

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 TRIAL BRIEF  
ON STANDING IN CASES CONSOLIDATED FOR TRIAL**

Defendant Christina White, in her official capacity as Supervisor of Elections for Miami-Dade County ("Supervisor White"), hereby files this legal briefing in response to this Court's order on February 15, 2022, which requested legal briefing that addresses how the Supreme Court's holding on standing in *Rumsfeld v. FAIR*, 547 U.S. 47, 53 (2006) applies when cases have been consolidated for trial (ECF No. 615).

**I. 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?**

Under prevailing precedent, a party from each individual case must have standing as to each claim asserted against each defendant in that case. This is because, even

though these cases have been consolidated for the limited purposes of discovery and trial, each action still maintains its separate character so that any rights and defenses that the parties have in one action are preserved. *See Johnson v. Manhattan Ry. Co.*, 289 U.S. 479, 496–97 (1933); *Hall v. Hall*, 138 S. Ct. 1118 (2018). *See also Wright v. Dougherty Cty., Ga.*, 358 F.3d 1352, 1356 (11th Cir. 2004) (“A case may not be consolidated with another when one set of plaintiffs lack standing to assert a claim against the defendants.”).

In *Johnson v. Manhattan Ry. Co.*, the Supreme Court interpreted a prior federal statute which had governed consolidation in federal cases for 125 years prior to the adoption of the Federal Rules of Procedure and held 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.” 289 U.S. at 496–97. But, after the Federal Rules of Civil Procedure were adopted just four years after *Johnson* in 1937, the Supreme Court did not have occasion to decide whether the use of the term “consolidate” in Fed. R. Civ. P. 42(a) was intended to have a different meaning than it had in *Johnson* until it decided *Hall v. Hall*, 138 S. Ct. 1118 (2018). In *Hall*, a unanimous court held that consolidation under Rule 42 carries forward the same meaning as consolidation under *Johnson* and, as a result, “each constituent case must be analyzed individually ... to ascertain jurisdiction and to decide its disposition.” *See id.* at 1128. And *Hall* cited to additional Supreme Court decisions concerning consolidation that were decided after 1937 that supported this reading of Fed. R. Civ.

P. 42(a). *See, e.g., Bank Markazi v. Peterson*, 578 U.S. 212, 233 (2016) (“[A]ctions do not lose their separate identity because of consolidation.”) (*quoting* 9A C. Wright & A. Miller, *Federal Practice and Procedure* § 2382, p. 10 (3d ed. 2008)); *Butler v. Dexter*, 425 U.S. 262, 267 n.12 (1976) (*per curiam*) (“Each case before this Court, however, must be considered separately to determine whether or not this Court has jurisdiction to consider its merits.”).

Furthermore, the Supreme Court’s decision in *Rumsfeld v. FAIR*, 547 U.S. 47, 53 (2006) cannot speak directly to this issue because that case did not involve any consolidated actions. Instead, *FAIR* reached the Supreme Court following the entry of a preliminary injunction by a district court in a single case. *See id.* at 51 (describing procedural history). *See also* District Court Docket in *FAIR v. Rumsfeld*, Case No. 2:03-cv-04433-JCL-MF (D.N.J.) (attached hereto as Exhibit 1).<sup>1</sup>

A collection of additional persuasive authority from other circuits is included below:

- *Cole v. Schenley Indus., Inc.*, 563 F.2d 35, 38 (2d Cir. 1977) (“Consolidation under Rule 42(a), Fed.R.Civ.P., is a procedural device designed to promote judicial economy, and *consolidation cannot effect a merger of the actions or the defenses of the separate parties. It does not change the rights of the parties in the separate suits. . . . Rights are unaffected even though a consolidated complaint is filed. . . . We must therefore consider the jurisdictional basis of each complaint separately.*”)

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<sup>1</sup> It is also worth noting that the Supreme Court decided *Hall* and *Bank Markazi* after *Rumsfeld v. FAIR*.

