

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBBIN STEWART,	)	
	)	
Plaintiff,	)	
	)	
v.	)	
	)	Case No.: 1:18-cv-1487
MARION COUNTY ELECTION BOARD	)	
MYLA ELDRIDGE, and STEVEN ROSE,	)	
	)	
Defendants.	)	

NOTICE OF REMOVAL

Defendants Marion County Election Board, Myla Eldridge, and Steven Rose, by counsel, and pursuant to 28 U.S.C. §§ 1441(a) and 1446, file this Notice of Removal. In support, Defendants state:

1. On May 1, 2018, Plaintiff filed his Complaint in the Marion Superior Court. The Complaint alleges that the Defendants violated his rights under various parts of the United States Constitution, *e.g.*, Complaint, ¶¶ 1, 6, and “counts” 8, 9, 10, 11, 12, and 13. He has specifically sued under 42 U.S.C. § 1983, Complaint, ¶ 4, as well as bringing a federal *Monell* claim, *id.* at ¶ 2.
2. This Court has original jurisdiction over civil actions arising under the Constitution and laws of the United States. 28 U.S.C. § 1331.
3. Title 28 U.S.C. § 1441(a) provides that “any civil action brought in a State court of which the district courts of the United States have original jurisdiction, may be removed by the defendant or defendants, to the district court of the United States for the district and division embracing the place where such action is pending.”

4. Title 28 U.S.C. § 1446(b) permits the removal of a case that is eligible to be removed
“within 30 days after receipt by the defendant, through service or otherwise, of a copy of
the initial pleading setting forth the claim for relief upon which such action or proceeding
is based.”

5. Defendants received service of Plaintiff’s Complaint on May 1, 2018.

WHEREFORE, Defendants hereby remove this action from the Marion Superior Court,
Cause Number 49D13-1805-CT-017023, to the United States District Court for the Southern
District of Indiana, Indianapolis Division.

Respectfully Submitted,

/s/ Grant E. Helms

Grant E. Helms (29953-49)
Assistant Corporation Counsel
OFFICE OF CORPORATION COUNSEL
200 East Washington Street, Suite 1601
Indianapolis, Indiana 46204
Telephone: (317) 327-4055
Email: grant.helms@indy.gov

CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that on May 15, 2018, a copy of the foregoing was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

Robbin Stewart
4015 East Washington Street
Indianapolis, Indiana 46201

Respectfully Submitted,

/s/ Grant E. Helms
Grant E. Helms (29953-49)
Assistant Corporation Counsel

OFFICE OF CORPORATION COUNSEL
200 East Washington Street, Suite 1601
Indianapolis, Indiana 46204
Telephone: (317) 327-4055

FILED

Marion County

ss}

Indiana

153 MAY 01 2018

SUPERIOR COURT OF MARION COUNTY INDIANA

Myla A. Eldridge
CLERK OF THE MARION CIRCUIT COURT

Robbin Stewart,

plaintiff

v

cause number 49D13 18 05 CT 017 023

Marion County Election Board,

Myla Eldridge and Steven Rose,

defendants.

complaint

1. Introduction

This case arises out of the refusal by precinct officials to allow plaintiff to cast a provisional ballot at the 2016 primary, and the subsequent ratification of that action by the county. This has violated plaintiff's clearly established rights under the voter ID statute, the Indiana constitution, a federal statute, and the federal constitution. This is an action for damages and declaratory judgment.

2. Parties

Plaintiff is a would-be voter in Marion County. Since 2005, he has found it difficult to vote, since he does not display ID except when driving, for privacy reasons discussed in his *Crawford* amicus.. This has been the topic of previous litigation, and this new action does not seek to relitigate those cases or issues. The relief sought here is damages, under *Monell*, plus a declaratory judgment that his rights were violated.

3. Defendants are the Marion County Election Board ("the Board") and its three members in their official capacities: Myla A. Eldridge ("Eldridge"), Keith Johnson ("Johnson"), and Melissa Thompson ("Thompson"). By law, the three-member Board consists of the elected clerk of Marion Circuit Court (Eldridge) and her two appointees, one from the county Democratic Party (Johnson) and one from the county Republican Party (Thompson) Eldridge is also named in her personal capacity, for failure to adequately train and supervise Rose.

