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October 31, 2022

Clerk of Superior Court
of Surry County
Post Office Box 345
Dobson, NC 27017-0345

Re: *John A. Bowes Jr. v. Surry County Board of Elections*
Case No.: 22 CVS 961 (Surry County)
Claim No.: A2F3748
Our File No.: 00551.0000111

Dear Clerk:

Enclosed please find an original and one copy of the following:

1. Defendant's Verified Answer to Plaintiff's Complaint; and
2. Defendant's Motion for Judgment on the Pleadings.

Please file the original of each document with the Court and return a file-stamped copy of each document to our office in the enclosed envelope. By copy of this letter, I am serving a copy of same on Plaintiff. Should you have any questions, please do not hesitate to contact me.

Sincerely,

Paula Oldham

Paula Oldham
Legal Administrative Assistant

Enclosures

cc: John A. Bowes Jr. (w/enclosures)

STATE OF NORTH CAROLINA
COUNTY OF SURRY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 961

JOHN A. BOWES, JR.,

Plaintiff,

v.

SURRY COUNTY BOARD OF
ELECTIONS,

Defendant.

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**DEFENDANT'S VERIFIED ANSWER
TO PLAINTIFF'S COMPLAINT**

NOW COMES the Defendant Surry County Board of Elections (hereinafter "the Defendant"), by and through undersigned counsel, and answers Plaintiff's Complaint ("Complaint") as follows:

FIRST DEFENSE AND MOTION TO DISMISS

Defendant hereby moves, pursuant to Rule 12(b)(6) of the North Carolina Rules of Civil Procedure, that the Complaint be dismissed on the grounds that the allegations and claim for relief fail to state a claim upon which relief can be granted. Specifically, Plaintiff's Complaint fails to state a viable claim for a violation of North Carolina's public records law when looking to the four corners of the Complaint and documents incorporated therein, and otherwise fails to state a claim against this Answering Defendant.

SECOND DEFENSE AND ANSWER

Answering the numbered allegations of the Plaintiff's Complaint, Defendant Surry County Board of Elections alleges and says as follows:

INTRODUCTION

This section of the Complaint requires no response. To the extent a response is necessary, it is admitted that N.C. Gen. Stat. § 132 is a written document, the contents of which speak for

themselves. To the extent the allegations in Plaintiff's Complaint contradict the written document, they are denied. It is admitted that Plaintiff made a request to the Defendant Surry County Board of Elections, but is specifically denied that the purported "public records" sought by Plaintiff "relate to non-confidential voting records from the 2020 election," as this statement is false in every respect. Plaintiff made a request to the Defendant Surry County Board of Elections, for records that not only are not public records, but do not even exist. Plaintiff is mistaken in his application of law to the actual facts of this matter. The purported record at issue here, which Plaintiff refers to as a "Cast Vote Record" or "CVR," is not necessary to conduct an election in North Carolina, and for that reason was **never** created by the Defendant Surry County Board of Elections at any point in time, either during the 2020 election, or thereafter. In other words, the document Plaintiff claims Defendant Surry County Board of Elections is withholding **does not exist, and in fact, has never existed**, and therefore it is expressly denied that the Defendant Surry County Board of Elections is refusing to turn over a record, given that the record does not actually exist. Moreover, the statement that the non-existent "CVR," or some portion thereof, would not contain voter identifying information is false. If such a document existed, the document would be confidential in its entirety pursuant to N. C. Gen. Stat. §165-165.1(e).

JURISDICTION AND VENUE

1. Denied for lack of information and belief.
2. Admitted upon information and belief.

PARTIES

3. Denied for lack of information and belief.
4. It is admitted that Defendant Surry County Board of Elections is a governmental entity tasked with administering elections in Surry County, and that it is legally obligated to do so

fairly and within the restrictions of North Carolina and Federal law. It is also admitted that Defendant Surry County Board of Elections maintains a place of business at 915 E. Atkins St., Dobson, North Carolina. Plaintiff's contention that either Defendant Surry County Board of Elections or Surry County Election staff are custodians "of the records at issue in this lawsuit," is specifically denied, as it is not possible to be a custodian of something that does not exist.

FACTUAL ALLEGATIONS

5. Admitted.

6. It is admitted that Michella Huff is the Elections Director for Surry County and is an appropriate person to receive and respond to public records requests for Defendant Surry County Board of Elections. It is expressly denied that she "maintains possession, custody, and/or control of the public records at issue," as the purported records sought by Plaintiff do not exist. Except as expressly admitted herein, the allegations in this Paragraph are denied.

