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INDIANAPOLIS, INDIANA

UNITED STATES DISTRICT COURT

SOUTHERN DISTRICT COURT OF INDIANA, INDIANAPOLIS DIVISION

Robbin Stewart,

Plaintiff

v

Cause number 1:18 cv 01487-dml

Marion County Election Board,

Myla Eldridge, Steven Rose,

Loreta Jones, Jane Doe #4,

Defendants.

MEMORANDUM IN SUPPORT OF MOTION FOR LEAVE TO FILE

SECOND AMENDED COMPLAINT

I moved to amend the complaint in this case.

I moved to Indiana in 1994. In 1996 I was running for center township advisory board as a fusion candidate, when one of my campaign signs was taken down because it did not have a disclaimer. In *Stewart v Taylor*, the previous statute was struck down, citing *McIntyre*. I accepted a settlement of \$7000, which I would not have done if I had known the county would almost immediately resume the same unconstitutional conduct.

Following the contested election of George W. Bush, the Indianapolis Star began campaigning for voter ID, which previously had only been popular in places like Alabama along with poll taxes, literacy tests, grandfather clauses, cross-burnings, and other relics of Jim Crow. A bill passed in 2005, and was upheld against an initial facial challenge in *Crawford, 2008*. I wrote an amicus at the *en banc* stage which was denied by Judge Posner. I joined an amicus merits brief at the Supreme Court.

The Court of Appeals found Indiana's voter ID rules unconstitutional in *League of Women Voters v Rokita*, but the state Supreme Court reversed. The Indiana court denied my motion to consolidate *Rokita* with *Stewart v Board*. I brought several unsuccessful challenges to the statute. In a 2010 case, I lost because I did not have evidence to rebut

false testimony. Subsequently I have been working on better documenting my continued attempts to vote.

According to the standard favored by Justice Scalia, I have been severely burdened. Showing my passport or equivalent as a condition of voting in a federal election violates expectations of privacy, which I find unreasonable. I am not society; society doesn't seem to give a hoot that they have given away both their right to vote and their right to be free of an unwarranted search of their pockets. Expectations of privacy are heightened at the ballot box, and to demand a voter surrender so much of their personal data creates an appearance of corruption and detracts from the integrity of the election process. It is a content-specific censorship of who gets to vote, and should be given exacting scrutiny under *norman v reed*.

But we are not here about whether the statute is unconstitutional or violates my rights or imposes a severe burden. What we are here about is the refusal, once my vote was challenged based on declining to show ID, to issue me a ballot, whether provisional or regular. That was a civil rights violation. It may or may not have been a crime; that would be a question for a different court.

The central issue of law as to these claims is that I contend the officials had a legal duty to issue me a ballot. This can be decided by declaratory judgment.

If the board's position, expressed in the answer to the notice of tort claim, is correct, most of my case goes away. I am currently waiting for the board to answer a request for a stipulation of facts.

In order to be deemed a prevailing party and be awarded costs and fees, I need at least one winning claim. In order to attract counsel, I need the prospect of a fee award under 42 usc 1988 et seq. Once the county chose to remove to a federal forum, my set of tactical choices changed, and it became prudent to add a new set of claims without the possible weakness of a finding that there is no right to a provisional ballot.

Because the county denied my notice of tort claim, I have been closely monitoring the elections, continuing to gather evidence. In doing so I got offered a selection of literature, and considered doing a slate card to distribute to early voters. But I was discouraged by the emails from the county, and decided that a court ruling would be an appropriate way to resolve the conflict. So I have amended my complaint to include the political literature claim. So far I have only made a few signs, but hope to get

preliminary relief from this court before the elections cycle is over.

I intend to be active in the 2019 and 2020 election cycles.

It is possible the *Purcel* principle, or simple delay, will prevent this court from providing relief soon enough.

The political literature claim stands a high likelihood of success. 10 or more supreme court opinions directly support a finding for plaintiff. Cases on the other side represent a minority view, not controlling.

Additionally, 13 states have found a right to such speech under state constitutions.

The prior case, *Stewart v Taylor*, is about as on point as a litigant could hope to ask for.

Same parties, same speech format, same federal precedent relied on. It is enough to provide a likelihood of success, such that issuance of a preliminary injunction would not be an abuse of discretion, and shows that the case survives any *Iqbal* inquiry.

The text of the statute follows.

