UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA

ORLANDO DIVISION

WILLIAM EVERETT WARINNER and JAMES C. MILLER, SR.,	)	No. 6:13CV1860-ORL-JA-DAB
Plaintiffs,	)	
vs.	)	
KEN DETZNER, in his official capacity as Secretary of State of the State of Florida,	)	(Loc. R. 3.01(h) - Dispositive Motion)
Defendant.	)	

THE LEGISLATIVE PARTIES' MOTION TO DISMISS
OR, IN THE ALTERNATIVE, TO STAY PROCEEDINGS

The Florida House of Representatives and the Florida Senate (collectively, the "Legislative Parties"), move to dismiss the Amended Complaint on abstention grounds. Alternatively, they move to stay these proceedings pending the resolution of the case pending before the Circuit Court of the Second Judicial Circuit, in and for Leon County, Florida, styled *Romo, et al. v. Detzner, et al.*, Case No. 2012-CA-000412 (the "State Proceeding").

BACKGROUND

On February 9, 2012, the Florida Legislature enacted Committee Substitute for Senate Bill 1174, which establishes new congressional districts for the State of Florida in accordance with the 2010 Census and the redistricting standards in Article III, Section 20 of

the Florida Constitution.[1] *See* Ch. 2012-2, Laws of Fla. Nine minutes later, seven individuals—including Plaintiff Warinner—filed the State Proceeding in Leon County Circuit Court challenging the validity of several congressional districts under the redistricting standards in Article III, Section 20 (a copy of the complaint is attached to this motion as **Exhibit A**).[2] Among the districts subject to challenge is District 5. Plaintiffs in the State Proceeding allege that District 5 violates the Florida Constitution because it "was drawn with the intent to deny or abridge the equal opportunity of racial and language minorities to participate in the political process" (Ex. A at 6). Plaintiffs claim that District 5 "unnecessarily packs more African Americans into the District than is necessary to protect the minority group's ability to elect its preferred candidate;" that the Legislature failed to perform "a proper functional analysis of minority voting rights" when it drew the district (*id.*); that District 5 "is not compact, as demonstrated by, among other things, a visual inspection of the District and quantitative measures" (*id.* at 7); and that District 5 "fails to utilize existing political and geographical boundaries where feasible" (*id.*). Plaintiffs request that the state court "[i]ssue a permanent injunction and judgment . . . enjoin[ing] Defendants from calling, holding, supervising or certifying any further elections using Congressional District[] 5" (*id.* at 14).

[1] Article III, Section 20 provides, among other things, that "[n]o apportionment plan or individual district shall be drawn with the intent to favor or disfavor a political party or an incumbent; and districts shall not be drawn with the intent or result of denying or abridging the equal opportunity of racial or language minorities to participate in the political process or to diminish their ability to elect representatives of their choice."

[2] Several organizational Plaintiffs later filed a separate complaint also challenging the new districts. The cases have been consolidated.

In this case, Plaintiffs challenge the constitutionality of District 5 under federal law, and ask this Court to impose "a valid plan for new Congressional districts for the State of Florida." The factual allegations in the Amended Complaint are substantially similar to those asserted about District 5 in the State Proceeding filed nineteen months earlier. The Amended Complaint alleges that the congressional plan violates the equal protection clause because "African-American voters are unnecessarily packed into Congressional District 5;" and that the Legislative Parties "fail[ed] to conduct a proper functional analysis when enacting the 2012 Congressional Plan" (Compl. ¶¶ 25, 33). Plaintiffs also claim that District 5 is not compact "[o]n visual inspection" and that "[q]uantitative measures confirm that Congressional District 5 is not compact" (Compl. ¶¶ 36-37). Plaintiffs also assert that District 5 "does not utilize existing political or geographical boundaries when feasible" (Compl. ¶¶ 46). They seek "a permanent injunction enforcing or giving any effect to the boundaries of Congressional District 5" and "an injunction barring Defendants from conducting any elections for the United States House of Representatives based on Congressional District 5" (Compl. p. 11).

