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

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