

IN THE DISTRICT COURT OF APPEAL
FIRST DISTRICT, STATE OF FLORIDA

RON DESANTIS, in his official capacity
as Governor of the State of Florida, et al.,

Appellants,

Consolidated DCA Case Nos.
1D20-2470 and 1D20-2472
L.T. Case No.: 2020-CA-001450

vs.

FLORIDA EDUCATION ASSOCIATION,
et al.,

Appellees,

and

MONIQUE BELLEFLEUR, et al.,

Appellees.

APPELLEES' OPPOSITION TO CONSOLIDATION
IN RESPONSE TO SEPTEMBER 17, 2020 ORDER

Appellees/Plaintiffs, Florida Education Association, Stefanie Beth Miller, Ladara Royal, Mindy Festge, Victoria Dublino-Henjes, Andres Henjes, National Association for the Advancement of Colored People, Inc., NAACP Florida State Conference, Monique Bellefleur, et al. (collectively, "**Plaintiffs**") respond to this Court's September 17, 2020 Order directing the parties to advise the Court whether consolidated case numbers 1D20-2470 and 1D20-2472 should be consolidated with case numbers 1D20-2633 and 1D20-2634. This Response explains why consolidation would be inappropriate.

Case numbers 1D20-2470 and 1D20-2472 (the “**Injunction Appeals**”) are interlocutory, direct appeals of the trial court’s orders granting the Plaintiffs’ motions for temporary injunction filed pursuant to Rule of Appellate Procedure 9.130(a)(3)(B). In contrast, in case numbers 1D20-2633 and 1D20-2634 (the “**Certiorari Proceedings**”) the Defendants/Appellants (“**Defendants**”) seek certiorari review of interlocutory trial court orders denying their motions to dismiss the underlying consolidated action under Rule of Appellate Procedure 9.100.

Defendants filed docketing statements in the Injunction Appeals stating that the Certiorari Proceedings “involve the same or similar issues” and “aris[e] from the same case.” Based on these statements, this Court asked the parties to respond as to why all four appellate cases should not be consolidated. Respectfully, while all four appellate cases arise from the same consolidated trial court proceeding, the Injunction Appeals and Certiorari Proceedings involve different procedural postures, different questions, and different standards of review. The Injunction Appeals address a temporary injunction, warranting expedited and limited review; while the Certiorari Proceedings involve the underlying case on the merits. In addition, the Injunction Appeals have been expedited by this Court, have been fully briefed, and are awaiting decision, while the Certiorari Proceedings are new proceedings. For these reasons, the Injunction Appeals and the Certiorari Proceedings should not be consolidated.

A. Different Stages of Briefing.

The Injunction Appeals are fully briefed. Under the expedited briefing schedule set by this Court, Defendants filed their initial brief on September 2, the Plaintiffs' answer brief was filed on September 7, and the reply brief was filed on September 9. The parties await a ruling in these consolidated appeals.

The posture of the Certiorari Proceedings is completely different. The Certiorari Proceedings were commenced after the briefing in the Injunction Appeals was completed, *i.e.*, when the Defendants filed petitions for writ of certiorari on September 10. This Court may either dismiss the Certiorari Proceedings or issue orders to show cause permitting responses and replies under Rule of Appellate Procedure 9.100.

Consolidating the Injunction Appeals with the Certiorari Proceedings does not promote judicial efficiency or conservation of the parties' resources when the Injunction Appeals are poised for decision and the Certiorari Proceedings have barely begun.

B. Different Procedural Posture and Different Questions.

The Injunction Appeals and Certiorari Proceedings should not be consolidated because they involve different procedural postures and different questions under different standards of review. The Injunction Appeals involve review of a temporary injunction, while the Certiorari Proceedings ask this Court

to rule on issues involving the merits of the underlying case. While review of a temporary injunction “considers” the merits, it does not “decide” the merits absent circumstances not present here—a decision on the merits is issued at the end of the case. *See, e.g., Silver Rose Entertainment, Inc. v. Clay County*, 646 So. 2d 246 (Fla. 1st DCA 1994) (denial of a preliminary injunction or reversal of an order granting same does not preclude the granting of a permanent injunction at the conclusion of case).

