

**IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO**

JAMES B. CALLEN, et al.,	:	Case No. 06CVH-11-14411
Plaintiffs,	:	Judge David E. Cain
vs.	:	
OHIO SECRETARY OF STATE, J. KENNETH BLACKWELL, et al.,	:	
Defendants.	:	

ANSWER OF DEFENDANT MIAMI COUNTY BOARD OF ELECTIONS

Now comes the Defendant, the Miami County Board of Elections, (“Miami County Defendant”), and hereby Answers the Plaintiffs’ Complaint as follows:

FIRST DEFENSE

1. The Miami County Defendant Admits the allegations contained in Paragraph One (1) of the Plaintiffs’ Complaint.
2. The Miami County Defendant Admits that the Plaintiff seeks a declaratory judgment as alleged in Paragraph Two (2) of the Plaintiffs’ Complaint, but the Miami County Defendant Denies the remainder of the allegations contained in Paragraph Two (2) of the Plaintiffs’ Complaint.
3. The Miami County Defendant Admits that the Miami County Defendant has used Diebold DRE’s in statewide elections in 2006, and plans do to so for the foreseeable future as alleged in Paragraph Three (3) of the Plaintiffs’ Complaint, but the Miami County Defendant is

without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph Three (3) of the Plaintiffs' Complaint.

4. The Miami County Defendant Admits that the Plaintiff seeks a declaratory judgment as alleged in Paragraph Four (4) of the Plaintiffs' Complaint, but the Miami County Defendant Denies the remainder of the allegations contained in Paragraph Four (4) of the Plaintiffs' Complaint.
5. The Miami County Defendant Denies the allegations set forth in Paragraph Five (5) of the Plaintiffs' Complaint.
6. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of allegations contained in Paragraphs Six (6) through Ten (10) of the Plaintiffs' Complaint.
7. The Miami County Defendant Admits the allegations contained in Paragraphs Eleven (11) through Sixty-nine (69) of the Plaintiffs' Complaint.
8. The Miami County Defendant Admits the allegations contained in Paragraph Seventy (70) of the Plaintiffs' Complaint.
9. The Miami County Defendant Denies the allegations contained Paragraph Seventy-one (71) of the Plaintiffs' Complaint.
10. The Miami County Defendant Admits the allegations contained in Paragraph Seventy-two (72) of the Plaintiffs' Complaint.
11. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph Seventy-three (73) of the Plaintiffs' Complaint.
12. The Miami County Defendant Admits the allegations contained in Paragraphs Seventy-four (74) and Seventy-five (75) of the Plaintiffs' Complaint.

13. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph Seventy-six (76) of the Plaintiffs' Complaint.
14. The Miami County Defendant Admits the allegations contained in Paragraph Seventy-seven (77) of the Plaintiffs' Complaint as the same relate to the assertion that Miami County owned Diebold DRE's use continuous rolls of reel-to-reel thermal paper as a VVPAT system, but is without sufficient information to form a belief as to the truth of the remaining allegations contained in Paragraph Seventy-seven (77) of the Plaintiffs' Complaint.
15. The Miami County Defendant Denies the allegations set forth in Paragraph Seventy-eight (78) of the Plaintiffs' Complaint.
16. The Miami County Defendant Admits the allegations contained in Paragraph Seventy-nine (79) of the Plaintiffs' Complaint.
17. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs Eighty (80) and Eighty-one (81) of the Plaintiffs' Complaint.
18. The Miami County Defendant Admits the allegations contained in Paragraphs Eighty-two (82) through Eighty-four (84) of the Plaintiffs' Complaint.
19. The Miami County Defendant Admits the allegations contained in Paragraph Eighty-five (85) of the Plaintiffs' Complaint as the same relate to Miami County, but is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph Eighty-five (85) of the Plaintiffs' Complaint.
20. The Miami County Defendant Admits the allegations contained in Paragraph Eighty-six (86) of the Plaintiffs' Complaint.

21. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraph Eighty-seven (87) of the Plaintiffs' Complaint.
22. The Miami County Defendant Denies the allegations contained in Paragraphs Eighty-eight (88) through Ninety-one (91) of the Plaintiffs' Complaint.
23. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs Ninety-two (92) through Ninety-eight (98) of the Plaintiffs' Complaint.
24. The Miami County Defendant Denies the allegation that Ohio law requires compliance with the Federal Election Commission's Voluntary Voting System Standards as alleged in Paragraph Ninety-nine (99) of the Plaintiffs' Complaint, but Admits the remaining allegations contained in Paragraph Ninety-nine (99) of the Plaintiffs' Complaint.
25. The Miami County Defendant Admits the allegations contained in Paragraphs One Hundred (100), and One Hundred and One (101) of the Plaintiffs' Complaint.
26. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Two (102) of the Plaintiffs' Complaint.
27. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs One Hundred and Three (103) through One Hundred and Seven (107) of the Plaintiffs' Complaint.
28. The Miami County Defendant Admits the allegations contained in Paragraph One Hundred and Eight (108) of the Plaintiffs' Complaint.
29. The Miami County Defendant is without knowledge sufficient to form a belief as to the truth of the allegations contained in Paragraphs One Hundred and Nine (109) through One Hundred and Fourteen (114) of the Plaintiffs' Complaint.

