

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,

and

REPUBLICAN NATIONAL
COMMITTEE, and NATIONAL
REPUBLICAN SENATORIAL
COMMITTEE,

Intervenor-
Defendants.

Cases Consolidated for Trial:

Nos.: 4:21-cv-186-MW/MAF
4:21-cv-187-MW/MAF
4:21-cv-201-MW/MAF
4:21-cv-242-MW/MAF

**PLAINTIFFS' JOINT BRIEF IN RESPONSE TO COURT'S ORDER
REQUESTING BRIEFING ON SPECIFIC QUESTION RELATING TO
*RUMSFELD v. FAIR***

Pursuant to the Court's February 15 Order Requiring Supplemental Briefing,
ECF No. 615, Plaintiffs in the above-captioned consolidated cases respond to the
Court's question as follows:

COURT'S QUESTION: "[T]he presence of one party with standing is
sufficient to satisfy Article III's case-or-controversy requirement." *Rumsfeld v.
FAIR*, 547 U.S. 47, 53 (2006). The parties are ordered to file supplemental briefs

addressing whether this principle applies to all of these consolidated cases collectively or to each consolidated case individually. Put another way, is it enough that one party from one consolidated case has standing as to each claim, or must a party from each individual case have standing as to each claim asserted in that case?

Persuasive authority holds that identical claims in consolidated cases can be considered together for standing purposes, such that, under the *Rumsfeld v. FAIR* rule, there need only be one plaintiff from any consolidated case with standing as to each claim. *See Bauer v. DeVos*, 325 F. Supp. 3d 74, 90-91 (D.D.C. 2018). Because Plaintiffs filed a single, integrated pretrial stipulation and presented witness testimony and other evidence jointly at trial relevant to Plaintiffs' respective claims, in accordance with the Court's Order Consolidating Cases for Trial, ECF No. 322, this authority suggests that standing may be considered with respect to the four consolidated cases collectively. However, because the issue is not free from doubt, Plaintiffs urge the Court to resolve factual issues relevant to standing with respect to each separate case as well, to enable review should a reviewing court reach the opposite conclusion.

In *Bauer*, two sets of plaintiffs brought "identical" challenges to an agency decision and sought "identical relief." *Id.* at 89. Applying the *Rumsfeld v. FAIR* principle, the court held that it only needed to find standing for one set of plaintiffs in order for the case to proceed, even though the two cases had been filed as separate actions. *Id.* at 88-91. Treating the cases as a single action for standing purposes was

appropriate, the court explained, because the complaints were “mirror images of one another that could easily have been filed in the first instance as a single action.” *Id.* at 91. And the court concluded it was bound by Supreme Court and D.C. Circuit decisions treating the standing of one plaintiff in consolidated cases seeking identical relief as sufficient to establish jurisdiction over all cases. *Id.* (citing, e.g., *Bowsher v. Synar*, 478 U.S. 714, 721 (1986); *Sec’y of the Interior v. California*, 464 U.S. 312, 319 n.3 (1984)).

The Supreme Court’s decisions in both *Bowsher* and *Secretary of the Interior* support *Bauer*’s conclusion that identical claims in consolidated cases may be considered together for standing purposes, although neither decision contains extensive reasoning on the question. In *Bowsher*, the Supreme Court addressed two consolidated, “virtually identical” cases and held that because a plaintiff in one of the cases had standing, the Court “need not consider the standing issue” as to the other plaintiffs, including in the other case. *Bowsher*, 478 U.S. at 719, 721. Similarly, in *Secretary of the Interior*, the Supreme Court addressed “separate but similar complaints filed by the State of California and by” environmental groups, which the Supreme Court had consolidated before it. *Sec’y of the Interior*, 464 U.S. at 319 n.3; see also *Watt v. California*, 461 U.S. 925 (1983) (order consolidating cases). The Supreme Court explained that “[s]ince the State of California clearly does have

standing, we need not address the standing of the other respondents, whose position here is identical to the State's.”

As *Bauer* explains, however, the Supreme Court's subsequent decision in *Hall v. Hall*, 138 S. Ct. 1118 (2018), casts some doubt on the conclusion that consolidated cases may be considered together for standing purposes. *See Bauer*, 325 F. Supp. 3d at 90. *Hall* did not involve standing, but it did address the legal significance of consolidation under Federal Rule of Civil Procedure 42(a). The Supreme Court explained that “[f]rom the outset, we understood consolidation not as completely merging the constituent cases into one, but instead as enabling more efficient case management while preserving the distinct identities of the cases and the rights of the separate parties in them.” *Hall*, 138 S. Ct. at 1125. The Court explained 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.” *Id.* at 1127 (quoting *Johnson v. Manhattan R. Co.*, 289 U.S. 479, 496-97 (1933)). And the Court rejected the argument that Federal Rule of Civil Procedure 42(a) changed this, explaining that “if Rule 42(a) were meant to transform consolidation into something sharply contrary to what it had been, we would have heard about it.” *Id.* at 1129. Applying this rule in *Hall*, the Court held that cases that had been consolidated for trial under Federal Rule of Civil Procedure 42(a) did not become a single case, so

that a judgment disposing of all claims in just one of those cases remained an appealable final judgment despite pending claims in the other case. *Id.* at 1131.

Hall's mode of analysis, under which the consolidation of cases for trial "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," *id.* at 1127 (quoting *Johnson*, 289 U.S. at 496-97), might seem to suggest that standing should be assessed separately even in cases that have been consolidated for trial. But *Hall* did not directly address standing, nor did it say anything to overrule the Court's treatment of standing in consolidated cases in *Bowsher* and *Secretary of the Interior*. As *Bauer* explained, district courts "must follow controlling precedent until it has been overruled by a court empowered to do so," and *Hall* "[e]ven open the possibility that, in some situations, consolidated cases may be treated as a single action," at least for some purposes. *Bauer*, 325 F. Supp. 3d at 91.

Thus, while the question is not free from doubt, Plaintiffs submit that the Court should apply the *Rumsfeld v. FAIR* analysis collectively to the four consolidated cases, but that the Court should also resolve factual issues relevant to standing in each separate case, to facilitate review in the event that a reviewing court disagrees.

Respectfully submitted this 23rd day of February, 2022.

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I HEREBY CERTIFY that on February 23, 2022 I electronically filed the foregoing with the Clerk of the Court by using the CM/ECF system, which will send a notice of electronic filing to all counsel in the Service List below.

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