

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

CASE NO. 4:26-cv-00388

FLORIDA ACTION COMMITTEE, INC.,

Plaintiff,

vs.

MARK GLASS, et al.,

Defendants.

**DEFENDANT CITY OF
BOCA RATON'S MOTION TO DISMISS COMPLAINT**

Defendant, City of Boca Raton (“Boca Raton”), pursuant to Federal Rule of Civil Procedure 12(b)(1), (6), moves to dismiss the Complaint (“Complaint”),¹ [ECF No. 1], filed by Florida Action Committee, Inc., (“FAC,” or “Plaintiff”). In support, Boca Raton states as follows:

OVERVIEW

The instant action presents a sweeping constitutional challenge to Florida’s sex offender registration laws and to materially different county and municipal enactments. The claims actually asserted against Boca Raton, however, are much narrower. As to Boca Raton, the action challenges only the sex offender residency

¹ Citations to the Complaint will be cited as (“Compl. ¶__”).

restrictions² imposed by Section 9-101 of the Boca Raton Code of Ordinances (the “Boca Raton Regulation”). Compl., Exh. 2, at p. 4.³ The Complaint should be dismissed as to Boca Raton for at least two independent reasons.

First, Plaintiff has not adequately alleged Article III standing to pursue Counts I and II against Boca Raton. FAC, a non-profit advocacy organization, purports to have associational standing to challenge sex offender regulations imposed by a number of jurisdictions in Florida. Yet, the entirety of the Boca Raton specific associational standing allegations in the Complaint is a single “catch-all” allegation that “FAC’s members live all across the State of Florida, including in each of the defendant counties and municipalities.” The Complaint contains no allegations regarding whether a sex offender subject to the Boca Raton Regulation lives in Boca Raton (or desires to live in Boca Raton), identifies no particular Boca Raton

² The Complaint alleges that Boca Raton is a “Residency Restriction Defendant,” Compl., ¶ 27, subject to Counts I (Cruel and Unusual Punishments Clause) and II (*Ex Post Facto* Clause) of the Complaint. Boca Raton is not a “Presence Restriction Defendant” (Compl., ¶ 28), a “Vague Ordinance Defendant” (Compl., ¶ 29) or a “Gag Ordinance Defendant” (Compl., ¶ 30), and is accordingly not named as a defendant in Counts III-VI.

³ Ordinance No. 4880 and Ordinance No. 4893 are the Boca enactments identified in the Complaint. Those ordinances are appended hereto as Exhibit “1.” The ordinances may be considered in connection with the instant motion because the codified ordinances were referenced as exhibits to the complaint, *Crenshaw v. Lister*, 556 F.3d 1283, 1292 (11th Cir. 2009), and the actual adopted ordinances are indisputably authentic and are central to the Plaintiff’s claims. *Maxcess, Inc. v. Lucent Techs., Inc.*, 433 F.3d 1337, 1340, n. 3 (11th Cir. 2005).

residence that an FAC member has been prevented from occupying, alleges no Boca Raton enforcement event affecting an FAC member, and identifies no member whose asserted housing injury would be redressed if Boca Raton alone were enjoined. The deficiency is especially acute as to Count II because FAC does not allege that any member subject to the Boca Raton Regulation committed a qualifying offense *before* the particular Boca Raton enactment alleged to operate retroactively against that member.

Second, as the Complaint itself affirmatively alleges, the residency restrictions imposed by the Boca Raton Regulation are materially less onerous than comparable restrictions that have withstood constitutional challenge by the Eleventh Circuit. Thus, Plaintiff has not plausibly alleged that the narrower Boca Raton Regulation constitutes punishment, and Counts I and II therefore fail as a matter of law.

ARGUMENT

I. PLAINTIFF HAS NOT SUFFICIENTLY ALLEGED STANDING TO PURSUE COUNTS I AND II AGAINST BOCA RATON.

A. Associational Standing

It is well settled that an organization may, under appropriate circumstances, assert the rights of its members by suing on their behalf. *American Alliance for Equal Rights v. Fearless Fund Mgmt., LLC*, 103 F.4th 765, 771 (11th Cir. 2024) (citation omitted). To have standing to do so, an organization, like FAC, must allege that: “(a)

its members would otherwise have standing to sue in their own right; (b) the interests it seeks to protect are germane to the organization's purpose; and (c) neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit.” *Id.* (quoting *Students for Fair Admissions, Inc. v. President & Fellows of Harv. Coll.*, 600 U.S. 181, 199–200 (2023)). The instant motion does not challenge the second or third elements; instead, Boca Raton maintains that the Complaint is devoid of allegations that at least one of FAC’s members is actually subject to and injured by the Boca Raton Regulation, so as to have standing to maintain either Count I or Count II against Boca Raton. With specific regard to Count II, FAC has not alleged that at least one of its members was subject to the Boca Raton Regulation based upon qualifying offense conduct that predates the particular Boca Raton enactment challenged as retroactive, so as to maintain Count II (Plaintiff’s Ex Post Facto Claim).

To determine whether any member of Plaintiff has standing to sue Boca Raton, FAC must allege that at least one of its members has suffered an injury in fact that is “fairly traceable” to Boca Raton’s conduct, and that the injury is redressable by the relief sought in this action. *See American Alliance*, 103 F.4th at 771; *see also Comp. & Comms. Ind. Ass’n v. Uthmeier*, 770 F. Supp. 1317, 1321 (N.D. Fla. 2025) (“For one of Plaintiffs’ members to face an injury in fact that is ‘actual or imminent,’ not ‘conjectural or hypothetical,’ and that is ‘fairly traceable’

to Defendant, Plaintiffs must allege facts from which this Court can reasonably infer that at least one of their members is covered by the law.”) (quoting *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560 (1992)).

