

**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
TERRE HAUTE DIVISION**

Andrew M. Horning [Pro Se],)	
)	
Plaintiff,)	
v.)	Case No. 2:15-cv-284-LJM-WGH
)	
THE STATE OF INDIANA, et al.,)	
)	
Defendants.)	

REPLY IN OPPOSITION TO DEFENDANTS MOTION TO DISMISS

Plaintiff, Andrew M. Horning, an individual private citizen claiming individual rights to equal treatment under constitutional rule of law, respectfully submits this reply to Defendants' *Reply in Support of Motion to Dismiss*.

Argument

1. Defendants' primary election theories are irrelevant to the Complaint.

Defendants confuse correlation with causation, and create a straw-man argument when claiming that "Complaint hinged on the assumption that Plaintiff is denied participation in the primary elections by virtue of his non-MPP status." Plaintiff never made this argument in either the original Complaint or the subsequent reply to Defendants' Motion to Dismiss.

And once again the Defendants assume that Plaintiff is a corporate representation, when, in fact, Plaintiff is a private individual citizen holding no membership to any political entity. That is an important distinction because by Indiana statute, no individual is able to qualify for Indiana primary elections at all. As previously documented, only State-approved partisan organizations

are allowed in primary elections; and those private entities' qualification depend entirely upon the election result of only one of their candidates, in a prior Secretary of State contest.

Theories about nonexistent conditions are irrelevant. It is currently fact that there is nothing any individual wishing to appear on Indiana's next primary ballot could do but run as an official MPP candidate. In the previously filed arguments the Plaintiff already proved that he was and still is, personally, denied access to primary elections by both statute, and present reality.

Defendants have confirmed that MPP members have superior powers, immunities, exemptions and other advantages already detailed in the previous filings. Primary elections are just one of the advantages currently allowed to only MPP members; and partly as a consequence of their other advantages. That a non-MPP organization could theoretically qualify for a future primary election is a corporate issue, not present reality, and unrelated to individual rights.

2. Taxpayer standing

Again Defendants erect a straw man argument. Taxpayers' insignificance in political processes was never disputed in any of the Plaintiff's prior arguments. However, being a taxpayer should not disqualify anyone from legal remedy. Plaintiff's standing has already been amply demonstrated.

It is in fact ironic that the Defendants rely so heavily on the dubious *American Party of Texas v. White* decision when the American Party clearly had standing.

3. Equal Protection

Defendants' concede that Indiana's election and preferential partisan statutes are separate and unequal. They argue only that "*that the equal protection clause does not require the states to*

*implement identical nomination procedures for all political parties.*¹"

And again, Plaintiff is an individual human, not a corporate entity. Defendants' alledge all individuals have equal treatment while ignoring the very codes and statutes they agree assign different classes of individual with differing requirements, stipulations and burdens in each class.

This inequality should be remedied. Plaintiff asks the court to confirm and reestablish as *stare decisis* that separate and unequal is, in fact, unequal.

Defendants allege that there is "*no appropriate comparison to make*" with *Brown v. Board of Education of Topeka*, 347 U.S. 483; but that is incorrect:

- a) In attaching education to the fourteenth amendment which never mentioned it, Justice Warren wrote, "*The most avid proponents of the post-War Amendments undoubtedly intended them to remove all legal distinctions among 'all persons born or naturalized in the United States.'* Their opponents, just as certainly, were antagonistic to both the letter and the spirit of the Amendments and wished them to have the most limited effect." The court obviously sided with the former against the latter.
- b) Citing "*the importance of education to our democratic society*," Warren also wrote that, "*Because of the obvious importance of the question presented, the Court took jurisdiction.*" It is reasonable to assume that Warren would consider our democratic process similarly important to our democratic society. And this case is about equality and justice in our democratic process.
- c) In rejecting generations of *stare decisis*, Warren cited improvements in education which made the 14th Amendment relevant to education. This strongly argued the priority of the

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present over the past. Plaintiff argues that reduction of equality in ballot access is at least as strong an argument for application of the Equal Protections Clause, as was the improvement of education systems. Indiana never had a crowded ballot; there have never been more than six POTUS candidates, for example. Yet ballot access has been progressively and dramatically restricted, from 500 signatures for statewide office for all independents as well as party candidates, to .5% (one half of one percent) of the previous SOS election result for only partisan candidates, then quadrupling for 1983 to 2%; again for only members of officially recognized private organizations. Not since Pat Buchanan petitioned in 2000 has any statewide minor party or independent candidate petition succeeded in Indiana. Only Georgia has a similarly poor record. The present reality of Indiana ballot access laws is dysfunction, as well as harm to the Plaintiff. This can be proven by testimony and evidence presented to the court.

4. Can Indiana public officials be held accountable?

Defendants claim that:

- a) This court cannot hold any statewide administrative, legislative or executive officials accountable in the Plaintiff's Complaint.

Yet Plaintiff already substantiated the application of § 1983 in the previous filing. Reasserting application from municipal to statewide office reaffirms the original purpose of the Civil Rights Act of 1871.

- b) If they could be held accountable, they are incapable of redressing Plaintiff's injuries.

This is of course not true. The Complaint is that Defendants actively violate Plaintiff's

rights, and they could simply desist. Interposition, nullification, Executive Orders and even proper legislation is a daily occurrence everywhere in this country. From President Obama's successful nullification of the Defense of Marriage Act, and several States' nullification of various aspects of federal ACA, firearm and marijuana laws, to the Missouri legislature's recent easing of their ballot access laws; every level of government agency exerts the power to move the status quo. The proper use of such administrative, legislative and executive powers held by the Defendants is both the remedy sought, and a requirement of Indiana officials' Oath of Office.

c) Redressing Plaintiff's injuries would have "little effect" on Plaintiff.

Defendants imply that they should persist in doing wrong because doing so won't substantially effect Plaintiff. However, Plaintiff will submit to the court a large amount of written and testimonial evidence showing injury and impact of redress. Elections have been studied in detail for generations, and the Plaintiff has extensive experience in non-MPP candidacy, MPP candidacy, professional major media, and the election process as a whole. In addition, comparisons to other states, along with published research and standard media policy, will thoroughly demonstrate the harm caused by Indiana's unequal statutes to all individuals, including Plaintiff. As with *Brown v. Board of Education*, this is a case of public interest as well as individual rights.

CONCLUSION

Plaintiff again respectfully requests that this Court deny defendant's motion to dismiss the

Complaint; and further requests that there be no more costly equivocation and delay.

Dated this 10 day of December, 2015.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that a copy of this reply was sent to both the Indiana Southern District Court's Terre Haute Division and Defendants' Counsel by US mail, first-class postage prepaid, on December 10, 2015.

Andrew Horning