

**IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA
CIVIL DIVISION**

**In Re: BRUCE CHILDERS,
Plaintiff,**

**CASE NO.: 2024 CA 000816
DIVISION: N**

v.

**ROBERT BENDER,
Supervisor of Elections,
Defendant.**

**ORDER DENYING PLAINTIFF'S EMERGENCY MOTION FOR
INJUNCTIVE RELIEF**

THIS MATTER is before the Court on Plaintiff's Emergency Motion for Injunctive Relief ("Motion"), e-filed on June 25, 2024. Defendant filed his Response in Opposition on June 27, 2024, and Plaintiff filed his Amended Bench Brief and Exhibits on the morning of the hearing held on June 28, 2024. The Court, having reviewed the filings and exhibits¹, having carefully considered testimony and evidence, and being otherwise advised in the premises, **DENIES** Plaintiff's Motion as follows:

Procedural History

On June 21, 2024, Plaintiff filed his Pro Se Petition for Emergency Writ of Mandamus and for Declaratory Judgment. On June 24, 2024, Plaintiff filed

¹ For ease and by agreement of the parties, all exhibits were admitted into evidence. The Court only reviewed and considered the exhibits referenced at the hearing.

an Emergency Ex Parte Motion for Order to Show Cause, and later on that same date, counsel filed a Notice of Appearance on behalf of Plaintiff. On June 25, 2024, Plaintiff filed an Emergency Motion for Injunctive Relief, and the Court entered an Order Denying Petition for Emergency Writ of Mandamus. On June 26, 2024, a Notice of Hearing was filed on Plaintiff's Emergency Motion for Injunctive Relief to be held Friday, June 28, 2024, at 2:00 p.m. Three (3) hours was allotted.

Summary of Undisputed Facts

On Wednesday, June 12, 2024, Plaintiff presented to the Supervisor of Elections ("SOE") office to qualify as a candidate for the Supervisor of Elections seat. He is not an incumbent or otherwise a current public official. At the first visit, Plaintiff and his wife came to file the forms necessary to open a campaign account, and thereafter, returned to the SOE office with a check and a photocopy of the first page of Form 6-Full and Public Disclosure of Financial Interest ("Form 6"). There was a conversation between Ms. Childers and a SOE employee involving Ms. Childers' iPad that both witnesses testified involved Plaintiff's electronic Form 6, which is found on the Commission on Ethics ("COE") website. Per multiple witnesses, including Ms. Childers, she stated she would email a copy of Plaintiff's Form 6 to a

SOE employee when she got to a computer.² Despite not having the full Form 6, both the Chief Deputy Supervisor, an employee of the SOE for thirteen (13) years, and another twenty-year employee initialed Plaintiff's "2024 Qualifying Check List for Supervisor of Elections Candidates" as having provided all necessary documents.

In addition to the check list, sometime later that day, the SOE posted Plaintiff as a qualified candidate on his website. The following day, Defendant sent a press release to local media outlets advising the public that Plaintiff had qualified to run for the seat. Qualifying closed on Friday, June 14, 2024, at noon, and Plaintiff remained listed as "qualified" on the website.

On June 18, 2024, the Chief Deputy Supervisor called Plaintiff to notify him that he was not qualified because the SOE never received the full Form 6 as required by law. No one on behalf of Defendant communicated in any way with Plaintiff about this issue between his in-person visit on June 12, 2024 and June 18, 2024. Later that day, a meeting was held between the parties and the county attorney, and the matter was taken under advisement. On June 20, 2024, the Chief Deputy Supervisor made the decision to deem Plaintiff not qualified for failure to file the complete Form 6. Thereafter, Defendant submitted a list of candidates qualified for local office to the

² Although the specific facts about the exchange were disputed, the Court finds those disputes immaterial to its findings.

Secretary of State that did not include Plaintiff. On June 21, 2024, this litigation commenced. As of June 27, 2024, the primary ballots have already been designed and printed to meet the July 5, 2024 deadline for vote-by-mail ballots for military and overseas voters.³ Adding Plaintiff to the ballot would require a change to 100% of the ballots.

Analysis and Applicable Law

The parties concede the Court has been put in a procedural predicament. The time to answer the declaratory action has not yet lapsed, the Motion does not indicate whether this is a request for a temporary or permanent injunction, and the style of the case is confusing. The Court recognizes the parties are constrained by the urgent nature of these proceedings, and in turn, the Court is also asked to decide a case of public importance with limited time and resources. Ultimately, the parties concede that what the Court is being asked to do is to overrule the Defendant's decision to deem Mr. Bruce Childers an unqualified candidate for the office of Supervisor of Elections and require Defendant to put Plaintiff on this year's ballot.

Plaintiff has an extraordinary burden in his request for an injunction directing Defendant to place Plaintiff's name on the ballot as a candidate for

³ Technically, the deadline is July 6, 2024, due to the holiday.