In the Injunction Appeals, this Court must decide whether the trial court abused its discretion in granting the Plaintiffs’ motions for temporary injunction. More specifically, this Court first must determine whether the trial court abused its discretion in finding that DOE Emergency Order 2020-EO-06 (the “**Emergency Order**”) would cause irreparable harm to the Plaintiffs because it effectively forces teachers and staff to work in schools where unsafe conditions exist and students are attending schools where unsafe conditions exist—and yet DOE has not made any recommendations regarding whether it is safe to work in or attend classes in the schools. This Court must then determine whether the trial court abused its discretion in finding that the Plaintiffs had a substantial likelihood of success in the trial court on the merits—*i.e.* that DOE’s arbitrary and capricious implementation of the Emergency Order renders it unconstitutional.

The Certiorari Proceedings pose different questions. In these proceedings, this Court must first find that, if the trial court case is allowed to proceed, it will result in material injury for the remainder of the case that cannot be remedied on post-judgment appeal. *Keck v. Eminisor*, 104 So. 3d 359, 363-64 (Fla. 2012). This question is jurisdictional and must be reached before this Court decides whether the trial court “departed from the essential requirements of law” in denying the motion to dismiss. *Rodriguez v. Miami-Dade Cnty.*, 117 So. 3d 400, 404 (Fla. 2013).

While both the Injunction Appeals and Certiorari Proceedings address “injury,” the irreparable injury (potential death) to Florida teachers, staff, and students is a very different issue than the alleged material injuries claimed by the Defendants in the Certiorari Proceedings—*i.e.* litigation costs and the pall of uncertainty over the Governor’s and DOE’s actions. [Pet. at 6.]¹

WHEREFORE, Appellees/Plaintiffs respectfully ask this Court to refrain from consolidating case numbers 1D20-2470 and 1D20-2472 with case numbers 1D20-2633 and 1D20-2634.

¹ References are to page numbers of the petitions filed with this Court by the Defendants on September 10.

Respectfully submitted,

/s/ Katherine E. Giddings

KATHERINE E. GIDDINGS, BCS
(949396)

katherine.giddings@akerman.com

KRISTEN M. FIORE, BCS (25766)

kristen.fiore@akerman.com

elisa.miller@akerman.com

myndi.qualls@akerman.com

Akerman LLP

201 E. Park Ave., Suite 300

Tallahassee, Florida 32301

Telephone: (850) 224-9634

Facsimile: (850) 222-0103

GERALD B. COPE, JR. (251364)

gerald.cope@akerman.com

cary.gonzalez@akerman.com

Akerman LLP

Three Brickell City Centre

98 Southeast Seventh St., Suite 1600

Miami, FL 33131-1714

Telephone: (305) 374-5600

Facsimile: (305) 374-5095

RYAN D. O'CONNOR (106132)

ryan.oconnor@akerman.com

jann.austin@akerman.com

Akerman LLP

420 S. Orange Avenue, Suite 1200

Orlando, FL 32801

Telephone: (407) 419-8418

Facsimile: (407) 813-6610

Counsel for Appellees in

Case No. 1D20-2470

JACOB V. STUART (86977)

jvs@jacobstuartlaw.com

Jacob V. Stuart, P.A.

1601 East Amelia Street

Orlando, FL 32803

Telephone: (407) 434-0330

WILLIAM J. WIELAND II (84792)

billy@wdjustice.com

Wieland & Delattre, P.A.

226 Hillcrest Street

Orlando, FL 32801

Telephone: (407) 841-7699

Counsel for Appellees in

Case No. 1D20-2472

CERTIFICATE OF SERVICE

I HEREBY CERTIFY on this 21st day of September 2020 that a true and correct copy of the foregoing has been furnished by E-Mail to all parties below.