Steven Rose was the precinct inspector who refused to let plaintiff vote.

4 Jurisdiction. This court has general civil jurisdiction as well as under 42 USC 1983. Venue is in Marion County.

5 facts

The 2016 presidential primary was held may 3rd. Plaintiff wanted to vote in the republican primary for Donald Trump, but was refused the vote when he declined to show ID by Steven Rose, the precinct inspector at the fire station near 300 n sherman. What he was supposed to do under the statute was offer a provisional ballot.

6. Rose is not held to an expert standard, unlike Eldridge. He and the other poll workers were inadequately trained by Eldridge. They may therefore enjoy some qualified or absolute immunity. *Fitzgerald*. Both Eldridge and Rose acted with willful and reckless disregard for the rights of plaintiff.

7. Plaintiff filed a notice of tort claims to which the board by counsel sent a letter which ratified the decision to deny plaintiff a provisional ballot, and denied the tort claim. This action follows.

claims

count 1

Defendants violated Plaintiff's right to vote a provisional ballot under the Indiana voter ID statute.

count 2

Defendants violated Plaintiff's right to vote under Article II section 1, the right to free and equal elections. Elections are not free, in either sense of the word, when the voter must produce a passport or drivers license he has paid for. Under the statute, they were required to offer a provisional ballot to a person who could not or would not show ID. The clerk failed to adequately train and supervise poll workers.

Count 3. Defendants's violated Plaintiff's right to vote under Article II section 1, the right to free and equal elections. Elections are not equal when voters willing and able to show a license, such as a passport, are allowed to vote, but those without are not. Under the statute, they were required to offer a provisional ballot to a person who could not or would not show ID.

Elections are not equal, where other similarly situated voters at other precincts and in other counties were offered provisional ballots, but Plaintiff was not.

count 4

By denying plaintiff a ballot, even a provisional ballot, his rights under article 1 section 9 were violated. Voting is an aspect of the right to speak freely. Voting is political speech given strict scrutiny under *Price v Indiana*. *Yick Wo v Hopkins*.

Count 5

Art 1 section 11. Defendant demanded Plaintiff's papers as a condition of exercising his right to vote, thereby violating his freedom from search under section 11. This created an unconstitutional condition, where the exercise of one right to made contingent on waiving another. There was no probable cause or reasonable suspicion. The search was arbitrary and capricious instead of being programmatic and standardized as required under case law independently interpreting section 11.

count 6

Due course of law under art 1 section 12. Plaintiff had a right to a provisional ballot which would have allowed him a hearing before the board as to whether that ballot would be counted. Plaintiff has participated in previous such hearings. The right to a hearing is a fundamental element of due course of law. Plaintiff has a substantive right to vote protected by section 12 which was violated when they refused to allow him to vote.

Count 7

Article I Section 23. Equal privileges. Other voters in Plaintiff's situation were given provisional ballots.

Section 23 requires that people in the same situation, legally, be given the same treatment under law.

Here instead Plaintiff was treated in an arbitrary and capricious manner. Here the actions of Defendants were contrary to what was required by the statute.

Count 8 Federal claims

Federal statute: The Help America Vote Act (HAVA) and/or the Motor-Voter Act require that provisional ballots be offered to a person whose vote is challenged.

Count 9

The First Amendment right to vote was violated when Defendants refused to allow Plaintiff to vote.

Count 10

By refusing to issue a provisional ballot, he was deprived of the right to a hearing by the election board as to whether his vote would be counted. This violated his rights under the 14th Amendment due process clause.

Count 11.

By denying the right to vote, they violated his substantive due process rights under the 14th amendment due process clause.

Count 12

By denying Plaintiff the right to vote Defendants violated his right to equal protection of the laws under the 14th Amendment.