Supervisor of Elections. See *Fla. Dep't of Health v. Florigrown, LLC*, 317 So. 3d 1101, 1110 (Fla. 2021); *State, Dep't of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018). “[A] temporary injunction is extraordinary relief that should be granted only when the party seeking the injunction has established four elements: (1) a substantial likelihood of success on the merits, (2) the unavailability of an adequate remedy at law, (3) irreparable harm absent entry of an injunction, and (4) that the injunction would serve the public interest.” *Florigrown, LLC*, 317 So. 3d at 1110. “[A] temporary injunction is an extraordinary remedy that should be granted sparingly. . . . [T]he movant must prove each element with competent, substantial evidence. . . . [C]lear, definite, and unequivocally sufficient factual findings must support each of the four conclusions necessary to justify entry of a preliminary injunction. If any one of the elements is not established, the trial court may not grant the injunction.” *Bayfront HMA Med. Ctr., LLC*, 236 So. 3d at 472. If this Court grants such an injunction, it “must make specific factual findings to support each element, and those findings must be supported by competent, substantial evidence.” *DeSantis v. Fla Educ. Ass’n*, 206 So. 3d 1202, 1212 (Fla. 1st DCA 2020).

To obtain a permanent injunction, the petitioner must “establish a clear legal right, an inadequate remedy at law and that irreparable harm will arise

absent injunctive relief.” *K.W. Brown & Co. v. McCutchen*, 819 So.2d 977, 979 (Fla. 4th DCA 2002).

I. Plaintiff has failed to demonstrate a clear legal right (or a substantial likelihood of success on the merits).

The Court finds nothing temporary about Plaintiff’s requested relief, and thus, finds Plaintiff seeks a permanent injunction. The Court agrees with Defendant’s Response that even if “Plaintiff’s asserted-yet-not-proven facts were deemed true,” the Motion is due to be denied pursuant to applicable law. The Court raised this point as a preliminary matter at the hearing. Moreover, the Court sought undisputed facts to be proffered by counsel. However, the Court proceeded with a full evidentiary hearing at the parties’ request, and the parties agreed the Court should make factual findings to support its decision. To this end, the Court agrees with Defendant that no law has been provided to the Court that would allow it to grant Plaintiff’s requested relief under any version of the events or merits. The Court merely highlights, for the benefit of the parties and the public, the “travesty” of the unique situation that lies before it.⁴

Ms. Childers testified that she assumed Defendant would not deem Plaintiff qualified on the website and in a press release if he was not, in fact,

⁴ A SOE witness testified that this has never happened in her twenty years of employment with the office. Counsel represented that they were not aware of any pending or past cases involving this fact pattern.

qualified. Defendant employees checked their list and deemed Plaintiff qualified online. Defendant further notified the public of Plaintiff's qualification by sending a press release to local media outlets. This was all done, because it was assumed Ms. Childers (or Plaintiff) would follow up with the necessary paperwork by email.

Although Defendant and his employee(s), the "filing officer," as found in § 99.061(7)(b), Fla. Stat. "shall make a reasonable effort to notify the candidate of missing or incomplete items and shall notify the candidate of the missing or incomplete items....," ultimately, the onus is on the candidate as explained below. A candidate seeking to qualify for a constitutional office⁵ must provide a sworn statement providing full and public disclosure of financial interests at the time of qualifying as a requirement to have his or her name placed on the ballot for election to office. See Art. II, § 8(a) and (j)1, Fla. Const.; § 99.061(5) and (7)(a)5, Fla. Stat. Specifically, section 99.061, Florida Statutes, provides:

(5) At the time of qualifying for office, each candidate for a constitutional office, or for another elective office subject to an annual filing requirement pursuant to s. 112.3144, **shall** file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution, which must be verified under oath or affirmation pursuant to s. 92.525(1)(a), and a candidate for any other office, including local elective office, shall file a statement of

⁵ A county supervisor of elections is a constitutional officer. See Art. 8, § 1(d) (listing supervisor of elections as among those enumerated county constitutional officers).

financial interests pursuant to s. 112.3145. A candidate who is subject to an annual filing requirement under s. 112.3144 may file a verification or receipt of electronic filing pursuant to s. 112.3144(4). A candidate who is subject to an annual filing requirement under s. 112.3145 may file a verification or receipt of electronic filing pursuant to s. 112.3145(2)(c) unless the candidate is required to file a full and public disclosure of financial interests pursuant to s. 8, Art. II of the State Constitution or this subsection.

...
(7)(a) In order for a candidate to be qualified, the following items **must** be received by the filing officer by the end of the qualifying period:

...
5. The full and public disclosure or statement of financial interests required by subsection (5). A public officer who has filed the full and public disclosure or statement of financial interests with the Commission on Ethics before qualifying for office may file a copy of that disclosure or a verification or receipt of electronic filing as provided in subsection (5) at the time of qualifying.

