IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT IN AND FOR
DADE COUNTY, FLORIDA
GENERAL JURISDICTION DIVISION

CASE NO.: 2020-015211 CA 24

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

Plaintiffs,

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; and
CARLOS GIMENEZ, in his official, capacity
as Mayor of Miami-Dade County,
Defendants.
_____/

DEFENDANT MAYOR CARLOS GIMENEZ' MOTION TO DISMISS COMPLAINT

Defendant Mayor Carlos Gimenez hereby files his Motion to Dismiss Complaint (the "Motion") and respectfully requests that the Court dismiss the action for failure to join an indispensable party, mootness, and lack of subject matter jurisdiction.

Introduction

This is a dispute about whether, in light of novel coronavirus disease 2019 (COVID-19), schools throughout Florida, from Tallahassee to Key West should provide on-line or in-person classes. This dispute has nothing to do with the Mayor of Miami-Dade County, Carlos Gimenez ("the Mayor"). The Mayor's emergency powers, broad though they are, do not grant him

authority over schools in Miami-Dade County, much less those in Broward, Hillsborough, or Alachua Counties.

Instead, it is the School Board of Miami-Dade County, Florida ("School Board"), a wholly separate elected body of representatives, directly answerable to Miami-Dade County's parents and non-parents alike, that is tasked with setting policy for the fourth-largest school district in the entire country. The School Board's day-to-day operations are overseen by Superintendent Alberto Carvalho. The School Board, acting through Superintendent Carvalho, is the entity that decided on March 13, 2020, to close schools in Miami-Dade County, and it is the entity that decided on July 29, 2020 that Miami-Dade public schools will be virtual through at least September 30.[1] The School Board is an indispensable party, and the failure to include it compels dismissal of this case against the Mayor. Of course, since it is the School Board, and not the Mayor, which regulates public schools in Miami-Dade County, the Mayor cannot grant Plaintiffs the relief they seek. And this Court cannot enjoin the Mayor to take an action that exceeds his legal authority.

Moreover, that the School Board's already decided to provide virtual schooling in Miami-Dade County—the very relief Plaintiffs seek here—renders this case moot with respect the Mayor. While Plaintiffs may argue that their Complaint calls for state-wide relief, the Mayor's authority, such as it is, stops at the County line. As the status of public schools in the County is beyond dispute, the Mayor must be dismissed from this Case.

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[1] *See* 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's decision may be considered as part of this motion because it is documentary evidence supporting their role as an indispensable party. *City Nat. Bank of Miami v. Simmons*, 351 So. 2d 1109, 1110 (Fla. 4th DCA 1977) (encouraging submission of documents along with the motion to dismiss in subsequent proceedings for trial court to determine whether a party is indispensable).

Lastly, even if a live controversy over which the Mayor had some semblance of authority remained, the proper way to open public schools in the face of COVID-19 is a political, non-justiciable question that is beyond the courts' jurisdiction. A court attempting to solve political disputes would violate the separation of powers and entangle courts in decisions that they are ill-suited to make. The decision as to whether it is better for students to attend classes in person versus virtually are questions of policy trade-offs and value judgments. Because this Court cannot answer those questions or render those judgments, this case must be dismissed.

Accordingly, Carlos Gimenez, Mayor of Miami-Dade County, respectfully requests that the Complaint against him be dismissed with prejudice.

Argument

I. The Complaint Must be Dismissed for Failure to Join an Indispensable Party

Florida law requires Plaintiffs to include as parties those persons whose rights or duties would be affected by Plaintiffs' case; those parties are indispensable, and a case cannot proceed without them. Fla. R. Civ. P. 1.140(b); *Immer v. City of Miami*, 898 So. 2d 258, 258 (Fla. 3d DCA 2005) (finding that the holder of the permit must be joined as a party when attempting to cancel a building permit); *see also Two Islands Develop. Corp. v. Clarke*, 157 So. 3d 1081, 1083 (Fla. 3d DCA 2015) ("Stated otherwise, ''[t]he general rule in equity is that all persons materially interested, either legally or beneficially, in the subject-matter of a suit, must be made parties either as complainants or defendants so that a *complete decree* may be made binding upon all parties.'") (internal citations omitted); *MTGLQ Investors, L.P. v. Moore,* 293 So. 3d 610, 616 (Fla. 1st DCA 2020) ("'It is axiomatic that a trial court may not issue an injunction that interferes with the rights of those who are not parties to the action.'") (quoting *Trans Health Mgmt. Inc. v. Nuziata*, 159 So. 3d 850, 857 (Fla. 2d DCA 2014)). Parties are

indispensable when they "have not only an interest in the controversy, but an interest of such a nature that a final decree cannot be made without either affecting that interest, or leaving the controversy in such a condition that its final termination may be wholly inconsistent with equity and good conscience." *Phillips v. Choate*, 456 So. 2d 556, 557 (Fla. 4th DCA 1984) (quoting *Shields v. Barrow*, 58 U.S. 130, 139 (1854)). Without the proper parties, the relief sought could never be provided and enforced. For this reason, failing to name indispensable parties in an action is grounds for dismissing a complaint. *City of Hallandale v. Gulfstream Park Racing Ass'n,* 440 So. 2d 1328, 1329 (Fla. 4th DCA 1983).

