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CLERK, U.S. DISTRICT COURT  
NORTHERN DISTRICT OF OHIO  
AKRON

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

EFFIE STEWART, et al., : CASE NO. 02-CV-2028  
 : (Judge David D. Dowd, Jr.)  
 Plaintiffs, each appearing : (Magistrate Judge James S. Gallas)  
 herein individually and on :  
 behalf of persons similarly :  
 situated, :

v.

J. KENNETH BLACKWELL, ETC.,  
et al.,  
  
Defendants.

**ANSWER OF DEFENDANTS**  
**CHRISTOPHER R. HEIZER, STEVEN**  
**P. HARSMAN, SUE A. FINLEY,**  
**THOMAS J. RITCHIE, JAMES S.**  
**NATHENSON, DENNIS A. LIEBERMAN,**  
**CHARLES J. CURRAN, DON LUCAS,**  
**VICKI D. PEGG, MONTGOMERY COUNTY**  
**BOARD OF ELECTIONS, AND THE BOARD**  
**OF COUNTY COMMISSIONERS OF**  
**MONTGOMERY COUNTY, OHIO**

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Come now the aforementioned Defendants, to-wit: Heizer, Harsman, Finley, Ritchie, Nathenson, Lieberman, Curran, Lucas, Pegg, the Montgomery County Board of Elections, and the Board of County Commissioners of Montgomery County, Ohio (hereinafter referred to as the "Montgomery County Defendants"), by and through counsel, and, in Answer to the allegations and complaints of the Plaintiffs, aver and say as follows:

1. The Montgomery County Defendants admit the allegations contained in Paragraphs 18, 19, 20, 22, 23, 46, 55, 57, 58, 59, 63, 64 and 70 of the Plaintiffs' Complaints.
2. The Montgomery County Defendants expressly deny the allegations contained in Paragraphs 24, 32, 37, 56, 62, 74, 83, 84, 91, 92, 93, 94, 95, 96, 103, 104, 105 and 106 of the Plaintiffs' Complaints.
3. The Montgomery County Defendants admit that Christopher Heizer is the Director of the Montgomery County Board of Elections, and that Steven Harsman is the Deputy Director of the said Board, contrary to the allegation that they are Board members as recited in Paragraph 26, and further admit that Finley, Ritchie, Nathenson and Lieberman are, in fact, members of the Board of Elections, as alleged in said paragraph.
4. The Montgomery County Defendants deny that the Board of Elections is "a public quasi-corporation, a body corporate and politic," as alleged in Paragraph 41, but admit the balance of said paragraph.
5. The Montgomery County Defendants admit that federal subject matter jurisdiction exists for any choses in action, which may arise under the various statutory authorities recited in Paragraph 45.
6. The Montgomery County Defendants admit that Montgomery County utilizes a "punch card voting system" with "central counting," as alleged in Paragraph 66, but expressly deny that voter "error notification" is required by any Federal or State statute or constitutional provision as further implied therein.

7. The Montgomery County Defendants admit that, logically, “Almost every overvote is an error,” as stated in Paragraph 69, but expressly deny “undervotes” are in any way conclusively reflective of voter error, as further implied therein.
8. The Montgomery County Defendants admit that “punch card voting systems with central counting are not capable of providing error notification,” as alleged in Paragraph 76, but, again, expressly deny that “error notification” is required by any Federal or State statute or constitutional provision as further implied therein.
9. The Montgomery County Defendants admit that “voting systems with central counting...are not capable of providing error notification,” as alleged in Paragraph 87, but, again, expressly deny that “error notification” is in any way required by law.
10. The Montgomery County Defendants are without knowledge or information sufficient to form an opinion as to the truth or falsity of the allegations found in Paragraphs 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 21, 25, 27, 28, 29, 30, 31, 33, 34, 35, 36, 38, 39, 40, 42, 43, 44, 47, 48, 49, 50, 51, 52, 53, 60, 61, 65, 67, 68, 71, 72, 73, 75, 77, 78, 79, 80, 82, 85, 86, 88, 89, 90, 97, 98, 99, 100, 101 and 102, and, therefore, deny the same.
11. The Montgomery County Defendants hereby deny each and every allegation of Plaintiffs’ Complaints not previously admitted or denied.
12. The Montgomery County Defendants hereby recite that the Plaintiffs’ Complaints fail to state any cause upon which relief can be predicated.

