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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,

Case No. 2022-CA-000666

v.

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

Defendants.
_____/

ORDER GRANTING INDIVIDUAL LEGISLATORS' MOTION TO DISMISS

This case came on for hearing on July 14, 2022, on a motion to dismiss filed on behalf 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, in their official capacities (collectively, the "Individual Legislators"). Upon consideration of the Complaint, the Individual Legislators' motion to dismiss, and presentations by counsel, the Court grants the motion to dismiss.

In this case, Plaintiffs bring constitutional challenges to the congressional district map passed by the Legislature as Senate Bill 2-C on April 21, 2022, and signed by the Governor on April 22, 2022. Ch. 2022-265, Laws of Fla. Plaintiffs sued the Florida Senate, the Florida House of

Representatives, and six individuals in their official capacities: the Secretary of State, the Attorney General,[1] and the Individual Legislators. The Complaint minimally mentions the Individual Legislators and does not include any requests for relief that they alone could provide.

The Court grants the Individual Legislators' motion to dismiss for four alternative and independently sufficient reasons: (1) the Individual Legislators are not proper parties; (2) the Individual Legislators have legislative immunity; (3) Plaintiffs have identified no relief that is not barred by Florida's separation of powers provision; (4) and the Individual Legislators' inclusion in this suit is redundant and duplicative.

First, Florida law is clear that "legislators are not proper parties to actions seeking a declaration of rights under a particular statute." *Haridopolos v. Alachua Cnty.*, 65 So. 3d 577, 578 (Fla. 1st DCA 2011); *see also Walker v. President of the Senate*, 658 So. 2d 1200, 1200 (Fla. 5th DCA 1995) ("Individual legislators are not themselves proper parties to an action seeking a declaration of rights under a particular statute."). Plaintiffs in this case seek declarations of their rights under Senate Bill 2-C, the Congressional district map legislatively enacted following the 2020 U.S. Census. (Compl. pp. 2-5). The Individual Legislators are not proper parties to such a suit.

Plaintiffs argue that the First District Court of Appeal in *Atwater v. City of Weston*, 64 So. 3d 701 (Fla. 1st DCA 2011), created an exception to this

[1] The Attorney General was dismissed from this lawsuit on May 17, 2022.

well-settled principle for redistricting cases. But the *Atwater* Court held that legislators were *not* proper parties in a case challenging growth management legislation. Plaintiffs' argument is based upon dicta citing a decision by the Fourth District for the proposition that the Senate President was a proper party in a redistricting case. *See id.* at 704 (*Brown v. Butterworth*, 831 So. 2d 683, 689-90 (Fla. 4th DCA 2002)). Notably, the Senate President in *Brown* moved to intervene in that redistricting case, and the Fourth District reversed the trial court's denial of that motion. *See Brown*, 831 So. 2d at 689-90 (holding that the Senate President was not an indispensable party in a redistricting case but that he had a sufficient cognizable interest in the action to intervene). A Senate President's right to intervene, however, does not permit Plaintiffs to force multiple legislators, against their wishes, to participate in a suit challenging the constitutionality of a statute. Plaintiffs' other cited cases are unpersuasive because they involved easily distinguishable facts, cases in other states, or legislators who willingly participated in the case.

Second, "state legislators are immune from suit for their acts done within the sphere of legislative activity." *Walker*, 658 So. 2d at 1200. "The principle of legislative immunity was so well established in English and American law that it was incorporated into the United States Constitution." *Fla. House of Representatives v. Expedia, Inc.*, 85 So. 3d 517, 522-24 (Fla. 1st DCA 2012) (holding that legislators enjoy immunity from civil liability for actions taken in the course of their legislative duties); *see also Tenney v.*

Brandhove, 341 U.S. 367 (1951) (concluding that California state legislators were immune from civil liability based upon common law principles); *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). Plaintiffs' suit is based upon the Legislature's passage of Senate Bill 2-C. Thus, Plaintiffs directly challenge the Individual Legislators' actions in the course of their legislative duties. The Individual Legislators enjoy legislative immunity from this suit.

Plaintiffs argue that traditional legislative immunity principles do not apply in redistricting litigation and point to cases from the U.S. Supreme Court and other state courts where legislators were named parties. But legislative immunity can be waived, and the sheer fact that one legislator participated in another suit does not mean Plaintiffs can compel the Individual Legislators here to participate in this suit. Moreover, Plaintiffs cite no case supporting their argument that a redistricting case presents an exception to the generally applicable common law principle of legislative immunity. And even if the common law did not provide legislators this right, the separation of powers provision of the Florida Constitution demands that courts recognize the existence of legislative immunity from suit. *See Expedia*, 85 So. 3d at 524.

