

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

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

Case No.: 2022 CA 000666

Plaintiffs,

v.

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

Defendants.

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**MOTION TO DISMISS ON BEHALF OF INDIVIDUAL LEGISLATORS**

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, in their official capacities (collectively, the “Individual Legislators”), move to dismiss all claims against them in the Complaint.

The Individual Legislators are not proper parties to this lawsuit and are entitled to legislative immunity from lawsuits regarding their legislative duties. Plaintiffs have not requested any relief that this Court can order the Individual Legislators to provide. Finally, Plaintiffs’ claims against the Individual Legislators are merely redundant and duplicative of the claims against the Florida Senate and the Florida House of Representatives, which are separately named defendants, and there is therefore no legal basis to maintain identical claims against the Individual Legislators.

This Court should dismiss all claims against the Individual Legislators with prejudice.

### **Introduction**

This case involves a constitutional challenge to the congressional district map passed by the Legislature on April 21, 2022, and signed by the Governor on April 22, 2022. Five political advocacy organizations and twelve individuals filed a Complaint for Injunctive and Declaratory Relief, including five counts alleging violations of article III, section 20, of the Florida Constitution. Plaintiffs sued eight governmental entities and individuals in their official capacities, including: Florida Secretary of State Cord Byrd,<sup>1</sup> Florida Attorney General Ashley Moody,<sup>2</sup> the Florida Senate, the Florida House of Representatives, Florida State Senate President Wilton Simpson, Florida Speaker of the House Chris Sprowls, Florida State Senator and Chair of the Senate Committee on Reapportionment Ray Rodrigues, and Florida State Representative and Chair of the House Redistricting Committee Thomas J. Leek.

The Complaint includes allegations about the actions of the Florida Legislature, Florida Senate, and Florida House of Representatives.<sup>3</sup> But the

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<sup>1</sup> The Plaintiffs initially sued Secretary of State Laurel M. Lee, who served in office until May 16, 2022. Effective May 17, 2022, Secretary Byrd succeeded Secretary Lee in office and was automatically substituted as a party. *See Fla. R. Civ. P. 1.260(d)(1)*.

<sup>2</sup> This Court entered an order on May 17, 2022, dismissing the Attorney General from this case.

<sup>3</sup> For purposes of this Motion only, Plaintiffs' well-pleaded factual allegations within the Complaint are deemed true. *See Wallace Bros. v. Yates*, 117 So. 2d 202, 203 (Fla. 2d DCA 1960). Plaintiffs' "conclusions of law or unwarranted

Complaint contains almost no references to the Individual Legislators other than the paragraphs identifying them as defendants in their official capacities. (Compl., ¶¶ 32, 34). The Complaint does not include any requests for relief specific to the Individual Legislators.

### **Argument**

This Court should dismiss Plaintiffs' claims against the Individual Legislators for three reasons. First, the Individual Legislators are not proper parties to this lawsuit and are entitled to legislative immunity from suit regarding their legislative duties. Second, the Complaint does not request any relief that this Court can order the Individual Legislators to provide and therefore fails to establish a justiciable controversy. Finally, Plaintiffs' claims against the Individual Legislators in their official capacities add nothing to this suit and are duplicative of the claims Plaintiffs have alleged against the Florida Senate and the Florida House of Representatives.

#### **I. The Individual Legislators are not proper parties and are entitled to legislative immunity from suit.**

Under well-established Florida law, “[i]ndividual legislators are not themselves proper parties to an action seeking a declaration of rights under a particular statute. Indeed, state legislators are immune from suit for their acts done within the sphere of legislative activity.” *Walker v. President of the Senate*,

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deductions of fact are not admitted.” *Ellison v. City of Fort Lauderdale*, 175 So. 2d 198, 200 (Fla. 1965); see also *Bohannon v. Shands Teaching Hosp. & Clinics, Inc.*, 983 So. 2d 717, 721 (Fla. 1st DCA 2008) (Plaintiff’s “mere conclusions tracking the language of the statutory definitions, unsupported by facts, . . . are legally insufficient.”).

