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

BLACK VOTERS MATTER CAPACITY BUILDING INSTITUTE, INC., et al.,

Plaintiffs,

v.

CORD BYRD, in his official capacity as Florida Secretary of State, et al.,

Defendants.

Case No. 2022-ca-000666

PLAINTIFFS' RESPONSE IN OPPOSITION TO MOTION TO DISMISS INDIVIDUAL LEGISLATORS

Plaintiffs request that the Court deny the Motion to Dismiss of Defendants Florida State Senate President Wilton Simpson, Florida State Senator and Chair of the Florida State Senate Reapportionment Committee Ray Rodrigues, Florida Speaker of the House Chris Sprowls, and Florida State Representative and Chair of the House Redistricting Committee Thomas J. Leek (collectively, the "Individual Legislators") dated June 6, 2022 (the "Motion"), and state as follows:

INTRODUCTION

Individual legislators are proper and routine defendants in redistricting litigation throughout the country including here in Florida. The House Speaker and Senate President were defendants in lawsuits following at least the past two redistricting cycles in Florida, including in cases that the Florida Supreme Court resolved on the merits without any suggestion that their inclusion in the litigation was improper. And other state legislative leaders, including legislative redistricting committee chairs, are regularly named as defendants in redistricting suits. We are not aware of any court—in Florida or elsewhere—holding that legislators are improper defendants in redistricting litigation.

The Individual Legislators supply no reason for this Court to become the first. Their primary argument—that legislators generally cannot be sued in constitutional challenges to legislation—ignores that Florida courts have made several important carveouts to that rule including for redistricting cases. Their secondary argument that Plaintiffs' claims are barred by legislative immunity was rejected by the Florida Supreme Court in the prior redistricting cycle. And their contention that the Complaint fails to request any relief that the Individual Legislators can provide ignores the Complaint's plain language and is belied by their own court submissions in the prior redistricting cycle acknowledging their importance in effectuating remedial relief. The Individual Legislators' Motion is without merit and should be denied.

ARGUMENT

I. Legislators are proper parties in redistricting cases.

It is settled law that Florida legislators are proper defendants in "declaratory actions challenging the constitutionality of legislative or executive acts" that involve (1) "a broad constitutional duty of the State implicating specific responsibilities of [the legislators]" or (2) "any issue in which [the legislators] have an actual, cognizable interest." *Atwater v. City of Weston*, 64 So. 3d 701, 704 (Fla. 1st DCA 2011). The First District Court of Appeal has already noted that redistricting litigation is an example of such an action, explaining that the Senate President is "a proper party in [a] declaratory action challenging [the] constitutionality of [the] Legislature's congressional redistricting scheme for that official ha[s] a cognizable interest in defending the scheme against claims of discriminatory effect." *Id.* (citing *Brown v. Butterworth*, 831 So. 2d 683, 689-90 (Fla. 4th DCA 2002)); *see also id.* (noting Florida Supreme Court's holding that the Senate President and House Speaker were proper parties to a lawsuit alleging inadequate funding of public education system) (citing *Coalition for Adequacy & Fairness in Sch. Funding, Inc. v. Chiles*, 80 So. 2d 400, 402-03 (Fla. 1996)).

Consistent with this precedent, individual legislators have been defendants in Florida state court redistricting lawsuits in at least the past two redistricting cycles—including in cases that were adjudicated on the merits by the Florida Supreme Court. *See, e.g.*, *League of Women Voters of Fla. v. Fla. House of Representatives*, 132 So. 3d 135 (Fla. 2013) (holding that legislative immunity did not protect Defendant Speaker of the House and Defendant President of the Senate from being deposed in a constitutional challenge to Florida's 2012 congressional redistricting plan); *Butterworth*, 831 So. 2d at 690 (noting that the President of the Senate was a party in *Florida Senate v. Forman*, 826 So. 2d 279 (Fla. 2002), in which Florida's 2002 legislative redistricting plan was challenged under the state Equal Protection Clause). And other state legislative leaders—including legislative redistricting committee chairs—are routine defendants in redistricting litigation. *See, e.g.*, *Rucho v. Common Cause*, 139 S. Ct. 2484, 2492 (2019) (plaintiffs "sued the two lawmakers who led the redistricting effort" in partisan gerrymandering challenge under U.S. Constitution); *Harper v. Hall*, 868 S.E.2d 499 (N.C. 2022) (plaintiffs sued the North Carolina Speaker of the House, Senate President, and House and Senate Redistricting Chairs in challenge to North Carolina's congressional redistricting plan under North Carolina Constitution); *Adams v. DeWine*, No. 2021-1428, 2022 WL 129092 (Ohio Jan. 14, 2022) (plaintiffs sued the Ohio Speaker of the House, President of the Senate, and Secretary of State in challenge to Ohio's congressional redistricting plan under Ohio Constitution).

