IN THE FIRST DISTRICT COURT OF APPEAL
FOR THE STATE OF FLORIDA

RON DESANTIS, in his official capacity as Governor of the State of Florida; RICHARD CORCORAN, in his official capacity as Florida Commissioner of Education; FLORIDA DEPARTMENT OF EDUCATION; and FLORIDA BOARD OF EDUCATION,

Defendants/Appellants, Case No. 1D20-2470

v.

FLORIDA EDUCATION ASSOCIATION; STEFANIE BETH MILLER; LADARA ROYAL; MINDY FESTGE; VICTORIA DUBLINO-HENJES; ANDRES HENJES; NATIONAL ASSOCIATION FOR THE ADVANCEMENT OF COLORED PEOPLE, INC.; and NAACP FLORIDA STATE CONFERENCE,

Plaintiffs/Appellees.

_____/

EMERGENCY MOTION TO REINSTATE AUTOMATIC STAY

This emergency motion is necessitated by the circuit court's lifting of the automatic stay in a case in which the court enjoined the Governor and the Commissioner of Education from requiring school districts to submit plans and obtain approval for the reopening of public schools—including an option for in-person instruction—across the state of Florida. That injunction was an extraordinary violation of basic separation-of-powers principles under the state

constitution. If allowed to take effect despite the State Defendants' pending appeal, the injunction would threaten to interfere with the ongoing reopening of schools by local districts and disrupt plans that families have made with respect to their children's education. Although some public-school students are receiving remote instruction through virtual classes, as permitted under the emergency order that the circuit court enjoined, more than 700,000 students have opted for and are already receiving in-person instruction.

On the other hand, the injunction does nothing to address the concerns of the Plaintiff–Appellees ("Plaintiffs"), or the eight individual school teachers and staff who provided declarations or testimony for the injunction hearing, seeking to avoid in-person instruction. As noted in the order improperly lifting the stay below, the circuit court did "not have authority to enter such an order" to close schools. Those concerns should be addressed to and by the local school boards responsible for employing teachers and delivering classroom instruction—and in no way warrant a statewide injunction against the Governor and Commissioner of Education to restrict the exercise of their constitutional authority.

Plaintiffs did not (and cannot) carry their heavy burden to show that "compelling circumstances" justify lifting the automatic stay. Defendant–Appellants, Governor Ron DeSantis, Commissioner Richard Corcoran, the Florida Department of Education, and the Florida Board of Education (collectively, the

"State Defendants"), therefore move this Court for an order immediately reinstating the stay imposed by Rule 9.310(b)(2).

BACKGROUND

1. On March 9, 2020, due to the unprecedented public-health crisis caused by the COVID-19 pandemic, Governor DeSantis, under the authority vested in him by Article IV, section 1(a) of the Florida Constitution, and Chapter 252 of the Florida Statutes, declared a State of Emergency for all of Florida. *See* Executive Order 20-52. He authorized state agencies to suspend statutes and rules if strict compliance would prevent, hinder or delay necessary action in coping with the emergency where prescribed in the State Comprehensive Emergency Management Plan or ordered by the Florida's Division of Emergency Management's State Coordinating Officer. *See* Executive Order 20-52.

2. On March 13, 2020, Florida's Emergency Management State Coordinating Officer issued Emergency Order 20-004. That order authorized "the Department of Education ["DOE"] to take all appropriate actions coordinated with Florida's school districts, state colleges, and other educational providers to promote the health, safety, welfare and education of Florida students under the circumstances presented by this emergency." The order directed that these actions must be informed by guidance from the Centers for Disease Control and Prevention and the State Health Officer and Surgeon General.

3. On March 23, 2020, the DOE issued Emergency Order 2020-EO-01 recommending that school districts close all public schools in the State of Florida.

