

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Laura Boustani, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	Judge Christopher Boyko
v.)	
)	Case No. 1:06-2065
J. Kenneth Blackwell,)	
)	
Defendant.)	
)	
)	

**PLAINTIFFS' OPPOSITION TO DEFENDANT SECRETARY OF STATE
BLACKWELL'S MOTION FOR ENLARGEMENT OF TIME OF FOUR DAYS TO
RESPOND TO PLAINTIFFS' MOTION FOR A PRELIMINARY INJUNCTION**

Plaintiffs—all naturalized American citizens who hope to vote unimpeded in the November 7, 2006 election and beyond—respectfully but strongly oppose Defendant Secretary of State J. Kenneth Blackwell's eleventh-hour motion for still more time to file a response to the motion for preliminary injunction. The motion not only violates an express scheduling agreement of the parties and this Court's order, but it makes no sense given the issues in this case, the need for swift resolution, and the Secretary of State's own publicly professed position on the litigation.

1.

The parties stipulated to, and the Court ordered, the current schedule out of fairness to the parties and to brief the Court timely before the October 4 hearing—which is essential to this case being timely resolved.

The undersigned counsel are in the professional habit of granting courtesy extensions to opposing counsel who ask for them. Here, however, the parties had *already* agreed to an earlier extension for the Secretary of State and to a briefing schedule that this Court then ordered. The Secretary of State's counsel had asked Plaintiffs' counsel for a ten-day extension until September 28 to file a response to the complaint (originally due on September 18). Plaintiffs' counsel stipulated to a schedule that would accommodate defense counsel on the express condition that the Secretary of State agree to file his response to the preliminary-injunction motion (originally due September 12) no later than the same day as the answer, giving Plaintiffs several days to reply, with a hearing to follow shortly thereafter. Under the stipulated briefing schedule, the Secretary of State has already received sixteen extra days to file a response to Plaintiffs' preliminary-injunction motion.¹

The stipulated and ordered briefing schedule would have allowed Plaintiffs enough time to craft and file by October 2 a thoughtful reply brief helpful to this Court prior to the October 4 preliminary-injunction hearing. Now the Secretary of State, having had since August 30 to consider the issues in this case, seeks the Court's blessing to renege on his commitment and drop an opposition brief on Plaintiffs on October 2, the same day Plaintiffs are to reply. It is critical that the October 4 hearing date go forward so that naturalized American citizens across Ohio have this Court's decision about whether poll workers can really single them out by demanding naturalization certificates. Plaintiffs should not now be penalized because the Secretary of State is unable to timely articulate where he stands on discrimination against naturalized citizens.

¹ See L.R. 7.1(d).

2.

The Secretary of State does not need the extra time; it should not be that complicated for him to decide whether he stands for or against the discrimination against naturalized citizens that Section 3505.20 expressly permits.

The Secretary of State's request for an enlargement of time is even more baffling given the fact that the case is not that complicated. The statute at issue, Ohio Revised Code Section 3505.20, is concise. It expressly provides that naturalized American citizens can be treated differently than other citizens at the polls. Under this statute, grandparents who immigrated decades ago can be treated differently at the polls than their native-born children and grandchildren, even though all are American citizens. Either the Secretary of State agrees that treating naturalized American citizens differently than non-naturalized citizens is unconstitutional or he does not. Either the Secretary of State wishes to follow the Supreme Court precedent that holds that naturalized citizens should not be treated as second-class citizens, or he does not. If he does, he could just enter into a simple consent judgment agreeing that the law is unconstitutional, that he will not enforce it, and that he will instruct Ohio's boards of elections not to enforce it—and be done with this case.

3.

The Secretary of State has already publicly claimed that he opposes the discrimination that Section 3505.20 expressly permits, so he does not need extra time to “formulate a viable alternative” to injunctive relief—he just needs to agree to an injunction or let this Court decide the issue.

The fact that the Secretary of State is publicly professing his belief that naturalized citizens should not be treated differently, all the while asking for extensions and dragging out this case is alarming. This Court may note that that the Secretary of State's spokesperson was

quoted in Cleveland's *Plain Dealer* on August 30, 2006, in response to the filing of this suit, as saying, "The secretary of state considers a citizen without distinction," He added, "And we believe this portion of the law is unenforceable. Secretary Blackwell will be asking his attorneys to work toward resolving the matter."² The Associated Press quoted the Secretary of State's representative similarly that same day.³

Yet, instead of filing a simple response with this Court paralleling his public comments and agreeing to a declaration of the unconstitutionality of Section 3505.20, the Secretary of State now seeks to delay so that he can supposedly "formulate a viable alternative" to injunctive relief and a judgment. For Ohio's naturalized American citizens, there is no alternative to a federal-court decision striking down as unconstitutional a law that on its face permits them to be treated differently than their fellow Americans.

The Secretary of State's public protestations that he considers citizens "without distinction" and that Section 3505.20 is "unenforceable," and his claim that he is trying to "formulate a viable alternative," are further belied by the answer to the complaint he filed concurrently with his motion for enlargement of time. There, he repeatedly denies that Section 3505.20 is illegal, and even goes to the extreme of insisting as a novel affirmative defense that this *United States* District Court "lacks jurisdiction" to hear claims under the *United States* Constitution. He also claims as an affirmative defense "laches"—as though naturalized Americans who file a lawsuit in August 2006 over a statute that went into effect in June 2006 should somehow continue to face the prospect of discrimination at the polls because they sat on

² Available at <http://www.cleveland.com/news/plaindealer/index.ssf?/base/cuyahoga/115692696099050.xml&coll=2> (last accessed on Sept. 28, 2006).

³ Available at <http://www.ohio.com/mld/ohio/news/15392340.htm> (last accessed on Sept. 28, 2006).

their rights for too long—a full two months.

4.

Conclusion: the Court should end the games and the delaying tactics and resolve Plaintiffs' concerns about their voting rights.

Since this case was filed, Plaintiffs' counsel have heard from countless similarly situated Ohio voters who are deeply worried and distressed over this law—the only one of its kind in America. Plaintiffs respectfully request that this Court end the games, deny the motion for enlargement of time, and move forward with the October 4 hearing so that Ohio's naturalized citizens can know whether they are at risk of facing discrimination at the polls on November 7 and beyond. Although the Secretary of State has waived his right to file a written response, he can be heard at the October 4 hearing.

Respectfully submitted,

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Certificate of Service

This is to certify that a copy of the foregoing was served upon all counsel of record via electronic filing on this 29th day of September, 2006.

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