The Individual Legislators identify no case—in Florida or any other state—holding that legislators are immune from suit in redistricting cases. Instead, they rely on *Walker v. President of the Senate*, 658 So. 2d 1200 (Fla. 5th DCA 1995), and several related cases for the unremarkable proposition that individual legislators generally cannot be sued in "an action seeking a declaration of rights under a particular statute." Mot. at 3; *see also* Mot. at 4 (citing *Haridopolos v. Alachua*

Cnty., 65 So. 3d 577, 578 (Fla. 1st DCA 2011)). But the First District Court of Appeal expressly distinguished *Walker* and its progeny, holding that these cases do ***not*** stand for the blanket proposition that "these officials are improper parties in ***all*** declaratory actions challenging the constitutionality of legislative or executive acts." *Atwater*, 4 So. 3d at 704 (distinguishing *Walker*, 658 So. 2d at 1200) (emphasis added). Rather, as discussed above, legislators are proper defendants where, as here, the lawsuit involves the legislators' "specific [constitutional] responsibilities" or "any issue in which the defendants have an actual, cognizable interest." *Id.*

Grasping at straws, the Individual Legislators argue that legislative immunity also renders them improper parties in redistricting cases. Mot. at 5-6. But they again cite no case law that stands for such a sweeping proposition. *Fla. House of Representatives v. Expedia*, 85 So. 3d 517 (Fla. 1st DCA 2012), was not a redistricting case and merely held that legislative immunity shielded legislators from *testifying* in a civil case. The First District, moreover, cautioned that "there is no judicial precedent in Florida for legislative immunity" and explained that "[t]he legislative privilege [it] recognized in [that] case is not absolute," because "[t]he court will always have to make a preliminary inquiry to determine whether the information is within the scope of the privilege and whether the need for privacy is outweighed by a more important governmental interest." *Expedia*, 85 So. 3d at 525. Sure enough, the Florida Supreme Court subsequently declined to extend *Expedia* to redistricting, holding in the lawsuit challenging Florida's 2012 congressional redistricting plan that "the purposes underlying the privilege are outweighed by the compelling, competing interest of effectuating the *explicit* constitutional mandate that prohibits partisan gerrymandering and improper discriminatory intent in redistricting." *See League of Women Voters of Fla.*, 132 So. 3d at 137; *see also id.* at 150 ("Unlike *Expedia* and other disputes not directly involving the Legislature, the lawsuit brought by the challengers seeks to vindicate the

public interest in ensuring that unconstitutional partisan political gerrymandering by the Legislature itself did not occur.").[1]

The Individual Legislators also cite *Tenney v. Brandhove*, 341 U.S. 367 (1951), and *Scott v. Taylor*, 405 F.3d 1251 (11th Cir. 2005), in which courts held that legislators are immune from civil suit under 42 U.S.C. § 1983. *See* Mot. at 5-6. The U.S. Supreme Court, however, expressly held that *Tenney*'s reasoning was limited to "civil action[s] brought by a private plaintiff to vindicate private rights." *United States v. Gillock*, 445 U.S. at 371 (1980). It does not stand for the proposition that legislators are absolutely immune from civil cases of public importance; nor could it, as the U.S. Supreme Court and state courts of last resort have repeatedly adjudicated on the merits redistricting cases in which individual legislators are named as defendants. *See supra* p. 4.

II. The Complaint requests relief that this Court can order the Individual Legislators to provide.

The Individual Legislators also seek dismissal on the ground that the Complaint purportedly fails to "request any relief that the Individual Legislators can provide." Mot. at 6. Not so. The Complaint plainly requests that the Court enter judgment "[o]rdering or adopting a new congressional districting plan that complies" with the Florida Constitution. *See* Compl. ¶¶ 134(c), 137(c), 139(c), 141(c).

The Individual Legislators argue that the separation of powers prohibits the Court from ordering this relief. Mot. at 6-7 (citing *Corcoran v. Geffen*, 250 So. 3d 779 (Fla. 1st DCA 2018)). But that argument is squarely at odds with binding precedent from the Florida Supreme Court. *See League of Women Voters of Fla. v. Detzner*, 172 So. 3d 363, 413-15 (Fla. 2015). In *League of Women Voters*, the Florida Supreme Court held that certain districts in Florida's 2012

[1] Like *Expedia*, the question in *League of Women Voters of Fla.* was whether legislative privilege protected individual legislators from discovery in a civil case. *See* 132 So. 3d at 147 n.11.

congressional redistricting were unconstitutional and ordered the defendants—including the Florida Senate President and Speaker of the House—to redraw them. *Id.* at 413 ("We thus conclude that the appropriate remedy at this juncture is to require the Legislature to redraw the map, based on the directions set forth by this Court."). And in so doing, the Florida Supreme Court rejected any separation of powers concerns with this approach, explaining that the Florida Constitution was amended precisely to give the judiciary the power to enforce redistricting requirements against the legislature:

> In typical cases challenging the constitutionality of a legislative enactment, the relevant inquiry is whether the enacted legislation violates some individual right or contravenes some prohibition on the type of law the Legislature is empowered to enact. The traditional constitutional analysis of enacted legislation does not involve, as it does here, a specific constitutional direction to the Legislature, as to what it can and cannot do with respect to drafting legislative reapportionment plans. Simply put, this case does not pit this Court versus the Legislature, but instead implicates this Court's responsibility to vindicate the essential right of our citizens to have a fair opportunity to select those who will represent them.

