

FRANKLIN COUNTY, OHIO  
COURT OF COMMON PLEAS

JAMES B. CALLEN, )  
1244 Woodledge Drive )  
Mineral Ridge, OH 44440 )  
 )  
ROBERT COMER, )  
8010 Halo Road, NW )  
Magnolia, OH 44643-9539 )  
 )  
PATRICIA W. HRIDEL )  
10750 Franks Road )  
Chagrin Falls, OH 44023-5228 )  
 )  
SALLY KUHNLE )  
286 Miles Road )  
Chagrin Falls, OH 44022 )  
 )  
PATRICIA DEFRANCO )  
6379 Chagrin River Road )  
Chagrin Falls, OH 44022 )  
 )  
Plaintiffs

**COMPLAINT FOR DECLARATORY  
JUDGMENT AND INJUNCTIVE  
RELIEF**

v.

J. KENNETH BLACKWELL,  
in his official capacity as  
Ohio Secretary of State  
Borden Building  
180 East Broad Street  
Columbus, OH 43215

ADAMS COUNTY  
BOARD OF ELECTIONS  
215 North Cross St., Room 103  
West Union, OH 45693

ASHLAND COUNTY  
BOARD OF ELECTIONS  
110 Cottage St.  
Ashland, OH 44805

BELMONT COUNTY  
BOARD OF ELECTIONS  
103 Plaza Dr., Suite B  
PO Box 663  
St. Clairsville, OH 43950

BUTLER COUNTY  
BOARD OF ELECTIONS  
Government Services Building  
315 High St., Suite 1050  
Hamilton, OH 45011-6016

CARROLL COUNTY  
BOARD OF ELECTIONS  
Courthouse  
119 S. Lisbon St., Suite 102  
Carrollton, OH 44615-1489

COSHOCTON COUNTY  
BOARD OF ELECTIONS  
724 S. Seventh St., Rm 100  
Coshocton, OH 43812

CRAWFORD COUNTY  
BOARD OF ELECTIONS  
130 N. Walnut St., Suite A  
Bucyrus, OH 44820-2383

CUYAHOGA COUNTY  
BOARD OF ELECTIONS  
2925 Euclid Ave.  
Cleveland, OH 44115-2497

DARKE COUNTY  
BOARD OF ELECTIONS  
300 Garst Ave.  
Greenville, OH 45331

DEFIANCE COUNTY  
BOARD OF ELECTIONS  
1300 E Second St., Suite 103  
Defiance, OH 43512

FAIRFIELD COUNTY  
BOARD OF ELECTIONS  
Liberty Center  
951 Liberty Drive  
Lancaster, Ohio 43130

FULTON COUNTY  
BOARD OF ELECTIONS  
525 N. Shoop Ave.  
Wauseon, OH 43567

GALLIA COUNTY  
BOARD OF ELECTIONS  
Courthouse  
18 Locust St., 2nd Floor  
Gallipolis, OH 45631-1292

GREENE COUNTY  
BOARD OF ELECTIONS  
651 Dayton-Xenia Rd.  
Xenia, OH 45385

GUERNSEY COUNTY  
BOARD OF ELECTIONS  
627 Wheeling Ave., Suite 101  
Cambridge, OH 43725

HANCOCK COUNTY  
BOARD OF ELECTIONS  
209 West Main Cross St., Suite 103  
Findlay, OH 45840

HARDIN COUNTY  
BOARD OF ELECTIONS  
One Court House Sq., Suite 170  
Kenton, OH 43326

HARRISON COUNTY  
BOARD OF ELECTIONS  
Courthouse  
100 W. Market St.  
Cadiz, OH 43907

HENRY COUNTY  
BOARD OF ELECTIONS  
1813 Oakwood Ave  
Napoleon, OH 43545

HIGHLAND COUNTY  
BOARD OF ELECTIONS  
119 Governor Foraker Pl.  
Hillsboro, OH 45133

HOCKING COUNTY  
BOARD OF ELECTIONS  
1 E. Main St.  
PO Box 109  
Logan, OH 43138

HOLMES COUNTY  
BOARD OF ELECTIONS  
75 East Clinton St., Suite 108  
Millersburg, OH 44654

HURON COUNTY  
BOARD OF ELECTIONS  
County Administration Building  
180 Milan Ave.

JACKSON COUNTY  
BOARD OF ELECTIONS  
Courthouse  
226 Main St., Suite 2  
Jackson, OH 45640

JEFFERSON COUNTY  
BOARD OF ELECTIONS  
117 N. Third St.  
Steubenville, OH 43952-4499

LAWRENCE COUNTY  
BOARD OF ELECTIONS  
Veterans Square  
111 S. Fourth St.  
Ironton, OH 45638

LICKING COUNTY  
BOARD OF ELECTIONS  
County Administration Building  
20 S. Second St.  
Newark, OH 43055

LORAIN COUNTY  
BOARD OF ELECTIONS  
1985 North Ridge Road East  
Lorain, OH 44055-3344

MARION COUNTY  
BOARD OF ELECTIONS  
222 W. Center St.  
Marion, OH 43302

MEDINA COUNTY  
BOARD OF ELECTIONS  
4210 N Jefferson St., PO Box 506  
Medina, OH 44258

MERCER COUNTY  
BOARD OF ELECTIONS  
101 N. Main St., Rm 107  
Celina, OH 45822

MIAMI COUNTY  
BOARD OF ELECTIONS  
Courthouse  
215 W. Main St.  
Troy, OH 45373

MONTGOMERY COUNTY  
BOARD OF ELECTIONS  
451 W. Third St.  
PO Box 8705  
Dayton, OH 45481-8705

MORGAN COUNTY  
BOARD OF ELECTIONS  
155 E. Main St., Rm. 157  
McConnelsville, OH 43756

MORROW COUNTY  
BOARD OF ELECTIONS  
619 West Marion Rd., Rm 146  
Mt. Gilead, OH 43338

MUSKINGUM COUNTY  
BOARD OF ELECTIONS  
205 N. Seventh St.  
Zanesville, OH 43701-3709

OTTAWA COUNTY  
BOARD OF ELECTIONS  
8444 West State Route 163, Suite 101  
Oak Harbor, OH 43449-8885

PAULDING COUNTY  
BOARD OF ELECTIONS  
105 E. Perry St.  
Paulding, OH 45879-1412

PERRY COUNTY  
BOARD OF ELECTIONS  
121 W. Brown St.  
PO Box 187  
New Lexington, OH 43764

PIKE COUNTY  
BOARD OF ELECTIONS  
230 Waverly Plaza, Suite 1100  
Waverly, OH 45690

PORTAGE COUNTY  
BOARD OF ELECTIONS  
449 S. Meridian St., Rm. 101  
Ravenna, OH 44266

RICHLAND COUNTY  
BOARD OF ELECTIONS  
1495 W. Longview Ave., Suite 101  
Mansfield, OH 44902

STARK COUNTY  
BOARD OF ELECTIONS  
201 Third St. NE  
Canton, OH 44702-1296

TRUMBULL COUNTY  
BOARD OF ELECTIONS  
2947 Youngstown Rd SE  
Warren, Ohio 44484

TUSCARAWAS COUNTY  
BOARD OF ELECTIONS  
Court House Square  
101 E High St.  
PO Box 69  
New Philadelphia, OH 44663

VAN WERT COUNTY  
BOARD OF ELECTIONS  
120 E. Main St.  
Van Wert, OH 45891-1428

WAYNE COUNTY  
BOARD OF ELECTIONS  
200 Vanover Street, Suite 1  
Wooster, OH 44691-4849