Additionally, the Supreme Court has held that, in order to establish standing on behalf of its members, an organization must “make specific allegations establishing that at least one identified member had suffered or would suffer harm.” *Summers v. Earth Island Institute*, 555 U.S. 488, 498 (2009). Likewise, in *Georgia Republican Party v. SEC*, 888 F.3d 1198, 1204 (11th Cir. 2018), the Eleventh Circuit held that an organization lacked standing because it failed to identify any affected members. *See also Jacobson v. Florida Sec’y of State*, 974 F.3d 1236, 1251-52 (11th Cir. 2020) (holding the same). Further, standing cannot be dispensed “in gross.” *Murthy v. Missouri*, 603 U.S. 43, 61 (2024). In other words, Plaintiff must “demonstrate standing for each claim that they press against each defendant, and for each form of relief that they seek.” *Id.* (internal quotation and citation omitted). Thus, Plaintiff must sufficiently allege standing as to *each* defendant in this action, including Boca Raton, and for *each* claim. *See id.*

The Complaint fails to do that. As to Boca Raton, the Complaint merely alleges that “FAC’s members live all across the State of Florida, including in each of the defendant counties and municipalities.” Compl. ¶ 21. In addition, while the Complaint later makes certain allegations regarding the locations of offending

incidents, [Compl. ¶¶ 82-90], none of those allegations implicate Boca Raton. *Id.* In short, instead of specifically identifying a member affected by a particular regulation, by pseudonym or otherwise, FAC simply provides a single, sweeping allegation in an effort to support standing for all its claims against thirty-three counties and seventeen municipalities. *See generally*, Compl.

Paragraph 21 of the Complaint alleges that FAC’s members live “all across the State of Florida, including in each of the defendant counties and municipalities,” and that its members generally have suffered “restrictions on residence, movement, employment, and daily life” as a result of (all defendant governments’) collective “regulatory scheme.” Compl. ¶ 21. As it relates to this defendant, the only other allegation in which Boca Raton is even tangentially referenced is Paragraph 27, wherein Boca Raton is identified as a “Residency Restriction Defendant.” Compl. ¶ 27. But beyond that, there are simply no allegations tying any member’s purported injury to Boca Raton. Lastly, none of the declarations made by Plaintiff’s members in support of the Complaint even mention Boca Raton as a place of residence or a jurisdiction in which the Boca Raton Regulation has otherwise adversely affected an FAC member. Compl. Ex. 5.

Significantly, FAC “members” include not only individuals subject to the Boca Raton Regulation (i.e., sexual offenders subject to residency restrictions), but also “family members of registrants, attorneys, researchers, treatment providers, and

other citizens who support [Plaintiff’s] mission.” Compl. Ex. 1 at ¶ 4. Thus, the FAC “member” purportedly living in Boca Raton could be an attorney, a researcher, a family member of a registrant, a treatment provider, or simply a person who supports Plaintiff’s mission and not anyone affected by the Boca Raton Regulation. Likewise, the “member” living in Boca Raton might also be a family member of an individual that is affected by the State’s (or any other defendant’s) regulations and not by the Boca Raton Regulation. Compl. Ex. 1 at ¶ 4. Accordingly, Paragraph 21 of the Complaint, wherein Plaintiff alleges that at least one FAC “member” lives within, *inter alia*, Boca Raton, does *not* allege that any individual who might be subject to the Boca Raton Regulation lives in the City. Compl. ¶ 21. This pleading deficiency makes it impossible to trace any particular member’s injuries to the Boca Raton Regulation.⁴

This pleading deficiency is even more apparent when analyzing Count II, the “Ex Post Facto Clause” claim. In Count II, FAC alleges that “residency restrictions” imposed on sex offenders who have already served their criminal sentences

⁴ Nor does the Complaint identify any Boca Raton specific injury suffered by an FAC member. It identifies no particular Boca Raton residence that a member sought and was prohibited from occupying, no Boca Raton specific housing search, and no warning, citation, prosecution, threatened prosecution, landlord action, displacement, or other enforcement contact attributable to the Boca Raton Regulation. FAC must allege some actual or imminent injury caused by Boca Raton, such as a concrete intended residential arrangement prohibited by the Boca Raton Regulation. The Complaint alleges none.

constitute retroactive punishment, in violation of the Ex Post Facto Clause. Compl. ¶ 132. FAC alleges that certain “registrants” are so affected. *See, e.g.*, Compl. ¶¶ 5, 133. But the Complaint does not allege that the FAC “member” purportedly living in Boca Raton is a “registrant” affected by the Boca Raton Regulation. Nor does it allege that any such member’s qualifying offense conduct predates the Boca Raton enactment alleged to operate retrospectively against that member.

That is the same threshold retroactivity deficiency the Eleventh Circuit identified in FAC’s own Ex Post Facto challenge in *Doe v. Miami-Dade County*, 846 F.3d 1180, 1185 & n.4 (11th Cir. 2017). There, the court held that only the individual plaintiffs whose qualifying convictions preceded the ordinance had properly alleged retroactive application, and specifically observed that FAC “failed to allege that any of its members were convicted of, or even committed, a relevant sexual offense before” the ordinance was enacted. *Id.* FAC likewise identifies no member here whose qualifying offense conduct predates the particular Boca Raton enactment allegedly being applied retroactively.

As a result, the Complaint fails to contain any factual allegations establishing that a single member of FAC is affected by the Boca Raton Regulation so as to establish standing for either Count I or Count II of the Complaint. It likewise fails to identify an injury fairly traceable to Boca Raton and likely to be redressed by the relief FAC seeks against this Defendant. Therefore, the Complaint should be

dismissed, and Plaintiff should be required to provide specific allegations regarding its standing to assert its claims against Boca Raton. *See e.g., Comp. & Comms. Ind. Ass’n*, 770 F. Supp. at 1321 (dismissing the plaintiff’s complaint due to the fact that the plaintiff, an organization, did not allege any facts allowing the court to infer that one of its members was affected); *cf American Alliance for Equal Rights*, 103 F.4th at 772-73 (finding that the organization plaintiff established standing by referring to its members as Owner A, B, and C when alleging specific facts); *Florida Action Committee, Inc. v. Seminole Cnty.*, 212 F. Supp. 3d 1213, 1221 (M.D. Fla. 2016) (finding that the plaintiff alleged standing by identifying Doe # 3 and providing factual allegations of how she had standing to bring each constitutional challenge to the ordinance at issue).