As alleged in the Complaint, and as outlined in Florida law, it is the local school board and superintendent—and *not* Mayor Gimenez or any other mayor—who make "local decisions regarding the physical re-opening of public schools." Compl. at pp. 30-31; *see also* Art. IX, § 4, Fla. Const. ("The school board shall operate, control and supervise all free public schools within the school district"); § 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 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.").

Any order of this Court with respect to public schools in Miami-Dade County necessarily affects the powers and duties of the School Board. The School Board is therefore an indispensable party, and the failure to include the School Board compels dismissal of this case.

II. The Complaint Must be Dismissed as Moot

To maintain an action, there must be an actual case or controversy between the parties. *Montgomery v. Dep't of Health and Rehab. Servs.*, 468 So. 2d 1014, 1016 (Fla. 1st DCA 1985). Thus, where the underlying circumstances giving rise to a dispute no longer exist, the case is moot and must be dismissed. And because, Florida courts may not issue advisory opinions, "[a] moot case generally will be dismissed." *Godwin v. State*, 593 So. 2d 211, 212 (Fla. 1992); *City of Sweetwater v. Lopez*, 245 So. 3d 863, 868 (Fla. 3d DCA 2018). "Mootness occurs in two basic situations: when the issues presented are no longer live or when the parties lack a legally cognizable interest in the outcome." *Montgomery*, 468 So. 2d at 1016 (citations and quotations omitted).

In this case, Plaintiffs allege that in-person instruction presents a risk of disease transmission if teachers and students are within the same "brick and mortar" space, and demand

instead that public schools be allowed to resume virtually. Compl. ¶¶ 63, 72, 111. Plaintiffs' claims turn upon a requirement of in-person instruction and an alleged absence of virtual schooling as an alternative. But after Plaintiffs filed their lawsuit, the School Board announced that public schools within the County would not return to in-person instruction until at least October 1, 2020, if not later.[2] Instead, the School Board will provide schooling on a virtual basis, exactly as sought by Plaintiffs. As the School Board has already granted Plaintiffs the relief they seek, no case or controversy exists between Plaintiffs and Miami-Dade County Mayor Carlos Gimenez.[3] Therefore, the case must be dismissed as moot.

None of the exceptions to the mootness doctrine allow this claim to move forward. Florida law provides "three instances in which an otherwise moot case will not be dismissed [including] . . . when the questions raised are of great public importance or are likely to recur . . . [or] if collateral legal consequences that affect the rights of a party flow from the issue to be determined." *Godwin*, 593 So. 2d at 212. First, the potential issue of "great public importance," in-person schooling, is a political question that is not subject to judicial inquiry and the consideration of which would run afoul of the separation of powers doctrine. *See infra* § 4. Second, whether the problem recurs is not a proper question here because the issue has not been properly invoked against the School Board in the first instance. This Court cannot impose obligations on the School Board without them being first named as a party able to defend their

[2] *See* 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

[3] Plaintiffs cannot avoid this conclusion by arguing that other school districts around the state have not yet provided for virtual instruction. There is no non-frivolous legal theory under which the Mayor could potentially exercise authority over or be responsible for schooling outside the legal boundaries of Miami-Dade County; indeed, as is discussed below, the Mayor does not have the legal ability to interfere in the decisions of the School Board of Miami-Dade County, much less that of Leon County.

rights and duties. Finally, no collateral legal consequences would flow from dismissing the lawsuit. Therefore, the matter remains moot and the Complaint against Mayor Gimenez must be dismissed.

III. The Complaint Must Be Dismissed Because the Mayor has No Legal Authority to Provide the Relief Plaintiffs Seek

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* Compl. ¶ 102. Count III also seeks an order requiring Defendants, including Mayor Gimenez, "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 [PPE] 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. Count III therefore contemplates that the Mayor has the power to both compel the School District to shift to virtual instruction and force

the School District to purchase PPE, to make changes to school physical plants, and to unilaterally reduce class size. The Mayor has no such authority.[4]

The Mayor's authority derives either from Florida Statutes or from the County Charter. No Florida Statute provides a role for the Mayor in the administration of local schools; instead, that power is resident in wholly separate elected officials: the School Board. *See generally* Art. IX, § 4, Fla. Const.; § 1001.33, Fla. Stat.; § 1001.42(4)-(8), (19), Fla. Stat. Nor does the Miami-Dade County Home Rule Charter give the County the right to hijack administration of the local schools from the School District.[5] Plaintiffs can point to no source of authority that would allow the Mayor to commandeer decisions left by Florida law for the Miami-Dade County School Board.

