

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF INDIANA  
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 TODD ROKITA, *et al.*, )  
 )  
 Defendants. )  
 )  
 \_\_\_\_\_ )  
 WILLIAM CRAWFORD, *et al.*, )  
 )  
 Plaintiffs, )  
 )  
 vs. )  
 )  
 MARION COUNTY ELECTION BOARD, )  
 )  
 Defendant, )  
 )  
 and )  
 )  
 STATE OF INDIANA, )  
 )  
 Intervenor. )

1:05-CV-0634-SEB-VSS

**DEFENDANT’S ANSWER AND AFFIRMATIVE DEFENSES TO  
PLAINTIFFS’ SECOND AMENDED COMPLAINT**

The Marion County Election Board (“MCEB”), by counsel, answers Plaintiffs’ Indiana Democratic Party and Marion County Democratic Central Committee Second Amended Complaint for Declaratory and Injunctive Relief as follows:

1. MCEB does not contest subject matter jurisdiction. MCEB admits that the Plaintiffs’ Second Amended Complaint asserts an action against MCEB based on 42 U.S.C. §

1983. MCEB denies any and all remaining allegations in paragraph 1 of Plaintiffs' Second Amended Complaint.

2. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 2 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

3. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 3 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

4. MCEB denies the allegations contained in paragraph 3 of the Plaintiffs' Second Amended Complaint.

5. MCEB admits that Todd Rokita is the Indiana Secretary of State. MCEB asserts that I.C. §§ 3-6-3.7-1, 3-6-4.2-2(a), 3-6-4.2-2.5, 3-12-10-2.1(b), and 3-12-5-9 speak for themselves. The remaining allegations in paragraph 5 are legal conclusions requiring no response.

6. MCEB admits that Defendants King and Robertson are co-directors of the Indiana Election Division of Secretary of State Rokita's office. MCEB asserts that Senate Enrolled Act 483, I.C. §§ 3-6-4.2-2(b), 3-6-4.2-14, 3-5-4-8(b), 3-6-4.2-2.5, and 3-6-4.2-1(a) speak for themselves. The remaining allegations in paragraph 6 are legal conclusions requiring no response.

7. MCEB admits the allegations contained in paragraph 7 of the Plaintiffs' Second Amended Complaint.

8. MCEB asserts that the Indiana Constitution, I.C. §§ 3-7-13-1, and 3-7-13-4 speak for themselves. The remaining allegations in paragraph 8 are legal conclusions requiring no response.

9. MCEB asserts that Senate Enrolled Act 483 speaks for itself. The remaining allegations in paragraph 9 are legal conclusions requiring no response.

10. MCEB asserts that Senate Enrolled Act 483 speaks for itself. The remaining allegations in paragraph 10 are legal conclusions requiring no response.

11. MCEB asserts that Senate Enrolled Act 483 speaks for itself. The remaining allegations in paragraph 11 are legal conclusions requiring no response.

12. MCEB asserts that Senate Enrolled Act 483 speaks for itself. The remaining allegations in paragraph 12 are legal conclusions requiring no response.

13. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 13 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

14. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 14 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

15. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 15 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

16. MCEB asserts that the 14<sup>th</sup> Amendment speaks for itself. The remaining allegations in paragraph 16 are legal conclusions requiring no response.

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

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

19. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 19 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

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

21. MCEB denies the allegation contained in paragraph 21 of the Plaintiffs' Second Amended Complaint.

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

23. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 23 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

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

25. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 25 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

26. MCEB asserts that Senate Enrolled Act 483 speaks for itself. The remaining allegations contained in paragraph 26 are legal conclusions requiring no response.

27. MCEB asserts that I.C. §§ 3-14-2-16(a) and 3-14-2-12 speak for themselves. The remaining allegations contained in paragraph 27 are legal conclusions requiring no response.

28. MCEB asserts that 42 U.S.C. § 1973i(e)(1) speaks for itself. The remaining allegations contained in paragraph 28 are legal conclusions requiring no response.

29. MCEB is without sufficient information to admit or deny the allegations contained in paragraph 29 of the Plaintiffs' Second Amended Complaint and therefore denies the same.

30. MCEB incorporates its answers to the allegations contained in paragraphs 1 through 29 as a response to paragraph 30 of the Plaintiffs' Second Amended Complaint.

31. MCEB asserts that the First Amendment speaks for itself. The remaining allegations in paragraph 31 are legal conclusions requiring no response.

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

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

34. MCEB incorporates its answers to the allegations contained in paragraphs 1 through 33 as a response to paragraph 34 of the Plaintiffs' Second Amended Complaint.

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

36. MCEB denies the allegation in paragraph 36 of the Plaintiffs' Second Amended Complaint that Senate Enrolled Act 483 violates the Voting Rights Act. MCEB asserts that 42

U.S.C. § 1971(a)(2)(A) and Senate Enrolled Act 483 speak for themselves. The remaining allegations in paragraph 36 are legal conclusions requiring no response.

37. MCEB denies the allegation in paragraph 37 of the Plaintiffs' Second Amended Complaint that Senate Enrolled Act 483 violates the Voting Rights Act. MCEB asserts that 42 U.S.C. § 1971(a)(2)(B) and Senate Enrolled Act 483 speak for themselves. The remaining allegations in paragraph 37 are legal conclusions requiring no response.

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

39. MCEB denies the allegation in paragraph 39 of the Plaintiffs' Second Amended Complaint that Senate Enrolled Act 483 violates the Help America Vote Act of 2002, 42 U.S.C. §§ 15301, 15483(b)(1) or (2). MCEB asserts that 42 U.S.C. §§ 154301, 15483(b)(1) and (2), 15545(a)(4), 15545(a)(1), and Senate Enrolled Act 483 speak for themselves. The remaining allegations in paragraph 39 are legal conclusions requiring no response.

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

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

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

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

WHEREFORE, Defendant requests that this Court deny Plaintiffs the relief requested in Plaintiffs' Second Amended Complaint.

**AFFIRMATIVE DEFENSES**

First Defense

The complaint fails to state a claim against defendant upon which relief can be granted.

Second 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.

Third Defense

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

Fourth Defense

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

Fifth Defense

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

Respectfully submitted,

OFFICE OF CORPORATION COUNSEL

By: /s/ James B. Osborn

James B. Osborn  
Special Assistant Corporation Counsel  
Atty. No. 17162-49

**CERTIFICATE OF SERVICE**

I do hereby certify that a copy of the foregoing has been duly served upon all persons listed below, by United States mail, first-class, postage prepaid or by electronic mail on this 8th day of September, 2005

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