

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

EFFIE STEWART, et. al.,

CASE NO: 5:02 CV 2028

Plaintiffs,

JUDGE DOWD

vs.

**ANSWER OF ALL SUMMIT COUNTY
DEFENDANTS TO SECOND
AMENDED COMPLAINT**

J. KENNETH BLACKWELL, et. al.

Defendants.

Now come Defendants, Summit County Board of Elections, Alex Arshinkoff, Joseph Hutchinson, Wayne Jones, Russ Pry, in their Respective Official Capacities as Members of the Summit County Board of Elections, Summit County Council, Kimberly Zurz, Michael T. Callahan, Daniel A. Congrove, Tim Crawford, Pete Crossland, Paul Gallagher, Louise L. Heydorn, Michael J. King, Andrea Norris, Cazzell M. Smith Sr., and Tom Teodosio, in their Respective Official Capacities as Members of Summit County Council, and in answer to Plaintiff's Complaint state as follows:

1) Summit County Defendants admit that Plaintiffs are attempting to bring their claims under the statute cited in Paragraph 1 of the Complaint, but deny that they

have stated a claim under the statutes and deny that Summit County Defendants violated the statutes.

2) Summit County Defendants admit that Plaintiffs are attempting to recover the relief set forth in Paragraphs 2 and 3 of the Complaint, but deny that Plaintiffs are entitle to such relief.

3) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraphs 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16 and 17 of the Complaint.

4) Summit County Defendants admit the allegations contained in Paragraphs 18 and 19 of the Complaint.

5) Summit County Defendants state that the statutes speak for themselves and no response is required for Paragraph 20 of the Complaint.

6) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 21 of the Complaint

7) Summit County Defendants state that the statutes speak for themselves in Paragraph 22, and Defendants deny all other allegations for want of knowledge, information and belief.

8) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 23 of the Complaint.

9) Summit County Defendants deny each and every allegation contained in Paragraph 24 of the Complaint.

10) Defendants Alex Arshinkoff, Joseph Hutchinson, Wayne Jones and Russ Pry admit that they are current members of the Summit County Board of Elections. Arshinkoff, Hutchinson, Jones and Pry deny all other allegations contained in Paragraph 25 of the Complaint.

11) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraphs 26, 27 and 28 of the Complaint.

12) No response is required for the allegation contained in Paragraph 29 of the Complaint.

13) Defendants Kimberly Zurz, Michael T. Callahan, Daniel Congrove, Tim Crawford, Pete Crossland, Paul Gallagher, Louise Heydorn, Michael King, Andrea Norris, Cazzell Smith, Sr., and Tom Teodosio admit that they are current members of the Summit County Council and deny all other allegations as alleged in Paragraph 30 of the Complaint. Effective January 1, 2003, Andrea Norris is no longer a member of Summit County Council.

14) Summit County Defendants deny the allegations contained in Paragraph 31 of the Complaint.

15) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 32, 33 and 34 of the Complaint.

16) Summit County Defendants state that no response is required to Paragraph 35 of the Complaint.

17) Summit County Defendants deny the allegations contained in Paragraph 36 of the Complaint.

18) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 37, 38 and 39 of the Complaint.

19) Summit County Defendants deny the allegations contained in Paragraph 40 of the Complaint.

20) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraphs 41, 42 and 43 of the Complaint.

21) Summit County Defendants admit that Plaintiffs are attempting to bring their Complaint under the statute cited in Paragraphs 44, 45 and 46 of the Complaint, but deny that they have stated a claim under the statutes, or that the Summit County Defendants have violated these statutes.

22) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 47 of the Complaint.

23) Summit County Defendants deny the allegations contained in Paragraphs 48, 49, 50, 51, 52 and 53 of the Complaint.

24) In response to Paragraph 54 of the Complaint, Summit County Defendants herein incorporate the answers to Paragraphs 1 – 53 of the Complaint as if fully rewritten herein.

25) Summit County Defendants state that the statutes speak for themselves in response to Paragraph 55 of the Complaint.

26) Summit County Defendants deny the allegation contained in Paragraphs 56, 57, 58, 59, 60, 61, 62, and 63 of the Complaint for want of knowledge, information and belief.

27) Summit County Defendants admit the allegations contained in Paragraph 64 of the Complaint.

28) Summit County Defendants admit that it uses the punch card voting system with central ballot tabulation and conducts elections with this system, and deny all other allegations contained in Paragraph 65 of the Complaint.

29) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraphs 66, 67 and 68 of the Complaint.

30) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 69 of the Complaint.

31) Summit County Defendants deny the allegations contained in Paragraphs 70, 71, 72, 73 and 74 of the Complaint.

32) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraph 75, 76, 77, 78, 79 of the Complaint.

33) Summit County Defendants deny the allegations contained in Paragraph 80 of the Complaint.

34) In response to Paragraph 81 of the Complaint, the Summit County Defendants hereby incorporate the answers to Paragraphs 1 – 80 of the Complaint as if fully rewritten herein.

35) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraphs 82, 83, 84, 85 and 86 of the Complaint.

36) Summit County Defendants deny the allegations contained in Paragraph 87, 88, 89, 90, 91, 92, 93, 94, 95 and 96 of the Complaint.

37) In response to Paragraph 97 of the Complaint, Summit County Defendants herein incorporate the answers to Paragraphs 1 – 96 of the Complaint as if fully rewritten herein.

38) Summit County Defendants deny for want of knowledge, information and belief the allegations contained in Paragraphs 98, 99, 100 and 101 of the Complaint.

39) Summit County Defendants deny the allegations contained in Paragraphs 102, 103, 104, 105 and 106 of the Complaint.

40) Summit County Defendants deny each and every allegation contained in the Complaint not specifically admitted.

FIRST DEFENSE

The Summit County Defendants are entitled to statutory, absolute and qualified immunity on some or all of Plaintiffs' claims.

SECOND DEFENSE

Plaintiff has failed to state a claim upon which relief can be granted.

THIRD DEFENSE

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

FOURTH DEFENSE

The Plaintiffs' claims for damages are barred in whole or in part by prior or subsequent intervening or superceding acts, omissions and/or causes and/or by the acts or omissions of the individuals themselves.

FIFTH DEFENSE

Some or all of Plaintiffs' claims are barred by the applicable Statute of Limitations.

SIXTH DEFENSE

Plaintiffs may have failed to include all necessary and indispensable parties.

SEVENTH DEFENSE

Plaintiffs do not meet the requirements pursuant on behalf of the purported class, and/or Plaintiffs 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.

EIGHTH DEFENSE

Plaintiffs are not entitled to injunctive relief, as they possess an adequate remedy at law, furthermore, the alleged harm is not immediate, nor is there any clear entitlement at law to the relief alleged.

NINTH DEFENSE

Plaintiffs have failed to perfect service of the Summons and Complaint on some or all of the Summit County Defendants.

TENTH DEFENSE

Plaintiffs lack standing to bring all or some of the claims stated.

ELEVENTH DEFENSE

Summit County Defendants hereby reserve the right to assert any other defense, which may be discovered during the discovery phase of the case.

TWELFTH DEFENSE

There is no state or federal duty, of either a statutory or constitutional nature, to provide Ohio voters with foolproof electoral marketing 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.

THIRTEENTH DEFENSE

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 electronic marking devices as implied by the allegations of the Plaintiff's Complaints.

FOURTEENTH DEFENSE

No policy or practice of the Summit County Defendants cause or resulted in violation of any statutory or constitutional right of any Plaintiff or other person.

FIFTEENTH DEFENSE

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 Summit County Board of Elections, Alex Arshinkoff, Joseph Hutchinson, Wayne Jones, Russ Pry, in their respective official capacities as members of the Summit County Board of Elections, Summit County Council, Kimberly Zurz, Michael T. Callahan, Daniel A. Congrove, Tim Crawford, Pete Crossland, Paul Gallagher, Louise L. Heydorn, Michael J. King, Andrea Norris, Cazzell M. Smith, Sr., and Tom Teodosio, in their respective official capacities as members of Summit County Council demand that Plaintiff's Complaint be dismissed in its entirety with prejudice and with costs and attorney fees assessed to the Plaintiffs.

Respectfully submitted,

SHERRI BEVAN WALSH
Prosecuting Attorney

/s/ Anita L. Davis

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Counsel for Summit County

JURY DEMAND

Summit County Defendants hereby demand a trial by jury on all issues stated herein.

/s/ Anita L. Davis

ANITA L. DAVIS, #0012849
Assistant Prosecuting Attorney
Davis@prosecutor.summitoh.net
Counsel for Defendants

CERTIFICATE OF SERVICE

I hereby certify that on September 17, 2003, a copy of the foregoing Answer of all Summit County Defendants was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

/s/ Anita L. Davis

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