IN THE CIRCUIT COURT OF THE ELEVENTH JUDICIAL CIRCUIT
IN AND FOR MIAMI-DADE COUNTY, FLORIDA

FLORIDA EDUCATION ASSOCIATION; STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINO-HENJES; and, ANSDRES HENJES

Plaintiff(s),

v.

RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; FLORIDA BOARD OF EDUCATION; CARLOS GIMENEZ, in his official, capacity as Mayor of Miami-Dade County,

Defendant(s).

Circuit Civil Division

Case No.2020-015211 CA 01 (24)

DEFENDANT MAYOR CARLOS GIMENEZ' RESPONSE TO PLAINTIFFS' MOTION TO COMPEL EXPEDITED MEDIATION

Defendant Mayor Carlos Gimenez hereby files his response to Plaintiffs' Motion to Compel Expedited Mediation (the "Motion") and respectfully requests that the Court deny the Motion.

PRELIMINARY STATEMENT

The Miami-Dade County School Board has the power to determine how and when, in light of novel coronavirus 2019 (COVID-19), public schools in Miami-Dade County should open. The State defendants—Governor DeSantis, Richard Corcoran, and the Department of Education—might have the power to determine how and when, in light of COVID-19, public schools should open. Miami-Dade County Mayor Carlos Gimenez has ***no power*** to determine how and when public schools should open. Even if Plaintiffs were correct—that opening up public schools for

in-person instruction in Miami-Dade County would present intolerable risks to the teachers and students exposed to COVID-19—the Mayor cannot mandate virtual schooling or otherwise close public schools. The Mayor should not be forced to mediate a case in which the Mayor cannot, as a matter of law, grant the relief Plaintiffs are seeking.

The Plaintiffs bring this case out of frustration and fear of a disease that has ravaged the County. Mayor Gimenez is not unsympathetic to Plaintiffs' concerns. But the simple fact remains that Mayor Gimenez is not a proper party to this dispute and this Court is not the proper forum for such a challenge. The Mayor expects to shortly file a motion to dismiss this case. [1] Accordingly, the Mayor should not be compelled to use valuable time mediating this case. Instead, to the extent this Court orders expedited mediation, it should be between the Plaintiffs and the State Defendants only. As further described below, in a case such as this – wrought with political questions and at least one improper party – including the Mayor in a mediation at this time would not only be premature, but pointless.

ARGUMENT

A. Mayor Gimenez Should Not Be Forced to Mediation as He is Not a Proper Party to this Dispute

This is, at heart, a dispute between three parties, only two of which are in this case: the teachers, the state, and the School Board. Those are the entities which have a say in how and when public schools may open for in-person learning. The Mayor has no say in this process; there is no statutory authority granting the Mayor any role in that decision. *see* § 1001.33, Fla. Stat. (2020) ("Except as otherwise provided by law, all public schools conducted within the district shall be under the direction and control of the school board with the school district superintendent as

[1] Mayor Gimenez is simultaneously preparing a response to the Complaint and is not hereby waving his ability to make or repeat any of these arguments in that response. Instead, Mayor Gimenez felt it was essential to respond in a timely fashion to this Motion, so the Court would be fully informed before it ruled on the same.

executive officer."); § 1001.42(4)- (8), (19), Fla. Stat. ("The district school board, shall exercise all powers and perform all duties listed below: . . . [a]dopt and provide for the execution of plans for the establishment, organization and operation of the schools of the district, including but not limited to the following: . . . [e]stablish schools and adopt enrollment plans[,] . . . [a]dopt policies for the opening and closing of schools and fix uniform dates; however, the opening date of schools in the district may not be earlier than August 10 of each year[,] provide for the . . . proper attention to the health, safety, and other matters relating to the welfare of students . . . [and] "[a]dopt policies that clearly encourage and enhance maximum decisionmaking appropriate to the school site. Such policies must include guidelines for schools in the adoption and purchase of district and school site instructional materials and technology, the implementation of student health and fitness standards, staff training, school advisory council member training, student support services, budgeting, and the allocation of staff resources."); § 1001.49, Fla. Stat. ("the district school superintendent shall exercise the following powers: . . . [e]xercise general oversight over the district school system in order to determine problems and needs, and recommend improvements . . . [and] [a]dvise and counsel with the district school board on all educational matters and recommend to the district school board for action such matters as should be acted upon."). Indeed, Plaintiffs themselves concede that the Mayor has no role in running the public schools; the only responsibility that Plaintiffs even assert of the Mayor is a general "responsibl[ity] for providing real-time data on the metrics [of the pandemic] to the local school board and superintendent so that they may be best informed on the manner in which to safely reopen schools." *See* Complaint at ¶ 16. Even Plaintiffs concede that decision to as how and when to open schools is in the hands of the School Board and the Superintendent. *See id.*