4. On July 6, 2020, the DOE issued Emergency Order 2020-EO-06 (the "Emergency Order"). Expressly "subject to the advice and orders of the Florida Department of Health[and] local departments of health" (Emergency Order § I.a) [A.12-13], the Emergency Order recognizes the need to open schools safely to ensure not only the continuity of the educational process but also student well-being. At the same time, the Emergency Order provides additional flexibility and financial stability for school districts grappling with the potential decline of in-person student enrollment as a result of the pandemic. Under Florida's education-funding system, districts would ordinarily experience significant funding losses if previously in-person students switched to a virtual instruction model or if enrollment declined. [A.24-25]. The Emergency Order addressed both of these concerns. First, school districts receive less funding for virtual education because virtual classes generate about 25 percent less funding and are paid for only on an as-completed basis. [A.24]. Thus, if the student does not complete the course, the district receives no funding. Second, school districts receive funding based on the number of students they serve, and declines in student enrollment result in corresponding declines in funding. [A.24-25]. For districts with an approved reopening plan, the Emergency Order addressed these concerns by waiving the

necessary statutes and rules so that school districts would not lose *any* funding simply because more parents chose a distance-learning option, students failed to complete virtual courses, or students exited the public school system in favor of either homeschooling or private education. [A.25]; *see generally* Emergency Order § III [A.16-17]. These waivers were provided in response to requests from superintendents and school finance offers for guaranteed funding and reporting flexibility to empower districts to be able to provide more high-quality options to students and their parents. (Def. Exs. 12 and 23.) [A.7-10]. Although the DOE provides comprehensive guidance and support, the question of how schools will open, which students and teachers are physically present when schools open, what safety measures are in place, etc. are left to the local school boards to decide. And in reliance on the terms of the Emergency Order, school districts across Florida developed plans for the reopening of schools in August 2020, which have been approved by the DOE and are now being implemented. At their option and based on the decisions of their individual families, 711,000 students are already benefitting from in-person classes.

5. Plaintiffs are six Florida teachers, five Florida parents, and various associations—but not local school boards—who filed suit in July challenging the DOE's policy judgments as outlined in the Emergency Order. They seek an order declaring the portion of the Emergency Order requiring school districts to offer an

option for in-person instruction (in exchange for enhanced educational funding and flexibility for remote instruction or despite declining enrollment) unconstitutional under Article IX, Section 1(a) and Article I, Section 9 of the Florida Constitution. The central premise of Plaintiffs' case is that the Emergency Order's funding incentives somehow "coerce" local school districts to allow (and require their employees to support) in-person instruction before Plaintiffs believe it is safe to do so.

6. On August 19-20, 2020, the trial court held a two-day evidentiary hearing on Plaintiffs' Motion for Temporary Injunction at which the parties offered approximately 100 exhibits and 14 witnesses. Closing argument was held on August 21, 2020.

7. At the hearing, the State Defendants presented extensive evidence of the harm to children and society when students do not have an option to access in-person educational instruction.

8. Among other evidence, the State Defendants offered CDC guidance on school reopening that recognizes "[a]side from a child's home, no other setting has more influence on a child's health and well-being than their school"[1] and guidance from the American Academy of Pediatrics that "strongly advocates that

[1] Centers For Disease Control, The Importance of Reopening America's Schools this Fall, July 23, 2020, available at https://www.cdc.gov/coronavirus/2019-ncov/community/schools-childcare/reopening-schools.html.

all policy considerations for the coming school year should start with a goal of having students physically present in school."[2]

9. The State Defendants also offered the declaration of Paul Peterson, a Professor of Government and the Director of the Program on Education Policy and Governance at Harvard University. He explained that: (1) "Numerous studies show that when children lose instructional time, they suffer in ways that linger for a lifetime, including lower enrollment in college and lower lifetime earnings compared to students without losses in instructional time;" (2) "Online learning is no substitute for classroom instruction" particularly for students in low-income areas; (3) "[r]ules and regulations reduce learning" by impacting the quality and efficiency of the learning process; (4) "[c]losing schools damages the social and emotional well-being of children" by increasing their risk to develop depression or other mental health issues that "may last for years;" (5) "[c]losing schools places the physical health of young people at risk" by depriving them of an important vehicle for the delivery of health services and food; (6) "[s]chool closures and online learning widen gaps between advantaged and disadvantaged students;" and

[2] American Academy of Pediatrics. COVID-19 Planning Considerations: Guidance for School Re-entry, June 25, 2020, available at https://services.aap.org/en/pages/2019-novel-coronavirus-covid-19-infections/clinical-guidance/covid-19-planning-considerations-return-to-in-person-education-in-schools/ (hereinafter, "AAP Reopening Guidance").

