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

League of Women Voters of Florida, Inc., et al., *Plaintiffs*, v. **Laurel M. Lee**, in her official capacity as Florida Secretary of State, et al., *Defendants*.	**Case No. 4**:21-cv-00186-MW-MAF

Defendant Christina White's Response to Plaintiffs' Motion for Summary Judgment (ECF No. 320)

In accordance with Fed. R. Civ. P. 56 and Local Rule 56.1, Defendant Christina White, in her official capacity as Supervisor of Elections for Miami-Dade County ("Supervisor White") submits the following response to the Plaintiffs' Motion for Summary Judgment and Supporting Memorandum of Law (ECF Nos. 320, 320-1).

Introduction

Plaintiffs have sought partial summary judgment as to Counts IV and V of their Amendment Complaint. *See* ECF No. 320-1 at 14.[1] Only one of those counts—Count IV—pertains to Supervisor White. *See generally* ECF No. 273 (holding that

[1] For ease of reference, all citations in this response—except citations to deposition transcripts—shall refer to the pagination generated by CM/ECF at the top of each filing rather than the page numbers provided by the filers in the footer.

Plaintiffs may proceed with their claims against the Supervisors of Elections relating to the "'line warming' ban," such as Count IV, but dismissing claims against the Supervisors of Elections relating to the "Deceptive Registration Warning Requirement," such as Count V).

Statement of Facts

Supervisor White does not dispute that SB 90 amended the definition of "solicitation" in Fla. Stat. § 102.031 in the manner stated in Plaintiffs' Statement of Facts. *See* ECF No. 320-1 at 11-12. She also does not dispute that the Plaintiffs "conducted volunteer efforts at polling places, at which they provided water, food, and non-partisan encouragement to people at and around polling places, including those waiting in line to vote within what is now defined as the non-solicitation zone" ***somewhere*** within the State of Florida. *Id.* at 12. But, critically for purposes of summary judgment against Supervisor White, none of the deposition testimony cited by Plaintiffs establishes that any of those relevant volunteer efforts occurred at polling places in Miami-Dade County.

First, Plaintiffs rely on the deposition of Cecile Scoon, in her capacity as the corporate representative for the League of Women Voters of Florida, Inc. and the League of Women Voters of Florida Education Fund, Inc. (ECF No. 319-13), at pages 58:8-16. *See* ECF No. 320-1 at 12. But, on the very next page of her deposition, Ms. Scoon states that all the previously discussed activities occurred outside of the non-solicitation zone. *See* ECF No. 319-13 at 59 (stating it was the organization's policy that "[n]othing should be conducted within the nonsolicitation zone").

Second, Plaintiff rely on the deposition of Clifford Albright, in his capacity as the corporate representative for Black Voters Matter Fund, Inc. (ECF No. 319-15), at pages 87:19-88:4. *See* ECF No. 320-1 at 12. But Mr. Albright similarly conceded that all of his organization's activities occurred outside of the nonsolicitation zone. *See* ECF No. 319-15 at 87:15-18 (noting that all of the activities that he was aware of occurred "a good distance away" and "not actually interacting with people on line at all"). Additionally, Mr. Albright stated that some of their partner organizations may have "engaged with voters [by] providing food, water, snacks, and doing so very close [to] what is now the 150-foot forbidden zone." *Id.* at 87:25-88:2. But, Mr. Albright could only definitively recall these activities occurring in Orange and Duval County. *Id.* at 87:23.

Third, Plaintiffs rely on a second deposition of Cecile Scoon, in her individual capacity (ECF No. 319-14), at pages 38:7-14. *See* ECF No. 320-1 at 12. But that testimony only relates to activities in Bay County and does not reference Miami-Dade County. *See* ECF No. 319-14 at 38:7-8 ("Well, it's going to impact how we in Bay County do our so-called line warming.").

Furthermore, Plaintiffs cannot establish that any relevant volunteer efforts at polling places in Miami-Dade County will be impacted by SB 90's "line warming ban" because of the undisputed testimony that Supervisor White provided in her deposition. Most notably, Supervisor White testified that all activity at Miami-Dade County polling places—except for exit polling—has always occurred outside the 150-foot line. *See* ECF No. 318-25 at 22:16 ("All activity is outside the 150 feet.");

22:17-23 (confirming that this was true for elections in 2016, 2018, and 2020). As described by Supervisor White, this policy is necessary for Miami-Dade County to maintain order at its polling places. *Id.* at 77:22-24 ("[I]n order to maintain order, … we have everybody be outside of the 150 feet, except for the exit pollers.").[2] Notwithstanding this fact, any voter in Miami-Dade County seeking water, food, or non-partisan encouragement is still able to engage with the Plaintiff organizations. In short, for any voter who needs to sit down, obtain assistance, or get water or food from an organization while waiting in line, Miami-Dade County provides a proxy process where that individual's spot in line is saved while they address those matters outside of the non-solicitation zone. *Id.* at 23:2-7 ("We have what's called the proxy process, that a person who is in line with them or just … another voter who is willing to hold the line for them is able to do so. And that person is able to go sit down, whether it's at our area that we have stations for this purpose or wherever they are comfortable.").