Count 13

24th A claim. When the officials denied him his right to vote for failure to show ID, they violated his rights under the 24th Amendment. In practice, the only document which would have worked is his driver's license. He obtained his drivers license by paying a fee of some \$20, with a regular renewal fee every 4 or so years. Additionally he had had to purchase a birth certificate from his home state at \$10 plus the cost of travel. Because the 24th A prohibits the payment of any fee as a condition of voting, he is unwilling to display his driver's license. Additionally, the 24th Amendment, under Harmon v Forssenius, prohibits the imposition of obstacles and barriers to voting such as an ID requirement.

Relief sought:

as to each count, from each named defendant respectively, damages, as assessed by a jury, declaratory judgment, costs and legal fees, and such other relief as is in the interest of justice.

A'

Averment: I affirm that the above allegations are true to the best of my knowledge and belief.

Robbin Stewart

/s/ Robbin Stewart

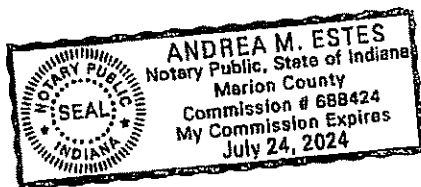
X *Robbin Stewart*

State of Indiana
County of Marion

Subscribed and sworn before me this 1st day of
May, 2018.

Andrea M. Estes
Notary's Signature

My commission expires July 24, 2024
County of Residence Marion



IN THE

FILED

49D13 18 05 CT 017023

163

MAY 01 2018

(Caption)

) Case Number

) (To be supplied by Clerk when case is filed)

Megan A. Edwards
CLERK OF THE MARION CIRCUIT COURT

APPEARANCE BY ATTORNEY IN CIVIL CASE

Party Classifications: Initiating ☒ Responding ☐ Intervening ☐

1. The undersigned attorney and all attorneys listed on this form now appear in this case for the following party member(s):

Name: Robin Stewart
Address: 4015 E Washington St 46201
Telephone: 317 656 9233

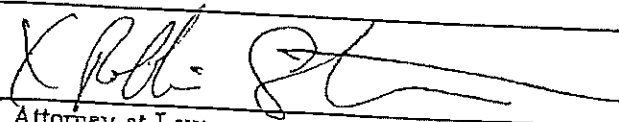
2. Applicable attorney information for service as required by Trial Rule 5(B)(2) and for case information as required by Trial Rules 3.1 and 77(B) is as follows:

Name: _____ Atty. Number: _____
Address: _____ Phone: _____
FAX: _____
Computer Address: _____

[List on continuation page the additional attorneys appearing for above party member(s)]

3. There are other party members: Yes _____ No ☒ (If yes, list on continuation page.)4. If first initiating party filing this case, the Clerk is requested to assign this case the following Case type under administrative rule 8(b)(3): Civil Tort5. I will accept service by FAX at the above noted number: Yes _____ No ☒6. This case involves support issues. Yes _____ No ☒ (If yes, supply social security numbers for all family members on continuation page.)7. There are related cases: Yes _____ No ☒ (If yes, list on continuation page)

8. This form has been served on all other parties. Certificate of Service is attached: Yes _____ No _____

9. Additional information required by local rule: NAAttorney-at-Law
Attorney information shown above

SUMMONS

Robin Stewart

In the Marion Superior Court, Room No. _____

Plaintiff

Marion County Election Board, et al.

Cause
No.

49D13-18-05-CT-017023

Defendant

TO DEFENDANT: (Name)

Myla Eldridge

(Address)

Election Board Office, City County Building
200 E Washington Indianapolis 46204

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

If you need the name of an attorney, you may contact the Indianapolis Bar Association Lawyer Referral Service (269-2222), or the Marion County Bar Association Lawyer Referral Service (634-3950).

Dated

5-1-18

Myla A. Eldridge

Clerk, Marion Superior Court

(Seal)

(The following manner of service of summons is hereby designated.)

☐ Registered or certified mail.

☒ Service at place of employment, to-wit: above

☐ Service on individual — (Personal or copy) at above address.

