

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

KING LINCOLN BRONZEVILLE	:	Case No. C2 06 745
NEIGHBORHOOD ASSOCIATION, et al.,	:	
	:	JUDGE ALGENON L. MARBLEY
Plaintiffs,	:	
v.	:	MAGISTRATE JUDGE KEMP
	:	
J. KENNETH BLACKWELL, et al.,	:	
	:	
Defendants.	:	

**MOTION OF DEFENDANT J. KENNETH BLACKWELL,
SECRETARY OF THE STATE OF OHIO,
TO DISMISS PLAINTIFFS’ AMENDED COMPLAINT AS MOOT**

Now comes Defendant, J. Kenneth Blackwell, Secretary of the State of Ohio, by and through counsel, and requests this Honorable Court to dismiss Plaintiffs’ Amended Complaint as all issues contained therein have been rendered moot. A Memorandum in Support is attached hereto and incorporated by reference.

Respectfully submitted,

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ATTORNEY GENERAL OF OHIO**

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MEMORANDUM IN SUPPORT

I. INTRODUCTION.

Plaintiffs filed their Amended Complaint in this matter on or about October 9, 2006. The main thrust of the Complaint relates to the conduct of the 2004 Election in the State of Ohio. The Complaint also contains a challenge to the Ohio Voter Identification laws passed by the Ohio General Assembly. Plaintiffs specifically allege that all Defendants engaged in a conspiracy to deprive the Plaintiffs of their right to vote. See, generally, Amended Complaint.

Since there is no way to remedy any alleged irregularities with the 2004 Election and since as of January 2007, J. Kenneth Blackwell will no longer be the Secretary of the State of Ohio, all issues raised as against Defendant Blackwell in Plaintiffs' Amended Complaint are moot and must be dismissed.

II. PLAINTIFFS' AMENDED COMPLAINT.

As stated above, Plaintiffs have sued several state and local Elections Officials as well as the Ohio Republican Party and the Chair of the Ohio Republican Party, alleging a conspiracy to deprive

Plaintiffs of their right to vote. Specifically as to Defendant Blackwell, Plaintiffs have alleged as follows:

1. Engaged and directed others to engage and neglected to ensure proper election procedures were followed. (Plaintiffs' Amended Complaint, ¶ 14).
2. Absentee ballots for Pike County were counted twice by Secretary of State's Office. (*Id.* ¶ 53).
3. Provisional ballot rules narrowed to limit where and how provisional ballots could be cast to discriminate against minorities. (*Id.*, ¶ 72).
4. Re: HAVA, adopted a "harshly restrictive interpretation" in Directive 2004-43 to suppress urban and minority voters. (*Id.*, ¶ 73).
5. Re: HAVA, issued conflicting directives re: whether provisional votes would be counted. (*Id.*, ¶ 74).
6. Attempted to impose a requirement that valid registrations must be on 80 lb. card stock. (*Id.*, ¶ 75).
7. Caused higher provisional voting and higher rejection of provisional votes than Florida. (*Id.*, ¶ 76).
8. Because of provisional ballot rules – caused delays and long lines at polls. (*Id.*, ¶ 77).
9. Failed to distribute paper ballots in Franklin County creating long lines and vote suppression when machines failed. (*Id.*, ¶ 78).
10. Failed to distribute paper ballots in Knox County creating long lines and vote suppression when machines failed. (*Id.*, ¶ 79).
11. Delayed scheduling recount and allowed selection of ballots for recount by non-random methods. (*Id.*, ¶ 81).
12. Failed to review, investigate or answer inquiries re: irregular voting statistics from 2004 election. (*Id.*, ¶ 87).
13. Failed in his statutory duties and deprived Plaintiffs of fair and honest government. (*Id.*, ¶ 229).

Obviously, all of these alleged actions relate to the conduct of the 2004 Presidential Election.

