

**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 DEPOSITION DESIGNATIONS AND OBJECTIONS

This Order is entered in consideration of the parties' notice of filing deposition designations in lieu of live testimony for certain witnesses, ECF No. 549, and attached objections. The parties have filed the deposition transcripts of Elizabeth Guzzo, Alan Hays, and Craig Latimer, along with a table of objections. In an ideal world, this Court would provide detailed explanations as to each of its rulings on the objections. But this isn't a utopia. Instead, this Court is issuing a truncated order on

an expedited basis given the time constraints inherent in this proceeding and this Court's myriad other cases on its docket.

To summarize, the objections and this Court's rulings fall into a few general categories. For example, this Court overruled several hearsay objections that fell under this Court's determinative ruling outlined in ECF No. 545. Likewise, this Court overruled objections when the objection pertained to multiple, as opposed to individual, questions or when the objection was otherwise waived. *See, e.g.*, ECF No. 403 at 3 and ECF No. 474. This Court also overruled several objections to the answers—as opposed to questions—when the objection was not preserved during the deposition. *See Kirschner v. Broadhead*, 671 F.2d 1034, 1038 (7th Cir. 1982). This Court overruled other objections as to whether the question called for a legal conclusion when the question asked for the witness's understanding of certain provisions or how they would apply those provisions as the Supervisor of Election in their respective county. This Court also overruled objections based on hearsay when the statements at issue were not offered for the truth of the matter asserted. Indeed, just because a legislator says something on the Florida House floor doesn't make that statement true. What matters is what other legislators were aware of at the relevant time. Finally, this Court sustained objections where the parties had already stipulated to the facts in question.

With this preamble in mind, this Court sets out its ruling as to each objection below, starting with Ms. Guzzo's deposition.

I

This Court's rulings on each of the objections as to Ms. Guzzo's designated testimony are detailed below.¹

- 30:1–7: **OVERRULED**. This question is not vague, and the witness was able to answer it. Moreover, the parties have already stipulated that the Secretary of State “is Florida’s chief elections officer and, as such, is responsible for the administration and implementation of election laws in Florida as prescribed by section 97.012(1), Florida Statutes.” ECF No. 402 ¶ 51; *see also id.* ¶ 10.
- 32:5–9: **OVERRULED**.
- 33:4–7: **OVERRULED**.
- 39:20–23: **OVERRULED**.
- 44:25–45:3: **OVERRULED**.
- 45:7–13: **SUSTAINED**. Section 97.0575(3)(a), Florida Statutes (2021), requires “notification,” not “recitation.”
- 53:22–24: **OVERRULED**, though only marginally relevant.

¹ This Court identifies each objection based on the page and line numbers as stated in ECF No. 549-4.

- 56:23–57:3: **OVERRULED.** The question is relevant. In addition, asking this Court to rule on objections to questions to which the witness testifies to having no personal knowledge only serves to waste this Court’s time, of which there is little to spare for ruling on objections like this one. Here, the witness testified that “she can’t speak to . . . or [is] not sure of specifics.” There is thus no evidentiary value to this testimony and no value to having this Court rule on this objection.
- 58:12–16: **SUSTAINED.** Once again, although this objection is sustained, the answer is of no evidentiary value anyways and this is merely an exercise in wasting this Court’s time.
- 64:21–65:8: **SUSTAINED.** The parties have stipulated that “the Attorney General does not have any written or unwritten procedures or protocols specifically addressing referrals from the Secretary pursuant to 97.0575(4).” ECF No. 402 ¶ 53.
- 68:18–19: **SUSTAINED:** The parties have stipulated that “[t]he Attorney General has pursued no enforcement actions against 3PVROs since 2012.” *Id.* ¶ 17.
- 68:20–21: **SUSTAINED.**
- 69:2–3: **SUSTAINED.**

- 69:9–15: **OVERRULED** for failure to object to individual questions. *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 70:19–20: **SUSTAINED**.
- 73:5–11: **SUSTAINED**.
- 73:12–15: **SUSTAINED**.

II

This Court’s rulings on each of the objections to Supervisor Hays’s designated testimony are detailed below.

