

**UNITED STATES DISTRICT COURT
NORHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

UNITED SOVEREIGN AMERICANS,
INC., et al.,

Petitioners,

vs.

CASE NO.: 4:24-cv-00327-MW-MAF

CORD BYRD, in his official capacity
as the Florida Secretary of State, et al.,

Respondents.

**RESPONDENTS BYRD AND GUARD'S REPLY IN SUPPORT
OF ITS MOTION TO DISMISS PETITION FOR RELIEF IN
THE FORM OF AN AMENDED WRIT OF MANDAMUS**

Respondents Cord Byrd, in his official capacity as the Secretary of State of the State of Florida, and John Guard, in his official capacity as the Acting Attorney General of the State of Florida,¹ by and through undersigned counsel and as authorized by this Court's Order dated January 17, 2025, ECF 36, respectfully submit this reply in support of their Motion to Dismiss Petitioners' Second Amended Petition for Relief in the Form of an Amended Writ of Mandamus (hereinafter the Petition). ECF 18.

¹ Pursuant to Fed. R. Civ. P. 25(d), the successor of a public officer named as a party is automatically substituted when the named public officer leaves office.

I. Petitioners do not establish an Article III injury.

Petitioners' Response repeats their speculative fears that do not amount to the particularized injury in fact required to establish subject matter jurisdiction. The Supreme Court has stated that harms regarding speculative fears based on an uncertain chain of events is not enough to establish a concrete injury required for Article III standing. *Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 410 (2013). Petitioners insist that the alleged defects in the 2022 election will reoccur in every future federal election. Petitioners allege no facts establishing that these supposed defects stem from a pattern or practice suggesting that these defects are *likely* to reoccur in future elections. Without any factual basis, Petitioners attempt to invoke this Court's jurisdiction on the mere belief and assumption that the alleged 2022 defects will reoccur in the future and harm them. Federal courts have held that allegations of such "future *possible* injury" is not enough to establish an Article III injury. *Id.* at 409 (emphasis in original); *see also Tsao v. Captiva MVP Rest. Partners, LLC*, 986 F.3d 1332, 1338 (11th Cir. 2021).

Additionally, Petitioners' general grievances concerning their voting rights are not enough to establish a particularized injury. Petitioners rely on *Gray v. Sanders*, 372 U.S. 368 (1963), which stated that the appellee in that case had standing because his right to vote was impaired by state action. 372 U.S. at 375. However, *Sanders* is inapposite to the facts currently before this Court. *Sanders* was

a qualified voter challenging the constitutionality of a state statute that impaired his voting rights. However, in this case, Petitioners allege only that they were voters or candidates in past elections and claim that the alleged 2022 election defects may harm them in the future. Unlike *Gray v. Sanders*, Petitioners allege no facts that they will be individually qualified to vote in the future or that their future vote will be impaired.

Petitioners attempt to allege additional harms in their Response that are specific to just these Petitioners. See ECF 35 at p. 8. However, the fact that they researched and investigated these alleged defects in the past is not sufficient to establish that they have a concrete injury under Article III. *Corbett v. Transportation Sec. Admin.*, 930 F.3d 1225, 1233 (11th Cir. 2019) (stating that a past injury, without allegation that the injury will likely reoccur in the future, is not enough to confer standing). Moreover, even if these alleged injuries were enough to establish standing, courts generally do not consider new facts provided in a response to a motion to dismiss. *Pankey v. Aetna Life Ins. Co.*, No. 6:16-cv-1011-Orl-37GJK, 2017 WL 9362906, at *2 (M.D. Fla. Feb. 24, 2017), *report and recommendation adopted*, No. 6:16-cv-1011-Orl-37GJK, 2017 WL 1089330 (M.D. Fla. Mar. 23, 2017).

Lastly, the Organizational Petitioners do not have standing to bring suit on behalf of its members. The Petition fails to allege any facts establishing the three

elements required for associational standing: “(a) its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Greater Birmingham Ministries v. Sec’y of State for State of Alabama*, 992 F.3d 1299, 1316 (11th Cir. 2021) (quoting *Hunt v. Washington State Apple Advertising Comm’n*, 432 U.S. 333, 343 (1977)). In their Response, Petitioners attempt to allege facts supporting the second factor. *See* ECF 35 at p. 6. Even if this Court were to consider these new facts, Petitioners still do not allege any facts suggesting that United Sovereign Americans’ or Defending Freedom’s members would have standing in their own right or that their claims do not require the participation of its members. Petitioners do not allege that either of these organizations have members whose right to vote has been impaired, or will be impaired in the future. Without naming any members of the organizations that would have standing, Petitioners cannot allege associational standing. *See Jacobson v. Fla. Sec’y of State*, 974 F.3d 1236, 1249 (11th Cir. 2020).

