

**UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION**

FLORIDA RISING TOGETHER, et al.,

Plaintiffs,

CASE NO.: 4:21-cv-201

v.

**LAUREL M. LEE, in her official capacity as
Secretary of State of Florida, et al.,**

Defendants.

**MOTION FOR SUMMARY JUDGMENT BY DEFENDANT CRAIG
LATIMER, IN HIS OFFICIAL CAPACITY AS SUPERVISOR OF
ELECTIONS FOR HILLSBOROUGH COUNTY**

COMES NOW Defendant Craig Latimer, in his official capacity as Supervisor of Elections for Hillsborough County, and files his Motion for Summary Judgment and states:

Plaintiffs, in Counts I through VI of their Amended Complaint (Doc. 59) seek injunctive and declaratory relief against Defendant Craig Latimer, in his Official Capacity as Supervisor of Elections for Hillsborough County (herein, "Latimer") and all of the State's Supervisors of Elections. Plaintiffs' allegations against Latimer and all SOE's (according to the heading set forth at the beginning of each Count) are as follows:

Count I: That Latimer intends intentionally to apply SB 90 in a manner which discriminates against Hillsborough County voters based on their race, by implementing requirements of SB 90 in 2022, specifically the “enforcement of the Secure Drop Box” provisions of SB 90, the enforcement of the Vote-by-Mail provision of SB 90, and the so-called “line warming restriction” of SB 90.

Count II: That “race was a motivating factor in the enactment of SB 90”. (no specific claims are made against the SOE’s in Count II, since the SOE’s did not enact SB 90)

Count III: That Latimer, by administering and enforcing provisions of SB 90, intends to deny Hillsborough citizens their right to vote on account of their race or color.

Count IV: That “the sponsors of SB 90” created burdens on voting which must be enjoined. (no claims are made against the SOE’s in Count IV because none of the SOE’s were “the sponsors of SB 90”).

Count V: That the “line warming” provisions of SB 90 are facially vague and overbroad, chilling speech. (no claims are made against the SOE’s in Count V, because the SOE’s did not enact SB 90).

Count VI: That the “line warming” provisions of SB 90 prevent voters who are standing in line from receiving voting assistance related to the voter’s blindness, disability, or inability to read or write.

Latimer is entitled to summary judgment as to Counts II, IV and V because none of those Counts addresses any claims against SOE's. Latimer is further entitled to summary judgment as to Counts I, III and VI because there is no evidence sufficient to establish a case or controversy involving Latimer in any of those counts.

Latimer is responsible for implementing SB 90 in Hillsborough County during the coming elections. Consequently, Latimer's entire focus is upon his statutory duty to implement the requirements of SB 90 without consequently violating anyone's constitutional rights. Latimer is determined to do both. He thus asserts a defense, and seeks summary judgment in this motion, against any *as applied* challenge which may be inferred from Plaintiffs' pleadings, to the extent such a challenge might be focused upon Hillsborough County's Supervisor of Elections and upon his conduct of future elections.

Based on the record evidence, Plaintiffs have not done their job of showing that Latimer's application and implementation of SB 90 will violate or even might violate Plaintiffs' constitutional rights. For this reason, there is no case or controversy before the Court regarding Latimer. More specifically, there is no alleged action, or alleged potential action, that is fairly traceable to Latimer in this case. Even if there were, Plaintiffs' claims as to Latimer would not be redressable. For all of these reasons, summary judgment should be granted as to Latimer.

Record Evidence

The only record evidence reflecting Latimer's intentions regarding the implementation of SB 90, may be found in Latimer's deposition testimony and discovery responses. In practical reality, Latimer's testimony and discovery responses are the only relevant testimony regarding what Latimer intends to do in Hillsborough County regarding SB 90. Other than mere speculation, there is no contrary evidence in the record on this subject.

The Evidence Reflecting Abundant Opportunities for Voters to Vote

Overall, the evidence reflects the availability of numerous, varied opportunities to vote in Hillsborough County. Latimer testified he always offers the maximum number of days of early voting and plans to do the same in 2022. (Latimer Depo., p. 20, lines 2-8). Florida law allows, at the discretion of each Supervisor of Elections, as many as 14 days for early voting. Section 101.657(1)(d), Fla.Stat. For primary elections, each early voting site in Hillsborough County is open from 10 a.m. to 6 p.m. For general elections, each early voting site is open from 7 a.m. to 7 p.m. Drop boxes are available at all of Hillsborough County's early voting sites during the hours that those sites are open. (Responses to Requests for Production in LWV case, #34).