7. It is admitted that on or about May 12, 2022, Plaintiff emailed Director Michella Huff with a request for records Plaintiff identified as a "Cast Vote Record," for all ballots cast in Surry County in the November 2020 election, and included in his request the assertion that such record contained no information identifying the voter who cast a particular ballot. There is no Exhibit A attached to the Complaint, and thus, Defendant lacks sufficient information to admit this allegation. Except as expressly admitted herein, the allegations in this Paragraph are denied.

8. It is admitted that on or about May 12, 2022, Director Michella Huff responded to Plaintiff's public records request, and that said response referenced the State Board of Elections' position that a "CVR" record, if such existed, would constitute a confidential record. There is no Exhibit B attached to the Complaint, and thus, Defendant lacks sufficient information to admit this allegation. Except as expressly admitted herein, the allegations in this Paragraph are denied.

9. It is admitted that Director Michella Huff informed Plaintiff that a “Cast Vote Record,” if such existed, would be confidential pursuant to N. C. Gen. Stat. §163-165.1. It is also admitted that she further informed Plaintiff that the North Carolina State Board of Elections has also concluded that a “Cast Vote Record” would be confidential if it should exist, and had issued a directive to all local Boards of Elections that such documents are confidential and non-disclosable. It is specifically denied that this position is inconsistent with North Carolina law. Except as expressly admitted herein, the allegations in this Paragraph are denied.

10. This allegation is denied for lack of information and belief.

11. Denied.

NOTE: The Complaint does not contain a Paragraph 12; this Answer will follow the numbering set out in the Complaint.

13. The allegations contained in this Paragraph call for a legal conclusion, to which no response is required. To the extent a response is required, N.C. Gen. Stat. § 132-6(c) is a written document, the contents of which speak for themselves. To the extent the allegations in this Paragraph contradict the written document, they are denied. It is expressly denied that Defendant Surry County Board of Elections can redact a document that does not exist. Except as expressly admitted herein, the allegations in this Paragraph are denied.

14. The allegations contained in this Paragraph call for a legal conclusion, to which no response is required. To the extent a response is required, it is expressly denied that electronic records of voting ballots contain any information that would not be considered confidential. It is expressly denied that Defendant Surry County Board of Elections has failed to comply with its obligations under the Public Records Act (N.C. Gen. Stat. § 132) or any other North Carolina law.

15. It is admitted that N.C. Gen. Stat. § 132-6(c) is a written document, the contents of which speak for themselves. To the extent the allegations in this Paragraph contradict the written document, they are denied. Except as expressly admitted herein, the allegations in this Paragraph are denied.

16. It is denied that any record exists to redact or not redact. It is further denied that such document described by Plaintiff as a “CVR” could contain any non-confidential information to offer to Plaintiff, or anyone else. It is admitted that Defendant Surry County Board of Elections made no offer of a portion of the non-existent record. Except as expressly admitted herein, the allegations in this Paragraph are denied.

17 To the extent this Paragraph include conclusions of law, Plaintiff has inaccurately applied said law to the facts of this case. It is admitted that N.C. Gen. Stats. §§ 163-165(e) and 132-6(c) are written documents, the contents of which speak for themselves. To the extent the allegations in this Paragraph contradict the written documents, they are denied. It is further admitted that the Public Records Act and N. C. Gen. Stat. §163-165.1 are not in conflict, as nothing in the Public Records Act requires the production of documents that do not exist, nor the production of documents otherwise classified as confidential by North Carolina statutes. Except as expressly admitted herein, the allegations in this Paragraph are denied.

18. Denied.

19. Denied.

20. Denied.

FIRST CLAIM FOR RELIEF
(Violation of North Carolina Public Records Law)

21. Defendant Surry County Board of Elections repeats, realleges, and reincorporates herein by reference each of the averments to Paragraphs 1 to 20 of the Complaint as set forth in the Answer above.

22. This Paragraph contains legal conclusions to which no response is required. To the extent a response is required, it is admitted that N.C. Gen. Stat. § 132-1(b) is a written document, the contents of which speak for themselves. To the extent the allegations in this Paragraph contradict the written document, they are denied.

23. This Paragraph contains legal conclusions to which no response is required. To the extent a response is required, it is admitted that N.C. Gen. Stat. § 132-6(a) is a written document, the contents of which speak for themselves. To the extent the allegations in this Paragraph contradict the written document, they are denied.

