

**IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION**

LEAGUE OF WOMEN VOTERS, ET AL., :
PLAINTIFFS, :
VS. :
J. KENNETH BLACKWELL, ET AL., :
Defendants. :
CASE NO. 3:05-CV-7309
JUDGE CARR

DEFENDANTS' MOTION TO STAY DISCOVERY

Defendants J. Kenneth Blackwell and Bob Taft ask this Court to issue an order staying all discovery pending the outcome of the Defendants' motion to dismiss. The Defendants will file a motion to dismiss pursuant to Fed. R. Civ. P. 12(b)(1) and (6) within the timeframe permitted by the Rules. The Defendants will be raising, as a defense, Sovereign 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. That motion was premised, in part, upon the Defendant’s entitlement to Sovereign Immunity. In order to protect the Defendants’ constitutional right to avoid litigation in federal court, this Court should stay discovery pending the determination of the Taft’s and Blackwell’s motion to dismiss the Amended Complaint.

Respectfully submitted,

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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 1st day of December, 2005.

/s Richard N. Coglianesi
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Deputy Attorney General