

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

**EFFIE STEWART, et al.,** :

**Plaintiffs,** : **Case No.: 5:02CV2028**

**vs.** : **Judge David Dowd, Jr.**

**BLACKWELL, et al.** : **Jury Demand Endorsed Hereon**

**Defendants.** :

**DEFENDANTS THE SANDUSKY COUNTY BOARD OF ELECTIONS, HARRY HEYMAN, THOMAS YOUNKER, JOHN RETTIG, SANDUSKY COUNTY BOARD OF COMMISSIONERS, BRAD SMITH, DANIEL LISKAI, AND TERRY THATCHER’S ANSWER TO PLAINTIFFS’ COMPLAINT**

Defendants The Sandusky County Board of Elections, Harry Heyman, Thomas Younker, John Rettig, Sandusky County Board of Commissioners, Brad Smith, Daniel Liskai, and Terry Thatcher (collectively “Sandusky Defendants”), by and through counsel, and for their Answer to Plaintiffs’ Complaint, state as follows:

**FIRST DEFENSE**

1. Sandusky Defendants admit that Plaintiffs are attempting to bring their claims under the statutes cited in paragraph 1 of the Complaint, but deny that they have stated a claim under these

statutes, or that the Sandusky Defendants have violated these statutes.

2. Sandusky Defendants admit that Plaintiffs are attempting to recover the relief set forth in paragraphs 2-3 of the Complaint, but deny that they are entitled to any such relief.

3. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 4-17 of the Complaint.

4. Sandusky Defendants admit the allegations contained in paragraphs 18-19 of the Complaint.

5. Paragraph 20 of the Complaint contains legal conclusions to which no response is required.

6. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraph 21 of the Complaint.

7. Paragraph 22 of the Complaint contains legal conclusions to which no response is required.

8. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraph 23 of the Complaint.

9. Sandusky Defendants deny the allegations contained in paragraph 24 of the Complaint.

10. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 25-27 of the Complaint.

11. Sandusky Defendants admit the allegations contained in paragraph 28 of the Complaint.

12. Paragraph 29 of the Complaint sets forth no allegations to which a response is required.

13. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 30-33 of the Complaint.

14. Sandusky Defendants admit the allegations contained in paragraph 34 of the Complaint.

15. Paragraph 35 of the Complaint sets forth no allegations to which a response is required.

16. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 36-38 of the Complaint.

17. Sandusky Defendants admit the allegations contained in paragraph 39 of the Complaint.

18. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 40-42 of the Complaint.

19. Sandusky Defendants admit the allegations contained in paragraph 43 of the Complaint.

20. Sandusky Defendants admit that Plaintiffs are attempting to bring their claims under the statutes cited in paragraphs 44-46 of the Complaint, but deny that they have stated a claim under these statutes, or that the Sandusky Defendants have violated these statutes.

21. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraph 47 of the Complaint.

22. Sandusky Defendants deny the allegations contained in paragraphs 48-53 of the Complaint.

23. In response to paragraph 54 of the Complaint, Sandusky Defendants hereby incorporate the answers to paragraphs 1 through 53 of the Complaint as if fully restated and realleged herein.

24. Sandusky Defendants admit the allegations contained in paragraph 55 of the Complaint.

25. Sandusky Defendants admit that selection of the voting system used to record and count votes in Sandusky County -- and the decision whether to count votes centrally or in-precinct -- is left to the discretion of the Sandusky County Board of Elections and the Sandusky County Board of Commissioners, subject to the certification and approval by the State Government Defendants, but deny, for want of knowledge, the rest of the allegations contained in paragraph 56 of the Complaint.

26. Sandusky Defendants admit the allegations contained in paragraphs 57-60 of the Complaint.

27. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraph 61 of the Complaint.

28. Sandusky Defendants admit the allegations contained in paragraphs 62-64 of the Complaint.

29. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 65-66 of the Complaint.

30. Sandusky Defendants admit that the Sandusky County Commissioners and the Sandusky County Board of Elections have selected a optical scan voting system with central counting, and that they conduct elections with this system. Sandusky Defendants deny the rest of the allegations contained in paragraph 67 of the Complaint.

31. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 68-69 of the Complaint.

32. Sandusky Defendants deny the allegations contained in paragraphs 70-74 of the Complaint.

33. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraph 75 of the Complaint.

