UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
TAMPA DIVISION

JOHN WILLIAM LICCIONE,

Plaintiff,

v. Case No. 8:24-cv-2005-SDM-NHA

JULIE MARCUS, et. al.,

Defendants.
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STATE DEFENDANTS' MEMORANDUM IN OPPOSITION TO PLAINTIFF'S MOTION TO TRANSFER AND CONSOLIDATE

Governor Ron DeSantis, Secretary of State Cord Byrd, and Andrew Darlington, Director of the Office of Election Crimes and Security[1] ("State Defendants") hereby respond in opposition to Plaintiff's Motion to Transfer and Consolidate Case (Doc. 121).

INTRODUCTION

Plaintiff filed his First Amended Complaint ("FAC") on December 4, 2024, alleging a vague and conclusory election conspiracy that he contends caused his landslide loss in the August 2024 Democratic primary for the 13th Congressional District. Doc. 55. He claims that his "case arises from systemic

[1] The Director of the Office of Election Crimes and Security is now Jillian Pratt. Thus, pursuant to Federal Rule of Civil Procedure 25(d), Andrew Darlington is automatically substituted by Jillian Pratt.

election fraud, foreign interference, election software and systems hacking, evidence tampering and subsequent cover-up and obstructive efforts orchestrated by state and county officials, private entities, and others to include hostile foreign actors, acting in concert to undermine election integrity in August 20, 2024 primary and the November 5th general election." *Id.* at ¶ 2. All of the defendants have filed motions to dismiss. Docs. 59, 67,71, 80, 81. These motions seek dismissal based on lack of standing, Eleventh Amendment immunity, lack of a private right of action, shotgun pleading, and failure to state a claim. *Id*.

On April 7, 2025, Plaintiff filed a qui tam complaint in the United States District Court for the District of Columbia. *Liccione v. VR Systems, Inc.*, No. 1:25-cv-01028-APM, Doc. 1 (D.D.C. Apr. 7, 2025) ("D.C. Complaint"). The D.C. Complaint alleges two counts based on a conspiracy to defraud the United States by concealing a defect in elections software utilized by Florida supervisors of elections in order to keep federal election assistance funds flowing to the state pursuant to the Help America Vote Act ("HAVA"), 52 U.S.C. §§ 20901-21145.[2] Doc. 121-1 ¶¶ 91–146. Plaintiff alleges in the D.C. Complaint, that he filed the instant case based on a "mistaken belief" that he and other candidates in the August 2024 primary elections were victims of "fraudulent ballot orders placed

[2] Plaintiff also alleged a claim based on the False Claims Act, which was dismissed by the district court on June 18, 2025. *See Liccione v. VR Systems, Inc.*, No. 1:25-cv-01028-APM (D.D.C. June 18, 2025).

by malicious actors, and thus, had resulted in their defeats at the polls." Doc. 121 at ¶ 27. He now claims that the election records he relied on upon as the basis of the instant lawsuit are not evidence of election fraud committed by outside actors, but rather establish that there was a bug in the elections software which resulted in incorrect information being included in reports documenting requests for vote-by-mail ballots. *Id.* at ¶¶ 11–13, 28–29.[3]

But, rather than voluntarily dismiss the instant case, or seek to amend the FAC to reflect his new theory of wrongdoing,[4] Plaintiff filed the D.C. Complaint and moved to transfer the instant case and consolidate it with the D.C. case.

Plaintiff's motion should be denied because (1) venue of the instant case is improper in the District of Columbia; (2) under the first-filed rule, if consolidation and transfer were warranted, the D.C. would be transferred to this district and consolidated with the instant case; (3) convenience of the parties supports keeping this case in this district; (4) the cases should not be consolidated when they are in different procedural postures; and (5) the Court should not consider transfer and consolidation until it rules on the pending motions to dismiss.

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[3] Because they contend that the FAC was based on an incorrect factual basis, the D.C. Complaint and instant motion provide an additional reason to dismiss the FAC.

[4] The Court gave Plaintiff a deadline of July 18, 2025 to either move to amend the FAC or respond to the motions to dismiss. Doc. 119. Defendant has done neither.

