

FIRST DISTRICT COURT OF APPEAL
STATE OF FLORIDA

SUE M. COBB, Secretary of State of
The State of Florida,

Appellant,

v.

Case No. 1D06-5447
L.T. Case No. 2006-CA-002619

KAREN THURMAN, as Chairman of the
FLORIDA DEMOCRATIC PARTY; and the
FLORIDA DEMOCRATIC PARTY, *et al.*

Appellees.

**SECRETARY OF STATE'S MOTION
TO REINSTATE AUTOMATIC STAY**

Sue M. Cobb, in her official capacity as Secretary of State of the State of Florida (the "Secretary"), moves this Court to reinstate the automatic stay of the lower court's Order dated October 18, 2006, and states:

INTRODUCTION

By its Order of October 18, 2006, attached hereto as Exhibit A, the lower court enjoined the Supervisors of Elections for the eight counties comprising Florida's 16th Congressional District from posting or delivering to individual voters a proposed notice, informing voters that a vote for the withdrawn candidate, whose name appears on the ballot, will be counted as a vote for the actual, lawful candidate. On the same day, and in order to affirm the long-standing authority of

the Supervisors of Elections to educate voters when early voting ensues this coming Monday, October 23, 2006, the Secretary filed a notice of appeal. Pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, the Secretary's notice of appeal automatically stayed the Court's injunction pending appellate review. On October 19, 2006, Plaintiffs moved to vacate the automatic stay, alleging that the "exigent and extraordinary circumstances of the upcoming election" compel vacation. *See* Exhibit B. After a hearing in which no evidence was presented, the lower court entered a written Order, attached as Exhibit C, vacating the stay. Because there can be no prejudice arising out of a knowing vote beginning with early voting, and for the reasons set forth herein, this Court should reinstate the automatic stay.

ARGUMENT

The Supreme Court has provided in Rule 9.310(b)(2), Florida Rules of Appellate Procedure, that the filing of a notice of appeal by a public officer in an official capacity "shall automatically operate as a stay pending review." This provision recognizes the fact that "any adverse consequences realized from proceeding under an erroneous judgment harm the public generally." *Reform Party of Florida v. Black*, 885 So.2d 303, 306 n.3 (Fla. 2004) (quoting *St. Lucie County v. North Palm Development Corp.*, 444 So.2d 1133, 1135 (Fla. 4th DCA), *rev. den'd*, 453 So.2d 45 (Fla.1984)). "Given the rationale for staying such

judgments in the first instance . . . the stay should be vacated only under the most compelling circumstances.” *St. Lucie County*, 444 So. 2d at 1135 (emphasis added); accord *State, Dep’t of Environmental Protection v. Pringle*, 707 So.2d 387, 390 (Fla. 1st DCA 1998).¹, *vacated on other grounds*, 743 So. 2d 1189 (1999). The Court may vacate the stay only if the moving party meets the heavy burden of “establish[ing] an evidentiary basis for the existence of such ‘compelling circumstances.’” *Pringle*, 707 So. 2d at 390 (granting motion to reinstate automatic stay). The Court must also consider “the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits by the entity seeking to maintain the stay.”² *Mitchell v. State*, 911 So. 2d 1211 (Fla. 2005).

Plaintiffs have not established any evidentiary basis for the existence of “the most compelling circumstances” so as to warrant vacation of the automatic stay. Indeed, no such compelling reason exists.

¹ The injunction that formed the basis of the *Pringle* decision was subsequently vacated by this Court in *State, Dep’t of Environmental Protection v. Pringle*, 743 So.2d 1189 (Fla. 1st DCA 1999).

² The considerations set forth in *Mitchell* do not supersede the “compelling circumstances” standard. The question before the Court in *Mitchell* was whether the state is entitled to an automatic stay pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, when it seeks civil commitment of a convicted sex offender under the Jimmy Ryce Act. The Court’s holding does not rely on its description of the standard for vacating a stay. See *Mitchell*, 911 So. 2d at 1220 (Wells, J., concurring) (“I do not join in the majority opinion because it is too broadly written, covering issues which I do not believe are necessary in answering the question that was certified in this case.”).

