

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

C6720J09

JAMES B CALLEN, *et al*

Plaintiff,

-vs-

Case No 06-CVH-11-14411

OHIO SECRETARY OF STATE,
J KENNETH BLACKWELL, *et al*

JUDGE CAIN

Defendants

FILED
COMMON PLEAS COURT
FRANKLIN COUNTY OHIO
2007 JAN 18 PM 4:30
CLERK OF COURT

REPLY IN SUPPORT OF MOTION TO DISMISS OF DEFENDANTS ADAMS,
COSHOCOTON, FULTON, HARDIN, KNOX, LAKE, LORAIN, AND VAN WERT COUNTY
BOARD OF ELECTIONS

Defendant Adams, Coshocotn, Fulton, Hardin, Knox, Lake, Lorain, and Van Wert County Board of Elections, for their reply in support of their Motion to Dismiss, state that their motion should be granted because the Consolidated Response to Motions to Dismiss Plaintiffs' Complaint ("Plaintiffs' Response") fails to establish that any of the Plaintiffs have standing to maintain their claims against these Defendants. Plaintiffs do not claim to vote in any of these counties. Instead, their theory of standing is essentially based on the possibility that 1) a voter from one of these Defendants' counties might not have their vote properly tabulated by a voting machine, 2) that voter might vote for the same candidate as one of the Plaintiffs might, and 3) that candidate might lose the election because the voter from the Defendant county did not have their vote properly tabulated. (Plaintiffs' Response at 2-3) Plaintiffs' so called theory of "effective aggregation," or piggyback standing, has no basis in the law.

The U S Supreme Court has been clear that

[t]he irreducible constitutional minimum of standing contains three elements
First, the plaintiff must have suffered an 'injury in fact' - an invasion of a legally

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protected interest that is (a) concrete and particularized, and (b) actual or imminent, not conjectural or hypothetical. Second, there must be a causal connection between the injury and the conduct complained of. Third, it must be likely, as opposed to merely speculative, that the injury will be redressed by a favorable decision.

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US v Hays, 515 U.S. 737, 742-743 (1995) (quoting *Lujan v Defenders of Wildlife*, 504 U.S. 555, 560-561 (1992))¹ In light of these principles, the U.S. Supreme Court has repeatedly refused to recognize a generalized grievance against allegedly illegal governmental conduct as sufficient standing to invoke judicial power. *Id.* at 743. Therefore, the U.S. Supreme Court has held that it is the burden of the party who seeks the exercise of jurisdiction in his favor to clearly allege facts demonstrating that he is a proper party to invoke judicial resolution of the dispute. *Id.* Plaintiffs cannot satisfy this burden.

Plaintiffs support their theory by citing to select dicta from a number of federal cases, none of which involve voting machines or even a principal of standing based upon the denial of the right to vote to another voter. A close examination of the case law cited by Plaintiffs reveals that the cases involve either apportionment, ballot access, or criminal election tampering issues. See *Baker v Carr*, 369 U.S. 186 (1962) (challenge to Tennessee state apportionment statute), *Wesberry v Sanders*, 376 U.S. 1 (1964) (challenge to Georgia state apportionment statute), *Bush v Vera*, 517 U.S. 952 (1996) (challenge to Texas congressional redistricting plan as constituting racial gerrymandering)², *Reynolds v Sims*, 377 U.S. 533 (1964) (challenge to Alabama legislative apportionment plan), *Williams v Rhodes*, 393 U.S. 23 (1968) (challenge to Ohio election laws

¹ In *Hays*, which involved a challenge to a Louisiana congressional redistricting scheme, the U.S. Supreme Court rejected the appellees' position that "anybody in the State has a claim." 515 U.S. at 744.

² In *Bush v Vera*, the Court determined that plaintiff Chen lacked standing because he resided in a congressional district that was not one of the three districts that had been declared unconstitutional, and because he had "not alleged any specific facts showing that he personally [had] been subjected to any racial classification." 517 U.S. at 957. Similarly, the Plaintiffs in this case cannot show that they personally are subject to any harm by these Defendants.

which made it “virtually impossible” for new political party to be placed on state ballot to choose electors pledged to particular candidates for presidency), *Anderson v Celebrezze*, 460 U S 780 (1983)(challenge to Ohio’s early filing deadline for independent candidates), *Clingman v Beaver*, 544 U S 581 (2005)(challenge to Oklahoma’s semiclosed primary system), *Republican Party of the State of Connecticut v Tashjian*, 770 F 2d 265 (2nd Cir 1985)(challenge to Connecticut’s closed primary law), and *United States v Classic*, 313 U S 299 (1941)(challenge to counts of indictment related to primary election) While all of these cases provide dicta relating to the general right to vote, they do not provide any support for Plaintiffs’ argument that they have standing because some other person who votes in one of these Defendants’ counties may not have their vote properly tabulated

Plaintiffs’ argument also fails because, otherwise, any voter, *anywhere* in the United States, would have standing against these Defendant board of elections For example, under Plaintiffs’ “effective aggregation” theory, a voter in New Mexico would have standing to sue the Adams County Board of Elections because the New Mexico voter may vote for the same candidate for President as a voter in Adams County The absurdity of this example demonstrates why Plaintiffs’ argument must be rejected It also demonstrates the wisdom of the U S Supreme Court in rejecting standing based upon “a generalized grievance against allegedly illegal governmental conduct,” which is really all the Plaintiffs here are alleging See *US v Hays*, 515 U S at 743

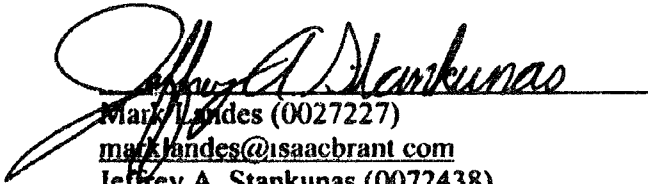
Finally, as practical matter, the Plaintiffs can achieve their requested relief without having these eight, or even the other forty three, board of elections as defendants Under Ohio law, a county board of elections may only select a voting machine that has been certified for use by the Ohio Secretary of State and the Ohio Board of Voting Machine Examiners See R C §§

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3506 05-10 Therefore, the Plaintiffs could achieve their requested relief even if they had only sued the Ohio Secretary of State, since this Court could order the Ohio Secretary of State to decertify the voting equipment with which the Plaintiffs take issue

For the foregoing reasons, as well as those set forth in their Motion to Dismiss, Defendant Adams, Coshocton, Fulton, Hardin, Knox, Lake, Lorain, and Van Wert County Board of Elections respectfully request this Court to dismiss Plaintiffs' Complaint against them in its entirety

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing was served by regular United States mail, postage prepaid, this 18th day of January 2007, to

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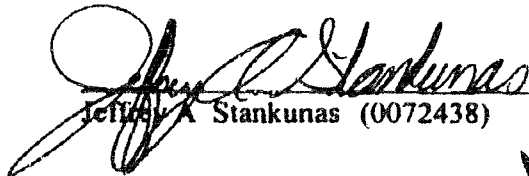
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