

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KIRK B. REAMS
Plaintiff,

v.

Civil Action
Case No.4:18cv154

RICK SCOTT
In his official capacity as Governor of Florida
and
JOE NEGRON
In his official capacity as President of the Florida Senate.

COMPLAINT FOR DECLARATORY AND INJUNCTIVE RELIEF

Plaintiff, KIRK B. REAMS (hereinafter “Reams”), by and through undersigned counsel, files this Complaint against Defendants, Rick Scott, in his official capacity as Governor of Florida and Joe Negron, in his official capacity as President of the Florida Senate and as state officials responsible under Florida Law for administering and enforcing the state laws and regulations governing executive suspensions. Plaintiff seeks declaratory and injunctive relief: a declaration that Florida’s laws (F.S. §112 Part V and Florida Senate Rule 12) regarding executive suspension are unconstitutional under the Fourteenth Amendment to the United States Constitution and an injunction compelling the defendants to refrain from enforcing such law and to allow the plaintiff to resume his office as the duly elected Clerk of Court of

Jefferson County, Florida with all accrued back pay that has been withheld because of his suspension to date. In support of his complaint against Defendants, Plaintiff hereby alleges as follows:

INTRODUCTION

1. This is an action pursuant to 42 U.S.C. §1983 for deprivation of civil rights under color of law, which seeks equitable, declaratory and injunctive relief challenging the State of Florida in laws regarding executive suspension, to wit: Florida Statute §112 Part V §112.43, §112.45, §112.46, §112.47, §112.48, §112.52 and Florida Senate Rule 12.9 and 12.14.
2. The Fourteenth Amendment guarantee[s] the individual right to due process of law when the government seizes or deprives such an individual's property.
3. However, the aforestated laws of Florida deprive an individual of due process in that such laws do not require a timely hearing before or after an individual's property has effectively already been seized.
(suspended public official's loss of pay)
4. Plaintiff seeks to establish that the recognition and incorporation of the Fourteenth Amendment renders the State's executive suspension laws

(Florida Statute §112 Part V and Florida Senate Rule 12) unconstitutional.

JURISDICTION AND VENUE

5. This Court has subject matter jurisdiction pursuant to 28 U.S.C. §1331, §1343, §2201, §2202 and 42 U.S.C. §1983, in that this action seeks to address the deprivation under color of the laws, statute, regulations, customs and usages of the Defendants as they execute, administer and enforce the complained-of laws, of the rights, privileges or immunities secured by the United States Constitution and by Act of Congress.
6. This Court has personal jurisdiction over the Defendants because, *inter alia*, they acted under the color of law, policies, customs, and/or practices of the State of Florida and/or within the geographic confines of the State of Florida.
7. Venue is proper pursuant to 28 U.S.C. §1391 because the Defendants execute, administer and enforce the complained-of laws against Plaintiff in this District and because the events and omissions giving rise to this action are harming Plaintiff in this District and the State laws were enacted in the State Capital in this District.

PLAINTIFF / FACTUAL ALLEGATIONS

8. Plaintiff, Kirk B. Reams, is 41 years old and a citizen of the State of Florida residing in Lamont, Florida and has done so since birth. Reams was elected Clerk of Court for Jefferson County, Florida on November 7, 2006. Reams took office on January 2, 2007. He was re-elected with opposition on August 26, 2008. He ran unopposed thereafter in 2012 and 2016. The Governor suspended him from office on October 18, 2017 without pay. At said time Ream's salary for being Clerk of Court was \$8,459.67 per month. The basis for the immediate suspension was that Reams was accused and charged with petit theft. Allegedly he had loaned out an unused, outdated, county owned laptop computer to his then girlfriend for her personal use.
9. Rather than accept the State's offer of resigning and it would drop and/or dismiss the petit theft charge, Reams demanded a jury trial. On January 11, 2018, in the very courthouse of which he is the elected Clerk of Court a Jefferson County Jury found him "not guilty" of petit theft in less than fifteen minutes.
10. Reams was also accused in the executive order suspending him of improperly using his official position to gain access to the courthouse (where his office was located) after hours in February of 2013 for the purpose of engaging in inappropriate behavior with a paramour. The

Governor's Executive Order of Suspension with Exhibits is attached hereto as Plaintiff's Exhibit A.