While discovery in this proceeding has yet to commence, discovery in the State Proceeding is well advanced. The parties have produced hundreds of thousands of pages of documents, deposed dozens of witnesses, and submitted several expert reports and rebuttals. After four continuances of trial at the *plaintiffs'* request (including Plaintiff Warinner, also a plaintiff in the State Proceeding), the parties are near to concluding discovery and preparing

for a two-week trial scheduled to begin on May 19.[3] Yet Plaintiffs now seek to pursue in this Court—on an emergency basis, no less—a *second* action challenging the congressional plan on grounds substantially similar to those asserted in the State Proceeding, claiming that they are "reasonably concerned that th[e] issues of state constitutional law will not be resolved in time to achieve effective relief before the 2014 congressional elections" (Compl. ¶ 3). The Amended Complaint does not explain Plaintiffs' failure to raise the equal protection claims in the State Proceeding, or their delay in filing this case almost two years after the Legislature enacted the congressional plan, instead waiting until the eve of the 2014 congressional election qualifying process to pursue those claims here.

ARGUMENT

This Court should dismiss Plaintiffs' claim or defer its consideration until the State Proceeding concludes. Several abstention doctrines support such relief: (I) Under the *Pullman* doctrine, abstention is warranted when a state proceeding presents an unsettled question of state law which may be dispositive of the federal case or would materially alter the constitutional question presented. Here, the state court's resolution of Plaintiff Warinner's state constitutional challenges to the congressional plan may significantly alter or render moot the federal questions raised here. (II) Under the *Germano* doctrine, a court should defer consideration of redistricting disputes where a state court has commenced its adjudication of the validity of the congressional plan. Here, a state court has already begun to address the same factual questions that Plaintiffs seek to raise in this proceeding. (III)

[3] The trial was originally scheduled for February 2013 but the plaintiffs requested four continuances to allow them to conduct further discovery, so that the trial has been rescheduled four times: first to June 2013, then to August 2013, then to January 2014, and now to May 2014.

Under the *Colorado River* doctrine, abstention is appropriate when a parallel state proceeding exists and a simultaneous federal proceeding would create problems of judicial administration. Here, the State Proceeding is well advanced, as substantial discovery has occurred and trial is set to commence in May. A simultaneous federal proceeding would necessarily interfere with the state court's ability to adjudicate and resolve those claims. Finally, (IV) under the *Younger* doctrine, abstention is proper because the State Proceeding implicates important state interests and a separate federal case would interfere with the state court's ability to perform its judicial functions because, among other things, it creates a risk of conflicting judgments.

We address these doctrines in turn.

I. THIS COURT SHOULD APPLY THE *PULLMAN* DOCTRINE AND ABSTAIN FROM EXERCISING JURISDICTION BECAUSE THE RESOLUTION OF THE STATE PROCEEDING MAY SIGNIFICANTLY ALTER OR RENDER MOOT THE ISSUES ASSERTED HERE

Under the *Pullman* abstention doctrine, "a federal court will defer to state court resolution of underlying issues of state law." *Pittman v. Cole*, 267 F.3d 1269, 1286 (11th Cir. 2001) (citation omitted). For *Pullman* abstention to apply: "(1) the case must present an unsettled question of state law, and (2) the question of state law must be dispositive of the case or would materially alter the constitutional question presented." *Id*. The *Pullman* abstention doctrine "avoid[s] unnecessary friction in federal-state functions, interference with important state functions, tentative decisions on questions of state law, and premature constitutional adjudication." *Id*. Because *Pullman* abstention is discretionary, "it is only appropriate when the question of state law can be fairly interpreted to avoid adjudication of the constitutional question." *Id*.

