

IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

THE UNITED STATES OF AMERICA,))	
)	
Plaintiff,)	
)	
v.)	CIVIL ACTION NO. 06-CV-01652-KMO
)	
CITY OF EUCLID, OHIO; et at.,)	JUDGE KATHLEEN M. O'MALLEY
)	
Defendants.)	
_____))	

ANSWER OF CUYAHOGA COUNTY BOARD OF ELECTIONS

Now comes Defendant Cuyahoga County Board of Elections (hereinafter “Board”) and states for its Answer to Plaintiff’s Complaint as follows.

1. Answering paragraph 1 of the Complaint, the Board admits that 42 U.S.C. 1973 prohibits certain actions, practices or procedures concerning the denial or abridgement of the right to vote on account of race or color, and that 42 U.S.C. 1973j(d) provides for the United States Attorney General to institute civil actions for preventative, injunctive and other relief, for violations of 42 U.S.C. 1973. Said statutes speak for themselves. The Board denies all other allegations contained in paragraph 1.

2. Answering paragraph 2 of the Complaint, the Board admits that pursuant to 28 U.S.C. 1345 and 42 U.S.C. 1973j(f), this Court has jurisdiction over civil actions commenced by the United States, or by any agency or offices thereof, concerning preventative, injunctive and other relief for acts, practices or procedures prohibited by U.S.C. 1973. Said statutes speak for themselves. The Board denies all other allegations contain in paragraph 2.

3. Answering paragraph 3 of the Complaint, the Board admits that Defendant, City of Euclid, Ohio, is a home rule municipality, organized and existing pursuant to and under the laws and Constitution of the State of Ohio. The Board denies all other allegations contained in paragraph 3.

4. Answering paragraph 4 of the Complaint, the Board denies the allegations contained therein for want of knowledge or information sufficient to form a belief as to the truth thereof.

5. Answering paragraph 5 of the Complaint, the Board admits it is organized and exists pursuant the Ohio Revised Code and exercises certain powers and duties pursuant to the Ohio Revised Code, including, but not limited to, exercising certain powers and duties associated with the conduct of elections in the City of Euclid, including elections for the Euclid City Council, and acts under the direction of the Secretary of the State of Ohio. The Board denies all other allegations contained in paragraph 5.

6. Answering paragraph 6 of the Complaint, the Board admits that Section 2 of Voting Rights Act, as amended, 42 U.S.C. 1973, provides, in pertinent part, as follows: “(a) no voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in the denial or abridgement of the right of any citizen of the United States to vote on the account of race or color, ...” Said statute speaks for itself. The Board denies all other allegations contained in paragraph 6.

7. Answering paragraphs 7 through 9 of the Complaint, the Board denies the allegations contained therein for want of knowledge or information sufficient to form a belief as to the truth thereof.

8. Answering paragraph 10 of the Complaint, the Board admits the allegations therein.

9. Answering paragraphs 11 through 16 of the Complaint, the Board denies the allegations contained therein for want of knowledge or information sufficient to form a belief of the truth thereof.

10. To the extent that paragraph 17 of the Complaint makes allegations against the Board, the Board denies all such allegations.

AFFIRMATIVE DEFENSES

11. Plaintiff's Complaint fails to claim against the Board upon which relief can be granted

12. The Board is not a proper party to this action.

13. Pursuant to Fed. Civ. R. 19(A), Plaintiff has failed to join a necessary party to this action, to-wit the Ohio Secretary of State who is the chief election officer of the State of Ohio, and, pursuant to Chapter 3501 et seq. of the Ohio Revised Code, exercises certain powers and duties over the Board, including, but not limited to, appointing all members of the Board, issuing instructions by directions and advisories to members of the Board as to the proper methods of conducting elections, preparing rules and instructions made and issued for the conduct of elections which cannot be contradicted by rules and instructions made and issued by the Board, summarily decide questions in cases wherein the Board has reached a tie vote or disagreement and summarily remove any member of the Board or Director or Deputy Director or any other employee of the Board for certain specified reasons.

WHEREFORE, having fully answered the Plaintiff's Complaint, Defendant Cuyahoga County Board of Elections requests that this Honorable Court dismiss the Plaintiff's Complaint against it, with prejudice at Plaintiff's cost.

Respectfully submitted,
WILLIAM D. MASON
Prosecuting Attorney for Cuyahoga County

/s/ David G. Lambert
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Answer of the Cuyahoga County Board of Elections was filed electronically this 1st day of August 2006. 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/ David G. Lambert
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