

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT,
IN AND FOR LEON COUNTY, FLORIDA**

CASE NO.: 2020-CA-000908

**REVEREND CYNTHIA COTTO GRIMES, ART YOUNG, and DENNIS
MCFATTEN,**

Plaintiffs,

vs.

**FLORIDA DEPARTMENT OF STATE, FLORIDA DIVISION OF ELECTIONS,
LAUREL M. LEE, as Secretary of State of Florida, and
MARK EARLEY, Supervisor of Elections, Leon County Florida,**

Defendants.

**SUPERVISOR EARLEY'S MOTION TO DISMISS VERIFIED SECOND AMENDED
COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**

Defendant, MARK EARLEY, in his official capacity as the Supervisor of Elections of Leon County, Florida, files this Motion to Dismiss the Verified Second Amended Complaint for Declaratory and Injunctive Relief, pursuant to Rule 1.140(b), Florida Rules of Civil Procedure.

Supervisor Earley moves to dismiss the Verified Second Amended Complaint for Declaratory and Injunctive Relief, on the following grounds: (1) Failure to state a cause of action against Supervisor Earley upon which relief can be granted; (2) The Court lacks jurisdiction under Chapter 86, Florida Statutes; and (3) Failure to join indispensable parties.

MEMORANDUM OF LAW IN SUPPORT OF MOTION TO DISMISS

Failure to State a Cause of Action

Plaintiffs have failed to state a cause of action against Supervisor Earley as none of the Plaintiffs reside in Leon County and there is, therefore, no justiciable case or controversy between Supervisor Earley and any Plaintiff.

As the Florida Supreme Court has stated,

Before any proceeding for declaratory relief should be entertained it should be clearly made to appear that there is a bona fide, actual, present practical need for the declaration; that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; that some immunity, power, privilege or right of the complaining party is dependent upon the facts or the law applicable to the facts; that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; that the antagonistic and adverse interests are all before the court by proper process or class representation and that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

May v. Holley, 59 So. 2d 636,639 (Fla. 1952).

Here, none of the Plaintiffs are registered voters in Leon County, Florida. Plaintiff Young resides in Miami-Dade County. *See* 2d Am. Comp. ¶¶4, 13. Plaintiffs Grimes and McFatten reside in Marion County. *See* 2d Am. Comp. ¶¶5, 6, 13. Thus, there is no bona fide, actual, present practical need for the declaration; nor are there persons who have, or reasonably may have, an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law, with Supervisor Earley. *Ahern v. Mayo Clinic*, 180 So. 3d 165, 174 (Fla. 1st DCA 2015). Thus, the Second Amended Complaint must be dismissed as to Supervisor Earley for failure to state a cause of action against Supervisor Earley.

Lack of Jurisdiction Under Chapter 86

In order for a court to exercise its jurisdiction under Chapter 86 “there must ... exist some justiciable controversy between adverse parties that needs to be resolved....” *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991). “Otherwise, any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action.” *Id.* See also *Ahern* at 174. There is no justiciable controversy between Plaintiffs and Supervisor Earley. Thus, the Second Amended Complaint must be dismissed as to Supervisor Earley for lack of jurisdiction under Chapter 86. *Florida Society of Ophthalmology v. State, Dept. of Professional Regulation*, 532 So. 2d 1278 (Fla. 1st DCA 1988).


Failure to Join Indispensable Parties

“An indispensable party is one whose interest in the controversy makes it impossible to completely adjudicate the matter without affecting either that party's interest or the interests of another party in the action.” *Florida Dept. of Revenue v. Cummings*, 930 So. 2d 604, 606 (Fla. 2006). Here, Plaintiffs seek a declaration that Section 101.62 (1)(a), Florida Statutes, “does not limit the provision of mail-in ballots to only those electors who request such ballots” and an injunction that the “Leon County Supervisor of Elections automatically send mail-in ballot to all electors in the county, whether requested or not, to include with the ballot a stamped self-addressed return. envelope for the submission of mail-in ballots”

Supervisor Earley is not a proper party with respect to either of the Plaintiffs' demands. Plaintiff Young is a registered voter who resides in Miami-Dade County. See 2d Am. Comp. ¶¶4, 13. Plaintiffs Grimes and McFatten are registered voters who reside

in Marion County. *See* 2d Am. Comp. ¶¶5, 6, 13. As such, the respective Supervisors of Elections in Miami-Dade and Marion Counties are indispensable parties to this action.

Respectfully submitted on this 7th day of July, 2020 by:



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing has been furnished via the Court's Electronic Filing Portal, on July 7, 2020, to all counsel of record.