B. Organizational Standing

Based upon the express allegations of the Complaint, it appears Plaintiff is alleging that it has “associational standing.” Compl. ¶¶ 21, 22 (alleging harm to its members), ¶ 20 (alleging that the interests of FAC’s members are germane to the organization’s purpose). Nowhere within the Complaint is there any allegation of any direct harm to FAC, as an organization. *City of S. Miami v. Governor*, 65 F.4th 631, 637 (11th Cir. 2023) (“An organization can establish Article III standing either ‘through its members [or] ... through its own injury in fact.’”) (quoting *Ga. Ass’n of Latino Elected Offs., Inc. v. Gwinnett Cnty. Bd. of Registration & Elections*, 36 F.4th

1100, 1114 (11th Cir. 2022)). In short, the Complaint’s claim of standing is premised entirely on the alleged injuries suffered by FAC’s “registrant” members. *See generally*, Compl. Moreover, even if the Plaintiff intends to rely upon injury to FAC itself, neither the Complaint nor its incorporated materials identifies any organizational injury caused by Boca Raton. The Complaint does not allege that Boca Raton has impaired FAC’s activities, required FAC to undertake any Boca-specific response, or otherwise caused FAC itself an injury in fact. In short, the Complaint is devoid of allegations of “organizational standing.”

Although there are no direct allegations of organizational standing contained in the body of the Complaint, an exhibit thereto [ECF No. 1-1] is a purported declaration from FAC’s President. According to that declaration, FAC is an organization that “devotes significant resources to educating its members about the registration statutes,” “monitoring proposed legislation” and “investigating governmental actions affecting its members.” ECF No. 1-1 at ¶¶ 8, 9. The declaration further attests that FAC has devoted resources to investigating, researching, and educating its members about the challenged governmental conduct. *Id.* at ¶ 10. And, as a result, FAC has diverted financial resources from other organizational priorities and programs in order to pursue the instant claims. *Id.* at ¶ 10.

These contentions may be designed to support organizational standing under a “diversion-of-resources” theory. *Arcia v. Florida Sec’y of State*, 772 F.3d 1335,

1342 (11th Cir. 2014). Under such a theory, “an organization has standing to sue when a defendant's illegal acts impair the organization's ability to engage in its own projects by forcing the organization to divert resources in response.” *Id.* (citation omitted). But neither the Complaint nor the President’s declaration alleges that FAC has diverted its resources in response to any action taken by Boca Raton or to the Boca Raton Regulation in particular. The asserted expenditures instead concern the challenged governmental conduct collectively.

It is clear based upon the referenced declaration that monitoring legislation and maintaining legal challenges against offending legislation *are* the main purposes of FAC. As a result, FAC is not “diverting resources” fulfilling its primary mission. Moreover, to “establish an injury based on resource diversion, an organization must present ... concrete evidence to substantiate [its] fears, not commit resources based on mere conjecture about possible governmental actions.” *City of S. Miami*, 65 F.4th at 639 (internal quotations and citations omitted). Most importantly here, there are no allegations within either the Complaint or the declaration connecting any purported “diversion” of FAC’s resources to Boca Raton. While standing has been found when the NAACP was required to divert resources to educate black voters regarding new voting rules for an *upcoming election*, *Fla. State Conf. of NAACP v. Browning*, 522 F.3d 1153, 1165 (11th Cir. 2008), FAC alleges no comparable Boca Raton specific expenditure or disruption. Whatever resources FAC may have

devoted to challenging Florida’s broader regulatory system or the conduct of other defendants, those expenditures do not establish an injury fairly traceable to Boca Raton. Instead, the Complaint seems to have been motivated by Florida’s passage of HB 45 in March of 2026, which excludes sex offender registrants from proximity to swimming pools. As a result, to the extent FAC attempts to assert standing based upon a diversion of resources theory, it has not alleged the Boca Raton specific injury and causation necessary to establish organizational standing against this Defendant, and thus, the Complaint should be dismissed.

II. FAC HAS NOT PLAUSIBLY ALLEGED THAT THE BOCA RATON REGULATION CONSTITUTES PUNISHMENT.

Less than four years ago, in *McGuire v. Marshall*, 50 F.4th 986 (11th Cir. 2022), the Eleventh Circuit rejected an Ex Post Facto challenge to Alabama sex offender restrictions that were materially more onerous than the Boca Raton Regulation. Alabama restricted both residence and employment, yet the court concluded that the restrictions did not constitute punishment. Because Boca Raton imposes a materially narrower, residence only restriction, *McGuire* provides the controlling framework and strongly supports dismissal of FAC’s claims.

A. The Boca Raton Regulation Does Not Impose Punishment.

“Because the *Ex Post Facto* Clause prohibits the retroactive application only of laws imposing punishment, a statutory scheme that is civil and regulatory in nature rather than criminal may apply retroactively without violating the

Constitution.” *McGuire*, 50 F.4th at 1001 (citing *Collins v. Youngblood*, 497 U.S. 37, 43 (1990) and *United States v. W.B.H.*, 664 F.3d 848, 853 (11th Cir. 2011)).

“To show entitlement to relief under the *Ex Post Facto* Clause, [a claimant] must establish that the challenged provisions ... are criminal in nature.” *Id.*

“To determine whether a law is criminal in nature, we apply a two-part ‘intent-effects’ test.” *Id.* (citing *Smith v. Doe*, 538 U.S. 84, 92 (2003)). “In the first step of the inquiry, we ask whether the legislature intended to impose punishment.”⁵ *Id.* “If the legislature intended to impose punishment, the inquiry ends, and the statutory scheme is punitive.” *Id.* “If the intent of the legislature was to create a civil and nonpunitive scheme, we proceed to the second step and ask whether the statutory scheme is ‘so punitive either in purpose or effect as to negate’ the legislature’s intent to deem it civil.” *Id.* Where a legislative body intended to create a civil, nonpunitive

⁵ *McGuire* involved an *Ex Post Facto* Clause challenge to, *inter alia*, Alabama’s sex offender residency scheme, similar to Count II of the instant Complaint. But while the *McGuire* court did not separately adjudicate the Cruel and Unusual Punishment Clause (as FAC alleges in Count I), the 11th Circuit’s conclusion that the Alabama residency restrictions did not impose “punishment” *at all* necessarily precludes a contention that those restrictions imposed “*cruel and unusual* punishment.” If a regulation is civil and nonpunitive, there is no “punishment” to which either the *Ex Post Facto* Clause or the Cruel and Unusual Punishment Clause can apply. Plaintiff concedes as much when it (ineffectively) attempts to distinguish *McGuire* in the Count I Cruel and Unusual Punishment Clause claim (at ¶ 127). Finally, the particular “punishment” that the Complaint alleges is “cruel and unusual” is the purported punishment of “banishment” (Compl., ¶ 126), which, as discussed in further detail *infra*, the *McGuire* court considered and rejected in connection with its rejection of the *Ex Post Facto* claim at issue therein. For all of these reasons, *McGuire* compels dismissal of both Counts I and II against Boca Raton.

regulatory scheme, “only the clearest proof” will suffice to override that intent and transform what has been denominated a civil remedy into a criminal penalty. *Smith*, 538 U.S. at 92; *McGuire*, 50 F.4th at 1001.

