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

FLORIDA RISING TOGETHER, 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 (Lead Consolidated Case)
Case No. 4:21-cv-00201

DEFENDANT CHRISTINA WHITE'S RESPONSE TO PLAINTIFFS' MOTION FOR SUMMARY JUDGMENT (ECF NO. 241)

In accordance with Fed. R. Civ. P. 56 and Local Rule 56.1, Defendant Christina White, in her official capacity as Supervisor of Elections for Miami-Dade County ("Supervisor White") submits the following response to the Plaintiffs' Motion for Summary Judgment and Supporting Memorandum of Law (ECF Nos. 241, 241-1).

INTRODUCTION

Plaintiffs have sought partial summary judgment as to Counts V, VI, and VIII of their Amendment Complaint. *See* ECF No. 241-1 at 6.[1] Only two of those counts—Counts V and VI—pertain to Supervisor White. *See generally* ECF No. 201

[1] For ease of reference, all citations in this response—except citations to deposition transcripts—shall refer to the pagination generated by CM/ECF at the top of each filing rather than the page numbers provided by the filers in the footer.

(holding that Plaintiffs may proceed with their claims against the Supervisors of Elections relating to the "'line warming' ban," such as Counts V and VI, but dismissing claims against the Supervisors of Elections relating to the "Deceptive Registration Warning Requirement," such as Count VIII).

Statement of Facts

Supervisor White does not dispute that SB 90 amended the definition of "solicitation" in Fla. Stat. § 102.031 in the manner stated in Plaintiffs' Statement of Facts. *See* ECF No. 241-1 at 13. Supervisor White also does not dispute that "[a]lmost all of the Plaintiffs previously conducted line warming activities within 150 feet of polling places and other voting sites" ***somewhere*** within the State of Florida. *Id.* at 9. But, critically for purposes of summary judgment against Supervisor White, none of the deposition testimony cited by Plaintiffs establishes that there would be any impact to those relevant volunteer efforts at polling places in Miami-Dade County following the passage of SB 90.

First, Plaintiffs rely on the deposition of Gepsie Metellus, in her capacity as the corporate representative for the Haitian Neighborhood Center Sant La. (ECF No. 238-21), at pages 52:19-53:19. *See* ECF No. 241-1 at 9. But the cited provisions only describe circumstances where Sant La has provided language assistance to voters. And those activities are expressly authorized under Fla. Stat. § 101.051(1), which was not amended by SB 90. *See* Fla. Stat. § 101.051(1) ("Any elector applying to vote in any election who requires assistance to vote by reason of … inability to read or write may request the assistance of two election officials or some other person

of the elector's own choice … to assist the elector in casting his or her vote."). Furthermore, Ms. Metellus testified later in her deposition that her organization has never handed out food, water, or any other item to voters waiting in line and does not plan to do so in the future. *See* ECF No. 238-21 at 58:17-59:6.

Second, Plaintiff rely on the deposition of Andrea Mercado, in her capacity as the corporate representative for Florida Rising Together. (ECF No. 238-24), at pages 61:12-62:12. *See* ECF No. 241-1 at 9. But, in that excerpted portion of her deposition, Ms. Mercado conceded that her organization would set up and conduct its activities outside of the nonsolicitation zone. *See* ECF No. 238-24 at 61:12-23.

Third, Plaintiffs rely on the deposition of Soraya Marquez, in her capacity as the corporate representative for Mi Familia Vota (ECF No. 238-25), at pages 27:17-28:1. *See* ECF No. 241-1 at 9. But, like Ms. Mercado, Ms. Marquez's testimony similarly conceded that her organization conducted its activities outside of the relevant nonsolicitation zone. *See* ECF No. 238-25 at 26:8-18. (noting that, in prior elections, her organization conducted its activities at the 100 ft. line)[2]; ("I want to clarify something. We were not going through the lines. They would come to the kiosk that we had at 100 feet."). Additionally, Ms. Marquez stated that her organization only conducted these activities in three counties: Hillsborough, Orange, and Osceola. *Id.* at 24:2-6; 26:21-23.

[2] In prior elections, the non-solicitation zone described in Fla. Stat. § 102.031 was set at 100 feet from the entrance to a polling place rather than the current 150-foot line. *See, e.g.,* Fla. Stat. § 102.031 (2018).

Fourth, Plaintiffs rely on the deposition of Esteban Garces, in his capacity as the corporate representative for Poder Latinx (ECF No. 238-30), at pages 45:24-46:24. *See* ECF No. 241-1 at 9. However, Mr. Garces stated that there were only two counties in Florida where his organization conducted the activities described in that cited portion of his deposition. *See* ECF No. 238-30 at 46:12-13. And, throughout his entire deposition, Mr. Garces only mentioned activities occurring in two counties: Orange County and Osceola County. *Id.* at 18:12-13; 38:39:6. Critically, Mr. Garces did not state that any of these activities occurred in Miami-Dade County.

