

NO. 17-14194

UNITED STATES COURTS OF APPEALS
FOR THE ELEVENTH CIRCUIT

CAROL WILDING, *et al.*,

Plaintiffs,

vs.

DNC SERVICES CORPORATION, *et al.*,

Defendants.

Appeal from the United States District Court
for the Southern District of Florida

**DEFENDANTS' POSITION REGARDING THE COURT'S
JURISDICTIONAL QUESTION OF OCTOBER 11, 2017**

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CERTIFICATE OF INTERESTED PERSONS AND CORPORATE DISCLOSURE STATEMENT

To the best of undersigned's knowledge, the following is a complete list of the trial judges, attorneys, persons, associations of persons, firms, partnerships, or corporations that have or may have an interest in the outcome of this case, including subsidiaries, conglomerates, affiliates, and parent corporations, including any publicly held company that owns 10% or more of the party's stock, and other identifiable legal entities related to a party.

1. Kimberly Alberts, Plaintiff/Appellant.
2. Connie Anderson, Plaintiff/Appellant.
3. Antonino Hernandez, P.A., trial and appellate counsel for Plaintiffs/Appellants.
4. Kayite Ashcraft, Plaintiff/Appellant.
5. Lester John Bates, Plaintiff/Appellant.
6. Beck & Lee P.A., trial and appellate counsel for Plaintiffs/Appellants.
7. Elizabeth Lee Beck, trial and appellate counsel for Plaintiffs/Appellants.
8. Jared H. Beck, trial and appellate counsel for Plaintiffs/Appellants.
9. Mark Bedard, Plaintiff/Appellant.
10. Nancy Berners-Lee, Plaintiff/Appellant.
11. Jen Betterley, Plaintiff/Appellant.

12. Harris Bierhoff, Plaintiff/Appellant.
13. Timothy Bingen, Plaintiff/Appellant.
14. Stephanie Birdsong, Plaintiff/Appellant.
15. Marianne Blair, Plaintiff/Appellant.
16. Richard Booker, Plaintiff/Appellant.
17. Barbara Bowen, Plaintiff/Appellant.
18. Richard Boylan, Plaintiff/Appellant.
19. Matthew Joseph Brady, Plaintiff/Appellant.
20. Kyle Braund, Plaintiff/Appellant.
21. Chris Bubb, Plaintiff/Appellant.
22. Tristan Burgener, Plaintiff/Appellant.
23. D.J. Buschini, Plaintiff/Appellant.
24. Bruce Busto, Plaintiff/Appellant.
25. Joseph Callan, Plaintiff/Appellant.
26. Mark R. Caramanica, counsel for Defendants/Appellees.
27. Patricia Cassidy, Plaintiff/Appellant.
28. Susan Catterall, Plaintiff/Appellant.
29. Vincent Cauchi, Plaintiff/Appellant.
30. Cynthia Chan, Plaintiff/Appellant.

31. Torsha Childs, Plaintiff/Appellant.
32. Karlie Cole, Plaintiff/Appellant.
33. Aimee Coleman, Plaintiff/Appellant.
34. Rosalie Consiglio, Plaintiff/Appellant.
35. Daniel Cooper, Plaintiff/Appellant.
36. Yalonda Dye Cooper, Plaintiff/Appellant.
37. Suzanne Cork, Plaintiff/Appellant.
38. Rhiannon Crandall, Plaintiff/Appellant.
39. William Crandall, Plaintiff/Appellant.
40. Sharon Crawford, Plaintiff/Appellant.
41. Phyllis Criddle, Plaintiff/Appellant.
42. John Crowe, Plaintiff/Appellant.
43. Cullin O'Brien Law P.A., trial and appellate counsel for Plaintiffs/Appellants.
44. Craig Richard Currier, Plaintiff/Appellant.
45. Catherine Cyko, Plaintiff/Appellant.
46. Heather Dade, Plaintiff/Appellant.
47. Alecia Davis, Plaintiff/Appellant.
48. Sherry Davis, Plaintiff/Appellant.
49. Tammy Deitch-Coulter, Plaintiff/Appellant.

