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

CIRCUIT CIVIL DIVISION

FLORIDA EDUCATION ASSOCIATION; STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINO-HENJES; ANDRES HENJES; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC., and NAACP FLORIDA STATE CONFERENCE, Plaintiffs, vs. RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; FLORIDA BOARD OF EDUCATION; and, CARLOS GIMENEZ, in his official capacity as Mayor of Miami-Dade County, Defendants.	Case No. 2020 CA 001450
MONIQUE BELLEFLUER, individually and on behalf of D.B. Jr., M.B., and D.B.; KATHRYN HAMMOND; ASHLEY MONROE, and JAMES LIS Plaintiffs, vs. RON DESANTIS, Governor of Florida, in his official capacity as Chief Executive Officer of the State of Florida; ANDY TUCK, in his official capacity as the chair of the State Board of Education; STATE BOARD OF EDUCATION; RICHARD CORCORAN, in his official capacity as Commissioner of the Florida Department of Education; FLORIDA DEPARTMENT OF EDUCATION; JACOB OLIVA, in in his official capacity as Chancellor, Division of Public Schools; TERESA JACOBS, in her official capacity as the chair of the School Board of Orange County; SCHOOL BOARD OF ORANGE COUNTY; BARBARA JENKINS, in her official capacity as the Superintendent of Orange County Public Schools; and, ORANGE COUNTY PUBLIC SCHOOLS, Defendants.	Case No. 2020 CA 001467

PLAINTIFFS' JOINT EMERGENCY MOTION TO VACATE AUTOMATIC STAY

This Court's August 24, 2020 Order which found, inter alia, that Emergency Order 2020-EO-6 (the "Emergency Order") is unconstitutional to the extent it arbitrarily disregards safety, denies local school boards decision making with respect to reopening brick and mortar schools, and conditions funding on an approved reopening plan with a start date in August, was automatically stayed upon the State's filing of its Notice of Appeal on August 24, 2020. Plaintiffs move this Court, pursuant to Fla. R. App. P. 9.310(b)(2), to vacate the stay.

The stay should be vacated so that locally elected school boards, acting with sound medical advice, may determine when it is safe, as required by Article IX, § 1(a), to reopen brick and mortar schools free from the threat of loss of school funding to ensure that educators, school staff, students, their family members at home, and the community are not exposed to needless danger posed by the pandemic.

In support of their motion, Plaintiffs state as follows:

1. On August 24, 2020, this Court entered its Order Granting Motion for Temporary Injunction in which it held the Emergency Order unconstitutional under Article I, § 9 and Articles IX, § 1(a) of the Florida Constitution and severing the unconstitutional portions of the Emergency Order in a manner which will pass constitutional muster rather than invalidating the entire Emergency Order. This Court's Order decoupled public school funding from the requirement that a school district present a plan to the Defendants which requires schools to open brick and mortar locations by August 31, 2020, and instead confirmed that school boards have the authority to make reopening decisions based upon sound medical advice and safety concerns.

2. The Defendants filed their Notice of Appeal on August 24, 2020, the same day this Court's order granting injunctive relief was entered. By law, the filing of that Notice had the

effect of automatically staying this Court's Order pending disposition of the State's appeal. Fla. R. App. P. 9.310(b)(2).

3. Rule 9.310(b)(2) authorizes this Court, upon motion, to vacate or modify the automatic stay. This Court "has broad discretion in the matter of a stay." *City of Sarasota v. AFSCME Council '79*, 563 So. 2d 830, 830 (Fla. 1st DCA 1990). In determining whether to vacate an automatic stay, the Court must consider (1) the likelihood of irreparable harm if the stay is reinstated and (2) the government's likelihood of success on appeal. *Mitchell v. State*, 911 So. 2d 1211, 1219 (Fla. 2005); *Florida Dep't of Health v. People United for Medical Marijuana*, 250 So. 3d 825, 828 (Fla. 1st DCA 2018).

4. Vacating the automatic stay is appropriate when the moving party demonstrates that there are "compelling circumstances" warranting such action. *See Florida Dep't of Health*, 250 So. 3d at 828; *St. Lucie County v. North Palm Development Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984). An automatic stay is properly vacated where the balance of equities is "overwhelmingly tilted" such that the stay would cause "definite irreparable, and irremediable harm to [] important constitutional interests," to a significantly greater degree than the harm to the government's interest by lifting the stay. *Florida Dep't of Health*, 250 So. 3d at 828; *Tampa Sports Auth. v. Johnston*, 914 So. 2d 1076, 1084 (Fla. 2d DCA 2005).

5. "Compelling circumstances" clearly are present here. The same likelihood of irreparable harm the Court found warranted issuing the injunction requires the automatic stay to be vacated. An injury is irreparable if it cannot "be adequately repaired or redressed in a court of law by an award of money damages." *Sun Elastic Corp. v. O.B. Indus.*, 603 So. 2d 516, 518 n.3 (Fla. 3d DCA 1992). Should the automatic stay remain in force pending disposition of the State's appeal, Plaintiffs, hundreds of thousands of school children, teachers, and school staff would be forced to return to school without regard to health and safety considerations. Plaintiffs

presented evidence that teachers throughout the State are deciding whether to retire, resign, or put themselves and their families in harm's way. (Temporary Injunction at 12.)