While an injunction was entered on the merits, the lower court's findings, as outlined in the Order granting the injunction, do not set forth "compelling circumstances." In fact, the lower court recognized that "the proposed notice is truthful, and does not misstate anything about the Congressional District 16 race." Order Granting Injunction, at 3. It also "stated, very clearly and definitively, that the Court perceives no improper motive on the part of the Defendants." *Id.* The lower court even acknowledged that "confusion [was] likely to result where voters know that the person reflected on the ballot is no longer seeking the position," *id.* at 5, and that the proposed "notices might clarify" that a vote cast for the withdrawn candidate will be counted as a vote for the substituted candidate. *Id.* at 4.

Far from supporting vacation of a stay, compelling circumstances support the stay pending this Court's now expedited review. A notice informing voters of the fact that a vote for the person on the ballot will count as a vote for a person not on the ballot is essential for basic voter information purposes. Voters should not be locked in the dark while the identity of the actual, lawful candidate is concealed from their view. Nor should a confused voter be required to *guess* as how a vote will be counted, or to question poll workers and to rely on perhaps inconsistent, incomplete, or partial verbal information. Under these circumstances, posting a concise, factual notice is profoundly responsible, in the best interests of voters, and

in the public interest.

The Court entered the injunction because it perceived an absence of authority in election officials to post such notices—not because the notice was inaccurate, misleading, ineffective, or even unwise. The fact that the trial court decided, on the merits, that an injunction was warranted should not, without more, be sufficient to vacate a stay. If a decision on the merits, without some attendant, compelling circumstances is sufficient to vacate a stay, Florida Rule of Appellate Procedure 9.310(b)(2) is a nullity. And, where the proposed informational notices are concededly truthful, accurate, and perhaps even useful to counteract confusion at Florida’s polling places, it is illogical to suggest that the most compelling circumstances—characteristic only of the most extraordinary cases—compel a deviation from the conventional line of judicial “deference.” *See St. Lucie County v. North Palm Development Corp.*, 444 So.2d 1133, 1135 (Fla. 4th DCA 1984).

In its Order vacating the stay, the lower court cited the imminence of the election as constituting “exceptionally compelling circumstances” that support vacating the stay. Order Vacating Stay, at 3. This circumstance is no longer valid, however, in light of this Court’s Order granting Appellant’s motion to expedite. Because the matter will be adjudicated before the general election scheduled for November 7, 2006, the imminence of the election is not a circumstance that compels lifting the automatic stay. And, in intervening early voting period, the

stay is essential to preserve the traditional authority of the Supervisors of Elections to provide facially neutral information according to their best professional judgment of local needs and circumstances.

Not only must a party moving to vacate an automatic stay demonstrate compelling circumstances, it must establish an evidentiary basis for those circumstances. *See Dep't of Environmental Protection v. Pringle*, 707 So.2d 387, 390 (Fla. 1st DCA 1998) (reinstating automatic stay while noting that the “sole evidence” supporting vacation of stay was a single affidavit); *St. Lucie County v. North Palm Development Corp.*, 444 So.2d 1133, 1135 (Fla. 4th DCA 1984) (reinstating automatic stay while noting that lower court’s “conclusion [wa]s not based upon any evidentiary record). Here, Appellees presented no evidence whatsoever—not even an affidavit—in support of their motion to vacate. The lifting of a stay where the moving party fails to present any evidence whatsoever is a departure from precedent, which establishes that, without an evidentiary record, the lower court is not at liberty to find compelling circumstances justifying vacation of an automatic stay.

CONCLUSION

Appellees have not met their heavy burden of establishing by evidence that “the most compelling circumstances” exist to vacate the automatic stay. For all of the foregoing reasons, this Court should reinstate the automatic stay.