In addition, for the 2022 elections, drop boxes will be available at Latimer's four offices in Hillsborough County, during the business hours of the four offices,

from July 14 to August 23, 2022 (Primary Election) and September 29 to November 8, 2022 (Election Day). (Responses to Requests for Production in LWV case, at #34).

Doing some basic math, based on inferences from the above record evidence regarding open hours available for early voting, for primary elections each early voting site in Hillsborough County is open for 14 days, times 8 hours per day, equaling 112 hours, per site (there are at least 24 sites; see below for citation to record). Drop boxes are open at all early voting sites during the same 112 hours, per site. For general elections, each early voting site is open for 14 days, times 12 hours per day, equaling 160 hours, per site (again, there are at least 24 sites). Drop boxes are open at all 24 (or more) early voting sites during the same 160 hours, per site.

There are a minimum of 24 early voting sites in Hillsborough County, and Latimer testified he plans to have as many as 26-27 early voting sites in 2022, equal to or more than the number he had in 2020. (Latimer depo., p. 44, line 15 through p. 45, line 14).

In addition, voters may vote by mail or vote in person on Election Day.

As Latimer testified, Hillsborough County voters have more options for the method they use to vote than at any time in Hillsborough County's history. (Id., p. 194, lines 17-21). There is no evidence at all in the record that suggests that in Hillsborough County Latimer's robust plan to offer multiple choices to voters will

diminish voters' opportunities in 2022 or in any future year, whether caused by SB 90 or for any other reason.

Against this backdrop, and in light of the Plaintiffs' allegations in this lawsuit that Latimer's enforcement of SB 90 will have the impact of intentionally discriminating against voters based on their race, it is at least curious that during Latimer's multi-hour deposition the only two questions posed to Latimer about the subject of race were:

"Q: Is it fair to say that Hillsborough is a diverse county in terms of ethnicity and race?

A: Absolutely.

Q: And is it fair to say that the number of registered voters in the county is also diverse by ethnicity and race?

A: Yes."

(Latimer depo., p. 152, lines 17-23).

In sum, Plaintiffs' claims that Latimer intends to implement voting restrictions which discriminate against people on any basis, is without support in the record at bar. The evidence is to the contrary: Latimer has provided abundant choices for all voters in Hillsborough County and intends to continue to do so.

(1) “The drop box restrictions”

Plaintiffs allege that because Latimer intends to apply the drop box restrictions of SB 90, Latimer thereby, *ipso facto*, intends to discriminate against voters based on their race and to deny voters their right to vote based on their race or color. The record evidence does not support Plaintiffs’ allegations.

Latimer testified that he has four early voting sites where drop boxes are located, and:

“Q: And in 2022 do you still plan on having the same 26 drop boxes that you had in 2020?”

A: I am losing two of my sites, I am trying to secure some more right now. But Amalie Arena and Raymond James Stadium won’t be available because they are back to having fans in place now.

Q: Got it. That fact, the fact that you are losing two of your sites, that’s just related to the economy opening up, it’s not related to Senate Bill 90, right?

A: That is correct. And as I said, I am looking for replacements, and who knows, I may have 27 by the time we finish.

Q: Got it, got it. And other than those two locations, are you going to have the same locations in 2022 for drop boxes that you had in 2020?

A: Right now, yes, that's barring any unforeseen catastrophes of a site burning down or damage or something that we wouldn't be able to use it, but, yes.

Q: Understood. Understood. Are you going to do anything different in 2022 with regard to staffing and securing the drop boxes than you did in 2020?

A: No.”

Latimer depo., p. 44, line 15 through p. 45, line 14.

Thus, the record evidence establishes, without any dispute of material fact, that in Hillsborough County there will be no reduction in the availability of drop boxes in 2022. The number of drop boxes available in 2022 will be the same as, or perhaps more than, the number of drop boxes which were available in 2020. There is simply no “case or controversy” here, much less any violation of any voter’s rights in Hillsborough County.

(2) “The vote by mail application restrictions”

Plaintiffs’ Amended Complaint also alleges that SB 90’s requirement that returned vote-by-mail applications include either the voter’s driver’s license number or the last four digits of the voter’s Social Security number, discriminates against voters. Plaintiffs argue that this requirement is “completely unnecessary and will

lead to the arbitrary rejection of vote-by-mail ballots.” (Amended Complaint, paragraph 150).

Latimer testified that “all of the [vote-by-mail] requests on file, all 346,000 of them, will be good through 2022.” (Id., p. 59, lines 11-16).

Latimer also testified that the requirement that voters list the last four digits of their Social Security number or their driver’s license number on their vote-by-mail ballot application, will be an administrative burden for his office. (Id., p. 82, lines 16-21). Yet there is no evidence that Latimer’s office cannot or will not meet any and all of the administrative burdens placed upon all SOE’s by the Legislature. Thus, there is simply no record evidence suggesting that Latimer’s office is not up to the task of meeting the increased burdens created by SB 90. Lacking such evidence specific to Hillsborough County, there is no case or controversy before the Court on this issue either.

