

IN THE CIRCUIT COURT OF THE SEVENTH JUDICIAL CIRCUIT
IN AND FOR ST. JOHNS COUNTY, FLORIDA

2012 MAY -1 A 10 59

ALLIED VETERANS OF THE
WORLD, INC.: AFFILIATE 31,
A Florida non-profit corporation, et al.,

Plaintiffs,

CASE NO. CA11-1831

DIVISION SS

vs.

ADAM H. PUTNAM, as Commissioner
of the Florida Department of Agriculture
and Consumer Services,

Defendant

FILED
2011 DEC 15 PM 2:26
CLERK OF CIRCUIT COURT
ST. JOHNS COUNTY, FLORIDA

**MOTION TO DISMISS FOR FAILURE TO JOIN INDISPENSABLE
PARTY/ MOTION TO JOIN NECESSARY OR PROPER PARTY**

COMES NOW, Defendant, FLORIDA DEPARTMENT OF AGRICULTURE AND
CONSUMER SERVICES ("Department"), by and through its undersigned counsel, and pursuant
to Rules 1.140, 1.210 and 1.250, Fla. R. Civ. P., files its Motion to Dismiss for Failure to Join
Indispensible Party/ Motion to Join Necessary or Proper Party, and states:

1. On November 4, 2011, Plaintiffs filed this action against the Department in St.
Johns County, Florida, seeking Declaratory Judgment to determine whether Plaintiffs are subject
to the provisions of Chapter 496, Fla. Stat. (2011), which regulates the solicitation of
contributions for charitable purposes.

2. Plaintiffs make three arguments in their Complaint: (1) that neither Plaintiffs nor
their parent organization, Allied Veterans of the World, Inc. ("Parent"), are charitable
organizations as the term is defined in Chapter 496, and are therefore not subject to the
requirements of Chapter 496; (2) that neither Plaintiffs nor Parent are involved in solicitation of

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contributions within the meaning of Chapter 496, and are therefore not subject to the requirements of Chapter 496; (3) that Chapter 496 is unconstitutionally vague and overbroad as applied to Plaintiffs and Parent. Parent is not a Plaintiff in this action.

3. The inclusion of Parent in this action as a party is necessary for the Court to make a complete and efficient resolution of this matter. “Florida law defines ‘indispensable parties’ to a lawsuit as [p]ersons who 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.” Glancy v. First W. Bank, 802 So.2d 498, 499 (Fla. 4th DCA 2001)(citations omitted); Haire v. Overseas Holdings Ltd. P'ship, 908 So.2d 580, 583 (Fla. 2d DCA 2005).

4. In addition, “[a]ll persons materially interested in the subject matter of a suit and who would be directly affected by an adjudication of the controversy are necessary parties.” Everette v. Florida Dept. of Children & Families, 961 So.2d 270, 273 (Fla. 2007)(citations omitted). The distinction between an indispensable party and a necessary party is that a party deemed merely necessary must be joined before the suit can proceed, *if feasible*; whereas, an indispensable party is a party that the court’s inability to join requires dismissal of the action. Provident Tradesmens Bank & Trust Co. v. Patterson, 390 U.S. 102, 118 (1968). All indispensable parties are also necessary parties, but not all necessary parties are indispensable parties. Dep’t of Revenue ex rel. Preston v. Cummings, 871 So.2d 1055, 1058 (Fla. 2d DCA 2004) approved sub nom. Florida Dept. of Revenue v. Cummings, 930 So.2d 604 (Fla. 2006). In addition, Rule 1.210, Fla. R. Civ. P., also provides for the inclusion of all parties whose presence is proper for a complete determination of the cause.

5. Issues related to Parent's subjugation to Chapter 496, F.S., and Parent's relationship to Plaintiffs are inextricably connected to the determination being sought by Plaintiffs in their Complaint. In addition, Plaintiffs Complaint fuses the claims of Plaintiffs and Parent. Plaintiffs also argue throughout the Complaint regarding the applicability of Chapter 496 to Parent.

6. Paragraph 2 of the Complaint states: "Allied Veterans of the World and Affiliates, Inc. ("Allied Veterans") is a private veterans organization which is exempt from federal income taxation pursuant to § 501(c)(19) of the Internal Revenue Code and has a current determination letter from the Internal Revenue Service ("IRS")."¹ The inclusion of the words "and affiliates" in the company name is obviously meant to show a unity between Parent and its affiliates. In fact, each Affiliate Charter specifically states that it is subject to the bylaws of Parent as can be seen from the example Charter attached to Plaintiffs' Complaint as Exhibit C.

7. Parent and Plaintiffs have emphasized their connection to each other with regard to their charitable fundraising. For example, in a Verified Complaint for Declaratory and Injunctive Relief and Demand for Jury Trial filed by Allied Veterans of the World, Inc.; Affiliate 67 and Allied Veterans of the World, Inc.; Affiliate 74 against Seminole County, Florida, in the U.S. Middle District of Florida, the named affiliates challenged a local ordinance which limited internet cafes' ability to offer sweepstakes through their terminals. In that complaint they stated:

12. Allied Veterans of the World is a tax exempt veterans' organization pursuant to 26 U.S.C. § 501(c)(19). It was established in Florida in 1979 to promote veterans' causes. One of its primary missions is to assist veterans' health care by advocacy, fundraising, and making donations to veterans' health care facilities. *Allied Veterans of the World has numerous affiliates throughout Florida to assist with their charitable purpose through fundraising. Allied Veterans Affiliates 66 and 74 are two of such organizations.* (Emphasis added).

¹ Allied Veterans of the World and Affiliates, Inc. is not a proper name for Parent. Parent's correct designation is Allied Veterans of the World, Inc. and Affiliates.

A true and accurate copy of the Verified Complaint is attached hereto as "Exhibit A."

8. Plaintiffs' Complaint in this matter specifically requests a determination be made regarding its Parent organization. In Paragraph 10, Plaintiffs state "Allied Veterans is not subject to the Act because it does not qualify as a 'charitable organization' within the meaning and intent of the Act." Allied Veterans, as the term is established in Paragraph 2 of the Complaint, refers to Parent. Paragraph 13, including all subparts, argues why Parent should not be considered a "charitable organization" within the meaning of Chapter 496. In Paragraph 16, the Complaint alleges that Parent does not solicit or even accept donations. This argument is continued in Paragraph 19 and each of its subparts and Paragraph 21. The Complaint also alleges in paragraphs 22 through 31 that Chapter 496 is unconstitutionally overbroad and vague as applied to both Parent and Plaintiffs.

9. As shown by Plaintiffs' own Complaint, Parent and Plaintiffs are inextricably connected in their charitable fundraising activity. A final decree cannot be made in this matter without directly affecting Parent's interest. Parent must be included in this action as a necessary party, such that this action should not be allowed to proceed without joinder of Parent as a party. If Parent cannot be made a party to this action for any reason, then this action should be dismissed as Parent is an indispensable party to this action.

WHEREFORE, Defendant, FLORIDA DEPARTMENT OF AGRICULTURE AND CONSUMER SERVICES, hereby requests this Court to enter its Order requiring that Plaintiffs amend their Complaint within a time certain to include Allied Veterans of the World, Inc. and Affiliates, as a party, or else be subject to dismissal for failure to join a necessary and indispensable party.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy hereof has been furnished by U.S. Mail to Kelly B. Mathis, Attorney for Plaintiffs, 1200 Riverplace Boulevard, Suite 902, Jacksonville, FL 32207, on this 15th day of December, 2011.

**ADAM H. PUTNAM
COMMISSIONER OF AGRICULTURE**



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