1. Boca Raton Intended to Create a Civil, Nonpunitive Scheme.

In “the first step of our analysis, we ask ‘whether the legislature, in establishing the penalizing mechanism, indicated either expressly or impliedly a preference for a civil or criminal label.’” *McGuire*, 50 F.4th at 1001 (citing *Smith*, 538 U.S. at 93). “When the legislature states in a statute’s text that the objective is to protect the public, it indicates an exercise of the State’s power to protect health and safety of its citizens and evidences an intent to enact a civil regulatory scheme.” *McGuire*, 50 F.4th at 1002 (citing *Smith*, 538 U.S. at 93-94).

The Alabama residency restrictions were deemed intended to be nonpunitive because Alabama expressly identified their purpose as “further[ing] the primary governmental interest of protecting vulnerable populations, particularly children.” *McGuire*, 50 F.4th at 1005. Similarly, the Boca Raton “legislature” (its City Council) expressly stated that the intent of the Boca Raton Regulation is to “protect ... the public health, safety and welfare of its most vulnerable citizens.” Boca Raton Ordinance No. 4880, Exh. 1 at p. 2.⁶

⁶ FAC’s allegations concerning inflammatory statements by state legislators and other governmental actors in connection with Florida legislation in 2025-26 do not bear on the intent of the Boca Raton City Council when it enacted the challenged

Moreover, the *McGuire* court rejected the contention that the Alabama legislation is “punitive” because it “imposes criminal penalties on registrants who violate its provisions.” *McGuire*, 50 F.4th at 1006. “[C]ivil regimes may impose criminal penalties for violations of their regulatory requirements.” *Id.* (citing *W.B.H.*, 664 F.3d at 854).

Thus, under the “first step,” the Complaint does not plausibly allege that Boca Raton intended its residency restriction to impose punishment.

2. The Boca Raton Regulation Is Not so Punitive either in Purpose or Effect as to Negate the Legislative Intent to deem it Civil.

“In the second step of the inquiry, we ‘examine whether the statutory scheme is so punitive either in purpose or effect as to negate the State’s intention to deem it civil.’” *McGuire*, 50 F.4th at 1002 (citing *Smith*, 538 U.S. at 92). To determine whether a regulatory scheme is “so punitive” in purpose or effect, the court considers:

Whether, in its necessary operation, the regulatory scheme: has been regarded in our history and traditions as a punishment; imposes an affirmative disability or restraint; promotes the

municipal residency restriction in 2005. Boca’s contemporaneous materials instead articulate a preventive child safety and public safety purpose. The structure of Ordinance No. 4880 reinforces that stated child protection purpose. It applied only to specified offenses involving victims younger than sixteen (16) and restricted residence near schools, designated school bus stops, day care centers, parks, and playgrounds. It also protected qualifying preexisting residences and residences established before a protected location later opened nearby. Those features are consistent with a regulatory measure directed toward protecting children, rather than an additional punishment imposed for completed crimes.

traditional aims of punishment; has a rational connection to a nonpunitive purpose; or is excessive with respect to this purpose.

McGuire, 50 F.4th at 1003 (citing *Smith*, 538 U.S. at 97).⁷ Consideration of those factors as applied to the Boca Raton Regulation and the allegations of the Complaint confirms that FAC has not plausibly alleged that the Regulation constitutes “punishment.”

a. The Boca Raton Regulation Does Not Sufficiently Resemble the Traditional Punishment of Banishment.

The plaintiff in *McGuire* contended that the Alabama sex offender restrictions resembled “the traditional punishment of banishment.” *McGuire*, 50 F.4th at 1008-10. FAC likewise invokes banishment, although its theory expressly relies on the “combined effect of Florida’s residency and presence restrictions.” Compl., ¶¶ 126-130.

⁷ At the outset, however, the punitive effects inquiry must focus on the regulation actually enacted by Boca Raton. The Complaint repeatedly relies on the combined or cumulative effects of state, county, and municipal restrictions, including residency, presence, registration, travel, employment, and other requirements. *See, e.g.*, Compl. ¶¶ 1-4, 79, 126, 129, 132. But the Complaint itself identifies Boca Raton only as a “Residency Restriction Defendant” and does not identify Boca Raton as a Presence Restriction Defendant, Vague Ordinance Defendant, or Gag Ordinance Defendant. Compl. ¶¶ 27-30. Those independently imposed burdens may provide context, but they cannot be treated as additional punitive effects of the Boca Raton Regulation itself. The relevant inquiry is therefore whether Boca Raton’s residence only regulation, considered according to its own purpose and effects, is sufficiently punitive to overcome its civil character.

The *McGuire* court expressly rejected the contention with regard to the Alabama regulatory scheme:

[T]he restrictions do not sufficiently resemble the traditional punishment of banishment to be considered punitive [because] [r]egistrants are not totally prohibited from entering the exclusion zones that [the Alabama regulation] creates. It is true that they may not reside, work or volunteer in the exclusion zones. But they remain able to enter exclusion zones for other purposes.

McGuire, 50 F.4th at 1009.

The court further emphasized that registrants remained able to enter the regulated areas to obtain healthcare, visit family and friends, eat, shop, worship, and otherwise participate in community life. *Id.* at 1009-12.

