IN THE CIRCUIT COURT OF THE SIXTEENTH JUDICIAL CIRCUIT IN AND FOR MONROE COUNTY, FLORIDA

GENERAL JURISDICTION DIVISION
CASE NO.: 25-CA-000843-K

LISSETTE CUERVO CAREY, in her Official capacity as Key West City Commissioner,
Plaintiff,
vs.

CITY OF KEY WEST, KERI O'BRIEN, in her official capacity as Key West City Clerk, **JAMES STREBEK** and **SHERRI HODIES**, in her official capacity as Supervisor of Elections of Monroe County

Defendants.

_____/

PLAINTIFFS' EMERGENCY MOTION FOR PERMANANT INJUNCTION AND DECLARATORY RELIEF (With Incorporated Memorandum of Law)

Plaintiff, LISSETTE CUERVO CAREY ("CAREY"), in her capacity as a Key West City Commissioner, brings this action to stop an unlawful recall by JAMES STREBEK. The remaining Defendants are named in their official capacities for the purpose of the relief requested by the Plaintiff.

This action is for a temporary and permanent injunction to enjoin further proceedings in the effort to recall Commissioner from office as the District 4 Commissioner of the City of Key West. The action also seeks a declaratory judgment to determine the rights and responsibilities of the parties, including a prompt and speedy determination of the facial validity and legal sufficiency of the recall petition and recall process initiated by

Strebek pursuant to F.S. § 100.361. Considering the impact of an illegal recall process on Commissioner Carey and the citizens and residents of the City of Key West who elected her to office, Commissioner Carey requests an immediate hearing on her request for a temporary injunction enjoining further recall proceedings until this court determines the validity of the petitions and the recall petition process. As the recall petitions have not yet been officially certified, time is of the essence and the Court should act swiftly to prevent the furthering on an illegal recall.

I. BACKGROUND[1]

1. In June 2025, Strebek self-designated himself as "chair" of the Recall Committee to recall Commissioner Carey but did not register any political committee as required by F.S. § 100.361 (2) (c) that specifically states that any recall committee must abide by Chapter 106 of the Florida Statutes.
2. Around the same time, someone started the website, https://recallkeywest.com/, seeking the recall of Commissioner Carey. See Exhibit "A" of Complaint.
3. It is unknown if Strebek or someone else paid for the website as it was created in violation of F.S. § 100.361(2)(c) without a lawfully registered political committee as per Chapter 106 of the Florida Statutes. As such, the public was deprived from knowing who is funding the recall against Commissioner Carey in direct violation of the Florida Statutes.
4. On or around July 25, 2025, someone turned in a significant number of recall petitions to the Key West City Clerk. It is unknown if it was Strebeck.

[1] Plaintiff adopts all facts and exhibits contained in the Complaint.

5. Pursuant to the municipal recall statute, F.S. § 100.361(2)(f), only the chair of the recall committee is authorized to submit the signed petitions to the municipal clerk. As there was no properly registered recall committee pursuant to Chapter 106 of the Florida Statutes, there was no proper designation of a recall committee chair and thus whomever submitted the petitions cannot be considered the chair of the recall committee.
6. As per the allegations and Exhibits in the Complaint, the recall petition does not contain a properly worded or stated allegation alleging Commissioner Carey committed one of the specific grounds required by the Florida Statutes under which to be recalled from office.

II. ARGUMENT

A. DECLARATORY RELIEF IS PROPER

CARREY seeks a declaration of this court that the recall is not lawful as STREBEK violated F.S. § 100.361. The interpretation of a statute is a purely legal matter. *Stock Building Supply of Florida, Inc. v. Soares Da Costa Construction Services, LLC.*, 76 So. 3d 313, 316 (Fla. 3d DCA 2012). A review of a statute must commence with the plain meaning of the actual language contained therein. *Diamond Aircraft Industries, Inc. v. Horowitch*, 107 So. 3d 362, 367 (Fla. 2013). Examining the plain language of the statute will give effect to legislative intent. *Id;* F.S. § 100.361states in relevant parts:

> *(2) RECALL PETITION.—*
>
> *(a) Petition content.—A petition shall contain the name of the person sought to be recalled and a statement of grounds for recall. The statement of grounds may not exceed 200 words, and the stated grounds are limited solely to those specified in paragraph (d). If more than one member of the governing body is sought to be*

7/30/2025 6:34 PM eFiled - Kevin Madok, CPA, Clerk of the Court Page 3

recalled, whether such member is elected by the electors of a district or by the electors of the municipality at-large, a separate recall petition shall be prepared for each member sought to be recalled. Upon request, the content of a petition should be, but is not required to be, provided by the proponent in alternative formats.