34. Sandusky Defendants deny the allegations contained in paragraphs 76-77 of the Complaint.

35. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 78-79 of the Complaint.

36. Sandusky Defendants deny the allegations contained in paragraph 80 of the Complaint.

37. In response to paragraph 81 of the Complaint, Sandusky Defendants hereby incorporate the answers to paragraphs 1 through 80 of the Complaint as if fully restated and realleged herein.

38. Sandusky Defendants deny the allegations contained in paragraphs 82-83 of the Complaint.

39. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 84-85 of the Complaint.

40. Sandusky Defendants deny the allegations contained in paragraphs 86-96 of the Complaint.

41. In response to paragraph 97 of the Complaint, Sandusky Defendants hereby incorporate the answers to paragraphs 1 through 96 of the Complaint as if fully restated and realleged herein.

42. Sandusky Defendants deny, for want of knowledge, the allegations contained in paragraphs 98-101 of the Complaint.

43. Sandusky Defendants deny the allegations contained in paragraphs 102-106 of the Complaint.

44. Sandusky Defendants deny that Plaintiffs are entitled to the relief sought in the Complaint.

Sandusky Defendants deny each and every allegation of Plaintiffs' Complaint not specifically admitted as true above. Additionally, Sandusky Defendants set forth the following defenses to Plaintiffs' Complaint.

#### **SECOND DEFENSE**

45. The Sandusky Defendants are entitled to immunity, including statutory, absolute, and qualified immunity, as well as immunity from punitive damages. This includes but is not limited to the provisions of Ohio's Political Subdivision Tort Immunity Statute, Ohio Revised Code Section

2744.

**THIRD DEFENSE**

46. Plaintiffs have failed to state a claim upon which relief may be granted.

**FOURTH DEFENSE**

47. Sandusky Defendants at all times relevant to this suit acted in good faith without malice and in accordance with the United States and Ohio Constitutions, as well as applicable statutory law.

**FIFTH DEFENSE**

48. The Plaintiffs' claims for damages may be barred, in whole or in part, by prior or subsequent intervening or superseding acts, omissions or causes and/or by the acts or omissions of individuals or entities over whom these Sandusky Defendants had no control or right of control.

**SIXTH DEFENSE**

49. All or some of Plaintiffs' claims are barred by the applicable statute of limitations.

**SEVENTH DEFENSE**

50. Plaintiffs may have failed to include indispensable and necessary parties herein.

**EIGHTH DEFENSE**

51. Some or all of Plaintiffs' claims are now moot, as Sandusky Defendants utilize an optical scan election ballot, as opposed to the punch card ballot that was utilized in 2000.

**NINTH DEFENSE**

52. Plaintiffs do not meet the requirements for suing on behalf of the purported class, and/or do not meet the requirements for maintaining a class action, as set forth in Rule 23 of the Federal Rules of Civil Procedure, and/or have failed to meet the applicable requirements of the local rules of this Court.

**TENTH DEFENSE**

53. Plaintiffs' are not entitled to injunctive relief, as they 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.

**ELEVENTH DEFENSE**

54. Plaintiffs have failed to properly perfect service of the summons and Complaint on some or all of the Sandusky Defendants.

**TWELFTH DEFENSE**

55. Plaintiffs lack standing to bring some or all of their claims.

**THIRTEENTH DEFENSE**

56. Sandusky Defendants hereby reserve the right to assert the defense of assumption of the risk, discharge in bankruptcy, duress, fraud, illegality, license, payment, release, laches, lack of capacity, lack of standing, consent, unclean hands and any other matter constituting an avoidance or affirmative defense for which discovery reveals a basis.

**WHEREFORE,** The Sandusky County Board of Elections, Harry Heyman, Thomas Younker, John Rettig, Sandusky County Board of Commissioners, Brad Smith, Daniel Liskai, and Terry Thatcher demand that Plaintiffs' Complaint be dismissed in its entirety with prejudice, and with costs and attorney fees assessed to the Plaintiffs.

Respectfully submitted,

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**JURY DEMAND**

Sandusky Defendants hereby demand a trial by jury on all issues herein.

/s/ Jeffrey A. Stankunas  
Jeffrey A. Stankunas  
Isaac, Brant, Ledman & Teetor LLP

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on November 14, 2002, a copy of the foregoing was filed electronically. Notice of the filing will be sent by operation of the Court's electronic filing system and/or by regular U.S. Mail to the following:

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