STANDARD OF REVIEW

A district court may transfer a case to any district where it could have been brought for the convenience of parties and witnesses and in the interest of justice. 28 U.S.C. § 1404(a). "The purpose of the section is to prevent the waste of time, energy and money and to protect litigants, witnesses and the public against unnecessary inconvenience and expense." *Van Dusen v. Barrack*, 376 U.S. 612, 616 (1964). In order to show that transfer of venue is proper, "the moving party must establish venue is proper in the transferor court, venue is proper in the transferee court, and transfer is for the convenience of the parties and witnesses as well as in the interests of justice." *Olson v. Ford Motor Co.*, No. 91-849-CIV-T-17A, 1993 WL 125955, at *2 (M.D. Fla. Apr. 8, 1993); *see also Nat'l Tr. Ins. Co. v. Pennsylvania Nat'l Mut. Cas. Ins. Co.*, 223 F. Supp. 3d 1236, 1241 (M.D. Fla. 2016) (stating that a court must consider "whether the case could have been filed in the proposed district" and whether transfer would be in the "interests of convenience and justice").

With respect to consolidation, a court is given discretion to consolidate actions where both actions before the court "involve a common question of law or fact." Fed. R. Civ. P. 42(a). Under this rule consolidation is proper when it serves the purposes of judicial economy and convenience. *Young v. City of Augusta*, 59 F.3d 1160, 1169 (11th Cir. 1995). "The purpose of consolidation is

to avoid unnecessary cost or delay where the claims and issues contain common aspects of law or fact." *Connell v. Centurion Med.*, No. 3:22-CV-269-BJD-PDB, 2023 WL 6895936, at *6 (M.D. Fla. Oct. 19, 2023) (citing *E.E.O.C. v. HBE Corp.*, 135 F.3d 543, 551 (8th Cir. 1998)).

MEMORANDUM OF LAW

I. Venue is Improper in District of Columbia

This case cannot be transferred to the District Court for the District of Columbia because venue would be improper there. 28 U.S.C. § 1404(a) states that "a district court may transfer a civil action to any other district or division *where it might have been brought*." (emphasis added). Thus, in determining whether transfer would be proper, the court must find that the case could have been brought in the transferee court. *BC Waycross Spring Hill, LLC v. FL Spring Hill Cortez*, LLC, No. 8:22-CV-1397-MSS-TGW, 2022 WL 18492708, at *2 (M.D. Fla. Sept. 6, 2022). The test for proper venue is set out in 28 U.S.C. § 1391(b), which states:

> A civil action may be brought in—
>
> (1) a judicial district in which any defendant resides, if all defendants are residents of the State in which the district is located;
>
> (2) a judicial district in which a substantial part of the events or omissions giving rise to the claim occurred, or a substantial part of property that is the subject of the action is situated; or

> (3) if there is no district in which an action may otherwise be brought as provided in this section, any judicial district in which any defendant is subject to the court's personal jurisdiction with respect to such action.

Here, Plaintiff has not shown that venue would be proper in D.C., nor would venue be proper under any of the bases in § 1391(b). First, Plaintiff admits that all of the defendants in this case and in the D.C. case are located in Florida. Doc. 121 at ¶ 3. Thus, under subsection (1), venue would be proper in any judicial district in Florida. Next, under subsection (2), Plaintiff makes no allegations that a substantial part of the events occurred in D.C. In the FAC, Plaintiff alleges that various Florida state officials are in a conspiracy to commit election fraud that interfered with his campaign for a Florida congressional seat. *See* Doc. 55. Throughout the FAC, Plaintiff alleges that there was election fraud in multiple Florida counties. *See id.* at ¶¶ 27, 34, 38. Nowhere in the FAC does Plaintiff allege any connection with D.C. or state that any defendant committed an act there. In his motion to transfer, Plaintiff claims that venue is proper because funds from Help America Vote Act and the Election Assistance Commission come from D.C. Doc. 121 at ¶ 6. However, this bears no relation to this case as Plaintiff is not complaining of any act related to federal funding. Plaintiff cannot add additional allegations through his motion to transfer to seek venue in another district. On the face of the FAC, the alleged conspiracy and

harm all occurred in Florida. Thus, venue would be proper here. Lastly, subsection (3) would not make venue proper in D.C. because venue would already be proper in any district in Florida for the reasons stated above. Plaintiff's argument that venue would be proper in D.C. because he "would have brought this case in D.C." lacks any basis in fact or law. Therefore, venue would be improper in D.C. and this case cannot be transferred there.