**AFFIRMATIVE DEFENSES**

13. The Montgomery County Defendants hereby recite the actions and/or inactions attributed to them were either taken, or not taken, as the case may be, in good faith, and in diligent regard to, and within the scope of, their duties and responsibilities under both Ohio and Federal law, at all times pertinent to the Plaintiffs' Complaints.
14. There is no state or federal duty, of either a statutory or constitutional nature, to provide Ohio voters with foolproof electoral marking devices capable of notifying voters of possible errors committed in the voting process, so as to afford them the opportunity to correct these supposed errors before turning in their ballots.
15. No federal or state statute or constitutional provision mandates that any county in the State of Ohio be forced to utilize a particular type of voting technology, or to utilize the best technology available for electoral marking devices as implied by the allegations of the Plaintiffs' Complaints.
16. Plaintiffs' Complaints are, in part, predicated upon the fallacious and/or unprovable assumption that "undervotes" are, in fact, reflective of errors or mistakes.
17. The Montgomery County Defendants herein specifically dispute that either Erin Otis or Vermellia Randall are typical or adequate representatives of either class identified in the Plaintiffs' Complaints.
18. The Plaintiffs' Complaints are beyond the applicable statutes of limitation.
19. The Plaintiffs' Complaints, having been filed just several weeks prior to the November 2002 election are barred with regard thereto by application of the doctrine of laches.

20. The Board of County Commissioners of Montgomery County, Ohio, has in no way decided the type or manner of voting or ballot counting utilized in Montgomery County, Ohio.
21. Neither Christopher Heizer nor Steven Harsman, the respective Director and Deputy Director of the Montgomery County Board of Elections have in any manner decided the type or manner of voting or ballot counting utilized in Montgomery County, Ohio.
22. The Montgomery County Defendants expressly deny that the facts recited in the Plaintiffs' Complaints are sufficient under application of either federal or state law, to allege, support, and/or implicate the equal protection clause of the 14th Amendment to the Federal Constitution.
23. The Montgomery County Defendants expressly deny that the facts recited in the Plaintiffs' Complaints are sufficient under application of either federal or state law, to allege, support, and/or implicate Section Two of the Voting Rights Act of 1965.
24. The Montgomery County Defendants expressly deny that the facts recited in the Plaintiffs' Complaints are sufficient, under application of either federal or state law, to allege, support, and/or implicate the Civil Rights Act of 1871, codified at 42 U.S.C. Section 1983.
25. The Montgomery County Defendants reiterate, as stated in Paragraph 20 herein, that the Plaintiffs' request for injunctive relief, as to the election of November 2002, is barred by application of the doctrine of laches; and, as to any election which may be subsequent thereto, the said Defendants recite that the Plaintiffs'

obviously possess an adequate remedy at law via the instant litigation;  
furthermore, the harm alleged is not immediate, nor is there any clear entitlement  
at law to the relief alleged.

WHEREFORE, the Montgomery County Defendants respectfully request that this  
Honorable Court dismiss the forgoing complaints against it at the Plaintiffs' cost.

Respectfully submitted,

MATHIAS H. HECK, JR.  
PROSECUTING ATTORNEY

By: 

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ATTORNEY OF RECORD FOR  
THE MONTGOMERY COUNTY  
DEFENDANTS

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been mailed via regular  
U.S. mail, postage prepaid, this 4th day of November, 2002, to the following:

Raymond Vasvari, Esq.  
Legal Director, American Civil Liberties  
Union of Ohio Foundation, Inc.  
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J. Kenneth Blackwell  
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his official capacity  
Secretary of State of Ohio  
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Raymond Butler, Geraldine Lewis,  
Larry Loutszenhiser, Sued here  
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official capacities as members of the State of  
Ohio Board of Examiners for the Approval of  
Electoral marking Devices  
180 East Broad Street, 15th Floor  
Columbus, Ohio 43215

Alex Arshinkoff, Joseph Hutchinson,  
Wayne Jones, Rus Pry, Sued here individually  
and in their respective official capacities as members of  
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470 Grant Street  
Akron, Ohio 44311

Kimberly Zurz, Michael T. Callihan,  
Daniel A. Cosgrove, Tim Crawford,  
Pete Crossland, Paul Gallagher,  
Louise L. Heydorn, Michael J. King,  
Andrea Norris, Cazzell M. Smith, Sr,  
Tom Teodosio, Sued here individually and  
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of the Summit County Council  
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Akron, Ohio 44308

Timothy M. Burke, Michael R. Barrett,  
V. Daniel Radford, Todd A. Ward, Sued  
here individually and in their respective  
official capacities as members of the Hamilton  
County Board of Elections  
824 Broadway  
Cincinnati, Ohio 45202-1345

John S. Dowlin, Tom Neyer, Jr., Todd Portune, Sued  
here individually and in their respective official  
capacities as members of the Hamilton County Board  
of Commissioners  
138 East Court Street, Room 603  
Cincinnati, Ohio 45202

Harry Heyman, Thomas Younker and  
John Rettig, Sued here individually and  
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Fremont, Ohio 43420

Brad Smith, Daniel Liskai, and Terry Thatcher,  
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Board of Commissioners  
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175 South Main Street, 7th Floor  
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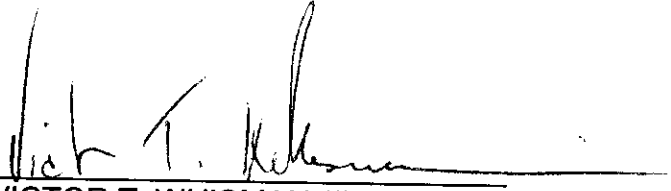
Summit County Board of Elections  
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