. . . .

(c) Recall committee.—Electors of the municipality or district making charges contained in the statement of grounds for recall, as well as those signing the recall petition, shall be designated as the recall committee. A specific person shall be designated in the petition as chair of the committee, and this person shall act for the committee. The recall committee and the officer being recalled are subject to the provisions of chapter 106.

By all evidence, Strebek did not form proper committee, as none was registered with either the Key West City Clerk or the Monroe County Supervisor of Elections. More important, the petition is legally insufficient as it fails to properly allege conduct by Carrey that comports to one of the prescribed grounds for a recall under the statute. As such, the petition is legally insufficient and contains impermissible reasons for recall. Although the petition contains a few words listed in the statute as grounds for recall, the petition does not explain what specific conduct of Commissioner Carey fits into any of the specific recall grounds. Rather, the petition references a "grand jury report" that was not shown to the voters and makes thinly veiled references that are not specifically tied to any particular action by the Commissioner. As such, Commissioner Carey cannot face a recall for removal from office.

As directed by the Florida Supreme Court, "the present legislative scheme protects public officials from being ousted when illegal grounds provide the basis for recall. Since we place enormous value on the regular

elective process, this legislative scheme is certainly not unreasonable. Accordingly, public officials should not face removal from the office they were lawfully and properly elected to on a ballot that contains illegal grounds for recall in express violation of the statute." *Garvin v. Jerome*, 767 So. 2d 1190, 1193 (Fla. 2000). The Third District Court of Appeal held in *Sanchez v. Lopez*, 219 So. 3d 156, 159 (Fla. 3d DCA 2017), that a recall petition containing even one invalid ground for removal renders the entire petition legally insufficient.

The statement of the grounds for recall in the petition fail to comport with Florida law and are therefore invalid. A statement of grounds must be more than just a vague and general allegation of misfeasance, malfeasance, or nonfeasance. The grounds must be more than "beliefs" or "ideas," but must instead be charges of specific misdeeds that have a direct relationship to the official's performance of the duties of office. *Richard v. Tomlinson*, 49 So. 2d 798 (Fla. 1951); *Collins v. City of Opa-Locka*, 251 So. 2d 709 (Fla. 3d DCA 1971); *Piver v. Stallman*, 198 So. 2d 859 (Fla. 3d DCA 1967); *Tolar v. Johns*, 147 So. 2d 196 (Fla. 2d DCA 1962); *Hines v. Dozer*, 134 So. 2d 548 (Fla. 3d DCA 1961); *Joyner v. Shuman*, 116 So. 2d 472 (Fla. 2d DCA 1959); *Gordon v. Leathisman*, 450 F.2d 562 (5th Cir. 1971).

The Florida Declaratory Judgment Act is remedial in nature and should be broadly construed. *Dept. of Environmental Protection v. Garcia*, 99 So. 3d 539, 544 (Fla. 3d DCA 2011). However, in order to properly invoke the jurisdiction of the circuit court, a party seeking declaratory relief must not only show that he or she is in doubt as to the existence or nonexistence of some right or status,

7/30/2025 6:34 PM eFiled - Kevin Madok, CPA, Clerk of the Court Page 5

but also that there is a bona fide, actual, present, and practical need for the declaration. *Id.*

CAREY has an actual present, adverse, and antagonistic interest in ensuring that the recall against her is conducted lawfully. In this case, Strebek did not follow the requirements of F.S. § 100.361. He did not form a proper recall committee as per Chapter 106 of the Florida Statutes and more important, he fails to properly allege that CAREY has committed one of the criteria in the statute for a recall of a municipal official. The relief requested by CAREY is not merely the giving of legal advice or the answers to questions propounded for curiosity, rather the relief requested seeks to enforce the purposeful intent of the Florida Statute regarding municipal recalls.

B. CAREY IS ENTITLED TO AN INJUNCTION AGAINST DEFENDANTS

To obtain a temporary injunction, a plaintiff must establish: 1) The likelihood of irreparable harm; (2) the unavailability of an adequate remedy at law; (3) substantial likelihood of success on the merits; and (4) considerations of the public interest. *City of Jacksonville v. Naegele Outdoor Advertising Co.,* 634 So.2d 750 (Fla. 1st. DCA, 1994) On the facts of the instant case, CAREY clearly meets the test for injunctive relief as she seeks a declaration from this Court that the recall against her is illegal as it does not conform to the requirements for municipal recall in the Florida Statutes.

