

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
MIAMI DIVISION**

CASE NO. 08-21243-CIV-ALTONAGA/Brown

**LEAGUE OF WOMEN VOTERS
OF FLORIDA, et al.,**

Plaintiffs,

vs.

KURT S. BROWNING, in his official capacity
as Secretary of State of the State of Florida; and
DONALD L. PALMER, in his official capacity
as Director of the Division of Elections within the
Department of State for the State of Florida,

Defendants.

ORDER ADMINISTRATIVELY CLOSING CASE

THIS CAUSE came before the Court on the Plaintiffs, League of Women Voters of Florida, Florida AFL-CIO, and Marilyn Wills's (collectively the "League[s]") Notice of Appeal [D.E. 81], filed on September 5, 2008. The League has appealed the August 6, 2008 Order ("Previous Order") [D.E. 80], denying Plaintiffs' Motion for Preliminary Injunction [D.E. 24], to the United States Court of Appeals for the Eleventh Circuit, pursuant to 28 U.S.C. § 1292(a)(1).¹ The Previous Order denied the League's request for a preliminary injunction upon finding that "Plaintiffs . . . failed to demonstrate a likelihood of success [on the merits] on their facial challenge to the Amended Law." (Previous Order at 47).

¹ "[T]he courts of appeals shall have jurisdiction of appeals from: (1) Interlocutory orders of the district courts of the United States . . . granting, continuing, modifying, refusing or dissolving injunctions . . ." 28 U.S.C. § 1292(a)(1).

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On a motion for preliminary injunction, a trial court “make[s] a preliminary evaluation of respondents’ likelihood of success on the merits.” *Firefighters Local Union No. 1784 v. Stotts*, 467 U.S. 561, 604 (1984). The appellate court, although “bound by stringent standards,”² may evaluate the equitable considerations involved, including “the plaintiffs’ likelihood of prevailing on the merits.” *Martinez v. Mathews*, 544 F.2d 1233, 1242-43 (5th Cir. 1976). Indeed, “on a number of occasions, [appellate courts have] reached the merits of cases before [them] on interlocutory appeal from the grant or denial of a preliminary injunction.” *Solantic, LLC v. City of Neptune Beach*, 410 F.3d 1250, 1273 (11th Cir. 2005); *see also Burk v. Augusta-Richmond County*, 365 F.3d 1247, 1250 (11th Cir. 2004).

Courts often choose to administratively close a case when a particular issue in that case is pending elsewhere and where continuing the litigation in the current forum could lead to duplicitous results. *See, e.g., Corion Corp. v. Chen*, 964 F.2d 55, 57 (1st Cir. 1992) (court retains jurisdiction upon administrative closing of case pending arbitration result); *Radcliffe v. School Bd. of Hillsborough County, Fla.*, 38 F. Supp. 2d 994, 1000 (M.D. Fla. 1999) (administratively closing case to permit exhaustion of administrative remedies); *Advance-United Expressways, Inc. v. C.R. Bard, Inc.*, 731 F. Supp. 499, 503 (N.D. Ga. 1990) (administratively closing case pending request by one of the parties after completion of procedures before the Interstate Commerce Commission); *Accrued Fin. Serv., Inc. v. Prime Retail, Inc.*, No. CIV.JFM-00-2474, 2000 WL 1528697, at *1 (D. Md. 2000)

² Appellate courts “review a district court’s order granting or denying a preliminary injunction for abuse of discretion.” *McDonald’s Corp. v. Robertson*, 147 F.3d 1301, 1306 (11th Cir. 1998) (citing *Baker v. Buckeye Cellulose Corp.*, 856 F.2d 167, 169 (11th Cir. 1988)). “However, questions of law supporting the preliminary injunction are reviewed *de novo*.” *Tefel v. Reno*, 180 F.3d 1286, 1295 (11th Cir. 1999) (citing *Collum v. Edwards*, 578 F.2d 110, 112 (5th Cir. 1978)).

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(administratively closing case pending resolution in state court). “Administrative closings comprise a familiar, albeit essentially ad hoc, way in which courts remove cases from their active files without making any final adjudication.” *Lehman v. Revolution Portfolio, LLC*, 166 F.3d 389, 392 (1st Cir. 1999) (citing *Corion*, 964 F.2d at 56-57); *see also Penn W. Assocs. Inc. v. Cohen*, 371 F.3d 118, 128 (3d Cir. 2004) (“[A]n order merely directing that a case be marked closed constitutes an administrative closing that has no legal consequence other than to remove that case from the district court’s active docket.”). Essentially, courts utilize this case management tool in order to “shelve pending, but dormant, cases.” *Lehman*, 371 F.3d at 127.


The Trial Order [D.E. 46] in this case contains operative pre-trial deadlines and a trial date in August 2009. In the interest of conserving the parties’ and judicial resources while the interlocutory appeal is briefed and considered, an administrative closing of the case is appropriate. Although “when an appeal is taken from the grant or denial of a preliminary injunction, the reviewing court will go no further into the merits than is necessary to decide the interlocutory appeal,” *Callaway v. Block*, 763 F.2d 1283, 1287 n.6 (11th Cir. 1985), the appellate court, given the nature of preliminary injunction appeals, may pass judgment on the merits. *See Solantic*, 410 F.3d at 1272 (“[U]nder certain circumstances, a judgment on the merits is appropriate.”); *Callaway*, 763 F.2d at 1287 n.6 (“Section 1292(a)(1) of Title 28 of the United States Code, which governs appeals of interlocutory orders denying/granting injunctions, grants the courts jurisdiction to reach the merits . . .”). Accordingly, and unless the parties indicate they wish to vigorously prepare this case for trial and abide by the pre-trial deadlines while addressing the appeal, it is

ORDERED AND ADJUDGED as follows:

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1. The Clerk is directed to **ADMINISTRATIVELY CLOSE** this case for administrative purposes only. The case may be reopened upon motion by any party upon completion of the interlocutory appeal.
2. The administrative closing of this case shall not affect any rights of the parties in this, or any other, proceeding.
3. The administrative closing of this case shall not prevent the parties from proceeding, by agreement, with discovery or the taking of testimony for use at trial in this case while the interlocutory appeal is pending.

DONE AND ORDERED in Chambers at Miami, Florida, this 9th day of September, 2008.



CECILIA M. ALTONAGA
UNITED STATES DISTRICT JUDGE

cc: All counsel of record