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:

Case 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' MEMORANDUM IN FURTHER SUPPORT OF ADMISSION OF STATEMENT BY SENATOR MICHAEL BENNETT

Plaintiffs respectfully submit this memorandum in further support of the admission of the statement of Defendant Michael Bennett during the legislative debate over HB 1355, as discussed in this Court's order dated February 10, 2022 (ECF 592). In that order, the Court conditionally granted Plaintiffs' motion for the admission of Senator Bennett's statement. *See* ECF 592, Order Granting Motion for

the Admission of Senator Michael Bennett Statement. Subsequent to that, the Court invited further briefing on the issue. Feb. 14 Tr. at 3365.

With respect to their argument that Defendant Bennett's statement is admissible under *Village of Arlington Heights v. Metropolitan Housing Development Corp.*, 429 U.S. 252, 265-66 (1977), Plaintiffs rely on their original motion. ECF 585.

Plaintiffs also wish to draw the Court's attention to the fact that the statement is admissible with respect to their claim under Section 2 of the Voting Rights Act, 52 U.S.C. § 10301(b). Under Section 2, courts must consider the "totality of circumstances" in determining whether an election law or practice has a discriminatory impact on a protected group. *Id.* The court is to conduct a "searching practical evaluation of the 'past and present reality,'" *Thornburg v. Gingles*, 478 U.S. 30, 45 (1986) (quoting S. Rep. No. 97-417, at 30 (1982)), and take a "functional" view of the political process, *id.* (quoting S. Rep. No. 97-417, at 30 n.120). This inquiry into the totality of circumstances includes the history of racial voting-related discrimination in the state. *Id.* at 36-37.

Senator Bennett's statement, with its clear racial overtones, is fully relevant to this Court's assessment of the "past and present reality" in Florida. Indeed, it ties directly into Dr. Burch's testimony on the political science phenomenon, "racial resentment," ECF 536 at 952:6-15. As Dr. Burch described, racial resentment is "the

idea that Black people don't live up to those standards of industriousness and effort, and a lack of effort . . . accounts for racial disparities in American society." *Id.* at 956:11-13. The concept of racial resentment helps provide context for Senator Bennett's statement, which indicated support for forcing voters to "fight for [their right to vote]" as "people in Africa" do. ECF 467-13 at ¶ 71. Through the lens of racial resentment, Senator Bennett's statement in support of HB 1355 provides critical historical context to evaluate SB 90. ECF 467-13 at ¶ 71.

As Dr. Burch testified: "what happens in the past both informs, influences, and shapes what happens in the future . . . past politics can set up the politics of the day, but also past politics can either open or close avenues for ways of thinking about the ways that we can move forward . . . past politics and past policies and past actions shape ideology." ECF 536 at 937:18-23. Therefore, Senator Bennett's statement during the debate on HB 1355—one bill in "a series of official actions" taken to restrict the preferred voting methods of Black and Latino voters in Florida—is relevant to evaluating the totality of circumstances behind the challenged provisions of SB 90. FRE 401(b) ("Evidence is relevant if . . . the fact is of consequence in determining the action.").

II. THE STATEMENT IS NOT HEARSAY

Defendants argue that the statement is hearsay because it requires the finder of fact to assume that the statement reflects the views of the speaker, pointing out

that Plaintiffs might not have introduced the statement if Senator Bennett had merely been quoting a statement that he actually disagreed with. This argument entirely misses the point. The statement obviously would have no relevance to this case if Senator Bennett had risen up to disagree with the statement in question, so it proves nothing to argue that Plaintiffs would not have sought to introduce an irrelevant statement. Moreover, if there were any serious question as to whether Senator Bennett made the statement, he is a party-defendant in this case in his role as Supervisor of Election of Manatee County. The statement is therefore admissible as the statement of a party-opponent under Federal Rule of Evidence 801(d)(2).

Respectfully submitted this 15th day of February, 2022.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on February 15, 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.

/s/ Jeremy Karpatkin
Jeremy Karpatkin

Counsel for Plaintiffs