WOOD COUNTY  
BOARD OF ELECTIONS  
1 Court House Sq.  
Bowling Green, OH 43402

DELAWARE COUNTY  
BOARD OF ELECTIONS  
140 N. Sandusky St.  
Delaware, OH 43015

FRANKLIN COUNTY  
BOARD OF ELECTIONS  
280 E. Broad St., 1st floor  
Columbus, OH 43215-4572

KNOX COUNTY  
BOARD OF ELECTIONS  
117 E. High St., Suite 210  
Mt. Vernon, OH 43050

LAKE COUNTY  
BOARD OF ELECTIONS  
105 Main St.  
PO Box 490  
Painesville, OH 44077-0490

MAHONING COUNTY  
BOARD OF ELECTIONS  
2801 Market Street  
Youngstown, Ohio 44507

PICKAWAY COUNTY  
BOARD OF ELECTIONS  
141 West Main St., Suite 800  
Circleville, OH 43113

PUTNAM COUNTY  
BOARD OF ELECTIONS  
Annex Building  
336 E Main ST  
Ottawa, OH 45875

ROSS COUNTY  
BOARD OF ELECTIONS  
475 Western Ave.  
PO Box 1663  
Chillicothe, OH 45601

UNION COUNTY  
BOARD OF ELECTIONS  
Union County Services Center  
940 London Ave., Suite 1000  
Marysville, OH 43040-1621

WYANDOT COUNTY  
BOARD OF ELECTIONS  
109 S. Sandusky Ave., Rm 12  
Upper Sandusky, OH 43351

Defendants

## INTRODUCTION

Plaintiffs allege as follows:

1. Plaintiffs bring this Complaint for Declaratory and Injunctive Relief (“Complaint”) to protect their fundamental right to vote and to protect the integrity of Ohio’s elections.
2. Plaintiffs seek a declaration that the Ohio Secretary of State (“Secretary”) violated the Ohio Constitution and Ohio Statutes by unlawfully certifying for use in Ohio elections certain Direct Recording Electronic (“DRE”) computerized voting systems that do not satisfy state law requirements for reliability, security, accuracy, verifiability, and accessibility to all Ohio voters. The systems at issue include DREs manufactured by Diebold Election Systems, Inc. (“Diebold”), and Election Systems and Software, Inc. (“ES&S”). The Diebold and ES&S DREs present unacceptable risks of operational failure, hacking and vote manipulation, election uncertainty, and incorrect election outcomes.
3. The Ohio counties associated with the Defendant County Boards of Election plan to use Diebold or ES&S DREs in statewide elections in 2006 and thereafter.
4. Plaintiffs seek a declaration that it is unlawful for county election officials to purchase, lease, or use the Diebold and ES&S DREs that do not comply with the Ohio Constitution, Ohio statutes, and regulations, as well as an injunction prohibiting use of those DREs in Ohio elections.
5. Use of the Diebold or ES&S DREs would violate the Ohio Constitution and Ohio statutes, would constitute an unconstitutional infringement of Plaintiffs’ fundamental right to vote, and would result in electoral chaos and irrevocable harm to Plaintiffs’ fundamental right to vote and to integrity in Ohio elections.

## **PARTIES**

6. Plaintiff James B. Callen is a qualified voter who is registered to vote in Mahoning County, Ohio, plans to vote in the 2006 and 2008 elections, and wishes to have his and all other qualified voting Ohio voters' votes properly counted and weighted in any forthcoming election.
7. Plaintiff Robert Comer is a qualified voter who is registered to vote in Carroll County, Ohio, plans to vote in the 2006 and 2008 elections, and wishes to have his and all other qualified Ohio voters' votes properly counted and weighted in any forthcoming election.
8. Patricia Hridel is a qualified voter who is registered to vote in Geauga County, Ohio, plans to vote in the 2006 and 2008 elections, and wishes to have her and all other Ohio voters' votes properly counted and weighted in any forthcoming election.
9. Sally Kuhnle is a qualified voter who is registered to vote in Cuyahoga County, Ohio, and plans to vote in the 2006 and 2008 elections, and wishes to have her and all other Ohio voters' votes properly counted and weighted in any forthcoming election.
10. Patricia DeFranco is a qualified voter who is registered to vote in Cuyahoga County, Ohio, and plans to vote in the 2006 and 2008 elections, and wishes to have her and all other Ohio voters' votes properly counted and weighted in any forthcoming election.
11. Defendant J. Kenneth Blackwell is the Ohio Secretary of State, a public officer of the State of Ohio and is named as Defendant in this action in his official capacity only. The Secretary is the public officer responsible for the conduct of statewide elections.
12. Defendant Board of Elections for Adams County, Ohio ("Adams County Board") is a public board of this State and is named as Defendant in this action in its official capacity. The Adams County Board is responsible for the conduct of elections in Adams County.

13. Defendant Board of Elections for Ashland County, Ohio (“Ashland County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Ashland County Board is responsible for the conduct of elections in Ashland County.

14. Defendant Board of Elections for Belmont County, Ohio (“Belmont County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Belmont County Board is responsible for the conduct of elections in Belmont County.

15. Defendant Board of Elections for Butler County, Ohio (“Butler County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Butler County Board is responsible for the conduct of elections in Butler County.

16. Defendant Board of Elections for Carroll County, Ohio (“Carroll County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Carroll County Board is responsible for the conduct of elections in Carroll County.

17. Defendant Board of Elections for Coshocton County, Ohio (“Coshocton County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Coshocton County Board is responsible for the conduct of elections in Coshocton County.

18. Defendant Board of Elections for Crawford County, Ohio (“Crawford County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Crawford County Board is responsible for the conduct of elections in Crawford County.

19. Defendant Board of Elections for Cuyahoga County, Ohio (“Cuyahoga County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Cuyahoga County Board is responsible for the conduct of elections in Cuyahoga County.

20. Defendant Board of Elections for Darke County, Ohio (“Darke County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Darke County Board is responsible for the conduct of elections in Darke County.

21. Defendant Board of Elections for Defiance County, Ohio (“Defiance County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Defiance County Board is responsible for the conduct of elections in Defiance County.

22. Defendant Board of Elections for Fairfield County, Ohio (“Fairfield County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Fairfield County Board is responsible for the conduct of elections in Fairfield County.

23. Defendant Board of Elections for Fulton County, Ohio (“Fulton County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Fulton County Board is responsible for the conduct of elections in Fulton County.

24. Defendant Board of Elections for Gallia County, Ohio (“Gallia County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Gallia County Board is responsible for the conduct of elections in Gallia County.

25. Defendant Board of Elections for Greene County, Ohio (“Greene County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Greene County Board is responsible for the conduct of elections in Greene County.

26. Defendant Board of Elections for Guernsey County, Ohio (“Guernsey County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Guernsey County Board is responsible for the conduct of elections in Guernsey County.

27. Defendant Board of Elections for Hancock County, Ohio (“Hancock County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Hancock County Board is responsible for the conduct of elections in Hancock County.

28. Defendant Board of Elections for Hardin County, Ohio (“Hardin County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Hardin County Board is responsible for the conduct of elections in Hardin County.

29. Defendant Board of Elections for Harrison County, Ohio (“Harrison County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Harrison County Board is responsible for the conduct of elections in Harrison County.

30. Defendant Board of Elections for Henry County, Ohio (“Henry County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Henry County Board is responsible for the conduct of elections in Henry County.

