

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY,)
 et al.,)
)
 Plaintiffs,)
)
 v.)
)
 TODD ROKITA, et al.,)
)
 Defendants,)
)
 _____)

WILLIAM CRAWFORD, et al.,)
)
 Plaintiffs,)
)
 v.)
)
 MARION COUNTY ELECTION BOARD,)
)
 Defendant,)
)
 and)
)
 STATE OF INDIANA,)
)
 Intervenor.)

No. 1:05-CV-00634 SEB-VSS

**INTERVENOR-DEFENDANT STATE OF INDIANA’S ANSWER AND
AFFIRMATIVE DEFENSES TO THE PLAINTIFFS’ INDIANA DEMOCRATIC
PARTY AND MARION COUNTY DEMOCRATIC CENTRAL COMMITTEE
SECOND AMENDED COMPLAINT**

Intervenor-Defendant State of Indiana (“State”), by counsel, answers Plaintiffs’ Indiana Democratic Party and Marion County Democratic Central Committee Second Amended Complaint as follows:¹

Admissions and Denials

1. State does not contest subject matter jurisdiction. State admits that the Plaintiffs’ Complaint purports to bring an action under 42 U.S.C § 1983 on behalf of those voters who associate with them. State denies any and all remaining allegations in paragraph 1 of Plaintiffs’ Second Amended Complaint.

2. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 2 of Plaintiffs’ Second Amended Complaint, and therefore denies them.

3. State is without knowledge of information sufficient to form a belief as to the truth of the allegations contained in paragraph 3 of Plaintiff’s Second Amended Complaint and therefore denies them.

4. State denies the allegations contained in paragraph 4 of Plaintiffs’ Second Amended Complaint.

5. State admits that Defendant Rokita is the Indiana Secretary of State. State asserts that Indiana Code § 3-6-3.7-1 speaks for itself and that the remaining allegations in paragraph 5 of Plaintiffs’ Second Amended Complaint are legal conclusions that require no response.

¹ Plaintiffs’ Second Amended Complaint is filed against Defendants Rokita, King and Robertson and newly added Marion County Election Board. Judge Barker’s Order dated July 1, 2005 relieved Defendants Rokita, King and Robertson from active participation in the case until further order. In light of the foregoing, the Intervenor-Defendant State will answer in lieu of Defendants Rokita, King and Robertson.

6. State admits that Defendants King and Robertson are co-directors of the Indiana Election Division of Secretary of State Rokita's office. State asserts that Senate Enrolled Act (SEA) 483 and Ind. Code §§ 3-6-4.2-14 and 3-5-4-8(b) speak for themselves and that the remaining allegations in paragraph 6 are legal conclusions that require no response.

7. State admits the allegations contained in paragraph 7 of Second Amended Complaint.

8. State asserts that the Indiana Constitution, as well as, Ind. Code §§ 3-7-13-1 and 3-7-13-4 speak for themselves and that the remaining allegations in paragraph 8 are legal conclusions that require no response.

9. State asserts that Senate Enrolled Act (SEA) 483 speaks for itself and that the remaining allegations in paragraph 9 are legal conclusions that require no response.

10. State asserts that Senate Enrolled Act (SEA) 483 speaks for itself and that the remaining allegations in paragraph 10 are legal conclusions that require no response.

11. State asserts that Senate Enrolled Act (SEA) 483 speaks for itself and that the remaining allegations in paragraph 11 are legal conclusions that require no response.

12. State asserts that Senate Enrolled Act (SEA) 483 speaks for itself and that the remaining allegations in paragraph 12 are legal conclusions that require no response.

13. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 13 of Plaintiffs' Second Amended Complaint and therefore denies them.

14. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 14 of Plaintiffs' Second Amended Complaint and therefore denies them.

15. State is without knowledge or information sufficient to form a belief as to the truth of the allegation contained in paragraph 15 of Plaintiffs' Second Amended Complaint and therefore denies them.

16. State asserts that the 14th Amendment speaks for itself and that the remaining allegations in paragraph 16 are legal conclusions that require no response.

17. State denies the allegations contained in paragraph 17 of Plaintiffs' Second Amended Complaint.

18. State denies the allegations contained in paragraph 18 of Plaintiffs' Second Amended Complaint.

19. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 19 of Plaintiffs' Second Amended Complaint, and therefore denies them.

20. State denies the allegations contained in paragraph 20 of Plaintiffs' Second Amended Complaint.

21. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 21 of Plaintiffs' complaint regarding the impact, if any, upon registered and otherwise qualified voters without identification who are poor or of otherwise limited means. State denies the allegation that SEA 483 is a de facto poll tax and any other remaining allegations contained in paragraph 21 of Plaintiffs' Second Amended Complaint.

22. State denies the allegations contained in paragraph 22 of Plaintiffs' Second Amended Complaint.

23. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 22 of Plaintiffs' Second Amended Complaint and therefore denies them.

24. State denies the allegations contained in paragraph 24 of Plaintiffs' Second Amended Complaint.

25. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 25 of Plaintiffs' Second Amended Complaint, and therefore denies them.

26. State asserts that Senate Enrolled Act (SEA) 483 speaks for itself and that the remaining allegations in paragraph 26 are legal conclusions that require no response.

27. State asserts that Ind. Code §3-14-2-16(a) speaks for itself and that the remaining allegations in paragraph 27 are legal conclusions that require no response.

