

IN THE UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
INDIANAPOLIS DIVISION

ROBBIN STEWART,	)	
	)	
Plaintiff,	)	
v.	)	
	)	CASE NO.: 1:18-cv-1487-RLY-DML
MARION COUNTY ELECTION BOARD,	)	
MYLA ELDRIDGE, STEVEN ROSE,	)	
LORETA JONES, and JANE DOE #4,	)	
	)	
Defendants.	)	

DEFENDANTS' ANSWER TO PLAINTIFF'S SECOND AMENDED COMPLAINT

Marion County Election Board, Myla Eldridge, and Steven Rose, ("Defendants"), answer Plaintiff's Amended Complaint as follows.

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.

ANSWER: Defendants admit that Plaintiff has filed this action seeking damages and declaratory relief. Defendants deny that Defendants the remaining allegations in Plaintiff's Paragraph 1.

1.A The first amended complaint fixes some typos, adds a new incident at the 2018 primary, and adds a claim about political literature. The second amended complaint spells out more facts about standing and ripeness.

ANSWER: Defendants state that Plaintiff's paragraph 1A does not require a response. To the extent that answer is required, Defendants deny that Plaintiff's complaint has merit.

2. Parties

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 admit that the issues raised in Plaintiff's complaint have been previously litigated and decided adversely against Plaintiff. Defendants also admit that Plaintiff's complaint seeks a damages award and declaratory judgment. However, Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Plaintiff's paragraph 2 and, therefore, deny them.

3. Defendants are the Marion County Elections (sic) 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 that the Marion County Election Board is comprised of the Marion County Clerk and two appointees. Defendants also admit that Plaintiff has sued Myla Eldridge in her personal capacity. However, Defendants deny that Johnson and Thompson are members of the Board.¹ Defendants further deny all remaining allegations in Plaintiff's paragraph 3.

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

ANSWER: Defendants deny that the Southern District Court of Indiana is a court of general jurisdiction. Defendants admit, however, that the Southern District Court of Indiana has jurisdiction over claims arising under federal laws such as 42 U.S.C. 1983.

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 350 N. Sherman. What he was supposed to do under the statute was to offer a provisional ballot.

¹ Keith Johnson and Melissa Thompson were sued in their official capacity as members of the Board; however, the current Board is comprised of Myla Eldridge, Michael Solari, and Bryce Carpenter. Accordingly, upon order of this Court, Michael Solari and Bryce Carpenter should be substituted in place of Steven Rose and Loretta Jones. *See, Kincaid v. Rusk*, 670 F.2d 737, 741 (7th Cir. 1982); *abrogated on other grounds by Salazar v. City of Chicago*, 940 F.2d 233 (7th Cir. 1991); Fed. R. Civ. P. 25(d) ("The officer's successor is automatically substituted as a party.").

ANSWER: The Defendants admit that a primary election was held on May 3, 2016. Defendants lack sufficient knowledge or information to form a belief as to the truth of the remaining allegations in Plaintiff's paragraph 5 and, therefore, deny them.

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 the Plaintiff.

ANSWER: Defendants state that Plaintiff's paragraph 6 proffers legal conclusions to which a response is not required. To the extent that an answer is required, Defendants admit that Defendants may be immune from suit. Defendants deny the remaining allegations in Plaintiff's paragraph 6.

7. Plaintiff filed a notice of tort claim, 16-T-803, 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 sufficient information or knowledge to form a belief as to the truth of the allegations contained in Plaintiff's paragraph 7 and, therefore, deny them.

8. Count 1

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

ANSWER: Defendants deny the allegations contained in Plaintiff's paragraph 8.

9. 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 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.

ANSWER: Defendants deny that Plaintiff's constitutional rights were violated or that the poll workers were inadequately trained and supervised. Defendants also state that Plaintiff's conclusory statements do not require a response. To the extent that an answer is required, Defendants deny all remaining allegations in Plaintiff's paragraph 9.

10. Count 3

Defendants 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.

ANSWER: Defendants deny that Plaintiff's constitutional rights were violated or that Plaintiff was not treated equally. Defendants also state that Plaintiff's conclusory statements do not require a response. To the extent that an answer is required, Defendants deny all remaining allegations in Plaintiff's paragraph 10.

11. 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*.

ANSWER: Defendants deny that Plaintiff's constitutional rights were violated.

Defendants also state that Plaintiff's conclusory statements do not require a response. To the extent that an answer is required, Defendants deny all remaining allegations in Plaintiff's paragraph 11.

12. Count 5

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 from search under Section 11. This created an unconstitutional condition, where the exercise of one right was 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.

ANSWER: Defendants deny that Plaintiff's constitutional rights were violated.

Defendants also state that Plaintiff's legal conclusions do not require a response. To the extent that an answer is required, Defendants deny all remaining allegations in Plaintiff's paragraph 12.

13. Count 6

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.

ANSWER: Defendants deny that Plaintiff's constitutional rights were violated. Defendants also state that Plaintiff's legal conclusions do not require a response. To the extent that an answer is required, Defendants deny all remaining allegations in Plaintiff's paragraph 13.

14. 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 statute.

ANSWER: Defendants deny the allegations in Plaintiff's paragraph 14.