A lawsuit cannot be brought against a political entity that 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 that force government officials to participate in lawsuits in

[4] When the School Board decided that it would only provide virtual instruction this fall, it made that decision on its own; it neither needed nor sought the permission of Miami-Dade County or the Mayor.

[5] In fact, the Miami-Dade County Home Rule Charter expressly disclaims any ability by the County to regulate schools; the Charter preserves the right of the County to "abolish or consolidate the office of constables, or any county office created by the Legislature, or provide for the consolidation and transfer of any of the functions of such officers, ***provided, however, that there shall be no power to abolish the Superintendent of Public Instruction***" Miami-Dade County Home Rule Charter, Article 1, Section 1.01(19).

which they have no legal interest or authority. *See Scott v. Francati,* 214 So. 3d 742 (Fla. 1st DCA 2017).

Mayor Gimenez cannot possibly provide any of the requested relief, as he has absolutely no authority over the School Board's provision of student instruction, much less any authority over other public school systems in the state. The Complaint has not alleged – because it cannot possibly allege – otherwise. The Mayor must therefore be dismissed from this case.

IV. The Complaint Must be Dismissed for Lack of Subject Matter Jurisdiction Because the Requested Relief Violates the Separation of Powers Doctrine

Even if this case were not moot, and even if the County Mayor were somehow found to have hitherto unknown powers to regulate public schools in Miami-Dade County, this Court would nevertheless lack subject matter jurisdiction to adjudicate the political question at issue. The manner of operations of the Miami-Dade County public schools are political decisions for the elected officials of the nation's fourth-largest school district, or for the elected Governor of this state, not for the judiciary.

Plaintiffs invite this Court to independently draft its own plan to operate public schools during a national pandemic. Indeed, Plaintiffs press a plan with very specific policy dmeands such as "to develop and implement an online instruction plan aimed at all children and to make internet connectivity and computer devices available to all students" and to "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." Compl. ¶ 113 (a) and (c). Plaintiffs invite this Court to well exceed its jurisdiction and to violate the separation of powers doctrine enshrined in the Article II, Section 3

of the Florida Constitution. *See Office of the State Atty. v. Polites*, 904 So. 2d 527, 532 (Fla. 3d DCA 2005) (reversing lower court pursuant to a writ of certiorari finding that "when a court interferes with an executive agency's discretion in spending its appropriate funds, it is encroaching on the powers of the agency [and j]udges may not direct an executive agency to spend its money in any particular way"); *Dep't of Child. and Fam. Servs. v. Birchfield*, 718 So. 2d 202 (Fla. 4th DCA 1998).

The Florida Constitution specifically allocates the responsibility for public education to the legislative and executive branches. In particular, the Florida Constitution provides:

> 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 to contend that "[t]he Florida Constitution requires that state entities and local officials, who are charged with overseeing the funding and operations of public education, ensure that our schools operate safely." Compl. 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 usurp the functions of legislative bodies: "[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*, 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. *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 violate the Florida Constitution's clear separation of powers. *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.")

Indeed, in addressing claims related to school funding, the Third District Court of Appeals has specifically ruled that while attempting to solve social ills by acting as the heads of public agencies is "appealing on one level," courts must resist this temptation because "[t]he legislature has not given the courts control over the state's resources, nor could it without a constitutional amendment, and hence, the courts may not direct the Department to use them in any particular manner." *Brown v. Feaver*, 726 So. 2d 322, 325 (Fla. 3d DCA 1999). The Court concluded that "[t]o do so would constitute a clear violation of the separation of powers doctrine." *Id.* That is precisely the case here. Plaintiffs invite the Court to supplant the Governor and the Miami-Dade County School Board, and to have this Court dictate to those elected officials how their money is spent, their forces are allocated, and their students be educated. For this Court to take up this invitation would be error.

Accordingly, this Court cannot solve this dispute. This Court cannot weigh the competing political concerns at issue: the health of students and teachers versus the impacts of prolonged remote learning on students versus the costs to physically modify schools to provide for smaller classes and social distancing versus any other social and economic costs that flow from children staying home rather than physically attending school. There is no metric by which a Court can weigh these competing interests; it is a value judgment that, under Florida law, must be solved by the proper elected officials, not by judges. Mayor Gimenez thus respectfully requests that the Complaint against him be dismissed for lack of jurisdiction.

CONCLUSION

Miami-Dade County Mayor Carlos Gimenez should not be involved in this matter. With respect to Miami-Dade County residents and students, this action is moot. But even if a live controversy remained, the Mayor cannot legally grant Plaintiffs the relief they seek because he

has no control over public school operations. Moreover, Plaintiffs have failed to join the indispensable party who could grant this relief—the School Board of Miami-Dade County. But the Complaint must be dismissed in any event, because the doctrine of separation of powers bars this Court from granting Plaintiffs the relief they seek. Accordingly, Mayor Gimenez respectfully requests that the Complaint against him be dismissed with prejudice.

Respectfully submitted,

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Certificate of Service

I certify that the foregoing document has been e-mailed to all parties of record August 3**, 2020** to the following e-mail address(es):

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