UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

KELVIN LEON JONES, et al., *Plaintiffs,* v. RON DESANTIS, in his official capacity as Governor of Florida, et al., *Defendants.*	Consolidated Case No. 4:19-cv-300-RH-MJF

RAYSOR PLAINTIFFS' BRIEF IN SUPPORT OF MOTION TO JOIN CONSOLIDATED CASE DEFENDANT CRAIG LATIMER AS DEFENDANT IN MEMBER CASE NO. 4:19-cv-301

Raysor Plaintiffs seek to join consolidated case Defendant Craig Latimer, in his official capacity as Supervisor of Elections for Hillsborough County, as a Defendant in member case *Raysor v. Lee*, No. 4:19-cv-301, pursuant to Fed. R. Civ. P. 21. Defendant Latimer is a named Defendant in member case *Gruver v. Barton*, No. 4:19-cv-302, which was consolidated with *Raysor v. Lee*, and three other related actions under the consolidated case *Jones v. DeSantis*, 4:19-cv-300. Because joinder would serve the interests in judicial economy and there is no prejudice to Defendant Latimer or the other parties to this action, the court should grant Plaintiffs' motion.

BACKGROUND

Bonnie Raysor and Diane Sherrill, on behalf of themselves and others similarly situated, filed a class action in this Court on June 28, 2019, against Defendant Laurel Lee, in her official capacity as Secretary of State of Florida. That action is captioned *Raysor v. Lee*, and was assigned case number 4:19-cv-301. On June 29, 2019, the *Raysor* action was consolidated with lead case *Jones v. DeSantis*, No. 4:19-cv-300 and member case *Gruver v. Barton*, No. 4:19-cv-302. Defendant Latimer is named as a Defendant in the *Gruver* case. On July 16, 2019, *Raysor* Plaintiffs filed their First Amended Complaint, adding Plaintiff Lee Hoffman. Raysor Plaintiffs' Second Amended Complaint was filed on October 29, 2019, and is the operative complaint.

Mr. Hoffman is a resident of Hillsborough County. PX17 ¶¶ 3–4, 7, 11–12 (Hoffman Decl.). But for his outstanding legal financial obligations ("LFOs"), Mr. Hoffman would be eligible to vote under SB7066. *Id.* Defendant Latimer is the Supervisor of Elections for Hillsborough County.

ARGUMENT

On April 29, 2020, the Eleventh Circuit suggested that Supervisors of Elections[1] in the State of Florida are "lawfully entitled" to willfully violate the

[1] Under Florida law, the Supervisors of Elections are constitutional officers, Art. VIII § 1(d), Fla. Const., who must swear or affirm to "support, protect, and defend the

United States Constitution in contravention of declaratory judgments by United States Federal Courts "until they are made parties to a judicial proceeding that determines otherwise." *See* Op. at 28, *Jacobson v. Florida Secretary of State*, No. 19-14552 (11th Cir. Apr. 29, 2020). Although superficially related in that both cases deal with Supervisors and the Secretary, the instant action is legally and factually distinct from *Jacobson*. In *Jacobson*, the court found that where Florida law directed the Supervisors to assign ballot order according to statute, and provided no countervailing role for the Secretary of State to assign ballot order, nor authority to constrain the Supervisors in so doing, an action to enjoin the ballot order set out by statute could not be redressed by the Secretary, but rather must be brought against the Supervisors. Op. at 25, *Jacobson v. Fla. Sec. of State*, No. 19-14552.

Here, the Plaintiffs in the consolidated case, including Raysor Plaintiffs, are challenging SB7066, which sets forth the eligibility requirements for voting with respect to individuals past felony convictions who have outstanding legal financial obligations ("LFOs"), under the U.S. Constitution and the National Voting Rights Act. *See, e.g.*, Plaintiffs' Joint Pretrial Brief, ECF 340, *Jones v. DeSantis*, No. 4:19-cv-300 (April 14, 2020). Unlike with ballot order, both the Supervisors and the Secretary have statutorily designated roles in maintaining voting lists by

---

Constitution and Government of the United States and of the State of Florida" upon taking office. Art. II § 5(b), Fla. Const.

implementing and enforcing the eligibility requirements for individuals with outstanding LFOs. *See* Fla. Stat. § 98.0751(3). Furthermore, the Supervisors are obligated by statute to conform such list maintenance activities to regulations issued by the Secretary and the National Voter Registration Act. *See id.* 98.015(10). Thus, the traceability and redressability issues in *Jacobson* are not found with respect to Raysor Plaintiffs' claims.[2] Nonetheless, in an abundance of caution and in the interest of judicial economy, Raysor Plaintiffs move to join consolidated case Defendant Supervisor Craig Latimer as a Defendant in member case No. 4:19-cv-0301, pursuant to Fed. R. Civ. P. 21.

Rule 21 provides that "[o]n motion or on its own, the court may at any time, on just terms, add or drop a party." Fed. R. Civ. P. 21. Under this Rule, courts have "wide discretion . . . to order joinder of parties" so long as the requirements of due process are met. *Moore v. Knowles*, 482 F.2d 1069, 1075-75 (5th Cir. 1973). Thus, "it is permissible to join a defendant *at any stage* of the litigation in the trial court so long as it is given sufficient notice and opportunity to adequately defend its interests." *Gentry v. Smith*, 487 F.2d 571, 580 (5th Cir. 1973).[3] Indeed, Rule 21 "has

[2] Raysor Plaintiffs are prepared to address the Eleventh Circuit's decision in more detail as the Court directs, but note some of the distinguishing characteristics solely for purposes of this motion under Rule 21.