- *McKenzie v. United States*, 678 F.2d 571, 574 (5th Cir. 1982) (“But consolidation does not cause one civil action to emerge from two; the actions do not lose their separate identity; the parties to one action do not become parties to the other. ... As a consequence, *the subsequent consolidation of McKenzie's two lawsuits did not give the district court subject matter jurisdiction to adjudicate his action against NOPSI and Dear.*”)
- *Chalara v. Intel Corp.*, 410 F. Supp. 2d 1080, 1089–90 (D.N.M. 2005), *aff'd*, 245 F. App'x 784 (10th Cir. 2007) (collecting cases from the Sixth, Fifth, Third, Ninth, and Tenth Circuits)
- *Ashley Creek Properties, LLC v. Timchak*, 649 F. Supp. 2d 1171, 1180 (D. Idaho 2009), *aff'd sub nom. Ashley Creek Properties, L.L.C. v. Larson*, 403 F. App'x 273 (9th Cir. 2010) (“Ashley Creek asserts that the standing question in this case is moot because the environmental groups in the parallel suit have standing to challenge the mine expansion. According to Ashley Creek, it would not have to satisfy the standing requirements if the Court were to consolidate the two cases under Federal Rule of Civil Procedure 42. The Court disagrees. ... Consolidation does not make those who are parties in one suit parties in another.”)
- *Hoffman v. State Farm Fire & Cas. Co.*, No. CV 15-309-JWD-RLB, 2015 WL 9581413, at \*7 (M.D. La. Dec. 4, 2015), *report and recommendation adopted*, No. CV 15-309-JWD-RLB, 2015 WL 9480463 (M.D. La. Dec. 29, 2015) (“[E]ach of the consolidated actions must have an independent basis for the exercise of subject matter jurisdiction.”)

Date: February 23, 2022

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

By: /s/ Michael B. Valdes

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*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 February 23, 2022.

/s/ Michael B. Valdes

Michael B. Valdes  
Assistant County Attorney

**U.S. District Court  
District of New Jersey [LIVE] (Newark)  
CIVIL DOCKET FOR CASE #: 2:03-cv-04433-JCL-MF**

FORUM FOR ACADEMIC, et al v RUMSFELD, et al  
Assigned to: Judge John C. Lifland  
Referred to Magistrate Judge Mark Falk  
Demand: \$0  
Cause 42 1983 Civil Rights Act

Date Filed 09/19/2003  
Date Terminated: 09/28/2006  
Jury Demand None  
Nature of Suit: 440 Civil Rights: Other  
Jurisdiction U S Government Defendant

**Plaintiff**

**FORUM FOR ACADEMIC AND  
INSTITUTIONAL RIGHTS**  
*a New Jersey membership corporation*

represented by **ANDREW W. DWYER**  
Dwyer & Barrett, L.L.C.  
17 Academy Street  
Suite 1201  
Newark  
Newark, NJ 07102  
United Sta  
(973) 242-3636  
Fax: (973) 242-3399  
Email: andy@thedwyerlawfirm.com  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**SOCIETY OF AMERICAN LAW  
TEACHERS, INC.**  
*a New York corporation*

represented by **ANDREW W. DWYER**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**COALITION FOR EQUALITY**  
*a Massachusetts association*

represented by **ANDREW W. DWYER**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**RUTGERS GAY AND LESBIAN  
CAUCUS**  
*a New Jersey association*

represented by **ANDREW W. DWYER**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**PAM NICKISHER**  
*a new jersey resident*

represented by **ANDREW W. DWYER**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**LESLIE FISCHER**  
*a Pennsylvania resident*

**Plaintiff**

**MICHAEL BLAUSCHILD**  
*a New Jersey resident*

represented by **ANDREW W. DWYER**  
(See above for address)  
**LEAD ATTORNEY**  
**ATTORNEY TO BE NOTICED**

**Plaintiff**

**ERWIN CHEMERINSKY**  
*a California resident*

**Plaintiff**

**SYLVIA LAW**  
*a New York resident*

V.

