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BOOK: R2440 PAGE: 02178  
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DAVE LANG. CLERK OF COURTS

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

ERIC R. KELLER,



Plaintiff,

BK: R2440 PG: 02178

vs.

CASE No: CV-00-2779

HONORABLE KATHERINE HARRIS,  
Florida Secretary of State, et al.,

Defendants.

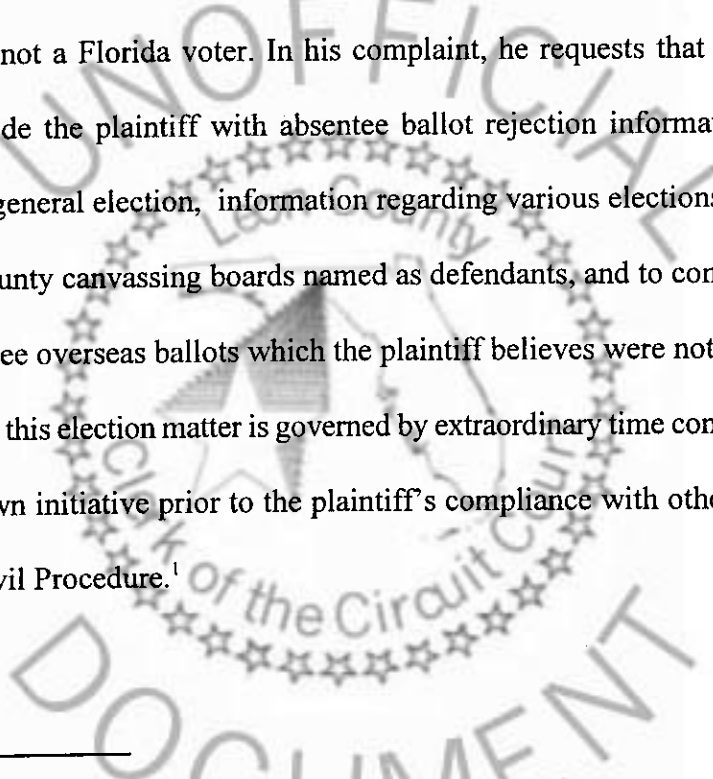
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DAVE LANG  
CLERK CIRCUIT COURT  
LEON COUNTY, FLORIDA

ORDER DISMISSING COMPLAINT

THIS CAUSE came before the Court upon the filing of the Plaintiff's Complaint for Declaratory Judgement and Other Relief, filed November 21, 2000. The plaintiff is a resident of the State of New Jersey and is not a Florida voter. In his complaint, he requests that this court require the defendants to provide the plaintiff with absentee ballot rejection information pertaining to the November 7, 2000 general election, information regarding various elections procedures followed by the 15 Florida county canvassing boards named as defendants, and to compel the defendants to count certain absentee overseas ballots which the plaintiff believes were not counted.

Considering that this election matter is governed by extraordinary time constraints, this court will proceed upon its own initiative prior to the plaintiff's compliance with other requirements of the Florida Rules of Civil Procedure.<sup>1</sup>

<sup>1</sup> Specifically, the time for service of process on named defendants, a reasonable opportunity to file written responses, reasonable notice of hearing and an opportunity to be heard in a meaningful manner has not passed and such requirements have not been met at this time.





Upon its own initiative, the court finds that the complaint fails to state a cause of action and should be dismissed pursuant to Rule 1.110(b), Florida Rules of Civil Procedure. Despite the title of the complaint referencing declaratory relief (presumably pursuant to Section 86.011, et seq., Florida Statutes) the allegations and request for relief in the body of the complaint do not seek a declaration of any kind by this court. Although the plaintiff does not refer to any particular constitutional or statutory grounds for this court's jurisdiction to afford him the relief sought, he apparently seeks injunctive or mandamus relief to compel certain actions by state and local elections officials under the purview of this court's extraordinary writ jurisdiction under Article V, Section 5 of the Florida Constitution and Rule 1.630, Florida Rules of Civil Procedure.

The complaint fails to state a cause of action for injunctive relief. To state a cause of action for injunctive relief, the plaintiff must allege "ultimate facts which, if true, would establish (1) irreparable injury (that is, injury which cannot be cured by money damages), (2) a clear legal right, (3) lack of an adequate remedy at law and (4) that the requested injunction would not be contrary to the interest of the public generally." Weekly v. Pace Assembly Ministries, Inc., 671 So. 2d 220 (Fla. 1st DCA 1996). With respect to the production by any of the defendants of documentation regarding the rejection of ballots and regarding election policies and procedures, the plaintiff has an adequate remedy afforded by Section 119.07, Florida Statutes (the "Public Records Law"). The plaintiff has not alleged any failure by any of the public officials named as defendants in this suit to properly respond to any request by the plaintiff for public records under Section 119.07, Florida Statutes.


Considering mandamus relief to compel the Secretary of State and County Canvassing Boards to take any official action, the plaintiff has not alleged that the Secretary and Boards owe him a clear legal duty. A complaint for mandamus relief is not sufficient to state a prima facie case for relief if



the plaintiff is merely taking issue, in the abstract, with an official's legal interpretation of his or her statutory duties. See, King v. Florida Parole Commission, 614 So.2d 1183 (Fla. 1st DCA 1993). Indeed, given the plaintiff's residence in New Jersey, it is not clear exactly what standing he has to claim any relief against Florida's Secretary of State or local canvassing boards. See generally, Florida State Board of Dispensing Opticians v. Bayne, 204 So.2d 34 (Fla. 2d DCA 1967)(declaratory relief not available to non-state residents regarding Florida statutory regulation).

For all of the foregoing reasons, the complaint is hereby **DISMISSED** for failure to state a cause of action and a short plain statement of the ultimate facts showing that the pleader is entitled to the relief sought. Fla.R.Civ.P. 1.110(b).

DONE AND ORDERED this 4<sup>th</sup> day of December, 2000.

  
L. RALPH SMITH  
Circuit Judge

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