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

NATH C. DOUGHTIE,

Plaintiff,

v. **Case No. 1:23-cv-210-AW-MJF**

CITY OF GAINESVILLE,

Defendant,

and

ASHLEY MOODY, in her official capacity as Florida Attorney General,

Intervenor-Defendant.

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ORDER DISMISSING CASE FOR LACK OF SUBJECT-MATTER JURISDICTION

Nath Doughtie sued the City of Gainesville and several state officials to challenge the constitutionality of a new Florida law (House Bill 1645, or the "Act"). ECF No. 1 (Cmpl.). The Act created the Gainesville Regional Utility Authority (the "Authority") and gave it control of the Gainesville Regional Utilities ("GRU"). Before the Authority took control, the Gainesville City Commission had controlled GRU.

Gainesville's citizens elect city commissioners, and Florida's Governor appoints the Authority's members. So the Act moved GRU control from elected officials to appointed officials. Doughtie's claim is that this change violates the First

and Fourteenth Amendments by eliminating his right to vote for those who run GRU. *See* Cmpl. ¶¶ 152, 155-56.

The complaint included Florida's Attorney General, Secretary of State, and Governor as Defendants, but Doughtie voluntarily dismissed his claims against them, leaving the City as the sole Defendant. *See* ECF Nos. 1, 16, 22. I later granted the Attorney General's unopposed motion to intervene to defend the Act's constitutionality. ECF No. 29.

Pending now are Doughtie's and the City's cross motions for summary judgment. ECF Nos. 26, 28. After a hearing on the motions, all parties filed additional briefs. ECF Nos. 41, 42, 45, 46. The Attorney General raised the issue of standing (among other things). Although the City did not raise standing, the court must always consider its own jurisdiction. *See Kelly v. Harris*, 331 F.3d 817, 819 (11th Cir. 2003). Having done so, I conclude Doughtie lacks standing.

As Plaintiff, Doughtie had the burden of showing standing, which requires showing he "(1) suffered an injury in fact, (2) that is fairly traceable to the challenged conduct of the defendant, and (3) that is likely to be redressed by a favorable judicial decision." *Salcedo v. Hanna*, 936 F.3d 1162, 1166 (11th Cir. 2019) (quoting *Spokeo, Inc. v. Robins*, 578 U.S. 330, 338 (2016), *as revised* (May 24, 2016)). He had to meet this burden "in the same way as any other matter on which [he] bears the burden of proof," *Lujan v. Defs. of Wildlife*, 504 U.S. 555, 561 (1992), so at summary

judgment, he must provide evidence supporting standing. But as explained below, the inquiry here is a purely legal one. As a matter of law, the Authority and the City are separate legal entities, and the City does not enforce the Act in any way that injures Doughtie. Doughtie therefore cannot show traceability or redressability as to the City, meaning he does not have standing.

I.

As noted above, standing requires injury, traceability, and redressability. *Salcedo*, 936 F.3d at 1166. The Attorney General does not question whether Doughtie has suffered an injury, and I assume he has. Doughtie wishes to vote for those running GRU, and the Act keeps him from doing so. That is likely enough to show injury. But the Attorney General argues Doughtie cannot establish the other two elements: traceability and redressability. ECF No. 45 at 4.

Traceability and redressability "often travel together." *Support Working Animals, Inc. v. Governor of Fla.*, 8 F.4th 1198, 1201 (11th Cir. 2021). And since Doughtie has sued to enjoin the City from enforcing the Act, he must show that the City "has the authority to enforce the particular provision that he has challenged, such that an injunction prohibiting enforcement would be effectual." *Id.* "He must demonstrate that there is a 'causal connection' between his injury and the conduct of which he complains and that it is 'likely, as opposed to merely speculative, that

the injury will be redressed by a favorable decision.'" *Id.* (cleaned up) (quoting *Lujan*, 504 U.S. at 560).

A.

