

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

EFFIE STEWART, <i>et al.</i> ,	}	
	}	
Plaintiffs,	}	Case No. 5:02CV 2028
	}	Judge DOWD
vs	}	Magistrate Judge Gallas
	}	
J. KENNETH BLACKWELL, <i>et al</i>	}	
	}	
Defendants.	}	

Amended Answer to Plaintiffs Second Amended Complaint of Defendants Hamilton County, Ohio; Board of Commissioners of Hamilton County, Ohio; Board of Elections of Hamilton County, Ohio; John Dowlin, Todd Portune, Thomas Neyer (Hamilton County Commissioners, all in their official capacities; Michael R. Barrett, Timothy Burke, V. Daniel Radford and Todd Ward (members of the Hamilton County Board of Elections), all in their official capacities.

Now come Defendants Hamilton County, Ohio; Board of Commissioners of Hamilton County, Ohio; Board of Elections of Hamilton County, Ohio; John Dowlin, Todd Portune, Thomas Neyer (Hamilton County Commissioners, all in their official capacities; Michael R. Barrett, Timothy Burke, V. Daniel Radford and Todd Ward (members of the Hamilton County Board of Elections) [hereafter “Hamilton County Defendants”], all in their official capacities, by and through counsel, and state for their Answer to the allegations of the Amended Complaint in this matter :

FIRST DEFENSE

1. Hamilton County Defendants admit the allegations in Paragraph 1 that the Plaintiffs purport to bring herewith a class action under the Voting Rights Act of 1965, 42 U.S.C. § 1973 [hereafter “VRA”] and the Reconstruction Era Civil Rights Act of 1871, 42 U.S.C. § 1983 [hereafter “Section 1983”], and name two purported classes of plaintiff for the action, alleging, collectively that voting technologies used in Hamilton County, Ohio violate the

Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States constitution and/or Section Two of the VRA. Hamilton County Defendants deny that the constitution or VRA have been violated.

2. Hamilton County Defendants admit the Plaintiffs seek the relief set out in Paragraph 2, and deny that they are entitled to it.

3. Hamilton County Defendants admit the Plaintiffs seek the relief set out in Paragraph 3, and deny that they are entitled to it.

4. Hamilton County Defendants deny the allegations of Paragraph 4 for want of information sufficient to form an opinion of their accuracy.

5. Hamilton County Defendants deny the allegations of Paragraph 5 for want of information sufficient to form an opinion of their accuracy.

6. Hamilton County Defendants deny the allegations of Paragraph 6 for want of information sufficient to form an opinion of their accuracy.

7. Hamilton County Defendants deny the allegations of Paragraph 7 for want of information sufficient to form an opinion of their accuracy.

8. Hamilton County Defendants deny the allegations of Paragraph 8 for want of information sufficient to form an opinion of their accuracy.

9. Hamilton County Defendants deny the allegations of Paragraph 9 for want of information sufficient to form an opinion of their accuracy.

10. Hamilton County Defendants deny the allegations of Paragraph 10 for want of information sufficient to form an opinion of their accuracy.

11. Hamilton County Defendants deny the allegations of Paragraph 11 for want of information sufficient to form an opinion of their accuracy.

12. Hamilton County Defendants deny the allegations of Paragraph 12 for want of information sufficient to form an opinion of their accuracy.

13. Hamilton County Defendants deny the allegations of Paragraph 13 for want of

information sufficient to form an opinion of their accuracy.

14. Hamilton County Defendants deny the allegations of Paragraph 14 for want of information sufficient to form an opinion of their accuracy.

15. Hamilton County Defendants deny the allegations of Paragraph 15 for want of information sufficient to form an opinion of their accuracy.

16. Hamilton County Defendants deny the allegations of Paragraph 16 for want of information sufficient to form an opinion of their accuracy.

17. Hamilton County Defendants deny the allegations of Paragraph 17 for want of information sufficient to form an opinion of their accuracy.