24. This Paragraph contains legal conclusions to which no response is required. To the extent a response is required, it is admitted that N.C. Gen. Stat. § 132-6(a) and (c) is a written document, the contents of which speak for themselves. To the extent the allegations in this Paragraph contradict the written document, they are denied.

25. Denied.

26. Denied.

The remainder of Plaintiff's Complaint, not already fully answered herein, including Plaintiff's prayer for relief, is denied.

THIRD AFFIRMATIVE DEFENSE

Defendant Surry County Board of Elections pleads lack of subject matter jurisdiction and personal jurisdiction pursuant to the provisions of Rules 12(b)(1) and 12(b)(2) of the North Rules of Civil Procedure.

FOURTH AFFIRMATIVE DEFENSE

Defendant Surry County Board of Elections pleads all applicable immunities to which it is entitled to by operation of law and in bar of Plaintiff's claims herein, including but not limited to governmental immunity, sovereign immunity, public officials' immunity, qualified immunity, and the public duty doctrine.

FIFTH AFFIRMATIVE DEFENSE

Defendant Surry County Board of Elections alleges and states that any action or inaction taken with regard to Plaintiff constitutes a legitimate consideration in the exercise of the power of the municipal government, pursuant to statutory powers granted by the State of North Carolina.

SIXTH AFFIRMATIVE DEFENSE

Defendant Surry County Board of Elections has complied in good faith with all applicable laws and regulations, and, having so complied, acted without improper motive and any injury accruing to Plaintiff, the existence of which is specifically denied, is not actionable.

SEVENTH AFFIRMATIVE DEFENSE

Defendant Surry County Board of Elections pleads that this action at its inception is unreasonable, frivolous, meritless, and/or vexatious, and Plaintiff should be aware that it is so when judged under the standard of a reasonable person. As a result of the Plaintiff's filing of this lawsuit, Defendant Surry County Board of Elections has been required to obtain the services of the undersigned attorneys, and Defendant is therefore entitled to receive its reasonable attorneys' fees and costs incurred in and throughout this action.

EIGHTH AFFIRMATIVE DEFENSE

DEFENDANT RESERVES THE RIGHT TO AMEND ITS ANSWER AND TO ASSERT ADDITIONAL AFFIRMATIVE DEFENSES AS THE CLAIMS OF PLAINTIFF ARE MORE

FULLY DISCLOSED DURING THE COURSE OF THIS LITIGATION.

WHEREFORE, having answered Plaintiff's Complaint, Defendant prays the Court for the following relief:

1. That Plaintiff's Complaint be dismissed with prejudice;
2. That Plaintiff have and recover no monetary nor other damages from Defendant;
3. That the costs of this action be taxed against the Plaintiff;
4. That, to the extent supported by law, Defendant recover its reasonable attorney's fees; and
5. For such other and further relief as the Court may deem just, fair and proper.

Respectfully submitted this the 31st day of October, 2022.

CRANFILL SUMNER LLP

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Post Office Box 10782
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336.669.2302
jmarkpayne1@outlook.com
Attorneys for Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **DEFENDANT'S VERIFIED ANSWER TO PLAINTIFF'S COMPLAINT** on all of the parties to this cause by:

_____ Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each said party as follows:

 X Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to each said party as follows:

_____ Telecopying a copy hereof to each said party as follows:

 X Via electronic mail addressed to each said party as follows:

John A. Bowes Jr.
236 After Burner Lane
Mount Airy, NC 27030
BowesJr@protonmail.com
Pro Se Plaintiff

This the 31st day of October, 2022.

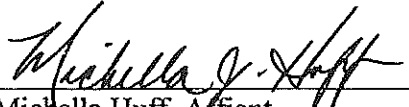
CRANFILL SUMNER LLP

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Attorneys for Defendant

AFFIDAVIT OF VERIFICATION

I, Michella Huff, Surry County Elections Director, depose and say that I serve as the Elections Director for Surry County Board of Elections, and in that capacity, I have read the forgoing ANSWER and know the contents thereof; that the same are true to the best of my knowledge, except for those matters and things stated upon information and belief, and as to those matters and things, I believe them to be true.


