

Case No. 16-5246

UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

FILED
Mar 15, 2017
DEBORAH S. HUNT, Clerk

UNITED AUTOMOBILE, AEROSPACE)
AND AGRICULTURAL IMPLEMENT)
WORKERS OF AMERICA LOCAL 3047,)
et al.,)

Plaintiffs-Appellees,)

v.)

HARDIN COUNTY, KENTUCKY, et al.,)

Defendants-Appellants.)

ORDER

BEFORE: BOGGS, SUHRHEINRICH, and McKEAGUE, Circuit Judges.

The court having issued its opinion on November 18, 2016, granting relief to appellants in part; and

The court having duly considered and denied appellees' petition for rehearing and rehearing en banc on March 6, 2017; and

Appellees having meanwhile moved the court to vacate the November 18, 2016 ruling as having been rendered moot by subsequent change of Kentucky law; and

The court having duly considered the motion, together with appellants' opposition, and finding that appellees have failed to carry their "heavy burden" of clearly establishing the "mootness" of this appeal, *see Los Angeles County v. Davis*, 440 U.S. 625, 663 (1979), because the impact of the new Kentucky Right to Work Act on the Hardin County Ordinance is a yet-to-

be determined matter of state law that is beyond the power of the instant court and

having been rendered moot by subsequent change of Kentucky law; and

The court having duly considered the motion, together with appellants' opposition, and finding that appellees have failed to carry their "heavy burden" of clearly establishing the "mootness" of this appeal, *see Los Angeles County v. Davis*, 440 U.S. 625, 663 (1979), because the impact of the new Kentucky Right to Work Act on the Hardin County Ordinance is a yet-to-be-determined matter of state law that is beyond the scope of the instant appeal; and

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The court further finding, *even if* the case were deemed to have been rendered moot, that the "established practice" favoring vacatur on which appellees' motion is based, *see United States v. Munsingwear, Inc.*, 340 U.S. 36, 39 (1950), is hardly uniform and hardly clearly established, but depends on the circumstances and is applied in a manner "most consonant with justice," *see U.S. Bancorp Mortg. Co. v. Bonner Mall Partnership*, 513 U.S. 18, 23-25 (1994); and

The court further finding that appellees have failed to show that the public interest, generally served by permitting judicial precedents to stand, *see U.S. Bancorp*, 513 U.S. at 26, would instead be served in this case by vacatur; and

The court further finding that appellees have failed to show the existence of other unusual or equitable circumstances that would mandate or even counsel strongly in favor of relief;

Now therefore, the motion to vacate and remand is **DENIED**.

ENTERED BY ORDER OF THE COURT



Deborah S. Hunt, Clerk