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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. Case No. 2022-CA-000666

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

Defendants.
_____/

ATTORNEY GENERAL'S MOTION TO DISMISS

Attorney General Ashley Moody hereby responds to the Complaint for Injunctive and Declaratory Relief ("Complaint") filed on April 22, 2022 and, pursuant to Rules 1.140(b)(1) and (b)(6), Florida Rules of Civil Procedure, moves this Court to dismiss her as a defendant from this case because she is an improper defendant and because the Complaint fails to state a cause of action against her.

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) (the "Challenged Provisions").

Plaintiffs request this Court to declare that the enacted redistricting plan is unconstitutional, to enjoin "Defendants, their respective agents, officers, employees, and successors, and all persons acting in concert with each or any of them, from implementing, enforcing, or giving any effect to" the enacted plan, and to enjoin "Defendants from conducting any elections for the U.S. House of Representatives under" the enacted plan. *Compl.* pp. 33-37 (emphasis added). Hence, Plaintiffs seek a permanent injunction against all Defendants, rather than specific Defendants. Yet, nowhere in the Complaint do Plaintiffs allege that the Attorney General has any role in "implementing, enforcing, or giving any effect to" Congressional district boundaries or "conducting any elections for the U.S. House of Representative." Accordingly, the Attorney General is an improper defendant in this case and the Complaint fails to state a cause of action against her.

MEMORANDUM OF LAW

I. Legal Standards

"To state a cause of action, a complaint must allege sufficient ultimate facts to show that the pleader is entitled to relief." *W.R. Townsend Contracting, Inc. v. Jensen Civil Const., Inc.*, 728 So. 2d 297, 300 (Fla. 1st DCA 1999) (citation omitted). "When a court determines the sufficiency of a complaint to state a cause of action, it applies the so-called 'four corners rule' in the analysis. Under this rule, the court's

review is limited to an examination solely of the complaint and its attachments." *Santiago v. Mauna Loa Investments, LLC*, 189 So. 3d 752, 755 (Fla. 2016).

While the Court must accept well-pled allegations as true, conclusory allegations are not sufficient to state a cause of action. *See Shands Teaching Hosp. & Clinics, Inc. v. Estate of Lawson ex rel. Lawson*, 175 So. 3d 327, 331 (Fla. 1st DCA 2015) ("Although courts must liberally construe, and accept as true, factual allegations in a complaint, as well as reasonable inferences therefrom, there is no obligation to accept internally inconsistent factual claims, conclusory allegations, unwarranted deductions, or mere legal conclusions made by a party.") (citations omitted); *Turnberry Vill. N. Tower Condo. Ass'n, Inc. v. Turnberry Vill. S. Tower Condo. Ass'n, Inc.*, 224 So. 3d 266, 267 (Fla. 3d DCA 2017) (holding that a mechanical recitation of the cause of action and conclusory allegations are insufficient to withstand a motion to dismiss), *Jordan v. Nienhuis*, 203 So. 3d 974, 976 (Fla. 5th DCA 2016) ("[V]ague and conclusory statements are insufficient to satisfy the requirement that a pleader allege 'a short and plain statement of the ultimate facts showing the pleader is entitled to relief....') (citations omitted).

To state a cause of action for declaratory relief, a plaintiff must allege ultimate facts which would establish the following elements:

> [1] there is a bona fide, actual, present practical need for the declaration; [2] that the declaration should deal with a present, ascertained or ascertainable state of facts or present controversy as to a state of facts; [3] that some immunity, power, privilege or right of the complaining

> party is dependent upon the facts or the law applicable to the facts; [4] that there is some person or persons who have, or reasonably may have an actual, present, adverse and antagonistic interest in the subject matter, either in fact or law; [5] that the antagonistic and adverse interest are all before the court by proper process or class representation and [6] that the relief sought is not merely the giving of legal advice by the courts or the answer to questions propounded from curiosity.

