

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT COURT OF INDIANA, INDIANAPOLIS DIVISION

Robbin Stewart,

Plaintiff

v

Marion County Election Board, *et al.*

Defendants

2018 OCT 12 PM 1:32

cause number 1:18 cv 01487-dml

RLY

Plaintiff's response to opposition to motion for leave

Comes now plaintiff Robbin Stewart pro se and states as follows.

The board, by counsel, objects to the refiled complaint, in a filing I received on october 10th, although it had been filed october 1. The chief allegation seems to be that the complaint is scattershot, raising three unrelated claims against three unrelated parties. But that is not the case.

In third grade, in 1968, they introduced the new math and set theory. So let me describe this case in set theory terms.

Set A was from the initial complaint.

It consists of the board's three members in their official capacity, the clerk in her personal capacity, and Steven Rose, who was Jones's supervisor at the polling place. Jones could have been included in this set, but wasn't. As to the first incident in 2016, she was an unindicted co-conspirator.

Set A can be further broken own into two subsets, Aa and Ab, the precinct officials and the county officials.

If Jones is willing to waive the statute of limitations, I'd be happy to file a 3rd amended complaint to add Jones to the 2016 event claims, so that we would have less variation between the sets. Otherwise, Jones would have a valid defense that the statute had run as to her 2016 conduct.

Set B is those involved in the 2018 incident.

This includes the county officials, set Ab as above, and the precinct officials, Jones again, and a new person to replace rose, Jane Doe. Doe is a fictitious name, a placeholder until such time as the board lets us know who she is.

Set C is those involved in the political literature claim, which is only set AB, the board and clerk. There is no allegation that rose or jones or doe are involved in the political literature claim.

So the parties are not scattershot. If we count the clerk in personal and official capacities as two persons, set Ab has 4 units, 4 people, the county officials. This set is common to claims a b and c. Similarly I, Stewart, am the only plaintiff in each three claims. Set C has 4 people, set A has those 4 plus 1, and set B has those 4 plus 2.

Claims a and b differ only in that jones is not named in claim a, for the reasons discussed, and in claim b rose has been replaced by doe.

Nor are the claims scattershot. The first and second incident share a common question of law, in a nearly identical setting and very similar facts.

The core of the original complaint is that since 2005 the county election board has often refused to let stewart vote because he doesn't show id, and it does so in a haphazard way that often violates his rights.

Thus it was reasonably foreseeable that this would re-occur in 2018 if the board and clerk continued to follow the policies expressed in the denial letter. It did.

After being given an opportunity to view the video, they continued to employ Jones, who lacks rudimentary competence as a poll worker.

If I had filed the new incident as a separate action, my guess is counsel would object that this case is res judicata and the claims would be waived and barred by not filing them here. Just a hunch.

It is important that they be heard together. A reasonable jury, or even a confused 7th circuit panel, if offered only a single incident, might not find a policy or custom, but the repetition year after year makes it undeniable.

The board tries to portray what happened as an "isolated incident". It was not. I walked in there with the camera reasonably expecting that what did happen would happen, because it is what usually happens, because there is a custom or policy of deliberate indifference to fundamental voting rights. It was not an isolated incident in 2008 or 2010 or 2012 or 2015 or 2016 or 2018; it is an ongoing practice.

I agree with opposing counsel that judicial economy should be preserved. It is my belief that putting all my claims against the board into one lawsuit is the efficient way to do things.

However, if the court finds it just, it could bifurcate the case into two distinct actions, and give the political literature claim a new case number. Dismissal of the new claims would violate due process, but I am not opposed to bifurcation if the rules permit it and there are no fees attached.

This would give me a second case to settle, or try to a jury, or appeal if improperly dismissed. I won't turn down a second bite at the apple, so long as this court retains jurisdiction. I am unclear what opposing counsel's strategy is. It would be a waste of judicial economy to assign parts of this case to another judge or magistrate.