**Defendant**

**DONALD H. RUMSFELD**  
*in his capacity as U.S. Secretary of Defense*

**Defendant**

**ROD PAIGE**  
*in his capacity as U.S. Secretary of Education*

**Defendant**

**ELAINE CHAO**  
*in her capacity as U.S. Secretary of Labor*

**Defendant**

**TOMMY THOMPSON**  
*in his capacity as U.S. Secretary of Health and Human Services*

**Defendant**

**NORMAN Y. MINETA**  
*in his capacity as U.S. Secretary of Transportation*

**Defendant**

**TOM RIDGE**  
*in his capacity as U S Secretary of Homeland Security*

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Date Filed	#	Docket Text

09/19/2003	1	COMPLAINT w/verifications, Rule 7 1 Statemmnt, and Local Rule 11 2 Certf filed FILING FEE \$ 150.00 RECEIPT # 318525 (dc) Modified on 09/19/2003 (Entered: 09/19/2003)
09/19/2003	2	NOTICE of Allocation and Assignment filed. ( NEWARK - Judge John C. Lifland - Magistrate Judge Mark Falk) (NM) (dc) (Entered: 09/19/2003)
09/19/2003		SUMMONS(ES) issued for DONALD H RUMSFELD, ROD PAIGE, ELAINE CHAO, TOMMY THOMPSON, NORM MINETA, TOM RIDGE ( 60 Days) (to Messenger) (dc) Modified on 09/23/2003 (Entered 09/19/2003)
09/19/2003	3	Minute entry: Proceedings recorded by Ct-Reporter: Walter Perrilli; Minutes of: 9/19/03; The following actions were taken, OTSC W/TRO. Hrg on pltf's application to admit E. Joshua Rosenkranz, Esq. & Timothy P. Wei, Esq. pro hac vice. Ordered application granted. Ordered that a conference call be set for 9/29/03. By Judge John C. Lifland (dc) (Entered: 09/24/2003)
09/19/2003	4	TRO & APPLICATION/MOTION for preliminary injunction for briefing scheduling by FORUM FOR ACADEMIC (brief submitted) (dc) (Entered 09/24/2003)
09/19/2003	5	DECLARATION of Andrew Dwyer w/exhibits on behalf of pla FORUM FOR ACADEMIC in support of [4-1] application for preliminary injunction (dc) (Entered: 09/24/2003)
09/23/2003	6	AFFIDAVIT OF SERVICE of corrected copies of the complaint w/verifications, memorandum of law, and declarations (dc) (Entered 09/25/2003)
09/23/2003	8	AFFIDAVIT OF SERVICE of corrected copies of complaint w/ original verifications, memorandum of law, & declarations (dc) (Entered: 10/01/2003)
09/26/2003	9	Notice of MOTION to dismiss action for lack of jurisdiction , by dfts Motion set for 10/27/03 on [9-1] motion w/certsvc. (Brief/PO Subm) (dc) Modified on 10/06/2003 (Entered 10/02/2003)
09/26/2003	10	CERTIFICATE OF SERVICE of memorandun of law, and dfts motion to dismiss and opposition to plas motion for a preliminary injunction (dc) (Entered: 10/02/2003)
09/26/2003	12	AFFIDAVIT OF SERVICE of summons and complaint w/verifications by certified mail (return receipt requested) (dc) (Entered: 10/06/2003)
09/29/2003	7	REPLY DECLARATION of HAROLD KENT GREENFIELD on behalf of pla., FORUM FOR ACADEMIC and in support of [4-1] application for preliminary injunction (cs) Modified on 09/30/2003 (Entered: 09/30/2003)
10/01/2003	11	DECLARATION of E Joshua Rosenkranz on behalf of FORUM FOR ACADEMIC Re in further suppoert of pltf's motion for preliminary injunction (bl) Modified on 10/06/2003 (Entered 10/02/2003)
10/10/2003	13	FIRST AMENDED COMPLAINT by plaintiffs w/attached verifications and certsvc , amending [1-1] complaint (dc) (Entered: 10/14/2003)
10/10/2003	14	DECLARATION of Gerald V May, III on behalf of pla COALITION FOR EQUALITY (dc) Modified on 10/20/2003 (Entered: 10/14/2003)
10/10/2003	15	Minute entry: Proceedings recorded by Ct-Reporter: Lynne Johnson; Minutes of: 10/10/03; The following actions were taken, [9-1] motion to dismiss action for lack of jurisdiction Decision Reserved, [4-1] application for preliminary injunction Decision Reserved, [4-2] application Decision Reserved By Judge John C. Lifland (dc) (Entered: 10/14/2003)
10/15/2003	16	2ND AMENDED COMPLAINT by pltf's (amending 1st amended complaint) w/attached