Federal courts have applied *Pullman* abstention in cases involving parallel state redistricting proceedings. In *Romero v. Coldwell*, 455 F.2d 1163 (5th Cir. 1972), the then-Fifth Circuit applied the *Pullman* doctrine in a case challenging a countywide districting plan. The court held that resolution of claims in state court would "obviate any necessity for federal constitutional litigation, [which] indicates the propriety of abstention." *Id*. at 1165-66. The court therefore dismissed the case without prejudice to allow the plaintiffs to pursue a state court action that "that might avoid [federal] constitutional adjudication." *Id*. at 1166-67. And in *Badham v. United States District Court*, 721 F.2d 1170 (9th Cir. 1983), the Ninth Circuit affirmed a district court's decision to apply the *Pullman* doctrine and stay the action pending resolution of the state court action, holding that "[t]his case [ ] presents three state constitutional law questions that may obviate the federal constitutional issue." *Id*. at 1177.

Pullman abstention is appropriate here. The State Proceeding raises an unsettled question of state law: the legality of the congressional map under recent amendments to the Florida Constitution. *See Pittman*, 267 F.3d at 1286. As noted above, the State Proceeding challenges the validity of District 5 under newly adopted Article III, Section 20 of the Florida Constitution, which establishes substantive reapportionment requirements, including protections for minority voters. After two years of overseeing extensive discovery and motion practice, the state court should have the opportunity to interpret and apply Article III, Section 20 to the congressional map. Its determinations of the validity of the congressional map under the Florida Constitution could materially alter or render moot the issues presented here, including whether the Legislative Parties' obligation to comply with the requirements

of the Florida Constitution amounted to a "compelling interest" which justifies the consideration of race in the design of District 5.

Indeed, resolution of the questions presented in the State Proceeding could entirely avoid the need to decide this case. In the State Proceeding, Plaintiffs ask the court to "[h]old hearings, consider briefing and evidence, and otherwise take actions necessary to determine and order valid plans for new congressional districts for the State of Florida" (Ex. A at 14). If Plaintiffs obtain such relief there, the federal issue in this case would be moot. *See Romero*, 455 F.2d 1163 at 1165-66 (holding that resolution of claims in state court would "obviate any necessity for federal constitutional litigation, [which] indicates the propriety of abstention.") Abstention under the *Pullman* doctrine is therefore appropriate.

II. THIS COURT SHOULD STAY THE PROCEEDINGS UNDER THE *GERMANO* ABSTENTION DOCTRINE BECAUSE REAPPORTIONMENT IS PRIMARILY THE DUTY OF THE STATES AND A STATE COURT IS ALREADY CONSIDERING THE VALIDITY OF FLORIDA'S CONGRESSIONAL DISTRICTS

A subset of the *Pullman* abstention doctrine, first developed in *Scott v. Germano*, 381 U.S. 407 (1965), applies specifically in the redistricting context. *See Benavidez v. Eu*, 34 F.3d 825, 832 (9th Cir. 1994). Under *Germano* abstention, federal judges are "to defer consideration of disputes involving redistricting where the State, through its legislative *or* judicial branch, has begun to address that highly political task itself." *Growe v. Emison*, 507 U.S. 25, 33 (1993) (emphasis original). Federal courts recognize that "reapportionment is primarily the duty and responsibility of the State through its legislature or other body, rather than of a federal court. Absent evidence that these state branches will fail timely to perform that duty, a federal court must neither affirmatively obstruct state reapportionment nor permit

federal litigation to be used to impede it." *Id*. at 34 (marks and citation omitted); *see also Germano*, 381 U.S. at 409 ("We believe that the District Court should have stayed its hand. The power of the judiciary of a State to require valid reapportionment or to formulate a valid redistricting plan has not only been recognized by this Court but appropriate action by the States in such cases has been specifically encouraged."); *Baldus v. Brennan*, No. 11–CV–562, 2011 WL 5040666, at *2 (E.D. Wis. Oct. 21, 2011) ("Federal courts should abstain or defer action on challenges to state redistricting efforts when the state's own governing bodies have not yet concluded their reform efforts or when challenges to those efforts are pending in the state's courts."); *Rice v. Smith*, 988 F. Supp. 1437, 1439 (M.D. Ala. 1997) ("[I]n the reapportionment context, when parallel State proceedings exist, the decision to refrain from hearing the litigant's claims should be the routine course. The rationale behind this distinction lies in the inherently greater interest a State has in legislative reapportionment.").

