

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

League of Women Voters of Ohio, *et al.*,)
)
Plaintiffs,)
)
v.) Case No. 3:05-CV-7309
) Chief Judge Carr
J. Kenneth Blackwell, *et al.*,)
)
Defendants.)

**DECLARATION OF MICHAEL R. GESKE
IN SUPPORT OF PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION AND APPLICATION UNDER 28 U.S.C. § 1292(B)**

1. My name is Michael R. Geske and I am over 18 years of age.
2. I am counsel at Arnold & Porter LLP, 555 12th Street, N.W., Washington, D.C. 20004, and co-counsel to Plaintiffs in this action.
3. Over the last three months, Plaintiffs' counsel have engaged in lengthy and detailed negotiations with Boards of Elections throughout Ohio's 88 counties about subpoenas duces tecum which Plaintiffs served on each of them. Those extensive negotiations have centered on balancing the parties' need to obtain and to review documents and information in the possession of the county Boards of Elections to resolve claims and defenses in this case and the counties' concerns about the costs they would incur as non-parties to provide such materials, along with discrete issues that certain individual Boards have raised from county to county. As set forth below, those negotiations have been productive, leading to compliance by dozens of county Boards of Elections including many that originally objected to or moved to quash the subpoenas.
4. Since the November 8, 2005 election, the Boards of Elections of twenty-four (24) counties within the geographic jurisdiction of the Southern District of Ohio have voluntarily produced documents responsive to Plaintiffs' subpoena to each of them. Many of these counties (at least 13 of them) voluntarily produced their documents after December 8, 2005, notwithstanding this Court's Order staying discovery and the follow-on stay Order issued by Magistrate Judge King in the Southern District of Ohio. Several additional county Boards of Elections have represented that they have or are prepared to begin compliance and production as soon as the stay Orders are lifted.

5. Only two Boards of Elections, Clermont County and Franklin County, are currently pursuing Motions to Quash the subpoena in the Southern District of Ohio. The three other Boards of Elections (in Delaware County, Union County and Guernsey County) that had earlier moved to quash the subpoenas in the Southern District of Ohio are now complying with responsive documents and information.

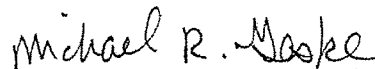
6. Pursuant to paragraph 4 of this Court's December 8 Order, Ben Blustein (of the Lawyers' Committee for Civil Rights Under Law and co-counsel to Plaintiffs) and I reviewed documents at the offices of the Montgomery County Board of Elections and the Pickaway County Board of Elections and designated responsive information for duplication.

7. Our visit to the Montgomery County Board of Elections took place on December 13, 2005 and lasted from about 11:00 am to 4:00 pm. The Board designated a single staff member to work with us for the day and to make copies of designated documents, but who spent very little time with us. Within those five hours, Mr. Blustein and I were able to review and to designate for duplication sufficient documents and information for us to consider the Montgomery County Board of Elections to be in substantial compliance with the subpoena.

8. Our visit to the Pickaway County Board of Elections took place on December 14, 2005 and lasted from about 9:00 am until noon. During that time, we interacted only occasionally with the Director of the Board of Elections, Johnda Perkins. Within those three hours, Mr. Blustein and I were able to review and designate for duplication sufficient documents and information for us to consider the Pickaway County Board of Elections to be in substantial compliance with the subpoena.

9. The "organizational plaintiffs," League of Women Voters of Ohio and League of Women Voters of Toledo-Lucas County, have been responding to and complying with the discovery requests from the defendants.

Pursuant to 28 U.S.C. § 1746(2), I declare under penalty of perjury that the foregoing is true and correct. Executed on January 5, 2006.



Michael R. Geske