

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

EFFIE STEWART, et al.,	:	
	:	
Plaintiffs,	:	
	:	
v.	:	CASE NO: 5:02CV-2028
	:	
J. KENNETH BLACKWELL,	:	JUDGE DOWD
Ohio Secretary of State, et al.,	:	
	:	MAGISTRATE JUDGE GALLAS
Defendants.	:	

**ANSWER OF DEFENDANTS, J. KENNETH BLACKWELL, OHIO
SECRETARY OF STATE, RAYMOND BUTLER, GERALDINE
LEWIS, AND LARRY LOUTSZENHISER TO PLAINTIFFS' COMPLAINT**

Now come the State Defendants, J. Kenneth Blackwell, Ohio Secretary of State, and Raymond Butler, Geraldine Lewis, and Larry Loutszenhiser, members of the State of Ohio Board of Examiners for the Approval of Electoral Marking Devices (hereinafter "State Defendants"), by and through counsel, to answer in this cause of action as follows:

FIRST DEFENSE

1. The State Defendants, in responding to paragraphs 1, 2, and 3 of Plaintiffs' complaint, denominated as "Introduction, state that the allegations contained in said paragraphs are not susceptible to an admission or denial, inasmuch as these paragraphs are narratives. To

the extent an answer is required to these paragraphs, Defendants deny any factual allegations and legal conclusions set forth in said paragraphs.

2. In response to paragraph 4 of Plaintiffs' complaint, the State Defendants admit that certain Defendants are members of state government and that other Defendants are members of local government as set forth in that paragraph. Defendants deny any other allegations contained in said paragraph not heretofore expressly admitted as being true.

3. In response to paragraphs 5-17, State Defendants specifically deny allegations that the State uses any inadequate voting technology or any inadequate voting system. Further answering said paragraphs, the State Defendants are without sufficient knowledge or information to form a belief as to the truth of any of the other allegations contained in said paragraphs and therefore deny each and every allegation contained therein.

4. With regard to the allegations contained in paragraphs 18-24 of Plaintiffs' complaint, the State Defendants admit that J. Kenneth Blackwell is the Ohio Secretary of State and is the chief elections officer for the State of Ohio, and further admit that Defendants Butler, Lewis and Loutszenhiser, are members of the Board of Examiners for the Approval of Electoral Marking Devices, and further admit that the Ohio Constitution and/or the Ohio Revised Code impose duties upon these State Defendants. With regard to any other allegations contained in said paragraphs, the State Defendants specifically deny that any dual system of voting is created and further deny each and every allegation not heretofore expressly admitted as being true.

5. The State Defendants admit the allegations contained in paragraph 25-28 of Plaintiffs' complaint.

6. With regard to the allegations contained in paragraph 29 of Plaintiffs' complaint, State Defendants aver that no response is necessary, as the paragraph contains mere narrative without factual allegations and therefore no admission or denial is required.

7. With regard to the allegations contained in paragraph 30-35 of Plaintiffs' complaint, the State Defendants admit that the other Defendants named -- Members of the Summit County Council, Montgomery County Board of Commissioners, Hamilton County Board of Commissioners, and Sandusky Board of Commissioners -- are members of their respective commissions and have duties and responsibilities imposed upon them by the Ohio Revised Code. With regard to all other allegations contained in said paragraphs, the State Defendants deny any allegations not heretofore expressly admitted as being true.

8. With regard to the allegations contained in paragraphs 36-43 of Plaintiffs' complaint, these State Defendants admit that certain county and local officials named as Defendants in said paragraphs have duties imposed them by the Ohio Revised Code in regard to the conducting of elections. With regard to all other allegations contained in said paragraphs, the State Defendants deny any allegations not hereto expressly admitted as being true.

9. The State Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 44-46 of Plaintiffs' complaint and therefore deny each and every allegation contained therein.

10. The State Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraph 47 of Plaintiffs' complaint and therefore deny each and every allegation contained therein.

11. With regard to the allegations contained in paragraphs 48-53 of Plaintiffs' complaint, the State Defendants deny each and every allegation contained therein.

12. In response to paragraph 54 of Plaintiffs' complaint, the State Defendants restate and re-aver each and every answer contained in paragraph 1-11 of their Answer.

