IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

THE LEAGUE OF WOMEN VOTERS
OF FLORIDA, *et al*.,

Plaintiffs,

v. Case No. 2012-CA-002842

KENNETH W. DETZNER, *et al*.,

Defendants.
_____/

THE LEGISLATIVE DEFENDANTS' MOTION FOR PROTECTIVE ORDER

Pursuant to Florida Rule of Civil Procedure 1.280(c), the Florida House of Representatives; Dean Cannon, in his official capacity as Speaker of the Florida House of Representatives; the Florida Senate; and Mike Haridopolos, in his official capacity as President of the Florida Senate (collectively, the "Legislative Defendants") request that the Court enter a protective order staying the depositions of legislators and legislative staff in this case.

1. On September 25, 2012, shortly after accepting service of the Complaint in this case, the House Defendants filed a motion to stay discovery until the Court could rule on their jurisdictional challenges. That motion, if granted, would moot this Motion. Plaintiffs have now issued deposition notices, however, that would implicate issues of privilege unrelated to the Legislative Defendants' jurisdictional challenges. Accordingly, the Legislative Defendants file this Motion, which seeks a stay based not only on jurisdictional challenges, but also on issues of legislative privilege—an issue which the First District Court of Appeal will soon consider.

2. On October 11, 2012, Plaintiffs noticed depositions pursuant to Florida Rule of Civil Procedure 1.310(b)(6). The notices direct the House and Senate to offer for deposition

the "person(s) . . . with the most knowledge of the identities and respective roles of individuals—including but not limited to legislators, legislative staff, and consultants—who participated in and had input in the preparation and review of the Florida Senate Redistricting Plan."

3. As an initial matter, this Court is without jurisdiction over Plaintiffs' claims. Plaintiffs' claims against the Senate Plan have already been decided by the Supreme Court, which has mandatory and exclusive jurisdiction to determine the validity of legislative districts. *See* Art. III, § 16, Fla. Const. The Supreme Court has exercised that jurisdiction and issued a declaratory judgment upholding the Senate Plan and rejecting Plaintiffs' claims. *See In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So. 3d 872 (Fla. 2012). The Florida Constitution provides that this declaratory judgment is "binding upon all the citizens of the state." Art. III, § 16(d), Fla. Const. As a result, and as more fully explained in the Florida House of Representatives' Motion to Stay Discovery, dated September 25, 2012, this Court lacks subject-matter jurisdiction to relitigate claims that the Supreme Court has already resolved. No party should be burdened with discovery until this threshold jurisdictional issue is resolved.

4. In addition, the depositions are a substantial intrusion on the independence of the legislative branch, and precisely the sort of interference that the constitutional Separation of Powers and *Florida House of Representatives v. Expedia*, *Inc.*, 85 So. 3d 517 (Fla. 1st DCA 2012), forbid. Any depositions designed to elicit testimony from legislators or legislative staff about the legislative process would burden the exercise of the legislative function, would exert a chilling effect on the freedom of legislative deliberation, and would encroach on the proper sphere of authority of a coordinate branch of government. *See Florida v. United States*, --- F. Supp. 2d ----, 2012 WL 3594322, at *3 (N.D. Fla. Aug. 10, 2012).

5. The question of legislative privilege—whether state legislators and legislative staff are subject to deposition with respect to matters within the legislative sphere—will soon be presented to the First District Court of Appeal in an original action arising from pending challenges to Florida's congressional districts. *See Romo v. Detzner*, 2012-CA-000412 (Fla. 2d Cir. Ct.). In *Romo*, the same Plaintiffs directed notices of deposition to one legislator and two legislative staff members. The Legislative Defendants filed a Motion for Protective Order Based on Legislative Privilege. They argued that a legislative privilege is inherent in the constitutional guarantee of Separation of Powers and that the privilege protected both the legislators themselves and legislative staff from depositions concerning legislative matters. On October 3, 2012, the Court granted a protective order prohibiting inquiries into the subjective thoughts or impressions of legislators and staff, but allowed inquiries into objective information or communications that do not encroach on subjective thoughts or impressions.

6. The Legislative Defendants will seek certiorari review of the order in *Romo*. Certiorari review is appropriate where a trial court orders disclosure of privileged information because such information, once disclosed, cannot be undisclosed. Its disclosure thus causes irreparable harm, leaving no remedy on post-judgment appeal. *See Allstate Ins. Co. v. Langston*, 655 So. 2d 91, 94 (Fla. 1995); *Heartland Express, Inc., of Iowa v. Torres*, 90 So. 3d 365, 367 (Fla. 1st DCA 2012). The First DCA will therefore soon consider the same question presented here: whether legislators and their staff are subject to deposition concerning legislative matters.

7. This Court should enter a protective order staying all depositions of both legislators and legislative staff pending the First DCA's review of *Romo v. Detzner*. To permit the depositions pending review would require disclosure of privileged information and cause harm that cannot be corrected on post-judgment appeal. Discovery of the information that is the

subject of the petition for writ of certiorari would deny the First DCA a full and fair opportunity to consider the question of legislative privilege—a question of constitutional magnitude—before the information must be disclosed. And to compel disclosure of assertedly privileged information without an opportunity to seek review would diminish the Separation of Powers, especially where, as here, the depositions would interfere with the core functions of a coordinate branch of government and are calculated to chill the freedom of action and deliberation within the legislative branch. The depositions should not occur until this Court has the benefit of the appellate court's decision on the same question.

8. "The trial court has broad discretion in determining whether a protective order is warranted under the circumstances." *Smith v. S. Baptist Hosp. of Fla., Inc.*, 564 So. 2d 1115, 1118 (Fla. 1st DCA 1990). To avert irreparable harm and to afford the appellate court a full and fair opportunity for review, the Court should enter a protective order pending a determination of its subject-matter jurisdiction and certiorari review of the question of legislative privilege.

WHEREFORE, the Legislative Defendants respectfully request that the Court enter a protective order staying all depositions of legislators and legislative staff until (i) the Court's jurisdiction has been established; and (ii) the First District Court of Appeal has resolved the question of legislative privilege raised in *Romo v. Detzner*.

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by electronic transmission on October 16, 2012, to the persons listed on the following Service List.

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