UNITED STATES COURT OF APPEALS
FOR THE ELEVENTH CIRCUIT

CASE NO. 13-14053-FF

JONATHAN CORBETT

Appellant/Plaintiff,

v.

TRANSPORTATION SECURITY ADMIN. et. al.,

Appellees/Defendants.
_____/

ON APPEAL FROM THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
DISTRICT COURT CASE NO.: 1:12-cv-20863-JAL

APPELLEE BROWARD SHERIFF'S OFFICE ANSWER BRIEF

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CERTIFICATE OF INTERESTED PERSONS
AND CORPORATE DISCLOSURE STATEMENT

Pursuant to Fed. R. App. P. 26.1 and Eleventh Circuit Rule 26.1-1, Appellee, BROWARD SHERIFF'S OFFICE, by and through undersigned counsel, hereby states that, to the best of Appellee's knowledge, the following individuals and entities have an interest in the disposition of this case:

1. Rupa Bhattacharyya, U.S. Department of Justice
2. Alejandro Chamizo, Transportation Security Administration
3. Jonathan Corbett, Appellant
4. Stuart F. Delrey, U.S. Department of Justice
5. Wilfredo Ferrer, U.S. Department of Justice
6. Scott Israel, Sheriff of Broward County Florida

7. U.S. District Judge Joan A. Lenard

8. Laura G. Lothman, U.S. Department of Justice

9. Andrea W. McMcarthy, U.S. Department of Justice

10. Janet Napolitano, U.S. Department of Homeland Security, United States of America

11. U.S. Magistrate Judge John J. O'Sullivan

12. John Pistole, Transportation Security Administration

13. Sharon Swingle, U.S. Department of Justice

14. Robert L. Teitler, Broward County Aviation Department, Broward County

15. Robert D. Yates, Counsel for Broward Sheriff's Office.

STATEMENT REGARDING ORAL ARGUMENT

Pursuant to Rules 34(a)(1) of the Federal Rules of Appellate Procedure and Rule 34-3(c) of the Eleventh Circuit Rules of Appellate Procedure, the Appellee Broward Sheriff's Office, submits that oral argument is not necessary for this matter. The facts pertinent to the present issue and the applicable legal arguments may be adequately presented in the briefs and the record. The Court's decisional process would not be significantly aided by oral argument.

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STATEMENT REGARDING ADOPTION OF BRIEFS

Pursuant to Federal Rule of Appellate Procedure Rule 28(I), the Appellant Broward Sheriff's Office "BSO" does hereby inform this Court that it has previously adopted the entirety of all arguments of the Co-Appellees below contained within their individual motions to dismiss (DE 30, 37, 41) as set forth within BSO's motion to dismiss. (DE 64). Further and in support of this appeal, BSO does hereby adopt and incorporate by reference the Fourth Amendment arguments within Co-Appellees, TSA, USA, Broward County Florida, and Chamizos,' motions for summary judgment (DE 89, 93); and all arguments set forth within the co-appellee Answer Briefs which address the following issues:

1. That the present suit originally filed in District Court lacks subject matter jurisdiction pursuant to 49 U.S.C. § 46110(a) because it is the functional equivalent of a challenge to TSA procedures and that all the facts surrounding the civil rights and state tort actions brought by Corbett are all "inextricably intertwined" therein.

2. That the District Court Judge, Lenard, correctly analyzed and determined that qualified immunity was warranted under the circumstances within this case due to the absence of clearly established law within the Supreme Court, the Eleventh Circuit, or State Supreme Court to provide "fair warning" that a reasonable officer would understand that his actions violated the law within the security check point.

3. That declaratory and or injunctive relief are unwarranted, moot, unavailable, and or precluded as no Constitutional violations were determined to have occurred, the district court lacks jurisdiction to challenge a TSA policy, and or the relief is not otherwise available under the circumstances.

STATEMENT O F JURISDICTION

This Court has jurisdiction over a final decision of a United States Court for the Southern District of Florida pursuant to 28 U.S.C. § 1291. Court twenty-one (21) was brought pursuant to this Court's supplemental pendant party jurisdiction 28 U.S.C. § 1367(a) as occurring within the same case, controversy and operative facts involved in Corbett's TSA security check point encounter and subsequent searches.

