

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

RENE ROMO, et al.,)
)
Plaintiffs,)
)
v.)
)
KEN DETZNER and PAM BONDI,)
)
Defendants.)
)
)
THE LEAGUE OF WOMEN VOTERS)
OF FLORIDA, et al.,)
)
Plaintiffs,)
)
v.)
)
KEN DETZNER, et al.,)
)
Defendants.)
)
_____)

CASE NO. 2012-CA-00412

CASE NO. 2012-CA-00490

**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,

s/ Adam M. Schachter

Gerald E. Greenberg
Florida Bar No. 0440094
ggreenberg@gsgpa.com

Adam M. Schachter
Florida Bar No. 647101
aschachter@gsgpa.com

GELBER SCHACHTER & GREENBERG, P.A.
1441 Brickell Avenue, Suite 1420
Miami, Florida 33131
Telephone: (305) 728-0950
Facsimile: (305) 728-0951

Michael B. DeSanctis
mdesanctis@jenner.com

Jessica Ring Amunson
jamunson@jenner.com

Paul Smith
PSmith@jenner.com

Kristen Rogers
KRogers@jenner.com

JENNER & BLOCK, LLP
1099 New York Ave NW, Suite 900
Washington, DC 20001
Telephone: (202) 639-6000
Facsimile: (202) 639-6066

J. Gerald Hebert
hebert@voterlaw.com
Admitted Pro Hac Vice
191 Somerville Street, #415
Alexandria, VA 22304
Telephone: (703) 628-4673

Ronald G. Meyer
Florida Bar No. 0148248
rmeyer@meyerbrookslaw.com
Lynn Hearn
lhearn@meyerbrookslaw.com
MEYER, BROOKS, DEMMA and BLOHM, P.A.
131 North Gadsden Street
Post Office Box 1547
Tallahassee, FL 32302
Counsel for Coalition Plaintiffs

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.

/s/Adam M. Schachter
ADAM M. SCHACHTER

SERVICE LIST

Blaine Winship
Timothy D. Osterhaus
Office of the Attorney General of Florida
The Capitol, Suite PL-01
Tallahassee, FL 32399-1050
blaine.winship@myfloridalegal.com

Counsel for the Attorney General

George T. Levesque (FBN 555541)
General Counsel
THE FLORIDA SENATE
404 South Monroe Street, Suite 409
Tallahassee, Florida 32399
Levesque.George@flsenate.gov
GLEVESQUE4@comcast.net
Carter.Velma@flsenate.gov

Michael A. Carvin
Louis K. Fisher
JONES DAY
51 Louisiana Avenue N.W.
Washington, D.C. 20001
macarvin@jonesday.com
lkfisher@jonesday.com

Peter M. Dunbar
Cynthia S. Tunnicliff
PENNINGTON, MOORE, WILKINSON,
BELL & DUNBAR, P.A.
215 South Monroe Street, Second Floor

Ashley Davis
General Counsel
Florida Department of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399
Ashley.davis@DOS.myflorida.com

Counsel for Florida Secretary of State

Charles T. Wells
George N. Meros, Jr.
Jason L. Unger
Allen C. Winsor
GRAY ROBINSON, P.A.
Post Office Box 11189
Tallahassee, FL 32302
Charles.wells@gray-robinson.com
George.meros@gray-robinson.com
Jason.unger@gray-robinson.com
Allen.Winsor@gray-robinson.com
Charlene.roberts@gray-robinson.com
mwilkinson@gray-robinson.com
Teresa.barreiro@gray-robinson.com

Daniel Nordby
General Counsel
Florida House of Representatives
422 The Capitol
Tallahassee, FL 32399-1300
Daniel.Nordby@myfloridahouse.gov
lynn.imhof@myfloridahouse.gov

