

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF INDIANA
HAMMOND DIVISION

CITY OF HAMMOND, et al.,)	
)	
Plaintiffs,)	CASE NO. 2:21-cv-00160-PPS-JEM
)	
vs.)	
)	
LAKE COUNTY JUDICIAL)	
NOMINATING COMMISSION, et al.,)	
)	
Defendants.)	

DEFENDANT’S, LAKE COUNTY BOARD OF ELECTIONS, ANSWER TO
PLAINTIFFS’ SECOND AMENDED COMPLAINT FOR DECLARATORY
JUDGMENT AND INJUNCTIVE RELIEF

Comes now the Defendant, The Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, (“Election Board”), by counsel, Tolbert & Tolbert, LLC, and for their answer to Plaintiffs’ Second Amended Complaint for Declaratory Judgment and Injunctive Relief, and states as follows:

Introduction

When Congress enacted the Voting Rights Act (“VRA”) in 1965, all Indiana residents enjoyed full voting rights for judges. From 1950 to 1970, the black populations in Marion and Lake Counties dramatically increased. It is in this context that in the 1970s the Indiana Legislature began abridging judicial voting rights—but only in high minority counties.

Today, approximately 82% of white Indiana residents continue to enjoy the full voting rights they enjoyed when the VRA was enacted. But the story is not the same for minority voters. In Lake, Marion, and St. Joseph Counties, voters now only have an abridged voting right. They do not vote in free and open elections. Rather, they only get to vote on whether to retain judges

appointed by the Indiana Governor. This selective abridgment of voting rights has had an extreme and disparate impact on minority voters. Today, approximately 66% of Indiana black residents and 49% of Indiana minority residents have lesser and unequal voting rights. Selectively restricting voting rights in only certain high minority parts of the State violates the Indiana Constitution and it violates the VRA.

ANSWER: Said paragraph is not directed at the answering Defendant and is conclusory so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant it is denied.

PARTIES, JURISDICTION, AND VENUE

1. Hammond is an Indiana municipality and governmental organization located in Lake County, Indiana, and its administrative offices are located at Hammond City Hall, 2nd Floor, 5925 Calumet Avenue, Hammond, Indiana 46320.

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

2. Hammond frequently litigates in Lake County Superior Courts.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

3. When Hammond's police officers write traffic tickets or make arrests, those matters are frequently prosecuted in Lake County Superior Courts.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

4. Hammond has a direct and substantial interest in ensuring that Lake County Superior judges are legally selected.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

5. Thomas McDermott ("McDermott") is the Mayor of Hammond; an attorney that resides in Lake County, Indiana; and is a registered voter.

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

6. Lonnie Randolph ("Randolph") is an Indiana Senator from Lake County, Indiana; is black, a member of a minority group; is an attorney; resides in Lake County, Indiana; and is a registered voter in Lake County, Indiana.

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

7. Eduardo Fontanez ("Fontanez") is Hispanic, a member of a minority group, and is a registered voter in Lake County, Indiana.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

8. Fontanez is also an attorney that resides in Lake County, Indiana, and was previously an East Chicago City Court judge.

ANSWER: Defendant admits that Fontanez is an attorney and was previously the East Chicago City Court judge. Defendant is without sufficient knowledge or information to form a belief as to the truth of the remaining allegations of said paragraph of Plaintiffs' Amended Complaint.

9. Fontanez previously ran for election for the Lake County Superior Court county division, under Ind. Code § 33-33-45-43, but the Legislature repealed Ind. Code § 33-33-45-43 in 2011.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

10. Fontanez, Randolph, and McDermott previously had the right to vote for Lake County Superior Court judges of the county division, and they voted in those elections, but the right to vote in those elections was taken away from them.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

11. Fontanez would have run for election for Lake County Superior Court since 2011 but has been precluded from doing so because Lake County Superior Court judges are not elected.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

12. Fontanez, Randolph, and McDermott now only enjoy the lesser voting right of voting whether to retain judges.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

13. The State of Indiana is a proper defendant for a claim under the VRA because in enacting the VRA Congress abrogated sovereign immunity and the State of Indiana has enacted judicial voting laws that violate the VRA.

ANSWER: Said paragraph is a legal conclusion and not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant it is denied.

14. The Lake County Board of Elections is a local governmental unit that oversees elections in Lake County Indiana and administers the retention votes for Lake County Superior Court judges. Ind. Code § 33-33-45-42(e).

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

15. The Indiana Secretary of State is Indiana's chief election official, Ind. Code § 3-6-3.7-1, and she receives statements from judges wishing to be placed on the retention vote ballot. Ind. Code § 33-33-45-42(f).

