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

RENE ROMO, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2012-CA-00412
	)	
KEN DETZNER and PAM BONDI,	)	
	)	
Defendants.	)	
	)	
	)	
THE LEAGUE OF WOMEN VOTERS OF FLORIDA, et al.,	)	
	)	
Plaintiffs,	)	
	)	
v.	)	CASE NO. 2012-CA-00490
	)	
KEN DETZNER, et al.,	)	
	)	
Defendants.	)	
	)	

COALITION PLAINTIFFS' RESPONSE TO NON-PARTIES MOTION FOR ORDER QUASHING SUBPOENAS DUCES TECUM

Plaintiffs League of Women Voters of Florida, the National Council of La Raza, Common Cause Florida, Robert Allen Schaeffer, Brenda Ann Holt, Roland Sanchez-Medina Jr., and John Steele Olmstead ("Coalition Plaintiffs") file this response to the Motion for Order Quashing Subpoenas Duces Tecum filed by non-parties Pat Bainter, Matt Mitchell, Michael Sheehan, and Data Targeting, Inc. ("the Political Consultants"). The motion should be denied for the following reasons.

Introduction

The Political Consultants' motion is equal parts audacious and frivolous. Citing zero cases and without so much as a single sentence explaining how the Coalition Plaintiffs' straightforward requests for documents and depositions are "oppressive," "unreasonable," "burdensome," etc., these Political Consultants seek a blanket order exempting themselves from any and all discovery in this case. Although bad enough under ordinary circumstances – that is, if it were filed *prior to* responding to the subpoenas they now seek to quash – the motion is downright incomprehensible in this instance, coming mere days after a partial production of documents along with limited deposition testimony showing that these Political Consultants possess information that is not only plainly discoverable, but highly probative on many of the key issues in this case.

The Florida Rules of Civil Procedure provide numerous protections and safeguards for third parties responding to discovery requests. Absent some extraordinary circumstances not present here, halting that discovery process altogether is not one of them. The Political Consultants' motion should be denied.

Background

The record being developed in these cases indicates that political consultants – in all likelihood, these Political Consultants – may have drawn maps that were then adopted by legislators and/or may have given legislators instructions about how to obtain the most favorable district lines. Importantly, the maps approved by the Legislature were not drawn in public at open meetings. Rather, the maps were drawn in private, behind closed doors, and then presented to the public. The Constitution requires that Plaintiffs and the Court be allowed to learn what happened behind those closed doors.

To that end, Plaintiffs issued subpoenas to a number of consultants known to have relationships, influence, and frequent communications with legislators who proposed and voted for the maps that were passed, and with staff members involved in the process. The subpoenas seek documents, and in some cases oral testimony, regarding the Congressional and Senate redistricting processes, including draft maps or other analysis and communications shared with legislators and their staffs either directly or indirectly (for example, through other political consultants, party officials, or intermediaries).

Political Consultant Pat Bainter, the president of Data Targeting, has already produced some documents and appeared at a deposition. His initial document production and deposition testimony revealed that he discussed redistricting with a number of powerful legislators and staff members who played important roles in drafting and passing the new maps. The record also showed that Bainter drew maps and received assistance in his redistricting work from at least two of his employees, Matt Mitchell and Michael Sheehan, and that the Data Targeting employees shared maps and advice with other consultants, who are in turn believed to have communicated with legislators and staff involved in redistricting.

Because Bainter's production plainly did not include all of his documents, including the attachments to the emails that he did produce, he agreed through counsel to conduct a more complete search for materials and provide a supplemental response before the agreed-upon continuation of his deposition. Following Bainter's deposition, Plaintiffs issued subpoenas to Mitchell, Sheehan, and Data Targeting to obtain a more adequate production of probative materials. At that point, Bainter and Data Targeting changed their tune and their lawyer, now refusing to provide any discovery responses, appear for deposition (or, in Bainter's case, the continuation of deposition that he had previously agreed to attend), and filing the instant motion.

Argument

The Political Consultants' effort to quash their subpoenas is entirely without merit. Florida courts allow for broad discovery of information that "appears reasonably calculated to lead to the discovery of admissible evidence." Fla R. Civ. P. 1.280(b)(1); *Allstate Ins. Co. v. Boecher*, 733 So. 2d 993, 995 (Fla. 1999) (citing Rule and noting that "[o]ur rules of civil procedure broadly allow parties to obtain discovery"). Parties are afforded latitude in determining how they want to obtain discovery, to whom they want to direct discovery requests, and the sequence in which they want to seek it. *See* Fla. R. Civ. P. 1.280(e). The mere fact that a party is seeking discovery from its opposing party in no way precludes that party from also seeking discoverable materials from third parties via deposition or document subpoena.

