

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

FLORIDA STATE CONFERENCE
OF THE NATIONAL ASSOCIATION
FOR THE ADVANCEMENT OF
COLORED PEOPLE (NAACP),
as an organization and representative
of its members; et al.;

Plaintiffs,

v.

CASE NO. 4:07-CV-402-SPM/WCS

KURT S. BROWNING, in his official
capacity as Secretary of State
for the State of Florida,

Defendant.

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ORDER DENYING MOTION TO STAY

Defendant, Secretary of State for the State of Florida, Kurt S. Browning, has filed a motion to stay the preliminary injunction pending appeal. Doc. 109. Plaintiffs filed a response. Doc. 110. For the following reasons, the motion to stay will be denied.

A court may “suspend, modify, restore, or grant an injunction during the pendency of [an] appeal.” Fed. R. Civ. P. 62(c). The decision involves equitable considerations, including (1) whether the movant has demonstrated a likelihood it will prevail on appeal; (2) whether the movant will suffer irreparable harm absent

a stay; (3) whether another interested party will suffer substantial injury if the stay is issued; and (4) the effect of the stay on the public interest. Hilton v. Braunskill, 481 U.S. 770, 776 (1987). Defendant does not cite to any of the four factors, but argues that a stay should be entered to maintain the status quo.

Specifically, Defendant argues that the Court's order enjoining use of the matching process (§ 97.053(6), Fla. Stat.) as a precondition to voter registration will require changes to election procedures and voter rolls, which may disrupt the ability of election officials to carry out their duties for the upcoming Presidential Preference Primary. Defendant also argues that the possibility of conflicting orders requiring the matching process to be stopped and then started, justifies maintaining the status quo pending appeal or, alternatively, until the Eleventh Circuit Court of Appeals determines whether it will expedite the appeal and issue its own stay. Balanced against all of the equitable factors, Defendant has not demonstrated that a stay is warranted.

Keeping the injunction in place is not likely to disrupt the election process; nor is it likely to increase the burden placed on county election officials. The State of Florida already has a procedure in place for registration and identification of voters without resort to the matching process. § 97.0535, Fla. Stat. There is no indication that county election officials cannot implement this procedure effectively.

Moreover, eliminating the matching process may in fact reduce the burden

placed on county election officials. County election officials do not do the initial matching under § 97.053(6), Fla. Stat. A number of state workers and officials have that responsibility. Because the matching process is prone to error (such as data entry mistakes and computer glitches) the statute requires county election officials to make a final attempt to resolve failed matches. With the expected spike in registration applications coming as the Presidential Preference Primary draws near, the number of failed matches is expected to increase. The burden placed on county elections officials to resolve those matches in time for otherwise eligible voters to be registered would also increase. Additional burdens would fall on county elections officials to match the identification numbers of those who could not be registered but could cast provisional ballots. By eliminating the matching requirement, these burdens are eliminated and county election officials will have more time to devote to other duties.

For reasons spelled out in the Order Granting Motion for Preliminary Injunction (doc. 105), the injunction is warranted. There is a substantial likelihood that the matching requirement of § 97.053(6), Fla. Stat., violates federal law. Enjoining enforcement is consistent with the public interest in conducting a fair voting process that is open to all eligible voters. The injunction is necessary to avoid irreparable harm to thousands of eligible Florida voters. Staying the injunction is not warranted and Defendant will not suffer irreparable harm if a stay is not granted.

Based on the foregoing, it is
ORDERED AND ADJUDGED that Defendant's motion to stay the
preliminary injunction pending appeal (doc. 109) is denied.
DONE AND ORDERED this 26th day of December, 2007.

s/ Stephan P. Mickle
Stephan P. Mickle
United States District Judge