50. DNC Services Corporation, Defendant/Appellee.
51. Kathleen Dodge, Plaintiff/Appellant.
52. Diane Emily Dreyfus, Plaintiff/Appellant.
53. Dan Ellis Dudley, Plaintiff/Appellant.
54. Amalie Duvall, Plaintiff/Appellant.
55. Marc. E. Elias, counsel for Defendants/Appellees.
56. Eliza Feero, Plaintiff/Appellant.
57. Erik Michael Ferragut, Plaintiff/Appellant.
58. Elizabeth Figueroa, Plaintiff/Appellant.
59. Diana Flores, Plaintiff/Appellant.
60. William Scott Franz, Plaintiff/Appellant.
61. Susan Frisbie, Plaintiff/Appellant.
62. Elisabeth C. Frost, counsel for Defendants/Appellees.
63. Erik Furreboe, Plaintiff/Appellant.
64. Lisa Gale, Plaintiff/Appellant.
65. Laura Genna, Plaintiff/Appellant.
66. Ryan Ghan, Plaintiff/Appellant.
67. Joseph Gleason, Plaintiff/Appellant.
68. Jeffrey Goldberg, Plaintiff/Appellant.

69. Estrella Gonzalez, Plaintiff/Appellant.
70. Jose Alberto Gonzalez, Plaintiff/Appellant.
71. Prabu Gopalakrishnan, Plaintiff/Appellant.
72. Luke Grim, Plaintiff/Appellant.
73. Lucille Grooms, Plaintiff/Appellant.
74. Anthony Grudin, Plaintiff/Appellant.
75. Lauren Hale, Plaintiff/Appellant.
76. Julie Hampton, Plaintiff/Appellant.
77. Zachary James Haney, Plaintiff/Appellant.
78. Gayle Ann Harrod, Plaintiff/Appellant.
79. Jarath Hemphill, Plaintiff/Appellant.
80. Antonino Hernandez, trial and appellate counsel for Plaintiffs/Appellants.
81. Kirsten Hoffman, Plaintiff/Appellant.
82. Rebecca Hohm, Plaintiff/Appellant.
83. Kim Marie Houle, Plaintiff/Appellant.
84. Stephen Houseknecht, Plaintiff/Appellant.
85. Lewis Humiston, Plaintiff/Appellant.
86. United States Magistrate Judge Patrick M. Hunt.
87. Kirsten Hurst, Plaintiff/Appellant.

88. Benjamin Ilarraza, Plaintiff/Appellant.
89. Bakh Inamov, Plaintiff/Appellant.
90. Danielle Ingrassia, Plaintiff/Appellant.
91. Carolyn Jacobson, Plaintiff/Appellant.
92. Tukoi Jarrett, Plaintiff/Appellant.
93. Timo Johann, Plaintiff/Appellant.
94. Tamara Johnston, Plaintiff/Appellant.
95. Heather Jordan, Plaintiff/Appellant.
96. Rana Kangas-Kent, Plaintiff/Appellant.
97. Brandy Kincaid, Plaintiff/Appellant.
98. Amber Rae Knowlton, Plaintiff/Appellant.
99. Theda Larson-Wright, Plaintiff/Appellant.
100. Peggy Lew, Plaintiff/Appellant.
101. Melissa Liang, Plaintiff/Appellant.
102. Sarah Lopez, Plaintiff/Appellant.
103. Ruthzee Louijeune, counsel for Defendants/Appellees.
104. Edwin Lugo, Plaintiff/Appellant.
105. John Lynch, Plaintiff/Appellant.
106. Sean Lynch, Plaintiff/Appellant.

107. Christine Maiurano, Plaintiff/Appellant.
108. Melissa Marcotte, Plaintiff/Appellant.
109. Raymond Maxwell, Plaintiff/Appellant.
110. Lisa Anne Meneely, Plaintiff/Appellant.
111. David Meuli, Plaintiff/Appellant.
112. Greta Mickey, Plaintiff/Appellant.
113. Carl Miller, Plaintiff/Appellant.
114. Teri Monaco, Plaintiff/Appellant.
115. Angela Monson, Plaintiff/Appellant.
116. Brittany R. Musick, Plaintiff/Appellant.
117. Cullin O'Brien, trial and appellate counsel for Plaintiff/Appellant.
118. Daniel O'Meara, Plaintiff/Appellant.
119. Andrew Orrino, Plaintiff/Appellant.
120. Perkins Coie LLP, counsel for Defendants/Appellees.
121. Steve Philipp, Plaintiff/Appellant.
122. Susan Phillips, Plaintiff/Appellant.
123. Jane Ellen Plattner, Plaintiff/Appellant.
124. Alette Prichett, Plaintiff/Appellant.
125. Kenneth Puckett, Plaintiff/Appellant.