Fifth, Plaintiffs rely on the deposition of Yanidsi Velez, in her capacity as the corporate representative for Hispanic Federation (ECF No. 238-31), at pages 81:19-82:6, 116:22-117:19. *See* ECF No. 241-1 at 9. However, Ms. Velez stated that her organization primarily conducted "line warming" activities in "the Central Florida area, Orange County, Osceola County, Volusia County, Seminole." *Id.* at 88:5-6. In fact, she explicitly stated that her organization did not conduct any "line warming" activities in Miami-Dade County. *Id.* at 88:7-8 ("**Q: Do you do any ["line warming"] in Miami-Dade?** A. Not directly.").

Furthermore, Plaintiffs cannot establish that any relevant volunteer efforts at polling places in Miami-Dade County will be impacted by SB 90's "line warming ban" because of the undisputed testimony that Supervisor White provided in her deposition. Most notably, Supervisor White testified that all activity at Miami-Dade County polling places—except for exit polling—has always occurred outside the 150-foot line. *See* ECF No. 238-10 at 22:16 ("All activity is outside the 150 feet.");

22:17-23 (confirming that this was true for elections in 2016, 2018, and 2020). As described by Supervisor White, this policy is necessary for Miami-Dade County to maintain order at its polling places. *Id.* at 77:22-24 ("[I]n order to maintain order, … we have everybody be outside of the 150 feet, except for the exit pollers.").[3] Notwithstanding this fact, any voter in Miami-Dade County seeking water, food, or non-partisan encouragement is still able to engage with the Plaintiff organizations. In short, for any voter who needs to sit down, obtain assistance, or get water or food from an organization while waiting in line, Miami-Dade County provides a proxy process where that individual's spot in line is saved while they address those matters outside of the non-solicitation zone. *Id.* at 23:2-7 ("We have what's called the proxy process, that a person who is in line with them or just … another voter who is willing to hold the line for them is able to do so. And that person is able to go sit down, whether it's at our area that we have stations for this purpose or wherever they are comfortable.").

Consequently, nothing in SB 90's change to the definition of "solicit" would cause Miami-Dade County to do anything differently in the upcoming election cycle than what it did in the prior election cycles. *Id.* at 24:14-17 ("Q: Does Section 102.031 of the Florida Statutes require you to do anything differently? A. I don't believe so.").

[3] The record shows that, in Miami-Dade County, there is a well-founded need to maintain order at polling places to address complaints of "aggressive and intrusive campaigning" at early voting locations. *See, e.g.,* ECF No. 238-10 at 20:1-22:3.

ARGUMENT

I. Plaintiffs are Not Entitled to Summary Judgment on Counts V and VI as to Miami-Dade County Because They Lack Standing

Article III of the Constitution limits the subject-matter jurisdiction of federal courts to "Cases" and "Controversies." U.S. Const. art. III, § 2. For that reason, "the first and fundamental question [in every case] is that of jurisdiction." *Steel Co. v. Citizens for a Better Environment*, 523 U.S. 83, 94 (1998) (internal quotation omitted). "Without jurisdiction the court cannot proceed at all in any cause. Jurisdiction is power to declare the law, and when it ceases to exist, the only function remaining to the court is that of announcing the fact and dismissing the cause." *Ex Parte McCardle*, 74 U.S. 506, 514 (1868).

"[T]he core component of standing is an essential and unchanging part of the case-or-controversy requirement of Article III." *Lujan v. Defenders of Wildlife,* 504 U.S. 555, 560 (1992). "The Supreme Court has identified three constitutional requirements for standing, all of which must be satisfied: (1) an injury in fact, meaning an injury that is concrete and *particularized,* and actual or imminent, (2) a causal connection between the injury and the causal conduct, and (3) a likelihood that the injury will be redressed by a favorable decision." *Granite State Outdoor Advert., Inc. v. City of Clearwater, Fla.*, 351 F.3d 1112, 1116 (11th Cir. 2003) (emphasis in original). Each element is "an indispensable part of the plaintiff's case" and "must be supported in the same way as any other matter on which the plaintiff bears the burden of proof, *i.e.,* ***with the manner and degree of evidence required at the***

successive stages of the litigation." *Lujan,* 504 U.S. at 561 (citation omitted) (emphasis added).

In their Motion for Summary Judgment, Plaintiffs have defined their purported injury as the inability to "conduct[] line warming activities within 150 feet of polling places and other voting sites" ECF No. 241-1 at 9. They assert that this injury is caused by SB 90's amended definition of "solicitation" in Fla. Stat. § 102.031, and the relief requested for Counts V and VI relies exclusively on their challenge to this provision of SB 90. *See id*. at 11-12.