Tallahassee, FL 32301
pete@penningtonlaw.com
cynthia@penningtonlaw.com

Raoul G. Cantero
Jason N. Zakia
Jesse L. Green
WHITE & CASE LLP
Southeast Financial Center, Ste. 4900
200 South Biscayne Boulevard
Miami, FL 33131
Telephone: (305) 371-2700
Facsimile: (305) 358-5744
rcantero@whitecase.com
jzakia@whitecase.com
jgreen@whitecase.com
ldominguez@whitecase.com
mgauling@whitecase.com

Counsel for the Florida Senate

Jon L. Mills
Elan Nehleber
BOIES, SCHILLER & FLEXNER, LLP
100 S.E. 2nd Street, Suite 2800
Miami, FL 33131-2144
jmills@bsflfp.com
enehleber@BSFLLP.com
ecruz@bsflfp.com

Karen C. Dyer
BOIES, SCHILLER & FLEXNER, LLP
121 South Orange Ave., Suite 840
Orlando, FL 32801
kdyer@bsflfp.com

John M. Devaney
Mark Erik Elias
PERKINS COIE, LLP
700 Thirteenth Street, NW, Suite 700
Washington, D.C. 20005
jdevaney@perkinscoie.com
melias@perkinscoie.com
efrost@perkinscoie.com
sYarborough@perkinscoie.com

Miguel De Grandy
800 Douglas Road
Coral Gables, FL 33134
mad@degrandylaw.com

Counsel for Florida House of Representatives

Stephen Hogge
Florida Bar No. 718238
STEPHEN HOGGE ESQ., LLC
117 South Gadsden Street
Tallahassee, Florida 32301
stephen@stephenhoggeesq.com

Charles G. Burr
Florida Bar No. 0689416
BURR & SMITH, LLP
Grand Central Place
442 W. Kennedy Blvd., Suite 300
Tampa, FL 33606
cburr@burrandsmithlaw.com

Allison J. Riggs, *Admitted Pro Hac Vice*
Anita S. Earls
SOUTHERN COALITION FOR SOCIAL
JUSTICE
1415 W. Highway 54, Suite 101
Durham, NC 27707
allison@southerncoalition.org
anita@southerncoalition.org

Abha Khanna
Kevin J. Hamilton
PERKINS COIE, LLP
1201 Third Avenue, Suite 4800
Seattle, Washington 98101-3099
akhanna@perkinscoie.com
rkelly@perkinscoie.com
khamilton@perkinscoie.com
npurcell@perkinscoie.com

Mark Herron, Esq.
Robert J. Telfer III, Esq.
Angelina Perez, Esq.
Messer, Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
Telephone: (850) 222-0720
Facsimile: (850) 558-0659
mherron@lawfla.com
rtelfer@lawfla.com
aperez@lawfla.com
clowell@lawfla.com
bmorton@lawfla.com
statecourtpleadings@lawfla.com

Counsel for Romo Plaintiffs

Victor L. Goode
Dorcas R. Gilmore
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
vgoode@naacpnet.org
dgilmore@naacpnet.org

Counsel for Intervenor/Defendant, NAACP

Harry O. Thomas
Christopher B. Lunny
Radney, Thomas, Yon & Clark, PA
301 South Bronough St., Ste. 200
Tallahassee, FL 32301-1722
hthomas@radneylaw.com
clunny@radneylaw.com
jday@radeylaw.com
cdemeo@radeylaw.com

Counsel for Intervenors/Defendants Negron, Suarez, Rodriguez, Pinder, Mathiri, Mount, Barnes, Butler, and Wise

D. Kent Safriet
Thomas R. Philpot
HOPPING GREEN & SAMS, P.A.
P.O. Box 6526
Tallahassee, Florida 32314
Telephone: (850) 222-7500
Facsimile: (850) 224-8551
kents@hgslaw.com
thomasp@hgslaw.com

David Healey, Esq.
2846 Remington Green Cir #B
Tallahassee, Florida 32308-3763
dhealy@davidhealylaw.com

Counsel for Non-parties Pat Bainter, Matt Mitchell, Michael Sheehan and Data Targeting, Inc.