ANSWER: Said paragraph is a legal conclusion and not directed at the answering Defendant so no answer is required.

16. The Lake County Judicial Nominating Commission ("Lake County JNC") is a local government entity created by the Indiana Legislature.

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

17. This Court has original jurisdiction over this matter under 28 U.S.C. § 1331 because claims in this matter arise under the laws and Constitution of the United States.

ANSWER: Defendant denies this allegation specifically as it relates to the Election Board. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint as it relates to other Defendants.

18. This Court has supplemental jurisdiction under 28 U.S.C. § 1367 over Plaintiffs' state-law claims because they are closely related and form part of the same case or controversy over Plaintiffs' federal-law claims.

ANSWER: Defendant denies this allegation specifically as it relates to the Election Board. Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Amended Complaint as it relates to other Defendants.

FACTUAL BACKGROUND

Current and Historical Method for Electing and Selecting Superior Court Judges

19. When the VRA was enacted in 1965, all Superior Court judges in Indiana were elected in free and open elections, including in Lake County.

ANSWER: Said paragraph is a legal conclusion and not directed at the answering Defendant so no answer is required.

20. Beginning in 1971, the Indiana Legislature disenfranchised Lake County voters (and St. Joseph County voters) and eliminated their right to elect Superior Court judges.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

21. The Legislature instead determined that in Lake County judicial nominees would be selected by the Lake County JNC, and the Governor would appoint Lake County Superior Court judges.

ANSWER: Defendant admits that Lake County judicial nominees are selected by the Lake County JNC, and from that list provided to the Governor, the Governor appoints Lake Superior Court judges.

22. Lake County residents were then given the lesser and unequal voting right to vote on whether to retain judges appointed by the Governor, but Lake County residents could not run for judge or vote for the judge of their choice.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

23. In the early 1970s, residents in other Indiana counties were not similarly disenfranchised, and voters in 90 Indiana counties continued to elect their Superior Court judges.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

24. Beginning in 1989, the Indiana Legislature provided that Lake County residents elected Lake County Superior Court county division judges, but the Legislature repealed this provision in 2011, again abridging Lake County residents' voting rights.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

25. Today, the Lake County JNC nominates Lake County attorneys to fill Superior Court vacancies, and the Governor then appoints Lake Superior Court judges from those nominees. Ind. Code §§ 33-33-45-35, 38.

ANSWER: Defendant admits that Lake County judicial nominees are selected by the Lake County JNC, and from the list provided to the Governor, the Governor appoints Lake Superior Court judges.

26. Today, Lake County residents do not have the right to elect Superior Court judges of their choice or to run for election.

ANSWER: Defendant admits that Lake County judicial nominees are selected by the Lake County JNC, and from the list provided to the Governor, the Governor appoints Lake Superior Court judges.

27. Instead, they only vote on whether to retain judges the Governor appoints. Ind. Code § 33-33-45-42.

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

Minority Voters in Indiana Have Been Systematically Disenfranchised

28. According to 2020 population data, Lake County has a minority population of 247,594 and approximately 50% of Lake County residents are minorities.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

29. If elections for Superior Court judges in Lake County were free and open, as they are in most of the State, minority residents would be able to elect judges of their choice.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

30. Instead, the Governor who is elected in a state-wide election chooses Superior Court judges in Lake County.

ANSWER: Defendant admits the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

31. While minorities make up almost half of Lake County's population, the State of Indiana as whole is 77% white.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

32. This is an extreme form of vote dilution.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

33. In addition to Lake County, the Indiana Legislature has abridged voting rights in Marion and St. Joseph Counties.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

34. According to 2020 population data, Marion County had a minority population of 383,538, which is approximately 49% of its population; and St. Joseph County had a minority population of 84,356, which is approximately 31% of its population.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

35. According to 2020 census data, Lake, Marion, and St. Joseph Counties are the most diverse counties.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

36. The only county that is even close to Marion, Lake, and St. Joseph Counties, in terms of percentage of minority residents, is Allen County, with approximately 30% of its population being minorities, and the Legislature has implemented a JNC in Allen County as well, followed by non-partisan elections.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

37. According to 2020 population data, approximately 49% of minority residents in Indiana live in Lake, Marion, and St. Joseph Counties.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

38. Approximately 66% of black residents in Indiana have abridged voting rights for Superior Court Judges.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

39. In contrast, approximately 82% of white, non-Hispanic voters in Indiana enjoy full election rights for their Superior Court judges.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint.

WHEREFORE, the Defendant, The Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, asks that this Court does not impose any liability on the answering Defendant and for all other just relief proper in the premises.

