

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.

Case No. 2022-CA-000666

LAUREL M. LEE, Secretary of State, et al.,

Defendants.

**ATTORNEY GENERAL'S RESPONSE TO PLAINTIFFS' MOTION FOR
TEMPORARY INJUNCTION AND PLAINTIFFS' MEMORANDUM OF
LAW IN SUPPORT OF MOTION FOR TEMPORARY INJUNCTION**

Attorney General Ashley Moody hereby responds to Plaintiffs' Motion for Temporary Injunction ("Motion") and Plaintiffs' Memorandum of Law in Support of Motion for Temporary Injunction ("Memorandum") filed on April 26, 2022, and, for the reasons set forth herein, requests that this Court deny Plaintiffs' Motion to the extent it requests this Court to enter an injunction against the Attorney General.

INTRODUCTION

Plaintiffs bring causes of action for declaratory and permanent injunctive relief related to the recently enacted Congressional districts following the last decennial census. *See Compl.* ¶¶ 4, 132-143. More specifically, Plaintiffs challenge the constitutionality of sections 8.0001 – 8.07, Florida Statutes (2022), as modified by Senate Bill 2-C (2022C).

Plaintiffs also move for a temporary injunction “enjoining Defendants from enforcing the boundaries of the congressional districts as drawn in the congressional plan (P000C0190) drawn and signed into law” and “enjoin[ing] implementation of” the enacted plan. *Motion*, pp. 1, 3-4; *Memorandum*, p. 20 (emphasis added). Hence, Plaintiffs seek a temporary injunction against all Defendants, rather than specific Defendants. Yet, nowhere in the Complaint, Motion, or Memorandum do Plaintiffs allege that the Attorney General has any role in “enforcing” or “implementing” Congressional district boundaries. Therefore, this Court must deny Plaintiffs’ Motion to the extent that it requests an injunction against the Attorney General.

MEMORANDUM OF LAW

I. Legal Standard for Temporary Injunction

“To obtain a temporary injunction, the petitioner must satisfy a four-part test under Florida law: a substantial likelihood of success on the merits; lack of an adequate remedy at law; irreparable harm absent the entry of an injunction; and that injunctive relief will serve the public interest.” *Liberty Counsel v. Fla. Bar Bd. Of Gvs.*, 12 So. 3d 183, 186 (Fla. 2009) (citations omitted).

“An injunctive order should never be broader than is necessary to secure the injured party, without injustice to the adversary, relief warranted by the circumstances of the particular case.” *Clark v. Allied Associates, Inc.*, 477 So. 2d 656, 657 (Fla. 5th DCA 1985) (citing *Moore v. City Dry Cleaners and Laundry, Inc.*,

41 So. 2d 865, 871 (Fla. 1949)). Moreover, “the acts or things enjoined should be specified in the decree with such reasonable definiteness and certainty, considering their nature and character, that a defendant bound by the decree may readily know what he must refrain from doing without the matter being left to speculation and conjecture.” *Moore*, 41 So. 2d at 871 (citations omitted).

II. The Attorney General is an improper defendant in this lawsuit.

“The proper defendant in a lawsuit challenging a statute’s constitutionality is the state official designated to enforce the statute.” *Florida House of Representatives v. Florigrown, LLC*, 278 So. 3d 935, 938 (Fla. 1st DCA 2019) (citing *Atwater v. City of Weston*, 64 So. 3d 701, 703 (Fla. 1st DCA 2011) and *Haridolopolos v. Alachua Cty.*, 65 So. 3d 577, 578 (Fla. 1st DCA 2011)); *see also Scott v. Francati*, 214 So. 3d 742, 745 (Fla. 1st DCA 2017); *Marcus v. State Senate for the State*, 115 So. 3d 448, 448 (Fla. 1st DCA 2013); *Walker v. President of the Senate*, 658 So. 2d 1200, 1200 (Fla. 5th DCA 1995). That is because, when the defendant has “no enforcement authority over the statute” at issue, “there is no relief the court could order [the defendant] to provide to remedy the constitutional violation alleged in the complaint.” *Scott*, 214 So. 3d at 747. Plaintiffs have not alleged that the Attorney General is the state official designated to enforce the statutes challenged in this case.

“If a government official or entity is not the enforcing authority of a challenged statute, courts must consider two additional factors in determining

whether that official or entity is a proper party: (1) whether the action involves a broad constitutional duty of the state implicating specific responsibilities of the official or entity, and (2) whether [the] official or entity has an actual, cognizable interest in the challenged action.” *Florigrown, LLC*, 278 So. 3d at 938–39 (citations omitted). Plaintiffs have not alleged that the Attorney General has responsibilities specifically related to Congressional redistricting, or even generally related to elections administration. Nor have they alleged any actual, cognizable interest that the Attorney General has in those matters.

