mailing address:

Voter has a mailing address:

8. When you finish recording undeliverable mail, go to **Printing > Notices Queue** to print the notices. For mail merge documents, mailing labels may also be printed.

   You can view details about sent notices and temporary forwarding addresses from the Audit and Comms tabs in voter records.

   Undeliverable mail processed by each user is included in the totals in the Operator Additions and Changes report.

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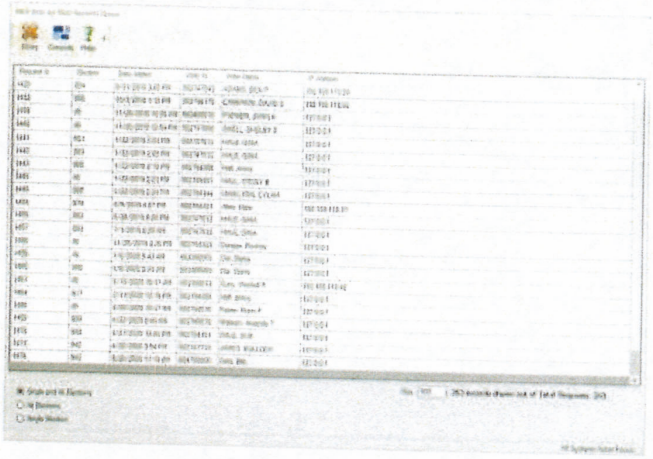
EXHIBIT 5

Web Vote-By-Mail Request Queue

To access: **Vote By Mail > Process Web Requests**

This dialog lists the Vote-By-Mail requests that voters have submitted using the Absentee/Mail Ballot Request Form on your website.



Initially, the requests are ordered by when they were added to the queue (that is, the *Date Added* column) and respective of the filters at the bottom of the dialog.

- Select to display **Single and All Elections**, or limit the grid display to only **All Elections** or only **Single Elections**.
- Leave the default **Max** number to display in the queue, which is 500 requests, or change the selection.

> **Note:**
>
> - Changing the Max setting to a significantly greater number may affect the system's response time to load and also re-load (after processing a request and returning to the grid) requests.
> - The system retains changes to the Max setting. The next time you return to the dialog, your last setting remains in effect.

To sort by a different column or change the sort order (ascending or descending), click any column header.

For an overview of the Process Web Requests feature, see About Vote-By-Mail Requests Submitted Online. To learn how to process both single and all-elections requests, review Process Vote-By-Mail Requests Submitted Through Your Website.

> **Note:** If your county uses Vote-By-Mail Fraud Detection, web requests are intercepted before they enter the queue and are not released into the queue

until the Fraud Detection program is run.

Note: to VR Tower Counties In Website Maintenance, you can create a CSV list of request submitted on the website during a specified time period. Use the list to confirm that email notifications are going to the right recipients in the elections office and to verify that web requests are entering the request queue.



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EXHIBIT 6

Process Undeliverable Mail and Third-Party Address Changes

This topic describes how to process undeliverable postal items and notices of a voter address change from third-party agencies.

Important:

For Undeliverable Mail Ballots—

- Do not process an undeliverable Vote-By-Mail ballot as undeliverable mail unless the package contains a change-of-address notice from the Postal Service.
- For undeliverable ballots without a third-party address change, follow the instructions in Process an Undeliverable Vote-By-Mail Ballot.
- For ballots with an address change, refer the return as described in Process an Undeliverable Vote-By-Mail Ballot. Then, process the package as undeliverable mail with a third-party address change, as described below.

When the Postal Service is unable to deliver mail (other than mail ballots) to a voter and returns it to your office, it should be processed as undeliverable mail. In addition to undeliverable postal items, the following items should also be processed as undeliverable mail:

- Jury notices with changes of address
- Changes of address from an NCOA vendor that your county is not processing using the automated NCOA processing facility provided in Voter Focus.
- HSMV lists of voters who have surrendered their Florida driver license in another state and have provided a new out-of-state address.

These items, plus undeliverable mail that includes a change-of-address notice, fall into the category of third-party address changes. Depending on the type of address change (residential or mailing, in-county, or out-of-county) the proper notice will be scheduled to be sent to the voter requesting confirmation of the address change. A log is posted to the voter's audit noting the address change and the notice(s) scheduled.

The processing of undeliverable mail for which there is no change of address schedules the voter to receive a Final Notice and adds an entry to their audit log that the notice is scheduled. When the notice is sent, a record of that event is added to the Comms tab in the voter's record. Should a Final Notice be returned as undeliverable, no further communications are scheduled for the voter, and the voter will be placed in the queue of voters who are ready to be made Inactive. Should the voter subsequently request a mail

ballot or cast a ballot during an election, Voter Focus will remove them from the Inactive queue.

If a voter previously made an all-elections or FPCA Vote-By-Mail request, processing undeliverable mail with no change of address or an out-of-state address automatically triggers the cancellation of any outstanding Vote-By-Mail requests for future elections (unless a ballot has already been delivered) and sets the expiration date of the all-elections/FPCA request to today's date. The process also schedules a Cancelled Requests Notice to be sent to the voter.

To process undeliverable mail or a third-party address change:

1. Go to **VOTER REGISTRATION > Record Undeliverable Mail**.
2. Do one of the following:
    - **Scan First enabled**—On the **Process Undeliverable Mail** dialog, double-click on the desired row from the **Images** grid. The **Find a Voter** and **Batch Images** dialogs open. You can clip the signature area of the image, if one exists, to index a copy of the voter's signature. Otherwise, continue to the next step.
    - **Scan First disabled**—On the **Voter Management** dialog, accept today's date or enter an earlier date when the mail (or jury notice) was returned to your office and click **OK**. (The **Comms** tab in the voter's record will show this date in the **Date** column.) The **Find a Voter** dialog opens.
3. If you are working with a bar code wand, wand the bar code to open the voter's record; otherwise, do a local search by name. The **Undeliverable Mail** dialog opens with the voter's information in the fields.



4. Check the date in the **Last Activity Date** field and determine if you have had activity from this voter since you received the mail or jury notice in the office. If the date in **Last Activity Date** is earlier than the date the item arrived in the office, continue with the next step.

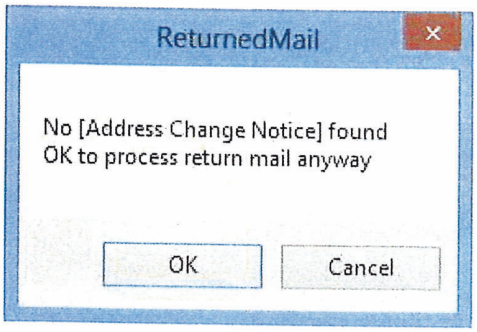
   If the date in the **Last Activity Date** field is later than the date the item arrived, do not process the item, because the voter has either contacted the elections office or voted since you received it. Click **Close** to complete the procedure.
5. If your county wants the note *Address Update Required* to appear with the voter's name on subsequent precinct registers (and EViD screens), select **Change Status to "Address Update Required"**.
6. In the **Mail Type** box, select the type of item you are processing. You can toggle the list of options between **Classic Mail Types** and **Voter Mail Types**. The option **Other Mail** can be any item not covered by the other options, such as a sample ballot or a mail ballot. The selection in this box is sticky for this undeliverable mail session; once you select a mail type, it remains selected for the next voter unless

you change it. This lets you quickly process a batch of similar items for different voters.

Note:

- If the item is a combo card, select **Address Change Notice** as the mail type.
- If the voter was previously sent a Notice of Potential Ineligibility, the notice will also be listed in the **Mail Type** box.

7. Click one of the following:
   - **No Address Change**—If the undeliverable item has no change-of-address notice. You will see the message *An Address Final Notice will be sent to the voter*. Click **OK** to finish processing the item. You can now restart this procedure to process undeliverable mail for another voter.
   - **Forwarding Address**—If the item shows a change of address for the voter. If the mail type you selected does not match with sent mail records in the system, a message displays.



   Verify that you have the right voter and have selected the correct type of mail item. If the mail was truly sent without being recorded in the system, click **OK** to continue processing the undeliverable mail.

Voter doesn't have a mailing address:

Voter has a mailing address:

8. When you finish recording undeliverable mail, go to **Printing > Notices Queue** to print the notices. For mail merge documents, mailing labels may also be printed.

   You can view details about sent notices and temporary forwarding addresses from the Audit and Comms tabs in voter records.

   Undeliverable mail processed by each user is included in the totals in the Operator Additions and Changes report.

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EXHIBIT M

Affidavit of Christopher Gleason dated 2/14/2025

SWORN STATEMENT OF CHRISTOPHER GLEASON

STATE OF FLORIDA
COUNTY OF PINELLAS

I, **Christopher Gleason**, declare under penalty of perjury that the following is true and accurate to the best of my knowledge and belief:

1. I have firsthand knowledge of the facts stated herein.
2. I was a candidate for Pinellas County Supervisor of Elections in 2024.
3. I applied to the Florida Division of Elections for an account on their vote-by-mail (VBM) ballot records portal and was granted access to it in June, 2024.
4. On multiple dates, I logged into the State portal https://countyballotfiles.floridados.gov/Account/Login?ReturnUrl=%2FVoteByMailEarlyVotingReports%2FReports on my computer and downloaded the VBM Ballot Request comma-delimited text (.txt) files that the State had published on a daily basis during the campaign.
5. I imported the .txt file into an Excel spreadsheet and discovered a massive spike of over 219,000 VBM ballot requests in Pinellas County on Sunday, June 23, 2024.
6. I further discovered that 97 percent of the VBM ballot requests recorded on June 23, 2024, showed as having no (N) Social Security number (last 4 digits) and no (N) driver's license number attached to the request.
7. This discovery formed the basis for part of my election fraud and contest of elections lawsuits, Case No. 24-003717 and Case No. 24-003995.
8. On February 13, 2024, I conducted a search on the names of judges Thomas Ramsberger and Patricia Muscarella. I discovered that the State's data showed that both judges were among the over 219,000 VBM ballot requests recorded as received on Sunday, June 23, 2024. Additionally, the data indicated that the VBM ballot requests submitted under the voter ID’s and names of both judges also showed as having no (N) Social Security number and no (N) driver's license number attached to the request.
9. Furthermore, the personally protected individual information of both judges Thomas Ramsberger and Patricia Muscarella were redacted as required under Florida Statutes and the Florida Rules of Procedure. This report generated by the

State of Florida was the same report that I had submitted to the court as evidence. Judge Muscarella ruled that every single exhibit in the case was to be sealed based on the fraudulently filed motion by Pinellas County Attorneys Jared Kahn and Kelly Vaccari.

10. I notified John Liccione of these facts on the same day, February 13, 2024.

I declare under penalty of perjury under the laws of the State of Florida that the foregoing is true and correct.

DATED this 14th day of February, 2025.

/s/ Christopher Gleason

Christopher Gleason
Affiant

EXHIBIT N

Affidavit of John Siamas dated 02/18/2025

AFFIDAVIT OF JOHN SIAMAS

REGARDING CHAIN OF CUSTODY FOR STATEWIDE VOTE-BY-MAIL REPORT

AND THE IRREGULARITES OBSERVED WITH THE DATA

STATE OF FLORIDA

COUNTY OF PINELLAS

BEFORE ME, the undersigned authority, personally appeared John Siamas, who, being duly sworn, deposes and says as follows:

Affiant's Identity

1. I, John Siamas, was a Republican candidate for the Florida State Sente District 21 Primary Election held on August 20th, 2024. I am over 18 and competent to make this affidavit and have personal knowledge of the facts stated herein.

Purpose of Affidavit

2. This affidavit is made to establish the chain of custody for the Statewide Vote-By-Mail (the "VBM Report") that I obtained directly from the Florida Division of Elections at the following url:

https://countyballotfiles.floridados.gov/VoteByMailEarlyVotingReports/Reports

Acquisition of Voting List

3. I personally accessed the Florida Division of Elections secure online system for authorized individuals as clearly stated in FL Stat 101.62 and FAC 1S-2.043. I used the following secure URL

https://countyballotfiles.floridados.gov/VoteByMailEarlyVotingReports/Reports

provided to me by the Division of Elections to download the daily updates of the Statewide VBM Report.

Secure Download Process

4. The Florida Division of Elections provided me with access to the Voting List via the following secure link *https://countyballotfiles.floridados.gov/VoteByMailEarlyVotingReports/Reports*, which required my unique login credentials provided by the Division. These credentials were assigned specifically for my use as a registered recipient of the Voting List after directly registering with the State at the following url: *https://countyballotfiles.floridados.gov/Account/Register*

Receipt of Voting List

5. Upon logging into the secure platform August 22, 2024, I downloaded the VBM Report file name "VBM_43887_08212024_080337289.txt" compressed and wrapped within the "VBM_43887_08212024.zip", file the State had published. I saved the files directly to my computer using industry-standard cybersecurity best practices, ensuring that the data was not altered, and I burned the file to immutable storage media – a write once read-only DVD disk.

Handling and Storage

6. After downloading the VMB Report, I took immediate steps to preserve the integrity of the data. The files were securely stored on my computer and external hard drive, which is protected by encryption and password protection. No unauthorized individuals had access to the VBM Report from the time I downloaded it until the date of this affidavit and is now submitted in connection with this case.

Integrity of the Data

7. I affirm that the VBM Report downloaded from the Florida Division of Elections has not been altered, modified, or tampered with in any way. The files I obtained are in the same

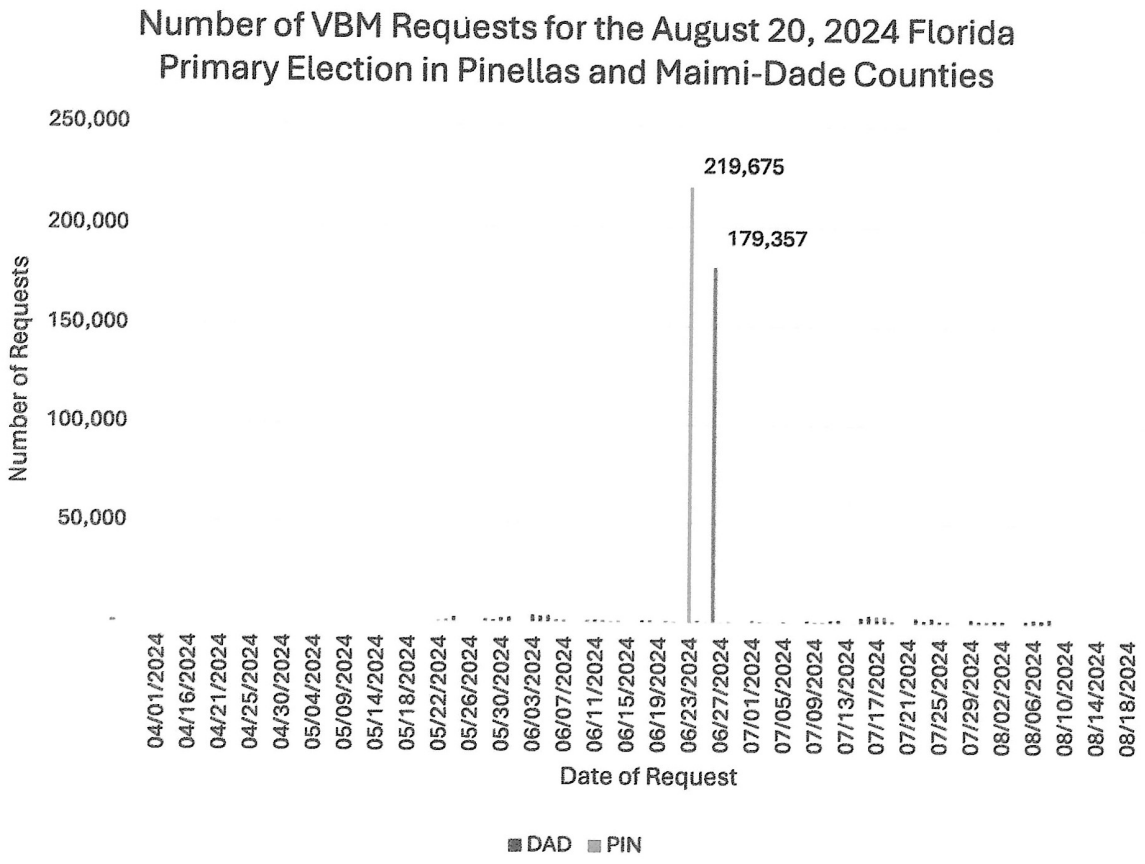
2

condition as when I downloaded them directly from the Division's secure platform and I have burned the file to immutable storage media (a DVD).

Irregularities and Anomalies with the Vote-By-Mail Ballots

8. Here are the following anomalies and irregularities in the vote-by-mail ballots and the system implemented to administer the vote-by-mail ballots:

9. When observing the VBM Report request data as of August 22, 2024, provided by the Florida Division of Elections for the primary elections, I noticed two very unusual outliers in the requests made. Here is a visualization of the daily requests made across the entire state in 2024:



3

10. The two extreme outliers represent the counties of Pinellas and Miami-Dade. Pinellas county received 219,675 vote-by-mail ballot requests on Sunday June 23, 2024, and Miami-Dade received 179,358 vote-by-mail ballot requests on Wednesday June 26, 2024. The following is a factual analysis of these anomalies.

Pinellas County

11. On Sunday June 23, 2024, there were 219,675 vote-by-mail ballots requested from the Pinellas County Supervisor of Elections office. Of those 219,675 vote-by-mail requests, according to the VBM Report dated August 21, 2024, provided by the State, 219,628 (99%) did not provide a Driver's License or Last 4 of SSN as part of the request. This is indicated by a "N" designator in the columns for the "FLDL/StateID" and "VoterSSN4" in the report.

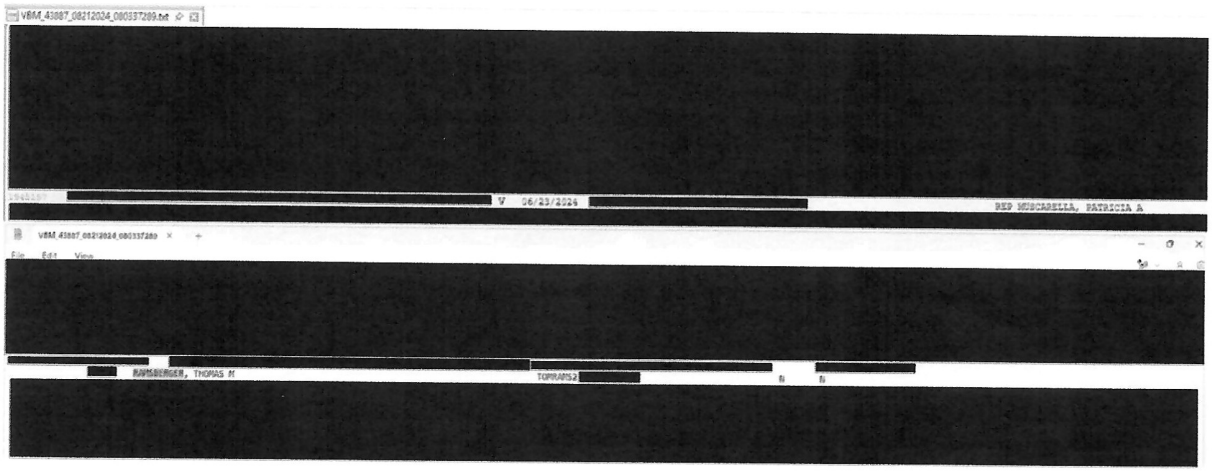
12. Among the listed individuals who are listed as not having a "N" designator in the columns for the "FLDL/StateID" and "VoterSSN4" in the report are Patricia A Muscarella and Thomas M Ramsberger. Both are judges in the Sixth Judicial Circuit of Pasco and Pinellas Counties. See **EXHIBIT 01** with redacted screen shots of the two names.

Miami-Dade County

13. On Wednesday June 26, 2024, there were 179,358 vote-by-mail ballots that were recorded as having been requested at Miami-Dade County Supervisor of Elections office. Of those, 178,848 ballots (99.7%) did not provide a Driver's License or Last 4 of SSN as part of the request. This is indicated by a "N" designator in the columns for the "FLDL/StateID" and "VoterSSN4" in the report.

4

EXHIBIT 01
Redacted Screen Shots of the Two Names



AFFIANT SIGNATURE

Sworn to and subscribed before me by means of __X__ physical presence or _____ online

notarization, this 18th day of February 2025 by JOHN SIAMAS

Notary Public – State of Florida

MAEVA VEGA TAGGART
Notary Public-State of Florida
Commission # HH 446988
My Commission Expires
September 24, 2027

MAEVA VEGA TAGGART
[PRINT, TYPE, OR STAMP NAME OF NOTARY PUBLIC]

Personally Known _____ OR Produced Identification __X__ [CHECK ONE]

[Type of Identification Produced: FL DL

EXHIBIT O

2nd DCA Order Denying Writ of Prohibition

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. Tampa Street, Suite 300, Tampa FL 33602

February 12, 2025

JOHN WILLIAM LICCIONE,
PETITIONER(S)
V.

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, MICHAEL JOHN SHEROSKY, JENNIFER W. GRIFFITH,
RESPONDENT(S).

CASE NO.: 2D2025-0297
L.T. No.: 24-002994-CI

BY ORDER OF THE COURT:

The petition for writ of prohibition is denied.

SILBERMAN, MORRIS, and LABRIT, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Mary Elizabeth Kuenzel
Mary Elizabeth Kuenzel, Clerk
2D2025-0297 2/12/25

JAR

Served:
PINELLAS CLERK
JOHN WILLIAM LICCIONE
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

EXHIBIT P

Gmail John Liccione <jliccione@gmail.com>

Set CMC Rer: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Section19 <Section19@jud6.org> Tue, Feb 18, 2025 at 8:39 AM
To: Teresa McCreary <TMcCreary@rahdertlaw.com>, George Thurlow <GThurlow@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>

Good morning Teresa,

Judge Ramsberger would like a telephone conference call Case Management Conference schedule regarding the above matter.

The following time slots are available:

M	Feb. 24	9:45am, 2:30pm
T	Feb. 25	10:30am, 3:30pm
W	Feb. 26	9:15am, 2:45, 3:30pm
M	March 3	10:30am

Teresa, would you please let me know as soon as possible which of the above time slots clears with Mr. Liccione and Attorney Thurlow.

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

* UNTIL FURTHER NOTICE, ALL HEARINGS set before Judge Thomas Ramsberger will be conducted

by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

Please state the date the motion was filed when requesting a hearing time slot via JAWS.

All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: Section19
Sent: Friday, February 14, 2025 4:19 PM
To: Teresa McCreary <TMcCreary@rahdertlaw.com>; George Thurlow <GThurlow@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Good afternoon Teresa,

I apologize for the delay in my reply. The OTSC hearing will not go forward on Monday, February 17, 2025 or anytime next week.

I will coordinate with you soon regarding a new hearing date.

Thank you for your assistance.

Have a wonderful weekend!

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

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by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

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All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: Teresa McCreary <TMcCreary@rahdertlaw.com>
Sent: Friday, February 14, 2025 3:58 PM
To: Section19 <Section19@jud6.org>; George Thurlow <GThurlow@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Ms. McGivern:

Please advise if we should expect an Order for the Order to Show Cause Hearing on Monday.

Teresa M.O. McCreary, FRP

Florida Registered Paralegal

FBN #0292645; CTM-103885

Paralegal/Legal Assistant

Phone: (727) 823-4191 X428

EFax: 7275135600@hostmyfax.com

Fax: (727) 823-6189

Email: TMcCreary@rahdertlaw.com

From: Section19 <Section19@jud6.org>
Sent: Thursday, February 13, 2025 4:21 PM
To: George Thurlow <GThurlow@rahdertlaw.com>; Teresa McCreary <TMcCreary@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Good afternoon Attorney Thurlow,

Thank you for your email and assistance.

I will discuss this matter with Judge Ramsberger as soon as he takes a recess from trial.

I will reply again as soon as possible.

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

* *UNTIL FURTHER NOTICE*, *ALL HEARINGS* set before Judge Thomas Ramsberger will be conducted by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

Please state the date the motion was filed when requesting a hearing time slot via JAWS.

All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: George Thurlow <GThurlow@rahdertlaw.com>
Sent: Thursday, February 13, 2025 4:08 PM
To: Section19 <Section19@jud6.org>; Teresa McCreary <TMcCreary@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Dear Ms. McGivern:

I can attend at any of those times on Monday February 17th.

To supplement my morning conversation which my last email relayed, I once again called Mr. Liccione this afternoon to confirm whether he was available, and he declined to confirm his availability.

George Thurlow, Esq.

Associate Attorney

Rahdert & Mortimer, PLLC

535 Central Avenue

Suite 200

St. Petersburg, FL 33701

Office: (727)823-4191 ext. 409

Fax: (727)513-5600

GThurlow@RahdertLaw.com

THIS MESSAGE AND ANY FILES TRANSMITTED WITH IT ARE CONFIDENTIAL AND INTENDED SOLELY FOR THE INDIVIDUAL OR ENTITY TO WHOM THEY ARE ADDRESSED. IF YOU ARE NOT THE INTENDED RECIPIENT, YOU ARE HEREBY NOTIFIED THAT ANY DISCLOSURE, COPYING, DISTRIBUTION OR THE USE OF THE CONTENTS OF THIS TRANSMISSION IS PROHIBITED. IF YOU HAVE RECEIVED THIS MESSAGE IN ERROR, DESTROY IT IMMEDIATELY. ***CONFIDENTIAL***

From: Section19 <Section19@jud6.org>
Sent: Thursday, February 13, 2025 12:15 PM
To: George Thurlow <GThurlow@rahdertlaw.com>; Teresa McCreary <TMcCreary@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Good afternoon Attorney Thurlow,

As I previously stated, this Order to Show Cause hearing needs to be heard sooner, rather than later.

The Order to Show Cause hearing will be scheduled for Monday, February 17, 2025 at 11:00, 11:15, 11:30 or 11:45am.

Please let me know as soon as possible which time works best for all parties.

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

* *UNTIL FURTHER NOTICE*, *ALL HEARINGS* set before Judge Thomas Ramsberger will be conducted

by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

Please state the date the motion was filed when requesting a hearing time slot via JAWS.

All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: George Thurlow <GThurlow@rahdertlaw.com>
Sent: Thursday, February 13, 2025 10:41 AM
To: Section19 <Section19@jud6.org>; Teresa McCreary <TMcCreary@rahdertlaw.com>
Cc: John Liccione <jliccione@gmail.com>
Subject: RE: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Dear Ms. McGivern:

I spoke with Mr. Liccione by telephone just now, and he advised me that he is not available for any of the times offered by the Court next week, as his election for Mayor of Gulfport is on March 11th. Mr. Liccione asked me to relay his request to the Court that this hearing be held after his election. Mr. Liccione additionally stated that if the hearing is to be set for next week or a time before his election, he would seek intervention from the Florida Supreme Court.

Assuming that the Court proceeds in holding this hearing next week, I can be available for the February 17th or 18th dates (I am in a deposition at the 2/19 times and have a hearing before Judge Andrews at the same time as the available time on 2/20).

Best,

George

George Thurlow, Esq.

Associate Attorney

Rahdert & Mortimer, PLLC

535 Central Avenue

Suite 200

St. Petersburg, FL 33701

Office: (727)823-4191 ext. 409

Fax: (727)513-5600

GThurlow@RahdertLaw.com

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From: Section19 <Section19@jud6.org>
Sent: Wednesday, February 12, 2025 3:12 PM
To: Teresa McCreary <TMcCreary@rahdertlaw.com>
Cc: George Thurlow <GThurlow@rahdertlaw.com>; John Liccione <jliccione@gmail.com>
Subject: RE: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Good afternoon Teresa,

Thank you for your email and for forwarding to the court Mr. Liccione emails.

I just sent to the parties the only other time slots that I have available for this OTSC hearing.

I appreciate your assistance.

~Those affected by Hurricane Helene and/or Hurricane Milton, you are in our thoughts~

Please note Judge Ramsberger's telephone conference call number below.

Thank you,

Valerie McGivern

Judicial Assistant to

Circuit Judge Thomas Ramsberger

545 First Avenue North, Room 200

St. Petersburg, FL 33701

(727) 582-7874 / Section19@jud6.org

www.jud6.org

* *UNTIL FURTHER NOTICE*, *ALL HEARINGS* set before Judge Thomas Ramsberger will be conducted by telephone conference call. *

Conference Telephone Number: 1 (425) 436-6303 Access Code: 141878#

Please state the date the motion was filed when requesting a hearing time slot via JAWS.

All counsels shall properly associate themselves in JAWS as Attorney for Plaintiff/Defendant.

Please note that Florida has a very broad public records law. Most written communications to or from state officials regarding state business are considered public records. Your e-mail message may be subject to public disclosure upon request.

From: Teresa McCreary <TMcCreary@rahdertlaw.com>
Sent: Wednesday, February 12, 2025 12:23 PM
To: Section19 <Section19@jud6.org>
Cc: George Thurlow <GThurlow@rahdertlaw.com>; John Liccione <jliccione@gmail.com>
Subject: FW: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Ms. McGivern: To supplement Mr. Thurlow's response, I am forwarding to you Mr. Liccione's response to the dates kindly and courteously provided by

the Court.

Teresa M.O. McCreary, FRP

Florida Registered Paralegal

FBN #0292645; CTM-103885

Paralegal/Legal Assistant

Phone: (727) 823-4191 X428

EFax: 7275135600@hostmyfax.com

Fax: (727) 823-6189

Email: TMcCreary@rahdertlaw.com

From: John Liccione <jliccione@gmail.com>
Sent: Wednesday, February 12, 2025 12:12 PM
To: Teresa McCreary <TMcCreary@rahdertlaw.com>; George Thurlow <GThurlow@rahdertlaw.com>
Subject: Re: FW: Liccione v. Pinellas Democratic Executive Committee, Case No. 24-002994-CI-19

Ms McCreary,

I'm not available on Feb 18th. I'd ask that we focus on dates solely beyond March 11th. This may become moot given my Petition for Emergency Writ of Prohibition/Mandamus. I'm going to be contacting the 2nd DCA to determine when I might get a ruling.

In the meantime, the following dates in March are currently blocked and unavailable:

March 12

March 13
March 14
March 21
March 25

I don't yet have anything else booked on my calendar after March 11th. All of April is currently open.

Regards,

John Liccione

February 18, 2025

John Liccione
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

FILED
CIVIL COURT RECORDS DEPARTMENT
FEB 2 5 2025
KEN BURKE
CLERK CIRCUIT COUNTY COURT & COMPTROLLER

Clerk of the Court
Florida Supreme Court
500 South Duval Street
Tallahassee, FL 32399-1927

Re: **Emergency Petition for Writ of Certiorari, Writ of Prohibition, and Writ of Mandamus for Judicial Disqualification**

Case Nos: **2D2025-0297**
L.T. No: 24-003939-CI;
L.T. No.: 24-002994-CI

Dear Clerk of the Court,

Enclosed for filing, please find the Emergency Petition for Writ of Certiorari, Writ of Prohibition, and Writ of Mandamus for Judicial Disqualification in the above-referenced matter. This petition is submitted by the Petitioner, John William Liccione, pro se, seeking urgent intervention by this Honorable Court.

As detailed in the petition, this case involves critical constitutional concerns, including violations of due process, judicial impartiality, and potential election fraud, necessitating immediate appellate review. Specifically, Petitioner requests this Court's intervention to disqualify Judges Thomas Ramsberger and Patricia Muscarella due to newly discovered conflicts of interest and to vacate certain judicial orders that threaten irreparable harm. Additionally, the petition seeks relief to prohibit an improperly scheduled contempt hearing designed to interfere with Petitioner's candidacy in the upcoming Gulfport mayoral election on March 11, 2025.

Given the urgency of these issues and the imminent harm posed to fundamental rights, I respectfully request that this Court expedite its review of this petition. Petitioner stands ready to provide any further documentation or argument the Court may require.

Please kindly confirm receipt of this filing. Should there be any deficiencies or additional requirements, please notify me at your earliest convenience.

Thank you for your time and attention to this matter. I appreciate the Court's consideration of this urgent petition.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
443-698-8156
jliccione@gmail.com

Enclosures: Emergency Petition for Writ of Certiorari, Writ of Prohibition, and Writ of Mandamus, Certificate of Service, Exhibits A - Q

Supreme Court of Florida

FRIDAY, MARCH 7, 2025

John William Liccione,
Petitioner(s)
v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

SC2025-0242
Lower Tribunal No(s).:
2D2025-0297;
522024CA002994XXCICI;
522024CA003939XXCICI

Petitioner's Motion for Rehearing, Petition for Emergency Stay, and Petition for Emergency Injunctive Relief is hereby denied.

A True Copy
Test:

SC2025-0242 3/7/2025
John A. Tomasino
Clerk, Supreme Court
SC2025-0242 3/7/2025

KS
Served:

2DCA CLERK
PINELLAS CLERK
KIRBY ZOE KREIDER
JOHN WILLIAM LICCIONE
HON. PATRICIA ANN MUSCARELLA
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

Filed, MAR 7, 2025, 13:46, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Supreme Court of Florida

Office of the Clerk
500 South Duval Street
Tallahassee, Florida 32399-1927

JOHN A. TOMASINO
CLERK
MARK CLAYTON
CHIEF DEPUTY CLERK
JULIA BREEDING
STAFF ATTORNEY

PHONE NUMBER: (850) 488-0125
www.floridasupremecourt.org

Friday, March 7, 2025

RE: John William Liccione,
Petitioner(s)

v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

Case Number: SC2025-0242
Lower Tribunal Case Number(s): 2D2025-0297; 522024CA002994XXCICI; 522024CA003939XXCICI

The Florida Supreme Court has received the following documents reflecting a filing date of March 6, 2025.

Emergency Petition for Order to Show Cause

Please be advised that the above Emergency Petition for Order to Show Cause has been forwarded to the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, for consideration in the context of case numbers 522024CA002994XXCICI and 522024CA003939XXCICI, to be placed with case number SC2025-0242, which was transferred to that Court on February 25, 2025. Any future pleadings filed in the above case should be filed in the above mentioned circuit court at 14250 49th Street North, Clearwater, FL 33762.

KS
cc:

Filed, MAR 7, 2025, 15:35, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

2DCA Clerk
Pinellas Clerk
Kirby Zoe Kreider
John William Liccione
Hon. Patricia Ann Muscarella
Hon. Thomas M. Ramsberger
George Albert Doyle Thurlow

Filed, MAR 7, 2025, 15:35, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

IN THE SUPREME COURT OF FLORIDA

JOHN WILLIAM LICCIONE,

Petitioner,

v.

Judge Thomas Ramsberger'

Respondent.

CASE NO.: SC2025-0242

Lower State Tribunal Nos.: 2D2025-0297;
522024CA002994XXCICI;
522024CA003939XXCICI
Related Federal Tribunal No.:
8:24-cv-02005-SDM-NHA

_____/

EMERGENCY PETITION FOR ORDER TO SHOW CAUSE

COMES NOW, Petitioner, John William Liccione, and files this Emergency Petition to Show Cause why Respondent Judge Thomas Ramsberger should not be held in contempt for willful disobedience of this Court's February 25, 2025, order divesting him of jurisdiction over Case No. 522024CA002994XXCICI and transferring the matter to the 6th Circuit Court in Clearwater. In support of this Petition, Petitioner states as follows:

I. JURISDICTION

1. This Court has jurisdiction to enforce its orders and to hold individuals, including judicial officers, in contempt for willful disobedience of its directives

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

pursuant to Article V, Section 3(b) of the Florida Constitution and applicable Florida law.

II. BACKGROUND FACTS

2. On February 25, 2025, this Court issued an order removing jurisdiction from Judge Thomas Ramsberger over Case No. 522024CA002994XXCICI and transferring the case to the 6th Circuit Court in Clearwater. (EXHIBIT A)

3. Judge Ramsberger was electronically served with this Court's order on February 25, 2025, and was therefore fully aware of the divestiture of his jurisdiction.

4. Despite this, on February 27, 2025, Judge Ramsberger issued a written order (EXHIBIT B) sua sponte dismissing the case after what was supposed to have been non-dispositive case management hearing held on February 24th, an action taken without jurisdiction and in direct violation of this Court's order. An inspection of the written order shows that Judge Ramsberger applied his "wet signature." The acts of signing the order, and having it entered, after knowing he had been divested of jurisdiction, demonstrates a willful disregard for this Court's order.

5. Additionally, Judge Ramsberger reaffirmed in the Order that he will be holding a previously scheduled criminal contempt show-cause hearing on April 10, 2025, further exercising jurisdiction over a case he no longer had authority to preside over. On page two of the order, the Judge stated: "*This Court shall retain*

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

jurisdiction over any ancillary matters, including but not limited to the Order to Show Cause pending against the Plaintiff which is currently set for hearing on April 10, 2025."

6. Then, Judge Ramsberger went on to deny Petitioner's ore tenus Motion for Stay, and his ore tenus Motion for Recusal in the order.

III. LEGAL BASIS FOR CONTEMPT

6. Contempt proceedings require proof of willful disobedience of a court order. A judicial officer's intentional disregard of a higher court's directive constitutes contempt.

7. The Florida Rules of General Practice and Judicial Administration mandate that judges must comply with orders from higher courts and refrain from taking actions that exceed their jurisdiction.

8. Judge Ramsberger's actions—issuing and signing and entering a written dismissal order on February 27, 2025, re-affirming a previous order for a criminal contempt show-cause hearing on April 10, 2025, and denying Petitioner's motions for stay and recusal after having been divested of jurisdiction—constitute a willful and deliberate violation of this Court's February 25, 2025, order.

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

IV. ARGUMENT

9. **Willful Disobedience**: Judge Ramsberger's conduct demonstrates clear and intentional defiance of this Court's authority. The timeline of events establishes that he was aware of the divestiture of jurisdiction yet proceeded to act in the case after he was divested of jurisdiction.

10. **Obstruction of Justice**: By dismissing the case sua sponte after being divested of jurisdiction and scheduling a contempt hearing, Judge Ramsberger obstructed the judicial process and undermined the integrity of this Court's review.

11. **Precedent and Judicial Accountability**: While judges are afforded discretion in their judicial functions, willful disobedience of a higher court's order is not protected by judicial immunity and warrants contempt proceedings to uphold the rule of law.

V. RELIEF REQUESTED

WHEREFORE, Petitioner respectfully requests that this Court:

A. Issue an order to show cause requiring Judge Thomas Ramsberger to explain why he should not be held in contempt for willfully violating this Court's February 25, 2025, order;

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

B. Hold Judge Ramsberger in contempt for his actions, including the sua sponte written dismissal of the case and the scheduling of a contempt hearing after being divested of jurisdiction;

C. Impose appropriate sanctions to address the willful disobedience and deter future violations of this Court's authority; and

D. Grant any other relief this Court deems just and proper.

Respectfully submitted,

/s/ John W. Liccione
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6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

List of Exhibits:

Exhibit A: Supreme Court's February 25, 2025 Order Transferring the Case to the 6th Circuit Court in Clearwater

Exhibit B: Judge Ramsberger's February 27, 2025 Order Dismissing Lawsuit

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March 2025, a true and correct copy of the foregoing Emergency Petition for Contempt has been e-served on Respondent Judge Thomas Ramsberger, Judge Patricia Muscarella, on Defendants the Pinellas Democratic Executive Committee, Jennifer Griffith, Michael Sherosky through their attorney George Thurlow; Defendant Julie Marcus through her attorney Kirby Kreider, and on Defendant Cathy Salustri through her attorney James Lake, via the Court's e-file and serve system and via email.

/s/ John W. Liccione

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Supreme Court of Florida

TUESDAY, FEBRUARY 25, 2025

John William Liccione,
Petitioner(s)
v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

SC2025-0242
Lower Tribunal No(s).:
2D2025-0297;
522024CA002994XXCICI;
522024CA003939XXCICI

The petition for writ of prohibition is hereby transferred to the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, for consideration in the context of case numbers 522024CA002994XXCICI and 522024CA003939XXCICI. The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of prohibition. The transferee court should not interpret the transfer of this case as an indication that it must or should reach the merits of the petition. Any determination concerning whether a filing fee shall be applicable to this case shall be made by the transferee court. Any and all pending motions in this case are hereby deferred to the transferee court.

Any future pleadings filed regarding this case should be filed in the above mentioned circuit court at 14250 49th Street North, Clearwater, FL 33762.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

A True Copy
Test:

EXHIBIT A

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

SC2025-0242 2/25/2025

John A. Tomasino
Clerk, Supreme Court
SC2025-0242 2/25/2025

KS
Served:
2DCA CLERK
PINELLAS CLERK
KIRBY ZOE KREIDER
JOHN WILLIAM LICCIONE
HON. PATRICIA ANN MUSCARELLA
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

I#: 2025062757 BK: 23080 PG: 2517, 03/04/2025 at 10:53 AM, RECORDING 2
KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
CLKDU17

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

Case No. 24-002994-CI

COMPANION WITH:

Case No. 24-003939-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

ORDER DISMISSING LAWSUIT

THIS CAUSE, having come before this Court on February 24, 2025 at a duly noticed Case Management Conference, and this Court, having heard argument from Plaintiff *Pro Se* and counsel for Defendants, and being otherwise fully and duly advised in its premises, the Court hereby finds as follows:

1. On December 20, 2024, this Court entered an Order (Doc # 64) requiring Plaintiff to replead Counts I and II in an amended pleading, if Plaintiff so desired, dismissing Counts III, IV, VI, and VII without prejudice, and dismissing Counts V and VIII with prejudice. The Order set a deadline of December 30, 2024 for Plaintiff to file an amended complaint.
2. The Plaintiff subsequently filed a Motion for Clarification of the December 20, 2024 Order (Doc # 64) on December 21, 2024 and a Motion for Extension of Time to File Second Amended Complaint (Doc # 65) on December 30, 2024. The Court held a hearing on these motions on January 28, 2025 (Doc # 66)
3. On January 31, 2025, the Court entered an Order (Doc # 68) denying Plaintiff's Motion for Clarification and Motion for Extension of Time, setting a deadline for Plaintiff to file a Second Amended Complaint of February 4, 2025 at 4:00pm local time.
4. As of February 24, 2025, Plaintiff had not filed an amended complaint and indicated as such on the record at the Case Management Conference.

EXHIBIT B

Filed, MAR 3, 2025, 8:14, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County
Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

5. On February 3, 2025, this Court entered an Order to Show Cause against the Plaintiff, John William Liccione (Doc #69) which was amended on February 11, 2025 (Doc #75) for the purposes of changing the hearing date to April 10, 2025.
6. At the Case Management Conference, Plaintiff made *ore tenus* motions to stay this action pending the outcome of a petition he filed with the Supreme Court of Florida and to ask for the recusal of Judges Ramsberger and Muscarella based upon his verbal allegations that they are either fact witnesses or victims to the acts Plaintiff is alleging.

Based on the foregoing, this Court hereby **ORDERS AND ADJUDGES** as follows:

(1) Based on the December 20, 2024 and January 31, 2025 orders of this Court and that the Plaintiff has not filed an Amended Complaint, this case (24-002994-CI and 24-003939-CI as it pertains to Defendant Jennifer Griffith) is **DISMISSED** without prejudice. The Clerk of Court is directed to close the case file. This Court shall retain jurisdiction over any ancillary matters, including but not limited to the Order to Show Cause pending against the Plaintiff which is currently set for hearing on April 10, 2025.

(2) Plaintiff's *ore tenus* Motion for Stay is **DENIED.**

(3) Plaintiff's *ore tenus* Motion for Recusal is **DENIED.** The Court notes that recusals are voluntary and that the proper vehicle for a litigant to judicially seek the removal of a presiding judge is through a Motion to Disqualify, which must be filed in writing.

DONE AND ORDERED in Chambers, St. Petersburg, Pinellas County, Florida.

2/27/2025

The Honorable Thomas Ramsberger
Circuit Court Judge

Copies to:
John William Liccione, Plaintiff *Pro Se* (jliccione@gmail.com)
George A.D. Thurlow, Counsel for Defendants (gthurlow@rahdertlaw.com)

Filed, MAR 3, 2025, 8:14, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County
Filed, MAR 7, 2025, 15:37, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Supreme Court of Florida

TUESDAY, MARCH 11, 2025

John William Liccione,
Petitioner(s)
v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

SC2025-0242
Lower Tribunal No(s).:
2D2025-0297;
522024CA002994XXCICI;
522024CA003939XXCICI

Petitioner's Motion for Clarification on Jurisdiction filed with this Court on March 10, 2025, is hereby stricken as unauthorized.

PLEASE BE ADVISED THAT THE ABOVE STYLED CASE IS FINAL IN THIS COURT AND NO FURTHER PLEADINGS MAY BE FILED. ANY FURTHER FILINGS WILL NOT BE RESPONDED TO AND PLACED IN A MISCELLANEOUS FILE.

A True Copy
Test:

SC2025-0242 3/11/2025
John A. Tomasino
Clerk, Supreme Court
SC2025-0242 3/11/2025

KS
Served:
2DCA CLERK
PINELLAS CLERK
KIRBY ZOE KREIDER

Filed, MAR 11, 2025, 17:10, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

JOHN WILLIAM LICCIONE
HON. PATRICIA ANN MUSCARELLA
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

Filed, MAR 11, 2025, 17:10, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

ORDER DENYING PLAINTIFF'S MOTION FOR DISQUALIFICATION OF JUDGE

THIS MATTER is before the Court on the Emergency Petition for Writ of Certiorari, Writ of Prohibition, and Writ of Mandamus (hereinafter "Petition") dated February 20, 2025, which has been transferred to this Court by the Florida Supreme Court's Order dated February 25, 2025.[1] Having considered the Petition, the case file, the applicable law, and being otherwise fully advised in the premises, the Court hereby

FINDS and ORDERS as follows:

1. Plaintiff's Petition includes a motion for disqualification of the undersigned judge in the above-referenced matter.

2. The motion for disqualification is hereby **DENIED** as legally insufficient.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this __ day of March, 2025.

24-003939-CI 3/13/2025 1:30:34 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 3/13/2025 1:30:34 PM

Honorable Patricia A. Muscarella
Circuit Civil Judge

[1] See *John William Liccione v. Pinellas Democratic Executive Committee, et. al.*, Florida Supreme Court Case Number SC2025-0242.

ELECTRONICALLY FILED 3/13/2025 1:30:34 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Copies furnished to:

Parties served by email

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Counsel for Defendant, Whitney Fox

Party served by U.S. mail

Patrick Heinzen
1785 40th Ave. N.
St. Petersburg, FL 33714
Defendant

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
JULIE MARCUS, et al.,
Defendants.
_____/

Case No.: 24-003939-CI
Related Federal Case No.:
8:24-cv 02005-SDM-NHA

NOTICE OF VOLUNTARY DISMISSAL WITHOUT PREJUDICE OF DEFENDANTS JULIE MARCUS AND PATRICK HEINZEN

COMES NOW, Plaintiff John William Liccione, pro se, and pursuant to Florida Rule of Civil Procedure 1.420(a)(1), hereby voluntarily dismisses Defendants Julie Marcus and Patrick Heinzen from this action without prejudice. This dismissal applies only to Defendants Marcus and Heinzen does not affect any claims against the sole remaining Defendant Cathy Salustri-Loper. As to Defendant Marcus, Plaintiff gives this Court notice that he will be consolidating his election-related claims against Ms. Marcus in Plaintiff's related federal case, *Liccione-v-DeSantis, et al*, 8:24-cv 02005-SDM-NHA. As to Defendant Heinzen, Plaintiff has never brought any federal claims against him, nor did he ever bring any federal claims against Defendant Cathy Salustri-Loper.

Respectfully submitted,

/s/ John W. Liccione
John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
Email: jliccione@gmail.com
Phone: 443-698-8156

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Notice of Voluntary Dismissal has been served upon Defendant Cathy Salustri-Loper through her attorney James Lake, and upon Defendant Julie Marcus' attorney Kirby Kreider, via the court's e-file and e-serve system, on this 20th day of March, 2025. As to Defendant Patrick Heinzen, to date Plaintiff has been unsuccessful in affecting any service of process Mr. Heinzen using a process server, the US Mail, or through Defendant Cathy Salustri-Loper's attorney James Lake.

/s/ John W Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

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

Defendants.
_____/

ORDER ON PLAINTIFF'S TRANSFERRED PETITION

THIS MATTER is before the Court on the Order (hereinafter "Transfer Order") of the Florida Supreme Court dated February 25, 2025 in Florida Supreme Court Case Number SC2025-0242. Having considered the Transfer Order, the case file, the applicable law, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. Background and Procedural History

1. On September 3, 2024, Plaintiff initiated the instant action in this Court.

2. On November 20, 2024, this Court entered an order staying the instant matter (hereinafter "Stay Order") due to the existence of analogous federal litigation filed by Plaintiff before the initiation of this proceeding.

3. On February 10, 2025, Plaintiff filed a Petition for Writ of Prohibition (hereinafter "Prohibition Petition") in Florida's Second District Court of Appeal (hereinafter "Second District") which pertained to Pinellas County Case No. 24-002994-CI rather than the instant matter.

ELECTRONICALLY FILED 3/24/2025 2:45:55 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

4. On February 12, 2025, the Second District entered an Order summarily denying Plaintiff's Prohibition Petition. Said Order is attached as Exhibit A.

5. On February 20, 2025, Plaintiff filed an Emergency Petition for Writ of Certiorari, Writ of Prohibition, and Writ of Mandamus (hereinafter "Instant Petition") with the Florida Supreme Court, which requested relief as to the instant matter even though the Prohibition Petition did not pertain to this case.[1]

6. On February 25, 2025, the Florida Supreme Court entered the Transfer Order without any disposition of the Instant Petition. The Transfer Order states: "The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of prohibition." The Transfer Order is attached as Exhibit B.

II. Request for Writ of Certiorari

7. The Instant Petition requests a "writ of certiorari to review the Second District Court of Appeal's denial of Petitioner's prior petition for writ of prohibition." Pet. at 11.

8. "The common law writ of certiorari is a special mechanism whereby an upper court can direct a lower tribunal to send up the record of a pending case so that the upper court can 'be informed of' events below and evaluate the proceedings for regularity." *Broward Cnty. v. G.B.V. Intern., Ltd.*, 787 So. 2d 838, 842 (Fla. 2001) (citation omitted).

---

[1] The appellate history of this matter is circuitous. Plaintiff's Prohibition Petition in the Second District only pertained to a related case in this Court: Pinellas Case Number 24-002994-CI, which is before Judge Thomas Ramsberger rather than the undersigned. Thereafter, Plaintiff filed the Instant Petition with the Florida Supreme Court. The Instant Petition went beyond seeking certiorari review of the Second District's denial of the Prohibition Petition by raising additional appellate issues for the first time as to both Pinellas Case Number 24-002994-CI and the instant matter. The Instant Petition's case caption does not include any of the respondents named as parties to the Second District case. Instead, the Instant Petition names the undersigned and Judge Ramsberger as the sole respondents. Notably, the Florida Supreme Court ignored Plaintiff's alteration to the case caption and docketed the case in accordance with the proceedings in both lower tribunals. This Court is in no position to adjudicate whether procedural irregularities existed as to the filings made in the Second District and the Florida Supreme Court, but the foregoing commentary is provided herein to clarify the record.

9. As this Court is the lower tribunal in relation to the Second District, this Court lacks certiorari jurisdiction to review the decisions of the Second District and therefore is not authorized to issue the requested writ of certiorari.

III. Request for Writ of Prohibition

10. "Prohibition is an extraordinary writ ... by which a superior court, having appellate and supervisory jurisdiction over an inferior court or tribunal possessing judicial or quasi-judicial power, may prevent such inferior court or tribunal from exceeding jurisdiction or usurping jurisdiction over matters not within its jurisdiction." *English v. McCrary*, 348 So. 2d 293, 296 (Fla. 1977); *see also Mandico v. Taos Const., Inc.*, 605 So. 2d 850, 853 (Fla. 1992) ("Prohibition is an extraordinary writ by which a superior court may prevent an inferior court or tribunal, over which it has appellate and supervisory jurisdiction, from acting outside its jurisdiction" (citations omitted)).

11. In the instant matter, this Court serves as the trial court and court of original jurisdiction. Under these circumstances, this Court is the lowest court in the Florida judicial system. To the extent the Instant Petition requests a writ of prohibition against the undersigned, this Court does not have appellate jurisdiction over itself and is not authorized to issue the requested writ of prohibition.

IV. Request for Writ of Mandamus

12. The Instant Petition also requests "a Writ of Mandamus ordering Judge Muscarella to vacate her sua sponte stay order in the Clearwater case in Case No. 24-003939-CI." Pet. at 11. It also appears to request a writ of mandamus to disqualify the undersigned. See Pet. at 1.

13. It is true that mandamus is an original action which can be initiated in this Court. See *Anthony v. Singletary*, 718 So. 2d 335, 336 (Fla. 2d DCA 1998) (reversing a circuit court for

failing to make the necessary threshold determination of whether an original mandamus action filed in the circuit court was legally sufficient).

14. However, Plaintiff seeks a writ of mandamus specifically against this Court, which this Court is not authorized to rule on. See *Scott v. State*, 130 So. 3d 741, 743 (Fla. 3d DCA 2014) ("[D]istrict courts typically address mandamus actions requiring a circuit court judge to act" (citation omitted)). Accordingly, this Court is the incorrect venue for the relief requested by Plaintiff as this Court is not authorized to issue a writ of mandamus against itself.

15. Furthermore, Plaintiff's request for a writ of mandamus does not comply with the Florida Rules of Civil Procedure. Plaintiff must plead a mandamus action in this Court as a complaint. See Fla. R. Civ. P. 1.630(b) ("The initial pleading must be a complaint"). Even if this Court was an appropriate venue for Plaintiff's mandamus action, Plaintiff was required to either amend his complaint in this action to include a mandamus count or otherwise file a separate mandamus action in the circuit court. Plaintiff did neither. Furthermore, seeking mandamus relief in the instant action would be futile as it would violate the Stay Order.

V. Conclusion

16. Plaintiff initiated the instant matter in this Court, thus making this Court the tribunal with original jurisdiction. As such, this Court is functioning as the lowest court in the Florida judicial system as to the instant matter and therefore does not have the necessary appellate or supervisory jurisdiction to grant the relief requested by the Instant Petition.

Accordingly, it is

ORDERED and ADJUDGED:

1. Plaintiff's request for a writ of certiorari is hereby **DENIED** for lack of jurisdiction.

2. Plaintiff's request for a writ of prohibition is hereby **DENIED** for lack of jurisdiction.

3. Plaintiff's request for a writ of mandamus is hereby **DENIED** for lack of jurisdiction and for otherwise violating the Florida Rules of Civil Procedure and the Stay Order.

4. To the extent the Instant Petition seeks disqualification of the undersigned judge, Plaintiff's motion for disqualification has been addressed separately in this Court's prior Order Denying Plaintiff's Motion for Disqualification of Judge dated March 13, 2025.

5. All additional relief requested in the Instant Petition, including but not limited to Plaintiff's request for the vacation of the Stay Order, is hereby **DENIED** as Plaintiff has failed to state a sufficient legal basis for such relief.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this __ day of March, 2025.

24-003939-CI 3/24/2025 2:45:55 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 3/24/2025 2:45:55 PM
Honorable Patricia A. Muscarella
Circuit Civil Judge

Copies furnished to:

Parties served by email

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jackie@employeerights.com
Counsel for Defendant, Whitney Fox

Party served by U.S. mail

Patrick Heinzen
1785 40th Ave. N.
St. Petersburg, FL 33714
Defendant

DISTRICT COURT OF APPEAL OF THE STATE OF FLORIDA
SECOND DISTRICT
1700 N. Tampa Street, Suite 300, Tampa FL 33602

February 12, 2025

JOHN WILLIAM LICCIONE,
PETITIONER(S)
V.

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE, MICHAEL JOHN SHEROSKY, JENNIFER W. GRIFFITH,
RESPONDENT(S).

CASE NO.: 2D2025-0297
L.T. No.: 24-002994-CI

BY ORDER OF THE COURT:

The petition for writ of prohibition is denied.

SILBERMAN, MORRIS, and LABRIT, JJ., Concur.

I HEREBY CERTIFY that the foregoing is a true copy of the original court order.

Mary Elizabeth Kuenzel, Clerk
2D2025-0297 2/12/25

JAR

Served:
PINELLAS CLERK
JOHN WILLIAM LICCIONE
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

EXHIBIT
A

Supreme Court of Florida

TUESDAY, FEBRUARY 25, 2025

John William Liccione,
Petitioner(s)
v.

Pinellas Democratic Executive Committee, et al.
Respondent(s)

SC2025-0242
Lower Tribunal No(s).:
2D2025-0297;
522024CA002994XXCICI;
522024CA003939XXCICI

The petition for writ of prohibition is hereby transferred to the Circuit Court of the Sixth Judicial Circuit, in and for Pinellas County, Florida, for consideration in the context of case numbers 522024CA002994XXCICI and 522024CA003939XXCICI. The transfer of this case should not be construed as an adjudication or comment on the merits of the petition, nor as a determination that the transferee court has jurisdiction or that the petition has been properly denominated as a petition for writ of prohibition. The transferee court should not interpret the transfer of this case as an indication that it must or should reach the merits of the petition. Any determination concerning whether a filing fee shall be applicable to this case shall be made by the transferee court. Any and all pending motions in this case are hereby deferred to the transferee court.

Any future pleadings filed regarding this case should be filed in the above mentioned circuit court at 14250 49th Street North, Clearwater, FL 33762.

NOT FINAL UNTIL TIME EXPIRES TO FILE REHEARING MOTION AND, IF FILED, DETERMINED.

A True Copy
Test:

EXHIBIT
B

SC2025-0242 2/25/2025
John A. Tomasino
Clerk, Supreme Court
SC2025-0242 2/25/2025

KS
Served:
2DCA CLERK
PINELLAS CLERK
KIRBY ZOE KREIDER
JOHN WILLIAM LICCIONE
HON. PATRICIA ANN MUSCARELLA
HON. THOMAS M. RAMSBERGER
GEORGE ALBERT DOYLE THURLOW

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

CLEARWATER – SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
Cathy Salustri-Loper
Defendants.

CASE NO.: CA-003939-CI

Related Federal Case:
8:24-cv-02005-SDM-NHA

_____/

PLAINTIFF'S MOTION TO LIFT STAY

COMES NOW, Plaintiff JOHN WILLIAM LICCIONE, pro se, pursuant to Florida Rule of Civil Procedure 1.530 and this Court's inherent authority to reconsider interlocutory orders, and respectfully moves this Honorable Court to Lift Stay. The factual and legal circumstances underpinning the Court's sua sponte stay have since materially changed. The stay no longer serves a judicial purpose, as no remaining claims or defendants in this state case overlap with the related federal litigation. In support, Plaintiff states:

I. PROCEDURAL BACKGROUND

1. On November 20, 2024, this Court entered a sua sponte Order staying proceedings, citing the pendency of a related federal case and the existence of "overlapping legal and factual issues, including Defendants in common."
2. At the time the stay was entered, this state case included Defendants Julie Marcus, Patrick Heinzen, Jennifer Griffith, Whitney Fox, and Mark Weinkrantz, in addition to Defendant Cathy Salustri-Loper. Several of these defendants were alleged to be involved in events

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overlapping with Plaintiff's federal action, 8:24-cv-02005-SDM-NHA, in which Plaintiff subsequently filed his First Amended Complaint on February 18, 2025. **(EXHIBIT A)**

3. Since that time:
    1) Defendant Jennifer Griffith was transferred to case number 24-002994-CI pursuant to this Court's order;
    2) Defendants Whitney Fox and Mark Weinkrantz were voluntarily dismissed by Plaintiff;
2. On March 20, 2025, Plaintiff filed a Notice of Voluntary Dismissal (Dkt 120) Without Prejudice of Defendants Julie Marcus and Patrick Heinzen, pursuant to Florida Rule of Civil Procedure 1.420(a)(1).
4. Plaintiff's Notice of Voluntary Dismissal was filed pursuant to Florida Rule of Civil Procedure 1.420(a)(1) and is legally self-executing. Upon filing, it immediately and effectively dismissed Defendants Marcus and Heinzen from this action. Florida courts have consistently held that a notice of voluntary dismissal under Rule 1.420(a)(1) is effective upon filing and requires no court order to take effect. See *Pino v. Bank of New York*, 121 So. 3d 23, 32 (Fla. 2013) ("A plaintiff's notice of voluntary dismissal under rule 1.420(a)(1) terminates judicial labor and divests the trial court of jurisdiction."); *Falkner v. Ameris Bank*, 314 So. 3d 784, 787 (Fla. 1st DCA 2021) ("Once a notice of voluntary dismissal is filed, the trial court loses jurisdiction to take further action on the merits of the case."). As a result, the only remaining defendant is Cathy Salustri-Loper, who is not a party to the federal action and is alleged to have engaged in conduct wholly unrelated to the facts and legal theories asserted in that case.

II. NO REMAINING COMMONALITY BETWEEN STATE AND FEDERAL CASES AS TO SOLE REMAINING DEFENDANT SALUSTRI-LOPER

A. Federal Case: *Liccione v. DeSantis*, 8:24-cv-02005-SDM-NHA

1) **Federal Defendants now are:** Governor Ron DeSantis, Secretary of State Cord Byrd, Chief of Election Crimes and Security Andrew Darlington, Matt Smith, Mindy Perkins, Julie Marcus, and Wendy Link.

2) **Federal Claims now are:**

I. Violation of 42 U.S.C. § 1983 – Deprivation of Civil Rights

II. Violation of 52 U.S.C. § 20511 – Federal Election Law

III. Conspiracy to Commit Election Fraud

IV. Violation of Florida Public Records Act (Fla. Stat. § 119.01)

V. Fraudulent Concealment

VI. Violation of the Computer Fraud and Abuse Act (18 U.S.C. § 1030)

VII. Violation of RICO (18 U.S.C. §§ 1961–1968)

VIII. Obstruction of Justice (18 U.S.C. § 1503)

IX. Intentional Infliction of Emotional Distress

X. Fraudulent Misrepresentation

B. This State Case: Remaining Defendant – Cathy Salustri-Loper

1) C**laims now or will be (**under a 2nd Amended complaint to be filed upon grant of leave to amend by the court):

a) Defamation by omission and misrepresentation in *The Gabber Newspaper*

b) Voter suppression through misleading journalism

c) Tortious interference with prospective economic advantage

d) Potential other counts.

e) New Defendants connected to The Gabber Newspaper:

i. Thursday Morning Media, Inc. (The Gabber's parent company)

ii. Thomas Loper – Co-owner of The Gabber and Thursday Morning Media

2) **Factual Basis Is:** Allegations involve local press misconduct, wholly distinct from state-actor election administration, oversight, absentee ballot systems, or election infrastructure.

5. There is no longer any factual, legal, or party-based overlap between the two proceedings.

IV. LEGAL BASIS FOR RECONSIDERATION

6. Florida courts allow reconsideration of interlocutory orders where material facts have changed or to prevent manifest injustice. *State v. Lewis*, 775 So. 2d 947, 948 (Fla. 2000).

7. A trial court has inherent authority to modify non-final rulings prior to final judgment. *Silvestrone v. Edell*, 721 So. 2d 1173, 1174 (Fla. 1998); *Precision Tune Auto Care, Inc. v. Radcliff*, 731 So. 2d 744, 746 (Fla. 4th DCA 1999).

8. A stay should be lifted when its legal justification has been extinguished. *Abu-Nayleh v. First Class Parking Sys. LLC*, 228 So. 3d 638 (Fla. 3d DCA 2017).

9. Continuing a stay under invalid or obsolete grounds imposes unfair delay and prejudice. *Gonzalez v. State Farm Fire & Cas. Co.*, 805 So. 2d 814 (Fla. 3d DCA 2000).

V. CONCLUSION

10. All conceivable legal justification for the Court's stay no longer exists. All potentially overlapping defendants—Marcus, Heinzen, Griffith, Fox, and Weinkrantz—have either been transferred or dismissed.

11. The only remaining Defendant, Cathy Salustri-Loper, has no connection to the federal case in parties, facts, or law.
12. The voluntary dismissal of Marcus and Heinzen is procedurally valid, and self-executing.
13. Plaintiff's forthcoming Second Amended Complaint will introduce new, post-filing acts of malicious defamation per se and other continued harm, and two new defendants associated with Salustri-Loper and The Gabber Newspaper, reinforcing the need to proceed.

VI. RELIEF REQUESTED

WHEREFORE, Plaintiff respectfully requests that this Court:

A. GRANT this Motion to lift stay

B. Grant Plaintiff's Motion to Compel Discovery filed on October 29, 2024;

C. Grant any other relief this Court deems just and proper.

Respectfully submitted,

Enclosed: Proposed Order

/s/ John W. Liccione
John W. Liccione, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
Email: jliccione@gmail.com
Phone: 443-698-8156

CERTIFICATION OF COMPLIANCE WITH MEET AND CONFER ORDER

Pursuant to the applicable rules and administrative orders of the Sixth Judicial Circuit, I hereby certify that I and Defendant Salustri-Loper's counsel James Lake made a good faith effort to meet and confer on this motion and did in fact meet and confer on this day. Defendant Salustri-Loper opposes this motion.

/s/ John W. Liccione

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion to Lift Stay has been served via the Florida e-Filing Portal and via email to all relevant parties on this 29th day of March, 2025.

/s/ John W. Liccione

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

CLEARWATER – SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER,
Defendant.
_____/

CASE NO.: 24-003939-CI

ORDER GRANTING PLAINTIFF'S MOTION TO LIFT STAY

THIS CAUSE came before the Court on Plaintiff's Motion to Lift Stay dated March 29, 2025. The Court, having reviewed the motion, the procedural record, and being otherwise fully advised in the premises, finds that good cause exists to lift the stay order. Accordingly, it is hereby ORDERED and ADJUDGED that:

1. Plaintiff's Motion to Lift Stay is GRANTED.
2. The stay entered by the Court on November 20, 2024 is hereby LIFTED.
3. Plaintiff's Motion to Compel Discovery, filed on October 29, 2024, is GRANTED.
4. Defendant is hereby COMPELLED to produce the documents responsive to Plaintiff's First Request for Production of Documents, as follows:

   "1. Defendant is to produce all documents, records, and communications with any 3rd party pertaining to Plaintiff since May 1st of 2023."
5. Defendant shall produce all responsive documents no later than 14 days from the date of this Order.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this ___ day of _____, 2025.

_____
CIRCUIT COURT JUDGE

IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al,

Defendants.
_____/

NOTICE OF VOLUNTARY DISMISSAL WITH PREJUDICE AS TO DEFENDANT MARK WEINKRANTZ

Plaintiff, John William Liccione ("Plaintiff"), pro se, pursuant to Florida Rule of Civil Procedure 1.420(a)(1), hereby voluntarily dismisses his claims filed against Defendant Mark Weinkrantz in the above-styled case, with prejudice. Plaintiff and Defendant Weinkrantz, through his attorney Thomas McGuire, have agreed that they will each bear their own fees and costs in this matter.

Respectfully submitted,

/s/ John W. Liccione
John William Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S, Ste 201-116
South Pasadena, FL 33707
Email: jliccione@gmail.com
Phone: 443-698-8156

CERTIFICATE OF SERVICE

I, John William Liccione, Plaintiff, hereby certify that on this 27th day of November, 2024, I served the foregoing Notice of Voluntary Dismissal of Mark Weinkrantz With Prejudice, on all Defendants and counsel of record in the manner specified below:

1. Thomas McGuire, Attorney for Defendant Mark Weinkrantz (via e-filing and email).
2. Kirby Kreider, Attorney for Defendants Julie Marcus (via e-filing and email).

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. Case No.: 24-003939-CI
CATHY SALUSTRI-LOPER,
Defendant.
_____/

PLAINTIFF'S MOTION FOR LEAVE TO FILE

SECOND AMENDED COMPLAINT

Plaintiff, JOHN WILLIAM LICCIONE ("Plaintiff"), pro se, pursuant to Florida Rule of Civil Procedure 1.190(a), hereby moves this Court for leave to file a Second Amended Complaint, a proposed amended complaint which is attached hereto as Exhibit A, and in support states as follows:

1. Plaintiff originally filed this action against Defendants Julie Marcus, Whitney Fox, Mark Weinkrantz, Cathy Salustri-Loper, Patrick Heinzen, and Jennifer Griffith.

2. Defendant Jennifer Griffith was subsequently transferred by the Court to a separate action now pending under Case No. 24-002994-CI.

3. Plaintiff has voluntarily dismissed Defendants Marcus, Fox, Weinkrantz, and Heinzen, leaving Cathy Salustri-Loper as the sole remaining defendant.

4. Plaintiff filed a Motion to Lift Stay on April 1, 2025, which remains pending before the Court.

5. Plaintiff now seeks leave to file a Second Amended Complaint, pending a favorable ruling on his currently pending Motion to Lift Stay, which:

ELECTRONICALLY FILED 04/12/2025 04:43:09 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

a. Removes dismissed/transferred defendants;

b. Adds two new defendants: (i) Thomas Loper, the husband of Defendant Cathy Salustri-Loper and co-owner of The Gabber Newspaper and its parent company Thursday Morning Media, Inc; and (ii) Thursday Morning Media, Inc., the parent company of The Gabber Newspaper;

c. Adds a new claim for Defamation and Defamation by Omission (Count I);

d. Removes all other previously asserted causes of action, with the exception of:

    i. A fully re-formed Tortious Interference with Prospective Economic Advantage (now repleaded as Count II); and,

    ii. A fully re-formed Civil Conspiracy (now re-pleaded as Count III);.

7. These amendments are based on newly discovered facts and evidence arising from additional wrongful acts by defendants after the first amended complaint was filed, including a continuation of the Defendants wrongful acts during Plaintiff's recent Gulfport mayoral election held on March 11, 2025. The amendments are necessary to conform the pleadings to the current status and posture of the case and the latest material facts and circumstances.

8. This amendment is sought in good faith, without undue delay, and is not for purposes of prejudice or harassment. The new defendants are closely related to the current defendant and The Gabber Newspaper, and all allegations arise from the same nucleus of operative facts pertaining to Defendant Salustri-Loper, her husband and business partner Thomas Loper, and the media properties they own: Thursday Morning Media, Inc. and The Gabber Newspaper.

9. Florida courts favor liberal amendment of pleadings in the interest of justice. See Dausman v. Hillsborough Area Reg'l Transit, 898 So. 2d 213, 215 (Fla. 2d DCA 2005).

WHEREFORE, Plaintiff respectfully requests that this Court:

A. Grant Plaintiff leave to file the attached Second Amended Complaint;

B. Accept it as the operative pleading in this matter;

C. Order the Stay lifted.

D. Grant such other and further relief as the Court deems just and proper.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione
Plaintiff, Pro Se
6800 Gulfport Blvd S
Suite 201-116
jliccione@gmail.com
443-698-8156

Attached: **EXHIBIT A**: Second Amended Complaint

CERTIFICATION OF COMPLIANCE WITH MEET AND CONFER ORDER

Pursuant to the applicable rules and administrative orders of the Sixth Judicial Circuit, I hereby certify that I and Defendant Salustri-Loper's counsel James Lake made a good faith effort to meet and confer on this motion and did in fact meet and confer on April 2, 2024 via email. Defendant Salustri-Loper opposes this motion.

/s/ John W. Liccione

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing Motion for Leave to File a Second Amended Complaint has been served via the Florida e-Filing Portal and via email to all relevant parties on this 12th day of April, 2025.

/s/ John W. Liccione

EXHIBIT A

Plaintiff's Proposed Second Amended Complaint

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER;
THOMAS LOPER;
THURSDAY MORNING MEDIA, INC.;
Defendants.
_____/

SECOND AMENDED COMPLAINT AND DEMAND FOR JURY TRIAL

Plaintiff, JOHN WILLIAM LICCIONE ("Plaintiff" or "Liccione"), sues Defendants CATHY SALUSTRI-LOPER ("Salustri-Loper") and THOMAS LOPER (collectively, "The Lopers"), and THURSDAY MORNING MEDIA, INC. ("TMMI") and alleges as follows:

I. INTRODUCTION

1. This is an action for defamation, defamation by omission, tortious interference with prospective economic advantage, and civil conspiracy. The action arises from a sustained and coordinated campaign by the Loper Defendants—owners and operators of The Gabber Newspaper and TMMI —to suppress, distort, and ultimately erase Plaintiff's presence and viability as a candidate in the 2024 Democratic Primary for U.S. House District 13, and in the 2025 Gulfport mayoral election. Plaintiff brings this action to redress the severe reputational, economic, and political harm inflicted by Defendants' knowing and malicious conduct.

II. PARTIES

2. Plaintiff is a resident of Pinellas County, Florida. He is a first-generation Italian-American and a disabled individual subsisting primarily on Social Security Disability. Plaintiff was a qualified Democratic candidate for Congress for U.S. House District 13 in 2024 and a qualified candidate for Mayor of Gulfport in 2025.

3. Defendant Cathy Salustri-Loper is Editor-in-Chief and co-owner of The Gabber Newspaper and a principal and co-owner of Thursday Morning Media, Inc. She resides in Pinellas County Florida. She is sued individually and in her capacity as Editor-in-Chief and co-owner of The Gabber Newspaper, and co-owner and principle of Thursday Morning Media, Inc. She is a registered Democrat.

4. Defendant Thomas Loper is co-owner of The Gabber Newspaper and a principal and co-owner of Thursday Morning Media, Inc. He Resides in Pinellas County Florida. He is the husband of Cathy Salustri-Loper.

5. Defendant Thursday Morning Media, Inc. is a Florida media corporation headquartered in Gulfport, Florida, and owns The Gabber Newspaper and other media properties to include "The Barnacle" that serve the greater Pinellas County region.

III. JURISDICTION AND VENUE

6. This Court has subject matter jurisdiction over this civil action and personal jurisdiction over all parties.

7. Venue is proper in Pinellas County pursuant to Fla. Stat. § 47.011 because the causes of action arose in Pinellas County and all Defendants reside or operate their business here.

IV. FACTUAL ALLEGATIONS

8. In June 2024, Plaintiff was one of five qualified candidates in the Democratic primary for Florida's 13th Congressional District primary election.

The Pride Parade Attack on Plaintiff

9. During Plaintiff's 2024 Congressional campaign, on June 22nd, during the St. Petersburg Pride Parade, Plaintiff—a declared Democratic congressional candidate, a heterosexual male, and a known survivor of domestic abuse and resulting PTSD—was the victim of an unprovoked political battery and assault by Michael Sherosky, the openly gay Secretary of the Pinellas County Democratic Party.

10. This occurred as Plaintiff was peacefully greeting parade participants in the assembly area and while wearing a hat with a Pride flag affixed to the back in support of LGBTQ+ rights, and while carrying another Pride parade flag in his hand. (See EXHIBIT A photographs)

11. Plaintiff was physically battered by Sherosky who approached from behind and after accosting Plaintiff, acknowledged he wanted to hit Plaintiff and then knocked Plaintiff's hat off his head while verbally abusing him, then stalked him and invaded his personal space. The attack was witnessed by numerous bystanders and was partially captured on video by Plaintiff after he picked his hat up from the ground.

12. Plaintiff filed a criminal complaint with the St. Petersburg Police. Then, he filed a civil rights and battery and assault lawsuit against Sherosky, the Pinellas Democratic Executive Committee, and Party Chair Jennifer Griffith, on July 3, 2024, in the Circuit Court of the Sixth Judicial Circuit, Case No. 24-002994-CI. Counts I and II of the complaint are Battery and Assault. This case is still pending.

13. The battery and assault occurred in a politically and symbolically charged context—at a Pride event, with a gay Democratic Party leader as the perpetrator of political violence committed against a straight, male, disabled Democratic candidate and Gulfport resident publicly marching in support of LGBTQ+ rights in the middle of a hotly contested 5-way Democratic primary.

14. Rather than condemn this act of political violence and abject hypocrisy, the Pinellas County Democratic Party remained silent and stood behind Sherosky, failed to discipline him, and even provided for his legal defense - not just in his Party official capacity - but also in his personal capacity.

15. Defendants would never report the battery and assault of its own Gulfport Democratic Congressional candidate in The Gabber Newspaper. Worse, Defendants would later act to weaponize Plaintiff's lawsuit against Sherosky and the Party by way of defamation, during his subsequent 2025 Gulfport mayoral campaign.

16. On July 12, 2024, Defendants published an article in both The Gabber Newspapers' print and online editions titled: "*Meet the Democratic Candidates for the District 13 Congressional Election*." The featured picture was captioned: "*The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.*" [1]

17. This article falsely represented that there were four candidates in the race when they knew Plaintiff was the fifth candidate. They falsely omitted any mention of Plaintiff, despite his lawful qualification with the FEC and the State of Florida, and despite his active campaign.

---

[1] **EXHIBIT A:** "*Meet the Democratic Candidates for the District 13 Congressional Election*," July 12, 2024, The Gabber Newspaper; https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/

18. Plaintiff lived less than 100 yards from The Gabber's office. His campaign signs were clearly visible to Defendants. He had placed a paid campaign advertisement in The Gabber earlier in the election cycle through Defendant Thomas Loper.

19. Plaintiff had personally introduced himself to The Loper Defendants at a Gulfport community event, a "Welcome to Gulfport" gathering for new Gulfport residents held at Gulfport's Scout Hall, where the Lopers had a table and were promoting The Gabber Newspaper. Plaintiff had multiple email and telephone conversations with The Gabber's political reporter, Patrick Heinzen, who authored the July 12 article.

20. Defendants thus had direct, actual knowledge of Plaintiff's candidacy and campaign activities. Their decision to omit Plaintiff from the article was not an oversight but a knowing, willful defamatory act of omission and commission.

21. The July 12 article was published at a critical moment in the election cycle—during the arrival of mail-in ballots and prior to the final Democratic primary debate—maximizing its harmful impact on voter awareness and support.

22. When confronted by Plaintiff, Defendants failed to issue a meaningful or prominent correction in line with The Gabber's own published journalistic ethical standards. They published a belated and inadequate acknowledgment containing a rationalization, buried in the "Letters to the Editor" section, mischaracterizing it. The false article remains accessible and uncorrected on The Gabber's website even as of the date of this filing.

23. As a direct result, Plaintiff's campaign fundraising efforts collapsed. Donors and supporters, misled by the article, concluded he had dropped out or was not a viable candidate, or that he never was a candidate at all. Plaintiff was forced to personally fund

his campaign with over $250,000 of his life savings. He would expend another $10,000 of personal funds in his subsequent Gulfport mayoral campaign.

24. Plaintiff is a disabled individual living primarily on Social Security disability. These expenditures caused him significant financial hardship due to his campaign losses.

25. On January 30, 2025, during the Gulfport mayoral race, The Gabber hosted a candidate forum at the Catherine Hickman Theatre in Gulfport. Defendant Cathy Salustri-Loper and her associate Barbara Banno served as moderators.

26. Prior to the debate, Plaintiff attempted to address the potential conflict of interest posed by Defendant Salustri-Loper's role as a debate moderator while also being a named defendant in Plaintiff's lawsuit. Plaintiff asked whether questions regarding the lawsuit would be considered in or out of bounds. Salustri-Loper responded stating that Plaintiff "could not dictate the questions." When asked who the moderators would be, Salustri-Loper refused to answer.

27. During the forum, Salustri-Loper engaged in an extended and adversarial exchange with Plaintiff's opponent, Karen Love, in violation of her own moderator rules briefed to the candidates, hijacking the debate. When Plaintiff attempted to interject with a point of order and suggested Salustri-Loper publish her commentary in The Gabber rather than effectively hijacking the forum, Salustri-Loper publicly threatened in front of a packed theatre of 150 voters to have Plaintiff removed by police, stating she'd have him removed "if you can't control yourself." The incident was recorded and streamed live online.

28. Plaintiff was publicly humiliated by Salustri-Loper's conduct. He lost the mayoral election by a wide margin, which he attributes, in part, to The Gabber's sustained campaign of defamation which cost him over 1,000 Democratic votes.

29. The Gabber—a Gulfport-based newspaper that purports to support LGBTQ+ communities and regularly covers both Pride events and local politics—likewise refused to report on the battery and assault of Plaintiff during his Congressional or mayoral campaigns.

30. As the *only* Gulfport-based Democratic candidate in the Congressional District 13 race, Plaintiff's filing of a civil rights and battery and assault lawsuit against the leadership of his own party was unquestionably newsworthy and of clear interest to the Gulfport and broader Pinellas County electorate, and to the LGBTQ+ community in particular.

31. Upon information and belief, the Loper Defendants conspired with others to make a conscious editorial decision to kill the story because it reflected positively on Plaintiff as a staunch defender of LGBTQ+ equal protection rights, and poorly and hypocritically on the Pinellas County Democratic Party leadership. The narrative—a straight, disabled, male Congressional candidate marching for LGBTQ+ rights being physically attacked by a gay Democratic official at a Pride event while he was peaceably campaigning—did not fit the publication's political or cultural messaging priorities and their favored Democratic candidate. This suppression was not grounded in journalistic principle, but in political protectionism. The truth embarrassed powerful local actors and contradicted The Gabber's preferred narrative about who may be a victim of political violence, and who must be shielded from scrutiny.

32. Despite omitting the battery and assault alleged in the lawsuit from its reporting, the Defendants later *weaponized the mere existence of the lawsuit* against Plaintiff during his 2025 Gulfport mayoral campaign. The Defendants intentionally referenced that Plaintiff was suing the Democratic Party (as well as The Gabber), without disclosing that the lawsuit arose from an unprovoked physical battery and assault against Plaintiff by a Democratic Party official. This selective and deceptive use of information was calculated to smear Plaintiff, shield the Party from accountability, while suppressing the truth about the attack against Plaintiff with the Gulfport Democrats and the local LGBTQ+ community, specifically.

33. On February 27, 2025—just thirteen days before the March 11 Gulfport mayoral election—*The Gabber* published an article entitled *"Gulfport Mayoral Candidate John Liccione's Time in Courts."* The article portrayed Plaintiff as combative and litigious, citing multiple lawsuits he had filed, including his civil rights lawsuit against the Pinellas County Democratic Party. However, the article deliberately omitted Sherosky's name, and the central fact that precipitated the filing of that lawsuit: that Plaintiff had been the victim of an unprovoked battery and assault by Sherosky at the June 2024 St. Petersburg Pride Parade while peacefully campaigning. This omission was not accidental—Defendants had long known about the battery and the lawsuit but had willfully refused to report on it at all, let alone accurately.

34. The Gabber's February 27, 2025 article—*"Gulfport Mayoral Candidate John Liccione's Time in Courts"*—was crafted in a way that embedded the word "criminal" in close proximity to Plaintiff's name in a permanent, Internet-crawlable and searchable format. Defendants knew that Plaintiff has a clean record of no convictions. This

calculated headline choice coupled with the strategic use of the word "*criminal*" was designed to create a false association between Plaintiff and criminality, and to trigger search engine and AI algorithmic bias in order to smear Plaintiff in the digital public sphere. The timing and wording of the headline, combined with the omission of the fact that Plaintiff's lawsuit arose from his being a victim of political battery and assault by a Democratic Party official, demonstrates a deliberate effort to mislead readers and malign Plaintiff's character for Defendants' own political and financial agenda.

35. On March 2, 2025, The Gabber issued an online "correction" to the February 27 article, acknowledging minor errors regarding the mis-identification of the Florida Democratic Party as a defendant. However, despite having had months of access to the complaint and actual knowledge of its contents, The Gabber still refused to disclose that Counts I and II of the lawsuit alleged battery and assault against Plaintiff at the Pride Parade by PDEC Secretary Michael Sherosky. This continued omission reinforced the false impression that Plaintiff's lawsuit was baseless and vindictive, and that Plaintiff himself was combative and unstable, while protecting powerful Democratic party officials from public scrutiny.

36. By referencing the lawsuit without disclosing that it arose from a politically motivated physical battery and assault against Plaintiff at a public Pride event, Defendants again misled the public, the LGBTQ+ community, smeared Plaintiff's reputation, and further alienated him from Gulfport voters, thereby continuing a calculated pattern of editorial defamation, reputational sabotage, and voter suppression through misrepresentation and concealment.

37. As a direct result, Plaintiff was alienated from over 1,000 Democratic and Republican and NPA voters in Gulfport, many of whom told him they would not vote for him solely because, they explicitly told him, he was suing the Party and/or The Gabber. He was shunned within the community.

38. The final vote tally in the Gulfport mayoral race was:

1) Karen Love (NPA) - 1,436 votes
2) Sam Henderson (NPA) – 1,018 votes
3) John Liccione (D) – 143 votes. (See **EXHIBIT B**)

The Gabber Newspaper Catches and Kills its Own Mayoral Candidate Survey Results

39. In the week leading up to January 27, 2025, The Gabber Newspaper hosted an informal online mayoral candidate survey on the right-hand side of its homepage. The survey was prominently displayed and widely visible to site visitors – until the survey closed on January 27th. When the survey concluded, Plaintiff John Liccione had won by a landslide, receiving 975 votes, compared to Karen Love's 246 votes, Sam Henderson's 36 votes, with 14 responses selecting "Not Voting." Liccione's commanding 58% margin of victory reflected broad grassroots support and shocked Gulfport's and the Pinellas Democratic Party political establishment, including the Defendants. (**EXHIBIT C**)

40. After the survey ended, The Gabber quietly moved the results to a rarely accessed archive of past surveys, and never reported on their own survey results, effectively concealing Liccione's early and commanding lead in the poll from the broader public. Despite the clear newsworthiness of the results—especially given that it occurred during

an active election season—The Gabber never mentioned the survey or Liccione's overwhelming early lead in any of its news coverage of the race.

41. On information and belief, the Defendants were alarmed by Liccione's popularity and, in a state of panic, escalated their coordinated defamation campaign in response. Their strategy worked: while Liccione had received 975 votes in The Gabber's survey, he would receive only 149 votes in the actual election—an extreme reversal suggesting the effectiveness of Defendants' last-minute smear tactics.

42. Consequently, despite being the only Democrat in a 3-way mayoral race, Plaintiff would capture only 5.5 percent of the vote. He lost to a Non-Party-Affiliated candidate Karen Love who was ultimately backed by the vast majority of Democrats in Gulfport due to Defendants' defamation campaign it has been waging against Plaintiff since July of 2024.

43. The Gabber's concealment of the battery and assault lawsuit's context, coupled with its use of that lawsuit (and this one) to discredit Plaintiff in his 2025 mayoral election, further evidences actual malice, personal animus, and a persistent pattern of ideological, political, and self-serving bias.

44. Defendants' conduct reflects a double standard, whereby the identities, political affiliations, sex, disability status, and sexual orientations of the victim and the aggressor determined whether a documented act of political violence would be reported, or buried. These omissions were not neutral editorial decisions—they were intentional acts of reputational sabotage designed to silence Plaintiff, delegitimize his candidacy, deprive him of Democratic votes in particular, deprive the voters knowledge of the truth about

him and his character, destroy his reputation within the local community, and protect entrenched political interests.

45. In particular, rather than report the truth—that Plaintiff was a Gulfport-based Democratic candidate who had continued to march for LGBTQ+ *rights even after being physically battered and assaulted by a gay Democratic party official at a Pride event*—Defendants engaged in a reputational takedown of Plaintiff within the Gulfport LGBTQ+ community.

46. Among those who turned on Plaintiff was one Barbara Banno, a prominent local LGBTQ+ leader, restaurant owner, and the wife of Morgan Banno, the woman who would later allegedly author a March 9, 2025 Op-Ed in The Gabber Newspaper in which she derisively likened Plaintiff to a glass of "cheap, white sangria." (**EXHIBIT D**)

47. This Gabber-published election-eve "cheap white sangria" smear was the final act in furtherance of this conspiracy. It was the culmination of a long-running editorial campaign of misrepresentation, omission, and retaliation by Defendants, designed to malign Plaintiff's public image within the very communities he had supported, sought to defend, and sought to represent in Congress and in Gulfport City Hall.

48. The relevant quote from The Gabber's March 9th Banno Op/Ed piece follows:

> *"**John Liccione:** White Sangria - Sweet and boozy with a little too much going on, this fruit-packed drink captures the essence of a politician whose career is as colorful as their reputation. Who else would have the audacity to run for City Mayor while concurrently suing local businesses? Poor taste… Much like cheap, white sangria."*

V. CAUSES OF ACTION

COUNT I – DEFAMATION AND DEFAMATION BY OMISSION

49. Plaintiff incorporates by reference paragraphs 1 through 48 as if fully set forth herein.

50. This claim arises from a pattern of knowingly false, misleading, and defamatory statements and omissions by Defendants, including but not limited to:

a. The July 12, 2024 article titled "Meet the Democratic Candidates for the District 13 Congressional Election";

b. The February 27, 2025 article titled "Gulfport Mayoral Candidate John Liccione's Time in Courts";

c. The March 9, 2025 Op-Ed likening Plaintiff to "cheap, white sangria";

d. The systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade;

e. The concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race.

51. These actions and omissions—taken together—were intended to convey a false and defamatory impression of Plaintiff to the public, to damage Plaintiff's candidacies for Congress and mayor, and to sabotage his standing within the Florida Congressional District 13 and Gulfport electorates, and in Democratic and LGBTQ+ communities at large.

A. July 12, 2024 “Meet the Candidates” Article

52. On July 12, 2024, Defendants published an article in both the print and online editions of The Gabber Newspaper titled “Meet the Democratic Candidates for the District 13 Congressional Election,” falsely representing that the race consisted of only four Democratic candidates when they knew Plaintiff was the fifth candidate. In doing so, Defendants willfully omitted Plaintiff’s name and campaign despite their actual knowledge of Plaintiff’s active, lawful candidacy.

53. Plaintiff had filed with both the Federal Election Commission and the Florida Division of Elections. Defendants knew of his candidacy through direct personal interaction, a paid political ad Plaintiff placed in The Gabber directly with Defendant Thomas Loper, proximity of campaign signs, and ongoing communication with the article's author, Gabber political reporter Patrick Heinzen.

54. By representing the four featured candidates as the entirety of the field, when they knew it wasn’t true, Defendants published a materially false statement of fact by implication, by omission, and by commission. Under Florida law, such omissions may constitute defamation when they convey a misleading impression. See *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008).

55. This article was published at the peak of vote-by-mail distribution and prior to the final primary debate, inflicting maximum damage to Plaintiff’s credibility and donor support. Many supporters and prospective donors reasonably concluded he had dropped out or was never a candidate at all. Plaintiff’s fundraising collapsed, forcing him to self-fund over $250,000 from his retirement savings.

56. Despite being confronted, Defendants refused to issue a meaningful correction in the manner required by their own published professional ethics standards. The original article remains online even today in its unaltered state.

B. February 27, 2025 "Time in Courts" Article

57. Thirteen days before the Gulfport mayoral election, The Gabber published a second defamatory piece: "Gulfport Mayoral Candidate John Liccione's Time in Courts." The article referenced multiple lawsuits Plaintiff had filed, including a civil rights suit against the Pinellas County Democratic Party, but willfully omitted the central underlying fact: that the suit arose from a politically motivated battery and assault committed against Plaintiff by PDEC Secretary Michael Sherosky during the June 2024 Pride Parade.

58. This omission materially distorted the meaning of the article, suggesting that Plaintiff was combative, litigious, and unstable—rather than a victim of unprovoked political violence while peacefully marching in support of LGBTQ+ rights. The article's proximity of the word "criminal" to Plaintiff's name in its headline and structure further created a false and defamatory implication, despite the undisputed fact that Plaintiff has no criminal convictions.

C. The March 9, 2025 "Cheap White Sangria" Op-Ed

59. On the eve of the election, The Gabber published an Op-Ed authored by Morgan Banno, the wife of prominent local LGBTQ+ leader and restaurant owner Barbara Banno. In it, Plaintiff was derisively compared to "cheap, white sangria." While couched as satire, this piece was part of an ongoing editorial campaign of reputational destruction. It deliberately portrayed Plaintiff as chaotic, unserious, and unfit for office.

60. The Gabber published this piece knowing full well the community influence wielded by the Banno couple. Barbara Banno owns Stella's restaurant—a major local LGBTQ+ gathering space—located just ten feet from The Gabber's office. The placement and timing of the Op-Ed were calculated to amplify reputational damage within the LGBTQ+ community and Gulfport Democratic voters at large.

D. Suppression and Weaponization of Plaintiff's Pride Parade Battery and Assault and Civil Rights Lawsuit

61. The Gabber consistently refused to report on the politically motivated battery and assault against Plaintiff at the St. Petersburg Pride Parade by Democratic Party Secretary Michael Sherosky. The omission is especially defamatory because the same incident formed the basis of Plaintiff's pending battery, assault, and civil rights lawsuit against Sherosky and the Party. Defendants subsequently weaponized that lawsuit without disclosing its context, in an attempt to make Plaintiff look like the criminal instead of his attacker. That is why they inserted the word "criminal" into the story about Plaintiffs upcoming contempt hearing.

62. Defendants' decision to omit any mention of the politically motivated battery and assault Plaintiff suffered while peacefully campaigning at the June 2024 St. Petersburg Pride Parade, and their subsequent weaponization of the lawsuit arising from that attack, was not only defamatory but also enabled the concealment of conduct criminalized under Florida Statute § 104.615 and The underlying battery and assault against Plaintiff on June 22, 2024, constituted conduct that meets the definition of a federal hate crime under 18 U.S.C. § 249(a)(2), the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. This federal statute criminalizes willfully causing bodily injury or attempting to do

so because of a person's actual or perceived sexual orientation, sex, disability, or other protected characteristics. Plaintiff is a heterosexual male and a disabled individual subsisting primarily on Social Security Disability benefits. He was physically assaulted while peacefully and visibly supporting LGBTQ+ rights at a Pride Parade by an openly gay male Democratic Party official who acted with bias, hostility, and political animus based on Plaintiff's sexual orientation, sex, disability status, and perceived threat to entrenched political interests. Defendants were aware of the factual context and the existence of the civil rights lawsuit arising from that assault, yet willfully suppressed and distorted the truth by omitting the nature and motive of the attack. Their knowing concealment of what plausibly constitutes a federal hate crime—and subsequent use of the lawsuit to cast Plaintiff as combative or unstable—demonstrates actual malice and a reckless disregard for the truth, and materially altered the impression conveyed to voters.. This statute makes it a felony of the third degree to knowingly and willfully injure, intimidate, or interfere with any person for the purpose of interfering with that person's right to become a candidate or to be elected to public office. While Plaintiff does not assert a private cause of action under § 104.615 or 18 U.S.C. § 249(a)(2) here, Defendants' decision to conceal and distort the context of that felony-level conduct further supports a finding of actual malice, knowing falsity, and reckless disregard for the truth.

63. This pattern of concealment and weaponization within the context of the same lawsuit evidences actual malice. The omitted facts were material, available to Defendants, and highly newsworthy, especially to Gulfport's politically engaged and

LGBTQ-friendly Democratic electorate. Defendants had full access to the complaint and months of notice.

64. The underlying battery and assault against Plaintiff on June 22, 2024, constituted conduct that meets the definition of a federal hate crime under 18 U.S.C. § 249(a)(2), the Matthew Shepard and James Byrd Jr. Hate Crimes Prevention Act. This federal statute criminalizes willfully causing bodily injury or attempting to do so because of a person's actual or perceived sexual orientation, sex, disability, or other protected characteristics. Plaintiff is a heterosexual male and a disabled individual subsisting primarily on Social Security Disability benefits. He was physically assaulted while peacefully and visibly supporting LGBTQ+ rights at a Pride Parade by an openly gay male Democratic Party official who acted with bias, hostility, and political animus based on Plaintiff's sexual orientation, sex, disability status, and perceived threat to entrenched political interests. Defendants were aware of the factual context and the existence of the civil rights lawsuit arising from that assault, yet willfully suppressed and distorted the truth by omitting the nature and motive of the attack. Their knowing concealment of what plausibly constitutes a federal hate crime—and subsequent use of the lawsuit to cast Plaintiff as combative or unstable—demonstrates actual malice and a reckless disregard for the truth, and materially altered the impression conveyed to voters.

E. The Gabber Catches and Kills Their Own Poll Results and the Resultant Panic Attacks

65. In January 2025, The Gabber conducted an online mayoral survey that closed on January 27th, originally featured on its homepage. Plaintiff received 975 votes—an overwhelming 58% of the total—and led by a landslide over the other two non-party-affiliated candidates.

66. This stunning result was never reported. Instead, once the poll concluded, the defendants quietly relegated it to an archive and made no mention of it in any of its subsequent election coverage. No headlines. No analysis. No acknowledgment that a candidate polling at nearly 60% had seized the public's attention.

67. Within days, and with the poll results buried, Defendants initiated a sharp escalation of defamatory conduct. On February 27, they published the misleading "Liccione Time in Courts + Criminal" article. On March 9—just 48 hours before the election—they ran the mocking "Cheap White Sangria" Op-Ed.

68. The sequence was not coincidental. The juxtaposition of suppressed data showing Plaintiff's surge with the timing of these smears evidences a calculated editorial response. The Defendants panicked and acted swiftly to reverse Plaintiff's momentum.

69. The impact was devastating. From 975 survey votes to only 143 votes on election day, Plaintiff's public support disintegrated by over 85% in less than six weeks. That extraordinary collapse—unexplained by any political event other than The Gabber's defamatory publications—strongly indicates that Defendants' defamatory conduct was the proximate, sole cause of Plaintiff's defeat.

70. This pattern of manipulation—elevating defamatory narratives while concealing Plaintiff-favorable facts—constitutes both defamation by commission and omission, it proves actual malice, and it demonstrates Defendants' weaponization of their media platform to interfere with the electoral process.

F. Summary of Harm

71. Defendants' defamatory acts of commission and omission were not protected opinion, but knowingly false statements of fact and materially misleading omissions of

relevant true facts, made with knowledge of their falsity and a reckless disregard for the truth.

72. As a direct and proximate result, Plaintiff suffered:

a. Public ridicule, shunning, and humiliation;

b. A collapse in campaign donations;

c. Self-funding losses of over $260,000 across two elections;

d. Severe reputational harm within Pinellas County, Gulfport, and LGBTQ+ communities;

e. Electoral defeat in two races and the loss of future income as a public official;

f. Emotional distress and long-term economic injury.

73. WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and punitive damages, injunctive relief requiring correction or removal of false content, costs, interest, and any other relief the Court deems just and proper.

COUNT II – TORTIOUS INTERFERENCE WITH PROSPECTIVE ECONOMIC ADVANTAGE

74. Plaintiff incorporates by reference paragraphs 1 through 73 as if fully set forth herein.

75. The legal basis for Count II, tortious interference with prospective economic advantage, is grounded in the principles articulated in *Walters v. Blankenship*, 931 So. 2d 137 (Fla. Dist. Ct. App. 2006). Under Florida law, tortious interference encompasses both affirmative acts and deliberate omissions when the defendant's intent is to disrupt or destroy another's economic relationships. The *Walters* court emphasized that even otherwise lawful acts may constitute actionable interference if they are "unjustified" and

carried out with improper motives. Determining whether interference is unjustified requires balancing the interests involved and assessing whether the conduct aligns with what is "right and just" under the "rules of the game." Here, Defendants' actions, including the publication of false and misleading articles, the omission of critical facts, and the suppression of favorable information about Plaintiff's candidacy, were intentional, unjustified, and motivated by actual malice. These actions directly interfered with Plaintiff's prospective economic relationships with campaign donors, voters, and supporters, causing significant financial and reputational harm, as well as electoral losses and loss of future income.

76. At all relevant times, Plaintiff had a reasonable expectation of economic relationships with individual and organizational campaign donors, political supporters, and prospective voters in both the 2024 Congressional and 2025 mayoral elections.

77. These prospective economic advantages included campaign contributions, public endorsements, political momentum, and speaking opportunities—all essential to maintaining viability as a non-incumbent candidate and building a successful grassroots campaign.

78. Defendants knew of Plaintiff's candidacy and campaign activity, including the importance of visibility in the local press to sustaining political credibility and financial support. Plaintiff had previously advertised in The Gabber Newspaper, and had personally introduced himself to Defendants Cathy and Thomas Loper at a public Gulfport event. Additionally, Plaintiff had a history of substantive communications with Gabber political reporter Patrick Heinzen, who authored the defamatory July 12, 2024 article.

79. Despite this knowledge, Defendants intentionally and maliciously interfered with Plaintiff's economic relationships with potential donors who would have otherwise donated to his campaign, by publishing false and misleading content that falsely portrayed the Congressional race as limited to four candidates, thereby erasing Plaintiff from voters' awareness at a critical moment in the election cycle.

80. The timing of the July 12th article—immediately prior to the final Democratic debate and the arrival of vote-by-mail ballots—was calculated to ensure maximum suppressive impact on Plaintiff's public visibility and support.

81. Defendants' acts of omission and misrepresentation were designed to induce others to refrain from supporting or contributing to Plaintiff's campaign, and to believe that he was not a serious or viable candidate, or even that he never even had been a candidate at all.

82. As a direct and foreseeable result of Defendants' actions, Plaintiff experienced an immediate collapse in Congressional campaign donations and public interest. Potential donors and voters reasonably concluded, based on The Gabber's mis-representations, that Plaintiff had dropped out of the race or had failed to qualify, or that he did not even exist.

83. Plaintiff was forced to self-finance over $250,000 of his life savings for his Congressional campaign, and another $10,000 in his mayoral campaign, causing long-term economic injury to a disabled individual subsisting on Social Security Disability income.

84. Plaintiff was also deprived of the economic opportunities associated with winning either election. The annual salary and benefits of a U.S. Congressional representative totaled approximately $174,000 in 2024, and the Mayor of Gulfport receives an annual

salary of approximately $14,400. These roles also carried public platforms and leadership visibility that would have enhanced Plaintiff's professional reputation and future political viability. The loss of these tangible and intangible benefits further compounded the financial and reputational harm caused by Defendants' conduct.

85. Florida law under *Walters* recognizes that tortious interference includes both affirmative acts and deliberate omissions where the defendant's intent is to disrupt or destroy another's economic relationship. Defendants' conduct meets this standard and was carried out with actual malice.

86. Defendants' actions were not privileged, not protected by the First Amendment or the Florida Anti-SLAPP statute, and were outside the bounds of lawful, independent journalism. They served no legitimate public interest and were instead designed to damage Plaintiff's political and financial prospects for their own corrupt motives.

87. Defendants' acts of interference were not merely intentional—they were undertaken through means that are unlawful under both Florida and federal law. Specifically, the June 22, 2024 assault on Plaintiff at the St. Petersburg Pride Parade, which Defendants subsequently concealed and distorted in their coverage, constitutes conduct prohibited by Florida Statute § 104.615, which criminalizes injuring, intimidating, or interfering with a candidate for the purpose of preventing that individual from running for or being elected to office. The same assault also constitutes conduct that plausibly meets the standard of a federal hate crime under 18 U.S.C. § 249(a)(2), as it was motivated, in part, by Plaintiff's sexual orientation, sex, disability status, and political identity. By suppressing this context while using the resulting civil rights lawsuit to cast Plaintiff in a false light, Defendants interfered with Plaintiff's prospective donor

and voter relationships through unlawful and malicious means. These acts fall outside the protection of the First Amendment and Florida's anti-SLAPP statute and support Plaintiff's entitlement to punitive damages.

88. WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and punitive damages for economic loss, campaign disruption, reputational harm, and emotional distress; interest, costs of suit, and all further relief this Court deems just and proper.

COUNT III – CIVIL CONSPIRACY

89. Plaintiff incorporates by reference paragraphs 1 through 88 as if fully set forth herein.

90. Florida law recognizes civil conspiracy as a cause of action when two or more parties agree to commit a wrongful act and act in furtherance thereof. Each Defendant is jointly and severally liable for the damages caused by the conspiracy and the acts undertaken in furtherance of it.

91. Defendants Cathy Salustri-Loper, Thomas Loper, and Thursday Morning Media, Inc. (TMMI), acting in concert and through their shared control of The Gabber Newspaper, conspired with themselves and others to publish defamatory content, suppress exculpatory information, and undermine Plaintiff's political candidacies in 2024 and 2025.

92. The conspiracy extended beyond Defendants and included non-party actors such as Barbara Banno and Morgan Banno. Although not employees or agents of The Gabber Newspaper per se—as expressly disclaimed in The Gabber's editor's note accompanying the March 9, 2025 op-ed—the Banno women participated in the conspiracy by using the

pages of The Gabber to ridicule and defame Plaintiff. Barbara Banno also served, along with Cathy Salustri-Loper, as debate moderator at the Hickman Theater candidate forum where Plaintiff was threatened with removal by police for exercising his 1st Amendment right to political speech at a political debate. The Gabber editor's note made clear that the op-ed did not reflect the views of the publication, yet Defendants knowingly published it anyway just two days before the mayoral election, further advancing the coordinated attack on Plaintiff.

