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

**BRIAN KRAMER**, candidate for State Attorney for the Eighth Judicial Circuit,

Plaintiff,

v.

**Case No: 2020 CA 801**

**BEVERLY R. MCCALLUM**, candidate for State Attorney for the Eighth Judicial Circuit, et al.,

Defendants.
_____/

**FINAL JUDGMENT**

THIS MATTER having come before the Court on June 23, 2020, on Plaintiff Brian Kramer's Motion for Summary Judgment, and the Court having considered Plaintiff's Motion, Defendant Beverly McCallum's Amended Response in Opposition to Plaintiff's Motion for Summary Judgment, Plaintiff's Reply in Support of Summary Judgment, having heard argument from counsel, and being otherwise fully apprised, it is hereby ORDERED that the Motion is GRANTED and Final Judgment is entered for the Plaintiff on all counts of the Complaint.

**Background and Procedural History**

This is an elections case. Plaintiff Brian Kramer is a candidate for the office of State Attorney in the Eighth Judicial Circuit. The principal Defendant is Beverly McCallum, who has also filed as a candidate for the office of State Attorney in the Eighth Judicial Circuit. The state and county elections officials responsible for qualifying candidates and conducting the election for State Attorney in the Eighth Judicial Circuit (collectively, the "Elections Official Defendants") have also been named as Defendants for purposes of the relief sought by the Plaintiff, but they have effectively taken no position on the merits of the dispute between

Plaintiff Kramer and Defendant McCallum.

On April 24, 2020, Plaintiff filed a Complaint seeking declaratory and injunctive relief regarding the candidacy of Defendant McCallum for the office of State Attorney for the Eighth Judicial Circuit. The Court entered an Expedited Scheduling Order reflecting the priority status of this elections case under Florida Rule of Judicial Administration 2.215(g). The Elections Official Defendants filed Answers to the Complaint. Defendant McCallum filed a Motion to Dismiss the Complaint, an Amended Motion to Dismiss the Complaint, and a Motion to Strike, all of which the Court denied in a written order following a hearing held on May 26, 2020.

On June 2, 2020, Plaintiff filed a Motion for Summary Judgment alleging that no material facts are in dispute and that he is entitled to judgment as a matter of law. Defendant McCallum filed a Response in Opposition to Plaintiff's Motion for Summary Judgment and an Amended Response in Opposition to Plaintiff's Motion for Summary Judgment. Plaintiff filed a Reply in Support of Summary Judgment on June 18, 2020.

At a duly-noticed telephonic hearing attended by counsel for all parties on June 23, 2020, the Court received argument from the parties on Plaintiff's Motion for Summary Judgment. This Final Judgment reflects the Court's ruling following that hearing.

**Summary Judgment Standard**

A party is entitled to summary judgment "if the pleadings and summary judgment evidence on file show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law." Fla. R. Civ. P. 1.510. "The function of the rule authorizing summary judgments is to avoid the expense and delay of trials when all facts are admitted or when a party is unable to support by any competent evidence a contention of fact." *Nat'l Airlines v. Florida Equipment Co. of Miami,* 71 So. 2d 741, 744 (Fla. 1954).

The initial burden of demonstrating the non-existence of material facts rests with the moving party. *See Cox v. CSX Intermodal, Inc.*, 732 So. 2d 1092, 1095 (Fla. 1st DCA 1999) (citing *Holl v. Talcott,* 191 So.2d 40 (Fla. 1966). "[O]nce [the moving party] tenders competent evidence to support his motion, the [non-moving] party must come forward with counter-evidence sufficient to reveal a genuine issue. It is not enough for the [non-moving] party merely to assert that an issue does exist." *Landers v. Milton*, 370 So. 2d 368, 370 (Fla. 1979) (citing *Harvey Building, Inc. v. Haley*, 175 So. 2d 780 (Fla.1965)).