The Boca Raton Regulation is materially narrower in the conduct it regulates than the regulations upheld in *McGuire*. While the Alabama registrants were prohibited from “resid[ing], work[ing] or volunteer[ing] in the “exclusion zones” established by the regulations, the Boca Raton Regulation restricts only where covered persons may establish a permanent or temporary residence. It imposes no employment or volunteer restriction and, critically for the banishment analogy, does not prohibit covered persons from entering or moving through the regulated areas for ordinary activities. Nothing in the Boca Raton Regulation prevents a covered

person from working in Boca Raton, visiting family or friends, shopping, worshipping, obtaining healthcare, or otherwise participating in community life.⁸

Nor are the residential “exclusionary zones” in Boca Raton any more restrictive than those in Alabama. While the *McGuire* plaintiff alleged that the Alabama “residency and employment restrictions effectively cast registrants out of Montgomery because they make approximately 80 percent of the housing stock and 85 percent of the jobs off limits to registrants,” *McGuire*, 50 F.4th at 1010, FAC alleges that Florida’s statewide residency restriction “blocks” around 73% of residential housing in Palm Beach County (the county in which Boca Raton is located), Compl., ¶ 58, and that additional, local “Residency Restriction Ordinances” such as the Boca Raton Regulation render 73% of residential housing units in Palm Beach County “legally off limits to registrants.” Compl., ¶ 62. Thus, it appears both that (a) the Boca Raton Regulation has a negligible effect on the availability of housing for affected sex offenders, and (b) the aggregate effect of the Florida regulations and the Boca Raton Regulations provides a lesser impact on the

⁸ The Complaint’s displacement allegations likewise do not establish a Boca Raton analogue to traditional banishment. FAC alleges, for example, that one member was required to leave an existing residence after a new park was established nearby. Compl. ¶ 86. The Boca Raton Regulation, however, protects a qualifying residence established before a protected location later opens nearby. That grandfather protection reduces the forced displacement characteristic on which FAC relies and further distinguishes the Boca Raton Regulation from expulsion from an existing community.

availability of housing for affected persons than did the regulations that passed muster in *McGuire*.

b. The Limited Affirmative Disability or Restraint Imposed by the Boca Raton Regulation Does Not Render It Punitive.

Boca Raton does not contend that its Regulation imposes no affirmative restraint. It limits where covered persons may establish a residence. But the existence of a regulatory restraint does not itself establish punishment. Indeed, while recognizing that the Alabama regulations “impose some affirmative disability or restraint by limiting where registrants may live or work,” the *McGuire* court concluded the “affirmative disability or restraint imposed by the residency and employment restrictions is not sufficiently punitive to override the legislature’s expressed intent to create a civil, nonpunitive scheme.” *McGuire*, 50 F.4th at 1011, 1012. The Boca Raton Regulation imposes a materially narrower restraint in important respects: it regulates residence, but not employment or volunteering, and it does not prohibit ordinary presence in the exclusion zones. Accordingly, although the Regulation unquestionably limits residential choice, FAC has not plausibly alleged that the character and degree of that restraint is sufficiently punitive, considered with the other factors, to overcome the City’s civil regulatory intent. *See McGuire*, 50 F.4th at 1011-12.

c. Any Deterrent or Retributive Effects Are Insufficient to Render the Boca Raton Regulation Punitive.

While the Alabama statutory scheme furthered the traditional punishment goals of deterrence and retribution, neither was sufficient to overcome the civil nature of the regulations. *See McGuire*, 50 F.4th at 1012 (“Even though the residency and employment restrictions have some deterrent effect, we cannot say that they are so punitive that they override the legislature’s intent to enact a civil scheme”); *Id.* at 1013 (“[W]e find any expression of condemnation insufficiently clear or strong to negate the legislature’s stated nonpunitive intent.”). Likewise, any deterrent or retributive effect of the Boca Raton Regulation is insufficient, without more, to overcome the City’s stated nonpunitive intent.

d. The Boca Raton Regulation has a Rational Connection to a Nonpunitive Purpose.

The State of Alabama justified its residency and employment restrictions based upon public safety concerns related to recidivism rates for sex offenders. *McGuire*, 50 F.4th at 1013-14. The *McGuire* court held that that concern was a “rational,” non-punitive purpose, even if “social science research in the record indicates that sex offenders may have lower recidivism rates than previously thought.” *Id.*

Boca Raton, too, was motivated by public safety concerns related to sex offender recidivism. *See* Boca Raton Ordinance No. 4880, Exh. 1, at p. 2 (“[T]he Mayor and the City Council acknowledge the recidivism rate for released sex offenders is alarmingly high, especially for those who commit their crimes on

children.”). Thus, the Boca Raton Regulation has a rational connection to a nonpunitive purpose of protecting children and public safety.⁹

e. The Boca Raton Regulation Is Not Excessive.

The Eleventh Circuit determined that Alabama’s residency and employment restrictions were not “excessive,” notwithstanding the fact that “(1) they apply to all registrants for life; (2) other state laws are less severe; and (3) the restrictions caused [a registrant] to be homeless and unable to find a job.” *McGuire*, 50 F.4th at 1015.

That holding strongly supports the conclusion that FAC has not plausibly alleged that Boca Raton’s materially narrower residence only regulation is excessive in relation to its public safety purpose. FAC alleges no Boca specific facts showing the extent to which the Regulation excludes available housing or has caused a covered person to become homeless.¹⁰ Violations of Alabama’s sex offender residency restriction “may constitute a Class C felony,” subjecting a violator to imprisonment for “not more than 10 years or less than 1 year and 1 day.” *McGuire v. Marshall*, 512 F. Supp. 3d 1189, 1203 (M.D. Ala. 2021). Violators of the Boca

⁹ That connection is reinforced by the Regulation’s definition of the covered class. Section 9-101 does not apply to registrants generally; it applies to specified sexual offenses involving victims younger than sixteen. The regulated class therefore bears a direct relationship to the City’s stated purpose of protecting children.

¹⁰ FAC’s own countywide allegations reinforce that pleading deficiency. FAC alleges that the statewide restriction alone renders approximately 73% of Palm Beach County housing unavailable and reports the same 73% figure after local residency ordinances are included. Compl. ¶¶ 58, 62.

