

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

**BLACK VOTERS MATTER CAPACITY
BUILDING INSTITUTE, INC., et al.,**

Plaintiffs,

Case No.: 2022 CA 0666

v.

**LAUREL M. LEE, in her official capacity as
Florida Secretary of State, et al.,**

Defendants.

ORDER GRANTING EMERGENCY MOTION VACATING STAY PENDING APPEAL

This Court rendered an order granting the Plaintiffs' motion for a temporary injunction on May 12, 2022. That same day, the Defendant, Secretary of State Laurel M. Lee, filed an appeal with the First District Court of Appeal. No other Defendant—the Florida Senate, the Florida House of Representatives, the Senate President, the Speaker of the House, Senator Rodrigues, or Representative Leek – defended the Enacted Map or filed an appeal.

Secretary of State Lee's appeal triggered an automatic stay of this Court's injunction per Florida Rule of Appellate Procedure 9.310(b)(2). On May 13, 2022, the Plaintiffs filed an emergency motion with this Court to vacate the automatic stay per the same appellate rule.

By agreement of the parties, Secretary of State Lee filed her response to the Plaintiffs' motion to vacate by noon today. That filing covered 249 pages. The Court spent time last Friday and over the weekend to read the applicable law. Today, the Court adjusted its schedule, spending the lunch hour and several hours during the afternoon to be prepared. After reviewing the casefile, the law, and having considered the arguments of counsel, the Court finds as follows.

On November 2, 2010, Floridians voted by an overwhelming margin to enact the Fair Districts Amendment to the Florida Constitution. That amendment provides the Legislature with

the standards it must follow for establishing congressional district boundaries. Article III, Section 20 of the Florida Constitution. It falls on the judiciary to ensure that these constitutional standards are followed. See, In re S. J. Res. of Legis. Apportionment 1176, 83 So.3d 597, 600 (Fla. 2012).

When a governmental entity files a timely notice of appeal of a lower tribunal's order, the notice shall "automatically operate as a stay pending review." Fla. R. App. P. 9.310(b)(2). The lower tribunal has the authority to "extend a stay, impose any lawful conditions, or vacate the stay." *Id.* However, "a court may vacate an automatic stay only "under the most compelling circumstances.'" Fla. Dep't of Health v. People United for Med. Marijuana, 250 So. d 825, 828 (Fla. 1st DCA 2018) (citations omitted).

In deciding whether to vacate an automatic stay, the court must consider: (1) whether the equities overwhelmingly tilt against maintaining the automatic stay; (2) the governments likelihood of success on appeal; and (3) the likelihood of irreparable harm if the automatic stay remains. Dep't of Agric. & Consumer Servs. V. Henry & Rilla White Found., Inc., 317 So. 3d 1168 (Fla. 1st DCA 2020) (citations omitted); DeSantis v. Fla. Educ. Ass'n, 325 So. 3d 145 (Fla. 1st DCA 2020) (citations omitted).

The automatic stay rule is based upon deference to planning-level government decisions. Here, the issue is the Legislature's compliance with the state constitution—not some run-of-the-mill executive branch planning decision! Thus, the Secretary of State is due no deference. Even if she was, that deference diminishes where the equities are overwhelmingly tilted against maintaining a stay. Tampa Sports Auth. V. Johnson, 914 So. 2d 1076, 1083 (Fla. 2d DCA 2005).

The Court finds overwhelmingly compelling circumstances against maintaining the stay in this action. At the temporary injunction hearing, the Court determined that the Enacted Plan violates the Fair Districts Amendment of the Florida Constitution by diminishing the ability of Black voters to elect their representative of their choice.

Fundamental constitutional rights are at stake and time is both short and of the essence. There are no do-overs when it comes to elections; in essence, there is no remedy for a Florida voter once their constitutional rights have been infringed. Considering this Court's determination that the Enacted Plan violates Article III, Section 20, and the fact that the 2022 primary is fast approaching, the equities in this case are overwhelmingly tilted against maintaining the automatic stay.

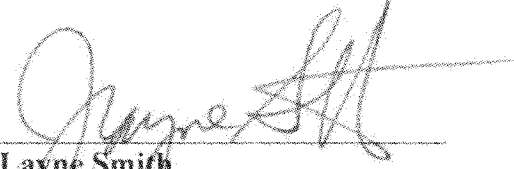
Considering the Florida Supreme Court and the United States Supreme Court precedents cited in the Court's May 12, 2022, order, it is unlikely that the Secretary of State will succeed upon appeal.

Allowing the automatic stay to remain in place would almost certainly result in irreparable harm to Plaintiffs and Florida voters. Maintaining the stay and failing to quickly determine this case on the merits, will force Plaintiffs and many North Florida voters to cast their votes according to an unconstitutional congressional district map.

The people expect this case to be decided on the merits. They deserve no less.

Accordingly, this Court **ORDERS** and **ADJUDGES** that the automatic stay per the appellate rule is **VACATED**.

DONE and **ORDERED** on May 16, 2022.



J. Layne Smith
Circuit Judge

Copies furnished to counsel of record via e-service