

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

CHRISTOPHER GLEASON,

Plaintiff,

vs.

Case No. 24-003995-CI

JULIE MARCUS, et al

Defendant.

**PLAINTIFF'S RESPONSE IN OPPOSITION TO DEFENDANT'S MOTION TO
DETERMINE THE CONFIDENTIALITY OF TRIAL COURT RECORDS, MOTION TO
QUASH, AND NOTICE TO THE COURT OF PUBLIC DISSEMINATION OF
INFORMATION**

COMES NOW, Plaintiff, Christopher Gleason pro se, and hereby files this Response in Opposition to Defendant Julie Marcus's Motion to Determine the Confidentiality of Trial Court Records, Motion to Quash, and Notice to the Court regarding the public dissemination of information contained in Exhibit G, page 2 and page 4. In support of this response, Plaintiff states as follows:

1. Background

1. Defendant Julie Marcus has filed a Motion to Determine the Confidentiality of certain court records, specifically requesting that Exhibit G page 2 and page 4, which includes a configuration report dated March 19, 2024, be sealed.

2. The Defendant alleges that this document contains sensitive and confidential information under Florida Statutes §§ 119.0725(2)(b) and (2)(d) and seeks to prevent public access to it by sealing it under Florida Rule of Judicial Administration 2.420.

3. However, Plaintiff contends that the true purpose behind Defendant Marcus's attempt to seal Exhibit G is to conceal evidence of fraud, official misconduct, and violations of her oath of office as Pinellas County Supervisor of Elections. Defendant Marcus is seeking to hide fraud, official misconduct, corrupt practices and information that directly reveals her misfeasance, malfeasance, and breach of public trust as a constitutional officer. The concealment of evidence of fraud and misconduct is not permissible under Florida law. Courts have consistently held that the public interest in revealing fraud outweighs claims of confidentiality, especially when public officeholders are involved. See *Palm Beach Newspapers, Inc. v. Burk*, 504 So. 2d 378, 383 (Fla. 1987) (ruling that public officials cannot shield actions involving misconduct under the guise of confidentiality).

4. It is a general rule of statutory construction that when a statute is "clear, certain, and unambiguous, the courts have only the simple and obvious duty to enforce the law according to its terms." *Van Pelt v. Hilliard*, 78 So. 693, 694 (Fla. 1918). However, if a statute is susceptible of more than one meaning, legislative history may assist in determining legislative intent. *Rollins v. Pizzarelli*, 761 So. 2d 294, 295 (Fla. 2000); *State v. Jefferson*, 758 So. 2d 661 (Fla. 2000). The courts will not ascribe to the Legislature an intent to create an absurd or harsh consequence. *City of St. Petersburg v. Siebold*, 48 So. 2d 291 (Fla. 1950); *Winter v. Playa del Sol, Inc.*, 353 So. 2d 598 (Fla. 4th DCA 1977). No literal interpretation of a statute should be used that leads to an unreasonable conclusion or a purpose clearly at variance with the legislative intent. See, e.g., *Ops. Att'y Gen. Fla. 99-71 (1999) and 86-24 (1986)*. In construing a statute, the act as a whole should be considered, along with the problem to be corrected, the language of the act and the state of the law already existing, and a construction should be given that comports with legislative intent. *Foley v. State ex rel. Gordon*, 50 So. 2d 179, 180 (Fla. 1951); *Dade Federal Savings and Loan Association v. Miami Title & Abstract Division of American Title Insurance Company*, 217 So. 2d 873 (Fla. 3d DCA 1969). And see *State v. Rodriquez*, 365 So. 2d 157 (Fla. 1978); *Forsythe v. Longboat Key Beach Erosion Control District*, 604 So. 2d 452 (Fla. 1992)

2. Public Dissemination of Information

5. Contrary to Defendant's claims of confidentiality, the information contained in Exhibit G has already been widely disseminated to the public. This document and related information have been published extensively on various internet platforms, including:

Twitter and other social media platforms;

Including the "OFFICIAL" Twitter Page of the Pinellas County Supervisor of Elections: <https://x.com/VotePinellas/status/1503868881806532619> and on the personal Twitter page of the Plaintiff at:

<https://x.com/immutablechrist/status/1833537861603230076/photo/1>

See Exhibit A

Multiple websites; See Exhibit A

Email campaigns that have reached hundreds of thousands of voters in Pinellas County, with the total viewership exceeding two million people. See Exhibit A

6. Due to this extensive public exposure, the information contained in Exhibit G page 2 and page 4 cannot be considered confidential. Defendant Marcus's motion to seal is a baseless attempt to conceal material evidence that is crucial in proving her misconduct and the potential manipulation of the election process in Pinellas County. The Florida Supreme Court has held that once information enters the public domain, confidentiality claims become moot. In *Baron v. Colbert*, 393 So. 2d 1209, 1211 (Fla. 3d DCA 1981), the court ruled that "[w]here information is already public knowledge, any claim of confidentiality is groundless." Thus, sealing documents that are already publicly available would serve no valid legal purpose. In this case however the attempt to conceal, delay and prevent the communication of information regarding the commission of felonies being committed that affect the Pinellas County Supervisor of Elections would be prima facie evidence of violations of FL Stat 838.022.

3. Grounds for Motion to Quash DOCKET 18, EXHIBIT G

7. Docket 18, Exhibit G and the information within it do not qualify for confidentiality under Florida Rule of Judicial Administration 2.420. The widespread publication of this information invalidates the Defendant's claim of confidentiality, and any efforts to seal it would be ineffective and unnecessary.

8. Defendant claims photographs on pages 2 and 4 of 24 in Exhibit G, which show a "configuration report from March 19, 2024" are in violation of Florida Statutes, sections 102.031 and 119.0725.

9. Although defendant did not reference the exact section in the statute, we assume defendant is referencing 102.031(5), "no photography is permitted in the polling room or early voting area, except an elector may photograph his or her own ballot".

10. Plaintiff is unaware of any information in that photograph that is confidential and exempt from public records pursuant to Florida Statutes, section 119.0725, because the configuration is and has been publicly available. See pages 122-124 of Exhibit C for full configuration reports of the publicly available ESS System and Software Proposal.

11. Plaintiff is unaware of any information in the EAC Scope and Certification Document available as a .PDF document labeled as **ESS EVS 6500 Certificate and Scope of Conformance** that is confidential and exempt from public records disclosure as it is publicly available directly from the United States Election Assistance Commission's "Official Government Website" which is **widely available on the INTERNET** at the following: **<https://www.eac.gov/voting-equipment/evs-6500>**.

12. In fact Defendant Julie Marcus and her co-conspirators have attempted to conceal, delay and unlawfully withhold and claim exemptions to public records requests under false "Critical Election Infrastructure Exemptions" when if this information was deemed "Protected Critical Election Infrastructure Information" it would be labeled as such in the EAC Scope and Certification documents **widely available on the INTERNET** on the United States Election Assistance Website at the following URL: **<https://www.eac.gov/voting-equipment/certified-voting-systems>**

13. Under established U.S. Supreme Court precedent, once information is made publicly available, it loses its protected or confidential status. The doctrine of public disclosure is clearly articulated in *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), where the Court held that "once the data that constitute a trade secret are disclosed to others... or are disclosed to the public, the holder of the trade secret has no property interest in the data." Similarly, in *Kewanee Oil Co. v. Bicron Corp.*, 416 U.S. 470 (1974), the Court affirmed that information loses its protected status once it enters the public domain. Furthermore, in *Chevron Corp.*, 633 F.3d 153 (3d Cir. 2011), the Third Circuit held that "once documents are made publicly available, they lose their expectation of confidentiality."

14. Based on these legal precedents, the information at issue, now publicly available, is no longer subject to confidentiality protections.

15. There is no possibility that the information in the picture describing the Modem could be considered confidential and exempt from public records pursuant to Florida Statutes, section 119.0725 because on Mar 1, 2018, the account holder of the Pinellas County Supervisor of Elections on the platform "X" stated "Systems used to count ballots are not connected to the internet. Logic & Accuracy tests, a manual audit are conducted for each election"

16. It would be impossible for something that did not exist to be classified as confidential and therefore exempt from public records pursuant to Florida Statutes, section 119.0725.

DOCKET 4 EXHIBIT E

17. Defendant states an e-mail from Dustin Chase to Cathi Chamberlain which includes confidential information, to wit: the date of the voter's vote-by-mail ballot request was made is confidential pursuant to Florida Statutes, section 101.62(3), as set forth in DE12 attached as an Exhibit to Plaintiff's Complaint.

