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

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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