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KS. DISTRICT COURT
THIRD JUDICIAL DIST.
TOPEKA, KS

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IN THE DISTRICT COURT OF SHAWNEE COUNTY, KANSAS
DIVISION SEVEN

Aaron Belenky, Scott Jones,)
and Equality Kansas,)
)
Plaintiffs,) Case No. 2013CV1331
)
vs.)
)
Kris Kobach, Kansas)
Secretary of State, and)
Bryan Caskey, Deputy)
Assistant Secretary of)
State, Elections and)
Legislative Matters,)
Kansas, In their)
Official Capacities,)
)
Defendants.)
_____)

MEMORANDUM OPINION AND ORDER

NATURE OF THE ISSUE:

The Defendants have filed a motion pursuant to K.S.A. 60-260(b)(2) or K.S.A. 60-260(b)(6) asking the Court to vacate its prior judgment entered in this case

based on certain actions taken by the Executive Director of the federal Election Assistance Commission (EAC) as of February 1, 2016, which authorized Kansas proof of citizenship requirements to be added to the instructions for "Federal Form" registrants, which Defendants assert now moots the Court's prior judgment.

CONCLUSIONS OF LAW:

While if the action taken by the Executive Director of the EAC stands, the application of the Court's *Opinion* in regard to Federal Form registrants may have no present value. Of course, district court judgments have no binding reach beyond the case in which the particular judgment is issued. Further, determining the validity of that recent federal action is not within the jurisdictional ambit of this Court. Nevertheless, this Court's *Opinion* spoke to the facts and law pertaining to the issues as they stood at the filing of this case and to its conclusion, notwithstanding the Defendants' attempts, through their gratuitous actions, to undermine the standing of

Plaintiffs Messrs. Belenky and Jones to raise the issue of their voting entitlements as Kansas "Federal Form" registrants.

The Court notes the cited action taken by the EAC's executive director has been challenged in Court (*League of Women Voters of the United States v. Newby*, No. 16-236-RLJ, Doc. 1 (D.D.C. Feb. 12, 2016), but, notwithstanding the outcome, the fact exists that in challenging any specific governmental action change may come subsequent, or be attempted, through changes in the law under which the particular case at issue was litigated and determined, making only the principles announced, not the case's forward effect, its only useful residue. If confronting alleged present overreaching governmental conduct in Court was circumscribed because the law or regulation challenged may sometime later be changed, either temporarily or permanently, then there could never be any efficient or practical check or restraint on the abuse of power by a governmental official.

Here, the Plaintiffs pursuit of their cause prompted these Defendants to act differently than they apparently would have, but for Plaintiffs' suit, and, perhaps, spurred further action to be sought by the Defendants through the Election Assistance Commission. Plaintiffs themselves effectively concluded the case at hand when further legal relief was not sought by either of them by way of amendment to the pleadings. Nor was a motion made to expand the case by adding party plaintiffs. Simply, the fact this case presently, except, perhaps, by analogy (*See Fish v. Kris Kobach, in his official capacity as Secretary of State for the State of Kansas, et al, Memorandum Opinion and Order, No. 16-2015-JAR-JPO, May 17, 2016*), has lost, either temporarily or permanently, its legal efficacy does not affect, nor should it, the rights declared to Plaintiffs by the earlier rulings entered in the district court:

"Appellee's second contention, as to the change in the statute, requires no discussion. Without examining the provisions of the new amendment to section 19-804 it suffices to say

that whatever changes it makes they can, of course, have no effect on the present controversy. The rights of the parties were determined solely by the law governing the controversy when adjudicated."

Moore v. Smith, 160 Kan. 167, 170 (1945).

The Court finds no merit to Defendants K.S.A. 60-260 motion under any theory nor any reason, as Defendants suggest, to dismiss this case altogether simply because either the case has ended or subsequent governmental conduct has taken place and the propriety of such action is beyond the jurisdictional control of this Court. Whatever may transpire cannot cure the Defendants' errors of the past that first affected these Plaintiffs. Accordingly, Defendants' motion is denied.

IT IS SO ORDERED this 14th day of June, 2016.



Franklin R. Theis
Judge of the District Court
Division Seven

cc: Stephen D. Bonney
Robert V. Eye
Dale Ho

Julie A. Ebenstein
Kris Kobach
Bryan Brown
Garrett R. Roe