93. The conspiracy also included the leadership of the Pinellas County Democratic Party, including but not limited to Secretary Michael Sherosky and Chair Jennifer Griffith, who provided and promoted the false narrative that Plaintiff had failed the Party's vetting process for reasons of alleged moral turpitude—a narrative that was echoed and amplified by The Gabber and its affiliates. These individuals coordinated behind the scenes to suppress Plaintiff's candidacy and credibility both within the Party and in the press, furthering the aims of the conspiracy to discredit and politically destroy him.

94. This conspiracy by Defendants included, but was not limited to:

a. Willfully excluding any mention of Plaintiff's existence as a candidate for Congress in the July 12, 2024 "Meet the Candidates" article, while falsely stating that the four candidates featured were the sole Democrats in the primary race, despite having actual first-hand knowledge of Plaintiff's candidacy.

b. Deliberately omitting from all reporting the fact that Plaintiff had been physically battered and assaulted at the June 2024 St. Petersburg Pride Parade by Pinellas County Democratic Party Secretary Michael Sherosky—even though those events

formed the basis of Counts I and II in Plaintiff's civil rights lawsuit against Sherosky and the Party.

c. Citing and mischaracterizing Plaintiff's lawsuit against Sherosky, Griffith, and the Pinellas County Democratic in The Gabber publications while intentionally concealing that it arose from physical battery and assault on Plaintiff by Sherosky.

d. Suppressing the politically inconvenient narrative that a straight, white, male, disabled Democratic congressional candidate—publicly supporting and marching for LGBTQ+ rights —was physically battered and assaulted by a gay Democratic Party official at a Pride parade event, in order to protect the image of favored local Party figures and allies.

e. Conspiring with Morgan Banno to publish, just before the Gulfport mayoral election, an editorial in *The Gabber* mocking Plaintiff as a glass of "cheap, white sangria," with the intent to ridicule, belittle, and politically damage him. The editorial was published under the guise of a third-party opinion piece but was timed and framed to inflict maximum reputational harm and suppress electoral support with in-person voters, and was part of a broader coordinated effort by Defendants and their allies to discredit Plaintiff within the Gulfport electorate and LGBTQ+ community. The disclaimer that appeared beneath the op-ed—stating that the opinions expressed were solely those of the author and not of *The Gabber*—demonstrates Defendants' consciousness of guilt and served as a

disingenuous and inadequate attempt to shield Defendants from liability at the expense of Morgan Banno and her wife Barbera Banno.[2]

f. Permitting the conflict of interest of having Defendant Cathy Salustri-Loper—a named defendant in this lawsuit—moderate The Gabber's candidate forum at Hickman Theater along with Barbera Banno, which The Gabber arranged by paying the City of Gulfport to rent the venue and hiring the Gulfport Police Department to provide an on-duty officer for event security. During the forum, Salustri-Loper used her position to publicly threaten Plaintiff with police removal after he challenged her publicly for her misconduct, thereby weaponizing a state-provided security presence to intimidate and humiliate Plaintiff before a live and livestreamed audience of Gulfport voters.

95. These coordinated acts were performed with actual malice and in furtherance of the shared goal of protecting political allies and discrediting Plaintiff. Among the most damaging was the calculated decision to use the headline and framing of the February 27, 2025 article - "Gulfport Mayoral Candidate John Liccione's Time in Courts"—to embed the word "criminal" in close proximity to Plaintiff's name in a searchable article, with full knowledge that Plaintiff has a clean criminal record.

96. This was done with the intent to trigger search engine algorithms and AI Chatbots and to smear Plaintiff as a criminal figure in the minds of voters, while omitting exculpatory facts about the nature of his lawsuits, his innocence, and the battery he suffered at a public Pride event at the hands of the Secretary of the Pinellas Democratic Party.

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[2] Barbera Banno told Plaintiff at her Stella's restaurant in front of witnesses on 3/10/25 that she had received no pre-publication warning from either her wife Morgan Banno or the Defendants about the offensive Op/Ed: She claimed it was hurting her business due to the citizenry's strong negative reaction to the article.

97. Defendants acted knowingly and with ideological and political bias, thereby corrupting the electoral process and inflicting serious harm on Plaintiff's reputation, emotional health, financial stability, and political viability, and in furtherance of the shared goal of protecting political allies and discrediting Plaintiff. Defendants acted knowingly and with ideological and political bias, thereby corrupting the electoral process.

98. Among the unlawful objectives of the conspiracy was the suppression of politically and legally significant information relating to the battery and assault committed against Plaintiff by a Democratic Party official, which constitutes a third-degree felony under Florida Statute § 104.615, and potentially a federal hate crime under 18 U.S.C. § 249(a)(2). Defendants knowingly and intentionally concealed this conduct while conspiring to weaponize the existence of Plaintiff's civil lawsuit against the attacker. Their concealment of this felony-level behavior—and their joint efforts to manipulate the public narrative to portray Plaintiff as unstable or combative—demonstrate the unlawful object and overt acts required for civil conspiracy. This conduct was not merely political speech or editorial judgment; it was a coordinated, malicious campaign to distort the truth, damage Plaintiff's candidacy, and protect entrenched political interests at the expense of Plaintiff's rights and safety.

99. Each Defendant is jointly and severally liable for the overt acts undertaken in furtherance of the conspiracy and for the full scope of damages resulting from it.

100. WHEREFORE, Plaintiff demands judgement against all Defendants for compensatory damages, punitive damages, attorney's fees (if applicable), interest, costs of suit, and all other relief this Court deems just and proper.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that this Court enter judgment in his favor and against Defendants Cathy Salustri-Loper, Thomas Loper, and Thursday Morning Media, Inc., jointly and severally, and award the following relief:

A. Compensatory damages in an amount to be determined at trial for:

   1) Economic losses including self-funded campaign expenditures exceeding $260,000;

   2) Loss of campaign contributions and prospective economic opportunities;

   3) Loss of future wages;

   4) Reputational harm and diminished political viability;

   5) Emotional distress and humiliation;

B. Punitive damages, upon Plaintiff's filing of a motion and evidentiary proffer pursuant to Fla. Stat. § 768.72, based on Defendants' willful misconduct, actual malice, and knowing disregard for Plaintiff's rights;

C. Injunctive relief as may be warranted, including the removal or correction of false content still published online;

D. Pre- and post-judgment interest as permitted by law;

E. Costs of this action and any other relief this Court deems just and proper.

Plaintiff expressly reserves the right to seek leave to assert punitive damages pursuant to Florida Statutes § 768.72.

VII. DEMAND FOR JURY TRIAL

Plaintiff hereby demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se Plaintiff
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156



John Liccione campaigning in the Saint Petersburg Pride Parade assembly area while preparing to march for Pride with the Pinellas Democratic Senior Caucus (Fellow caucus member Van Farber holds squirt gun)

Michael Sherosky
Secretary of Pinellas County Democratic Party, accosts Liccione and invades his personal space after knocking Pride-flagged hat of Liccione's head.

EXHIBIT A

April 12, 2025

John W. Liccione,
Pro Se Plaintiff
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com | 443-698-8156

Clerk of the Court
Sixth Judicial Circuit in and
for Pinellas County, Florida
315 Court Street
Clearwater, FL 33756

Re: Submission of Proposed Order on Plaintiff's Motion for Leave to File Second Amended Complaint

Case No.: 24-003939-CI

Dear Clerk:

Pursuant to the Florida Rules of Judicial Administration and the Sixth Judicial Circuit's procedures for e-filing proposed orders, please find the attached Proposed Order Granting Plaintiff's Motion for Leave to File Second Amended Complaint, submitted in connection with Plaintiff's pending Motion for Leave to File Second Amended Complaint, dated April 12, 2025.

I respectfully request that the attached proposed order be forwarded to the presiding judge in Section 7 (Clearwater Division) for review and signature.

The corresponding Second Amended Complaint, marked as Exhibit A to the motion, is included with the motion submission and has been uploaded separately.

Thank you for your attention to this matter.

Respectfully submitted,

/s/ John William Liccione
Pro Se Plaintiff

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

CLEARWATER – SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER,
Defendant.
_____/

CASE NO.: 24-003939-CI

ORDER GRANTING PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

THIS CAUSE came before the Court on Plaintiff's Motion for Leave to File a Second a Mended Complaint dated April 12, 2025. The Court, having reviewed the motion and its attached proposed Amended Complaint, otherwise fully advised in the premises, finds that good cause exists to grant Plaintiff leave to amend. Accordingly, it is hereby ORDERED and ADJUDGED that:

1. Plaintiff's Motion for Leave to File a Second Amended Complaint is GRANTED.

The Clerk is ordered to docket Plaintiff's proposed Second Amended Complaint which was attached as Exhibit A as the operative complaint.

DONE AND ORDERED in Chambers at Clearwater, Pinellas County, Florida, this ___ day of _____, 2025.

_____
CIRCUIT COURT JUDGE

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

CLEARWATER – SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER,
Defendant.

CASE NO.: CA-003939-CI

Related Federal Case:
8:24-cv-02005-SDM-NHA

_____/

NOTICE OF NO WRITTEN OPPOSITION TO PLAINTIFF'S MOTION TO LIFT STAY AND REQUEST FOR PROMPT RULING ON SUBMITTED ORDER

COMES NOW Plaintiff, JOHN WILLIAM LICCIONE, pro se, and respectfully notifies this Honorable Court as follows:

1. On April 1, 2025, Plaintiff filed and served a Motion to Lift Stay.

2. As of the date of this filing, twenty-one (21) days have passed, and no written opposition has been filed by Defendant Loper.

3. While counsel for Defendant previously indicated opposition during a meet-and-confer, no written response or memorandum has been submitted to the Court.

4. The original basis for the Court's November 20, 2024 sua sponte stay — the pendency of overlapping parties and issues in a related federal action (8:24-cv-02005-SDM-NHA) — has been extinguished. The sole remaining defendant, Cathy Salustri-Loper, is not and has never been a party to the federal action, and the allegations and claims against Loper in this state case are entirely distinct from those brought against the federal case defendants: Ronald Dion

ELECTRONICALLY FILED 04/22/2025 10:06:08 AM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

DeSantis, Cord Byrd, Andrew Darlington, Julie Marcus, Matt Smith, Mindy Perkins, and Wendy Link.

5. On April 12, 2024, Plaintiff submitted a proposed order granting the Motion.

WHEREFORE, Plaintiff respectfully renews his request that the Court promptly enter an order granting the Motion to Lift Stay and permit this case to proceed.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
Email: jliccione@gmail.com
Phone: 443-698-8156

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on Defendant Loper via her counsel Thomas Lake via the Florida Courts E-Filing Portal on this 22nd day of April, 2025.

/s/ John W. Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S
RESPONSE TO MOTION TO LIFT STAY

Defendant Cathy Salustri Loper ("Loper") objects in part to Plaintiff's Motion to Lift Stay (Dkt. No. 122). Loper consents and agrees to this Court proceeding with consideration of Loper's Anti-SLAPP defenses to the pending First Amended Complaint ("FAC") (Dkt. No. 14). Otherwise, Loper opposes the Motion to Lift Stay, for the following reasons:

Background

This is the third lawsuit Plaintiff has filed concerning a 2024 primary election, in which Plaintiff unsuccessfully sought the Democratic Party nomination for Florida's 13th Congressional District. The first case, *Liccione v. Pinellas Democratic Executive Committee*, Case. No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case"),[1] was filed July 3, 2024. The second case, originally styled *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the "Federal Case"), was filed August 23, 2024. The third case – this one – was filed September 3, 2024. In these three lawsuits, Plaintiff blames his election loss on various people, agencies and

[1] Copies of documents from Plaintiff's other litigation and related materials are included in a Notice of Filing ("NOF") that Loper is submitting contemporaneously with this response. Loper asks that the Court take judicial notice of the records in the PDEC Case and the Federal Case. *See* Fla. R. Civ. P. 90.202(6).

business, including the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's CEO, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and various media organizations, including two newspapers. *See* Federal Case Verified First Amended Complaint (the "Federal Complaint") (NOF Exhibit 1) ¶¶ 6-14, 64-66 & 70-72; PDEC Case Complaint (NOF Exhibit 4) ¶¶ 3-7, 39-42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶¶ 4-6, 20, 24. Loper is identified as the owner and editor of one of those newspapers, The Gabber, a local publication in Gulfport. FAC ¶ 8.

In response to the First Amended Complaint in this case, Loper invoked her rights under Section 768.295, Fla. Stat. (2024), the Florida Anti-SLAPP Statute. Dkt. No. 41. On November 4, 2024, this Court moved to stay this case, noting that the Federal Case and this one involved many of the same defendants, some of the same claims, and the same nucleus of facts. Dkt. No. 85. Loper did not oppose a stay, subject to her "right to an expeditious resolution" of her Anti-SLAPP motion "at the earliest possible time after" the stay is lifted. Dkt. No. 96. After hearing from all parties, the Court entered a stay and added that, once the stay is lifted, the Court would "hear any remaining anti-SLAPP defenses" at a Case Management Conference. Dkt. No. 107.

On April 1, 2025, Plaintiff filed a Motion to Lift Stay (Dkt. No. 122), and on April 12, 2025, Plaintiff filed a Motion for Leave to File Second Amended Complaint (Dkt. No. 125) ("Motion to Amend"). On May 5, 2025, this Court gave notice that the Motion to Lift Stay and Motion to Amend will be heard – and a Case Management Conference will be held – on June 10, 2025. Dkt. No. 130. Accordingly, Loper is separately filing a Memorandum of Law in support of her Anti-SLAPP defenses for the Court's consideration at the conference.

I. Loper's Anti-SLAPP defenses to the First Amended Complaint must be resolved.

Plaintiff's request to lift this Court's stay of this proceeding rests upon differences he alleges between the Verified First Amended Complaint (NOF Exhibit 1) in the Federal Case and a proposed Second Amended Complaint (Dkt. No. 126) in this case. The proposed Second Amended Complaint, however, is not the operative pleading in this case. Plaintiff is currently proceeding under the First Amended Complaint (Dkt. No. 14). Loper filed a response to the First Amended Complaint in the form of a motion to dismiss asserting Anti-SLAPP defenses (Dkt. No. 41). Those Anti-SLAPP defenses have not been resolved.

In staying this case, this Court ruled that the Court would "hear any remaining anti-SLAPP defenses" expeditiously at a Case Management Conference once the stay is lifted. *See* Order Granting Court's Motion to Stay (Dkt. No. 107). This ruling was consistent with Loper's express reservation of her "right to an expeditious resolution" of her Anti-SLAPP motion "at the earliest possible time after" the stay is lifted. *See* Defendant Cathy Salustri Loper's Response to Court's Motion to Stay and Order (Dkt. No. 96). Loper's Anti-SLAPP defenses to the First Amended Complaint remain pending.

The Florida Anti-SLAPP statute requires the expeditious resolution of claims within its scope. SLAPP "lawsuits are an abuse of the judicial process and are used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs." Ch. 2000-174, § 1, Laws of Fla. The Anti-SLAPP law "operates to deter violations of its prohibition on meritless, speech-targeted lawsuits." *Vericker v. Powell*, No. SC2022-1042, 2025 WL 922413, at *5 (Fla. Mar. 27, 2025). "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1), Fla. Stat. Accordingly, as the Florida Supreme Court recently recognized, "courts are to resolve Anti-SLAPP claims 'at the earliest possible time' once the necessary filings are submitted by the parties." *Vericker*, 2025 WL 922413, at *5. Allowing

the ongoing prosecution of such lawsuits "is precisely the harm that the Anti-SLAPP statute seeks to prevent – unnecessary litigation." *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 311 (Fla. 2d DCA 2019) (disapproved of on other grounds by *Vericker)*. For that reason, a denial of an Anti-SLAPP motion is immediately appealable, even if proceedings in the trial court will continue. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, No. SC2024-1798, 2025 WL 922308, at *1 (Fla. Mar. 27, 2025).

Likewise, in this case, before deciding whether to permit the proposed Second Amended Complaint, this Court should resolve the Anti-SLAPP defenses raised by the operative First Amended Complaint. Section 768.295(3) provides that a person "may not file … any … claim" that violates the statute. The mere *filing* of the First Amended Complaint violated Section 768.295. Plaintiff's request to amend his pleading does not cure that violation, because the harm the statute addresses was committed upon filing.

To be sure, by pursuing multiple claims in multiple courts, Plaintiff was able to delay adjudication of Loper's Anti-SLAPP defenses. But Plaintiff now seeks relief from the stay *and* to amend his pleading, as if the First Amended Complaint never existed. He is not entitled to relief from the stay *and* to sidestep the consequences of his earlier actions.

The proposed Second Amended Complaint drops six of the First Amended Complaint's claims against Loper. Resolution of Loper's Anti-SLAPP defenses, however, cannot be evaded by Plaintiff's belated attempt to abandon some of his claims. Plaintiff should not have filed these claims at all. He had the opportunity to abandon them on October 3, 2024, when he was served with Loper's Anti-SLAPP motion. He chose not to do so and instead persisted in them, forcing Loper to incur additional unnecessary attorneys' fees. His Anti-SLAPP liability is a result of his own choosing. That liability must be resolved before the proposed amendment is considered.

As Plaintiff notes, Loper is not a party to the Federal Case, and the overlap between the Federal Case and this litigation has diminished. Therefore, the comity concerns that this Court identified in staying this case have lessened. Moreover, the Florida Supreme Court has recognized that this state's courts may depart from the rule of comity where necessary to protect its citizens or to enforce a paramount rule of public policy. *State Farm Mut. Auto. Ins. Co. v. Roach*, 945 So. 2d 1160, 1164 (Fla. 2006) (quoting *Herron v. Passailaigue*, 110 So. 539, 542 (Fla. 1926)). The Florida Supreme Court's recent *Vericker* decision, rendered since this Court's stay order, articulates a paramount public policy of expeditious enforcement of the Anti-SLAPP law. Accordingly, resolution of Loper's Anti-SLAPP defenses is now appropriate.

II. If Loper's Anti-SLAPP defenses do not resolve this case, this litigation should remain stayed.

Although Loper's Anti-SLAPP defenses are ripe for resolution, if those defenses do not lead to a complete and prompt dismissal, this action should otherwise remain stayed.

Plaintiff has indicated that he wishes to proceed on his proposed Second Amended Complaint in this case and has cited differences between that anticipated pleading and the operative Federal Complaint. At the same time, Plaintiff has repeatedly indicated that he still plans to amend the Federal Complaint. On March 6, 2025, Plaintiff filed in the Federal Case a "Motion for Leave to File Second Amended Complaint," based upon "newly discovered evidence and further developments in Plaintiff's case, including material facts and evidence presented in a recent filing before the Supreme Court of Florida." *See* Federal Case DE 83 page 1 (NOF Exhibit 2). On April 19, 2025, Plaintiff withdrew that motion but also notified the federal court that he still "intends to file a new motion for leave to amend" his federal pleading based upon "newly developed factual circumstances." *See* Federal Case DE 113 page 1 (NOF Exhibit 3). Loper's federal pleadings, therefore, remain in flux, and consequently discovery in the Federal Case is

stayed, as shown in the following screenshot of an Endorsed Order as it appears in PACER:

03/24/2025	103	**ENDORSED ORDER granting 82, 87, and 91 Motions to Stay Discovery. Generally, unilateral motions to stay discovery are disfavored. *See* Middle District Discovery (2021) at Section I.E.4. However, having reviewed the pending motions to dismiss, which raise potentially dispositive legal challenges to the lawsuit, I find that allowing discovery on the numerous claims presently in flux (*see* Docs. 59, 71, 80, 81), would create an undue burden and would be inconsistent with Rule 1 of the Federal Rules of Civil Procedure. Accordingly, discovery is STAYED as to each movant until its respective motion to dismiss is resolved (Docs. 59, 71, 80, 81). Signed by Magistrate Judge Natalie Hirt Adams on 3/24/2025. (CJF)** (Entered: 03/24/2025)

Similarly, in this case, proceedings should remain stayed until Loper's Anti-SLAPP defenses are resolved, any Anti-SLAPP award is paid, and any remaining claims are found to state a cause of action. In the alternative, if the Court elects not to reach Loper's Anti-SLAPP defenses at this time, this action should remain stayed pending a final judgment in the Federal Case, as this Court previously ordered.

Conclusion

This Court should proceed with consideration of Loper's Anti-SLAPP defenses to the pending First Amended Complaint. Otherwise, and if those Anti-SLAPP defenses do not result in a complete dismissal, this action should remain stayed.

Respectfully submitted,

THOMAS & LOCICERO PL

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Counsel for Defendant Cathy Salustri Loper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **3rd** day of **June, 2025**, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/ *James B. Lake*
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S
MEMORANDUM OF LAW IN SUPPORT OF ANTI-SLAPP DEFENSES

Pursuant to this Court's Order entered November 20, 2024, and Section 768.295 of the Florida Statutes, Defendant Cathy Loper ("Loper") submits this memorandum in support of her Anti-SLAPP defenses. Plaintiff's claims against Loper in the First Amended Complaint are without merit and were brought primarily because Loper exercised the constitutional right of free speech in connection with a public issue. Section 768.295, therefore, mandates an award of Loper's attorneys' fees. Grounds for Loper's Anti-SLAPP defenses are as follows:

Background

Loper is filing with this memorandum a response to Plaintiff's Motion to Lift Stay. Loper incorporates herein by reference the "Background" section from her Response to Motion to Lift Stay.

I. The Anti-SLAPP Law prohibits meritless attacks on free speech.

Section 768.295 of the Florida Statutes governs "Strategic Lawsuits Against Public Participation" or "SLAPPs." A SLAPP lawsuit is one filed "without merit and primarily because [the defendant] has exercised the constitutional right of free speech in connection with a public issue." § 768.295(3), Fla. Stat. (2024). Such lawsuits "are typically dismissed as unconstitutional."

Gundel v. AV Homes, Inc., 264 So. 3d 304, 310 (Fla. 2d DCA 2019) (quoting Ch. 2000-174, § 1, Laws of Fla.). In such cases, the Second District Court of Appeal places "the initial burden on the SLAPP defendant to set forth a prima facie case that the Anti-SLAPP statute applies and then shift[s] the burden to the claimant to demonstrate that the claims are not 'primarily' based on First Amendment rights in connection with a public issue and not 'without merit'." *Gundel*, 264 So. 3d at 314. Where these two criteria are satisfied, the "court shall award the prevailing party reasonable attorney fees." § 768.295(4). Plaintiff's claims against Loper in the operative First Amended Complaint ("FAC") (Dkt. No. 14) fall squarely within the statute's prohibition.

First, Plaintiff's claims against Loper were filed "primarily" – indeed, exclusively – as a result of Loper's exercise of "free speech in connection with a public issue." This protection applies to Loper because she "is sued in her capacity as owner and editor" of *The Gabber*, a newspaper that published a news report about an election. *See* First Amended Complaint ("FAC") ¶¶ 8, 43. Specifically, Loper is being sued over news reports that a newspaper Loper owns and edits published in connection with Plaintiff's political campaigns. The First Amendment protects the "exercise of editorial control and judgment." *See Moody v. NetChoice, LLC*, 603 U.S. 707, 728 (2024) (quoting *Miami Herald Publishing Co. v. Tornillo*, 418 U.S. 241, 258 (1974)). Plaintiff's claims, therefore, explicitly and clearly were filed as a result of Loper's exercise of free speech in connection with public issues.

Second, the claims against Loper are "without merit." The claims in the First Amended Complaint fail to state a cause of action. As a matter of law, therefore, the claims against Loper violate the Anti-SLAPP law. *See Lee v. Animal Aid, Inc.*, 388 So.3d 25, 29 (Fla. 4th DCA 2024) ("Plaintiff's suit is 'without merit' because Plaintiff failed to state a claim for defamation.") (quoting *Bongino v. Daily Beast Co.*, 2021 WL 4976287, at *4 (S.D. Fla. 2021)); *WPB Residents*

for Integrity in Gov't, Inc. v. Materio, 284 So. 3d 555, 564 (Fla. 4th DCA 2019) ("Based on the summary judgment evidence, Materio did not meet her burden. Her claims are therefore 'without merit' ") (Gross, J., concurring).

In this case, the pleadings demonstrate a prima facie case for application of the Anti-SLAPP law. Plaintiff, therefore, has the burden of showing that his claims were not primarily based on the exercise of First Amendment rights in connection with a public issue and not without merit. *Gundel*, 264 So. 3d at 314. Plaintiff cannot meet that burden.

II. Claims in the First Amended Complaint are Without Merit.

Plaintiff's First Amended Complaint alleges eight meritless counts against Loper. As explained in Loper's original Anti-SLAPP Motion (Dkt. No. 41):

Count One and **Count Three**, based upon election-fraud statutes, rely upon laws that do not provide a private right of action. *See Torres v. Shaw*, 345 So. 3d 970, 974 (Fla. 1st DCA 2022) (no private right of action under election-related statute); *Shiver v. Apalachee Pub. Co.*, 425 So. 2d 1173, 1175 (Fla. 1st DCA 1983) (criminal statute that prohibits corruptly influencing voters does not "confer a right of action on defeated candidates"). "Private citizens … are not empowered to sue under a criminal statute, which involves an executive function." *Hall v. Cooks*, 346 So. 3d 183, 189 (Fla. 1st DCA 2022), *reh'g denied* (Sept. 2, 2022). *See also* 52 U.S.C. § 20511 (providing criminal penalties in narrow circumstances not alleged here); *Hall v. Valeska*, 509 Fed. Appx. 834, 837 (11th Cir. 2012) (statute authorizing fine did "not provide for a private right of action"; dismissal affirmed).

Count Two alleges a conspiracy "to manipulate election results through unlawful means including, but not limited to, the submission of fraudulent absentee ballots and the suppression of lawful votes, in violation of Florida election laws and federal statutes, thereby damaging the

Plaintiff." FAC ¶ 50. The First Amended Complaint contains no allegations connecting Loper to fraudulent ballot submission or vote suppression. Moreover, Florida does not recognize civil conspiracy as a freestanding tort. *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). Because the other claims fail against Loper, the conspiracy claim does as well.

Count Four, a claim under 42 U.S.C. Section 1983, fails against Loper and is without merit because the Amended Complaint does not allege Loper was a "state actor" and does not attribute any "state action" to her. Nor would the facts support such allegations.

Count Five is a claim under the Computer Fraud and Abuse Act ("CFAA"). The CFAA, however, provides a civil cause of action against only "the violator" of that law. *See* 18 U.S.C. § 1030(g). The few facts alleged concerning Loper (FAC ¶¶ 43-45) do not remotely relate to any CFAA violation. Because Count Five does not identify Loper as "the violator" of any CFAA provision, this claim fails to state a cause of action.

Count Six alleges intentional interference with a prospective economic advantage, citing the congressional salary of $175,000. FAC ¶ 54. The interference tort does not apply to "communications to the public at large." *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Loper is accused of editing a newspaper that communicated articles to the public at large. *See* FAC ¶¶ 8, 43. As a matter of law, this is not interference. In addition, the congressional salary that Plaintiff cites – and any other damages for losing the primary election – are unavailable as a matter of law. "Damages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *See Peer v. Lewis*, 06-60146-CIV, 2008 WL 2047978, at *10 (S.D. Fla. May 13, 2008), *aff'd*, 08-13465, 2009 WL 323104 (11th Cir. Feb. 10, 2009); *Grayson v. No Labels, Inc.*, 601 F. Supp. 3d 1251, 1258 (M.D. Fla. 2022) (rejecting

expert testimony attributing plaintiff's election loss to negative political ads, despite pre-election poll suggesting voters supported plaintiff).

Count Eight, for injunctive relief, fails against Loper and is without merit because this count seeks an injunction relating to management of future elections and a special election in the Democratic Congressional primary. FAC ¶ 63. The Amended Complaint does not attribute to Loper any role or authority to manage elections, and of course she has none. Moreover, if Count Eight is intended to seek injunctive relief restraining the speech of Loper or her newspaper, such relief is unavailable as a matter of law. *Palm Beach Newspapers, LLC v. State*, 183 So. 3d 480, 482 (Fla. 4th DCA 2016) (reversing trial court order requiring newspaper to remove published materials from its website and explaining that injunctions are prior restraints that are "presumptively unconstitutional under the First Amendment.").

Count Ten presents merely a general plea for damages and does not state a cause of action. Count Ten, therefore, is without merit.

For all of these reasons, these counts of the FAC violate Section 768.295, and consequently the statute requires an award of Loper's attorneys' fees.

Plaintiff's proposed Second Amended Complaint (Dkt. No. 126) abandons six of these counts (all of them except tortious interference and conspiracy). The deletion of six counts shows that Plaintiff now realizes those claims against Loper are meritless. That realization, however, does not immunize Plaintiff from Anti-SLAPP liability. Section 768.295(3) provides that a person "may not file … any … claim" that violates the statute. The mere *filing* of the six abandoned claims violated Section 768.295. As the Florida Supreme Court recently recognized, "courts are to resolve Anti-SLAPP claims 'at the earliest possible time' once the necessary filings are submitted by the parties." *Vericker v. Powell*, No. SC2022-1042, 2025 WL 922413, at *5 (Fla. Mar. 27,

2025). The Anti-SLAPP law "operates to deter violations of its prohibition on meritless, speech-targeted lawsuits." *Id.* A denial of an Anti-SLAPP motion is immediately appealable, even if proceedings in the trial court will continue. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, No. SC2024-1798, 2025 WL 922308, at *1 (Fla. Mar. 27, 2025).

These principles demonstrate that an Anti-SLAPP determination and fee award are warranted *now* and cannot be evaded by Plaintiff's belated attempt to abandon some of his claims. Plaintiff should not have filed these claims at all. He had the opportunity to abandon them on October 3, 2024, when he was served with Loper's Anti-SLAPP motion. He chose not to do so and instead persisted in them. His Anti-SLAPP liability is a result of his own choosing.

Plaintiff's Response to Loper's Motion to Dismiss (Dkt. No. 56) does not change this analysis and in fact supports application of the Anti-SLAPP law. The Response (¶¶ 32 & 36) cites two cases, which the Response refers to as *Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011), and *Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019). Neither case exists. Those party names do not appear in any Florida court opinion in Westlaw, and no opinions begin at those citations. One citation leads to the middle of an Alabama opinion, and the other leads to the second page of an opinion about a wholly unrelated issue. There is a New York case called *Gordon v. Marrone*, but that is of no help to Plaintiff, because in that case the New York appellate division upheld a $10,000 sanction against a plaintiff who brought litigation for improper purposes. *See Gordon v. Marrone*, 202 A.D.2d 104, 105-06, 616 N.Y.S.2d 98, 99 (App. Div. 1994). So, if anything, the miscited New York case helps Loper. For these reasons, the Court should give no weight to the Response and its made-up case law. Loper's Anti-SLAPP defenses should be sustained, and Plaintiff should be required to pay her attorneys' fees.

Conclusion

By filing the proposed Second Amended Complaint, Plaintiff has implicitly admitted that the claims in the First Amended Complaint against Loper are without merit. He cannot show otherwise, and the proposed Second Amended Complaint is meritless as well. Accordingly, this Court should find that the First Amended Complaint violates the Anti-SLAPP law, and that Loper is entitled to an award of her attorneys' fees.

Respectfully submitted,

THOMAS & LOCICERO PL

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Counsel for Defendant Cathy Salustri Loper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **3rd** day of **June, 2025**, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/ *James B. Lake*
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S
RESPONSE TO MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

In this third lawsuit concerning a 2024 primary election that Plaintiff lost, he seeks a third opportunity to state a viable cause of action against Defendant Cathy Salustri Loper ("Loper").[1] Plaintiff's proposed Second Amended Complaint ("2AC") is as meritless as his other pleadings. The amendment should be denied as abusive, prejudicial and futile. However, before taking up the proposed amendment, Florida's Anti-SLAPP law requires resolution of Loper's Anti-SLAPP defenses to the pending First Amended Complaint. Plaintiff's proposed amendment should be considered *only* if and after those defenses are addressed and Loper's attorneys' fees related to that meritless pleading are paid.

Background

Loper is filing with this response a separate response to Plaintiff's Motion to Lift Stay. Loper incorporates by reference the "Background" section of her Response to Motion to Lift Stay.

[1] The Second Amended Complaint also would add as defendants (1) Thursday Morning Media, Inc., a corporation that is described as the parent company of a newspaper known as *The Gabber*; and (2) a person identified as Loper's husband and co-owner of *The Gabber*, through whom Plaintiff placed a campaign ad in *The Gabber*. 2AC ¶¶ 4-5 & 18. No independent counts are alleged against them, and their addition would not cure any of the pleading's defects.

Argument

I. Before considering Plaintiff's proposed amendment, the Anti-SLAPP defenses to the First Amended Complaint must be resolved.

The Florida Anti-SLAPP statute requires the expeditious resolution of claims within its scope. "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1), Fla. Stat. Accordingly, as the Florida Supreme Court recently recognized, "courts are to resolve Anti-SLAPP claims 'at the earliest possible time' once the necessary filings are submitted by the parties." *Vericker v. Powell*, No. SC2022-1042, 2025 WL 922413, at *5 (Fla. Mar. 27, 2025). For that reason, a denial of an Anti-SLAPP motion is immediately appealable, even if proceedings in the trial court will continue. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, No. SC2024-1798, 2025 WL 922308, at *1 (Fla. Mar. 27, 2025).

These principles demonstrate that an Anti-SLAPP determination in this case is warranted *now*. Section 768.295(3) provides that a person "may not file … any … claim" that violates the statute. The mere *filing* of the First Amended Complaint violated Section 768.295. Amendment of a violative pleading does not cure that violation, because the harm the statute addresses is committed upon filing.

Plaintiff should not have filed his First Amended Complaint against Loper at all. He had an opportunity to abandon those meritless claims on October 3, 2024, when he was served with Loper's Anti-SLAPP motion. He chose not to do so and instead persisted in them, forcing Loper to incur additional unnecessary attorneys' fees. His continuing Anti-SLAPP liability is a result of his own choosing. That liability must be resolved before the proposed amendment is considered.

II. The Rules of Civil Procedure support resolving the Anti-SLAPP defenses to the First Amended Complaint prior to any amendment.

Expeditious resolution of the First Amended Complaint's Anti-SLAPP issues is consistent with the Florida Rules of Civil Procedure. The Motion to Amend cites Rule 1.190(a) but ignores

Rule 1.190(e), which governs amendments generally and permits them "in furtherance of justice" and "upon such terms as may be just." *See* Fla. R. Civ. P. 1.190(e). Permitting Plaintiff to evade the Anti-SLAPP law would not further justice, but rather would undermine the speech protections that law serves. Promptly resolving Loper's Anti-SLAPP defenses to the First Amended Complaint would further justice.

Rule 1.190(e) vests trial courts with authority to set conditions on proposed amendments – namely, "terms that may be just." For example, the court in *Chatmon v. Woodard*, 492 So. 2d 1115 (3d DCA 1986) endorsed permitting an amendment only if the amending party paid the other party's additional costs and expenses incurred as a result of the amendment. *Id.* at 1116 n.2. Such a condition is particularly warranted in this case, given the commands of the Anti-SLAPP law and Plaintiff's gamesmanship in bringing three cases in two courts. Accordingly, the Anti-SLAPP defenses to the First Amendment Complaint must be resolved and any fee award paid before amendment is permitted.

III. The proposed Second Amended Complaint is abusive, prejudicial and futile.

If and when the Court reaches the merits of the Motion to Amend, the amendment should be denied, because the proposed Second Amended Complaint is abusive, prejudicial and futile.

To be sure, motions to amend are routinely granted. Refusal, however, is warranted if the amendment would prejudice the opposing party, the privilege to amend has been abused, and the amendment would be futile. *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1238 (Fla. 3d DCA 2021). All three of these conditions exist in this case.

First, the amendment would prejudice Loper. As shown in her Motion to Dismiss the First Amended Complaint (Dkt. 41) and her Memorandum of Law in Support of Anti-SLAPP Defenses being filed today, Loper has already been subject to unwarranted, meritless litigation by Plaintiff in the First Amended Complaint. SLAPP "lawsuits are an abuse of the judicial process and are

used to censor, intimidate, or punish citizens, businesses, and organizations for involving themselves in public affairs." Ch. 2000-174, § 1, Laws of Fla. The Anti-SLAPP law "operates to deter violations of its prohibition on meritless, speech-targeted lawsuits." *Vericker*, 2025 WL 922413, at *5. The Anti-SLAPP law is designed to prevent this misuse of the judicial system to attack political speech, such as that attributed to Loper.

Second, the privilege to amend has been abused. Although the proposed Second Amended Complaint would be only Plaintiff's third attempt to state a cause of action *in this case*, this pleading would be Plaintiff's seventh concerning the 2024 election. Liccione has filed a Complaint and First Amended Complaint in *Liccione v. Pinellas Democratic Executive Committee*, Case. No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case"),[2] has filed two complaints in *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the "Federal Case"), and plans a third in the federal action.[3] These overlapping lawsuits have consumed federal and state judicial resources and required the time and attention of public and private attorneys to respond to Plaintiff's pleadings. He also has filed meritless petitions to the Second District Court of Appeal and Florida Supreme Court, including a motion that was stricken as unauthorized[4] and a petition that was denied two days after it was filed.[5] This vexatious litigation is abusive.

Finally, the proposed Second Amended Complaint is an exercise in futility. "Although leave of the court shall be freely given when justice requires, the court need not allow an

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[2] Copies of documents from Plaintiff's other litigation and related materials are included in a Notice of Filing ("NOF") that Loper is submitting contemporaneously with this response. Loper asks that the Court take judicial notice of the records in the PDEC Case and the Federal Case. *See* Fla. R. Civ. P. 90.202(6).

[3] *See* Notice of Withdrawal of Motion for Leave to File Second Amended Complaint (DE 113) in Federal Case (NOF Exhibit 3).

[4] *See Liccione v. Pinellas Democratic Executive Committee*, Case No. SC2025-0242 (Fla. 2025).

[5] *Liccione v. Pinellas Democratic Executive Committee*, Case No. 2D2025-0297 (Fla. 2d DCA 2025).

amendment that would be futile." *Tuten v. Fariborzian*, 84 So. 3d 1063, 1069 (Fla. 1st DCA 2012) (affirming denial of leave to file second amended complaint, because appellants failed to show possible amendments would not be futile). For the reasons explained below, the proposed Second Amended Complaint's counts fail to state a cause of action. Leave to plead them, therefore, should be denied.

A. The repleaded interference and conspiracy counts are meritless.

The Second Amended Complaint would replead counts alleging interference with a prospective economic advantage and a civil conspiracy. *See* 2AC ¶¶ 74-88 & 89-100. These claims are just as meritless as in the First Amended Complaint.

The interference claim is based upon Plaintiff's losses in two elections – first in a Congressional primary and later in a mayoral race. "Damages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *See Peer v. Lewis*, 06-60146-CIV, 2008 WL 2047978, at *10 (S.D. Fla. May 13, 2008), *aff'd*, 08-13465, 2009 WL 323104 (11th Cir. Feb. 10, 2009); *Grayson v. No Labels, Inc.*, 601 F. Supp. 3d 1251, 1258 (M.D. Fla. 2022) (rejecting expert testimony attributing plaintiff's election loss to negative political ads, despite pre-election poll suggesting voters supported plaintiff).

The interference claim also fails because the interference tort does not apply to "communications to the public at large." *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Loper is accused of editing a newspaper that communicated articles to the public at large. *See* 2AC ¶¶ 3, 5, 29. As a matter of law, this is not interference.

The conspiracy claim also is meritless. "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). The failure of Plaintiff's other claims against Loper means that the conspiracy count fails as well. Moreover, the attempt to sue Loper, her husband and the "parent company" of

Loper's newspaper is barred by the intra-corporate immunity doctrine. *See McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire amongst themselves"); 2 AC ¶ 91 (accusing Loper, her husband and Thursday Morning Media of "acting in concert through their shared control of The Gabber"). The proposed conspiracy claim, therefore, is without merit.

B. The proposed defamation claim is without merit.

The Second Amended Complaint also would add a defamation claim challenging three articles that appeared in *The Gabber*. These allegations are without merit for numerous reasons.

In defamation cases, courts act as gatekeepers and serve a "prominent function" by determining threshold issues as a matter of law. *Byrd v. Hustler Mag., Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983); *Wolfson v. Kirk*, 273 So. 2d 774, 778 (Fla. 4th DCA 1973). As the Second District Court of Appeal recently explained, "the First Amendment requires that [a defamation] claim be considered against the background of a profound national commitment to the freedom of speech and especially of political speech, which is essential to the security of the Republic." *Flynn v. Wilson*, 398 So. 3d 1103, 1110 (Fla. 2d DCA 2024) (citation and quotation marks omitted), *review denied*, No. SC2025-0065 (Fla. 2025). "The fact that plaintiffs may not like the way the article was written or what it says about them does not automatically provide the basis for a libel suit." *Kurtell & Co. v. Miami Tribune, Inc.*, 193 So. 2d 471, 471 (Fla. 3d DCA 1967). Considered in this light, Plaintiff's proposed defamation claim is clearly without merit.

Moreover, as noted above, courts refuse to award damages for election losses, because "[d]amages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *See Peer v. Lewis*, 06-60146-CIV, 2008 WL 2047978, at *10 (S.D. Fla. May 13, 2008), *aff'd*, 08-13465, 2009 WL 323104 (11th Cir. Feb. 10, 2009). Such is particularly the

case here, because Plaintiff attributes his election losses not only to Loper, but also to the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's chief executive, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and other, larger media that did not mention his candidacy. *See* Federal Case Verified First Amended Complaint (NOF Exhibit 1) ¶¶ 6-14, 64-66, 70-72 & 79-81 (accusing various Federal Case defendants of "directly causing his loss" in congressional primary and of actions "directly resulting in Plaintiff's defeat"); PDEC Case Complaint (NOF Exhibit 4) ¶¶ 4-7 & 39-40 (alleging that articles in another newspaper "caused catastrophic damage to his campaign, his reputation, and his ability to raise campaign funds"); PDEC First Amended Complaint (NOF Exhibit 5) ¶¶ 51 & 67 (accusing "four mainstream media outlets" of "outright excluding Plaintiff from even being mentioned as a candidate," and blaming PDEC defendants for "the loss of his Congressional primary race"). Because Plaintiff blames so many other people for his election defeats, his attempt to impose liability on Loper, her husband and her newspaper for his losses – including an election in which he received less than four percent of the vote[6] – is far too speculative to state a defamation claim.

The Debate Article

The first challenged article[7] concerned a Democratic Party-sponsored July 2024 debate that featured four Congressional candidates, but not Plaintiff. FAC ¶¶ 1, 12, 13, 43; 2AC ¶ 16.

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[6] *See* PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 20 ("Plaintiff lost the primary election, garnering only 3.93 percent of the vote, whereas Whitney Fox won with 57.94 percent of the vote."). *See also* 2AC ¶ 28 (Plaintiff "lost the mayoral election by a wide margin").

[7] Because the FAC includes a hyperlink to this article, the debate article is incorporated in Plaintiff's pleading by reference. *See Skupin v. Hemisphere Media Grp., Inc.*, 314 So. 3d 353, 356 (Fla. 3d DCA 2020) (trial court "did not deviate from the four corners of the complaint when

(footnote continued on next page)

Plaintiff was not mentioned in that article, because he was not a debate participant. FAC ¶ 12. More specifically, Plaintiff was "not invited to participate." *Id.* Shortly before the debate, Plaintiff learned that a PDEC committee "wouldn't be recognizing him as a qualified candidate and would be denying him all access to party resources, promotion, speaking engagements, and participation in candidate forums and debates." *See* PDEC Case Complaint (NOF Exhibit 4) ¶ 17. As a result, Plaintiff was denied "speaking opportunities at Party events and candidate forums." *See* PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22. Accordingly, a Pinellas Democratic Party news release that was the basis for the article did not mention Plaintiff.[8]

Despite Plaintiff's exclusion from the debate, Plaintiff contends that he should have been mentioned in the debate coverage. 2AC ¶¶ 16-17. Reviewing an allegedly defamatory publication, however, requires "examining not merely a particular phrase or sentence, but *all of the words used* in the publication." *Flynn*, 398 So. 3d at 1112 (emphasis added). A "publication must be considered in its totality." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 705 (Fla. 3d DCA 1999); *Byrd*, 433 So. 2d at 595. Courts must "consider the circumstances of its publication and the entire language used." *Cooper v. Miami Herald Publ'g Co.*, 31 So. 2d 382, 384 (Fla. 1947).

Plaintiff's objection is to an article that, read as a whole, was clearly about the debate, which Plaintiff admits did not include him. No law required *The Gabber* to mention Plaintiff in its debate article. The newspaper was entitled to focus on candidates who participated in the event. Nevertheless, as Plaintiff concedes, *The Gabber* acknowledged Plaintiff's candidacy in a subsequent publication and in advertising. *See* 2AC ¶¶ 18, 22 & 78. In any event, the Second

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considering defendant's motion to dismiss [defamation case] because all the broadcasts, either via hyperlink or attached transcripts, were attached to the complaint and thus incorporated"). For the Court's convenience, a copy is included with Loper's separate Notice of Filing (NOF Exhibit 9).

[8] *See* "July 13th Congressional District 13 Democratic Candidate Primary Debate" (NOF Exhibit 10).

Amended Complaint does not identify any materially false or defamatory statement about Plaintiff.

A "false statement of fact is the sine qua non for recovery in a defamation action." *Byrd*, 433 So. 2d at 595. The falsity element of a defamation claim is satisfied only "if the publication is *substantially and materially* false, not just if it is technically false." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 707 (Fla. 3d DCA 1999) (emphasis added). "As long as a report is substantially correct, it is not necessary that it be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting." *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021) (internal punctuation omitted). A "statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Smith v. Cuban Am. Nat. Found.*, 731 So. 2d at 706. In other words, a "statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Smith v. Cuban Am. Nat. Found.*, 731 So. 2d at 706.

To evaluate whether a publication is substantially false, courts "eliminate the alleged falsities" and then assess how the "common mind would understand" the publication without them. *Hill v. Lakeland Ledger Publ'g Corp.*, 231 So. 2d 254, 256 (Fla. 2d DCA 1970). A publication is not actionable unless the gist of the publication *with* the allegedly defamatory statement conveys a "significantly greater opprobrium" or sting than the publication *without* the alleged falsehood. *See Davis v. McKenzie*, 16-62499-CIV, 2017 WL 8809359 at *13 (S.D. Fla. Nov. 3, 2017), *report and recommendation adopted*, 16-62499-CIV, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018).

The July 2024 article referred to the debate participants as "the Democratic Candidates" and "[t]he four candidates." The falsity that Plaintiff alleges would be eliminated – and the article would be entirely truthful by Plaintiff's standards – if the article had referred to the "invited

candidates" or the "recognized candidates," because according to Plaintiff Democratic Party officials "wouldn't be recognizing him as a qualified candidate" and denied him "participation in candidate forums alongside his four opponents."[9] Even with the additional words "invited" or "recognized," the gist of the article would be same – namely, that the debate would consist of the four invited candidates whom the PDEC recognized. The common mind would come away from the article with exactly the same meaning that Plaintiff alleges – namely, that the Democratic Party held a debate to which only four recognized candidates were invited. To be sure, Plaintiff wants more – he would have had the article mention him and his candidacy. But defamation law does not require that. Because adding the word "invited" or "recognized" would remove the falsity that Plaintiff alleges but the sting to Plaintiff would be the same, the article's reference to the four debate candidates is substantially true and does not support a defamation claim.

Plaintiff's reference to libel by implication (2AC ¶ 54) does not change this analysis. The proposed Second Amended Complaint asserts that "omissions may constitute defamation when they convey a misleading impression," citing *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008). That legal proposition is no help to Plaintiff, because in *Rapp* the Florida Supreme Court recognized that "[a]ll of the protections of defamation law … extend[] to the tort of defamation by implication." *Rapp*, 997 So. 2d at 1108. Thus, the requirement of material falsity applies just as much to an alleged implication or omission as to an overtly false statement.

The attempt to sue over the debate article also fails for another reason: The article did not contain a defamatory statement "of and concerning" Plaintiff. "Florida courts have long held that if a defamed person is not named in the defamatory publication, the communication as a whole must contain sufficient facts or references from which the injured person may be determined by

[9] *See* PDEC Case Complaint (NOF Exhibit 4) ¶ 42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22.

the persons receiving the communication." *Mac Isaac v. Twitter, Inc.*, 557 F. Supp. 3d 1251, 1258 (S.D. Fla. 2021) (internal punctuation omitted). In addition, the alleged defamatory meaning of a libelous statement must be reasonable and not based upon a "stacking of inferences." *Trump v. Cable News Network, Inc.*, 684 F. Supp. 3d 1269, 1275 (S.D. Fla. 2023). The proposed Second Amended Complaint does not meet these standards.

The debate article neither named Plaintiff nor stated any facts about him. Plaintiff was omitted entirely, because the article was about the debate participants, not him. Plaintiff argues that his supporters would infer from the article the implication that he was no longer a candidate (or never had been). 2AC ¶ 55. Similarly strained speculation was rejected in *Trump v. Cable News Network*, 684 F. Supp. 3d at 1275-76. In that case, the court rejected a claim that the phrase "the Big Lie" connected Donald Trump to Nazi propaganda advocating Jewish persecution and genocide. *Id.* The Court declined to "create an inference of defamatory meaning," *Id.* at 1276. The *Trump* court cited *Church of Scientology of California v. Cazares*, 638 F.2d 1272, 1288 (5th Cir. 1981), which rejected speculation that the phrase "helter-skelter" connected the Church of Scientology to Charles Manson. The former Fifth Circuit was "not prepared to build inference upon inference in order to find defamatory meaning in a statement." *Id.* This Court likewise should not "create an inference of defamatory meaning" from the theory that (1) Plaintiff's congressional campaign had supporters who (2) read The Gabber article about the debate (3) noted Plaintiff was not mentioned, (4) inferred from the omission that Plaintiff had dropped out or was never a candidate at all, and (5) never learned otherwise from Plaintiff or The Gabber's other coverage of Plaintiff's candidacy. Because the alleged defamatory meaning of the debate article depends upon this stacking of inferences, Plaintiff has failed to satisfy the law's defamatory meaning and "of and concerning" requirements.

Finally, the debate article is protected by the neutral report privilege. "Under Florida law, it is well settled that disinterested communications of matters of public concern are privileged, even if defamatory." *Barbuto v. Miami Herald Media Co.*, No. 21-CV-20608, 2022 WL 123906, at *6 (S.D. Fla. Jan. 13, 2022) (quoting *Corsi v. Newsmax Media, Inc.*, 519 F. Supp. 3d 1110, 1124 (S.D. Fla. 2021)). So, for example, a statement in a *Washington Post* article repeating another publication's report of a money-laundering investigation was not actionable. *Trump Media & Tech. Grp. Corp. v. WP Co. LLC*, 720 F. Supp. 3d 1203, 1212-13 (M.D. Fla. 2024). Because that statement was "newsworthy" and "touch[ed] on an area of public interest," that statement "fit squarely within the type of reporting to which the neutral reporting privilege has been applied." *Id.* at 1213. Similarly, in this case, Loper is accused of being the editor of a newspaper that published a neutral, disinterested report on a matter of public concern – namely, an upcoming primary debate. The article did not mention Plaintiff, but instead presented neutral profiles of the debate participants, tracking the Democratic Party's news release. The article, therefore, was privileged.

The "Time in Courts" Article

The second challenged article[10] likewise is not actionable. Plaintiff challenges that article's statement that Plaintiff was suing in the PDEC Case "for alleged election fraud." The "central fact that precipitated the filing of that lawsuit," Plaintiff alleges, was an "unprovoked battery and assault," consisting of a hat being knocked off Plaintiff's head and verbal abuse. *See* PDEC Case Complaint (NOF Exhibit 4) ¶¶ 11, 24, 33. But a week after the "Time in Courts" article was published, Plaintiff referred to the PDEC Case and this one as his "Florida election fraud cases." *See* Motion for Leave to File Second Amended Complaint Federal Case DE 83 ¶ 7 (NOF Exhibit

[10] *See* "Gulfport Mayoral Candidate John Liccione's Time in Courts" (NOF Exhibit 11). This article is appropriately considered in connection with the Proposed Amended Complaint, because it is a document upon which this proposed claim is brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R.Civ. P. 1.130(a).

2). Because Plaintiff has referred to the PDEC case as concerning "election fraud," use of that same description in the February 2025 article was not false or actionable.

Moreover, although the proposed Second Amended Complaint makes much of the assault and battery claims in the PDEC Case, their significance is undermined by Plaintiff's decision to abandon those claims. Judge Ramsberger found those claims lacked specific allegations of damages and required Plaintiff to add them. *See* Order Granting Defendants' Motions to Dismiss PDEC Case 1 (NOF Exhibit 6). Plaintiff did not do so, and consequently those claims were dismissed. *See* Order Dismissing Lawsuit PDEC Case (NOF Exhibit 8).

In light of these facts, the "Time in Courts" article is neither false nor defamatory. Plaintiff's opinion that other information ought to have been included in the article is not a basis for a defamation claim. *See Turner v. Wells*, 879 F.3d 1254, 1270 (11th Cir. 2018) (recognizing "Defendants' editorial discretion in what to publish in their Report."). Plaintiff seems to believe this article was unfair. "The First Amendment requires neither politeness nor fairness." *Pullum v. Johnson*, 647 So 2d 254, 258 (Fla. 1st DCA 1994).

The Second Amended Complaint also alleges that the "Time in Courts" article "was crafted in a way that embedded the word 'criminal' in close proximity to Plaintiff's name." 2AC ¶ 34. The word "criminal" was used because Judge Ramsberger ordered Plaintiff "to explain why the Court should not find the Plaintiff in direct criminal contempt." *See* Amended Order to Show Cause, PDEC Case (NOF Exhibit 7). "That is why [The Gabber] inserted the word 'criminal' into the story about Plaintiff's upcoming contempt hearing." 2AC ¶ 61. The use of the word "criminal," therefore, was not false and in fact was privileged. *See Carson v. News-Journal Corp.*, 790 So. 2d 1120, 1122 (Fla. 5th DCA 2001) (news reports were not actionable because they accurately summarized separable portions of public records), *appeal dismissed*, 805 So. 2d 805

(Fla. 2002). The use of the word "criminal" was an accurate description of a judicial record and, therefore, cannot be the basis for a defamation claim.

The "Cocktails" Article

The defamation claim also points to a humor article[11] that "reimagined" all of the seven 2025 Gulfport mayoral and city council candidates as cocktails. This light-hearted, satirical piece invited readers who might be weary of traditional political activities to look at the candidates in a different way:

> [W]hat if we shook things up – literally – and reimagined the candidates running for Gulfport office as cocktails? From fiery libations to watered-down spritzers, each political persona has a flavor profile all its own. Because really, isn't every campaign just a mix of bold claims, bitter truths, and a splash of something sweet to make it go down easier? I don't know about you, but this election season in Gulfport makes me want to drink. Grab a shaker and swizzle stick – this is one round of politics you'll actually want to toast to.

See NOF Exhibit 12. From this obviously non-literal premise, the article then compares Plaintiff and six other candidates to various beverages, including a martini, Negroni, mojito and a "home brew." *Id.* The single paragraph that Plaintiff challenges referred to him as "a politician whose career is as colorful as their reputation" and asked the question, "Who else would have the audacity to run for City Mayor while concurrently suing local businesses?" The writer answered her own question: "Poor taste… Much like cheap, white sangria." *Id.*

Attempting to construct a cause of action from this work of imagination, Plaintiff complains that this article "derisively likened Plaintiff to a glass of 'cheap, white sangria.' " *See* 2AC ¶ 46. But the proposed Second Amended Complaint does not identify any false statement of fact in this article. Comparing Plaintiff to "cheap, white sangria" was an expression of opinion or rhetorical hyperbole, neither of which is actionable.

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[11] *See* "Cocktails and Campaigns: Gulfport Candidates Recrafted as Cocktails" (NOF Exhibit 12). This article is appropriately considered in connection with the Proposed Amended Complaint, because it is a document upon which this proposed claim is brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R.Civ. P. 1.130(a).

The First Amendment protects "statements that cannot reasonably be interpreted as stating actual facts." *Pullum v. Johnson*, 647 So 2d 254, 256 (Fla. 1st DCA 1994). Such protection serves "to assure that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." *Id.* at 256-57 (quoting *Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 20 (1990)).

For example, In *Flynn v. Wilson*, 398 So. 3d at 1103, the Second District Court of Appeal found that referring to retired General Michael Flynn as a "Putin employee" was not actionable. *See* 398 So. 3d at 1106. That statement in isolation "may indeed appear to be making a factual claim about Flynn's economic relationship with [Russian President Vladimir] Putin," the court acknowledged. *Id.* at 1112. But Wilson's comment appeared in the context of "widely publicized news stories about Flynn's purported connections with Russia" and alongside a letter from General Flynn concerning Putin. *Id.* at 1113. Read in that context, the court concluded, a reasonable reader would *not* see the "Putin employee" comment as making "a literally true, factual claim about Flynn's employment status." *Id.*

The same is true here. No reader of the "Cocktails" article would find the reference to "cheap, white sangria" as "a literally true, factual claim" about Plaintiff. The article uses loose, figurative language to express an opinion. "Because of the frequent use of ill-considered, name-calling attacks in American political debate, we expect people who engage in controversy to accept that kind of statement as their lot. We think the first amendment demands a hide that tough." *Pullum*, 647 So. 2d at 258 (cleaned up). The obviously metaphorical reference to Plaintiff in the Cocktails article is not actionable.

Other editorial criticisms also are without merit.

In addition to the challenges to these three articles mentioned above, the proposed Second Amended Complaint objects to information that Loper's newspaper allegedly did not publish in

the manner Plaintiff would like. For example, the proposed Second Amended Complaint alleges that the newspaper conducted and "prominently displayed" an "informal online mayoral candidate survey" that showed Plaintiff with a 58 percent margin of victory. 2AC ¶ 39. After the survey ended, Plaintiff alleges, "The Gabber quietly moved the results to a rarely accessed archive of past surveys, and never reported on their own survey results, effectively concealing Liccione's early and commanding lead in the poll from the broader public." *Id.* ¶ 40. The "clear newsworthiness of the results," Plaintiff alleges, merited news coverage beyond that accorded other past surveys. *Id.*

This argument displays a remarkable ignorance of the First Amendment. In this country, political candidates do not dictate the content, manner and timing of news coverage. "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment," which the First Amendment protects. *See Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (rejecting political candidate's demand that newspaper publish his reply). "For better or worse, editing is what editors are for, and editing is selection and choice of material." *CBS v. Democratic Nat'l Committee*, 412 U.S. 94, 124 (1973). Politicians are not entitled "to interfere with editorial control and judgment as to the content (or layout) of news columns and the slant of editorials." *News & Sun-Sentinel Co. v. Bd. of Cnty. Com'rs*, 693 F. Supp. 1066, 1072 (S.D. Fla. 1987). Thus, basic principles of free speech entitled Loper to determine (if she chose to do so) that "the results of an informal online survey" did not merit continued news coverage. Plaintiff's attempt to sue over that exercise of editorial judgment is absurd.

Conclusion

Loper's Anti-SLAPP defenses to the First Amended Complaint must be resolved before the proposed Second Amended Complaint is considered. Once those defenses are resolved, the Anti-SLAPP law and Rule 1.190(e) require that Plaintiff pay Loper's attorneys' fees. The Motion to Amend is prejudicial, abusive and futile and should be denied.

Respectfully submitted,

THOMAS & LOCICERO PL

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Counsel for Defendant Cathy Salustri Loper

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the **3rd** day of **June, 2025**, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/ *James B. Lake*
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

DEFENDANT CATHY SALUSTRI LOPER'S NOTICE OF FILING

Defendant Cathy Salustri Loper ("Loper") gives notice of filing the attached documents for the Court's consideration in connection with Plaintiff's Motion to Lift Stay (Dkt. No. 122) and Plaintiff's Motion for Leave to File Second Amended Complaint (Dkt. No. 125):

Tab	Description
1	Verified First Amended Complaint (DE 55) in *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the "Federal Case") (without exhibits)
2	Motion for Leave to File Second Amended Complaint (DE 83) in Federal Case
3	Notice of Withdrawal of Motion for Leave to File Second Amended Complaint (DE 113) in Federal Case
4	Complaint (Dkt. No. 2) in *Liccione v. Pinellas Democratic Executive Committee*, Case. No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case")
5	First Amended Complaint (Dkt. No. 31) in PDEC Case
6	Order Granting Defendants' Motions to Dismiss (Dkt. No. 62) in PDEC Case
7	Amended Order to Show Cause (Dkt. No. 75) in PDEC Case
8	Order Dismissing Lawsuit (Dkt. No. 81) in PDEC Case
9	Debate Article (https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/)

10	Debate News Release (https://us3.campaign-archive.com/?e=44ecd8245f&u=184627293a6f977c78f8e83b7&id=4a77ab680b)
11	Time in Courts Article (https://thegabber.com/gulfport-mayoral-candidate-john-licciones-time-in-courts/)
12	Cocktails Article (https://thegabber.com/cocktails-and-campaigns-gulfport-candidates-recrafted-as-cocktails/)

Loper asks that the Court take judicial notice of the records in the PDEC Case and the Federal Case. *See* Fla. R. Civ. P. 90.202(6). The other documents are appropriately considered because they are documents upon which Plaintiff's claims are brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R.Civ. P. 1.130(a).

Respectfully submitted,

THOMAS & LOCICERO PL

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Counsel for Defendant Cathy Salustri Loper

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s/ *James B. Lake*
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 1

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,
Plaintiff,

v. Case No. 8:24-cv-02005-SDM-NHA

RONALD DION DESANTIS, in his official capacity as Governor of Florida; **ANDREW DARLINGTON**, in his official capacity as Director of the Florida Election Crimes and Security; **CORY BYRD**, in his official capacity as Florida Secretary of State; **JULIE MARCUS**, in her official capacity as Pinellas County Supervisor of Elections, **MATT SMITH**; in his official capacity as General Counsel for the Pinellas County Supervisor of Elections; **MINDY PERKINS**, in her professional capacity as Chief Executive Officer of VR Systems, Inc.; **WENDY LINK**, in her official capacity as Palm Beach County Supervisor of Elections; **JANE DOE 1**, in her personal and professional capacities; and, additional **JOHN/JANE DOES**, in their official and individual capacities, including unknown Russian hackers who compromised election system software and the production information systems of VR Systems and their software development environment, Defendants.

VERIFIED FIRST AMENDED COMPLAINT

Plaintiff John William Liccione, pro se, brings this verified First Amended Complaint against the Defendants named above and alleges as follows:

I. INTRODUCTION

1. This case arises from systemic election fraud, foreign interference, election software and systems hacking, evidence tampering and subsequent cover-up and obstructive efforts orchestrated by state and county officials, private entities, and

others to include hostile foreign actors, acting in concert to undermine election integrity in August 20, 2024 primary and the November 5th general election. Plaintiff also alleges new death threats, extortion, and intimidation tactics employed against him after having filed this lawsuit, to suppress his claims.

2. This First Amended Complaint adds named Defendants Ronald Dion DeSantis, Andrew Darlington, Cory Byrd, Mindy Perkins, Wendy Link, Matt Smith, and Defendant "Jane Doe 1" and other unnamed Jane/John Doe defendants. It removes Defendants Dustin Chase, Jennifer Griffith, Mark Weinkrantz, Whitney Fox (already dismissed), and Nikki Fried (already dismissed).

II. JURISDICTION AND VENUE

3. This Court has jurisdiction pursuant to 28 U.S.C. § 1331 (federal question jurisdiction) and 42 U.S.C. § 1983 (civil rights violations).

4. Venue is proper under 28 U.S.C. § 1391 because the events giving rise to this action occurred within this judicial district.

III. PARTIES

5. **Plaintiff: John William Liccione**, a Democratic candidate in the 2024 election for U.S. Representative for Florida's 13th Congressional District and a registered voter in Pinellas County, Florida.

6. **Defendant Ronald Dion DeSantis:** Governor of the State of Florida, accused of using his position to direct this alleged Florida election fraud conspiracy, to obstruct criminal investigations by Defendants Darlington, Byrd, and others, and of undermining election integrity.

7. **Defendant Andrew Darlington**: Director of the Florida Election Crimes and Security Division, accused of using his position to further the conspiracy, obstruct investigations, and undermine election integrity.

8. **Defendant Cory Byrd:** Florida Secretary of State, the chief elections officer in Florida, accused of failing to oversee and address systemic election fraud and irregularities and to obstruct criminal investigations.

9. **Defendant Julie Marcus:** Pinellas County Supervisor of Elections, responsible for administering elections in Pinellas County and accused of participating in the cover-up of election fraud.

10. **Defendant Matt Smith:** General Counsel for the Pinellas County Supervisor of Elections, accused of obstructing investigations and concealing material records.

11. **Defendant Mindy Perkins:** CEO of VR Systems, Inc., a company responsible for providing election software to the State of Florida and at least 7 other states and is accused of enabling election fraud, the hacking of their election systems by Russia, and participating in the concealment of the hacking and fraud.

12. **Defendant Wendy Link:** Palm Beach County Supervisor of Elections, accused of failing to safeguard election systems and records against fraud and actively participating in efforts to obstruct discovery of election irregularities.

13. **Defendant Jane Doe 1:** A Florida private attorney accused of acting in furtherance of the conspiracy in coordination with Defendant Andrew Darlington.

14. **John/Jane Does 2-10:** As yet unknown individuals, including Russian hackers alleged to have compromised election systems and facilitated fraud in the 2016 and 2024 elections.

IV. NON-PARTY NECESSARY WITNESSES AND/OR INTERESTED PARTIES

15. **John Siamas**: Former candidate for the Florida State Senate District 21 who filed a lawsuit in Florida Circuit Court, Leon County, **Case No. 2024-CA-001457**, exposing fraudulent activity within VR Systems' software and systemic failures in voter record management and a total breakdown in internal controls within the Pinellas County Supervisor of Elections office and the State Division of Elections.

16. **Jeffrey Buongiorno**: Candidate for Palm Beach County Supervisor of Elections running against Defendant Link, and the plaintiff in **Case No. 9:24-CV-80920-AMC** in U.S. District Court for the Southern District of Florida, alleging widespread vote-by-mail fraud.

17. **Chris Gleason**: Candidate for Pinellas County Supervisor of Elections running against Defendant Marcus and the plaintiff in **Case No. 24-003717-CI**, exposing fraudulent vote-by-mail ballot order data manipulation and unlawful ballot issuance practices in Pinellas County.

18. **Samuel Thompson**: Candidate for Clerk of the Circuit Court and Comptroller in Palm Beach County, and the plaintiff in **Case No. 50-2024-CA-011346**, highlighting voter ID verification failures, fraudulent ballot issuance, and systemic data tampering.

V. FACTUAL ALLEGATIONS

A. Evidence from the Reality Winner leaked NSA report and DOJ Indictments against Russian GRU Hackers that Breached VR Systems in 2016 to Get Trump elected.

19. The top-secret NSA report leaked to The Intercept by NSA whistleblower Reality Winner in 2017[1] revealed that Russian GRU operatives successfully hacked VR Systems' software and employee administrator accounts during the 2016 election in an effort to get Donald Trump elected president. It began with spearphishing campaigns that targeted VR Systems employees and their admin

[1] EXHIBIT A: *Report: The NSA Knew Russia Hacked a U.S. Voting Software Supplier Before the Election. What Now?*", The Intercept, June 6, 2027; https://www.gq.com/story/the-intercept-russia-hack-report

accounts. This was confirmed in the Robert Mueller DOJ indictment of 12 Russian GRU hackers.[2]

20. The compromised systems were used to manipulate voter registration data and facilitate election fraud during the 2016 Presidential Election. This was not limited to just Florida, but several other states that used VR Systems election software.

21. Page 26, Paragraph 76 in the Mueller Indictment reads as follows:

> *"76. In or around November 2016 and prior to the 2016 U.S. presidential election, KOVALEV and his co-conspirators used an email account designed to look like a Vendor 1 email address to send over 100 spearphishing emails to organizations and personnel involved in administering elections in numerous Florida counties. The spearphishing emails contained malware that the Conspirators embedded into Word documents bearing Vendor l's logo."*

22. Eight years later, evidence uncovered during the 2024 primary and general elections by Plaintiff and 4 other candidates demonstrates a more sophisticated cyberattack that exploited vulnerabilities in VR Systems Voter Focus vote-by-mail (VBM) ballot ordering software, and VR Systems production servers running that software, in several Florida counties (and possibly across 7 other states such as Georgia, North Carolina, and Texas).

[2] **EXHIBIT B:** The Robert Mueller DOJ Unsealed Indictment of Russian GRU Hackers, *United States of America v. Viktor Borisovich Netyksho, et al,* 1:18-cr-00215-ABJ, filed July 13, 2018.

23. A massive number of fraudulent VBM orders missing voter ID information (SSAN-last 4 and driver's license numbers) on June 23 and June 26 of 2024 were submitted to Pinellas and Miami-Dade counties' Supervisors of Elections over the Internet. The hackers manipulated voter registration data, and then they retro-actively tampered with and modified (on September 9, 2024) the historical record of those VBM ballot orders that had been submitted on June 23rd in Pinellas County.

24. The VBM ballot fraud was large enough to alter the outcome of Plaintiff's primary election on August 20th, the elections in other Pinellas county primary races, and in the general election races on November 5th, 2024. This includes potentially the re-election of Donald Trump, the re-election of Congresswoman Anna Paulina Luna, and the elections of others such as: (1) FL Senate candidate Edward Hooper; (2) Defendant Julie Marcus (Pinellas Supervisor of Elections); (3) Defendant Wendy Link (Palm Beach Supervisor of Elections), and Adam Anderson (District 57 FL House).

25. In the most recent act in furtherance of this election fraud conspiracy, on December 2, 2024, Defendant Jane Doe 1, a Florida lawyer and social advocate with ties to the Ron DeSantis administration, arranged and hosted a Zoom videoconference meeting involving Defendant Andrew Darlington and John Siamas (a former Florida State Senate candidate who allegedly lost to Edward

Hooper in the August 20th primary)who is an interested party and necessary witness in this case.

26. The meeting was hosted on Jane Doe 1's Zoom account, bypassing official state communication channels to avoid transparency and oversight, and to leave no trace of the on-line meeting on any public record.

27. During the meeting, Darlington requested Siamas' data regarding the aforementioned vote-by-mail (VBM) ballot anomalies, including the unexplained massive spikes in VBM requests in Pinellas and Miami-Dade counties on June 23rd and 26th which had Social Security and driver's license numbers labeled as non-existent in over 80 percent of VBM ballot requests, as was shown in FL state election records.

28. Siamas expressed concerns as to why Darlington, as Director of the Florida Election Crimes and Security Division and the chief election crimes law enforcement officer in Florida, was asking *him* to provide Darlington the State's own VBM ballot ordering data the State itself had published.

29. Jane Doe 1's role was to broker and facilitate the Zoom meeting, as she, not Darlington or anyone from his office, had made the initial outreach to Siamas, where should would drop Darlington's name as an enticement.

30. Siamas later described the meeting to Plaintiff as a thinly disguised attempt to assess the strength of his election fraud case against Darlington's bosses such as

Florida Secretary of State Cory Byrd and Governor Ron DeSantis and other State and county elections officials.

31. Plaintiff alleges that this Zoom conference, convened at the request of Defendant Darlington through his proxy Jane Doe 1, represents the latest act in furtherance of this election fraud conspiracy to conceal election fraud exposed in Siamas' and Plaintiff's and other candidates' lawsuits, and to obstruct what legitimately should be a criminal election fraud investigation by Defendants Darlington and Byrd in their official administration and law enforcement duties.

Death Threat and Coercion Against Plaintiff to Drop Lawsuits

32. On November 15, 2024, Plaintiff received a disturbing email titled "GoneGetGaetz," threatening him to abandon his lawsuits and stop political activities against Donald Trump, Anna Luna, Matt Gaetz, and Lauren Boebert, or face harm, ruin, or expulsion from the country. The email stated that Plaintiff was on a hit list being developed by the incoming Trump administration.[3]

33. The sender used a "burner" one-time use email account *gonegetgaetz@proton.me*, which was deleted before Plaintiff could respond.

Evidence of Unlawful Vote-by-Mail Ballot Requests on a Massive Scale

34. On June 23, 2024, over 219,000 VBM requests were processed in Pinellas County by VR Systems' Voter Focus production servers hosted on behalf of the

[3] **EXHIBIT C:** Threatening "GoneGetGaetz" email threat/warning to John Liccione, 11/15/24.

Pinellas County Supervisor of Elections under the domain name ***pinellas.electionsfl.org***.[4]

35. Ninety-six point eight percent (96.8%) were recorded as lacking required voter identification (SSAN last 4 and/or driver's license number). It is noted that Plaintiff ordered his own vote-by-mail ballot in September of 2024 and the VBM ballot request form cannot even be submitted unless at least one of the SSAN/Driver's License fields are filled in.

36. Deceased Voters: VBM ballots were requested for deceased individuals.

37. Systemic Internal Control Failures: VR System's Voter Focus software used in Florida counties permitted administrators, or hackers using hacked administrator accounts, to turn off fraud detection features, and to wipe or modify the records, facilitating fraudulent VMB ballot orders, the down-stream counting of fraudulently marked blank ballots mailed to the fraudsters, and the after-the-fact obstruction by State and County-level election officials to conceal the evidence.

Evidence from the Thompson Lawsuit

38. Palm Beach County Irregularities: Of 292,292 VBM requests, 19,649 lacked identification. Fraud detection systems were overridden, allowing issuance of these requests.

[4] **EXHIBIT D**: Screenshots of Liccione Wireshark packet capture recorded during his VBM request session with the Pinellas Supervisor of Elections website (VR Systems Voter Focus) on September 27, 2024, showing DNS resolution to domain pinellas.flelections.org and other metadata.

39. Manual Overrides: After discrepancies were exposed by Plaintiff and the other named candidates in their lawsuits, VBM count records were fraudulently altered retroactively to appear compliant with statutory requirements.

Russian Hacking/Foreign Interference

40. Forensic analysis identified cyber intrusion consistent with Russian GRU hacking operations targeting VR Systems during the 2016 election to get Trump elected. Similar or more sophisticated tactics were employed in 2024, generated fraudulent batch VBM orders with absent mandatory voter identification, manipulation of voter rolls - once again to the benefit of Donald Trump and this time, Anna Paulina Luna, Edward Hooper, Julie Marcus, Wendy Link, Adam Anderson, and other victorious candidates.

Fraudulent Concealment of IP Addresses of VBM Ballot Requesters on June 23, 2024

41. On August 30, 2024, Plaintiff submitted a very narrowly focused public records request as CEO of **The Crabber News** (Request no. 2024-392) to the Pinellas Supervisor of Elections[5] requesting the IP addresses and timestamps of all VBM ballot requests submitted on Sunday June 23, 2024, as follows:

> *"A .csv file or excel spreadsheet report showing* ***the source IP address of each and every individual who submitted an absentee ballot request to the Pinellas Supervisor of Elections over the Internet on June 23,***

[5] **EXHIBIT E –** Email thread of Liccione public records request for IP addresses of VBM ballot requests on June 23, 2024,and PSOE General Counsel Matt Smith's responses.

> ***2024.*** *The report need not provide any personally identifiable information, just the following 2 columns: (1) Date/Time of submission; (2) Source IP Address of submitter. It is noted that this type of metadata is typically available as a cybersecurity standard practice in web server logs, firewall logs, cloud service provider (e.g., Cloudflare) reports, and other off-the-shelf IT logging and reporting systems. It would typically take an IT person with proper access credentials less than 30 minutes to generate it and export it to a csv or Excel file."*

42. After 18 days of silence PCSOE General Council Matt Smith replied via email and gave this one-sentence, completely non-responsive response: *"**We have no records responsive to your request**."*

43. Plaintiff requested an in-person meeting with Smith and others at the PCSOE to discuss the matter. Smith refused, citing Plaintiff's pending litigation against the PCSOE and referring Plaintiff to litigation counsel.

44. On September 3 2024, after the election results were certified by the State of Florida and the PCSOE, Plaintiff filed his related State lawsuit against Julie Marcus, et al in Florida's 6th Circuit Court: Case no. 24-003939-CI.

45. On September 12 2024, Plaintiff Liccione served the Case 24-003939-CI summons, the 1st Amended Complaint, and his 1st Request for Production of Documents on Defendant Julie Marcus. He he demanded production of the June 23rd VBM requestor IP addresses and timestamps (and added related voter and cybersecurity forensic metadata to the request.[6]

[6] **EXHIBIT F:** Plaintiff's Request for Production of IP Addresses of VBM Ballot requestors in Case no. 24-003939-CI.

Violation of Discovery Rules, The FL Public Records Act, Fraudulent Concealment, Obstruction

46. On October 22, 2024, Defendant Marcus' attorney, Kirby Kreider, requested an extension of the discovery deadline, claiming that the requested records were held by an unidentified external contractor and would require an additional time to retrieve.

47. During this discussion, Kreider refused to confirm, when pressed by Plaintiff, whether the contractor retained the requested records or could produce them, suggesting a deliberate effort to delay and obstruct the discovery process.

48. Plaintiff provided Defendant Marcus' counsel with evidence, including excerpts from the Voter Focus on-line user manual, demonstrating that the Voter Focus software records, stores, retains, and performs fraud detection based on the IP addresses used by mail ballot requestors, and that the fraud detection feature can be disabled by Voter Vocus administrators.[7] Despite this, Defendant's counsel denied knowledge of these capabilities and failed to provide assurances that the records would be produced even within another 45 days.

49. Plaintiff filed a 12-page Motion to Compel Discovery of the IP Address records against Defendant Marcus in 24-003939-CI on October 28, 2024.[8]

[7] **EXHIBIT G**: Liccione email to Attorney Kirby Kreider with Voter Focus User's manual pages proving IP Address record retention for VBM ballot orders and fraud detection.
[8] **EXHIBIT H:** Liccione Motion to Compel Discovery of IP Address Records against Julie Marcus in FL case 24-003939-CI.

50. To date, Defendant Marcus and her attorneys have continued to stonewall in the State case until, on October 20, 2024, the FL 6th Circuit Court presiding judge Patricia Muscarella, issued an order staying proceedings, including stay of discovery, until after a final judgement is entered in this federal case, which won't get to trial until at least January 2026.

51. Plaintiff alleges that Defendant Marcus and her attorneys, including Matt Smith, Kirby Kreider, and Andrew Keefe, acting at the direction of Governor Ron DeSantis, Secretary of State Cory Byrd and Division of Elections Director Maria Mathews, and Election Crimes and Security Director Andrew Darlington, are actively concealing the existence of critical records that would identify the source of the fraudulent 219,000+ mail ballot requests received on June 23, 2024.

52. Defendants Marcus and Smith's refusal to produce these records, and even, in Smith's case, to claim the records don't even exist when it is obvious they do exist, constitutes a violation of both the Florida Public Records Act and the Florida rules of discovery, and it further supports allegations of a post-election cover-up by way of fraudulent concealment and obstruction of justice.

53. Plaintiff alleges that the Defendants have acted in concert to obstruct justice by denying access to public records and discovery materials critical to Plaintiff's claims of election fraud.

54. On September 9, 2024, the State of Florida's vote-by-mail request file made downloadable to candidates by the State, then reflected that 198,259 mail ballot requests were received in a single day under the general election's ID number. This serves to extend the appearance of election fraud out to the general election.

55. Plaintiff has presented evidence that the Voter Focus software includes fraud detection features that capture and analyze the IP addresses of mail ballot requestors and flags potential fraud for investigation in its "fraud case management system." The refusal to produce these records hinders the investigation and discovery of potential foreign interference, including IP addresses linked to foreign entities, such as Russia, China, and Iran.

56. Defendants' actions have delayed Plaintiff's ability to substantiate his claims, deprived him of critical evidence, and represent a willful effort to impede the legal process.

Fraudulent Concealment

57. Plaintiff alleges that the failure to produce the IP addresses and related metadata and constitutes fraudulent concealment, as well as wire fraud, as Defendants are aware of the records' existence and their relevance to this case.

58. The retroactive adjustment of the June 23, 2024 mail ballot request count, which occurred in early September shortly after Plaintiff and others filed their

election fraud lawsuits, further evidences a concerted effort by Defendants to manipulate election records and obscure the truth regarding election irregularities.

59. Defendants' intentional withholding of these records violates their obligations under Florida law and the Rules of Civil Procedure, warranting judicial intervention to compel disclosure and address this misconduct.

The Wendy Link Public Declaration that she will never release the IP addresses of VMB Ballot Requestors During Sun Sentinel Debate

60. On September 5, 2024, during a recorded public debate with her opponent Jeff Buongiorno that was hosted by the Sun Sentinel's editorial board, Defendant Wendy Link declared that she would *never* release the IP addresses of VBM ballot requestors.

61. This declaration by Link can be seen as an admission of guilt and criminal intent, obstruction of justice, fraudulent concealment, and various election crimes.

62. On information and belief, Defendants Marcus and Link's marching orders are flowing down from Governor Ron DeSantis, through Secretary of State Byrd, and through the State Division of Elections Director Maria Matthews and Defendant Darlington, and then down to all of Florida's County supervisors of elections, as well as over to the CEO of VR Systems, Defendant Mindy Perkins.

63. The cumulative evidence from publicly available State records as disclosed in lawsuits and investigations reveals a coordinated effort involving a hostile foreign power, state and local election officials, and private individuals, with systemic

breaches of voter identification protocols, intentional failures to uphold election laws, and violation of Florida Public Records act and violation of the rules of discovery under color of law.

V. CLAIMS FOR RELIEF

COUNT I: Violation of 42 U.S.C. § 1983 – Deprivation of Civil Rights

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

64. **Against Defendants:** Ron DeSantis, Andrew Darlington, Cory Byrd, Julie Marcus, Matt Smith, Wendy Link, Jane Doe 1, and John/Jane Does 2-10.

65. **Conduct:** Defendants acted under color of state law to deprive Plaintiff of his constitutional rights, including the right to a fair election and equal protection under the law, by facilitating election fraud, obstructing investigations, and concealing evidence.

66. **Damages:** Plaintiff suffered harm as:

a. **A voter:** His vote was diluted and canceled by fraudulently ordered and cast vote-by-mail ballots and manipulated election results in both the primary and general elections.

b. **A candidate:** His Congressional candidacy was undermined, depriving him of a fair electoral process, directly causing his loss.

c. **A plaintiff:** Defendants' acts of obstruction hindered his ability to gather evidence and pursue legal redress, both before and after the election results were certified, resulting in financial and emotional harm.

COUNT II: Violation of Federal Election Laws (52 U.S.C. § 20511)

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

67. **Against Defendants:** Ron DeSantis, Cory Byrd, Julie Marcus, Matt Smith, Wendy Link, and Mindy Perkins.

68. **Conduct:** Defendants knowingly engaged in fraudulent activities, including the concealment of metadata and facilitation of fraudulent vote-by-mail requests, materially interfering with the integrity of federal elections.

69. **Damages:** Plaintiff suffered harm as:

a. **A voter:** His constitutional right to participate in an untainted election process was violated.

b. **A candidate:** Fraudulent activity altered the election outcome, depriving him of fair competition.

c. **A plaintiff:** His ability to substantiate claims of election fraud was obstructed, causing reputational and financial harm.

COUNT III: Conspiracy to Commit Election Fraud

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

70. **Against Defendants:** Ron DeSantis, Andrew Darlington, Cory Byrd, Julie Marcus, Matt Smith, Wendy Link, Mindy Perkins, Jane Doe 1, and John/Jane Does 2-10.

71. **Conduct:** Defendants conspired to commit election fraud by manipulating voter data, suppressing evidence, and retroactively altering records to conceal fraudulent vote-by-mail requests.

72. **Damages:** Plaintiff suffered harm as:

a. **A voter:** His vote was devalued by widespread fraud.

b. **A candidate:** The conspiracy directly impacted the outcome of his election.

c. **A plaintiff:** Plaintiff's ability to litigate was undermined through intentional concealment and obstruction.

COUNT IV: Violation of the Florida Public Records Act - Fla. Stat. § 119.01 (2024)

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

73. **Against Defendants:** Julie Marcus, Matt Smith, Wendy Link, and John/Jane Does 2-10.

74. **Conduct:** Defendants willfully failed to produce records, including metadata and IP addresses related to vote-by-mail requests, in violation of Florida's Public Records Act.

75. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Denied transparency in the election process, undermining his confidence in democracy.

b. **A candidate:** Lack of access to records concealed fraud that influenced the election.

c. **A plaintiff:** Obstruction of public records delayed and hindered Plaintiff's ability to pursue legal remedies.

COUNT V: Fraudulent Concealment

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

76. **Against Defendants:** Julie Marcus, Matt Smith, Mindy Perkins, and John/Jane Does 2-10.

77. **Conduct:** Defendants concealed material facts, including metadata and vote-by-mail records, with the intent to obstruct investigations and deceive Plaintiff and the public.

78. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Fraudulent concealment perpetuated election fraud, violating his rights.

b. **A candidate:** Lack of transparency allowed fraud to affect the election outcome, harming his candidacy, and directly resulting in Plaintiff's defeat..

c. **A plaintiff:** Concealment of evidence caused delays, additional costs, and emotional distress in pursuing legal action.

COUNT VI: Violation of the Computer Fraud and Abuse Act 18 U.S.C. § 1030 (CFAA)

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

79. **Against Defendants:** Mindy Perkins, Julie Marcus, Wendy Link, and John/Jane Does 2-10.

80. **Conduct:** Unauthorized access to protected election systems and metadata facilitated fraudulent vote-by-mail requests and voter record manipulation.

81. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Cyber intrusions compromised election integrity and his participation in the process.

b. **A candidate:** Manipulated records and fraud undermined his ability to compete fairly, directly resulting in Plaintiff's defeat.

c. **A plaintiff:** Defendants' conduct caused delays and increased costs in obtaining critical forensic evidence.

COUNT VII: Violation of the Racketeer Influenced and Corrupt Organizations Act (RICO) (18 U.S.C. §§ 1961-1968)

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

82. **Against Defendants:** All defendants.

83. **Conduct:** Defendants engaged in a coordinated corrupt enterprise involving multiple criminal acts within the span of seven months in 2024 to include fraudulent vote-by-mail requests, obstruction of investigations, and retroactive alteration and destruction of electronic election records, wire fraud, violation of the Florida Public Records Act, constituting racketeering activity.

84. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Systemic fraud diluted his vote and undermined democratic processes.

b. **A candidate:** Racketeering activities distorted the election's outcome, depriving him of fair competition, directly resulting in Plaintiff's defeat.

c. **A plaintiff:** Efforts to obstruct justice impeded his ability to prosecute claims and seek redress.

COUNT VIII: Obstruction of Justice Under 18 U.S.C. § 1503

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

85. **Against Defendants:** All Defendants.

86. **Conduct:** Defendants intentionally obstructed Plaintiff's judicial proceedings by refusing to produce evidence, retroactively altering records, and misrepresenting the existence of metadata and violating rules of civil procedure on discovery.

87. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Denied accountability in the electoral process.

b. **A candidate:** Obstruction concealed fraudulent activities that influenced the election outcome and resulted in Plaintiff's election defeat.

c. **A plaintiff:** Obstruction caused significant delays in Plaintiff's judicial proceedings, financial loss, emotional distress, and inability to prosecute his claims.

COUNT IX: Intentional Infliction of Emotional Distress

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

88. **Against Defendants:** Ron DeSantis, Julie Marcus, Matt Smith, Jane Doe 1, and John/Jane Does 2-10.

89. **Conduct:** Defendants engaged in extreme and outrageous conduct, including death threats, suppression of Plaintiff's claims, and obstructive tactics, intending to cause severe emotional distress.

90. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Emotional distress from threats and undermined confidence in democracy.

b. **A candidate:** Threats and intimidation interfered with his campaign and placed him in fear for his life.

c. **A plaintiff:** Psychological and emotional harm due to Defendants' malicious conduct.

COUNT X: Fraudulent Misrepresentation

Plaintiff incorporates by reference all preceding paragraphs as if fully set forth herein.

91. **Against Defendants:** Julie Marcus, Matt Smith, Mindy Perkins, Wendy Link, and John/Jane Does 2-10.

92. **Conduct:** Defendants knowingly misrepresented the existence of records and metadata pertaining to mail ballot order processing, to deceive Plaintiff, obstruct investigations, and delay litigation.

93. **Damages:** Plaintiff suffered harm as:

a. **A voter:** Fraudulent misrepresentation perpetuated fraud in the election process.

b. **A candidate:** Lack of transparency allowed election fraud to influence the outcome, directly resulting in Plaintiff's election defeat.

c. **A plaintiff:** Deception delayed litigation, increased costs, and caused reputational harm.

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Declare the actions of Defendants unconstitutional and unlawful.

B. Grant injunctive relief to preserve election records and order production of requested records by Defendants Marcus, Link, Darlington, Byrd, and DeSantis.

C. Award compensatory and punitive damages in an amount to be determined at trial.

D. Award treble RICO damages, costs, attorneys' fees, and pre- and post-judgement interest.

E. Order the invalidation of all unlawfully ordered, processed, voted, and counted VBM ballots in the August 20th FL Primary election in Plaintiff's congressional primary race, in the Anna Paulina Luna vs Whitney Fox general election congressional CD-13 race, and in the Florida presidential race, and the de-certification of each races election results.

VII. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

Respectfully submitted,

/s/ John W. Liccione
John William Liccione, Pro Se
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443-698-8156
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 2

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No. 8:24-cv-02005-SDM-NHA

RONALD DION DESANTIS, ET AL,

Defendants.

Related FL Supreme Court Case No. SC2025-0242

MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

COMES NOW, Plaintiff, JOHN WILLIAM LICCIONE, pro se, pursuant to Rule 15(a)(2) of the Federal Rules of Civil Procedure, and respectfully moves this Court for leave to file a Second Amended Complaint in light of newly discovered evidence and further developments in Plaintiff's case, including material facts and evidence presented in a recent filing before the Supreme Court of Florida in Case No. SC2025-0242 (EXHIBIT A). In support thereof, Plaintiff states the following:

I. INTRODUCTION AND BACKGROUND

1. Plaintiff originally filed this action against Defendants for claims relating to election fraud, violations of constitutional rights, RICO violations, and unlawful conduct in connection with the administration of elections and in the State of Florida in a Federal Election.
2. On March 6, 2025, Plaintiff filed an Emergency Motion for Rehearing (EXHIBIT A), an Emergency Petition to Stay, and a Petition for Emergency Injunctive Relief with the Florida Supreme Court in Case No. SC2025-0242. This filing details newly uncovered evidence of systematic election fraud directly relevant to Plaintiff's 2024 federal action, election fraud, which is now occurring again in the exact same manner in 2025 in the March 11, 2025 municipal election in Pinellas County, an election in which Plaintiff is running for Mayor of Gulfport, Florida.
3. This new evidence, which pertains to Plaintiff's March 11, 2025, Gulfport Florida mayoral election in which he is once again a victim as both a candidate and a registered voter, demonstrates a continuation of the same fraudulent criminal scheme identified in Plaintiff's prior pleadings in this case.
4. Specifically, the evidence reveals that 411 vote-by-mail ballots were requested fraudulently in the name of Gulfport voters on Saturday, January

11, 2025, including the name of Plaintiff, utilizing voter information without required authentication, as part of a scheme targeting the integrity of the election process.

5. The newly discovered fraud scheme follows the same pattern as the previously documented 2024 election fraud conspiracy, wherein unauthorized vote-by-maild (VBM) ballot requests, referred to as "***No-No Ballot Requests***" were submitted en masse without proper voter identification credentials.

II. LEGAL STANDARD

5. Under Rule 15(a)(2) of the Federal Rules of Civil Procedure, leave to amend should be freely granted when justice so requires. Courts generally permit amendment unless there is undue delay, bad faith, repeated failure to cure deficiencies, undue prejudice to the opposing party, or futility. See *Foman v. Davis*, 371 U.S. 178 (1962).
6. Here, there is no undue delay or prejudice to defendants, as Plaintiff seeks to amend the complaint promptly upon discovering new evidence critical to the claims already before the Court.

III. BASIS FOR AMENDMENT

7. The Second Amended Complaint will incorporate newly discovered facts, including: (1) Fraudulent VBM requests filed on January 11, 2025, targeting 411 Gulfport voters including Plaintiff; (2) Unauthorized alterations of voter records on January 27, 2025 including Plaintiff's; (3) direct involvement of elections officials and systemic vulnerabilities exploited through VR Systems that are being up by the defendants; (4) Documentation of conflicts of interest among election officials and Florida and judges in the Florida 6th Circuit Court that aer overseeing the March 11th election and are presiding over Plaintiffs Florida election fraud cases; (5) A criminal complaint and Gulfport Police Report GP-25-3378, supporting claims of election fraud; (6) Plaintiff's formal petition to the Florida State Attorney's Office and to the Florida Supreme court for a grand jury probe under Fla. Stat. § 104.43.
8. The proposed amendment will refine and expand existing claims under the Equal Protection and Due Process Clauses of the Fourteenth Amendment, the Voting Rights Act, and federal statutes prohibiting election fraud, interstate wire fraud, mail fraud, computer hacking, identity theft in furtherance of election fraud, and additional elements that serve as more predicates for a RICO criminal and civil conspiracy.

9. The proposed Amendment will also add as Defendants the following persons and legal entities based on their participation in the on-going RICO conspiracy:

   a. Florida Supervisors of Elections, Inc.
   b. Benjamin Gibson, currently counsel for Defendant VR Systems CEO Mindy Perkins and General Counsel for the Florida Republican Party
   c. Evan Powers, Chairman of the Florida Republican Party
   d. William Stafford, currently counsel for Defendants DeSantis, Byrd, and Darlington, and Special Counsel in the Office of the Florida Attorney General;
   e. US Senator from Florida and Former Florida Attorney General Ashley Moody
   f. KrisAnne Hall

10. Because this case is in the early stages of litigation, despite having been filed 7 months ago without a single interrogatory having been answered and without a single document having been produce by Defendants, allowing amendment will not result in undue delay or prejudice to Defendants but will instead ensure the Court has a complete record of all relevant facts.

IV. CONCLUSION

10. For the foregoing reasons, Plaintiff respectfully requests that this Court grant leave to file the Second Amended Complaint, incorporating new factual allegations and legal claims based on the recently uncovered evidence.

WHEREFORE, Plaintiff prays that this Court enter an order:

A. Granting leave to file the Second Amended Complaint;

B. Directing the Clerk to docket the Second Amended Complaint upon filing;

C. Granting such further relief as this Court deems just and proper.

Dated: March 6, 2025

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
6800 Gulfport Blvd S., Ste 201-116
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jliccione@gmail.com
443-698-8156

LOCAL RULE 3.01(g) CERTIFICATION

I John Liccione, do hereby certify that I have conferred with opposing parties' counsels and that we were not able to come to any agreement on this motion for leave to file amended complaint. The conference occurred by way of phone calls with opposing counsel on March 6, 2025.

/s/ John W. Liccione

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 6th day of March 2025, a true and correct copy of the foregoing Motion for Leave to File Second Amended Complaint has been served upon all parties via the Court's electronic filing system.

/s/ John W. Liccione

John W. Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 3

UNITED STATES DISTRICT COURT

MIDDLE DISTRICT OF FLORIDA

TAMPA DIVISION

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
RONALD DION DESANTIS, ET AL,
Defendants.
_____/

Case No. 8:24-cv-02005-SDM-NHA

NOTICE OF WITHDRAWAL OF MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

Plaintiff, John Liccione, pro se, hereby withdraws his Motion for Leave to File Second Amended Complaint (Doc. No. 83), filed on March 6, 2025, in light of newly developed factual circumstances. Plaintiff intends to file a new motion for leave to amend based on those developments.

Dated: April 19, 2025

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
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South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 19th day of April 2025, a true and correct copy of the foregoing Notice of Withdrawal of Motion for Leave to Amend has been served upon all parties via the Court's electronic filing system.

/s/ John W. Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 4

Filing # 201918584 E-Filed 07/03/2024 05:41:37 PM

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA

	*	
	*	
John William Liccione,	*	
Plaintiff,	*	
	*	
v.	*	
	*	
Pinellas Democratic Executive Committee	*	
Florida Democratic Party	*	**Case No.:**
Michael John Sherosky	*	
Jennifer W Griffith,	*	
Defendants.	*	

****

COMPLAINT FOR DAMAGES AND EMERGENCY INJUNCTIVE RELIEF

Plaintiff, John William Liccione, pro se, files this Complaint against Defendants, Michael Sherosky, Jennifer Griffith, the Pinellas Democratic Executive Committee (PDEC), and the Florida Democratic Party, and alleges:

I. JURISDICTION AND VENUE

1. This action is filed in the Circuit Court of the 6th Judicial Circuit in and for Pinellas County, Florida, as the amount in controversy exceeds $15,000.
2. The events giving rise to this claim occurred in Pinellas County, Florida, thereby establishing venue and jurisdiction in this Court.

ELECTRONICALLY FILED 07/03/2024 05:41:35 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

II. PARTIES

3. Plaintiff, John William Liccione, is a 64-year-old man residing in Pinellas County, Florida. Plaintiff is also a Democratic Congressional Candidate in Pinellas County's Congressional District 13.
4. Defendant Pinellas Democratic Executive Committee is an organization headquartered in Pinellas County, Florida, and may be served with process at Pinellas County Democratic Party 2250 1st Avenue North St. Petersburg, FL 33713.
5. Defendant Florida Democratic Party is the governing body for the Democratic Party in the state of Florida and may be served with process at its headquarters at 201 South Monroe Street, Suite 300 Tallahassee, FL 32301.
6. Defendant Michael Sherosky is an individual residing in Pinellas County, Florida. Defendant Sherosky is the Secretary of the Pinellas Democratic Executive Committee and may be served with process at 3415 Annette Ct, Clearwater, FL 33761.
7. Defendant Jennifer Griffith is an individual residing in Pinellas County, Florida. Defendant Griffith is the Chair of the Pinellas Democratic Executive Committee and may be served with process at 305 S Tessier Dr, St Pete Beach, FL 33706

III. FACTUAL ALLEGATIONS

8. Plaintiff is one of 5 Democratic qualified candidates recognized by the FEC and the State of Florida that are running for Florida's 13th District House seat in 2024.
9. Out of Plaintiff's four opponents, three are young-to-early-middle-age women, Sabrina Bousbar (27), and Whitney Fox (42), Liz Dahan (44), and the fourth is Mark Weinkrantz who is 67 years old.

10. Over the last year, it has become rather obvious to many Party insiders and to Plaintiff that Whitney Fox is the Democratic Party's favored candidate, whereas Plaintiff is perceived by the Party as being the biggest threat to Whitney Fox.
11. In its way, this can be seen as the equivalent of what the Democratic Party did to Bernie Sanders in the 2016 presidential election, only much worse.
12. There, the Party was secretly backing Hillary Clinton over Bernie Sanders which, arguably, was a strategy than ultimately handed Donald Trump a victory over Clinton after the Russians were called by Trump to hack Clinton's campaign emails and those of the DNC, thereby exposing the Democrat Party's "dirty laundry" to the electorate.
13. In this campaign, however, the Democratic Party has abandoned all caution and pretext and is doing the quiet part out loud to Plaintiff in this race. They've gone so far as to publicly defame him and deny him donations and equal promotional opportunities, and other wrongful acts as described herein.
14. This Party favoritism on behalf of candidate Fox resulted in her being able to raise over $200,000 in her first few weeks of announcing her campaign, whereas Plaintiff's campaign donations would completely dry up to the extent that, for all intents and purposes, he is self-funding 99 percent of his campaign out of his own life savings.
15. The Democratic Primary election is on August 20, 2024.
16. Mail-in ballots are being mailed out to voters in District 13 on July 16, 2024.
17. Defendant Griffith notified Plaintiff via email on June 26, 2023, that she and the rest of the PDEC candidate vetting committee had failed him in his candidate vetting process, and that they wouldn't be recognizing him as a qualified candidate and would be denying

him all access to party resources, promotion, speaking engagements, and participation in candidate forums and debates. They did not give him a reason why.

18. In the vetting process, Defendants Griffith and the PDEC denied Plaintiff all due process. They refused to accept any court records Plaintiff offered to provide which proved his exoneration or dismissal of past criminal charges in Maryland in 2017 and 2019, in two cases in which he had stood falsely accused by his ex-wife and her divorce attorneys and the State of Maryland.
19. After the notification of candidate rejection, the Defendants engaged in a conspiracy to interfere in a contested Democratic primary election by publicly and privately defaming Plaintiff as a man of moral turpitude. As a result of this conspiracy, his campaign donations dried up and he was dis-invited from Party caucus and club speaking engagements and candidate forums and debates.
20. This pattern of Defendants' wrongful acts would continue unabated for the ensuing six months, upon which time, Defendant Griffith escalated it into a public confrontation which included her snatching Plaintiff's campaign sign.
21. Now, this conspiracy has escalated to political violence in the form of stalking and physical assault of Plaintiff by Defendant Sherosky, as describe in more detail below.
22. On June 22, 2024, during the St. Petersburg Pride Parade, Plaintiff was lawfully present and participating in the parade activities.
23. Plaintiff is a male domestic violence survivor who suffers from PTSD, a recognized disability under the Americans with Disabilities Act (ADA).

24. Defendant Sherosky, without provocation, forcefully knocked off the hat Plaintiff was wearing, which prominently displayed a pride flag, and hurled insults at Plaintiff, calling him an "ass" and he confirmed when asked that he wanted to hit Plaintiff.
25. Immediately following this assault, Plaintiff began recording the interaction with his cell phone. The first recorded statements captured Defendant Sherosky admitting to calling Plaintiff an "ass" and confessing that he had lied when he had denied knocking the hat off.
26. Defendant Sherosky's aggressive actions continued as he followed Plaintiff, stalking him and invading his physical space. On camera, Defendant Sherosky's body came within five inches of Plaintiff's face, significantly intensifying the distress experienced by Plaintiff.
27. These actions occurred in front of children and several adult witnesses, adding to their egregiousness and potential for causing broader distress. Following this incident, Plaintiff filed a criminal complaint against Defendant Sherosky with the St. Petersburg Police Department, seeking his arrest and criminal prosecution. [Police Incident Number: 2024-022685].
28. At the next monthly PDEC membership meeting in June 2024, Plaintiff Sherosky bragged to another member of PDEC during the meeting set-up about how he had abused Plaintiff and he stated something to the effect that "He should have gotten a lot worse."
29. Defendants Griffith and the Pinellas Democratic Executive Committee, being in proximity to the assault incident and in positions of authority, were either aware of, condoned, or failed to intervene in the actions taken by Defendant Sherosky.

30. Also, to date, no disciplinary action has been brought against Defendant Sherosky by Defendant's Griffith, Defendant PDEC, or Defendant the Florida Democratic Party, and, in their inaction, they continue to condone and thus enable Plaintiff's physical abuser, thus inviting future physical assaults on Plaintiff were he to attend any PDEC events.
31. On a prior occasion, during a monthly meeting of the Pinellas Democratic Executive Committee at the St. Pete College Epicenter, Defendant Griffith personally snatched one of Plaintiff's campaign signs while Plaintiff was using the men's bathroom.
32. After Plaintiff returned and placed his campaign sign back where it had originally been, Defendant Griffith initiated a public confrontation in the hallway, verbally harassing Plaintiff and demanding that he remove his campaign sign.
33. Despite Plaintiff's attempts to de-escalate the situation, Defendant Griffith continued to harass and bully him, abusing her authority as Chair of the PDEC. These acts were performed in front of approximately many eye witnesses and was indicative of a pattern of harassment directed at Plaintiff by Defendant Griffith and the Defendant PDEC. Subsequent to this incident, Plaintiff filed for two separate injunctions against Defendant Griffith, in Pinellas County Circuit Courts [Case Numbers: 24-000679-FL and 24-000750], to prevent further harassment, stalking, threats, theft, and intimidation.
34. Plaintiff also filed an appeal and complaint to Nikki Fried, Chair of the Florida Democratic Party reporting these previous events and demanding removal from office of Jennifer Griffith and a reversal of her candidate vetting failure decision.
35. However, the Florida Democratic Party rejected Plaintiff's complaint on a technicality, thereby also acting in a manner which serves to condone the Party's defamation and

harassment campaign against Plaintiff, thereby enabling this latest act of violence against Plaintiff.