(7) "[c]losing schools and degrading school quality damage the human capital the country depends upon." [A.109-10].

10. The State Defendants also presented evidence that in-person instruction is essential to the proper reporting and protection of abused and neglected children. [A.102-5].

11. The declaration of Victoria Gaitanis, the Senior Director for Dispute Resolution and Monitoring within the Florida Department of Education's Bureau of Exceptional Education and Student Services explained that brick-and-mortar schools are essential for students with disabilities who rely on in-person instruction for access to vital speech, occupational, and physical therapy, as well as for students with emotional and behavioral disorders, for whom classroom instruction can provide more effective intervention and treatment. [A.89-94].

12. By contrast, Plaintiffs presented testimony or offered declarations only from eight teachers and staff, who expressed their personal concerns about returning to school for health reasons, or who have chosen not to return. One Plaintiff, Kathryn Hammond, admitted that she had recently been provided with an accommodation to teach remotely (rendering her concerns moot). [A.95].

13. But no evidence was offered to support Plaintiffs' central contention that school boards and districts are being "coerced" into reopening schools for in-person instruction; indeed, no school district appeared, testified, or submitted any

declaration in its official capacity. Plaintiffs offered only the testimony of Tamara Shamburger, an individual school-board member in Hillsborough County, where none of the named Plaintiffs reside or are employed, and where the DOE approved the reopening plan submitted by the local board. The Hillsborough County board of education did not file suit against the DOE for coercion; it did not raise any safety concerns with the DOE; and it did not seek to implement a new plan. And while several teachers from various school districts testified that they are being asked to return to school, there is no evidence in the record that the school boards in any of those districts would have done anything different in the absence of the Emergency Order or that they were "coerced" in any way by the State Defendants.

14. On August 24, 2020, the circuit court issued a preliminary injunction order striking selected parts of Emergency Order 2020-EO-06 as arbitrary and capricious and severing the remainder for ongoing application. The resulting blue-penciled order waives various pre-existing funding statutes and guarantees additional flexible funding to school districts regardless of their (now-approved) reopening plans.

15. On August 24, 2020, State Defendants appealed from the circuit court's order to this Court. The appeal of the order triggered an automatic stay of the trial court's order under Rule. 9.310(b)(2).

16. On August 27, 2020, the circuit court vacated the automatic stay on the ground that "local schools districts [should] be given authority under their individual circumstances to open or close the local schools, based on local conditions," and apparently on the mistaken belief that the Emergency Order as issued did not permit local school boards "to determine whether it is safe to" reopen their local schools. (Aug. 27, 2020 Order 2, 3.)

ARGUMENT

The trial court's decision to vacate the automatic stay imposed by Rule 9.310(b)(2) should be reversed and the automatic stay reinstated.

Automatic stays provided under Rule 9.310(b)(2) are triggered when a governmental entity or officer appeals an adverse judgment. While a trial court may vacate a stay pending an appeal, "it may do so only under the most compelling circumstances." *Fla. Dept. of Health v. People United for Medical Marijuana*, 250 So. 3d 825, 828 (Fla. 1st DCA 2018). In determining whether to vacate an automatic stay, courts must consider: (1) the government's likelihood of success on appeal, and (2) the likelihood of irreparable harm if the automatic stay is reinstated. *Id.* But the showing necessary to lift the automatic stay pending review is necessarily greater than the showing necessary to obtain a preliminary injunction.