13. With regard to the allegations contained in paragraph 55-68 of Plaintiffs' complaint, the State Defendants admit that the Ohio Revised Code imposes upon certain public officials a number of duties in regard to the conducting of elections, which provisions speak for themselves. Further answering said paragraphs, the State Defendants admit that the four counties denominated as co-Defendants currently maintain a punch card voting system, as alleged in said paragraphs. The State Defendants deny any other allegations not heretofore expressly admitted as being true in said paragraphs.

14. The State Defendants deny the allegations contained in paragraphs 69-74 of Plaintiffs' complaint.

15. The State Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 75-79 of Plaintiffs' complaint and therefore deny each and every allegations contained therein.

16. The State Defendants deny the allegations set forth in paragraph 80 of Plaintiffs' complaint.

17. In response to the allegations contained in paragraph 81 of Plaintiffs' complaint, the State Defendants restate and re-aver each and every answer contained in paragraphs 1-15 of this Answer.

18. The State Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations contained in paragraphs 82-87 and therefore deny each and every allegation contained therein.

19. The State Defendants deny the allegations contained in paragraphs 88-96 of Plaintiffs' complaint.

20. In response to the allegations contained in paragraph 97 of Plaintiffs' complaint, the State Defendants restate and re-aver each and every answer contained in paragraph 1-18 of this Answer.

21. The State Defendants deny the allegations contained in paragraph 98-106 of Plaintiffs' complaint.

22. The State Defendants deny any other allegations made in Plaintiffs' complaint not heretofore expressly admitted as true.

SECOND DEFENSE

23. The complaint fails to state a claim upon relief may be granted against the State Defendants.

THIRD DEFENSE

24. Plaintiffs' claims for relief against the State Defendants, in whole or in part, are barred by the Eleventh Amendment to the United States Constitution.

FOURTH DEFENSE

25. The State Defendants are entitled to the defenses of immunity and/or qualified immunity.

FIFTH DEFENSE

26. At all times referred to in Plaintiffs' complaint, the State Defendants acted properly, in good faith, and in accordance with their duties under the law.

SIXTH DEFENSE

27. These Plaintiffs have not been deprived of any federal constitutional right by way of action of any of the State Defendants.

SEVENTH DEFENSE

28. These Plaintiffs are not entitled to any equitable relief.

EIGHTH DEFENSE

29. Plaintiffs do not satisfy the requirements of Rule 23(a) and (b) of the Federal Rules of Civil Procedure.

NINTH DEFENSE

30. Some or all of these Plaintiffs have failed to satisfy the applicable statutes of limitations and their claims are therefore barred.

TENTH DEFENSE

31. This Court is without jurisdiction to order the State of Ohio, or any of its political subdivisions, to purchase and/or use specific voting systems.

WHEREFORE, having fully answered the allegations contained in Plaintiffs' complaint, the State Defendants pray that they be dismissed and recover their costs of suit expended herein.

Respectfully submitted,

BETTY D. MONTGOMERY
Attorney General

/s/Elizabeth Luper Schuster

ARTHUR J. MARZIALE, JR. (0029764)

E-mail: amarziale@ag.state.oh.us

Deputy Chief Counsel

DARRELL M. PIERRE, JR. (0067012)

E-mail: dpierre@ag.state.oh.us

ELIZABETH LUPER SCHUSTER (0068022)

E-mail: eschuster@ag.state.oh.us

Assistant Attorneys General
Chief Counsel's Staff
30 East Broad Street, 17th Floor
Columbus, OH 43215-3428
(614) 466-2872
(614) 728-7592 (facsimile)

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2002, a copy of foregoing *Answer of Defendants, J. Kenneth Blackwell, Ohio Secretary of State, Raymond Butler, Geraldine Lewis, and Larry Loutszenhiser to Plaintiffs' Complaint* was filed electronically. 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. Copies will also be mailed to the following:

Victor Whisman
Montgomery County Prosecutor's Office
301 West Third Street
Dayton, Ohio 45422
Counsel for Montgomery County Defendants

Michael K. Allen
Hamilton County Prosecuting Attorney
230 E. 9th Street, Suite 400
Cincinnati, OH 45202-2151
Counsel for Hamilton County Defendants

/s/Elizabeth Luper Schuster
ELIZABETH LUPER SCHUSTER (0068022)
Email: eschuster@ag.state.oh.us
Assistant Attorney General
Chief Counsel's Staff
30 East Broad Street, 17th Floor
Columbus, OH 43215-3428
Phone: (614) 466-2872
Fax: (614) 728-7592