

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

TRUE THE VOTE, INC.,

Plaintiff,

v.

INTERNAL REVENUE SERVICE, et al.,

Defendants.

Civ. No. 13-cv-00734-RBW

Hearing Requested

**PLAINTIFF’S MOTION FOR
PRELIMINARY INJUNCTION AND EXPEDITED DISCOVERY
TO PREVENT FURTHER SPOILIATION OF,
AND TO PRESERVE AND RESTORE,
EVIDENCE AND DISCOVERABLE INFORMATION**

Plaintiff True the Vote, Inc., by counsel, respectfully moves the Court as follows:

1. Pursuant to Fed. R. Civ. P. 65, for a preliminary injunction directing Defendants (including all persons covered by Fed. R. Civ. P. 65(d)(2)) to preserve and prevent further destruction of all documents and electronically stored information within the scope of Fed. R. Civ. P. 26(b) and 34(a)(1)(A) in their possession, custody, and control; and
2. Pursuant to Federal Rule of Civil Procedure 26(f), an order directing the parties to plan for discovery within a reasonable time following the entry of the Order; and
3. Pursuant to Federal Rule of Civil Procedure 26(f), an order permitting expedited discovery for the limited purpose of (a) ascertaining the whereabouts and security of documents and electronically stored information related to the IRS Targeting Scheme and True the Vote’s application for exempt status and (b) developing a plan for restoring and preserving such documents and electronically stored information. The expedited discovery would be conducted under the following protocols, or similar protocols as defined by the parties and approved by the Court:
 - a. Subject to the approval of the Court, Plaintiff would designate an independent, computer forensics expert to conduct discovery as True the Vote’s representative (the “Expert”).
 - b. The Expert would be permitted to inspect and examine (by entering Defendants’ premises or other location, if necessary) any computer hard drive, server, back-up tape, or related storage device, whether for business or personal use, that contains or did contain documents and electronically stored information sent by, received

by, or copied to all Defendants, including Ms. Lerner, between January 1, 2009, and the present.

- c. The Expert would be permitted to take all reasonably necessary action to restore deleted or lost data.
- d. The Expert would be permitted to make copies of any data recovered or restored.
- e. Copies of any recovered data would be produced to Defendants' counsel and the Court, but not to True the Vote or its counsel, until such time that the recovered data, subject to any applicable privilege, must be produced in response to subsequent discovery requests.
- f. Defendant IRS would be required to provide sworn statements concerning: (a) the type of email system(s) software used; (b) diagrams of the hardware/software operational systems; (c) the IRS's retention policies and procedures, including retention of data backups, (d) any investigation, inquiries, or forensic review of the "crash" of Ms. Lerner's hard drive and any IRS servers regarding the same.

For the reasons explained in the accompanying Memorandum in Support, True the Vote respectfully requests that this Motion be granted.

Dated: June 30, 2014

Respectfully submitted,

/s/ Michael J. Lockerby

Cleta Mitchell (D.C. 433386) (lead)
Michael J. Lockerby (D.C. 502987)
FOLEY & LARDNER, LLP
Washington Harbour
3000 K Street, N.W., Suite 600
Washington, DC 20007
(202) 672-5300 (telephone)
(202) 672-5399 (fax)
cmitchell@foley.com
mlockerby@foley.com

Counsel for Plaintiff

William E. Davis (D.C. 280057)
Mathew D. Gutierrez (Fla. 0094014)*
FOLEY & LARDNER, LLP
One Biscayne Tower
2 South Biscayne Boulevard
Suite 1900
Miami, FL 33131
(305) 482-8404 (telephone)
(305) 482-8600 (fax)
wdavis@foley.com
mgutierrez@foley.com

Counsel for Plaintiff

John C. Eastman (Cal. 193726)*
Center for Constitutional Jurisprudence
c/o Chapman University School of Law
One University Drive
Orange, California 92866
(877) 855-3330 x2 (telephone)
(714) 844-4817 (fax)
jeastman@chapman.edu

Counsel for Plaintiff

**Pro Hac Vice Motions granted*

Kaylan L. Phillips (D.C. 1110583)
Noel H. Johnson (Wisc. 1068004)*
ACTRIGHT LEGAL FOUNDATION
209 West Main Street
Plainfield, IN 46168
(317) 203-5599 (telephone)
(888) 815-5641 (fax)
kphillips@actrightlegal.org
njohnson@actrightlegal.org

Counsel for Plaintiff

CERTIFICATE OF SERVICE

I hereby certify that on June 30, 2014, I caused the foregoing PLAINTIFF'S MOTION FOR PRELIMINARY INJUNCTION AND EXPEDITED DISCOVERY TO PREVENT FURTHER SPOILIATION OF, AND TO PRESERVE AND RESTORE, EVIDENCE AND DISCOVERABLE INFORMATION to be filed with the United States District Court for the District of Columbia via the Court's CM/ECF system, which will send a notice of electronic filing to all counsel of record.

I further certify I will cause a true and correct copy of the foregoing to be served upon the following Defendant, for whom no counsel of record has yet entered an appearance, via U.S. Certified Mail at his last known address, as follows:

DAVID FISH
3623 37th St. N.
Arlington, Virginia 22207

Dated: June 30, 2014

/s/ Michael J. Lockerby
Michael J. Lockerby
mlockerby@foley.com
Counsel for Plaintiff