II. Transfer to the District Court for the District of Columbia is Improper Under the First-Filed Rule

Even if venue of this matter could be found in the District of Columbia, transfer would be improper under the first-filed rule. Under the first-filed rule, when parties have instituted competing or parallel litigation in separate courts, the court initially seized of the controversy should hear the case. *Collegiate Licensing Co. v. Am. Cas. Co. of Reading, Pa.*, 713 F.3d 71, 78 (11th Cir. 2013) (citation omitted). Where there are two actions involving overlapping issues and parties are pending in two federal courts, as Plaintiff argues, "there is a strong presumption across the federal circuits that favors the forum of the first-filed suit under the first-filed rule." *Id.* (quoting *Manuel v. Convergys Corp.*, 430 F.3d 1132, 1135 (11th Cir. 2005)). To overcome this presumption, "the party objecting to jurisdiction in the first-filed forum carr[ies] the burden of proving compelling circumstances to warrant an exception to the first-filed rule." *Manuel*, 430 F.3d

at 1135 (citation modified). The primary purpose of the first-filed rule is "to avoid the waste of duplication, to avoid rulings which may trench upon the authority of sister courts, and to avoid piecemeal resolution of issues that call for a uniform result." *Halbert v. Credit Suisse AG*, 358 F. Supp. 3d 1283, 1288 (N.D. Ala. 2018) (quoting *W. Gulf Mar. Ass'n v. ILA Deep Sea Local 24, S. Atl. & Gulf Coast Dist. of ILA, AFL-CIO*, 751 F.2d 721, 729 (5th Cir. 1985)).

Plaintiff fails to mention the first-filed rule in his motion, much less set forth anything that comes close to establishing compelling circumstances to overcome the application of that rule in this case. Unless and until he does, there can be no transfer of venue.

III. Convenience of Parties Favors the Middle District of Florida

Even if transfer were a legitimate option in this case the convenience of parties and witnesses weigh heavily in favor of keeping this case in the Middle District of Florida. As noted above, section 1404(a) permits a transfer of venue "[f]or the convenience of parties and witnesses, in the interest of justice." In determining whether transfer is appropriate, courts generally look at the following factors "(1) the convenience of the parties; (2) the convenience of the witnesses; (3) the relative ease of access to sources of proof; (4) the availability of process to secure the presence of unwilling witnesses; (5) the cost of obtaining the presence of witnesses; and (6) the public interest." *Island City Lofts, LLC v.*

United States, No. 09-60595-CIV-COHN, 2009 WL 3418149, at *2 (S.D. Fla. Oct. 16, 2009); *Jewelmasters, Inc. v. May Dep't Stores Co.*, 840 F. Supp. 893, 895 (S.D. Fla. 1993). "[T]he burden is on the movant to establish that the suggested forum is more convenient." *In re Ricoh Corp.*, 870 F.2d 570, 573 (11th Cir. 1989).

Here, Plaintiff admits that all of the defendants are located in Florida. Doc. 121 at ¶ 3. Plaintiff also admits that he is a registered voter in Pinellas County, Florida and the election, which he believes was affected by the alleged conspiracy, was in Florida's 13th Congressional District. Doc. 55 at ¶ 5. All of the counts asserted in the FAC are based on alleged injuries as candidate, voter, and a plaintiff in Florida. *See id.* at 64–93. Thus, on the face of the FAC, this Court would be a more convenient forum due to all the allegations residing in this state, and specifically in the Middle District. While Plaintiff alleges that witnesses and financial records are located in D.C., there are no allegations supporting that these witnesses or records are relevant to the alleged *Florida* conspiracy. As discussed above, the FAC does not allege that federal funding or any Election Assistance Commission witnesses are involved in the claims alleged here. Therefore, the convenience of parties and witnesses would lie in the state where all of the parties are and where the alleged conspiracy took place. Therefore, even if D.C. was a proper venue, the case should stay here in the interests of justice.

IV. Consolidation is Improper When Cases are at Different Stages

In determining whether consolidation would be proper under Rule 42(a), courts generally look at the stage of litigation that each case is in. *See Monk v. Morris*, No. 8:16-CV-2817-T-35MAP, 2018 WL 8787331, at *2 (M.D. Fla. Feb. 5, 2018); *Ponder v. Experian Info. Sols., Inc.*, No. 1:19-CV-5494-CAP-JSA, 2021 WL 2688648, at *25 (N.D. Ga. May 18, 2021), report and recommendation adopted, No. 1:19-CV-5494-CAP, 2021 WL 5033483 (N.D. Ga. July 9, 2021). In *Ponder*, the court held that cases in vastly different stages of litigation proceedings weighed against consolidation. *Id.*; *see also Mills v. Beech Aircraft Corp.*, 886 F.2d 758, 762 (5th Cir. 1989) ("Consolidation may properly be denied in instances where the cases are at different stages of preparedness for trial.").