Indeed, Plaintiffs must show that "the equities are *overwhelming*[*ly*] tilted against maintaining the stay." *Fla. Dept. of Health*, 250 So. 3d at 828 (emphasis added). "[T]he burden is on the party . . . seeking to vacate the automatic stay to establish an evidentiary basis for the existence of such 'compelling circumstances.'" *Dep't of Envtl. Prot. v. Pringle*, 707 So. 2d 387, 390 (Fla. 1st DCA 1998) (*quoting St. Lucie Cty.*, 444 So. 2d at 1135), *vacated on other grounds*, 743 So. 2d 1189 (1999). Because Plaintiffs cannot meet this high standard, the Court should reinstate the automatic stay.

I. THERE ARE NO COMPELLING CIRCUMSTANCES THAT JUSTIFY VACATING THE AUTOMATIC STAY

No compelling circumstances justify overturning the automatic stay pending review, which was self-evidently designed for cases like this one. As this Court has recognized, "[t]he purpose of the automatic stay provision triggered when a government entity or officer appeals an adverse judgment is to accord judicial deference to governmental decisions." *Fla. Dep't of Health*, 250 So. 3d at 828. The automatic stay also protects the general public, who might be harmed by the erroneous ruling of the trial court pending the outcome of the appeal. *See St. Lucie Cty. v. N. Palm Dev. Corp.*, 444 So. 2d 1133, 1135 (Fla. 4th DCA 1984) (stating the reason for the automatic stay "involves the fact that planning-level decisions are made in the public interest[, and] . . . any adverse consequences realized from proceeding under an erroneous judgment harm the public generally").

As an initial matter, lifting the automatic stay interferes with the Governor's plenary power to respond to emergencies in the State of Florida. Article IV, section 1(a) of the Florida Constitution vests the Governor with "[t]he supreme executive power" and the duty to "take care that the laws [of Florida] be faithfully executed." This is a broad grant of constitutional authority to the Governor, as the chief executive, to act for the benefit of the State of Florida. Section 252.36(1)(a) of the Florida Statutes provides that "[t]he Governor is responsible for meeting the dangers presented to this state and its people by emergencies." Thus, under his authority, the Governor may "issue executive orders, proclamations and rules . . . [that] shall have the force and effect of law." § 252.36(1)(b), Fla. Stat. This emergency power includes the authority to suspend the provisions of any regulatory statute if necessary to cope with an emergency. *Id.* § 252.36(5)(a). Under his authority, the Governor is authorized to delegate his emergency powers at his discretion, as he has done so here to the Commissioner of Education. *See id.* § 252.36(1)(a). The constitutional separation of powers is strictly construed in Florida, and it has been described by the Florida Supreme Court as the "cornerstone of American democracy." *Corcoran v. Geffin*, 250 So. 3d 779, 783 (Fla. 1st DCA 2018) (quoting *Bush v. Schiavo*, 885 So. 2d 321, 329 (Fla. 2004). The principal has even more significance during an emergency like the COVID-19 pandemic. "Courts should be loath to intrude on the powers and prerogatives of the

other branches of government," and should not overturn (or blue-pencil) executive orders in an emergency except upon a showing of the most compelling circumstances. *Orr v. Trask*, 464 So.2d 131,135 (Fla. 1985).

The circuit court's vacation of the automatic stay here ignores not only the constitutional separation of powers but also the judicial deference routinely provided to governmental decisions while those decisions are the subject of a pending appeal. The Emergency Order reflects a policy decision in the context of a public-health emergency to condition additional state funding—which local school districts would not have otherwise received under Florida's preexisting funding system—on the development of plans that included an option for in-person instruction during the 2020-2021 academic year—all "subject to the advice and orders of the Florida Department of Health [and] local departments of health" (Emergency Order § I.a), [A.12-13]. That decision was made over the course of several months, after involving numerous education stakeholders, and should not be cast aside during this pending appeal. *See Sch. Bd. of Collier Cty. v. Fla. Dep't of Educ.*, 279 So. 3d 281, 291 (Fla. 1st DCA 2019) ("[T]he trial court reasoned in part that the school boards failed to explain how the Florida Constitution could preclude the State from imposing conditions on . . . [funds raised with state] authorization. The school boards have failed to show any error on the trial court's part."), *review denied*, No. SC19-1649, 2020 WL 1685138 (Fla. Apr. 7, 2020); *cf.*

