IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

FLORIDA RISING TOGETHER, et al.,

***Plaintiffs*,**

v. **Case No.: 4:21cv201-MW/MJF**

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

***Defendants*,**

and

NATIONAL REPUBLICAN
SENATORIAL COMMITTEE and
REPUBLICAN NATIONAL
COMMITTEE,

Intervenor-Defendants.

_____/

ORDER TO SHOW CAUSE

As this Court already explained, Defendant Lee may only defend those provisions that she has standing to defend. *See Yellow Pages Photos, Inc. v. Ziplocal, LP*, 795 F.3d 1255, 1265 (11th Cir. 2015) (explaining that "the requirement that a party establish its standing to litigate applies not only to plaintiffs but also defendants"). *See also Arizonans for Official English v. Arizona*, 520 U.S. 43, 64

(1997) (stating that "[s]tanding to sue *or defend* is an aspect of the case-or-controversy requirement" (emphasis added)). On Defendant Lee's motion, this Court dismissed Plaintiffs' claims against her with respect to section 102.031, Florida Statutes, (the solicitation ban). *See* ECF No. 201 at 26. And Plaintiffs sue only the supervisors to challenge section 101.62, Florida Statutes, (the vote-by-mail repeat-request requirement). *See, e.g.*, ECF No. 59 at 92. Because this Court has either dismissed these claims as to Defendant Lee, or because Plaintiffs never brought them against her in the first place, she lacks standing to defend against them based on her potential "exposure to an adverse judgment." *Ziplocal*, 795 F.3d at 1265.

Nonetheless, in her motion for summary judgment, Defendant Lee asks this Court to dismiss Plaintiff's claims as to both sections 102.031 and 101.62. *See* ECF No. 245-1 at 2. Three supervisors join in Defendant Lee's motion as to those provisions—two as to those provisions *only*—in apparent deference to Defendant Lee's position as Florida's "chief election officer." ECF No. 252 at 4; ECF No. 245 at 1.

But this Court "cannot simply ignore" the Eleventh Circuit's directive in *Jacobson v. Florida Secretary of State*, 974 F.3d 1236 (11th Cir. 2020). Mere status as "the chief election officer" is not enough. *Jacobson*, 974 F.3d at 1254. Though this rule is not of this Court's making, *see Jacobson v. Lee*, 411 F. Supp. 3d 1249,

1262 (N.D. Fla. 2019), this Court must follow it. As such, this Court has already held, "Defendant Supervisors are not merely placeholders and cannot rely on the Secretary of State to defend a provision of law that the Secretary of State does not have standing to defend." *See* Case No. 4:21cv186, ECF No. 273 at 2. This Court could not have been clearer, and no party moved for reconsideration of its order.

It appears to this Court that Defendant Lee is attempting to do an end-run around the above-described law, forcing Plaintiffs to expend resources responding to the arguments of a party that lacks standing to make them. That's not to say that there is no proper way to do what Defendant Lee is attempting to do. As this Court noted, the supervisors could "even hire the same lawyers as" Defendant Lee. *Id.* at 4. But no notice of appearance has been entered on their behalf. Worse still, Supervisors Hays and Doyle—who are both represented by counsel—did not bother to even file their own notice of joinder, and instead let Defendant Lee do it for them.

Accordingly, Defendant Lee, Defendant Hays, Defendant Doyle, and Defendant White are ordered to **SHOW CAUSE** on an expedited basis why this Court should not strike the portions of Defendant Lee's motion for summary judgment defending statutes she lacks standing to defend as well as Defendants Hays, Doyle, and White's notices/motions adopting Defendant Lee's arguments. Plaintiffs and the other supervisors may also file responses if they so choose.

The responses must include citation to authority—not concurring opinions or law review articles—explaining why Defendant Lee's approach is permissible. And the parties must not appeal to convenience, clarity, or cost. As the Chief Judge of the Eleventh Circuit has already made abundantly clear, those considerations are irrelevant. *Jacobson*, 974 F.3d at 1258 (explaining that, "[t]o satisfy traceability and redressability, the voters and organizations should have sued the Supervisors of Elections instead of the Secretary of State" even though "[t]hat approach would have made for more defendants").

All responses must be filed **on or before November 30, 2021**.

SO ORDERED on November 23, 2021.

s/Mark E. Walker
Chief United States District Judge