IN THE 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 Secretary of State of Florida, et al.,

Defendants,

and

NATIONAL REPUBLICAN SENATORIAL COMMITTEE and REPUBLICAN NATIONAL COMMITTEE,

Intervenor-Defendants.
_____/

4:21-cv-186-MW-MAF

Consolidated for trial with:
4:21-cv-187-MW-MAF
4:21-cv-201-MW-MAF
4:21-cv-242-MW-MAF

SECRETARY'S AND INTERVENOR-DEFENDANTS' RESPONSE TO PLAINTIFFS' MOTION FOR THE ADMISSION OF FORMER SENATOR BENNETT'S STATEMENT OVER OBJECTION

Pursuant to this Court's oral comments on the record and the Order conditionally granting the admission of a statement by a former State Senator, *see* ECF No. 592, Secretary of State Laurel M. Lee and Intervenor-Defendants, the National Republican Senatorial Committee and the Republican National Committee

(collectively, the "Intervenor-Defendants"), hereby respond to Plaintiffs' motion seeking to admit an irrelevant hearsay statement by a former legislator.

Argument

Plaintiffs offer former Senator Bennett's statement for the truth of the matter. Plaintiffs argue that the statement "is not being offered to show what 'people in Africa' in fact do," which Plaintiffs describe as "the sole assertion of fact in the statement." ECF No. 585 at 5. Although this may be the sole assertion of *fact*, the statement contains assertions that Plaintiffs posit demonstrate Senator Bennett's opinions on voting. The Federal Rules of Evidence provide no hearsay exception simply because the out of court statement is offered to show the speaker's opinion, as opposed to a factual statement made by the speaker.

Any "marginal relevance" of former Senator Bennett's statement to Plaintiffs' case is dependent on the factfinder considering the statement as former Senator Bennett's true opinion. For example, if former Senator Bennett made the statement based on something he heard another person say but expressly said he did not agree with the sentiment, it is highly unlikely Plaintiffs would be seeking to admit the statement. Indeed, Plaintiffs concede that one of their expert witnesses relied on former Senator Bennett's statement to argue the prior speech reflected the purpose of and intent behind the passage of HB 1355 (2011). *See* ECF No. 585 at 3.

Plaintiffs are thus urging this Court to consider the prior speech as reflecting former Senator Bennett's personal views on a different piece of legislation passed 10 years before SB 90. They also improperly argue that former Senator Bennett's opinion reflected the former Florida Legislature's intent in the passage of HB 1355. For these reasons, it should be excluded pursuant to *Greater Birmingham Ministries v. Sec'y of State*, 992 F.3d 1299, 1323 (11th Cir. 2021).

The Secretary and Intervenor-Defendants respectfully submit that the Court's characterization of former Senator Bennett's statement as having "marginal relevance" is far too generous. The *Greater Birmingham* Court excluded prior speech from multiple legislators, including, for example, the bill sponsor of the challenged law (Representative Rich) because "he made them during the debate on a different bill . . . about an entirely different subject . . ." *Id.* (adding, that with regard to one of the statements, "[i]t does not stand to reason that those comments support a wholesale intent by Representative Rich, or by the Alabama legislature, to discriminate against minority voters."). Another legislator's (Senator Dixon) prior speech was excluded because he was not a member of the legislature when the challenged law passed. *See id.*

Furthermore, the *Greater Birmingham* Court distinguished the Court's earlier ruling in *Carrollton Branch of NAACP v. Stallings*, 829 F.2d 1547, 1552 (11th Cir. 1987), noting that the *Stallings* Court admitted a legislator's prior speech from 1947

in regard to legislation passed four years later because "that case involved the same bill and the same sponsor." *See id.* (ruling that prior speech inadmissible where it did not raise "*Stallings*-level evidence of discriminatory intent").

Here, the connections between former Senator Bennett's prior speech and SB 90 are even more disparate than was the case in *Greater Birmingham*, where the Court excluded the prior speech:

1) Former Senator Bennett served in the Florida Senate from 2002 until 2012.[1] He left the Florida Legislature eight years before SB 90 was even introduced.

2) Because he was not a member of the Florida Legislature in 2021, former Senator Bennett did not sponsor or vote for SB 90. He also did not sponsor HB 1355 in 2011.[2]

3) SB 90 is a different bill from HB 1355, filed ten years later, and makes different changes to the Florida Election Code.

4) Plaintiffs' motion provides no evidence that Senator Baxley commented on or reacted to former Senator Bennett's statement or was even on the Senate Floor at the time (sometimes bill sponsors ask other Senators to handle questions and respond to debate, as can be evidenced

[1] *Available at* Senator Bennett - The Florida Senate (flsenate.gov).
[2] *Available at* House Bill 1355 (2011) - The Florida Senate (flsenate.gov).

from the legislative record on SB 90, e.g., the Senate floor discussion of April 22, 2021, where Senator Boyd was answering questions about SB 90).

Plaintiffs' argument is tenuous at best. Simply because a former legislator expressed a viewpoint on HB 1355 does not mean that the sponsor of that legislation expressed that viewpoint, let alone that the sponsor carried that viewpoint forward 10 years to a completely different bill. It also does not show that the Florida Legislature in 2011 passed HB 1355 with the intent to discriminate against minority voters. If former Senator Bennett's statement can be admitted simply because it provides some "historical context" that Plaintiffs argue goes to legislative intent, then there would never be any circumstances wherein prior speech of a former legislator would be excluded. *Greater Birmingham* tells us this is not the law.

Conclusion

For the above reasons, the Secretary and Intervenor-Defendants respectfully request that the Court deny Plaintiffs' motion and revoke its conditional admission of former Senator Bennett's statement.

Dated: February 11, 2022

Respectfully submitted:

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LOCAL RULE 7.1(F) CERTIFICATION

Pursuant to Local Rule 7.1(F), the Motion contains 888 words, excluding the case style, signature block, and any certificate of service.

/s/ Mohammad O. Jazil
Attorney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 11, 2022, a true and correct copy of the foregoing was filed via CM/ECF, which served a copy on all parties of record.

/s/ Mohammad O. Jazil
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