Santa Rosa Cnty. v. Admin. Com'n, Div. of Admin. Hearings, 661 So. 2d 1190, 1192–93 (Fla. 1995) (citations omitted). "These elements are necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts." *Id.* (citations omitted).

"[T]here [ ] must exist some justiciable controversy between adverse parties that needs to be resolved for a court to exercise its jurisdiction. Otherwise, any opinion on a statute's validity would be advisory only and improperly considered in a declaratory action." *Martinez v. Scanlan*, 582 So. 2d 1167, 1171 (Fla. 1991) (citations omitted). "It is essential that the defendant in a declaratory judgment action be the party or parties whose interest will be affected by the decree." *Jacobs & Goodman, P.A. v. McLin, Burnsed, Morrison, Johnson & Robuck, P.A.*, 582 So. 2d 98, 100 (Fla. 5th DCA 1991) (citation omitted); *see also N. Shore Realty Corp. v. Gallaher*, 99 So. 2d 255, 256 (Fla. 3d DCA 1957) ("One who seeks a declaratory judgment is generally not seeking to enforce a claim against the defendant; rather, he is seeking a judicial declaration as to the existence and effect of a relationship between himself and the defendant."). Indeed, "[e]ven if both parties have no

objection to the court entertaining [a declaratory judgment on a statute's constitutionality], mere mutual agreement between parties cannot confer subject-matter jurisdiction upon a court." *Martinez*, 582 So. 2d at 1171 (citations omitted).

"To state a cause of action for injunctive relief, a plaintiff must allege ultimate facts which, if true, would establish (1) irreparable injury (that is, injury which cannot be cured by money damages), (2) a clear legal right, (3) lack of an adequate remedy at law and (4) that the requested injunction would not be contrary to the interest of the public generally." *Weekley v. Pace Assembly Ministries, Inc.*, 671 So. 2d 220, 220 (Fla. 1st DCA 1996) (citation 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 because Plaintiffs have not alleged that she is designated to enforce the Challenged Provisions, has responsibilities related to Congressional redistricting or elections administration, or has an actual, cognizable interest in these matters.

"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 Challenged Provisions.

"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."); *see also State ex rel. Shevin v. Kerwin*, 279 So. 2d 836, 838 (Fla. 1973) ("Since many

constitutional challenges are raised in a trial court which can be simply disposed of as obviously meritless, it would be futile for the Attorney General to defend each statute against all constitutional challenges at the trial level.") and *Mallory v. Harkness*, 923 F. Supp. 1546, 1553 (S.D. Fla. 1996) ("It has long been recognized that the [Attorney General] is not a necessary party each time the constitutionality of a statute is drawn into question. The [Attorney General] is thus not affirmatively required to intervene every time an entity challenges the constitutionality of a statute." (citations omitted)), *aff'd without opinion*, 109 F.3d 771 (11th Cir. 1997).

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) (citing *In re Amendments to The Florida Rules of Civil Procedure*, 52 So. 3d 579, 582 (Fla. 2010) (Committee Notes to 2010 Adoption).[1] "[O]nce the Attorney General or appropriate state

[1] The Committee Notes state that "[t]his rule clarifies that, with respect to challenges to a state statute or municipal charter, ordinance, or franchise, service of the notice does not require joinder of the Attorney General or the state attorney as a party to

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). Moreover, the Attorney General may elect to participate for the first time to appeal a declaration regarding the constitutionality of a statute even if she did not participate in the trial court. *State ex rel. Shevin*, 279 So. 2d at 837–38.