28. State asserts that 42 U.S.C. § 1973i(e)(1) speaks for itself and that the remaining allegations in paragraph 28 are legal conclusions that require no response.

29. State is without knowledge or information sufficient to form a belief as to the truth of the allegations contained in paragraph 29 of Plaintiffs' Second Amended Complaint, and therefore denies them.

30. State incorporates its answers to paragraphs 1 through 29 of Plaintiffs' Second Amended Complaint for its answer to Paragraph 30 of Plaintiffs' Second Amended Complaint. There are no remaining allegations in Paragraph 30 which require an answer.

31. State asserts that the First Amendment speaks for itself and that the remaining allegations in paragraph 31 are legal conclusions that require no response.

32. State denies the allegations contained in paragraph 32 of Plaintiffs' Second Amended Complaint.

33. State denies the allegations contained in paragraph 33 of Plaintiffs' Second Amended Complaint.

34. State incorporates its answers to paragraphs 1 through 33 of Plaintiffs' Second Amended Complaint for its answer to Paragraph 34 of Plaintiffs' Second Amended Complaint. There are no remaining allegations in paragraph 34 which require an answer.

35. State asserts that the Voting Rights Act of 1965, as amended, 42 U.S.C. § 1971 *et. seq.* speaks for itself and that the remaining allegations in paragraph 35 are legal conclusions that require no response.

36. State denies the allegation in paragraph in 36 of Plaintiffs' Second Amended Complaint that SEA 483 violates the Voting Rights Act. State asserts that 42 U.S.C. § 1971(a)(2)(A) and SEA 483 speak for themselves and any remaining allegations contained in paragraph 36 of Plaintiffs' Second Amended Complaint are legal conclusions that require no response.

37. State denies the allegation in paragraph 37 of Plaintiffs' Second Amended Complaint that SEA 483 violates the Voting Rights Act. States asserts that 42 U.S.C. § 1971 (a)(2)(B) and SEA 483 speak for themselves and any remaining allegations contained in paragraph 37 of Plaintiffs' Second Amended Complaint are legal conclusions that require no response.

38. State denies the allegation in paragraph 38 of Plaintiffs' Second Amended Complaint that SEA 483 violates the National Voter Registration Act of 1993 (NVRA). State asserts that 42 U.S.C. § 1973gg-6 and SEA 483 speak for themselves and any remaining allegations contained in paragraph 38 of Plaintiffs' Second Amended Complaint are legal conclusions that require no response.

39. State denies the allegation in paragraph 39 of Plaintiffs' Second Amended Complaint that SEA 483 violates the Help America Vote Act of 2002. State asserts that 42 U.S.C §§ 15301 *et seq.*, 42 U.S.C. § 15483(b)(1) and (2), NVRA, 42 U.S.C. § 15545 (a)(4), Voting Rights Act, 42 U.S.C. § 15545(a)(1) and SEA 483 speak for themselves and any remaining allegations contained in paragraph 39 of Plaintiffs' Second Amended Complaint are legal conclusions that require no response.

40. State denies the allegations contained in paragraph 40 of Plaintiffs' Second Amended Complaint.

41. State denies the allegations contained in paragraph 41 of Plaintiffs' Second Amended Complaint.

42. State denies the allegations contained in paragraph 42 of Plaintiffs' Second Amended Complaint.

43. State denies the allegations contained in paragraph 43 of Plaintiffs' Second Amended Complaint.

WHEREFORE, State requests that the Court grant judgment in its favor, that Plaintiffs take nothing by way of their Second Amended Complaint and grant all other relief just and proper in the premises.

Affirmative Defenses

First Defense

42 U.S.C. § 1971 *et seq.* and 42 U.S.C § 15301 *et seq.* do not empower plaintiffs to seek direct relief from a violation.

Second Defense

Plaintiffs lack standing to bring suit under Article III of the United States Constitution and under 42 U.S.C. § 1983.

Third Defense

Plaintiffs do not present a real dispute which demonstrates a genuine need for judicial resolution at this time.

Fourth Defense

Plaintiffs' action is barred in whole or in part by the Eleventh Amendment to the United States Constitution.

Respectfully submitted,
STEVE CARTER
Attorney General of Indiana

By: s/Doug Webber
Doug Webber
Attorney No. 1015-49
Deputy Attorney General

Thomas M. Fisher
Attorney No. 17949-49
Special Counsel

CERTIFICATE OF SERVICE

I hereby certify that on September 8, 2005, a copy of the foregoing Notice of Intervenor-Defendant, State of Indiana's Answer to Plaintiffs' Second Amended Complaint was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system:

William R. Groth
Fillenwarth Dennerline Groth & Towe
wgroth@fdgtlaborlaw.com

Geoffrey S. Lohman
Fillenwarth Dennerline Groth &
Towe
glohman@fdgtlaborlaw.com

Barry A. Macey
Macey Swanson & Allman
bmacey@maceylaw.com

James B. Osborn
Office of Corporation Counsel
josborn@indygov.org

Kenneth Falk
Indiana Civil Liberties Union
ken.falk@iclu.org

 s/Doug Webber
Doug Webber
Deputy Attorney General

OFFICE OF ATTORNEY GENERAL
Indiana Government Center South, 5th Floor
302 West Washington Street
Indianapolis, IN 46204
Telephone: (317) 232-6224
Fax: (317) 232-7979