Sec. 2.5

(a) This section does not apply to any of the following:

- (1) A communication relating to an election to a federal office.
- (2) A communication relating to the outcome of a public question.
- (3) A communication described by this section in a medium regulated by federal law to the extent that federal law regulates the appearance, content, or placement of the communication in the medium.
- (4) Bumper stickers, pins, buttons, pens, and similar small items upon which the disclaimer required by this section cannot be conveniently printed.
- (5) Skywriting, water towers, wearing apparel, or other means of displaying an advertisement on which the inclusion of a disclaimer would be impracticable.
- (6) Checks, receipts, and similar items of minimal value that do not contain a political message and are used for purely administrative purposes.
- (7) A communication by a political action committee organized and controlled by a corporation soliciting contributions to the political action committee by the stockholders, executives, or employees of the corporation and the families of those individuals.
- (8) A communication by a political action committee organized and controlled by a labor organization soliciting contributions to the political action committee by the members or executive personnel of the labor organization and the families of those individuals.
- (9) A direct mailing of one hundred (100) or less substantially similar pieces of mail.

(b) This section applies whenever a person:

- (1) makes an expenditure for the purpose of financing communications expressly advocating the election or defeat of a clearly identified candidate; or

(2) solicits a contribution;

through a newspaper, a magazine, an outdoor advertising facility, a poster, a yard sign, a direct mailing, or any other type of general public political advertising.

(c) For purposes of this section, a candidate is clearly identified if any of the following apply:

(1) The name of the candidate involved appears.

(2) A photograph or drawing of the candidate appears.

(3) The identity of the candidate is apparent by unambiguous reference.

(d) A communication described in subsection (b) must contain a disclaimer that appears and is presented in a clear and conspicuous manner to give the reader or observer adequate notice of the identity of persons who paid for and, when required, who authorized the communication. A disclaimer does not comply with this section if the disclaimer is difficult to read or if the placement of the disclaimer is easily overlooked.

(e) In addition to meeting the requirements of subsection (d), a disclaimer that appears on a printed communication described in subsection (b) must comply with the following:

(1) The disclaimer must be of sufficient type size to be clearly readable by the recipient of the communication. A disclaimer in 12 point type size satisfies the size requirement of this subdivision when the disclaimer is used for a yard sign, a poster, a flyer, a newspaper, a magazine, or a direct mailing.

(2) The disclaimer must be printed with a reasonable degree of color contrast between the background and the printed statement. A disclaimer satisfies the color contrast requirement of this subdivision if:

(A) the disclaimer is printed in black text on a white background; or

(B) the degree of color contrast between the background and the text of the disclaimer is not less than the color contrast between the background and the largest text used in the communication.

Notwithstanding subdivisions (1) and (2), a disclaimer satisfies the requirements of this subsection if the minimum type size of the disclaimer is 7 point and the type color of the disclaimer contrasts with the background color.

(f) A communication that would require a disclaimer if distributed separately must contain the required disclaimer if included in a package of materials.

(g) This subsection does not apply to a communication, such as a billboard, that contains only a front face. The disclaimer need not appear on the front or cover page of the communication if the disclaimer appears within the communication.

(h) Except as provided in subsection (i), a communication described in subsection (b) must satisfy one (1) of the following:

(1) If the communication is paid for and authorized by:

(A) a candidate;

(B) an authorized political committee of a candidate; or

(C) the committee's agents;

the communication must clearly state that the communication has been paid for by the authorized political committee.

(2) If the communication is paid for by other persons but authorized by:

- (A) a candidate;
- (B) an authorized political committee of a candidate; or
- (C) the committee's agents;

the communication must clearly state that the communication is paid for by the other persons and authorized by the authorized political committee.

(3) If the communication is not authorized by:

- (A) a candidate;
- (B) an authorized political committee of a candidate; or
- (C) the committee's agents;

the communication must clearly state the name of the person who paid for the communication and state that the communication is not authorized by any candidate or candidate's committee.

(4) If the communication is a solicitation directed to the general public on behalf of a political committee that is not a candidate's committee, the solicitation must clearly state the full name of the person who paid for the communication.

(i) A communication by a regular party committee consisting of:

- (1) a printed slate card, a sample ballot, or other printed listing of three (3) or more candidates for public office at an election;
- (2) campaign materials such as handbills, brochures, posters, party tabloids or newsletters, and yard signs distributed by volunteers and used by the regular party committee in connection with volunteer activities on behalf of any nominee of the party; or
- (3) materials distributed by volunteers as part of the regular party's voter registration or get-out-the-vote efforts;

must clearly state the name of the person who paid for the communication but is not required to state that the communication is authorized by any candidate or committee.

/s/Robbin Stewart X

Certification:

a copy is being sent to grant helms and curtis hill
via hand delivery or us mail or email.

/s/ Robbin Stewart X