

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF OHIO
WESTERN DIVISION

TRACIE HUNTER,	:	Case no.	1:10-cv-820
	:		
Plaintiff	:	(Hon. Susan J. Dlott)	
	:		
v.	:	ANSWER OF DEFENDANTS	
	:	BOARD OF ELECTIONS OF	
BOARD OF ELECTIONS OF	:	HAMILTON COUNTY, OHIO, AND	
HAMILTON COUNTY, OHIO, <i>et al</i>	:	BOARD MEMEBERS ALEX	
	:	TRIANTAFILOU, TIMOTHY	
Defendants	:	BURKE, CALEB FAUX AND	
	:	CHARLES GERHARDT	

ANSWER

Defendant Board of Elections, and Defendant board members Triantafilou, Burke, Faux, and Gerhardt (herein collectively referred to as the “Board”) state as their Answer to Plaintiff Tracie Hunter’s Complaint as follows:

1. In response to paragraph 1 of the Complaint, Defendant Board admits that an election was held, that Plaintiff Hunter is not the winning candidate, and that provisional votes were cast in the election. Defendant Board denies the remaining allegations in paragraph 1 of the Complaint.
2. In response to paragraph 2 of the Complaint, Defendant Board admits that Hunter seeks certain relief from this Court and denies that she is entitled to such relief.
3. In response to paragraph 3, Defendant Board denies that there is a justiciable federal claim and admits that should jurisdiction exist, venue is proper in this Court.
4. Defendant Board admits the allegations in paragraph 4 of the Complaint.
5. Defendant Board admits the allegations in paragraph 5 of the Complaint.
6. Defendant Board admits the allegations in paragraph 6 of the Complaint.

7. Defendant Board admits the allegations in paragraph 7 of the Complaint.
8. Defendant Board denies that more than 11,000 provisional ballots had been cast in Hamilton County and states that 10,536 provisional ballots were cast in Hamilton County. Defendant Board admits the remaining allegations in paragraph 8 of the Complaint.
9. Defendant Board denies that it approved over 9,000 provisional ballots and rejected about 2,000 provisional ballots and states that it approved 8,999 provisional ballot envelopes for counting and rejected 1,537 provisional ballot envelopes. Defendant Board admits the remaining allegations in paragraph 9 of the Complaint.
10. Defendant Board admits the allegations in paragraph 10 of the Complaint.
11. In response to paragraph 11, Defendant Board admits that the Williams/Hunter election is subject to an automatic re-count and denies the remaining allegations in paragraph 11 of the Complaint.
12. In response to paragraph 12 of the Complaint, Defendant Board admits only that duly registered and qualified voters are eligible to vote in the precinct in which they reside and were so eligible for the November 10 general election. Defendant Board denies any remaining allegations in paragraph 12 of the Complaint.
13. In response to paragraph 13 of the Complaint, Defendant Board admits only that the referenced section of the Revised Code says what it says, and denies any remaining allegations in paragraph 13 of the Complaint.
14. In response to paragraph 14 of the Complaint, Defendant Board admits only that the referenced section of the Revised Code says what it says, and denies any remaining allegations in paragraph 14 of the Complaint.
15. Defendant Board denies the allegations in paragraph 15 of the Complaint.

16. In response paragraph 16 of the Complaint, Defendant Board admits only that the referenced Directive what it says, admit that the Court Order referenced in footnote says what it says, and denies any remaining allegations in paragraph 16 of the Complaint.

17. In response paragraph 17 of the Complaint, Defendant Board admits only that the referenced Directive says what it says, and denies any remaining allegations in paragraph 17 of the Complaint.

18. In response paragraph 18 of the Complaint, Defendant Board admits only that the referenced Directive says what it says, and denies any remaining allegations in paragraph 18 of the Complaint.

19. In response paragraph 19 of the Complaint, Defendant Board admits only that the referenced Directive says what it says, and denies any remaining allegations in paragraph 19 of the Complaint.

20. In response paragraph 20 of the Complaint, Defendant Board admits only that the referenced decision of the Ohio Supreme Court say what it says, and denies any remaining allegations in paragraph 20 of the Complaint.

21. Defendant Board denies the allegations in paragraph 21 of the Complaint.

22. In response to paragraph 22 of the Complaint, Defendant Board admits only that it reviews each provisional ballot to determine whether it should be counted and denies the remaining allegations in paragraph 22 of the Complaint.

23. Defendant Board denies that about 8,260 provisional ballots were approved for counting without any significant discussion and states further that provisional ballots were also reviewed by the Board staff acting in bi-partisan teams. Defendant Board admits the remaining allegations in paragraph 23 of the Complaint.