Raton Regulation “shall be punished as provided in section 1-16, Code of Ordinances.” Boca Raton Ordinance No. 4880, Exh. 1 at p. 4. The maximum such punishment is “a fine not exceeding \$500.00 or imprisonment for a term not exceeding 60 days, or by both such fine and imprisonment.” *See* Boca Raton Code of Ordinances, Sec. 1-16, available at https://library.municode.com/fl/boca_raton/codes/code_of_ordinances?nodeId=PTI_ICOOR_CH1GEPR (last checked September 2, 2026).¹¹

B. Doe v. Miami-Dade County Is Distinguishable.

Boca Raton recognizes that *Doe v. Miami-Dade County*, 846 F.3d 1180 (11th Cir. 2017), is an important pleading stage decision. There, the Eleventh Circuit held that two individual plaintiffs had plausibly alleged that Miami-Dade County’s 2,500-foot school residency restriction was sufficiently punitive in effect to permit their Ex Post Facto claims to proceed to discovery. *Id.* at 1185-86. Those plaintiffs alleged not merely a substantial restriction on housing generally, but that they were themselves homeless because of the County’s ordinance; one had been unable to live with his sister and was directed to homeless encampments, while the other slept in his car after repeated unsuccessful attempts to find compliant affordable housing. *Id.*

¹¹ Although the relative severity of the enforcement penalty does not itself resolve the excessiveness inquiry, it further distinguishes Boca Raton’s regulation from the scheme upheld in *McGuire*.

The complaint also contained particularized allegations bearing on excessiveness, including lifetime application, the absence of individualized risk assessment, and the contention that the restriction itself undermined its stated public-safety purpose.¹²

The Complaint here contains no comparable Boca-specific allegations. FAC identifies no member subjected to the Boca Raton Regulation, no Boca residence a member sought but could not occupy, no Boca-specific housing search, no Boca-caused homelessness or displacement, and no Boca enforcement event. Instead, its punitive effects theory relies principally on statewide, regional, and aggregate allegations and on hardships attributed to restrictions imposed by multiple governmental entities. *Doe* therefore reinforces, rather than eliminates, the need for facts plausibly connecting the challenged defendant's own regulation to the punitive effects alleged.

¹² The subsequent proceedings in the same litigation underscore the limited pleading stage nature of *Doe*. Following remand, the case proceeded to a five day bench trial on a facial Ex Post Facto challenge, with testimony from twenty witnesses and extensive expert evidence. *Doe #4 v. Miami-Dade County*, No. 14-23933-CIV, 2018 WL 10780510, at *1–2 (S.D. Fla. Dec. 18, 2018). On that developed record, the district court concluded that the County had not acted with punitive intent and that the plaintiffs had failed to establish by the “clearest proof” that the ordinance’s punitive effects overrode its civil purpose. *Id.* at 14–22. The court therefore rejected the facial Ex Post Facto challenge. *Id.* at 22. *McGuire*, decided thereafter, likewise provides binding Eleventh Circuit merits guidance sustaining residence and employment restrictions despite substantial hardship.

CONCLUSION

For the reasons discussed above, Plaintiff has not adequately alleged standing to pursue Counts I and II against Boca Raton. Even if FAC had adequately alleged standing, the Complaint does not plausibly allege that the Boca Raton Regulation constitutes punishment under the governing framework and controlling Eleventh Circuit authority. The Complaint should accordingly be dismissed as to Boca Raton.

Wherefore, Defendant, City of Boca Raton, respectfully requests that the Court grant this Motion, dismiss the Complaint against it, and award any further relief the Court deems just and proper.

Certificate of Word Limit

Per the requirements of Local Rule 7.1(F), undersigned counsel states that the memorandum in support of this Motion is 5,806 words.

Dated: September 8, 2026 Respectfully submitted

/s/ Bryan C. Siddique

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WEISS SEROTA HELFMAN

COLE & BIERMAN, P.L.

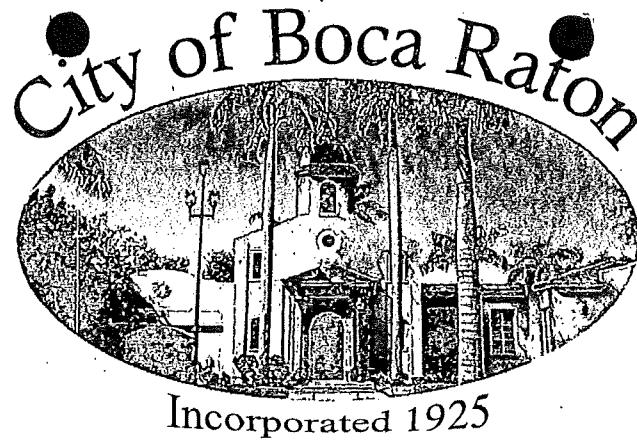
200 East Broward Boulevard, Suite 1900

Fort Lauderdale, FL 33301

Telephone: (954) 763-4242

Fax: (954) 764-7770

Counsel for Defendant, City of Boca Raton



ORDINANCE

4880

AN ORDINANCE OF THE CITY OF BOCA RATON AMENDING CHAPTER 9 OF THE CODE OF ORDINANCES, ENTITLED "MISCELLANEOUS OFFENSES"; TO CREATE ARTICLE V TO BE ENTITLED "SEXUAL OFFENDERS AND SEXUAL PREDATORS"; TO PROHIBIT SEXUAL OFFENDERS AND SEXUAL PREDATORS CONVICTED OF CRIMES UNDER CERTAIN FLORIDA STATUTES FROM LIVING WITHIN 1,500 FEET OF SPECIFIED LOCATIONS WITHIN THE CITY OF BOCA RATON AND PROVIDING FOR PENALTIES; PROVIDING FOR SEVERABILITY; PROVIDING FOR REPEALER; PROVIDING FOR CODIFICATION; PROVIDING AN EFFECTIVE DATE

WHEREAS, the Mayor and the City Council are deeply concerned about the numerous recent occurrences in our state and elsewhere, whereby convicted sex offenders who have been released from custody victimize children within the community where they reside; and

Exhibit 1

1 WHEREAS, the Mayor and the City Council acknowledge the recidivism rate for
2 released sex offenders is alarmingly high, especially for those who commit their crimes on
3 children; and

4 WHEREAS, the Florida Legislature has determined that sexual offenders and
5 predators convicted of certain sexual crimes pose a real and substantial danger to children and
6 therefore, has prohibited such sexual offenders and predators from residing within one thousand
7 (1,000) feet from certain locations where children regularly congregate, as set forth in sections
8 794.065 and 947.1405, Florida Statutes; and

9 WHEREAS, the Mayor and the City Council desire to establish a policy which
10 protects, to an extent greater than the State statutes, the public health, safety, and welfare of its
11 most vulnerable citizens from this threat; now therefore

12
13 THE CITY OF BOCA RATON HEREBY ORDAINS:
14

15 Section 1. That Chapter 9 of the Code of Ordinances entitled "Miscellaneous
16 Offenses" is amended to add Article V which provides:

17 ARTICLE V. SEXUAL OFFENDERS AND PREDATORS.

18 Section 9-100. Definitions. The following words, terms and phrases, when used in
19 this article, shall have the meanings ascribed to them in this section, except where the context
20 clearly indicates a different meaning:

21 "Permanent residence" means a place where the person abides, lodges, or resides
22 for 14 or more consecutive days.

