

**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 Stay Discovery

Defendants J. Kenneth Blackwell and Bob Taft ask this Court, pursuant to its inherent power and the Eleventh Amendment to the United States Constitution, to stay all discovery pending the outcome of the supplemental motion to dismiss. A memorandum in support is attached.

Respectfully submitted,

Jim Petro
Attorney General

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Memorandum In Support

On November 14, 2005, the Defendants filed a motion for leave to file a supplemental motion to dismiss *instanter*. The supplemental defense, raised in that motion, is Eleventh Amendment immunity.

The Eleventh Amendment prohibits a Court from exercising jurisdiction over a State or its officers absent very specific exceptions. *See, e.g., Kimel v. Florida Board of Regents*, 528 U.S. 62 (2000). In the context of qualified immunity or absolute immunity privileges under 42 U.S.C. § 1983, the Supreme Court has recognized that pretrial matters such as discovery should be stayed if possible as “inquiries of this kind can be peculiarly disruptive of effective government.” *Harlow v. Fitzgerald*, 457 U.S. 800, 817 (1982).

The same rationale holds true for Eleventh Amendment immunity. In fact, this Court has already stayed discovery in the *Rios v. Blackwell* case pending the outcome of the State’s motion to dismiss premised, which was also premised upon Eleventh Amendment immunity. Thus, in order to protect the State’s constitutional right to avoid litigation in federal court, this Court should stay discovery pending the determination of the Taft’s and Blackwell’s supplemental motion to dismiss.

Respectfully submitted,

Jim Petro
Attorney General

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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 14th day of November, 2005.

/s Richard N. Coglianesi