Filing # 199032997 E-Filed 05/23/2024 10:50:48 AM

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

ROSE MARIE PREDDY,
candidate for Circuit Court Judge,
Group 11, Seventh Judicial Circuit,

Plaintiff,

v. **Case No**: 2024-CA-653

SCOTT C. DUPONT, candidate
for Circuit Court Judge, Group 11,
Seventh Judicial Circuit, et al.

Defendants.
_____/

PLAINTIFF'S REPLY IN SUPPORT OF MOTION FOR FINAL JUDGMENT ON THE PLEADINGS

Plaintiff Rose Marie Preddy replies in support of her motion for judgment on the pleadings. For the reasons set forth in that motion and below, Defendant Scott DuPont is constitutionally ineligible to hold the office of Seventh Circuit Judge filled in this year's election as a matter of law. Plaintiff is entitled to declaratory and injunctive relief in her favor.

First, the responses filed by the Secretary of State and Supervisors of Elections take no position on the question of DuPont's eligibility to hold office. Instead, the elections officials advise the Court regarding the procedures (and the associated "statutory, legal, and practical" deadlines) for implementing a ruling in this case. The elections officials' responses also confirm that the relief requested by Plaintiff regarding DuPont's candidacy is available and can feasibly be implemented in advance of the August 2024 Primary Election.

Second, DuPont's response confirms: 1) this case involves no disputed

issues of fact and is appropriate for resolution on the pleadings as a matter of law; and 2) the single dispositive legal issue to be determined by the Court is whether an attorney who was reinstated to membership in the Florida Bar following a disciplinary suspension less than five years before the date he would assume office has been a "member of the bar of Florida" for the preceding five years under article V, section 8, of the Florida Constitution. DuPont Resp. at 1-2.

Third, DuPont's response asks this Court to reject the interpretation of the constitutional term "member of the bar of Florida" adopted by both the Florida Supreme Court and the First District Court of Appeal. DuPont Resp. at 2-5. DuPont first asks this Court to disregard the First District's four-year-old decision in *McCallum v. Kramer*, 299 So. 3d 630 (Fla. 1st DCA 2020), on the grounds that the court in *McCallum* construed the term "member of the bar of Florida" in article V, section 17, of the Florida Constitution rather than the identical term in article V, section 8. But DuPont offers no persuasive reason for this Court to impute different meanings to the same constitutional language found in two article V eligibility provisions. The *McCallum* court itself acknowledged the parallel constitutional language and interpreted the state-attorney-eligibility provision in section 17 to impose the same requirements as the circuit-judge-eligibility provision in section 8. *Id.* at 631.

DuPont also argues that this Court should ignore the Florida Supreme Court's decision *In re Advisory Opinion to Governor re Commission of Elected Judge*, 17 So. 3d 265, 267 (Fla. 2009) ("*Commission of Elected Judge*"), which

interpreted "member of the bar of Florida" in article V, section 8. DuPont Resp. at 3. DuPont cites *Ray v. Mortham*, 742 So. 2d 1276 (Fla. 1999), for the principle that the Supreme Court's advisory opinions are not "binding judicial precedents." DuPont Resp. at 3. But DuPont disregards the context of that statement in *Ray*, which actually said that advisory opinions "are not strictly binding precedent in the most technical sense." *Id.* at 1285. And DuPont ignores the Supreme Court's further caution in *Ray* that it would revisit an issue decided in earlier advisory opinions "only under *extraordinary* circumstances." *Id.* (emphasis in original). DuPont does not claim that this case presents extraordinary circumstances warranting a departure from the Supreme Court's prior interpretation of the judicial eligibility provision of the Florida Constitution.

