

IN THE CIRCUIT COURT OF THE  
11<sup>TH</sup> JUDICIAL CIRCUIT, IN AND FOR  
MIAMI-DADE COUNTY, FLORIDA

CIVIL DIVISION  
CASE NO.:

KRISTEN ROSEN GONZALEZ,  
an Individual.

Plaintiff,

vs.

STATE OF FLORIDA, RICK SCOTT, in his  
official capacity as Governor of the State of  
Florida, KEN DETZNER, in his official  
capacity as Secretary of State of the State of  
Florida, and RAFAEL E. GRANADO, in his  
official capacity as the City Clerk of the City of  
Miami Beach, Florida.

Defendants.

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**VERIFIED COMPLAINT FOR  
DECLARATORY AND INJUNCTIVE RELIEF**

Plaintiff, KRISTEN ROSEN GONZALEZ ("Rosen Gonzalez"), by and through undersigned counsel, hereby sues the Defendants, STATE OF FLORIDA ("State of Florida"), RICK SCOTT ("Governor Scott"), sued in his official capacity as Governor of the State of Florida, KEN DETZNER ("Detzner"), sued in his official capacity as Secretary of State of the State of Florida, and RAFAEL E. GRANADO ("Granado"), sued in his official capacity as the City Clerk of the City of Miami Beach, Florida and, in support thereof, states as follows:

**PARTIES**

1. Plaintiff Kristen Rosen Gonzalez is a candidate for the Democratic nomination for the 27th Congressional District of Florida. She has filed paperwork with the Federal Elections Commission regarding her candidacy in April, 2017. She is a sitting Commissioner of the Miami

Beach City Commission, with a four year term of office set to expire in November 2019. She is also a resident of Miami-Dade County, Florida, and is *sui juris*.

2. Defendant the State of Florida is a sovereign authorized by the people of Florida to pass statutes through its legislature and to enforce those statutes in accordance with the rulings of its courts.

3. Defendant Rick Scott is the Governor of the State of Florida and is sued in his official capacity only. As Governor, he is the chief administrative officer of the State of Florida. He is a resident of and domiciled in the State of Florida.

4. Defendant Ken Detzner is sued in his official capacity as Secretary of State of Florida only. As Secretary of State, he is the chief elections officer of the State of Florida. He is a resident of and domiciled in the State of Florida.

5. Defendant Rafael E. Granado is sued in his official capacity as the City Clerk of the City of Miami Beach, Florida. As City Clerk, he is the chief elections officer of the City of Miami Beach and the person with whom candidates must file paperwork to qualify to run for City Commission or City Mayor. He is a resident of and domiciled in Miami-Dade County in the State of Florida.

#### **JURISDICTION AND VENUE**

6. This action is subject to the jurisdiction of this Court as it involves an action for equitable relief, to wit: Declaratory and Injunctive Relief.

7. Venue is proper in this Circuit pursuant to Florida Statute §47.021.

#### **FACTS APPLICABLE TO ALL COUNTS**

8. Qualifying for placement on the Florida ballot for a federal office in the State of Florida commences on Noon, April 30, 2018 to Noon, May 4, 2018.

9. Senate Bill 186 ("SB 186") was adopted by the Florida Legislature on or about March 7, 2018. A copy of SB 186 as adopted by the Florida Legislature and engrossed and enrolled is attached hereto as **Exhibit A**.

10. SB 186 was transmitted by the officers of the Florida House and Senate on March 16, 2018.

11. SB 186 was signed by Governor Scott on or about March 30, 2018.

12. Under the terms of SB 186, the bill became law immediately upon signing by Governor Scott. Exhibit A at 4, line 89.

13. The law provides that candidates for federal office who hold a state, county, or municipal office "must resign from the office he or she presently holds if the terms, or any part thereof, run concurrently with each other." Exhibit A at 1, lines 24-25.

14. The law also provides that the resignation is irrevocable. Exhibit A at 1, line 26.

15. The law provided that a candidate is required to submit his or her resignation "at least 10 days before the first day of qualifying for the office he or she intends to seek." Exhibit A at lines 27 to 29.

16. The law provides that the written resignation must be effective on the earlier of the date the officer would take office, if elected; or the date the officer's successor is required to take office. Exhibit A at 2, lines 30-33.

17. The law provides that an elected official is required to submit his or her resignation letter "to the officer before whom he or she qualified for the office he or she holds, with a copy to the Governor and the Department of State." Exhibit A at 2, lines 36-38.

18. Prior to the enactment of SB 186, candidates for federal office who held an elected office with the government of the State of Florida, any of Florida's counties, or any of

Florida's municipalities were not required by state law to tender a resignation from their elected offices.

19. When Plaintiff ran for the Miami Beach City Commission in 2015, she qualified by submitting her paperwork to Defendant Granado as the Clerk of the City of Miami Beach.

20. Should SB 186 be deemed applicable to the Plaintiff, it is to Defendant Granado that Plaintiff must direct a letter of resignation under SB 186, on or before April 20, 2018

21. Under SB 186, should that law be deemed applicable to Plaintiff, Plaintiff is also directed to serve a copy of her resignation letter to Defendant Governor Scott and Defendant Detzner. Exhibit A at 2, lines 37-38.

