

**IN THE SUPREME COURT OF FLORIDA**

DAWN K. ROBERTS, in her capacity  
as Interim Secretary of State of the State  
of Florida,

Petitioner,

v.

Case No.

L.T. No.

37-2010-CA-001824

CORRINE BROWN, MARIO  
DIAZ-BALART, FLORIDA HOUSE  
OF REPRESENTATIVES, FLORIDA  
SENATE, BOB GRAHAM, and  
FAIRDISTRICTSFLORIDA.ORG, INC.,

Respondents.

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**PETITIONER'S MOTION FOR REVIEW  
OF ORAL ORDER DENYING STAY PENDING REVIEW**

Pursuant to Florida Rule of Appellate Procedure 9.310(f), the Petitioner, Dawn K. Roberts, in her capacity as Florida Interim Secretary of State (the "Secretary"), respectfully requests the Court to stay the proceedings in Case No. 37-2010-CA-001824 in the Circuit Court in and for Leon County, Florida, Hon. Jackie Lee Fulford, presiding.

The Secretary files herewith her Petition for Constitutional Writ or, Alternatively, for Writ of Prohibition. That petition sets forth why the proceedings before Judge Fulford interfere with this Court's jurisdiction under article V, section 3(b)(10), Florida Constitution. It alternatively sets forth why the circuit court lacks subject matter jurisdiction.

On July 8, 2010, the circuit court heard the parties' arguments on jurisdiction. The transcript of that proceeding has been ordered on an expedited basis, but is not yet ready at this time. A copy will be filed in a supplemental appendix as soon as possible. On July 12, 2010, Judge Fulford entered a written order denying the Secretary's motion to dismiss. (1 Appendix at 323-27.)

On the record at a hearing early in the morning on July 12, 2010, the Secretary's counsel advised Judge Fulford that the Secretary was filing its petition today and made an ore tenus motion for a stay pending review under Florida Rule of Appellate Procedure 9.310(a). Judge Fulford denied that motion and indicated that she will proceed to the merits of the lawsuit. The transcript of that proceeding has been ordered on an expedited basis, but is not yet ready at this time. A copy will be filed in a supplemental appendix as soon as possible.

For the reasons expressed in the accompanying petition, this Court should enjoin further proceedings in the circuit court and either direct that the case be dismissed or transfer it to this Court. The continuing proceedings in the circuit court not only interfere with this Court's jurisdiction, but are consuming the limited resources of the Secretary and potentially interfere with her ability to have the ballots prepared for the 2010 general election. If this were a direct appeal, the Secretary would be entitled to an automatic stay as of right pursuant to Florida Rule of Appellate Procedure 9.310(b)(2) because she is a public officer. *But see*


*State, Dept. of Health & Rehabilitative Services v. E.D.S. Fed. Corp.*, 622 So. 2d 90, 91 (Fla. 1st DCA 1993) (holding that this provision does not apply to review by original petition).

The principles underlying Rule 9.310(b)(2) should apply equally here to warrant a stay. See *St. Lucie County v. N. Palm Dev. Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984) (noting that purpose behind automatic stay for appeals by public officials is because “planning-level decisions are made in the public interest and should be accorded a commensurate degree of deference and that any adverse consequences realized from proceeding under an erroneous judgment harm the public generally”). See also *order Reform Party of Florida v. Black*, 885 So. 2d 303, 307 (Fla. 2004) (granting Secretary’s motion to reinstate stay pending appeal involving ballot challenges “[i]n order to preserve the rights of the parties and the voters”).

Similarly, if the Court directs the Respondents to show cause why a writ of prohibition should not be granted, the proceedings below will be automatically stayed pursuant to Florida Rule of Appellate Procedure 9.100(h). Because there is a serious question as to the circuit court’s continued exercise of jurisdiction, the same principles underlying a stay in a prohibition proceeding apply here, even if the Court were to only order the Respondents to show cause as to the request for a constitutional writ.

WHEREFORE, this Court should stay further proceedings in the circuit court pending disposition of the accompanying petition.

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished to the following persons by U.S. Mail, this 12th day of July, 2010:

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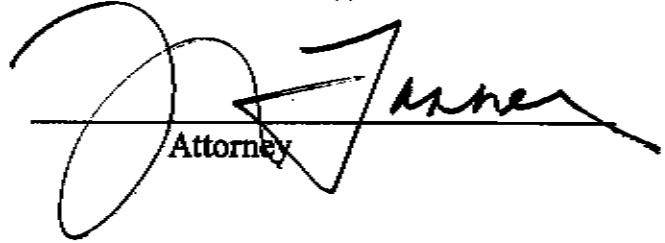
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**CERTIFICATE OF COMPLIANCE**

I HEREBY CERTIFY that the foregoing is in Times New Roman 14-point font and complies with the font requirements of Rule 9.100(l), Florida Rules of Appellate Procedure.

  
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Attorney