Filing # 13115897 Electronically Filed 04/30/2014 02:59:03 PM

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

RENE ROMO, *et al.*,

Plaintiffs,

vs. Case No. 2012-CA-000412

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

Defendants.
_____/

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

Plaintiffs,

vs. Case No. 2012-CA-000490

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

Defendants.
_____/

THE LEGISLATIVE PARTIES' MOTION TO DETERMINE LEGAL STANDARD

To narrow the issues at trial and avoid the presentation of irrelevant evidence, the Florida House of Representatives; Will Weatherford, in his official capacity as Speaker of the Florida House of Representatives; the Florida Senate; and Don Gaetz, in his official capacity as President of the Florida Senate (the "Legislative Parties") move for an order holding that the "intent" provisions of Article III, Section 20 of the Florida Constitution refer to the intent of the Legislature as a whole, not the intent of individual legislators and legislative staff members.

INTRODUCTION

Despite the benefit of extensive discovery, including production of hundreds of thousands of pages of documents and unprecedented depositions of legislators and legislative staff about the process leading to the enacted congressional map, Plaintiffs have failed to produce or identify any evidence to support their claims that the Legislature acted with intent to favor the Republican Party or Republican incumbents in violation of Section III, Section 20 of the Florida Constitution. Plaintiffs' entire case is based on alleged communications between certain legislators, legislative staff and political consultants during the redistricting process. But even if Plaintiffs could establish that individual legislators or staff members acted with improper intent—which they cannot—they have not offered any evidence that the Legislature *as a whole* acted with improper intent under Article III, Section 20 of the Florida Constitution.

To be clear, this motion does not seek an order excluding evidence. Rather, it seeks a purely legal determination that, under Article III, Section 20 of the Florida Constitution, the controlling and dispositive consideration is the intent of the Legislature as a corporate body—not the subjective motivations of particular individuals. To narrow the issues at trial and avoid presentation of irrelevant matter, this Court should clarify that the intent of the Legislature will be determined as it always has been—by considering the intent of the Legislature as a whole.

STATEMENT OF FACTS

In February 2012, the Florida Legislature enacted, and the Governor signed, Committee Substitute for Senate Bill 1174, which established new congressional districts for the State of Florida. *See* Ch. 2012-2, Laws of Fla. The bill resulted from many months of public meetings and input. Beginning in June 2011, the Legislature held 26 public hearings across the state, followed by 17 meetings of House and Senate committees and subcommittees where

congressional redistricting plans were publicly discussed. The Legislature debated alternative proposals, including many received from the public. The redistricting process produced a comprehensive legislative record with scores of alternative maps (including 86 complete and partial congressional maps submitted by the public), extensive public comments, reports and transcripts from 26 public hearings, volumes of statistics and demographic data, and thousands of pages of transcripts from committee and subcommittee meetings and floor debates.

Just after Committee Substitute for Senate Bill 1174 was enacted, Plaintiffs filed this action, alleging that the new congressional districts violate the redistricting standards in Article III, Section 20 of the Florida Constitution because, among other reasons, they were "drawn with the intent to favor or disfavor a political party or an incumbent." Count I of the LOWV Plaintiffs' First Amended Complaint alleges that "[t]he Legislature's Congressional Plan and individual districts in the Legislature's Congressional Plan . . . were drawn with the intent to favor the controlling political party and to disfavor the minority political party in violation of the Florida Constitution, Article III, Section 20(a)" (LOWV Compl. p. 24). Count II alleges that "[t]he Legislature's Congressional Plan and individual districts in the Legislature's Congressional Plan . . . were drawn with the intent to favor certain incumbents and disfavor others in violation of the Florida Constitution, Article III, Section 20(a)" (LOWV Compl. p. 24). Count I of the Romo Plaintiffs' Second Amended Complaint alleges that "[t]he 2012 Congressional Plan was drawn with the intent to favor a political party and certain incumbents . . . . As a result, the 2012 Congressional Plan as a whole violates Article III, Section 20 of the Florida Constitution" (Romo Compl. ¶ 28). The Romo Plaintiffs also allege that "[t]he 2012 Congressional Plan contains districts, including those where Plaintiffs reside, that were drawn

with the intent to favor a political party and certain incumbents . . . in violation of Article III, Section 20 of the Florida Constitution" (Romo Compl. ¶ 29).