RESPECTFULLY SUBMITTED,

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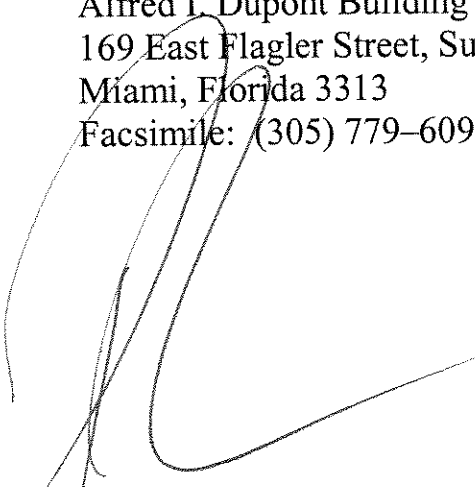
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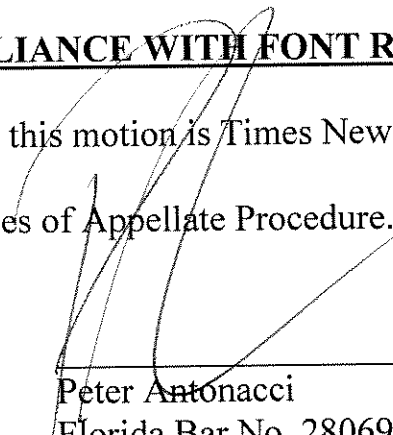
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CERTIFICATE OF COMPLIANCE WITH FONT REQUIREMENT

I certify that the font used in this motion is Times New Roman 14 point and in compliance with the Florida Rules of Appellate Procedure.



Peter Antonacci
Florida Bar No. 280690

IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA

KAREN THURMAN, as Chairman
of the FLORIDA DEMOCRATIC
PARTY, and the FLORIDA DEMOCRATIC
PARTY,

Plaintiffs,

CASE NUMBER 2006-CA-2619

vs.

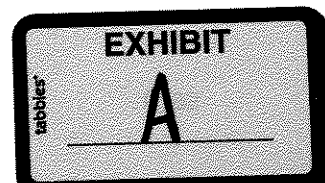
SUE M. COBB, Secretary of State of
The State of Florida; et al.,

Defendants.

FINAL JUDGMENT GRANTING INJUNCTIVE RELIEF

This cause having come before the Court on the Complaint and motion for temporary injunctive relief, and the Court having considered the motion and pleadings, the arguments of counsel, and being otherwise fully advised in the premises, finds as follows:

The hearing on the Plaintiffs' motion for temporary injunction proceeded with the understanding and agreement of the parties that the Court's order on the motion will be entered as a final judgment in this case. Mr. Joseph Negron's motion to intervene was granted at the hearing. Apart from two affidavits admitted into



evidence on behalf of the Supervisors of Elections, and two exhibits submitted by the Plaintiffs, there are no facts essential to resolution of the issue described in the Complaint or the responses filed by the Defendants. This case presents the narrow question of whether a notice, attached to the Complaint as Exhibit B and entered into evidence at the hearing as Plaintiffs' Exhibit 2, can be provided to electors presenting themselves at polling places in Congressional District 16. The congressional district reaches from the east coast of Florida to the west coast, and includes eight counties. The incumbent in the position, who was unopposed in the primary, was Congressman Mark Foley. Mr. Foley recently withdrew from the race, which then, by operation of law, provided the Republican Party of Florida the opportunity to replace Mr. Foley with another candidate. The Republican Party did so, nominating Mr. Joseph Negron as Mr. Foley's replacement. The Plaintiffs do not contest the propriety of the replacement, and agrees that all statutory procedures were properly followed in nominating Mr. Negron. What the Plaintiffs object to is the posting of notices at the polling places informing electors that a vote for Mr. Foley is, in fact, a vote for Mr. Negron.¹ The precise text of the notice is that provided in Plaintiffs' Exhibit 2.

¹Six of the eight supervisors of elections have indicated their intention to post the notices inside the polling place. The Supervisor of Elections for Palm Beach County, Arthur Anderson, has said that he will not post the notice, but will provide it to any elector with a question about the race; Supervisor Gertrude Walker of St. Lucie County does not appear to have made a final decision about whether to use the notice or not.