36. In November 2023, Defendant Griffith publicly defamed Plaintiff in an interview with the Tampa Bay Times, falsely claiming he was a man of moral turpitude.
37. Griffith further stated that the Committee did not recognize Plaintiff as a Democratic candidate.
38. As a result, Plaintiff has been systematically denied equal treatment in promotional and speaking opportunities at Party events and candidate forums.
39. Additionally, on information and belief, Defendants acted to blacklist Plaintiff with all Democratic Political Action Committees and other donors, which directly resulted in financial damages to Plaintiff estimated at over $400,000 to date, and counting.
40. As a direct result of Griffith's disinformation and defamation campaign, the Tampa Bay Times published two defamatory articles about Plaintiff, which caused catastrophic damage to his campaign, his reputation, and his ability to raise campaign funds.
41. Defendant Griffith and others within PDEC have falsely claimed to third parties that Plaintiff is guilty of being a wife-beating stalker when Maryland court records prove he is not, video evidence proved his wife was lying to the police and the Courts, and he had been found not guilty in a 20-minute bench trial. Defendant’s refused to accept any of these Maryland court records and denied him all due process in their candidate vetting process.
42. These patently false accusations by Defendants have been accepted as somehow true by some members of the PDEC, resulting in Plaintiff being systematically denied speaking engagements and participation in candidate forums alongside his four opponents further

marginalizing him within the political landscape and causing additional reputational and financial damages.

43. On June 18, 2024, as a result of Defendants' conspiratorial acts, a media company named "Florida Politics" published an article that failed to mention Plaintiff's name or his candidacy.

44. The article falsely claimed that one of his opponents, Whitney Fox, was the first to enter the race, while in truth, Plaintiff was the first to file to run on June 28, 2023. This falsehood further misled the public and damaged Plaintiff's opportunity to be recognized as a legitimate candidate.

45. As a direct result of the Defendants' conspiratorial acts and disinformation campaign led by Defendant Griffith, two other candidates, Sabrina Bousbar and Liz Dahan, have published candidate survey poll results that entirely omit Plaintiff's name from their poll bar charts, treating him as if he does not exist. This action directly harms Plaintiff's visibility among voters and further inhibits his ability to campaign effectively. It also runs afoul of Florda and Federal election statutes.

46. On information and belief, Defendants have conspired to coerce all 4 of Plaintiff's Democratic opponents to omit Plaintiff's name and polling results from all of their public communications so as to unduly influence voters' minds with willfully inaccurate polling results.

47. As of this date, there are now three mainstream media outlets, the Tampa Bay Times, Florida Politics, and Politico's Florida Playbook, that are willfully acting to suppress Liccione's campaign.

48. These outlets either omit Plaintiff's name from their articles as one of the five qualified candidates, or, they publish little or nothing about Liccione while highlighting the other candidates in their articles on the race. This systematic exclusion by major media outlets exacerbates the damage to Plaintiff's campaign and reputation, further influenced by the disinformation spread by Defendant Griffith and her associates within the PDEC.
49. The PDEC, Jennifer Griffith, and other Defendant's have most recently conspired to not extend an invitation to Plaintiff to attend a July 13, 2024 Candidate forum and are even now conspiring to prevent him from participating in it were he to show up at the event.
50. The PDEC website event calendar and the event description omit Plaintiff's name and photograph, only showing the names and photographs of his four opponents. This is especially damaging to Plaintiff at this critical moment in the primary because it is scheduled for the week that mail-in/absentee ballots are mailed out to District 13 voters in Pinellas County, and Democratic voters here tend to overwhelmingly prefer to vote by mail.
51. If not compelled via Court injunction to permit Plaintiff's participation in the candidate forum (which costs nothing to participate in for the other candidates) Plaintiff will have no choice but to invest significant campaign funds in a counter-event and peaceable assembly at or near the venue, so as to get at least some media attention and have his voice heard by voters in this critical week in the campaign.
52. Defendants engaged in a conspiracy to promote political violence and defame Plaintiff in an all-out-effort to undermine his congressional campaign, which has resulted in harm and damages to Plaintiff.

53. On information and belief, this was a premeditated act to provoke a violent response from Plaintiff that would have resulted in Plaintiff's arrest, executed at the direction of Defendant Griffith and other party operatives within the PDEC.
54. Defendants' actions were in violation of Florida Statutes Chapter 104 (Election Code: Violations; Penalties) and Federal election laws, specifically those designed to protect the rights of candidates to campaign without undue interference and intimidation.
55. The actions of the Defendants, which targeted Plaintiff on the basis of his sex, disability, and age, constitute violations of both Florida and Federal civil rights laws, including the Americans with Disabilities Act.
56. The Democratic primary election is scheduled for August 20, 2024. Plaintiff contends that as a direct result of the Defendants' wrongful and malicious acts, future damages will continue to mount, include the potential loss of the primary election, the potential loss in the general election on November 5, 2025, the personal loss of over $250,000 of Plaintiff's personal life savings, oand the loss of over $10 million in campaign donations that he would have otherwise been able to raised, if not for the wrongful acts of Defendants.

IV. CAUSES OF ACTION

Count I – Battery (Against Defendant Sherosky)

57. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.
58. Defendant Sherosky intentionally and unlawfully touched Plaintiff against his will.
59. Defendant Sherosky's unauthorized and harmful touching directly and proximately caused damages to Plaintiff.

Count II – Assault (Against Defendant Sherosky)

60. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.
61. Defendant Sherosky intentionally acted in a threatening manner, causing Plaintiff to have a reasonable apprehension of imminent harmful contact.
62. As a result of Defendant Sherosky's conduct, Plaintiff suffered emotional distress.

Count III – Vicarious Liability (Against Defendants Griffith, the Pinellas Democratic Executive Committee, and the Florida Democratic Party)

63. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.
64. Defendants Griffith and the Pinellas Democratic Executive Committee and the Florida Democratic Party are liable for the actions of Defendant Sherosky, who acted within the

scope of his authority and under the apparent or actual oversight of the PDEC and the Florida Democratic Party.

Count IV – Conspiracy (Against All Defendants)

65. Plaintiff re-alleges and incorporates by Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.
66. Defendants collectively engaged in concerted action aimed at inciting political violence and defaming Plaintiff to disrupt his congressional campaign, to destroy his campaign fundraising ability, and to obstructing his efforts to campaign by snatching his campaign sign and other wrongful acts of election interference.
67. As a direct result of this conspiracy, Plaintiff suffered damages including emotional distress, and damage to his reputation and campaign, and personal financial damages.

Count V – Violation of Election Laws (Against All Defendants)

68. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.
69. Defendants' actions intended to impede Plaintiff's ability to campaign freely are in direct violation of Florida and Federal election laws, designed to ensure fair and free campaigning processes.

Count VI – Violation of Civil Rights (both Florida and State Laws) and the ADA (Against All Defendants)

70. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.
71. Defendants' actions that targeted and discriminated against Plaintiff on the basis of his disability (PTSD) which he suffers as a result of domestic violence against him, his sex violate the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and the Florida Civil Rights Act (FCRA).
72. By their actions, Defendants have discriminated against Plaintiff in the activities of public life and engagement, including participation in political campaigning, on the basis of his disability, which is protected under the ADA.
73. Furthermore, Defendants' actions also constitute a violation of the Civil Rights Act of 1964, and Florida civil rights laws which prohibit discrimination on the basis of sex, age, and disability, including in instances where any program or activity is receiving Federal financial assistance directly or through in-kind donations from 3rd parties. In at least one instance, Defendant PDEC is hosting a Candidate forum on July 13, 2024 at the St Petersburg/Clearwater Marriott which is being moderated by an employee of a publicly funded media outlet that receives federal funding. Further, it is clear that both of the over-60-year-old males in the race are not the favored party candidates. Instead, the Chair of PDEC, defendant Jennifer Griffith, and the Chair of the Florida Democratic Party Nikki Fried, both being white women of a certain age themselves, are backing a white female candidate of a similar age as them, to the detriment of the two older men, both of whom are over 60.

74. Further, the Florida Civil Rights Act of 1992 (FCRA), Section 760.01-760.11, Prohibits discrimination based on race, sex, age, and handicap, amongst other protected classes.
75. Further, Florida's Public Employment; Age Discrimination, Section 112.044: Prohibits age discrimination in public employment. In this case, the wholly corrupted "candidate vetting process" undertaken by Defendants' Griffith and PDEC can be seen as the first stage of the "job candidate vetting process," where the hiring managers are the registered voters in Florida's District 13, and this is a "public office."
76. As a direct result of Defendants' discriminatory actions, Plaintiff has suffered emotional distress, harm to his reputation, and interference with his right to participate fully and equally in public life and the democratic political process.
77. Defendants are in violation of The Voting Rights Act of 1965: While primarily aimed at preventing racial discrimination in voting, this act also includes provisions that can impact campaign practices. For example, it outlaws tactics that may be used to intimidate or disenfranchise voters, which can indirectly affect campaign activities.
78. Defendants are in violation of 18 U.S. Code § 245 - Federally protected activities: This statute makes it a federal crime to interfere with federally protected activities, including voting in federal elections. It provides penalties for anyone "who uses force or threat of force to intimidate or interfere with a person's right to vote or campaign."
79. Defendants are in violation of 18 U.S. Code § 594 - Intimidation of voters: This statute prohibits any form of intimidation, threats, or coercion against voters to influence their voting behavior. This can include interference with campaign activities if the intent is to suppress or alter the outcome of an election.

80. 18 U.S. Code § 597 - Expenditures to influence voting: This statute makes it illegal to make expenditures to influence voting through bribery or other corrupt practices. In this case, Defendants engaged in the aforementioned corrupt and malicious practices which included making expenditures to promote the 4 other candidates in the primary race, and to portray Plaintiff as some kind of physical threat to Defendant Jennifer Griffith: She convinced the PDEC that they needed to hire a security guard for her personal protection against Plaintiff. Also, she convinced the PDEC to expend funds to hire a lawyer to provide a legal opinion regarding whether they could be held liable for damages by Plaintiff for their wrongful acts.
81. Florida Democratic and PDEC By-Law Violations - Finally, While Florida Democratic Party and PDEC by-laws prohibit choosing and promoting one candidate over another in a contested Democratic Primary, Defendant's Griffith and PDEC and the Florida Democratic Party have engaged in acts of commission and omission against Plaintiff that have denied him recognition, suppressed his campaign, denied him equal promotional opportunities with his opponents, denied him campaign donations, and omitted his name and picture alongside his four opponents on the PDEC website. Defendents have, constructively and literally by acts of both commission and omission, chosen their favored candidate in secret, are covering up that they have done so, are they are not even trying to cover up their wrongful acts against Plaintiff. This demonstrates consciousness of guilt by all Defendants.

VII. DAMAGES

82. Plaintiff demands judgment for compensatory damages in an amount to be determined at trial, plus court costs. Specific compensatory damages sought include financial losses due to being blacklisted with Democratic Political action committees and other donors, reputational damages, and emotional distress caused by the aforementioned systematic exclusion, defamation, and physical assault. Future damages may include the loss of the Democratic primary election, the potential loss in the general election, and the loss of significant campaign donations in excess of $10 million that he would otherwise have raised, if not for the wrongful acts of the Defendants.

83. Plaintiff hereby also gives preliminary notice to the Court of his intent to seek punitive damages (if permitted the Court), as the Defendants' actions are believed to have been intentional, malicious, and undertaken in reckless disregard to the rights of the Plaintiff.

VIII. REQUEST FOR EMERGENCY INJUNCTIVE RELIEF

84. Plaintiff seeks emergency injunctive relief as follows:

    A. To enjoin all further acts of commission and omission by all Defendants that serve to suppress, interfere with, assault, stalk, harass, defame, slander, or otherwise act in any way to impede Plaintiff's Congressional campaign, including acts against Plaintiff himself and any and all of Plaintiff's campaign volunteers, staff, family, and friends.

    B. To enjoin all Defendants from further acts of commission and omission that serve to deny the voters the right to know that Plaintiff exists as a Federal Election Commission and Florida State-qualified Democratic Congressional Candidate.

C. To enjoin all Defendants from impeding his ability to raise campaign funds from the donor community including Political Action Committees.

D. To enjoin all Defendants from denying him equal participation with other candidates at Democratic Party events, including those held by Democratic Caucuses and Clubs in Pinellas County and elsewhere.

E. To issue an injunctive order requiring the Defendants PDEC and the Florida Democratic Party to permit Plaintiff to participate equally in the July 13th Candidate Forum at the St Petersburg/Clearwater Mariott, and in subsequent candidate forums, and to place him equally alongside his 4 opponents on their website events page as well as on promotional communications and materials.

F. To issue an injunctive order requiring that all Defendants afford Plaintiff equal speaking and promotional opportunities in PDEC and Florida Democratic Party communications including on its websites, its emailers, and the Mobilize service, and any other marketing communications channels in use by Defendants.

G. To issue an injunctive order to Defendants PDEC and the Florida Democratic Party to immediately deliver to Plaintiff all campaign polling data now and in the future in the lead up to both the Democratic Primary and the general election in November.

H. To enjoin Defendant Sherosky, Defendant Miller, and each and every officer of the Pinellas Democratic Executive Committee at large, and any agents acting on any of Defendants' behalf, from coming to within 100 feet of Plaintiff at any public campaign event or at his residence.

IX. REQUEST FOR EMERGENCY EX PARTE HEARING ON EMERGENCY INJUNCTIVE RELIEF

Plaintiff seeks an emergency Ex Parte hearing on his request for (emergency) injunctive relief, as time is of the essence. The July 13, 2024 candidate form is only 9 days from now. The mail-in ballots will be mailed out to voters that week, and a majority of Democrats vote by mail in District 13. The primary is being held on August 20th, just 46 days from now.

X. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff demands judgment against Defendants for damages, costs, injunctions against further discriminatory and election interference violations, punitive damages (assuming punitive damages are permitted), and any other relief the court deems just and proper.

Respectfully submitted,



John William Liccione, Plaintiff

6800 Gulfport Blvd S.
South Pasadena, FL 33707
John@VoteLiccione.org
443-698-8156

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 5

IN THE CIRCUIT COURT OF THE 6TH JUDICIAL CIRCUIT

IN AND FOR PINELLAS COUNTY, FLORIDA

John William Liccione,
Plaintiff,
v. **Case No.: 24-002994-CI**

Pinellas Democratic Executive Committee (PDEC);

Michael John Sherosky - in his official capacity
as Secretary of PDEC and in his personal capacity;
Jennifer W Griffith - in her official capacity
as Chair of PDEC and in her personal capacity**;**
Defendants.
_____/

FIRST AMENDED COMPLAINT

Plaintiff, John William Liccione, pro se, hereby files this First Amended Complaint against Defendants, the Pinellas Democratic Executive Committee (PDEC), Michael John Sherosky in his official capacity as Secretary of PDEC and in his personal capacity, and Jennifer Griffith in her official capacity as Chair of PDEC and in her personal capacity, and states in support as follows:

SUMMARY OF CHANGES

This Amended Complaint adds a new **Count VII: Defamation,** removes the Florida Democratic Party as a Defendant, and removes Plaintiff's request for injunctive relief. It also adds new relevant facts and allegations which occurred after the filing of the original Complaint on July 3, 2024.

ELECTRONICALLY FILED 11/07/2024 04:06:19 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

I. JURISDICTION AND VENUE

1. This action is filed in the Circuit Court of the 6th Judicial Circuit in and for Pinellas County, Florida, as the amount in controversy exceeds $15,000.
2. The events giving rise to this claim occurred in Pinellas County, Florida, thereby establishing venue and jurisdiction in this Court.

II. PARTIES

3. Plaintiff, John William Liccione, is a 64-year-old man and voter residing in Pinellas County, Florida. Plaintiff is a recent Democratic Congressional candidate in Pinellas County's Congressional District 13 and ran in the 2024 Democratic primary.
4. Defendant Pinellas Democratic Executive Committee (PDEC) is an organization headquartered in Pinellas County, Florida, and may be served with process at Pinellas County Democratic Party 2250 1st Avenue North St. Petersburg, FL 33713.
5. Defendant Michael Sherosky is an individual residing in Pinellas County, Florida. Defendant Sherosky is the Secretary of PDEC and may be served with process at 3415 Annette Ct, Clearwater, FL 33761.
6. Defendant Jennifer Griffith is an individual residing in Pinellas County, Florida. Defendant Griffith is the Chair of the PDEC and may be served with process at 305 S Tessier Dr, St Pete Beach, FL 33706

III. FACTUAL ALLEGATIONS

8. In early May of 2023, Plaintiff introduced himself to Defendant Griffith at his very first PDEC monthly meeting. He informed her of his intent to run for the Florida CD-13 House seat as a Democrat.
9. Griffith told Plaintiff that there were already several candidates who were intending to enter the race, and she told him that the Democratic Party did not wish to have a contested primary and she tried to discourage Plaintiff from running.
10. Sometime later that spring, Griffith informed Plaintiff for the first time that she and PDEC had adopted a new candidate vetting process. She sent him a candidate vetting form to fill out and return, which he did.
11. In his vetting form, Plaintiff disclosed that he had been arrested several times in Maryland and represented that he had been found not guilty at trial, and that charges were dismissed.
12. With his vetting form submittal Plaintiff also offered to provide Griffith with all the court records proving his exonerations in Maryland, but Griffith did not respond and would cut off all communications with Plaintiff regarding the vetting process.
13. Plaintiff was one of 5 Democratic qualified candidates recognized by the FEC and the State of Florida that ran in the 2024 Democratic Primary for Florida's 13th District House seat.

14. Out of Plaintiff's four opponents, three were young-to-early-middle-age women, Sabrina Bousbar (27), and Whitney Fox (42), Liz Dahan (44), and the fourth was Mark Weinkrantz who is 67 years old.
15. Democratic Party (PDEC, Griffith) favoritism on behalf of candidate Fox resulted in Fox being able to raise over $200,000 in her first few weeks of announcing her campaign. Over the course of the primary election, Ms. Fox would raise a total of $1,049,738 in campaign contributions.
16. In contrast, over the course of the primary campaign, Plaintiff received just under $2,000 in donations from individuals, and zero donations from Democratic political action committees.
17. Plaintiff's campaign donations would completely dry up to the extent that he had to self-fundi 99 percent of his campaign by loaning to it over $272,000 out of his personal savings and via personal credit cards.
18. Mail-in ballots were mailed out to voters in Pinellas County beginning on or about July 16, 2024.
19. The Democratic Primary election was on August 20, 2024.
20. Plaintiff lost the primary election, garnering only 3.93 percent of the vote, whereas Whitney Fox won with 57.94 percent of the vote.
21. With his vetting form submittal Plaintiff also offered to provide Griffith with all the court records proving his exonerations in Maryland, but Griffith did not respond and would cut off all communications with Plaintiff regarding the vetting process.
22. Griffith notified Plaintiff via email on June 26, 2023, that she and the rest of the PDEC candidate vetting committee had failed him in his candidate vetting

process, and that they wouldn't be recognizing him as a qualified candidate and would be denying him all access to party resources, promotion, speaking engagements, and participation in candidate forums and debates. She did not give him a reason why.

23. In the vetting process, Defendants Griffith and the PDEC denied Plaintiff all due process. They refused to accept any court records Plaintiff offered to provide which proved his exoneration or dismissal of past criminal charges in Maryland in 2017 and 2019, in two cases in which he had stood falsely accused by his ex-wife and her divorce attorneys and the State of Maryland.

24. After the notification of candidate rejection, the Defendants engaged in a conspiracy to interfere in a contested Democratic primary election by publicly and privately defaming Plaintiff as a man of moral turpitude. As a result of this conspiracy, his campaign donations dried up and he was dis-invited from Party caucus and club speaking engagements and candidate forums and debates.

25. This pattern of Defendants' wrongful acts would continue unabated for the ensuing six months, upon which time, Defendant Griffith escalated it into a public confrontation on January 30, 2024, where she personally snatched Plaintiff's campaign sign in front of witnesses outside a PDEC meeting in the hallway St. Petersburg College Epicenter in Clearwater.

26. After Plaintiff replaced his sign Griffith then initiated a public confrontation in the hallway demanding he remove his campaign sign and prevented him from engaging with voters as the exited the PDEC meeting. She claimed that the College did not allow campaign signage inside the facility and she acted to

enforce of the state college policy, as if a state actor, by way of confrontation, harassment, and bullying.

27. After Plaintiff refused to remove his sign, Griffith escalated further by threatening Plaintiff that she would get a college security guard to remove his sign if he wouldn't remove it. Plaintiff refused to remove it.

28. Griffith then walked to the front lobby and brought back a security guard who refused to remove Plaintiff's campaign sign.

29. As a result of Griffith's campaign interference, Plaintiff lost the opportunity to engage with most of the voters leaving the PDEC meeting.

30. Next, Griffith and Sherosky in their official capacities as Chair and Secretary of PDEC, respectfully, and in their personal capacities, then conspired to escalated the dispute with Plaintiff by conspiring to engage in political violence, assault and battery, as detailed below.

31. On June 22, 2024, during the St. Petersburg Pride parade, Plaintiff was lawfully present and participating in the parade activities and was campaigning lawfully in the parade assembly area.

32. Plaintiff is a male domestic violence survivor who suffers from PTSD, a recognized disability under the Americans with Disabilities Act (ADA).

33. Defendants Griffith, Scherosky, and other members of PDEC were also participating in the Pride Parade. They had rented a parade truck.

34. As Plaintiff walked by the PDEC parade truck and was attempting to campaign and was about to begin introducing himself to the voters near the parade truck, Defendant Sherosky, without provocation, forcefully knocked off the hat Plaintiff was wearing, which prominently displayed a pride flag, and hurled insults at

Plaintiff, calling him an "ass", accused him of “harassing people, and he confirmed when asked that he wanted to hit Plaintiff.

35. Immediately following this battery, Plaintiff began recording the interaction with his cell phone. The first recorded statements captured Defendant Sherosky admitting to calling Plaintiff an "ass" and confessing that he had lied when he had denied knocking Plaintiff’s hat off.

36. Defendant Sherosky's aggressive actions continued as he followed Plaintiff, stalking him and invading his physical space. On camera, Defendant Sherosky’s body came within five inches of Plaintiff’s face, significantly intensifying the distress experienced by Plaintiff.

37. These actions occurred in front of children and several adult witnesses, adding to their egregiousness and potential for causing broader distress. Following this incident, Plaintiff filed a criminal complaint against Defendant Sherosky with the St. Petersburg Police Department, seeking his arrest and criminal prosecution. [Police Incident Number: 2024-022685].

38. At the next monthly PDEC membership meeting in July 2024 held once again at the St. Petersburg College Epicenter in Clearwater, Plaintiff Sherosky bragged to another member of PDEC during the meeting set-up about how he had abused Plaintiff and he stated something to the effect that “He was lucky he didn’t get worse.”

39. Defendant Griffith being in proximity to the battery incident and in a position of authority as Chair of PDEC, was either aware of, condoned, and failed to intervene in the violent and harassing actions taken by Defendant Sherosky, and she failed to discipline Sherosky.

40. To date, no disciplinary action has been brought against Defendant Sherosky by Defendants Griffith or PDEC. In their inaction, they continue to condone and thus enable Plaintiff's physical abuser, thus inviting future physical assaults on Plaintiff were he to attend any future campaign events.
41. Plaintiff also filed an appeal and complaint to Nikki Fried, Chair of the Florida Democratic Party reporting these previous events and demanding removal from office of Jennifer Griffith and a reversal of her candidate vetting failure decision.
42. However, the Florida Democratic Party rejected Plaintiff's complaint on a technicality.
43. In November 2023, Defendant Griffith publicly defamed Plaintiff in an interview with the Tampa Bay Times, falsely claiming he was a man of moral turpitude, a statement which the Times published and attributed to Griffith.
44. Griffith further stated that the Committee did not recognize Plaintiff as a Democratic candidate.
45. As a result, Plaintiff was been systematically denied equal treatment in promotional and speaking opportunities at Party events and candidate forums, and was subjected to further defamatory attacks, campaign interference, and voter coercion and intimidation to prevent voters from attending Plaintiff's campaign events.
46. Additionally, on information and belief, Defendants acted to blacklist Plaintiff with all Democratic Political Action Committees and other donors, which directly resulted in financial damages to Plaintiff estimated at over $400,000.
47. As a direct result of Griffith's disinformation and defamation campaign, the Tampa Bay Times published a total of two defamatory articles about Plaintiff,

which caused catastrophic damage to his campaign, his reputation, his ability to raise campaign funds, and his ability to come off disability and return to work in his field of cyber-security executive.

48. Defendant Griffith and others within PDEC have falsely claimed to third parties that Plaintiff is guilty of being a wife-beating stalker when Maryland court records prove he is not. Video evidence proved his wife was lying to the police and the Courts, and he had been found not guilty in a 20-minute bench trial.

49. These patently false accusations by all three Defendants have been accepted as somehow true by the voters and PDEC members, resulting in Plaintiff being systematically denied speaking engagements and participation in candidate forums alongside his four opponents, further marginalizing him within the political landscape and causing additional reputational and financial damages.

50. On information and belief, Defendants have conspired to coerce all 4 of Plaintiff's Democratic opponents to omit Plaintiff's name and polling results from all of their public communications so as to unduly influence voters' minds with willfully inaccurate polling results.

51. All totaled, as a result of Griffith and PDECs defamation and disinformation campaign, there were a total of four mainstream media outlets, the Tampa Bay Times, Florida Politics, Politico's Florida Playbook, and The Gabber Newspaper that took Griffith's lead and willfully acted to suppress Plaintiff by relay Griffith's disinformation about Plaintiff campaign and by even outright excluding Plaintiff from even being mentioned as a candidate.

52. These outlets either omit Plaintiff's name from their articles as one of the five qualified candidates, or, they publish little or nothing about Liccione while

highlighting the other candidates in their articles on the race. This systematic exclusion by major media outlets exacerbated the damage to Plaintiff's campaign and reputation, further influenced by the disinformation spread by Defendant Griffith and her associates within the PDEC.

53. Defendants engaged in a conspiracy to promote political violence and defame Plaintiff in an all-out-effort to undermine his congressional campaign, which has resulted in harm and damage to Plaintiff.
54. On information and belief, this was a premeditated act to provoke a violent response from Plaintiff that would have resulted in Plaintiff's arrest, executed at the direction of Defendant Griffith and other party operatives within the PDEC.
55. Defendants' actions were in violation of Florida Statutes Chapter 104 (Election Code: Violations; Penalties) and Federal election laws, specifically those designed to protect the rights of candidates to campaign without undue interference and intimidation.
56. The actions of the Defendants, which targeted Plaintiff on the basis of his sex, disability, and age, constitute violations of both Florida and Federal civil rights laws, including the Americans with Disabilities Act.

IV. CAUSES OF ACTION

Count I – Battery (Against Defendant Sherosky)

57. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 8 through 56 as if fully set forth herein.

58. Defendant Sherosky intentionally and unlawfully touched Plaintiff against his will.
59. Defendant Sherosky's unauthorized and harmful touching directly and proximately caused damages to Plaintiff.

Count II – Assault (Against Defendant Sherosky)

60. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 8 through 56 as if fully set forth herein.
61. Defendant Sherosky intentionally acted in a threatening manner, causing Plaintiff to have a reasonable apprehension of imminent harmful contact.
62. As a result of Defendant Sherosky's conduct, Plaintiff suffered emotional distress.

Count III – Vicarious Liability (Against Defendants Griffith, the Pinellas Democratic Executive Committee)

63. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 8 through 56 as if fully set forth herein.
64. Defendants Griffith and the Pinellas Democratic Executive Committee are liable for the actions of Defendant Sherosky, who acted within the scope of his authority and under the apparent or actual oversight of the PDEC and the Florida Democratic Party.

Count IV – Conspiracy (Against All Defendants)

65. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 1 through 56 as if fully set forth herein.

66. Defendants collectively engaged in concerted action aimed at inciting political violence and defaming Plaintiff to disrupt his congressional campaign, to destroy his campaign fundraising ability, and to obstruct his efforts to campaign by snatching his campaign sign, harassing him, by preventing voters from speaking with him and attending his campaign events, and other wrongful acts of election interference.
67. As a direct result of this conspiracy, Plaintiff suffered damages including emotional distress, and damage to his reputation and campaign, and personal financial damages, and the loss of his Congressional primary race.

Count V – Violation of Election Laws (Against All Defendants)

68. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 8 through 56 as if fully set forth herein.
69. Defendants' actions intended to impede Plaintiff's ability to campaign freely are in direct violation of Florida and Federal election laws, designed to ensure fair and free campaigning processes.
70. As a direct result, suffered damages to include the loss of his primary election, and financial damages in excess of over $1,000,000 in lost donations and over $250,000 in costs to self-fund his campaign.

Count VI – Violation of Civil Rights (both Florida and Federal Laws) zincluding the ADA And the Civil Rights Act (All Defendants)

71. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 8 through 56 as if fully set forth herein.

72. Defendants' actions that targeted and discriminated against Plaintiff on the basis of his disability (PTSD) which he suffers as a result of domestic violence against him, his sex violate the Americans with Disabilities Act (42 U.S.C. § 12101 et seq.) and the Florida Civil Rights Act (FCRA).
73. By their actions, Defendants have discriminated against Plaintiff in the activities of public life and engagement, including participation in political campaigning, on the basis of his disability, which is protected under the ADA.
74. Furthermore, Defendants' actions also constitute a violation of the Civil Rights Act of 1964, and Florida civil rights laws which prohibit discrimination on the basis of sex, age, and disability, including in instances where any program or activity is receiving Federal financial assistance directly or through in-kind donations from 3rd parties. In at least one instance, Defendant PDEC is hosted a Candidate forum on July 13, 2024 at the St Petersburg/Clearwater Marriott which was moderated by an employee of a publicly funded media outlet that receives federal funding. The Pinellas County Supervisor of Elections coupled with the Florida Department of States operates the Pinellas Democratic primary election using taxpayer dollars. Further, it is clear that both of the over-60-year-old males in the race are not the favored party candidates. Instead, the Chair of PDEC, defendant Jennifer Griffith, are backing a white female candidate of a similar age as them, to the detriment of the two older men, both of whom are over 60.
75. Further, the Florida Civil Rights Act of 1992 (FCRA), Section 760.01-760.11, Prohibits discrimination based on race, sex, age, and handicap, amongst other protected classes.

76. Further, Florida's Public Employment; Age Discrimination, Section 112.044: Prohibits age discrimination in public employment. In this case, the wholly corrupted "candidate vetting process" undertaken by Defendants' Griffith and PDEC can be seen as the first stage of the "job candidate vetting process," where the hiring managers are the registered voters in Florida's District 13, and this is a "public office."
77. As a direct result of Defendants' discriminatory actions, Plaintiff has suffered emotional distress, harm to his reputation, and interference with his right to participate fully and equally in public life and the democratic political process.
78. Defendants are in violation of The Voting Rights Act of 1965: While primarily aimed at preventing racial discrimination in voting, this act also includes provisions that can impact campaign practices. For example, it outlaws tactics that may be used to intimidate or disenfranchise voters, which can indirectly affect campaign activities.
79. Defendants are in violation of 18 U.S. Code § 245 - Federally protected activities: This statute makes it a federal crime to interfere with federally protected activities, including voting in federal elections. It provides penalties for anyone "who uses force or threat of force to intimidate or interfere with a person's right to vote or campaign."
80. Defendants are in violation of 18 U.S. Code § 594 - Intimidation of voters: This statute prohibits any form of intimidation, threats, or coercion against voters to influence their voting behavior. This can include interference with campaign activities if the intent is to suppress or alter the outcome of an election.

81. 18 U.S. Code § 597 - Expenditures to influence voting: This statute makes it illegal to make expenditures to influence voting through bribery or other corrupt practices. In this case, Defendants engaged in the aforementioned corrupt and malicious practices which included making expenditures to promote the 4 other candidates in the primary race, and to portray Plaintiff as some kind of physical threat to Defendant Jennifer Griffith: She convinced the PDEC that they needed to hire a security guard for her personal protection against Plaintiff. Also, she convinced the PDEC to expend funds to hire a lawyer to provide a legal opinion regarding whether they could be held liable for damages by Plaintiff for their wrongful acts.

Count VII – Defamation (All Defendants)

82. Plaintiff re-alleges and incorporates by reference the allegations contained in paragraphs 8 through 56 as if fully set forth herein.
83. Defendant Jennifer Griffith, acting in her role as Chair of PDEC as well as in her personal capacity, made numerous false and defamatory statements to third parties over the course of Plaintiff's 15-month Congressional primary election, statements that she knew were false and that were made with reckless disregard for the truth.
84. Specifically, Defendant Griffith, in coordination with others in the PDEC falsely and publicly claimed that Plaintiff was a person of moral turpitude, a wife-beating stalker, unfit to be a Democratic candidate, and a physical threat to her and others when he was not. She made false, defamatory statements to the

Tampa Bay Times and other media outlets, which caused the publication of defamatory articles against Plaintiff.

85. Griffith's statements were per se defamatory and as such, Plaintiff is not required to prove special damages.

86. These defamatory statements were made with actual malice, with full knowledge of their falsity, and with a reckless disregard for the truth.

87. Defendants' defamatory statements caused severe damage to Plaintiff's Congressional campaign, including his loss in the primary election, to his reputation, personal humiliation, emotional distress, financial harm including the loss of campaign donations, lost of opportunities to speak at various campaign venues.

88. The financial damage to Plaintiff due to Griffith's defamation continues to mount post-election as the damage to his reputation directly caused by Defendant Griffith as it has severely affected his job prospects as he attempts to re-enter the workforce, come off disability, and land a job in his field of cyber-security executive.

89. As a direct and proximate result of Defendants' malicious defamation and reckless disregard for the truth, Plaintiff has suffered substantial reputational damage, loss of income, loss of campaign donations, and other damages in an amount to be determined at trial.

VIII. Damages

90. Plaintiff demands judgment for compensatory damages in an amount to be determined at trial, plus court costs. Specific compensatory damages sought

include financial losses due to being blacklisted with Democratic Political action committees and other donors, reputational damages, self-funded campaign expenses of over $250,000, and emotional distress caused by the systematic exclusion, defamation, and physical assault and battery. Plaintiff lost the Democratic primary election as a direct result of Defendants' wrongful acts. Plaintiff suffered over $1.1 million in damages in lost campaign donations that he would have otherwise reasonably received, if not for the wrongful and tortious acts of the Defendants.

91. Plaintiff hereby also gives preliminary notice to the Court of his intent to seek punitive damages (if permitted by the Court), as the Defendants' actions are believed to have been intentional, malicious, and undertaken in reckless disregard to the truth and to the civil rights of the Plaintiff.

IX. DEMAND FOR JURY TRIAL

Plaintiff demands a trial by jury on all issues so triable.

WHEREFORE, Plaintiff demands judgment against Defendants for compensatory and special damages, costs, punitive damages (assuming punitive damages are permitted), and any other relief the court deems just and proper.

Respectfully submitted,



John William Liccione, Plaintiff

6800 Gulfport Blvd S.
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I, John William Liccione, Plaintiff, on this 7th day of November 2024, hereby certify that the forgoing Plaintiff's Response to Defendants' Motion to Dismiss were e-served on all defendants through their attorney George Thurlow via the Court's e-file and e-serve system.



John W. Liccione

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 6

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

COMPANION WITH:
Case No. 24-003939-CI

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S AMENDED COMPLAINTS

THIS CAUSE, having come before the Court upon Defendants Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #34 in Case No. 24-002994-CI, filed November 14, 2024) and Defendant Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #40 in Case No. 24-003939-CI, filed on October 2, 2024, and re-filed as part of Doc #45 in Case No. 24-002994-CI, pg. 103-115, on November 20, 2024), and this Court, having reviewed the memoranda and materials filed by counsel and Plaintiff *pro se*, and having heard arguments from Plaintiff *pro se* and counsel for Defendants, this Court hereby **ORDERS AND ADJUDGES** as follows:

Case No. 24-002994-CI: Defendants Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #34 in Case No. 24-002994-CI, filed November 14, 2024)

1. This Court **DENIES** Defendants' Motion to Dismiss on Counts I and II as they pertain to Defendant Michael Sherosky, but will require Plaintiff to re-plead Counts I and II in any amended pleading. In such an amended pleading, Plaintiff shall provide specific allegations pertaining to damages.
2. This Court **GRANTS** Defendants' Motion to Dismiss , without prejudice, with leave to amend, on Counts III and IV.

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

3. This Court **GRANTS** Defendants' Motion to Dismiss on Count V pursuant to Fla. Stat. § 768.295.
4. This Court **GRANTS** Defendants' Motion to Dismiss on Counts VI and VII, without prejudice, with leave to amend.
5. This Court **GRANTS** Defendants' Motion to Dismiss on Count VIII with prejudice, as damages do not exist as an independently-pled count.

Case No. 24-003939-CI: Defendant Jennifer Griffith's Motion to Dismiss Amended Complaint

6. This Court **GRANTS** Defendant's Motion to Dismiss on all counts, without prejudice, with leave to amend. If Plaintiff opts to file an Amended Complaint, the Amended Complaint must make specific allegations supporting that he has a private right of action against the Defendant with sufficient allegations.

Plaintiff shall have until December 30, 2024 to file a Second Amended Complaint, if he so desires.

Counsel for the Defendants shall file their response to the Second Amended Complaint within twenty (20) days and make every effort to schedule a hearing on any Motion(s) either pending or filed in response to a Second Amended Complaint within 45-60 days of the Second Amended Complaint being filed. Should any or all of the Defendants move to dismiss a subsequently-filed Second Amended Complaint, the meet-and-confer requirement for such a Motion is waived.

[THIS SPACE IS INTENTIONALLY LEFT BLANK]

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Nothing in this Order shall be construed as an adjudication of Defendants' legal or factual defenses, including the applicability of Fla. Stat. § 768.295, except as otherwise provided and Defendants' are permitted to raise these issues for adjudication by the Court in subsequent Motions.

Entered in Chambers, St. Petersburg, Pinellas County, Florida on this 20th day of December, 2024.

CIRCUIT COURT JUDGE
Thomas Ramsberger

Copies to:

-John William Liccione, Plaintiff *Pro Se*

-George A.D. Thurlow, Esquire, Counsel for Defendants

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 7

IN THE CIRCUIT COURT IN AND FOR PINELLAS COUNTY
STATE OF FLORIDA, CIVIL DIVISION
CASE NO.: 24-002994-CI-19

JOHN WILLIAM LICCIONE,
Plaintiff,
vs.

PINELLAS DEMOCRATIC
EXECUTIVE COMMITTEE, ET AL,
Defendants.
_____/

AMENDED
ORDER TO SHOW CAUSE

THIS CAUSE came before the Court for telephonic hearing on January 28, 2025, during which the Plaintiff, John William Liccione, disrupted the Court numerous times and, after being advised by the Judge to not disrupt the hearing, continued to disrupt the Court's business. The Plaintiff engaged in similar conduct during two prior telephonic hearings. The Court is hereby entering this Order to Show Cause for the Plaintiff to explain why the Court should not find the Plaintiff in direct criminal contempt pursuant to Fla. R. Crim. P. 3.830 for the Plaintiff's misconduct during the hearing. Therefore, it is hereby

ORDERED AND ADJUDGED as follows:

The Plaintiff, John William Liccione, is hereby **ordered to appear in person** before the Court on:

Date/Time: **Thursday, April 10, 2025, at 11:45a.m.**
Judge: **Thomas Ramsberger, Circuit Judge**
Location: **St. Petersburg Judicial Building**
545 1st Avenue North, 2nd Floor, Courtroom 2A
St. Petersburg, Florida 33701

The Plaintiff will at that time provide the Court with testimony as to why he should not be found in contempt. Should the Court find the Plaintiff in contempt, then the Court will set another hearing to determine if any sanctions will be imposed upon the Plaintiff, including but not limited to, incarceration for such contempt.

FAILURE OF JOHN WILLIAM LICCIONE TO APPEAR IN COURT AT THE SCHEDULED TIME MAY RESULT IN THE COURT ISSUING A WARRANT FOR HIS ARREST. IF ARRESTED, YOU MAY BE HELD IN JAIL UP TO FORTY-EIGHT (48) HOURS BEFORE A HEARING IS HELD.

DONE AND ORDERED at St. Petersburg, Pinellas County, Florida, on February _____, 2025.

24-002994-CI 2/11/2025 3:34:16 PM
Circuit Judge Thomas Ramsberger
24-002994-CI 2/11/2025 3:34:16 PM

THOMAS RAMSBERGER
Circuit Judge

Copies furnished via JAWS to:
John William Liccione, Plaintiff, Pro Se
George Thurlow, Counsel for Defendants

ELECTRONICALLY FILED 2/11/2025 3:34:17 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 8

I#: 2025062757 BK: 23080 PG: 2517, 03/04/2025 at 10:53 AM, RECORDING 2
KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

Case No. 24-002994-CI

COMPANION WITH:

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

Case No. 24-003939-CI

ORDER DISMISSING LAWSUIT

THIS CAUSE, having come before this Court on February 24, 2025 at a duly noticed Case Management Conference, and this Court, having heard argument from Plaintiff *Pro Se* and counsel for Defendants, and being otherwise fully and duly advised in its premises, the Court hereby finds as follows:

1. On December 20, 2024, this Court entered an Order (Doc # 64) requiring Plaintiff to replead Counts I and II in an amended pleading, if Plaintiff so desired, dismissing Counts III, IV, VI, and VII without prejudice, and dismissing Counts V and VIII with prejudice. The Order set a deadline of December 30, 2024 for Plaintiff to file an amended complaint.
2. The Plaintiff subsequently filed a Motion for Clarification of the December 20, 2024 Order (Doc # 64) on December 21, 2024 and a Motion for Extension of Time to File Second Amended Complaint (Doc # 65) on December 30, 2024. The Court held a hearing on these motions on January 28, 2025 (Doc # 66)
3. On January 31, 2025, the Court entered an Order (Doc # 68) denying Plaintiff's Motion for Clarification and Motion for Extension of Time, setting a deadline for Plaintiff to file a Second Amended Complaint of February 4, 2025 at 4:00pm local time.
4. As of February 24, 2025, Plaintiff had not filed an amended complaint and indicated as such on the record at the Case Management Conference.

Filed, MAR 3, 2025, 8:14, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

5. On February 3, 2025, this Court entered an Order to Show Cause against the Plaintiff, John William Liccione (Doc #69) which was amended on February 11, 2025 (Doc #75) for the purposes of changing the hearing date to April 10, 2025.
6. At the Case Management Conference, Plaintiff made *ore tenus* motions to stay this action pending the outcome of a petition he filed with the Supreme Court of Florida and to ask for the recusal of Judges Ramsberger and Muscarella based upon his verbal allegations that they are either fact witnesses or victims to the acts Plaintiff is alleging.

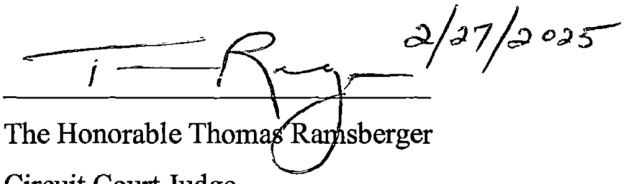
Based on the foregoing, this Court hereby **ORDERS AND ADJUDGES** as follows:

(1) Based on the December 20, 2024 and January 31, 2025 orders of this Court and that the Plaintiff has not filed an Amended Complaint, this case (24-002994-CI and 24-003939-CI as it pertains to Defendant Jennifer Griffith) is **DISMISSED** without prejudice. The Clerk of Court is directed to close the case file. This Court shall retain jurisdiction over any ancillary matters, including but not limited to the Order to Show Cause pending against the Plaintiff which is currently set for hearing on April 10, 2025.

(2) Plaintiff's *ore tenus* Motion for Stay is **DENIED**.

(3) Plaintiff's *ore tenus* Motion for Recusal is **DENIED.** The Court notes that recusals are voluntary and that the proper vehicle for a litigant to judicially seek the removal of a presiding judge is through a Motion to Disqualify, which must be filed in writing.

DONE AND ORDERED in Chambers, St. Petersburg, Pinellas County, Florida.



The Honorable Thomas Ramsberger
Circuit Court Judge

Copies to:
John William Liccione, Plaintiff *Pro Se* (jliccione@gmail.com)
George A.D. Thurlow, Counsel for Defendants (gthurlow@rahdertlaw.com)

Filed, MAR 3, 2025, 8:14, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 9

The GABBER
FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER



Meet the Democratic Candidates for the District 13 Congressional Election

July 12, 2024 by Patrick Heinzen



The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.

Photo courtesy of the City of St. Petersburg

With election season coming back around, Pinellas County residents look to learn more about the candidates up for election. The district stretches from the southern parts of St. Pete Beach up to Tarpon Springs. At 6 p.m. on July 13, the Pinellas Democratic Party hosts a debate between four candidates.

Meet the District 13 Congressional Candidates:

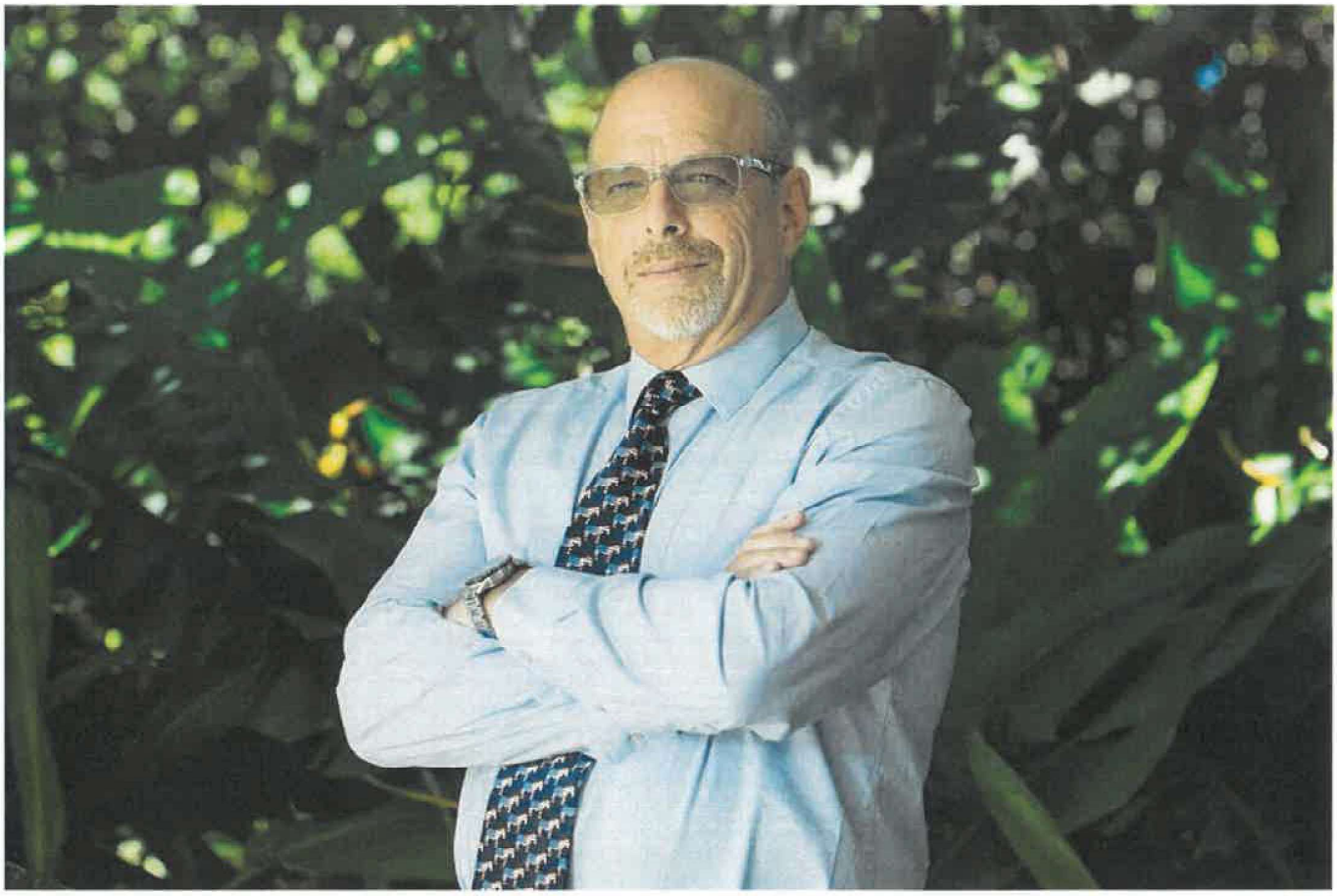
Whitney Fox



Whitney Fox looks to take the District 13 Congressional seat in the upcoming election.
Photo via FloridaPolitics

Fox's website describes her as, "A mother who will fight to improve the quality of life for Florida's 13th district and the American people. Some focuses for her candidacy include protecting women's reproductive rights and healthcare. Also, she looks to protect Social Security and Medicare, and lower prescription drug costs.

Mark Weinkrantz



What does Mark Weinkrantz hope to achieve if elected to the District 13 Congressional seat?
Photo Via Mark Weinkrantz

Weinkrantz is similar in his approach to women's reproductive freedoms. Along with this, his website highlights how, "He believes in the American Dream and recognizes the need for compassionate and comprehensive immigration policies that honor America's legacy as a nation of immigrants."

The District 13 Congressional election candidates are not the only people you will vote for. Read about the Pinellas County Supervisor of Elections candidates.

Liz Dahan



Liz Dahan prepares for the debate for the District 13 Congressional election.
Photo via FloridaPolitics

Dahan also focuses on protecting women's rights. Her approach towards Social Security and medicare is similar to Fox's. Also, her website states, "She is passionate about protecting Florida's natural environment and recognizes that our vulnerability to rising sea levels, hurricanes, and coastal erosion requires bold legislative measures aimed at reducing carbon emissions, investing in renewable energy, and enhancing our natural defenses against climate-related disasters."

Sabrina Bousbar



Sabrina Bousbar's campaign for the District 13 Congressional election is heating up.
Photo via FloridaPolitics

Bousbar's website describes her as a "public servant and commonsense problem solver." Her goals are to make sure that families and individuals have access to viable "education, healthcare, housing, and jobs that every family needs and deserves."

Want More Election News?

The Gabber Newspaper covers elections on the South Pinellas beaches, Gulfport, and South Pasadena. Want to make an informed decision at the polls? Subscribe to The Weekly and The Beach Barnacle, our two weekly newsletters. And make thegabber.com your homepage to stay up-to-date on all the news in Gulfport, South Pinellas, and the beaches.

by Patrick Heinzen

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Filed Under: Vote

Tagged With: Florida Elections, Vote Pinellas

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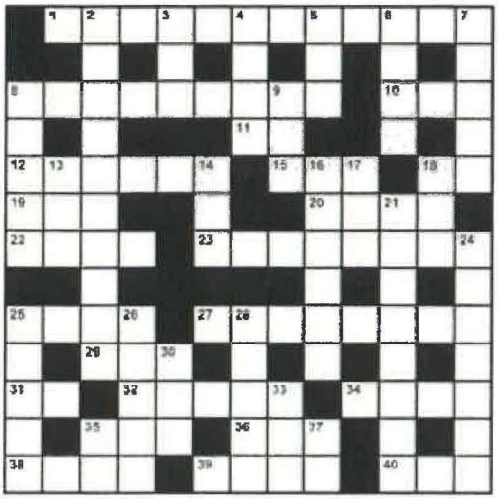

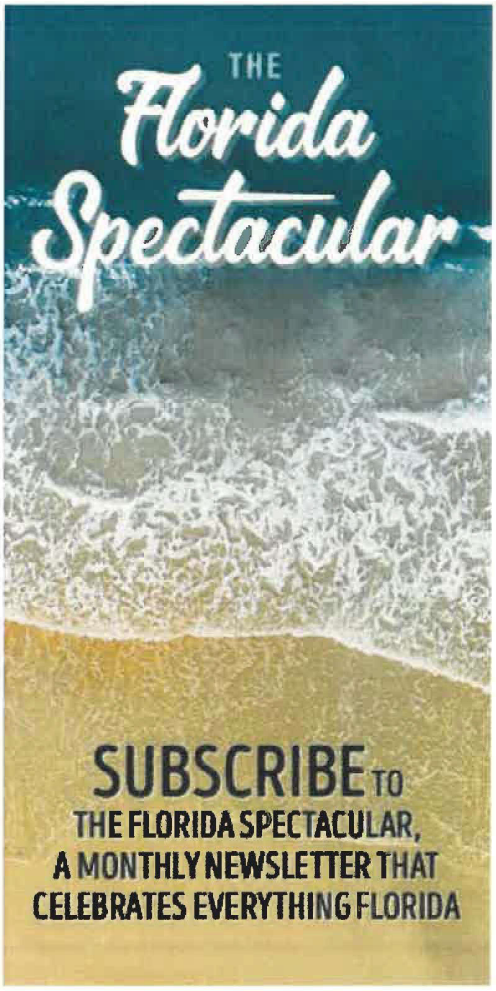

Woman owned

Sertify Small Business

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

JULIE MARCUS, et al.

Defendants.
_____/

TAB 10

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FOR ALL OF US
PinellasDemocrats.org

Congressional District 13 Democratic Primary Candidate Debate Saturday, July 13th!





We are pleased to invite you to participate in the Pinellas Democratic Primary Candidate Debate, scheduled to take place on July 13th, 2024, at the St. Petersburg/Clearwater Marriott. The event will begin at 6:00 PM.

The debate will be moderated by Rob Lorei, Managing Editor of Florida This Week at WEDU TV and News/Public Affairs Director at WMNF-88.5FM Tampa. Our debate format will include an opening statement from each candidate, followed by a question and answer session. We will then take a small mid-session break, after which we will proceed with questions from the audience. Audience questions can be submitted prior to the event via the button below.

We have the capacity to host 400 attendees, and we encourage you to invite your friends, family and neighbors.

This debate is designed to be a respectful and informative evening for the voters of Pinellas County to get to know their Democratic primary candidates before mail ballots are distributed. It is not intended as an opportunity for candidates to attack each other, but rather to share their visions and policies with the electorate.
Please register to attend through the link below. We look forward to a productive and engaging discussion!

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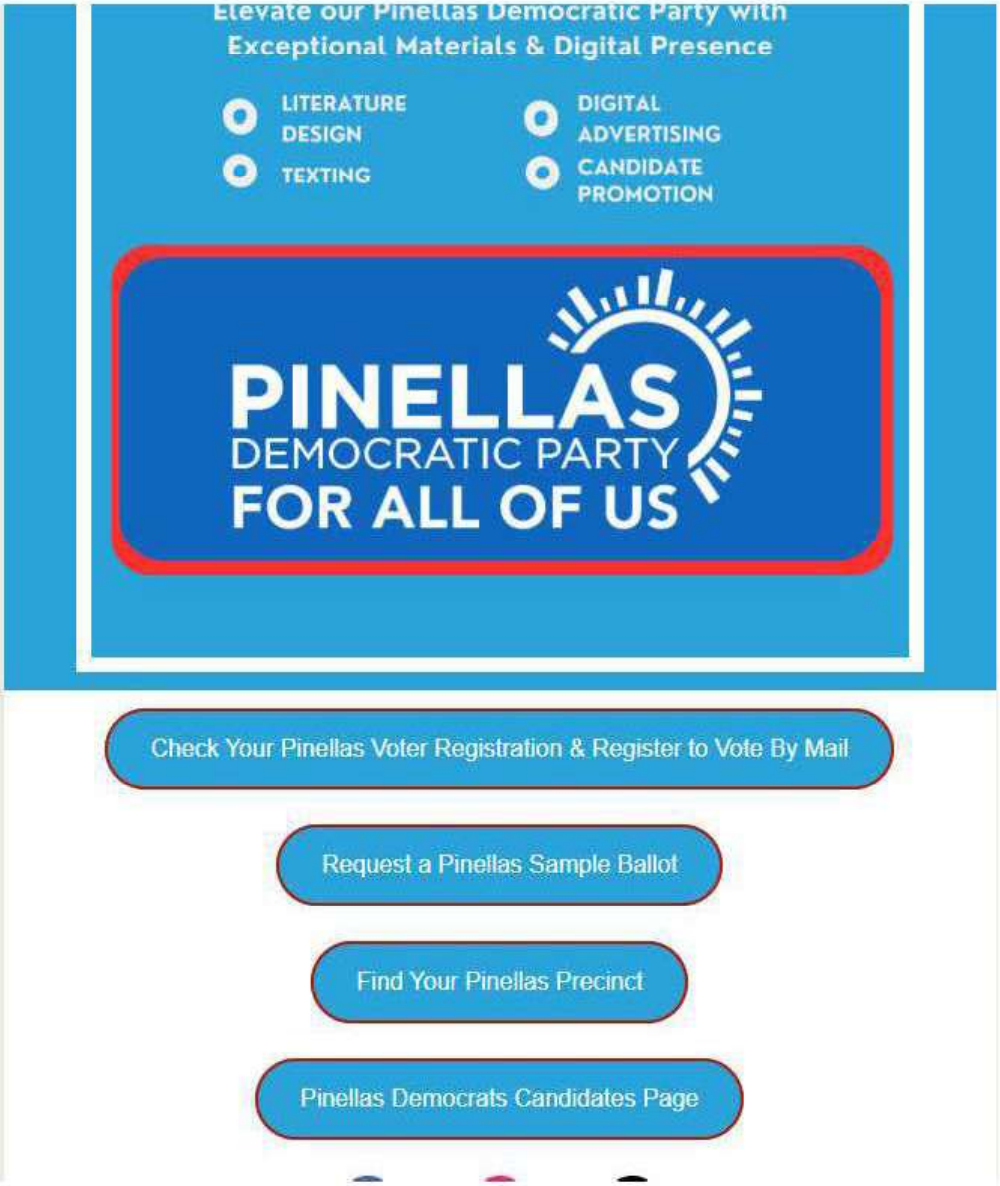
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Defendants.
_____/

TAB 11

The GABBER
FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER



Gulfport Mayoral Candidate John Liccione's Time in Courts

February 26, 2025 by Ethan Perelstein



Gulfport mayoral candidate John Liccione's time in Courts include two civil suits.
Photo by Cameron Healy

Updated Mar. 2, 9:00 am

An earlier version of this article listed the Florida Democratic Party as a defendant in Liccione's suit, however Liccione has dropped them from all suits. Additionally, Liccione's suit names the former chair of the PDEC as a defendant, not the current chair, we've updated the article to reflect this and include the correct information.

The Gabber Newspaper *regrets the error.*

If John Liccione wins his mayoral race, Gulfport's mayor will be ordered to appear in court to explain why he shouldn't be held in contempt three weeks into his term.

John Liccione's Time in Courts

Gulfport mayoral candidate John Liccione has been ordered before Circuit Judge Thomas Ramsberger to explain why the Court should not find Liccione in direct criminal contempt.

This order to show cause sprung from a civil suit Liccione brought against the Pinellas Democratic Executive Committee. Liccione is suing the PDEC, among other named defendants, for alleged election fraud in his lost primary congressional race in Florida's 13th district.

In a hearing held on the phone, Liccione "disrupted the court numerous times, after being advised by the judge not to disrupt the hearing, continued to disrupt the Court's business," according to the official order. This was Liccione's third offense, according to the order.

Liccione Files Petition

On Feb. 20, Liccione filed a petition to the Florida Supreme Court asking them to compel the Second District Court of Appeals to remove Judge Ramsberger from his case and cancel the order to appear and contempt allegations.

The petition asks the court to "disqualify Judges Thomas Ramsberger and Patricia Muscarella, vacate their prior orders, and prohibit the contempt hearing." Judge Patricia Muscarella is the judge presiding over another lawsuit.

In the meantime, Liccione's order to show cause has been rescheduled to April 10. This would be a month after the Gulfport mayoral elections. If John Liccione is elected, Gulfport's mayor would be ordered to appear in court to explain why he shouldn't be held in contempt three weeks into his term.

Liccione's other lawsuit before Pinellas circuit courts (the one Muscarella is presiding over) names the parties he blamed for his loss in the congressional race. Among the defendants are the Pinellas County Supervisor of Elections, the then-chair of the PDEC, two other democratic candidates in the race, and *The Gabber Newspaper*.

Want More Election News?

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Tidal Basin

At the Feb. 4 City Council meeting, Liccione warned that "there are gonna be lawsuits" levied against Tidal Basin, the State's contractor for assessing hurricane damage. He then posted about the incoming lawsuits on his blog.

"The power of the lawsuit is how we hold them accountable," he said at the Feb. 18 meeting.

"I'm gonna be bringing a lawsuit, personally, against this contractor [Tidal Basin]", he said. "I'm calling for those who are victims of this scheme to send me their information, their substantial damage letters."

Liccione said this during public comment at the meeting, and is not doing this at the behest of the city.

Tidal Basin's faulty Substantial Damage Letters (SDLs) have kept displaced Gulfportians out of their homes now more than 150 days after Helene. Gulfportians at the last two council meetings still fill public comment sections with complaints.

Liccione, who is not a member of any bar association and does not have a law degree, represents himself in his own lawsuits. Judge Ramsberger ordered him to appear to excuse himself for an inability to respect court proceedings. Now, Liccione proposes that he lead the charge in legal action against Tidal Basin.

"In my head, I'm already mayor," he said at the February 18 City Council meeting.

Comments From Liccione

The Gabber Newspaper reached out to Liccione for comment on this article.

For accuracy, *The Gabber Newspaper* asked to record the conversation with Liccione.

He declined.

The Gabber Newspaper then offered to send Liccione questions in an email, so he could reply with his comment. He declined.

Liccione then asked to conduct the interview with no record. He requested that we share an advance copy of this article with him for approval. *The Gabber Newspaper* does not offer pre-publication review, and told him as much.

Liccione then agreed to answer questions via email; at press time, he had not done so.

The Gabber Newspaper's Election Coverage

As a newspaper, it is not our job to have an opinion about the campaigns and candidates. Our job is to report what happens, what key players say and do, and any legal activity concerning the campaign. This includes campaign finance reporting, basic investigation into the candidates (and, as warranted, their families), and any unusual campaign activities. Read *The Gabber Newspaper*'s full statement on our elections ethics.

by Ethan Perelstein

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Filed Under: News

Tagged With: Gulfport, Gulfport Florida, Gulfport Florida Elections, John Liccione Gulfport Florida

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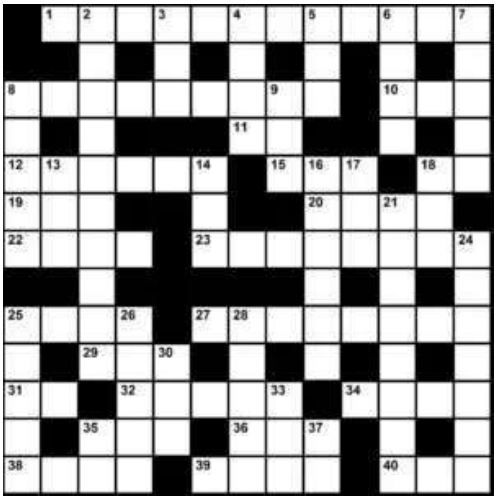

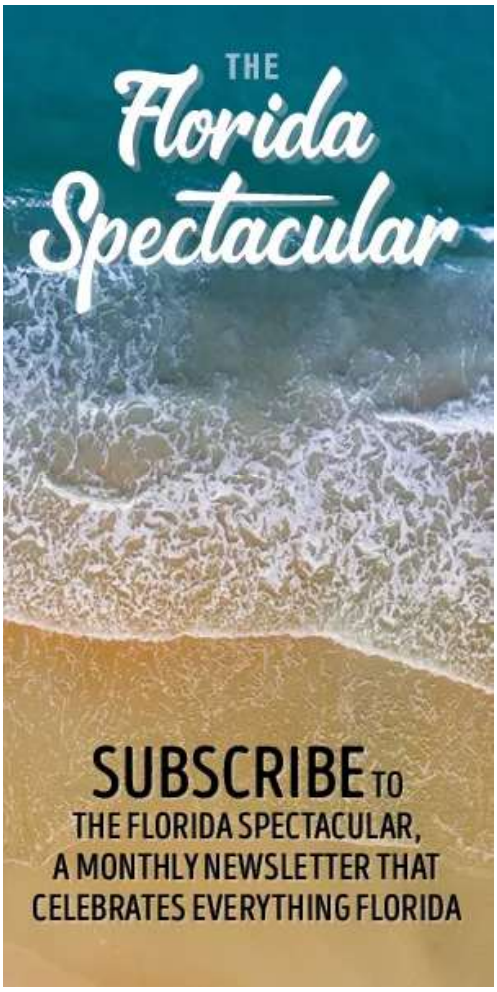
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Defendants.
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TAB 12

The GABBER
FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER



OP-ED: Cocktails and Campaigns: Gulfport Candidates Recrafted as Cocktails

March 9, 2025 by Morgan Wujkowski



This election season in Gulfport, sip the vote.
Photo by Morgan Banno

Updated March 10, 2:26 p.m.

Editor's note: This is an opinion piece only about Gulfport candidates running for city council, reimagined as cocktails.

The views and opinions here do not necessarily represent the opinions of anyone at The Gabber Newspaper, its owners, staff, or advertisers.

Let's face it: Election season can be a headache-inducing spectacle of debates, promises, and yard signs cluttering the neighborhood. But what if we shook things up — literally — and reimagined the candidates running for Gulfport office as cocktails? From fiery libations to watered-down spritzers, each political persona has a flavor profile all its own. Because really, isn't every campaign just a mix of bold claims, bitter truths, and a splash of something sweet to make it go down easier? I don't know about you, but this election season in Gulfport makes me want to drink. Grab a shaker and swizzle stick—this is one round of politics you'll actually want to toast to.

In alphabetical order, the Gulfport candidates as cocktails:

The Mayoral Cocktail

Sam Henderson: Martini

Sophisticated and smooth, this gin-based classic is the perfect representation of a polished negotiator who prefers their solutions shaken, not stirred. Like a martini, Henderson is dependable and charming, with established roots in the government. No need to fix what isn't broken.

Karen Love: Negroni

The Negroni is a polarizing cocktail: You either love it or you despise it, much like the politician it represents. Bold and complex with equal parts of gin, Campari, and sweet vermouth, it's the drink for those who divide opinions. And truth be told, I'm not sure it can stand on its own.

John Liccione: White Sangria

Sweet and boozy with a little too much going on, this fruit-packed drink captures the essence of a politician whose career is as colorful as their reputation. Who else would have the audacity to run for City Mayor while concurrently suing local businesses? Poor taste… Much like cheap, white sangria.

The Ward II Cocktail

Christine Brown: Mojito

This cocktail is for the candidate who rises from humble beginnings, rallying support one leaf at a time. Minty and unpretentious, the mojito, much like Christine Brown, is an acquired taste, but worth it compared to the rest of the menu. Right when I think we should 86 the mojito from the menu, the alternatives pale in comparison.

Byron Chalfont: Your Backyard Neighbor's First Home Brew

There's always someone on the block who thinks it's a brilliant idea to brew their own beer, not unlike the person who thinks it's a great idea to run for office just because. Owning a local business doesn't make you the ideal city council candidate. "Working for the betterment of Gulfport" is about as vague and dull of a platform as it gets.

Marlene Shaw: Flat Hard Seltzer

What might have been seen as flashy at one point is now a bit flat, much like the politicians running for Ward II. What is it with candidates assuming we're impressed that they run local Facebook pages? I need more bubbles and concrete ideas, please. This hard seltzer has lost its fizz and the campaigning has only just begun.

Ward IV: The Unopposed Cocktail

Nancy Early: Paloma

Running unopposed is lucky in an election.The Paloma is a crowd-pleasing concoction that is fresh and effervescent, like the candidate for Ward IV. I hope she brings vibrant ideas to the dais, and I look forward to what she'll bring to the party.

Cheers to democracy, one drink at a time!

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by Morgan Wujkowski

/morgwuj

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Filed Under: Voices

Tagged With: Byron Chalfont Gulfport Florida, Christine Brown in Gulfport Florida, John Liccione Gulfport Florida, Karen Love Gulfport Florida, Marlene Shaw Gulfport Florida, Sam Henderson in Gulfport Florida

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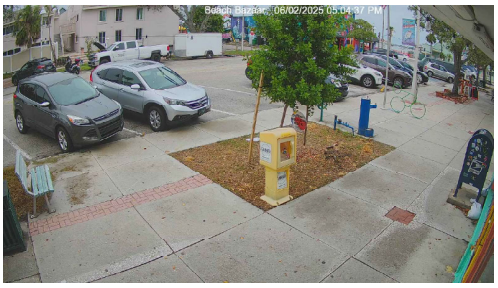

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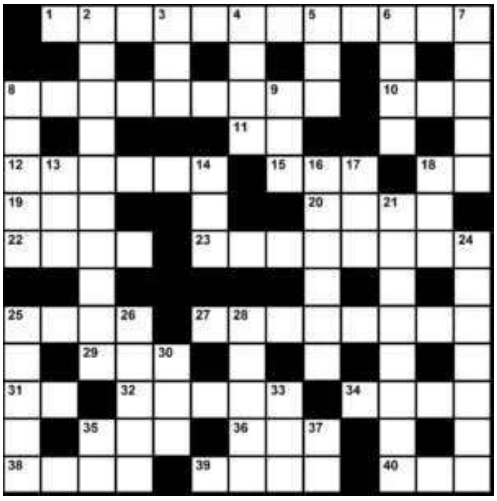

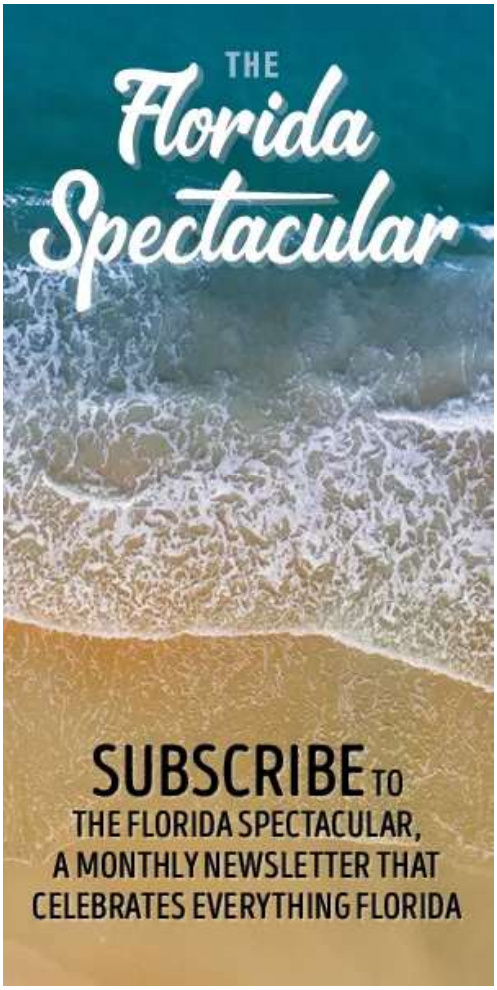



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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT IN AND FOR PINELLAS COUNTY, FLORIDA

CLEARWATER – SECTION 7

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER,
Defendant.
_____/

CASE NO.: CA-003939-CI

PLAINTIFF'S MOTION TO STRIKE DEFENDANTS' UNTIMELY AND IMPROPER FILINGS

Plaintiff, John William Liccione, pro se, respectfully moves this Honorable Court to strike the following filings submitted by Defendant Cathy Salustri-Loper on June 3, 2025, and in support states:

I. FILINGS AT ISSUE

Plaintiff moves to strike the following:

1. Defendant's Response to Plaintiff's Motion for Leave to File Second Amended Complaint
2. Defendant's Response to Plaintiff's Motion to Lift Stay
3. Defendant's Memorandum of Law in Support of Anti-SLAPP Defenses
4. Defendant's Notice of Filing

II. GROUNDS FOR STRIKING THE FILINGS

A. Untimeliness

1. These filings were submitted well beyond the 21-day response window mandated by Fla. R. Civ. P. 1.100(a) and 1.140(b).

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2. Plaintiff's motions were filed on April 1 and April 12, 2025, respectively.
3. Defendant filed nothing for over six weeks and never sought an extension. These filings are therefore presumptively waived and untimely.

B. Improper Expansion of Scope of Hearing

4. The hearing noticed for June 10, 2025 is exclusively set to address Plaintiff's motions to lift the stay and to amend the complaint. Defendant's filings seek to improperly introduce new and unnoted matters, including re-litigation of Anti-SLAPP defenses already raised months ago prior to the November 21, 2024 Order staying these proceedings. This surprise tactic circumvents fair notice and impairs Plaintiff's ability to prepare.

C. Defendant's Anti-SLAPP Arguments Are Not Properly Before the Court

5. Defendant's June 3, 2025 "Memorandum of Law in Support of Anti-SLAPP Defenses" is procedurally defective and not ripe for judicial determination, because:
    a. Defendant's original Motion to Dismiss, which first raised Anti-SLAPP defenses in October 2024, has not been noticed for hearing;
    b. No request to shorten time or to consolidate Anti-SLAPP issues with the current June 10 hearing was made;
    c. The stay remains in place, and Defendant objected to lifting it.
6. Defendant has now filed a de facto Motion to Dismiss on Anti-SLAPP grounds cloaked in the form of an improper legal memorandum—without notice, service, or scheduling.
7. Plaintiff does not address the merits of the Anti-SLAPP argument here because doing so would risk improperly expanding the June 10th hearing's scope. Plaintiff reserves all rights to contest the substance of Defendant's defenses if and when they are properly noticed and ripe for adjudication.

8. Accordingly, Plaintiff reserves all substantive arguments and relies on the procedural impropriety of the June 3 filings as grounds for striking.

D. Misrepresentation of Critical Order by Judge Ramsberger

9. Defendant's "Notice of Filing" claims Plaintiff's PDEC case before Judge Thomas Ramsberger (24-002994-CI) was fully dismissed at a hearing held in December 2024. This is a fallacy.

10. In fact, Judge Ramsberger:

    a. Granted the motion in part and denied it in part;

    b. Denied dismissal of Counts I and II (Battery and Assault);

    c. Dismissed most of the remaining counts *without prejudice*, including all counts pertaining to Defendant Jennifer Griffith after this Court transferred all claims against Griffith to Case No. 24-002994-CI); and,

    d. Ordered Plaintiff to file a Second Amended Complaint.

11. These misrepresentations of record materially undermine Defendant's arguments and credibility. (See **EXHIBIT A** – Judge Ramsberger's December 20, 2024 Order)

E. Duplicative and Repetitive Motion Practice

12. Defendant previously raised Anti-SLAPP arguments in her October 23, 2024 Motion to Dismiss, which included a section captioned as "ANTI-SLAPP MOTION."

13. The current "Memorandum of Law" simply repeats those arguments and seeks dismissal under Anti-SLAPP without adding new legal authority, factual basis, or court permission.

14. Defendant never moved for a supplemental brief or leave to reargue or expand the June 10th hearing scope.

F. Waiver of Opposition to Motion to Lift Stay

15. On April 22, 2025, Plaintiff filed a Notice of No Written Opposition to the Motion to Lift Stay, after 21 days had elapsed with no filing by Defendant. The same waiver of opposition also applies to Defendant's untimely June 3rd response to Plaintiff's Motion for leave to filed a 2nd Amended Complaint.
16. Defendant may not now enter those arguments through new filing weeks later after the deadline has expired.

G. Contradictory Litigation Positions on the Stay

17. On April 2, 2025, defense counsel James Lake stated in email: "*We object to lifting the stay…"*
18. Yet in the June 3 filings, Defendant argues the stay should be lifted—but only for her benefit, to litigate Anti-SLAPP defenses in her Motion to Dismiss and Memorandum of Law on Anti-SLAPP.
19. This is procedural gamesmanship—attempting to deny Plaintiff a hearing on his Motion for Leave to Amend, while seeking relief for herself—and it violates principles of fairness and equity.

H. Filing a Disguised Motion to Dismiss Without Scheduling or Ripeness

20. Defendant's "Memorandum of Law" is functionally a Motion to Dismiss on Anti-SLAPP grounds, but it:
    a. Was not styled as a motion;
    b. Was not noticed for hearing;
    c. Relies on an unripe original MTD that has not been scheduled or briefed since the stay was imposed;

d. Lacks a Motion to Shorten Time or any procedural attempt to bring it before the Court properly.

e. Seeks a hearing on this disguised motion on June 10th while the case remains stayed.

21. This violates due process, the rules of judicial procedure, and the Court's own scheduling expectations.

I. Violation of Judicial Preferences and Procedural Integrity

22. Judge Muscarella's preferences require all materials to be delivered no later than 5 business days prior to hearing.

23. Defendant waited until literally the 11th hour on the final day to file four lengthy pleadings, burdening the Court and ambushing the Plaintiff.

24. Plaintiff was deprived of the time needed to finalize his own preparation or has had to now spend time dealing with these filings and delivering them to the Court, in person today, thereby preventing him filing his own supplement documents in support of his two motions – on this final day.

25. Defendant never conferred or warned Plaintiff, never moved to shorten time, and failed to comply with the spirit of fair and orderly motion practice.

J. Failure to Meet and Confer in Violation of Sixth Circuit Standards

26. Defendant failed to meet and confer with Plaintiff before filing four contentious pleadings.

27. Under the Standards of Professional Courtesy (Sixth Judicial Circuit AO 2015-052), parties should confer before filing motions requiring court intervention.

28. This is particularly prejudicial to a pro se litigant, and further underscores Defendant's bad faith and tactical ambush.

III. RELIEF REQUESTED

Plaintiff respectfully requests that this Court:

A. Strike the following pleadings filed by Defendant Cathy Salustri-Loper on June 3, 2025, as untimely, procedurally defective, duplicative, and filed in bad faith:

   1) Defendant's Response to Motion to Amend
   2) Defendant's Response to Motion to Lift Stay
   3) Defendant's Memorandum of Law in Support of Anti-SLAPP Defenses
   4) Defendant's Notice of Filing

B. Exclude all such pleadings from consideration at the June 10, 2025 hearing;

C. Declare that Defendant's actions—including last-minute filing of multiple pleadings without notice, failure to meet and confer, submission of an unripe Anti-SLAPP memorandum disguised as a motion, and misrepresentation of prior judicial orders—violate this Court's Judicial Practice Preferences, the Sixth Circuit's Standards of Professional Courtesy, and the Florida Rules of Civil Procedure;

D. Reserve jurisdiction to consider sanctions, including under § 57.105, Fla. Stat., and any other relief deemed just and proper.

E. Reserve jurisdiction to consider an award of costs or other appropriate sanctions pursuant to § 57.105, Fla. Stat., and/or the Court's inherent authority, based on:

   1) Defendant's willful filing delay;
   2) Tactical litigation ambush;
   3) Failure to meet and confer;
   4) Misuse of Anti-SLAPP motions procedure;
   5) And prejudicial conduct that has unduly burdened both Plaintiff and this Court.

F. Grant such other and further relief as this Court deems just and proper under the circumstances.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
Email: jliccione@gmail.com
Phone: 443-698-8156

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been served on Defendant Salustri-Loper via her counsel Thomas Lake via the Florida Courts E-Filing Portal on this 3rd day of June, 2025.

/s/ John W. Liccione

EXHIBIT A

Judge Thomas Ramsberger's Order Granting in Part and Denying In Part Defendants' Motion to Dismiss

Case No. 24-002994-CI

(Docket No. 62)

Liccione-v-Pinellas Democratic Executive Committee, et al

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

JOHN WILLIAM LICCIONE,
Plaintiff,

v.

Case No. 24-002994-CI

PINELLAS DEMOCRATIC EXECUTIVE COMMITTEE,
MICHAEL JOHN SHEROSKY,
JENNIFER W. GRIFFITH,
Defendants.
_____/

COMPANION WITH:
Case No. 24-003939-CI

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS PLAINTIFF'S AMENDED COMPLAINTS

THIS CAUSE, having come before the Court upon Defendants Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #34 in Case No. 24-002994-CI, filed November 14, 2024) and Defendant Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #40 in Case No. 24-003939-CI, filed on October 2, 2024, and re-filed as part of Doc #45 in Case No. 24-002994-CI, pg. 103-115, on November 20, 2024), and this Court, having reviewed the memoranda and materials filed by counsel and Plaintiff *pro se*, and having heard arguments from Plaintiff *pro se* and counsel for Defendants, this Court hereby **ORDERS AND ADJUDGES** as follows:

Case No. 24-002994-CI: Defendants Pinellas Democratic Executive Committee, Michael John Sherosky, and Jennifer Griffith's Motion to Dismiss Amended Complaint (Doc #34 in Case No. 24-002994-CI, filed November 14, 2024)

1. This Court **DENIES** Defendants' Motion to Dismiss on Counts I and II as they pertain to Defendant Michael Sherosky, but will require Plaintiff to re-plead Counts I and II in any amended pleading. In such an amended pleading, Plaintiff shall provide specific allegations pertaining to damages.
2. This Court **GRANTS** Defendants' Motion to Dismiss , without prejudice, with leave to amend, on Counts III and IV.

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

3. This Court **GRANTS** Defendants' Motion to Dismiss on Count V pursuant to Fla. Stat. § 768.295.
4. This Court **GRANTS** Defendants' Motion to Dismiss on Counts VI and VII, without prejudice, with leave to amend.
5. This Court **GRANTS** Defendants' Motion to Dismiss on Count VIII with prejudice, as damages do not exist as an independently-pled count.

Case No. 24-003939-CI: Defendant Jennifer Griffith's Motion to Dismiss Amended Complaint

6. This Court **GRANTS** Defendant's Motion to Dismiss on all counts, without prejudice, with leave to amend. If Plaintiff opts to file an Amended Complaint, the Amended Complaint must make specific allegations supporting that he has a private right of action against the Defendant with sufficient allegations.

Plaintiff shall have until December 30, 2024 to file a Second Amended Complaint, if he so desires.

Counsel for the Defendants shall file their response to the Second Amended Complaint within twenty (20) days and make every effort to schedule a hearing on any Motion(s) either pending or filed in response to a Second Amended Complaint within 45-60 days of the Second Amended Complaint being filed. Should any or all of the Defendants move to dismiss a subsequently-filed Second Amended Complaint, the meet-and-confer requirement for such a Motion is waived.

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Nothing in this Order shall be construed as an adjudication of Defendants' legal or factual defenses, including the applicability of Fla. Stat. § 768.295, except as otherwise provided and Defendants' are permitted to raise these issues for adjudication by the Court in subsequent Motions.

Entered in Chambers, St. Petersburg, Pinellas County, Florida on this 20th day of December, 2024.

CIRCUIT COURT JUDGE
Thomas Ramsberger

Copies to:

-John William Liccione, Plaintiff *Pro Se*

-George A.D. Thurlow, Esquire, Counsel for Defendants

Filed, DEC 20, 2024, 13:57, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI LOPER, *et al.*,

Defendants.
_____/

DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Plaintiff's Second Amended Complaint ("2AC") is as meritless as his first two pleadings. All three counts of the Second Amended Complaint fail to state a cause of action and violate Florida's Anti-SLAPP law. Accordingly, pursuant to Florida Rule of Civil Procedure 1.140 and Section 768.295(4) of the Florida Statutes, Defendants Cathy Salustri Loper ("Cathy"), Barry Loper ("Barry") and Thursday Morning Media, Inc. ("TMM"), move this Court to dismiss the Second Amended Complaint with prejudice and to award them their costs and attorneys' fees.[1]

Background

This case is the third lawsuit Plaintiff has filed concerning a 2024 primary election, in which Plaintiff unsuccessfully sought the Democratic Party nomination for Florida's 13th Congressional District. The first case, *Liccione v. Pinellas Democratic Executive Committee*, Case No. 24-002994-CI (Fla. 6th Cir. Ct.) (the "PDEC Case"),[2] was filed July 3, 2024. The second case,

[1] Neither Barry Loper nor TMM have been properly served. They are appearing without waiving service of process.

[2] Copies of documents from Plaintiff's other litigation and related materials are included in a Notice of Filing ("NOF") that Cathy filed June 3, 2025. Defendants ask that the Court take judicial notice of the records in the PDEC Case and the Federal Case. *See* Fla. R. Civ. P. 90.202(6).

originally styled *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla.) (the "Federal Case"), was filed August 23, 2024. The third case – this one – was filed September 3, 2024. In these three lawsuits, Plaintiff blames his election loss on various people, agencies and business, including the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's CEO, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and various media organizations, including two newspapers. *See* Federal Case Verified First Amended Complaint (the "Federal Complaint") (NOF Exhibit 1) ¶¶ 6-14, 64-66 & 70-72; PDEC Case Complaint (NOF Exhibit 4) ¶¶ 3-7, 39-42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶¶ 4-6, 20, 24. Defendant Cathy Salustri Loper is identified as co-owner and editor of one of those newspapers, *The Gabber*, a local publication in Gulfport. 2AC ¶ 3. Defendant Barry Loper, whom the Plaintiff erroneously refers to as "Thomas Loper," is Cathy's husband and identified as co-owner of *The Gabber*. 2AC ¶ 4.

Argument

I. The Anti-SLAPP law applies to the Second Amended Complaint.

The Second Amended Complaint demonstrates on its face that Florida's Anti-SLAPP law is applicable. Plaintiff has explicitly sued Cathy because she co-owns and edits a newspaper that published news reports about elections and moderated a political debate. 2AC ¶¶ 3, 16, 25, 33, 50 & 92. Barry and TMM likewise are sued for their alleged "shared control of The Gabber," the newspaper's content, and their alleged decisions regarding the content of news articles. 2AC ¶¶ 4, 18, 19 & 91. Specifically, Defendants allegedly published news reports concerning a 2024 Congressional primary and a 2025 mayoral election. 2AC ¶¶ 3, 4, 16, 33, 50 & 92. Thus all three Defendants are sued primarily because they exercised the constitutional right of free speech in

connection with a public issue. § 758.295(3), Fla. Stat. (2024). The Anti-SLAPP law, therefore, applies, and Plaintiff has the burden of demonstrating that his claims in the Second Amended Complaint are not "without merit." *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019) (disapproved of on other grounds by *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025)). For the reasons explained below, Plaintiff cannot make such a showing.[3]

II. The Second Amended Complaint is without merit.

The Second Amended Complaint's second and third counts rehash interference and conspiracy claims from the First Amended Complaint. They are as meritless in the new pleading as they were in the prior one. The Second Amended Complaint's first count – for defamation – also fails to state a cause of action. All three counts, therefore, are without merit. *See Lee v. Animal Aid, Inc.*, 388 So. 3d 25, 29 (Fla. 4th DCA 2024) ("Plaintiff's suit is 'without merit' because Plaintiff failed to state a claim for defamation.") (quoting *Bongino v. Daily Beast Co.*, No. 19-14472-CIV-MARTINEZ/MAYNARD, 2021 WL 4976287, at *4 (S.D. Fla. Feb. 9, 2021)); *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 564 (Fla. 4th DCA 2019) ("Based on the summary judgment evidence, Materio did not meet her burden. Her claims are therefore 'without merit' ") (Gross, J., concurring). The Second Amended Complaint should be dismissed with prejudice.

A. The repleaded interference and conspiracy counts are meritless.

The Second Amended Complaint repleads counts alleging interference with a prospective economic advantage and a civil conspiracy. 2AC ¶¶ 74-88 & 89-100. The interference claim is based upon Plaintiff's losses in two elections. 2AC ¶¶ 24, 75. "Damages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *Peer v.*

[3] The same standard applies to the First Amended Complaint, even though Plaintiff has amended his pleading. *Cf. Pino v. Bank of New York,* 121 So. 3d 23, 41 (Fla. 2013) (voluntary dismissal does not divest court of jurisdiction to award sanctions under Section 57.105, Fla. Stat.).

Lewis, No. 06-60146-CIV, 2008 WL 2047978, at *10 (S.D. Fla. May 13, 2008), *aff'd*, No. 08-13465, 2009 WL 323104 (11th Cir. Feb. 10, 2009); *Grayson v. No Labels, Inc.*, 601 F. Supp. 3d 1251, 1258 (M.D. Fla. 2022) (rejecting expert testimony attributing plaintiff's election loss to negative political ads, despite pre-election poll suggesting voters supported plaintiff). As a matter of law, therefore, the facts alleged do not support the interference claim.

This cause of action also fails because the interference tort does not apply to "communications to the public at large." *Ozyesilpinar v. Reach PLC*, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023) (affirming dismissal of tortious interference claims concerning online articles). *See also Ethan Allen, Inc. v. Georgetown Manor, Inc.*, 647 So. 2d 812, 815 (Fla. 1994) ("no cause of action exists for tortious interference with a business's relationship to the community at large"). News reporting is not conduct that can be the basis for a tortious interference claim. *Ozyesilpinar*, 365 So. 3d at 461 (quoting *Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of interference claim against newspaper, and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication")). Defendants are accused of editing, owning and publishing a newspaper that communicated news and opinion articles to the public at large. *See* 2AC ¶¶ 3, 5, 29 & 76. As a matter of law, this is not interference.

The conspiracy claim also is meritless. "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). The failure of Plaintiff's other claims means that the conspiracy count fails as well. Moreover, the attempt to sue Defendants for an alleged conspiracy is barred by the intra-corporate immunity doctrine. *See McAndrew v. Lockheed Martin Corp.*, 206 F.3d 1031, 1036 (11th Cir. 2000) ("a corporation cannot conspire with its employees, and its employees, when acting in the scope of their employment, cannot conspire amongst themselves"); 2AC ¶ 91 (accusing

Defendants of "acting in concert through their shared control of The Gabber"). The conspiracy claim, therefore, is without merit.

Finally, because the Second Amended Complaint contains a defamation count (discussed below), these other two counts are barred by the single cause of action rule. "Florida's single publication/single action rule precludes the recasting of defamation claims as additional, distinct causes of action in tort if all of the claims arise from the same defamatory publication." *Int'l Sec. Mgmt. Grp., Inc. v. Rolland*, 271 So. 3d 33, 48 (Fla. 3d DCA 2018). This is because "various injuries resulting from [a publication] are merely items of damage arising from the same wrong." *Callaway Land & Cattle Co., Inc. v. Banyon Lakes C. Corp*., 831 So. 2d 204, 208 (Fla. 4th DCA 2002). The single cause of action rule prevents "circumventing a valid defense to defamation by recasting essentially the same facts into several causes of action all meant to compensate for the same harm." *Gannett Co., Inc. v. Anderson*, 947 So. 2d 1, 13 (Fla. 1st DCA 2006). "In reliance on the single-action rule, courts dismiss concurrent counts for related torts based on the same publication and underlying facts as a failed defamation count," and "it does not matter whether the defamation claim fails, succeeds, or is not brought at all." *Tymar Distribution LLC v. Mitchell Group USA, LLC*, 558 F. Supp. 3d 1275, 1286 (S.D. Fla. 2021).

The single cause of action applies in this case. The Second Amended Complaint is a shotgun pleading, incorporating the defamation count into the interference and conspiracy counts. 2AC ¶¶ 74, 89. Thus all the facts alleged in the defamation count are the basis for the other counts. The allegedly defamatory publications are the same statements that allegedly constituted interference and a conspiracy. Plaintiff has simply recast his defamation claim as additional causes of action, which is precisely what the single cause of action rule prohibits. *Rolland*, 271 So. 3d at 48. The second and third counts, therefore, are barred by the single cause of action rule.

B. The defamation claim is without merit.

The Second Amended Complaint's new cause of action – for defamation – challenges three articles in *The Gabber*. These allegations are without merit for numerous reasons.

In defamation cases, courts act as gatekeepers and serve a "prominent function" by determining threshold issues as a matter of law. *Byrd v. Hustler Mag., Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983); *Wolfson v. Kirk*, 273 So. 2d 774, 778 (Fla. 4th DCA 1973). As the Second District Court of Appeal recently explained, "the First Amendment requires that [a defamation] claim be considered against the background of a profound national commitment to the freedom of speech and especially of political speech, which is essential to the security of the Republic." *Flynn v. Wilson*, 398 So. 3d 1103, 1110 (Fla. 2d DCA 2024) (citation and quotation marks omitted), *review denied*, No. SC2025-0065 (Fla. 2025). "The fact that plaintiffs may not like the way the article was written or what it says about them does not automatically provide the basis for a libel suit." *Kurtell & Co. v. Miami Tribune, Inc.*, 193 So. 2d 471, 471 (Fla. 3d DCA 1967). Considered in this light, Plaintiff's defamation claim is clearly without merit.

Moreover, as noted above, courts refuse to award damages for election losses, because "[d]amages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *Peer v. Lewis*, 2008 WL 2047978, at *10. Such is particularly the case here, because Plaintiff attributes his election losses not only to the Defendants, but also to the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's chief executive, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and other, larger media that did not mention his candidacy. *See* Federal Case Verified First Amended Complaint (NOF Exhibit 1) ¶¶ 6-14, 64-66, 70-72 & 79-81 (accusing various Federal Case defendants of

"directly causing his loss" in congressional primary and of actions "directly resulting in Plaintiff's defeat"); PDEC Case Complaint (NOF Exhibit 4) ¶¶ 4-7 & 39-40 (alleging that articles in another newspaper "caused catastrophic damage to his campaign, his reputation, and his ability to raise campaign funds"); PDEC First Amended Complaint (NOF Exhibit 5) ¶¶ 51 & 67 (accusing "four mainstream media outlets" of "outright excluding Plaintiff from even being mentioned as a candidate," and blaming PDEC defendants for "the loss of his Congressional primary race"). Because Plaintiff blames so many other people for his election defeats, his attempt to impose liability on Defendants for his losses – including an election in which he received less than four percent of the vote[4] – is far too speculative to state a defamation claim.

The Debate Article

The first challenged article[5] concerned a Democratic Party-sponsored July 2024 debate that featured four Congressional candidates, but not Plaintiff. FAC ¶¶ 1, 12, 13, 43; 2AC ¶ 16. Plaintiff was not mentioned in that article, because he was not a debate participant. FAC ¶ 12. This article is not actionable, for three reasons.

First, the article did not contain a defamatory statement "of and concerning" Plaintiff. "Florida courts have long held that if a defamed person is not named in the defamatory

[4] *See* PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 20 ("Plaintiff lost the primary election, garnering only 3.93 percent of the vote, whereas Whitney Fox won with 57.94 percent of the vote."); 2AC ¶ 28 (Plaintiff "lost the mayoral election by a wide margin"); Gulfport Mayoral Election Results, Pinellas County Supervisor of Elections, https://enr.votepinellas.gov/FL/Pinellas/123235/web.345435/#/summary (Plaintiff finished third with 5.51 percent of vote). Defendants ask that the Court take judicial notice of the election results. *See* Fla. R. Civ. P. 90.202(11) & (12).

[5] Because the Second Amended Complaint includes a hyperlink to this article, the debate article is incorporated in Plaintiff's pleading by reference. *See Skupin v. Hemisphere Media Grp., Inc.*, 314 So. 3d 353, 356 (Fla. 3d DCA 2020) (trial court "did not deviate from the four corners of the complaint when considering defendant's motion to dismiss [defamation case] because all the broadcasts, either via hyperlink or attached transcripts, were attached to the complaint and thus incorporated"). For the Court's convenience, a copy is included with Cathy's separate Notice of Filing (NOF Exhibit 9).

publication, the communication as a whole must contain sufficient facts or references from which the injured person may be determined by the persons receiving the communication." *Mac Isaac v. Twitter, Inc.*, 557 F. Supp. 3d 1251, 1258 (S.D. Fla. 2021) (internal punctuation omitted). In addition, the alleged defamatory meaning of a libelous statement must be reasonable and not based upon a "stacking of inferences." *Trump v. Cable News Network, Inc.*, 684 F. Supp. 3d 1269, 1275 (S.D. Fla. 2023). The Second Amended Complaint does not meet these standards.

The debate article neither named Plaintiff nor stated any facts about him. Plaintiff was omitted entirely, because the article was about the debate participants, not him. Plaintiff argues that his supporters would infer from the article the implication that he was no longer a candidate (or never had been). 2AC ¶ 55. Similarly strained speculation was rejected in *Trump v. Cable News Network*, 684 F. Supp. 3d at 1275-76. In that case, the court rejected a claim that the phrase "the Big Lie" connected Donald Trump to Nazi propaganda advocating Jewish persecution and genocide. *Id.* The Court declined to "create an inference of defamatory meaning," *Id.* at 1276. The *Trump* court cited *Church of Scientology of California v. Cazares*, 638 F.2d 1272, 1288 (5th Cir. 1981), which rejected speculation that the phrase "helter-skelter" connected the Church of Scientology to Charles Manson. The former Fifth Circuit was "not prepared to build inference upon inference in order to find defamatory meaning in a statement." *Id.* This Court likewise should not "create an inference of defamatory meaning" from the theory that (1) Plaintiff's congressional campaign had supporters who (2) read *The Gabber* article about the debate (3) noted Plaintiff was not mentioned, (4) inferred from the omission that Plaintiff had dropped out or was never a candidate at all, and (5) never learned otherwise from Plaintiff or *The Gabber*'s other coverage of Plaintiff's candidacy. Because the alleged defamatory meaning of the debate article depends upon this stacking of inferences, Plaintiff has failed to satisfy the law's defamatory meaning and "of and concerning" requirements.

Second, the debate article is protected by the neutral report privilege. "Under Florida law, it is well settled that disinterested communications of matters of public concern are privileged, even if defamatory." *Barbuto v. Miami Herald Media Co.*, No. 21-CV-20608, 2022 WL 123906, at *6 (S.D. Fla. Jan. 13, 2022) (quoting *Corsi v. Newsmax Media, Inc.*, 519 F. Supp. 3d 1110, 1124 (S.D. Fla. 2021)). So, for example, a statement in a *Washington Post* article repeating another publication's report of a money-laundering investigation was not actionable. *Trump Media & Tech. Grp. Corp. v. WP Co. LLC*, 720 F. Supp. 3d 1203, 1212-13 (M.D. Fla. 2024). Because that statement was "newsworthy" and "touch[ed] on an area of public interest," that statement "fit squarely within the type of reporting to which the neutral reporting privilege has been applied." *Id.* at 1213. Similarly, in this case, Defendants are accused of being the editor and owners of a newspaper that published a neutral, disinterested report on a matter of public concern – namely, an upcoming primary debate. The article did not mention Plaintiff, but instead presented neutral profiles of the debate participants, tracking the Democratic Party's news release. The article, therefore, was privileged.

Third, the Debate Article was not materially false. As Plaintiff admits, he was "not invited to participate" in the debate. FAC ¶ 12. Shortly before the event, Plaintiff learned that a PDEC committee "wouldn't be recognizing him as a qualified candidate and would be denying him all access to party resources, promotion, speaking engagements, and participation in candidate forums and debates." *See* PDEC Case Complaint (NOF Exhibit 4) ¶ 17. As a result, Plaintiff was denied "speaking opportunities at Party events and candidate forums." *See* PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22. Accordingly, a Pinellas Democratic Party news release that was the basis for the article did not mention Plaintiff.[6]

[6] *See* "July 13th Congressional District 13 Democratic Candidate Primary Debate" (NOF Exhibit 10).

Despite Plaintiff's exclusion from the debate, Plaintiff contends that he should have been mentioned in the debate coverage. 2AC ¶¶ 16-17. Reviewing an allegedly defamatory publication, however, requires "examining not merely a particular phrase or sentence, but *all of the words used* in the publication." *Flynn*, 398 So. 3d at 1112 (emphasis added). A "publication must be considered in its totality." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 705 (Fla. 3d DCA 1999); *Byrd*, 433 So. 2d at 595. Courts must "consider the circumstances of its publication and the entire language used." *Cooper v. Miami Herald Publ'g Co.*, 31 So. 2d 382, 384 (Fla. 1947).

Plaintiff's objection is to an article that, read as a whole, was clearly about the debate, which Plaintiff admits did not include him. No law required *The Gabber* to mention Plaintiff in its debate article. The newspaper was entitled to focus on candidates who participated in the event. Nevertheless, as Plaintiff concedes, *The Gabber* acknowledged Plaintiff's candidacy in a subsequent publication and in advertising. *See* 2AC ¶¶ 18, 22 & 78. In any event, the Second Amended Complaint does not identify any materially false or defamatory statement about Plaintiff.

A "false statement of fact is the sine qua non for recovery in a defamation action." *Byrd*, 433 So. 2d at 595. The falsity element of a defamation claim is satisfied only "if the publication is *substantially and materially* false, not just if it is technically false." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 707 (Fla. 3d DCA 1999) (emphasis added). "As long as a report is substantially correct, it is not necessary that it be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting." *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021) (internal punctuation omitted). A "statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Smith v. Cuban Am. Nat. Found.*, 731 So. 2d at 706. In other words, a "statement is not considered false unless it

would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Smith v. Cuban Am. Nat. Found.*, 731 So. 2d at 706.

To evaluate whether a publication is substantially false, courts "eliminate the alleged falsities" and then assess how the "common mind would understand" the publication without them. *Hill v. Lakeland Ledger Publ'g Corp.*, 231 So. 2d 254, 256 (Fla. 2d DCA 1970). "A publication is not actionable unless the gist of the publication *with* the allegedly defamatory statement conveys a "significantly greater opprobrium" or sting than the publication *without* the alleged falsehood. *See Davis v. McKenzie*, No. 16-62499-CIV, 2017 WL 8809359, at *13 (S.D. Fla. Nov. 3, 2017), *report and recommendation adopted*, No. 16-62499-CIV, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018). If the alleged falsehoods are eliminated and an article "would not have produced a different effect," the article is not actionable. *McCormick v. Miami Herald Pub. Co.*, 139 So. 2d 197, 201 (Fla. 2d DCA 1962).

The July 2024 article referred to the debate participants as "the Democratic Candidates" and "[t]he four candidates." The falsity that Plaintiff alleges would be eliminated – and the article would be entirely truthful by Plaintiff's standards – if the article had referred to the "invited candidates" or the "recognized candidates," because according to Plaintiff Democratic Party officials "wouldn't be recognizing him as a qualified candidate" and denied him "participation in candidate forums alongside his four opponents."[7] Even with the additional words "invited" or "recognized," the gist of the article would be same – namely, that the debate would consist of the four invited, recognized candidates. The common mind would come away from the article with exactly the same meaning that Plaintiff alleges – namely, that the Democratic Party held a debate to which only four recognized candidates were invited. To be sure, Plaintiff wants more – he

[7] *See* PDEC Case Complaint (NOF Exhibit 4) ¶ 42; PDEC Case First Amended Complaint (NOF Exhibit 5) ¶ 22.

would have had the article mention him and his candidacy. But defamation law does not require that. Because adding the word "invited" or "recognized" would remove the falsity that Plaintiff alleges but the sting to Plaintiff would be the same, the article's reference to the four debate candidates is substantially true and does not support a defamation claim.

Plaintiff's reference to libel by implication (2AC ¶ 54) does not change this analysis. The Second Amended Complaint asserts that "omissions may constitute defamation when they convey a misleading impression," citing *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008). That legal proposition is no help to Plaintiff, because in *Rapp* the Florida Supreme Court recognized that "[a]ll of the protections of defamation law … extend[] to the tort of defamation by implication." *Rapp*, 997 So. 2d at 1108. Thus, the "of and concerning" requirements, neutral report privilege, and requirements of defamatory meaning and material falsity apply just as much to an alleged implication or omission as to a traditional defamation claim. The Debate Article, therefore, is not actionable.

The "Time in Courts" Article

The second challenged article[8] likewise is not actionable. Plaintiff challenges that article's statement that Plaintiff was suing in the PDEC Case "for alleged election fraud." The "central fact that precipitated the filing of that lawsuit," Plaintiff alleges, was an "unprovoked battery and assault," consisting of a hat being knocked off Plaintiff's head and verbal abuse. *See* PDEC Case Complaint (NOF Exhibit 4) ¶¶ 11, 24, 33. But a week after the "Time in Courts" article was published, Plaintiff referred to the PDEC Case and this one as his "Florida election fraud cases." *See* Motion for Leave to File Second Amended Complaint Federal Case DE 83 ¶ 7 (NOF Exhibit

[8] *See* "Gulfport Mayoral Candidate John Liccione's Time in Courts" (NOF Exhibit 11). This article is appropriately considered in connection with the Proposed Amended Complaint, because it is a document upon which this proposed claim is brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R. Civ. P. 1.130(a).

2). Because Plaintiff has referred to the PDEC case as concerning "election fraud," use of that same description in the February 2025 article was not false or actionable.

Moreover, although the Second Amended Complaint makes much of the assault and battery claims in the PDEC Case, their significance is undermined by Plaintiff's decision to abandon those claims. Judge Ramsberger found those claims lacked specific allegations of damages and required Plaintiff to add them. *See* Order Granting Defendants' Motions to Dismiss PDEC Case 1 (NOF Exhibit 6). Plaintiff did not do so, and consequently those claims were dismissed. *See* Order Dismissing Lawsuit PDEC Case (NOF Exhibit 8).