**Undisputed Material Facts**

The Court finds that the following material facts set forth in Plaintiff's Motion for Summary Judgment are not disputed by the parties, and that no other material facts are in dispute:

1. On April 14, 2003, Defendant McCallum was admitted to the Florida Bar.

2. On December 16, 2019, the Florida Supreme Court adjudicated Defendant McCallum guilty and suspended her from the practice of law for a period of fifteen days as a sanction for multiple violations of the Rules Regulating the Florida Bar. *The Florida Bar v. McCallum*, Case No. SC18-604, 2019 WL 6873032 (Fla. Dec 16, 2019).

3. Defendant McCallum was suspended from the practice of law in Florida from December 20, 2019, until January 3, 2020. During the period of her disciplinary suspension, McCallum did not have the privilege to practice law.

4. On April 15, 2020, Defendant McCallum paid the qualifying fee and filed qualifying papers with the Division of Elections, including a sworn candidate oath stating that she was qualified under the Constitution and laws of Florida to hold the office of State Attorney.

5. On April 20, 2020, the Department of State performed its ministerial function in

reviewing the qualifying papers and qualified Defendant McCallum as a candidate for the office of State Attorney for the Eight Judicial Circuit, without determining whether the contents of the qualifying papers were accurate.

6. Defendant Beverly McCallum, a Democrat, and Plaintiff Brian Kramer, a Republican, are the only candidates who the Department of State qualified by the end of the qualifying period for the office of State Attorney for the Eight Judicial Circuit.

**Analysis**

*Defendant McCallum's eligibility and qualifications to hold the office of State Attorney*

The Florida Constitution requires all State Attorneys to "be and have been a member of the bar of Florida for the preceding five years." Art. V, § 17, Fla. Const. The legal question raised by the Plaintiff's Complaint is whether Defendant McCallum can satisfy this constitutional eligibility requirement as a result of her disciplinary suspension from the practice of law from December 20, 2019, until January 3, 2020. More specifically, the Plaintiff argues that Defendant McCallum was not a "member of the bar of the Florida" for purposes of the Florida Constitution's eligibility requirements during the period of her disciplinary suspension because she admittedly lacked the privilege to practice law while suspended.

The Plaintiff's argument relies on the Florida Supreme Court's opinion in *Advisory Opinion to Governor re Commission of Elected Judge*, 17 So. 3d 265, 267 (Fla. 2009). In *Commission of Elected Judge*, the Florida Supreme Court addressed the question of "whether suspended lawyers are 'member[s] of the bar of Florida' for the purpose of satisfying the eligibility requirements for circuit court judge" under Article V, section 8, of the Florida Constitution. 17 So. 3d at 266. Governor Crist had requested an advisory opinion regarding his authority to commission a circuit judge-elect who had been suspended from the practice of law

by the Court after his election but before the date he was to take office. *Id.* at 265. Based principally upon the language of the Florida Constitution, the Florida Supreme Court held that the constitutional term "a member of the bar of Florida" refers to "a member with the privilege to practice law." *Id.* at 266-67. A lawyer who is suspended from the practice of law lacks the privilege to practice law and therefore fails to satisfy the constitutional eligibility requirements for a circuit court judgeship. *Id.* at 267.

In reaching its conclusion, the Florida Supreme Court noted that its holding was consistent with the decisions of other state supreme courts construing similar provisions in their own constitutions. *Id.* at 266-67. The Court also acknowledged that the Rules Regulating the Florida Bar consider a suspended lawyer to be a member of the Bar without the privilege to practice law, but found that the Rules addressing lawyer regulation and disciplinary cases were not intended to define the phrase "a member of the bar of Florida" as used in Article V, section 8, of the Florida Constitution. *Id.*

