UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

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

Plaintiffs, **CASE NO.: 4:21-cv-186-MW-MAF**

v.

LAUREL M. LEE, in her official Capacity as Florida Secretary of State, 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 their Corrected First Amended Complaint (Doc. 160) seek injunctive and declaratory relief against Defendant Craig Latimer, in his Official Capacity as Supervisor of Elections for Hillsborough County (herein, "Latimer"). Plaintiffs allege, and Latimer admits, that Latimer is responsible for "administering elections" in Hillsborough County, "administering voting by mail" in Hillsborough

County, "arranging polling locations", "determining when to start early voting" and "organizing drop off locations" in Hillsborough County. (Doc. 160, paragraph 38).

On October 8, 2021, the Court entered an Order responsive to the Supervisor Defendants' (herein, "SOEs'") request to be excused from active participation in the litigation. (Doc. 273). The Court determined that, responsive to the SOEs' request, that Plaintiffs have standing to sue the SOE's regarding the following issues:

(1) Plaintiffs have standing to sue the SOE's regarding "the drop box restrictions"

(2) Plaintiffs have standing to sue the SOE's regarding "the vote by mail application restrictions" and

(3) Plaintiffs have standing to sue the SOE's regarding the "line warming ban" as alleged in Counts I, III and IV.

The Court then ordered the SOE's to "default or defend."

Appreciating the gravity of the Court's October 8, 2021 Order on the issue of standing, combined with the Court's admonition to "default or defend," this motion approaches the issue of standing based on two points which may or may not change the Court's view of Plaintiffs' burden to establish that it has standing. First, this motion seeks summary judgment after the close of discovery; the Court's October 8, 2021 order did not consider the evidence in the case because at that point discovery was still going on. Second, this motion seeks summary judgment ONLY

as to Defendant Latimer. In other words, based on the record evidence, Latimer is entitled to summary judgment because Plaintiffs have not presented a case or controversy involving Latimer.

In his response to Plaintiffs' Corrected First Amended Complaint, Latimer has stated in his Answers and Affirmative Defenses (Doc. 219) that he takes no position regarding Plaintiffs' claims in this lawsuit. In other words, Latimer does not intend in this litigation to assert a defense against the facially contested provisions of SB 90, a piece of legislation Latimer has publicly criticized as "a solution without a problem." Latimer didn't pass SB 90; the Legislature did. It does not fall among considerable duties to defend in court the facial constitutionality of SB 90. Latimer will leave to others this burden of defending SB 90, should anyone wish to take up this cause. Put bluntly and clearly, Latimer thus "defaults" on the question of whether SB 90 is *facially* unconstitutional in any respect. Latimer will abide by the Court's ruling in its entirety.

Latimer is, however, responsible for implementing SB 90 in 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.

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. In practical reality, Latimer's testimony is 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.

Latimer testified extensively about each of the remaining challenged provisions presented against the SOE's:

(1) "The drop box restrictions"

Plaintiffs allege that SB 90 "severely restricts the availability of drop boxes"

and further allege that this "severe restriction" violates Plaintiffs' voting rights. (Doc. 160, paragraph 72).

Latimer testified that there will be no such problem in Hillsborough County:

> "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 "severe restriction of the availability of drop boxes." 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' Complaint notes that SB 90 requires that vote-by-mail applications must be renewed by the voter every two years, rather than every four years. Plaintiffs allege that the Legislature changed this requirement in 2007 from two-year renewal to four-year renewal, and now, after several years, SB 90 returns the requirement back to a two-year renewal. (Complaint at paragraph 112.) Plaintiffs now allege that voters are used to the four-year renewal process and consequently that the Legislature's reversion in SB 90 to a two-year renewal now violates voters' constitutional rights.

Plaintiffs note that this change increases administrative costs. (Complaint, paragraph 116).

Latimer testified extensively about the change from the four-year application requirement back to two years. Latimer believes that the change from four years to two years creates an "administrative burden" on his office. (Latimer depo., p. 59, lines 5-10, p. 74, lines 13-21). However, this administrative burden doesn't apply to the voters registered for vote by mail for the 2022 elections because "all of the requests on file, all 346,000 of them, will be good through 2022." (Id., p. 59, lines 11-16). Unless the 2022 Legislative session amends SB 90, the administrative burden on Hillsborough County will take place after the 2022 elections with respect to "both processing the application and voter education." (Id., p. 59, lines 17-23). Thus, there are no current administrative burdens on Latimer's office, but Latimer believes there will be such burdens on Latimer's office after the 2022 elections unless SB 90 is amended by then.

Latimer testified that his office will educate voters on the change from four years to two years. (Id., p. 60, lines 6-13). Even so, Latimer believes the change will cause confusion for voters. (Id., p. 137, line 23 through p. 138, line 1).

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 another administrative burden for his office. (Id., p. 82, lines 16-21).

Latimer's testimony establishes that the vote-by-mail requirements of SB 90 will constitute an administrative burden to his office and confusion for voters starting after Election Day in 2022. The next question is, what is the evidence regarding how Latimer's office will handle that administrative burden? There is a remarkable absence of record evidence on this question. There is thus 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, there is no case or controversy before the Court on this issue either.

(3) The "line warming ban"

Perhaps the least problematic concern raised by Plaintiffs is what they call a "line warming ban." Specifically, Plaintiffs allege that SB 90 "does not make clear" whether third parties may hand out water and food to voters waiting in line to vote. (Complaint, paragraph 120). Plaintiffs allege this lack of clarity chills their desire to hand out water and other items to voters stuck in a long line on Election Day.

Latimer testified that this alleged lack of clarity about the legality of "line warming" is 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).

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, he 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). 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).

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 was 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 voter. Finally, the so-called "line warming ban" will not 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 line 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. 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 via the Court's CM/ECF system which will send a notice of electronic filing to Counsel of Record.

s/ *Stephen M. Todd*
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