On November 16, 2012, the district court entered an omnibus order granting motions to dismiss for all defendant/appellees dismissing counts 1-16 and 19-21. (DE 69). On September 3, 2013, the district court granted summary judgment on the remaining claims 17-18 for TSA and Broward County. (DE 101). Appellant filed his Notice of Appeal on September 6, 2013. (DE 78). The Notice appears to be timely filed within the thirty day window provided in Rule 4(a)(1)(A) in conjunction with Rule 59(e) of the Federal Rules of Civil Procedure.

STATEMENT OF THE ISSUES

The Appellant's Initial Brief sets forth 18 ostensible issues for review that encompass the multiple defendants and claims brought within the complaint below. (*See* Initial Brief, p. 2). However, it is respectfully contended by that the sole issues presented for Appellee, BSO, are:

1. Whether the trial court correctly determined that the Florida Constitution

itself does not provide a cause of action for monetary damages related to Appellant's purported "State Constitutional claim" (Count 21).

2. Whether it was an abuse of discretion to deny a second amended complaint seeking to pursue a federal civil rights claim against the individual deputy for the receipt of personal information and subsequent warrants check at the TSA checkpoint in light of the fact that the TSA supervisor was granted qualified immunity.

3. Whether the denial of leave to amend the complaint seeking to pursue a federal civil rights claim against the individual deputy for the receipt of personal information and subsequent warrants check would also be affirmed for Corbett's undue delay, bad faith and dilatory motives.

4. Whether Corbett's non-monetary claims filed in the District Court should be considered as an attempt to circumvent the lack of subject matter jurisdiction for the district court to challenge TSA procedures pursuant to 49 U.S. C. § 46110(a) and dismissal affirmed.

PRELIMINARY STATEMENT

The appellant Jonathan Corbett shall be referred to as "Appellant" or "Corbett." When referring singularly to Appellee, Broward Sheriff's Office, it shall be referred to as "BSO." Appellee Transportation Security Administration shall be referred to as "TSA." Appellee, Alejandro Chamizo, shall be referred to as "Chamizo." Appellee, Broward County, shall be referred to as "the County." When referring to the Appellees collectively they shall be referred to as "Appellees" or "Defendants."

Citation to the record on appeal will be made by referring to the appropriate district court docket number followed by the page number. [For Example, " DE 1 p. 1"].

References to the Appellant's Initial Brief shall be referred to as "IB."

References to Co-Appellee Briefs shall be in accordance with the statement above followed by the page number. [For Example, " TSA Brief p. 1"].

STATEMENT OF THE CASE

The present case surrounds Corbett's attempt to clear a TSA security screening checkpoint within the Fort Lauderdale International Airport and accompanying property search on August 27, 2011. (DE 20). The twenty one claims within the operative first amended complaint involved civil rights claims pursuant to 42 U.S.C. § 1983 and *Bivens;* the Federal Privacy Act; Federal Tort Claims Act, Freedom of Information Act, and various state public records and tort claims against the multiple Appellees related to Corbett's August 27, 2011 Fort Lauderdale Airport security checkpoint encounter, search and subsequent responses to his public records requests. (Id.). A succinct one page chart numerically listing and identifying by type of claim and corresponding Appellee can be reviewed on page five (5) of trial court Judge Joan Lenard's omnibus order of dismissal. (DE 69 p. 5).

The sole count asserted against BSO (Count 21) was brought as an alleged Florida state constitutional claim for unlawful search and seizure. (DE 69 p. 31). Corbett maintained that Florida law, specifically Article I, Section 12 of the Florida Constitution, provided monetary damages against BSO for it's alleged receipt of Corbett's photocopied personal identification from the TSA and the subsequent warrants check utilizing that information during his checkpoint encounter. (DE 20 p. 14). Corbett, sought a combined one million dollars in compensatory and punitive

damages from BSO because an unnamed BSO deputy failed to seek Corbett's consent to receive the photocopied personal information from the TSA and further that the deputy lacked the authority to conduct a criminal warrants check during Corbett's interaction at the security checkpoint with TSA. (DE 20, p. 14-15).

(A) COURSE OF PROCEEDINGS.