Invoking the presumption of consistent usage, Plaintiff argues that the constitutional phrase "member of the bar of Florida" in Article V, section 17, should be afforded the same interpretation as in Article V, section 8. Plaintiff notes that the relevant eligibility criteria for the offices of state attorney and circuit court judge do not differ in any material respect:

| **Article V, section 8** | **Article V, section 17** |
|---|---|
| "No person shall be eligible for office of justice or judge of any court unless the person is an elector of the state and resides in the territorial jurisdiction of the court."<br>* * *<br>"No person is eligible for the office of circuit judge unless the person ***is, and has been for the preceding five years, a member of the bar of Florida.***" | "A state attorney shall be an elector of the state and reside in the territorial jurisdiction of the circuit; ***shall be and have been a member of the bar of Florida for the preceding five years***; shall devote full time to the duties of the office; and shall not engage in the private practice of law." |

(emphasis added). Because the constitutional term "a member of the bar of Florida" refers to "a member with the privilege to practice law," *Commission of Elected Judge*, 17 So. 3d at 266-67, Plaintiff asserts that a person seeking the office of state attorney—like a person seeking the office of circuit court judge—must have the privilege to practice law both at the time he or she takes office and for the preceding five years. As noted above, it is undisputed that Defendant McCallum has not had the privilege to practice law "for the preceding five years" as a result of her disciplinary suspension.

Defendant McCallum argues that the Florida Supreme Court's decision in *Commission of Elected Judge* does not apply to the circumstances of this case. First, Defendant McCallum notes that the Court's opinion addresses the eligibility criteria for the office of circuit court judge, not state attorney. As discussed above, however, the relevant constitutional text provides an identical eligibility requirement for the two constitutional offices: "a member of the bar of Florida" for the requisite five-year period. *See* Art. V, §§ 8, 17, Fla. Const. With respect to constitutional eligibility requirements, the Florida Supreme Court has concluded that the constitutional term "member of the bar of Florida" refers to a "member with the privilege to practice law." Defendant McCallum has identified no textual basis for interpreting identical constitutional text in a dissimilar fashion. *See, e.g., Fla. Highway Patrol v. Jackson*, 288 So. 3d 1179, 1182-83 (Fla. 2020) (noting interpretive principle that identical text in related provisions is presumed to bear the same meaning).

Defendant McCallum has also argued that *Commission of Elected Judge* does not control the result here because the circuit judge candidate in that case was suspended at the time he was to take office, while McCallum's suspension concluded earlier this year. But this provides no basis for disregarding the Court's holding: a suspended lawyer is not a "member of the bar of

Florida" during the period of his or her suspension because a suspended lawyer lacks the privilege to practice law. *Commission of Elected Judge*, 17 So. 3d at 266-67. The Florida Constitution requires Bar membership ***both*** at the time of taking office ***and*** for the preceding five years. Art. V, § 17, Fla. Const.

At the summary judgment hearing, although not in her written response, Defendant McCallum argued that the court should adopt the approach advocated by the concurring opinion for Justices Pariente and Lewis in *Commission of Elected Judge*. The concurring opinion's approach would have limited the Court's opinion to the specific circumstances before it: a 91-day suspension. Because the opinion for the Florida Supreme Court did not limit its holding in the manner suggested by Justices Pariente and Lewis, I find that it is the opinion of the Florida Supreme Court—rather than the concurring opinion for two justices—that is relevant for the analysis in the present case.

Defendant McCallum next argues that during her disciplinary suspension she "remained a member of the member of the Florida Bar," citing Rule Regulating the Florida Bar 3.5.1(e). This same argument was also considered and rejected by the Florida Supreme Court in *Commission of Elected Judge*:

> Under Rule Regulating the Florida Bar 3–5.1(e), a suspended lawyer is a member of the Bar, but lacks the privilege to practice law. However, in adopting the Rules Regulating the Florida Bar, we did so "to regulate the admission of persons to the practice of law and the discipline of persons admitted." See art. V, § 15, Fla. Const. We in no way intended for those rules and our disciplinary cases to define the phrase "a member of the bar of Florida" as used in article V, section 8.

*Commission of Elected Judge*, 17 So. 3d at 266. Defendant McCallum has not identified any basis for concluding that the Rules Regulating the Florida Bar were intended to define the phrase "a member of the bar of Florida" as used in Article V, section 17.