18. Hamilton County Defendants admit the allegations of Paragraph 18.

19. Hamilton County Defendants admit the allegations of Paragraph 19.

20. Hamilton County Defendants admit in respect of the allegations of Paragraph 20 that the provisions of Revised Code Title 35 say what they say and impose such duties as are set forth therein. These Defendants deny any categorization which is or may be to the contrary.

21. Hamilton County Defendants deny the allegations of Paragraph 21 for want of information sufficient to form an opinion of their accuracy.

22. Hamilton County Defendants admit in respect of the allegations of Paragraph 22 that the provisions of R.C. 3506.05 and 3507.04 say what they say and impose such duties as are set forth therein. These Defendants deny any categorization which is or may be to the contrary.

23. Hamilton County Defendants deny the allegations of Paragraph 23 for want of information sufficient to form an opinion of their accuracy.

24. Paragraph 24 contains allegations against the state of Ohio and individual defendants of the state, which do not appear to require an answer by Hamilton County, Ohio. To the extent that an answer is required, Hamilton County Defendants deny the allegations.

25. Hamilton County Defendants deny the allegations of Paragraph 25 for want of information sufficient to form an opinion of their accuracy.

26. Hamilton County Defendants deny the allegations of Paragraph 26 for want of information sufficient to form an opinion of their accuracy.

27. Hamilton County Defendants admit the allegations of Paragraph 27, and deny that their official status is any ground for liability under the allegations of the Amended Complaint.

28. Hamilton County Defendants deny the allegations of Paragraph 28 for want of information sufficient to form an opinion of their accuracy.

29. Paragraph 29 contains no allegation requiring an answer.

30. Hamilton County Defendants deny the allegations of Paragraph 30 for want of information sufficient to form an opinion of their accuracy.

31. Hamilton County Defendants deny the allegations of Paragraph 31 for want of information sufficient to form an opinion of their accuracy.

32. Hamilton County Defendants deny the allegations of Paragraph 32 for want of information sufficient to form an opinion of their accuracy.

33. Hamilton County Defendants admit that there are three methods by which counties may select and acquire voting technology and deny the remaining allegations of Paragraph 33.

34. Hamilton County Defendants deny the allegations of Paragraph 34 for want of information sufficient to form an opinion of their accuracy.

35. Paragraph 35 contains no allegation requiring an answer.

36. Hamilton County Defendants deny the allegations of Paragraph 36 for want of information sufficient to form an opinion of their accuracy.

37. Hamilton County Defendants deny the allegations of Paragraph 37 for want of information sufficient to form an opinion of their accuracy.

38. Hamilton County Defendants admit that Hamilton County is a political subdivision of the state of Ohio and a "person" for purposes of Section 1983, admit that there are three methods by which counties may select and acquire voting technology, and deny the

remaining allegations of Paragraph 38.

39. Hamilton County Defendants deny the allegations of Paragraph 39 for want of information sufficient to form an opinion of their accuracy.

40. Hamilton County Defendants deny the allegations of Paragraph 40 for want of information sufficient to form an opinion of their accuracy.

41. Hamilton County Defendants deny the allegations of Paragraph 41 for want of information sufficient to form an opinion of their accuracy.

42. Hamilton County Defendants deny the allegations of Paragraph 42.

43. Hamilton County Defendants deny the allegations of Paragraph 43 for want of information sufficient to form an opinion of their accuracy.

44. Hamilton County Defendants admit only so much of the general allegation of Paragraph 44 that the Plaintiffs purport to have brought this action pursuant to the statutory and constitutional provisions set forth in that paragraph. Hamilton County Defendants deny that these provisions have been violated or that these Defendants are liable for damages thereunder.

45. Hamilton County Defendants admit that this action is filed pursuant to the statutes cited in Paragraph 45, and that these statutes say what they say. These Defendants deny any categorization which is or may be to the contrary.

