

**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.*

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**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.

## **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 his 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 28<sup>th</sup> 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 23<sup>rd</sup> 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 23<sup>rd</sup>.

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 23<sup>rd</sup>, 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