This Court should apply *Germano* abstention and defer considering this case until the State Proceeding is resolved. That case has progressed through two years of discovery and is approaching trial. In such circumstances, federal courts should defer to a state's own efforts to adjudicate redistricting claims. *Germano*, 381 U.S. at 409. Because of the "inherently greater interest a State has in legislative reapportionment," this Court should follow the "routine course" and defer to the State Proceeding. *See Rice*, 988 F. Supp. at 1439.

III. THIS COURT SHOULD APPLY THE *COLORADO RIVER* ABSTENTION DOCTRINE AND DECLINE JURISDICTION OVER THIS CASE BECAUSE A PARALLEL LAWSUIT IS PENDING IN STATE COURT

A federal court also may abstain from a case if (1) a parallel lawsuit was proceeding in state court, and (2) judicial-administration reasons so demanded abstention. *Col. River*

Water Conservation Dist. v. United States, 424 U.S. 800, 818–20 (1976). The Eleventh Circuit has stated that "[s]ince the general rule is that the pendency of an action in the state court is no bar to proceedings concerning the same matter in federal court, and since the federal courts have a virtually unflagging obligation to exercise their jurisdiction, *Colorado River* abstention applies in exceptional circumstances." *Jackson-Platts v. Gen. Elec. Capital Corp.*, 727 F.3d 1127, 1140 (11th Cir. 2013); *see also Noonan S., Inc. v. Cnty. of Volusia*, 841 F.2d 380, 383 (11th Cir. 1988) ("[D]ismissal of an action in deference to parallel state proceedings is an extraordinary step that should not be undertaken absent a danger of a serious waste of judicial resources.").

"[A]s a threshold matter," a federal court may abstain under the *Colorado River* doctrine only if there is a parallel state action, which is one involving "substantially the same parties and substantially the same issues." *Jackson-Platts*, 727 F.3d at 1140 (citation omitted). If those criteria are met, courts then consider "(1) the order in which the courts assumed jurisdiction over property; (2) the relative inconvenience of the fora; (3) the order in which jurisdiction was obtained and the relative progress of the two actions; (4) the desire to avoid piecemeal litigation; (5) whether federal law provides the rule of decision; and (6) whether the state court will adequately protect the rights of all parties." *Id*. at 1141 (marks omitted). "No single factor is dispositive, and we are required to weigh the factors with a heavy bias favoring the federal courts' obligation to exercise the jurisdiction that Congress has given them." *Id*.

This case clearly presents "exceptional circumstances" justifying abstention under *Colorado River*. *Jackson-Platts*, 727 F.3d at 1140. Although Plaintiffs' equal protection

claim is based on the same facts and allegations that form the basis of the state challenge, Plaintiffs waited until the eve of trial in the State Proceeding to file a separate federal challenge. This challenge now creates the possibility of inconsistent judgments, which could interfere with candidates' and voters' ability to participate in the 2014 congressional election.

Moreover, the *Jackson-Platts* criteria support abstention. Plaintiff Warinner filed his claim in the State Proceeding almost two years before commencing this case. 727 F.3d at 1141. The parties to the State Proceeding have engaged in two years of motion practice and extensive discovery, and the case is now approaching trial. If this Court accepts jurisdiction, piecemeal litigation is certain to result. Moreover, the state court may adequately protect the rights of the parties. Indeed, as noted above, Plaintiffs had ample opportunity to raise their federal claims in state court. This Court should not reward Plaintiffs' strategic decision to avoid the efficient resolution of their claims in a single proceeding.