46. Hamilton County Defendant deny the allegations of Paragraph 46 for want of information sufficient to form an opinion of their accuracy

47. Hamilton County Defendants admit the allegation of Paragraph 47 that Plaintiffs have purported to bring this action on behalf of two alleged classes pursuant to Civ.R. 23, but deny that either of the purported classes fulfills the requirements of Civ.R. 23.

48. Hamilton County Defendants deny the allegations of Paragraph 48.

49. Hamilton County Defendants deny the allegations of Paragraph 49.

50. Hamilton County Defendants deny the allegations of Paragraph 50.

51. Hamilton County Defendants deny the allegations of Paragraph 51.

52. Hamilton County Defendants deny the allegations of Paragraph 52.

53. Hamilton County Defendants deny the allegations of Paragraph 53.

54. No response is required for the assertions of Paragraph 54. Nonetheless, Hamilton County Defendants reassert each answer set out in Paragraphs 1 through 54.

55. Hamilton County Defendants admit the allegations of Paragraph 55.

56. Hamilton County Defendants admit that the selection of the voting system used in Hamilton County is subject to the discretion of the voters, the Board of Elections and, to the extent appropriate, the Commissioners of Hamilton County. These Defendants deny the allegations remaining in Paragraph 56 for want of information sufficient to form an opinion of their accuracy.

57. Hamilton County Defendants admit the allegations of Paragraph 57.

58. Hamilton County Defendants admit the allegations of Paragraph 58.

59. Hamilton County Defendants admit the allegations of Paragraph 59.

60. Hamilton County Defendants admit the allegations of Paragraph 60.

61. Hamilton County Defendants deny the allegations of Paragraph 61 for want of information sufficient to form an opinion of their accuracy.

62. Hamilton County Defendants admit the allegations of Paragraph 62 to the extent they apply to Hamilton County, Ohio, and deny the remaining allegations of this paragraph for want of information sufficient to form an opinion of their accuracy.

63. Hamilton County Defendants admit the allegations of Paragraph 63 to the extent they apply to Hamilton County, Ohio, and deny the remaining allegations of this paragraph for want of information sufficient to form an opinion of their accuracy.

64. Hamilton County Defendants admit the allegations of Paragraph 64 to the extent they apply to Hamilton County, Ohio, and deny the remaining allegations of this paragraph for want of information sufficient to form an opinion of their accuracy.

65. Hamilton County Defendants deny the allegations of Paragraph 65 for want of

information sufficient to form an opinion of their accuracy.

66. Hamilton County Defendants deny the allegations of Paragraph 66 for want of information sufficient to form an opinion of their accuracy.

67. Hamilton County Defendants deny the allegations of Paragraph 67 for want of information sufficient to form an opinion of their accuracy.

68. Hamilton County Defendants admit the allegation of Paragraph 68 that the county uses a punch card voting system with central counting to conduct elections, and deny the remaining allegations of Paragraph 68.

69. Hamilton County Defendants deny the allegations of Paragraph 69 for want of information sufficient to form an opinion of their accuracy.

70. Hamilton County Defendants deny the allegations of Paragraph 70 for want of information sufficient to form an opinion of their accuracy.

71. Hamilton County Defendants deny the allegations of Paragraph 71 for want of information sufficient to form an opinion of their accuracy.

72. Hamilton County Defendants deny the allegations of Paragraph 72 for want of information sufficient to form an opinion of their accuracy.

73. Hamilton County Defendants deny the allegations of Paragraph 73 for want of information sufficient to form an opinion of their accuracy.

74. Hamilton County Defendants deny the allegations of Paragraph 74 for want of information sufficient to form an opinion of their accuracy.

75. Hamilton County Defendants deny the allegations of Paragraph 75 for want of information sufficient to form an opinion of their accuracy.

76. Hamilton County Defendants deny the allegations of Paragraph 76.

77. Hamilton County Defendants deny the allegations of Paragraph 77.

78. Hamilton County Defendants deny the allegations of Paragraph 74 for want of information sufficient to form an opinion of their accuracy.