6. For example, the Court heard testimony from Andre Escobar, a math teacher at Gateway High School in Osceola County, Florida, who suffers from quadriplegia. Mr. Escobar testified that his physician has advised him that he is unlikely to survive if he were to contract COVID-19. Despite the huge risk he faces based on his medical condition, Mr. Escobar testified that he is being forced to teach in person and potentially expose himself to the virus beginning this week. Mr. Escobar also provided testimony that his school's plans to mitigate transmission are insufficient: For instance, Mr. Escobar is expected to disinfect his classroom during the 5-minute interim between classes, though he cannot ambulate without assisted devices, he is being asked to disinfect the class in less than five minutes between periods.

7. The Court also heard testimony from James Lis, one of the individual Plaintiffs, a veteran biology teacher at Dr. Phillips High School in Orange County, Florida, who described being forced to return to in-person teaching despite his pleas to his administrators, and the School Board, to allow him to continue teaching virtually, and the agonizing choice he was being forced to make between the career he loves so passionately and the danger that he could put himself, his family (including his elderly mother-in-law) at risk.

8. Also in evidence is the declaration of Eileen Walentin, a former choral instructor at South Ridge High School in Martin County, Florida, who lives with her 73-year-old mother, who suffers from underlying medical conditions that put her at particularly high risk if exposed to COVID-19. After being told that she had to teach students in-person this month, Ms. Walentin chose to resign, so as not to put her mother (and herself) at risk.

9. If the automatic stay remains in place, teachers will continue to make these irreversible decisions as schools continue to reopen brick and mortar locations around the state.

As the Court found in its Order, "[t]he cost of life of teachers and their family members cannot be readily calculated." (*Id.*) The Court has already determined that the threatened injuries which warranted issuance of the temporary injunction are irreparable and without an adequate remedy at law. (*Id.* a 12-13.)

10. If not vacated, the automatic stay would permit, as this Court held in its Order, the Defendants, acting pursuant to the unmodified Emergency Order, to unconstitutionally withhold funds from a school district which "chooses safety, that is, delaying the start of schools until it individually determines it is safe to do so for its county" without facing a loss of state funding "even though every student is being taught." (*Id.* at 5.) If the automatic stay remains in place, in other words, the State would be permitted, for the duration of the appeal, to freely expose students and school staff to pandemic-related health issues in a manner that this Court has held to be prohibited by the Constitution. This would constitute *per se* irreparable injury, which could not possibly be remedied after the fact. *Tampa Sports Auth.*, 914 So. 2d at 1080 (automatic stay vacated where deprivation of constitutional right to be free of unreasonable searches was irreparable harm for which there would be no adequate legal remedy after the fact).

11. This potential for significant harm to the students and education employees throughout Florida if the stay is not vacated must be weighed against the minimal potential for harm to the Defendants if the stay is vacated. As this Court has previously determined:

> [The] temporary injunction will serve the public interest. An injunction in this case will allow local school boards to make safety determinations for the reopening of schools without financial penalty. This is what the local school boards were elected to do. Every witness testified that any decision to reopen schools should be based on local conditions. Reasoned and data-driven decisions based on local conditions will minimize further community spread of COVID-19, severe illness, and possible death of children, teachers and school staff, their families, and the community at large.

(Temporary Injunction at 13.) This balance of potential harms weighs heavily in favor of vacating the automatic stay pending the State's appeal of this Court's temporary injunction.

12. Moreover, Defendants are unable to demonstrate that their appeal is likely to succeed on the merits. "A trial court has wide discretion to grant or deny a temporary injunction, and an appellate court will not interfere with the exercise of such discretion unless the party challenging the grant or denial clearly shows an abuse of discretion." *Saidin v. Korecki*, 202 So. 3d 468, 470 (Fla. 1st DCA 2016). The Court's well-reasoned decision dedicates over seven pages to Plaintiffs' likelihood of success on the merits. (Temporary Injunction at 4-12.) The Plaintiffs' evidence showed that the Emergency Order, through its threat of funding cuts, left school districts "with no meaningful alternative" but to open brick and mortar locations by August 31, 2020. (*Id.* at 5.) Moreover, Defendants failed to consider health and safety indicators and reduced this "constitutional guarantee of a safe education to an empty promise, in violation of the Florida Constitution." (*Id.* at 7.) The Plaintiffs also established that the Defendants arbitrarily allowed Miami-Dade, Broward, and Palm Beach Counties to delay their brick and mortar openings but denied Hillsborough and Monroe Counties this option. (*Id.* at 9.) Based on the evidence in the record, this Court did not abuse its discretion in granting the temporary injunction.

13. If the Court vacates the automatic stay and reinstates the temporary injunction, Plaintiffs request an evidentiary hearing as to the amount of the required bond. *See Gawker Media, LLC v. Bollea*, 129 So. 3d 1196, 1199 n.2 (Fla. 2nd DCA 2014).

CONCLUSION

For the reasons stated above, the automatic stay of this Court's August 24, 2020, Temporary Injunction should be vacated.

DATED this 25th day of August 2020.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that the foregoing document has been furnished by the Florida Courts e-filing Portal pursuant to Fla. R. Jud. Admin. 2.516(b)(1), this 25th day of August, 2020, to the following:

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