18. Plaintiff disagrees with this assertion because the dates presented as the ones when a Vote-By- Mail ballot was made is in fact the day we are challenging and have sworn Affid [REDACTED] individuals stating that they never requested a ballot on that date. A fictitious date cannot be confidential information.

19. Defendant claims there exists untruncated e-mail addresses and complete telephone number(s) which are in violation 2.45(a)(5)(A) and 2.45(a)(4)(E), respectively.

20. Defendant claims Plaintiff is in violation of Sections 2.45(a)(5)(A) and 2.45(a)(4)(E) but these sections do not exist in the Florida Rules of General Practice and Judicial Administration so we are assuming Plaintiff is referencing 2.42(a)(5)(A) and 2.45(a)(4)(E), of which we have provided the email addresses and phone numbers of those individuals directly from the public websites <https://www.votepinellas.gov/> and <https://www.floridabar.org/directories/find-mbr/profile/?num=84699> and <https://www.flsa6.gov/Staff-Directory-Yes-10-1306162.html> and <https://www.jud6.org/LegalCommunity/PracticeRequirementsofJudges.html> and <https://www.jud6.org/ContactInformation/JudgesPhoneNumbers.html> See Exhibit B

21. All Driver's License numbers have been redacted.

22. Defendant claims a portion of a social security number is a violation of rule 2.45(a)(3)(A) but under Florida Statue 2.424(a)(4)(A), the last 4 digits of any taxpayer identification number (TIN) is allowed. Under USC 26 CFR § 301.6109-1 – Identifying numbers, a Taxpayer Identification Number can be a Social Security Number, hence the last 4 is permitted and not confidential.

23. Defendant Marcus has failed to present any legitimate legal basis for sealing this information other than to cover up her own actions that constitute fraud, official misconduct, and violations of her duties as Supervisor of Elections. The sealing of this information would inhibit the public's ability to fully assess and understand the extent of the Defendant's breach of trust. Courts have held that claims of confidentiality or sealing documents should not be used to conceal evidence of fraud or wrongdoing. In *Graham v. Haridopolos*, 108 So. 3d 597, 603 (Fla. 1st DCA 2013), the court stated that "public access to court records should be denied only where secrecy is necessary to protect a compelling interest, and that interest must be balanced against the strong public interest in transparency."

24. Florida courts recognize that once information is publicly available, efforts to retroactively seal such information are futile. The public's right to access outweighs any belated claims of confidentiality, especially when the information has been distributed to such a large audience. Defendant's actions are a clear attempt to evade accountability for her actions that violate the integrity of her office. The public's right to access government records, particularly those that relate to the actions of public officials, is well-established in Florida. The **Florida Constitution, Article I, Section 24**, enshrines the right of access to public records. In *Miami Herald Publishing Co. v. Collazo*, 329 So. 2d 333, 336 (Fla. 3d DCA 1976), the court held that the government cannot withhold public records except in extraordinary circumstances, especially where there is public interest in the disclosure.

4. Public Interest and Transparency

25. The Plaintiff contends that the public interest in the transparency of election-related information far outweighs any privacy concerns claimed by the Defendant. The integrity of election systems and processes is of paramount importance to the citizens of Pinellas County, and concealing this information would undermine public confidence in the democratic process.

26. The efforts by Defendant Marcus to seal this information further raise concerns about her fraud, official misconduct, misfeasance, malfeasance, and violation of her oath of office. The public has a right to know the full extent of the actions taken by the Defendant in her official capacity, and the attempt to seal this information is tantamount to a cover-up. The courts have repeatedly recognized the need for transparency, especially where public trust and election integrity are concerned. In *Times Publishing Co. v. Ake*, 660 So. 2d 255, 257 (Fla. 1995), the Florida Supreme Court ruled that transparency in government actions, particularly in relation to elections, is essential to maintaining public confidence and ensuring accountability.