In light of these facts, the "Time in Courts" article is neither false nor defamatory. Plaintiff's opinion that other information ought to have been included in the article is not a basis for a defamation claim. *See Turner v. Wells*, 879 F.3d 1254, 1270 (11th Cir. 2018) (recognizing "Defendants' editorial discretion in what to publish in their Report."). Plaintiff seems to believe this article was unfair. "The First Amendment requires neither politeness nor fairness." *Pullum v. Johnson*, 647 So 2d 254, 258 (Fla. 1st DCA 1994).

The Second Amended Complaint also alleges that the "Time in Courts" article "was crafted in a way that embedded the word 'criminal' in close proximity to Plaintiff's name." 2AC ¶ 34. The word "criminal" was used because Judge Ramsberger ordered Plaintiff "to explain why the Court should not find the Plaintiff in direct criminal contempt." *See* Amended Order to Show Cause, PDEC Case (NOF Exhibit 7). "That is why [The Gabber] inserted the word 'criminal' into the story about Plaintiff's upcoming contempt hearing." 2AC ¶ 61. The use of the word "criminal," therefore, was not false and in fact was privileged. *See Carson v. News-Journal Corp.*, 790 So. 2d 1120, 1122 (Fla. 5th DCA 2001) (news reports were not actionable because they accurately summarized separable portions of public records), *appeal dismissed*, 805 So. 2d 805

(Fla. 2002). The use of the word "criminal" was an accurate description of a judicial record and, therefore, cannot be the basis for a defamation claim.

The "Cocktails" Article

The defamation claim also points to a humorous article[9] that "reimagined" all of the seven 2025 Gulfport mayoral and city council candidates as cocktails. This light-hearted, satirical piece invited readers who might be weary of traditional political activities to look at the candidates in a different way:

> [W]hat if we shook things up – literally – and reimagined the candidates running for Gulfport office as cocktails? From fiery libations to watered-down spritzers, each political persona has a flavor profile all its own. Because really, isn't every campaign just a mix of bold claims, bitter truths, and a splash of something sweet to make it go down easier? I don't know about you, but this election season in Gulfport makes me want to drink. Grab a shaker and swizzle stick – this is one round of politics you'll actually want to toast to.

See NOF Exhibit 12. From this obviously non-literal premise, the article then compares Plaintiff and six other candidates to various beverages, including a martini, Negroni, mojito and a "home brew." *Id.* The single paragraph that Plaintiff challenges referred to him as "a politician whose career is as colorful as their reputation" and asked the question, "Who else would have the audacity to run for City Mayor while concurrently suing local businesses?" The writer answered her own question: "Poor taste… Much like cheap, white sangria." *Id.*

Attempting to construct a cause of action from this work of imagination, Plaintiff complains that this article "derisively likened Plaintiff to a glass of 'cheap, white sangria.' " *See* 2AC ¶ 46. But the Second Amended Complaint does not identify any false statement of fact in this article. Comparing Plaintiff to "cheap, white sangria" was an expression of opinion or rhetorical hyperbole, neither of which is actionable.

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[9] *See* "Cocktails and Campaigns: Gulfport Candidates Recrafted as Cocktails" (NOF Exhibit 12). This article is appropriately considered in connection with the Proposed Amended Complaint, because it is a document upon which this proposed claim is brought and, therefore, "shall be incorporated in or attached to the pleading." *See* Fla. R. Civ. P. 1.130(a).

The First Amendment protects "statements that cannot reasonably be interpreted as stating actual facts." *Pullum v. Johnson*, 647 So. 2d 254, 256 (Fla. 1st DCA 1994). Such protection serves "to assure that public debate will not suffer for lack of 'imaginative expression' or the 'rhetorical hyperbole' which has traditionally added much to the discourse of our Nation." *Id.* at 256-57 (quoting *Milkovich v. Lorain Journal Co.,* 497 U.S. 1, 20 (1990)).

For example, in *Flynn v. Wilson*, 398 So. 3d at 1103, the Second District Court of Appeal found that referring to retired General Michael Flynn as a "Putin employee" was not actionable. *Id.* at 1106. That statement in isolation "may indeed appear to be making a factual claim about Flynn's economic relationship with [Russian President Vladimir] Putin," the court acknowledged. *Id.* at 1112. But Wilson's comment appeared in the context of "widely publicized news stories about Flynn's purported connections with Russia" and alongside a letter from General Flynn concerning Putin. *Id.* at 1113. Read in that context, the court concluded, a reasonable reader would *not* see the "Putin employee" comment as making "a literally true, factual claim about Flynn's employment status." *Id.*

The same is true here. No reader of the "Cocktails" article would find the reference to "cheap, white sangria" as "a literally true, factual claim" about Plaintiff. He is a human being, not an alcoholic beverage. The article uses loose, figurative language to express an opinion. "Because of the frequent use of ill-considered, name-calling attacks in American political debate, we expect people who engage in controversy to accept that kind of statement as their lot. We think the first amendment demands a hide that tough." *Pullum*, 647 So. 2d at 258 (cleaned up). The obviously metaphorical reference to Plaintiff in the Cocktails article is not actionable.

Other editorial criticisms also are without merit.

In addition to the challenges to these three articles mentioned above, the Second Amended Complaint objects to information that *The Gabber* allegedly did not publish in the manner Plaintiff

would like. For example, the Second Amended Complaint alleges that the newspaper conducted and "prominently displayed" an "informal online mayoral candidate survey" that showed Plaintiff with a 58 percent margin of victory. 2AC ¶ 39. After the survey ended, Plaintiff alleges, "The Gabber quietly moved the results to a rarely accessed archive of past surveys, and never reported on their own survey results, effectively concealing Liccione's early and commanding lead in the poll from the broader public." *Id.* ¶ 40. The "clear newsworthiness of the results," Plaintiff alleges, merited news coverage beyond that accorded other past surveys. *Id.*

This argument displays a remarkable ignorance of the First Amendment. In this country, political candidates do not dictate the content, manner and timing of news coverage. "The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials -- whether fair or unfair -- constitute the exercise of editorial control and judgment," which the First Amendment protects. *See Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) (rejecting political candidate's demand that newspaper publish his reply). "For better or worse, editing is what editors are for, and editing is selection and choice of material." *CBS v. Democratic Nat'l Committee*, 412 U.S. 94, 124 (1973). Politicians are not entitled "to interfere with editorial control and judgment as to the content (or layout) of news columns and the slant of editorials." *News & Sun-Sentinel Co. v. Bd. of County Comm'rs*, 693 F. Supp. 1066, 1072 (S.D. Fla. 1987). Thus, basic principles of free speech entitled Defendants to determine (if they chose to do so) that "the results of an informal online survey" did not merit continued news coverage. Plaintiff's attempt to sue over that exercise of editorial judgment is itself meritless.

III. Dismissal with prejudice is warranted.

The Second Amended Complaint is Plaintiff's *seventh* attempt to state a cause of action regarding his election losses. Plaintiff has peddled his conspiracy theories against these

Defendants long enough. Allowing this litigation to continue would inflict "precisely the harm that the Anti-SLAPP statute seeks to prevent – unnecessary litigation." *Gundel*, 264 So. 3d at 311. "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1), Fla. Stat. (2024). This case, therefore, should be dismissed with prejudice. To the extent that this motion is not granted, or to the extent the Court takes this matter under advisement, Defendants request a stay of this matter pending a ruling by this Court or on appeal. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, 406 So. 3d 937, 938 (Fla. 2025) (providing for interlocutory review by appeal of nonfinal orders that deny Anti-SLAPP motion); *Bank of America, N.A. v. De Morales*, 314 So. 3d 528, 530-31 (Fla. 3d DCA 2020) ("postponing discovery for a short period of time pending determination of material, outstanding motions is within the discretion of the trial court," but "[g]iven the purpose of the immunity asserted, the potentially dispositive nature of the motion, and the circumstances, the trial court abused its discretion in failing to stay discovery until it ruled on the bank's motion to dismiss").

Conclusion

The Second Amended Complaint's three counts each fail to state a cause of action and are without merit. The Anti-SLAPP law requires that Plaintiff pay Defendants' attorneys' fees.

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ James B. Lake
James B. Lake (FBN 23477)
601 South Boulevard
Tampa, FL 33606
Telephone: (813) 984-3060
Facsimile: (813) 984-3070
jlake@tlolawfirm.com
Secondary email: jkendricks@tlolawfirm.com

Counsel for Defendants Cathy Salustri Loper, Barry Loper and Thursday Morning Media, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on June 20, 2025, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ James B. Lake
Attorney

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI-LOPER, et al.,

Defendants.

PLAINTIFF'S EMERGENCY MOTION FOR CONTINUANCE

OF JUNE 26, 2025, HEARING

Plaintiff John William Liccione ("Plaintiff"), pro se, pursuant to Florida Rule of Civil Procedure 1.460, Florida Rule of Judicial Administration 2.545(e), and Sixth Judicial Circuit Administrative Order No. 2021-011 PA/PI-CIR, moves on an emergency basis for a continuance of the hearing scheduled for June 26, 2025, at 1:30 P.M. before the Honorable Patricia A. Muscarella, as set forth in Defendants' Notice of Hearing (Dkt. #137), which addresses the Motion to Dismiss the Second Amended Complaint ("2AC Motion," Filing #225713655) and the Motion to Dismiss the First Amended Complaint ("FAC Motion," Dkt. No. 41). Plaintiff requests the hearing be continued to the week of July 7, 2025, or as soon as possible thereafter, due to surprise caused by Defendants' failure to confer on the expanded scope and length of the hearing to include the FAC Motion, in violation of Florida Rule of Civil Procedure 1.202, Florida Rule of Judicial Administration 2.545(e), Administrative Order 2021-011, and Judge Muscarella's Judicial Practice Preferences (effective May 27, 2025). This surprise, combined with the high probability of a scheduling conflict/overlap with another case hearing, prejudices Plaintiff and could warrant relief from any adverse final order under Florida Rule of Civil Procedure 1.540(b)(1). The

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emergent nature of this motion arises from the imminent hearing date, Defendants' bad-faith sandbagging of a pro se litigant, Plaintiff's concurrent hearing obligations, and the Response to the 2AC Motion due today, June 24, 2025. In support, Plaintiff states:

I. BACKGROUND

1. On September 5, 2024, Plaintiff filed the First Amended Complaint (FAC) against Defendants Julie Marcus, Jennifer Griffith (transferred), Whitney Fox, Mark Weinkrantz, Cathy Salustri-Loper, Patrick Heinzen, and other unknown co-conspirators (all defendants except Cathy Salustri-Loper were ultimately removed), alleging violation of Florida Statute § 104.041 (election fraud), conspiracy to commit election fraud, violation of 52 U.S.C. § 20511 (federal election fraud), civil rights violations under 42 U.S.C. § 1983, Computer Fraud and Abuse Act violation under 18 U.S.C. § 1030, intentional interference with prospective economic advantage, voter intimidation and suppression, request for injunctive relief, and violation of Florida's Public Records Sunshine Law, all arising from a malicious campaign to suppress Plaintiff's 2024 Congressional candidacy (FAC ¶¶ 1-75) and commit election fraud and other election-related violations. The FAC amended the original complaint solely to correct the misspelling of Cathy Salustri-Loper's last name (from "Lopes" to "Loper").

2. On April 12, 2025, Plaintiff filed a Motion for Leave to File a Second Amended Complaint (2AC) with a Proposed 2nd Amended Complaint attached as Exhibit A (Dkt. #125), which was granted by Order of the Court at the June 10, 2025 hearing. At that hearing, the Honorable Judge Patricia Muscarella stated that a half-hour-long Zoom hearing starting at 1:30 P.M. on June 26, 2025 was ordered to address the anticipated motion to dismiss the Second Amended Complaint. The Judge gave Defendants 10 days (6/20/25) to file their 2AC Motion to Dismiss, but gave Plaintiff only 4 days to file his Response (6/24/25).

3. The 2AC superseded the First Amended Complaint (FAC), rendering the FAC arguable moot as to dismissal and fees, as the 2AC adds counts (Defamation and Defamation by Omission, updated Tortious Interference, Conspiracy (with new co-conspirators), drops counts, and added two new defendants.

4. Defendants filed their FAC Motion (Dkt. No. 41) to Dismiss the First Amended Complaint and seek attorneys' fees under Florida's Anti-SLAPP statute (§ 768.295, Fla. Stat.). The 2AC Motion to Dismiss targets the operative 2AC and includes the same Anti-SLAPP grounds for dismissal and attorney's fees demand.

5. Without further conferral with Plaintiff, on June 11, 2025, Mr. Lake filed a Notice of Hearing (Dkt. #137), scheduling a ***one-hour*** Zoom hearing on June 26, 2025, 1:30-2:30PM to address *both the FAC Motion and the 2AC Motion*. The Notice states the hearing will cover "Motion to Dismiss First Amended Complaint and For Attorneys' Fees (Dkt. No. 41) (Supporting Memorandum of Law at Dkt. No. 132)" and "Motion to Dismiss Second Amended Complaint (to be filed on or before June 20, 2025)."

6. Plaintiff's Response to the 2AC Motion is now due today, June 24, 2025, and Plaintiff's preparation of his Response has been unfairly prejudiced against for the reasons stated herein.

Plaintiff's Good Faith Conferral Efforts

7. On June 23, 2025, Plaintiff emailed Defendants' counsel, James B. Lake, objecting to the inclusion of the FAC Motion and the one-hour hearing length, noting a high probability of a scheduling conflict with his in-person hearing at 3:00 P.M. before Judge Rebecca Hamilton in Liccione v. Pascale Places, LLC, Case No. 25-001624-CI, and requesting a consent on

continuance. Mr. Lake refused, claiming the Notice was consistent with Judge Muscarella's instructions (it was not to Plaintiff's recollection) and that Plaintiff's objection was untimely (**Exhibit A**, Email Exchange, June 23-24, 2025).

8. Plaintiff did not receive final JAWS email confirmation of the hearing's scope and length until June 18, 2025, the ramifications of which he did not fully comprehend until yesterday, June 23rd, leaving insufficient time to address the procedural violations (**Exhibit B**, JAWS Hearing Confirmation Email, June 18, 2025).

9. Plaintiff attempted to mitigate the potential scheduling conflict this morning by contacting opposing counsel in *Liccione v. Pascale Places, LLC* - Alexander Lewis - to consent to continuance of the 3PM hearing, but he also refused.

II. LEGAL ARGUMENT

A. Emergency Nature of the Motion

10. The emergent nature of this motion arises from the imminent June 26, 2025, hearing, the prejudice caused by Defendants' failure to confer, and Plaintiff's inability to prepare for a hearing on a moot FAC Motion while facing a 3:00 P.M. hearing in Liccione v. Pascale Places, LLC, Case No. 25-001624-CI, and the Response to the 2AC Motion to Dismiss, being due today, June 24, 2025. The late JAWS confirmation (June 18, 2025) and Defendants' refusal to reschedule exacerbate the prejudice to Plaintiff, a pro se litigant.

B. The Element of Surprise Due to Defendants' Failure to Seek Conferral

11. Defendant Counsel Lake's failure to confer on the expanded hearing scope and length constitutes surprise, which prejudices Plaintiff and could warrant relief from any adverse

final order under Florida Rule of Civil Procedure 1.540(b)(1). Surprise under Rule 1.540(b)(1) arises from unexpected procedural irregularities that prevent a party from presenting their case. *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998). Here, the unilateral and non-consented inclusion of the FAC Motion and the extension to a one-hour hearing, contrary to Judge Muscarella's instruction for a half-hour hearing on the 2AC Motion only, blindsided Plaintiff, causing a scheduling conflict risk, producing Plaintiff and hindering preparation.

12. **Florida Rule of Civil Procedure 1.202**: Rule 1.202(a) requires the movant to confer in good faith before filing most motions, including motions to dismiss, to resolve issues. Rule 1.202(b) mandates a certificate of conferral. Defendants' failure to confer on including the FAC Motion in the hearing violates Rule 1.202.

13. **Florida Rule of Judicial Administration 2.545(e)**: This rule mandates that parties confer in good faith before scheduling hearings to resolve issues and determine necessary time. Defendants violated Rule 2.545(e) by unilaterally scheduling a *one-hour* hearing on *both* motions without discussing it first with Plaintiff …knowing that Plaintiff had his in-person motions hearing at 3PM in his other case – deprives Plaintiff of the critical half-hour he thought he had been originally afforded between the two hearings.

14. **Sixth Judicial Circuit AO 2021-011**: Administrative Order 2021-011 requires parties to confer on the scope, time, and issues of hearings before scheduling via JAWS. Plaintiff is pro se thus has no JAWS access. Defendants' failure to confer on the inclusion of the FAC Motion and the one-hour increase in hearing length violates this AO, as confirmed by the June 18th JAWS final hearing confirmation (**Exhibit B**), which shows a one-hour Zoom hearing and two motions.

15. **Judge Muscarella's Judicial Practice Preferences** (effective May 27, 2025):

    a. **JAWS Scheduling (Page 4)**: Hearings must be scheduled via JAWS, and the moving party must not file a Notice of Hearing until receiving JAWS confirmation. Defendants scheduled a one-hour hearing without conferring, violating the preference that all counsel/parties be associated in JAWS to ensure notification (Page 4). Failure to comply "***can result in cancellation of your hearing***." (emphasis added)

    b. **Standards of Professional Courtesy (Page 5, 7)**: Per AO 2015-052, parties must provide opposing counsel an opportunity to agree or object to procedural actions. Defendants' unilateral action denied Plaintiff this opportunity, violating professional courtesy standards.

16. The surprise is compounded by Plaintiff's pro se status, lack of access to JAWS, the delayed JAWS confirmation (June 18, 2025), and the scheduling conflict with a 3:00 P.M. hearing on June 26th in Liccione v. Pascale Places, LLC. This prejudice, coupled with the foreshortened 4-day deadline on Response to the 2AC Motion to Dismiss, could justify vacating any order granting the 2AC or FAC Motion and attorney fees under Rule 1.540(b)(1) if Plaintiff is unable to meet todays filing deadline, attend or prepare. *Fleming v. Fleming*, 710 So. 2d 601, 603 (Fla. 4th DCA 1998).

C. Motion to Dismiss FAC Arguably is Moot, Redundant, or Both: Wasting Judicial Resources

17. The FAC Motion is moot and or is superseded as to dismissal because the 2AC, filed on April 12, 2025, supersedes the FAC, rendering motions directed at the FAC irrelevant or at a minimum, redundant. Including a moot motion wastes judicial resources and burdens

Plaintiff, who must prepare for an obsolete issue under 4-day time constraints exacerbated by the scheduling conflict and today's Response deadline.

18. Defendants can seek Anti-SLAPP attorneys' fees for both the FAC and 2AC if they prevail, as § 768.295(4), Fla. Stat., allows fee recovery for defending against any complaint violating the Anti-SLAPP statute. Judge Muscarella confirmed Defendants' right to re-plead their Anti-SLAPP defenses and fee demands in the 2AC Motion. Thus, including the FAC Motion is redundant, serves no legitimate purpose, and constitutes bad-faith sandbagging of a pro se litigant.

D. Good Cause for Continuance Under Rule 1.460

19. Florida Rule of Civil Procedure 1.460 permits a continuance for good cause to prevent prejudice and ensure fairness. *Fleming v. Fleming,* 710 So. 2d 601, 603 (Fla. 4th DCA 1998).

20. In Fleming, the Fourth District Court of Appeal emphasized that a motion for continuance is addressed to the sound discretion of the trial court and will not be reversed absent an abuse of that discretion. The court outlined specific factors to consider when determining whether such an abuse has occurred:

    a. Injustice to the Movant: Whether the denial of the continuance creates an injustice for the party requesting it.

    b. Unforeseeability and Dilatory Practices: Whether the cause for the continuance was unforeseeable by the movant and not the result of dilatory practices.

    c. Prejudice to the Opposing Party: Whether the opposing party would suffer any prejudice or inconvenience as a result of the continuance.

21. In the Fleming case, the appellate court found that the trial court's denial of the continuance did, in fact, cause an injustice to the movant under the unique circumstances presented. Specifically, the former wife's attorney withdrew close to the trial date, and she was left unrepresented, which hindered her ability to present her case adequately. The court concluded that the denial of the continuance was an abuse of discretion and reversed the trial court's decision.

22. Although the facts are different here, good cause exists due to:

    a. **Surprise**: Defendants' failure to confer on the expanded scope and one-hour length, violating Rule 1.202, Rule 2.545(e), AO 2021-011, and Muscarella's preferences, blindsided Plaintiff, a pro se litigant.

    b. **Prejudice**: The scheduling conflict with a 3:00 P.M. hearing in *Liccione v. Pascale Places, LLC*, combined with what is arguably an unusually short (4-day) Response deadline which is today, June 24, 2025, prevent Plaintiff from preparing adequately his Response, and preparing for the expanded hearing on a superseded/moot and otherwise redundant Motion to Dismiss FAC.

    c. **Bad Faith**: Defendants' refusal to reschedule after Plaintiff's good-faith conferral attempt (Exhibit A) and their failure to originally confer on hearing scope and duration exploit Plaintiff's pro se status, confirms bad faith and in a paradoxical way, undermines the Anti-SLAPP statute's goal of expeditious resolution (§ 768.295(1), Fla. Stat.).

    d. **Restoration of fairness:** A continuance to the week of July 7, 2025 restores due process, fairness, and aligns with Judge Muscarella's UMC calendar (e.g., July 8, 2025, at 2:00 or 3:00 P.M., Preferences, Page 1) and ensures compliance with Rule 2.545(e), AO 2021-

011, and Muscarella's practice preferences. Plaintiff is unavailable July 1-4, 2025, due to an out-of-state hearing in Maryland but is available any time during the week of July 7, 2025, and thereafter in July.

e. **No Prejudice to Defendants:** A two-week continuance will in no way prejudice Defendants, as the 2AC Motion can be fully addressed at a rescheduled hearing, no rights or defenses are waived, and Anti-SLAPP fee claims for both complaints remain viable. A continuance promotes judicial efficiency and fairness by focusing on the operative 2AC Motion, avoiding redundant arguments on a superseded/redundant FAC Motion.

III. CONCLUSION

23. Defendants' failure to confer on the expanded hearing scope and length violates Florida Rule of Civil Procedure 1.202, Florida Rule of Judicial Administration 2.545(e), Sixth Judicial Circuit Administrative Order 2021-011, and Judge Muscarella's Judicial Practice Preferences. This failure caused surprise, prejudicing Plaintiff by creating a significant probability of a scheduling conflict/overlap with a 3:00 P.M. hearing on June 26, 2025, in Liccione v. Pascale Places, LLC, and hindering preparation amidst the Response deadline today, June 24, 2025. The surprise could warrant appellate relief from any adverse final order under Rule 1.540(b)(1). The FAC Motion is superseded or moot, redundant, wasting judicial resources and constituting bad-faith sandbagging of a pro se litigant. Plaintiff respectfully requests that the Court continue the June 26, 2025, hearing to the week of July 7, 2025, or as soon as possible thereafter, preferably on July 8, 2025, at 2:00 or 3:00 P.M., and grant such other relief as the Court deems just and proper, including a case management conference to clarify the hearing's scope.

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATION OF COMPLIANCE WITH MEET AND CONFER REQUIREMENT

Pursuant to Florida Rule of Judicial Administration 2.545(e) and Administrative Order No. 2021-011 PA/PI-CIR, Plaintiff certifies that he attempted to confer with Defendants' counsel, James B. Lake, via email on June 23, 2025, regarding the inclusion of the FAC Motion in the June 26, 2025, hearing and requested a continuance, but Defendants refused.

/s/ John W. Liccione

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com), on June 24, 2025.

/s/ John W. Liccione

Exhibits:

Exhibit A: Email Exchange between John Liccione and James B. Lake, June 23-24, 2025

Exhibit B: JAWS Hearing Confirmation Email, June 18, 2025

EXHIBIT A

Defendant Counsel Lake's Refusal to Join in Motion for Continuance - Email Exchange with John Liccione

Gmail John Liccione <jliccione@gmail.com>

Re: June 26th Hearing Scope/Logistical Issues

2 messages

John Liccione <jliccione@gmail.com> Tue, Jun 24, 2025 at 8:52 AM
To: "James B. Lake" <jlake@tlolawfirm.com>

Mr. Lake,

The 1-hour hearing on both motions was not confirmed via Jaws notice to me until 6/18. (See attached notice email). You slipped one past me without a notice or consent by unilaterally changing what was discussed at the hearing to be a 30-minute zoom hearing on one motion to 1-hour, and by slipping in your 1st Motion to Dismiss and Request for Attorney Fees into the hearing. Judge Muscarella was clear that nothing barred you from repleading defenses your 2nd MTD that which you pleaded in your 1st MTD, including your anti-slapp arguments. This was not discussed at the 6/10 hearing, or since. Now you've refused to agree to reschedule after having gotten away with it. You created this prejudicial situation. This represents bad faith as you've just sandbagged a pro se litigant, gained advantage, and now I have to deal with this openly and expose it to the Judge on the day my Response is due.

I'll give you one last chance to self-mitigate the prejudice you've caused. If you won't consent to join in a continuance motion (you can prepare it since I've got to finish my Response today), then I'll file unilatterly for continuance and/or to exclude your 1st MTD from the hearing.

Please respond by 11:00AM today. If I don't hear back by then, I'll engage with the JA and file an emergency motion for ocntinuance on the above grounds.

Regards,

John Liccione

On Mon, Jun 23, 2025 at 3:43 PM James B. Lake <jlake@tlolawfirm.com> wrote:

> Mr. Liccione:
>
> We are not agreeing to postpone the hearing. The notice is consistent with Judge Muscarella's instructions, both at the hearing and in her Nov. 20 Order. Moreover, the hearing time was selected and agreed upon with your 3 p.m. hearing in mind.
>
> The notice was sent June 11 – nearly two weeks ago. Any objection to the notice at this late date is untimely.
>
> Both motions are noticed because both the First Amended Complaint and Second Amended Complaint violate the Anti-SLAPP law, which provides for a hearing on such motions at the earliest possible time.
>
> You can participate via Zoom at a location closer to your 3 p.m. hearing than Gulfport.
>
> **Jim Lake**
> **jlake@tlolawfirm.com**

Thomas & LoCicero PL
813.984.3063

From: John Liccione <jliccione@gmail.com>
Sent: Monday, June 23, 2025 9:31 AM
To: James B. Lake <jlake@tlolawfirm.com>
Subject: June 26th Hearing Scope/Logistical Issues

Mr. Lake,

Upon closer look at the June 26th hearing notice, I see first that this is to be a full-hour zoom hearing from 1:30-2:30PM, which is highly problematic for me since, as I made you and Judge Muscarella aware, I have an in-person hearing before Judge Rebecca Hamilton in the Clearwater Courthouse at 3PM on Thursday. (Liccione-v-Pascale Places, LLC: 25-001624-CI)

Second, our hearing was supposed to be hearing on your anticipated motion to dismiss 2nd amended complaint. And yet, I see you also added your motion to dismiss 1st amended complaint and reqeuest for attorney fees. This appears to run counter to the statements made at our last hearing by Judge Muscarella. She indicated your right to re-plead your original arguments from your first MTD within your 2nd MTD, including your anti-slapp grounds, were preserved. So, I don't understand why you've re-introduced the original motion explicitly like you have. Perhaps you could explain.

Since this hearing is via zoom, I would be participating from my home in Gulfport. Assuming this hearing were to NOT to runover past 2:30PM - that would give me only 30 minutes to drive up to the Clearwater Courhouse in traffic, park, get through security. This is not possible.

Given the above, I'd like to ask if you will consent to rescheduling this hearing for another time and if yes, please suggest dates. I am unavailable July 1st-4th. Otherwise, the rest of July is open at the moment.

Regards,

John Liccione

Disclaimer

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Gmail - Scheduled_ 24-003939-CI 6_26_2025 1_30 PM 1 HOUR HEARING appointment_Confirmed.pdf
218K

John Liccione <jliccione@gmail.com> Tue, Jun 24, 2025 at 9:03 AM

Draft To: jawsadmin@jud6.org
Cc: "James B. Lake" <jlake@tlolawfirm.com>

Ms. Torres,

Please see the below email exchange between myself and opposing counsel James Lake pertaining to today's secheduled hearing.

Mr. Lake failed to confer with me on changing this hearing to a 1-hour hearing and adding a 2nd Motion to the hearing: His original Motion to Dismiss and request for Attorney's fees.
I did not receive final JAWS confirmation notice of the hearing until 6/18 and I realized that he had unilaterally made these two alterations without my knowledge or consent. I have requested him to join in moving to continue this hearing on these grounds and he has refused.

As such, I'm filing an emergency motion for continuance of this hearing until the week of July 7th because this has caused prejudice by failure to confer on a modified hearing scope and length. My Response to his 2nd Motion to Dismiss is due today by order of Judge Muscarella (at the 6/10 hearing), and this situation is prejudicing my ability to complete the legal research and drafting necessary to meet today's Response deadline.

Regards,

John Liccione

[Quoted text hidden]

EXHIBIT B

JAWS Final 6/26/26 Hearing Notice Confirmation Email

June 18, 2025

Gmail John Liccione <jliccione@gmail.com>

Scheduled: 24-003939-CI 6/26/2025 1:30 PM 1 HOUR HEARING appointment

jawsadmin@jud6.org <jawsadmin@jud6.org> Wed, Jun 18, 2025 at 11:13 AM
To: gthurlow@rahdertlaw.com, LTORRES@jud6.org, jlake@tlolawfirm.com, kkreider@pinellas.gov, akeefe@pinellas.gov, JLICCIONE@gmail.com, banoe@pinellas.gov, john@voteliccione.org, eservice@pinellas.gov, info@mcguirelawoffices.com, rbarack@employeerights.com, section7@jud6.org

Please contact your attorney or the Judge's office for any additional information regarding Zoom or phone conference information. Judge's contact page.

https://www.jud6.org/ContactInformation/JudgesPhoneNumbers.html

Your Judicial Automated Workflow System 1 HOUR HEARING has been Scheduled for 24-003939-CI

This is an automated email. Do not reply to this email.

Welcome to the 6th Judicial Circuit Courts. Your requested 1 HOUR HEARING has been confirmed.

Should you require technical assistance at any time during this process or if you want to offer feedback regarding your experience with JAWS, please contact the Pinellas County Business Technology Services Operations Center at 727.453.4357 or via email at supportctr@pinellascounty.org. Thank you.

Confirmation Number	**12J-3496062819**

Case Information

Case Number	24-003939-CI
Case Title	JOHN WILLIAM LICCIONE Vs. CATHY SALUSTRI LOPER, et al
Case Description	OTHER CIVIL - CIRCUIT
Event Status	***Scheduled***
With	Section 7, MUSCARELLA, PATRICIA ANN
On	6/26/2025 1:30 PM
Location	423
Event Description	Motion to Dismiss First Amended Complaint and For Attorneys' Fees and Motion to Dismiss Second Amended Complaint

Associated Parties

Name	George Thurlow
Associated with	Defendant/Respondent
Phone	7278234191
Email	gthurlow@rahdertlaw.com

To Login: **https://jawspinellas.jud6.org/jaws_attorney**

Scheduled by:

Name Lidia Torres

CONFIDENTIALITY: The information in this transaction may be confidential, and is intended for the use of the individual or entity named above. Dissemination, distribution or copying of this communication by anyone other than the intended recipient is strictly prohibited. If you have received this transaction in error, please notify us immediately by phone at 727.453.4357 or via email at supportctr@pinellascounty.org and return the original message to us at the above address via the United States Mail at Administrative Office of the Courts 324 South Ft. Harrison Ave. - Room 102 Clearwater FL 33756.

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

JOHN WILLIAM LICCIONE,

Plaintiff

CASE NO: 24-003939-CI

v.

CATHY SALUSTRI LOPER, et al

Defendant(s).
_____/

ORDER GRANTING PLAINTIFF'S EMERGENCY MOTION FOR CONTINUANCE OF JUNE 26, 2025 HEARING

THIS CAUSE came before the Court upon the Plaintiff's motion, entitled Plaintiff's Emergency Motion for Continuance of June 26, 2025 Hearing, as filed on June 24, 2025, in the above-styled case. Having reviewed the record, the applicable law, and being otherwise fully advised in the premises it is therefore;

IT IS ORDERED AND ADJUDGED:

1. Plaintiffs Emergency Motion is hereby **Granted**.
2. The Court has available July 8, 2025 at 3:30pm or July 10, 2025 at 3:00pm.
3. Parties are to discuss and agree on a date and time.

DONE AND ORDERED in Chambers, Clearwater, Pinellas County, Florida this ____ day of _____, 2025.

24-003939-CI 6/24/2025 4:06:17 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 6/24/2025 4:06:17 PM
CIRCUIT COURT JUDGE

Copies furnished to:
JOHN WILLIAM LICCIONE
Jliccione@gmail.com

JAMES B LAKE, ESQ
Jlake@tlolawfirm.com

ELECTRONICALLY FILED 6/24/2025 4:06:18 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI LOPER, *et al.*,

Defendants.
_____/

DEFENDANTS' NOTICE OF SUPPLEMENTAL AUTHORITY IN SUPPORT OF MOTION TO DISMISS SECOND AMENDED COMPLAINT AND REQUEST FOR JUDICIAL NOTICE

Defendants file the attached supplemental authority in support of their Motion to Dismiss the Second Amended Complaint.

In the attached order in *Liccione v. VR Systems Inc. et al.*, Case No. 25-cv-01028 (APM) (D.D.C. April 9, 2025), a federal court in Washington, D.C., noted Plaintiff's argument that proceedings before Judge Ramsberger "could result in up to six months of incarceration for alleged acts of criminal contempt." A copy of Plaintiff's motion to the federal court also is attached, in which Plaintiff told the federal court that he faced "imprisonment for criminal contempt." *See* Motion page 3 ¶ 7.

As these court records show, the phrase "criminal contempt" in the "Time in Courts" article was not false and, in fact, was privileged.

Defendants ask that the Court take judicial notice of these court records. *See* Fla. R. Civ. P. 90.202(6).

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ James B. Lake
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jlake@tlolawfirm.com
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Counsel for Defendants Cathy Salustri Loper, Barry Loper and Thursday Morning Media, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 2025, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ James B. Lake
Attorney

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN WILLIAM LICCIONE,	)	
	)	
Plaintiff,	)	
	)	
v.	)	**Case No. 25-cv-01028 (APM)**
	)	
VR SYSTEMS INC., et al.,	)	
	)	
Defendants.	)	
	)	

ORDER

Before this court is Plaintiff's Emergency Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 2. Plaintiff seeks to halt a Show Cause hearing scheduled for April 10, 2025, before Judge Thomas Ramsberger of Florida's Sixth Judicial Circuit Court, which he fears could result in up to six months of incarceration for alleged acts of criminal contempt. Plaintiff claims that the Florida proceedings are in retaliation for protected whistleblower activity and are unconstitutional because the trial judge has refused to recuse himself based on various alleged conflicts of interest. Florida appellate courts, including the Florida Supreme Court, have rejected Plaintiff's effort to dislodge Judge Ramsberger from the case.

A temporary restraining order and a preliminary injunction are "extraordinary remed[ies] that should be granted only when the party seeking the relief, by a clear showing, carries the burden of persuasion." *Cobell v. Norton*, 391 F.3d 251, 258 (D.C. Cir. 2004). In both cases, a moving party must demonstrate that (1) she is "likely to succeed on the merits"; (2) she is "likely to suffer irreparable harm in the absence of preliminary relief"; (3) "the balance of equities tips in [her]

favor"; and (4) "an injunction is in the public interest." *Winter v. Nat. Res. Def. Council, Inc.*, 555 U.S. 7, 20 (2008) (citations omitted); *see also McCray v. Biden*, 574 F. Supp. 3d 1, 7 (D.D.C. 2021) (noting that temporary restraining orders are "analyzed using factors applicable to preliminary injunctive relief" (internal quotation marks omitted)).

Federal courts lack the power to "enjoin a pending state criminal proceeding except in the very unusual situation that an injunction is necessary to prevent great and immediate irreparable injury." *Ohio C.R. Comm'n v. Dayton Christian Sch., Inc.*, 477 U.S. 619, 626 (1986). The typical injuries faced by a criminal defendant in a prosecution brought lawfully and in good faith are not the kind of irreparable injury that entitles a person to equitable relief. *See Younger v. Harris*, 401 U.S. 37, 49 (1971). Here, Plaintiff has not established facts that would make his case the "unusual situation" where a federal court may intercede in an ongoing state criminal proceeding.

Accordingly, Plaintiff's Ex Parte Motion for Temporary Restraining Order and Preliminary Injunction, ECF No. 2, is denied.

Dated: April 9, 2025

Amit P. Mehta
United States District Court Judge

IN THE UNITED STATES DISTRICT COURT FOR

THE DISTRICT OF COLUMBIA

THE UNITED STATES OF AMERICA, ex
JOHN WILLIAM LICCIONE
Plaintiff/Relator

v.

VR SYSTEMS,
Defendant

Case: 1:25-cv-01028 JURY DEMAND
Assigned To : Mehta, Amit P.
Assign. Date : 4/7/2025
Description: TRO/Prel. Inj. (D-DECK)

Related Case Nos.
8:24-cv-02005-SDM-NHA
24-002994-CI-19 (FL 6th Ckt)
SC2025-0242 (FL Supreme Ct)
2D2025-0297 (FL 2nd DCA)

/

EMERGENCY EX PARTE MOTION FOR TEMPORARY RESTRAINING ORDER AND PRELIMINARY INJUNCTION

TO HALT RETALIATORY FLORIDA STATE COURT PROCEEDINGS AGAINST RELATOR JOHN LICCIONE

COMES NOW, Relator/Plaintiff John William Liccione, pro se, and pursuant to Federal Rule of Civil Procedure 65 and the federal False Claims Act's anti-retaliation provisions (31 U.S.C. § 3730(h)), respectfully moves this Court for an Ex Parte Restraining Order and Injunction against Hon. Judge Thomas Ramsberger, to halt the scheduled April 10, 2025 'Show Cause' hearing in Case No. 24-002994-CI-19 in Sixth Judicial Circuit Court of Florida and the Florida state court system at large. Plaintiff further requests an emergency ex parte hearing to address this motion as soon as possible, preferably within the next 24 hours, in

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Courts for the District of Columbia

light of the urgency of filing the qui tam case in this Court and the immediate need for relief in the form of federal whistleblower protection.

Relator is threatened with up to 6 months imprisonment for what was normal, non-contemptable speech during oral argument made during a telephonic hearing, and in retaliation for his whistleblower conduct and his lawful exercise of First Amendment rights in pursuing his qui tam case and its precursor election fraud cases in Florida's 6th Circuit Court. This threat is based on false pretenses that are intended to silence and intimidate him, thus obstructing the due process of his ongoing state and federal legal proceedings. Additionally, the threat of bodily seizure under the guise of contempt proceedings represents a direct attempt to deprive him of his very freedom, in violation of his Fourth Amendment protections against unreasonable search and seizure.

Relator further states as follows:

I. INTRODUCTION

1. Relator is a former Democratic candidate for Congress in Florida's 13th District. He is the named relator in a federal qui tam action brought under the False Claims Act and Civil RICO Act against VR Systems, Florida Governor Ron DeSantis, Florida Secretary of State Cord Byrd, Andrew Darlington (Florida Chief of Election Crimes and Security), the Republican Party of Florida, Florida Supervisors of Elections (FSE) Inc., Pinellas County Supervisor of Elections Julie

Marcus, Palm Beach County Supervisor of Elections Wendy Link, and their enabling legal teams led by Benjamin Gibson, William Stafford, and others.

2. This motion is filed ex parte to prevent irreparable harm and to preserve the confidentiality of the qui tam complaint, which is required to remain under seal for at least 60 days under 31 U.S.C. § 3730(b)(2).

I. STATEMENT OF FACTS

3. In March 2025, Relator uncovered direct conflicts of interest involving Judge Thomas Ramsberger, whose father, retired Judge Peter Ramsberger, and wife, Angela Ramsberger, are directly connected to the underlying election fraud allegations, referred to herein as the VR Systems 'No-No Ballot Bug.' Relator filed multiple motions to disqualify Judge Ramsberger, supported by sworn evidence and voter-by-mail (VBM) records, yet he has faced continuous retaliation from the state court system.

4. Judge Ramsberger ordered a show cause hearing after threatening Plaintiff with up to 6 months imprisonment for criminal contempt – on what were false pretenses, as is shown in the hearing transcript. The hearing is scheduled for April 10, 2025.

5. Relator first filed a petition for writ of prohibition to the Second DCA (Case No. 2D2025-0297), which was denied. He then appealed the denial of the writ of prohibition to the Florida Supreme Court (Case No. SC2025-0242). The Florida

Supreme Court denied the appeal and remanded the matter back to Judge Ramsberger for a decision. However, Judge Ramsberger denied his own writ of prohibition, citing lack of jurisdiction. Despite this, Judge Ramsberger has denied all motions for disqualification and continues to maintain the show cause hearing scheduled for April 10, 2025.

6. Relator is also the plaintiff in the precursor to the qui tam action, the federal election fraud case currently pending in this Court: Liccione v. DeSantis, et al., 8:24-cv-02005-SDM-NHA. This case involves similar but distinctly different fraud allegations against VR Systems and state and county officials.

7. Relator is now facing the potential for up to 6 months of imprisonment for criminal contempt at the upcoming show cause hearing in Case No. 24-002994-CI-19. This retaliation is designed to obstruct Relator's federal qui tam case, violate his rights under the False Claims Act, and deter whistleblowing on election fraud.

8. These actions represent a direct retaliation against Relator's whistleblower activities, aimed at obstructing federal proceedings and violating Relator's rights under the False Claims Act and constitutional protections.

II. GROUNDS FOR EMERGENCY RELIEF

A. Imminent Irreparable Harm

9. Relator is facing the risk of arrest at and wrongful pro-longed imprisonment at unlawful contempt proceedings at a state court hearing in Saint Petersburg on

April 10, 2025, where Judge Ramsberger's personal and familial conflicts undermine the fairness of the legal process. This retaliation stems from Relator's protected whistleblower conduct, which must be immediately halted to prevent irreparable harm to his legal and civil rights. The continued legal proceedings are a direct effort to obstruct Relator's ongoing federal qui tam case and violate his constitutional rights under the First, Fourth, and Fourteenth Amendments.

B. Protected Conduct

10. Relator's actions—including filing motions to disqualify Judge Ramsberger based on conflicts of interest and disclosing publicly available election data—are fully protected under 31 U.S.C. § 3730(h) and the First Amendment. Retaliation for these actions violates federal whistleblower protection laws. Additionally, Judge Ramsberger's conflicts of interest in the No-No Ballot Bug fraud involve himself, his wife, Angela Ramsberger, and his father, 6th Circuit Court Judge Peter Ramsberger, are all victims of the No-No Ballot election fraud, which now forms the basis of this qui tam case as well as Relator's precursor Florida state cases. These conflicts of interest create a mandatory disqualification under Florida law, further necessitating federal intervention to prevent further harm to Relator's constitutional rights and the integrity of the federal proceedings.

C. Federal Interest

11. The United States and the DOJ have a compelling interest in protecting whistleblowers and preserving the integrity of federal proceedings. State court interference and retaliation directly undermine this process and must be prevented to avoid further harm to the federal qui tam case. Further, **Executive Order 14248,** signed by President Trump, affirms the federal government's responsibility to maintain the integrity of elections, including addressing fraudulent election practices and ensuring compliance with federal election standards. This Executive Order also instructs the U.S. Department of Justice and The Department of Government Efficiency (DOGE) to investigate and prosecute election-related fraud under federal law, which is *directly* relevant to the actions of Judge Ramsberger in this case.

12. The ex parte nature of this motion is consistent with the federal interest in protecting whistleblowers and ensuring the integrity of federal proceedings, as it prevents premature disclosure of the qui tam complaint and preserves the confidentiality required under 31 U.S.C. § 3730(b)(2).

D. Likelihood of Success on the Merits

13. As detailed in the attached qui tam complaint, the federal case brought by Relator, John William Liccione, is a comprehensive and extensive legal action against the Defendants for violations of the False Claims Act (FCA), 18 U.S.C. §

1001 (fraud against the United States), and the RICO Act. This complaint spans 58 pages and contains 128 paragraphs of detailed factual allegations, properly formed Counts, clearly outlining the fraudulent actions undertaken by VR Systems, Florida state and county officials, and other parties involved. The complaint provides a thorough narrative of the fraudulent submission of false claims for HAVA reimbursements from 2022 to 2025, involving dozens of Florida counties and an extensive web of misrepresentations about election system compliance.

14. In addition to Count I for violations of the FCA, the complaint also includes Count II for fraud against the United States under 18 U.S.C. § 1001, addressing the systematic manipulation and falsification of election data submitted for federal reimbursement under the Help America Vote Act (HAVA). The fraudulent claims for reimbursement were submitted with knowledge of the defects in the election software system (referred to as the "No-No Ballot Bug") and despite the Defendants' awareness that the system failed to meet critical standards for data integrity and accuracy. This count highlights the significant financial injury to the United States as a result of these false claims, which were processed for federal funding, violating both the False Claims Act and federal laws governing election system standards.

15. The United States and the DOJ have a compelling interest in protecting whistleblowers and preserving the integrity of federal proceedings. State court

interference and retaliation directly undermine this process and must be prevented to avoid further harm to the federal qui tam case. Further, Executive Order 14248, signed by President Trump, affirms the federal government's responsibility to maintain the integrity of elections, including addressing fraudulent election practices and ensuring compliance with federal election standards. This Executive Order also instructs the U.S. Department of Justice and The Department of Government Efficiency to investigate and prosecute election-related fraud under federal law, which is directly relevant to the actions of Judge Ramsberger in this case.

16. Given the comprehensive nature of the qui tam complaint, which covers both fraud under the FCA and fraud against the United States, and its extensive factual support, the likelihood of success on the merits in the federal court is high. As such, Relator's efforts are clearly aligned with the federal interest in uncovering and addressing election-related fraud and ensuring that the United States is compensated for its losses.

17. Furthermore, this legal action is brought under both the False Claims Act (FCA) and the Civil RICO statute, ensuring a multi-faceted approach to addressing the extensive fraud. The claims presented are not only grounded in well-documented instances of fraud, but also implicate the broader pattern of

racketeering conduct related to election manipulation and misappropriation of federal funds.

E. Public Interest

18. This case involves election fraud in Florida and directly impacts the credibility of Florida's election system. Retaliating against an election fraud whistleblower undermines public trust, discourages whistleblowers from coming forward, and impedes the integrity of federal election investigations, which is in the public interest to protect.

III. CONCLUSION

19. This case involves massive election fraud in Florida and directly impacts the credibility of Florida's election system. Retaliating against an election fraud whistleblower undermines public trust, discourages whistleblowers from coming forward, and impedes the integrity of federal election investigations, which is in the public interest to protect.

IV. REQUESTED RELIEF

Relator respectfully requests that this Court:

A. Issue an Ex Parte Restraining Order and Injunction enjoining Hon. Judge Thomas Ramsberger and the Sixth Judicial Circuit Court of Florida, the Second District Court of Appeal, and the Florida Supreme Court, from proceeding with any contempt hearings, sanctions, or adverse actions against

Relator, including the April 10, 2025 show cause criminal contempt hearing in Case No. 24-002994-CI-19, until further order of this Court, in order to protect Relator's Fourth Amendment rights against unreasonable searches and seizures and the threat of unlawful bodily seizure in violation of his constitutional rights, and mandatory disqualification of Judge Ramsberger based on his familial conflict of interest;

B. Refer this matter to the U.S. Department of Justice (Civil Division – Fraud Section) and the Election Integrity Task Force under Executive Order 14248 for immediate investigation and potential intervention in the retaliatory actions by Florida state court officials;

C. Order that the restraining order and injunction be served upon Judge Ramsberger, the Sixth Circuit Court of Florida, the Second DCA, the Florida Supreme Court, including the Chief Administrative Judge of the Sixth Circuit Court in Clearwater, and Judge Ramsberger in St. Petersburg, immediately, preferably within the next 24 to 48 hours, by the U.S. Marshals, to prevent further harm and ensure that no retaliatory actions are taken against Relator, obstructing his ongoing federal qui tam case and whistleblower rights under 31 U.S.C. § 3730(h), and his rights under the First and Fourteenth Amendments to the United States Constitution;

D. Further, issue an injunction to vacate the show cause hearing order, as the contempt proceedings are based on the false premise that Relator engaged in contemptuous conduct during a telephonic hearing. The contempt charges stem from an over-talk incident where Relator did not receive a clear and direct order to cease speaking, despite polite requests from the judge. This misunderstanding cannot form the basis for contempt charges, and the continued proceedings must be halted to prevent retaliation against Relator for his protected whistleblower conduct, which must be immediately addressed to prevent irreparable harm to his legal and civil rights. The contempt proceedings represent a direct attempt to obstruct Relator's ongoing federal qui tam case and violate his constitutional rights under the First, Fourth, and Fourteenth Amendments."

E. Grant such other relief as this Court deems just, proper, and necessary to preserve Relator's rights and ensure that his federal whistleblower protections are upheld, including protection against any unlawful bodily seizure and further violations of his Fourth Amendment rights.

Dated: April 6, 2025

Respectfully submitted,

/s/ John W. Liccione

John W. Liccione, Relator, Pro Se
jliccione@gmail.com
443-698-8156

Enclosed
EXHIBIT A -Verified Affidavit

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

JOHN WILLIAM LICCIONE, Plaintiff,
v.

Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER; et al, Defendants.

PLAINTIFF'S RESPONSE AND MEMORANDUM OF LAW IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS SECOND AMENDED COMPLAINT

Plaintiff, John William Liccione ("Plaintiff" or "Liccione"), pro se, pursuant to Florida Rule of Civil Procedure 1.140, submits this Response in opposition to the Motion to Dismiss the Second Amended Complaint ("SAC") filed by Defendants Cathy Salustri-Loper, Thomas Loper, and Thursday Morning Media, Inc. (TMI) (collectively, "Defendants"). The cornerstone of this case is the Defendants' knowingly false article published on July 12, 2024, which deliberately omitted Plaintiff as the fifth Democratic Congressional candidate in Plaintiff's 2024 primary election, despite Defendants' knowledge of his candidacy, demonstrating undeniable reckless disregard for the truth. This foundational falsehood underpins all claims—defamation, tortious interference, and civil conspiracy—and is exacerbated by subsequent acts, including the February 27, 2025, article's misrepresentations, the suppression of a January 2025 mayoral survey, and Salustri-Loper's threat to invoke city police to eject Plaintiff from a city-owned theater. This filing corrects an inadvertent citation error, distinguishes between actionable false statements and protected opinions, quotes Florida Statute § 104.061(1) to show how Defendants' deception violated this law, and demonstrates that the SAC's claims are legally and factually sufficient, overcoming Defendants' Anti-SLAPP defenses under § 768.295, Florida Statutes, which does not protect knowingly false

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statements. Plaintiff requests that the Court deny Defendants' motion, grant leave to correct the citation error, allow the case to proceed to discovery, and award such other relief as deemed just and proper.

I. INTRODUCTION

1. The SAC alleges three causes of action: defamation and defamation by omission (Count I), tortious interference with prospective economic advantage (Count II), and civil conspiracy (Count III). These claims rest on Defendants' campaign to suppress Plaintiff's 2024 Congressional and 2025 Gulfport mayoral candidacies, initiated by the July 12, 2024, article that knowingly falsely stated there were only four Democratic Congressional candidates in Plaintiff's 2024 Congressional primary election, omitting Plaintiff despite Defendants' direct knowledge of his candidacy. This foundational falsehood, demonstrating reckless disregard for the truth, caused immediate and ongoing harm to Plaintiff's Congressional campaign, reputation, and fundraising, and was compounded by subsequent acts related to his mayoral candidacy, including the February 27, 2025, article misrepresenting Plaintiff's lawsuits, the suppression of a January 2025 mayoral survey, and Salustri-Loper's January 30, 2025, threat to have Plaintiff forcibly removed by city police at the city-owned Catherine Hickman Theater for criticizing her moderation. SAC ¶¶ 17–24, 27, 49–100.

2. Defendants' Motion to Dismiss argues that the SAC fails to state a claim, is barred by the First Amendment, violates Florida's Anti-SLAPP statute, and contains a phantom citation to § 104.615, echoing their prior criticism of Plaintiff's Response to Loper's Motion to Dismiss (Dkt. No. 56). See Defendants' Memorandum of Law, Dkt. No. 224407375, at 6. Defendants also reiterate arguments from their prior Motion to Dismiss (Dkt. No. 41), such as no private right of action or protected editorial judgment. These defenses fail because the July 12, 2024, article's knowing falsehood is not protected speech, as it undermines the

public's right to basic, accurate information about electoral candidates, a societal harm not shielded by § 768.295, and violates § 104.061(1) by corruptly deceiving voters deliberately, by design - not by accident, negligence, or mistake. The disappearance of Plaintiff as a candidate in the article was a FEATURE of the article - not a bug.

3. The July 12, 2024, article's false claim of only four Democratic Congressional candidates in Plaintiff's 2024 primary election, deliberately omitting Plaintiff despite Defendants' knowledge of his candidacy, is the linchpin of this case, showing undeniable reckless disregard for the truth under New York Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964). There is no societal good in publishing knowingly false most basic news - who are the candidates running? - and such conduct is not the type of speech Florida's Anti-SLAPP statute is intended to protect. Subsequent acts, including the February 27, 2025, article's failure to update a "criminal contempt" reference, the suppression of a battery/assault incident against Plaintiff and a favorable mayoral poll, and Salustri-Loper's police action threat, build on this initial malice, reinforcing Defendants' intent to harm Plaintiff's campaigns. The police threat also implicates Salustri-Loper as a state actor, subjecting her conduct to First Amendment scrutiny. This response corrects the § 104.615 error and confirms the SAC's sufficiency.

II. CORRECTION OF CITATION ERROR

4. The SAC inadvertently cited § 104.615 in paragraphs 62, 87, and 98 as a statute criminalizing interference with a candidate's right to run for office. Plaintiff acknowledges that no such statute exists. The intended reference was § 104.061, Corruptly Influencing Voting, subsection (1), which states: "Whoever by bribery, menace, threat, or other corruption whatsoever, either directly or indirectly, attempts to influence, deceive, or deter any elector in voting or interferes with him or her in the free exercise of the elector's right to vote at any election commits a felony of the third degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084 for the first conviction, and a felony of the second degree, punishable as provided in s. 775.082, s. 775.083, or s. 775.084, for any subsequent conviction." This statute supports Plaintiff's claim that the June 22, 2024, battery and assault by Michael Sherosky, willfully concealed by Defendants, and the July 12, 2024, article's false claim of only four candidates, which deceived voters into believing Plaintiff did not exist as a candidate, constituted corrupt attempts to influence and deceive electors in violation of § 104.061(1), furthering the malicious campaign initiated by the article's falsehood.

5. Plaintiff requests leave to amend the SAC to replace references to § 104.615 with § 104.061.

6. The correction is made in good faith under Florida Rule of Civil Procedure 1.190(a), which favors amendment. See Dausman v. Hillsborough Area Reg'l Transit, 898 So. 2d 213, 215 (Fla. 2d DCA 2005). The error is not fraudulent, lacking deceptive intent, and Plaintiff's diligence in correcting it aligns with prior efforts to address citation issues.

III. THE JULY 12, 2024, ARTICLE AS THE FOUNDATION OF DEFENDANTS' MALICIOUS CONDUCT

7. The SAC's claims hinge on the July 12, 2024, article, "Meet the Democratic Candidates for the District 13 Congressional Election," which falsely stated there were only four Demo-

cratic candidates, omitting Plaintiff despite Defendants' firsthand knowledge of his candidacy through face-to-face interactions, a paid political advertisement in The Gabber Newspaper itself, email exchanges with The Gabber reporters, and campaign signs in proximity to The Gabber Newspaper's headquarters in Gulfport (SAC ¶¶ 17–20, 52).

8. Defendants published pictures and write-ups for each of the four other candidates, deliberately "disappearing" Plaintiff from the electoral psyche, despite knowing he was the qualified fifth candidate per FEC and Florida filings (SAC ¶ 53). Where did they get the four candidate pictures and their write-ups? From the Pinellas Democratic Party who was hosting the July 13, 2024 congressional primary debate that was reported in The Gabber article? Was this a coordinated effort by Defendants and others to suppress Plaintiff's candidacy through malicious falsehoods? Discovery is required, as these are fact-finder questions.

9. This verifiable false statement of fact demonstrates the publishing of a known falsehood – a reckless disregard for the truth - under Sullivan, 376 U.S. at 279–80. By falsely claiming only four candidates existed and prominently featuring the others with pictures and profiles, Defendants corruptly deceived voters, influenced by the first and only article featuring the Congressional candidate that was published in The Gabber, into believing Plaintiff was not a candidate, directly influencing their first impressions and voting decisions in violation of § 104.061(1), which prohibits "bribery, menace, threat, or other corruption whatsoever, either directly or indirectly, [that] attempts to influence, deceive, or deter any elector in voting." This deception undermined Plaintiff's Congressional campaign by erasing his visibility, causing voters to disregard him as a viable option, thus affecting their electoral choices. The article's ongoing uncorrected online availability, despite Plaintiff's demand for correction and the filing of this lawsuit in July 2024, underscores Defendants' malice (SAC ¶ 56), causing Plaintiff's fundraising collapse, reputational harm, and electoral defeat (SAC ¶¶ 23–24).

10. This falsehood is analogous to a hypothetical scenario in the 2024 Republican presidential primary, where Donald Trump, Nikki Haley, Ron DeSantis, Chris Christie, and Vivek

Ramaswamy were five FEC-qualified candidates. If a major outlet like Fox News or CNN published or broadcast a known falsehood claiming only four candidates were running, omitting one despite clear evidence, while including pictures and profiles of the other four, this would mislead voters and undermine the democratic process.

11. There is no societal good in publishing knowingly false news of what is the most basic and essential fact in an election: Who are the candidates running? Such conduct is not protected by the First Amendment or Florida's Anti-SLAPP statute, which aims to shield legitimate speech, not known falsehoods that harm candidates and deceive the voters.

12. The July 12, 2024, article's deliberate omission of Plaintiff as a candidate, while promoting the other four potentially at the request of the local Democratic Party, similarly damaged his Congressional campaign and voter awareness, forming the basis for all subsequent malicious acts by Defendants and violating § 104.061(1) by corruptly deceiving electors.

13. Further, it is noted that Defendants knew that the Pinellas County Democratic Party did not invite Plaintiff to the July 13, 2025 debate. One might think the Defendants might have published THAT fact, and reported why they chose to not invite him. This was a newsworthy fact important to the local voters in Gulfport and Pinellas County at large. This is especially true since (1) Plaintiff was the only candidate who lived in Gulfport, (2) The Gabber Newspaper is based in Gulfport, (3) their circulation covers southern Pinellas County, and (4) Plaintiff lived within 100 yards of The Gabber's headquarters office.

14. This is actionable under Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 667–68 (1989) (actual malice shown by publishing of known falsity with evidence of reckless disregard). To quote Harte-Hanks:

"We have not gone so far, however, as to accord the press absolute immunity in its coverage of public figures or elections. If a false and defamatory statement is published with knowledge of falsity or a reckless disregard for the truth, the public figure may prevail. See Curtis Publishing Co. v. Butts, 388 U.S., at 162 (opinion of Warren, C. J.). A 'reckless disregard'

for the truth, however, requires more than a departure from reasonably prudent conduct. 'There must be sufficient evidence to permit the conclusion that the defendant in fact entertained serious doubts as to the truth of his publication.' St. Amant, 390 U.S., at 731. The standard is a subjective one — there must be sufficient evidence to permit the conclusion that the defendant actually had a 'high degree of awareness of . . . probable falsity.' When a candidate enters the political arena, he or she 'must expect that the debate will sometimes be rough and personal,' Ollman v. Evans, 242 U.S.App.D.C. 301, 333, 750 F.2d 970, 1002 (1984) (en banc) (Bork, J., concurring), cert. denied, 471 U.S. 1127 (1985), and cannot 'cry Foul!' when an opponent or an industrious reporter attempts to demonstrate that he or she lacks the 'sterling integrity' trumpeted in campaign literature and speeches, Monitor Patriot Co. v. Roy, 401 U.S. 265, 274 (1971). Vigorous reportage of political campaigns is necessary for the optimal functioning of democratic institutions and central to our history of individual liberty."

15. Here it is not just the absence of vigor in Defendants' reportage that is most breathtaking, it is the sense of entitlement demonstrated by Defendants - that they could publish such an indisputably false and defamatory article about who the candidates were in the race, and they seem to have thought, and they still think, that they can get away with it…and perhaps may do so again in the next election to Plaintiff or some other candidate they might disfavor.

16. Other False Statements and Omissions Serve to Reinforce Actual Malice:

a. February 27, 2025, Article: The article "Gulfport Mayoral Candidate John Liccione's Time in Courts" falsely implied Plaintiff was litigious and a criminal by omitting the battery/assault counts in his other lawsuit where he was a Plaintiff, and placing "criminal" near his name, despite Defendants' knowledge of those counts, and of his clean record (SAC ¶¶ 33–35, 58). The article's failure to update a "criminal contempt" reference after Plaintiff was ruled not in contempt on April 10, 2025, furthered the malicious pattern initiated by the July 12, 2024, article, showing reckless

disregard for the truth, by omission (SAC ¶¶ 33–35).

b. Suppression of Battery/Assault and Mayoral Election Poll Results: Defendants' knowing omission of the June 22, 2024, battery/assault against Plaintiff by Michael Sherosky (SAC ¶¶ 61–62), which Plaintiff had alleged in his other complaint, and their suppression of their own Gabber Newspaper January 2025 poll showing Plaintiff's 58-point early commanding lead in the mayoral election (SAC ¶¶ 39–40, 65), continued to build on the July 12, 2024, article's foundation, creating a false and defamatory impression of Plaintiff's character and mayoral candidacy viability. These omissions are actionable as false statements by implication, with actual malice shown by Defendants' knowledge of these facts (SAC ¶¶ 20, 41). Defendants were clearly following Plaintiff's battery/assault (and other counts) lawsuit closely since they reported on its existence, but deliberately suppressed the reasons for the lawsuit, enhancing the defamatory implication. See Memphis Publishing Co. v. Nichols, 569 S.W.2d 412, 420 (Tenn. 1978) (omissions creating a defamatory implication by selectively withholding facts are actionable); New York Times Co. v. Sullivan, 376 U.S. 254, 279–80 (1964) (actual malice requires knowledge or reckless disregard of falsity).

17. Statements of Opinion as Evidence of Malice:

a. March 9, 2025, Op-Ed: The op-ed likening Plaintiff to "cheap, white sangria" (SAC ¶¶ 46–48, 59) is a protected opinion but, given its election-eve timing and intent to ridicule, reinforces the malicious intent established by the July 12, 2024, article (SAC ¶ 60). Plaintiff, who is economically disadvantaged, white, and the son of an Italian immigrant, notes this as a triple-insult to his economic status, race, and ethnicity.

b. Other Editorial Commentary: Statements implying Plaintiff was combative or unstable (e.g., February 27, 2025, article's framing, SAC ¶ 58) are protected opinions but, when paired with the July 12, 2024, article's falsehood, evidence a pattern of malice.

18. Hickman Theater Police Action Threat: On January 30, 2025, Salustri-Loper threatened to have Plaintiff forcibly removed by city police at the Catherine Hickman Theater candidate forum for criticizing her biased moderation (SAC ¶ 27). This threat, building on the July 12, 2024, article's malicious foundation, shows intent to suppress Plaintiff's mayoral campaign and silence his political speech, reinforcing Defendants' reckless disregard for the truth (SAC ¶ 36). By threatening police action against a candidate she invited, Salustri-Loper violated Plaintiff's First Amendment rights while accusing him of stifling speech, and her actions as a state actor (via use of a city-owned venue and police) undermine the Anti-SLAPP defense.

IV. MATERIAL FACTS AND LEGAL ARGUMENT

A. The SAC Sufficiently States Causes of Action

19. Count I: Defamation and Defamation by Omission

The July 12, 2024, article's knowing falsehood, stating only four Democratic candidates existed while including pictures and write-ups for them, is the foundation of the defamation claim, demonstrating reckless disregard for the truth and causing reputational and electoral harm by deceiving voters in violation of § 104.061(1) (SAC ¶¶ 17–24, 49–73). Subsequent acts, including the February 27, 2025, article's misrepresentations, suppressed battery/assault, and Salustri-Loper's police threat, reinforce this malice (SAC ¶ 27). These satisfy the defamation elements: knowingly false statement, publication, actual malice, and damages. Harte-Hanks Communications, Inc. v. Connaughton, 491 U.S. 657, 667–68 (1989); Masson v. New Yorker Magazine, Inc., 501 U.S. 496, 517 (1991).

a. Factual Sufficiency: Defendants' knowledge of Plaintiff's candidacy (SAC ¶¶ 18–20), the July 12 article's timing during vote-by-mail distribution (SAC ¶ 21), its uncorrected online status with pictures and write-ups for other candidates (SAC ¶ 56), the February 27 article's "criminal contempt" omission (SAC ¶¶ 33–35), and the

police threat (SAC ¶ 27) show malice stemming from the initial falsehood, violating § 104.061(1) by deceiving electors.

b. Legal Sufficiency: Jews for Jesus, 997 So. 2d 1106 (Fla. 2008), supports defamation by omission. Actual malice, established by the July 12, 2024, article and reinforced by subsequent acts, meets Sullivan, 376 U.S. at 279–80.

20. Count II: Tortious Interference with Prospective Economic Advantage

The July 12, 2024, article's falsehood, prominently featuring the other four candidates while omitting Plaintiff, disrupted Plaintiff's donor and voter relationships, causing a donation collapse and electoral defeat in his Congressional campaign by deceiving voters into believing he was not a candidate, in violation of § 104.061(1) (SAC ¶¶ 74–88). Subsequent acts, including the February 27, 2025, article and police threat, furthered this interference in his mayoral campaign (SAC ¶¶ 27, 79–80). This satisfies the elements: economic relationship, intentional and unjustified interference, and damages. Tamiami Trail Tours, Inc. v. Cotton, 463 So. 2d 1126, 1127 (Fla. 1985).

a. Factual Sufficiency: Plaintiff's expectation of donations (SAC ¶ 76), Defendants' knowledge (SAC ¶ 78), and damages ($260,000 in losses, SAC ¶ 83) stem from the July 12, 2024, article's impact, amplified by later acts like the "criminal contempt" omission (SAC ¶¶ 79–80) and police threat (SAC ¶ 27).

b. Legal Sufficiency: Walters v. Blankenship, 931 So. 2d 137, 139 (Fla. 2d DCA 2006), supports interference via malicious omissions. Ozyesilpinar v. Reach PLC, 365 So. 3d 453 (Fla. 3d DCA 2023), is distinguishable, as the SAC alleges targeted harm initiated by the July 12, 2024, article.

21. Count III: Civil Conspiracy

The July 12, 2024, article's falsehood, deliberately "disappearing" Plaintiff while promoting the other four candidates, forms the basis of a conspiracy with non-parties to defame and

interfere with Plaintiff's candidacies by deceiving voters in violation of § 104.061(1), with subsequent acts like the police threat and omissions reinforcing the agreement (SAC ¶¶ 89–100). This satisfies the conspiracy elements: agreement, unlawful act, and damages. Charles v. Fla. Foreclosure Placement Ctr., LLC, 988 So. 2d 1157, 1159–60 (Fla. 3d DCA 2008).

a. Factual Sufficiency: The SAC details the agreement (SAC ¶ 91), overt acts starting with the July 12, 2024, article (SAC ¶ 94), and damages (SAC ¶ 97), with the police threat and "criminal contempt" omission reinforcing malice (SAC ¶ 27).

b. Legal Sufficiency: Conspiracy is recognized for wrongful acts. Banco de los Trabajadores v. Cortez Moreno, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018).

B. State Actor Doctrine Undermines Anti-SLAPP Defense

22. The July 12, 2024, article's falsehood, compounded by Salustri-Loper's January 30, 2025, threat to have Gulfport city police to eject Plaintiff from the city-owned Catherine Hickman Theater, leased by Defendants, implicates her as a state actor, subjecting her conduct to First Amendment scrutiny and undermining the Anti-SLAPP defense. By leasing a city-owned facility and threatening state-funded police action to suppress Plaintiff's political speech, Salustri-Loper engaged in state action, building on the initial malicious falsehood.

23. State Actor Doctrine Principles: Private entities become state actors when their conduct is "fairly attributable" to the state, via state resources, public functions, or a "symbiotic relationship" with government. Burton v. Wilmington Parking Auth., 365 U.S. 715, 725 (1961). Political activities, like candidate forums, are state actions when entwined with state resources. Smith v. Allwright, 321 U.S. 649, 664–65 (1944).

24. Application to Salustri-Loper:

a. Use of City-Owned Venue: Defendants leased the Hickman Theater for the mayoral candidate forum, a public function (SAC ¶ 25). This mirrors Ludtke v. Kuhn, 461

F. Supp. 86, 93–94 (S.D.N.Y. 1978), where exclusion from a publicly owned stadium was state action due to the use of state property and public interest. Salustri-Loper's use of a city venue subjects her actions to scrutiny.

b. Invocation of State Police Powers: Salustri-Loper's police threat to suppress Plaintiff's speech (SAC ¶ 27) parallels Burton, 365 U.S. at 724, as a state action via a "symbiotic relationship" with government, using hired city police.

c. Public Function of Political Debate: The forum, akin to the primary in Smith v. Allwright, 321 U.S. at 664, is a public function (a Democratic primary election) entwined with state resources, subjecting Defendants' conduct to First Amendment scrutiny.

25. Impact on Anti-SLAPP Defense: The July 12, 2024, article's falsehood and Salustri-Loper's police threat are not protected speech under § 768.295, as they involve knowing falsity and state-backed suppression, not legitimate journalism. The article's deception violates § 104.061(1) by corruptly influencing electors. As a state actor, Salustri-Loper's conduct violates Plaintiff's First Amendment rights, rendering the Anti-SLAPP defense inapplicable. See Burton, 365 U.S. at 725; Smith v. Allwright, 321 U.S. at 664–65.

C. The SAC Overcomes Other Anti-SLAPP Arguments

26. The Anti-SLAPP defense fails because the SAC targets the July 12, 2024, article's knowing falsehood and subsequent malicious acts, not protected speech. Under § 768.295, Defendants must show the SAC targets protected speech, then Plaintiff must prove the claims are not primarily based on First Amendment rights and have merit. Gundel v. AV Homes, Inc., 264 So. 3d 304, 314 (Fla. 2d DCA 2019).

27. Not Primarily Based on Protected Speech: The July 12, 2024, article's falsehood, like a hypothetical Fox News or CNN report omitting a candidate in the 2024 Republican primary

while featuring the others, is not protected, as it involves knowing falsity and malice, violating § 104.061(1). Dominion Voting Sys., Inc. v. Fox News Network, LLC, No. N21C-03-257, 2023 WL 2730567, at *15 (Del. Super. Ct. Mar. 31, 2023). Subsequent acts (e.g., police threat, SAC ¶ 27) and opinions (e.g., "cheap, white sangria") reinforce this malice.

28. Not Without Merit: The SAC's allegations, supported by Jews for Jesus, Walters, and 18 U.S.C. § 249(a)(2), establish merit. The July 12, 2024, article, battery/assault omission (SAC ¶ 64), and police threat (SAC ¶ 27) show actual malice, unaffected by the corrected § 104.061 reference.

29. Attorneys' Fees: Defendants are not entitled to fees under § 768.295. Plaintiff reserves the right to seek fees under § 57.105 if Defendants' motion is frivolous or if he prevails under § 768.295.

D. The Citation Error Does Not Warrant Dismissal or Sanctions

30. The § 104.615 error, corrected to § 104.061, is minor compared to the July 12, 2024, article's falsehood. The error is not fraudulent, and Plaintiff's correction aligns with pro se leniency. Haines v. Kerner, 404 U.S. 519, 520 (1972). It does not justify dismissal or sanctions under Florida Rule of Civil Procedure 1.150 or § 57.105.

V. CONCLUSION

The SAC's claims rest on the July 12, 2024, article's knowing falsehood, deliberately "disappearing" Plaintiff from the electoral psyche by omitting him while featuring pictures and write-ups for the other four candidates, demonstrating reckless disregard for the truth and violating § 104.061(1) by corruptly deceiving electors, akin to a major outlet falsely omitting a candidate in the 2024 Republican presidential primary. This falsehood, compounded by subsequent acts like the February 27, 2025, article's "criminal contempt" omission and Salustri-Loper's police threat, supports valid claims for defamation, tortious interference,

and civil conspiracy. The police threat implicates Salustri-Loper as a state actor, undermining the Anti-SLAPP defense. The § 104.615 error is corrected to § 104.061. Plaintiff requests that the Court:

A. Deny Defendants' First and Second Motions to Dismiss.

B. Grant leave to amend the SAC to correct the § 104.615 references.

C. Allow the case to proceed to discovery.

D. Grant such other relief as deemed just and proper.

Respectfully Submitted,

/s/ John W. Liccione
John W. Liccione,
Pro Se Plaintiff
6800 Gulfport Blvd S., Ste 201-116
South Pasadena, FL 33707
jliccione@gmail.com
443-698-8156

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 2, 2025, a true and correct copy of the foregoing Supplemental Response and Memorandum of Law was filed electronically with the Clerk of the Court via the Florida e-Filing Portal and served via the e-Filing Portal and email on James B. Lake, Esq (jlake@tlolawfirm.com), counsel for Defendants, and was emailed to Judge Patricia Muscarella's judicial assistant at Section7@jud6.org. A hardcopy was mailed to Judge Muscarella chambers at Court, Pinellas County Circuit Court, 315 Court Street, Clearwater, FL 33756, Defendants' counsel at the above address on the morning of July 3, 2025.

/s/ John W. Liccione

Thomas & LoCicero
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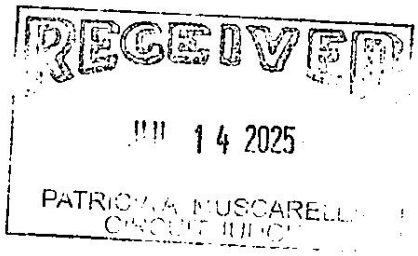
jlake@tlolawfirm.com

Reply to: Tampa

VIA E-MAIL & U.S. MAIL

July 10, 2025



The Honorable Patricia A. Muscarella
315 Court Street, Room 423
Clearwater, FL 33756

Re: *Liccione v. Loper*
Case No.: 24-003939-CI

Dear Judge Muscarella:

In accordance with the Court's instructions in the referenced matter, I enclose a proposed nunc pro tunc order granting Plaintiff's Motion to Lift Stay and Plaintiff's Motion for Leave to File Second Amended Complaint. This order tracks the Court's ruling at the June 10 hearing, including the Court's explicit direction that this order is without prejudice to Ms. Loper's Motion to Dismiss the First Amended Complaint and for Attorneys' Fees. Because the Court made this point explicitly at the June 10 hearing, we have included it in the proposed order. Plaintiff has objected to including the phrase beginning with the words "without prejudice" in the order.

We are submitting a Word copy of the proposed order to Ms. Torres via email with a copy of this letter.

Thank you for your consideration.

Respectfully yours,

THOMAS & LoCICERO PL

/James B. Lake/

James B. Lake

JBL/dl
Enclosure
cc: Plaintiff pro se

ELECTRONICALLY FILED 7/17/2025 1:03:25 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

CATHY SALUSTRI LOPER, et al.,

Defendants.
_____/

ORDER GRANTING PLAINTIFF'S MOTION TO LIFT STAY AND PLAINTIFF'S MOTION FOR LEAVE TO FILE SECOND AMENDED COMPLAINT

THIS CAUSE came before the Court on Plaintiff's Motion to Lift Stay (Dkt. No. 122) and Motion for Leave to File Second Amended Complaint (Dkt. No. 125) (collectively the "Motions"). The Court having reviewed the Motions, having heard argument on June 10, 2025, and being otherwise fully advised, it is hereby:

ORDERED AND ADJUDGED that the Motions are GRANTED without prejudice to Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and for Attorneys' Fees (Dkt. No. 41).

DONE and **ORDERED** at Pinellas County, Florida, this ____ day of July, 2025, nunc pro tunc to June 10, 2025.

24-003939-CI 7/17/2025 3:23:38 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 7/17/2025 3:23:38 PM
HON. PATRICIA A. MUSCARELLA
CIRCUIT COURT JUDGE

ELECTRONICALLY FILED 7/17/2025 3:23:38 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

KEN BURKE

CLERK OF THE CIRCUIT COURT AND COMPTROLLER
PINELLAS COUNTY, FLORIDA

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Custodian of County Funds
County Auditor
Clerk of the Water and Navigation Control Authority

315 Court Street, Room 170
Clearwater, FL 33756-5165
Telephone: (727) 464-7000

JOHN WILLIAM LICCIONE
STE 201-116
6800 GULFPORT BLVD S
SOUTH PASADENA FL 33707

Date: July 21, 2025

JOHN WILLIAM LICCIONE
Vs.
CATHY SALUSTRI LOPER, et al

In Re: UCN: 522024CA003939XXCICI

REF: 24-003939-CI

NOTICE OF NON PAYMENT OF FEES

On April 12, 2025 you filed a document(s) with the Pinellas County Clerk of the Circuit Court that requires a fee. The fees indicated below have not been paid:

- ☐ F.S. 28.241 or 34.041 requires a filing fee of $_____.
- ☐ F.S. 28.241 or 34.041 requires a reopen fee of $50.00 to file this pleading.
- ☐ F.S. 28.241 or 34.041 requires a fee of $_____ to file your Counter Claim.
- ☒ F.S. 28.241 or 34.041 requires a $2.50 fee for each defendant over 5. Additional fees of $5.00 are due and owing for the additional defendants added to your complaint/petition. Issuance of summonses will be held pending the receipt of these fees.
- ☐ Other: _____.

Please submit your payment of **$5.00** directly to the Clerk's Office, along with a copy of this letter to ensure proper validation, at Civil Court Records, 315 Court St Room 170, Clearwater Fl 33756.

Thank you for your immediate attention to this matter.

Very truly yours**,**

KEN BURKE, CPA
Clerk of the Circuit Court and Comptroller

By: /s/ Ramon Ailes
Deputy Clerk

I#: 2025295843 BK: 23329 PG: 1553, 10/17/2025 at 09:21 AM, RECORDING 20
KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
CLKDU08

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND FOR ATTORNEY'S FEES

THIS CAUSE came before the Court for hearing on July 8, 2025 on Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and For Attorneys' Fees dated October 3, 2024 and Defendants' Motion to Dismiss Second Amended Complaint dated June 20, 2025. The Court has reviewed the following materials:

1. Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and for Attorneys' Fees ("First Motion to Dismiss") dated October 3, 2024.
2. Plaintiff's Response to Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and Request for Hearing ("First Response") dated October 22, 2024.
3. Defendants' Motion to Dismiss Second Amended Complaint ("Second Motion to Dismiss") dated June 20, 2025.
4. Plaintiff's Response and Memorandum of Law in Opposition to Defendants' Motion to Dismiss Second Amended Complaint ("Second Response") dated July 2, 2025.

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Having considered these materials, the case file, the applicable law, the argument of counsel at a hearing on July 8, 2025, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 3, 2024, Plaintiff initiated this action by filing his original Complaint. On September 5, 2024, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right. The FAC relates to Plaintiff's unsuccessful bid to win the Democratic primary election for U.S. House District 13. On October 3, 2024, Loper filed the First Motion to Dismiss, which asserts that the claims against Ms. Loper violate Florida's Anti-SLAPP Statute codified at section 768.295, Florida Statutes (2024).[1] Prior to disposition of this motion, the Court entered an order on November 20, 2024 staying the instant matter due to the existence of related federal litigation which was pending prior to the initiation of this action. The stay remained in place until a hearing on June 10, 2025 in which the Court ruled on the record that it would grant Plaintiff's Motion to Lift Stay dated April 1, 2025 and Plaintiff's Motion for Leave to File Second Amended Complaint dated April 12, 2025 with the caveat that said motions were granted without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC.[2]

A. The First Amended Complaint

The introductory section of the FAC states that Plaintiff "brings this action seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of Defendants." FAC ¶ 1. The FAC names Defendant, CATHY

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

[2] On July 17, 2025, the Court rendered the corresponding written order.

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

SALUSTRI LOPER ("Ms. Loper") as a defendant and alleges eight counts against her. The FAC identifies Ms. Loper as the "owner and editor of the Gabber Newspaper, a local newspaper in Gulfport[.]" FAC ¶ 8. The remaining factual allegations made against Ms. Loper are limited to the following:

> 43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of the Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Henzen[.]
>
> 44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) congressional candidate that lives in Gulfport.
>
> 45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

FAC ¶¶ 43-45. Counts I, II, III, IV, V, VI, and VIII of the FAC allege various causes of action against Ms. Loper, including multiple statutory violations, conspiracy to commit election fraud, intentional interference with prospective economic advantage, and injunctive relief. The FAC also includes a section styled "Count X," which provides a general plea for damages and is therefore not an alleged cause of action which requires any further consideration by the Court.

B. The Second Amended Complaint

The Second Amended Complaint ("SAC") is now the operative pleading. The SAC names three defendants: Ms. Loper, Barry Loper[3] ("Mr. Loper"), and Thursday Morning Media, Inc.

[3] The SAC mistakenly refers to Mr. Loper as "Thomas Loper."

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

("TMMI").[4] The SAC alleges that: 1) the Lopers are co-owners of TMMI; 2) TMMI and the Lopers own *The Gabber*; and 3) Ms. Loper is the editor-in-chief of *The Gabber*. SAC ¶¶ 3-5. Ms. Loper "is sued in her capacity as owner and editor" of *The Gabber*. SAC ¶¶ 3, 16. Similarly, Mr. Loper and TMMI are sued for their alleged role in harming Plaintiff's 2024 congressional campaign and 2025 Gulfport mayoral campaign. SAC ¶¶ 4, 18, 19, 21.

The SAC alleges three causes of action, which are asserted against each of the defendants: defamation, tortious interference with a prospective economic advantage, and civil conspiracy. Accordingly, the SAC abandons six of the eight causes of action alleged against Ms. Loper in the FAC. The gist of Plaintiff's allegations in the SAC pertains to the publication of certain articles by *The Gabber*. In addition to these publications, Plaintiff also complains of "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and "[t]he concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50. Lastly, Ms. Loper is also sued for a statement she made while moderating a political debate during the 2025 mayoral campaign. *See* SAC ¶¶ 25-27. On June 20, 2025, Defendants filed their Second Motion to Dismiss.[5] Ms. Loper is now joined by Mr. Loper and TMMI in moving to dismiss the SAC on Anti-SLAPP grounds.

[4] Collectively these three defendants are hereinafter referred to as "Defendants."

[5] The Second Motion to Dismiss is filed on behalf of Defendants despite noting that Plaintiff has not served Mr. Loper and TMMI. *See* Second Mot. to Dismiss at 1 n.1. However, the Second Motion to Dismiss addresses the merits of the SAC and seeks affirmative relief, namely in the form of an award of attorney's fees and costs. Accordingly, counsel for Defendants has made a general appearance in this matter. *See, e.g., Segalis v. Roof Depot USA, LLC*, 178 So. 3d 83, 85 (Fla. 4th DCA 2015) (holding that a filing seeking "some sort of affirmative relief on the merits of the case" constitutes a general appearance). Any argument that this Court lacks personal jurisdiction over Mr. Loper and TMMI has thus been waived. *Id.* (stating "if a party makes a general appearance in a case without first challenging personal jurisdiction, the party is deemed to have waived any claims as to lack of personal jurisdiction").

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

II. LEGAL STANDARD

"By statute, Florida prohibits 'Strategic Lawsuits Against Public Participation.'" *Vericker v. Powell*, 406 So. 3d 939, 941 (Fla. 2025) (citing § 768.295, Fla. Stat. (2024)). Per the statute, "[a] person…in this state may not file…any lawsuit, cause of action, [or] claim…against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue[.]" § 768.295(3), Fla. Stat. (2024). The purpose of the Anti-SLAPP statute is "to safeguard the exercise of constitutionally protected free-speech rights by prohibiting lawsuits targeted at suppressing them." *Vericker*, 406 So. 3d at 942 (citing § 768.295(1), Fla. Stat. (2024)). "In addition, the statute operates to deter violations of its prohibition on meritless, speech-targeted lawsuits—accomplishing this through attorney-fee awards[.]" *Id.* at 946 (citing § 768.295(4), Fla. Stat. (2024)). "The express legislative intent of subsection 768.295(4) is to secure a speedy decision at 'the earliest possible time' on a summary judgment or motion to dismiss." *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 (Fla. 4th DCA 2019). Accordingly, courts routinely assess Anti-SLAPP applicability to speech-based claims at the motion to dismiss stage. *See, e.g., Godwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (requiring application of Anti-SLAPP standards to a motion to dismiss); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same).

In considering a motion to dismiss, the trial court generally must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pleaded allegations as true. *Precision Orthopedics, Inc. v. Zimmer US, Inc.*, 341 So. 3d 458, 461 (Fla. 2d DCA 2022) (citations omitted). However, "a motion to dismiss based on the Anti-SLAPP statute is distinct from a traditional motion to dismiss brought under the Florida Rules of Civil Procedure." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th

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Cir. Ct. Apr. 29, 2021). In particular, "the Anti-SLAPP statute requires the trial court to do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant." *Mishiyev v. Davis*, 402 So. 3d 443, 448 (Fla. 2d DCA 2025) (citations omitted). "Rather, the trial court must apply a burden-shifting test." *Id.*[6] "[T]he initial burden is on the SLAPP defendant to establish that the Anti-SLAPP statute applies, and once the defendant has done so, the burden shifts to the claimant to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit." *Godwin*, 371 So. 3d at 975 (cleaned up).

III. ANALYSIS

A. Did the SAC Supersede Ms. Loper's Claims that the FAC Violated the Anti-SLAPP Statute?

Because the Court granted Plaintiff's Motion for Leave to File Second Amended Complaint without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC, the Court must first consider whether the First Motion to Dismiss is moot. The Anti-SLAPP Statute specifically provides: "The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with ***a claim*** that an ***action*** was filed in violation of this section." § 768.295(4), Fla. Stat. (emphasis added). The plain language of the statute does not limit recoverable fees and costs to those associated only with the operative pleading. Furthermore, the Eleventh Judicial Circuit of Florida recently held the following:

[6] The Second District established the burden-shifting test for Anti-SLAPP motions in *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). In *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025), the Florida Supreme Court disapproved of the *Gundel* court's determination that certiorari was the proper vehicle for review of trial court orders disposing of Anti-SLAPP motions. However, the *Vericker* decision did not disturb the burden-shifting analysis utilized by the *Gundel* court. In *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021), the Third District declined to follow the *Gundel* burden-shifting approach and certified conflict to the Florida Supreme Court. However, it appears that none of the parties in *Lam* invoked the Florida Supreme Court's jurisdiction to consider the certification of conflict. The Second District utilized the *Gundel* burden-shifting analysis as recently as 2025 in *Mishiyev v. Davis*, 402 So. 3d 443 (Fla. 2d DCA 2025). Accordingly, this Court must do the same.

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> In this action, the entirety of the litigation -- principally, the preparation of Lazarow's first motion under the Anti-SLAPP Statute, Lazarow's opposition to Marquez's motions to amend, the preparation of Lazarow's second motion under the Anti-SLAPP Statute, oral argument on that motion, and all matters pertaining to Marquez's appeal -- concerned Lazarow's claim that this action was filed in violation of the Anti-SLAPP Statute. Lazarow is thus entitled to all reasonable attorney's fees and costs she incurred in this action.

Marquez v. Lazarow, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022).[7]

In *Marquez*, Florida's Eleventh Circuit held that the defendant was entitled to attorney's fees incurred for her defense against both the initial complaint and the amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute." *Id.* As in *Marquez*, Ms. Loper has maintained a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute both as to the FAC And SAC. As such, the Court finds that Ms. Loper's claims for attorney's fees as to the FAC survived amendment of the complaint, and accordingly the Court must consider whether both the FAC and SAC violate the anti-SLAPP statute.

B. Do Florida's Anti-SLAPP Provisions Apply to the Contested Speech?

Defendants now have the burden of establishing that the Anti-SLAPP Statute applies to the FAC and SAC. In doing so, Defendants "must present a prima facie case that the statements are protected by the First Amendment." *Mishiyev*, 402 So. 3d at 448. "Florida's Anti-SLAPP statute protects the right to exercise 'free speech in connection with public issues ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.'" *Id.* (citing § 768.295(1), Fla. Stat.). "This requirement can be effectively split into two parts: (1) the

[7] The trial court's order was subsequently affirmed in *Marquez v. Lazarow*, 347 So. 3d 472 (Fla. 3d DCA 2022).

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medium of the speech and (2) its content." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021).

As to the medium of the speech, "'[f]ree speech in connection with public issues' means any written or oral statement that is protected under applicable law and...is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, ***magazine article***, musical work, ***news report***, or other similar work." § 768.295(2)(a), Fla. Stat. (2024) (emphasis added). *See also Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (stating that the phrase "'free speech in connection with a public issue' includes any written statement protected under applicable law and made in connection with a news report" (citing § 768.295(2)(a), Fla. Stat.)).

As to content, the contested speech "must only be made in connection with a 'public issue' in order to fall within the Anti-SLAPP statute's protection." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021). "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (cleaned up).

i. The FAC

The FAC mentions Loper in only four paragraphs. First Resp. ¶ 2. Specific allegations pertaining to Ms. Loper are found exclusively in the general allegations section of the FAC. *See* FAC ¶¶ 8, 43, 44, 45. In sum, these paragraphs allege that Loper is the owner and editor of a newspaper that published an article on July 12, 2024 ("Debate Article") about a primary election

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debate between Democratic Party candidates for a congressional seat. First Resp. ¶ 2.[8] The medium of this speech clearly qualifies as a news report, which is an explicitly enumerated category in section 768.295(2)(a), Florida Statutes (2024). Additionally, the content of the Debate Article clearly concerns a public issue as it pertains to a political concern of the community and is subject of legitimate news interest in that it profiles various candidates who were running for a political office. Since the FAC does not allege a cause of action for defamation, the Court need not analyze whether the contested speech is unprotected by virtue of the law of defamation. As such, Ms. Loper has met her burden to demonstrate that her contested speech is protected and governed by the Anti-SLAPP Statute.

ii. The SAC

In the SAC, Plaintiff alleges additional instances of purportedly actionable speech. Defendants argue that the SAC demonstrates "on its face" that the Anti-SLAPP Statute applies because it names Defendants in their capacities as owners and operators of *The Gabber*. Second Mot. to Dismiss at 2. This fact is uncontested. *See* SAC ¶¶ 3-5 (alleging that Defendants are sued due to their ownership, control, and operation of *The Gabber* newspaper). As Defendants point out, the gist of Plaintiff's claim against Defendants relate to "the newspaper's content" and "alleged decisions regarding the content of news articles" in relation to "a 2024 Congressional primary and a 2025 mayoral election." Second Mot. to Dismiss at 2. Specifically, the SAC identifies the following publications by *The Gabber* which Plaintiff claims are actionable: 1) the Debate Article; 2) an article published on February 27, 2025 entitled "Gulfport Mayoral Candidate John Liccione's Time in Courts" ("Contempt Article"); and 3) an op-ed published on March 9,

[8] Plaintiff incorporated the Debate Article into the SAC via the following hyperlink: https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/. *See* SAC at 4 n.1.

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2025 authored by a non-party named Barbara Banno which likened Plaintiff to "cheap, white sangria" ("Banno Article"). SAC ¶ 50.

Count I of the SAC states: "This claim arises from a pattern of knowingly false, misleading, and defamatory statements and omissions by Defendants[.]" SAC ¶ 50. Plaintiff admits that the Debate Article is "the cornerstone" of the SAC. Second Resp. at 1. Count I also alleges that Defendants used their editorial discretion in various instances to conceal information by refusing to publish material relevant to Plaintiff's political campaigns, and that such behavior is actionable. Count II states: "Defendants' actions, including the publication of false and misleading articles...directly interfered with Plaintiff's prospective economic relationships" and that the Debate Article "was calculated to ensure maximum suppressive impact on Plaintiff's public visibility and support." SAC ¶¶ 75, 80. Lastly, Count III alleges that Defendants "conspired with themselves and others to publish defamatory content, suppress exculpatory information, and undermine Plaintiff's political candidacies in 2024 and 2025." SAC ¶ 90. The SAC therefore claims that contested speech is directly actionable or otherwise serves as evidence of a conspiracy involving Defendants to interfere with and harm Plaintiff's political campaigns. *See, e.g.,* SAC ¶ 47 (alleging that the Banno Article "was the final act in furtherance of [a] conspiracy").

The medium of the contested speech once again clearly falls into a category of speech that is specifically enumerated in section 768.295(2)(a). The Debate Article and the Contempt Article constitute news reports. It can be argued that the Banno Article, which is an op-ed in nature, also qualifies as a news report within the meaning of the Anti-SLAPP Statute, but it is perhaps more appropriately categorized as a magazine article or, at the very least, belongs in the catch-all category of "other similar work." In any event, it also qualifies as a medium of speech which is governed by the Anti-SLAPP Statute. Once again, it is clear from the content of the three identified

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publications – the Debate Article, the Contempt Article, and the Banno Article – that the contested speech all concerns public issues given that the publications involve reporting and commentary on political campaigns of local interest, and that such matters are of legitimate news interest as the speech shed light and opinion on the qualifications of candidates for political office.

Plaintiff additionally argues that the contested speech is not constitutionally protected because it is defamatory. It is true that defamation is not constitutionally protected speech. *See, e.g., Mishiyev*, 402 So. 3d at 450 (citing *McQueen v. Baskin*, 377 So. 3d 170, 176 (Fla. 2d DCA 2023)). For the reasons provided in more detail below, the Court finds that there is no merit to Plaintiff's defamation claims. Given the foregoing, Defendants have met their burden to demonstrate that the contested speech is governed by the Anti-SLAPP statute. To the extent the SAC is grounded in other actions, e.g. *The Gabber*'s alleged concealment of information favorable to Plaintiff's campaign and a statement made by Ms. Loper to Plaintiff while moderating a mayoral debate, such allegations do not appear to fall within the purview of the Anti-SLAPP statute but are nonetheless meritless for the reasons described further below.

C. Are Plaintiff's Claims Primarily Based on First Amendment Rights in Connection with a Public Issue?

The burden now shifts to Plaintiff to demonstrate that his claims were not filed primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. Plaintiff's claims against Defendants in both the FAC and SAC seek redress primarily for written statements published in a local newspaper concerning his two unsuccessful political campaigns. Plaintiff objects to these written statements for a variety of alleged reasons including voter suppression, disinformation, violation of journalistic ethics and standards, and defamation. Plaintiff expresses discontent with what he views as *The Gabber*'s failure to report on his congressional campaign. For example, Plaintiff regards *The Gabber*'s actions as constituting "a

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pattern of willful neglect towards factual reporting contrary to the very ethics and standards Loper espouses in her publication's policies." First Resp. at 12. Such allegations demonstrate that Plaintiff filed this action primarily because Defendants engaged in speech. The publications complained of by Plaintiff clearly involved public issues.

Plaintiff's only discernible argument in response to the inquiry at hand is that the speech at issue is not protected by the First Amendment because the published articles are defamatory in nature. Such an argument is not meant for consideration at this juncture. *See Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021) (stating that the issue of whether a magazine article was defamatory and therefore not an exercise of free speech "is better addressed under the second prong of the analysis: whether Plaintiff's suit is filed without merit"). Accordingly, Plaintiff has failed to carry his burden to demonstrate that his claims in the FAC and SAC are not primarily based upon Defendants' exercise of free speech in connection with a public issue.

D. Are Plaintiff's Claims Without Merit?

Plaintiff now has the burden of demonstrating that his claims are not without merit.

i. FAC Causes of Action

For the reasons provided below, all counts in the FAC asserted against Ms. Loper fail to state a cause of action and are therefore without merit. First, Plaintiff offers no legal authority for the Court to consider in support of the validity of his claims. The First Response contains little more than Plaintiff's own theories about why the FAC states valid causes of action. Plaintiff attempts to counter the First Motion to Dismiss by arguing general concepts of defamation law by citing to "*Dominion Voting Systems v. Fox News Network*" and "*Goldwater v. Ginzburg*," neither of which includes a proper citation to a case law reporter. However, the FAC does not allege a

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cause of action for defamation against Loper. Thus, the little authority Plaintiff cites is entirely irrelevant to the validity of his claims in the FAC.[9]

Moreover, Plaintiff cites two fictitious cases in the First Response. First, Plaintiff cites to a case styled as "*Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019)" for the proposition that "courts must carefully evaluate whether the alleged speech is genuinely related to a public issue, and, more importantly, whether it is delivered in good faith and without intent to mislead." First Resp. at 16. Next, Plaintiff cites to a case styled as "*Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011)" for the proposition that "courts must evaluate whether the speech is misleading." First Resp. at 14. These cases do not appear in any Florida reporter. Not only has Plaintiff failed to present legal authority to counter Ms. Loper's grounds for dismissal, but Plaintiff has presented false legal authority to this Court, an action which is sanctionable, including as to *pro se* parties. *See e.g., Gutierrez v. Gutierrez*, 399 So. 3d 1185, 1188 (Fla. 3d DCA 2024) (finding that a *pro se* party's "submission of fictitious case law" to the court was "sufficient to warrant the imposition of sanctions" (subsequent history omitted)).

Because Plaintiff has failed to identify any legal authority which demonstrates that his causes of action against Ms. Loper are meritorious, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute as to the FAC.

ii. SAC Causes of Action

The Court now turns to the SAC. Count I purports to state a defamation claim against all Defendants. "Defamation has the following five elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public

[9] *See US Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 EMD, 2023 WL 2730567, at *1 (Del. Super. Ct. Mar. 31, 2023) ("This is a civil action involving a defamation claim"); *Goldwater v. Ginzburg*, 414 F.2d 324, 327 (2d Cir. 1969) ("This is a libel action").

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official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory." *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008) (citation omitted). The required element of a false statement is not present if the alleged statements are true. *Cape Publications, Inc. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003) (citation omitted). "Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Kieffer v. Atheists of Florida, Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019) (citation omitted). "Under Florida law, words are defamatory when they charge a person with an infamous crime or tend to subject one to hatred, distrust, ridicule, contempt or disgrace or tend to injure one in one's business or profession." *Seropian v. Forman*, 652 So. 2d 490, 495 (Fla. 4th DCA 1995) (citing *Adams v. News–Journal Corp.*, 84 So. 2d 549 (Fla. 1955)). "Where the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in either dismissing the complaint for failure to state a cause of action or in granting a directed verdict at the proof stage." *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (citation omitted).

Count I fails to state a cause of action for defamation. First, the Court must consider the Debate Article, which Plaintiff concedes is "the linchpin of this case." Second Resp. at 3. Having reviewed the hyperlinked article incorporated by Plaintiff into the SAC, the Debate Article never mentions Plaintiff at all, an admission made by Plaintiff. *See* SAC ¶ 17. Accordingly, Plaintiff has not demonstrated that the Debate Article charges Plaintiff with an infamous crime or tends to subject him to hatred, distrust, ridicule, contempt or disgrace or tends to injure him in his business or profession. Moreover, it is clear the gist or main purpose of the Debate Article was to discuss candidates participating in the debate, which did not include Plaintiff. Plaintiff admits that he was not invited to the debate for the congressional campaign. Second Resp. at 6. Although it is

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technically true that the Contempt Article described the debate participants as "the four candidates" for the political office in question, the Debate Article was substantially true as the "gist" of the article was to preview a debate that included those four candidates and excluded Plaintiff.

As to the Contempt Article, Plaintiff fails to demonstrate an actionable basis for defamation. Plaintiff does not argue that the statements contained in the Contempt Article are untrue. In other words, Plaintiff fails to show that he in fact was not ordered to attend a hearing where criminal contempt sanctions could have been imposed on him. Plaintiff simply alleges that the proximity of "criminal" to his name in a newspaper created false impressions that he had a criminal history. In failing to demonstrate the Contempt Article was untrue, Plaintiff cannot rely upon it as grounds for a defamation claim.

Additionally, Plaintiff concedes in his Second Response that the Banno Article "is a protected opinion" but insists it "reinforces the malicious intent established by the [Debate Article][.]" Second Resp. at 8. Thus, by Plaintiff's own admission, the Banno Article does not provide an independent basis for defamation. Having already determined that the Debate Article is not sufficient to support a claim for defamation, Plaintiff's argument that the Banno Article somehow "reinforces" the Debate Article is an invalid and moot point. The Banno Article constitutes pure opinion and is therefore not actionable. *See, e.g. Smith v. Taylor Cty. Pub. Co., Inc.*, 443 So. 2d 1042, 1046 (Fla. 1st DCA 1983) ("It is clear, as the trial court determined, that a writer's opinion about a newsworthy item is a protected privilege" (citation omitted)).

Count I also alleges that Defendants engaged in "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and the "concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50.

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Plaintiff alleges that "[t]hese actions and omissions–taken together–were intended to convey a false and defamatory impression of Plaintiff to the public, to damage Plaintiff's candidacies for Congress and mayor, and to sabotage his standing within the Florida Congressional District 13 and Gulfport electorates, and in Democratic and LGBTQ+ communities at large." SAC ¶ 51. Per Plaintiff, Defendants' failure to report on these matters constitutes actionable defamation. Plaintiff has presented no authority to support his contention. On the contrary, "[t]he judgment of what is newsworthy must remain primarily a function of the publisher." *See, e.g. Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1202 (Fla. 2d DCA 2014) (citing *Doe v. Sarasota-Bradenton Florida Television Co., Inc.*, 436 So. 2d 328, 331 (Fla. 2d DCA 1983) for the proposition that "it is the primary function of the publisher to determine what is newsworthy and that the court should generally not substitute its judgment for that of the publisher"). *See also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment"). Thus, Plaintiff's contention that *The Gabber*'s alleged concealment and failure to report on matters relevant to his campaign are therefore meritless.

Count II alleges a cause of action for tortious interference with a prospective economic advantage. Plaintiff identifies two specific instances of publication and editorial decision-making by *The Gabber* which undergird this claim: 1) publication of the Debate Article (*see* SAC ¶¶ 79, 80, 82); and 2) Defendants' alleged concealment and distortion of an alleged assault on Plaintiff at a pride parade (*see* SAC ¶ 87). However, Plaintiff has failed to present legal authority that this claim is meritorious. Moreover, the established authority on the issue defeats Plaintiff's claim. The tort of interference does not apply to "communications to the public at large." *Ozyesilpinar v.*

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Reach PLC, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Additionally, news reporting is not conduct that can be the basis for a tortious interference claim. *Id.* at 461 (citation omitted). *See also Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of an interference claim against a newspaper and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication"). Since the SAC alleges that Defendants edit, own, and operate a newspaper that communicated news and opinion articles to the public at large. *See, e.g.*, SAC ¶¶ 3, 5, 29, 76. Therefore, Plaintiff's tortious interference claim fails as a matter of law.

Finally, Count III alleges a cause of action for civil conspiracy. Because the Court has already determined that all other causes of action alleged in the SAC are without merit, Count III also fails because "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). Since Count III cannot stand on its own, it is also without merit. Notably, Count III is the only cause of action which specifically mentions Ms. Loper's alleged statement about having Plaintiff removed by police from the 2025 mayoral debate. *See* SAC ¶¶ 92, 94. Because Count III fails as a matter of law, Plaintiff has failed to demonstrate an actionable basis for Ms. Loper's alleged statement at the mayoral debate.

Since Plaintiff has failed to provide sufficient legal authority to demonstrate merit as to the causes of action asserted in the SAC, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute.

iii. Shotgun Pleadings

The Court further observes that the FAC and the SAC are both impermissible shotgun pleadings. The U.S. Court of Appeals for the Eleventh Circuit has identified "four rough types or

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categories of shotgun pleadings." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). The first is "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is a complaint that does not separate "each cause of action or claim for relief" into a different count. *Id.* at 1323. The fourth is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.*

At a minimum, the FAC and SAC both fall into the first and second categories identified by the Eleventh Circuit. Each count of the FAC and SAC begins by incorporating all foregoing paragraphs. Thus, the complaints clearly fall into the first category of shotgun pleadings. Secondly, both complaints contain lengthy general allegations sections which are fully incorporated into each count. Many of the general allegations asserted in both complaints are conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.[10] Thus, both complaints also fall into the second category of shotgun pleadings. Accordingly, both complaints are subject to dismissal as procedurally defective shotgun pleadings.