23 "Temporary residence" means a place where the person abides, lodges, or resides
24 for a period of 14 or more days in the aggregate during any calendar year and which is not the
25 person's permanent address, or a place where the person routinely abides, lodges, or resides

1 for a period of 4 or more consecutive or nonconsecutive days in any month and which is not the
2 person's permanent residence.

3 Section 9-101. Sexual Offender and Sexual Predator Residence Prohibition.

4 (1) It is unlawful for any person who has been convicted of a violation of Section
5 794.011 ("Sexual battery"), 800.04 ("Lewd or lascivious offenses committed upon or in the
6 presence of persons less than 16 years of age"), 827.071 ("Sexual performance by a child"), or
7 847.0145 ("Buying or selling of minors"), Florida Statutes, regardless of whether adjudication
8 has been withheld, in which the victim of the offense was less than 16 years of age, to establish
9 a permanent residence or temporary residence within 1,500 feet of any school, designated
10 public school bus stop, day care center, park, or playground. Provided, however, a person
11 referenced in the foregoing sentence and residing within 1,500 feet of any school, designated
12 public school bus stop, day care center, park, playground, does not commit a violation of this
13 section if:

14 (a) The person established the permanent residence prior to June 28, 2005 (the
15 effective date of this Ordinance No. 4880).

16 (b) The person was a minor when he/she committed the offense and was not
17 convicted as an adult.

18 (c) The person is a minor.

19 (d) The school, designated public school bus stop, day care center, park, or
20 playground within 1,500 feet of the person's permanent residence was opened after the person
21 established the permanent residence.

22 (2) For purposes of determining the minimum distance separation, the distance shall
23 be measured by following a straight line from the outer property line of the permanent residence
24 or temporary residence to the nearest outer property line of a school, designated public school
25 bus stop, day care center, park, or playground.

1 (3) A person who violates this section shall be punished as provided in section 1-16,
2 Code of Ordinances.

3 Section 9-102. Property Owners Prohibited from Renting Real Property to Certain
4 Sexual Offenders and Sexual Predators.

5 (1) It is unlawful to lease, rent or convey any dwelling to any person prohibited from
6 establishing such permanent residence or temporary residence pursuant to section 9-101 of this
7 Code, if such dwelling, or part thereof, is going to be used as a permanent residence or
8 temporary residence of said person and such dwelling is located within 1,500 feet of any school,
9 designated public school bus stop, day care center, park, or playground.

10 (2) A property owner's failure to comply with the provisions of this section shall
11 constitute a violation of this section, and shall subject the property owner to the code
12 enforcement provisions and procedures as provided in Chapter 2 of the Code of Ordinances.

13 Section 2. If any section, subsection, clause or provision of this ordinance is held
14 invalid, the remainder shall not be affected by such invalidity.

15 Section 3. All ordinances and resolutions or parts of ordinances and resolutions and
16 all sections and parts of sections in conflict herewith shall be and hereby are repealed.

17 Section 4. Codification of this ordinance in the City Code of Ordinances is hereby
18 authorized and directed.

19 Section 5. This ordinance shall take effect immediately upon adoption.
20

PASSED AND ADOPTED by the City Council of the City of Boca Raton this 28th
day of June, 2005.

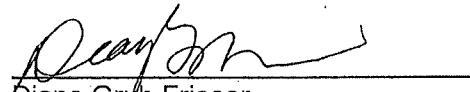
CITY OF BOCA RATON, FLORIDA

ATTEST:


Steven L. Abrams, Mayor

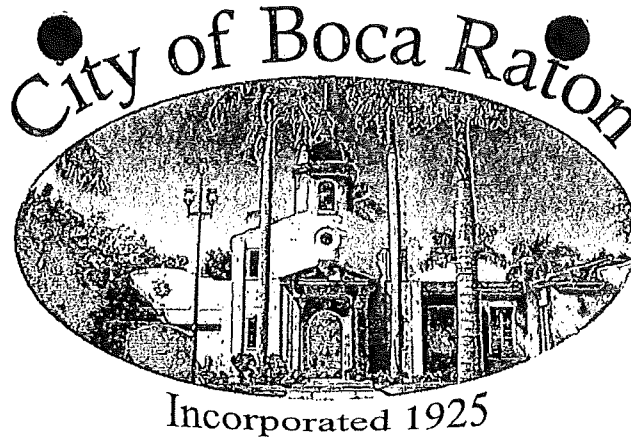

Sharma Carannante, City Clerk

Approved as to form:


Diana Grub Frieser
City Attorney

O05252

COUNCIL VOTE			
	YES	NO	ABSTAINED
MAYOR STEVEN L. ABRAMS	☒	☒	☐
DEPUTY MAYOR SUSAN WHELCHER	☒	☒	☐
COUNCIL MEMBER PETER R. BARONOFF	☒	☒	☐
COUNCIL MEMBER BILL HAGER	☒	☒	☐
COUNCIL MEMBER SUSAN HAYNIE	☒	☒	☐