The initial complaint was filed on March 2, 2012. (DE 1). The operative complaint at issue in the present appeal is now the twenty-one (21) count first amended complaint filed on May 8, 2012 against the five Appellees, USA, TSA, BSO, Broward County and TSA Officer Chamizo. (DE 20). All Appellees filed motions to dismiss the amended complaint. (DE 30,41, 64). Corbett sought leave to amend the first amended complaint related to Chamizo for unspecified reasons and without filing a proposed amended complaint. (DE 47). Corbett also sought leave to amend count 21 against BSO to replace the entity BSO with an unnamed individual BSO deputy for the purpose of pursuing a federal civil rights claim under 42 U.S. C. § 1983. (DE 65 p. 8). Corbett failed again to include a proposed amended complaint.(Id.).

Judge Lenard ultimately issued an omnibus order of dismissal that dispensed with the majority of all claims except for the federal and state public records challenges against TSA and Broward County (Counts 17-18). Judge Lenard found

that Chamizo, the TSA managing supervisor on scene, was entitled to qualified immunity on the constitutional claims as there was no clearly established law establishing his actions as unlawful. (DE 69 p. 9). When granting qualified immunity to Chamizo, Judge Lenard determined that Chamizo's actions, as supervisor, were dispositive of the individual civil rights issues in the qualified immunity analysis. (Id.). Corbett's cross-motions for leave to amend the complaint were also denied within the same omnibus order of dismissal. (DE 69 p. 9, 32). The omnibus order dispensed with all claims except the federal and state public records challenges as to TSA and Broward County (Counts 17-18). The two remaining public records challenges were ultimately dismissed upon the grant of summary judgment against Corbett on September 3, 2012. (DE 101). Corbett filed his Notice of Appeal on September 6, 2013. (DE 78). The present appeal follows.

(B) STATEMENT OF FACTS.

BSO accepts Corbett's statement of facts within his initial brief (IB p. 5-7) as being generally correct except for the argumentative characterizations, legal and factual conclusions therein such as "retaliation," "ejected" and the like. Additionally, BSO submits the following additional facts below to expound upon Corbett's proffered facts and those relevant to the BSO issues:

Corbett presented himself and bags to the TSA security checkpoint as a

passenger where his bags were initially screened before TSA manager Chamizo arrived at the security checkpoint. (IB p. 10). Chamizo and BSO were summoned after Corbett refused to unconditionally elect either an electromagnetic full-body image scan or the alternative "opt out" manual pat-down screening required to clear the security checkpoint area. (DE 20 ¶¶ 30-43). Corbett refused the manual pat-down believing that TSA's policy was *"we will run our hand up the inside of your leg until we meet resistance.*" (Id. ¶ 42 n. 3). Corbett believed that his genitals would be contacted during a manual pat-down. (Id.). Corbett attempted to condition his consent upon the manor in which the pat-down would be administered. (Id.). Neither the TSA screeners or Supervisor Chamizo would negotiate conditions with Corbett regarding the method and manner of conducting a pat-down. (Id. ¶¶ 41-49).

During the time after Chamizo arrived at the checkpoint, two unnamed TSA screeners searched Corbett's belongings, which consisted of a backpack and a plastic bag containing books. (Id. ¶¶ 50, 51). One of the screeners found a stack of Corbett's credit cards and IDs. (Id. ¶¶ 55). Corbett objected to the inspection of his credit cards, stating that the search exceeded TSA's objective of finding weapons, explosives, and incendiary devices. (Id. ¶ 56). Also during the search, a screener looked through one of Corbett's books. (Id. ¶ 59). Chamizo took Plaintiff's driver's license and boarding pass in order to photocopy them. (Id. ¶ 66.) Corbett did not

provide consent for Chamizo to do so. (Id. ¶ 67). TSA agents then furnished a copy of Corbett's driver's license to the Broward Sheriff's Office, and the Broward Sheriff's Office checked if Plaintiff had any outstanding warrants during the encounter. (Id. ¶¶ 70-73). Corbett was denied access to the departure gate. (Id.). Corbett was not arrested, charged, or prosecuted, nor does he claim his items were confiscated or damaged.

(C). STANDARD OF REVIEW.