11. At present the Governor refuses to reinstate Reams and the Senate took no action of any kind regarding Reams during the entire recent legislative session which lasted from January 9, 2018 until March 11, 2018. Unless special session is called Reams will not have his "due process" hearing before the Senate until as late as May 2019.
12. Under present Florida Law such is purportedly legal.

DEFENDANTS / FACTUAL ALLEGATIONS

13. Defendant, Rick Scott, as the Governor of Florida, in Scott's official capacity, is responsible for enforcing the laws, customs, practices and policies complained of in this action. Specifically, Scott is the authority charged with prosecuting (including suspending) public officials who have allegedly done wrong. He is sued in his official capacity. Governor Scott has taken no action to reinstate Reams despite his acquittal. The Florida Constitution allows the Governor to suspend a public official for misfeasance and/or malfeasance in regard to official duties. However, Executive Order 17-273 does not adequately describe such acts so as to put Reams on notice of upon which his continued suspension is based.

14. Defendant, Joe Negron, at present is the president of the Florida Senate which is responsible for determining the fate (guilt or innocence) of the charged public official. At present the Florida Senate has refused to take any action regarding Reams' fate.

CONSTITUTIONAL PROVISION

15. The Fourteenth Amendment provides:

No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property without due process of law.

U. S. Const. Amend. XIV (emphasis added).

STATE LAW

15. Florida Statute §112 Part V to wit: §112.43, §112.45, §112.46, §112.47, §112.48, §112.52 provide in pertinent part:

112.43 Prosecution of suspension before Senate. All suspensions heard by the Senate, a select committee, or special magistrate in accordance with rules of the Senate shall be prosecuted by the Governor, the Governor's legal staff, or an attorney designated by the Governor... Following the issuance of the suspension order, either the Senate or the select committee may request the Department of Legal Affairs to provide counsel for the Senate to advise on questions of law or otherwise advise with the Senate or the select committee... (Emphasis added)

112.45 Senate's report; results of prosecution.

(1) The Secretary of the Senate shall, as soon as reasonably possible following the action of the Senate, file with the Department of State a report of the action of the

Senate, including an order signed by the President and the Secretary specifying the action taken by the Senate. The action of the Senate shall become effective immediately upon the filing of the order with the Department of State, and the Department of State shall forthwith deliver copies of such order to the Governor, the officer involved, and the governing body of the county, district, or state, as the case may be. Any such order or any certified copy thereof, under the signature of the Secretary of State, may be recorded in the public records of any county in this state. (Emphasis added)

(2) The date of delivery of the order to the Department of State shall be the effective date of the removal or reinstatement, as the case may be, and, should the official be reinstated, he or she shall be entitled to reimbursement for such pay and emoluments of office from the date of suspension to that date, as though he or she had never been suspended, and the order of the Senate, or a certified copy thereof, shall constitute the authority of the county, district, or state, to make such payment for reimbursement.

112.46 Period during which suspension will lie. — Any officer subject to suspension by the Governor pursuant to the State Constitution shall be subject to such suspension from the date provided by law for such officer to take office whether or not the Governor has executed and delivered the commission of office to the said officer. It is the intent of this part to provide that the formal execution of a commission by the Governor and a delivery thereof to the officer is a ministerial duty not necessary either to the performance of the duties of that officer or to the susceptibility to suspension of that officer. However, nothing in this part shall prohibit or preclude any officer claiming title to any office from seeking a judicial determination of his or her right to such office, regardless of the issuance or non-issuance of a commission to such office. (Emphasis added)

112.47 Hearing before Senate select committee; notice. The Senate shall afford each suspended official a hearing before a select committee or special magistrate, and shall notify such suspended official of the time and

place of the hearing sufficiently in advance thereof to afford such official an opportunity fully and adequately to prepare such defenses as the official may be advised are necessary and proper, and all such defenses may be presented by the official or by the official's attorney. In the furtherance of this provision the Senate shall adopt sufficient procedural rules to afford due process both to the Governor in the presentation of his or her evidence and to the suspended official, but in the absence of such adoption, this section shall afford a full and complete hearing, public in nature, as required by the State Constitution. However, nothing in this part shall prevent either the select committee or the Senate from conducting portions of the hearing in executive session if the Senate rules so provide. (Emphasis added)

