

FILED

03 JAN -2 PM 1:01

U.S. DISTRICT COURT
NORTHERN DISTRICT OF OHIO
AKRON

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

EFFIE STEWART, *et al.*,

Plaintiffs,

vs

J. KENNETH BLACKWELL, *et al*

Defendants.

}
}
}
}
}
}
}
}

Case No. **5:02CV 2028**
Judge **DOWD**
Magistrate Judge **Gallas**

Answer of: Defendants John Dowlin, Todd Portune, and Thomas Neyer (Hamilton County Commissioners), all in their individual capacities; Michael R. Barrett, Timothy Burke, V. Daniel Radford and Todd Ward (members of the Hamilton County Board of Elections), all in their individual capacities.

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

FIRST DEFENSE

1. Hamilton County Individual 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 Individual Defendants deny that the constitution or VRA have been violated.

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

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

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

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

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

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

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

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

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

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

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

13. Hamilton County Individual Defendants deny the allegations of Paragraph 13 for want of information sufficient to form an opinion of their accuracy.

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

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

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

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

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

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

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

22. Hamilton County Individual 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 Individual 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 an answer is required, Hamilton County Individual Defendants deny the allegations.

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

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

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

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

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

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

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

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

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

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

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

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

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

44. Hamilton County Individual 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 Individual Defendants deny that these provisions have been violated or that these Defendants are liable for damages thereunder.

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

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

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

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

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

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

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

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

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

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

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

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

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

62. Hamilton County Individual 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 Individual 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 Individual 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 Individual Defendants deny the allegations of Paragraph 65 for want of information sufficient to form an opinion of their accuracy.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

89. Hamilton County Individual Defendants deny the allegations of Paragraph 89.
90. Hamilton County Individual Defendants deny the allegations of Paragraph 90.
91. Hamilton County Individual Defendants deny the allegations of Paragraph 91.
92. Hamilton County Individual Defendants deny the allegations of Paragraph 92.
93. Hamilton County Individual Defendants deny the allegations of Paragraph 93.
94. Hamilton County Individual Defendants deny the allegations of Paragraph 94.
95. Hamilton County Individual Defendants deny the allegations of Paragraph 95.
96. Hamilton County Individual Defendants deny the allegations of Paragraph 96.
97. No response is required for the assertions of Paragraph 97. Nonetheless,

Hamilton County Individual Defendants reassert each answer set out in Paragraphs 1 through 96.

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

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

100. Hamilton County Individual Defendants deny the allegations of Paragraph 100.
101. Hamilton County Individual Defendants deny the allegations of Paragraph 101.
102. Hamilton County Individual Defendants deny the allegations of Paragraph 102.
103. Hamilton County Individual Defendants deny the allegations of Paragraph 103.
104. Hamilton County Individual Defendants deny the allegations of Paragraph 104.
105. Hamilton County Individual Defendants deny the allegations of Paragraph 105.
106. Hamilton County Individual Defendants deny the allegations of Paragraph 106.

SECOND DEFENSE

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

THIRD DEFENSE

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

FOURTH DEFENSE

109. Plaintiffs' claims are barred by Ohio Revised Code Chapter 2744 and/or Ohio Revised Code Chapter 9 and the Hamilton County Individual Defendants hereby assert all applicable credits, set-offs, and immunities, as well as any right to indemnification, available under Ohio Revised Code Chapter 2744 and/or Ohio Revised Code Chapter 9.

FIFTH DEFENSE

110. The actions or omissions, if any, by Hamilton County Individual 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.

SIXTH DEFENSE

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

SEVENTH DEFENSE

112. At no time were the actions or omissions on the part of Hamilton County Individual 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.

EIGHTH DEFENSE

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

NINTH DEFENSE

114. The Hamilton County Individual Defendants hereby give notice that they intend to assert and rely on 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.

TENTH DEFENSE

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

ELEVENTH DEFENSE

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

TWELFTH DEFENSE

117. The Plaintiffs have a remedy at law for their equitable claims. To the extent that the 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 Individual Defendants to purchase any particular equipment or to use any particular method of regulating elections within Hamilton County, Ohio.

SIXTEENTH DEFENSE

121. Hamilton County Individual 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 Complaint, to the extent that such issues may become apparent in the course of litigation.

SEVENTEENTH DEFENSE

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

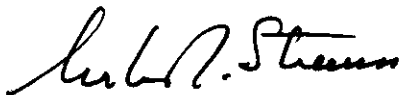
EIGHTEENTH DEFENSE

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

WHEREFORE, having answered fully, the Hamilton County Individual 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



GORDON M. STRAUSS 006400
Ass't Prosecuting Att'y
TRIAL ATTORNEY
230 East Ninth Street
Suite 4000
Cincinnati, OH 45202-2174
(513) 946-3053
(513) 946-3018 (fax)
gmstrauss@prosecutor.hamilton-co.org

David T. Stevenson by R. L. N. Ste
Gregory M. Stearns
0006400

DAVID T. STEVENSON 0030014
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

Joe Hutson

JOSEPH 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

I certify that a copy of the foregoing Answer was sent by U.S. mail to the following counsel of record, on December 30, 2002:

RAYMOND VASVARI
JILLIAN DAVIS
MAX WOHL CIVIL
LIBERTIES CENTER
4506 CHESTER AVENUE
CLEVELAND OH 44103 3621

PAUL MOKE
1252 PYLE CENTER
WILMINGTON COLLEGE
WILMINGTON OH 45177

RICHARD SAPHIRE
UNIVERSITY OF DAYTON
300 COLLEGE PARK
DAYTON OH 45469-2772

SCOTT T. GREENWOOD
1 LIBERTY HOUSE
P. O. BOX 5440
CINCINNATI OH 45202-5440

LAUGHLIN MCDONALD
2725 HARRIS TOWER
233 PEACHTREE STREET NE
ATLANTA GA 30303-1504

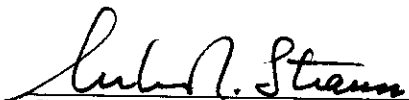
MEREDITH BELL
2725 HARRIS TOWER
233 PEACHTREE STREET NE
ATLANTA GA 30303-1504

ARTHUR J. MARZIALE, Jr.
ELIZABETH LUPER SCHUSTER
DARRELL M PIERRE, Jr.
ASS'T ATTORNEYS GENERAL
17TH FLOOR
30 EAST BROAD STREET
COLUMBUS, OH 43215-3428

VICTOR T. WHISMAN
ASS'T PROSECUTING ATT'Y
301 WEST THIRD STREET
DAYTON, OH 45422-1446

JEFFERY STANKUNAS
MARK LANDES
250 EAST BROAD STREET
COLUMBUS, OH 43215-3742

ANITA L. DAVIS
ASS'T PROSECUTING ATT'Y
53 UNIVERSITY AVENUE
6TH FLOOR
AKRON, OH 44308-1608


GORDON M. STRAUSS 0006400
Ass't Prosecuting Att'y