Filing # 42989896 E-Filed 06/20/2016 04:41:54 PM

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

CASE NO. 2016-CA-001044

HOWARD FORMAN, in his official capacity as the Clerk of the Circuit Court of the Seventeenth Judicial Circuit and the Clerk of the Court of Broward County, Florida,

Plaintiff,

v.

FLORIDA DEPARTMENT OF REVENUE, FLORIDA DEPARTMENT OF FINANCIAL SERVICES, and THE JOINT LEGISLATIVE BUDGET COMMISSION

Defendants.
___________________________________/

MOTION TO DISMISS

Defendants, Florida Department of Revenue and The Joint Legislative Budget Commission, hereby move to dismiss the instant complaint and as grounds state:

1. This is a case in which Plaintiff, Howard Forman, a state official under Art. V, § 16, Fla. Const., challenges the constitutionality of various Florida Statutes that govern the activities of his office. Specifically, Plaintiff challenges §§ 28.2401, 28.241(1)(a)1.a., 28.241(1)(a)1.b., 28.241(1)(a)2., 28.241(1)(c)1.,

28.241(1)(c)2., 34.041(1), 34.041(1)(c), 48.108(1)[1], and 28.35-28.36, Fla. Stat.

2. The provisions of chapters 28 and 34 generally set fees for various filings in the courts of Florida and provide for the transfer of portions of those fees to the Department of Revenue for deposit into the General Revenue Fund, the State Courts Revenue Trust Fund and other related Trust Funds. Plaintiff asserts that these "diversions" violate Art. V, § 14(b), Fla. Const.

3. The provisions of §§ 28.35-28.36, Fla. Stat., generally provide for the budgeting process for the 67 Clerks of Court which the Plaintiff asserts violates Art. III, §§ 12 and 19(c)(3), Fla. Const.

4. Plaintiff further contends that the FY 2015-16 budget does not "adequately and appropriately" fund the Clerks of Court in the performance of their court related functions." Plaintiff makes this allegation with respect to the 67 clerks statewide and to Broward County in particular.

5. As a public official, Plaintiff lacks standing to challenge the constitutionality of the statutes governing the activities of his office.

> As a general rule, a public official does not have standing to sue for the purpose of determining whether or not the law which sets forth his duties is valid. *Graham v. Swift*, 480 So.2d 124 (Fla. 3d DCA 1985).

Branca v. City of Miramar, 634 So.2d 604 (Fla. 1994). In *Crossings At Fleming*

---

[1] Defendants cannot find § 48.108(1), Fla. Stat., but to the extent there is a statute that does what Plaintiff alleges in paragraph 48 of his complaint, it is subject to the same argument set forth below with respect to the other challenged sections.

Island Community Development Dist. v. Echeverri, 991 So.2d 793 (2008), the supreme court recognized, "the historical rule that a public official acting in his or her official capacity does not have standing to initiate an action challenging the validity of a statute."

However, there is an exception to this rule when the law requires an expenditure of public funds. *Branca, citing Kaulakis v. Boyd*, 138 So.2d 505 (Fla.1962). See also *Echeverri,* recognizing also that "a ministerial officer may challenge the constitutionality of a statute where "his administration of the Act in question will require the expenditure of public funds." *Barr*, 70 So.2d at 350." The supreme court however "caution[ed] that past precedent indicates that the public funds exception is a **narrow exception**. *See*, e.g., *Dep't of Educ. v. Lewis*, 416 So.2d 455, 459 (Fla.1982)." (e.a.)

In this case, the historical rule applies and the exception does not. By his own allegations, Plaintiff is a public official acting in his official capacity challenging the validity of statutes setting forth his duties. None of the challenged statutes requires the expenditure of public funds. Rather, they require transfer of state funds from the accounts of the Clerks to the General Revenue Fund or various state trust funds. Plaintiff therefore lacks standing and this case should be dismissed.

6. Plaintiff's challenge to §§ 28.2401, 28.241(1)(a)1.a., 28.241(1)(a)1.b., 28.241(1)(a)2., 28.241(1)(c)1., 28.241(1)(c)2., 34.041(1), 34.041(1)(c), 48.108(1), Fla. Stat., as violative of Art. V, § 14, Fla. Const., fails as a matter of law. In *Crist v. Ervin*, 56 So. 3d 745, 751-52 (Fla. 2010), as revised on reh'g (Jan. 20, 2011), the supreme court held:

> The filing fee statutes at issue are not contrary to article V, section 14 of the Florida Constitution. . . . There is no language in section 14 of article V (or any provision of the Florida Constitution) that prevents the Legislature from exercising its option to use filing fees to fund the administration of justice by directing certain portions of the filing fees to the general revenue fund before it then appropriates this money to the costs of the administration of justice.

