

**UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION**

John B. Curley, as Chairman of the Lake County,
Indiana, Republican Central Committee, and as a
registered voter, and Jim B. Brown as member of
the Lake County Board of Elections and
Registration and as a registered voter,

Plaintiffs,

v.

Case No. 2:08 cv-00287-JVB

Lake County Board of Elections and Registration,
and the Honorable Thomas Philpot, not
individually but as Lake County Clerk,

Defendants.

Linda Peterson, Roosevelt Phillips, Mary Aaron,
Service Employees International Union, and
Indiana State Conference of National Association
for the Advancement of Colored People Branches,

Proposed Intervenor-Defendants.

INTERVENOR-DEFENDANTS' [PROPOSED] ANSWER

INTRODUCTION

1. Plaintiffs filed this lawsuit to *prevent* voters from having access to early voting in their communities. Intervenor-Defendants have intervened in this lawsuit to protect the rights of voters to participate fully and equally in the electoral process.

2. Plaintiffs seek to reverse Defendant Lake County Board of Elections' decision to continue early voting in Gary, Hammond, and East Chicago for the upcoming 2008 general election, as was provided for the primary election in May 2008.

3. Not one Lake County resident testified to the Board of Elections against the proposal to allow early voting in these communities. Although the Board's decision was opposed by the two Republican members of Board of Elections, the only explanation they gave for not wanting voting in these communities was "no comment."

4. The Board's decision has now been challenged in this lawsuit as contrary to statutory authority because the vote of the Board was only by a *majority* rather than unanimous decision. By filing this lawsuit, Plaintiffs seek to *prevent* many thousands of Lake County residents from being provided with the opportunity to vote through early voting in the communities of Gary, Hammond and East Chicago.

5. The relief Plaintiffs request threatens to infringe the constitutional right of voters in Gary, Hammond, and East Chicago to reasonable, uniform and impartial elections procedures under Article 2, Section 1 of the Indiana Constitution, which provides: "All elections shall be free and equal." Providing access to early voting to the 20,000 residents of Crown Point while denying access to the more than 200,000 residents of Gary, Hammond, and East Chicago would

directly contravene this important constitutional protection, as would both denying early voting in these locations for the general election when it was permitted during the primary election and creating a very significant racial disparity in access to early voting.

6. The relief Plaintiffs request also threatens the rights of Lake County's African-American and Latino residents, the vast majority of whom live in Gary, Hammond, and East Chicago, to an equal opportunity to participate in the political process through early voting, in violation of the federal Voting Rights Act, 42 U.S.C. §1973. Lake County cannot provide greater access to early voting to the white residents of Crown Point while denying the same access to the African-American and Latino residents of Gary, Hammond, and East Chicago.

ANSWER

Therefore, Intervenor-Defendants answer Plaintiffs' Complaint as follows:

7. Answering Paragraph 1, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of all of the allegations in Paragraph 1, and on that basis deny the allegations.

8. Answering Paragraph 2, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of all of the allegations in Paragraph 2, and on that basis deny the allegations.

9. Answering Paragraph 3, the paragraph states legal conclusions which do not require a response.

10. Answering Paragraph 4, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 4, and on that basis deny the allegations.

11. Answering Paragraph 5, the paragraph states legal conclusions which do not require a response.

12. Answering Paragraph 6, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 6, and on that basis deny the allegations.

13. Answering Paragraph 7, Intervenor-Defendants admit the allegations.

14. Answering Paragraph 8, Intervenor-Defendants admit the allegations.

15. Answering Paragraph 9, the paragraph states legal conclusions which do not require a response.

16. Answering Paragraph 10, Intervenor-Defendants admit the allegations.

17. Answering Paragraph 11, the paragraph states legal conclusions which do not require a response.

18. Answering Paragraph 12, the paragraph states legal conclusions which do not require a response.

19. Answering Paragraph 13, the paragraph states legal conclusions which do not require a response.

20. Answering Paragraph 14, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 14, and on that basis deny the allegations.

21. Answering Paragraph 15, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 15, and on that basis deny the allegations.

22. Answering Paragraph 16, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 16, and on that basis deny the allegations.