During discovery in this case, the Legislative Parties produced hundreds of thousands of pages of documents, including the State's entire submission to the United States Department of Justice establishing compliance with Section 5 of the federal Voting Rights Act. In addition, Plaintiffs took 24 depositions of fact and expert witnesses, many of them purportedly aimed at determining the legislative intent behind the Committee Substitute for Senate Bill 1174. Despite the extensive legislative record and abundance of information obtained through discovery, Plaintiffs sought unprecedented depositions of legislators and legislative staff members. The Florida Supreme Court ultimately found that this Court could order such depositions to the extent that they do not encroach on the subjective "thoughts or impressions" of a legislator or legislative staff member. *See League of Women Voters v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013). Plaintiffs have subsequently taken the depositions of the Senate President, the Speaker of the House, the former Speaker of the House, and ten other legislators and legislative staff members.

ARGUMENT

Despite the extensive and unprecedented discovery described above, Plaintiffs have not produced or identified any evidence that the Legislature as a whole intended to favor the Republican Party or Republican incumbents during the redistricting process. Instead, Plaintiffs have focused on the actions of a small number of legislators and legislative staff, alleging that because they communicated with political consultants about the redistricting process in general, the Court should assume these individuals acted with improper intent (Pls. Joint Mot. for Sanctions at 4). These arguments are not only factually wrong, but also legally irrelevant. The

subjective motivations of one individual cannot be imputed to the entire Legislature. As the Florida Supreme Court recognized, it is the intent of the Legislature—not the diverse and unique motivations of individual legislators—that controls. *See, e.g., In re Senate Joint Resolution of Legislative Apportionment 1176*, 83 So. 3d 597, 641 (Fla. 2012) (referring to "the Legislature's intent"); *In re Senate Joint Resolution of Legislative Apportionment 2-B*, 89 So. 3d 872, 892 (Fla. 2012) (referring to "the Legislature's 'intent'") (Pariente, J., concurring).

Florida courts have long doubted the probative value of the subjective views or motivations of an individual legislator in determining the Legislature's collective intent. *See Sec. Feed & Seed Co. v. Lee,* 189 So. 869, 870 (Fla. 1939) (finding that personal views of individual legislators are "of doubtful verity if at all admissible to show what was intended by the Act."); *State v. Patterson*, 694 So. 2d 55, 58 n.3 (Fla. 5th DCA 1997) (finding that personal views of individual legislator "did not shed meaningful light on the legislature's intent"); *Fields v. Zinman,* 394 So. 2d 1133, 1135 (Fla. 4th DCA 1981) ("Our doubts are not assuaged by affidavits of members of the legislature as to what their subjective intent was since there is no indication that this intent was expressed to other members of the legislature."); *McLellan v. State Farm Mut. Auto Ins. Co.,* 366 So. 2d 811, 813 (Fla. 4th DCA 1979) (finding that "such proof is generally not accepted as admissible evidence to demonstrate legislative intent."), *overruled on other grounds by S.C. Ins. Co. v. Kokay,* 398 So. 2d 1355 (Fla. 1981).

Courts outside Florida likewise refuse to impute the subjective motivations of individual legislators to the body as a whole. *See, e.g., Pac. Gas & Elec. Co. v. State Energy Res. Conservation & Dev. Comm'n,* 461 U.S. 190, 216 (1983) ("What motivates one legislator to vote for a statute is not necessarily what motivates scores of others to enact it."); *Bread Pol. Action Comm. v. Fed. Election Comm'n*, 455 U.S. 577, 582 n.3 (1982) (refusing to "give probative