112.48 Suspension when Senate not in session. The Governor may suspend any officer at any time, whether or not the Senate is in session. However, the Senate need not hear or determine the question of the suspension of the officer during any regular session. (Emphasis added)

112.52 Removal of a public official when a method is not otherwise provided.

(1) When a method for removal from office is not otherwise provided by the State Constitution or by law, the Governor may by executive order suspend from office an elected or appointed public official, by whatever title known, who is indicted or informed against for commission of any felony, or for any misdemeanor arising directly out of his or her official conduct or duties, and may fill the office by appointment for the period of suspension, not to extend beyond the term.

(2) During the period of the suspension, the public official shall not perform any official act, duty, or function or receive any pay, allowance, emolument, or privilege of office.

(3) If convicted, the public official may be removed from office by executive order of the Governor. For the purpose of this section, any person who pleads guilty or nolo contendere or who is found guilty shall be deemed to have

been convicted, notwithstanding the suspension of sentence or the withholding of adjudication.

(4) If the public official is acquitted or found not guilty, or the charges are otherwise dismissed, the Governor shall by executive order revoke the suspension; and the public official shall be entitled to full back pay and such other emoluments or allowances to which he or she would have been entitled had he or she not been suspended. (Emphasis added)

16. Florida Senate Rule Twelve, Suspensions and Removals:

12.9—Procedure upon receipt of an executive suspension

(1) Unless suspension proceedings are held in abeyance, the committee, subcommittee, or special master shall institute action by transmitting a notice of hearing for a prehearing conference or a hearing on the merits within three (3) months after the Secretary of the Senate receives the suspension order. The Governor and the suspended official shall be given reasonable notice in writing of any hearing or prehearing conference before the committee, subcommittee, or special master. If the Governor files an amended suspension order, the attention of the Senate, committee, subcommittee, or special master shall be directed at the amended suspension order.

(2) An executive suspension of a public official who has pending against him or her criminal charges, or an executive suspension of a public official that is challenged in a court shall be referred to the Ethics and Elections Committee, other appropriate committee, or special master; however, all inquiry or investigation or hearings thereon shall be held in abeyance and the matter shall not be considered by the Senate, committee, subcommittee, or special master until the pending charges have been dismissed, or until final determination of the criminal charges at the trial court level, or until the final determination of a court challenge, if any, and the exhaustion of all appellate remedies for any of the above. The committee, subcommittee, or special master shall

institute action within three (3) months after the conclusion of any pending proceedings. In a suspension case in which the criminal charge is a misdemeanor, the committee, subcommittee, or special master and the Senate may proceed if the written consent of counsel for the Governor and of the suspended official is obtained.

(3) The committee, subcommittee, or special master may provide for a prehearing conference with counsel for the Governor and the suspended official to narrow the issues involved in the suspension. At such conference, both the Governor and the suspended official shall set forth the names and addresses of all the witnesses they intend to call, the nature of their testimony, photocopies of all documentary evidence, and a description of all physical evidence that will be relied on by the parties at the hearing. Each shall state briefly what each expects to prove by such testimony and evidence. The suspended official may file with the Secretary, no later than ten (10) days prior to the first (1st) prehearing conference, or no later than the date set by the committee, subcommittee, or special master if no prehearing conference is held, all written defenses or matters in avoidance of the charges contained in the suspension order.

(4) When it is advisable, the committee, subcommittee, or special master may request that the Governor file a bill of particulars containing a statement of further facts and circumstances supporting the suspension order. Within twenty (20) days after receipt of the Governor's bill of particulars, the suspended officer shall file a response with the committee, subcommittee, or special master. Such response shall specifically admit or deny the facts or circumstances set forth in the Governor's bill of particulars and may further make such representation of fact and circumstances or assert such further defenses as are responsive to the bill of particulars or as may bear on the matter of the suspension.

(5) The Senate may act on the recommendations of the committee, subcommittee, or special master at any time it is sitting but shall do so no later than the end of the next regular session of the Legislature. (Emphasis added)

(6) Within sixty (60) days after the Senate has completed final action on the recommendation of the committee, subcommittee, or special master, any party to the suspension matter may request the return, at that party's expense, of any exhibit, document, or other evidence introduced by that party. After the expiration of sixty (60) days from the date the Senate has completed final action, the committee, subcommittee, or special master may dispose of such exhibits or other evidence.

