

IN THE UNITED STATES DISTRICT COURT
DISTRICT OF SOUTH CAROLINA

Public Interest Legal Foundation, Inc.,

Plaintiff,

vs.

Howard M. Knapp, in his official capacity
as the Executive Director of the South
Carolina State Election Commission,

Defendant.

C/A No. 3:24-cv-1276-JFA

ORDER

This matter is currently before the Court on Defendant Howard M. Knapp, in his official capacity as Executive Director of the South Carolina Election Commission's ("SEC")¹, motion for "stay of judgment pending consideration of motion to alter or amend and, if warranted, appeal." (ECF No. 44). This motion has been fully briefed and is therefore ripe for review. The reasons stated below, the motion is granted.

I. FACTUAL AND PROCEDURAL HISTORY

This declaratory judgment action concerns the issue of whether the SEC must turn over a copy of the Statewide Voter Registration List to the Public Interest Legal Foundation ("PILF") pursuant to the National Voter Registration Act ("NVRA"). The Court ultimately granted PILF's motion for summary judgment and held that the South Carolina Statewide Voter Registration List is a record subject to inspection pursuant to the NVRA, and that

¹ Howard Knapp is the executive Director of the SEC. Because he has been named only in his official capacity, the court will refer to the defendant as the SEC.

the NVRA preempts any South Carolina law limiting access to the Statewide Voter Registration List to South Carolina registered voters. (ECF No. 38). The SEC's cross-motion for summary judgment was consequently denied.

Thereafter, the SEC moved to alter or amend the order and contemporaneously filed this motion to stay the judgment pending the outcome of the motion to amend or a possible appeal. Since then, the motion to alter or amend has been denied. Therefore, the Court will adjudicate the SEC's requests as a motion for stay pending appeal.

II. LEGAL STANDARD

In determining whether to stay a case pending appeal, courts consider four factors: “(1) whether the stay applicant has made a strong showing that he is likely to succeed on the merits; (2) whether the applicant will be irreparably injured absent a stay; (3) whether issuance of the stay will substantially injure the other parties interested in the proceeding; and (4) where the public interest lies.” *Hilton v. Braunskill*, 481 U.S. 770, 776 (1987). The irreparable harm to the Plaintiff and the harm to the Defendant are the two most important factors. *Hodges v. Shalala*, 127 F. Supp. 2d 790, 792 (D.S.C. 2001); *see also Fort Sumter Tours, Inc. v. Andrus*, 564 F.2d 1119, 1124 (4th Cir. 1977).

III. DISCUSSION

As an initial matter, the SEC's motion to alter or amend has since been denied. Accordingly, a stay pending the outcome of that motion is no longer warranted. The only

remaining question is whether a stay of the judgment should be entered pending the outcome of a yet-to-be noticed appeal. Each of the applicable factors is addressed below.

The first factor—likelihood of success on the merits—weighs against a stay. As the SEC points out, there is little guidance on these South Carolina specific issues within the Fourth Circuit. However, what guidance does exist, runs contrary to SEC’s position. As stated in the Court’s prior order, the “Fourth Circuit opinion leaves little, if any, doubt that the NVRA applies equally to the records sought here” and the “weight of authority surrounding the NVRA supports this conclusion.” (ECF No. 38, p. 9). Thus, the SEC has not made a strong showing of success on the merits.

However, the remaining factors favor a stay. As argued by the SEC, there is a great disparity between the potential harms to parties. As to the SEC, failure to issue a stay could potentially moot the appeal entirely. If the SEC is forced to turn over the records now, there will be no further issues to litigate as the cat will be out of the proverbial bag. Accordingly, the potential harm to the SEC is great and a stay of the judgment is the only way to ensure that the SEC will be afforded the opportunity for review. Conversely, any harm to PILF caused by a stay would be slight. PILF would only suffer the minor inconvenience of waiting a short time longer to receive a copy of the Statewide Voter Registration List.

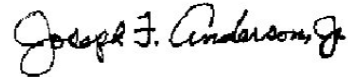
The final factor of public interest likewise favors a stay. Here, PILF is requesting personal information concerning millions of South Carolina registered voters. This Court’s decision will likely heighten the degree of exposure of this information by making it available to broader group of requesters. Accordingly, public interest favors a stay.

IV. CONCLUSION

As stated above, the majority of factors weighs in favor of a stay of this Court's judgment. Therefore, the SEC's motion (ECF No. 44) is granted, and the Order and Judgment are stayed pending an appeal.

IT IS SO ORDERED.

January 7, 2025
Columbia, South Carolina



Joseph F. Anderson, Jr.
United States District Judge