

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

Reverend Cynthia Cotto GRIMES,  
Art YOUNG, and Dennis MCFATTEN,  
*Plaintiffs,*

v.

CASE NO.: 2020-CA-000908

FLORIDA DEPARTMENT OF STATE,  
FLORIDA DIVISION OF ELECTIONS,  
and Laurel M. LEE, Secretary of State of Florida,  
*Defendants.*

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**DEPARTMENT DEFENDANTS' AMENDED<sup>1</sup> MOTION TO STRIKE "PLAINTIFFS"'**  
**THIRD AMENDED COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF**  
**AND**  
**MOTION TO DISMISS CASE FILED BY CYNTHIA COTTO GRIMES, ART YOUNG,**  
**AND DENNIS MCFATTEN WITH PREJUDICE**

**COME NOW**, Defendants, Florida Department of State, Florida Division of Elections, and Laurel M. Lee, Secretary of State of Florida (hereinafter "Department Defendants") and move to **STRIKE** "Plaintiffs'" Third Amended Complaint for Declaratory and Injunctive Relief filed July 29, 2020, and to **DISMISS** this case (20-CA-000908) filed by Cynthia Cotto Grimes, Art Young, and Dennis McFatten, **with prejudice**.

Department Defendants, in their Reply to Plaintiffs' Response to the Motion to Dismiss characterized the allegations made in the Second Amended Verified Complaint as being examples of "a purported harm in search of a Plaintiff rather than any actual harm suffered by these Plaintiffs." *See* Reply, p. 3 filed July 13, 2020. This allegation was distinctly confirmed upon the filing of the Third Amended Complaint in which Plaintiffs, Cynthia Cotto Grimes, Art

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<sup>1</sup> Amended only as to the date in the Certificate of Service. The original Motion indicated August 4, 2020. This was in error. The Motion was filed today, August 5, 2020.

Young, and Dennis McFatten have disappeared and seeming new and unrelated Plaintiffs, Lily Aaronson and Farm Workers Association of Florida have materialized.

An amended pleading is not the proper vehicle to find wholly new Plaintiffs believed to better fit an attorney's legal theories. That is a new lawsuit and the attendant procedures of filing a new lawsuit apply.

More specifically, the Court, by Order dated July 20, 2020, dismissed Plaintiffs' Cynthia Cotto Grimes, Art Young, and Dennies McFatten, Second Amended Verified Complaint without prejudice, and gave them ten (10) days to file and serve a third amended complaint if they so chose. Significantly, the leave to amend was granted to *Plaintiffs*, not *counsel*. In other words, the Court did not grant counsel leave to drop the three Plaintiffs, find new ones, and file a new lawsuit under the guise of a third amended complaint.<sup>2</sup>

While Defendants acknowledge the opportunity to *add* parties under Florida Rule of Civil Procedure 1.250(c) during a timeframe given to amend, the rule of *amendment* by necessity contemplates a continuation of action in some form. An action belongs to an aggrieved or wronged party or parties, not an attorney. Here, with none of the Plaintiffs who were given leave to amend remaining, there is no continuation of action to amend, nor claims into which new parties may *add* themselves. There is merely a new case.

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<sup>2</sup> It appears also that the Third Amended Complaint has not been timely *served* as required by the Court's order on new Defendants, Christina White, Supervisor of Elections, Miami-Dade County, and Bill Cowles, Supervisor of Elections, Orange County. The Certificate of Service only indicates mailing, contrary to Florida Rule of Civil Rule of Procedure 1.070, requiring process for the initial complaint upon a party.

Additionally problematic is that Wesley Wilcox, Supervisor of Elections for Marion County is mentioned in the introductory paragraph of the Third Amended Complaint but appears nowhere else, nor in the Certificate of Service. And further, the "Wherefore" clause to Count II asks that the *Indian River* Supervisor of Elections automatically send vote-by-mail ballots. The Indian River Supervisor of Elections is never named nor discussed elsewhere, nor included in the Certificate of Service.

Plaintiffs, Cynthia Cotto Grimes, Art Young, and Dennis McFatten, have not filed and served a third amended complaint within ten (10) days despite having been given the opportunity by the Court on July 20, 2020. As such, this case filed by Cynthia Cotto Grimes, Art Young, and Dennis McFatten should be dismissed with prejudice.

**WHEREFORE**, the Department Defendants respectfully request that the Court **STRIKE** the Third Amended Complaint for Declaratory and Injunctive Relief as an unauthorized pleading and **DISMISS** this case filed by Cynthia Cotto Grimes, Art Young, and Dennis McFatten, **with prejudice**.

Should the Court deny this request to strike, Defendants ask to be given ten (10) days to respond to the Third Amended Complaint.

August 5, 2020

Respectfully submitted,

/s/ Colleen E. O'Brien

BRADLEY R. MCVAY (FBN 79034)

*General Counsel*

brad.mcvay@dos.myflorida.com

ASHLEY E. DAVIS (FBN 48032)

*Deputy General Counsel*

ashley.davis@dos.myflorida.com

candice.edwards@dos.myflorida.com

COLLEEN E. O'BRIEN (FBN 76578)

*Assistant General Counsel*

colleen.obrien@dos.myflorida.com

FLORIDA DEPARTMENT OF STATE

R.A. Gray Building, Suite 100

500 South Bronough Street

Tallahassee, Florida 32399-0250

Phone: (850) 245-6536

*Counsel for Department Defendants*

**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 5th day of August, 2020, a true copy of this motion was filed electronically with the Clerk of Court through the Florida Courts eFiling Portal, which shall serve a copy via e-mail to all counsel of record.

/s/ Colleen E. O'Brien  
Attorney