

**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,)	
)	Richard M. Kerger (0015864)
and)	Kimberly A. Donovan (0074726)
)	KERGER & ASSOCIATES
)	33 S. Michigan St., Suite 100
Jeanne White,)	Toledo, Ohio 43602
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Intervenor-Plaintiff,)	Fax: (419) 255-5997
)	
v.)	Cindy A. Cohn, Esq.
)	Matthew S. Zimmerman, Esq.
)	ELECTRONIC FRONTIER FOUNDATION
J. Kenneth Blackwell, Secretary of)	454 Shotwell Street
State of Ohio, et. al.,)	San Francisco, California 94114
)	
Defendants.)	<i>Counsel for Intervenor-Plaintiff</i>
)	

**INTERVENOR-PLAINTIFF WHITE’S RESPONSE TO DEFENDANTS’ MOTION
FOR LEAVE TO TAKE AN INTERLOCUTORY APPEAL**

Defendants seek review of this Court’s denial of their Motion to Dismiss Intervenor White’s Complaint. (Doc. 254.) Specifically, Defendants intend to appeal the decision that Intervenor White’s Complaint “stated a constitutional violation.” (Doc. 258.) In support, Defendants state, “This Court has already authorized that appeals as it relates to the Plaintiffs’ claims.” (Doc. 258.)

Indeed, the Court has already certified an interlocutory appeal from its December 2, 2005, Order upholding Plaintiff’s Complaint, “with respect to the first

question, whether plaintiffs plead a valid claim.” (Doc. 236.) Therefore, Intervenor White does not object to the certification of an appeal from the same issue as it relates to her Complaint. This means that Intervenor White does not object to an interlocutory appeal from the decision rendered on the third issue raised in the Defendants’ Motion to Dismiss her Complaint. (See Doc. 198, p. 5 “White has failed to allege that Defendants have violated her Constitutional Rights.”) Plaintiff anticipates that the Courts’ denial of a stay during the pendency of the previously certified interlocutory appeal applies in kind to any certification of an appeal as it relates to her Complaint. (See Order, Doc. 252.)

However, Intervenor White vehemently objects to the certification of any appeal on the issue of whether the Defendants are entitled to Eleventh Amendment Immunity, the second issue raised in the Motion to Dismiss the Intervenor-Plaintiff’s Complaint. In its Order denying Defendants’ Motion to Dismiss the Intervenor-Plaintiff’s Complaint, the Court explicitly stated that the Orders found at Doc. 197, Doc. 202 and Doc 237 were the “law of the case”. (See Doc. 254.)

In its order of February 10, 2006, Doc 237, the Court ruled “defendants’ motion to dismiss on the basis of sovereign immunity is unfounded and without merit; any appeal on the issue of sovereign immunity is certified as frivolous; any interlocutory appeal of this decision shall, accordingly, not divest this court of jurisdiction.” Therefore, any appeal from the Courts’ denial of Defendants’ Motion to Dismiss Intervenor-Plaintiff White’s Complaint on Eleventh Amendment Grounds is equally frivolous, and equally unwarranted.

Respectfully submitted,

/s/ Richard M. Kerger
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CERTIFICATE OF SERVICE

This is to certify that on this 20th day of April 2006 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