As to traceability, Doughtie contends his injury flows from the Act. ECF No. 46 at 2. Maybe so, but it is not enough to show an injury that is traceable to a law's existence. Doughtie must show that the City's *enforcement* of the law causes his injury. *Cf. Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236, 1253 (11th Cir. 2020). His alleged injury is his inability to vote for the Authority's governing members. *See* ECF No. 40 at 12 (describing his injury as being "denied the right to vote for the officers who are now making legislative decisions for a unit of government of the City of Gainesville"). So he must identify conduct the City is taking (or will take) that causes this injury. He has not done so.[1]

A significant problem here for Doughtie is that, as the Attorney General argues, the Authority and the City are separate legal entities.[2] The decision in

[1] I recognize that the Act does not call for any "enforcement" in the usual sense of the word. *See Lewis v. Governor of Ala.*, 944 F.3d 1287, 1298-99 (11th Cir. 2019) ("[N]o one contends that the Attorney General is actually, affirmatively 'enforcing' [the challenged Act]—at least in the usual sense, say, of bringing suit to implement its provisions."). But Doughtie still has to show that the City's actions—not just the law itself—cause his injury. *Cf. id.* at 1299 ("The fact that the Act itself doesn't contemplate enforcement by the Attorney General counts heavily against plaintiffs' traceability argument.").

[2] The City seems to disagree with the Attorney General. As Doughtie noted, the City's answer admitted the Authority is a unit of the City without separate legal

Lederer v. Orlando Utilities Commission, 981 So. 2d 521 (Fla. 5th DCA 2008), is instructive on this point. *Lederer*, on which the Attorney General extensively relies, held that the Orlando Utilities Commission ("OUC") was not a municipal department. *Id.* at 526. Municipal departments—unlike other types of special units, districts, and municipal agencies that the Legislature creates for specific purposes—are generally not separate legal entities with the capacity to sue or be sued. *Id.* at 525-26. Although the OUC was "a public utility designated as part of the City's government," it was "a distinct legal entity that operates mostly independently of the City" and thus not a municipal department. *Id.* at 525.

Lederer did not specify what the OUC was—only what it was not. But in *Hodge v. Orlando Utilities Commission*, 2009 WL 4042930 (M.D. Fla. Nov. 23, 2009), the federal district court concluded the OUC was a municipal agency, confirming its status as a separate entity capable of being sued, *see id.* at *7 n.6 ("A 'municipal agency' is a separate legal entity from the municipality, whereas a 'municipal department' is not a separate legal entity and does not have the capacity to sue and be sued apart from the city." (citing *Lederer*, 981 So. 2d at 525-26)).

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existence. *See* ECF No. 21 at 4. But this is a legal issue. *See Dean v. Barber*, 951 F.2d 1210, 1214 (11th Cir. 1992) (discussing how the "capacity to sue or be sued shall be determined by the law of the state in which the district court is held" (quoting Fed. R. Civ. P. 17(b))). And parties' agreement on legal issues are not binding. *See Noel Shows, Inc. v. United States*, 721 F.2d 327, 330 (11th Cir. 1983).

The OUC and the Authority are similar on several points *Lederer* found relevant. Each was a creature of the Legislature. *See Lederer*, 981 So. 2d at 523; H.B. 1645 at 1. Each was created as part of its respective city but imbued with substantial independence. *Compare Lederer*, 981 So. 2d at 523-24 ("The special act established the OUC as a 'part of the government of the City of Orlando,' but provided that the OUC would have substantial autonomy to operate independent of the City government."), *with* H.B. 1645 § 7.01 ("The Authority shall operate as a unit of city government and, except as otherwise provided in this article, shall be free from direction and control of the Gainesville City Commission."). Each has its own board and president or CEO. *Lederer*, 981 So. 2d at 524; H.B. 1645 §§ 7.03(1)(h), 7.04(1), 7.09(1). And each had the power to set rates and undertake tasks necessary to provide and maintain utility services. *Lederer*, 981 So. 2d at 524; H.B. 1645 § 7.03(1)(c)-(d).