The procedure for addressing vacancies that occur after a primary election is found in Section 100.111(4), Florida Statutes (2005). In addition to providing a mechanism for political parties to replace a candidate in the event of death, resignation, withdrawal or removal, the statute also says the following:

If the name of the new nominee is submitted after the certification of the results of the primary election, however, *the ballots shall not be changed and the former party nominee's name will appear on the ballot.* Any ballots cast for the former party nominee will be counted for the person designated by the political party to replace the former party nominee. [emphasis supplied]

Section 100.111(4)(a), Fla. Stat.

The Defendants collectively argue that since this particular race has generated considerable media attention, especially in regard to Mr. Foley's withdrawal, the electors will be confused by the appearance of his name on the ballot. They also correctly point out that the proposed notice is truthful, and does not misstate anything about the Congressional District 16 race. Plaintiffs assert, however, that there is no authority for the posting of such notices, however correct they may be, and that the Supervisors of Elections should be prohibited from doing so. This Court must agree.

It should first be stated, very clearly and definitively, that the Court perceives no improper motive on the part of the Defendants to influence the outcome of the Congressional District 16 election by providing the proposed notices. The

Supervisors are anticipating numerous questions from electors about the race, and hoped to uniformly address such questions by reference to the notice. Although the Court is not convinced that the notices will adequately answer all questions posed by voters, the notices will at least address one. By reflecting that a vote cast for Mr. Foley will, in reality, be a vote cast for Mr. Negron, the notices might clarify that particular issue. The problem with posting or delivering such notices at polling places, which would speak only to the District 16 Congressional race, is that the Legislature did not authorize them. Section 100.111(4) controls the result here, because it deals specifically with the issue raised by the Plaintiffs. In addressing what should appear on the ballot in the event of a vacancy in nomination, the Legislature could have adopted various options: it could have required that the name of the new nominee be included on the ballot, or could have mandated the posting of a notice informing electors of the replacement, as the Kentucky Legislature did. See Section 118.227(3), Ken. Rev. Stat. Anno. (2006). Instead, Florida's Legislature specifically directed that "...the ballot shall not be changed, and the former party nominee's name will appear on the ballot." This provision of the statute refutes the Defendants' argument that Section 100.111(4) is "silent" on the issue of what should be done. Although Section 100.111(4) does not specifically preclude the posting of notices, it does specifically require that the person no longer seeking the office appear on the

ballot. The Legislature has therefore acknowledged the issue of whose name should appear when another candidate has been nominated, but, for whatever reason, decided to require that the former candidate's name appear on the ballot. The Court is not at liberty to question the Legislature's decision, or its judgment, in enacting the statute, and there can be little doubt that it understood the confusion likely to result where voters know that the person reflected on the ballot is no longer seeking the position.

The Defendants have defended their proposed use of the notice as part of their responsibilities, as Secretary of State and Supervisors of Elections, to educate and inform the public. There is no question that the Legislature has also addressed such activities and, in some instances, specifically prescribed exactly what the Defendants should do to properly advise voters of certain issues. Those statutory prescriptions include Section 97.012(6) [authorizing the Secretary of State to provide voter education assistance to the public]; Section 97.012 (4) [authorizing the Secretary of State to provide technical assistance to the Supervisors of Elections on voter education]; Section 101.031(1) [providing for dissemination of "cards" containing "instructions for the electors to use in voting"]; and Section 101.5611(1) [authorizing the Supervisors of Elections to provide "instruction at each polling place regarding the manner of voting with the system"]. The Court acknowledges these statutes, but cannot agree that they provide the authority to post notices regarding a particular race.

A review of the above-cited statutes reflects that they encourage, and in some cases require, the Defendants to properly inform voters about an election by distributing sample ballots, posting the Voter's Bill of Rights and Voter Responsibilities at polling places, specifying a procedure for assisting voters who "...ask for further instructions concerning the manner of voting," and providing "instruction" at each polling place "...regarding the manner of voting with the system...[and] the arrangement of candidates and questions to be voted on." See Sections 101.031 and 101.5611(1).

