

First, House Bill 3 does not address the recount procedures which occupy much of the Complaint filed by plaintiffs. Defendant Secretary of State Blackwell used exactly the same recount procedures in 2005 that existed in 2004. This Court is well-aware of the problems that resulted there, and nowhere do defendants indicate any changes in those procedures. Since House Bill 3 does not address this issue, it would appear reasonable to conclude the same procedures would be used in 2008. Plaintiffs do not want a repeat of what occurred in 2004 when the next Presidential Election occurs. It is for that reason that this case is susceptible of repetition and effectively evading the review.

Nor does the Eleventh Amendment enter into this case at all. Declaratory and injunctive relief is sought, not damage award. The law of Sixth Circuit is consistent and follows the teaching of *Ex Parte Young*, 209 U.S. 123 (1908). Declaratory and injunctive relief are not foreclosed by the Eleventh Amendment. *Telespectrum, Inc. v. Public Service Commission of Kentucky, et al.*, 227 F.3d 414 (6th Cir. 2000) and *Doe v. Wigginton, et al.*, 21 F.3d 733 (6th Cir. 1994); see also *Uttilla, et al. v. The Tennessee Highway Department*, 208 F.3d 216 (6th Cir. 2000) [unpublished].

For reasons set forth previously by plaintiffs and for the reasons set forth here, the Court is asked to alter or amend its Order of February 7, 2006.

Dated: March 27, 2006

Respectfully submitted,

/s/ Richard M. Kerger

Richard M. Kerger (0015864)

KERGER & ASSOCIATES

33 S. Michigan Street, Suite 100

Toledo, OH 43602

Telephone: (419) 255-5990

Fax: (419) 255-5997

John C. Bonifaz, admitted *pro hac vice*
National Voting Rights Institute
27 School Street, Suite 500
Boston, MA 02108
Telephone: (617) 624-3900
Fax: (617) 624-3911

Counsel for Plaintiffs

CERTIFICATE OF SERVICE

This is to certify that on this 27th day of March, 2006 this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Richard M. Kerger