31. Defendant Board of Elections for Highland County, Ohio (“Highland County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Highland County Board is responsible for the conduct of elections in Highland County.

32. Defendant Board of Elections for Hocking County, Ohio (“Hocking County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Hocking County Board is responsible for the conduct of elections in Hocking County.

33. Defendant Board of Elections for Holmes County, Ohio (“Holmes County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Holmes County Board is responsible for the conduct of elections in Holmes County.

34. Defendant Board of Elections for Huron County, Ohio (“Huron County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Huron County Board is responsible for the conduct of elections in Huron County.

35. Defendant Board of Elections for Jackson County, Ohio (“Jackson County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Jackson County Board is responsible for the conduct of elections in Jackson County.

36. Defendant Board of Elections for Jefferson County, Ohio (“Jefferson County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Jefferson County Board is responsible for the conduct of elections in Jefferson County.

37. Defendant Board of Elections for Lawrence County, Ohio (“Lawrence County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Lawrence County Board is responsible for the conduct of elections in Lawrence County.

38. Defendant Board of Elections for Licking County, Ohio (“Licking County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Licking County Board is responsible for the conduct of elections in Licking County.

39. Defendant Board of Elections for Lorain County, Ohio (“Lorain County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Lorain County Board is responsible for the conduct of elections in Lorain County.

40. Defendant Board of Elections for Marion County, Ohio (“Marion County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Marion County Board is responsible for the conduct of elections in Marion County.

41. Defendant Board of Elections for Medina County, Ohio (“Medina County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Medina County Board is responsible for the conduct of elections in Medina County.

42. Defendant Board of Elections for Mercer County, Ohio (“Mercer County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Mercer County Board is responsible for the conduct of elections in Mercer County.

43. Defendant Board of Elections for Miami County, Ohio (“Miami County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Miami County Board is responsible for the conduct of elections in Miami County.

44. Defendant Board of Elections for Montgomery County, Ohio (“Montgomery County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Montgomery County Board is responsible for the conduct of elections in Montgomery County.

45. Defendant Board of Elections for Morgan County, Ohio (“Morgan County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Morgan County Board is responsible for the conduct of elections in Morgan County.

46. Defendant Board of Elections for Morrow County, Ohio (“Morrow County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Morrow County Board is responsible for the conduct of elections in Morrow County.

47. Defendant Board of Elections for Muskingum County, Ohio (“Muskingum County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Muskingum County Board is responsible for the conduct of elections in Muskingum County.

48. Defendant Board of Elections for Ottawa County, Ohio (“Ottawa County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Ottawa County Board is responsible for the conduct of elections in Ottawa County.

49. Defendant Board of Elections for Paulding County, Ohio (“Paulding County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Paulding County Board is responsible for the conduct of elections in Paulding County.

50. Defendant Board of Elections for Perry County, Ohio (“Perry County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Perry County Board is responsible for the conduct of elections in Perry County.

51. Defendant Board of Elections for Pike County, Ohio (“Pike County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Pike County Board is responsible for the conduct of elections in Pike County.

52. Defendant Board of Elections for Portage County, Ohio (“Portage County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Portage County Board is responsible for the conduct of elections in Portage County.

53. Defendant Board of Elections for Richland County, Ohio (“Richland County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Richland County Board is responsible for the conduct of elections in Richland County.

54. Defendant Board of Elections for Stark County, Ohio (“Stark County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Stark County Board is responsible for the conduct of elections in Stark County.

55. Defendant Board of Elections for Trumbull County, Ohio (“Trumbull County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Trumbull County Board is responsible for the conduct of elections in Trumbull County.

56. Defendant Board of Elections for Tuscarawas County, Ohio (“Tuscarawas County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Tuscarawas County Board is responsible for the conduct of elections in Tuscarawas County.

57. Defendant Board of Elections for Van Wert County, Ohio (“Van Wert County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Van Wert County Board is responsible for the conduct of elections in Van Wert County.

58. Defendant Board of Elections for Wayne County, Ohio (“Wayne County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Wayne County Board is responsible for the conduct of elections in Wayne County.

59. Defendant Board of Elections for Wood County, Ohio (“Wood County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Wood County Board is responsible for the conduct of elections in Wood County.

60. Defendant Board of Elections for Delaware County, Ohio (“Delaware County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Delaware County Board is responsible for the conduct of elections in Delaware County.

61. Defendant Board of Elections for Franklin County, Ohio (“Franklin County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Franklin County Board is responsible for the conduct of elections in Franklin County.

62. Defendant Board of Elections for Knox County, Ohio (“Knox County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Knox County Board is responsible for the conduct of elections in Knox County.

63. Defendant Board of Elections for Lake County, Ohio (“Lake County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Lake County Board is responsible for the conduct of elections in Lake County.

64. Defendant Board of Elections for Mahoning County, Ohio (“Mahoning County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Mahoning County Board is responsible for the conduct of elections in Mahoning County.

65. Defendant Board of Elections for Pickaway County, Ohio (“Pickaway County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Pickaway County Board is responsible for the conduct of elections in Pickaway County.

66. Defendant Board of Elections for Putnam County, Ohio (“Putnam County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Putnam County Board is responsible for the conduct of elections in Putnam County.

67. Defendant Board of Elections for Ross County, Ohio (“Ross County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Ross County Board is responsible for the conduct of elections in Ross County.

68. Defendant Board of Elections for Union County, Ohio (“Union County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Union County Board is responsible for the conduct of elections in Union County.

69. Defendant Board of Elections for Wyandot County, Ohio (“Wyandot County Board”) is a public board of this State and is named as Defendant in this action in its official capacity. The Wyandot County Board is responsible for the conduct of elections in Wyandot County.

### **JURISDICTION AND VENUE**

70. This Court has jurisdiction over this action pursuant to Article I, § 16 and Article IV, § 4 of the Ohio Constitution and Ohio Rev. Code § 2305.01.

71. Under Ohio Rules of Civil Procedure, Rule 3(b)(4), venue is appropriate in the City of Columbus and County of Franklin.

### **STATEMENT OF FACTS**

72. Pursuant to Ohio Rev. Code 3506.19, for elections in 2006 and thereafter, each polling place in Ohio must be equipped with at least one voting system that allows voters with disabilities to vote privately and independently and all voting machine must have manual audit capacity that produce paper records for recounts.

73. In compliance with Ohio Rev. Code 3506.19, Ohio has eliminated all punch card and lever voting systems. All counties now utilize one of two types of electronic voting systems, either optical scan (“OS”) systems or Direct Recording Electronic (“DRE”) systems. These systems typically include the hardware, software, and firmware used to define ballots, cast and count votes, report and display election results, and maintain and produce audit trail information, if any.

74. Optical scan voting systems tabulate paper ballots, often using the same “mark-sense” technology that is used for scoring standardized tests. The official ballot in optical scan systems usually is the paper ballot itself, not the electronic record generated by the electronic tabulating machine.

75. DREs, on the other hand, capture votes electronically, without the use of paper ballots.

DREs come in two basic models: pushbutton or touch-screen.

76. Like any computer, a DRE and its components, such as memory cards, are vulnerable to security breaches, or hacking, from the vendor's insiders or from outsiders. A hacker who breaches or compromises a DRE machine's security can alter the results of an election in a manner that is not detectable to election officials.

