

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
PENSACOLA DIVISION**

KELLS HETHERINGTON,
Plaintiff,

v.

GINGER BOWDEN
MADDEN, in her official
capacity as State Attorney for
the First Judicial Circuit in and
for Escambia County, Florida,
et al.

Defendants.

Case No.: 3:21-CV-671

ANSWER AND AFFIRMATIVE DEFENSES

COMES NOW Defendant Ginger Bowden Madden, in her official capacity as State Attorney for the First Judicial Circuit in and for Escambia County, Florida (the “State Attorney” or “Defendant”), by and through undersigned counsel, and files this Answer and Affirmative Defenses to Plaintiff’s Complaint as follows:

INTRODUCTION

1. The State Attorney is without sufficient knowledge to admit or deny whether Mr. Hetherington was fined \$200 for describing himself as a “lifelong Republican,” which allegations therefore stand denied. The remaining allegations on Paragraph 1 are denied.

2. Admitted that Florida may establish non-partisan offices, the remaining allegations contained in Paragraph 2 are denied.

JURISDICTION AND VENUE

3. The State Attorney denies that Plaintiff has been deprived of any rights and admits the remaining allegations contained in Paragraph 3 for jurisdictional purposes only.

4. Admitted for the purposes of venue only.

PARTIES

5. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in Paragraph 5 which allegations therefore stand denied.

6. Admitted that Plaintiff has named Laurel M. Lee, in her official capacity as Secretary of State of Florida as a defendant in this action. The remaining allegations as to the cited statutes and the responsibilities of the Secretary of State derived therefrom are denied as the cited statutes speak for themselves and are the best evidence of the content, context, and meaning therein.

7. Admitted that Plaintiff has named Ashley Moody in her official capacity as the Attorney General of Florida as a defendant in this action. The remaining allegations as to the cited statutes and the responsibilities of the Attorney General derived therefrom are denied as the cited statute speaks for itself and is the best evidence of the content, context, and meaning therein.

8. Admitted that Plaintiff has named the State Attorney as a defendant in this action. The remaining allegations as to the cited statutes and the responsibilities of the State Attorney derived therefrom are denied as the cited statutes speak for themselves and are the best evidence of the content, context, and meaning therein.

9. Admitted that Plaintiff named Joni Alexis Poitier in her capacity as Vice Chair of the Florida Elections Commission and individually as a defendant in this action. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in the third sentence of Paragraph 9 of the Complaint which allegations therefore stand denied. The remaining allegations as to the cited statute and the responsibilities of Ms. Poitier derived therefrom are denied as the statute speaks for itself and is the best evidence of the content, context, and meaning therein.

10. Admitted that Plaintiff has named Barbara Stern in her official capacity as a member of the Florida Elections Commission and individually as a defendant in this action. The remaining allegations as to the cited statute and the responsibilities of Ms. Stern derived therefrom are denied as the statute speaks for itself and is the best evidence of the content, context, and meaning therein.

11. Admitted that Plaintiff has named Kymberlee Curry Smith in her official capacity as a member of the Florida Elections Commission and individually as a defendant in this action. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in the third sentence of Paragraph 11 of the

Complaint which allegations therefor stand denied. The remaining allegations as to the cited statutes and the responsibilities of Ms. Smith derived therefrom are denied as the statutes speak for themselves and are the best evidence of the content, context, and meaning therein.

12. Admitted that Plaintiff has named Jason Todd Allen in his capacity as a member of the Florida Elections Commission and individually as a defendant in this action. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in the third sentence of Paragraph 12 which allegations therefor stand denied. The remaining allegations as to the cited statutes and the responsibilities of Mr. Allen derived therefrom are denied as the cited statutes speak for themselves and are the best evidence of the content, context, and meaning therein.

13. Admitted that Plaintiff has named J. Martin Hayes in his capacity as a member of the Florida Elections Commission and individually as a defendant in this action. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in the third sentence of Paragraph 13 which allegations therefore stand denied. The remaining allegations as to the cited statutes and the responsibilities of Mr. Hayes derived therefrom are denied as the cited statutes speak for themselves and are the best evidence of the content, context, and meaning therein.

FACTS

14. The contents of the quoted statute speaks for itself and is the best evidence of the content, context, and meaning therein. To the extent that Plaintiff attempts to characterize its contents, the allegations of Paragraph 14 are denied.

