

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

Ohio Right to Life Society, Inc.,

Plaintiff,

-v-

**Case No. 2:08-cv-00492
JUDGE SMITH
Magistrate Judge Deavers**

Ohio Elections Commission, *et al.*,

Defendants.

ORDER

This matter is currently before the Court on Defendants' Motion to Dismiss for Lack of Subject Matter Jurisdiction (Doc. 56) and Plaintiff's Motion to File an Amended Verified Complaint (Doc. 65). Plaintiff initiated this action in May 2008 alleging that certain provisions of Ohio campaign finance law violate its First Amendment rights of freedom of speech and association. Plaintiff sought to enjoin Defendants from enforcing these provisions in relation to advertisements Plaintiff intended to run on broadcast media beginning in June 2008 through December 2008. In September 2008, this Court granted in part and denied in part Plaintiff's motion for a preliminary injunction (Doc. 40). In March 2010, Defendants filed their motion to dismiss, and in May 2010, Plaintiff filed its motion to amend.

The proposed Amended Verified Complaint ("amended complaint") seeks to clarify facts as they relate to new developments in applicable United States Supreme Court precedent concerning political speech. Additionally, the proposed amended complaint essentially supplements the original complaint with facts concerning Plaintiff's intent to run broadcast advertisements during the fall 2010 election season which would reasonably implicate the challenged statutory scheme. Therefore, the proposed amended complaint is at least in part an

attempt to cure any jurisdictional deficiency relating to the original complaint.

After reviewing the briefs and considering the arguments of the parties, the Court finds it appropriate to grant leave to Plaintiff to file the amended complaint. Defendants' motion to dismiss alleges that this Court lacks subject matter jurisdiction over this case because the Eleventh Amendment to the United States Constitution bars the Court from issuing declaratory or injunctive relief against a State when the relief operates only retrospectively, and because Plaintiff's claims for relief are moot because there is no longer any live dispute between the parties. That is, according to Defendants, the action is moot and barred by the Eleventh Amendment because the original complaint only alleged facts relating to the fall 2008 election season. The amended complaint, while not as developed and detailed as the original complaint, sets forth facts that are pertinent to the upcoming election season and that arguably demonstrate a very real and ongoing dispute between the parties and a request for relief that is not retrospective. The Court believes that the most appropriate action under this scenario is to grant the motion to amend and to permit Defendants to challenge, should they so choose, the Amended Verified Complaint by way of a motion to dismiss. Accordingly, Plaintiff's motion to amend (Doc. 65) is **GRANTED**. The Plaintiff shall file a signed copy of the Amended Verified Complaint identical to the one attached to the motion for leave within ten days. Because Defendants' motion to dismiss on jurisdictional grounds (Doc. 56) does not address the additional facts in the amended complaint, which arguably cure any jurisdictional deficiency, it is **DENIED** as moot.

The Clerk shall remove Documents 56 and 65 from the Court's pending motions list.

IT IS SO ORDERED.

/s/ George C. Smith
GEORGE C. SMITH, JUDGE
UNITED STATES DISTRICT COURT