(emphasis added).

The Court finds the law is clear and unambiguous as to a candidate's requirements. Of course, any complaints about the requirements or implementation of § 99.061 or § 112.3144 (Full and public disclosure of financial interests), Fla. Stat. should be directed to the legislative branch.

The Court finds the case akin to the facts in *State ex rel. Taylor v. Gray*, 25 So. 2d 492 (Fla. 1946). In *Taylor*, Henry Jones, the would-be candidate sent his agent with sufficient funds to cover the statutorily-set filing fee. *Id.* at 495. Upon arrival, the agent paid less than the full filing fee based upon the Secretary of State's clerk misinforming the agent as to the amount of the

filing fee. *Id.* Upon those facts, the Court observed “[t]he statutes evidence no indication of an intention to except anyone from their operation, or to place the duty or responsibility for compliance therewith upon anyone other than the prospective candidate himself,” and found that Jones should not be qualified for placement on the ballot. Just like *Taylor*, Plaintiff has failed to show an entitlement to have his name placed upon the ballot, because he failed to comply with the clear statutory requirements.

Plaintiff asks this Court to find the instant case facts more akin to those in *State ex rel. Siegendorf v. Stone*, 266 So.2d 345 (Fla. 1972). In that case, the Court found that a candidate, whose oath of candidacy stated that he was a candidate for office of ‘Judge (group) 3’ instead of ‘judge, county court, group 3, Dade County,’ had substantially complied with the statute. *Id.* at 345-346. “So long as the basic requirements have been met...to reject or challenge the candidacy on these grounds now (when the period for qualifying has closed) comes too late. It would be a denial of due process and unfair treatment of the candidate...to remove him from the ballot.” *Id.* at 347 (emphasis added).

II. There is an unavailability of an adequate remedy at law.

Through his Response, Defendant seemingly concedes this factor.

Further, the Court finds Plaintiff is not seeking monetary damages but seeks the ability to run for office.

III. Plaintiff has failed to prove irreparable harm.

As to the Plaintiff's argument that he has been irreparably harmed, the Court does find Plaintiff's arguments persuasive. Plaintiff cannot be reinstated or "put back on the ballot," because he was never put on the ballot to begin with nor was he "deprived of the right to run for office" as the requirements for office are clearly stated within the statute itself.

IV. Plaintiff has failed to prove that the requested relief would serve the public interest.

As to the public interest factor, the Court agrees with Plaintiff that the already narrow, statutorily driven timeframe for creating, printing, and distributing ballots was exacerbated by the delay in determining Plaintiff's qualifying status. Defendant's Chief Deputy Supervisor testified that it would be no small feat to change the ballots, but that the office would make "best efforts" to comply with federal and state law working through the weekend and holiday. She expressed a concern that the narrower the time constraints, the more likely for error, and the Court is cognizant that candidates and constituents may have causes of action stemming from same. Moreover, the

public's interest is best served by a judiciary who consistently adheres to the rule of law.

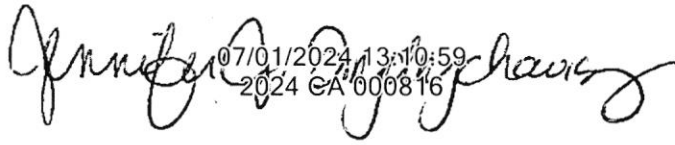
Conclusion

In summary, Plaintiff failed to file the complete sworn statement of his full and public disclosure of his financial interests before the qualifying deadline of June 14, 2024, at noon, which is required by law. This is true despite Defendant employees having initialed otherwise on their internal "2024 Qualifying Check List" and having publicly represented that Plaintiff had qualified to run for the position of Supervisor of Elections through the SOE website and a press release.

However, Plaintiff was not certified as a qualified candidate to the Division of Elections, and thus, the issue before the Court is not whether to put Plaintiff back on the ballot but to unilaterally place him on the ballot. This Court is bound by the law, as it is written, and no authority has been provided that would enable the Court to grant such drastic relief. As Plaintiff has failed to prove his clear legal right to placement on the ballot, it is hereby

ORDERED AND ADJUDGED that Plaintiff's Emergency Motion for Injunctive Relief is DENIED.

DONE AND ORDERED in Pensacola, Escambia County, Florida.

A handwritten signature in black ink, appearing to read "Jennifer Frydrychowicz". The signature is written in a cursive style. Overlaid on the signature is a digital timestamp: "07/01/2024 13:10:59" and "2024 CA 000816".

signed by CIRCUIT COURT JUDGE JENNIFER J FRYDRYCHOWICZ 07/01/2024 01:10:59 6mJS9ZtO

HON. JENNIFER FRYDRYCHOWICZ

cc: Edward P. Fleming, Attorney for Plaintiff
George T. Levesque, Attorney for Defendant