

**IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
EASTERN DIVISION**

THE OHIO DEMOCRATIC PARTY : **CASE NO. C204-1055**
PLAINTIFF, : **JUDGE MARBLEY**
V. :
J. KENNETH BLACKWELL, ET AL., :
DEFENDANTS. :

**ANSWER
AND COUNTERCLAIM OF
INTERVENING DEFENDANT THE STATE OF OHIO**

The Intervening Defendant the State of Ohio hereby answers as follows:

FIRST DEFENSE

1. Defendant denies the allegations in Paragraph 1 of Defendant's Complaint.
2. Defendant denies the allegations in Paragraph 2 of Defendant's Complaint based on insufficient information.
3. Defendant admits the allegations in Paragraph 3 of Defendant's Complaint in part, deny and part ; Defendant admits the Franklin County and Knox County Boards of Elections administer voting in Franklin and Knox Counties. Defendant denies the remainder of the allegations in the paragraph.
4. Defendant admits the allegations in Paragraph 4 of Defendant's Complaint.
5. Defendant denies the allegations in Paragraph 5 of Defendant's Complaint.
6. Defendant denies the allegations in Paragraph 6 of Defendant's Complaint for lack of knowledge.
7. Defendant denies the allegations in Paragraph 7 of Defendant's Complaint.

8. Defendant denies the allegations in Paragraph 8 of Defendant's Complaint for lack of knowledge.
9. Defendant denies the allegations in Paragraphs 9 through Paragraphs 13 of Defendant's Complaint.
10. Defendant denies the Plaintiff's "causes of action" in Paragraphs 1 through 4 of Defendant's Complaint.

SECOND DEFENSE

11. The Complaint fails to state a claim upon which relief may be granted against Secretary of State Blackwell.

THIRD DEFENSE

12. Secretary of State Blackwell is not a proper defendant or a real party in interest.

FOURTH DEFENSE

13. At all times referred to in Plaintiff's Complaint, Secretary of State Blackwell acted properly, in good faith, and in accordance with his duties under the law.

FIFTH DEFENSE

14. This Plaintiff is not entitled to any equitable relief.

SIXTH DEFENSE

15. Plaintiff has failed to satisfy the applicable statutes of limitations and their claims are therefore barred.

SEVENTH DEFENSE

16. Plaintiff's claims are barred, in whole or in part, because they are not ripe.

EIGHTH DEFENSE

17. Plaintiff's claims are barred, in whole or in part, because they are moot.

NINTH DEFENSE

18. Plaintiff's claims are barred, in whole or in part, by laches.

TENTH DEFENSE

19. Plaintiff has failed to join all necessary parties.

ELEVENTH DEFENSE

20. Plaintiff's proposed remedies are impossible, illegal and/or unreasonable and run the risk of jeopardizing the outcome of the November 2004 the election.

TWELFTH DEFENSE

21. This Court does not have subject matter jurisdiction.

THIRTEENTH DEFENSE

22. Plaintiff is barred by the Eleventh Amendment to bring this claim.

23. The State of Ohio reserves the right to add additional defenses, including affirmative defenses, as discovery proceeds.

WHEREFORE, having fully answered the allegations contained in Plaintiff's Complaint, The State of Ohio raises the following counterclaim against the Plaintiff:

1. A live case or controversy exists between the Plaintiff and the Intervening Defendant the State of Ohio.
2. The Intervening Defendant has a statutory right to be present in this case pursuant to Fed. R. Civ. P. 24 and 28 U.S.C. § 2402.
3. This Court has jurisdiction over the Intervening Defendant's Counterclaim pursuant to 28 U.S.C. §§ 1331, 2201, and 2202. Venue is proper under 28 U.S.C. § 1391.
4. The refusal of the State of Ohio, Defendant Secretary of State Blackwell, Defendant Franklin County Board of Elections, or Defendant Knox County Board of

Elections to provide paper ballots or “adequate voting machines” as alleged in the Plaintiff’s complaint does not violate the right to vote of any person as secured by the United States Constitution as alleged in the Plaintiff’s complaint.

WHEREFORE, the Intervening Defendant, the State of Ohio prays that this Court issue a declaration that none of the Defendants violated the United States Constitution as alleged in the Plaintiff’s complaint.

Respectfully submitted,

JIM PETRO
Ohio Attorney General

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CERTIFICATE OF SERVICE

I hereby certify that on November 9, 2004, a copy of foregoing *Answer and Counterclaim of the Intervening Defendant The State of Ohio*, was filed electronically. 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 N. Coglianesse

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