Finally, and perhaps most importantly, each generally acts outside its city's direct control. *Compare Lederer*, 981 So. 2d at 524 ("OUC acts independently and beyond the control of the City with respect to the powers it has under the special act."), *and Gaines v. City of Orlando*, 450 So. 2d 1174, 1181 (Fla. 5th DCA 1984) ("The OUC is a part of the City for some purposes, but . . . it is independent and beyond the control of the City as regards the powers granted to it under the special acts."), *with* H.B. 1645 § 7.01 ("[E]xcept as otherwise provided in this article, [the

Authority] shall be free from direction and control of the Gainesville City Commission."), *and id.* § 7.10(5) ("Any utility advisory board created by the City Commission shall have no role with respect to the Authority.").

There are differences between the two, but many of these differences further suggest the Authority is not a municipal department. For example, Orlando's mayor sits on the OUC's board, and its City Council selects OUC's board members. *Lederer*, 981 So. 2d at 524. The City of Gainesville, in contrast, has no direct representation on the Authority. H.B. 1645 §§ 7.04(1), 7.08(1)-(2). The OUC also cannot exercise eminent domain, *Lederer*, 981 So. 2d at 524, while the Authority can, H.B. 1645 § 7.03(1)(d).

Doughtie highlights several facts in arguing the Authority is not a separate legal entity: (1) the Act makes the Authority a "unit" of the City's government; (2) Authority workers retain the rights and benefits of city employment; (3) the City retains ownership over GRU; (4) title to property the Authority acquires is "vested in the City"; and (5) "bonds and other forms of indebtedness accrued by the Authority must be attested to by agents of the City." ECF No. 46 at 2-4 (citing H.B. 1645 §§ 7.01(e), 7.03(c) and (e), 7.09(3), 7.10(1)). But these facts do not compel the conclusion Doughtie asserts.

For starters, *Lederer* shows that a city and its utility commission can be distinct legal entities without being completely separate. They can have an

"interconnected relationship," with the operator's being a "part of the City for some purposes" yet still "independent and beyond the control of the City as to the powers granted to it." *Lederer*, 981 So. 2d at 524. Plus, the OUC had many of the same (or similar) traits Doughtie highlights. The OUC was "part of the government of the City of Orlando." *Lederer*, 981 So. 2d at 523-24. The Act creating it seemed to contemplate that at least some OUC "workers" would remain City employees. *See* ch. 9861, § 6, Laws of Fla. (1923) (giving the OUC authority to "elect and discharge at their pleasure all employees of [Orlando] whose time and services are wholly occupied in the discharge of duties directly in connection with the said electric light and water works plants"). Certain of the OUC's "evidence of . . . indebtedness" had to be signed "by the Mayor of the City and under the seal of" the City. *Id.* § 7. And there is nothing in the act creating the OUC granting it ownership or title over anything. *See id.* § 6 (granting the OUC "full authority over the management and control of the electric light and water works plants in the City of Orlando" but mentioning nothing of ownership). In short, Doughtie has not pointed to anything showing the Authority is not a separate entity capable of suing and being sued. And I conclude that, as a matter of law, it is indeed a separate entity.

Since the Authority is separate from the City, its actions in enforcing the Act cannot be imputed to the City for standing purposes. *Cf. Jacobson*, 974 F.3d at 1253-54 ("Because the Supervisors are independent officials not subject to the Secretary's

control, their actions to implement the ballot statute may not be imputed to the Secretary for purposes of establishing traceability."). And to the extent the City itself "enforces" the Act, that enforcement appears unconnected to Doughtie's alleged injury. Doughtie points generally to sections 7.03 and 7.10 of the Act. *See* ECF No. 40 at 12-13. But section 7.03 outlines the Authority's "powers and duties," not the City's. And the City's primary "obligation" under section 7.10 is to effectuate an orderly transition of GRU control to the Authority. Even assuming one or both of these sections show the City enforces the Act in some way, *some* enforcement is not enough for standing. *Jacobson*, 974 F.3d at 1256. Instead, Doughtie must show that the City enforces the specific provisions of the Act that cause his injury. He has not done that.[3]

B.