126. David Pulaski, Plaintiff/Appellant.
127. David Pyles, Plaintiff/Appellant.
128. Valerie Elyse Rasch, Plaintiff/Appellant.
129. Michael Reed, Plaintiff/Appellant.
130. Susan Reed, Plaintiff/Appellant.
131. Daniel Reynolds, Plaintiff/Appellant.
132. Stanley Rifken, Plaintiff/Appellant.
133. Diane Robinson, Plaintiff/Appellant.
134. Rachel Roderick, Plaintiff/Appellant.
135. Jeff Rogers, Plaintiff/Appellant.
136. Dominic Ronzani, Plaintiff/Appellant.
137. Susan Lynne Roppel, Plaintiff/Appellant.
138. Andrew Rousseau, Plaintiff/Appellant.¹
139. Deborah Wasserman Schultz, Defendant/Appellee.
140. Lisa Settle, Plaintiff/Appellant.
141. Julianna Seymour, Plaintiff/Appellant.
142. Matthew Shaw, Plaintiff/Appellant.

¹ In Plaintiff-Appellants' First Amended Complaint, one of the proposed Plaintiff-Appellants' names is spelled Andrew "Rousseau," but is spelled "Andrew Rosseau" in their Certificate of Interested Persons and Corporate Disclosure Statement. The proper spelling is unclear.

143. Zeke Shaw, Plaintiff/Appellant.
144. James Simon, Plaintiff/Appellant.
145. Susan Singer, Plaintiff/Appellant.
146. Erika Sitzer, Plaintiff/Appellant.
147. Brenda Lee Smith, Plaintiff/Appellant.
148. Elesha Snyder, Plaintiff/Appellant.
149. Erich Sparks, Plaintiff/Appellant.
150. Bruce Spiva, counsel for Defendants/Appellees.
151. Marlowe St. Cloud Primack, Plaintiff/Appellant.
152. Alaina Talboy, Plaintiff/Appellant.
153. Felicia Michelle Taylor, Plaintiff/Appellant.
154. Brett Teegardin, Plaintiff/Appellant.
155. Thomas & Locicero PL, counsel for Defendants/Appellees.
156. George Thomas, Plaintiff/Appellant.
157. Gregg Thomas, counsel for Defendants/Appellees.
158. Laura Michelle Vaughn, Plaintiff/Appellant.
159. Carlos Villamar, Plaintiff/Appellant.
160. Beverly Virues, trial and appellate counsel for Plaintiff/Appellant.
161. Rick Washik, Plaintiff/Appellant.

162. Duffy Robert Weiss, Plaintiff/Appellant.
163. Mary Jasmine Welch, Plaintiff/Appellant.
164. Rebecca White-Hayes, Plaintiff/Appellant.
165. Carol Wilding, Plaintiff/Appellant.
166. Catherine Willott, Plaintiff/Appellant.
167. AnnMarie Wilson, Plaintiff/Appellant.
168. Graham Wilson, counsel for Defendants/Appellees.
169. Gregory Witkowski, Plaintiff/Appellant.
170. Emma Young, Plaintiff/Appellant.
171. United States District Court Judge William J. Zloch.

DEFENDANTS' RESPONSE TO JURISDICTIONAL QUESTION

Defendants DNC Services Corporation and Congresswoman Deborah Wasserman Schultz submit this response to the Jurisdictional Question issued by this Court on October 11, 2017. The District Court correctly dismissed Plaintiffs' First Amended Complaint ("FAC") for lack of subject matter jurisdiction, properly holding that Plaintiffs fail to allege complete diversity of citizenship under 28 U.S.C. § 1332(a) or minimal diversity of citizenship under the Class Action Fairness Act ("CAFA"), 28 U.S.C. § 1332(d), and that Plaintiffs lack standing. There is no current record evidence that establishes Plaintiffs' or Congresswoman Deborah Wasserman Schultz's citizenship.² Although the District Court put Plaintiffs on notice that they had failed adequately to plead citizenship and permitted them the opportunity to amend, Plaintiffs chose to appeal the District Court's ruling rather than fix this obvious jurisdictional defect in their pleading. Nonetheless, because Defendants seek expeditious resolution of this matter by this Court, including affirmance of the District Court's holding that Plaintiffs do not have standing, Defendants do not oppose permitting Plaintiffs to amend their pleadings on appeal for the sole purpose of attempting to cure their failure to plead citizenship properly. Defendants would oppose any other amendments apart from