30. The Miami County Defendant Admits the allegations contained in Paragraphs One Hundred and Fifteen (115) through One Hundred and Twenty-two (122) of the Plaintiffs' Complaint.
31. The Miami County Defendant Admits the allegations contained in Paragraphs One Hundred and Twenty-three (123) through One Hundred and Twenty-four (124) of the Plaintiffs' Complaint as the same relate to Miami County, but is without knowledge sufficient to form a belief as to the remaining allegations contained in Paragraphs One Hundred and Twenty-three (123) through One Hundred and Twenty-four (124) of the Plaintiffs' Complaint.
32. The Miami County Defendant is without knowledge sufficient to form a belief as to the allegations contained in Paragraphs One Hundred and Twenty-five (125) through One Hundred and Twenty-nine (129) of the Plaintiffs' Complaint.
33. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Thirty (130) of the Plaintiffs' Complaint.
34. The Miami County Defendant Admits the allegations contained in Paragraphs One Hundred and Thirty-one (131) through One Hundred and Thirty-four (134) of the Plaintiffs' Complaint.
35. The Miami County Defendant is without knowledge sufficient to form a belief as to the allegations contained in Paragraphs One Hundred and Thirty-five (135) through One Hundred and Forty-three (143) of the Plaintiffs' Complaint.
36. The Miami County Defendant Denies the allegations contained in Paragraphs One Hundred and Forty-four (144) and One Hundred Forty-five (145) of the Plaintiffs' Complaint.
37. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Forty-six (146) of the Plaintiffs' Complaint, hereby incorporates each of its

responses to Paragraphs One (1) through One Hundred Forty-five (145) of the Plaintiffs' Complaint as if fully rewritten here.

38. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Forty-seven (147) of the Plaintiffs' Complaint as the same relate to division (D) of Section 3506.05 of the Ohio Revised Code, but Admits the remaining allegations contained in Paragraph One Hundred and Forty-seven (147) of the Plaintiffs' Complaint.
39. The Miami County Defendant Denies the allegations contained in Paragraphs One Hundred and Forty-eight (148) and One Hundred Forty-nine (149) of the Plaintiffs' Complaint.
40. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred Fifty (150) and One Hundred and Fifty-one (151), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.
41. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Fifty-two (152) of the Plaintiffs' Complaint, hereby incorporates each of its responses to Paragraphs One (1) through One Hundred and Fifty-one (151) of the Plaintiffs' Complaint as if fully rewritten here.
42. The Miami County Defendant Admits the allegations contained in Paragraph One Hundred and Fifty-three (153) of the Plaintiffs' Complaint.
43. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Fifty-four (154) of the Plaintiffs' Complaint as the same relate to Miami County, but is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph One Hundred and Fifty-four (154) of the Plaintiffs' Complaint.

44. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Fifty-five (155) of the Plaintiffs' Complaint.
45. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred and Fifty-six (156) and One Hundred and Fifty-seven (157), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.
46. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Fifty-eight (158) of the Plaintiffs' Complaint, hereby incorporates each of its responses to Paragraphs One (1) through One Hundred and Fifty-seven (157) of the Plaintiffs' Complaint as if fully rewritten here.
47. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Fifty-eight (158) of the Plaintiffs' Complaint as the same relate to Miami County, but is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph One Hundred and Fifty-eight (158) of the Plaintiffs' Complaint.
48. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred Sixty (160) of the Plaintiffs' Complaint.
49. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Sixty-one (161) of the Plaintiffs' Complaint.
50. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred and Sixty-two (162) and One Hundred and Sixty-three (163), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.

51. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Sixty-four (164) of the Plaintiffs' Complaint, hereby incorporates each of its responses to Paragraphs One (1) through One Hundred and Sixty-three (163) of the Plaintiffs' Complaint as if fully rewritten here.
52. The Miami County Defendant Admits the allegations contained in Paragraph One Hundred and Sixty-five (165) of the Plaintiffs' Complaint.
53. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Sixty-six (166) of the Plaintiffs' Complaint as the same relate to Miami County, but is without knowledge sufficient to form a belief as to the truth of the remaining allegations contained in Paragraph One Hundred and Sixty-six (166) of the Plaintiffs' Complaint.
54. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Sixty-seven (167) of the Plaintiffs' Complaint.
55. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred and Sixty-eight (168) and One Hundred and Sixty-nine (169), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.
56. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Seventy (170) of the Plaintiffs' Complaint, hereby incorporates each of its responses to Paragraphs One (1) through One Hundred and Sixty-nine (169) of the Plaintiffs' Complaint as if fully rewritten here.
57. The Miami County Defendant Admits the allegations contained in Paragraph One Hundred and Seventy-one (171) of the Plaintiffs' Complaint.

58. The Miami County Defendant Denies the allegations contained in Paragraphs One Hundred and Seventy-two (172), and One Hundred and Seventy-three (173) of the Plaintiffs' Complaint.
59. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred and Seventy-four (174) and One Hundred and Seventy-five (175), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.
60. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Seventy-six (176) of the Plaintiffs' Complaint, hereby incorporates each of its responses to Paragraphs One (1) through One Hundred and Seventy-five (175) of the Plaintiffs' Complaint as if fully rewritten here.
61. The Miami County Defendant Admits the allegations contained in Paragraph One Hundred and Seventy-seven (177) of the Plaintiffs' Complaint.
62. The Miami County Defendant Denies the allegations contained in Paragraphs One Hundred and Seventy-eight (178), and One Hundred and Seventy-nine (179) of the Plaintiffs' Complaint.
63. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred Eighty (180) and One Hundred and Eighty-one (181), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.
64. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Eighty-two (182) of the Plaintiffs' Complaint, hereby incorporates each of its

responses to Paragraphs One (1) through One Hundred and Eighty-one (181) of the Plaintiffs' Complaint as if fully rewritten here.

65. The Miami County Defendant Admits the allegations contained in Paragraph One Hundred and Eighty-three (183) of the Plaintiffs' Complaint.
66. The Miami County Defendant Denies the allegations contained in Paragraphs One Hundred and Eighty-four (184), and One Hundred and Eighty-five (185) of the Plaintiffs' Complaint.
67. The Miami County Defendant Admits that the Plaintiffs are seeking judicial determinations and declarations as alleged in Paragraphs One Hundred and Eighty-six (186) and One Hundred and Eighty-seven (187), but Denies that the Plaintiffs are entitled to such judicial determinations and declarations.
68. The Miami County Defendant, in response to the allegations contained in Paragraph One Hundred and Eighty-eight (188) of the Plaintiffs' Complaint, hereby incorporates each of its responses to Paragraphs One (1) through One Hundred and Eighty-seven (187) of the Plaintiffs' Complaint as if fully rewritten here.
69. The Miami County Defendant Denies the allegations contained in Paragraph One Hundred and Eighty-nine (189) of the Plaintiffs' Complaint.
70. The Miami County Defendant Admits that the Plaintiffs are seeking injunctions as alleged in Paragraphs One Hundred Ninety (190) and One Hundred and Ninety-three (183), but Denies that the Plaintiffs are entitled to such injunctions.
71. The Miami County Defendant Denies each and every allegation and averment contained in the Plaintiff's Complaint not specifically Admitted, or otherwise addressed herein.

SECOND DEFENSE

72. The Plaintiffs' Complaint fails to state a claim upon which relief can be granted, and, therefore, must be dismissed pursuant to Rule 12(B)(6) of the Ohio Rules of Civil Procedure.

THIRD DEFENSE

73. The Franklin County Court of Common Pleas is an improper venue to bring an action against the Miami County Defendant, and, therefore, must be dismissed pursuant to Rule 12(B)(3) of the Ohio Rules of Civil Procedure.

FOURTH DEFENSE

74. None of the Plaintiffs is a resident of Miami County, Ohio, and, therefore, none of the Plaintiffs has standing to pursue an action against the Miami County Defendant.

FIFTH DEFENSE

75. The doctrine of laches bars some or all of the Plaintiffs' claims against the Miami County Defendant, and, therefore, must be dismissed.

WHEREFORE, the Miami County Defendant, having fully Answered the Plaintiffs' Complaint, requests that this Court dismiss this action as to the Miami County Board of Elections, order that the costs of the same be taxed to the Plaintiffs, and grant the Miami County Board of Elections any other relief which the Court deems appropriate.

Respectfully submitted,

Gary A. Nasal

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CERTIFICATE OF SERVICE

I hereby certify that on this ____ day of December, 2006, the forgoing Appearance of

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