

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' REPLY TO**  
**PLAINTIFFS' RESPONSE TO MOTIONS TO DISMISS**

**COME NOW**, Defendants, Florida Department of State, Florida Division of Elections, and Laurel M. Lee, Secretary of State of Florida (hereinafter "Department Defendants"), and submit this brief Reply to Plaintiffs' Response to Motions to Dismiss filed July 10, 2020.

The Department Defendants stand by the legal arguments made in the Motion to Dismiss, but reply briefly to certain factual allegations Plaintiffs make for the first time in their Response. Specifically, Plaintiffs state at page 5 of the Response:

*These Plaintiffs have personal interests at stake. They all want to vote and all will have difficulty registering to vote-by-mail. And they all believe that as a result of the expected flood of mail-in-ballots for the General Election, elections offices will be inundated and their mailed ballots will not be counted.*

See Response to Motion to Dismiss at p. 5. (emphasis added).

Factual considerations outside the four corners of the complaint are generally improper at the motion to dismiss stage. See, e.g., *Stubbs v. Plantation Gen. Hosp. Ltd. P'ship*, 988 So. 2d 683, 684 (Fla. 4th DCA 2008). The allegations in Plaintiffs' Response were never made in the Second Amended Verified Complaint. This is simply an attempt to connect purported harm to Plaintiffs, which purported harm is wholly lacking from the action at this point. Plaintiffs' new

factual allegations are therefore improper for the Court to consider in evaluating the Department Defendants' Motion to Dismiss.

Moreover, to the extent Plaintiffs seek to amend and file a *fourth* complaint to state that they will have difficulty registering to vote by mail, it appears unlikely that they would be able to do so in good faith. A review by Division of Elections staff of the Plaintiffs' voter registration histories indicates that two of the three Plaintiffs (Mr. McFatten and Mr. Young) appear to be already registered to receive vote-by-mail ballots in the upcoming elections and the third, Ms. Grimes, previously requested vote-by-mail ballots in 2010 and 2014.

More specifically, it appears that Mr. McFatten requested a vote-by-mail ballot online in May of 2020, and that Mr. McFatten previously voted by mail in 2016. It also is something of a unique turn to previously have alleged that Mr. McFatten desires to help or helps elderly individuals with voting, but would have difficulty registering to receive vote-by-mail ballots himself. And again, he is in fact registered to receive them.

It appears that Plaintiff Art Young (described in the Second Amended Complaint as a 68-year-old in Miami-Dade County), assuming he is Arthur S. Young in Miami-Dade County, also submitted an online request to receive a vote-by-mail ballot in May of 2020. Arthur S. Young also voted by mail in twelve elections since 2012. Indeed, all of the Plaintiffs appear to have requested vote by mail ballots before and no reason is given why they would have difficulty doing so now.

In sum, Plaintiffs' bare factual allegations of purported harm – that they will have difficulty registering to vote by mail and that they fear their ballots would not be counted due to Supervisors of Elections being inundated by vote-by-mail ballots – do not appear in the operative pleading and should not be considered for testing the legal sufficiency of the allegations in the

Second Amended Verified Complaint. To the extent such allegations are taken into consideration for purposes of weighing the viability of another amendment, it appears unlikely that Plaintiffs would be able to make them in good faith given their voting histories and the current vote-by-mail requests on file. Rather, this is another example of a purported harm in search of a Plaintiff rather than any actual harm suffered by these Plaintiffs.

July 13, 2020

Respectfully submitted,

/s/ Colleen E. O'Brien

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### **CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 13th day of July, 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