Third, Plaintiffs have not identified any relief they wish to obtain from the Individual Legislators that is not prohibited by the separation of powers provision of the Florida Constitution. The separation of powers prohibits

courts from ordering the Legislature to enact legislation or take other actions within the province of the Legislative branch. Art. II, § 3, Fla. Const.; *see also Corcoran v. Geffin*, 250 So. 3d 779, 783-84 (Fla. 1st DCA 2018). The Individual Legislators do not enforce redistricting legislation and have no role in the administration of congressional elections. Thus, they cannot be enjoined from "implementing" or "enforcing" or "conducting . . . elections for the U.S. House of Representatives" under Senate Bill 2-C. (Compl. ¶ 134(b)).

Plaintiffs argue that the Senate President and Speaker of the House can call a Special Session. But so, too, can the Governor, or three-fifths of the Legislature. *See* Art. III, §§ 3(c), Fla. Const.; §11.011(2), Fla. Stat. This allowance in Florida Law does not mean that the Individual Legislators can redress Plaintiffs' alleged injuries; if so, any legislator could be named in any suit challenging the constitutionality of a legislative act. Moreover, this Court cannot order the Individual Legislators to call a special session, any more than it can order the Individual Legislators to legislate. *See* Art. II, § 3, Fla. Const.; *see also Moffitt v. Willis*, 459 So. 2d 1018, 1022 (Fla. 1984) (holding that the "judiciary cannot compel the legislature to exercise a purely legislative prerogative"). The quintessential legislative prerogative is the "legislative power," which the Florida Constitution confers on the Legislature, Art. III, § 1, Fla. Const., and which includes the "authority to enact laws," *State v. Duval Cnty.*, 79 So. 692, 697 (Fla. 1918); *accord Fla. House of Representatives v. Crist*, 999 So. 2d 280, 284 (Fla. 2008) ("Enacting laws . . . is quintessentially a legislative function.").

Plaintiffs note that the Florida Supreme Court in *League of Women Voters v. Detzner*, 172 So. 3d 363, 413-15 (Fla. 2015), ordered the Legislature to redraw congressional districts. But the Court subsequently made clear—after the Legislature convened a special session and failed to pass a new redistricting plan—that it had simply "provided the Legislature with the *opportunity* to pass a constitutionally compliant plan." *League of Women Voters of Fla. v. Detzner*, 179 So. 3d 258, 261 (Fla. 2015) (emphasis added). The Florida Supreme Court's clarification is consistent with the approach taken in redistricting cases by other courts, which, rather than order the enactment of redistricting legislation, have provided state legislatures with an opportunity to enact a remedial plan. *See*, *e.g.*, *McDaniel v. Sanchez*, 452 U.S. 130, 150 n.30 (1981); *Reynolds v. Sims*, 377 U.S. 533, 586 (1964). Moreover, the Florida Supreme Court never directed individual legislators to provide any relief.

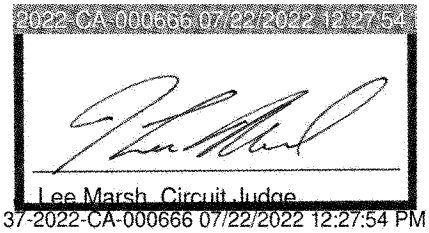
Finally, even if the Court ruled against the Individual Legislators on the above three issues, the Court would still dismiss them from this suit. Plaintiffs' inclusion of the Individual Legislators is redundant and duplicative. Plaintiffs suing government entities do not also need to bring suit against the officers those entities employ. *Cf. Busby v. City of Orlando*, 931 F.2d 764, 766 (11th Cir. 1991) ("[S]uits against a municipal officer sued in his official capacity and direct suits against municipalities are functionally equivalent."). The Florida Senate and Florida House of Representatives are also parties to this case and have not sought to be dismissed. In fact, they have answered

the Complaint. Because the claims and relief sought against those governmental entities and the Individual Legislators are the same, the Individual Legislators' participation is unnecessary in this suit. *See, e.g.*, *Braden Woods Homeowners Ass'n, Inc. v. Mavard Trading, Ltd.*, 277 So. 3d 664, 671 (Fla. 2d DCA 2019); *De Armas v. Ross*, 680 So. 2d 1130, 1131-32 (Fla. 3d DCA 1996).

Plaintiffs argue the claims against the Individual Legislators are not redundant because the Individual Legislators possess powers that are separate from those of the Florida Senate or Florida House of Representatives. But, even if this Court ultimately directs a remedy, Plaintiffs could identify no relief that the Individual Legislators can provide that the Florida Senate or Florida House of Representatives could not also provide. Moreover, Plaintiffs' argument that dismissal for redundancy is limited to tort law is erroneous and ignores the Second District's decision in *Braden Woods*. *See* 277 So. 3d at 671.

For the foregoing reasons, the Motion to Dismiss on Behalf of Individual Legislators is **GRANTED** and the Individual Legislators are dismissed from this case with prejudice. The Plaintiffs shall take nothing by this action against Defendants Individual Legislators, and the Defendants Individual Legislators shall go hence without day.

DONE AND ORDERED in Tallahassee, Leon County, Florida, this Friday, July 22, 2022.



J. LEE MARSH
CIRCUIT JUDGE

Copies furnished to:

All Counsel of Record