79. Hamilton County Defendants deny the allegations of Paragraph 79.

80. Hamilton County Defendants deny the allegations of Paragraph 80.

81. No response is required for the assertions of Paragraph 81. Nonetheless, Hamilton County Defendants reassert each answer set out in Paragraphs 1 through 80.

82. Hamilton County Defendants denies the inferential allegation of Paragraph 82 that there are “problems with punch card balloting systems” and deny the remaining allegations of that paragraph for want of information sufficient to form an opinion of their accuracy.

83. Hamilton County Defendants deny the allegations of Paragraph 83.

84. Hamilton County Defendants deny the allegations of Paragraph 84 for want of information sufficient to form an opinion of their accuracy.

85. Hamilton County Defendants deny the allegations of Paragraph 85 for want of information sufficient to form an opinion of their accuracy.

86. Hamilton County Defendants deny the allegations of Paragraph 86.

86. Hamilton County Defendants deny the allegations of Paragraph 87.

87. Hamilton County Defendants deny the allegations of Paragraph 87.

88. Hamilton County Defendants deny the allegations of Paragraph 88.

89. Hamilton County Defendants deny the allegations of Paragraph 89.

90. Hamilton County Defendants deny the allegations of Paragraph 90.

91. Hamilton County Defendants deny the allegations of Paragraph 91.

92. Hamilton County Defendants deny the allegations of Paragraph 92.

93. Hamilton County Defendants deny the allegations of Paragraph 93

94. Hamilton County Defendants deny the allegations of Paragraph 94.

95. Hamilton County Defendants deny the allegations of Paragraph 95.

96. Hamilton County Defendants deny the allegations of Paragraph 96.

97. No response is required for the assertions of Paragraph 97. Nonetheless, Hamilton County Defendants reassert each answer set out in Paragraphs 1 through 96.

98. Hamilton County Defendants deny the allegations of Paragraph 98 for want of information sufficient to form an opinion of their accuracy.

99. Hamilton County Defendants deny the allegations of Paragraph 99 for want of information sufficient to form an opinion of their accuracy.

100. Hamilton County Defendants deny the allegations of Paragraph 100.

101. Hamilton County Defendants deny the allegations of Paragraph 101.

102. Hamilton County Defendants deny the allegations of Paragraph 102.

103. Hamilton County Defendants deny the allegations of Paragraph 103.

104. Hamilton County Defendants deny the allegations of Paragraph 104.

105. Hamilton County Defendants deny the allegations of Paragraph 105.

106. Hamilton County Defendants deny the allegations of Paragraph 106.

SECOND DEFENSE

107. Hamilton County Defendants deny all allegations contained in the Amended Complaint not herein specifically admitted to be true, or denied.

THIRD DEFENSE

108. The Amended Complaint fails to state a claim for which relief can be granted.

FOURTH DEFENSE

109. The actions or omissions, if any, by Hamilton County Defendants 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.

FIFTH DEFENSE

110. The Plaintiffs' injuries, if any, resulted entirely from Plaintiffs' own negligence, whether reckless, intentional, or otherwise wrongful conduct.

SIXTH DEFENSE

111. At no time were the actions or omissions on the part of Hamilton County Defendants, indifferent, deliberate or otherwise, to any need of Plaintiffs', nor were the acts or

omissions of these answering Defendants malicious, wanton or reckless, outside of the scope and course of their employment or official capacity, or undertaken in bad faith.

SEVENTH DEFENSE

112. Some or all of Plaintiffs' claims may be barred by the statute of limitations.

EIGHTH DEFENSE

113. The Hamilton County Defendants hereby give notice that they intend to assert and rely upon all affirmative defenses, avoidances, counter-claims, cross-claims and third party claims, which become apparent or available during the course of discovery or trial, and hereby reserve the right to amend this Answer to assert such defenses.

