IN THE CIRCUIT COURT OF THE FIRST JUDICIAL CIRCUIT
IN AND FOR SANTA ROSA COUNTY, FLORIDA

CARMEN A. REYNOLDS,

Plaintiff,

CASE NO. 09-1432-CA-01

vs.

CHARLIE CRIST, Governor
in his official capacity;
BILL McCOLLUM, Attorney
General in his official capacity;
and
ANA M. VIAMONTE ROS, M.D.,
M.P.H., State Surgeon General in
her official capacity,

Defendants.
_____/

DEFENDANT CRIST'S AND McCOLLUM'S MOTION TO DISMISS

Defendants, Governor CHARLIE CRIST and Attorney General BILL McCOLLUM, by undersigned counsel, hereby move pursuant to Fla. R. Civ. P. 1.140(b) to dismiss this action for injunction on the grounds of improper venue (sub. (3)) and failure to state a cause of action (sub. (6)).

Plaintiff challenges §381.00315(1)(b)4, Fla. Stat., which is part of the statute that provides for public health advisories and public health emergencies. Specifically, plaintiff attacks that subsection which pertains to ordering a person to be tested, treated and quarantined for communicable diseases that have high

"morbidity or mortality and present a severe danger to public health." By his paragraph 5, plaintiff contends this provision violates due process by subjecting such decisions "to the whim of an unelected official, the State Health Officer... ."

I. Venue is Improper.

This action is a facial challenge to a statute that is enforced by an official whose headquarters is in Tallahassee, Leon County, Florida, which is within the Second Judicial Circuit. As a result, venue is proper only in that judicial circuit and is therefore improper in this forum. See, School Board of Osceola County v. State Board of Education, 903 So. 2d 963 (Fla. 5th DCA 2005). This home venue privilege here is viewed as a matter of right. Id. Accordingly, this case must be dismissed for improper venue, or transferred to the Second Judicial Circuit.

II. Plaintiff Lacks Standing.

Plaintiff's lawsuit fails to state how and in what manner he is affected by this provision. It is elementary that a person who is not affected by a statute has no standing to challenge it. State v. Champe, 373 So. 874 (Fla. 1978). A challenge to a statute may only be brought by one whose rights or duties are affected or prejudiced by it. See, e.g., State ex rel. Utilities Operating Co. v. Mason, 172 So. 2d 225 (Fla. 1965). Since plaintiff has failed to meet the conditions precedent to asserting standing to maintain his challenge, his lawsuit must be dismissed for lack of standing.

III. The Governor and the Attorney General are not Proper or Nominal Parties.

A. Governor Crist.

Governor Crist is not a proper party to this action. In Harris v. Bush, 106 F. Supp. 2d 1272 (N. D. Fla. 2000), the court fully addressed the impropriety of the Governor's defendant party status. Joinder of the Governor there was based on plaintiff's simplistic allegation that the Governor must be a defendant because the Florida Constitution vests in the governor as chief executive officer the authority to "take care that the laws be faithfully executed... ." Art. IV, §1(a), Fla. Const.

In rejecting that contention, the court summarized over a decade of jurisprudence and dismissed the Governor:

> In order to challenge the constitutionality of a rule of law, a plaintiff must bring forth an action against the state official (or agency) responsible for enforcing the rule. See ACLU v. The Florida Bar, 999 F.2d 1486, 1490-91 (11th Cir.1993). Governor Bush argues that he is not the proper party to challenge the Baker Act because he holds no special relationship to the Act and is not expressly directed to oversee its enforcement. Plaintiff contends, however, that Governor Bush is the proper party because the Florida Constitution vests him with executive power to faithfully execute and enforce the laws of Florida. The Court agrees with Governor Bush.
>
> Article IV, S 1 of the Florida Constitution vests Governor Bush with executive power to enforce the laws. However, this general authority, standing alone, is insufficient to make him the proper party whenever a plaintiff seeks to challenge the constitutionality of a law. See, e.g., 1st Westco Corp. v. School Dist. of Philadelphia, 6 F.3d 108, 113 (3d Cir.1993); Warden v. Pataki, 35 F.Supp.2d 354, 358-59 (S.D.N.Y.), aff'd

sub nom. Chan v. Pataki, 201 F.3d 430 (2d Cir.1999), petition for cert. filed --- U.S.L.W. ---- (U.S. May 8, 2000) (No. 99-9887); Weinstein v. Edgar, 826 F.Supp. 1165, 1165-67 (N.D.Ill.1993); NAACP v. California, 511 F.Supp. 1244, 1261 (E.D.Cal.1981). But see Okpalobi v. Foster, 190 F.3d 337, 342- 49 (5th Cir.1999), reh'g en banc granted, 201 F.3d 353 (5th Cir.2000); Allied Artists Pictures Corp. v. Rhodes, 473 F.Supp. 560, 566 (S.D.Ohio 1979), aff'd 679 F.2d 656, 665 & n. 5 (6th Cir.1982).