It is neither forbidden nor unusual for a lawsuit to contain more than one claim against a party or set of parties. For example, *Stewart v Taylor*, 953 F. Supp. 1047 (S.D. Ind. 1997), (7th cir. No. 96-3108, 1/15/1997), was a case with two claims. Stewart, i.e. myself, had been nominated by two political parties for the same office, and sought to be a fusion candidate, at a time when *timmons v new party* was pending before the supreme court. In order to hedge my bets, I included a political literature claim, which prevailed, even after I had lost the first claim at the 7th circuit. This made it possible to pay my lawyer, which otherwise I could not have done.

Election cases are entitled to an expedited place on the docket, which could put a strain on the limited resources of the judicial system if cases are unnecessarily split, resulting in duplication of efforts.

At the moment, the board is getting a bargain. Because, like the proverbial fool, I represent myself, I am not charging my standard \$235/hr. If the political literature claim is not heard in this case, the county can expect me to return, but as counsel for an as yet unnamed party. For example, Scott Huminski has told me he is available. Huminsky is a former client of mine in a sign case who later, while represented by Robert Corn-Revere, won \$900,000 in a dispute about some political signs in Vermont. My situation is that I took a few years off from law practice to be involved in medical research, and am using this case and a few others to brush up on my skills before taking on clients and the professional responsibilities that entails.

The board tries to argue that the political literature claim and the voting rights claim are unrelated. This is false. The American experiment tests the hypothesis that representative democracy can protect liberty. This is the philosophy that informs the declaration of independence, Northwest Territory Ordinance, the 1816 constitution, and sections 1 and 2 of article I of the current, 1851, constitution. Instead of a king we have, or at least have been promised, free and equal elections. However, the franchise was initially restricted

mostly to certain older white males rather than universal suffrage, first explicitly, then through a series of jim crow subterfuges, including voter ID, “enacted with surgical precision” to target black democrats, and disclaimer rules to censor speech, so that those who dared to speak out could be found and silenced. Other techniques to limit participation include the grandfather clause, literacy tests, poll taxes, purging, caging, racially motivated gerrymandering, felonization of everyday life, sign control ordinances, jayhawk primaries, intimidation at the polls, slating conventions, ‘one man five votes’ at-large elections, vote fraud, and ballot box theft. Any decent biography of Justice Thurgood Marshall would cover much of this ground. Robert Caro’s bio of LBJ provides details of Johnson’s theft of a senate seat via vote fraud.

These various techniques present obstacles to the ballot, contrary to the intent of the 24th Amendment, and to the free flow of public debate required for an election to be not a mere sham. When a person can go to jail for having a ‘vote for smith’ sign in her yard, that is merely a *potempkin* election, keeping the form but losing the substance.

The infrastructure of a free and open election has many parts, of which a lack of censorship is one, and proper handling of provisional ballots is another.

All of the claims I raise in this suit relate to the board’s failure to provide free an equal elections, as is their mandate. See *Common Cause v MCEB*, 2018.

I may have other claims against the county or some of its staff, but they do not arise out of the election cycle, and are not germane to this case, so have not been included here, because this is not a scattershot complaint. While I happen to be white, conservative, and republican, I try to carry on with Justice Marshall’s work of using the courts to try to improve the integrity of the election process by making it more free and more equal. I do not see free and open elections as a partisan issue, but as an American issue, and part of the constitutions that I have sworn to uphold.

Each of the three sets of claims relates directly to the integrity of the election process.

Most of the parties are the same. The board has a duty toward me, as a citizen of unigov, to carry out free and equal elections. When it fails that duty, a lawsuit can provide a possible remedy. Here, campaign signs and provisional ballots are simply two different facets of the board’s deliberate indifference to crumbling election infrastructure, like pointing out two different potholes on a county highway.

Perhaps I am taking the filing too seriously. It is not particularly substantive, and looks like a smoke screen to distract from the failure to timely file an answer. It seems like the case may be being slow walked in order to delay action until after the election. Counsel has identified no reason under the rules to prevent the court from accepting the amended complaint.

Respectfully submitted,

robbin stewart

/s/robbin stewart

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CERTIFICATE OF SERVICE

I, robbin stewart, representing myself, certify that on this 12th day of october, 2018 I served a copy of the foregoing on the opposing side by mailing/hand delivering a copy thereof to

Grant Helms

Office of corporation counsel

200 e washington #1600

via email and hand delivery.

robbin stewart

/s/robbin stewart

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