COUNT I—THE LESSER AND UNEQUAL VOTING RIGHTS IN LAKE COUNTY VIOLATE THE VRA

40. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-39.

ANSWER: Defendant repeats and realleges their responses to the allegations set forth in all previous paragraphs in Plaintiffs' Second Amended Complaint as if the same were fully repeated and set forth herein.

41. The State of Indiana is only a Defendant for Count I, which is brought under the VRA.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

42. The Voting Rights Act provides that “[n]o voting qualification or prerequisite to voting or standard, practice, or procedure shall be imposed or applied by any State or political subdivision in a manner which results in a denial or abridgement of the right of any citizen of the United States to vote on account of race or color.” 52 U.S.C. § 10301(a).

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

43. “A violation of subsection (a) is established if, based on the totality of circumstances, it is shown that the political processes leading to nomination or election in the State or political subdivision are not equally open to participation by members of a class of citizens protected by subsection (a) in that its members have less opportunity than other members of the electorate to participate in the political process and to elect representatives of their choice.” 52 U.S.C. § 10301(b).

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

44. In Indiana, judicial nominating only occurs in select counties with high minority populations (including Lake County) that results in the abridgement of the right of minority residents to vote for judges.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

45. In select counties with high minority populations (including Lake County), residents only retain the lesser and unequal right to vote in retention elections for Superior Court judges.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

46. Residents in other counties in Indiana have full voting rights for Superior Court judges.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

47. Voting for Superior Court judges is not equally open to all Indiana residents.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

48. By selectively implementing lesser voting rights only in high minority counties, Indiana has imposed a substantial burden on minority residents.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

49. This is not a mere inconvenience, but rather entirely blocks the rights of voters in high minority counties to vote on Superior Court judges of their choice or to run for election.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

50. The lesser and unequal voting rights afforded to select minority voters is a deviation from what existed in 1965 when Congress enacted the VRA and does not have a long pedigree, since all voters enjoyed full voting rights then.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

51. In 1982, when the VRA was amended, Marion County residents still elected their Superior Court judges, though Marion County's system was later declared unconstitutional for different reasons.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

52. Likewise, in 1982, Allen County voters also elected their Superior Court judges.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

53. So (*sic*) the current state of abridged voting rights for voters in high minority areas is a stark departure from what existed in Indiana in 1965 and 1982.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

54. The size of the disparities imposed on minorities by Indiana's differential voting procedures is significant because 66% of Indiana's black residents live in Lake, Marion, and St. Joseph Counties, and 49% of Indiana's minorities live in those counties.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

55. Indiana does not have any alternate procedure that would allow minority voters in Lake, Marion, and St. Joseph Counties to participate in voting for Superior Court judges.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

56. The State has no interest in imposing lesser voting rights only in Lake, Marion, and St. Joseph Counties because the Indiana Constitution mandates that all Circuit Court judges are elected and Superior Court judges are elected in the vast majority of Indiana counties.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

57. The political processes leading to the election of judges in Indiana are not equally open to the participation of minority residents in Indiana, and minorities in Indiana have less opportunity to elect Superior Court judges.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

58. Voters in Lake County have no incentive to vote to not retain Superior Court judges because this will not result in them being able to participate equally in the selection and election of a replacement judge, but will instead only result in the JNC selecting new nominees and the Governor appointing one to replace the non-retained judge.

ANSWER: Said paragraph is not directed at the answering Defendant so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

59. The Defendants should be enjoined from placing any Lake Superior Court on a ballot for a retention vote.

ANSWER: Defendant is without sufficient knowledge or information to form a belief as to the truth of the allegations of said paragraph of Plaintiffs' Second Amended Complaint and denies the same to the extent it ignores the Election Board's existing obligation to follow applicable law as it relates to retention of Judges.

60. The State should be given the opportunity to enact judicial voting procedures in Indiana that do not violate the VRA, presumably free and open elections for Superior Court judges statewide.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

WHEREFORE, the Defendant, The Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, asks that this Court does not impose any liability on the answering Defendant and for all other just relief proper in the premises.

**COUNT II – DECLARATORY JUDGMENT THAT THE LAKE COUNTY JNC
SELECTION PROCESS AND RETENTION VOTES VIOLATE INDIANA CONSTITU-
TION ARTICLE 4 SECTION 23**

61. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-60 as if fully set forth herein.

ANSWER: Defendant repeats and realleges their responses to the allegations set forth all previous paragraphs in Plaintiffs' Second Amended Complaint as if the same were fully repeated and set forth herein.

62. Indiana Constitution Article 4 Section 23 provides that “where a general law can be made applicable, all laws shall be general, and of uniform operation throughout the State.”