The discovery sought here meets every definition of discoverable. More than just "reasonably calculated to lead to the discovery of admissible evidence," the information sought appears probative on the precise issues that will require resolution by this Court. As set forth above, evidence that political consultants provided either actual maps or guidance to legislators and their staff, either directly or through intermediaries, could reveal what happened when the maps were privately drawn and shed significant light on the question of whether the maps were drawn or supported with the intent of advancing partisan interests or protecting incumbents. Indeed, it is hard to imagine more probative evidence than communications from or with people like the Political Consultants, whose primary professional goals include the advancement of partisan interests and the protection of incumbent clients. To argue that such communications are irrelevant is preposterous.

Not surprisingly, the Political Consultants advance arguments having very little to do with the core issue raised by their motion. Incredibly, the lead argument is that only Senate and

House members themselves are aware of what information they relied upon in drawing and passing maps. Nothing could be further from the truth. The Political Consultants have information about who actually drew maps or portions of maps (whether they were drawn by legislators, staff members, or consultants themselves) and who among legislators or staff had influence over how district lines were drawn. Nothing in the law requires Plaintiffs to limit their inquiries to legislators or simply to take legislators' words for it if they deny improper influence. To the contrary, the Florida Rules of Civil Procedure expressly contemplate this type of third party discovery.

The Political Consultants also argue that the subpoenas should be quashed because the complaint does not specifically allege that a majority of legislators relied on anything provided by outside parties. Needless to say, the motion does not set forth any authority that lends even the slightest credence to the theory that discovery must be limited only to individuals and parties specifically named in a complaint. Such a requirement would turn pleading, discovery, and the entire litigation process on its head. The complaint plainly alleges that districts were drawn with the unlawful intention of protecting incumbents and partisan interests. Without question, Plaintiffs and the Court are entitled to know what input legislators received from consultants who developed and possessed valuable data about voters, preferences, results, and partisan showings in precincts and districts throughout the state.

The next argument is that the subpoenas should be quashed because there is no allegation that the Political Consultants "participated in the Legislature's *public* input process by submitting maps, data, comments or information in the first instance." (emphasis added). That is precisely the point. The subpoenas seek not public record documents, but information about *private* communications reflecting factors considered by the Legislature *outside of the public eye.*

Indeed, contrary to the assertion that this is "a fishing expedition based on a mere political hunch," Motion to Quash, ¶ 4, the Political Consultants have already produced documents and given testimony showing extensive private communications between Data Targeting and the Legislature.[1] There is no legal basis to deny further discovery in that regard.

Finally, and quite ironically, the Political Consultants argue politics, taking an unsupported shot at Plaintiffs as being "predominately Democratic supporters," *id.*, dismissing this constitutional lawsuit as an attempt to "interject their political preferences into the redistricting process," *id.* ¶ 6, and noting that they work with Republicans, not Democrats. Although the argument barely warrants a response, suffice it to say that the subpoenas at issue were directed to consultants with influence over the legislators who proposed and supported the maps that were passed. The fact that the majority of the Political Consultants typically work for Republican legislators is without question a relevant and probative fact, but not one that supports this motion to quash.

Put charitably, the Political Consultants' motion is devoid of merit and ignores the facts. For Bainter, Plaintiffs seek merely to complete the deposition and receive the full production to which they are entitled (and which has been promised). With the subpoenas to Data Targeting, Mitchell, and Sheehan, Plaintiffs seek additional communications not covered by the Bainter subpoena but plainly probative on the issue of what analysis, maps, advice, and other materials Data Targeting provided to the Legislature, either directly or through other consultants. Since the Legislature's intent in adopting redistricting proposals is the central issue in this case, it is

[1] For example, Bainter admitted that he discussed, or might have discussed, ideas regarding maps with at least one Senate Staff member, Majority Office Director Tony Cortese, and at least two legislators, Senators Andy Gardiner and David Simmons. Documents contained in his partial production include numerous emails with staff members, legislators, and other consultants (including Sheehan and Mitchell) discussing the drawing of redistricting maps.

abundantly clear that the subpoenas are "reasonably calculated to lead to the discovery of admissible evidence."

Request for Fees and Costs

Because the Political Consultants' motion plainly lacks legal support, Plaintiffs seek an order, pursuant to Rule 1.380(a)(4) of the Florida Rules of Civil Procedure, requiring reimbursement of their reasonable expenses, including attorneys' fees and costs, incurred in responding to the motion. Such an order would not only compensate Plaintiffs for what they had to spend, but it would also discourage other subpoena recipients in this case from filing similar dilatory motions.

Conclusion

For the reasons set forth above, the Court should deny the Motion to Quash, grant Plaintiffs' request for fees and costs, and order all other such relief as the Court deems appropriate.

Dated: December 17, 2012

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this, the 17th day of December, 2012, a true and correct copy of the foregoing was sent by electronic mail to the counsel of record listed on the attached service list.

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