

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

ROBERT HUTCHINSON and
JEFFREY SHAPIRO,

CASE NO: 2023-CA- 02361

Petitioners,

vs.

RON DESANTIS, in his official capacity
as Governor of the State of Florida,

Respondent.

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RESPONSE AND OBJECTION
TO MOTION TO TRANSFER ACTION

COME NOW, the Petitioners, by and through their undersigned attorneys, and respond to the Respondent's Motion to Transfer Action and raise the following objections:

1. This case was properly assigned to the Honorable Lee Marsh in accordance with this Circuit's judicial assignment order.
2. Judge Marsh entered an Order to Show Cause on October 9, 2023 which provides an expeditious briefing schedule.
3. There is no basis in law or fact to assign this case to Judge Dempsey.

4. The Respondent correctly notes that there is no Local Rule, custom or policy which permits the assignment of a case from one judge to another in the absence of disqualification or similar event.

5. The Respondent anchors his request in Rule 1.270(a), Fla.R.Civ.P. which governs consolidation of separate actions. Upon close examination, the Respondent is *not* seeking consolidation of these actions. Rather, the Respondent simply prefers the Judge it was assigned in the City of Gainesville case over the current judicial assignment.

6. The Respondent proclaims that the two cases are closely related without actually undertaking any analysis of the legal claims addressed in the separate cases or the facts supporting the diverse claims. At most, Respondent merely suggests that Judge Dempsey has a general familiarity with the statute in question.

MEMORANDUM OF LAW

Respondent pins its motion to Rule 1.270 based on a couple of cherry-picked phrases concerning “common questions” and “unnecessary costs or delay”. Courts which have considered this question, have instead adopted a five-part test to examine whether consolidation or transfer is appropriate:

In deciding whether the consolidate cases, a trial court must consider: (1) whether the trial process will be accelerated due to consolidation; (2) whether unnecessary costs and delays can be

avoided by consolidation; (3) whether there is the possibility for inconsistent verdicts; (4) whether consolidation would eliminate duplicative trials that involve substantially the same core of operative facts and questions of law; and (5) whether consolidation would deprive a party of a substantive right.

Lee v. Lee, 352 So.3d 420, 427 (Fla. 2d DCA 2022) *quoting* State Farm Fla. Ins. Co. v. Bonham, 886 So.2d 1072, 1074 (Fla. 5th DCA 2004); *See, also*, Jallali v. Christiana Tr., 297 So.3d 580, 583 (Fla. 4th DCA 2020) (Setting forth the same five factors).

The claims at issue in City of Gainesville, Florida v. The State of Florida, et al, Case No.: 2023-CA-1928 (Fla. 2d Jud. Cir., Leon Cty) concerned facial constitutional and legal challenges to the validity of Chapter 2023-348, Laws of Fla. (also referred to as HB 1645). Judge Dempsey entered a Summary Final Judgment on September 29, 2023 finding that the City of Gainesville lacked standing to sue and had also sued the wrong parties.¹ The City of Gainesville case did not address the manner in which GRU Authority members are selected.

In contrast, Petitioners in this case assume that the statute is constitutional and are attempting to enforce those provisions which govern

¹ Judge Dempsey also went on to find in favor of the State on all of the City's substantive claims. However, it is debatable whether that portion of the ruling is anything but dicta given the fact that the Judge had already determined that she lacked jurisdiction to hear the case.

the appointment of Authority members. There is not even the slightest overlap in legal issues between the two cases. That lack of overlap is reflected in the nature of the proceedings. In City of Gainesville, the plaintiff sought declaratory and injunctive relief against the statute in a conventional civil suit. Here, Petitioners have are seeking an extraordinary writ to enforce the very same statute which the plaintiffs disavowed in City of Gainesville. There are no common issues of law between the two cases.

This case turns on facts – albeit undisputed facts. In contrast, City of Gainesville involved facial challenges where the specific facts of the case were immaterial except to establish standing.

[B]ecause the Cheshire plaintiffs mounted facial overbreadth challenges the underlying facts are largely irrelevant. See City of Los Angeles v. Patel, 576 U.S. 409, 415, 135 S.Ct. 2443, 192 L.Ed.2d 435 (2015) (“A facial challenge is an attack on a statute itself as opposed to a particular application.”); Miami Herald Pub. Co. v. City of Hallandale, 734 F.2d 666, 674 n.4 (11th Cir. 1984) (“In a facial challenge such as this, the facts of the challenging party's case are irrelevant.”) (*citing* Beckerman v. City of Tupelo, 664 F.2d 502, 506 (5th Cir. 1981)).

Cheshire Bridge Holdings, LLC v. City of Atlanta, Georgia, 15 F.4th 1362, 1365 (11th Cir. 2021); See, also, Forsyth County, Ga. v. Nationalist Movement, 505 U.S. 123, 133 (1992) (“Facial attacks on the discretion granted a decisionmaker are not dependent on the facts surrounding any

particular permit decision.”). There are no common issues of fact between the two cases.

The remaining 1.270 factors do not support a transfer of this case to Judge Dempsey. This case is already proceeding expeditiously with a date certain for the Respondent’s response to the Order to Show Cause. A transfer to Judge Dempsey will not expedite that process. If anything an administrative transfer may delay proceedings while Judge Dempsey comes up to speed regarding what, for her, will be novel issues.

There are no costs to the parties other than the initial filing fee. The facts are uncontested and Petitioners’ claim will rise or fall on the basis of the facts alleged in their Petition. It is not anticipated that any discovery will be required in this proceeding. Accordingly, a transfer to Judge Dempsey will not avoid any unnecessary costs – because there will be no new costs.

The third factor is neutral: there is no possibility of inconsistent verdicts because the cases literally have nothing to do with one another.

The fifth factor is inapplicable. There is no suggestion that Judge Marsh is incapable of a fair ruling in this case or that Judge Dempsey is the only jurist who could possibly make a decision on the issue presented.

In short, there is no basis in fact or law to transfer this action to Judge Dempsey nor would the interests of justice be served by any such transfer.

Given the lack of legal analysis in support of the Respondent's Motion and considering the actual facts of the two separate cases, it is apparent that the Respondent is engaged in "judge shopping" wholly unconnected to the efficient administration of justice. *Compare, Kruckenberq v. Powell*, 422 So.2d 994, 996 (Fla. 5th DCA 1982) ("Subject only to substantive law relating to disqualification of judges, litigants have no right to have, or not have, any particular judge of a court hear their cause...").

WHEREFORE, Petitioners pray that the Court deny Respondent's Motion to Transfer Action.

I HEREBY CERTIFY that a true and correct copy of the foregoing Response has been furnished to RYAN D. NEWMAN, Esquire [Ryan.Newman@eog.myflorida.com], NICHOLAS J.P. MEROS, Esquire [Nicholas.Meros@eog.myflorida.com] and SAMUEL F. ELLIOT, Esquire [Samuel.Elliot@eog.myflorida.com], Executive Office of the Governor, The Capitol, PL-5 400 S. Monroe Street, Tallahassee, Florida 32399, by E-mail this 17th day of October, 2023.

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