weight" to legislator testimony "because such statements represent only the personal views of this legislator") (marks omitted)); *Tinsley Media, LLC v. Pickens County, Ga.,* 203 F. App'x 268, 273 (11th Cir. 2006) (finding "no case in which this Court has upheld the admission of an affidavit of a legislator as evidence of legislative intent."); *In re Blair*, 408 S.W.3d 843, 859 (Tex. 2013) (refusing to engage in "speculation about individual legislators' motivations"); *State ex rel. Lute v. Mo. Bd. of Probation & Parole,* 218 S.W.3d 431, 436 n.5 (Mo. 2007) ("[A]n affidavit from a legislator only reflects the intent of one legislator out of 197 that voted on a particular bill."); *Nadler v. Schwarzenegger,* 137 Cal. App. 4th 1327, 1336, 41 Cal. Rptr. 3d 92, 98 (Cal. Ct. App. 2006) ("[E]vidence that relates to the mental processes of individual legislators is irrelevant to the judicial task."); *Cave City Nursing Home, Inc. v. Ark. Dep't of Human Servs.,* 89 S.W.3d 884, 890 (Ark. 2002) ("[T]he testimony of the legislators with respect to their intent in introducing legislation is clearly inadmissible."); *City of Yakima v. Int'l Ass'n of Fire Fighters, AFL-CIO, Local469, Yakima Fire Fighters Ass'n v. Int'l Ass'n of Fire Fighters, AFL-CIO,* 818 P.2d 1076, 1087 (Wash. 1991) (noting that it is "well settled that the legislature's intent in passing a particular bill cannot be shown by the affidavit of a legislator."); *Jackson v. Delk,* 361 S.E.2d 370, 372 (Ga. 1987) (rejecting "the testimony of a legislator, with respect to the legislative intent underlying the enactment of a particular piece of legislation"); *Styers v. Phillips,* 178 S.E.2d 583, 590 (N.C. 1971) ("The intention of the legislature cannot be shown by the testimony of a member.")

Intent must be inferred not from a skewed sample of the subjective motivations of individual legislators but primarily from the enactment itself and the legislative record. *See Fla. Senate v. Fla. Pub. Emps. Council 79, AFSCME*, 784 So. 2d 404, 409 (Fla. 2001) ("Florida courts have full authority to review the final product of the legislative process, but they are

without authority to review the internal workings of that body."); *Tamiami Trail Tours v. City of Tampa*, 31 So. 2d 468, 470-71 (Fla. 1947) ("[W]e should, if possible, determine from the legislative record what was the legislative intent.").

The Florida Supreme Court's decision in *League of Women Voters v. Florida House of Representatives*, 132 So. 3d 135 (Fla. 2013) is not to the contrary. There, the Court permitted discovery of "communications of individual legislators or legislative staff members [which], *if part of a broader process* to develop portions of the map, could directly relate to whether the plan as a whole or any specific districts were drawn with unconstitutional intent." *Id.* at 150 (emphasis added). Thus, the Court recognized these communications could be relevant, but not as evidence of the subjective intent of individual legislators and legislative staff members. Rather, the Court found that such communications were discoverable because they could provide evidence of the "broader process" that led to the development of the map, and thus could be probative of the intent of the Legislative as a whole.

Here, Plaintiffs have not even offered evidence that any individual legislator or legislative staff member acted with the intent to favor the Republican Party or a Republican incumbent. They allege only that certain members of the Legislature had discussions about redistricting in general with political consultants and therefore must have acted with improper intent (Pls. Joint Mot. for Sanctions at 4). But even if their allegations were true—which they are not—the intent of an individual legislator or legislative staff member does not represent the intent of the Legislature as a whole. *See Sec. Feed & Seed Co.,* 189 So. at 870; *Patterson*, 694 So. 2d at 58 n.3. To discern the intent of the Legislature as a whole, this Court must consider the legislative record, *see Tamiami Trail Tours*, 31 So. 2d at 470-71, which demonstrates that the "prohibition against intentionally seeking partisan or personal advantage was [the Legislature's]

guiding principle as we applied Amendment 6 to the Congressional districts" (Ex. A at 6:16-19). To narrow the issues at trial, this Court should clarify that the constitutionality of the enacted congressional map depends on the intent of the Legislature as a whole, rather than on the subjective motivations of individual legislators and legislative staff members.

