

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

INDIANA DEMOCRATIC PARTY,)	
<i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	CAUSE NO: 1:05-CV-0634-SEB-VSS
)	
TODD ROKITA, <i>et al.</i> ,)	
)	
Defendants.)	
<hr/>		
)	
WILLIAM CRAWFORD, <i>et al.</i> ,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
MARION COUNTY ELECTION BOARD,)	
)	
Defendant,)	
and)	
)	
STATE OF INDIANA,)	
)	
Intervenor.)	

PLAINTIFFS’ JOINT MOTION TO STRIKE PORTIONS OF THE MEMORANDUM IN SUPPORT OF SUMMARY JUDGMENT AND APPENDIX OF EVIDENCE OF THE STATE OF INDIANA, THE INDIANA SECRETARY OF STATE, AND THE CO-DIRECTORS OF THE INDIANA ELECTION DIVISION

The Plaintiffs, Indiana Democratic Party and the Marion County Democratic Central Committee (referred to collectively hereinafter as the “Democratic Plaintiffs”), along with Plaintiffs William Crawford, United Senior Action of Indiana, Indianapolis Resource Center for Independent Living, Concerned Clergy of Indianapolis, Indianapolis Branch of the NAACP,

Indiana Coalition of Housing and Homeless Issues, and Joseph Simpson (referred to collectively hereinafter as the “Crawford Plaintiffs”), by counsel, pursuant to Fed. R. Civ. P. 56(c), jointly move to strike portions of the Memorandum in Support of Summary Judgment and Appendix of Evidence of the State of Indiana, the Indiana Secretary of State, and the Co-Directors of the Indiana Election Division (referred to collectively hereinafter as the “State Defendants”). In support hereof, the Plaintiffs state:

1. On October 31, 2005, the Democratic Plaintiffs and the Crawford Plaintiffs filed separate motions for summary judgment along with accompanying briefs and appendices of evidence in accordance with Fed. R. Civ. P. 56 and Local Rule 56.1.

2. On December 1, 2005, the State Defendants filed their own motion for summary judgment, along with a brief in support of their motion and in opposition to the Democratic Plaintiffs’ and Crawford Plaintiffs’ respective motions for summary judgment. The State Defendants also filed on December 1 an appendix of evidence, which consisted of seventy-three (73) separately-numbered exhibits.¹

3. Of the seventy-three (73) exhibits contained within the Appendix, forty-two (42) of the exhibits are not sworn in any way, and are not “pleadings, depositions, answers to interrogatories, . . . admissions on file,” nor are they “affidavits,” as permitted by Fed. R. Civ. P. 56(c) in order to support or oppose a motion for summary judgment. Such exhibits are not properly authenticated. These exhibits are numbered 1-26, 28-36, 44-45, 48-49, 71, and 76-77. Each should be stricken because of their non-compliance with Fed. R. Civ. P. 56 and because they

¹ The Appendix identifies eighty (80) different exhibits, but it appears that the items originally numbered 38-43 and 78 were not filed by the State and do not appear to have been relied on in any manner.

are unsworn.

4. In addition many of the same exhibits must also be stricken because they consist solely of inadmissible hearsay. Specifically, these exhibits are numbered 4-8, 10-20, 22-26, 28-34, 71 and 76. As such, they cannot be used to establish factual matters for purposes of summary judgment.

5. The State Defendants have purported to rely on the information contained within these unsworn and/or hearsay documents for the purpose of establishing factual issues in opposition to the Democrat Plaintiffs' and Crawford Plaintiffs' summary judgment motions and in support of the State Defendants' own motion for summary judgment.

6. The following portions of the State Defendants' memorandum of law should be stricken because they contain factual assertions based solely upon the unsworn and/or hearsay documents:

- a. Within the section of the memorandum entitled "Statement of Material Facts Not in Dispute" (pages 2-12), the following paragraphs and portions thereof:
 - i. 1st paragraph;
 - ii. 2nd paragraph, 2nd and 3rd sentences;
 - iii. 5th paragraph, 1st sentence and 3rd sentence;
 - iv. Paragraphs 6-9;
 - v. 12th paragraph, last 2 sentences;
 - vi. Paragraphs 13-14, 16, 19-21, and 23;
 - vii. 24th paragraph, first two sentences;

- viii. 25th paragraph;
- ix. 27th paragraph, last 2 sentences (which relies on improper portions of the Affidavit of Wendy Orange, for the reasons set forth in the separate motion to strike that was filed with respect to her affidavit).

b. Within the “Argument” section of the memorandum, the following portions:

- i. Subsection IV.G.1.b. entitled “In-person voter fraud is very difficult to detect” (p. 49) as it sets forth purported factual material based upon the unsworn and/or hearsay documents;
- ii. Subsection IV.G.1.c entitled “Voter fraud exists and needs to be prevented” (pp. 49-50), the last two sentences of the 1st paragraph, and the 2nd paragraph in its entirety;
- iii. Subsection IV.G.2 entitled “The Voter ID Law vindicates the compelling state interest in reassuring voters that elections are legitimate” (p. 53), the 1st full paragraph in its entirety.

7. For ease of reference, a copy of the relevant portions of the State’s Memorandum is attached hereto as Exhibit “A,” with the portions of the brief that the Plaintiffs are requesting be stricken identified.

8. In accordance with Local Rule 7.1(a), the Plaintiffs are submitting a supporting brief in conjunction with this motion to strike.

WHEREFORE, the Democratic Plaintiffs and the Crawford Plaintiffs respectfully request

that the strike from the State Defendants' Appendix of Evidence exhibits 1-26, 28-36, 44-45, 48-49, 71, and 76-77, as well as the strike from the State Defendants' Memorandum of Law all references to these exhibits and all factual assertions that purport to rely upon such documents, which references are identified in this motion.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on the 21st day of December, 2005, a copy of the foregoing pleading was filed electronically upon the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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