

**In The United States District Court
For The Northern District Of Ohio
Western Division**

League of Women Voters of Ohio, *et al.*,

Plaintiffs,

vs.

Case No. 3:05-CV-7309

J. Kenneth Blackwell, *et al.*,

Judge Carr

Defendants.

**Defendants' Motion to Dismiss
Amended Complaint As Moot**

Defendants J. Kenneth Blackwell and Bob Taft, pursuant to Fed. R. Civ. P. 12(b)(1), ask this Court to issue an order dismissing the complaint of the Plaintiffs. A memorandum in support is attached.

Respectfully submitted,

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/s Richard N. Coglianes
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Memorandum In Support

I. Introduction

On January 31, 2006, Amended Substitute House Bill 3 became law.¹ Most of its provisions will be in effect on May 2, 2006; all of its provisions will be in effect by June 1, 2006; and, as a result, the claims asserted in Amended Complaint are moot.

II. Law And Argument

The Plaintiffs' claims are moot because the conduct they challenge is now prohibited by H.B. 3.

Federal courts are courts of limited jurisdiction, restricted to hearing “cases” or “controversies.” U.S. Const. Art. III § 2; *Allen v. Wright*, 468 U.S. 737, 750 (1984). The mootness doctrine, which is a subset of this “justiciability” requirement, demands that a case present a live case or controversy at *all times* during the pendency of the case. *Burke v. Barnes*, 479 U.S. 361, 363 (1987). The Sixth Circuit has recognized that “the test for mootness is whether the relief sought would, if granted, make a difference to the legal interests of the parties.” *McPherson v. Mich. High Sch. Athletic Ass’n*, 119 F.3d 453, 458 (6th Cir. 1997) (en banc). And, where federal court plaintiffs seek to enjoin state action that has since been prohibited by a state statute – even if the statutory change occurred during *an appeal* of the federal action – a federal injunction would not “make a difference” to their “legal interests.” In *Kentucky Right to Life v. Terry*, 108 F.3d 637 (6th Cir. 1997), the Sixth circuit explained this point:

¹ The full text of the bill is available at http://www.legislature.state.oh.us/BillText126/126_HB_3_EN_N.html.

Legislative repeal or amendment of a challenged statute [even] while a case is pending on appeal usually eliminates this requisite case-or-controversy because a statute must be analyzed by the appellate court in its present form. *See, e.g., Kremens v. Bartley*, 431 U.S. 119, 129, 52 L. Ed. 2d 184, 97 S. Ct. 1709 (1977); *Hall v. Beals*, 396 U.S. 45, 48, 24 L. Ed. 2d 214, 90 S. Ct. 200 (1969). Applying this principle in the First Amendment context, the Supreme Court has routinely declared moot those claims effectively nullified by statutory amendment pending appeal. *Massachusetts v. Oakes*, 491 U.S. 576, 582-84, 105 L. Ed. 2d 493, 109 S. Ct. 2633 (1989); *Bigelow v. Virginia*, 421 U.S. 809, 817-18, 44 L. Ed. 2d 600, 95 S. Ct. 2222 (1975). Both *Oakes* and *Bigelow* involved First Amendment overbreadth challenges implicit as defenses to criminal prosecution. In each case, the Court refused to reach the First Amendment arguments because legislative amendment of the challenged statute while the case was pending rendered the issue moot. *See Bigelow*, 421 U.S. at 817-18; *Oakes*, 491 U.S. at 583-84.

Id. at 644 (emphasis added).

When Ohio enacted H.B. 234 – which allowed voters who had requested absentee ballots to nonetheless cast provisional ballots – the Northern District of Ohio relied on this case law *to amend* a previously issued permanent injunction and to formally declare “moot” the plaintiffs’ claims that the State of Ohio had improperly denied them provisional ballots because they had requested absentee ballots. *See White v. Blackwell*, 2006 U.S. Dist. LEXIS 9059, Case No. 3:04 CV 7689 (N.D. Ohio March 8, 2006); *see also Rios v. Blackwell*, Case No. 3:04-cv-7724 (N.D. Ohio May 1, 2006). Because the plaintiffs in this case seek to enjoin conduct that is now barred by H.B. 3, Defendants ask that this case similarly be declared moot.

The plaintiffs here hope to enjoin what they term “non-uniform, non-standard, and completely deficient voting standards, processes, and resources in Ohio.” *See, e.g., Amended Complaint* (Doc. No. 200) at ¶6. And they say they want the “promulgation and implementation of adequate, uniform rules and procedures to protect the fundamental right to vote in Ohio regardless of the county or precinct in which a voter lives.” *Id.* at ¶11. Though each of the

plaintiffs raises somewhat different issues, as a whole the Amended Complaint asks this Court to order the Defendants:

- To institute a uniform system of registration. *Id.* at ¶¶46-64.
- To ensure that absentee ballots are properly counted. *Id.* at ¶¶65-74.
- To ensure that voters receive accurate information as to the location of their polling places, that those polling places are adequately staffed with trained poll workers and adequately supplied with functioning voting machines, that provisional ballots are properly counted, and that disabled voters be adequately accommodated. *Id.* at ¶¶ 75-143.

H.B. 3 addresses all of those concerns. It institutes a statewide registration system under which (a) voter identification is required with applications for registration and notices of registration specifically inform voters of that requirement – *see* R.C. 3503.11, 3503.14(A) and 3503.19(C)(1); (b) applicants are permitted to register through any board of elections or through the Secretary of State’s office – R.C. 3503.19(B)(2)(a) and (b); (c) voters whose applications are received more than 30 days before an election are assured that they will be registered to vote in that election – R.C. 3503.19(B)(2)(d); (d) voter registration lists are prepared 14 days before each election and are available for public inspection – R.C. 3503.23(A); (e) registration lists are periodically purged of ineligible voters – R.C. 3501.05(Q); (f) a statewide voter registration database is maintained and each board of elections is authorized to modify it – R.C. 3501.05(V), 3503.13(A), 3503.15(A), 3505.15(C), 3505.15(D) and 3505.15(F); (g) voters may search the statewide database – 3505.15(G); (h) disabled voters may, among other things, vote with the assistance of an “attorney in fact” – 3599.13(A)(3); (i) voters who have requested absentee ballots may cast provisional ballots – R.C. 3505.181(A)(5) and 3509.09(B); (j) authorizes 14 separate categories of voters who are eligible for provisional voting – R.C. 3501.05(C), 3501.19(C), 3503.16(B), 3503.19(C), 3503.24(D), 3505.18(A) and 3505.181(A); and (k) every

board of elections is subject to strict guidelines concerning voting machines and the minimum number of direct recording electronic voting machines in a county is further refined – R.C. 3501.11, 3506.01, 3506.05, 3506.18, 3506.22 and 3506.23.²

Whatever else might be said about this case, this much is certain: H.B. 3 addresses the very issues as to which the plaintiffs seek a federal court injunction, and it implements “uniform rules and procedures to protect the fundamental right to vote in Ohio regardless of the county or precinct in which a voter lives.” *See* Amended Complaint at ¶11.

III. Conclusion

For the foregoing reasons, Defendants ask that the plaintiffs’ Amended Complaint be dismissed as moot.

Respectfully submitted,

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² Amended Substitute House Bill 66, enacted by the 126th General Assembly also addresses that issue. *See* R.C. 3506.22.

Certificate of Service

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 1st day of May, 2006.

/s Richard N. Coglianes
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