☐ Service on agent (Specify) _____

☐ Other service. (Specify) _____

Attorney for Plaintiff

Address

Telephone

Robin Stewart gbsw@qmail.com

4015 E. Wacker Lane, IL

317 656 4233

Marion County Superior Court
200 East Washington Street
Indianapolis, IN 46204

SUMMONS

Robbin Stewart

In the Marion Superior Court, Room No. _____

Plaintiff

Myla Eldredge, et al.

Cause No. 49D13 18 05 CT 017 023

Steven Rose

Defendant

TO DEFENDANT: (Name) Steven Rose

(Address) Marion county clerk's office, city-county building
200 E Washington Indianapolis 46204

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

If you need the name of an attorney, you may contact the Indianapolis Bar Association Lawyer Referral Service (269-2222), or the Marion County Bar Association Lawyer Referral Service (634-3950).

Dated 5-1-18

Myla A. Eldredge (Seal)
Clerk, Marion Superior Court

(The following manner of service of summons is hereby designated.)

☐ Registered or certified mail.

☒ Service at place of employment, to-wit: clerk's office

☐ Service on individual (Personal or copy) at above address.

☐ Service on agent. (Specify) _____

☐ Other service. (Specify) _____

Robbin Stewart glbear@gmail.com
Attorney for Plaintiff

4015 E Washington 46201
Address

317 656 9223
Telephone

Marion County Superior Court
200 East Washington Street
Indianapolis, IN 46204



CORP

Martin County Sheriff's Office Return Of Service

Service code

I hereby certify that I have served this Summons/Order/Petition/Motion etc...on the

2 day of MAY, 2018, 11:05 hours;

☒ By delivering a copy of the Summons/Order/Petition/Motion etc., and a copy of the complaint to the Defendant

☐ By leaving a copy of the document at _____

which is the dwelling place or usual place of abode of _____

☐ By leaving a copy of the Summons/Order/Petition/Motion etc. with a person over 16 years of age.

☐ By leaving a copy of the Summons/Order/Petition/Motion etc...at the individual's place of employment with,

Served on _____ Corporation

Not Found: Reason _____

Signature of recipient: _____ (If corporate service) Title: _____

By John R. Layton, Sheriff, Martin County, Indiana

By Deputy

[Signature]
B5554

Enclosure & Complaint to Address

MAILED 05/15/2018

SUMMONS

Robbin Stewart

In the Marion Superior Court, Room No. _____

Plaintiff

Myla Eldredge, et al.Cause No. 49D13 18 05 CT 017023Steven Rose

Defendant

TO DEFENDANT: (Name) Steven Rose(Address) Marion county clerk's office, city-county building
200 E Washington Indpls 46204

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

If you need the name of an attorney, you may contact the Indianapolis Bar Association Lawyer Referral Service (269-2222), or the Marion County Bar Association Lawyer Referral Service (634-3950).

Dated 5-1-18Myla A. Eldredge (Seal)
Clerk, Marion Superior Court

(The following manner of service of summons is hereby designated.)

☐ Registered or certified mail.☒ Service at place of employment, to-wit: clerk's office☐ Service on individual — (Personal or copy) at above address.☐ Service on agent (Specify) _____☐ Other service, (Specify) _____Robbin Stewart gtbear@gmail.com
Attorney for Plaintiff4015 E Washington 46201
Address317 656 9223
TelephoneMarion County Superior Court
200 East Washington Street
Indianapolis, IN 4620449D13-1805-CT-017023
SRS
Service Returned Served
1944061

Maricopa County Sheriff's Office **Return Of Service**

Service code

I hereby certify that I have served this Summons/Order/Petition/Motion etc... on the

2 day of MAY, 2018, 11:05 hours;

By delivering a copy of the Summons/Order/Petition/Motion etc., and a copy of the complaint to the Defendant

By leaving a copy of the document at _____

which is the dwelling place or usual place of abode of _____

By leaving a copy of the Summons/Order/Petition/Motion etc. with a person over 18 years of age.