[10] For example, the FAC contains numerous paragraphs detailing how an alleged whistleblower named "Tampa Girl" informed Plaintiff that "she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents." FAC ¶ 18. These allegations are totally irrelevant to Plaintiff's cause of action for Loper's alleged violation of the Computer Fraud and Abuse Act (Count V), yet said allegations are incorporated into Count V. The SAC exhibits the same defect as Count I incorporates each paragraph in the lengthy general allegations section despite many being irrelevant to the cause of action asserted. Count II incorporates all preceding paragraphs, including those asserted in Count I. Count III asserts all preceding paragraphs, including those asserted in Count I and Count II.

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IV. Entitlement to Attorney's Fees

Under the Anti-SLAPP Statute, the Court "shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4), Fla. Stat. *See also Lee v. Animal Aid, Inc.*, 388 So. 3d 25, 29 (Fla. 4th DCA 2024) ("A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under section 768.295(4)"). Accordingly, the Court finds the following:

1. Ms. Loper is the prevailing party as to the FAC;
2. Ms. Loper, Mr. Loper, and TMMI are the prevailing parties as to the SAC; and
3. Plaintiff's claims against the aforementioned defendants were filed in violation of section 768.295.

Defendants are entitled to attorney's fees and costs incurred in relation to the SAC. Additionally, Ms. Loper is entitled to attorney's fees incurred since service of the FAC upon her. *See Marquez v. Lazarow*, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022) (holding that Defendant was entitled to attorney's fees when forced to respond to both an initial complaint and an amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute"). Here, Ms. Loper filed an Anti-SLAPP motion to dismiss the FAC. In granting Plaintiff's Motion to File Second Amended Complaint, the Court specifically granted the motion with the caveat that Ms. Loper's claim to attorney's fees as to the FAC would be preserved post-amendment. Therefore, Ms. Loper is entitled to recover reasonable attorney's fees and costs incurred for defending against both the FAC and the SAC.

V. CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED:

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1. This lawsuit is without merit, and Plaintiff brought the suit primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. This is true both as to the FAC and SAC.

2. The First Motion to Dismiss is hereby **GRANTED.**

3. The Second Motion to Dismiss is hereby **GRANTED.**

4. This case is **DISMISSED WITHOUT PREJUDICE.**

5. Plaintiff is granted leave to file a third amended complaint within **TWENTY (20) DAYS** of this Order. **FAILURE TO FILE A THIRD AMENDED COMPLAINT WITHIN THE TIMEFRAME PROVIDED WILL RESULT IN DISMISSAL OF THIS ACTION WITH PREJUDICE WITHOUT FURTHER NOTICE.** *See, e.g., Neu v. Turgel*, 480 So. 2d 216, 217 (Fla. 3d DCA 1985) (subsequent history omitted).

6. Defendants are entitled to an award of their reasonable attorney's fees and costs under section 768.295(4), Florida Statutes (2024). The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 14 day of October, 2025.

Honorable Patricia A. Muscarella
Circuit Civil Judge

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER; et al
Defendants.
_____/

Case No.: 24-003939-CI

THIRD AMENDED COMPLAINT

(Defamation, Including by Implication)
Jury Trial Demanded

Plaintiff, JOHN WILLIAM LICCIONE ("Plaintiff"), sues Defendants CATHY SALUSTRI-LOPER and THURSDAY MORNING MEDIA, INC. (collectively, "Defendants"), and alleges:

I. PARTIES

1. Plaintiff is a natural person who, in 2024, was a duly qualified Democratic candidate for the U.S. House of Representatives in Florida's Congressional District 13 (CD-13) Democratic primary election.

2. Defendant THURSDAY MORNING MEDIA, INC. ("TMMI") is a for-profit Florida corporation headquartered in Pinellas County that publishes The Gabber Newspaper (The Gabber).

3. Defendant Cathy Salustri-Loper is an owner/principal of TMMI and exercises editorial and business control over The Gabber and its publications.

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II. JURISDICTION AND VENUE

4. The amount in controversy exceeds $50,000, exclusive of interest, costs, and fees; this Court has subject-matter jurisdiction.

5. Venue is proper in Pinellas County because Defendants reside and do business here, the challenged publication was issued from here, and the tort and injury occurred here.

III. STATEMENT OF FACTS

6. Plaintiff qualified as one of five Democratic candidates for the U.S. House in Florida's CD-13 for the 2024 election cycle. The other four qualified candidates were: Whitney Fox, Mark Weinkrantz, Liz Dahan, and Sabrina Bousbar (See **Exhibit A** – the official Supervisor of Elections sample ballot).

7. As of July 12, 2024, the same five candidates were still in the race and all would remain in the race all the way to the August 20, 2024 election.

8. On July 12, 2024, The Gabber published a voter guide article on the CD-13 Democratic Primary election entitled: "***Meet the Democratic Candidates for the CD-13 Election***" under the byline of its reporter Patrick Heinzen.[1] (**Exhibit B**)

The Gabber Newspaper Introduction

9. The Gabber represents itself as Florida's oldest independent weekly newspaper, delivering essential news, lifestyle stories, and event coverage to communities in southern Pinellas County, including Gulfport, South Pasadena, St. Pete Beach, Treasure Island, and Madeira Beach. It routinely publishes fact-based "Meet the Candidates" voter guides for every election, informing voters about the full fields of candidates running for various offices,

[1] ***Meet the Democratic Candidates for the District 13 Congressional Election***, The Gabber, July 12, 2024. https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/

providing pictures of the candidates, and short write-ups about each one to help residents make "*informed decisions at the polls*."

10. These articles consistently feature headlines beginning literally with a "*Meet the… Candidates*…" branding, and are framed to emphasize comprehensive coverage of all qualified candidates in the race, ensuring "transparency" by, in some cases, noting attempts to contact every candidate multiple times (if necessary) and disclosing any non-responses, thereby maintaining a supposed commitment to balanced and complete electoral reporting for the local community.

11. Given these standard practices of these Meet the Candidates voter guide articles, The Gabber readership is conditioned to presume that when they see a Meet the Candidates headline, they are going to be reading a voter guide and be introduced to all of the candidates in an election, and would otherwise have no reason to suspect that The Gabber would deliberately disinform them on the number of candidates running for office. These are not positioned as opinion pieces, and they are not positioned as reports on individual campaign events (although one might include a reference to an upcoming election event). Their readers would have no reason to suspect that The Gabber would deliberately deceive them about the identities of the candidates running by omitting one of the qualified candidates from their Meet the Candidates articles.

12. One such reader and registered voter was Karla Kay Kemp. Ms. Kemp was a registered Democrat residing in Florida's Congressional District 13 during the period in question, and still is.

The "Gist and Sting" of the July 12, 2024 Gabber Voter Guide Article

13. On July 12, 2024, Defendants published the aforementioned article with the large, bold-font headline: "**Meet the Democratic Candidates for the District 13 Congressional Election**," (Exhibit B).

14. Immediately below appear the date/byline ("July 12, 2024" / "by Patrick Heinzen"), followed by a lead generic stock photograph of a hand holding an "I Voted" sticker against a blurred building/sky (not a debate venue), and a small-font caption: "***The four candidates*** *for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.*" (emphasis added)

15. Directly beneath the caption is an introductory paragraph stating: "*With election season coming back around,* ***Pinellas County residents look to learn more about the candidates up for election.*** *The district stretches from the southern parts of St. Pete Beach up to Tarpon Springs. At 6 p.m. on July 13, the Pinellas Democratic Party hosts a debate between four candidates.*" (emphasis added)

16. A bold, larger-font sub-header then introduces candidate profiles thusly: "***Meet the District 13 Congressional Candidates***:"

17. The article presented four profile modules with photos and short narratives for Whitney Fox, Mark Weinkrantz, Liz Dahan, and Sabrina Bousbar.

18. Mid-article, a bold, larger-font interstitial states: "**The District 13 Congressional election candidates are not the only people you will vote for. Read about the Pinellas County Supervisor of Elections candidates.**"

19. The article concludes with a promotional paragraph titled "Want More Election News?" inviting readers to "*make an informed decision at the polls*."

20. By packaging the piece as a "Meet the … Candidates" voter guide (bold headline and sub-header; four photo-profiles; bold interstitial; "Want More Election News?" call-out) while omitting Plaintiff, Defendants conveyed to ordinary readers that the "Democratic candidates" in CD-13 were *only* those four individuals.

21. Nowhere does the article identify Plaintiff as a qualified candidate; nowhere does it say "four of the five candidates"; and nowhere does it disclose that Plaintiff was not invited to the referenced party debate, or why.

The Gabber Standard Practices, Sampling of its "Meet the Candidate" Voter Guides

22. The Gabber's own "**Meet the Candidates**" feature series are fact-based voter guides reflecting an explicit published standard practice and procedure: (a) contact every candidate before publishing (sometimes multiple times); (b) present the complete candidate field; (c) transparently note any non-responses and explain missing photos; (d) frame the piece as a fact-based voter guide with election resources, and (e) the headline always says "*Meet the… Candidates*" in some form. The following is a statistically significant sample of five published examples of The Gabber's Meet the Candidates series voter guide articles spanning 2021-2024.

23. In "***Meet the Candidates: St. Petersburg***" (October 13, 2021, by Abby Baker, **Exhibit C**), The Gabber presented comprehensive coverage of all known candidates in the St. Petersburg mayoral and council races without exclusions, detailing the candidates who advanced from the primaries and providing their backgrounds and platforms.[2]

24. In "***Meet the Candidates for the Madeira Beach Election Season****"* (December 21, 2023, by Patrick Heinzen, **Exhibit D**), The Gabber stated: "*Note: The Gabber Newspaper attempted to*

[2] https://thegabber.com/meet-the-candidates-st-petersburg/

contact every candidate multiple times. We noted each instance where the candidate failed to respond." The article included profiles for all candidates, noting non-responses where applicable, such as for candidates who did not provide responses or photos.[3]

25. In "***Meet the Candidates for the Treasure Island Election Season***" (December 20, 2023, by Patrick Heinzen, **Exhibit E**), The Gabber stated "*Note: The Gabber Newspaper attempted to contact every candidate here multiple times. We noted each instance where the candidate failed to respond.*" All candidates were profiled, with disclosures for those who did not respond.[4]

26. In "***Meet the Candidates for the St. Pete Beach Election Season***" (December 21, 2023, Patrick Heinzen, **Exhibit F**), The Gabber stated: "*Note: The Gabber Newspaper attempted to contact every candidate multiple times. We noted each instance where the candidate failed to respond.*" The article covered the full field, including non-responders, and an update noted a correction for a candidate initially listed as non-responsive but who later responded.[5]

27. In "***Meet the Candidates for St. Pete Beach's District 2 Election***" (July 17, 2024, by Patrick Heinzen, **Exhibit G**), The Gabber included all qualified candidates in the St. Pete Beach District 2 special election, with profiles and photos where available.[6]

Pre-publication knowledge; interactions showing Defendants knew of Plaintiff's candidacy

28. Plaintiff filed to run in the 2024 Democratic primary with the Federal Election Commission in late May 2023. He was the first to file in what would ultimately become a field of five qualified candidates running as of July 12, 2024. As such, his campaign would span a total of 15 months from June 2023 to August 2024.

[3] https://thegabber.com/meet-the-candidates-for-the-madeira-beach-election-season/
[4] https://thegabber.com/meet-the-candidates-for-the-treasure-island-election-season/
[5] https://thegabber.com/meet-the-candidates-for-the-st-pete-beach-election-season/
[6] https://thegabber.com/upcoming-st-pete-beach-special-election/

29. On August 24, 2023, Plaintiff held his campaign launch rally at Gulfport's Hickman Theatre.

30. In late 2023, Plaintiff personally introduced himself as a Democratic CD-13 candidate to Defendant Cathy Salustri-Loper and her husband Barry Loper (co-owner of TMMI) at a Gulfport community event at Gulfport's Scout Hall. Ms. Salustri-Loper acknowledged that she already knew Plaintiff was running.

31. In late February of 2024, Plaintiff purchased a half-page campaign event advertisement with The Gabber after speaking with TMMI co-owner Barry Loper about it on the phone (See **Exhibit H**).

32. Plaintiff lived within 100 yards of The Gabber's office in downtown Gulfport and during the relevant period, Plaintiff's campaign signage was visible in the vicinity of The Gabber's office (See **Exhibit I**).

33. Plaintiff spoke with The Gabber reporter Patrick Heinzen about his candidacy and about a city government IT procurement corruption scandal he had uncovered, and he exchanged emails with Heinzen, in late 2023 and through early 2024.

34. Plaintiff was the sole Gulfport resident running in the Democratic primary.

35. Despite this knowledge, access, proximity, and interactions, Defendants (or their employees or agents to include reporter Patrick Heinzen under the direction and control of Defendants) did not contact Plaintiff prior to publishing the July 12 voter-guide article to obtain any information, a photograph, or a statement. Instead. They concealed from Plaintiff they were about to publish a deceptive, field-defining "Meet the … Candidates" package that omitted Plaintiff entirely while deceptively representing there were only 4 candidates in his race.

Post-publication notice and the delayed, self-contradictory, and false "correction"

36. After publication, Plaintiff notified The Gabber of the omission and demanded a correction of equal prominence.

37. Defendants did not correct the article page to identify Plaintiff, did not add a fifth profile, and did not revise the headline or subheader to reflect the complete field. They did not publish an equivalent feature article on Plaintiff.

38. On August 14, 2024—more than a month after publication—and just 6 days before the Primary election, reporter Heinzen left Plaintiff a voicemail saying he wanted to "*apologize for our mistake*" and asking to "*do a short profile … in this week's paper*," seeking a same-day call back as follows:

> *"Hi John, this is Patrick Heinzen with The Gabber. I was hoping we could have a few minutes to talk quickly just so that I could first of all* ***apologize for our mistake*** *and then so that I could speak with you so that I could do a short profile about you in this week's paper. Unfortunately based on the time we would have to do it sometime today. So if you could get back to me today at some point, I would really appreciate it. And thank you so much for your time."*

39. That evening, while travelling to Maryland and upon seeing the voicemail message transcript, Plaintiff texted Mr. Heinzen explaining that The Gabber already had everything it needed for a candidate profile (from his campaign website career pages and his detailed Linked(In) biography), i.e., Plaintiff responded (**Exhibit J**).

40. On August 15, 2024, Defendants published a small-font self-conflicting "Corrections" item buried within the "**Letters to the Editor/Voices**" section, not on or linked from or even to the original article page **(Exhibit K)**, stating as follows:

> *"***Corrections**
> The Gabber Newspaper printed an article — "Meet the Democratic Candidates for the District 13 Congressional Election" — focusing on a scheduled debate hosted by the Pinellas Democratic Party. The Pinellas Democratic Party showcased four of the candidates for (sic) running for congress. The Gabber Newspaper did not include candidates who were not participating in the event, including John Liccione. The Gabber Newspaper did not intentionally omit Liccione, and regrets the mistake. The Gabber Newspaper reached out to Liccione, but did not receive a response."

41. The item simultaneously and self-contradictorily claims that The Gabber "*did not include candidates who were not participating in the event, including John Liccione*" (an **intentional** exclusion of Liccione) and that, contradictorily "*The Gabber Newspaper did not intentionally omit Liccione, and regrets the mistake*" (admitting mistake, claims it was unintentional), and further asserts falsely that The Gabber "*reached out to Liccione, but did not receive a response*."

42. Across the sample set of The Gabber's "Meet the Candidates" voter guide articles identified in Exhibits C–G, Plaintiff's 2024 CD-13 congressional primary is the only election in which a duly qualified candidate was omitted from the field. It is also noted that reporter Patrick Heinzen, whose byline appears under the July 12th article, also appears under four of the five other Meet the Candidates articles published in Noember 2023 and in 2024. Upon information and belief, Plaintiff is also the only candidate in that set whom The Gabber did not contact at all prior to publishing the guide for that race. In the other sampled guides, The Gabber either included every candidate and disclosed outreach efforts and any named-candidate non-responses; in Plaintiff's race, it did neither while presenting a four-person field as if exclusive.

Timing and foreseeable effects

43. The July 12th article was published during the vote-by-mail ballot request/mailing period of the 2024 cycle, some 39 days before the August 20th primary, and just *4 days* before the ballots were mailed out to voters by the Pinellas County Supervisor of Elections. As such, the

article was published at a time when it would knowingly wreak maximum damage on Plaintiff's reputation, candidacy, and viability because eighty (80) percent of Democrats would vote by mail in the CD-13 primary (See election results - **Exhibit L**).

44. Over the entirety of Plaintiff's 15-month primary campaign, the July 12th article was the *only* article published by The Gabber that covered the CD-13 Democratic candidate field in the primary election. It was the only "voter guide" The Gabber ever published for the CD-13 primary.

45. Following publication, campaign contributions, voter engagement declined significantly relative to the preceding period and Plaintiff had to self-fund promotions and events through a serious of campaign loans from his life savings.

46. Because Defendants did not correct the original article page, did not add a fifth profile, and instead buried a later "correction" in a letters section without comparable prominence or linkage, the false gist persisted through the VBM period and all the way up to election day, prolonging and aggravating the harm.

47. Ms. Karla Kay Kemp was and is a registered Democrat residing in Florida's Congressional District 13. She was aware of Plaintiff's candidacy through means other than The Gabber and was undecided between voting for Plaintiff or Whitney Fox.

48. Upon reading The Gabber's July 12, 2024, article titled "*Meet the Democratic Candidates for the District 13 Congressional Election*," Ms. Kemp inferred that Plaintiff had dropped out of the race and thus made a final decision to vote for Whitney Fox instead. This absence of Plaintiff in the article was the singular driving factor in her final decision to vote for Fox. (See sworn affidavit of Karla Kay Kemp - **Exhibit M)**

Damages

49. Plaintiff suffered reputational harm and pecuniary loss, including campaign self-funding exceeding $50,000 due to loss of what was the (free) media coverage represented by The Gabber's voter guide article, to replace foregone contributions, lost media opportunities, lost voter support, and reputational damage as a candidate who was depicted by implication as not even existing as a qualified candidate at all or at least a former candidate who had dropped out of the field.

Objective textual counts preserving the article's "gist" and "sting"

50. In the July 12 article, the word "candidates" appears seven (7) times across the large-font bold headline, large-bold sub-header, the caption, bold interstitial, and closing promo—consistent with The Gabber's standard practice of fact-based voter guides introducing all qualified "candidates." Some form of the phrase "Meet the ….Candidates" appears twice – in the large, bolded headline, and in the large, bold subtitle under the caption. The word "debate", in contrast, appears only three times and is always in small, non-bolded font. The word debate appears nowhere in the headline or subtitles.

V. CAUSE OF ACTION

COUNT I — DEFAMATION (INCLUDING BY IMPLICATION)

(Against both Defendants)

51. Plaintiff realleges and incorporates by reference paragraphs 6–50.

52. **Governing Law and Elements.** Florida recognizes defamation by implication where the omission or juxtaposition of facts conveys a false and defamatory impression, even if individual statements are literally true. *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106–08 (Fla. 2008)

(adopting *Restatement (Second) of Torts* § 559 & cmt. e). Substantial truth turns on the "gist" or "sting" of the publication, as a whole, and the ordinary reader's overall impression. See, e.g., *Thomas v. Jacksonville Television, Inc*., 699 So. 2d at 802 (Fla. 1st DCA 1997); *Smith v. Cuban Am. Nat'l Found*., 731 So. 2d 702, 706 (Fla. 3d DCA 1999). Where a plaintiff is a public or limited-purpose public figure, the standard is actual malice—knowledge of falsity or reckless disregard for truth. *New York Times Co. v. Sullivan*, 376 U.S. 254, 279–80 (1964); *Turner v. Wells*, 879 F.3d 1254, 1269–70 (11th Cir. 2018). At Rule 1.140(b)(6), the court is confined to the four corners of the complaint and exhibits, accepts well-pleaded facts as true, and draws all reasonable inferences in Plaintiff's favor. See *City of Miami v. Cruz*, 342 So. 3d 741, 742 (Fla. 3d DCA 2022); *Sobi v. Fairfield Resorts, Inc.*, 846 So. 2d 1204, 1206 (Fla. 5th DCA 2003). Whether a capable-of-defamatory-meaning publication actually conveys a defamatory implication to ordinary readers is ordinarily for the jury (Restatement (Second) of Torts § 614).

53. **"Ridicule" is not required.** A communication is defamatory if it prejudices the plaintiff in the eyes of a substantial and respectable minority of the community or deters others from associating with him; Florida defamation is not limited to statements provoking hatred, distrust, ridicule, contempt, or disgrace. *Jews for Jesus*, 997 So. 2d at 1108 (embracing Restatement § 559 cmt. e).

54. **As applied here.** The July 12 voter-guide presentation—"Meet the …Candidates" in large bold headline, bold sub-header, four photo-profiles and write-ups, bold interstitial, and the "*make an informed decision*" promo—omitted Plaintiff from the defined field of "Democratic candidates," falsely signaling to Democratic voters, donors, and volunteers that Plaintiff was not a legitimate, qualified candidate in his own race (see **¶¶13–21**). That implication plausibly prejudices Plaintiff in the eyes of a substantial and respectable minority of the community (the

registered Democratic voters in FL CD-13) and deters association (votes, contributions, speaking engagements, volunteering), which is actionable even if the article did not hold him up to ridicule.

55. **Publication and of/concerning.** Defendants published the July 12, 2024 voter-guide-style "Meet the Candidates" article about the CD-13 Democratic primary. Because the article purports to define who the "Democratic candidates" in Plaintiff's own race are, it is of and concerning Plaintiff because it is *of and concerning Plaintiff's election*, even though he is deliberately omitted by name and photograph.

56. **Falsity by implication (gist).** Considering the article's presentation—the large bold "Meet the … Candidates" headline; smaller date/byline; the stock "I Voted" photo (not a debate venue picture); small caption referencing "***The four candidates…***"; bold larger-font sub-header "**Meet the District 13 Congressional Candidates:**"; four photo-anchored profiles; bold larger-font interstitial; and the "Want More Election News?" promo—the publication conveys the false impression that the CD-13 Democratic field consisted of only four individuals as of July 12, 2024 (see **¶¶13–19, 21**). In truth, five Democrats, including Plaintiff, remained duly qualified (see **¶¶6–7**).

57. **Fault and actual malice (pre-publication knowledge & concealment).** Plaintiff is at least a limited-purpose public figure. Defendants acted with actual malice or reckless disregard by publishing a field-defining "Meet the … Candidates" voter guide while knowing of Plaintiff's candidacy from pre-publication interactions and ad placement (**¶¶30–33**); failing to contact Plaintiff before publication; and concealing the forthcoming voter-guide publication from Plaintiff, depriving him of the opportunity to provide information and demand equal coverage before it ran (**¶35**).

58. **Conscious departure supporting actual malice.** The unique, outlier treatment described in ¶42—where Plaintiff's race is the only "Meet the Candidates" guide in the sample set to omit a duly qualified candidate, misrepresent the number of candidates, and the only one where no pre-publication contact occurred, while other guides included full fields and disclosed outreach/non-responses—corroborates falsity by implication and supports an inference of actual malice (knowledge of falsity or reckless disregard for the truth) (see **¶¶22–27, 42**)

59. **The changing story with self-serving, internally conflicting "correction**." Defendants then issued a self-serving, litigation-posture "pseudo- correction"—buried, delayed, and contradictory—that both (i) admits a deliberate editorial exclusion ("did not include candidates who were not participating in the event, including John Liccione") and (ii) claims the omission was "not intentional" and a "mistake," while also misrepresenting that Plaintiff did not respond despite his same-day reply (¶¶25–27) when he did. Further, reporter Heinzen himself claimed in his voice message that it was "our mistake" (see **¶¶38–41**). Taken in the light most favorable to Plaintiff, those admissions and contradictions strengthen liability under *Jews for Jesus* and are probative of knowledge of falsity or reckless disregard for the truth: Actual malice.

60. **Conscious departure from established practice.** The July 12 CD-13 article violated The Gabber's own stated and demonstrated editorial standards for "Meet the Candidates" features—by not contacting all candidates, by not presenting the complete field, by failing to transparently disclose any purported non-response (see **¶¶22–27**), and by falsely asserting there were exclusively only "***The four candidates…***" in the race. Combined with the timing and the post-hoc self-conflicting "pseudo-correction" (see **¶¶38–41**) this supports an inference of reckless disregard and consciousness of wrongdoing.

61. **Issue for the fact-finder.** Plaintiff has pled that the article is at least capable of conveying a defamatory implication, as supported by the sworn declaration of affected Democratic voter Karla Kemp (**see ¶¶47–48**). Whether other "ordinary readers" actually drew that implication—and the weight to give Defendants' contradictory "correction" and conscious departure—are classic jury questions, not grounds for dismissal under Rule 1.140(b)(6).

62. **Damages.** As a direct and proximate result of the July 12 publication and Defendants' failure to correct it with equal prominence (**see ¶¶38–41, 43–46**), Plaintiff suffered (a) reputational injury and loss of electoral support (general damages); and (b) special damages that are specifically stated, including: (i) emergency corrective-advertising and event spend of over $38,000; (ii) additional digital/email list and outreach costs of over $5,000 and (iii) increased self-funding of over $50,000 in the last month of the election to counter-act the negative impact of the article, and to replace foregone contributions, with total special damages exceeding $50,000, subject to refinement in discovery (**see also ¶49**).

63. **Substantial truth inapplicable.** Any assertion that discrete statements were literally true (e.g., that four individuals debated on July 13) does not defeat liability where the article's gist—who the "Democratic candidates" are—is false, and was known to be false (**see ¶¶6–7, 13–21, 38–41**).

64. **Nature of the claim.** This is not a "non-coverage" claim. This claim is about Defendants' actual *coverage* of a Democratic Congressional primary *election* in which they knew Plaintiff was one of the five qualified candidates (**see ¶¶6–7, 30–33**). It challenges an affirmative, candidate-field-defining set of factual mis-representations presented within a supposedly fact-based a voter guide (**see ¶¶13–21, 22–27**).

65. While this was not a traditional "character assassination," it functioned as a *candidacy* assassination. By conspiring to conceal then publish a supposedly fact-based voter-guide-styled "Meet the Candidates" voter guide inconsistent with all other like pieces in all other races in that it omitted a duly qualified candidate, while misrepresenting the true candidate count, Defendants wrongfully erased Plaintiff, and only Plaintiff, from the Democratic electorate psyche in Congressional District 13. Presented as a voter resource, the article conveyed a materially false gist—disinformation about who was on the ballot—and any attempt to cloak it in Fla. Stat. § 768.295 anti-SLAPP protection misapprehends the statute and disserves Pinellas County voters' right to accurate, non-misleading election information about the most fundamental election information of all that we as Americans are entitled to: Who is running?

VI. PRAYER FOR RELIEF

WHEREFORE, Plaintiff requests judgment against Defendants, jointly and severally, for:

- **A.** Compensatory damages, including special damages, exceeding $50,000 in an amount to be determined at trial;
- **B.** Pre- and post-judgment interest;
- **C.** Taxable costs as allowed by law;
- **D.** Attorney fees;
- **E.** Such other and further relief as the Court deems just and proper.

VII. JURY DEMAND

Plaintiff demands trial by jury on all issues so triable.

Dated: November 3, 2025

Respectfully Submitted

/s/ John W. Liccione
John W. Liccione
Plaintiff, Pro Se
PO Box 229
Dunedin, FL 34697
443-698-8156 |
jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com, jkendricks@tlolawfirm.com), on November 3, 2025.

/s/ John W. Liccione

EXHIBITS

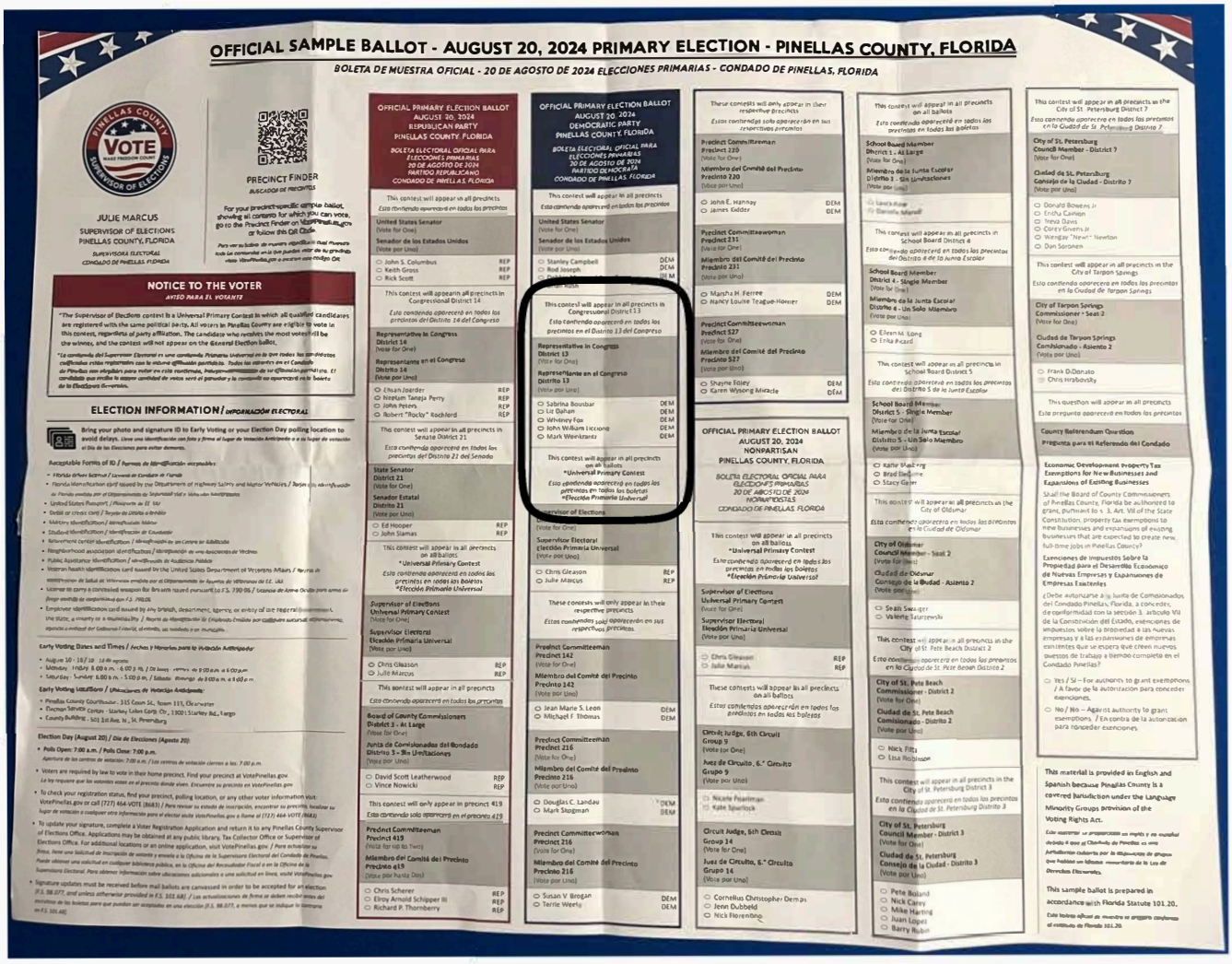
A. Official Pinellas County Supervisor of Elections sample ballot (five Democratic candidates as of July 12, 2024).
B. The Gabber (July 12, 2024) — "Meet the Democratic Candidates for the District 13 Congressional Election" (By Patrick Heinzen).
C. The Gabber (Oct. 13, 2021) — "Meet the Candidates: St. Petersburg" (By Abby Baker) .
D. The Gabber (Dec. 21, 2023) — "Meet the Candidates for the Madeira Beach Election Season" (By Patrick Heinzen).
E. The Gabber (Dec. 20, 2023) — "Meet the Candidates for the Treasure Island Election Season" (By Patrick Heinzen).
F. The Gabber (Dec. 21, 2023) — "Meet the Candidates for the St. Pete Beach Election Season" (By Patrick Heinzen).
G. The Gabber (July 17, 2024) — "Meet the Candidates for St. Pete Beach's District 2 Election" (By Patrick Heinzen).
H. Plaintiff's Campaign ad purchased with The Gabber (pre-publication).

I. Plaintiff's Congressional Campaign sign near The Gabber office.
J. Screenshot of Plaintiff's same-day text reply to Patrick Heinzen's August 13, 2024 voicemail.
K. The Gabber (Aug. 15, 2024) — "Voices/Letters to the Editor — Corrections."
L. Pinellas County Supervisor of Elections 2024 Democratic Primary results (showing ~80% vote-by-mail).
M. Sworn declaration of Karla Kay Kemp
N. Sworn declaration of John Liccione

EXHIBIT A

Official Sample Ballot
August 20, 2024 Primary Election - Pinellas County

Published by the Pinellas County Supervisor of Elections



OFFICIAL SAMPLE BALLOT - AUGUST 20, 2024 PRIMARY ELECTION - PINELLAS COUNTY, FLORIDA

BOLETA DE MUESTRA OFICIAL - 20 DE AGOSTO DE 2024 ELECCIONES PRIMARIAS - CONDADO DE PINELLAS, FLORIDA

JULIE MARCUS
SUPERVISOR OF ELECTIONS
PINELLAS COUNTY, FLORIDA

PRECINCT FINDER

NOTICE TO THE VOTER

ELECTION INFORMATION / INFORMACIÓN ELECTORAL

OFFICIAL PRIMARY ELECTION BALLOT
AUGUST 20, 2024
REPUBLICAN PARTY
PINELLAS COUNTY, FLORIDA

OFFICIAL PRIMARY ELECTION BALLOT
AUGUST 20, 2024
DEMOCRATIC PARTY
PINELLAS COUNTY, FLORIDA

OFFICIAL PRIMARY ELECTION BALLOT
AUGUST 20, 2024
NONPARTISAN
PINELLAS COUNTY, FLORIDA

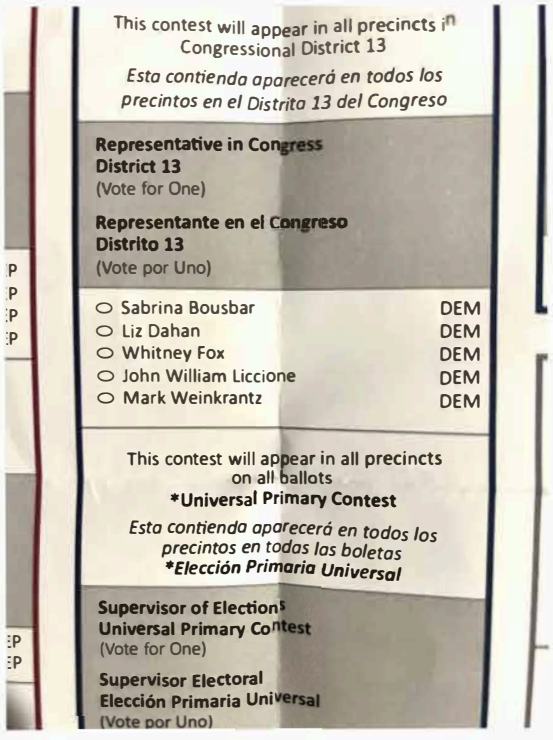


EXHIBIT B

The Gabber (July 12, 2024) — "Meet the Democratic Candidates for the District 13 Congressional Election" (By Patrick Heinzen).

ELECTRONICALLY FILED 11/07/2025 02:22:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Pier Dental
Family Owned and Run
General and Cosmetic
Dentistry
Dr. Brittany Pierpont
8351 Blind Pass Rd
St Pete Beach, FL 33706
727-363-6169

Meet the Democratic Candidates for the District 13 Congressional Election

July 12, 2024 by Patrick Heinzen



The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.
Photo courtesy of the City of St. Petersburg

With election season coming back around, Pinellas County residents look to learn more about the candidates up for election. The district stretches from the southern parts of St. Pete Beach up to Tarpon Springs. At 6 p.m. on July 13, the Pinellas Democratic Party hosts a debate between four candidates.

Meet the District 13 Congressional Candidates:

Whitney Fox



GULFPORT FL WEBCAM



Watch our LIVE streaming Gulfport Florida Webcams!
Gulfport Casino Webcam
Gulfport Beach Webcam
Downtown Gulfport Webcam
Gulfport Marina East Webcam
Gulfport Marina West Webcam

CLEAR NUMBERS BOOKKEEPING
Virtual bookkeeping for small businesses and nonprofits. Monthly packages customized to your needs or one time cleanups. Payroll available. QuickBooks Online Certified ProAdvisor. 10+ years experience.
CLICK HERE FOR MORE INFO!

2025 FLORIDA PRESS ASSOCIATION AWARD WINNER

GULFPORT WEATHER
GULFPORT, FL

Meet the District 13 Congressional Candidates:

Whitney Fox



Whitney Fox looks to take the District 13 Congressional seat in the upcoming election.
Photo via FloridaPolitics

Fox's website describes her as, "A mother who will fight to improve the quality of life for Florida's 13th district and the American people. Some focuses for her candidacy include protecting women's reproductive rights and healthcare. Also, she looks to protect Social Security and Medicare, and lower prescription drug costs.

GULFPORT WEATHER

GULFPORT, FL

70°
sunny
7:40 am 6:47 pm EST

feels like: 70°f
wind: 6mph w
humidity: 53%
pressure: 30.04"hg
uv index: 0

8 pm	9 pm	10 pm
66°F	66°F	64°F

sun	mon	tue
77°F / 64°F	73°F / 57°F	77°F / 63°F

Gulfport, FL climate ▸

Mark Weinkrantz



What does Mark Weinkrantz hope to achieve if elected to the District 13 Congressional seat?
Photo Via Mark Weinkrantz

Weinkrantz is similar in his approach to women's reproductive freedoms. Along with this, his website highlights how, "He believes in the American Dream and recognizes the need for compassionate and comprehensive immigration policies that honor America's legacy as a nation of immigrants."

The District 13 Congressional election candidates are not the only people you will vote for. Read about the Pinellas County Supervisor of Elections candidates.

The District 13 Congressional election candidates are not the only people you will vote for. Read about the Pinellas County Supervisor of Elections candidates.

Liz Dahan



Liz Dahan prepares for the debate for the District 13 Congressional election.
Photo via FloridaPolitics

Dahan also focuses on protecting women's rights. Her approach towards Social Security and medicare is similar to Fox's. Also, her website states, "She is passionate about protecting Florida's natural environment and recognizes that our vulnerability to rising sea levels, hurricanes, and coastal erosion requires bold legislative measures aimed at reducing carbon emissions, investing in renewable energy, and enhancing our natural defenses against climate-related disasters."

Sabrina Bousbar



Sabrina Bousbar's campaign for the District 13 Congressional election is heating up.
Photo via FloridaPolitics

Bousbar's website describes her as a "public servant and commonsense problem solver." Her goals are to make sure that families and individuals have access to viable "education, healthcare, housing, and jobs that every family needs and deserves."

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by Patrick Heinzen

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EXHIBIT C

The Gabber (Oct. 13, 2021) — "Meet the Candidates: St. Petersburg"
(By Abby Baker)

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Meet the Candidates: St. Petersburg

October 13, 2021 by Abby Baker

On November 2, voters will have their say on St. Petersburg's next mayor and council members in Districts 1, 2, 4, 6 and 8.

This election is non-partisan, but each candidate has strong stances on how they will represent the city during their term in office. The candidates, two in each category, beat out the competition in late August during the primary elections. Each aspiring official, and a handful of incumbents, will have to win the majority vote to reach the coveted spot at St. Petersburg City Hall.

The election is city-wide; residents can request a mail-in ballot until October 23.

The Next Mayor: Ken Welch vs. Robert Blackmon



Photo courtesy of Ken Welch.

St. Petersburg is saying goodbye to term-limited Mayor Rick Kriseman, who has served for the full term limits. His successor will be either Ken Welch or Robert Blackmon, who have wildly different political agendas and backgrounds.



Photo courtesy of Robert Blackmon.

Welch, a registered Democrat who grew up in St. Petersburg's Gas Plant District, served as the second ever Black commissioner on the Pinellas County Board of County Commissioners, District 7, for 20 years.

Similar to his platform as commissioner for two decades, Welch looks to prioritize economic development by focusing on climate resiliency, transportation, equity, housing and criminal justice reform.

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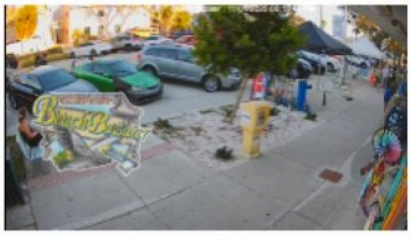

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2025 FLORIDA PRESS ASSOCIATION AWARD WINNER

Next District 8 Councilmember: Jeff Danner vs. Richie Floyd



Courtesy of Richie Floyd.

Pinellas County science teacher Richie Floyd is running for council with a grassroots campaign focused on "better jobs, affordable housing, and social and environmental justice."

The proclaimed "community activist" won the primary with 51.81% of the vote.



Courtesy of Jeff Danner.

Jeff Danner, a former construction worker and St. Petersburg Councilmember in 2005, followed with 27%. He's president of the Historic Kenwood Neighborhood and a supporter of affordable housing and small business.

The former councilmember is against quick development of the Tropicana Field site, stating the project needs more community input and less rash action.

More from the candidates at stpete.com/advocacy/electionseason2021. Find more election information, sample ballots or request a mail-in ballot at votepinellas.com.

Want to talk about this post? Click here and discuss on Facebook!

by Abby Baker

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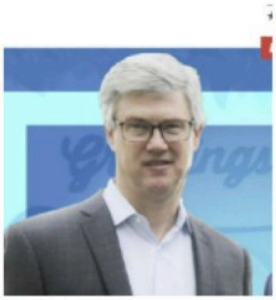
Next District 4 Councilmember: Lisset Hanewicz vs. Tom Mullins



Courtesy of Lisset Hanewicz.

Lisset Hanewicz, the daughter of Cuban exiles, is an attorney with her own private practice.

The University of Florida Alumni isn't originally from St. Petersburg, but is active in the community as President of the Crescent Lake Neighborhood Association, co-founder of Friends of Woodlawn Elementary, a board member of the Shirley Proctor Puller Foundation and a former Membership Chair for the Council of Neighborhood Associations.

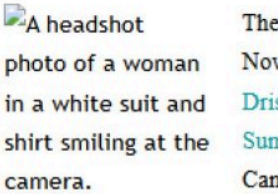


Courtesy of Tom Mullins.

Hanewicz won the primary with 42% of the vote. Her opponent, Tom Mullins, received 24% and is an investment banker with Raymond James. A conservative, Mullins states increasing business and lowering property taxes are some of his top priorities.

"More Jobs, More Friends and More Cool Stuff," is the businessman's slogan.

Next District 6 Councilmember: Mhariel Summers vs. Gina Driscoll



A headshot photo of a woman in a white suit and shirt smiling at the camera.

Courtesy of Gina Driscoll.

The primary for District 6 was canceled, but the November 2 vote will be between incumbent Gina Driscoll and first-time political candidate Mhariel Summers, who worked on the Charlie Crist Campaign, managed the Dr. Carter G. Woodson African American Museum and recently served as the District Secretary for Florida State Representative Michele Rayner of District 70.



Courtesy of Mhariel Summers.

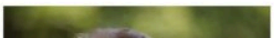
District 6 incumbent Driscoll is focused on affordable housing, green issues, increasing transportation mobility and expanding education.

Both candidates are Democrats and represent similar issues on different platforms.

Next District 8 Councilmember: Jeff Danner vs. Richie Floyd



Pinellas County science teacher Richie



In contrast, registered Republican Robert Blackmon has a background in St. Petersburg real estate.

The former Council of Neighborhood Associations representative states he is focused on preserving historical neighborhoods and spaces, but also aims to build on economic opportunities such as the Tropicana Field site and the abandoned Tangerine Plaza grocery store.

"We can't be the region that loses a Major League Baseball team our community worked decades to get," Blackmon writes on his campaign site.

Next District 1 Councilmember: Bobbie Shay Lee vs. Copley Gerdes



Courtesy of Bobbie Shay Lee.

Former NFL cheerleader, breast cancer advocate and survivor Bobbie Shay Lee has a primary focus on crime in the St. Petersburg area, along with waterway health and keeping the Rays in the city.

"It used to feel safe here, now as a parent myself, the rise in crime and human trafficking is terrifying," she states on her website. "One peak at the Juvenile Welfare Board statistics shows we are desperately failing to provide for the children in this community. "



Courtesy of Copley Gerdes.

Lee is new to local politics, and so is opponent Copley Gerdes, son of former District 1 Councilmember Charlie Gerdes, who shares many of Lee's priorities.

Gerdes, a financial advisor, is looking to develop infrastructure in the area through growing local business and improving the roadways. He had the lead in the primary, but cut it close with 33.81%, while Lee followed with 33.76% of the votes.

Next District 2 Councilmember: Brandi Gabbard

Incumbent Brandi Gabbard works as a real estate agent when she's not sitting on council. She won District 2 by default when her competitor, Kyle Hall, withdrew from the race in September.

Gabbard, a registered Democrat, focuses on protecting small businesses and providing affordable housing.

"As we look forward, I promise to continue working on the issues everyday that matter to you," Gabbard said in a video on her website.

GULFPORT WEATHER

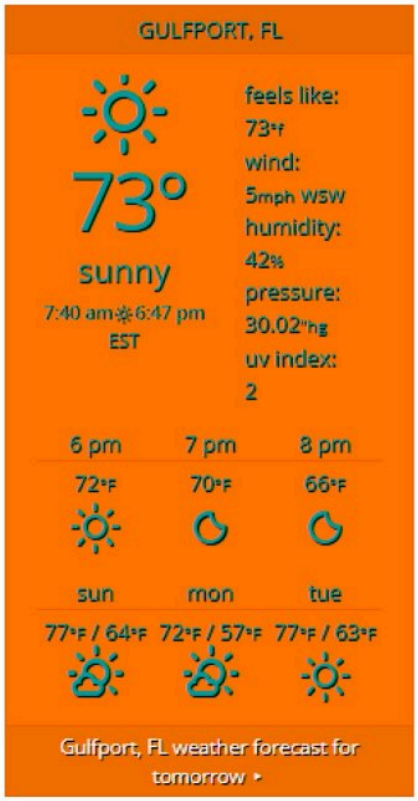


EXHIBIT D

The Gabber (Dec. 21, 2023) — "Meet the Candidates for the Madeira Beach Election Season" (By Patrick Heinzen)

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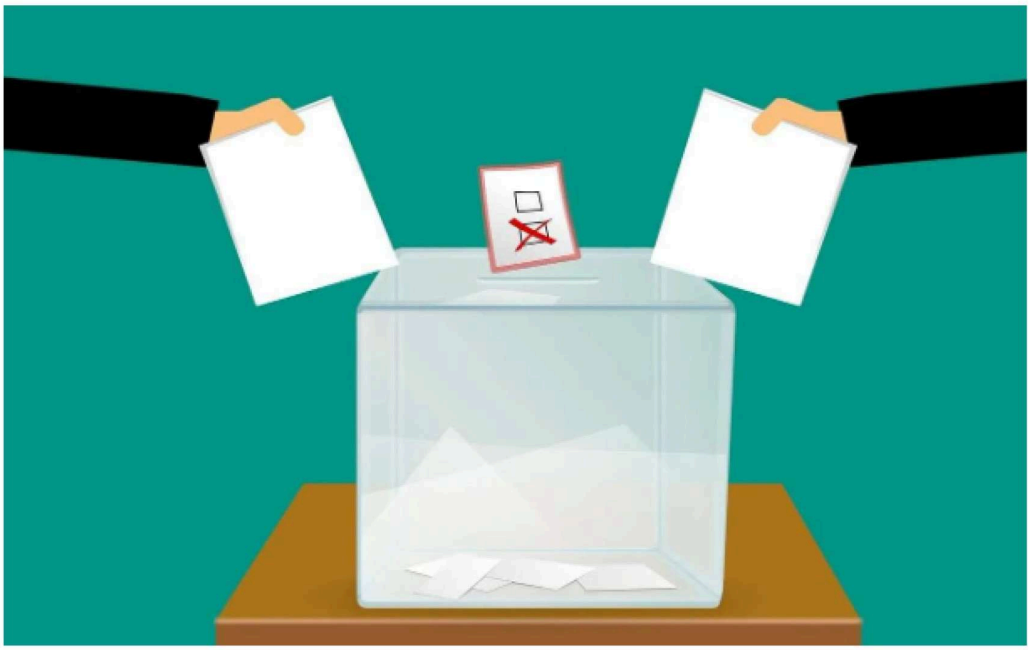
Meet the Candidates for the Madeira Beach Election Season

December 21, 2023 by Patrick Heinzen



Across Pinellas County, election season is heating up. Meet the candidates running in the upcoming Madeira Beach election season.
Photo by Pixabay

It's election season across Pinellas County. From Madeira Beach to St. Pete Beach, city councils and commissions are preparing to receive new members. *The Gabber Newspaper's* election coverage will look at Gulfport, St. Pete Beach, Treasure Island, and Madeira Beach. *The Gabber Newspaper* would cover South Pasadena elections, but South Pasadena does not have elections in 2024.

Note: The Gabber Newspaper *attempted to contact every candidate multiple times. We noted each instance where the candidate failed to respond.*

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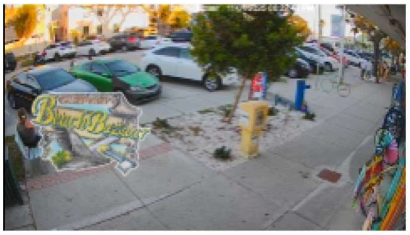

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2025 FLORIDA PRESS ASSOCIATION AWARD WINNER

Madeira Beach Election Season



Incumbent Commissioner David Tagliarini won his unopposed re-election campaign for Madeira Beach District 1.

Photo Courtesy of the City of Madeira Beach

Madeira Beach sees two qualified candidates, both of them incumbents running unopposed. In District 1, David Tagliarini will continue his service.

GULFPORT, FL

73°

sunny

7:40 am 6:47 pm EST

feels like: 73°f
wind: 5mph WSW
humidity: 42%
pressure: 30.02"hg
uv index: 2

6 pm	7 pm	8 pm
72°F	70°F	66°F

sun	mon	tue
77°F / 64°F	72°F / 57°F	77°F / 63°F

Gulfport, FL 10 days weather forecast ▸



Incumbent Vice Mayor Ray Kerr won his unopposed re-election campaign for Madeira Beach District 2.

Photo courtesy of the City of Madeira Beach

In District 2, Vice Mayor Ray Kerr says he hopes to make improvements to taxes and roads. He is looking to maintain property taxes for homeowners, as well as look into raising roads to prevent flood damage.

The Gabber Newspaper *reached out to Tagliarini multiple times, but did not receive an answer.*

This not the only city in South Pinellas with an election. Read about candidates in St. Pete Beach and Treasure Island.

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by Patrick Heinzen

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Filed Under: News
Tagged With: Florida Elections, Madeira Beach, Madeira Beach News, Pinellas Elections



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EXHIBIT E

The Gabber (Dec. 20, 2023) — "Meet the Candidates for the Treasure Island Election Season" (By Patrick Heinzen)

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Meet the Candidates for the Treasure Island Election Season

December 20, 2023 by Patrick Heinzen



Across Pinellas County, election season is heating up. Meet the candidates running in the upcoming Treasure Island election season.
Photo by Pixabay

It's election season across Pinellas County. From Madeira Beach to St. Pete Beach, city councils and commissions are preparing to receive new members. *The Gabber Newspaper's* election coverage will look at Gulfport, St. Pete Beach, Treasure Island, and Madeira Beach. The Gabber Newspaper would cover South Pasadena elections, but South Pasadena does not have elections in 2024.

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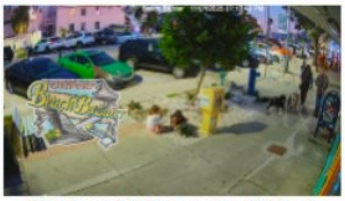

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Treasure Island Elections: District 4

Richard Harris



Richard Harris looks to serve District 4 in Treasure Island, if voters choose him in the March elections.
Photo Courtesy of Richard Harris

25
FLORIDA PRESS ASSOCIATION
AWARD WINNER

GULFPORT WEATHER

GULFPORT, FL
73°
sunny
7:40 am 6:47 pm EST
feels like: 73°f
wind: 6mph n
humidity: 43%
pressure: 30.06"hg
uv index: 6
4 pm 5 pm 6 pm
73°F 73°F 70°F
sun mon tue
75°F / 63°F 72°F / 59°F 77°F / 61°F
Gulfport, FL weather forecast ▸

Arden Dickey



Arden Dwight Dickey also hopes to serve Treasure Island District 4.
Photo Courtesy of Arden Dickey

Arden Dickey has lived in Treasure Island permanently since 2016, but owned property since 2007. He has been a regular visitor to the area since 1978. He earned a Bachelors in Business Administration from Florida Atlantic University in 1985, and a Masters in Business Administration from University of Miami in 1987. From here, Dickey spent almost 50 years as a business executive in the newspaper industry, with time at the *Miami Herald*, Knight Ridder newspapers, and the *Minneapolis Star Tribune*.

Since 1992, Dickey has volunteered as the Florida ombudsmen director with the Employer Support of the Guard and Reserves. This organization seeks to help members of the National Guard and military reserves who are having issues with their civilian employers. If elected, he wants to maintain quality of life for Treasure Island residents. This comes through responsible growth and development, permanent beach re-nourishment, solving parking issues, and using tax dollars efficiently.

Treasure Island Elections: Unopposed Incumbents



Incumbent Commissioner John Doctor won his unopposed campaign for Treasure Island District 2.
Photo Courtesy of the City of Treasure Island

Treasure Island has two candidates who are incumbents, and are running unopposed: Mayor Tyler Payne, and District 2 Commissioner John Doctor. The information we present on Payne comes from the City of Treasure Island; Commissioner Doctor's page on the City's website is blank.

Tyler Payne



Incumbent Mayor Tyler Payne won his unopposed re-election campaign.
Photo Courtesy of the City of Treasure Island

Payne grew up in Treasure Island. He earned a Bachelor of Science in business administration and a Bachelor of Arts in religion from University of Florida. Later, he earned his Juris Doctor and Masters in business administration from Stetson University. In July, 2015, Payne passed the Florida Bar exam and became a licensed attorney. In 2018, he ran for an open seat on City Commission, and was reelected in 2020 without opposition.

Payne was elected as mayor for a three-year term in March 2021. Outside of his work as mayor, Payne serves as Corporate Counsel and Executive Vice President for his family business, IcareLabs, an eyeglass manufacturer in Pinellas County. As mayor, he focuses on "common sense and good business practices," according to his bio on the City of Treasure Island website.

The Gabber Newspaper *reached out to Payne and Doctor multiple times, but did not receive an answer.*

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by Patrick Heinzen

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Filed Under: News, Vote
Tagged With: Florida Elections, Pinellas Elections, Treasure Island

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The Gabber (Dec. 21, 2023) — "Meet the Candidates for the St. Pete Beach Election Season" (By Patrick Heinzen).

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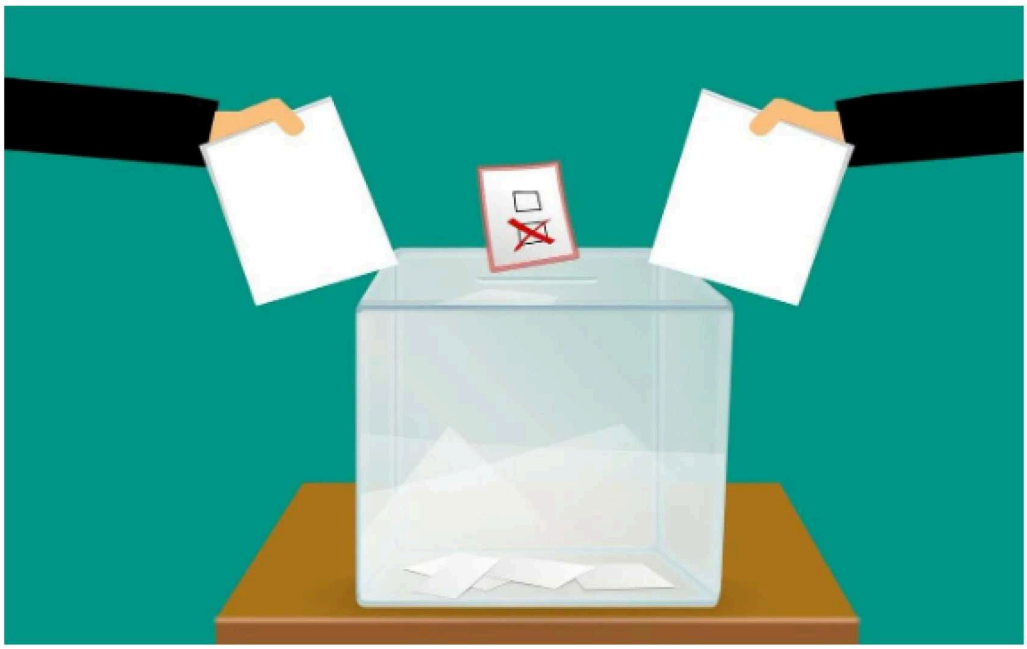
Meet the Candidates for the St. Pete Beach Election Season

December 21, 2023 by Patrick Heinzen



Across Pinellas County, election season is heating up. Meet the candidates running in the upcoming St. Pete Beach election season.

Photo by Pixabay

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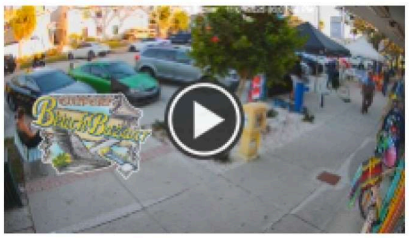

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GULFPORT WEATHER

GULFPORT, FL

St. Pete Beach Election Season

St. Pete Beach has three candidates who qualified for elections.

Note: Between Dec. 12 and Dec. 18, four of the five seated commissioners on St. Pete Beach said they would either resign effective Dec. 30 or refuse to comply with new laws about financial disclosures for elected officials. The remaining member of the city commission, Mayor Adrian Petrila, will appoint interim commissioners for all four districts. The appointed commissioners for Districts 1 and 3 will serve until the March 2024 elections. The City of St. Pete Beach will hold special elections in August 2024 for Districts 2 and 4.

District 1

In District 1, Karen Marriott and Lisa Reich qualified.

Update: A previous version said that Reich did not respond. The article has been updated to reflect her responding to The Gabber Newspaper, *and adding a photo.*

Karen Marriott



GULFPORT, FL
73°
sunny
7:40 am 6:47 pm EST
feels like: 73°F
wind: 5mph WSW
humidity: 42%
pressure: 30.02"hg
uv index: 2
6 pm 7 pm 8 pm
72°F 70°F 66°F
sun mon tue
77°F / 64°F 72°F / 57°F 77°F / 63°F
Gulfport, FL weather forecast ▸

Karen Marriott



Karen Marriott hopes to earn a seat on the St. Pete Beach City Commission
Photo courtesy of Karen Marriott

Marriott has lived in Florida for 14 years, all of them in St. Pete Beach. Marriott earned a Bachelors of Arts in Business Administration from Regis College, and an Associates of Arts degree as a physical therapy assistant from St. Petersburg College. Recently, Marriott purchased an old auto-repair garage to turn into a retail store for her business, North Beach Windsurfing. During this process, she learned a lot about permitting and development. If elected, Marriott says she hopes to encourage small-scale development in favor of large development (centered around the big hotels) on St. Pete Beach.

Lisa Reich



St. Pete Beach candidate Lisa Reich is hoping to take the District 1 City Commissioner seat.
Photo Courtesy of Lisa Reich

Reich has lived in Florida since 1981, but moved to St. Pete Beach in 2020. After earning a Bachelor of Science degree from Florida State University, she pursued a 25-year career in sales, marketing, and management. She has also held a health, life, and annuities insurance license since 1999. Today, she owns a business that provides payroll administration, workers compensation and risk management, employee benefits, and human resource management to small-to-medium-sized businesses. She is also an artist, focusing on a coastal theme with her art. As an active wildlife conservationist, she has spent 12 years working with sea turtle conservation efforts. In a press release, Reich spoke about her goals to protect beaches and natural beauty, local businesses, and overall quality of life.

St. Pete Beach Elections: District 3

In District 3, Betty Rzewnicki will run unopposed.

Rzewnicki has lived in Florida for 53 years, with the last 13 of them in St. Pete Beach. She earned a Bachelors of Science in Marine Biology, as well as a Masters in education and educational leadership.

The Gabber Newspaper *reached out multiple times to Rzewnicki, but did not receive an answer.*

This not the only city in South Pinellas with an election. Read about candidates in Madeira Beach and Treasure Island.

EXHIBIT G

The Gabber (July 17, 2024) — "Meet the Candidates for St. Pete Beach's District 2 Election" (By Patrick Heinzen).

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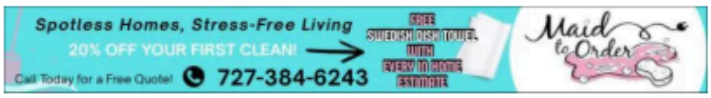


Meet the Candidates for St. Pete Beach's District 2 Election

July 17, 2024 by Patrick Heinzen

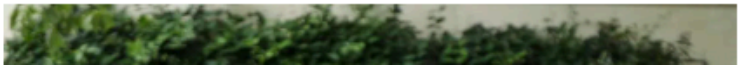


Learn more about the candidates for the St. Pete Beach District 2 election.
Photo courtesy of the City of St. Petersburg

For months, St. Pete Beach has had some political turmoil. After four of the five City Commissioners resigned, the City appointed interim commissioners. In March, the District 1 and 3 interim commissioners ran in the general election unopposed. While the City prepares for the 2025 general election, they plan to hold a special election on August 20. The non-partisan race sees current interim commissioner Nick Filtz against challenger Lisa Robinson.

Meet the Candidates for St. Pete Beach's District 2 Election:

Nick Filtz



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GULFPORT WEATHER

Meet the Candidates for St. Pete Beach's District 2 Election:

Nick Filtz



Nick Filtz looks to retain his interim seat as the St. Pete Beach District 2 Commissioner.

Photo via Nick Filtz

Filtz was appointed to the commission in December as the interim commissioner. For 20 years, he's lived in St. Pete Beach working as a realtor.

According to his introduction video on the City's website, " I applied for the City Commissioner position as I wanted to get more involved in our community and be a part of contributing to the future of our City, and creating a place that my son and future family want to move back to after college. As commissioner I want to focus on positivity and unity in our community amongst our residents and the city. While encouraging more support of local small businesses and small business owners."

AWARD WINNER

GULFPORT WEATHER

GULFPORT, FL

75°
sunny
6:42 am 5:46 pm EST

feels like: 75°f
wind: 10mph nnw
humidity: 38%
pressure: 30.09"hg
uv index: 4

4 pm	5 pm	6 pm
75°F	73°F	70°F

tue	wed	thu
81°F / 64°F	81°F / 64°F	79°F / 66°F

Gulfport, FL climate ▸

Want More Election News?

The Gabber Newspaper covers elections on the South Pinellas beaches, Gulfport, and South Pasadena. Want to make an informed decision at the polls? Subscribe to The Weekly and The Beach Barnacle, our two weekly newsletters. And make thegabber.com your homepage to stay up-to-date on all the news in Gulfport, South Pinellas, and the beaches.

Lisa Robinson



Lisa Robinson threw her hat in the ring to take the District 2 St. Pete Beach Commissioner seat. ***Photo via Facebook***

Robinson has lived in St. Pete Beach for 35 years, spending time as an event coordinator, operations producer, and technical manager. In her application, she highlights her background in business development, marketing, and planning.

"I am a creative thinker, detail oriented, and a highly effective communication with strong negotiating, multi-tasking and follow through skills," she wrote in her application.

The result of this election doesn't change the March 2025 general election. If the elected commissioner would like to run in March, they need to qualify again. To learn more, visit votepinellas.gov.

The Gabber Newspaper has reached out to both candidates to offer voters a televised forum; thus far, only Robinson has responded that she will attend. If both candidates do not attend, we will still hold the televised forum.

We're the calm during the storm. No hype, only help!

Bookmark *The Gabber Newspaper's* storm coverage page for quick access to relevant tropical storm updates. No hype, no guessing, just updates on shelters, sandbags, and closures. And sign up for text alerts to get real-time guidance and prep advice when there's a named storm heading our way. Also, check out our downtown Gulfport and beach web cams.

by Patrick Heinzen

SUPPORT THE GABBER NEWSPAPER

Your donations are tax-deductible to the full extent of the law. The Florida Community News Fund is a program administered by the Florida Press Foundation, tax ID #59-2449377, a 501 (C) (3) organization. All donations made at this link go to *The Gabber Newspaper* through the Florida Press Association, a 501(c)(3).

Please support local news and The Gabber Newspaper!

Filed Under: News, Vote
Tagged With: Pinellas Politics, St. Pete Beach, St. Pete Beach elections, Vote Pinellas

Small Business Sertify

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Donations to *The Gabber Newspaper* go through the Florida Press Foundation, a 501(c)(3) tax-exempt organization with its principal place of business in Florida. The Florida Press Foundation is registered to solicit charitable contributions in Florida. Financial and other information about the Florida Press Foundation's purpose, programs and activities can be obtained by visiting https://floridapressfoundation.org or by writing to Florida Press Foundation at 336 East College Avenue, Suite 304, Tallahassee, FL 32301.

A copy of the official registration (CH63336) and financial information may be obtained from the Division of Consumer Services by calling 1-800-HELP-FLA (1-800-435-7352) toll-free within the state, or by visiting fdacs.gov/consumer-resources/charities and selecting the Check-a-Charity search feature. Registration does not imply endorsement, approval, or recommendation by the state.

Located in downtown Gulfport, Florida
Serving South Pinellas County and our Gulf Beaches in Florida including South Pasadena, St. Pete Beach, Treasure Island, Madeira Beach, West St. Petersburg, South St. Petersburg, Tierra Verde, Pass-a-Grille, Pinellas Point, Kenneth City, and more!

EXHIBIT H

Plaintiff's campaign ad purchased with The Gabber (pre-publication)

For Every Child a Shield!

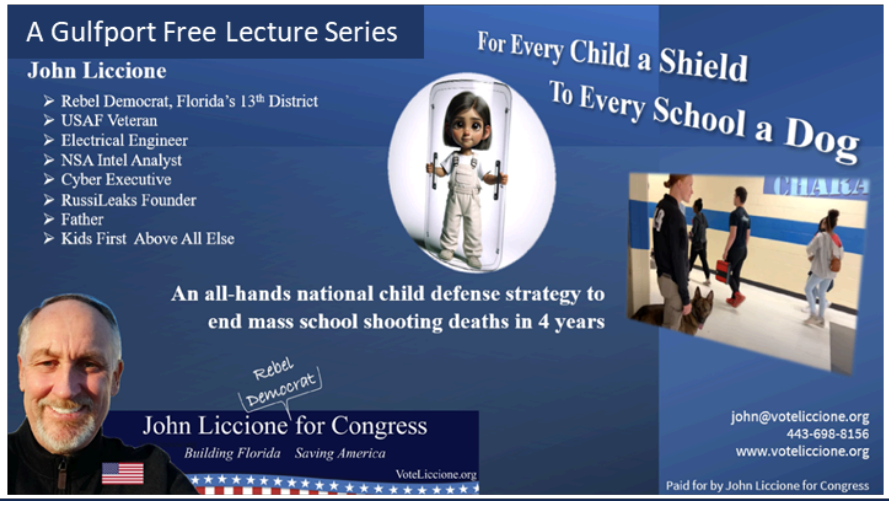
Join Gulfport's own John Liccione, rebel Democrat for Congress, for his free lecture and engineering practicum on his radical strategy to drive mass school shooting deaths to zero in 4 years - and getting the NRA to pay for it.

When: Saturday March 2 | Session 1 – 2-4PM (Repeat) Session 2 - 4:15-6PM

Where: Gulfport Recreation Center Art Room, 2nd Floor

Book your free tickets for either session now: Seating limited.

Book tickets 2 PM Session



Book Tickets 4:15PM Session

ELECTRONICALLY FILED 11/07/2025 02:22:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

EXHIBIT I

Plaintiff's Congressional Campaign Sign in Gulfport Near

The Gabber office



ELECTRONICALLY FILED 11/07/2025 02:22:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

EXHIBIT K

The Gabber (Aug. 15, 2024)

“Voices: Letters to the Editor" Section

with buried self-contradictory "correction"



Voices: Letters to the Editor August 15

August 15, 2024 by Cameron Healy



The August 15 letters to the editor of *The Gabber Newspaper*.
Photo by June Johns

The Gabber Newspaper's August 15 Letters to the Editor

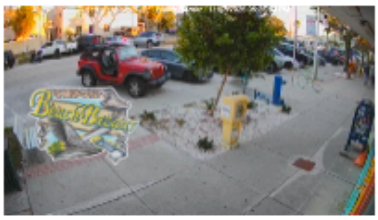
Boat Communities

I've spent many years in and around your city and I'm disgusted with the negligence I see pertaining to your liveaboard community. After viewing the devastation of the last few minor storms, and now the loss of life, how will this city ever prepare for a more serious event? This town is overburdened with tons of untenable ordinances and the time has come to add a useful new one. It's time to apply and enforce restrictions on liveaboards close to shore.

Florida's liveaboard community certainly makes the state a better place, but as usual, guidelines must be implemented at a local level for emergency preparedness and safety. Seeing the preventable loss of life and devastation happen over and over simply signals the need for greater enforcement and education. And the responsibility on this local waterway — whether you want to pawn off responsibility or not — rests with the city and not the state or feds. The damage here occurs to the city, and instead of again wasting months waiting for the salvage and pier repair is unacceptable and negligent.

Proper and regular inspection of the anchorage is necessary, as well as civic enforcement for those registered vessels not taking cleanup duties responsibly. There is also no reason based on safety that so many vessels should be moored that close to the shoreline or so close to each other. Especially since moored boats rely on other small vessels to get ashore anyway.

GULFPORT FL WEBCAM



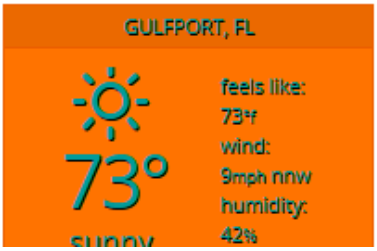
Watch our LIVE streaming Gulfport Florida Webcams!

Gulfport Casino Webcam
Gulfport Beach Webcam
Downtown Gulfport Webcam
Gulfport Marina East Webcam
Gulfport Marina West Webcam





GULFPORT WEATHER



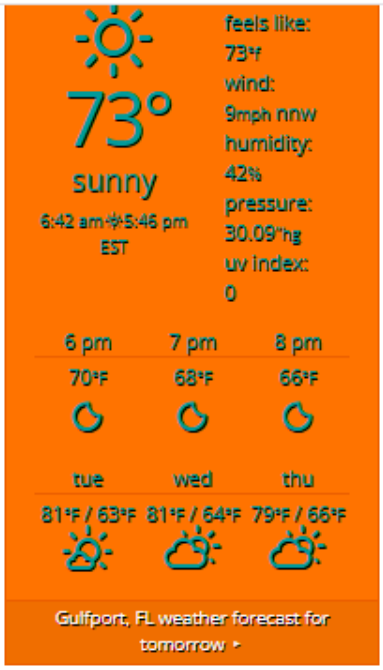
Proper and regular inspection of the anchorage is necessary, as well as civic enforcement for those registered vessels not taking cleanup duties responsibly. There is also no reason based on safety that so many vessels should be moored that close to the shoreline or so close to each other. Especially since moored boats rely on other small vessels to get ashore anyway.

I've seen with my own eyes a patrol officer pestering people tying rowboats to the casino pier for little reason (you know who you are).

The time has come to manage that officer better, and move him into the harbor on a small craft for wiser lifesaving prevention and enforcement.

—Gino Batali, St. Petersburg

Read the August 1 Letters to the Editor.



Corrections

The Gabber Newspaper printed an article — "Meet the Democratic Candidates for the District 13 Congressional Election" — focusing on a scheduled debate hosted by the Pinellas Democratic Party.

The Pinellas Democratic Party showcased four of the candidates for running for congress. *The Gabber Newspaper* did not include candidates who were not participating in the event, including John Liccione.

The Gabber Newspaper did not intentionally omit Liccione, and regrets the mistake. *The Gabber Newspaper* reached out to Liccione, but did not receive a response.

We're the calm during the storm. No hype, only help!

Bookmark *The Gabber Newspaper*'s storm coverage page for quick access to relevant tropical storm updates. No hype, no guessing, just updates on shelters, sandbags, and closures. And sign up for text alerts to get real-time guidance and prep advice when there's a named storm heading our way. Also, check out our downtown Gulfport and beach web cams.

About Letters to the Editor

We want your letters! The Gabber Newspaper *encourages letters (one per person, per month). Include your real name and city. Please keep it short – <250 words. We may edit letters for content, clarity, and length. We don't print letters that incite violence or include attacks on private citizens.* The Gabber Newspaper *also doesn't print letters that intentionally mislead people. Letters may appear online and/or in print. We may print comments that appear on* The Gabber Newspaper's *website and social media. Opinions expressed do not necessarily represent the views of* The Gabber Newspaper *owners, advertisers, or staff. Send letters to news@thegabber.com or 2908-B Beach Blvd. S., Gulfport, FL, 33707.*

by Cameron Healy

SUPPORT THE GABBER NEWSPAPER

Your donations are tax-deductible to the full extent of the law. The Florida Community News Fund is a program administered by the Florida Press Foundation, tax ID #59-2449377, a 501 (C) (3) organization. All donations made at this link go to *The Gabber Newspaper* through the Florida Press Association, a 501(c)(3).

Please support local news and The Gabber Newspaper!

Filed Under: Voices
Tagged With: Gulfport Florida, Gulfport Florida City Hall, Gulfport Florida Elections, Gulfport Florida Police, The Gabber Newspaper

Small Business

Sertify

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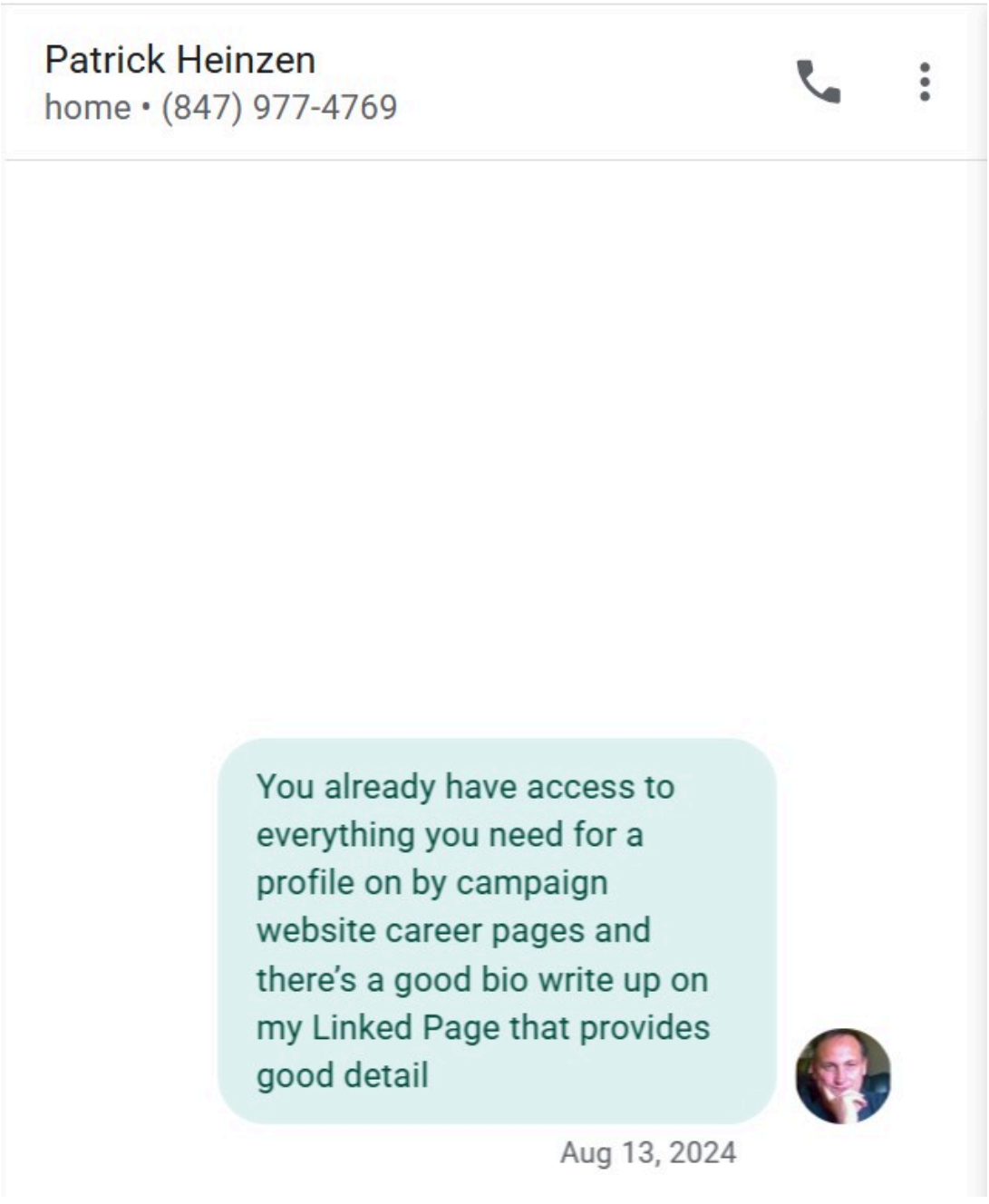
EXHIBIT J

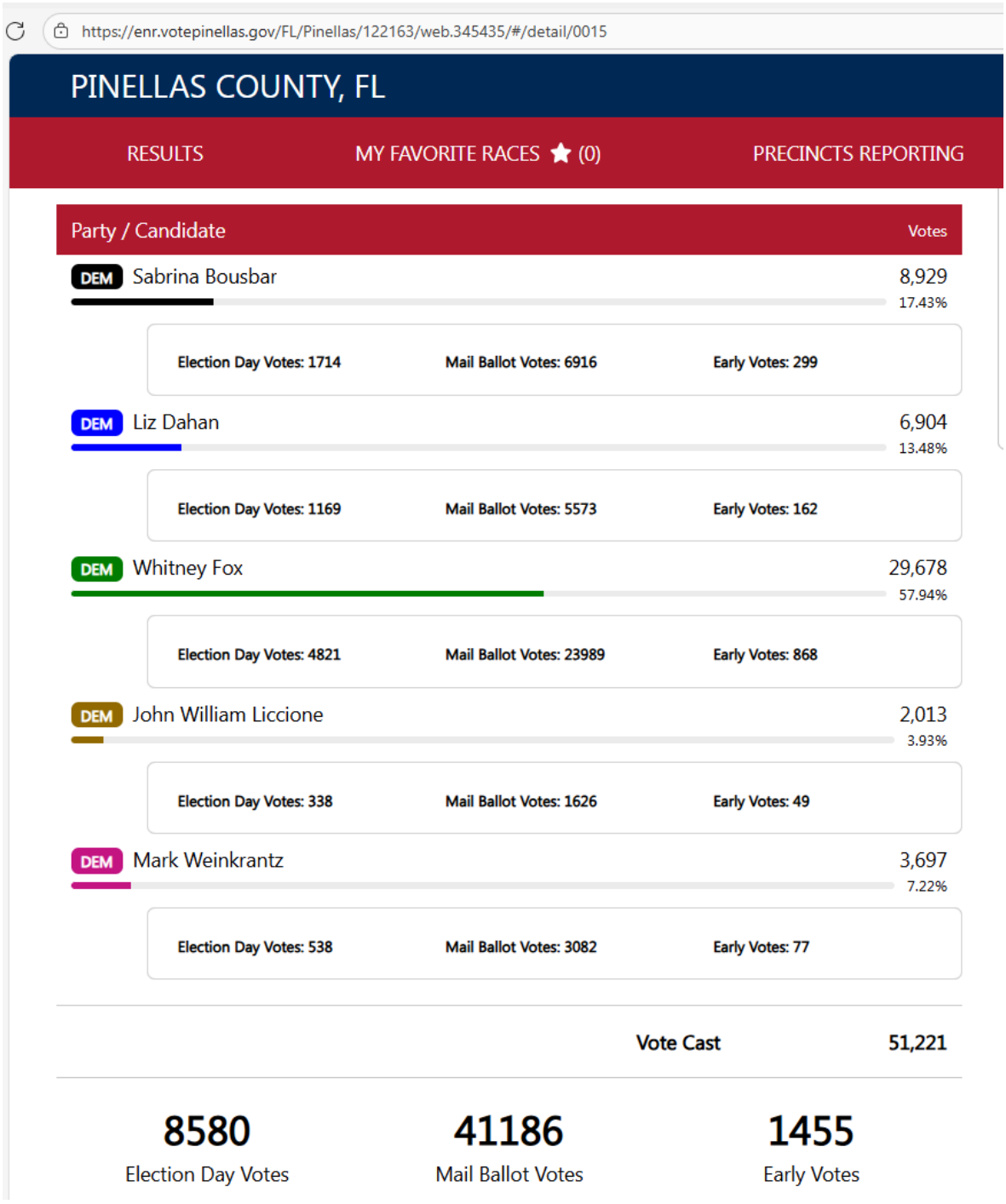
Screenshot of Plaintiff's same-day text reply to Patrick Heinzen's August 13, 2024 voicemail.



ELECTRONICALLY FILED 11/07/2025 02:22:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

EXHIBIT L

Pinellas County Supervisor of Elections
2024 Democratic primary election results showing ~80% voted by mail
(41,186 out of 51,221)



Liccione v. Salustri-Loper, et al 24-003939-CI

EXHIBIT M

Sworn Affidavit of Karla Kay Kemp

ELECTRONICALLY FILED 11/07/2025 02:22:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

CIRCUIT COURT
SIXTH JUDICIAL CIRCUIT
(Court Level and Jurisdiction)

JOHN WILLIAM LICCIONE Plaintiff -vs- CATHY SALUSTRI-LOPER, et al; Defendant	CIVIL DIVISION Case No.:24-003939-CI (Case I.D. Number)

AFFIDAVIT

I, KARLA KAY KEMP, of SAINT PETERSBURG, in PINELLAS County, Florida, MAKE OATH AND SAY THAT:

1. I, Karla Kay Kemp, a registered Democrat voter in Pinellas County District 13, am creating this affidavit to testify as a witness to the dispute by the plaintiff, John William Liccione, that the misleading article written by The Gabber newspaper swayed my vote in the 2024 Democratic Primary Election for Congressional Seat District 13.

2. Having been sorely disappointed about the lack of educational resources explaining the different policies of the primary candidates publicly available, on August 9, 2024, I did a google search on my phone for information on the platforms of the democratic candidates for Pinellas county 2024, as I planned to vote early on Monday, August 12, 2024.

3. In my search results, I found an article by a local newspaper now as The Gabber, titled "Meet the Candidates for the District 13 Congressional Election." {exhibit A}

4. As I knew a local resident of Gulfport, FL, a suburb of Saint Petersburg, FL, who was also a former editor of the award winning St Petersburg Times aka Tampa Bay Times, I was aware of the reputation The Gabber had for its accuracy.

5. Having already done a little bit of research and liking their platforms, I had already come to the decision that I was going to choose between John William Liccione Or Whitney Fox.

6. However, after reading the article, I was shocked and disappointed that there was no information on John Liccione.

7. I double checked the title and date of the article to make sure that I had the right information. And, the article was affirmatively covering all the candidates for the democratic parties District 13th Congressional Elections. There was no reference to his not being interviewed, but still running.

8. As a result, I came to the conclusion that John W Liccione, the plaintiff, must have dropped out of the primary race, and consciously decided that it would have to be Whitney Fox.

9. I do not have a subscription to The Gabber. I also did not see the follow up rectraction explaining their discrepancy at leaving him out of the article prior to the debate and primary runoff election. I was not even aware of it until Friday, October 24, 2025.

10. Ultimately, I voted for Whitney Fox for the Pinellas County District 13 Congressional candidate as a direct result of The Gabber article making me think that he had withdrawn his candidacy.

STATE OF FLORIDA

COUNTY OF PINELLAS

SUBSCRIBED AND SWORN TO BEFORE ME, by means of X physical presence or ___ online notarization, on the 3rd day of November, 2025

Signature
_____ (Seal)
NOTARY PUBLIC
My Commission expires:
9-25-2029

Le'Andre Fletcher
Notary Public
State of Florida
Comm# HH725216
Expires 9/25/2029

_____
(Signature)

KARLA KAY KEMP

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EXHIBIT N

Declaration of John Liccione

ELECTRONICALLY FILED 11/07/2025 02:22:32 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. Case No.: 24-003939-CI
CATHY SALUSTRI-LOPER, et al,
Defendants.
_____/

DECLARATION OF JOHN WILLIAM LICCIONE IN SUPPORT OF THIRD AMENDED COMPLAINT

I, John William Liccione, declare as follows:

1. I am the Plaintiff in the above-captioned action. I am over the age of 18 and competent to make this declaration. I have personal knowledge of the facts stated herein, except where stated on information and belief, and as to those matters, I believe them to be true.
2. I am the individual identified as the Plaintiff in the Third Amended Complaint filed in this case.
3. I have read the Third Amended Complaint in its entirety, including all allegations, statements of fact, and references to exhibits.
4. To the best of my knowledge, information, and belief, all facts alleged in the Third Amended Complaint are true and correct. All statements made on information and belief are believed to be true based on my personal knowledge, investigations, and review of relevant documents and records.
5. The exhibits attached to the Third Amended Complaint as Exhibits A through L are true and accurate copies of the originals, and I have reviewed them to confirm their authenticity and relevance to the allegations in the Complaint.

Under penalties of perjury, I declare that I have read the foregoing Declaration and that the facts stated in it are true.

Executed on November 3, 2025, at Dunedin, Florida.

/s/ John W. Liccione
John W. Liccione
Plaintiff, Pro se
PO Box 229
Dunedin, FL 34697
443-698-8156
jliccione@gmail.com

I#: 2025318129 BK: 23355 PG: 1954, 11/12/2025 at 11:02 AM, RECORDING 2
KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
CLK102878

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER DISMISSING CASE WITH PREJUDICE

THIS CAUSE is before the Court *sua sponte*. Having considered the case file, the applicable law, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. On October 14, 2025, this Court entered an order dismissing Plaintiff's Second Amended Complaint without prejudice ("Prior Order").

2. The Prior Order afforded Plaintiff twenty days to amend his complaint. Accordingly, the deadline for Plaintiff to file a timely third amended complaint was November 3, 2025.

3. The Prior Order warned Plaintiff that failure to file a timely third amended complaint would result in dismissal of this action with prejudice without further notice.

4. Plaintiff has failed to file a third amended complaint, and the deadline for doing so has passed.

Accordingly, it is

ORDERED and ADJUDGED:

1. The instant action is **DISMISSED WITH PREJUDICE**.

ELECTRONICALLY FILED 11/7/2025 3:21:47 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

2. The Court reserves jurisdiction to consider an award of attorney's fees and costs.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this __ day of November, 2025.

24-003939-CI 11/7/2025 3:21:46 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 11/7/2025 3:21:46 PM

Honorable Patricia A. Muscarella
Circuit Civil Judge

Copies furnished via e-mail to:

John Liccione
jliccione@gmail.com

James B. Lake, Esq.
jlake@tlolawfirm.com
tgilley@tlolawfirm.com
jkendricks@tlolawfirm.com

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER VACATING ORDER DISMISSING CASE WITH PREJUDICE

THIS CAUSE is before the Court *sua sponte*. Having considered the case file, the applicable law, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. On November 7, 2025, this Court entered an Order Dismissing Case with Prejudice ("Dismissal Order").

2. At the time this Court entered the Dismissal Order, the court record did not contain a third amended complaint, which was due by November 3, 2025.

3. Upon subsequent review, the Court acknowledges that Plaintiff filed his Third Amended Complaint on November 3, 2025, which appeared in the court record after rendition of the Dismissal Order.

Accordingly, it is

ORDERED and ADJUDGED:

1. Plaintiff's Third Amended Complaint is deemed timely.

2. The Dismissal Order is hereby **VACATED**.

ELECTRONICALLY FILED 11/12/2025 6:29:56 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

3. Defendants shall file a response to the Third Amended Complaint **WITHIN TWENTY (20) DAYS** of this Order.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this __ day of November, 2025.

24-003939-CI 11/12/2025 6:29:55 PM

Circuit Judge Patricia A. Muscarella

24-003939-CI 11/12/2025 6:29:55 PM

Circuit Civil Judge

Copies furnished via e-mail to:

John Liccione
jliccione@gmail.com

James B. Lake, Esq.
jlake@tlolawfirm.com
tgilley@tlolawfirm.com
jkendricks@tlolawfirm.com

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI LOPER, *et al.*,

Defendants.
_____/

DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR STAY OF VEXATIOUS LITIGATION

Undeterred by this Court's ruling that this "lawsuit is without merit" (DN 149 page 20) and violates Florida's Anti-SLAPP law, Plaintiff has now filed a Third Amended Complaint ("3AC") that reiterates the dscientefamation claim this Court dismissed just weeks ago. The same reasons this Court cited in rejecting that claim apply to this one.

Plaintiff has demonstrated beyond doubt that he is a vexatious litigant, bent on wasting this Court's time and forcing others to incur attorneys' fees fending off his frivolous claims. Accordingly, pursuant to Florida Rule of Civil Procedure 1.140 and Sections 768.295 and 68.093 of the Florida Statutes, Defendants Cathy Salustri Loper and Thursday Morning Media, Inc. ("TMM") (collectively "Defendants"), move this Court to dismiss the Third Amended Complaint with prejudice and to award them their costs and attorneys' fees for responding to that pleading. This action should be stayed while this motion is pending. *See* § 68.093(3)(d), Fla. Stat. (2025).

Background

Plaintiff's Second Amended Complaint ("2AC") accused Defendants of publishing a July 2024 news article (the "Debate Article") in a newspaper called *The Gabber* about four political candidates who participated in a debate prior to a primary election. 2AC ¶¶ 3, 5, 16. Plaintiff was

also a candidate in that election but, because he was not a debate participant, was not mentioned in the article. 2AC ¶ 2, 17. Plaintiff claimed that omitting him from the article amounted to defamation. 2AC ¶¶ 50-56. This Court disagreed and explained why:

> [T]he Debate Article, which Plaintiff concedes is the linchpin of this case" …, never mentions Plaintiff at all, an admission made by Plaintiff. *See* SAC ¶ 17. Accordingly, Plaintiff has not demonstrated that the Debate Article charges Plaintiff with an infamous crime or tends to subject him to hatred, distrust, ridicule, contempt or disgrace or tends to injure him in his business or profession. Moreover, it is clear the gist or main purpose of the Debate Article was to discuss candidates participating in the debate, which did not include Plaintiff. Plaintiff admits that he was not invited to the debate for the congressional campaign. Second Resp. at 6. Although it is technically true that the Contempt Article described the debate participants as "the four candidates" for the political office in question, the Debate Article was substantially true as the "gist" of the article was to preview a debate that included those four candidates and excluded Plaintiff.

DN 149 pages 14-15. Accordingly, the Court concluded, Plaintiff's defamation claim (and all other counts in the Second Amended Complaint) were "without merit." *Id.* page 20. The Court also found the Anti-SLAPP law applicable (Section 768.295, Fla. Stat. (2024)), and that Defendants are entitled to an award of reasonable attorneys' fees. *Id.* page 20.

Plaintiff has now repleaded the same failed defamation claim. The Third Amended Complaint, like its predecessor, accuses Defendants of publishing the Debate Article. 3AC ¶¶ 2-3, 8, 13 & Exhibit B. Plaintiff again complains that article referred to the four debating candidates and did not mention him. 3AC ¶¶ 14-21.

As Plaintiff again admits, he was "not invited to" participate in the debate. 3AC ¶ 21. Shortly before the event, Plaintiff learned that a Democratic Party committee "wouldn't be recognizing him as a qualified candidate and would be denying him all access to party resources, promotion, speaking engagements, and participation in candidate forums and debates." *See Liccione v. Pinellas Democratic Exec. Comm.*, Case No. 24-002994-CI (Fla. 6th Cir. Ct.) (the

"PDEC Case") Complaint, DN 134 Tab 4 ¶ 17.[1] As a result, Plaintiff was denied "speaking opportunities at Party events and candidate forums." *See* PDEC Case First Amended Complaint, DN 134 Tab 5 ¶ 22. Accordingly, a Pinellas Democratic Party news release that was the basis for the article did not mention Plaintiff.[2] The omission of Plaintiff from the Debate Article, the Third Amended Complaint contends, was defamatory. 3AC ¶¶ 52-65. Plaintiff is wrong again. As this Court has already found, the Debate Article is not actionable.

Argument

I. The Anti-SLAPP law applies to the Third Amended Complaint.

The Third Amended Complaint demonstrates on its face that Florida's Anti-SLAPP law again is applicable – for the same reasons this Court has already found with regard to Plaintiff's prior pleadings. According to the Third Amended Complaint, Plaintiff sued Cathy Loper as co-owner and editor of The Gabber, the newspaper that published the Debate Article. 3AC ¶¶ 3, 13. TMM likewise is sued for allegedly publishing that newspaper. 3AC ¶ 2. Thus Cathy Loper and TMM are again sued because they exercised the constitutional right of free speech in connection with a public issue. § 768.295(3), Fla. Stat. (2024). The Anti-SLAPP law, therefore, applies, and Plaintiff has the burden of demonstrating that his claims in the Third Amended Complaint are not "without merit." *Gundel v. AV Homes, Inc.*, 264 So. 3d 304, 314 (Fla. 2d DCA 2019) (disapproved of on other grounds by *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025)). For the reasons this Court has already found, Plaintiff cannot make such a showing. The Third Amended Complaint is without merit. This motion should be granted and this case dismissed with prejudice.

---

[1] Copies of documents from Plaintiff's other litigation were filed in this case on June 3, 2025 (DN 134). Defendants ask that the Court take judicial notice of these records. *See* § 90.202(6), Fla. Stat. (2024).

[2] *See* "July 13th Congressional District 13 Democratic Candidate Primary Debate," DN 134 Tab 10. Defendants ask that the Court take judicial notice of this news release. *See* § 90.202(12), Fla. Stat. (2024).

II. The Third Amended Complaint is without merit for the same reasons this Court cited in dismissing Plaintiff's earlier defamation claim.

The reasoning of this Court's October 14 Order (DN 149) applies squarely to the Third Amended Complaint. In this *fourth* attempt to state a cause of action, Plaintiff has simply rehashed and expanded his earlier allegations about the Debate Article. Nothing in the Third Amended Complaint overcomes the defects this Court has already identified. Defendants, therefore, incorporate by reference the case law discussed in their motion to dismiss the Second Amended Complaint (DN 138) and in this Court's October 14 Order (DN 149).

A. The Debate Article did not contain a statement "of and concerning" Plaintiff.

As this Court's October 14 Order found, "the Debate Article never mentions Plaintiff at all." DN 149 page 14. The Debate Article, therefore, was not "of and concerning" Plaintiff. As stated in the article, "the Pinellas Democratic Party host[ed] a debate between four candidates." *See* 3AC Exhibit B. Plaintiff was not one of them, and consequently the Debate Article neither named Plaintiff nor stated any facts about him.

B. The Debate Article was not defamatory of Plaintiff.

As this Court noted, the Debate Article did not charge Plaintiff with an infamous crime or tend to subject him to hatred, distrust, ridicule, contempt or disgrace or tend to injure him in his business or profession. DN 149 page 14. Hoping this Court will reconsider that holding, Plaintiff claims the article "prejudices Plaintiff in the eyes of a substantial and respectable minority of the community" or "deters others from associating with him." 3AC ¶¶ 53-54. Simply reciting those words does not make them so. Because Plaintiff was not mentioned in the Debate Article, nothing in that article prejudiced him or would deter others from associating with him.

C. The Debate Article was not materially false.

The Third Amended Complaint also shows that the Debate Article was not materially false. As this Court's October 14 Order found, "the gist or main purpose of the Debate Article was

to discuss candidates participating in the debate." DN 149 page 14. Read in that context, nothing in the Debate Article was materially false.

The falsity element of a defamation claim is satisfied only "if the publication is *substantially and materially* false, not just if it is technically false." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d 702, 707 (Fla. 3d DCA 1999) (emphasis added). "As long as a report is substantially correct, it is not necessary that it be exact in every immaterial detail or that it conform to the precision demanded in technical or scientific reporting." *Readon v. WPLG, LLC*, 317 So. 3d 1229, 1234-35 (Fla. 3d DCA 2021) (internal punctuation omitted). A "statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Smith v. Cuban Am. Nat'l Found.*, 731 So. 2d at 706. In other words, a "statement is not considered false unless it would have a different effect on the mind of the reader from that which the pleaded truth would have produced." *Id.*

To evaluate whether a publication is materially false, courts "eliminate the alleged falsities" and then assess how the "common mind would understand" the publication without them. *Hill v. Lakeland Ledger Publ'g Corp.*, 231 So. 2d 254, 256 (Fla. 2d DCA 1970). "A publication is not actionable unless the gist of the publication *with* the allegedly defamatory statement conveys a 'significantly greater opprobrium' or sting than the publication *without* the alleged falsehood. *See Davis v. McKenzie*, No. 16-62499-CIV, 2017 WL 8809359, at *13 (S.D. Fla. Nov. 3, 2017), *report and recommendation adopted*, No. 16-62499-CIV, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018). If the alleged falsehoods are eliminated and an article "would not have produced a different effect," the article is not actionable. *McCormick v. Miami Herald Publ'g Co.*, 139 So. 2d 197, 201 (Fla. 2d DCA 1962).

Plaintiff's claim of falsity hinges on the single word "the" appearing before the phrase "four candidates." Plaintiff pretends the article reads:

> *These are the only candidates. No one else is running. Anyone else you think was running has withdrawn. You may vote for only these four candidates and no one else.*

The Debate Article does not say these things and, therefore, was not materially false.

The Debate Article referred to the debate participants as "the Democratic Candidates" and "[t]he four candidates." The falsity that Plaintiff alleges would be eliminated – and the article would be entirely truthful by Plaintiff's standards – if the article had omitted the word "the" and referred simply to "four candidates," or if the article referred to the four debate participants as the "recognized candidates." As Plaintiff has acknowledged, the Democratic Party "wouldn't be recognizing him as a qualified candidate" and denied him "participation in candidate forums alongside his four opponents." PDEC Case Complaint, DN 134 Tab 4 ¶ 42; PDEC Case First Amended Complaint, DN 134 Tab 5 ¶ 22. Even without the word "the" or with the additional word "recognized," the gist of the article would be same – namely, that the debate would consist of the four recognized candidates. The common mind would come away from the article with the same meaning that Plaintiff alleges – namely, that the Democratic Party held a debate to which only recognized candidates were invited. To be sure, Plaintiff wants more – he would have had the article mention him and his candidacy. But defamation law does not require that. The sting would be the same even if the word "the" were omitted or the word "recognized" were added. Thus the article's reference to the four debate candidates is substantially true and does not support a defamation claim.

The Third Amended Complaint pretends Defendants had a *duty* to report his candidacy. Plaintiff is wrong as a matter of law, for the reasons this Court has already explained. *See* DN 149 page 16 (judgment of newsworthiness belongs to the publisher). But in any event, as Plaintiff concedes, The Gabber *did* report his candidacy, both before and after the Debate Article. The newspaper published a half-page campaign advertisement from Plaintiff. 3AC ¶ 31 & Exhibit H.

And after the Debate Article was published (but prior to this litigation), the Gabber again reported Plaintiff's candidacy. 3AC Exhibit K. The reporter who wrote the Debate Article also offered to write a profile of Plaintiff before the election, but Plaintiff declined to be interviewed. 3AC ¶ 38 & Exhibit J. And of course Plaintiff's name appeared on the ballot (3AC Exhibit A), and he was able to reach voters through his own advertising (3AC ¶¶ 62). Read in this context, the Debate Article was not materially false.

D. Plaintiff's affidavit from one voter does not change this analysis.

Hoping to create evidence of material falsity, Plaintiff provides an affidavit from one voter (among 51,221 in the primary election[3]) who allegedly read the Debate Article, noticed Plaintiff was not mentioned, and ultimately voted for another candidate. 3AC Exhibit M. This anecdote is irrelevant, for at least two reasons.

First, whether an article is defamatory is an issue for the Court to decide as a matter of law. *Flynn v. Wilson*, 398 So. 3d 1103, 1111 (Fla. 2d DCA 2024), *review denied*, No. SC2025-0065, 2025 WL 1009410 (Fla. Apr. 2, 2025). The applicable legal standards are *objective*, not subjective. *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1109 (Fla. 2008). One person's alleged subjective reaction to the Debate Article does not inform the Court's objective assessment of whether the article is materially false or is defamatory in the eyes of a "substantial and respectable minority of the community." *Id.* at 1114-15. *See also Davis v. McKenzie*, No. 16-62499-CIV, 2017 WL 8809359, at *11 (S.D. Fla. Nov. 3, 2017) (plaintiff's alleged "reputation among his family and friends" did not satisfy Florida Supreme Court's community standard), *report and recommendation adopted*, No. 16-62499-CIV, 2018 WL 1813897 (S.D. Fla. Jan. 19, 2018).

[3] *See* Democratic Primary Election Results, Pinellas County Supervisor of Elections, https://enr.votepinellas.gov/FL/Pinellas/122163/web.345435/#/detail/0015 (copy attached as Exhibit A). Defendants ask that the Court take judicial notice of the election results. *See* § 90.202(11) & (12), Fla. Stat. (2024).

Because one voter's testimony does not shed light on this objective matter, Plaintiff's proffered affidavit is not relevant.

Second, the affidavit does not demonstrate that the Debate Article was *materially* false. The affiant states that she planned to vote for *either* Plaintiff or one of his opponents, Whitney Fox. 3AC Exhibit M ¶¶ 5. After reading the July 12 debate article, the affiant says she decided to vote for Fox a month later. 3AC Exhibit M ¶¶ 6-10. Thus the affiant might well have voted for Fox even without reading the Debate Article. Moreover, judged by an objective standard (as the law requires), a reasonable reader's voting decision would not be guided by a single, month-old article that did not mention Plaintiff – particularly in light of coverage of Plaintiff's candidacy in The Gabber and elsewhere before and after the Debate Article and in light of Plaintiff's own advertising. 3AC ¶ 31 & Exhibit H & Exhibit K; 2AC ¶¶ 39, 62. The alleged defamatory meaning of a statement must be reasonable and not based upon a "stacking of inferences." *Trump v. Cable News Network, Inc.*, 684 F. Supp. 3d 1269, 1275 (S.D. Fla. 2023). Giving this affidavit any weight would require an unwarranted stacking of inferences. This single voter's affidavit does not objectively demonstrate that the Debate Article was defamatory.

III. The Third Amended Complaint fails for other reasons.

The Third Amended Complaint also reveals other reasons why this lawsuit is without merit: The pleaded facts demonstrate an absence of actual malice, and the Debate Article is protected by the neutral report privilege. In addition, as a matter of law, damages for an election loss are not recoverable.

A. The Third Amended Complaint fails to plead actual malice with the required convincing clarity.

The Third Amended Complaint's factual allegations do not meet the constitutional requirement of actual malice. As a candidate for public office, Plaintiff is a public figure, required to plead and to prove with convincing clarity that Defendants published a false statement with

knowledge of its falsity or reckless disregard for whether it was false. *See Cronley v. Pensacola News-Journal, Inc.*, 561 So. 2d 402, 404 (Fla. 1st DCA 1990) (applying actual malice standard to political candidate's defamation claim against newspaper). Actual malice is a demanding requirement. "Failure to investigate before publishing, even when a reasonably prudent person would have done so, is not sufficient to establish [a knowing falsehood or] reckless disregard." *Harte-Hanks Commc'ns, Inc. v. Connaughton*, 491 U.S. 657, 688 (1989). The requisite mental state must be brought home to the individuals involved in the decision to publish the alleged falsehood. *New York Times Co. v. Sullivan*, 376 U.S. 254, 287 (1964). To meet the actual malice standard, Plaintiff must "plead sufficient facts to show" that a materially false statement was "fabricated, wholly imaginary, based on an unverified anonymous phone call, inherently improbable, or obviously worthy of doubt." *Lam v. Univision Commc'ns, Inc.*, 329 So. 3d 190, 198 (Fla. 3d DCA 2021).