77. To support and provide some measure of voter verification for DREs, several different kinds of voter verified paper record ("VVPR") devices have been developed and are in various stages of deployment. The two predominant VVPRs are reel-to-reel or voter verified paper ballots ("VVPBs"). Ohio requires DREs to be equipped with printers that print a voter verifiable paper audit trail ("VVPAT") pursuant to Ohio Rev. Code §§ 3506.01(H), 3506.05(H)(3)(a), and 3506.10(P) and Ohio Admin. Code § 111:5-1-01. The Diebold and ES&S DREs use VVPAT systems that employ continuous rolls of reel-to-reel thermal paper.

78. Although Defendants have purchased DRE systems in an effort to comply with state law, the DREs manufactured by Diebold and ES&S in fact do not comply. Those machines do not comply with the statutory requirement that voting systems certified in Ohio "provide[] for recording of voter intent, system security, voter privacy, retention of vote, and communication of voting records." Ohio Rev. Code § 3506.05(D); *see also* Ohio Admin. Code § 11:3-3-02. The machines also fail to meet the requirements for disability access set by Ohio law, *see* Ohio Rev. Code § 3506.19. Finally, the use of the machines violates Article V, § 1 of the Ohio Constitution, which guarantees every qualified elector the right to vote—a right that necessarily includes the right to have one's lawful vote and the lawful votes of all other voters counted

accurately so the effect of the elector's vote is not diluted, as well as Article I, § 2 and Article II, § 26 of the Ohio Constitution, which guarantee equal protection and uniform application of law.

### **DREs Are Inherently Untrustworthy**

79. The following provisions of Ohio law require that voting machines be trustworthy if they are to be used in elections in the state:

- a. Ohio Rev. Code § 3506.10(B) (voting machine must permit voter to vote “for all persons and offices for whom and for which the elector is lawfully entitled to vote”).
- b. Ohio Rev. Code § 3506.10(M) (voting machine “when operated properly shall register and record correctly and accurately every vote cast”).
- c. Ohio Rev. Code § 3506.23 (“A voting machine shall not be connected to the internet.”).
- d. Ohio Admin. Code § 111:3-3-01(C)(15) (voting machine must be certified by independent testing authority as meeting or exceeding federal election standards)

80. A basic tenet of computer science is that testing of computer code can be used to show the presence of bugs or malicious code, but never to show or prove the absence of bugs or malicious code. In fact, it is impossible to prove that any computer is not infected with malicious code. This tenet holds true for DREs. No matter how stringent the testing and certification may be, it is impossible to be certain that an electronic voting system will be secure and reliable. This fundamental fact is especially important in the present circumstances, where expert examinations and practical election experience have shown that the Diebold & ES&S DREs are insecure and unreliable.

81. Evaluations have shown that DREs are susceptible to untraceable alteration of the cast vote records on the voting machine. Computer experts have demonstrated that, with minimal

effort, they can hack into the ballot definition files and alter them so that the votes shown on the display screen for one candidate would actually be recorded and counted for a different candidate. They have also demonstrated that with only a minute's access, they could install malicious code on a DRE that could steal votes undetectably, modifying all records, logs, and counters to be consistent with the fraudulent vote count it creates. This malicious code could be spread automatically and silently from machine to machine during normal election activities—a voting-machine virus. Further, the threat posed by the electronic voting systems' vulnerability to attacks by outsiders pales in comparison to the systems' more critical vulnerability to attacks by insiders--namely, the private vendors' hardware and software engineers, programmers, and other employees or agents who are granted access to the systems' hardware, firmware, and software during the design, manufacture, deployment, and field support of the electronic voting systems.

**The DREs to Be Used in Ohio's 2006 Elections Are Inherently Untrustworthy**

82. Defendant Secretary of State has certified, and the Defendant County Boards of Elections have opted to use DREs manufactured by Diebold and ES&S for statewide elections in 2006 and thereafter.

83. Each voting system certified in Ohio must meet the qualifications of Ohio Admin. Code § 111:3-3-01, which includes a requirement that the system be “certified by an independent testing authority as meeting or exceeding the minimum requirements of the federal election commission voting system standards.”

84. The Secretary has certified a Diebold DRE both for use in the 2006 elections and thereafter. Specifically, the Secretary authorized the Diebold AccuVote-TSX DRE and associated components.

85. County election officials in Adams, Ashland, Belmont, Butler, Carroll, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Fairfield, Fulton, Gallia, Greene, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Jefferson, Lawrence, Licking, Lorain, Marion, Medina, Mercer, Miami, Montgomery, Morgan, Morrow, Muskingum, Ottawa, Paulding, Perry, Pike, Portage, Richland, Stark, Trumbull, Tuscarawas, Van Wert, Wayne, and Wood Counties plan to or already have purchased the above Diebold DRE system.

86. The Secretary has certified an ES&S DRE both for use in the 2006 elections and thereafter. Specifically, the Secretary authorized the ES&S iVotronic DRE and associated components.

87. County election officials in Delaware, Franklin, Knox, Lake, Mahoning, Pickaway, Putnam, Ross, Union, and Wyandot Counties plan to or already have purchased the above ES&S DRE system.

88. The Diebold and ES&S DREs purchased or leased by Ohio counties have documented histories of failure to function at the beginning of election days, breakdowns during election days, loss of legitimate votes, addition of votes not cast by voters and mis-tabulation of votes.

89. The Diebold and ES&S DREs purchased or leased by Ohio counties violate the following provisions of Ohio law:

- a. Ohio Rev. Code § 3506.10(B) (voting machine must permit voter to vote “for all persons and offices for whom and for which the elector is lawfully entitled to vote”).
- b. Ohio Rev. Code § 3506.10(M) (voting machine “when operated properly shall register and record correctly and accurately every vote cast”).
- c. Ohio Rev. Code § 3506.23 (“A voting machine shall not be connected to the internet.”).

- d. Ohio Admin. Code § 111:3-3-01(C)(15) (voting machine must be certified by independent testing authority as meeting or exceeding federal election standards)

### **Diebold DREs**

90. Diebold DREs, which are to be used in Adams, Ashland, Belmont, Butler, Carroll, Coshocton, Crawford, Cuyahoga, Darke, Defiance, Fairfield, Fulton, Gallia, Greene, Guernsey, Hancock, Hardin, Harrison, Henry, Highland, Hocking, Holmes, Huron, Jackson, Jefferson, Lawrence, Licking, Lorain, Marion, Medina, Mercer, Miami, Montgomery, Morgan, Morrow, Muskingum, Ottawa, Paulding, Perry, Pike, Portage, Richland, Stark, Trumbull, Tuscarawas, Van Wert, Wayne, and Wood Counties, have a history of well-known accuracy and security flaws, including the potential for faulty recording, counting and reporting of votes, and are currently being challenged in the courts of several States.

91. The Diebold touch-screen DRE voting systems that the above-named counties plan to purchase (or already have purchased) and use have serious, fundamental security flaws, including the presence of illegal interpreted code, that leave them highly vulnerable to election fraud through tampering with software and vote records.

92. In 2003, computer science professor Aviel Rubin of Johns Hopkins University and his research team analyzed the publicly available source code for the Diebold AccuVote-TS DRE voting machine, which is the predecessor DRE to the Diebold AccuVote-TSX certified for use in Ohio. Dr. Rubin's team found significant security flaws in that voters could cast multiple ballots and regular voters could perform administrative functions.