Consequently, nothing in SB 90's change to the definition of "solicit" would cause Miami-Dade County to do anything differently in the upcoming election cycle than what it did in the prior election cycles. *Id.* at 24:14-17 ("Q: Does Section 102.031 of the Florida Statutes require you to do anything differently? A. I don't believe so.").

---

[2] The record shows that, in Miami-Dade County, there is a well-founded need to maintain order at polling places to address complaints of "aggressive and intrusive campaigning" at early voting locations. *See, e.g.,* ECF No. 318-25 at 20:1-22:3. *See also id.* at 246-49 (Memorandum regarding Aggressive and Intrusive Tactics at Early Voting Locations).

ARGUMENT

I. Plaintiffs are Not Entitled to Summary Judgment on Count V as to Miami-Dade County Because They Lack Standing

Article III of the Constitution limits the subject-matter jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. For that reason, "the first and fundamental question [in every case] is that of jurisdiction." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (internal quotation omitted). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex Parte McCardle*, 74 U.S. 506, 514 (1868).

"[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). "The Supreme Court has identified three constitutional requirements for standing, all of which must be satisfied: (1) an injury in fact, meaning an injury that is concrete and *particularized,* and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *Granite State Outdoor Advert., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1116 (11th Cir. 2003) (emphasis in original). Each element is "an indispensable part of the plaintiff's case" and "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." *Lujan,* 504 U.S. at 561 (citation omitted) (emphasis added).

In their Motion for Summary Judgment, Plaintiffs have defined their purported injury as the inability to "provide[] water, food, and non-partisan encouragement to people at and around polling places, including those waiting in line to vote within what is now defined as the non-solicitation zone" ECF No. 320-1 at 12. They assert that this injury is caused by SB 90's amended definition of "solicitation" in Fla. Stat. § 102.031, and the relief requested for Count V relies exclusively on their challenge to this provision of SB 90. *See id.* at 11-12.

However, the record evidence described above shows that Plaintiffs cannot establish at this stage of litigation that, with respect to Miami-Dade County, this "injury will be 'redressed by a favorable decision.'" *Lujan,* 504 U.S. at 561 (citation omitted). This is because Miami-Dade County is not altering or amending any of its policies as it relates to maintaining order at the polls in response to SB 90's amended definition of "solicitation" in Fla. Stat. § 102.031. Thus, regardless of whether this Court upholds or strikes down SB 90, all activity by organizations at polling places in Miami-Dade County will still occur outside of the 150-foot non-solicitation zone due to Miami-Dade's long-standing policy. *See, e.g., KH Outdoor, L.L.C. v. Clay Cty., Fla.*, 482 F.3d 1299, 1303 (11th Cir. 2007) ("Any injury [plaintiff] actually suffered … is not redressible because [their actions] failed to meet the requirements of other statutes and regulations not challenged.") *Harp Adver. Ill., Inc., v. Village of*

Chicago Ridge, Ill., 9 F.3d 1290, 1292 (7th Cir. 1993) ("[Plaintiff suffers an injury…, but winning the case will not alter that situation.").

Moreover, the Plaintiffs have failed to demonstrate through any record evidence that they have suffered any "injury in fact" in Miami-Dade County. While Plaintiffs have elicited some evidence that they have engaged in "line warming" activities ***somewhere*** in Florida, they have failed to elicit ***any*** evidence that they have either engaged in "line warming" activity in Miami-Dade County in the past or affirmatively intending to engage in such activity in Miami-Dade County in the future. Even where core political speech is implicated, when plaintiffs "fail[] to provide the court with anything more than generalizations" regarding their intent to engage in the prohibited conduct, such claims do not demonstrate an injury in fact and must be dismissed for lack of standing. *Dermer v. Miami-Dade County*, 599 F.3d 1217, 1219 (11th Cir. 2010) (holding that plaintiffs alleging a chilling effect in violation of the First Amendment must still establish "detail, such as when, where, or how [plaintiff] intends to exercise his right to free speech in the future, that illuminates the specifics of his claimed injury" to allege an injury in fact for standing purposes).

CONCLUSION

For the reasons stated above, this Court should deny Plaintiffs' Motion for Summary Judgment, find that Plaintiffs lack standing for Count V as to Miami-Dade County, and dismiss that claim.

Date: December 3, 2021

Respectfully submitted,
GERALDINE BONZON-KEENAN
MIAMI-DADE COUNTY ATTORNEY

By: */s/ Michael B. Valdes*

Oren Rosenthal
Assistant County Attorney
Florida Bar No. 86320
Michael B. Valdes
Assistant County Attorney
Florida Bar No. 93129

Miami-Dade County Attorney's Office
111 N.W. 1st Street, Suite 2810
Miami, Florida 33128
Phone: (305) 375-5151
Fax: (305) 375-5634
E-mail: orosent@miamidade.gov
mbv@miamidade.gov

Counsel for Christina White

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was served to all counsel of record through the Court's CM/ECF system on December 3, 2021.

/s/ Michael B. Valdes

Michael B. Valdes
Assistant County Attorney

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing complies with the size, font, and formatting requirements of Local Rules 5.1(C) and 56.1.

/s/ Michael B. Valdes

Michael B. Valdes
Assistant County Attorney