The Third Amended Complaint lacks such allegations and in fact demonstrates that actual malice *cannot* be shown. At the time of the Debate Article, considerable reason existed to doubt the status of Plaintiff's campaign and the viability of his candidacy. Shortly before the debate, Plaintiff was told a Democratic Party committee "wouldn't be recognizing him as a qualified candidate" and denied him "participation in candidate forums alongside his four opponents." *See* PDEC Case Complaint, DN 134 Tab 4 ¶ 42; PDEC Case First Amended Complaint, DN 134 Tab 5 ¶ 22. Consequently, the Democratic Party's official debate announcement listed only four candidates, and not Plaintiff. *See* "July 13th Congressional District 13 Democratic Candidate Primary Debate," DN 134 Tab 10. These facts explain why Plaintiff was not mentioned in the Debate Article. The newspaper "did not intentionally omit Liccione," and when he complained the author of the article and the newspaper apologized for not mentioning him. 3AC ¶ 38 & Exhibit K. When Plaintiff later ran for another office, the newspaper conducted and "prominently displayed"

an online survey that included Plaintiff. 2AC ¶ 39. As a matter of law, therefore, Plaintiff is unable to plead clear and convincing evidence of actual malice.

B. The Debate Article is protected by the neutral report privilege.

The Third Amended Complaint also is barred by the neutral report privilege. "Under Florida law, it is well settled that disinterested communications of matters of public concern are privileged, even if defamatory." *Barbuto v. Miami Herald Media Co.*, No. 21-CV-20608, 2022 WL 123906, at *6 (S.D. Fla. Jan. 13, 2022) (quoting *Corsi v. Newsmax Media, Inc.*, 519 F. Supp. 3d 1110, 1124 (S.D. Fla. 2021)). So, for example, a statement in a *Washington Post* article repeating another publication's report of a money-laundering investigation was not actionable. *Trump Media & Tech. Grp. Corp. v. WP Co. LLC*, 720 F. Supp. 3d 1203, 1212-13 (M.D. Fla. 2024). Because that statement was "newsworthy" and "touch[ed] on an area of public interest," that statement "fit squarely within the type of reporting to which the neutral reporting privilege has been applied." *Id.* at 1213. Similarly, in this case, Defendants are accused of being the editor and owner of a newspaper that published a neutral, disinterested report on a matter of public concern – namely, an upcoming primary debate. The article did not mention Plaintiff, but instead presented neutral profiles of the debate participants, tracking the Democratic Party's news release. The article, therefore, was privileged.

C. An election loss is not actionable.

Finally, the Third Amended Complaint fails because "[d]amages for a lost election are considered 'too speculative and conjectural' and thus cannot be awarded by a court." *Peer v. Lewis*, No. 06-60146-CIV, 2008 WL 2047978, at *10 (S.D. Fla. May 13, 2008), *aff'd*, No. 08-13465, 2009 WL 323104 (11th Cir. Feb. 10, 2009).[4] This election-related lawsuit is particularly

[4] See also *Grayson v. No Labels, Inc.*, 601 F. Supp. 3d 1251, 1258 (M.D. Fla. 2022) (rejecting expert testimony attributing plaintiff's election loss to negative political ads, despite pre-election poll suggesting voters supported plaintiff).

speculative, because Plaintiff attributes his election losses not only to the Defendants, but also to the Governor of Florida, the Florida Secretary of State, the Pinellas County Supervisor of Elections, the supervisor's general counsel, the Palm Beach County Supervisor of Elections, an election software company's chief executive, ten John and Jane Doe defendants, the Pinellas Democratic Executive Committee, the committee chair and secretary, the Florida Democratic Party, and other, larger media that did not mention his candidacy.[5] Because Plaintiff blames so many other people for his election defeats, his attempt to impose liability on Defendants for his losses – including an election in which he received less than four percent of the vote[6] – is far too speculative to state a defamation claim.

IV. Dismissal with prejudice is warranted or, at a minimum, a stay.

The Third Amended Complaint is Plaintiff's *eighth* attempt to state a cause of action regarding his election losses. Plaintiff has peddled his conspiracy theories long enough. Allowing this litigation to continue would inflict "precisely the harm that the Anti-SLAPP statute seeks to prevent – unnecessary litigation." *Gundel*, 264 So. 3d at 311. "It is the intent of the Legislature that such lawsuits be expeditiously disposed of by the courts." § 768.295(1), Fla. Stat. (2024). This case, therefore, should be dismissed with prejudice.

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[5] *See Liccione v. VR Sys. Inc.*, Case No. 1:25-CV-01028-APM, page 2 (D.D.C. Oct. 3, 2025) (Plaintiff sued "numerous federal, state, local, and foreign government officials," alleging "a conspiracy beginning when falsified ballot records tainted multiple elections in which he ran as a candidate") (copy attached as Exhibit B); Verified First Amended Complaint, *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA (M.D. Fla. 2024), DN 134 Tab 1, ¶¶ 6-14, 64-66, 70-72 & 79-81 (accusing various defendants of "directly causing his loss" in congressional primary and of actions "directly resulting in Plaintiff's defeat"); PDEC Case Complaint, DN 134 Tab 4 ¶¶ 4-7 & 39-40 (alleging that articles in another newspaper "caused catastrophic damage to his campaign, his reputation, and his ability to raise campaign funds"); PDEC Case First Amended Complaint, DN 134 Tab 5 ¶¶ 51 & 67 (accusing "four mainstream media outlets" of "outright excluding Plaintiff from even being mentioned as a candidate," and blaming PDEC defendants for "the loss of his Congressional primary race").

[6] *See* PDEC Case First Amended Complaint, DN 134 Tab 5 ¶ 20 ("Plaintiff lost the primary election, garnering only 3.93 percent of the vote, whereas Whitney Fox won with 57.94 percent of the vote.").

In the meantime, and to the extent the Court takes this matter under advisement, Defendants request a stay of this matter pending a ruling by this Court or on appeal. *See In re Amendments to Florida Rule of Appellate Procedure 9.130*, 406 So. 3d 937, 938 (Fla. 2025) (providing for interlocutory review by appeal of nonfinal orders that deny Anti-SLAPP motion); *Bank of America, N.A. v. De Morales*, 314 So. 3d 528, 530-31 (Fla. 3d DCA 2020) ("postponing discovery for a short period of time pending determination of material, outstanding motions is within the discretion of the trial court," but "[g]iven the purpose of the immunity asserted, the potentially dispositive nature of the motion, and the circumstances, the trial court abused its discretion in failing to stay discovery until it ruled on the bank's motion to dismiss").

A stay also is warranted (if necessary) pursuant to the recently amended Florida Vexatious Litigant Law, Section 68.093, Fla. Stat. (2025), which applies to a litigant who "repeatedly files unmeritorious pleadings, requests for relief, or other documents… or engages in other tactics that are frivolous or solely intended to cause unnecessary delay in any action." *Id.* § 68.093(2)(c)(4). Plaintiff's vexatiousness is apparent from the record in this case – repeating in the Third Amended Complaint a claim this Court previously rejected – and from decisions in related litigation. *See Liccione v. VR Sys. Inc.*, Case No. 1:25-CV-01028-APM, page 1 (finding Plaintiff's election related claims "patently frivolous") (copy attached as Exhibit B); *Liccione v. Marcus*, Case No. 8:24-cv-02005-SDM-NHA, Dkt. No. 132 pages 4-5 (M.D. Fla. Aug. 20, 2025) (denying "meritless" motions for preliminary injunction and to disqualify counsel and dismissing claims concerning primary election) (copy attached as Exhibit C). This record demonstrates that Plaintiff "is a vexatious litigant and is not reasonably likely to prevail on the merits" of this litigation. *Id.* § 68.093(3)(a). Accordingly, and absent a prompt dismissal with prejudice, Plaintiff should be required to furnish security. *Id.* § 68.093(3)(b). In the meantime, this action should be stayed. *Id.* § 68.093(3)(d). In any event, the Court should retain jurisdiction to determine the amount of fees

and costs to be awarded to Defendants pursuant to this Court's October 14 Order and for responding to the Third Amended Complaint. *Id.* § 768.295(4).

Conclusion

The Third Amended Complaint – like its predecessors – fails to state a cause of action and is without merit. The Anti-SLAPP law requires a prompt dismissal with prejudice, and that Plaintiff pays Defendants' attorneys' fees. In the alternative, and at a minimum, this case should be stayed.

Respectfully submitted,

THOMAS & LOCICERO PL

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Counsel for Defendants Cathy Salustri Loper and Thursday Morning Media, Inc.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on Nov. 18, 2025, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

/s/ James B. Lake
Attorney

IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI LOPER, *et al.*,

Defendants.
_____/

EXHIBIT A
to
DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR STAY OF VEXATIOUS LITIGATION

Official Results

Includes Mail Ballots

Includes Early Voting

Includes Provisional Ballots

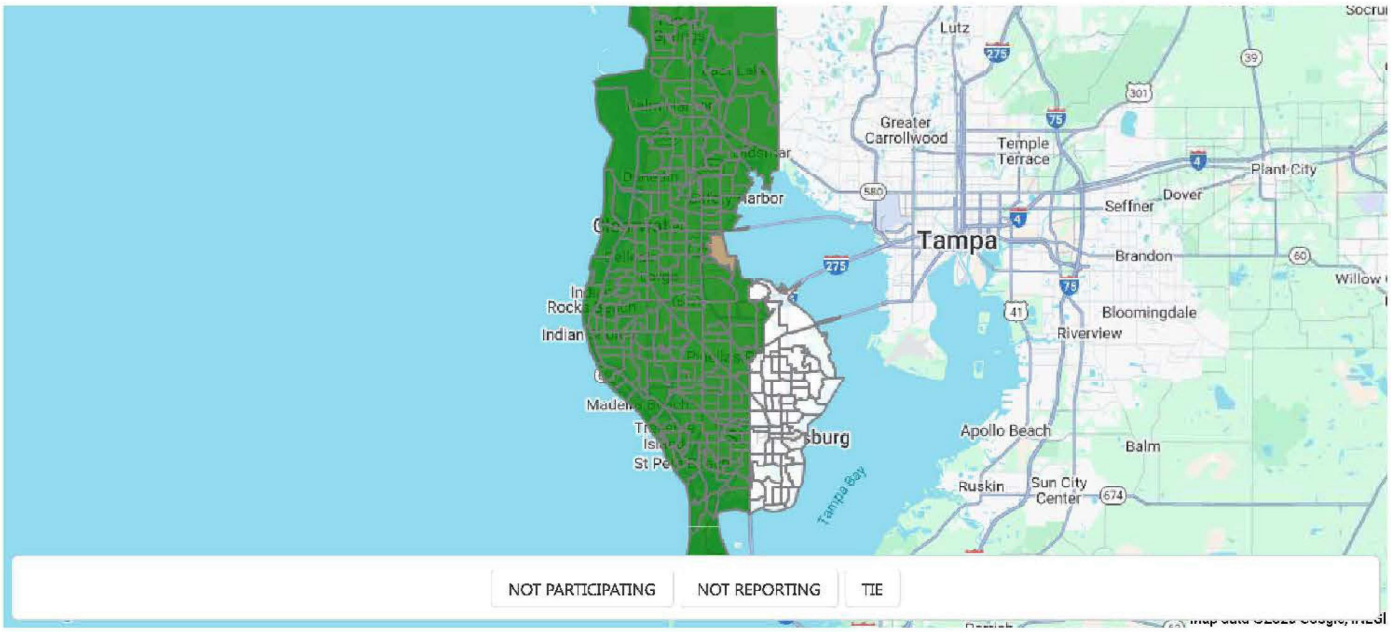
DEM REPRESENTATIVE IN CONGRESS - DISTRICT 13

(VOTE FOR: 1)

Last updated

Friday, August 23, 2024, 12:36:19 PM (1 year ago)

★ (0)



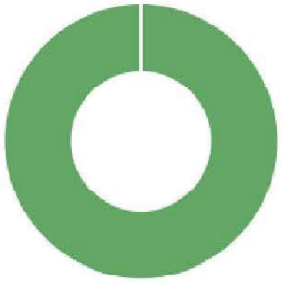
229/229

Precincts Reporting

Results | Vote types

Party / Candidate		Votes
DEM	Sabrina Bousbar	8,929 17.43%
DEM	Liz Dahan	6,904 13.48%
DEM	Whitney Fox	29,678 57.94%
DEM	John William Liccione	2,013 3.93%
DEM	Mark Weinkrantz	3,697 7.22%
	Vote Cast	**51,221**

PRECINCTS REPORTING



PRECINCTS REPORTING **286**/286

VOTER TURNOUT

TOTAL	26.85%
Ballots Cast	**168,294**
Registered Voters	**626,705**

REPORTS

Summary CSV
Comma separated file showing total votes received.

Detail XLS
Precinct level details for election results. Contains votes received by choice in each contest for all participating precincts.

Detail XML
Precinct level details for election results. Contains votes received by choice in each contest for all participating precincts.

Detail TXT
Precinct level details for election results. Contains votes received by choice in each contest for all participating precincts.

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IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI LOPER, *et al.*,

Defendants.
_____/

EXHIBIT B
to
DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR STAY OF VEXATIOUS LITIGATION

UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA

JOHN WILLIAM LICCIONE, *United States of America ex rel.,*	)	
Plaintiff,	)	
v.	)	**Case No. 25-cv-01028 (APM)**
VR SYSTEMS INC., et al.	)	
Defendants.	)	

MEMORANDUM OPINION

Plaintiff John William Liccione, proceeding pro se, brings several claims against Defendants VR Systems, Inc. and its CEO, as well as numerous federal, state, local, and foreign government officials. Am. Compl., ECF No. 11 [hereinafter Am. Compl.], ¶¶ 8–23. Because Plaintiff fails to raise a substantial federal question and his claims are patently frivolous, the court *sua sponte* dismisses the Amended Complaint and this action.

"[F]ederal courts are without power to entertain claims otherwise within their jurisdiction if they are so attenuated and unsubstantial as to be absolutely devoid of merit" or "obviously frivolous." *Hagans v. Lavine*, 415 U.S. 528, 536–37 (1974) (internal quotation marks and citations omitted); *see also Tooley v. Napolitano*, 586 F.3d 1006, 1009 (D.C. Cir. 2009) ("A complaint may be dismissed on jurisdictional grounds when it 'is patently insubstantial, presenting no federal question suitable for decision.'" (internal quotation marks omitted) (quoting *Best v. Kelly*, 39 F.3d 328, 330 (D.C. Cir. 1994))). Claims are insubstantial and frivolous if they are "essentially fictitious" because they advance, for example, "bizarre conspiracy theories." *Best*, 39 F.3d at 330

(internal quotation marks omitted). In such cases, a district court may dismiss the case *sua sponte*. *See Lewis v. Bayh*, 577 F. Supp. 2d 47, 54 (D.D.C. 2008).

Here, Plaintiff alleges a conspiracy beginning when falsified ballot records tainted multiple elections in which he ran as a candidate. Am. Compl ¶¶ 59, 81. Despite repeated attempts to get local, state, and federal officials to investigate, Plaintiff received no response. *Id.* ¶¶ 73–80, 85, 99. Plaintiff also filed election-fraud lawsuits, but several federal-government Defendants allegedly bribed a potential witness into silence by offering him a job within the Department of Justice's Civil Rights Division. *Id.* ¶ 94. When Plaintiff spoke out against both the fraudulent election activity and various political officials more broadly, he received anonymous emails telling him that he may be detained, deported, or "[p]erhaps worse" by the new administration and that "[his] name is on The List." *Id.* ¶¶ 63, 115. Plaintiff also received intelligence "from sources referred to herein collectively as '*Radio Putin*' indicating that Putin and Trump are conspiring" to have a terrorist assassinate him. *Id.* ¶ 122. The same intelligence told Plaintiff that the National Security Administration had hacked his devices and that Russian officials had obtained some of the files. *Id.* ¶ 123. The President was then allegedly caught on a hot microphone mentioning Plaintiff by name, saying that he sees Plaintiff "getting a funeral." *Id.* ¶ 125. Ultimately, Plaintiff alleges that Defendants violated a host of federal laws as they conspired to conceal the falsified ballot records and then silence Plaintiff through retaliation. *Id.* ¶ 129. Plaintiff seeks compensatory damages of over $50 million and punitive damages of over $200 million, along with other statutory damages and injunctive relief. *Id.* at pp. 73–75.

The court is mindful that complaints filed by pro se litigants are held to less stringent standards than those applied to formal pleadings drafted by lawyers. *See Haines v. Kerner*, 404 U.S. 519, 520 (1972). But Plaintiff's claim is clearly fantastic, delusional, and "essentially

fictitious." *Best*, 39 F.3d at 330 (internal quotation marks omitted). Accordingly, the court dismisses the Complaint and this action for lack of subject matter jurisdiction.

A separate final, appealable order accompanies this Memorandum Opinion.

Dated: October 3, 2025

Amit P. Mehta
United States District Judge

IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. **Case No.: 24-003939-CI**

CATHY SALUSTRI LOPER, *et al.*,

Defendants.
_____/

EXHIBIT C
to
DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR STAY OF VEXATIOUS LITIGATION

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. CASE NO. 8:24-cv-2005-SDM-NHA

JULIE MARCUS, et al.,

Defendants.
_____/

ORDER

John William Liccione, as a "voter" and as a "candidate," sues (Doc. 55) seven defendants, including some elected Florida officials, and alleges "systemic election fraud, foreign interference, election software and systems hacking, evidence tampering, and subsequent cover-up and obstructive efforts orchestrated by state and county officials, private entities, and others." According to the complaint, Liccione is a voter registered in Pinellas County, Florida and a "Democratic candidate in the 2024 election for U.S. Representative for Florida's 13th Congressional District." Otherwise difficult to understand, the complaint includes inflammatory and accusatory but not coherent or cogent allegations.

A June 27, 2025 order (Doc. 116) states:

> Five motions (Docs. 59, 67, 71, 80, and 81) to dismiss the current complaint pend. The plaintiff responds (Docs. 61, 93) to two of the five pending motions. No later than July 10, 2025, the plaintiff must either respond to each remaining motion or move to amend the complaint.

> If the plaintiff fails to comply with this order, each motion to dismiss will be deemed unopposed.

The docket reveals no response to the remaining three motions (Docs. 67, 71, and 80) to dismiss. Accordingly, the three motions are deemed unopposed.

Rule 8(a)(2), Federal Rules of Civil Procedure, requires that a pleading contain "a short and plain statement of the claim showing that the pleader is entitled to relief." A satisfactory complaint will support with identified facts each legal assertion. *Ashcroft v. Iqbal*, 556 U.S. 662, 678 (2009). Rule 8 requires that a complaint "give the defendant fair notice of what the . . . claim is and the grounds upon which it rests." *Erickson v. Pardus*, 551 U.S. 89, 93 (2007) (quoting *Bell Atlantic Corp. v. Twombly*, 550 U.S. 544, 555 (2007)).

The complaint fails to give adequate notice of both the claims against each defendant and the "grounds upon which [each claim] rests." The complaint fails to identify specific constitutional violations and instead asserts general, conclusory violations of "the right to a fair election and equal protection under the law." The complaint fails to explain which facts support each claim, and each count incorporates "all preceding paragraphs." For example, the final count, Count X, incorporates the preceding nine counts and the preceding sixty-three paragraphs of scattered "factual" allegations. The complaint repeatedly includes seemingly irrelevant facts, which increase the confusion. Also, the complaint includes many conclusory and scattered allegations of fraud, interference, and corruption. Because the complaint leaves each

defendant unable to comprehend, to assess, and to defend each claim, the complaint fails to state a claim.

Because Count II asserts a violation of 52 U.S.C. § 20511, which is a "criminal penalty" statute that creates no private right of action, Count II is facially invalid and incapable of salvage by mere amendment. Count II is **DISMISSED WITH PREJUDICE**.

Count IV asserts a violation of Section 119.01, Florida Statutes, which creates no private right of action. Under Section 119.10, a violation of any provision in Chapter 119 warrants a noncriminal infraction, impeachment, a misdemeanor, or a felony, but Section 119.10 permits no private prosecution of any violation. Because amending the count is futile, Count IV is **DISMISSED WITH PREJUDICE**.

Count V asserts a claim for fraudulent concealment and Count X asserts a claim for fraudulent misrepresentation. Each claim requires that a "defendant knew [that the] concealment of or [the] failure to disclose the material fact would induce the plaintiff to act" and that Liccione "detrimentally relied on the concealed information." *Philip Morris USA Inc. v. Principe*, 337 So. 3d 821, 827 n.7 (Fla. 3rd DCA 2021). The complaint fails to identify the act induced by the alleged concealment, fails to allege that any defendant knew that the alleged concealment would induce an act, and fails to allege detrimental reliance.

Count VI asserts a violation of 18 U.S.C. § 1030, which creates a private right of action "only if the conduct involves 1 of the factors set forth in subclauses (I), (II),

(III), (IV), or (V) of subsection (c)(4)(A)(i)." The complaint fails to identify, or even suggest, which "subclause" is "involved" in the alleged violation.

Count VII asserts a violation of the Racketeer Influenced and Corrupt Organizations Act. 18 U.S.C. § 1964(c) creates a claim for relief if a person's business or a person's property suffers an injury "by reason of violation of" 18 U.S.C. § 1962. The complaint fails to allege an injury to Liccione's "business" or "property." Also, the complaint fails to allege a violation of Section 1962, which is a complex statute incapable of invocation by mere conclusory and disjointed allegations.

Count VIII asserts a violation of 18 U.S.C. § 1503, which criminalizes a "corrupt" "endeavor to influence, intimidate, or impede any grand or petit juror, or officer in or of any court of the United States." Because Section 1503 is a criminal statute and creates no private right of action, Count VIII is **DISMISSED WITH PREJUDICE**.

For the reasons above, each motion (Docs. 59, 67, 71, 80, and 81) to dismiss is **GRANTED**. As mentioned, Count II, Count IV, and Count VIII are **DISMISSED WITH PREJUDICE**. The balance of the complaint is **DISMISSED WITHOUT PREJUDICE**. No later than **SEPTEMBER 12, 2025**, the plaintiff may amend the complaint to correct the deficiencies identified in this order or in each motion to dismiss. If Liccione fails to timely amend, this order becomes final. In other words, the action will end without another opportunity to amend the complaint. The "emergency" motion (Doc. 127) for a preliminary injunction is **DENIED** as meritless and for fundamentally misunderstanding the purpose and effect of a

preliminary injunction. The motion (Doc. 128) to "disqualify counsel" is **DENIED** as meritless. The motion (Doc. 121) to transfer the action is **DENIED** for the reasons stated in each response (Docs. 124, 125, and 126).

In any amended complaint and in addition to resolving the deficiencies described earlier, (1) the plaintiff must plead his complaint in separate claims for relief and include no more than one claim for relief in each count of the amended complaint; (2) the plaintiff must state above each count in the form of a title or a heading the name of one and only one claim for relief that the count alleges and whether the claim is based on federal law or based on state law; (3) the plaintiff must separate or identify the facts that support each count from the facts that support another count or counts; (4) the plaintiff must in each count identify the defendant or defendants against whom that count states a claim; and (5) the plaintiff must in each claim state the relief to which, based on the claim, the plaintiff claims entitlement.

A CAUTION TO THE PLAINTIFF

Litigation in federal court is difficult and requires timely compliance with applicable rules, including the Federal Rules of Civil Procedure, the Local Rules, the Federal Rules of Evidence, and several procedural, discovery, and other orders. An action against the State of Florida, against Florida's political subdivisions, or against Florida's constitutional and other officers presents special requirements. A judge cannot assist a party, even a *pro se* party, in conducting an action. Therefore, the plaintiff is strongly advised to obtain legal advice and assistance — preferably full representation — from a member of The Florida Bar. To the extent he intends to

continue to represent himself in this action, the plaintiff should familiarize himself with both the Federal Rules of Civil Procedure at https://www.uscourts.gov/rules-policies/current-rules-practice-procedure/federal-rules-civil-procedure and the Local Rules for the Middle District of Florida at https://www.flmd.uscourts.gov/local-rules, a copy of each of which is available in the clerk's office on the second floor of the Sam M. Gibbons United States Courthouse, 801 North Florida Avenue, Tampa, Florida. Also, the plaintiff can consult the "Litigants Without Lawyers" guide at http://www.flmd.uscourts.gov/litigants-without-lawyers.

ORDERED in Tampa, Florida, on August 20, 2025.

STEVEN D. MERRYDAY
UNITED STATES DISTRICT JUDGE

cc by e-mail: jliccione@protonmail.com

CLOSED

U.S. District Court
Middle District of Florida (Tampa)
CIVIL DOCKET FOR CASE #: 8:24-cv-02005-SDM-NHA

Liccione v. Marcus, et al
Assigned to: Judge Steven D. Merryday
Referred to: Magistrate Judge Natalie Hirt Adams
Demand: $9,999,000
Cause: 42:1983 Civil Rights Act

Date Filed: 08/23/2024
Date Terminated: 09/19/2025
Jury Demand: Plaintiff
Nature of Suit: 441 Civil Rights: Voting
Jurisdiction: Federal Question

Plaintiff

John William Liccione

represented by **John William Liccione**
6800 Gulfport Blvd. S. Ste 201-116
South Pasadena, FL 33707
443-698-8156
PRO SE

V.

Defendant

Julie Marcus
In her official capacity as Pinellas County Supervisor of Elections

represented by **Andrew Keefe**
Pinellas County Attorney's Office
315 Court Street, 6th Floor
Clearwater, FL 33756
727-464-3354
Fax: 727-464-4147
Email: akeefe@pinellas.gov
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Justin Chase
Official capacity as Deputy Supervisor of Elections
TERMINATED: 12/04/2024

represented by **Andrew Keefe**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Jennifer Griffith
Official capacity as Chair of the Pinellas Democratic Executive Commitee
TERMINATED: 12/04/2024

represented by **George Albert Doyle Thurlow**
Rahdert & Mortimer, PLLC
535 Central Avenue
Suite 200
St Petersburg, FL 33701
727-823-4191
Email: gthurlow@rahdertlaw.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Nikki Fried
Official capacity as Chair of the Florida Democratic Party
TERMINATED: 10/25/2024

represented by **Mark Herron**
Messer Caparello, PA
2618 Centennial Place
Tallahassee, FL 32308
850/222-0720
Fax: 850/224-4359
Email: mherron@lawfla.com
ATTORNEY TO BE NOTICED

Defendant

Whitney Fox
Individual and Official Capacity as a Democratic Candidate for Florida's 13th Congressional District
TERMINATED: 12/04/2024

represented by **Ryan D. Barack**
Kwall Barack Nadeau PLLC
304 S. Belcher Rd., Suite C
Clearwater, FL 33765
727/441-4947
Fax: 727/447-3158
Email: rbarack@employeerights.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Mark Weinkrantz
Individual and Official Capacity as a Democratic candidate for Florida's 13th Congressional District
TERMINATED: 12/04/2024

represented by **Thomas E. McGuire**
McGuire Law Offices
1173 NE Cleveland Street
Clearwater, FL 33755
727-446-7659
Email: defense@mcguirelawoffices.com
ATTORNEY TO BE NOTICED

Defendant

Jane Doe 1
in her personal and professional capacities

Defendant

John/Jane Does
in their official and individual capacities, including unknown Russian hackers who compromised election system software and the production information systems of VR Systems and their software development environment

Defendant

Andrew Darlington
In his official capacity as Director of the Florida Election Crimes and Security

represented by **William H. Stafford**
Office of the Attorney General
PL-01 - The Capitol
400 S Monroe St
Tallahassee, FL 32399-1050
850-414-3785
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Florida Atlantic University
Office of General Counsel
777 Glades Road
Ste Ad10-370
Boca Raton, FL 33431
561-703-5752
Email: jvandebogart@fau.edu
TERMINATED: 05/09/2025
ATTORNEY TO BE NOTICED

Maryssa Hardy
Florida Attorney General's Office
PL-01 The Capitol
Tallahassee, FL 32399-1050
850-414-3695
Email: maryssa.hardy@myfloridalegal.com
ATTORNEY TO BE NOTICED

Defendant

Governor Ron DeSantis
In his official capacity as Governor of Florida

represented by **William H. Stafford**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Maryssa Hardy
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Cory Byrd
In his official capacity as Florida Secretary of State

represented by **William H. Stafford**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ashley E. Davis
(See above for address)
ATTORNEY TO BE NOTICED

Joseph Van de Bogart
(See above for address)
TERMINATED: 05/09/2025
ATTORNEY TO BE NOTICED

Maryssa Hardy
(See above for address)
ATTORNEY TO BE NOTICED

Defendant

Matt Smith
In his official capacity as General Counsel for the Pinellas County Supervisor of Elections

represented by **Andrew Keefe**
(See above for address)
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Defendant

Mindy Perkins
In her professional capacity as Chief Executive Officer of VR Systems

represented by **Benjamin John Gibson**
Shutts & Bowen
215 South Monroe Street
Suite 804
Tallahassee, FL 32301
850-241-1720
Fax: 850-241-1718
Email: bgibson@shutts.com
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ATTORNEY TO BE NOTICED

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215 S. Monroe St.
Suite 804
Tallahassee, FL 32301
850-241-1717
Email: nmeros@shutts.com
ATTORNEY TO BE NOTICED

Defendant

Wendy Link
In her official capacity as Palm Beach County Supervisor of Elections

represented by **Gregor J. Schwinghammer , Jr.**
Gunster, Yoakley & Stewart, P.A.
777 South Flagler Drive
Suite 500 East
West Palm Beach, FL 33401
561-650-0595
Fax: 561-655-5677
Email: gschwinghammer@gunster.com
LEAD ATTORNEY
ATTORNEY TO BE NOTICED

Ryan C. Childress

Gunster Yoakley & Stewart, P.A.
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Fax: 561-655-5677
Email: rchildress@gunster.com
ATTORNEY TO BE NOTICED

Date Filed	#	Docket Text
08/23/2024	1	COMPLAINT for EMERGENCY INJUNCTIVE RELIEF AND DAMAGES against Justin Chase, Jane Doe 1-10, John Doe 1-10, Whitney Fox, Nikki Fried, Jennifer Griffith, Julie Marcus, Mark Weinkrantz with Jury Demand Filing fee $405.00, receipt number TPA70943 filed by John William Liccione. (Attachments: # 1 Exhibit A, # 2 Exhibit B, # 3 Exhibit C, # 4 Civil Cover Sheet)(AA) (Entered: 08/23/2024)
08/23/2024	2	SUMMONS issued as to Justin Chase, Whitney Fox, Nikki Fried, Jennifer Griffith, Julie Marcus, Mark Weinkrantz. (AA) (Entered: 08/23/2024)
08/23/2024	3	MOTION for Miscellaneous Relief, specifically Move case from FL 6th Circuit Court by John William Liccione. (AA) (Entered: 08/23/2024)
08/23/2024	4	MOTION for Miscellaneous Relief, specifically to Order the US Federal Marshalls to enter John Liccione into the Federal Witness Protection Program by John William Liccione. (AA) (Entered: 08/23/2024)
08/23/2024	5	MOTION for Miscellaneous Relief, specifically to Order Federal Marshalls to Accompany Plaintiff to Pinellas County Supervisor of Elections Office in Largo and to Serve Summons/Lawsuit on all Defendants by John William Liccione. (AA) (Entered: 08/23/2024)
08/23/2024	6	MOTION for Miscellaneous Relief, specifically to Empanel a Special Grand Jury by John William Liccione. (AA) (Entered: 08/23/2024)
08/26/2024	7	**ORDER denying the motion for a temporary restraining order; denying 3, 4, 5, 6. Signed by Judge Steven D. Merryday on 8/26/2024. (AP)** (Entered: 08/26/2024)
09/03/2024	8	**NOTICE of Order Referring Case to U.S. Magistrate Judge for IDEAL Program.** See attached Order for important deadlines and information about the IDEAL Program. (CDR) (Entered: 09/03/2024)
09/13/2024	9	NOTICE of Appearance by George Albert Doyle Thurlow on behalf of Jennifer Griffith (Thurlow, George) (Entered: 09/13/2024)
09/13/2024	10	NOTICE of a related action per Local Rule 1.07(c) by Jennifer Griffith. Related case(s): Yes (Thurlow, George) (Entered: 09/13/2024)
09/13/2024	12	MOTION for Miscellaneous Relief, specifically E-Filing Privilege by John William Liccione. (AA) (Entered: 09/17/2024)
09/16/2024	11	MOTION to Dismiss for Lack of Jurisdiction , MOTION to Dismiss Case as Frivolous , MOTION to Dismiss for Failure to State a Claim by Jennifer Griffith. (Thurlow, George) (Entered: 09/16/2024)
09/17/2024	13	NOTICE of APPEARANCE AND DESIGNATION OF LEAD COUNSEL Appearance by Andrew Keefe on behalf of Justin Chase, Julie Marcus (Keefe, Andrew). (Entered: 09/17/2024)

09/17/2024	14	MOTION to Dismiss PLAINTIFF'S COMPLAINT by Justin Chase, Julie Marcus. (Keefe, Andrew) (Entered: 09/17/2024)
09/17/2024	15	DISCLOSURE STATEMENT under Rule 7.1, Federal Rules of Civil Procedure, and Local Rule 3.03 by Justin Chase, Julie Marcus. (Keefe, Andrew) (Entered: 09/17/2024)
09/18/2024	16	NOTICE of Appearance by Mark Herron on behalf of Nikki Fried (Herron, Mark) (Entered: 09/18/2024)
09/18/2024	17	NOTICE of a related action per Local Rule 1.07(c) by Nikki Fried. Related case(s): Yes (Herron, Mark) (Entered: 09/18/2024)
09/18/2024	18	DISCLOSURE STATEMENT under Rule 7.1, Federal Rules of Civil Procedure, and Local Rule 3.03 by Nikki Fried. (Herron, Mark) (Entered: 09/18/2024)
09/18/2024	19	MOTION to Dismiss Complaint for Emergency Injunctive Relief by Nikki Fried. (Herron, Mark). (Entered: 09/18/2024)
09/18/2024	20	**ENDORSED ORDER: The plaintiff's motion (Doc. 12) for access to file documents on CM/ECF is DENIED. The plaintiff can mail or hand deliver any document to the clerk's office, or the plaintiff can electronically submit through the Electronic Document Submission Portal any document. Signed by Judge Steven D. Merryday on 9/18/2024. (AP)** Modified on 9/19/2024 as to docket number (ARL). (Entered: 09/18/2024)
09/18/2024	21	MOTION for Case Management Conference by John William Liccione. (AA) (e-portal) (Entered: 09/19/2024)
09/19/2024	22	SUPPLEMENT re 14 MOTION to Dismiss PLAINTIFF'S COMPLAINT by Justin Chase, Julie Marcus. (Keefe, Andrew) (Entered: 09/19/2024)
09/19/2024	23	NOTICE of a related action per Local Rule 1.07(c) by Justin Chase, Julie Marcus. Related case(s): Yes (Keefe, Andrew) (Entered: 09/19/2024)
09/27/2024	24	MOTION for Extension of Time to File Answer re 1 Complaint or to file Motion to Dismiss by Whitney Fox. (Barack, Ryan) Modified on 9/27/2024 as to docket text (ARL). (Entered: 09/27/2024)
09/29/2024	25	NOTICE by Jennifer Griffith *Notice of Unavailability* (Thurlow, George) (Entered: 09/29/2024)
09/29/2024	26	DISCLOSURE STATEMENT under Rule 7.1, Federal Rules of Civil Procedure, and Local Rule 3.03 by Jennifer Griffith. (Thurlow, George) (Entered: 09/29/2024)
09/30/2024	27	**ENDORSED ORDER: Whitney Fox moves (Doc. 24) to extend the time within which to respond to the complaint. The motion is GRANTED. No later than October 18, 2024, Fox may respond to the complaint. Signed by Judge Steven D. Merryday on 9/30/2024. (AP)** (Entered: 09/30/2024)
10/02/2024	28	**ENDORSED ORDER granting 21 Motion for IDEAL Case Management Conference. The Court will hold a Case Management Conference on October 10, 2024 at 3:00 PM in Courtroom 11A of the Sam Gibbons Courthouse at 801 N Florida Ave, Tampa, FL 33602. At the Conference, the Court will discuss the IDEAL Program Policies (Doc. 8) and the parties' scheduling and case management needs. Signed by Magistrate Judge Natalie Hirt Adams on 10/2/2024. (CJF)** (Entered: 10/02/2024)

10/02/2024	29	NOTICE of hearing: IDEAL Case Management Conference set for 10/10/2024 at 03:00 PM in Tampa Courtroom 11 A before Magistrate Judge Natalie Hirt Adams. (CJF) (Entered: 10/02/2024)
10/07/2024	30	NOTICE of voluntary dismissal by Whitney Fox (Barack, Ryan) (Entered: 10/07/2024)
10/07/2024	31	NOTICE OF RESCHEDULING HEARING: The Case Management Conference hearing previously scheduled for 10/10/2024 is rescheduled due to inclement weather. New scheduling date and time: Case Management Conference set for 10/30/2024 at 03:00 PM in Tampa Courtroom 11 A before Magistrate Judge Natalie Hirt Adams. (CDR) (Entered: 10/07/2024)
10/07/2024	32	NOTICE of voluntary dismissal with prejudice by John William Liccione (eportal).(LF) (Entered: 10/14/2024)
10/16/2024	33	**ENDORSED ORDER: In accord with the plaintiff's notice (Doc. 32), the action against Whitney Fox is DISMISSED WITH PREJUDICE. Signed by Judge Steven D. Merryday on 10/16/2024. (AP)** (Entered: 10/16/2024)
10/22/2024	34	MOTION to Dismiss Defendant Nikki Fried by John William Liccione. (AA) (e-portal) (Entered: 10/22/2024)
10/24/2024	35	**ENDORSED ORDER: The plaintiff moves (Doc. 34) to dismiss the action against Nikki Fried. The motion is GRANTED. The action against Fried is DISMISSED WITH PREJUDICE. Fried's motion (Doc. 19) to dismiss is DENIED AS MOOT. Signed by Judge Steven D. Merryday on 10/24/2024. (AP)** (Entered: 10/24/2024)
10/30/2024	36	ORAL MOTION for Miscellaneous Relief, specifically to Extend Response Deadline by John William Liccione. (CDR) (Entered: 10/31/2024)
10/30/2024	37	Minute Entry. In Person Proceedings held before Magistrate Judge Natalie Hirt Adams: granting 36 Motion Extend Response Deadline; CASE MANAGEMENT CONFERENCE held on 10/30/2024. (DIGITAL) (CDR) (Entered: 10/31/2024)
11/06/2024	38	Joint MOTION for Extension of Time to File Case Management Report 12/15/24 by John William Liccione. (e-portal) (JKB) (Entered: 11/07/2024)
11/07/2024	39	**ENDORSED ORDER: The parties move (Doc. 38) to extend the time within which to file a case management report. The motion is GRANTED-IN-PART. No later than November 21, 2024, the parties must submit a case management report. Signed by Judge Steven D. Merryday on 11/7/2024. (AP)** (Entered: 11/07/2024)
11/12/2024	40	First MOTION for Extension of Time to File Answer *or motion to dismiss* by Mark Weinkrantz. (McGuire, Thomas) (Entered: 11/12/2024)
11/12/2024	41	NOTICE of Appearance by Thomas E. McGuire on behalf of Mark Weinkrantz (McGuire, Thomas) (Entered: 11/12/2024)
11/14/2024	42	**ENDORSED ORDER: Mark Weinkrantz moves (Doc. 40) to extend the time within which to respond to the complaint. The motion, filed in twelve-point Times New Roman, violates Local Rule 1.08(b), which requires at least fourteen-point Times New Roman. The motion (Doc. 40) is DENIED WITHOUT PREJUDICE. No later than NOVEMBER 21, 2024, Weinkrantz may file a motion that conforms to Local Rule 1.08. Signed by Judge Steven D. Merryday on 11/14/2024. (DJL)** (Entered: 11/14/2024)
11/15/2024	43	Amended MOTION for Extension of Time to File Answer *or motion to dismiss* by Mark Weinkrantz. (McGuire, Thomas) (Entered: 11/15/2024)

11/20/2024	44	NOTICE of "Extortive Death Threat" by John William Liccione. (Attachments: # 1 Exhibit, # 2 Affidavit) (e-portal) (JKB) (Entered: 11/20/2024)
11/20/2024	45	MOTION to Stay Discovery *Pending Resolution of Motions to Dismiss and Incorporated Memorandum of Law* by Justin Chase, Julie Marcus. (Keefe, Andrew) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 11/20/2024)
11/20/2024	46	Amended MOTION for Extension of Time to File Answer *or motion to dismiss* by Mark Weinkrantz. (McGuire, Thomas) (Entered: 11/20/2024)
11/20/2024	47	RESPONSE in Opposition re 45 MOTION to Stay Discovery *Pending Resolution of Motions to Dismiss and Incorporated Memorandum of Law* filed by John William Liccione. (Attachments: # 1 Exhibit A, # 2 Affidavit)(AA) (e-portal) (Entered: 11/21/2024)
11/20/2024	48	MOTION for Leave to file First Amended 1 Complaint, by John William Liccione. (e-portal) (JKB) (Entered: 11/21/2024)
11/21/2024	49	UNILATERAL CASE MANAGEMENT REPORT. (Keefe, Andrew) (Entered: 11/21/2024)
11/22/2024	50	UNILATERAL CASE MANAGEMENT REPORT. (e-portal) (JKB) (Entered: 11/25/2024)
11/25/2024	51	**ENDORSED ORDER: The plaintiff's motion (Doc. 48) to amend the complaint is GRANTED. No later than December 4, 2024, the plaintiff may amend the complaint. Any future filing must comply with each applicable rule, including Local Rule 3.01(g). Signed by Judge Steven D. Merryday on 11/25/2024. (AP)** (Entered: 11/25/2024)
11/27/2024	52	NOTICE of voluntary dismissal by John William Liccione (AA) (e-portal) (Entered: 12/02/2024)
12/04/2024	53	**VACATED per 57 Order- ENDORSED ORDER: In accord with the plaintiff's notice (Doc. 52), the action is DISMISSED WITH PREJUDICE. Each pending motion (Docs. 11, 14, 43, 45, and 46) is DENIED AS MOOT. The clerk must close the case. Signed by Judge Steven D. Merryday on 12/4/2024. (AP)** Modified docket text on 12/9/2024 (JTM). (Entered: 12/04/2024)
12/04/2024	55	AMENDED COMPLAINT against Jane Doe 1-10, John Doe 1-10, Julie Marcus, Andrew Darlington, Ron DeSantis, Cory Byrd, Matt Smith, Mindy Perkins, Wendy Link with Jury Demand. Terminating Jennifer Griffith (Official capacity as Chair of the Pinellas Democratic Executive Commitee), Mark Weinkrantz (Individual and Official Capacity as a Democratic candidate for Florida's 13th Congressional District), Justin Chase (Official capacity as Deputy Supervisor of Elections) and Whitney Fox (Individual and Official Capacity as a Democratic Candidate for Florida's 13th Congressional District) filed by John William Liccione. Related document: 1 Complaint, filed by John William Liccione. (Attachments: # 1 Exhibit) (e-portal) (JKB) (Entered: 12/06/2024)
12/04/2024	56	SUMMONS issued as to Cory Byrd, Andrew Darlington, Ron DeSantis, Wendy Link, Mindy Perkins, Matt Smith. (e-portal) (JKB) (Entered: 12/06/2024)
12/05/2024	54	NOTICE of Local Rule 1.11(e), which provides that, unless an order states another time, a seal under Rule 1.11 expires ninety days after a case is closed and all appeals are exhausted. To prevent the content of a sealed item from appearing on the docket after the seal expires, a party or interested non-party must move for relief before the seal expires. (Signed by Deputy Clerk). (BD) (Entered: 12/05/2024)

12/06/2024	57	**ORDER vacating 53--order dismissing the action; directing the clerk to re-open the case. Signed by Judge Steven D. Merryday on 12/6/2024. (AP)** (Entered: 12/06/2024)
12/16/2024	58	Unopposed MOTION for Extension of Time to File Answer *to the First Amended Complaint and Incorporated Memorandum of Law* by Julie Marcus. (Keefe, Andrew) (Entered: 12/16/2024)
12/18/2024	59	MOTION to Dismiss First Amended Complaint by Julie Marcus. (Keefe, Andrew) (Entered: 12/18/2024)
12/19/2024	60	**ENDORSED ORDER: Julie Marcus moves (Doc. 58) unopposed to extend the time within which Marcus may respond to the complaint. The motion is GRANTED. No later than January 3, 2025, Marcus may respond to the complaint. Signed by Judge Steven D. Merryday on 12/19/2024. (AP)** (Entered: 12/19/2024)
01/08/2025	61	RESPONSE in Opposition re 59 MOTION to Dismiss First Amended Complaint filed by John William Liccione. (e-portal) (JKB) Modified text on 1/9/2025 (JKB). (Entered: 01/09/2025)
01/09/2025	62	MOTION for Extension of Time to File Answer re 55 Amended Complaint by Andrew Darlington, Cory Byrd. (Stafford, William) Modified docket text on 1/9/2025 (JOS). (Entered: 01/09/2025)
01/09/2025	63	Amended MOTION for Extension of Time to File Answer re 55 Amended Complaint by Andrew Darlington, Cory Byrd. (Stafford, William) Modified docket text on 1/9/2025 (JOS). (Entered: 01/09/2025)
01/09/2025	64	NOTICE of Appearance by Joseph Van de Bogart on behalf of Andrew Darlington, Cory Byrd (Van de Bogart, Joseph) (Entered: 01/09/2025)
01/09/2025	65	NOTICE of Appearance by Ashley E. Davis on behalf of Andrew Darlington, Cory Byrd (Davis, Ashley) (Entered: 01/09/2025)
01/09/2025	66	Amended MOTION for Extension of Time to File Answer re 55 Amended Complaint by Andrew Darlington, Cory Byrd. (Stafford, William) Modified docket text on 1/10/2025 (EVK). (Entered: 01/09/2025)
01/09/2025	67	MOTION to Dismiss Plaintiff's Claims Against Wendy Link, in her Capacity as Palm Beach County Supervisor of Elections by Wendy Link. (Schwinghammer, Gregor) (Entered: 01/09/2025)
01/10/2025	68	**ENDORSED ORDER: Cord Byrd and Andrew Darlington's motion (Doc. 66) to extend the time within which to respond to the complaint is GRANTED. No later than February 8, 2025, Byrd and Darlington may respond to the complaint. Each earlier motion (Docs. 62 and 63) is DENIED AS MOOT. Signed by Judge Steven D. Merryday on 1/10/2025. (AP)** (Entered: 01/10/2025)
01/10/2025	69	***ENTERED IN ERROR (Signed by Deputy Clerk). (EVK) Modified docket text on 1/10/2025 (EVK). (Entered: 01/10/2025)
01/16/2025	70	NOTICE of Appearance by Andrew Keefe on behalf of Matt Smith (Keefe, Andrew) (Entered: 01/16/2025)
01/16/2025	71	MOTION to Dismiss Plaintiff's First Amended Complaint with Incorporated Memorandum of Law by Matt Smith. (Keefe, Andrew) (Entered: 01/16/2025)
01/17/2025	72	NOTICE of Appearance by Benjamin John Gibson on behalf of Mindy Perkins (Gibson, Benjamin) (Entered: 01/17/2025)

01/17/2025	73	NOTICE of Appearance by Kassandra S. Reardon on behalf of Mindy Perkins (Reardon, Kassandra) (Entered: 01/17/2025)
01/17/2025	74	NOTICE of Appearance by Nicholas John Peter Meros on behalf of Mindy Perkins (Meros, Nicholas) (Entered: 01/17/2025)
01/17/2025	75	MOTION for Extension of Time to File Answer re 55 Amended Complaint by Mindy Perkins. (Gibson, Benjamin) Modified text on 1/21/2025 (ABM). (Entered: 01/17/2025)
01/17/2025	76	DISCLOSURE STATEMENT under Rule 7.1, Federal Rules of Civil Procedure, and Local Rule 3.03 by Mindy Perkins. (Gibson, Benjamin) (Entered: 01/17/2025)
01/21/2025	77	**ENDORSED ORDER: Mindy Perkins moves (Doc. 75) to extend the time within which to respond to the complaint. The motion is GRANTED. No later than February 24, 2025, Perkins may respond to the complaint. Signed by Judge Steven D. Merryday on 1/21/2025. (AP)** (Entered: 01/21/2025)
02/04/2025	78	NOTICE of Appearance by William H. Stafford on behalf of Ron DeSantis (Stafford, William) (Entered: 02/04/2025)
02/05/2025	79	NOTICE of Appearance by Maryssa Hardy on behalf of Andrew Darlington, Ron DeSantis, Cory Byrd. (Hardy, Maryssa) (Entered: 02/05/2025)
02/07/2025	80	MOTION to Dismiss First Amended Complaint by Andrew Darlington, Ron DeSantis, Cory Byrd. (Attachments: # 1 Exhibit Election Results)(Stafford, William) (Entered: 02/07/2025)
02/24/2025	81	MOTION to Dismiss Complaint and Incorporated Memorandum of Law by Mindy Perkins. (Gibson, Benjamin) (Entered: 02/24/2025)
03/03/2025	82	MOTION to Stay Discovery *And Incorporated Memorandum of Law* by Cory Byrd, Andrew Darlington, Ron DeSantis. (Hardy, Maryssa) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 03/03/2025)
03/06/2025	83	MOTION for leave to file Second Amended Complaint 55 by John William Liccione. (e-portal) (JKB) (Entered: 03/07/2025)
03/06/2025	84	EMERGENCY MOTION for Injunctive Relief to set Aside and Authenticate 411 Fraudulent Vote-by-Mail Ballots by John William Liccione. Chambers notified. (e-portal) (Attachments: # 1 Exhibit A) (JKB) (Entered: 03/07/2025)
03/07/2025	85	DISCLOSURE STATEMENT under Rule 7.1, Federal Rules of Civil Procedure, and Local Rule 3.03 by Cory Byrd, Andrew Darlington, Ron DeSantis. (Stafford, William) (Entered: 03/07/2025)
03/12/2025	86	MOTION for Extension of Time to File Response/Reply *to Plaintiff's Motion for Leave to file Second Amended Complaint* by Julie Marcus, Matt Smith. (Keefe, Andrew) (Entered: 03/12/2025)
03/12/2025	87	MOTION to Stay Discovery by Mindy Perkins. (Meros, Nicholas) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 03/12/2025)
03/12/2025	88	STRICKEN per 90 Order -NOTICE of *Rule 26 Initial Disclosures* by Mindy Perkins. (Meros, Nicholas) Modified text on 3/13/2025 (JK). Modified on 3/13/2025 (JK). (Entered: 03/12/2025)
03/13/2025	89	SUPPLEMENT re 86 MOTION for Extension of Time to File Response/Reply *to Plaintiff's Motion for Leave to file Second Amended Complaint* by Julie Marcus, Matt Smith. (Keefe, Andrew) (Entered: 03/13/2025)

03/13/2025	90	**ENDORSED ORDER. The Clerk is directed to strike as improperly filed discovery 88 Defendant Perkins's Rule 26 Disclosures. Discovery documents should not be filed on the Court docket except as an attachment to a pending motion, when appropriate, or as directed by the Court. *See* Fed. R. Civ. P. 5(d)(1)(A) ("[D]isclosures under Rule 26(a)(1)...must not be filed until they are used in the proceeding or the court orders filing."). Signed by Magistrate Judge Natalie Hirt Adams on 3/13/2025. (CJF)** (Entered: 03/13/2025)
03/13/2025	91	MOTION to Stay Discovery by Julie Marcus, Matt Smith. (Keefe, Andrew) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 03/13/2025)
03/14/2025	92	**ENDORSED ORDER: Julie Marcus and Matt Smith move (Doc. 86) to extend the time within which to respond to the motion (Doc. 83) to amend the complaint. The motion (Doc. 86) is GRANTED. This order extends the time within which every defendant, including the non-moving defendants, may respond to the motion (Doc. 83) to amend the complaint. No later than April 8, 2024, each defendant may respond to the motion (Doc. 83). Signed by Judge Steven D. Merryday on 3/14/2025. (AP)** (Entered: 03/14/2025)
03/17/2025	93	RESPONSE to Motion re 81 MOTION to Dismiss Complaint and Incorporated Memorandum of Law filed by John William Liccione. (Attachments: # 1 Exhibit, # 2 Affidavit)(AA) (Entered: 03/17/2025)
03/17/2025	94	MOTION for Extension of Time to File Response/Reply as to 84 MOTION for Miscellaneous Relief, specifically Injunctive Relief to set Aside and Authenticate 411 Fraudulent Vote-by-Mail Ballots by Julie Marcus, Matt Smith. (Keefe, Andrew) (Entered: 03/17/2025)
03/18/2025	95	MOTION for Miscellaneous Relief, specifically Automatic E-Service of All Court Docket Filings and Notices by John William Liccione. (e-portal) (JKB) (Entered: 03/18/2025)
03/19/2025	96	NOTICE of WITHDRAWAL of 84 Motion for Miscellaneous Relief, Specifically for Injunctive Relief filed by John William Liccione. (e-portal) (JKB) (Entered: 03/20/2025)
03/24/2025	97	**ENDORSED ORDER: Because the plaintiff withdraws (Doc. 96) a motion (Doc. 84) for a preliminary injunction, the motion (Doc. 84) and the defendant's motion (Doc. 94) to extend the time within which to respond to the motion for a preliminary injunction are DENIED AS MOOT. Signed by Judge Steven D. Merryday on 3/24/2025. (AP)** (Entered: 03/24/2025)
03/24/2025	98	MOTION to Proceed In Forma Pauperis Under Seal by John William Liccione. (e-portal) (Attachments: # 1 Motion to proceed In Forma Pauperis) (JKB) Modified event on 3/24/2025 (JKB). (Entered: 03/24/2025)
03/24/2025	99	MOTION to Appoint Counsel by John William Liccione. (e-portal) (JKB) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 03/24/2025)
03/24/2025	100	AMENDED MOTION to proceed In Forma Pauperis Case by John William Liccione. (e-portal) (Attachments: # 1 Amended Motion for IFP) (JKB) Modified event on 3/24/2025 (JKB). (Entered: 03/24/2025)
03/24/2025	101	AMENDED MOTION to Appoint Counsel by John William Liccione. (e-portal) (Attachments: # 1 Text of Proposed Order) (JKB) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 03/24/2025)
03/24/2025	102	MOTION for miscellaneous relief, specifically to file sworn declaration under seal by John William Liccione. (e-portal) (Attachments: # 1 Text of Proposed Order, # 2 Sworn Declaration) (JKB) Modified event on 3/24/2025 (JKB). (Entered: 03/24/2025)

03/24/2025	103	**ENDORSED ORDER granting 82, 87, and 91 Motions to Stay Discovery. Generally, unilateral motions to stay discovery are disfavored. *See* Middle District Discovery (2021) at Section I.E.4. However, having reviewed the pending motions to dismiss, which raise potentially dispositive legal challenges to the lawsuit, I find that allowing discovery on the numerous claims presently in flux (*see* Docs. 59, 71, 80, 81), would create an undue burden and would be inconsistent with Rule 1 of the Federal Rules of Civil Procedure. Accordingly, discovery is STAYED as to each movant until its respective motion to dismiss is resolved (Docs. 59, 71, 80, 81). Signed by Magistrate Judge Natalie Hirt Adams on 3/24/2025. (CJF)** (Entered: 03/24/2025)
03/28/2025	104	**ENDORSED ORDER denying without prejudice 99 Motion to Appoint Counsel, in light of 101 Amended Motion to Appoint Counsel. Signed by Magistrate Judge Natalie Hirt Adams on 3/28/2025. (CJF)** Modified to correct Scrivener's error re: ruling on 3/31/2025 (JNB). (Entered: 03/28/2025)
04/07/2025	105	Second MOTION for Extension of Time to File Response/Reply as to 83 MOTION to Amend 55 Amended Complaint, by Julie Marcus, Matt Smith. (Keefe, Andrew) (Entered: 04/07/2025)
04/07/2025	106	Unopposed MOTION for Extension of Time to File Response/Reply as to 83 MOTION to Amend 55 Amended Complaint, by Mindy Perkins. (Meros, Nicholas) (Entered: 04/07/2025)
04/08/2025	107	MOTION for Extension of Time to File Response/Reply as to 83 MOTION to Amend 55 Amended Complaint, by Cory Byrd, Andrew Darlington, Ron DeSantis. (Stafford, William) (Entered: 04/08/2025)
04/08/2025	108	Unopposed MOTION for Extension of Time to File Response/Reply as to 83 MOTION to Amend 55 Amended Complaint, by Wendy Link. (Schwinghammer, Gregor) (Entered: 04/08/2025)
04/10/2025	109	**ORDER granting 105, 106, 107, 108; permitting each defendant to respond no later than April 30, 2025; denying as moot 98, 100--motions to proceed in forma pauperis; denying 101--motion for court-appointed counsel; denying 102--motion to submit under seal; directing the clerk to remove the seal from docket entry 98, from docket entry 100, and from docket entry 102; denying 95--motion for e-service. Signed by Judge Steven D. Merryday on 4/10/2025. (AP)** (Entered: 04/10/2025)
04/11/2025	110	MOTION for Reconsideration of Order Denying Motion to seal; 109 Order on Motion for Miscellaneous Relief Order on Motion to Proceed In Forma Pauperis Order on Motion to Appoint Counsel Order on Motion for Extension of Time to File Response / Reply, by John William Liccione. (e-portal) (JKB) (Entered: 04/11/2025)
04/11/2025	111	MOTION for Reconsideration of Order Denying Motion for Appointment of Counsel: 109 Order on Motion for Miscellaneous Relief Order on Motion to Proceed In Forma Pauperis Order on Motion to Appoint Counsel Order on Motion for Extension of Time to File Response / Reply, by John William Liccione. (e-portal) (JKB) (Entered: 04/11/2025)
04/15/2025	112	**ORDER denying 110, 111--motions for re-consideration. Signed by Judge Steven D. Merryday on 4/15/2025. (AP)** (Entered: 04/15/2025)
04/19/2025	113	NOTICE of Withdrawal of Motion 83 MOTION to Amend 55 Amended Complaint, by John William Liccione. (AA) (e-portal) Modified text on 4/21/2025 (JNB). (Entered: 04/21/2025)
05/02/2025	114	MOTION for Joseph Van de Bogart to Withdraw as Attorney by Cory Byrd. (Van de Bogart, Joseph) (Entered: 05/02/2025)

05/09/2025	115	**ENDORSED ORDER: Joseph S. Van de Bogart's motion (Doc. 114) to withdraw as counsel for Cord Byrd and for Andrew Darlington is GRANTED. Van de Bogart is WITHDRAWN as counsel. The clerk must terminate Van de Bogart from the service list. Signed by Judge Steven D. Merryday on 5/9/2025. (AP)** (Entered: 05/09/2025)
06/27/2025	116	**ORDER directing the plaintiff to either respond to each motion to dismiss or move to amend the complaint no later than July 10, 2025. Signed by Judge Steven D. Merryday on 6/27/2025. (AP)** (Entered: 06/27/2025)
07/10/2025	117	MOTION for Extension of Time to Amend re 55 Amended Complaint, by John William Liccione. (e-portal) (Attachments: # 1 Exhibit A) (JKB) (Entered: 07/10/2025)
07/11/2025	118	NOTICE of change of address by John William Liccione. (e-portal) (JKB) (Entered: 07/11/2025)
07/11/2025	119	**ENDORSED ORDER: The plaintiff moves (Doc. 117) to extend by seven days the time within which to either move to amend the complaint or respond to each motion to dismiss. The motion is GRANTED. No later than July 18, 2025, the plaintiff may either move to amend the complaint or respond to each motion to dismiss. Signed by Judge Steven D. Merryday on 7/11/2025. (AP)** (Entered: 07/11/2025)
07/15/2025	120	NOTICE of a related action per Local Rule 1.07(c) by John William Liccione. Related case(s): Yes. (eportal) (Attachments: # 1 Exhibit A)(MCB) (Entered: 07/17/2025)
07/17/2025	121	MOTION to Consolidate Cases, MOTION to Transfer Case by John William Liccione. (eportal) (Attachments: # 1 Exhibit)(MCB) (Entered: 07/18/2025)
07/31/2025	122	MEMORANDUM in opposition re 121 Motion to Consolidate Cases, Motion to Change Venue / Transfer Case filed by Cory Byrd, Andrew Darlington, Ron DeSantis. (Hardy, Maryssa) (Entered: 07/31/2025)
07/31/2025	124	RESPONSE in Opposition re 121 MOTION to Consolidate Cases MOTION to Change Venue / Transfer Case filed by Wendy Link. (Schwinghammer, Gregor) (Entered: 07/31/2025)
07/31/2025	125	RESPONSE in Opposition re 121 MOTION to Consolidate Cases MOTION to Change Venue / Transfer Case filed by Julie Marcus, Matt Smith. (Keefe, Andrew) (Entered: 07/31/2025)
07/31/2025	126	RESPONSE in Opposition re 121 MOTION to Consolidate Cases MOTION to Change Venue / Transfer Case filed by Mindy Perkins. (Gibson, Benjamin) (Entered: 07/31/2025)
08/04/2025	127	EMERGENCY MOTION for Preliminary Injunction by John William Liccione. (AA) Modified text on 8/4/2025 (AA). (Note: Chambers has been notified.) (Entered: 08/04/2025)
08/11/2025	128	MOTION to Disqualify Counsel, MOTION to Strike 71 MOTION to Dismiss Plaintiff's First Amended Complaint with Incorporated Memorandum of Law , 125 Response in Opposition to Motion, 59 MOTION to Dismiss First Amended Complaint 91 Motion to Stay Discovery by John William Liccione. (AA) Motions referred to Magistrate Judge Natalie Hirt Adams. (Entered: 08/13/2025)
08/14/2025	129	RESPONSE in Opposition re 127 MOTION for Preliminary Injunction filed by Mindy Perkins. (Gibson, Benjamin) (Entered: 08/14/2025)
08/18/2025	130	RESPONSE in Opposition re 127 MOTION for Preliminary Injunction filed by Cory Byrd, Andrew Darlington, Ron DeSantis. (Hardy, Maryssa) (Entered: 08/18/2025)
08/19/2025	131	RESPONSE in Opposition re 127 MOTION for Preliminary Injunction *and Joinder in State Defendants' Response in Opposition to Plaintiff's Motion for Preliminary Injunction*

		[DE 130] filed by Wendy Link. (Schwinghammer, Gregor) (Entered: 08/19/2025)
08/20/2025	132	**ORDER granting 59, 67, 71, 80, 81--motions to dismiss; dismissing with prejudice Count II, Count IV, and Count VIII; dismissing the balance of the complaint without prejudice and with leave to amend; denying 127--motion for a preliminary injunction; denying 128--motion to "disqualify counsel"; denying 121--motion to transfer the action. Signed by Judge Steven D. Merryday on 8/20/2025. (AP)** (Entered: 08/20/2025)
09/19/2025	134	**ENDORSED ORDER: An earlier order (Doc. 132) dismissed Counts I, III, V, VI, and VII without prejudice and Counts II, IV, and VIII with prejudice. Plaintiff fails to timely amend the complaint. The action is DISMISSED, and the clerk is directed to close the case. Signed by Senior District Judge Steven D. Merryday on 9/19/2025. (DM)** (Entered: 09/19/2025)
09/22/2025	135	NOTICE of Local Rule 1.11(e), which provides that, unless an order states another time, a seal under Rule 1.11 expires ninety days after a case is closed and all appeals are exhausted. To prevent the content of a sealed item from appearing on the docket after the seal expires, a party or interested non-party must move for relief before the seal expires. (Signed by Deputy Clerk). (ELA) (Entered: 09/22/2025)

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No.: 24-003939-CI

CATHY SALUSTRI LOPER, et al.,

Defendants.
_____/

STIPULATION REGARDING HEARING

Plaintiff, John William Liccione, and Defendants Cathy Salustri Loper and Thursday Morning Media, Inc., stipulate as follows:

1. Plaintiff and Defendants seek a hearing on Defendants' Motion to Dismiss Third Amended Complaint (the "Motion") and are available December 16, 2025, for such a hearing. The parties understand that the Court has time available on that date.

2. In the interest of judicial economy, the parties agree and request that the Court limit the December 16, 2025, hearing to the portion of the Motion challenging the legal sufficiency of the Third Amended Complaint and seeking relief under Florida's Anti-SLAPP law, Section 768.295, Fla. Stat. (2025). The parties request one hour for this hearing.

3. The Motion also cites the Florida Vexatious Litigant Law, Section 68.093, Fla. Stat. (2025). The parties agree and consent to the Court hearing the vexatiousness issue (if necessary) at a later date.

Respectfully submitted,

THOMAS & LOCICERO PL

/s/ James B. Lake
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Plaintiff pro se

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on the 21st day of **November, 2025**, the foregoing document was electronically filed with the Clerk of the Court via the E-Portal, and was served this same day on all parties and attorneys of record, either via transmission of Notices of Electronic Filing generated by the E-Portal or in some other authorized manner for those counsel or parties who are not authorized to receive electronic Notices of Electronic Filing.

s/ *James B. Lake*
Attorney

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v. **Case No.: 24-003939-CI**
CATHY SALUSTRI-LOPER; et al
Defendants.
_____/

PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT AND FOR STAY / VEXATIOUS-LITIGANT RELIEF

Plaintiff, John William Liccione, pro se, files this Response in Opposition to Defendants' Motion to Dismiss Third Amended Complaint and for Stay / Vexatious-Litigant Relief (Dkt. 172) and states:

ELECTRONICALLY FILED 12/08/2025 11:27:16 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

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I. INTRODUCTION AND REVIEW OF JULY 12TH GABBER ARTICLE

1. The 3AC asserts a single, focused cause of action for defamation, including defamation by implication, arising from The Gabber's July 12, 2024 article about the Democratic primary for Florida's 13th Congressional District.

2. The 3AC attaches and incorporates key exhibits: (a) the Supervisor of Elections sample ballot showing five qualified Democratic candidates (including Plaintiff); (b) the complete July 12 article, including headline, sub-headline, photos, layout, and interstitial; (c) prior "Meet the Candidates" features published by The Gabber; (d) Plaintiff's paid campaign advertisement in The Gabber; (e) a photograph of Plaintiff's campaign sign located near The Gabber's office; (f) The Gabber's partial "correction"; and (g) a sworn voter affidavit attesting to how the article was understood.

3. The defamatory gist of the July 12 article emerges immediately from its opening elements. The very first thing an ordinary reader sees is the bold headline:

> **Meet the Democratic Candidates for the District 13 Congressional Election**

thus signaling that what follows is a comprehensive voter-guide presenting the full Democratic field for that specific Congressional election.

4. Immediately beneath that headline the article displays a generic stock photo of a hand holding an "I VOTED" sticker, that is not of the debate venue, not the St. Petersburg Marriott Clearwater, and has a background of blurry image of small, one-story hotel's pool area with deck chairs. It bears no resemblance to the event location. The image is credited "Photo courtesy of

the City of St. Petersburg," further reinforcing to readers that this is an authoritative, civic-oriented voter-information piece—not a debate advertisement.



5. Directly under this stock photo, the caption unequivocally states in small-font:

The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater.
Photo courtesy of the City of St. Petersburg

6. Thus, the caption is framed as a factual identification of a congressional election race that is unequivocally a ***four-way race***, not a five-way race. It is *not* solely a description of debate participants. The article then profiles only those four individuals. Plaintiff—who indisputably appeared on the Supervisor of Elections ballot as the fifth Democratic candidate in the race and was known to Defendants as a qualified candidate still in the running at time of publication—was omitted entirely. Plaintiff argues this was deliberate, as the already well-pleaded facts and evidence show.

7. Immediately following this caption, the article introduces the candidate profiles with a large, bold-font section header and introduction to Whitney Fox, followed by a large, page-wide photo as follows:

Meet the District 13 Congressional Candidates:

Whitney Fox



8. The caption under Whitney Fox's photo then reads:

Whitney Fox looks to take the District 13 Congressional seat in the upcoming election.
Photo via FloridaPolitics

9. Below follows a one-paragraph profile of Fox in normal-size font that Defendants state they had obtained, notably, ***from Fox's campaign website.***

> "Fox's website describes her as, "A mother who will fight to improve the quality of life for Florida's 13th district and the American people. Some focuses for her candidacy include protecting women's reproductive rights and healthcare. Also, she looks to protect Social Security and Medicare, and lower prescription drug costs."

10. Next comes the presentation of candidate Mark Weinkrantz, which follows the same layout and content as Fox's presentation, with one significant difference. Defendants state that Weinkrantz' photograph was provided ***by Mark Weinkrantz himself***. This proves that Defendants contacted Weinkrantz in advance of publication, notified him of the upcoming article, requested a photograph, and he provided one.

Mark Weinkrantz



What does Mark Weinkrantz hope to achieve if elected to the District 13 Congressional seat?
Photo Via Mark Weinkrantz

11. What follows next is the interstitial large-font and italicized, with a link to their article about the Pinellas County Supervisor of Elections race voter guide:

The District 13 Congressional election candidates are not the only people you will vote for. Read about the Pinellas County Supervisor of Elections candidates.

12. What then follows is the presentation of candidate Liz Dahan whose photo they obtained from FloridaPolitics and whose profile writeup they obtained from Dehan's campaign website:

Liz Dahan



Liz Dahan prepares for the debate for the District 13 Congressional election.
Photo via FloridaPolitics

> "Dahan also focuses on protecting women's rights. Her approach towards Social Security and medicare is similar to Fox's. Also, her website states, "She is passionate about protecting Florida's natural environment and recognizes that our vulnerability to rising sea levels, hurricanes, and coastal erosion requires bold legislative measures aimed at reducing carbon emissions, investing in renewable energy, and enhancing our natural defenses against climate-related disasters."

13. Finally comes candidate Sabrina Bousbar's profile whose picture was obtained from FloridaPolitics while her writeup was lifted from her campaign website:

Sabrina Bousbar



Sabrina Bousbar's campaign for the District 13 Congressional election is heating up.
Photo via FloridaPolitics

> "Bousbar's website describes her as a "public servant and commonsense problem solver." Her goals are to make sure that families and individuals have access to viable "education, healthcare, housing, and jobs that every family needs and deserves."

14. And finally is the wrap-up paragraph which describes how Defendants cover local elections and invites readers to subscribe so as to make "an informed decision at the polls."

Want More Election News?

The Gabber Newspaper covers elections on the South Pinellas beaches, Gulfport, and South Pasadena. Want to make an informed decision at the polls? Subscribe to The Weekly and The Beach Barnacle, our two weekly newsletters. And make thegabber.com your homepage to stay up-to-date on all the news in Gulfport, South Pinellas, and the beaches.

15. It is clear to a reasonable person that Defendants deliberately ***avoided*** contacting Plaintiff, and avoided pulling content from Plaintiff's campaign website to obtain his photo and profile content. A reasonable inference one can make is that Defendants knew that if they *did* provide Plaintiff advanced knowledge of publication, he would have had a written email record of prepublication contact and delivery of photograph and writeup. Defendants, their employees, and potentially others, acted in concert to *conceal* the upcoming publication from Plaintiff. This demonstrates a pre-meditated, pre-publication strategy designed to create the exact legal pretext for post-publication plausible deniability they have deployed in their defense in this case: Claiming after-the-fact that all along this was just an article about a debate, not a comprehensive Meet the Candidates voters' guide about his congressional primary election, of the kind the record shows they always publish for local elections.

16. Taken together, this headline–photo–caption–section-header sequence communicates a single, clear, false message to readers: that there were only four Democratic candidates in the CD-13 primary and Plaintiff was not one of them. It is this publication-wide misrepresentation—not just a mere omission—that gives rise to Plaintiff's defamation and defamation by implication claims.

17. When this evidentiary record and factual allegations are taken as true and all reasonable inferences are drawn in Plaintiff's favor, as required by Rule 1.140(b)(6), the 3AC states a plausible claim for defamation by implication under *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008), and its progeny. The 3AC also satisfies Plaintiff's burden under Florida's Anti-SLAPP statute and defeats Defendants' request for vexatious-litigant sanctions.

II. THE PRIOR DISMISSAL DEFENDANTS RELY ON HERE MISAPPLIED RULE 1.140(b)(6) AND *JEWS FOR JESUS*

18. In dismissing the Second Amended Complaint, the Court correctly cited Jews for Jesus for the general principles of defamation-by-implication, but the order applied that case only at a high level while overlooking the specific components of the published article that Jews for Jesus requires courts to evaluate. The prior dismissal did not address (a) whether the publication's structure and format communicated a false implication; (b) whether omission of a ballot-qualified Democratic candidate from a voter-guide-style presentation labeled "Meet the Democratic Candidates" created a misleading gist; or (c) whether the article, viewed as a whole, conveyed a false factual message to ordinary readers. As detailed in ¶¶3–16 above, the headline, stock photo attributed to the City of St. Petersburg, the express caption identifying "the four candidates," the bold section header "Meet the District 13 Congressional Candidates," and the subsequent four candidate profiles all combine to signal completeness and to represent falsely that the CD-13 Democratic field consisted of only four individuals. These are precisely the kinds of contextual meaning and implication issues that Jews for Jesus requires courts to evaluate, and the prior order did not analyze them.

19. In *Jews for Jesus, Inc. v. Rapp*, the Florida Supreme Court adopted Restatement (Second) of Torts § 563 comment c and held that a defendant may be liable for defamation where it

"juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts," and may be held responsible for that implication "even though the individual facts are true." 997 So. 2d at 1108. Under that standard, the question is the overall message or gist that reasonable readers would draw from the publication as a whole. As described in ¶¶3–16 above, Plaintiff alleges that the headline, image, caption, section header, and candidate profiles in the July 12 article were arranged and curated in a way that led ordinary readers to draw a false conclusion about who the Democratic candidates for District 13 were, and also to the false conclusion that only four candidates were running — that the race was a four-way contest rather than the five-way primary that actually appeared on the Supervisor of Elections ballot..

20. The explicit caption stating "The four candidates for the District 13 Congressional election debate with each other on July 13 at the St. Petersburg Marriott Clearwater", placed immediately beneath the headline "Meet the Democratic Candidates for the District 13 Congressional Election" and immediately above the bold section header "Meet the District 13 Congressional Candidates:", makes this publication especially susceptible to an actionable implication under Jews for Jesus. The prior dismissal treated the article as if it were simply a notice about a debate. But an ordinary reader encountering this sequence — a voter-guide headline, a City-attributed stock photo, a caption referring to "the four candidates," a section header introducing "Meet the District 13 Congressional Candidates:" and four profiles presented as the complete field — would reasonably understand the article as identifying the full roster of Democratic candidates, not merely debate participants. Under Jews for Jesus, the inquiry is whether the overall message conveyed is false or misleading, and here the message is

unmistakably that Plaintiff was ***not*** a Democratic candidate running in this specific election at all.

21. Florida's ordinary-reader standard, articulated in Hay and Ane and approved by the Florida Supreme Court in Nodar, confirms that dismissal is improper where a publication is reasonably susceptible to a defamatory meaning. Hay requires that allegedly defamatory matter be read "as the common mind would normally understand it," and Ane holds that a claim cannot be dismissed if the communication is "reasonably capable of a defamatory meaning." Applying those standards here, an ordinary Democratic primary voter encountering the July 12 article as presented in ¶¶3–16—beginning with the headline "Meet the Democratic Candidates for the District 13 Congressional Election," followed by a City-attributed stock photo, an express caption identifying "the four candidates," a bold section header labeled "Meet the District 13 Congressional Candidates:", and then four candidate profiles—could reasonably understand the publication to mean that the Democratic field consisted of only four candidates and that Plaintiff was not in the race at all. Under Hay, Ane, and Nodar, that determination must be left to the trier of fact. The prior dismissal inverted the Rule 1.140(b)(6) standard by accepting Defendants' characterization of the article as a debate notice and drawing inferences in Defendants' favor rather than Plaintiff's. Because the ordinary-reader question and the publication's contextual meaning are factual issues under Florida law, the claim cannot be dismissed at the pleading stage.

22. The prior dismissal order cited Jews for Jesus but did not apply its core requirements: to evaluate whether the arrangement of facts, the omission of a ballot-qualified candidate, and the overall structure and presentation of the article created a false implication or misleading gist. The order treated the publication as if it were merely a debate notice, without conducting the analysis

required under Jews for Jesus, Hay, Ane, and Nodar. As set forth in ¶¶3–16, the full text, sequence, and layout of the July 12 article present a much different—and actionable—implication. At this stage, Plaintiff is required only to plead a plausible claim, and all reasonable inferences must be drawn in his favor under Rule 1.140(b)(6). The meaning an ordinary reader would derive from the article's presentation is a factual question that cannot be resolved on a motion to dismiss. By drawing inferences in Defendants' favor, the prior dismissal inverted both the plausibility standard and the governing defamation-by-implication framework. With the complete context now pled, the Third Amended Complaint states a facially sufficient and plausible claim for defamation by implication.

III. QUANTITATIVE AND VISUAL ANALYSIS CONFIRMS THE ARTICLE IS A VOTER GUIDE, NOT A DEBATE PREVIEW

23. Defendants' present motion leans heavily on the prior order dismissing the Second Amended Complaint, citing it as though it conclusively resolved the sufficiency of any defamation claim arising from the July 12 article. But that order addressed a different pleading on a materially different record, and it cannot simply be imported onto the Third Amended Complaint. The 3AC adds detailed factual allegations, incorporates the full article and layout, and squarely pleads the implication theory that the prior order said was lacking. On this motion, the Court must evaluate the 3AC on its own terms under Rule 1.140(b)(6) and the governing defamation-by-implication authorities, rather than extending the prior order's "Debate Article" framing to a now-expanded and corrected record.

24. As detailed in ¶¶3–16, the July 12 article must be evaluated as an ordinary reader experiences it: through its words, layout, typography, images, and omissions. Florida defamation law requires courts to consider a publication's full presentation and overall message, not isolated

phrases. Linguistic and visual cues together determine a publication's gist and the implication it conveys.

25. Quantitatively, the article is dominated by the language and imagery of candidates, not a debate. The term "candidate(s)" appears six times, including in the most visually prominent locations: (a) the large headline, "Meet the Democratic Candidates for the District 13 Congressional Election," and (b) a section header that reinforces that branding with the stylized phrase "Meet the District 13 Congressional Candidates:" which appears directly above candidate Whitney Fox's name, picture, and profile. Candidate-centric language appears repeatedly in the body text.

26. By contrast, within the article itself, the word "debate" appears only three times, and only in small-font, incidental body text or a caption. "Debate" never appears in a headline, sub-headline, section heading, or other typographically emphasized location. The lexical balance and structural placement of terms thus strongly favor the interpretation that the article is a voter's candidate guide, not a debate announcement.

27. Visually, the article follows The Gabber's established "Meet the Candidates" voter-guide format. The largest font on the page is reserved for "Meet the Democratic Candidates…" in the headline. The sub-headline repeats the candidate focus. Below that are four large portrait-style photographs of individual candidates, each paired with text describing their background or positions—exactly how The Gabber presents candidates in its other voter guides.

28. There is no debate branding, no photograph of a debate stage, no debate logo or insignia, no visually separated box labeled "Debate Information," no logistical details about the debate venue, and no layout that would signal to a reader that this is primarily an event notice. The debate, to the extent it is mentioned at all, is visually subordinate to the candidate profiles.

29. The article also contains a prominent interstitial box directing readers to "meet the candidates" in the Supervisor of Elections race "to stay informed." That internal cross-link uses the same "Meet the Candidates" branding and explicitly tells readers that reviewing candidate profiles is how to stay informed. This is a self-referential component of The Gabber's broader voter-guide series, not a typical feature of a debate announcement.

30. Just as important is omission. The article's structure—headline, sub-headline, "Meet the Candidates" branding, candidate photo array, and interstitial cross-link—communicates to an ordinary reader that the published list of four individuals comprises the entire Democratic candidate field (when it does not), and that it is a field of only four candidates (when it is not). When a publication adopts a format that signals completeness and then omits one ballot-qualified Democratic candidate, the omission itself communicates the false implication that the omitted candidate is not, in fact, a candidate.

31. The prior dismissal order did not undertake any quantitative or visual analysis of this sort. It did not note how often "candidate(s)" appears versus "debate," did not acknowledge the "Meet the Democratic Candidates…" headline or sub-headline, did not address the candidate photo array or voter-guide format, and did not mention the interstitial cross-link. Instead, it repeatedly referred to the piece as a "debate article" and focused on Defendants' characterization. Respectfully, that was error under Rule 1.140(b)(6) and inconsistent with Jews for Jesus, which requires a holistic view of context and implication.

32. The prior dismissal order, which Defendants continue to invoke in their latest motion to dismiss, repeatedly adopted Defendants' characterization of the publication as a "Debate Article," referring to it or to a "debate" a total of twenty-three (23) times in the written order. But the publication itself never uses the term "Debate Article," and its headline contains no reference

to a debate. By labeling the publication a "Debate Article" as if that characterization were an established fact, the Court made a factual determination that cannot be made on a Rule 1.140(b)(6) motion. Whether an ordinary reader would understand the July 12 piece as a debate notice, a voter-information guide, or something else is a contextual meaning question reserved for the trier of fact under Jews for Jesus, Hay, Ane, and Nodar. At this stage, the Court must draw all reasonable inferences in Plaintiff's favor, not accept Defendants' litigation branding as fact.

33. When the article is viewed as an ordinary reader would—with attention to headline, sub-headline, layout, font size, repetition of "Meet the Candidates" branding, candidate photos, the cross-promotional "Meet the candidates" interstitial, the reference to "the four candidates…," and the omission of one ballot-listed Democrat—Plaintiff's allegation is more than plausible. The article conveyed the false and defamatory implication that (1) only four Democratic candidates existed in what they knew was a five-way race in CD-13, and (2) Plaintiff was not one of them. Under Rule 1.140(b)(6), this easily states a plausible defamation-by-implication claim.

IV. THE 3AC STATES A PLAUSIBLE CLAIM FOR DEFAMATION BY IMPLICATION

34. The Florida Supreme Court's decision in Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008), expressly adopts Restatement (Second) of Torts § 563 comment c and recognizes a cause of action for defamation by implication. Under that rule, a defendant is liable where it "juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts," and may be held responsible for that implication "even though the individual facts are true." Id. at 1108. That is exactly what is alleged here:

Defendants assembled true facts about four candidates, omitted Plaintiff, and presented the result in a format that signals completeness, thereby implying—falsely—that Plaintiff was not a Democratic candidate at all.

35. Jews for Jesus further holds that defamation law focuses on the gist or substance of a publication, not the literal accuracy of discrete statements. A defendant may have "the details right but the gist wrong." Id. Here, Plaintiff does not contest that four Democratic candidates participated in a debate. His allegation is that Defendants used a voter-guide headline ("Meet the Democratic Candidates for the District 13 Congressional Election"), candidate photographs, a structured "Meet the District 13 Congressional Candidates:" section header, and an interstitial urging readers to "meet the candidates … to stay informed" to create the false gist that those four individuals comprised the entire Democratic field in CD-13. That is the core of defamation by implication under Jews for Jesus.

36. The Court in Jews for Jesus also reaffirmed the Restatement principle that a publication is defamatory if it tends to harm the plaintiff's reputation in the eyes of a "substantial and respectable minority of the community," rather than a numerical majority. Id. at 1109. Plaintiff easily meets this standard. Among Democratic primary voters—the relevant community—being erased from a published "Meet the Candidates" guide is inherently prejudicial. The Kemp affidavit confirms that at least one voter actually understood the article to mean that Plaintiff was no longer running and acted on that false belief. That is precisely the kind of reputational harm contemplated by Jews for Jesus.

37. The prior dismissal order cited Jews for Jesus only in a generalized way, without applying its critical analytic steps: (1) whether omitting Plaintiff from a publication that visually and textually signals completeness creates a defamatory implication; (2) whether the article's

overall gist is false even if each isolated fact is technically true; and (3) whether the implication would prejudice Plaintiff in the eyes of a substantial and respectable minority of Democratic voters. Each of these inquiries is satisfied by the allegations in ¶¶3–16 and by the structure of the July 12 article. Because the 3AC plausibly alleges a false implication under the controlling standard, dismissal under Rule 1.140(b)(6) is improper.

V. DEFENDANTS' PARTY-DEBATE ARGUMENT MISCONSTRUES BOTH LAW AND FACT

38. Defendants' primary defense is that The Gabber's article merely reflected the fact that the Pinellas County Democratic Party invited only four candidates to participate in its July 13 debate. From this, Defendants argue that the omission of Plaintiff was justified. But this argument rests on a fundamental logical error: it conflates (1) who a political party chooses to invite to a private event, with (2) who is a legally qualified candidate on the ballot, and with (3) how a newspaper chooses to present an article that adopts the formatting and structure of a voter guide. These are distinct concepts, and collapsing them violates the defamation-by-implication framework adopted in Jews for Jesus.

39. A political party's decision to invite or exclude a candidate from a debate has no bearing on whether that person is a lawful candidate for office. Candidate qualification is determined by state election law, not party discretion. Plaintiff met all statutory requirements, paid the qualifying fee, and appeared on the official ballot as the fifth Democratic candidate in CD-13. Defendants' reliance on a debate invitation list as if it defined the candidate field is legally incorrect and cannot justify presenting only four candidates as "the" Democratic candidates in a five-way primary.

40. Even if Defendants wished to report on the debate, nothing compelled it to present the debate's invitees as if they constituted the full candidate roster. A media outlet is free to describe who was invited to an event, but it may not — consistent with Jews for Jesus — use a "Meet the Candidates" headline, voter-guide layout, and curated candidate profiles to imply falsely that those invitees are the only candidates in the race. If Defendants wished merely to report on a debate, they could have said: "Four of the five Democratic candidates will attend tonight's debate." Instead, they omitted Plaintiff entirely while simultaneously adopting a format that signals completeness.

41. Defendants attempt to bootstrap the prior dismissal order to support this conflation, but that order applied a defective framework — treating the publication as a "Debate Article" rather than analyzing the actual headline, structure, caption, and layout. As explained in ¶¶17–21 and in Section III, the debate framing is neither textually supported nor contextually dominant in the article. It was therefore legal error under Rule 1.140(b)(6) to adopt Defendants' characterization and resolve the publication's meaning as a matter of law. Defendants cannot rely on an order that applied the wrong standard to defeat a now-expanded and corrected Third Amended Complaint.

42. The fallacy in Defendants' reasoning is straightforward: exclusion from a party debate does not justify implying exclusion from the ballot. Yet that is exactly the implication conveyed by presenting only four candidates in a voter-guide format. Under Florida law, a publisher may not rely on a technically true fact (who was invited to a debate) to create a false implication about a materially different fact (who is a candidate). Jews for Jesus expressly prohibits this—truth in fragments does not immunize a false gist. Defendants' "party-debate" argument therefore fails as a matter of law and cannot support dismissal.

VI. DEFENDANTS' ADMISSIONS SUPPORT ACTUAL MALICE AND DEFEAT ANY "NEUTRAL REPORTAGE" THEORY

43. Defendants claim, in their unsworn and unverified motion, that they relied on a Democratic Party "debate advertisement" when deciding whom to include in the July 12 article. But there is no competent evidence of any such advertisement in the record. Defendants have not filed a copy of the ad, have not attached it as an exhibit, have not provided an affidavit attesting to its existence or contents, and have not identified who created it, how they obtained it, or who may have forwarded it to them. On a Rule 1.140(b)(6) motion, the Court is confined to the four corners of the operative complaint and its attachments—not to unsworn factual narratives in a motion. Accordingly, Defendants' debate-advertisement story should not be accepted as fact or used to defeat a well-pled claim.

44. Even if the Court were to assume for the sake of argument that some such Party advertisement existed and was seen by Defendants, their own description of their pre-publication process still supports a finding of reckless disregard. Defendants claim that they were aware that the Party had chosen not to "recognize" Plaintiff as a candidate, and they describe in the article contacting Weinkrantz, pulling photographs of the four Party-recognized candidates from FloridaPolitics, and lifting biographical material and issue summaries from those candidates' campaign websites. At the same time, they willfully concealed the article from Plaintiff before publication, did not contact him for comment or material, and did not pull any information from his campaign website or from readily available photographs and coverage of Plaintiff in outlets such as the Tampa Bay Times. A reasonable inference at this stage is that Defendants deliberately avoided Plaintiff and are now withholding details about who provided them with the alleged Party debate advertisement and related materials—likely to protect a partisan source such as local Party leadership or operatives—because disclosing that provenance would further

underscore the partisan, non-neutral character of their sourcing. Taken together, this selective curation of four favored candidates, combined with the total exclusion and concealment of Plaintiff, plausibly alleges that Defendants knew, or at minimum consciously disregarded, that they were not presenting the actual ballot-qualified Democratic field.

45. Armed with that knowledge, they did not follow their own standard practice and contact Plaintiff. Instead, they chose to publish a branded "Meet the Democratic Candidates" guide featuring only the four Party-recognized candidates, in a format that signals completeness, without noting for its readers that Plaintiff remained a certified candidate excluded from the debate. At minimum that alleges reckless disregard for the truth sufficient to support actual malice.

46. Neutral-report privilege does not apply. Defendants were not neutrally quoting or attributing the Democratic Party's view of who the candidates were. In the article itself, they never identify the Party as the source of the debate event information or of the four-candidate lineup. By contrast, they expressly attribute the stock photo ("Photo courtesy of the City of St. Petersburg"), identify outside sources for the candidate photos (FloridaPolitics, Mark Weinkrantz), and draw writeups from the four candidates' own campaign websites—yet nowhere do they tell readers that the selection of only four candidates came from a Party debate invitation or Party materials. Having chosen to publish the four-candidate slate under The Gabber's own corporate and "Meet the Democratic Candidates" branding, without attributing it to the Party or presenting it as the Party's opinion, Defendants made the implication their very own. They cannot retroactively reframe the article as neutral reportage of the Party's position when, on the face of the publication, the Party is never identified as the source of the omission. They cannot have it both ways.

VII. DEFENDANTS' RELIANCE ON EXTRA-RECORD MATERIALS IS IMPROPER, HEARSAY, AND CANNOT SUPPORT DISMISSAL

47. Defendants' motion repeatedly cites materials that are not part of the record and cannot be considered on a Rule 1.140(b)(6) motion to dismiss. These include: (a) an unauthenticated and unproduced "Democratic Party news release" allegedly listing only four candidates (Motion at p. 10), and (b) allegations extracted from Plaintiff's pleadings in an entirely separate case, the PDEC matter (Motion at p. 9, citing DN 134 Tabs 4, 5, 10). None of these documents are attached to the 3AC, none are authenticated, and none are before the Court as evidence. A motion to dismiss cannot introduce new facts or extra-record materials.

48. Under Florida law, allegations in a pleading from another lawsuit constitute hearsay when offered to prove the truth of the matter asserted. Courts may take judicial notice of the existence of another case or its filings, but may not accept the allegations in those filings as true, nor may they be used as evidence to establish factual propositions in a different case. Defendants' reliance on statements from the PDEC case violates this fundamental rule and attempts to convert Plaintiff's unproven allegations into admissions—a use Florida law does not permit.

49. The same is true of the alleged "Democratic Party news release." Defendants did not attach it to their motion, did not file it separately, did not authenticate it, did not identify its author or provenance, and did not provide any sworn declaration attesting to its existence or content. The Court therefore cannot consider it for any purpose on this motion. Unsworn attorney argument about what such a document "said" or "listed" is not evidence and cannot defeat a well-pled claim.

50. Rule 1.140(b)(6) strictly confines the Court to the four corners of the operative complaint and its attachments. Matters outside the pleadings may not be considered unless the motion is converted to one for summary judgment, which Defendants have not requested and which would require notice and an opportunity to present evidence—none of which occurred here. Defendants' attempt to smuggle facts into the record through citations to unrelated case filings and descriptions of unfiled documents is therefore improper.

51. Because Defendants' extra-record materials cannot be considered, the only operative facts for purposes of this motion are those pled in the 3AC and its attachments. On that record, Plaintiff has more than plausibly alleged a false and defamatory implication, reckless disregard, and injury to reputation. Defendants' improper reliance on hearsay, unauthenticated materials, and unsworn factual assertions cannot serve as a basis for dismissal.

VIII. PLAINTIFF SEEKS REPUTATIONAL AND RELATED DAMAGES, NOT "ELECTION-LOSS" DAMAGES

52. Plaintiff does not seek damages for losing the election and does not ask the Court to revisit or second-guess electoral outcomes. The 3AC seeks only reputational harm and campaign-related injuries that Florida law recognizes as independent categories of defamation damages. These include loss of visibility, voter confusion, donor confusion, disruption to campaign operations, and the financial and logistical costs associated with counteracting a misleading publication. The Kemp affidavit confirms that at least one voter actually believed Plaintiff was no longer running because of the article—demonstrating precisely the type of reputational and community-perception harm that Florida defamation law protects against.

53. These categories of harm are fully cognizable under Florida law. Under Jews for Jesus, defamation occurs where the publication tends to harm the plaintiff in the eyes of a "substantial and respectable minority of the community," not only where financial or electoral outcomes are affected. Damage to a political candidate's reputation, standing, and perceived legitimacy among primary voters is classic reputational injury, and Plaintiff has pled specific, non-speculative harms directly traceable to Defendants' false implication. These allegations easily satisfy Rule 1.140(b)(6).

IX. FLORIDA'S ANTI-SLAPP STATUTE DOES NOT APPLY BECAUSE PLAINTIFF'S CLAIM IS NOT "WITHOUT MERIT" AND WAS NOT FILED "PRIMARILY BECAUSE" OF DEFENDANTS' SPEECH

54. As an initial matter, the July 12 article does not merely imply a falsehood—it contains an objectively false statement of fact. The caption expressly states: "***The four candidates for the District 13 Congressional election***…" when, as a matter of public record, five Democratic candidates were legally qualified and appeared on the Supervisor of Elections ballot and Defendants knew it. This statement is false on its face and independently actionable. And critically, once the article falsely identifies "*The four candidates*," the rest of the sentence—whether describing that they would debate each other, attend an event, meet the president, or anything else—is irrelevant; the defamatory falsity lies in the identification of the candidate field sizer itself. In addition, the Florida Supreme Court's decision in Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008), adopts Restatement (Second) of Torts §563 cmt. c and recognizes defamation by implication, under which a defendant may be liable where it "juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts," even when individual facts are true. Both forms of defamation—

literal known falsity and implication—are pled here, and neither can be dismissed as "without merit."

55. Section 768.295(3) bars only claims that are both (1) without merit and (2) filed primarily because the defendant exercised rights of free speech. Defendants satisfy neither element.

A. Under the cases Plaintiff submitted, meaning, implication, and gist are questions for the trier of fact—not grounds for deeming a claim "without merit."

56. In *Jews for Jesus*, the Florida Supreme Court held that defamation may arise where a defendant "juxtaposes a series of facts so as to imply a defamatory connection between them, or creates a defamatory implication by omitting facts," and that a defendant may be liable "even though the individual facts are true." That is the precise theory pled here.

57. In *Nodar v. Galbreath*, the Court reaffirmed that defamatory meaning is a factual issue, because meaning depends on how reasonable listeners interpret words in context.

58. *Hay v. Independent Newspapers* — expressly approved in Nodar — holds that allegedly defamatory language must be evaluated "as the common mind would normally understand it," and when language is susceptible to a defamatory meaning, "the issue is for the jury." 450 So. 2d 293, 295–96 (Fla. 2d DCA 1984)

59. *Miami Herald Publ'g Co. v. Ane* likewise held that when a publication is "reasonably capable of a defamatory meaning," the case "must be submitted to a jury"—not dismissed as a matter of law.

60. These cases show that Plaintiff's implication claim cannot be labeled "without merit" under Anti-SLAPP because Florida law treats its core issues—context, implication, gist, omission, and reader understanding—as factual, not legal, questions.

B. *Gundel* requires a merits evaluation and burdens Defendants—not Plaintiff—with disproving merit.

61. In *Gundel v. AV Homes, Inc.,* 264 So. 3d 304 (Fla. 2d DCA 2019), the court held that Anti-SLAPP does not authorize a perfunctory four-corners dismissal. Instead, the trial court must conduct a meaningful merits evaluation. Critically, Gundel also holds that the party invoking Anti-SLAPP protection—the defendant—bears the burden of proving both prongs of §768.295(3): (1) that the claim is "without merit," and (2) that it was filed "primarily because" of protected speech. Plaintiff bears no burden under the statute.

62. Applying Gundel, Defendants cannot meet their burden. A merits evaluation under *Jews for Jesus, Hay, Ane,* and *Nodar* confirms that Plaintiff has pled a viable defamation-by-implication claim—and, independently, a literal falsity claim. Defendants therefore cannot establish the "without merit" prong.

C. *Bongino* confirms that "without merit" means the defamation claim fails under Florida defamation law. Plaintiff's does not.

63. In *Bongino v. Daily Beast*, the court held that a suit is "without merit" for Anti-SLAPP purposes only when the underlying defamation claim fails as a matter of Florida defamation law. In that case, the article was not defamatory because it conveyed no implication of wrongdoing; thus the claim failed outright.

64. Here, Plaintiff's claim falls squarely within Jews for Jesus implication doctrine and on top of that presents a literal known-false statement. It therefore cannot be deemed "without merit."

D. Plaintiff did not file this lawsuit "primarily because" of Defendants' speech.

65. Plaintiff did not sue to silence or punish protected political commentary. He sued to correct a specific, known-false factual assertion and defamatory implication—that he was not a Democratic congressional candidate in District 13 at all—and to recover legally proper damages, including the reputational harm that Florida defamation law expressly recognizes. Falsely asserting that Plaintiff was not a legally qualified candidate is defamatory per se, because it directly injures him in his political vocation, public standing, credibility, and community reputation, and therefore requires no proof of special damages. The 3AC also alleges facts showing actual malice: Defendants knew Plaintiff remained a certified candidate, yet published a voter-guide-formatted article that falsely presented only four candidates and omitted Plaintiff entirely. In addition, it is noteworthy—and the Court may take notice—that even today, more than fifteen months after being sued on September 3, 2024, Defendants have still not removed or corrected the original defamatory article, thereby continuing to publish the false statement and prolonging the harm to Plaintiff's reputation. This case challenges a narrow false factual representation in a voter-guide format—not political opinion or commentary.

66. Plaintiff narrowed claims, amended pleadings when the court granted explicit leave to do so, complied with court directives, and supported allegations with documents and a sworn affidavit. Nothing in the record suggests retaliatory motive. This lawsuit falls far outside the intended scope of §768.295.

E. Anti-SLAPP dismissal and fee-shifting must be denied.

67. Because Plaintiff's claim is not "without merit," was not filed "primarily because" of Defendants' speech, and because Defendants cannot satisfy their statutory burden under

§768.295(3), their Anti-SLAPP motion must be denied. Fee-shifting to Plaintiff is likewise unavailable.

X. DEFENDANTS' VEXATIOUS-LITIGANT ARGUMENT FAILS UNDER BOTH THE PRE-JULY 2025 AND THE CURRENT VERSION OF § 68.093

A. Exhibits A-C are inadmissible and outside the four corners of the complaint, and should be stricken

68. Defendants' motion includes three exhibits: Exhibit A, a "Congressional Primary Election Results" document; Exhibit B, a memorandum opinion from Plaintiff's District of Columbia case, *Liccione v. VR Systems Inc., et al*., No. 1:25-cv-01028-APM; and Exhibit C, the dismissal order from Plaintiff's Middle District of Florida case, No. 8:24-cv-02005-SDM-NHA, and a printout of that federal case's docket. None of these materials are attached to or incorporated by reference into the Third Amended Complaint. Defendants filed no sworn affidavit authenticating them, no motion or request for judicial notice under §§ 90.202–.203, Fla. Stat., and no notice affording Plaintiff an opportunity to be heard on any proposed judicial notice. On a Rule 1.140(b)(6) motion to dismiss, however, the Court is confined to the four corners of the operative complaint and its attachments. Prior orders from other courts, election-result printouts, and federal dockets are extra-record materials that cannot be treated as evidence to defeat a well-pled claim unless they are properly presented for judicial notice—and even then, judicial notice extends to their existence, not to the truth of contested factual conclusions within them.

B. Defendants' vexatious-litigant argument fails on its face

69. Even if the Court were to accept their exhibits and characterizations at face value, Defendants do not allege—nor could they—facts satisfying the minimum statutory threshold in §

68.093. Plaintiff has not commenced, prosecuted, or maintained five or more pro se civil actions in Florida state courts, all finally and adversely determined against him, within any relevant lookback period. Because Defendants' own narrative does not meet the statute's basic numerical and adverse-determination requirements, their request for any vexatious-litigant designation or restriction must be denied.

70. Even if the Court were to proceed beyond the threshold defects identified above, Defendants' argument still fails under both the pre-2025 and current versions of § 68.093. The pre-2025 statute—governing this action as filed on September 3, 2024—required a litigant to have commenced, prosecuted, or maintained, pro se, five or more qualifying civil actions in Florida state courts within the preceding five years, all of which had to have been finally and adversely determined against that litigant. Plaintiff does not come close to meeting that definition. The 2025 amendments broaden the statute's reach by extending the lookback period to seven years, expanding the types of proceedings that qualify as "actions," and adding alternate behavioral triggers such as repeated re-litigation or repeated unmeritorious filings.

71. But even under this expanded version, the primary numerical trigger still requires five or more actions finally and adversely determined, and the alternative triggers require a documented pattern of frivolous or repetitive conduct that is wholly absent here. Nothing in the text of either version supports Defendants' attempt to treat three unrelated lawsuits—several of which did not end adversely to Plaintiff—as sufficient to invoke vexatious-litigant restrictions.

72. Defendants' counting and case outcomes are also wrong. Plaintiff has not commenced, prosecuted, or maintained five or more qualifying pro se civil actions in Florida state courts in the relevant period, full stop. And let alone five or more that were finally and adversely determined against him. Several of them were either (a) settled before judgment, (b) resolved by

post-judgment settlement that resulted in payment to Plaintiff, (c) resolved post-judgement with mutual no-damages/fees award walkaway, or (d) were filed in federal court. Under both the pre-2025 and current versions of § 68.093, such matters do not qualify as "civil actions" that have been finally and adversely determined for vexatious-litigant purposes.

73. Defendants also appear to count Plaintiff's petitions for injunctive or protective relief as "civil actions" toward the statutory threshold. But § 68.093 distinguishes between ordinary civil actions governed by the Florida Rules of Civil Procedure and other types of special statutory proceedings. Temporary-injunction or restraining-order petitions of the kind Plaintiff filed against a party official are special proceedings; they are not the sort of fully litigated civil actions the vexatious-litigant statute was intended to count.

74. Nor do Plaintiff's federal filings change the analysis. The pre-2025 statute counts only actions in Florida state courts, not federal courts. The 2025 amendment expands the concept of "action" to include certain proceedings in other state courts or in federal court, but it does not retroactively convert earlier federal lawsuits into qualifying actions for purposes of this case. And even if it did, Plaintiff still has not accumulated three let alone five finally adverse determinations, nor has any court found his filings frivolous, malicious, or harassing within the meaning of the alternate triggers in the current statute. Plaintiff's federal cases were filed on August 23, 2025 (Tampa) and on April 7, 2025 (D.D.C). As such, they are not qualifying federal cases.

75. The statute also focuses on litigants who "repeatedly relitigate or attempt to relitigate" the same issues against the same parties, or who repeatedly file pleadings that have already been ruled on in the same action. Plaintiff has never previously sued these Defendants over this article, this July 12 publication, or this defamation claim. There is no history of repeated

litigation of the same issues against these parties. Defendants' effort to shoehorn unrelated election-integrity litigation, battery and assault, and party-bylaws disputes, and exempt federal cases into § 68.093 is inconsistent with the statute's text and purpose.

76. Plaintiff's conduct in this case bears no resemblance to the abusive, repetitive, or harassing filing practices that § 68.093 was enacted to curb. Plaintiff has timely complied with every Court order, filed amendments only when expressly granted leave, voluntarily dismissed parties and claims to narrow the case, and supported his pleadings with documentary evidence and sworn verification. Defendants' invocation of the vexatious-litigant statute is not a good-faith application of § 68.093. It is a transparent attempt to weaponize the statute's extraordinary remedies—an automatic stay and mandatory surety bond—(1) to stigmatize a pro se political opponent, (2) to derail a facially viable defamation-by-implication claim on the eve of dispositive motions, and (3) to exploit Plaintiff's limited financial resources in order to deny him meaningful access to the courts. Such misuse of the statute defeats its purpose and offends Article I, Section 21 of the Florida Constitution.

77. For all these reasons, the Court should reject Defendants' invocation of § 68.093, and decline to impose any vexatious-litigant designation, security requirement, or filing restriction on Plaintiff under either the pre-2025 or current version of the statute, and strike their Exhibits A, B, and C.