- 26:21–27:1: **OVERRULED** for failure to object to individual questions, *see* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question), and as to relevance.
- 43:15–19: **OVERRULED**. *See* ECF No. 545. This Court entered ECF No. 545 to avoid repeatedly addressing Defendants’ hearsay objections to the Supervisors of Elections. Defendants’ continued objections, even after this Court issued its definitive ruling on this point, are borderline sanctionable and another exercise in wasting this Court’s time.
- 46:3–19: **OVERRULED**.
- 47:13–18: **OVERRULED**. *See* ECF No. 545.

- 52:11–13: **OVERRULED**. The question does not call for speculation and any objection to the answer as speculative is waived.
- 55:24–56:12: **OVERRULED**. Defendants object to hearsay. *See* ECF No. 549-4 at 9. To be sure, a party does not waive their objection to a *question* that elicits hearsay by failing to object at the deposition. *See* Fed. R. Civ. P. 32(d)(3)(B)(i). But when the answer contains hearsay, the issue is more complicated. An objection to “the form of a question or answer” is waived only if the issue could have been fixed in the face of a contemporaneous objection. *Id.* When a question is permissible, but the answer is not, a contemporaneous objection is typically necessary. In the face of a contemporaneous objection, the witness can “conform[] his answers to the questions.” *Kirschner v. Broadhead*, 671 F.2d 1034, 1038 (7th Cir. 1982). By failing to object here, Defendants did not alert Plaintiffs of the need to attempt to elicit the information in the answer in a non-hearsay form. Having failed to do so, Defendants cannot now seek to exclude entire answers because those answers contain hearsay.
- 60:25–61:12: **SUSTAINED**.
- 66:20–25: **OVERRULED** as to speculation because the objection is waived. *See also* ECF No. 403 at 3; *see also* ECF No. 474 at 2

(overruling objections for Defendant Lee's failure to object to a specific question).

- 68:10–24: **OVERRULED**. *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee's failure to object to a specific question).
- 76:12–15: **OVERRULED**.
- 76:18–77:11: **SUSTAINED**.
- 77:12–15: **SUSTAINED**.
- 79:10–13: **OVERRULED**. *See* ECF No. 545.
- 84:15–23: **OVERRULED in part** and **SUSTAINED in part**. The objection is overruled to the extent that Supervisor Hays testified to his understanding of what SB 90 requires. But the objection is sustained in that Supervisor Hays cannot testify on what SB 90 in fact requires.
- 85:10–14: **OVERRULED**.
- 87:1–8: **OVERRULED in part** and **SUSTAINED in part**. The objection is overruled to the extent that Supervisor Hays testified to his understanding of what SB 90 requires. But the objection is sustained in that Supervisor Hays cannot testify on what SB 90 in fact requires.
- 87:9–18: **OVERRULED**.
- 91:13–17: **OVERRULED**.

- 94:19–96:5: **OVERRULED.**
- 97:10–18: **OVERRULED.** Objects to hearsay in an answer without a contemporaneous objection.
- 99:2–100:4: **OVERRULED.** *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 102:7–12: **OVERRULED.**
- 103:2–104:1: **OVERRULED.**
- 122:18–123:1: **OVERRULED.**
- 123:2–6: **SUSTAINED.**
- 123:7–10: **OVERRULED.**
- 125:6–126:17: **OVERRULED.**
- 126:15–17: **OVERRULED.**
- 127:12–18: **OVERRULED.**
- 144:15–20: **OVERRULED.**
- 144:21–24: **OVERRULED.**
- 145:4–17: **OVERRULED.**
- 150:12–21: **OVERRULED.**
- 151:17–22: **OVERRULED.**
- 153:6–19: **OVERRULED.**

- 154:7–9; and 154:24–25: **OVERRULED**.
- 177:15–178:18: **OVERRULED**.
- 202:17–24: **OVERRULED**.
- 208:8–13: **OVERRULED**.
- 209:22–210:21: **OVERRULED**. *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 221:2–11: **OVERRULED**.
- 222:2–7: **SUSTAINED on other grounds** as argumentative.