Fourth, DuPont contends that the "drafters, ratifiers, and citizens of Florida" would have understood the term "member of the bar of Florida" to include lawyers who are prohibited from practicing law as a result of a disciplinary suspension. DuPont Resp. at 4-5. The Supreme Court in *Commission of Elected Judge* reached the contrary conclusion based on the term's context in an eligibility provision. And that decision is consistent with the decisions of other states construing similar provisions of their own constitutions, which reflect the "common sense understanding" that, where Bar membership is an eligibility requirement for judicial office, "one may not be a judge in a court in which one's own practice as a lawyer would be disallowed." *Commission of Elected Judge*, 17 So. 3d at 266; *see also* R. Regulating Fla. Bar 3-5.1(e) (providing that an attorney suspended for more than 90 days must provide "proof

of rehabilitation" and remains suspended until the Supreme Court "enters an order *reinstating the respondent to membership* in The Florida Bar") (emphasis added). Contrary to DuPont's speculation, the Supreme Court's conclusion that "member of the bar of Florida" should be reasonably understood in context to refer to a Florida attorney *with the privilege to practice law* is a fair reading of the text consistent with the meaning as it would have been understood by its ratifiers at the time of its adoption. Motion at 5-7 (citing, *inter alia*, *Planned Parenthood of SW and Cent. Fla. v. State*, 49 Fla. L. Weekly S73, 2024 WL 1363525 (Fla. Apr. 1, 2024)).

Fifth, and finally, DuPont invokes the "canon against surplusage" to suggest that the phrase "in good standing" in the constitutional eligibility provision for rural county judges should be interpreted to *exclude* a "good standing" eligibility requirement for non-rural county judges, circuit judges, district judges, and justices of the Florida Supreme Court. Dupont Resp. at 5. DuPont fails to acknowledge—let alone distinguish—a recent Florida Supreme Court decision cited by Plaintiff for the principle that the canon against surplusage is not "an absolute rule." *See* Motion at 9-10 (quoting *Tsuji v. Fleet*, 366 So. 3d 1020, 1030 (Fla. 2023) (citing *Marx v. Gen. Revenue Corp.*, 568 U.S. 371, 385 (2013))). DuPont's invocation of the canon against surplusage also runs headlong into other interpretive principles such as the "whole text canon." *Cf. Thompson v. DeSantis,* 301 So. 3d 180, 187 (Fla. 2020) (adopting "reasonable interpretation" of article V that "honors the whole text and 'furthers rather than obstructs the document's purpose.' ") (quoting Scalia & Garner, *Reading Law* at

63); *see also Thompson,* 301 So. 3d at 187 ("After all, 'our role [is] to make sense rather than nonsense out of the *corpus juris.*'" (quoting *W. Va. Univ. Hosps., Inc. v. Casey,* 499 U.S. 83, 101 (1991)); *Heyman v. Cooper,* 31 F.4th 1315, 1321-22 (11th Cir. 2022) ("[O]ur obligation is to the text and not the canons per se."). DuPont points to nothing in the text, context, or history of the rural-county-judge-eligibility provision to suggest that it would have most reasonably been understood to prohibit suspended lawyers from serving as county judges in counties with a population of 40,000 or less while allowing suspended lawyers to serve in all other judicial offices.

Conclusion

The Court should grant final judgment on the pleadings in favor of Plaintiff:

1) Declaring that Scott C. DuPont is constitutionally ineligible to hold the office of circuit judge for the Seventh Judicial Circuit for the term beginning in January 2025; and

2) Permanently enjoining the Defendant Supervisors of Elections, the Division of Elections, and all those acting in concert with them from certifying Defendant DuPont as a duly qualified candidate for circuit judge for the Seventh Judicial Circuit (or, if DuPont has already been certified, ordering that the ballot certification be amended to remove DuPont's name from the ballot); and

3) Permanently enjoining the Defendant Supervisors of Elections, the Division of Elections, and all those acting in concert with them from including DuPont as a candidate on any ballots that are printed for the August 2024

Primary Election (or, if DuPont is removed as a candidate after ballots have been printed, preparing notices to voters in accordance with Template #3 of Florida Division of Elections Guide "Notice of Candidate Withdrawal or Disqualification or Removal of Ballot Issue" (Exhibit B to Affidavit of Supervisor of Elections Charles Overturf III)); and

4) Permanently enjoining the Defendant Supervisors of Elections, the Division of Elections, and all those acting in concert with them from tabulating, reporting, or certifying any votes cast for DuPont in the August 2024 Primary Election.

Respectfully submitted,

/s/ Daniel Nordby

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on May 23, 2024, a copy of the foregoing was filed via electronic means through the Florida Courts E-Filing portal and was served via electronic mail on all counsel of record.

/s/ Daniel Nordby
Attorney