CONCLUSION

For the reasons stated above, this Court should enter an order holding that the "intent" provisions of Article III, Section 20 of the Florida Constitution refer to the intent of the Legislature as a whole, not that of individual legislators and legislative staff members.

Respectfully submitted,

/s/ Raoul G. Cantero
Raoul G. Cantero
Florida Bar No. 552356
Jason N. Zakia
Florida Bar No. 698121
Jesse L. Green
Florida Bar No. 95591
White & Case LLP
Southeast Financial Center
200 S. Biscayne Blvd., Suite 4900
Miami, Florida 33131-2352
Telephone: 305-371-2700
Facsimile: 305-358-5744
E-mail: rcantero@whitecase.com
E-mail: jzakia@whitecase.com
E-mail: jgreen@whitecase.com

George T. Levesque
Florida Bar No. 555541
General Counsel, The Florida Senate
305 Senate Office Building
404 South Monroe Street
Tallahassee, Florida 32399-1100
Telephone: (850) 487-5237
E-mail: levesque.george@flsenate.gov

Attorneys for Defendants, Florida Senate and President Don Gaetz

/s/ George N. Meros, Jr.
Charles T. Wells
Florida Bar No. 086265
George N. Meros, Jr.
Florida Bar No. 263321
Jason L. Unger
Florida Bar No. 0991562
Andy Bardos
Florida Bar No. 822671
Gray Robinson, P.A.
Post Office Box 11189
Tallahassee, Florida 32302
Telephone: (850) 577-9090
E-mail: Charles.Wells@gray-robinson.com
E-mail: George.Meros@gray-robinson.com
E-mail: Jason.Unger@gray-robinson.com
E-mail: Andy.Bardos@gray-robinson.com

Daniel E. Nordby
Florida Bar No. 14588
General Counsel, The Florida House of Representatives
422 The Capitol
402 South Monroe Street
Tallahassee, Florida 32399-1300
Telephone: 850-717-5500
E-mail: daniel.nordby@myfloridahouse.gov

Attorneys for Defendants, Florida House of Representatives and Speaker Will Weatherford

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served by electronic transmission on April 30, 2014, to the persons listed on the following Service List.

By: */s/ Raoul G. Cantero*
Raoul G. Cantero

SERVICE LIST

Abha Khanna
Kevin J. Hamilton
Ryan Spear
Perkins Coie, LLP
1201 Third Avenue, Ste. 4800
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
E-mail: AKhanna@perkinscoie.com
E-mail: KHamilton@perkinscoie.com
E-mail: RSpear@perkinscoie.com

John M. Devaney
Mark Erik Elias
Elisabeth C. Frost
Perkins Coie, LLP
700 Thirteenth Street, NW, Ste. 700
Washington, DC 20005
Telephone: (202) 654-6200
Facsimile: (202) 654-6211
E-mail: JDevaney@perkinscoie.com
E-mail: MElias@perkinscoie.com
E-mail: efrost@perkinscoie.com

Mark Herron
Robert Telfer
Angelina Perez
Messer Caparello & Self, P.A.
Post Office Box 1876
Tallahassee, FL 32302-1876
Telephone: 850-222-0720
E-mail: mherron@lawfla.com
E-mail: rtelfer@lawfla.com
E-mail: aperez@lawfla.com

Attorneys for Respondents Rene Romo, Benjamin Weaver, William Everett Warinner, Jessica Barrett, June Keener, Richard Quinn Boylan and Bonita Agan

Gerald E. Greenberg
Adam M. Schachter
Gelber Schachter & Greenberg, P.A.
1441 Brickell Avenue, Suite 1420
Miami, FL 33131
Telephone: (305) 728-0950
Facsimile: (305) 728-0951
E-mail: ggreenberg@gsgpa.com
E-mail: aschachter@gsgpa.com