15. The content of the quoted advisory opinion speaks for itself and is the best evidence of the content, context, and meaning therein. To the extent that Plaintiff attempts to characterize its contents, the allegations in Paragraph 15 are denied.

16. Upon information and belief, admitted.

17. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in Paragraph 17 of the Complaint which allegations therefore stand denied.

18. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in Paragraph 18 of the Complaint which allegations therefore stand denied.

19. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in Paragraph 19 of the Complaint which allegations therefore stand denied.

20. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in Paragraph 20 of the Complaint which allegations therefore stand denied.

21. The State Attorney is without sufficient knowledge to admit or deny the allegations contained in Paragraph 21 of the Complaint which allegations therefore stand denied.

COUNT I

22. The State Attorney adopts and incorporates by reference, as if fully stated herein, the responses to Paragraphs 1-21.

23. The cited case speaks for itself and is the best evidence of the content, context, and meaning therein. To the extent that Plaintiff attempts to characterize its contents, the allegations in Paragraph 23 are denied.

24. The contents of the First Amendment and the cited case speak for themselves and are the best evidence of the content, context, and meaning therein. To the extent that Plaintiff attempts to characterize their content, the allegations in Paragraph 24 are denied.

25. The cited case speaks for itself and is the best evidence of the content, context, and meaning therein. To the extent that Plaintiff attempts to characterize its contents, the allegations in Paragraph 25 are denied.

26. The cited statute speaks for itself and is the best evidence of the content, context, and meaning therein. To the extent that Plaintiff attempts to characterize its contents, the allegations in Paragraph 26 are denied.

27. Denied.

28. Denied.

29. Denied.

PRAYER FOR RELIEF

The State Attorney denies that Plaintiff is entitled to any relief, including, but not limited to, the relief sought in Paragraphs A-H of Plaintiff's Prayer for Relief.

AFFIRMATIVE DEFENSES

FIRST AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims failed to state a claim upon which relief can be granted. Plaintiff's complaint fails to allege *any* facts which would support a past or potential future infringement on his First Amendment rights by the State Attorney.

SECOND AFFIRMATIVE DEFENSE

Some or all of Plaintiff's claims are barred by the doctrines of laches, waiver, accord and satisfaction, payment, and/or estoppel.

THIRD AFFIRMATIVE DEFENSE

Plaintiff lack standing to assert claims of facial unconstitutionality or as-applied unconstitutionality of Section 106.143(3) beyond the narrow factual context raised in the Complaint.

FOURTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the State Attorney are barred by the doctrine of Qualified Immunity as the State Attorney has been sued in her official capacity.

FIFTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the State Attorney and claims for damages are barred by the doctrine of sovereign immunity as the State Attorney has been sued in her official capacity.

SIXTH AFFIRMATIVE DEFENSE

The damages sought by Plaintiff are, in whole or in part, not legally authorized.

SEVENTH AFFIRMATIVE DEFENSE

Plaintiff's Complaint fails to set forth the facts sufficient to constitute a claim of attorney's fees and costs in this case as Plaintiff has failed to state a claim upon which relief can be granted and is not entitled to any relief as a prevailing party.

EIGHTH AFFIRMATIVE DEFENSE

Plaintiff's claims are damages alleged may be barred, in whole or in part, as Defendant has not enforced the alleged unconstitutional statute and was not a party to its previous enforcement against

NINTH AFFIRMATIVE DEFENSE

The State Attorney did not ratify, adopt, or condone any wrongful acts against Plaintiff and cannot be held liable for acts that were neither authorized nor ratified.

TENTH AFFIRMATIVE DEFENSE

Plaintiff's claims against the State Attorney fail as the Complaint contains mere legal conclusions and does not put forth sufficient facts to support a finding against the State Attorney for enforcement of the challenged statute.

ELEVENTH AFFIRMATIVE DEFENSE

The State Attorney reserves the right to assert any and such additional defenses as circumstances may dictate and which become known during the course of this litigation.

[DATE AND SIGNATURE ON FOLLOWING PAGE]

Respectfully submitted this 1st day of September 2021.

/s/ Jennifer K. Sniadecki

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Counsel for the State Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 1st day of September 2021, I electronically filed a true and correct copy of the foregoing document with the Clerk of Court using the CM/ECF system, which will automatically serve all counsel of record.

/s/ Jennifer K. Sniadecki

Jennifer K. Sniadecki