² Defendants Deborah Wasserman Schultz has stipulated that she is a citizen of Florida, and the DNC does not dispute that it is a citizen of the District of Columbia.

amendments to Plaintiffs' citizenship allegations. Defendants oppose any supplementation of the record to demonstrate citizenship, because Defendants would not have an opportunity to challenge any evidence Plaintiffs might submit on appeal, and Defendants believe that the entire case was properly dismissed on the pleadings and should be affirmed on that basis. *See* Dist. Ct.'s Op., Doc. 62 - Pg. 12.³

I. Plaintiffs Fail to Allege Citizenship, But Defendants Do Not Oppose Permitting Limited Amendments To Avoid Unnecessary and Futile Delay in Affirmance of the District Court's Opinion.

As the District Court held, Plaintiffs fail to allege citizenship, preventing the District Court from determining whether complete diversity of citizenship or even minimal diversity of citizenship exists between the parties. A plaintiff can invoke a federal court's jurisdiction under 28 U.S.C. § 1332(a) only where the parties are completely diverse, *i.e.*, "no plaintiff maintains citizenship in the same state as any defendant." Dist. Ct.'s Op., Doc. 62 - Pg. 10 (citing *Strawbridge v. Curtiss*, 7 U.S. (3 Cranch) 267 (1806); *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998)). CAFA altered this long-standing rule, and in certain putative

³ In addition to lack of standing, Defendants in their Motion to Dismiss set forth a number of other reasons why Plaintiffs' claims lack merit and should be dismissed on the pleadings, including failure to meet requirements for certification of a class action. *See* Defendants' Motion to Dismiss, Doc. 44 - Pgs. 4-12 (lack of standing); 13-17 (failure to meet basic pleading requirements); 17-20 (failure to meet class action certification requirements). This Court of course may affirm the District Court's ruling on any grounds apparent to this Court. *See, e.g., Akanthos Capital Mgmt., LLC v. Atlanticus Holdings Corp.*, 734 F.3d 1269, 1271 (11th Cir. 2013) (a court of appeals "may affirm a judgment based on any grounds supported by the record.") (citing *Molinos Valle Del Cibao, C. por A. v. Lama*, 633 F.3d 1330, 1349 n.20 (11th Cir. 2011)).

class actions, a plaintiff need only plead minimal diversity, meaning that only a single member of a class of plaintiffs need be “a citizen of a State different from any defendant.” 28 U.S.C. § 1332(d)(2)(A).

In their First Amended Complaint, Plaintiffs alleged only their purported residences, but did not allege their or Defendants’ citizenship.⁴ As the District Court held, residence and citizenship are not interchangeable. *See, e.g., Travaglio v. Am. Express Co.*, 735 F.3d 1266, 1269 (11th Cir. 2013) (stating that for diversity purposes, “[r]esidence alone is not enough.”) (citations omitted); *Taylor v. Appleton*, 30 F.3d 1365, 1367 (11th Cir. 1994) (“Citizenship, not residence, is the key fact that must be alleged in the complaint to establish diversity for a natural person.”). This Court has clearly stated that “[c]itizenship is equivalent to domicile for purposes of diversity jurisdiction [a]nd domicile requires both residence in a state and an intention to remain there indefinitely[.]” *Travaglio*, 735 F.3d at 1269 (citing *McCormick v. Aderholt*, 293 F.3d 1254, 1257 (11th Cir. 2002)) (internal quotation marks omitted). Without allegations of citizenship, a district court cannot be satisfied that “no plaintiff is a citizen of the same state as any defendant.” *Travaglio*, 735 F.3d at 1268 (citing *Triggs v. John Crump Toyota, Inc.*, 154 F.3d 1284, 1287 (11th Cir. 1998)). Plaintiffs’ failure to plead citizenship adequately

⁴ Plaintiffs fail to allege the citizenship of Congresswoman Deborah Wasserman Schultz and the DNC Services Corporation. Defendants stipulate that Congresswoman Deborah Wasserman Schultz is a citizen of Florida. Defendants acknowledge that Plaintiffs allege that the DNC’s principal place of business and place of incorporation is Washington D.C., which, under 28 U.S.C. § 1332(c)(1), is deemed sufficient to show citizenship.

thus precluded the District Court from finding either complete or minimal diversity.⁵ The District Court dismissed the action without prejudice on these and other jurisdictional grounds.