Here, the case pending in front of this Court already has motions to dismiss pending while the D.C. complaint has not even been served to defendants yet. The purpose of consolidation is to avoid unnecessary cost and delay. *See Connell*, 2023 WL 6895936, at *6. If this case were to be transferred and consolidated, the case would essentially be stalled until defendants are served and have a chance to respond to the D.C. complaint. Allowing these motions, which were filed in February 2025, to further stall for months when there are substantial fundamental questions, would not support the "convenience and unnecessary delay" requirement of consolidation. *See Diehl v.*

Money Source, Inc., No. CV 17-0125-WS-B, 2018 WL 1370613, at *3 (S.D. Ala. Mar. 16, 2018) (holding that consolidation would be improper where the litigants in the first-filed action "would be forced to remain in a holding pattern for many months waiting for the [litigants in the second action] to catch up").

Consolidation has generally been reserved for cases that are on similar tracks and could thus easily be joined without delay. *See Young v. City of Augusta, Ga. Through DeVaney*, 59 F.3d 1160, 1169 (11th Cir. 1995) (stating that consolidation made sense when the two cases were filed a month apart). However, here, Plaintiff filed the FAC in December of 2024 and the D.C. complaint in April of 2025. *See* Docs. 55, 121-1. These two cases are in completely different stages and cannot feasibly be joined without delay.

Additionally, as the court in *Ponder* recognized, consolidation would be improper where one case has pending motions to dismiss that are likely to be dispositive. 2021 WL 2688648, at *25. As mentioned above, all five motions to dismiss present jurisdictional deficiencies in the FAC. Plaintiff has already responded to one of the motions to dismiss. *See* Doc. 61. Thus, this case could easily be dismissed on the motion that is fully briefed. If this case were to be dismissed, transfer and consolidation would be moot. Therefore, because these cases are in two completely different procedural postures, consolidation would be improper.

V. There are Questions Regarding Whether the Court Has Jurisdiction

Because the pending motions to dismiss question whether this Court has subject matter jurisdiction, the Court should not consider transfer until the motions are resolved. Before a district court considers transfer, it must determine that it has subject matter jurisdiction. *See Sure Fill & Seal, Inc. v. Platinum Packaging Grp., Inc.*, No. 8:10-CV-316-T17-TBM, 2010 WL 11508051, at *8 (M.D. Fla. June 24, 2010) ("[F]ederal courts must find the existence of subject-matter jurisdiction."); *McKinley All. Grp., LLC v. Sarah Adult Day Servs., Inc.*, No. 1:19-CV-2036-TCB, 2019 WL 13198053, at *2 (N.D. Ga. Sept. 10, 2019) ("Before considering [defendant's motion to transfer, the Court must determine whether it has subject matter jurisdiction to hear this case."); *United States v. Leekley*, 377 F. Supp. 3d 1318, 1323 (N.D. Fla. 2019) ("A federal court may not consider the merits of a motion unless and until it is certain that it has subject matter jurisdiction.").

Here, as stated above there are currently five motions to dismiss in front of this Court. Each of the motions assert that there is no subject matter jurisdiction because Plaintiff lacks standing, there is Eleventh Amendment immunity, and he fails to allege any federal private cause of action. *See* Docs. 59, 67,71, 80, 81. These fundamental jurisdictional questions should be addressed before the Court considers whether transfer or consolidation is

necessary. Because consolidation requires both cases to have an independent basis for jurisdiction, it would be judicially efficient to first determine whether federal courts would have jurisdiction at all. *See Schwarz v. City of Treasure Island*, No. 8:05-CV-1696-T-30MSS, 2007 WL 2900447, at *2 (M.D. Fla. Oct. 2, 2007) ("[n]either consolidation with a jurisdictionally proper case nor an agreement by the parties can cure a case's jurisdictional infirmities." (quoting *Brown v. Francis*, 75 F.3d 860, 866 (3d Cir.1996)); *BC Waycross Spring Hill, LLC*, 2022 WL 18492708, at *2 (stating that subject matter jurisdiction must properly lie in the transferee court before a case can be transferred). Additionally, questions regarding whether defendants are immune, in addition to questions of jurisdiction, deal with whether defendants should be subject to this case at all. This weighs in favor of resolving these questions first as not to subject defendants to unnecessary burdens of litigation. *See Howe v. City of Enter.*, 861 F.3d 1300, 1303 (11th Cir. 2017) ("[T]he district court should decide those immunity issues before requiring that the parties litigate Howe's claims any further."). Therefore, this Court has an independent obligation to first answer whether subject matter jurisdiction exists before considering whether to transfer and consolidate the case.

WHEREFORE, for the reasons set forth herein, the State Defendants respectfully request that the Court enter an order denying Plaintiff's motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that that a copy of the foregoing has been furnished via the Court's CM/ECF System on July 31, 2025, to all counsel of record and served via email to Plaintiff (jliccione@gmail.com).

/s/ Maryssa S. Hardy