Plaintiffs go on to request relief in regard to Defendant Blackwell as follows:

1. Plaintiffs request permanent injunction against Defendant Blackwell. (Plaintiffs' Amended Complaint, ¶ 236).
 - A. To force implementation of security and audit procedures for voting machines for checking electronic and paper correlation.
 - B. Implement a bar code system by which optical scan machines would distinguish between regular and absentee ballots.
 - C. Allow those who want to use paper ballots.
 - D. Evaluate election practices.
 - E. Appoint special master to hear emergency motions.
2. Plaintiffs further request that Defendant Blackwell be enjoined from enforcing the voter I.D. law. recently passed by the Ohio Legislature, H.B. 3. (*Id.*, ¶ 237).

III. LAW AND ARGUMENT.

“Mootness is determined by examining whether an actual controversy between the parties exists in light of intervening circumstances.” *WJW-TV, Inc. v. City of Cleveland*, 878 F2d 906, 908 (6th Cir. 1989). “Mootness results when events occur during the pendency of the litigation which render the court unable to grant the requested relief.” *Carras v. Williams*, 807 F2d 1286, 1289 (6th Cir. 1986).

Mootness is a jurisdictional matter and may be raised at any time during the course of litigation. *International Union v. Dana Corp.*, 697 F.2d 718, 720 (6th Cir. 1983). “The court may not render an advisory opinion; it is confined to ‘real and substantial controversies admitting of specific relief through a decree of a conclusive character’” *Id.* at 720 (quoting *North Carolina v. Rice*, 404 U.S. 244, 246; 92 S. Ct. 402 (1971)).

In the present case, it must be noted that while the majority of Plaintiffs' allegations relate to the conduct of the 2004 Presidential Election, Plaintiffs allege that a conspiracy is ongoing and capable of repetition in the future. Specifically, Plaintiffs request injunctive relief from this Court to direct Secretary Blackwell to act in a specific fashion in his capacity as Ohio Secretary of State (See Amended Complaint, ¶ 236). There appears to be no issue that all alleged irregularities regarding the 2004 Election are moot. There is simply no fashion by which Plaintiffs could "go back in time" and alter the outcome of the 2004 Presidential Election.

In regard to the prospective relief requested by the Plaintiffs, entering an injunction against Defendant Blackwell as Secretary of the State of Ohio and enjoining enforcement by Defendant Blackwell as Secretary of the State of Ohio of the voter identification provisions of H.B. 3, these issues are also moot. This Court can take judicial notice of the fact that J. Kenneth Blackwell did not run for re-election to the Office of Secretary of the State of Ohio, and commencing in January of 2007 Defendant Blackwell will no longer be Secretary of the State of Ohio. Since Defendant Blackwell will no longer be the Secretary of the State of Ohio, any request by Plaintiffs that this Court enter injunctions against him directing him as to the application and administration of Ohio Election laws is moot. This Court's entry of any orders or injunctions as to Defendant Blackwell will have no effect, whatsoever, as he will no longer be Secretary of the State of Ohio. There is simply no better example of an issue becoming moot¹.

In addition, there certainly was no evidence of any conspiracy or intentional voter disenfranchisement during the conduct of the 2006 Election. Plaintiffs would certainly be hard

¹ Judging by Plaintiffs' allegations, it seems unlikely that Plaintiffs will seek to substitute as a defendant the new Ohio Secretary of State, Jennifer Brunner, a democrat.

pressed to make any such argument. Therefore, their allegations of an ongoing conspiracy to disenfranchise minority voters have already been proven to be untrue.

Since all of the issues raised in Plaintiffs' Amended Complaint have, as of this point, been rendered moot, Defendant J. Kenneth Blackwell, Secretary of the State of Ohio, respectfully requests this Court to dismiss all allegations against him in their entirety.

WHEREFORE, Defendant J. Kenneth Blackwell, Secretary of the State of Ohio, respectfully requests this Honorable Court to grant his Motion to Dismiss Plaintiffs' Amended Complaint as moot.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon all counsel of record via the Court's electronic filing system on December 11, 2006.

/S/ Larry H. James

Larry H. James (0021773)