658 So. 2d 1200, 1200 (Fla. 5th DCA 1995). *See also, e.g., Haridopolos v. Alachua Cnty.*, 65 So. 3d 577, 578 (Fla. 1st DCA 2011) (holding that “legislators are not proper parties to actions seeking a declaration of rights under a particular statute”); *Fla. House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 523-24 (Fla. 1st DCA 2012) (concluding that Florida legislators are entitled to legislative immunity from suit under both common law and constitutional principles). Because the Individual Legislators are not proper parties to this case—and are entitled to absolute legislative immunity from suit—the Plaintiffs’ claims against them should be dismissed with prejudice.

Florida courts have clearly resolved whether individual legislators are proper party defendants in a lawsuit challenging the constitutionality of a statute. They are not. In *Haridopolos*, the Senate President and Speaker of the House were sued for declaratory relief regarding the constitutionality of an impact fee statute. 65 So. 3d at 577. After the trial court denied their motion to dismiss, the legislators petitioned for a writ of certiorari on the basis that they were not proper parties to the underlying action. *Id.*

The First District granted the legislators’ petition. “A suit challenging the constitutionality of a statute must be brought against the state agency or department charged with enforcing the statute at issue. In other words, legislators are not proper parties to actions seeking a declaration of rights under a particular statute.” *Id.* at 578 (internal citations omitted). Because the trial judge departed from the essential requirements of law, the appellate court granted the writ and quashed the order denying the motion to dismiss. *Id.* at

578-79. *See also Walker*, 658 So. 2d at 1200 (holding that Senate President and Speaker of the House were not proper parties to declaratory judgment action); *Atwater v. City of Weston*, 64 So. 3d 701, 704 (Fla. 1st DCA 2011) (same).

Significantly, the Florida Senate and the Florida House of Representatives are not seeking dismissal of Plaintiffs' claims against them and are participating in this lawsuit so that they have "an opportunity to respond" to Plaintiffs' challenges in this redistricting case. *See Brown v. Butterworth*, 831 So. 2d 683, 689-90 (Fla. 4th DCA 2002) (internal quotation marks and citation omitted). Although *Brown* supports the Senate President's right to intervene in a constitutional challenge to redistricting legislation, *Brown* does not support forcing Individual Legislators sued in their official capacities to remain as separate named defendants in a constitutional challenge—especially one where the Florida Senate and the Florida House of Representatives are already named parties. *See id.* (noting that the Senate President was not an indispensable party to the suit, but granting his motion to intervene to give the Florida Senate an opportunity to defend the redistricting map the Legislature had enacted).

Legislative immunity also bars Plaintiffs' claims against the Individual Legislators. "The principle of legislative immunity was so well established in English and American law that it was incorporated into the United States Constitution." *Expedia*, 85 So. 3d at 522. Because no Florida statute has abrogated the immunity from suit that existed at common law, Florida legislators continue to enjoy legislative immunity from civil liability for actions taken in the course of their legislative duties. *Id.* at 523-24. *See also id.* at 524 (holding, as

an independent ground for the court’s decision, that the separation of powers provision of the Florida Constitution required the judiciary to recognize the existence of legislative immunity from suit); *Tenney v. Brandhove*, 341 U.S. 367 (1951) (applying common law principles to conclude that members of California Legislature were immune from liability in a civil suit); *Scott v. Taylor*, 405 F.3d 1251, 1254-57 (11th Cir. 2005) (holding that state legislators are entitled to absolute legislative immunity for actions taken in their official capacity).

On both proper-party and legislative immunity grounds, precedent squarely forecloses Plaintiffs’ claims against the Individual Legislators. The Complaint seeks declaratory relief against legislators regarding the constitutionality of congressional redistricting legislation that the Individual Legislators do not “enforce.” To the extent the Complaint addresses the Individual Legislators at all, it discusses their involvement in enacting legislation—a quintessentially legislative matter falling within the scope of legislative immunity. Plaintiffs’ claims against the Individual Legislators are barred and should be dismissed with prejudice.