23. Answering Paragraph 17, Intervenor-Defendants are without sufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 17, and on that basis deny the allegations.

24. Answering Paragraph 18, the paragraph states legal conclusions which do not require a response.

25. Answering Paragraph 19, the paragraph states legal conclusions which do not require a response.

26. Answering Paragraph 20, the paragraph states legal conclusions which do not require a response.

27. Answering Paragraph 21, the paragraph states legal conclusions which do not require a response.

28. Intervenor-Defendants deny that Plaintiffs are entitled to any relief.

Intervenor-Defendants also affirmatively allege as follows:

29. Intervenor-Defendant Linda Louise Peterson is an African-American registered voter in Gary, Indiana. She works a full-time job and is the primary caretaker of a seriously ill son who frequently requires time-consuming care. For these reasons, it may be extremely difficult for her to vote at her polling site on election day. She does not know in advance whether she will need to take her son to the hospital on a given day, so she does not qualify to vote by mail. Voting early in Crown Point would be very difficult because of her demanding

personal and professional obligations. If there is an early voting site in Gary, Ms. Peterson can and will vote there.

30. Intervenor-Defendant Roosevelt Phillips is an African-American registered voter in Gary, Indiana. His work schedule is unpredictable, and can include 16-hour shifts with no advance notice. He may be working on election day and unable to vote, but he will not know his schedule early enough to qualify for a mail-in ballot. He desires to vote early, but he does not own a car, and it would be extremely difficult for him to travel to Crown Point to vote early. If there is an early voting site at the Gary courthouse, Mr. Phillips can easily reach the site by public transportation.

31. Intervenor-Defendant Mary Aaron is a registered voter residing in Gary, Indiana. Her job requires her to be away from home between 6:30 a.m. and 6 p.m. For this reason, she has only a half-hour to vote on election day. If her poll site opened late or there were long lines, she would not be able to vote because she would have to leave for work. Her demanding work schedule also makes it very difficult for her to go to Crown Point to vote early. She desires to vote early in Gary.

32. Intervenor-Defendant Service Employees International Union (“SEIU”) is committed to ensuring that its union members and all Americans have the opportunity to exercise their right to vote. SEIU has 2,604 members in Lake County, the majority of whom live in Gary, Hammond, or East Chicago. SEIU has African-American and Latino members in Gary, Hammond, and East Chicago. Many of SEIU’s members in these cities would be benefitted by the opportunity to vote early. SEIU intends to educate those members and other voters in Gary,

Hammond, and East Chicago about early voting opportunities, including by canvassing door-to-door and phone-banking.

33. Intervenor-Defendant Indiana State Conference of National Association for the Advancement of Colored People Branches (“State Conference”) is a branch of the oldest civil rights organization in the country. The State Conference has members in Gary, Hammond, and East Chicago. The State Conference is extensively involved in voter empowerment activities. The State Conference is concerned that its members and constituencies in Gary, Hammond, and East Chicago would be detrimentally effected if early voting is limited to Crown Point.

FIRST AFFIRMATIVE DEFENSE

As a First Affirmative Defense, Intervenor-Defendants allege that Plaintiffs’ claims are not justiciable and that Plaintiffs lack standing to assert these claims.

SECOND AFFIRMATIVE DEFENSE

As a Second Affirmative Defense, Intervenor-Defendants allege that the relief sought by Plaintiffs in this lawsuit would violate Article 2, Section 1 of the Indiana Constitution.

THIRD AFFIRMATIVE DEFENSE

As a Third Affirmative Defense, Intervenor-Defendants allege that the relief sought by Plaintiffs in this lawsuit would violate the federal Voting Rights Act, 42 U.S.C. §1973.

PRAYER

WHEREFORE, Intervenor-Defendants pray for relief as follows:

1. That Plaintiffs take nothing by their Complaint;
2. That judgment be entered in favor of Defendants and Intervenor-Defendants;
3. That attorneys’ fees and costs of suit be awarded to Intervenor-Defendants; and

4. That the Court award such other and further relief as is just and proper.

Dated: October 3, 2008

Respectfully submitted,

/s/Barry A. Macey

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