

2021 WL 4843709

Only the Westlaw citation is currently available.
United States Court of Appeals, Fifth Circuit.

Jennifer HARDING; Jasmine Pogue; Louisiana
State Conference of the NAACP; Power Coalition
for Equity and Justice, Plaintiffs—Appellees,

v.

Kyle ARDOIN, in his official capacity as Secretary
of State of Louisiana, Defendant—Appellant,
State of Louisiana, by and Through its Attorney
General, Jeff Landry, Intervenor—Appellant.

No. 20-30632

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FILED May 17, 2021

Appeal from the United States District Court for the
Middle District of Louisiana, Case No. 3:20-cv-495,
Shelly Deckert Dick, U.S. District Judge

Attorneys and Law Firms

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Solicitor General, Louisiana Department of Justice Office
of the Solicitor General, New Orleans, LA, for
Defendant—Appellant/Intervenor—Appellant.
Before Dennis and Engelhardt, Circuit Judges, and Hicks,
Chief District Judge.*

Opinion

Per Curiam:

*1 This case is an appeal of a preliminary injunction
entered by the district court in mid-September of last year.
The preliminary injunction ordered the State of Louisiana

to continue several COVID-19 emergency voting
measures utilized during the July and August 2020
elections “in both the November 3, 2020 Presidential
General and Open Congressional Primary Election and
the December 5, 2020 Open
General/Congressional/Republican State Central
Committee (RSCC) Election.” At the time, the State
elected not to seek a stay or expedited review of the
injunction from this court.

The elections have now passed, and the preliminary
injunction has expired by its own terms. And, on May 13,
2021, the district court granted the Plaintiff-Appellees’
motion to voluntarily dismiss the district court
proceedings. Our review of the preliminary injunction
would therefore serve no purpose other than to comment
on its propriety; an order from this court cannot alter the
terms applicable in elections that have already passed, nor
can it affect the future proceedings in a case that has been
dismissed. As we cannot grant any relief, the
Plaintiff-Appellees have moved to dismiss this case as
moot. *See Vieux Carre Prop. Owners, Residents and
Assocs., Inc. v. Brown*, 948 F.2d 1436, 1446 (5th Cir.
1991) (“The law is clear that a suit is moot ... when it can
be shown that a court cannot even ‘theoretically grant’
relief.” (quoting *Richland Park Homeowners Ass’n v.
Pierce*, 671 F.2d 935, 943 (5th Cir. 1982))).

The State argues the
capable-of-repetition-but-evading-review exception to the
mootness doctrine applies here. But the State
acknowledges that it made a conscious choice not to seek
review before the case became moot, and, even assuming
that issues similar to those that arose in this case as a
result of the COVID-19 pandemic may come up again in
future cases, there is no indication that the parties in those
cases will be unable to use the tools available to obtain
meaningful review. *See Empower Texans Inc. v. Geren*,
977 F.3d 367, 370-72 (5th Cir. 2020) (“Expedited
procedures are available in this circuit before certain
categories of cases become moot, such as seeking a stay
or injunction pending appeal” and “exceptional
circumstances justifying a court’s moving beyond actual
mootness will be less likely found when the party seeking
review failed to utilize the procedures that had been
available.”); *see also id.* at 371 (“One of this court’s
panels held that if ‘prompt application for a stay pending
appeal can preserve an issue for appeal, the issue is not
one that will evade review.’ ” (quoting *Ashford Hosp.
Prime, Inc. v. Sessa Cap. (Master), L.P.*, 673 F. App’x
401, 404 (5th Cir. 2016))).

Accordingly, the Plaintiff-Appellees' motion to dismiss the appeal is GRANTED, and the appeal is DISMISSED as moot.

All Citations

Not Reported in Fed. Rptr., 2021 WL 4843709

Footnotes

* Chief Judge of the Western District of Louisiana, sitting by designation.