

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.)	

PLAINTIFFS' RESPONSE TO ELECTION BOARD'S STATEMENT OF ADDITIONAL MATERIAL FACTS

Plaintiffs, City of Hammond, Thomas McDermott, in his official and personal capacities, Eduardo Fontanez, and Lonnie Randolph, by counsel and pursuant to Local Rule 56-1(c)(2), respectfully file their Reply to the Statement of Additional Material Facts filed by the Defendant, Lake County Board of Elections ("Election Board") (Dkt. 103):

39. On May 7, 2021, Plaintiffs, City of Hammond, Thomas McDermott, and Eduardo Fontanez filed a Complaint for Declaratory Judgment and Injunctive Relief ("Complaint") against the Lake County Judicial Nominating Commission. [See DKT 1, Complaint for Declaratory Judgment and Injunctive Relief.]

39. Plaintiffs do not dispute this.

40. This case arises out of Plaintiffs' claim that minority voters in Lake, Marion, and St. Joseph Counties are negatively impacted under the United States Constitution, Indiana Constitution, and the Voting Rights Act because they do not get to vote for Judges in their respective areas. [See DKT 1, pp 1-2.]

40. Plaintiffs dispute this. Under Indiana law, all Indiana voters vote for Circuit Court judges. Ind. Const. Art. 7 § 7. In Lake, Marion, and St. Joseph Counties, voters only have the right to vote on whether to retain Superior Court Judges. Ind. Code Art. 33-33.

41. On December 7, 2021, Plaintiffs filed an Amended Complaint for Declaratory Judgment and Injunctive Relief ("Amended Complaint") against the Defendants, Lake County Judicial Nominating Commission, State of Indiana, Secretary of State Holly Sullivan (in her official capacity), and the Election Board. [See DKT 30, Amended Complaint for Declaratory Judgment and Injunction Relief].

41. Plaintiffs do not dispute this.

42. The Amended Complaint merely alleged that the Election Board was a local governmental unit that oversees elections in Lake County Indiana and administers the retention votes for Lake County Superior Court judges and nothing else. Ind. Code § 33-33-45-42(e). [See DKT 30 at p. 3].

42. Plaintiffs do not dispute this. The Election Board is the entity that causes the harm Plaintiffs allege violates the Voting Rights Act and Indiana Constitution. Plaintiffs have explained in their response brief that local election boards are frequently named defendants in cases involving challenges to voting laws, and the Election Board does not cite any authority to support that the entity that enforces and administers the challenged statute is not a proper defendant. *See, e.g., Crawford v. Marion Cnty. Election Bd.*, 553 U.S. 181, 185 (2008). Additionally, if this Court finds the challenged statute illegal, the Election Board would be required to follow this Court's order and stop placing judges for retention votes. *See Common Cause Indiana v.*

Indiana Secretary of State, 1:12-cv-01603-RLY-DML, 2013 WL 12284648 *4 (S.D. Ind. Sep. 6, 2013).

43. The Amended Complaint alleged no wrongdoing or specific violation of any law by the Election Board. [See DKT 30 at pp. 6-9].

43. Plaintiffs dispute this. Plaintiffs are challenging the relevant statute as violating the Voting Rights Act and the Indiana Constitution. The Election Board enforces and administers the challenged statute. Ind. Code § 33-33-45-42(e). If this Court accepts the Plaintiffs' arguments and finds the statute illegal, then the Election Board is improperly administering the retention-vote scheme in Lake County. *See* Ind. Code § 33-33-45-42(e).

44. On August 17, 2022, a Second Amended Complaint ("Second Amended Complaint") was filed. [See attached as Exhibit 2, the corrected Second Amended Complaint, DKT 58]

44. Plaintiffs do not dispute this.

45. By this time, Lonnie Randolph was added as a named Plaintiff. *Id.*

45. Plaintiffs do not dispute this.

46. However, the Second Amended Complaint, again, made no specific or direct allegations against the Election Board nor alleged any wrongdoing by the named Defendant. *Id.*

46. Plaintiffs dispute this. Plaintiffs are challenging the relevant statute as violating the Voting Rights Act and the Indiana Constitution. The Election Board enforces and administers the challenged statute. Ind. Code § 33-33-45-42(e). If this Court accepts the Plaintiffs' arguments and finds the statute illegal, then the Election Board is improperly administering the retention-vote scheme in Lake County. *See* Ind. Code § 33-33-45-42(e).

47. The Plaintiffs' claims are not directed at the Election Board nor is there any evidence offered by the Plaintiffs demonstrating that the Election Board caused them any injury and/or damage to them. [See attached as Exhibit 3 Affidavit of Lonnie Randolph, and also see attached as Exhibit 4 the Affidavit of Eduardo Fontanez.]

47. Plaintiffs dispute this. Plaintiffs are challenging the relevant statute as violating the Voting Rights Act and the Indiana Constitution. The Election Board enforces and administers the challenged statute. Ind. Code § 33-33-45-42(e). If this Court accepts the Plaintiffs' arguments and finds the statute illegal, then the Election Board is improperly administering the retention-vote scheme in Lake County. *See* Ind. Code § 33-33-45-42(e). Plaintiffs are injured by the lesser voting rights they receive, (Dkt. 84-1 p.1; 84-2 p.1; Dkt. 84-3 p.1), and this injury is directly caused by the Election Board. *See* Ind. Code § 33-33-45-42(e).

Respectfully submitted,

/s/ Bryan H. Babb

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CERTIFICATE OF SERVICE

I hereby certify that on September 1, 2023, a copy of the foregoing document was filed electronically. Notice of this filing will be sent to the following parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

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