

**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' SECOND AMENDED COMPLAINT**

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"), hereby answer as follows:

FIRST DEFENSE

1. The State Defendants, in responding to paragraphs 1, 2, and 3 of Plaintiffs' amended 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' amended 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' amended 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. In response to paragraph 25, the State Defendants deny that Wayne Jones is a member of the Summit County Board of Elections and admit the remaining allegations contained in paragraph 25 of Plaintiffs' amended complaint.

6. The State Defendants admit the allegations in paragraphs 26-28 of Plaintiffs' amended complaint.

7. With regard to the allegations contained in paragraph 29 of Plaintiffs' amended 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.

8. With regard to the allegations contained in paragraph 30-35 of Plaintiffs' amended 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 or were 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.

9. With regard to the allegations contained in paragraphs 36-43 of Plaintiffs' amended 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.

10. 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' amended complaint and therefore deny each and every allegation contained therein.

11. 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' amended complaint and therefore deny each and every allegation contained therein.

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

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

14. With regard to the allegations contained in paragraph 55-68 of Plaintiffs' amended 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.

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

16. 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' amended complaint and therefore deny each and every allegation contained therein.

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

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

19. 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.

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

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

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

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

SECOND DEFENSE

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

THIRD DEFENSE

25. 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

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

FIFTH DEFENSE

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

SIXTH DEFENSE

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

SEVENTH DEFENSE

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

EIGHTH DEFENSE

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

NINTH DEFENSE

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

TENTH DEFENSE

32. 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.

ELEVENTH DEFENSE

33. Plaintiffs' claims are barred, in whole or in part, because they are not ripe.

TWELFTH DEFENSE

34. Plaintiffs' claims are barred, in whole or in part, because they are moot.

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

Respectfully submitted,

JIM PETRO
Ohio Attorney General

/s/Holly J. Hunt

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CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2003, a copy of foregoing *Answer of Defendants, J. Kenneth Blackwell, Ohio Secretary of State, Raymond Butler, Geraldine Lewis, and Larry Loutszenhiser to Plaintiffs' Amended 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.

/s/ Holly J. Hunt

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