22. Under SB 186, should that law be deemed applicable to the Plaintiff, and should Plaintiff fail to timely submit a letter of resignation, that is by April 20, 2018, to the Clerk of the City of Miami Beach, then immediately upon her qualification for the federal office she will be deemed to have automatically, irrevocably, and immediately to have resigned from her office as Commissioner as a matter of law. Exhibit A at 2, lines 45-49.

23. Defendants State of Florida, Governor Scott, Detzner, and Granado, under the terms and conditions of SB 186 will be operating under color of state law for the State of Florida.

24. All conditions precedent and statutory prerequisites under Florida law have occurred, been waived, or excused.

#### **COUNT I: DECLARATORY RELIEF**

25. Plaintiff realleges paragraphs 1-24.

26. As an elected official, Plaintiff has a recognized property right to her office. *Landis v. Tedder*, 143 So. 148 (Fla. 1932); *Gilbert v Morrow*, 277 So.2d 812, 813-814 (Fla. 1<sup>st</sup> DCA 1973).

27. Plaintiff is entitled to occupy her office for its natural term of four years. In Plaintiff's case, that is until November 2019 and upon the election of her successor. The Miami Beach City Charter does not prohibit Plaintiff from running for a second term of office if she so desires.

28. A member of the City of Miami Beach City Commission such as Plaintiff may voluntarily terminate his or her term of office by submitting a resignation.

29. Under the Miami Beach City Charter, §2.08, "[t]he Mayor and any City Commissioner, in addition to being removed by recall pursuant to State law, may be removed from office pursuant to the Miami Beach City Code."

30. Under Florida law, a municipal office such as Plaintiff may be suspended from office upon the indictment or charge of a felony. A municipal office may thereafter be removed from office permanently upon conviction of a felony.

31. Prior to the enactment of SB 186, there was no Florida state law provision which required an office holder to resign prior to filing qualification papers for federal office with the Florida Department of State nor any provision that deemed the failure to file a resignation letter to be an immediate resignation from current office upon filing qualification papers for federal office.

32. Plaintiff and the voters who elected her in November 2015 had the reasonable expectation that she would be able to finish the natural term of her office unless Plaintiff voluntarily resigned or was removed from office pursuant to then existing state law.

33. Application of SB 186 to an office holder such as Plaintiff, who was elected and whose term began prior to the enactment of SB 186, violates her rights under the Due Process Clause of the Florida Constitution.

34. There is no mechanism for the application of due process to office holders.

35. Retrospective application of the resignation requirements of SB 186 to current office holders also violates the Plaintiff's due process rights under the Florida Constitution because it creates legal obligations which infringe upon and impair her vested property right in her elected public office. Only a prospective application to office holder elected after the effective date of SB 186 would allow both candidates and voters to understand that the successful candidates running for state, county or municipal public office may be required to resign if they sought election to a federal office.

36. There is a bona fide, actual, present practical need for the declaration.

37. The declaration is dealing with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts.

38. The immunity, power, privilege or right of the Plaintiff to her office is dependent upon the facts or the law applicable to the facts.

39. One or more of the Defendants have, or reasonably may have an actual, present, adverse and antagonist interest in the subject matter, either in fact or law.

40. All antagonistic and adverse interests are all before this court by proper process.

41. The relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity, but an actual controversy.

## **COUNT II: INJUNCTIVE RELIEF**

42. Plaintiff realleges paragraphs 1-35.

43. Unless the Court enjoins the Defendants from enforcing the provisions of SB 186, Plaintiff Rosen Gonzalez will suffer irreparable harm in that SB 186 forces upon current officer holders an irrevocable resignation of her elected Miami Beach Commission office by

April 20, 2018 or, alternatively, the automatic stripping of that office as Miami Beach Commissioner from her upon her qualification for federal office during the April 30, 2018 to May 4, 2018 period to qualify.

44. SB 186 provides for no hearing or any other avenue for an affected elected official to contest the validity and the constitutionality, as it applies specifically to Plaintiff Rosen Gonzalez. As such, there is no adequate remedy at law.

45. Because the case law is clear that unless a statute explicitly states its intent to be retrospectively applied, it is to be applied only prospectively, there is a substantial likelihood of success on the merits.

46. The granting of injunctive relief will serve the public interest because the electors who elected the Plaintiff as Commissioner will continue to be represented by the Plaintiff unless Plaintiff is successful in her election to Congress where she would represent that electorate as well as others in Congress.

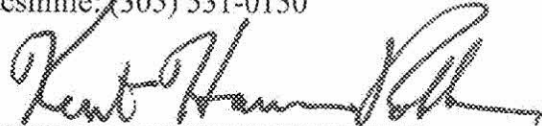
**WHEREFORE**, Plaintiff, KRISTEN ROSEN GONZALEZ, respectfully requests that the Court:

- a. Enter a judgment of injunctive relief and enjoin Defendants RICK SCOTT, KEN DETZNER, and RAFAEL E. GRANADO, under the terms and conditions of SB 186, operating under color of state law for THE STATE OF FLORIDA from forcing the irrevocable resignation of the Plaintiff, KRISTEN ROSEN GONZALEZ;
- b. Enter an Order requiring declaring that SB 186 either is applicable prospectively only or that it violates the Plaintiff's due process rights, as a current elected official, under the Florida Constitution;
- c. Retain jurisdiction to enforce the Court's injunction; and
- d. Any other such relief as this Court may deem just and proper.

Respectfully Submitted,

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