

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO
WESTERN DIVISION

League of Women Voters of Ohio, League)
of Women Voters of Toledo-Lucas County,)
Darla Stenson, Dorothy Stewart, Charlene)
Dyson, Anthony White, Justine Watanabe,)
Deborah Thomas, Leonard Jackson,)
Deborah Barberio, Mildred Casas, Sadie)
Rubin, Lena Boswell, Chardell Russell,)
Dorothy Cooley, Lula Johnson-Ham, and)
Jimmie Booker,)

Plaintiffs,)

v.)
J. Kenneth Blackwell, Secretary of State of)
Ohio and Bob Taft, Governor of Ohio,)

Defendants.)

Case No. 3:05-CV-7309

Hon. James G. Carr

PLAINTIFFS’ RESPONSE TO JEANNE WHITE’S MOTION TO INTERVENE

Plaintiffs respectfully submit this brief response to Jeanne White’s Motion to Intervene.

As Ms. White explains, Plaintiffs have alleged that one of the many symptoms of the systemic breakdowns in Ohio’s voting system is the failure to reasonably ensure that voters throughout the state are provided with working voting equipment. The “jumping” votes in the Mahoning machines in the November 2004 election are just one of the most recent examples that Plaintiffs have cited. Cmpl. ¶ 122 (citing numerous examples of voting machine failures in Mahoning and other counties in 2004); ¶¶ 147-50 (citing historical evidence and Congressional reports citing failure to provide working machines as one aspect of the Ohio’s failure to adequately protect the fundamental right to vote).

Plaintiffs also have shown in their opposition to Defendants’ motion to dismiss that the broad duties and powers of the Secretary include the duty to instruct and direct the BOEs on “the

examination, testing, and use of the voting machine and tabulating equipment”. O.R.C. § 3506.15; *see also* O.R.C. § 3501.30(B) (boards of election “shall follow the instructions and advisories of the secretary of state in the production and use of polling place supplies”). While all mechanical breakdowns cannot be avoided, a fair and evenhanded election process requires that there be adequate systems in place (a) to ensure before the election that counties provide an adequate number of machines in accurate and working order and (b) to address mechanical problems and breakdowns that may occur on election day despite pre-election day machine testing and calibration programs.

Plaintiffs allege that the repeated and widespread problems encountered in Mahoning County and elsewhere are the predictable result of Defendants’ failure to institute such protections of the fundamental right to vote. *E.g.*, Cmpl. ¶¶ 90-116, 150, 183-85. Accordingly, Plaintiffs seek declaratory and injunctive relief “to ensure that each county has and deploys to each precinct on election day an adequate and reasonable number of accurately calibrated and functioning voting machines”. *Id.*, Prayer for Relief, ¶ 5(b).

In view of the foregoing, Plaintiffs do not oppose Ms. White’s request for intervention. The core of her claim already is encompassed in Plaintiffs’ claims and request for relief. To the extent that Ms. White seeks additional, specific relief (for example, with respect to post-election procedures), her requests do not appear to prejudice Plaintiffs. Finally, it appears that the addition of Ms. White will not delay the progress of this action. With respect to the pending motion, Ms. White’s addition to the lawsuit does not raise any different or additional issues that have not already been addressed. With respect to discovery, it appears that Ms. White is fully willing to adhere to the existing schedule. If Defendants wish to depose Ms. White, her

deposition presumably can be accommodated in the current schedule that Plaintiffs have proposed to Defendants.

For all of the foregoing reasons, Plaintiffs do not oppose Ms. White's motion to intervene.

Respectfully submitted,

October 6, 2005

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CERTIFICATE OF SERVICE

I hereby certify that on October 6, 2005, a copy of foregoing Response to Motion to Intervene was filed electronically. Notice of this filing will be sent by operation of the Court's electronic filing system to all parties indicated on the electronic filing receipt. All other parties will be served by regular U.S. mail. Parties may access this filing through the Court's system.

October 6, 2005

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