David B. King
Thomas A. Zehnder
King Blackwell Zehnder Wermuth P.A.
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
E-mail: dking@kbzwlaw.com
E-mail: tzehnder@kbzwlaw.com

Jessica Ring Amunson
Paul Smith
Michael B. DeSanctis
Kristen M. Rogers
Christopher Deal
Jenner & Block LLP
1099 New York Ave, N.W., Ste. 900
Washington, DC 20001-4412
Telephone: (202) 639-6023
Facsimile: (202) 661-4993
E-mail: JAmunson@jenner.com
E-mail: psmith@jenner.com
E-mail: mdesanctis@jenner.com
E-mail: krogers@jenner.com
E-mail: Cdeal@jenner.com

Ronald Meyer
Lynn Hearn
Meyer, Brooks, Demma and Blohm, P.A.
131 North Gadsden Street
Post Office Box 1547 (32302)
Tallahassee, FL 32301
Telephone: (850) 878-5212
Facsimile: (850) 656-6750
E-mail: rmeyer@meyerbrookslaw.com
E-mail: Lhearn@meyerbrookslaw.com

J. Gerald Hebert
191 Somervelle Street, #405
Alexandria, VA 22304
Telephone: (703) 628-4673
E-mail: Hebert@voterlaw.com

Attorneys for Petitioners The 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

J. Andrew Atkinson
Ashley Davis
Assistant General Counsel
Florida Department Of State
R.A. Gray Building
500 S. Bronough Street
Tallahassee, FL 32399
Telephone: (850) 245-6536
E-mail:
JAndrew.Atkinson@dos.myflorida.com
E-mail:
Ashley.Davis@dos.myflorida.com

Attorneys for Respondent Ken Detzner, in his Official Capacity as Florida Secretary of State

Harry O. Thomas
Christopher B. Lunny
Radey, Thomas, Yon & Clark, P.A.
301 South Bronough Street
Suite 200
Tallahassee, FL 32301-1722
Telephone: (850) 425-6654
Facsimile: (850) 425-6694
E-mail: hthomas@radeylaw.com
E-mail: clunny@radeylaw.com

Attorneys for Bill Negron, Anthony Suarez, Luis Rodriguez, Father Nelson Pinder; N.Y. Nathiri; Mayor Bruce B. Mount, Pastor Willie Barnes, Mable Butler, and Judith A. Wise

Blaine H. Winship
Office Of Attorney General
Capitol, Pl-01
Tallahassee, FL 32399-1050
Telephone: (850) 414-3300
Facsimile: (850) 401-1630
E-Mail: Blaine.winship@myfloridalegal.com

Attorneys for Pam Bondi, in her capacity as Florida Attorney General

Michael A. Carvin
Louis K. Fisher
Jones Day
51 Louisiana Avenue, N.W.
Washington, DC 20001
Telephone: (202) 879-7643
Facsimile: (202) 626-1700
E-mail: macarvin@jonesday.com
E-mail: lkfisher@jonesday.com

Attorneys for the Florida Senate and President Don Gaetz

Victor L. Goode
Dorcas R. Gilmore
NAACP
4805 Mt. Hope Drive
Baltimore, MD 21215-3297
Telephone: (410) 580-5790
Facsimile: (410) 358-9350
E-mail: vgoode@naacpnet.org
E-mail: dgilmore@naacpnet.org

Allison J. Riggs
Anita S. Earls
Southern Coalition For Social Justice
1415 West Highway 54, Ste. 101
Durham, NC 27707
Telephone: (919) 323-3380
Facsimile: (919) 323-3942
E-mail: allison@southerncoalition.org
E-mail: anita@southerncoalition.org

Benjamin James Stevenson
American Civil Liberties Union of Florida Foundation
Post Office Box 12723
Pensacola, FL 32591-2723
Telephone: (786) 363-2738
Facsimile: (786) 363-1985
E-mail: bstevenson@aclufl.org

Attorneys for the Florida State Conference of NAACP Branches