The Defendants' extrapolation of the clear language of these statutes carries the Legislature's mandates into uncharted territory. Read literally, the aforementioned statutes recognize that instructions on "the manner of voting" and "the manner of voting with the system" may be necessary, due to the recent introduction of electronic touch screen machines and other new voting paraphernalia. These mandates do not, however, suggest that the phrase "manner of voting" can be interpreted to mean that the Supervisors can provide guidance as to the "manner of voting" in a particular race. Nothing in these statutes even suggests that such an interpretation is appropriate. Instead, the language used in these provisions consistently returns to instruction regarding how to use voting systems, rather than instruction regarding what will happen in a particular race.

One other issue bears mention. At the hearing, counsel for the Supervisors indicated that they, with one exception, had read Section 101.62(6) to preclude mailing the proposed notices with the absentee ballots, due to that section's direction that "[n]othing other than the materials necessary to vote absentee shall be mailed or delivered with any absentee ballot." Although the Supervisors felt that this law prevented them from including the notices with the absentee ballots, the Secretary of State disagreed with their interpretation. Although the Secretary's position is consistent, it disregards the Legislature's use of the word "nothing." The issue of whether to include the notices in the absentee ballots is therefore instructive, since it points out that the Secretary and the Supervisors of Elections differ on the proper interpretation of an important statute, and that venturing into explanations regarding the ballot itself is fraught with problems.

Florida has the dubious honor of having its election laws scrutinized and debated regularly in our courts, with the most thorough discussion of those laws taking place in the 2000 general election. We understand that candidates do not resort to litigation lightly, and likely do so only when a problem is significant and unresolvable. We also understand our obligation to respect the integrity of the voting process, while addressing important legal concerns about that process. The responsibility, then, to interpret the statutes enacted by the Legislature in a manner

that effectuates their plain meaning is perhaps even more obvious when dealing with a process that is held so dear in this country. To interpret the election statutes relevant here as permitting the proposed intrusion into the polling place, no matter how well-intentioned that proposal may be, is an extrapolation far beyond the Legislature's words. It is also a slippery slope, calling into question the logical boundaries of the Defendants' efforts to "inform" voters. If a constitutional amendment is confusing or obtuse, could a clarifying notice assist voters? Certainly. Is such a notice permissible? The Legislature has enacted no law suggesting that it would be. Here, because Section 100.111(4) actually addresses what must appear on the ballot when a candidate withdraws, it provides clear guidance that cannot be contravened by general voter education, or voting system information, statutes.

Since the Plaintiffs seek injunctive relief, the Court must address the predicates for issuance of an injunction. First, the Court finds that irreparable injury will occur if the unauthorized notices are posted or delivered to individual voters. Since the issues here involve elections, the ballot, and the sanctity of the voting booth, there can be little debate that interference with that process, especially in a manner not contemplated by the Legislature, would cause irreparable harm. There is also no adequate remedy at law to address the complained of activity. Finally, because the Court finds that the proposed notices are not authorized, the Plaintiffs have

demonstrated that it has a clear legal right to the injunctive relief requested. By precluding the use of the notices, the Legislature's statement of policy is respected, as is the voters' right to vote without interference. Since the parties have agreed to allow the Court to enter a final judgment in this matter, it should not be necessary to address predicates for temporary injunctive relief. Suffice it to say, however, that the considerations of the public interest certainly require the result here. It is therefore

ORDERED AND ADJUDGED that the Plaintiffs' request for issuance of an injunction is GRANTED. The Defendants are therefore ordered not to post the proposed notice, and may not deliver the notice to individual voters posing questions about the race in question. Any requests for assistance from voters should be handled in the same manner that they usually are, which would preclude discussion of individual candidates, or nominees, in any particular race.

DONE AND ORDERED on October 18, 2006, at Tallahassee, Leon County, Florida.


