

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

CASE NO.: 18-CV-80771-RLR

ROBERT W. OTTO, and
JULIE H. HAMILTON,

Plaintiffs,

vs.

CITY OF BOCA RATON, FLORIDA, and
COUNTY OF PALM BEACH, FLORIDA,

Defendants.

ORDER ON REQUEST FOR JURISDICTIONAL DISCOVERY

Defendants assert that the Court lacks subject matter jurisdiction over some of the Plaintiffs' claims because of mootness. In their Response to the Motions to Dismiss, the Plaintiffs assert several arguments why the mootness arguments should be rejected. They then conditionally ask for jurisdictional discovery:

Should the Court conclude otherwise, Plaintiffs respectfully request the opportunity for additional discovery to assess whether it is "absolutely clear" that Defendants' constitutional violations "could not reasonably be expected to recur," and to thereafter amend or supplement their First Amended Complaint.

...

Here, Defendants' contention that the case is moot due to repeal of the Ordinances gives rise to a jurisdictional question that is "genuinely in dispute." Discovery would be useful, and perhaps essential, to gather facts necessary to resolve the dispute. For example, Defendants have not yet produced their recent communications with Rand Hoch on their admittedly "strategic" move to moot this case to avoid further review. Plaintiffs know that these communications exist, because Defendants

have admitted at council meetings that they were doing Hoch's personal bidding in seeking to moot this case. Documents and deposition discovery from Defendants, and from non-party Hoch, will very likely reveal the breadth and depth of Defendants' maneuvers, and provide further proof that Defendants are not done with violating Plaintiffs' rights. For these reasons, the Court should allow jurisdictional discovery *if it finds that Defendants' mootness argument has some cogency.*

ECF No. 188 at 22-23 (emphasis added) (citations omitted). Defendant City of Boca Raton does not address this request in its Reply. ECF No. 191. Defendant Palm Beach County argues that jurisdictional discovery would be futile given the other undisputed facts in the record. ECF No. 192 at 7-8.

Plaintiffs' conditional request for jurisdictional discovery is not procedurally proper. A party seeking jurisdictional discovery must formally move for it or timely serve it. The party cannot "bur[y] such requests in its briefs as a proposed alternative to dismiss[al] on the state of the current record." *United Techs. Corp. v. Mazer*, 556 F.3d 1260, 1280-81 (11th Cir. 2009); *see also Wolf v. Celebrity Cruises, Inc.*, 683 Fed. Appx. 786, 792 (11th Cir. 2017) (Denying plaintiff's belated jurisdictional discovery request that was "buried within his response to OCT's motion to dismiss."); *Mother Doe I v. Al Maktoum*, 632 F. Supp. 2d 1130, 1144-46 (S.D. Fla. 2007) (J. Altonaga) (Conditional request for jurisdictional discovery in footnote to responsive pleading was "not a substitute for the issuance of discovery requests or the filing of a formal motion to take discovery.").

WHEREFORE, it is ORDERED that Plaintiffs' conditional request for jurisdictional discovery is DENIED WITHOUT PREJUDICE. On or before February

9, 2022, at 5:00 p.m. Eastern time, Plaintiffs may file a motion for leave to take jurisdictional discovery. The motion should explain what jurisdictional *facts* are allegedly in dispute and should attach the proposed jurisdictional discovery requests. Defendants shall respond to any such motion by February 23, 2022, at 5:00 p.m. Eastern time. No jurisdictional discovery may be served without prior leave of Court.

DONE and ORDERED in Chambers at West Palm Beach, Palm Beach County, in the Southern District of Florida, this 27th day of January 2023.

A handwritten signature in black ink, appearing to read "Bruce Reinhart", written in a cursive style.

BRUCE E. REINHART
UNITED STATES MAGISTRATE JUDGE