The use of these filing fees to fund aspects of the administration of justice is specifically permitted by Art. V, § 14(b), which provides in part: "Selected salaries, costs, and expenses of the state courts system may be funded from appropriate filing fees for judicial proceedings and service charges and costs for performing court-related functions, as provided by general law." There is no allegation in this case that suggests that the filing fees remitted to the state are not used in the administration of justice as contemplated by this sentence. In *Ervin*, the supreme court ruled the remittances did not convert the filing fees into illegal taxes because more funds were appropriated for the administration of justice than were remitted by the clerks. *Ervin*, 56 So. 3d at 750 ("Because the Legislature funded the costs of the administration of justice with far more than the amount of

filing fees deposited into the general revenue fund, the filing fee statutes are not operating as an unconstitutional tax.")

7. To the extent he seeks a declaration that the money appropriated by the Legislature for the operation of the Court Clerks' offices is insufficient, this court lacks subject matter jurisdiction over this political question.[2] A court cannot order the Legislature to appropriate funds, Art. V, § 14(d), or second-guess whether an appropriation is sufficient. See *In re Order on Prosecution of Criminal Appeals by Tenth Judicial Circuit Pub. Defender*, 561 So. 2d 1130, 1136 (Fla. 1990) ("... it is not the function of this Court to decide what constitutes adequate funding and then order the legislature to appropriate such an amount. Appropriation of funds for the operation of government is a legislative function. [T]he judiciary cannot compel the Legislature to exercise a purely legislative prerogative.). *See also Republican Party of Fla. v. Smith*, 638 So. 2d 26, 28 (Fla. 1994) ("This provision [Art. VII, § 1(c)] gives to the Legislature the exclusive power of deciding how, when, and for what purpose the public funds shall be applied in carrying on the government."

---

[2] In response to an argument that the filing fee statutes at issue caused underfunding of the courts, the Court in *Ervin* stated, "while this Court has stated that Florida's court system is operationally underfunded, *see e.g., In re Certification of Need for Additional Judges*, 29 So.3d 1110 (Fla. 2010), we have not determined that the judiciary is underfunded to the point of it being a violation of the constitution. Moreover, we agree with the State that the trial court's ruling on this claim is based upon the Appellees' erroneous position that the cause of underfunding is the existence of the challenged statutes rather than specific appropriations decisions.

(internal quotation marks omitted)). Under the Florida Constitution, "[t]he legislative power of the state shall be vested in a legislature of the State of Florida," Art. III, § 1, Fla. Const., and "[n]o money shall be drawn from the treasury except in pursuance of appropriation made by law," Art. VII, § 1(c), Fla. Const. In other words, "[t]he judiciary shall have no power to fix appropriations." Art. V, § 14(d), Fla. Const.

The Court should reject Plaintiffs' claim under the strict separation-of-powers doctrine. Under the Florida Constitution, "[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches," Art. II, § 3, Fla. Const., and "no branch may encroach upon the powers of another," *Chiles v. Children A, B, C, D, E, & F*, 589 So. 2d 260, 264 (Fla. 1991).

Plaintiff claims that the State's level of funding for the Clerks does not "adequately and appropriately" fund the Clerks of Court in the performance of their court related functions. This request for judicial intervention runs afoul of this "strict separation of powers doctrine." *Fla. House of Representatives v. Crist*, 999 So. 2d 601, 611 (Fla. 2008) (*quoting Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004)). Plaintiff's claim of inadequate funding should be dismissed.

WHEREFORE, Defendants respectfully request that this court issue an order dismissing this case with prejudice and enter judgment for the Defendants.

Respectfully submitted this 20th day of June, 2016

PAMELA JO BONDI
ATTORNEY GENERAL

s/ Jonathan A. Glogau
Jonathan A. Glogau
Chief, Complex Litigation
Florida Bar # 371823
Office of the Attorney General
PL-01, The Capitol
Tallahassee, FL 32399-1050
850-414-3300
Jon.glogau@myfloridalegal.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on June 20, 2016 to:

RICHARDT. DONELAN, JR.
Chief Counsel
Florida Bar No. 198714
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4247
richard.donelan@myfloridacfo.com

MARK A. TEMPLETON
Assistant General Counsel
Florida Bar No. 115832
Department of Financial Services
200 East Gaines Street
Tallahassee, Florida 32399-4247
mark. templeton@myfloridacfo.com

Mark Herron
mherron@lawfla.com
Albert T. Gimbel
tgimbel@lawfla.com
Robert J. Telfer, III
rtelfer@lawfla.com
Messer Caparello, P.A.
Post Office Box 15579
Tallahassee, FL 32317