A district court's dismissal for failure to state a claim is reviewed *de novo*. Behlan v. Merrill Lynch, 311 F.3d. 1087,1090 (11th Cir. 2002). Under Rule 12(b)(6), a motion to dismiss should be granted only if the plaintiff is unable to articulate "enough facts to state a claim of relief that is plausible on its face." Bell Atl. Corp. v. Twombly, 550 U.S. 544, 570 (2007). "A claim has facial plausibility when the pleaded factual content allows the court to draw the reasonable inference that the defendant is liable for the misconduct alleged." Ashcroft v. Iqbal, 129 S. Ct. 1937, 1949 (2009)(*citing* Twombly, 550 U.S. at 556). Lastly, review of the denial of a motion to amend a complaint falls under an abuse of discretion standard. Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1300 (11th Cir.2003).

SUMMARY OF THE ARGUMENT

I.

Florida's waiver of sovereign immunity pursuant to Florida Statutes § 768.28 *et. seq.* extends to traditional torts but not to state constitutional claims. *See* Garcia v. Reyes, 697 So.2d 549, 550 (Fla 4th DCA 1997). Notwithstanding, Corbett's claims of the Constitutional provision being self-executing and the lack of case law involving specifically Article 1, Section 12 of the Florida Constitution, Garcia is squarely on point barring all monetary actions premised upon provisions of the Florida Constitution.

II.

Denial of Corbett's request to amend his claim to drop BSO as a party and add the deputy who received his personal information from Chamizo would be futile because Chamizo was granted qualified immunity. The deputy's role was insignificant and he should not be afforded any less immunity than Chamizo. Similarly as to Chamizo, there exists no clearly established law establishing the unnamed Deputy violated Corbett's rights on the facts alleged in the complaint and proffered in the motion for reconsideration.

Denial of leave to amend would also be proper for the existence of undue delay, bad faith and dilatory motive. Corbett has crusaded to change TSA policy

through internet postings, blogs, District Court law suits and the like. He considers himself a professional troublemaker and has had a similar suit dismissed in this Court. *See* Corbett v. U.S., 458 Fed Appx. 866 (11th Cir. 2012). The instant case is more of the same attempt to throw as many claims and defendants at the court as possible trying to get a District Court to weigh in on TSA policy.

III.

Asking for declaratory relief is the functional equivalent of a challenge to TSA policy and procedure and should therefore be dismissed for lack of subject matter pursuant to 49 U.S.C. § 46110(a). Because all of the facts occurred in conjunction with Corbett's encounter with TSA at the security checkpoint they are inextricably intertwined as to all defendants such that any non-monetary relief claims should be dismissed for lack of subject matter jurisdiction.

ARGUMENT

(Point X)

I. THE DISTRICT COURT PROPERLY DISMISSED THE STATE CONSTITUTIONAL CLAIM (COUNT 21) AS AN UNRECOGNIZED CAUSE OF ACTION UNDER FLORIDA LAW.

Count twenty-one of Corbett's amended complaint asserted a state constitutional claim premised upon the unreasonable search and seizure provision, Article I, Section 12 of the Florida Constitution, for the sole claim against BSO. Corbett made it abundantly clear within his response in opposition to BSO's motion to dismiss that he was unmistakably asserting a "state constitutional claim" rather than a common law tort action. (DE 65 p. 7). Judge Lenard correctly determined that Corbett's claim was not cognizable in Florida for state constitutional claims and correctly dismissed count twenty-one.

(A). Protections in Article I, Section 12 are not Self-Executing.

In Florida, the Sheriff (BSO in the present case) is treated as a governmental entity within the meaning of Florida's sovereign immunity waiver statute, section 768.28 *et seq*. and therefore entitled to immunity or otherwise amenable to suit as set forth within the statute. (Citations omitted). The waiver of sovereign immunity pursuant to section 768.28 extends to traditional torts but not to state constitutional claims. Garcia v. Reyes, 697 So.2d 549, 550 (Fla 4th DCA 1997)(attempted monetary

claim pursuant to Article I Section 9 of the Florida Constitution not cognizable or waived under Florida Statute § 768.28)). *See also*, Depaola v. Town of Davie, 872 So. 2d 377, 380 (Fla. 4th DCA 2004)(*citing* Garcia, 697 So.2d at 549-50)("no cause of action exists for money damages for a violation of a state constitutional right")). Garcia and it's progeny are squarely on point and fatal to Corbett's state constitutional claim against BSO.

