

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

LEAGUE OF WOMEN VOTERS, *ET AL.*, :
PLAINTIFFS, :
VS. : **CASE NO. 3:05-CV-7309**
J. KENNETH BLACKWELL, *ET AL.*, : **JUDGE CARR**
DEFENDANTS. :

**DEFENDANTS' REPLY IN SUPPORT OF THEIR MOTION TO DISMISS
THE INTERVENOR'S AMENDED COMPLAINT**

In her memorandum contra Jeanne White has failed to demonstrate that she has stated any claim against either Defendant Taft or Blackwell. Her lawsuit is nothing short of a belief that electronic voting machines violate the United States constitution. This theory, despite being rejected by courts, would undermine the most basic constitutional distribution of power that grants to the States the authority to determine the manner in which votes are cast and counted.

In an identical lawsuit filed against the State of California, a Plaintiff alleged that she was denied her right to vote under the Due Process and Equal Protection clauses because her voting machine did not contain voter verified paper audit trail. The Ninth Circuit correctly recognized that “[i]t is the job of democratically-elected representatives to weigh the pros and cons of

various balloting systems. So long as their choice is reasonable and neutral, it is free from judicial second-guessing.” *Weber v. Shelley*, 347 F.3d 1101, 1107 (9th Cir. 2003). The *Weber* Court refused to impose a strict scrutiny analysis in reviewing the State’s determination on which type of voting system to use. Instead, the Court determined that the State had “made a reasonable, politically neutral and non-discriminatory choice to certify touchscreen systems as an alternative to paper ballots.... Nothing in the Constitution forbids this choice.” *Id.*

White has not addressed her failure to state a constitutional claim. She merely disagrees with the choice that her local board of elections made in selecting DRE voting equipment. Her claim that the face of the machine recorded the incorrect choice for President, however, does not state a constitutional claim. Rather, White alleged that she re-selected her choice for President but she cannot claim with certainty how that vote was recorded on the computer. That, however, is not a claim under the due process or equal protection clauses. That is a claim that is identical to *Weber*. Thus, this Court should dismiss the intervenor’s claim on this basis alone.

Finally, the Defendants incorporate by reference all arguments they have put forth in their reply brief in support of the motion to dismiss the complaint filed by the plaintiffs. Thus, for the foregoing reasons, this Court should dismiss White’s claims.

Certificate of Service

This is to certify a copy of the foregoing was served upon all counsel of record by means of the Court's electronic filing system on this 13th day of January, 2005.

/s Richard N. Coglianes
Richard N. Coglianes
Deputy Attorney General