[3] Both *Moore* and *Gentry* are binding precedent having been issued prior to creation of the Eleventh Circuit. *See Bonner v. City of Prichard*, 661 F.2d 1206 (11th Cir. 1981)."

been held to permit joinder of a party more two years after commencement of the action, after trial, and even on appeal." *Id.* at 581; *see also Moore*, ("a district court has the discretion to add a defendant even on remand after appeal under Rule 21, if the court finds it would be practical to do so and provided the defendant has sufficient notice and opportunity to defend its interests."). This is particularly true where "the promise of speedy resolution to a controversy in a single action outweighs any inconvenience to the parties." *Gentry*, 457 F.2d at 580. Thus, Courts have routinely found joinder to be appropriate even at the trial or post-trial stage of the litigation, where the party to be joined had notice and opportunity to be heard at a meaningful time and a meaningful manner. *See Perry v. Blum*, 629 F.3d 1, 16 (1st Cir. 2010) (citing *Moore*, 482 F.3d at 1067).

In *Moore*, the district court determined *after* trial that judgment should be issued against a school board rather than its individual members, and dismissed the members and entered judgment accordingly. *Moore*, 482 F.2d at 1075. The 5th Circuit held that while judgment against the board was appropriate, entry of judgment against the board was inappropriate absent joinder, and directed the lower court to allow the plaintiff to join the board on remand. *Id.* at 1075-76. The court found no prejudice to the board because the board's lawyer represented the members, was paid by the board, and presented the board's position to the court. *Id.* at 1075.

Similarly, there is no prejudice to Defendant Latimer in being added as Defendant to member case 4:19-cv-301, because he has had adequate notice and opportunity to defend against the claims brought by Raysor Plaintiffs. Defendant Latimer has been a party to this litigation and been represented by counsel throughout the pendency of the consolidated action. The Raysor Plaintiffs claims against the Secretary were also brought by the Gruver Plaintiffs in their action against Defendant Latimer.[4] Indeed, all Plaintiffs in the consolidated cases have routinely filed joint briefs, and advanced joint legal and factual arguments in support of their joint claims, which Defendant Latimer has had adequate opportunity to defend. *See also Perry*, 629 F.3d at 17. Nor, given Defendant Latimer's continued presence in the consolidated cases since the filing of these actions, is there any prejudice to Secretary Lee, who is already a co-Defendant with Supervisor Latimer in the *Gruver* member case.

Furthermore, joinder of Defendant Latimer is appropriate at this time because it will promote judicial economy and ensure the speedy resolution of these

[4] The Raysor Plaintiffs brought two of their claims as a class action, seeking relief on behalf of all those similarly situated with respect to their wealth discrimination claim under the Fourteenth Amendment and their poll tax claim under the Twenty-Fourth Amendment. This Court granted class certification on April 7, 2020. ECF 20, *Jones*, 4:19-cv-300. Although Defendant Latimer did not actively participate in briefing or arguing Raysor Plaintiffs' class certification motion, there is no reason to suspect that his interests in the matter were not adequately represented by Secretary Lee, and by Governor DeSantis, who joined Defendant Lee's briefs on class certification despite not being a defendant to the *Raysor* action.

consolidated cases as a single action. Raysor Plaintiffs have no reason to suspect that Defendant Latimer would take the Eleventh Circuit up on its invitation to willfully disregard any constitutional ruling of this court with respect to their rights and the rights of those similarly situated. But in that unlikely event, joinder now will ensure that Raysor Plaintiffs will not be required to file a new action against Defendant Latimer, duplicative of that which he has already defended, simply to secure the benefits of this Court's rulings.

* * *

For the reasons stated herein, the Court should grant Raysor Plaintiffs' Motion to Join Defendant Latimer and to conform their operative Complaint to the evidence with respect to Defendant Latimer.[5]

May 1, 2020

Respectfully submitted,

/s/ Mark P. Gaber

Chad. W. Dunn†
Fla. Bar No. 119137
BRAZIL & DUNN
1200 Brickell Ave., Ste 1950
Miami, FL 33131
(305) 783-2190
chad@brazilanddunn.com

Danielle M. Lang*
Mark P. Gaber*†
Molly E. Danahy*
Jonathan M. Diaz*
CAMPAIGN LEGAL CENTER
1101 14th St., Ste 400
Washington, D.C. 20005
(202) 736-2200

[5] Pursuant to Rule 15(b)(2), Raysor Plaintiffs request the Court read their Second Amended Complaint, ECF 26, No. 4:19-cv-301, in light of the evidence presented in this case regarding Defendant Latimer's role as the Supervisor of Elections of Hillsborough County so as to conform that pleading pursuant to Rule 15(b)(2).

Counsel for Raysor *Plaintiffs*
**admitted* pro hac vice
†Class Counsel

dlang@campaignlegal.org
mgaber@campaignlegal.org
mdanahy@campaignlegal.org
jdiaz@campaignlegal.org

CERTIFICATE OF COMPLIANCE

This brief complies with the word count requirement of Local Rule 7.1(f) because it contains fewer than 8,000 words; it contains fewer than 2,000 words.

/s/ Mark P. Gaber
Mark P. Gaber

Counsel for Raysor Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on May 1, 2020, I served a true and correct copy of the foregoing document via electronic notice via the CM/ECF system on all counsel or parties of record.

/s/ Mark P. Gaber
Mark P. Gaber

Counsel for Raysor Plaintiffs