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

63. The JNC selection process for Superior Court judges is only in place in Lake, Marion, St. Joseph, and Allen Counties.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

64. Retention votes for Superior Court judges, as opposed to full elections, are only in place in Lake, Marion, and St. Joseph Counties.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

65. The Lake County JNC selecting nominees for the Governor to appoint to the Lake County Superior Court followed by a retention vote is special legislation because it does not apply uniformly statewide.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

66. This process is unconstitutional special legislation because there is nothing unique about Lake County that requires a JNC to select nominees to be appointed by the Governor to the Lake County Superior Court followed by retention votes.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

WHEREFORE, the Defendant, The Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, asks that this Court does not impose any liability on the answering Defendant and for all other just relief proper in the premises.

COUNT III- DECLARATORY JUDGMENT THAT IND. CODE § 33-33-45-28 VIOLATES INDIANA CONSTITUTION ARTICLE 1 SECTION 23

67. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-66.

ANSWER: Defendant repeats and realleges their responses to the allegations set forth all previous paragraphs in Plaintiffs' Second Amended Complaint as if the same were fully repeated and set forth herein.

68. Indiana Constitution Article 1 Section 23 provides that the "General Assembly shall not grant to any citizen, or class of citizens, privileges or immunities, which, upon the same terms, shall not equally belong to all citizens."

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

69. Previously, in all counties with a judicial nominating commission, attorneys elected or appointed members to the judicial nominating commission.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

70. Under Ind. Code § 33-33-45-28, attorneys in Lake County no longer have the privilege of electing or selecting members to the Lake County JNC.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

71. Ind. Code § 33-33-45-28 violates Ind. Const. Art. 1 § 23 because attorneys in Lake County no longer have privileges afforded to attorneys in Marion and Allen Counties.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

WHEREFORE, the Defendant, The Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, asks that this Court does not impose any liability on the answering Defendant and for all other just relief proper in the premises.

**COUNT IV–DECLARATORY JUDGMENT THAT INDIANA CODE ARTICLE 33-3345'S
JUDICIAL NOMINATING PROVISIONS VIOLATE INDIANA CONSTITUTION ARTICLE 1
SECTION 23**

72. Plaintiffs incorporate by reference the allegations contained in paragraphs 1-71.

ANSWER: Defendant repeats and realleges their responses to the allegations set forth all previous paragraphs in Plaintiffs' Second Amended Complaint as if the same were fully repeated and set forth herein.

73. In eighty-nine counties in Indiana, all citizens over the age of eighteen elect their Superior Court judges.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

74. In Lake County, citizens do not have the privilege of electing their judges.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

75. The judicial nomination and retention vote provisions in Ind. Code Article 33-33-45 violate Indiana Constitution Article 1, Section 23 because citizens in Lake County do not enjoy the privilege of electing their judges and citizens in eighty-nine other counties in Indiana enjoy this privilege.

ANSWER: Said paragraph is not directed at the answering Defendant and is a legal conclusion so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

WHEREFORE, Plaintiffs seek a declaratory judgment that: (1) the judicial nominating provisions of Ind. Code Article 33-33-45 violate Indiana Constitution Article 1, Section 23; (2) future openings on the Lake County Superior Court will be filled by election, as occurs in 89 counties in Indiana currently; and (3) for all other just and proper relief.

ANSWER: Said paragraph is Plaintiffs' prayer for relief, so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

WHEREFORE, and applicable to all Counts of this lawsuit, Plaintiffs seek the following relief through this suit:

- a) Plaintiffs seek only prospective relief;
- b) Plaintiffs seek a declaration that retention votes for Lake Superior Court Judges violate the VRA rule;

- c) Plaintiffs seek to enjoin Lake County Superior Court judges from being placed on ballots for retention votes;
- d) Plaintiffs seek to enjoin the Lake County JNC from selecting future Lake Superior Court judge nominees;
- e) Plaintiffs seek an order that future Lake County Superior Court openings will be filled by election, not by selection and retention votes;
- f) Plaintiffs do not challenge the nomination and selection of current or former Lake County Superior Court judges, and:
- g) Plaintiffs do not seek damages.

ANSWER: Said paragraph is Plaintiffs' prayer for relief and are legal conclusions, so no answer is required. To the extent said paragraph seeks to impose liability on the answering Defendant, it is denied.

WHEREFORE, the Defendant, The Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, asks that this Court does not impose any liability on the answering Defendant and for all other just relief proper in the premises.

