

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

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

DEFENDANT’S ANSWER TO PLAINTIFF’S COMPLAINT

Comes now Marion County Election Board, Myla Eldridge, and Steven Rose
 (“Defendants”), by counsel to answer Plaintiff’s Complaint, as follows:

INTRODUCTION

1. 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 as action for damages and declaratory judgment.

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 1 of Plaintiff’s Complaint, and so deny the allegations.

PARTIES

2. Plaintiff was 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.

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 2 of Plaintiff's Complaint, and so deny the allegations.

3. Defendants are the Marion County Elections 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 (Eldridge) and her two appointees, one from the county Democratic Party (Johnson) and one for the county Republican Party (Thompson). Eldridge is also named in her personal capacity, for failure to adequately train and supervise Rose. Steven Rose was precinct inspector who refused to let Plaintiff vote.

ANSWER: Defendants admit the composition of the Marion County Election Board. Defendants deny the remaining allegations of paragraph 3 of Plaintiff's Complaint.

JURISDICTION

4. This Court has general civil jurisdiction as well as under 42 U.S.C. 1983.

ANSWER: Admit.

FACTS

5. 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 to offer a provisional ballot. (*sic*)

ANSWER: The Defendants admit the occurrence of the May 3, 2016, primary election but deny the remaining allegations in this paragraph.

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 willfull (*sic*) and reckless disregard for the rights of the Plaintiff.

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 6 of Plaintiff's Complaint, and so deny the allegations.

7. Plaintiff filed a notice of tort claims (*sic*) 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.

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 7 of Plaintiff's Complaint, and so deny the allegations.

8. Defendants violated Plaintiff's right to vote a provisional ballot under the Indiana Voter ID Statute. (*Count 1*)

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 8 of Plaintiff's Complaint, and so deny the allegations.

9. 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 driver's 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 2*)

ANSWER: Deny.

10. Defendants's (*sic*) violated Plaintiff's right to vote under Article II, Section 1, the right to free and equal elections. Elections are not equal whne 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 3*)

ANSWER: Deny.

11. 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 4*)

ANSWER: Deny.

12. Article 1, Section 11. Defendant demanded plaintiff's papers as a condition of exercising his right to vote, thereby violating his right to vote, thereby violating his freedom of from search under Section 11. This created an unconstitutional condition, where the exercise of one right to made contingent on waiving another. There is 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 5)*

ANSWER: Deny.

13. Due course of law under Article 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 all him to vote. *(Count 6)*

ANSWER: Deny.

14. 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 statute. *(Count 7)*

ANSWER: Deny.

15. 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 8)*

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 15 of Plaintiff's Complaint, and so deny the allegations.

16. The First Amendment right to vote was violated when Defendants refused to allow Plaintiff to vote. *(Count 9)*

ANSWER: Deny.

17. 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 10)*

ANSWER: Defendants lack knowledge or information sufficient to admit or deny the allegations contained in paragraph 17 of Plaintiff's Complaint, and so deny the allegations.

18. By denying the right to vote, they violated his substantive due process rights under the 14th Amendment due process clause. *(Count 11)*

ANSWER: Deny.

19. By denying Plaintiff the right to vote Defendants violated his right to equal protection of the laws (*sic*) under the 14th Amendment. *(Count 12)*

ANSWER: Deny.

20. 24TH A (*sic*) 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 driver's 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 (*sic*) 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. (*Count 13*)

ANSWER: Deny.

WHEREFORE, the Defendants respectfully request that the Plaintiff take nothing by way of his Complaint.

Jury Trial Requested

The Defendants respectfully request a jury trial on all of the Plaintiff's claims.

DEFENDANTS' AFFIRMATIVE DEFENSES

1. The Plaintiff has failed to state a claim upon which relief may be granted.
2. The Defendants are entitled to qualified immunity, or other immunity that may apply.
3. The Defendants did not violate any of the Plaintiff's constitutional rights.
4. The Plaintiff's claims are barred by res judicata and/or the doctrines of claim- or issue-preclusion.
5. Plaintiff's claims under *Monell*, if any, are barred to the extent he has failed to properly state a claim.
6. There is no private right of action for monetary damages under the Indiana Constitution.

7. The Defendants are immune against Plaintiff's state law claims to the extent Indiana Code § 34-13-3-3 *et seq.* applies.
8. The Plaintiff's state law claims are barred to the extent he has failed to comply with the notice requirements of the Indiana Tort Claims Act, Indiana Code § 34-13-3-1 *et seq.*
9. Plaintiff's recovery, if any, on state law claims is limited pursuant to Indiana Code § 34-13-3-4.
10. The Defendants did not act with malice or deliberate indifference.
11. The Defendants reserve the right to assert additional affirmative defenses as discovery continues.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on June 14, 2018 a copy of the foregoing was filed electronically via the Court's system. Service of this filing will be made on the below via the United State Postal Service, first class mailing, postage prepaid:

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