II. Respondents are not “quasi-federal officials.”²

Federal courts have repeatedly held that they do not have jurisdiction to issue

² In their Response, Petitioners only address Respondent Byrd as a “quasi-federal official,” ECF 35 at p. 10, but because both State Respondents are state officials, this section applies to both.

a writ of mandamus against state officials. Petitioners ask this Court to use the novel interpretation that the All Writs Act, 28 U.S.C. § 1651, permits federal courts to issue writs of mandamus against state officers based upon the *functions* that they are performing. However, the All Writs Act is not an independent grant of jurisdiction and does not expand the federal courts' existing statutory jurisdiction. *See Syngenta Crop Protection, Inc. v. Henson*, 537 U.S. 28, 33 (2002) (noting “the All Writs Act does not confer jurisdiction under federal courts” so jurisdiction will not lie unless “specifically provide[d]” by Congress).

28 U.S.C. § 1361 states specifically that federal courts may issue a writ of mandamus only against officers and employees of the United States or any agency thereof. Section 1361 does not provide for jurisdiction against state officers who may be exercising certain functions, nor does it make any distinction for state officials exercising duties in areas where Congress has reserved power. Petitioners are unable to provide this Court with any case law or other authority allowing a writ of mandamus against state officials based on the function they are exercising. 28 U.S.C. § 1361 states that only federal officers and employees are within the federal court's mandamus jurisdiction, and abundant case law makes clear that federal courts lack jurisdiction to issue writs of mandamus against state officials. *Bailey v. Silberman*, 226 F. App'x 922, 924 (11th Cir. 2007) (“Because the defendants named in Bailey's complaint are not officers or employees of the United States or any

agency thereof, the district court lacked jurisdiction to grant the only relief Bailey requested.”); *Previlon v. Dep't of Revenue Child Support*, No. 23-cv-22649, 2023 WL 4581183, at *2 (S.D. Fla. July 18, 2023), *reconsideration denied sub nom. Previlon v. Fla. Dep't of Revenue Child Support*, No. 23-cv-22649, 2023 WL 5154729 (S.D. Fla. July 24, 2023) (“Defendants in this action are not officers or employees of the United States or any agency thereof.”). Thus, courts have not recognized any functionality exception to the All Writs Act’s jurisdiction.

Petitioners continue to argue that because the power of conducting federal elections was given to the states, Respondents are exercising federal authority in their role in elections. However, even if this Court were to consider the Respondents’ functions, any role that Respondents have in federal elections stems from their delegation of power from the *Florida* Legislature. Thus, their authority is granted from the state, not the federal government. Petitioners acknowledge that they seek to compel Byrd and Guard, both state officials, to perform duties prescribed to them by Florida law. *See* ECF 18 at ¶ 70, p. 65. If this Court were to agree with Petitioners’ argument, federal courts could issue writs of mandamus to compel state officials to perform their duties as mandated by state law. This goes well beyond what Congress has prescribed for the federal courts’ mandamus jurisdiction.

III. Because Petitioners allege no mandatory duties, a writ of mandamus cannot be issued.

Even setting aside Petitioners' jurisdictional infirmities, they can have no claim to a writ of mandamus without alleging a mandatory, clerical duty owed to them by the State Respondents. Petitioners ask this Court to compel Respondents "to investigate and take appropriate action concerning the apparent errors." ECF 35 at p. 9. However, none of the statutes delegating authority to Respondents create a mandatory duty to investigate or prosecute statutory violations. *See generally* §§ 16.01, 97.012, Fla. Stat. While the Response claims that Petitioners are merely asking this Court to compel Respondents to perform their mandatory duties under HAVA and NVRA, their prayer for relief reveals that Petitioners are actually asking this Court to compel Respondents to "investigat[e], correct[], and where warranted in their discretion, prosecut[e]". ECF 18 at p. 65. None of these discretionary duties are mandatory under HAVA or NVRA. Consequently, even if this Court has jurisdiction under the All Writs Act to direct writs of mandamus against the State Respondents, which it clearly does not, such a writ could not be issued to compel the State Respondents to perform discretionary acts.

CONCLUSION

For the reasons set forth above, the most recent Petition for Relief in the Form of an Amended Writ of Mandamus, ECF 18, should be dismissed.

Respectfully submitted this 24th day of January 2025.

JOHN GUARD
ACTING ATTORNEY GENERAL

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was filed with the Court's CM/ECF system, which provides notice to all parties this 24th day of January 2025.

/s/ Timothy L. Newhall
Timothy L. Newhall