12.14—Rule takes precedence

In any situation where there is a direct conflict between the provisions of Rule Twelve and Part V of Chapter 112, Florida Statutes, Rule Twelve, derived from Article III, §4(a) of the State Constitution, shall take precedence.

**COUNT 1 – DEPRIVATION OF PROPERTY IN VIOLATION OF
CONSTITUTIONAL RIGHT TO DUE PROCESS
(U.S. CONST. AMEND XIV; 42 U.S.C. §§1981(a), 1983)**

16. Paragraphs 1 through 15 are re-alleged and incorporated herein by reference.
17. Florida Senate Rule 12.9(2) tolls the time of the proceeding if the suspended official challenges his suspension in a court of law.
18. In interpreting the Fourteenth Amendment the Federal Courts have through the years analyzed a procedural due process violation claim by three sub-issues. First, is there a deprivation? If so, then, determine if

there is a deprivation of life, liberty or property? If so, then what procedures are required to insure due process is met?

Chemerinsky, Erwin (2016) "**Procedural Due Process Claims**,"

Touro Law Review: Vol. 16: No. 3, Article 12.

19. Clearly Reams has a protected property interest in his career and salary as the elected clerk of court of Jefferson County, Florida. Further, his right to said career is not an expectation. But for the Governor's action and Senate's inaction the people of Jefferson County Florida, through their elected officials have requested Reams be forthwith returned to office (See Plaintiff's Exhibit B attached, Jefferson County Commission letter to Governor Rick Scott dated October 19, 2017.)
20. Reams has been deprived of his aforestated career/office as Clerk of the Court by the Governor's executive suspension order dated October 18, 2017. Approximately five months have passed. At present an evidentiary hearing has not been set and one is not contemplated until at least March 2019 and as late as May 2019. To add insult to injury, Reams, a member of the Florida Bar, as a "suspended" clerk of court is unable to practice law either at the state or federal level in the State of Florida. Such designation renders his investment in his education useless.

21. The law and rule complained of do not provide an adequate procedure to insure due process before the aforesated deprivation has occurred or since said deprivation has occurred.
22. F. S. §112.43 allows for the Governor's office to prosecute suspended officials at an evidentiary hearing set before the Florida Senate. Said hearing and matters related thereto shall be in accordance with rules of the Florida Senate.
23. F. S. §112.43 allows the Governor to suspend a public official at any time. Said statute also forgives and does not require a hearing before the Florida Senate during any regular session.
24. Florida Senate Rule Twelve imposes on the Florida Senate a deadline for determining the suspended officials' date as late as the end of the next regular session of the Legislature. Rule 12.9 (5).
25. F. S. §112.47 directs the Florida Senate to adopt sufficient procedural rules to afford due process to both the Governor and the suspended official, but in the absence of such adoption, this section shall afford a full and complete hearing, public in nature, as required by the State Constitution.
26. In Fuentes v. Shevin, Attorney General of Florida, et al. 407 U. S. 67 (1972), a case wherein the Florida law authorizing the summary seizure

- of goods under a writ of replevin pursuant to an ex-parte application without notice and a hearing, prior to seizure, to the person who was in possession of said goods, the court considered whether such law violated the U.S.C. Fourteenth Amendment's guarantee that no state shall deprive any person of property without due process of law.
27. In Fuentes the Court held that pre-judgment replevin statutes like the Florida one at issue before the Court deprived the person from whom the property was seized, due process of law in so far as they deny the right to a prior opportunity to be heard before chattels are taken from their possession. Fuentes at 78.
28. The Fuentes Court in holding such observed:
- For more than a century the central meaning of procedural due process has been clear: "Parties whose rights are to be affected are entitled to be heard; and in order that they may enjoy that right they must first be notified." Baldwin v. Hale, 1 Wall. 233, 233. See Windsor v. McVeigh, 93 U.S. 274; Hovey v. Elliot, 167 U.S. 409; Grannis v. Ovdean, 234 U.S. 385. It is equally fundamental that the right to notice and an opportunity to be heard must be granted at a meaningful time and in a meaningful manner. Armstrong v. Manzo, 380 U.S. 545, 552.
29. The prohibition against the deprivation of property without due process of law reflects the high value, embedded in our constitutional and political history. A high value is placed on a person's right to enjoy

what is his, free of governmental influence. Lynch v. Household Finance Corp., 405 U.S. 538, 552 (1972).