By leaving a copy of the Summons/Order/Petition/Motion etc... at the individual's place of employment with,

Served on _____ Corporation

Not Found: Reason _____

Signature of recipient: _____ (If corporate service) Title: _____

John R. Layton, Sheriff, Maricopa County, Arizona

By Deputy

Enc. Summons & Complaint to Address

35554

SUMMONS

Robin Stewart

In the Marion Superior Court, Room No. _____

Plaintiff

Manion County Election Board, et al.Cause
No.49D13-18-05 CT 017023

Defendant

TO DEFENDANT: (Name) Myla Eldridge(Address) Election Board Office, City County Building
200E Washington Indpls 46204

You are hereby notified that you have been sued by the person named as plaintiff and in the Court indicated above.

The nature of the suit against you is stated in the complaint which is attached to this Summons. It also states the relief sought or the demand made against you by the plaintiff.

An answer or other appropriate response in writing to the complaint must be filed either by you or your attorney within twenty (20) days, commencing the day after you receive this Summons, (or twenty-three (23) days if this Summons was received by mail), or a judgment by default may be rendered against you for the relief demanded by plaintiff.

If you have a claim for relief against the plaintiff arising from the same transaction or occurrence, you must assert it in your written answer.

If you need the name of an attorney, you may contact the Indianapolis Bar Association Lawyer Referral Service (269-2222), or the Marion County Bar Association Lawyer Referral Service (634-3950).

Dated 5-1-18Myla A. Eldridge

Clerk, Marion Superior Court

(Seal)

(The following manner of service of summons is hereby designated.)

☐ Registered or certified mail.☒ Service at place of employment, to-wit: above☐ Service on individual — (Personal or copy) at above address.☐ Service on agent (Specify) _____☐ Other service. (Specify) _____

49D13-1806-CT-017023

SRS

Service Returned Served

1944062



Attorney for Plaintiff

Robin Stewart
4015 E. Washington St.

Address

317 656 9233

Telephone

Marion County Superior Court
200 East Washington Street
Indianapolis, IN 46204



SEP 10 11 40 AM 2018

Cohl

Marion County Sheriff's Office Return Of Service

Service code

I hereby certify that I have served this Summons/Order/Petition/Motion etc... on the

2 day of MAY, 2018, 11:05 hours;

☒ By delivering a copy of the Summons/Order/Petition/Motion etc., and a copy of the complaint to the Defendant

☐ By leaving a copy of the document at _____

which is the dwelling place or usual place of abode of _____

☐ By leaving a copy of the Summons/Order/Petition/Motion etc. with a person over 18 years of age.

☐ By leaving a copy of the Summons/Order/Petition/Motion etc... at the individual's place of employment with,

Served on _____ Corporation

Not Found: Reason _____

Signature of recipient: _____ (If corporate service) Title: _____

Sheriff John R. Layton, Sheriff, Marion County, Indiana

By Deputy *J. D. [Signature]*

☐ Mailed Documents & Complaint to Addressee

MAIL

B5554

7. There are related cases: Yes No X

8. Additional information required by local rule: NONE.
9. There are other party members: Yes ____ No X
10. This form has been served on all other parties and Certificate of Service is attached:
Yes X No ____

Respectfully Submitted,

/s/ Grant E. Helms

Grant E. Helms (29953-49)
Assistant Corporation Counsel
OFFICE OF CORPORATION COUNSEL
200 East Washington Street, Suite 1601
Indianapolis, Indiana 46204
Telephone: (317) 327-4055
Email: grant.helms@indy.gov

CERTIFICATE OF SERVICE

I hereby certify that on May 15, 2018 a copy of the foregoing APPEARANCE BY ATTORNEY IN CIVIL CASE was filed electronically. Service of this filing will be made on the below via the United State Postal Service, first class mailing, postage prepaid:

Robbin Stewart
4015 East Washington Street
Indianapolis, Indiana 46201

/s/ Grant E. Helms

Grant E. Helms (29953-49)
Assistant Corporation Counsel

OFFICE OF CORPORATION COUNSEL
200 East Washington Street, Suite 1601
Indianapolis, Indiana 46204
Telephone: (317) 327-4055