

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

<b>Effie Stewart, et al.,</b>	)	<b>CASE NO. 5:02cv2028</b>
<b>Plaintiffs</b>	)	
	)	<b>Judge Dowd</b>
	)	
<b>v.</b>	)	<b>Magistrate Judge Gallas</b>
	)	
<b>J. Kenneth Blackwell, et al.,</b>	)	
<b>Defendants</b>	)	
	)	
	)	

**PLAINTIFFS’ REPLY TO SANDUSKY COUNTY’S  
MEMORANDUM IN OPPOSITION TO PLAINTIFFS’  
MOTION FOR SUMMARY JUDGMENT**

**I. Introduction**

To the extent Sandusky County’s Memorandum in Opposition Plaintiffs’ Motion for Summary Judgment (Sandusky’s Opposition Brief, Doc. 189) raises matters that are addressed in the Defendants’ Memorandum Contra Plaintiffs’ Motion for Summary Judgment (Defendants’ Brief Contra, Doc. 186) previously filed, Plaintiffs incorporate herein the responses included in their Reply Brief in Opposition to that document. Beyond those matters, Plaintiffs reply as follows.

**II. Argument**

The major claim advanced by the Sandusky County Defendants is that the Plaintiffs have established no basis for asserting an equal protection claim against them. They base this claim on the assertion that Plaintiffs have failed to produce any evidence of “any problem with the method

of voting utilized by Sandusky County.” Sandusky Opposition Brief at 4. This claim, however, is belied by the record in this case.

First, the Defendants argue that the Plaintiffs have offered no evidence bearing on the “method by which Sandusky County conducts its elections, or any data which reflects on any results of those elections.” *Id.* But, as Plaintiffs noted in their Memorandum in Opposition to Sandusky County Defendants Motion for Summary Judgment at 4 (Doc. 188), the Defendants’ own data show the extent to which the central-count optical scan equipment (without error notification) they have adopted results in more than a de minimis number of residual votes – discarded votes which could be enough to determine the outcome in a close election.

Second, the expert report of Roy Saltman establishes that the voting equipment adopted by Sandusky County leads to significant levels of residual voting, and that the central count system used in Sandusky County leads to higher rates of residual voting than does otherwise comparable precinct count equipment. Saltman Report (Doc. 171-4p) at 12-13.

Third, as the Plaintiffs noted in their response brief opposing Sandusky County’s summary judgment motion, evidence from the 2000 Presidential election establishes the Defendants’ voting equipment performed significantly worse than electronic and lever equipment used in that election, a fact that was confirmed by Defendants’ own expert. Plaintiffs’ Opposition Brief at 8-10.

Finally, the Defendants once again claim that if only all voters were more careful and meticulously followed directions, no residual votes would occur. This attempt to shift all responsibility for residual voting from the equipment adopted by the Defendants – or more precisely, from the interaction between the equipment and real voters – to the carelessness of

voters themselves must be rejected. Defendants have a duty to adopt policies and equipment that takes voters as they are. Where a county has a choice between voting equipment that will predictably reduce or eliminate residual voting<sup>1</sup> and equipment that will not, they cannot avoid the inevitably discriminatory implications of their choice by blaming the victims of their own policy decisions.

### III. Conclusion

For the foregoing reasons, the Court should grant Plaintiffs' motion for summary judgment against the Sandusky County Defendants.

Respectfully submitted,

/s/Meredith Bell

**Meredith Bell (0072917)**

ACLU Voting Rights Project  
2725 Harris Tower  
233 Peachtree Street, NE  
Atlanta, GA 30303  
Telephone (404) 523-2721  
Telecopier (404) 653-0331  
MBell@aclu.org

/s/Paul Moke

**Paul Moke (0014099)**

Professor of Social and Political  
Science; Wilmington College  
1252 Pyle Center  
Wilmington, OH 45177  
Telephone (937) 382-6661  
Telecopier (937) 382-7077  
Paul\_Moke@Wilmington.edu

Attorneys for the Plaintiffs

OF COUNSEL

**RICHARD SAPHIRE (0017813)**

Professor of Law  
University of Dayton  
300 College Park  
Dayton, Ohio 45469-2772  
Telephone 937-229-2820  
Telecopier 937-229-2469  
saphire@udayton.edu

**DANIEL TOKAJI**

Assistant Professor of Law  
The Ohio State University  
Moritz College of Law  
55 W. 12th Ave.  
Columbus, Ohio 43210  
Telephone 614-292-6566  
Telecopier 614-688-8422  
Dtokaji@aol.com

**SCOTT T. GREENWOOD (0042558)**

**LAUGHLIN McDONALD**

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<sup>1</sup> The Defendants do not appear to contest the fact that other voting equipment that was available to them would have made overvoting impossible.

**General Counsel, American Civil  
Liberties Union of Ohio Foundation, Inc.**  
1 Liberty House, P.O. Box 54400  
Cincinnati, Ohio 45202  
Telephone 513-943-4200  
Telecopier 513-943-4800  
scottgreenwood@earthlink.net

**Director, ACLU Voting Rights Project**  
2725 Harris Tower  
233 Peachtree St., NE  
Atlanta, GA 30303  
Telephone 404-523-2721  
Telecopier 404-653-0331  
LMcDonald@aclu.org