

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
ORLANDO DIVISION

VINCENT M. RINALDI, CHARLES R.
MUNSEY, JR., and CHARLES VIOLI,

Case No. 6:22-cv-23-WWB-DCI

Plaintiffs,

v.

BREVARD COUNTY, a political
subdivision of the State of Florida,

Defendant.

**DEFENDANT BREVARD COUNTY'S MOTION TO DISMISS AND MOTION TO
STRIKE, WITH INCORPORATED MEMORANDUM OF LAW**

COMES NOW, Defendant BREVARD COUNTY (the "County"), through its attorney, hereby files and serves its Motion to Dismiss and Motion to Strike with Incorporated Memorandum of Law in response to Plaintiffs' Verified Complaint (Doc. 1).

1. Alleged Background and Procedural History

In this case, Plaintiffs challenge the County's Ordinance § 74-102(b), which states that registered sexual offenders are not permitted to enter into or remain within the 1,000-foot buffer zone surrounding any school, daycare center, park, or playground, insofar as the Ordinance relates to their ability to attend the County Commission's public meetings at the County Government Center. (See Doc. 1 ¶ 1). Violation of the Ordinance is punishable by a jail sentence and a fine. (See Doc. 1 ¶ 1). Plaintiffs claim that because the County Government Center is within 1,000 feet of a school, they are unable to attend County Commission meetings at the County Government Center. (See Doc. 1 ¶ 1). Plaintiffs challenge the ordinance pursuant to 42 U.S.C. § 1983 as allegedly violating their

First Amendment rights to free speech and to petition for redress of grievances and also challenge the Ordinance as violating Florida's Sunshine in Government Laws.

Plaintiffs initiated this action by filing their Verified Complaint (Doc. 1), on January 5, 2022. On the same date, Plaintiffs also filed their Motion for Preliminary Injunction (Doc. 2). The County now responds to Plaintiffs' Verified Complaint with this motion to dismiss pursuant to Rule 12(b)(1) of the Federal Rules of Civil Procedure and motion to strike pursuant to Rule 12(f).

2. Plaintiffs Have Not Sufficiently Established Standing for Injunctive and Declaratory Relief

The Court should dismiss Plaintiffs' Verified Complaint insofar as Plaintiffs seek injunctive and declaratory relief because Plaintiffs have not sufficiently established standing for such relief. Standing has three constitutional elements: (1) injury in fact that is concrete, particularized, and actual or imminent as opposed to conjectural or hypothetical, (2) fair traceability between the injury and the challenged action of the defendant, and (3) likelihood, as opposed to mere speculation, that the injury will be redressed by a favorable decision. See *Koziara v. City of Casselberry*, 392 F.3d 1302, 1304-05 (11th Cir. 2004). All three are an irreducible constitutional minimum. *Id.* at 1305.

Additionally, a plaintiff seeking injunctive or declaratory relief must also demonstrate a real and immediate threat of future injury in order to satisfy the injury in fact requirement. *Id.* That is, the plaintiff must show a sufficient likelihood that the plaintiff will be affected by the allegedly unlawful conduct in the future. *Id.* So, to proceed beyond the pleadings stage, a plaintiff must allege facts from which it appears that there is a substantial likelihood that he will suffer injury in the future. *Worthy v. City of Phenix City*, 930 F.3d 1206, 1215 (11th Cir. 2019); see also *Elend v. Basham*, 471 F.3d 1199, 1207

(11th Cir. 2006) (emphasizing that for the injury in fact to suffice for prospective relief, it must be *imminent*). Alleged past exposure to illegal conduct does not itself show a present case or controversy sufficient to pursue injunctive relief. *Elend*, 471 F.3d at 1207-08.

In this case, Plaintiffs seek declaratory and injunctive relief (see Doc. 1 at 20-22) but did not adequately allege a concrete and particularized injury in fact that Plaintiffs will imminently suffer in the future. Plaintiffs alleged that they want to be able to speak at future public hearings before the County Commission just like any other member of the public. (Doc. 1 ¶ 6). Also, Plaintiffs alleged generally that they wish to attend future meetings and hearings at the Brevard County Government Center. (Doc. 1 ¶ 38). Such allegations do not suffice given the Eleventh Circuit's insistence that alleged future injury be imminent and not conjectural. See *Elend*, 471 F.3d at 1209 (plaintiffs' allegations of intentions to peacefully express their viewpoints in the future in a manner similar to their activities on a particular past date in concert with presidential appearances at the USF Sun Dome and other locations around the country was insufficient to seek injunctive relief). In *Worthy*, the Eleventh Circuit explained:

Were we to hold that Appellants sufficiently alleged a likelihood of future harm by asserting that they will again violate the ordinance, litigants would be able to sufficiently plead a threat of future harm simply by alleging that they will violate a law. The result would be to say: "Want to challenge a state statute or local ordinance in federal court? All you have to do is live in (or at least close to) the jurisdiction in which the law or ordinance applies and allege that you may violate it." Opening the door of the federal courthouse to litigants with such nebulous allegations of future harm would constitute an overreach of federal equitable power. And we refuse to venture down that path.