ORDINANCE

4893

1
2 AN ORDINANCE OF THE CITY OF BOCA RATON
3 AMENDING ARTICLE V, CHAPTER 9 OF THE CODE OF
4 ORDINANCES, ENTITLED "SEXUAL OFFENDERS AND
5 SEXUAL PREDATORS"; TO PROHIBIT SEXUAL
6 OFFENDERS AND SEXUAL PREDATORS CONVICTED OF
7 CRIMES UNDER CERTAIN FLORIDA STATUTES FROM
8 LIVING WITHIN 2,500 FEET OF SPECIFIED LOCATIONS;
9 TO PROVIDE FOR THE ANNUAL REGISTRATION OF
0 PRIVATE SCHOOL BUS STOPS; PROVIDING FOR A
1 DEFINITION OF PRIVATE SCHOOL BUS STOPS;
2 PROVIDING FOR SEVERABILITY; PROVIDING FOR
3 REPEALER; PROVIDING FOR CODIFICATION; PROVIDING
4 AN EFFECTIVE DATE
5

6 WHEREAS, the Mayor and the City Council adopted Ordinance No. 4880 on June 28,
7 2005, which ordinance prohibited sexual offenders and sexual predators convicted of crimes
8 under certain Florida Statutes from living within 1,500 feet of any school, designated public
9 school bus stop, day care center, park, or playground; and

1 WHEREAS, the Mayor and the City Council desire to further protect the public health,
2 safety, and welfare of its citizens from the threat of sexual offenders and sexual predators by
3 prohibiting sexual offenders and sexual predators convicted of crimes under certain Florida
4 Statutes from living within 2,500 feet of specified locations, adding private school bus stops and
5 public libraries as additional locations which sexual offenders and sexual predators are
6 prohibited from living within 2,500 feet of, providing for annual registration of private school bus
7 stops, and providing for a definition of private school bus stops; now therefore

8
9 THE CITY OF BOCA RATON HEREBY ORDAINS:

0 Section 1. Section 9-100, Code of Ordinances, is amended to add the following
1 definition:

2 "Private school bus stop" means a location where private school students from more
3 than 1 residence are picked up and/or dropped off during transportation to or from a private
4 school.

5 Section 2. Section 9-101, Code of Ordinances, is amended to read:

6 Section 9-101. Sexual Offender and Sexual Predator Residence Prohibition.

7 (1) It is unlawful for any person who has been convicted of a violation of Section
8 794.011 ("Sexual battery"), 800.04 ("Lewd or lascivious offenses committed upon or in the
9 presence of persons less than 16 years of age"), 827.071 ("Sexual performance by a child"), or
0 847.0145 ("Buying or selling of minors"), Florida Statutes, regardless of whether adjudication
1 has been withheld, in which the victim of the offense was less than 16 years of age, to establish
2 a permanent residence or temporary residence within 2,500 ~~4,500~~ feet of any school,
3 designated public school bus stop, private school bus stop registered pursuant to Section 9-103,
4 public library, day care center, park, or playground. Provided, however, a person referenced in
5 the foregoing sentence and residing within 2,500 ~~4,500~~ feet of any school, designated public

1 school bus stop, private school bus stop registered pursuant to Section 9-103, public library, day
2 care center, park, or playground does not commit a violation of this section if:

3 (a) The person established the permanent residence prior to June 28, 2005 (the
4 effective date of ~~this~~ Ordinance No. 4850) or prior to August 23, 2005 (the effective date of
5 Ordinance No. 4893), as applicable, based on the number of feet (radius) and/or the specified
6 locations from which the number of feet are calculated.

7 (b) The person was a minor when he/she committed the offense and was not
8 convicted as an adult.

9 (c) The person is a minor.

0 (d) The school, designated public school bus stop, private school bus stop registered
1 pursuant to Section 9-103, public library, day care center, park, or playground within 2,500
2 4,500 feet of the person's permanent or temporary residence was opened and/or established
3 after the person established the permanent or temporary residence.

4 Section 3. Section 9-102, Code of Ordinances, is amended to read:

5 Section 9-102. Property Owners Prohibited from Renting Real Property to Certain
6 Sexual Offenders and Sexual Predators.

7 (1) It is unlawful to lease, rent or convey any dwelling to any person prohibited from
8 establishing such permanent residence or temporary residence pursuant to section 9-101 of this
9 Code, if such dwelling, or part thereof, is going to be used as a permanent residence or
0 temporary residence of said person and such dwelling is located within 2,500 4,500 feet of any
1 school, designated public school bus stop, private school bus stop registered pursuant to
2 Section 9-103, public library, day care center, park, or playground.

3 (2) A property owner's failure to comply with the provisions of this section shall
4 constitute a violation of this section, and shall subject the property owner to the code
5 enforcement provisions and procedures as provided in Chapter 2 of the Code of Ordinances.

1 Section 4. Section 9-103, Code of Ordinances, is created read:

2 Section 9-103. Private school bus stops; annual registration.

3 (1) The prohibition from establishing a residence near a private school bus stop as
4 set forth in this article shall only apply to those private school bus stops that are registered with
5 the City pursuant to this section.

6 (2) Any private school which enrolls children within the City may register the location
7 of its bus stops with the Police Services Department, and may amend such registration by filing
8 the locations, as amended, with the Police Services Department. The registration, or amended
9 registration, as applicable, shall be effective for a single school year from the date of filing
0 through August 1 following the school year.

1 Section 5. If any section, subsection, clause or provision of this ordinance is held
2 invalid, the remainder shall not be affected by such invalidity.

3 Section 6. All ordinances and resolutions or parts of ordinances and resolutions and
4 all sections and parts of sections in conflict herewith shall be and hereby are repealed.

5 Section 7. Codification of this ordinance in the City Code of Ordinances is hereby
6 authorized and directed.

7 Section 8. This ordinance shall take effect immediately upon adoption.
8

PASSED AND ADOPTED by the City Council of the City of Boca Raton this 23rd
day of August, 2005.

CITY OF BOCA RATON, FLORIDA

ATTEST:


Sharma Carannante, City Clerk


Steven L. Abrams, Mayor

Approved as to form:


Diana Grub Frieser
City Attorney

O05260

COUNCIL VOTE			
	YES	NO	ABSTAINED
MAYOR STEVEN L. ABRAMS	☒	☒	
DEPUTY MAYOR SUSAN WHELCHER	☒	☒	
COUNCIL MEMBER PETER R. BARONOFF	☒	☒	
COUNCIL MEMBER BILL HAGER	☒	☒	
COUNCIL MEMBER SUSAN HAYNIE	☒	☒	