There are redressability issues too. For one, since the Authority is a separate entity not under City control, the Authority would not be bound by an injunction against the City. *See Jacobson*, 974 F.3d at 1254 ("As nonparties, the Supervisors are not obliged in any binding sense to honor an incidental legal determination this

[3] Doughtie has not shown (or even alleged) that the orderly transition section 7.10 requires has not already occurred. *See* ECF No. 26 at 11 (describing how "[t]he members of the appointed Authority have been appointed by the governor, sworn into office, elected a chairman, and commenced making legislative, operational, and management decisions pertaining to the governance of GRU"). So he has not shown that an injunction preventing the City from assisting in the transition would remedy his alleged injury by allowing him to vote for governing members.

suit produces." (cleaned up)). An injunction against the City would not prevent the unelected Authority members from controlling GRU. *Cf. Lujan*, 504 U.S. at 569 ("[R]esolution by the District Court would not have remedied respondents' alleged injury anyway, because it would not have been binding upon the agencies. They were not parties to the suit, and there is no reason they should be obliged to honor an incidental legal determination the suit produced.").

The possibility that the Authority might voluntarily comply with the court's order cannot help. "Any persuasive effect a judicial order might have upon . . . absent nonparties who are not under [Defendant's] control, cannot suffice to establish redressability." *Jacobson*, 974 F.3d at 1254 (citation omitted). And as to any possibility that the City might proceed as though the Act never happened and try to set up competing control over GRU, it is beyond speculative as to whether this would remedy Doughtie's asserted injury—or what the Authority might do in response. *Cf. Doe v. Pryor*, 344 F.3d 1282, 1286 (11th Cir. 2003) ("Speculation is not enough to base standing upon." (citing *Lujan*, 504 U.S. at 561)); *cf. also Jacobson*, 974 F.3d at 1257 (finding it "far from clear" that ordering the named party to promulgate a rule contrary to state law would make nonparties act in a manner to redress plaintiffs' injuries).[4] Although standing does not require the possibility of

[4] Doughtie does not appear to seek an injunction directing the City to assert control of GRU. *See* ECF No. 26 at 2-3; *see also* ECF No. 1 ¶ 156; ECF No. 40 at

complete relief, *Garcia-Bengochea v. Carnival Corp.*, 57 F.4th 916, 927 (11th Cir. 2023), "it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision," *Lujan*, 504 U.S. at 561 (cleaned up) (citation omitted); *see also Lewis*, 944 F.3d at 1301 ("[I]n assessing [redressability], we ask whether a decision in a plaintiff's favor would 'significantly increase the likelihood' that she 'would obtain relief that directly redresses the injury' that she claims to have suffered." (cleaned up) (quoting *Harrell v. Fla. Bar*, 608 F.3d 1241, 1260 n.7 (11th Cir. 2010))).

Finally, Doughtie seems to suggest his injury is redressable because the court could essentially eliminate the Act from Florida law. He "seeks an order invalidating" the Act—an order he argues will render the law "null and void" and "restore exclusive legislative governance of GRU to the City Commission of the City of Gainesville" and thus restore his right to vote. ECF No. 20 at 11; *see also* ECF No. 40 at 13 (describing the impact of an injunction as rendering the Act "invalid" and thus unenforceable and putting back what "was in place before"). But "federal courts have no authority to erase a duly enacted law from the statute books."

13. But even if he does, such an injunction would not stop the Authority from asserting its own control of GRU. How the debacle of two groups battling for control might resolve is anyone's guess. But all that matters here is that Doughtie has not shown that such an injunction would significantly increase the likelihood that he would be able to vote for those controlling GRU.

Jacobson, 974 F.3d at 1255 (citation omitted). Instead, courts can only enjoin Defendants "from taking steps to enforce a statute." *Id.* (citation omitted).

C.

In sum, Doughtie has not met his burden on standing. He has not shown that his inability to vote for the governing members of GRU is traceable to the actions of the City or redressable by an injunction against the City. The court therefore lacks subject matter jurisdiction and must dismiss.

II.

The case is dismissed for lack of subject matter jurisdiction. The summary judgment motions (ECF Nos. 26, 28) are DENIED as moot. The clerk will enter a judgment that says, "This case is dismissed without prejudice for lack of subject matter jurisdiction." The clerk will then close the file.

SO ORDERED on September 6, 2024.

s/ *Allen Winsor*
United States District Judge