

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.	:	<b><u>ANSWER OF DEFENDANTS</u></b>
	:	<b><u>CHRISTOPHER R. HEIZER, STEVEN</u></b>
J. KENNETH BLACKWELL, ETC.,	:	<b><u>P. HARSMAN, SUE A. FINLEY,</u></b>
et al.,	:	<b><u>THOMAS J. RITCHIE, JAMES S.</u></b>
	:	<b><u>NATHENSON, DENNIS A. LIEBERMAN,</u></b>
Defendants.	:	<b><u>CHARLES J. CURRAN, DON LUCAS,</u></b>
	:	<b><u>VICKI D. PEGG, MONTGOMERY COUNTY</u></b>
	:	<b><u>BOARD OF ELECTIONS, AND THE BOARD</u></b>
	:	<b><u>OF COUNTY COMMISSIONERS OF</u></b>
	:	<b><u>MONTGOMERY COUNTY, OHIO, TO FIRST</u></b>
	:	<b><u>AMENDED COMPLAINT</u></b>

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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 chose 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 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.

20. 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.
21. 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.
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 Section Two of the Voting Rights Act of 1965.
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 the Civil Rights Act of 1871, codified at 42 U.S.C. Section 1983.
24. The Montgomery County Defendants recite that, with respect to the Plaintiffs' request for injunctive relief, the Plaintiffs' obviously possess an adequate remedy at law via the instant litigation, the harm alleged is not immediate, nor is there any clear entitlement at law to the relief requested.
25. The Plaintiffs' injuries, if any, resulted entirely from their own negligent and/or reckless conduct.
26. The Montgomery County 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 the Answer to assert such defenses.

27. No policy or practice of the Montgomery County Defendants caused or resulted in violation of any statutory or constitutional right of any Plaintiff or other person.
28. Plaintiffs have an adequate remedy at law for their equitable claims. To the extent that the Complaint purports to state a claim under 42 U.S.C. Section 1973, any claim for injunctive relief is moot, or alternatively, unripe before the final dates for compliance with the Help America Vote Act of 2002, wherein Congress has established, as a matter of national public policy, that punch card voting systems should be replaced no later than 2006. Help America to Vote Act of 2002, 42 U.S.C. Sections 15301, et seq.

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

/s/ Victor T. Whisman

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ATTORNEY OF RECORD FOR  
THE MONTGOMERY COUNTY  
DEFENDANTS

**CERTIFICATE OF SERVICE**

Copies of the foregoing were filed today, Friday, March 28, 2003, through the Court Electronic Filing System. Notice and copies will be distributed to counsel, and may be obtained through operation of the ECF System. In addition, copies were sent via First Class United States Mail, postage prepaid, to:

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