

IN THE CIRCUIT COURT FOR THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

JAY R. CHERNOFF, an individual and in
his capacity as City Commissioner,

Plaintiff,

CASE NO.: 2023-2633-CA-01

v.

CITY OF NORTH MIAMI BEACH, and
COMMISIONER MICHAEL JOSEPH,

Defendants.

_____ /

**DEFENDANT COMMISSIONER MCKENZIE FLEURIMOND'S
MOTION TO DISMISS**

Defendant Commissioner McKenzie Fleurimond (“Commissioner Fleurimond”) hereby moves to dismiss the Amended Complaint for Declaratory Judgment and Injunctive Relief Requiring the Removal of Michael Joseph as North Miami Beach Commissioner and McKenzie Fleurimond as North Miami Beach Commissioner (the “Amended Complaint”) filed by Jay R. Chernoff (“Plaintiff”).

The entire action is improper. It is settled law that quo warranto proceedings are the exclusive remedy to affirmative challenge an elected official’s right to hold office. *See Swoope v. City of New Smyrna*, 125 So. 371 (Fla. 1929). *Accord McSween v. State Live Stock Sanitary Bd. of Florida*, 122 So. 239, 244 (Fla. 1929) (quo warranto proceedings are “the only proper remedy in cases in which they are available.”). The Court need look no further than the title of the Amended Complaint to dismiss it for lack of subject matter jurisdiction.

Quo warranto may only be brought by the Attorney General or, if she or he declines, by a person claiming title to the office. Fla. Stat. § 80.01; *McGhee v. City of Frostproof*, 289 So. 2d 751



(Fla. 2d DCA 1974). Private individuals, such as Chernoff, are not entitled to bring suit seeking a writ of quo warranto challenging a municipal official's right to their office unless (i) the Attorney General expressly declines to bring the challenge on the State's behalf; and (ii) such private individuals claim entitlement to the office. *See Butterworth v. Espey*, 523 So. 2d 1278 (Fla. 2d DCA 1988) (affirming dismissal with prejudice quo warranto claim brought by private citizens seeking to remove school board official from office where private citizens did not claim entitlement to the office that was the subject of their claim).

As proceeding with Plaintiff's claims for injunctive and declaratory relief would require an invalid exercise of subject matter jurisdiction by this Court, all defendants are entitled to the dismissal. Fla. R. Civ. P. 1.140 provides that "any ground showing that the court lacks jurisdiction of the subject matter may be made at any time." Commissioner Fleurimond's co-Defendants in this matter, Commissioner Michael Joseph and the City of North Miami Beach, have not waived their right to have this claim dismissed on these grounds. Further, as Plaintiff undoubtedly cannot amend his complaint to state a valid claim for quo warranto, dismissal with prejudice is warranted.

WHEREFORE, Defendant, Commissioner McKenzie Fleurimond respectfully requests that this Court dismiss Plaintiff's Amended Complaint for Declaratory Judgment and Injunctive Relief Requiring the Removal of Michael Joseph as North Miami Beach Commissioner and McKenzie Fleurimond as North Miami Beach Commissioner, and enter such other and further relief as this Court deems just.

Respectfully submitted,

By: /s/ Benjamin H. Brodsky
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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this **24th day of April, 2023**, on all counsel of record.

By: /s/ Benjamin H. Brodsky
Benjamin H. Brodsky, Esq.