

IN THE COURT OF COMMON PLEAS
FRANKLIN COUNTY, OHIO

C7641810

0602 14411

JAMES B CALLEN, ET AL
PLAINTIFFS
vs
OHIO SECRETARY OF STATE,
J KENNETH BLACKWELL, ET AL
DEFENDANTS

CASE NO ~~GVH-11-1411~~
JUDGE DAVID E CAIN
ANSWER OF DEFENDANT,
CUYAHOGA COUNTY BOARD
OF ELECTIONS

ON COMPUTER 29

Now comes the Defendant, Cuyahoga County Board of Elections, by and through counsel, and voluntarily submits its answer, as that it was never served with Plaintiffs' complaints, and for its answer to Plaintiffs' complaint, Cuyahoga County Board of Elections states as follows

FILED COURT
CLERK OF COURTS-CV
2007 FEB 21 2 10 52
FRANKLIN COUNTY OHIO

FIRST DEFENSE

- 1 Defendant, Cuyahoga County Board of Elections ("Cuyahoga Board of Elections"), is without sufficient knowledge or information to ascertain the truth of the allegations contained in paragraphs 1 through 10 of Plaintiffs' complaint and, therefore, denies the same
- 2 Cuyahoga Board of Elections admits the allegations contained in paragraphs 11 through 69 of Plaintiffs' complaint
- 3 Cuyahoga Board of Elections is without sufficient knowledge or information to ascertain the truth of allegations contained in paragraphs 70 through 143 of Plaintiffs' complaint and, therefore, denies the same
- 4 Cuyahoga Board of Elections denies the allegations contained in paragraphs 144 and 145 of Plaintiffs' complaint

- 5 Cuyahoga County Board of Elections is without sufficient knowledge or information to ascertain the truth of the allegations contained in paragraphs 146 through 188 of Plaintiffs' complaint and, therefore, denies the same
- 6 Cuyahoga Board of Elections denies the allegations contained in paragraph 189 of Plaintiffs' complaint
- 7 Cuyahoga Board of Elections is without sufficient knowledge or information to ascertain the truth of the allegations contained in paragraphs 190 through 193 of Plaintiffs' complaint and, therefore, denies the same

SECOND DEFENSE

- 8 Plaintiffs' complaint fails to state a cause of action against Cuyahoga Board of Elections upon which relief can be granted

THIRD DEFENSE

- 9 The Franklin County Court of Common Pleas is an improper venue to bring an action against the Cuyahoga Board of Elections and, therefore, Plaintiffs' complaint must be dismissed pursuant to Rule 12(B)(3) of the Ohio Rules of Civil Procedure

FOURTH DEFENSE

- 10 The doctrine of laches bars some or all of Plaintiffs' claims against Cuyahoga Board of Elections and, therefore, must be dismissed

FIFTH DEFENSE

- 11 The Plaintiffs lack standing to bring their claims

SIXTH DEFENSE

12 This Defendant is entitled to immunity, including statutory absolute, and qualified immunity, as well as immunity from punitive damages. This includes but is not limited to the provisions of Ohio's Political Subdivision Tort Immunity Statute, Ohio Revised Code Section 2744

SEVENTH DEFENSE

13 This case is inappropriate for declaratory judgment relief

EIGHTH DEFENSE

14 Plaintiffs have failed to join all indispensable and necessary parties

NINTH DEFENSE

15 The Plaintiffs have failed to comply with all administrative prerequisites prior to filing this litigation

TENTH DEFENSE

16 Plaintiffs' claims are barred by the doctrines of res judicata and/or collateral estoppel

ELEVENTH DEFENSE

17 Plaintiffs' own contributory and/or comparative negligence, assumption of the risks and/or failure to conduct due diligence may have caused or contributed to cause the injuries and harm of which they complain

TWELTH DEFENSE

18 This Defendant at all times relevant to this suit acted in good faith without malice and in accordance with the United States and Ohio Constitutions, as well as applicable statutory law, and directives of the then Secretary of State

THIRTEENTH DEFENSE

C7641B13

19 This Defendant hereby reserves the right to assert the defense of assumption of the risk, discharge in bankruptcy, duress, fraud, illegality, license, payment, release, laches, lack of capacity, lack of standing, consent, unclean hands and any other matter constituting an avoidance or affirmative defense for which discovery reveals a basis

FOURTEENTH DEFENSE

20 The Plaintiff's' claims may be barred, in whole or in part, by prior or subsequent intervening or superseding acts, omissions or causes and/or by the acts or omissions of individuals or entities over whom this Defendant had no control or right of control

FIFTEENTH DEFENSE

21 All or some of Plaintiff's' claims are barred by the applicable statute of limitations

SIXTEENTH DEFENSE

22 Some or all of Plaintiff's' claims may be moot

SEVENTEENTH DEFENSE

23 Plaintiffs are not entitled to injunctive relief, as they possess an adequate remedy at law, furthermore, the harm alleged is not immediate, nor is there any clear entitlement at law to the relief alleged

EIGHTEENTH DEFENSE

24 This Defendant reserves the right to raise additional defenses, including other affirmative defenses, as this case progresses

7 2

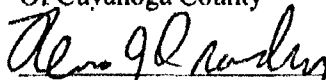
C7641814

WHEREFORE, The Cuyahoga County Board of Elections demand that

Plaintiffs' Complaint be dismissed in its entirety with prejudice, and with costs and attorney fees assessed to the Plaintiffs

Respectfully submitted,

William D Mason, Prosecuting Attorney
Of Cuyahoga County



Reno J Oradini, Jr (0039848)
Assistant Prosecuting Attorney
Cuyahoga County Prosecutor's Office
Justice Center, Courts Tower
1200 Ontario Street - 8th Floor
Cleveland, Ohio 44113
Tel (216) 443-7769
Fax (216) 443-7602
Attorneys for the Cuyahoga County
Board of Elections

APR 93

CERTIFICATE OF SERVICE

A copy of the foregoing Answer has been sent this 16th day of February 2007 by **C7641815**

regular U S Mail to the following

Pamela N Hultin
Smith & Hultin, LLC
100 North Main Street, Suite 350
Chagrin Falls, Ohio 4022

David Joyce, Prosecutor
Geauga County Prosecutor's Office
Courthouse Annex
231 Main Street, Suite 3-A

Frank Strigan
Richard N Cuglianese
Assistant Attorney General
30 East Broad Street
Columbus, Ohio 43215

Paul J Gaines
Mahoning County Prosecutor
21 West Boardman Street, 6th Floor
Youngstown, OH 44503

Mark Landes
Jeffrey Strakonas
Isaac, Hunt, Ledman, Tecton, LLP
250 East Broad Street, Suite 900
Columbus, Ohio 43215-3742
Attorneys for Carroll County BOE



RENO J. ORADINI, JR. (0039848)