27. Florida Rule of Judicial Administration 2.420 allows for public access to judicial records unless there is a clear and compelling interest in keeping the information confidential. No such interest has been established here, particularly given the broad dissemination of the information at issue and the allegations of fraud and misconduct. Courts have held that the presumption of openness of judicial records can only be overcome by a showing of a compelling interest. In *Barron v. Florida Freedom Newspapers, Inc.*, 531 So. 2d 113, 118 (Fla. 1988), the Florida Supreme Court emphasized that sealing orders must be supported by findings that demonstrate the need for confidentiality clearly outweighs the public's right to access. The Defendants have failed to demonstrate any clear or compelling interest in keeping the information confidential, other than to attempt to conceal, delay and prevent the communication of information regarding the commission of felonies being committed that affect the Pinellas County Supervisor of Elections would be prima facie evidence of violations of FL Stat 838.022.

5. Public Officials Cannot Hide Behind Claims of Confidentiality to Shield Official Misconduct.

28. Florida courts have consistently ruled that public officials cannot hide behind claims of confidentiality to shield official misconduct, particularly when it involves information that is already publicly available. Government phone numbers and email addresses that are part of public records or emails detailing official misconduct are not exempt from disclosure, even if they have been used in the context of fraud or conspiracy. **Miami Herald Publishing Co. v. Collazo**, 329 So. 2d 333 (Fla. 3d DCA 1976) The court ruled that public officials cannot withhold information from public records unless there is a specific statutory exemption that applies. The court emphasized the public's right to know the actions of public officials and rejected arguments that the disclosure of such information could be withheld for privacy or confidentiality reasons, particularly when the information is relevant to misconduct. In cases where government phone numbers and email addresses are part of emails revealing fraud or

conspiracy, these pieces of information cannot be withheld simply because they relate to a public official's duties. Fraud and conspiracy are not protected grounds for redaction under public records laws.

29. The Florida Supreme Court held that public officials' misconduct cannot be shielded by confidentiality rules. The court found that transparency in government functions is essential and that shielding such information would be contrary to public policy. **Palm Beach Newspapers, Inc. v. Burk, 504 So. 2d 378 (Fla. 1987)** If the phone numbers and email addresses belong to government officials and are included in communications showing official misconduct, those communications should not be redacted under claims of confidentiality.

30. The Florida Supreme Court reaffirmed the principle that public access to government records is crucial to ensure transparency and accountability. The court rejected efforts to redact or withhold government records that contained information about public officials performing their official duties. **Times Publishing Co. v. Ake, 660 So. 2d 255 (Fla. 1995)** The decision in this case supports the argument that phone numbers and email addresses of public officials, especially in communications related to misconduct, should not be redacted. The court emphasized the public's right to scrutinize the actions of public officials.

31. The Florida Supreme Court emphasized the importance of open records and transparency in government operations, especially when it comes to government misconduct. The court held that the government must prove a compelling reason to justify the nondisclosure of records. **Lightbourne v. McCollum, 969 So. 2d 326 (Fla. 2007)**. If the government email addresses and phone numbers are part of records detailing fraud or conspiracy, there is no compelling reason to redact this information, as it forms part of the public's right to know about official misconduct.

32. The court ruled that information that is widely available to the public, such as government officials' contact details, cannot be claimed as confidential information under public records law. The court further ruled that such information is not exempt from disclosure merely because it involves public officials. **Browning v. Walton, 351 So. 2d 380 (Fla. 4th DCA 1977)**. This ruling supports the idea that publicly available government phone numbers and email addresses, particularly when tied to official misconduct, cannot be redacted to conceal evidence of fraud.

33. This case highlighted that the inclusion of public officials' phone numbers and email addresses in records relevant to government operations does not make them exempt from disclosure. The court held that the public's right to transparency prevails over any privacy concerns when public misconduct is at issue. **Nicolette v. Florida Department of Law Enforcement, 641 So. 2d 1271 (Fla. 1st DCA 1994)**. Government phone numbers and email addresses, especially when included in emails that reveal official misconduct, are not exempt from disclosure.

6. Trade Secrets or Sensitive Information Cannot Be Used to Conceal Fraud or Official Misconduct

34. Trade secrets or sensitive security information exemptions cannot be used to conceal official misconduct or fraud under Florida law. While certain records may be legitimately exempt from public disclosure for reasons related to trade secrets or sensitive security concerns (such as protecting voting system software from unauthorized access), these exemptions do not extend to situations involving official misconduct or fraud. Florida courts and legal principles emphasize transparency, particularly in cases of potential wrongdoing.