Corbett relies entirely on the case of Florida Hospital Waterman, Inc. v. Buster, 984 So.2d 478, 485 (Fla. 2008) in an attempt to analogize his claim as involving a self-executing constitutional provision. (IB p. 38-39). Corbett's reliance is misplaced and easily distinguishable. Florida Hospital Waterman was a non-monetary action seeking production of medical documents through a constitutional amendment giving patients the right to know about adverse medical incidents. Corbett argues that the "self-executing" test annunciated in Florida Hospital Waterman was not conducted by Judge Lenard. (IB p. 39).

Corbett's arguments on this issue are wholly void of substance and merely cite a case and a legal test without any practical application or meaningful comparison. Corbett dispenses rather quickly with Garcia by just declaring it simply as a conflicting case. Corbett summarily quotes the Florida Hospital Waterman self-execution test and then claims Judge Lenard erred by not applying it; all without

demonstrating how it's application would have gotten him around Garcia. Ironically, Corbett never actually takes the leap he claims Judge Lenard should have done to apply the "self-execution" test to the provision within his claim. The self-execution test does clearly fail upon it's application.

The fallacy of Corbett's self-execution argument is that the test he quotes in Florida Hospital Waterman requires the constitutional provision to be *"...determined, enjoyed, or protected without the aid of legislative enactment*. Florida Hospital Waterman, 984 So.2d at 485. In other words, there must not be a need for an enabling statute. As pointed out in Garcia, Florida's sovereign immunity statute Section 768.28 was designed to waive immunity and allow private citizens to sue the state for breaches of care to the same extent as a private individual under like circumstances. Garcia, 697 So.2d at 550. Since one private citizen cannot sue another for a "state constitutional claim" there would need to be some sort of enabling statute enacted before Corbett's claim *sub judice* would be cognizable.

> "To allow Garcia to bring a cause of action based on a violation of our state's constitution, where no concomitant duty arises for private citizens, would extend the waiver of sovereign immunity beyond the stated intent of the statute. It would also create a duty of care arising from the state constitution where none has previously existed." (Id.).

The above quoted rationale applies to Corbett and his claim fails the test.

The dismissal should be affirmed.

(Point XI)

II. CORBETT'S DENIAL OF THE OPPORTUNITY TO AMEND WAS NOT AN ABUSE OF DISCRETION.

Review of the denial of a motion to amend a complaint falls under an abuse of discretion standard. Green Leaf Nursery v. E.I. DuPont De Nemours & Co., 341 F.3d 1292, 1300 (11th Cir.2003). Other than initial amendments permissible as a matter of course, "a party may amend its pleading only with the opposing party's written consent or the court's leave." Fed. R. Civ. P. 15(a)(2). "The court should freely give leave when justice so requires." Id. However, "[a] district court need not . . . allow an amendment (1) where there has been undue delay, bad faith, dilatory motive, or repeated failure to cure deficiencies by amendments previously allowed; (2) where allowing amendment would cause undue prejudice to the opposing party; or (3) where amendment would be futile." Bryant v. Dupree, 252 F.3d 1161, 1163 (11th Cir. 2001). Moreover, "[a] motion for leave to amend should either set forth the substance of the proposed amendment or attach a copy of the proposed amendment." Long v. Satz, 181 F.3d 1275, 1279 (11th Cir. 1999). "Where a request for leave to file an amended complaint simply is imbedded within an opposition memorandum, the issue has not been raised properly." Rosenberg v. Gould, 554 F.3d 962, 967 (11th Cir. 2009) (*quoting* Posner v. Essex Ins. Co., Ltd., 178 F.3d 1209, 1222 (11th Cir.

1999)).

Corbett requested within his response in opposition (DE 65) to BSO's motion to dismiss and then again within his motion for reconsideration of dismissal (DE 76) that he be permitted to amend for the purpose of replacing BSO to *"name the individual sheriff who interacted with him for a Civil Rights Act claim.*" (DE 76 p. 16). Corbett sought to drop BSO as a party and add civil rights claim against the unnamed individual deputy that received Corbett's personal information from Chamizo. These requests were denied in the Court's omnibus order of dismissal (DE 69) and the paperless order denying reconsideration. (DE 78). Corbett never filed a proposed amended complaint nor ever named the individual deputy, or proffered new or additional facts. Notwithstanding the technical deficiencies in Corbett's requests there were other reasons denial of leave to amend was not an abuse of discretion, including futility, undue delay, bad faith, and dilatory motive.