XI. CONCLUSION

78. Defendants' motion is a meritless attempt to derail a well-pled defamation claim through procedural overreach. The Third Amended Complaint establishes a textbook case of defamation—both literal falsity and by implication—under Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008). The Gabber's July 12, 2024, article falsely declared "The four candidates for the District 13 Congressional election…" despite Defendants' knowledge of Plaintiff's qualified candidacy, as evidenced by his paid advertisement, signage near their office, and the Supervisor of Elections' ballot (3AC Ex. A, D, E). Their own "correction" (3AC Ex. F) admits intentional exclusion due to Plaintiff's absence from the PDEC debate, yet contradictorily calls it an "inadvertent error"—a damning admission of actual malice. The Gabber's established practice of listing all candidates in prior "Meet the Candidates" features (3AC Ex. C) further confirms the article's design as a voter guide, rendering Plaintiff's omission defamatory to the ordinary reader.

79. Defendants' reliance on unauthenticated, extra-record exhibits (A–C) violates the four-corners rule, lacking affidavits or judicial notice requests under Fla. Stat. §§ 90.202–.203. Their Anti-SLAPP defense fails—the 3AC is far from "without merit" under Gundel v. AV Homes, Inc., 264 So. 3d 304 (Fla. 2d DCA 2019). Their vexatious-litigant claim is baseless; § 68.093's 2025 amendments apply prospectively, and Plaintiff's 2025 record shows meritorious outcomes, including monetary and neutral settlements (Ex. D–F), not frivolous conduct.

80. The Court should deny the motion, strike Exhibits A–C, vacate any stay, and permit discovery. To do otherwise would reward Defendants' tactics and deny Plaintiff's constitutional right to open courts (Fla. Const. Art. I, § 21).

81. For these reasons, Plaintiff respectfully requests that the Court:

A. Deny Defendants' Motion to Dismiss the Third Amended Complaint;

B. Deny Defendants' request for Anti-SLAPP dismissal and attorneys' fees;

C. Strike or disregard Exhibits A–C as inadmissible and extra-record;

D. Deny Defendants' request for vexatious-litigant designation, stay, or bond; and

E. Allow this case to proceed to discovery so that the facts may be fully developed.

Dated: December 8, 2025

Respectfully submitted,

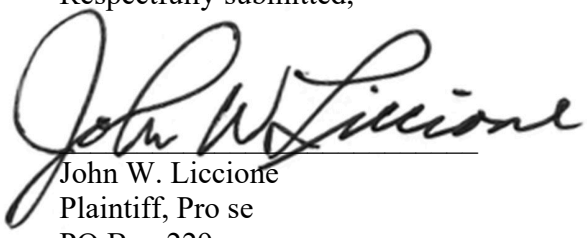

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TABLE OF AUTHORITIES

CASES

Bongino v. Daily Beast Co., 477 F. Supp. 3d 1310 (S.D. Fla. 2020)

Gundel v. AV Homes, Inc., 264 So. 3d 304 (Fla. 2d DCA 2019)

Hay v. Independent Newspapers, Inc., 450 So. 2d 293 (Fla. 2d DCA 1984)

Jews for Jesus, Inc. v. Rapp, 997 So. 2d 1098 (Fla. 2008)

Miami Herald Publ'g Co. v. Ane, 423 So. 2d 376 (Fla. 3d DCA 1982)

Nodar v. Galbreath, 462 So. 2d 803 (Fla. 1984)

STATUTES

Fla. Stat. § 68.093 (pre–July 1, 2025 version)

Fla. Stat. § 68.093 (2025 version)

Fla. Stat. § 768.295

Fla. Stat. §§ 90.202, 90.203

OTHER AUTHORITY

Restatement (Second) of Torts § 563 cmt. c

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on December 8, 2025, a true and correct copy of the foregoing Response was filed electronically with the Clerk of the Court via the Florida e-Filing Portal and served via the e-Filing Portal and email on *James B. Lake*, Esq (jlake@tlolawfirm.com), counsel for Defendants.

/s/ John W. Liccione

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER; et al
Defendants.
_____/

Case No.: 24-003939-CI

PLAINTIFF'S SUPPLEMENT TO RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

(Adding Exhibits O, P, Q, R, and S)

1. Plaintiff submits this Supplement to his Response in Opposition to Defendants' Motion to Dismiss the Third Amended Complaint to add comparator exhibits **O, P, Q, R,** and **S** and to address Defendants' Anti-SLAPP, failure to state a claim, and "vexatious litigant" arguments with objective, real-world evidence.

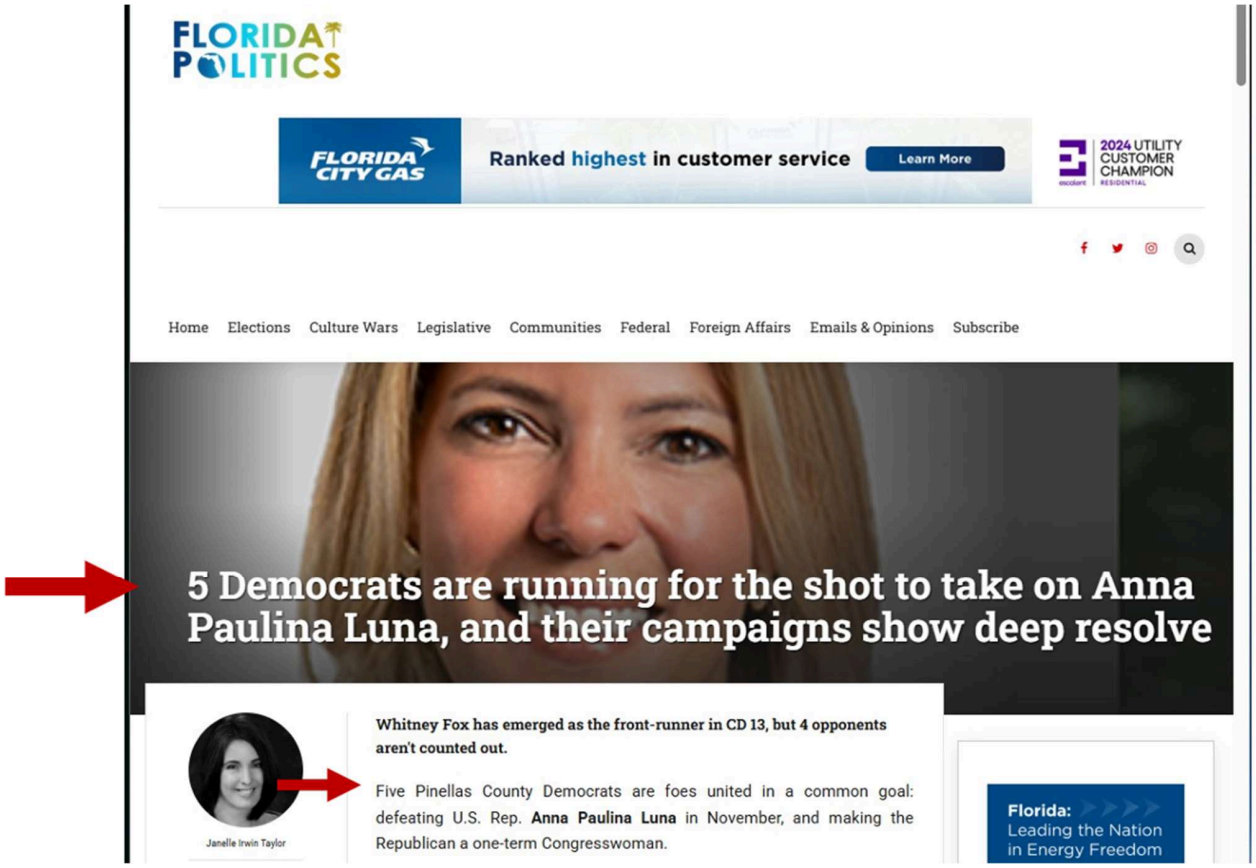
2. This Supplement does not alter Plaintiff's claims or legal theories. It reinforces why those claims are meritorious and why dismissal is improper, including Plaintiff's claims based on defamation by commission (literal falsity) and defamation by implication or omission (false gist and sting).

3. Exhibits O and **P** demonstrate how ethical political reporting accurately described the same congressional race at issue; how Defendants' July 2024 "Meet the Candidates" publication departed from those norms; and how Defendants later demonstrated an ability to publish accurate, neutral "Meet the Candidates" coverage about Plaintiff in a subsequent race.

ELECTRONICALLY FILED 12/23/2025 07:45:51 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

I. EXHIBITS O AND P — ACCURATE REPORTING VERSUS FALSE FIELD-DEFINITION

4. **Exhibit O** is an article published by Florida Politics on August 16, 2024, concerning the same CD-13 Democratic primary race at issue in this case, titled "***5 Democrats are running for the shot to take on Anna Paulina Luna, and their campaigns show deep resolve***" as shown below.



5. The article's lead photo caption and opening paragraph likewise further properly set the field count as 5 as follows: (a) Caption: "*Whitney Fox has emerged as the front-running in CD-13, but 4 opponents aren't counted out*" and (b) '*Five Pinellas County Democrats are foes unitied in a common goal: defeating U.S. Rep. Anna Paulina luna in November, and making the Republican a one-term Congresswoman.*"

6. By identifying the five-candidate field count in Exhibit O demonstrates that the size of the candidate field was a settled, readily verifiable fact within the media ecosystem at the time of Defendants' publication, and that accurate reporting did not require contacting Plaintiff or exercising subjective editorial judgment.

7. Next, **Exhibit P** is a highly-relevant comparative article published by Florida Phoenix (with Mitch Perry), with a large-font bolded title: "*Meet the Pinellas County Democrats who want to oust Anna Paulina Luna from Congress this fall*," dated May 24, 2024. The article opens by reporting that, at a candidate forum in Dunedin, *four Democrats* attempted to make their case for why they were the best option to challenge the incumbent.

> As a crowd tightly packed the Scottish Cultural Center in Ron DeSantis' hometown of Dunedin last week, four Democrats attempted to make the case for why they are the best option for voters hungry to oust conservative Republican incumbent Anna Paulina Luna from office in November after her first term representing most of Pinellas County in Florida's Thirteenth Congressional District.

(The rest of this page is left intentionally blank)

8. But crucially, the article later expressly states that *there was a fifth candidate who qualified for the primary—John Liccione*—and accurately explains that he was not permitted to participate in the gathering and would not receive institutional support from the Pinellas County Democratic Executive Committee, according to party chair Jennifer Griffith.



Mark Weinkrantz in Dunedin on May 16, 2024 (Photo by Mitch Perry/Florida Phoenix)

Mark Weinkratz, 67, is an Air Force Veteran and former airline pilot for Northwest. A resident of Palm Harbor in North Pinellas, Weinkrantz is the only candidate with previous experience in local government, as an East Lake fire commissioner. He has the backing of two former Republican County Commissioners, Susan Latvala and Karen Seel.

There is a fifth candidate who qualified for the primary: **John Liccione**. However, he was not permitted to participate in the gathering, and will not receive any institutional support from the Pinellas County Democratic Executive Committee, according to party chair Jennifer Griffith, because he did not pass a vetting process.

9. Note that Florida Phoenix reporter Mitch Perry chose to bold Plaintiff's name just like the other four candidates. This is an example of non-actionable neutral reporting of 3rd party (negative factual) statements about a candidate that had been made by the local party leader: The type of neutral reporting the Defendants would have this Court believe they had engaged in.

10. By explicitly distinguishing between the five-candidate field and the subset of candidates appearing at an event, **Exhibit P** demonstrates the proper and non-defamatory way to report candidate participation without redefining the candidate roster or conveying the false implication that a qualified candidate is not actually running.

11. Next, **Exhibit Q** is Defendants' own "Meet the Candidates" article titled "***2025 Gulfport Mayoral Election: Meet the Candidates***," which they published on January 23, 2025, concerning Plaintiff's subsequent three-way Gulfport mayoral race which kicked off almost four months after Plaintiff filed this action on September 3, 2024.



John Liccione wants to be the next mayor of Gulfport.
Photo via John Liccione

John Liccione

I wish to place myself in the service of the citizens of Gulfport. I have an eclectic mix of technical and people skills that are tailor-made to address the challenges Gulfport is facing in the aftermath of two hurricanes, and the recent disclosures of the exploitation of vulnerabilities in our city's internal financial controls. Now is the time for serious reform. I bring an unmatched sense of urgency to this mission. I love Gulfport and have made it my home. After a long career in industry, it's time to give back. Not doing so was not an option.

12. In **Exhibit Q**, Defendants accurately identify the race as a three-candidate contest, include all three candidates by name—including Plaintiff—and present each candidate in a uniform, candidate-by-candidate format with photos and write-ups consistent with the expectations of a field-defining voter guide.

13. Exhibit Q is also the first time Defendants ever published Plaintiff's photograph in their newspaper, marking a clear departure from prior treatment.

14. This sequencing is critical. Defendants' accurate, neutral, and fully inclusive 'Meet the Candidates' coverage in what was the first of several articles about Plaintiff published by Defendants during his Gulfport mayoral race occurred almost four months after Plaintiff initiated this lawsuit, and after Defendants had been placed on notice that the prior field-defining publication was disputed as factually inaccurate.

15. Exhibit Q therefore demonstrates that Defendants were capable of publishing accurate, neutral, and fully inclusive "Meet the Candidates" coverage in a voter-guide format in a race in which Plaintiff was running, when they chose to do so. This evidence is offered solely to show Defendants' ability to avoid false field-definition and to support Plaintiff's allegation that the July 2024 publication's exclusionary, field-defining presentation was not compelled by journalistic necessity or ambiguity about the candidate field.

II. ANTI-SLAPP AND "VEXATIOUS LITIGANT" REBUTTAL — OBJECTIVE CONDUCT EVIDENCE

16. Plaintiff's documented course of conduct across multiple media outlets provides objective proof that this action was not filed "primarily because" Defendants engaged in protected speech, nor as an attempt to chill or punish journalism.

17. During the 2023–2024 election cycle, Plaintiff was covered by multiple outlets, including the Tampa Bay Times, Florida Politics, and Florida Phoenix, among others.

18. That coverage ranged from neutral to unfavorable and included minimization, omission, exclusion from photographs, skepticism about viability, and criticism.

19. Plaintiff did not respond to that broader media environment by filing lawsuits against other outlets.

20. Instead, Plaintiff pursued non-litigation remedies, including contacting reporters, providing public records, and requesting corrections, demonstrating restraint and a good-faith effort to ensure factual accuracy rather than retaliation.

III. TAMPA BAY TIMES PUBLICATION ERROR: CORRECTION, NO LITIGATION

21. Exhibit R is a Tampa Bay Times article published on August 10, 2023 (later corrected on September 15 **– See Exhibit S**) on the 2024 FL CD-13 Congressional race titled; "***Democrats want to take on Anna Paulina Luna in 2024. But they need a candidate."*** It reported falsely that no Democrat had yet entered the race when Plaintiff had filed to run over a month prior in early June.

22. Plaintiff contacted the newspaper regarding the omission, and the Tampa Bay Times later issued a correction on September 15, 2023, changing the title and made changes within the body to expressly state that "*one Democrat has filed to run for the seat: John Liccione*," and further noting that Plaintiff filed his statement of candidacy with the Federal Election Commission in June. These changes are shown on the following page in a side-by-side comparison.

Original August 10, 2023 Article

Tampa Bay Times

ELECTIONS

Democrats want to take on Anna Paulina Luna in 2024. But they need a candidate.

The freshman lawmaker will have more money behind her than in 2022 and the advantage of the incumbency.



Anna Paulina Luna speaks to a crowd during the Keep Florida Free Tour on Wednesday, Aug. 24, 2022, in Tampa. [LUIS SANTANA | Times]

By Josh Archote *Times staff*

Published Aug. 10 | Updated Yesterday

Democrats are targeting U.S. Rep. Anna Paulina Luna's 13th Congressional District seat in 2024. But they have yet to find a candidate to face the freshman lawmaker from Pinellas County.

September 15, 2023, Updated Article

Menu Tampa Bay Times Subscribe

ELECTIONS

Democrats want to take on Anna Paulina Luna in 2024

The freshman lawmaker will have more money behind her than in 2022 and the advantage of the incumbency.



Anna Paulina Luna speaks to a crowd during the Keep Florida Free Tour on Wednesday, Aug. 24, 2022, in Tampa. [LUIS SANTANA | Times]

By Josh Archote *Times staff*

Published Aug. 10, 2023 | Updated Sept. 15, 2023

Democrats are targeting U.S. Rep. Anna Paulina Luna's 13th Congressional District seat in 2024. But they are still looking for a candidate to face the freshman lawmaker from Pinellas County.

So far, one Democrat has filed to run for the seat: John Liccione, who listed an address in South Pasadena in a statement of candidacy he filed in June with the Federal Election Commission.

Correction: *This story has been updated to reflect that, in June, one Democrat filed to run for Congressional District 13.*

Josh Archote is an intern covering state politics and general assignment. Reach him at jarchote@tampabay.com.

23. Plaintiff did not sue over the original omission; he sought a correction, and the outlet corrected the article in a manner visible to readers within the article itself with the correction notice at the bottom.

24. That sequence—notice, in-article correction, no litigation—illustrates Plaintiff's consistent approach and is precisely the type of meaningful corrective action Plaintiff sought from Defendants, to no avail.

IV. DEFENDANTS' REFUSAL TO MEANINGFULLY CORRECT DISTINGUISHES THIS CASE

25. By contrast, Defendants failed to legitimately acknowledge their error until just before the August 2024 primary, despite Plaintiff reaching out promptly after publication and demanding a correction.

26. Defendants have never pulled the false article.

27. Defendants has never corrected the article itself which remains on-line.

28. Defendants have never clearly informed readers, within the body of the original "Meet the Candidates" publication, that the original "four candidates" field-defining statement was false. They buried a self-conflicting pseudo-correction in the letters to the editor section.

29. This refusal to meaningfully correct the record—rather than the act of publication alone—is central to why this lawsuit exists.

V. WHY THIS ACTION IS NOT A SLAPP

30. Taken together, Plaintiff's restraint across multiple outlets and Defendants' refusal to meaningfully correct a false voter-guide publication establish that this lawsuit was filed because of falsity and defamatory implication, not because Defendants spoke on a public issue.

31. Plaintiff does not sue outlets for minimization, criticism, or editorial judgment.

32. Plaintiff seeks accountability only where a publisher crosses a bright legal line by affirmatively misrepresenting the size of a candidate field and conveying a false gist by commission and omission that a qualified candidate is not legitimately running.

33. Exhibit Q further demonstrates that Defendants can, and did, publish a neutral "Meet the Candidates" profile that (i) accurately states the number of candidates in the race, (ii) includes each candidate by name, and (iii) presents candidates in a uniform format consistent with a voter-guide presentation. This supports Plaintiff's contention that the July 2024 publication's "four candidates" field-defining presentation was avoidable and that accurate field verification and inclusive presentation were straightforward.

34. The Court's prior stay further underscores that this action was not filed to chill Defendants' speech. The stay was entered sua sponte based on principles of comity arising from Plaintiff's earlier-filed federal action in the Middle District of Florida. That federal action did **not** assert any claims against Defendant Cathy Salustri-Loper, The Gabber, or Thursday Morning Media, Inc., and those entities were not defendants in the federal case. The stay was based on overlap in factual background and certain parties, not on parallel claims against Defendants here. The Court later lifted the stay and granted leave to amend without prejudice to Defendants' positions. This procedural history reflects ordinary docket management, not a litigation strategy aimed at suppressing Defendants' protected speech.

35. Accordingly, Defendants' Anti-SLAPP motion fails because this action was filed based on alleged knowing false statements of fact and false defamatory implications, Defendants' delayed and inadequate response after notice of falsity, Defendants' decision to bury a purported correction outside the article itself in a self-contradictory manner, and Defendants' refusal to

publish Plaintiff's candidate profile on equal terms with others—rather than because Defendants engaged in protected speech. Plaintiff has therefore plausibly rebutted Defendants' asserted Anti-SLAPP grounds for dismissal at the pleading stage.

VI. CONCLUSION

36. Plaintiff has plausibly pleaded claims for defamation and defamation by implication under Florida law. Plaintiff alleges that Defendants published a materially false, field-defining statement of fact—namely, that there were only four candidates in the race—in a voter-facing publication presented as a candidate roster or "Meet the Candidates" voter guide, and that the publication conveyed a false and defamatory implication by omission that Plaintiff was not a legitimate or qualified candidate. See *Jews for Jesus, Inc. v. Rapp*, 997 So. 2d 1098 (Fla. 2008). Plaintiff further alleges actual malice within the meaning of *New York Times Co. v. Sullivan*, 376 U.S. 254 (1964), because the size of the candidate field was readily verifiable, Defendants knew of Plaintiff's candidacy or recklessly disregarded the truth when publishing a definitive field count, and Defendants persisted in the false field-defining presentation after notice. Plaintiff also alleges reputational and financial harm proximately caused by the publication. These allegations, taken as true and construed in Plaintiff's favor, are sufficient to state actionable defamation claims and to rebut Defendants' asserted Anti-SLAPP grounds for dismissal at the pleading stage. Plaintiff further alleges that Defendants' publication is defamatory per se; the legal consequences of that classification, if any, may be addressed on a fuller record.

VII. RELIEF REQUESTED

Plaintiff respectfully requests that the Court:

A. Deny Defendants' Motion to Dismiss in its entirety;

B. Deny Defendants' request for dismissal under section 768.295, Florida Statutes, because the Third Amended Complaint and the pleadings before the Court plausibly allege actionable defamation by commission and implication and do not establish, at the pleading stage, that this action was filed "primarily because" Defendants exercised protected speech within the meaning of the statute;

C. Deny any additional award of attorneys' fees and costs in connection with Defendants' Motion to Dismiss the Third Amended Complaint, and reserve for later proceedings—upon a properly supported, itemized fee affidavit—any determination regarding the amount, scope, apportionment, and reasonableness of any fees and costs Defendants may claim in connection with prior motions;

D. Upon denial of the Motion to Dismiss, enter an order lifting the discovery stay so that this action may proceed on the merits;

E. Schedule a case management conference to set discovery deadlines and further case scheduling.

Respectfully Submitted,

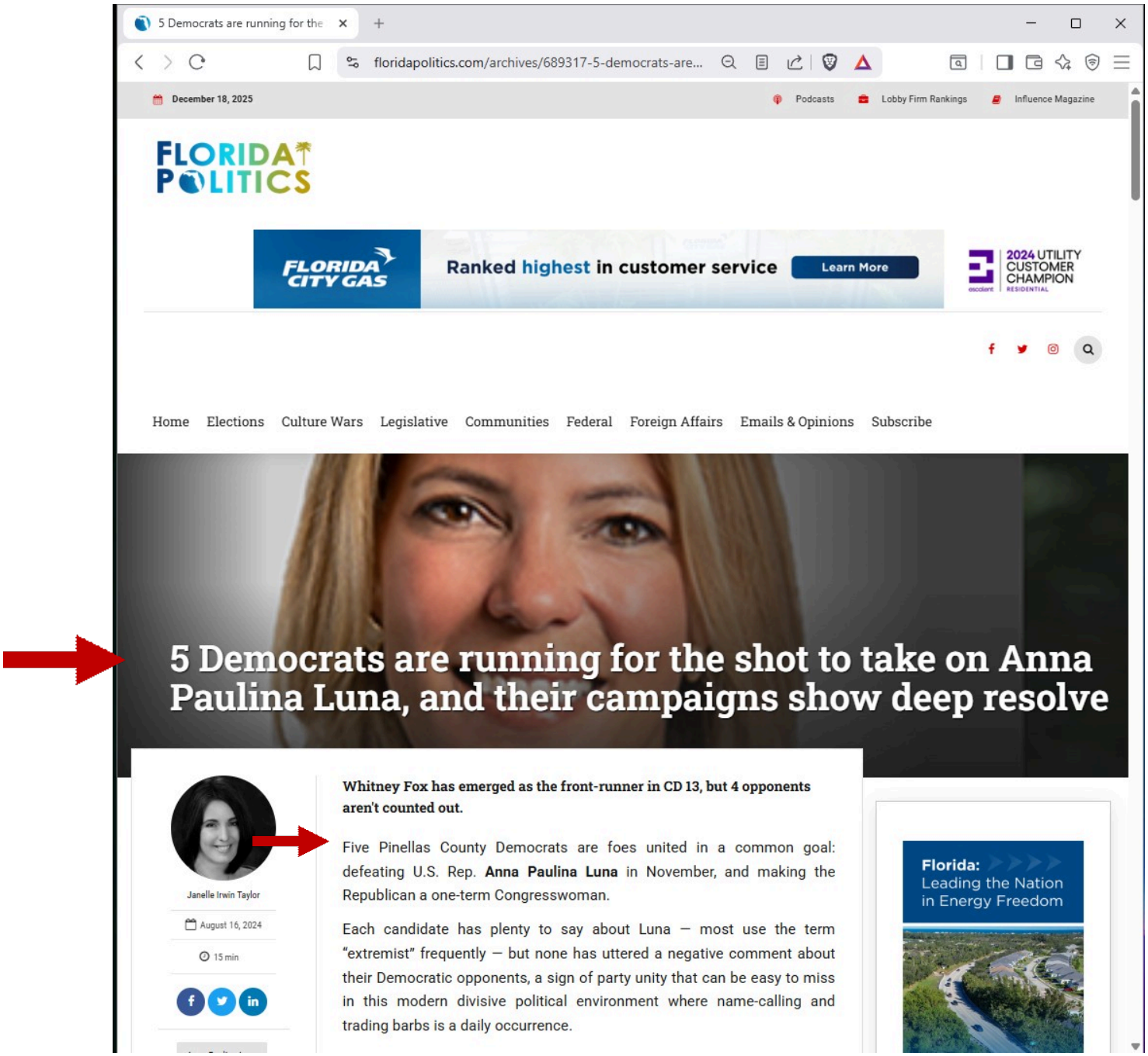
/s/ John W. Liccione
John W. Liccione
Plaintiff, Pro Se
PO Box 229
Dunedin, FL 34697
443-698-8156 |
jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email and e-fining portal to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com), on December 23, 2025.

/s/ John W. Liccione

EXHIBIT O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floridapolitics.com/archives/689317-5-democrats-are...
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5 Democrats are running for the shot to take on Anna Paulina Luna, and their campaigns show deep resolve
Janelle Irwin Taylor
August 16, 2024
15 min
Whitney Fox has emerged as the front-runner in CD 13, but 4 opponents aren't counted out.
Five Pinellas County Democrats are foes united in a common goal: defeating U.S. Rep. Anna Paulina Luna in November, and making the Republican a one-term Congresswoman.
Each candidate has plenty to say about Luna — most use the term "extremist" frequently — but none has uttered a negative comment about their Democratic opponents, a sign of party unity that can be easy to miss in this modern divisive political environment where name-calling and trading barbs is a daily occurrence.
Florida:
Leading the Nation
in Energy Freedom

defeating U.S. Rep. **Anna Paulina Luna** in November, and making the Republican a one-term Congresswoman.

Each candidate has plenty to say about Luna — most use the term "extremist" frequently — but none has uttered a negative comment about [illegible] in this modern divisive political environment where name calling and trading barbs is a daily occurrence.

But being cordial doesn't mean there isn't a fight afoot. Democrats are eyeing Florida's 13th Congressional District as one of its only U.S. House pickup opportunities this cycle.

At R+6 and "likely Republican," the district will be tough to flip, but Cook Political Report lists it as one of only three competitive congressional races in Florida. The other two are listed as "likely Democrat" — Florida's 9th Congressional District, represented by **Darren Soto**, and Florida's 23rd Congressional District, represented by **Jared Moskowitz**. Both are incumbent Democrats not facing Primary challenges.

While money can be hard to come by for Democrats under an ever-tightening GOP grip, CD 13 candidates — or at least one of them — have found a bright spot in the Pinellas County-based district.



Whitney Fox, a former Communications Director for the Pinellas Suncoast Transit Authority (PSTA), has emerged a clear front-runner for the Democratic nomination. Fox has consistently **outraised** all of her Primary opponents, which include **Sabrina Bousbar**, **Liz Dahan**, **John Liccione** and **Mark Weinkrantz**. Even considering loans to her opponents' campaigns — of which there have been several — Fox still has a major money advantage.

As of the end of the second quarter of 2024, Fox had raised nearly three quarters of $1 million. She **brought in $320,632** in total contributions during the second quarter of 2024, which covers campaign finance activity from April through June.

When excluding personal loans to their campaigns, Fox also outraised the entire field combined by more than $100,000. Fox did not loan her campaign any money.

She also ended the quarter with more cash on hand than her opponents, at $355,684. Her closest opponent in total cash on hand is Liccione, who

Anna Paulina Luna
Florida's 13th Congressional District
John Liccione
Liz Dahan
Mark Weinkrantz
Sabrina Bousbar
Whitney Fox

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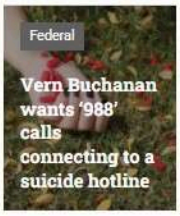

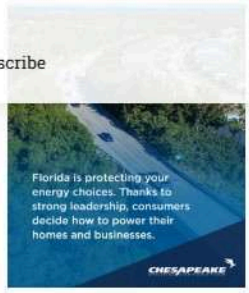

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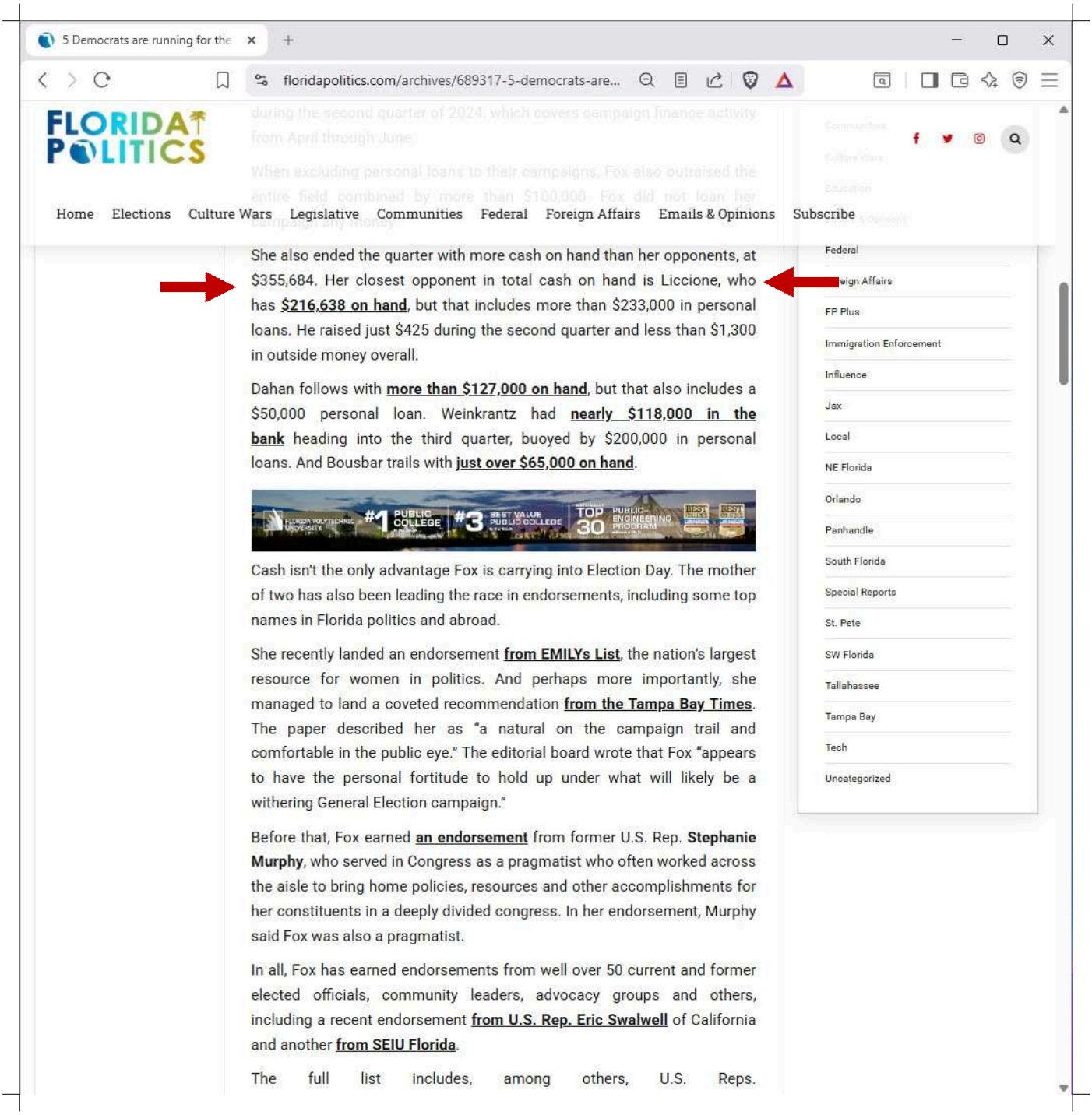
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She also ended the quarter with more cash on hand than her opponents, at $355,684. Her closest opponent in total cash on hand is Liccione, who has $216,638 on hand, but that includes more than $233,000 in personal loans. He raised just $425 during the second quarter and less than $1,300 in outside money overall.
Dahan follows with more than $127,000 on hand, but that also includes a $50,000 personal loan. Weinkrantz had nearly $118,000 in the bank heading into the third quarter, buoyed by $200,000 in personal loans. And Bousbar trails with just over $65,000 on hand.
#1 PUBLIC COLLEGE
#3 BEST VALUE PUBLIC COLLEGE
TOP 30 PUBLIC ENGINEERING PROGRAM
Cash isn't the only advantage Fox is carrying into Election Day. The mother of two has also been leading the race in endorsements, including some top names in Florida politics and abroad.
She recently landed an endorsement from EMILYs List, the nation's largest resource for women in politics. And perhaps more importantly, she managed to land a coveted recommendation from the Tampa Bay Times. The paper described her as "a natural on the campaign trail and comfortable in the public eye." The editorial board wrote that Fox "appears to have the personal fortitude to hold up under what will likely be a withering General Election campaign."
Before that, Fox earned an endorsement from former U.S. Rep. Stephanie Murphy, who served in Congress as a pragmatist who often worked across the aisle to bring home policies, resources and other accomplishments for her constituents in a deeply divided congress. In her endorsement, Murphy said Fox was also a pragmatist.
In all, Fox has earned endorsements from well over 50 current and former elected officials, community leaders, advocacy groups and others, including a recent endorsement from U.S. Rep. Eric Swalwell of California and another from SEIU Florida.
The full list includes, among others, U.S. Reps.
Federal
FP Plus
Immigration Enforcement
Influence
Jax
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Orlando
Panhandle
South Florida
Special Reports
St. Pete
SW Florida
Tallahassee
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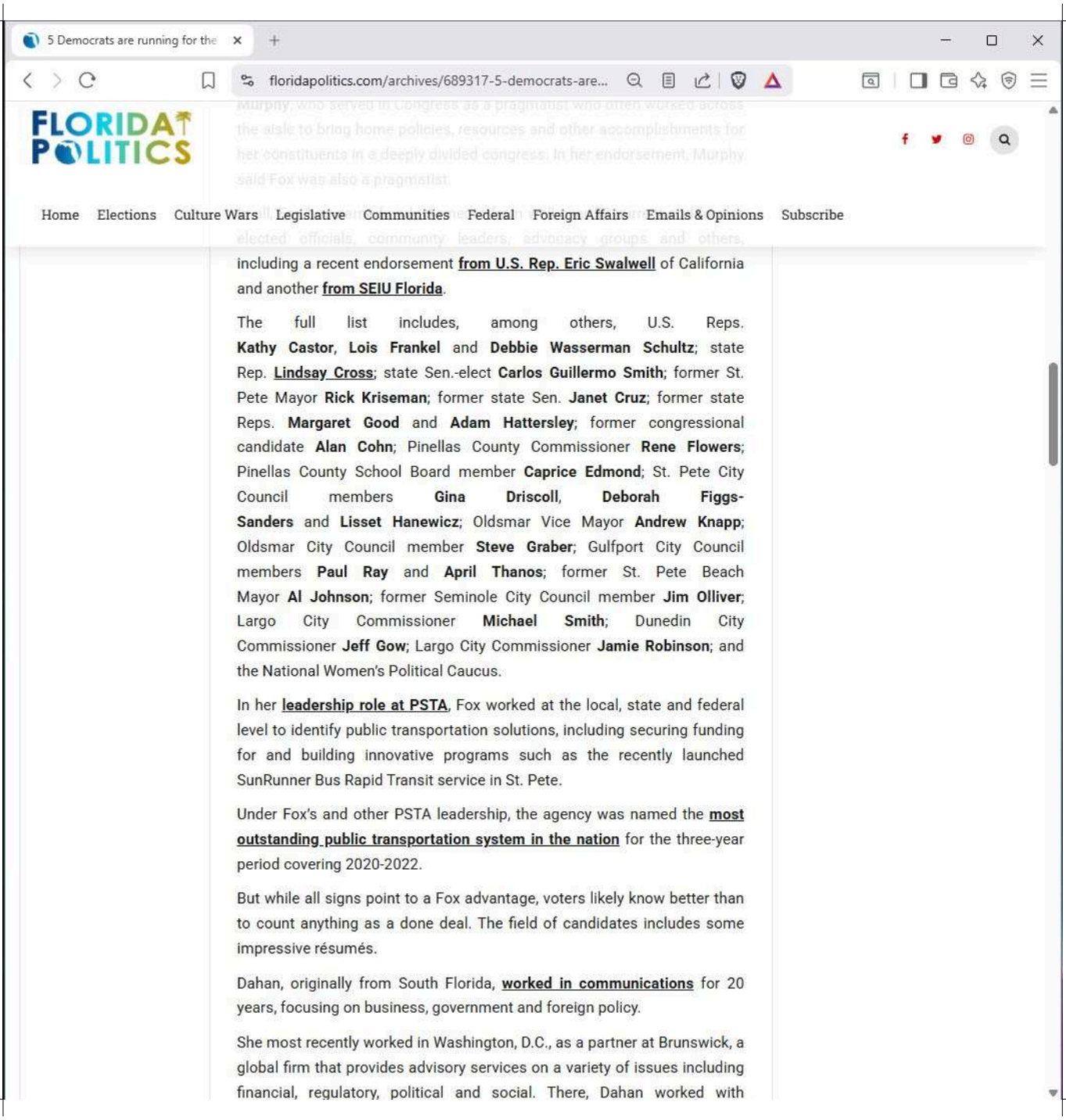


Murphy, who served in Congress as a pragmatist who often worked across the aisle to bring home policies, resources and other accomplishments for her constituents in a deeply divided congress. In her endorsement, Murphy said Fox was also a pragmatist.

elected officials, community leaders, advocacy groups and others, including a recent endorsement **from U.S. Rep. Eric Swalwell** of California and another **from SEIU Florida**.

The full list includes, among others, U.S. Reps. **Kathy Castor**, **Lois Frankel** and **Debbie Wasserman Schultz**; state Rep. **Lindsay Cross**; state Sen.-elect **Carlos Guillermo Smith**; former St. Pete Mayor **Rick Kriseman**; former state Sen. **Janet Cruz**; former state Reps. **Margaret Good** and **Adam Hattersley**; former congressional candidate **Alan Cohn**; Pinellas County Commissioner **Rene Flowers**; Pinellas County School Board member **Caprice Edmond**; St. Pete City Council members **Gina Driscoll**, **Deborah Figgs-Sanders** and **Lisset Hanewicz**; Oldsmar Vice Mayor **Andrew Knapp**; Oldsmar City Council member **Steve Graber**; Gulfport City Council members **Paul Ray** and **April Thanos**; former St. Pete Beach Mayor **Al Johnson**; former Seminole City Council member **Jim Olliver**; Largo City Commissioner **Michael Smith**; Dunedin City Commissioner **Jeff Gow**; Largo City Commissioner **Jamie Robinson**; and the National Women's Political Caucus.

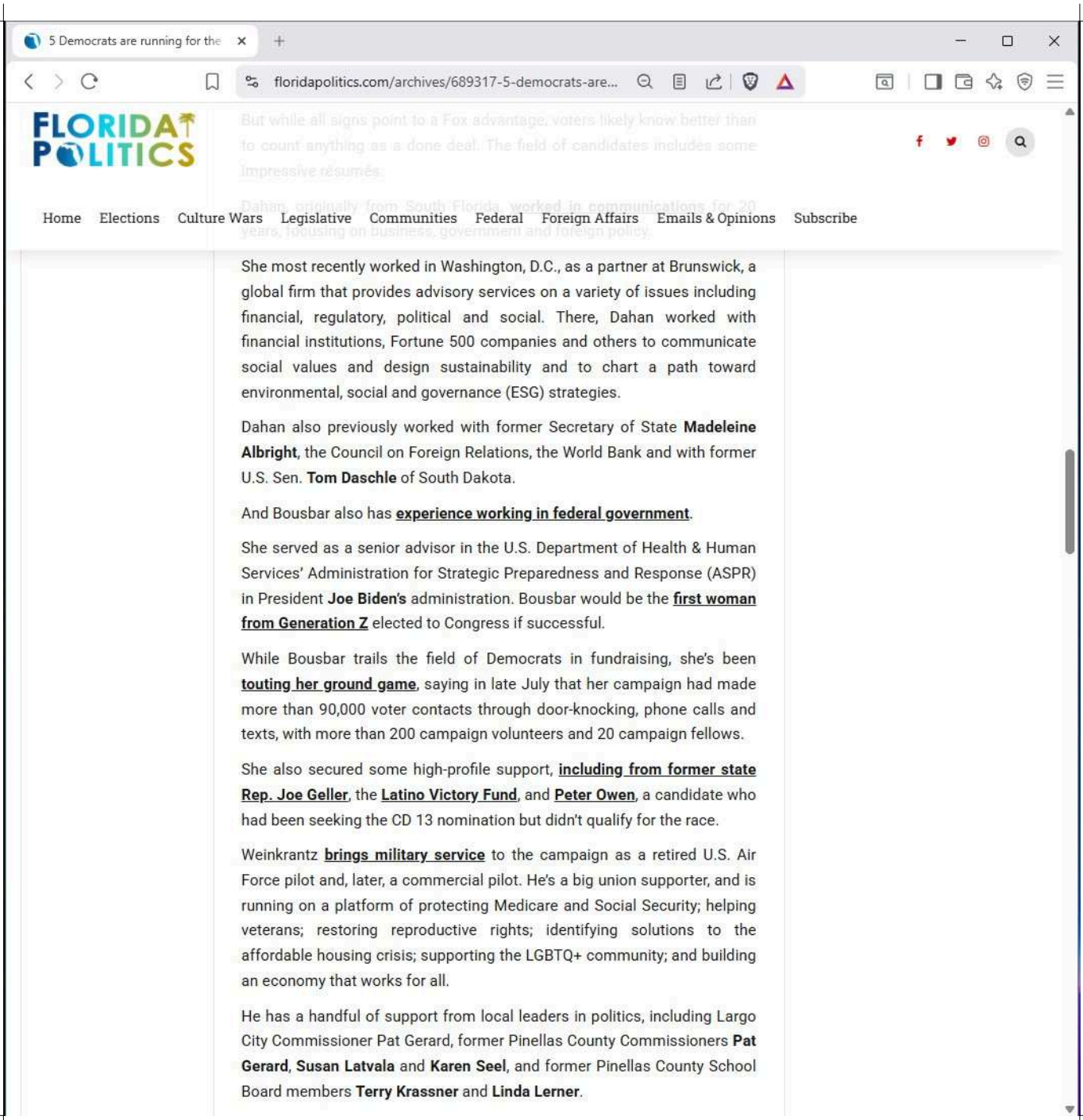
In her **leadership role at PSTA**, Fox worked at the local, state and federal level to identify public transportation solutions, including securing funding for and building innovative programs such as the recently launched SunRunner Bus Rapid Transit service in St. Pete.

Under Fox's and other PSTA leadership, the agency was named the **most outstanding public transportation system in the nation** for the three-year period covering 2020-2022.

But while all signs point to a Fox advantage, voters likely know better than to count anything as a done deal. The field of candidates includes some impressive résumés.

Dahan, originally from South Florida, **worked in communications** for 20 years, focusing on business, government and foreign policy.

She most recently worked in Washington, D.C., as a partner at Brunswick, a global firm that provides advisory services on a variety of issues including financial, regulatory, political and social. There, Dahan worked with



She most recently worked in Washington, D.C., as a partner at Brunswick, a global firm that provides advisory services on a variety of issues including financial, regulatory, political and social. There, Dahan worked with financial institutions, Fortune 500 companies and others to communicate social values and design sustainability and to chart a path toward environmental, social and governance (ESG) strategies.

Dahan also previously worked with former Secretary of State **Madeleine Albright**, the Council on Foreign Relations, the World Bank and with former U.S. Sen. **Tom Daschle** of South Dakota.

And Bousbar also has **experience working in federal government**.

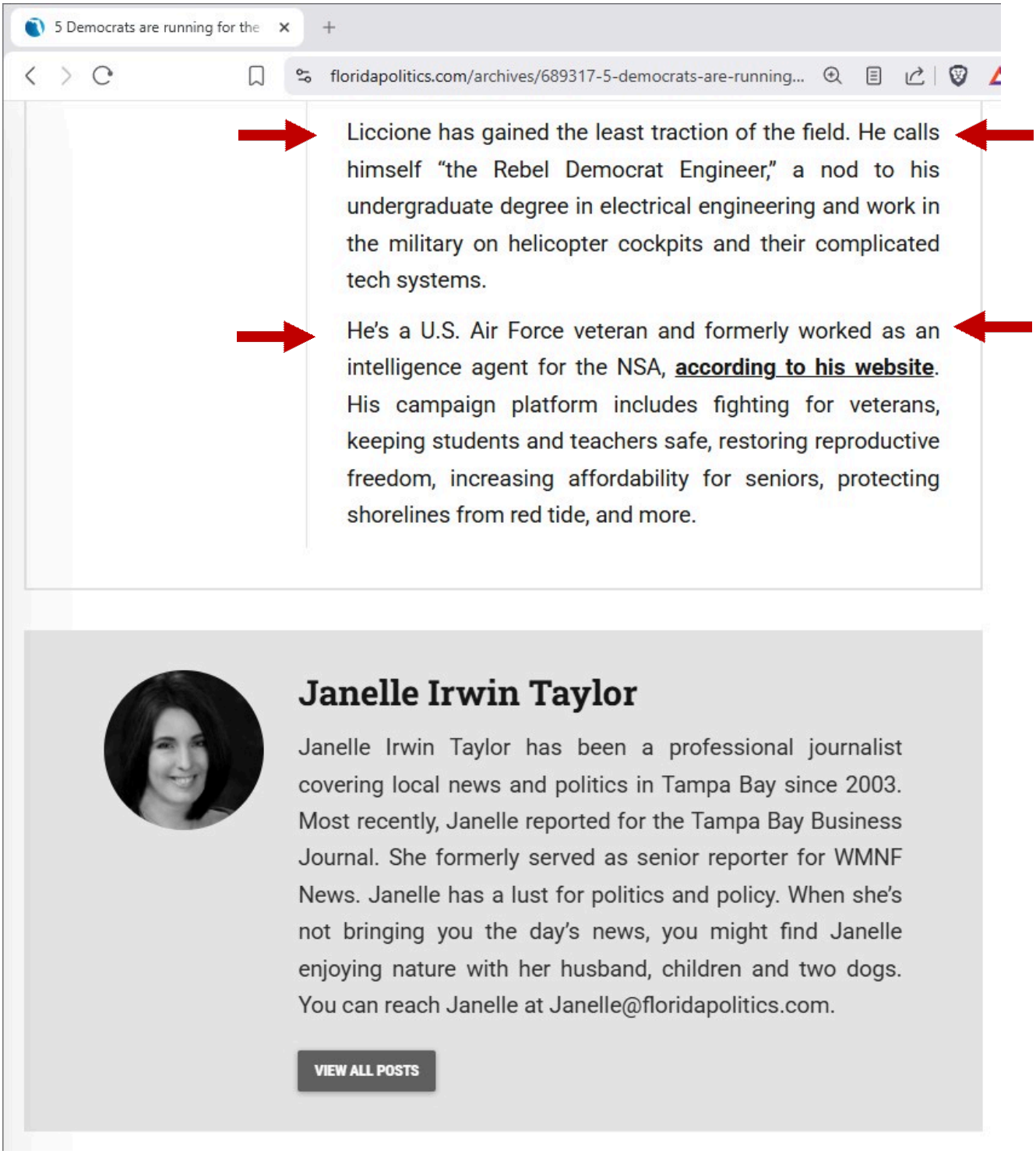
She served as a senior advisor in the U.S. Department of Health & Human Services' Administration for Strategic Preparedness and Response (ASPR) in President **Joe Biden's** administration. Bousbar would be the **first woman from Generation Z** elected to Congress if successful.

While Bousbar trails the field of Democrats in fundraising, she's been **touting her ground game**, saying in late July that her campaign had made more than 90,000 voter contacts through door-knocking, phone calls and texts, with more than 200 campaign volunteers and 20 campaign fellows.

She also secured some high-profile support, **including from former state Rep. Joe Geller**, the **Latino Victory Fund**, and **Peter Owen**, a candidate who had been seeking the CD 13 nomination but didn't qualify for the race.

Weinkrantz **brings military service** to the campaign as a retired U.S. Air Force pilot and, later, a commercial pilot. He's a big union supporter, and is running on a platform of protecting Medicare and Social Security; helping veterans; restoring reproductive rights; identifying solutions to the affordable housing crisis; supporting the LGBTQ+ community; and building an economy that works for all.

He has a handful of support from local leaders in politics, including Largo City Commissioner Pat Gerard, former Pinellas County Commissioners **Pat Gerard**, **Susan Latvala** and **Karen Seel**, and former Pinellas County School Board members **Terry Krassner** and **Linda Lerner**.


5 Democrats are running for the
floridapolitics.com/archives/689317-5-democrats-are-running...
Liccione has gained the least traction of the field. He calls himself "the Rebel Democrat Engineer," a nod to his undergraduate degree in electrical engineering and work in the military on helicopter cockpits and their complicated tech systems.
He's a U.S. Air Force veteran and formerly worked as an intelligence agent for the NSA, according to his website. His campaign platform includes fighting for veterans, keeping students and teachers safe, restoring reproductive freedom, increasing affordability for seniors, protecting shorelines from red tide, and more.
Janelle Irwin Taylor
Janelle Irwin Taylor has been a professional journalist covering local news and politics in Tampa Bay since 2003. Most recently, Janelle reported for the Tampa Bay Business Journal. She formerly served as senior reporter for WMNF News. Janelle has a lust for politics and policy. When she's not bringing you the day's news, you might find Janelle enjoying nature with her husband, children and two dogs. You can reach Janelle at Janelle@floridapolitics.com.
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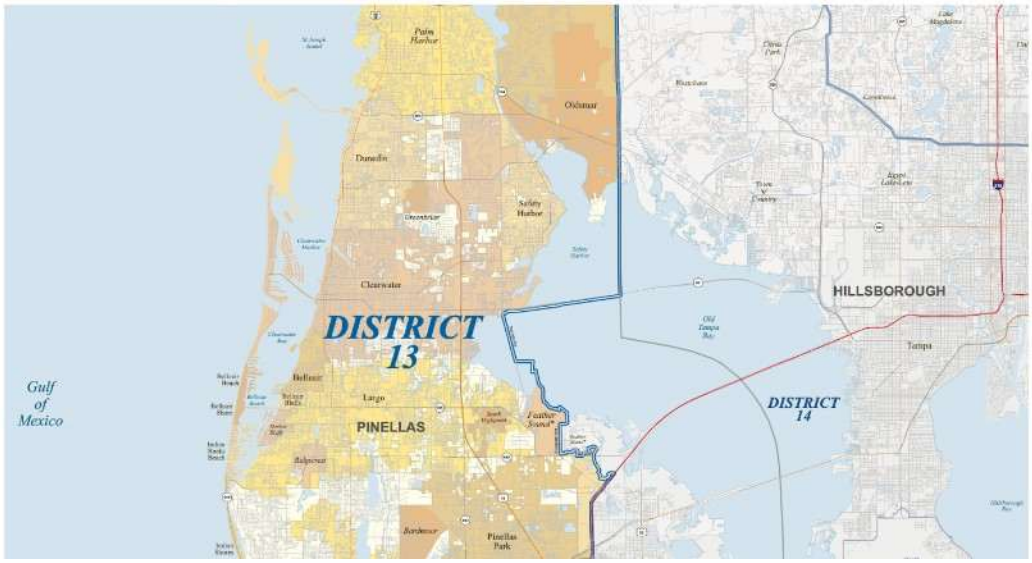
ABORTION POLICY CLIMATE CHANGE ELECTION 2024

Meet the Democrats who want to oust Anna Paulina Luna from Congress this fall

It won't be easy: 50,000 more Republicans than Dems live in the district

BY: **MITCH PERRY** - MAY 24, 2024 7:00 AM





U.S. Census map of Florida's Congressional District 13

As a crowd tightly packed the Scottish Cultural Center in Ron DeSantis' hometown of Dunedin last week, four Democrats attempted to make the case for why they are the best option for voters hungry to oust conservative Republican incumbent Anna Paulina Luna from office in November after her first term representing most of Pinellas County in Florida's Thirteenth Congressional District.

Whoever survives the Aug. 20 primary will be a decided underdog to Luna this fall, as the district was drawn to be solidly Republican during the most recent congressional redistricting process in 2022.

That turned the seat from a previously safe Democratic district into an even safer GOP-leaning area, with the heart of its liberal base (eastern and southern parts of St Petersburg) moved into the already strongly Democratic District 14 seat held by Hillsborough County's Kathy Castor.

The Cook Political Report lists the race as "Likely Republican," defined as "not considered competitive at this point but has the potential to become engaged." The Center for Politics' "Sabato's Crystal Ball" and Inside Elections also list the race as "Likely Republican."

Yet it's also possibly the only seat that the Florida Democrats have a hope and a prayer of flipping this year in what has become an increasingly red state.

Touting the most endorsements and fundraising totals is **Whitney Fox**, 36. She's received backing not only of Castor but also other Florida Democrats such as Debbie Wasserman Schultz, Debbie Mucarsel-Powell, and Lois Frankel.



Whitney Fox (photo credit: Whitney Fox campaign)

Fox also draws union support from the American Federation of Government Employees and the

Establishment links



Liz Dahan in Dunedin on May 16, 2024. (Photo by Mitch Perry/Florida Phoenix)

Liz Dahan,44, was raised in South Florida but has mostly called Washington, D.C., her home for the past two decades. Her CV is cluttered with D.C. Establishment links, including stints with the World Bank, the Council on Foreign Relations, the office of then Democratic Senate Leader Tom Daschle, the Albright Stonebridge Group (originally chaired by former Secretary of State Madeline Albright and co-chaired by former National Security Adviser Sandy Berger), and for the past eight years she's served as a partner with the Brunswick Group, a D.C. business consultancy.

Although she visited her aunt in Clearwater as a youth, she'd never been a full-time resident of Pinellas County until this year. But that's not much different from Luna, a Southern California native who moved to the district only a short time before her first run for the CD 13 seat in 2020.



Sabrina Bousbar outside Black Crow Coffee in St. Petersburg on May 22, 2024 (Photo by Mitch Perry/Florida Phoenix)

Sabrina Bousbar, 27, is a Florida State University undergrad who gained a master's degree in emergency management and natural disasters at Georgetown University on the same day that last week's forum took place.

She grew up in the county, first in Pinellas Park, and now lives in Largo. She worked as one of the first field organizers for the Joe Biden campaign in Iowa in 2019, and says the campaign utilized her trilingual skills (she says she speaks fluently in English, Spanish, and Arabic) to work as a field organizer in South Florida leading up to the election.

She then was hired to work as deputy director of transportation for the Biden inauguration. She served in the U.S. Department of Health and Human Services over the past three years.



Mark Weinkrantz in Dunedin on May 16, 2024 (Photo by Mitch Perry/Florida Phoenix)

Mark Weinkratz, 67, is an Air Force Veteran and former airline pilot for Northwest. A resident of Palm Harbor in North Pinellas, Weinkrantz is the only candidate with previous experience in local government, as an East Lake fire commissioner. He has the backing of two former Republican County Commissioners, Susan Latvala and Karen Seel.

There is a fifth candidate who qualified for the primary: **John Liccione**. However, he was not permitted to participate in the gathering, and will not receive any institutional support from the Pinellas County Democratic Executive Committee, according to party chair Jennifer Griffith, because he did not pass a vetting process.

Disdain for Luna

During the candidate forum last week, all four Democrats identified similar issues that they consider priorities, such as climate change, abortion rights, and standing up for democracy.

And, of course, their mutual enmity for Luna, whom they claim is simply too conservative for the district.



The 35-year-old Luna is definitely one of the more right-leaning members of Congress. The first Mexican-American woman elected to Congress from Florida, she has supported impeaching President Joe Biden and last year

And, of course, their mutual enmity for Luna, whom they claim is simply too conservative for the district.


Anna Paulina Luna (Source: Luna's X page)

The 35-year-old Luna is definitely one of the more right-leaning members of Congress. The first Mexican-American woman elected to Congress from Florida, she has supported impeaching President Joe Biden and last year successfully sponsored a resolution to censure California Rep. Adam Schiff for comments he made about investigations into Donald Trump's ties to Russia.

Last week, she became part of a group of GOP lawmakers who want to award a Congressional Gold Medal to Trump. Just hours before the forum took place, she became the latest Florida Republican to make the caravan to Manhattan to show solidarity with the former and potentially future president of the United States at his hush-money and campaign-finance violation trial.

"So, I entered the race about six weeks ago, because I couldn't stand by and watch Anna Paulina Luna destroy our democracy any longer," said Dahan.

"My girls are growing up with fewer rights that I did," said Fox. "Doctors are leaving our state. Women will die. Anna Paulina Luna supports this six-week [abortion] ban that is in place here in Florida, and she supports a national ban."

"Right now, we have extremist Anna Paulina Luna," added Bousbar. "She is denying our fundamental rights as women. She's denying and disregarding the climate crisis, and she's cutting Social Security and Medicare for a district that needs it the most."

(That was apparently a reference to the Republican Study Committee, which Luna belongs to, supporting a proposal to raise the Social Security retirement age for younger workers, as well as transitioning Medicare to a "premium support model" in which the program would compete with private plans and beneficiaries would receive subsidies to shop for preferred policies, according to Spectrum News.)

Luna response

Luna response

Olivia Carson is the campaign manager for Luna. She spoke to the Phoenix on Thursday afternoon to address some of the comments, beginning with where Luna is on abortion.

"Rep. Luna has never said that it's a federal issue," Carson said. "It's a state's rights decision as was made by the Supreme Court."

"There also were some comments about the climate and the environment, so while we're on that topic, Rep. Luna has been the most strong supporter of beach renourishment and fighting for our sea turtles and manatees, so anything about her not caring about the climate or the environment is just false," Carson continued.

"She has brought home millions back to the district and fixed Social Security problems for many constituents. We have a fantastic caseworker team on our official congressional side that has brought back hundreds of thousands of dollars for people who need returns from Social Security, so her wanting to cut Social Security is completely false.

"As you can tell by these false claims from candidates running against her, they're not serious. They're not able to smartly discuss her platform or her voting record, and are unable to address local issues, which is a shame especially if they're at a candidate forum where candidates are there to learn. We would expect them to be factual."

Abortion

Regarding the state's six-week abortion ban, which went into effect on May 1 and has been described by anti-abortion advocates as a "heartbeat bill," Luna was interviewed in 2023 on a podcast called "EWTN Pro-Life Weekly." At that time, the ban had been proposed in the Florida Legislature but not yet signed by Gov. Ron DeSantis.

"It needs to happen," she said, adding, "I have faith within my governor, within the state of Florida Legislature, to do the right thing and follow the science and actually protect life at heartbeat."

But while that position may be out of favor of the majority of voters in the

"It needs to happen," she said, adding, "I have faith within my governor, within the state of Florida Legislature, to do the right thing and follow the science and actually protect life at heartbeat."

But while that position may be out of favor of the majority of voters in the district, the 2022 redistricting map approved by DeSantis makes this a solidly red constituency. Moreover, as in virtually every other place in the state, Republicans continue to run up their numbers compared to Democrats in voter registration. More than 50,000 more registered Republicans than Democrats live in Congressional District 13, according to the Florida Division of Elections.

The four Democrats maintain they can overcome that disadvantage if they win the nomination in August.

"What I learned from working with Tom [Daschle] is, you have to find the common ground," Dahan said at the forum. "You have to be able to understand what the other side is actually looking for, and then you have to work really damn hard to find that common ground. I learned that from him, I will bring that to my service for the people of Pinellas County."

Still, "no straight-line Democrat is going to win this district," said Weinkrantz. "I've been committed and invested in this community for over 30 years, I have really broad support from influential Republicans and, between them and the number of nonparty-affiliated [voters], I feel really good about succeeding and beating Luna."

"We are building the coalition necessary to defeat Anna Paulina Luna,' Bousbar said. "We have Republicans, independents, Democrats, people from all walks of life. It's for the people. It's about bringing everyone together because right now our Congress is playing performative politics."

"We are confident in our path to victory because I am running as a candidate who is not afraid to talk to people in the Republican Party," said Fox. "I have many relationships with Republicans in this district and Republican elected leaders, and we are having very candid, sincere conversations with them."

Republican elected leaders, and we are having very candid, sincere conversations with them."

Fox added that "this is the moderate, pragmatic district with iconic leaders like Charlie Crist, David Jolly, and Bill Young," referring to the last three officials who held the seat, with Jolly and Young being Republicans (Young serving from 1971 to 2013).

Not so moderate

However, longtime observers of Pinellas County politics conclude that the district isn't so moderate anymore.

"Both Republican and Democratic parties' bases have moved more to the right and to the left the last several years," said Barry Edwards, who has worked with Democratic and Republican candidates in Pinellas County elections for decades. "She [Luna] is reflecting the party's move to the more conservative side and, like Bill Young, she has an interest in defense policy and foreign affairs."

Luna has been outspoken in opposing additional funding for Ukraine, but that stance is in sync with the majority of Republican voters. A CBS News/YouGov survey released last month showed that 61% of Republicans oppose sending weapons and military aid to Ukraine. "She reflects where the majority of the base of her party is, which is why she didn't get any challengers in her primary," Edwards said.

Redistricting moved the district from a Democratic +2 points district to a Republican +6 or possibly +7 district, Edwards said.

Daryl Paulson is emeritus professor of government at the University of South Florida in St. Petersburg. A former Republican who has listed Ronald Reagan, Barry Goldwater, and William F. Buckley as his political heroes, he left the party to become an independent in 2017 following the election of Donald Trump.

He says the CD 13 seat isn't what it used to be, because the Republican Party nationally isn't the same.

"What you're seeing in Pinellas County is sort of a microcosm nationally," he

"What you're seeing in Pinellas County is sort of a microcosm nationally," he says. "It's not the Republican Party, it's the party of Donald Trump, and Luna is one of the Trumpites."

Paulson noted that Luna had been a newcomer to Pinellas, which previously might have been a detriment to her electoral chances, but that changed when she was backed by Trump in September 2021. "She's somebody who pledged her affiliation early on to Donald Trump and, in many cases across the country, that's been the difference for winning Republican candidates."

Whether any Democrat can take down Luna won't be known until the fall. But these candidates have about two months before the first vote-by-mail ballots go out to make their case that they can flip the seat in November.

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MITCH PERRY

Mitch Perry has covered politics and government in Florida for more than two decades. Most recently he is the former politics reporter for Bay News 9. He has also worked at Florida Politics, Creative Loafing and WMNF Radio in Tampa. He was also part of the original staff when the Florida Phoenix was created in 2018.

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EXHIBIT Q

The GABBER
FLORIDA'S OLDEST INDEPENDENT WEEKLY NEWSPAPER


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2025 Gulfport Mayoral Elections: Meet the Candidates

January 23, 2025 by Rachel Rubin



Get to know the candidates for the 2025 Gulfport mayoral election.
Graphic via Pixabay

Every three years, Gulfport elects a new mayor. This year, incumbent Sam Henderson — who has been mayor since 2013 — faces two challengers: Karen Love, a frequent and outspoken attendee at the City's twice-monthly council meetings, and John Liccione, who lost his 2024 primary bid to Whitney Fox (who ran unsuccessfully against Anna Paulina Luna for Florida's 13th Congressional District).

2025 Gulfport Mayoral Election

The Gabber Newspaper asked Henderson, Liccione, and Love about their motivations and plans.

2025 Gulfport Mayoral Election:

thegabber.com/2025-gulfport-mayoral-el...

2025 Gulfport Mayoral Election

The Gabber Newspaper asked Henderson, Liccione, and Love about their motivations and plans.

Here's what they told us.

Why did you choose to run for Gulfport mayor?



Sam Henderson hopes to hold his mayor seat in the 2025 Gulfport mayoral election.
Photo courtesy of Sam Henderson

Sam Henderson

My answer to this question today is the same as it was 16 years ago when I started my first term on Council. I want to protect, preserve, and strengthen Gulfport. This is a special place and small towns face big challenges. I have served you with integrity and compassion since 2009, and I am proud of what we have accomplished. We still have much to do, and I am dedicated to helping us navigate the difficulties we face. I don't claim to have all the answers, but I'll always be honest with you and I will not give up.

we face. I don't claim to have all the answers, but I'll always be honest with you and I will not give up.



John Liccione wants to be the next mayor of Gulfport.
Photo via John Liccione

John Liccione

I wish to place myself in the service of the citizens of Gulfport. I have an eclectic mix of technical and people skills that are tailor-made to address the challenges Gulfport is facing in the aftermath of two hurricanes, and the recent disclosures of the exploitation of vulnerabilities in our city's internal financial controls. Now is the time for serious reform. I bring an unmatched sense of urgency to this mission. I love Gulfport and have made it my home. After a long career in industry, it's time to give back. Not doing so was not an option.

2025 Gulfport Mayoral Election:

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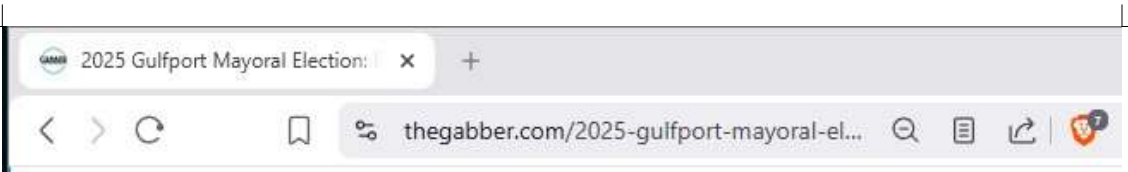
Karen Love also hopes to become the next mayor of Gulfport.

Photo courtesy of Karen Love

Karen Love

I chose to run for office because there's currently a huge need for transparency, open communication, and problem solving. That is my background. I have attended most meetings for the last 12 years and have learned the strengths and weaknesses of the council. It is my intention to have presentations given routinely to the council and residents regarding options for recovery and restoration. None of us have all the answers but brainstorming together and working as a team can only advance our great city.



What are the three main focuses of your campaign?

JL: Prosperity, urgency, and recovery. My overarching focus at this stage of the campaign is to articulate my vision and methodology for turning around underperforming City departments, for measuring, re-imagining, and re-engineering a culture of continuous improvement in citizen and business services, and by capturing the federal, state, and county funding for the investments necessary to execute my recovery plan. Financially speaking, our City seems to be lacking in state-of-the-art internal financial controls, so detecting and eliminating fraud, waste, and abuse is high on my list of priorities.

KL: A transparent council working through collaboration with each other and the residents, attacking the real problems created by the hurricanes. Arranging, through the city manager, a sit-down with the Community Development department and listening to what they think they need to function in our residents best interest. The attitude needs to be "whatever it takes, let's solve this ongoing issue." Getting the marina up and running ASAP to start collecting revenue for our city.

Publisher's Note: The marina never stopped collecting slip rent, even while closed and the boat lifts were without power.

SH: Helping our residents, businesses, and property owners through the minefield of hurricane recovery is number one. Navigating the multiple agencies and convoluted processes to which we are beholden has been one of the greatest challenges this community has faced. I am committed to seeing us through this dark time. Secondly, we must maintain our level of service to residents. The autonomy of having our own city departments enables us to have a greater level of home rule and gives us the ability to better serve our people. Lastly, combatting gentrification and keeping Gulfport a vibrant, inclusive, Old-Florida community.

What sets you apart from your opponents?

KL: I've been a good listener during 12 years of meetings. When I recap the meetings on social media I have shown two things. First I've shown that I can condense a meeting of one-three hours into a five-minute read for the folks who haven't attended. Secondly, I have done these recaps keeping my opinions out of it. I have been a city advocate, civil servant, and fundraiser for Gulfport. I have a track record for getting things done in Gulfport. See community involvement on my website.

Publisher's Note: Merriam-Webster defines "civil servant" as "a member of a civil service or a member of the administrative staff of an international agency." There is no evidence of Love serving as a civil servant in Gulfport.

SH: Experience. Since 2009 I have been finding creative solutions and charting a path forward for Gulfport. During my time in office, I have forged strong relationships with City staff and represented us beyond our municipal borders. Through times of crisis — such as the aftermath of the 2008 market crash, COVID, Deepwater Horizon, and multiple storms — I have learned the parameters of what this job requires and the pitfalls to avoid. I worked my way up, from the ordinance review committee to Mayor, and gained a unique and practical understanding of how this City works along the way.

Publisher's Note: Although Henderson was not in office in 2008, he did take office in 2009, when then-Governor Crist mandated 10% budget cuts for Florida municipalities.

Vote in the 2025 Gulfport Mayoral Election

The 2025 Gulfport city election will take place on Tuesday, March 11. The last day to register to vote is Monday, Feb. 10. To vote by mail, contact the Pinellas County Supervisor of Elections Office at 727-464-8683 or visit votepinellas.org. The last day to request a mail ballot is Feb. 27 at 5 p.m.

JL: I'm a proven change agent with leadership experience in military and civilian public service, as well as my success as a high-tech executive and businessman. I've specialized in disaster recovery systems, cybersecurity, cloud technology, and software. I've turned around struggling organizations, departments, and systems with a hands-on, results-driven approach. Gulfport needs leadership that can build trust, solve real problems, and create sustainable growth. I'm passionate about seeing Gulfport thrive as a community where everyone is valued and protected. I'm ready to use these skills to lead us toward a prosperous future.

What's right with Gulfport? What needs to be fixed?

JL: The ideal of Gulfport as a "hate-free zone" and all those who strive to walk that talk every day. Police, fire, and rescue are working reasonably well, but they need more resources.

We have a management problem needing urgent fixing: complacency, lack of urgency in certain functions, clinging to the status quo, [and] resistance to change. Our council cannot be rubber stamps for the resolutions the City Manager and the City Attorney present. Large dollar no-bid procurements in IT are placed on the consent agenda with missing contract dollar amounts. The inability to solve the permitting problem is a crisis.

KL: Fortunately the majority of our City staff have a helpful attitude. My own interactions with Justin

KL: Fortunately the majority of our City staff have a helpful attitude. My own interactions with Justin Shea, Tom Nicholls, and David Mather have shown them to have the "can do" spirit to solve whatever issue I have presented to them. The relationship between the City council and the City Manager needs to be fixed. As an observer for 12 years, I feel like the City Manager is not receiving direction from the council, as outlined in Gulfport's founding charter, but instead is directing the city council. We need a more proactive City council.

SH: There are many things right with Gulfport. We are far better off than most cities in Florida of comparable size. We have a reasonable millage rate that has been steady for over a decade, we have the vast majority of our city services in-house, and while we have become a popular destination we manage to maintain the "soul" of Gulfport. Our biggest challenges, not unlike the rest of our nation, are environmental resiliency, divisive politics, rising costs on everything from groceries to homes, coping with the influence of outside money and surviving government over-reach from the state and federal level.

What is the biggest challenge that you believe the average Gulfport resident faces? What about the average business? How do you feel you can help with these issues?

SH: Aside from those devastated by the hurricane, the cost of living is a constant struggle for most of the people I know, from residents to business owners. Expenses increase faster than income: rent, healthcare, insurance, utilities. Many of these challenges are beyond our control at the local level, but I strive to ease this burden where we are able. Creating an environment conducive to business, keeping our utility and millage rates as competitive as possible, complying with federal requirements to protect our homeowner's insurance rates, and keeping our service fees affordable to better serve our residents.

JL: Rising expenses for the basics, housing, insurance, utilities, compounded by the catastrophic losses just suffered in the hurricanes. We reduce household and business expenses by targeting the lowest hanging fruit first, such as capture federal funding for homeowner/business solar energy subsidies/rebates. These can reduce electricity bills drastically. The money is just sitting there in the treasury.

For businesses, lack of revenue growth and shrinking profits are putting some out of business. I'll work to reduce government regulation strangulation. A mayor must be an effective 'Promoter-in-Chief' for Gulfport as a tourism destination and great place to live. I'll deliver on that.

The Gabber Newspaper? We Go There

In 1968, our founder, George Brann, started *The Gabber Newspaper*, then called the *Gulfport Gabber*, to hold Gulfport City Council accountable. Read more of our city council coverage, and learn about our policies on reporting, fact-checking, and funding.

KL: Regarding the residents, it is the cost of housing and insurance costs. I feel like the City's attitude towards illegal short term rentals (STRs) and auxiliary dwelling units (ADUs) must change. The City council must put pressure on our State legislators to address insurance costs. Regarding businesses, this is where the newly formed Midtown Business Collective and established Gulfport Merchants Chamber need to take the lead in more promotion of our businesses outside of Gulfport. The City needs to be more helpful when new businesses apply for permits and produce a clear outline of code requirements all at one time.

Publisher's Note: John Liccione is currently suing The Gabber Newspaper *for $10 million.*

Want More 2025 Gulfport Mayoral Election News?

For more election news, subscribe to The Weekly and The Beach Barnacle, our two weekly newsletters. And make thegabber.com your homepage to stay up-to-date on all the news happening in Gulfport, South Pinellas, and the Beaches.

by Rachel Rubin

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Filed Under: News, Vote

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EXHIBIT R

Tampa Bay Times

ELECTIONS

Democrats want to take on Anna Paulina Luna in 2024. But they need a candidate.

The freshman lawmaker will have more money behind her than in 2022 and the advantage of the incumbency.



Anna Paulina Luna speaks to a crowd during the Keep Florida Free Tour on Wednesday, Aug. 24, 2022, in Tampa. [LUIS SANTANA | Times]

By **Josh Archote** *Times staff*

Published Aug. 10 | Updated Yesterday

Democrats are targeting U.S. Rep. Anna Paulina Luna's 13th Congressional District seat in 2024. But they have yet to find a candidate to face the freshman lawmaker from Pinellas County.

The Democratic Congressional Campaign Committee has labeled 31 Republican-held House seats as vulnerable, including two in Florida — the ones held by Luna and Maria Elvira Salazar, who represents parts of Miami.

Democrats expect high voter turnout from left-leaning voters in Florida if they can get two initiatives on the ballot related to recreational use of marijuana and abortion.

"We got new leadership with the Florida Democratic Party. National groups are also paying attention. The vice president has been here numerous times already, and she's indicated that she is also going to spend more time in Florida," Democratic consultant Maya Brown said. "I think that's going to be reflected in what's going to be a high turnout election for Democrats."

Although the 13th Congressional District has in recent years been a swing seat, redistricting in 2020 made the district more red.

That, along with an endorsement from former President Donald Trump, paved the way for Luna's victory in 2022, when she beat Democrat Eric Lynn, an adviser under former President Barack Obama, comfortably by 8 points. Republican turnout in 2022 in Pinellas County was higher than that of Democrats and part of a red wave that swept Florida.

"Anna Paulina Luna vanquished her last democrat opponent, despite being outspent by $11 Million, a 12-to-1 disadvantage for her. Every local democrat politician with half a brain knows they can't beat her, that's why none have stepped up to challenge," James Blair, Luna's chief political strategist, said in a text.

In her short time in Congress, Luna has cultivated a reputation for her confrontational and brazen approach to politics. A member of the Freedom Caucus, Luna has been at the forefront of a conservative rebellion against the more moderate arm of the party.

Her most recent action includes a successful effort she led to censure Democratic lawmaker Adam Schiff for his involvement in the Trump-Russia investigation. She is also leading a House investigation into UFOs and intelligence oversight.

She has also pressured the U.S. Army Corps of Engineers for faster action on beach renourishment in Pinellas County.

But Justin Chermol, a spokesperson with the Democratic Congressional Campaign Committee, said many of the issues that Luna focuses on are not what matter most to Floridians.

"Rather than work to lower costs, create jobs, and keep our communities safe, Luna has prioritized aliens from outer space and the fringe of our politics," Chermol said in a statement.

The National Republican Congressional Committee said it is confident in Luna's ability to hold her seat.

"Democrats know they have no chance to take back this seat, evidenced by the fact not one serious candidate has jumped into this race. Democrats pretending they can take this seat is all talk," Delanie Bomar, a spokesperson for the National Republican Congressional Committee, said in a statement. Bomar's organization is focused on flipping Florida's 9th District, held by Democrat Darren Soto since 2017.

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Luna will likely have more money behind her this election in addition to the benefit of being an incumbent. The Club for Growth, a conservative organization known for propping up more conservative members of Congress, is preparing a $20 million defense to help The Patriot 20, according to a memo obtained by Politico.

Five freshmen members of the group who are especially vulnerable will be the focus, including Luna.

EXHIBIT S

ELECTIONS

Democrats want to take on Anna Paulina Luna in 2024

The freshman lawmaker will have more money behind her than in 2022 and the advantage of the incumbency.



Anna Paulina Luna speaks to a crowd during the Keep Florida Free Tour on Wednesday, Aug. 24, 2022, in Tampa. [LUIS SANTANA | Times]

By **Josh Archote** *Times staff*

Published Aug. 10, 2023 | Updated Sept. 15, 2023

Democrats are targeting U.S. Rep. Anna Paulina Luna's 13th Congressional District seat in 2024. But they are still looking for a candidate to face the freshman lawmaker from Pinellas County.

The Democratic Congressional Campaign Committee has labeled 31 Republican-held House seats as vulnerable, including two in Florida — the ones held by Luna and Maria Elvira Salazar, who represents parts of Miami.

Democrats expect high voter turnout from left-leaning voters in Florida if they can get two initiatives on the ballot related to recreational use of marijuana and abortion.

"We got new leadership with the Florida Democratic Party. National groups are also paying attention. The vice president has been here numerous times already, and she's indicated that she is also going to spend more time in Florida," Democratic consultant Maya Brown said. "I think that's going to be reflected in what's going to be a high turnout election for Democrats."

Although the 13th Congressional District has in recent years been a swing seat, redistricting in 2020 made the district more red.

That, along with an endorsement from former President Donald Trump, paved the way for Luna's victory in 2022, when she beat Democrat Eric Lynn, an adviser under former President Barack Obama, comfortably by 8 points. Republican turnout in 2022 in Pinellas County was higher than that of Democrats and part of a red wave that swept Florida.

"Anna Paulina Luna vanquished her last democrat opponent, despite being outspent by $11 Million, a 12-to-1 disadvantage for her. Every local democrat politician with half a brain knows they can't beat her, that's why none have stepped up to challenge," James Blair, Luna's chief political strategist, said in a text.

In her short time in Congress, Luna has cultivated a reputation for her confrontational and brazen approach to politics. A member of the Freedom Caucus, Luna has been at the forefront of a conservative rebellion against the more moderate arm of the party.

Her most recent action includes a successful effort she led to censure Democratic lawmaker Adam Schiff for his involvement in the Trump-Russia investigation. She is also leading a House investigation into UFOs and intelligence oversight.

She has also pressured the U.S. Army Corps of Engineers for faster action on beach renourishment in Pinellas County.

But Justin Chermol, a spokesperson with the Democratic Congressional Campaign Committee, said many of the issues that Luna focuses on are not what matter most to Floridians.

"Rather than work to lower costs, create jobs, and keep our communities safe, Luna has prioritized aliens from outer space and the fringe of our politics," Chermol said in a statement.

So far, one Democrat has filed to run for the seat: John Liccione, who listed an address in South Pasadena in a statement of candidacy he filed in June with the Federal Election Commission.

The National Republican Congressional Committee said it is confident in Luna's ability to hold her seat.

"Democrats know they have no chance to take back this seat, evidenced by the fact not one serious candidate has jumped into this race. Democrats pretending they can take this seat is all talk," Delanie Bomar, a spokesperson for the National Republican Congressional Committee, said in a statement. Bomar's organization is focused on flipping Florida's 9th District, held by Democrat Darren Soto since 2017.

Luna will likely have more money behind her this election in addition to the benefit of being an incumbent. The Club for Growth, a conservative organization known for propping up more conservative members of Congress, is preparing a $20 million defense to help The Patriot 20, according to a memo obtained by Politico.

Five freshmen members of the group who are especially vulnerable will be the focus, including Luna.

Correction: *This story has been updated to reflect that, in June, one Democrat filed to run for Congressional District 13.*

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER; et al
Defendants.
_____/

Case No.: 24-003939-CI

PLAINTIFF'S SECOND SUPPLEMENT TO RESPONSE IN OPPOSITION TO DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

(Adding Exhibit T)

1. Plaintiff submits this Second Supplement to his Response in Opposition to Defendants' Motion to Dismiss the Third Amended Complaint to add **Exhibit T**, and to further address Defendants' arguments with objective, real-world evidence from the Pinellas County Democratic Executive Committee's own public candidate listing. See image below.[1]

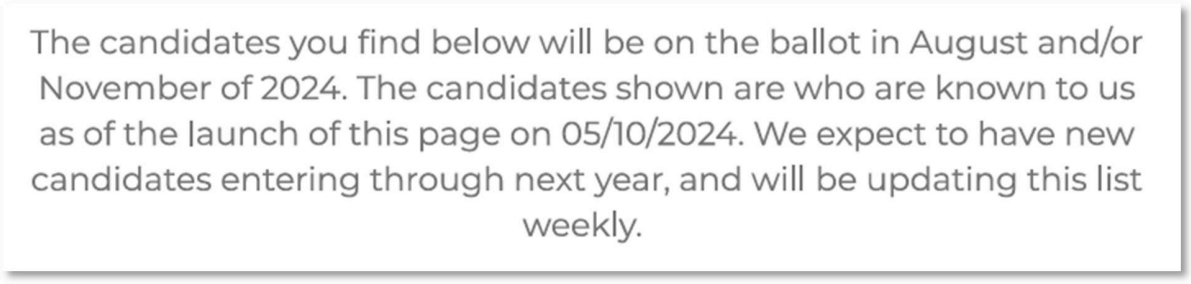


Pinellas County Democratic Party website presentation of the incomplete candidate field in the August 20 2024 Democratic primary election in Pinellas for the CD-13 and CD-14 races (extracted from attached Exhibit T)

[1] Source: https://pinellasdemocrats.org/candidates (captured on January 2, 2026).

ELECTRONICALLY FILED 01/02/2026 01:48:54 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

2. This Second Supplement does not alter Plaintiff's claims or legal theories. It reinforces why those claims are meritorious and why dismissal is improper, including Plaintiff's claims based on defamation by commission (literal falsity) and defamation by implication or omission (false gist and sting).
3. Exhibit T is the full web page printout of the Pinellas County Democratic Executive Committee's official candidates page. It shows the party listed the same four of the five CD-13 candidates that The Gabber profiled in its July 12, 2024 article: Sabrina Bousbar, Liz Dahan, Whitney Fox, and Mark Weinkrantz.
4. The page deliberately omits Plaintiff, the fifth qualified Democratic candidate in CD-13.
5. Exhibit T also contains an express factual representation—quoted verbatim and shown in the inline snapshot below—that the candidates listed were those "known to us as of the launch of this page on 05/10/2024," with "weekly" updates promised thereafter.



6. That representation is materially false. Plaintiff filed to run for Congress in late May 2023 and was personally known to Pinellas Democratic Party leadership for nearly a year before May 10, 2024, including through Plaintiff's attendance at Party membership meetings chaired by Pinellas Democratic Executive Committee Chair Jennifer Griffith. Plaintiff's candidacy was therefore known—not merely knowable from public records—at the time Exhibit T was published. The "known to us" assurance is thus demonstrably untrue, and it is

probative of intentional or, at minimum, reckless misrepresentation in a voter-facing, field-defining "candidate list" publication, the omission of which was subsequently echoed without disclosure in Defendants' newspaper.

7. This graphic proves the party's deliberate exclusion of Plaintiff as a non- "recognized" candidate, mirroring precisely The Gabber's exclusion in its voter-guide format in the July 12, 2024 article. It supports Plaintiff's allegation that The Gabber's presentation of "The four candidates" was not neutral reportage but a knowing alignment with the party's partisan omission, creating a false and defamatory implication that Plaintiff was not a legitimate candidate in the race.
8. Exhibit T ties directly to Plaintiff's existing exhibits, arguments, and pleadings. It contrasts with Supplement Exhibits O–P (accurate five-candidate reports by Florida Politics and Florida Phoenix) and further undermines Defendants' "debate preview" defense, as the party's listing was not a debate advertisement but a curated candidate field. It also complements Exhibits C–G (The Gabber's pattern of full candidate listings) and Q–S (accuracy in Plaintiff's mayoral race), showing Defendants' capability to report accurately when they choose.
9. Taken together with the record, Exhibit T infers malice and deliberate conduct: Defendants contacted Weinkrantz (photo inference from Exhibit B in the first supplement), but concealed the article from Plaintiff despite knowledge of his candidacy, adopting the party's exclusion without disclosure.

WHEREFORE, Plaintiff respectfully requests that the Court:

A. Take judicial notice of this supplement and Exhibit T at the January 5, 2026 hearing under § 90.202(12);

B. Deny Defendants' Motion to Dismiss the Third Amended Complaint in its entirety;

C. Deny Defendants' request for dismissal and attorneys' fees under Florida's Anti-SLAPP statute (§ 768.295, Fla. Stat.), because the Third Amended Complaint and the pleadings before the Court plausibly allege actionable defamation by commission and implication and do not establish, at the pleading stage, that this action was filed "primarily because" Defendants exercised protected speech within the meaning of the statute;

D. Grant such other relief as is just and proper.

Respectfully Submitted,

/s/ John W. Liccione
John W. Liccione
Plaintiff, Pro Se
PO Box 229
Dunedin, FL 34697
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email and e-fining portal to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com), on January 2, 2026.

/s/ John W. Liccione

EXHIBIT T

Pinellas Democratic Party Webpage Covering the 2024 August Primary Candidates

DONATE VOLUNTEER

PINELLAS DEMOCRATIC PARTY

2024 AUGUST PRIMARY CANDIDATES

Pinellas Democratic Party **2024 CANDIDATES**

The Pinellas County Democratic Party's candidate vetting policy is in accordance with the Bylaws of the Florida Democratic Party and the Pinellas County Democratic Party. The full policy can be found below.

We cannot endorse or support any candidate prior to qualifying, nor in a contested Democratic Primary election.

Post-primary, the Pinellas County Democratic Party may offer support to Democratic candidates who have successfully completed our vetting process. This support can range from canvassing and phone banking to potential monetary contributions, social media promotion, and inclusion in promotional materials.

Our vetting process is designed to ensure that candidates align with the commonly accepted Democratic values and principles as outlined by the Pinellas County Democratic Executive Committee, the Florida Democratic Party, and the Democratic National Committee. Any history of activities contrary to these values

is a disqualifier for our support. Additionally, registration as a Democrat alone does not automatically qualify a candidate for our endorsement.

READ MORE

The candidates you find below will be on the ballot in August and/or November of 2024. The candidates shown are who are known to us as of the launch of this page on 05/10/2024. We expect to have new candidates entering through next year, and will be updating this list weekly.

2024 Federal Elections

Federal, State, Multi-County Candidates: Additional candidate information can be found on the Florida Division of Elections website and/or the Federal Election Commissions website.



United States President

Kamala Harris

August 20, 2024 Primary • United States Senate



UNITED STATES SENATE

Stanley Campbell



UNITED STATES SENATE

Rod Joseph



UNITED STATES SENATE

Debbie Mucarsel-Powell



UNITED STATES SENATE

Brian Rush

August 20, 2024 Primary • **United States Congress**



UNITED STATES CONGRESS D. 13

Sabrina Bousbar



UNITED STATES CONGRESS D. 13

Liz Dahan



UNITED STATES CONGRESS D. 13

Whitney Fox



UNITED STATES CONGRESS D. 13

Mark Weinkrantz



2024 State

State, Multi-County Candidates: Additional candidate information can be found on the website and/or the website.

UNITED STATES CONGRESS D. 14

Kathy Castor



STATE SENATE D. 21

Doris Carroll



STATE REPRESENTATIVE D. 57

Kelly Johnson



STATE REPRESENTATIVE D. 58

Bryan Beckman



STATE REPRESENTATIVE D. 59

Dawn Douglas



STATE REPRESENTATIVE D. 60

Lindsay Cross



STATE REPRESENTATIVE D. 61

Nathan Breummer



STATE REPRESENTATIVE D. 62

Michele Rayner

2024 Pinellas County Elections

Click here to see the full list of local candidates who have filed to run for office.

Pinellas County Commission



COUNTY COMMISSIONER
D. 1 (AT-LARGE)

Joanne "Cookie" Kennedy



COUNTY COMMISSIONER
D. 3 (AT-LARGE)

Charlie Justice



COUNTY COMMISSIONER
D. 7

Rene Flowers

Pinellas County School Board

The Pinellas County School Board is a non-partisan race.



SCHOOL BOARD
D. 1 (AT-LARGE)

Laura Hine (NP)



SCHOOL BOARD
D. 4
Eileen Long (NP)



SCHOOL BOARD
D. 5
Brad Decourte (NP)

Elections

Municipal Candidates: Contact the City/Town Clerk's Office for information on offices up for election in any of the 24 municipalities in Pinellas County. The list below are the municipalities who have seats up for election in 2024. If no candidate files to run against an incumbent, there will be no election. Check your city's website for the most up-to-date information.



LEALMAN SPECIAL FIRE CONTROL DISTRICT, SEAT 3

Jay D. Alexander

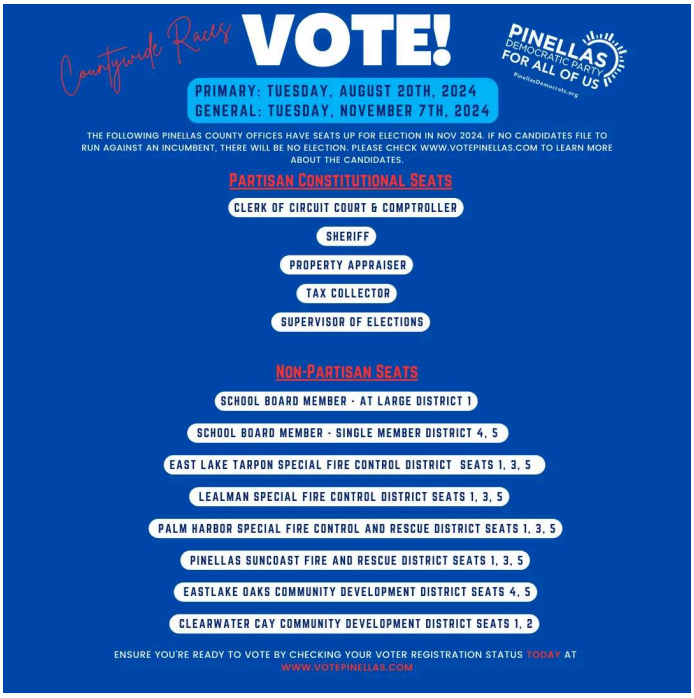


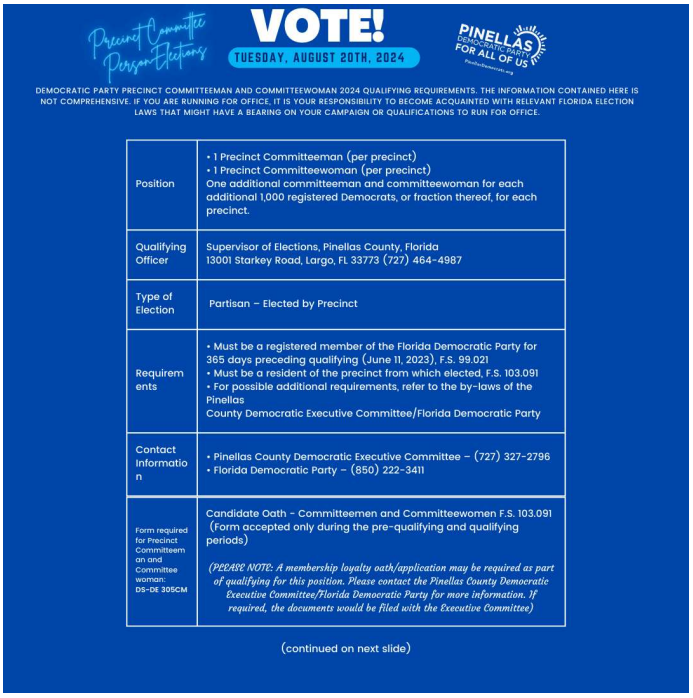
PALM HARBOR SPECIAL FIRE CONTROL AND RESCUE DISTRICT, SEAT 3

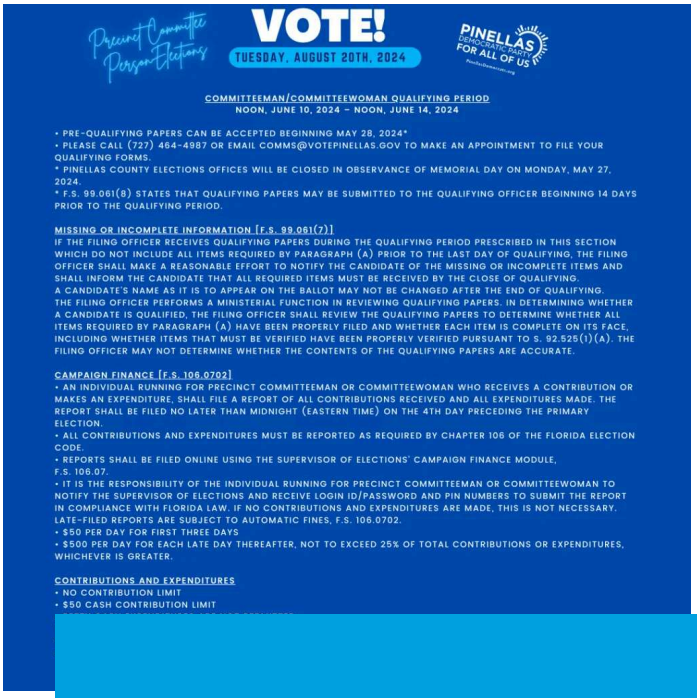
Carl Zimmermann

All Election Registration Information

Click to view larger.







HELP ELECT DEMOCRATS

Making a donation to the Pinellas Democratic Party helps us organize to register voters, support campaigns and spread the ideals of the Democratic Party.

DONATE

PINELLAS
DEMOCRATIC PARTY



Pinellas County Headquarters

2250 1st Ave. N.
St Petersburg, FL 33713

727-327-2796



Outreach Location

1402 Martin Luther King Jr. Ave. N.
Clearwater, FL 33755

727-230-1812

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Voter Guide

Get Involved

Join Us

Clubs & Caucuses

Connect

About Us

How We Operate

Board & Committees

News

Events

Contact

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

JOHN WILLIAM LICCIONE,
Plaintiff,
v.
CATHY SALUSTRI-LOPER; et al
Defendants.
_____/

Case No.: 24-003939-CI

PLAINTIFF'S NOTICE OF SUPPLEMENTAL EXHIBITS (U AND V)

Plaintiff files this Notice to submit Supplemental Exhibits U and V for the Court's consideration in connection with Defendants' pending Motion to Dismiss.

1. The July 12, 2024 publication at issue is already before the Court as Plaintiff's Exhibit B, and the January 23, 2025 Gulfport mayoral "Meet the Candidates" publication is already before the Court as Plaintiff's Exhibit Q. Plaintiff's contemporaneous response to Defendants' outreach is already in the record as Plaintiff's Exhibit J.
2. Exhibit U consists of screenshots reflecting the public-facing search-result presentation (title and subtitle/snippet) for the same publications already filed as Exhibits B and Q.
3. Exhibit V is a screenshot transcript of a voicemail left on August 13, 2024 by the byline reporter of the July 12, 2024 publication, which is referenced in the Third Amended Complaint and corroborates Plaintiff's response already in the record as Exhibit J.
4. Plaintiff submits these supplemental exhibits to assist the Court's evaluation of the existing record and will address them in oral argument at the scheduled zoom hearing on January 5, 2025.

ELECTRONICALLY FILED 01/04/2026 03:52:04 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Respectfully Submitted,

/s/ John W. Liccione

John W. Liccione
Plaintiff, Pro Se
PO Box 229
Dunedin, FL 34697
443-698-8156
jliccione@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email and e-fining portal to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com), on January 4, 2026.

/s/ John W. Liccione

EXHIBIT U

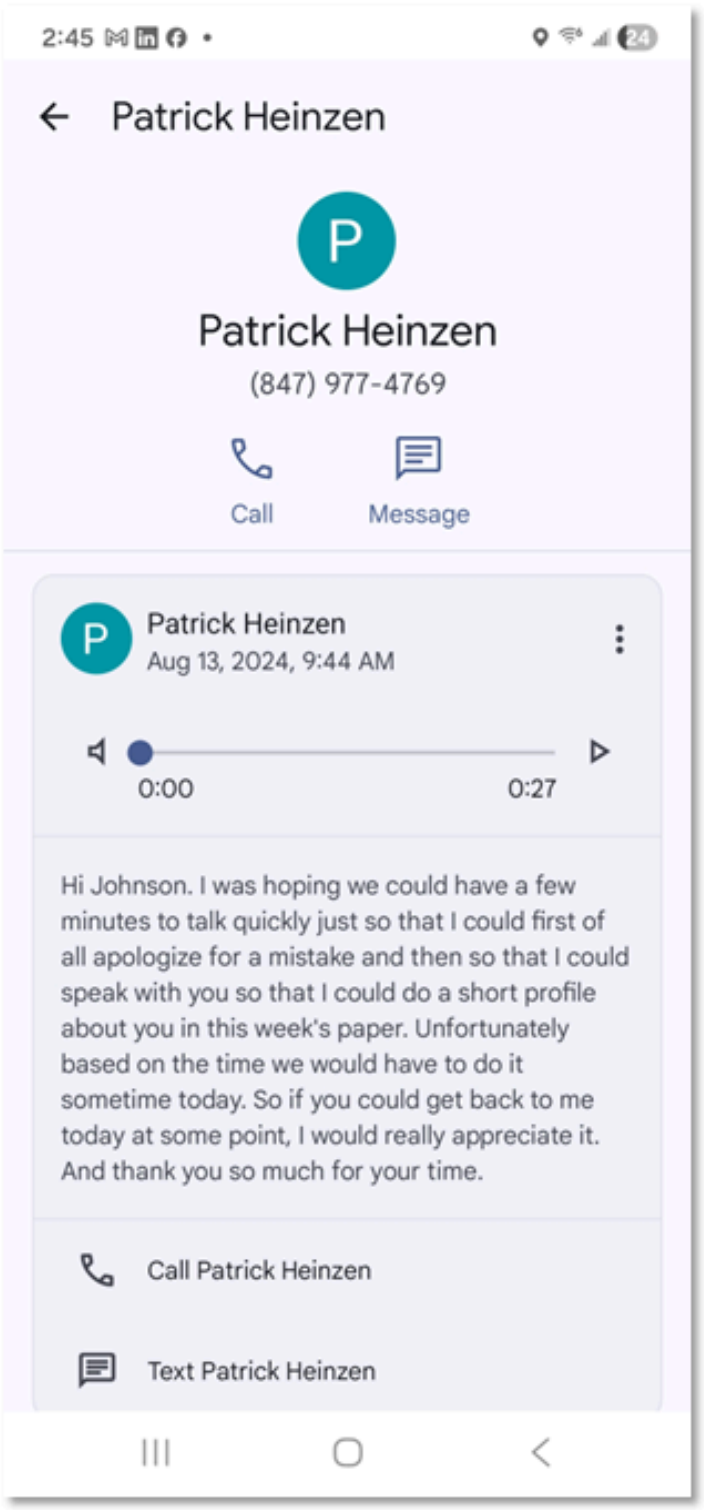
The Gabber Newspaper's Search Engine Optimization Decisions for Their July 12, 2024 Meet the Candidates Article Contrasted With January 23, 2025 Gulfport Mayoral Election Meet the Candidates Article





EXHIBIT V

The Gabber Newspaper Reporter Patrick Heinzen's Voicemail Left With Plaintiff on August 13, 2024



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KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
CLKDU08

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND FOR ATTORNEY'S FEES

THIS CAUSE came before the Court for hearing on July 8, 2025 on Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and For Attorneys' Fees dated October 3, 2024 and Defendants' Motion to Dismiss Second Amended Complaint dated June 20, 2025. The Court has reviewed the following materials:

1. Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and for Attorneys' Fees ("First Motion to Dismiss") dated October 3, 2024.
2. Plaintiff's Response to Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and Request for Hearing ("First Response") dated October 22, 2024.
3. Defendants' Motion to Dismiss Second Amended Complaint ("Second Motion to Dismiss") dated June 20, 2025.
4. Plaintiff's Response and Memorandum of Law in Opposition to Defendants' Motion to Dismiss Second Amended Complaint ("Second Response") dated July 2, 2025.

Exhibit A

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County
ELECTRONICALLY FILED 1/29/2026 2:40:52 PM KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

Having considered these materials, the case file, the applicable law, the argument of counsel at a hearing on July 8, 2025, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 3, 2024, Plaintiff initiated this action by filing his original Complaint. On September 5, 2024, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right. The FAC relates to Plaintiff's unsuccessful bid to win the Democratic primary election for U.S. House District 13. On October 3, 2024, Loper filed the First Motion to Dismiss, which asserts that the claims against Ms. Loper violate Florida's Anti-SLAPP Statute codified at section 768.295, Florida Statutes (2024).[1] Prior to disposition of this motion, the Court entered an order on November 20, 2024 staying the instant matter due to the existence of related federal litigation which was pending prior to the initiation of this action. The stay remained in place until a hearing on June 10, 2025 in which the Court ruled on the record that it would grant Plaintiff's Motion to Lift Stay dated April 1, 2025 and Plaintiff's Motion for Leave to File Second Amended Complaint dated April 12, 2025 with the caveat that said motions were granted without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC.[2]

A. The First Amended Complaint

The introductory section of the FAC states that Plaintiff "brings this action seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of Defendants." FAC ¶ 1. The FAC names Defendant, CATHY

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

[2] On July 17, 2025, the Court rendered the corresponding written order.

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

SALUSTRI LOPER ("Ms. Loper") as a defendant and alleges eight counts against her. The FAC identifies Ms. Loper as the "owner and editor of the Gabber Newspaper, a local newspaper in Gulfport[.]" FAC ¶ 8. The remaining factual allegations made against Ms. Loper are limited to the following:

> 43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of the Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Henzen[.]
>
> 44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) congressional candidate that lives in Gulfport.
>
> 45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

FAC ¶¶ 43-45. Counts I, II, III, IV, V, VI, and VIII of the FAC allege various causes of action against Ms. Loper, including multiple statutory violations, conspiracy to commit election fraud, intentional interference with prospective economic advantage, and injunctive relief. The FAC also includes a section styled "Count X," which provides a general plea for damages and is therefore not an alleged cause of action which requires any further consideration by the Court.

B. The Second Amended Complaint

The Second Amended Complaint ("SAC") is now the operative pleading. The SAC names three defendants: Ms. Loper, Barry Loper[3] ("Mr. Loper"), and Thursday Morning Media, Inc.

[3] The SAC mistakenly refers to Mr. Loper as "Thomas Loper."

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

("TMMI").[4] The SAC alleges that: 1) the Lopers are co-owners of TMMI; 2) TMMI and the Lopers own *The Gabber*; and 3) Ms. Loper is the editor-in-chief of *The Gabber*. SAC ¶¶ 3-5. Ms. Loper "is sued in her capacity as owner and editor" of *The Gabber*. SAC ¶¶ 3, 16. Similarly, Mr. Loper and TMMI are sued for their alleged role in harming Plaintiff's 2024 congressional campaign and 2025 Gulfport mayoral campaign. SAC ¶¶ 4, 18, 19, 21.

