

UNITED STATES DISTRICT COURT
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,

REPUBLICAN NATIONAL
COMMITTEE and NATIONAL
REPUBLICAN SENATORIAL
COMMITTEE,

Intervenor-Defendants.

Cases Consolidated for Trial:

Case No.: 4:21-cv-186-MW/MAF

4:21-cv-187-MW/MAF

4:21-cv-201-MW/MAF

4:21-cv-242-MW/MAF

RESPONSE TO ORDER FOR SUPPLEMENTAL BRIEFING

On February 15, 2022, this Court ordered the parties to file supplemental briefs addressing whether the principle of standing articulated in *Rumsfeld v. FAIR*, 547 U.S. 47, 53 (2006), applies to all consolidated cases collectively or to each case individually. 4:21-cv-00186, ECF No. 615.

As the Supreme Court has explained, consolidation of cases under Federal Rule of Civil Procedure Rule 42(a) does not eliminate the requirement that standing be separately and individually demonstrated by plaintiffs in each consolidated case. *See Butler v. Dexter*, 425 U.S. 262, 267 n.12 (1976) (“Each [consolidated] case . . . must be considered separately to determine whether or not this Court has jurisdiction

to consider its merits.”); *Hall v. Hall*, 138 S. Ct. 1118, 1127-29 (2018) (confirming that Rule 42(a) adopts the prior understanding that “consolidation is permitted as a matter of convenience and economy in administration, but does not merge the suits into a single cause, or change the rights of the parties, or make those who are parties in one suit parties in another” (quoting *Johnson v. Manhattan R. Co.*, 289 U.S. 479, 496-497 (1933)); see also *id.* (affirming that “consolidation does not merge the suits; it is a mere matter of convenience in administration, to keep them in step. They remain as independent as before.” (citation omitted)); *Rich v. Lambert*, 53 U.S. 347, 352-53 (1852) (dismissing three of five consolidated cases for lack of jurisdiction). The Eleventh Circuit has affirmed this long-standing principle. See *Boardman Petroleum v. Federated Mut. Ins. Co.*, 135 F.3d 750, 752 (11th Cir. 1998) (“[C]onsolidation of cases under Fed. R. Civ. P. 42 does not strip the cases of their individual identities.”).¹

In fact, the requirement to establish jurisdiction in each individual consolidated case, rather than collectively, extends further than the circumstances before this Court: cases consolidated under Rule 42(a) “for *all purposes* . . . [still]

¹ Courts’ separate treatment of individual consolidated cases for purposes of establishing jurisdiction extends to various jurisdictional requirements. See, e.g., *Bailey v. Lloyd D Nabors Demolition L.L.C.*, No. 3:20-CV-00362, 2020 U.S. Dist. LEXIS 116619, at *2 n.1 (W.D. La. June 15, 2020) (“[C]onsolidation does not remedy the deficient allegations of citizenship in the original suit. Rather, consolidated cases remain distinct, and each case must be considered separately to determine jurisdiction.”).

retain their separate identities,” *Hall*, 138 S. Ct. at 1131 (citations omitted) (emphasis added), and “are not merged” by consolidation under Rule 42, meaning that “[e]ach case . . . must be considered separately to determine whether or not this Court has jurisdiction to consider its merits.” *Id.* at 1130-31 (citations and internal quotation marks omitted).

By contrast, this Court consolidated these four cases for discovery purposes only, ECF No. 92, and then subsequently for trial, ECF No. 365, rather than for “all purposes.” Even if it had, though, the requirement to demonstrate at least one party with standing per claim in each individual case would still apply. *See Hall*, 138 S. Ct. at 1130 (explaining that merger “is never so complete in [Rule 42(a)] consolidation as to deprive any party of any substantial rights which he may have possessed had the actions proceeded separately”); *cf. In re Chiquita Brands Int’l Alien Tort Statute & S’holder Derivative Litig.*, No. 08-MD-01916-MARRA, 2021 U.S. Dist. LEXIS 212930, at *75 (S.D. Fla. May 6, 2021) (noting that, in the context of a multidistrict litigation, a Rule 42 consolidation “without more, does not merge the complaints”).

Because consolidation of these four cases for purposes of trial does not merge them into a single suit, Plaintiffs still must demonstrate that a party from each individual case has standing as to each claim asserted in that case.

Dated: February 23, 2022

Respectfully submitted:

/s/Mohammad Jazil

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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 February 23, 2022.

/s/ Mohammad O. Jazil
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