A lawsuit cannot be brought against a political entity which cannot grant the relief sought. *See, e.g.*, *Marcus v. State Senate for the State*, 115 So. 3d 448, (Fla. 1st DCA 2013) (it is improper to bring declaratory action against government entity with no statutory role in enforcing statute at issue); *Atwater v. City of Weston*, 64 So. 3d 701 (Fla. 1st DCA 2011) (holding that the Senate President, Speaker of the House, Governor, and Secretary of State were not proper parties to an action challenging the growth management statute). Indeed, writs of prohibition may issue against courts which force government officials to participate in lawsuits in which they have no legal interest or authority. *See Scott v. Francati*, 214 So. 3d 742 (Fla. 1st DCA 2017).

Here, Mayor Gimenez is named only in Count III of the Complaint. That count specifically seeks, "an injunction to prohibit all named Defendants from taking actions to unconstitutionally force millions of public school students and employees to report to brick and mortar schools that should remain closed during the resurgence of COVID-19 cases pursuant to the CDC and other federal guidelines as well as the overwhelming opinion of medical and epidemiological experts." *See* Complaint at ¶ 102. But the decision to open public schools is a decision of the School Board, not the Mayor; there is no allegation that any statute allows the Mayor to dictate to the School Board. Worse, the complaint asks this prohibition to all schools across Florida; there is no universe in which the Miami-Dade County Mayor has authority to dictate school conditions to, for example, Leon County parents and teachers.

That Count also seeks an Order requiring Defendants "to develop and implement an online instruction plan aimed at all children and to make internet connectivity and computer devices available to all students[,]" as well as "requiring that, before the physical reopening of brick and mortar schools, each school must have adequate personal protective equipment and other necessary supplies for all employees and students; reduce class sizes to comply with physical distancing

requirements; install sufficient hand-sanitizing stations; add plexiglass shields where necessary; increase staffing; increase school clinic capabilities; and take all necessary measures to protect students and staff and minimize COVID-19 transmission." *Id.* at pp. 30-31. But the Mayor plays no role in the administration of schools; he has no role in their procurement process, in class size determinations, or in their staffing decisions. In short, Mayor Gimenez cannot possibly provide any of the requested relief, as he has absolutely no authority over any school board or any public school system in the state. The Complaint has not alleged – because it cannot possibly allege – otherwise.[2] Accordingly, forcing Mayor Gimenez to engage in mediation prior to any hearing on a motion to dismiss would be a waste of time and resources.

B. <u>The Complaint Raises Political Questions Not Subject to Judicial Review</u>

Even if the Mayor had any authority in this matter, this Court should not compel early mediation here because this dispute is not justiciable as any attempt to render a judgment in this matter would impermissibly entangle this Court in the political affairs of other branches of government. The Florida Constitution specifically allocates the responsibility for public education to the legislative and executive branches. In particular, the Florida Constitution provides that,

> The education of children is a fundamental value of the people of the State of Florida. It is therefore a paramount duty of the state to make adequate provision for the education of all children residing within its borders. Adequate provision shall be made by law for a uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education and for the establishment, maintenance, and operation of institutions of higher learning and other public education programs that the needs of the people may require.