The SAC alleges three causes of action, which are asserted against each of the defendants: defamation, tortious interference with a prospective economic advantage, and civil conspiracy. Accordingly, the SAC abandons six of the eight causes of action alleged against Ms. Loper in the FAC. The gist of Plaintiff's allegations in the SAC pertains to the publication of certain articles by *The Gabber*. In addition to these publications, Plaintiff also complains of "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and "[t]he concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50. Lastly, Ms. Loper is also sued for a statement she made while moderating a political debate during the 2025 mayoral campaign. *See* SAC ¶¶ 25-27. On June 20, 2025, Defendants filed their Second Motion to Dismiss.[5] Ms. Loper is now joined by Mr. Loper and TMMI in moving to dismiss the SAC on Anti-SLAPP grounds.

---

[4] Collectively these three defendants are hereinafter referred to as "Defendants."

[5] The Second Motion to Dismiss is filed on behalf of Defendants despite noting that Plaintiff has not served Mr. Loper and TMMI. *See* Second Mot. to Dismiss at 1 n.1. However, the Second Motion to Dismiss addresses the merits of the SAC and seeks affirmative relief, namely in the form of an award of attorney's fees and costs. Accordingly, counsel for Defendants has made a general appearance in this matter. *See, e.g., Segalis v. Roof Depot USA, LLC*, 178 So. 3d 83, 85 (Fla. 4th DCA 2015) (holding that a filing seeking "some sort of affirmative relief on the merits of the case" constitutes a general appearance). Any argument that this Court lacks personal jurisdiction over Mr. Loper and TMMI has thus been waived. *Id.* (stating "if a party makes a general appearance in a case without first challenging personal jurisdiction, the party is deemed to have waived any claims as to lack of personal jurisdiction").

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

II. LEGAL STANDARD

"By statute, Florida prohibits 'Strategic Lawsuits Against Public Participation.'" *Vericker v. Powell*, 406 So. 3d 939, 941 (Fla. 2025) (citing § 768.295, Fla. Stat. (2024)). Per the statute, "[a] person…in this state may not file…any lawsuit, cause of action, [or] claim…against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue[.]" § 768.295(3), Fla. Stat. (2024). The purpose of the Anti-SLAPP statute is "to safeguard the exercise of constitutionally protected free-speech rights by prohibiting lawsuits targeted at suppressing them." *Vericker*, 406 So. 3d at 942 (citing § 768.295(1), Fla. Stat. (2024)). "In addition, the statute operates to deter violations of its prohibition on meritless, speech-targeted lawsuits—accomplishing this through attorney-fee awards[.]" *Id.* at 946 (citing § 768.295(4), Fla. Stat. (2024)). "The express legislative intent of subsection 768.295(4) is to secure a speedy decision at 'the earliest possible time' on a summary judgment or motion to dismiss." *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 (Fla. 4th DCA 2019). Accordingly, courts routinely assess Anti-SLAPP applicability to speech-based claims at the motion to dismiss stage. *See, e.g., Godwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (requiring application of Anti-SLAPP standards to a motion to dismiss); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same).

In considering a motion to dismiss, the trial court generally must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pleaded allegations as true. *Precision Orthopedics, Inc. v. Zimmer US, Inc.*, 341 So. 3d 458, 461 (Fla. 2d DCA 2022) (citations omitted). However, "a motion to dismiss based on the Anti-SLAPP statute is distinct from a traditional motion to dismiss brought under the Florida Rules of Civil Procedure." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th

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Cir. Ct. Apr. 29, 2021). In particular, "the Anti-SLAPP statute requires the trial court to do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant." *Mishiyev v. Davis*, 402 So. 3d 443, 448 (Fla. 2d DCA 2025) (citations omitted). "Rather, the trial court must apply a burden-shifting test." *Id.*[6] "[T]he initial burden is on the SLAPP defendant to establish that the Anti-SLAPP statute applies, and once the defendant has done so, the burden shifts to the claimant to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit." *Godwin*, 371 So. 3d at 975 (cleaned up).

III. ANALYSIS

A. Did the SAC Supersede Ms. Loper's Claims that the FAC Violated the Anti-SLAPP Statute?

Because the Court granted Plaintiff's Motion for Leave to File Second Amended Complaint without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC, the Court must first consider whether the First Motion to Dismiss is moot. The Anti-SLAPP Statute specifically provides: "The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with ***a claim*** that an ***action*** was filed in violation of this section." § 768.295(4), Fla. Stat. (emphasis added). The plain language of the statute does not limit recoverable fees and costs to those associated only with the operative pleading. Furthermore, the Eleventh Judicial Circuit of Florida recently held the following:

[6] The Second District established the burden-shifting test for Anti-SLAPP motions in *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). In *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025), the Florida Supreme Court disapproved of the *Gundel* court's determination that certiorari was the proper vehicle for review of trial court orders disposing of Anti-SLAPP motions. However, the *Vericker* decision did not disturb the burden-shifting analysis utilized by the *Gundel* court. In *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021), the Third District declined to follow the *Gundel* burden-shifting approach and certified conflict to the Florida Supreme Court. However, it appears that none of the parties in *Lam* invoked the Florida Supreme Court's jurisdiction to consider the certification of conflict. The Second District utilized the *Gundel* burden-shifting analysis as recently as 2025 in *Mishiyev v. Davis*, 402 So. 3d 443 (Fla. 2d DCA 2025). Accordingly, this Court must do the same.

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> In this action, the entirety of the litigation -- principally, the preparation of Lazarow's first motion under the Anti-SLAPP Statute, Lazarow's opposition to Marquez's motions to amend, the preparation of Lazarow's second motion under the Anti-SLAPP Statute, oral argument on that motion, and all matters pertaining to Marquez's appeal -- concerned Lazarow's claim that this action was filed in violation of the Anti-SLAPP Statute. Lazarow is thus entitled to all reasonable attorney's fees and costs she incurred in this action.

Marquez v. Lazarow, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022).[7]

In *Marquez*, Florida's Eleventh Circuit held that the defendant was entitled to attorney's fees incurred for her defense against both the initial complaint and the amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute." *Id.* As in *Marquez*, Ms. Loper has maintained a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute both as to the FAC And SAC. As such, the Court finds that Ms. Loper's claims for attorney's fees as to the FAC survived amendment of the complaint, and accordingly the Court must consider whether both the FAC and SAC violate the anti-SLAPP statute.

B. Do Florida's Anti-SLAPP Provisions Apply to the Contested Speech?

Defendants now have the burden of establishing that the Anti-SLAPP Statute applies to the FAC and SAC. In doing so, Defendants "must present a prima facie case that the statements are protected by the First Amendment." *Mishiyev*, 402 So. 3d at 448. "Florida's Anti-SLAPP statute protects the right to exercise 'free speech in connection with public issues ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.'" *Id.* (citing § 768.295(1), Fla. Stat.). "This requirement can be effectively split into two parts: (1) the

[7] The trial court's order was subsequently affirmed in *Marquez v. Lazarow*, 347 So. 3d 472 (Fla. 3d DCA 2022).

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medium of the speech and (2) its content." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021).

As to the medium of the speech, "'[f]ree speech in connection with public issues' means any written or oral statement that is protected under applicable law and...is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, ***magazine article***, musical work, ***news report***, or other similar work." § 768.295(2)(a), Fla. Stat. (2024) (emphasis added). *See also Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (stating that the phrase "'free speech in connection with a public issue' includes any written statement protected under applicable law and made in connection with a news report" (citing § 768.295(2)(a), Fla. Stat.)).

As to content, the contested speech "must only be made in connection with a 'public issue' in order to fall within the Anti-SLAPP statute's protection." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021). "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (cleaned up).

i. The FAC

The FAC mentions Loper in only four paragraphs. First Resp. ¶ 2. Specific allegations pertaining to Ms. Loper are found exclusively in the general allegations section of the FAC. *See* FAC ¶¶ 8, 43, 44, 45. In sum, these paragraphs allege that Loper is the owner and editor of a newspaper that published an article on July 12, 2024 ("Debate Article") about a primary election

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debate between Democratic Party candidates for a congressional seat. First Resp. ¶ 2.[8] The medium of this speech clearly qualifies as a news report, which is an explicitly enumerated category in section 768.295(2)(a), Florida Statutes (2024). Additionally, the content of the Debate Article clearly concerns a public issue as it pertains to a political concern of the community and is subject of legitimate news interest in that it profiles various candidates who were running for a political office. Since the FAC does not allege a cause of action for defamation, the Court need not analyze whether the contested speech is unprotected by virtue of the law of defamation. As such, Ms. Loper has met her burden to demonstrate that her contested speech is protected and governed by the Anti-SLAPP Statute.

ii. The SAC

In the SAC, Plaintiff alleges additional instances of purportedly actionable speech. Defendants argue that the SAC demonstrates "on its face" that the Anti-SLAPP Statute applies because it names Defendants in their capacities as owners and operators of *The Gabber*. Second Mot. to Dismiss at 2. This fact is uncontested. *See* SAC ¶¶ 3-5 (alleging that Defendants are sued due to their ownership, control, and operation of *The Gabber* newspaper). As Defendants point out, the gist of Plaintiff's claim against Defendants relate to "the newspaper's content" and "alleged decisions regarding the content of news articles" in relation to "a 2024 Congressional primary and a 2025 mayoral election." Second Mot. to Dismiss at 2. Specifically, the SAC identifies the following publications by *The Gabber* which Plaintiff claims are actionable: 1) the Debate Article; 2) an article published on February 27, 2025 entitled "Gulfport Mayoral Candidate John Liccione's Time in Courts" ("Contempt Article"); and 3) an op-ed published on March 9,

[8] Plaintiff incorporated the Debate Article into the SAC via the following hyperlink: https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/. *See* SAC at 4 n.1.

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2025 authored by a non-party named Barbara Banno which likened Plaintiff to "cheap, white sangria" ("Banno Article"). SAC ¶ 50.

Count I of the SAC states: "This claim arises from a pattern of knowingly false, misleading, and defamatory statements and omissions by Defendants[.]" SAC ¶ 50. Plaintiff admits that the Debate Article is "the cornerstone" of the SAC. Second Resp. at 1. Count I also alleges that Defendants used their editorial discretion in various instances to conceal information by refusing to publish material relevant to Plaintiff's political campaigns, and that such behavior is actionable. Count II states: "Defendants' actions, including the publication of false and misleading articles...directly interfered with Plaintiff's prospective economic relationships" and that the Debate Article "was calculated to ensure maximum suppressive impact on Plaintiff's public visibility and support." SAC ¶¶ 75, 80. Lastly, Count III alleges that Defendants "conspired with themselves and others to publish defamatory content, suppress exculpatory information, and undermine Plaintiff's political candidacies in 2024 and 2025." SAC ¶ 90. The SAC therefore claims that contested speech is directly actionable or otherwise serves as evidence of a conspiracy involving Defendants to interfere with and harm Plaintiff's political campaigns. *See, e.g.*, SAC ¶ 47 (alleging that the Banno Article "was the final act in furtherance of [a] conspiracy").

The medium of the contested speech once again clearly falls into a category of speech that is specifically enumerated in section 768.295(2)(a). The Debate Article and the Contempt Article constitute news reports. It can be argued that the Banno Article, which is an op-ed in nature, also qualifies as a news report within the meaning of the Anti-SLAPP Statute, but it is perhaps more appropriately categorized as a magazine article or, at the very least, belongs in the catch-all category of "other similar work." In any event, it also qualifies as a medium of speech which is governed by the Anti-SLAPP Statute. Once again, it is clear from the content of the three identified

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publications – the Debate Article, the Contempt Article, and the Banno Article – that the contested speech all concerns public issues given that the publications involve reporting and commentary on political campaigns of local interest, and that such matters are of legitimate news interest as the speech shed light and opinion on the qualifications of candidates for political office.

Plaintiff additionally argues that the contested speech is not constitutionally protected because it is defamatory. It is true that defamation is not constitutionally protected speech. *See, e.g., Mishiyev*, 402 So. 3d at 450 (citing *McQueen v. Baskin*, 377 So. 3d 170, 176 (Fla. 2d DCA 2023)). For the reasons provided in more detail below, the Court finds that there is no merit to Plaintiff's defamation claims. Given the foregoing, Defendants have met their burden to demonstrate that the contested speech is governed by the Anti-SLAPP statute. To the extent the SAC is grounded in other actions, e.g. *The Gabber*'s alleged concealment of information favorable to Plaintiff's campaign and a statement made by Ms. Loper to Plaintiff while moderating a mayoral debate, such allegations do not appear to fall within the purview of the Anti-SLAPP statute but are nonetheless meritless for the reasons described further below.

C. Are Plaintiff's Claims Primarily Based on First Amendment Rights in Connection with a Public Issue?

The burden now shifts to Plaintiff to demonstrate that his claims were not filed primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. Plaintiff's claims against Defendants in both the FAC and SAC seek redress primarily for written statements published in a local newspaper concerning his two unsuccessful political campaigns. Plaintiff objects to these written statements for a variety of alleged reasons including voter suppression, disinformation, violation of journalistic ethics and standards, and defamation. Plaintiff expresses discontent with what he views as *The Gabber*'s failure to report on his congressional campaign. For example, Plaintiff regards *The Gabber*'s actions as constituting "a

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pattern of willful neglect towards factual reporting contrary to the very ethics and standards Loper espouses in her publication's policies." First Resp. at 12. Such allegations demonstrate that Plaintiff filed this action primarily because Defendants engaged in speech. The publications complained of by Plaintiff clearly involved public issues.

Plaintiff's only discernible argument in response to the inquiry at hand is that the speech at issue is not protected by the First Amendment because the published articles are defamatory in nature. Such an argument is not meant for consideration at this juncture. *See Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021) (stating that the issue of whether a magazine article was defamatory and therefore not an exercise of free speech "is better addressed under the second prong of the analysis: whether Plaintiff's suit is filed without merit"). Accordingly, Plaintiff has failed to carry his burden to demonstrate that his claims in the FAC and SAC are not primarily based upon Defendants' exercise of free speech in connection with a public issue.

D. Are Plaintiff's Claims Without Merit?

Plaintiff now has the burden of demonstrating that his claims are not without merit.

i. FAC Causes of Action

For the reasons provided below, all counts in the FAC asserted against Ms. Loper fail to state a cause of action and are therefore without merit. First, Plaintiff offers no legal authority for the Court to consider in support of the validity of his claims. The First Response contains little more than Plaintiff's own theories about why the FAC states valid causes of action. Plaintiff attempts to counter the First Motion to Dismiss by arguing general concepts of defamation law by citing to "*Dominion Voting Systems v. Fox News Network*" and "*Goldwater v. Ginzburg*," neither of which includes a proper citation to a case law reporter. However, the FAC does not allege a

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cause of action for defamation against Loper. Thus, the little authority Plaintiff cites is entirely irrelevant to the validity of his claims in the FAC.[9]

Moreover, Plaintiff cites two fictitious cases in the First Response. First, Plaintiff cites to a case styled as "*Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019)" for the proposition that "courts must carefully evaluate whether the alleged speech is genuinely related to a public issue, and, more importantly, whether it is delivered in good faith and without intent to mislead." First Resp. at 16. Next, Plaintiff cites to a case styled as "*Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011)" for the proposition that "courts must evaluate whether the speech is misleading." First Resp. at 14. These cases do not appear in any Florida reporter. Not only has Plaintiff failed to present legal authority to counter Ms. Loper's grounds for dismissal, but Plaintiff has presented false legal authority to this Court, an action which is sanctionable, including as to *pro se* parties. *See e.g., Gutierrez v. Gutierrez*, 399 So. 3d 1185, 1188 (Fla. 3d DCA 2024) (finding that a *pro se* party's "submission of fictitious case law" to the court was "sufficient to warrant the imposition of sanctions" (subsequent history omitted)).

Because Plaintiff has failed to identify any legal authority which demonstrates that his causes of action against Ms. Loper are meritorious, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute as to the FAC.

ii. SAC Causes of Action

The Court now turns to the SAC. Count I purports to state a defamation claim against all Defendants. "Defamation has the following five elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public

[9] *See US Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 EMD, 2023 WL 2730567, at *1 (Del. Super. Ct. Mar. 31, 2023) ("This is a civil action involving a defamation claim"); *Goldwater v. Ginzburg*, 414 F.2d 324, 327 (2d Cir. 1969) ("This is a libel action").

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official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory." *Jews.For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008) (citation omitted). The required element of a false statement is not present if the alleged statements are true. *Cape Publications, Inc. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003) (citation omitted). "Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Kieffer v. Atheists of Florida, Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019) (citation omitted). "Under Florida law, words are defamatory when they charge a person with an infamous crime or tend to subject one to hatred, distrust, ridicule, contempt or disgrace or tend to injure one in one's business or profession." *Seropian v. Forman*, 652 So. 2d 490, 495 (Fla. 4th DCA 1995) (citing *Adams v. News–Journal Corp.*, 84 So. 2d 549 (Fla. 1955)). "Where the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in either dismissing the complaint for failure to state a cause of action or in granting a directed verdict at the proof stage." *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (citation omitted).

Count I fails to state a cause of action for defamation. First, the Court must consider the Debate Article, which Plaintiff concedes is "the linchpin of this case." Second Resp. at 3. Having reviewed the hyperlinked article incorporated by Plaintiff into the SAC, the Debate Article never mentions Plaintiff at all, an admission made by Plaintiff. *See* SAC ¶ 17. Accordingly, Plaintiff has not demonstrated that the Debate Article charges Plaintiff with an infamous crime or tends to subject him to hatred, distrust, ridicule, contempt or disgrace or tends to injure him in his business or profession. Moreover, it is clear the gist or main purpose of the Debate Article was to discuss candidates participating in the debate, which did not include Plaintiff. Plaintiff admits that he was not invited to the debate for the congressional campaign. Second Resp. at 6. Although it is

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technically true that the Contempt Article described the debate participants as "the four candidates" for the political office in question, the Debate Article was substantially true as the "gist" of the article was to preview a debate that included those four candidates and excluded Plaintiff.

As to the Contempt Article, Plaintiff fails to demonstrate an actionable basis for defamation. Plaintiff does not argue that the statements contained in the Contempt Article are untrue. In other words, Plaintiff fails to show that he in fact was not ordered to attend a hearing where criminal contempt sanctions could have been imposed on him. Plaintiff simply alleges that the proximity of "criminal" to his name in a newspaper created false impressions that he had a criminal history. In failing to demonstrate the Contempt Article was untrue, Plaintiff cannot rely upon it as grounds for a defamation claim.

Additionally, Plaintiff concedes in his Second Response that the Banno Article "is a protected opinion" but insists it "reinforces the malicious intent established by the [Debate Article][.]" Second Resp. at 8. Thus, by Plaintiff's own admission, the Banno Article does not provide an independent basis for defamation. Having already determined that the Debate Article is not sufficient to support a claim for defamation, Plaintiff's argument that the Banno Article somehow "reinforces" the Debate Article is an invalid and moot point. The Banno Article constitutes pure opinion and is therefore not actionable. *See, e.g. Smith v. Taylor Cty. Pub. Co., Inc.*, 443 So. 2d 1042, 1046 (Fla. 1st DCA 1983) ("It is clear, as the trial court determined, that a writer's opinion about a newsworthy item is a protected privilege" (citation omitted)).

Count I also alleges that Defendants engaged in "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and the "concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50.

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Plaintiff alleges that "[t]hese actions and omissions–taken together–were intended to convey a false and defamatory impression of Plaintiff to the public, to damage Plaintiff's candidacies for Congress and mayor, and to sabotage his standing within the Florida Congressional District 13 and Gulfport electorates, and in Democratic and LGBTQ+ communities at large." SAC ¶ 51. Per Plaintiff, Defendants' failure to report on these matters constitutes actionable defamation. Plaintiff has presented no authority to support his contention. On the contrary, "[t]he judgment of what is newsworthy must remain primarily a function of the publisher." *See, e.g. Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1202 (Fla. 2d DCA 2014) (citing *Doe v. Sarasota-Bradenton Florida Television Co., Inc.*, 436 So. 2d 328, 331 (Fla. 2d DCA 1983) for the proposition that "it is the primary function of the publisher to determine what is newsworthy and that the court should generally not substitute its judgment for that of the publisher"). *See also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment"). Thus, Plaintiff's contention that *The Gabber*'s alleged concealment and failure to report on matters relevant to his campaign are therefore meritless.

Count II alleges a cause of action for tortious interference with a prospective economic advantage. Plaintiff identifies two specific instances of publication and editorial decision-making by *The Gabber* which undergird this claim: 1) publication of the Debate Article (*see* SAC ¶¶ 79, 80, 82); and 2) Defendants' alleged concealment and distortion of an alleged assault on Plaintiff at a pride parade (*see* SAC ¶ 87). However, Plaintiff has failed to present legal authority that this claim is meritorious. Moreover, the established authority on the issue defeats Plaintiff's claim. The tort of interference does not apply to "communications to the public at large." *Ozyesilpinar v.*

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Reach PLC, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Additionally, news reporting is not conduct that can be the basis for a tortious interference claim. *Id.* at 461 (citation omitted). *See also Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of an interference claim against a newspaper and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication"). Since the SAC alleges that Defendants edit, own, and operate a newspaper that communicated news and opinion articles to the public at large. *See, e.g.*, SAC ¶¶ 3, 5, 29, 76. Therefore, Plaintiff's tortious interference claim fails as a matter of law.

Finally, Count III alleges a cause of action for civil conspiracy. Because the Court has already determined that all other causes of action alleged in the SAC are without merit, Count III also fails because "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). Since Count III cannot stand on its own, it is also without merit. Notably, Count III is the only cause of action which specifically mentions Ms. Loper's alleged statement about having Plaintiff removed by police from the 2025 mayoral debate. *See* SAC ¶¶ 92, 94. Because Count III fails as a matter of law, Plaintiff has failed to demonstrate an actionable basis for Ms. Loper's alleged statement at the mayoral debate.

Since Plaintiff has failed to provide sufficient legal authority to demonstrate merit as to the causes of action asserted in the SAC, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute.

iii. Shotgun Pleadings

The Court further observes that the FAC and the SAC are both impermissible shotgun pleadings. The U.S. Court of Appeals for the Eleventh Circuit has identified "four rough types or

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categories of shotgun pleadings." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). The first is "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is a complaint that does not separate "each cause of action or claim for relief" into a different count. *Id.* at 1323. The fourth is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.*

At a minimum, the FAC and SAC both fall into the first and second categories identified by the Eleventh Circuit. Each count of the FAC and SAC begins by incorporating all foregoing paragraphs. Thus, the complaints clearly fall into the first category of shotgun pleadings. Secondly, both complaints contain lengthy general allegations sections which are fully incorporated into each count. Many of the general allegations asserted in both complaints are conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.[10] Thus, both complaints also fall into the second category of shotgun pleadings. Accordingly, both complaints are subject to dismissal as procedurally defective shotgun pleadings.

[10] For example, the FAC contains numerous paragraphs detailing how an alleged whistleblower named "Tampa Girl" informed Plaintiff that "she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents." FAC ¶ 18. These allegations are totally irrelevant to Plaintiff's cause of action for Loper's alleged violation of the Computer Fraud and Abuse Act (Count V), yet said allegations are incorporated into Count V. The SAC exhibits the same defect as Count I incorporates each paragraph in the lengthy general allegations section despite many being irrelevant to the cause of action asserted. Count II incorporates all preceding paragraphs, including those asserted in Count I. Count III asserts all preceding paragraphs, including those asserted in Count I and Count II.

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IV. Entitlement to Attorney's Fees

Under the Anti-SLAPP Statute, the Court "shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4), Fla. Stat. *See also Lee v. Animal Aid, Inc.*, 388 So. 3d 25, 29 (Fla. 4th DCA 2024) ("A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under section 768.295(4)"). Accordingly, the Court finds the following:

1. Ms. Loper is the prevailing party as to the FAC;
2. Ms. Loper, Mr. Loper, and TMMI are the prevailing parties as to the SAC; and
3. Plaintiff's claims against the aforementioned defendants were filed in violation of section 768.295.

Defendants are entitled to attorney's fees and costs incurred in relation to the SAC. Additionally, Ms. Loper is entitled to attorney's fees incurred since service of the FAC upon her. *See Marquez v. Lazarow*, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022) (holding that Defendant was entitled to attorney's fees when forced to respond to both an initial complaint and an amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute"). Here, Ms. Loper filed an Anti-SLAPP motion to dismiss the FAC. In granting Plaintiff's Motion to File Second Amended Complaint, the Court specifically granted the motion with the caveat that Ms. Loper's claim to attorney's fees as to the FAC would be preserved post-amendment. Therefore, Ms. Loper is entitled to recover reasonable attorney's fees and costs incurred for defending against both the FAC and the SAC.

V. CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED:

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1. This lawsuit is without merit, and Plaintiff brought the suit primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. This is true both as to the FAC and SAC.

2. The First Motion to Dismiss is hereby **GRANTED.**

3. The Second Motion to Dismiss is hereby **GRANTED.**

4. This case is **DISMISSED WITHOUT PREJUDICE.**

5. Plaintiff is granted leave to file a third amended complaint within **TWENTY (20) DAYS** of this Order. **FAILURE TO FILE A THIRD AMENDED COMPLAINT WITHIN THE TIMEFRAME PROVIDED WILL RESULT IN DISMISSAL OF THIS ACTION WITH PREJUDICE WITHOUT FURTHER NOTICE.** *See, e.g., Neu v. Turgel*, 480 So. 2d 216, 217 (Fla. 3d DCA 1985) (subsequent history omitted).

6. Defendants are entitled to an award of their reasonable attorney's fees and costs under section 768.295(4), Florida Statutes (2024). The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 14 day of October, 2025.

Honorable Patricia A. Muscarella
Circuit Civil Judge

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KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

THIS CAUSE came before the Court for hearing on January 5, 2026 on Defendants' Motion to Dismiss Third Amended Complaint and for Stay of Vexatious Litigation ("Motion") dated November 18, 2025. Having considered the Motion, Plaintiff's Response in Opposition to Defendants' Motion dated December 8, 2025, Plaintiff's Supplement to Response in Opposition to Defendants' Motion dated December 23, 2025, Plaintiff's Second Supplement to Response in Opposition to Defendants' Motion dated January 2, 2026, the case file, the applicable law, the oral argument of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. On October 14, 2025, this Court entered an order ("Prior Order") which dismissed Plaintiff's Second Amended Complaint without prejudice and determined that Plaintiff's First Amended Complaint and Second Amended Complaint violated Florida's Anti-SLAPP Statute.[1] Accordingly, the Court found that the defendants named in the First Amended Complaint and

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

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Second Amended Complaint were entitled to an award of attorney's fees and costs under the Anti-SLAPP Statute. The Prior Order is attached as Exhibit A.

2. On November 3, 2025, Plaintiff filed a Third Amended Complaint, which asserts a single cause of action, defamation by omission, against two Defendants, Cathy Salustri-Loper ("Loper") and Thursday Morning Media, Inc. ("TMMI"). The Third Amended Complaint alleges that TMMI "publishes The Gabber Newspaper" and that Loper "is an owner/principal of TMMI and exercises editorial and business control over The Gabber and its publications." Third Am. Compl. at ¶¶ 2, 3.

3. On this occasion, Plaintiff has limited his lawsuit to the alleged tortious publication of a single article published by *The Gabber* on July 12, 2024 entitled "*Meet the Democratic Candidates for the CD-13 Election*" (hereinafter "Debate Article").

4. In the First Amended Complaint, Plaintiff asserted that the Debate Article was actionable under a variety of legal theories, none of which included defamation. This Court ultimately found that Plaintiff's claims concerning the Debate Article were without merit and violated the Anti-SLAPP Statute, thus entitling Defendant[2] to an award of attorney's fees and costs.

5. In the Second Amended Complaint, Plaintiff alleged in Count I that the Debate Article was actionable under the law of defamation. Once again, the Court ultimately rejected this claim as meritless and found that it violated the Anti-SLAPP Statute, thus entitling Defendants[3] to a further award of attorney's fees and costs.

[2] As to the First Amended Complaint, the Court's analysis in the Prior Order applied only to Loper.

[3] As to the Second Amended Complaint, the Court's analysis in the Prior Order applied to all of the named Defendants, which included Loper, TMMI, and Barry Loper (mistakenly named by Plaintiff as Thomas Loper).

6. In the Third Amended Complaint, Plaintiff attempts to rekindle the same defamation claim concerning the Debate Article, a claim which this Court has already analyzed at length and adjudicated in the Prior Order. In said order, this Court concluded: 1) that the Anti-SLAPP Statute applied to the Debate Article; and 2) that Plaintiff's claim that the Debate Article constituted defamation was meritless. The Court adopts and reincorporates its analysis from the Prior Order as if fully set forth herein.

7. Nothing in the Third Amended Complaint, Plaintiff's written submissions in opposition to Defendant's Motion, or Plaintiff's oral argument at the hearing on January 5, 2026 has convinced the Court to alter any of its conclusions contained in the Prior Order or to conduct a different analysis. In essence, Plaintiff argues that the Debate Article did not primarily concern a debate. The Court disagrees with this assessment for the reasons previously stated in the Prior Order as well as Defendants' Motion and oral argument.

8. Specifically, this Court once again concludes the following:

a. The Anti-SLAPP Statute applies to this matter as: 1) the medium of the contested speech qualifies as a news report pursuant to section 768.295(2)(a), Florida Statutes (2024); and 2) the content of the Debate Article clearly concerns a public issue, namely a political race of local interest to the public.

b. Plaintiff's claim against Defendants is primarily based on the exercise of their First Amendment rights in connection with a public issue as Plaintiff complains of the way Defendants reported on a local political race.

c. Plaintiff's defamation claim against Defendants is without merit as the Debate Article never mentions Plaintiff, does not charge Plaintiff with an infamous crime, subject him to hatred, distrust, ridicule, contempt, disgrace, or tend to

injure him in his business or profession. Moreover, the gist of the Debate Article was to preview a debate among candidates in a local political race - a debate which Plaintiff admits he was not invited to - and the Debate Article was substantially true given its focus on the candidates participating in the debate.

9. Pursuant to section 768.295(4), Florida Statutes (2024), Defendants are entitled to an award of attorney's fees and costs associated with defending against the Third Amended Complaint.

10. Additionally, the Court concludes that further amendment of the complaint would be futile. Since the dismissal of the First Amended Complaint, Plaintiff has reduced the number of claims and named defendants with each subsequent amendment of his complaint. At this stage of proceedings, Plaintiff has confined his complaint to a single claim of defamation against two named defendants – a claim which the Court already adjudicated as meritless when considering the same claim in the Second Amended Complaint. Accordingly, dismissal with prejudice is warranted. *See, e.g. Scott v. Hertz Corp.*, 722 So. 2d 231, 231–32 (Fla. 2d DCA 1998) ("Because the amendment would have been futile, we hold that the trial court did not abuse its discretion in denying leave to amend."). It has become clear to this Court that Plaintiff is unable to state a valid cause of action in this matter.

Accordingly, it is

ORDERED and ADJUDGED:

1. Defendants' Motion is hereby **GRANTED.** Plaintiff's Third Amended Complaint is hereby **DISMISSED WITH PREJUDICE.**

2. Pursuant to section 768.295(4), Defendants are entitled to an additional award of reasonable attorney's fees and costs incurred in their defense against the Third Amended Complaint. The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of January, 2026.

24-003939-CI 1/29/2026 3:00:22 PM
Circuit Judge Patricia A. Muscarella
24-003939-CI 1/29/2026 3:00:22 PM

Honorable Patricia A. Muscarella
Circuit Civil Judge

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KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND FOR ATTORNEY'S FEES

THIS CAUSE came before the Court for hearing on July 8, 2025 on Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and For Attorneys' Fees dated October 3, 2024 and Defendants' Motion to Dismiss Second Amended Complaint dated June 20, 2025. The Court has reviewed the following materials:

1. Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and for Attorneys' Fees ("First Motion to Dismiss") dated October 3, 2024.
2. Plaintiff's Response to Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and Request for Hearing ("First Response") dated October 22, 2024.
3. Defendants' Motion to Dismiss Second Amended Complaint ("Second Motion to Dismiss") dated June 20, 2025.
4. Plaintiff's Response and Memorandum of Law in Opposition to Defendants' Motion to Dismiss Second Amended Complaint ("Second Response") dated July 2, 2025.

Exhibit A

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Having considered these materials, the case file, the applicable law, the argument of counsel at a hearing on July 8, 2025, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 3, 2024, Plaintiff initiated this action by filing his original Complaint. On September 5, 2024, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right. The FAC relates to Plaintiff's unsuccessful bid to win the Democratic primary election for U.S. House District 13. On October 3, 2024, Loper filed the First Motion to Dismiss, which asserts that the claims against Ms. Loper violate Florida's Anti-SLAPP Statute codified at section 768.295, Florida Statutes (2024).[1] Prior to disposition of this motion, the Court entered an order on November 20, 2024 staying the instant matter due to the existence of related federal litigation which was pending prior to the initiation of this action. The stay remained in place until a hearing on June 10, 2025 in which the Court ruled on the record that it would grant Plaintiff's Motion to Lift Stay dated April 1, 2025 and Plaintiff's Motion for Leave to File Second Amended Complaint dated April 12, 2025 with the caveat that said motions were granted without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC.[2]

A. The First Amended Complaint

The introductory section of the FAC states that Plaintiff "brings this action seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of Defendants." FAC ¶ 1. The FAC names Defendant, CATHY

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

[2] On July 17, 2025, the Court rendered the corresponding written order.

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SALUSTRI LOPER ("Ms. Loper") as a defendant and alleges eight counts against her. The FAC identifies Ms. Loper as the "owner and editor of the Gabber Newspaper, a local newspaper in Gulfport[.]" FAC ¶ 8. The remaining factual allegations made against Ms. Loper are limited to the following:

> 43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of the Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Henzen[.]
>
> 44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) congressional candidate that lives in Gulfport.
>
> 45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

FAC ¶¶ 43-45. Counts I, II, III, IV, V, VI, and VIII of the FAC allege various causes of action against Ms. Loper, including multiple statutory violations, conspiracy to commit election fraud, intentional interference with prospective economic advantage, and injunctive relief. The FAC also includes a section styled "Count X," which provides a general plea for damages and is therefore not an alleged cause of action which requires any further consideration by the Court.

B. The Second Amended Complaint

The Second Amended Complaint ("SAC") is now the operative pleading. The SAC names three defendants: Ms. Loper, Barry Loper[3] ("Mr. Loper"), and Thursday Morning Media, Inc.

[3] The SAC mistakenly refers to Mr. Loper as "Thomas Loper."

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("TMMI").[4] The SAC alleges that: 1) the Lopers are co-owners of TMMI; 2) TMMI and the Lopers own *The Gabber*; and 3) Ms. Loper is the editor-in-chief of *The Gabber*. SAC ¶¶ 3-5. Ms. Loper "is sued in her capacity as owner and editor" of *The Gabber*. SAC ¶¶ 3, 16. Similarly, Mr. Loper and TMMI are sued for their alleged role in harming Plaintiff's 2024 congressional campaign and 2025 Gulfport mayoral campaign. SAC ¶¶ 4, 18, 19, 21.

The SAC alleges three causes of action, which are asserted against each of the defendants: defamation, tortious interference with a prospective economic advantage, and civil conspiracy. Accordingly, the SAC abandons six of the eight causes of action alleged against Ms. Loper in the FAC. The gist of Plaintiff's allegations in the SAC pertains to the publication of certain articles by *The Gabber*. In addition to these publications, Plaintiff also complains of "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and "[t]he concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50. Lastly, Ms. Loper is also sued for a statement she made while moderating a political debate during the 2025 mayoral campaign. *See* SAC ¶¶ 25-27. On June 20, 2025, Defendants filed their Second Motion to Dismiss.[5] Ms. Loper is now joined by Mr. Loper and TMMI in moving to dismiss the SAC on Anti-SLAPP grounds.

[4] Collectively these three defendants are hereinafter referred to as "Defendants."

[5] The Second Motion to Dismiss is filed on behalf of Defendants despite noting that Plaintiff has not served Mr. Loper and TMMI. *See* Second Mot. to Dismiss at 1 n.1. However, the Second Motion to Dismiss addresses the merits of the SAC and seeks affirmative relief, namely in the form of an award of attorney's fees and costs. Accordingly, counsel for Defendants has made a general appearance in this matter. *See, e.g., Segalis v. Roof Depot USA, LLC*, 178 So. 3d 83, 85 (Fla. 4th DCA 2015) (holding that a filing seeking "some sort of affirmative relief on the merits of the case" constitutes a general appearance). Any argument that this Court lacks personal jurisdiction over Mr. Loper and TMMI has thus been waived. *Id.* (stating "if a party makes a general appearance in a case without first challenging personal jurisdiction, the party is deemed to have waived any claims as to lack of personal jurisdiction").

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II. LEGAL STANDARD

"By statute, Florida prohibits 'Strategic Lawsuits Against Public Participation.'" *Vericker v. Powell*, 406 So. 3d 939, 941 (Fla. 2025) (citing § 768.295, Fla. Stat. (2024)). Per the statute, "[a] person...in this state may not file...any lawsuit, cause of action, [or] claim...against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue[.]" § 768.295(3), Fla. Stat. (2024). The purpose of the Anti-SLAPP statute is "to safeguard the exercise of constitutionally protected free-speech rights by prohibiting lawsuits targeted at suppressing them." *Vericker*, 406 So. 3d at 942 (citing § 768.295(1), Fla. Stat. (2024)). "In addition, the statute operates to deter violations of its prohibition on meritless, speech-targeted lawsuits—accomplishing this through attorney-fee awards[.]" *Id.* at 946 (citing § 768.295(4), Fla. Stat. (2024)). "The express legislative intent of subsection 768.295(4) is to secure a speedy decision at 'the earliest possible time' on a summary judgment or motion to dismiss." *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 (Fla. 4th DCA 2019). Accordingly, courts routinely assess Anti-SLAPP applicability to speech-based claims at the motion to dismiss stage. *See, e.g., Godwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (requiring application of Anti-SLAPP standards to a motion to dismiss); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same).

In considering a motion to dismiss, the trial court generally must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pleaded allegations as true. *Precision Orthopedics, Inc. v. Zimmer US, Inc.*, 341 So. 3d 458, 461 (Fla. 2d DCA 2022) (citations omitted). However, "a motion to dismiss based on the Anti-SLAPP statute is distinct from a traditional motion to dismiss brought under the Florida Rules of Civil Procedure." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th

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Cir. Ct. Apr. 29, 2021). In particular, "the Anti-SLAPP statute requires the trial court to do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant." *Mishiyev v. Davis*, 402 So. 3d 443, 448 (Fla. 2d DCA 2025) (citations omitted). "Rather, the trial court must apply a burden-shifting test." *Id.*[6] "[T]he initial burden is on the SLAPP defendant to establish that the Anti-SLAPP statute applies, and once the defendant has done so, the burden shifts to the claimant to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit." *Godwin*, 371 So. 3d at 975 (cleaned up).

III. ANALYSIS

A. Did the SAC Supersede Ms. Loper's Claims that the FAC Violated the Anti-SLAPP Statute?

Because the Court granted Plaintiff's Motion for Leave to File Second Amended Complaint without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC, the Court must first consider whether the First Motion to Dismiss is moot. The Anti-SLAPP Statute specifically provides: "The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with ***a claim*** that an ***action*** was filed in violation of this section." § 768.295(4), Fla. Stat. (emphasis added). The plain language of the statute does not limit recoverable fees and costs to those associated only with the operative pleading. Furthermore, the Eleventh Judicial Circuit of Florida recently held the following:

[6] The Second District established the burden-shifting test for Anti-SLAPP motions in *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). In *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025), the Florida Supreme Court disapproved of the *Gundel* court's determination that certiorari was the proper vehicle for review of trial court orders disposing of Anti-SLAPP motions. However, the *Vericker* decision did not disturb the burden-shifting analysis utilized by the *Gundel* court. In *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021), the Third District declined to follow the *Gundel* burden-shifting approach and certified conflict to the Florida Supreme Court. However, it appears that none of the parties in *Lam* invoked the Florida Supreme Court's jurisdiction to consider the certification of conflict. The Second District utilized the *Gundel* burden-shifting analysis as recently as 2025 in *Mishiyev v. Davis*, 402 So. 3d 443 (Fla. 2d DCA 2025). Accordingly, this Court must do the same.

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> In this action, the entirety of the litigation -- principally, the preparation of Lazarow's first motion under the Anti-SLAPP Statute, Lazarow's opposition to Marquez's motions to amend, the preparation of Lazarow's second motion under the Anti-SLAPP Statute, oral argument on that motion, and all matters pertaining to Marquez's appeal -- concerned Lazarow's claim that this action was filed in violation of the Anti-SLAPP Statute. Lazarow is thus entitled to all reasonable attorney's fees and costs she incurred in this action.

Marquez v. Lazarow, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022).[7]

In *Marquez*, Florida's Eleventh Circuit held that the defendant was entitled to attorney's fees incurred for her defense against both the initial complaint and the amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute." *Id.* As in *Marquez*, Ms. Loper has maintained a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute both as to the FAC And SAC. As such, the Court finds that Ms. Loper's claims for attorney's fees as to the FAC survived amendment of the complaint, and accordingly the Court must consider whether both the FAC and SAC violate the anti-SLAPP statute.

B. Do Florida's Anti-SLAPP Provisions Apply to the Contested Speech?

Defendants now have the burden of establishing that the Anti-SLAPP Statute applies to the FAC and SAC. In doing so, Defendants "must present a prima facie case that the statements are protected by the First Amendment." *Mishiyev*, 402 So. 3d at 448. "Florida's Anti-SLAPP statute protects the right to exercise 'free speech in connection with public issues ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.'" *Id.* (citing § 768.295(1), Fla. Stat.). "This requirement can be effectively split into two parts: (1) the

[7] The trial court's order was subsequently affirmed in *Marquez v. Lazarow*, 347 So. 3d 472 (Fla. 3d DCA 2022).

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medium of the speech and (2) its content." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021).

As to the medium of the speech, "'[f]ree speech in connection with public issues' means any written or oral statement that is protected under applicable law and...is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, ***magazine article***, musical work, ***news report***, or other similar work." § 768.295(2)(a), Fla. Stat. (2024) (emphasis added). *See also Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (stating that the phrase "'free speech in connection with a public issue' includes any written statement protected under applicable law and made in connection with a news report" (citing § 768.295(2)(a), Fla. Stat.)).

As to content, the contested speech "must only be made in connection with a 'public issue' in order to fall within the Anti-SLAPP statute's protection." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021). "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (cleaned up).

i. The FAC

The FAC mentions Loper in only four paragraphs. First Resp. ¶ 2. Specific allegations pertaining to Ms. Loper are found exclusively in the general allegations section of the FAC. *See* FAC ¶¶ 8, 43, 44, 45. In sum, these paragraphs allege that Loper is the owner and editor of a newspaper that published an article on July 12, 2024 ("Debate Article") about a primary election

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debate between Democratic Party candidates for a congressional seat. First Resp. ¶ 2.[8] The medium of this speech clearly qualifies as a news report, which is an explicitly enumerated category in section 768.295(2)(a), Florida Statutes (2024). Additionally, the content of the Debate Article clearly concerns a public issue as it pertains to a political concern of the community and is subject of legitimate news interest in that it profiles various candidates who were running for a political office. Since the FAC does not allege a cause of action for defamation, the Court need not analyze whether the contested speech is unprotected by virtue of the law of defamation. As such, Ms. Loper has met her burden to demonstrate that her contested speech is protected and governed by the Anti-SLAPP Statute.

ii. The SAC

In the SAC, Plaintiff alleges additional instances of purportedly actionable speech. Defendants argue that the SAC demonstrates "on its face" that the Anti-SLAPP Statute applies because it names Defendants in their capacities as owners and operators of *The Gabber*. Second Mot. to Dismiss at 2. This fact is uncontested. *See* SAC ¶¶ 3-5 (alleging that Defendants are sued due to their ownership, control, and operation of *The Gabber* newspaper). As Defendants point out, the gist of Plaintiff's claim against Defendants relate to "the newspaper's content" and "alleged decisions regarding the content of news articles" in relation to "a 2024 Congressional primary and a 2025 mayoral election." Second Mot. to Dismiss at 2. Specifically, the SAC identifies the following publications by *The Gabber* which Plaintiff claims are actionable: 1) the Debate Article; 2) an article published on February 27, 2025 entitled "Gulfport Mayoral Candidate John Liccione's Time in Courts" ("Contempt Article"); and 3) an op-ed published on March 9,

[8] Plaintiff incorporated the Debate Article into the SAC via the following hyperlink: https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/. *See* SAC at 4 n.1.

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2025 authored by a non-party named Barbara Banno which likened Plaintiff to "cheap, white sangria" ("Banno Article"). SAC ¶ 50.

Count I of the SAC states: "This claim arises from a pattern of knowingly false, misleading, and defamatory statements and omissions by Defendants[.]" SAC ¶ 50. Plaintiff admits that the Debate Article is "the cornerstone" of the SAC. Second Resp. at 1. Count I also alleges that Defendants used their editorial discretion in various instances to conceal information by refusing to publish material relevant to Plaintiff's political campaigns, and that such behavior is actionable. Count II states: "Defendants' actions, including the publication of false and misleading articles...directly interfered with Plaintiff's prospective economic relationships" and that the Debate Article "was calculated to ensure maximum suppressive impact on Plaintiff's public visibility and support." SAC ¶¶ 75, 80. Lastly, Count III alleges that Defendants "conspired with themselves and others to publish defamatory content, suppress exculpatory information, and undermine Plaintiff's political candidacies in 2024 and 2025." SAC ¶ 90. The SAC therefore claims that contested speech is directly actionable or otherwise serves as evidence of a conspiracy involving Defendants to interfere with and harm Plaintiff's political campaigns. *See, e.g.,* SAC ¶ 47 (alleging that the Banno Article "was the final act in furtherance of [a] conspiracy").

The medium of the contested speech once again clearly falls into a category of speech that is specifically enumerated in section 768.295(2)(a). The Debate Article and the Contempt Article constitute news reports. It can be argued that the Banno Article, which is an op-ed in nature, also qualifies as a news report within the meaning of the Anti-SLAPP Statute, but it is perhaps more appropriately categorized as a magazine article or, at the very least, belongs in the catch-all category of "other similar work." In any event, it also qualifies as a medium of speech which is governed by the Anti-SLAPP Statute. Once again, it is clear from the content of the three identified

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publications – the Debate Article, the Contempt Article, and the Banno Article – that the contested speech all concerns public issues given that the publications involve reporting and commentary on political campaigns of local interest, and that such matters are of legitimate news interest as the speech shed light and opinion on the qualifications of candidates for political office.

Plaintiff additionally argues that the contested speech is not constitutionally protected because it is defamatory. It is true that defamation is not constitutionally protected speech. *See, e.g., Mishiyev*, 402 So. 3d at 450 (citing *McQueen v. Baskin*, 377 So. 3d 170, 176 (Fla. 2d DCA 2023)). For the reasons provided in more detail below, the Court finds that there is no merit to Plaintiff's defamation claims. Given the foregoing, Defendants have met their burden to demonstrate that the contested speech is governed by the Anti-SLAPP statute. To the extent the SAC is grounded in other actions, e.g. *The Gabber*'s alleged concealment of information favorable to Plaintiff's campaign and a statement made by Ms. Loper to Plaintiff while moderating a mayoral debate, such allegations do not appear to fall within the purview of the Anti-SLAPP statute but are nonetheless meritless for the reasons described further below.

C. Are Plaintiff's Claims Primarily Based on First Amendment Rights in Connection with a Public Issue?

The burden now shifts to Plaintiff to demonstrate that his claims were not filed primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. Plaintiff's claims against Defendants in both the FAC and SAC seek redress primarily for written statements published in a local newspaper concerning his two unsuccessful political campaigns. Plaintiff objects to these written statements for a variety of alleged reasons including voter suppression, disinformation, violation of journalistic ethics and standards, and defamation. Plaintiff expresses discontent with what he views as *The Gabber*'s failure to report on his congressional campaign. For example, Plaintiff regards *The Gabber*'s actions as constituting "a

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pattern of willful neglect towards factual reporting contrary to the very ethics and standards Loper espouses in her publication's policies." First Resp. at 12. Such allegations demonstrate that Plaintiff filed this action primarily because Defendants engaged in speech. The publications complained of by Plaintiff clearly involved public issues.

Plaintiff's only discernible argument in response to the inquiry at hand is that the speech at issue is not protected by the First Amendment because the published articles are defamatory in nature. Such an argument is not meant for consideration at this juncture. *See Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021) (stating that the issue of whether a magazine article was defamatory and therefore not an exercise of free speech "is better addressed under the second prong of the analysis: whether Plaintiff's suit is filed without merit"). Accordingly, Plaintiff has failed to carry his burden to demonstrate that his claims in the FAC and SAC are not primarily based upon Defendants' exercise of free speech in connection with a public issue.

D. Are Plaintiff's Claims Without Merit?

Plaintiff now has the burden of demonstrating that his claims are not without merit.

i. FAC Causes of Action

For the reasons provided below, all counts in the FAC asserted against Ms. Loper fail to state a cause of action and are therefore without merit. First, Plaintiff offers no legal authority for the Court to consider in support of the validity of his claims. The First Response contains little more than Plaintiff's own theories about why the FAC states valid causes of action. Plaintiff attempts to counter the First Motion to Dismiss by arguing general concepts of defamation law by citing to "*Dominion Voting Systems v. Fox News Network*" and "*Goldwater v. Ginzburg*," neither of which includes a proper citation to a case law reporter. However, the FAC does not allege a

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cause of action for defamation against Loper. Thus, the little authority Plaintiff cites is entirely irrelevant to the validity of his claims in the FAC.[9]

Moreover, Plaintiff cites two fictitious cases in the First Response. First, Plaintiff cites to a case styled as "*Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019)" for the proposition that "courts must carefully evaluate whether the alleged speech is genuinely related to a public issue, and, more importantly, whether it is delivered in good faith and without intent to mislead." First Resp. at 16. Next, Plaintiff cites to a case styled as "*Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011)" for the proposition that "courts must evaluate whether the speech is misleading." First Resp. at 14. These cases do not appear in any Florida reporter. Not only has Plaintiff failed to present legal authority to counter Ms. Loper's grounds for dismissal, but Plaintiff has presented false legal authority to this Court, an action which is sanctionable, including as to *pro se* parties. *See e.g., Gutierrez v. Gutierrez*, 399 So. 3d 1185, 1188 (Fla. 3d DCA 2024) (finding that a *pro se* party's "submission of fictitious case law" to the court was "sufficient to warrant the imposition of sanctions" (subsequent history omitted)).

Because Plaintiff has failed to identify any legal authority which demonstrates that his causes of action against Ms. Loper are meritorious, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute as to the FAC.

ii. SAC Causes of Action

The Court now turns to the SAC. Count I purports to state a defamation claim against all Defendants. "Defamation has the following five elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public

[9] *See US Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 EMD, 2023 WL 2730567, at *1 (Del. Super. Ct. Mar. 31, 2023) ("This is a civil action involving a defamation claim"); *Goldwater v. Ginzburg*, 414 F.2d 324, 327 (2d Cir. 1969) ("This is a libel action").

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official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory." *Jews.For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008) (citation omitted). The required element of a false statement is not present if the alleged statements are true. *Cape Publications, Inc. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003) (citation omitted). "Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Kieffer v. Atheists of Florida, Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019) (citation omitted). "Under Florida law, words are defamatory when they charge a person with an infamous crime or tend to subject one to hatred, distrust, ridicule, contempt or disgrace or tend to injure one in one's business or profession." *Seropian v. Forman*, 652 So. 2d 490, 495 (Fla. 4th DCA 1995) (citing *Adams v. News–Journal Corp.*, 84 So. 2d 549 (Fla. 1955)). "Where the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in either dismissing the complaint for failure to state a cause of action or in granting a directed verdict at the proof stage." *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (citation omitted).

Count I fails to state a cause of action for defamation. First, the Court must consider the Debate Article, which Plaintiff concedes is "the linchpin of this case." Second Resp. at 3. Having reviewed the hyperlinked article incorporated by Plaintiff into the SAC, the Debate Article never mentions Plaintiff at all, an admission made by Plaintiff. *See* SAC ¶ 17. Accordingly, Plaintiff has not demonstrated that the Debate Article charges Plaintiff with an infamous crime or tends to subject him to hatred, distrust, ridicule, contempt or disgrace or tends to injure him in his business or profession. Moreover, it is clear the gist or main purpose of the Debate Article was to discuss candidates participating in the debate, which did not include Plaintiff. Plaintiff admits that he was not invited to the debate for the congressional campaign. Second Resp. at 6. Although it is

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technically true that the Contempt Article described the debate participants as "the four candidates" for the political office in question, the Debate Article was substantially true as the "gist" of the article was to preview a debate that included those four candidates and excluded Plaintiff.

As to the Contempt Article, Plaintiff fails to demonstrate an actionable basis for defamation. Plaintiff does not argue that the statements contained in the Contempt Article are untrue. In other words, Plaintiff fails to show that he in fact was not ordered to attend a hearing where criminal contempt sanctions could have been imposed on him. Plaintiff simply alleges that the proximity of "criminal" to his name in a newspaper created false impressions that he had a criminal history. In failing to demonstrate the Contempt Article was untrue, Plaintiff cannot rely upon it as grounds for a defamation claim.

Additionally, Plaintiff concedes in his Second Response that the Banno Article "is a protected opinion" but insists it "reinforces the malicious intent established by the [Debate Article][.]" Second Resp. at 8. Thus, by Plaintiff's own admission, the Banno Article does not provide an independent basis for defamation. Having already determined that the Debate Article is not sufficient to support a claim for defamation, Plaintiff's argument that the Banno Article somehow "reinforces" the Debate Article is an invalid and moot point. The Banno Article constitutes pure opinion and is therefore not actionable. *See, e.g. Smith v. Taylor Cty. Pub. Co., Inc.*, 443 So. 2d 1042, 1046 (Fla. 1st DCA 1983) ("It is clear, as the trial court determined, that a writer's opinion about a newsworthy item is a protected privilege" (citation omitted)).

Count I also alleges that Defendants engaged in "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and the "concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50.

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Plaintiff alleges that "[t]hese actions and omissions–taken together–were intended to convey a false and defamatory impression of Plaintiff to the public, to damage Plaintiff's candidacies for Congress and mayor, and to sabotage his standing within the Florida Congressional District 13 and Gulfport electorates, and in Democratic and LGBTQ+ communities at large." SAC ¶ 51. Per Plaintiff, Defendants' failure to report on these matters constitutes actionable defamation. Plaintiff has presented no authority to support his contention. On the contrary, "[t]he judgment of what is newsworthy must remain primarily a function of the publisher." *See, e.g. Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1202 (Fla. 2d DCA 2014) (citing *Doe v. Sarasota-Bradenton Florida Television Co., Inc.*, 436 So. 2d 328, 331 (Fla. 2d DCA 1983) for the proposition that "it is the primary function of the publisher to determine what is newsworthy and that the court should generally not substitute its judgment for that of the publisher"). *See also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment"). Thus, Plaintiff's contention that *The Gabber*'s alleged concealment and failure to report on matters relevant to his campaign are therefore meritless.

Count II alleges a cause of action for tortious interference with a prospective economic advantage. Plaintiff identifies two specific instances of publication and editorial decision-making by *The Gabber* which undergird this claim: 1) publication of the Debate Article (*see* SAC ¶¶ 79, 80, 82); and 2) Defendants' alleged concealment and distortion of an alleged assault on Plaintiff at a pride parade (*see* SAC ¶ 87). However, Plaintiff has failed to present legal authority that this claim is meritorious. Moreover, the established authority on the issue defeats Plaintiff's claim. The tort of interference does not apply to "communications to the public at large." *Ozyesilpinar v.*

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Reach PLC, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Additionally, news reporting is not conduct that can be the basis for a tortious interference claim. *Id.* at 461 (citation omitted). *See also Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of an interference claim against a newspaper and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication"). Since the SAC alleges that Defendants edit, own, and operate a newspaper that communicated news and opinion articles to the public at large. *See, e.g.*, SAC ¶¶ 3, 5, 29, 76. Therefore, Plaintiff's tortious interference claim fails as a matter of law.

Finally, Count III alleges a cause of action for civil conspiracy. Because the Court has already determined that all other causes of action alleged in the SAC are without merit, Count III also fails because "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). Since Count III cannot stand on its own, it is also without merit. Notably, Count III is the only cause of action which specifically mentions Ms. Loper's alleged statement about having Plaintiff removed by police from the 2025 mayoral debate. *See* SAC ¶¶ 92, 94. Because Count III fails as a matter of law, Plaintiff has failed to demonstrate an actionable basis for Ms. Loper's alleged statement at the mayoral debate.

Since Plaintiff has failed to provide sufficient legal authority to demonstrate merit as to the causes of action asserted in the SAC, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute.

iii. Shotgun Pleadings

The Court further observes that the FAC and the SAC are both impermissible shotgun pleadings. The U.S. Court of Appeals for the Eleventh Circuit has identified "four rough types or

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categories of shotgun pleadings." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). The first is "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is a complaint that does not separate "each cause of action or claim for relief" into a different count. *Id.* at 1323. The fourth is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.*

At a minimum, the FAC and SAC both fall into the first and second categories identified by the Eleventh Circuit. Each count of the FAC and SAC begins by incorporating all foregoing paragraphs. Thus, the complaints clearly fall into the first category of shotgun pleadings. Secondly, both complaints contain lengthy general allegations sections which are fully incorporated into each count. Many of the general allegations asserted in both complaints are conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.[10] Thus, both complaints also fall into the second category of shotgun pleadings. Accordingly, both complaints are subject to dismissal as procedurally defective shotgun pleadings.

[10] For example, the FAC contains numerous paragraphs detailing how an alleged whistleblower named "Tampa Girl" informed Plaintiff that "she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents." FAC ¶ 18. These allegations are totally irrelevant to Plaintiff's cause of action for Loper's alleged violation of the Computer Fraud and Abuse Act (Count V), yet said allegations are incorporated into Count V. The SAC exhibits the same defect as Count I incorporates each paragraph in the lengthy general allegations section despite many being irrelevant to the cause of action asserted. Count II incorporates all preceding paragraphs, including those asserted in Count I. Count III asserts all preceding paragraphs, including those asserted in Count I and Count II.

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IV. Entitlement to Attorney's Fees

Under the Anti-SLAPP Statute, the Court "shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4), Fla. Stat. *See also Lee v. Animal Aid, Inc.*, 388 So. 3d 25, 29 (Fla. 4th DCA 2024) ("A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under section 768.295(4)"). Accordingly, the Court finds the following:

1. Ms. Loper is the prevailing party as to the FAC;
2. Ms. Loper, Mr. Loper, and TMMI are the prevailing parties as to the SAC; and
3. Plaintiff's claims against the aforementioned defendants were filed in violation of section 768.295.

Defendants are entitled to attorney's fees and costs incurred in relation to the SAC. Additionally, Ms. Loper is entitled to attorney's fees incurred since service of the FAC upon her. *See Marquez v. Lazarow*, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022) (holding that Defendant was entitled to attorney's fees when forced to respond to both an initial complaint and an amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute"). Here, Ms. Loper filed an Anti-SLAPP motion to dismiss the FAC. In granting Plaintiff's Motion to File Second Amended Complaint, the Court specifically granted the motion with the caveat that Ms. Loper's claim to attorney's fees as to the FAC would be preserved post-amendment. Therefore, Ms. Loper is entitled to recover reasonable attorney's fees and costs incurred for defending against both the FAC and the SAC.

V. CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED:

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1. This lawsuit is without merit, and Plaintiff brought the suit primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. This is true both as to the FAC and SAC.

2. The First Motion to Dismiss is hereby **GRANTED.**

3. The Second Motion to Dismiss is hereby **GRANTED.**

4. This case is **DISMISSED WITHOUT PREJUDICE.**

5. Plaintiff is granted leave to file a third amended complaint within **TWENTY (20) DAYS** of this Order. **FAILURE TO FILE A THIRD AMENDED COMPLAINT WITHIN THE TIMEFRAME PROVIDED WILL RESULT IN DISMISSAL OF THIS ACTION WITH PREJUDICE WITHOUT FURTHER NOTICE.** *See, e.g., Neu v. Turgel*, 480 So. 2d 216, 217 (Fla. 3d DCA 1985) (subsequent history omitted).

6. Defendants are entitled to an award of their reasonable attorney's fees and costs under section 768.295(4), Florida Statutes (2024). The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 14 day of October, 2025.

Honorable Patricia A. Muscarella
Circuit Civil Judge

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Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

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

JOHN WILLIAM LICCIONE,

Plaintiff,

v.

CATHY SALUSTRI-LOPER, et al.,

Defendants.

Case No.: 24-003939-CI

NOTICE OF APPEAL

NOTICE IS GIVEN that Plaintiff, John William Liccione, pro se, appeals to the Florida Second District Court of Appeal the Order Granting Defendants' Motion to Dismiss Third Amended Complaint, dismissed with prejudice, and electronically conformed on January 29, 2026, rendered in this action.

The order appealed from is a final order that disposes of all claims as to all parties, except for collateral matters over which the trial court purported to retain jurisdiction.

DATED: February 2, 2026

Respectfully submitted,

/s/ John W. Liccione
John W. Liccione, Pro Se
1497 Main St. Ste 196
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443-698-8156

ELECTRONICALLY FILED 02/02/2026 06:19:19 PM: KEN BURKE, CLERK OF THE CIRCUIT COURT, PINELLAS COUNTY

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true copy of the foregoing was filed via the Florida e-Filing Portal and served via email to Defendants' counsel, James B. Lake (jlake@tlolawfirm.com), on February 2, 2025.

/s/ John W. Liccione

EXHIBIT A

Order Granting Motion to Dismiss
Third Amended Complaint
With Prejudice

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

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTION TO DISMISS THIRD AMENDED COMPLAINT

THIS CAUSE came before the Court for hearing on January 5, 2026 on Defendants' Motion to Dismiss Third Amended Complaint and for Stay of Vexatious Litigation ("Motion") dated November 18, 2025. Having considered the Motion, Plaintiff's Response in Opposition to Defendants' Motion dated December 8, 2025, Plaintiff's Supplement to Response in Opposition to Defendants' Motion dated December 23, 2025, Plaintiff's Second Supplement to Response in Opposition to Defendants' Motion dated January 2, 2026, the case file, the applicable law, the oral argument of counsel, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

1. On October 14, 2025, this Court entered an order ("Prior Order") which dismissed Plaintiff's Second Amended Complaint without prejudice and determined that Plaintiff's First Amended Complaint and Second Amended Complaint violated Florida's Anti-SLAPP Statute.[1] Accordingly, the Court found that the defendants named in the First Amended Complaint and

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

Second Amended Complaint were entitled to an award of attorney's fees and costs under the Anti-SLAPP Statute. The Prior Order is attached as Exhibit A.

2. On November 3, 2025, Plaintiff filed a Third Amended Complaint, which asserts a single cause of action, defamation by omission, against two Defendants, Cathy Salustri-Loper ("Loper") and Thursday Morning Media, Inc. ("TMMI"). The Third Amended Complaint alleges that TMMI "publishes The Gabber Newspaper" and that Loper "is an owner/principal of TMMI and exercises editorial and business control over The Gabber and its publications." Third Am. Compl. at ¶¶ 2, 3.

3. On this occasion, Plaintiff has limited his lawsuit to the alleged tortious publication of a single article published by *The Gabber* on July 12, 2024 entitled "*Meet the Democratic Candidates for the CD-13 Election*" (hereinafter "Debate Article").

4. In the First Amended Complaint, Plaintiff asserted that the Debate Article was actionable under a variety of legal theories, none of which included defamation. This Court ultimately found that Plaintiff's claims concerning the Debate Article were without merit and violated the Anti-SLAPP Statute, thus entitling Defendant[2] to an award of attorney's fees and costs.

5. In the Second Amended Complaint, Plaintiff alleged in Count I that the Debate Article was actionable under the law of defamation. Once again, the Court ultimately rejected this claim as meritless and found that it violated the Anti-SLAPP Statute, thus entitling Defendants[3] to a further award of attorney's fees and costs.

[2] As to the First Amended Complaint, the Court's analysis in the Prior Order applied only to Loper.

[3] As to the Second Amended Complaint, the Court's analysis in the Prior Order applied to all of the named Defendants, which included Loper, TMMI, and Barry Loper (mistakenly named by Plaintiff as Thomas Loper).

6. In the Third Amended Complaint, Plaintiff attempts to rekindle the same defamation claim concerning the Debate Article, a claim which this Court has already analyzed at length and adjudicated in the Prior Order. In said order, this Court concluded: 1) that the Anti-SLAPP Statute applied to the Debate Article; and 2) that Plaintiff's claim that the Debate Article constituted defamation was meritless. The Court adopts and reincorporates its analysis from the Prior Order as if fully set forth herein.

7. Nothing in the Third Amended Complaint, Plaintiff's written submissions in opposition to Defendant's Motion, or Plaintiff's oral argument at the hearing on January 5, 2026 has convinced the Court to alter any of its conclusions contained in the Prior Order or to conduct a different analysis. In essence, Plaintiff argues that the Debate Article did not primarily concern a debate. The Court disagrees with this assessment for the reasons previously stated in the Prior Order as well as Defendants' Motion and oral argument.

8. Specifically, this Court once again concludes the following:

a. The Anti-SLAPP Statute applies to this matter as: 1) the medium of the contested speech qualifies as a news report pursuant to section 768.295(2)(a), Florida Statutes (2024); and 2) the content of the Debate Article clearly concerns a public issue, namely a political race of local interest to the public.

b. Plaintiff's claim against Defendants is primarily based on the exercise of their First Amendment rights in connection with a public issue as Plaintiff complains of the way Defendants reported on a local political race.

c. Plaintiff's defamation claim against Defendants is without merit as the Debate Article never mentions Plaintiff, does not charge Plaintiff with an infamous crime, subject him to hatred, distrust, ridicule, contempt, disgrace, or tend to

injure him in his business or profession. Moreover, the gist of the Debate Article was to preview a debate among candidates in a local political race - a debate which Plaintiff admits he was not invited to - and the Debate Article was substantially true given its focus on the candidates participating in the debate.

9. Pursuant to section 768.295(4), Florida Statutes (2024), Defendants are entitled to an award of attorney's fees and costs associated with defending against the Third Amended Complaint.

10. Additionally, the Court concludes that further amendment of the complaint would be futile. Since the dismissal of the First Amended Complaint, Plaintiff has reduced the number of claims and named defendants with each subsequent amendment of his complaint. At this stage of proceedings, Plaintiff has confined his complaint to a single claim of defamation against two named defendants – a claim which the Court already adjudicated as meritless when considering the same claim in the Second Amended Complaint. Accordingly, dismissal with prejudice is warranted. *See, e.g. Scott v. Hertz Corp.*, 722 So. 2d 231, 231–32 (Fla. 2d DCA 1998) ("Because the amendment would have been futile, we hold that the trial court did not abuse its discretion in denying leave to amend."). It has become clear to this Court that Plaintiff is unable to state a valid cause of action in this matter.

Accordingly, it is

ORDERED and ADJUDGED:

1. Defendants' Motion is hereby **GRANTED**, Plaintiff's Third Amended Complaint is hereby **DISMISSED WITH PREJUDICE.**

2. Pursuant to section 768.295(4), Defendants are entitled to an additional award of reasonable attorney's fees and costs incurred in their defense against the Third Amended Complaint. The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in Clearwater, Pinellas County, Florida this ___ day of January, 2026.

Electronically Conformed 1/29/2026
Patricia Muscarella

Honorable Patricia A. Muscarella
Circuit Civil Judge

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I#: 202529584 3 BK: 23329 PG: 1553, 10/17/2025 at 09:21 AM, RECORDING 20
KEN BURKE, CLERK OF COURT AND COMPTROLLER PINELLAS COUNTY, FL BY DEPUTY CLERK:
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IN THE CIRCUIT COURT OF THE SIXTH JUDICIAL CIRCUIT
IN AND FOR PINELLAS COUNTY, FLORIDA
CIVIL DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

vs. Case No.: 24-003939-CI

CATHY SALUSTRI-LOPER, et. al.,

Defendants.
_____/

ORDER GRANTING DEFENDANTS' MOTIONS TO DISMISS AND FOR ATTORNEY'S FEES

THIS CAUSE came before the Court for hearing on July 8, 2025 on Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and For Attorneys' Fees dated October 3, 2024 and Defendants' Motion to Dismiss Second Amended Complaint dated June 20, 2025. The Court has reviewed the following materials:

1. Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and for Attorneys' Fees ("First Motion to Dismiss") dated October 3, 2024.
2. Plaintiff's Response to Defendant Cathy Salustri Loper's Motion to Dismiss First Amended Complaint and Request for Hearing ("First Response") dated October 22, 2024.
3. Defendants' Motion to Dismiss Second Amended Complaint ("Second Motion to Dismiss") dated June 20, 2025.
4. Plaintiff's Response and Memorandum of Law in Opposition to Defendants' Motion to Dismiss Second Amended Complaint ("Second Response") dated July 2, 2025.

Exhibit A

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

Having considered these materials, the case file, the applicable law, the argument of counsel at a hearing on July 8, 2025, and being otherwise fully advised in the premises, the Court hereby **FINDS** as follows:

I. FACTUAL AND PROCEDURAL BACKGROUND

On September 3, 2024, Plaintiff initiated this action by filing his original Complaint. On September 5, 2024, Plaintiff filed a First Amended Complaint ("FAC") as a matter of right. The FAC relates to Plaintiff's unsuccessful bid to win the Democratic primary election for U.S. House District 13. On October 3, 2024, Loper filed the First Motion to Dismiss, which asserts that the claims against Ms. Loper violate Florida's Anti-SLAPP Statute codified at section 768.295, Florida Statutes (2024).[1] Prior to disposition of this motion, the Court entered an order on November 20, 2024 staying the instant matter due to the existence of related federal litigation which was pending prior to the initiation of this action. The stay remained in place until a hearing on June 10, 2025 in which the Court ruled on the record that it would grant Plaintiff's Motion to Lift Stay dated April 1, 2025 and Plaintiff's Motion for Leave to File Second Amended Complaint dated April 12, 2025 with the caveat that said motions were granted without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC.[2]

A. The First Amended Complaint

The introductory section of the FAC states that Plaintiff "brings this action seeking remedies for substantial systemic irregularities and fraudulent actions in voting processes and other events relating to the August 20th election in Pinellas County, that occurred under the supervision and/or the willful participation of Defendants." FAC ¶ 1. The FAC names Defendant, CATHY

[1] "According to the title of section 768.295, SLAPP is an acronym for 'Strategic Lawsuits Against Public Participation.'" *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 n.1 (Fla. 4th DCA 2019).

[2] On July 17, 2025, the Court rendered the corresponding written order.

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SALUSTRI LOPER ("Ms. Loper") as a defendant and alleges eight counts against her. The FAC identifies Ms. Loper as the "owner and editor of the Gabber Newspaper, a local newspaper in Gulfport[.]" FAC ¶ 8. The remaining factual allegations made against Ms. Loper are limited to the following:

> 43. Thirty-nine days before the August 20th primary, on July 12, 2024, the local newspaper in Gulfport, "The Gabber Newspaper", published a fraudulent article about the CD-13 Congressional election in which The Gabber asserted falsely that there were only 4 Democratic candidates competing in the primary. Plaintiff was the 5th candidate. The article included pictures and write ups of each of the four candidates. The owner and editor of the Gabber Newspaper is Cathy Salustri Loper. The reporter who wrote the article is Patrick Henzen[.]
>
> 44. Plaintiff lives 100 yards from The Gabber in Gulfport. Defendants Loper and Heinzen have both spoken to Plaintiff about him being (the only) congressional candidate that lives in Gulfport.
>
> 45. Plaintiff would demand Loper publish a correction to their false article but Loper failed to do so. She instead attempted to rationalize her and Heinzen's decision to conceal the existence of Plaintiff and his Congressional candidacy from voters.

FAC ¶¶ 43-45. Counts I, II, III, IV, V, VI, and VIII of the FAC allege various causes of action against Ms. Loper, including multiple statutory violations, conspiracy to commit election fraud, intentional interference with prospective economic advantage, and injunctive relief. The FAC also includes a section styled "Count X," which provides a general plea for damages and is therefore not an alleged cause of action which requires any further consideration by the Court.

B. The Second Amended Complaint

The Second Amended Complaint ("SAC") is now the operative pleading. The SAC names three defendants: Ms. Loper, Barry Loper[3] ("Mr. Loper"), and Thursday Morning Media, Inc.

[3] The SAC mistakenly refers to Mr. Loper as "Thomas Loper."

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("TMMI").[4] The SAC alleges that: 1) the Lopers are co-owners of TMMI; 2) TMMI and the Lopers own *The Gabber*; and 3) Ms. Loper is the editor-in-chief of *The Gabber*. SAC ¶¶ 3-5. Ms. Loper "is sued in her capacity as owner and editor" of *The Gabber*. SAC ¶¶ 3, 16. Similarly, Mr. Loper and TMMI are sued for their alleged role in harming Plaintiff's 2024 congressional campaign and 2025 Gulfport mayoral campaign. SAC ¶¶ 4, 18, 19, 21.

The SAC alleges three causes of action, which are asserted against each of the defendants: defamation, tortious interference with a prospective economic advantage, and civil conspiracy. Accordingly, the SAC abandons six of the eight causes of action alleged against Ms. Loper in the FAC. The gist of Plaintiff's allegations in the SAC pertains to the publication of certain articles by *The Gabber*. In addition to these publications, Plaintiff also complains of "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and "[t]he concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50. Lastly, Ms. Loper is also sued for a statement she made while moderating a political debate during the 2025 mayoral campaign. *See* SAC ¶¶ 25-27. On June 20, 2025, Defendants filed their Second Motion to Dismiss.[5] Ms. Loper is now joined by Mr. Loper and TMMI in moving to dismiss the SAC on Anti-SLAPP grounds.

[4] Collectively these three defendants are hereinafter referred to as "Defendants."

[5] The Second Motion to Dismiss is filed on behalf of Defendants despite noting that Plaintiff has not served Mr. Loper and TMMI. *See* Second Mot. to Dismiss at 1 n.1. However, the Second Motion to Dismiss addresses the merits of the SAC and seeks affirmative relief, namely in the form of an award of attorney's fees and costs. Accordingly, counsel for Defendants has made a general appearance in this matter. *See, e.g., Segalis v. Roof Depot USA, LLC*, 178 So. 3d 83, 85 (Fla. 4th DCA 2015) (holding that a filing seeking "some sort of affirmative relief on the merits of the case" constitutes a general appearance). Any argument that this Court lacks personal jurisdiction over Mr. Loper and TMMI has thus been waived. *Id.* (stating "if a party makes a general appearance in a case without first challenging personal jurisdiction, the party is deemed to have waived any claims as to lack of personal jurisdiction").

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II. LEGAL STANDARD

"By statute, Florida prohibits 'Strategic Lawsuits Against Public Participation.'" *Vericker v. Powell*, 406 So. 3d 939, 941 (Fla. 2025) (citing § 768.295, Fla. Stat. (2024)). Per the statute, "[a] person...in this state may not file...any lawsuit, cause of action, [or] claim...against another person or entity without merit and primarily because such person or entity has exercised the constitutional right of free speech in connection with a public issue[.]" § 768.295(3), Fla. Stat. (2024). The purpose of the Anti-SLAPP statute is "to safeguard the exercise of constitutionally protected free-speech rights by prohibiting lawsuits targeted at suppressing them." *Vericker*, 406 So. 3d at 942 (citing § 768.295(1), Fla. Stat. (2024)). "In addition, the statute operates to deter violations of its prohibition on meritless, speech-targeted lawsuits—accomplishing this through attorney-fee awards[.]" *Id.* at 946 (citing § 768.295(4), Fla. Stat. (2024)). "The express legislative intent of subsection 768.295(4) is to secure a speedy decision at 'the earliest possible time' on a summary judgment or motion to dismiss." *WPB Residents for Integrity in Gov't, Inc. v. Materio*, 284 So. 3d 555, 556 (Fla. 4th DCA 2019). Accordingly, courts routinely assess Anti-SLAPP applicability to speech-based claims at the motion to dismiss stage. *See, e.g., Godwin v. Michelini*, 371 So. 3d 973 (Fla. 2d DCA 2023) (requiring application of Anti-SLAPP standards to a motion to dismiss); *Davis v. Mishiyev*, 339 So. 3d 449 (Fla. 2d DCA 2022) (same).

In considering a motion to dismiss, the trial court generally must confine its review to the four corners of the complaint, draw all inferences in favor of the pleader, and accept all well-pleaded allegations as true. *Precision Orthopedics, Inc. v. Zimmer US, Inc.*, 341 So. 3d 458, 461 (Fla. 2d DCA 2022) (citations omitted). However, "a motion to dismiss based on the Anti-SLAPP statute is distinct from a traditional motion to dismiss brought under the Florida Rules of Civil Procedure." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th

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Cir. Ct. Apr. 29, 2021). In particular, "the Anti-SLAPP statute requires the trial court to do more than accept as true the factual allegations in the four corners of the complaint and draw all reasonable inferences therefrom in favor of the claimant." *Mishiyev v. Davis*, 402 So. 3d 443, 448 (Fla. 2d DCA 2025) (citations omitted). "Rather, the trial court must apply a burden-shifting test." *Id.*[6] "[T]he initial burden is on the SLAPP defendant to establish that the Anti-SLAPP statute applies, and once the defendant has done so, the burden shifts to the claimant to demonstrate that the claims are not primarily based on First Amendment rights in connection with a public issue and not without merit." *Godwin*, 371 So. 3d at 975 (cleaned up).

III. ANALYSIS

A. Did the SAC Supersede Ms. Loper's Claims that the FAC Violated the Anti-SLAPP Statute?

Because the Court granted Plaintiff's Motion for Leave to File Second Amended Complaint without prejudice to Loper's claim for entitlement to attorney's fees under the Anti-SLAPP Statute as to the FAC, the Court must first consider whether the First Motion to Dismiss is moot. The Anti-SLAPP Statute specifically provides: "The court shall award the prevailing party reasonable attorney fees and costs incurred in connection with ***a claim*** that an ***action*** was filed in violation of this section." § 768.295(4), Fla. Stat. (emphasis added). The plain language of the statute does not limit recoverable fees and costs to those associated only with the operative pleading. Furthermore, the Eleventh Judicial Circuit of Florida recently held the following:

[6] The Second District established the burden-shifting test for Anti-SLAPP motions in *Gundel v. AV Homes, Inc.*, 264 So. 3d 304 (Fla. 2d DCA 2019). In *Vericker v. Powell*, 406 So. 3d 939 (Fla. 2025), the Florida Supreme Court disapproved of the *Gundel* court's determination that certiorari was the proper vehicle for review of trial court orders disposing of Anti-SLAPP motions. However, the *Vericker* decision did not disturb the burden-shifting analysis utilized by the *Gundel* court. In *Lam v. Univision Communications, Inc.*, 329 So. 3d 190 (Fla. 3d DCA 2021), the Third District declined to follow the *Gundel* burden-shifting approach and certified conflict to the Florida Supreme Court. However, it appears that none of the parties in *Lam* invoked the Florida Supreme Court's jurisdiction to consider the certification of conflict. The Second District utilized the *Gundel* burden-shifting analysis as recently as 2025 in *Mishiyev v. Davis*, 402 So. 3d 443 (Fla. 2d DCA 2025). Accordingly, this Court must do the same.

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> In this action, the entirety of the litigation – principally, the preparation of Lazarow's first motion under the Anti-SLAPP Statute, Lazarow's opposition to Marquez's motions to amend, the preparation of Lazarow's second motion under the Anti-SLAPP Statute, oral argument on that motion, and all matters pertaining to Marquez's appeal – concerned Lazarow's claim that this action was filed in violation of the Anti-SLAPP Statute. Lazarow is thus entitled to all reasonable attorney's fees and costs she incurred in this action.

Marquez v. Lazarow, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022).[7]

In *Marquez*, Florida's Eleventh Circuit held that the defendant was entitled to attorney's fees incurred for her defense against both the initial complaint and the amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute." *Id.* As in *Marquez*, Ms. Loper has maintained a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute both as to the FAC And SAC. As such, the Court finds that Ms. Loper's claims for attorney's fees as to the FAC survived amendment of the complaint, and accordingly the Court must consider whether both the FAC and SAC violate the anti-SLAPP statute.

B. Do Florida's Anti-SLAPP Provisions Apply to the Contested Speech?

Defendants now have the burden of establishing that the Anti-SLAPP Statute applies to the FAC and SAC. In doing so, Defendants "must present a prima facie case that the statements are protected by the First Amendment." *Mishiyev*, 402 So. 3d at 448. "Florida's Anti-SLAPP statute protects the right to exercise 'free speech in connection with public issues ... as protected by the First Amendment to the United States Constitution and s. 5, Art. I of the State Constitution.'" *Id.* (citing § 768.295(1), Fla. Stat.). "This requirement can be effectively split into two parts: (1) the

[7] The trial court's order was subsequently affirmed in *Marquez v. Lazarow*, 347 So. 3d 472 (Fla. 3d DCA 2022).

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medium of the speech and (2) its content." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021).

As to the medium of the speech, "'[f]ree speech in connection with public issues' means any written or oral statement that is protected under applicable law and...is made in or in connection with a play, movie, television program, radio broadcast, audiovisual work, book, ***magazine article***, musical work, ***news report***, or other similar work." § 768.295(2)(a), Fla. Stat. (2024) (emphasis added). *See also Bongino v. Daily Beast Co., LLC*, 477 F. Supp. 3d 1310, 1322 (S.D. Fla. 2020) (stating that the phrase "'free speech in connection with a public issue' includes any written statement protected under applicable law and made in connection with a news report" (citing § 768.295(2)(a), Fla. Stat.)).

As to content, the contested speech "must only be made in connection with a 'public issue' in order to fall within the Anti-SLAPP statute's protection." *Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021). "Speech deals with matters of public concern when it can be fairly considered as relating to any matter of political, social, or other concern to the community, or when it is a subject of legitimate news interest; that is, a subject of general interest and of value and concern to the public." *Snyder v. Phelps*, 562 U.S. 443, 453 (2011) (cleaned up).

i. The FAC

The FAC mentions Loper in only four paragraphs. First Resp. ¶ 2. Specific allegations pertaining to Ms. Loper are found exclusively in the general allegations section of the FAC. *See* FAC ¶¶ 8, 43, 44, 45. In sum, these paragraphs allege that Loper is the owner and editor of a newspaper that published an article on July 12, 2024 ("Debate Article") about a primary election

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debate between Democratic Party candidates for a congressional seat. First Resp. ¶ 2.[8] The medium of this speech clearly qualifies as a news report, which is an explicitly enumerated category in section 768.295(2)(a), Florida Statutes (2024). Additionally, the content of the Debate Article clearly concerns a public issue as it pertains to a political concern of the community and is subject of legitimate news interest in that it profiles various candidates who were running for a political office. Since the FAC does not allege a cause of action for defamation, the Court need not analyze whether the contested speech is unprotected by virtue of the law of defamation. As such, Ms. Loper has met her burden to demonstrate that her contested speech is protected and governed by the Anti-SLAPP Statute.

ii. The SAC

In the SAC, Plaintiff alleges additional instances of purportedly actionable speech. Defendants argue that the SAC demonstrates "on its face" that the Anti-SLAPP Statute applies because it names Defendants in their capacities as owners and operators of *The Gabber*. Second Mot. to Dismiss at 2. This fact is uncontested. *See* SAC ¶¶ 3-5 (alleging that Defendants are sued due to their ownership, control, and operation of *The Gabber* newspaper). As Defendants point out, the gist of Plaintiff's claim against Defendants relate to "the newspaper's content" and "alleged decisions regarding the content of news articles" in relation to "a 2024 Congressional primary and a 2025 mayoral election." Second Mot. to Dismiss at 2. Specifically, the SAC identifies the following publications by *The Gabber* which Plaintiff claims are actionable: 1) the Debate Article; 2) an article published on February 27, 2025 entitled "Gulfport Mayoral Candidate John Liccione's Time in Courts" ("Contempt Article"); and 3) an op-ed published on March 9,

[8] Plaintiff incorporated the Debate Article into the SAC via the following hyperlink: https://thegabber.com/meet-the-candidates-for-the-district-13-congressional-election/. *See* SAC at 4 n.1.

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2025 authored by a non-party named Barbara Banno which likened Plaintiff to "cheap, white sangria" ("Banno Article"). SAC ¶ 50.

Count I of the SAC states: "This claim arises from a pattern of knowingly false, misleading, and defamatory statements and omissions by Defendants[.]" SAC ¶ 50. Plaintiff admits that the Debate Article is "the cornerstone" of the SAC. Second Resp. at 1. Count I also alleges that Defendants used their editorial discretion in various instances to conceal information by refusing to publish material relevant to Plaintiff's political campaigns, and that such behavior is actionable. Count II states: "Defendants' actions, including the publication of false and misleading articles...directly interfered with Plaintiff's prospective economic relationships" and that the Debate Article "was calculated to ensure maximum suppressive impact on Plaintiff's public visibility and support." SAC ¶¶ 75, 80. Lastly, Count III alleges that Defendants "conspired with themselves and others to publish defamatory content, suppress exculpatory information, and undermine Plaintiff's political candidacies in 2024 and 2025." SAC ¶ 90. The SAC therefore claims that contested speech is directly actionable or otherwise serves as evidence of a conspiracy involving Defendants to interfere with and harm Plaintiff's political campaigns. *See, e.g.*, SAC ¶ 47 (alleging that the Banno Article "was the final act in furtherance of [a] conspiracy").

The medium of the contested speech once again clearly falls into a category of speech that is specifically enumerated in section 768.295(2)(a). The Debate Article and the Contempt Article constitute news reports. It can be argued that the Banno Article, which is an op-ed in nature, also qualifies as a news report within the meaning of the Anti-SLAPP Statute, but it is perhaps more appropriately categorized as a magazine article or, at the very least, belongs in the catch-all category of "other similar work." In any event, it also qualifies as a medium of speech which is governed by the Anti-SLAPP Statute. Once again, it is clear from the content of the three identified

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publications – the Debate Article, the Contempt Article, and the Banno Article – that the contested speech all concerns public issues given that the publications involve reporting and commentary on political campaigns of local interest, and that such matters are of legitimate news interest as the speech shed light and opinion on the qualifications of candidates for political office.

Plaintiff additionally argues that the contested speech is not constitutionally protected because it is defamatory. It is true that defamation is not constitutionally protected speech. *See, e.g., Mishiyev*, 402 So. 3d at 450 (citing *McQueen v. Baskin*, 377 So. 3d 170, 176 (Fla. 2d DCA 2023)). For the reasons provided in more detail below, the Court finds that there is no merit to Plaintiff's defamation claims. Given the foregoing, Defendants have met their burden to demonstrate that the contested speech is governed by the Anti-SLAPP statute. To the extent the SAC is grounded in other actions, e.g. *The Gabber*'s alleged concealment of information favorable to Plaintiff's campaign and a statement made by Ms. Loper to Plaintiff while moderating a mayoral debate, such allegations do not appear to fall within the purview of the Anti-SLAPP statute but are nonetheless meritless for the reasons described further below.

C. Are Plaintiff's Claims Primarily Based on First Amendment Rights in Connection with a Public Issue?

The burden now shifts to Plaintiff to demonstrate that his claims were not filed primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. Plaintiff's claims against Defendants in both the FAC and SAC seek redress primarily for written statements published in a local newspaper concerning his two unsuccessful political campaigns. Plaintiff objects to these written statements for a variety of alleged reasons including voter suppression, disinformation, violation of journalistic ethics and standards, and defamation. Plaintiff expresses discontent with what he views as *The Gabber*'s failure to report on his congressional campaign. For example, Plaintiff regards *The Gabber*'s actions as constituting "a

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pattern of willful neglect towards factual reporting contrary to the very ethics and standards Loper espouses in her publication's policies." First Resp. at 12. Such allegations demonstrate that Plaintiff filed this action primarily because Defendants engaged in speech. The publications complained of by Plaintiff clearly involved public issues.

Plaintiff's only discernible argument in response to the inquiry at hand is that the speech at issue is not protected by the First Amendment because the published articles are defamatory in nature. Such an argument is not meant for consideration at this juncture. *See Loomer v. New York Magazine*, No. 2019-CA-015123, 2021 WL 1748006 (Fla. 15th Cir. Ct. Apr. 29, 2021) (stating that the issue of whether a magazine article was defamatory and therefore not an exercise of free speech "is better addressed under the second prong of the analysis: whether Plaintiff's suit is filed without merit"). Accordingly, Plaintiff has failed to carry his burden to demonstrate that his claims in the FAC and SAC are not primarily based upon Defendants' exercise of free speech in connection with a public issue.

D. Are Plaintiff's Claims Without Merit?

Plaintiff now has the burden of demonstrating that his claims are not without merit.

i. FAC Causes of Action

For the reasons provided below, all counts in the FAC asserted against Ms. Loper fail to state a cause of action and are therefore without merit. First, Plaintiff offers no legal authority for the Court to consider in support of the validity of his claims. The First Response contains little more than Plaintiff's own theories about why the FAC states valid causes of action. Plaintiff attempts to counter the First Motion to Dismiss by arguing general concepts of defamation law by citing to "*Dominion Voting Systems v. Fox News Network*" and "*Goldwater v. Ginzburg*," neither of which includes a proper citation to a case law reporter. However, the FAC does not allege a

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cause of action for defamation against Loper. Thus, the little authority Plaintiff cites is entirely irrelevant to the validity of his claims in the FAC.[9]

Moreover, Plaintiff cites two fictitious cases in the First Response. First, Plaintiff cites to a case styled as "*Mastellone v. Lightning Park, Inc.*, 283 So. 3d 876 (Fla. 3d DCA 2019)" for the proposition that "courts must carefully evaluate whether the alleged speech is genuinely related to a public issue, and, more importantly, whether it is delivered in good faith and without intent to mislead." First Resp. at 16. Next, Plaintiff cites to a case styled as "*Gordon v. Marrone*, 77 So. 3d 1210 (Fla. 1st DCA 2011)" for the proposition that "courts must evaluate whether the speech is misleading." First Resp. at 14. These cases do not appear in any Florida reporter. Not only has Plaintiff failed to present legal authority to counter Ms. Loper's grounds for dismissal, but Plaintiff has presented false legal authority to this Court, an action which is sanctionable, including as to *pro se* parties. *See e.g., Gutierrez v. Gutierrez*, 399 So. 3d 1185, 1188 (Fla. 3d DCA 2024) (finding that a *pro se* party's "submission of fictitious case law" to the court was "sufficient to warrant the imposition of sanctions" (subsequent history omitted)).

Because Plaintiff has failed to identify any legal authority which demonstrates that his causes of action against Ms. Loper are meritorious, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute as to the FAC.

ii. SAC Causes of Action

The Court now turns to the SAC. Count I purports to state a defamation claim against all Defendants. "Defamation has the following five elements: (1) publication; (2) falsity; (3) actor must act with knowledge or reckless disregard as to the falsity on a matter concerning a public

[9] *See US Dominion, Inc. v. Fox News Network, LLC*, No. N21C-03-257 EMD, 2023 WL 2730567, at *1 (Del. Super. Ct. Mar. 31, 2023) ("This is a civil action involving a defamation claim"); *Goldwater v. Ginzburg*, 414 F.2d 324, 327 (2d Cir. 1969) ("This is a libel action").

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official, or at least negligently on a matter concerning a private person; (4) actual damages; and (5) statement must be defamatory." *Jews For Jesus, Inc. v. Rapp*, 997 So. 2d 1098, 1106 (Fla. 2008) (citation omitted). The required element of a false statement is not present if the alleged statements are true. *Cape Publications, Inc. v. Reakes*, 840 So. 2d 277, 280 (Fla. 5th DCA 2003) (citation omitted). "Under the substantial truth doctrine, a statement does not have to be perfectly accurate if the 'gist' or the 'sting' of the statement is true." *Kieffer v. Atheists of Florida, Inc.*, 269 So. 3d 656, 659 (Fla. 2d DCA 2019) (citation omitted). "Under Florida law, words are defamatory when they charge a person with an infamous crime or tend to subject one to hatred, distrust, ridicule, contempt or disgrace or tend to injure one in one's business or profession." *Seropian v. Forman*, 652 So. 2d 490, 495 (Fla. 4th DCA 1995) (citing *Adams v. News-Journal Corp.*, 84 So. 2d 549 (Fla. 1955)). "Where the court finds that a communication could not possibly have a defamatory or harmful effect, the court is justified in either dismissing the complaint for failure to state a cause of action or in granting a directed verdict at the proof stage." *Byrd v. Hustler Magazine, Inc.*, 433 So. 2d 593, 595 (Fla. 4th DCA 1983) (citation omitted).

Count I fails to state a cause of action for defamation. First, the Court must consider the Debate Article, which Plaintiff concedes is "the linchpin of this case." Second Resp. at 3. Having reviewed the hyperlinked article incorporated by Plaintiff into the SAC, the Debate Article never mentions Plaintiff at all, an admission made by Plaintiff. *See* SAC ¶ 17. Accordingly, Plaintiff has not demonstrated that the Debate Article charges Plaintiff with an infamous crime or tends to subject him to hatred, distrust, ridicule, contempt or disgrace or tends to injure him in his business or profession. Moreover, it is clear the gist or main purpose of the Debate Article was to discuss candidates participating in the debate, which did not include Plaintiff. Plaintiff admits that he was not invited to the debate for the congressional campaign. Second Resp. at 6. Although it is

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technically true that the Contempt Article described the debate participants as "the four candidates" for the political office in question, the Debate Article was substantially true as the "gist" of the article was to preview a debate that included those four candidates and excluded Plaintiff.

As to the Contempt Article, Plaintiff fails to demonstrate an actionable basis for defamation. Plaintiff does not argue that the statements contained in the Contempt Article are untrue. In other words, Plaintiff fails to show that he in fact was not ordered to attend a hearing where criminal contempt sanctions could have been imposed on him. Plaintiff simply alleges that the proximity of "criminal" to his name in a newspaper created false impressions that he had a criminal history. In failing to demonstrate the Contempt Article was untrue, Plaintiff cannot rely upon it as grounds for a defamation claim.

Additionally, Plaintiff concedes in his Second Response that the Banno Article "is a protected opinion" but insists it "reinforces the malicious intent established by the [Debate Article][.]" Second Resp. at 8. Thus, by Plaintiff's own admission, the Banno Article does not provide an independent basis for defamation. Having already determined that the Debate Article is not sufficient to support a claim for defamation, Plaintiff's argument that the Banno Article somehow "reinforces" the Debate Article is an invalid and moot point. The Banno Article constitutes pure opinion and is therefore not actionable. *See, e.g. Smith v. Taylor Cty. Pub. Co., Inc.*, 443 So. 2d 1042, 1046 (Fla. 1st DCA 1983) ("It is clear, as the trial court determined, that a writer's opinion about a newsworthy item is a protected privilege" (citation omitted)).

Count I also alleges that Defendants engaged in "[t]he systematic suppression of truthful reporting concerning a politically motivated battery and assault by a Democratic party leader against Plaintiff at a Pride parade" and the "concealment and burial of a Gabber mayoral candidate survey showing Plaintiff's early overwhelming lead in the Gulfport mayoral race." SAC ¶ 50.

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Plaintiff alleges that "[t]hese actions and omissions–taken together–were intended to convey a false and defamatory impression of Plaintiff to the public, to damage Plaintiff's candidacies for Congress and mayor, and to sabotage his standing within the Florida Congressional District 13 and Gulfport electorates, and in Democratic and LGBTQ+ communities at large." SAC ¶ 51. Per Plaintiff, Defendants' failure to report on these matters constitutes actionable defamation. Plaintiff has presented no authority to support his contention. On the contrary, "[t]he judgment of what is newsworthy must remain primarily a function of the publisher." *See, e.g. Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1202 (Fla. 2d DCA 2014) (citing *Doe v. Sarasota-Bradenton Florida Television Co., Inc.*, 436 So. 2d 328, 331 (Fla. 2d DCA 1983) for the proposition that "it is the primary function of the publisher to determine what is newsworthy and that the court should generally not substitute its judgment for that of the publisher"). *See also Miami Herald Pub. Co. v. Tornillo*, 418 U.S. 241, 258 (1974) ("The choice of material to go into a newspaper, and the decisions made as to limitations on the size and content of the paper, and treatment of public issues and public officials—whether fair or unfair—constitute the exercise of editorial control and judgment"). Thus, Plaintiff's contention that *The Gabber*'s alleged concealment and failure to report on matters relevant to his campaign are therefore meritless.

Count II alleges a cause of action for tortious interference with a prospective economic advantage. Plaintiff identifies two specific instances of publication and editorial decision-making by *The Gabber* which undergird this claim: 1) publication of the Debate Article (*see* SAC ¶¶ 79, 80, 82); and 2) Defendants' alleged concealment and distortion of an alleged assault on Plaintiff at a pride parade (*see* SAC ¶ 87). However, Plaintiff has failed to present legal authority that this claim is meritorious. Moreover, the established authority on the issue defeats Plaintiff's claim. The tort of interference does not apply to "communications to the public at large." *Ozyesilpinar v.*

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Reach PLC, 365 So. 3d 453, 460-61 (Fla. 3d DCA 2023). Additionally, news reporting is not conduct that can be the basis for a tortious interference claim. *Id.* at 461 (citation omitted). *See also Seminole Tribe of Florida v. Times Pub. Co., Inc.*, 780 So. 2d 310, 316 (Fla. 4th DCA 2001) (affirming dismissal of an interference claim against a newspaper and questioning "whether this common law cause of action could ever be stretched to cover a case involving news gathering and publication"). Since the SAC alleges that Defendants edit, own, and operate a newspaper that communicated news and opinion articles to the public at large. *See, e.g.*, SAC ¶¶ 3, 5, 29, 76. Therefore, Plaintiff's tortious interference claim fails as a matter of law.

Finally, Count III alleges a cause of action for civil conspiracy. Because the Court has already determined that all other causes of action alleged in the SAC are without merit, Count III also fails because "Florida does not recognize civil conspiracy as a freestanding tort." *Banco de los Trabajadores v. Cortez Moreno*, 237 So. 3d 1127, 1136 (Fla. 3d DCA 2018). Since Count III cannot stand on its own, it is also without merit. Notably, Count III is the only cause of action which specifically mentions Ms. Loper's alleged statement about having Plaintiff removed by police from the 2025 mayoral debate. *See* SAC ¶¶ 92, 94. Because Count III fails as a matter of law, Plaintiff has failed to demonstrate an actionable basis for Ms. Loper's alleged statement at the mayoral debate.

Since Plaintiff has failed to provide sufficient legal authority to demonstrate merit as to the causes of action asserted in the SAC, Plaintiff has failed to carry the burden imposed on him to avoid application of the Anti-SLAPP Statute.

iii. Shotgun Pleadings

The Court further observes that the FAC and the SAC are both impermissible shotgun pleadings. The U.S. Court of Appeals for the Eleventh Circuit has identified "four rough types or

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categories of shotgun pleadings." *Weiland v. Palm Beach Cty. Sheriff's Office*, 792 F.3d 1313, 1321 (11th Cir. 2015). The first is "a complaint containing multiple counts where each count adopts the allegations of all preceding counts, causing each successive count to carry all that came before and the last count to be a combination of the entire complaint." *Id.* The second is a complaint that is "replete with conclusory, vague, and immaterial facts not obviously connected to any particular cause of action." *Id.* at 1322. The third is a complaint that does not separate "each cause of action or claim for relief" into a different count. *Id.* at 1323. The fourth is a complaint that "assert[s] multiple claims against multiple defendants without specifying which of the defendants are responsible for which acts or omissions, or which of the defendants the claim is brought against." *Id.*

At a minimum, the FAC and SAC both fall into the first and second categories identified by the Eleventh Circuit. Each count of the FAC and SAC begins by incorporating all foregoing paragraphs. Thus, the complaints clearly fall into the first category of shotgun pleadings. Secondly, both complaints contain lengthy general allegations sections which are fully incorporated into each count. Many of the general allegations asserted in both complaints are conclusory, vague, and immaterial facts not obviously connected to any particular cause of action.[10] Thus, both complaints also fall into the second category of shotgun pleadings. Accordingly, both complaints are subject to dismissal as procedurally defective shotgun pleadings.

[10] For example, the FAC contains numerous paragraphs detailing how an alleged whistleblower named "Tampa Girl" informed Plaintiff that "she and others were paid to mark absentee ballots en masse on behalf of one or more of Plaintiff's opponents." FAC ¶ 18. These allegations are totally irrelevant to Plaintiff's cause of action for Loper's alleged violation of the Computer Fraud and Abuse Act (Count V), yet said allegations are incorporated into Count V. The SAC exhibits the same defect as Count I incorporates each paragraph in the lengthy general allegations section despite many being irrelevant to the cause of action asserted. Count II incorporates all preceding paragraphs, including those asserted in Count I. Count III asserts all preceding paragraphs, including those asserted in Count I and Count II.

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IV. Entitlement to Attorney's Fees

Under the Anti-SLAPP Statute, the Court "shall award the prevailing party reasonable attorney fees and costs incurred in connection with a claim that an action was filed in violation of this section." § 768.295(4), Fla. Stat. *See also Lee v. Animal Aid, Inc.*, 388 So. 3d 25, 29 (Fla. 4th DCA 2024) ("A party who prevails on an Anti-SLAPP claim is entitled to attorney's fees under section 768.295(4)"). Accordingly, the Court finds the following:

1. Ms. Loper is the prevailing party as to the FAC;
2. Ms. Loper, Mr. Loper, and TMMI are the prevailing parties as to the SAC; and
3. Plaintiff's claims against the aforementioned defendants were filed in violation of section 768.295.

Defendants are entitled to attorney's fees and costs incurred in relation to the SAC. Additionally, Ms. Loper is entitled to attorney's fees incurred since service of the FAC upon her. *See Marquez v. Lazarow*, 29 Fla. L. Weekly Supp. 797a (Fla. 11th Cir. Ct. Jan. 18, 2022) (holding that Defendant was entitled to attorney's fees when forced to respond to both an initial complaint and an amended complaint where her responses "asserted a single, consistent claim that this action was filed in violation of the Anti-SLAPP Statute"). Here, Ms. Loper filed an Anti-SLAPP motion to dismiss the FAC. In granting Plaintiff's Motion to File Second Amended Complaint, the Court specifically granted the motion with the caveat that Ms. Loper's claim to attorney's fees as to the FAC would be preserved post-amendment. Therefore, Ms. Loper is entitled to recover reasonable attorney's fees and costs incurred for defending against both the FAC and the SAC.

V. CONCLUSION

Accordingly, it is

ORDERED and ADJUDGED:

Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

1. This lawsuit is without merit, and Plaintiff brought the suit primarily because Defendants exercised their constitutional right of free speech in connection with a public issue. This is true both as to the FAC and SAC.

2. The First Motion to Dismiss is hereby **GRANTED.**

3. The Second Motion to Dismiss is hereby **GRANTED;**

4. This case is **DISMISSED WITHOUT PREJUDICE.**

5. Plaintiff is granted leave to file a third amended complaint within **TWENTY (20) DAYS** of this Order. **FAILURE TO FILE A THIRD AMENDED COMPLAINT WITHIN THE TIMEFRAME PROVIDED WILL RESULT IN DISMISSAL OF THIS ACTION WITH PREJUDICE WITHOUT FURTHER NOTICE.** *See, e.g., Neu v. Turgel*, 480 So. 2d 216, 217 (Fla. 3d DCA 1985) (subsequent history omitted).

6. Defendants are entitled to an award of their reasonable attorney's fees and costs under section 768.295(4), Florida Statutes (2024). The Court reserves jurisdiction to determine the amount.

DONE and ORDERED in Chambers, in St. Petersburg, Pinellas County, Florida this 14 day of October, 2025.

Honorable Patricia A. Muscarella
Circuit Civil Judge

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Filed, OCT 15, 2025, 14:38, Ken Burke, Clerk of the Circuit Court and Comptroller, Pinellas County

STATE OF FLORIDA
COUNTY OF PINELLAS

I, KEN BURKE, Clerk of the Circuit Court and Comptroller of the Sixth Judicial Circuit in and for the County of Pinellas, State of Florida, do hereby certify that this **TRANSCRIPT OF THE RECORD**, in the case of

JOHN WILLIAM LICCIONE
VS.
CATHY SALUSTRI LOPER, ET AL

Circuit Civil Number 24-003939-CI is a true and correct recital and copy of all such papers and proceedings in said cause as appear from the records and files of my office that have been directed to be included in said record in accordance with Florida Rules of Appellate Procedures.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the Seal of said Court on this the 19th day of March, 2026.

KEN BURKE
Clerk of the Circuit Court and Comptroller

By: /s/ Toni Rose
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