(A). The Proposed Amendment would be Futile Because the Lack of Clearly Established Law Would Require A Dismissal for Qualified Immunity to a BSO Deputy For the Same Reasons it was Granted to Chamizo.

Leave to amend a complaint is futile when the complaint as amended would still be properly dismissed or be immediately subject to summary judgment for the defendant. Cockrell v. Sparks, 510 F.3d 1307, 1310 (11th Cir. 2007) (*citing* Hall v.

United Ins. Co. of Am., 367 F.3d 1255, 1263 (11th Cir. 2004)). Judge Lenard found that Chamizo, as the TSA manager, was accountable for all actions of TSA screeners. (DE 69 p. 9). This should also include the actions of any BSO deputy who responded to the checkpoint and subsequently conducted a warrants check upon Chamizo's request with information supplied. Chamizo was the acting TSA manager that took control of the checkpoint and summoned BSO. Chamizo was the person conversing and interacting with Corbett. Chamizo was the person who took Corbett's license and boarding pass and photocopied them. Chamizo was the person who supplied Corbett's personal Information to BSO. Thus, a BSO deputy arriving at the request of TSA to assist in a warrants check on information supplied by TSA should not be afforded any less immunity from suit. Chamizo's qualified immunity proves the futility of Corbett's proposed amendment to sue the BSO deputy.

Chamizo was granted qualified immunity to the civil rights claim asserted against him for unconstitutional search and seizure based upon the lack of clearly established airport security search law. Judge Lenard found that Chamizo's actions taken during an administrative search within an airport security screening were not clearly unlawful based upon the lack of mandatory precedent. (DE 69 p. 13). Surprisingly, while Corbett takes issue with the manner of Judge Lenard's application of the *Saucier* qualified immunity test in points 1-3 of his initial brief, he does tacitly

acknowledge that there is a lack of case law defining boundaries in the context of airport security checkpoint stops and searches.[1] (IB p. 21). This concession on Corbett's part actually gives credence to Judge Lenard's qualified immunity analysis and that the results she reached were correct.

Any qualified immunity analysis for the proposed amended civil rights claim for BSO deputy accepting the information from Chamizo should reach the same result. The BSO deputy had a very indirect and minor role, if any, during the entire Corbett encounter with TSA. There is likewise no clearly established law on the issue of requesting personal identification during an airport administrative search by a law officer summoned to the scene by TSA. The issues related to Chamizo encompassed multiple different kinds of searches, i.e. wallets, books and luggage. The issue for the BSO deputy is much narrower. The BSO deputy received information from TSA and conducted a warrants check. Corbett's information was not even requested by BSO. It was just received.

The unnamed deputy did not commit an action that implicated the Fourth Amendment. The Fourth Amendment is not implicated simply because a name,

[1] Corbett discusses public interest and ponders various questions that he seeks answers because the case law is nonexistent.- Can a TSA screener read through a traveler's documents? Can a TSA supervisor detain a traveler, and for how long? (IB p. 22).

legally obtained, is later used to run a criminal background check. That action is neither a search nor a seizure, because there is no legitimate expectation of privacy in one's criminal history. *See* Nilson v. Layton City, 45 F.3d 369, 372 (10th Cir.1995) ("Expectations of privacy are legitimate if the information which the state possesses is highly personal or intimate.... [G]overnment disclosures of arrest records, judicial proceedings, and information contained in police reports do not implicate the right to privacy.")). Furthermore, obtaining identities and running warrant checks during a valid stop, whether a traffic ticket, or on foot have generally been excepted for security purposes. *See generally*, United States v. Holt, 264 F.3d 1215, 1221-22 (10th Cir.2001) "[t]he justification for detaining a motorist to obtain a criminal history check is, in part, officer safety" because "[b]y determining whether a detained motorist has a criminal record or outstanding warrants, an officer will be better apprized of whether the detained motorist might engage in violent activity during the stop."