Finally, Defendant McCallum relies on a series of cases (*State ex rel. Siegendorf v. Stone*,

266 So. 2d 345, 347 (Fla. 1972); *Schurr v. Sanchez-Gronlier*, 937 So. 2d 1166, 1170 (Fla. 3d DCA 2006); and *State ex rel. Haft v. Adams*, 238 So. 2d 843 (Fla. 1970)), which generally stand for the principle that public policy favors letting voters decide the qualifications of candidates. Plaintiff characterizes those cases as involving de minimis errors in qualifying documents or campaign finance violations, as opposed to constitutional eligibility requirements.

On this point, the Court finds most persuasive the First District's recent decision in *Hoover v. Mobley*, 253 So. 3d 89 (Fla. 1st DCA 2018). In that case, the First District affirmed a trial court ruling granting declaratory and injunctive relief to decertify and remove an opposing candidate's name from the ballot. Writing for the court, Judge Wetherell distinguished the *Siegendorf* line of cases by noting that, absent special circumstances, "public policy considerations" cannot override a clear and unambiguous statutory requirement. *Id.* at 93. The same principle applies here.

Based upon the undisputed material facts, the language of the Florida Constitution, and the analysis set forth in the cases cited above, the Court concludes as a matter of law that Defendant Beverly McCallum has not been "a member of the bar of Florida for the preceding five years"; is constitutionally ineligible to hold the office of State Attorney for the Eighth Judicial Circuit; and does not meet the necessary qualifications to hold the office of State Attorney for the Eighth Judicial Circuit for which she sought to qualify.

*Plaintiff's Entitlement to Declaratory Relief*

Under Florida law, individuals seeking declaratory relief must allege 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 interest 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.

*Martinez v. Scanlan,* 582 So. 2d 1167, 1170 (Fla. 1991) (quoting *May v. Holley,* 59 So. 2d 636, 639 (Fla. 1952)). The Court finds that Plaintiff has established each of these elements based upon the undisputed material facts and is entitled to a declaratory judgment as a matter of law regarding his rights with respect to Defendant McCallum's ineligibility.

Defendant McCallum has filed a sworn candidate oath with the Department of State, Division of Elections, claiming that she is qualified to hold the office of State Attorney under the Constitution and Laws of Florida. Plaintiff Brian Kramer, as the only other candidate for the office of State Attorney for the Eighth Judicial Circuit, alleges that he has been placed in doubt regarding his own rights with respect to the candidacy of Defendant McCallum. The Court finds that Plaintiff has a bona fide, actual, present, and practical need for a declaration at this time regarding the candidacy of Defendant McCallum. This is true in part due to Florida law recognizing circumstances under which a post-election challenge to a candidate's eligibility or qualifications may be barred or estopped, rendering it important for this dispute to be resolved "before the ballots [are] cast and results announced." *Republican Party of Miami-Dade Cnty. v. Davis*, 18 So. 3d 1112, 1118 (Fla. 3d DCA 2009). There appears to be no dispute that Plaintiff has brought all parties with potentially adverse or antagonistic interests before the Court by proper process: Defendant McCallum and the elections officials responsible for candidate qualifying and the conduct of the election. Defendant McCallum has not alleged that some other party with an interest adverse to the Plaintiff on the relevant questions of law is absent. And because Plaintiff seeks both declaratory and injunctive relief with respect to McCallum's ineligibility in a race in which he is himself a candidate, Plaintiff's request does not seek the

giving of legal advice by the courts or the answer to questions propounded from curiosity, but seeks judicial relief to bar a constitutionally ineligible candidate from appearing on the ballot to the detriment of Plaintiff's own interests as a candidate.

Under the undisputed material facts, the Court finds that Plaintiff is entitled as a matter of law to a declaratory judgment regarding Defendant McCallum's eligibility and qualifications for the office of State Attorney for the Eighth Judicial Circuit.