Instead, Plaintiffs allege that the Attorney General “is properly named in an action seeking a statute of the Florida Legislature to be declared unconstitutional,” citing section 86.091, Florida Statutes. *Compl.* ¶ 29. However, section 86.091 merely requires that the Attorney General “be served with a copy of the complaint and be entitled to be heard” and does not make her a proper defendant in every case challenging the constitutionality of a statute. This is readily apparent from the text of the statute, which requires counties and municipalities to be made parties to proceedings concerning the validity of county or municipal charters, ordinances, or franchises but does not impose the same requirement with respect to the Attorney General. *See Mayo v. Nat’l Truck Brokers, Inc.*, 220 So. 2d 11, 13 (Fla. 1969) (“It is obvious from the provisions of Chapter 86 that neither the Attorney General nor the State Attorney of the circuit in which the action is pending are necessary parties in

the strict sense of that expression.”); *Watson v. Claughton*, 34 So. 2d 243, 246 (Fla. 1948) (“It will be noted that this Section does not prescribe that the Attorney General shall be a necessary party when the constitutionality of an act is assailed.”).

Additionally, Florida Rule of Civil Procedure 1.071, which specifies the method of providing the Attorney General service of constitutional challenges, explicitly provides that “[s]ervice of the notice and pleading, written motion, or other document does not require joinder of the Attorney General or the state attorney as a party to the action.” “While this grants the Attorney General the discretion to participate and be heard in a particular case, Rule 1.071 neither compels such participation nor joins the Attorney General as a party.” *State v. Florida Workers’ Advocates*, 167 So. 3d 500, 504 (Fla. 3d DCA 2015). “[O]nce the Attorney General or appropriate state attorney has been served, he or she may choose either to appear or not. However, in the latter event, non-participation has no effect on the litigation.” *Martin Mem’l Med. Ctr., Inc. v. Tenet Healthsystem Hosps., Inc.*, 875 So. 2d 797, 800 (Fla. 1st DCA 2004).

Plainly stated, the mere fact that the Attorney General may choose to participate in a constitutional challenge to a statute does not make her a proper defendant whenever a statute is challenged. More articulately stated, “the Attorney General cannot be required to defend suits attacking the constitutionality of a state statute against her will.” *Marcus v. Scott*, No. 2012-CA-1260, 2012 WL 5962383

(Fla. 2d. Cir. Oct. 26, 2012) (Cooper, J.). Because there is no allegation that the Attorney General is designated to enforce the statutes challenged in this case, has responsibilities specifically related to Congressional redistricting, or has an actual, cognizable interest in the matter, she is an improper defendant.

III. Plaintiffs cannot establish the elements for a temporary injunction against the Attorney General.

Since the Attorney General is an improper defendant, Plaintiffs cannot establish that there is a substantial likelihood that they will succeed on the merits against her. Moreover, since Plaintiffs have not alleged that the Attorney General has enforcement authority with respect to Congressional redistricting, Plaintiffs cannot establish that they will be irreparably harmed absent entry of an injunction against her. Finally, the public interest cannot be served by injunctive relief against an improper defendant. Therefore, Plaintiffs cannot establish the elements for a temporary injunction against the Attorney General.

IV. Any injunction against the Attorney General would be broader than necessary and the requested injunction would not be sufficiently specific.

Since there is no allegation that the Attorney General can enforce the statutes challenged in this case, an injunction against her would patently be broader than necessary to secure the Plaintiffs the relief that they seek. Should this Court determine that an injunction is necessary, it should only be entered against the Defendant(s) that can actually enforce the statutes challenged in this case.

Furthermore, Plaintiffs request this Court to temporarily enjoin the Defendants from “enforcing” or “implementing” the newly enacted Congressional district boundaries. Yet, Plaintiffs fail to specify how the Attorney General “enforces” or “implements” Congressional district boundaries or what acts or things she should be enjoined from doing. Any injunction simply prohibiting the Attorney General from “enforcing” or “implementing” Congressional district boundaries would not inform her of what she must refrain from doing without resorting to speculation and conjecture. Therefore, the temporary injunction requested by Plaintiffs would not be sufficiently specific.

CONCLUSION

Wherefore, the Attorney General requests that this Court deny Plaintiffs’ Motion for Temporary Injunction to the extent that it requests this Court to enter a temporary injunction against the Attorney General.

Respectfully submitted,

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Attorney General

/s/ Bilal Ahmed Faruqui

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished to counsel for the parties by e-mail through the Florida Courts E-Filing Portal on May 9, 2022.

/s/ Bilal Ahmed Faruqui
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