24. Defendant Board admits the allegations in paragraph 24 of the Complaint.
25. Defendant Board admits the allegations in paragraph 21 of the Complaint.
26. In response to paragraph 26 of the Complaint, Defendant Board admits only that the Board approved for counting certain ballots that were cast at the offices of the Board. The Board denies that the ballots referenced in paragraph 26 were cast in any “precinct” or “the wrong precinct.”
27. In response to paragraph 27 of the Complaint, Defendant Board admits only that the 685 ballots referenced in this paragraph were unanimously approved for counting by the Board. The Board denies the remaining allegations in paragraph 27 of the Complaint.
28. In response to paragraph 28, Defendant Board admits only that the referenced ballots were approved for counting and denies the remaining allegations in paragraph 28 of the Complaint.
29. In response to paragraph 29, Defendant Board admits only that the some ballots were approved for counting and denies the remaining allegations in paragraph 29 of the Complaint.
30. In response to paragraph 30 of the Complaint, the Board admits only that 849 ballots cast in the wrong precinct were unanimously not approved for counting and that the referenced document speaks for itself and denies any remaining allegations in paragraph 30 of the Complaint.
31. Defendant Board denies the allegations in paragraph 31 of the Complaint.
32. In response to paragraph 32 of the Complaint, Defendant Board admits only the statements attributed to “Counsel for Ms. Hunter,” denies the accuracy of these statements, and denies any remaining allegations in paragraph 32 of the Complaint.
33. Defendant Board admits the allegations in paragraph 33 of the Complaint.

34. In response to paragraph 34 of the Complaint, Defendant Board admits only that certain provisional ballots were not approved for counting as stated in said paragraph, denies that poll worker error is relevant to Defendant Board's decision regarding these ballots, and denies any remaining allegations in paragraph 34 of the Complaint.

35. In response to paragraph 35 of the complaint, Defendant Board admits only that certain provisional ballots were not approved for counting and denies that poll worker error is relevant to the Board's decision regarding these ballots.

36. Defendant Board admits the allegations in paragraph 36 of the Complaint.

37. Defendant Board denies the allegations in paragraph 37 of the Complaint.

38. Defendant Board denies the allegations in paragraph 38 of the Complaint.

39. Defendant Board denies the allegations in paragraph 39 of the Complaint.

40. In response to paragraph 40 of the Complaint, Defendant Board admits only that it has an interest in seeing that every legally cast ballot by a legally registered and qualified voter is counted, and a further interest in assuring the integrity of elections through the prevention of fraudulent voting and the counting of illegally cast ballots. Defendant Board denies the remaining allegations in paragraph 30 of the Complaint.

41. Defendant Board denies the allegations in paragraph 41 of the Complaint and states affirmatively that an adequate remedy at law exists by way of an election contest.

42. Defendant Board denies the allegations in paragraph 42 of the Complaint.

43. Defendant Board denies the allegations in paragraph 43 of the Complaint.

44. Defendant Board denies the allegations in paragraph 44 of the Complaint.

45. In response to Section VI. of the Complaint ("Prayer for Relief"), Defendant Board admits that Hunter seeks the relief indicated therein and denies that she is entitled to such relief.

45. To the extent that the remaining portions of the Complaint or the attachments thereto are intended to describe the actions of Defendant Board, state a cause of action, assert a claim, or demand any form of relief, said allegations are denied.

DEFENSES

1. The Complaint fails to state a claim for which relief can be granted.
2. The Complaint states no cognizable cause of action against Defendant Board under the Ohio Constitution or laws of the State of Ohio or the Constitution and laws of the United States.
3. The actions or omissions, if any, by Defendant Board which may have affected the Plaintiff were undertaken in good faith, with probable cause, and pursuant to the duties imposed by the Ohio Revised Code and the laws of the United States.
4. No policy or practice of Hamilton County, Ohio caused or resulted in a violation of any statutory or constitutional right of Plaintiff. Moreover, the allegations in the Complaint relating to the conduct of Hamilton County, Ohio do not set forth a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States.
5. Defendant Board denies that it was a party to, and is subject to, the terms of the Consent Decree entered on April 19, 2010 in the case of *Northeast Ohio Coalition for the Homeless v. Brunner*, Case No. 06-CV-896 (S.D. Ohio).
6. Plaintiff Hunter has an adequate state – based remedy by way of an election contest.
7. Defendant Board hereby provides notice that it intends to assert and rely upon all of the affirmative defenses, avoidances, counterclaims, cross-claims, third party claims, immunities,

avoidances, and set-offs which may become available or apparent during the course of discovery or trial. Defendant Board reserves the right to amend its answer for the purpose of asserting such defenses.

8. Defendant Board hereby provides notice that it intends to assert and rely upon all of the affirmative defenses, avoidances, counterclaims, cross-claims, third party claims, immunities, avoidances, and set-offs which may become available or apparent during the course of discovery or trial. Defendant Board reserves the right to amend its answer for the purpose of asserting such defenses.

9. Plaintiff Hunter's claims are not ripe for review.

10. Plaintiff Hunter's claims present a political question over which this court lacks subject matter jurisdiction.

WHEREFORE, having fully answered, Defendant Board requests that Plaintiff's Complaint be dismissed, with prejudice and at Plaintiff's costs and expenses, and that the Court grant Defendant Board such further relief as it deems just and proper under the circumstances of the case.

Respectfully submitted,
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PROSECUTING ATTORNEY
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BY:

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Attorneys for Hamilton County Board of Elections

CERTIFICATE OF SERVICE

I hereby certify that the foregoing was filed on May 3, 2011 by electronic mail to all necessary parties and using the Court's CM/ECF system, which will transmit notice of the filing to all counsel of record in this case.

/s/ James W. Harper
James W. Harper

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