id. at 292 ("The Florida Constitution therefore creates a hierarchy under which a school board has local control, but the State Board supervises the system as a whole. This broader supervisory authority may at times infringe on a school board's local powers, but such infringement is expressly contemplated—and in fact encouraged by the very nature of supervision—by the Florida Constitution." (quoting *Sch. Bd. of Palm Beach Cnty. v. Fla. Charter Educ. Found. Inc.*, 213 So. 3d 356, 360 (Fla. 4th DCA 2017)).

By contrast, the trial court's order imposing the injunction and vacating the stay was based on a two-day evidentiary hearing, a limited record and an expedited schedule where the State Defendants briefed dozens of arguments involving complex constitutional issues, standing, and separation of powers in the context of an emergency order potentially impacting over one million Florida students. The circuit court's own judgment regarding "the good and bad features of the [Emergency] Order" (Aug. 24, 2020 Order 14) should not replace the careful public-policy judgment of the DOE while the injunction order is on appeal.

Second, vacating the automatic stay will threaten the *public* with irreparable harm. Less than a week has passed since the injunction hearing. Since then, schools have continued to reopen (for a mix of in-person and remote instruction), and no school board has come forward complaining to the DOE or any court about "coercion." But without the benefit of the automatic stay pending review, many of

the 711,000 Florida students currently attending brick-and-mortar schools will face uncertainty as Plaintiffs (led by the Florida Education Association and individual teachers employed by local school boards) push to limit in-person instruction throughout the state. [A.157-158]. Tens of thousands of Florida families who are not parties to this case might need to quickly line up day care, renegotiate work schedules, or alter their daily lives for an injunction that the State Defendants expect to be overturned on appeal. [A.159].

Vacating the automatic stay will disrupt months of careful planning by local school districts and undermine the DOE's ability to exercise its constitutional and statutory authority to supervise the statewide system of public schools. For example, despite the Emergency Order's reference to "the advice and orders of the Florida Department of Health [and] local departments of health" (Emergency Order § I.a), [A.12-13], the circuit court's injunction order discusses an unrelated 5% COVID-19 positivity standard and other potential guidelines from various other sources that may only create confusion and disorder. This sort of uncertainty is what the automatic stay provided by Rule 9.310(b)(2) was designed to avoid. *See Fla. Dept. of Health*, 250 So. 3d at 829 (finding that it was an abuse of discretion to vacate the automatic stay where "[a]ppellees . . . failed to demonstrate that they will suffer irreparable harm if the automatic stay is reinstated" particularly as "reinstating the automatic stay will maintain the status quo pending appeal").

II. PLAINTIFFS WILL NOT BE IRREPARABLY HARMED IF THE AUTOMATIC STAY IS REINSTATED

Plaintiffs will not be irreparably harmed if the automatic stay is reinstated because the trial court's injunction order does not give them the relief they seek in the first place. This case is ultimately a dispute about the working and classroom conditions at public schools operated by Florida's 67 local school districts. Yet none of those school districts or local boards that oversee them are parties to this case. Nothing in the trial court's order requires any school district to operate their schools any differently, to change the classroom assignments, or to alter the working conditions for any of their teachers or students.

While Plaintiffs express concern about returning to in-person classes, nothing about the circuit court's order will redress that concern. School districts are still free to offer options for in-person instruction and many indisputably will. Even under Plaintiffs' reading of the Emergency Order, school districts could have waited until August 31, 2020 to reopen for in-person instruction, but many of them chose to reopen sooner. Nothing in the circuit court's order closes schools or otherwise "protects" Plaintiffs from the risks that they associate with in-person classroom instruction.