(3) The “line warming ban”

Plaintiffs allege that SB 90’s “line warming” ban prevents voters who are in line to vote from receiving voting assistance due to the voter’s blindness, disability, or inability to read or write. (Count VI).

Again, as to Count VI, there is no evidence in the record that Latimer ever has, or intends to, deny assistance to queuing voters by reason of the voter’s blindness, disability or inability to read or write.

Latimer testified that concerns about the about the impact of “line warming” restrictions are a non-issue in Hillsborough County, where there are no long lines on Election Day. (Latimer depo., p. 48: lines 14-18, p. 149, lines 6-9). Latimer attributes this to 65-70 percent of Hillsborough voters who Latimer estimates have placed their ballots prior to Election Day, and to his office’s practice of increasing the numbers of early voting sites in Hillsborough County most every election year. (Id., p. 149, line 6 through p. 150, line 6). Latimer estimates the longest amount of time a voter has had to wait in line to vote in Hillsborough County as 30 minutes. (Id., p. 150, lines 7-11). Regardless, Latimer construes SB 90 as allowing his staff to give water to voters standing in line (Id., p. 48, lines 20-25). He also has a process to ensure that physically disabled individuals can be given an opportunity to sit while waiting in line. (Id., p. 48, lines 3-13). In addition, a family member may return a disabled voter’s ballot. (Id., p. 68, line 24 through p. 69, line 6). Latimer testified he believes SB 90 will have no impact on his staff’s ability to assist voters standing in line. (Id., p. 49, lines 1-5).

According to Latimer, there is no “line warming” issue in Hillsborough, thus no need for third parties to hand out water, etc. There is simply no case or controversy on this question.

Finally, Latimer testified, again unrebutted by any record evidence, that SB 90 “is not going to impact the voting process” (Latimer depo., p. 193, lines 10-17),

and “we have a very safe and secure process.” (Id., p. 193, lines 17-18). Latimer testified he has no concerns that any part of SB 90 will prevent any qualified registered voter from voting in Hillsborough County. (Id., p. 194, lines 3-7). He further testified he has no concerns that any part of SB 90 will prevent any qualified voter from registering in Hillsborough County. (Id., p. 194, lines 8-12). Finally, Latimer testified that no part of SB 90 will prevent any legally cast vote from being counted in Hillsborough County. (Id., p. 194, lines 13-16).

Memorandum of Law

Plaintiffs have the burden of showing at every stage of the litigation that they have standing to sue Latimer. This requirement is not diminished by the fact that there are dozens of Defendants in this case:

Since they are not mere pleading requirements, but rather an indispensable part of the plaintiff’s case, each element [of standing] must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, i.e., with the manner and degree of evidence required at the successive stages of the litigation. At the pleading stage, general factual allegations of injury resulting from the defendant’s conduct may suffice...In response to a motion for summary judgment, however, the plaintiff can no longer rest on such mere allegations...

Lewis v. Casey, 518 U.S. 343, 358, 116 S.Ct. 2174, 2183 (1996), citing to Lujan v. Defenders of Wildlife, 504 U.S. 555, 561, 112 S.Ct. 2130, 2136-37 (1992).

As the Court is intimately familiar, jurisdiction in federal court is limited to review of “Cases and Controversies.” Lujan, 504 U.S. at 559. Based on Lujan, standing doctrine requires Plaintiffs, “at a constitutional minimum,” to show that:

(1) Plaintiffs suffered an injury-in-fact; (2) there is a causal connection between the injury and the conduct complained of; and (3) it is likely, as opposed to merely speculative, that Plaintiffs' injury will be redressed by a favorable decision. Socialist Workers Party v. Leahy, 145 F.3d 1240, 1244 (11th Cir. 1998). In addition, the Court's ripeness inquiry requires Plaintiffs to establish that there is a "sufficient injury to meet Article III's requirement of a case or controversy and, if so, whether the claim is sufficiently mature, and the issues sufficiently defined and concrete to permit effective decision making by the Court." Id. In a "pre-enforcement" challenge such as the claims at bar, plaintiffs must demonstrate that there is "a realistic danger of sustaining direct injury as a result of the statute's operation or enforcement." Id.