930 F.3d at 1216. The Eleventh Circuit then confirmed that the *Worthy* plaintiffs had not pleaded facts sufficient to show a likelihood of future harm and therefore could not pursue

injunctive relief. *Id.* The same reasoning applies in this case, and this Court should reach the same conclusion. See also *Koziara*, 392 F.3d at 1306; *Corbett v. Transp. Sec. Admin.*, 930 F.3d 1225, 1236 (11th Cir. 2019) (finding plaintiff did not have standing to seek injunctive relief where he could only hypothesize that as a frequent flier, he “might” be selected by TSA in the future for additional (allegedly unconstitutional) screening); *Liss v. Jacksonville Aviation Auth.*, Case No. 3:19-cv-185-J-32JBT, 2019 WL 3717942, at *4-5 (M.D. Fla. Aug. 7, 2019).

Plaintiffs’ stated desire to have attended past County Commission meetings is also unhelpful in establishing standing for injunctive and declaratory relief. Plaintiffs alleged that they wanted to attend County Commission meetings on July 21, 2020 and August 25, 2020 to speak out against a proposed amendment to the Ordinance. (See Doc. 1 ¶¶ 12-14). Also, Plaintiff Munsey alleged that three years before, he wrote the County Commission to express his belief that it was unfair for him to be unable due to his status as a registered sexual offender, to attend a County Commission meeting and speak out against a special fire fee assessment. (See Doc. 1 ¶ 28).¹ Aside from for those particular topics, which Plaintiffs do not allege will or even might reasonably be raised by the County Commission again in the future, Plaintiffs apparently did not wish to attend *past* County Commission meetings.

The County maintains that, with respect to future injury, Plaintiffs have alleged only that they wished to attend certain past County Commission meetings about particular, non-recurring issues and that they wish to attend future County Commission meetings at

¹ Plaintiff Munsey does not clearly allege that he would have attended that meeting if not for the Ordinance.

some unspecified time in the future. In *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 564 (1992), the Supreme Court stated: “Such ‘some day’ intentions—without any description of concrete plans, or indeed even any specification of *when* the some day will be—do not support a finding of the ‘actual or imminent’ injury that our cases require.” To borrow the Supreme Court’s term, Plaintiffs expressed only “some day intentions.” Therefore, the Court should dismiss Plaintiffs’ Verified Complaint without prejudice² insofar as Plaintiffs requested injunctive and declaratory relief.

3. Plaintiffs Improperly Seek Punitive Damages

Rule 12(f) of the Federal Rules of Civil Procedure permits the Court to strike from any pleading an insufficient defense or any redundant, immaterial, impertinent, or scandalous matter. The Court should strike Plaintiff’s demand for punitive damages (Doc. 1 at 21) because punitive damages are not available for section 1983 claims against governmental entities. *City of Newport v. Fact Concerts, Inc.*, 453 U.S. 247, 271 (1981) (local government entities are immune from punitive damages in actions brought pursuant to 42 U.S.C. § 1983); *Kubany v. Sch. Bd. of Pinellas Cty.*, 839 F. Supp. 1544, 1551 (M.D. Fla. 1993) (“[P]unitive damages are not available under § 1983 from a governmental entity.”); see also *Petchem, Inc. v. Canaveral Port Auth.*, 368 F. Supp. 2d 1292, 1295-96 (M.D. Fla. 2005).

4. Request for Relief

WHEREFORE, Defendant Brevard County respectfully requests that the Court enter an order dismissing Plaintiffs’ Verified Complaint (Doc. 1) without prejudice insofar

² See *Stalley v Orlando Reg'l Healthcare Sys., Inc.*, 524 F.3d 1229, 1232 (11th Cir. 2008) (“A dismissal for lack of subject matter jurisdiction is not a judgment on the merits and is entered without prejudice.”).

as Plaintiffs sought declaratory and injunctive relief and striking Plaintiffs' demand for punitive damages and for any other relief the Court deems just and proper.

LOCAL RULE 3.01(g) CERTIFICATION

I HEREBY CERTIFY that counsel for the County attempted to confer pursuant to Local Rule 3.01(g) via telephone with Plaintiffs' counsel, but Plaintiffs' counsel was unavailable. Counsel for the County will continue to diligently work to confer in good faith with Plaintiffs' counsel for three days and after the sooner of completing conferral or expiration of three days, file with the Court a notice supplementing this certification.

Respectfully submitted,

/s/ Frank Mari

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Attorney for Defendant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been filed with the Clerk of the Court by using the CM/ECF system on this 11th day of February, 2022.

/s/ Frank Mari

Attorney for Defendant