To be sure, the mere possibility that the school boards, non-parties to this case, may or may not take actions that may or may not remedy Plaintiffs' claimed harm does not meet the high burden required to lift the automatic stay. As a rule,

"[i]njunctions must be specifically tailored to each case and they must not infringe upon conduct that does not produce the harm sought to be avoided." *Angelino v. Santa Barbara Enters., LLC*, 2 So. 3d 1100, 1104 (Fla. 3d DCA 2009), *quoted with approval in Eadgear, Inc. v. Baca*, 93. So. 3d 1246, 1247 (Fla. 1st DCA 2012). That limitation is especially important in the context of a preliminary injunction against the state regarding a requirement to adopt local plans that have already been approved for the current school year, and pursuant to which hundreds of thousands of students are receiving in-person instruction.

Even accepting the premise that there is a threat of irreparable injury if local school districts were to require (or continue to require) in-person instruction, there is no reason to lift the automatic stay when the injunction at issue does not prevent the school districts from offering in-person instruction.

III. STATE DEFENDANTS HAVE A HIGH LIKELIHOOD OF SUCCESS ON APPEAL

Finally, State Defendants' high likelihood of success on appeal also weighs in favor of reinstating the automatic stay. To obtain an injunction, Plaintiffs were required to establish (1) the likelihood of irreparable harm, (2) the unavailability of an adequate remedy at law, (3) a substantial likelihood of success on the merits, and (4) that the public interest supports the injunction. *Id*. Failure to prove any of these requirements is fatal. *State Dep't of Health v. Bayfront HMA Med. Ctr., LLC*, 236 So. 3d 466, 472 (Fla. 1st DCA 2018), *reh'g denied* (Feb. 21, 2018). While

Plaintiffs failed to establish any of these elements, there are four reasons why State Defendants have a particularly high likelihood of success on appeal.

First, Plaintiffs have not met their burden to show that the Emergency Order threatens the safety and security of the education system, violates the mandates of Article IX, or is "arbitrary and capricious." Plaintiffs' were required "to prove beyond a reasonable doubt that the State's education policies . . . were not rationally related to the provision 'by law' for a 'uniform, efficient, safe, secure, and high quality system of free public schools that allows students to obtain a high quality education." *Citizens for Strong Schools, Inc. v. Fla. State Bd. of Educ.*, 232 So. 3d 1163, 1172 n.5 (Fla. 1st DCA 2017). This standard is entirely appropriate, particularly because "[a]s a general rule, courts may not reweigh the competing policy concerns underlying a legislative enactment." *Sch. Bd. of Collier Cty. v. Fla. Dept. of Educ.*, 279 So. 3d 281, 290 (Fla. 1st DCA 2019). There is also a presumption in favor of the constitutionality of such enactments. *See Crist v. Fla. Ass'n of Criminal Defense Lawyers, Inc.*, 978 So. 2d 134, 139 (Fla. 2008). This is especially true when the government is acting in the context of a public-health emergency.

The State Defendants' undisputed evidence established that school children can suffer physiologically, emotionally, and educationally when they cannot attend school in-person. At the same time, *no* student is *obligated* to return to school for

in-person instruction under any plan submitted and approved under the Emergency Order. That is why the Emergency Order balances both the benefits of in-person instruction and additional funding and flexibility to provide virtual learning opportunities for Florida's students. The evidence on the record demonstrates there is no bright-line litmus test for reopening schools under these unprecedented circumstances, regardless of what Plaintiffs or the trial court might believe. Indeed, a bright-line approach is inconsistent with virtually all available guidance regarding the reopening of schools from the CDC, the American Academy of Pediatrics, and others.

Given the great deference afforded to the executive and legislative branches of government, *Citizens for Strong Schs.*, 232 So. 3d at 1165–66, and in light of the emergency and unprecedented nature of the COVID-19 pandemic, the circuit court not only erred in failing to defer to the DOE and finding the Emergency Order unconstitutional, but it also improperly intruded into a policy judgment of the executive branch and violated the separation of powers. Art. II, § 3, Fla. Const. ("[n]o person belonging to one branch shall exercise any powers appertaining to either of the other branches unless expressly provided herein."); *Citizens for Strong Schs.*, 232 So. 3d at 1171 ("Absent explicit constitutional authority to the contrary, the legislative and executive branches possess exclusive jurisdiction in [educational policy choices and their implementation] . . . .").