Plaintiffs fall far short of their burden to show that Latimer has caused an injury-in-fact (which Lujan defines as "an invasion of a legally protected interest which is...(b) actual or imminent, not conjectural or hypothetical"; Lujan, 504 U.S. at 560), or that Latimer is "likely" to do so. In addition, at this stage after enactment of SB 90 and before its implementation by Latimer, Plaintiffs' claims are, at most, premature and hypothetical. No voter has voted in Hillsborough County since SB 90 was enacted. Thus, any impact on voters is purely speculative and hypothetical at this point.

Moreover, Latimer's candid testimony reveals no "realistic danger" that any of the Plaintiffs might sustain direct injury as a result of SB 90's operation or enforcement. Specifically, the "drop box restrictions" will not affect Hillsborough County voters because, if anything, Latimer testified there will be more drop boxes in Hillsborough in coming elections. There is no evidence that the administrative burdens caused by SB 90's "vote-by-mail restrictions" will affect any Hillsborough County voter. Finally, there is no evidence that the so-called "line warming ban" will prevent disabled individuals from receiving assistance be affect Hillsborough voters because there are no long lines in Hillsborough on Election Day. Plaintiffs' claims against Latimer thus fall short.

Jacobson v. Florida Secretary of State, 974 F.3d 1236 (11th Cir. 2020), to which the Court and the parties have given justifiably close attention, involved a claim against the Florida Secretary of State regarding the order of candidates on ballots. Notable to Jacobson was the absence of any Supervisor of Elections as a party to that litigation. Thus, the Court's analysis in Jacobson did not consider any Supervisor's arguments regarding standing or any other issue. Nonetheless, Jacobson, noting the trial court's "independent obligation to ensure that subject matter jurisdiction exists before reaching the merits of a dispute," Jacobson, 974 F.3d at 1245, held that the plaintiffs lacked standing because the voters in that case failed to prove an injury-in-fact and they further failed to prove that any injury was

fairly traceable to the defendant or redressable by relief against the defendant, in that case, the Secretary of State of Florida. Both arguments apply to Plaintiffs' claims against Latimer in the case at bar.

In Jacobson, unlike in the case at bar thus far, Plaintiffs presented actual evidence of injury-in-fact; at bar, there is no evidence of injury-in-fact which applies to Latimer or to Hillsborough County voters exclusively. There is no witness, for example, who has testified in this case that SB 90 restricts their ability to vote in Hillsborough County, or that Latimer's implementation of SB 90 is likely to restrict their ability to vote by mail, to place a ballot in a drop box, or to stand in line (for less than 30 minutes) on Election Day without the benefit of a water bottle provided by a third party. Lacking such evidence, there is no case or controversy which allows Plaintiffs to move forward to trial against Latimer.

The analysis does not end there, of course. Plaintiffs must also show that their alleged injury is "fairly traceable to the challenged action of the defendant." Jacobson, 974 F.3d at 1253. There is simply no "action of the defendant" which has been challenged at bar. The Complaint challenges nothing that Latimer has done or has said he might do which would allow Plaintiffs to satisfy the "fairly traceable" requirement. In Jacobson, the Court held that the Secretary's position as chief election officer of Florida did not make the order of candidate placement on the ballot traceable to her. Id. at 1254. Likewise, Latimer's duty to administer elections

in Hillsborough County does not make any speculative or hypothetical constitutional violation fairly traceable to him.

Finally, as in Jacobson, Plaintiffs' claims against Latimer are not redressable. That is, if the Court grants declaratory or injunctive relief in this case against Latimer, nothing will happen. There will still be more drop boxes in Hillsborough County ready for voters to utilize during the next election. The current vote-by-mail applications already on file in Hillsborough County will still be valid through the 2022 elections. And short lines on Election Day will obviate the need for third parties to hand out water bottles; regardless, Supervisor employees will still hand out water bottles to waiting voters even in their short Election Day lines. Voting in Hillsborough will continue to be safe and secure, and voters will still have available to them more methods for voting than have previously existed in the history of Hillsborough County.

In conclusion, Plaintiffs' claims in this lawsuit are more premature and speculative than those claims which were presented in Jacobson. The problem is, Plaintiffs' claims in this case are about things that haven't happened yet and, based on the evidence, are unlikely to happen in Hillsborough County. Either in their pleadings or in the evidence, Plaintiffs do not suggest any urgency which gives rise to judicial intervention regarding Latimer's work. A crystal ball is required to stretch Plaintiffs' claims from the hypothetical to the tangible. For all of these reasons,

under these circumstances, and on this record, summary judgment should be granted as to Defendant Craig Latimer on all issues before the Court.

s/ *Stephen M. Todd*

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on November 12, 2021, the foregoing document was electronically submitted to the Clerk of Court using the CM/ECF system which will send a notice of electronic filing to Counsel of Record.

s/ *Stephen M. Todd*

Stephen M. Todd, Esquire