

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

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

Plaintiffs,

v.

Case No.: 4:21cv186-MW/MAF
4:21cv187-MW/MAF
4:21cv201-MW/MJF
4:21cv242-MW/MAF

LAUREL M. LEE, in her official
capacity as Florida Secretary of
State, et al.,

Defendants,

and

NATIONAL REPUBLICAN
SENATORIAL COMMITTEE and
REPUBLICAN NATIONAL
COMMITTEE,

Intervenor-Defendants.

_____ /

ORDER ON MOTIONS TO LIMIT CROSS-EXAMINATION

In two motions, the *NAACP*, *Florida Rising*, and *League* Plaintiffs move to limit the scope of Defendants' cross-examination of their witnesses.

First, Plaintiffs move to preclude Defendants from insinuating, while cross-examining Plaintiffs' witnesses, that the witnesses' prior line-warming activities violated section 101.051(2), Florida Statutes. ECF No. 505. "Section 101.051(2)," Plaintiffs say, "plainly does not apply to these activities." *Id.* at 1. In short, Plaintiffs

argue that section 101.051(2) applies only when a person solicits disabled voters for permission to go into the voting booth with the voter, and thus is not implicated here.

Second, Plaintiffs move more broadly to bar Defendants from asking questions on cross-examination suggesting that Plaintiffs' witnesses have engaged in illegal or criminal conduct. ECF No. 521.

In response to Plaintiffs' first motion, Defendants say that Plaintiffs misinterpret section 101.51(2), and that section 101.51(2) *does* prohibit the activities Plaintiffs' witnesses have testified to engaging in. Plus, Defendants say, such questioning is relevant because it goes to whether Plaintiffs' alleged injuries stemming from SB 90 are redressable in this case. Put another way, Defendants say that an order enjoining Defendants from enforcing SB 90 cannot redress Plaintiffs' injuries because section 101.51(2)—which is not at issue in this lawsuit—also prohibits Plaintiffs' activities. *See generally* ECF No. 532. With these arguments in mind, this Court addresses Plaintiffs' motions in turn.

I

Starting with questions about section 101.51(2), such questions *may* be relevant if that provision prohibits the activities Plaintiffs allege that they would engage in but for SB 90. At this stage, however, this Court has neither the time nor the desire to parse section 101.51(2)'s language to determine its scope. Accordingly, this Court will permit Defendants to ask questions about section 101.51(2) and will

reserve ruling on its relevance until the end of trial. If this Court ultimately determines that this line of questioning is improper, this Court will strike all testimony relating to such questioning.

II

Next this Court turns to questions about alleged illegal activity generally. This Court has “a duty to protect [witnesses] from questions which go beyond the bonds of proper cross-examination merely to harass, annoy or humiliate.” *Alford v. United States*, 282 U.S. 687, 694 (1931). The Rules of Evidence codify that duty, providing that this Court should “exercise reasonable control over the mode and order of examining witnesses and presenting evidence so as to: (1) make those procedures effective for determining the truth; (2) avoid wasting time; and (3) protect witnesses from harassment or undue embarrassment.” Fed. R. Evid. 611. Plus, relevant here, this Court “may exclude evidence if its probative value is outweighed by a danger of . . . unfair prejudice, confusing the issues, . . . undue delay,” or “wasting time.” Fed. R. Evid. 403.

On the other hand, Rule 608 gives courts the *discretion* to permit parties, on cross-examination, to inquire into specific instances of conduct “if they are probative of the [witness’s] character for truthfulness or untruthfulness.” Fed. R. Evid. 603(b). But “Rules 403 and 611 identify the principles controlling the exercise of discretion

under Rule 608(b).” 28 C.A. Wright & V.J. Gold, *Federal Practice and Procedure Evidence* § 6118, Westlaw (database updated Apr. 2021).

This Court finds that questions related to alleged illegal activity generally—such as assertions that witnesses or their organizations have falsified pay stubs, provided confidential voter information to third parties, or engaged in illegal lobbying—are more prejudicial than probative, waste time, and unduly harass or embarrass witnesses. This Court therefore bars such questions under Rules 611 and 403.

III

In sum, Defendants cannot question Plaintiffs’ witnesses about alleged illegal conduct irrelevant to this action except as provided for under Rule 609. But Defendants may ask about alleged violations of section 101.51(2), and this Court reserves ruling on the propriety of those questions until the end of trial.

Accordingly,

IT IS ORDERED:

1. This Court reserves ruling on Plaintiffs’ motion to preclude reference to § 101.051(2), Fla. Stat., ECF No. 505.
2. Plaintiffs’ motion to preclude Defendants from making unfounded insinuations of illegal activity, ECF No. 521, is **GRANTED**.

3. This Court's prior order, ECF No. 522, which directed Defendants to respond to ECF No. 521, is **VACATED**. Defendants need not file a response.

SO ORDERED on February 4, 2022.

s/Mark E. Walker
Chief United States District Judge

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