III

This Court’s rulings on each of the objections to Supervisor Latimer’s designated testimony are detailed below.

- 25:17–26:6: **OVERRULED**.
- 28:23–24: **OVERRULED**.
- 47:18–20: **OVERRULED**.
- 47:21–23: **OVERRULED**.
- 59:9–10: **OVERRULED**. This objection provides a perfect example of the foolish nature of many of the parties’ objections. Just because something has not happened yet does not mean any discussion of the topic calls for speculation. For example, suppose a Publix manager is

asked the following question at a deposition: “Say there is a spill on aisle 4, what do you expect your employees to do?” This question does not call for speculation just because the spill has not happened yet. So too here, questions about how an increase in vote-by-mail applications will increase burdens on Supervisors does not call for speculation just because the requests have not happened yet.

- 74:16–21: **OVERRULED.**
- 95:21–25: **OVERRULED.** This Court cannot let it pass. Asking the Hillsborough County Supervisor of Elections whether the 2020 election was successful in both Hillsborough County and Florida does not call for hearsay. Moreover, just because some of the answer contains hearsay does not render the *entire* answer hearsay. And finally, this Court has heard *ad nauseam* that Governor DeSantis and Secretary Lee called the 2020 election successful. So the whole exercise is silly, and a waste of this Court’s time.
- 98:17–24: **OVERRULED.** Objects to hearsay in an answer without a contemporaneous objection.
- 99:6–18: **OVERRULED.** *See*, yet again, ECF No. 545.
- 99:19–22: **OVERRULED.**
- 100:1–4: **OVERRULED.**

- 100:25–101:5: **OVERRULED.**
- 101:16–25: **OVERRULED.**
- 102:4–20: **OVERRULED.**
- 103:3–11: **OVERRULED.**
- 104:2–3: **OVERRULED.**
- 106:6–11: **OVERRULED.**
- 109:8–19: **OVERRULED.**
- 111:7–15: **OVERRULED.** *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 111:16–112:3: **OVERRULED.**
- 112:4–8: **OVERRULED.**
- 113:10–18: **OVERRULED.**
- 115:25–116:3: **OVERRULED.**
- 116:5–10: **OVERRULED.**
- 116:12–20: **OVERRULED.**
- 126:4–9: **OVERRULED.**
- 127:16–21: **SUSTAINED.**
- 130:22–131:3: **OVERRULED.** Supervisor Latimer testified that Supervisor Marcus and Supervisor Link served on the FSE work group.

That he could not remember the other three to four supervisors in the group does not mean he lacks personal knowledge. For example, if a witness was asked to list ten people who attended a meeting and she remembers only nine, her answer about the nine people she remembers is not inadmissible because she cannot remember the tenth.

- 131:4–7: **OVERRULED.**
- 131:24–132:7: **OVERRULED.**
- 135:7–11: **SUSTAINED.**
- 137:23–138:2: **OVERRULED.**
- 138:4–13: **SUSTAINED.**
- 141:21–25: **OVERRULED.**
- 148:16–20: **SUSTAINED.**
- 148:21–23: **SUSTAINED.**
- 156:13–23: **OVERRULED.** *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 157:23–158:2: **OVERRULED.**
- 159:17–23: **OVERRULED.**
- 160:2–6: **OVERRULED.**
- 161:16–22: **SUSTAINED.**

- 162:12–20: **OVERRULED.**
- 164:1–9: **OVERRULED.** *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 166:2–8: **OVERRULED.**
- 166:19–167:2: **OVERRULED.** *See* ECF No. 403 at 3; *see also* ECF No. 474 at 2 (overruling objections for Defendant Lee’s failure to object to a specific question).
- 168:19–23: **OVERRULED.**
- 169:17–19: **OVERRULED.**
- 169:24–170:7: **OVERRULED.**
- 175:2–8: **OVERRULED.**
- 175:15–23: **SUSTAINED.**
- 192:5–9: **OVERRULED.**
- 192:15–18: **OVERRULED.**

SO ORDERED on February 9, 2022.

s/Mark E. Walker
Chief United States District Judge