

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

**NANCY CAROLA JACOBSON,  
et al.,**

*Plaintiffs,*

v.

**CASE NO.: 4:18cv262-MW/CAS**

**LAUREL M. LEE, et al.,**

*Defendant/Intervenors.*

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**ORDER GRANTING IN PART AND DENYING IN PART  
MOTION FOR STAY**

This Court has considered, after hearing on April 3, 2020, Defendant's Motion for Stay Pending Decision by the Eleventh Circuit, ECF No. 232, which Intervenors join, ECF No. 235. This Court previously denied a similar motion for stay and imposed deadlines for compliance with its injunction, ECF No. 220, and this Court also later extended those deadlines on motion by Defendant, ECF No. 231.

The present motion raises no new issues of fact or law and provides no basis for this Court to revisit its decision as expressed in its denial of Defendant's prior motion for stay. Nothing has changed, including the fact that review of this case is pending on appeal, as it was when this Court denied Defendant's prior motion for

stay.<sup>1</sup> It is true, as Defendant urges, that the Eleventh Circuit may soon issue a decision in the appeal from this Court’s entry of an injunction in this matter but it is impossible to prognosticate when that might occur. And when that day does arrive, neither this Court nor anyone else can predict with certainty what the Eleventh Circuit’s ruling will be. This Court will not act based on speculation about the possible future actions of a reviewing court. It is this Court’s constitutional duty to administer justice and follow the law. *See* U.S. Const., art. III, § 1 (“The judicial Power of the United States, shall be vested in one supreme Court, and in such inferior Courts as the Congress may from time to time ordain and establish.”).

The Eleventh Circuit’s decision, when it does ultimately issue and become final, will provide clear direction as to the next steps this Court and the parties must take. Until then, this Court’s Order is the operative authority in this matter, and this Court must balance the need to avoid unnecessary expenditure of the parties’ resources (and its own) with the need to avoid a last-minute scramble of emergency action and to preserve sufficient time to appeal—or seek a stay pending appeal of—any future rulings. The issue in this case goes to the heart of our democracy—namely, the conduct of a free, fair, and orderly election. Given the fundamental importance of the issue at stake, it is incumbent upon this Court to plan for the worst-

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<sup>1</sup> This Court hereby incorporates by reference its prior Order denying Defendant’s original motion for stay. ECF No. 220.

case scenario and proceed in a thoughtful but crisp fashion. It is also vital, to the extent possible, to avoid dealing with these issues on an expedited basis and at the last minute.

Despite this Court's best efforts, it has been impossible to obtain a direct answer about what would be done to comply with this Court's prior ruling and how it would be done. Defendant's ambiguous and hedged answers make it difficult to establish a timeline, but this Court will do its best with what it has. In the hearing on her prior motion to stay, Defendant informed this Court that an emergency rule could only remain effective for ninety days, ECF No. 219 at 7, and that for the 2020 General Election the "drop-dead date to have some kind of ballot order in place is September 19th," but approximately two weeks before that would be needed to ensure ballots can be printed, *id.* at 16. Allowing a slight margin for error, then, there must be *some* resolution by September 1, 2020, of what ballot order scheme Florida shall use. As noted above, the importance of this issue emphasizes the need to avoid last-minute handling of any foreseeable contingencies that may arise. Therefore, in the spirit of expecting a smooth resolution but acting in an abundance of caution in case such resolution is not forthcoming, this Court will again extend the deadlines in its prior Order for Defendant to provide this Court with a detailed explanation of how she intends to proceed in complying with this Court's ruling,

working backwards from September 1, 2020.<sup>2</sup> This extension balances the need to avoid needless expenditure of time and other resources with the need to provide due process, undertake a full exploration of the issues before this Court, and allow the parties a full and fair opportunity to appeal any subsequent ruling—or seek a stay of such ruling pending an appeal thereof.

As this Court has noted, the ideal option is for the State of Florida to resolve the matter itself by adopting of its own accord and pursuant to its own procedures a ballot order scheme which comports with the requirements of the United States Constitution, and this Court will make every effort to avoid the necessity of becoming involved in the matter. *See* ECF No. 202 at 69–71. And it may be that the State of Florida will yet resolve the issue on its own. It may also be that the Eleventh Circuit will settle the matter in the interim.

But let the parties rest assured that, if no one else acts, I will. Accordingly,

**IT IS ORDERED:**

1. Defendant’s motion for stay, ECF No. 232, is **DENIED IN PART** to the extent it seeks a stay of these proceedings. It is **GRANTED IN PART** to the extent it moves, in the alternative, for a further modification of the deadlines originally established in this Court’s November 26, 2019, Order. Defendant

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<sup>2</sup> This Court herein reaffirms its statement in its prior Order that, by establishing a briefing schedule, this Court in no way forecloses the right of any party to move for modification of the injunction on any appropriate basis at any appropriate time. *See* ECF No. 220 at 7 n.2 (same).

shall file the notice required therein **on or before Friday, May 1, 2020**. This Court is extending the deadline for another month, having previously extended the deadline, recognizing that an opinion from the Eleventh Circuit may be forthcoming and a brief delay would not prejudice the parties.

2. On a parallel track, this Court shall require the parties to submit briefing as to the relief available should it become necessary for this Court to modify its injunction pursuant to a lack of action by the State of Florida and the non-issuance of a final decision by the Eleventh Circuit before the September 1, 2020, deadline for establishing a ballot order scheme for Florida to use in the 2020 General Election. Defendant shall file said brief **on or before Monday, May 11, 2020**. Plaintiffs and Intervenors shall file any response **on or before Friday, May 22, 2020**. Defendants shall thereafter file any reply **on or before Tuesday, May 26, 2020**. The parties are encouraged to attach proposed orders. A hearing, if any, shall be scheduled by subsequent Order.

**SO ORDERED on April 3, 2020.**

**s/Mark E. Walker**  
**Chief United States District Judge**