

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

**JAMES BAIARDI, JOHN MCKENNA,
SHANEA MAYCOCK, and FLORIDA
POLICE BENEVOLENT ASSOCIATION,
INC.,**

Plaintiffs,

v.

**KENNETH S. TUCKER, in his capacity as
THE SECRETARY OF THE FLORIDA
DEPARTMENT OF CORRECTIONS,**

Defendant.

**CASE NO.: 2011-CA-1838
JUDGE FULFORD**

ORDER ON PLAINTIFFS' MOTION TO VACATE AUTOMATIC STAY

THIS CAUSE is before the Court upon the Plaintiffs' Motion to Vacate Automatic Stay. The Court having reviewed the Motion and record, heard argument of counsel, testimony of the Plaintiff, James Baiardi, and being otherwise duly advised in the premises, finds as follows:

On September 30, 2011, this Court entered its Final Declaratory and Injunctive Judgment, finding that the proviso contained in the General Appropriation Act, Ch. 2011-69, directing the Department of Corrections ("DOC") to contract to privatize 29 State correctional facilities in South Florida, is unconstitutional under sections 6 and 12 of Article III of the Florida Constitution. This Court enjoined DOC, its officers and agents "from taking further steps to contract under the proviso or otherwise implement the privatization of state correctional facilities in the 18 counties pursuant to proviso or otherwise."

Although not on behalf of DOC, the Attorney General filed a Notice of Appeal on October 31, 2011. Rule 9.310, Fla. R. App. Proc., provides that "The timely filing of a notice [of appeal] shall automatically operate as a stay pending review ... when the state, any public

officer ... or other public body seeks review ... On motion, the lower tribunal or the court may extend a stay, impose lawful conditions, or vacate the stay." (e.s.)

On November 3, 2011, the parties agreed to set a hearing on Plaintiff's Motion to Vacate Automatic Stay for November 16, 2011. In selecting the hearing date, DOC agreed through counsel that it would take no further steps towards privatization until this Court could hear argument and thereafter rule on the motion. At some point later that same day, without any notice to Plaintiff, DOC announced it would begin accepting bids on the privatization on November 10, 2011. The emergency hearing was then set for today.

In addition to the other evidence already in the record before the Court, the Plaintiff, Mr. Baiardi, testified at the hearing on this motion that he is a captain with the South Florida Reception Center, and President of the State Correctional Officers Chapter of the Florida PBA. In those capacities, he is aware of the overwhelming impact caused by renewing the privatization bid process. Captain Baiardi testified that the panic caused to the approximately 4,000 correctional officers that are impacted by the decision to privatize the South Florida prisons had significantly calmed after the Court's initial ruling, but that the subsequent amendment to the RFP published by the Department to accept bids, has once again caused a heightened state of anxiety. Specifically Captain Baiardi identified such factors as the disruption to families, the threatened separation of families, loss of jobs, change of schools, lack of sleep, loss of homes, and displacement of experienced officers to institutions away from their families, as concerns which are overwhelming the correctional officers of the affected facilities.

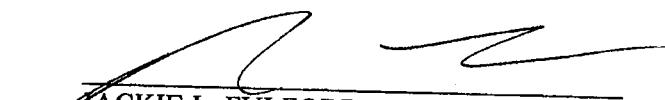
When deciding whether to vacate a stay, pursuant to Rule 9.310, Fla. R. App. Proc., there are two principal considerations the court must take into account: (1) the likelihood of irreparable harm if the stay is not granted, and (2) the likelihood of success on the merits by the

appellant. *Mitchell v. State*, 911 So. 2d 1211, 1219 (Fla. 2005). Trial courts have leeway to balance the interests of affected persons with the concerns of the state. This Court finds that the evidence in the record establishes the likelihood of irreparable injury to the Plaintiffs if the stay is not vacated, and further that Defendants are not likely to succeed on the merits on appeal.

It is therefore ORDERED AND ADJUDGED that:

Plaintiffs' Motion to Vacate Automatic Stay is GRANTED. This Court vacates the automatic stay effective immediately. The Department of Corrections, its attorneys, agents and employees, are directed to cease and desist all actions relating to the procurement process on the prison privatization RFP, and shall forthwith refrain from taking any further action inconsistent with this Court's Final Judgment.

DONE AND ORDERED at Tallahassee, Leon County, Florida, this 4th day of November, 2011.


JACKIE L. FULFORD
Circuit Court Judge

Copies furnished:

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Gene L. "Hal" Johnson
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