**II. The Complaint does not request any relief that this Court can order the Individual Legislators to provide.**

Plaintiffs’ claims against the Individual Legislators also fail because the Complaint does not request any relief that the Individual Legislators can provide. As discussed above, Florida law prohibits Plaintiffs from obtaining declaratory relief challenging the constitutionality of a statute against individual members of the legislature. (Compl. ¶ 134(a)). The Individual Legislators have no role in administering congressional elections and therefore cannot be enjoined from

“implementing” or “enforcing” or “conducting . . . elections for the U.S. House of Representatives” under the challenged statute. (Compl. ¶ 134(b)). Under the separation of powers, a court may not order the Legislature to enact legislation, *Corcoran v. Geffin*, 250 So. 3d 779, 783–84 (Fla. 1st DCA 2018), and, even if it could, Senate President Simpson, State Senator Rodrigues, House Speaker Sprowls, and State Representative Leek, as four individual legislators, cannot themselves enact legislation or “adopt[] a new congressional districting plan” in response to an order or judgment of this Court. (Compl. ¶ 134(c)). *See, e.g.*, Art. III, § 7, Fla. Const. (“Passage of a bill shall require a majority vote in each house.”).

In short, Plaintiffs have made no factual allegations showing that the Individual Legislators’ presence in this lawsuit is necessary to Plaintiffs’ ability to obtain the ultimate relief they seek. In fact, the Complaint fails to identify any relief that the Individual Legislators could lawfully provide. *Cf. May v. Holley*, 59 So. 2d 636, 639 (Fla. 1952) (identifying relief beyond the mere “giving of legal advice by the courts” as an element “necessary in order to maintain the status of the proceeding as being judicial in nature and therefore within the constitutional powers of the courts”)

Because Plaintiffs have not identified any relief this Court could order against the Individual Legislators, this Court should dismiss Plaintiffs’ claims against the Individual Legislators with prejudice.

**III. Plaintiffs' claims against the Individual Legislators are redundant and duplicative of their claims against the Florida Senate and the Florida House of Representatives.**

Finally, Plaintiffs' claims against the Individual Legislators should be dismissed because they are merely redundant and duplicative of their claims against the Florida Senate and the Florida House of Representatives. Where a government agency can be sued directly, there is no need to bring an official-capacity action against the agency's officers. *See Busby v. City of Orlando*, 931 F.2d 764, 766 (11th Cir. 1991) (noting that "suits against a municipal officer sued in his official capacity and direct suits against municipalities are functionally equivalent" and "[t]o keep both the City and the officers sued in their official capacity as defendants in this case would have been redundant"). Florida courts agree and dismiss suits against employees in their official capacities where the governmental entity is also sued. *See, e.g., Braden Woods Homeowners Ass'n, Inc. v. Mavard Trading, Ltd.*, 277 So. 3d 664, 671 (Fla. 2d DCA 2019) (holding that in a case "seeking the same injunctive and declaratory relief" against the officer and government entity, where damages are not sought so the government entity cannot contest liability based upon the officer's actions, the suit against the officer is redundant and properly dismissed); *Stephens v. Geoghan*, 702 So. 2d 517, 527 (Fla. 2d DCA 1997) ("A suit against a defendant in his official capacity is, in actuality, a suit against the governmental entity which employs him."); *De Armas v. Ross*, 680 So. 2d 1130, 1131-32 (Fla. 3d DCA 1996) (dismissing claims against municipal officers sued in their official capacity



for violations of Florida's Whistleblower's Act because the municipality could provide plaintiff with all desired relief).

Here, Plaintiffs have sued the Florida Senate and the Florida House of Representatives as well as the Individual Legislators, alleging the same declaratory and injunctive claims and seeking the same relief. Plaintiffs have not alleged any facts establishing a separate basis of liability for any of the claims in the Complaint. Indeed, Plaintiffs have not alleged any connection between any statements or actions specific to the Individual Legislators and liability for any of the claims in Plaintiffs' Complaint. Under these circumstances, Plaintiffs' suit against the Individual Legislators is "merely superfluous and adds nothing" to Plaintiffs' case. *See Payne v. DeKalb Cnty.*, 414 F. Supp. 2d 1158, 1179-80 (N.D. Ga. 2004).

### **Conclusion**

For the above reasons, this Court should dismiss Plaintiffs' claims against the Individual Legislators with prejudice.

Respectfully Submitted,

/s/ Andy Bardos

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 6th day of June 2022, a copy of the foregoing was filed via electronic means through the Florida Courts E-Filing portal and was served via electronic mail on all counsel of record.

/s/ Daniel Nordby

Attorney