

**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.	)	
	)	
STATE OF INDIANA, INDIANA	)	
SECRETARY OF STATE	)	
DIEGO MORALES, in his official	)	
Capacity, and THE LAKE COUNTY	)	
BOARD OF ELECTIONS,	)	
	)	
Defendants.	)	

**DEFENDANT’S, LAKE COUNTY BOARD OF ELECTIONS, REPLY BRIEF IN**  
**SUPPORT OF MOTION FOR SUMMARY JUDGMENT**

Comes now Defendant, the Lake County Board of Elections, whose true name is Lake County Board of Elections and Registration, (“Election Board”), and file their Reply Brief in Support of Motion for Summary Judgment. In support thereof, the Court is shown the following:

**I. LEGAL ARGUMENT**

The Plaintiffs filed their response (“Response”) to the Election Board’s Motion for Summary Judgment on August 10, 2023. The Plaintiffs’ Response brief did nothing more than employ “fancy footwork” around the obvious – that there is no designated evidence showing that the Election Board did anything to cause their alleged injury. The Plaintiffs’ Response brief takes a “this is the way it’s always been done approach” but offers little support to justify keeping a Defendant in a case under Federal Rule 56 when there have been no allegations pled or designated evidence linking that Defendant’s conduct to the alleged wrong.

The Plaintiffs rely on the case *Crawford v. Marion Cnty Election Bd*, 553 U.S. 181 (2008) in an effort to support the customary tradition of naming election boards in lawsuits in which the constitutionality of a statute is challenged. However, the *Crawford* case analyzed the issue of whether a law that required citizens voting in person to present government-issued photo identification was constitutional. The *Crawford* case simply upheld the constitutionality of the photo identification statute but did not, *carte blanche*, find that the naming of a county election board is proper when no recognizable injury can be traced to any conduct of the entity. *Crawford*, 553 U.S. at p. 204.

The Plaintiffs' reliance on the case *Mulholland v. Marion Cnty Election Bd*, 746 F.3d 811 (7<sup>th</sup> Cir. 2014) is also misplaced. In *Mulholland*, a plaintiff challenged an anti-slating law. *Mulholland*, 746 F.3d at pp. 813-814. The election board, in the *Mulholland* case, was sued because of its actions in attempting to enforce an anti-slating law that was previously found to be invalid. *Id.* In the present case, the Election Board has not sought to enforce a statute against the Plaintiffs that was found to be unconstitutional. As it stands, there has been no evidence designated that the Election Board has tried to enforce a statute that has been legally determined to be unconstitutional, so the *Mulholland* case simply is inapplicable.

Other cases cited by the Plaintiffs do little to further their cause of keeping a local Election Board in a case where their conduct cannot be linked nor has been alleged to have caused the Plaintiffs' alleged injury. *Indiana Democratic Party v. Rokita*, 375 F. Supp. 2d 788 (S.D. Ind. 2005)(holding a motion to dismiss under advisement when it appeared that the Indiana Secretary of State and co-directors of Indiana Election Division, acting in their official capacities, had no direct role in enforcing statutory photo identification requirements for voters to qualify to vote.) *Anderson v. Mallamad*, 1997 WL 35024766 (S.D. Ind. 1997)(holding that

summary judgment in favor of county defendants and state defendants as to Count IV of Plaintiff's Complaint was proper when the Supreme Court previously held that the one-person, one-vote standard did not apply to judicial elections.)

The Plaintiffs' Response fails to address the basics, which provides that a party is entitled to summary judgment "if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue of material fact and that the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). An issue is genuine only when a reasonable jury could find for the Plaintiffs and against the Election Board based on the record as a whole. *Pipitone v. United States*, 180 F.3d 859, 861 (7th Cir. 1999). Here, it would be impossible for a jury or trier of fact to find for the Plaintiffs against the Election Board when there is not even an allegation made of any wrongdoing on their part or an actual controversy that exists between the parties.

The Plaintiffs' argument that the Election Board does not challenge that they have suffered a cognizable injury is not accurate. The Election Board's Motion for Summary Judgment clearly provides that judicial authority under Article III of the United States Constitution is limited to "cases or controversies." Furthermore, it asserted that in order for the Plaintiffs to have standing, a plaintiff must have "an injury in fact," a causal connection between the injury and the conduct complained of, and it must be likely (as opposed to speculative), that the injury will be redressed by a favorable decision. *Lujan v. Defenders of Wildlife*, 504 U.S. 555, 560-61 (1992). The injury must be fairly traceable to the challenged action of the defendant. *Id.* The Plaintiffs invoking federal jurisdiction bears the burden of establishing the elements of standing. *Lujan* at 561. Again, the Plaintiffs have not pled nor have designated any evidence that shows any injury that has any causal connection with the Election Board. The Plaintiffs are not alleging that the Election Board has done anything

wrong or failed to do something. There was no designated evidence in the Plaintiffs' Response that even attempts to link the Plaintiffs' claims and/or the allegations to any Election Board conduct.

For the above reasons, the Plaintiffs lack standing to bring this suit against the Election Board because there is no "case or controversy" as between the Plaintiffs and the Election Board within the meaning of Article III of the United States Constitution. There is no injury fairly traceable to the Election Board. The Election Board's Motion for Summary Judgment should be granted.

## **II. CONCLUSION**

Plaintiffs lack standing under Article III of the United States Constitution to sue the Election Board. The injuries alleged by the Plaintiffs in this case are not fairly traceable to the Election Board. The Election Board's Motion for Summary Judgment should be granted.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

I certify that on the 1<sup>st</sup> day of September 2023, service of a true, correct, and complete copy of the foregoing pleading and/or paper was made upon all counsel of record via the Court's Pacer system and/or via United States first class mail with the proper postage affixed to:

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