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

FLORIDA WILDLIFE FEDERATION, INC., *et al*.,

Plaintiffs,

v. Case No.: 2015-CA-001423

JOE NEGRON, as President of the Florida Senate, *et al.*,

Defendants.
_____/

FLORIDA DEFENDERS OF THE ENVIRONMENT, INC., *et al*.,

Plaintiffs,

v. Case No. 2015-CA-002682

KEN DETZNER, in his official capacity as Florida Secretary of State, *et al.*,

Defendants.
_____/

PLAINTIFFS' JOINT MOTION TO VACATE AUTOMATIC STAY

Plaintiffs Florida Wildlife Federation, Inc., Sierra Club, Inc., St. Johns Riverkeeper, Inc., Environmental Confederation of Southwest Florida, Inc., and Manley Fuller ("FWF Plaintiffs"), Florida Defenders of the Environment, Inc., Steven J. Robitaille, Joseph W. Little, James P. Clugston, Lola Holland, Steven M. Holland, and W. Thomas Hawkins ("FDE Plaintiffs") move to vacate the automatic stay arising pursuant to Florida Rule of Appellate Procedure 9.310(b)(2).

On June 28, 2018, the court entered final judgment in this matter, ruling that "[t]he clear intent [of Article X, section 28 of the Florida Constitution, the Land Acquisition Trust Fund amendment] was to create a trust fund to purchase new conservation lands and take care of them." Final Judgment for Plaintiffs at 5. The court stated on the record that it had read the constitutional provision "well over a hundred times" and indicated that no other interpretation was supportable. Hearing Transcript at 83. This court rejected out of hand the Defendants' contention that the Legislature was free to use the Land Acquisition Trust Fund moneys for any other purpose.

The court's ruling should have ended the more than three-year period during which, as the court recognized, the Legislature has systematically disregarded the constitutional restrictions imposed by Article X, section 28. But governmental parties have taken an appeal, which has the effect of staying the trial court's judgment even as yet another legislative session is fast approaching. *See* Fla. R. App. P. 9.310(b)(2). Recognizing that the trial court will ordinarily be most familiar with the facts of a given case, Florida Rule of Appellate Procedure 9.310(b)(2) grants this court the authority to vacate the stay, and it should do so.

The likelihood that the court's judgment will be affirmed is more than substantial. The judgment on appeal merely gave effect to the plain language of Article X, section 28. The appellants' unpersuasive arguments otherwise

underscore the fact that the likelihood of their overturning this court's judgment is remote and speculative. Notably, in their motion for rehearing, the parties now appealing had little to say on the merits of the judgment, arguing principally and at length that some (but not all) of the plaintiffs were not entitled even to declaratory relief. Plainly warranted, declaratory relief lies at the heart of the case. The court's commonsense explication of Article X, section 28's effect should not be ignored during the pendency of the appeal. The court's final judgment in this case is eminently correct and should be given immediate effect.

Failure to vacate the automatic stay will cause irreparable harm to citizens of Florida, present and future, whose quality of life will be affected by the unavailability of Land Acquisition Trust Fund moneys unconstitutionally diverted. Not every Floridian can afford her own hunting preserve or a private beach. Dissolving the stay of the court's judgment can help assure that the real and important restorative effects of time spent in natural environments are available to all Floridians. There is no time like the present.

Critically, Land Acquisition Trust Fund moneys must be fully available to purchase "lands that protect water resources." Art. X, § 28, Fla. Const. The Legislature has identified the cause of algae outbreaks in Lake Okeechobee: "land uses in the Lake Okeechobee watershed . . . have resulted in algal blooms . . . both in Lake Okeechobee and in downstream receiving waters." § 393.4595(1)(b) Fla.

Stat. (2006). Those receiving waters include the St. Lucie and Caloosahatchee Rivers and coastal waters to the north and south of them, almost all of which have been covered with toxic green algae and red tide. *See* Executive Order 18-191, https://www.flgov.com/wp-content/uploads/2018/07/EO-18-191.pdf (declaring state of emergency due to toxic green algae outbreaks); Executive Order 18-221, https://www.flgov.com/wp-content/uploads/orders/2018/EO_18-221.pdf (state of emergency due to red tide coastal waters north and south of the Caloosahatchee).

Acquisition of land to store water and to protect surface water resources is a specific goal of land acquisition, §§ 259.105(5)(d)(1), 259.105(2)(a)(9), and the Land Acquisition Trust Fund Amendment fosters those goals by dedicating funds to acquire "lands that protect water resources." Art. X, § 28, Fla. Const. Regulatory programs have plainly failed to prevent pollution discharges attributable to certain uses of private land; and the Legislature has long recognized acquisition of land as necessary to "protect significant surface water" resources which cannot "be accomplished through local and state regulatory programs." § 259.032(1)(d), Fla. Stat. Thus, land acquisition will be a principal component in any solution to the current algae outbreak that is creating a public health emergency and devastating parts of the economy of Central and South Florida. *See*, Executive Order 18-191, *supra*.

If the stay is not lifted, the Legislature can continue to spend Land Acquisition Trust Fund moneys on agency operations and for other purposes instead of buying land to address the toxic algae emergency. Failure to vacate the automatic stay threatens irreparable harm to the citizens and the economy of Florida. Dissolving the stay serves "the policy of the state that the citizens of this state shall be assured public ownership of natural areas for purposes of maintaining this state's unique natural resources; protecting air, land, and water quality." § 259.032 (1), Fla. Stat. (2018). Time is of the essence.

Article X, section 28 is, indeed, a time-limited provision. *See* Art. X, § 28, Fla. Const. ("for a period of 20 years . . . the Land Acquisition Trust Fund shall receive" specified revenues). Defendants' counsel acknowledged that under the court's "interpretation, all $600 million [per annum] would have to go to acquiring new land, at least in the initial years, and then once that land is acquired then you can start putting some money towards managing those lands." Hearing Transcript at 65-66. Once the fiscal year has passed, restoring to its rightful place money that has been unconstitutionally appropriated and expended is no easy matter. The First District alluded to this circumstance in characterizing the case as one that "involves appropriations that expired two years ago." Corcoran v. Florida Wildlife Federation, No. 1D18-3141 (Fla. 1st DCA Aug. 29, 2018).

Defendants recognized these realities in stating that if the First District "were to affirm and the Legislative Parties were to seek further review, then [the First District] could consider a request to vacate the automatic stay before the next legislative session." The Legislative Parties' Response to the FWF and FDE's Suggestion for Certification at 4. There is no good reason to allow (an)other legislative session(s) to roll by while the appeals process unfolds, before addressing the issue of a stay. This is especially true where the Legislative Parties have the right to invoke a stay of further judicial proceedings, and have in fact already done so in the course of this litigation. *See* § 11.111, Fla. Stat. (2018); The Legislative Parties' Notice of Invoking Continuance Pursuant to Section 11.111, Florida Statutes.

CONCLUSION

Wherefore, FWF Plaintiffs and FDE Plaintiffs move to vacate the automatic stay arising by virtue of Florida Rule of Appellate Procedure 9.310(b)(2).

Respectfully submitted on this 19th day of September, 2018.

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing document was electronically served on the following counsel of record on this September 19th, 2018.

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