IV. THIS COURT SHOULD APPLY THE *YOUNGER* ABSTENTION DOCTRINE AND DECLINE TO EXERCISE JURISDICTION BECAUSE AN ONGOING STATE PROCEEDING IS PENDING THAT IMPLICATES IMPORTANT STATE INTERESTS AND PLAINTIFFS COULD HAVE RAISED THEIR EQUAL PROTECTION CLAIMS THERE

Under the *Younger* abstention doctrine, first developed in *Younger v. Harris*, 401 U.S. 37, 44 (1971), federal courts abstain from exercising jurisdiction in "extraordinary circumstances" if there is (i) an "ongoing state judicial proceeding" which (ii) implicates "important state interests" and (iii) there is "an adequate opportunity in the state proceedings to raise constitutional challenges." *Middlesex Cnty. Ethics Comm. v. Garden State Bar Ass'n,* 457 U.S. 423, 431-32 (1982). The Supreme Court recently clarified that the criteria established in *Middlesex* does not apply to every proceeding, but only criminal proceedings,

civil enforcement proceedings, and "civil proceedings involving certain orders . . . uniquely in furtherance of the state courts' ability to perform their judicial functions." *Sprint Commc'ns v. Jacobs*, 134 S. Ct. 584, 586 (2013); *see also Wexler v. Lepore*, 385 F.3d 1336, 1339 (11th Cir. 2004) (finding that for *Younger* abstention to be triggered, (1) the federal injunction must "create an 'undue interference with state proceedings,'" and (2) "the state proceedings at issue must involve 'certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions.")

Younger abstention is based on "the notion of 'comity,' that is, a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate state governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways." *Younger*, 401 U.S. at 44. This doctrine "is not merely a principle of abstention; rather, the case sets forth a mandatory rule of equitable restraint, requiring the dismissal of a federal action . . . ." *Nivens v. Gilchrist*, 444 F.3d 237, 247 (4th Cir. 2006) (quoting *Juluke v. Hodel*, 811 F.2d 1553, 1556 (D.C. Cir. 1987)). The *Younger* doctrine "contemplates the outright dismissal of the federal suit, and the presentation of all claims, both state and federal, to the state courts." *Id.* at 246-47 (quoting *Gibson v. Berryhill*, 411 U.S. 564, 577 (1973)).

For example, in *Marylanders for Fair Representation, Inc. v. Schaefer*, 795 F. Supp. 747 (D. Md. 1992), a redistricting case, a concurring judge believed that that the *Younger* test was met because "there are state court proceedings that are ongoing and that implicate an important state interest. Indeed, it is difficult to think of a more important interest any state

has than the process by which its citizens elect their legislators." *Id*. at 752 (Smalkin, J., concurring). The opinion also noted that "the state court proceedings provide an adequate opportunity to raise constitutional challenges to the Governor's redistricting plan." *Id*. at 752-53.

Here, all the *Middlesex* criteria are satisfied. First, an ongoing state judicial proceeding exists that challenges the validity of District 5 (among others). Second, "it is difficult to think of a more important interest any state has than the process by which its citizens elect their legislators." *Marylanders for Fair Representation*, 795 F. Supp. at 752-53 (Smalkin, J., concurring). Third, Plaintiffs had "a full and fair opportunity to litigate [their] constitutional claim[s]" in state court without filing a complaint in federal court. *Benavidez*, 34 F.3d at 831. Nothing prevented Plaintiffs from asserting in the State Proceeding—filed almost two years ago—that the congressional map violated the Equal Protection Clause.

The State Proceeding also involves the "exceptional circumstances" that the Supreme Court recently required in *Sprint Communications* because a federal injunction would interfere with the "state courts' ability to perform their judicial functions" and create an "undue interference" with the state proceeding. 134 S. Ct. at 586; *see also Wexler*, 385 F.3d at 1339 (noting that "the state proceedings at issue must involve 'certain orders that are uniquely in furtherance of the state courts' ability to perform their judicial functions."). As shown above, the Amended Complaint is based on the same facts involved in the State Proceeding and seeks similar relief. Any relief this Court provides would necessarily undermine the state court's ability to determine whether the congressional map satisfies the

Florida Constitution. In the interests of "comity" and a "proper respect for state functions," this Court should abstain from exercising jurisdiction.

CONCLUSION

For the reasons stated, this Court should dismiss Plaintiffs' Amended Complaint or, in the alternative, stay the proceedings pending the resolution of the State Proceeding.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was filed in the Court's CM/ECF System this 11th day of February, 2014, and thereby served upon all counsel of record.

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