

STATE OF INDIANA)
) SS:
ST. JOSEPH COUNTY)

IN THE ST. JOSEPH SUPERIOR COURT
CAUSE NO. 71D05-2210-PL-000231

THOMAS DIXON, in his capacity as the)
Republican Member of the St. Joseph County)
Election Board,)

INDIANA REPUBLICAN STATE COMMITTEE, INC.,)
and)
ST. JOSEPH COUNTY REPUBLICAN PARTY,)

Plaintiffs,)

v.)

RITA GLENN, in her official capacity as Clerk of)
the St. Joseph County Circuit Court and)
Secretary of the St. Joseph County Election)
Board, and)

CHARLES LEONE, in his official capacity as the)
Chair of the St. Joseph County Election Board)
(Democrat),)

Defendants.)

OBJECTION TO PLAINTIFFS' MOTION TO DISMISS

Defendants **Rita Glenn** and **Charles Leone**, by counsel, Object to Plaintiffs' Motion to Dismiss filed on November 15, 2022 for the reason that Plaintiffs seek to dismiss this case "without prejudice" to avoid an adjudication on the merits, presumably so the Plaintiffs are not barred from re-filing their complaint at a later time. Defendants agree that this case should be dismissed, but dismissal should be for the reason that this case is moot. Defendants have filed contemporaneously a Motion to Dismiss the case for becoming moot. Defendants incorporate their argument in that motion in support of this motion.

Argument

This case should not be dismissed “without prejudice”. This case should be dismissed because it is moot. There is no controversy now before for the court to decide and the issues in this case cannot be raised again in some future litigation.

Plaintiffs brought this case for declaratory and injunctive relief, including a temporary restraining order without notice, to enjoin the two Defendants, Rita Glenn and Charles Leone, who are two members of the St. Joseph County Election Board, from “adopting and enforcing” a Resolution of the St. Joseph County Election Board approved at its meeting on October 7, 2022. The Resolution at issue, by its terms, was effective only for the “2022 election cycle”. The 2022 election now is over and Plaintiffs did not obtain any relief on their complaint before the election.

The Resolution at issue is no longer effective. Consequently, there is nothing to litigate now or to re-litigate at another time concerning the Resolution that is the subject of this action. In addition, one of the defendants, Rita Glenn, who is the St. Joseph County Clerk and an *ex officio* member of the County Election Board by virtue of her position as County Clerk, Ind. Code § 3-6-5-2, was term-limited from seeking re-election and will leave office on December 31, 2022. The long-standing rule in Indiana courts has been that a case is deemed moot when no effective relief can be rendered to the parties before the court. *Matter of Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991).

Plaintiffs’ complaint does not raise a question of great public importance which is likely to reoccur. *Yergy’s State Rd. BBQ, LLC v. Wells Cnty. Health Dep’t*, 189 N.E.3d 189, 193 (Ind. Ct. App. 2022), reh’g denied (declining to apply the public interest exception to executive orders that were no longer effective). The controversy now between the parties to this lawsuit will no

longer exist if the Plaintiffs were to try to resurrect this action in the future, as Defendant Rita Glenn would no longer be a proper party to the action. This case is moot as between the parties to this action. There is no cause of action to preserve for future litigation by a dismissal “without prejudice” as the Resolution which was the basis for this lawsuit has expired by its terms.

Conclusion

For the foregoing reasons, Defendants Rita Glenn and Charles Leone Object to Plaintiffs’ Motion to Dismiss this case “without prejudice” and move the Court to dismiss this action because it is moot.

/s/ James A. Masters

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CERTIFICATE OF SERVICE

The undersigned certifies that service of a true and complete copy of the above and foregoing pleading was made upon the parties herein by the e-filing system and by e-mail to counsel of record shown below on November 17, 2022:

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Attorney for Plaintiffs

/s/ **James A. Masters**

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