NINTH DEFENSE

114. No policy or practice of Hamilton County Defendants caused or resulted in a violation of any statutory or constitutional right of any plaintiff or other person. Moreover, the allegations in the Amended Complaint relating to the conduct of Hamilton County Defendants do not set forth a deprivation of rights, privileges, or immunities secured by the Constitution or laws of the United States.

TENTH DEFENSE

115. The Amended Complaint states no cognizable cause of action against Hamilton County Defendants under the Ohio Constitution or laws of the State of Ohio.

ELEVENTH DEFENSE

116. The Hamilton County Defendants hereby give notice that they intend to assert and rely upon all affirmative defenses, immunities, avoidances, set-offs, counterclaims, cross-claims, and/or third-party claims which may become available or apparent during the course of discovery or trial. Hamilton County Defendants reserve the right to amend their answer for the purpose of asserting such defenses.

TWELFTH DEFENSE

117. The Plaintiffs have a remedy at law for their equitable claims. To the extent that the Amended Complaint purports to state a claim under 42 U.S.C. § 1973, any claim for injunctive relief is moot, or in the alternative, unripe before the final dates for compliance with the Help America Vote Act of 2002, wherein the Congress of the United States established as national public policy that punch card balloting machines shall be used no longer in federal elections and has required that these devices be replaced not later, under any circumstances, than 2006. Help America Vote Act of 2002, 42 U.S.C. §§ 15301, et seq.

THIRTEENTH DEFENSE

118. Some or all of the Plaintiffs' claims are barred by the Eleventh Amendment to the U.S. constitution.

FOURTEENTH DEFENSE

119. The Plaintiffs do not meet the class requirements of Civ.R. 23 or 23a.

FIFTEENTH DEFENSE

120. This Court lacks jurisdiction to order Hamilton County Defendants to purchase any particular equipment or to use any particular method of regulating elections within Hamilton County, Ohio.

SIXTEENTH DEFENSE

121. Hamilton County Defendants reserve the right to assert any defense or other matter which might constitute any immunity, avoidance of liability or affirmative defense against any claim in the Amended Complaint, to the extent that such issues may become apparent in the course of litigation.

SEVENTEENTH DEFENSE

122. The Amended Complaint fails to name one or more parties necessary for just adjudication

EIGHTEENTH DEFENSE

123. To the extent that any claim or cause of action is added by or may be implied from any portion of the Amended Complaint not answered heretofore, any and all such allegations are denied.

NINETEENTH DEFENSE

124. This Court lacks subject matter jurisdiction over all claims against the Hamilton County Defendants as there is no case or controversy as required by the United States Constitution with those defendants.

WHEREFORE, having answered fully, the Hamilton County Defendants pray this honorable Court to dismiss this action with prejudice at the Plaintiffs' cost, and award them all such additional relief as it shall deem appropriate in the circumstances, including attorneys fees and costs of this action.

Respectfully submitted,

MICHAEL K. ALLEN 0025214
Prosecuting Attorney
Hamilton County, Ohio

/s/ David T. Stevenson
DAVID T. STEVENSON 0030014
TRIAL ATTORNEY
Ass't Prosecuting Att'y
230 East Ninth Street
Suite 4000
Cincinnati, OH 45202-2174
(513) 946-3120
(513) 946-3018 (fax)
dstevens@prosecutor.hamilton-co.org

/s/ Joseph M. Hutson
JOSEPH M. HUTSON 000069849
Ass't Prosecuting Att'y
230 East Ninth Street
Suite 4000
Cincinnati, OH 45202-2174
(513) 946-3057
(513) 946-3018 (fax)

jhutson@prosecutor.hamilton-co.org

CERTIFICATE OF SERVICE

The foregoing was filed today, Friday, September, 12, 2003, through the Court Electronic Filing System. Copies will be distributed to opposing counsel and may be obtained through the operation of the Court ECF System.

/s/ Joseph M. Hutson

Joseph M. Hutson
Assistant Prosecuting Attorney