*Plaintiff's Entitlement to Injunctive Relief*

To establish entitlement to permanent injunctive relief, a party must demonstrate a "clear legal right, an inadequate remedy at law[], and that irreparable harm will arise absent injunctive relief. *See, e.g., Liberty Counsel v. Florida Bar Bd. of Governors,* 12 So. 3d 183, 186 n. 7 (Fla. 2009). The Court finds that Plaintiff has established each of these elements based upon the undisputed material facts and is entitled as a matter of law to permanent injunctive relief supplemental to the declaratory judgment with respect to Defendant McCallum's ineligibility. *See* § 86.061, Fla. Stat.

For the reasons stated above, Plaintiff has established a clear legal right to a declaratory judgment finding Defendant McCallum constitutionally ineligible as a matter of law to hold the office of State Attorney for the Eighth Judicial Circuit. In the absence of further supplemental injunctive relief, the Elections Official Defendants will continue to act upon Defendant McCallum's candidacy as though she were an eligible and qualified candidate for the office of State Attorney. Plaintiff has no adequate remedy at law to prevent the Defendant Supervisors of Elections and the Division of Elections from engaging in these election activities with respect to a candidate who is ineligible to serve in the office of State Attorney. The harm to the Plaintiff in being required to contend in an election with an ineligible candidate cannot be redressed by

money damages and is therefore irreparable. *See, e.g., Hoover v. Mobley*, 253 So. 3d 89 (Fla. 2018) (affirming trial court order granting declaratory and injunctive relief requiring elections officials to decertify and remove opposing candidate's name from ballot upon finding that candidate had not properly and timely qualified).

Under the undisputed material facts, the Court finds that Plaintiff is entitled as a matter of law to a permanent injunction directed to the Elections Official Defendants, and all those acting in concert with them, precluding them from: a) certifying Defendant McCallum as a duly qualified candidate for State Attorney for the Eighth Judicial Circuit; b) including Defendant McCallum as a candidate on any ballots that are printed for the General Election; and c) tabulating, reporting, or certifying any votes cast for Defendant McCallum.

*Defendant McCallum's Affirmative Defenses*

Defendant McCallum has asserted six affirmative defenses in her Answer. The Court finds that, as to each of Defendant's affirmative defenses, Plaintiff's Motion for Summary Judgment establishes that they are either legally insufficient as a matter of law or disproven based upon the undisputed material facts.

Accordingly, it is hereby ORDERED and ADJUDGED that:

1. Plaintiff's Motion for Summary Judgment is GRANTED;
2. For the reasons stated above, and as it relates to the 2020 General Election, Defendant Beverly McCallum is hereby declared constitutionally ineligible to hold the office of State Attorney for the Eighth Judicial Circuit and does not meet the necessary qualifications to hold the office of State Attorney for the Eighth Judicial Circuit for which she sought to qualify;

3. Defendants Florida Department of State, Division of Elections; Kim Barton, in her official capacity as Supervisor of Election for Alachua County; Nita Crawford, in her official capacity as Supervisor of Elections for Baker County; Terry Vaughn, in his official capacity as Supervisor of Elections for Bradford County; Connie Sanchez, in her official capacity as Supervisor of Elections for Gilchrist County; Tammy Jones, in her official capacity as Supervisor of Elections for Levy County; and Deborah Osbourne, in her official capacity as Supervisor of Elections for Union County; and all those acting in concert with them, are permanently enjoined from: a) certifying Defendant McCallum as a duly qualified candidate for State Attorney for the Eighth Judicial Circuit for the 2020 General Election; b) including Defendant McCallum as a candidate on any ballots that are printed for the 2020 General Election; and c) tabulating, reporting, or certifying any votes cast for Defendant McCallum for the 2020 General Election.

4. The Court enters Final Judgment for Plaintiff and against Defendants on all counts of the Complaint.

DONE AND ORDERED this 29th day of June, 2020.

Ann C. Dempsey

ANGELA C. DEMPSEY
CIRCUIT JUDGE

Copies furnished to:

Benjamin Gibson
Daniel Nordby
Beverly McCallum
Ronald Labasky
Ashley E. Davis
Corbin Hanson