However, the record evidence described above shows that Plaintiffs cannot establish at this stage of litigation that, with respect to Miami-Dade County, this "injury will be 'redressed by a favorable decision.'" *Lujan,* 504 U.S. at 561 (citation omitted). This is because Miami-Dade County is not altering or amending any of its policies as it relates to maintaining order at the polls in response to SB 90's amended definition of "solicitation" in Fla. Stat. § 102.031. Thus, regardless of whether this Court upholds or strikes down SB 90, all activity by organizations at polling places in Miami-Dade County will still occur outside of the 150-foot non-solicitation zone due to Miami-Dade's long-standing policy. *See KH Outdoor, L.L.C. v. Clay Cty., Fla.*, 482 F.3d 1299, 1303 (11th Cir. 2007) ("Any injury [plaintiff] actually suffered … is not redressible because [their actions] failed to meet the requirements of other statutes and regulations not challenged.") *Harp Adver. Ill., Inc., v. Village of Chicago Ridge, Ill.,* 9 F.3d 1290, 1292 (7th Cir.1993) ("[Plaintiff] suffers an injury…, but winning the case will not alter that situation.").

Moreover, the Plaintiffs have failed to demonstrate through any record evidence that they have suffered any "injury in fact" in Miami-Dade County. While Plaintiffs have elicited some evidence that they have engaged in "line warming" activities ***somewhere*** in Florida, they have failed to elicit ***any*** evidence that they have either engaged in "line warming" activity in Miami-Dade County in the past or affirmatively intending to engage in such activity in Miami-Dade County in the future. Even where core political speech is implicated, when plaintiffs "fail[] to provide the court with anything more than generalizations" regarding their intent to engage in the prohibited conduct, such claims do not demonstrate an injury in fact and must be dismissed for lack of standing. *Dermer v. Miami-Dade County*, 599 F.3d 1217, 1219 (11th Cir. 2010) (holding that plaintiffs alleging a chilling effect in violation of the First Amendment must still establish "detail, such as when, where, or how [plaintiff] intends to exercise his right to free speech in the future, that illuminates the specifics of his claimed injury" to allege an injury in fact for standing purposes).

II. Language Assistance is Not Barred by the General Provisions of SB 90 Because it is Expressly Authorized by the Specific Provisions of Fla. Stat. § 101.051(1)

In their Motion for Summary Judgment, Plaintiffs argue that, following the passage of SB 90, voters can no longer receive the assistance required by Section 208 of the Voting Rights Act from Plaintiffs or other trusted organizations at polling places. However, there is no evidence in the record that any voter assistance activities that occurred in Miami-Dade County prior to SB 90 will be impacted by

SB 90's amendment to the definition of "solicit" in Fla. Stat. § 102.031. ECF No. 238-10 at 24:14-17 ("Q: Does Section 102.031 of the Florida Statutes require you to do anything differently? A. I don't believe so.").

And Plaintiffs cannot demonstrate that such activities will be impacted by SB 90 because the requirements of Section 208 of the Voting Rights Act, codified at 52 U.S.C. § 10508, are mirrored in a separate provision of Florida law. Specifically, Fla. Stat. § 101.051(1) states: "Any elector applying to vote in any election who requires assistance to vote by reason of blindness, disability, or inability to read or write may request the assistance of two election officials or some other person of the elector's own choice, other than the elector's employer, an agent of the employer, or an officer or agent of his or her union, to assist the elector in casting his or her vote." Therefore, when read in *pari materia* with other relevant provisions of Florida's laws, the general non-solicitation provision in Fla. Stat. § 102.031 cannot be read to prohibit conduct that is expressly authorized by Fla. Stat. § 101.051(1). *See RadLAX Gateway Hotel, LLC v. Amalgamated Bank*, 566 U.S. 639, 645 (2012) ("It is a commonplace of statutory construction that the specific governs the general. … The general/specific canon is perhaps most frequently applied to statutes in which a general … prohibition is contradicted by a specific … permission. To eliminate the contradiction, the specific provision is construed as an exception to the general one."). Additionally, there is no evidence in the record that Supervisor White will do anything other than comply with the requirements of Fla. Stat. § 101.051(1).

CONCLUSION

For the reasons stated above, this Court should deny Plaintiffs' Motion for Summary Judgment, find that Plaintiffs lack standing for Counts V and VI as to Miami-Dade County, and dismiss those claims.

Date: December 3, 2021

Respectfully submitted,
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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 December 3, 2021.

/s/ Michael B. Valdes

Michael B. Valdes
Assistant County Attorney

CERTIFICATE OF COMPLIANCE

The undersigned certifies that the foregoing complies with the size, font, and formatting requirements of Local Rules 5.1(C) and 56.1.

/s/ Michael B. Valdes

Michael B. Valdes
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