Art. IX, § 1(a), Fla. Const. The Complaint cites to this exact provision in paragraph 79, and uses it to allege that, "[t]he Florida Constitution requires that state entities and local officials, who are

[2] Oddly, for reasons unknown, the Complaint fails to sue the parties with actual statutory authority over operations of the schools: the school district, the school board, and superintendent. *See generally* Complaint.[2] Those are the proper parties that could potentially provide the relief sought.

charged with overseeing the funding and operations of public education, ensure that our schools operate safely." Complaint at ¶ 79.

Courts throughout the state have specifically held that questions as to this particular provision are not appropriate for judicial review because "the strict separation of powers embedded in Florida's organic law requires judicial deference to the legislative and executive branches to adopt and execute educational policies those branches deem necessary and appropriate to enable students to obtain a 'high quality' education, as directed by the Florida Constitution." *Citizens for Strong Schools, Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1165-66 (Fla. 1st DCA 2017); *Kunz v. School Bd. of Palm Beach Cnty.*, 237 So. 3d 1026, 1028 (Fla. 4th DCA 2018) ("the school board is vested with exclusive authority over the free public schools within its district, subject only to 'such infringement ... expressly contemplated ... by the Florida Constitution.'") (internal citation omitted). Judges cannot act as legislative bodies; instead, "[i]n a republican form of government founded on democratic rule, it must be the elected representatives and executives who make the difficult and profound decisions regarding how our children are to be educated." *Citizens for Strong Schools, Inc.*, 232 So. 3d at 1166.

Discussions as to the appropriate way or timing for children to go back to school are appropriate for the chambers of the Florida Legislature, the chambers of local school boards, or the Governor's office. They are not appropriate for a courtroom or a mediation chamber. *See Orr v. Trask*, 464 So. 2d 131, 135 (Fla. 1985) ("Courts should be loath to intrude on the powers and prerogatives of the other branches of government"); *cf. Membreno v. City of Hialeah*, 188 So. 3d 13 (Fla. 3d DCA 2016) ("the question of the existence of an emergency is not so much an empirical fact as a value judgment . . . . The legislative choices in such matters are not driven by the sort of finding of historical facts regarding past events which occurs in a courtroom. In our system of

government, only democratically elected representative bodies are competent to form the sorts of legislative judgments upon which these legislative choices are based."). Diving into policy issues such as these would be a violation of the clear separation of powers called for in the Florida Constitution. *See Kunz*, 237 So. 3d at 1030 ("It is not for the courts to question whether the manner in which the legislative or executive branch carries out these requirements is wise. Nor could we mandate the amendment be carried out in any particular manner. Such decisions are best left to the legislative or executive branch of our government, comprised of persons who must answer to their constituents. There is no place for the courts in such disputes, especially on an individual classroom basis and outside the process established to handle this exact issue.") As such, mediation at this point would be improper, as this Court has no authority to entertain this action.

C. . With Respect to Miami-Dade County Residents, This Action is Moot

The Miami-Dade County School Board announced during a special meeting on July 29, 2020 that it would start the upcoming school year with all students attending virtual school.[3] This appears to be the precise relief sought by the Plaintiffs. There is thus no longer a case or controversy with respect to public schools in Miami-Dade County. There is no longer any reason for the Mayor of Miami-Dade County to be a party to this case, much less for the Mayor to waste time and resources engaging in mediation.

CONCLUSION

Forcing Mayor Gimenez to mediate this case when the Mayor has no authority over public schools, where this Court has no authority to determine school operating standards, and where the School Board itself has already provided the relief sought by Plaintiff would not be productive use

[3] Colleen Wright, *Miami-Dade County Public Schools to Begin School Year Online Only and Later Aug. 31 Date*, Miami Herald, July 29, 2020, *available at* https://www.miamiherald.com/news/local/education/article244544787.html. The School Board promulgated this decision without any action of the County Mayor.

of time and resources. The County Mayor should not be party to this matter, and should not be forced to attend mediation in advance of a hearing on motion to dismiss. Defendant Mayor Gimenez respectfully requests that the Court deny the Plaintiffs' Motion to Compel Mediation.

Respectfully submitted,
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Certificate of Service

I certify that the foregoing document has been e-mailed to all parties of record on **July 30, 2020** to the following e-mail address(es):

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