Second, Plaintiffs do not have standing for the relief they seek. "[S]tanding is a threshold issue which must be resolved before reaching the merits of a case." *Solares v. City of Miami*, 166 So. 3d 887, 888 (Fla. 3d DCA 2015). To have standing, a party must have a sufficient stake in a justiciable controversy, with a legally cognizable interest which would be affected by the outcome of the litigation. *Nedeau v. Gallagher*, 851 So. 2d 214, 215–16 (Fla. 1st DCA 2003) (citing *Peregood v. Cosmides*, 663 So.2d 665 (Fla. 5th DCA 1995) and *Equity Resources, Inc. v. County of Leon*, 643 So.2d 1112 (Fla. 1st DCA 1994)).

Plaintiffs seek two forms of relief, neither of which are legally cognizable as to them. As explained above, no school board was present, testified, or submitted any declaration in an official capacity in this case. The Emergency Order is a proper exercise of the State Defendants' constitutional authority, which includes the ability to impose conditions on state funding and create "strong incentives and disincentives to force accountability for results." Fla. Stat. § 1000.03(2)(b); see also Art. IX, § 1, Fla. Const. Plaintiffs presented evidence that a handful of teachers are being asked to return to school but presented no evidence that their requested relief (much less the injunction actually issued by the circuit court) would redress those supposed injuries. Indeed, as explained above, their requested relief does not prevent teachers from being required to teach in-person. As a result, Plaintiffs lack standing to bring this action.

Third, Plaintiffs have not shown a likelihood of irreparable harm. No irreparable harm is visited upon any student or parent because under any plan submitted under the Emergency Order, they have no obligation to go to school and can choose multiple remote learning options. For those that choose to return, the guidelines and support offered by the DOE have translated into robust reopening plans that mitigate the risk of transmission, while acknowledging that "no single action or set of actions will completely eliminate the risk of SARS-CoV-2 transmission."[3]

Plaintiffs also cannot meet their burden of establishing irreparable harm for teachers because although some teachers may be asked by some districts to return to school in person, they are not compelled to do so. They can choose, for example, to take a leave of absence, to retire early, or to quit. Moreover, teachers and staff contract directly with districts and are subject to collective bargaining agreements that do not involve any of the State Defendants. Those contracts contain grievance procedures through which teachers are required to submit if they wish to contest their working conditions.[4] Plaintiffs here, like all other teachers in Florida, have that very same contractual remedy.

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[3] AAP Reopening Guidance, *supra* note 3.

[4] Indeed, the Orange County Classroom Teachers Association, which is part of Plaintiff FEA, has already filed such a proceeding and is simultaneously seeking identical injunctive relief to prevent Orange County from reopening schools "in

Finally, the circuit court's order vacating the automatic stay and imposing its judicially altered emergency order improperly alters, rather than preserves, the status quo. *Planned Parenthood of Greater Orlando, Inc. v. MMB Props.*, 211 So. 3d 918, 924 (Fla. 2017) ("[T]he purpose of a temporary injunction is to preserve the status quo while final injunctive relief is sought."). The status quo is that an estimated 711,000 Florida students are already attending brick-and-mortar schools. The circuit court's order vacating the stay could suspend those plans, throw the statewide school system into disarray and uncertainty, and could disrupt the education of hundreds of thousands of students indefinitely.

CONCLUSION

For the foregoing reasons, the State Defendants respectfully request this Court reverse the decision of the trial court and reinstate the automatic stay provided under Rule 9.310.

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violation of the parties' Collective Bargaining Agreement." *See Orange County Classroom Teachers Association v. Orange County Public Schools, et al.,* Case No. 2020-CA-007690-O (9th Judicial Circuit, Fla., filed July 30, 2020)

August 27, 2020

Respectfully submitted,

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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served on August 27, 2020 by email through the Florida Courts E-Filing Portal to the following:

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