JANET E. FERRIS
Circuit Judge

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**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
IN AND FOR LEON COUNTY, FLORIDA**

FLORIDA DEMOCRATIC PARTY, and
KAREN THURMAN, in her Capacity
as Chairwoman of the Florida
Democratic Party,

Plaintiffs,

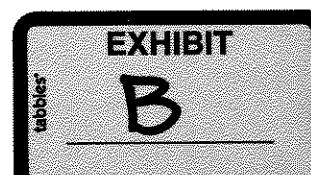
vs.

Case No.: 06-CA-2619

SUE M. COBB, in her Official Capacity
as Secretary of State, State of Florida;
ARTHUR ANDERSON, in his Official
Capacity as Supervisor of Elections
of Palm Beach County; VICKI
DAVIS, in her Official Capacity as
Supervisor of Elections of Martin
County; GERTRUDE WALKER,
in her Official Capacity as Supervisor
of Elections of St. Lucie County;
GWEN CHANDLER, in her Official
Capacity as Supervisor of Elections
of Okeechobee County; JOE
CAMPBELL, in his Official Capacity
as Supervisor of Elections of Highlands
County; HOLLY WHIDDON, in her
Official Capacity as Supervisor of Elections
of Glades County; LUCRETIA A.
STRICKLAND, in her Official Capacity
as Supervisor of Elections of Hendry
County; and MAC V. HORTON, in his
Official Capacity as Supervisor of Elections
of Charlotte County.

MOTION TO VACATE AUTOMATIC STAY

Plaintiffs FLORIDA DEMOCRATIC PARTY and KAREN THURMAN move this Court, pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure, to vacate the automatic stay of its Final Judgment Granting Injunctive Relief afforded to Defendant SUE M.



COBB when she filed her Notice of Appeal of the Final Judgment. In further support of this Motion, Plaintiffs state:

1. On October 18, 2006, this Court, after hearing testimony and argument of counsel, rendered its Final Judgment Granting Injunctive Relief. This Court found, as a matter of law, that a proposed notice (Plaintiff's Exhibit 2) could not be provided to electors presenting themselves at polling places in Congressional District 16. This Court further found that, although the parties agreed to allow this Court to enter a final judgment in this matter, the Plaintiffs had also established the predicates for injunctive relief.

2. After this Court issued its Final Judgment, Defendant Secretary Cobb filed a Notice of Appeal with the First District Court of Appeal. A Copy of Secretary Cobb's Notice of Appeal is attached hereto as Exhibit "A." Pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure, "[t]he timely filing of a notice shall automatically operate as a stay pending review . . . when . . . any public officer in an official capacity . . . seeks review"

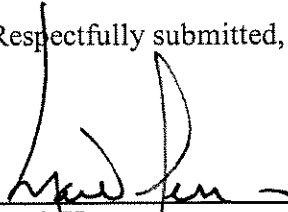
3. Plaintiffs respectfully request that this Court vacate the automatic stay. This Court found that Plaintiffs established the predicates for injunctive relief. In *Miami-Dade County v. Church & Tower, Inc.*, 715 So. 2d 1080, 1084 (Fla. 3d DCA 1998), the Third District held that stay of an injunction is improper where the prevailing party has established the likelihood of success on the merits. Similarly, as this Court held, Plaintiffs have demonstrated such a likelihood.

4. Further, the exigent and extraordinary circumstances of the upcoming election, with early voting commencing on (October 23, 2006), compel vacating the stay. Vacating the stay would restore the status quo of conducting the upcoming election free from unauthorized materials in the polling place.

5. Failing to vacate the stay would cause irreparable harm because the Supervisors of Elections could, despite this Court's ruling, place the unauthorized notice in the polling places before the First District issues any ruling on this Court's Final Judgment.

WHEREFORE, Plaintiffs respectfully request that this Court enter an Order that vacates the automatic stay of its Final Judgment pending review by the First District Court of Appeal.

Respectfully submitted,



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CERTIFICATE OF SERVICE

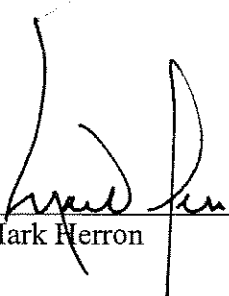
I HEREBY CERTIFY that a true and correct copy of the foregoing was served on the attorneys listed below by U.S. Mail and by facsimile transmission, this 19th day of October, 2006.