1. Likelihood of irreparable harm to Carey if Injunctive Relief is Not Granted.

If the Court does not grant the emergency injunctive relief requested herein, Carey, as well as the voters in District 4 in Key West will suffer irreparable

7/30/2025 6:34 PM eFiled - Kevin Madok, CPA, Clerk of the Court Page 6

harm. Carey is the elected Commissioner of the District, and any recall must be conducted lawfully. If an illegal recall is allowed to go forth, the residents of Key West will be burdened with the expense of a special election on the recall that was unlawfully conducted.

2. Carey has No Adequate Remedy at Law.

Carey needs an injunction to stop this unlawful recall lest she suffer unmeasurable damages. As there is no properly stated ground for her recall in the petition, it would be impossible to even defend herself in either a statement of defense as required by the statute or in a subsequent recall election. Only action by this Court can provide Carey the relief she needs from this illegal action against her.

3. There is a Substantial Likelihood of Success on the Merits.

The statute is clear and unambiguous as to what the requirements are for a municipal recall and Strebek has failed to follow the statute. He did not form a proper recall committee and has not presented lawful grounds for a recall.

Accordingly, there is a substantial likelihood of success of Carey's suit for a declaratory judgment that the recall is unlawful.

4. The granting of this injunction is in the public interest.

The public has a vested interest in maintaining elected officials in office and recalls should only occur under the most extreme measures. This is why the statute is so strict on the reasons for recall and why courts have ruled that if one ground for recall in a petition is flawed, the entire recall fails. In fact, the injunction sought furthers the clear public interest that Florida's laws will be

7/30/2025 6:34 PM eFiled - Kevin Madok, CPA, Clerk of the Court Page 7

enforced and upheld. Conversely, by not granting this injunction, the public will be adversely affected as they will be forced into a special election that will cost taxpayer money even though the recall was not lawfully undertaken.

III. CONCLUSION

Simply stated, the recall against Commissioner Lissette Cuervo Carey does not meet the requirements of F.S. § 100.361 in either the process undertaken or the wording of the recall petition. As such, it is unlawful and should not be allowed to move forward.

WHEREFORE, the Plaintiff, respectfully requests that this Court enter a judgment against the Defendants as follows:

1. Declaring that the recall was not lawfully organized by Strebek according to F.S. § 100.361(2)(c) as he did not properly register a recall committee as per Chapter 106 of the Florida Statutes, registered with either the Key West City Clerk;

2. Declaring that the recall petition signed by voters and presented to the City Clerk does not contain a lawfully specifically stated ground for the recall of Commissioner Lissette Cuervo Carey as required by F.S. § 100.361 (2)(d).

3. Baring Defendant Hodies from certifying the recall petitions as they are unlawful;

7/30/2025 6:34 PM eFiled - Kevin Madok, CPA, Clerk of the Court Page 8

4. Requiring The City of Key West and O'Brien to void the recall and issue a letter to Strebek rejecting the petitions for failure to comport with the requirements of F.S. § 100.361;

5. Requiring The City of Key West to reimburse Commissioner Carey for all financial burdens in defending an unlawful recall;

6. Any other relief this court deems equitable.

Respectfully submitted this 30th day of July 2025 by:

Law Firm of Juan-Carlos Planas, P.A.
9100 S Dadeland Blvd.,
Suite 1500,
Miami, Florida 33156
(850) 980-6542
Email: jcplanas@planaslawfirm.com
By: ***s./ J.C. Planas***
Juan-Carlos Planas, Esq.
Fla. Bar No.: 156167

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that a true and correct copy of the foregoing was electronically filed with the Florida Court's E-Filing Portal and that as a registered participant of the Portal, I have effectuated service through the Portal to the Service List below in compliance with Fla. R. Jud. Admin. 2.516 on all parties, this 30th day of July 2025 with the exception of Defendant, James Strebek who will be personally served with the Complaint upon issuance of the Summons by the Clerk of Courts.

Law Firm of Juan-Carlos Planas, P.A.
9100 S Dadeland Blvd.,
Suite 1500,
Miami, Florida (850) 980-6542
Email: jcplanas@planaslawfirm.com
By: ***s./_J.C. Planas***
Juan-Carlos Planas, Esq.
Fla. Bar No.: 156167

SERVICE LIST

Bob Shillinger, Esq
Patricia Eables, Esq.
County Attorney
Monroe County Attorney's Office
1111 12th Street, Suite 408
Key West, FL 33040
(305) 292-3470
shillinger-bob@monroecounty-fl.gov
eables-patricia@monroecounty-fl.gov

Kendal Lyn Harden, Esq.
Key West City Attorney
City of Key West
PO Box 1409
Key West, FL 33041-1409
kendal.harden@cityofkeywest-fl.gov