

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

League of Women Voters of Ohio,	)	Case No. 3:05CV7309
et. al.,)	
	)	Hon. James G. Carr
Plaintiffs,)	
and	)	Richard M. Kerger (0015864)
	)	Kimberly A. Donovan (0074726)
Jeanne White,	)	KERGER & ASSOCIATES
	)	33 S. Michigan St., Suite 100
Intervenor-Plaintiff,	)	Toledo, Ohio 43602
	)	Telephone: (419) 255-5990
v.	)	Fax: (419) 255-5997
)	
	)	Cindy A. Cohn, Esq.
J. Kenneth Blackwell, Secretary of	)	Matthew S. Zimmerman, Esq.
State of Ohio, et. al.,	)	ELECTRONIC FRONTIER FOUNDATION
	)	454 Shotwell Street
Defendants.	)	San Francisco, California 94110
)	
	)	<i>Counsel for Intervenor-Plaintiff</i>

**INTERVENOR-PLAINTIFF WHITE'S
STATUS REPORT ON DISCOVERY ISSUES**

On March 27, 2006, Intervenor-Plaintiff Jeanne White (“White”) served copies of her First Set of Requests for Production and Inspection and her First Set of Interrogatories on Defendants, followed by a 30(b)(6) Notice of Deposition on April 3, 2006. Counsel for White met and conferred in a telephonic conference with counsel for Defendants on April 3, 2006, to discuss any discovery disputes. As per the Court’s instructions in its Order of March 23, 2006, White hereby submits her status report regarding identifiable discovery issues.

I. Scope of Intervenor-Plaintiff White’s Discovery Requests

White’s First Set of Requests for Production and First Set of Interrogatories can roughly be broken down into the following broad categories: (1) documents and information

regarding the practices and procedures surrounding Direct Recording Electronic (DRE) and Optical Scan (OPSCAN) voting equipment, (2) documents and information regarding malfunctions of DRE and OPSCAN voting equipment, (3) data created by DRE and OPSCAN voting equipment, and (4) DRE and OPSCAN voting equipment itself.

II. Status of Intervenor-Plaintiff White's Discovery Requests

A. Materials and Information in the Immediate Possession of Defendants or Other State Agencies.

Counsel for Defendants informed counsel for White that materials responsive to White's discovery requests that have already been produced to the original Plaintiffs would be provided to White immediately. Counsel for Defendants also represented that other responsive materials in the possession of Defendants or relevant state agencies would be tentatively produced by the first of May. In addition, counsel for Defendants also informed counsel for White that individuals subject to White's 30(b)(6) deposition notice would be identified and made available for depositions beginning in early May.

Counsel for Defendants identified no individual discovery request or category for which Defendants would not produce responsive documents in their immediate possession or in the immediate possession of other state officials or agencies.

B. Materials and Information in the Immediate Possession of Local Election Officials or Third Parties.

Counsel for Defendants informed counsel for White that the majority of the materials sought in her discovery requests were in the possession of local boards of election and other local election officials. Counsel took the position that Defendants would not or could not compel local election officials to produce materials responsive to White's discovery requests.

Without conceding that Defendants have no such power, White intends nonetheless to proceed to seek relevant materials directly from local agencies, officials, and third party vendors.

All four categories of discovery requests identified above will be sought from Ohio counties that have used or intend to use DRE and OPSCAN voting technology. Of particular concern to Intervenor-White is information and data that is at high risk of being lost before discovery can be completed. For example, data generated by voting machines that malfunctioned – as well as those voting machines themselves – are of particular interest to White yet are subject to retention policies that are either insufficient or unclear. Such materials will be prioritized in White’s third party discovery requests, which will be submitted not only to local officials but also to the appropriate voting equipment vendors.

Respectfully submitted,

/s/ Richard M. Kerger
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Dated: Monday, April 03, 2006.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing was electronically filed this 3rd day of April, 2006. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Richard M. Kerger