

**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. :
Defendants. :

**SANDUSKY COUNTY DEFENDANTS’ RESPONSE TO PLAINTIFFS’
SUPPLEMENTAL BRIEF IDENTIFYING UNDISPUTED FACTS IN SUPPORT OF
THEIR MOTION FOR SUMMARY JUDGMENT**

Just as they have throughout the entire course of these proceedings, Plaintiffs have made very few allegations and have come forward with even less evidence that addresses Sandusky County’s current method of voting. The overwhelming majority of their case has been devoted to the other Defendants. Therefore, and for the sake of brevity, the Sandusky County Defendants hereby adopt and incorporate the response of the other Defendants to Plaintiffs’ Supplemental Brief Identifying Undisputed Facts In Support of Their Motion for Summary Judgment (“Plaintiffs’ Supplemental Brief”), with the exception of the following numbered paragraphs of the Plaintiffs’ Supplemental Brief, as for the reasons set forth thereafter:

¶ 4) While the Sandusky County Defendants do not dispute that Ms. See was a registered voter at the time of her deposition, neither Ms. See nor Plaintiffs have come forward with any admissible evidence to demonstrate that she has ever voted in an election in which Sandusky County’s current method of voting, the optical scan with central location tabulation, was utilized. (See generally, Sandusky County Defendants’ Memorandum in Opposition to Plaintiffs’ Motion to Certify a Plaintiff Class & Subclass and Memorandum in Support).

¶ 22) Sandusky County Defendants agree with everything set forth in this paragraph except for the statement that “central-count optical scan systems cannot (provide actual notice).” A voter can still receive actual notice by examining his or her optical scan ballot, regardless of whether or not it is counted at a central location. If a voter makes a mistake on their optical scan ballot, they are informed that they should return the ballot to the presiding poll judge so that they can receive a new ballot. (Sandusky County MSJ at 4-5; Tuckerman Depo. Exhibit 6). Moreover, the only error notification found in the electronic voting equipment currently used in Franklin County (which is apparently equipment that plaintiffs are asking this Court to impose upon the defendants) is that Franklin County voters must look at the lights on their ballots prior to casting their ballot. If a light is still flashing, the voter should know that they have not cast a vote for the corresponding race. However, the fact that Franklin County voters have to examine their ballots for the flashing lights to make sure they have voted in every contest that they intended to prior to submission is no different from the fact that Sandusky County voters have to examine their optical scan ballots to make sure they filled in an oval for every race they wanted to vote in prior to submission. (Asher Depo. at 104, 109-113).

¶ 23) Sandusky County Defendants do not dispute anything in this paragraph except for the statement that “Sandusky County Defendants have utilized a central-count optical scan system that does not provide voters with actual notice. Tuckerman Depo. (Doc. 171-10-3a) at 16, 21.” This dispute is for the reasons set forth above, as well as because nowhere on the cited pages of Ms. Tuckerman’s deposition transcript does she state that Sandusky County’s current method of voting “does not provide voters with actual notice.”

¶ 24) Sandusky County Defendants take no position on all of the allegations set forth in this paragraph except for the statement, as it relates to the electronic voting machines used in

Franklin County, that “[e]lectronic or “DRE” voting machines provide actual notice,” and that these machines “gives [voters] a message allowing them to review and verify their choices before casting their votes.” The reasons for this dispute are set forth above.

¶ 34) Sandusky County Defendants do not dispute that the report referenced by Plaintiffs says what it says. However, any admissions made in that report are not binding upon the Sandusky County Defendants, as it is clear from that report that the Sandusky County Defendants did not author it.

¶ 35) Sandusky County Defendants take no position on the first sentence of this paragraph, but they dispute the statement that “[t]he next highest system, in terms of residual votes, was the central-count optical scan system.” The Sandusky County Defendants dispute this. For example, in the 2000 General Election in Ohio, a 0.93% residual vote rate occurred in Allen County (which used optical scan with in precinct tabulation) and 2.4% residual vote rate occurred in Mahoning County (which used optical scan with central tabulation). The only other county that used an optical scan ballot with in precinct tabulation in the 2000 Presidential election was Hancock County, which had a residual vote rate of 1.2%. The following Counties, *all of which used optical scan ballots with central tabulation in that election*, had the same or a lower residual vote rate than did Hancock County:

- 1) Ashland County (1.2%);
- 2) Geauga County (.8%);
- 3) Hancock County (1.0%)¹; and
- 4) Ottawa County (1.1%).

¹ Hancock County apparently used optical scan ballots with both in precinct and central tabulation.

(Appendix G to Plaintiffs' Memorandum in Opposition to Motion for Summary Judgment by Defendants State of Ohio, Hamilton County, Montgomery County, and Summit County ("Appendix G")). Additionally, Coshocton County only had a residual vote rate of 1.5% in that race, and Lucas County only had a residual vote rate of 1.4%. Both of these counties used an optical scan ballot with central tabulation. *Id.*

Respectfully submitted,

/s/ Jeffrey A. Stankunas by J. Eric Holloway
(0063857) per authority 6/4/04

Mark Landes (0027227)

marklandes@isaacbrant.com

Trial Attorney

Jeffrey A. Stankunas (0072438)

jeffreystankunas@isaacbrant.com

Isaac, Brant, Ledman, & Teetor LLP

The Midland Building

250 East Broad Street, Suite 900

Columbus, Ohio 43215-3742

Phone (614) 221-2121

Fax (614) 365-9516

Attorneys for Sandusky County Defendants

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on June 4, 2004, 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 A. Stankunas by J. Eric Holloway
(0063857) per authority 6/4/04
Jeffrey A. Stankunas