30. The Fuentes Court further observed that the requirement of notice and an opportunity to be heard raises no impenetrable barrier to taking lawfully a person's property. Rather it insures a fair process to protect against arbitrary deprivation of property. Fuentes at 72.

31. Finally, Fuentes stated:

For when a person has an opportunity to speak up in his own defenses and when the State must listen to what he has to say, substantively, unfair and simply mistaken deprivation of property interests can be prevented. It has long been recognized that fairness can rarely be obtained by secret one sided determination of facts decisive of rights... and no better instrument has been devised for arriving at the truth than to give a person in jeopardy of serious loss notice of the case against them and an opportunity to meet it. Fuentes at 72, 73 (quoting Joint Anti-Fascist Refugee Committee v. McGrath 341 U.S. 123, 170-172 (Frankfurter, J... concurring)

32. There are extraordinary situations that justify postponing notice and opportunity for a hearing. These situations, however must be truly unusual. Only in a few limited situations has the United States Supreme Court allowed outright seizure without opportunity for a prior hearing.

33. The aforestated F.S. §112 Part V and Senate Rule 12.9 expressly prevent Reams from exercising his right to meaningful due process as

- it has already authorized the seizure of his property without giving him an opportunity to be heard.
34. Reams' right to an evidentiary hearing can be postponed to May 2019. This would be nineteen (19) months after his career/office/salary were taken by the Governor.
 35. Reams, a member of the Florida Bar, is forbidden from his ability to practice law due to his status as a "suspended" clerk of court.
 36. Reams does not know when his hearing will take place or what procedural due process rules will apply.
 37. By challenging his suspension in a Court of Law he is further delayed from a due process hearing pursuant to F.S. §112. Such a law suit tolls the time in which he may receive a hearing.
 38. Paragraphs 17 through 37 are realleged and incorporated herein by reference.
 39. A controversy exists as to whether F.S. §112 Part V and Florida Senate Rule 12.9 are unconstitutional.
 40. A declaration from this Court would settle this issue.
 41. A declaration would also serve a useful purpose in clarifying the legal issues in dispute.

42. Plaintiff seeks a declaration that the provisions addressed and contained in F.S. §112 Part V and Florida Senate Rule 12.9 are unconstitutional.
43. In the absence of an injunction the requirement of F.S. §112 Part V and Florida Senate Rule 12.9 will continue to be utilized and prevent the Plaintiff Reams from his right to due process.
44. The Plaintiff Reams will continue to suffer irreparable injury if the Court does not issue an injunction.
45. There is no adequate remedy at law because only a declaration and injunction, as opposed to monetary damages, would allow Reams due process before he is deprived of his property.

WHEREFORE, Plaintiff prays that this Honorable Court:

1. Issue preliminary and permanent injunctions:
 - (a) enjoining the named defendants from enforcing F.S. §112 Part V and Florida Senate Rule 12 against Plaintiff.
2. Enter the following:
 - (a) A declaratory judgement that F.S. §112 Part V and Florida Senate Rule 12.9 are null and void because they violate the Fourteenth Amendment to the United States Constitution in that they deprive Plaintiff of his property without due process of law.

- (b) Issue preliminary and permanent injunctions against Defendants and their agents and employees thereof from action on or under F.S. §112 Part V and Florida Senate Rule 12.9.
3. Award Plaintiff attorney's fees and costs pursuant to 42 U.S.C. §1988 and reinstate Reams as Clerk of Court of Jefferson County Florida with accrued back pay.
 4. Grant such other and further relief, in law and equity as the Court deems just and proper.

Dated this twentieth day of March, 2018.

Respectfully submitted,

By /s/ David Collins
David W. Collins, Esquire
Fla. Bar No.: 475289
P.O. Box 541
Monticello, Florida 32345
Telephone 850-997-8111
Facsimile 850-997-5852
Email: Collins.FL.Law@gmail.com
Attorney for Plaintiff