As stated so clearly in Weinstein, **if this Court were to conclude that Governor Bush's "general obligation to faithfully execute the laws is a sufficient connection to the enforcement of [the Baker Act], then the constitutionality of every statute enacted by the [Florida] legislature necessarily could be challenged by merely naming the Governor as a party defendant."** 826 F.Supp. at 1167. (Emphasis added.)

In the case at bar, Plaintiff does not allege or even suggest that Governor Bush intends to enforce the statutory provision under attack. Nor does he cite the Court to authority stating the Governor of Florida bears a sufficient connection with the enforcement of the Baker Act. In fact, the Baker Act designates the Department of Children and Family Services ("Department") (formerly the Department of Health and Rehabilitative Services) as the "Mental Health Authority" of Florida and charges the Department and the Agency for Health Care Administration ("Agency") with "executive and administrative supervision over all mental health facilities, programs, and services." Fla.Stat.Ann. S 394.457(1) (West Supp.2000).

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This is not the type of self-enforcing statute analyzed in Okpalobi or Allied. Consequently, an Article III "case or controversy" does not exist between Plaintiff and Governor Bush. For the reasons stated above, Plaintiff's claims against Governor Bush are dismissed. Cf. Florida E. Coast Ry. Co. v. Martinez, 761 F.Supp. 782, 783-85 (M.D.Fla.1991) (granting motion to dismiss based on a finding that no case or controversy existed between the plaintiff and Governor Martinez).

106 F. Supp. 2d at 1276-77. See also Walker v President of the Senate, 658 So.2d. 1200 (Fla. 5th DCA 1995) (When challenge is made to constitutionality of a statute, it is the state official designated to enforce it who is the proper defendant.) Plaintiff alleges no facts connecting Governor Crist with the challenged statute; indeed, he cannot do so. Therefore, Governor Crist is not a defendant in this statutory challenge and this action must be dismissed as to him.

B. Attorney General McCollum.

Plaintiff alleges no facts connecting Attorney General McCollum the challenged statute.. Just as the Governor is not a proper party, neither is the Attorney General.

There are no allegations the Attorney General has ever enforced or threatened to enforce the challenged statute. Under the Florida Constitution (Art. IV, §4(b)) and the enabling statute (§16.01, Florida Statutes), the Attorney General does not have any enforcement or regulatory authority in accordance with the challenged statute.

In the absence of some regulatory or enforcement nexus between the challenged statute and the Attorney General, Defendant McCollum must be dismissed as a party. See, e.g., Children's Healthcare is a Legal Duty v. Deters , 92 F.3d 1412, 1416-1417 (6th Cir. 1996), cert. den. 519 U.S. 1149 (1997) (holding Ex Parte Young did not allow suit against Ohio's Attorney General, when "Ohio law delegates the enforcement of the challenged statutes to local prosecutors, not the Attorney General"); Planned

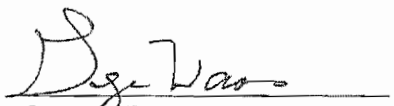
Parenthood , 376 F.3d at 921 ("State attorneys general are not invariably proper defendants in challenges to state criminal laws. Where an attorney general cannot direct, in a binding fashion, the prosecutorial activities of the officers who actually enforce the law or bring his own prosecution, he may not be a proper defendant.").[1]

CONCLUSION

Venue is improper, plaintiff lacks standing and he improperly and impermissibly names the Governor and Attorney General as party defendants. For the reasons set out above, this action should be dismissed.

Respectfully submitted,

BILL McCOLLUM
ATTORNEY GENERAL



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[1]It is noted that plaintiff bases his claim on a denial of due process. The challenged statute references enforcement by a law enforcement official under sec. 381.0012, Fla. Stat. Enforcement pursuant to that section requires the application for an injunction in circuit court and "upon hearing and good cause shown may grant" injunctive relief. This provision sets out a notice requirement, burden of proof and state liability for the improper or erroneous granting of an injunction or restraining order. Thus, in passing, the linkage between the challenged statute and the one cited above appears to provide all the process that is due. However, for the reasons set out herein, the court need not address the merits of plaintiff's claim because of the deficiencies set out herein.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished by U. S. Mail to Carmen A. Reynolds, pro se, 9621 Sunnybrook Drive, Navarre, Florida 32566, this 26th day of August, 2009.

George Waas