Michella Huff, Affiant
Surry County Elections Director

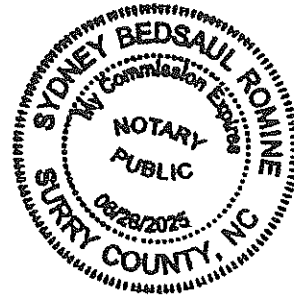
County of Surry

SWORN to and subscribed to before me

this the 25 day of October, 2022.


NOTARY PUBLIC

My Commission Expires: 6/28/2025



IN WITNESS WHEREOF, I have hereunto set my hand and the seal of said County, at the City of Raleigh, North Carolina, this 1st day of January, 1902.

Notary Public
for North Carolina



Witness my hand and the seal of said County, at the City of Raleigh, North Carolina, this 1st day of January, 1902.

STATE OF NORTH CAROLINA
COUNTY OF SURRY

IN THE GENERAL COURT OF JUSTICE
SUPERIOR COURT DIVISION
22 CVS 961

JOHN A. BOWES, JR.,

Plaintiff,

v.

SURRY COUNTY BOARD OF
ELECTIONS,

Defendant.

**DEFENDANT'S MOTION FOR
JUDGMENT ON THE PLEADINGS**

NOW COMES the Defendant Surry County Board of Elections (hereinafter "the Defendant"), by and through undersigned counsel, and moves for judgment on the pleadings dismissing Plaintiff's Complaint pursuant to Rule 12(c) of the North Carolina Rules of Civil Procedure. The grounds for this Motion are the pleadings in this above-captioned action, including the Defendant's Verified Answer and Affirmative Defenses, and the facts set forth herein, which show that Plaintiff is not entitled to his requested relief. Accordingly, Defendant's Motion for Judgment on the Pleadings should be **GRANTED**, and Plaintiff's Complaint should be **DISMISSED WITH PREJUDICE** for the following reasons:

1. Plaintiff's Complaint fails to state a claim upon which relief may be granted as he seeks disclosure of a "Cast Vote Record," or "CVR," which is a record that is not necessary to conduct an election in North Carolina, and for that reason was never created by the Defendant Surry County Board of Elections at any point in time, either during the 2020 election, or thereafter;
2. The document Plaintiff claims Defendant Surry County Board of Elections is withholding does not exist and in fact, has never existed, and therefore it is

impossible for the Defendant to unlawfully refuse to turn over a record given that the record does not actually exist;

3. Moreover, even if the “CVR” did exist, which it does not, Plaintiff’s contention that this document would not contain voter identifying information is plainly false, as evidenced by the North Carolina State Board of Elections directive that such a record would be confidential, which is specifically referenced in Plaintiff’s Complaint;
4. Furthermore, if such a document did exist, the document would be confidential in its entirety pursuant to N. C. Gen. Stat. §165-165.1(e);
5. North Carolina’s public records law (N. C. Gen. Stat. § 132) likewise provides no support for Plaintiff’s suit, as the statute only requires that a “custodian of public records shall permit any record in the custodian's custody to be inspected and examined at reasonable times and under reasonable supervision,” and thus, there is no obligation for Defendant to create a record that does not already exist, and therefore cannot be in its custody. N. C. Gen. Stat. § 132-6 (emphasis added);
6. Plaintiff’s claim for damages is barred for the additional reason that Defendant is entitled to governmental immunity; and
7. Finally, Plaintiff, as a *pro se* litigant, is not entitled to recover attorney’s fees.

WHEREFORE, based upon the foregoing, the Defendant Surry County Board of Elections moves the Court for judgment on the pleadings in its favor and dismissing Plaintiff’s claims with prejudice, or for judgment in favor of the Defendant on all of Plaintiff’s claims on the grounds set forth above, or for such other and further relief as the Court deems just and proper.

This the 31st day of October, 2022.

CRANFILL SUMNER LLP

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Attorneys for Defendant

CERTIFICATE OF SERVICE

This is to certify that the undersigned has this day served the foregoing **DEFENDANT'S MOTION FOR JUDGMENT ON THE PLEADINGS** on all of the parties to this cause by:

_____ Depositing a copy hereof, postage prepaid, in the United States Mail, addressed to each said party as follows:

 X Depositing a copy hereof with a nationally recognized overnight courier service, for overnight delivery, addressed to each said party as follows:

_____ Telecopying a copy hereof to each said party as follows:

 X Via electronic mail addressed to each said party as follows:

John A. Bowes Jr.
236 After Burner Lane
Mount Airy, NC 27030
BowesJr@protonmail.com
Pro Se Plaintiff

This the 31st day of October, 2022.

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