93. In September 2003, Science Application International Corporation ("SAIC") issued a "Risk Assessment Report: Diebold AccuVote-TS Voting System and Processes," which was commissioned by the Governor of Maryland. The report identified 328 security flaws and

concluded that "the system, as implemented in policy, procedure, and technology, is at high risk of compromise." In December 2003, Defendant Secretary of State released its "DRE Technical Security Assessment" and found that the Diebold AccuVote-TS voting system had more security risks rated "high" than any other vendor's system. The report stated that the same PIN----1111--- was used on all "supervisor" smart cards nationwide, and that an unauthorized person could use the PIN to gain access to supervisor functions on the voting terminal.

94. In January 2004, the Maryland Department of Legislative Services released a report titled "Trusted Agent Report: Diebold AccuVote-TS Voting System," which was prepared by RABA Technologies, LLC. The RABA report identified numerous security vulnerabilities in the Diebold GEMS vote tabulation software used on a central computer to aggregate votes from all precincts and concluded that "a pervasive rewrite" of Diebold's code would be required to significantly improve its security.

95. The California Secretary of State concluded in a special report on California's March 2004 elections that Diebold DREs experienced operating problems that severely curtailed voting in San Diego County and significantly affected voting in Alameda County, and that Diebold never alerted California election officials about this equipment problem, nor provided poll worker training to address the problem. Due to the Diebold DRE failures, voters were sent away or to other polling places. As a result, the California Attorney General investigated Diebold for criminal fraud charges and obtained a \$2.6 million state False Claims Act settlement.

96. The Diebold AccuVote-TSX DRE and the Diebold AccuVote-OS optical scan system, certified by the Secretary for use in the 2006 elections and thereafter, use as key components substantially the same removable memory cards. Those memory cards contain:

- a. The election description (i.e., races, candidates, parties, propositions, and ballot layout);
- b. Vote counters for every candidate and proposition;
- c. Byte-coded object programs;
- d. The internal electronic audit log;
- e. An election mode field indicating whether the system containing the card is currently being used in a real election; and
- f. Other variables and data describing the state of the election.

97. In 2005, computer security investigator Dr. Harri Hursti was permitted by a county elections official in Florida to investigate Diebold's AccuVote-OS voting machine. Dr. Hursti demonstrated that a person with access to a Diebold AccuVote-OS system's removable memory card—the contents of which are substantially the same as the contents of the card used in the Diebold AccuVote-TSX DREs—could modify scripts (small programs written in Diebold's proprietary AccuBasic source code) that are stored on the card, and also could alter the vote counts stored on the card in a manner that would affect the outcome of the election and not be detected by the post-election canvass procedures.

98. Concern over Dr. Hursti's report prompted the California Secretary of State to order his Voting Systems Technology Assessment Advisory Board ("VSTAAB") to conduct an analysis of the AccuBasic source code for both the AccuVote-OS and the AccuVote-TSX DRE. David Jefferson of Lawrence Livermore Laboratories and University of California Computer Science Professors David Wagner and Matt Bishop authored the official VSTAAB report. Their report highlighted the following concerns:

- a. Anyone who has access to the memory card of the AccuVote-OS and can modify its contents can modify the election results in a number of ways without allowing detection except through a recount of actual paper ballots;
- b. Sixteen bugs in the implementation of Diebold's AccuBasic interpreter, which resides on the memory card used in the Accuvote OS, could allow an attacker to change vote totals, modify reports, change the names of candidates, change the races voted on, or insert his own code into the running firmware of the machine;
- c. The only way to detect such attacks on the AccuVote-OS is through recounting the original paper ballots;
- d. The bugs in the AccuVote-OS are also present in the Diebold AccuVote-TSX DRE;
- e. Implementation of cryptographic protection in the AccuVote-TSX is flawed. The AccuVote-TSX uses a default key, which is hard-coded into the source code for every such machine in the United States and has been openly published for over two years on the Internet;
- f. The AccuBasic interpreter does not appear to have been written using high-assurance development methodologies;
- g. Interpreted code is prohibited by the 2002 VVSS, currently adopted by the EAC as its first set of voting system standards, and by the EAC's updated Voluntary Voting System Guidelines due to take effect in 2007.

99. The United States Election Assistance Commission (“EAC”) promulgates voluntary guidelines for voting machines. Section 222(e) of the federal Help America Vote Act of 2002 (HAVA) provides that the 2002 Voluntary Voting System Standards (“VVSS”) adopted by the Federal Election Commission (“FEC”) are deemed to be adopted by the EAC as the first set of

voluntary voting system guidelines adopted under HAVA. The VVSS set out standards that provide guidance to voting machine manufacturers, independent testing authorities, and the states regarding various features of voting systems. Ohio law requires any voting system used in the state to comply with the VVSS. Ohio Admin. Code § 111:3-3-01.

100. Among the features addressed in the VVSS are security features. One of the VVSS provisions designed to minimize security problems is the prohibition of “interpreted code” in electronic voting systems, including DREs. When a computer programmer creates a computer program, he or she writes it in human-readable code. This is known as the “source code.” For most software programs, the source code is then run through a program called a “compiler,” which translates the source code into machine-readable code called “object code.” There is often an additional step required that is called “linking” or “binding.” For that step, the object code is run through a linking or binding program, and the result is the executable program---the machine-readable instructions to the computer. When a computer program is installed on a machine, the codes are loaded onto the machine and stay there. After the program is installed, if the source code, object code, compiler, and linking program are deleted from the machine, only the machine-readable code remains on the computer, making it difficult for humans to alter the executable program.

101. Interpreted code operates in a manner that is fundamentally different from compiled code. Interpreted code is written in a human-readable format similar to source code. Unlike compiled code, however, interpreted code remains in human-readable format on the machine where it is run. A computer program called an “interpreter,” which remains on the machine at all times, reads the interpreted code and translates the code into machine-readable format each time the program runs. Thus, with interpreted code, human-readable code and an interpreter are present

on the machine, and it is easy for a knowledgeable person to alter that interpreted code. In the case of a computer program in a DRE voting system, alteration of the interpreted code can result in election fraud and alteration of election results.

102. The VVSS and Ohio Admin. Code § 111.3-3-01 prohibit the presence of human-readable computer code in DRE voting systems, including interpreted code. This prohibition reduces a DRE voting system's vulnerability to hacking.

103. Despite the prohibition on interpreted code, and despite knowing of the vulnerabilities of interpreted code, on information and belief, Diebold has not changed its voting systems to eliminate the problematic interpreted code.

104. The Diebold DREs' interpreted code is a particularly serious security risk because it is loaded at the time of the election in "real time," not in advance, and is not subjected to security testing and certification. The Diebold DREs' interpreter is accessible on the Diebold memory card, which is small and portable. Anyone with access to the interpreted code can change it before, during, or after an election.

105. The danger that these memory cards could be tampered with while they are in the AccuVote-TSX units is particularly high because the AccuVote-TSX's Windows CE operating system, which has notoriously weak security features, has never been subjected to testing by any independent testing authority.

106. In early 2006, a county elections official in Utah allowed Dr. Hursti to examine the Diebold AccuVote-TSX DRE, and the security vulnerability he discovered was shocking. . Dr. Hursti found that he could readily install malicious code permanently on the machine at the most fundamental level and that the malicious code can defeat any attempt to secure the machine afterwards.

107. There are three levels of code in any computer: the BIOS (that interfaces the hardware to the software, controls the system at startup, and is the basic level of machine functionality), the operating system (that provides essential services, including security, for the system), and the application (in this case, voting functionality).

108. The BIOS is what a computer user is working with when a computer starts up and before the computer's system is loaded. The BIOS offers the user the option to press F2 or some other key and set things like the boot sequence, the system clock, the processor speed, and some hardware level functions, including some security functions, before loading the operating system and the application software the user wishes to use.