David M. Wells, Esq.
Nathan W. Hill, Esq.
Kenneth B. Bell, Esq.
Lauren v. Purdy, Esq.
Gunster, Yoakley & Stewart, P.A.
200 So. Orange Ave., Suite 1400
Orlando, FL 32801
dwells@gunster.com
nhill@gunster.com
kbell@gunster.com
lpurdy@gunster.com
awinsor@gunster.com
dculmer@gunster.com
eservice@gunster.com
***Counsel for Appellants in
Case Nos. 1D20-2470 & 1D20-2472***

Joseph W. Jacquot, Esq.
General Counsel
Raymond F. Treadwell, Esq.
Deputy General Counsel
Joshua E. Pratt, Esq.
Assistant General Counsel
Executive Office of
Governor Ron DeSantis
Office of General Counsel
The Capitol, PL-5
400 S. Monroe Street

Kendall B. Coffey, Esq.
Josefina M. Aguila, Esq.
Scott A. Hiaasen, Esq.
Coffey Burlington, P.L.
2601 S. Bayshore Drive Ph 1
Miami, FL 333133-5460
kcoffey@coffeyburlington.com
jaguila@coffeyburlington.com
shiaasen@coffeyburlington.com
yvb@coffeyburlington.com
service@coffeyburlington.com
lperez@coffeyburlington.com
***Trial Counsel for Appellees in
Case No. 1D20-2470***

Lucia Piva, Esq.
Mark Richard, Esq.
Kathleen M. Phillips, Esq.
Phillips, Richard & Rind, P.A.
9360 SW 72nd Street, Suite 283
Miami, FL 33173
lpiva@phillipsrichard.com
mrichard@phillipsrichard.com
kphillips@phillipsrichard.com
Trial Counsel for Appellees

Kimberly C. Menchion, Esq.
Florida Education Association
213 S. Adams Street

Tallahassee, FL 32399
Joe.Jacquot@eog.myflorida.com
Ray.Treadwell@eog.myflorida.com
Joshua.Pratt@eog.myflorida.com
Ashley.Tardo@eog.myflorida.com
***Counsel for Governor Ron DeSantis in
Case Nos. 1D20-2470 & 1D20-2472***

Matthew H. Mears, Esq.
General Counsel
Judy Bone, Esq.
Deputy General Counsel
Jamie M. Braum, Esq.
Assistant General Counsel
Department of Education
325 W. Gaines St., Suite 1544
Tallahassee, FL 32399-0400
matthew.mears@fldoe.org
judy.bone@fldoe.org
jamie.braum@fldoe.org
***Counsel for Appellants Richard
Corcoran, in his official capacity as
Commissioner of Education; the Florida
Department of Education, and the
Florida Board of Education in Case No.
1D20-2470***

William E. Ploss, Esq.
75 Miracle Mile, Unit 347967
Coral Gables, FL 33234-5099
wepwep1@gmail.com
***Counsel for Amicus Curiae, the Florida
Alliance of Retired Americans***

Tallahassee, FL 32302
kimberly.menchion@floridaea.org
***Trial Counsel for Appellees in
Case Nos. 1D20-2470***

Ronald G. Meyer, Esq.
Meyer, Brooks, Blohm and Hearn, P.A.
P.O. Box 1547
Tallahassee, FL 32302
rmeyer@meyerbrookslaw.com
***Trial Counsel for Appellees in
Case Nos. 1D20-2470***

Raquel A. Rodriguez, Esq.
Buchanan Ingersoll & Rooney PC
One Biscayne Tower
2 S. Biscayne Blvd., Ste. 1500
Miami, FL 33131-1822
raquel.rodriquez@bipc.com
soraya.hamilton@bipc.com
***Counsel for Amicus Curiae, the
Foundation for Excellence in
Education, Inc.***

Jarrett B. Davis, Esq.
Buchanan Ingersoll & Rooney PC
401 E. Jackson Street, Suite 2400
Tampa, FL 33602
jarrett.davis@bipc.com
***Counsel for Amicus Curiae, the
Foundation for Excellence in
Education, Inc.***

/s/ Katherine E. Giddings
KATHERINE E. GIDDINGS, BCS