

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA**

Case No. 18-24190-CIV-SMITH

WILLIAM O. FULLER and
MARTIN PINILLA, II,

Plaintiffs,

v.

JOE CAROLLO,

Defendant.

**ORDER DENYING MOTION FOR TEMPORARY RESTRAINING ORDER AND
PRELIMINARY INJUNCTION**

This matter is before the Court on Plaintiffs' Verified Emergency Motion for a Temporary Restraining Order and Preliminary Injunction [DE 221] and Defendant's Preliminary Response [DE 223]. This case arises from Defendant's alleged retaliatory conduct towards Plaintiffs after they supported Defendant's opponent in an election for City Commissioner. Defendant ultimately won the election and Plaintiffs allege that since the election Defendant has subjected Plaintiffs to a campaign of harassment in retaliation for Plaintiffs' exercise of their First Amendment right, thereby violating 42 U.S.C. § 1983. Plaintiffs' Second Amended Complaint seeks money damages and a permanent injunction enjoining Defendant from further retaliation against Plaintiffs.

The instant Motion seeks a temporary restraining order and a preliminary injunction to prohibit Defendant from participating in any further discussions concerning the redistricting of the City of Miami and prohibiting Defendant from voting on any proposed redistricting maps at the commission meeting scheduled for March 11, 2022. The redistricting map at issue redraws the boundaries of District 3, the district Defendant represents, to include Defendant's home. By including his home in his district, Defendant could obtain homestead protection for his home,

thereby protecting it from any money judgment Plaintiffs may obtain in this case. Plaintiffs argue that this is just additional retaliation against Plaintiffs.

To obtain a temporary restraining order, a party must demonstrate “(1) a substantial likelihood of success on the merits; (2) that irreparable injury will be suffered if the relief is not granted; (3) that the threatened injury outweighs the harm the relief would inflict on the non-movant; and (4) that entry of the relief would serve the public interest.” *Schiavo ex. rel Schindler v. Schiavo*, 403 F.3d 1223, 1225–26 (11th Cir. 2005). The Motion is denied because Plaintiffs cannot establish irreparable harm.

Plaintiffs maintain that they will suffer irreparable harm because, once Defendant’s home is protected through the homestead exemption, there will be no check on the retaliation Defendant will inflict on Plaintiffs. First, this is pure speculation. Second, in reality, Plaintiffs request the preliminary injunction to protect a potential asset which could be used to satisfy any later obtained money judgment. However, generally courts do not issue preliminary injunctions in order to maintain assets which could be used to satisfy a potential money judgment. *See Rosen v. Cascade Int’l, Inc.*, 21 F.3d 1520, 1529 (11th Cir. 1994).

Third, the relief sought by Plaintiffs is different in nature than that sought in the Second Amended Complaint. Plaintiffs seek to enjoin Defendant from exercising his legislative responsibilities, not from taking retaliatory actions against Plaintiffs. Moreover, as Defendant points out in his response, any challenge to the City Commission’s redistricting decisions should be challenged through a voter redistricting lawsuit. Consequently, Plaintiffs have failed to show that they will suffer irreparable harm if the Court does not issue a temporary restraining order or preliminary injunction.

Accordingly, it is

ORDERED that:

1. Plaintiffs' Verified Emergency Motion for a Temporary Restraining Order and Preliminary Injunction [DE 221] is **DENIED**.

2. The hearing set for **March 9, 2022 at 1:30 p.m.** is **CANCELED**.

DONE AND ORDERED in Fort Lauderdale, Florida, this 9th day of March, 2022.

A handwritten signature in black ink, appearing to read 'Rodney Smith', is written over a horizontal line.

RODNEY SMITH
UNITED STATES DISTRICT JUDGE

Copies to: Counsel of Record