To be clear, the Attorney General is the State's "chief state legal officer," Art. IV, § 4(b), Fla. Const., and, in that role, she has the authority to act in the public interest and, when she deems necessary, to intervene on behalf of the State in cases, such as constitutional challenges, in which the State may be interested. §16.01(4) – (5), Fla. Stat. (2022); *see also State ex rel. Landis v. S.H. Kress & Co.*, 155 So. 823, 826 (Fla. 1934). However, that authority is entirely discretionary. Indeed, "it is the inescapable historic duty of the Attorney General, as the chief state legal officer, to institute, defend or intervene in any litigation or quasijudicial administrative proceeding which [s]he determines in h[er] sound official discretion involves a legal matter of compelling public interest." *State of Fla. ex rel. Shevin v. Exxon Corp.*, 526 F.2d 266, 271 (5th Cir. 1976) (citation omitted) (emphasis added); *see also State ex rel. Landis*, 155 So. at 828 ("The office of Attorney-General is, in many respects,

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the action; however, consistent with section 86.091, Florida Statutes, the Florida Attorney General or applicable state attorney has the discretion to participate and be heard on matters affecting the constitutionality of a statute." (citations omitted).

judicial in its character, and [s]he is clothed with a considerable discretion.") (citation omitted). That discretion is unreviewable by the courts. *Id.*

Furthermore, "it is obvious that the statutory authorization [in section 86.091] does not create the adverse or antagonistic interest necessary for the exercise of the court's declaratory-relief jurisdiction." *State v. Florida Consumer Action Network*, 830 So. 2d 148, 153 (Fla. 1st DCA 2002). Indeed, even if the Attorney General exercised her privilege to be heard on a constitutional challenge, it would not supply the necessary adversarial interest. *Ervin v. Taylor*, 66 So. 2d 816, 817 (Fla. 1953) (holding that "[t]here were no adversaries, and being none, there was no actual controversy" where no defendant was named, even though Attorney General and State Attorney filed responses to constitutional challenge).

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 Challenged Provisions, has responsibilities related to Congressional redistricting or elections administration, or

has an actual, cognizable interest in these matters, she is an improper defendant. Therefore, the Attorney General must be dismissed as a defendant from this case.

III. The Complaint fails to state a cause of action for declaratory relief against the Attorney General.

Because there is no allegation that the Attorney General is designated to enforce the Challenged Provisions, has responsibilities related to Congressional redistricting or elections administration, or has an actual, cognizable interest in these matters, the Complaint also fails to allege that the Attorney General has an actual, present, adverse and antagonistic interest in the subject matter. Therefore, the Complaint fails to state a cause of action for declaratory relief against the Attorney General.

IV. The Complaint fails to state a cause of action for permanent injunctive relief against the Attorney General.

Because there is no allegation that the Attorney General is designated to enforce the Challenged Provisions, has responsibilities related to Congressional redistricting or elections administration, or has an actual, cognizable interest in these matters, the Complaint also fails to allege a clear legal right to injunctive relief against the Attorney General or irreparable harm absent entry of a permanent injunction against the Attorney General. Moreover, the public interest cannot be served by injunctive relief against an improper defendant. Therefore, the Complaint

fails to state a cause of action for permanent injunctive relief against the Attorney General.

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

Because there is no allegation that the Attorney General is designated to enforce the Challenged Provisions or has responsibilities related to Congressional redistricting or elections administration, an injunction against her would patently be broader than necessary to secure 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 Challenged Provisions. Furthermore, Plaintiffs request this Court to enjoin Defendants from "implementing, enforcing, or giving any effect to" the enacted redistricting plan and to enjoin Defendants from "conducting any elections under the enacted plan. Yet, Plaintiffs fail to specify how the Attorney General "implements, enforces, or gives effect to" Congressional district boundaries, how she "conducts any elections" for Congressional districts, or what acts or things she should be enjoined from doing. Any injunction simply prohibiting the Attorney General from "implementing, enforcing, or giving any effect to" the Challenged Provisions or "conducting any elections" for Congressional districts would not inform her of what she must refrain from doing without resorting to speculation and conjecture. Therefore, the injunction requested by Plaintiffs would not be sufficiently specific.

CONCLUSION

Wherefore, the Attorney General requests that this Court enter an order dismissing her as a defendant from this case.

Respectfully submitted,

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Attorney General

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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 16, 2022.

/s/ Bilal Ahmed Faruqui
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