15. Count 8 Federal Claims

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

ANSWER: Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations contained in Plaintiff's paragraph 15 and, therefore, deny them.

16. Count 9

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

ANSWER: Defendants deny the allegations in Plaintiff's paragraph 16.

17. 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.

ANSWER: Defendants deny the allegations in Plaintiff's paragraph 17.

18. Count 11

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

ANSWER: Defendants deny the allegations in Plaintiff's paragraph 18.

19. Count 12

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

ANSWER: Defendants deny the allegations in Plaintiff's paragraph 19.

20. Count 13

24th Amendment 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 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. But see *Stewart v MCEB 2010*.

ANSWER: Defendants deny that Plaintiff's constitutional rights have been violated. Defendants lack sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Plaintiff's paragraph 20 and, therefore, deny them.

21. New Incident:

This lawsuit was filed May 1. On Tuesday May 6th 2018, the primary election was held. I was elected, perhaps unopposed, as a delegate to the GOP state convention.

ANSWER: Defendants admit that Plaintiff originally filed this suit in Marion Superior Court on May 1, 2018. Defendants deny that May 6, 2018 occurred on a Tuesday. Defendants state that primary election day for 2018 was held on Tuesday May 8, 2018. Defendants lack sufficient information or knowledge to form a belief as to the truth of the remaining allegations contained in Plaintiff's paragraph 21 and, therefore, deny them.

22. I went to vote at the same location, at about 10 a.m. A new person, Jane Doe #4 was there along with Loretta Jones, who had starred in the 2016 videos. After I declined to how (sic) ID, they did not let me vote, and Doe was not aware of how to do a provisional ballot. I had signed the poll book and chosen a republican ballot.

I did not get video this time. Jones was actively hostile and told me to “get out,” so I went. They were unable to provide any documentation of my visit other than an “I voted” sticker.

Before leaving, I showed them a copy of the lawsuit and suit and a copy of my authorization paperwork as a media observer, and stated that they had violated my rights.

ANSWER: Defendants lack sufficient information or knowledge to form a belief as to the truth of the allegations contained in Plaintiff paragraph 22 and, therefore, deny them.

23. Claims:

Count 14. Doe and Jones, by refusing to let me cast a regular or provisional ballot, violated my rights, as detailed above and incorporated by reference, under the voter ID statute, and sections 1, 2, 9, 11, 12, 23, and 31, of the Indiana Bill of Rights, and under article II, section 1, the right to vote freely, section 1, the right to vote equally, section 2, and section 14, both each clause individually, and when read as a whole.

ANSWER: Defendants deny the allegations in Plaintiff’s paragraph 23.

24. Count 15.

Doe and Jones, by refusing to let me case a regular or provisional ballot, violated my rights, as detailed above and incorporated by reference, under the HAVA statute, and the first fourth fourteenth and twenty-fourth amendments,

Specifically the speech, press, assembly and petition clauses, as incorporated, due process, equal protection, and privileges and immunities of federal citizenship, or which voting in a federal election is one.

ANSWER: Defendants deny the allegations in Plaintiff’s paragraph 24.

25. Even though suit had already been filed, and the clerk was on specific notice of the problem at this precinct, Eldridge failed to properly train and supervise Jones and Doe.

ANSWER: Defendants deny the allegations in Plaintiff's paragraph 25.

Relief sought:

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

ANSWER: Defendants state that Plaintiff's statement of relief sought does not require a response. To the extent that an answer is required, Defendants deny that Plaintiff is entitled to any relief.

AFFIRMATIVE DEFENSES

1. Plaintiff failed to state a claim upon which relief may be granted.
2. Plaintiff's claims against improperly named defendants fail as a matter of law.
3. Defendants are immune from suit.
4. Plaintiff's claims are barred by the doctrine of res judicata and/or the doctrine of preclusion.
5. There is no private right of action for monetary damages under the Indiana Constitution for Plaintiff's claims.
6. 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.*
7. Plaintiff's recovery, if any, on state law claims is limited by Indiana Code § 34-13-3-4.

JURY DEMAND

Defendants, by counsel, respectfully demand all claims be tried before a jury pursuant to Rule 38(b) of the Federal Rules of Civil Procedure.

WHEREFORE, Defendants respectfully request that the Plaintiff take nothing by way of his Complaint, find in favor of Defendants, and grant Defendants all relief that is just and proper.

Respectfully submitted,

/s/ Traci M. Cosby
Traci Marie Cosby (31003-49)
Assistant Corporation Counsel
OFFICE OF CORPORATION COUNSEL
200 East Washington Street, Room 1601
Indianapolis, Indiana 46204
Telephone: (317) 327-4055
Fax: (317) 327-3968
E-Mail: traci.cosby@indy.gov

CERTIFICATE OF SERVICE

I certify that this document was electronically filed on October 26, 2018. The same day, the following non-e-filing users were served via first-class United States mail:

ROBBIN STEWART
4015 East Washington Street
Indianapolis, IN 46201

/s/ Traci M. Cosby
Traci Marie Cosby (31003-49)
Assistant Corporation Counsel

OFFICE OF CORPORATION COUNSEL
200 East Washington Street, Room 1601
Indianapolis, Indiana 46204
Telephone: (317) 327-4055
Fax: (317) 327-3968
E-Mail: traci.cosby@indy.gov