		verifications. (dc) Modified on 10/28/2003 (Entered: 10/22/2003)
10/15/2003	17	AFFIDAVIT OF SERVICE by Emily M. Meyers of copies of 2nd Amended Complaint (dc) (Entered: 10/22/2003)
10/22/2003	18	Notice of MOTION to strike or in the alternative to dismiss second amended complaint by DONALD H. RUMSFELD, ROD PAIGE, ELAINE CHAO, TOMMY THOMPSON, NORMAN Y. MINETA, TOM RIDGE, Motion set for 11/24/03 on [18-1] motion, set for 11/24/03 on [18-2] motion w/cert of service attached (Brief/PO Subm) (jd) (Entered: 10/24/2003)
10/24/2003	19	DECLARATION of E. JOSHUA ROSENKRANZ w/attached exhibit 1 on Re: in opposition to [18-1] motion to strike, [18-2] motion to dismiss second amended complaint (DD) (Entered: 10/29/2003)
11/05/2003	20	OPINION (copy to NJLJ) ( signed by Judge John C. Lifland ) (dc) (Entered: 11/05/2003)
11/05/2003	21	ORDER denying dfts [18-1] motion to strike plus second amended complaint denying [18-2] motion to dismiss plus second amended complaint denying [18-3] hearing Motion set for 11/24/03 on [18-1] motion, set for 11/24/03 on [18-2] motion denying dfts [9-1] motion to dismiss action for lack of jurisdiction as to all associational and individual plus denying [9-2] hearing Motion set for 10/27/03 on [9-1] motion denying plus [4-1] application for preliminary injunction enjoining enforcement of the Solomon Amendment as unconstitutional denying [4-2] application ( signed Judge John C. Lifland ) (NM) (dc) (Entered: 11/05/2003)
11/12/2003	22	NOTICE OF APPEAL filed at 1:09pm by pla's FORUM FOR ACADEMIC, SOCIETY OF AMERICAN, COALITION FOR EQUALI, RUTGERS GAY AND LESB, PAM NICKISHER, LESLIE FISCHER, MICHAEL BLAUSCHILD, ERWIN CHEMERINSKY, SYLVIA LAW Re: [21-1] order . Fee Status: \$255.00. Copies of notice of appeal sent to Clerk, USCA and Attorney(s): ANDREW DWYER (ce) (Entered: 11/12/2003)
11/12/2003	23	AFFIDAVIT of on behalf of FORUM FOR ACADEMIC, SOCIETY OF AMERICAN, COALITION FOR EQUALI, RUTGERS GAY AND LESB, PAM NICKISHER, LESLIE FISCHER, MICHAEL BLAUSCHILD, ERWIN CHEMERINSKY, SYLVIA LAW Re: [22-1] appeal (ce) (Entered: 11/12/2003)
11/18/2003	24	NOTICE of Docketing ROA from USCA Re: [22-1] appeal USCA NUMBER: 03-4433 (ce) (Entered: 11/20/2003)
11/21/2003		Deadline updated; terminating [18-3] hearing Motion set for 11/24/03 on [18-1] motion, set for 11/24/03 on [18-2] motion, terminating [9-2] hearing Motion set for 10/27/03 on [9-1] motion (jb) (Entered: 11/21/2003)
11/24/2003	25	Transcript Purchase Order RE: [22-1] appeal ordering transcript of proceedings held on 10/10/03 (ce) (Entered: 12/01/2003)
12/03/2003	26	TRANSCRIPT filed [22-1] appeal for dates of 10/10/03 Hon. John C. Lifland (ce) Modified on 12/10/2003 (Entered: 12/03/2003)
12/03/2003		Record complete for purposes of appeal. (ce) (Entered: 12/03/2003)
03/16/2005	<a href="#">27</a>	Letter from Supreme Court of the U.S. Office of the Clerk indicating that a petition for a writ of certiorari was filed on 2/28/05 and palced on the docket 2/28/05 as No. 04-1152. (ji, ) (Entered: 03/16/2005)
05/09/2005	<a href="#">28</a>	Letter from Office of the Clerk of the Supreme Court of the U.S. indicating that the petition for a writ of certiorari is granted. (ji, ) (Entered: 05/10/2005)
11/22/2005		Certified and Transmitted Record on Appeal to Office of the Clerk of the Supreme Court

		of the US per request of USCA for the 3rd Circuit re 22 Notice of Appeal (USCA). (ji, ) (Entered: 11/22/2005)
11/22/2005	<a href="#">29</a>	USCA LETTER TO DISTRICT COURT CLERK re: sending district court record to the US Supreme Court (Ruffin, Phyllis) (Entered: 11/22/2005)
05/24/2006	<a href="#">30</a>	MANDATE of USCA as to 22 Notice of Appeal (USCA), filed by FORUM FOR ACADEMIC AND INSTITUTIONAL RIGHTS, SOCIETY OF AMERICAN LAW TEACHERS, INC., COALITION FOR EQUALITY, RUTGERS GAY AND LESBIAN CAUCUS, PAM NICKISHER, LESLIE FISCHER, MICHAEL BLAUSCHILD, ERWIN CHEMERINSKY, and SYLVIA LAW. (Attachments: # <a href="#">1</a> )(Burr, Gayle) (Entered: 05/24/2006)
06/17/2006	<a href="#">31</a>	NOTICE of Voluntary Dismissal by all plaintiffs (DWYER, ANDREW) (Entered: 06/17/2006)
06/19/2006		Appeal Record Returned from the Office of the Clerk of the Supreme Court of the U.S.: 22 Notice of Appeal (USCA). (ji, ) (Entered: 06/19/2006)
09/28/2006		***Civil Case Terminated. (mn, ) (Entered: 09/28/2006)

<b>PACER Service Center</b>			
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