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

RENE ROMO, an individual; BENJAMIN WEAVER, an individual; *et. al*,

Plaintiffs,

vs. CASE NO. 2012-CA-00412

KEN DETZNER, in his official capacity as Florida Secretary of States, PAMELA JO BONDI, in her official capacity as Attorney General,

Defendants.
_____/

THE LEAGUE OF WOMEN VOTERS OF FLORIDA; THE NATIONAL COUNCIL OF LA RAZA; *et al.*,

Plaintiffs,

vs. CASE NO. 2012-CA-00490

KEN DETZNER, in his official capacity as Florida Secretary of State; THE FLORIDA SENATE; *et al.*,

Defendants.
_____/

FLORIDA HOUSE OF REPRESENTATIVES AND FLORIDA SENATE'S JOINT MOTION TO DISMISS ROMO PLAINTIFFS' AMENDED COMPLAINT

Pursuant to Florida Rule of Civil Procedure 1.140(b), the Hon. Dean Cannon, in his official capacity as the Speaker of the Florida House of Representatives, the Florida House of Representatives, the Hon. Mike Haridopolos, in his official capacity as President of the Florida Senate, and the Florida Senate (the "Legislative Defendants") move to dismiss the Amended Complaint filed by Plaintiffs Rene Romo, Benjamin Weaver, *et al.*, on March 7, 2012 (the "Romo Complaint"). This Court should dismiss the Romo Complaint because it fails to state ultimate facts. The Romo Plaintiffs' failure to plead anything more than legal conclusions makes

it impossible even to assess at this stage whether any factual allegations that they might plead would be sufficient, if taken as true, to entitle them to relief. Those issues cannot be addressed now, and the Legislative Defendants reserve all additional rights and defenses.

1. On February 9, 2012, the Florida Legislature enacted Senate Bill 1174, which establishes new congressional districts in light of 2010 Census data. Minutes later, the Romo Plaintiffs brought this challenge to the constitutionality of Senate Bill 1174. On February 16, 2012, the Governor signed Senate Bill 1174, which was designated Chapter 2012-2, Laws of Florida.

2. In their Amended Complaint, the Romo Plaintiffs allege that the redistricting plan as a whole—and specifically fourteen districts—violate new redistricting standards in Article III, Section 20 of the Florida Constitution. The Amended Complaint states no ultimate facts that support Plaintiffs' allegations of invalidity. Instead, the Amended Complaint merely recites the new legal standards and baldly asserts that the redistricting plan and fourteen districts violate those standards. (Compl. ¶¶ 19-32, 37-38.) Because the bare recitation of legal conclusions does not satisfy the basic pleading requirements of the Florida Rules of Civil Procedure, the Amended Complaint must be dismissed.

3. Florida Rule of Civil Procedure 1.110(b) provides that a complaint "shall contain . . . a short and plain statement of the ultimate facts showing that the pleader is entitled to relief." "Unlike the pleading requirements in the federal courts where notice pleading is the prevailing standard, the Florida Rules of Civil Procedure require fact pleading." *Louie's Oyster, Inc. v. Villaggio Di Las Olas, Inc.*, 915 So. 2d 220, 221-22 (Fla. 4th DCA 2005) (quoting *Ranger Constr. Indus., Inc. v. Martin Cos. of Daytona, Inc.*, 881 So. 2d 677, 680 (Fla. 5th DCA 2004)); *accord Deloitte & Touche v. Gencor Indus., Inc.*, 929 So. 2d 678, 681 (Fla. 5th DCA 2006) ("As we wearily continue to point out, Florida is a fact-pleading jurisdiction . . . .").

4. The requirement that litigants plead "ultimate facts" serves important purposes. It ensures that litigants "state their pleadings with sufficient particularity for a defense to be prepared." *Horowitz v. Laske*, 855 So. 2d 169, 173 (Fla. 5th DCA 2003) (citing *Arky, Freed, Stearns, Watson, Greer, Weaver & Harris, P.A. v. Bowmar Instrument Corp.*, 537 So. 2d 561 (Fla. 1988)); *accord Barrett v. City of Margate*, 743 So. 2d 1160, 1162 (Fla. 4th DCA 1999) ("The complaint must set out the elements and the facts that support them so that the court and the defendant can clearly determine what is being alleged."). Further, Florida's fact-pleading rule "forces counsel to recognize the elements of their cause of action and determine whether they have or can develop the facts necessary to support it, which avoids a great deal of wasted expense to the litigants and unnecessary judicial effort." *Horowitz*, 855 So. 2d at 172-73.

5. "Legal conclusions unsupported by ultimate facts are not enough to state a cause of action." *Miami-Dade County v. Deerwood Homeowners' Ass'n*, 979 So. 2d 1103, 1104 (Fla. 3d DCA 2008); *accord K.R. Exch. Serv., Inc. v. Fuerst, Humphrey, Ittleman, P.L.*, 48 So. 3d 889, 892 (Fla. 3d DCA 2010) ("To withstand dismissal, however, a plaintiff must allege more than the 'naked legal conclusion' that the law firm and attorneys have negligently rendered legal services." (quoting *Rios v. McDermott, Will & Emery*, 613 So. 2d 544, 545 (Fla. 3d DCA 1993))); *Barrett*, 743 So. 2d at 1163 ("It is insufficient to plead . . . legal conclusions or argument.").

6. It is patently insufficient merely to recite the words of the law alleged to have been violated. Thus, in *Bohannon v. Shands Teaching Hospital and Clinics, Inc.*, 983 So. 2d 717, 721 (Fla. 1st DCA 2008), the Court affirmed dismissal of the case because the allegations of the complaint "were mere conclusions tracking the language of the statutory definitions, unsupported by facts." *Accord Ginsberg v. Lennar Fla. Holdings, Inc.*, 645 So. 2d 490, 501 (Fla. 3d DCA 1994) ("[The plaintiff's] allegations merely track the language of the statute . . . . A

party does not properly allege a cause of action by alleging in conclusive form, which tracks the language of the statute, acts which lack factual allegations and merely state bare legal conclusions."). Rather, a plaintiff must allege the ultimate facts which, if found to be true, would establish liability.

7. The Amended Complaint in this case contains no statement of the ultimate facts showing that the Romo Plaintiffs are entitled to relief. The Amended Complaint simply enumerates the redistricting standards in the Constitution and states that the redistricting plan and fourteen districts violate the standards. It alleges no facts (such as geographic or other features of the allegedly unconstitutional districts) which, according to the Romo Plaintiffs, establish a violation of the constitutional standards. And because the Amended Complaint merely tracks the language of the Constitution, it does not make allegations "with sufficient particularity for a defense to be prepared." *Horowitz*, 855 So. 2d at 173. Its assertion of "naked legal conclusions" without any facts falls well short of the basic pleading requirements of this fact-pleading jurisdiction. *See Bohannon*, 983 So. 2d at 721; *Ginsberg*, 645 So. 2d at 501.

WHEREFORE, the Legislative Defendants respectfully move the Court to dismiss the Romo Plaintiffs' Amended Complaint.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing was sent by United States mail on March 23, 2012, to the persons listed on the attached Service List.

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