

**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’ FIRST AMENDED 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’ First Amended 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 First Amended 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 First Amended 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 First Amended Complaint.

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

5. Paragraph 20 of the First Amended 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 First Amended Complaint.

7. Paragraph 22 of the First Amended 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 First Amended Complaint.

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

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

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

12. Paragraph 29 of the First Amended 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 First Amended Complaint.

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

15. Paragraph 35 of the First Amended 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 First Amended Complaint.

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

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

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

20. Sandusky Defendants admit that Plaintiffs are attempting to bring their claims under the statutes cited in paragraphs 44-46 of the First Amended 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 First Amended Complaint.

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

23. In response to paragraph 54 of the First Amended Complaint, Sandusky Defendants hereby incorporate the answers to paragraphs 1 through 53 of the First Amended Complaint as if

fully restated and realleged herein.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

41. In response to paragraph 97 of the First Amended Complaint, Sandusky Defendants hereby incorporate the answers to paragraphs 1 through 96 of the First Amended 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 First Amended Complaint.

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

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

Sandusky Defendants deny each and every allegation of Plaintiffs' First Amended Complaint not specifically admitted as true above. Additionally, Sandusky Defendants set forth the following defenses to Plaintiffs' First Amended 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 First Amended 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. Plaintiffs' own contributory and/or comparative negligence, assumption of the risks

and/or failure to conduct due diligence may have caused or contributed to cause the injuries and damages of which they complain.

FOURTEENTH DEFENSE

57. To the extent that Plaintiffs' First Amended Complaint seeks injunctive relief, such claim is moot, or alternatively, unripe before the final dates for compliance with the Help America Vote Act of 2002, 42 U.S.C. §§ 15301 *et seq*

FIFTEENTH DEFENSE

58. 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' First Amended Complaint be dismissed in its entirety with prejudice, and with costs and attorney fees assessed to the Plaintiffs.

Respectfully submitted,

/s/ Jeffrey A. Stankunas
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JURY DEMAND

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

/s/ Jeffrey A. Stankunas
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on April 14, 2003, a copy of the foregoing was filed electronically. Notice of the filing will be sent to and can be accessed by all parties by operation of the Court's electronic filing system.

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