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Mark Herron

**IN THE CIRCUIT COURT OF THE SECOND JUDICIAL CIRCUIT
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**KAREN THURMAN, as Chairman
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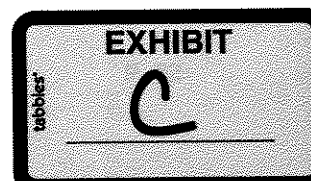
**SUE M. COBB, Secretary of State of
The State of Florida; et al.,**

Defendants.

ORDER GRANTING MOTION TO VACATE AUTOMATIC STAY

THIS CAUSE came before the Court upon the Plaintiffs' Motion to Vacate Automatic Stay filed on October 19, 2006, pursuant to Rule 9.310(b)(2) of the Florida Rules of Appellate Procedure. The court, having considered the motion and the applicable law,

FINDS and DECIDES that Secretary Cobb's Notice of Appeal, filed on October 18, 2006 pursuant to Rule 9.310(b)(2), Florida Rules of Appellate Procedure, operated as an automatic stay of the final order entered in this case, given that Secretary Cobb is a public officer acting in her official capacity. The Plaintiffs argue that this court should vacate the automatic stay, and, given the circumstances of the case, the court agrees.



Rule 9.310(b)(2) provides that the lower tribunal may, on motion, vacate a stay arising from the rule. The Florida Supreme Court has stated that “[o]rdinarily, there are two principal considerations that courts must take into account when deciding whether to vacate a stay: the likelihood of irreparable harm if the stay is not granted and the likelihood of success on the merits by the entity seeking to maintain the stay.” *Mitchell v. State*, 911 So.2d 1211, 1219 (Fla. 2005).

In the final order granting injunctive relief, this court found that irreparable injury would occur if the unauthorized notices in question were posted or delivered to individual voters. Considering that early voting is scheduled to begin on October 23, 2006, immediate operation of this court’s order is necessary to prevent such irreparable harm from occurring. Furthermore, even greater confusion and disparities in the voting process would arise if notices were posted for part of the early voting process and then, if the First District affirms this Court, taken down for the latter part. In addition, given that this court found the Plaintiffs to have a clear legal right to the injunctive relief requested, based on the statutory authority addressed by this Court, the Court finds that the Plaintiff here has a substantial likelihood of success on the merits. Therefore, the two principal conditions enumerated by the Florida Supreme Court in *Mitchell* are satisfied here.

The Court also recognizes that the First District has included the additional requirement that the party seeking to vacate the automatic stay to establish an evidentiary basis for the existence of "compelling circumstances" to do so. See *State Dept. of Environmental Protection v. Pringle*, 707 So.2d 387 (Fla. 1st DCA 1998), *vacated on other grounds*, 743 So.2d 1189 (1999). Here, the fact that this case involves an election to be held on November 7, 2006, and an early voting period set to begin three days from now on October 23, 2006, constitute exceptionally compelling circumstances for the vacating of the automatic stay. It should also be noted that although the Supervisors of Elections stated at the hearing on the motion to vacate the stay that they did not intend to appeal, and did not intend to post or deliver the proposed notices, counsel for the Plaintiff has pointed out that the Legislature has provided the Secretary of State with what appears to be new supervisory authority over the Supervisors. See Section 97.012(14), Fla. Stat. (2005). Thus, the Supervisors' intentions could be overridden by a directive, or emergency rule, of the Secretary of State. In light of that possibility, the Supervisors' decision not to appeal in no way negates the existence of the compelling circumstances relied upon here.

It is therefore,

ORDERED and ADJUDGED that the Plaintiffs' Motion to Vacate Automatic Stay is hereby **GRANTED**.

DONE and ORDERED on October 19, 2006, at Tallahassee, Leon County, Florida.



JANET E. FERRIS
Circuit Judge.

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