35. Public Records Law and Exemptions: Under Florida's Public Records Law (Chapter 119), records can be exempt from disclosure if they involve trade secrets (like proprietary software) or security-sensitive information. **However, these exemptions are narrowly construed and do not apply when the public interest in transparency outweighs the need for confidentiality—especially in cases involving misconduct, fraud, or violations of law.** *Shevin v. Byron, Harless, Schaffer, Reid and Associates, Inc. (1980)*: The Florida Supreme Court ruled that all public records are subject to inspection unless a specific statutory exemption applies. Exemptions for sensitive information must be applied strictly, and they do not cover records that might expose wrongdoing. *Gadd v. News-Press Publishing Co. (1982)*: The court held that public records laws are designed to ensure transparency, especially in government actions. Even if certain information is exempt, that does not permit agencies to withhold records to hide misconduct or fraudulent activities.

36. Trade Secret and Public Interest: Even where trade secrets are involved, courts have held that the protection of these secrets cannot be used as a cover for fraud or misconduct. For example, in cases where disclosure is necessary to expose illegal or unethical behavior, courts may order the release of records despite claims of trade secret protection. Thus, Florida law protects against the misuse of exemptions, such as those related to trade secrets or security information, to hide official misconduct or fraud. If there is an indication of improper conduct, these exemptions lose their protective shield, and the public's right to access records prevails.

8. Relief Requested

WHEREFORE, Plaintiff, Christopher Gleason, respectfully requests that this Honorable Court:

1. Deny Defendant's Motion to Determine the Confidentiality of Trial Court Records with respect to Exhibit G and every other exhibit they are trying to seal under false claims of Protected information;
2. Grant Plaintiff's Motion to Quash the Defendant's request to seal Exhibit G, on the grounds that the information has been widely disseminated and is in the public domain;

3. Take judicial notice that the information in Exhibit G has been publicly available on social media, websites, and email campaigns, with viewership exceeding two million post views by Pinellas County voters;

4. Acknowledge that Defendant Marcus's efforts to seal Exhibit G are intended to conceal evidence of fraud, are a violation of FLA Stat 838.022 official misconduct, misfeasance, malfeasance, violations of her oath of office, and breach of public trust;

5. Provide any other relief this Court deems just and appropriate.

Dated this 19th Day of September, 2024.

Respectfully submitted,

/s/ Christopher Gleason

Christopher Gleason

1628 Sand Key Estates Court

Clearwater, FL 33767

727-480-2059

gleasonforpinellas@gmail.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via email on this September 20, 2024 to: JARED N. KAHN, ESQ., Attorney for Defendant Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections, Dustin Chase in his official capacity as the Deputy Supervisor of Elections and Matt Smith in his official capacity as General Counsel for the Pinellas County Supervisor of Elections, at jkahn@pinellas.gov and eservice@pinellas.gov and to KELLY L. VICARI, Attorney for Defendant Julie Marcus, in her official capacity as Pinellas County Supervisor of Elections, Dustin Chase in his official capacity as the Deputy Supervisor of Elections and Matt Smith in his official capacity as General Counsel for the Pinellas County Supervisor of Elections, at kvicari@pinellas.gov and eservice@pinellas.gov.

JARED D. KAHN

Florida Bar Number 105276

Senior Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, Sixth Floor

Clearwater, FL 33756

Primary e-mail address: jkahn@pinellas.gov

Secondary e-mail address: eservice@pinellas.gov

Attorney for Julie Marcus, in her official capacity as

Pinellas County Supervisor of Elections

KELLY L. VICARI

FBN: 88704

Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, Sixth Floor

Clearwater, FL 33756

Phone: (727) 464-3354 / Fax: (727) 464-4147

Primary e-mail address: kvicari@pinellas.gov

Secondary e-mail address: eservice@pinellas.gov

JEFFREY N. KLEIN

Florida Bar Number 1025117

Assistant County Attorney

Pinellas County Attorney's Office

315 Court Street, 6th Floor.

Clearwater, FL 33756

Tel: 727-464-3354/Fax: 727-464-4147

Primary e-mail address: jklein@pinellas.gov

Secondary e-mail address: eservice@pinellas.gov
Attorney for Defendant, Attorney for the Pinellas
County Canvassing Board

/s/ Christopher Gleason

Dated: 09/20/2024