109. In a report now referred to as "Hursti II," Dr. Hursti showed that he could easily alter the Diebold BIOS and attack both the Windows CE operating system and the voting application of the Diebold AccuVote-TSX as well. The exploit requires only a standard PC memory card, naming the files according to Diebold's naming scheme, and gaining brief physical access (a minute or two) to the AccuVote-TSX machine. The system will automatically install the malicious code, which can be permanent, can contain functionality to enable further attacks (such as vote reallocation), can protect itself from forensic investigation, and can defeat any security measures added at a higher level (such as hash code checking).

In Ohio's May 2, 2006 primary election, Cuyahoga County used the Diebold TSX DRE voting system. The county experienced severe problems with the voting system. A study by several independent experts commissioned by the county (ESI Report) found, after three months of exhaustive research, that the Diebold TSX machines' four sources of vote totals – VVPAT individual ballots, VVPAT summary, election archive, and memory cards – did not agree with one another.

## **ES&S DREs**

110. The ES&S iVotronic DRE that Delaware, Franklin, Knox, Lake, Mahoning, Pickaway, Putnam, Ross, Union, and Wyandot Counties plan to purchase (or have purchased) and use has serious flaws that leave it vulnerable to election fraud through software tampering.
111. The ES&S iVotronic DRE is a touch-screen voting system that, along with accompanying election management software, is called the "Unity system."
112. A recent study conducted by the Pennsylvania Secretary of the Commonwealth identified potential security problems in the ES&S iVotronic DRE. They include the following:
- a. ES&S iVotronic DRE software modules can be set so that they do not require passwords;
  - b. Factory-set default passwords can be used on any ES&S iVotronic DRE in the country;
  - c. ES&S iVotronic DRE memory cards, containing audio and long text ballots, can be installed at the polling place, compromising the security of the memory card and permitting the possibility that counterfeit cards could be substituted;
  - d. There are accessible, unsecured cable connections at the top edge of ES&S iVotronic DREs; and
  - e. The ES&S Unity tabulating software runs on a Windows platform that, if used with a modem, could allow untraceable connections to the Internet, connection of the ES&S system with uncertified telephone equipment, and the introduction of malicious code into the ES&S system.
113. Any person with knowledge of a poll worker's simple ES&S password could irrevocably erase all votes in an ES&S DRE, at any time during a polling day.

114. The Defendant Secretary of State also performed an analysis of the security of the ES&S iVotronic DRE and identified the following as-yet-unmitigated risk: The “add to” feature in the tally program, which is intended to recover data from broken machines, can be executed multiple times for the same machine, and thereby allow overcounting of votes.**The Diebold and ES&S**

### **DREs Provide An Inadequate Paper Trail**

115. Ohio Rev. Code §§ 3506.05(H)(3)(a) and 3506.10(P) require that all DRE voting systems produce a corresponding paper record with audit capacity, or VVPAT. The paper used to produce the record must be “sturdy, clean, and resistant to degradation.” Ohio Rev. Code § 3506.05(H)(3)(a)(iv). In addition, Ohio Rev. Code § 3506.18 requires that the paper record be available for any recount conducted for any election in which the system is used.

116. Pursuant to statute, the VVPAT must be an auditable paper record that (a) is available for the elector to inspect “visually or audibly” before the vote is cast, Ohio Rev. Code §3506.01(H); (b) is “capable of being optically scanned for the purpose of conducting a recount or other audit of the voting machine and ... readable in a manner that makes the voter’s ballot choices obvious to the voter without the use of computer or electronic codes,” Ohio Rev. Code § 3506.05(H)(3)(a)(v), Ohio Admin. Code § 111:5-1-01(E)(1)(d)(ii); (c) for office-type ballots, includes the name of each candidate selected, the designation of each office, and for questions and issues ballots, includes the title of the question of issue, the name of the entity that place the question or issue on the ballot, and the voter’s selection, Ohio Rev. Code § 3506.05(H)(3)(a)(vi-vii); and (d) is capable of being maintained as an election record in accordance with the requirements of Ohio Rev. Code § 3506.18 and Ohio Admin. Code § 111:5-1-01(C).

117. The VVPAT record is the “official ballot to be recounted” during any recount of an election. Ohio Rev. Code § 3506.18; *see also* Ohio Admin. Code § 111:5-1-01(E)(i)-(iii).

118. In addition, pursuant to regulation, the VVPAT must be equipped with a printer that is attached to, built into, or used in conjunction with the DRE. *See* Ohio Admin. Code § 111:5-1-01(D)(1)(a). This printer is required to “duplicate a voter’s selections on the DRE onto a paper record copy.” Ohio Admin. Code § 111:5-1-01(D)(1)(a)(i).
119. The unit must store both the records of the votes cast and spoiled paper record copies securely. Ohio Admin. Code § 111:5-1-01(D)(1)(b).
120. The VVPAT units may not be used with any voting machine that has the capability for radio or wireless transmission at a distance greater than one inch. Ohio Admin. Code § 111:5-1-01(D)(1)(d).
121. In addition, the VVPAT must be designed to ensure the secrecy of votes so that it is not possible to determine which voter cast the paper record. Ohio Admin. Code § 111:5-1-01(E)(1)(b)-(c).
122. The VVPAT must allow the voter to verify his vote in the same language in which he voted on the DRE. Ohio Admin. Code § 111:5-1-01(E)(1)(f).
123. Upon information and belief, all certified Ohio DREs use reel-to-reel VVPATs.
124. The paper on which these reel-to-reel VVPATs are printed is thermal, continuous roll paper that is similar to the paper used for cash register receipts.
125. In July 2005, the California Secretary of State's office oversaw a "volume test" of the Diebold AccuVote-TSX's attached printers. The test revealed critical flaws in the hardware and software of the AccuVote-TSX, including destroyed or lost paper audit records and ongoing software corruptions, which made it possible that votes could be lost or corrupted. In its October 11, 2005, report, the VSTAAB concluded that "any system with failure rates this high is not ready for use in any election." A second test was held a few months later. This test, which was

staffed by California Secretary of State temporary workers and was closely supervised by Diebold staff, concluded that the problems with the earlier test had allegedly been resolved.

126. VVPATs certified for use in Ohio have not been shown capable of supporting a manual recount as required by Ohio Rev. Code § 3506.18. *See also* Ohio Admin. Code § 111:5-1-01(E)(i)-(iii). The VVPATs are not printed on ballot-quality paper and will not retain their quality during the often-lengthy recount and legal challenge period. The paper is fragile and easily alterable by handling, blackening when it is exposed to heat or sunlight, thereby making it difficult, if not impossible, to read and use for manual audits and recounts. The ESI Report on the May 2006 primary election in Cuyahoga County found that 16.9 % of VVPAT tapes showed a discrepancy of one to five votes between the tally of ballots and the results report; 2.1 % showed a discrepancy of over 25 votes; and that during the manual recount, team members discovered 40 VVPAT tapes (9.66%) that were either destroyed, blank, illegible, missing, taped together or otherwise compromised.

127. When VVPAT audit trails are recountable, it takes an unacceptably long time to conduct the recount.

a. In Nevada's 2004 election, 1,268 of 60,000 ballots were audited using a DRE VVPAT reel-to-reel audit trail. The process required five teams of four people two days to complete.

b. In one California VVPAT recount, it took 127.5 hours to recount the 114 ballots-more than one hour for each ballot recounted.