Respectfully submitted,

TOLBERT & TOLBERT, LLC

By: /s/ Michael E. Tolbert
Michael E. Tolbert # 22555-64
1085 E. Broadway, Suite B
Gary, Indiana 46402
P: (219) 427-0094/F: (219) 427-0783
mtolbert@tolbertlegal.com
Attorney for the Election Board

AFFIRMATIVE DEFENSES

Defendant, Lake County Board of Elections and Registration, by counsel, for its Affirmative Defenses to Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief and states:

1. Any allegations in Plaintiffs' Amended Complaint for Declaratory Judgment and Injunctive Relief which have not heretofore been specifically admitted, denied or otherwise controverted are hereby specifically denied.

2. Defendant reserves the right to assert additional defenses.

3. Defendant asserts any and all applicable Federal Rule 5(C) defenses.

4. The Defendant raises any and all applicable provisions found in Title 3 of the Indiana Election Code that can be construed as a defense in this matter; particularly, the Plaintiffs' Complaint has not pled that the Election Board has violated any chapter or section of Title 3 or has failed to carry out any legal obligation under Title 3 or any applicable law.

5. The Plaintiffs have failed to state a claim upon which relief can be granted, specifically against the Election Board, because there is been no finding or action taken by the Election Board in violation of any existing law and this action must be dismissed pursuant to Federal Rule 12(B)(6).

6. The Plaintiffs' claim must fail, specifically as it relates to the Election Board, as it fails to present any legitimate and/or actual controversy relating to the Election Board.

7. The Plaintiffs' claim must fail, as it relates specifically to the Election Board, to the extent it seeks an advisory opinion with no real finding that the Election Board has engaged in any conduct in violation of the law.

8. Plaintiffs' claim must fail, as it relates specifically to the Election Board, because there is a lack of standing and there are no injuries alleged that are fairly traceable to the acts or omissions of the Election Board.

9. To the extent any State law claims are pled due to notice pleading against the answering Defendant, the Election Board is entitled to all applicable immunities afforded by the common law and the Indiana Tort Claims Act, I.C. § 34-13-3-1, et. seq., and the limitation, "caps" and protections afforded by the Indiana Tort Claims Act and the Common Law are asserted and applicable. Likewise, any state law claims pled are barred to the extent the Plaintiffs have failed to comply with any notice requirements found within the Indiana Tort Claims Act.

10. To the extent any State Law claims are pled due to notice pleading against the answering Defendant, the Election Board is entitled to all immunities afforded by the Indiana Tort Claims Act, I.C. § 34-13-3-1, et. seq., to the extent any state law claims are being made, including, but not limited to, the following sections:

I.C. § 34-13-3-3(7);

I.C. § 34-13-3-3 (8);

I.C. § 34-13-3-3 (9);

I.C. § 34-13-3-3(10);

I.C. § 34-13-3-3(14);

11. The Plaintiffs' Complaint fails to name the real party in interest, Lake County Board of Elections and Registration, but incorrectly names the Defendant as "Lake County Board of Elections."

12. The Plaintiffs' claims are barred, with respect to the Election Board, by Federal and State Immunity defenses which include, but are not limited to, individual immunity, qualified immunity, statutory immunity, good faith immunity, absolute immunity, and discretionary immunity.

13. The Plaintiffs' claims against the Election Board are not ripe and are premature.

14. No act or omission of the Election Board has proximately caused the Plaintiffs any injury or damage.

15. The Plaintiffs have asserted no claims against the Election Board upon which personal and/or subject matter jurisdiction can be conferred.

16. Defendant incorporates by reference any and all applicable affirmative defenses pled by any other Defendant in this matter as though the same was fully set forth herein.

17. The present claims are not justiciable.

18. To the extent Plaintiffs make a claim against the Election Board, the Defendant states that they have failed to exhaust any and all applicable administrative remedies.

19. The Defendant raises Article III of the United States Constitution as a defense.

Respectfully submitted,

TOLBERT & TOLBERT, LLC

By: /s/ Michael E. Tolbert

Michael E. Tolbert # 22555-64

1085 E. Broadway, Suite B

Gary, Indiana 46402

P: (219) 427-0094/F: (219) 427-0783

mtolbert@tolbertlegal.com

Attorney for the Election Board

CERTIFICATE OF SERVICE

I hereby certify that on the 31st day of August 2022, a copy of the foregoing was filed electronically with the Clerk of the Court using the Court's e-filing system, which sent notification of such filing to all counsel of record.

Brian H. Babb, #21535-49
Bradley M. Dick, # 29647-49
Bose McKinney & Evans, LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
P: (317) 684-5000/F: (317) 684-5173

/s/ Michael E. Tolbert

Michael E. Tolbert, #22555-64

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