(B). Undue Delay, Bad faith, and Dilatory Motive.

Another rationale, albeit not addressed by Judge Lenard, to deny the amendment would be for undue delay, bad faith or dilatory motive. It should not be ignored the Appellant Corbett openly considers himself a "troublemaker" as demonstrated by his e-mail name on the cover page of his initial brief.

"jcorbett@professional-troublemaker.com. That alone should question his motives. Corbett routinely blogs[2] about Constitutional issues, causes and intended projects he has going on, or otherwise plans to advocate in various states. Corbett attempts to recruit followers, donations, helpers through his blog and has even gone so far as to post a YouTube video titled "How to Get Anything Through TSA Body Scanners.[3]" He has focused his current efforts in the Eleventh Circuit trying to locate a District Court that will find that subject matter jurisdiction exists for his crusade to change TSA policy and procedures. *See* Corbett v. U.S., 458 Fed. Appx. 866 (11th Cir. 2012). Corbett has been trying to get around the exclusivity of subject matter jurisdiction within 49 USC § 46110(a) to the appellate courts in his efforts to effect change to TSA policies and procedures. Corbett clearly has an agenda and his antics, videos, blog postings, articles, pleadings and conversations all collectively suggest he will go to great lengths to further his cause. The proposed amendment seeking to add the BSO deputy who received his personal information from TSA is frivolous and vexatious. The denial of leave to amend against the BSO deputy would be justified under the circumstances.

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[2] *See* tsaoutof ourpants.workpress.com

[3] *See* http://www.youtube.com/watch?v=olEoc_1ZkfA

(POINT IV)

III. DECLARATORY RELIEF IS THE FUNCTIONAL EQUIVALENT OF CHALLENGING TSA PROCEDURES.

Subject matter jurisdiction to review TSA policy lies solely with the Appellate Court. 49 U.S.C. § 46110(a). Corbett's attempt and arguments concerning broad constitutional challenges were previously rejected in Corbett v. U.S., 458 Fed Appx. 866 (11th Cir. 2012) (hereinafter "*Corbett 1*"). Asking for some form of declaratory judgment is the same thing as requesting the District Court to weigh in on TSA policy and procedures. All of the facts in the present case occurred because Corbett refused to comply with TSA procedures, *i.e.* electromagnetic full-body scan, or the alternate pat-down. Corbett admittedly does not agree to either scan. Corbett attempted to negotiate a change in TSA policy inside the security checkpoint. That was not the place to effect change and neither is the District Court. Any non-monetary claims Corbett alleged as part of the initial complaint would be properly dismissed for lack of subject matter jurisdiction. Asking for declaratory or other non-monetary relief is the functional equivalent to a challenge of TSA procedure. Moreover, all of the facts occurred at the checkpoint and are therefore inextricably intertwined such that any non-monetary relief sought in the District Court should be dismissed for lack of subject matter jurisdiction. Lastly, Corbett's complaint in this case was filed well

over 60 days,[4] from the TSA encounter so it should be dismissed with prejudice and forever end the litigation that erupted from Corbett's Fort Lauderdale Airport encounters on August 27, 2011, as to all parties.

CONCLUSION

For the aforementioned reasons, Appellee respectfully requests that the order granting its motion to dismiss and denial of leave to amend be affirmed and all other relief sought by denied and this matter forever closed.

Respectfully submitted,

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[4] The initial complaint was filed on March 2, 2012. (DE 1).

CERTIFICATE OF COMPLIANCE WITH TYPE-VOLUME LIMITATION

This brief complies with the type-volume limitation of Federal R. App. P. 32 (a)(7)(B) because this brief contains approximately 5,842 words.

BY: */s/ Robert D. Yates, Esq.*
Robert D. Yates, Esq.

CERTIFICATE OF TYPE SIZE AND STYLE

The type size and style used in the body of this brief is fourteen point Times New Roman.

BY: */s/ Robert D. Yates, Esq.*
Robert D. Yates, Esq.

CERTIFICATE OF SERVICE

I CERTIFY that a true and correct copy of the foregoing brief has been furnished by U.S. Mail to Plaintiff/Appellant below on this 19TH day of December, 2013 and to the other parties via electronic mail.

BY: */s/ Robert D. Yates, Esq.*
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