Id. at 414 (internal citations and quotation marks omitted); *see also id.* at 415 ("Of course, we categorically reject the . . . overblown claims that this Court has violated the separation of powers" by ordering the Legislature to adopt a new congressional map). Like in *League of Women Voters*, Plaintiffs here seek an order directing the defendants—including the Individual Legislators—to enact a constitutionally compliant congressional redistricting plan.

The Individual Legislators claim that even if this Court could order the relief requested, they have no power to implement it themselves. Mot. at 7. But this argument is again contrary to *League of Women Voters* and the legislators' own court submissions in the prior redistricting cycle detailing the power of legislative leaders to implement a remedy. After the trial court declared Florida's 2012 congressional redistricting plan unconstitutional, the legislative defendants—the Senate President, Speaker of the House, the Florida Senate, and the Florida House—jointly submitted a remedial plan passed by the Legislature and a memorandum in support for the court's

review. *See* The Legislative Parties' Submission of Remedial Plan and Memorandum in Support, *Romo v. Detzner*, No. 2012-CA-000490, 2014 WL 4254387 (Fla. Cir. Ct. Aug. 15, 2014). That submission explained that to comply with the trial court's remedial order to draw a new map, "the Speaker of the House and the President of the Senate issued a joint proclamation . . . to convene the Legislature in Special Session" for the "sole and exclusive purpose" of effectuating the trial court's judgment. *See id.* That is because Florida law tasks the House Speaker and Senate President, specifically, with the authority to call a special legislative session. *See* Fla. Stat. Ann. § 11.011(a).[2] Thus, even if the Individual Legislators lack the power to unilaterally pass a redistricting plan through the Legislature, they plainly have the authority to effectuate relief ordered by the Court.

III. The Complaint properly sues the Individual Legislators alongside the Florida House and Senate.

Finally, the Individual Legislators seek dismissal on the ground that Plaintiffs' claims against them are duplicative of their claims against the Florida Senate and the Florida House of Representatives. Mot. at 8. This argument misses the mark for two reasons.

First, as discussed above, the claims are not duplicative because the Individual Legislators possess authority separate and apart from the Florida House and Senate to implement any remedy. *See, e.g.*, Fla. Stat. Ann. § 11.011(a) (joint proclamation from House Speaker and Senate President needed to convene a special legislative session); The Legislative Parties' Submission on Remedial Plan, 2014 WL 4254387 (explaining that the House and Senate Redistricting Chairs implemented the Florida Supreme Court's remedial order by providing instructions to committee members and

[2] A special legislative session may also be called by the Governor, *see* Fla. Const. Art. 3, § 5, or through a special procedure initiated by "20 percent of the members of the Legislature," Fla. Stat. Ann. § 11.011(b).

staff). The House Speaker and Senate President were, accordingly, named as defendants alongside the Florida House and Senate in the prior redistricting cycle in a case that the Florida Supreme Court resolved on the merits. *See, e.g.*, *League of Women Voters*, 172 So. 3d at 363.

Second, the Individual Legislators provide no legal basis for dismissing the claims against them even if they are "redundant" of the claims against the Florida House and Senate. The Individual Legislators rely exclusively on cases dismissing state employees from actions in which a state agency may be sued directly. Mot. at 8. Those cases are distinguishable because their dismissal was required by a Florida law preventing state employees from being "named as a party defendant" in certain tort actions and requiring those actions to be directed "against the governmental entity, or the head of such entity in her or his official capacity." Fla. Stat. § 768.28(9)(a); *see Stephens v. Geoghegan*, 702 So. 2d 517, 527 (Fla. 2d DCA 1997) (citing *id.*). Individual Legislators cite no authority applying this statute to bar claims against legislators; nor does the statute apply here on its face as legislators are not listed among the "officer[s], employee[s], or agent[s]" covered by the law. *See* Fla. Stat. §§ 768.28(9)(b)(1)-(2).

CONCLUSION

For the foregoing reasons, Plaintiffs respectfully request this Court deny the Individual Legislators' Motion.

Dated: July 8, 2022

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on July 8, 2022 I electronically filed the foregoing using the State of Florida ePortal Filing System, which will serve an electronic copy to counsel in the Service List below.

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