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

LEAGUE OF WOMEN VOTERS OF FLORIDA, INC., et al.,

***Plaintiffs*,**

v. **Case No.: 4:21cv186-MW/MAF**

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

Defendants,

and

NATIONAL REPUBLICAN SENATORIAL COMMITTEE and REPUBLICAN NATIONAL COMMITTEE,

Intervenor-Defendants.
_____/

ORDER ON DEFENDANT SUPERVISORS' ACTIVE PARTICIPATION IN CASE

On July 7, 2021, all but one of the 67 Defendant Supervisors of Elections moved to be excused from active participation in this case. ECF No. 114. This Court denied the motion without prejudice and with leave to renew pending this Court's ruling on Defendant Lee's motion to dismiss and determination of standing with respect to Defendant Lee. ECF No. 115. By separate order, this Court has considered

the parties' arguments with respect to Plaintiffs' standing to challenge each statutory provision at issue against each of the Defendants in this case, and concludes that (1) Plaintiffs have standing to challenge the drop box restrictions against both Defendant Lee and Defendant Supervisors, that (2) Plaintiffs lack standing to sue any Defendants to challenge the vote-by-mail ballot return, that (3) Plaintiffs have standing to challenge the vote-by-mail application restrictions and "line warming" ban against only Defendant Supervisors, and that (4) Plaintiffs have standing to challenge the registration warning requirement against Defendant Lee and Defendant Moody, but not Defendant Supervisors. In sum, Plaintiffs may proceed against Defendant Supervisors with respect to challenging the drop box restrictions, vote-by-mail application restrictions, and "line warming" ban in Count 1 and the "line warming" ban in Counts III-IV. Indeed, Defendant Supervisors are the *only* parties in this case against whom Plaintiffs have standing to proceed with respect to Counts III and IV.

Accordingly, 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. In so stating, this Court recognizes that, for years, the Eleventh Circuit and its sister circuits held that the Secretary, as "chief elections officer" of the state, is the proper party to sue to challenge a state's election laws. *See, e.g.*, *Texas Dem. Party v. Abbot*, 961 F.3d 389, 401 (5th Cir. 2020); *Common*

Cause Ind. v. Lawson, 937 F.3d 944, 957 (7th Cir. 2019) (concluding that Plaintiffs had standing against Secretary of State to challenge election laws under the National Voter Registration Act); *OCA-Greater Houston v. Texas*, 867 F.3d 604, 613 (5th Cir. 2017) ("The facial invalidity of a Texas election statute is, without question, fairly traceable to and redressable by the State itself and its Secretary of State, who serves as the 'chief election officer of the state.' "); *Dem. Exec. Comm. of Fla. v. Lee*, 915 F.3d 1312, 1318 (11th Cir. 2019) (holding that "Plaintiffs properly sued the Secretary in her official capacity when they asserted that Florida's signature-match regime imposed an undue burden on the right to vote."); *Obama for Am. v. Husted*, 697 F.3d 423 (6th Cir. 2012) (addressing claims on merits against Ohio Secretary of State). But that is no longer the law in the Eleventh Circuit when it comes to challenging Florida's election laws. *See Jacobson v. Fla. Sec'y of State*, 974 F.3d 1236 (11th Cir. 2020). And this Court is bound to follow this precedent, even if it contradicts the law of its sister circuits and makes it less convenient or efficient for the parties to challenge or defend Florida's election laws. Indeed, as Judge Pryor suggested in *Jacobson*, it is no answer to say that having the Secretary of State defend the law in toto is simply more *convenient*.

Here, as this Court summarized above, Defendant Supervisors are the only proper parties before this Court with respect to some of Plaintiffs' claims but are not properly before this Court with respect to others. This is evidence of the fact that

they play a unique role in the statutory scheme that Plaintiffs now challenge. Thus, Defendant Supervisors must choose—default or defend. But that is not to say that they cannot coordinate their defense of the law with the Secretary of State or even hire the same lawyers as the Secretary.[1] In short, Defendant Supervisors may not proceed as "placeholders" or inactive parties, unless they choose to default in this action.

SO ORDERED on October 8, 2021.

s/Mark E. Walker
Chief United States District Judge

[1] Though this Court is certainly not asking for any more lawyers to join this litigation. At last count, 64 lawyers have entered appearances in this action—surely, this kitchen has enough cooks.