128. Continuous-roll, reel-to-reel VVPATs allow for the invasion of voter privacy by preserving the order in which voters have voted, in violation of Ohio Admin. Code § 111:5-1-01(E)(1)(c).

129. Even when a voter's choice shows up correctly on the VVPAT, it is impossible for the voter to know whether the official vote has been electronically recorded correctly on the DRE's memory card, which is the official repository of votes, unless there is a full manual audit that compares the VVPAT to the machine tabulation.

130. For a voter to be unable to verify that his or her vote was correctly counted and recorded violates the voter's fundamental right to vote.

### **The Diebold and ES&S DREs Provide Inadequate Disability Access**

131. Pursuant to Ohio Rev. Code § 3506.19, each polling place must have at least one voting device that allows voters with disabilities to vote privately and independently.

132. The paper record must also be accessible to individuals with disabilities, including nonvisual accessibility, to provide the same opportunity for participation as for other voters, and the voting system must provide alternative language accessibility. Ohio Admin. Code §§ 111:5-1-01(E)(1)(d)-(f), (4)(c).

133. There are several types of disabilities that voting machines must accommodate in order to fulfill the requirements of Ohio Rev. Code § 3506.19. These disabilities include vision-related impairments, mobility- and dexterity-related impairments, cognitive impairments and various combinations of each.

134. Visually impaired voters include not only voters who are completely blind but also voters who are classified as "low-vision." Low-vision voters have some sight, but it is only partial or not fully correctable.

135. Low-vision voters often require different accommodations than blind voters. Voters who have recently become blind may require different accommodations from those who have been

blind for many years. For example, while many blind voters read and understand Braille, this may not be true for voters with low-vision.

136. Examples of accommodations for vision-impaired voters include audio recordings, magnification of the screen, the ability to change contrast and color on a screen, and keypads with Braille numbers or letters on the keys.

137. Mobility and dexterity-related impairments include a wide range of impairments. These impairments range from voters who cannot walk but can use their hands to voters who lack fine motor control but still have limited use of their hands, to voters who have no use of their hands and legs and must use sip-and-puff breath-controlled devices to cast their votes.

138. Sip-and-puff devices are devices that attach to the voting machine and allow the voter to indicate his or her choices by sipping air from or puffing air into a tube. A sip-and-puff device requires no use of the hands or legs.

139. Jelly switches accommodate voting for dexterity-impaired voters. Jelly switches are large buttons that are easier for a person with limited hand strength and dexterity to press.

140. Cognitive impairments are impairments that make it more difficult for a voter to process information. For example, voters who have suffered strokes will often suffer some degree of cognitive impairment.

141. Voters with cognitive impairments often will require accommodations that allow them to receive information about the ballot in more than one form simultaneously—for example, visually and through spoken messages.

142. Some voters have more than one of the above-described impairments.

143. The deficiencies of the Subject DREs certified by the Secretary include, but are not limited to, the following:

- a. The Diebold and ES&S DREs do not support standard 2-switch systems or other user interface devices required for use of sip-and-puff, jelly switches, and other assistive devices;
- b. Many voters with motor impairments cannot hold the tethered keypads, which are used by the Diebold and ES&S DREs, in one hand while attempting to press keys with the other. The large size and form factor of these keypads do not facilitate their use as a keypad, held in a single hand and operated by the thumbs of the same hand;
- c. The Braille labels beside, above, or below the keys of the keypads are difficult to read. They do not have the Braille dots spaced properly, with the standard Braille dot spacing;
- d. The volume controls are of poor quality, noisy, and scratchy. To support the needs of audio voters who have major hearing loss, a high-volume boost capability should be, but is not, available.
- e. The Diebold and ES&S DREs do not have a "Call for Help" key or other control to discretely summon assistance from a poll worker.
- f. The Diebold and ES&S DREs do not have a 1/8 inch phone jack (separate from the headphone jack) on the keypad, for attaching a sip-and-puff or other standard switched input control device.
- g. Many blind, low-vision and cognitively impaired voters cannot be able to navigate successfully through the hierarchical menu system used by the Diebold and ES&S DREs.
- h. The Diebold and ES&S DREs fail to address the needs of elderly voters who have developed severe visual impairments with age, but who are unfamiliar with, and unable to operate, audio-only access technology because they have had normal vision most of their lives.

1. The audio access functions of the systems also are not suitable for providing accessible voting to voters who are both profoundly hearing impaired and visually impaired. The lack of a standard output interface port means that, for example, a deaf-blind voter cannot bring his or her own portable Braille display device to the polls and plug it into a standard output plug of the Diebold and ES&S DREs, in order to read the instruction materials, mark, review and correct the ballot privately and independently.

j. Blind and low-vision voters are unable to independently and privately verify their votes using the VVPAT paper trail because the Diebold and ES&S DREs are not equipped with any accommodations (such as scanners with audio output) allowing blind and low-vision voters to verify independently what is printed on the VVPAT without relying on a third party to read it to them.

k. Although technology exists that would allow the Diebold and ES&S DREs certified by the Secretary to provide the required accommodations to make these systems accessible to Ohio's disabled voters, on information and belief, the DREs purchased by Ohio counties do not include such technology.

### **IRREPARABLE HARM**

144. For all of the reasons set forth in the foregoing paragraphs, if Ohio's counties are permitted to use the Diebold and ES&S DREs in Ohio elections, the likely result is electoral chaos: votes are likely to be lost or miscounted (or both), no effective audit or recount will be possible, and many disabled voters will be denied their statutory and constitutional rights to vote independently and privately.

145. If Ohio’s counties are allowed to use the Diebold and ES&S DREs in the upcoming Ohio elections, Plaintiffs’ will suffer irreparable harm to their fundamental right to vote, protected by the Ohio Constitution and statutes.

## **CLAIMS FOR RELIEF**

### **First Claim for Relief (Declaratory Judgment—Violations of Ohio Rev. Code § 3506.05(D))**

146. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

147. Ohio Rev. Code § 3506.05(D) requires that all voting machines to be used in this State “provide for recording of voter intent, system security, voter privacy, retention of vote, and communication of voting records.” *See also* Ohio Admin. Code § 11:3-3-02.

148. The Diebold and ES&S DREs certified by the Secretary of State and purchased by the Defendant Counties do not provide for the recording of voter intent, system security, voter privacy, retention of vote, or communication of voting records.

149. Pursuant to Ohio’s Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the statutory requirements—violates the Defendants’ statutory duty to put in place voting machines that provide for recording of voter intent, system security, voter privacy, retention of vote and communication of voting records.

150. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Diebold and ES&S DREs---or any other DRE voting machine that does not fulfill the statutory requirements--- for use in any election.

151. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Diebold and ES&S DREs---or any other DRE voting machine that does not fulfill the statutory requirements---in any election.

**Second Claim for Relief**  
**(Declaratory Judgment—Violations of Ohio Rev. Code § 3506.10(M))**

152. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

153. Ohio Rev. Code § 3506.10(M) requires that all voting machines “when operated properly shall register and record correctly and accurately every vote cast.”

154. The Diebold and ES&S DREs certified by the Secretary and purchased by the Defendant Counties do not accurately record and count every vote cast, even when operated properly.

155. Pursuant to Ohio’s Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the statutory requirements—violates the Defendants’ statutory duty to put in place voting machines that register and record correctly and accurately all votes cast by Ohio voters.

156. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Diebold and ES&S DREs—or any other DRE voting machine that does not fulfill the statutory requirements—for use in any election.

157. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Diebold and ES&S DREs—or any other DRE voting machine that does not fulfill the statutory requirements—in any election.

**Third Claim for Relief**  
**(Declaratory Judgment—Violations of Ohio Rev. Code § 3506.19)**

158. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

159. Pursuant to Ohio Rev. Code § 3506.19, each polling place in the State must be equipped with at least one voting device that allows voters with disabilities to vote privately and independently.

160. The Diebold and ES&S DREs certified by the Secretary and purchased by the Defendant Counties do not allow many disabled voters to vote privately and independently as Ohio law requires.

161. Pursuant to Ohio's Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the statutory requirements—violates the Defendants' statutory duty to put in place voting machines that provide equal access to disabled voters and allow them to vote privately and independently, as required by Ohio law.

162. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs' statutory rights—for use in any election.

163. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs' statutory rights—in any election.

**Fourth Claim for Relief**

**(Declaratory Judgment—Violations of Ohio Rev. Code § 3506.05(H) and 3506.18(A))**

164. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

165. Ohio Rev. Code §§ 3506.05(H)(3)(a) and 3506.10(P) require that all DRE voting systems produce a corresponding paper record with audit capacity, or VVPAT. The paper used to produce the record must be “sturdy, clean, and resistant to degradation.” Ohio Rev. Code § 3506.05(H)(3)(a)(iv). In addition, Ohio Rev. Code § 3506.18 requires that the paper record be available for any recount conducted for any election in which the system is used.

166. The Diebold and ES&S DREs certified by the Secretary and purchased by the Defendant Counties do not provide a durable, permanent paper record suitable for a manual recount.

167. Pursuant to Ohio’s Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the statutory requirements—violates the Defendants’ statutory duty to put in place voting machines that produce an accurate, durable paper record that would allow Ohio election officials to perform a recount.

168. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Subject DREs—or any other DRE voting machine that does not fulfill the statutory requirements—for use in any election.

169. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Subject DREs—or any other DRE voting machine that does not fulfill the statutory requirements—in any election.

**Fifth Claim for Relief**  
**(Declaratory Judgment—Violations of Ohio Const. Art. I, § 2)**

170. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

171. Article I, Section 2 of the Ohio Constitution states: “All political power is inherent in the people. Government is instituted for their equal protection and benefit, and they have the right to alter, reform, or abolish the same, whenever they may deem it necessary; and no special privileges or immunities shall ever be granted, that may not be altered, revoked, or repealed by the General Assembly.”

172. By requiring some voters to cast their votes on inaccurate, unreliable, and insecure voting machines, thereby placing those voters at far higher risk of not having their votes properly counted or weighted, Defendants are denying some Ohio voters equal protection of the law and equal privileges and immunities. To require some voters to vote on such flawed and insecure systems as the Diebold and ES&S DREs while others vote on safer, more accurate systems would result in an unequal election and the unequal protection of Ohio citizens’ rights to vote.

173. Pursuant to Ohio’s Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the constitutional requirements—violates Plaintiffs’ constitutional rights to equal protection and equal privileges and immunities.

174. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs’ constitutional rights—for use in any election.

175. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs’ constitutional rights—in any election.

**Sixth Claim for Relief  
(Declaratory Judgment—Violations of Ohio Const. Art. II, § 26)**

176. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

177. Article II, Section 26 of the Ohio Constitution states: “All laws, of a general nature, shall have a uniform operation throughout the State; nor, shall any act, except such as relates to public schools, be passed, to take effect upon the approval of any other authority than the General Assembly, except, as otherwise provided in this constitution.”

178. By requiring some voters to vote on such flawed and insecure systems as the Diebold and ES&S DREs while others vote on safer, more accurate systems would deny Ohio voters uniform application of the State election laws.

179. Pursuant to Ohio’s Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the constitutional requirements—violates Plaintiffs’ constitutional right to uniform application of Ohio election law.

180. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs’ constitutional rights—for use in any election.

181. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs’ constitutional rights—in any election.

**Seventh Claim for Relief  
(Declaratory Judgment—Violations of Ohio Const. Art. V, § 1)**

182. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

183. Article I, Section 5 of the Ohio Constitution states, in relevant part: “Every citizen of the United States, of the age of eighteen years, who has been a resident of the state, county, township, or ward, such time as may be provided by law, and has been registered to vote for thirty days, has the qualifications of an elector, and is entitled to vote at all elections.”

184. By requiring some voters to cast their votes on less accurate and less secure voting machines, Defendants are denying Ohio voters their right to vote at all elections.

185. Pursuant to Ohio’s Uniform Declaratory Judgments Act, Ohio Rev. Code § 2721.01 et seq., and Ohio R. Civ. P. 57, Plaintiffs are entitled to and request a judicial determination and declaratory judgment that use of the Diebold and ES&S DREs certified by the Secretary—or any other DRE voting machine that does not fulfill the constitutional requirements—violates Plaintiffs’ constitutional right to vote at all elections.

186. Plaintiffs further request a judicial determination and declaration that the Secretary cannot certify the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs’ constitutional rights—for use in any election.

187. Plaintiffs further request a judicial determination and declaration that Defendants cannot use the Subject DREs—or any other DRE voting machine that does not fulfill Plaintiffs’ constitutional rights—in any election.

**Eighth Claim for Relief**  
**(Permanent Injunctive Relief—Pursuant to Ohio Rev. Code § 2727.02)**

188. Plaintiffs incorporate the allegations set forth in the foregoing paragraphs of this Complaint as if fully set forth herein.

189. Defendants have failed to acquire voting machines that (a) provide “for recording of voter intent, system security, voter privacy, retention of vote, and communication of voting records,” (b) register and record correctly and accurately every vote cast, (c) allow equal access to disabled voters, and (d) meet Ohio constitutional requirements.

190. Plaintiffs request an injunction prohibiting Defendants from using the Diebold and ES&S DREs—or any other machine that does not fulfill the statutory and constitutional requirements of Ohio law—for any election in the State.

191. Plaintiffs further request an injunction requiring Defendants to put in place voting machines that comply with Ohio statutory and constitutional provisions.

192. Plaintiffs further request an injunction prohibiting Defendants from training personnel and poll workers on the use and operation of the Diebold and ES&S DRE voting machines.

193. Plaintiffs further request an injunction prohibiting Defendant Secretary of State from certifying voting machines that do not comply with the statutory and constitutional provisions.

**RELIEF REQUESTED**

Wherefore, Plaintiffs request the following relief:

1. A declaration that the Diebold and ES&S DREs certified by the Secretary and purchased by the Defendant Counties do not comply with the Ohio Constitution and statutes and that their use violates Ohio voters’ statutory and constitutional rights.
2. A declaration that the Diebold and ES&S DREs certified by the Secretary and purchased by the Defendant Counties do not comply with Ohio’s disability-access requirements.

3. A permanent injunction prohibiting the Secretary from certifying electronic voting systems that do not comply with Ohio's statutory and constitutional provisions.
4. A permanent injunction prohibiting Defendants from purchasing or leasing and using the Diebold and ES&S DREs, or any other DRE voting machine that does not fulfill the statutory and constitutional requirements, for any election in Ohio.
5. A permanent injunction prohibiting Defendants from training their personnel and poll workers on the use and operation of the Diebold and ES&S DREs.
6. A permanent injunction requiring Defendants to put in place voting systems that comply with Ohio's statutory and constitutional provisions.
7. An award of other and further relief for Plaintiffs as may be appropriate.
8. An award of costs necessary to pursue this relief.

Respectfully Submitted,

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