

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF FLORIDA
TALLAHASSEE DIVISION

NANCY C. JACOBSON., *et al.*,

Plaintiffs,

v.

Case No. 4:18-cv-00262-MW-CAS

SECRETARY LAUREL M. LEE,
in her official capacity only,

Defendant.

**SECRETARY'S MOTION FOR STAY PENDING
DECISION FROM ELEVENTH CIRCUIT**

The Secretary asks this Court to stay proceedings until seven days after the U.S. Court of Appeals for the Eleventh Circuit issues an opinion in the appeal from this Court's final judgment.

Relevant Background

By way of background, the Secretary notes that she filed a notice of appeal on Friday, November 15, 2019, the same day this Court issued the final judgment. ECF 204. She filed a stay with this Court on the following Monday, November 18, 2019, ECF 207, which this Court denied on November 26, 2019. ECF 220. She filed a stay with the Eleventh Circuit on December 6, 2019. While the Eleventh Circuit denied the stay, “[t]he [Eleventh Circuit], on its own motion, set[] this appeal for

expedited briefing and oral argument.” Order, Case No. 19-14552 at 2. Briefing was complete on February 4, 2020, and argument held on February 12, 2020. *Id.*

Of relevance also is this Court’s Order Denying the Secretary’s Motion for Stay. There, this Court provided that “[o]n or before March 20, 2020, Defendant shall file a notice in this matter informing this Court how she intends to proceed.” ECF 220 at 8. This Court further stated that “Defendant shall also file any related motion to modify the injunction in this case at that time” with “Plaintiffs and Intervenors [] fil[ing] any response on or before March 27, 2020.” *Id.* The Court’s deadlines stemmed from the Secretary’s request for “seven days after the end of the [2020 Legislative] Session to evaluate her options.” *Id.* at 7.

Although expected to end Friday, March 13, 2020, the 2020 Regular Legislative Session ended on Thursday, March 19, 2020. The Florida Legislature did not adopt a new ballot order statute. In light of the delayed end of Session, the Secretary asked this Court to extend by seven days the deadlines in the Order Denying the Secretary’s Motion for Stay. ECF 230. This Court granted the Secretary’s request. ECF 231.

The Secretary now asks for a stay of the deadlines in the Order Denying the Secretary’s Motion for Stay until seven days after the Eleventh Circuit issues an opinion in the appeal from this Court’s final judgment or until June 1, 2020, whichever comes later.

Relevant Legal Standard

“[T]he power to stay proceedings is incidental to the power inherent in every court to control disposition of the causes on its docket with economy of time and effort for itself, for counsel, and for litigants.” *Landis v. N. Am. Co.*, 299 U.S. 248, 254 (1936). This Court thus has the inherent discretionary authority to stay deadlines in the prior orders, including the Order Denying the Secretary’s Motion for Stay

Argument

The Secretary asks this Court to exercise discretionary authority in staying the deadline for when she must inform this Court on “how she intends to proceed” with issues related to ballot ordering partisan elections. ECF 220 at 8. This is for two distinct but related reasons.

First, while the average Eleventh Circuit appeal takes nine months to proceed from the notice of appeal to a decision,¹ this case is proceeding at a far quicker pace. An opinion appears imminent. That opinion might prove dispositive of the issues in this case and make further guidance from the Secretary unnecessary.

¹ See, e.g., U.S. Court of Appeals—Median Time Intervals in Months for Civil and Criminal Appeals Terminated on by the Merits, by Circuit, During 12-month Period Ending Sept. 30, 2018, U.S. Cts., available at https://www.uscourts.gov/sites/default/files/data_tables/jb_b4a_0930.2018.pdf (last visited Nov. 15, 2019); Kevin Golembiewski & Jessica A. Ettinger, *Advocacy Before the Eleventh Circuit: A Clerk’s Perspective*, 73 U. Miami L. Rev. 1221, 1225–26 (2019).

Second, in the Motion for Stay filed before this Court and subsequent argument on that motion, the Secretary noted her concerns with utilizing the rulemaking procedure and explored with this Court the limits of her emergency rulemaking powers. The Eleventh Circuit’s exposition of the Secretary’s powers—as explored at the argument before a panel of that Court—might reveal a surer path forward for both the Secretary and this Court.

Waiting makes sense. Waiting until a few days after an opinion that appears imminent should not prejudice the parties.

WHEREFORE the Secretary asks this Court to stay proceedings until seven days after the Eleventh Circuit issues an opinion in the appeal from this Court’s final judgment.

CERTIFICATE OF COMPLIANCE WITH LOCAL RULES

The undersigned certifies that the foregoing filing complies with the size, font, and formatting requirements of Local Rule 5.1(C), that the foregoing filing complies with the word limit in Local Rule 7.1(F) because it contains 718 words, excluding the case style, signature block, and certificates, and that undersigned conferred with Plaintiffs’ counsel and Intervenor’s counsel regarding this Motion. *Plaintiffs oppose the Motion. Intervenor do not.*

* * *

Respectfully submitted by:

BRADLEY R. MCVAY (FBN 79034)

General Counsel

brad.mcvay@dos.myflorida.com

ASHLEY E. DAVIS (FBN 48032)

Deputy General Counsel

ashley.davis@dos.myflorida.com

FLORIDA DEPARTMENT OF STATE

R.A. Gray Building Suite, 100

500 South Bronough Street

Tallahassee, Florida 32399-0250

(850) 245-6536 / (850) 245-6127 (fax)

/s/ Mohammad O. Jazil

MOHAMMAD O. JAZIL (FBN 72556)

mjazil@hgslaw.com

GARY V. PERKO (FBN 855898)

gperko@hgslaw.com

JOSEPH A. BROWN (FBN 25765)

josephb@hgslaw.com

KRISTEN C. DIOT (FBN 118625)

kristend@hgslaw.com

HOPPING GREEN & SAMS, P.A.

119 South Monroe Street, Suite 300

Tallahassee, Florida 32301

Phone: (850) 222-7500

Fax: (850) 224-8551

Dated: March 27, 2020

Counsel for the Secretary of State

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via electronic mail to the following on March 27, 2020:

Frederick S. Wermuth
KING, BLACKWELL, ZEHNDER
& WERMUTH, P.A.
P.O. Box 1631
Orlando, FL 32802-1631
Telephone: (407) 422-2472
Facsimile: (407) 648-0161
fwermuth@kbzwlaw.com

Jason Torchinsky
Phillip M. Gordon
Shawn T. Sheehy
45 North Hill Drive, Suite 100
Warrenton, VA 20106
P: (540) 341-8808
F: (540) 341-8809
JTorchinsky@hvjt.law pgordon@hvjt.law
ssheehy@hvjt.law
Counsel for Defendant-Intervenors

Marc E. Elias
Elisabeth C. Frost*
Amanda Callais*
Jacki L. Anderson*
John M. Geise*
Alexi M. Velez*
PERKINS COIE LLP
700 Thirteenth St., N.W., Suite 600
Washington, D.C. 20005-3960
Telephone: (202) 654-6200
Facsimile: (202) 654-9959
melias@perkinscoie.com
efrost@perkinscoie.com
acallais@perkinscoie.com
jackianderson@perkinscoie.com
jgeise@perkinscoie.com
avelez@perkinscoie.com

Abha Khanna*
PERKINS COIE LLP
1201 Third Avenue, Suite 4900
Seattle, WA 98101-3099
Telephone: (206) 359-8000
Facsimile: (206) 359-9000
akhanna@perkinscoie.com

Counsel for the Plaintiffs
**Admitted Pro Hac Vice*

/s/ Mohammad O. Jazil
Attorney