Plaintiffs could have amended and re-filed their complaint in the District Court, but instead chose to appeal to this Court. Defendants seek to avoid unnecessary and futile delay, and therefore, do not oppose Plaintiffs amending their complaint on appeal for the limited purpose of attempting adequately to plead the citizenship of Plaintiffs. Defendants oppose any other amendments on appeal apart from allegations of the citizenship of Plaintiffs and Defendants. Defendants seek a final disposition of this matter by this Court, including an affirmance of the District Court's holding that Plaintiffs do not have standing to pursue this matter. Dist. Ct.'s Op., Doc. 62 - Pgs. 12-27.

II. The Current Record Evidence Does Not Establish Citizenship, and Defendants Oppose Supplementation.

There is no record evidence that establishes the citizenship of Plaintiffs or Defendants. Defendants do not dispute – and indeed have stipulated – that Congresswoman Deborah Wasserman Schultz is a citizen of Florida, or that the DNC is a citizen of the District of Columbia. However, there is no evidence in the

⁵ Even if the Court were to assume that the allegations of “residence” are equivalent to allegations of citizenship, it is apparent from the face of the First Amended Complaint that Plaintiffs are not completely diverse from Defendants. Several named Plaintiffs are residents of the District of Columbia, where the DNC is also a citizen, and several of the named Plaintiffs are residents of Florida, where Congresswoman Wasserman Schultz is also a citizen. *See* FAC, Doc. 8 - Pgs. 5 ¶ 2; 8 ¶ 28; 10 ¶ 51, 55; 12 ¶ 73; 13 ¶ 87; 15 ¶ 103; 17 ¶ 125; 18 ¶ 133.

record concerning the citizenship of any Plaintiff, nor did Plaintiffs seek to introduce any such evidence in the District Court. While, as indicated above, Defendants do not oppose limited amendment of the pleadings to allege citizenship, they do oppose Plaintiffs being permitted to introduce purported evidence on appeal. Defendants would not have the opportunity to challenge any such evidence. More fundamentally, permitting the introduction of evidence on appeal would be at odds with the procedural posture of this matter, having been properly dismissed by the District Court on the pleadings. Defendants moved to dismiss below because the pleadings were fatally deficient: Plaintiffs lack standing and have not otherwise stated a claim. Dist. Ct.'s Op., Doc. 62 - Pgs. 10-12, 27-28. The District Court properly dismissed the case on the pleadings and its ruling should be considered and affirmed on that basis.

Regardless of whether this Court allows Plaintiffs to amend on appeal to allege citizenship or to supplement the record with additional evidence of citizenship, this Court should still find that it lacks subject-matter jurisdiction because, as the District Court correctly found, Plaintiffs lack standing. Dist. Ct.'s Op., Doc. 62 - Pg. 12. Furthermore, as Defendants stated in their Motion to Dismiss, Doc. 44 - Pgs. 12-20, Plaintiffs fail to meet other basic pleading

requirements and have not properly pled any class allegations.

Dated: October 30, 2017

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Type-Volume. This document complies with the word limit of Fed. R. App. P. 32 because, excluding the parts of the document exempted by Fed. R. App. P. 32(f) and applicable rules, this document contains 1,359 words according to Microsoft Word word-processing software, version 2010. **Typeface and Type-Style.** This document complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type-style requirements of Fed. R. App. P. 32(a)(6) because this document has been prepared in a proportionally spaced typeface in Times New Roman Type-Style and size 14 font.

/s/ Bruce V. Spiva
Bruce V. Spiva

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served by CM/ECF on October 30, 2017 on all counsel or parties of record on the service list.

/s/ Bruce V. Spiva
Bruce V. Spiva

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